Volume 2

NATIONAL TAXPAYER ADVOCATE

Objectives Report to Congress

IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2016 Annual Report to Congress

Fiscal Year 2018

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INTRODUCTION

Honorable Members of Congress:

Internal Revenue Code (IRC) § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to prepare an Annual Report to Congress that contains a summary of at least 20 of the Most Serious Problems encountered by taxpayers. For 2016, the National Taxpayer Advocate identified, analyzed, and offered recommendations to assist the IRS and Congress in resolving 20 such problems.[1] The National Taxpayer Advocate also offered recommendations in her Special Focus section. This section focused on the IRS's "Future State" and the National Taxpayer Advocate's vision for a taxpayer-centric 21st century tax administration.

IRC § 7803(c)(2)(B)(iii) requires the National Taxpayer Advocate to submit her reports "directly" to the House Committee on Ways and Means and the Senate Committee on Finance "without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget."[2] This provision protects the independence of the National Taxpayer Advocate's perspective.

Congress provided the IRS with the ability to comment on and respond to the National Taxpayer Advocate's recommendations (in the Annual Reports and elsewhere) by requiring the Commissioner to "establish procedures requiring a formal response to all recommendations submitted to the Commissioner by the National Taxpayer Advocate within three months after submission to the Commissioner."[3] The IRS has fulfilled its statutory responsibility by preparing written responses to the recommendations in each of the 20 Most Serious Problems and four administrative recommendations that were proposed in the Special Focus section.

The IRS formal comments on our recommendations, together with the National Taxpayer Advocate's analysis of and responses to the comments, are presented here. In this way, we maintain full transparency regarding the IRS's perspective on our recommendations to address the Most Serious Problem while still complying with the statutory protections.

The format for these responses is as follows:

- A problem statement for each Most Serious Problem from the 2016 Annual Report;
- A summary analysis of the problem;[4]
- TAS's recommendations for the Most Serious Problem;
- IRS's narrative response;

1 https://taxpayeradvocate.irs.gov/2016AnnualReport.

2 IRC § 7803(c)(2)(B)(iii).

3 IRC § 7803(c)(3). The IRS's 90-day responses to previous Annual Reports and the TAS comments on those responses are available in the "report cards," http://www.irs.gov/Advocate/Reports-to-Congress.

4 The complete analysis of the problem is available in the full text of the 2016 Annual Report to Congress, http://www.irs.gov/Advocate/Reports-to-Congress.

- The National Taxpayer Advocate's comments to IRS's narrative response; and
- A table with the IRS's responses and actions to each recommendation along with TAS's response.

Respectfully submitted,

Nina E. Olson
National Taxpayer Advocate
June 28, 2017

SPECIAL FOCUS: IRS FUTURE STATE: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration

In the 2015 Annual Report to Congress (ARC), the National Taxpayer Advocate identified the IRS's plans for its "Future State" as the number one most serious problem facing taxpayers.[1] Among other things, she cited concerns about the IRS's lack of transparency with taxpayers and Congress about the plans; the move away from person-to-person assistance and compliance contacts in favor of impersonal electronic "self-service"; and the reliance on private third parties to provide for-fee assistance for core tax administration services previously provided by the IRS for free, thereby increasing taxpayer costs for the "privilege" of paying their taxes.

The IRS has partially addressed the National Taxpayer Advocate's concerns. For example, almost immediately after the issuance of the 2015 Annual Report to Congress, the IRS created a webpage on irs.gov dedicated to the "Future State" and uploaded numerous documents.[2] The IRS Commissioner also made clear in congressional testimony and elsewhere that the IRS did not intend to eliminate phone or in-person assistance.[3] Moreover, during the Nationwide Tax Forums last summer, the IRS held a presentation on the "Future State," attended by over 2,200 practitioners and preparers, and also sponsored a suggestion booth.[4]

These steps, however commendable, have not fully addressed the core of the National Taxpayer Advocate's concerns, namely, that the IRS has failed to adequately study and incorporate into its "Future State" plans the needs and preferences of United States taxpayers — an incredibly diverse and complex population. In a budget environment in which the IRS has seen its annual appropriation decreased by about 19 percent on an inflation-adjusted basis, it is tempting and even understandable for the IRS to try to move taxpayers to less costly methods of communication, or channels, including digital self-service options.[5] But as tax administrators throughout the world have learned, and as the National Taxpayer

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

2 IRS, https://www.irs.gov/uac/newsroom/irs-future-state (last visited Dec. 20, 2016).

3 "As we improve the online experience, we understand the responsibility we have to serve the needs of all taxpayers, whatever their age, income, or location. We recognize there will always be taxpayers who do not have access to the internet, or who simply prefer not to conduct their transactions with the IRS online. The IRS remains committed to providing the services these taxpayers need. We do not intend to curtail the ability of taxpayers to deal with us by phone or in person." *Tax Return Filing Season: Hearing Before the H. Subcomm. on Oversight, Comm. on Ways and Means*, 114th Cong. (Apr. 19, 2016) (written statement of John Koskinen, Commissioner, Internal Revenue Service). *See also Can the IRS Protect Taxpayers' Personal Information? Hearing Before the H. Subcomm. on Research and Technology*, Comm. on Science, Space and Technology, 114th Cong. (Apr. 14, 2016) (statement of John Koskinen, Commissioner, Internal Revenue Service), https://www.irs.gov/uac/ written-testimony-of-commissioner-koskinen-before-the-house-science-space-and-technology-committee-on-cybersecurity-and-protecting-taxpayer-information, and John A. Koskinen, Commissioner of Internal Revenue, Address Before the National Press Club (Mar. 24, 2016), https://www.irs.gov/uac/March-24-2016-Commissioner-Koskinen-Speech-to-National-Press-Club.

4 10,723 practitioners and preparers attended the IRS Nationwide Tax Forums. Of those, 2,263 attended the presentation "IRS Future State Initiative" at five Tax Forums in 2016. Email from IRS Office of Online Services to TAS (Dec. 13, 2016).

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

Advocate discussed in her 2016 annual report, many of these shifts are only superficially less costly.[6] This is so because even the best-designed digital environment cannot accommodate the sheer complexity of the tax code and the limitless variety of taxpayers' lives and circumstances. This constrained communication, coupled with automated impersonal and often harmful IRS actions, can alienate the taxpayer population and over time may undermine compliance. Even if there is no negative compliance impact (which the National Taxpayer Advocate does not believe), it is not a recipe for good government if a large portion of U.S. taxpayers are alienated from and distrustful of the one government agency they interact with at least annually throughout their adult lives.

For these reasons, and given her statutory role as "an independent voice for the taxpayer within the IRS,"[7] in the Special Focus, the National Taxpayer Advocate attempted to identify and make recommendations to address the challenges the IRS faces to become a 21st century, taxpayer-centric tax administrator.

IRS CULTURE: To create an environment that encourages taxpayer trust and confidence, the IRS must change its culture from one that is enforcement-oriented to one that is service-oriented.

Simply put, the IRS cannot function well in the 21st century with the budget it has today. More funding is paramount — for taxpayer service, for compliance functions, for the agency's enforcement function (Criminal Investigation), for technology, and for its "support" operations like security and real estate.

TAS Recommendation	**[SPECIAL FOCUS RECOMMENDATION 2-1] Publish an annual report card on comprehensive measures that not only show traditional "enforcement" measures but disclose how the IRS performed in providing assistance and service in meeting taxpayer needs and preferences, as well as increasing voluntary compliance over time. These measures, in turn, should form the basis for Executive performance commitments and assessments.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA. The NTA's recommendation complements the agency's ongoing effort to fill information gaps, refine measurements over time and maintain focus on encouraging taxpayer trust and confidence in the IRS, but to assume the agency's culture is exclusively "enforcement-oriented" completely disregards the agency's significant commitment of time and resources to taxpayer service. In fact, service and compliance activities are inextricably linked, and the IRS is oriented toward helping all taxpayers come into full compliance with their federal tax obligations. As a result, the agency's focus on professionalism, integrity and courteous interactions permeates every aspect of IRS operations.

6 See Most Serious Problem: *Worldwide Taxpayer Service: The IRS Has Not Adopted "Best-in-Class" Taxpayer Service Despite Facing Many of the Same Challenges as Other Tax Administrations* and *Literature Review: Taxpayer Service in Other Countries, National Taxpayer Advocate 2016 Annual Report to Congress*, vol. 3.

7 National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* 48 (June 25, 1997).

IRS Action

The IRS is required by law to report its performance levels and to evaluate all employees, including executives, at least annually on their individual performance. Individual commitments must align with the agency's strategic goals to ensure a servicewide focus on common goals. Throughout the year, comprehensive measures are tracked and reported on all aspects of tax administration, including taxpayer service, compliance, and support operations. How the IRS performs in meeting taxpayer needs, as well as increasing voluntary compliance over time, is all freely available in IRS publications made available throughout the year.

The agency's performance management system was established initially by law (Public Law 105-206) and regulation (26 CFR Part 801) nearly 20 years ago. At that time, the IRS Restructuring and Reform Act of 1998 (RRA '98) marked a major turning point for the agency as Congress mandated the IRS institute more service-oriented measures. As part of that effort, the IRS transformed its approach and measurements entirely.

The reforms that began with RRA '98 set the stage for year-by-year improvements. Today the IRS maintains a robust set of measures to manage and continually evaluate the performance of programs at many levels of the organization. The IRS, like all federal agencies, must identify performance goals, report progress against targets, conduct data-driven reviews.[8] The IRS must also regularly assess 1) customer satisfaction; 2) employee satisfaction; and 3) business results for all its various programs. To satisfy various legal and oversight requirements and to inform the public of how its federal tax agency is performing, several key measures are published throughout the year. For example:

- The IRS Data Book provides information on the scope and composition of the agency's taxpayer assistance programs, including the telephone helpline, the IRS website, online tools, local taxpayer assistance centers, volunteer income tax assistance, and the workloads of the IRS Taxpayer Advocate Service and IRS Office of Appeals. The usability of this publication has improved dramatically in recent years with the addition of charts and graphs that more clearly communicate key measures to the average reader.
- The Taxpayer Assistance Blueprint is a multi-year report published since Congress mandated in 2005 that the IRS, the IRS Oversight Board, and the NTA collaboratively develop a five-year plan for taxpayer service. Subsequent updates to this report summarize taxpayer service levels, challenges to improving service, and survey research on taxpayer needs, preferences, and behavior.[9] This report is submitted to the U.S. Congress and published on our website, IRS.gov.
- The IRS Management Discussion and Analysis report is an annual publication that provides a wide range of information, including measures on refund processing, electronic filing, internet usage and levels of taxpayer service. This report is made available on the Government Accountability Office (GAO) website as part of its annual financial audit of the IRS.

Notably, tracking and reporting the right measures are far more important that the sheer volume of measures, so we choose carefully and adjust periodically. For all measures, specific documentation is required. The measure must have an understandable title, a full definition of its composition, and a justification for its inclusion or elimination. Over time, measures are adjusted to reflect the reality of the operating environment and to maintain alignment with the agency's strategic goals and objectives.

8 As required by the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010.

9 Taxpayer Experience Surveys have been conducted 10 times over the last 16 years, and each one has provided important insights into the needs, opinions and behaviors of individual taxpayers. The most recent survey was conducted for tax year 2014 and completed in 2015.

IRS Action Cont.

For example, the IRS continues to transform and adjust key measures around taxpayer service. Popular self-service applications like "Where's My Refund?" have enabled taxpayers to exchange information online with the IRS, thereby increasing the likelihood that IRS employees are more freely available to help others. As the self-assistance rate increases for simple tasks like checking the status of your tax refund, finding a tax form or making a payment, the telephone and in-person services IRS provides are more likely available for others who cannot or do not prefer to go online.

In recognition of changing taxpayer needs and preferences, the IRS began reporting the "taxpayer self-assistance rate" in fiscal year (FY) 2013 to illustrate the percentage of taxpayer assistance requests resolved using self-assisted automated services. By adding this new measure, the IRS can track its performance in adapting to the changing dynamic of online services and reinforce the strategic goal of enabling taxpayers to meet their tax obligations using the type of services, tools and support they prefer.

As required by law, the strategic goals of the agency form the basis of how performance is assessed for all employees, including executives. For example, executives are subject to multiple performance review boards ensuring appropriate and consistent application of Office of Personnel Management (OPM) policies and regulations that govern performance. The review boards are responsible for objectively ensuring individual performance evaluations and ratings align with operational performance and that any awards or annual increase in pay is strictly based on performance. Furthermore, executive performance plans require each person to set "specific, relevant, and measurable employee performance expectations (goals) that align with organizational goals." To ensure IRS is focused on providing excellent customer service to taxpayers, all IRS executives' performance plans must have a commitment to the "fair and equitable treatment of taxpayers," requiring that consistent with the incumbent's official responsibilities, adherence to the commitment of administering the tax laws fairly and equitably, protecting taxpayers' rights, and treating them ethically with honesty, integrity, and respect.

More generally, key measures and other information are published regularly to illustrate how the IRS is meeting taxpayer needs and preferences, as well as how the IRS performs in fulfilling its many other duties as the nation's federal tax administrator. The IRS relies on performance measures at all levels of the organization, and those measures are adjusted over time as the environment changes to better reflect the agency's mission and goals.

TAS Response

The National Taxpayer Advocate appreciates the IRS's description of key performance measures it currently uses and publishes. We do not dispute the number or breadth of these existing measures. Moreover, we appreciate the IRS's statement that it undertakes ongoing efforts "to fill information gaps, refine measures over time and maintain focus on encouraging taxpayer trust and confidence in the IRS." With respect to taxpayer services, however, we believe the information gaps are significant. They include inadequate measures to gauge the quantity and quality of outreach and education and inadequate measures to identify how many taxpayers ask tax-law questions that the IRS declines to answer as "out-of-scope." If the IRS is serious about filling "information gaps," it should be working with our office to improve on existing measures or devise new ones.

We also believe it is important to publish the IRS's multitude of measures in a consolidated format. The IRS response explains that some measures are published in the IRS Data Book, other measures are published in the Taxpayer Assistance Blueprint updates, and yet others are published in the IRS Management Discussion and Analysis report. We note that still others are posted on irs.gov as fiscal year "Enforcement and Service Results," and many more are reported — some just internally — in each business unit's Business Performance Review quarterly reports. Many measures are reported in several of these reports, while others are not. The purpose of a consolidated report card is to enable Members of Congress, IRS oversight organizations, external stakeholders, and of course taxpayers to find all relevant measures in one place.

In addition, the National Taxpayer Advocate takes strong exception to the statement in the IRS response that we "assume the agency's culture is exclusively 'enforcement-oriented.'" Nowhere does the report say the IRS's focus on enforcement is "exclusive," and the statement is facially incorrect. Among other things, the report acknowledges that the IRS budget is funded largely from separate "Taxpayer Services" and "Enforcement" accounts, it discusses the number of taxpayers assisted by IRS customer service representatives on the phones and in the IRS's Taxpayer Assistance Centers (TACs), and it notes that the IRS has hundreds of employees from the Stakeholder Partnerships, Education and Communication (SPEC) function and the Stakeholder Liaison (SL) function who are assigned to conduct outreach to individual taxpayers and business taxpayers, respectively.

TAS Response

Rather, our point is that the IRS, *in relative terms*, places more emphasis on enforcement activities than on taxpayer service activities, including outreach and education. We cite numerous factors in support of our view, including that 43 percent of the IRS budget is allocated for Enforcement (a figure that rises to more than 60 percent with Operations Support dollars apportioned) as opposed to about four percent of the budget allocated for Pre-filing Taxpayer Assistance and Education.[10] We note that the IRS currently has fewer than 500 employees in its SPEC and SL outreach functions[11] out of a workforce of roughly 80,000 (*i.e.*, about one-half of one percent). We describe how the IRS revised its mission statement in 2009, without any public discussion, to change the focus from "applying" the law to "enforcing" the law. And we point out the IRS has developed and posted on irs.gov four "vignettes" to illustrate the taxpayer experience under its "Future State" vision, where all involve IRS compliance activities and all reach the conclusion that the IRS is right and the taxpayer is wrong. We argue the IRS should shift its approach to tax administration from an "Enforcement First" approach to a "Service First" approach. That is a question of relative emphasis. By mischaracterizing our report as saying the IRS focuses "exclusively" on enforcement, the IRS response seems intent on creating a straw man and knocking it down rather than addressing the nuances of the issue and the recommendations we present.

IRS MISSION STATEMENT: To ensure the IRS recruits, hires, and trains employees with the appropriate skill sets, the IRS must revise its mission statement to explicitly acknowledge the IRS's dual mission of collecting revenue and disbursing benefits, as well as the foundational role of the Taxpayer Bill of Rights.

In the IRS Restructing and Reform Act of 1998 (RRA 98), Congress directed the IRS to restate its mission statement with an emphasis on taxpayer service.[12] Accordingly, the IRS adopted the following mission statement: "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and *by applying the tax law* with integrity and fairness to all."[13] (Emphasis added.) In 2009, with no public discussion, the IRS quietly made a profound change to that mission statement, which now reads: "Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and *enforce the tax law* with integrity and fairness to all." (Emphasis added.) As noted in the discussion of IRS culture, this shift in tone and emphasis, from "apply" to "enforce," has significant consequences for taxpayers, and is closely related to the issue of agency culture.

10 *See* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (2015); U.S. Department of the Treasury, *Internal Revenue Service FY 2017 Budget-in-Brief* 1, https://www.irs.gov/pub/newsroom/IRS%20FY%202017%20BIB.pdf, which shows FY 2016 enacted funding levels of about $4.86 billion for Enforcement and about $630 million for Pre-filing Taxpayer Assistance and Education out of a total appropriated budget of $11.235 billion. The Pre-filing Taxpayer Assistance and Education category includes about $173 million for Taxpayer Advocate Case Processing, which generally does *not* involve pre-filing taxpayer assistance or education. After backing out that amount, the remaining Pre-filing Taxpayer Assistance and Education budget comes to about $457 million, or four percent of the total IRS budget. In addition, about $3.75 billion, or 33 percent of the IRS budget, is appropriated for the Operations Support account. When Operations Support dollars are apportioned to the Taxpayer Services and Enforcement accounts in rough proportion to their respective allocations ($2.33 billion for Taxpayer Services and $4.86 billion for Enforcement), overall spending on Enforcement activities comes to more than 60 percent of the IRS budget.

11 IRS response to TAS fact check (Dec. 16, 2016).

12 RRA 98, Pub. L. No. 105-206, Title I, § 1002, 112 Stat. 685 (1998).

13 IRM 1.1.1.1 (Mar. 1, 2006).

TAS Recommendation

[SPECIAL FOCUS RECOMMENDATION 3-1] Revise the IRS mission statement to re-emphasize a non-coercive approach to tax administration, recognize the IRS's dual roles of revenue collector and benefits administrator, and explicitly affirm the role of the TBOR as the guiding principle for tax administration.

IRS Response

NTA Recommendation Not Adopted. Congress has changed the tax code dramatically over the years, but the basic functions of tax administration have remained the same: collect the appropriate amount of tax due to the government and ensure timely and accurately filed returns. The taxpayer's role is to understand and meet their tax obligations, and most do, since roughly 98 percent of the taxes collected are paid without active intervention by the IRS. In effect, the IRS focuses on helping the large majority of taxpayers who are willing to comply with the tax law, while seeing to it that the minority who are unwilling to comply do not evade their tax responsibilities.

A fair reading of the IRS mission statement — together with the agency's vision, strategic goals, objectives and core values — illustrates a multi-faceted focus on service, enforcement and operational excellence. The IRS mission is to "provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all." The vision is to "uphold the integrity of our nation's tax system and preserve the public trust through our talented workforce, innovative technology and collaborative partnerships." The agency's core values include:

- *Honesty and Integrity:* We uphold the public trust in all that we do; we are honest and forthright in all of our internal and external dealings.
- *Respect:* We treat each colleague, employee and taxpayer with dignity and respect.
- *Continuous Improvement:* We seek to perform the best that we can today, while embracing change, so that we can perform even better in the future.
- *Inclusion:* We embrace diversity of background, experience, and perspective.
- *Openness and Collaboration:* We share information and collaborate, recognizing that we are a team.
- *Personal Accountability:* We take responsibility for our actions and decisions and learn and grow from our achievements and mistakes.

To reinforce our purpose as public servants and stewards of the nation's tax system, the entire IRS workforce — including executives, managers, and thousands of employees located across the country — are trained to know and apply these values in all facets of their employment with IRS. All employees are expected to protect taxpayer rights and adhere to the highest ethical standards.

A fair assessment of the agency's compliance activities, including conducting audits and collecting taxes, would acknowledge that IRS procedures have elements of taxpayer service embedded in the process. In effect, service and compliance activities are inextricably linked. For example, IRS revenue agents conducting audits of taxpayer returns are evaluated on the requirement to maintain fair and equitable treatment of taxpayers. That means the employee must administer the tax laws fairly and equitably, protect all taxpayer rights and treat them with honesty, integrity and respect.[14]

14 Examples of meeting this standard include: responding to taxpayers in a timely manner, protecting taxpayer rights to privacy by following disclosure procedures, using communication techniques that are appropriate for the listener's level of understanding, conducting oral and written communications with taxpayers that are professional, courteous and accurate, listening to and considering the taxpayer's point of view, and advising the taxpayers of the full personal impact, such as interest and penalty accumulation, when taxpayers advise they cannot pay their liability in full. For more information see Internal Revenue Manual (IRM) Part 6 Human Resources Management > Chapter 430 Performance Management > Section 2 Performance Management Program for Evaluating Bargaining Unit and Non Bargaining Unit Employees Assigned to Critical Job Elements (CJEs)

IRS Response Cont.	Notably, all IRS enforcement programs also include measures for customer satisfaction as a way to judge performance and remain focused on the ultimate goal of positively influencing voluntary compliance. In practice, revenue officers provide taxpayers a service by sharing their technical knowledge to help the taxpayer resolve account issues and avoid problems in the future. Similarly, tax examiners read and reply to taxpayer letters with the goal of being timely, courteous and professional, and IRS criminal investigators, whose tax prosecutions directly impact voluntary compliance, staunchly defend the tax system in ways that signal to honest taxpayers that the system is fair. Enforcement of the tax law helps ensure all taxpayers can have trust and confidence that the IRS will not stand for willful noncompliance by the unscrupulous who would otherwise attempt to circumvent tax laws. Merely because the IRS has a duty to conduct enforcement activities does not mean the agency's culture is enforcement-oriented. Rather, the IRS is oriented toward helping all taxpayers come into full compliance with their federal tax obligations. The IRS is the world's most efficient tax agency serving the largest population of taxpayers who voluntarily comply with the law. Every employee is held to high standards and evaluated based on the requirements of their particular job, which in turn, must align with the agency's mission and strategic goals. We will continue to pursue efforts that make tax compliance easier by creating an environment that encourages taxpayer trust and confidence. Part of that effort necessarily includes proactive education, outreach, and tailored communications and interactions, informed by data and behavioral insights, to assist taxpayers in understanding their tax obligations.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is disappointed by the IRS's unwillingness to consider changes to its mission statement. In RRA 98, Congress directed the IRS to revise its mission statement to place greater emphasis on taxpayer service. The IRS did so. But as noted above, the IRS revised its mission statement again in 2009 to change its focus from "applying" the law to "enforcing" the law. It made this change without consulting or notifying either our office or, as far as we know, the congressional tax-writing committees. Since 2009, Members of Congress have expressed concern about the extent to which the IRS respects taxpayer rights, ultimately enacting the provisions of the Taxpayer Bill of Rights into law in 2015. As a separate matter, Congress has given the IRS more social benefits programs to administer, a line of work that differs markedly from traditional tax collection. Therefore, both to better protect taxpayer rights and to ensure the IRS recruits, hires and trains employees with the appropriate skill sets for its tax collection and benefits administration responsibilities, we continue to believe the IRS should revise its mission statement to explicitly acknowledge the foundational role of the Taxpayer Bill of Rights in administering the tax laws and the IRS's dual roles of tax collector and benefits administrator.

UNDERSTANDING TAXPAYER NEEDS AND PREFERENCES: To ensure that the IRS designs its Current and "Future State" initiatives based on actual taxpayer needs and preferences, the IRS must actively and directly engage with the taxpayer populations it serves as well as undertake a robust research agenda that furthers an understanding of taxpayer compliance.

In 2005, Congress directed the IRS to conduct a comprehensive review of its current portfolio of services and develop a five-year strategic plan for taxpayer service.[15] That plan, the Taxpayer Assistance Blueprint (TAB), has since been updated annually, by congressional directive.[16] Far from being a strategic plan, the TAB has deteriorated into a list of unrelated initiatives. Meanwhile, IRS budget cuts and consequent elimination or radical restructuring of core taxpayer services have increased taxpayer burden and cost.

15 H. Rep. No. 109-307, at 209 (2005).

16 *See* S. Rep. No. 113-80, at 27 (2013); *see also* IRS Pub. 4701, *Annual Report to Congress: The Taxpayer Assistance Blueprint Taxpayer Service Improvements* (Nov. 2015), http://core.publish.no.irs.gov/pubs/pdf/p4701--2015-11-00.pdf.

TAS Recommendation	**[SPECIAL FOCUS RECOMMENDATION 4-1] The IRS, in collaboration with the National Taxpayer Advocate, undertake a comprehensive study of taxpayer needs and preferences by taxpayer segment, using telephone, online, and mail surveys, focus groups, town halls, public forums, and research studies. These initiatives should be designed to solicit taxpayer needs and preferences, and not be biased by the IRS's own desired direction.**
IRS Response	IRS Actions Already In Progress. The IRS, in collaboration with the NTA, has undertaken a comprehensive effort to catalog an extensive listing of taxpayer needs and preferences studies by taxpayer segment, identifying telephone, online, and mail surveys, focus groups, town halls, public forums, and other relevant research studies. These initiatives are designed to solicit taxpayer needs and preferences, and not be biased by the IRS's own desired direction.
IRS Action	The IRS has formed the Taxpayer Experience Coordinating Council (TECC), whose membership includes the Taxpayer Advocate. The TECC is a collaboration led jointly by RAAS, W&I and OLS with membership from all taxpayer-facing units. It was initiated to identify all IRS efforts over time to gain insights about taxpayers' needs and preferences, such as various surveys, including those conducted by the IRS Oversight Board, conjoint analyses, other TAB and TAS efforts. The compilation was done for the purpose of understanding more about the taxpayer's experience. The impetus for the entire Future State pursuit is to improve the taxpayer's experience. All of the TECC efforts under way help IRS senior leadership determine if the IRS is on the right track to serve the taxpayers from the taxpayers' perspective. The TECC efforts will be built upon to identify current and additional ways to understand taxpayer needs and preferences. TECC and IRS leadership will continue to ask if IRS is adequately understanding taxpayers' perspective. In addition, collaboration and information sharing between bodies such as the TECC, Community of Practice, and behavioral research groups collectively will continue to produce valuable insights about the taxpayer experience. This collective intelligence is helpful to IRS senior leadership in determining whether the taxpayer experience is improving as Future State initiatives are implemented.
TAS Response	The National Taxpayer Advocate appreciates the IRS's efforts and commitment to continue to work with our office to gain a better understanding of taxpayer needs and preferences. We emphasize only that this undertaking must drill deeply to be meaningful. For example, it will be of limited value to determine that X percent of taxpayers are able and willing to use the Internet and Y percent of taxpayers are not. Taxpayers may be willing to use the internet for certain purposes (*e.g.,* to get a form or to check refund status) but may be reluctant or unwilling to use the Internet for other purposes (*e.g.*, to resolve an audit or an identity-theft problem). We look forward to working with the IRS to help flesh out these important nuances and obtain the necessary information to make intelligent decisions. TAS has already conducted important surveys identifying the needs and preferences of U.S. taxpayers nationwide,[17] as well as subcategories including low income taxpayers (who constitute 46 percent of all individual taxpayers) and Hispanic taxpayers.[18] The IRS would do well to study our research results carefully and incorporate them into their "Future State" planning.

17 See various studies under Tax Behaviors and Customer Service categories at http://win.web.irs.gov/aboutus/goals.htm

18 For this purpose, we define taxpayers as "low income" if they qualify for assistance from a Low Income Taxpayer Clinic (LITC) pursuant to IRC § 7526. In general, the Internal Revenue Code defines taxpayers as "low income" for LITC eligibility if their incomes are at or below 250 percent of the federal poverty level. Of the 135.8 million taxpayers who had filed tax year (TY) 2015 individual income tax returns through October of 2016, nearly 63 million (46.2 percent) had total positive income at or below 250 percent of the federal poverty level. These numbers exclude filers who are claimed as a dependent on another tax return. IRS Compliance Data Warehouse (CDW), *Individual Returns Transaction File for TY 2015* (returns processed through October 31, 2016).

TAXPAYER RIGHTS AND THE "FUTURE STATE"

Since adopting the National Taxpayer Advocate's proposed Taxpayer Bill of Rights (TBOR), the IRS has made commendable efforts to inform taxpayers about their rights.[19] As we observe in the 2016 Annual Report to Congress, however, the IRS has a more uneven record in complying with the congressional mandate, codified in Internal Revenue Code (IRC) § 7803(a)(3), to educate IRS employees about the TBOR.[20]

The National Taxpayer Advocate believes that taxpayer rights, and the TBOR specifically, should be the foundation for tax administration, including any strategic vision for the future. Yet few documents pertaining to the Future State that have been made available to the National Taxpayer Advocate address the TBOR, and those that do only nominally mention it, using a checklist approach at best. None explains how the proposed "Future State" design and initiatives will specifically advance the general rights stated in the TBOR and the specific protections afforded by the IRC.[21]

TAS Recommendation	**[SPECIAL FOCUS RECOMMENDATION 5-1] The Office of Chief Counsel, in collaboration with the National Taxpayer Advocate, immediately undertake a comprehensive review of key taxpayer rights provisions in the IRC and issue proposed guidance for public comment, updating these provisions to protect taxpayer rights in the digital environment envisioned by the IRS "Future State". These provisions include the application of the mailbox rule and the erroneous advice rule to digital communications, and the definition of an "examination" or "audit" in light of the substantial pre-refund review activity envisioned by the "Future State".**
IRS Response	NTA Recommendation Not Adopted As Written, but IRS Actions Taken to Address Issues Raised by NTA. The Office of Chief Counsel is committed to protecting taxpayer rights and will work with the NTA to identify issues or problem areas that may impact taxpayer rights as the IRS undertakes to move to a more digital environment. There is adequate guidance on the issues raised regarding the mailbox rule and erroneous advice, but we are open to addressing more specific issues or problems as they are identified. With respect to the definition of an examination, the existing guidance strikes the appropriate balance between the rights of taxpayers and the burden on the IRS.

19 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

20 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)). For a detailed discussion of the IRS's TBOR efforts, see Most Serious Problem: *Taxpayer Bill of Rights (TBOR): The IRS Must Do More to Incorporate the TBOR into Its Operation*.

21 The National Taxpayer Advocate has identified specific taxpayer rights concerns relating to "Real Time" tax administration before. See National Taxpayer Advocate 2012 Annual Report to Congress 180-91 (Most Serious Problem: *The Preservation of Fundamental Taxpayer Rights Is Critical as the IRS Develops a Real-Time Tax System*); National Taxpayer Advocate 2011 Annual Report to Congress 284-295 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*).

IRS Action

Mailbox Rule

Under common law, the date of delivery or filing is the date of receipt. See *United States v. Lombardo*, 241 U.S. 73, 76, 78 (1916). Section 7502 is an exception to this common law rule, using a postmark date as the date of delivery in certain circumstances. Section 7502 applies only when the internal revenue laws prescribe that the document must be filed or payment must be made within a prescribed period or before a prescribed date. Treas. Reg. § 301.7502-1(d) was promulgated under the authority of section 7502(c)(2) to provide rules for treating certain electronically filed documents as delivered as of the date of the authorized electronic postmark. Section 7502 does not apply to electronic filings other than those currently described in the regulation.

Electronic communications are generally designed to be instantaneous or near instantaneous methods of delivering communications. Accordingly, timely mailing and timely filing issues should be rare with electronically filed documents. The existing regulations are designed to accommodate specific items that are approved for electronic filing, while they preserve the need to ensure the accuracy of the information provided to the taxpayer and to the IRS as to the date and time of the transmittal. We would consider issuing guidance to the extent necessary to accommodate other approved electronic submissions.

Erroneous Advice Rule

Section 6404(f) provides that the IRS will abate any portion of any penalty or addition to tax attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the IRS if (1) the written advice is reasonably relied upon by the taxpayer and was in response of a specific written request of the taxpayer, and (2) the portion of the penalty or addition to tax did not result from a failure by the taxpayer to provide adequate or accurate information.

Under section 301.6404-3(e)(1) of the Treasury Regulations, written advice will be considered advice for section 6404(f) abatement only if the response applies the tax laws to the specific facts submitted in writing by the taxpayer and provides a conclusion regarding the tax treatment to be accorded the taxpayer upon the application of the tax law to those facts.

Section 301.6404-3(b)(3) of the regulations provides that no abatement will be allowed unless the penalty or addition to tax is attributable to advice issued in response to a specific written request for advice by the taxpayer. For advice unrelated to an item on a tax return, the taxpayer is not considered to have reasonably relied upon the advice if the taxpayer received the advice after the act or omission that is the basis for the penalty or addition to tax. § 301.6404-3(b)(2)(iv).

We have not taken the position that email advice is not written advice. In fact, email advice is processed for release to the public in the same way as Chief Counsel advice, which advice is included in the definition of a written determination in section 6110. Assuming the other requirements of section 6404(f) were met, we believe erroneous advice provided via email would be subject to the erroneous advice rule without the need to amend the existing regulation.

Definition of Examination or Audit

Section 7605(b) provides that "[n]o taxpayer shall be subjected to unnecessary examination or investigations, and only one inspection of a taxpayer's books of account shall be made for each taxable year unless" the IRS notifies the taxpayer in writing that an additional inspection is necessary. In the 2016 Annual Report to Congress, the NTA recommended that the IRS define the concept of "examination" or "audit" with a focus on the IRS's return processing (pre-refund) procedures used to identify and resolve specific types of possible errors appearing on a taxpayer's return. Specifically, the NTA recommends that any pre-refund inquiry requiring the taxpayer to provide "some level of documentation" be considered an examination or audit.

An "examination" is not defined in the Code or in the regulations under section 7605. Nor is the concept defined in IRS Procedural Rule § 601.105(b). Case law provides no comprehensive definition. At best, case law defines certain activities as not constituting an examination. *See*, *e.g.*, *Ellis v. Commissioner*, 94 T.C.M. (CCH) 112 (2007); No. 19766–05, 2007 WL 2188098 (July 31, 2007), *aff'd in part*, *rev'd in part on other grounds*, 346 Fed. Appx. 346 (10th Cir. 2009) (letter to taxpayer from the Service Center, seeking explanation of discrepancy between income reported on return and that reported by third-party payor, to which taxpayer responded with explanation and documents did not constitute an examination or an inspection of books of account).

Rev. Proc. 2005-32, section 4.03(1)(a)–(d) provides guidelines and illustrative examples of other limited contacts with taxpayers that are not considered examinations.

IRS Action Cont.	When the IRS can identify a likely error on a return, as is done with the information return matching programs, and resolve it by seeking an explanation from the taxpayer, both the taxpayer and the IRS benefit from enhanced efficiency. The taxpayer is spared the more rigorous and burdensome experience of an examination and is able to reach resolution in a more timely manner. Similarly, the IRS is able to resolve a single matter, often a simple matter, more quickly and with far fewer resources than required to conduct an audit. It would neither be beneficial to the IRS nor to the majority of taxpayers to force the IRS to conduct an audit to resolve minor discrepancies on a return, some of which result in adjustments in the taxpayer's favor.
TAS Response	The National Taxpayer Advocate appreciates the IRS's thoughtful responses regarding the Mailbox Rule, the Erroneous Advice rule, and the definition of an examination or audit. She further appreciates the IRS's commitment to continue to address these issues further as problems are identified. With regard to the Mailbox Rule, technology glitches are not infrequent, and there will inevitably be occasions — whether due to a taxpayer's computer, an ISP provider, or the IRS's network – where email delivery will not be instantaneous. We believe it is important for the IRS to develop appropriate guidelines to address these situations before they occur. Otherwise, taxpayers and practitioners would be better advised to submit time-limited responses by certified mail, so they can prove the date of submission. With regard to the Erroneous Advice rule, we note that the IRS currently receives millions of tax-law questions on its telephone lines and in its TACs. If the IRS is successful in migrating large numbers of taxpayers online, those same tax-law questions will be submitted electronically and will presumably be answered electronically. It will be critical to adopt clear guidelines — which are understood by taxpayers as well as IRS employees – regarding which written responses taxpayers may rely on for purposes of avoiding penalties and which responses may not be relied on for that purpose. With regard to the definition of an examination, we appreciate the IRS's observation that identifying problems in the pre-refund environment may be simpler for both the IRS and the taxpayer. We agree. But it is also the case that Congress generally limits the IRS to one inspection of a taxpayer's books of account for each tax year. The purpose of that provision is to protect taxpayers from the time and expense of responding to multiple reviews of the same return. To the extent that a taxpayer will be required to submit substantiation in response to a pre-refund verification request that the taxpayer may also need to submit in response to a subsequent audit, the IRS procedures will run directly contrary to congressional intent. More work is required to ensure those situations are minimized. We encourage the IRS to continue to refine its approach to these issues, working in conjunction with both the IRS Office of Chief Counsel and the Office of the Taxpayer Advocate.

MSP #1 VOLUNTARY COMPLIANCE: The IRS Is Overly Focused on So-Called "Enforcement" Revenue and Productivity, and Does Not Make Sufficient Use of Behavioral Research Insights to Increase Voluntary Tax Compliance

PROBLEM

The IRS reports "enforcement" revenue more routinely than it reports "service" revenues from alternative treatments. As a result, it may be more likely to use coercive treatments than to implement effective alternatives that rely on the latest behavioral science insights (*e.g.*, insights from psychology and behavioral economics). However, the taxpayer's *right to privacy*, which includes the right to expect that any IRS inquiry or enforcement action will "be no more intrusive than necessary," requires the IRS to try alternative treatments before resorting to coercion. Furthermore, when coercion is unnecessary, it wastes resources, burdens taxpayers and probably reduces voluntary compliance and overall tax revenue indirectly (*i.e.*, in future years or due from other taxpayers).

ANALYSIS

Behavioral science insights reveal that people generally do not perform an elaborate economic analysis when making decisions. For example, they often do what is easy, respond only to messages that are clear and relevant, do what others are doing, and cheat only if they can maintain a positive self-image. The IRS is using randomized controlled trials (RCTs) to measure revenue from alternative treatments that use behavioral insights. However, the IRS labels all revenue it receives while an account is assigned to an "enforcement" function as "enforcement" revenue, and ignores the indirect effects of coercion on voluntary compliance. If the IRS could collect one percent more direct revenue through an enforcement strategy that causes taxpayers to reduce voluntary compliance by one percent, voluntary compliance revenue would decline roughly 60 times as much as "enforcement" revenue would increase. Thus, if the IRS tries to maximize direct enforcement revenue, it risks misallocating its resources.

TAS RECOMMENDATIONS

[1-1] Adopt procedures for routinely testing behavioral insights (BIs) using randomized control trials (RCTs) to identify which ones are most effective for various compliance problems and taxpayer segments.

[1-2] Adopt procedures to timely disclose the results of IRS studies and RCTs so that all internal and external stakeholders can benefit from them.

[1-3] Routinely measure and report the "service" revenue and compliance gains from alternative treatments to internal and external stakeholders.

[1-4] Discontinue or modify reports that highlight "enforcement" revenue (as currently defined), which is misleading because it includes "service" revenue and does not include the (potentially negative) indirect effects of unnecessary coercion.

[1-5] Incorporate behavioral response metrics (*e.g.*, response rates and future compliance) into all IRS programs to help avoid over-emphasizing the importance of direct revenue.

IRS RESPONSE

The IRS agrees that insights from behavioral science (BI) have great potential for improving service to taxpayers and strengthening voluntary compliance with the nation's tax laws. In 2015, the IRS introduced a revised model for ensuring IRS research activities were effectively focused and managed, establishing the Research Policy and Planning Committee to set business-focused research priorities. The Committee made expanding the IRS's use of behavioral research a top priority. In response, the Wage and Investment (W&I) and Research, Applied Analytics, and Statistics (RAAS) Divisions created Taxpayer Behavior Labs focused on testing use-patterns, and field testing behavioral insight-based treatments, respectively, and the IRS's Research Directors Coordinating Council (RDCC) created a Behavioral Research Community of Practice (COP) and sponsored a cross-divisional Behavioral Insights Team. The BI team and COP have developed resources and procedures to facilitate the sharing of knowledge related to BI, creating the necessary foundation for future applications. Resources include best practices and examples of successful applications of BI, both inside and outside the IRS. The team has engaged leadership and analysts across the IRS to explore how these resources can be applied to promote understanding and develop a portfolio for moving forward. It has also reached out to the behavioral researchers in academia and across the Federal government. These efforts culminated in the recent release of a BI toolkit.

Another important mechanism the IRS uses to drive BI is through partnerships with leading academic researchers. The Joint Statistical Research Program (JSRP) regularly issues calls for proposals to the research community, requesting their best ideas for cutting edge research projects with potential to improve tax administration. Recent partnerships with renowned experts at Harvard, Stanford, and Universities of Texas and Michigan, to name just a few, have helped the IRS develop important behavior insights about tax salience that are directly impacting the design of IRS programs. For example, tests around methods for encouraging participation in refundable tax credit programs have informed the IRS's outreach efforts.

At the heart of the IRS's approach to BI is increased use of treatment and control groups, or the leveraging of natural experiments. Following the recommendations in the 2014 Economic Report of the President, the IRS has employed both randomized control trials and quasi-experimental settings for behavioral insights testing.[1] By continually developing its analytic resources, the IRS has laid a foundation for employing these techniques to support ongoing and routine testing within its research portfolio, leading to enhanced services as well as improved case selection.

The IRS also agrees that it is important to share research broadly with internal stakeholders. To this end, the RDCC created a searchable repository of research projects and is making that repository available as widely as possible so that IRS programs can quickly identify completed and ongoing work and use the insights gained to improve engagements with taxpayers. The resulting Research and Analytics Project Repository, which has over 700 entries, includes a classification for Behavioral Research. The IRS is also committed to sharing its research findings externally, while protecting the confidentiality of individual taxpayer data and IRS internal processes. The IRS research community regularly presents its work in professional conferences, gaining valuable feedback. Through the SOI Working Paper Series, the IRS shares works-in-progress with the public.[2] Finished research is frequently submitted for publication in highly regarded journals. The IRS also makes research available through the annual IRS Research Conferences, which publish abstracts, presentations and final papers on the Web.[3]

1 2014 Economic Report of the President, p. 272

2 See https://www.irs.gov/uac/soi-tax-stats-soi-working-papers.

3 See https://www.irs.gov/uac/soi-tax-stats-irs-research-conference.

Enforcement activities, taxpayer service and employee engagement, are the pillars of the IRS's mission. Behavioral research consistently demonstrates that enforcement activities encourage voluntary compliance through different channels. There is a direct effect on those whose returns are audited. There is an indirect and positive effect, which may be as much as 11 times higher than the direct effect among some taxpayer groups.[4] Enforcement activities also tangibly contribute to the sense of fairness or equality of treatment that is critical to sustaining the nation's high voluntarily compliance rate.

The IRS's approach to enforcement is layered and service-focused. Information reporting and verification programs, such as Automated Underreporter (AUR) and Automated Substitute For Return (ASFR), assist taxpayers who may omit reporting certain income items or neglect to file, by providing the information needed to resolve an issue. Likewise, the IRS uses its Math Error authority to correct certain types of errors reported on returns and automatically provides taxpayers refunds or assessments as appropriate. Data on these activities are reported annually in the *IRS Data Book*.[5] When the IRS does examine returns, almost 71 percent are conducted entirely by correspondence. Detailed statistics on these examinations are also included in the *IRS Data Book*.

The IRS takes seriously the responsibility for providing accurate, timely statistics on its activities. In many cases, Congress requires the IRS to provide regular reports on specific functions, including income collected through enforcement activities. The IRS complies through the release of annual Enforcement and Service Results statistics and detailed information provided in the *IRS Data Book*. This series provides valuable insights into the full range of the IRS's activities to fairly and equitably administer the tax system. In addition, the Statistics of Income program compiles detailed annual statistics on voluntary tax return filings for most taxpayer segments.

Looking forward, the IRS is evaluating performance measures in support of its vision for the future. Frameworks, such as that produced by the Organization for Economic Cooperation and Development, as well as practices used by tax authorities outside the U.S. provide useful models.[6] The IRS's official statistics are carefully compiled in compliance with policies and directives issued by the Statistical Policy Branch of the Office of Budget and Management's Office of Information and Regulatory Affairs. Guidelines governing information disseminated by Federal agencies are intended to maximize quality, objectivity, utility and integrity, emphasizing reproducibility and peer review of methods used to produce statistics.[7]

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate commends the IRS for establishing a Taxpayer Behavior Lab and a cross-divisional Behavioral Insights (BIs) Team. The IRS's work with private-sector researchers through the Joint Statistical Research Program (JSRP) and its increasing use of RCTs and field experiments have produced promising research that should help the IRS use behavioral insights to improve voluntary compliance without coercion, as described in the Most Serious Problem.[8]

4 See Plumley, Alan, (1996) "The Determinants of Individual Income Tax Compliance: Estimating The Impacts of Tax Policy, Enforcement, and IRS Responsiveness," Department of Treasury, Internal Revenue Service, *Publication 1916*.

5 The annual *IRS Data Book* can be found at: https://www.irs.gov/uac/soi-tax-stats-irs-data-book.

6 The OECD report can be found at: http://www.oecd.org/ctp/administration/measures-of-tax-compliance-outcomes-9789264223233-en.htm.

7 See https://obamawhitehouse.archives.gov/omb/fedreg_final_information_quality_guidelines/

8 The IRS does not have the resources to partner with private sector researchers through the JSRP more than once every two years or so. For legislative recommendations for improving the JSRP, see National Taxpayer Advocate 2016 Annual Report to Congress 358-63 (Legislative Recommendation: *Expand Opportunities for the IRS to Collaborate With Outside Researchers*).

In its response, the IRS also acknowledges the importance of sharing research broadly with internal stakeholders so that IRS programs can quickly identify completed and ongoing BI research and apply the findings. To this end, the IRS has established a Behavioral Research Community of Practice (COP) and a Research and Analytics Project Repository. The repository contains a significant number of short project descriptions.

However, TAS was unable to locate any draft or completed research reports in the repository. TAS could not even use the repository to identify research projects that might be relevant to the Most Serious Problem discussion because a significant amount of unrelated research is characterized as "behavioral." TAS had to obtain all the IRS research that it discussed in the Most Serious Problem by making overlapping requests to several different IRS operating divisions and functions and then waiting 30 days or more for a response. Even these responses omitted significant findings that were released to the public while TAS was preparing the report.[9] Thus, although the IRS has taken steps to try to increase internal awareness of its BI research, TAS and other IRS programs do not currently have ready access to all of the IRS's research.

The IRS response also recognizes the importance of sharing research findings externally. Doing so might improve the quality of the proposals for collaboration by outside researchers, as information about what the IRS has been doing could help them in drafting proposals that would extend internal research efforts. Because of the lack of internal transparency, it could also help IRS programs learn about ongoing work and findings in other parts of the IRS. The IRS response cites private journal articles, presentations, the SOI Working Paper Series, and IRS Research Conferences as ways in which the IRS makes its BI research public.[10] Without doing a literature review and, in some cases, paying for access, it is difficult to know what various IRS researchers have submitted for publication or stated at conferences.

The SOI Working Paper Series lists one paper in 2017 and three in 2016, which are informative, but do not address the application of BIs.[11] By contrast, the IRS Research Conference website, which includes abstracts, presentations, and final papers is very helpful, and includes at least three papers addressing behavioral issues that were presented at the 2016 conference.[12] The IRS should consider requiring abstracts, presentations, and final papers discussing IRS-sponsored research or research by IRS employees to be available for free (redacted, if necessary) on an IRS website.[13]

In addition, the IRS response states that it is evaluating performance measures in support of its vision for the future, as recommended. However, interpreting the IRS response requires reading between the lines. The response indicates that the framework used by the Organization for Economic Cooperation and Development (OECD) provides a useful model.[14] Thus, the IRS apparently shares the National

9 *See* U.S. Department of the Treasury, *Report to Congress on Strengthening Earned Income Tax Credit Compliance through Data Driven Analysis* (July 5, 2016), https://www.treasury.gov/resource-center/tax-policy/Documents/Report-EITC-Data-Driven-Compliance-2016.pdf.

10 *See* https://www.irs.gov/uac/soi-tax-stats-soi-working-papers.

11 *Id*.

12 *See* https://www.irs.gov/uac/soi-tax-stats-irs-research-conference.

13 A policy memo already directs agencies with more than $100 million in research and development expenditures to develop a plan to increase public access to the results of research funded by the government. *See* Memorandum from John Holden, Director, Executive Office of the President, Office of Science and Technology Policy to Heads of Executive Departments and Agencies (Feb. 12, 2013), https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf.

14 OECD, *Measures of Tax Compliance Outcomes: A Practical Guide* (2014), http://www.oecd.org/ctp/administration/measures-of-tax-compliance-outcomes-9789264223233-en.htm (last visited June 21, 2017).

Taxpayer Advocate's concerns because the OECD report expresses many of the same concerns. For example, it states that:

> "many revenue bodies are concerned that it [audit yield] does not cover the full revenue effects of all their activities. One response to this is to estimate the full revenue effects of all compliance activities (including specific interventions and improvements to processes). This total revenue effects approach expands the scope of audit yield to the revenue effect of a broad range of activities on current and future year compliance, and to a wider taxpayer population (that may not have been directly subject to an intervention). These wider revenue effects generally result from preventative activities which improve voluntary compliance, so that the additional revenue appears on tax returns submitted by taxpayers rather than audits by the revenue body's compliance officers…. [t]he total revenue effect measure (including both audit yield and wider revenue effects) is closer to an outcome measure than audit yield. … The strength of this approach is that it gives a common revenue currency for all activities. At the strategic level, this helps decision making as it is easier to compare and contrast the headline performance of all activities.[15]

While the IRS appears to agree with the National Taxpayer Advocate's concerns about its current measures of "enforcement" output, its response suggests it is apparently hesitant to address the problem due to its concern with "reproducibility and peer review of methods used to produce [better] statistics." In other words, it seems concerned that it may not be able to estimate the effect of its activities on voluntary compliance in a way that is objective and reproducible. While this is a valid concern, if the IRS explicitly acknowledges that it needs to focus more on the total effect of its activities and less on the outputs of various enforcement functions, it can work toward that goal, as discussed in connection with recommendation 1-5 (see below).

Finally, the IRS says it "takes seriously the responsibility for providing accurate, timely statistics on its activities." However, LB&I recently refused to publish statistics on its Offshore Voluntary Disclosure Programs (OVDP) — requiring TAS to black them out of this report.[16] Similarly, the IRS has repeatedly refused to publish the Foreign Bank and Financial Account Report (FBAR) report, which it is required to deliver to Congress each year to describe its efforts to improve compliance with the FBAR reporting requirements.[17]

Furthermore, as an example of its focus on "service" and transparency the IRS response cites Automated Substitute for Return (ASFR) and Math Error statistics, which are published in the IRS Data Book. The National Taxpayer Advocate is concerned by the IRS's reference to ASFR and Math Error as examples of service-oriented behavioral approaches. These are not service-focused programs and the basic statistics in the IRS Data Book are largely irrelevant to their effectiveness. The IRS abated 29 percent of all ASFR assessments it made in fiscal year (FY) 2011 through FY 2014 and only collected a fraction of the remainder.[18] In FY 2014, the ASFR program had revenue of $89.5 million, but spent $39.8 million operating the ASFR program, which does not include the costs of later abating liabilities or the expense

15 OECD, *Measures of Tax Compliance Outcomes: A Practical Guide* (2014), http://www.oecd.org/ctp/administration/measures-oftax-compliance-outcomes-9789264223233-en.htm (last visited June 21, 2017).

16 National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress, *The Offshore Voluntary Disclosure (OVD) Program Still Lacks Transparency, Violating the Right to Be Informed*, *supra*.

17 *Id*.

18 National Taxpayer Advocate 2015 Annual Report to Congress 188, 189 (Most Serious Problem: *Current Selection Criteria for Cases in the ASFR Program Create Rework and Impose Undue Taxpayer Burden*).

of sending out notices or making collection attempts.[19] Thus, the ASFR program has a relatively low return on investment and unnecessarily burdens taxpayers, potentially damaging voluntary compliance. The IRS can and should publish statistics that would reveal these types of problems.

Similarly, a TAS study of math errors that the IRS charged on dependent TINs found that the IRS subsequently reversed at least part of these math errors on 55 percent of the returns with incorrect TINs.[20] However, the IRS could have resolved 56 percent of these errors using information already in its possession (*e.g.*, the TIN listed on a prior year return), rather than assessing tax using math error procedures and then burdening taxpayers to explain the apparent discrepancy.[21] Even when the taxpayer did not respond and the IRS did not reverse the math error, the TAS study found that the IRS should have reversed it in 41 percent of the cases based on information in its files.[22] Thus, the IRS deprived taxpayers of benefits to which they were entitled. Moreover, the IRS appears to have ignored this study and continually fails to provide any similar type of analysis or statistics to the public.

TAS Recommendation	**[1-1] Adopt procedures for routinely testing behavioral insights (BIs) using randomized control trials (RCTs) to identify which ones are most effective for various compliance problems and taxpayer segments.**
IRS Response	IRS Actions Already in Progress.
IRS Action	The approach used by the IRS is guided by the 2014 Economic Report of the President, Chapter 7: Evaluation as a Tool for Improving Federal Programs, which outlines methods for conducting rigorous impact evaluations: "A strong impact evaluation needs a strategy for constructing more valid comparisons—specifically, for identifying 'treatment' and 'control' groups for which differences in outcomes can reasonably be attributed to the program or intervention rather than to some other factor. Impact evaluations conducted using rigorous, high-quality methods provide the greatest confidence that observed changes in outcomes targeted by the program are indeed attributable to the program or intervention."[23]

19 National Taxpayer Advocate 2015 Annual Report to Congress 188, 189 (Most Serious Problem: *Current Selection Criteria for Cases in the ASFR Program Create Rework and Impose Undue Taxpayer Burden*).

20 *Id.* at 114, 119-20.

21 *Id.* at 114, 119-20.

22 *Id.* at 114, 120.

23 2014 Economic Report of the President, p. 272.

IRS Action Cont.	The report also outlines the types of approaches available for creating a valid comparison group. "Although the classic impact evaluation design entails random assignment of recipients into treatment and control groups as part of the experiment, the goal of constructing valid comparisons sometimes can be achieved by taking advantage of natural variation that produces as-if randomness, an approach referred to as a quasi-experiment. Quasi-experiments can be much less expensive than traditional large-scale random assignment experiments."[24] The IRS employs both randomized control trials and analysis of quasi-experimental settings for behavioral insights testing with the goal of enhancing both taxpayer service and enforcement. Current and recent efforts include reporting, filing, and payment compliance nudges, outreach promoting use of IRS (*e.g.*, electronic payment) and partner (*e.g.*, VITA) services, quasi-experimental analysis of factors promoting voluntary compliance (1099-K, 1099-B basis reporting, FATCA and OVDP, as well as influences of prior enforcement efforts), nudges to encourage take-up of tax benefits (*e.g.* EITC and AOTC), and a variety of behavioral nudges to promote issue resolution and future compliance (examples in Collection include employment tax early intervention pilots, two notice redesign pilots, a pre-emptive notice pilot, and a lien pilot). The IRS has dedicated resources towards behavioral interventions, including the creation of the Behavioral Insights team to promote the dissemination and application of behavioral insights across the IRS. The Behavioral Insights Team and associated Community of Practice have developed resources and procedures to facilitate the sharing of knowledge related to behavioral insights, providing a foundation for future application and extension of this work. The resources include best practices and examples of successful applications both inside and outside of the IRS, summarized in a Behavioral Insights Toolkit. Collaboration with behavioral researchers in academia and in other parts of the government help the IRS continue to bring the best available behavioral research to promote effective tax administration.
TAS Response	The IRS has started to use RCTs and quasi-experimental settings to test BIs. It has also established a BIs team and developed a BIs Toolkit. These steps should help the IRS move toward more routine use of BIs to improve tax administration. However, the IRS response does not suggest that it has revised procedural guidance or provided instructions to staff (*e.g.*, instructions governing campaigns) requiring those charged with addressing compliance problems to consider alternative treatments that incorporate BIs or to measure the effect of any treatments using RCTs or quasi-experiments. The IRS should issue such guidance, as recommended.

24 *Ibid*.

TAS Recommendation	**[1-2] Adopt procedures to timely disclose the results of IRS studies and randomized control trials (RCTs) so that all internal and external stakeholders can benefit from them.**
IRS Response	IRS Actions Already in Progress.
IRS Action	IRS is using several methods for disseminating results of RCTs and quasi-experimental studies internally and externally. Internally, the Research Planning and Prioritization Executive Steering Committee, the Research Directors Coordination Council, The Behavioral Research Community of Practice all provide forums where results from RCTs and quasi-experimental studies are often reported. The Behavioral Insights Team is also working with HCO on developing a Behavioral Insights knowledge base for consolidating and disseminating baseline and new insights on from RCTs, quasi-experimental studies, and related behavioral research. Externally, the IRS hosts an annual research conference, participates in many other tax and research conferences, and promotes transparency of these evidence-based findings through academic partnerships such as those managed by the Joint Statistical Research Program. The associated presentations and papers are made public either through Tax Stats pages on irs.gov or through the websites and journals of the organizations where the results are presented, promoting transparency and external review.
TAS Response	The IRS has made significant strides in cataloging baseline BI insights as well as the BI research that it is undertaking. The National Taxpayer Advocate applauds the IRS for working with the Human Capital Office (HCO) on a knowledge base for consolidating and disseminating baseline and new BIs. However, the IRS should improve its BI repository or find another way to preserve its research results so that they are readily available to IRS employees in different functions, even if the results did not appear to reveal new insights. Information about what does not work is nearly as important as information about what does. Similarly, the IRS has continued past practices, which disclose some of its research to external stakeholders, such as by allowing IRS researchers to draft and publish journal articles. Without doing a literature review and, in some cases, paying for access, however, it is difficult to learn what various IRS researchers have submitted for publication or stated at conferences. Moreover, some IRS researchers may not send their work for publication and if they do, it may not be accepted. While the transparency of the IRS research conference is a step in the right direction, the IRS should consider requiring that abstracts, presentations, and papers and other deliverables be available for free (redacted, if necessary) on an IRS website, if they were written by IRS employees or funded by the IRS and delivered to a client or target audience.[25] Such a policy would help both internal and external stakeholders find the information they need to evaluate and potentially extend the IRS's prior work, without checking or requesting that someone else check an internal repository.

25 For the International Conference on Taxpayer Rights, TAS has included a clause in its speaker's agreement, which requires panelists to provide an abstract of the topic as well copy of any paper (or slides) presented. These are freely available on the internet. *See* International Conference on Taxpayer Rights, https://taxpayerrightsconference.com/conference-papers/ (last visited June 14, 2017).

TAS Recommendation	**[1-3] Routinely measure and report the "service" revenue and compliance gains from alternative treatments to internal and external stakeholders.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	Ongoing research and analysis seeks to better disentangle the various factors and agency actions contributing to compliance. A 2014 OECD Forum on Tax Administration report on measuring tax compliance outcomes provides a useful overview of the associated measurement and attribution issues: "For outcome measures to be fit for purpose, they must be based on reasonable evidence to ensure the measurement is reliable. A related but separate issue is attribution reliability. An outcome measure can be fit for purpose without being attributed. Direct attribution cannot be expected of a measure if the cause and effect in reality is not direct. This is particularly so at the strategic level, where outcome measure may be used as indicators of the health of the overall tax administration system. For this purpose an outcome measure does not need to be attributed to the specific actions of the revenue body. For example, overall filing on time can be measured reliably but is not directly attributable to the revenue body's actions. In contrast, at operational level a fit for purpose effectiveness measure needs to have reliable attribution to enable revenue bodies to identify which interventions work and which are not working as intended."[26] As discussed in the narrative response, the IRS commonly reports compliance and revenue outcomes as part of results presented in the academic research community and the Taxpayer Assistance Blueprint. The IRS also provides annual statistics on alternative treatments such as AUR and ASFR in the IRS Data Book. The IRS conducts ongoing review of the most appropriate content for the Data Book and will evaluate options to address this issue more comprehensively going forward. It is worth noting that current enforcement statistics include the results of both soft notice campaigns as well as more traditional enforcement methods. Development of new statistics involving estimation methods are subject to OMB guidelines.

26 Measuring Tax Compliance Outcomes: A Practical Approach, p. 29. OECD, 2014.

TAS Response	The IRS response references the Taxpayer Assistance Blueprint (TAB) and data on the AUR and ASFR programs in the IRS Data Book as examples of transparency concerning the performance of its programs. The information contained in these publications is incomplete. For example, the TAB references various Taxpayer Usage Surveys and Taxpayer Experience Surveys, but a full analysis of the survey results does not appear to be available to the public.[27] By contrast, when TAS conducts a survey it publishes both the results and the survey instrument.[28] For the ASFR and AUR programs, the IRS Data Book only reports very basic data such as the number of closures and assessments. As noted above, these statistics provide stakeholders with no ability to evaluate the success or failure of these programs in achieving the desired outcome. For example, the IRS does not report the number of erroneous assessments, or amount of abatements, the ultimate outcomes its ASFR or AUR closures, or the taxpayer's future compliance. In addition, the IRS response seems to suggest that it cannot develop a measure of voluntary compliance revenue resulting solely from the IRS's efforts, rather than from other causes. However, that is exactly what the IRS's BI team is doing when it uses RCTs or quasi-experiments to isolate the effect of the IRS's BI treatments from other causes. It is unclear why the IRS could not extend this methodology, even if it starts by using it just to estimate the service revenue from campaigns, improvements resulting from the application of BIs, or similar initiatives. The IRS is apparently concerned that it could not develop measures of service revenue that meet the OMB guideline, which requires that "influential scientific or statistical information" must be "capable of being substantially reproduced."[29] This is not an unrealistically high standard, however. It only requires that "independent reanalysis of the original or supporting data using the same methods would generate similar analytical results, subject to an acceptable degree of imprecision."[30] The IRS response does not explain why a reasonable methodology that addresses all of the concerns expressed by internal and external stakeholders could not meet this standard.

TAS Recommendation	**[1-4] Discontinue or modify reports that highlight "enforcement" revenue (as currently defined), which is misleading because it includes "service" revenue and does not include the (potentially negative) indirect effects of unnecessary coercion.**
IRS Response	NTA Recommendation Not Adopted. Discussed above in 1-3. In addition, as recognized in footnote 70 of the TAS Report, there is a GAO requirement for current enforcement ROI using the current enforcement revenue reporting methods. We concur that the current enforcement revenue reporting includes no indirect effect estimates on subsequent voluntary reporting (positive or negative).
IRS Action	N/A

27 See, e.g., IRS, Pub. 4701, *Annual Report to Congress: The Taxpayer Assistance Blueprint Taxpayer Service Improvements* (Nov. 2015), https://www.irs.gov/pub/irs-pdf/p4701.pdf.

28 See, e.g., National Taxpayer Advocate 2012 Annual Report to Congress vol. 2 1-70 (*Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

29 OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies* (Oct. 1, 2001), https://obamawhitehouse.archives.gov/omb/fedreg_final_information_quality_guidelines/ (last visited June 21, 2017).

30 *Id.*

TAS Response	The IRS response does not address the National Taxpayer Advocate's recommendation to correct or discontinue the IRS's misleading definition of "enforcement" revenue. The response also misconstrues GAO's recommendation that it "review disparities in the ratios of direct [enforcement] revenue yield to costs," as a "requirement" to retain a misleading definition of "enforcement" revenue[31] If GAO could require the IRS to take action, it would not need to make recommendations. Moreover, GAO has not recommended that the IRS retain its misleading definition of "enforcement" revenue. Indeed, it suggested the definition of "enforcement" yield should change when it also recommended the IRS "explore the potential of estimating the marginal influence of enforcement activity on voluntary compliance."[32] The IRS's response to GAO also said there were problems with its use of direct "enforcement" revenue (presumably, as currently defined) to allocate resources when it stated: "The IRS is committed to the optimal allocation of our resources; that is why... we account for factors other than just direct return on investment when allocating resources across programs or categories of work..."[33] Furthermore, segregating and reporting service revenues is consistent with both GAO's recommendations and the IRS's response to GAO.

TAS Recommendation	**[1-5] Incorporate behavioral response metrics (*e.g.*, response rates and future compliance) into all IRS programs to help avoid over-emphasizing the importance of direct revenue.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	As stated above, the IRS is evaluating performance measures in support of its vision for the future. Frameworks, such as that produced by the Organization for Economic Cooperation and Development, as well as practices used by tax authorities outside the U.S. provide useful models.[34] The IRS's official statistics are carefully compiled in compliance with policies and directives issued by the Statistical Policy Branch of the Office of Budget and Management's Office of Information and Regulatory Affairs. Guidelines governing information disseminated by Federal agencies are intended to maximizing quality, objectivity, utility and integrity, emphasizing reproducibility and peer review of methods used to produce statistics.[35] These principles must guide any new IRS performance measures.

31 GAO, GAO-13-151, *IRS Could Significantly Increase Revenues by Better Targeting Enforcement Resources* 16 (Dec. 2012), http://www.gao.gov/assets/660/650521.pdf.

32 *Id.*

33 *Id.*

34 The OECD report can be found at: http://www.oecd.org/ctp/administration/measures-of-tax-compliance-outcomes-9789264223233-en.htm.

35 *See* https://obamawhitehouse.archives.gov/omb/fedreg_final_information_quality_guidelines/.

TAS Response

The IRS response states that it is evaluating performance measures in support of its vision for the future, as recommended. Because the IRS response cites an OECD report, which supports the National Taxpayer Advocate's recommendation (as discussed above), the IRS seems to be saying that it agrees with the National Taxpayer Advocate's concerns about the IRS's current output-oriented metrics. Thus, its hesitancy to adopt the National Taxpayer Advocate's recommendation in full appears to stem from concerns about the "reproducibility and peer review of methods used to produce statistics."

In other words, the IRS seems concerned that it may not be able to measure or estimate the effect of its activities on voluntary compliance in a way that is objective and reproducible. While this is a valid concern, if the IRS explicitly acknowledges that it needs to focus more on the total effect of its activities on voluntary compliance and less on the outputs of various enforcement functions, as recommended, it can work toward that goal, which is not as difficult as the IRS response suggests.

As discussed above, some measures of voluntary compliance are relatively easy to quantify or estimate, such as future filing and payment compliance. Even some types of reporting noncompliance are easy to detect (*e.g.*, math errors and mismatches). While it may be difficult to say with absolute certainty what caused a taxpayer's compliance or noncompliance following some interaction with the IRS, as the IRS acknowledges, the current direct "enforcement" revenue statistics are not computed with certainty either.[36] Moreover, the IRS has begun to use RCT and field experiments, which can provide reasonable estimates of the effect of its activities on future compliance. If properly designed, these estimates can be generalized. The IRS should have the confidence to report these results on a regular basis and move toward more holistic metrics, as recommended.

36 The IRS can still report the taxpayer's subsequent behavior while simply acknowledging any uncertainty that it has about the cause of the change. As noted in the report, TAS sent letters to taxpayers who claimed the EITC on 2014 returns that were not audited even though the returns appeared to have the same problems as those that were. *See* National Taxpayer Advocate FY 2017 Objectives Report to Congress 184 (Research Study: *Impact of Education and Outreach on Earned Income Tax Credit (EITC) Taxpayer Compliance*). Because there is a control group, TAS will be able to observe the comparative effect of this letter on their future compliance.

MSP #2 WORLDWIDE TAXPAYER SERVICE: The IRS Has Not Adopted "Best-in-Class" Taxpayer Service Despite Facing Many of the Same Challenges As Other Tax Administrations

PROBLEM

The IRS and tax administrations elsewhere have reacted to budgetary constraints in recent years by shifting taxpayer services to online channels, often without fully understanding what drives taxpayers to use or prefer alternative service delivery channels. "Best practices" begin with looking at taxpayers' — as opposed to the tax administration's — view of reality.

ANALYSIS

The information and surveys relating to taxpayer service the IRS has relied on in developing its "Future State" vision have important limitations. Some are conducted exclusively online and thus do not capture the needs and preferences of the 33 percent of American households without broadband access. Pew Research found that panelists in online surveys who are members of racial and ethnic minority groups may not be representative of these groups more broadly. The IRS's vision of how taxpayers will use online accounts does not recognize that taxpayers need to perform tasks of varying levels of complexity, and does not accommodate taxpayers' needs when confronted with complex or emotionally charged transactions.

TAS RECOMMENDATIONS

[2-1] Conduct any taxpayer service surveys by calling taxpayers' land line telephones or cellphones, or by sending taxpayers the survey by mail.

[2-2] In surveys of Taxpayer Assistance Centers (TACs), include taxpayers who attempted to use TAC services but were turned away.

[2-3] In taxpayer service surveys include menu options (such as "other") that allow respondents to indicate that the given alternatives do not describe their experience or preference.

[2-4] In developing taxpayer service surveys, use focus groups and pre-testing with real taxpayers to ensure the surveys reflect all the potential preferences of taxpayers.

[2-5] In implementing taxpayer service programs, place highest priority on meeting the preferences of taxpayers and stakeholders.

[2-6] Implement procedures to safeguard against adopting service methods that have as their implicit or explicit objective forcing taxpayers to online channels.

IRS RESPONSE

The IRS aims to deliver top quality service to America's taxpayers and meet the public's expectation to operate promptly and seamlessly in a digital environment. The IRS vision is about continuing to transform the way IRS serves and interacts with taxpayers. This involves looking at the future in a more comprehensive way to determine how the IRS can take advantage of the latest tools and technology to cost-effectively enhance the entire taxpayer experience. A key concept of the future state focusses on the

taxpayer, and how to provide the services taxpayers need in the way that works for them. This means helping as many taxpayers as possible using the communication channel they want to use, whether that channel is online services over the internet, telephone services through our toll-free telephone assistance line, or walk-in assistance at a Taxpayer Assistance Center.

To help identify ways to enhance the entire taxpayer experience, the IRS has reviewed literature from other tax agencies that have revamped their service offerings, reviewed research conducted by third parties and completed internal research to understand the needs, preferences and behaviors of taxpayers. This research includes, but is not limited to, the United Kingdom (UK) Needs Enhanced Support (NES) Pilot Evaluation Research, Canada Revenue Agency (CRA) Transforming Initiative, American Community Survey (ACS) Reports, Pew Research Center Library Survey, Forrester, and the Current Population Survey (CPS), IRS TAC Expectations Survey, Taxpayer Experience Survey (TES) and different Conjoint Surveys.

A literature search of international pilots pointed towards the need for a phased approach and to a triage system function that identifies customer service needs based on a series of questions. The Canadian Revenue Agency (CRA) changed to appointment-based service at their inquiry counters and utilized employees equipped to provide service over the phone to provide service to taxpayers. This resulted in a phased approach to closing inquiry counters in all CRA Tax Services Offices (TSO) during a six-year period. Based upon a literature review of Her Majesty's Revenue and Customs (HMRC) research, the UK developed a program of research based on a framework of providing different services and treatments to different taxpayers frequently using a triage system. The IRS has developed programs of research based on providing all taxpayers access to different services and tailoring service to taxpayer preferences. The CRA, HMRC and IRS have all utilized the principal of using data to better understand taxpayers and then to pilot programs to test service options.

A review of external literature on internet usage and service offerings indicates 84% of US adults are internet users. These online adults have expectations for being able to conduct business online with the IRS as they do with the private sector. Although internet adoption does vary by some demographics, internet growth for seniors has the greatest rate of change since 2000 and smartphones have provided internet access to lower income individuals. As internet adoption continues to increase with these groups, so will their expectation to interact with the IRS online.

The IRS has also conducted original research to better understand the needs, preferences and behaviors of taxpayers to help inform IRS service offerings. For example, the IRS has conducted surveys, such as the Taxpayer Experience Survey (TES) (conducted annually since 2006 (except 2011)), the TAC Expectations Survey (conducted in 2010, 2013 and 2016), and several different conjoint surveys, as well as service pilots, such as the Virtual Service Delivery pilot and the Appointment Based Service Test.

Just as the technology landscape is changing and impacting IRS services, so has the survey administration landscape changed. Random digit dial (RDD) phone surveys of landline phones may no longer represent the US population as almost half of Americans have a cellphone but no longer have landlines. The cellphone-only rate is higher among young adults, Hispanics and African Americans. Although cell phones can be added to landline phone survey, cell phone surveys are more expensive and have a lower response rate thereby increasing the odds of non-response bias. Online panels for survey research also have advantages and disadvantages that can be minimized based on the quality of the panel. There are online panels that are built on probability sampling and are considered representative of the US population. Still other surveys are still administered in person to ensure inclusion of the desired population of interest.

Decisions about IRS service offerings are made after considering many factors including the diversity of the population we serve. Research is utilized to help us continue to better understand those factors and our customer base.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The IRS's otherwise admirable objective to "meet the public's expectation to operate promptly and seamlessly in a digital environment" needs qualification — the objective is appropriate for taxpayers who *choose* a digital channel for the service they need from among other delivery channels. The IRS notes that it has undertaken original research to identify taxpayer preferences, using methodologies with various strengths and weaknesses, but does not explain or provide examples of insights it has gained from these efforts. It is not clear from the IRS's response that it reviewed recent TAS studies such as the Service Priorities Project survey or the Hispanic Taxpayer Survey, published in the National Taxpayer Advocate's Annual Reports to Congress and available on TAS's website. The one innovation the IRS is clearly implementing is online accounts, even though many taxpayers — even internet users — do not always prefer to interact with the IRS online. Even internet users may be hesitant to share personal information online with the government. While according to the IRS, 84 percent of US adults are internet users, TAS estimates that 33 million taxpayers who filed returns or used IRS services in a 12-month period do not have broadband access. Although taxpayers prefer to use different service channels depending on what they are trying to acomplish, the IRS response does not give a single example of an instance in which its research led to the adoption of a delivery channel other than digital. Additionally, while a significant portion of taxpayers have internet access, about one of every six do not have internet access and will require different delivery channels for services.

The IRS does not provide the sources for the cited information pertaining to Canada and the UK, and our review did not lead us to the conclusion that the decisions made by those tax administrations were the result of research about taxpayers' needs and preferences. On the contrary, some decisions appear to have been driven solely by cost considerations. Moreover, the National Taxpayer Advocate has consulted extensively with Her Majesty's Revenue and Customs (HMRC) and does not agree that the UK's approach is similar to IRS's. A few examples of ways in which the IRS does not provide world-class taxpayer service include the IRS's declaring issues out of scope, refusing to answer tax law questions after April 15, and limiting walk-in assistance. The system the IRS descibes as "triage" means the IRS will decide how taxpayers should contact it, rather than give taxpayers the latitude to choose which channel best meets their needs and fits into their schedules, learning needs, or lifestyles. The latter approach is the hallmark of a world-class tax administration.

TAS Recommendation	**[2-1] Conduct any taxpayer service surveys by calling taxpayers' land line telephones or cellphones, or by sending taxpayers the survey by mail**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.

IRS Action	The IRS stays current with research best practices and considers all survey methods (phone, mail, internet, in person) when determining the best survey administration method based on the research question. For example, the 2017 TES is scheduled to be administered utilizing the AmeriSpeak Panel. The AmeriSpeak Panel is operated by NORC at the University of Chicago. AmeriSpeak is a probability-based panel designed to be representative of the U.S. household population. To address non-internet and internet adverse households, AmeriSpeak gives respondents a choice regarding their preferred mode of survey participation between online and phone surveys. Other IRS surveys are administered by phone, mail, and in person depending on the best option for the research question to be answered or the population to be surveyed.
TAS Response	The National Taxpayer Advocate welcomes the new feature of the Taxpayer Experience Survey that allows taxpayers to take the survey by phone. This may reduce some bias present in online panels generally. The IRS asserts that it chooses the best survey method depending on the research question to be answered or the population to be surveyed. Either way, the IRS is concerned about maximizing the number of taxpayers it reaches, not necessarily in reaching vulnerable taxpayers. Moreover, the IRS relies more heavily on data from studies conducted online, such as the conjoint study, in which the IRS decides which (non-exhaustive) options respondents may choose from. The IRS has not at all addressed the Pew finding that online panels are biased against African Americans and Hispanics. The fact remains that surveys conducted online cannot take into account the needs and preferences of those who do not have internet access or who are unwilling to take an online survey. The IRS should seek to serve all taxpayers, not just the easy to reach.

TAS Recommendation	**[2-2] In surveys of TACs, include taxpayers who attempted to use TAC services but were turned away.**
IRS Response	IRS Actions Already Implemented.
IRS Action	All three of the TAC Expectation Survey administrations have included taxpayers who do not receive service from the TAC. During survey administration, every person who comes to the TAC seeking service is invited to participate in the survey. Taxpayers who come to the TAC but do not receive service are requested to complete the applicable portions of the survey. Additionally, the IRS will be implementing a customer satisfaction survey on the appointment line and an internet or phone follow up survey to better understand the customer experience. These surveys will include those who visited the TAC as well as those who called to make an appointment, whether they received service or not at the TAC.
TAS Response	The IRS response evidently uses the term "coming to the TAC" to mean arriving at the door of the TAC, which is where survey administrators were positioned, according to the IRS.[1] Thus, taxpayers who stood in line waiting to arrive at the front door of the TAC were *not* surveyed. It is appropriate for the IRS to survey taxpayers who call to make an appointment, as well as though who visited TACs, whether or not they receive service at the TACs. However, because the contemplated survey will not be administered in person, the IRS will not be able to survey taxpayers who visit a TAC but leave without receiving service, because the IRS will not have contact information for those taxpayers.

1 IRS response to TAS fact check (Dec. 19, 2016).

TAS Recommendation	**[2-3] In taxpayer service surveys include menu options (such as "other") that allow respondents to indicate that the given alternatives do not describe their experience or preference.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	Where applicable and methodically sound, the IRS includes "other" options on their survey questions. For example, the TES has several questions with the other "please specify" as a response category including questions about tasks, what information source they used, service expectations and preferred source of general tax information. Conjoint surveys are designed to gather qualified preference. Qualified preference is a respondent's preference based on information the survey instrument provides to the respondent and is used to understand how respondents make choices and predict decisions for them based on that knowledge. Qualified preference is typically a better predictor of choice behavior when introducing new service options or including service options with low awareness. Unqualified preference, as measured in the TAS Service Priorities Survey, is a respondent's stated preference without knowledge of how the respondent came to that decision and typically includes an "other" category where respondents can provide an alternative preference. Conjoint surveys do not include an "other" option.
TAS Response	The National Taxpayer Advocate is pleased that the Taxpayer Experience Survey allows taxpayers to select a "please specify" option. Conjoint studies also provide options, but as the IRS notes, the options themselves are limited to those the IRS provides, and assume the respondent is already familiar with those options. Moreover, the survey may ask taxpayers what their preferred service delivery method would be with respect to services they may not need or want in the first place. The most recent conjoint survey, for example, explores how taxpayers would like to make a payment, obtain a copy of a tax transcript, obtain tax account information, or have their identity authenticated for tax-related purposes. Nothing in the survey signals for the IRS that taxpayers are not actually familiar with the given options or that they may have very different preferences when, for example, they need to challenge the IRS's proposed adjustment to their return or engage in other emotionally charged transactions. Additionally, taxpayers may have a much more intense preference for a given service delivery channel when they attempt to address complex, difficult, or time sensitive situations. As long as the IRS designs surveys that are not taxpayer-centric, but require taxpayers to choose among pre-set options the IRS has identified, the exclusion of an "other" category may lead the IRS to overlook important information about taxpayers' needs and preferences.

TAS Recommendation	**[2-4] In developing taxpayer service surveys, use focus groups and pre-testing with real taxpayers to ensure the surveys reflect all the potential preferences of taxpayers.**
IRS Response	IRS Actions Already Implemented.
IRS Action	The IRS has and does conduct focus groups, pre-testing, or cognitive testing of its surveys when resources and the budget allows. For example, the TES regularly undergoes cognitive testing with real taxpayers to ensure the quality of the survey. In addition, where resources and funding has allowed, focus groups have been part of the conjoint survey design process.
TAS Response	The National Taxpayer Advocate is pleased that the IRS recognizes the need to vet surveys before they are administered. However, pre-testing and focus groups should be an integral part of every taxpayer survey rather than steps taken "when resources and the budget allow." More importantly, the purpose of vetting should be to ensure not only that surveys are understandable to taxpayers, but that they capture taxpayer preferences the survey instrument would otherwise overlook. The extent to which the IRS does not vet a survey, especially a conjoint survey, should be taken into account in determining how much it should rely on the survey results.

TAS Recommendation	**[2-5] In implementing taxpayer service programs, place highest priority on meeting the preferences of taxpayers and stakeholders.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The IRS aims to deliver top quality service to America's taxpayers and we continually look for new cost-effective ways to enhance the taxpayer experience. In doing so, the IRS utilizes many factors to make an extensive assessment that includes taxpayer needs, preferences and behaviors as well as business considerations such as the budget.
TAS Response	As the IRS notes, its commitment to deliver top quality service is qualified by the need to do so in a cost-effective way. The attention to cost containment has led it to emphasize digital service delivery with insufficient recognition that not all taxpayers prefer to interact with the IRS digitally for every service they need. While "going digital" may cost less than other service delivery channels, the focus on what best serves the IRS may impede taxpayers from engaging with it, with the attendant risk of future noncompliance.

TAS Recommendation	**[2-6] Implement procedures to safeguard against adopting service methods that have as their implicit or explicit objective forcing taxpayers to online channels.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The IRS enthusiastically accepts the responsibility to deal with all 150 million taxpayers in whatever way they want to interact with us. We recognize there will always be taxpayers who do not have access to the digital economy, or who simply prefer not to interact with the IRS online. We remain committed to providing the services these taxpayers need. In fact, getting more people to use our online offerings will help us provide better and faster service to those who still want or need to call us or visit us in person.[2]
TAS Response	By stating "there will always be taxpayers" who do not have online access or prefer not to interact with the IRS online, the IRS attempts to minimize the population that is actually affected by its decision to force them to use online channels. Implicit in the IRS's response is the admission that the IRS may attempt to force taxpayers to use online channels — "getting" them online. The refusal to adopt this recommendation is inconsistent with the IRS's position that it accepts responsibility to deal with taxpayers "in whatever way they want to interact with us."

2 Prepared Remarks of Commissioner John Koskinen before the AICPA, Nov. 15, 2016.

MSP #3 IRS STRUCTURE: The IRS's Functional Structure Is Not Well-Suited for Identifying and Addressing What Different Types of Taxpayers Need to Comply

PROBLEM

The IRS's functional structure is a barrier to multi-functional coordination. As a result, enforcement functions focus on completing tasks quickly without sufficient regard for the downstream consequences to other functions or taxpayers. Moreover, the root cause of noncompliance and the appropriate treatment is not the same for every taxpayer population segment. Thus, without multi-functional coordination, the IRS is likely to miss opportunities to prevent noncompliance by addressing its root causes.

ANALYSIS

The IRS Restructuring and Reform Act of 1998 (RRA 98) required the IRS to give organizational units end-to-end responsibility for providing service to specific taxpayer segments. After RRA 98, the IRS created national operating divisions (ODs) named after four broad taxpayer population segments: Small Business/Self-Employed (SB/SE), Wage and Investment (W&I), Tax Exempt and Government Entities (TE/GE), and Large Business and International (LB&I). However, taxpayers generally do not receive end-to-end service from a single OD. SB/SE, LB&I, and TE/GE allocate only about one percent, zero percent, and four percent, respectively, to service, whereas W&I allocates 82 percent to service. For example, wage earners may be subject to enforcement by SB/SE while receiving most services from W&I. IRS functions need to work together to understand the root causes of noncompliance and implement the most effective and least burdensome alternative treatment(s) (*e.g.*, educating taxpayers, alerting them to apparent discrepancies, and improving guidance, forms, communications, and outreach). If the IRS has not tried alternatives before resorting to enforcement, then the enforcement may be unnecessary. The use of unnecessary coercion violates the taxpayer rights *to quality service*, *to be informed*, *to finality*, *to a fair and just tax system*, *to privacy*, and in some cases *to pay no more than the correct amount of tax*. When the IRS violates taxpayer rights, it likely reduces voluntary compliance by eroding trust for the IRS and promoting the view that noncompliance is justified.

TAS RECOMMENDATIONS

[3-1] Remove servicewide functions from W&I by establishing a new unit that handles servicewide functions (*e.g.*, submission processing, media and publications, etc.) so that W&I can focus on providing end-to-end service to W&I taxpayers, as previously recommended.

[3-2] Establish cross-functional units that have true end-to-end responsibility and accountability for voluntary compliance (*e.g.*, on-time filing and payment rates), satisfaction with, and trust for the agency by narrow taxpayer segments that they can affect, such as those shown in Figure 1.3.1.[1]

[3-3] Establish procedures that require the ODs to implement alternative treatments to address the root causes of noncompliance for a segment or issue (*e.g.*, using multifunctional CIPs, campaigns, or similar programs) before applying coercive treatments, except when it is clear that alternative treatments would be ineffective.

1 Figure 1.3.1 of the Most Serious Problem appears as Exhibit A in IRS Pub. 3349, *Modernizing America's Tax Agency* 22 (1999).

IRS RESPONSE

The IRS Restructuring and Reform Act of 1998 (RRA 98) prompted the most comprehensive reorganization and modernization of IRS since the 1950s, with an objective of transforming the IRS into a modern financial services organization. As part of RRA 98, the IRS reorganized to closely resemble the private sector model, organizing around customers with similar needs. The RRA 98 blueprint of our customer-based organizational structure, with four main operating divisions focused on serving groups of taxpayers with (*i.e.*, wage earners, small businesses, large/international taxpayers, and tax-exempt and governmental entities), remains the foundation of today's IRS. Contrary to the National Taxpayer Advocate's statement, this current structure allows IRS to focus and address the specific and unique tax compliance needs and taxpayer service needs of the different taxpayer bases that we serve. Collaboration across the business operating divisions routinely occurs to address tax administration issues that span two or more functions and to ensure a servicewide approach and/or strategy.

In addition, the existing structure allows the different operating divisions to provide end-to-end service to the taxpayers they serve. Take for example, the Employee Plans group which serves tax-exempt retirement plans and provides support to retirement plans for their life-cycle as taxpayers. This starts with an employer's request for an IRS determination that a new retirement plan is tax-qualified (a compliance function); continues with compliance, enforcement, and outreach activities for an ongoing plan; and ends with a final IRS determination when a plan is terminated and its assets are distributed to participants. Compliance activities include a voluntary correction program that enables plans to correct qualification violations by either self-correcting or requesting an IRS compliance statement. Outreach activities via publications, web-based education, and live presentations continue throughout this lifecycle, and are tailored to meet the needs of this discrete taxpayer population. This is one of countless examples across IRS of how our existing structure is well-suited and tailored to meet the vast, differing and evolving needs of the millions of taxpayers we serve.

Across IRS, we continually examine and refine our approaches to services and enforcement to meet the needs of, and improve voluntary compliance among, each of our taxpayer segments. To that end, our Large Business and International (LB&I) division recently adopted a campaign approach for selecting issues and working with taxpayers to address the root causes of noncompliance. A campaign is a holistic response to an item of known or potential compliance risk. LB&I will use campaigns to identify, prioritize and allocate resources to compliance risks within for the LB&I taxpayer population. Campaigns apply the proper type and amount of resources and combination of treatment streams to achieve intended compliance outcomes. For example, a campaign may include examinations and/or some type of alternative treatment such as outreach, form changes, soft letters and/or guidance.

Likewise, to help improve voluntary compliance with payroll taxes for businesses of all sizes, the IRS's Collection function recently tested an "Early Interaction Initiative" in which the IRS contacts employers who appear to be falling behind with their payroll tax deposits, before their quarterly return is due. By doing so, Collection can work with the taxpayer to resolve the noncompliance at the earliest possible time. As part of this initiative, Collection is developing a new Alert selection model to better identify taxpayers who are likely to have compliance issues in the current quarter. The objective of the initiative is to better identify the right treatment for the taxpayer at the earliest possible time. The pilot for this initiative proved to be successful in addressing compliance issues before the issue pyramided, and it appeared to reduce the likelihood of recidivism among those taxpayers who were contacted. The initiative was also successful in reducing taxpayer burden by reducing the amount of penalties.

As noted above, the objective of RRA 98 was to transform the IRS into a modern financial services organization — offering taxpayers the option of online account access capability and other modern service options, similar to some of the best-in-business private sector services that many taxpayers are already accustomed to having at their disposal. To that end, the IRS developed a Future State strategy, informed by taxpayers' preferences and behaviors, which covers the complete end-to-end taxpayer experience and outlines our vision for delivery of additional taxpayer services and enforcement options moving forward. The strategic goal guiding this entire effort is to do business with taxpayers more timely and inter-actively through their preferred channels and means. This will also effectively reduce taxpayer burden and encourage and enhance voluntary compliance. These new capabilities will complement our existing telephone and face-to-face service options, which will remain available for those who wish to utilize them. In that manner, they will become another step in the modernization of the IRS that Congress called for in RRA 98.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate commends TE/GE's EP function, SB/SE's Collection function, and LB&I's Exam function for implementing the service-oriented programs described in the IRS response, even though they are not allocated any significant funding to provide services. It is not clear if all of the examples described in the IRS response involve collaboration, but even if they do, a function's ability to overcome structural barriers in certain instances does not mean the barriers do not exist. For example, if LB&I wants to change a form to implement a campaign, it must coordinate with W&I, distracting W&I from its focus on W&I taxpayers. Moreover, LB&I has not disclosed whether or how it will measure the success of a form change. If the IRS measures its effect on voluntary compliance, the metric is just as likely to appear in W&I's performance metrics as it is to appear in LB&I's, potentially blunting LB&I's incentive to address problems proactively.

As described in the Most Serious Problem, IRS enforcement functions generally focus on completing tasks quickly to produce enforcement outputs, such as closed cases, without sufficient regard for the downstream consequences to other functions or taxpayers. This general focus is not necessarily the functions' fault. Enforcement functions naturally focus on enforcement outputs, rather than the big picture, because their mission is narrow. This is a structural problem.

If the IRS wants every organizational unit to be proactive in addressing compliance problems with the appropriate service and enforcement tolls, like LB&I's campaigns are supposed to do, it should not segregate its units into enforcement and service organizations. Each unit should be focused on the big picture – the satisfaction and voluntary compliance of the specfic taxpayer segment they are named after. Without responsibility for both enforcement and service, such broad metrics do not make sense.

TAS Recommendation

[3-1] Remove servicewide functions from W&I by establishing a new unit that handles servicewide functions (*e.g.*, submission processing, media and publications, etc.) so that W&I can focus on providing end-to-end service to W&I taxpayers, as previously recommended.

IRS Response

NTA Recommendation Not Adopted. The IRS stands behind our previous response to this recommendation.[1] Our current approach to providing servicewide functions from W&I benefits all taxpayers, including the majority of filers who are individual taxpayers with wage and investment income. This approach provides the most efficiency, benefitting all taxpayers through reduced cost of tax administration, while also providing the greatest consistency and quality of service delivery. The design and development of the servicewide functions provided by W&I are the result of collaborative efforts involving all operating divisions.

W&I is the largest single customer-facing entity in the IRS. W&I processes tax returns and payments, issues tax refunds, and posts transactions to tax accounts for over 150 million individual and more than 47 million business customers each year. W&I also answers more than 55 million account and tax law inquiries and form requests via telephone and 26 million paper inquiries each year. W&I also adjusts accounts, provides walk-in appointment service, and updates, prints, and distributes notices, tax forms, instructions, and publications for all tax filers. While W&I is responsible for delivering all of these servicewide functions, we rely on our partnerships with the other operating divisions to ensure that we are ensuring excellent end-to-end service for all customers.

For example, while the design and development of the tax products are housed within W&I, the product ownership is determined based on the primary user of the tax product. W&I collaborates with the operating division owners of the tax products to help identity and improve areas of noncompliance or confusion. W&I also collaborates form changes with Information Technology (IT) to ensure all necessary programming changes are implemented in order to ensure a successful filing season.

The Online Account team, including members from W&I, Online Services and IT, designed and deployed a consolidated web-based tool providing individual taxpayers with the ability to view their tax information, make payments, and update account information using a single-authentication platform on irs.gov. Development of the tool was performed by corporate stakeholder engagement including IRS employees, taxpayers, and practitioners.

Another example of our internal collaboration is the Customer Early Warning System (CEWS), which brings together feedback received from employees, taxpayers, software partners with contact centers, and social media outlets such as Facebook, Twitter and blogs on forms, procedures and processes, in order to address emerging issues in real time; a proactive rather than reactive approach. Closely associated with this effort is the Contact Center Forum (CCF), an ongoing collaborative effort between the IRS and private tax-related industry members with large taxpayer call center operations, promoting knowledge sharing, and partnership in support of taxpayer service. This collaborative effort has contributed to reducing taxpayer burden during the filing season.

W&I also collaborates with external partners, such as the Internal Revenue Service Advisory Council (IRSAC), Information Reporting Program Advisory Committee (IRPAC), and the Taxpayer Advocacy Panel (TAP) to improve our services to the American taxpayer. These committees have provided feedback and recommendations on various issues, such as, improvements to our toll-free telephone script; the Interactive Tax Assistant tool on irs.gov; forms, notices and letters; and service provided on the Practitioner Priority Service telephone line. We also review and consider recommendations received through the Taxpayer Burden Reduction Program.

These internal and external team efforts showcase W&I's ability to coordinate with the other operating divisions and to successfully and efficiently provide servicewide functions that benefit all taxpayers, including end-to-end service to W&I taxpayers.

2 *See* National Taxpayer Advocate 2010 Annual Report to Congress 49, 70 (Most Serious Problem: *The Wage & Investment Division Is Tasked With Supporting Multiple Agency-Wide Operations, Impeding Its Ability to Serve Its Core Base of Individual Taxpayers Effectively*).

IRS Action	N/A
TAS Response	The National Taxpayer Advocate applauds W&I's efforts to collaborate with internal and external stakeholders. Without this collaboration, most IRS services would not address the needs of taxpayers that other operating divisions are named after. W&I's servicewide functions — processing tax returns and payments, posting transactions, answering the phone, and printing and mailing notices, tax forms, instructions, and publications for all tax filers — detract from its focus on the compliance and education needs of taxpayers with wage and investment income. By contrast, if a new back-office function were charged with these tasks, they would no longer distract W&I from the needs of W&I taxpayers. The IRS response asserts that giving W&I responsibility for servicewide functions results in more efficiency, consistency, and quality than assigning those functions to a new unit. However, the response provides no support for this conclusion. A new unit focused on servicewide back-office functions seems just as likely to deliver quality, consistency, and efficiency to all IRS operating divisions as W&I, which is trying to provide back-office functions for all of the operating divisions while also providing tailored service to W&I taxpayers. Similarly, if W&I could focus solely on improving satisfaction and voluntary compliance by W&I taxpayers using both service and enforcement tools, it could use the results of its enforcement activity to identify which W&I taxpayer segments need more proactive individualized services.[2] As currently structured, if W&I fails to provide services needed to prevent problems, the result is that another operating division's exam or collection functions have a larger pool of noncompliant taxpayers to which they must apply their limited enforcement resources. Because W&I has few enforcement resources (other than to address refundable credit claims), it has very little continuing responsibility for most W&I taxpayers. Thus, it is difficult for the IRS or its stakeholders to hold W&I (or any other organizational unit) accountable for voluntary compliance by W&I taxpayers or their overall views of or satisfaction with the IRS.

TAS Recommendation	**[3-2] Establish cross-functional units that have true end-to-end responsibility and accountability for voluntary compliance (*e.g.*, on-time filing and payment rates), satisfaction with, and trust for the agency by narrow taxpayer segments that they can affect, such as those shown in Figure 1.3.1.**
IRS Response	NTA Recommendation Not Adopted as Written but IRS Actions Taken to Address Issues Raised by NTA.

3 Notably, the IRS has only 1,267 Taxpayer Assistance Center (TAC) Service Representatives at 367 TACs to provide outreach and education to all W&I taxpayers. National Taxpayer Advocate 2016 Annual Report to Congress 7.

IRS Action	See IRS Narrative Response. The IRS continues to recognize and address the unique characteristics of taxpayer populations by tailoring outreach and compliance programs by taxpayer segments. Refundable tax credits, and specifically the earned income tax credit (EITC), is an example of IRS's recognition and attention to specific groups of taxpayers. Recognizing the unique challenges we face in administering the EITC for low to moderate income families, the IRS established a centralized function, the EITC Program Office, in 2003 to oversee administration of the program. The mission of the office from its inception was to ensure that all eligible individuals receive the EITC, while reducing the number of erroneous EITC claims. This office developed tailored outreach and compliance programs for EITC. Through the years the office was realigned organizationally, however, it continues to accomplish its mission that now includes all refundable credits. The new office, the Refundable Credits Administration (RCA) office housed in W&I, takes the unique characteristics of the refundable credits and taxpayer populations into consideration as it coordinates its outreach and compliance programs end-to-end, across the IRS. For example, RCA collaborates with Communications & Liaison, (C&L), Submission Processing, compliance (including return preparer compliance) functions, research functions, and Chief Counsel to ensure strategies and treatments are consistently applied and legally sound. W&I is also in the process of developing a Refundable Credit Operational Strategy for the IRS. Data is currently being collected on all servicewide treatments, including soft notices, examinations, error correction, and outreach and education. The treatment streams will be analyzed to better understand their effects on behavior, credit coverage, taxpayer burden, return on investment, addressing fraud, and revenue protection. Another example that illustrates IRS's end-to-end accountability for voluntary compliance can be found in our FATCA Compliance Teams, which collaborate to encourage voluntary compliance by all impacted taxpayers including individual taxpayers, U. S. Financial Institutions, and Foreign Financial Institutions (FFIs). Taxpayers have access to IRS.Gov FATCA website which provides guidance and responses to FAQs. The FATCA Compliance Teams regularly update IRS.Gov webpages with the most recent guidance and FAQs as they become available. For example, if IRS identifies an issue that is prevalent in the industry or affecting multiple FFIs, an FAQ is published on the FATCA FAQ website. The publication of the question and response provides guidance for other FFIs that may encounter the same issue in the future without the FFIs needing to expend time and resources to research the issue. FATCA Compliance Teams also collaborate on various compliance initiatives, including Form 1042/1042S initiative which included form changes to make it easier for taxpayers to comply.
TAS Response	The National Taxpayer Advocate commends the IRS for establishing at least two program offices with responsibility for addressing specific tax compliance issues. A program office dedicated to understanding a specific taxpayer population and their compliance challenges should be able to design more effective outreach, education, audit, and collection strategies, informed by the latest behavioral insights applicable to the population in question. The RCA program office may enable W&I to better understand taxpayers who claim refundable credits and address their needs. However, nobody is charged with understanding each of the other populations shown on Figure 1.3.1 or the compliance challenges they face. If the IRS were organized so that some IRS unit had responsibility for each of these groups, the units could be held accountable for a particular taxpayers' overall voluntary compliance or satisfaction with the IRS.

TAS Recommendation	**[3-3] Establish procedures that require the ODs to implement alternative treatments to address the root causes of noncompliance for a segment or issue (*e.g.*, using multifunctional CIPs, campaigns, or similar programs) before applying coercive treatments, except when it is clear that alternative treatments would be ineffective.**
IRS Response	NTA Recommendation Not Adopted as Written but IRS Actions Taken to Address Issues Raised by NTA.

IRS Action

As part of the Refundable Credit Operational Strategy, we will look at whether certain treatments are better suited to different populations. We will also look at possibly varying the level of treatments based on intent. For example, we can consider applying a lighter treatment or an educational treatment for those taxpayers that made a mistake versus a stronger treatment for those that exhibited continued non-compliance after receiving previous treatment. Also, in FY 2016, LB&I adopted the campaign process to address the root causes of noncompliance. A campaign is a holistic response to an item of known or potential compliance risk. Campaigns apply the proper type and amount of resources and combination of treatment streams to achieve intended compliance outcomes. For example, a campaign may include examinations and/or some type of alternative treatment such as outreach, form changes, soft letters, and/or guidance.

In our Examination functions, Compliance Initiative Projects (CIPs) are frequently used to identify potential areas of non-compliance with the goal being to identify and implement corrective actions. All CIP authorizations include a section regarding alternative treatments. Consideration is already given to identify alternative non-enforcement ways to improve voluntary compliance before proceeding with the CIP. Additionally, alternative treatments are also considered for potential compliance issues that may not be addressed through a CIP such as use of soft notices and outreach efforts/education to industry segments and taxpayers at large (e.g., via irs.gov, industry meetings, practitioner liaison meetings). Examples of alternative treatment programs include:

- Soft Notice Automated Underreporter (AUR): Soft notices are issued to select taxpayers in lieu of issuing formal notices proposing a change in tax.
- Soft Notice Procedures – Tipped Employee: Soft notices are issued to select taxpayers indicating they have not properly reported taxable tipped income based on information submitted by their employer. The notices provide the taxpayer the opportunity to review the information provided to the IRS and either correct or amend their individual tax return(s) or provide information to determine the proper amount of tipped income to include on their individual income tax return.
- Voluntary Classification Settlement Program (VCSP): The program offers employers a path to obtain certainty and compliance with the issue(s) of worker classification while incurring a significantly reduce tax obligation for resolving this issue. If the employer meets the requirements and is accepted in the program, the employer/taxpayer can permanently resolve the issue of worker classification.
- Voluntary Closing Agreement Program (VCAP): This program is designed to offer employers a method of correcting employment tax issues of withholding and or reporting non-compliance. The taxpayer will come forward to the IRS, fully explaining the errors made regarding payments or benefits provided to their employees. The employer must show the current procedures available to correct their error(s) would result in an undue burden to the taxpayer, their employees and the IRS/government. A resolution of the reported errors can result in entering into a Closing Agreement or conducting limited examination procedures to bring the taxpayer into compliance.

Moving from the examination context to the collection sphere, taxpayers who owe money to the IRS can avail themselves of a variety of alternative treatments in the Collection process before progressive treatments are applied. For example, if taxpayers are unable to pay in full, the IRS offers a variety of installment agreement options, some of which taxpayers may set up online. Additionally, if a taxpayer is experiencing financial difficulties or an economic hardship, they may ask that their account be determined to be currently not collectible. Taxpayers also may submit an offer-in-compromise which will allow them to settle their liability for less than the full amount owed if it is accepted. Finally, in certain cases in which the taxpayer believes the IRS incorrectly determined the tax liability, the taxpayer may request an audit reconsideration. If the taxpayer is cooperating with the IRS and providing the requested financial information, the taxpayer generally is able to pursue one or more of these alternative treatments, and is entitled to Appeal an unfavorable determination, before Collection takes actions to collect the tax owed.

TAS Response

The National Taxpayer Advocate commends the IRS for making use of soft notices before initiating the Automated Under Reporter (AUR) process and to address tip reporting issues. Its commitment to modify the Refundable Credit Operational Strategy to apply alternative treatments also appears to be a step in the right direction. Reserving the IRS's most expensive coercive treatments for those who will not respond to alternative treatments makes good sense.

However, using alternative treatments in specific situations is not the same as requiring those IRS programs and employees charged with applying coercive treatments to make sure the IRS has actively considered less intrusive alternative treatments before pursuing coercive ones. It appears that the LB&I campaign process is set up to ensure LB&I considers alternative treatments (*e.g.*, soft notices, form changes, and the like) before resorting to exams. However, TAS is unaware of any guidance issued by LB&I or SB/SE that requires employees to ensure the IRS has considered ways to encourage self-correction before initiating an examination or implementing an exam strategy outside of the campaign process.

As discussed in the Most Serious Problem, CIPs provide opportunities for exam employees to address reporting compliance problems by identifying alternative treatments, but in practice they use CIPs primarily to identify returns to examine. There is no requirement for exam employees to identify alternative treatments, and if they do there is no requirement for them to follow up to ensure the function charged with implementing the treatment actually did. Similarly, collection employees are not required to discuss alternative treatments such as installment agreements or offers-in-compromise with taxpayers before pursuing liens, levies, and seizures, even if such discussions make sense from both the taxpayer and the IRS's perspective.

MSP #4 GEOGRAPHIC FOCUS: The IRS Lacks an Adequate Local Presence in Communities, Thereby Limiting Its Ability to Meet the Needs of Specific Taxpayer Populations and Improve Voluntary Compliance

PROBLEM

The overriding purpose of tax administration is to enable voluntary compliance. This goal can be significantly furthered by providing service, creating a culture of trust, and promoting an understanding of the role taxes play "in a civilized society." The IRS Restructuring and Reform Act of 1998 (RRA 98) required the IRS to replace its geographic-based structure with organizational units serving specific groups of taxpayers. In doing so, the importance of having a local, engaged presence in taxpaying communities was minimized. Failing to maintain a robust geographic presence hinders the IRS's ability to achieve its mission.

ANALYSIS

Prior to 1998, the IRS served every taxpayer at one of ten centralized IRS service centers and 33 local district offices. Post-RRA 98, the IRS shifted its community-based resources to campuses relying on national "one-size-fits-all" service and "enforcement" policies for each category of taxpayer. This centralization has resulted in the IRS not addressing the particular attributes of local taxpayer populations.

Reductions in IRS geographic presence permeate the entire organization. Twelve states and the territory of Puerto Rico lack a permanent Appeals presence, leaving taxpayers in these states to either wait for a circuit-riding employee to visit their area, or to travel to the nearest state with an Appeals presence to obtain an in-person hearing. Additionally, 16 states and Puerto Rico lack a Settlement Officer. The IRS consolidated 33 geographically dispersed lien units into a single centralized unit in 2005, virtually eliminating taxpayers' ability to walk in and obtain an immediate release of a lien. Localized outreach and education have all but disappeared.

TAS RECOMMENDATIONS

[4-1] Expand partnerships with private and non-profit organizations, similar to the Alaska Volunteer Tax and Loan Program, to visit most remote and underserved regions and provide tax education and preparation to taxpayers within their communities.

[4-2] Use the Service Priorities Project (SPP) model to make decisions on taxpayer services, including the location of Taxpayer Assistance Centers (TACs).

[4-3] Work with community partners to host virtual service delivery terminals for taxpayers located in remote and otherwise underserved communities.

[4-4] Re-staff Appeals Officers and Settlement Officers locally so that one of each employee is located and regularly available in every state, the District of Columbia, and Puerto Rico.

[4-5] Re-staff local outreach and education positions to bring an actual presence to every state.

[4-6] Provide face-to-face service through the use of mobile taxpayer assistance stations (vans) in each state

IRS RESPONSE

The IRS appreciates the NTA's recognition of our initiatives to maintain a local geographic presence to reach taxpayers in remote and underserved communities, including our appointment process at the Taxpayer Assistance Centers (TACs), the expansion of virtual service terminals hosted by community partners, and our co-location proof of concept with Social Security Administration (SSA) offices.

Providing quality and timely service to our taxpayers remains a top priority for the IRS. We recognize that some taxpayers still prefer, or need to interact with us in person, and we will continue to offer face-to-face service to help these taxpayers understand and meet their tax obligations. As noted in the report, our TACs are recognized for their important role "in meeting the needs of underserved taxpayers, including rural, elderly, disabled, English as a second language, American Indian, and low income taxpayers." While the demand for face-to-face service remains high, the newly implemented TAC appointment service allows us to effectively schedule service in those areas where we have limited staffing. The appointment process improved service to all taxpayers, gave us an upfront opportunity to educate taxpayers on alternative service options and, in some cases, precluded the need to travel to the TAC for service. Preliminary data this filing season shows that more than half of taxpayers who called to make an appointment spoke to a phone assistor and afterwards did not need an appointment. The TAC appointment service has resulted in more efficient and effective service for taxpayers, substantially reduced or eliminated long lines, and reduced wait time for taxpayers who chose to make an appointment. And when possible, we continue to serve those taxpayers who are unable to call for an appointment or who arrive at a TAC with an emergency or immediate issue.

We are aware of the importance of surveying taxpayers for their feedback on our TAC customer service. In your report, you stated that IRS failed "to accurately survey the taxpayers that actually use the TACs and are in the greatest need of these services." However, our TAC offices distribute customer satisfaction survey cards to taxpayers who received assistance, including those who come to the TAC for other service options available to resolve their issue. Also, in 2005, we initiated the Taxpayer Assistance Blueprint (TAB), the IRS's and the NTA's response to a Congressional mandate for development of a five-year plan for taxpayer service. The TAB is the first large-scale, agency-wide attempt to gain a comprehensive picture of the needs, preferences, and behaviors of taxpayers as they work to comply with their federal tax obligations. The IRS incorporated almost 40 research studies about taxpayer needs, preferences, and behaviors in its TAB Phase 2 report to Congress that laid the foundation for the five-year plan. Survey data currently in collection will continue to increase the IRS's understanding of the needs, expectations and behaviors of TAC customers as we continue to leverage available technologies to provide service to taxpayers.

In addition to serving taxpayers in our TACs, we also work with community based partners to offer assistance through our Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs. These volunteer programs serve low to moderate-income taxpayers, senior citizens, persons with disabilities, those with limited English proficiency, and Native Americans through its network and relationships with local communities. In 2016, more than 3.8 million federal tax returns were prepared at nearly 12,000 VITA/TCE sites by nearly 90,000 volunteers.

While traditional face-to-face volunteer tax preparation services are the primary focus of the VITA/TCE program, the IRS realizes the value in leveraging technology and alternative virtual assistance methods of sharing information to expand access to low and moderate income taxpayers across the country. In FY 2016, more than 34,000 Virtual VITA/TCE returns were prepared for taxpayers in more remote locations as well as for taxpayers with disabilities or with limited transit options. Facilitated Self Assistance (FSA), which uses interview-based online tax software, assists computer savvy taxpayers with self preparation and e-filing of their return. Under this program, volunteers certified in IRS tax law topics serve as tax coaches, facilitating multiple clients with self preparation of their returns through virtual means. In FY 2016, more than 200,000 taxpayers prepared their taxes using FSA. For many taxpayers, FSA marks the first step towards an increased understanding about their taxes as well as a heightened awareness of their overall financial situation. In addition, we have also expanded our use of Virtual Service Delivery (VSD) technology which allows taxpayers in remote locations to interact face-to-face with an assistor in a TAC or Virtual VITA/TCE site through telephonic and computer equipment. To date, the IRS has collaborated with 28 community partners to host VSD terminals at their offices. Virtual assistance improves service and makes voluntary compliance easier for taxpayers, while at the same time helps alleviate staffing issues and better balance our workload.

We will continue to look for ways to improve our service for remote populations. For example, our Rural Initiative is helping us identify underserved rural communities that would most likely benefit from increased access to free tax preparation services. Under this initiative, we analyzed our volunteer site locations, Tax Forms Outlet Program locations, and TACs to identify existing support in rural communities based on zip codes. The zip code data indicated that 79.2 percent of rural taxpayers can obtain all of these services within a one hour drive time from their home, while more than 99 percent of rural taxpayers can obtain at least one of these services within a one hour drive time from their home. The rural zip code data will help us identify locations where coverage can be improved and expanded.

We are confident that our co-location initiative with SSA will also allow us to provide face-to-face and virtual service in underserved locations. We are currently in a one-year proof of concept where employees in four locations are sharing space with SSA employees. Additionally, we are collaborating with SSA on shared technology and ID proofing initiatives. We estimate completion of a shared video networking solution in 2017 that will allow IRS to place VSD technology in SSA's space. Our efforts to establish a process for SSA to provide assistance with ID proofing for taxpayers are in the initial stages.

Our collaboration with TAS on the Services Priority Project (SPP), a ranking methodology for major taxpayer service activities offered by the IRS through its different service channels (*i.e.* TACs, telephone, IRS.gov), will be yet another tool the IRS uses in its multifactor approach for decision-making processes regarding taxpayer services.

In summary, the IRS is dedicated to providing the best service possible to the widest range of taxpayers. This means providing all taxpayers with efficient and effective services, including those who may not have access or are not comfortable using the internet to obtain answers to their questions. Face-to-face assistance will continue to be an integral part of the IRS's service to taxpayers based on their needs and preferences.

In closing, we note that the NTA's report overlooks the fact that IRS structure brought about by RRA 98 (*i.e.*, organizing along customer lines) was meant to ensure consistency for all taxpayers, so that conclusions on issues and protocols do not vary by geography. For example, the impetus for forming the IRS' Indian Tribal Governments Office (ITG) was to provide horizontal equity across the tribal government sector, providing consistent conclusions on issues, a consistent audit coverage rate, and consistency

in following tribal government protocols. Achieving this horizontal equity for tribal governments was a challenge under the former structure which was based upon geographic locations. The creation of ITG enabled the IRS to implement a national geographic structure tailored to respect tribal government regional associations. But at the same time, ITG employees are also required to stay informed of local issues specific to the tribes they cover, regardless of how far they may be located from them. The combination promotes accountability, responsiveness, and consistency in approaches to tribal government compliance issues. Relatedly, in the examination sphere, many of our examinations are divided into areas focused on geographic locations - Northeast, Pacific Coast, Mid-Atlantic, Great Lakes, and Gulf Coast. As such, the current structure does allow for a geographic focus, as well as facilitate the consistent treatment of taxpayer issues.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate is pleased with the steps the IRS is taking to leverage current technology in order to reach additional taxpayers and the partnerships the IRS is using to reach rural taxpayers. However, the National Taxpayer Advocate is concerned that the IRS is moving too far in the direction of using technology at the expense of taxpayers who do not have access to that technology or choose not to avail themselves of it for a multitude of reasons. The taxpayer population is diverse in many ways, including geographic diversity as well as individual needs and preferences. Additionally, an IRS without a physical geographic presence loses access to the knowledge that being in a community provides.

While the IRS discusses the need for all taxpayers to receive consistent conclusions on tax matters, it misses the point of the value of local knowledge and local initiatives. Taxpayers in varying local economies have different needs and their ability to comply with the tax laws is dependent on those needs being met. While the IRS may not need to offer assistance with, for example, farm income in a major city, it may need to offer that assistance in a rural farming community. Communities with migrant workers face different tax issues than those in communities with a single industry. Tax compliance is not one-size fits all, so the IRS approach to the needs of various communities cannot be one size either.

Finally, the IRS appears to have missed the point of the discussion of surveying taxpayers who need assistance at the TACs. The National Taxpayer Advocate understands that the IRS surveys taxpayers who *actually received service*. However, the concern is regarding those taxpayers who did not receive service. The TACs, which were previously known as "walk-in sites," moved to an "appointment-only" system this year. The National Taxpayer Advocate previously recommended the IRS offer appointments by request as an option.[1] However, the IRS's new policy against accepting walk-in taxpayers has led to considerable taxpayer frustration and a failure to meet taxpayer needs. Many — if not most — taxpayers have no way of knowing the IRS is no longer accepting walk-ins, so some taxpayers travel considerable distances only to be sent home. The IRS cites customer satisfaction surveys to suggest taxpayers are pleased with the appointment-only approach. But these surveys are misleading because they are only administered to taxpayers who have been served. They do not reflect the opinions of taxpayers who are turned away. The IRS has reduced the number of TACs from 401 to 376 since 2011.[2] In addition, 22 TACs have no staff, while 95 have only one employee,[3] and the IRS is considering closing a significant number of additional TACs through Fiscal Year (FY) 2018.

1 *See, e.g.*, National Taxpayer Advocate 2010 Annual Report to Congress 267-77.

2 In 2011, the IRS operated 401 TACs. IRS response to TAS information request (Dec. 23, 2014). As of December 31, 2016, the IRS operated 376 TACs, a reduction of six percent. IRS response to TAS fact check (Dec. 20, 2016).

3 IRS response to TAS fact check (Dec. 20, 2016).

TAS Recommendation	**[4-1] Expand partnerships with private and non-profit organizations, similar to the Alaska Volunteer Tax and Loan Program, to visit most remote and underserved regions and provide tax education and preparation to taxpayers within their communities.**
IRS Response	IRS Actions Already In Progress.
IRS Action	The IRS already has actions in place that will implement this recommendation. As discussed in our response, our Rural Initiative is designed to enhance coverage to remote, hard-to-reach communities. This objective will be achieved by empowering local Territory offices to identify rural partners and locations that would benefit the most from increased resource allocation and by implementing a dedicated strategy for growth. Conversations with potential partners will continue during 2017 to determine the best course of action, including use of FSA and Virtual VITA/TCE, with targeted implementation during the 2018 Filing Season. We will provide a pre and post 2018 analysis on partner growth to help measure the success of the Rural Initiative no later than December 31, 2018.
TAS Response	The National Taxpayer Advocate is pleased that the IRS plans to partner with rural organizations to expand the reach of IRS services. The National Taxpayer Advocate has long recommended an approach where the IRS leverages partnerships with stakeholders and other government entities and looks forward to reviewing the results of this initiative.[4]

TAS Recommendation	**[4-2] Use the Service Priorities Project (SPP) model to make decisions on taxpayer services, including the location of TACs.**
IRS Response	NTA Recommendation Not Adopted. The SPP in its current state is not designed to assess geographic location. When the data gaps in the current SPP are filled, the IRS may consider including the SPP in its multifactor approach to address geographic coverage and TAC locations.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate believes the SPP can be used, with additional data, to assess taxpayer needs in certain geographic locations. Surveys of taxpayer needs and preferences by location could inform the IRS of particular needs in various communities. The National Taxpayer Advocate encourages the IRS to fully populate the SPP and refine its use to best serve the needs of taxpayers and the government.

4 *See, e.g.*, National Taxpayer Advocate 2010 Annual Report to Congress 267-77.

TAS Recommendation	**[4-3] Work with community partners to host virtual service delivery terminals for taxpayers located in remote and otherwise underserved communities.**
IRS Response	IRS Actions Already Implemented.
IRS Action	The IRS currently has 28 community partners hosting virtual service delivery for taxpayers. Based on budget availability, the IRS will continue to identify additional locations and work with our partners in remote and underserved communities to expand the use of this and potentially other cost-effective technologies to ensure that we are best serving taxpayers.
TAS Response	The National Taxpayer Advocate is pleased that the IRS is expanding its virtual service delivery program and will continue to implement new sites. The National Taxpayer Advocate has long urged the IRS to use this technology to expand its presence.[5]

TAS Recommendation	**[4-4] Re-staff Appeals Officers and Settlement Officers locally so that one of each employee is located and regularly available in every state, the District of Columbia, and Puerto Rico.**
IRS Response	NTA Recommendation Not Adopted. Appeals meets the legal requirement of having an Appeals Officer regularly available in each state through circuit riding to areas where there is no permanent Appeals presence, and working with taxpayers and representatives to schedule convenient meeting dates and locations when in-person conferences are necessary. Appeals Officers are versed in the laws of multiple states when required to determine federal tax consequences (*e.g.* definition of alimony) and may seek legal advice from Chief Counsel attorneys as needed. While regional economics are sometimes relevant to tax administration, a state-based geographic approach would fail to account for the multiple jurisdictions that may exist within a single, local economy (*e.g.* Kansas City or Texarkana) or the substantive expertise that may be needed on a particular case. Matching the expertise of the Appeals employee to the issue(s) presented is more critical to settling a case properly than the physical presence of two employees in each state, who could possess insufficient expertise to cover all issues in the case.
IRS Action	N/A

5 *See* National Taxpayer Advocate 2010 Annual Report to Congress 267-77.

TAS Response	The National Taxpayer Advocate is not proposing a solution whereby Appeals loses particular subject matter expertise at the expense of having employees in every state. The National Taxpayer Advocate believes that Appeals can and should do both — have employees physically present in every state and bring in subject matter experts when relevant. Additionally, the National Taxpayer Advocate is concerned that the IRS is not focusing on the broader picture of having employees geographically dispersed and in the community. The purpose of having local employees is not simply so that those employees are familiar on an intimate level with the needs of the community, which is also an important goal, but to also provide an IRS face in the community. Taxpayer morale is an important component of voluntary compliance, and a faceless and nameless IRS creates an atmosphere of anonymity which can serve to increase tax avoidance behaviors.

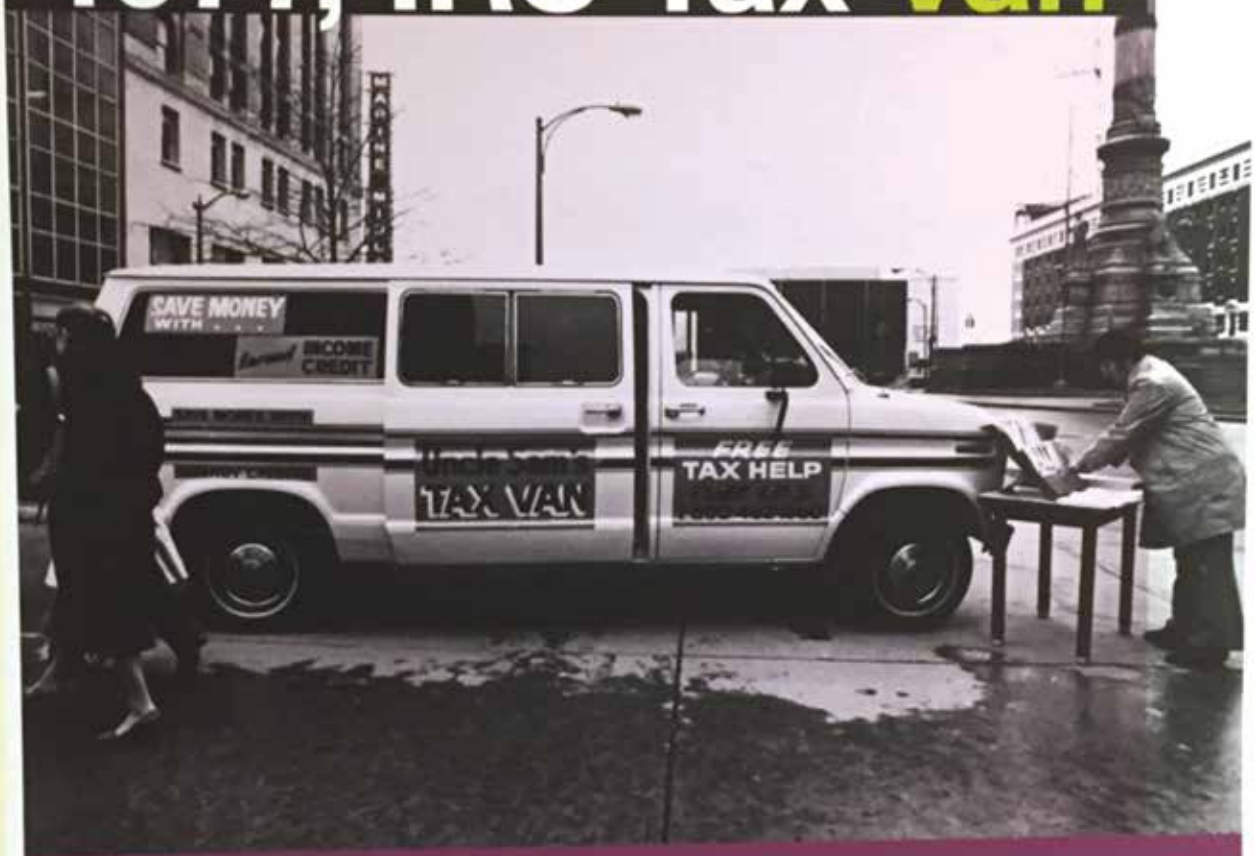
TAS Recommendation	**[4-5] Re-staff local outreach and education positions to bring an actual presence to every state.**
IRS Response	NTA Recommendation Not Adopted. In order to ensure we are reaching the maximum amount of external stakeholders (including both taxpayers and practitioners) with our available outreach and education resources, the IRS has adopted a virtual outreach business model that has garnered positive support from our stakeholders. To ensure geographical coverage, our Stakeholder Partnerships, Education and Communication (SPEC) organization currently has a presence in every state where national and local partners are leveraged to deliver VITA/TCE services to millions of taxpayers. To broaden partner outreach and sustainability, the IRS also provides support to partners through the use of virtual technology to conduct meetings and training sessions.
IRS Response Cont.	The Stakeholder Liaison Field (SLF) function utilizes a number of tools to maintain a face-to-face presence in all 50 states. These tools include conducting face-to-face Practitioner Liaison Meetings (PLMs), Small Business Forums (SBFs) and other events with our practitioner and industry partners. Additional tools include leveraging other IRS personnel to attend events when SLF personnel are not available and maintaining an instructor cadre, normally comprised of external practitioners, to conduct Leveraged Small Business Tax Workshops (LSBTWs) targeting the small business community. In order to ensure we are reaching the maximum number of external stakeholders which includes taxpayers, practitioners and various industry organizations representing small business, we are increasingly relying on virtual technology as a key component of our business model. Utilizing both IRS and stakeholder technologies, webinars are conducted on a host of different topics targeting a wide variety of target audiences. These have proven very popular as participants can attend from the comfort of their homes or offices, regardless of where they live or work. These technologies often offer live interaction with participants including question and answer sessions. At times, even face-to-face events will pull in both participants and presenters virtually to broaden the impact of the event. Another primary component of the SLF business model is the leveraging of stakeholder communication channels (websites, social media, training sessions, e-mail blasts, etc.) to reach their membership with IRS key messages. Staffing and budget limitations prevent IRS from staffing outreach and education positions in every state but by utilizing the tools mentioned above, we will continue to maintain an active presence in each state and serve the broadest range of taxpayer communities and populations possible.
IRS Action	N/A

TAS Response	While the National Taxpayer Advocate appreciates the IRS efforts to use the latest technology to reach as many taxpayers as possible, a virtual presence is not an appropriate full substitute for an actual IRS employee. Further consolidating and removing an IRS presence from communities perpetuates the image of the IRS as a behemoth, faceless, and nameless organization to be feared by taxpayers. The National Taxpayer Advocate continues to stress the importance of a community presence by the IRS, which humanizes the agency and promotes taxpayer morale increasing voluntary compliance. Moreover, shifting the core responsibility for taxpayer outreach and education onto third parties, however well-positioned and well-intentioned, is not a model for sustaining voluntary compliance. The IRS has an important and personal role to play, directly interacting with taxpayers in a non-coercive and helpful manner, in the communities where taxpayers live. At the very least, it can ensure that there is one employee who lives in each state who is responsible for outreach and education to the Small Business and Self-Employed taxpayers of that state.

TAS Recommendation	**[4-6] Provide face-to-face service through the use of mobile taxpayer assistance stations (vans) in each state.**
IRS Response	NTA Recommendation Not Adopted. IRS has decided to invest its resources in more efficient web-based and live services that will allow it to serve a greater number of taxpayers. During 2008 through 2011 in North Dakota, IRS used Tax Tours, a "mobile" concept where temporary offices were set up at alternative locations, such as Community Colleges and Universities. The IRS used radio, newspaper, and flyers to advertise the dates and times we would be available at these alternative locations. The total number of taxpayers served during these tours was 114 (76 in 2008, 12 in 2009, 13 in 2010, and 13 in 2011). The IRS concluded taxpayers do not come to sites that are not established on a regular basis and determined that the use of mobile vans was not the best use of resources. Additionally, we believe the expansion of Virtual Service Delivery will help us provide more face-to-face opportunities for taxpayers.
IRS Action	N/A
TAS Response	The IRS has previously mentioned its test of Tax Tours in North Dakota in response to other National Taxpayer Advocate recommendations to implement a mobile van program. However, the IRS has yet to provide the National Taxpayer Advocate with details and results of the program in order to allow TAS to evaluate the program design. Successful pilots of van and co-location programs must contain several key elements. The programs must be consistent; that is, taxpayers must be able to expect that certain services will be available on certain days in certain locations. Haphazardly advertising a mobile van program through print and radio advertising, holding the program for one day, and then declaring it unsuccessful because only a few taxpayers availed themselves of the service does not reflect a well-structured pilot program. It will take time for taxpayers to realize and trust that a mobile TAC will be in their area every other Thursday offering full-scale IRS services. A one-day trial, even with advertising, will not give the IRS useful information about the extent to which taxpayers use the program. The National Taxpayer Advocate also notes that the IRS is currently displaying posters in the National Headquarters Building which describe tax vans from 1977. See figure following.

Taxpayer Assistance

1977, IRS Tax Van



Tax mobiles provided assistance to taxpayers who did not have convenient access to in-person services. They were especially helpful in remote and rural areas. Over the years, the IRS has greatly expanded the **tools and services** available to all taxpayers via IRS.gov, mobile cell phone applications, and virtual tax assistance centers.

MSP #5 TAXPAYER BILL OF RIGHTS (TBOR): The IRS Must Do More to Incorporate the TBOR Into Its Operations

PROBLEM

In 2014, the IRS officially adopted the Taxpayer Bill of Rights (TBOR), on the National Taxpayer Advocate's recommendation. Congress followed in late 2015, by adding to the Internal Revenue Code the list of fundamental rights and a requirement for the Commissioner to "ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title." Although the IRS has commendably done much to make the public aware of the TBOR, it has not fulfilled Congress's mandate internally. The IRS has inadequately incorporated the TBOR into many areas of its operations, including employee training and messaging, internal guidance, employee awards, internal measures, customer satisfaction surveys, policy decisions, and strategic plans.

ANALYSIS

The IRS has incorporated taxpayer rights into some of its training courses and has disseminated messages to IRS employees emphasizing the importance of observing TBOR; however, it has not issued any kind of operating division-wide or servicewide guidance on incorporating the TBOR into training materials, resulting in taxpayer rights information being inserted in a piecemeal and boilerplate manner. Employee messaging about the TBOR should be ongoing and motivate employees to improve the protection of taxpayer rights — not merely uphold the status quo. The IRS has not used the TBOR in the creation of new customer satisfaction survey questions, quality measurements, and Critical Job Elements (CJEs) used to measure employee performance. Creating an employee award for supporting the TBOR would help ingrain it within the IRS's culture. IRS functions could hold themselves accountable for recognizing the TBOR by grouping together actions and successes that further the TBOR in their quarterly performance reports. Finally, the IRS should consider and specifically address aspects of the TBOR and the effect upon taxpayer rights when it formulates policy decisions and strategic plans, including its "Future State" plans.

TAS RECOMMENDATIONS

[5-1] Issue guidance at a servicewide level and an operating division-wide level to employees who author training materials, internal guidance, and correspondence with detailed instructions regarding how to incorporate the TBOR into those materials.

[5-2] Collaborate with TAS to create an annual mandatory briefing on the TBOR, which should be designated as mandatory for all employees by the IRS's Human Capital Office.

[5-3] Create an award to be given by the Commissioner of Internal Revenue to recognize special achievements in supporting taxpayer rights and the TBOR rights associated with each measure.

[5-4] Require operating divisions and functions to report the results of their performance measurements and quality measurements according to the relevant TBOR rights associated with each measure.

[5-5] Update the IRS's guidance for developing CJEs to instruct employees to incorporate the TBOR into the CJEs for all positions.

[5-6] Provide instructions from senior leadership to all "Future State" teams to consider the TBOR in developing "Future State" plans and to document how "Future State" plans affect taxpayer rights.

IRS RESPONSE

In 2014, the IRS announced the adoption of a Taxpayer Bill of Rights (TBOR) to serve as a cornerstone document to provide the nation's taxpayers with a better understanding of their rights. The TBOR took multiple existing rights that are embedded in the tax code, and grouped them into 10 broad categories, making them more visible, easier for taxpayers to understand and easier to find on IRS.gov. Publication 1, *Your Rights as a Taxpayer*, was updated with the 10 rights and has been sent to millions of taxpayers each year when they receive IRS notices on issues ranging from audits to collection. The rights are also publicly visible in all IRS facilities for taxpayers and employees to see.

It is important to note that the taxpayer rights that are summarized in the TBOR were not new concepts for IRS or IRS employees. These rights are what our employees embrace in their work every day. Ensuring delivery of taxpayer rights is a responsibility that the IRS takes very seriously and, as such, they are ingrained in our operations, procedures, processes, and decision-making. The establishment of the TBOR was a clear reminder that all of the IRS takes seriously our responsibility to treat taxpayers fairly, and it also allowed us to create an important education tool.

We've worked to highlight the TBOR in many different forums and venues. Indeed, the IRS has conducted a sweeping and ongoing awareness campaign around the TBOR that started in 2014 and continues on an ongoing basis to taxpayers and the tax professional community. The communications effort has been coordinated by a cross-functional team at the IRS, which includes representatives of the TAS communications team. The effort is ongoing, but here are just a few of the highlights:

- We created a TBOR page on IRS.gov (in English and Spanish) which we continue to update regularly, display prominently and promote via social media.
- We created a TBOR video for taxpayers featuring Commissioner Koskinen, which is displayed on the IRS YouTube channel.
- We also issued a press release promoting the availability of Publication 1, *Your Rights as a Taxpayer*, in six languages.
- For the 2015 and 2016 filing seasons, we published Special Edition Tax Tips and a series of fact sheets covering each of the individual rights. The fact sheets were published weekly throughout both filing seasons. In 2015, we also began including TBOR information and a link to the TBOR page on IRS.gov in our regular Tax Tips.
- In 2016, we included this language in 67 Tax Tips, which are distributed to hundreds of thousands of subscribers and also shared online, in social media and with news media. These tax tips covered a variety of topics designed for different segments of the taxpayer population and were published on multiple days each week of the filing season.
- All of these items were published in English and Spanish and promoted via social media channels such as Twitter.

To help educate tax professionals about TBOR, we mailed the fact sheets directly to IRS tax professional organizations and partners and included articles in online newsletters like *eNews for Tax Professionals* and *Retirement News for Employers*. We also prominently displayed TBOR at tax professional activities, featuring it at the IRS Nationwide Tax Forum in speeches and slides promoting TBOR to thousands of participants at the yearly IRS Nationwide Tax Forums.

The IRS is committed to providing our employees with all the necessary training and skill sets to accurately, completely and consistently resolve taxpayer inquiries. A key component of this effort is ensuring

that taxpayer rights are addressed. Taxpayer rights briefings are provided to new hires and ongoing training curriculum addresses taxpayer rights as they relate to specific customer situations including privacy, disclosure, third party representation, collection and exam processes, as well as courteous and professional service. Taxpayer rights are embedded in our IRM procedures, training modules, workshops, team meetings, job aids and automated systems. IRS ensures its products not only comply with TBOR, but all correspondence provides taxpayers with the information needed to comply with the tax laws and contains plain language that is clear and easily understandable. Lastly, Executive-level summaries, such as the Business Performance Review (BPR), identify initiatives and actions that specifically relate to the TBOR.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The IRS's narrative focuses primarily on outreach and education efforts to inform taxpayers and practitioners about the TBOR, which the National Taxpayer Advocate agrees have been very beneficial to taxpayers. The Most Serious Problem acknowledged the IRS's work in this regard, and in fact discussed some of the same items the IRS discusses here. The main focus of the Most Serious Problem was what the IRS could do to better incorporate the TBOR into its daily operations. Simply saying that taxpayer rights or the TBOR is already embedded in IRS procedures, training, systems, and other items is not enough. The Most Serious Problem provides numerous examples of where the current procedures, training, and other items are seriously lacking TBOR information. The IRS's response seems to reflect the view that the IRS has no room for improvement when it comes to protecting taxpayer rights or incorporating taxpayer rights into its operations.

TAS Recommendation	**[5-1] Issue guidance at a servicewide level and an operating division-wide level to employees who author training materials, internal guidance, and correspondence with detailed instructions regarding how to incorporate the TBOR into those materials.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	HCO will draft Interim Guidance and revise IRM 6.410.1 to add TBOR as required Front Matter in IRS courses; incorporate TBOR link into New Manager Orientation; and update leadership training front matter to include TBOR as resources and funding are available. IRS employees have an extensive suite of IRM guidance, tools, job aids and automated systems to ensure they provide complete, accurate and consistent service to customers. Taxpayer Rights are embedded into these various tools. We currently consider and incorporate the TBOR when we update or draft IRMs, training materials, other internal guidance and correspondence procedures. The IRM update process is subject to TAS reviews and TBOR considerations are continually evaluated. In addition, OTC works closely with functional business owners, Chief Counsel, TAS, and other stakeholders to improve the technical content and clarity of correspondence products to ensure taxpayers clearly understand their obligations and their rights.

IRS Action Cont.	For example, Collection authors worked with TAS employees to revise the IRM 5.11.2.3.1.4 on Releasing levies and economic hardship. Paragraph (6) of that section of the IRM discusses the taxpayer right to appeal the Revenue Officer's determination that the financial analysis does not support a full release of the levy and it also refers the employee to the IRM provision on referrals to TAS. SB/SE Examination Field and Campus Policy is revising IRM 4.10.1, *Overview and Basic Examiner Responsibilities*, to include enhanced content related to taxpayer rights under the TBOR, as well as the IRS Restructuring and Reform Act of 1998, the Internal Revenue Code, and IRS policies. Likewise, Appeals has notified its IRM authors of the need to incorporate TBOR and include in IRM 8.1.1.1, Accomplishing the Appeals Mission, additional guidance for considering protested cases, holding conferences and negotiating settlements in a manner which ensures Appeals employees act in accord with the TBOR, as identified in Pub 5170, Taxpayer Bill of Rights. The guidance in IRM 8.1.1.1 provides Appeals IRM authors with an example of how to incorporate TBOR in other IRM sections as appropriate. Of note, the rights encapsulated in TBOR have been a cornerstone in the development of the LB&I campaign process. Fairness and integrity are built into the foundation of the campaign process and how LB&I administers the enforcement process to all taxpayers. The campaign process will ensure a quality, fair and just tax system for taxpayers, as well as meeting the taxpayer's right to be informed, by virtue of the campaign process' "integrated feedback loop" where LB&I can receive feedback from front-line examiners and practitioners as campaigns are evaluated. In addition, LB&I intends to make every campaign public provided that doing so does not impair tax administration.
TAS Response	The National Taxpayer Advocate is pleased to be working with HCO on adding required TBOR front matter to all IRS courses. Incorporating the TBOR link into New Manager Orientation and updating training to include TBOR front matter will also help inform employees about the TBOR. The National Taxpayer Advocate disagrees that the IRS already considers the TBOR when it drafts the IRM and other materials. As discussed in the Most Serious Problem, TAS made more than 400 recommendations for IRMs and other materials to include taxpayer rights information, and the IRS accepted less than half of these. Although it is encouraging that Appeals is instructing its IRM authors to consider the TBOR when drafting IRMs, the IRS needs to ensure that all employees who draft training or internal guidance receive training on how to incorporate the TBOR. It is also positive that Large Business & International (LB&I) is considering taxpayer rights in its campaign process, but this portion of the response does not address the recommendation, which is about providing guidance to the authors of IRS training and guidance materials. Although not mentioned in the IRS's response, TAS is pleased to be collaborating with HCO in order to create and deliver a training course on incorporating taxpayer rights into IRMs, IRS training materials, and correspondence. TAS will work with HCO and other IRS offices to ensure all employees who create such materials are advised to take this training.

TAS Recommendation	**[5-2] Collaborate with TAS to create an annual mandatory briefing on the TBOR, which should be designated as mandatory for all employees by the IRS's Human Capital Office.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	IRS employees have an extensive suite of IRM guidance, tools, job aids, and automated systems to ensure they provide complete, accurate, and consistent service to customers. Taxpayer Rights are embedded into these various tools. We currently consider and incorporate the TBOR when we update or draft IRMs, training materials, other internal guidance and correspondence procedures. The IRM update process is subject to TAS reviews and TBOR considerations are continually evaluated. The TBOR represents a compilation of pre-existing taxpayer rights, that IRS has had a long-standing responsibility of ensuring, protecting and promoting in the execution of our tax administration duties. IRS employees have been trained to make it a personal responsibility to observe these rights in daily interactions with taxpayers. More generally, adherence to protection of these rights forms the basis of rules, procedures and policies that govern the agency's actions in all facets of tax administration. Training for employees regarding taxpayer rights has been designed to provide a meaningful explanation of how the taxpayer rights apply to the specific skills of the job. The definition of the right to quality service may not change, but the elements of the right to quality service will be more or less pronounced depending on the nature of the employee's work. For example, compare the work of a revenue agent to that of an employee helping process paper returns. Revenue agents work to maintain fair and equitable treatment of taxpayers, while submission processing employees are tasked with timely and efficient processing of returns. A revenue agent must be timely in interactions with taxpayers as well, but agents also have other elements to consider: they must use communication techniques that are appropriate for the listener's level of understanding, conduct oral and written communications with taxpayers that are professional, courteous and accurate, listen to and consider the taxpayer's point of view, and advise the taxpayers of the full personal impact, such as interest and penalty accumulation, when taxpayers advise they cannot pay their liability in full.[1] The IRS has tailored its training for employees regarding taxpayer rights in an effort to ensure that the learning objectives are relevant and applicable to the employee's particular job function. For example, several training courses already developed and delivered include modules on taxpayer rights customized for the duties of the job. For the Automated Underreporter Program (AUR), employees received training designed to explain the 10 fundamental taxpayer rights, in addition to explaining how to apply those rights when working AUR cases. As part of that training, AUR employees were reminded to direct taxpayers to the AUR Notice websites to view Publication 5181, Tax Return Reviews by Mail and to Publication 1, Your Rights as a Taxpayer. Similarly, the employees who serve as contact representatives for the IRS Automated Collection System (ACS) receive customized training on how to uphold taxpayer rights. In continuing education courses for FY 2016, ACS employees were reminded about the responsibility to explain the Appeals process to a taxpayer or Power of Attorney, recognizing that taxpayers should be advised of their appeal rights whenever they indicate disagreement with a proposed or planned action by ACS. This ACS training course was designed to ensure employees could successfully identify, address, and resolve issues regarding the appeals process as outlined in IRM 5.19.8, Collection Appeal Rights.

1 For more information, *see* Internal Revenue Manual (IRM) Part 6 Human Resources Management > Chapter 430 Performance Management > Section 2 Performance Management Program for Evaluating Bargaining Unit and Non-Bargaining Unit Employees Assigned to Critical Job Elements (CJEs).

IRS Action Cont.	Also, in the Appeals sphere, Appeals has a long history of ensuring that taxpayers are aware of their access to Appeals and they continue to engage 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 include the Bill of Rights. Also, on irs.gov, there is a link titled "What Can You Expect from Appeals?" that explains our commitments, taxpayer responsibilities and general timeframes. Appeals has updated videos explaining collection alternatives and delivered presentations at the 2016 Nationwide Tax Forums to help practitioners understand what is needed for a successful appeal. Training on taxpayer rights is also being incorporated in courses for IRS leadership. The Human Capital Office has begun a major revision of all of the IRS leadership training programs and is considering how to incorporate the TBOR into training materials. In summary, it is the responsibility of IRS to observe taxpayer rights and the IRS will continue to ensure these rights are protected by training employees to understand the application of those rights in the context of their specific job.
TAS Response	Similar to the IRS's response to the previous question, the IRS fails to mention its progress and collaboration with TAS in working towards achieving this recommendation. TAS has been working with HCO during early 2017 to plan for a mandatory briefing for all IRS employees on TBOR, to be provided for the FY 2018 training cycle. It is unclear why the IRS would not categorize this recommendation as adopted because the IRS and TAS are currently working towards completion of it. The IRS's response focuses on tailored taxpayer rights training for different employee positions and programs. The National Taxpayer Advocate agrees that such tailored training is valuable and is pleased to learn about how the IRS has updated its training in this regard. The need for tailored taxpayer rights training does not, however, remove the need for a mandatory briefing for all employees. The Literature Review associated with this Most Serious Problem found that a requirement for success is making the TBOR part of the IRS's culture and way of doing things. The forthcoming annual briefing will remind employees about the TBOR and their responsibility to uphold it. This will help create a shared mindset among employees and reinforce the TBOR as a key part of tax administration. Implementing a mandatory briefing on the TBOR will also assist the IRS in meeting its statutory mandate to ensure employees are familiar with and act in accord with the TBOR.

TAS Recommendation	**[5-3] Create an award to be given by the Commissioner of Internal Revenue to recognize special achievements in supporting taxpayer rights and the TBOR.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The current IRS Commissioner Award which encompasses "individuals, team leaders, and team members who embody the IRS Values, who demonstrated commitment to the Strategic Objectives and whose accomplishments had a major impact on tax administration" already provides an avenue to recognize IRS employees for special achievements in supporting taxpayer rights and the Taxpayer Bill of Rights (TBOR). As we review and modify this and other existing awards across IRS, we will make any necessary changes to ensure that we are recognizing special achievements in the area of taxpayer service.
TAS Response	Although the current award structure allows for awards to employees who protect taxpayer rights, the IRS Commissioner Award appears to be more focused on meeting strategic objectives and having an impact, as opposed to protecting taxpayer rights. In some situations, an award could be given to an employee who had a significant fiscal impact for the agency, yet took an action that infringed on taxpayer rights. Having an award exclusively devoted to taxpayer rights sends a message to employees that the IRS values it commitment to the TBOR. The IRS's response seems to equate taxpayer rights with taxpayer service. Although the *right to quality service* is one of the ten taxpayer rights, it certainly does not encompass the TBOR. Awards should recognize a broad array of achievements related to the ten rights, not just taxpayer service.

TAS Recommendation	**[5-4] Require operating divisions and functions to report the results of their performance measurements and quality measurements according to the relevant TBOR.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	Respecting taxpayer rights has been a top priority for IRS and the rights included in the TBOR are reflected in current processes and programs. For example, the National Quality Review System (NQRS) and the Embedded Quality Review System (EQRS) document employee performance. Quality measures are aligned with numerous attributes that relate directly to Taxpayer Rights such as disclosure, privacy, third party representation, collection processes, exam procedures, penalties/interest, statutes and appeal rights with the overarching expectation that customers receive courteous, professional, timely, accurate, as well as complete and consistent responses. Furthermore, each quality attribute is aligned with a specific Critical Job Elements (CJEs) to ensure managerial reviews (EQRS) are incorporated into employee performance evaluations. Quality results are regularly shared with management internally to identify successes and improvement opportunities. Executive level summaries, such as the Business Performance Review (BPR), identify quality improvement initiatives and actions that specifically relate to the TBOR. Moreover, TBOR is inherently linked to quality measures in both Collection and Exam. For instance, SBSE Exam's quality measures (attributes) provide our employees with organizational expectations that cover all phases of the examination process — from planning to closure. TBOR is an essential component of each phase and those rights are incorporated into the quality attributes. As an example, the Taxpayer Right to "Challenge the IRS's Position and Be Heard" is covered across multiple aspects of the examination process — from the expectation that the examiner will consider and evaluate the taxpayer's position and address the merits during case development (Interpreted/Applied Law Correctly quality attribute) to the taxpayer's receiving prompt responses (covered within the Time span quality attribute) and be apprised of any delays in the examination process (Taxpayer Rights quality attribute). Finally, the rights encapsulated in TBOR have been a cornerstone in the development of the LB&I campaign process. Fairness and integrity are built into the foundation of the campaign process and how LB&I administers the enforcement process to all taxpayers. LB&I employees are expected to interact with each taxpayer and tax practitioner in a professional manner. This professionalism is a key component of LB&I's Customer Satisfaction performance measure. The campaign process will ensure a quality, fair and just tax system for taxpayers, as well as meeting the taxpayer's right to be informed, by virtue of the campaign process' "integrated feedback loop" where LB&I can receive feedback from front-line examiners and practitioners as campaigns are evaluated. In addition, LB&I intends to make every campaign public provided that doing so does not impair tax administration. By communicating, analyzing feedback, providing quality service, and utilizing objective standards in workload selection, LB&I will address the Customer Satisfaction performance measures.
TAS Response	The IRS's response details how various IRS measures relate to specific taxpayer rights, which is the first step towards implementing this recommendation. As explained in the Most Serious Problem, the exercise of aligning various attributes or measures with taxpayer rights is valuable for understanding how the measures support specific rights. The IRS should take this one step further and report its performance and quality results in a way that links a desired employee action to a particular right. This practice would increase employee awareness of the TBOR and make employees accountable for observing the TBOR when interacting with taxpayers or working on a taxpayer's case. Without linking the measures and reporting the results according to the relevant rights, the IRS misses an opportunity to measure whether it is truly complying with IRC § 7803(a)(3), which requires the Commissioner to ensure employees are familiar with and act in accord with taxpayer rights.

TAS Recommendation	**[5-5] Update the IRS's guidance for developing CJEs to instruct employees to incorporate the TBOR into the CJEs for all positions.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	There is no need to update IRS guidance for developing Critical Job Elements to incorporate TBOR because this requirement is currently covered in the IRS Retention Standard which applies to all employees. The standard reads as follows; "The Fair and Equitable Treatment of Taxpayers Retention Standard Rating - Consistent with the incumbent's official responsibilities, administers tax laws fairly and equitably, protects taxpayer rights, and treats them ethically with honesty, integrity, and respect." Where applicable, the TBOR may be included in the aspects of an employee's CJEs.
TAS Response	Although the Fair and Equitable Treatment of Taxpayers Retention Standard considers the protection of taxpayer rights, a single, catch-all standard is inadequate to measure how employees are taking actions in accordance with the TBOR. There may be situations where an employee consistently takes an action to protect one right, for example, the employee protects the *right to confidentiality* by authenticating the taxpayer when calling. However, the employee could also consistently infringe on another right, for example, *the right to challenge the IRS's position and be heard* by not considering documentation in an examination. A single CJE that measures adherence to all taxpayer rights, among other items, is not sufficient. Incorporating the TBOR throughout the CJEs would allow employees and managers to understand how specific actions relate to specific taxpayer rights. It would also better allow the IRS to measure its success in ensuring employees are familiar with and act in accord with taxpayer rights. Managers would be able to see which rights were being upheld and areas of improvement for their employees to recognize other rights. Without providing guidance to incorporate the TBOR into CJEs, the IRS may only include the TBOR in a piecemeal fashion, with some CJEs lacking TBOR information altogether.

TAS Recommendation	**[5-6] Provide instructions from senior leadership to all "Future State" teams to consider the TBOR in developing "Future State" plans and to document how "Future State" plans affect taxpayer rights.**
IRS Response	IRS actions already implemented. TBOR along with laws, regulations, and policies are among the criteria that the Future State workgroups are directed to consider in developing plans and related business cases. The criteria is modeled on the OMB E-300 guidance for all agency investments, with TBOR specified as being unique to IRS and the taxpayers we serve.
IRS Action	Established and distributed criteria for business case development that takes into account TBOR considerations. Implemented (February 2017).
TAS Response	Although the TBOR is included in the criteria to consider when developing plans and related business cases, it is not evident that the IRS has adequately considered the TBOR in developing its plans. For this reason, it is necessary to document how "Future State" plans affect taxpayer rights. First, this documentation will hold the IRS accountable by demonstrating how the IRS actually considered taxpayer rights. Second, it will provide a valuable record for IRS policy makers who later revisit and reevaluate "Future State" plans. Understanding how the initial decisions had a positive or negative impact on taxpayer rights will help these policy makers evaluate whether and how to make changes. As discussed in multiple places in the Literature Review related to the Most Serious Problem, it is necessary for leadership to show its commitment to a taxpayer charter and ensure employees are informed about it. Here, the IRS could accomplish this by providing guidance from senior leadership to all "Future State" teams about the importance of considering the TBOR and including taxpayer rights information in "Future State" plans.

MSP #6 ENTERPRISE CASE MANAGEMENT (ECM): The IRS's ECM Project Lacks Strategic Planning and Has Overlooked the Largely Completed Taxpayer Advocate Service Integrated System (TASIS) As a Quick Deliverable and Building Block for the Larger ECM Project

PROBLEM

The IRS currently has between 60 and approximately 200 different case management systems. The age, number, and lack of integration across these systems, as well as the lack of digital communication and record keeping, cause waste, delay, and make it difficult for IRS employees, including those in TAS, to perform their jobs efficiently and provide quality service to taxpayers.

ANALYSIS

As a part of its "Future State" vision, the IRS is currently pursuing a solution to unify these disparate case management systems through an ECM project intended to deal with the issues of automation, records management, and integration. However, the IRS is failing to design the ECM project from the ground up to comprehensively engage its employees, taxpayers, and tax professionals and seek their suggestions as to how to make processes and procedures more efficient to maximize employee productivity and improve the quality of taxpayer service. Without this critical foundational step, the ECM system as ultimately designed will not be employee-centric and will ultimately adversely impact taxpayers. If the IRS is unable to successfully integrate its 60 to 200 case management systems, then it is unlikely that it will be able to create robust online services for taxpayers, thus jeopardizing its "Future State" goals.

In addition, the IRS's current ECM strategy appears to be inefficient and does not reflect lessons learned from its past case management project failures that, to date, have resulted in abandoned, wasteful, and incomplete initiatives costing tens of millions of dollars. Finally, the IRS is failing to leverage the extensive investment of time, money, and effort expended on the Taxpayer Advocate Service Integrated System (TASIS) in order to incorporate the largely completed elements of TASIS as building blocks for the servicewide ECM solution.

TAS RECOMMENDATIONS

[6-1] Develop its ECM solution from the ground up by actively and comprehensively engaging all its employees and seeking their specific suggestions as to how to make processes and procedures more efficient and maximize employee productivity in order to provide quality customer service to taxpayers.

[6-2] Use TASIS and its foundational work as part of the ECM effort, for example, by using TASIS modules that are adaptable for ECM.

[6-3] Provide the funding necessary to complete TASIS Release 1.

[6-4] Prioritize and fund the development of an electronic Operations Assistance Request (OAR) process.

IRS RESPONSE

The ECM Program is a critical component of the IRS's effort to improving administration and enhancing employee productivity. The IRS is approaching this effort through a strategic, thoughtful lens, acknowledging the broad impact of ECM solutions on IRS operations and our employees. To ground the program, the IRS established under the Deputy Commissioner for Services and Enforcement, the Services and Enforcement Program Management Office (S&E PMO) that is taking on the broader responsibilities of integration and collaboration across the Services and Enforcement, Operations Support, TAS and other IRS organizations. To guide the ECM Program, the IRS developed a clear vision and set of design principles that highlights the importance of empowering employees, supporting taxpayers, and simplifying the internal technical environment. Additionally, the ECM Program is part of an enterprise governance structure, which includes boards and bodies that focus solely on the ECM program but also incorporate the program as part of a larger enterprise view. This governance structure engages employees at all levels of the organization as relevant, informs IRS offices of the program's progress, and provides the needed forums to assess and mitigate program risks. The IRS is in the process of refining existing program management tools and developing an enterprise-level, integrated program plan, master schedule, and risk register to act as an early warning system as this complex program moves forward.

The IRS shares the NTA's concerns around identifying a quick deliverable for the ECM Program and is working in partnership with IT and the business to determine if "quick wins" are available for deployment. In terms of the Taxpayer Advocate Service Integrated System (TASIS), IT evaluated the TASIS solution to identify reusable components that could support the overall ECM development process and found that that the current software carries substantial technical debt and security concerns. Additionally, IT determined that only 10-20% of TASIS's business artifacts could inform overall ECM development.

TASIS was developed using a now obsolete version of a COTS software product, and the source code does not follow current case management practices. This product is not integrated with current development tools and processes (e.g. source code management, testing, and continuous integration). Reliance on this old platform limits the ability to maintain and upgrade the software, as numerous components were custom built for TASIS and are now obsolete. The TASIS solution, as developed, will not satisfy many non-functional (technical) requirements, including those related to cybersecurity, performance, scalability, testing, 508 compliance, and the ability to integrate into the complex IRS IT environment. Recent research and prototyping completed in 2015 and 2016 also reinforce our conclusion that the work on TASIS was done using a COTS product that is not suitable for use as a foundation for ECM efforts.

Building on the work completed by the IRS "Future State" teams, the IRS intends to develop ECM solutions by using lessons learned and an operating model approach recently used to integrate complex tax law statutes into business operations. The S&E PMO will co-lead the collaboration in partnership with IT, business partners, and TAS. We recognize the importance of participation across the organization to successfully complete this transformation. Additionally, the IRS remains committed to the strategic planning underway for the ECM Program and will continue to thoughtfully manage and govern the development and deployment of the ECM solution.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate understands and appreciates the IRS's challenges with the ECM project. She commends the IRS for bringing on new leadership to the ECM project, its collaborative effort to obtain an ECM solution that will work servicewide, and its efforts to reach out to those with ECM experience to gather information that will assist with the ECM development process. She appreciates that it does not make business sense to complete TASIS if the software platform the IRS selected for its development is obsolete. However, as described in detail below, she believes that the IRS can use TASIS's business process design work in its current ECM effort, even if the programming is not current. By doing this, the IRS will ensure that the time, effort, and significant amount of money spent on TASIS does not go to waste.

Moreover, the National Taxpayer Advocate finds the IRS's response misleading, implying that the TASIS is the fault of circumstance instead of acknowledging its own role in causing TASIS's unsuitability. To be clear: It was the IRS that identified Entellitrak, the COTS product that it now says is "obsolete," as the product in which TASIS should be programmed. It was the IRS that required TAS to accept that product. It was the IRS that placed a moratorium on TASIS development in 2014 and refused to allow any updates to the programming as new versions of the software came out, despite the fact that 60 percent of the programming was complete and $20 million had already been invested in the system. And it was the IRS that prevented the completion of the programming, which would have addressed many of the concerns the IRS states are barriers for use, including cybersecurity, testing, 508 compliance, and integration.

The IRS has experienced many setbacks over the years in its attempts to modernize its IT systems. It is unlikely to make progress in its modernization activities unless and until it is honest about assessing the reasons for its setbacks so it can avoid them in the future. The IRS's failure to accept responsibility for TASIS's problems is concerning and does not bode well for ECM development.

TAS Recommendation	**[6-1] Develop its ECM solution from the ground up by actively and comprehensively engaging all its employees and seeking their specific suggestions as to how to make processes and procedures more efficient and maximize employee productivity in order to provide quality customer service to taxpayers.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA. The IRS has taken efforts and is continuing to engage stakeholders and other federal partners in developing the ECM solution.

IRS Action

The IRS agrees with the essence of the NTA's recommendation to develop ECM solutions with users in mind, engaging employees throughout the process, and developing a solution to facilitate more efficient, standard business processes. Throughout the development of the ECM solution, the IRS is engaging employees in the process from participating in key governance forums to identifying requirements to creating an ECM communications plan that will provide channels for employees to share ideas and suggestions.

The IRS's ECM Program is focused on developing standardized, common ECM solutions that will meet the diverse needs of the IRS; this may involve using several platforms to accommodate the requirements of dozens of business units. Building on the precepts of the IRS Future State, the ECM Program engaged with IRS stakeholders to develop a program-specific vision and set of design principles that guides the development of solutions to enhance employee productivity and improve the taxpayer experience. It is also essential to create IT systems that are efficient, scalable, and maintainable over time. The ECM vision specifically highlights the importance of empowering employees to rapidly resolve cases, providing top quality service to taxpayers, and upholding the fair administration of tax law.

Collaborating with key stakeholders, the ECM Program will develop an Enterprise ECM Strategic Roadmap that will outline the desired end state capabilities. Through the development of this roadmap, impacted IT and business stakeholders including TAS will be engaged to provide inputs on their desired business capabilities and functions. The process of engaging IT and business stakeholders is still in development, but this process will be an integral part of developing the Enterprise ECM Strategic Roadmap, which will in turn drive the development of the ECM solution. For the development of ECM, IT intends to use a federated delivery team structure to guide the ECM solution; this collaboration model includes the business customers, IT ECM program management office, and IT service delivery partners on an integrated team that works in partnership on a daily basis.

The ECM vision and design principles, the Enterprise ECM Strategic Roadmap, and the federated delivery team are three examples of how the IRS is committed to supporting an integrated, inclusive approach for the ECM solution and to improving IRS operations. Throughout the ECM Program, the IRS will continue to engage with employees as a more efficient ECM solution is developed to provide quality customer service to taxpayers.

TAS Response

The National Taxpayer Advocate applauds the IRS for its inclusive ECM approach and for reaching out to federal agencies as part of the ECM development process. However, she believes the IRS should engage all of its front-line employees, unit by unit, and ask them, through town halls and working groups, what they specifically need to more effectively and efficiently do their jobs and serve taxpayers. The IRS can then identify tasks or capabilities that are general or common, and those that are specific to particular business functions. This is a critical step to building an ECM system that will maximize employee productivity and creating efficiencies that will benefit both the IRS and taxpayers.

The National Taxpayer Advocate is concerned because it appears the IRS may be exploring general ECM capabilities, and require business functions to adapt to those capabilities, rather than designing the ECM system around the business functions and the needs of its employees. The National Taxpayer Advocate believes that the IRS can both find out what is on the ECM product market (as products have identified general capabilities) and also determine the specific needs of its employees. The benefit of reaching out directly to *all* front-line employees and collating and tracking their responses, is that it will enable the IRS to identify deficiencies in its current business practices, and modify them appropriately, prior to moving forward with the programming of a new ECM system. It may be the case that some IRS business practices are driven by limited technology, in which case it can plan a change to business practices at the same time it implements new ECM technology. When TAS went through the TASIS design process, TAS learned about employee technology needs by holding dedicated town hall or workgroup meetings. TAS asked all its employees what they needed to perform their jobs efficiently, recorded their proposals and "wish lists" for capabilities, and then considered and tracked them in the development of the business requirements to see what, if anything, we could do to address them.

TAS Recommendation	**[6-2] Use TASIS and its foundational work as part of the ECM effort, for example, by using TASIS modules that are adaptable for ECM.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA. TAS initiated development on the Taxpayer Advocate Service Integrated System (TASIS) in 2010 with IRS IT and contractor support. TASIS Release 1 development was halted in March 2014 due to funding constraints. Studies conducted in 2015 and 2016 by IRS IT found the code developed for TASIS Release 1 has limited reusability. IRS is using the documentation and lessons learned from TASIS to inform the conceptual design and enterprise case management approach for development and delivery. Subject matter experts who worked on TASIS are actively participating in these ECM planning efforts. The marketplace of case management solutions has significantly evolved since 2010, when IT identified the COTS product used for TASIS development. The capabilities sought by TAS that previously required custom development are now integrated into many product offerings. IRS has initiated several efforts to better inform ECM, including requesting information from the industry and studying internal and external experiences of transitioning from a legacy system to a modern case management system (including TASIS). These efforts will inform the selection of new product(s) or solution(s) to support ECM. The development work done on TASIS to date is not suitable for use as a foundation for ECM efforts. The TASIS solution, as developed, will not satisfy many non-functional (technical) requirements, including those related to cybersecurity, performance, scalability, testing, and 508 compliance. The work done on TASIS to date is not suitable for use as a foundation for ECM efforts. The current software carries substantial "technical debt" (substantial rework that would need to be done to implement as designed) and security issues.
IRS Action	The IRS and the ECM program are planning to implement a set of common services that will provide standard case management features and will simplify future development to meet TAS business requirements, using up-to-date software and standardized development tools and processes. These efforts will address many of the concerns enumerated above. These services will be developed and implemented as funding and staffing priorities allow.
TAS Response	The National Taxpayer Advocate is encouraged to hear the IRS is using the documentation and lessons learned from TASIS in the ECM design process. The National Taxpayer Advocate also commends the IRS for requesting ECM information from industry and studying the experiences (both internally and externally) of how to transition from legacy to modern case management systems. While the National Taxpayer Advocate understands that the programming or code on the platform that the IRS selected for TASIS is not reusable for the current ECM project, she maintains, as described above, that the TASIS design and business requirement development *process* can serve as a foundation for the current ECM project. Moreover, as stated earlier, the National Taxpayer Advocate is concerned that the IRS is not acknowledging its role in making TASIS programming obsolete. In order to move forward on ECM, the IRS needs to honestly assess its own mistakes so it can avoid them in the future. The IRS's failure to do so with respect to TASIS is deeply concerning. Nevertheless, TAS looks forward to working with the IRS and lending is case management development expertise to the ECM development effort.

TAS Recommendation	**[6-3] Provide the funding necessary to complete TASIS Release 1.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA. After very careful deliberation, the IRS decided to halt development of the Taxpayer Advocate Service Integrated System (TASIS) in March 2014 and re-prioritize funding and resources. The IRS, and specifically the IRS IT organization, is under extreme pressure in regard to funding, staffing, and resources. The delivery of Filing Season, response to cybersecurity threats, implementation of core customer service initiatives, and the delivery of congressionally mandated initiatives (such as the Foreign Account Tax Compliance Act) require prioritization within a resource-constrained environment. TASIS Release 1 development was halted in March 2014 due to funding constraints, and even if funding were provided for the completion of TASIS, the system could not serve as an enterprise solution for case management due to the constraints outlined in #6-2. If the IRS implemented TASIS as developed, it would put an obsolete system into production. The IRS continues to be under-resourced and is challenged with balancing new investments to keep pace with technology, taxpayer expectations, criminal activity related to stolen identity/refund fraud, and preventing cybercrime. Given what we now know about the COTS product and the current state of development of the TASIS solution, completing this is not a viable option due to security and maintainability issues already discussed in #6-2.
IRS Action	The IRS and the ECM program are planning to implement a set of common services that will provide standard case management features and will simplify future development to meet business requirements using up-to-date software and standardized development tools and processes. These efforts will address many of the concerns enumerated above. These services will be developed and implemented across the IRS—including TAS—as funding and staffing priorities allow. The IRS has no plans to complete TASIS Release 1.
TAS Response	The National Taxpayer Advocate understands the IRS's decision not to place an obsolete case management system into production as it pursues an ECM solution that will work across the agency. However, the National Taxpayer Advocate urges the IRS to take steps to address its aging legacy systems while it develops an ECM system, which could take several years. Many of these legacy systems, such as TAS's Taxpayer Advocate Management Information System (TAMIS) desperately need upgrading to provide effective tax administration and quality service to taxpayers.

TAS Recommendation	**[6-4] Prioritize and fund the development of an electronic Operations Assistance Request (OAR) process.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA. The solution for an electronic OAR process is understandably a high priority. The ECM program and TAS worked together in 2016 to develop scope and requirements for an ECM-based OAR solution, using functionality already developed in the now-halted Taxpayer Advocate Service Integrated System (TASIS). Analysis indicated that the IT infrastructure at the time was not sufficient to support development for both OAR and the ECM Tracking systems. Therefore, the business customer in July 2016 decided to make Tracking applications a priority and defer work on OAR.
IRS Action	The IRS and the ECM program are planning to implement a set of common services that will provide standard case management features and will simplify future development to meet business requirements. These services will be developed and implemented across the IRS—including TAS—as funding and staffing priorities allow. Prioritization decisions will be made by Business and TAS stakeholders.
TAS Response	The National Taxpayer Advocate is disappointed that the IRS did not implement an electronic OAR process in 2016 but appreciates the IRS's acknowledgement that such a process is a high priority. TAS is committed to working with the IRS on the ECM project and is offering its assistance with testing new products as the IRS designs and programs the ECM system. The National Taxpayer Advocate believes electronic OARs should be one of the first products to be programmed in the ECM project as it would benefit taxpayers, TAS, and the IRS by reducing delays in case resolution in the most urgent of cases. It would also produce resource savings by eliminating many of the current costs, including shipping, time spent by employees manually inputting and tracking OARs, and time spent physically printing and scanning OARs into other IRS tracking systems. TAS, having been through the case management testing process with TASIS, is a business unit highly capable of initially testing and evaluating new ECM products.

MSP #7 ONLINE ACCOUNTS: Research Into Taxpayer and Practitioner Needs and Preferences Is Critical As the IRS Develops an Online Taxpayer Account System

PROBLEM

A main component of the IRS's "Future State" vision is the development of an online taxpayer account application. While the National Taxpayer Advocate has proposed for years that the IRS develop an online account for taxpayers, we are concerned that the IRS is now doing so without first developing an overarching long term service strategy that focuses on taxpayer needs and preferences. The current vision focuses on business needs rather than taxpayer and practitioner needs. To properly focus on taxpayer and practitioner needs, the IRS must rely on research, including third-party research and TAS research. If the IRS does not "do digital right" from the start, it may build a system that few will choose to use. In addition, the online strategy must acknowledge that the necessary strict e-authentication standards mean that only about one-third of taxpayers will be able to create such an account.

ANALYSIS

The IRS released the first phase of the online account on November 16, 2016. Accessed through the IRS payments page, individual taxpayers who access their account can view the account balance, and select payment options such as IRS Direct Pay, debit or credit card, or apply for an installment agreement (IA). During the initial launch of the program, about one-third of individuals attempting to register passed the e-authentication strategies. In addition, despite the fact that practitioners have expressed a real interest in using the online account, the IRS has not shared any detailed plans about practitioner access to the account, the procedures to authorize such access, or planned account features and capabilities geared toward practitioners. Furthermore, despite efforts by TAS, the first phase of the online account does not provide taxpayers with any information on how to dispute the account balance provided. It also does not provide links for different options, including: amending a return, audit reconsideration, refund claims, penalty abatement, innocent spouse, injured spouse, identity theft, return preparer fraud, and doubt as to liability for offer in compromise (OIC).

TAS RECOMMENDATIONS

[7-1] By mid-2017, make available at least 24 months of payment history, rather than only 18 months, on the online account in order to provide information necessary for refund claims.

[7-2] By mid-2017, provide a link on the payments page of the online account to give the taxpayer an option, other than paying the tax, to dispute the balance due shown. The IRS should provide a button on the payment page indicating "I don't think I owe this amount." Once the taxpayer selects this option, the IRS should provide links for different options, including: amending a return, audit reconsideration, refund claims, penalty abatement, innocent spouse, injured spouse, identity theft, return preparer fraud, and doubt as to liability OIC.

[7-3] Work collaboratively with the National Taxpayer Advocate to review the recommendations of participants in the 2016 National Taxpayer Advocate Public Forums, the 2016 IRS Nationwide Tax Forum TAS Focus Groups, as well as the findings of TAS and third party research, and address the public's recommendations in the plans for the online account.

[7-4] Conduct research, in consultation with the National Taxpayer Advocate, using a variety of methods (online, landline and cell phone) into taxpayer and practitioner service needs and preferences for the various existing and proposed service channels by type of transaction, with acknowledgement that the taxpayer may choose multiple service channels to resolve a single issue.

[7-5] Incorporate into the "Future State" vision realistic expectations for access to and use of the online account application given robust e-authentication measures.

[7-6] Limit access to the online account to only those practitioners who are subject to Circular 230 oversight.

IRS RESPONSE

The IRS is committed to providing multi-channel service options to ensure that we meet taxpayer needs. Commissioner Koskinen has stated that "[w]e recognize there will always be taxpayers who do not have access to the digital economy, or who simply prefer not to interact with the IRS online. We remain committed to providing the services these taxpayers need. In fact, getting more people to use our online offerings will help us provide better and faster service to those who still want or need to call us or visit us in person."[1]

The IRS believes, and our research and experience shows, that the number of taxpayers and their representatives who are willing and able to use an online account and other digital services is large and growing. Based on trends for our current online offerings, there is clearly a segment of the population that both has access to and prefers to communicate with the IRS online. For example, in FY 2016, taxpayers visited IRS.gov 500 million times, made over 62 million payments via the Electronic Federal Tax Payment System (EFTPS) and 8 million payments via Direct Pay, and visited Online Account 400,000 times in the first four months since it launched (with minimal advertising).

Research shows that the online population is growing. For example, Pew research indicates that home broadband access increased in 2016 to 73%.[2] Also, the same research shows that 88% of U.S. adults use the internet, (99% of 18-29 year olds; 96% of 30-49 year olds; 87% of 50-64 year olds, and 64% of 65+ year olds), and shows comparable internet usage by race and gender.

These online services are a complement to, not a substitution for, other channels of communications that are available for taxpayers to interact with the IRS. If the IRS can meet the needs of some taxpayers with new and improved digital tools, it will allow our scarce resources to offer improved assistance through our other communication channels.

The IRS looks forward to continuing to work with the NTA, industry partners, advisory groups, tax professionals, and taxpayers to make this multi-channel environment a reality — by better understanding where, when, and how specific customer segments seek to receive service, and then delivering high-quality, personalized, seamless experiences across all channels.

1 Prepared Remarks of Commissioner John Koskinen before the AICPA, https://www.irs.gov/uac/newsroom/prepared-remarks-of-commissioner-john-koskinen-before-the-aicpa-2016.

2 Pew Internet/Broadband Fact Sheet, January 12, 2017, http://www.pewinternet.org/fact-sheet/internet-broadband/ (last visited March 13, 2017).

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The IRS response cites to irs.gov visits and Electronic Federal Tax Payment System (EFTPS) payments as an indication of the increasing preference for online tools. However, IRS data has shown that irs.gov visits dropped during the 2017 filing season.[3] Furthermore, businesses are required to use EFTPS to make all federal tax deposits.[4]

The IRS response notes that the population of taxpayers with the ability and preference to interact with the IRS digitally increases over time. However, the IRS response does not mention any of the TAS research that is directly on point and specific to taxpayers' needs and preferences.[5] For example, TAS Research shows that 33 million U.S. taxpayers do not have broadband access and more than 14 million do not have internet access at home.[6] The IRS needs to acknowledge these significant populations. Moreover, contrary to the IRS's statement in the response, Pew Research Center data shows that broadband access has plateaued.[7] The IRS failure to review and incorporate this research data into its strategy confirms that the IRS is not interested in any information that might force it to reconsider or adjust its direction.

In justifying the "Future State" vision towards online accounts, the Commissioner of Internal Revenue has stated that taxpayers "should expect the same level of service when dealing with the IRS in the future as they have now from their financial institution, whether it's a bank, brokerage, or mortgage company."[8] However, the IRS's approach to "Future State" is not consistent with the research performed specifically for the financial sector. Research commissioned by the Federal Reserve found that even tech-savvy mobile phone users prefer multiple service channels. Over the past several years, the Federal Reserve has surveyed banking preferences among mobile phone users. According to a recent report, more mobile phone users who have a bank account reported visiting a branch than using any other channel in the last 12 months.[9] Likewise, even those taxpayers who normally prefer digital interaction may occasionally prefer to talk to a live IRS employee to understand how the complex tax rules apply to their particular transaction.

Therefore the online account application should be one option in a multichannel service offering. We agree with the IRS that online services are a complement to, not a substitution for, other channels of

3 IRS, Filing Season Statistics for Week Ending May 12, 2017 (showing a 3.5 percent decrease in visits compared to May 13,2016).

4 IRS Publication 15, *Circular E, Employer's Tax Guide for Use in 2017* 25 (Rev. Dec. 19, 2016); IRM 21.2.1.47, *Electronic Federal Tax Payment System* (Oct. 1, 2016).

5 *See* National Taxpayer Advocate 2016 Annual Report to Congress, vol. 2, 1-30 (Research Study: *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*); National Taxpayer Advocate 2015 Annual Report to Congress, vol. 2. 101-10; (Research Study: *Understanding the Hispanic Underserved Population*); National Taxpayer Advocate 2016 Annual Report to Congress 121-37 (Most Serious Problem: *Online Accounts: Research into Taxpayer and Practitioner Needs and Preferences Is Critical as the IRS Develops an Online Account System*).

6 *See* National Taxpayer Advocate 2016 Annual Report to Congress, vol. 2, 1-30 (Research Study: *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*). The TAS survey research also found that such vulnerable groups as low income, seniors and taxpayers with disabilities are less likely to have broadband access at home.

7 John B. Horrigan and Maeve Duggan, Pew Research Center, *Home Broadband 2015* 2-9 (Dec. 21, 2015).

8 Prepared Remarks of Commissioner John A. Koskinen Before the Tax Policy Center (Aug. 1, 2016), https://www.irs.gov/uac/newsroom/commissioner-koskinen-remarks-to-the-tax-policy-center (last visited Nov. 26, 2016).

9 Although more respondents report visiting a branch in the past 12 months, other channels may have been used more frequently during that same period. "Among those who had used each of the channels in the past month, the median number of uses in the past month was five for each of the online and mobile channels, three for ATM, and two for each of the branch and telephone channels." Board of Governors of the Federal Reserve, *Consumer and Mobile Financial Services 2016* 14 (Mar. 2016); Board of Governors of the Federal Reserve, *Consumer and Mobile Financial Services 2015* 9 (Mar. 2015).

communications. As the IRS response notes, the online account will satisfy the needs of a substantial percentage of taxpayers which will free up scarce resources to bolster the levels of service on the phones and in the Taxpayer Assistance Centers (TACs).

We continue to strongly encourage the IRS to restrict access to the online account to those practitioners subject to Circular 230. Once the IRS strengthens the examination requirements for the voluntary annual filing season program (AFSP), the National Taxpayer Advocate supports expanding such access to include AFSP record of completion holders. This restriction is a vital taxpayer protection measure, the absence of which will expose taxpayers to potential harm due to preparer incompetence or misconduct.

We look forward to working with the IRS as it continues to research the needs and preferences of taxpayers as it develops its multichannel service strategy. We encourage the IRS to incorporate the findings of TAS research as well as comments and statements presented at the National Taxpayer Advocate Public Forum on Taxpayers Service Needs and Preferences, as discussed in detail in the Most Serious Problem.

TAS Recommendation	**[7-1] By mid-2017, make available at least 24 months of payment history, rather than only 18 months, on the online account in order to provide information necessary for refund claims.**
IRS Response	IRS Actions to be Adopted/Addressed if Resources and Budget Allow.
IRS Action	During the initial development of a payment module, the 18-month window was chosen to provide taxpayers with a full year's worth of payment history, including up through the filing extension deadline. This was the parameter set for the minimum viable product for payment information. Follow up payment work will extend the payment history window through 7 years of historical payments. Initial payment information was made available to taxpayers through Online Account on March 5, 2017. Additional years of history are estimated to be available in Fall 2017, however the timing of when this functionality can be delivered is dependent on resources and other competing priorities (*e.g.*, tax law changes, etc.).
TAS Response	The National Taxpayer Advocate is encouraged by the IRS's commitment to expand the payment history provided on the online account. We understand that IRS resources are scarce, but we firmly believe that taxpayers have the right to be informed of at least two years of payment history in order to file accurate refund claims. By not providing such information, the IRS is also jeopardizing the taxpayer's right to pay no more than the correct amount of tax. Accordingly, we believe the IRS should prioritize this feature because it should have already been included in the minimum viable product.

TAS Recommendation	**[7-2] By mid-2017, provide a link on the payments page of the online account to give the taxpayer an option, other than paying the tax, to dispute the balance due shown. The IRS should provide a button on the payment page indicating "I don't think I owe this amount." Once the taxpayer selects this option, the IRS should provide links for different options, including: amending a return, audit reconsideration, refund claims, penalty abatement, innocent spouse, injured spouse, identity theft, return preparer fraud, and doubt as to liability offer in compromise.**

IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The IRS is in the process of user testing recommendations and alternate design options provided by the NTA to determine an implementation that will help taxpayers find the information they are looking for when they believe they do not owe the amount showing as their balance due. The results of the user tests will drive the ultimate design decision; however, we expect this to be an ongoing and iterative process, so we will continue to monitor the information provided to determine usage and understanding once it is in production.
TAS Response	TAS appreciates the IRS's willingness to include us in the design decision-making process. While the recommended button did not test well, we appreciate the IRS's continuing initiatives to address this void in the current state of the account. If the goal of the online account is to reduce phone calls, it is in the IRS's best interest to develop something to address those taxpayers who do not agree with the balance due shown. If not, taxpayers will continue to call the IRS to understand their options. Furthermore, the absence of this information on the online account application jeopardizes the taxpayer's rights to be informed, to quality service, and to pay no more than the correct amount of tax.

TAS Recommendation	**[7-3] Work collaboratively with the National Taxpayer Advocate to review the recommendations of participants in the 2016 National Taxpayer Advocate Public Forums, the 2016 IRS Nationwide Tax Forum TAS Focus Groups, as well as the findings of TAS and third party research, and address the public's recommendations in the plans for the online account.**
IRS Response	IRS Actions Already Implemented.
IRS Action	The IRS is working collaboratively with the NTA to prioritize, collect, and synthesize Taxpayer Experience research. As an active member of this group, TAS is invited to share the recommendations and outcomes of the 2016 NTA Public Forums with a broad group of IRS research directors. We have also worked with TAS to identify the research that has been conducted and to locate the transcripts and narratives that could best inform features and development for individual Account and Tax Pro Account applications.
TAS Response	We appreciate the IRS's willingness to collaborate with TAS as it rolls out new online account features and capabilities. We look forward to a continued collaboration in the future. However, the National Taxpayer Advocate is concerned that, based on the IRS's response, it is clear the IRS has not reviewed the transcripts from the National Taxpayer Advocate Public Forums or any TAS research studies on this topic.[10]

10 For details on the National Taxpayer Advocate Public Forums on Taxpayer Service Needs and Preferences, including submitted written statements from panelists as well as full transcripts of the forums, see https://taxpayeradvocate.irs.gov/public-forums (last visited June 13, 2017). See National Taxpayer Advocate 2016 Annual Report to Congress, vol. 2, 1-30 (Research Study: *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*); National Taxpayer Advocate 2016 Annual Report to Congress 121-37 (Most Serious Problem: Online Accounts: *Research into Taxpayer and Practitioner Needs and Preferences Is Critical as the IRS Develops an Online Account System*).

TAS Recommendation	**[7-4] Conduct research, in consultation with the National Taxpayer Advocate, using a variety of methods (online, landline and cell phone) into taxpayer and practitioner service needs and preferences for the various existing and proposed service channels by type of transaction, with acknowledgement that the taxpayer may choose multiple service channels to resolve a single issue.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The IRS conducts numerous research efforts using a variety of methodologies, approaches, and techniques to assess taxpayer and practitioner service needs and preferences using best practices from the research community. For example, we conduct an annual Taxpayer Experience Survey that uses a mix of multiple-choice and open-ended questions with a broad cross-section of the U.S. population (including via telephone and online). The IRS also uses conjoint studies to better understand tradeoffs between specific services, channels, and attributes, as described in the NTA Report to Congress. The cadre of research tools employed by the IRS is not limited to online, landline, and mobile methods. The IRS also uses (but is not limited to) qualitative and quantitative research methods that uncover taxpayer preferences, attitudes and behaviors, as well as historical and predictive analytics. The IRS recognizes the diverse service channels that taxpayers and practitioners desire and choose to engage with the IRS and employs the best suited research methods to understand the taxpayer experience regardless of the channel used. The IRS will work with the NTA on the prioritization and design of upcoming research endeavors through participation in the RAAS Taxpayer Experience working group, and will share research results, as appropriate.
TAS Response	As discussed in more detail in the Most Serious Problem, TAS does not support the research methodology of several IRS research studies on this topic. Therefore, we encourage the IRS to analyze the findings of TAS research on Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayers Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups. This nationwide survey of U.S. taxpayers was conducted entirely by telephone (landline and mobile). The results will help the IRS to track preferred service channel by service need or task.

TAS Recommendation	**[7-5] Incorporate into the "Future State" vision realistic expectations for access to and use of the online account application given robust e-authentication measures.**
IRS Response	NTA Recommendation Not Adopted. The IRS has already made many improvements that expand access to the authentication process, including the ability to receive a pin by mail, corrections to technical errors, and improved business rules that allow more users to verify their identity. As plans for new features come about based on user research and input from the taxpayer community, these new features will be balanced with a mix of services provided by other channels, including the phone and walk-in services. The IRS deployed the initial Online Account platform with basic features. These features provide account-based services that many customers would otherwise call, write, and visit IRS to resolve. The intent of the Future State is not to drive all customers to the web, but to recognize where a digital delivery can alleviate the pressures put on these other channels and free them up to address more serious and complicated problems with in person or phone support. It is important to recognize that the initial launch of Online Account laid the foundation for future online capabilities. IRS recognizes that Online Account will be a key component in achieving the Future State and is looking to leverage the ongoing partnership with TAS to gain perspectives on customer service.

IRS Action	N/A
TAS Response	We are encouraged by the IRS's acknowledgement that the online account application will be just one of many service options available to taxpayers. If the intent of the application is to alleviate the pressures put on other service channels, the IRS must also acknowledge, when allocating resources among the various service channels, that an overwhelming majority of taxpayers will not be able to open accounts due to necessary e-authentication requirements by individuals attempting to create accounts.

TAS Recommendation	**[7-6] Limit access to the online account to only those practitioners who are subject to Circular 230 oversight.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	A cross-functional IRS team, including members from the TAS, is currently working on analysis and policy planning for tax professional account features. 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	We appreciate the IRS's willingness to include TAS representatives in the policy planning meetings for the tax professional account features. We are encouraged that such meetings provided several opportunities for TAS representatives to give presentations on this topic. However, until the IRS makes a final decision to limit access to Circular 230 practitioners, we will continue to strongly advocate for this taxpayer protection measure. Without such restriction on access, the IRS will expose taxpayers to potential harm due to preparer incompetence or misconduct. Further, when the National Taxpayer Advocate raised this recommended restriction on preparer access during the dozen National Taxpayer Advocate Publics Forums held around the country, the proposal received overwhelming support.

MSP #8 EARNED INCOME TAX CREDIT (EITC): The "Future State's" Reliance on Online Tools Will Harm EITC Taxpayers

PROBLEM

The Earned Income Tax Credit (EITC) has become one of the government's largest means-tested anti-poverty programs. In tax year (TY) 2014, 27.5 million taxpayers received about $66.7 billion in EITC benefits. However, the IRS recently announced its intention to pursue a "Future State" plan. Major goals of the plan are to improve tax processing systems, increase electronic filing and payment options, and expand services available on irs.gov. The IRS's "Future State," which emphasizes a reliance on technology and taxpayer self-help as opposed to one-on-one communication, will do a disservice for many low income taxpayers by compounding existing obstacles facing this population.

ANALYSIS

The IRS primarily relies on the correspondence audit process in order to address questionable claims *after* a return has been filed. In fact, EITC audits make up approximately 36 percent of all IRS individual audits despite the fact that EITC returns account for only about 19 percent of all individual tax returns filed. The National Taxpayer Advocate has consistently argued that low income taxpayers need customer service approaches fine-tuned for their specific needs and preferences, including an emphasis on communication and education. This is because low income taxpayers, generally speaking, often share a unique set of attributes that may prevent them from navigating the audit process successfully on their own. These attributes include having lower levels of education, being more likely to speak English as a second language, and being less likely to have a bank account. The IRS's "Future State" plans will likely be a disservice for many low income taxpayers by compounding these obstacles. In particular, the "Future State" is not reflective of low income taxpayers' experiences. In addition, recent legislative changes, including expansion of math error authority and the underpayment penalty, make unintentional EITC errors very harmful to taxpayers. Given the increased harms that taxpayers may experience from unintentional errors, it is particularly concerning that the IRS has proceeded with the "Future State" without sufficient research into how it will affect low income taxpayers. TAS is conducting a study to evaluate the compliance impact of education and outreach on potentially noncompliant EITC taxpayers. In conjunction with IRS Online Services, TAS is also developing Taxpayer Digital Communication (TDC), a pilot project. These research initiatives will provide much needed information on the impact of the "Future State" on this important taxpayer population.

TAS RECOMMENDATIONS

[8-1] Amend Internal Revenue Manual (IRM) 4.19.14.5.4, *EITC Qualifying Child*, to allow an IRS employee to use a state agency's determination that a taxpayer has qualified for Temporary Assistance for Needy Families, Section 8 or comparable benefits, as substantiation for EITC with a qualifying child.

[8-2] Hire or train employees with social work skillsets in order to meet the needs of taxpayers claiming the EITC.

[8-3] Postpone its planning of any EITC "Future State" technology until the TDC data is available. Instead, the IRS should invest its resources into person-to-person communication for EITC taxpayers, including a dedicated "Extra Help" line for EITC taxpayers.

IRS RESPONSE

The IRS strives to help taxpayers understand the tax law to meet their tax obligations. Online tools offered by the IRS to help taxpayers are intended to complement, not substitute, for the multiple channels the IRS uses to educate taxpayers on their filing obligations and the rules for claiming the earned income tax credit (EITC). Taxpayers can access information about claiming the EITC and resolving compliance issues in various ways. Protecting taxpayer rights and reducing burden wherever possible will be fundamental to all future plans and strategies for serving taxpayers.

Since the studies that TAS conducted in 2004 and 2007, the IRS has made significant improvements to its EITC education and outreach. There is more tax information available online for taxpayers now than ever before. In 2015, we revamped the EITC website to make it easier for taxpayers to find information they need. We also worked with governmental and external partners to post information about EITC and provide a link back to the official IRS website. The EITC Assistant, the online tool that helps a taxpayer determine eligibility, has more than a half million users each year.

We also have a robust communication strategy to help taxpayers understand EITC eligibility requirements. One of IRS's major activities is EITC Awareness Day which recently celebrated its eleventh anniversary. EITC Awareness Day uses traditional and social media channels to lead taxpayers back to irs.gov to get more information and to promote use of the EITC Assistant. We use available resources, such as radio, print press, Skype, Twitter and YouTube, to reach the broadest range of taxpayers. We also work with our external Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) community partners, who are well-versed in EITC requirements and offer free tax preparation to eligible taxpayers. Taxpayers can also call our toll-free line to request an appointment at their local Taxpayer Assistance Center (TAC) to obtain help in answering any questions they have about EITC.

To support the strategic objectives of increasing program participation that is now at 79 percent, reducing the credit's 24 percent improper payments, and understanding the tax filing behavior of the underserved EITC eligible population, the IRS has engaged in ongoing research. We sent informational postcards to influence the filing behaviors of taxpayers who appeared to be eligible but had not yet filed a return to claim the credit in recent years. Results indicate that outreach helps overcome barriers to EITC participation and overcome barriers tax filing and tax reporting in general. Overall, the research findings are increasing understanding of the tax filing decisions of the potentially eligible for EITC.

The IRS has also worked on improved taxpayer interactions in its audit compliance program. Our Audit Process Improvement Team is made up of IRS staff and members of TAS. The team revised the information document request, Form 886-H-EIC, used in EITC exams as one of its first efforts. In this revision we simplified and clarified the wording and layout so that taxpayers can better understand what they need to send IRS in an audit. Improvements to an online version are underway.

The IRS continues to gather and use research results to help improve outreach and education and audit processes. For example, the IRS conducted focus groups in 2016 with tax examiners who answer phone calls and conduct audits with taxpayers to determine the main issues that confuse taxpayers. The IRS also developed two training courses for examiners to improve phone and written communication skills. To do this, a team listened to and analyzed phone calls to evaluate the effectiveness of certain training courses. Results showed that the "Earned Income Credit (EIC): One Call Does It All" training delivered in 2016 helped improve discussions with taxpayers. The analysis showed improvements in taxpayers understanding if they were eligible for EITC, and if not, why (94% v 83%), as well as improvements in allowing taxpayers to ask questions rather than holding a general conversation (88% v 72). We delivered

the "Earned Income Credit (EIC): One Response Does It All" to examiners for 2017 and the team will evaluate improvements from this written communication skills class as well.

The IRS has made significant strides to identify alternatives to the traditional audit as a way of promoting compliance. For example, our EITC Return Preparer Strategy is one area the IRS has pursued to increase the due diligence of tax professionals who prepare about 54 percent of EITC returns. We also conducted a study to measure the effectiveness of educational notices, as known as soft notices, to change taxpayer behavior through self-correction and voluntary compliance in future tax years. In December 2015, the IRS sent 25,600 educational notices to two populations of taxpayers preparing their own returns. Those two populations included: first-time exam rule-breakers and repeat rule-breakers not previously audited who broke child-related rules or Schedule C rules. The notices provided eligibility requirements for claiming EITC and additional sources of information. The format and content of the letters applied insights from prior IRS studies about changing taxpayer behavior. The results of the test showed the test groups had slightly higher changed behavior compared to the control groups that were statistically valid. IRS plans on refining a subsequent test.

The IRS provides our EITC taxpayers many options for getting assistance in understanding the EITC rules and meeting their tax filing obligations, and we will continue to do so as we work on Future State plans.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate acknowledges that the IRS has made improvements since TAS first identified barriers faced by EITC taxpayers in its 2004 and 2007 studies. The National Taxpayer Advocate also applauds the IRS for continuing to develop various outreach and educational tools. In fact, the National Taxpayer Advocate is pleased to hear about studies involving informational postcards and educational notices. The National Taxpayer Advocate looks forward to reviewing the IRS's conclusions from these studies.

However, the IRS response misses the point of the National Taxpayer Advocate's concerns regarding the impact of the IRS's "Future State" plans on taxpayers who claim the EITC. The IRS reports that online tools, including those availabe through the "Future State," are intended to complement, not substitute, the ways in which the IRS already educates taxpayers. This view of the "Future State" is not realistic and will do a great disservice to low income taxpayers. The National Taxpayer Advocate has consistently advocated that low income taxpayers need services specifically tailored to their unique needs and preferences.[1] Taxpayers who claim the EITC need more personal assistance, not less. They need clear information that explains their eligibility (or ineligibility) for the EITC.

The "Future State" vignette highlighted in the Most Serious Problem presents a situation where a taxpayer claiming the EITC will be left to his or her own devices to understand complex concepts,

1 For example, see National Taxpayer Advocate 2013 Annual Report to Congress 103-15 (Most Serious Problem: *Earned Income Tax Credit (EITC): The IRS Inappropriately Bans Many Taxpayers from Claiming EITC*); National Taxpayer Advocate 2011 Annual Report to Congress 296-312 (Most Serious Problem: *The IRS Should Reevaluate Earned Income Tax Credit Compliance Measures and Take Steps to Improve Both Service and Compliance*); National Taxpayer Advocate 2008 Annual Report to Congress 227-42 (Most Serious Problem: *Suitability of the Examination Process*); National Taxpayer Advocate 2007 Annual Report to Congress 222-41 (Most Serious Problem: *EITC Examinations and the Impact of Taxpayer Representation*); National Taxpayer Advocate 2005 Annual Report to Congress 94-122 (Most Serious Problem: *Earned Income Tax Credit Exam Issues*); National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 8-45 (*Earned Income Tax Credit (EITC) Audit Reconsideration Study*).

such as what constitutes a disabled child. The IRS response indicates that if a taxpayer, such as the one featured in the "Future State" vignette, has a question about their eligibility, he or she will be able to find and understand various IRS educational material. Instead, what low income taxpayers truly need is personalized, individual assistance in order to get their questions answered. This view was reiterated at the National Taxpayer Advocate's Public Forums in 2016.[2]

The IRS reports that it revamped the EITC website to make it easier for taxpayers to find information they need, worked with governmental and external partners to post information about EITC and provide a link back to the official IRS website, and that the EITC Assistant, the online tool that helps a taxpayer determine eligibility, has had more than a half million users each year. However, these efforts are not the best approach to reach low income taxpayers. Research conducted by TAS shows that low income taxpayers have less computer skills as well as less access to the internet than not low income taxpayers. In particular, TAS research shows that 8.9 million low income taxpayers do not have access to the internet at home, compared to 4.25 million not low income taxpayers.[3] Additionally, only 73.6 percent of low income taxpayers feel skilled doing internet research, compared to 85.9 percent of not low income taxpayers.[4]

The IRS decided to apply the "Future State" technology to EITC cases without any research to determine how it will affect low income taxpayers. This decision could not have come at a worse time. The ramifications for taxpayers who make mistakes are even higher since Congress recently granted IRS the ability to use math error authority in situations where the taxpayer has claimed the EITC during a time that he or she is barred from doing so under IRC § 32(k).[5] Taxpayers who make mistakes claiming the EITC will also incur costs from penalty assessments since recently enacted law reversed the Tax Court's decision in *Rand v. Commissioner*, now allowing the IRS to calculate negative tax in computing the amount of underpayment for accuracy-related penalty purposes.[6]

2 National Taxpayer Advocate Service 2016 Annual Report to Congress 144-45.

3 National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 8. Low income taxpayer is defined as a taxpayer whose household income is at or below 250 percent of the federal poverty level.

4 *Id.* at 10.

5 Protecting Americans from Tax Hikes (PATH Act) of 2015, Pub. L. No. 114-113, div Q, title 2, § 208, 129 Stat. 3083.

6 *Id.* at § 209.

TAS Recommendation	**[8-1] Amend Internal Revenue Manual 4.19.14.5.4, *EITC Qualifying Child*, to allow an IRS employee to use a state agency's determination that a taxpayer has qualified for Temporary Assistance for Needy Families, Section 8 or comparable benefits, as substantiation for EITC with a qualifying child.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA. The IRS, working with members of TAS, identified additional documentation that taxpayers can provide and the IRS will accept to support EITC eligibility during an examination.
IRS Action	The IRS updated Internal Revenue Manual (IRM) 4.19.14.5.4, *EITC Qualifying Child (QC)*, on July 29, 2016. A new exhibit was added, Exhibit 4.14-1, (Examples of Acceptable Documentation for EITC claims (not all-inclusive)), which includes these six additional documents: 1. Social service records (relationship) 2. Earnings statement/Check Stub (residency) 3. Bank statements (residency) 4. Military records (relationship) 5. Parole Office files (residency, relationship, citizenship) 6. Eviction Notice (residency) The IRM was also updated to inform tax examiners that they should consider any information received that is not reflected in the IRM to strengthen proof of eligibility. This could include information that the taxpayer and child qualified for other social benefit programs during the year, including Temporary Assistance for Needy Families.
TAS Response	The National Taxpayer Advocate commends the IRS for working with TAS to incorporate additional documents into IRM 4.19.14.5.4. These documents are specifically suited to meet the needs of low income taxpayers. Making the guidance in IRM 4.19.14.5.4 as thorough as possible will go far in helping IRS employees assist EITC claimants. However, instead of catching incorrect claims after the fact, in certain cases the IRS could rely on determinations by federal or state agencies that are already making eligibility decisions for similar public benefits.[7] Although none of the federal or state administered benefit programs, including Temporary Assistance for Needy Families (TANF),[8] Supplemental Nutrition Assistance Program (SNAP),[9] and Section 8 housing assistance,[10] fully overlap with the EITC, state workers arguably have the knowledge and experience to understand the needs of low income applicants. Additionally, the state workers determining eligibility for TANF are investigating many of the same elements as EITC audits: U.S. citizenship, family structure, and household finances. In particular, because children must not be absent from the household for more than 45 days for TANF benefits, the state employees are also familiar with determining the residency of children.[11] This is important to consider because IRS data show that of the known errors involving qualifying children on EITC claims, 75 percent of the errors resulted from the residency test.[12]

7 National Taxpayer Advocate 2016 Annual Report to Congress 350.
8 42 U.S.C. §§ 601-679c.
9 42 U.S.C. § 1786.
10 42 U.S.C. § 1437f.
11 42 U.S.C. § 608(a)(10)(A).
12 IRS Pub. 5162, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* 22 (Aug. 2014).

TAS Recommendation	**[8-2] Hire or train employees with social work skillsets in order to meet the needs of taxpayers claiming the EITC.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The IRS provides Continuing Professional Education (CPE) and other training that consistently includes lessons devoted to the development of social work skills to help the tax examiners more effectively communicate and interact with taxpayers. The CPE training is delivered to all tax examiners annually. These lessons support the IRS mission by helping taxpayers to understand their tax obligations while being treated with fairness and understanding. For example, our "Maintaining Professional Courtesy" lesson includes information on using effective communication and listening skills, including showing respect and consideration for the taxpayer. The "Earned Income Credit (EIC): One Response Does It All" lesson, which was included in the CPE for FY 2017, was developed to help tax examiners improve their written explanations to taxpayers to help reduce multiple document requests. Our courses on the "Earned Income Credit (EIC): One Call Does it All" and Suicide Calls and Domestic Violence Awareness also help our employees develop the skillsets for meeting the needs of taxpayers. In an effort to improve the training material, cases and telephone calls are continually reviewed to identify improvement opportunities when tax examiners are interacting with taxpayers in written and verbal communication.
TAS Response	The National Taxpayer Advocate's recommendation regarding social work skill sets encompasses more than just enhanced communication skills. EITC taxpayers would benefit from employees with actual social work training not just because they need personalized communication and interaction. Family matters are some of the most personal matters a taxpayer can discuss. Thus, an employee with social work skills would gain familiarity with the taxpayer's issues, be able to suggest alternate sources of documentation given that familiarity, and most importantly, reassure the taxpayers who may be understandably apprehensive and anxious, incorporating some of the skills and traits associated with social workers. This approach goes beyond what current IRS employees are trained to do.

TAS Recommendation	**[8-3] Postpone its planning of any EITC "Future State" technology until the TDC data is available. Instead, the IRS should invest its resources into person-to-person communication for EITC taxpayers, including a dedicated "Extra Help" line for EITC taxpayers.**
IRS Response	NTA Recommendation Not Adopted. The IRS budget has been cut significantly, but taxpayers still have multiple ways and options for getting EITC assistance from IRS employees and volunteers versed in the tax law. These options include calling the IRS toll-free phone line, visiting a Volunteer Income Tax Assistance (VITA) or Tax Counseling for the Elderly (TCE) program, using the EITC Assistant online, or making an appointment to visit the local Taxpayer Assistance Center (TAC). Various outreach and educational events hosted by the IRS also help increase awareness of the credit and help people know the rules. For example, "EITC Awareness Day" is a nationwide effort led by the IRS to help taxpayers get more information through traditional and social media channels and to promote use of the EITC Assistant on the IRS website. Each year, the IRS uses its available communication resources to reach the broadest range of taxpayers.
IRS Action	N/A
TAS Response	As mentioned above, the IRS intends to incorporate "Future State" technology into EITC audits without understanding how it will affect low income taxpayers. Given the harm that can befall a taxpayer who makes a mistake with his or her EITC claim, it imperative that the IRS understand how the "Future State" will affect low income taxpayers. It is true that the IRS has many educational tools available to EITC taxpayers. However, the "Future State" will likely move low income taxpayers away from the personalized assistance that they need to successfully navigate the IRS systems successfully. A better use of limited funds is to invest in tools that assist EITC taxpayers directly, such as a dedicated "Extra Help" line. Recently, TAS opened two new offices, one in San Diego, California, and one in St. Petersburg, Florida. These locations where chosen because of the low income population density. The Local Taxpayer Advocate (LTA) in each new office reached out to Stakeholder Partnerships, Education and Communication (SPEC) employees in those areas and asked to participate in EITC Day activities. Both of the LTAs were told they do not do anything for EITC Awareness Day. In these instances, the IRS has missed an important opportunity to reach EITC taxpayers.

MSP #9 FRAUD DETECTION: The IRS's Failure to Establish Goals to Reduce High False Positive Rates for Its Fraud Detection Programs Increases Taxpayer Burden and Compromises Taxpayer Rights

PROBLEM

Over the past decade, the IRS has been significantly impacted by fraud and identity theft. To detect and prevent identity theft and other tax refund fraud, the IRS has established a complicated screening process. When a return is flagged by one of the multiple IRS systems that scrutinize returns for characteristics of refund fraud or identity theft, the refund is held until the taxpayer can authenticate his or her identity, or until the information on the return can be verified. Although these systems do identify improper returns and prevent improper refunds from being issued, they also have a high degree of inaccuracy — with false positive rates (FPRs) between 38 and 55 percent in its most prevalent fraud detection systems. IRS systems that improperly flag legitimate tax returns and delay refund issuance can create a financial hardship for taxpayers, expend unnecessary IRS resources to resolve the issues, and negatively impact taxpayers' voluntary compliance.

ANALYSIS

The IRS's ability to adjust fraud detection systems in real time is limited, placing them outside the industry standard. These limitations on adjusting system filters and rules result in high FPRs, which occur when a system selects a legitimate return and delays the refund past the prescribed review period. For calendar year (CY) 2016 through September, IRS filters and business rules used for detecting fraudulent returns and identity theft had many FPRs over 50 percent. These incorrect selections delayed approximately 1.2 million tax returns associated with about $9 billion in legitimate refunds for more than an additional 30 days on average. During the same time period, the three systems on which the IRS is largely reliant in its return screening process had the following FPRs: the Dependent Database (DDb) — 49 percent, the Return Review Program (RRP) — 38 percent, and the Electronic Fraud Detection System (EFDS) — 55 percent. Notably, one IRS process for scrutinizing returns for identity theft had an FPR of roughly 91 percent. As a result, more than one million taxpayers with legitimate returns were forced to engage in a frustrating process to rectify the IRS's error. For example, the IRS phone line dedicated to identity theft issues had a level of service (LOS) of 31.7 percent for fiscal year (FY) 2016 and a wait time of almost 11 minutes for affected taxpayers.

TAS RECOMMENDATIONS

[9-1] Establish aspirational FPR goals and a schedule to meet them.

[9-2] Continue to build, maintain, and improve private-public partnerships to implement techniques to fight fraud.

[9-3] Establish relationships with other government agencies that use data mining and risk detection systems to learn better techniques for lowering false positive rates.

[9-4] Create a real time governance board to adjust filters and include TAS on this board.

IRS RESPONSE

The IRS has an established performance metric for False Detection Rate (FDR) for IDT and continually works to improve performance. This metric is a core component of the annual work plan development of the Taxpayer Protection Program (TPP), which is data driven and includes analysis of the historical and projected filter performance including FDR and workload impacts. As part of the process, an annual meeting is held that includes using historical data to establish the annual goals for the FDR. Once the FDR goal is established, it sets into motion the alignment of resources for the projected workload selection for the 2017 processing year. This includes projections for notice releases and coverage for the TPP phone lines.

Despite all the progress we have made, we realize we cannot let up in the fight against identity theft. We are finding that, as the IRS improves monitoring capabilities and shuts off certain avenues of entry, identity thieves look for new ways of getting in. As the IRS enhances return processing filters and catches more fraudulent returns at the time of filing, criminals attempt to become more sophisticated at faking taxpayers' identities so they can evade those filters and successfully obtain fraudulent refunds. Therefore, the IRS is working not just to react better and faster, but to anticipate the criminals' next moves and stay ahead of them. To fully protect taxpayers and the tax system, the IRS must not only keep pace with, but also get ahead of, criminals and criminal organizations, as they improve their efforts to obtain personal taxpayer information.

Because of the fraudsters' increasing access to personally identifiable information, including Form W-2 wage statements and third party income documents, the fraudsters are now able to mimic many characteristics of some valid returns. As such, our identity theft models are continuously evolving due to increasing complexity. But the identity theft filters cannot be calibrated in a way to only catch the fraudsters. Models and filters are closely monitored to ensure that the impact to taxpayers is minimized as much as possible. The FDR is set for 49% for the 2017 processing year, which is a decrease over the 2016 filing season. We start tracking the FDR beginning in May of each year because of the timing of the TPP notices, opportunities for the taxpayer to authenticate, and confirmation of IDT.

Reducing the FDR to reasonable levels is an ongoing process and only part of the broader effort to address challenges posed to tax administration by identity theft refund fraud. The IRS convened a Security Summit in March 2015, bringing together state tax agencies and the private tax sector to work collaboratively with the IRS in a coordinated and united fight against identity theft. The efforts of the Security Summit continue through a formal summit and robust working groups. The collaboration continues today and resulted in several innovations that were deployed for the 2016 and 2017 filing seasons. The Security Summit partnerships continue to diligently address the IDT problem.

The IRS led a significant effort in 2016 to identify, evaluate, and prioritize opportunities to improve the taxpayer experience without compromising the ability to protect IDT dollars. The focus of this effort was an end-to-end review of TPP processes and procedures. The Taxpayer Advocate was a vital participant in these efforts. A number of changes were implemented for the 2017 filing season. Several improvements were made, including updates to the applicable Internal Revenue Manual guidance and efforts to optimize staff resources for TPP phone support. The updated IRM was released in time for the 2017 filing season and the IRS was well-positioned for the projected TPP phone calls. The level of service (LOS) for fiscal year (FY) 2017 as of March 11, 2017 is 72.0%. This is a substantial improvement over the FY 2016 LOS of 15.4%. There is also a substantial improvement in the Average Speed of Answer (ASA) of 542 seconds versus 882 seconds in 2016. These efforts are expected to continue after the 2017 filing season as the IRS makes iterative and transformational progress.

The IRS has also improved its fraud detection systems, some of which were antiquated with inadequate functionality compared to industry standards. For example, in October 2016, the case selection functionality of Electronic Fraud Detection System (EFDS) was replaced with a real-time application called the Return Review Program (RRP). RRP has the capability to better detect, resolve, prevent and reduce the issuance of fraudulent tax refunds; and it can be modified when needed. FY 2017 was the first year the case selection moved from EFDS to RRP, so 2017 data will be used as a baseline for the appropriate FDR for the non-IDT inventories. Data associated with the IDT and non-IDT filter performance are being reviewed regularly.

Essential to both IDT and non-IDT case selection is the availability of third-party information returns, including Forms W-2. Access to information returns serves an increasingly important role in preventing tax return-based identity theft and refund fraud before tax refunds are issued. In addition, the introduction of the wage and non-employee compensation data into our tax return screening strategy earlier in the filing season enhances our ability to perform risk-based analysis of returns. The additional data driven by the Protecting Americans from Tax Hikes (PATH) Act and our Accelerated Information Return Program all assist in the identification of potential identity theft and refund fraud before refunds are issued, further strengthening pre-refund processing defenses. For example, if the return had certain indicators of identity theft or questionable income detected at filing, the earlier information returns enhance our ability to determine return consistency with the known third party reporting in order to reduce taxpayer burden. As a result, we can release these refunds without requiring action from the taxpayer or a third party. The earlier availability of the information returns also allows us to evaluate income inconsistencies as an indicator that the return requires further review and aids in our risk based case selection for identity theft, refund fraud, and questionable refunds.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate recognizes the significant challenge of detecting identity theft and fraud and anticipating how individuals may attempt to compromise the tax system in the future in an effort to secure refunds that do not belong to them or that they are not entitled to. Addressing these challenges requires a balanced strategy of protecting the United States fisc on the one hand, while minimizing the impact to legitimate taxpayers on the other.

As discussed in the above IRS response, some efforts in this regard have taken place, such as:

- Moving the selection of potential ID theft or fraudulent returns to the RRP system, which has enhanced ability to consider historical data;
- Establishing the Security Summit to collaborate with other government agencies and the private sector about the best techniques to detect, prevent and anticipate identity theft and fraudulent activity; and
- Considering third-party documentation prior to releasing a refund, ensuring the information matches what is on the return.

Despite these efforts to improve the IRS's ability to detect and prevent identity theft and fraud, a number of legitimate taxpayers are still being burdened unnecessarily by improperly being identified by IRS detection systems, often resulting in frustration for legitimate taxpayers. In fact, the IRS's response states that its more recent goal for FPRs is still as high as nearly 50 percent, meaning that about half of the returns selected by IRS systems would turn out to be legitimate. This FPR is still far too high, subjecting many legitimate taxpayers to a frustrating and confusing process, and in some situations

requiring taxpayers to drive long distances to IRS Taxpayer Assistance Centers (TACs) to prove their identities. Subjecting a large number of legitimate taxpayers to these bureaucratic hurdles may negatively impact their willingness to comply voluntarily with their tax obligations.

Although some enhancements to IRS systems to better target individuals who are attempting ID theft or fraud have taken place, the IRS needs to do more. For example, the IRS needs the ability to adjust its filters in real time. The IRS response above states that an annual meeting takes place to consider historic data regarding how ID theft has been attempted in the past, and to then make projections regarding false positive rates based on that data. However, if this information is only being considered annually (rather than in real time), then the IRS will be unable to thwart identity theft attempts of perpetrators who have altered their tactics from previous years.

The lack of real time adjustments to filters in IRS systems likely contributes to high FPRs, unnecessarily subjecting legitimate taxpayers to a complex and frustrating process which, in the past, has been plagued with poor customer service. The IRS touts above a notable improvement in its customer service for FY 2017 through March 11, 2017. Specifically, the IRS's dedicated TPP line for identity theft had a level of service of 72 percent, with an average speed of answer (ASA) of 542 seconds for this time period. Although improvements have in fact taken place, it is not yet clear at what cost. That is, were employees taken off other lines and placed on the TPP lines, meaning the shift of resources was really just a shift of the poor customer service from one division to another?

TAS Recommendation	**[9-1] Establish aspirational FPR goals and a schedule to meet them.**
IRS Response	IRS Actions Already Implemented.
IRS Action	A metric for the False Detection Rate (FDR) is established. This metric is a core component of the annual work plan development of the Taxpayer Protection Program (TPP), which is data driven and includes analysis of the historical and projected individual filter performance. This analysis includes FDR scenarios and associated workload impacts. The FDR goal for the 2017 processing year is 49% for the identity theft (IDT) filters. Due to a change from moving non-IDT filters from the Electronic Fraud Detection System (EFDS) to the Return Review Program (RRP), we are base lining the FDR for non-IDT for 2017. However we continue to monitor the FDR and performance of the non-IDT models in RRP. During the execution of the TPP work plan, the performance of the filters including both the variation in predicted workflow and FDR is reviewed on a weekly basis. As part of the work plan processes, we plan to meet our targets including the FDR. We officially start reporting the FDR in May of each year because of the timing of the TPP notices, opportunities for the taxpayer to authenticate, and confirmation of IDT.
TAS Response	The National Taxpayer Advocate is pleased that the IRS has set goals for both its IDT and fraud filters. However an ID theft false positive rate (FPR) goal of nearly 50 percent lacks ambition, and is an admission that the IRS is willing to accept that nearly half of the returns selected for potential ID theft are legitimate. As stated in the Most Serious Problem, the IRS's concession of the high false positive rate is contradictory to the aspirations of other government agencies and the private sector, and violates the taxpayer's right to quality service.

TAS Recommendation	**[9-2] Continue to build, maintain, and improve private-public partnerships to implement techniques to fight fraud.**
IRS Response	IRS Actions Already Implemented.
IRS Action	The IRS is using a robust private and public partnership to implement techniques to fight identity theft and fraud. The Security Summit was established to bring the tax community closer to adopting strategies focused on preventing and detecting identity theft and refund fraud. We organized a Security Summit Group in March 2015, an unprecedented partnership between the IRS, the electronic tax industry, the software industry, and the states to work on collaborative solutions to combat stolen identity refund fraud. Over the past two years, the Security Summit group has made progress on a number of initiatives. They include, but not limited to, the following: ♦ Security Summit members share more data from tax returns to improve fraud detection and prevention. The additional data provides enhanced opportunities to identify both questionable returns as well as unique consistencies with prior year filings to allow the return to be excluded from selection. This reduces taxpayer burden. ♦ Tax software providers strengthened identity requirements and validation procedures for customers to protect against account takeover by criminals. The improvements add verification procedures for taxpayer when logging in to their accounts. ♦ Security Summit members created a Refund Fraud Information Sharing and Analysis Center (RF-ISAC) to centralize, standardize, and enhance data compilation and analysis, which will facilitate sharing actionable data and information. The RF-ISAC pilot launched on January 23, 2017. ♦ Recognizing the critical role that tax professionals play within the tax industry in both the federal and state arenas, the Security Summit established a team to examine issues related to tax return preparers, such as how the tax return preparer community can contribute to the prevention of IDT and refund fraud. ♦ Security Summit initiatives included the establishment of a financial services workgroup comprised of members from the IRS, the states, and industry partners. The workgroup will identify and analyze possible fraud vulnerabilities associated with tax refunds through the use of financial products, services, and institutions. IRS will continue this partnership on an ongoing basis.
TAS Response	The National Taxpayer Advocate agrees that the establishment of the Security Summit was a positive step towards identifying best practices for detecting and preventing identity theft and fraud. The IRS should not limit its partners to only those organizations who have direct knowledge of the tax industry, but rather it should broaden the types of partners in this summit to include entities from the financial sector, the banking sector, the commercial sector, and the consumer and privacy advocates sector, ensuring that it is aware of the most advanced tactics being used to detect and prevent identity theft and fraud in all sectors.

TAS Recommendation	**[9-3] Establish relationships with other government agencies that use data mining and risk detection systems to learn better techniques for lowering false positive rates.**
IRS Response	IRS Actions Already Implemented.
IRS Action	The Security Summit was established to bring the tax community closer to adopting strategies focused on preventing and detecting identity theft and refund fraud. IRS and state revenue agencies are collectively working together to protect the taxpayer, revenue, and to strengthen the tax return processing systems. We recognize that there are opportunities to expand the Security Summit or similar activities with other federal agencies in the future. The IRS is engaging with other government agencies, including the Social Security Administration, the Federal Trade Commission and the Department of Education, in the fight against refund fraud, and these interagency efforts will continue.
TAS Response	The National Taxpayer Advocate agrees that the establishment of the Security Summit was a positive step towards identifying best practices for detecting and preventing identity theft and fraud. We encourage the IRS to continue to expand the number and type of government partners that are involved in the Security Summit. As stated in the Most Serious Problem, the IRS should establish partnerships with data mining experts in the Defense Intelligence Agency that use data mining and risk detection. To be as innovative and creative as the individuals who are committing identity theft and fraud, the IRS must expand its interaction to include a diverse group of government agencies that are considering ways to detect problems while mitigating their FPRs.

TAS Recommendation	**[9-4] Create a real time governance board to adjust filters and include TAS on this board.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The Return Integrity and Compliance Services (RICS) organization meets with the Return Review Program (RRP) Application Development and Research, Applied Analytics, and Statistics (RAAS) on a well-coordinated meeting to walk through all the identity theft (IDT) or Taxpayer Protection Program (TPP) filters and models. These sessions provide weekly insight into the analytics associated with the IDT and Non-IDT filter performance. The analysis includes any potential changes to thresholds, filter logic, impact of data breaches on inventory, and exclusions from case selection. The Business Rules and Requirement Management (BRRM) is a participant in the meeting to capture in real time the anticipated and expected changes approved. The RICS organization is responsible for the delivery of the False Detection Rate (FDR) metric, and as such, serves as the approving official for all filter and tolerance changes. The review is weekly and all decisions are exclusively operational and made by RICS. There is no board assembled for the filter recommendations or changes. The tolerance and filter logic changes occur swiftly and all programming changes are completed within 48 hours of the approval. The information is documented as part of a change request process. The documentation is to provide an audit trail of the changes made and provide necessary traceability on filter performance. The documentation may follow the actual implementation since the adjustments to the filters are important to prevent revenue loss or taxpayer burden.
TAS Response	The National Taxpayer Advocate is pleased that the IRS monitors the FPRs for both ID theft and fraud filters on a regular basis, and considers possible filter adjustments. However, rather than giving sole authority to RICS to either grant or deny any proposed adjustments to filters, the group should be designed in a way that allows all stakeholders to have a voice in whether or not a filter should be adjusted and, most importantly, to identify and mitigate potential downstream consequences of a filter change at a servicewide level prior to implementation. RICS should only be carrying out the recommendations of the group. Additionally, as discussed in the Most Serious Problem, the process should be consolidated to consider any change to filters for both the RRP and DDb systems, rather than relying on two separate and distinct approval processes.

MSP #10 TIMING OF REFUNDS: The Speedy Issuance of Tax Refunds Drives Refund Fraud and Identity Theft, As More Research Is Needed on the Costs and Benefits of Holding Refunds Until the End of the Filing Season

PROBLEM

The speed with which a tax agency issues refunds requires the balancing of two compelling interests. That is, there is an inherent tension between the need to get refunds out to taxpayers quickly and the need to protect against refund fraud. The IRS processes more than 150 million tax returns each year and issues refunds to taxpayers in about 70 percent of the returns received. Although the IRS prides itself in delivering 90 percent of refunds in less than 21 days, this waiting period can cause significant hardship to taxpayers (with an average refund of $2,800) who rely on this refund. Low income taxpayers are particularly affected by any refund delays, with refunds constituting 16 percent of their total positive income, on average.

ANALYSIS

Because Congress has chosen to deliver many social benefit programs through the tax system, and because the IRS has done a good enough job of delivering the resulting tax refunds timely, a cultural phenomenon has developed — many U.S. taxpayers now have an expectation that they will receive a sizable refund shortly after the beginning of each tax filing season. With tax refund fraud becoming a significant problem, costing the government billions of dollars each year, it may make sense for the IRS to delay the issuance of tax refunds while it verifies taxpayer-reported data. If the IRS held off issuing refunds until the end of the filing season, it would have an opportunity to validate return information using Form W-2 data, check for duplicate dependency exemption claims, reconcile child support and alimony reporting, and conduct Automated Underreporter matching, enabling it to process error-free returns and deliver accurate refunds. The IRS should quantify the compliance impact of administering these programs in real time. Once it does, the IRS would be much better positioned to determine whether delaying the issuance of refunds by a couple of months will be justified, after balancing it against the very real financial impact of the delay on taxpayers, particularly low income taxpayers. Participants in the 2016 IRS Nationwide Tax Forum focus groups cautioned that changing their clients' mindsets and expectations about the timing of refund delivery would be difficult. With their clients' urgent need for the refunds, practitioners felt it would take quite a bit of time to change behavior.

TAS RECOMMENDATION

[10-1] In collaboration with TAS, initiate a research study on the potential savings to the government from reducing improper payments and the potential impact to taxpayers, particularly low income taxpayers, if refund issuance is delayed until after the filing season.

IRS RESPONSE

A key component of tax administration is the effective management of tax refunds, repayments and credits, which involves balancing the expectations of taxpayers for high levels of service with the responsibility of preventing and dealing with fraudulent and erroneous refund claims. Refund timeliness,

which means the speed at which the IRS issues refunds, requires the proper balance of getting taxpayers the refunds they are due quickly while also protecting against refund fraud.

The IRS has made significant advancements in its ability to process refunds faster. So far in the 2017 filing season, 9 out of 10 refunds were issued within 21 days of IRS accepting the return. The IRS also made significant strides protecting against refund fraud. Over the last two fiscal years, the IRS has made numerous improvements in our screening to catch fraud and identity theft (IDT) before refunds are issued.

- The Protecting Americans from Tax Hikes Act of 2015 (PATH Act) accelerated the Form W-2 filing deadline from the end of February (or the end of March if the forms were electronically filed) to January 31, beginning with the 2017 filing season. The PATH Act also delayed the issuance of refunds on returns claiming certain refundable credits to no earlier than February 15, beginning with the 2017 filing season. These changes increase IRS's ability to verify income and wage withholdings early in the filing season, enhancing our ability to stop fraudulent refunds before they are paid.
- In 2016, we created an Accelerated Information Reporting Program. This program allows payroll reporting agents to send their clients' Form W-2 data directly to IRS, in addition to filing the Form W-2 with the Social Security Administration (SSA). Use of this program assisted the IRS in being able to more quickly verify wages and withholding reported on Forms 1040, *U.S. Individual Income Tax Return*.
- We continually review and enhance our IDT screening filters to improve our ability to spot false returns before we process them and issue refunds. In 2015, a more dynamic filter program was introduced called the Return Review Program, which increases our ability to detect identity thieves in the pre-refund environment.
- We have implemented a variety of mechanisms to prevent criminals from using a deceased individual's identity information to perpetrate fraud. We routinely lock the accounts of deceased taxpayers and have locked more than 30 million accounts so far.
- We have developed procedures to better stop the processing of fraudulent returns from prisoners. In FY 2015, we stopped more than 30,000 fraudulent returns filed by prisoners, representing approximately $1.2 billion in fraudulent refunds claimed.
- Starting in 2015, we limited the number of direct deposit refunds that can be made to a single account to three. Any additional refunds are automatically converted to a paper check and mailed to the address of record.

The IRS carefully balances its fraud detection policies against the need to get refunds to taxpayers timely. A delay in the issuance of all refunds until the end of the filing season would have economic impacts to the country at large. It would also impact taxpayers, especially low-income taxpayers and those experiencing significant financial hardships, and could result in an increase in the use of refund anticipation loans. The following are the key concerns of changing the timing of refunds:

- The local economies relying on the cycle of refunds is impacted. For example, to implement the requirements to hold refunds as part of the PATH Act Section 201(b) legislation in 2017, the IRS met with finance, retail, and tax practitioner industries to assist in the tremendous preparation and planning needed to compress billions of dollars in refunds in a single pay-out immediately following February 15.

- Statistics indicate most taxpayers are compliant with the tax laws. Delaying all refunds until the end of the filing season will impact all taxpayers for a small percentage of fraudulent returns.
- The impact of a delay in refunds is a compressed filing season. By holding the refunds until later in the filing season, there will be impacts to both the industry and IRS.
- The impact must have a known result. Holding the refunds may not increase the number of returns we are able to audit. Adjustments to income and refundable credits require audits for Statutory Notices of Deficiency. Without an increase in resources to support pre-refund audits or additional math error authority, there is limited impact on the reduction of improper payments.
- The PATH Act legislation provided earlier information returns including wages and non-employee compensation. Many more information returns are required but not available early in the filing season. In addition, these documents do not overcome the challenges of evaluating the accuracy of self-employment income that includes cash and merchant card payments.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

We commend the IRS's ability to deliver refunds to millions of taxpayers, the vast majority within 21 days of accepting the return. It is reassuring to hear that the IRS takes very seriously its responsibility to balance the desire to get refunds issued promptly with the need to protect against refund fraud.

We acknowledge the challenges inherent in changing the timing of refunds – many taxpayers are accustomed to receiving their refunds early in the filing season. As the IRS noted, delaying the issuance of refunds beyond the filing season would affect more than just taxpayers; the retail industry and financial institutions are certainly among the stakeholders that would be impacted. Our expectation is that any changes contemplated to the delivery of refunds would not be implemented until the immediate and downstream consequences are studied and discussed thoroughly.

We continue to assert that the IRS would benefit conducting a research study on the pros and cons of delaying the delivery of refunds for all taxpayers, not just taxpayers who have claimed refundable credits such as the EITC.

TAS Recommendation	**[10-1] In collaboration with TAS, initiate a research study on the potential savings to the government from reducing improper payments and the potential impact to taxpayers, particularly low income taxpayers, if refund issuance is delayed until after the filing season.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The policy decision around any significant change to the timing of refund issuance falls outside the purview of the IRS. The IRS is planning to conduct analysis on the impact of the PATH Act provisions that resulted in accelerated information reporting and delayed refunds to measure its impact on the IRS ability to prevent fraudulent refunds from being issued. However, without knowing the results of this analysis and due to current budget and resource constraints, we would not opt at this time to expand this analysis further.

TAS Response

We are pleased that the IRS is planning to analyze the impact of the accelerated information reporting due dates and the congressional directive to hold certain refunds until February 15. We recognize the IRS is operating under severe resource constraints, but still feel there is much value in exploring the impact to taxpayers, and the savings to the government, if the IRS were to delay the issuance of refunds even further, until after the filing season. We understand that taking such a drastic action would require buy-in from Congress; having the IRS share its findings from a research study would help policymakers make a fully educated decision. Given all that the IRS has written in its response, the National Taxpayer Advocate is baffled why the IRS will not take her up on the offer of a joint research study.

MSP #11 PAYMENT CARDS: Payment Cards Are Viable Options for Refund Delivery to the Unbanked and Underbanked, But Security Concerns Need to Be Addressed

PROBLEM

With over 68 million adults in the U.S. either unbanked or "underbanked," taxpayers can request that the IRS load their tax refund onto a reloadable debit card, rather than to a conventional bank account. However, the convenience offered by the IRS delivering refunds via prepaid debit cards comes at a cost — in the form of refund fraud. Because the IRS receives little information about the owner of the prepaid debit card (compared to a traditional savings or checking account), identity thieves and perpetrators of refund schemes may opt to avoid detection by requesting refunds via prepaid debit cards. By the time the IRS learns of the refund fraud, the money is already loaded onto prepaid debit cards, leaving the IRS with little chance of recouping those funds.

ANALYSIS

Despite obvious benefits, there are some downsides to the use of prepaid debit cards to deliver tax refunds. First, taxpayers can incur numerous fees to enjoy the benefits of prepaid debit cards, including an enrollment fee, a monthly maintenance fee, ATM withdrawal fees, ATM balance inquiry fees, or a fee to convert the remaining balance into a bank check. Second, prepaid debit cards can be used to help facilitate refund fraud. The use of prepaid debit cards may be appealing to perpetrators of tax refund fraud, since no information other than a bank routing number and account number is required to request that a refund be loaded onto a prepaid debit card. The Department of Treasury now requires that all federal benefit payments be delivered electronically, and recommends that those without a bank account use the Direct Express debit card. However, the Treasury-sponsored Direct Express debit card does not accept tax refund payments from the IRS at this time, which is perplexing, given that the Earned Income Tax Credit (EITC) is one of the government's largest means-tested anti-poverty programs. With the EITC, taxpayers are left to pay for debit cards on the market, with no bargaining power like that which the federal government has for the Direct Express debit cards. Employers are increasingly using payroll cards to load money for employees who do not have bank accounts. An estimated 12.2 million workers will receive their wages via payroll cards by 2019. The IRS should evaluate the efficacy of using payroll cards to deliver federal tax refunds.

TAS RECOMMENDATIONS

[11-1] Participate in a government-sponsored prepaid debit card program (such as Direct Express) offered at no cost to taxpayers.

[11-2] Add "Direct Express" and "Other Payment Card" as additional refund type options in the Refund section of each of the Form 1040 series.

[11-3] Conduct a pilot comparing the refund fraud rate of refunds delivered to the Direct Express card versus non-government-sponsored prepaid debit cards.

[11-4] Work with large employers and major providers of payroll services to conduct a pilot evaluating the efficacy of using payroll cards to deliver federal tax refunds.

IRS RESPONSE

The IRS provides several options to taxpayers for receiving their federal income tax refunds. The IRS encourages taxpayers to use direct deposit because it offers a fast, simple, safe, secure way to have refunds deposited automatically while also saving tax dollars because it costs the government less to refund by direct deposit than with a paper check.

In 2011, Treasury offered a government-sponsored tax refund debit card nationwide to a selected group of low-to mid-income taxpayers. Unlike Social Security or Supplemental Security benefits, tax refunds are made only once a year. In its evaluation of the pilot, Treasury noted that "simply converting a once-a-year check payment to a once-a-year plastic card may not provide savings for the government. The expense of providing a taxpayer with a plastic card annually for this singular purpose would be greater than disbursing a payment via a paper check".[1] While the evaluation concluded that "the federal government's creation of an option for tax filers to receive refunds directly onto a low-cost, account-linked card, as tested in this pilot, is a concept with promise,"[2] Treasury ultimately made a decision to terminate the debit card pilot for refunds and has not offered it since that time.

The IRS' Stakeholder Partnerships, Education & Communication (SPEC) organization also conducted a debit card pilot program in 2011. SPEC promoted a Debit Card Program among its Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) partners to eliminate paper refunds for taxpayers that were under or unbanked. Taxpayers were encouraged to use the prepaid debit cards with banks providing reduced fees. The uptake rate was so low, based on the Office of Program Evaluation and Risk Assessment (OPERA) study, that continuous use of the debit card program was not feasible.

The IRS is unaware of any additional security features that Direct Express cards offer over any other bank account and routing number. Direct Express cards appear to contain the same constraints as other accounts, including the inability to identify the name of the account holder, account take overs, deposits that are not in the name of the taxpayer, and limited filtering on behalf of some banks to assist in the identification of refund fraud. Any Direct Express or other initiative for pre-paid cards could ultimately present the same identity theft refund fraud concerns as those faced by existing financial institutions, and may not result in lower fees for taxpayers. Financial institutions have initiated new products over the past two years to further expand customer bases, including early access products which offer no penalties and limited fees for taxpayers.

The IRS agrees that security concerns should continue to be addressed for refund delivery options to the unbanked and underbanked populations. We have taken significant steps to mitigate these concerns over the past several years. To improve our efforts against the evolving threat of identity theft refund fraud, the Security Summit, which consists of a partnership between IRS, State tax officials, Electronic Tax Return Preparation Industry, the Software industry, and Financial Institutions was developed. Over the past year, the Security Summit groups have made significant progress on a number of initiatives. For example the Financial Services Workgroup team, is comprised of members from the IRS, States, Financial Institutions (Network Branded Prepaid Card Association (NBPCA) and BITS Financial Services Roundtable) and industry partners. The group identifies and analyzes possible fraud vulnerabilities associated with tax refunds through the use of financial products, services, and institutions.

1 *Tax Time Account Direct Mail Pilot Evaluation* ES-1, https://www.treasury.gov/resource-center/financial-education/Documents/Treasury%20Tax%20Time%20Account%20Pilot%20Final%20Report.pdf.

2 *Id*. at ES-5.

We have also established relationships with representatives of the prepaid access card industry, which has enabled us to leverage their security protocols designed to detect and prevent fraudulent use of prepaid cards. In many cases, these companies can identify potentially fraudulent tax refunds and freeze or cancel the cards. Our collaboration with the financial industry through the BITS Financial Services Roundtable, Criminal Investigation, and the NBPCA, enables us to acquire new information on potential fraud schemes, new cards in the industry and changes in industry practices. Through our work with the NBPCA, US Postal Service, IRS Criminal Investigation, and financial institutions, we also recover fraudulent prepaid cards through postal interceptions and traffic stops. NBPCA worked with their members to provide information to IRS assisting with the appropriate point of contacts and mailing information for the various cards confiscated and a centralized debit card procedure was established for recover of the cards and tax refunds.

We established and continue to expand the External Leads Program, which receives leads on questionable tax refunds identified by partner institutions, including financial institutions, government and law enforcement agencies, state agencies, tax return preparation entities, and other sources. These collaboration efforts enable us to acquire new information on potential fraud schemes and some financial institutions strengthened their fraud detection practices and/or established additional practices for their institutions.

We continue to review and enhance our identity theft screening filters to improve our ability to spot false returns in a pre-refund environment. In 2015 we implemented use of the Return Review Program (RRP) which enhanced our ability to detect identity thieves in a pre-refund environment using a dynamic filtering program. We created an Accelerated Information Reporting Program allowing reporting agents to send their Forms W-2 directly to the IRS. We implemented mechanisms to prevent criminals from using a deceased individual's identity to perpetrate fraud. This enabled us to routinely lock accounts of deceased taxpayers resulting in over 30 million accounts being locked.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

We acknowledge the challenges inherent in processing tax returns and delivering refunds to millions of taxpayers each filing season. Taxpayers desire convenient and speedy options for refund delivery, yet the IRS needs to ensure that the refunds end up in the right hands. We applaud the IRS's continuous efforts to combat refund fraud.

The IRS dismisses the benefits of delivering tax refunds through a debit card by pointing out the low uptake rate, but it relies on studies that are six years old, which are ancient in today's financial environment. As the National Taxpayer Advocate noted in her 2012 Annual Report to Congress, the Treasury pilot program had design flaws that likely impacted the uptake rate.[3] Moreover, the IRS's focus should not be on the uptake rate, but on providing taxpayers (including the millions who are unbanked or underbanked) alternatives for receiving their tax refunds. The IRS does not articulate a persuasive rationale for it not participating in the Direct Express program, which has already been established and is used by many other agencies within the Department of Treasury.

Our concern is one that is shared by the IRS — we want to minimize unnecessary risk to the government while still delivering refunds to taxpayers in a way that is convenient and not costly. We continue to challenge the IRS to look for ways to make this possible, whether it be through the use of Direct

3 See National Taxpayer Advocate 2012 Annual Report to Congress 334.

Express debit cards, payroll cards, or some other vehicle that addresses the needs of the unbanked or underbanked community.

TAS Recommendation	**[11-1] Participate in a government-sponsored prepaid debit card program (such as Direct Express) offered at no cost to taxpayers.**
IRS Response	NTA Recommendation Not Adopted. IRS does not agree that we should participate in a government sponsored pre-paid debit card program (such as Direct Express) for several reasons. As noted, there have been previous pilot tests conducted offering a government-sponsored tax refund debit card. In 2011, both the Department of Treasury and IRS' SPEC organization conducted debit card pilot programs. Treasury ultimately made a decision to terminate the debit card pilot for refunds and has not offered it since that time. The IRS, in evaluating its pilot program, determined that the uptake rate was so low that continuous use of the debit card program was not feasible. Participating in a government-sponsored pre-paid debit card program would be in conflict with our collaborative efforts over the past several years with financial institutions and industry, where we have worked together in an effort to close the gap on identity theft and refund fraud. Financial institutions have provided IRS with information to assist us in the revenue protection processes, made changes to refund filters, and implemented processes and programming to identify refunds that have gone through our processes. This collaboration has allowed us to implement new initiatives, improve our processes, and implement strategies to address concerns with bank products identified over the past several years. The IRS is unaware of any additional security features that Direct Express cards offer over any other bank account and routing number. Direct Express cards appear to contain the same constraints as other accounts, including the inability to identify the name of the account holder, account take overs, deposits that are not in the name of the taxpayer, and limited filtering on behalf of some banks to assist in the identification of refund fraud. Thus, we believe that any Direct Express or other initiative for pre-paid cards could ultimately result in the same concerns as existing financial institutions and may not result in lower fees for taxpayers. Financial institutions have initiated new products over the past two years to further expand customer bases, including early access products which offer no penalties and limited fees for taxpayers.
IRS Action	N/A
TAS Response	We appreciate the recent efforts by the IRS to work collaboratively with the private financial sector to find ways to combat fraud. We hope that the IRS is correct in its optimistic view that financial institutions will broadly offer to taxpayers low- or no-cost products to receive tax refunds. We do not find the IRS's reasons to decline participating in the existing Treasury-sponsored debit card program to be persuasive. When the IRS characterizes a debit card as being a "one-time" use to deliver a tax refund, it is clear that it is taking an IRS-centric view. From the taxpayer's perspective, the Direct Express debit card would not be discarded after it was loaded with a tax refund. Rather, taxpayers would be able to spend the refund amount in multiple transactions. Furthermore, if taxpayers were able to use the same Direct Express card already being used to receive other government benefits, then that would offer additional convenience. Even if the uptake rate would be low, what is the downside for the IRS opting to participate in the Direct Express program? We continue to believe that consumer interests are better served if taxpayers are given the opportunity to use Direct Express (or other government-sponsored pre-paid debit card). For the millions of taxpayers that are unbanked or underbanked, they can benefit from the increased bargaining power of Direct Express to negotiate lower fees or more features. The IRS needs to look at this in a holistic way when analyzing the costs and benefits of participating in the Direct Express program.

TAS Recommendation	**[11-2] Add "Direct Express" and "Other Payment Card" as additional refund type options in the Refund section of each of the Form 1040 series.**
IRS Response	NTA Recommendation Not Adopted. The IRS does not believe that adding additional account types to the Form 1040 series would provide benefit in identifying fraudulent refund claims. Because the IRS cannot distinguish between a bank account and a prepaid debit card, we would not be able to detect if the filer checked the wrong box for an account type. Therefore, any potential filters that might indicate increased risk of fraud based on the account type would be largely ineffective.
IRS Action	N/A
TAS Response	To accurately assess the scope of the refund fraud problem, it is important that the IRS learn how much of the fraudulent refunds are loaded onto prepaid debit cards. If the IRS currently has no way of distinguishing between taxpayers directing refunds to a bank account versus a prepaid debit card, we would like the IRS to have discussions with financial institutions and with legislators as well as regulators to change that. Prepaid cards are too exploitable to perpetuate refund fraud, when there is no effective way for the IRS to even identify when they are being used.

TAS Recommendation	**[11-3] Conduct a pilot comparing the refund fraud rate of refunds delivered to the Direct Express card versus non-government-sponsored prepaid debit cards.**
IRS Response	NTA Recommendation Not Adopted. Because the IRS cannot distinguish between types of accounts, we would not have the necessary information to compare the refund fraud rate for government versus non-government-sponsored prepaid debit cards.
IRS Action	N/A
TAS Response	Same concerns as expressed in comments to Recommendation 11-2 (see above).

TAS Recommendation	**[11-4] Work with large employers and major providers of payroll services to conduct a pilot evaluating the efficacy of using payroll cards to deliver federal tax refunds.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	Based on the progress the Security Summit working groups have made with identification of identity theft returns and our extensive analysis from a security perspective, we do not agree that introducing payroll cards would be beneficial at this point. We believe that the same constraints exist as with any other account, including the inability to identify the name of the account holder, account take overs, deposits that are not in the name of the taxpayer, and limited filtering on behalf of some banks to assist in the identification of refund fraud. Additional challenges such as changing employers, current business email compromise of Forms W-2, secure access and other constraints exist. We are currently working with payroll companies as part of our Form W-2 Acceleration efforts and as a result of the implementation of the PATH Act in 2017. We believe that these efforts, along with our current initiatives through the Financial Services Working Group and Payroll subgroup, will continue to assist us in the fight against identity theft.
TAS Response	We understand the frustration the IRS must feel when it is required to deliver refunds to a payment card when it is unable to confirm the identity of the payment card holder. However, because the holder of a payroll card is an employee of a known company, the IRS will have reliable information about the recipient of the tax refund — much more reliable information than it would have for an ordinary prepaid debit card. For this reason, we believe the use of payroll cards to deliver refunds should be explored. The IRS may be right — the use of payroll cards may be of limited benefit — but we believe it is still worth exploring.

MSP #12 PRIVATE DEBT COLLECTION (PDC): The IRS Is Implementing a PDC Program in a Manner That Is Arguably Inconsistent With the Law and That Unnecessarily Burdens Taxpayers, Especially Those Experiencing Economic Hardship

PROBLEM

In 2015, Congress enacted legislation requiring the IRS to assign certain tax receivables to private collection agencies (PCAs). Under the law, PCAs are permitted to offer taxpayers installment agreements (IAs) not to exceed five years. The IRS plans to implement the PDC program in ways that are arguably inconsistent with the law and plans to assign to PCAs the accounts of taxpayers the IRS itself would not subject to Federal Payment Levy Program (FPLP) levies.

ANALYSIS

The IRS plans to allow PCAs to "monitor" and receive commissions on payments taxpayers make pursuant to IAs that exceed five years. The IRS intends to assign to PCAs accounts of taxpayers who receive Social Security or Railroad Retirement Board retirement benefits despite having a median income below $19,000. These taxpayers' payments are not subject to FPLP levies if their incomes are less than 250 percent of the federal poverty level. The federal poverty level was about $11,880 for a single person in 2016; 250 percent of that level is about $29,700. The IRS has not provided adequate guidance to PCAs on when they are required to refer a taxpayer to TAS and does not intend to recall accounts from PCAs when the taxpayers request assistance from TAS.

TAS RECOMMENDATIONS

[12-1] Revise the PPG to allow PCAs to offer IAs of up to five years — rather than for the period that remains on the collection statute expiration date — to comply with the law.

[12-2] Revise the PPG to clarify that PCAs are not authorized to monitor IAs arranged by the IRS or TAS, and are not entitled to commissions on payments taxpayers make pursuant to those IAs.

[12-3] Revise the PPG to remove the option of soliciting voluntary payments that do not satisfy the liability and are not made pursuant to an IA in order to comply with the law.

[12-4] Revise the PPG to provide that PCAs must refer taxpayers to TAS where the taxpayer so requests, where payment of the balance due immediately or through a payment arrangement would create a significant hardship, including long term or adverse impact, where the taxpayer is unable to pay necessary living expenses, or where the taxpayer is experiencing systemic burden in resolving his or her issue.

[12-5] Assign a Master File code to open TAS cases and systemically prevent open TAS cases from being assigned to PCAs.

[12-6] Recall cases from PCAs when taxpayers request assistance from TAS and TAS opens a case.

[12-7] Implement the necessary programming as soon as possible to remove recipients of SSDI or SSI payments from the population of accounts that are eligible for assignment to PCAs.

[12-8] Adopt an interpretation of "potentially collectible inventory" that excludes the accounts of taxpayers whose SSA and RRB retirement benefits are not subject to FPLP levies because their incomes are less than 250 percent of the federal poverty level and develop a filter to identify those who appear to have significant assets.

[12-9] Revise the contract with PCAs to require PCAs to disclose all materials that impact taxpayers' contacts with PCAs, including operational plans, training materials, instructions to staff, the content and format of taxpayer letters, and calling scripts.

[12-10] Include in required training for all PCA employees the National Taxpayer Advocate's taped training on taxpayer rights.

[12-11] Send taxpayers whose accounts will be assigned to PCAs the IRS initial contact letter at least 14 days before transferring their accounts to PCAs and do not pay commissions to PCAs on any payments received after the initial IRS contact letter is sent and before the first PCA contact with the taxpayer.

[12-12] Designate a group of Collection employees to work to completion cases that are recalled from PCAs.

IRS RESPONSE

On December 4, 2015, the president signed into law the Fixing America's Surface Transportation Act (FAST Act). This legislation includes a provision requiring the IRS to use private debt collection agencies (PCAs) to collect unpaid federal tax. The IRS discontinued prior attempts to use private debt collection agencies to collect unpaid federal tax because they did not meet expectations and did not prove to be cost effective. Congress, in this latest legislative requirement, has attempted to address the issues that caused those prior attempts to be unsuccessful. The IRS began using PCAs to collect unpaid federal tax in April of 2017.

Following the passage of the FAST Act, the IRS developed and executed an implementation plan to use PCAs in accordance with the statute and congressional intent. The IRS has engaged with stakeholders, including the NTA and the Treasury Inspector General for Tax Administration (TIGTA), throughout the implementation plan's execution. Throughout the process, the IRS has responded to the concerns raised by stakeholders. When TIGTA raised concerns about a process for receiving, addressing and monitoring taxpayer complaints related to the private debt collection agencies, the IRS developed a complaint system with the help of TIGTA and the IRS's Human Capital Office. The IRS also developed a robust communication strategy about PCAs. Similarly, in response to the NTA's concerns about the cases of taxpayers receiving Social Security disability (SSDI) or Supplemental Security Income (SSI) being referred to PCAs, the IRS revised the procedures to require the PCA to return to the IRS any case in which the taxpayer advises that they receive these payments while we determine if there is a systemic way to remove these cases from the inventory of private debt collection agency cases.

Another important aspect of the implementation plan is that the legislation be implemented consistent with the IRS mission to enforce the law with integrity and fairness to all. For example, taxpayers generally may set up installment agreements for the period that the collection statute of limitations is open, which can be more than five years, but the legislation allows the PCAs to set up and monitor payment arrangements for no more than five years. Limiting a taxpayer to an installment agreement of five years solely because their case has been referred to a private debt collection agency lacks the fairness the IRS

mission requires. Working with our attorneys in the Office of Chief Counsel, the IRS addressed this concern by allowing the PCAs to set up and monitor payment arrangements with terms of five to seven years only after receiving the approval of an IRS technical analyst. Similarly, the IRS decided not to assign a specific group of IRS employees to work cases returned to IRS inventory by the PCAs. The private debt collection agencies are assigned cases that are not currently assigned to IRS employees to be worked under the case selection criteria. Assigning cases returned by the private debt collection agency to a special group of IRS employees bypasses the current process for assigning cases and would result in these cases being treated differently than other Collection cases.

Working with stakeholders, including TAS, the IRS has taken steps to ensure that the rights of taxpayers will be protected and preserved when their case is turned over to a PCA. Representatives of all PCAs received training on the Taxpayer Bill of Rights and were provided discs of the training with the understanding that they will consider using the discs in their own employee training program. Additionally, open TAS cases will not be referred to a PCA and, if a taxpayer contacts TAS while their case is with a PCA, the PCA will return the case to the IRS if TAS opens a case. The PCA also is required to inform the taxpayer of the purpose and existence of TAS in their initial contact letter. And, the PCA will refer taxpayers to TAS when the taxpayer requests assistance from TAS. Finally, as stated above, the IRS has established process for receiving and monitoring taxpayer complaints with PCAs.

Prior to selecting the PCAs who are participating in the program, the IRS developed a Private Collection Agency Policy and Procedures Guide (PPG), which provides the procedures that apply to the PCAs who contract with the IRS. The guide can be updated quarterly and the latest revisions were transmitted to the PCAs in January 2017. The current guide addresses many of the concerns raised by the NTA.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate acknowledges that the IRS is required by law to implement a PDC initiative, that it faces budgetary constraints as it does so, and that it has included the Taxpayer Advocate Service in some aspects of program development. She is pleased that the Commissioner directed the IRS to exclude the debts of SSDI and SSI recipients from the program and recognizes that the IRS will exclude open TAS cases from PCA inventory.

The National Taxpayer Advocate is perplexed by the IRS's position that its mission requires it to treat taxpayers whose debts are assigned to PCAs the same as taxpayers whose cases remain with the IRS. Because PCAs cannot perform inherently governmental activities, the statute mandates that assignment to a PCA will result in different treatment. Taxpayers whose debts are assigned to PCAs will be approached by debt collectors who represent the IRS but who do not have the authority, training, discretion, judgment, or expertise of IRS employees. An IRS employee has the authority not only to place a taxpayer in a seven-year installment agreement, but also to place the taxpayer's debt into CNC-Hardship status or consider other collection alternatives, typically after considering financial information from the taxpayer. Thus, the services available to taxpayers whose debts are assigned to PCAs are not aligned with the services available to other taxpayers. The authority of PCAs, on the other hand, only extends as far as IRC § 6306 permits, and under the statute, PCAs are not authorized to set up installment agreements of more than five years' duration.

Similarly, nothing in IRC § 6306 authorizes the IRS to allow PCAs to monitor installment agreements in excess of five years. If these "back room operations" are permissible, the IRS must separately contract for the performance of those duties. They cannot be grafted onto IRC § 6306. Paying PCAs commissions with respect to payments made on installment agreements in excess of five years, absent a separate contract and fee schedule, is an improper payment and misuse of funds.

On at least two occasions in December 2016, the National Taxpayer Advocate pointed out to the Commissioner, IRS Counsel, and SB/SE managers that the contemplated arrangements for installment agreements in excess of five years were impermissible. To our knowledge, the IRS has not issued a new or amended contract that would permit PCAs to monitor and receive commissions with respect to installment agreements in excess of five years. Therefore, it is our position that any such actions under the current contract are unlawful and unauthorized, and any such payments are unlawful and unauthorized.

Similarly, the National Taxpayer Advocate does not support the IRS's decision to not work accounts returned by PCAs to the IRS. The IRS justifies this approach by noting that doing so "bypass[es] the current process for assigning cases and would result in these cases being treated differently than other Collection cases." As noted, these cases are already "being treated differently" than other collection cases. More relevantly, the IRS foregoes revenue it might collect from working the cases and continues to include as tax receivables debts that it could determine are not collectible.

The IRS references its complaint process as an example of its responsiveness to stakeholders such as TIGTA. In recent testimony, the Treasury Inspector General for Tax Administration noted that TIGTA had "identified numerous concerns during our audit [of the PDC program], including … our concerns related to the IRS's process for receiving taxpayer complaints about PCAs."[1] The testimony does not, however, reference a complaint system developed with the help of TIGTA or otherwise indicate that TIGTA's concerns were addressed, and the National Taxpayer Advocate is unaware of any plans to effectively manage complaints about PCAs. The PPG requires PCA employees to refer taxpayers who wish to complain to TIGTA and to record the complaint in a log required to be delivered to the IRS each month. IRS employees will simply refer taxpayers who wish to complain about a PCA to TIGTA without making any record of the complaint. Thus, the IRS has no way of verifying whether PCAs actually record taxpayer complaints as required. This is a significant departure from the IRS's management of complaints in its prior PDC program that ran from about 2006-2009. In that initiative, the IRS established a complaint panel that consisted of IRS employees from different operating divisions, including TAS. This panel reviewed complaints and made determinations on their validity and severity. In the current initiative, TAS will open a case for taxpayers who contact TAS for assistance, even if the only thing the taxpayers need is to make complaints about PCAs. Thus, only TAS is proactively keeping an independent record of complaints about PCAs.

1 *Oversight Hearing – Internal Revenue Service: Hearing Before the H. Subcomm. on Financial Services and General Government of the H. Comm. on Appropriations*, 115th Cong. 19 (May 23, 2017) (written statement of J. Russell George, Treasury Inspector General for Tax Administration).

TAS Recommendation	**[12-1] Revise the PPG to allow PCAs to offer IAs of up to five years — rather than for the period that remains on the collection statute expiration date — to comply with the law.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The IRS revised the Private Collection Agency Policy and Procedures Guide (PPG) to permit the PCA to set up and monitor a payment arrangement with terms of five years. Payment arrangements with terms of five to seven years require technical analyst approval to set up and monitor.
TAS Response	The National Taxpayer Advocate appreciates that the IRS is seeking to accommodate her insistence that the PDC program operate in compliance with the law. However, she does not find any statutory authority for the IRS's current position that PCAs may, with the approval of an IRS technical analyst, set up and monitor payment arrangements in excess of five years, or receive commissions on payments made under those circumstances. She believes these actions fall outside of the authority granted to PCAs under the law.

TAS Recommendation	**[12-2] Revise the PPG to clarify that PCAs are not authorized to monitor IAs arranged by the IRS or TAS, and are not entitled to commissions on payments taxpayers make pursuant to those IAs.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	PCAs are not authorized to monitor IAs arranged by the IRS or TAS. When a taxpayer establishes an IA with the IRS or TAS, the case is recalled and returned to the IRS. The commission description is detailed in the Request for Quote (RFQ).
TAS Response	As noted above, the National Taxpayer Advocate acknowledges that the IRS will no longer allow open TAS cases to be sent to, or remain with, PCAs. However, the IRS permits PCAs to organize payment arrangements in excess of five years if they obtain approval from the IRS and to receive commissions on the ensuing payments. Thus, PCAs will receive commissions on installment agreements that require the IRS's involvement to organize. As noted above, whether or not these procedures could be permitted by contract, they are not authorized by IRC § 6306. Because it appears the IRS has not issued a new or revised contract, any actions and payments are unauthorized and unlawful. Moreover, the IRS response does not indicate, and it is not clear, that the IRS will be able to determine the extent to which PCAs fail to seek IRS approval of payment arrangements that exceed five years.

TAS Recommendation	**[12-3] Revise the PPG to remove the option of soliciting voluntary payments that do not satisfy the liability and are not made pursuant to an IA in order to comply with the law.**
IRS Response	NTA Recommendation Not Adopted. PCA will make one attempt to secure a voluntary payment, as described in section 10.2.1 of the PPG, which states "If the taxpayer cannot full pay, within 120 days or with a payment arrangement, the PCA will make one attempt to verbally secure a voluntary payment. Taxpayers will be verbally advised that a voluntary payment will not suspend the further accrual of interest or penalties the taxpayer may owe on the unpaid balance due. The PCA will make one verbal request to secure a voluntary payment when the taxpayer cannot resolve their account by either full payment or with a payment arrangement. A voluntary payment will only be requested verbally to ensure it does not have the implication of a payment arrangement. The PCA will document the attempt to secure a voluntary payment in the record of account. After making the one attempt to secure a voluntary payment, the PCA will initiate the return of the account back to the IRS. The PCA will not attempt to secure a voluntary payment when the taxpayer expresses they are unable to pay. Instead, the PCA will initiate the return of the case to the IRS."
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is pleased that the Commissioner decided that PCAs will be allowed to request only one voluntary payment. It is not clear, however, that the IRS will be able to determine the extent to which PCAs actually solicit more than one voluntary payment, and the IRS response does not indicate that the IRS is planning any actions to ensure that PCAs solicit only one voluntary payment. Additionally, the National Taxpayer Advocate reiterates that she does not see any authority under IRC § 6306 for the PCAs to request even one voluntary payment.

TAS Recommendation	**[12-4] Revise the PPG to provide that PCAs must refer taxpayers to TAS where the taxpayer so requests, where payment of the balance due immediately or through a payment arrangement would create a significant hardship, including long term or adverse impact, where the taxpayer is unable to pay necessary living expenses, or where the taxpayer is experiencing systemic burden in resolving his or her issue.**
IRS Response	NTA Recommendation Not Adopted. The PCA is required to inform the taxpayer of the purpose and existence of TAS in their initial contact letter. The PCA will refer taxpayers to TAS when the taxpayer requests assistance from TAS.
IRS Action	N/A

TAS Response	This is another example of an area in which taxpayers whose debts are assigned to PCAs are further penalized. IRS employees, who have no financial incentive to put taxpayers in installment agreements, can consider collection alternatives in light of taxpayers' financial information. Where it appears the taxpayer is experiencing significant hardship, the IRS employees are required to refer the taxpayer to TAS; the taxpayer is not required to ask to be referred to TAS.[2] If the IRS were interested in restoring similarity in treatment between taxpayers whose debts are assigned to PCAs and other taxpayers, it would require PCA employees to proactively consider whether the taxpayer is likely facing economic hardship and should therefore be referred to TAS. Treating taxpayers differently in this respect is not mandated by IRC § 6306. On the contrary, the IRS's approach violates taxpayers' *right to a fair and just tax system*, which specifically includes the right "to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty." The March 2016 version of the PPG required PCA employees to refer cases to TAS not only when the taxpayer states that he or she is experiencing economic hardship, but also when the PCA employee identifies that condition. Over TAS's objections, the IRS removed that provision from later versions of the PPG.

TAS Recommendation	**[12-5] Assign a Master File code to open TAS cases and systemically prevent open TAS cases from being assigned to PCAs.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The IRS and the NTA have agreed that TAS will input a transaction code on all open cases in the TAS's inventory to prevent assignment to a PCA. If the taxpayer's case is assigned to a PCA and the taxpayer contacts TAS, TAS will input a transaction code to recall the case from the PCA. TAS also will reverse the code upon completion of its actions.
TAS Response	The National Taxpayer Advocate is pleased that open TAS cases will not be included in PCA inventory and interprets this recommendation as having been adopted by the IRS

TAS Recommendation	**[12-6] Recall cases from PCAs when taxpayers request assistance from TAS and TAS opens a case.**
IRS Response	IRS Actions Already Implemented.

2 For example, Internal Revenue Manual (IRM) 21.1.3.18, *Taxpayer Advocate Service (TAS) Guidelines* (Oct. 19, 2015) instructs telephone assistors to refer taxpayers to TAS "when the contact meets TAS criteria."

IRS Action	The IRS and the NTA have agreed that if the taxpayer's case is assigned to a PCA and the taxpayer contacts TAS, TAS will input a transaction code to recall the case from the PCA. TAS will reverse the code upon completion of its actions.
TAS Response	The National Taxpayer Advocate is pleased that the IRS adopted this recommendation.

TAS Recommendation	**[12-7] Implement the necessary programming as soon as possible to remove recipients of SSDI or SSI payments from the population of accounts that are eligible for assignment to PCAs.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The PCA will return the account to IRS when the taxpayer informs they are a recipient of SSI/SSDI. Additional research is being conducted to determine if a systemic process can be put in place.
TAS Response	As noted above, the National Taxpayer Advocate is pleased that the Commissioner decided the debts of SSDI or SSI recipients should not be assigned to PCAs. TAS interprets the IRS's statement that "additional research is being conducted" as an Action Planned or Underway in Response to Recommendation 12-7. TAS is available to assist the IRS as it conducts additional research to determine how these debts can be systemically excluded from assignment to PCAs. In the meantime, TAS will gather data on the number of these debts that are assigned to PCAs and the number returned to the IRS by PCAs for this reason.

TAS Recommendation	**[12-8] Adopt an interpretation of "potentially collectible inventory" that excludes the accounts of taxpayers whose SSA and RRB retirement benefits are not subject to FPLP levies because their incomes are less than 250 percent of the federal poverty level and develop a filter to identify those who appear to have significant assets.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	Section 6306(d) lists certain tax receivables that are not eligible for collection by a PCA. Taxpayers receiving Social Security Administration (SSA) and Railroad Retirement Board (RRB) retirement benefits are not listed as legislative exclusions. The PCA will return the case to the IRS if collection is unsuccessful. The account is then returned to the inactive shelved status it was in prior to PCA assignment. Additionally, the PCA offers zero threat of enforcement action, such as a lien or levy. To improve PCA collection efforts and minimize returned cases, the feasibility of filtering accounts based on collection potential is being discussed. The policy decisions to permit the PCA to attempt collection and return the account when all reasonable efforts are exhausted are outlined in the PPG Section 14.2.

TAS Response	IRC § 6306 requires the assignment of "potentially collectible inventory," a term that is not defined in the statute, Treasury regulations, or other relevant guidance. The IRS has already determined that debts in CNC-Hardship status are not required to be assigned to PCAs. The Commissioner decided that the debts of SSDI and SSI recipients will also not be assigned to PCAs. That the PCA may return cases to the IRS does not mitigate the inappropriateness of subjecting these vulnerable taxpayers to PCA contact in the first place. It is disappointing that the IRS is considering filtering accounts, not to avoid harming vulnerable taxpayers who, as TAS studies have shown, enter into installment agreements they cannot actually afford, but to enhance the PCAs' likelihood of success. The IRS's stated objection to affording the same treatment to debts of this group of taxpayers — SSA retirement and RRB recipients whose incomes are less than 250 percent of the federal poverty level — is that the IRS cannot easily determine that these taxpayers do not have substantial assets that would nevertheless allow them to pay the tax debt. The National Taxpayer Advocate is perplexed by this reasoning: if these taxpayers have substantial assets, then the IRS should still not assign these debts to a PCA. The IRS should use its collection alternatives like offers in compromise and partial pay installment agreements, and, in the appropriate instances, its enforcement powers such as liens and levies, to address those assets to pay the tax debt, thus avoiding paying a commission to a PCA. In any event, the IRS's response overlooks the fact that the Commissioner decided that these taxpayers' debts could be assigned to PCAs for the first six months of the program to allow the IRS time to explore how to screen for SSA recipients with incomes below 250 percent of the federal poverty level who also have substantial assets. The IRS should have included this commitment as an Action Planned or Underway in Response to Recommendation 12-8.

TAS Recommendation	**[12-9] Revise the contract with PCAs to require PCAs to disclose all materials that impact taxpayers' contacts with PCAs, including operational plans, training materials, instructions to staff, the content and format of taxpayer letters, and calling scripts.**
IRS Response	NTA Recommendation Not Adopted. Contract revisions are not required to disclose materials that impact taxpayer contacts. The following deliverables were provided by the PCAs and reviewed by TAS and other stakeholders: operating plans, quality review plans, training plans, letters and calling scripts. The task orders outline the specific deliverables and performance requirements in the Performance Work Statement and PCA Policy and Procedures Guide that are reviewed and approved by the Contracting Officer Representative (COR) and the PDC Project Office.
IRS Action	N/A
TAS Response	The IRS has indeed shared materials submitted by PCAs with TAS. Regrettably, the IRS often rejected TAS's suggested changes to those materials. Moreover, at least one PCA's training materials referenced and contained links to job aids that were not provided. When TAS requested the material, the IRS responded that the contract with the PCAs does not require the job aids to be provided, and they would not be requested or reviewed by the IRS. Thus, the IRS has abdicated its responsibility to oversee how these PCA employees are being instructed to collect federal tax debts.

TAS Recommendation	**[12-10] Include in required training for all PCA employees the National Taxpayer Advocate's taped training on taxpayer rights.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	PCA representatives received TAS training discs at the PCA Engagement Conference in January 2017. NTA's recorded training highlighted elements of the Taxpayer's Bill of Rights relating to PDC. The discs were provided for consideration in the PCA's employee training sessions.
TAS Response	The IRS response simply reiterates that the National Taxpayer Advocate's video on the Taxpayer Bill of Rights is not mandatory training for all PCA employees without giving any rationale for this position. In the absence of requiring this training, it is difficult to understand how the IRC § 7803(a) requirement that the Commissioner ensure that IRS employees are familiar with and act in accord with taxpayer rights, and the provision in the IRS's contracts with PCAs that imposes the same requirement on PCA employees, is being satisfied. The National Taxpayer Advocate posted this training on the TAS website so all taxpayers can see how she wanted PCA employees to be instructed in protecting the rights of U.S. taxpayers. The training is available on the IRS website at: https://www.irsvideos.gov/Individual/Resources/NTAMessageToPCAContractors-TaxpayerBillOfRights

TAS Recommendation	**[12-11] Send taxpayers whose accounts will be assigned to PCAs the IRS initial contact letter at least 14 days before transferring their accounts to PCAs and do not pay commissions to PCAs on any payments received after the initial IRS contact letter is sent and before the first PCA contact with the taxpayer.**
IRS Response	NTA Recommendation Not Adopted. The IRS initial contact letter is mailed seven days prior to PCA assignment. The PCA is not permitted to mail their initial contact letter to the taxpayer during the first 10 calendar days following the PCA's receipt of a new or subsequent case/module. The timing of the letters was established to allow the taxpayer time to receive both letters and to have a level of confidence when authenticating the PCA when phone contact is made. Initial contact guidelines are outlined in the PPG section below.
IRS Action	N/A
TAS Response	The IRS response does not explain how waiting for 14 days after the IRS letter is sent before assigning the case to PCAs is inconsistent with its stated objective of allowing taxpayers time to receive both letters. The response does make clear that the timing of the letters was not established with the objective of identifying taxpayer payments made in response to a letter from the IRS, rather than from the PCA. By better identifying payments made in response to the IRS letter, the IRS could avoid paying commissions on payments that were inspired by the IRS notice and not by any PCA contact, thus protecting the public fisc, but it has chosen to forego this opportunity, thereby harming *all* U.S. taxpayers.

TAS Recommendation	**[12-12] Designate a group of Collection employees to work to completion cases that are recalled from PCAs.**
IRS Response	NTA Recommendation Not Adopted. When a case is recalled, the account is returned to the inactive shelved status it was in prior to PCA assignment. The recalled accounts that are returned to inactive shelved status will be worked per current prescribed policy and as IRS resources permit.
IRS Action	N/A
TAS Response	The IRS does not explain why it has adopted this position, except to note in its earlier comments that working recalled cases "would result in these cases being treated differently than other Collection cases." The National Taxpayer Advocate does not believe that restoring to inactive status the accounts recalled from PCAs is sound tax administration. These procedures may lead taxpayers to conclude that their best course of action is to simply ignore collection attempts and convey the message that the IRS is not actually committed to assisting them in resolving their tax liabilities.

MSP #13 ALLOWABLE LIVING EXPENSE (ALE) STANDARD: The IRS's Development and Use of ALEs Does Not Adequately Ensure Taxpayers Can Maintain a Basic Standard of Living for the Health and Welfare of Their Households While Complying With Their Tax Obligations

PROBLEM

Internal Revenue Code (IRC) § 7122(d)(2)(A) mandates that the IRS develop allowances designed to provide that taxpayers entering into an offer in compromise (OIC) have an adequate means to provide for basic living expenses. The resulting Allowable Living Expense (ALE) standards have come to play a major role in IRS collection cases. However, the current standards are based on outdated measurements and are implemented in a way that keeps some taxpayers in or near poverty in order to meet their taxpayer obligations.

ANALYSIS

In its efforts to base the allowed expenses on reliable and consistent data, the IRS relies heavily on the Consumer Expenditure Survey (CES), which gathers expenditure information for consumers. Since this survey measures what people spend on average to live, it does not take into account what the goods or services actually cost to live. This system does not recognize that taxpayers of limited means may forego otherwise necessary expenses.

Furthermore, spending is not consistent over income levels. While housing costs now account for about 25 percent of a family's pre-tax income, some low income renters may spend up to half of their pre-tax income on rent. The standards are also out of date. There is no standard allotment for child care expenses, and no allotment at all for basic digital technology or retirement savings. There are alternative methods to measure the cost of maintaining the health and welfare of a household. These alternative methods provide better insight into necessary expenses and also establish the expenses as a floor rather than a cap.

TAS RECOMMENDATIONS

[13-1] In conjunction with TAS, consider the family budget or self-sufficiency standard as an alternative method to calculate the cost of providing for the health and welfare of households. The alternative method should not be a cap to allowable expenses, but should represent the floor for what can be claimed.

[13-2] Expand the standard to include additional expenses for basic technology in the household, child care, and retirement savings.

[13-3] Reconsider the recent decrease in ALE standards for national standards, out-of-pocket healthcare, housing, and transportation.

IRS RESPONSE

The IRS offers taxpayers a number of options to satisfy their tax liabilities. These include options for which little or no financial information is required, including an online installment agreement tool. However, when a taxpayer requests terms of payment that present a heightened risk that the taxes owed will go uncollected if the agreement terms are not met, sound financial analysis and an accurate determination of ability to pay are essential to making the correct collection determination. IRS financial analysis guidelines provide a comprehensive structure for making this determination. The treatment of other debts and expenses in these guidelines is intended to balance the needs of the taxpayer against their obligation to pay tax and, at the same time, to foster public confidence that all taxpayers are being held to the same standard of compliance.[1]

The IRS strives to make Allowable Living Expense computation data-driven and fair to taxpayers. The best regularly updated government measure of the typical American household budget is the Bureau of Labor Statistic's Consumer Expenditure Survey. The Allowable Living Expense standards deviate from the Consumer Expenditure Survey only when another source, such as the Census local housing cost database or the Medical Expenditure Panel Survey, provides more pertinent information. The IRS updates the Allowable Living Expense annually using publicly available data and a standard methodology. The self-sufficiency standards advocated by the NTA do not meet standards of accuracy or cover a sufficient geographic area; they are also not collected regularly or generally accepted as a reliable data source. The self-sufficiency standard reports for the various states use a variety of state and local sources and lack the consistency needed to ensure nationwide consistency and fairness. Occasional local publications based on unverifiable methods and data for the estimated cost of living do not meet IRS requirements for defending using its methodology.

The Allowable Living Expense standards are not based on the official poverty level or the average expenditures of poor households. They are based on average expenditures for *all income groups combined*. At the suggestion of the NTA, the IRS removed income based ranges for the Allowable Living Expense standards in 2007 following the completion of an SB/SE research study of the Allowable Living Expense standards. That change allowed for higher allowances for most expenses for lower income taxpayers, thereby resulting in a currently not collectible determination for most taxpayers below the poverty threshold.

The IRS considers new data sources, when available, to produce the Allowable Living Expense and has updated its data sources over time. For example, consider the 2007 redesign of the Allowable Living Expense, which included the addition of cell phones as a utility expense.[2] In October 2011, new Housing and Utilities standards were released using a more current data source, which increased the standard amount significantly for most areas in the country.[3] The revised standards also included an allowance for cable television and internet services. In May 2012, IRS revised its Internal Revenue Manual guidance regarding conducting a financial analysis to allow additional payments for student loans and delinquent state and local tax liabilities to be considered when. As noted by the NTA, the IRS also established a floor for some expenses where documenting the expense would be cumbersome for the taxpayer. For example, when considering food, clothing, household supplies, out-of-pocket medical expenses and public transportation, taxpayers are allowed the standard amount, even if they report that

1 IRS Policy Statement P-5-2, Collecting Principles. IRM 1.2.14.1.2 (Feb. 17, 2000).

2 *See, e.g.*, SB/SE Research (Brooklyn/Hartford), Project BKN0086, *2007 Allowable Living Expenses Project* (Dec. 2007).

3 *See* http://sbse.web.irs.gov/collection/AllowExp/AllowExpRedesign.htm.

they spend less; in these cases, the taxpayer is not required to provide documentation unless the amount they claim exceeds the standard amount.[4]

In determining ability to pay, the IRS allows for all expenses that are necessary to provide for a taxpayer's and their family's health and welfare and/or production of income. The expenses must be reasonable. IRS guidance explicitly lists all of the necessary living expenses identified in the Treasury Regulations as relevant when determining whether collection action would cause economic hardship.[5] IRS guidance also states that other expenses, such as child care, should be allowed if they meet the necessary expense definition. Where standards for a specific expense are provided, those amounts are based on what an average citizen spends for basic living expenses. No set of standards can be expected to fit every circumstance. Therefore, IRS employees are directed to consider a taxpayer's unique circumstances and to make exceptions to the application of the Allowable Living Expense when warranted. This allows taxpayers the means to adequately meet living expenses.[6] Unique circumstances, however, do not include the maintenance of an affluent or luxurious standard of living, as noted in the Treasury Regulations.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate acknowledges that the current ALE standards allow for a consistent approach for all taxpayers. That is an important step in treating all taxpayers fairly. However, if the current standard does not meet the needs of taxpayers, even if it is consistent, it will create harmful situations for taxpayers facing a collection issue with the IRS.

The IRS response relies heavily on using a consistent approach based on publicly available information. However, the data that is being used measures the average *expenditures* for taxpayers, not what it actually costs to live. For example, when the IRS decreased the allowable expense for out-of-pocket healthcare costs because the data showed that expenditures decreased, that decrease does not necessarily mean the costs of out-of-pocket healthcare costs have gone down; it just means taxpayers are spending less on that expense. Perhaps taxpayers are spending less because they cannot afford to pay what it truly costs, or they are taking money from that category to cover the expenses in another category. There is no way to know for certain because the current ALE standards do not account for what it costs to live. The Bureau of Labor Statistics, which provides the Consumer Expenditure Survey (CES) data relied on for the ALE standards, cautions against using CES data when relating averages to individual circumstances.[7]

The limitations to the current ALE standards are not limited to the amount of expenses allowed. Additionally, the National Taxpayer Advocate believes the current ALE standards are out-of-date for what it costs to maintain a basic standard of living for the health and welfare of taxpayers' households today. The National Taxpayer Advocate suggested alternative measures, including concepts such as family budgets and the self-sufficiency standard. The IRS found these alternatives to be unacceptable

4 *See* IRM 5.15.1.7.

5 The amount reasonably necessary for food, clothing, housing (including utilities, home-owner insurance, home-owner dues, and the like), medical expenses (including health insurance), transportation, current tax payments (including federal, state, and local), alimony, child support, or other court-ordered payments, and expenses necessary to the taxpayer's production of income (such as dues for a trade union or professional organization, or child care payments which allow the taxpayer to be gainfully employed). *See* Treas. Reg. § 301.6343-1.

6 *See* IRM 5.15.1.7(5). National and local expense standards are guidelines. If it is determined a standard amount is inadequate to provide for a specific taxpayer's basic living expenses, allow a deviation. Require the taxpayer to provide reasonable substantiation and document the case file.

7 Bureau of Labor Statistics, *Frequently Asked Questions*, https://www.bls.gov/cex/csxfaqs.htm#q13.

because they are not accurate, do not cover sufficient geographical areas, are not collected regularly, or are not generally accepted as a reliable data source.

However, Congress has mandated that the Secretary "shall develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses."[8] This is a clear Congressional mandate for the IRS. Despite the IRS's unwillingness to collaborate with the National Taxpayer Advocate in adopting a different approach to the ALE standards, the National Taxpayer Advocate will move forward with researching alternatives to how the IRS develops and implements the ALE standards.

TAS Recommendation	**[13-1] In conjunction with TAS, consider the family budget or self-sufficiency standard as an alternative method to calculate the cost of providing for the health and welfare of households. The alternative method should not be a cap to allowable expenses, but should represent the floor for what can be claimed.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	In response to the NTA's report to Congress in 2005, IRS considered the use of self-sufficiency standards as an alternative to the ALE. IRS determined that the data did not meet standards of accuracy, cover a sufficient geographic area, are not collected regularly, and are not generally accepted as reliable. In addition, the self-sufficiency standard reports for the various states use a variety of state and local sources and lack the consistency needed to ensure nationwide consistency and fairness. In discussions with TAS regarding decreases in the ALE for 2016, IRS agreed to consider other sources for use in calculating the ALE. Where practicable for the taxpayer and the IRS, no substantiation is required for some expenses unless the monthly amount exceeds the national level. This includes public transportation for the purchase of bus tokens, subway passes, out-of-pocket health care costs for medication, doctors, dentists, and food, clothing, and household supplies for the purchase of numerous personal and household items. For an automobile loan/ lease or mortgage/rent amount, where the expense can vary significantly and substantiation would be less cumbersome, documentation is required in some cases.
TAS Response	The National Taxpayer Advocate understands that it will not be easy finding an alternative to the current ALE standards that is both sufficient for taxpayer needs and consistent for all taxpayers. She invites the IRS to join her in researching and considering other sources for calculating the ALE standards. The National Taxpayer Advocate appreciates that in some instances the taxpayer does not have to provide documents to substantiate a given expense. However, the allowed amount serves as a cap on the expense, when we know that some taxpayers will pay more and some will pay less because the ALE standards are based on average expenditures. Second, in many cases taxpayers will forego one expense in order to pay for a more immediate or costly expense. The current system is not always reflective of a taxpayer's true financial situation, making it difficult to substantiate.

8 IRC § 7122(d)(2)(A).

TAS Recommendation	**[13-2] Expand the standard to include additional expenses for basic technology in the household, child care, and retirement savings.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The 2007 redesign of the ALE included the addition of cell phones as a utility expense. In addition, in October 2011, new Housing and Utilities standards were released which included an allowance for cable television and internet services. The National Standards include a miscellaneous allowance, which was increased in 2007. It was established for living expenses not included in any other standards or allowable expense items and can be used to purchase a computer or tablet. IRS did consider a child care standard in 2007, however the data available was not adequate to establish a standard. Child care costs vary widely by type (nanny, babysitter, au pair vs daycare center or home-based). Families may need different amounts depending on parents' work schedules and other factors such as a child's age and time spent in child care. Child care is an allowable expense when necessary to provide for a taxpayer's and their family's health and welfare and/or production of income. Discretionary retirement savings are not a necessary current living expense while the taxpayer is repaying past due taxes.
TAS Response	The current ALE standards are out-of-date and as a result, do not reflect all expenses necessary to maintain the health and welfare of households today. The National Taxpayer Advocate does appreciate that it may be challenging to develop a way to measure all necessary expenses, to include childcare, basic technology in the household, and retirement savings. However, until the IRS has a system that includes these basic expenses, the ALE standards will not truly reflect what it costs to maintain the health and welfare of households today. These taxpayers will be susceptible to IRS collection action that otherwise would be avoided due to financial harm.

TAS Recommendation	**[13-3] Reconsider the recent decrease in ALE standards for national standards, out-of-pocket healthcare, housing, and transportation.**
IRS Response	NTA Recommendation Not Adopted. Between 2007 and 2015 there were no decreases to the ALE standard amounts. In 2016 after a thorough and collaborative review of the standards, the need to adjust the amounts based upon actual data resulted in a decrease in the ALE in some categories. Since there were no decreases in the standard amounts for eight years, there was a wide variance between the actual data driven standard amount for some expenses and the amount that IRS had published. Rather than drastically reduce the standard amount for those expenses in 2016, the IRS capped the decrease to a portion of the gap in an effort to minimize impact on the taxpayer. The standards will be evaluated annually based on current national data.
IRS Action	N/A

TAS Response

TAS is unable to confirm that the categories in the ALE standards have decreased. If anything, our research shows that costs to live are increasing. Since the IRS relies on average expenditures, we are not aware of a way to test the IRS's decision to decrease ALE standards. As it is now, the IRS is basing its decision to decrease ALE standards on data that shows taxpayers are spending less. It does not mean that the costs of these goods and services are decreasing. In the last few years, taxpayers have felt the effects of the Great Recession, with high unemployment and underemployment. People who did not have the money to spend on necessary expenses resorted to foodbanks and other resources. Since our research shows that costs are going up, it is possible that taxpayers are simply trying to do more with less. To use this data to justify lowering the necessary and basic living expenses and thus obtain a tax payment, perpetuates the dire financial straits taxpayers found themselves in during the recession and the years after it.

MSP #14 APPEALS: The Office of Appeals' Approach to Case Resolution Is Neither Collaborative Nor Taxpayer Friendly and Its "Future Vision" Should Incorporate Those Values

PROBLEM

In several Annual Reports to Congress, the National Taxpayer Advocate has detailed a variety of concerns regarding programs and policies adopted by the IRS Office of Appeals (Appeals) that continue to disadvantage taxpayers. Among other things, taxpayers are experiencing limitations on their ability to obtain in-person conferences and are encountering Appeals proceedings with narrowing scopes of substantive review. Appeals' proposed five-year trajectory is set forth in its preliminary design for a "Future State." However, this Concept of Operations (CONOPS) is limited by its reliance on a "one size fits all" model that is primarily bureaucratic- and enforcement-oriented.

ANALYSIS

The resource constraints to which Appeals recently has been subject present challenging issues that underlie Appeals' CONOPS. For example, between fiscal years (FYs) 2013 and 2016, the number of Appeals cases has dropped by seven percent, whereas the number of Appeals Hearing Officers (Hearing Officers) available to resolve those cases has dropped by 24 percent. Appeals' need for operational efficiency and cost-effectiveness, however, is not, in the long run, best served by such steps as limiting access to in-person conferences or reducing the quality of substantive review. Rather, taxpayers who choose to engage in dialogue with the IRS through participation in the Appeals process should be encouraged, educated, and welcomed as partners in the voluntary tax system. The National Taxpayer Advocate urges Appeals to embrace a "Future State" that is premised on a collaborative model of tax administration, that recognizes the desire of most taxpayers to be compliant, and that is designed to work with them in furtherance of this goal.

TAS RECOMMENDATIONS

[14-1] Adopt an Appeals future vision in which Appeals adopts policies and organizes itself in a way that makes in-person Appeals conferences readily available to good-faith taxpayers who request a live conference as part of the case resolution process.

[14-2] Adopt an Appeals future vision in which Appeals expands its geographic footprint and strategically reallocates Campus-based and Field-based Hearing Officers to increase the confidence of taxpayers that they will have access to Hearing Officers with requisite local knowledge and substantive expertise, regardless of the assigned location.

[14-3] Adopt an Appeals future vision in which Appeals revises its procedures to allow Hearing Officers additional discretion and time to personally undertake factual development and provide more in-depth substantive review in seeking fair and efficient resolutions of Examination-based and Collection-based Appeals cases.

IRS RESPONSE

As part of the IRS' Future State efforts, Appeals completed a high-level concept for its future vision. This vision included a set of guiding principles that will help us innovate and improve the efficiency

of our operations while fulfilling our mission and remaining fair, impartial and independent. The preliminary design also identified a number of key features of an appeal that align with the guiding principles and support our commitment to taxpayers, employees and tax administration. It is premature to draw any conclusions about Appeals' future state planning. The MSP gives the impression that Appeals' Future State is in final form when it is still very much under development. The MSP criticizes our future state work because it is general and provides few specifics. We have been very clear with TAS in sharing our materials that our design is preliminary and will evolve over time. We appreciate the comments and views of TAS and will take those into account as specific future plans are developed. The view of other internal stakeholders and external stakeholders will continue to be considered as well.

With respect to some of Appeals recent policy clarifications and changes, we continue to consider feedback. These changes were not specifically connected to our Future State work. Changes to policies were driven by a desire to fulfill the Appeals mission of providing an appeal that is impartial to both the government and the taxpayer. Taking compliance actions in Appeals is inconsistent with its mission and deprives taxpayers of a true appeal.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate appreciates Appeals' willingness to take her views, and those of other internal and external stakeholders, into account when developing and implementing policies. Since Appeals' "Future State" represents a central, ongoing aspect of Appeals' planning, TAS believed it was important to provide contemporaneous commentary and suggestions with respect to this effort. As a result, we examined the most recently published "Future State" document, which was dated August 31, 2015. At the outset of our analysis, TAS explained that the "Future State" was preliminary and represented a proposed trajectory.[1] Nevertheless, some of the "Future State's" aspirations and guiding principles possessed troubling aspects that TAS wished to address so its comments could be considered as the "Future State" development moved forward.

Appeals' "Future State" is limited by its reliance on a "one size fits all" model that is primarily bureaucratic- and enforcement-oriented. From a broader, more fundamental perspective, Appeals' "Future State" appears to be focused primarily on internal Appeals logistics, such as technology, training, career paths, case management, and communications, all of which are worthy candidates for systemic enhancement. Nevertheless, to be truly significant and effective, Appeals' "Future State" should center on the taxpayer experience and on improving case resolution via engagement with the taxpayer. At the same time as the Appeals "Future State" was articulated, however, Appeals was instituting policies that restricted taxpayers' ability to obtain in-person Appeals conferences and encouraged Appeals Officers to invite Counsel or Compliance to conferences, even against the wishes of taxpayers.

The National Taxpayer Advocate believes that the "Future State" development process presents an exceptional opportunity to improve the taxpayer experience within Appeals. To the extent that Appeals is willing to expand the current focus of its "Future State" planning beyond primarily internal issues, Appeals can use it as a vehicle for establishing a more welcoming environment for taxpayers and facilitating streamlined case resolutions. Such a policy alteration would place Appeals well on the road toward better protecting taxpayer rights, fostering long-term tax compliance, and minimizing expenditures of both taxpayers and the government.

1 National Taxpayer Advocate 2016 Annual Report to Congress 204.

TAS Recommendation	**[14-1] Adopt an Appeals future vision in which Appeals adopts policies and organizes itself in a way that makes in-person Appeals conferences readily available to good-faith taxpayers who request a live conference as part of the case resolution process.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	When finalized, Appeals' future vision will make in-person conferences readily available to good-faith taxpayers when necessary for effective case resolution. Recent changes to IRM 8.6.1.4.1(4) relating to Appeals' face-to-face procedures were not designed to limit access to face-to-face conferences. Rather, the new rules were intended to encompass the circumstances in which face-to-face conferences are needed in most cases. Most Appeals cases are resolved successfully by telephone, with customer satisfaction data indicating that most taxpayers prefer to communicate with Appeals via telephone. Appeals nevertheless continues to offer a full range of conference options, including virtual and in-person, which includes circuit-riding. This approach is consistent with Appeals' future vision; however, Appeals remains open to suggestions for additional criteria that should be considered. And, going forward, Appeals will incorporate practitioner and taxpayer feedback about how the new policy is being applied into training for our employees as appropriate.
TAS Response	The National Taxpayer Advocate urges Appeals to broaden its future vision to incorporate the practice of allowing in-person conferences when Appeals Officers or good-faith taxpayers request such a meeting. In-person conferences can be essential for developing rapport among the parties, enabling the effective presentation of complex factual and legal issues, gauging credibility of witnesses, assessing hazards of litigation, and reaching a meeting of the minds. Other conference methods can be effective, as well, but the IRS should not force these other alternatives on unwilling taxpayers and tax practitioners. Doing so will only breed disenchantment with the IRS administrative resolution process and encourage future litigation so that taxpayers can effectively present in court the case they were hoping to present in Appeals. By contrast, allowing in-person conferences will not only decrease the likelihood of future litigation, but will increase taxpayer satisfaction with the IRS, enhance the probability that the taxpayer will accept the outcome of the Appeals proceeding, even if it is unfavorable, and strengthen the odds of future tax compliance. Further, according to Appeals, "Most Appeals cases are resolved successfully by telephone, with customer satisfaction data indicating that most taxpayers prefer to communicate with Appeals via telephone." Assuming that to be the case, making in-person conferences available to the relatively few taxpayers who request them would not be precluded by resource considerations, and would benefit both the government and taxpayers when such conferences are believed by taxpayers to be essential for the quality presentation of their cases.

TAS Recommendation	**[14-2] Adopt an Appeals future vision in which Appeals expands its geographic footprint and strategically reallocates Campus-based and Field-based Hearing Officers to increase the confidence of taxpayers that they will have access to Hearing Officers with requisite local knowledge and substantive expertise, regardless of the assigned location.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	When finalized, Appeals' future vision will take into account how to continue satisfying the legal requirement of having an Appeals Officer regularly available in each state given resource constraints and anticipated future budgetary environments. Appeals will continue to train its Appeals Officers to ensure they are versed in the laws of multiple states and the local economic environment (or able to seek expert assistance) when necessary for quality case resolution. Matching the expertise of the Appeals employee, regardless of geographic location, to the issues presented will continue to be a critical criterion to settling a case.
TAS Response	Training Hearing Officers to ensure they are versed in the laws of multiple states and the local economic environment, and allowing them to seek expert assistance are laudable measures, but they are not directly responsive to the National Taxpayer Advocate's recommendation. An essential aspect of quality case resolution is rapport between a taxpayer and a Hearing Officer. Intangible but incalculably powerful benefits arise from a common understanding of the social and economic challenges facing the community in which a taxpayer lives. This shared knowledge of circumstances can most effectively be achieved when Hearing Officers live in relatively close proximity to the taxpayers with whom they are interacting. Concentrating Hearing Officers in Campuses and larger cities from which they communicate with taxpayers by telephone, by videoconferencing, or by occasionally traveling to distant locations to conduct circuit riding conferences detaches Hearing Officers from the taxpayers they serve. This trend toward consolidation and separation is precisely the opposite of what should be occurring. Instead, Appeals should expand its geographic footprint and reengage with taxpayers, which will help taxpayers gain confidence that their cases will be brought before Hearing Officers who are accessible, committed to case resolution, and conversant with their circumstances.

TAS Recommendation	**[14-3] Adopt an Appeals future vision in which Appeals revises its procedures to allow Hearing Officers additional discretion and time to personally undertake factual development and provide more in-depth substantive review in seeking fair and efficient resolutions of Examination-based and Collection-based Appeals cases.**
IRS Response	NTA Recommendation Not Adopted. We believe this recommendation is inconsistent with the mission of Appeals. To provide an impartial review, Appeals Officers must not function as investigators or first finders of fact. When an Appeals employee takes an investigative action that strengthens the case for either party, the employee runs the risk of being viewed as invested in the outcome of the decision. Any hypothetical gains in efficiency achieved by allowing Appeals Officers to engage in factual development would be substantially outweighed by the damage to Appeals' independence, both real and perceived.
IRS Action	N/A

TAS Response

The National Taxpayer Advocate does not agree that allowing Hearing Officers the discretion to undertake limited factual development and providing them with enough time to do so compromises either the actual or perceived independence of Appeals. Of course, a Hearing Officer should not attempt to usurp the role of Compliance personnel, but neither should the goal of operating in a "quasi-judicial manner" be allowed to supplant reasonable efforts at resolving cases at 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, current procedures under the Appeals Judicial Approach and Culture (AJAC) project 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.

MSP #15 ALTERNATIVE DISPUTE RESOLUTION (ADR): The IRS Is Failing to Effectively Use ADR As a Means of Achieving Mutually Beneficial Outcomes for Taxpayers and the Government

PROBLEM

The IRS acknowledges that alternative dispute resolution (ADR) can play a useful role as part of its operations. Nevertheless, the IRS is underutilizing this potentially valuable tool and administering ADR in a way that is unattractive to taxpayers. Taxpayers can reasonably question the accessibility, cost effectiveness, and impartiality of IRS ADR proceedings. These concerns, together with unfamiliarity and a lack of demonstrably positive outcomes, cause taxpayers to overlook ADR as a means of resolving their tax controversies. To this point, the IRS is failing to take advantage of what could be a highly effective mechanism for administrative dispute resolution.

ANALYSIS

The IRS could benefit a great deal from the ADR lessons learned by commentators, businesses, various federal agencies, and tax authorities of certain foreign countries. For example, in a range of different situations, ADR consistently generates quicker, more cost-effective case resolutions with higher levels of participant satisfaction and compliance as compared with cases following the more standard litigation path. Likewise, a quality ADR program can be a substantial contributor to successful tax administration and can significantly improve the taxpayer experience. Among other things, studies in this area demonstrate that efficient ADR can have a positive impact on tax compliance. Nevertheless, the IRS is failing to realize the potential advantages offered by ADR. During fiscal year 2016, the IRS reported only 306 ADR case receipts — less than one half of one percent of the total Appeals case receipts for that same year. Many reasons contribute to the underutilization of ADR within the IRS, including significant limitations on its availability, IRS veto power (effectively) over the initiation and outcome of proceedings, and questions regarding the neutrality of facilitators. If thoughtfully and creatively implemented, however, ADR could substantially increase the efficiency and timeliness of case resolutions. In turn, an effective ADR program would protect taxpayer rights, reduce taxpayer burden and cost, encourage voluntary compliance, and economize scarce IRS resources.

TAS RECOMMENDATIONS

[15-1] Expand ADR to all taxpayers upon request, including at the Compliance level, as well as the Appeals stage.

[15-2] Publish quarterly data relating to the settlement percentages and the cost-effectiveness of ADR.

[15-3] Reduce the administrative burdens surrounding ADR, allow video conferencing where desired by the parties, and examine scenarios in which a redesigned arbitration option can represent an attractive alternative to litigation.

[15-4] Establish a separate unit to house IRS personnel assigned exclusively to the ADR program.

IRS RESPONSE

We agree with TAS that ADR can increase the efficiency and timeliness of case resolution. Since 1927, Appeals has served as an independent dispute resolution forum for taxpayers to contest IRS Compliance actions. The traditional Appeals process, itself a form of dispute resolution, uses informal taxpayer conferences to provide an impartial review of the facts and litigating prospects as an alternative to litigation. In addition to our traditional dispute resolution process, we offer a number of alternative dispute resolution options for taxpayers. In the early 1990s, following enactment of the Administrative Dispute Resolution Act, Appeals began exploring the use of mediation-based alternative dispute resolution (ADR) techniques to settle tax disputes more efficiently. Later, the IRS Restructuring & Reform Act of 1998 (RRA 98) effectively codified then-existing ADR programs and directed Appeals to establish a pilot arbitration program. Over the years, Appeals has developed ADR programs for each stage of the return filing process and expanded existing procedures to new types of cases and customers.

Appeals offers taxpayers four voluntary, mediation-based dispute resolution options:

1. Fast Track Settlement (FTS) – provides taxpayers a mechanism to resolve tax disputes during the Examination process using an Appeals Officer as a mediator. Settlements may be based on hazards of litigation and the mediator may propose, but not impose, a settlement on the parties. Subject to restrictions, FTS is available for taxpayers under the jurisdiction of the Large Business & International (LB&I), Small Business & Self-Employed (SBSE) and Tax Exempt Government Entities (TEGE) operating divisions.
2. Fast Track Mediation – Collection (FTMC) – provides taxpayers with Offer in Compromise (OIC) and Trust Fund Recovery Penalty (TFRP) cases an opportunity to resolve tax disputes during the Collection process using an Appeals Officer as a mediator. Hazards of litigation may not be considered.
3. Rapid Appeals Process (RAP) – provides most LB&I taxpayers and Compliance an opportunity to use mediation techniques to resolve their disputes while the case is under Appeals' jurisdiction. If RAP negotiations are unsuccessful, the taxpayer and Appeals may continue with the traditional Appeals process and settle the case without Compliance involvement.
4. Post-Appeals Mediation (PAM) – provides taxpayers with a final administrative opportunity to resolve tax disputes if good-faith traditional Appeals negotiations are unsuccessful. Each PAM must use an Appeals official as a mediator; however, a taxpayer may elect to include a non-IRS co-mediator at its own expense. PAM is available for Examination, Offer in Compromise and Trust Fund Recovery cases.

Appeals and Compliance have taken steps in recent years to encourage the use of these programs – and will continue to do so. Many taxpayers, however, favor the traditional appeals process and have been unwilling to resolve their disputes using an alternative approach.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

In a broad sense, Appeals itself represents a form of dispute resolution. Nevertheless, other governmental agencies and private industry employ more traditional types of ADR that could, if creatively and effectively implemented by the IRS, facilitate quicker and more efficient settlements. To its credit, Appeals has developed some ADR programs. These programs, however, are sparsely used by taxpayers and generated only 306 case resolutions during fiscal year (FY) 2016.

In part, this low usage may be attributable to lack of familiarity on the part of taxpayers and their representatives. Any hesitancy to utilize ADR, however, will quickly disappear when taxpayers and their representatives see indications that ADR, as it does in the case of other governmental agencies, such as the Social Security Administration and the Environmental Protection Agency (EPA), will produce resolutions that take less time and incur fewer costs. Embracing the cooperative model of taxation, of which a robust ADR program is a central part, would provide a broad range of benefits for both taxpayers and the government, including better resource allocation and improved long-term tax compliance.

TAS Recommendation	**[15-1] Expand ADR to all taxpayers upon request, including at the Compliance level, as well as the Appeals stage.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	Over the years, Appeals has consistently increased the availability of its ADR options, including making SBSE FTS available nationwide in 2013 following the conclusion of a pilot program limited to only eight jurisdictions. Appeals also expanded PAM to OIC and TFRP cases in 2014 and is planning to expand RAP to all SBSE E&G and LB&I cases (other than Individual International Cases) in 2017. Appeals does not plan to expand its mediation-based ADR programs to all taxpayers upon request without restriction because not all cases are suitable for mediation. For example, cases involving whipsaw issues, frivolous issues, docketed issues, issues for which the taxpayer has requested competent authority assistance, cases or issues designated for litigation, or issues for which mediation would be inconsistent with sound tax administration (*e.g.* issues governed by closing agreements, *res judicata*, or controlling precedent) are properly excluded from Appeals' mediation programs. Additionally, it is appropriate to allow Compliance input into ADR requests because mediation requires the investment of time and personnel, which may be unfeasible in some instances due to resource constraints. Moreover, systemically generated cases may not involve a Revenue Agent or Revenue Officer with whom to conduct negotiations. Taxpayers whose cases are ineligible for mediation continue to have an alternative to litigation via the traditional Appeals process.
TAS Response	The National Taxpayer Advocate applauds IRS efforts to expand ADR. Nevertheless, if Appeals is committed to achieving a broadly successful ADR program, it must expand ADR availability substantially. In particular, offering ADR to most taxpayers during the Compliance stage of the case would increase usage and yield great benefits. Among other things, ADR at the Compliance stage would help the parties better understand the issues, reach agreement on disputed facts, and settle cases at an earlier stage in the controversy process. Also, just as a meaningful ADR session involves give-and-take, so the IRS should consider relinquishing its effective veto power over ADR availability to encourage substantial usage of the program. To the extent that taxpayers and practitioners sense a power differential in the threshold ability to initiate an ADR proceeding, many will automatically discard such a program as being based on an uneven playing field.

TAS Recommendation	**[15-2] Publish quarterly data relating to the settlement percentages and the cost-effectiveness of ADR.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	Appeals will explore sharing additional data with taxpayers via outreach presentations to illustrate the benefits of ADR. Implementation date: September 30, 2017
TAS Response	As cited by the National Taxpayer Advocate in this Most Serious Problem, some other agencies, such as the EPA and the Air Force, provide publicly available data on time and cost savings attributable to the use of their ADR programs. If taxpayers and their representatives are consistently and systematically provided with this detailed information, assuming it is positive, they will quickly embrace the IRS's ADR program. On the other hand, if the data is less-than-compelling, the IRS must figure out why and take decisive steps to make meaningful changes in its ADR program. Comprehensive ADR data should be included in the IRS annual compliance statistics. Sharing such information via public presentations is beneficial but cannot be treated as a substitute for formal reporting.

TAS Recommendation	**[15-3] Reduce the administrative burdens surrounding ADR, allow video conferencing where desired by the parties, and examine scenarios in which a redesigned arbitration option can represent an attractive alternative to litigation.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	Appeals is exploring options to expand the possibilities for virtual conferences with taxpayers and expects to offer a new option in the near future. In 2015, Appeals eliminated its Arbitration program due to lack of use. In the 14 years during which the program was offered, only 16 taxpayers pursued the option with only two reaching agreement. Based on this experience, there is little, if any, evidence to suggest that arbitration is likely to be an attractive alternative to litigation for taxpayers.

TAS Response	The National Taxpayer Advocate applauds the IRS's goal of facilitating access to ADR through the use of videoconferencing and Virtual Service Delivery (VSD) technologies. She continues to urge the IRS to expand its capacities in both of these areas as it moves forward. These methods of holding Appeals conferences and their availability will be further examined as part of a 2017 Most Serious Problem on the broader subject of in-person Appeals conferences. At the time the IRS discontinued its post-appeals arbitration program, the National Taxpayer Advocate submitted comments suggesting that the IRS consider the possibility that low taxpayer usage might be a sign of design or operational flaws, rather than an indication that taxpayers were irreconcilably averse to such a program. This issue remains an open question, and a revamped post-appeals arbitration program that effectively addresses previous taxpayer and practitioner concerns about high costs and longer-than-desired delays inherent in the program could still represent an important element within an ADR suite of offerings. Similarly, ADR expansion overall will benefit from a perspective that, in addition to identifying reasons for current under-usage, also affirmatively removes those obstacles and focusses on encouraging taxpayers to take advantage of these programs.

TAS Recommendation	**[15-4] Establish a separate unit to house IRS personnel assigned exclusively to the ADR program.**
IRS Response	NTA Recommendation Not Adopted. It is unnecessary and would be inefficient to establish a separate IRS unit, in addition to the Office of Appeals, for ADR. Historically, Appeals has successfully resolved the majority of cases that come to it. Consistent with the statutory mandate of RRA 98, Appeals Officers are trained to be impartial and independent as part of their role in the traditional Appeals process. In addition, all Appeals Officers are offered nationally-recognized mediation training. According to Appeals' customer satisfaction survey data for FY13 – FY15, taxpayers and practitioners have positive views of Appeals' independence overall (67% satisfied), ADR overall (70% satisfied) and ADR impartiality (74% satisfied). Appeals continually reviews its policies to ensure that its practices and procedures support and reinforce its independence. Establishing a separate unit to house personnel assigned exclusively to the ADR program would be duplicative with the Office of Appeals.
IRS Action	N/A
TAS Response	The most important number in evaluating the effectiveness of the IRS's ADR program is 306. This number represents all of the cases resolved via ADR in FY 2016. To expand usage, Appeals must persuade taxpayers and their representatives that they can benefit from the ADR process. As discussed above, Appeals must publish data demonstrating the effectiveness and efficiency of ADR, to the extent that such information exists. Further, taxpayers and their representatives must be presented with a forum for seeking settlement that, in perception and in reality, is independent not only of the IRS, but also of Appeals. A separate unit housing neutrals assigned solely to the IRS's ADR program would not only highlight its new commitment to ADR, but would proclaim and protect the independence of those neutrals from other portions of the IRS organization. The more taxpayers and their representatives perceive the ADR program as an effective, efficient, and independent vehicle for seeking case settlement, the more likely they are to pursue a wide range of case resolutions through this methodology. Accomplishing this broad usage would have tremendous benefits both for the IRS and taxpayers in terms of reduced proceedings, lowered costs, and improved interactions.

MSP #16 FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA): The IRS's Approach to International Tax Administration Unnecessarily Burdens Impacted Parties, Wastes Resources, and Fails to Protect Taxpayer Rights

PROBLEM

The Foreign Account Tax Compliance Act (FATCA) was passed in 2010 in response to IRS and congressional concerns that U.S. taxpayers were not fully disclosing the extent of financial assets held abroad. The concerns giving rise to FATCA are understandable. Nevertheless, the IRS's approach to implementing FATCA and related international provisions has created significant compliance burdens and risk exposures to a variety of impacted parties including non-resident aliens, U.S. citizens living abroad, and foreign financial institutions (FFIs).

ANALYSIS

The IRS has adopted an enforcement-oriented regime with respect to international taxpayers. Its operative assumption is that all such taxpayers should be suspected of fraudulent activity, an outlook that causes the IRS to mistrust stakeholders, dismiss useful comments and suggestions, and misallocate resources. This perspective has resulted in the IRS unnecessarily freezing over 102,000 refund claims of non-resident aliens, many of which were filed by low risk international students, and proposing Internal Revenue Code (IRC) Chapter 3 and Chapter 4 regulations that would explicitly make the availability of credits and refunds to covered taxpayers contingent on the actions of withholding agents. U.S. expatriates have also reported suffering significant banking "lock-out" as a result of FATCA, while all U.S. citizens are potentially subject to the revocation or denial of passports in the case of certain tax liabilities. FFIs also continue to face regulatory uncertainty, reputational risk, and ongoing expenditures regarding FATCA and related information reporting obligations. The IRS could achieve better results and reduce hardships placed on taxpayers and FFIs if it took a collaborative, service-based approach that focused on identifying the relatively few bad actors and recognizing the good faith efforts of the compliant majority.

TAS RECOMMENDATIONS

[16-1] Implement policies and procedures for reviewing and issuing Chapter 3 and Chapter 4 refund claims that mirror those processes currently in place with respect to domestic taxpayers under IRC § 31 and related regulations.

[16-2] Adopt a same country exception that excludes from FATCA coverage financial accounts held in the country in which a U.S. taxpayer is a bona fide resident.

[16-3] Protect the rights of taxpayers potentially impacted by the new law regarding revocations and denials of passports by broadly interpreting hardship and other discretionary exclusions; providing an administrative appeal before certifying a "seriously delinquent tax debt" to the Department of State (DOS); working with the DOS to encourage it to adopt expansive definitions of humanitarian and emergency exceptions; and informing taxpayers of the availability of TAS assistance before passport revocation or denial occurs.

[16-4] Reduce burdens on FFIs by adopting a collaborative model of tax administration that encourages FFIs to correct erroneous reporting and focuses on providing the clarity and consistent guidance needed for reasonable, cost-effective compliance with FATCA.

IRS RESPONSE

FATCA is an information reporting regime designed to foster voluntary compliance. The collection of information from foreign financial institutions enhances incentives for U.S. taxpayers maintaining accounts with those financial institutions to report their assets and income accurately, thereby narrowing the tax gap. In the absence of visible IRS compliance enforcement activity, the incentive to comply first brought about by enactment of new reporting rules will degrade over time.

The IRS's administration of FATCA is helpfully viewed within the context of widespread use of offshore accounts to conceal assets and income that prompted the law's enactment. The public record supporting the need for greater transparency and improved reporting is vast and dates back many years. *See*, *e.g.*, *Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities* (November 1999); *Role of U.S. Correspondent Banking in International Money Laundering* (March 2001); *Tax Haven Abusers: The Enablers, The Tools, and Secrecy* (August 2006); and *Tax Haven Banks and U.S. Tax Compliance* (2008) (all reports issued by the Senate Permanent Subcommittee on Investigations).

In 2008 and 2009, the Senate Permanent Subcommittee on Investigations held hearings and released a bipartisan report examining how some banks located in jurisdictions that were then known for their preservation of secrecy were deliberately helping U.S. customers hide their assets offshore to evade U.S. taxes. The hearings focused on two banks, UBS AG, the largest bank in Switzerland, and LGT, a private bank owned by the royal family of Liechtenstein. On the first day of the hearings, UBS acknowledged its role in facilitating U.S. tax evasion, apologized for its wrongdoing, and promised to end it. It later entered into a Deferred Prosecution Agreement with the U.S. Department of Justice (DOJ), paid $780 million in fines, interest and restitution, and turned over approximately 4,500 accounts with U.S. client names that had not been disclosed to the IRS. It also committed to disclosing to the IRS all future accounts opened for U.S. persons. This type of misuse of offshore financial accounts continued notwithstanding the existence of the Foreign Bank Account Reporting (FBAR) rules, which had been enacted many years previously and produced only limited reporting.

It was against this backdrop that Congress, in 2010, enacted the Foreign Account Tax Compliance Act (FATCA), which requires foreign financial institutions to either identify and disclose their U.S. customer accounts on an automatic, annual basis or pay a 30 percent tax on their U.S. investment income. FATCA's third-party reporting regime is consistent with the recurring theme of improving compliance by sharing information with taxpayers and the IRS. This approach improves compliance, reduces controversy, and heightens fairness and integrity in the tax system.

Following the enactment of FATCA, significant progress has been made in the effort to combat offshore tax abuses. World leaders have declared their commitment to reduce cross border tax evasion. Jurisdictions around the world have declared they will no longer use secrecy laws to facilitate tax avoidance or evasion. Some of the most dramatic and important indicators of progress are the measurable increases in voluntary compliance.

In the United States as of October 2016, over 55,000 taxpayers had joined a voluntary IRS disclosure program, disclosed their hidden offshore accounts, and paid nearly $10 billion in back taxes, interest, and penalties. An additional 48,000 taxpayers made use of separate streamlined procedures to correct

prior non-willful omissions and meet their tax obligations, paying approximately $450 million in taxes, interest and penalties. The enactment of FATCA, and the commensurate increase in awareness about reporting obligations has also had a significant impact on the number of taxpayers filing FBAR disclosures. For example, in 2007, approximately 322,000 FBAR disclosures were filed. By 2015, following the first year of FATCA reporting by foreign financial institutions, FinCEN received a record high 1,163,229 FBAR disclosures.

Another development triggered by the enactment of FATCA was the request by the G8 and G20 leaders of the Organization for Economic Cooperation and Development (OECD) to develop a model agreement that, like FATCA, would enable countries to automatically exchange account information to fight cross border tax evasion. The OECD's efforts led to the development of a Common Reporting Standard (CRS), which has since been adopted by over 100 countries representing every one of the world's major economies and a significant number of smaller ones. The due diligence, account documentation, and reporting rules imposed by CRS on financial institutions are nearly identical to those required by FATCA. The result has been the adoption of FATCA-like rules in more than 100 countries. Reporting and exchange of CRS information will begin later in 2017, with widespread adoption on course for 2018.

Notwithstanding the significant strides made to improve transparency for tax purposes, the use of offshore accounts to conceal assets and income, including assets and income generated from criminal activities, remains an ongoing problem. As recently as 2014, the Senate Permanent Subcommittee on Investigations published a report detailing once again the aggressive use of offshore accounts with the intent to evade taxes. This report, rather than advising a relaxation of FATCA compliance, instead advised the tightening of such roles and the closing of perceived loopholes.

This historical context establishes the importance of the enactment of FATCA as a contributor to U.S. efforts to improve tax compliance by U.S. persons holding investments in offshore accounts by requiring reporting to the IRS by taxpayers and foreign financial institutions on these accounts.

The 30 percent withholding tax imposed under FATCA was crafted as an incentive for voluntary reporting. By necessity, the FATCA withholding tax required harmonization with a different, but long-standing, withholding tax imposed under Chapter 3 of the Code on payments of U.S. source income to non-residents. The IRS has long confronted the challenge of mitigating the risk of fraudulent or erroneous claims for refunds of the non-resident withholding tax, and the advent of the FATCA withholding tax only increased those risks. Nevertheless, the IRS approach to using all data, including FATCA data, is continually evolving and changing to strike the appropriate balance between compliance burden and risk. To that end, we are currently evaluating policies and procedures for reviewing and issuing Chapter 3 and FATCA refund claims alike, relying on best practices and models, such as fraud filters, that we use to identify fraudulent refunds within the general Form 1040 population. Our goal is to appropriately balance our responsibility to promptly process and pay legitimate refund claims with our responsibility to protect the government against fraudulent refund claims. It is important to note, however, that the vast majority of refund claims filed by non-residents are those related to Chapter 3 withholding, not FATCA, and while this does not eliminate the challenge, the issue is not primarily a FATCA issue. Both Chapter 3 and FATCA require significant systemic upgrades to improve the IRS's ability to compare data and quickly determine whether reporting is consistent with third-party reporting, thereby paving the way for the most proper and well-balanced responses possible.

The IRS recognizes that the issues faced by individual U.S. taxpayers located abroad may be unique and continues to look for opportunities to ease certain reporting burdens for these individuals. The filing requirement thresholds for U.S. individuals living abroad was set much higher than taxpayers who live

in the U.S. to alleviate the filing burden for a large number of expats. All Americans are required to report and pay tax on worldwide income, regardless of where they live, work or conduct business, but the risk of U.S. tax avoidance by a U.S. taxpayer holding an account with a Foreign Financial Institution (FFI) continues to exist.

Ultimately, the NTA's recommendation would require a change in the law. The result of such a law change should be considered in light of more than 100 countries working now to implement CRS. CRS, like FATCA, requires financial institutions to conduct due diligence to identify the owners of financial accounts and to report information about non-resident account holders to their host-country tax administrations. As such, no account holder of any nationality or residency can expect to avoid the obligation to provide accurate account documentation or to report assets and income accurately. Also, no financial institution can expect to avoid conducting the same elevated level of due diligence on its account holders. In the course of engagements with financial institutions on FATCA, frequent concerns have been raised about reducing complexity, which is an objective taken into account.

The IRS recognizes the issues and challenges FFIs face with FATCA reporting and took steps to alleviate burden, including providing a two-year transition period for 2014 and 2015 to allow sufficient time for the FFIs to put reporting infrastructures in place. The IRS continues to look for ways to ease the FFIs' reporting burdens and has implemented various procedures to ensure that FFIs continuously receive the guidance and support needed.

For example, to encourage correction of reporting errors, FFIs receive electronic notifications of the errors so that corrections can be made timely. The IRS also provides clear guidance to help FFIs comply with FATCA reporting in a cost-effective manner. Resources are available at no cost to every FFI through our IRS.gov website. Webpages on FATCA are updated regularly with the most recent guidance and FAQs as they become available. In addition to the FAQs, other assistance is available to FFIs and Foreign Competent Authorities through the Information Reporting Program Advisory Committee (IRPAC), IDES Help Desk (via email or toll free phone), Global IT Forum, FATCA XML Schema User Guides and FATCA Newsletters.

Finally, the legal framework underlying FATCA, including Treasury Regulations applicable to participating FFIs and Intergovernmental Agreements applicable to financial institutions operating in most of the world's financial centers, in fact requires that the IRS and other governments work together with financial institutions to identify and attempt to remedy non-compliant behavior before revoking a financial institution's "FATCA compliant" status. The IRS will continue to adhere to this legal framework as it develops and implements campaigns designed to encourage voluntary compliance and identify and respond to non-compliant behavior.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate acknowledges the challenges in developing the comprehensive worldwide information reporting regime congressionally mandated by FATCA. She further appreciates the thoughtful and constructive response provided regarding the issues raised in this Most Serious Problem narrative. That being said, the IRS's approach to FATCA implementation has created significant compliance burdens and risk exposures to a variety of impacted parties including non-resident aliens, U.S. citizens living abroad, and FFIs. Notwithstanding the IRS's above description of a collaborative model, the underlying operative assumption of IRS FATCA policy and practices appears to be that all international taxpayers should be suspected of fraudulent activity, unless proven otherwise.

The IRS asserts that there has been a longstanding risk of fraudulent or erroneous refunds with respect to withholding. Yet the IRS has not been able to provide any historical or current data of this risk. Instead, for example, the experience of withholding on international students demonstrates just the opposite – that they are largely compliant, and that detected reporting errors were largely attributable to design flaws in IRS systems. Moreover, the vast majority of withholding agents are domestic; therefore, the IRS can impose the same liability on these withholding agents as they do in cases of employment tax withholding, thereby mitigating substantial risk. Instead, it chooses to deny refunds to international taxpayers from whom taxes have been withheld, instead of seeking payment from the domestic withholding agents when this withholding is not remitted to the IRS. This is unprecedented in tax administration, and demonstrates an unfounded bias against international taxpayers.

The IRS's unfounded assumptions regarding international taxpayers lead it to ignore stakeholders, dismiss useful comments and suggestions, and misallocate resources. Rather than continuing with its blanket approach to Chapter 3 and Chapter 4 administration, the IRS would be better served by an approach that employs quantitative analysis to inform its enforcement activity. Such an approach would serve the dual purpose of relieving unnecessary burdens on broad classes of compliant taxpayers and financial institutions, while at the same time capturing increased revenue from the noncompliant taxpayers Congress had in mind when it first enacted FATCA.

TAS Recommendation	**[16-1] Implement policies and procedures for reviewing and issuing Chapter 3 and Chapter 4 refund claims that mirror those processes currently in place with respect to domestic taxpayers under IRC § 31 and related regulations.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	See narrative response. The IRS is currently evaluating policies and procedures for reviewing and issuing Chapter 3 and FATCA refund claims. We are relying on best practices and models, such as fraud filters used to identify fraudulent refunds within the general Form 1040 population. Our goal is to appropriately balance the responsibility to promptly process and pay legitimate refund claims with the responsibility to protect the government against fraudulent refund claims. The vast majority of refund claims filed by non-residents are those related to Chapter 3 withholding, not FATCA. While this does not eliminate the challenge, the issue is not primarily a FATCA issue. Both Chapter 3 and FATCA require significant systemic upgrades to improve the IRS's ability to compare data and quickly determine whether reporting is consistent with third-party reporting, thereby paving the way for the most proper and well-balanced responses possible.

TAS Response	In its response, the IRS states, "We are relying on best practices and models, such as fraud filters used to identify fraudulent refunds within the general Form 1040 population." These filters and processes are themselves in need of substantial improvement, as noted in Most Serious Problem #16. Nevertheless, an approach in which Form 1040 and Form 1040NR filers received equivalent treatment would be a very positive development. TAS looks forward to working with the IRS to develop these filters and models to operate in ways that preserve taxpayer rights and perpetuate quality tax administration. The negative impact that can result from a disparate approach are illustrated by the IRS's prior decision to freeze Chapter 3 and Chapter 4 refunds for up to one year or longer, while attempting to match the documentation provided by taxpayers with the documentation provided by withholding agents. After the systemic matching program yielded so many "false positives" that it proved untenable, these frozen refunds were finally released. Accordingly, more commonality should be established in the treatment of Form 1040 and Form 1040NR filers, including allowing Form 1040NR filers to establish their right to a refund by presenting persuasive evidence of actual withholding. The National Taxpayer Advocate agrees with the IRS that, "Both Chapter 3 and FATCA require significant systemic upgrades to improve the IRS's ability to compare data and quickly determine whether reporting is consistent with third-party reporting, thereby paving the way for the most proper and well-balanced responses possible." Care must be taken, however, not to inconvenience compliant taxpayers either while these systemic upgrades are being developed, or once they are implemented. Instead, the IRS should focus on and allocate its resources to the identifiable groups of taxpayers who represent real compliance risks. This more targeted approach likely would result in more efficient use of resources and would free already-compliant taxpayers from the burdens to which they were subjected under the systemic matching program discontinued in June 2016.

TAS Recommendation	**[16-2] Adopt a same country exception that excludes from FATCA coverage financial accounts held in the country in which a U.S. taxpayer is a bona fide resident.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The recommendation would require a change in the law, and as such, cannot be adopted. The IRS recognizes that the issues faced by individual U.S. taxpayers working, living, or doing business abroad may be unique. The IRS continues to look for opportunities to ease certain reporting burdens for these individuals. With that in mind, the IRS had set the filing requirement thresholds for U.S. individuals living abroad much higher, comparing to the taxpayers who live in the U.S., to alleviate the filing burden for a large number of expats. For example, $200,000 (at year-end) or $300,000 (at any time) for U.S. individuals living abroad filing single status vs. $50,000 (at year-end) or $75,000 (at any time) for U.S. individuals living in the U.S. All Americans are required to report and pay tax on worldwide income, regardless of where they live, work, or doing business. The risk of U.S. tax avoidance by a U.S. taxpayer holding an account with an FFI exists regardless of whether the U.S. taxpayer holds an account in his or her foreign country of residence or another foreign country.
TAS Response	The larger thresholds for FATCA coverage established regarding expatriates are helpful in reducing compliance burdens. Nevertheless, these thresholds do not directly address the problem of banking lock-out that has been widely reported by expatriates. This unfortunate and unintended consequence of FATCA could largely be remedied by a same country exception if the IRS would implement such an exception, or, if the IRS believes it lacks the authority to do so, would join the National Taxpayer Advocate and several organizations of expatriates in asking Congress to provide the remedy.

TAS Recommendation	**[16-3] Protect the rights of taxpayers potentially impacted by the new law regarding revocations and denials of passports by broadly interpreting hardship and other discretionary exclusions; providing an administrative appeal before certifying a "seriously delinquent tax debt" to the Department of State; working with the Department of State to encourage it to adopt expansive definitions of humanitarian and emergency exceptions; and informing taxpayers of the availability of TAS assistance before passport revocation or denial occurs.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The NTA first suggests that the IRS "broadly interpret hardship and other discretionary exclusions." Section 7345 affords the IRS discretion to exclude categories of tax debt that would otherwise meet the definition of "seriously delinquent tax debt." The IRS will specify these categories in sections of the Internal Revenue Manual that deal with section 7345. The NTA also suggests that the IRS "provid[e] an administrative appeal before [certification]." Section 7345 does not provide administrative appeal rights to individuals who will be or have been certified as having a seriously delinquent tax debt. As such, the IRS decided not to provide administrative appeals of its certification decisions. However, for a taxpayer's debt to qualify as "seriously delinquent tax debt," the taxpayer will have had an opportunity to go to Appeals—either in the deficiency or collection due process context—regarding the liabilities that gave rise to their certification. Moreover, upon being notified of certification by the IRS, section 7345 gives taxpayers the immediate right to judicial review in either federal district court or the Tax Court. The NTA's third suggestion encourages the IRS to work with the Department of State "to adopt expansive definitions of humanitarian and emergency exceptions." The provision of the FAST Act that grants the State Department the authority to issue a passport to a taxpayer for emergency or humanitarian reasons despite certification was codified at 22 U.S.C. § 2714a. The State Department is responsible for interpreting and implementing this provision. The IRS has no authority to do so. Also, this exception is identical to one already in place for individuals who are denied or lose their passports upon failure to pay child support. The State Department may choose to exercise its authority to grant emergency and humanitarian exceptions in IRS cases in a manner similar to child support cases. Regarding the NTA's suggestion that the IRS inform taxpayers of the availability of TAS assistance before passport revocation or denial occurs: Section 7345(d) requires the IRS to send notice to the taxpayer upon certification. Although the notice, CP508C, is mailed to the taxpayer contemporaneously with certification, as opposed to before certification, it informs the taxpayer of the availability of TAS assistance.

TAS Response

The National Taxpayer Advocate reiterates her recommendation that the IRS broadly interpret hardship and other discretionary exclusions. TAS looks forward to the specification of these categories in the forthcoming Internal Revenue Manual (IRM) guidance. The National Taxpayer Advocate likewise urges the IRS to exclude already-open TAS cases from certification. Failure to do so exacerbates problems faced by taxpayers and impinges on the National Taxpayer Advocate's ability to fulfill her congressionally assigned role of advocating on behalf of taxpayers.

Despite the circumstance that taxpayers will have had access to an appeal in the context of the underlying proceeding giving rise to the tax debt itself, and will be able to seek judicial review of the determination that the tax debt is "seriously delinquent," such an important determination with so many far-reaching ramifications should not be made in the absence of administrative appeal rights. Taxpayers should not be forced to seek such review in court, but instead should be allowed to make a case to Appeals as to why the IRS's determination is incorrect. The ability to do so may well reduce substantial stress and expense on the part of taxpayers, and save significant resources for the IRS and the courts.

The National Taxpayer Advocate is aware that the FAST Act places the State Department in the position of granting humanitarian and other emergency exceptions. Nevertheless, from a practical perspective, the IRS will be working closely with the DOS regarding the passport revocation program and she urges the IRS to expeditiously refer such cases to the correct office within the DOS, and, insofar as feasible and permissible, to encourage the DOS to apply the humanitarian and emergency exceptions broadly.

Further, taxpayers should receive notice informing them that the IRS has initiated proceedings to certify their tax debt as "seriously delinquent." As part of this communication, which would protect taxpayers' due process rights, they should also be informed that TAS is available to assist. Notifying taxpayers of the possibility of TAS assistance only after the tax debt has already been certified as "seriously delinquent" is often a case of too little, too late. Of course, TAS will do its best to help taxpayers post-certification, but taxpayers would benefit from assistance and advocacy during the process leading to the certification determination. The IRS should make taxpayers aware that the process has been initiated, and that TAS can assist on an ongoing basis.

TAS Recommendation

[16-4] Reduce burdens on FFIs by adopting a collaborative model of tax administration that encourages foreign financial institutions (FFIs) to correct erroneous reporting and focuses on providing the clarity and consistent guidance needed for reasonable, cost-effective compliance with FATCA.

IRS Response

NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.

IRS Action	A large majority of FFIs are operating under the laws of foreign countries, not the United States. It should also be noted that the applicable intergovernmental agreements establish a legal framework that is a fully collaborative model that requires communication and collaboration between the two jurisdictions' competent authorities. Having noted that, the IRS recognizes the issues and challenges FFIs face with FATCA reporting. In addition to providing a two-year (2014 & 2015) transition period to allow sufficient time for the FFIs to put in place their FATCA reporting infrastructures, we continue to look for ways to ease the FFIs' reporting burdens and have implemented various procedures to ensure that FFIs continuously receive the guidance and support they need to comply with FATCA reporting. To encourage correction of reporting errors, FFIs receive electronic notifications of the errors so that corrections can be made timely. Upon submitting a FATCA Report, the filer is automatically notified of any validation errors in the FATCA XML Schema. This prompts the filer to correct the error without any lag in time or requiring the FFI to expend additional resources to identify the error. Additionally, no penalty is applied in this instance. The IRS also continuously provides clear guidance to help FFIs comply with FATCA reporting in a cost-effective manner. Resources are available at no cost to every FFI on our IRS.gov FATCA website. The IRS regularly updates webpages with the most recent guidance and FAQs as they become available. For example, if IRS identifies an issue that is prevalent in the industry or affecting multiple FFIs, a FAQ is published on the FATCA FAQ website. The publication of the question and response provides guidance for other FFIs that may encounter the same issue in the future without the FFIs needing to expend time and resources to research the issue. In addition to the FAQs, other assistance is available to FFIs and Foreign Competent Authorities through the Information Reporting Program Advisory Committee (IRPAC), IDES Help Desk (via email or toll free phone), Global IT Forum, FATCA XML Schema User Guides and FATCA Newsletters.
TAS Response	The National Taxpayer Advocate applauds the IRS's efforts at improving its FATCA-related technology and communications where FFIs are concerned. The IRS can reduce compliance burdens on FFIs and ultimately achieve more effective results if it continues moving toward a collaborative model of tax administration with respect to FFIs. For example, a significant step in this regard would be to simplify and clarify the definition of "good faith efforts" under IRS published guidance. As things stand now, "…over-reporting, over-withholding, and misinformation could make it difficult for the IRS to use the information it is receiving as intended, and may lead to false-positives."[1] As pointed out by industry and echoed by the National Taxpayer Advocate, the IRS should "distinguish between FFIs that are colluding with their local authorities to avoid FATCA and FFIs that are making genuine, 'good faith' efforts to comply, but are unable to because of the complexity of the law."[2] The IRS appears to be making some strides in this regard, and is working cooperatively with FFIs to maintain and improve reporting rather than simply penalizing them for noncompliance. For example, the practice of informing FFIs regarding reporting errors and giving them the opportunity to remedy those errors is a positive step and is in accordance with the recommendations of the National Taxpayer Advocate. Continued cooperative progress regarding the various aspects of FATCA reporting will be most beneficial for all concerned.

1 IRS, IRS FATCA Roundtable: *Industry Concerns and Suggestions* 7 (Nov. 16, 2015).

2 *Id.*

MSP #17 INSTALLMENT AGREEMENTS (IAs): The IRS Is Failing to Properly Evaluate Taxpayers' Living Expenses and Is Placing Taxpayers in IAs They Cannot Afford

PROBLEM

The IRS is authorized by law to enter into an agreement with a taxpayer to pay any tax due in installments to facilitate full or partial collection of the tax. Installment Agreements (IAs) are offered as a collection alternative mutually beneficial to taxpayers and the IRS — taxpayers can make payments to the IRS over time and spread out the burden of paying their tax accounts, and the IRS can increase revenue by collecting portions of tax due rather than collecting nothing. However, certain types of IAs result in higher rates of taxpayers failing to make payments as agreed (defaulting) while other taxpayers are being placed in IAs where their income is less than the living expenses permitted by the IRS, and potentially not meeting their basic needs in order to pay the IRS instead.

ANALYSIS

TAS analysis of IRS IA data suggests that the IRS is placing taxpayers into IAs where their total positive income (TPI) is less than their allowable living expenses (ALEs). Nearly 300,000 taxpayers who should have qualified for currently not collectible hardship (CNC) status had entered into IAs in calendar year 2014 despite their income being below the IRS ALEs. Taxpayers may agree to an IA they can't afford out of fear of the IRS, a misunderstanding of the options available, or out of obligation to repay their debts at any cost. The IRS has the data available to determine if a taxpayer has enough income to support payments under an IA. However, the IRS does not use this information to estimate the taxpayer's ability to pay or to determine the appropriate collection alternatives for each taxpayer in order to prevent rework for the IRS, reduce burden and frustration for taxpayers, and craft individual taxpayer solutions that encourage current and future compliance. As the IRS moves on its "Future State" plans, it should focus on using data and technology to assist taxpayers entering into realistic and affordable payment arrangements instead of relying on a one-size-fits-all strategy.

TAS RECOMMENDATIONS

[17-1] Modify the allowable living expenses (ALEs) in accordance with the recommendations in the Most Serious Problem on ALEs.

[17-2] Develop an internal ability-to-pay estimator that will populate with the most current taxpayer income information for use by all employees offering IAs.

[17-3] Revise IRMs and employee training to require use of the estimator even in streamlined IA applications and provide employees with a decision tree indicating where other collection alternatives are more appropriate than IAs.

IRS RESPONSE

Section 6159 of the Internal Revenue Code authorizes the IRS to enter into an agreement with a taxpayer to pay any tax due in installments. Installment Agreements, as they are known, allow taxpayers who are not able to pay their balance in full immediately to make monthly payments over time. The IRS offers taxpayers several different installment agreement options. For example, taxpayers who

meet certain criteria may use the Online Payment Agreement Application to establish an Installment Agreement without contacting an IRS employee. Similarly, taxpayers who meet the criteria for a Streamlined Installment Agreement can obtain an installment agreement with the help of an IRS assistor without completing a Collection Information Statement or having the IRS make a determination on whether to file a Notice of Federal Tax Lien.

In an effort to reduce burden on taxpayers and improve efficiencies, the IRS has, over time, expanded the dollar amount of cases that can be closed using Streamlined Installment Agreement criteria where no Collection Information Statement is required. In 2012, the streamlined criteria was expanded to include cases with balances up to $50,000. At that time, cases with balances between $25,000 and $50,000 required the use of the Streamlined Installment Agreement Calculator to verify that the taxpayer had sufficient income to make the payment to the IRS and pay their necessary living expenses. In March 2013, Streamlined Installment Agreement procedures were modified to limit the use of the Streamlined Installment Agreement Calculator to cases where the taxpayer had defaulted an installment agreement in the prior 12 months for missing payments. This change was made as a result of feedback from stakeholders and in recognition that taxpayers using the Online Payment Agreement Application were not required to use the Streamlined Installment Agreement Calculator.

The IRS believes the NTA's proposal to utilize return information from the Integrated Data Retrieval System (IDRS) data in conjunction with Allowable Living Expense (ALE) information to determine a taxpayer's ability to pay will reduce efficiencies, likely increase costs, and may not result in less defaults. The income information available to the IRS through IDRS and other sources may be significantly out of date and not be reflective of the taxpayer's true ability to pay.

Additionally, while Installment Agreement default rates increased in 2012 (from 17.39% to 17.86%) and 2013 (to 17.95%), they have decreased steadily since 2013, down to 13.23% in 2016, which is a 26% reduction from 2012. This decrease in the default rates suggests that taxpayers who use the Online Payment Agreement Application and the Streamlined Installment Agreement procedures to establish their monthly payment agreement are accepting terms that they can afford without submitting a Collection Information Statement and having an IRS employee verify the taxpayer's income and expenses to make a costly and burdensome collection determination.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate understands that the IRS strives to create efficiencies where possible in order to use its limited resources. However, she remains concerned about the significantly higher rates of default on certain types of IAs and IAs granted by various IRS functions and believes the IRS should strive to reduce the default rates in these situations. TAS research suggests that taxpayers are entering into IAs that they cannot afford and instead should pursue other collection alternatives or be placed in CNC status.

For example, in calendar year 2014 nearly 300,000 taxpayers who should have qualified for CNC instead entered into IAs.[1] These taxpayers had income less than their ALEs yet were actively making payments to the IRS despite the IRS's own standards indicating they could not afford to pay. This suggests that

1 National Taxpayer Advocate 2016 Annual Report to Congress vol. 2 (Research Study: *The Importance of Financial Analysis in Installment Agreements (IAs) in Minimizing Defaults and Preventing Future Payment Noncompliance*). TAS research found 286,141 taxpayers who entered into an IA in 2014 despite total positive income (TPI) less than allowable living expenses (ALEs) after eliminating accounts where abatements were at least half of the balance (including accruals), refund offsets that were at least 95 percent of the balance, or cases where the IRS classified a taxpayer prior to currently not collectible (CNC) subsequent to the initial TDA in 2014.

taxpayers are forgoing other necessary expenses in order to pay the IRS, thus creating economic hardship. TAS research shows that TAS IA cases have lower rates of default.[2] TAS uses a taxpayer's financial information before placing a taxpayer in a streamlined IA, reducing rates of default, precisely the opposite of the IRS's suggestion that reviewing financial information will reduce efficiencies and not lower the rates of default.

Also concerning is the default rate on partial payment installment agreements (PPIAs). While the IRS overall default rate on IAs is just over 13 percent, the rate for PPIAs is over double that at nearly 28 percent.[3] Taxpayers who are granted PPIAs have already been determined by the IRS to be unable to full pay their tax liability. The high default rate suggests that the current financial analysis conducted by the IRS to determine ability to pay in PPIAs is not capturing the reality of the ability of these taxpayers.

Providing payment plan calculators to employees to use when granting IAs and to taxpayers to use when determining payment amounts will allow greater accuracy in crafting payment plans. Additionally, a decision tree for employees that guides employees to other collection alternatives or CNC status will result in more appropriate resolutions for taxpayers and less rework for the IRS.

TAS Recommendation	**[17-1] Modify the allowable living expenses (ALEs) in accordance with the recommendations in the Most Serious Problem on ALEs.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The IRS strives to make Allowable Living Expense computation data-driven and fair to taxpayers by using regularly-updated, generally-accepted government survey data. We undertake periodic reviews or redesigns of our methodology and regularly update the data to ensure that our computation of the Allowable Living Expense aligns with the current external environment and taxpayer needs. See the IRS response to the MSP #13 recommendations regarding Allowable Living Expense (ALE) Standards for more information about IRS actions.
TAS Response	The National Taxpayer Advocate remains concerned about the current state of ALEs, particularly the decrease in certain ALEs and the non-inclusion of other basic items. For a full response to the IRS, please see the response associated with Most Serious Problem #13, ALLOWABLE LIVING EXPENSE (ALE) STANDARD: The IRS's Development and Use of ALEs Does Not Adequately Ensure Taxpayers Can Maintain a Basic Standard of Living for the Health and Welfare of Their Households While Complying With Their Tax Obligations, *supra*.

2 National Taxpayer Advocate 2016 Annual Report to Congress vol. 2 (Research Study: *The Importance of Financial Analysis in Installment Agreements (IAs) in Minimizing Defaults and Preventing Future Payment Noncompliance*).

3 IRS, *Installment Agreement (IA) Default Rate Report* (Oct. 6, 2016). Overall, 13.23 percent of all IAs defaulted in FY 2016. Partial payment installment agreements (PPIAs) defaulted at a rate of 27.84 percent in FY 2016.

TAS Recommendation	**[17-2] Develop an internal ability-to-pay estimator that will populate with the most current taxpayer income information for use by all employees offering IAs.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	Creation of an internal ability-to-pay calculator would rely on IRS income data that is eight to 19 months old and would require contact with the taxpayer to determine current expenses. Presently, the IRS has an ability to pay estimator (the Streamlined Installment Agreement Calculator) that uses current income and expense information from the taxpayer. However, the Streamlined Installment Agreement Calculator or a Collection Information Statement is required to be used only if the taxpayer has defaulted an Installment Agreement in the past 12 months for failure to make payments timely or does not meet streamlined or guaranteed installment agreement criteria. Taxpayers who meet the Streamlined Installment criteria and have not defaulted, self-assess their financial situation to determine if the monthly payment amount under the installment agreement is achievable. This approach allows taxpayers to examine their own financial situations and consider their personal needs while decreasing taxpayer burden. In FY 2016, 84% of taxpayers met streamlined criteria (where no financial information was required). To require the use of the Streamlined Installment Agreement Calculator or a Collection Information Statement in all Installment agreement cases will significantly increase the burden on the taxpayer, reduce efficiencies and increase costs for the IRS and the taxpayer. With default rates on installment agreements down 26% since 2012, the benefits of the Online Payment Agreement Application and the current Streamlined Installment Agreement procedures outweigh the cost of requiring the Streamlined Installment Agreement Calculator or Collection Information Statement on every case.
TAS Response	Currently, individual taxpayers with balances due of $50,000 or less do not need to provide any financial information to the IRS to qualify for an IA.[4] The taxpayer must simply propose to meet their obligation in 72 payments or less.[5] The National Taxpayer Advocate is recommending the creation of an internal ability to pay estimator for use by employees in granting any type of IA, including streamlined IAs. The estimator would pre-populate with the most recent tax return information available to the IRS. While the IRS is correct that this information would not be the most current information, the purpose would not be to determine the amount the taxpayer should pay, but rather, if based on the information available to the IRS the taxpayer can even pay the amount proposed or anything at all. If the estimator revealed an inability to pay the proposed amount, the Customer Service Representative would then be prompted to raise concerns to the taxpayer before granting the IA. Or, if the taxpayer proposed the streamlined IA via the IRS website, the employee reviewing the proposed IA would run the estimator before granting the proposed IA, and if the estimator showed an inability to meet the terms proposed, the employee would be required to send a notice to the taxpayer to prompt the taxpayer to call the IRS regarding the proposed IA. With a pre-populated estimator, the initial employee granting the IA would need only look at the available information to ensure the IRS is granting IAs that have a chance at succeeding from the beginning.

4 IRM 5.14.5.2 (Dec. 23, 2015).

5 *Id.*

TAS Recommendation	**[17-3] Revise IRMs and employee training to require use of the estimator even in streamlined IA applications and provide employees with a decision tree indicating where other collection alternatives are more appropriate than IAs.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA. IRS procedures currently require the use of the Streamlined Installment Agreement Calculator only in cases where the taxpayer defaulted an installment agreement for failure to make payments in the past 12 months. Installment Agreement default rates are currently lower than when the Streamlined Installment Agreement Calculator was required on all streamlined installment agreements between $25,000 and $50,000. Therefore, we have no plans to change the criteria for using the Streamlined Installment Agreement Calculator or to update the Internal Revenue Manual/Training material for Streamlined Installment Agreements. We believe that our current procedures and available tools are sufficient to direct employees to the appropriate collection alternative, either the application of streamlined criteria or the analysis of the Collection Information statement to determine the course of the case resolution. IRS employees have access to tools that calculate a payment amount based on income and expenses or may update the appropriate currently-not-collectible code if the taxpayer's financial situation suggests that they can't make a monthly payment.
IRS Action	Collection will issue a reminder to employees to use the Streamlined Installment Agreement Calculator or a Collection Information Statement in cases where the taxpayer has defaulted an installment agreement in the past 12 months. Implementation date: June 30, 2017
TAS Response	The National Taxpayer Advocate appreciates that the IRS will issue a reminder to use the calculator where taxpayers have previously defaulted on a streamlined IA. However, while the overall default rate for IAs has decreased, the National Taxpayer Advocate remains concerned that certain types of IAs and IAs granted by certain IRS functions have substantially higher default rates and urges the IRS to study and address the causes of these higher default rates. Providing an estimator to use for all employees who grant IAs will allow a quick check as to the reality of the payment the taxpayer has proposed in streamlined IAs as well as to confirm whether the payment is realistic for taxpayers in other types of IAs. Its use can prompt the IRS employee to ask additional questions and may identify cases of economic hardship. As detailed in the previous response, the National Taxpayer Advocate is not proposing a calculator to determine the proper payment, but rather an estimator that would provide employees with a quick way to raise any potential issues regarding affordability of the proposed payments. In this way, an estimator will reduce IRS re-work and taxpayer burden. A decision tree pointing to other potential collection alternatives will allow employees to craft the most appropriate solution for the taxpayer, which may not be a drawn-out IA.

MSP #18 INDIVIDUAL TAXPAYER IDENTIFICATION NUMBERS (ITINs): IRS Processes for ITIN Applications, Deactivations, and Renewals Unduly Burden and Harm Taxpayers

PROBLEM

Each year, approximately 4.6 million taxpayers ineligible for Social Security numbers (SSNs) require Individual Taxpayer Identification Numbers (ITINs) to comply with their tax filing and payment obligations, claim dependents, and receive tax benefits. Changes in application requirements, program administration, and insufficient staffing have contributed to delays in obtaining ITINs for thousands of taxpayers in recent years. The new law passed in late 2015 made major changes to the ITIN program, which create significant challenges for taxpayers and the IRS related to the schedule for deactivating ITINs, math error procedures for disallowing claims filed with deactivated ITINs, and the disallowance of the Child Tax Credit (CTC) and American Opportunity Tax Credit (AOTC) if an ITIN is not issued timely. Despite the flexibility allowed under the law, the IRS has not exercised discretion to expand what is considered acceptable documentation for an ITIN application and to extend the timeframe for filing all applications to throughout the year.

ANALYSIS

Because the IRS is unable to meet the rigid deactivation schedule mandated by the law it has had to implement an alternative schedule, causing taxpayer confusion and uncertainty. Of the approximately 11 million taxpayers whose ITINs the IRS will deactivate in January 2017, the IRS sent a letter to only 440,000 taxpayers notifying them of the need to renew. Although the law allows the IRS discretion to determine alternatives to taxpayers mailing in original documents or copies certified by the issuing agency, the IRS maintains restrictions that leave many applicants still needing to mail in their original documents. The law's extension of math error authority to situations where the taxpayer lists a deactivated ITIN on a return will likely exacerbate existing problems with the IRS's use of math error procedures. Because the new law requires an ITIN to be issued by the tax return due date in order to claim the CTC or AOTC, taxpayers may miss out on these credits if they do not understand the need to timely file their ITIN applications and returns, or if the IRS mishandles or loses them. The IRS's longstanding requirement for new applicants to apply for an ITIN during the filing season will continue to burden applicants, create delays, hamper fraud detection, and exacerbate the other problems ITIN applicants face.

TAS RECOMMENDATIONS

[18-1] Prioritize and accelerate the programming and implementation of the necessary systems to process ITIN renewal applications and reissue ITINs upon receipt of renewal applications.

[18-2] Identify additional types of documentation that can be considered "certified copies," such as copies certified by state or other Federal agencies other than the issuing agency, copies certified by clerks of courts, copies properly apostilled and authenticated by U.S. diplomatic missions abroad, and notarized copies from specific jurisdictions.

[18-3] Allow all ITIN applicants to apply for an ITIN at any time of the year without a tax return as long as they provide evidence of a legitimate tax administration purpose for the ITIN.

IRS RESPONSE

The Protecting Americans from Tax Hikes (PATH) Act legislation signed on December 18, 2015 requires the IRS to deactivate ITINs. The IRS is currently administering the deactivation and renewal of ITINs within current budget and resource restrictions. Starting in 2017, all ITINs that have not been used in the last three consecutive years were deactivated. In addition, ITINs issued prior to 2013 that have been used in the last three consecutive years will be deactivated on a rolling basis starting with ITINs with the middle digits 78 and 79. The IRS's methodology to deactivate ITINs by middle digits is less burdensome on taxpayers and is easier for taxpayers to understand because it's based on the ITIN itself rather than the date the IRS issued the ITIN. Taxpayers that need to renew their ITINs also have the option of renewing the ITIN(s) of every family member listed on the return (*e.g.*, taxpayer, spouse and dependent(s)) at one time, even if all of the ITINs do not include the designated middle digits. Going forward, a schedule to renew ITINs will be announced on the IRS website and through other communication tools.

In addition to making significant programming changes to implement the ITIN changes based on the PATH Act, the IRS also undertook a significant communications effort to alert taxpayers about the upcoming deactivation schedule. For example, IRS Notice 2016-48, released on August 4, 2016, outlines the new ITIN procedures under the PATH Act. The IRS also posted 32 ITIN Expiration Frequently Asked Questions (FAQs) on our dedicated ITIN webpage. These FAQs are available in seven different languages. In addition, the IRS mailed Letter 5821 to individuals holding ITINs with the middle digits of 78 or 79 if the ITIN was used for a taxpayer or dependent on a U.S. income tax return in any of the last three consecutive tax years. Letter 5821 informed the recipient that they must submit a Form W-7 with the original or certified documents to renew their ITINs. The IRS did not mail letters to ITIN holders who have not used their ITIN on a tax return for the last three consecutive years because these holders do not appear to have an ongoing tax need for an ITIN and the IRS might not have a good address for these ITIN holders as a result of their non-use over a three year period. In addition, our communication outreach, which included multiple news releases, provided notification of the upcoming expiration changes to impacted ITIN holders.

The IRS is exploring revisions to the processing of Form W-7, *Application for IRS Individual Taxpayer Identification Number (ITIN)*, as a result of the PATH Act changes. We expect the volume of Forms W-7 to increase by approximately 1.5 million receipts annually. Submission Processing (SP) and The Lean Six Sigma Organization (LSSO) are collaborating on a project to identify opportunities to improve quality, fraud detection, and the overall capacity for processing Forms W-7. Testing and development of the new process is expected to run from November 2016 through March 2017.

The IRS is committed to the protection of taxpayer rights while maintaining the integrity of the ITIN program. We will continue to explore viable options that will encourage voluntary compliance and assist taxpayers in meeting their U.S. tax obligations.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

As discussed in the Most Serious Problem, the Protecting Americans from Tax Hikes (PATH Act) of 2015 has created some significant challenges for the IRS in administering the ITIN program. While the IRS's plans for deactivating ITINs based on the middle digits provides simplicity for taxpayers, it will be incumbent on the IRS this year and in the coming years to better notify taxpayers of which ITINs will expire in advance. The National Taxpayer Advocate encourages the IRS to conduct direct outreach in communities with a high number of ITIN filers to ensure they are aware of not only the continuing

deactivations, but also the recent requirement for ITINs to be issued by the tax return due date in order to claim the Child Tax Credit (CTC) or the American Opportunity Tax Credit (AOTC). Although the National Taxpayer Advocate understands it may not be feasible to send a letter to every taxpayer whose ITIN will expire, the IRS should explore other mechanisms for notifying ITIN holders who have not filed in the last three years. For example, the IRS could explore the feasibility of sending a generic letter explaining the deactivation schedule to a primary taxpayer who has filed recently and has previously claimed dependents whose ITINs will expire.

Because TAS has experience with ITIN cases that are not resolved through normal channels, the IRS should have included TAS on its team that collaborated to identify opportunities to improve quality, fraud detection, and the overall capacity for processing Forms W-7. Although the team has concluded, it has not shared any of its conclusions or recommendations with TAS. The National Taxpayer Advocate is pleased the IRS is exploring changes to ITIN processing to accommodate the expected increase in ITIN applications. However, by far the most effective way to ease the strain on the IRS and reduce the associated burden for taxpayers would be to accept ITIN applications year-round from all applicants, as discussed below.

TAS Recommendation	**[18-1] Prioritize and accelerate the programming and implementation of the necessary systems to process ITIN renewal applications and reissue ITINs upon receipt of renewal applications.**
IRS Response	IRS Actions to be Adopted/Addressed if Resources and Budget Allow.
IRS Action	The concern raised by the NTA with regard to the length of time between when a renewal application is filed, the renewal request is processed and an ITIN issued is not without merit. The enactment of the PATH Act on December 18, 2015, afforded limited time to get necessary programming in place to implement the provisions of the law with regard to ITIN deactivation; and our implementation efforts must navigate challenges posed by our current limited budget and limited Information Technology resources. The IRS encouraged impacted taxpayers to start submitting ITIN renewal applications as early as October 1, 2016. Although necessary programming was not yet in place to systemically process these applications, we created a manual workaround until January 2017. During this time, the ITIN Submission Processing function performed preliminary reviews of the renewal applications and information was entered into an interim database. If needed, we issued correspondence to address any concerns. If there were no concerns with the application after tax examiner review, we returned documentation to applicants in 8–12 days (since not during the peak ITIN processing period). In January 2017, information from 89,297 ITIN applications in the interim database were entered into the RTS system. The preliminary processing of ITIN renewal applications mitigated risks until systemic enhancements were deployed in January 2017 and allowed taxpayers to file tax returns on time without IRS disallowing exemptions and/or credits associated with an expired ITIN. Since January, the IRS continues to successfully process ITIN renewal applications and reissue ITINs within the stated processing time of 7 weeks (or 9 to 11 weeks during peak processing periods for internationally filed Forms W-7). The ITIN deactivation and renewal process is an ongoing effort and the IRS will continue to build upon lessons learned from the initial launch. This includes prioritizing and accelerating programming and the implementation of necessary systems, where possible, and within the parameters of our current budget and resource allocations.

TAS Response	The National Taxpayer Advocate recognizes the significant challenge the deactivation schedule presented. Although the Real Time System was not updated in time for the renewal period, the National Taxpayer Advocate hopes the IRS will have the proper technology in place during the upcoming renewal period in Fall 2017 to process ITIN renewal applications when they are received. While it is always preferable to return original identification documents, such as a passport, as soon as they have been reviewed, the two-step process creates confusion for taxpayers. In addition, taxpayers may change addresses between the time they file their renewal application and the time the IRS processes the application, raising the risk of the applicant not receiving notification of the ITIN assignment or worse, the assignment notice being received by an identity thief.

TAS Recommendation	**[18-2] Identify additional types of documentation that can be considered "certified copies," such as copies certified by state or other Federal agencies other than the issuing agency, copies certified by clerks of courts, copies properly apostilled and authenticated by U.S. diplomatic missions abroad, and notarized copies from specific jurisdictions.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA. In 2012, the IRS implemented changes to the ITIN procedures to strengthen the program and maintain the integrity of the ITIN application and refund processes. As part of those changes, documentation standards were modified and applicants were required to submit original documents or certified copies of documents from the issuing agency to obtain an ITIN. The IRS no longer accepts notarized copies of documents, including documents from foreign notaries with an apostille. However, the IRS continues to accept certified copies of identification documents from embassy and consulate offices. While the IRS remains committed to maintaining the integrity of the ITIN Program, we are equally committed to exploring opportunities to reduce the burden on taxpayers to facilitate this process. The IRS continues to maintain a dialogue with the Department of State (DOS) exploring ways the two agencies can work together to obtain reasonable assurance that copies of foreign-issued identification documents presented by ITIN applicants are true and correct copies of original documents. As a part of the discussions, the IRS is considering all viable options of services the DOS can provide to assist ITIN applicants at consular posts.
IRS Action	The IRS is currently working with the DOS to develop an interagency agreement to provide assistance to ITIN applicants at various consulate posts. The details of the agreement have not been finalized, but the IRS anticipates the services will improve customer satisfaction and reduce the burden on ITIN applicants abroad. Additionally, all diplomatic and consular posts will use a standard form to certify identification documents for ITIN applicants to ensure consistency in submissions. Implementation date: December 29, 2017
TAS Response	The National Taxpayer Advocate is pleased the IRS is actively working with the Department of State (DOS) to begin accepting ITIN applications at consulate posts. As cited in the 2015 Annual Report to Congress, there are 275 consulate posts abroad that provide a similar service to Social Security applicants. The IRS should pursue an agreement with the DOS that establishes a similar number of posts that can certify ITIN applications. In addition to allowing consular posts to certify ITIN documents, the IRS should explore additional options for entities who may certify ITIN documents. For example, clerks of court or other federal agencies could provide much needed options for ITIN applicants who do not live near a Taxpayer Assistance Center (TAC) and cannot use a Certifying Acceptance Agent (CAA) due to cost or restrictions on dependents. Although the PATH Act encouraged the expansion of the CAA program to entities which have not traditionally participated, such as local government agencies, it is not clear the IRS has made any progress in encouraging such entities to participate.

TAS Recommendation	**[18-3] Allow all ITIN applicants to apply for an ITIN at any time of the year without a tax return as long as they provide evidence of a legitimate tax administration purpose for the ITIN.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The requirement to submit a tax return with Form W-7 was established to ensure that the applicant has a tax administration purpose for requesting an ITIN. This measure facilitates compliance with U.S. tax laws by providing a TIN to resident aliens that are required to file a return and want to voluntarily meet their tax obligations. Submitting alternatives, such as pay stubs or bank records, may be helpful in establishing residency, but they do not necessarily establish a tax filing obligation. The IRS considered this recommendation from the NTA as we explored available options to implement the PATH Act renewal process. The IRS's goal was to identify immediate actions we could take to maintain the integrity of the program and reduce taxpayer burden. Beginning October 1, 2016, ITIN holders that were required to renew their ITINs were permitted to file Form W-7 renewal applications without a tax return. This particular group of applicants had already proven a federal tax administration purpose when they were initially assigned an ITIN and filing for renewal indicates they continue to have a US tax filing obligation. The IRS will continue to accept ITIN renewal applications year round without a federal tax return.
TAS Response	Although allowing renewal applicants to apply outside the filing season is a positive step, the National Taxpayer Advocate is disappointed the IRS will not extend this flexibility to all applicants. The IRS's response states that alternatives like pay stubs or bank statements do not "necessarily" establish a tax filing obligation. However, the fact that a renewal applicant in the past had a tax filing obligation does not necessarily establish that the taxpayer has a continued tax filing obligation. The IRS has chosen to waive the return requirement for these applicants due to the likelihood they will have a tax filing obligation based on their history, which is good policy. Similarly, a series of pay stubs showing consistent income would establish that a person is likely to continue earning that income and thus have a filing requirement. The IRS could estimate a person's annual income based on the average income over a period of weeks or months. Although there is always a chance that the person could lose a job or stop working, the pay stubs could show likelihood that the person will earn enough to exceed the filing threshold. Furthermore, there are taxpayers who could provide full proof of income that exceeds the filing requirement through a series of pay stubs or even a single pay stub if their income is high enough. The IRS's failure to even consider alternative forms of proof to show a filing requirement will continue to harm taxpayers. Taxpayers applying during the filing season struggle with lost identification documents, lost attached tax returns, and significant delays in having their identification documents returned. As stated in the IRS's response to the first recommendation above, the IRS was able to return identification documents to taxpayers within 8-12 days during late 2016 because it was outside the filing season and the peak application time. This is a very positive result and goes to show what kind of service the IRS could offer all ITIN applicants if it chose to exercise some flexibility when it comes to when applicants may apply.

MSP #19 FORM 1023-EZ: The IRS's Reliance on Form 1023-EZ Causes It to Erroneously Grant Internal Revenue Code § 501(c)(3) Status to Unqualified Organizations

PROBLEM

Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, requires applicants to merely attest that they meet the requirements for qualification as Internal Revenue Code (IRC) § 501(c)(3) organizations. Most applications for such status are now submitted on Form 1023-EZ and the IRS approves 94 percent of Form 1023-EZ applications. The IRS erroneously approves Form 1023-EZ applications at an unacceptably high rate. The IRS agreed to revise Form 1023-EZ to require a narrative statement of applicants' activities, but additional information is needed.

ANALYSIS

Treasury regulations generally require IRC § 501(c)(3) organizations to pass an "organizational test" by including acceptable purpose and dissolution clauses in their organizing documents. According to the IRS's pre-determination reviews of a portion of Form 1023-EZ applicants, 25 percent do not qualify for exempt status because they do not meet this organizational test. A 2015 TAS study of a representative sample of approved Form 1023-EZ applicants in 20 states that make articles of incorporation viewable online at no cost showed that 37 percent do not meet the organizational test. A similar 2016 TAS study showed that 26 percent of approved organizations do not meet the organizational test. In the 2016 TAS study, four percent of the approved organizations consisted of two limited liability companies; two churches; seven schools, colleges, or universities or supporting organizations; and one private operating foundation. Such organizations are never eligible to file Form 1023-EZ.

TAS RECOMMENDATIONS

[19-1] In addition to revising Form 1023-EZ to require applicants to provide a brief narrative statement of their actual or planned activities, as directed by the National Taxpayer Advocate's sustained Taxpayer Advocate Directive (TAD), revise Form 1023-EZ to:

a. Require applicants, other than corporations in states that make articles of incorporation publicly available online at no cost, to submit their organizing documents; and

b. Require applicants to submit summary financial information such as past and projected revenues and expenses.

[19-2] Make a determination about qualification as an IRC § 501(c)(3) organization only after reviewing an applicant's narrative statement of actual or planned activities, organizing documents, and summary financial information.

[19-3] 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

Form 1023-EZ continues to successfully reduce taxpayer burden when applying for recognition of tax-exempt status. Form 1023-EZ, in addition to streamlined processing guidelines for all applications, has allowed the IRS to avoid a backlog of applications such as existed at the beginning of FY 2014. As always, the IRS must balance risks to the Treasury against the resources available when administering the tax law. Simplifying the application process for smaller organizations and applying streamlined processing to all applications allow the IRS to focus resources on more complex applications as well as on back-end review of compliance including actual operations.

In its 2016 Report to Congress, TAS continues to assert that the IRS erroneously approves Form 1023-EZ applications at an unacceptably high rate, specifically due to organizations' failure to meet the organizational test under § 501(c)(3). Form 1023-EZ is a representational process whereby an applicant attests, under penalties of perjury, to information regarding its operations and organization. If an applicant attests that it meets the organizational test and that its organizing document contains the required clauses, the IRS accepts that attestation. The IRS has taken and continues to take the following steps to assess and mitigate compliance risks associated with the Form 1023-EZ:

- If a Form 1023-EZ is selected for pre-determination review, a revenue agent requests additional information including a copy of the organizing document. The revenue agent reviews the submitted document and determines if the document meets the organizational test based on all of the facts and circumstances of the application, in the same manner as on a long Form 1023 application.
- For all applications for exemption under § 501(c)(3), if a revenue agent identifies a deficiency in a submitted organizing document, the agent requests an attestation that the applicant amended the document.

The IRS takes these attestations seriously, recently releasing Interim Guidance Memorandum TEGE-04-0117-0007, *Review of Organizing Documents of Organizations that Attested to their Conformity in the Determination Process*. This guidance provides that if, upon examination, the IRS determines that an organization that attested to amending its document made no attempt to do so, the examining agent will propose revocation after discussion with the manager. This memorandum is posted on irs.gov.

The IRS maintains that risks associated with Form 1023-EZ are sufficiently mitigated with pre- and post-determination reviews along with other case processing referral procedures outlined in IRM 7.20.9, *Form 1023-EZ Case Processing*.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

The National Taxpayer Advocate acknowledges that the IRS faces budget constraints and that Form 1023-EZ has allowed the IRS to address backlogs in applications for IRC § 501(c)(3) status. However, she believes the IRS has not found the appropriate balance between providing an expedited application process and exercising sufficient oversight. The short-term benefit of reducing backlog may be outweighed by the erosion of public confidence and continued noncompliance over the long term. Moreover, backlogs in processing Form 1023 applications may be accumulating. In that event, the IRS will have eroded the integrity of the determination process and not solved the underlying problem.

TAS Recommendation	[19-1] **In addition to revising Form 1023-EZ to require applicants to provide a brief narrative statement of their actual or planned activities, as directed by the National Taxpayer Advocate's sustained TAD, revise Form 1023-EZ to:** **a) Require applicants, other than corporations in states that make articles of incorporation publicly available online at no cost, to submit their organizing documents; and** **a) Require applicants to submit summary financial information such as past and projected revenues and expenses.**
IRS Response	NTA Recommendation Not Adopted. The recommended additional information (organizing documents and summary financial information) does not reflect how the organization will operate, and how the organization operates is a determinative factor regarding exempt status. In addition, 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 online would not need to submit them. This recommendation would result in disparate treatment of applicants, potentially causing confusion and decreasing customer satisfaction. A requirement for organizing documents would also preclude electronic filing.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is baffled by the IRS's refusal to obtain and review formation documents of Form 1023-EZ applicants. Organizing documents may not necessarily reflect how the organization will operate, but the law requires that organizing documents contain specific provisions, and these provisions supply important protections to taxpayers and consumers. As the IRS notes, an applicant for IRC § 501(c)(3) status must meet an operational test, but the manner in which it is organized is also a determinative factor. Requiring applicants to provide their articles of incorporation that are not already available online does not constitute impermissibly disparate treatment. All applicants would have their documents reviewed by the IRS. The only difference is the manner in which the IRS receives the documents. Moreover, the requirement is a simple one; the National Taxpayer Advocate does not agree with the IRS that confusion would necessarily ensue. The IRS could simply post a list of the states that maintain a database with the necessary documents viewable by the public at no charge. In any event, the National Taxpayer Advocate questions whether organizations that cannot comply with such a basic request understand the requirements for exempt status, either in terms of organization or operationally. The IRS is correct that electronic filing does not currently allow applicants for IRC § 501(c)(3) status to submit attachments. Rather than accepting this limitation, Tax Exempt and Governmental Entities Division (TE/GE) should explore how it can adjust its systems to allow applicants to submit documents electronically. Taxpayers seeking certification as a Certified Professional Employer Organization can already upload documents to IRS systems, and there may be other IRS pilots on improving taxpayer digital communications in which TE/GE could participate. The Taxpayer Digital Communication project would be a solution. Even more routine solutions, such as allowing for e-fax transmissions (which allow documents to be transmitted via phone number and received in an email box within the IRS), would help address the limitation.

TAS Recommendation	**[19-2] Make a determination about qualification as an IRC § 501(c)(3) organization only after reviewing an applicant's narrative statement of actual or planned activities, organizing documents, and summary financial information.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA. Once Form 1023-EZ is revised to require a narrative statement of actual or planned activities, the IRS will make a determination about qualification as an IRC section 501(c)(3) organization after reviewing the submitted narrative of activities. The IRS does not plan to require organizing documents or summary financial information as indicated in our response to recommendation #19-1.
IRS Action	The IRS is identifying and planning for process changes based on narrative activity statements on Form 1023-EZ. The IRS expects to have these processes in place on the implementation of the revised Form 1023-EZ. Implementation date: December 31, 2018
TAS Response	The National Taxpayer Advocate is pleased that the Deputy Commissioner for Services and Enforcement sustained the portion of her September 26, 2016 Taxpayer Advocate Directive that directs the IRS to revise Form 1023-EZ to include a narrative statement of actual or planned activities. She looks forward to new processes that will ensure the IRS considers the narrative statement in evaluating an applicant's qualification as an IRC § 501(c)(3) organization.

TAS Recommendation	**[19-3] 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	NTA Recommendation Not Adopted. Consistent with streamlined case processing used in processing all applications for recognition of tax-exempt status, the IRS does not plan to require that applicants submit copies of amendments where the IRS has identified a deficiency in the organizing document and requested an amendment. The IRS will continue to accept attestations, signed under penalties of perjury, that the organization has made the required amendments. If, upon examination, the IRS determines that an organization that attested to amending its document made no attempt to do so, the examining agent will propose revocation after discussion with the manager per Interim Guidance Memorandum TEGE-04-0117-0007, *Review of Organizing Documents of Organizations that Attested to their Conformity in the Determination Process*.
IRS Action	N/A
TAS Response	The National Taxpayer Advocate is perplexed by the IRS's reluctance to verify that organizations follow its direction to amend their organizing documents. Affected organizations are those that submitted Form 1023-EZ attesting their organizing documents met the statutory requirements when they did not and were then directed by the IRS to amend their organizing documents. Rather than ascertaining that the required amendments were made, thus ensuring the organization complied with the requirements for exempt status, the IRS allows the organization to again simply attest that it has complied with the law. The organization's noncompliance will come to light only if it is selected for audit, at which point the penalty for the noncompliance may be revocation of exempt status. These procedures represent a lack of service to organizations making good faith errors and a windfall to those that are intentionally noncompliant.

MSP #20 AFFORDABLE CARE ACT (ACA): The IRS Has Made Progress in Implementing the Individual and Employer Provisions of the ACA But Challenges Remain

PROBLEM

In order to ensure that taxpayer rights are protected, TAS has been actively involved with the implementation of the tax provisions of the Patient Protection and Affordable Care Act of 2009 (ACA). Premium Tax Credit (PTC) cases rose to become the fourth highest category of TAS case receipts during fiscal year (FY) 2016. In addition to the existing provisions impacting individuals, some provisions of the ACA impacting employers became effective in tax year (TY) 2015. We are particularly concerned with whether employees in the newly-established ACA Business Exam unit would receive appropriate training on topics including concepts such as applicable large employer (ALE), minimum essential coverage (MEC), and the employer shared responsibility payment (ESRP). In addition, we will monitor IRS preparedness to handle the additional volume of information-reporting data expected for the 2017 filing season.

ANALYSIS

Taxpayers claiming the advanced PTC (APTC) are required to file Form 8962, *Premium Tax Credit (PTC)*, to reconcile the APTC received during the year with the PTC the taxpayer is actually entitled to receive. Taxpayers use Form 1095-A, *Health Insurance Marketplace Statement*, to prepare Form 8962. When the taxpayer files the return, IRS Submission Processing checks the ACA Verification System (AVS) on all individual tax returns to verify if the taxpayer received APTC and reconciled the APTC on Form 8962. If the AVS indicates that the taxpayer received the APTC, but the taxpayer does not reconcile APTC on Form 8962, the IRS will hold the return in an Error Resolution/Rejected Returns unit as the IRS issues Letter 12C, *Individual Return Incomplete for Processing*. In FY 2016, TAS received 10,910 cases with PTC issues. Based on an analysis of a random sample of those cases, 90 percent involved the IRS Error Resolution/Reject unit and 87 percent did not reconcile the APTC.

We are also concerned about the IRS's preparedness in administering certain business provisions in the 2017 filing season. For example, it is unclear if the scheduled training for employees on ACA-related issues concerning business taxpayers is sufficient. TAS is also concerned that the IRS's inability to test the accuracy of information reports before the filing season may cause significant taxpayer burden.

TAS RECOMMENDATIONS

[20-1] Apply the Individual Shared Responsibility Payment (ISRP) overpayment recovery procedures used for TY 2014 to TY 2015 ISRP overpayments and to overpayments made in future tax years.

[20-2] Take preventive measures to avoid ISRP overpayments in the future, such as distributing educational notices to preparers associated with overpayments and conducting a comprehensive review and testing of private-sector tax filing software to ensure that the overpayment problems do not recur.

[20-3] Reject electronic filed returns when the taxpayer received APTC and did not reconcile on Form 8962, *Premium Tax Credit (PTC)*, as the IRS plans to do for silent returns that do not include Form 8965, *Health Coverage Exemptions*.

[20-4] Develop procedures to perform reviews of cases for which the IRS issued Letter 12C to determine if the CDR has been updated with new Marketplace data.

[20-5] Ensure instructions to the Form 1040 series returns and the Form 8962 clearly state that the taxpayer cannot file Form 1040EZ if the APTC was paid on the taxpayer's behalf.

[20-6] Conduct outreach and education on the consequences of receiving large lump sum Social Security Disability Insurance (SSDI) distributions to APTC recipients and the Social Security Administration (SSA).

IRS RESPONSE

We appreciate the NTA's recognition of the significant progress the IRS has made in implementing the ACA tax provisions. Like the implementation of most new and significant legislation, the implementation of the ACA provisions was a broad, complex and substantial undertaking for the IRS, a process that required the development of new information technology systems, processes, tax forms, instructions, educational materials, training, outreach, etc. Throughout this process, we worked closely and had ongoing and significant collaborations with our stakeholders — taxpayers, their representatives and other private sector stakeholders — to facilitate implementation in a manner that was informed by our taxpayers' experience, responsive to stakeholder feedback, and maintained the appropriate balance between compliance burden and risk.

In preparation for the upcoming filing season, we worked with software companies that develop tax preparation software to ensure that interview questions and prompts appropriately remind preparers and taxpayers to file Form 8962 if they received an advance premium tax credit (APTC). We are also continuing our close collaboration with the Centers for Medicare and Medicaid Services (CMS), Health & Human Services (HHS), and state agencies to ensure consistent messaging and content between our agencies as well as information reporting necessary for APTC reconciliation. The IRS continues to monitor filing season 2017 to determine if additional measures may be appropriate to assist taxpayers.

For implementation of the ACA's employer shared responsibility provisions, the IRS identified the information that these employers are required to provide to comply with the information reporting requirements and administered effective outreach and education for employers and tax preparation firms. We established a help desk dedicated to providing assistance to filers who were experiencing difficulty in filing their information returns. We conducted several sessions with external groups, including hosting an ACA roundtable discussion at IRS, and in response to the feedback received, we provided transition relief for employers and other filers, allowing for additional time for compliance with the information reporting requirements.

We developed and provided training for IRS employees who will be conducting the post filing compliance activities as well as employees from TAS and Appeals. We also designed compliance plans that detail actions the IRS plans to take to identify employers that may owe a shared responsibility payment and employers that did not file the required information returns.

TAXPAYER ADVOCATE SERVICE COMMENTS ON IRS RESPONSE

We once again commend the IRS's progress in the monumental task of implementing the ACA tax provisions. We also acknowledge that the IRS has made significant efforts to address issues raised by the

National Taxpayer Advocate over the past several years. We will continue to actively work with the IRS to address the following issues:

- Despite the sharp drop in the incidence of ISRP overpayments in TY 2015, we believe the IRS should apply already developed and implemented recovery procedures to the remaining impacted taxpayers;
- As PTC cases continue to be in the top ten issues in TAS case receipts, we will work with the IRS to minimize the compliance burden imposed on taxpayers who are entitled to receive PTC;
- We believe the IRS must address the unnecessary burden imposed on taxpayers requesting religious exemptions for the ISRP;
- While the IRS has conducted preliminary outreach to address those APTC recipients who receive large lump sum payments of SSDI, we believe more can be done to ensure that the necessary information reaches this population;
- In light of the January 20, 2017, Executive Order requiring all agencies in the executive branch with responsibilities under the ACA to "minimize the unwarranted economic and regulatory burdens of the Act," the IRS must make decisions regarding the assessment of the employee shared responsibility payment (ESRP) and the training of employees on the ESRP.

TAS Recommendation	**[20-1] Apply the Individual Shared Responsibility Payment (ISRP) overpayment recovery procedures used for TY 2014 to TY 2015 ISRP overpayments and to overpayments made in future tax years.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS will consider the NTA recommendation as analysis is completed to determine the appropriate action IRS may take for TY 2015 and forward. As reported previously, IRS has experienced a significant reduction in the number of over-assessed individual SRPs related to dependents and income below the filing threshold (the two buckets of taxpayers included in the SRP recovery performed during August 2016), from TY 2014 to TY 2015. This can be attributed to significant outreach during 2015 to Tax Practitioners and Software Providers. As of Cycle 26, first of July 2016, the number of tax returns received related to these two issues dropped from 182,000 in TY 2014 to 6,000 in TY 2015, a 97% reduction.
IRS Action	The IRS will determine the TY 2015 population impacted by overstatement of the SRP based on the previous overstatement recovery procedures and determine the best course of action for TY 2015 and forward. Implementation date: Complete analysis by September 30, 2017.
TAS Response	We commend the IRS's efforts to prevent ISRP overpayments. IRS preventive actions directly resulted in a sharp drop in overpayments in TY 2015 and future years. However, while the number of TY 2015 overpayments is small in comparison to TY 2014, there are still thousands of taxpayers who overpaid ISRP. In addition, the IRS already has fully developed and previously implemented ISRP overpayment identification and recovery procedures. Because these taxpayers have a right to pay no more than the correct amount of tax, it is incumbent on the IRS to apply these recovery procedures to any identified ISRP overpayments.

TAS Recommendation	**[20-2] Take preventive measures to avoid ISRP overpayments in the future, such as distributing educational notices to preparers associated with overpayments and conducting a comprehensive review and testing of private-sector tax filing software to ensure that the overpayment problems do not recur.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA.
IRS Action	The IRS routinely conducts extensive outreach to both the tax practitioner and software developer communities through routine conferences and provides important MeF updates through IRS quick alerts. The IRS also maintains a dedicated page on IRS.gov, Affordable Health Care, which proves an excellent e-source for taxpayers and tax professionals. IRS also publishes IRS news releases and tax tips. The significant reduction in the number of ISRP over-assessments between Tax Year 2014 and TY 2015 highlights the effectiveness of this existing process. Prior to the start of the 2017 filing season, the IRS hosted various communication events with the tax software developer industry to emphasize the importance of delivering software that made it easy for taxpayers to find the health coverage exemptions they may qualify for and to prepare the Form 8965, Health Coverage Exemptions, accurately through self-guided questions. For example, through its partnership with Free File Inc., IRS ensured that all 12 participating companies asked questions to help taxpayers accurately complete the Form 8965 and to easily answer the exemption question as to whether their income is below the filing threshold. The software also asked questions to enable taxpayers to check the 12 month qualifying full year health coverage box.
TAS Response	The IRS's outreach to both preparers and commercial software providers effectively reduced the incidence of ISRP overpayments in TY 2015, and likely TY 2016 returns. We commend the IRS for working closely with the Free File Alliance to ensure the accurate preparation of Forms 8965. However, we believe the IRS should take one step further and require all commercial tax preparation software providers to include prompts and built-in checks to ensure accurate preparation of these forms. In addition, outreach and education through conferences and digital communications may not reach those preparers who have a history of preparing returns with ISRP overpayments. We encourage the IRS to directly communicate with this preparer population through educational notices to ensure that they avoid repeating such errors in the future.

TAS Recommendation	**[20-3] Reject electronic filed returns when the taxpayer received APTC and did not reconcile on Form 8962, Premium Tax Credit (PTC), as the IRS plans to do for silent returns that do not include Form 8965, Health Coverage Exemptions.**
IRS Response	NTA Recommendation Not Adopted. The IRS cannot reject the Form 8962, Premium Tax Credit (PTC), associated with a taxpayer's return because it is based on third party data. Under current law, the IRS does not have math error authority to reject returns based on this third-party data.
IRS Action	N/A
TAS Response	We appreciate the IRS's explanation of why it cannot reject electronically filed returns of APTC recipients who do not reconcile on Form 8962. We look forward to further discussing this matter with the IRS to pursue all avenues to relieve the burden on this population of taxpayers.

TAS Recommendation	**[20-4] Develop procedures to perform reviews of cases for which the IRS issued Letter 12C to determine if the CDR has been updated with new Marketplace data.**
IRS Response	NTA Recommendation Not Adopted. As described, the IRS initially uses the monthly data reported by the Marketplaces to determine if there are any discrepancies with the information provided on the taxpayer's return. Once the letter is issued, the IRS system does not have the capability for employees to do intermittent checks as the return is in suspense status. The tax return is de-activated out of the processing system and until a taxpayer reply is received or the period of time to respond has expired, no actions can be taken until removed from the suspense file. At that time, the appropriate actions can be taken. The IRS understands the information may be updated and before initially corresponding with the taxpayer, IRS reviews the Form 1095-A information in Business Objects Enterprise (BOE) also submitted by the Marketplaces. Submission of an updated Form 1095-A can occur more frequently than the monthly information. The Form 1095-A the IRS receives is a copy of the information sent to the taxpayer and from which the taxpayer would prepare their Form 8962. If the IRS finds that the Form 1095-A in our system agrees with the taxpayer's entries, the IRS does not correspond with the taxpayer but continues to process the return avoiding unnecessary delays and reducing the burden on taxpayers.
IRS Action	N/A
TAS Response	We understand the limitations on the system for updating the account while the return is in suspense. However, once the return is no longer in suspense, based on time lapsed or taxpayer response, the IRS should have procedures to immediately check for updates and adjust the account accordingly, if applicable.

TAS Recommendation	**[20-5] Ensure instructions to the Form 1040 series returns and the Form 8962 clearly state that the taxpayer cannot file Form 1040EZ if the APTC was paid on the taxpayer's behalf.**
IRS Response	IRS Actions Already Implemented.
IRS Action	The 2016 Form 1040 series of products and Form 8962 have been revised to inform taxpayers that if they wish to claim the PTC, Form 8962 must be attached to Form 1040, 1040A, or 1040NR whether or not the APTC was paid on their behalf. The Instructions for Form 1040EZ have a dedicated page for the Affordable Care Act which specifically states in multiple locations that if the taxpayer is claiming the PTC or is required to reconcile advance payments of the PTC, that they cannot file Form 1040EZ. Furthermore, we have instructions on the back of Form 1040EZ that state that taxpayers claiming the PTC or who have received the advance payment of the PTC must use Form 1040A or Form 1040. In response to TAS's concerns, IRS made this statement more visible by converting it into a Caution. IRS also made the same statement more visible in the Instructions to Form 1040EZ by putting it in large, bold font across the top of a full-page graphic on page 4. Finally, Form 8962 and its instructions identify the tax returns with which it can be filed. For example, the Instructions for Form 8962 include a Caution on page 2 that states that if you are filing Form 8962 you cannot file Form 1040EZ, 1040NR-EZ, 1040-SS, or 1040-PR.
TAS Response	We appreciate the IRS's responsiveness to our concerns. Including the information more visibly on the various instructions and Form 8962 will help prevent APTC recipients from filing Form 1040-EZ in error.

TAS Recommendation	**[20-6] Conduct outreach and education on the consequences of receiving large lump sum SSDI distributions to APTC recipients and the Social Security Administration.**
IRS Response	NTA Recommendation Not Adopted as Written, but IRS Actions Taken to Address Issues Raised by NTA. Currently there is information on IRS.gov that connects lump sum payments of Social Security benefits to reportable changes in circumstances, as noted below. https://www.irs.gov/affordable-care-act/individuals-and-families/premium-tax-credit-claiming-the-credit-and-reconciling-advance-credit-payments IRS Communications & Liaison (C&L) Branch issues Health Care and Summertime Tax Tips that specifically address changes in circumstances and how important it is to report these changes to the Marketplace when they happen. As in the past, we will continue to use these products to highlight that changes in income related to social security payments (including disability payments) should be reported to the Marketplace when they happen. We will also look for other opportunities to include this information where it is appropriate. Products that were released last year related to changes in circumstances are presented below. IRS Summertime Tax Tip 2016-10, July 25, 2016 https://www.irs.gov/uac/check-your-tax-withholding-this-summer-to-prevent-a-tax-time-surprise IRS Health Care Tax Tip 2016-59, July 6, 2016 https://www.irs.gov/affordable-care-act/individuals-and-families/its-time-for-a-ptc-checkup-for-your-2016-health-insurance-marketplace-coverage IRS Health Care Tax Tip 2016-67, August 31, 2016 https://www.irs.gov/affordable-care-act/individuals-and-families/moving-in-2016-notify-your-marketplace-about-your-new-address;
IRS Action	Wage and Investment will review language for tax tips to look for areas to improve language related to changes in circumstances. Implementation date: September 30, 2017
TAS Response	We believe that the IRS communications are helpful, but we also believe that the IRS should work in conjunction with the SSA. If taxpayers receive information about the tax consequences, including the impact on PTC eligibility, when they receive the large lump sum amounts from the SSA, they are more likely to report their changes in circumstances in a timely fashion. The IRS should also work with partner organizations that have experience in distributing information to taxpayers with disabilities.

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IRS Publication 4054 (Rev. 06-2017) Catalog Number 34427X Department of the Treasury **Internal Revenue Service** www.irs.gov