

## Improve the Filing Process

### #3 AUTHORIZE THE VOLUNTEER INCOME TAX ASSISTANCE GRANT PROGRAM

#### Present Law

The IRS administers important programs that provide free or low-cost assistance to lower income U.S. taxpayers. The Volunteer Income Tax Assistance (VITA) program provides assistance to low-to-moderate income, elderly, disabled, and limited English-speaking taxpayers in preparing and filing their federal income tax returns. The Low Income Taxpayer Clinic (LITC) program provides *pro bono* representation to low income taxpayers involved in controversies with the IRS, including audits, appeals, collection matters, and tax litigation, and provides information about taxpayer rights and responsibilities in multiple languages for taxpayers who speak English as a second language.<sup>10</sup>

As part of the IRS Restructuring and Reform Act of 1998, Congress created a federal grants program for LITCs. IRC § 7526 authorizes the Secretary, subject to the availability of appropriated funds, to make grants to provide matching funds for the development, expansion, or continuation of LITCs.

In contrast to the LITC grant program, Congress has not authorized the VITA program to receive grants through the tax-writing process. Since fiscal year 2008, however, Congress has used the appropriations process to provide funding for the IRS to administer a Community VITA matching grants program for tax return preparation assistance.<sup>11</sup>

#### Reasons for Change

The VITA grant program would stand on more solid, permanent, and predictable footing if it were authorized and not solely created and funded through the annual appropriations process. As with the LITC authorizing statute, the tax-writing committees could establish eligibility criteria for VITA programs to expand their provision of services. Absent such criteria, the IRS has administered the VITA grant program narrowly, restricting grantees' ability to use grant funds to hire experts to train volunteers and perform quality reviews, as well as to serve as Certified Acceptance Agents. As a result, few VITA grantees assist low income self-employed taxpayers who file a Schedule C, *Profit or Loss From Business (Sole Proprietorship)*, or a Schedule F, *Profit or Loss From Farming*, or low income taxpayers with disaster losses. Moreover, few VITA grantees are open year-round or assist taxpayers in preparing amended returns.

Through an authorizing statute, Congress could provide direction to the IRS about the eligibility criteria for grantees, including their ability to operate year-round, and authorize the use of funds to develop expertise to

<sup>10</sup> A third program, Tax Counseling for the Elderly (TCE), is similar to the Volunteer Income Tax Assistance (VITA) program in that it assists elderly taxpayers in preparing and filing their federal income tax returns. The IRS administers VITA and TCE jointly in most respects. The rationale for authorizing the VITA program probably applies to the TCE program as well. However, we have not studied the TCE program closely, so we are not making that recommendation at this time. In the Revenue Act of 1978, Congress authorized the TCE program. See Pub. L. No. 95-600, § 163, 92 Stat. 2763, 2810 (1978). Although that authorization only applied for fiscal years 1979 and 1980, Congress continues to appropriate funds for the TCE program annually through its appropriations acts. See, e.g., Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division E, Title 1, 132 Stat. 348, 540 (2018).

<sup>11</sup> See, e.g., Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 1976 (2007); Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division E, Title 1, 132 Stat. 348, 540 (2018). Not all VITA programs receive a grant from the IRS. For more details about the VITA grant program, see IRS Pub. 4671, *VITA Grant Program Overview and Application Instructions*.

assist taxpayers in preparing a broader range of forms and schedules than most VITA programs are currently able to handle.

### Recommendation

Enact a new IRC § 7526A to authorize the Secretary, subject to the availability of appropriated funds, to provide grants for the development, expansion, or continuation of VITA programs, particularly VITA programs that will use the funds to prepare tax forms and schedules that are commonly needed by low income taxpayers but currently designated as “out-of-scope.”<sup>12</sup>

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<sup>12</sup> For legislative language generally consistent with this recommendation, see Taxpayer First Act of 2018, S. 3246, 115th Cong. § 1001 (2018); Taxpayer First Act, H.R. 5444, 115th Cong. § 12001 (2018); Protecting Taxpayers Act, S. 3278, 115th Cong. § 502 (2018). These three bills are similar in substance and contain the same taxpayer eligibility criteria. However, the House bill differs from the Senate bills in the term it uses to describe eligible taxpayers. The Senate bills use the term “applicable taxpayer.” The House bill uses the term “low-income taxpayer.” We recommend Congress use the term “applicable taxpayer” to avoid creating inconsistent statutory definitions of the term “low-income taxpayer.” In IRC §§ 7526(b) and 6159(f), the term “low-income taxpayer” is defined as a taxpayer with income at or below 250 percent of the Federal Poverty Level. The IRS has adopted 250 percent of the Federal Poverty Level as its proxy for low-income taxpayers as well, including to screen out taxpayers receiving Social Security benefits from the Federal Payment Levy Program. See IRM 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016). Notably, the VITA program does not use 250 percent of the Federal Poverty Level for its eligibility criterion. Instead, a taxpayer is eligible to use VITA services if his or her income does not exceed an amount equal to the completed Earned Income Tax Credit (EITC) phaseout amount for a married couple filing a joint return with three or more qualifying children. We have no concerns about using the EITC threshold for purposes of VITA eligibility, but we believe it would promote clarity to consistently use the term “low-income taxpayer” to refer to taxpayers with incomes at or below 250 percent of the Federal Poverty Level. Use of the term “applicable taxpayer” would address this concern without changing the substance of the proposal.