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#6**USER FEES: Prohibit User Fees That Reduce Revenue, Increase Costs, or Erode Taxpayer Rights****TAXPAYER RIGHTS IMPACTED¹**

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

PROBLEM

Consistent with its mission, the IRS offers various services that help people report and pay their taxes. Due to budget constraints, however, it has been charging new fees or hiking existing fees for these services.² For example, the IRS has recently increased (or proposed to increase) a wide range of fees including the fees for installment agreements (IAs),³ offers in compromise (OICs),⁴ pre-filing agreements (PFAs),⁵ private letter rulings (PLRs),⁶ and special enrollment examinations (SEE).⁷

The IRS cites the Independent Offices Appropriation Act of 1952 (IOAA), Office of Management and Budget (OMB) Circular A-25, and budget constraints as the reasons for its most recent fee hikes.⁸ Unlike services provided by other agencies, however, the government is often the primary beneficiary of the IRS's services, which help people pay taxes.⁹ Thus, IRS user fees may discourage people from paying their taxes and cost the government more — in lost tax revenue and increased enforcement costs — than they bring in.

- 1 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)).
- 2 In 2016 the IRS proposed increasing the fees for installment agreements (IAs) and offers in compromise (OICs) because of “constraints on IRS resources.” See *User Fees for IAs*, 81 Fed. Reg. 56,543, 56,544 (Aug. 22, 2016); *User Fees for OICs*, 81 Fed. Reg. 70,654, 70,655 (Oct. 13, 2016).
- 3 *User Fees for IAs*, T.D. 9798, 81 Fed. Reg. 86,955 (Dec. 2, 2016).
- 4 *User Fees for OICs*, 81 Fed. Reg. 70,654 (Oct. 13, 2016) (proposing to increase the OIC fee from \$186 to \$300). For the National Taxpayer Advocate’s comments, see National Taxpayer Advocate Memo to Associate Chief Counsel (Procedure and Administration), *Comments on User Fees for OICs* (Nov. 28, 2016), <https://www.regulations.gov/document?D=IRS-2016-0038-0003>.
- 5 Rev. Proc. 2016-30, § 10, 2016-21 I.R.B. 981 (increasing the pre-filing agreement (PFA) fee from \$50,000 to \$218,600).
- 6 Rev. Proc. 2015-1, App’x A(3), 2015-1 I.R.B. 1 (2015) (increasing the private letter ruling (PLR) fee from \$19,000 to \$28,300). Previously, the fee for PLRs from Tax Exempt/Government Entities (TE/GE) was \$10,000. Rev. Proc. 2014-8, § 6.08, 2014-1 I.R.B. 242 (2014).
- 7 *Special Enrollment Examination User Fee for Enrolled Agents*, 82 Fed. Reg. 33,009 (July 19, 2017) (increasing the IRS’s portion of the fee from \$11 to \$81).
- 8 See, e.g., 31 U.S.C. § 483a (1976), *re-codified at* 31 U.S.C. § 9701 (2017); Office of Management and Budget (OMB), Circular A-25, 58 Fed. Reg. 38,142 (July 15, 1993), (hereinafter “OMB Circular A-25”).
- 9 See, e.g., *Steele v. United States*, 2017-1 U.S. Tax Cas. (CCH) P50,238, 2017 U.S. Dist. LEXIS 84117 (D.D.C. 2017), *appeal docketed*, No. 1:14-cv-01523 (D.D.C., Sept. 6, 2017) (holding the fee for preparer tax identification numbers (PTINs) was invalid primarily because “if a benefit exists, it inures to the IRS, who, through the use of PTINs, may better identify and keep track of tax return preparers and the returns that they have prepared.”).

In addition, charging for fundamental tax services that allow taxpayers to exercise their rights creates a pay-to-play system that seems inconsistent with the *right to a fair and just tax system*. If charging taxpayers to exercise their rights reduces trust in government and faith in the legitimacy of the tax system, it could even reduce the revenue that the government collects from other taxpayers by reducing voluntary compliance overall.¹⁰

Without additional legislation, resource constraints could prompt the IRS to begin charging for all kinds of fundamental tax services such as: filing an appeal, receiving assistance from the Taxpayer Advocate Service, asking for an audit reconsideration, entering a closing agreement, visiting a taxpayer assistance center, calling the IRS, receiving a communication (*e.g.*, a call, letter, or notice), making a payment, submitting a tax form, using the “where’s my refund” website, or asking the IRS to withdraw a lien.

EXAMPLE

In 2016, the IRS raised the fee for taxpayers to enter into IAs to pay their taxes plus interest and penalties over time. In response to comments about how the government benefits from IAs, the IRS responded that “the benefit to the fisc of collecting outstanding taxes is not an additional benefit to the government because the IRS would collect those amounts through other means absent the installment agreement.”¹¹ The IRS did not provide any data to support this assertion, and did not consider the cost of collecting those taxes through other means. Nor did it address the potential violation of taxpayer rights that could otherwise occur. It explained “there is no requirement that the agency weigh this public benefit against the specific benefit to the identifiable recipient.”¹² The IRS’s analysis suggests that if it can identify someone who arguably receives a “special benefit,” then it is required to impose a user fee (or request a waiver from OMB), even if the fee would cost the government more in tax revenue or enforcement costs than it generates, and even if it would violate the Taxpayer Bill of Rights.

In response to a comment observing that the IRS is required by law to enter into certain “guaranteed” IAs — a law that supports the taxpayer’s *right to privacy* by ensuring that enforcement is “no more intrusive than necessary” — the IRS explained that an “issuing agency may charge a fee even though the agency is required to issue such benefit.”¹³ In other words, the IRS believes it is permitted (or maybe even required) to charge a fee for access to or application of fundamental taxpayer rights.

RECOMMENDATIONS

To ensure the IRS adequately considers the consequences of increasing fees, the National Taxpayer Advocate recommends that Congress prohibit the IRS from increasing fees for tax-related services unless it first determines, after considering public comments, that:

- (1) The proposed fee will not reduce government revenue (*e.g.*, by directly or indirectly discouraging voluntary tax compliance);

10 See, *e.g.*, National Taxpayer Advocate 2007 Annual Report to Congress vol. 2, 138-150; National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 1-28; OECD, Forum on Tax Administration, Small/Medium Enterprise (SME) Compliance Subgroup, *Understanding and Influencing Taxpayers’ Compliance Behaviour* (Nov. 2010); OECD, Forum on Tax Administration Subgroup, *Right from the Start: Influencing the Compliance Environment for Small and Medium Enterprises* (Jan. 2012); Tom Tyler, *Why People Obey the Law* (2006); Tom Tyler, *Legitimacy and Criminal Justice: The Benefits of Self-Regulation*, 7 OHIO ST. J. CRIM. L. 307-359 (Fall 2009); Erich Kirchler, *The Economic Psychology of Tax Behaviour* (2007).

11 *User Fees for IAs*, T.D. 9798, 81 Fed. Reg. 86,955, 86,957 (Dec. 2, 2016).

12 *Id.* Perhaps OMB Circulars should be revisited in light of the TBOR, which has been codified by Congress.

13 *Id.*

- (2) The proposed fee will not increase government expenses (*e.g.*, by increasing enforcement costs or noncompliance); and
- (3) The proposed fee will not undermine or deter taxpayers from claiming the protection of taxpayer rights.

PRESENT LAW

The IOAA generally requires federal agencies to consider establishing user fees for any “service or thing of value provided by the agency,” and the OMB requires them to consider charging “full cost” for those that convey “special benefits,” unless it grants a waiver.¹⁴ Agencies have discretion to request a fee waiver “where the cost of collecting the fees would represent an unduly large part of the fee for the activity or any other condition exists that, in the opinion of the agency head, justifies an exception.”¹⁵ When an agency charges a fee, however, the IOAA specifies that “[e]ach charge shall be — (1) fair; and (2) based on — (A) the costs to the Government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and (D) other relevant facts.” Various other laws give the IRS discretion to set a “reasonable” fee for specific items.¹⁶

OMB Circular A-25 says that agencies may impose fees for services except when “identification of the specific beneficiary is obscure, and the service can be considered primarily as benefiting broadly the general public.” It does not distinguish between services that benefit the government and those that do not. Rather, it says that even

when the public obtains benefits as a necessary consequence of an agency’s provision of special benefits to an identifiable recipient (*i.e.*, the public benefits are not independent of, but merely incidental to, the special benefits), an agency need not allocate any costs to the public.

As an example, it suggests that agencies may charge full cost for services such as granting patents, passports, and licenses, and conducting customs inspections after regular duty hours, even though such services may benefit the general public.

However, a Senate report preceding the IOAA suggested that agencies consider fees for services to “special beneficiaries,” but not for “fundamental government services” that benefit the general public or where “there is doubt as to the degree or preponderance of benefit.”¹⁷ This report is consistent with recommendations by economists and the Government Accountability Office that agencies not charge for services that primarily benefit the general public, and that they charge a reduced fee for services that

¹⁴ 31 U.S.C. § 9701(b) (“service or thing of value provided by the agency”); OMB Circular A-25 (“special benefit”).

¹⁵ OMB Circular A-25.

¹⁶ See, *e.g.*, IRC § 6103(p)(2) (reproduction of returns and the disclosure of return information, such as a U.S. Residency Certification, Income Verification Express Service (IVES), and copies); IRC § 7528 (letter rulings, opinion letters, determination letters, art valuation, and similar requests); IRC § 6104(d)(1)(B) (copying and mailing exempt organization (EO) materials and returns); IRC § 6108(b) (statistical studies); 5 U.S.C. § 552(a)(4)(A) (Freedom of Information Act (FOIA) document search, duplication, and review); IRC § 6110(k) (reproduction of Chief Counsel Advice); 29 U.S.C. 1202a (Employee Plan Compliance Resolution System under Rev. Proc. 2016-51, 2016-42 I.R.B. 465 (Sept. 29, 2016)). The IRS must also collect a \$500 user fee from any person claiming a deduction for a historical preservation easement. See IRC § 170(f)(13).

¹⁷ S. REP. NO. 2120, 81st Cong., 2d Sess. 3-4 (1950). Services that promote tax compliance are perhaps the most fundamental government service because the government could not exist without taxes. See, *e.g.*, *Bull v. US*, 295 U.S. 247, 259-260 (1935) (“taxes are the lifeblood of government...”).

provide a public benefit.¹⁸ Moreover, courts have held that the IOAA does not authorize full-cost fees for services that primarily benefit the general public (e.g., the cost of regulating the industry) just because specific beneficiaries can be identified.¹⁹ Thus, there is a limit to the services that may be subject to a fee, but the precise outlines of that limit are unclear.

The IRS has an incentive to push the envelope by raising fees and imposing new ones. Unlike other federal agencies, it may retain and spend certain user fee revenue.²⁰ The IRS has a lot of flexibility in how it spends user fees. It generally does not have to use fee revenue to fund the services that generated it.²¹ While the IRS submits its user fee spending plan to the Department of Treasury and OMB for approval, it does not need congressional approval.²²

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- 18 See, e.g., Government Accountability Office (GAO), GAO-08-386SP, *Federal User Fees: A Design Guide* 7 (May 2008), <http://www.gao.gov/assets/210/203357.pdf> (“if a program primarily benefits the general public (e.g., national defense), it should be supported by general revenue, not user fees; if a program primarily benefits identifiable users, such as customers of the U.S. Postal Service, it should be funded by fees; and if a program benefits both the general public and users, it should be funded in part by fees and in part by general revenues.”); Clayton P. Gillette, *Federal User Fees: A Legal and Economic Analysis*, 67 B.U.L. REV. 795, 873 (1987) (“Where provision of the good or service creates substantial external benefits, user fees should be reduced to reflect judgments about the relative magnitudes of the marginal social benefits entailed.”).
- 19 See *Nat’l Cable Television Assn., Inc. v. United States et al.*, 415 U.S. 336 (1974) (holding CATV operators could not be charged for regulations, even though the regulations limited the franchise fees charged to operators); *Fed. Power Comm’n v. New England Power Co.*, 415 U.S. 345, 346-350 (1974) (holding electric and gas utilities could not be charged for regulations that helped them gain access to markets, to capital, and supplies); *Elec. Indus Ass’n v. FCC*, 554 F.2d 1109, 1115 (D.C. Cir. 1976) (explaining the Federal Communications Commission (FCC) could charge equipment manufacturers fees for tariff filings and equipment certifications, which they needed to conduct business, but remanding because the FCC could not charge for other regulatory costs that benefit the public); *Engine Mfrs. Ass’n v. EPA*, 20 F.3d 1177, 1180 (D.C. Cir. 1994) (noting “[I]f the service provides both a specific benefit to an identifiable beneficiary and an independent benefit to the public, then the agency must pro rate its costs, lest the specific beneficiary be charged for agency costs attributable to the public benefit.”); *Steele v. United States*, 2017-1 U.S. Tax Cas. (CCH) P50,238, 2017 U.S. Dist. LEXIS 84117 (D.D.C. 2017), *appeal docketed*, No. 1:14-cv-01523 (D.D.C., Sept. 6, 2017) (holding the IOAA did not authorize the IRS to charge for PTINs, in part, because “if a benefit exists, it inures to the IRS”).
- 20 Compare 31 U.S.C. § 3302(b) (requiring agencies to return user fee receipts to the Treasury) with Treasury, Postal Service, and General Government Appropriations Act, 1995, Pub. L. No. 103-329, § 3, 108 Stat. 2382 (1994) (allowing the IRS to retain certain user fee receipts) and Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, Pub. L. No. 109-115, § 209, 119 Stat. 2396 (2006) (same).
- 21 IRS response to TAS information request (June 30, 2017).
- 22 GAO, GAO-17-492T, *2016 Filing Season* 4 n.7 (Mar. 8, 2016), <http://www.gao.gov/assets/690/683246.pdf>. Congress increased the IRS’s appropriation for taxpayer services from fiscal year (FY) 2013 to FY 2016. Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2017-40-013, *Analysis of Resources Allocated to Taxpayer Services* 5 (Dec. 2016), <https://www.treasury.gov/tigta/auditreports/2017reports/201740013fr.pdf>. In FY 2015, however, the IRS diverted fee revenue from taxpayer service to operations support, primarily to implement various legislative mandates. *Id.* H.R. 4885 would limit the IRS’s authority to spend user fee revenue without authorization from Congress.

REASONS FOR CHANGE

IRS Services Often Generate Revenue, Reduce Costs, and Implement Taxpayer Rights

PFA and PLR benefit the government.²³ When a taxpayer requests a PFA, the IRS may agree to examine and resolve an issue on the return before it is filed.²⁴ According to the IRS, PFA exams are better than post-filing exams because:

- Records and people are more readily available before a return is filed;
- PFAs foster a cooperative relationship;
- PFAs are faster;
- PFAs make any post-filing exam quicker;
- PFAs improve resource allocation by addressing significant issue(s); and
- PFAs reduce compliance burden and costs.²⁵

PLRs can provide similar benefits. Even more importantly, they help educate the public about how experts at the IRS would apply the law in similar cases, even if they do not necessarily represent the IRS's official position and other taxpayers cannot rely on them.²⁶

As discussed above, IAs and OICs also benefit the government. The IRS's goal for the OIC program is to collect what is reasonably collectible at the least cost and at the earliest possible time.²⁷ As a condition of the agreement taxpayers must remain compliant for at least five years.²⁸ In addition, OICs enable the IRS to avoid wasting resources by trying to collect more in the future from taxpayers who cannot afford to pay without experiencing economic hardship (and thereby also helping the IRS avoid violating taxpayer rights).²⁹

Similarly, IAs allow the taxpayer to pay over time, sparing the IRS the expense of enforced collection. Thus, IAs and OICs independently benefit all taxpayers. Any benefit to the applicant is designed as an incentive to encourage tax debtors who cannot pay in full to apply for an IA or OIC so that the government may benefit (e.g., by collecting the reasonable collection potential at a minimal cost to the government and by securing at least five years of voluntary compliance going forward). Thus, it is costly for the IRS to charge for OICs and IAs, and doing so may undermine the IRS's mission.

23 The PLR and PFA fees are not governed by the Independent Offices Appropriation Act of 1952 (IOAA), but the IRS can still consider the extent to which these services benefit the general public and the government when setting fees for these services. See IRC § 7528(b)(2)(A) ("The Secretary shall provide for such exemptions (and reduced fees) under such program [for issuing 'ruling letters, opinion letters, and determination letters, and other similar requests'] as the Secretary determines to be appropriate.").

24 IRM 4.30.1 (Jan. 9, 2002).

25 See, e.g., IRS, *Pre-Filing Agreement Program - Orientation Guide* (Feb. 27, 2017), <https://www.irs.gov/businesses/pre-filing-agreement-program-orientation-guide>.

26 See Rev. Proc. 2017-1, § 11.02, 2017-1 I.R.B. 1 ("A taxpayer may not rely on a letter ruling issued to another taxpayer. See § 6110(k)(3).").

27 Policy Statement P-5-100, *reprinted at* IRM 1.2.14.1.17 (Jan. 30, 1992).

28 IRS, Form 656, *Offer in Compromise* (Mar. 2017) (providing in item j that OICs require five years of future compliance).

29 The IRS loses revenue when it rejects an OIC based on the (false) premise that it will collect more from the taxpayer in the future. The IRS ultimately collects surprisingly little on OICs that are returned, withdrawn, or rejected. IRS, *Analysis of Various Aspects of the OIC Program* (Sept. 2004) (finding, for example, that for OICs from businesses that were not accepted, no collections were subsequently credited to the offer-related modules in 60% of the processable returns, 46% of the rejected OICs and 40% of those withdrawn); National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 (*A Study of the IRS Offer in Compromise Program*).

In addition, each of these services also furthers taxpayer rights, such as the *right to privacy* (including the right to expect that enforcement will be “no more intrusive than necessary”), the *right to quality service*, the *right to be informed*, the *right to finality*, and the *right to a fair and just tax system* (including the right to expect “the tax system to consider facts and circumstances that might affect their ... ability to pay”). Thus, charging for them erodes taxpayer rights.

Research Suggests That Even Small Fees Can Significantly Reduce Uptake and Re-Frame Tax Compliance Decisions, Potentially Reducing Compliance

The effect of IRS user fees could be more complicated than it seems. Fees can significantly reduce uptake even among those who can afford them, perhaps by making the uptake decision more complicated.³⁰ Free services could generate goodwill, trust, and a cooperative attitude toward the IRS, which studies suggest could improve voluntary compliance.³¹ If people learn that others are using IRS services to comply, they may be more likely to view compliance as the norm.³² By contrast, if the IRS charges to help people comply, it could monetize the transaction, eroding tax morale.³³ In other words, helping people comply (for free) reinforces the view that tax compliance is a civic and moral duty, whereas charging for assistance reinforces the view that compliance is just a monetary transaction, which is “smart” to undertake only if it makes economic sense.

The IRS Is Not Required to Consider Whether Services Generate Revenue, Reduce Costs, or Erode Taxpayer Rights Protections Before Increasing Fees

The IOAA does not expressly require the IRS to quantify or consider the public benefit of the service.³⁴ Nor is the IRS required to consider if imposing the fee would increase the IRS’s enforcement costs, reduce tax revenue, or violate taxpayer rights.³⁵ Moreover, the IRS does not appear to consider these factors when imposing or raising fees.³⁶

In 2016, the IRS proposed increasing the fees for IAs and OICs due to “constraints on IRS resources.”³⁷ Similarly, in its Fiscal Year 2015 biennial review the IRS proposed to use its discretion to set a “reasonable” fee that is higher than the cost of certain services: (1) because the cost of providing the services “can vary significantly,” (2) to avoid “raising the fee one year only to lower the next,” or (3)

30 See, e.g., Mary Ann Bates et al., *The Price is Wrong*, FIELD ACT. SCI. REP. (June 12, 2012), <http://factsreports.revues.org/1554> (discussing the negative effect of fees on the uptake of health-related products or services such as deworming, water disinfectant, and insecticidal bed nets).

31 See, e.g., Erich Kirchler, *The Economic Psychology of Tax Behaviour* (2007).

32 For a survey of studies showing the impact of behavioral insights including norms on tax compliance, see National Taxpayer Advocate 2016 Annual Report to Congress vol. 3 (Literature Review: *Behavioral Science Lessons for Taxpayer Compliance*).

33 See generally, Kathleen D. Vohs, Nicole L. Mead & Miranda R. Goode, *The Psychological Consequences of Money*, 314 Sci. 1154 (2006) (conducting experiments that suggest people are less helpful after thinking about money); James Heyman & Dan Ariely, *Effort for Payment: A Tale of Two Markets*, 15 PSYCHOL. SCI. 787, 792-93 (2004) (showing that people sometimes expend more effort in exchange for no payment (a social market) than they expend when they receive low payment (a monetary market)).

34 See *User Fees for Installment Agreements (IAs)*, T.D. 9798, 81 Fed. Reg. 86,955, 86,957 (Dec. 2, 2016).

35 *Id.*

36 When the IRS has received comments suggesting a fee would not be in the public interest, it has focused solely on the fact that it might deploy the fee revenue for “other activities.” *Special Enrollment Examination User Fee for Enrolled Agents*, 82 Fed. Reg. 33,009, 33,011 (July 19, 2017) (acknowledging that “[e]nrolled agents play a valuable role in the tax administration process” but that “subsidizing the cost of the EA–SEE program requires diverting resources from other activities that are in the public interest and that inure to the public generally.”).

37 See, e.g., *User Fees for IAs*, Notice of Proposed Rulemaking (NPRM), 81 Fed. Reg. 56,543, 56,544 (Aug. 22, 2016); *User Fees for OICs*, NPRM, 81 Fed. Reg. 70,654, 70,655 (Oct. 13, 2016). Because PFA and PLR fees are not governed by the IOAA, the IRS raised them without public notice and comment.

to “reduce the number and frequency” of requests for service — services that promote voluntary compliance.³⁸

Without additional legislation, resource constraints could prompt the IRS to begin charging for all kinds of fundamental tax services such as filing an appeal, receiving assistance from the Taxpayer Advocate Service, asking for an audit reconsideration, entering a closing agreement, visiting a taxpayer assistance center, calling the IRS, receiving a communication (*e.g.*, a call, letter, or notice), making a payment, submitting a tax form, using the “where’s my refund” website, or asking the IRS to withdraw a lien.

The National Taxpayer Advocate has recommended that the IRS avoid fees that increase enforcement costs, reduce voluntary compliance, erode taxpayer rights, or otherwise create difficulties in achieving the IRS’s mission.³⁹ The IRS agreed to consider these factors in its biennial reviews.⁴⁰ However, this change only applies to certain new user fees, and it is unclear how the IRS will quantify and evaluate these considerations.⁴¹ Moreover, the IRS has not agreed to include its analysis in its public notices of proposed rulemaking or otherwise subject the analysis to public scrutiny.⁴²

EXPLANATION OF RECOMMENDATIONS

Before increasing any fee for tax-related service, this recommendation would require the IRS to consider public comments concerning whether the service (1) increases government revenue, (2) reduces government expenses, such as enforcement costs, or (3) erodes access to taxpayer rights, such as the *right to privacy* (including the right to expect that enforcement be “no more intrusive than necessary”) and the *right to a fair and just tax system* (including the right to expect “the tax system to consider facts and circumstances that might affect their ... ability to pay”). Unless the IRS could reasonably conclude that the proposed fee increase would not reduce tax revenue, increase enforcement costs, or undermine taxpayer rights, it would not be authorized to increase the fee. This new requirement would not apply to fees for services that are not tax-related, such as those for fulfilling requests under the Freedom of Information Act.

38 IRS response to TAS information request (July 6, 2017) (explaining why an IRS Operating Division proposed, in the FY 2015 biennial user fee review, to impose above-cost fees for many of the services it provides).

39 National Taxpayer Advocate 2015 Annual Report to Congress 14-22 (Most Serious Problem: *The IRS May Adopt User Fees to Fill Funding Gaps Without Fully Considering Taxpayer Burden and the Impact on Voluntary Compliance*).

40 See, *e.g.*, National Taxpayer Advocate FY 2017 Objectives Report to Congress 8-10 (TAS Comments on IRS Response).

41 National Taxpayer Advocate FY 2017 Objectives Report to Congress, vol. 2, 8-10; IRM 1.35.19.20(2)(e)-(g) (July 19, 2016) (for potential new user fees, requiring IRS business units to consider the “effect of the fee on voluntary compliance, taxpayer burden, and taxpayer rights. The change in demand for service resulting from the proposed fee,” and explaining that “[t]he IRS will avoid fees that impact enforcement costs, voluntary compliance, or otherwise create other difficulties in achieving the IRS’s mission.”).

42 Executive Order 12866 already requires the IRS to “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify).” Executive Order 13563, 76 Fed. Reg. 3,821 (Jan. 21, 2011), *supplementing* Executive Order 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1993); CCDM 32.1.5.4.7.5.3 (Oct. 15, 2015). According to the IRS, this order does not apply to the OIC or IA fee regulations. See, *e.g.*, *User Fees for OICs*, 81 Fed. Reg. 70,654, 70,657 (Oct. 13, 2016). For a discussion of problems with the administration of this requirement, see GAO, GAO-16-720, *Regulatory Guidance Processes, Treasury and OMB Need to Reevaluate Long-standing Exemptions of Tax Regulations and Guidance* 35 (2016).