

MSP
#11**VITA/TCE PROGRAMS: IRS Restrictions on Volunteer Income Tax Assistance (VITA) and Taxpayer Counseling for the Elderly (TCE) Programs Increase Taxpayer Burden and Adversely Impact Access to Free Tax Preparation for Low Income, Disabled, Rural, and Elderly Taxpayers****RESPONSIBLE OFFICIALS**

Kenneth Corbin, Commissioner, Wage and Investment Division

TAXPAYER RIGHTS IMPACTED¹

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

DEFINITION OF PROBLEM

The Volunteer Income Tax Assistance (VITA) program provides free basic income tax return preparation with electronic filing to taxpayers who generally make \$54,000 or less,² including low-wage workers, persons with disabilities, taxpayers living in rural communities, Native Americans, and taxpayers with limited English proficiency.³ In addition to VITA, the Tax Counseling for the Elderly (TCE) program offers free tax help for taxpayers 60 years of age and older, specializing in questions about pensions and retirement-related issues.⁴ IRS-certified volunteers in these programs are associated with IRS partners, which are often non-profit organizations that receive grants from the IRS.⁵

- 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 The \$54,000 figure is based on the Earned Income Tax Credit (EITC) threshold; family size is not a factor. See IRS response to TAS Information Request (Sept. 21, 2017). Each year, the IRS suggests an income threshold for which free tax preparation will be offered. For example, in Tax Year 2015, the income threshold was \$53,000 while the EITC threshold for a family filing married filing jointly with three or more children, was \$53,267. See IRS, *2015 EITC Income Limits, Maximum Credit Amounts and Tax Law Updates*, <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/eitc-income-limits-maximum-credit-amounts-1-year> (last visited Oct. 19, 2017).
- 3 Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) sites provide free tax preparation services for qualified individuals in conjunction with IRS assistance and direction. See IRS, *Free Tax Return Preparation for Qualifying Taxpayers*, <https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers> (last visited May 17, 2017).
- 4 Section 163 of the Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2810 (1978) authorizes the IRS to enter into agreements with private or nongovernmental public non-profit agencies and organizations, exempt under IRC § 501, providing training and technical assistance to volunteers engaged in free tax help for the elderly.
- 5 See Revenue Act of 1978, Pub. L. No. 95-600, 92 Stat. 2810 (1978), § 163. In Fiscal Year (FY) 2017, the IRS partnered with 55 national partners. See also IRS response to TAS Information Request (Sept. 21, 2017).

Of about 143 million individual tax return filers in Processing Year (PY) 2017, 108 million or approximately 75 percent may be eligible to have their returns prepared at VITA and TCE sites.⁶ During fiscal year (FY) 2017, VITA and TCE programs prepared over 3.5 million individual income tax returns.⁷ This total does not reflect the number of taxpayers who sought assistance from VITA or TCE sites but were turned away because the issues they sought help with were deemed “out-of-scope.”⁸ Notably, in FY 2017, VITA and TCE sites were reported to have a 93 percent accuracy rate.⁹

The National Taxpayer Advocate has long emphasized that restrictions and limitations the IRS imposes on VITA and TCE sites, compounded with the elimination of tax preparation services at Taxpayer Assistance Centers (TACs), increase taxpayer burden and may adversely impact the ability of low income, disabled, rural, and elderly taxpayers to obtain free tax return preparation services and meet their reporting obligations.

More specifically, we have identified the following issues pertaining to the IRS administering VITA and TCE programs:

- VITA/TCE programs are subject to restrictions that impede their effectiveness;
- VITA and TCE income limits, which do not account for family size, adversely impact free tax preparation for otherwise eligible taxpayers;
- The IRS’s lack of tracking volunteers certified in specific “in-scope” law issues results in VITA and TCE programs being unable to assist eligible taxpayers;
- Most VITA and TCE tax preparation sites are open only until mid-April each year, further confounding the problem of taxpayers going without the assistance they need; and
- The IRS unreasonably restricts grant funds to be used as compensation for screeners, quality reviewers, and Certified Acceptance Agents (CAAs).

ANALYSIS OF PROBLEM

Background

History of VITA and TCE Programs

The Tax Reform Act of 1969 resulted in the formation of the VITA Program.¹⁰ IRS personnel recruited and trained volunteer tax preparers and then assigned them to community sites, such as libraries and community centers.¹¹ In 2000, the IRS created Stakeholder Partnerships, Education and Communication (SPEC), the outreach and education office of the IRS’s Wage and Investment Division,

6 TAS Research & Analysis, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF), data drawn Nov. 6, 2017. The number of individual filers is based on primary taxpayers who filed IRS Forms 1040, 1040A, and 1040EZ in Processing Year (PY) 2017. This number excludes amended returns. Some taxpayers may have filed multiple taxable year returns in a given processing year.

7 Letter by Frank Nolden, Director, Stakeholder Partnerships, Education and Communication; IRS Publication 4012, *VITA/TCE Volunteer Resource Guide* (Oct. 2, 2017).

8 See IRS Publication 5220, *VITA/TCE Volunteer Site Scope & Referral Chart* (Dec. 2016). Topics the IRS prohibits VITA programs from addressing are referred to as “out-of-scope” topics.

9 See FY 2017 Stakeholder Partnerships, Education and Communication (SPEC) Quality Statistical Sample (QSS) Review Results (July 5, 2017).

10 Pub. L. No. 91-172, 83 Stat. 487 (1969) (codified as amended in scattered sections of 26 U.S.C. and 42 U.S.C.).

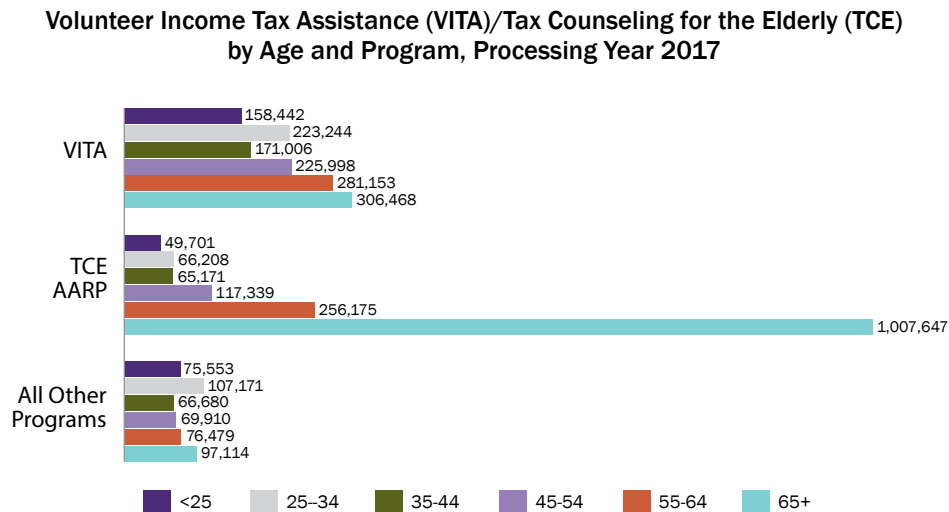
11 Steve Holt, *Ten Years of the EITC Movement: Making Work Pay Then and Now*, Metropolitan Policy Program at Brookings, 2 (Apr. 2011).

which manages the VITA and TCE programs.¹² Its creation led to the IRS’s emphasis on developing and supporting community partnerships rather than providing direct service.¹³

Diversity of VITA Taxpayers and Partners

The population of the United States is large and diverse in its taxpayer service needs, requiring VITA to be adaptable to the vulnerable populations it serves. During the 2016 tax year, 90 percent of that year’s nearly 3.5 million VITA taxpayers had annual incomes equal to or less than \$50,000.¹⁴ Nearly 42 percent of VITA and TCE filers were age 65 or older.¹⁵ As depicted in the figure below, the vast majority of older taxpayers using the volunteer programs file their returns at TCE sites.

FIGURE 1.11.1, VITA/TCE Tax Returns by Age and Program: Processing Year 2017¹⁶



Additionally, more than 400,000 taxpayers filed their returns at sites located in rural areas of the country.¹⁷ Whether low income, disabled, military, or elderly, taxpayer groups have different needs, all which VITA must be prepared to serve. During FY 2017, taxpayers visited 11,400 VITA and TCE sites,

12 See Internal Revenue Manual (IRM) 22.30.1.1, *Program Scope and Objectives* (Oct. 1, 2017). Stakeholder Partnerships, Education and Communication (SPEC) manages the VITA and TCE programs and handles the outreach and education functions of the IRS.

13 *Id.* By working with partners already established in local communities, SPEC has better access to lower income and underserved populations in those communities. The National Taxpayer Advocate has pointed out, however, that the IRS’s disappearing geographic footprint has significant downfalls. See, e.g., National Taxpayer Advocate 2016 Annual Report to Congress 86-97 (Most Serious Problem: *Geographic Focus*) (discussing how the lack of access to local IRS employees may result in taxpayers turning to both legitimate and illegitimate internet resources for tax information, where anonymity provides cover for behavior people might not normally consider).

14 IRS response to TAS Information Request, VITA-TCE Demographics attachment (Sept. 21, 2017).

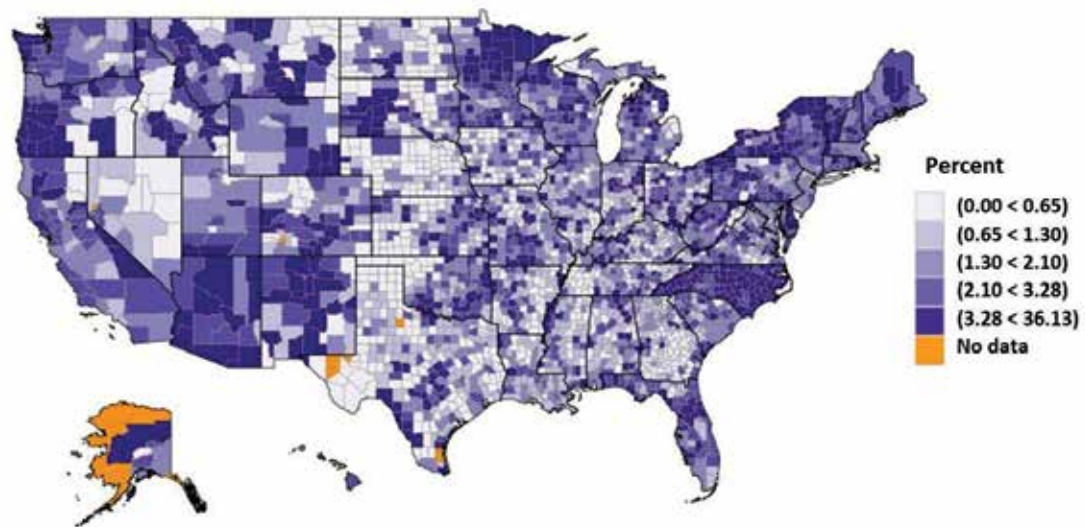
15 *Id.*

16 The “All Other” category is comprised of Facilitated Self-Assistance, Grant Programs, TCE (non-AARP), Co-located VITA programs, and Military VITA programs. TAS Research & Analysis, CDW, IRTF, data drawn Nov. 14, 2017.

17 IRS response to TAS Information Request, Percent of Target Population Filed Tax Returns with VITA/TCE Sites attachment (Sept. 21, 2017).

using the efforts of more than 87,000 volunteers.¹⁸ The map below depicts where taxpayers, who visited VITA/TCE sites during tax season 2017, were located.

FIGURE 1.11.2, Percent of VITA and TCE Returns in U.S. Counties: Filing Season 2017¹⁹



The sheer diversity of the most vulnerable taxpayer populations signals the difficulty in creating guidelines that apply equally to all groups. Tax issues that are considered out-of-scope for one group may not make sense to consider out-of-scope for another. One solution is that some out-of-scope decisions can be made on a regional basis. For example, a VITA program in rural Iowa should be equipped to prepare a Schedule F for a farmer, even if a VITA program in New York City is not. To support taxpayers with more complex issues, the IRS can develop additional certification levels for volunteers. Additionally, current VITA regulations exclude most self-employed taxpayers and Schedule E filers. For example, nearly a quarter of the U.S. population supplement their income in the sharing economy.²⁰ Of those, 85 percent make less than \$500 per month.²¹ However, taxpayers in these categories very often include low income, limited English proficiency (LEP), and elderly taxpayers who are exactly the type of taxpayer VITA ought to serve and who are easy prey for unscrupulous, dishonest, or incompetent tax preparers.

18 FY 2017 Stakeholder Partnerships, Education and Communication (SPEC) Quality Statistical Sample (QSS) Review Results (July 5, 2017).

19 TAS Research & Analysis, CDW, IRTF, data drawn Nov. 6, 2017. The percentage was calculated by taking the number of tax returns prepared by VITA & TCE sites and dividing it by the total number of tax returns filed in PY 2017. 'No data' means that no tax returns appear in the CDW ENTITY database (as of Sept. 2017) for the indicated counties. A ratio of zero indicates that no one in the county used VITA/TCE services even though some positive number of tax returns were filed. Counties with a ratio of zero are included in the category of 0.00 to 0.65 percent.

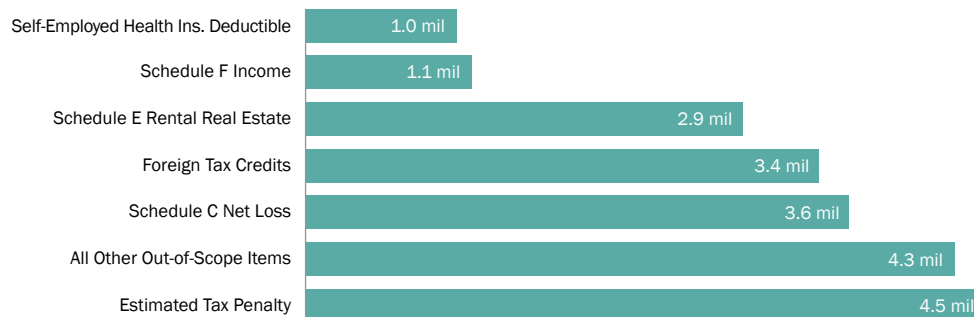
20 Pew Research Center, *Gig Work, Online Selling and Home Sharing* (Nov. 17, 2016), www.pewinternet.org/2016/11/17/gig-work-online-selling-and-home-sharing/. The sharing economy (also known as the gig economy) can be described as "collaborative consumption" or a "peer-to-peer market" that links a willing provider to a consumer of goods or services (coordinated through a community-based online service). See also Most Serious Problem: *SHARING ECONOMY: Participants in the Sharing Economy Require Further Guidance from the IRS, infra*.

21 Washington Post, *Side Hustles Are the New Norm* (July 3, 2017).

Nearly 21 million taxpayers who otherwise would have been eligible (based on age and income criteria) in processing year 2017 to seek Volunteer Income Tax Assistance had out-of-scope items.

FIGURE 1.11.3, VITA-Eligible Filers with VITA and TCE Out-of-Scope Items: Processing Year 2017²²

VITA-Eligible Filers With VITA and TCE Out-of-Scope Items, Processing Year 2017



As depicted in Figure 1.11.3, nearly 21 million taxpayers who otherwise would have been eligible (based on age and income criteria) in PY 2017 to seek VITA or TCE assistance had out-of-scope items.²³ About 4.5 million taxpayers contended with issues related to an estimated tax penalty, the single largest out-of-scope item.

²² TAS Research & Analysis, CDW, IRTF, data drawn Nov. 6, 2017.

²³ The figure of 20.8 million for 2017 reflects the number of taxpayers as of September 2017 and will increase as extension and other late filers are included.

VITA/TCE Programs Are Subject to Restrictions That Impede Their Effectiveness

Because VITA programs are staffed primarily by volunteers who are not tax professionals, the IRS has been concerned about allowing volunteers to prepare returns that involve legal complexity. To address this concern in part, the IRS has established a regime of testing for volunteers.²⁴ Volunteers must certify in tax law in one of four courses — Basic, Advanced, Military, or International.²⁵ There are also two optional specialty courses — Cancellation of Debt (COD) and Health Savings Accounts (HSAs) — and two supplemental training courses for Puerto Rico returns and foreign student returns.²⁶ A volunteer who tests and passes a particular certification level can prepare all tax returns that fall within the scope of that level.

The IRS, however, provides inconsistent information about what topics are out-of-scope for VITA and TCE volunteers. The IRS Publication 5220, *VITA/TCE Volunteer Site Scope & Referral Chart, Depiction of What is In-Scope Versus Out-of-Scope for Varying Taxpayers*,²⁷ Appendix 1, was developed to list in-scope tax law topics in a centralized location.²⁸ In fact, SPEC contends it does not maintain a list of out-of-scope issues.²⁹ Yet, Publication 5220 identifies several tax law topics determined to be out-of-scope for its volunteers, no matter what their certification level.³⁰ Publication 5220 is confusing and overly complex, and is difficult for volunteers, much less Customer Service Representatives (CSRs), to identify which issues assistance can be provided under the VITA and TCE programs.³¹

As illustrated in the table below, one VITA publication, IRS Publication 4491, *VITA/TCE Training Guide*, lists over 100 additional out-of-scope issues.³² Yet another VITA publication, IRS Publication 4012, *VITA/TCE Volunteer Resource Guide*, incorporates a version of IRS Publication 5220 but leaves out the columns depicting which additional specialty tax law certifications are required, whether the Interactive Tax Law Assistance (ITA) is available, and whether a particular tax law topic can be referred to a VITA/TCE site.³³ IRS Publication 3676-B, *IRS Certified Volunteers Providing Free Tax Preparation*, lists additional issues with which VITA and TCE Volunteers will not assist, further confusing the matter of what is considered out-of-scope.³⁴ None of the IRS publications provide a comprehensive list of out-of-scope issues.

24 IRS, Volunteer Training Certification, <https://www.irs.gov/individuals/volunteer-training-certification> (Rev. Sept. 30, 2017).

25 The VITA certification test is contained in IRS Pub 6744, *VITA/TCE Volunteer Assistor's Test/Retest* (Rev. Oct. 2017). A minimum score of 80% is required to pass each certification test.

26 Only volunteers who have passed the Advanced exam may choose to test for Military and International certifications. The HSA exam requires that volunteers be certified at the Basic level or higher, while the COD exam requires an Advanced level certification. See IRS, *Volunteer Training Certification*, <https://www.irs.gov/individuals/volunteer-training-certification> (Rev. Sept. 30, 2017).

27 See IRS Publication 5220, *VITA/TCE Volunteer Site Scope & Referral Chart* (Dec. 2016).

28 IRS response to TAS Information Request (Sept. 21, 2017).

29 *Id.*

30 *But see* IRS Publication 4012, *VITA/TCE Volunteer Resource Guide* (2016 Returns). Ironically, SPEC allows volunteers to use the IRS provided software to prepare and electronically file their own tax return and the returns of family and friends since “[u]nlike VITA/TCE returns, these returns have no income or tax law limitations.”

31 If a volunteer consults Publication 5220 for scope guidance in assisting a low income nonresident taxpayer, the volunteer will find that a volunteer would need to have both an Advanced and an International certification to assist the taxpayer. For instance, if the volunteer continues across the “Foreign Taxpayers” row on the chart, he or she will also find that no Interactive Tax Assistance (ITA) is available, nor can the return be referred to a particular site. A referral would only occur if the IRS knows which VITA site might have a volunteer certified at the appropriate level to assist with the issue.

32 IRS Publication 4491, *VITA/TCE Training Guide* (Rev. Oct. 2017).

33 IRS Publication 4012, *VITA/TCE Volunteer Resource Guide* (Rev. Oct. 2017).

34 Per IRS Publication 3676-B, *IRS Certified Volunteers Providing Free Tax Preparation* (Rev. Nov. 2016).

FIGURE 1.11.4, Out-of-Scope Issues Identified Per IRS VITA Publications³⁵

Publication	Number of tax topics deemed out-of-scope	Number of tax topics in-scope but with limitations	Number of tax topics that can be referred only to AARP
Pub. 4491, VITA/TCE Training Guide (Rev. Oct. 2016)	111	—	—
Pub. 3676-B, IRS Certified Volunteers Providing Free Tax Preparation Flyer (Rev. Nov. 2016)	8	—	—
Pub. 5220, VITA/TCE Volunteer Site Scope & Referral Chart (Rev. Dec. 2016)	6	—	11
Pub 4012, VITA/TCE Volunteer Resource Guide 2016 Tax Returns (Rev. Dec. 2016)	10	7	—

Although many tax law topics justifiably are considered out-of-scope because of their complexity, there are others that SPEC should allow volunteers to assist with if they are certified at the appropriate level. For example, preparation of tax returns with Schedule C are in scope for VITA/TCE, but only under certain conditions.³⁶ A Schedule C is basically only in scope for VITA if a Schedule C-EZ would otherwise be allowed except that business expenses are between \$5,000 and \$25,000. Thus, VITA and TCE volunteers cannot assist most entrepreneurs who qualify to take an office-in-home deduction, including, for example, day-care providers. Nor can they assist Uber/Lyft drivers if they have over

Disaster victims, as a taxpayer population, have characteristics that justify Volunteer Income Tax Assistance (VITA) assistance. Yet, claiming any casualty loss is out of scope for VITA. For all of its efforts in assisting disaster-area taxpayers, the IRS still does not permit these taxpayers to seek tax preparation assistance at VITA and Tax Counseling for the Elderly sites.

35 IRS Publication 5220, *VITA/TCE Volunteer Site Scope & Referral Chart*, line 15a-b, SEP/SIMPLE IRAs is reportedly pending an update to show this item as an in-scope topic for VITA/TCE, which will cause the number of tax topics in IRS Publication 5220 that can be referred only to AARP to drop to ten. IRS response to TAS fact check (Dec. 13, 2017). IRS Publication 3676-B, *IRS Certified Volunteers Providing Free Tax Preparation Flyer* states that VITA will not prepare the following: (1) Schedule C with losses; (2) Complicated Schedule D (capital gains and losses); (3) Form SS-5 (request for Social Security Number); (4) Form 8606 (non-deductible IRA); (5) Form 8615 (minor's investment income); (6) Form SS-8 (determination of worker status for purposes of federal employment taxes and income tax withholding); and (7) Parts 4 & 5 of Form 8962 (Premium Tax Credits).

36 In February 2011, SPEC initiated a Schedule C pilot program to determine the effectiveness of allowing tax law issues or topics relating to small business owners into the VITA/TCE program. SPEC ultimately determined that pilot sites, although preparing Schedule C returns with about 99 percent accuracy, were not preparing many returns with the expanded parameters, such as business use of home and depreciation expenses and the Schedule C Pilot was discontinued. Although SPEC agreed to allow return preparation with business expenses up to \$25,000, there is now stricter criteria for VITA-prepared Schedule C returns than existed under the Schedule C pilot. Criteria includes: depreciation is not allowed; no Section 179 expensing in lieu of depreciation; no business use of home; cash only accounting method; no businesses with inventory; no businesses with employees; only standard mileage (actual not allowed); and no business losses.

\$25,000 in business expenses.³⁷ Similarly, VITA cannot assist someone who rents out his or her home in Airbnb³⁸ or HomeAway³⁹ for more than 14 days because of the requirement to depreciate.³⁴⁰

Additionally, VITA may not assist taxpayers affected by hurricanes and other natural disasters. To claim a casualty loss on a prior year return, taxpayers must file amended returns or claim their loss on their current year tax returns. The IRS suggests that volunteer preparers have two years of previous experience and be trained and certified at the advanced level before preparing prior year or amended returns.⁴¹ Disaster victims, as a taxpayer population, have characteristics that justify VITA assistance.⁴² Yet, claiming any casualty loss is out of scope for VITA. For all of its efforts in assisting disaster-area taxpayers, the IRS still does not permit these taxpayers to seek tax preparation assistance at VITA and TCE sites.⁴³

Another group of vulnerable taxpayers are those whose debts are canceled or forgiven. Despite being the very population who might be eligible for such relief and least likely to pay for professional representation, cancellation of debt due to bankruptcy or insolvency⁴⁴ is considered out-of-scope for VITA programs, even though IRS publications include clear worksheets that could be automated for assistance in preparation.⁴⁵

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- 37 An Uber driver's tax return is in scope only if all of the following are true: the deduction for car expenses is claimed using the standard mileage rate — not the actual expense method (to qualify, the standard mileage rate must have been used for the first year the car was used for business); the total of all business expenses is less than \$25,000; the driver does not pay helpers — whether as subcontractors or employees; and there is a profit from the business. See IRS Publication 4491, *VITA/TCE Training Guide* (2017 Returns).
- 38 Airbnb is an online marketplace enabling people to lease or rent short-term lodging including vacation rentals, apartment rentals, homestays, hostel beds, or hotel rooms. See <https://www.airbnb.com/about/about-us> (last visited Nov. 13, 2017).
- 39 HomeAway, Inc. is an online marketplace, offering vacation rentals throughout the world, often for less than the cost of traditional hotel accommodations. See <https://www.homeaway.com/info/media-center/presskit> (last visited Dec. 4, 2017).
- 40 If a taxpayer rents his or her dwelling unit to others that he or she also uses as a personal residence, limitations may apply to the rental expenses that can be deducted. Taxpayers are considered to use their dwelling unit as a residence if they use it for personal purposes during the tax year for more than the greater of 14 days, or ten percent of the total days they rent it to others at a fair rental price. See IRC § 280a(d).
- 41 IRS, Fact Sheet for SPEC Partners, Preparing Prior Year and Amended Returns at VITA/TCE sites (Aug. 2016), <https://www.irs.gov/pub/irs-utl/fact-sheet-prior-year-and-amended-returns.pdf> (last visited May 15, 2017).
- 42 People who are of low socio-economic status (SES) are more likely to live in housing that is vulnerable to disasters. They also may live in areas where risks from disasters are higher. Because people of low SES have fewer assets, they have less to lose, and when they experience financial loss in disasters, the loss has a greater financial impact on them than it will on people of higher SES, as the loss is proportionally greater. They also may have their savings concentrated in fewer possessions, and so they may be more vulnerable to economic losses in disasters than people of higher SES who have their savings distributed more widely and saved in financial institutions. See Disaster Technical Assistance Center Supplemental Research Bulletin, *Greater Impact: How Disasters Affect People of Low Socioeconomic Status*, https://www.samhsa.gov/sites/default/files/programs_campaigns/dtac/srb-low-ses.pdf (July 2017).
- 43 During August and September 2017, Hurricanes Harvey, Irma, and Maria caused unprecedented and catastrophic damage in Puerto Rico, U.S. Virgin Islands, Florida, Georgia, and Texas. The IRS immediately responded, providing extensive relief that postpones various tax deadlines, and other special assistance for disaster-area taxpayers. See IRS, *IRS Offers Help to Hurricane Victims: A Recap of Key Tax Relief Provisions Available Following Harvey, Irma and Maria*, <https://www.irs.gov/newsroom/irs-offers-help-to-hurricane-victims-a-recap-of-key-tax-relief-provisions-available-following-harvey-irma-and-maria> (Sept. 26, 2017).
- 44 Cancellation of indebtedness can involve auto loans, credit card debt, medical care, professional services, installment purchases of furniture or other personal property, mortgages, and home equity loans. See IRS Publication 4491, *VITA/TCE Training Guide* (Rev. Oct. 2017); IRS Publication 5182, *VITA/TCE Specialty Course – Cancellation of Debt (COD)– Principal Residence* (Rev. Dec. 2014). The insolvency must have occurred immediately before the debt was canceled. See IRS Publication 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments* (Feb. 1, 2017); IRS Publication 4491, *VITA/TCE Training Guide* (Rev. Oct. 2017).
- 45 See IRS Publication 4681, *Canceled Debts, Foreclosures, Repossessions, and Abandonments* (Feb. 1, 2017). Worksheets include an insolvency worksheet, used to help calculate the extent the taxpayer was insolvent immediately before the cancellation of debt, and a worksheet for foreclosures and repossessions, used to figure the amount of gain or loss from the foreclosure or repossession.

Additionally, although SPEC's rural strategy focuses on assisting those taxpayers in underserved, rural areas, VITA programs cannot assist farmers in tax preparation. Returns with Schedule F, *Profit or Loss From Farming*, are considered out-of-scope for VITA and TCE programs.⁴⁶ About 2.06 million farms are currently in operation.⁴⁷ By arbitrarily restricting low income farmers from VITA and TCE Programs, the IRS is further burdening a vulnerable taxpayer population that should have access to free tax preparation.

Each of the examples discussed above show that an out-of-scope classification has serious impact on the very taxpayer population that Congress intended to be served by VITA and TCE Programs. The IRS believes that expanding the scope may burden volunteers to learn complex tax law topics and topics that come up infrequently.⁴⁸ The consequence, however, is that many taxpayers who would otherwise qualify for VITA services and truly need person-to-person assistance may have to seek assistance from unregulated and unqualified preparers or attempt to use self-service, risking error.

One potential solution is to require a higher certification level for issues impacting specific taxpayer populations, but not declaring them out of scope. Tax professionals with the skill set and knowledge to help taxpayers, such as tax attorneys, certified public accountants and enrolled agents, who are also VITA volunteers, should be able to prepare out-of-scope returns to address topics where there is a need but no access to service.

VITA and TCE Income Limits, Which Do Not Account for Family Size, Impede Access to Free Tax Preparation for Otherwise Eligible Taxpayers

The IRS acknowledges that the definition of in-scope refers to permissible tax law topics in a tax return and does not refer to income levels.⁴⁹ Since the value of low to moderate income can vary depending on the cost of living for a geographic location, the IRS instead urges partners to exercise sound judgment in establishing income limitations for return preparation.⁵⁰

Current limitations exclude many taxpayers who are low income under Low Income Taxpayer Clinic (LITC) guidelines, yet are excluded from VITA income guidelines.⁵¹ In order to qualify for assistance from an LITC, generally a taxpayer's income must be below 250 percent of the current year's federal poverty guidelines, based on family size and with income adjustments for Hawaii and Alaska, as indicated in Figure 1.11.5 below.⁵² A system similar to the LITC financial guidelines, which account for

46 Farmers must file a Form Schedule F, *Profit or Loss From Farming*, to report their farming income and claim their expense deductions. A farm includes livestock, dairy, poultry, fish, fruit, and truck farms. It also includes plantations, ranches, ranges, and orchards and groves. See IRS Publication 225, *Farmer's Tax Guide* (Oct. 19, 2017).

47 United States Department of Agriculture, *Farming and Farm Income*, <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/farming-and-farm-income/> (Oct. 11, 2017).

48 IRS response to TAS Information Request (Sept. 21, 2017).

49 *Id.*

50 Interestingly, in September 2017, the Treasury Inspector General for Tax Administration (TIGTA) found that VITA and TCE grantees continue to prepare tax returns for taxpayers with income amounts that exceed the suggested income threshold set for the Volunteer Program. TIGTA reported it is concerned that when taxpayers with incomes exceeding the Volunteer Program's income threshold have their tax returns prepared, it limits the resources available to assist those taxpayers for which Congress appropriated the VITA grant funds. See TIGTA, *Improvements Are Needed to Ensure That the Volunteer Income Tax Assistance Grant Program Extends Tax Return Preparation to Underserved Populations*, Ref. No. 2017-40-088 (Sept. 20, 2017).

51 See IRS Publication 3319, *Low Income Taxpayer Clinic 2018 Grant Application Package and Guidelines* (Rev. Apr. 2017). Per IRC § 7526(b)(1)(B)(i), at least 90 percent of taxpayers represented by an LITC must have incomes that do not exceed 250 percent of the federal poverty level.

52 IRS, *Information for Taxpayers Seeking LITC Services*, <https://www.irs.gov/advocate/low-income-taxpayer-clinics/low-income-taxpayer-clinic-income-eligibility-guidelines> (Rev. Aug. 4, 2017).

family size and income, as well as include flexibility for extenuating circumstances, would expand the reach of VITA services to the low income community.

FIGURE 1.11.5, 250 percent of Federal Poverty Guidelines⁵³

Size of Family Unit	48 Contiguous States, D.C., and Puerto Rico	Alaska	Hawaii
1	\$30,150	\$37,650	\$34,650
2	\$40,600	\$50,725	\$46,675
3	\$51,050	\$63,800	\$58,700
4	\$61,500	\$76,875	\$70,725
5	\$71,950	\$89,950	\$82,750
6	\$82,400	\$103,025	\$94,775
7	\$92,850	\$116,100	\$106,800
8	\$103,300	\$129,175	\$118,825
For each additional person, add	\$10,450	\$13,075	\$12,025

The IRS's Lack of Tracking Sites With Volunteers Certified in Specific "In-Scope" Law Issues Results in VITA and TCE Programs Being Unable to Assist Large Segments of Eligible Taxpayers

Publication 5220 also includes several "in-scope" tax law topics⁵⁴ but specifies that taxpayers with those issues may not be referred to VITA sites because the IRS has not identified volunteers with the appropriate certifications to assist those taxpayers. Moreover, because the Publication 5220 chart is found only online, taxpayers with limited internet access⁵⁵ may not know for which topics they can seek assistance.

As noted in Publication 5220, Appendix 1, there is a column entitled, "Can a Taxpayer's Tax Return with this Tax Law be Referred to a VITA/TCE site?" If there is a "No" in that column, the corresponding tax law topics cannot be referred to any VITA/TCE site, therefore rendering them *de facto* out-of-scope. This is because the IRS is not tracking which sites have volunteers who are certified to assist with these issues. Including this information in the IRS tracking system is crucial in managing the VITA Program.

Tracking volunteer certification levels and where those volunteers provide services should be simple. After all, the SPEC Coordinator or Partner already must validate the volunteer's credentials and verify

⁵³ This table is based on the Federal Poverty Guidelines published at 81 Fed. Reg. 8831-32 (Jan. 31, 2017).

⁵⁴ These topics include: Foreign taxpayers or those with foreign income; Schedule E, Supplemental Income and Loss (rental real estate); Cancellation of debt income (mortgage or credit cards); Health savings account deduction; and Foreign tax credit. IRS Publication 5220, *VITA/TCE Volunteer Site Scope & Referral Chart* (Dec. 2016).

⁵⁵ Over 33 million taxpayers do not have broadband access at home, significantly limiting their online activities. Of this number, 28.5 percent are low income, 40 percent are senior, and 31.9 percent are disabled taxpayers. 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*). See also National Taxpayer Advocate 2016 Annual Report to Congress 21 (Special Focus: *IRS FUTURE STATE: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*).

that the volunteer certified by passing the appropriate test. The IRS captures data on volunteers but is not tracking it in a way that would enable the IRS to administer the program more effectively and to better meet the needs of its target populations.⁵⁶ The Treasury Inspector General for Tax Administration (TIGTA) also has indicated its concern about the IRS's lack of a centralized list of volunteers who have achieved advanced certification.⁵⁷ Although its information management system is fully capable of tracking this information, the IRS argues that SPEC does not include this capability for several reasons, which include adhering to privacy guidelines intended to limit the digital storage and access to Personally Identifiable Information (PII) and averting the task of inputting and maintaining records for volunteers, their certifications, and the specific sites where they may be volunteering on a given day.⁵⁸

Identifying and tracking the certification level of volunteers at VITA sites, however, would not violate privacy guidelines (and if the guidelines do consider such tracking a violation, then the IRS should review its policies to align with the specific situations presented). Such tracking would assist customer service representatives in directing taxpayers to volunteers who can help. *Notably, SPECTRM⁵⁹ does allow for comments to be stored to indicate special limitations or capabilities for particular sites, but these comments are not searchable for specific tax law issues.*⁶⁰ The IRS appears to have designed the VITA and TCE programs to minimize what it is responsible for, preferring instead to stay at the level of limited utility.

Most VITA and TCE Tax Preparation Sites Are Open Only Until April 15th Each Year, Further Confounding the Problem of Taxpayers Going Without the Necessary Assistance They Need

Not all taxpayers file their tax returns by the April tax deadline. The IRC recognizes that there are legitimate reasons why a taxpayer may not do so.⁶¹ Taxpayers may request a six-month automatic extension to file which moves the return filing deadline to October 15th.⁶² The ability to request an extension to file suggests that the taxpayer should have access to assistance to meet their statutory requirement at least until October 15th. Instead, the IRS appears to abandon these taxpayers after April 15th. The VITA Hotline is staffed only from mid-January to mid-April each year.⁶³ Thus, in order to obtain a list of VITA sites open year-round, taxpayers must access the VITA Locator on irs.gov and then plug in their zip code and the number of miles they are willing to travel, or call the IRS

56 See IRS response to TAS Information Request (Sept. 21, 2017).

57 In its September 2017 audit report, TIGTA stated that the IRS does not have reasonable assurance that the complex tax returns prepared by volunteers from 2014-2016 were prepared by volunteers with the appropriate training and certification. See TIGTA, *Improvements Are Needed to Ensure That the Volunteer Income Tax Assistance Grant Program Extends Tax Return Preparation to Underserved Populations*, Ref. No. 2017-40-088 (Sept. 20, 2017).

58 IRS response to TAS Information Request (Sept. 21, 2017).

59 SPEC's information management system, Stakeholder Partnerships, Education & Communications Total Relationship Management (SPECTRM), is the database system developed for use by SPEC to manage and coordinate the VITA and TCE programs. See IRS response to TAS Information Request (Sept. 21, 2017).

60 IRS response to TAS Information Request (Sept. 21, 2017).

61 For example, taxpayers impacted by presidentially declared disasters may need assistance in filing amended returns declaring casualty losses after April 15th.

62 See IRS Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return* (2016). Although the IRS does not track how many Forms 4868 are prepared at VITA and TCE sites, we know many taxpayers within VITA income eligibility file returns with extensions. For example, in TY 2016, 36,243 taxpayers with income of \$54,000 or less and who used a VITA or TCE site, filed returns with extensions. TAS Research & Analysis, CDW, IRTF, data drawn Nov. 7, 2017.

63 The Hotline phone number is listed in IRS Publication 5220, *VITA/TCE Volunteer Site Scope & Referral Chart* (Dec. 2016) as (800) 829-8482. For eight months of the year, a recording directs callers to search online for answers to their questions via the Interactive Tax Assistant.

The IRS appears to have designed the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs to minimize what it is responsible for, preferring instead to stay at the level of limited utility.

Assistor telephone line so that Assistors can search the VITA locator for the taxpayer. Without year-round person-to-person assistance, VITA-eligible taxpayers with limited digital access or functional or computer literacy will face challenges.

The IRS Unreasonably Restricts Grant Funds to Be Used As Compensation for Quality Reviewers, Qualified Tax Experts (QTEs), and Certified Acceptance Agents (CAAs)

Since FY 2008, the IRS has also provided financial assistance to some VITA programs through matching grants.⁶⁴ The IRS, however, does not allow VITA or TCE to use grant funds as compensation for tax assistors or preparers, screeners, or quality reviewers.⁶⁵ The IRS also restricts funding of CAAs who assist non-citizens in obtaining Individual Taxpayer Identification Numbers (ITINs) needed to file U.S. tax returns. The IRS maintains that grant funds may not be used to compensate the services of volunteers so that volunteers will remain under the veil of the Volunteer Protection Act.⁶⁶ It also maintains that paying for a portion of a volunteer's activity also adds complexity to managing volunteers.⁶⁷

Identifying and tracking the certification level of volunteers at VITA sites, however, would not violate the IRS's argument regarding extra burdens and liability imposed on the sites is misleading because VITA and TCE sites are already responsible for managing day-to-day activities. Similar to the Low Income Tax Clinic (LITC) Program, where a paid Qualified Tax Expert (QTE) is required to be on staff to assist the pro bono attorneys and assist with cases, the IRS could allow paid quality reviewers/experts to assist VITA volunteers. Moreover, the quality reviewer/expert could be specialized based on the location of the VITA site.⁶⁸ To support those higher more complex issues, IRS can develop additional certification levels, such as a home office module, a disaster loss module, or a Schedule C or F module. Spending funds on paid quality reviewers and QTEs will address TIGTA's concerns,⁶⁹ create stability and continuity of the programs, and enable sites to develop their own training materials for complex issues (such as disaster losses or home office deductions).

64 As part of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Congress enacted IRC § 7526 to authorize funding for the Low Income Tax Clinic (LITC) grant program. Subject to the availability of appropriated funds, the IRS may award grants of up to \$100,000 per year to qualifying organizations for the development, expansion, or continuation of an LITC. In Grant Year 2016, VITA grantees helped prepare more than 1.5 million tax returns. See TIGTA, *Improvements Are Needed to Ensure That the Volunteer Income Tax Assistance Grant Program Extends Tax Return Preparation to Underserved Populations*, Ref. No. 2017-40-088 (Sept. 20, 2017). See also IRS Publication 3319, *Low Income Taxpayer Clinic 2018 Grant Application Package and Guidelines* (Rev. Apr. 2017).

65 IRM 22.30.1.8.3.1.2(1), *Compensation for the Grant Program* (Oct. 1, 2011).

66 IRS response to TAS Information Request (Sept. 21, 2017).

67 See Report Card to National Taxpayer Advocate 2014 Annual Report to Congress 55-66 (Most Serious Problem: *VITA/TCE FUNDING: Volunteer Tax Assistance Programs Are Too Restrictive and the Design Grant Structure Is Not Adequately Based on Specific Needs of Served Taxpayer Populations*), https://www.irs.gov/pub/tas/2014ARC_ReportCard.pdf (last visited Dec. 4, 2017).

68 For instance, VITA sites in rural areas may want QTEs in preparing returns with Schedule F, Profit or Loss from Farming.

69 See TIGTA, *Improvements Are Needed to Ensure That the Volunteer Income Tax Assistance Grant Program Extends Tax Return Preparation to Underserved Populations*, Ref. No. 2017-40-088 (Sept. 20, 2017).

CONCLUSION

One of the VITA and TCE program's goals is making voluntary compliance easier by improving issue resolution across all interactions with taxpayers.⁷⁰ The restrictions and limitations the IRS imposes on VITA and TCE sites prevent the IRS from achieving this goal, increase taxpayer burden, and may adversely and significantly impact the ability of vulnerable taxpayers to obtain free tax return preparation services and meet their reporting obligations. Moreover, published restrictions confuse taxpayers and cause many otherwise eligible individuals to turn to paid tax filing services or to prepare their own returns. These shortcomings burden taxpayers because those who cannot obtain free filing assistance may pay more in taxes than they are legally required to pay, or seek preparation services from unqualified or unscrupulous preparers, undermining voluntary compliance and eroding the *taxpayer's rights to be informed, to quality service, and to pay no more than the correct amount of tax.*

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Allow VITA and TCE Partners, at their discretion, to prepare returns with issues that are currently out-of-scope, including:
 - Home office deduction (*e.g.*, day care providers);
 - Standard mileage vs actual costs (*e.g.*, Uber/Lyft drivers);
 - Casualty losses (*e.g.*, disaster relief);
 - Cancellation of debt due to bankruptcy or insolvency; and
 - Farm income.
2. Implement financial guidelines for the VITA/TCE Program which account for both family size and income, similar to that used by LITC Programs.
3. Create a tracking system for volunteers and their certifications so that taxpayers can be referred to a specific VITA or TCE site handling a specific tax law issue.
4. Ensure that more volunteer tax sites are open until October 15 each year.
5. Allow grant funds to be used for quality review and QTEs, CAAs, and year-round services at select sites.

70 IRS Publication 1084, *VITA/TCE Volunteer Site Coordinator Handbook* (Rev. Oct. 2017).