



Volume 1

NATIONAL TAXPAYER ADVOCATE

Objectives Report to Congress

Fiscal Year 2018

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**VOLUME TWO: IRS RESPONSES AND NATIONAL TAXPAYER ADVOCATE’S COMMENTS
REGARDING MOST SERIOUS PROBLEMS IDENTIFIED IN 2016 ANNUAL REPORT
TO CONGRESS**

PREFACE: National Taxpayer Advocate’s Introductory Remarks

The Internal Revenue Code requires the National Taxpayer Advocate to submit two annual reports to the House Committee on Ways and Means and the Senate Committee on Finance.¹ The National Taxpayer Advocate is required to submit these reports directly to the Committees without any prior review or comment from the Commissioner of Internal Revenue, the Secretary of the Treasury, the IRS Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.² The first report, due by June 30 of each year, must identify the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in that calendar year.

The United States tax system enjoys a high rate of voluntary compliance from its taxpayers, notwithstanding certain pockets of noncompliant behavior. Overall, the IRS estimates that about 84 percent of legal-source tax revenue due and owing is actually collected.³ And of the amount collected — which was \$3.3 trillion in fiscal year (FY) 2016 — more than 98 percent is paid voluntarily.⁴ Thus, less than two percent is collected as a direct result of IRS enforcement action. To maintain and increase high voluntary compliance levels, it is imperative that the tax administrator make tax compliance as simple and painless as possible.

Today, U.S. taxpayers are not treated very well by the U.S. tax system. They must navigate an Internal Revenue Code of extraordinary complexity that confounds most taxpayers and provides others with opportunities for gamesmanship. If a taxpayer wants an answer to even the most foundational tax law question — say, “what are the consequences for a married couple filing jointly or separately (see lines 1–5 of Form 1040)?” — the IRS will refuse to answer, declaring the question “out of scope.” And heaven forbid a taxpayer should seek an answer to a tax law question on the phones or at an IRS Taxpayer “Assistance” Center after the filing season. When it comes to answering tax law questions, the IRS now closes up shop entirely after April 15.⁵

The IRS is rightfully proud of its 79 percent “level of service” (LOS) on the main customer service telephone lines (the Accounts Management lines) during the recent filing season, up from 72 percent during the 2016 filing season. But as we report in our discussion, *Review of the 2017 Filing Season*, this figure masks the extremely poor treatment taxpayers experienced on other important phone lines. In fact, the percentage of *all* calls answered by IRS assistors *declined* from Filing Season (FS) 2016 to 2017.⁶ And for those 4.2 million folks who wanted to talk with an IRS Compliance employee about a collection matter, well, they needed to get in line. Only 44 percent of their calls were answered during the filing season, and they had to wait, on average, 42 minutes.⁷ Similarly, only 40 percent of the 2.7 million people who tried to call the “Installment Agreement/Balance Due” phone number that the IRS puts on

1 Internal Revenue Code (IRC) § 7803(c)(2)(B).

2 IRC § 7803(c)(2)(B)(iii).

3 IRS, *Tax Gap Estimates for Tax Years 2008-2010* (April 2016), <https://www.irs.gov/pub/newsroom/tax%20gap%20estimates%20for%202008%20through%202010.pdf>.

4 See Government Accountability Office (GAO), GAO-17-140, *Financial Audit: IRS’s Fiscal Years 2016 and 2015 Financial Statements* 25 (Nov. 2016), <https://www.gao.gov/assets/690/680957.pdf> (showing the IRS collected \$3.3 trillion in fiscal year (FY) 2016); IRS, *Fiscal Year 2016 Enforcement and Service Results*, https://www.irs.gov/PUP/newsroom/fy_2016_enforcement_and_service_results.pdf (showing the IRS collected \$54.3 billion through enforcement activities in FY 2016).

5 The deadline for filing tax returns without an extension generally falls on April 15. However, it may be extended, as it was this year, when April 15 falls on a weekend or holiday.

6 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot, Enterprise Total* (week ending April 22, 2017). The level of service (LOS) on all IRS telephone lines (Enterprise Total) for the filing season was 70.7 percent as of April 22, 2017, as compared with 71.3 percent as of the corresponding date in 2016.

7 IRS, JOC, *Snapshot Reports: Enterprise Snapshot, Consolidated ACS* (week ending April 22, 2017).

To maintain and increase high voluntary compliance levels, it is imperative that the tax administrator make tax compliance as simple and painless as possible.

its collection notices were able to get through to an IRS assistor, and then only after waiting 47 minutes, on average.⁸

Interestingly, at a time when the IRS and the Treasury Department are touting the digital products that are supposed to ameliorate this abysmal lack of taxpayer service, many taxpayers seem either uninterested or unable to participate. Hits to the IRS's website, irs.gov, declined by 4.1 percent between FS 2016 and FS 2017.⁹ And of the taxpayers who try to create an online account to obtain a transcript of their returns or check their balances due, only between 18 and 26 percent actually manage to do so.¹⁰ Indeed, the online account and other such services are virtually inaccessible to large numbers of U.S. taxpayers — 33 million do not have broadband access, and 14 million do not have any internet access at all.¹¹ Imagine dealing with your tax issues or researching your tax question on a library computer or via public wifi in a public space. So much for privacy and security.

As of September 30, 2016, the IRS dedicated only 98 employees to conducting education and outreach to the 62 million small business and self-employed taxpayers, and only 365 employees to conducting education and outreach to the nearly 125 million individual taxpayers.¹² There are 14 states that have *no* Stakeholder Liaison employees who conduct outreach to small business and self-employed taxpayers.¹³ The number of Taxpayer Assistance Centers (TACs) is declining each year, and because of the IRS's new *appointment-only* system, taxpayers who show up without an appointment are routinely turned away. The TACs have completely stopped offering free tax preparation for low income, elderly, and disabled taxpayers and, as noted above, will not answer "out-of-scope" tax law questions during the filing season and will not answer *any* tax law questions outside the filing season.

Staffing cuts are not just limited to taxpayer service. Twelve states do not have an Appeals Officer within their borders, and the Office of Appeals recently announced procedures that make it

8 IRS, JOC, *Snapshot Reports: Product Line Detail, Installment Agreement/Balance Due* (week ending April 22, 2017). LOS decreased 47 percent between Filing Season (FS) 2016 and FS 2017.

9 IRS, *Filing Season Statistics for Week Ending April 21, 2017*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-21-2017>, and *Filing Season Statistics for Week Ending April 22, 2016*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-22-2016>.

10 IRS, JOC, *Online Account External Launch Report*. The rate for passing authentication to access an online account was 26 percent for the week ending May 13, 2017. Between the week ending Jan. 14, 2017 and May 13, 2017, that rate ranged between 18 percent and 26 percent.

11 National Taxpayer Advocate 2016 Annual Report to Congress vol. 2 at 4 (Research Study: *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*). For a discussion the IRS online account and the needs of U.S. taxpayers, see Area of Focus: *The IRS's Heavy Reliance on the Online Account Benefits Taxpayers Who Can Access the Application and Prefer Digital Interaction, But It Burdens Taxpayers Who Need or Prefer More Personalized Service*, *infra*.

12 IRS responses to TAS fact checks (Dec. 15 and 16, 2016); the number of individual taxpayers is reported on the intranet site of the IRS's Wage & Investment Division.

13 The 14 states are Alaska, Delaware, Hawaii, Kentucky, Mississippi, Montana, North Dakota, Nebraska, New Hampshire, South Dakota, Vermont, West Virginia, Wisconsin, and Wyoming. There also is no liaison in the District of Columbia. IRS response to TAS fact check (Dec. 15, 2016); IRS Human Resources Reporting Center, *Report of Small Business/Self-Employed (SB/SE) Job Series 0526, Stakeholder Liaison Field Employees as of the week ending October 1, 2016* (Dec. 1, 2016).

extraordinarily difficult to obtain a face-to-face meeting.¹⁴ To get a sense of how frustrating these new restrictions are for many taxpayers and their representatives, imagine a court system that doesn't allow litigants to see a judge or a jury. That's what the Office of Appeals has largely become. Field examination and collection employees have declined by 26 and 30 percent between FYs 2011 and 2016, respectively.¹⁵ For individual taxpayers, approximately 76 percent of audits are conducted by correspondence, with no one IRS employee responsible for and accountable for the taxpayer's case.¹⁶ Penalties are often imposed automatically without any consideration of the taxpayer's actual behavior or intent. The geographic presence of the IRS throughout the country has been replaced by large, centralized sites of remote workers. With the exception of the Taxpayer Advocate Service, no part of the IRS focuses on the local needs, conditions, customs, and culture of the diverse states and locales that make up the United States.¹⁷

Finally, the IRS is struggling under the increasing burden of archaic computer and information technology (IT) systems. According to the Government Accountability Office, the nation's tax information is maintained on the government's two oldest databases. There are at least 60 different case management systems in the IRS that generally do not talk with one another, which forces employees to manually retrieve data and create paper files. The decrepitude of the IRS IT systems creates rework and employee and taxpayer burden.¹⁸

This unfortunate state of affairs has come about, in large part, because of sustained budget cuts since 2010; the Taxpayer Advocate Service estimates a reduction of about 20 percent, when adjusted for inflation.¹⁹ And things are likely to get worse. Based on the Administration's proposed FY 2018 budget, *the IRS is projecting it will only be able to answer 39 percent of the calls to IRS assistors in FY 18.*²⁰ The IRS

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- 14 The 12 states that lack a permanent Appeals Officer are Alaska, Arkansas, Delaware, Idaho, Kansas, Montana, North Dakota, New Mexico, Rhode Island, South Dakota, Vermont, and Wyoming. There is also no Appeals Office in the territory of Puerto Rico. IRS Office of Appeals response to TAS information request (June 6, 2016). For a discussion of Appeals' recent policy changes and TAS concerns about them, see National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress vol. 2 (Most Serious Problem: *Appeals: The Office of Appeals' Approach to Case Resolution Is Neither Collaborative Nor Taxpayer Friendly and Its "Future Vision" Should Incorporate Those Values*), *infra*.
- 15 There were 11,959 Revenue Agents (RAs) in the last pay period of FY 2011 and 8,871 RAs in the last pay period of FY 2016. There were 4,402 Revenue Officers (ROs) in the last pay period of FY 2011 and 3,072 ROs in the last pay period of FY 2016. *IRS Oversight: Hearing Before Subcomm. on Financial Services and General Government of H. Comm. on Appropriations*, 115th Cong. (May 23, 2017) (statement of Nina E. Olson, National Taxpayer Advocate); see National Taxpayer Advocate 2016 Annual Report to Congress 86-97 (Most Serious Problem: *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*).
- 16 IRS, *Fiscal Year 2016 Enforcement and Service Results*, https://www.irs.gov/PUP/newsroom/fy_2016_enforcement_and_service_results.pdf. During FY 2016, the IRS conducted 1,034,955 individual audits. Of that total, 791,233 were Correspondence audits and 243,722 were Field audits.
- 17 For a discussion of TAS's plans to expand its geographic presence in locales of underserved taxpayers, see *Efforts to Improve TAS Advocacy*, *infra*.
- 18 For a discussion of the IRS's information technology challenges, particularly with respect to Enterprise Case Management, see Area of Focus: *While the IRS Has Made Encouraging Progress on Its Enterprise Case Management (ECM) Project, Much Work Remains to Be Done for the Project to Succeed*, *infra*.
- 19 IRS funding is down in dollar terms by 7.5 percent since FY 2010. In FY 2010, the agency's appropriated budget stood at \$12.1 billion. For FY 2016, its budget was \$11.2 billion. Based on the Consumer Price Index measure of inflation, costs have risen by 12 percent over the same period. Bureau of Labor Statistics, Consumer Price Index – Urban (CPI-U) (reflecting inflation from March 2010 through March 2017). Thus, the inflation-adjusted reduction is nearly 20 percent. There are multiple measures of inflation, so the use of a different measure may produce slightly different results.
- 20 Department of the Treasury, *FY 2018 Budget in Brief* 55 (May 2017), <https://www.treasury.gov/about/budget-performance/budget-in-brief/BIB18/FY%202018%20Treasury%20BIB%20Combined%20FINAL.PDF>.

is also planning for additional cuts in other areas due to a projected reduction in full-time equivalent positions of 7.6 percent overall.²¹

While the impact of the budget cuts is significant, there is a related issue that also requires attention. As I discussed in the *Special Focus* section of the National Taxpayer Advocate's 2016 Annual Report to Congress, I believe the IRS historically has viewed itself first and foremost as an enforcement agency, and that approach to tax administration continues to predominate.²² More than 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 compared with about four percent for Pre-Filing Taxpayer Assistance and Education.²³ The IRS currently has fewer than 500 employees in its Stakeholder Partnerships, Education and Communication and Stakeholder Liaison outreach functions 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 its 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.

The IRS must change its focus to taxpayer service, outreach, and education first. It must revise its mission statement back to an emphasis on taxpayer service and add a focus on taxpayer rights.

In its response to our recommendations, the IRS inaccurately implies we said the IRS's culture is “exclusively” focused on enforcement. We did not and would not make such a statement, as the IRS clearly devotes resources to taxpayer service as well. Rather, it 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 tax administration priorities and the detailed recommendations we presented.

Given all the challenges I have described, what is to be done? Well, the IRS must change its focus to taxpayer service, outreach, and education first. It must revise its mission statement back to an emphasis on taxpayer service and add a focus on taxpayer rights. It must reinstate a geographic presence for its audit, collection, and appeals functions as well as expand outreach and education. It must pick up the phone and talk with taxpayers, and listen to them when they speak. To enable the IRS to do these things, Congress must provide sufficient funding. And Congress should conduct sufficient oversight over the IRS to ensure that it actually does them.

21 Department of the Treasury, *FY 2018 Budget in Brief* 51 (showing a reduction of 5,803 full-time equivalent positions from 76,838 in FY 2017 to 71,035 in FY 2018).

22 National Taxpayer Advocate 2016 Annual Report to Congress 1-41 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*).

23 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. After apportioning Operations Support dollars 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.

(As discussed in prior reports, more IRS funding generally translates into more revenue collection, so additional funding almost surely will more than pay for itself.)

I welcome the beginning of discussions on IRS reform.²⁴ So long as it is approached in a bipartisan, non-punitive manner, there will be no shortage of good ideas. We simply can't go on like we have been and think we are delivering to the U.S. taxpayer a 21st century tax administration. U.S. taxpayers deserve so much more.

Respectfully submitted,



Nina E. Olson
National Taxpayer Advocate
28 June 2017

24 See House Republicans' Tax Reform Task Force, *A Better Way: Our Vision for a Confident America* (June 2016), <http://abetterway.speaker.gov>; *IRS Reform: Lessons Learned from the National Taxpayer Advocate: Hearing Before Subcomm. on Oversight of H. Comm. on Ways and Means*, 115th Cong. (May 19, 2017) (statement of Nina E. Olson, National Taxpayer Advocate); National Taxpayer Advocate 2016 Annual Report to Congress 1-41 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*).

Review of the 2017 Filing Season

The 2017 filing season proceeded similarly to recent filing seasons in key respects. For the majority of taxpayers who filed their returns without requiring assistance from the IRS, the filing season was virtually problem-free. However, the results were mixed for taxpayers who sought IRS help.

Each year, the IRS receives more than 100 million telephone calls on its toll-free lines, roughly five million taxpayer visits in its Taxpayer Assistance Centers (TACs), and some ten million pieces of correspondence from taxpayers responding to proposed adjustment notices.¹ During Filing Season (FS) 2017, the IRS answered 79 percent of the telephone calls it received on its “Accounts Management” (AM) telephone lines that were routed to a telephone assistant,² up from 72 percent during FS 2016.³ In addition, the time these taxpayers spent on hold declined from 11.1 minutes in FS 2016 to 6.5 minutes in FS 2017.⁴ Thus, taxpayers generally were better served on the AM telephone lines.

However, taxpayer service was less successful in other areas. The IRS compliance telephone lines, which are not included in the AM category, showed significant declines. For example, the IRS received about 2.7 million calls on its “Installment Agreement/Balance Due” line, which taxpayers generally call if they cannot pay their tax liabilities in full and are seeking to arrange a payment plan.⁵ The IRS answered only 40 percent of these calls during FS 2017 (down from 76 percent in FS 2016), and wait times increased from 11 minutes in FS 2016 to a staggering 47 minutes in FS 2017.⁶

Moreover, the IRS to some degree lucked out this filing season. Despite answering a higher *percentage* of calls on its AM telephone lines, IRS telephone assistants actually answered 25 percent *fewer* calls during FS 2017 as compared with FS 2016.⁷ It is only because taxpayer calls routed to AM telephone assistants declined by even more — 32 percent — that the IRS was able to answer 79 percent of its calls during FS 2017. Had IRS telephone assistants received the same number of calls during FS 2017 as it received during FS 2016, they would have answered only 54 percent of taxpayer calls (rather than 79 percent).⁸ Thus, while the uptick in the percentage of AM calls answered was welcome news this year, it should not be taken as evidence that the poor levels of service taxpayers have experienced on the phones in recent years have reversed.

1 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot, IRS Enterprise Total* (final week of each fiscal year (FY) for FY 2008 through FY 2016) (showing telephone call volumes exceeding 100 million in every year); IRS Wage & Investment Division, *Business Performance Review 7* (Feb. 9, 2017) (showing 5.6 million visits in FY 2015 and 4.5 million visits in FY 2016); IRS, JOC, *Adjustments Inventory Reports: July-September Fiscal Year Comparison* (FY 2007 through FY 2016) (showing annual taxpayer correspondence volumes regarding potential adjustments has ranged from a low of 7.3 million letters to a high of 11.8 million letters and has averaged around ten million per year).

2 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 22, 2017).

3 *Id.*

4 *Id.*

5 IRS, JOC, *Snapshot Reports: Product Line Detail Snapshot* (week ending Apr. 22, 2017).

6 *Id.*

7 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 22, 2017).

8 *Id.* In filing season (FS) 2017, IRS telephone assistants answered 9,872,802 calls on the Accounts Management (AM) telephone lines. In FS 2016, IRS telephone assistants received about 18.2 million telephone calls on the AM telephone calls. Thus, the level of service in FS 2017 would have been about 54 percent if the IRS answered the same number of calls as it actually answered but received the number of calls received in FS 2016 (9.9 million calls answered divided by 18.2 million calls received).

The IRS should set out a list of core services it has been forced to curtail or eliminate and make clear to Congress that it would enhance or reinstate those services if it received additional funding.

As a separate matter, the IRS implemented a new policy that, for the first time, requires taxpayers to schedule appointments in advance of visiting any of the IRS's 376 TACs to receive face-to-face service.⁹ Thus, the TACs, previously known as “walk-in” sites, have been completely transformed to become “appointment only” sites. In response to complaints from TAS and others, the IRS has given TAC managers the discretion to make exceptions to the policy. But the general rule continues to require advance appointments.

In addition, the IRS has continued a policy adopted in 2014 that sharply limits the authority of IRS employees to answer tax law questions. IRS employees are restricted to answering “basic” questions during the filing season and are prohibited from answering any tax law questions outside the filing season. In our view, the IRS's continued unwillingness to help taxpayers by answering such a broad range of tax law questions represents a breathtaking abdication of a core function of tax administration.

There is no doubt many of the service constraints are attributable in significant part to funding limitations. Since fiscal year (FY) 2010, we estimate the IRS's budget has been reduced by nearly 20 percent on an inflation-adjusted basis.¹⁰ But regardless of cause, these service limitations harm taxpayers who need assistance. The IRS should set out a list of core services it has been forced to curtail or eliminate and make clear to Congress that it would enhance or reinstate those services if it received additional funding. If the IRS describes how it would use additional funding to improve taxpayer service with greater specificity, congressional appropriators might be convinced that additional funding would be put to good use and provide that funding.

⁹ IRS News Release IR-2016-172, *Tax Preparedness Series: IRS Face-To-Face Help Now By Appointment* (Dec. 20, 2016). IRS response to TAS fact check (Dec. 20, 2016).

¹⁰ IRS funding is down in dollar terms by 7.5 percent since FY 2010. In FY 2010, the agency's appropriated budget stood at \$12.1 billion. For FY 2016, its budget was \$11.2 billion. Based on the Consumer Price Index measure of inflation, costs have risen by 12 percent over the same period. Bureau of Labor Statistics, Consumer Price Index – Urban (CPI-U) (reflecting inflation from March 2010 through March 2017). Thus, the inflation-adjusted reduction is nearly 20 percent. There are multiple measures of inflation, so the use of a different measure may produce slightly different results.

Figure 2.1.1 presents an overview of returns processing during the filing season including refunds and visits to the IRS website.

FIGURE 2.1.1, Filing Season Statistics Comparing Weeks Ending April 24, 2015; April 22, 2016; and April 21, 2017¹¹

		2015	2016	2017	% Change 2016-2017
Individual Income Tax Returns	Total Receipts	134,209,000	136,528,000	135,638,000	-0.7%
	Total Processed	128,317,000	129,456,000	128,789,000	-0.5%
e-Filing Receipts	Total e-Filing	119,402,000	122,546,000	122,164,000	-0.3%
	Tax Professionals	70,491,000	70,864,000	70,401,000	-0.7%
	Self-Prepared	48,911,000	51,682,000	51,763,000	0.2%
Web Usage	Visits to IRS.gov	310,407,523	325,525,568	312,255,666	-4.1%
Total Refunds	Number	97,097,000	97,079,000	97,104,000	0.0%
	Amount	\$262.2 bil	\$263.2 bil	\$268.3 bil	1.9%
	Average Refund	\$2,700	\$2,711	\$2,763	1.9%
Direct Deposit Refunds	Number	80,383,000	81,221,000	81,646,000	0.5%
	Amount	\$231.7 bil	\$234.3 bil	\$239.4 bil	2.2%
	Average Refund	\$2,882	\$2,884	\$2,932	1.7%

In the narrative that follows, we will address the taxpayer experience during FS 2017 under the following major themes:

- The impact of several changes in the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) that Congress directed the IRS to implement;
- Interactions with the IRS through phones, correspondence, face-to-face meetings (TACs), and online access; and
- Special topics, including identity theft and refund fraud, the Affordable Care Act (ACA), and services for U.S. taxpayers living abroad.

IMPACT OF THE PROTECTING AMERICANS FROM TAX HIKES ACT

The PATH Act, which Congress enacted in December 2015, included several provisions that are directly impacting taxpayers, employers, and IRS processes. Among other things, it:

- Advanced the due date to January 31 for employers to report wage information on Forms W-2 to the Social Security Administration (SSA), and for payors of non-employee compensation to report that income on Forms 1099-MISC to the IRS.¹²
- Directed the IRS to hold the refunds of taxpayers claiming either the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC) until February 15.¹³

11 IRS, *Filing Season Statistics for Week Ending April 21, 2017*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-21-2017>, and *Filing Season Statistics for Week Ending April 22, 2016*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-22-2016>. The figures for 2015 are taken from the Week Ending April 22, 2016 report, and equate to Week Ending April 24, 2015. The 2015 filing season officially ended on April 15. The 2015 figures include additional post-filing season days however this approach maintains compatible calendar dates.

12 Protecting Americans from Tax Hikes (PATH) Act of 2015, Pub. L. No. 114-113 § 201 (codified at IRC § 6071).

13 PATH Act, § 201(b) (codified at IRC § 6402(m)).

- Directed to the IRS to deactivate Individual Taxpayer Identification Numbers (ITINs) for either age of issuance or non-use.¹⁴

We will address the impact of each of these provisions below.

Earlier Deadline for Information Reporting Documents

The PATH Act accelerated the due dates for certain information reporting documents. The due date for filing Forms W-2, *Wage and Tax Statement*, and Forms 1099-MISC, *Miscellaneous Income*, with the SSA was moved up to January 31. Forms 1099-MISC are used to report non-employee compensation. Prior to 2017, the due date for these information reporting forms was the last day of February (or March, if filed electronically).

The accelerated deadline allows the IRS to verify the legitimacy of tax returns by comparing the return data against the data reported on Forms W-2 filed by employers before paying out refunds. Prior to the enactment of the PATH Act, the IRS received W-2 data from the SSA after the filing season, when the majority of refunds had already been issued, and began data matching in the summer.

By the end of March 2017, the IRS had received 222 million Forms W-2, a nearly 30 percent increase from the 171 million received by the same point in 2016.¹⁵ Similarly, there was a sharp spike in the number of Forms 1099-MISC the IRS received in 2017 as compared with 2016. By week 12 of calendar year (CY) 2017, the IRS received 31 million Forms 1099-MISC, more than 2.5 times the 12 million received by the same week in the prior year.¹⁶

The objective of the accelerated deadline was to enable the IRS to match information supplied on tax returns against information reported on Forms W-2 and 1099-MISC, ideally before paying out refunds, to identify possible fraud and other mismatches. Based on the accelerated receipt of Forms W-2 and 1099-MISC, the law appears to be having its intended effect.

The Hold and Release of Refunds on Returns Claiming the Earned Income Tax Credit and Additional Child Tax Credit Appear to Have Gone Smoothly

The EITC was enacted as a work incentive in the Tax Reduction Act of 1975. It has become one of the government's largest means-tested anti-poverty programs. In tax year (TY) 2015, more than 27 million taxpayers received about \$67 billion in EITC benefits. However, the EITC program is also plagued by a relatively high improper payment rate.¹⁷ To reduce the improper payment rate, Congress included a directive in the PATH Act that requires the IRS to delay payment of any refund that includes the EITC or the refundable ACTC until February 15 of each filing year.¹⁸ Combined with the requirement that

14 PATH Act, § 203(a) (codified at IRC § 6109(i)(3)).

15 IRS, Compliance Data Warehouse, *Information Returns Master File* (as of cycle 201712).

16 *Id.*

17 An improper payment is defined as “any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements” and “any payment to an ineligible recipient.” Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111–204, § 2(e) (2010) amending Improper Payments Information Act of 2002, Pub. L. No. 107-300 (2002) by striking § 2(f) and adding (f)(2). The IRS estimates that for FY 2016, between 22.2 percent (\$15.5 billion) and 25.9 percent (\$18.1 billion) of the total Earned Income Tax Credit (EITC) program payments of \$69.8 billion were improper. Department of Treasury, *Agency Financial Report Fiscal Year 2016* 49 (Nov. 2016).

18 Unlike traditional anti-poverty and welfare programs, the EITC was designed to have an easy “application” process by allowing an individual to claim the benefit on his or her tax return. This approach virtually eliminates the significant costs associated with up-front eligibility verification in traditional social welfare programs, but results in a high improper payment rate.

employers accelerate the issuance of Forms W-2 and that other payors accelerate the issuance of Forms 1099-MISC, the requirement that the IRS hold these refunds until February 15 is intended to reduce the improper payment rate by enabling the IRS to data match income information before paying out EITC and ACTC claims. Taxpayers claiming these benefits could submit their returns prior to February 15, but the IRS held the returns until that date.¹⁹

Based on an analysis of IRS data from FS 2017, it appears computer-generated refund freezes related to the PATH Act released as anticipated.²⁰ TAS compared the number of EITC refunds issued week-by-week in FS 2016 to the comparable period in FS 2017.²¹ During FS 2016, the IRS had issued 13.6 million refunds claiming EITC benefits by mid-February. In 2017, the number of refunds claiming EITC benefits released in mid-February was 17 percent lower than at the same point in 2016.²² See Figure 2.1.2.

FIGURE 2.1.2, Comparison of Refund Issuance Dates on Returns Receiving EITC, Filing Seasons 2016 and 2017²³

Week Ending	2016 Cumulative	2017 Cumulative	Percentage Difference
Jan. 26, 2017	855,083		
Feb. 2, 2017	7,424,783		
Feb. 9, 2017	11,104,413		
Feb. 16, 2017	13,627,831	11,260,446	-17.4%
Feb. 23, 2017	15,533,821	13,367,603	-13.9%
Mar. 2, 2017	16,995,981	15,265,718	-10.2%
Mar. 9, 2017	18,166,010	16,691,389	-8.1%
Mar. 16, 2017	19,134,737	17,814,073	-6.9%
Mar. 23, 2017	19,971,655	18,775,735	-6.0%
Mar. 30, 2017	20,713,482	19,635,955	-5.2%
Apr. 6, 2017	21,468,224	20,459,066	-4.7%
Apr. 13, 2017	22,323,775	21,351,318	-4.4%
Apr. 20, 2017	23,494,074	22,534,564	-4.1%

TAS also compared the period of time between when a return successfully posted to the IRS computer system and when the refund was issued in Filing Seasons 2016 and 2017. For FS 2016, about 239,000

¹⁹ For a related discussion on the EITC and efforts to improve compliance, see Area of Focus: *TAS Continues to Pursue Improvements to the IRS's Administration of the Earned Income Tax Credit, Particularly With Recent Changes to the Law, infra.*

²⁰ At an April 6, 2017 hearing before the House Small Business Committee, Treasury Inspector General for Tax Administration Russell George commented to the media that he was unaware of any premature EITC or ACTC refunds, but he planned to look into the matter. Luca Gattoni-Celli, *TIGTA Chief Assesses IRS Budget Cut Fallout During Fraud Hearing*, 2017 TNT 66-67 (Apr. 7, 2017).

²¹ Our analysis focused on EITC and did not include Additional Child Tax Credit (ACTC) claims.

²² In its public statements, the IRS noted the date a taxpayer received their refund could extend to later in the month. See, e.g., IRS News Release IR-2016-167, *2017 Tax Filing Season Begins Jan. 23 for Nation's Taxpayers, Tax Returns Due April 18* (Dec. 9, 2016), <https://www.irs.gov/uac/2017-tax-filing-season-begins-jan-23-for-nations-taxpayers-with-tax-returns-due-april-18> (noting "In addition, the IRS wants taxpayers to be aware it will take several days for these refunds to be released and processed through financial institutions. Factoring in weekends and the President's Day holiday, the IRS cautions that many affected taxpayers may not have actual access to their refunds until the week of Feb. 27.").

²³ IRS, Compliance Data Warehouse, Individual Returns Transaction File and Individual Master File (Tax Year 2015 returns filed in 2016, and Tax Year 2016 returns filed in 2017). The 2017 figures differ slightly from those TAS reported in recent testimony even though they are derived from the same source data. *Hearing Before the H. Comm. on Appropriations, Subcomm. on Financial Services and General Government*, 114th Cong. 34-35 (2017) (written testimony of Nina E. Olson, National Taxpayer Advocate). The data presented here were generated June 5, 2017. While we are unsure why the data differ, the order of magnitude and percentage change is the same.

taxpayers claiming the EITC had to wait two weeks or more for the IRS to issue their refunds after their returns posted. This number climbed to over seven million taxpayers in FS 2017. However, the increase in waiting time declined as FS 2017 progressed. For taxpayers who had delays of four weeks or more, there was a 31 percent increase between Filing Seasons 2016 and 2017 (over 108,000 taxpayers in FS 2016 compared to over 141,000 taxpayers in FS 2017). The average delay was about a week longer in 2017 than 2016 (through the end of March 2017).

As of February 16, 2017, the number of frozen EITC returns between Filing Seasons 2016 and 2017 increased by nearly 260 percent (from about 41,000 to 148,000), and EITC dollars frozen increased by about 225 percent (from \$147 million to \$479 million). The increase in dollars frozen in FS 2017 equates to a potential 2.1 percent decrease in improper payments as compared with FS 2016.²⁴ This is not surprising, because although income misreporting is the most frequent source of EITC errors, it does not account for the largest dollar amount of EITC errors. Because EITC noncompliance is attributable to multiple causes, there is no magic bullet to eliminate erroneous claims. Rather, it will take multiple approaches to materially bring down the improper payment rate. Upfront W-2 matching is an important step, and as discussed later in this section, it provides additional benefits in the area of identity theft and other refund fraud.

Deactivation of Individual Taxpayer Identification Numbers

The IRS issues ITINs to taxpayers who are ineligible for Social Security numbers (SSNs) but need a taxpayer identification number to file tax returns. The PATH Act codified several changes related to ITINs including expiration due to age or non-use.²⁵ To implement section 203(a) of the PATH Act, the IRS announced in August 2016 that it would deactivate all ITINs not used on a tax return within the last three years as well as ITINs with the middle digits 78 and 79, which were issued between 1996 and 2000.²⁶

The IRS sent a deactivation notice only to taxpayers who had filed tax returns within the preceding three years. Taxpayers who expected to have a continued filing requirement could renew their ITINs beginning in October 2016.

In late December 2016 and early January 2017, the IRS deactivated an estimated 12.4 million ITINs.²⁷ While the deactivation had no impact for taxpayers who no longer need to file a tax return, data suggests it affected the filing behavior of some. From January 24, 2017 through March 31, 2017, the IRS received 9.8 percent fewer returns with ITINs than during the same period the prior year – a decrease from 2.75 million to 2.48 million.²⁸ Among those who did file, it is likely that some were unaware of the need to renew their ITIN(s) or were unable to complete the renewal step prior to filing. From January 1 through April 28, 2017, the IRS made approximately 186,000 math error adjustments related to an expired ITIN.²⁹

24 We will not know the exact decrease in the improper payment rate until the IRS has made a final determination on each case where the EITC was frozen as a result of the wage verification process.

25 PATH Act, § 203(a) (codified at IRC § 6109(i)(3)). For a more thorough discussion on ITINs, see Area of Focus: *The IRS Makes Needed Changes to the Individual Taxpayer Identification Number (ITIN) Program, But Barriers for ITIN Applicants Remain*, *infra*.

26 IRS News Release IR-2016-100, *IRS Works to Help Taxpayers Affected by ITIN Changes; Renewals Begin in October* (Aug. 4, 2016), <https://www.irs.gov/uac/irs-works-to-help-taxpayers-affected-by-itin-changes-renewals-begin-in-october>.

27 IRS response to TAS information request (May 4, 2017). Further, the IRS deactivated approximately 134,000 of these ITINs in error. The IRS promptly corrected the programming error.

28 ITIN returns refer to returns that include at least one ITIN for a primary, secondary, or dependent taxpayer. IRS, Compliance Data Warehouse (CDW), Entity database (Apr. 17, 2017).

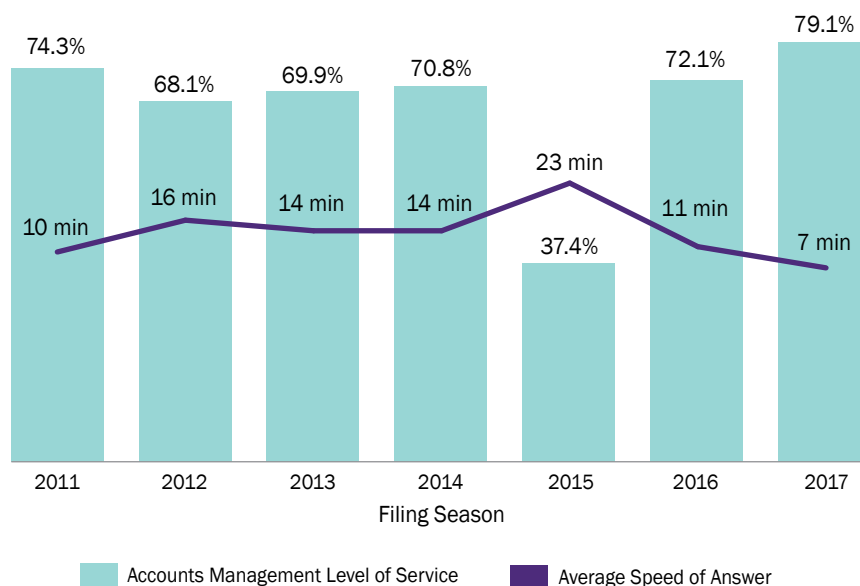
29 IRS, *Math Error Report* (week ending Apr. 28, 2017). Under math error authority, the IRS may independently make adjustments to a tax return unless the taxpayer responds within the designated time frame. Because multiple math error codes may be applied to a single return, the 186,000 math error adjustments do not necessarily represent 186,000 returns.

TELEPHONE ASSISTANCE

In general, the IRS did a better job of answering taxpayer calls during FS 2017, achieving the highest level of service and shortest wait times on its AM phone lines in the past seven years. In its spending plan, the IRS goal was to achieve a 75 percent level of service during the filing season, and the AM phone lines collectively achieved a 79 percent level of service.³⁰ In addition, the IRS provided toll-free service on the traditional high-demand days of the Presidents Day holiday and the two Saturdays preceding the end of the filing season.³¹

FIGURE 2.1.3³²

Telephone Services for Accounts Management Phone Lines,
Filing Seasons 2011-2017: Level of Service and Average Speed of Answer



Telephone Service Concerns

As noted above, the relatively successful top-line numbers mask significant weaknesses in IRS telephone service that have not been solved. Indeed, they are likely to become more evident if the IRS receives more telephone calls again next filing season.

- IRS Telephone Assistors Answered 25 Percent Fewer Calls on Its AM Lines in FS 2017 As Compared With FS 2016.** The primary reason the IRS answered a higher percentage of taxpayer calls this filing season is that there was a 32 percent reduction in taxpayer calls routed to AM telephone assistors, declining from about 18.2 million calls in FS 2016 to about 12.5 million calls

30 IRS Wage & Investment (W&I), *Business Performance Review* 16 (Feb. 9, 2017). At the same time, the aggregate level of service (LOS) for all IRS phone lines – the Enterprise Total – fell slightly from 71.3 percent to 70.7 percent. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 22, 2017).

31 IRS News Release IR-2017-38, *Avoid the Rush: IRS Extends Service Hours to Assist Taxpayers at Presidents Day Peak* (Feb. 17, 2017), <https://www.irs.gov/uac/avoid-the-rush-irs-extends-service-hours-to-assist-taxpayers-at-presidents-day-peak>. IRS News Release IR-2017-76, *IRS Extends Call Service Hours to Assist Taxpayers on Saturdays – April 8 and 15* (Apr. 6, 2017), <https://www.irs.gov/uac/newsroom/irs-extends-call-service-hours-to-assist-taxpayers-on-saturdays-april-8-and-15>.

32 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (weeks ending Apr. 28, 2012, Apr. 27, 2013, Apr. 26, 2014, Apr. 25, 2015, Apr. 23, 2016, and Apr. 22, 2017).

in FS 2017.³³ That enabled IRS telephone assistors to answer 3.3 million fewer calls in FS 2017 while still increasing the percentage of calls they answered by seven percentage points. Had the number of telephone calls routed to telephone assistors in FS 2017 remained at FS 2016 levels, the number of calls IRS telephone assistors answered in FS 2017 would have equated to answering just 54 percent of taxpayer calls rather than 79 percent — a dramatically different result.³⁴

- **The Percentage of All Calls IRS Telephone Assistors Answered During the Filing Season Declined Slightly From FS 2016 to FS 2017.** The “official” measure of the IRS’s telephone performance is the Customer Service Representative “Level of Service” (or “LOS”) on its Accounts Management telephone lines. The LOS is generally the percentage of calls answered by telephone assistors among all calls gated to an assistor. While it is true that the LOS on the AM lines was 79 percent and the wait time was about seven minutes, there are many telephone lines the IRS maintains that are not included under the “Accounts Management” umbrella. If one looks at all IRS telephone lines (the “Enterprise Total,” in IRS parlance), the LOS actually dropped slightly this filing season as compared with last year and stood at 71 percent.³⁵
- **The Percentage of Calls IRS Telephone Assistors Answered During the Filing Season on Compliance Lines Declined Substantially From FS 2016 to FS 2017, While Wait Times Nearly Doubled.** Most of the IRS phone lines excluded from the Accounts Management category are compliance lines (*e.g.*, audit and collection). The telephone lines pertaining to the IRS’s automated collection system received 4.2 million calls during the filing season, and the IRS answered only 44 percent — down from 64 percent last filing season. Wait times rose from 23 minutes last filing season to 42 minutes this year.³⁶
- **IRS Telephone Assistors Answered Only 40 Percent of Calls from Taxpayers Seeking to Make Payment Arrangements, and the Average Hold Time Was 47 Minutes.** One IRS compliance line is the “Installment Agreement/Balance Due” line. It received about 2.7 million calls during the filing season. For the most part, these calls come from taxpayers who are seeking to make payment arrangements — the sort of calls most private businesses would pick up immediately. Yet the IRS answered only 40 percent of these calls, and the average wait time among taxpayers who got through was a staggering 47 minutes. The IRS’s performance on this telephone line deteriorated markedly as compared with FS 2016. During FS 2016, the IRS answered 76 percent of these calls, and the wait time was 11 minutes. Thus, the percentage of calls the IRS

33 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 22, 2017). Although the IRS has received more than 100 million telephone calls in every year since 2008, not all calls are routed to telephone assistors. Many are routed to automated processes, such as most calls inquiring about the status of a pending refund. The IRS *Snapshot Reports* on telephone performance do not include a column showing the number of calls routed to telephone assistors. However, it can be roughly computed by dividing the number of calls answered by telephone assistors by the percentage of calls answered (known as the “Level of Service”). During FS 2016, IRS telephone assistors answered 13,156,402 calls on its AM telephone lines and its LOS was 72.1 percent. Therefore, the total number of calls routed to telephone assistors was about 18.2 million (13,156,402 million/0.721). During FS 2017, IRS telephone assistors answered 9,872,802 million calls on its AM telephone lines and its LOS was 79.1 percent. Therefore, the total number of calls routed to telephone assistors was about 12.5 million (9,872,802 million/0.791).

34 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 22, 2017). In FS 2017, IRS telephone assistors answered 9,872,802 calls on the AM telephone lines. In FS 2016, IRS telephone assistors received about 18.2 million telephone calls on the AM telephone calls. Thus, the LOS in FS 2017 would have been about 54 percent if the IRS answered the same number of calls as it actually answered but received the number of calls received in FS 2016 (9.9 million calls answered divided by 18.2 million calls received).

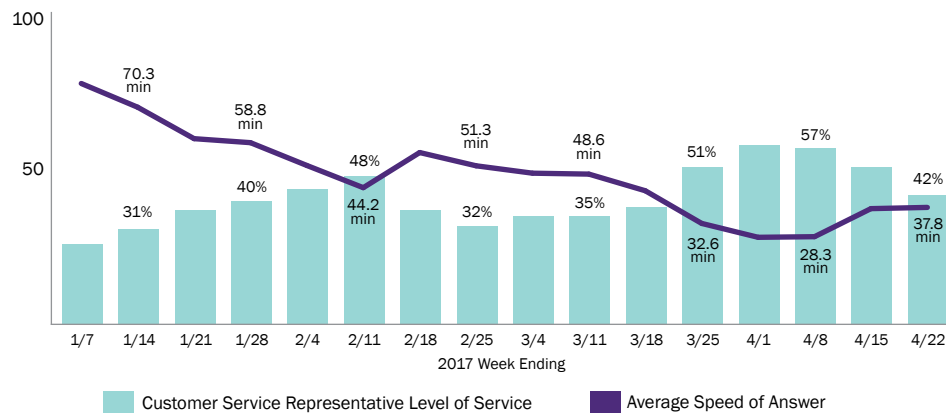
35 IRS, JOC, *Snapshot Reports: Enterprise Snapshot, Enterprise Total* (week ending April 22, 2017). The LOS on all IRS telephone lines (Enterprise Total) for the filing season was 70.7 percent as of April 22, 2017, as compared with 71.3 percent as of the corresponding date in 2016.

36 IRS, JOC, *Snapshot Reports: Enterprise Snapshot, Consolidated ACS* (week ending April 22, 2017).

answered from taxpayers seeking to make payment arrangements on this line dropped nearly in half as compared with last year, and wait times were more than four-fold.³⁷

FIGURE 2.1.4³⁸

Installment Agreement/Balance Due Line Service Levels By Week
During Filing Season 2017



- **The IRS Receives More Telephone Calls Outside the Filing Season Than During the Filing Season, and Its Performance at Other Times Has Been Dramatically Lower.** While the IRS's performance during the filing season receives considerable attention, the IRS typically receives fewer than half its calls during this period. In FY 2016, for example, the IRS received 55 million calls during the filing season and 117 million calls over the course of the full fiscal year on all its telephone lines, and it received 50 million calls during the filing season and 104 million calls during the full fiscal year on its Accounts Management lines.³⁹ The IRS staffs up considerably during the filing season by hiring seasonal employees to boost its LOS, but the larger number of taxpayers who call during other points of the year don't fare nearly as well. In FY 2016, the IRS answered 53 percent of its calls on its Accounts Management lines over the full year, as compared with 72 percent during the filing season.⁴⁰ To average 53 percent over the course of the full year, the LOS outside the filing season was necessarily well below 53 percent. Similarly, the average wait time of 11 minutes during the filing season increased to 18 minutes for the full year, which means callers outside the filing season waited on hold, on average, for substantially longer than 18 minutes. For the current fiscal year, the IRS's spending plan goal is to achieve a level of service of just 64 percent.⁴¹

37 IRS, JOC, *Snapshot Reports: Product Line Detail, Installment Agreement/Balance Due* (week ending April 22, 2017). LOS decreased 47 percent between FS 2016 and FS 2017.

38 IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 7 - Apr. 22, 2017).

39 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Sept. 30, 2016).

40 *Id.*

41 IRS W&I, *Business Performance Review 16* (Feb. 9, 2017). The IRS directs its resources to other areas after the filing season which has a significant impact on the phone service levels. For example, the IRS achieved a 72 percent filing season LOS on the AM phone lines during the 2016 filing season. However, for the entire FY, the LOS average was just 53 percent. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (weeks ending Apr. 23, 2016 and Sept. 30, 2016).

- The IRS Now Answers Only “Basic” Tax law Questions During the Filing Season and No Tax law Questions at All Outside the Filing Season.** Citing funding reductions, the IRS sharply curtailed the scope of tax law questions it would answer beginning in 2014. As noted above, the IRS now answers only “basic” questions during the filing season, and it does not answer tax law questions at all after the filing season, including from the roughly 16 million taxpayers who file their returns later in the year.⁴² The National Taxpayer Advocate considers this a significant failing since in her view, answering tax law questions is a fundamental responsibility of a tax administration agency.

Breakout of IRS Telephone Lines

To understand the IRS’s telephone statistics, a few concepts are important to review. First, the IRS tracks the total number of calls it receives, which is known as the “Enterprise Total.” The Enterprise Total includes calls to the “Accounts Management” (AM) telephone lines (which typically account for 85-90 percent of all “Enterprise Total” calls annually), calls to the compliance telephone lines, and calls to a few additional low-volume telephone lines.⁴³ Second, answered calls are split between “Assistor Answered Calls” and calls handled by the IRS’s automated processes. Whether a call is routed to automation or to a customer service representative (CSR) depends on the telephone number the taxpayer calls and how the caller responds to the prompts he or she encounters. Third, the official LOS statistics generally reflect calls routed to CSRs on the AM telephone lines.

Figure 2.1.5 shows the IRS’s performance during the 2016 and 2017 filing seasons for the AM total, many of the filing season-related phone lines that are components of the AM total, and a few lines of special interest. Nearly every phone line shows an improvement in service, marked by a higher LOS and shorter times on hold (“Average Speed of Answer”). At the same time, the number of call attempts on the AM lines fell by nearly 27 percent from 50.2 million to 36.9 million, while calls answered by an assistor dropped by 25 percent. Generally, shorter wait times may mean that fewer taxpayers hang up and attempt a repeat call.⁴⁴

42 During 2016, the IRS received nearly 137 million tax returns by April 22 and nearly 153 million by December 30, indicating that nearly 16 million returns were received after the filing deadline. See IRS, *Filing Season Statistics* (weeks ending April 22, 2016 and Dec. 30, 2016).

43 For the Jan. 1-Apr. 22, 2017, period the IRS received 44.3 million calls Enterprise-wide, and of that total, 36.9 million calls were directed to the AM telephone lines (83 percent). Typically, calls to the IRS compliance lines are answered at a somewhat higher LOS and with somewhat shorter hold times than the average call to an AM line. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 22, 2017).

44 It is worth noting the instructions for the Form 1040 individual tax return series (Forms 1040, 1040A, and 1040EZ) do not provide information about how to contact the agency by phone for assistance with tax law questions. Taxpayers who visit irs.gov to find answers to questions will be directed to self-help options, and will find the general tax information phone line (800-TAX-1040) only by clicking through several screens. The IRS “Future State” concept includes directing taxpayers to self-help options on irs.gov. Yet applications for securing a transcript, making a payment, or seeing an account balance do not provide a phone number for the taxpayer to call if they are experiencing difficulty accessing the application.

FIGURE 2.1.5, 2016 & 2017 Filing Season Statistics for Selected Toll-Free Telephone Lines⁴⁵

Telephone Line	2016					2017					Percent Change			
	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	ASA Percentage Change	LOS Percentage Change
Accounts Management (AM) [SUM of 29 Lines]	50,197,902	13,156,402	11.1	72.1%	36,853,126	9,872,802	6.5	79.1%					-41%	10%
Refund Hotline 800-829-1954	16,609,333	166,703	11.4	65.7%	13,155,827	138,167	5.4	74.9%					-52%	14%
Individual Income Tax Services 800-829-1040	8,835,528	2,641,875	12.2	72.1%	8,121,605	2,238,786	5.1	81.3%					-58%	13%
Transcript 800-908-9946	1,172,769	75,533	11.7	71.0%	2,073,759	159,197	6.0	86.6%					-49%	22%
Wage & Investment IMF Customer Response 800-829-0922	2,101,600	676,708	11.7	64.3%	1,818,893	749,240	5.1	80.5%					-56%	25%
Refund Call Back 800-829-0582	2,953,193	709,417	12.8	68.7%	1,787,379	539,793	6.6	74.9%					-48%	9%
Business & Specialty Tax Services Line 800-829-4933	1,372,748	709,392	11.0	77.0%	1,440,368	719,092	10.3	77.0%					-7%	0%
Identity Protection Specialized Unit (IPSU) 800-908-4490	1,574,881	841,261	14.9	76.5%	1,079,399	663,230	8.3	82.8%					-44%	8%
Self Employed IMF Customer Response 800-829-8374	976,523	312,337	11.1	64.0%	864,595	338,973	5.1	79.3%					-54%	24%
ACA Hotline 800-919-0452	1,180,112	803,046	13.5	71.8%	737,028	495,149	8.5	76.7%					-37%	7%
Tax Law 866-883-0217	717,876	421,941	9.4	70.2%	718,472	459,566	10.5	71.8%					12%	2%
PPS 866-860-4259	549,037	391,037	7.3	83.5%	683,674	487,346	6.9	81.0%					-6%	-3%
BMF Customer Response 800-829-0115	850,033	600,333	11.6	81.1%	683,239	486,811	10.0	82.1%					-13%	1%
International 8775 (855-790-8775)	254,332	154,487	6.9	74.3%	223,201	140,284	4.4	78.8%					-37%	6%
Tax Exempt and Government Entities (TE/GE) 877-829-5500	201,179	117,552	10.4	72.8%	199,771	122,162	8.4	74.0%					-19%	2%
Individual Taxpayer Identification Number (ITIN) 800-908-9982	123,905	74,091	10.0	71.1%	189,254	121,148	7.6	73.6%					-24%	4%
NTA 877-777-4778	266,438	138,647	5.1	73.7%	175,879	91,629	2.7	77.2%					-48%	5%
VITA Location 800-906-9887	58,150	39,681	2.9	75.6%	53,428	35,390	3.3	74.4%					11%	-2%
TAC Appointment 844-545-5640	961,103	630,394	5.4	75.9%	2,188,336	1,514,657	4.8	80.3%					-11%	6%
Installment Agreement/Balance Due	2,463,090	1,864,816	11.3	75.7%	2,656,759	1,071,182	46.8	40.3%					313%	-47%
Taxpayer Protection Program 800-830-5084	4,543,631	1,053,121	10.3	23.7%	1,368,598	879,273	7.4	77.8%					-28%	229%
Forms Order Line 800-829-3676 (800-TAX-FORM)	1,081,589	651,142	4.0	80.2%	886,921	554,807	1.6	90.9%					-59%	13%
Amended Return Hotline 866-464-2050	706,250	427,956	11.8	74.6%	518,197	337,970	7.4	78.4%					-37%	5%
Enterprise Total (Includes AM, Compliance, Forms Order Line, ASK TAS, and EPSS)	55,341,769	15,725,909	11.8	71.3%	44,327,213	13,176,265	11.6	70.7%					-2%	-1%

⁴⁵ IRS, JOC, Snapshot Reports: Enterprise Snapshot (Apr. 22, 2017) (source of AM and Enterprise Total data); IRS, JOC, Snapshot Reports: Product Line Detail (Apr. 22, 2017) (source of all other data except the Taxpayer Protection Program (TPP) line); IRS, JOC, FY 2016 Weekly TPP Snapshot Report (Apr. 22, 2017) (source of TPP line data). Data from Jan. 1–Apr. 22, 2017. Dialed attempts, sometimes called Net Attempts, is the number of callers intended for a given product line. Dialed attempts excludes callers who dialed the number, but should have dialed another number, and includes callers who dialed another number but should have dialed this number. IRS, FY17 Snapshot & ELS Reporting Guidelines, Version 2017.02 (Mar. 3, 2017).

Overall, there was a reduction of 13.3 million call attempts on the AM telephone lines from FS 2016 to FS 2017. This reduction is primarily attributable to three telephone lines. The IRS no longer requires the use of an electronic filing Personal Identification Number (PIN) for signing a return, which eliminated about six million calls taxpayers made in 2016.⁴⁶ The Refund Hotline received about 3.5 million fewer calls,⁴⁷ and the removal of the Installment Agreement/Balance Due line from the AM rollup eliminated another 2.5 million calls.⁴⁸ The increase in calls on the TAC Appointment Line can be attributed to all TACs operating on an appointment-only basis, as discussed in more detail below.

CORRESPONDENCE

There is a pool of AM employees that the IRS shifts back and forth between answering the phones and responding to taxpayer correspondence.⁴⁹ As a result, the IRS faces a difficult choice in deciding which service to prioritize. If it assigns more employees to answer taxpayer telephone calls, it will fall further behind in processing taxpayer responses to proposed adjustment notices. If it assigns more employees to process taxpayer responses to proposed adjustment notices, it will answer fewer telephone calls. Since 2008, the IRS has received an average of about ten million letters annually responding to proposed adjustments and other notices (e.g., requesting penalty abatements, responding to math error notices, and making payment arrangements).⁵⁰ The failure to timely process taxpayer responses to proposed increases in tax liability can have a significant impact on the taxpayer.

Examples of key AM correspondence categories as of April are shown in Figure 2.1.6. The “IMF Overall” category includes all taxpayer correspondence that is not handled by another function within the IRS; the “Amended Return/Duplicate Filing” category includes correspondence in which taxpayers are seeking to file amended returns;⁵¹ and the “Injured Spouse” category includes Forms 8379, *Injured Spouse Allocation*, received from taxpayers.⁵² The IRS made significant progress during the filing season to reduce the percentage of overaged inventory (more than 45 days old), achieving reductions of 60 percent or more for both Amended Returns and Injured Spouse claims.⁵³

46 Call attempts to the Electronic Filing PIN Help line dropped from 6.1 million in 2016 to 3,200 in 2017. IRS, JOC, *Snapshot Reports: Product Line Detail* (week ending Apr. 22, 2017). Beginning in 2011, taxpayers filing electronically entered a Personal Identification Number (PIN) to sign the return. IRS News Release FS-2011-07, *Taxpayers Who File Electronically Must Use e-Signatures* (Jan. 2011), <https://www.irs.gov/uac/taxpayers-who-file-electronically-must-use-e-signatures>. The IRS maintained the Electronic Filing PIN Help Line (866-704-7388) for taxpayers who needed their e-file PIN for filing their subsequent year tax return. For the 2017 filing season, taxpayers could sign their return using their prior year adjusted gross income amount, or prior year self-select PIN. IRS, *Validating Your Electronically Filed Tax Return*, <https://www.irs.gov/individuals/electronic-filing-pin-request>, (last visited May 12, 2017). This change was due to security concerns. See, e.g., IRS Statement on the Electronic Filing PIN (June 23, 2016), <https://www.irs.gov/uac/irs-statement-on-the-electronic-filing-pin>.

47 Call attempts to the Refund Hotline (800-829-1954) decreased from 16.6 million in 2016 to 13.2 million in 2017. IRS, JOC, *Snapshot Reports: Product Line Detail* (week ending Apr. 22, 2017).

48 The Installment Agreement/Balance Due line was removed from the consolidated AM rollup in October 2016. There were 2,463,090 call attempts during the 2016 filing season. IRS, JOC, *Snapshot Reports: Product Line Detail* (week ending Apr. 22, 2017).

49 Internal Revenue Manual (IRM) 21.1.1.6, *Customer Service Representative (CSR) Duties* (Oct. 1, 2016).

50 Over the past decade, annual taxpayer correspondence in response to proposed adjustments has ranged from a low of 7.3 million letters to a high of 11.8 million letters and has averaged just over ten million per year. See IRS, JOC, *Adjustments Inventory Reports: July-September Fiscal Year Comparison* (FY 2006 through FY 2015).

51 Amended returns are not accepted through e-file and thus must be filed on paper.

52 A taxpayer who participated in the filing of a joint return may request that his or her share of the credit balance be refunded where it otherwise would be applied to a past-due obligation of the other spouse.

53 TAS has expressed concern about over age inventories in the past. See, e.g., National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 65-66. Similarly, the Treasury Inspector General for Tax Administration issued an audit report in February 2016, Ref. No. 2016-40-023, *Continued Inconsistent Use of Over-age Correspondence Lists Contributes to Taxpayer Burden and Unnecessary Interest Payments* (Feb. 2016).

FIGURE 2.1.6, Selected Correspondence Inventory Levels, April⁵⁴

	Week Ending 04/25/15	Week Ending 04/23/16	Week Ending 04/22/17	% Change 2016-2017
IMF Correspondence	172,512	226,996	192,522	-15.2%
Overage	30.1%	38.8%	29.9%	-22.9%
Amended Return/Duplicate Filing	225,253	237,445	273,567	15.2%
Overage	28.0%	42.6%	15.9%	-62.6%
Injured Spouse	86,325	107,821	93,136	-13.6%
Overage	17.6%	37.7%	15.0%	-60.3%

FACE-TO-FACE SERVICE AT TAXPAYER ASSISTANCE CENTERS

For the first time during a filing season, taxpayers needed an appointment to receive assistance at any of 376 TACs operated by IRS.⁵⁵ The IRS began a pilot during FS 2015 whereby taxpayers needed to call for an appointment at 44 sites.⁵⁶ The IRS expanded the pilot to more locations during FS 2016, and in November 2016, it completed a transition to appointment-only service at all TACs.⁵⁷

To schedule an appointment, a taxpayer must call the TAC Appointment Line (844-545-5640).⁵⁸ The telephone assistor will determine the taxpayer's need, and if possible, direct taxpayers to resources where they may find answers to their question(s).⁵⁹ The telephone assistor will schedule an appointment for the taxpayer if the assistor determines the need meets the criteria for visiting a TAC — not simply because the taxpayer requests an appointment.⁶⁰

The IRS view is it is serving more taxpayers under the appointment-only approach since Accounts Management employees who staff the TAC Appointment line are able to assist many taxpayers by either answering their questions or directing them to a self-help option. For example, a taxpayer who is looking for forms or publications and is told how to download them from irs.gov or given a centralized number to

54 IRS, JOC, Customer Account Services, Accounts Management Paper Inventory Reports, *National Inventory Age Report* (weeks ending Apr. 25, 2015; Apr. 23, 2016; and Apr. 22, 2017). The Injured Spouse figures reflect taxpayers affected by offsets from the Debtor Master File or from the Financial Management Service and covers debts related to child support, student loans, etc.

55 IRS News Release IR-2016-172, *Tax Preparedness Series: IRS Face-To-Face Help Now By Appointment* (Dec. 20, 2016). IRS response to TAS fact check (Dec. 20, 2016).

56 IRS, *Fact Sheet: Internal Revenue Service Appointment Service Test* (Feb. 26, 2015).

57 In recent years, there have been local news stories from around the country reporting long lines at Taxpayer Assistance Centers (TACs) during the filing season. See, e.g., Alcides Segui, *IRS cutbacks result in day-long wait times for taxpayers*, FOX 13 News, Tampa, FL (Mar. 2, 2016), <http://www.fox13news.com/news/local-news/99602125-story>; and Susan Tompor, *Detroit IRS Office Overrun — Now Requires Appointment*, Detroit Free Press (Feb. 25, 2016), <http://www.freep.com/story/money/personal-finance/susan-tompor/2016/02/24/no-more-walk-detroit-irs-office-wants-appointment/80861504/>. One outcome of the appointment-only approach was an apparent lack of news stories during the 2017 filing season.

58 The TAC Appointment Line achieved an 80.3 percent LOS during FS 2017 with an average wait time of five minutes. Total calls to the appointment line more than doubled from 961,103 during FS 2016 to 2,188,336 in FS 2017 as a result of all TACs requiring appointments. IRS, JOC, *Snapshot Reports: Product Line Detail Snapshot* (week ending Apr. 22, 2017).

59 IRM 21.1.1.6, *Customer Service Representative (CSR) Duties* (Oct. 1, 2016).

60 IRS, *Field Assistance Appointment Desk Guide* (Dec. 5, 2016) (noting the phone assistor will first try to provide direct assistance, and second, provide information on alternative service options). Even if offered an appointment, the taxpayer may decline if the available dates and times do not work. In those instances, the taxpayer may be left with having to choose a "second best" option.

call to request mailed copies may be saved the trip to an IRS office. The IRS says its staff is thereby freed up to assist taxpayers who truly require face-to-face assistance.

The National Taxpayer Advocate has previously recommended the IRS give taxpayers the option of scheduling appointments, but the appointment-only approach can negatively impact taxpayers who need assistance urgently and cannot wait to obtain an appointment.⁶¹ TAS has previously reported examples of taxpayers without an appointment being turned away from a TAC in situations where a focus on assisting the taxpayer might have resulted in a different outcome.⁶² TAS is pleased that the IRS updated guidance to employees prior to FS 2017 to include managerial discretion to assist taxpayers without appointments if the taxpayer has a hardship or the taxpayer can be assisted without affecting other scheduled appointments.⁶³ However, serving taxpayers without appointments remains an exception – and one that requires an exception be granted on a case-by-case basis.

TAS remains concerned that the IRS data captures interactions with taxpayers but does not capture the full taxpayer experience. For example, the IRS does not have the ability to systemically monitor how many days taxpayers have to wait for their appointment. Phone assistors generally do not schedule appointments more than 30 days in the future.⁶⁴ But since this tool is not a management information system, there are no summary reports for management to monitor.⁶⁵ The IRS also does not know whether a taxpayer directed to a self-help option finds the answer to his or her question or is actually able to complete the self-help task successfully.

And these changes come on top of several reductions in service such as limiting the scope of tax law questions and assistance with tax return preparation.⁶⁶ As services are rolled back and made less accessible, the IRS cites the (predictable) decline in usage as a basis for making further reductions or eliminating the services altogether.⁶⁷

If the IRS's current trend continues, taxpayers soon may not have the option for in-person assistance from an IRS employee. For at least the decade preceding FY 2016, more than five million taxpayers sought in-person assistance at TACs every year.⁶⁸ The IRS has already reduced the number of TACs from 401

61 The IRS will, in some circumstances, “double book” an appointment if the taxpayer has an urgent need. However, this will happen only when the taxpayer is able to explain the need, and the phone assistor is able to recognize the urgency. There are exception criteria for taxpayers who show up at a TAC without an appointment. Likewise, the taxpayer will need to explain the need, and a TAC employee needs to recognize the taxpayer should receive service.

62 National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 68-70.

63 IRM 21.3.4.2.4.2, *TAC Appointment Exception Procedures* (July 29, 2016).

64 IRS, *Accounts Management Appointment Calendar User Guide* (rev. Sept. 13, 2016).

65 TAS discussion with Field Assistance, Feb. 2, 2017.

66 The Government Accountability Office (GAO) has reported the number of tax law questions answered by the IRS during the filing season alone dropped from 795,000 in 2004 to 110,000 in 2013. GAO-14-133, *2013 Tax Filing Season: IRS Needs to Do More to Address the Growing Imbalance between the Demand for Services and Resources* 26 (Dec. 2013); GAO, GAO-07-27, *Tax Administration: Most Filing Season Services Continue to Improve, but Opportunities Exist for Additional Savings* 29 (Nov. 2006) (supplemented with more precise IRS data provided to TAS by IRS W&I for 2004 through 2006).

67 For example, the IRS prepared nearly 500,000 tax returns for taxpayers in FY 2004. See National Taxpayer Advocate 2014 Annual Report to Congress 3, 21 (Most Serious Problem: *Taxpayer Service: Taxpayer Service Has Reached Unacceptably Low Levels and Is Getting Worse, Creating Compliance Barriers and Significant Inconvenience for Millions of Taxpayers*) (and GAO data cited therein). Over time, IRS placed significant limitations on the number of returns employees could prepare, and it began to require advance appointments. As a result of making the service harder to obtain, the IRS prepared substantially fewer returns over time, reaching a low of about 125,000 during the 2013 filing season. The IRS then eliminated the service, citing low usage.

68 IRS W&I, *Business Performance Review 7* (Nov. 9, 2016), showing 5.5 million visits in FY2014 and 5.6 million visits in FY 2015. The figure dropped to 4.5 million visits for FY 2016 as additional TACs transitioned to appointment-only.

to 376 since 2011.⁶⁹ Currently, 22 TACs have no staff, while 95 have only one employee.⁷⁰ Because of its new “appointment only” policy, the IRS is projecting that the number of taxpayers visiting a TAC will decline from about 5.6 million in FY 2015 to 3.5 million this year.⁷¹

The IRS is currently conducting a proof of concept with SSA where TAC employees provide face-to-face assistance to taxpayers using SSA office space.⁷² These sites differ from typical TACs in that the location information is provided only to those who have a scheduled appointment, and the office does not stock tax forms and publications.

As a separate matter, the IRS is developing a proof of concept where SSA employees will assist with identity verification for taxpayers.⁷³ Taxpayers impacted by identity theft may need to visit a TAC to authenticate their identities in some instances before their tax refunds can be released. Completing the verification process at an SSA office may be more convenient for the taxpayer, especially if the nearest TAC is a farther distance away.

The elimination of a regular walk-in option for taxpayers raises significant concerns about access to IRS services. We will continue to monitor the effectiveness of the appointment-only scheduling option in the coming year and advocate for a true walk-in policy. If a taxpayer goes through the trouble to show up at an IRS assistance site, the National Taxpayer Advocate does not understand why we would not find a way to assist that taxpayer.

AVAILABILITY OF TAX FORMS AND PUBLICATIONS

There were no significant changes in the availability of tax forms and publications for the 2016 filing season. TAS continues to be concerned that in recent years the IRS has scaled back the number of tax forms and publications stocked in TAC offices, and that once exhausted, the offices cannot order additional supplies.⁷⁴ While the majority of taxpayers file electronically, about 20 million taxpayers mail in paper tax returns.⁷⁵

69 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).

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

71 IRS W&I Division, *Business Performance Review 7* (Feb. 9, 2017).

72 *Id.* at 29.

73 *Id.*

74 National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 70-72. National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress 21.

75 The IRS received 152.5 million individual tax returns during calendar 2016. About 20.7 million (14 percent) of those were filed on paper. IRS, *Filing Season Statistics for Week Ending Dec. 30, 2016* (updated Jan. 10, 2017), <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-the-week-ending-december-30-2016>.

ONLINE AND SELF-SERVICE TOOLS

Online tools have become a more significant part of the filing season experience over time.⁷⁶ This trend will continue, especially in light of the IRS’s “Future State” initiative which includes directing taxpayers to more online and self-help tools.⁷⁷ Broadly, there are two categories of online tools: general access tools and taxpayer account tools.

General access tools allow taxpayers to obtain general information that is not case-specific. A few examples of what a taxpayer might accomplish on the IRS website ([irs.gov](https://www.irs.gov)) include:

- Downloading tax forms, instructions, and publications;⁷⁸
- Locating the TAC nearest to where the taxpayer lives;⁷⁹ and
- Using the Interactive Tax Assistant to find answers to general tax questions such as who may be claimed as a dependent or whether a taxpayer may deduct medical expenses.⁸⁰

Taxpayer account tools generally require that the taxpayer pass an authentication test before getting any information or accessing features. Examples of account tools include:

- Get Transcript, where the taxpayer can view tax account information;⁸¹
- Direct Pay, where the taxpayer can make payments to the IRS,⁸² and
- View Your Tax Account Information, where the taxpayer may view payment histories and remaining balance due.⁸³

Relatively simple needs such as obtaining a tax form or instructions can be met through a general access tool — as long as the taxpayer has the ability to access the website and, if needed, to print. The downside is taxpayers are also left to determine on their own the answer to a question. Interactive tools are helpful, but locating the correct answer is dependent on the series of filtering questions matching the taxpayer’s particular circumstances. As noted in the prior discussion on telephone service, the IRS will not answer tax law questions after the filing season, so these tools are the only option available to taxpayers for much of year.

Taxpayers wishing to access account tools face a different challenge. Generally, these tools require that the taxpayer pass “multi-factor authentication.” This security measure is intended to ensure the person requesting access is the true taxpayer and not an imposter. For example, to access an account transcript online for the first time, the taxpayer will need all of the following:

- SSN, date of birth, filing status, and mailing address from latest tax return,
- An email account,

76 For further discussion of online accounts, see Area of Focus: *The IRS’s Heavy Reliance on the Online Account Benefits Those Taxpayers Who Can Access the Application and Prefer Digital Interaction, But It Also Burdens Those Taxpayers Who Need or Prefer More Personalized Service*, *infra*, and Efforts to Improve Taxpayer Advocacy: *TAS Is Piloting a Taxpayer Digital Communications (TDC) Project*, *infra*.

77 IRS, *Future State Initiative*, <https://www.irs.gov/uac/newsroom/future-state-initiative> (last visited June 13, 2017).

78 IRS, *Forms & Publications*, <https://www.irs.gov/forms-pubs> (last visited June 13, 2017).

79 IRS, *Contact Your Local IRS Office*, <https://www.irs.gov/help-resources/contact-your-local-irs-office> (last visited June 13, 2017).

80 IRS, *Interactive Tax Assistant (ITA)*, <https://www.irs.gov/uac/interactive-tax-assistant-ita-1> (last visited June 13, 2017).

81 IRS, *Welcome to Get Transcript*, <https://www.irs.gov/individuals/get-transcript> (last visited June 13, 2017).

82 IRS, *Welcome to Direct Pay!*, <https://www.irs.gov/payments/direct-pay> (last visited June 13, 2017).

83 IRS, *View Your Tax Account Information*, <https://www.irs.gov/uac/view-your-tax-account> (last visited June 13, 2017).

- An account number from a credit card, mortgage, home equity loan, home equity line of credit, or car loan, and
- A mobile phone with the taxpayer's name on the account.

After the user enters some initial information to validate his or her identity, the IRS will send a one-time use security code via text message to the taxpayer's cell phone.⁸⁴ Currently, only about one in four taxpayers pass authentication the first time they attempt access.⁸⁵

The ongoing threat from identity thieves complicates the use of online tools. The IRS — appropriately — has tightened security on some tools and that, in turn, has created additional burden for users. For example, e-Services is a suite of web-based tools that allow tax professionals and payors to complete certain transactions with the IRS online.⁸⁶ In November 2016, the IRS announced it would begin sending letters to e-Services users that they needed to go online or call the e-Services Help Desk to validate their identities, or else their accounts would be deactivated in 30 days.⁸⁷ Apparently, some users either ignored the letter or did not receive it.⁸⁸ In March 2017, the IRS added staffing resources to the e-Services Help Desk specifically dedicated to helping practitioners whose accounts had been deactivated.⁸⁹

Another example of an online option not working within the timeframe needed by the taxpayer results from the security breach related to the Free Application for Federal Student Aid (FAFSA). The FAFSA is supported by the Department of Education, and it included a feature to automatically import certain tax return line items used in determining the student's (and family's) income. Within the IRS, this is known as the Data Reporting Tool. In March, the IRS disabled the tool when it learned that identity thieves had managed to access the tax return information of some taxpayers.⁹⁰ The IRS advised FAFSA applicants to use the Get Transcript option, suggesting they review the "rigorous identity authentication requirements" before attempting to register, or use the Get Transcript by Mail option (with its lower

84 The taxpayer has the option of requesting that the activation code be mailed to the address of record. IRS, *Secure Access: How to Register for Certain Online Self-Help Tools*, <https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools> (last visited June 9, 2017). However, waiting "5 to 10 days for mail delivery of the activation code" hinders the taxpayer's ability to immediately resolve the issue.

85 IRS, JOC, *Online Account External Launch Report* (week ending May 13, 2017). The rate passing authentication to access an online account was 26 percent for the week ending May 13, 2017. Between the week ending Jan. 14, 2017 and May 13, 2017, the passage rate ranged between 18 percent and 26 percent.

86 IRS, *e-Services - Online Tools for Tax Professionals*, <https://www.irs.gov/tax-professionals/e-services-online-tools-for-tax-professionals> (last visited June 13, 2017).

87 IRS, e-News for Tax Professionals **SPECIAL EDITION**: *Update on IRS e-Services*, (Nov. 29, 2016). The IRS originally announced its plans for recertifying e-Services users in September. IRS, e-News for Tax Professionals Issue 2016-38: *Important Security Update for e-Services Users* (Sep. 23, 2016). Three weeks later, the IRS postponed the reauthentication effort "to have discussions with key stakeholders affected by the e-services changes..." IRS, e-News for Tax Professionals Issue 2016-41: *Updates on IRS e-Services and Secure Access* (Oct. 14, 2017).

88 Systemic Advocacy Management System (SAMS) Issue 35681. SAMS is an online tool through which IRS employees and the public may report systemic problems to TAS, <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams> (last visited June 13, 3017).

89 IRS, e-News for Tax Professionals Issue 2017-10: *Received Letter 5903? Additional Staff Available Starting Tuesday to Revalidate Your Identity for e-Services* (Mar. 10, 2017). In additional, examples of practitioner challenges were elevated to TAS. SAMS Issue 35681.

90 IRS, Internal Revenue Service (IRS) and U.S. Department of Education Office of Federal Student Aid (FSA) Statement about the IRS Data Retrieval Tool (DRT) (Mar. 30, 2017), <https://www.irs.gov/uac/internal-revenue-service-irs-and-u-s-department-of-education-office-of-federal-student-aid-fsa-statement-about-the-irs-data-retrieval-tool-drt> (last visited June 13, 2017).

As the IRS tries to transition taxpayers from using personal service to using online service, it is incumbent on the agency to develop metrics that measure the effectiveness of online services at meeting taxpayer needs.

authentication hurdles), which will allow the transcript to be mailed “within five to ten days.”⁹¹ Taxpayers attempting to schedule a TAC appointment to secure a transcript would be told to use the online options. These events were all happening leading up to May 1, which is the deadline at many colleges for students to make their college decisions.

Not all taxpayer account tools require multi-factor authentication. For example, Where’s My Refund allows the taxpayer to check when his or her tax refund is likely to be issued.⁹² The only information the user needs to provide is the SSN (or ITIN), filing status, and expected refund amount.

As the IRS tries to transition taxpayers from using personal service to using online service, it is incumbent on the agency to develop metrics that measure the effectiveness of online services at meeting taxpayer needs. Adequate measures do not yet exist.⁹³

IDENTITY THEFT AND REFUND FRAUD

The nature of stolen identity refund fraud, also referred to as tax-related identity theft, continues to evolve as the IRS implements various filters, rules, and data mining models to combat refund fraud schemes that are becoming increasingly more sophisticated. We are seeing improvement on several metrics that suggest fewer taxpayers are being impacted, while some areas of concern remain.

For purposes of analyzing the taxpayer experience, it is useful to divide taxpayers into three broad categories: (i) taxpayers whose returns are flagged on suspicion of refund fraud unrelated to identity theft; (ii) taxpayers whose returns are flagged on suspicion of refund fraud related to identity theft; and (iii) taxpayers who were previously victimized by tax-related identity theft and whose cases were resolved by the IRS.⁹⁴

91 IRS, IRS Offers Help to Students, Families to Get Tax Information for Student Financial Aid Applications, <https://www.irs.gov/individuals/irs-offers-help-to-students-families-to-get-tax-information-for-student-financial-aid-applications> (last reviewed or updated June 2, 2017) (last visited June 13, 2017).

92 IRS, *Where’s My Refund? - It’s Quick, Easy and Secure*, <https://www.irs.gov/refunds> (last visited June 13, 2017). This tool was used about 300 million times in FY 2016. *The 2017 Tax Filing Season: Internal Revenue Service Operations and the Taxpayer Experience: Hearing Before S. Comm. on Fin., 115th Cong. 2* (2017) (written statement of John A. Koskinen, Commissioner of Internal Revenue). The same functionality is also on the IRS mobile app IRS2GO. IRS, IRS2Go Mobile App, <https://www.irs.gov/uac/irs2goapp>.

93 For related discussions on online accounts and alternative approaches, see Area of Focus: *The IRS’s Heavy Reliance on the Online Account Benefits Those Taxpayers Who Can Access the Application and Prefer Digital Interaction, But It Also Burdens Those Taxpayers Who Need or Prefer More Personalized Service*, *infra*, and Efforts to Improve Taxpayer Advocacy (*TAS is Piloting a Taxpayer Digital Communications (TDC) Project*), *infra*.

94 The National Taxpayer Advocate has advocated over many years for policies to address the burden imposed on taxpayers resulting from identity theft and refund fraud, most recently in the 2016 Annual Report to Congress. National Taxpayer Advocate 2016 Annual Report to Congress 151-60 (Most Serious Problem: *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*). For additional discussion on IRS steps to review a tax return, see Area of Focus: *The IRS’s Heavy Reliance on the Online Account Benefits Those Taxpayers Who Can Access the Application and Prefer Digital Interaction, But It Also Burdens Those Taxpayers Who Need or Prefer More Personalized Service*, *infra*.

Suspicious Returns

Pre-Refund Wage Verification

The IRS passes all tax returns claiming refunds through a variety of validation screens. One such screen looks for false reporting of income or tax withholding. For example, a taxpayer may file a return that understates income or overstates the amount of tax withheld by the employer to generate an inflated refund. Under the IRS's Pre-Refund Wage Verification Program, a claimed refund will be frozen if electronic filters and rules flag the income or withholding as suspicious until the amounts can be verified. While these screens are essential to combat the epidemic of refund fraud, they delay the processing of legitimate returns as well. Taxpayers whose legitimate refund claims have been frozen by these filters face particular challenges, because the Pre-Refund Wage Verification function does not provide a mechanism for direct taxpayer contact. Estimating the number of impacted taxpayers is difficult, because until recently, the IRS did not track false positive rates for this program.

Identity Verification

The IRS's filters and rules also look specifically for identity theft. Under the Taxpayer Protection Program (TPP), returns that the IRS flags as suspicious for identity theft are frozen until the taxpayer filing the return is able to verify his or her identity to the IRS's satisfaction. As of April 13, 2017, 1.3 million suspicious tax returns were selected by the TPP, down from 1.5 million returns over the same period in 2016.⁹⁵ The IRS sends a letter instructing the taxpayer to verify his or her identity by calling the TPP phone line. The taxpayer must provide information that was included on the prior-year return and successfully answer certain authentication questions.

Similar to the experience discussed in the prior section on Online and Self-Service Tools, not every legitimate taxpayer will pass the authentication process. For taxpayers failing oral authentication with a phone assistant or for taxpayers deemed at high risk for identity impersonation (*i.e.*, data breach victims), the only option is to visit a TAC. As a result, taxpayers desperate to complete this process to receive their refunds need to make an appointment at a TAC, as discussed above.

The ongoing challenge for the IRS is that as it makes improvements in its filters and screening methods, identity thieves move to a new approach. Currently, there is a lot of attention on phishing schemes where thieves masquerade as a legitimate source and get practitioners or employers to reveal the data that allows the thieves to perpetrate refund fraud.⁹⁶

At the same time, the IRS's fraud detection systems have a history of high false positive rates. In CY 2016, the false positive rate for TPP identity theft filters was 53 percent, meaning that of all returns flagged as potentially fraudulent, more than half turned out to be legitimate.⁹⁷ Notably, one IRS process for reviewing returns for identity theft had a false positive rate of about 91 percent.⁹⁸ High false positive rates can lead to significant downstream consequences for both the IRS and taxpayers. When legitimate taxpayers are ensnared in an over-reaching IRS fraud detection mechanism, they may experience

95 IRS Return Integrity & Compliance Services (RICS), *Update of the Taxpayer Protection Program (TPP)* (Apr. 19, 2017); IRS RICS, *Update of the Taxpayer Protection Program (TPP)* (Apr. 20, 2016).

96 See, e.g., IRS News Release IR-2016-15, *Phishing Schemes Lead the IRS "Dirty Dozen" List of Tax Scams for 2017; Remain Tax-Time Threat* (Feb. 1, 2017).

97 IRS W&I, *Business Performance Review 9* (Feb. 9, 2017). A false positive occurs when a system selects a legitimate return and delays the refund past the prescribed review period.

98 IRS response to TAS information request (Nov. 3, 2016). In 2017, the IRS modified certain of these business rules and included them in the TPP process. National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 126-7.

protracted refund delays as they navigate the authentication processes to prove they are the true tax return filers. During the 2017 filing season, 75 percent of taxpayers received refunds, and the average refund amount was more than \$2,750.⁹⁹ Many taxpayers, particularly those with low incomes, depend on timely receipt of their refunds to pay for basic living expenses; the impact of refund delays can range from mere inconvenience to extreme financial hardship. Thus, IRS reliance on over-inclusive filters unnecessarily delays refunds of legitimate taxpayers, possibly placing these taxpayers in a financial hardship; creates unnecessary work for IRS employees, needlessly draining the IRS's limited resources; and potentially damages taxpayers' willingness to voluntarily comply with their tax obligations.

In 2015, the IRS convened a "Security Summit" that began a collaborative effort between the IRS and representatives of the software industry, tax preparation firms, payroll and tax financial product processors, and state tax administrators to combat identity theft refund fraud.¹⁰⁰ This initiative appears to be having a positive effect in combating identity theft. With more data sharing and additional safeguards put in place at several levels, there appears to be progress within tax administration generally.

Prior Victims of Identity Theft

Taxpayers who were previously victims of identity theft and whose cases were conclusively resolved by the IRS may be assigned an Identity Protection Personal Identification Number (IP PIN) for use when filing future returns. IP PINs were implemented so the IRS would know a tax return was submitted by the correct SSN owner and allow it to pass through its identity theft filters. More specifically, the IRS marks the taxpayer's account with an identity theft indicator and thereafter the taxpayer provides the IP PIN when filing. IRS systems look for the IP PIN, and if it is provided, the return should be processed without delay. If the tax account contains an identity theft indicator and the tax return lacks an IP PIN or contains an inaccurate IP PIN, the return will be rejected if filed electronically.

TAS is not aware of any systemic problems affecting taxpayers with IP PINs for the 2017 filing season. As we reported last year, there were multiple events impacting this segment of taxpayers.¹⁰¹ More generally, fewer taxpayers are reporting that they have been the victims of tax-related identity theft. The number of people who reported to the IRS that they were victims of identity theft declined by 46 percent from 698,700 in CY 2015 to 376,500 in CY 2016.¹⁰² As of January 2017, the IRS-wide inventory of identity theft cases was under 30,000 – less than half of the inventory two years ago.¹⁰³

TAS understands and supports the need for a variety of revenue protection strategies. But the IRS must recognize the need for approaches that minimize the burden on legitimate taxpayers. Toward that end, we recommend the IRS devote more resources to recalibrating its filters during the filing season and establish a maximum target false-positive rate. By so doing, it would reduce the number of legitimate returns it flags, thereby reducing inconvenience to taxpayers and its own unnecessary rework.

99 IRS, *Filing Season Statistics for Week Ending April 21, 2017*, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-21-2017>. The percentage of returns receiving a refund is based on the number of returns processed.

100 IRS, *Security Summit*, <https://www.irs.gov/uac/security-summit> (last visited June 13, 2017).

101 The IRS mailed reminder notices to 2.7 million taxpayers assigning them an Identity Protection Personal Identification Number (IP PIN) for filing their tax return that specified the incorrect tax year, and the online tool for retrieving the IP PIN was disabled due to security concerns. National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 75-76.

102 *The 2017 Tax Filing Season: Internal Revenue Service Operations and the Taxpayer Experience: Hearing Before the S. Comm. on Fin.*, 115th Cong. 6 (2017) (written statement of John A. Koskinen, Commissioner of Internal Revenue).

103 *The 2017 Tax Filing Season: Internal Revenue Service Operations and the Taxpayer Experience: Hearing Before the S. Comm. on Fin.*, 115th Cong. (2017) (written statement of John A. Koskinen, Commissioner of Internal Revenue). In FY 2017 (through March), TAS had identity theft case receipts of 11,314 – less than half the 24,491 identity theft cases we received by the same point in FY 2016. Data obtained from Taxpayer Advocate Management System (TAMIS) (Apr. 1, 2016; Apr. 1, 2017).

AFFORDABLE CARE ACT

The primary event impacting taxpayers related to ACA during the filing season was the IRS decision to *not* delay processing tax returns with certain missing ACA information.¹⁰⁴ The ACA generally requires taxpayers to maintain minimum essential coverage throughout the year.¹⁰⁵ The taxpayer can certify on the tax return by checking a box that he or she and other tax family members had minimum essential coverage throughout the year.¹⁰⁶ If this is not the case, the taxpayer may claim a coverage exemption, if eligible, or else must report a shared responsibility payment.¹⁰⁷ The IRS refers to tax returns that do not include any of that information as “silent” returns. The IRS planned to hold off processing such silent returns until the taxpayer provided the missing information.¹⁰⁸

On January 20, 2017, the President signed an 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.”¹⁰⁹ The order stated that the agencies should “exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act” that would impose a burden.¹¹⁰

In response to the executive order, the IRS announced on February 15, 2017, that it had halted its plan to reject electronically filed “silent returns.”¹¹¹ As a result, the tax returns of taxpayers who did not provide the related information and had no other issues were processed without delays.

The National Taxpayer Advocate is closely monitoring what actions, if any, the IRS plans to take to address noncompliance with the ACA. The IRS stated in guidance to employees immediately after the President’s executive order: “The legislative provisions of the Affordable Care Act are still in force until changed by the Congress and taxpayers are still required to follow the law and pay all taxes they may owe under it.”¹¹² To the extent the IRS is planning to take enforcement action against taxpayers who file silent returns and don’t have qualifying coverage or qualify for an exemption, we believe the IRS’s original plan to reject silent returns should be reinstated, as requiring taxpayers to answer the questions upfront is a taxpayer-education, preventive measure and will reduce subsequent compliance burdens at such time as the IRS makes tax adjustments based on audits or document-matching.

104 For additional coverage of this issue, see Area of Focus: *While the IRS Continues to Do a Reasonable Job in Administering the Affordable Care Act, Taxpayers Still Encounter Difficulties Attempting to Comply with the Complex Provisions*, *infra*.

105 IRC § 5000A(a).

106 IRS, *Instructions for Form 1040, U.S. Individual Income Tax Return* (2016), Line 61 Health Care: Individual Responsibility.

107 *Id.* The taxpayer files Form 8965, *Health Coverage Exemptions*, or self-assesses an individual shared responsibility payment (ISRP) on the return.

108 Electronically-filed returns would be “rejected” giving the taxpayer an opportunity to correct and resubmit the return. Paper-filed returns would be sent to the Error Resolution unit where the taxpayer would be contacted by mail to provide the missing information. IRM 3.12.3.14, *Error Code 157* (Jan. 1, 2017).

109 White House, Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal* (Jan. 20, 2017).

110 *Id.*

111 See IRS, *Individual Shared Responsibility Payment*, <https://www.irs.gov/affordable-care-act/individuals-and-families/individual-shared-responsibility-provision> (last visited May 22, 2017).

112 IRS, Servicewide Electronic Research Program (SERP) Alert 17A0033, *Responding to Taxpayer Inquiries about ACA Executive Order* (revised Feb. 3, 2017).

SERVICE OPTIONS FOR U.S. TAXPAYERS LIVING ABROAD

TAS remains concerned about service options for taxpayers located overseas.¹¹³ The number of U.S. citizens living abroad continues to grow, while current services are limited. In mid-2016, approximately nine million U.S. citizens lived abroad, compared with about 7.6 million in mid-2014.¹¹⁴ There are also many international U.S. taxpayers who are neither residents nor citizens of the United States, as evidenced by the approximately 670,000 U.S. individual tax returns filed by nonresident aliens in 2015.¹¹⁵

Taxpayers living abroad generally cannot call U.S. toll-free telephone lines, yet in 2015, the IRS terminated the Electronic Tax Law Assistance program through which taxpayers could submit tax law questions to the IRS through its website and receive a response via email. In recent years, the IRS closed its overseas tax attaché offices, which eliminated the last face-to-face option for taxpayers.¹¹⁶

The PATH Act provisions requiring certain taxpayers to renew their ITINs overseas created additional challenges for FS 2016. TAS received reports that U.S. taxpayers in Canada and Mexico who live near the U.S. border and wanted to complete the renewal process in person were unable to make an appointment at a TAC because the toll-free line will not accept calls from a non-domestic number.¹¹⁷ The IRS implemented a work-around where taxpayers who place a (toll) call to the International Taxpayer Service phone line could be transferred to the TAC appointment line.¹¹⁸ But this alternative only worked for taxpayers who became aware of it. TAS has been unable to find any instruction concerning this option on irs.gov.¹¹⁹

On a positive note, the IRS is again allowing persons outside the U.S. to serve as Certified Acceptance Agents (CAAs).¹²⁰ International taxpayers now have the option of using a CAA to complete the ITIN renewal process without mailing important documents such as birth certificates and passports to the IRS.¹²¹

113 For past reporting on these concerns, see National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 78-79. National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does not Sufficiently Address the Unique Needs of International Taxpayers*).

114 See U.S. Department of State, Bureau of Consular Affairs, *Who We Are and What We Do: Consular Affairs by the Numbers* (May 2014), <https://travel.state.gov/content/dam/travel/CA%20Fact%20Sheet%202014.pdf>; U.S. Department of State, Bureau of Consular Affairs, *Consular Affairs by the Numbers* (June 2016), https://travel.state.gov/content/dam/travel/CA_By_the_Numbers.pdf.

115 IRS, CDW, Individual Returns Transaction File for TY 2015 (as of Apr. 29, 2017, cycle 201717).

116 IRS had fifteen attaché offices at one time. The last was closed in December, 2015. Memorandum from Acting Deputy Commissioner, International (LB&I), *Post Closures of Frankfurt, London and Paris* (Feb. 18, 2015) (on file with TAS). For a detailed discussion, see National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*).

117 SAMS Issue 35184. See also SAMS 35581, 35904.

118 IRS International Taxpayer Service Call Center, 267-941-1000 (not toll-free).

119 See, e.g., IRS, *Contact My Local Office Internationally*, <https://www.irs.gov/uac/contact-my-local-office-internationally> (last visited May 19, 2017), and IRS, *Contact Your Local IRS Office*, <https://www.irs.gov/help-resources/contact-your-local-irs-office> (last visited May 19, 2017).

120 IRS, SERP Alert 17A0128, *Rescinding Termination of International CAAs* (Apr. 17, 2017).

121 For a more detailed discussion, see Area of Focus: *The IRS Makes Needed Changes to the Individual Taxpayer Identification Number (ITIN) Program, But Barriers for ITIN Applicants Remain, infra*. See also, National Taxpayer Advocate 2016 Annual Report to Congress 239-52 (Most Serious Problem: *Individual Taxpayer Identification Number (ITINs): IRS Processes for ITIN Applications, Deactivations, and Renewals Unduly Burden and Harm Taxpayers*).

CONCLUSION

Overall, the IRS delivered a generally successful 2017 filing season, and the IRS deserves credit for implementing multiple new legislative requirements related to the PATH Act. Taxpayers benefited from higher service levels and reduced wait times on many key phone lines.

However, much of the IRS's improved performance this year is attributable to reduced taxpayer demand for services. While fewer taxpayers attempted to contact the IRS on the telephone, the IRS also answered fewer calls. We also remain concerned about the IRS's recent and continuing reductions in service for taxpayers, including declining to answer all but basic tax law questions during the filing season or any questions after the filing season, eliminating walk-in service at the TACs, and eliminating the ability of taxpayers to ask questions of the IRS online. The failure to meet the needs of taxpayers who rely on these services causes added stress for them and may reduce their willingness or ability to comply.

To a significant degree, the IRS's shortcomings are budget-driven. The additional \$290 million in funding Congress provided this year was very helpful to the IRS in improving its phone service, but the fact that the agency's budget has been reduced by nearly 20 percent in inflation-adjusted terms since FY 2010 continues to require it to cut corners in providing a full range of taxpayer services.

Area of
Focus #1

The Design of the IRS's Private Debt Collection (PDC) Program Will Disproportionately Burden Taxpayers in Economic Hardship and Impose Unnecessary Costs on the Public Fisc

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 Challenge the IRS's Position and Be Heard*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to Confidentiality*
- *The Right to a Fair and Just Tax System*

DISCUSSION

In 2015, Congress enacted legislation that requires the IRS to assign certain delinquent taxpayer debts to private collection agencies (PCAs).² The IRS is authorized to pay the PCAs a fee of up to 25 percent of the amount they collect, and the IRS itself is permitted to retain up to 25 percent of the amount PCAs collect.³ The IRS assigned the first group of taxpayer liabilities to PCAs on April 10, 2017.⁴ Although the IRS does not assign liabilities designated as Currently Not Collectible (CNC) – Hardship, it assigned other debts of taxpayers who are likely experiencing economic hardship.⁵ As of May 17, 2017, the IRS had assigned to PCAs the debts of approximately 9,600 taxpayers, approximately 5,900 of whom filed a recent return.⁶ The returns show:

- These taxpayers' median annual income is \$31,689;
- More than half have incomes below 250 percent of the federal poverty level;⁷ and

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 Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733-36 (2015) (FAST Act), (adding subsections (c) and (h) to IRC § 6306). As discussed below, IRC § 6306(c)(1) requires the IRS to enter into qualified tax collection contracts for the collection of "inactive tax receivables."

3 IRC §§ 6306(e)(2), 6307.

4 After sending about 400 cases to Private Collection Agencies (PCAs) each week for the first month of the program, the IRS plans to increase the weekly volume to about 4,000 cases for June and July, then increase the weekly volume to 8,000 cases in August and September, the end of the 2017 fiscal year. (Email from Supervisory Tax Analyst, Small Business/Self-Employed Collection – Private Debt Collection, Mar. 31, 2017).

5 Liabilities in Currently Not Collectible (CNC) - Hardship status are not "tax receivables" within the meaning of IRC § 6306(c)(2)(B).

6 Accounts Receivable Dollar Inventory (ARDI), Individual Returns Transaction File (IRTF), Information Returns Master File (IRMF), Compliance Data Warehouse (CDW), data accessed May 17, 2017. TAS Research identified 9,599 taxpayers whose accounts were assigned to PCAs as of May 17, 2017, of whom 5,947 filed a return for 2014 or later.

7 *Id.* Out of 5,947 taxpayers, 3,146 (53 percent) had incomes below 250 percent of the federal poverty level.

- More than a fifth have incomes below the federal poverty level.⁸

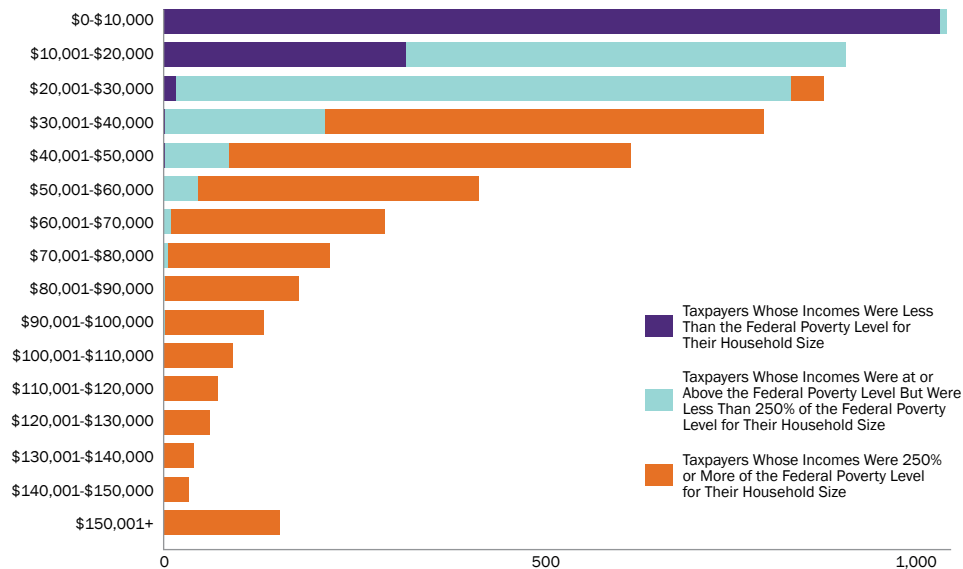
In addition to assigning “inactive tax receivables” to PCAs as required by statute, the IRS plans to use its discretionary authority to assign to PCAs the recent debts of taxpayers who already have a prior debt assigned to a PCA.⁹ Regular IRS collection processes, which in fiscal year (FY) 2016 generated about \$4.7 billion of receipts, will be circumvented.¹⁰ PCAs will thus receive commissions on payments the IRS could have collected merely by sending its usual notices, and the IRS will be able to retain up to 25 percent of collections that normally would go directly to the public fisc. Thus, under this procedure, up to half of the collections that would normally go to the public treasury will now be retained by PCAs and the IRS.

The IRS Is Assigning to Private Collection Agencies (PCAs) the Debts of Taxpayers Who Are Likely Experiencing Economic Hardship

TAS Research identified 5,947 taxpayers whose debts had been assigned to a PCA as of May 17, 2017 and who had filed tax returns for 2014 or later.¹¹ Figure 3.1.1 shows the income distribution of these taxpayers.

FIGURE 3.1.1¹²

Income Distribution of Taxpayers Whose Debts Were Assigned to PCAs Compared to the Federal Poverty Level, According to Their Last Filed Returns (Tax Year 2014 or Later)



8 ARDI, IRTF, IRMF, CDW, data accessed May 17, 2017. Out of 5,947 taxpayers, 1,373 (23 percent) had incomes below the federal poverty level.

9 Since 2004, IRC § 6306(a) has authorized the IRS to enter into qualified tax collection contracts with PCAs. See The American Jobs Creation Act of 2004, Pub. L. 108-357, Title VIII, § 881(a)(1), 118 Stat. 1418, 1625-27 (2004) (enacting IRC § 6306).

10 IRS Collection Activity Report (CAR) NO-5000-2/242, Balance Due Notices (Oct. 3, 2016), discussed below.

11 IRS, ARDI, IRTF, IRMF, CDW, data accessed May 17, 2017. These debts carry a Transaction Code of 971 and an Action Code of 54 on the IRS’s Master File database.

12 U.S. Dept. of Health and Human Resources, *Poverty Guidelines* (2017), <https://aspe.hhs.gov/poverty-guidelines>. The federal poverty level is based on family size and varies from year to year. Federal poverty level determinations shown in the chart correspond to the family size and tax year for the taxpayer’s most recently filed return. As discussed below, 250 percent of the federal poverty level is a proxy for economic hardship for purposes of excluding some taxpayers’ federal payments from the Federal Payment Levy Program (FPLP).

As Figure 3.1.1 shows, more taxpayers belong to the income category of less than \$10,000 than any other category. These 1,041 taxpayers comprise 18 percent of the total, and the incomes of all but eight of them are below the federal poverty level. Almost half of the taxpayers — 2,827, or 48 percent — have incomes of \$30,000 or less. Of these taxpayers, only 45 have incomes equal to or more than 250 percent of the federal poverty level.

To its credit, the IRS ultimately agreed with the National Taxpayer Advocate that it is inappropriate to assign to PCAs the liabilities of taxpayers who receive Social Security Disability Income (SSDI).¹³ Because of the IRS's earlier refusal to exclude these debts, however, the necessary programming was not in place by April 10, 2017. Thus, as of May 17, 2017:

- The debts of 445 taxpayers who received SSDI in 2016 were assigned to PCAs; and
- Of these 445 taxpayers, 160 filed recent returns; the median income shown on these returns was less than \$10,600.¹⁴

The National Taxpayer Advocate also expressed concern about assigning to PCAs the liabilities of taxpayers who were not subject to levies on their Social Security Administration (SSA) retirement payments pursuant to the Federal Payment Levy Program because their incomes were at or below 250 percent of the federal poverty level.¹⁵ In response, the IRS decided that for the first six months of the PDC program, these taxpayers' debts would be included in the PCA inventory. During that time, the IRS could explore how to identify taxpayers in this group who also have substantial assets. The IRS did not take any steps to develop such a method and ultimately informed TAS that it will not exclude these taxpayers' debts from assignment to PCAs.¹⁶ In the meantime:

- The IRS assigned to PCAs the liabilities of 875 taxpayers who received SSA in 2016; and
- Of these 875 taxpayers, 326 filed recent returns; the median income shown on these returns was less than \$13,200.¹⁷

13 Taxpayers receiving Social Security Disability Income (SSDI) by definition generally cannot earn over \$1,170 per month (\$1,950 if he or she is blind) without having their SSDI payments reduced. See Social Security Administration (SSA), *Update 2017*, <https://www.ssa.gov/pubs/EN-05-10003.pdf>.

14 IRS, ARDI, IRTF, IRMF, CDW, data accessed May 15, 2017. The 160 returns were filed for tax year 2014 or later. The IRS adjusted its guidance to PCAs, the PCA Policy and Procedures Guide (PPG), to require the return of cases in which the taxpayer states he or she is a recipient of SSDI or Supplemental Security Income.

15 See Internal Revenue Manual (IRM) 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016). The 250 percent measure operates as a proxy for economic hardship.

16 SB/SE response to TAS information request (Apr. 5, 2017); SB/SE response to TAS information request (May 15, 2017), (stating that "[t]axpayers receiving SSA retirement income will not be screened from the PDC program.").

17 IRS, ARDI, IRTF, IRMF, CDW, data accessed May 17, 2017. The 326 returns were filed for tax year 2014 or later.

The IRS Plans to Assign New Receivables to Private Collection Agencies (PCAs), Thus Allowing PCAs to Collect Amounts the IRS Could Collect by Sending Its Usual Notices

Once a taxpayer's liability is assigned to a PCA, the IRS will assign that taxpayer's new assessments, if any, to the PCA. The IRS describes the process as follows:

- A taxpayer owes income taxes for 2012 and the IRS transfers that liability to a PCA on April 10, 2017;
- The same taxpayer files a return for 2016 on April 15, 2017. The return shows a liability of \$5,000 but the liability is not paid with the return;
- If the taxpayer does not pay the 2016 liability by May 15, 2017, the IRS issues Notice CP 14, a demand for payment of the \$5,000 liability; and
- If payment is not received, the IRS assigns the \$5,000 to the PCA, notifies the taxpayer of the assignment, and will pay commissions to the PCA on payments the taxpayer makes with respect to the 2016 liability on or after July 14, 2017.¹⁸

The taxpayer's 2016 liability in the example above would not be an "inactive tax receivable."¹⁹ Thus, the IRS may, but is not required by statute, to assign it to a PCA.²⁰ As explained below, it is questionable whether doing so is a good business decision.

When taxpayers incur delinquent tax liabilities, the IRS demands payment over a period which spans about six months in a series of four notices. IRS Notice CP 14 is the first such notice, and is the only notice the IRS intends to issue in the example above.²¹ In FY 2016, the Notice CP 14 resulted in \$3.8 billion of payments.²² Notices generated *after* the CP 14, however, resulted in \$4.7 billion of payments.²³ The IRS plans to suppress those notices, allow the PCAs to solicit payments that might have been made in response to them, and pay the PCAs a commission on the amounts collected. Figure 3.1.2 shows the amounts the IRS receives for each of the four notices it issues to taxpayers whose debts are not assigned to PCAs.

18 SB/SE response to TAS information request (Apr. 5, 2017).

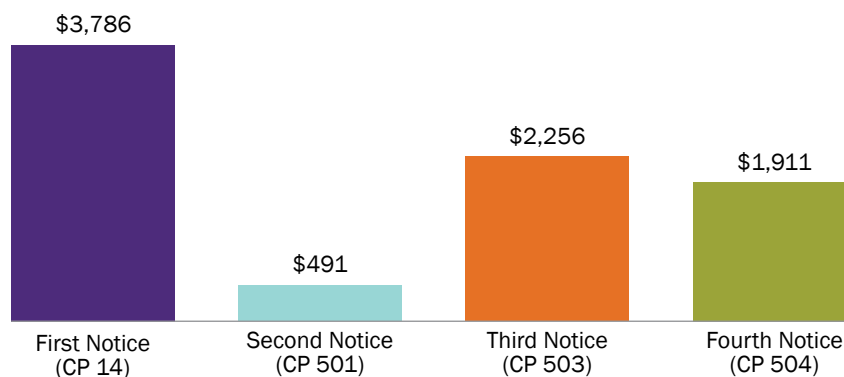
19 IRC § 6306(c)(2)(A) provides that "[t]he term 'inactive tax receivable' means any tax receivable if (i) at any time after assessment, the Internal Revenue Service removes such receivable from the active inventory for lack of resources or inability to locate the taxpayer, (ii) more than 1/3 of the period of the applicable statute of limitation has lapsed and such receivable has not been assigned for collection to any employee of the Internal Revenue Service, or (iii) in the case of a receivable which has been assigned for collection, more than 365 days have passed without interaction with the taxpayer or a third party for purposes of furthering the collection of such receivable."

20 IRC § 6306(c) provides: "Notwithstanding any other provision of law, the Secretary shall enter into one or more qualified tax collection contracts for the collection of all outstanding inactive tax receivables." IRC § 6306(a) is the source of the IRS's general authority to assign receivables to PCAs, providing "In general.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract."

21 SB/SE response to TAS information request, (Apr. 5, 2017).

22 CAR NO-5000-2/242, *Balance Due Notices* (Oct. 3, 2016). The data does not distinguish between collections from taxpayers who had liabilities for periods that preceded the notice stream and those who did not.

23 *Id.*, showing that the second, third, and fourth notices in the notice stream (CP 501, CP 503, and CP 504) combined resulted in payments of about \$4.7 billion. The data does not distinguish between collections from taxpayers who had liabilities for periods that preceded the notice stream and those who did not.

FIGURE 3.1.2²⁴**Amounts Collected From Taxpayers Whose Debts Are Not Assigned to PCAs and Who Are Issued Four IRS Collection Notices (in Millions of Dollars)**

Treating the same taxpayer's liabilities differently may not be justified in the light of actual taxpayer behavior. For example, even though the older debt of the taxpayer in the example above has been assigned to a PCA, the amount of the taxpayer's recent debt (\$5,000 in the example) may be less than the older debt. The taxpayer may therefore be able to pay the additional tax while it is still in the notice stream. Moreover, the new \$5,000 liability in the example above is self-assessed, not the result of an audit or other assessment process.²⁵ As a recent TAS study demonstrated, the IRS is more likely to collect self-reported liabilities than other types of assessments. For example, it collects self-assessed liabilities at a rate at least twice as great as it collects audit assessments.²⁶

Therefore, by bypassing the notice stream, the IRS:

- Circumvents its normal procedures for collecting new debts which have proven to be effective;
- Treats taxpayers whose debts were assigned to PCAs differently than taxpayers whose debts were not assigned;
- Treats the same taxpayer's tax liabilities differently depending on when they arose; and
- Imposes unnecessary costs on taxpayers and the public fisc in the form of commissions it pays PCAs.

The IRS, however, benefits from this approach because it retains up to 25 percent of the amount PCAs collect to be used for hiring and training Compliance employees.²⁷ Thus, the PCAs and IRS benefit from this truncated procedure; the public fisc, on the other hand, does not.

²⁴ IRS, CAR NO-5000-2/242, *Balance Due Notices* (Oct. 3, 2016). The data does not distinguish between collections from taxpayers who had liabilities for periods that preceded the notice stream and those who did not.

²⁵ Other sources of assessment include Automated Underreported assessments, trust fund recovery penalty assessments, and assessments based on a substitute for return. See National Taxpayer Advocate 2015 Annual Report to Congress vol. 2, 45 (Research Study: *IRS Collectibility Curve*).

²⁶ *Id.*

²⁷ IRC §§ 6306(e)(2), 6307.

The Private Debt Collection (PDC) Program Raises Concerns About the Adequacy of Authentication Procedures, Training of Private Collection Agency (PCA) Employees, and Transparency of PCA Practices

The IRS letter that notifies a taxpayer his or her tax debt has been assigned to a PCA contains the name, address, and phone number of the PCA and includes a ten-digit Taxpayer Authentication Number (TAN).²⁸ The first letter the PCA sends the taxpayer confirms that the debt was assigned to it, and contains the same TAN as the one listed on the IRS notice. When the PCA later speaks with the taxpayer by telephone, each party to the call can provide five digits of the TAN (the first five or the last five) as part of the authentication process. This allows each party to confirm the identity of the other. However, if the taxpayer cannot provide the TAN, the authentication process may, if the taxpayer is willing, be completed by having the taxpayer provide his or her Social Security number (SSN) or Taxpayer Identification number (TIN).²⁹ Thus, the IRS cannot advise taxpayers that legitimate PCAs will never request their SSNs or TINs.³⁰

Permitting authentication to proceed on the basis of the taxpayer's SSN or TIN (rather than using the TAN) heightens the potential for taxpayers to be victimized by scammers posing as PCA employees. Moreover, additional IRS resources will be needed downstream to assist taxpayers who are victims of identity theft as a result of having used their SSN or TIN to authenticate their identities with what they believed was a PCA.

In January 2017, a TAS executive and TAS program analyst travelled to Austin, Texas to deliver in-person training to PCA managers. The training included a 45-minute video of the National Taxpayer Advocate explaining how the Taxpayer Bill of Rights applies to PCA employees and activities. TAS requested that all PCA employees be required to view the video as part of their training, but the IRS refused to impose this training requirement.³¹

Transparency about how PCAs intend to interact with taxpayers also remains a concern. The PCAs have shared their calling scripts and the letters they plan to send to taxpayers with the IRS, as required, and the IRS shared these materials with TAS.³² However, some scripts reference job aids that appear to provide more detailed instructions about how to interact with taxpayers, and it is not clear whether the IRS requested the job aids from the PCAs.³³ In any event, the IRS did not share those job aids with TAS. Additionally, there may be other job aids that are not explicitly referenced in the scripts. These job aids have not been shared with TAS, and it appears that the IRS has not reviewed or conducted any

28 IRS Notice CP 40.

29 If the taxpayer does not agree to provide his or her Social Security number or Taxpayer Identification number, the PCA will offer to resend the PCA initial contact letter which contains the TAN, and suspend further discussion for five calendar days to allow time for the taxpayer to receive the PCA initial contact letter. See PPG section 6.4.2, *Additional Authentication Code*. In any event, the PCA cannot continue to collect the debt until authentication is completed.

30 In contrast, the IRS in the past advised taxpayers: “**The IRS will never:** ...Call or email you to verify your identity by asking for personal and financial information.” (emphasis in original). See IR-2016-40, *Consumer Alert: Scammers Change Tactics, Once Again*, <https://www.irs.gov/uac/newsroom/consumer-alert-scammers-change-tactics-once-again> (Mar. 14, 2016).

31 SB/SE response to TAS information request, (Apr. 5, 2017). The video, *National Taxpayer Advocate Message to PCA Contractors - Taxpayer Bill of Rights*, <https://www.irsvideos.gov/Individual/Resources/NTAMessageToPCAContractors-TaxpayerBillOfRights>. However, one PCA appears to be including the video in its training. Another PCA, to its credit, committed to displaying IRS Publication 5170, *Taxpayer Bill of Rights*, throughout its workplace, including in each PCA employee cubicle. Publication 5170 is a bilingual (English and Spanish) brochure that displays as a poster and lists and explains the ten taxpayer rights in the TBOR.

32 PPG section 5, *PCA Letters*.

33 When TAS requested the job aids, the IRS at first responded that “Job aids are not a part of the PCA Deliverables and not something the PDC Project Office will be requesting nor reviewing prior to Go Live.” Email from Supervisory Tax Analyst, SB/SE Collection – Private Debt Collection (Mar. 13, 2017). The IRS later indicated that the job aids might be forthcoming.

oversight with respect to them.³⁴ Another development of concern is the IRS's change in position about allowing TAS representatives to listen to calls between PCA employees and taxpayers. While the IRS initially agreed to allow TAS to participate in this oversight, it now refuses.³⁵

CONCLUSION

As the National Taxpayer Advocate predicted, the design of the PDC program will disproportionately affect taxpayers who appear to be experiencing economic hardship. The IRS plans to assign new liabilities to PCAs without first attempting to collect them through the usual notice stream, thereby unnecessarily paying significant amounts of commissions to PCAs. The IRS has not taken the necessary steps to ensure that PCAs adequately protect taxpayers, train their employees, and operate transparently.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Accept PDC cases under existing TAS criteria, including criterion nine (applicable when the National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers) and analyze the issues presented and resolution of those cases;
- Analyze a representative sample of taxpayers who receive Social Security retirement payments who are not subject to FPLP levies because their incomes are less than 250 percent of the federal poverty level but whose debts were assigned to a PCA to determine the extent to which these taxpayers have substantial assets;
- Analyze the accounts of taxpayers who made a payment or entered into an installment agreement while their liabilities were assigned to PCAs to determine these taxpayers' median income, the proportion of taxpayers whose income was less than the poverty level or 250 percent of the federal poverty level, and the proportion for whom allowable living expenses exceed their total positive income; and
- With respect to taxpayers with debts already assigned to PCAs whose new liabilities were assigned to PCAs, measure the proportion that subsequently fully paid or entered into a payment arrangement for those new liabilities.

34 For a description of inappropriate PCA practices that appeared in materials other than scripts in the previous PDC initiative, see Letter from Nina Olson, National Taxpayer Advocate, to Sen. Ron Wyden, Chairman, Committee on Finance; Sen. Orrin G. Hatch, Ranking Member, Committee on Finance; Rep. Dave Camp, Chairman, Committee on Ways and Means; Rep. Sander Levin, Ranking Member, Committee on Ways and Means; Rep. Charles W. Boustany, Jr., Chairman, Subcommittee on Oversight, Committee on Ways and Means; Rep. John Lewis, Ranking Member, Subcommittee on Oversight, Committee on Ways and Means (May 13, 2014).

35 Email from Supervisory Tax Analyst, SB/SE Collection – Private Debt Collection (Mar. 22, 2017).

Area of Focus #2 **The IRS's Certification Program Related to Denial or Revocation of Passports Impairs Taxpayer Rights**

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Background

In 2015, Congress passed the Fixing America's Surface Transportation (FAST) Act, which among other items, requires the Department of State (DOS) to deny an individual's passport application and allows the DOS to revoke or limit an individual's passport if the IRS has certified the individual as having a seriously delinquent tax debt.² The law provides an exception allowing the DOS to issue a passport to a certified individual in emergency circumstances or for humanitarian reasons.³ A seriously delinquent tax debt is an "unpaid, legally enforceable federal tax liability of an individual," which:

- Has been assessed;
- Is greater than \$50,000;⁴ and
- Meets either of the following criteria: (1) a notice of lien has been filed under Internal Revenue Code (IRC) § 6323 and the Collection Due Process (CDP) hearing rights under IRC § 6320 have been exhausted or lapsed; or (2) a levy has been made under IRC § 6331.⁵

The statute provides the following exceptions to the term "seriously delinquent tax debt":

- A debt that is being timely paid through an installment agreement (IA) or offer in compromise (OIC);
- A debt for which collection is suspended because the taxpayer requested a CDP hearing or a CDP hearing is pending; and
- A debt for which collection is suspended because the taxpayer has requested relief from joint liability (known as innocent spouse relief).⁶

If a certification is found to be erroneous, the debt is fully satisfied, or it ceases to be a seriously delinquent tax debt due to a statutory exception, the IRS must reverse the certification and notify the

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 as IRC § 7803(a)(3)).

2 Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32101, 129 Stat. 1312, 1729-32 (2015) (codified as IRC § 7345) (hereinafter FAST Act). The law allows the Department of State (DOS) to limit an individual's passport for only return to the United States or issue a limited passport for only return to the United States. FAST Act, § 32101(e)(2)(B).

3 FAST Act, § 32101(e)(1)(B).

4 This amount will be adjusted for inflation after calendar year 2016. FAST Act, § 32101(f).

5 FAST Act § 32101(a) (codified as IRC § 7345(b)).

6 FAST Act § 32101(a) (codified as IRC § 7345(b)(2)).

DOS.⁷ The IRS must notify the taxpayer of any certification or reversal at the same time as it transmits the certification or reversal to Treasury. The notice must include an explanation of the taxpayer's right to bring suit in U.S. Tax Court or a U.S. district court to determine whether the certification was erroneous or whether the IRS has failed to reverse it.⁸ The statute also requires the IRS to include in its CDP hearing notices, information about the certification of seriously delinquent tax debts and the denial, revocation, or limitation of passports.⁹

The IRS plans to initially certify the seriously delinquent tax debts of one percent (estimated to be between 3,500 and 4,000) of the entire population of taxpayers eligible to be certified when it begins implementation during 2017.¹⁰ After monitoring the response to the certifications and evaluating the resources needed, the IRS will then proceed to certify the rest of the eligible population over time. Initially, the DOS will only be denying passport applications for certified individuals. TAS understands the IRS is still developing plans to determine for which taxpayers it will recommend the DOS revoke passports. Since the IRS began planning for implementation of the passport provisions, the Small Business/Self-Employed (SB/SE) Division has held periodic conference calls with TAS to update TAS on its progress, answer TAS's questions, and provide documents such as correspondence and Internal Revenue Manual (IRM) sections for TAS review. This collaboration has been very effective in allowing TAS to raise concerns and in providing TAS with information it needs to plan for and respond to future taxpayer issues.

The IRS Has Not Exercised Its Broad Discretion by Excluding Already Open TAS Cases and Collection Due Process Equivalent Hearing Cases From Certification

Notwithstanding the willingness of the IRS to work with TAS on this program, the IRS has failed to address several of the National Taxpayer Advocate's significant concerns. For example, the National Taxpayer Advocate has repeatedly raised to the Commissioner of Internal Revenue the need to exclude taxpayers with already open TAS cases from the inventory of taxpayers whose tax debts the IRS will certify as seriously delinquent.¹¹ As acknowledged by IRS Chief Counsel, the IRS has significant discretion to choose which taxpayers are excluded from certification.¹² For example, the IRS has decided to exclude taxpayers whose tax debt is currently not collectible (CNC) due to the taxpayer's inability to pay¹³ and taxpayers whose tax debt is included in a pending IA under IRC § 6159 or OIC under IRC § 7122.¹⁴ As a policy matter, taxpayers with already open TAS cases should likewise be excluded.

7 FAST Act § 32101(a) (codified as IRC § 7345(c)(1)). There are various statutory timeframes for when the IRS must notify the Secretary of Treasury of a reversal of certification. FAST Act § 32101(a) (codified as IRC § 7345(c)(2)). A taxpayer may qualify for expedited decertification if the taxpayer is eligible for decertification, has foreign travel scheduled within 45 days, and has a passport application pending. IRM 5.19.1.4.19.5.1, *Expedited Decertification* (draft version shared with TAS dated Nov. 16, 2016) and IRM 5.1.12.27.6, *Reversal of Certification* (draft version shared with TAS dated Nov. 16, 2016).

8 FAST Act § 32101(a) (codified as IRC § 7435(d)).

9 FAST Act § 32101(b) (codified as IRC §§ 6320(a)(3)(E), 6331(d)(4)(E)).

10 Conference Call with TAS and Small Business/Self-Employed (SB/SE) Division (Mar. 6, 2017).

11 See, e.g., Email from National Taxpayer Advocate to Commissioner of the IRS (Mar. 7, 2017) (on file with TAS).

12 The statute states: "If the Secretary receives certification by the Commissioner of Internal Revenue that an individual has a seriously delinquent tax debt..." FAST Act § 32101(a) (codified as IRC § 7345(a)).

13 The IRS removes taxpayer accounts from the collection inventory when they are reported as currently not collectible (CNC). Accounts can be reported as CNC for a variety of reasons, such as collection would create a hardship and leave the taxpayer unable to meet necessary living expenses or the IRS cannot locate the taxpayer. See *generally* IRM 5.16.1, *Currently Not Collectible* (Jan. 1, 2016).

14 IRM 5.19.1.4.19.2.4, *Discretionary Certification Exclusions* (draft version shared with TAS dated Nov. 16, 2016) and IRM 5.1.12.27.4, *Discretionary Exclusions from Certification* (draft version shared with TAS dated Nov. 16, 2016).

As of May 3, 2017, there were 2,411 open TAS cases where the liability exceeded \$50,000, which is approximately 6.6 percent of all open TAS cases.¹⁵ Almost by definition, taxpayers with delinquent tax debts who have open cases in TAS are trying to resolve their debts. Pursuant to IRC § 7803(c)(2), Congress has charged TAS with helping taxpayers resolve their problems with the IRS. TAS accepts cases only when taxpayers who have *significant hardship*¹⁶ come to TAS for help, and TAS only keeps cases open as long as taxpayers are working with us to achieve a resolution.¹⁷ In the context of passport revocation or denial, taxpayers may have sought TAS assistance because they are having difficulty providing proper documentation and proving they qualify for CNC status; they may need assistance completing financial statements and submitting an OIC; or they may believe they do not owe the tax. Neither the law nor sound tax administration principles require certifying these taxpayers while they are working with TAS to resolve their tax debts. Indeed, doing so would exacerbate any hardship they may be experiencing and undermine taxpayer rights, most notably the *right to challenge an IRS position and be heard* and the *right to a fair and just tax system*.

Although initially there were logistical concerns about whether it was feasible to identify open TAS cases, these concerns have now been resolved. TAS has created a mechanism for systemically identifying and excluding open TAS cases from the Private Debt Collection program, and the IRS can use the same mechanism to identify and exclude TAS cases from passport certification. More specifically, all modules of taxpayers with cases in TAS have a Transaction Code and an Action Code, which can be used to identify and remove them from the inventory of taxpayers whose seriously delinquent tax debt the IRS plans to certify.

Although the statute excludes debt for which collection is suspended due to a pending CDP hearing, the IRS has concluded that an Equivalent Hearing (EH) does not meet the criteria for this statutory exception and has not made a discretionary exception.¹⁸ EHs hold the same purpose as CDP hearings — to provide the taxpayer with the opportunity to raise any relevant issues related to the unpaid tax, the lien, or the proposed levy, including the appropriateness of the collection action, collection alternatives, spousal defenses, and under certain circumstances, the underlying tax liability.¹⁹ Because taxpayers only have one year after the date of the CDP hearing notice to request an EH, providing an exception for EHs would not create significant delay. Proceeding to certify taxpayers with a pending EH may lead to taxpayers being unable to effectively raise collection alternatives or even challenge the underlying liability before the IRS makes a passport certification.

15 The 2,411 cases include open TAS cases with an aggregate assessed account balance exceeding \$50,000 as of May 3, 2017. IRS, *Account Receivable Dollar Inventory File* (May 3, 2017). Because some of these cases may meet the criteria for a statutory or discretionary exception to passport certification, not all of the taxpayers in these cases would necessarily be certified.

16 “The term significant hardship means a serious privation caused or about to be caused to the taxpayer as the result of the particular manner in which the revenue laws are being administered by the IRS. Significant hardship includes situations in which a system or procedure fails to operate as intended or fails to resolve the taxpayer’s problem or dispute with the IRS. A significant hardship also includes, but is not limited to: (A) An immediate threat of adverse action; (B) A delay of more than 30 days in resolving taxpayer account problems; (C) The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or (D) Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.” Treas. Reg. § 301.7811-1(a)(4).

17 TAS cases originate from contacts made by taxpayers themselves or on behalf of taxpayers by taxpayer representatives, third parties, congressional representatives, or IRS Operating Divisions or Functions employees. IRM 13.1.16.3, *Receipt of Potential TAS Cases* (Feb. 1, 2011), IRM 13.1.21.1.3.19, *No or Partial Reply from Taxpayer* (Feb. 2, 2011).

18 FAST Act § 32101(a) (codified as IRC § 7345(b)(2)(B)(i)). IRM 5.19.1.4.19.2.4, *Discretionary Certification Exclusions* (draft version shared with TAS dated Nov. 16, 2016).

19 IRC § 6330(c)(2). IRM 5.19.8.4.3, *Equivalent Hearing (EH) Requests and timeliness of EH Requests* (Nov. 1, 2007).

The IRS Is Infringing on Taxpayer Rights by Not Notifying All Affected Taxpayers Prior to Certification in a Stand-Alone Notice

As explained above, the statute only requires two forms of notice to affected taxpayers: a contemporaneous notice issued to the taxpayer at the time of the certification or reversal of a certification, and notice via text inserted in the taxpayer's CDP notice. The contemporaneous notice, issued within days of the certification, does not provide taxpayers with an opportunity to come into compliance before the IRS makes the certification and in fact advises the taxpayer that the certification has already occurred.²⁰ The IRS should provide notice at least 30 days prior to certification to warn taxpayers of the consequences, creating an incentive for taxpayers to act quickly in order to avoid those consequences.

While including the passport information in the CDP notice is important because of the opportunity for an administrative and judicial hearing, this should not be the taxpayer's only direct notice prior to certification. The issue of resolving the tax debt to avoid certification may be lost in the broader CDP letter, which spans at least four pages and includes other information such as how to request a CDP hearing, other actions the IRS may take (such as a lien or levy), and interest and penalty charges.²¹ Furthermore, taxpayers who have already received their CDP notices prior to the implementation of the passport provisions did not have the passport information included in their CDP notices and will not be notified until the certification is taking place. The failure to notify these taxpayers at all prior to the government taking their right to travel violates the Taxpayer Bill of Rights.

Furthermore, because “[t]he right of a citizen to travel is a part of the ‘liberty’ of which he cannot be deprived, except by due process of law,” the failure to notify taxpayers prior to certifying the tax debt weakens taxpayers’ right to due process, guaranteed under the Fifth Amendment of the U.S. Constitution.²² Although the IRS’s efforts to communicate the passport provisions to taxpayers in a general way through a forthcoming published notice and a press release²³ are useful, these forms of notice are too general and fail to communicate to taxpayers that the government will soon be taking or limiting their passports. The IRS is violating taxpayers’ *right to be informed* and *right to challenge the IRS’s position and be heard* by not providing them with adequate notice and time to protest before the government initiates a taking of the right to travel.²⁴

TAS understands that once the DOS receives notification of a seriously delinquent tax debt from the IRS, it will provide a 90-day period during which a taxpayer may resolve his or her seriously delinquent

20 IRS, CP508C, *Passport Denied or Revoked Due to Serious Tax Delinquency*. Placing the relevant transaction code and activity code on the taxpayer's account systemically generates the notice to the taxpayer. IRS, *The Fixing America's Surface Transportation (FAST) Act, Passport Certification Training* (undated training document, on file with TAS). The IRS systemically informs the DOS of newly certified taxpayers on a weekly basis. IRM 5.19.1.4.19.3, *Certification Process* (draft version shared with TAS dated Nov. 16, 2016).

21 IRS, Letter 1058, *Notice of Intent to Levy and Notice of Your Right to a Hearing* (Jan. 2017).

22 *Zemel v. Rusk*, 228 F. Supp. 65, 69 (D. Conn. 1964), *aff'd*, 381 U.S. 1 (1965). See also *Aptheker v. Sec'y of State*, 378 U.S. 500, 505-06 (1964); *Kent v. Dulles*, 357 U.S. 116, 125 (1958). Article 13 of the Universal Declaration of Human Rights states “Everyone has the right to leave any country, including his own, and to return to his country.” United Nations, *Universal Declaration of Human Rights*, GA Res. 217A (III), UN Doc A/810 (1948).

23 The notice and press release will be published approximately 15-30 days prior to the implementation. Email from SB/SE to TAS (May 1, 2017) (on file with TAS).

24 See *Weinstein v. Albright*, 2000 WL 1154310 at 5 (S.D.N.Y. 2001), *aff'd*, 261 F.3d 127 (2nd Cir. 2001) (finding the statute and regulations requiring denial of a passport in the case of unpaid child support did not violate the Due Process Clause because the statute provides for notice and an opportunity for the person to be heard before a state agency certifies the unpaid child support to the federal government).

tax debt before the DOS will deny the passport application.²⁵ However, in the case of a taxpayer who already has a passport, TAS is not aware of any similar grace period for a taxpayer to protest the certification or resolve the tax debt prior to the DOS immediately revoking the taxpayer's passport. Furthermore, 90 days may not provide enough time for taxpayers to resolve their tax debts. During the 2017 filing season, the level of service on the IRS's Balance Due phone line was only 40 percent and the average hold time was 47 minutes.²⁶ Taxpayers may be desperately trying to resolve their debts, but unable to reach the IRS.

In order to protect taxpayers' right to be informed, the IRS should expand the notices sent to taxpayers, warning them of the consequences if they do not take action regarding their seriously delinquent tax debts.

Regardless of whether the taxpayer received or will receive a CDP notice with the passport information included, the IRS should provide an additional notice immediately before it certifies the seriously delinquent tax debt. This stand-alone notice would focus on the actual tax debt and the specific consequences, such as a restriction on the right to travel, that will occur should the taxpayer not resolve it. Such a notice, issued approximately 30 days before the certification, would get taxpayers' attention and prompt taxpayers to take immediate action. This notice should explain that the IRS may certify their seriously delinquent tax debts, leading to the DOS revoking or denying their passports, and provide a date by which the taxpayer must act to avoid the certification. For taxpayers residing abroad, the IRS should issue the notice 90 days prior to certification, which provides an additional 60 days, similar to the extra time allotted taxpayers abroad for petitioning Tax Court following a statutory notice of deficiency.²⁷ Providing adequate notice to taxpayers abroad is even more important because if these taxpayers lose their passports, they will be overseas with limited ability to travel.

The IRS Must Ensure Certified Taxpayers Whom the IRS Refers to a Private Collection Agency (PCA) Have an Opportunity to Resolve Their Tax Debts Through Collection Alternatives

TAS understands the IRS may refer taxpayers whose tax debts the IRS has certified as seriously delinquent to a Private Collection Agency (PCA) pursuant to IRC § 6306.²⁸ Currently, PCAs, unlike IRS employees, do not secure financial information and do not have authority to determine whether the taxpayer should be placed in CNC hardship status, or considered for an OIC, a partial payment IA, or a non-streamlined IA.²⁹ Because PCAs can solicit a voluntary payment from a taxpayer (*i.e.*, a payment that does not satisfy the liability and is not made pursuant to an IA), the National Taxpayer Advocate was initially concerned that a certified taxpayer may feel pressured to make a payment (which may even reduce the tax debt to or below \$50,000), without entering into an IA or OIC that would reverse the

25 "After 90 days, a new passport application and fee payment will be required." DOS, <https://www.usa.gov/passport-problems> (last updated Feb. 28, 2017). See also IRS, *Revocation or Denial of Passport in Case of Certain Unpaid Taxes*, <https://www.irs.gov/businesses/small-businesses-self-employed/revocation-or-denial-of-passport-in-case-of-certain-unpaid-taxes> (last updated Feb. 6, 2017).

26 See IRS, Joint Operations Center, *Snapshot Reports: Product Line Detail: Installment Agreement/Balance Due* (week ending April 22, 2017).

27 IRC § 6213(a) requires a taxpayer to petition the U.S. Tax Court within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the IRS mails the notice of deficiency.

28 The IRS has informed TAS that it will not be sending cases over \$50,000 over to Private Collection Agencies (PCAs) until later this fiscal year or early next fiscal year. Email from SB/SE to TAS (Mar. 17, 2017) (on file with TAS).

29 By statute, PCAs can locate and contact the taxpayer, request full payment or an installment agreement (IA) not to exceed five years, and obtain financial information specified by the IRS. IRC § 6306(b)(1)(B). However, the PCA Policy and Procedures Guide (Mar. 2, 2017) allows PCAs to offer IAs for more than five years in some circumstances and does not authorize PCAs to collect financial information from taxpayers.

certification.³⁰ However, the IRS recently updated the PCA Policy and Procedures Guide to instruct PCAs to direct taxpayers to the Automated Collection System (ACS) and return the case to the IRS if the taxpayer wants to resolve a passport issue but cannot full pay or enter into a payment arrangement.³¹ Furthermore, the Guide now instructs PCAs to facilitate expedited passport decertification by contacting the appropriate IRS office when a taxpayer has foreign travel scheduled within 45 days.³² Ensuring PCAs understand the passport certification provisions and know when to refer taxpayers to the IRS is vital to protecting taxpayer rights.

CONCLUSION

Under the law, the IRS has broad discretion to exclude cases, and excluding already open TAS cases would be in accordance with both the role Congress assigned to TAS and the spirit of the law on passport certifications, which is to ensure taxpayers work with the IRS to resolve their delinquent tax liabilities. In order to protect taxpayers' *right to be informed*, the IRS should expand the notices sent to taxpayers, warning them of the consequences if they do not take action regarding their seriously delinquent tax debts. TAS will monitor the initial phase of passport certifications to ensure taxpayers receive the customer service needed in order to resolve their seriously delinquent tax debts and are able to have their certifications reversed in a timely manner when eligible.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Conduct and prepare a Taxpayer Rights Impact Statement to the IRS, analyzing how the IRS's refusal to provide an additional stand-alone notice prior to passport certification harms taxpayers and infringes on their rights;
- Continue to review and make recommendations to documents related to the passport certification program, including: published and unpublished guidance; IRM sections, and correspondence;
- Quantify the population of certified taxpayers with open TAS cases, including how many are decertified while working with TAS, and prepare a Taxpayer Rights Impact Statement analyzing the harm these taxpayers experience by not being excluded from certification while working with TAS;
- Issue an Interim Guidance Memorandum, providing guidance to TAS Case Advocates on how to assist and advocate for certified taxpayers with:
 - Requesting CNC status, including providing proper substantiating documentation;
 - Submitting an OIC request, including completing financial statements;
 - Submitting a request for innocent spouse relief where appropriate;
 - Challenging a liability if the taxpayer believes he or she does not owe the seriously delinquent tax debt;

30 Paying the liability to or below \$50,000 after the taxpayer is certified does not make the taxpayer eligible for reversal. However, if the IRS reverses a certification (for example, if the taxpayer enters into an IA) and the taxpayer pays the debt below \$50,000, the IRS could not recertify the debt, even if the reason for the reversal is no longer applicable (for example, the taxpayer defaulted on the IA). See IRM 5.19.1.4.19.5, *Reversal of Certification* (draft version shared with TAS dated Nov. 16, 2016) and IRM 5.1.12.27.6, *Reversal of Certification* (draft version shared with TAS dated Nov. 16, 2016).

31 PCA Policy and Procedures Guide 56 (Apr. 4, 2017).

32 *Id.*

- Ensuring the IRS timely decertifies the taxpayer's account when he or she meets one of the statutory or discretionary exclusions; and
- Requesting and receiving expedited decertification when eligible.

Area of Focus #3 **The Offshore Voluntary Disclosure (OVD) Programs Still Lack Transparency, Violating the *Right to Be Informed***

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Beginning in 2009, the IRS established a series of Offshore Voluntary Disclosure Programs (OVDs), which allow certain people who have not reported all of their foreign assets and income to settle with the IRS by paying taxes, interest, penalties, plus a “miscellaneous offshore penalty” (MOP). It also established a “streamlined” program for those who could certify their violations were not willful. These programs are governed by frequently asked questions (FAQs) posted on the IRS website.² The Large Business and International (LB&I) Division Withholding and International Individual Compliance (WIIC) Director can approve minor changes to the FAQs, but the Commissioner or Deputy Commissioner must approve significant ones.³ IRS examiners interpret the FAQs with assistance from technical advisors and Small Business/Self-Employed (SB/SE) Counsel.⁴ They may also access training materials and job aids posted to a secure SharePoint intranet site.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 IRS, *Options Available for U.S. Taxpayers with Undisclosed Foreign Financial Assets*, <https://www.irs.gov/individuals/international-taxpayers/options-available-for-u-s-taxpayers-with-undisclosed-foreign-financial-assets> (last visited March 2, 2017) (providing links to all of the FAQs referenced in this discussion). For concerns about the Offshore Voluntary Disclosure Programs (OVDs), see, e.g., National Taxpayer Advocate 2017 Objectives Report to Congress 164-76 (discussing prior reports). Although the 2009 OVD was succeeded by the 2011 Offshore Voluntary Disclosure Initiative, for purposes of this discussion we refer to it as an OVD.
- 3 Large Business and International (LB&I) response to TAS information request (Apr. 18, 2017) (“Minor corrections or updates [to FAQs] may be authorized at the Director level. Modifications or additions impacting policy or materially changing existing guidance require authorization by the Deputy Commissioner/Commissioner with input from the Deputy Chief Counsel Operations. Recommendations for modifications, updates, or additions are worked by a cross functional team made up of management and executives from LB&I and [Small Business/Self Employed] SB/SE, a technical advisor/senior revenue agent, and SB/SE Counsel. For purposes of this response, we will refer to this group as the ‘Elevated Issues Team.’”).
- 4 *Id.* (“In general, case specific information is communicated via e-mail from the technical advisor to the revenue agent working the case. On rare occasion, SB/SE Counsel (field) assigned to the OVD Biweekly Team provides written input on specific cases. Guidance on routine issues raised by the field or a general issue not related to a specific case is typically discussed at monthly conference calls organized by PN [Practice Network] Senior Revenue Agents detailed to OVD. Occasionally, SB/SE Counsel (field) will participate in those calls.”).
- 5 *Id.*

The IRS Does Not Disclose Interpretations of OVDP Frequently Asked Questions (FAQs)

Chief Counsel Advice from (or coordinated with) national office attorneys must be disclosed under IRC § 6110.⁶ Other “instructions to staff” that affect the public must be disclosed under the Freedom of Information Act (FOIA).⁷ However, the IRS does not disclose its interpretations of FAQs. For example, when the IRS first established the 2009 OVDP, it did not disclose how it interpreted FAQ #35, which addressed how to compute the “offshore penalty.” The guidance memo was only disclosed in response to a Taxpayer Advocate Directive.⁸ Practitioners have highlighted other undisclosed and counterintuitive FAQ interpretations.⁹

While the IRS may be required to disclose FAQ interpretations under FOIA, it is generally not required to disclose legal advice regarding the OVDP FAQs under IRC § 6110. IRC § 6110 requires disclosure of certain advice provided by or coordinated with the national office, but legal advice concerning the interpretation of the FAQs is generally provided by an SB/SE attorney in the field who is an OVDP expert.¹⁰ Moreover, some of this advice may be privileged, even if it reveals principles that the IRS will apply in other cases.

The IRS’s lack of transparency about how taxpayers fare inside and outside the Offshore Voluntary Disclosure Programs makes it more difficult for anyone to recognize when the result in a particular case is outside the norm.

The IRS could voluntarily disclose important interpretations of OVDP FAQs, but does not. For example, 2012 OVDP FAQ #10 is particularly important because, like 2009 FAQ #35, it concerns the amount taxpayers must agree to pay under the OVDP. FAQ #10 describes an “alternative mark-to-market” (MTM) method that OVDP participants can only use to file or amend returns inside the program. Under this method, participants are taxed on unrealized gains reduced by unrealized losses. Notably, FAQ #10 does not inform participants that they cannot offset unrealized gains with unrealized losses from years for which the refund statute expiration date (RSED) has passed.¹¹ Rather, it implies the opposite by warning only that unused losses cannot be carried forward beyond the OVDP disclosure period. If unrealized losses can be claimed for some years during this period and not others (*i.e.*, because the RSED has passed), it is misleading not to include that warning as well. Yet, that is how the IRS interprets FAQ #10 — as not permitting taxpayers to offset unrealized gains with losses from years for which the RSED had passed. Members of the Tax Section of the American Bar Association — who somehow learned of the

6 IRC § 6110 (requiring disclosure of Chief Counsel Advice (CCA)); Chief Counsel Notice 2014-009 (Sept 22, 2014) (requiring disclosure of certain legal advice provided by or coordinated with the national office).

7 5 U.S.C. § 552(a)(2)(C) (generally requiring disclosure of “administrative staff manuals and instructions to staff that affect a member of the public”).

8 See Taxpayer Advocate Directive (TAD) 2011-1 (Aug. 16, 2011), <https://www.irs.gov/advocate/taxpayer-advocate-directives-and-related-documents>.

9 See, e.g., New York State Bar Association (NYSBA) Tax Section, *NYSBA Tax Section Comments on FAQ for 2011 Offshore Voluntary Disclosure Initiative*, 2011 TNT 153-13 (Aug. 9, 2011); Marie Saphire, *More Written Guidance Needed As OVDI Deadline Nears*, 132 TAX NOTES 1001 (Sept. 5, 2011).

10 LB&I response to TAS information request (Apr. 18, 2017) (“We are not aware of any written advice interpreting OVDP FAQs from any employee assigned to a national office component of Chief Counsel issued to any technical advisor, program manager, or other LB&I employee.... We are aware of written advice provided by one SB/SE Counsel (field) attorney to technical advisors, OVDP managers, and other IRS personnel... We are aware of no written interpretation of OVDP FAQs mentioned in our earlier responses being released to the public.”). LB&I later said that “several attorneys from SBSE Counsel and Headquarter Counsel provide assistance to OVDP.” LB&I response to TAS fact check (June 7, 2017). But, LB&I did not provide TAS with written advice from any other attorneys.

11 IRC § 6511(a).

IRS's undisclosed interpretation of FAQ #10 — suggested that the IRS is not legally required to deny offsets from barred years and that doing so is unnecessarily punitive.¹²

Although the IRS's interpretation of FAQ #10 may be implied by IRS training materials,¹³ these training materials were not posted to the IRS website, as seemingly required by FOIA. Rather, a private firm acquired them by making a FOIA request and then made them available to the public on its private website.¹⁴ They are not indexed or organized.¹⁵ The firm could remove them or impose an access charge at any time. Moreover, neither the public nor other IRS employees (*e.g.*, TAS employees) should have to search a private website for information about an IRS program.¹⁶

More Routine Disclosure of Advice Would Be Helpful

In the years before the IRS was required to release its private letter rulings and other legal advice to the public, a 1926 report found that:

[R]ulings were known only to insiders ... This system ha[d] created, as a favored class of taxpayers, those who ha[d] employed 'tax experts.' It ha[d] created a special class of tax practitioners, whose sole stock in trade [was] a knowledge of the secret methods and practices of the Income Tax Unit. Knowledge of secret precedents had made Bureau employees extremely valuable to corporate taxpayers, fostering a damaging rate of turnover. Only the regular publication of BIR [Bureau of Internal Revenue] decisions could halt this outflow and ensure equal treatment for all taxpayers.¹⁷

While the IRS is more transparent today, a lack of transparency in connection with undisclosed FAQ interpretations could present the same risks. To assess those risks, TAS reviewed a sample of ten items of undisclosed advice about OVDP FAQs issued between March 1, 2016 and March 8, 2017.¹⁸ According to the IRS, these documents were not checked or reviewed by any disclosure expert to determine if they should be disclosed.¹⁹ However, TAS's review uncovered information that could be helpful to taxpayers, such as following:

- When the MOP is assessed pursuant to a closing agreement, the tax year recited in the closing agreement is the tax year that controls the analysis of whether it is too late to issue a refund of the MOP (*i.e.*, if the refund statute of limitation under IRC § 6511 has expired). The tax year recited in these agreements is generally the last tax year in the disclosure period.

12 Letter from American Bar Association (ABA), to John Koskinen, Commissioner of Internal Revenue, *Comments on 2014 Offshore Voluntary Disclosure Program and the Streamlined Programs* 18 (Oct. 14, 2015), <http://www.americanbar.org/content/dam/aba/administrative/taxation/policy/101415comments.pdf> (“...in the context of OVDP, where the IRS makes rules, disallowing losses because of a closed statute serves little purpose other than being punitive. We believe the IRS should reconsider its position here ...”).

13 See Bragger Tax Law Group, *Previously Unreleased IRS Guidelines for FBAR Audits, Offshore Voluntary Disclosure Workshop Houston, TX 09/11*, 192 <https://www.bragertaxlaw.com/previously-unreleased-irs-guidelines-for-fbar-audits.html> (last visited Apr. 28, 2017).

14 See *id.* See also Andrew Velarde, *FOIA Response Shows Hints of IRS Thinking on OVDP*, 2015 TNT 192-1 (Oct. 5, 2015).

15 Under the Freedom of Information Act, if an item is not properly posted and indexed by the IRS, it may not be “relied on, used, or cited as precedent” by the IRS against a taxpayer unless the taxpayer has actual and timely notice of its terms. See 5 U.S.C. § 552(a)(2)(flush).

16 Some TAS employees gained access to LB&I's secure SharePoint site for the first time in 2017.

17 See Joseph J. Thorndike, *Annual Regulation of Business Focus: Reorganization of the Internal Revenue Service: Reforming the Internal Revenue Service: A Comparative History*, 53 ADMIN. L. REV. 717, 751 (2001) (Internal citations omitted).

18 The sample was drawn from a universe of only 16 items. LB&I response to TAS information request (Apr. 18, 2017).

19 LB&I response to TAS information request (June 1, 2017).

- If a taxpayer makes a payment for the MOP and then is removed from or opts out of the OVDP, the statute of limitation under IRC § 6511 for all tax years in the OVDP submission must be analyzed in determining if it is too late to issue a refund. If the period is open for any tax year in the submission, then a claim for refund of the MOP may be considered under IRC § 6511.
- When determining if the taxpayer had less than \$10,000 in U.S. source income, as necessary to qualify for the five percent penalty under 2012 OVDP FAQ #52, the IRS considers gross income (not net income). In limited circumstances where the taxpayer receives flow-through income from an entity not controlled by the taxpayer, however, the IRS may apply a cash flow analysis for purposes of determining if the taxpayer exceeds this \$10,000 threshold.
- The IRS is legally permitted to consider an offer in compromise before there is an assessment pursuant to a closing agreement in the OVDP.
- A Swiss “libre passage” account is not excluded from the OVDP penalty base when computing the MOP on the basis that it is a tax-favored retirement account under Swiss law.
- OVDP Hotline personnel can assist taxpayers in determining whether a foreign retirement account (other than a Canadian retirement plan) must be included in the OVDP offshore penalty base by collecting information and elevating the matter to an OVDP Coordinator for consideration.
- OVDP Hotline personnel can assist taxpayers who have signed a Form 906 closing agreement and are due a refund if the examiner who handled the certification is unavailable to assist (*e.g.*, has separated from service, is on maternity leave, etc.).
- OVDP Hotline personnel can assist taxpayers who erroneously omitted an account/asset from their original disclosure by collecting the information and elevating the taxpayer’s request to make a supplemental disclosure.

While taxpayers could glean some of this information from other sources (*e.g.*, a representative with significant OVDP experience), disclosing answers to questions about the FAQs — whether by disclosing internal training and guides or advice currently being provided to IRS employees by email — could help taxpayers (and practitioners) understand the OVDP even if they are unrepresented, reduce unnecessary calls to the Hotline, increase confidence that the IRS is handling cases consistently, reduce internal requests for advice, and reduce unnecessary requests for assistance from TAS.²⁰

The IRS Does Not Always Disclose the Basis for Its OVDP-Related Decisions

When an OVDP examiner makes an OVDP-related decision based on guidance from a field attorney, technical advisor, or committee, he or she is not required to explain the resulting “take it or leave it” decision to the participant or allow the participant to speak with the decision maker.²¹ For example, the IRS announced in 2014 that certain OVDP participants could apply to transition into a more favorable “streamlined” program if they certified their conduct was non-willful.²² However, it would only allow them into the program if technical advisors, and in some cases, a secret “Central Review Committee”

20 See, *e.g.*, Organization for Economic Co-operation and Development (OECD), *Update on Voluntary Disclosure Programmes: A Pathway To Tax Compliance* 18 (Aug. 2015), <http://www.oecd.org/ctp/exchange-of-tax-information/Voluntary-Disclosure-Programmes-2015.pdf> (“The terms of the [OVD] programme or initiative should be clearly set out in guidance accessible both to the eligible population and to others, to avoid both ambiguity and any charge of a lack of even-handedness on the part of the tax authority.”).

21 See, *e.g.*, 2014 OVDP FAQ #49.

22 IRS, *Transition Rules: FAQs*, <https://www.irs.gov/individuals/international-taxpayers/transition-rules-frequently-asked-questions-faqs> FAQ #7 (last visited Mar. 2, 2017).

agreed (*i.e.*, taxpayers did not know who was on the committee and could not communicate with it).²³ Participants would have no way to know if the examiner miscommunicated the facts to the technical advisor or to the committee, or what standards were being applied. Thus, a taxpayer had no way to know if the IRS's decision in his or her case was consistent with its decisions in other similar cases.

The IRS Does Not Release Summary Statistics

The IRS's release of certain statistics, such as the average or median tax, interest, and penalties paid inside and outside an OVDP could help assure taxpayers they are not being unfairly singled out and the programs are being administered in a rational manner. Both TAS and the Government Accountability Office have computed and publicly reported such statistics in the past.²⁴ However, LB&I recently stated that TAS should not publish an update.²⁵ LB&I computes OVDP results using a different methodology, which TAS has obtained and redacted (at LB&I's request) in the Appendix below. LB&I explained:

Statistics with details beyond those publicly released in press releases by the Commissioner (most recently in IR-2016-137) may impair tax administration and are exempt from release under FOIA. LB&I's response to FOIA request # [REDACTED] from [REDACTED] [REDACTED] limited the information provided under the request to high level statistics. TAS should not release statistics more granular than those provided by the Commissioner in press releases.

We disagree. "May impair tax administration" is not the legal standard for withholding information under FOIA.²⁶ Even if it were, the IRS has provided no basis to support its conclusion that releasing this data may impair tax administration. Moreover, if the IRS could prevent the National Taxpayer Advocate from publishing data more granular than data provided by the IRS Commissioner in press releases, her reports would be much less effective in highlighting problems, such as those caused by the IRS's initial one-size-fits all approach to the OVDPs.

In addition to penalties assessed inside OVDP-related programs, the Treasury Department also compiles a summary of the penalties assessed outside the OVDPs against those who failed to file a *Report of Foreign Bank and Financial Accounts* (FBAR) for reports to Congress.²⁷ However, the IRS has not disclosed this summary to the public, notwithstanding repeated requests by TAS.²⁸ After years of

23 IRS, *Transition Rules: FAQs*, <https://www.irs.gov/individuals/international-taxpayers/transition-rules-frequently-asked-questions-faqs> FAQ #8.

24 See, e.g., National Taxpayer Advocate 2017 Objectives Report to Congress 164-76; Government Accountability Office (GAO), GAO-13-318, *IRS Has Collected Billions of Dollars, but May Be Missing Continued Evasion* 13 (Mar. 2013).

25 IRS response to TAS information request (Apr. 18, 2017).

26 Under FOIA exemption 5 U.S.C § 552(b)(7)(E), the IRS can withhold information that "could reasonably be expected to risk circumvention of the law." Similarly, the IRS is generally required to withhold return information (not data) the disclosure of which would "seriously impair" federal tax administration. See IRC §§ 6103(c), (e)(7).

27 See Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001, Pub. L. No.107-56 § 361(b) (2001) (requiring the reports). The Financial Crimes Enforcement Network (FinCEN) initially published these reports on its website. See, e.g., Department of Treasury, *A Report to Congress in Accordance with § 361(B) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001* (2004), http://www.fincen.gov/news_room/rp/files/fbar_report_2004.pdf.

28 TAS began advocating for the IRS to release these reports in 2013 and made its advocacy public in 2016. See National Taxpayer Advocate 2017 Objectives Report to Congress 164, 176.

working with the IRS to release these reports, the IRS recently stated for the first time to TAS that “Treasury is the owner of the annual FBAR report and thereby controls the release of that report.”²⁹

The IRS’s lack of transparency about how taxpayers fare inside and outside the OVDPs makes it more difficult for anyone to recognize when the result in a particular case is outside the norm. Moreover, this lack of transparency makes it impossible for impartial and independent observers to assess the effectiveness of the OVDPs.

CONCLUSION

According to a tax historian, “corruption, favoritism, secrecy, and taxpayer mistreatment” have prompted political leaders to try to restructure the IRS four times over the last 145 years.³⁰ Given the IRS’s history, it may be easier for taxpayers to believe that if the agency is not transparent, it must have something to hide. The IRS and Congress’s recent adoption of the Taxpayer Bill of Rights (TBOR) could help restore faith in the agency.

However, secrecy in the OVDPs violates the TBOR. The TBOR provides that taxpayers “have the *right to be informed* of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.” Blindsiding only those taxpayers who do not have special access to the IRS’s undisclosed interpretations of FAQs is inconsistent with this right, as well as the *rights to quality service* and *to a fair and just tax system*. Similarly, when the IRS does not provide for any appeal or review of “take it or leave it” offers (or even provide an explanation of them), it erodes the *right to challenge the IRS’s position and be heard*.

Transparency could also promote efficiency by reducing disputes.³¹ When the IRS’s lack of transparency makes people feel singled out for arbitrary and capricious treatment, they are more likely to try to elevate the IRS’s determinations, delaying resolution of their cases. Although the IRS does not disclose how long it takes to resolve OVDP cases, the Treasury Inspector General for Tax Administration recently reported “the IRS has taken nearly two years to complete 20,587 [OVDP] case certifications, with 241 cases taking at least four years to complete.”³² Some cases are probably delayed because participants feel they are being treated unfairly. Moreover, trust for the IRS is correlated with voluntary tax

29 LB&I response to TAS information request (Apr. 18, 2017). LB&I subsequently stated: “IRS has consistently indicated the annual [FBAR] report to Congress must be cleared by Treasury before the report can be released. As clarification, IRS is delegated the authority to prepare the report. But Treasury releases the report. For example: FinCEN is responsible for issuing the annual FBAR report but FinCEN has delegated that authority to the IRS. The IRS prepares the annual FBAR report, coordinates with FinCEN, and then submits the reports to Main Treasury. Main Treasury is ultimately responsible for submitting the report to Congress.” LB&I response to TAS fact check (June 7, 2017).

30 See Joseph J. Thorndike, *Annual Regulation of Business Focus: Reorganization of the Internal Revenue Service: Reforming the Internal Revenue Service: A Comparative History*, 53 ADMIN. L. REV. 717, 718 (2001) (emphasis added).

31 For example, the Coalition for Effective and Efficient Tax Administration (CEETA) agrees with the statement in IRS Pub. 5125, *LB&I Examination Process* (2016), that examinations “can be efficient if the examination team and the taxpayer work together in a spirit of cooperation, responsiveness, and transparency.” CEETA, *CEETA Addresses Changes Under Way in LB&I Division*, 2016 TNT 140-13 (July 21, 2016). Similarly, the OECD has noted that to improve regulation, member countries should “[E]nsure that administrative procedures for applying regulations and regulatory decisions are transparent...” Regulatory and Policy Division of the OECD, *OECD Guiding Principles on Regulatory Quality and Performance* 5 (Apr. 25, 2005), <http://www.oecd.org/dataoecd/24/6/34976533.pdf>.

32 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2016-30-030, *Improvements Are Needed in Offshore Voluntary Disclosure Compliance and Processing Efforts* 12 (June 2, 2016), <https://www.treasury.gov/tigta/auditreports/2016reports/201630030fr.pdf>.

compliance.³³ Thus, additional transparency could help restore faith in the IRS, promote consistent results, speed case resolutions, and promote voluntary compliance.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Advocate for the IRS to disclose all of the OVDP-related rules and procedures it is following, along with any interpretations of them (*e.g.*, the OVDP Hotline Guide, training materials, and IRS Counsel's responses to questions about the OVDP FAQs), even if disclosure is not legally required;
- Advocate for the IRS to allow taxpayers to communicate directly with decision makers (*e.g.*, OVDP Technical Advisors and the Central Review Committee) to verify that they have considered all of the relevant facts, and can articulate a reasonable basis for their decisions; and
- Advocate for the IRS to disclose detailed summary statistics for the OVDP and streamlined programs (*e.g.*, the FBAR report to Congress and the OVDP Closed Case Reports) to help taxpayers determine if they are being treated like everyone else and to help stakeholders evaluate these programs.

33 National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 1-70 (Research Study: *Factors Influencing Voluntary Compliance By Small Businesses: Preliminary Survey Results*).

APPENDIX A: OVD AND STREAMLINED DATA THAT THE IRS DOES NOT WANT TO RELEASE: RESULTS AS OF DECEMBER 5, 2016³⁴

	2009 OVDP (as of Nov. 2013)	2011 OVDP (as of Sept. 2016)	2012 OVDP (as of Sept. 2016)	2014 OVDI (July 2014 to Sept. 2016)	Subtotal	Streamlined (as of Oct. 18, 2016)	Total
Cases							
Taxpayers							
Returns							
Tax							
Interest							
Accuracy Penalty							
Offshore Penalty							
Total Assessed							
Total Collected on Closed Cases							
Total Collected on Open and Closed Cases							

³⁴ LB&I response to TAS information request (Dec. 5, 2016). TAS could not tie these figures to the amounts announced by the IRS Commissioner on October 21, 2016. IRS, IR-2016-137, *Offshore Voluntary Compliance Efforts Top \$10 Billion; More Than 100,000 Taxpayers Come Back into Compliance* (Oct. 21, 2016), <https://www.irs.gov/uac/newsroom/offshore-voluntary-compliance-efforts-top-10-billion-more-than-100000-taxpayers-come-back-into-compliance>. Because the IRS does not regularly update this data, the information above is still the most current available.

Area of Focus #4 Taxpayers Continue to Be Burdened by the IRS's Approach to International Tax Administration

TAXPAYER RIGHTS IMPACTED¹

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

DISCUSSION

The National Taxpayer Advocate has previously raised a number of issues regarding implementation of the Foreign Account Tax Compliance Act (FATCA) and the IRS's international withholding and refund policies.² Some of these problems were reiterated by taxpayers and their representatives in Public Forums recently held by the National Taxpayer Advocate.³ Lacking either statistically valid data or analytical justification, the IRS has adopted a coercive approach to international taxpayers, reflecting an assumption that all such taxpayers are suspect of fraudulent activity.⁴

The National Taxpayer Advocate continues to be concerned that:

- The IRS's processes for reviewing and validating Chapter 3 and Chapter 4 refund requests unnecessarily burden taxpayers;⁵
- Contemplated IRS policy changes would make the availability of Form 1042-S credits and refunds to covered taxpayers contingent on the actions of withholding agents;
- U.S. expatriates are especially vulnerable to FATCA-related hardships; and
- Businesses incur costs and risk exposures that could be minimized if the IRS adopted a more efficient and user-friendly approach to international tax administration.

The IRS's Processes for Reviewing and Validating Chapter 3 and Chapter 4 Refund Requests Unnecessarily Burden Taxpayers

Beginning January 1, 2015, the IRS systemically froze all Chapter 3 refunds.⁶ The intent was to freeze all refund claims until the accuracy of a refund request could be verified by matching the taxpayer's Form

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 National Taxpayer Advocate 2016 Annual Report to Congress 220-29; National Taxpayer Advocate 2015 Annual Report to Congress 346-52; National Taxpayer Advocate 2013 Annual Report to Congress 238-48. Foreign Account Tax Compliance Act (FATCA) was passed by the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat. 71 (2010).

3 National Taxpayer Advocate Public Forum, Washington D.C. (May 17, 2016) 25-26.

4 National Taxpayer Advocate 2016 Annual Report to Congress 221.

5 Under IRC §§ 1441-1443 (Chapter 3), the IRS imposes withholding on payments made to non-resident aliens and foreign corporations and allows credits and refunds of the amounts to which these taxpayers are entitled. Likewise, IRC §§ 1471-1474 (Chapter 4) mandates withholding under FATCA on payments to foreign financial institutions (FFIs) or similar institutions in specified circumstances and refers taxpayers to Chapter 3 for rules governing the credit or refund of those withheld amounts.

6 Internal Revenue Manual (IRM) 21.8.1.11.14.2, *FATCA - Programming Beginning January 2015 Affecting Certain Forms 1040NR* (Aug. 1, 2016).

Lacking either statistically valid data or analytical justification, the IRS has adopted a coercive approach to international taxpayers, reflecting an assumption that all such taxpayers are suspect of fraudulent activity.

1042-S against the withholding agent's copy that had been filed with the IRS.⁷ Originally, the freeze window was established as six months from the time the return was due or filed, whichever was later, but that window was subject to unilateral extension by the IRS.⁸

The IRS developed an automated matching tool designed to classify likely valid and invalid claims, but tests showed that the system generated a 94 to 98 percent error rate and it was determined to be inoperable.⁹ Thereafter, the IRS switched to an interim semi-automated tool,¹⁰ which likewise yielded an unacceptably high rate of false positives and kept some taxpayers waiting for their refunds for over a year by the time the IRS suspended the matching program and announced the release of the remaining frozen refunds in June 2016.¹¹ At various points, more than 100,000 taxpayers had become subject to refund freezes.¹² A number of low-risk taxpayers, such as foreign students studying in the U.S., experienced particular hardship from these freezes.¹³

To its credit, the IRS is undertaking a long-term redesign of its Form 1042-S refund processes and has included TAS in the discussions. Currently, the IRS is using interim procedures under which it freezes some, but not all, Form 1042-S refunds for review prior to their release.¹⁴ Under these interim procedures, as with domestic taxpayers, the IRS places the responsibility for correcting reporting errors by withholding agents on the shoulders of taxpayers. This approach, however, has severe consequences for international taxpayers, because, unlike in the domestic context, the IRS will not accept alternative proofs of withholding, and because withholding agents are not always willing or able to resolve documentation mismatches, regardless of whether the errors are attributable to actual misreporting on their part, or false positives on the part of the IRS. This circumstance has caused taxpayers, particularly those who are unsophisticated or unrepresented, a range of difficulties.¹⁵

Beyond causing unnecessary taxpayer burden, the Form 1042-S approach could create litigation risks for the IRS. In *Portillo v. Commissioner*, the Fifth Circuit Court of Appeals held that by failing to substantiate a Form 1099, the accuracy of which was challenged by the taxpayer, the IRS made a “naked assessment,” acted arbitrarily, and failed its burden of proof.¹⁶ Courts generally have limited *Portillo* to

7 IRM 21.8.1.11.14.2, *FATCA - Programming Beginning January 2015 Affecting Certain Forms 1040NR* (Aug. 1, 2016).

8 *Id.* National Taxpayer Advocate Fiscal Year (FY) 2017 Objectives Report to Congress 81.

9 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2016-20-077, *Foreign Account Tax Compliance Act Program Withholding and Refund Release 2.0 Project Development and Testing* 6 (Aug. 2016).

10 IRS, *IRS Takes Steps to Help Students; Outlines Interim Process for Obtaining Refunds of Withholding Tax Reported on Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding* (June 6, 2016), <https://www.irs.gov/uac/irs-takes-steps-to-help-students-and-others-outlines-interim-process-for-obtaining-refunds-of-withholding-tax-reported-on-form-1042s-foreign-persons-us-source-income-subject-to-withholding>.

11 National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 81.

12 IRS response to TAS fact check (Oct. 31, 2016).

13 National Taxpayer Advocate FY 2017 Objectives Report to Congress 82–83.

14 IRM 21.8.1.11.14.3, *FATCA- 1042-S Matching Program - General Information - Identifying Related Letters, Transaction Codes, Reason Codes, 1042-S Data Fields* (Oct. 1, 2016, Feb. 9, 2017).

15 National Taxpayer Advocate 2016 Annual Report to Congress 222–24.

16 *Portillo v Comm'r*, 932 F.2d 1128 (5th Circuit, 1991). The burden of proof in tax cases generally rests with the taxpayer. In a deficiency proceeding, however, when a taxpayer establishes that an assessment is “arbitrary and erroneous,” the burden shifts to the IRS to prove the correct amount of any taxes owed. *Id.*, 1133.

unreported income cases arising in the domestic context.¹⁷ Nevertheless, the IRS faces the risk that, in a case involving the creation of a deficiency attributable to a Form 1042-S mismatch, a court could extend *Portillo* and rule that IRS reliance on a withholding agent's Form 1042-S while rejecting a taxpayer's sworn Form 1040NR is arbitrary, particularly where the program's false positive rate is high. Such a finding could result in immediate dismissal of the IRS's case.

Further, even in a refund case, a taxpayer could come before a court and, using any available evidence, demonstrate that the withholding for which the refund is claimed actually occurred. Such a showing would open to judicial scrutiny the IRS's policy of relying solely on withholding agents' Forms 1042-S without any other validation, an approach treated as arbitrary in the Form 1099 context by the *Portillo* line of cases. Additionally, it would enable a taxpayer to challenge the IRS's current legal view that the IRS has no obligation to provide refunds unless it actually receives full remittances from withholding agents.¹⁸

To minimize taxpayer hardship and limit potential litigation, TAS encourages the IRS to focus its scrutiny on the relatively small percentage of Form 1042-S filers posing a high risk for noncompliance or fraud. This group can be identified through analysis of data available to the IRS, a step that would allow for a streamlining of resources and the tailoring of enforcement programs. Just as importantly, it would allow the IRS to reduce the burdens imposed on the vast majority of Form 1042-S taxpayers, who appear to be more compliant than U.S. taxpayers overall.¹⁹

Contemplated IRS Policy Changes Would Make the Availability of Form 1042-S Credits and Refunds to Covered Taxpayers Contingent on the Actions of Withholding Agents

The IRS is also considering Chapter 3 and Chapter 4 guidance that would allow full credits or refunds only if the IRS can confirm that the withholding agent remitted the full amount of the aggregate liabilities for which the withholding agent is responsible.²⁰ If a withholding agent has only partially satisfied their deposit requirements with the IRS, the guidance would provide for a *pro rata* allocation of the amount deposited among taxpayers seeking to claim credits or refunds for the withholding in question.²¹ This guidance does contemplate some exceptions, but none would allow taxpayers to demonstrate entitlement to their credit or refund by establishing that withholding at source had actually occurred.

The IRS's intentions regarding Chapter 3 and Chapter 4 refunds, as evidenced in Notice 2015-10 and related activities, are troubling. This policy would force many relatively powerless taxpayers, rather than the IRS, to police withholding agents and to bear the risk of noncompliance. Instead of attempting to shift burdens to taxpayers, IRS efforts would be better served by focusing on recalcitrant populations of taxpayers and withholding agents, and vigorously enforcing compliance within these groups. Such a targeted approach would have the added benefit of avoiding legal challenges to the IRS's current position, as discussed above, that it has the right to withhold credits and refunds from taxpayers anytime it does not receive full remittances from withholding agents.

17 See *Parker v. Comm'r*, 117 F.3d 785 (5th Circuit, 1997); *Pittman v. Comm'r*, 100 F.3d 1308 (7th Circuit, 1996); *Tinsman v. Comm'r*, 2000 Tax Ct. Memo LEXIS 62. See also *U.S. v. Janis*, 428 U.S. 433 (1976).

18 Notice 2015-10, 2015-20 I.R.B. 965.

19 National Taxpayer Advocate 2016 Annual Report to Congress 221.

20 Notice 2015-10, III.A., 2015-20, I.R.B. 965; Department of the Treasury 2016-2017 Priority Guidance Plan (Oct. 31, 2016).

21 Notice 2015-10, III.B., 2015-20, I.R.B. 965.

U.S. Expatriates Are Especially Vulnerable to Foreign Account Tax Compliance Act (FATCA)-Related Hardships

The enforcement-oriented outlook resulting in and perpetuated by the passage of FATCA generated the Form 1042-S issues discussed above. The legislation and its administration by the IRS also have had a detrimental impact on the well-being of many U.S. expatriates. Because of the record-keeping and reporting requirements of FATCA, many foreign financial institutions (FFIs) have stopped providing banking services to U.S. citizens.²² As a result of this banking “lock-out” and the additional tax reporting burdens placed on individuals by FATCA, record numbers of expatriates have been renouncing their U.S. citizenship.²³

The National Taxpayer Advocate and others have proposed a “same country exception” as a means of solving these problems and minimizing the burden of FATCA compliance for both individual U.S. taxpayers and FFIs.²⁴ This exception would exclude from FATCA coverage financial accounts held in the country in which a U.S. taxpayer is a *bona fide* resident, would mitigate concerns about the collateral consequences of FATCA raised by U.S. nonresidents, and would reduce reporting burdens faced by FFIs. Neither the IRS nor Congress has yet implemented this recommendation.

Businesses Incur Costs and Risk Exposures That Could Be Minimized If the IRS Adopted a More Efficient and User-Friendly Approach to International Tax Administration

Financial organizations face substantial record-keeping burdens and economic risks as a result of the manner in which the IRS has implemented FATCA. This has prompted some financial organizations and their representatives to energetically seek repeal of the legislation.²⁵ Other financial institutions have worked more quietly with the IRS in an effort to simplify reporting requirements and clarify the definition of “good faith efforts.”²⁶ A return by the IRS from its current withholding and enforcement orientation to its prior information gathering approach would reduce the burdens placed on FFIs and potentially minimize some of the remaining FATCA opposition.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Analyze data to determine the validity of IRS assumptions about noncompliance and risk with respect to nonresidents receiving Forms 1042-S;
- Explore the validity of the IRS’s legal justification for treating nonresidents receiving Forms 1042-S differently from other taxpayers subject to withholding;
- Assess whether the results of these inquiries justify issuance of a Taxpayer Rights Impact Statement, which would serve as the predecessor of a Taxpayer Advocate Directive;

22 Andrew Velarde, *Will the FATCA Same-Country Exception Become the Rule?* 152 TAX NOTES 1073 (Aug. 17, 2016).

23 Andrew Velarde, *U.S. Quarterly Expat List Tops Record, Includes U.K.’s Johnson*, 154 TAX NOTES 809 (Feb. 8, 2017). These numbers appear to have dipped in the quarter ending March 31, 2017, although the reasons for that drop and whether it represents the beginning of a new trend are unclear. Zoe Sagalow, *Half as Many Expatriated as Last Quarter, Latest U.S. List Shows*, 2017 TNT 89-6 (May 10, 2017).

24 National Taxpayer Advocate Public Forum, Washington D.C. (May 17, 2016) 25-6; Andrew Velarde, *Will the FATCA Same-Country Exception Become the Rule?* 152 TAX NOTES 1073 (Aug. 17, 2016).

25 Nigel Green *Launches Campaign to Repeal Obama-Era FATCA Law*, TAX ANALYSTS Doc. 2017-1863 (Feb. 7, 2017).

26 IRS, *IRS FATCA Roundtable: Industry Concerns and Suggestions* 3 (Nov. 16, 2015).

- Work with the IRS to improve the policies and procedures associated with the redesigned Form 1042-S withholding and verification program;
- Advocate for U.S. taxpayers and businesses experiencing hardships and burdens flowing from IRS administration of the FATCA regime; and
- Provide TAS employees, taxpayers, and tax practitioners with enhanced training and guidance regarding the most commonly arising FATCA-related issues.

**Area of
Focus #5**

The IRS's Heavy Reliance on the Online Account Benefits Taxpayers Who Can Access the Application and Prefer Digital Interaction, But It Burdens Taxpayers Who Need or Prefer More Personalized Service

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 Confidentiality*

DISCUSSION

For years, the National Taxpayer Advocate has recommended that the IRS develop an online account application.² An online account application benefits those taxpayers who are able to access the digital system and who have the background, knowledge, experience, and preference to navigate through various complex transactions online. For that limited taxpayer population, the online account, in its current state and planned future releases, provides a convenient method to look up tax information, such as balance due, refund status, and case updates.

The IRS has developed some useful tools for taxpayers on the online account. However, we continue to have the following concerns.³

- While the first phase of the online taxpayer account provides balance due information, it does not provide guidance to taxpayers about how to resolve a dispute of the balance due amount provided;
- The IRS should initially limit third party access to the online account to those practitioners subject to Circular 230 oversight, with a goal of ultimately expanding access to unenrolled preparers who obtain a record of completion from the Annual Filing Season Program (AFSP) once the voluntary program requirements are strengthened;
- Approximately 33 million U.S. taxpayers have no broadband access at all, making it difficult for these individuals to access large files or conduct complex transactions on the online account;⁴ and

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 See, e.g., National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 67-96 (Research Study: *Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments*).

3 In the 2016 Annual Report to Congress, the National Taxpayer Advocate raised concerns about the IRS "Future State" strategy's heavy reliance on service delivery through the online account. National Taxpayer Advocate 2016 Annual Report to Congress 1-41 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*); 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 Taxpayer Account System*).

4 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.

- If only approximately 30 percent of individuals satisfy the crucial e-authentication requirements, a significant portion of the individual taxpayer population is prevented from accessing the online account program.

Most importantly, the IRS “Future State” strategy fails to acknowledge that taxpayers need, not just prefer, to engage in a conversation with the IRS at many points in their transactions to understand how the complex rules and procedures apply to their particular facts and circumstances. Likewise, the IRS needs to talk with taxpayers to understand their unique situations. While the online account application is a good information retrieval tool, it is not a substitute for personalized service where an IRS employee actually takes the time to hear an explanation of the taxpayer’s unique facts and circumstances, and either explains the complex rules and procedures to the taxpayer or makes the appropriate adjustments to the taxpayer’s account. Accordingly, depriving taxpayers of adequate personalized service options jeopardizes many taxpayer rights, but most importantly the taxpayer’s *right to challenge the IRS’s position and be heard*.

Background

The IRS launched the first release of the online taxpayer account on November 16, 2016, and announced the launch to the public on December 1, 2016.⁵ Only individual taxpayers can create an account during the initial release, and they access the online account through the payments tab of the IRS official website. Once individual taxpayers pass the multi-factor e-authentication standards, they can view their current account balance, if applicable, and up to 18 months of payment history. They can also select payment options such as IRS Direct Pay, debit or credit card payments, or an application for an installment agreement.⁶ The IRS recently added the ability to access the IRS Get Transcript application through the online account, so taxpayers can obtain a transcript without logging in again to a separate application.⁷ Finally, by the end of 2017, the IRS tentatively plans to add more payment features as well as a fully-integrated transcript with search capabilities.⁸

TAS Continues to Work With the IRS As It Implements the Online Account for Individual Access

The first phase of the online account is very basic. It provides taxpayers with an account balance, 18 months of payment history, and three payment options.⁹ Taxpayers who have the ability to access the program may not necessarily be able to use it to resolve their particular need or issue. Others may become even more confused.

For example, consider a taxpayer who accesses the account landing page only to find a balance that seems substantially more than expected. The taxpayer will not want to merely choose one of the payment options. In the current phase of the application, the taxpayer would be forced to seek more personal assistance, such as in a walk-in center or by telephone. The National Taxpayer Advocate has suggested that the IRS provide a button indicating “I don’t think I owe this amount.” Once the taxpayer clicks on that button, the site should provide information on different options available to dispute the balance,

5 IRS News Release 2016-155, *IRS Launches New Online Tool to Assist Taxpayers with Basic Account Information* (Dec. 1, 2016).

6 IRS, *View Your Account Balance and Payment History*, <https://www.irs.gov/uac/view-your-tax-account> (last visited May 8, 2017).

7 IRS, *View Your Tax Account Information*, <https://www.irs.gov/uac/view-your-tax-account>; Luca Gattoni-Celli, *IRS Adds Get Transcript to Online Taxpayer Accounts*, *Tax Notes Today* (May 11, 2017).

8 Wage and Investment (W&I) response to TAS information request (Sept. 1, 2016); Services and Enforcement (S&E) ESC, *Online Account Status Briefing 5* (Nov. 17, 2016); IRS 10-day response to MSP fact check (Dec. 20, 2016).

9 The online account can be accessed from the following IRS payments page: <https://www.irs.gov/payments/finding-out-how-much-you-owe> (last visited Nov. 27, 2016).

including return amendment, audit reconsideration, refund claims, penalty abatement, innocent spouse, injured spouse, identity theft, return preparer fraud, and doubt as to liability for offer in compromise. As of the date of printing, the IRS is conducting usability testing on different ways to convey these options to the account user.¹⁰ In addition, the National Taxpayer Advocate has encouraged the IRS to increase the 18-month payment history to at least 24 months to provide useful information for refund claims.¹¹

Restricting Third Party Access of the Online Account to Circular 230 Practitioners Is a Crucial Taxpayer Protection Measure the IRS Must Take From Inception of the Application

In previous annual reports, the National Taxpayer Advocate raised concerns regarding preparer access to the online account. Specifically, we are concerned that the IRS will expose taxpayers to potential harm due to preparer incompetence or misconduct if it does not restrict access to only those preparers subject to IRS oversight pursuant to Circular 230.¹² Once it strengthens the testing requirements in the AFSP, the IRS should expand access to those preparers who obtain the AFSP record of completion.¹³ When the National Taxpayer Advocate raised this recommended restriction on preparer access during the dozen National Taxpayer Advocate Public Forums held around the country, the proposal received overwhelming support.¹⁴

The IRS Office of Online Services (OLS) is currently planning the parameters and features of the online account for third party access. The Product Management division of OLS has committed to share the prototype with TAS in various stages of development and consider our comments and suggestions for improvement.¹⁵ It also plans to test a prototype of a third party account at the 2017 IRS Nationwide Tax Forums. We urge the IRS to proceed cautiously in testing this prototype at the Tax Forums, because such testing might unnecessarily raise expectations with the unenrolled preparer population. It is ill-advised to request this group to user test the prototype only to subsequently bar access.

Taxpayers Without Broadband Access Will Not Be Able to Use the Online Account

While the online account will benefit many taxpayers, there is still a significant population that cannot access the account. TAS survey research has shown that approximately 33 million U.S. taxpayers have no broadband access at all. Taxpayers with internet service connections slower than broadband will likely

10 MediaBarn, *IRS Online Account – Research Findings, Test Periods: February & March* (Mar. 28, 2017).

11 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 Taxpayer Account System*). Under IRC § 6511(a), a taxpayer must file a claim for credit or refund of an overpayment within: 1) three years from the time the return was filed, or 2) two years from the time the tax was paid, whichever is later. If no return was ever filed by the taxpayer then the claim must be filed within two years of payment of the tax.

12 31 U.S.C. § 10.3.

13 The National Taxpayer Advocate supports providing access to certain preparers, but only if they have satisfied robust minimum competency standards, which include a one-time “entrance” examination to test basic competency in return preparation and continuing education courses to ensure preparers keep up to date with the many frequent tax-law changes. The current voluntary Annual Filing Season Program does not satisfy this threshold. For a detailed description of these recommendations, see 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 Taxpayer Account System*); National Taxpayer Advocate 2015 Annual Report to Congress 64-70 (Most Serious Problem: *Preparer Access to Online Accounts: Granting Uncredentialed Preparers Access to an Online Taxpayer Account System Could Create Security Risks and Harm Taxpayers*).

14 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 Mar. 30, 2017).

15 Meeting with IRS Office of Online Services (Mar. 28, 2017).

experience delays when attempting to access large files or complex web pages. In addition, 14 million U.S. taxpayers have no internet access at all.¹⁶

Crucial e-Authentication Requirements Impose a Barrier to Entry for a Significant Population

In the 2016 annual report, we raised concerns about the IRS's reliance on the online account for service delivery even though a substantial portion of those who attempt to create accounts cannot satisfy the necessary strict e-authentication requirements.¹⁷ Immediately after the IRS established its current online account in Fall 2016 with three-factor security authentication, only about 30 percent of the taxpayers who attempted to create an online account were able to do so.¹⁸ Further, as of May 20, 2017, of the approximately 1.6 million account registration attempts since the application launched, only about 21 percent (334,328) were successful.¹⁹ Thus, while it is absolutely essential to protect the integrity of taxpayer data, e-authentication creates a barrier to access. The IRS recognizes that providing this security has implications for how many taxpayers will be able to access their accounts electronically; however, it has failed to acknowledge that these security protections mean that many will need to contact the IRS by telephone or in taxpayer assistance centers (TACs).

While the online account application is a good information retrieval tool, it is not a substitute for personalized service where an IRS employee actually takes the time to hear an explanation of the taxpayer's unique facts and circumstances, and either explains the complex rules and procedures to the taxpayer or makes the appropriate adjustments to the taxpayer's account.

TAS will be able to assess how e-authentication impacts taxpayers firsthand during 2017. Beginning in April 2017, TAS began conducting a pilot of the Taxpayer Digital Communication (TDC) Secure Messaging system. TDC uses the same e-authentication requirements as the online account, also known as Secure Access. TAS is conducting the pilot in the following four offices: Dallas, Nashville, New Orleans and Cleveland. The pilot will only include unrepresented taxpayers involved in Earned Income Tax Credit (EITC) or levy cases. TDC enables TAS to send and receive electronic webmail, along with certain digital documents, to and from taxpayers through a secure portal. Taxpayers will be able to communicate within the system using computers, smartphones, or tablets. Once inside the secure portal, taxpayers will be able to respond to their assigned case advocate and upload scanned or photographed documents. This pilot is expected to run through September 2017, with the possibility for an extension of up to a year. TAS will gather data about every step of the process, including the e-authentication process and ease and frequency of system use. We expect this data to assist us in better understanding

16 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. See also Aaron Smith, Pew Research Center, *Record Shares of Americans Now Own Smartphones, Have Home Broadband* (Jan. 12, 2017).

17 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 Taxpayer Account System*).

18 IRS response to TAS fact check (Dec. 20, 2016) (providing data through Dec. 18, 2016). The IRS declined to provide us with an updated official Secure Access pass rate and has said it will no longer make the rate available. Email from IRS Identity Assurance Executive to National Taxpayer Advocate (Mar. 4, 2017).

19 IRS, Wage and Investment Division, Joint Operations Center (JOC), *Online Account External Launch Weekly Report* (week ending May 20, 2017). The registration rate increased to 27 percent by May 20, 2017.

the ability of taxpayers to participate in the IRS online applications with Secure Access e-authentication requirements.²⁰

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Finalize the administration of and report on the final survey results on *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service* to determine the particular usefulness of channels for various types of activities, as reported by the taxpayers;²¹
- Work with OLS as it designs and implements future releases of the online account to ensure that the program addresses taxpayer needs and preferences, especially those expressed at the 2016 National Taxpayer Advocate Public Forums and the TAS focus groups held at the 2016 IRS Nationwide Tax Forums, and identified in our 2016 interim survey report and upcoming 2017 survey results on *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service*;
- Participate in user tests of prototypes for future releases of the online account to ensure that the program is clearly presented and written in plain language, and addresses suggestions provided in previous user tests;
- Advocate for low income and other vulnerable populations who have low broadband rates, taxpayers who cannot pass the strict e-authentication requirements, and other taxpayers who need or prefer personal interaction, by working with the IRS to ensure it maintains meaningful and high-quality service options for these populations;
- Work with the IRS to restrict preparer access to taxpayers' online accounts to those who are regulated by Circular 230, with the ultimate goal of expanding access to record of completion holders of the voluntary AFSP once the testing component is strengthened; and
- Assess the impact of the TAS TDC pilot to determine the impact of the Secure Access e-authentication requirements on taxpayers attempting to participate in the pilot.

20 Small Business/Self-Employed (SB/SE) Exam launched a pilot of TDC in December 2016, allowing select taxpayers to correspond digitally with Exam regarding their audits. The pilot involved between 4,000 and 5,000 taxpayers selected for audits of itemized deductions. IRS SERP Alert 17A0048, *Secure Messaging Pilot for SBSE Correspondence Exam (TDC)* (Feb. 6, 2017); IRS SERP Alert 16A0336, *Secure Messaging Pilot for SBSE Correspondence Exam (TDC)* (Dec. 20, 2016); Luca Gattoni-Celli, *IRS Plans to Launch Secure Messaging Pilots for Exams*, TAS, TAX NOTES TODAY (Feb. 2, 2017).

21 For a report on the interim results of the survey through November 16, 2016, 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*); see also TAS Research Initiatives, *infra*.

Area of
Focus #6

TAS Continues to Pursue Improvements to the IRS's Administration of the Earned Income Tax Credit (EITC), Particularly With Recent Changes to the Law

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 Challenge the IRS's Position and Be Heard*
- *The Right to Retain Representation*
- *The Right to a Fair and Just Tax System*

DISCUSSION

The Earned Income Tax Credit (EITC) was enacted as a work incentive in the Tax Reduction Act of 1975.² It has become one of the government's largest means-tested anti-poverty programs.³ In tax year (TY) 2015, over 27 million taxpayers received about \$67 billion in EITC benefits.⁴ Unlike traditional anti-poverty and welfare programs, the EITC was designed to have an easy "application" process by allowing an individual to claim the benefit on his or her tax return. This approach dramatically lowered administrative costs, since it did not require an infrastructure of case workers and local agencies to make eligibility determinations. However, the easy application process of the EITC is also associated with a high improper payment rate.⁵ In addition, the Department of Treasury has noted that "[EITC] rules are complex and lead to high overclaim error rates for these credits."⁶ The National Taxpayer Advocate has long advocated for changes that could reduce the improper payment rate while ensuring taxpayers eligible for the EITC receive it.⁷

- 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 Pub. L. No. 94-12, § 204, 89 Stat. 26 (1975).
- 3 Congressional Budget Office, *Federal Means-Tested Programs and Tax Credits – Infographic* (Feb. 11, 2013), <https://www.cbo.gov/publication/43935>.
- 4 IRS, *About Earned Income Tax Credit (EITC)*, <https://www.eitc.irs.gov/EITC-Central/abouteitc>.
- 5 An improper payment is defined as "any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements" and "any payment to an ineligible recipient." Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111-204, § 2(e) (2010) amending Improper Payments Information Act of 2002, Pub. L. No. 107-300 (2002) by striking § 2(f) and adding (f)(2). The IRS estimates that for fiscal year (FY) 2016, between 22.2 percent (\$15.5 billion) and 25.9 percent (\$18.1 billion) of the total EITC program payments of \$69.8 billion were improper. Department of Treasury, *Agency Financial Report Fiscal Year 2016* 49 (Nov. 2016).
- 6 Department of Treasury, *Agency Financial Report Fiscal Year 2016* 161 (Nov. 2016).
- 7 National Taxpayer Advocate 2016 Annual Report to Congress 325-57; National Taxpayer Advocate 2016 Annual Report to Congress 138-50; National Taxpayer Advocate 2015 Annual Report to Congress 248-60; National Taxpayer Advocate 2012 Annual Report to Congress 103-15; National Taxpayer Advocate 2011 Annual Report to Congress 296-312; National Taxpayer Advocate 2008 Annual Report to Congress 227-42; National Taxpayer Advocate 2007 Annual Report to Congress 222-41; National Taxpayer Advocate 2005 Annual Report to Congress 94-122; National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 8-45.

Congress Mandated a Delay in Earned Income Tax Credit Refunds to Reduce the EITC Improper Payment Rate

To address the EITC improper payment rate, Congress mandated a delay of any refund that includes the EITC or the refundable portion of the Child Tax Credit until February 15 of each filing year.⁸ The National Taxpayer Advocate previously made a similar recommendation.⁹ This change could be useful in reducing the improper payment rate, particularly since National Research Program (NRP) data found that 51 percent of returns with an EITC overclaim contained income misreporting as the sole error (with the average claim being \$673).¹⁰ Even though it had to hold the refunds until February 15, the IRS informed taxpayers this year not to expect the refunds until the week of February 27 because banking and financial systems needed time to process the deposits.¹¹ The National Consumer Law Center has warned that such delay may create financial hardships for low income taxpayers.¹² In addition, delayed refunds may have a negative effect on the timing and level of consumer spending.¹³

EITC Returns Undergo Several Levels of Review

Each return filed has the potential to go through many layers of review. Figure 3.6.1 presents a flowchart for the processing of an electronic EITC return.

1. A return is prepared (either by the taxpayer, a paid preparer, or a service such as a Volunteer Income Tax Assistance site).
2. The return is transmitted to the IRS Modernized e-file system (MeF). At this point, the system checks for any duplicate Taxpayer Identification Numbers (TINs) used and established consistency checks. In this process, the return may be rejected before IRS accepts the return information. If the return is not accepted, it will receive a rejection code, and the taxpayer will receive a written explanation.
3. The return passes initial checks and moves to the Error Resolution System (ERS). This review may include incorrect or unverifiable line entries (such as transposed numbers or wages listed on the wrong line) and incorrect or missing schedules on the return. Some errors can be resolved without contacting the taxpayer and will be fixed manually. If there is an unresolved error, the return is posted and a math error notice is issued at this stage. If the ERS cannot resolve the problem, taxpayer contact is necessary, which will further delay resolution.
4. A return claiming a refund then moves to three filters concurrently: Dependent Database (DDb), Return Review Program (RRP), and Exam Scoring. The return is subject to identity theft scoring in DDb. RRP scores the likelihood of each Form W-2 being invalid or fraudulent and also screens for potential identity theft. Exam Scoring is the method by which the IRS selects returns to be audited. The IRS uses different filters to score for identity theft and examination selection.

8 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title II, §201, 129 Stat. 3076 (2015) (codified at IRC § 6402(m)). This applies to refunds made after December 31, 2016. IRC § 6402(m). For a full discussion of the filing season and the February 15 refund delay, see *Review of the 2017 Filing Season*, *supra*.

9 *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing before the H.Subcomm. on Government Operations Committee on Oversight and Government Reform*, 114th Cong. 27 (2015) (written statement of Nina E. Olson, National Taxpayer Advocate).

10 IRS, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* 16 (Aug. 2014).

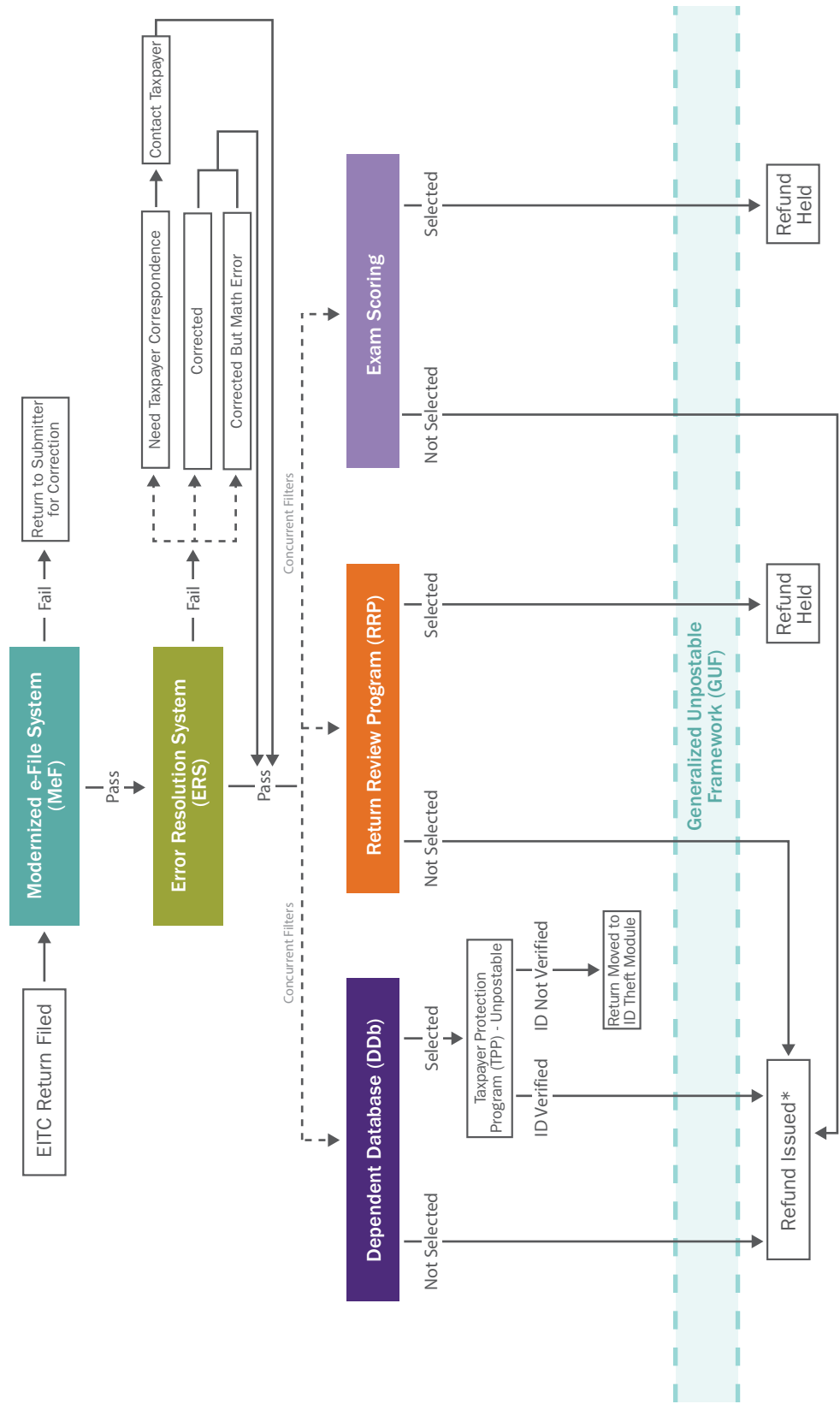
11 IRS, *Refund Timing for Earned Income Tax Credit and Additional Child Tax Credit Filers*, <https://www.irs.gov/individuals/refund-timing>.

12 National Consumer Law Center, *Tax Time Kick-Off: Delays and Risks Await Many Taxpayers This Year* (Jan. 23, 2017), <https://www.nclc.org/media-center/delays-risks-await-many-taxpayers.html>.

13 Steven Russolillo, *Equities – Ahead of the Tape: A Taxing Effect on Retailers' Revenue*, THE WALL STREET JOURNAL (Mar. 15, 2017).

FIGURE 3.6.1, Processing of an Electronic Earned Income Tax Credit Refund Return

Processing of an Electronic Earned Income Tax Credit Refund Return



*Unless selected by one of the other two programs

5. The return at this point is reviewed simultaneously by the Generalized Unpostable Framework (GUF). GUF simply determines if the return can post and works to correct returns that cannot post. If the return can be corrected, it will be posted.

TAS Has Not Identified Any Specific Problems With the Refund Freeze, Yet the IRS Must Remain Aware of Potential Problems for Taxpayers

Based on an analysis of IRS data from filing season 2017, it appears that all computer-generated freezes related to the Protecting Americans from Tax Hikes Act (PATH Act) of 2015 released as anticipated.¹⁴ Furthermore, TAS compared the number of EITC refunds issued week-by-week in filing season 2016 to the comparable period in filing season 2017. TAS found that by the fourth week of filing season 2016, the IRS had issued 13.6 million refunds. In comparison, by the fourth week of filing season 2017 (the first week in which EITC refunds were issued), the IRS had issued refunds to slightly less than 11.3 million taxpayers. See Figure 3.6.2.

FIGURE 3.6.2, Comparison of Refund Issuance Dates on Returns Receiving the Earned Income Tax Credit Between Filing Seasons 2016 and 2017¹⁵

Week Ending	2016 Cumulative	2017 Cumulative	Percentage Difference
Jan. 26, 2017	855,083		
Feb. 2, 2017	7,424,783		
Feb. 9, 2017	11,104,413		
Feb. 16, 2017	13,627,831	11,260,446	-17.4%
Feb. 23, 2017	15,533,821	13,367,603	-13.9%
Mar. 2, 2017	16,995,981	15,265,718	-10.2%
Mar. 9, 2017	18,166,010	16,691,389	-8.1%
Mar. 16, 2017	19,134,737	17,814,073	-6.9%
Mar. 23, 2017	19,971,655	18,775,735	-6.0%
Mar. 30, 2017	20,713,482	19,635,955	-5.2%
Apr. 6, 2017	21,468,224	20,459,066	-4.7%
Apr. 13, 2017	22,323,775	21,351,318	-4.4%
Apr. 20, 2017	23,494,074	22,534,564	-4.1%

TAS also compared the period of time between when a return posted and when the refund was issued in filing seasons 2016 and 2017. For filing season 2016, about 239,000 taxpayers had to wait two weeks or more for the IRS to issue their refunds after their returns posted. This number climbed to more than seven million taxpayers in filing season 2017 (a 2,858 percent increase).¹⁶ However, the increase in waiting time declined as filing season 2017 progressed. For taxpayers who had delays of four weeks or more, there was a 31 percent increase between filing seasons 2016 and 2017 (over 108,000 taxpayers

14 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title II, §201, 129 Stat. 3076 (2015) (codified at IRC § 6402(m)).

15 The 2017 figures differ slightly from those TAS reported in recent testimony. Hearing Before the H. Comm. on Appropriations, Subcomm. on Financial Services and General Government, 114th Cong. 34-35 (2017) (written testimony of Nina E. Olson, National Taxpayer Advocate). The data presented here were generated June 5, 2017, and while we are unsure why the data differ, the order of magnitude and percentage change is the same.

16 TAS review of Individual Returns Transaction File and the Individual Master File.

in filing season 2016 compared to over 141,000 taxpayers in filing season 2017). The average delay was about a week longer in 2017 than 2016 (through the end of March 2017).

The number of frozen EITC returns between filing seasons 2016 and 2017 increased by nearly 260 percent (from about 41,000 to 148,000), and EITC dollars frozen increased by about 225 percent (from \$147 million to \$479 million).¹⁷ The dollars frozen in filing season 2017 constitute a potential 2.1 percent decrease in improper payments from filing season 2016 to 2017.¹⁸ This is not surprising because although income misreporting is the most frequent source of EITC errors, it does not account for the largest dollar amount of EITC errors.¹⁹ Because EITC noncompliance is attributable to multiple causes, there is no single solution; instead, it will take multiple approaches to bring down the improper payment rate.

Some Barriers May Prevent the IRS From Fully Benefiting From the Refund Freeze

Of those taxpayers whose refund returns posted by February 15, a Form W-2 was available for 85 percent of EITC claimants (approximately 11.6 million EITC returns filed, with 9.9 million matches) and 83 percent of non-EITC claimants (approximately 21.3 million non-EITC returns filed, with approximately 17.7 million matches with a Form W-2).²⁰ However, the Government Accountability Office (GAO) reports that the IRS was able to verify the wage information for only over 35 percent of the frozen EITC returns before February 15.²¹ The IRS reprocessed about one million returns during the freeze period as new data became available; however, the IRS was unable to verify wage information for more than 58 percent of EITC returns before February 15.²² The GAO reports three reasons for the inability to verify all W-2 information:

- The IRS receives electronic W-2 data from the Social Security Administration (SSA) daily but because of older IRS technology, it could only load the information on a weekly basis;
- Some employers requested extensions beyond the new deadline of January 31 or missed the deadline; and
- W-2 information in paper form was not sent by the SSA until March 2017.²³

17 TAS review of Individual Returns Transaction File and the Individual Master File. Data includes taxpayers whose tax year (TY) 2015 refunds were processed by March 2016 and whose TY 2016 returns were processed by March 2017 and scheduled to receive EITC after IRS math error processing, but prior to audit.

18 This percentage is calculated as the additional \$332 million of EITC not refunded divided by the FY 2016 lower bound EITC improper payment estimate of \$15.5 billion. We will not know the exact decrease in the improper payment rate until the IRS has made a final determination on each case where the EITC was frozen as a result of the wage verification process.

19 IRS, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* (Aug. 2014). See also National Taxpayer Advocate 2016 Annual Report to Congress 325-57 (Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*).

20 As of the 13th week of 2017, there were 21,255,911 non-EITC returns filed around February 15, 2017, with 17,676,337 of those returns having a matched Form W-2. There were about 11,634,573 EITC returns filed around February 15, 2017, with about 9,907,286 matched to a Form W-2. These results are for a match on primary Taxpayer Identification Number (TIN) only and a match indicates that at least one Form W-2 was filed for the primary taxpayer. Individual Returns Transaction File and the Information Returns Master file for TY 2016 returns.

21 *2017 Filing Season: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means*, 115th Cong. 7 (2017) (written statement of Jessica Lucas-Judy, Government Accountability Office Acting Director, Strategic Issues).

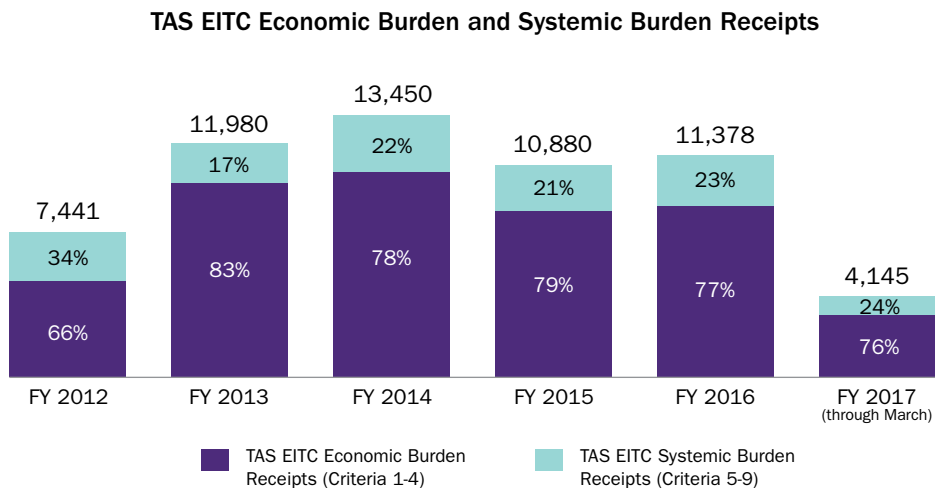
22 *Id.*

23 *Id.* at 8.

Ultimately, IRS officials report that the initial W-2 verification process for all returns with a frozen refund allowed the IRS to identify approximately 162,000 potentially fraudulent returns, representing about \$863 million in refunds.²⁴

The IRS and TAS will continue to analyze the 2017 filing season data to determine what impact freezing EITC refunds until February 15 had on the EITC overpayment rate. Additionally, TAS will monitor its caseload to ensure the IRS minimized any unnecessary hardships due to the February 15 freeze. The majority of TAS cases related to the EITC are consistently based on economic hardship, as shown in Figure 3.6.3.²⁵ In fact, the GAO reported the IRS opted to not hold all refunds until February 15 because of the burden such an action could have on the economy.²⁶

FIGURE 3.6.3²⁷



The Joint EITC Audit Improvement Team Continues to Make Improvements for Taxpayers Claiming the EITC

The List of Acceptable Documentation to Substantiate an EITC Claim Has Been Expanded

TAS is an active participant on a collaborative IRS team dedicated to identifying ways to improve the audit process for taxpayers claiming the EITC. One area of improvement includes the identification of acceptable documents for substantiating EITC claims, which are particular to the circumstances of low

24 2017 Filing Season: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means, 115th Cong. 9 (2017) (written statement of Jessica Lucas-Judy, Government Accountability Office Acting Director, Strategic Issues).

25 TAS receives cases that fall into four categories: economic hardship, systemic burden, best interest of the taxpayer, and TAS public policy. Internal Revenue Manual (IRM) 13.1.7.1 (Feb. 4, 2015). Economic burden cases are those involving a financial difficulty to the taxpayer: an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer. Systemic burden cases are those in which an IRS process, system, or procedure has failed to operate as intended, and as a result the IRS has failed to timely respond to or resolve a taxpayer issue. IRM 13.1.7.2 (Feb. 4, 2015).

26 2017 Filing Season: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means, 115th Cong. 7 (2017) (written statement of Jessica Lucas-Judy, Government Accountability Office Acting Director, Strategic Issues).

27 In 2017, TAS generally did not accept cases where the taxpayer sought assistance getting an EITC refund frozen under the PATH Act expedited. However, there were six exceptions to this rule, which among other things, involved accepting the case if it required case building while the refund was frozen. TAS, 2017 Filing Season - PATH Act Section 201 2-3 (2017).

Because Earned Income Tax Credit noncompliance is attributable to multiple causes, there is no single solution; instead, it will take multiple approaches to bring down the improper payment rate.

income taxpayers. This is something for which the National Taxpayer Advocate has consistently advocated.²⁸ Previous internal guidance provided a list of acceptable documentation to substantiate an EITC claim; however, the list was very narrow and did not reflect the types of documentation and methods of proof that would most likely be available or best-suited for taxpayers claiming the EITC.

Through the work of the EITC Audit Improvement Team, Internal Revenue Manual (IRM) 4.19.14-1 was added in July 2016. This IRM section will foster acceptance of substantiating documentation outside of the traditional EITC documentation, which typically includes letters from schools and doctors' offices. In addition to listing various "new" documents for Exam employees to consider, such as paternity test results, eviction notices, and statements from homeless shelters, the internal guidance informs exam employees that this list is not all-inclusive. The National Taxpayer Advocate will continue to work to have even more alternative documents listed in IRM 4.19.14-1.

TAS Continues to Advocate For Affidavits As a Tool For Taxpayers to Substantiate EITC Claims

The EITC Audit Improvement Team is considering how to incorporate the use of affidavits in EITC audits. Data from the IRS NRP reveals that the IRS should be focusing its efforts on EITC claims that involve qualifying child errors. While only 15 percent of returns with an EITC overclaim contained just a qualifying child error, the average claim was \$2,327, which is one of the largest dollar sources for EITC errors.²⁹ The NRP data broke the errors down even further and found that by far, the residency test is the highest source of errors. The data show that at least 75 percent of the children known to be claimed in error fail the residency test.³⁰ Compared to residency, only 20 percent of children known to be claimed in error failed the relationship test.³¹

In 2005, the IRS studied the use of affidavits as part of its EITC Qualifying Child Residency Certification Study.³² For the study, the IRS mailed documents to taxpayers (the test group) who had claimed the EITC with qualifying children in the previous tax year, but for whom the IRS could not establish qualifying child residency through available data. The documents sent to the taxpayer explained the certification requirements and included Form 8836, *Qualifying Child Residency Statement*, an affidavit form, and educational publications.³³ To certify their claim, the taxpayers in the study could submit any combination of documents described in Form 8836 (medical and school records, a letter on official letterhead, etc.) or the affidavit. The study found that affidavits had the highest rate of acceptance at 82 percent, compared to an overall acceptance rate of 64 percent for all document types.³⁴ The study concluded that this outcome was reasonable because affidavits had dedicated lines for all of the

28 National Taxpayer Advocate 2015 Annual Report to Congress 253-54; National Taxpayer Advocate 2011 Annual Report to Congress 305; National Taxpayer Advocate 2007 Annual Report to Congress 225; National Taxpayer Advocate 2004 Annual Report to Congress vol. 2, 20.

29 The National Research Program (NRP) conducted EITC audits in order to gather information about the nature of errors taxpayers made when claiming the EITC in tax years 2006 through 2008. IRS, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* 16 (Aug. 2014).

30 *Id.* at 22.

31 *Id.* at 23.

32 IRS, *IRS Earned Income Tax Credit (EITC) Initiative Final Report to Congress* 7 (Oct. 2005).

33 *Id.*

34 *Id.* at 33.

information, explaining “as long as the affidavit was filled out completely, it would contain all the required information to be accepted.”³⁵

The National Taxpayer Advocate believes that the affidavit should be incorporated into the EITC audit process as a tool for any taxpayer to use for substantiating his or her claim, and will help reduce the improper payment rate. It is an option that TAS is advancing through its participation on the joint EITC Audit Improvement Team. While keeping in mind that the National Taxpayer Advocate would like affidavits available to all EITC taxpayers, the EITC Audit Improvement Team is currently reviewing which particular group of EITC taxpayers could most benefit from receiving an affidavit early in the audit process.

TAS also plans to offer training to its employees during the months of June, July, and September. The training, which is entitled *EITC: Advocating With and For Taxpayers*, is based on a training developed by the EITC Audit Improvement Team for IRS employees. The training will discuss how to use communication skills to create a partnership with EITC taxpayers during the initial telephone contact.

TAS Will Continue Its Study to Research How Increased Education Can Improve Compliance

In January 2016, the National Taxpayer Advocate sent about 7,100 letters to the taxpayers who were not audited but appeared to have erroneously claimed EITC on their 2014 returns.³⁶ The letters were specifically designed to inform and educate taxpayers with targeted and specific information about EITC eligibility rules, geared to the error the IRS identified. The letters explained their purely educational purpose and clearly stated that this contact was not an audit. For those taxpayers who received Title IV benefits (Temporary Assistance for Needy Families, etc.), the letter included a sentence reminding them that the eligibility rules for EITC were different from the rules for Title IV benefits, so a taxpayer could receive Title IV benefits for a child and yet not be eligible for the EITC with respect to that same child. TAS then compared the level of compliance shown on taxpayers’ 2016 returns among three groups:

- Taxpayers who were not audited but were sent the TAS letter;
- A representative sample of taxpayers whose 2014 returns were audited; and
- A representative sample of taxpayers whose 2014 returns appeared to erroneously claim the EITC but who were not audited and did not receive the TAS letter.³⁷

The TAS letter, intended to educate taxpayers about the requirements for claiming EITC, appeared to help taxpayers avoid repeating their mistakes.³⁸ Taxpayers who were sent the TAS letter because they appeared to not meet the relationship test on their 2014 returns were less likely to repeat that error on their 2015 returns. Those who did not receive the TAS letter repeated their error 77.3 percent of the time, compared to 74.7 percent for the TAS group, an improvement of 2.6 percent.³⁹ There were about 1.2 million returns for 2014 that appeared to erroneously claim EITC because the relationship

35 IRS, *IRS Earned Income Tax Credit (EITC) Initiative Final Report to Congress* 33 (Oct. 2005).

36 National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 32-51 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits Apparently in Error and Were Sent an Educational Letter From the National Taxpayer Advocate*). Over 500 letters were returned to TAS as undeliverable.

37 *Id.*

38 *Id.* at 47.

39 *Id.* at 45.

requirement had not been met. If the TAS letter had been sent to all of those taxpayers, the projected savings would be about \$47 million.⁴⁰

TAS is repeating the letter test in the 2017 filing season. TAS added an additional sample of taxpayers who are offered, in the letter, the availability of a dedicated “Extra Help” line staffed by trained TAS employees who can answer taxpayer questions about the letter and the EITC eligibility rules. TAS is tracking the compliance behavior of that cohort as well and will report on that in the 2017 Annual Report to Congress.

CONCLUSION

As mentioned above, the EITC suffers from a high improper payment rate. However, since the EITC provides a benefit to so many low income taxpayers, any approach to reduce the improper payment rate must be balanced with minimal disruption to low income taxpayers, who rely on this credit for their day-to-day survival. The IRS has recently adopted new measures that will benefit both the improper payment rate and low income taxpayers.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Propose a Legislative Recommendation based on a thorough review of the extended refund issuance date;
- Coordinate with the IRS to implement the use of affidavits for all taxpayers who need to recertify for the EITC; and
- Complete the second year of the study addressing the impact of education on noncompliance.

⁴⁰ There were 1,197,374 returns processed in 2015 (which generally equates to returns filed for TY 2014) that appeared to contain this error. Data is from a Business Object interface with the Dependent Database (DDb), showing returns claiming EITC scored by the DDb for processing year 2015, which generally corresponds to returns filed for TY 2014. National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 44.

Area of Focus #7 **The IRS Makes Needed Changes to the Individual Taxpayer Identification Number (ITIN) Program, But Barriers for ITIN Applicants Remain**

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Individual Taxpayer Identification Numbers (ITINs) play a valuable role in tax administration by allowing taxpayers who are ineligible for Social Security numbers (SSNs) to file returns and pay taxes that are required under the law.² ITINs facilitate international business because foreign taxpayers report their ITINs to third parties and withholding agents to document foreign status and claim exemptions from withholding or reduced rates of withholding.³ In late 2015, Congress passed the Protecting Americans Against Tax Hikes (PATH) Act and for the first time codified elements of the ITIN program, including how an applicant may apply, what documents are required, when an ITIN expires, when an ITIN must be issued to claim certain refundable credits, and when the IRS may use math error authority.⁴ Following the passage of the PATH Act, the IRS implemented changes to the ITIN program, including:

- Notifying taxpayers and deactivating ITINs for either age of issuance or non-use;⁵
- Exercising its math error authority⁶ to disallow credits and exemptions for returns including a deactivated ITIN;⁷
- Disallowing the Child Tax Credit (CTC) and American Opportunity Tax Credit (AOTC) when the ITIN is not considered issued by the tax return due date;⁸

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 as IRC § 7803(a)(3)).

2 All United States (U.S.) citizens and persons considered U.S. residents under the IRC are required to file and pay U.S. taxes on their worldwide income and need a Taxpayer Identification Number (TIN) to do so. See, e.g., IRC § 61. Individuals considered nonresident aliens under the IRC are required to file and pay tax on income derived from sources within the United States. See IRC §§ 1, 2, 871, 7701(b).

3 Chapter 3 of the IRC generally requires withholding agents to collect the substantive tax liability of nonresident aliens imposed under IRC §§ 871(a), 881(a), and 4948 by withholding on certain payments of U.S. source fixed or determinable annual or periodical income. See IRC §§ 1441-1443. See also IRC §§ 1471-1474 (Chapter 4).

4 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV (2015) (hereinafter PATH Act).

5 Under the law, all Individual Taxpayer Identification Numbers (ITINs) issued after 2012 will remain in effect unless the ITIN holder does not file a tax return with the ITIN, or is not included on another's return as a dependent, for three consecutive taxable years. ITINs issued before 2013 will expire at the earlier of: after a period of three consecutive years of nonuse (as described in prior sentence), or on the "applicable date" scheduled between 2017 and 2020. PATH Act § 203(a) (codified at IRC § 6109(i)(3)).

6 The IRS is currently authorized to correct mathematical or clerical errors — arithmetic mistakes and the like — and assess any tax increase using summary assessment procedures that do not provide the taxpayer an opportunity to challenge the proposed deficiency in the United States Tax Court before the tax is assessed. See IRC §§ 6213(b)(1), (g)(2).

7 PATH Act § 203(e) (codified at IRC § 6213(g)(2)).

8 PATH Act §§ 205, 206 (codified at IRC §§ 24(e), 25A(i)(6)).

- Expanding the Certifying Acceptance Agent (CAA) program for applicants residing in the United States;⁹ and
- Providing ITIN services at Taxpayer Assistance Centers (TACs) on limited days and by appointment only.

Although the IRS has made commendable efforts to implement the ITIN provisions of the PATH Act, it falls short in terms of making it possible for all taxpayers to timely comply with their filing and payment obligations. The National Taxpayer Advocate remains concerned that the IRS has not included TAS in ITIN cross-functional teams nor has it sought TAS's advice regarding the development of new ITIN policies, which fail to protect key taxpayer rights, such as the *right to be informed*, the *right to challenge the IRS and be heard*, and the *right to a fair and just tax system*.¹⁰ ITIN applicants will continue to face barriers to filing and paying their taxes until the IRS further revises its ITIN policies and procedures.

The IRS Deactivated a Significant Number of ITINs for Age of Issuance or Non-Use at the Start of 2017

To implement section 203(a) of the PATH Act, the IRS announced in August 2016 that it would deactivate all ITINs not used on a tax return within the last three years and ITINs with the middle digits 78 and 79, which were issued between 1996 and 2000.¹¹ The IRS sent a notice informing taxpayers their ITINs would be deactivated to only those who had filed a tax return within the last three years, and started accepting renewal applications in October. During late December 2016 and early January 2017, the IRS deactivated approximately 12.4 million ITINs, including approximately 134,000 in error.¹² Although the IRS identified and corrected the programming error that caused the erroneous deactivations, any program to automatically deactivate ITINs may always carry the risk of future errors.

In 2016, the IRS stated that it expected approximately 750,000 ITIN holders to renew their ITINs in 2017 — all of the approximately 450,000 affected ITIN holders who had filed a tax return in the last three years and approximately 300,000 of the 11 million affected ITIN holders who had not filed returns recently.¹³ However, as of the week ending May 13, 2017, the IRS had received only about 196,000 renewal applications, and had renewed approximately 155,000 ITINs.¹⁴ There are multiple reasons taxpayers may have failed to renew their ITINs thus far, including:

- Lack of awareness of the requirement to renew;
- Lack of a tax filing requirement;
- Inability to submit required identification documents; and
- Concerns about the immigration consequences of sharing information with the IRS.

9 The PATH Act prohibits ITIN applicants residing abroad from using Certifying Acceptance Agent (CAAs). PATH Act § 203(a) (codified at IRC § 6109(i)(1)(B)). The PATH Act envisions an expansion of the CAA program, allowing state and local governments, federal agencies, and others authorized by the IRS to be CAAs. PATH Act § 203(c). As part of a required study, the IRS must evaluate ways to expand CAA availability and participation. PATH Act § 203(d).

10 See National Taxpayer Advocate Fiscal Year (FY) 2017 Objectives Report to Congress 148-49.

11 IRS Notice 2016-48, *Implementation of PATH Act ITIN Provisions*, IRB 2016-33 (Aug. 15, 2016); IRS response to TAS information request (Nov. 29, 2016).

12 IRS response to TAS information request (May 4, 2017).

13 IRS response to TAS information request (Nov. 29, 2016).

14 IRS, Submission Processing (SP) Program Management/Process Assurance (PMPA) Branch, *Filing Season Statistics Report*, Report for Week Ending May 13, 2017.

The IRS is planning to announce the next group of ITINs that will be deactivated based on the middle digits during summer 2017.

The IRS's Use of Math Error Authority for Expired ITINs Reflects a Sizable Number of Returns Filed With an Expired ITIN

The IRS created 14 new math error codes related to expired ITINs, which it has applied approximately 186,000 times from the start of the 2017 filing season through April 28, 2017.¹⁵ This substantial number suggests there are a significant number of taxpayers who were not aware of the requirement to renew their ITINs before or during the 2017 filing season. Of the 186,000 expired ITIN math error codes, approximately 40,000 (about 21 percent) were applied to taxpayers to whom the IRS had mailed Letter 5821, which advised them in advance to renew their ITINs.¹⁶ Letter 5821 may not have been effective due to taxpayers not receiving the letter or because the letter did not list the specific ITINs within the household that would be expiring.¹⁷

Better informing taxpayers about the ITIN deactivations prior to them taking place may have prevented some of these math errors, and in turn, reduced the burden on taxpayers by allowing them to apply to renew their ITINs prior to the filing season. As the IRS announces a new group of ITINs to be deactivated based on the middle digits during summer 2017, it should use the results of the 2017 filing season to revisit its procedures to notify taxpayers, identifying more effective ways to inform taxpayers of the deactivations and their ability to apply to renew their ITINs before the filing season.

The IRS Has Implemented Programming to Disallow the Child Tax Credit (CTC) When the ITIN Is Not Considered Issued by the Tax Return Due Date

The PATH Act requires a taxpayer's ITIN to be issued on or before the tax return due date for the taxable year in order to receive the CTC or AOTC.¹⁸ In January 2017, the IRS updated its Error Resolution System to reduce the allowable amount of the CTC or AOTC when a qualified person's ITIN assignment date was after the due date or approved extended due date for the return.¹⁹ On March 26, 2017, the IRS implemented programming changes to systematically generate the ITIN Assignment Date based on the IRS received date for the ITIN application and attached tax return.²⁰ These changes are beneficial to taxpayers because even if their ITIN applications are not fully processed and their ITINs not assigned until after the due date, they may still be able to receive the CTC or AOTC if their applications and returns were received by the due date. As of April 28, 2017, the IRS had denied the AOTC approximately 700 times and the CTC approximately 14,000 times due to an ITIN not issued by the tax return due date.²¹ These numbers are likely to increase now that the due date for tax year 2016 returns has passed.

15 IRS, *Math Error Report* (week ending Apr. 28, 2017). Because multiple math error codes may be applied to a single return, the 186,000 does not necessarily represent 186,000 returns. Internal Revenue Manual (IRM) 3.12.3-2, *Taxpayer Notice Codes* (Feb. 23, 2017) and IRM 3.22.3-9, *Taxpayer Notice Codes (TPNC)* (Jan. 1, 2017) contain descriptions for the math errors.

16 By comparison, taxpayers who received Letter 5821, *You must renew your Individual Taxpayer Identification Number (ITIN) to file your U.S. tax return* (approximately 450,000 taxpayers) comprised only about 4 percent of the 12.4 million taxpayers whose ITINs the IRS deactivated. IRS responses to TAS information requests (May 4, 2017), (Nov. 29, 2016).

17 Letter 5821 (Aug. 2016) states: "According to our records, the ITIN for you or someone listed on your tax return is set to expire on January 1, 2017."

18 PATH Act §§ 205, 206 (codified at IRC §§ 24(e), 25A(i)(6)).

19 IRS response to TAS information request (May 4, 2017).

20 *Id.*

21 IRS, *Math Error Report* (week ending Apr. 28, 2017).

IRS Policies Result in the Majority of ITIN Applicants Continuing to Mail Original Documents to the IRS

The IRS has made some positive changes to increase flexibility for ITIN applicants. Following the passage of the PATH Act, the IRS permitted CAAs to certify birth certificates and passports for dependent applicants.²² As of May 18, 2017, the IRS had received almost 14,000 dependent ITIN applications submitted by a CAA.²³ Expanding the ability of CAAs to certify all types of documents for dependents would help an even greater number of taxpayers.

Although the IRS has made commendable efforts to implement the Individual Taxpayer Identification Number provisions of the Protecting Americans Against Tax Hikes Act, it falls short in terms of making it possible for all taxpayers to timely comply with their filing and payment obligations.

The PATH Act removed the ability of CAAs to certify ITIN applications for applicants residing abroad, and the IRS implemented programming on January 3, 2017 to systematically reject ITIN applications received from foreign CAAs.²⁴ However, the IRS reversed its procedure on April 17, 2017 and again allowed foreign CAAs to certify ITIN documents.²⁵ Notwithstanding this change, the IRS could provide further options for certification. The PATH Act gives the IRS latitude to provide alternatives to accepting only original documents or copies certified by the issuing agency, but the IRS has failed to exercise this discretion and has not identified additional types of certified copies.²⁶

Similar to the CAA program, options for applying in person to an IRS employee have likewise undergone some expansion and some reduction in recent years. In late 2016, the IRS expanded the list of documents a TAC can certify for primary or secondary taxpayers to 11 documents, but continues to restrict TACs to only certifying three types of documents for dependents.²⁷ During late 2016, the IRS transitioned to an appointment only policy for TACs, and during much of the filing season there were only 186 TACs certifying ITIN documents.²⁸ These TACs scheduled ITIN appointments only on Tuesday and Thursdays, with a limited number offering ITIN appointments on Tuesdays, Wednesdays, and Thursdays.²⁹ Undocumented taxpayers may have been unable to use TACs at all, due to legal requirements for providing identification to enter federal buildings.³⁰

22 See Instructions for Form W-7 (Sept. 2016). Previously, CAAs were not allowed to certify identification documents for dependents.

23 IRS, Compliance Data Warehouse (CDW), Form W-7 database (May 18, 2017).

24 IRM 3.21.263.5.4.3, *ITIN Foreign CAA Procedures* (Feb. 8, 2017).

25 IRS, Servicewide Electronic Research Program (SERP) Alert 17A0128, *Rescinding Termination of International CAAs* (Apr. 17, 2017).

26 See IRC § 6109(i)(2)(B)).

27 IRS response to TAS information request (Nov. 29, 2016).

28 IRS, *Taxpayer Assistance Center (TAC) Locations Where In-Person Document Review is Provided*, <https://www.irs.gov/uac/tac-locations-where-in-person-document-verification-is-provided> (last updated May 5, 2017). This webpage was updated on April 18, 2017 to show 306 TACs offering ITIN services and again on May 5, 2017 to show 309. However, the prior webpage, accessed on March 20, 2017, listed only 186 TACs offering ITIN services. IRS, *Taxpayer Assistance Center (TAC) Locations Where In-Person Document Review is Provided*, <https://www.irs.gov/uac/tac-locations-where-in-person-document-verification-is-provided> (last updated Feb. 1, 2017).

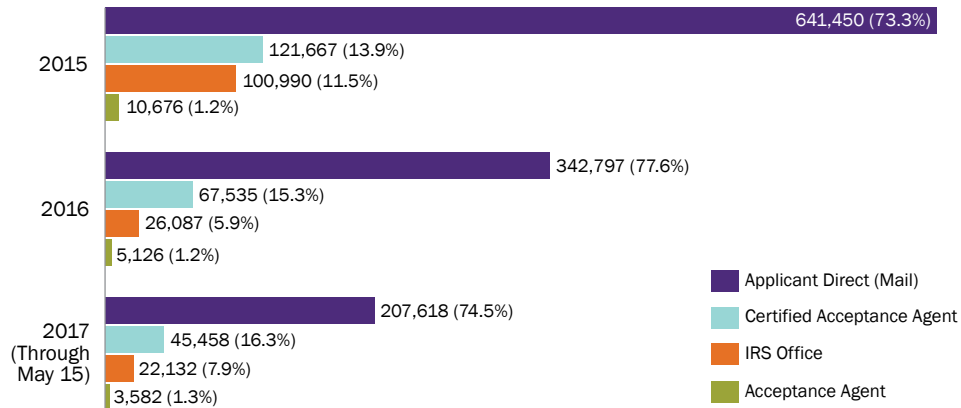
29 IRS, *Field Assistance Appointment Desk Guide 5* (Mar. 15, 2017). TAS has received reports in the past year that taxpayers who reside in Canada and Mexico near the U.S. border experienced further complications when attempting to schedule an appointment due to the toll-free line for making TAC appointments accepting only domestic calls. Systemic Advocacy Management System (SAMS) Issues 34713, 35184.

30 See REAL ID Act of 2005, Pub.L. 109–13, Division B, Title II, §§ 201-202, 119 Stat. 311–15, which sets standards for state-issued identification documents (IDs) that can be used to enter Federal facilities and establishes rules that states must follow in issuing the IDs.

As shown in the chart below, in recent years, only a small percentage of ITIN applicants were able to take advantage of TACs or CAAs to apply for ITINs, despite recent expansions to these programs.

FIGURE 3.7.1³¹

ITIN Applications by Submission Source During Calendar Years 2015-2017



Due to limited options for applying, the majority of taxpayers continue to mail in original documents and face a number of problems as a result. From January 1, 2017 through March 6, 2017, TAS opened nearly 170 cases from taxpayers suffering a hardship in connection with ITIN issues.³² The majority of these cases involved taxpayers who urgently needed their original documents back from the IRS. Examples of TAS cases include taxpayers who needed passports or other identification documents back in order to:

- Visit a dying family member;
- Travel for business;
- Travel because a family member passed away and the body could not be buried without the taxpayer;
- Verify identity for banking purposes, for example, to cash a child support payment;
- Apply for school;
- Travel for medical reasons, either for the taxpayer or to authorize surgery for a sick family member; and
- Obtain or use government services, including: appearing in court, obtaining a U.S. driver's license, getting married, applying for citizenship, requesting residency, and other immigration services.

³¹ IRS, CDW, Form W-7 Database (May 18, 2017).

³² Taxpayer Advocate Management Information System (TAMIS), Inventory Report (Mar. 7, 2017).

In the past we recommended the IRS return all original identification documents by expedited mail because depriving any taxpayer of these documents constitutes a hardship.³³ However, to date the IRS has not made this policy change.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Update its Tax Toolkit to provide further information about ITIN deactivations, renewals, and required dates of issuance;
- Monitor deactivations and renewals to ensure the IRS does not deactivate ITINs in error and assist taxpayers in correcting their accounts should erroneous deactivations occur;
- Review and provide recommendations for IRM sections and other internal guidance related to ITINs to promote taxpayer rights;
- Compile data regarding the volume of ITIN applications broken down by submission source and continue to advocate for the IRS to expand alternatives to mailing original documents for ITIN applicants, including options to use TACs, CAAs, and certain notary publics in foreign jurisdictions; and
- Assist taxpayers in locating and returning their original documents by expedited mail when they have an urgent need.

³³ See National Taxpayer Advocate 2015 Annual Report to Congress 204.

Area of Focus #8 **The Allowable Living Expense (ALE) Standard Does Not Reflect the Realistic Costs of Maintaining a Basic Standard of Living**

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Internal Revenue Code (IRC) § 7122(d)(2)(A) mandates that the IRS “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.”² Most importantly, Congress instructed the IRS to analyze the facts of each case involving these allowances and stipulated that if application of the allowances results in a taxpayer not being able to provide for basic living expenses, then the allowances should not be used.³ The resulting Allowable Living Expense (ALE) standards have come to play a major role in analyzing several types of IRS collection cases.⁴

The IRS allows an expense if it is “necessary to provide for a taxpayer’s and his or her family’s health and welfare and/or production of income.”⁵ In its efforts to base the allowed expenses on reliable and consistent data, the IRS relies heavily on the Bureau of Labor Statistics. In particular, the IRS uses the Consumer Expenditure Survey, which gathers expenditure information for consumers.⁶ Since this survey measures what people *spend* to live, it does not take into account what the goods or services *actually cost* to live. Taxpayers who are of limited means pay for what they can afford, and thus may forego expenses otherwise determined by the IRS definition to be necessary. Additionally, some essential expenses are not included in the category of “necessary” expense, preventing any taxpayer from claiming them.

By focusing on what expenses are *allowable* instead of *adequate*, the IRS has exercised its discretion in a way that does not meet congressional intent, since “allowable” is not synonymous with “adequate” or “basic.”⁷ Instead, the IRS should adopt standards that allow for a sufficient or adequate standard of living.⁸

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 See also Treas. Reg. § 301.7122-1(c)(2)(i).

3 IRC § 7122(d)(2)(B).

4 Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*, is used to determine monthly expenses and primarily relies on the Allowable Living Expense (ALE) standards. This form is necessary for many types of case resolutions, including certain installment agreements and offers in compromise (OIC). Internal Revenue Manual (IRM) 5.15.1.1(3), *Overview and Expectations* (Nov. 17, 2014).

5 IRM 5.15.1.7(1), *Allowable Expense Overview* (Oct. 2, 2012).

6 Bureau of Labor Statistics (BLS), *Consumer Expenditure Survey (CES) Frequently Asked Questions*, <http://www.bls.gov/ces/csxfaqs.htm>.

7 Congressional intent for maintaining an adequate and basic standard of living can be seen in how Congress has addressed “economic hardship” for IRS Collection purposes, which is defined as an inability to pay “reasonable basic living expenses.” Treas. Reg. § 301.6343-1(b)(4).

8 “Sufficient” is defined as “adequate; of such quality, number, force, or value as is necessary for a given purpose.” Whereas, “allowable” is defined as “acceptable according to the rules; permissible.” BLACK’S LAW DICTIONARY (10th ed. 2014).

The IRS Continues to Decrease ALEs Despite Data That Show Expenses Are on the Rise

Before the IRS can establish a standard for living expenses, it must understand what amount of money is sufficient for a basic standard of living. The IRS has not established how much it costs to maintain a basic standard of living. As a baseline, the United States often uses the poverty threshold to determine if a person has enough money to survive day-to-day. A person is considered to be living in poverty if his or her family's income falls below an income threshold set up by family size and composition.⁹ The current method for determining the poverty level was developed between 1963 and 1964 by Mollie Orshansky, an economist at the Social Security Administration (SSA).¹⁰ The official measure multiplies by three the cost of a minimum food diet from 1963 prices in today's prices.¹¹ The poverty threshold is not a measure of a sufficient standard of living.

By focusing on what expenses are *allowable* instead of *adequate*, the IRS has exercised its discretion in a way that does not meet congressional intent, since “allowable” is not synonymous with “adequate” or “basic.” Instead, the IRS should adopt standards that allow for a sufficient or adequate standard of living.

Based on concerns identified by the National Taxpayer Advocate, the IRS and TAS reached a joint agreement in 2007 whereby “the allowance amount for any ALE category cannot be decreased unless something economic changes significantly, such as a major sustained recession or depression.”¹² In violation of this agreement, on March 28, 2016, the IRS announced that new ALE standards took effect and that “some ALE amounts reflect a decrease from last year’s standard amounts based on current data showing a decline in expenditures.”¹³ Between 2015 and 2016, the expenses allowed for out-of-pocket healthcare and transportation decreased, as did the national standards for food, clothing, housekeeping supplies, and miscellaneous.¹⁴

It is difficult to find evidence to support the proposition that expenditures have actually declined. Instead, data appears to show the opposite. One source has reported on the impact of the Great Recession. It found that from 2004 to 2008, median household income grew by 1.5 percent while median expenditures grew by 11 percent.¹⁵ However, the 2014 median income has decreased by 13 percent from 2004 levels while expenditures increased by nearly 14 percent.¹⁶ One example of this can be seen with health insurance costs. The cost of employer-sponsored health plans has consistently increased at a rate greater than wage

9 U.S. Census Bureau, *How the Census Bureau Measures Poverty*, https://www.census.gov/library/visualizations/2014/demo/poverty_measure-how.html.

10 Gordon M. Fisher, *The Development and History of the Poverty Thresholds*, 55 Soc. Sec. Bull. 3 (Winter 1992).

11 U.S. Census Bureau, *Measuring America: How Census Measures Poverty*, https://www.census.gov/library/visualizations/2014/demo/poverty_measure-how.html. Food was chosen as the original standard of adequacy because it was the only generally accepted standard available at the time. Mollie Orshansky, *Counting the Poor: Another Look at the Poverty Profile*, 28 Soc. Sec. Bull. 5 (1965). The multiplier of three for costs of food was used since research at the time showed that families spent one-third of their budget on food. *Id.* at 9. For a discussion on how Ms. Orshansky came to this decision, see Gordon M. Fisher, *The Development and History of the Poverty Thresholds*, 55 Soc. Sec. Bull. 5 (Winter 1992).

12 IRS, Small Business/Self-Employed (SB/SE) Finance, Research & Strategy, *2015 Allowable Living Expenses Project* iii (Sept. 2015).

13 IRS, *Collection Financial Standards*, <https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Collection-Financial-Standards> (Mar. 17, 2017).

14 TAS Research analysis of IRS 2015 ALE Standards and IRS 2016 ALE Standards. Housing costs also decreased in 2,314 counties out of 3,221 counties.

15 The Pew Charitable Trusts, *Household Expenditures and Income*, 3 (Mar. 2016).

16 *Id.*

growth. Between 2006 and 2015, the average deductible has tripled (from \$303 to \$1,077), which is seven times faster than wage growth during the same period.¹⁷

TAS is unaware of how IRS assumptions can be tested using the current system of ALE standards, since the standards are based on averages spent by consumers, rather than an analysis of what individuals and families actually need to provide for a basic living. Despite TAS's concerns with the IRS decision last year, the IRS recently announced ALE standards for 2017 that include decreased amounts for a second year.¹⁸ To be exact, 415 categories of expenses will be decreasing, including out-of-pocket healthcare costs.¹⁹ Some of the categories of expenses increased. TAS is concerned that the IRS continues to make decisions regarding ALEs without fully understanding how the decisions impact taxpayers.

The IRS needs to work with TAS in a joint study to measure a basic standard of living for taxpayers. The joint study could consider how the SSA implements the cost of living adjustment (COLA) for its benefits program. For both the Social Security program and for Supplemental Security Income (SSI), the SSA uses the Consumer Price Index for Urban Wage Earners and Clerical Workers. However, unlike the IRS and its ALE standards, the COLA has never decreased.²⁰ The worst situation that a recipient will experience is no increase.

The ALE Standards Should Be Updated to Include Expenses Necessary to Maintain the Health and Welfare of Households Today

TAS continues to study how the ALE standards can be updated to conform with a basic lifestyle today. TAS previously recommended that the IRS expand the ALEs to include child care, an allocation for a basic home computer, and minimal retirement savings as an acknowledgement that these expenses are necessary for maintaining the health and welfare of today's families.²¹ TAS is studying the possibility of considering other expenses. For instance, in the United Kingdom (U.K.), the minimum income standard (MIS) is defined as the "income that people need in order to reach a minimum socially acceptable standard of living in the U.K. today, based on what members of the public think."²² The MIS definition allows for "social and cultural" participation expenses, which includes things such as gifts and recreation.²³ TAS will research the ability to include a small allotment for entertainment and recreation. Additionally, TAS will research an allowable expense for higher education or trade school. TAS will share its results with the IRS.

The IRS Should Study How Its Recent Deviation Involving ALEs Impacts Taxpayers

The IRS implemented a deviation from normal procedures for certain Automated Collection System and Compliance Services Collection Operations cases between December 17, 2015 and September 30, 2016 that involve financial analysis for particular types of installment agreements and currently not collectible

17 Noam N. Levey, LA TIMES, *Healthcare Costs Rise Again, and the Burden Continues to Shift to Workers* (Sept. 22, 2015).

18 IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

19 TAS Research analysis of IRS 2016 ALE Standards and IRS 2017 ALE Standards.

20 Social Security Administration, *Cost-of-Living Adjustments* <https://www.ssa.gov/oact/cola/colaseries.html>.

21 National Taxpayer Advocate 2016 Annual Report to Congress 200.

22 Joseph Roundtree Foundation, *A Minimum Income Standard for the UK in 2014* 8 (July 2014). The minimum income standard (MIS) is based on input from focus groups comprised of various segments of the population and experts in particular fields of study.

23 *Id.* at 20.

(CNC) cases.²⁴ For instance, one collection tool is a partial-pay installment agreement (PPIA), which is an installment agreement that does not pay the tax liability in full prior to the collection statute expiration date (CSED). PPIAs require a full collection information statement from the taxpayer, which is where the ALEs are considered.²⁵ The IRS's deviation will allow certain IRS employees to process PPIA requests without requesting substantiation of ALE expenses unless there is a large discrepancy.²⁶

TAS planned to report on the results of this deviation, however, since the deviation was done to address a backlog of work and not to study ALE standards; the IRS did not track details of cases, such as how each case was resolved or which expenses were allowed a deviation. Instead, the IRS tracked cases in the deviation to ensure that procedures of the deviation were followed.²⁷

The IRS extended the deviation through fiscal year 2017.²⁸ During the extended deviation, the IRS will track the total number of non-streamlined installment agreements, PPIAs, and currently not collectible accounts. However, there is no mechanism for the IRS to track which expenses were most likely to be allowed during the deviation or which expenses most often required substantiation.²⁹ The IRS could have used this type of deviation to closely study the ALEs. For instance, it could find out which expenses were most often allowed a deviation and by how much.

CONCLUSION

Taxpayers are responsible for paying their tax liabilities. However, Congress intended for the IRS to allow enough expenses to ensure taxpayers have an adequate means to provide for basic living expenses prior to resolving their outstanding tax debts. The current ALE standard is not based on an amount of money that allows for a basic standard of living. It also does not take into account all expenses that are necessary for a basic standard of living today. The IRS should reevaluate how it measures and implements the ALE standard so that taxpayers do not face a hardship while complying with their tax responsibilities, and it should not continue to decrease the amount of ALEs.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Research alternative methods to calculate the cost of providing for the health and welfare of households and share this information with the IRS;
- Issue a Taxpayer Advocacy Directive ordering the IRS to expand the categories available in the ALE standards and to stop decreasing the amount of ALEs; and
- Issue an Internal Guidance Memorandum to provide guidance to TAS employees about how to advocate for deviation from the current ALEs when applicable.

24 Director, Collection Policy and Director, Campus Collection, *Memorandum for SBSE Directors, Collection Policy and Campus Collection, IRM Deviation for ACS/ACSS/CSCO Collection Information Statement (CIS) Case Processing* (Dec. 17, 2015).

25 IRM 5.14.2.1.1 (Sept. 19, 2014).

26 Director, Collection Policy and Director, Campus Collection, *Memorandum for SBSE Directors, Collection Policy and Campus Collection, IRM Deviation for ACS/ACSS/CSCO Collection Information Statement (CIS) Case Processing 2* (Dec. 17, 2015). Furthermore, IRS employees are instructed to accept verbal substantiation unless the taxpayer cannot explain the discrepancy.

27 National Taxpayer Advocate 2016 Annual Report to Congress 198.

28 IRS, *Extension of IRM Deviation for ACS/ACSS/CSCO Collection Information Statement (CIS) Case Processing* (Sept. 26, 2016).

29 IRS response to TAS information request (Mar. 31, 2017).

Area of Focus #9 The IRS Has Improved Its Internal Guidance for Retirement Levies But More Can Be Done

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Americans are facing a crisis in saving for retirement. Forty-five percent of all working-age households have no retirement account assets.² The situation is particularly bleak for low income individuals. In one survey, 94 percent of respondents with a family income over \$100,000 reported having some retirement savings while among respondents making under \$40,000 per year, only 44 percent had any retirement savings.³ Stagnant wages and burgeoning student loan debt, for both students and their parents, may be responsible for low levels of retirement savings.⁴ The National Institute on Retirement Security points out that it is “highly unlikely that most individuals and households will be able to fill such a large retirement income gap by themselves” and suggests that public policy could play a “critical role” in addressing this retirement shortfall.⁵

While any collection action taken by the IRS can affect a taxpayer, levies on assets in retirement accounts may have a particularly negative effect on a taxpayer's future well-being.⁶ As a result, the IRS must balance the need for efficient collection of tax with the public policy that encourages saving for

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 National Institute on Retirement Security, *The Continuing Retirement Savings Crisis* 8 (Mar. 2015).

3 Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2015* 59-61 (May 2016). The lack of retirement savings is better understood by considering that only 54 percent of respondents to the same survey reported that they could “fairly easily handle” a hypothetical emergency expense of \$400. Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2015* 22 (May 2016). Women and minorities also face lower levels of saving for retirement. Joint Economic Committee, Ranking Democrat Carolyn B. Maloney, *Social Security and Retirement Savings in the United States* (Aug. 2016).

4 Abha Bhattarai, *Two-Thirds of Americans Aren't Using This Easy Way to Save For Retirement*, WASH. POST., Feb. 22, 2017.

5 National Institute on Retirement Security, *The Continuing Retirement Savings Crisis* 17 (Mar. 2015).

6 In some instances, a taxpayer can experience additional harm on top of losing the contents of his or her retirement account. First, pursuant to IRC § 408(d), generally, the entire amount paid from a retirement account or any distribution, is considered gross income and is subject to taxation. The payor is generally required to withhold twenty percent. IRC § 3405(c)(1). However, IRS offers no withholding guidance with the levy issued to payors. In some instances, payors fail to withhold and taxpayers have no resources to pay the tax liability created by the distribution. The taxpayer may be liable for a state income tax as well. TAS is working on a project that will look to provide better guidance to payors so that under withholding can be avoided.

retirement.⁷ The National Taxpayer Advocate previously raised several concerns regarding the inadequacy of IRS internal guidance related to levies on retirement accounts.⁸

Internal Revenue Code (IRC) § 6331 gives the IRS the right to levy on a taxpayer's property and rights to property, including funds held in retirement accounts.⁹ As an acknowledgement that retirement account levies can impact a taxpayer's future well-being, the IRS's internal guidance requires three steps to be taken before the IRS can issue a notice of levy on a taxpayer's retirement account:

1. Determine what property (retirement assets and non-retirement assets) is available to collect the liability, and if there is property other than retirement assets that can be used to collect the liability, or if a payment agreement can be reached, these alternatives are considered before issuing a levy on retirement assets;
2. Determine whether the taxpayer's conduct has been flagrant; and
3. Determine whether the taxpayer depends on the money in the retirement account (or will in the near future) for necessary living expenses.¹⁰

The IRS Has Taken Steps to Improve Internal Guidance, Thereby Ensuring Cases With Retirement Levies Receive Consistent Analysis

One of the National Taxpayer Advocate's main concerns with retirement levy cases is the lack of internal guidance provided to employees. For instance, IRS employees are instructed to make a determination of flagrancy on a case-by-case basis and may consider extenuating circumstances that mitigate otherwise flagrant behavior.¹¹ However, there is no on-point definition of what constitutes "flagrant" behavior in the IRC, accompanying regulations, or the Internal Revenue Manual (IRM).

The IRS Created Guidance for Considering Extenuating Circumstances

To its credit, the IRS has worked with TAS to address some concerns with how the determination to levy a retirement account impacts taxpayer rights.¹² For instance, through discussions, the IRS agreed to provide guidance on what constitutes an extenuating circumstance. The IRS now provides guidance to employees that extenuating circumstances are "at times situations beyond the control of taxpayers."¹³ Examples of extenuating circumstances include illness, loss of employment, a personal loss (family or loved one), identity theft or return preparer misconduct, and "natural acts of nature."¹⁴

7 Understanding the importance of Americans having sufficient retirement savings, Congress has formulated policies to not only provide Social Security income to retirees, but to protect the rights of individuals to pensions and to encourage retirement savings accounts. For example, the Employee Retirement Income Security Act of 1974 was enacted to provide protection for participants in pension and health plans in private industry. Pub. L. No. 93-406, 88 Stat. 829 (1974).

8 National Taxpayer Advocate 2015 Annual Report to Congress 100-11; National Taxpayer Advocate 2015 Annual Report to Congress 340-45 (Legislative Recommendation: *Levies On Retirement Accounts: Amend IRC § 6334 to Include a Definition of Flagrancy and Require Consideration of Basic Living Expenses at Retirement Before Levying on Retirement Accounts*); National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress 53-58.

9 For information on what constitutes a retirement plan, see IRC § 4974(c). The IRS may also levy on retirement income or distributions once the taxpayer retires. Internal Revenue Manual (IRM) 5.11.6.1, *Retirement Income* (Jan. 22, 2010).

10 IRM 5.11.6.2(4) - (7) (June 14, 2016).

11 IRM 5.11.6.2(5) (Revision June 14, 2016).

12 National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 94-101.

13 IRM 5.11.6.2(5) (June 14, 2016).

14 *Id.*

IRS Guidance Now Encourages Communication With the Taxpayer Prior to Levy Action

The National Taxpayer Advocate has also called for more taxpayer education around the issue of retirement levies. The IRS recently adopted guidance which promotes greater communication with taxpayers prior to a levy on their retirement account. Guidance to IRS employees reads: “Prior to levy, attempt to advise taxpayers that contributions to voluntary retirement plans are not a necessary expense.”¹⁵ Most importantly, taxpayers will be informed that continuing to make voluntary contributions to retirement accounts, while asserting an inability to pay an amount that is owed, may be considered flagrant conduct, and could result in a levy on retirement accounts.¹⁶ However, the IRS is not prohibited from making the determination to levy on a retirement account if this conversation does not take place.¹⁷

The IRS Can Do More to Improve Internal Guidance for Retirement Levies

A Definition of Flagrancy Is Still Needed

The IRS cannot levy on a taxpayer’s retirement account unless the IRS determines the taxpayer has exhibited flagrant conduct.¹⁸ Unfortunately, the IRS guidance in this area does not include a definition of what constitutes flagrant conduct. The IRS explains flagrant conduct through a list of examples.¹⁹

Through negotiation with TAS, the IRS recently agreed to strengthen the examples of flagrant conduct. For example, the IRS considers a taxpayer to be exhibiting flagrant conduct if he or she either voluntarily contributes to a retirement account during the time period he or she knew unpaid taxes were accruing, or the taxpayer continues to make voluntary contributions to retirement accounts while asserting an inability to pay an amount that is owed.²⁰ The IRS has added a note to its internal guidance to explain that if a taxpayer verifies he or she has been automatically enrolled to have a limited percentage of his or her basic pay deducted and deposited into a retirement account, this should not be considered flagrant conduct.²¹ However, the IRS continues to refuse to provide a definition of flagrant conduct.²²

The National Taxpayer Advocate believes that without a definition of flagrant conduct, taxpayers do not know what they need to do to comply with tax laws, which diminishes the *right to be informed*. The National Taxpayer Advocate believes a definition of flagrant conduct is essential to proper analysis of these cases and will continue to advocate for a definition of flagrancy that includes a willful action (or failure to act) which is voluntarily, consciously, and knowingly committed, and which appears to a reasonable person to be a gross violation of tax laws.²³

The National Taxpayer Advocate believes that without a definition of flagrant conduct, taxpayers do not know what they need to do to comply with tax laws, which diminishes the *right to be informed*.

15 IRS, Director, Collection Policy, *Interim Guidance for Revenue Officers regarding Levies on Retirement Plans* (Jan. 13, 2017); IRM 5.15.1.27(2) (Jan. 23, 2017).

16 *Id.*

17 *Id.*

18 IRM 5.11.6.2(5) (June 14, 2016).

19 IRM 5.11.6.2(6) (June 14, 2016).

20 *Id.*

21 *Id.*

22 National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress vol. 2, 59.

23 National Taxpayer Advocate 2015 Annual Report to Congress 341.

The IRS Has Changed Policy to Allow Retirement Levies at the Request of Taxpayers

Prior to June 2016, the IRS specifically did not levy on retirement accounts at the request of taxpayers.²⁴ The guidance read, in part:

Because of the exception to the 10 percent additional tax made on account of a levy, occasionally taxpayers may ask the Service to levy the funds in the retirement accounts. Even though the taxpayer may be able to voluntarily withdraw money in a lump sum from a retirement account and apply it to the outstanding tax liability, do not levy on retirement assets at the request of the taxpayer.²⁵

However, against the recommendation of TAS, the IRS has implemented a change in policy that allows taxpayers to “request” retirement levies. This change goes directly against the policy mentioned above that treats retirement levies as special cases, requiring the three-step analysis, including the determination of flagrant conduct. If a taxpayer requests a levy on his or her retirement account, the guidance now requires that the IRS employee analyze what other assets are available for levy and determine whether the taxpayer needs the retirement assets for necessary living expenses.²⁶ Notably, IRS employees are instructed to *not* make a determination of flagrant conduct, which is otherwise necessary prior to levying on a retirement account.²⁷ To its credit, the IRS accepted a TAS recommendation to make sure the taxpayer’s request is in writing and recorded in the case history.²⁸

In practice, it will not be as simple as the taxpayer choosing to pay his or her debt with a retirement account. The IRS employee will consider the retirement account while conducting his or her financial analysis under IRM 5.15.1.1, which provides the “basis for determining a taxpayer’s ability to pay delinquent tax liabilities, which enables Collection employees to make appropriate collection decisions to resolve cases.”²⁹ Once the retirement account is part of the analysis, a conversation about liquidating the asset can occur without regard to a flagrancy determination.

The IRS justified this change in policy by arguing that all taxpayers should be able to avoid the early withdrawal penalty, not just those taxpayers who receive an IRS levy on their retirement account.³⁰ While a “voluntary” levy may appear to be an attractive tool for taxpayers who want to avoid the additional ten percent tax on retirement distributions before the age of 59½, TAS is concerned that the special analysis that protects retirement accounts will be lost through this new procedure.

Furthermore, taxpayers may not realize the long-term tradeoff they are making when they request this option. The potential for abuse in this area is enormous. Since IRS employees are instructed to “emphasize to the taxpayer how much the Service expects from them rather than how the Service expects them to spend their money,” it is easy to see how in the normal course of working a collection case, the existence of a retirement account will now become part of a financial analysis stripped of the necessary flagrancy determination.³¹ The typical taxpayer will feel pressure to give up his or her retirement account

24 Generally, there is a ten percent additional tax on early distributions from a qualified retirement plan, but this additional tax does not apply to distributions made from an account because of an IRS levy. IRC § 72(t)(2)(A)(vii).

25 IRM 5.11.6.2(3) (Sept. 26, 2014).

26 IRM 5.11.6.2(3) (June 14, 2016).

27 *Id.*

28 *Id.*

29 IRS response to TAS information request (Mar. 24, 2017).

30 *Id.*

31 IRM 5.15.1.1(11) (Nov. 17, 2014).

when it is part of a financial analysis and the IRS employee cannot establish flagrant conduct on the part of the taxpayer. This undermines the entire public policy protection of retirement accounts.

The IRS Should Adopt a “Retirement Needs” Calculator Based on a Theoretical Model Developed By TAS

TAS remains concerned that there is inadequate instruction to employees for analyzing future retirement calculations. Collection employees are instructed to use the standards in IRM 5.15, *Financial Analysis*, to establish necessary living expenses and the life expectancy tables in Publication 590-B, *Distributions From Individual Retirement Arrangements* (IRAs), to estimate how much can be withdrawn annually to deplete the retirement account in the taxpayer’s remaining life.³² However, these instructions are silent on what type of calculators to use to determine when funds will be depleted. In addition to the variety of methods that could be used by different revenue officers, the IRM is additionally silent on factoring any growth in retirement funds or projecting future increases in necessary living expenses. TAS has created a proposed model of a “retirement needs” calculator. See Figures 1.9.1 and 1.9.2 in Appendix A immediately following for the calculator and accompanying example. TAS is offering its assistance to the IRS in developing a retirement needs calculator based on this theoretical model.

CONCLUSION

Congress has granted the IRS the ability to levy on retirement accounts. However, given the low levels of retirement savings and the impact this will have on Americans’ retirement, the IRS should exercise this option only when the taxpayer’s behavior is flagrant and where the levy will not place the taxpayer in a situation where he or she cannot function in retirement. Adopting a definition of flagrant conduct and the use of a retirement calculator, such as the one TAS proposes, will allow for sufficient analysis prior to levying on a retirement account.

FOCUS FOR FISCAL YEAR 2018


In Fiscal Year 2018, TAS will:

- Issue an Internal Guidance Memorandum to TAS employees regarding effective advocacy in retirement levy cases, including the use of the retirement calculator in TAS cases, the National Taxpayer Advocate’s proposed definition of flagrant conduct, and pushing back against “voluntary” levies;
- Conduct training for TAS employees so they can effectively advocate in cases involving retirement levies, particularly with respect to the taxpayer’s financial security in retirement, whether the taxpayer’s conduct is flagrant, and undue pressure on taxpayers to consent to “voluntary” levies;
- Work with the IRS to improve internal guidance by developing a definition for flagrant conduct;
- Issue a Taxpayer Advocate Directive ordering the use of the retirement calculator; and
- Draft better guidance for payers so that problems with insufficient withholdings can be avoided for taxpayers who receive a levy on their retirement accounts. TAS will encourage the IRS to publish the improved guidance.

32 IRM 5.11.6.2(7) (June 14, 2016). When conducting this financial analysis, employees are reminded to consider special circumstances that may be present on a case-by-case review.

APPENDIX A

FIGURE 1.9.1, Calculating the Need for Retirement Assets



CALCULATING THE NEED FOR RETIREMENT ASSETS

When IRS considers levy of a taxpayer’s retirement account assets, Internal Revenue Manual 5.11.6.2(7), *Funds in Pension or Retirement Plans*, states the IRS must “determine whether the taxpayer depends on the money in the retirement account (or will in the near future) for necessary living expenses.” The guidance in making this determination is limited.

This document provides a consistent method for calculating the need for retirement account assets to advocate for a taxpayer whose retirement account assets have been levied or are under the threat of levy. The method can be used to verify or challenge the IRS determination.¹

Five Steps for Calculating the Need for Retirement Assets	
1	<p>Calculate the taxpayer’s necessary living expenses. See Collection Financial Standards² and Internal Revenue Manual 5.15, <i>Financial Analysis</i>.³</p>
2	<p>Calculate the taxpayer’s life expectancy. See Life Expectancy Tables in the appendices of Publication 590-B, <i>Distributions From Individual Retirement Arrangements (IRAs)</i> at www.irs.gov (updated annually). Use the life expectancy to determine the number of months income from retirement assets will be required.</p>
3	<p>Calculate the taxpayer’s future Social Security Administration (SSA) benefits (if the taxpayer is eligible). See the SSA Quick Calculator.⁴</p> <p>CAUTION: The SSA Quick Calculator is the least accurate method to estimate benefits. Encourage the taxpayer to secure an estimate by creating an online account at www.ssa.gov or by using the Retirement Estimator on that site. These calculators use the taxpayer’s actual income rather than estimates used by the Quick Calculator.</p>
4	<p>Calculate the monthly income that is required from the taxpayer’s retirement assets to meet necessary living expenses. Total income from all sources other than the retirement assets considered for levy, then subtract necessary living expenses.</p>
5	<p>Calculate the number of monthly distributions from retirement assets until they are depleted.⁵ See Retirement Income Calculator.⁶</p> <p><i>Note: The calculator indicates annual year-end balances. If retirement funds are not fully depleted by end of life expectancy, the remaining balance would be available for levy.</i></p>

¹ The method in this document factors no growth in retirement assets or inflation of necessary living expenses. Attempting to estimate these future financial uncertainties would include too many variables to ensure a consistent application for all taxpayers.

² <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

³ Calculate current necessary living expenses without factoring future growth or inflation. Allow for known increases (e.g., health insurance or medical costs certain to increase upon retirement).


⁴ Calculate SSA income without factoring future growth or inflation. <https://www.ssa.gov/OACT/quickcalc/index.html>.

⁵ Calculate retirement income without factoring future growth or inflation.

⁶ The calculator assumes funds are in a Thrift Savings Plan but can be used for any type of retirement account assets. <https://www.tsp.gov/PlanningTools/Calculators/retirementCalculator.html>.

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FIGURE 1.9.2, Calculating the Need for Retirement Assets – Case Example



CALCULATING THE NEED FOR RETIREMENT ASSETS

Case Example

Assumptions About the Taxpayer

- Age 61, single, no dependents, and his date of birth is December 31, 1954.
- A wage earner, with no defined benefit retirement plan.
- Current annual wage income is \$75,000.
- Plans to retire December 31, 2016, upon turning age 62.
- Owns a 401k account with a current balance of \$250,000 and an Individual Retirement Arrangement with a current balance of \$50,000.
- Owns no real property, rents an apartment, and owns one auto with a loan balance and no equity.
- Health care expenses are \$300 per month. Health insurance will increase \$32 per month upon retirement.
- Estimated tax on retirement account withdrawals is \$68 per month.

Five Steps for Calculating the Need for Retirement Assets

1 Calculate the taxpayer's necessary living expenses. See [Collection Financial Standards¹](#) and Internal Revenue Manual 5.15, *Financial Analysis*.²

The example assumes Form 433A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*, has been completed and the current monthly allowable necessary living expenses are \$2,968.³

2 Calculate the taxpayer's life expectancy. See Life Expectancy Tables in the appendices of Publication 590-B, *Distributions From Individual Retirement Arrangements (IRAs)* at www.irs.gov (updated annually). Use the life expectancy to determine the number of months income from retirement assets will be required.

Publication 590-B, Table I shows a life expectancy of 24.4 years (292 months) for the taxpayer's current age of 61. Therefore, upon retirement in seven months, the taxpayer's income must meet his necessary living expenses for 23 years and nine months (285 months).


¹ <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

² Calculate current necessary living expenses without factoring future growth or inflation. Allow for known increases (e.g., health insurance or medical costs certain to increase upon retirement).

³ To make an accurate comparison of living expenses and income, this example uses today's dollars for necessary living expenses with no future growth rate.

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FIGURE 1.9.2, Calculating the Need for Retirement Assets – Case Example (continued)



CALCULATING THE NEED FOR RETIREMENT ASSETS

3 Calculate the taxpayer’s future Social Security Administration (SSA) benefits (if the taxpayer is eligible). See the [SSA Quick Calculator](#).⁴

CAUTION: The SSA Quick Calculator is the least accurate method to estimate benefits. Encourage the taxpayer to secure an estimate by creating an online account at www.ssa.gov or by using the Retirement Estimator on that site. These calculators use the taxpayer’s actual income rather than estimates used by the Quick Calculator.

The SSA calculator shows the taxpayer’s monthly benefits to be \$1,394, beginning age 62.⁵

4 Calculate the monthly income that is required from the taxpayer’s retirement assets to meet necessary living expenses. Total income from all sources other than the retirement assets considered for levy, then subtract necessary living expenses.

Monthly necessary living expenses (\$2,968) plus anticipated monthly health insurance increase (\$32) minus monthly SSA benefits (\$1,394) equals monthly income required from retirement assets (\$1,606).

5 Calculate the number of monthly distributions from retirement assets until they are depleted.⁶ See [Retirement Income Calculator](#).⁷

Note: The calculator indicates annual year-end balances. If retirement funds are not fully depleted by end of life expectancy, the remaining balance would be available for levy.

The Retirement Income Calculator shows the monthly distributions of \$1,606 would be depleted in 15 years and seven months (187 months), which is 98 months short of the taxpayer’s expected life span.⁸ Therefore, the retirement account assets should not be levied upon.

⁴ Calculate SSA income without factoring future growth or inflation. <https://www.ssa.gov/OACT/quickcalc/index.html>.

⁵ The Social Security Administration Quick Calculator allows the user to estimate today’s dollars or inflated (future) dollars. To make an accurate comparison of living expenses and income, this example uses today’s dollars.

⁶ Calculate retirement income without factoring future growth or inflation.

⁷ The calculator assumes funds are in a Thrift Savings Plan but can be used for any type of retirement account assets. <https://www.tsp.gov/PlanningTools/Calculators/retirementCalculator.html>.

⁸ The Thrift Savings Plan Retirement Income Calculator allows the user to estimate an annual rate of return to include in the projected earnings. In order to make an accurate comparison of living expenses and income, this example uses zero percent annual rate of return.

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Area of Focus #10 **With a Recent Decline in Tax-Related Identity Theft Cases, the IRS Can Focus on Making Its Authentication Procedures Less Burdensome for Victims**

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Quality Service*
- *The Right to Finality*

DISCUSSION

Tax-related identity theft is an invasive crime that has significant impact on its victims and the IRS. Victims of identity theft not only must spend time dealing with the IRS to prove their identity, but generally will not receive their refunds until their cases are resolved.

The National Taxpayer Advocate has highlighted the need for the IRS to establish or improve procedures to assist victims of identity theft for well over a decade.² The IRS has adopted many of our recommendations to improve its identity victim assistance procedures over the years. For example, one significant change involved centralizing its identity theft victim assistance units, something that TAS has long advocated.³

Decline in Identity Theft Case Receipts

For reasons we cannot know for certain, the IRS has seen a decline in identity theft case receipts. During calendar year (CY) 2015, the IRS received nearly 700,000 identity theft cases in which the taxpayer needed victim assistance.⁴ In CY 2016, the IRS received about 376,000 identity theft cases — a decline of about 46 percent.⁵ As of March 2017, the IRS-wide inventory of identity theft cases was approximately 34,000 — less than half of the inventory two years ago.⁶

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 See National Taxpayer Advocate 2015 Annual Report to Congress 180-87; National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 44-90; National Taxpayer Advocate 2013 Annual Report to Congress 75-83; National Taxpayer Advocate 2012 Annual Report to Congress 42-67; National Taxpayer Advocate 2011 Annual Report to Congress 48-73; National Taxpayer Advocate 2009 Annual Report to Congress 307-17; National Taxpayer Advocate 2008 Annual Report to Congress 79-94; National Taxpayer Advocate 2007 Annual Report to Congress 96-115; National Taxpayer Advocate 2005 Annual Report to Congress 180-91; National Taxpayer Advocate 2004 Annual Report to Congress 133-36.

3 See National Taxpayer Advocate 2007 Annual Report to Congress 115.

4 IRS, *Global Identity (ID) Theft Report* (Jan. 2017). Part of the decline in identity theft cases may be attributable to the IRS's decision to modify the criteria for counting cases included in the "Identity Theft Taxpayer Impacted" inventory.

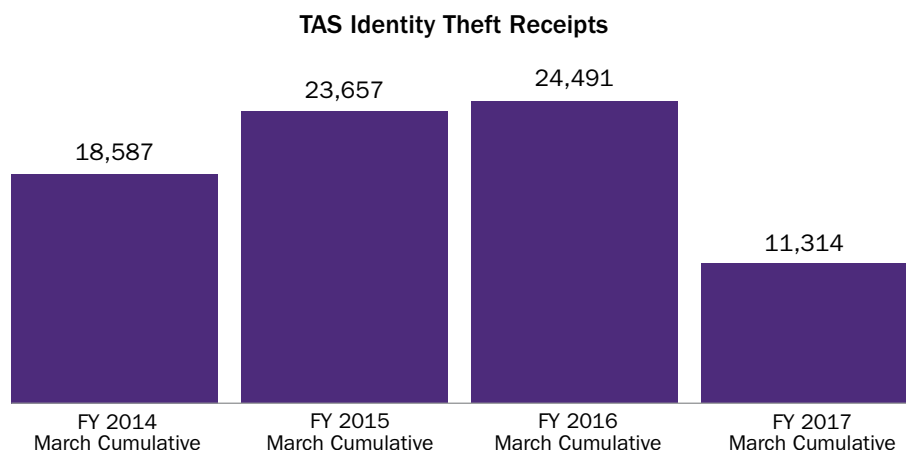
5 IRS, *Global ID Theft Report* (Jan. 2017).

6 IRS, *Global ID Theft Report* (Mar. 2017).

FIGURE 3.10.1, IRS-Wide Inventory (Identity Theft Taxpayer Impacted)⁷

	Calendar Year 2015	Calendar Year 2015 (Through March)	Calendar Year 2016	Calendar Year 2016 (Through March)	Calendar Year 2017 (Through March)
Beginning Inventory	71,098	71,098	64,424	64,424	31,328
Receipts	698,794	104,857	376,488	78,801	56,336
Closures	703,418	101,739	409,286	103,577	54,662
Ending Inventory	64,424	74,217	31,328	39,353	33,877

TAS has experienced a similar decline in its identity theft case receipts over the past fiscal year, reversing the trend in previous years. In fiscal year (FY) 2017 (through March), TAS had 11,314 identity theft case receipts — less than half the 24,491 identity theft cases TAS received over the same period in FY 2016.⁸

FIGURE 3.10.2⁹

The IRS is continually improving its fraud detection filters and safeguards. For example, the IRS now limits the number of refunds delivered to one bank account, which makes it more difficult for perpetrators to get away with mass refund fraud schemes.¹⁰

⁷ IRS, *Global ID Theft Report* (Mar. 2017).

⁸ Data obtained from Taxpayer Advocate Management System (TAMIS) (Apr. 1, 2016; Apr. 1, 2017).

⁹ Data obtained from TAMIS (Apr. 1, 2016; Apr. 1, 2017).

¹⁰ IRM 21.4.1.4.7, *Direct Deposits — General Information* (Oct. 1, 2016).

The IRS Needs to Strengthen Procedures for Assisting Victims of Large-Scale Data Breaches

Now that the IRS is getting better at detecting traditional identity theft, some identity thieves are targeting tax practitioners and employers to obtain the personal identifying information (PII) of taxpayers.¹¹ TAS continues to receive reports of large-scale data breaches, which leave taxpayers vulnerable to identity theft.¹² With PII obtained from data breaches, these cyber criminals may be able to bypass many of the identity theft filters.

While the IRS has implemented a process for employers to report large-scale breaches, it still needs to develop procedures to assist the impacted taxpayers as a group.¹³ TAS has received several complaints from practitioners whose clients are victims of data breaches.¹⁴ When a taxpayer's personal information is breached, the IRS may require him or her to authenticate his or her identity in person at a Taxpayer Assistance Center (TAC). When the nearest TAC is hundreds of miles away, or when the TAC has limited hours and the next available appointment is months away, requiring victims of data breaches to authenticate in person at TACs is overly burdensome.

Could there be an alternative to in-person authentication that minimizes the risk to the IRS but is not too burdensome to the taxpayers? Should taxpayers who live too far from a TAC be given the option to mail in authentication documents? Should taxpayer representatives be allowed to authenticate their clients? These are the types of questions the IRS should be asking as it develops procedures to assist victims of large-scale data breaches.

Impact of Protecting Americans from Tax Hikes (PATH) Act of 2015 Provisions

While it is difficult to single out one reason for the decrease in tax-related identity theft in the past year, one significant factor is the impact of the accelerated due dates for certain information reporting. As part of the PATH Act of 2015, the due date for filing Forms 1099-MISC (which are used to report non-employee compensation) and Forms W-2 with the IRS and Social Security Administration (SSA) was moved up to January 31.¹⁵ Until this year, the due dates for these information reporting forms were the last day of February (or March, if filed electronically).

Prior to the enactment of the PATH Act, the IRS received much of the W-2 data from the SSA after the filing season, when the majority of refunds had already been issued, and began data matching in the summer. The accelerated deadline allows the IRS to verify the legitimacy of tax returns by comparing the return data against the data on Forms W-2 filed by employers **before** paying out refunds.

By the week ending March 23, 2017, the IRS had received approximately 222 million Forms W-2, a nearly 30 percent increase from the 171 million received by the same point in 2016.¹⁶ There was an even greater increase in the number of Forms 1099-MISC that the IRS received in 2017 compared to 2016.

11 IRS, IR-2016-163, *Protect Your Clients: Security Summit Partners Warn Tax Pros of Cybercriminals, Launch New Awareness Tips* (Dec. 7, 2016).

12 See, e.g., Systemic Advocacy Management System (SAMS) issues 35584, 35757, 35763, 35767, 35822, and 35929.

13 IRS, *Data Theft Information for Tax Professionals*, <https://www.irs.gov/individuals/data-theft-information-for-tax-professionals> (Mar. 29, 2017).

14 See SAMS issues 35757, 35822, and 35929.

15 Protecting Americans from Tax Hikes (PATH) Act of 2015, Pub. L. No. 114-113, Division Q, Title II, § 201(a), 129 Stat. 2242, 3076 (2015) (codified at IRC § 6071(c)).

16 IRS Compliance Data Warehouse (CDW), Information Returns Master File (as of cycle 201712). For processing years 2016 and 2017, cycle 12 is the week ending March 24, 2016, and March 23, 2017, respectively.

By the week ending March 23, 2017, the IRS received 31 million Forms 1099-MISC, more than 2½ times the 12 million received by the same period in the prior year.¹⁷

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Advocate for recommendations made in Annual Reports to Congress related to IRS processing of identity theft cases, including assigning a single employee to coordinate IDT cases involving multiple issues or multiple years;
- Push for the IRS to develop procedures to assist victims of large-scale data breaches; and
- Collaborate with the IRS to thoroughly examine the impact of the accelerated due dates of information reporting.

¹⁷ IRS CDW, Information Returns Master File (as of cycle 201712). For processing years 2016 and 2017, cycle 12 is the week ending March 24, 2016, and March 23, 2017, respectively.

Area of Focus #11 **While the IRS Continues to Do a Reasonable Job in Administering the Affordable Care Act (ACA), Taxpayers Still Encounter Difficulties Attempting to Comply With the Complex Provisions**

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*

DISCUSSION

The IRS is charged with implementing certain provisions of the Patient Protection and Affordable Care Act of 2009 (ACA).² To ensure that taxpayer rights are protected, TAS has been actively involved with the implementation of the ACA provisions. Some of the issues we reviewed include:

- The IRS halted plans to reject “silent returns” in response to an executive order;
- TAS’s Premium Tax Credit (PTC) case receipts decreased significantly in fiscal year (FY) 2017;
- A commercial tax preparation software program incorrectly calculated PTC or failed to submit Form 8962, *Premium Tax Credit (PTC)*;
- Taxpayers had difficulty receiving advanced PTC (APTC) due to “failure to reconcile” flags; and
- Uncertainty regarding how the IRS will propose and assess the employer shared responsibility payment (ESRP) under Internal Revenue Code (IRC) § 4980H.

Background: Filing Season 2017 Overall Results

ACA was enacted by Congress in 2010 to provide affordable health care coverage for all Americans. To accomplish this goal, ACA provides targeted tax credits for low income individuals and for small businesses, while imposing a personal responsibility on individuals to have health coverage.³ During the 2017 filing season, eligible individual taxpayers claimed the PTC on tax year (TY) 2016 returns. Figure 3.11.1 provides preliminary data through April 27, 2017, regarding the extent to which individual taxpayers claimed the PTC on their TY 2016 returns.

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 Patient Protection and Affordable Care Act of 2009 (ACA), Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act (HCERA) of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

3 ACA, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by HCERA, Pub. L. No. 111-152, 124 Stat. 1029 (2010); Senate Finance Committee, *Description of Policy Options: Expanding Health Care Coverage: Proposals to Provide Affordable Coverage to All Americans* (May 14, 2009).

FIGURE 3.11.1, Reporting of the Premium Tax Credit on Forms 8962 for TY 2016 Returns Through April 27, 2017⁴

Returns Filed with Forms 8962, <i>Premium Tax Credit (PTC)</i>	5.1 million
Total PTC Amount Claimed	\$17.6 billion
Average PTC Amount Claimed Per Return	\$3,455
Returns Reporting Advanced PTC	4.9 million (96% of returns with Forms 8962)
Total Advanced PTC Reported	\$19.4 billion
Prepared Returns Filed with Forms 8962 (Paid or Volunteer)	3.2 million (63% of returns with Forms 8962)

Individual taxpayers who did not have minimum essential coverage (MEC) or qualify for an exemption were required to make an individual shared responsibility payment (ISRP) on their TY 2016 returns.⁵ Figure 3.11.2 provides preliminary data through April 27, 2017, on the reporting of ISRPs on TY 2016 returns.

FIGURE 3.11.2, Reporting of the Individual Shared Responsibility Payments on TY 2016 Returns Through April 27, 2017⁶

Returns with ISRP	4.0 million
Average ISRP	\$708
Prepared Returns Reporting ISRP (Paid or Volunteer)	2.6 million (65%)
Returns Filed with Forms 8965, Health Coverage Exemptions	10.7 million
Returns Filed with Forms 8965 Claiming Household Coverage Exemption (Form 8965 Part II)	3.9 million
Returns Filed with Forms 8965 Claiming Coverage Exemption (Form 8965 Part III)	8.0 million
Prepared Returns Filed with Forms 8965	5.8 million (54%)

The IRS Halted Plans to Reject Silent Returns in Response to Executive Order

On January 20, 2017, the President signed an executive order requiring all agencies in the executive branch with responsibilities under ACA to take actions to minimize the economic and regulatory burdens imposed by the Act. Specifically, the order stated that the agencies should exercise all authority and discretion to waive, defer, grant exemptions from, or delay the implementation of any requirement of the Act that would impose burden.⁷

4 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) TY 2016 (May 2017). This preliminary data is based on returns that had posted as of April 27, 2017, and is subject to change as the IRS reviews the data, processes additional TY 2016 returns, and conducts compliance activities.

5 IRC § 5000A.

6 IRS, CDW, IRTF TY 2016 (May 2017). This preliminary data is based on returns that had posted as of April 27, 2017, and is subject to change as the IRS reviews the data, processes additional TY 2016 returns, and conducts compliance activities. Some returns indicated both coverage exemptions for household (Part II on Form 8965) and coverage exemptions for individuals (Part III on Form 8965). As a result, the combined volumes may exceed the total number of returns with Form 8965.

7 White House, Executive Order, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal* (Jan. 20, 2017); ACA, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

In response to the executive order, the IRS announced on February 15, 2017, that it halted its plan to reject electronically filed “silent returns.”⁸ Silent returns are ones for which the taxpayer did not 1) check the box on the return to indicate the tax family had full-year health care coverage, 2) complete and attach Form 8965, *Health Coverage Exemptions*, to show tax family members had exemptions from health coverage requirements, or 3) self-assess an ISRP on the return.⁹

While other factors may have influenced filing behavior, Figure 3.11.3 compares the reporting of the ISRP during this filing season to the same period last filing season.

FIGURE 3.11.3, Comparison of Reporting of the Individual Shared Responsibility Payments on TY 2016 Through April 27, 2017 to TY 2015 Through April 28, 2016¹⁰

	TY 2016 (Through April 27, 2017)	TY 2015 (Through April 28, 2016)
Returns With ISRP	4.0 mil	5.6 mil
Prepared Returns Reporting ISRP (Paid or Volunteer)	2.6 mil (65%)	3.6 mil (64%)
Returns Filed With Forms 8965, <i>Health Coverage Exemptions</i>	10.7 mil	11.0 mil
Returns Filed With Forms 8965 Claiming Household Coverage Exemption (Form 8965 Part II)	3.9 mil	3.2 mil
Returns Filed With Forms 8965 Claiming Coverage Exemption (Form 8965 Part III)	8.0 mil	7.8 mil
Prepared Returns Filed With Forms 8965	5.8 mil (54% of returns with Form 8965)	6.0 mil (54% of returns with Form 8965)

The most notable change is the 27 percent drop in returns filed reporting the ISRP. The remaining amounts appear fairly consistent with the previous filing season amounts. In addition, there were just over eight million TY 2016 silent returns filed through April 27, 2017, a slight increase over the number of TY 2015 silent returns filed through April 28, 2016.¹¹

As of the date of printing, the IRS is in the process of assessing various options to address silent returns filed in past as well as future filings, including the reinstatement of the plans to reject electronically filed silent returns, the issuance of educational or soft notices, and the issuance of penalty assessment notices. The National Taxpayer Advocate supports any efforts to reinstate plans to reject electronically filed silent returns as well as issue educational and soft notices. These options would help the taxpayer avoid future

8 IRS Statement on Silent Returns (Feb. 15, 2017); IRS, *Individual Shared Responsibility Payment Provision* (Feb. 15, 2017), <https://www.irs.gov/affordable-care-act/individuals-and-families/individual-shared-responsibility-provision>.

9 IRM 3.12.3.14.1, *Error Code 157 (CE) Shared Health Care Responsibility Payment and Checkbox Validation (SRP)* (Jan. 1, 2017).

10 IRS, CDW, IRTF TY 2016, through April 27, 2017 (May 2017); WISS, ACA Fact Sheet 05-31-2016; National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 136–43. Note that some returns indicated both coverage exemptions for household (Part II on Form 8965) and coverage exemptions for individuals (Part III on Form 8965). As a result, the combined volumes may exceed the total number of returns with Form 8965.

11 IRS, CDW, IRTF TYs 2015 and 2016 (June 2017). This data is preliminary based on cycle 17 for tax years 2015 (returns processed through Apr. 28, 2016) and 2016 (returns processed through Apr. 27, 2017). TAS Research used the definition of silent returns from IRM 3.12.3.14.1, *Error Code 157 (CE) Shared Health Care Responsibility Payment and Checkbox Validation (SRP)* (Jan. 1, 2017). In some cases, taxpayers who filed apparent “silent returns” may have actually had their coverage substantiated by an information document, even though the return did not indicate minimum essential coverage; therefore, IRS compliance actions would not be necessary.

compliance problems. In addition, we have recommended that the IRS require commercial software vendors to program checks into their products to prevent the preparation of silent returns.¹²

TAS Premium Tax Credit (PTC) Case Receipts Decreased Significantly in FY 2017

After experiencing a sharp increase in PTC case receipts during FY 2016, TAS is seeing a significant decrease in these cases in FY 2017 through April 30, 2017. During FY 2016, PTC cases quickly became the fourth highest category of TAS cases. In FY 2017 through April 30, 2017, TAS received 3,104 cases with PTC issues, a 56 percent decrease from same period in FY 2016. This considerable decrease caused PTC cases to drop from being the fourth highest category of cases in FY 2016 to the sixth highest category in FY 2017 through April 7, 2017.¹³ In about 67 percent of the PTC cases, the tax return was in the Submission Processing Error Resolution (ERS)/Reject unit.¹⁴

A Commercial Tax Preparation Software Program Incorrectly Calculated PTC or Failed to Submit Form 8962, *Premium Tax Credit (PTC)*

In March 2017, the TAS ACA Rapid Response Team received an issue elevated through the Systemic Advocacy Management System (SAMS) regarding tax preparation software errors in preparing PTC returns.¹⁵ Specifically, one TAS local office elevated an issue that impacted approximately 25 cases in that particular office, but which may potentially have wider nationwide impact.¹⁶ The commercial tax preparation software used by a Volunteer Income Tax Assistance (VITA) partner incorrectly calculated PTC or failed to submit Form 8962, *Premium Tax Credit (PTC)*. Both the Stakeholder Partnerships, Education and Communication organization in the IRS Wage and Investment Division and the software provider were aware of the issue. The software provider has claimed to have corrected the problem that it estimates could have impacted up to 2,279 returns. To reduce the burden on impacted taxpayers, TAS issued internal guidance to TAS case advocates.¹⁷

Taxpayers Had Difficulty Receiving Advanced PTC (APTC) Due to “Failure to Reconcile” Flags

Taxpayers who receive advanced PTC (APTC) are required to reconcile the amount of the APTC received with the amount of PTC to which they are entitled on Form 8962, *Premium Tax Credit (PTC)*. Failure to reconcile renders a taxpayer ineligible to receive additional APTC in subsequent years.¹⁸ The IRS provides “flags” to the marketplace informing them of taxpayers who have failed to reconcile. These flags are eliminated once the taxpayer files either an original or amended return with Form 8962. However, there may be a delay between the posting of the Form 8962 and when it is available for the

12 Email from Wage & Investment Division (W&I) to TAS (June 2, 2017); Meeting between W&I and TAS (June 7, 2017).

13 In FY 2016, TAS received 10,910 cases with PTC issues. In comparison, TAS received 3,318 PTC cases in FY 2015 – an approximately 229 percent increase over a one-year period. National Taxpayer Advocate 2016 Annual Report to Congress 522 (TAS Case Advocacy, *Figure 4.1.4, Top 10 Issues for Cases Received in TAS, FYs 2015-2016*); Business Performance Management System (BPMS), Receipts - Core Issues by Business Operating Division (BOD) & Criteria – Cumulative, FY 2016: 1- October through 12- September (Oct. 1, 2016); Business Performance Management System (BPMS), Receipts - Core Issues by BOD & Criteria – Cumulative, FY 2015: 1- October through 12- September (Oct. 1, 2015); National Taxpayer Advocate 2016 Annual Report to Congress 266-76 (Most Serious Problem: Affordable Care Act (ACA): The IRS Has Made Progress in Implementing the Individual and Employer Provisions of the ACA But Challenges Remain).

14 Business Performance Management System (BPMS), Receipts - Core Issues by Business Operating Division (BOD) & Criteria – Cumulative, FY 2017: 1–October through 7–April (May 1, 2017).

15 Systemic Advocacy Management System (SAMS) issue 35850.

16 Taxpayer Advocacy Management Information System (TAMIS) case numbers for the approximate 25 cases are on file with TAS.

17 SAMS 35850; TAS ACA Rapid Response Team, *ACA Related Issues and Concerns, Week Ending March 24, 2017*.

18 IRM 21.6.3.4.2.13, *Premium Tax Credit* (Feb. 15, 2017).

system issuing the flags to the marketplace. Because of these timing differences, some marketplaces are allowing taxpayers to attest to filing a reconciling tax return and then subsequently verifying the attestation. The Centers for Medicare and Medicaid Services and one state marketplace contacted the IRS about this issue and, as a result, Accounts Management issued guidance to customer service representatives (CSRs) on how to assist impacted taxpayers. For those taxpayers who reconciled but are caught in a timing window, CSRs are told to inform the taxpayer of when the data posted and provide an estimate of when the information will be sent to the marketplace. Taxpayers are advised to order a return transcript as proof, but this will only help those taxpayers who reconciled on an original return, because amended return data is not populated on transcripts.¹⁹

There Is Uncertainty Regarding the Assessment of the Employer Shared Responsibility Payment Under Code Section 4980H

In addition to the existing provisions impacting individuals, some provisions of the ACA impacting employers became effective in TY 2015. For example, certain employers, referred to as Applicable Large Employers (ALEs), are subject to the ESRP provisions in IRC § 4980H.

ESRP under IRC § 4980H(a) will be assessed if an ALE did not offer MEC to at least 95 percent of its full-time employees (and their dependents) and at least one of its full-time employees was allowed a PTC. The amount of the ESRP under IRC § 4980H(c) is \$2,000 per full-time employee per year (determined on a monthly basis).²⁰

Even if an ALE did offer MEC to at least 95 percent of its full-time employees (and their dependents), ESRP under IRC § 4980H(b) will be assessed if one or more of its full-time employees was allowed PTC. The amount of the ESRP under IRC § 4980H(b) is \$3,000 per employee who was allowed a PTC (determined on a monthly basis).²¹ For any month, the amount of the ESRP under IRC § 4980H(b) may not exceed an amount equal to what the ALE would have been liable for under IRC § 4980H(a), if the ALE had been liable for such a payment for the month.

The IRS relies on information reports to verify data relevant to the ESRP liability. For example, ALEs must furnish Form 1095-C, *Employer-Provided Health Insurance Offer and Coverage Insurance*, by February 28 (March 31 if filing electronically). If the IRS receives incomplete or inaccurate data, it may erroneously assess ESRPs on ALEs, which can be costly and time-consuming for both employers and the IRS to rectify. It appears the IRS has addressed some of the glitches from the first year processing such information returns — the average rejection rate for ACA information reporting forms significantly declined from 5.6 percent in TY 2015 to 1.1 percent in TY 2016.²²

Even though these provisions became effective in TY 2015, the IRS has yet to set forth procedures it will use to propose and assess the ESRP under IRC § 4980H. Employers need to know how they will be notified of any proposed ESRP, how long they will have to respond, and whether they may

19 Email from Wage & Investment Division to TAS (Dec. 23, 2016); SERP Alert IPU 16U1764 (Dec. 19, 2016); IRM 21.6.3.4.2.13.8, *Failure to Reconcile Advanced Payment of the Premium Tax Credit* (Dec. 19, 2016).

20 IRC § 4980H(c)(1). The ESRP provisions provide an inflation adjustment mechanism beginning in years after 2014. IRC § 4980H(c)(5).

21 IRC § 4980H(b)(1).

22 IRS response to TAS information request (June 8, 2017).

request a pre-assessment appeal. However, with the President's Executive Order²³ that directs agencies to minimize the burdens imposed by the ACA, it is unclear whether the IRS will set forth procedures related to the ESRP.

CONCLUSION

As the IRS continues to make significant progress on the implementation of both the individual and business provisions of the ACA, the National Taxpayer Advocate will ensure that taxpayer rights are protected. TAS will address ACA-related issues as they arise and identify systemic issues. We commit to immediately assign any systemic issues that arise to the TAS ACA Rapid Response Team. We encourage both internal and external stakeholders to report any suspected ACA systemic issues on SAMS.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Advocate for taxpayer rights for any actions or inactions the IRS plans to take in response to the ACA executive order issued on January 20, 2017;
- Elevate and address ACA issues to the TAS ACA Rapid Response Team;
- Evaluate PTC cases to determine why it continues to be a top ten issue for TAS case receipts; and
- Review any procedures the IRS sets forth for assessing the ESRP.

23 Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal* (Jan. 20, 2017), <https://www.whitehouse.gov/the-press-office/2017/01/20/executive-order-minimizing-economic-burden-patient-protection-and>.

Area of Focus #12 **IRS Third Party Contact (TPC) Notices Should Be More Specific, Actionable, and Effective**

TAXPAYER RIGHTS IMPACTED¹

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

DISCUSSION

Third Party Contact (TPC) Notices Should Encourage Taxpayers to Volunteer Information to Avoid TPCs

The IRS is generally required by Internal Revenue Code (IRC) § 7602(c) to give taxpayers reasonable advanced notice before making third party contacts (TPC). This advance notice is supposed to encourage the taxpayer to volunteer information that would, in many cases, make the TPCs unnecessary, and avoid damage to the taxpayer's business and reputation.²

The IRS Has Discontinued Actionable TPC Notices in Favor of Vague Notices

The IRS used to issue a general TPC notice followed by a more detailed one.³ Today, it only provides a general notice, which is included in Publication 1, *Your Rights as a Taxpayer*. Publication 1 is so vague that at least one court held it does not even satisfy the statutory requirement.⁴ Publication 1 does not request information from the taxpayer. Nor does it indicate whether the IRS plans to make TPCs in his or her particular case. It merely warns “we sometimes talk with other persons if we need information that you have been unable to provide.” Moreover, Publication 1 is typically delivered before the IRS has requested any information from the taxpayer.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 See, e.g., S. REP. No. 105-174, at 77 (1998) (“taxpayers should have the opportunity to resolve issues and volunteer information before the IRS contacts third parties.”); T.D. 9028, 67 Fed. Reg. 77,419, 77,420 (Dec. 18, 2002) (TPC procedures “enable a taxpayer to come forward with information required by the IRS before third parties are contacted.”). See also Chief Counsel Advice (CCA) 09047 (2001) (“[T]he congressional intent behind these requirements is to provide taxpayers with the opportunity to come forward with information before third parties are contacted and the means to address any reputational concerns arising from such contacts...”); Internal Revenue Manual (IRM) 4.11.57.2(3) (Jan. 17, 2014) (“[T]he intent behind this statute is to prevent the Service from disclosing to third parties that the taxpayer is the subject of a Service action without first providing reasonable notice to the taxpayer and allowing the taxpayer an opportunity to provide the information and resolve the matter.”). In addition, IRC § 7602(c)(3) requires the IRS to provide “periodic” reports of third party contacts. Doing so would help taxpayers mitigate damage to their reputations, but the IRS does not provide periodic reports to taxpayers. See National Taxpayer Advocate 2015 Annual Report to Congress 123 (Most Serious Problem: *IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers’ Businesses and Reputations*).

³ See, e.g., IRM 4.10.1.6.12.2.1(5) (May 14, 1999); *Status of IRS Reform: Hearing Before the S. Finance Comm.*, 106th Cong. 46 (2000) (statement of Charles Rossotti, Commissioner, Internal Revenue).

⁴ See *Baxter v. United States*, 117 A.F.T.R.2d (RIA) 694 (N.D. Cal. Feb. 8, 2016), *appeal docketed*, No. 16-16021 (9th Cir. June 7, 2016).

⁵ See, e.g., IRM 4.10.2.7.4.2 (Apr. 2, 2010) (requiring Pub. 1 to be included with the initial contact letter).

By contrast, IRS Letter 3164-G, (*Exam-3 Third Party Contact*), states “we previously requested the following information from you. [information] [date requested]... Since you have been unable to provide the requested information, we are writing to tell you that we may contact other persons to obtain this and any related information.” Letter 3164-G would be even more informative if it provided a reasonable period within which the taxpayer could provide the information and avoid the TPC. However, the IRS has discontinued its use of Letter 3164-G and similar letters that provide specific and actionable information to taxpayers.⁶

Specific Notices Would Be More Effective

If the IRS wants the TPC notices to be effective, then it should design them so that they motivate taxpayers to provide the information that it would otherwise have to obtain from third parties. A tailored notice that identifies specific information that the IRS is about to contact third parties to obtain if not provided by the taxpayer first, is likely to be more effective than the boilerplate notice provided by Publication 1 that the IRS might someday contact third parties. Thus, if the IRS wants the taxpayer to provide the information, it should revert to its prior practice of using more specific and timely TPC notices like Letter 3164-G.

Direction in the Internal Revenue Manual (IRM) Is a Poor Substitute for Actionable Notices

The IRM provides generic statements such as “[G]enerally, contacts with third parties are made when the examiner is unable to obtain the information from the taxpayer or when it is necessary for the examiner to verify the information provided by the taxpayer.”⁷ However, the IRM does not actually require IRS employees to first request the information from the taxpayer or to identify what information, if any, the IRS plans to seek from third parties. A TAS review found that in cases where the IRS made TPCs, IRS employees did not first ask taxpayers for the specific information at issue in 22.8 percent of field examination cases and 11.1 percent of field collection cases.⁸ Even if the IRS has made a broad request that technically covers the information it plans to seek from third parties, such a request is unlikely to be as effective as a notice that identifies the specific subset of information that, if provided by the taxpayer, would alleviate the need for the IRS to contact third parties.

6 IRM 4.11.57.4.1.1 (Dec. 20, 2011) provides that Letter 3164-G and other similar letters are “no longer applicable because notice is given via Pub 1.” However, apparently-obsolete IRM 4.31.5.14.4 (May 31, 2005) still provides for its use and the IRS updated the letter in 2016. Although legislative history suggests the TPC notice could “be provided as part of an existing IRS notice,” it does not require the notice to be vague. H. REP. NO. 105-599, at 277 (1998) (Conf. Rep.). Rather, the specific information provided by Letter 3164-G could be included in the existing IRS information document request (e.g., Letter 4564, *Information Document Request (Exam)* and Form 9297, *Summary of Taxpayer Contact (Collection)*) or the existing notices that confirm the IRS’s receipt or non-receipt of the taxpayer’s response to requests for information.

7 IRM 4.11.57.4(1) (Dec. 20, 2011) (emphasis added). See also IRM 4.32.2.7.3.2(3) (June 8, 2012) (“Examiners should attempt to obtain the information in writing from the promoter before contacting any third parties.”); IRM 25.27.1.3 (Jan. 16, 2014) (“It is the Service’s practice to obtain information relating to a liability or collectability determination directly from the taxpayer whenever possible.”); IRM 4.10.3.2.1.4(2) (Mar. 1, 2003) (“Information will be collected, to the greatest extent practicable, directly from the taxpayer to whom it relates... Information about taxpayers collected from third parties will be verified to the extent practicable with the taxpayer before action is taken.”).

8 National Taxpayer Advocate 2015 Annual Report to Congress 123 (Most Serious Problem: *IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers’ Businesses and Reputations*).

The IRS Was Unresponsive When the National Taxpayer Advocate Raised Concerns About TPC Notices

The National Taxpayer Advocate has already recommended that the IRS:

Include with a TPC notice a specific request for information that would make the TPC unnecessary, except where the IRS employee documents that a TPC notice exception applies or that requesting the information from the taxpayer would be pointless (*e.g.*, because the IRS needs to verify information already provided).⁹

The IRS's formal response stated:¹⁰

Recommendation Not Adopted. Our current procedures require the examiner/officer to initially request information pertaining to an audit/collection process from the taxpayers to eliminate or reduce the need to conduct a TPC. These procedures are outlined in Internal Revenue Manual (IRM) Sections 4.10.2.8.1.1.2, 4.10.2.8.2.1.2, and 5.1.10.3.2. Taxpayers receive a Form 4564, *Information Document Request* (Examination), or a Form 9297, *Summary of Taxpayer Contact* (Collection), specifying what records are needed as well as the due date for the information. During the audit/collection process, if additional information is needed, subsequent requests will be provided in writing and due dates determined on a case-by-case basis. Taxpayers can also ask clarifying questions regarding the information requested.

The IRS response does not even discuss TPC notices. It seems indifferent to the effectiveness of TPC notices in prompting taxpayers to provide the information the IRS needs. It also does not discuss how the IRS's decision to shift to vague notices is consistent with the recently-adopted Taxpayer Bill of Rights.

CONCLUSION

Actionable and specific TPC notices would be consistent with IRC § 7803(a)(3), which requires the IRS Commissioner to “ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights...” According to Publication 1, the taxpayer's *right to be informed*, includes the right to “be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.” Under current procedures, however, the IRS's vague TPC notices do not “inform” taxpayers of, or provide a “clear explanation” of, the information the IRS will seek from third parties.

In addition, the *right to privacy* includes the right to “expect that any IRS inquiry... will comply with the law and be no more intrusive than necessary.” However, TPCs will be more intrusive than necessary if the IRS continues to use vague TPC notices that do not enable the taxpayer to provide the specific information necessary to avoid TPCs. Similarly, more specific TPC notices would further the taxpayer's *right to challenge the IRS's position and be heard*, as this right includes the “... right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions.”

Moreover, if the IRS continues to use vague TPC notices, then some taxpayers will figure out what information they need to provide to avoid the TPC, but other similarly-situated taxpayers will not. As a result, vague TPC notices are inconsistent with the *right to a fair and just tax system*.

9 National Taxpayer Advocate 2015 Annual Report to Congress 123, 136. The National Taxpayer Advocate suggested the IRS could return to its prior practice of using Letter 3164-G (DO), (*Exam-3*) *Third Party Contact Letter*, and Letter 3164-F (DO), (*Exam-2*) *Third Party Contact Letter*, for this purpose. *Id.*

10 National Taxpayer Advocate 2017 Objectives Report to Congress vol. 2, 72-79.

Finally, giving taxpayers every opportunity to avoid a disclosure to a third party is consistent with a taxpayer's *right to confidentiality*. Thus, the IRS's decision to use vague notices is inconsistent with five of the ten taxpayer rights adopted by the IRS.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Advocate for the IRS to revisit its decision to rely on vague TPC notices; and
- Review recent complaints from taxpayers about the IRS's TPC procedures and address the problems arising in TAS cases.

Area of Focus #13 **While the IRS Has Made Encouraging Progress on Its Enterprise Case Management (ECM) Project, Much Work Remains to Be Done for the Project to Succeed**

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Quality Service*
- *The Right to a Fair and Just Tax System*

DISCUSSION

The National Taxpayer Advocate has previously raised several issues relating to the IRS's development of an enterprise case management (ECM) project.² The IRS has many information technology (IT) challenges, including the two oldest IT systems, each nearly six decades old, in the entire federal government.³ It also has somewhere between 60 and approximately 200 different case management systems.⁴ 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 difficulty for IRS employees, including those in TAS, to perform their jobs efficiently and provide quality service to taxpayers.

As a part of its "Future State" vision, the IRS is currently pursuing an ECM project to unify these disparate case management systems and address the issues of automation, records management, and integration. The IRS has identified 63 case management systems to include in this project.⁵ The ECM project offers a future vision for consolidated case management that will address the need to modernize, upgrade, and consolidate multiple aging IRS systems. Few of these systems communicate with one another, and none provides an electronic substitute for the paper case file (*i.e.*, there are reams of paper supplementing whatever records are included in the electronic system).

The IRS's current case management system structure requires employees to retrieve data from many systems manually, which requires maintaining both paper and electronic records. Employees must transcribe or otherwise import information from paper and other systems into their own case

- 1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR that was adopted by the IRS 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 National Taxpayer Advocate 2016 Annual Report to Congress 31-3, 109-20.
- 3 See Government Accountability Office (GAO), GAO-16-468, Information Technology: Federal Agencies Need to Address Aging Legacy Systems (May 2016) (discussing aging IT systems throughout the government and listing the IRS's Individual Master File (IMF) and Business Master File (BMF) as the two oldest investments or systems at 56 years old each).
- 4 See *IRS Legacy Information Technology Systems: Hearing Before the H. Subcomm. On Government Operations of the H. Comm. on Oversight and Government Reform*, 114th Cong. 4 (2016) (written testimony of Terence Milholland, IRS Chief Technology Officer) (noting that there are more than 60 aging IRS case management systems), <https://oversight.house.gov/wp-content/uploads/2016/05/2016-05-25-Milholland-Testimony-IRS.pdf>; Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2016-20-094, *Annual Assessment of the Internal Revenue Service Information Technology Program 22* (Sept. 2016) (noting that the IRS maintains approximately 90 case management systems); Email from Director, Enterprise Case Management (ECM) to all designated ECM Business Unit Point of Contacts, which included the TAS Executive Director, Business Modernization (Mar. 11, 2016) (listing 198 case management systems). IRS response to TAS fact check (Dec. 16, 2016). See also TIGTA, Ref. No. 2014-20-071, *Information Technology: Improvements Are Needed to Successfully Plan and Deliver the New Taxpayer Advocate Service Integrated System* (Sept. 2014); TIGTA, Ref. No. 2014-20-088, *The Information Reporting and Document Matching Case Management System Could Not Be Deployed* (Sept. 2014) (both TIGTA reports note "there are more than 200 case management applications in operation across the IRS enterprise").
- 5 IRS, *Enterprise Case Management Day, Journey to the Future State* 12 (Aug. 3, 2016).

management systems, and ship, mail, or fax an estimated hundreds of thousands, if not millions, of case management files and supporting documents within or between business functions annually for activities such as case work, management approval, quality review, and responses to Appeals, Counsel, and TAS.⁶

To ameliorate these problems, ECM requires a significant investment of time and money to promote productivity and efficiency gains and to improve taxpayer service. Indeed, success of the ECM project is critical to establish online accounts to effectively serve taxpayers and their representatives.⁷ However, although the IRS requires substantial funding for IT in general and ECM specifically, it must provide a clear strategy that will assure both Congress and taxpayers that the IRS will spend this money appropriately.

While the National Taxpayer Advocate continues to support the IRS's ECM efforts and need for adequate funding, she remains concerned that:

- The IRS is not laying the foundation it needs for the ECM project to succeed by designing the project from the ground up and comprehensively engaging its employees; and
- After deciding not to complete the Taxpayer Advocate Service Integrated System (TASIS), the IRS may fail to leverage the extensive investment of time, money, and effort expended on TASIS and neglect its design work and lessons learned in the current ECM project.

The IRS Is Not Laying the Foundation It Needs for the ECM Project to Succeed by Designing the Project From the Ground Up and Comprehensively Engaging Its Employees

The IRS's ECM project involves the daunting task of consolidating 63 unique case management systems.⁸ The end goal is to develop an IRS solution for performing case management functions using a common infrastructure platform for multiple projects to share across all business units. The IRS has recently brought on new leadership to the ECM project and is in the process of soliciting information to identify products that will meet its ECM needs.⁹ The National Taxpayer Advocate commends the IRS for taking these steps. However, to accomplish this tremendous undertaking, it is critical that the IRS engage in the necessary foundational work and build the ECM project from the ground up.

The National Taxpayer Advocate firmly believes that the IRS should actively and comprehensively engage its employees at the outset of the ECM project, as TAS did when it developed TASIS, which was designed as a comprehensive replacement for its largely obsolete current case management system called the Taxpayer Advocate Management Information System (TAMIS). IRS employees are the front-line users of IRS systems, and understanding their interaction with those systems and ways to make current processes and procedures more efficient are crucial to having a more functional and polished ECM product that will maximize employee productivity. Without this critical foundational step, the ECM system, as designed, may work well for IT and make business processes faster and virtual but will not focus on what IRS employees need to better interact with and assist taxpayers, which will adversely impact taxpayers and practitioners. The National Taxpayer Advocate is unaware of any effort within the current ECM project to comprehensively engage IRS employees about their case management

⁶ See National Taxpayer Advocate 2016 Annual Report to Congress 112; National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 196.

⁷ See National Taxpayer Advocate 2016 Annual Report to Congress 31.

⁸ IRS, *Enterprise Case Management Day, Journey to the Future State 12* (Aug. 3, 2016).

⁹ For a description of the IRS Request for Information, see <https://www.fbo.gov/index?s=opportunity&mode=form&id=f2ef8e74927e11203cc978340993624e&tab=core&tabmode=list> (last visited June 8, 2017).

The end goal [of the IRS's Enterprise Case Management project] is to develop an IRS solution for performing case management functions using a common infrastructure platform for multiple projects to share across all business units.

system experiences, needs, and suggestions for improvement. In contrast, when TAS went through the TESIS design process, we learned about employee technology needs by holding dedicated town hall or workgroup meetings. TAS asked *all* of 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.

The National Taxpayer Advocate had previously suggested that the IRS consult with other federal agencies with large-scale ECM needs to gauge their experiences.¹⁰ In a recent development, the National Taxpayer Advocate has learned that the IRS plans on reaching out to other federal agencies as well as state governments to solicit opinions about their ECM experiences.¹¹ The National Taxpayer Advocate is encouraged by this step and hopes that the IRS will continue reaching out to other federal agencies, as well as tax administrators abroad, as it seeks an ECM solution.

After Understandably Deciding Not to Complete TESIS, the IRS May Fail to Leverage the Extensive Investment of Time, Money, and Effort Expended on TESIS and Neglect Its Design Work and Lessons Learned in the Current ECM Project

The National Taxpayer Advocate has recently learned the IRS does not plan to complete TESIS, which was halted in March 2014 after \$20 million was spent on it.¹² TESIS was a versatile case management system that would have replaced TAMIS, TAS's current antiquated system from the 1980s. Since 2013, Congress had identified TESIS as a major IT system and required quarterly IRS reporting on it.¹³ While we understand and appreciate the IRS's reason for not moving forward with TESIS as it seeks an ECM solution and platform that will work across the IRS, the time, effort, and \$20 million spent in developing TESIS should not go to waste. As discussed in the 2016 Annual Report to Congress, TAS worked over several years to develop more than 4,500 business requirements for TESIS.¹⁴ It is critical that the IRS leverage the extensive business requirements, development, and process design work that went into TESIS as it endeavors to find an ECM solution. The IRS can also use the lessons learned from the development of TESIS in its current ECM effort to reimagine its business processes and make them more efficient and user-friendly, thereby enabling it to thrive technologically in the 21st century.

TAS is committed to working with the IRS to develop an ECM solution and is offering its assistance with testing products as the IRS designs and programs the new ECM system. For example, we recommend the IRS test a solution to electronically submit and track Operations Assistance Requests

¹⁰ See National Taxpayer Advocate 2016 Annual Report to Congress 114.

¹¹ See IRS, *Enterprise Case Management Governance Board February Meeting* 15 (Feb. 23, 2017).

¹² See National Taxpayer Advocate 2016 Annual Report to Congress 110.

¹³ The Senate Appropriations Subcommittee on Financial Services and General Government has repeatedly included TESIS on a list of six “major information technology project activities” about which it has directed the IRS to submit quarterly reports. See S. REP. No. 114-280, at 40 (2016); S. REP. No. 114-97, at 39 (2015); S. REP. No. 113-80, at 34 (2013). In 2014, a similar provision was included in the Senate Appropriations Committee's draft report, but the draft report was not adopted for that year.

¹⁴ See National Taxpayer Advocate 2016 Annual Report to Congress 117 (Most Serious Problem: *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*).

(OARs),¹⁵ which 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.

It is also vitally important that the IRS take steps to address its aging legacy systems while it develops an ECM system, which could take several years. In the meantime, the IRS requires funding, which the National Taxpayer Advocate recommends that Congress provide, to maintain its current aging case management systems, many of which desperately need upgrading to provide effective tax administration and quality service to taxpayers. For example, TAS's antiquated TAMIS case management system requires upgrades to allow TAS's case advocates to do their jobs effectively and assist taxpayers.

Although the IRS requires substantially more funding for IT in general and ECM specifically, it must articulate a clear strategy that will assure both Congress and taxpayers that this money will be spent appropriately. TAS encourages Congress to require the IRS to submit an IT strategic plan to not only show its direction but also identify the talent gaps it has. Congress could then hold oversight hearings but should not simply hand the IRS a blank check.

CONCLUSION

To ensure the best chance of success for both the individual ECM project and its broader "Future State" vision, the IRS's ECM effort requires comprehensive employee engagement from the ground up and leveraging the extensive investment of time and money expended on TESIS. It also requires congressional funding and oversight.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Collaborate with the IRS in the ECM development process, particularly by lending its case management building expertise and sharing TESIS's relevant business requirements, design work, and lessons learned from this process; and
- Work with the IRS to assist with the testing of new products, such as an electronic OAR process, as the IRS designs and programs the new ECM system.

¹⁵ An Operations Assistance Request (OAR) is the form that TAS uses to request the IRS to take action on a case when TAS lacks the statutory or delegated authority to perform the action.

Efforts to Improve Taxpayer Advocacy

Advocacy on behalf of taxpayers is an ongoing and ever-evolving process at TAS. The efforts we are focused on now and into the next year revolve around getting back to the basics. This includes enhancing our outreach to provide better service; training senior leaders how to specifically assist emotional customers and resolve difficult situations; implementing secure digital messaging; improving TAS's website, www.TaxpayerAdvocate.irs.gov; effectively using the National Tax Forums, case resolution rooms, and focus groups; building upon the newly delegated authority to intake advocates; opening new TAS offices in currently underserved locations; training employees and developing leaders within TAS; and planning for the third International Conference on Taxpayer Rights in Spring 2018.

TAS REMAINS COMMITTED TO COMMUNITY OUTREACH

Local Taxpayer Advocates (LTAs) represent the National Taxpayer Advocate at the local level and are responsible for informing local communities and internal stakeholders about TAS and its mission to advocate on behalf of taxpayers. TAS outreach plays a critical part in building relationships with our partners.

TAS offices added over 4,600 planned outreach activities for fiscal year (FY) 2017, surpassing FY 2016's efforts.¹ Outreach in FY 2018 will continue to focus on raising awareness of emerging tax law issues, identifying local initiatives, developing and maintaining congressional relationships and reaching external audiences, and educating IRS employees on taxpayer rights.

Problem Solving Days Outreach Events Support the Back to Basics Initiative of TAS

In order to reach the TAS underserved population, LTAs will be hosting Problem Solving Day events in their local areas, where LTAs and case advocates will offer taxpayers and their representatives the ability to present unresolved IRS issues, taking steps to resolve them onsite. While the IRS is scaling back on face-to-face interactions with taxpayers as part of its "Future State," TAS wants to make sure we provide taxpayers with a way to reach us if they need help. Case advocates will be prepared to advocate and resolve taxpayer issues on the spot, if possible. LTAs will network with community stakeholders and personally conduct outreach, incorporating problem solving day activities into outreach events when possible.

LTAs have been instructed to seek out outreach opportunities in their communities — either those already established or by creating new ones. Typical events might include annual practitioner continuing education sessions or congressional resource fairs that bring together groups of taxpayers or those who represent taxpayers before the IRS. LTAs will promote the problem solving occasions in advance to make sure taxpayers are aware of the opportunity to meet face-to-face with TAS employees to discuss unresolved issues with the IRS. These face-to-face interactions will also provide TAS employees the chance to educate taxpayers and their practitioners about their rights when dealing with the IRS. For FY 2017, LTAs will explore these opportunities with the expectation that at least one event is completed by the end of the first quarter in FY 2018.

¹ TAS, *National Outreach Events Breakdown for 2017 Report*, May 1, 2017 (on file with TAS).

Identifying and Resolving Specific Issues Affecting Local Populations Improve Taxpayer Service

Continuing our focus on underserved taxpayers, LTAs will identify specific tax issues impacting their community, state, or region. These may be new issues or continuation of a current initiative. If continuing with a previous topic, LTAs must consider whether identifying a particular aspect of the issue or targeting a specific audience would be beneficial in the subsequent year.

When determining unique and significant issues, LTAs will pay particular attention to congressional and other local cases they have received, the interactions they have had with local congressional offices, the issues raised by the Geographical Leadership Communities, as well as issues revealed through recent community outreach. Some of the key issues that LTAs plan to address in outreach efforts include educating taxpayers about their responsibilities under the Affordable Care Act (ACA); educating and advocating for taxpayers affected by new legislation in the Protecting Americans from Tax Hikes (PATH) Act of 2015;² educating and advocating for taxpayers affected by new legislation in the Fixing America's Surface Transportation (FAST) Act,³ and advocating for taxpayers subject to the IRS Private Debt Collection (PDC) program.

Focus for Fiscal Year 2018

In FY 2018, TAS will:

- Ensure LTA offices schedule a “Problem Solving Day” event each quarter, which includes Taxpayer Advocate Group Managers, Lead Case Advocates, and Case Advocates who will meet with attendees and provide immediate service;
- Identify new organizations, locally represented, for personal outreach opportunities, to augment outreach to existing community organizations already familiar with TAS;
- Raise awareness of and advocate for taxpayer rights;
- Develop materials for LTAs and others to use in outreach and education on topics including:
 - Changes to tax returns involving the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC);
 - Expanded EITC due diligence requirements;
 - New passport revocation provisions; and
- Advocate for taxpayers subject to the IRS PDC program.

² See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV (2015) (Protecting Americans from Tax Hikes Act of 2015, hereinafter - PATH Act). The PATH Act requires the IRS to not release refunds for returns that claim the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit until Feb. 15th and expands the EITC due diligence requirements under Internal Revenue Code (IRC) § 6695 to now include the Child Tax Credit and the American Opportunity Education Credit. Additionally, the PATH Act prohibits individuals from filing amended returns to claim EITC, the Child Tax Credit, or the American Opportunity Education Credit for prior years that a qualifying child did not have a Social Security Number (and ITIN if claiming the Child Tax Credit or the American Opportunity Education Credit) and penalizes individuals for fraudulently claiming those credits. See also Area of Focus: *TAS Continues to Pursue Improvements to the IRS's Administration of the Earned Income Tax Credit, Particularly With Recent Changes to the Law*, *supra*.

³ Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, Div. C, Title XXXII, §§ 32101 and 32102, 129 Stat. 1312, 1729-32 (2015) (hereinafter FAST Act). Among other provisions, the FAST Act requires the Department of State (DOS) to deny a passport application and allows it to revoke or limit a passport if the IRS certifies a taxpayer's “seriously delinquent tax debt” (codified at IRC § 7345). For a detailed discussion, see Area of Focus: *The IRS's Certification Program Related to Denial or Revocation of Passports Impairs Taxpayer Rights*, *supra*. Additionally, the FAST added subsections (c) and (h) to IRC § 6306(c)(1), which requires the IRS to enter into qualified tax collection contracts for the collection of “inactive tax receivables.” For a detailed discussion, see Area of Focus: *The Design of the IRS's Private Debt Collection (PDC) Program Will Disproportionately Burden Taxpayers in Economic Hardship and Impose Unnecessary Costs on the Public Fisc*, *supra*.

TAS ESTABLISHES EMPATHY IN ACTION TEAM TO ENHANCE SERVICE TO TAXPAYERS

As part of our “Back to Basics” approach for this year, Case Advocacy leadership established the Empathy in Action team comprised of TAS senior leaders experienced in assisting emotional customers and resolving difficult situations. To ensure that LTAs and their staff are best equipped to handle the complex needs of taxpayers in their communities, the team is developing training focused on using empathy to assist case advocacy employees in helping taxpayers suffering from various hardships.

This training will help provide foundational building blocks focused on helping employees improve their awareness of the taxpayers’ circumstances, providing techniques to connect with taxpayers, and responding with appropriate tact in providing advocacy. By actively listening to taxpayers, understanding why they are concerned or upset, and showing empathy in presenting solutions, our case advocates will be able to take appropriate actions to help taxpayers with their unique needs.

Focus for Fiscal Year 2018

In FY 2018, TAS will:

- Deliver quarterly training to TAS Case Advocacy leadership, who will then deliver the training to their employees; and
- Deliver targeted empathy training to TAS employees so they can connect better with taxpayers and understand the unique challenges they face.

TAS IS PILOTING A TAXPAYER DIGITAL COMMUNICATIONS (TDC) PROJECT⁴

TAS is participating in a TDC pilot project, which began in the third quarter of FY 2017. This project offers taxpayers the ability to communicate and share information with their TAS case advocates using a secure, web-based portal without the need to mail or fax documents. The pilot is designed to test whether TDC enhances communication and information sharing between TAS employees and taxpayers. This project is taking place in four TAS offices,⁵ with taxpayers participating by invitation only, and includes EITC and levy cases. The goals of testing EITC cases is to see if taxpayers can create online accounts and clear the IRS’s multi-factor verification process, which will be necessary for all digital communication with the IRS.⁶ Historically, taxpayers have been reluctant to use government digital services.⁷ Nevertheless, the data TAS collects from this pilot will shed light on the ability of TAS’s EITC taxpayers⁸ to participate in the IRS’s “Future State” vision of online digital communication. TAS will gather data on every step of the process, including the e-authentication process and ease and

4 Interim Guidance Memorandum (IGM), *Taxpayer Digital Communications (TDC) Pilot* (Apr. 13, 2017), https://www.irs.gov/pub/foia/ig/spder/tas_13_0417_001_tdc_igm_.pdf.

5 The pilot began running in early April and will run until September 2017, and may continue longer if needed, in the TAS Dallas, Nashville, New Orleans and Cleveland offices. Employees in the four offices received face-to-face training between March 28 and April 25, 2017 and began offering TDC to taxpayers in TAS starting on April 3, 2017.

6 For a detailed discussion of the pilot, see Area of Focus: *TAS Remains Committed to the Taxpayer Advocate Service Integrated System (TASIS)*, *supra*.

7 See National Taxpayer Advocate 2016 Annual Report to Congress 121-37 (Most Serious Problems: *Online Accounts: Research Into Taxpayer and Practitioner Needs and Preference Is Critical As the IRS Develops an Online Taxpayer Account System*) (discussing the IRS’s lack of overarching strategy for the online account that is based on an understanding of taxpayer skills and abilities, as well as their needs and preferences for the various modes of receiving taxpayer service).

8 National Taxpayer Advocate 2016 Annual Report to Congress 139 n.9 (Most Serious Problem: *Earned Income Tax Credit (EITC)*).

frequency of system use. TAS expects this data to assist in better understanding the ability of taxpayers to participate in the IRS online applications with Secure Access e-authentication requirements.⁹

Focus for Fiscal Year 2018

In FY 2018, TAS will:

- Evaluate the effectiveness of TDC and expand the system if it proves successful; and
- Identify ways to improve TDC service.

COMMUNICATIONS, STAKEHOLDER LIAISON AND ONLINE SERVICES (CSO) INITIATIVES IMPROVE TAXPAYER ADVOCACY AND SERVICE

TAS Continues to Update Its Website, www.TaxpayerAdvocate.irs.gov, With New and Improved Information

In January 2015, TAS launched a significant update to its website, www.TaxpayerAdvocate.irs.gov. Built with responsive design, the site adapts to any device and better serves the growing population of taxpayers using mobile devices as their primary or only means to access the internet. The website helps taxpayers be better informed tax consumers through the use of plain language explanations of tax-related concepts and problems such as *I got a notice from the IRS*; *I can't pay my taxes*; and *Audits by mail*. Each issue is broken down into a conversation with the taxpayer, so he or she can easily follow the issue and find information. Some pages also include user-friendly videos to allow for quick, easy overviews of the issue.

Understanding and following the directions contained in IRS notices can be confusing and perplexing, as comments in our public forums supported last year. To guide taxpayers through certain IRS notice processes, TAS has an initiative this year to review all IRS Statutory Notices of Deficiency (SNOD), as well as all IRS Collection Due Process (CDP) notices, and provide taxpayers with critical, plain language information about these notices on the TAS website. The system will be designed for a taxpayer to enter a notice number and receive important, easy-to-understand information about the notice. Specifically, information will include an overview of the notice with an emphasis on taxpayer rights, important deadlines and consequences of missed deadlines, and step-by-step actions to take if the taxpayer agrees or disagrees with the IRS, including petitioning the United States Tax Court. The content will also include information about TAS, Low Income Taxpayer Clinic (LITC) services, collection alternatives, and other topics.

As hot topics, emerging tax issues, and tax law changes arise, TAS continues to update its website with:

- Assistance for taxpayers in the online account environment who have a balance due and have questions;
- Information to provide the taxpayer with a better understanding of certain IRS notices;
- News articles to help taxpayers identify and combat telephone and email scams from IRS imposters;
- Affordable Care Act (ACA) estimators such as:
 - Premium Tax Credit Change Estimator,

⁹ See Area of Focus: *The IRS's Heavy Reliance on the Online Account Benefits Taxpayers Who Can Access the Application and Prefer Digital Interaction, But It Burdens Taxpayers Who Need or Prefer More Personalized Service*, *supra*.

- Individual Shared Responsibility Provision Payment Estimator,
- Employer Shared Responsibility Provision Estimator, and
- Small Business Health Care Tax Credit Estimator;
- Help for international taxpayers about their tax obligations as well as how the Foreign Account Tax Compliance Act may impact them;
- Assistance with the PDC Program; and
- Research Studies for the National Taxpayer Advocate's Reports to Congress.

Focus for Fiscal Year 2018

In FY 2018, TAS will:

- Implement a notice resource where taxpayers receive a plain language overview of the notice, an explanation of the actions they should take, and a reference to their taxpayer rights applicable to the notice they received from the IRS;
- Identify additional Get Help Topics to address IRS Online Account Payment options and questions arising from the information and balances presented as the online account capabilities expand; and
- Create supporting Get Help pages for emerging tax issues along with expanding Get Help topics on existing tax issues.

National Tax Forums Promote Taxpayer Advocacy

TAS promotes its advocacy efforts through participation at the IRS Nationwide Tax Forums. The forums offer practitioners the opportunity to attend seminars and focus groups and have an opportunity to visit with TAS and IRS personnel about cases. TAS seminars will offer tips for practitioners to advocate for their clients in specific case types, such as PDC cases involving trade and business expenses, including hobby losses, and refund issues associated with nonresident alien withholding on payments of U.S. source income. TAS coordinates the Case Resolution Program (CRP), presents three seminars, and hosts two focus groups.

Case Resolution Rooms Confirm Face-to-Face Assistance for Taxpayers Is Necessary

The CRP is managed by TAS and staffed by employees from TAS, Wage and Investment (W&I), and the Small Business/Self-Employed (SB/SE) divisions to resolve client cases presented by practitioners. The practitioners look forward to “bringing their toughest case” and getting closure for unresolved issues. Practitioners appreciate face-to-face meetings to provide case details to IRS and TAS personnel that they have been unable to resolve previously by telephone or mail contacts with the IRS. Having personal dialogue enhances the ability to immediately exchange information needed to resolve the case, which is apparent by the 99 percent CRP resolution rate.¹⁰ This suggests that not all cases can be resolved using only telephone contacts or through online processes. Based on participants' comments every year, this is a highlight of the practitioners' experience during the forums. In addition, the IRS employees who are involved gain a deeper appreciation of the struggles and barriers often faced by representatives attempting to address unresolved matters.

¹⁰ Tax Forums 2016 Case Resolution Program (CRP) - Case Summary (data on file with TAS).

Focus Groups Gather Valuable Information for TAS

TAS conducts focus groups at the IRS Nationwide Tax Forums to gather valuable information from practitioners about their personal IRS experiences with specific tax issues, IRS processes and procedures, and their clients' experiences. Recent focus groups discussed the impact of the February 15 refund issuance date for EITC taxpayers and IRS's "Future State" vision and how limited personal services and reliance on online resources would affect practitioners and taxpayers. Findings from the focus groups gained directly from the participants are referenced in and support many of the National Taxpayer Advocate's recommendations in her Annual Report to Congress. The perspectives and firsthand accounts of what the public is experiencing are essential to advocate for improvements in the tax administration.

Focus for Fiscal Year 2018

In FY 2018, TAS will:

- Present seminars on tax issues emphasizing taxpayer rights and obtaining practitioner commentary on tax issues through focus groups; and
- Manage the Case Resolution Room to offer practitioners an opportunity to resolve previously unresolved cases face-to-face.

TAS CONTINUES TO IMPROVE THE CUSTOMER EXPERIENCE BY FOCUSING ON EFFORTS TO GET HELP FOR TAXPAYERS AT THE EARLIEST POSSIBLE TIME AND ENSURE THEY ARE SERVED BY A TAS OFFICE IN THEIR GEOGRAPHIC AREA

TAS Intake Strategy Resolves Taxpayer Problems and Allows Case Advocates to Focus on Most Complex Issues

For the first half of FY 2017, Centralized Case Intake (CCI) advocates answered 24,918 calls transferred from W&I, resulting in 16,884 cases created.¹¹ In the remaining 32 percent (8,034) of calls, TAS CCI employees used their new delegated authorities to provide assistance without creating a new case, an improvement over the 27 percent of calls in FY 2016.¹² The new delegated authorities allow intake advocates to take many of the initial actions that case advocates currently take – such as ordering transcripts, setting up streamlined installment agreements, and securing simple collection holds.¹³ Providing taxpayers this assistance during the initial contact frees up TAS case advocates to focus their specialized skills on situations that are more complex.

In 2018, if funding is received, TAS would like to expand the CCI function by taking calls from other 1040 product lines, continuing our goal to have a personal TAS contact at the time of referral, resolving their issues upon initial contact, referring them to the appropriate function, or building cases for case advocates to work the issues promptly.

11 TAS, *Business Performance Review, 2nd Quarter Fiscal Year (FY) 2017*.

12 See TAS, *Business Performance Review, 2nd Quarter FY 2017* 24. In the first quarter of FY 2017, Centralized Case Intake (CCI) Advocates created cases on 66 percent (5,197 of 7,918) of calls transferred from the NTA toll-free line answered by CCI Advocates. In the remaining 34 percent (2,721) of the calls, TAS provided assistance without creating a new case, an improvement over the 21 percent (1,647) of calls in FY 2016. See also IRS, *Aspect Application Activity Report*, (Oct. 1, 2016 – Feb. 28, 2017) and case data obtained from TAMIS (Feb. 28, 2017).

13 See IGM, *TAS Delegation Order 13-2-1* (July 27, 2015).

TAS Will Evaluate and Expand Its Local Presence to Best Meet Taxpayer Needs

Over the past few years, the National Taxpayer Advocate has been evaluating the location of TAS offices required under IRC § 7803(c)(2)(D) to adapt to shifting and underserved taxpayer populations.¹⁴ As the IRS moves away from having a local presence, it becomes even more important that all taxpayers have access to a local TAS office. As populations shift and new issues emerge, TAS will evaluate its case receipts and geographic data to identify areas where taxpayers are in need of TAS assistance but do not have easy access to a local office. TAS is currently evaluating opening new offices in Tallahassee, Florida; Charlotte, North Carolina; Trenton, New Jersey; Grand Rapids, Michigan, San Antonio and El Paso, Texas; and Savannah, Georgia, as budget and space permit.

At the same time, TAS is using this information to evaluate the size of its current offices to ensure they are adequately staffed to meet taxpayer demands. However, TAS is currently unable to track the calls that our local offices receive. This hampers our ability to plan for work and ensure our offices have the staff they need. TAS plans to identify technological solutions that can help track local office calls, further improving our ability to serve our taxpayers.

TAS Will Continue Efforts to Ensure Taxpayer Cases Are Worked in the TAS Office Where the Taxpayer Is Located

Generally, when a case comes into TAS, it remains in the office where it was created, regardless of where the taxpayer is located. Zip code routing allows us to transfer cases to the geographic area where the taxpayer is located. We are piloting this effort in a number of TAS sites. Our workload management initiative will allow us to roll out zip code routing to all TAS offices.

Focus for Fiscal Year 2018

In FY 2018, TAS will:

- Revise Internal Revenue Manuals (IRMs) to reflect current technology, systems, organizational structure, and the Intake Strategy;
- Identify opportunities to expand delegated authorities to TAS intake advocates and train them accordingly;
- Develop a plan to receive TAS-eligible calls from other IRS toll-free product lines as budget and staffing permit;
- Open new TAS offices in areas where taxpayers are in need of TAS assistance but do not have easy access to a local office, subject to the availability of additional funding;
- Analyze case receipts and taxpayer geographic data to identify locations where taxpayers lack access to a TAS office;
- Evaluate the size of existing TAS offices to ensure they are accurately sized to meet taxpayer demands;
- Identify methods to track local office calls; and
- Begin implementation of the workload initiative.

14 See National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 192.

TAS TRAINING INITIATIVES AND LEADERSHIP DEVELOPMENT EFFORTS FOCUS ON IMPROVING ADVOCACY, PROTECTING TAXPAYER RIGHTS, AND PROVIDING BETTER SERVICE TO TAXPAYERS

TAS equips its employees with the right skills delivered at the right time to ensure we have technical knowledge about tax law and procedures. This allows us to advocate effectively for taxpayers and to protect their rights. A principal focus in FY 2017 was to train intake advocates on new delegated authorities that allow them to take many of the initial actions that case advocates currently take — such as ordering transcripts, setting up streamlined installment agreements, and securing simple collection holds. This provides better service to taxpayers by allowing them to speak to a TAS employee at the earliest opportunity, assisting the taxpayer, and possibly closing the issue without accepting a case in TAS. The training focused on identifying and resolving technical issues up front, as well as tax training, financial analysis, and advocacy in fraud-related cases. Also in FY 2017, TAS delivered an “Improving Advocacy Through Effective Writing” course that focused on enhancing our advocates’ writing and communication skills.

We continued the use of virtual and local face-to-face training in FY 2017 to maximize student interaction while minimizing travel cost. We also emphasized low-cost on-demand training by using Lynda.com, a leading online learning platform that helps users learn business, software, technology, and creative skills to enhance their personal skills and achieve business goals.

TAS Will Emphasize Information and Research Contained in Previous Annual Reports to Congress in Training Employees

The National Taxpayer Advocate will lead a new effort in FY 2018 to emphasize the information contained in our Annual Reports to Congress and to use the information as a basis for training and educating our employees. We will begin with the Most Litigated Issues (MLIs) analyzed in the 2015 and 2016 Reports to Congress, focusing on:

- Trade or business expenses, including hobby losses;
- Accuracy-related, failure-to-file, failure-to-pay, and frivolous issues penalties;
- Gross income; and
- Appeals from CDP hearings.

The courses will include a review of the substantive tax law, an analysis of recent decided cases and what taxpayer rights are affected by the litigated concerns, and a discussion of how to best advocate on behalf of taxpayers in these matters. The trainings will be videotaped and available to all TAS and IRS employees.¹⁵

Developing Leaders in TAS Will Improve Advocacy and Taxpayer Service

TAS will continue preparing its employees for leadership positions through our Leadership 365 website, encouragement of Leadership Succession Review (LSR) participation, and a renewed focus on Career Learning Plans (CLPs).

Educating our employees about taxpayer rights — and protecting those rights as we advocate for taxpayers — will also continue to be a primary focus throughout our training and leadership efforts this

¹⁵ For example, the IRS Office of Appeals has expressed interest in TAS trainings based on most litigated issues contained in the National Taxpayer Advocate’s Annual Reports to Congress.

year. TAS is working with the Human Capital Office (HCO) to create a mandatory briefing on the Taxpayer Bill of Rights (TBOR) to be delivered as part of the FY 2018 training cycle. The briefing will explain the statutory basis for TBOR and remind employees about their responsibility to be aware of and act in accordance with taxpayer rights at all times. TAS has also worked with the HCO to develop TBOR “front matter,” brief information appearing at the beginning of a training course that provides a link to related material. The TBOR front matter will be added to all future IRS training courses. Finally, TAS has begun creating a TBOR training course for all IRS employees who author training materials, internal guidance such as the IRM, and correspondence. This course will be modeled after a National Taxpayer Advocate-led TAS training video that provided detailed instructions and examples for TAS employees regarding how to write about the TBOR and taxpayer rights and how to incorporate this information into materials. We will also emphasize providing taxpayer rights training whenever possible to the PDC agencies contracted as part of the FAST Act.¹⁶

Focus for Fiscal Year 2018

In FY 2018, TAS will:

- Generate training opportunities from the wealth of technical knowledge contained in our Annual Reports to Congress and use this technical and legal expertise to advance advocacy for our taxpayers;
- Explore innovative low-cost virtual and local face-to-face training methods to maximize student interaction while minimizing costs;
- Use the IRS’s servicewide virtual library to provide IRS employees with the knowledge, tools, and resources needed to fulfill their role of assisting taxpayers, providing top-quality service, and protecting taxpayer rights;
- Concentrate on leadership development to offset expected retirement attrition, using our Leadership 365 program and a renewed focus on LSR and CLPs;
- Incorporate ways to promote the protection of taxpayers’ rights into all of our training and development efforts;
- Develop and produce a mandatory briefing for all IRS employees on the TBOR;
- Work with HCO to revise its IRM to require all new training courses to include TBOR front matter;
- Create a TBOR training course for all employees who author training materials, internal guidance, and correspondence;
- Work with HCO and IRS senior leadership to promote the training course and advise all employees who author materials to take the training course; and
- Update IRM sections to advise employees to take the TBOR training course when appropriate.

¹⁶ FAST Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1729-32 (2015). For a detailed discussion of Private Debt Collection (PDC), see Area of Focus: *The Design of the IRS’s Private Debt Collection (PDC) Program Will Disproportionately Burden Taxpayers in Economic Hardship and Impose Unnecessary Costs on the Public Fisc*, *supra*.

THE THIRD INTERNATIONAL CONFERENCE ON TAXPAYER RIGHTS WILL HIGHLIGHT GOOD GOVERNANCE AND REMEDIES

On March 13-14, 2017, the National Taxpayer Advocate convened the Second International Conference on Taxpayer Rights, hosted by the Institute for Austrian and International Tax Law at WU (Vienna University of Economics and Business) in Vienna, Austria. More than 160 government officials, scholars, and practitioners from over 40 countries around the world gathered to explore how taxpayer rights globally serve as the foundation for effective tax administration. For two days, eight panels discussed topics that included these themes:

- Privacy and Transparency in Tax Administration;
- Taxpayer Rights in Multi-Jurisdictional Disputes;
- Access to Taxpayer Rights and the Right to Quality Service;
- Impact of Penalty Administration on Taxpayer Trust; and
- Transforming Cultures of Tax Agencies and Taxpayers.

The National Taxpayer Advocate is currently planning the Third International Conference on Taxpayer Rights on May 3 and 4, 2018. The conference, which will be held in the Netherlands, will be hosted by the International Bureau of Fiscal Documentation (IBFD). The conference theme is “Taxpayer Rights: Good Governance and Remedies.” Topics will include:

- Penalties: Proportionality and Deterrence;
- Early Warnings of Rights;
- Violations and Prevention;
- Taxpayer Rights in the Preliminary Phase of Tax Procedures;
- Taxpayer Right Considerations in Cross-Border Issues, including Transfer Pricing, Advanced Rulings, and Exchange of Information;
- Burden of Proof Issues; and
- Administrative Appeals and Mediation.

Focus for Fiscal Year 2018

In FY 2018, TAS will:

- Plan and convene the Third International Conference on Taxpayer Rights in Spring 2018.

TAS’S ADVOCACY AND IMPLEMENTATION AND EVALUATION (AIE) GROUP CONTINUES PROACTIVE ADVOCACY EFFORTS

Systemic Advocacy (SA) proactively uses the Systemic Advocacy Management System (SAMS) as an advocacy tool by encouraging IRS employees, taxpayers, tax practitioners, and others outside of the IRS to use SAMS to identify systemic issues adversely impacting taxpayers and to protect taxpayers’ rights.¹⁷ For example, an issue elevated through SAMS prompted TAS to review the accuracy of Collection Statute Expiration Dates (CSEDs) on taxpayer accounts containing multiple installment agreement

¹⁷ See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the IRC. See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

requests. TAS identified a number of accounts with potential collection statute errors and brought a comprehensive listing of the affected accounts to the IRS and requested corrective action. TAS will continue to work with the IRS on this issue, monitoring to ensure affected accounts reflect correct CSEDs and that we are protecting taxpayers' *rights to pay no more than the correct amount of tax* and ensuring the *right to a fair and just tax system*.

TAS also received a SAMS submission concerning the date the IRS posts restitution payments to a taxpayer's account. In a Judgment and Commitment Order, the Court ordered the taxpayer to make restitution payments to the Clerk of District Court by a specific date. The taxpayer timely submitted a restitution payment to pay in full the taxes due *plus* the court cost to the applicable Clerk of District Court. The payment was processed and recorded by the Clerk of District Court and then forwarded to the IRS almost four months later. The IRS posted the payment to the taxpayer's account as of the date the IRS received the payment, which resulted in additional penalties and interest.

Based on the advice of Chief Counsel, the IRS's policy states, "The Service must consider any remittances made to the Service when actually received by the Service." IRM 3.8.45.2(9) provides that "[a]ll remittances will be credited to taxpayer accounts for the earliest IRS Received Date," which is "the date the remittance is received by the IRS or Department of Treasury."¹⁸ The payment posting date of restitution is the date the IRS receives the payment, not the date the Clerk of Court receives it. The burden occurs when there is a substantial delay between these two dates that results in the IRS adding additional interest and penalties to the taxpayer's Restitution Based Assessments. TAS successfully advocated for a change in this policy.

TAS Internal Management Document/Single Point of Contact (IMD/SPOC) Activities Improve Taxpayer Rights and Reduce Taxpayer Burden

Systemic Advocacy also employs its IMD/SPOC program to review internal management documents (IMDs), IRM changes, and other IRS items such as forms, letters, and publications, to verify products are technically, legally, and procedurally accurate and do not create undue taxpayer burden or infringe upon taxpayer rights. TAS negotiates with the IRS to change products containing burdensome procedures, policies, or authorities.

At a cross-functional IRS and TAS meeting, TAS recommended that IRM 25.23.1, *Identity Protection and Victim Assistance - Policy Guidelines*, incorporate content related to Practitioner Data Breaches as the IRS continues to receive additional requests from taxpayers impacted by practitioner breaches. Because there is no published IRM providing guidance, TAS recommended adding the following, "...IRS report client data theft to your local stakeholder liaison. Liaisons will notify IRS Criminal Investigation and others within the agency on your behalf." Based on TAS's concerns and position, the Operating Division issued an Interim Guidance Memorandum (IGM)¹⁹ and added the statement above that will reduce taxpayer burden and assist in fraud detection.

TAS was also concerned the IRS was not adequately addressing taxpayer rights in procedures pertaining to the levy of retirement assets. Provisions regarding flagrant conduct were not defined and led to subjective interpretations. TAS recommended the flagrant conduct be defined and cross-referenced to relevant IRMs. Collection Policy responded to TAS's recommendations by publishing an Internal

18 Internal Revenue Manual (IRM) 3.8.45.2, *Deposit Procedures (General)* (Jan. 1, 2011).

19 Internal Procedural Update (IPU) 16U0648 of IRM 25.23.1.10, *Data Breach - Business Entities Whose Employees or Clients PII was Breached* (Mar. 3, 2017).

Procedural Update,²⁰ and the guidance now includes examples of extenuating circumstance to mitigate flagrant conduct. The revision will help inform taxpayers of the types of behavior that might be considered flagrant behavior and the new guidance will help ensure the IRS treats taxpayers consistently and considers all other collection options before levying retirement accounts.

In a further instance of IMD/SPOC efforts, TAS identified a discrepancy and negotiated the elimination of incorrect language in the CP 74, *Earned Income Credit (EIC) Recertification Letter*, that stated taxpayers may have to file Form 8862, *Information to Claim Earned Income Credit After Disallowance*, following receipt of the notice. This contradicts information that is provided to taxpayers on irs.gov which explicitly states that individuals who receive CP 74s are re-certified for the EITC and do not have to fill out Form 8862 in the future.²¹ After TAS elevated this concern, the IRS agreed to modify the CP 74 to remove the inconsistent language and clarify the notice. TAS will continue to monitor for implementation of revision.

TAS Technical Advocacy Groups Collaborate with the IRS to Resolve Systemic Problems and Make Recommendations for Change to Policies and Procedures

Systemic Advocacy's technical advocacy group also continues to proactively advocate. TAS's group of subject matter experts (SMEs) and technical specialists work on cross-functional teams, collaborating to address issues identified as causing taxpayer burden.

For example, due to a programming error by the IRS, some taxpayer accounts were erroneously marked as deceased, causing taxpayer's electronically filed returns to be rejected or causing returns that had previously been accepted as valid in the IRS system to be deleted. This caused the IRS to issue erroneous notification to taxpayers to contact the Social Security Administration to correct deceased information and to resubmit their 2016 income tax returns to the IRS. TAS immediately contact Return Integrity and Compliance Services (RICS) to recommend that they initiate corrective actions with the return information available instead of requesting the taxpayer to refile the return to prevent additional delays and possible cost of obtaining a copy of the return from the tax preparer. RICS agreed and implemented expedite corrective actions to process the original return received, electronic and paper, from the taxpayer to prevent additional taxpayer burden.

TAS Technical Advocacy also identified an IRS system programming problem regarding Married Filing Joint (MFJ) tax returns, where the secondary taxpayer's Tax Identification Number (TIN) on the valid joint tax return has also been used to file a fraudulent tax return. In this circumstance the IRS holds the MFJ tax refund, but TAS discovered the IRS system fails to denote the MFJ account as requiring review for verification and refund release. Furthermore, the IRS does not notify the legitimate taxpayers of the delay. Taxpayers are left to independently identify there is an issue, contact the IRS, and inquire about the status of their refund for the IRS to release it. TAS requested a change in system programming to recognize the duplicate tax return condition caused by the identity theft. The change will signal that the MFJ tax return needs to be verified and the refund released to the legitimate taxpayers. The IRS agreed to TAS's request, and after implementing the programming change, the author of IRM 21.6.7, *Adjusting Individual Tax Accounts*, will revise all necessary guidelines and information.

20 IPU 16U1064 of IRM 5.11.6.2, *Funds in Pension or Retirement Plans* (June 14, 2016).

21 See *Understanding Your CP74 Notice*, <http://www.irs.gov/individuals/understanding-your-cp74-notice> (reviewed or updated July 5, 2016) (last visited June 7, 2017).

On December 1, 2016, the IRS launched a new online account tool that allows taxpayers to view their IRS account balance, including the amount they owe for tax, penalties, and interest. TAS's Technical Advocacy group immediately learned that taxpayers with an identity theft (IDT) indicator on their account were receiving messages when using this Tool indicating that their account balance was unavailable. TAS promptly notified the IRS of the problem. The IRS updated the tool's message to advise taxpayers with IDT indicators to contact the Identity Protection Specialized Unit's (IPSU) toll-free number for account balance inquiries.

Focus for Fiscal Year 2018

In FY 2018, TAS will:

- Proactively market SAMS to internal and external stakeholders to help identify systemic issues that affect taxpayer rights or cause taxpayer burden, and implement a public relations campaign to champion the use of SAMS as a tool to advocate for taxpayers; and
- Continue and advocate for IMD/SPOC changes through our review process, examining the full spectrum of IRS publications, and argue for corrective amendments when taxpayer rights are threatened.

TAS Research Initiatives

The National Taxpayer Advocate is a strong proponent for the role of theoretical, cognitive, and applied research in effective tax administration. The Office of the Taxpayer Advocate is currently conducting a number of new and continuing research initiatives. A primary focus of TAS research initiatives is to better understand taxpayer compliance behavior and to evaluate IRS programs by balancing the goals of taxpayer compliance with minimizing taxpayer burden.

Following is a discussion of several research initiatives TAS will begin or continue to conduct for the remainder of fiscal year (FY) 2017 and FY 2018.

EFFECTIVENESS OF THE IRS OFFER IN COMPROMISE (OIC) PROGRAM

TAS Research is conducting a study to evaluate the effectiveness of the IRS Offer in Compromise (OIC) program. The IRS conducted an OIC study over a decade ago that examined the frequency of taxpayers submitting multiple offers within a short period of time, the future compliance of taxpayers with accepted offers, and a comparison of the dollars collected when an OIC was rejected or returned versus dollars collected through other collection methods.¹ Similar to the previous study, TAS will:

- Quantify the number of taxpayers who have submitted multiple OICs in a short amount of time;
- Examine the subsequent filing and payment compliance for the next five years after the IRS accepts a taxpayer's OIC;
- Determine if subsequent compliance continues beyond the five years required as part of the accepted OIC agreement;
- Compare the amount the IRS could have collected on a rejected or returned² OIC to the amount actually collected subsequently; and
- Determine if the IRS estimation of the reasonable collection potential on liabilities of rejected offers is actually realized.

The TAS OIC study will particularly focus on dollars collected from taxpayers with rejected or returned OICs versus what the IRS could have collected if it had accepted the offers from the taxpayers. TAS will evaluate whether the IRS left money on the table when it rejected or returned a taxpayer's offer in favor of pursuing other collection methods such as refund offsets, voluntary payments, or levies. We anticipate beginning this study in FY 2017 and completing it in FY 2018.

TRUST IN THE IRS AND THE EFFECT ON VOLUNTARY COMPLIANCE

A previous TAS Research study showed that trust in government has a significant impact on the compliance of taxpayers whose Schedule C returns were audited by the IRS.³ The current TAS study hopes to validate that trust in the IRS, as well as taxpayers' perceptions of legitimacy or coerciveness of the IRS powers to enforce compliance, affect taxpayers' accurate voluntary reporting of income and expenses.

1 IRS, *Offer in Compromise Program: An Analysis of Various Aspects of the OIC Program* (Sept. 2004).

2 Last year, the IRS implemented new procedures, which require an offer to be returned as unprocessable if research shows the taxpayer has unfiled returns. IRS, *Internal Guidance Memorandum (IGM)* (Apr. 13, 2016). Previously, the IRS worked with the taxpayer to secure any unfiled returns, so that the OIC could still be considered.

3 National Taxpayer Advocate 2012 Annual Report to Congress vol. 2 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

During FY 2017, TAS worked with a contractor to develop a survey document, which TAS Research tested at the IRS Ogden Developmental Center by simulating an actual telephone survey. Based on watching the test respondents' reactions to questions, an analysis of their responses, and a debriefing session, we adjusted the survey to ensure that respondents interpreted the questions as intended. The contractor has reviewed the revised survey instrument and made final adjustments to the questions. TAS has received approval from the Office of Management and Budget to begin the data collection.

TAS Research is currently determining the exact sampling frame. The initial sample groups will consist of taxpayers filing Schedule C who were audited and who have continued to file a Schedule C after the audit. These groups will be divided by whether the audit was conducted by a correspondence audit, an office audit, or field audit, as well as by whether the audit outcome showed an increase in tax, a decrease in tax, or no change in tax. We will pair these various groups with a control group of similar taxpayers who were not audited. We will compare the survey responses of both groups, in addition to their subsequent compliance as measured by their Discriminate Income Function score.

We plan to administer the survey at the end of FY 2017 and the beginning of FY 2018. We will analyze the results and publish a study of our findings during FY 2018.

SERVICE PRIORITIES PROJECT

As noted last year, TAS and the Wage & Investment (W&I) Division are developing a ranking methodology for the major taxpayer service activities offered by W&I in response to the National Taxpayer Advocate's concerns that cuts to the IRS's budget in FYs 2010–2015, and the IRS's response to those cuts, have resulted in unacceptable taxpayer service for taxpayers. This methodology will balance taxpayer needs and preferences against the IRS's need to effectively use limited resources, enabling the IRS to make resource allocation decisions that will optimize the delivery of taxpayer services given resource constraints. Congress will also be able to use the results of this methodology to determine whether it is adequately funding core taxpayer service activities. However, limitations imposed by the lack of available data continue to delay implementation.

In early 2016, TAS procured contractor services to address these data needs. TAS worked with the contractor to develop and administer a telephone-based survey that will expand on the data collected in prior W&I surveys. However, data collection difficulties resulted in delayed data delivery and revised goals. The project team will need to update the data included from internal sources and add the data collected from the survey currently underway. TAS's revised goal is to complete survey administration by the end of June 2017, update the data, and complete the ranking of the major W&I taxpayer services by the end of FY 2018.

EFFECT OF OUTREACH AND EDUCATION ON TAX COMPLIANCE

TAS is engaged in several studies exploring the impact of a variety of factors on taxpayer compliance behavior. In a previous phase of the study, TAS found that compliance norms and trust in government were the principal factors that appear to influence sole proprietor taxpayers' compliance behavior.⁴

⁴ TAS employed factor analysis and logistic regression to analyze the results of a national survey of taxpayers with sole proprietor income (*i.e.*, Schedule C, *Profit or Loss from Business (Sole Proprietorship)*). See National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 33 (*Small Business Compliance: Further Analysis of Influential Factors*). See also National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 1 (*Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

In this study, TAS will explore whether outreach and education can favorably influence compliance norms and trust in the IRS, resulting in improved taxpayer compliance.⁵ TAS has contracted with independent researchers to collaborate with TAS to design the study, analyze the results, and produce a final report evaluating the results in detail, discussing their implications for tax administration, and recommending new IRS outreach and education initiatives.

The team of independent researchers has completed an initial proposed study design that involves testing different types of outreach to taxpayers with outstanding tax liabilities whose cases are in the collection queue awaiting assignment. TAS is currently reviewing the proposed study design. Subsequent to agreeing on a sample design, we will begin to extract the sample data. We hope to agree on the sampling frame during FY 2017, with the actual testing of the collection notices conducted in FY 2018.

ALLOWABLE LIVING EXPENSE (ALE) STANDARDS

The IRS developed the allowable living expenses (ALEs) in 1995 to establish consistency in the application of expense allowances, such as food expenses, household expenses, medical expenses, housing expenses, and transportation expenses, in determining monies that taxpayers will have available to meet their U.S. tax liabilities.⁶ The IRS updates the expense amounts annually.

The IRS states that ALEs should allow taxpayers to provide for the taxpayer and his or her family's health, welfare, and production of income. Defining ALE from this starting point⁷ will allow for a structure that accommodates taxpayer needs. TAS will collaborate with the IRS to work on a new ALE methodology, which bases allowable expenses on needs, as opposed to expenditures. The development of new standards will not be an easy undertaking, as data sources are limited. Ultimately, the IRS may need to collaborate with other federal agencies to develop new sources of data. Although this research is expected to begin in FY 2017, it will continue throughout FY 2018. In the meantime, TAS will initiate a separate study also expected to continue into early FY 2018, which will examine the following items:

- Incidence rate of taxpayers submitting expenses in excess of the ALE standard, the types of expenses submitted, and whether the actual expense is allowed; and
- Incidence of taxpayers claiming specific items currently not included as a part of the ALE standards (including child care expenses, retirement, education, internet access, and basic recreation items) and whether the IRS has allowed these expenses.

TAS is currently reviewing and refining its methodologies to begin both the long-term and short-term ALE studies. TAS intends to work these projects in collaboration with IRS Collection personnel.

STUDY OF CASES REQUIRING REWORK

The IRS spends considerable resources to rework a variety of its cases. A prior study published by the National Taxpayer Advocate showed that Earned Income Tax Credit (EITC) audits were often appealed to the United States Tax Court even though the IRS should have been able to ascertain the appropriate facts

5 The phase 2 study found that all three components of trust in government studied, *i.e.*, trust in the federal government, the tax laws and the IRS appear to influence compliance behavior. TAS is focusing solely on trust in the IRS, since TAS believes that the IRS can take actions to directly influence this component.

6 Small Business/Self-Employed (SB/SE), *2015 Allowable Living Expenses Project* (Sept. 2015).

7 Internal Revenue Manual (IRM) 5.15.1.7, *Allowable Expense Overview* (Oct. 2, 2012).

and agree on the case outcome with the taxpayer at the audit stage.⁸ Specifically, TAS reviewed a sample of 256 fully-conceded EITC Tax Court cases. Some findings from this study included:

- Taxpayers or their representatives spoke to an IRS employee by telephone in 216 of the 256 cases, or 84 percent of the time;
- Taxpayers spoke to the IRS before filing their Tax Court petitions in 162 of the 256 cases, or 63 percent of the time; and
- These 162 taxpayers continued to communicate, speaking to the IRS about five times on average.

Taxpayers were unable to resolve these cases administratively, and they thus petitioned the U.S. Tax Court, requiring expensive IRS administrative and legal resources.

During FY 2018, TAS will select an IRS workload to analyze the amount of rework or other unnecessary downstream consequences occurring in that work stream. TAS may select Collection Due Process Cases for review. In many instances, the taxpayer must exercise his or her appeal rights prior to any case development on the part of the IRS. As a result, the Appeals Officer must either collect the initial facts or return the case to Collection for case development before continuing the hearing. Accordingly, the IRS will use more expensive resources to resolve a case that could have been resolved at a much lower level, without even requiring an appeal. In many other instances, the IRS has the information to make an appropriate determination; however, Collection personnel are often reluctant to be responsible for the decision, even though it is supported by the facts, thereby requiring Appeals to rework the case.

KINK POINTS IN THE APPLICATION OF THE FAILURE TO DEPOSIT PENALTY

Prior research has found that taxpayers exhibit reporting behavior that prevents their income from rising to the next highest tax bracket if their income is approaching the limit. That is, taxpayers report only up to the level that keeps them in their current tax bracket. Researchers have observed this phenomenon at the lowest marginal tax rate. Similar behavior exists in the claiming of the EITC, where taxpayers claim income near or at the level that maximizes their credit. An analysis of this type looks for “kink” points where taxpayers tend to cluster. TAS is applying this “kink” analysis to the application of the failure to deposit (FTD) penalty for employment taxes. To avoid penalties, taxpayers must make their deposits in the proper amount, on time, and in the right manner. Taxpayers that fail to do so are subject to a four-tier FTD penalty:

- Two percent if the correct deposit is one to five days late;
- Five percent if the correct deposit is six to 15 days late;
- Ten percent if the correct deposit is more than 15 days late; and
- Fifteen percent if the correct deposit is not paid on or before the earlier of ten days after the first notice of delinquency or the day on which notice and demand is given for immediate payment.

TAS research is recreating the computation of the FTD penalty to determine if taxpayers cluster around the kink points in the penalty structure for untimely tax deposits. Specifically, we are looking at FTD penalties assessed in calendar year 2016 to determine if taxpayers tend to make deposits shortly before the number of days at which the penalty increases.

8 See National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 72-104.

Similar to EITC, civil tax penalties provide a financial incentive to engage in certain behavior. Certain penalties have kink points where the marginal penalty rate increases. If taxpayers' compliance behavior is motivated by penalties, as assumed by the simple deterrence model of tax compliance, we would expect to see bunching around these kink points. If we do not see bunching, then we may be able to conclude that the penalty – or at least the marginal increase in the penalty rate at a particular kink point – does not affect behavior. These findings may become important considerations as policy makers reform existing penalty structures or implement new ones.

USE OF TAS SERVICES

TAS plans to conduct a study to estimate how many taxpayers qualify for but do not use TAS services. This study will help us quantify potential service demands and better understand the underserved taxpayer population and how to reach and communicate with this audience. The study will focus on existing branding and avenues such as mobile and social media trends. This information will expand TAS's understanding of its constituent base and help guide future priorities and decisions for the organization. The analysis will allow TAS to identify trends, where possible. Efforts may include a telephone survey, focus group interviews, and a marketing analysis, which identifies social behaviors, defines attitudes of population segments, and other related information.

This research will help gauge the need for TAS services in various market segments and whether these market segments are currently underserved by TAS. We will use the survey results to ascertain the percentage of taxpayers in these market segments who experienced a problem with the IRS within the past two years and the proportion of these taxpayers who were aware of TAS services. The results of this effort will update prior research on TAS awareness and allow TAS to use the updated information as a reference point in designing, conducting, and measuring the effectiveness of its future outreach efforts. This effort will begin in FY 2017 and be completed in FY 2018.

FOCUS FOR FISCAL YEAR 2018

In Fiscal Year 2018, TAS will:

- Update the previous IRS OIC study with a focus on the effectiveness of collection after the IRS rejects a taxpayer's offer. We will analyze the dollars the IRS could have collected if it accepted the initial offer versus what the IRS ultimately collected from the taxpayer;
- Administer and analyze the results of a TAS survey on trust in the IRS. We will survey taxpayers who were audited and taxpayers with similar profiles who were not audited and compare the attitudes of the two groups toward the IRS. We will also compare the future compliance of both groups of taxpayers;
- In a continuation of efforts to populate the data for the Service Priorities Project, analyze telephone survey data to fill in data gaps, and work with W&I to update the existing operational data. These updates will allow TAS to update and implement the ranking tool of W&I taxpayer services;
- Build upon prior work in the arena of compliance among sole proprietor communities. Previous research found that social norms heavily influenced compliance behavior in these communities. TAS will explore the effects of outreach and education activities on compliance in these groups;
- Begin work on both long- and short-term ALE studies. The long-term study will be in collaboration with the IRS to develop a new ALE methodology. The short-term study will focus on gaps in the current ALEs and areas where taxpayers submit expenses in excess of the ALEs;

- Analyze a subset of the IRS workload to determine the amount of rework conducted in the selected work stream. TAS may look at the Collection Due Process work stream;
- Analyze the behavior of taxpayers who are assessed the FTD penalty to see if taxpayers are motivated to submit their Federal Tax Deposits just before the FTD penalty will increase to the next level. Information about the ability of penalties to change or deter certain behavior may assist in the development of future tax penalties; and
- Engage in research to identify the population of taxpayers who qualify for TAS assistance but do not use TAS. TAS will use this information to better reach underserved populations and to refine our communication methods going forward.

TAS Technology

As discussed earlier in this report, the National Taxpayer Advocate has recently learned the IRS does not plan to complete the Taxpayer Advocate Service Integrated System (TASIS), which was halted in March 2014 after \$20 million was spent on it.¹ TAS is working to ensure the foundational elements of TASIS are incorporated into the broader IRS enterprise case management (ECM) project. While TASIS was in limbo, TAS proactively sought out, and in many cases funded, innovative technology solutions to address some of its business needs TASIS would have fulfilled. These efforts include:

- Pursuit of TAMIS digital document attachments;
- Dynamic data reporting through the Tableau platform;
- Use of SharePoint for business process efficiencies; and
- Participation in the IRS's Taxpayer Digital Communications (TDC) pilot project.

Pursuit of Taxpayer Advocate Management Information System (TAMIS) Digital Document Attachments

TAS is pursuing the digital document attachment capabilities in TAMIS, which will simplify case management. Specifically, digital document attachments will reduce the manual paper-processing burden for both TAS and IRS employees, reduce cycle time in resolving cases for taxpayers, and support the IRS "Future State" vision of electronic communication. Despite these savings, Information Technology (IT) initially denied TAS's request, citing lack of funding or restating the restrictions that bind IT support solely for legislative enhancements. After the National Taxpayer Advocate elevated this issue for reconsideration to the IT Chief Information Officer and IRS Commissioner, IT has agreed to fund the endeavor.

Dynamic Data Reporting Through the Tableau Platform

TAS is using Tableau, a data analytics software platform, to provide data reporting and advanced visualization capabilities. Tableau can interface with some of TAS's systems such as TAMIS and the Systemic Advocacy Management System, allows user interaction with large volumes of data, and displays the results as dynamic, interactive reports. As an example, Tableau can create reports that highlight data for the Low Income Taxpayer Clinic (LITC), which makes the data easy to understand and enables pattern recognition and analysis.

Use of SharePoint for Business Process Efficiencies

TAS continues to leverage the capabilities of SharePoint to promote business process effectiveness and efficiencies through seamless collaboration opportunities to share, organize, and manage data. This includes the creation of new workflow processes to streamline and automate items such as the Reports to Congress, employee suggestions, training and spending requests, and outreach events. TAS also plans to use SharePoint for future workflow processes including IRS research information requests, the Taxpayer Advocacy Panel, recruitment needs, National Taxpayer Advocate congressional testimony, Business Performance Reviews, and the Quality Review Program, thereby eliminating manual tracking and reminders and creating audit trails.

1 See Area of Focus: *While the IRS Has Made Encouraging Progress on Its Enterprise Case Management (ECM) Project, Much Work Remains to Be Done for the Project to Succeed*, *supra*.

Participation in the IRS's Taxpayer Digital Communications (TDC) Pilot Project

TAS is participating in a TDC pilot project, which began in the third quarter of fiscal year 2017. This project offers taxpayers the ability to communicate and share information with TAS's case advocates using a secure, web-based portal without the need to mail or fax documents. Taxpayers will be able to access the system from anywhere that they have an internet connection, including a smartphone, tablet, or computer to assist in resolving their case. This pilot project is taking place in four TAS offices, with taxpayer participation by invitation only, and includes Earned Income Tax Credit (EITC) and levy cases. TAS plans on participating in the pilot for no less than six months.

The launch of this new communications system was done in stages with each site receiving face-to-face training and then launching that following week. The first site received training the week of March 17, 2017 in Dallas, and began offering this option to qualified taxpayers on April 5, 2017. Nashville training was the week of April 3, 2017, with a launch the week of April 10, 2017. New Orleans training was the week of April 17, 2017, with a launch the week of April 24, 2017, and the final site, Cleveland, received the training the week of April 24, 2017 and launched May 1, 2017.

TAS also created an interim guidance memorandum outlining rules and procedures for working these types of cases using the new system. It was made available to the public on April 13, 2017.²

The pilot is designed to test whether TDC enhances communication and information sharing between TAS employees and taxpayers. The goal of testing EITC cases is to see if taxpayers can create online accounts and clear the IRS's multi-factor verification process, which will be necessary for all digital communication with the IRS. Of those taxpayers who can create an online account, TAS is gathering more details about their experience and seeks information to answer the following questions:

- Were taxpayers able to access their accounts in a timely manner?
- Were taxpayers able to use their accounts as intended?
- Did taxpayers communicate well through this system?
- Did taxpayers respond and provide documentation through the portal? and
- Were taxpayers unwilling to use the portal and why?

Taxpayer participant responses and those who are declining system use for case resolution are currently being captured. The National Taxpayer Advocate anticipates having this data by the end of 2017, which will shed light on the ability of TAS's taxpayers to participate in the IRS's "Future State" vision of online digital communications.³

2 IRS, Internal Guidance Memorandum *Taxpayer Digital Communications (TDC) Pilot*, https://www.irs.gov/pub/foia/ig/spder/tas_13_0417_001_tdc_igm_.pdf.

3 IRS, *About EITC*, <https://www.eitc.irs.gov/EITC-Central/abouteitc> (last visited Dec. 31, 2016).

APPENDIX 1: Evolution of the Office of Taxpayer Advocate

The Office of the Taxpayer Ombudsman was created by the IRS in 1979 to serve as the primary advocate, within the IRS, for taxpayers. This position was codified in the Taxpayer Bill of Rights (TBOR 1), included in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).¹

In TBOR 1, Congress added Internal Revenue Code (IRC) § 7811, granting the Ombudsman (now the National Taxpayer Advocate) the statutory authority to issue Taxpayer Assistance Orders (TAOs) if, in the determination of the Ombudsman, a taxpayer is suffering or is about to suffer significant hardship because of the way the Internal Revenue laws are being administered by the Secretary.² Further, this section directed the Ombudsman and the Assistant Commissioner (Taxpayer Services) to jointly provide an Annual Report to Congress about the quality of taxpayer services provided by the IRS. This report was delivered directly to the Senate Committee on Finance and the House Committee on Ways and Means.³

In 1996, the Taxpayer Bill of Rights 2 (TBOR 2) amended IRC § 7802 (the predecessor to IRC § 7803), replacing the Office of the Taxpayer Ombudsman with the Office of the Taxpayer Advocate.⁴ The Joint Committee on Taxation set forth the following reasons for change:

To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the Taxpayer Ombudsman is not an independent advocate for taxpayers. In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, Congress believed it appropriate to elevate the position to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas.⁵

In TBOR 2, Congress not only established the Office of the Taxpayer Advocate, but also described its functions:

- To assist taxpayers in resolving problems with the IRS;
- To identify areas in which taxpayers have problems in dealings with the IRS;
- To the extent possible, propose changes in the administrative practices of the IRS to mitigate those identified problems; and
- To identify potential legislative changes which may be appropriate to mitigate such problems.⁶

Congress did not provide the Taxpayer Advocate with direct line authority over the regional and local Problem Resolution Officers (PROs) who handled cases under the Problem Resolution Program (PRP), the predecessor to the Office of the Taxpayer Advocate. At the time of the enactment of TBOR 2,

1 Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).

2 *Id.*

3 *Id.* at 3737.

4 Pub. L. No. 104-168, § 101, 110 Stat. 1452, 1453 (July 30, 1996).

5 Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 104th Congress, JCS-12-96, 20 (Dec. 18, 1996).

6 Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453–54 (July 30, 1996).

Congress believed it sufficient to require that “all PROs should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc.”⁷

TBOR 2 also replaced the joint Assistant Commissioner/Taxpayer Advocate Report to Congress with two Annual Reports to Congress issued directly and independently by the Taxpayer Advocate.⁸ The first report is to contain the objectives of the Taxpayer Advocate for the fiscal year beginning in that calendar year. This report is to provide full and substantive analysis in addition to statistical information and is due no later than June 30 of each calendar year.

The second report is on the activities of the Taxpayer Advocate during the fiscal year ending during that calendar year. The report must:

- Identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness;
- Contain recommendations received from individuals who have the authority to issue a TAO;
- Describe in detail the progress made in implementing these recommendations;
- Contain a summary of at least 20 of the Most Serious Problems (MSPs) taxpayers have in dealing with the IRS;
- Include recommendations for such administrative and legislative action as may be appropriate to resolve such problems;
- Describe the extent to which regional PROs participate in the selection and evaluation of local PROs; and
- Include other such information as the Taxpayer Advocate may deem advisable.

The stated objective of these two reports is “for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate are not official legislative recommendations of the Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury.”⁹

Finally, TBOR 2 amended IRC § 7811, extending the scope of a TAO, by providing the Taxpayer Advocate with broader authority “to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws.”¹⁰ For the first time, the TAO could specify a time period within which the IRS must act on the order. The statute also provided that only the Taxpayer Advocate, the IRS Commissioner, or the Deputy Commissioner could modify or rescind a TAO, and that any official who so modifies or rescinds a TAO must respond in writing to the Taxpayer Advocate with his or her reasons for such action.¹¹

7 Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 104th Congress, JCS-12-96, 21 (Dec. 18, 1996).

8 Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453 - 54 (July 30, 1996).

9 Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 104th Congress, JCS-12-96, 21 (Dec. 18, 1996).

10 *Id.* at 22.

11 Pub. L. No. 104-168, § 102(b), 110 Stat. 1452, 1456 (July 30, 1996).

In 1997, the National Commission on Restructuring the Internal Revenue Service called the Taxpayer Advocate the “voice of the taxpayer.” In its discussion of the Office of the Taxpayer Advocate, the Commission noted:

Taxpayer Advocates play an important role and are essential for the protection of taxpayer rights and to promote taxpayer confidence in the integrity and accountability of the IRS. To succeed, the Advocate must be viewed, both in perception and reality, as an independent voice for the taxpayer within the IRS. Currently, the [N]ational Taxpayer Advocate is not viewed as independent by many in Congress. This view is based in part on the placement of the Advocate within the IRS and the fact that only career employees have been chosen to fill the position.¹²

In response to these concerns, in the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress amended IRC § 7803(c), renaming the Taxpayer Advocate as the National Taxpayer Advocate and mandating that the National Taxpayer Advocate could not be an officer or an employee of the IRS for two years preceding or five years following his or her tenure as the National Taxpayer Advocate (service as an employee of the Office of the Taxpayer Advocate is not considered IRS employment under this provision).¹³

RRA 98 provided for Local Taxpayer Advocates (LTAs) to be located in each state, and mandated a reporting structure for LTAs to report directly to the National Taxpayer Advocate.¹⁴ As indicated in IRC § 7803(c)(4)(B), each LTA must have a phone, fax, electronic communication, and mailing address separate from those of the IRS. The LTA must advise taxpayers at their first meeting of the fact that “the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate.”¹⁵

Congress also granted the LTAs discretion to not disclose the fact that the taxpayer contacted the Office of the Taxpayer Advocate or any information provided by the taxpayer to that office.¹⁶ The definition of “significant hardship” in IRC § 7811 was expanded in 1998 to include four specific circumstances:

1. An immediate threat of adverse action;
2. A delay of more than 30 days in resolving taxpayer account problems;
3. The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or
4. Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.¹⁷

The Committee Reports make clear that this list is a non-exclusive list of what constitutes significant hardship.¹⁸

Prior to 2011, Treasury Regulation § 301.7811-1 had not been updated since it was first published in 1992. Consequently, after Congress expanded the definition of “significant hardship” in the statute in

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

13 Pub. L. No. 105-206, § 1102, 112 Stat. 685, 699 (July 22, 1998).

14 *Id.* at 701.

15 IRC § 7803(c)(4)(A)(iii).

16 IRC § 7803(c)(4)(A)(iv).

17 IRC § 7811(a)(2).

18 See, e.g., H.R. Conf. Rep. No. 105-599, at 215 (1998).

1998, the definition in the regulation was inconsistent. However, on April 1, 2011, the IRS published in the Federal Register final regulations under IRC § 7811 that contain a definition of significant hardship consistent with existing law and practice.¹⁹

The National Taxpayer Advocate has long since advocated that the IRS establish a TBOR. In June 2014, the IRS finally adopted the Taxpayer Bill of Rights — a set of ten fundamental rights that taxpayers should be aware of when dealing with the IRS.²⁰ One of those ten rights is the *right to a fair and just tax system*, which gives taxpayers the right to receive assistance from the Office of the Taxpayer Advocate if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels. In December 2015, Congress enacted IRC § 7803(a)(3), which requires the Commissioner to ensure that employees of the IRS are familiar with and act in accord with taxpayer rights, including the *right to a fair and just system*.²¹

19 Treas. Reg. § 301.7811-1(a)(4)(ii); 76 Fed. Reg. 18,059 (Apr. 1, 2011).

20 See IR-2014-72 (June 10, 2014).

21 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, § 401, 129 Stat. 2242, 3117 (Dec. 18, 2015).

APPENDIX 2: Taxpayer Advocate Service Case Acceptance Criteria

TAS Case Acceptance Criteria	
<p><i>As an independent organization within the IRS, TAS helps taxpayers resolve problems with the IRS and recommends changes to prevent future problems. TAS fulfills its statutory mission by working with taxpayers to resolve problems with the IRS.¹ TAS case acceptance criteria fall into four main categories.</i></p>	
Economic Burden	Cases involving a financial difficulty to the taxpayer; an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer
Criteria 1	The taxpayer is experiencing economic harm or is about to suffer economic harm.
Criteria 2	The taxpayer is facing an immediate threat of adverse action.
Criteria 3	The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
Criteria 4	The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.
Systemic Burden	Cases in which an IRS process, system, or procedure has failed to operate as intended, and as a result the IRS has failed to timely respond to or resolve a taxpayer issue ²
Criteria 5	The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
Criteria 6	The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
Criteria 7	A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
Best Interest of the Taxpayer	TAS acceptance of these cases will help ensure that taxpayers receive fair and equitable treatment and that their rights as taxpayers are protected. ³
Criteria 8	The manner in which the tax laws are being administered raises considerations of equity, or have impaired or will impair the taxpayer's rights.
Public Policy	TAS acceptance of cases under this category will be determined by the National Taxpayer Advocate and will generally be based on a unique set of circumstances warranting assistance to certain taxpayers. ⁴
Criteria 9	The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.
<p>¹ Internal Revenue Code (IRC) § 7803(c)(2)(A)(i). ² TAS changed its case acceptance criteria to generally stop accepting certain systemic burden issues. See IRM 13.1.7.3(d) (Feb. 4, 2015). ³ See IRM 13.1.7.2.3 (Feb. 4, 2015). ⁴ See Interim Guidance Memorandum (IGM) TAS-0317-008, <i>Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy</i> (Mar. 22, 2017).</p>	

APPENDIX 3: List of Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) represent low income taxpayers before the IRS and assist taxpayers in audits, appeals, and collection disputes. LITCs can also help taxpayers respond to IRS notices and correct account problems.

If you are a low income taxpayer who needs assistance in resolving a tax dispute with the IRS and you cannot afford representation, or if you speak English as a second language and need help understanding your taxpayer rights and responsibilities, you may qualify for help from an LTC that provides free or low cost assistance. Eligible taxpayers must generally have incomes that do not exceed 250 percent of the federal poverty guidelines published annually by the Department of Health and Human Services.¹ See Figure 5.3.1 for income ceilings for 2017.

FIGURE 5.3.1, LTC Income Guidelines (250 Percent of the Federal Poverty Guidelines)

Size of Family	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

Although LITCs receive partial funding from the IRS, LITCs, their employees and their volunteers are completely independent of the federal government. Clinics receiving federal funding for the 2017 calendar year are listed below. These clinics are operated by nonprofit organizations or academic institutions.

In lieu of an LTC, low income taxpayers may be able to receive assistance from a referral system operated by a state bar association, a state or local society of accountants or enrolled agents, or another nonprofit tax professional organization.

Contact information for clinics may change, so please check for the most recent information at <http://www.taxpayeradvocate.irs.gov/about/litc>.

¹ See Federal Poverty Guidelines, <https://aspe.hhs.gov/poverty-guidelines>.

Low Income Taxpayer Clinic List

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
AK	Anchorage	Alaska Business Development Center LITC	800-478-3474 907-562-0335	Yupik, Cupik, Aleut, Inupiaq, Tlingit/Haida, Athabaskan
AL	Montgomery	Legal Services Alabama LITC	866-456-4995 334-832-4570	Spanish
AR	Little Rock	UALR Bowen School of Law LITC	501-324-9441	Spanish
	Springdale	Legal Aid of Arkansas	800-967-9224 479-442-0600	Spanish, Marshallese
AZ	Phoenix	Community Legal Services LITC	800-852-9075 602-258-3434	Spanish, Other languages through interpreter services
	Tucson	Southern Arizona Tax Clinic	520-622-2801	Spanish, Other languages through interpreter services
CA	Fresno	Central California Legal Services LITC	800-675-8001 559-570-1200	Spanish, Hmong, Cambodian, Other languages through interpreter services
	Los Angeles	Bet Tzedek Legal Services Tax Clinic	323-939-0506	Spanish, Russian, Other languages through interpreter services
	Los Angeles	KYCC Low Income Taxpayer Clinic	213-232-2700	Spanish, Korean
	Los Angeles	Pepperdine LITC	213-673-4831	Spanish
	Northridge	Bookstein Tax Clinic	818-677-3600	Spanish
	Orange	Chapman University Tax Law Clinic	877-242-7529 714-628-2535	Spanish, Vietnamese, Mandarin
	Riverside	Inland Counties Legal Services LITC	888-245-4257 951-368-2555	Spanish, Other languages through interpreter services
	San Diego	Legal Aid Society of San Diego LITC	877-534-2524	Spanish, Vietnamese, Tagalog, Arabic, Other languages through interpreter services
	San Diego	University of San Diego LITC	619-260-7470	Spanish, Other languages through interpreter services
	San Francisco	Chinese Newcomers Service Center	415-421-2111	Cantonese, Mandarin, Toisanese, Vietnamese
	San Francisco	Justice and Diversity Center of the Bar Association of San Francisco	415-982-1600	Spanish
	San Luis Obispo	Cal Poly Low Income Taxpayer Clinic	877-318-6772 805-756-2950	Spanish, Other languages through interpreter services
	Santa Ana	Legal Aid Society of Orange County LITC	800-834-5001 714-571-5200	Spanish, Vietnamese, Korean, Farsi, Chinese, Other languages through interpreter services
CO	Denver	Colorado Legal Services LITC	844-440-4848 303-837-1321	Spanish, Other languages through interpreter services
	Denver	University of Denver Graduate Tax Program LITC	303-871-6331	Spanish, Mandarin, Indonesian
CT	Hamden	Quinnipiac University School of Law LITC	203-582-3238	Spanish, Other languages through interpreter services
	Hartford	UConn Law School Tax Clinic	860-570-5165	Spanish, French, Polish, Chinese (Mandarin), Russian, Other languages through interpreter services
DC	Washington	The Catholic University of America LITC	202-319-6788	Spanish, Other languages through interpreter services
	Washington	The Janet R. Spragens Federal Tax Clinic	202-274-4144	All languages through interpreter services
	Washington	UDC David A. Clarke School of Law LITC	202-274-7315	All languages identified in DC Language Access Act

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
DE	Wilmington	Delaware Community Reinvestment Action Council LITC	877-825-0750 302-690-5000	Spanish, Hindi
FL	Gainesville	Three Rivers Legal Services, Inc.	877-825-0750 302-690-5000	Spanish
	Miami	Legal Services of Greater Miami Community Tax Clinic	305-576-0080	Spanish, Haitiano, Creole
	Plant City	Bay Area Legal Services Inc. LITC	813-232-1343	All languages through interpreter services
	Plantation	Legal Service of Broward and Collier Counties LITC	954-765-8950	Spanish, Creole
	St. Petersburg	Gulfcoast Legal Services LITC	727-821-0726	Spanish, Other languages through interpreter services
	Tallahassee	Legal Services of North Florida LITC	850-385-6852	Spanish, Other languages through interpreter services
	West Palm Beach	Legal Aid Society of Palm Beach County LITC	800-403-9353 561-655-8944	Spanish
GA	Atlanta	The Philip C. Cook Low Income Taxpayer Clinic	404-413-9230	Spanish
	Hinesville	JCVision and Associates, Inc.	866-396-4243 912-877-4243	Spanish
HI	Honolulu	Legal Aid Society of Hawaii LITC	808-536-4302	Chinese, Japanese, Korean, Tagalog, Chuukese, Other languages through interpreter services
IA	Des Moines	Iowa Legal Aid LITC	800-532-1275 515-243-2151	Spanish, Other languages through interpreter services
ID	Boise	University of Idaho College of Law LITC	877-200-4455 208-364-6166	Spanish
	Twin Falls	La Posada Tax Clinic	208-735-1189	Spanish
IL	Chicago	Center for Economic Progress Tax Clinic	312-252-0280	Spanish, Mandarin
	Chicago	Loyola University Chicago School of Law LITC	312-915-7176	All languages through interpreter services
	Elgin	Administer Justice	877-778-6006 847-844-1100	Spanish, Other languages through interpreter services
	Wheaton	Prairie State Legal Services LITC	855-829-7757	All languages through interpreter services
IN	Bloomington	Indiana Legal Services LITC	800-822-4774 812-339-7668	All languages through interpreter services
	Indianapolis	Neighborhood Christian Legal Clinic	855-275-7550 317-429-4131	Spanish, Chinese, French, Russian, Arabic, Burmese, Karen, Hakha Chin
	South Bend	Notre Dame Tax Clinic	574-631-3272	Spanish, Other languages through interpreter services
	Valparaiso	Valparaiso University Law Clinic	888-729-1064 219-465-7903	Spanish
KS	Kansas City	Kansas Legal Services, Inc. LITC	800-723-6953 913-621-0200	Spanish, French, German, Russian, Other languages through interpreter services
KY	Covington	Center for Great Neighborhoods LITC	859-547-5542	Spanish
	Louisville	Legal Aid Society, Inc.	800-292-1862 502-584-1254	All languages through interpreter services
	Richmond	AppalRed Low Income Taxpayer Clinic	800-477-1394 859-624-1394	All languages through interpreter services

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
LA	New Orleans	Southeast Louisiana Legal Services LITC	877-521-6242 504-529-1000	Spanish, Vietnamese
MA	Boston	Greater Boston Legal Services LITC	800-323-3205 617-371-1234	All languages through interpreter services
	Jamaica Plain	Legal Services Center of Harvard Law School LITC	866-738-8081 617-522-3003	All languages through interpreter services
	Springfield	Springfield Partners LITC	844-877-4722 413-263-6500	Spanish, Vietnamese, Cantonese
	Waltham	Bentley University Low Income Taxpayer Clinic	800-273-9494 781-891-2083	Spanish, Portuguese, Russian, Chinese, Haitian Creole
MD	Baltimore	Maryland Volunteer Lawyers Service LITC	800-510-0050 410-547-6537	All languages through interpreter services
	Baltimore	University of Baltimore School of Law LITC	410-837-5706	All languages through interpreter services
	Baltimore	University of Maryland Carey School of Law LITC	410-706-3295	Spanish, French, Other languages through interpreter services
ME	Bangor	Pine Tree Legal Assistance LITC	207-942-8241	All languages through interpreter services
MI	Ann Arbor	University of Michigan LITC	734-936-3535	All languages through interpreter services
	Detroit	Accounting Aid Society LITC	866-673-0873 313-556-1920	Spanish, Arabic
	East Lansing	Alvin L. Storrs Low Income Taxpayer Clinic	517-336-8088	All languages through interpreter services
	Grand Rapids	West Michigan Low Income Taxpayer Clinic	800-442-2777 616-774-0672	Spanish, Other languages through interpreter services
	MN	Minneapolis	Mid-Minnesota Legal Aid Tax Law Project	800-292-4150 612-334-1441
Minneapolis		University of Minnesota LITC	612-625-5515	Somali, Spanish, Hmong, Karen
MO	Kansas City	Legal Aid of Western Missouri	800-990-2907 816-474-6750	Spanish, Other languages through interpreter services
	Kansas City	Kansas City Tax Clinic	916-235-6201	All languages through interpreter services
	St. Louis	Washington University School of Law LITC	314-935-7238	Spanish
MS	Oxford	Mississippi Taxpayer Assistance Project	888-808-8049 662-234-2918	All languages through interpreter services
MT	Helena	Montana Legal Services Association LITC	800-666-6899 406-442-9830	All languages through interpreter services
NC	Charlotte	Western North Carolina LITC	800-438-1254 800-247-1931(SP) 704-376-1600	Spanish, Other languages through interpreter services
	Durham	North Carolina Central University School of Law LITC	919-530-7166	Spanish
NE	Omaha	Legal Aid of Nebraska LITC	877-250-2016 402-348-1060	Spanish, Other languages through interpreter services
NH	Concord	NH Pro Bono Low-Income Taxpayer Project	603-228-6028	All languages through interpreter services

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
NJ	Camden	South Jersey Legal Services LITC	800-496-4570 856-964-2010	Spanish, Other languages through interpreter services
	Edison	Legal Services of New Jersey Tax Legal Assistance Project	888-576-5529 732-572-9100	Spanish, Haitian Creole, Portuguese, Korean, French, Other languages through interpreter services
	Jersey City	Northeast New Jersey Legal Services LITC	201-792-6363	Spanish, Korean, Hindi, Urdu, Hebrew, Arabic, Portuguese, Tagalog, Other languages through interpreter services
	Newark	Rutgers Federal Tax Law Clinic	973-353-1685	Spanish
NM	Albuquerque	New Mexico Legal Aid LITC	866-416-1922 505-243-7871	Spanish, Other languages through interpreter services
NV	Las Vegas	Nevada Legal Services LITC	855-657-5489 702-386-0404	Spanish, Mandarin, Other languages through interpreter services
NY	Albany	Legal Aid Society of Northeastern New York LITC	800-462-2922 518-462-6765	All languages through interpreter services
	Bronx	Legal Services NYC-Bronx LITC	718-928-3700	Spanish, Other languages through interpreter services
	Brooklyn	Brooklyn Legal Services Corp A LITC	718-487-2300	Spanish, Other languages through interpreter services
	Brooklyn	Brooklyn Low-Income Taxpayer Clinic	718-237-5528	Spanish, Russian, Haitian Creole, American Sign Language, Other languages through interpreter services
	Buffalo	Erie County Bar Association Volunteer Lawyers Project LITC	800-229-6198 716-847-0662	All languages through interpreter services
	Central Islip	Touro Law Center LITC	631-761-7080	All languages through interpreter services
	Hempstead	Hofstra Law School Federal Tax Clinic	516-463-5934	Spanish, Other languages through interpreter services
	Jamaica	Queens Legal Services LITC	347-592-2178	Spanish, Chinese, Other languages through interpreter services
	New York	Fordham Law School Tax Clinic	212-636-7353	Spanish, Other languages through interpreter services
	New York	MFY Legal Services LITC	212-417-3839	Spanish, Mandarin, Other languages through interpreter services
	New York	The Legal Aid Society LITC	212-426-3013	Spanish, Mandarin, Chinese, Other languages through interpreter services
Syracuse	Syracuse University College of Law LITC	888-797-5291 315-443-4582	All languages through interpreter services	
OH	Akron	Community Legal Aid Service LITC	800-998-9454	Spanish, Other languages through interpreter services
	Cincinnati	Legal Aid of Greater Cincinnati LITC	800-582-2682 513-241-9400	Spanish, Other languages through interpreter services
	Cleveland	The Legal Aid Society of Cleveland LITC	888-817-3777	Spanish, Other languages through interpreter services
	Columbus	The Legal Aid Society of Columbus LITC	877-224-8374 614-224-8374	Spanish, American Sign Language, Other languages through interpreter services
	Columbus	Southeastern Ohio Legal Services LITC	800-837-2508 740-354-7563	All languages through interpreter services
	Toledo	Legal Aid of Western Ohio LITC	888-534-1432 877-894-4599	Spanish, Other languages through interpreter services

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
OK	Oklahoma City	Oklahoma Indian Legal Services LITC	800-658-1497 405-943-6457	All Native American languages through interpreter services
	Tulsa	Legal Aid Services of Oklahoma LITC	888-534-5243	Spanish, Other languages through interpreter services
OR	Gresham	El Programa Hispano Catolico's LITC	503-489-6845	Spanish
	Portland	Legal Aid Services of Oregon LITC	888-610-8764 503-224-4086	Spanish, Mixteco Bajo, Mandarin, Japanese, Other languages through interpreter services
	Portland	Lewis & Clark Low Income Taxpayer Clinic	503-768-6500	All languages through interpreter services
PA	Harrisburg	The Low-Income Taxpayer Clinic of MidPenn Legal Services	844-675-7829	Spanish, Other languages through interpreter services
	Philadelphia	Pennsylvania Farmworker Project LITC	888-541-1544	Spanish
	Pittsburgh	University of Pittsburgh School of Law LITC	412-648-1300	Spanish, French, Other languages through interpreter services
	Villanova	Villanova Federal Tax Clinic	888-829-2546 610-519-4123	Spanish, Other languages through interpreter services
	Washington	Southwestern Pennsylvania Legal Services LITC	724-225-6170	Spanish, Russian, Chinese, Other languages through interpreter services
RI	Providence	Rhode Island Legal Services LITC	401-274-2652	Spanish, Other languages through interpreter services
SC	Greenville	South Carolina Legal Services LITC	888-346-5592	Spanish, Other languages through interpreter services
SD	Vermillion	University of South Dakota LITC	844-366-8866 605-677-6342	All languages through interpreter services
TN	Memphis	Memphis Area Legal Services LITC	901-523-8822	Spanish
	Oak Ridge	Tennessee Taxpayer Project	866-481-3669 865-483-8454	Spanish, Other languages through interpreter services
TX	Fort Worth	Legal Aid of Northwest Texas LITC	800-955-3959 817-336-3943	Spanish, Other languages through interpreter services
	Fort Worth	Texas A&M University School of Law LITC	817-212-4062	Spanish
	Houston	Houston Volunteer Lawyers LITC	713-255-1829	Spanish, Chinese, Other languages through interpreter services
	Houston	Lone Star Legal Aid LITC	800-733-8394 713-652-0077	Spanish, Vietnamese, Other languages through interpreter services
	Houston	South Texas College of Law Houston LITC	800-646-1253 713-646-2900	Spanish, Vietnamese, Other languages through interpreter services
	Lubbock	Texas Tech University School of Law LITC	800-420-8037 806-742-4312	Spanish
	San Antonio	Texas Taxpayer Assistance Project	888-988-9996 210-212-3747	Spanish, Other languages through interpreter services
UT	Provo	Centro Hispano LITC	801-655-0258	All languages through interpreter services
	Salt Lake City	University of Utah College of Law LITC	801-587-2439	Spanish
	Salt Lake City	Westminster Low Income Taxpayer Clinic	801-829-1253 801-832-2635	Spanish

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
VA	Fairfax	Legal Services of Northern Virginia LITC	866-534-5233 703-778-6800	Spanish, Other languages through interpreter services
	Lexington	Washington and Lee University School of Law Tax Clinic	540-458-8918	All languages through interpreter services
	Richmond	Community Tax Law Project	800-295-0110 804-358-5855	Spanish, Other languages through interpreter services
VT	Burlington	Vermont Low Income Taxpayer Clinic	800-889-2047	All languages through interpreter services
WA	Seattle	University of Washington Federal Tax Clinic	866-866-0158 206-685-6805	Spanish, Russian, Chinese, Korean
	Spokane	Gonzaga University Federal Tax Clinic	800-793-1722 509-313-5791	All languages through interpreter services
WI	Milwaukee	Legal Action of Wisconsin LITC	855-502-2468 414-274-3400	All languages through interpreter services
	Milwaukee	The Legal Aid Society of Milwaukee, Inc.	888-562-8135 414-727-5326	All languages through interpreter services
	Wausau	Northwoods Tax Project	800-472-1638 715-842-1681	Spanish, Hmong, American Sign Language
WV	Charleston	Legal Aid of West Virginia LITC	800-642-8279 304-343-3013	All languages through interpreter services
WY	Cheyenne	Wyoming Low Income Taxpayer Clinic	877-432-9955 307-432-0807	Spanish

APPENDIX 4: TAS Performance Measures and Indicators

Resolve Taxpayer Problems Accurately and Timely

Measure	Description	FY 2017 Target	FY 2017 March Cumulative
Overall Quality of Closed Cases ¹	Percentage of sampled closed cases meeting the prescribed attributes of advocacy, customer and procedural focus.	Baseline	93.1%
Advocacy Focus	Percentage of sampled closed cases where TAS advocated effectively in resolving taxpayers' issue, protecting taxpayers' rights, taking substantive actions, issuing Operations Assistance Requests (OARs) and Taxpayer Assistance Orders (TAOs) and keeping taxpayers informed.	Baseline	94.2%
Customer Focus	Percentage of sampled closed cases where TAS took timely actions and adhered to disclosure requirements.	Baseline	94.5%
Procedural Focus	Percentage of sampled closed cases where TAS took actions in accordance with the tax code, IRM, and technical and procedural requirements.	Baseline	88.5%
OAR Reject Rate ²	Percentage of TAS's rejected requests for IRS operating division or function's actions (<i>i.e.</i> , OAR).	Indicator	3.3%
Expired OAR Rate ³	Percentage of OARs that were open at end of a period where the Requested Completion Date (RCD) or (if present) Negotiated Completion Date (NCD) is more than five workdays overdue.	Indicator	2.3%
Customers Satisfied ⁴	Percentage of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS.	TBD	
Customers Dissatisfied	Percentage of taxpayers who indicate they are somewhat dissatisfied or very dissatisfied with the service provided by TAS.	TBD	
Solved Taxpayer Problem	Percentage of taxpayers from the customer satisfaction survey who indicate the Taxpayer Advocate Service employee did their best to solve the taxpayer's problems.	TBD	
Relief Granted ⁵	Percentage of closed cases where TAS provided full or partial relief.	Indicator	79.6%
Number of TAOs Issued ⁶	Count of TAOs issued by TAS.	Indicator	58
Median – Closed Case Cycle Time	Median number of days taken to close TAS cases. This indicator <i>does not</i> include reopened cases.	Indicator	53
Mean – Closed Case Cycle Time	Mean number of days taken to close TAS cases. This indicator includes reopened cases.	Indicator	81.2

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- 1 TAS refocused its quality standards to better gauge advocacy effectiveness. Because the new measurements did not begin until October 2016, TAS considers Fiscal Year (FY) 2017 a baseline year and will develop targets beginning in FY 2018 based on FY 2017 data. Results are unweighted, cumulative October through January 2017.
- 2 Operations Assistance Request (OAR) Reject Rate excludes reject reason BOD/Function Disagrees.
- 3 This metric is a point estimate as of the date the report is run and is not cumulative. Results will vary depending on report run date. March FY 2017 Taxpayer Advocate Management Information System (TAMIS) report used run date March 31, 2017.
- 4 FY 2016 results are as of January 2017 and the target had not been determined at the time of this report. FY 2017 results will be available January 2018.
- 5 TAS tracks resolution of taxpayer issues through codes entered on TAMIS at the time of closing. IRM 13.1.21.1.2.1.2 (Dec. 3, 2015) requires case advocates to indicate the type of relief or assistance they provided to the taxpayer. The codes reflect full relief, partial relief, or assistance provided.
- 6 Internal Revenue Code (IRC) § 7811 authorizes the National Taxpayer Advocate to issue a TAO when a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the tax laws are being administered.

Measure	Description	FY 2017 Target	FY 2017 March Cumulative
Closed Cases per Case Advocacy FTE	Number of closed cases divided by total Case Advocacy full-time equivalents (FTEs) realized. (This includes all labor hours reported to the Executive Director of Case Advocacy).	155	104.1
Closed Cases per Direct FTE	Number of closed cases divided by direct Case Advocate FTEs realized.	395	269.6
Systemic Burden Receipts	Percentage of systemic burden receipts, Criteria 5 through 7, compared to all receipts excluding reopened case receipts.	38.0%	46.3%
Percentage of NTA Toll Free Calls Answered by CCI	Percentage of NTA Toll Free calls answered compared to the total number of NTA Toll Free calls transferred to Centralized Case Intake (CCI).	Indicator	68.0%
CCI Created Cases	Number of cases created that met the TAS case acceptance criteria.	Indicator	16,884
Quick Closures	Number of quick closures by all Intake Advocates.	Indicator	465
CCI Assistance Provided and No Case Created ⁷	Number of cases CCI provided assistance without creating a case or quick closure.	Indicator	8,034

Protect Taxpayer Rights and Reduce Burden

Measure	Description	FY 2017 Target	FY 2017 March Cumulative
Accuracy of Closed Advocacy Projects	Percentage of advocacy projects where Systemic Advocacy (SA) took correct actions in accordance with statute and Internal Revenue Manual (IRM) guidance. This includes accurate identification of the systemic issue and proposed remedy.	95.0%	97.3%
Timeliness of Actions on Advocacy Projects	Percentage of advocacy projects where SA took timely actions in accordance with IRM guidance, including contacting the submitter, developing an action plan, and working the project without unnecessary delays or periods of inactivity.	95.0%	83.6%
Quality of Communication on Advocacy Projects	Percentage of advocacy projects where SA provided substantive updates to the submitter during the initial and subsequent contacts, contacted internal and external stakeholders, wrote correspondence following established guidelines, and took outreach and education actions when appropriate.	90.0%	96.1%
Overall Quality of Immediate Interventions ⁸	Percentage of the immediate interventions meeting the timeliness, technical and communication quality attributes' measures.	88.0%	N/A
Systemic Advocacy Management System (SAMS) Review Process Median Days	Median count of days it takes SA to complete the three-level review process from the issue submission date to the date issue is closed on SAMS.	Indicator	39
Satisfaction of SAMS Users	Percentage of SAMS Users who indicate they agree or strongly agree to the survey question, "I would recommend SAMS to others as a way to elevate systemic issues."	80.0%	78.0%

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7 Data only reflects activity of intake advocates in Centralized Case Intake (CCI) sites with ASPECT phone system and does not include activity of intake advocates in local offices that do not have ASPECT system.

8 Results are not available because Systemic Advocacy does not have an immediate intervention closure.

Measure	Description	FY 2017 Target	FY 2017 March Cumulative
Satisfaction of Taxpayer Advocacy Panel (TAP) Members ⁹	Percentage of satisfaction of TAP members who indicate they agree or strongly agree to the member survey question, "I have been satisfied as a member of the TAP."	90.0%	83.0%
Projects Validated as Involving a Systemic Issue	Percentage of overall advocacy projects closed that the Director (Processing Technical Advocacy, Exam Technical Advocacy, or Collection Technical Advocacy) validates as a systemic issue.	91.0%	100.0%
Internal Management Document (IMD) Recommendations Made to IRS	Count of TAS IMD recommendations made to the IRS.	Indicator	715
IMD Recommendations Accepted by the IRS	Percentage of TAS's IMD recommendations accepted by the IRS.	Indicator	59.0%
Advocacy Effort Recommendations Made to the IRS	Count of advocacy effort recommendations. Advocacy efforts include projects, task forces, collaborative teams, Advocacy Issue Teams and rapid response teams (excludes IMD/SPOC and Annual Report to Congress).	Indicator	30
Advocacy Effort Recommendations Accepted by the IRS	Count of TAS advocacy effort recommendations accepted by the IRS.	Indicator	22

Sustain and Support a Fully-Engaged and Diverse Workforce

Measure	Description	FY 2017 Target	FY 2017 March Cumulative
Employee Satisfaction ¹⁰	Percentage of satisfaction of employees who respond satisfied or very satisfied to the employee satisfaction survey question, "Considering everything, how satisfied are you with your job?"	75.0%	
Employee Participation	Percentage of employees who take the employee satisfaction survey.	70.0%	

⁹ The TAP survey is administered to all Panel members.

¹⁰ Employee satisfaction and employee participation are from the Federal Employee Viewpoint Survey (FEVS). 2017 results are not available at the time of this report.

APPENDIX 5: Glossary of Acronyms

Acronym	Definition
ABA	American Bar Association
ACA	Affordable Care Act
ACS	Automated Collection System
ACSS	Automated Collection System Support
ACTC	Advanced Child Tax Credit
AFSP	Annual Filing Season Program
AGI	Adjusted Gross Income
AIE	Advocacy Implementation and Evaluation
AIMS	Audit Information Management System
AIT	Analysis and Improvement Team
ALE	Allowable Living Expense
AM	Accounts Management
AMS	Accounts Management System
AMTAP	Accounts Management Taxpayer Assurance Program
AOTC	American Opportunity Tax Credit
APTC	Advanced Premium Tax Credit
ARC	Annual Report to Congress
ARDI	Accounts Receivable Dollar Inventory
ASA	Average Speed of Answer
AWSS	Agency Wide Shared Services
BIR	Bureau of Internal Revenue
BLS	Bureau of Labor Statistics
BMF	Business Master File
BOD	Business Operating Division
BPMS	Business Performance Measurement System
BPR	Business Performance Reviews
CA	Case Advocate
CAA	Certifying Acceptance Agent
CABIC	Case Assistance by Issue Code
CAR	Communications Assistance Report
CCA	Chief Counsel Advice
CCI	Centralized Case Intake
CDP	Collection Due Process
CDW	Compliance Data Warehouse
CEETA	Coalition for Effective and Efficient Tax Administration
CES	Consumer Expenditure Survey
CFO	Chief Financial Officer

Acronym	Definition
CI	Criminal Investigation
CIS	Collection Information Statement
CMS	Centers for Medicare and Medicaid Services
CNC	Currently Not Collectible
COLA	Cost of Living Adjustment
CPA	Certified Public Accountant
CPI	Consumer Price Index
CRP	Case Resolution Program
CSCO	Compliance Services Collection Operations
CSED	Collection Statute Expiration Date
CSR	Customer Service Representative
CTC	Child Tax Credit
CY	Calendar Year
DDb	Dependent Database
DOS	Department of State
DRT	Data Reporting Tool
ECM	Enterprise Case Management
EFDS	Electronic Fraud Detection System
EH	Equivalent Hearing
EIC	Earned Income Credit
EIN	Employer Identification Number
EITC	Earned Income Tax Credit
EO	Exempt Organizations
EP/EO	Exempt Plan/Exempt Organization
EPSS	Electronic Products & Services Support
ERS	Error Resolution System
ESL	English-as-a-Second-Language
ESRP	Employer Shared Responsibility Payment
FAFSA	Free Application for Federal Student Aid
FAQ	Frequently Asked Question
FAST	Fixing America's Surface Transportation
FATCA	Foreign Account Tax Compliance Act
FBAR	Foreign Bank and Financial Account Report
FEVS	Federal Employee Viewpoint Survey
FOIA	Freedom of Information Act
FPL	Federal Poverty Line
FPLP	Federal Payment Levy Program
FPR	False Positive Rate

Acronym	Definition
FS	Filing Season
FSA	Federal Student Aid
FTD	Failure to Deposit
FTE	Full-Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
GUF	Generalized Unpostable Framework
HCERA	Health Care and Education Reconciliation Act
HCO	Human Capital Office
IA	Intake Advocate or Installment Agreement
IBFD	International Bureau of Fiscal Documentation
ID	Identity
IDR	Information Document Request
IDRS	Integrated Data Retrieval System
IDT	Identity Theft
IGM	Interim Guidance Memoranda
IMD	Internal Management Document
IMF	Individual Master File
IP PIN	Identity Protection Personal Identification Number
IPSU	Identity Protection Specialized Unit
IPU	Internal Procedural Update
IRA	Individual Retirement Arrangement
IRB	Internal Revenue Bulletin
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRMF	Information Returns Master File
IRS	Internal Revenue Service
IRTF	Individual Return Transaction File
ISRP	Individual Shared Responsibility Payment
IT	Information Technology
ITA	Interactive Tax Assistant
ITIN	Individual Taxpayer Identification Number
IVO	Integrity & Verification Operations
IWV	Income Wage Verification
JCT	Joint Committee on Taxation
JOC	Joint Operations Center
LB&I	Large Business & International
LIF	Low Income Filer
LITC	Low Income Taxpayer Clinic

Acronym	Definition
LLC	Limited Liability Company
LLP	Limited Liability Partnership
LOS	Level of Service
LSR	Leadership Succession Review
LTA	Local Taxpayer Advocate
MAGI	Modified Adjusted Gross Income
MEC	Minimum Essential Coverage
MIS	Minimum Income Standard
MOU	Memorandum of Understanding
MSP	Most Serious Problem
MTM	Mark-to-Market
N/A	Not Applicable
NCD	Negotiated Completion Date
NFTL	Notice of Federal Tax Lien
NRP	National Research Program
NTA	National Taxpayer Advocate
NTEU	National Treasury Employees Union
NYSBA	New York State Bar Association
OAR	Operations Assistance Request
OD	Operating Division
OD/Fs	IRS Operating/Functional Divisions
OECD	Organization for Economic Cooperation and Development
OIC	Offer in Compromise
OLS	Office of Online Services
OMB	Office of Management and Budget
OPM	Office of Personnel Management
OVD	Offshore Voluntary Disclosure
OVDI	Offshore Voluntary Disclosure Initiative
OVDP	Offshore Voluntary Disclosure Program
PATH	Protecting Americans from Tax Hikes
PCA	Private Collection Agency
PCIC	Primary Core Issue Code
PDC	Private Debt Collection
PII	Personal Identifying Information
PIN	Personal Identification Number
PMPA	Program Management/Process Assurance
POA	Power of Attorney
PPG	Policy and Procedures Guide
PPIA	Partial Pay Installment Agreement

Acronym	Definition
PPS	Practitioner Priority Service
PRO	Problem Resolution Officer
PRP	Problem Resolution Program
PTC	Premium Tax Credit
Pub. L. No.	Public Law Number
PY	Processing Year
QRP	Questionable Refund Program
RAAS	Research Applied Analytics and Statistics
RAL	Refund Anticipation Loan
RAS	Research Analysis & Statistics
RCD	Requested Completion Date
Rev. Proc.	Revenue Procedure
RICS	Return Integrity and Correspondence Services
RRA 98	IRS Restructuring and Reform Act of 1998
RRP	Return Review Program
RSED	Refund Statute Expiration Date
RTS	Real Time System
S&E	Services and Enforcement
S. Comm.	Senate Committee
SA	Systemic Advocacy
SAMS	Systemic Advocacy Management System
SB/SE	Small Business/Self-Employed Division
SERP	Servicewide Electronic Research Program
SFR	Substitute for Return
SITLP	State Income Tax Levy Program
SL	Stakeholder Liaison
SNOD	Statutory Notice of Deficiency
SP	SharePoint or Submission Processing
SPEC	Stakeholder Partnerships, Education, and Communication
SPOC	Single Point of Contact
SRP	Shared Responsibility Payment
SSA	Social Security Administration
SSDI	Social Security Disability Insurance

Acronym	Definition
SSI	Supplemental Security Income
SSN	Social Security Number
TAC	Taxpayer Assistance Center
TAD	Taxpayer Advocate Directive
TAMIS	Taxpayer Advocate Management Information System
TAMRA	Technical and Miscellaneous Revenue Act of 1988
TAN	Taxpayer Authentication Number
TAO	Taxpayer Assistance Order
TAP	Taxpayer Advocacy Panel
TAS	Taxpayer Advocate Service
TASIS	Taxpayer Advocate Service Integrated System
TBOR	Taxpayer Bill of Rights
TDA	Taxpayer Delinquent Account
TDC	Taxpayer Digital Communications
TE/GE	Tax Exempt and Government Entities Division
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TNT	Tax Notes Today
TPC	Third Party Contact
TPNC	Taxpayer Notice Codes
TPP	Taxpayer Protection Program
Treas. Reg.	Treasury Regulation
TSP	Thrift Savings Plan
TY	Tax Year
UPC	Unpostable Code
U.S.	United States
USDA	United States Department of Agriculture
VITA	Volunteer Income Tax Assistance
W&I	Wage & Investment
WIRA	Wage and Investment Research and Analysis

