

Impact of the 35-Day Partial Government Shutdown on the Taxpayer Advocate Service

The 35-day partial government shutdown (Shutdown) that began December 22, 2018, impacted every organization in the IRS, including the Taxpayer Advocate Service (TAS). Initial estimates from the National Taxpayer Advocate indicate it could take approximately one year to fully recover from the Shutdown, potentially longer.¹ During the Shutdown, only a handful of TAS employees were excepted to work, and that work was limited to checking the mail and processing checks.² The discussion below does not address the IRS Office of Chief Counsel's interpretation of the Anti-Deficiency Act as it applies to TAS, but instead focusses on the Shutdown's impact on TAS and the taxpayers it serves.³

As part of the recovery process, TAS identified risks that resulted from the Shutdown and impacted taxpayers, TAS, and the IRS and its employees.

Other examples of identified risks include:

- Increased TAS receipts due to IRS processing delays;
- Taxpayers unable to avail themselves of their rights due to the government being closed;
- Taxpayers' economic hardships that were exacerbated due to not being able to reach the IRS or TAS during the Shutdown;
- Decrease in employee satisfaction after the Shutdown impacting advocacy efforts and customer satisfaction; and
- Lack of outreach on critical issues such as Tax Reform.

This discussion highlights some of the most significant effects of the Shutdown on TAS and its taxpayers. TAS has taken steps to mitigate the impact where possible but in some situations, mitigation was not possible. TAS will also use this information to inform its actions should a future shutdown occur.

TAS Issued Interim Guidance to Employees to Help Identify and Assist Taxpayers Most in Need of Assistance After Returning From the Shutdown

Immediately upon returning from the Shutdown, the National Taxpayer Advocate issued interim guidance to all TAS employees.⁴ The interim guidance memorandum (IGM) helped TAS employees assist taxpayers whose hardships were exacerbated because they were unable to reach the IRS or TAS during the Shutdown. Specifically, the IGM provided guidance on:

- Identifying existing TAS taxpayers adversely impacted by the Shutdown;

1 Jeff Stein, *IRS Will Need At Least A Year To Recover From Government Shutdown, Watchdog Tells Congress*, WASH. POST, Jan. 26, 2019.

2 For a discussion about the Anti-Deficiency Act and TAS's ability to be excepted during a lapse under the safety of life and protection of property exception, see National Taxpayer Advocate 2018 Annual Report to Congress (*Preface*). See also National Taxpayer Advocate 2019 Purple Book 80-81; National Taxpayer Advocate 2017 Purple Book 75; National Taxpayer Advocate Fiscal Year (FY) 2015 Objectives Report to Congress 79-91; National Taxpayer Advocate 2014 Annual Report to Congress 275-310; National Taxpayer Advocate FY 2012 Objectives Report to Congress 1-2; National Taxpayer Advocate 2011 Annual Report to Congress 475-476.

3 See The Anti-Deficiency Act (Revised Statutes 3679), <https://www.gao.gov/legal/appropriations-law-decisions/resources>. This act prohibits federal agencies from obligating or expending federal funds in advance or in excess of an appropriation, and from accepting voluntary services, as codified in 31 U.S.C. §§ 1341(a), 1342, or 1517(a).

4 See Interim Guidance Memorandum (IGM) TAS-13-0219-0001, *Interim Guidance on Advocating for Taxpayers Adversely Impacted by the Government Shutdown* (Feb. 6, 2019).

- Routing of TAS cases received during the Shutdown;
- Handling cases requiring expedited handling;
- Prioritizing caseloads and advocating for taxpayers experiencing imminent hardship;
- Prioritizing caseloads and advocating for taxpayers not experiencing imminent hardship; and
- Identifying and elevating systemic issues for resolution.

The IGM directed TAS employees to identify those taxpayers whose issues were the most urgent and time-sensitive and notify management to ensure the taxpayers receive expeditious service. While TAS always placed the highest priority on those taxpayers experiencing hardship, in this instance we had to differentiate the different types of hardship. Local Taxpayer Advocates (LTAs) worked with their employees to use their discretion to identify those taxpayers with the most urgent needs so those cases could be addressed first.

TAS employees went through their existing inventories while also sorting through the new cases that came to us during the Shutdown or immediately after reopening. During the weeks immediately after reopening, TAS identified 165 “EMERGENCY” cases (64 new cases needing immediate action and 101 existing TAS cases) where taxpayers experienced significant economic or irreparable harm during the Shutdown.⁵

It is vitally important for TAS to capture the impact of the Shutdown on taxpayers so we can include this information in our many discussions with Congress and the IRS as part of our advocacy and collaborative improvement efforts. TAS received 41,193 cases through the end of January 2019, compared with 37,761 cases for the same period in fiscal year (FY) 2018.⁶ Despite being shut down for 35 days, TAS still experienced an almost ten percent increase in cases.

To understand the reason for this increase and capture the full impact of the Shutdown, TAS established the special tracking code “FURLO.” The code automatically populated on the Taxpayer Advocate Management Information System for all existing TAS cases when the Shutdown occurred and TAS new cases received through February 11, 2019. TAS identified 43,153 “FURLO” cases.⁷ Through May 31, TAS has issued 296 Taxpayer Assistance Orders (TAOs) on FURLO cases. The IRS complied with 169 TAOs, TAS rescinded 31, and 96 TAOs are still in process.⁸

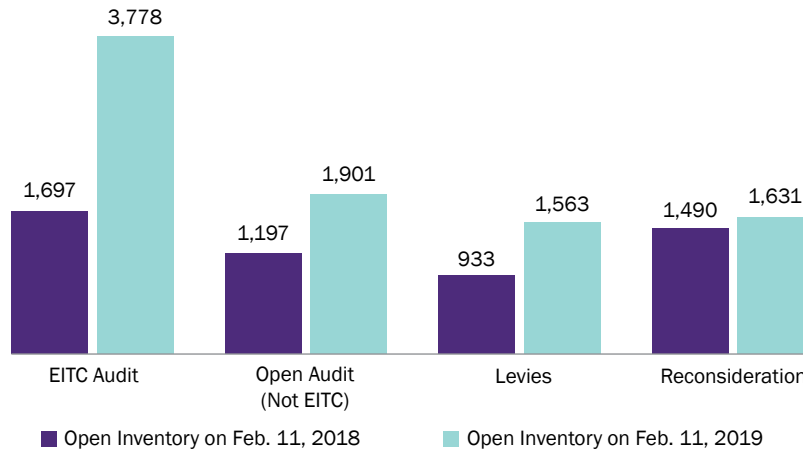
We continue to analyze these cases to determine the effect the Shutdown had on TAS’s ability to serve its customers. TAS has identified certain types of cases that made up a higher number of the FURLO cases than normally found in TAS workloads. Figure 3.1 compares Earned Income Tax Credit (EITC), Open Audit (Not EITC), Audit Reconsideration, and Levy Issue cases in open inventory on February 11, 2019 to those issues in open inventory on the same date in 2018.

5 Data obtained from Taxpayer Advocate Service Management Information System (TAMIS) (Feb. 16, 2019). TAS employees reviewed their open inventory as of Jan. 28, 2019, and cases received immediately following the 35-day partial government shutdown (Shutdown) (through Feb. 15, 2019) to identify those taxpayers whose issues were the most urgent and time-sensitive.

6 Data obtained from TAMIS (Feb. 1, 2018; Feb. 1, 2019).

7 Data obtained from TAMIS (Feb. 19, 2019).

8 Data obtained from TAMIS (June 1, 2019). TAS-13-0219-0001 (Feb. 6, 2019) established the systemic advocacy code “FURLO.” The code automatically populated on TAMIS for all open TAS cases when the Shutdown occurred and TAS new cases received through February 11, 2019.

FIGURE 3.1⁹**Comparison of Open Inventory EITC Audit, Open Audit (Not EITC), Levies, and Reconsideration Issues, February 11 (2018 and 2019)**

Immediately after returning from the Shutdown, TAS also worked with the Small Business/Self-Employed (SB/SE) Collection Division to develop procedures to address TAS Operations Assistance Requests (OARs) in cases where taxpayers were suffering or about to suffer a severe hardship because of the Shutdown. These cases were instances where the taxpayer's hardship was created by the Shutdown or where the Shutdown exacerbated an existing hardship. TAS and SB/SE prioritized and addressed the most urgent OARs related to lien release/withdrawals, levy releases, and return of levy proceeds. From February 1 through March 15, 2019, TAS elevated 60 OARs to SB/SE Collection using the Shutdown procedures. Of those elevated, SB/SE Collection resolved 57 OARs, taking an average of 17 days compared to an average of 20 days to complete the same OARs using normal processing during February 2019.¹⁰

Shutdown Severely Restrained TAS's Ability to Timely Hire and Train Employees in Preparation for Filing Season

The Shutdown also negatively impacted hiring plans in TAS. Prior to the Shutdown, TAS had planned to hire and begin training 110 case advocates and expand our intake advocate hiring in advance of the 2019 filing season. The intent was for these new employees to receive basic training necessary to assist with taxpayers calls and cases during the filing season. At the time the Shutdown began, TAS had hired and brought on board 11 case advocates and 27 intake advocates. While TAS met the hiring goal for one of those employee positions, the continuing resolutions resulted in neither group of new hires receiving training prior to the start of the Shutdown. This lack of training prevented them from assisting with taxpayer cases or calls when the IRS reopened. The delay in hiring and training, coupled with the increase in cases required TAS to dedicate high levels of funding to overtime for existing employees to work case inventories and answer incoming telephone calls. TAS's ability to serve taxpayers during the filing season was directly impacted.

⁹ Data obtained from TAMIS (June 6, 2019).

¹⁰ Data obtained from TAMIS (Mar. 1, 2019; Mar. 25, 2019). Small Business/Self-Employed (SB/SE) Collection and TAS ended the Shutdown Operations Assistance Request (OAR) procedures on March 15, 2019. However, TAS only issued two of the 60 OARs in March.

TAS resumed hiring once the Shutdown was over. The Centralized Case Intake (CCI) function received funds in FY 2019 to expand its operations and hire additional intake advocates. As of May 11, TAS has started to catch up with the hiring backlog, onboarding 92 case advocates and 40 intake advocates including those approved for the CCI expansion. TAS is working to train the new hires in advance of the 2020 filing season.¹¹ TAS has identified the need to hire four new CCI teams for FY 2019 and began the hiring process as scheduled.¹²

Shutdown Delayed Expansion of Centralized Case Intake Operations

The TAS Intake function serves as the first contact for most taxpayers coming to TAS for assistance. When a taxpayer contacts TAS, Intake Analysts conduct in-depth interviews with taxpayers to determine the correct disposition of their issue(s). They take actions where possible to resolve the issue upfront, create cases after validating the need for case advocate assistance, as well as offer taxpayers information and assistance with self-help options.

TAS also has Intake Advocates in the CCI function. Taxpayers who call the IRS National Taxpayer Advocate Toll-Free line—which is staffed by IRS employees—are transferred to the TAS CCI unit if the IRS assistors have been unable to assist the taxpayer, and they have determined that the taxpayer issue meets TAS criteria. CCI assistors perform the same function as Intake Advocates in local TAS offices and conduct in-depth interviews with taxpayers and assist in resolving their issue or creating a case; however, the assistors' work is focused on answering those calls transferred from the National Taxpayer Advocate Toll-Free line. The CCI expansion of its operations in FY 2019, to assume the direct transfer of taxpayers to TAS from additional IRS toll-free telephone lines, intends to allow taxpayers access to TAS at the earliest possible time.¹³

As previously discussed, during the Shutdown and continuing resolutions prior to the Shutdown, training classes for newly hired staff were cancelled, and the processing of competitive packages was stopped. CCI was unable to hire, train, and coach the number of employees needed to expand, delaying its ability to meet current demands and take on additional toll-free lines. At the same time, attrition has decreased the number of fully trained CCI personnel. The result is a significant impact on TAS's ability to help taxpayers in need of TAS assistance.

Shutdown Negatively Impacted TAS Employee Morale in Advance of the Filing Season

TAS employees, like many other federal employees, worried about paying their bills, and some took on another job just to make ends meet during the prolonged Shutdown. Even after returning to work, employees were anxious about receiving back pay and getting caught up on their work just as filing season was starting.

To mitigate any impact to employee morale and satisfaction, upon their return to duty, TAS Leadership worked with LTAs to help them express understanding and compassion to managers and employees. TAS Leadership used the opportunity to encourage all employees to use their increased understanding of what hardship entails to be more compassionate and understanding when working with taxpayers, which was also in line with the Empathy in Action Initiative TAS has implemented over the last several years.¹⁴

11 For additional discussion of the impact of the government shutdown on TAS's hiring efforts, see *Efforts to Improve Taxpayer Advocacy: TAS Continues Its Efforts to Resolve Hiring Backlogs Despite Human Capital Office Delays*, *infra*.

12 See *Efforts to Improve Taxpayer Advocacy: TAS Continues Centralized Intake Expansion*, *infra*.

13 *Id.*

14 See National Taxpayer Advocate 2017 Annual Report to Congress 477 (*TAS Case Advocacy: Empathy in Action*).

Shutdown Negatively Impacted TAS's Ability to Advocate for Taxpayer Rights in IRS Guidance and Assess Potential Systemic Issues

The review and assessment of potential IRS issues or actions is an essential function of TAS's Office of Systemic Advocacy.¹⁵ During the Shutdown, taxpayers' rights were exposed to the risk of implementation of Internal Revenue Manual or other policy or procedural guidance changes without TAS input or perspective. Potential systemic issues submitted by the public through the Systemic Advocacy Management System were not evaluated and acted upon during the Shutdown.¹⁶

Shutdown Delayed Funding of Low Income Taxpayer Clinics

The Low Income Taxpayer Clinic (LITC) program is a matching grant program that provides federal funds to organizations so they in turn can provide LITC services to taxpayers who are low income or who speak English as a second language (ESL). LITCs ensure the fairness and integrity of the tax system for low income and ESL taxpayers by:

- Providing *pro bono* representation on their behalf in tax disputes with the IRS;
- Educating them about their rights and responsibilities as taxpayers; and
- Identifying and advocating for issues that impact these taxpayers.

The Shutdown resulted in the LITC Program Office disbursing funds in mid-February instead of early January, thus putting clinicians at risk for layoffs or leading to the possible delay of the start of new clinic operations. It also led to the delay in opening the solicitation of supplemental funding applications for states without an LITC, which will likely limit start-up activities by new grantees due to later announcement, processing, and disbursement of funds.

During the Shutdown, clinics were unable to effectively work cases; appeals hearings and U.S. Tax Court cases were delayed; students' work on cases was delayed due to no student authorizations being issued and the delay in the issuance of Centralized Authorization File numbers for use in filing power of attorney forms with the IRS; and new staff on the payroll could not take on new work.

When asked about the effect of the Shutdown on the LITCs, clinicians focused on the harm to the taxpayers. The most common issue was the continuation of automated collections and levies without the ability to get relief. Other harm to taxpayers noted by clinicians included the continued accrual of interest on unresolved tax years, anticipated delays in 2018 refunds due to the IRS's inability to resolve prior-year audits, and lost opportunities to help the most vulnerable taxpayers, particularly those who experience mental illness or homelessness. The inability of clinicians to investigate or take other action likely closed the window of opportunity to work with those clients.

15 Systemic Advocacy (SA) reviews Systemic Advocacy Management System (SAMS) submissions for potential project work, task forces, or other efforts to resolve systemic issues, works with other TAS functional units regarding Internal Management Document or Single Point of Contact issues, and works with the Operating Divisions to find the best solutions to administrative or procedural issues that impact taxpayers.

16 SA opened an Investigation Gathering Project, 40449, *Issues Attributable to the Government Shutdown*, to identify any SAMS issues related to the Shutdown.