

## INTRODUCTION: The National Taxpayer Advocate's Remarks on the Role of Trust and Taxpayer Advocate Service in Fostering Tax Compliance

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.<sup>1</sup> 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.<sup>2</sup> 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 Objectives Report).

### This Year's Report Consists of Several Components

Volume 1, which I present to you today, includes an analysis of the 2019 Filing Season, an assessment of the impact of the recent government shutdown on the Taxpayer Advocate Service (TAS), 12 Areas of Focus, and a discussion of TAS advocacy initiatives, casework, and research studies. Volume 2, *IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in 2018 Annual Report to Congress*, and Volume 3, *Making the EITC Work for Taxpayers and the Government: Improving Administration and Protecting Taxpayer Rights*, will be published next month.

Volume 2 will contain the IRS's general responses to each of the administrative recommendations we identified in our 2018 Annual Report to Congress. Volume 3 will contain a comprehensive assessment of the Earned Income Tax Credit (EITC) and will make recommendations designed to increase the participation rate of eligible taxpayers and reduce overclaims by ineligible taxpayers. During the spring, Professor Leslie Book of the Villanova School of Law, a leading EITC expert, served as a "professor in residence" with TAS, and Margot Crandall-Hollick, an EITC expert with the Congressional Research Service, worked with TAS on a detail. Together with TAS's EITC experts, including former Low Income Taxpayer Clinic attorneys and researchers, they conducted a broad review of existing EITC research and drafted a comprehensive set of recommendations to assist Congress and the IRS in improving the program.

The last and most creative component of this year's Objectives Report, *The Taxpayer Roadmap 2019: An Illustration of the Modern United States Tax System*, also will be released in July. This roadmap—which actually will be in the form of a subway map—builds upon the seven discrete roadmaps we published in the 2018 Annual Report to Congress.<sup>3</sup> This new roadmap—available in hard copy (32" by 32") and in digital format—shows, at a high level, the taxpayer's "journey" through the tax system—from getting answers to tax law questions and preparing a return, through return processing, audit, appeals, litigation, and collection.

Anyone looking at this map will understand that we have an incredibly complex tax system that is almost impossible for the average taxpayer to navigate. I personally have spent dozens of hours designing and preparing this map, as have many members of my staff. For every step shown on the map, there are tens of steps and interactions that are impossible to represent in a single document. Thus, TAS is

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

2 IRC § 7803(c)(2)(B)(iii).

3 National Taxpayer Advocate 2018 Annual Report to Congress 10-16.

working to develop a digital roadmap into which a taxpayer or practitioner will be able to input the document number of any IRS letter or notice and receive a plain English summary of that letter or notice. From there, they can click through to the actual roadmap and see where they are. They can also learn more about that step in the tax process and the surrounding steps through pop-ups and links into additional TAS and IRS content, including links to TAS's Taxpayer Bill of Rights content.

This digital roadmap will be the culmination of many years of work and research by TAS into human cognition and learning, notice clarity, and taxpayer empowerment.<sup>4</sup> It is my firm belief that taxpayers must have knowledge about their rights within a system as complex as the IRS. If only taxpayers who are represented by tax professionals have access to that knowledge, then we do not have a fair and just tax system. Thus, the digital roadmap will be a powerful tool to improve access to justice.

### This Will Be My Last Report to Congress

Since March 1, 2001, I have had the privilege and honor of serving as the nation's National Taxpayer Advocate. I am enormously grateful for the opportunity I have had to advocate on behalf of our nation's taxpayers. I have witnessed the dedication of IRS employees in administering a mind-numbingly complex Internal Revenue Code. Amazingly, despite the challenges of complying with our multi-million-word tax code, more than 150 million individual taxpayers and more than ten million business entities do their civic duty every year by filing income tax returns with the IRS. That is an extraordinary achievement, and one we should not take for granted.

But even as the system works for most taxpayers most of the time, it doesn't work for millions of others. Since 2001, TAS has received more than four million cases from taxpayers who experienced significant hardship as a result of the way the IRS is administering the Internal Revenue laws. I am enormously proud of and grateful for the heroic efforts of TAS employees who, day in and day out, work to help taxpayers who are frustrated, frightened, and at wit's end. It is no easy task to find solutions to problems TAS is statutorily charged with addressing, but our employees have done so with determination, empathy, and creativity.

Because this is my last Report to Congress, in the remainder of this Introduction I will discuss subjects that I believe warrant the closest scrutiny and congressional oversight. These include the following concerns:

- Taxpayer service levels are currently very poor, and the IRS does not appear to have a taxpayer-centric strategy or a budget commitment to improve them.
- Research shows that forcing customers into self-service applications for anxiety-inducing transactions erodes trust and increases customer dissatisfaction.
- To increase taxpayer trust and improve compliance, taxpayer service should be designed around a "Taxpayer Anxiety Index."
- If you don't have taxpayer trust, you have to control (*i.e.*, more audits, more enforced collection).

4 See, e.g., Area of Focus: *TAS Plans to Design Sample Notices to Better Protect Taxpayer Rights and Reduce Taxpayer Burden*, *infra*. See also 2018 National Taxpayer Advocate Annual Report to Congress 170-222 (Introduction to Notices: *Notices Are Necessary to Inform Taxpayers of Their Rights and Obligations, Yet Many IRS Notices Fail to Adequately Inform Taxpayers, Leading to the Loss of Taxpayer Rights*); 2018 National Taxpayer Advocate Annual Report to Congress vol. 2 193-210 (*Further Analyses of "Federal Tax Liens and Letters: Effectiveness of the Notice of Federal Tax Liens and Alternative IRS Letters on Individual Tax Debt Resolution"*) and Literature Review: *Improving Notices Using Psychological, Cognitive, and Behavioral Science Insights*).

- Appropriate use of an “Economic Hardship Indicator” would reduce anxiety, minimize taxpayer harm, reduce rework, and get to the right answer.
- There is no more important entity for achieving trust in the tax system than the Taxpayer Advocate Service.

I will also report on the status of my “short-list” of items for resolution with respect to TAS and the IRS before my retirement.

### **Taxpayer Service Levels Are Currently Very Poor, and the IRS Does Not Appear to Have a Taxpayer-Centric Strategy or a Budget Commitment to Improve Them**

As I have highlighted in my 37 Reports to Congress and more than 60 congressional hearings, the bifurcation of service and enforcement in tax administration is an artificial distinction. It sounds plausible on its surface, but it leads to misguided strategies and produces poor results. Taxpayer service must be embedded in *every* aspect of IRS activity, including compliance contacts.

Yet today, IRS taxpayer service is woefully inadequate. During the recent filing season, IRS telephone assistors answered just 25 percent of taxpayer calls enterprise-wide and hold times averaged 13 minutes.<sup>5</sup> For taxpayers calling on the balance due line, telephone assistors answered just 24 percent of calls and hold times averaged 49 minutes.<sup>6</sup> The IRS’s performance on the balance due line is particularly concerning because this is the line taxpayers call to make payment arrangements when they can’t pay their tax liabilities in full. IRS audit notices are often unclear, leading some taxpayers to “agree” to assessments by default—even where they don’t owe the tax. And the IRS doesn’t screen for ability to pay before it takes collection actions, thereby causing or worsening financial hardships for financially vulnerable taxpayers. Advocating for taxpayers affected by problems like these, both individually and collectively, has been and will continue to be the work of TAS.

The President’s Management Agenda for 2018 emphasized the importance of high-quality customer service. It said: “Federal customers ... deserve a customer experience that compares to—or exceeds—that of leading private sector organizations,” and it cites data from the American Customer Satisfaction Index (ACSI) and the Forrester U.S. Federal CX Index™ as key benchmarks.<sup>7</sup> Notably, those indices find the IRS performs poorly relative to other federal agencies.

The ACSI report for 2018 ranks the Treasury Department tied for 10th out of 12 Federal Departments and says that, “most [IRS] programs score ... well below both the economy-wide national ACSI average and the federal government average.”<sup>8</sup> For its part, the 2019 Forrester report *ranked the IRS 13th out of 15 federal agencies and characterized the IRS’s score as “very poor.”*<sup>9</sup>

Yet despite the IRS’s remarkably poor customer service performance as measured by the benchmarks cited in the President’s Management Agenda, the Administration’s budget proposal for FY 2020 would build up tax law enforcement at the expense of taxpayer service. Specifically, it proposed to increase

5 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (week ending April 20, 2019).

6 IRS, JOC, *Snapshot Reports: Product Line Detail: Installment Agreement/Balance Due Line* (week ending April 20, 2019).

7 President’s Management Agenda 7, 28, [https://www.performance.gov/PMA/Presidents\\_Management\\_Agenda.pdf](https://www.performance.gov/PMA/Presidents_Management_Agenda.pdf).

8 American Customer Satisfaction Index, *ACSI Federal Government Report 2018*, 3-4 (2019).

9 Forrester Research, Inc., *The US Federal Customer Experience Index, 2019*, 15-16 (June 11, 2019).

funding for the IRS's Enforcement account by 5.0 percent while cutting funding for the IRS's Taxpayer Services account by 6.6 percent.<sup>10</sup> This approach is tantamount to robbing Peter to pay Paul.

There is no doubt that budget constraints have limited the IRS's taxpayer service capacity, but the IRS should not blame Congress for a lack of taxpayer services funding when it is itself proposing to shift funding away from taxpayer services. What's more, budget constraints can't be used as an all-purpose excuse for mediocrity. The Taxpayer First Act directs the IRS to develop a comprehensive customer service strategy within one year.<sup>11</sup> The IRS should use that requirement as an opportunity to think creatively about better ways to truly put "taxpayers first." At present, there is an enormous gap between the "very poor" customer service the agency provides and the "world-class" customer service to which it aspires. The IRS must think long and hard about ways to bridge that gap—and TAS and the next National Taxpayer Advocate should be intimately involved in this effort.

In fact, nowhere in the most recent IRS Strategic Plan do the words "world-class" customer or taxpayer service appear. Most of the IRS's recent customer service focus, beginning with the Orwellian-named "Future State" initiative, has been on digital services and self-help, largely because the IRS views such approaches as less costly—for the IRS. But this approach flies in the face of a significant body of data that indicates that customers, including customers of financial institutions that the IRS likes to say it must emulate, clearly prefer human, personal interaction for many transactions.

A recent survey conducted by Forrester regarding the preferences of "online adults" for customer service from financial institutions is instructive and should provide a guide to the IRS in delivering taxpayer service. Forrester found:

- 69 percent preferred personal contact (by phone or in-person) for opening a new financial account;
- 72 percent preferred digital self-service tools for checking the status of a payment;
- 69 percent preferred personal contact for disputing a transaction; and
- 75 percent preferred personal contact for getting financial advice.<sup>12</sup>

When these "online adults" were asked how important it was that their financial service provider offered specific customer service options:

- 79 percent said it was important to offer in-person assistance at an office or branch;
- 85 percent said it was important to offer over the phone assistance with an actual person;
- 44 percent said it was important to have an over the phone automated service;
- 30 percent said it was important to have video chat with a person on a computer or tablet; and
- 29 percent said it was important to have video chat with a person on a smartphone.<sup>13</sup>

10 Department of the Treasury, *FY 2020 Budget in Brief* 69 (March 2019), <https://home.treasury.gov/system/files/266/FY2020BIB.pdf> (including proposed \$200 million program integrity cap adjustment for the Enforcement account).

11 At this writing, the House and Senate have passed the Taxpayer First Act, H.R. 3151, 116th Cong. (2019), and the President is expected to sign it into law shortly.

12 Forrester Analytics, *Consumer Technographics® Financial Services Topic Insights 3 Survey, 2018*, 1.

13 *Id.* at 1-2.

Interestingly, 63 percent of online adults said it was important to have email communications with their financial service providers, something the IRS still cannot provide.<sup>14</sup> Moreover, the answers to these questions are surprisingly consistent across age groups. Some at the IRS have seemed to believe that as Baby Boomers (my generation) age out of the taxpayer base, it can do away with in-person taxpayer service. Not so. Regardless of internet skills, surveys show that some transactions require person-to-person contact.

The IRS cannot, and should not, ignore this data. And yet, in its most recent Strategic Plan, the IRS has announced, as a *principal measure* of success in delivering taxpayer service, the “Enterprise Self-Assistance Participation Rate.” According to the IRS, “[t]his measures the percent of instances where a taxpayer uses one of the IRS’s self-assistance service channels (*i.e.*, automated calls, web services) versus needing support from an IRS employee (*i.e.*, face-to-face, over the phone, via paper correspondence).”<sup>15</sup>

The implication of this measure is unmistakable: The IRS is striving to push taxpayers to self-service channels to save money—research showing customer preferences for personal contact in many financial transactions be damned. As I discuss in the next section, this foolhardy approach has significant consequences for taxpayer rights and trust in the IRS and creates downstream consequences for compliance.

### Research Shows That Forcing Customers Into Self-Service Applications for Anxiety-Inducing Transactions Erodes Trust and Increases Customer Dissatisfaction

As noted above, the IRS often declares it must deliver the same quality of services as other financial institutions. Well, as the discussion above shows, the IRS isn’t even meeting this objective. But it also bears pointing out that the IRS is *not* just another financial institution. In fact, it isn’t a financial institution at all. It is the Accounts Receivable Department of the United States Government, which last year collected some \$3.5 trillion in revenue.<sup>16</sup> It is also a large government benefits administrator, handing out nearly \$64 billion in anti-poverty payments (*i.e.*, the EITC).<sup>17</sup> It has awesome collection powers, able to seize and levy on assets and income without first obtaining a judgment from a court of law. It can assess taxes summarily, and it can recommend that passports be denied or revoked. These are powers that financial institutions can only dream about.

These IRS powers understandably create a great deal of anxiety for its customer base, *i.e.*, taxpayers. My own 44 years of experience representing and advocating for taxpayers before the IRS—in the private sector and as National Taxpayer Advocate—have convinced me that how taxpayers perceive and feel about the tax agency is directly connected to their willingness to comply with the tax laws. If a taxpayer’s anxiety increases through her interactions with the IRS, common sense tells us a conversation is an appropriate intervention. Pushing an anxious taxpayer to digital or self-service interaction is likely to be counterproductive and costly (both for the agency and the taxpayer).

14 Forrester Analytics, *Consumer Technographics® Financial Services Topic Insights 3 Survey, 2018, 2.*

15 IRS, *Strategic Plan 2018-2022*, Publication 3744 (rev. 4-2018), 12.

16 IRS, *2018 Data Book*, table 1 (May 2019). The 2018 Data Book covers the period from October 1, 2017 through September 30, 2018 (fiscal year (FY) 2018).

17 IRS, Compliance Data Warehouse, Individual Master File (IMF) for Earned Income Tax Credit (EITC) payments posted in FY 2018 (June 2019).

A recent study published in the *Harvard Business Review* bears this out. The researchers conducted two lab experiments and one field experiment in the financial services sector.<sup>18</sup> The researchers chose the financial services industry because “it is riddled with uncertainty and complex decision-making known to provoke anxiety and distress for its customers.”<sup>19</sup> (The parallels with taxation are obvious.)

The researchers found that “anxious customers interacting through self-service technology feel dissatisfied with their decisions even when their decisions appear aligned with their goals. Their dissatisfaction reduced their trust in the service provider.”<sup>20</sup> Of particular importance, the researchers found that “when people had the ability to connect with another person ... the deleterious effects of anxiety were offset.”<sup>21</sup> This result occurred even when the participant actually didn’t take advantage of the opportunity to talk with someone. “Just knowing we *can* chat with another person—even if we don’t choose to do so—seems to make a big difference.”<sup>22</sup>

### To Increase Taxpayer Trust and Improve Compliance, Taxpayer Service Should Be Designed Around a “Taxpayer Anxiety Index”

Applying these findings to the IRS, with its awesome investigation, audit, and collection powers, it is clear that every interaction with the agency has the potential to be anxiety-inducing. This observation has led me to develop what I call the *Taxpayer Anxiety Index* as a methodology for analyzing how the IRS should structure its interactions with the taxpayer. Simply put, *as the anxiety-inducing capacity of a given interaction increases, so should the taxpayer’s access to person-to-person interaction.*

If we apply the Taxpayer Anxiety Index (or TAI, since the IRS loves acronyms) to any one of the high-level roadmaps we created for the 2018 Annual Report to Congress,<sup>23</sup> we can easily identify where the taxpayer’s anxiety increases and human intervention is warranted. For example, in our Return Processing Roadmap, if a taxpayer’s refund return gets bogged down in identity theft processes or in the pre-refund wage verification program, these delays cause anxiety. Where the taxpayer’s refund gets stopped for *multiple* delays, anxiety skyrockets. Whereas in the beginning of the process the taxpayer is likely willing to check on the status of her refund via the IRS-to-go mobile app or the automated phone line, as the taxpayer progresses through the delays, her anxiety increases and her desire to speak to a live human being about her refund becomes greater. Here is where pushing taxpayers to digital applications only exacerbates the taxpayer anxiety. The taxpayer wants *answers*, and instead gets a runaround. All this decreases trust in the agency.<sup>24</sup>

18 Michelle A. Shell and Ryan W. Buell, *Why Anxious Customers Prefer Human Customer Service* (April 15, 2019), <https://hbr.org/2019/04/why-anxious-customers-prefer-human-customer-service>.

19 *Id.* at 2.

20 *Id.*

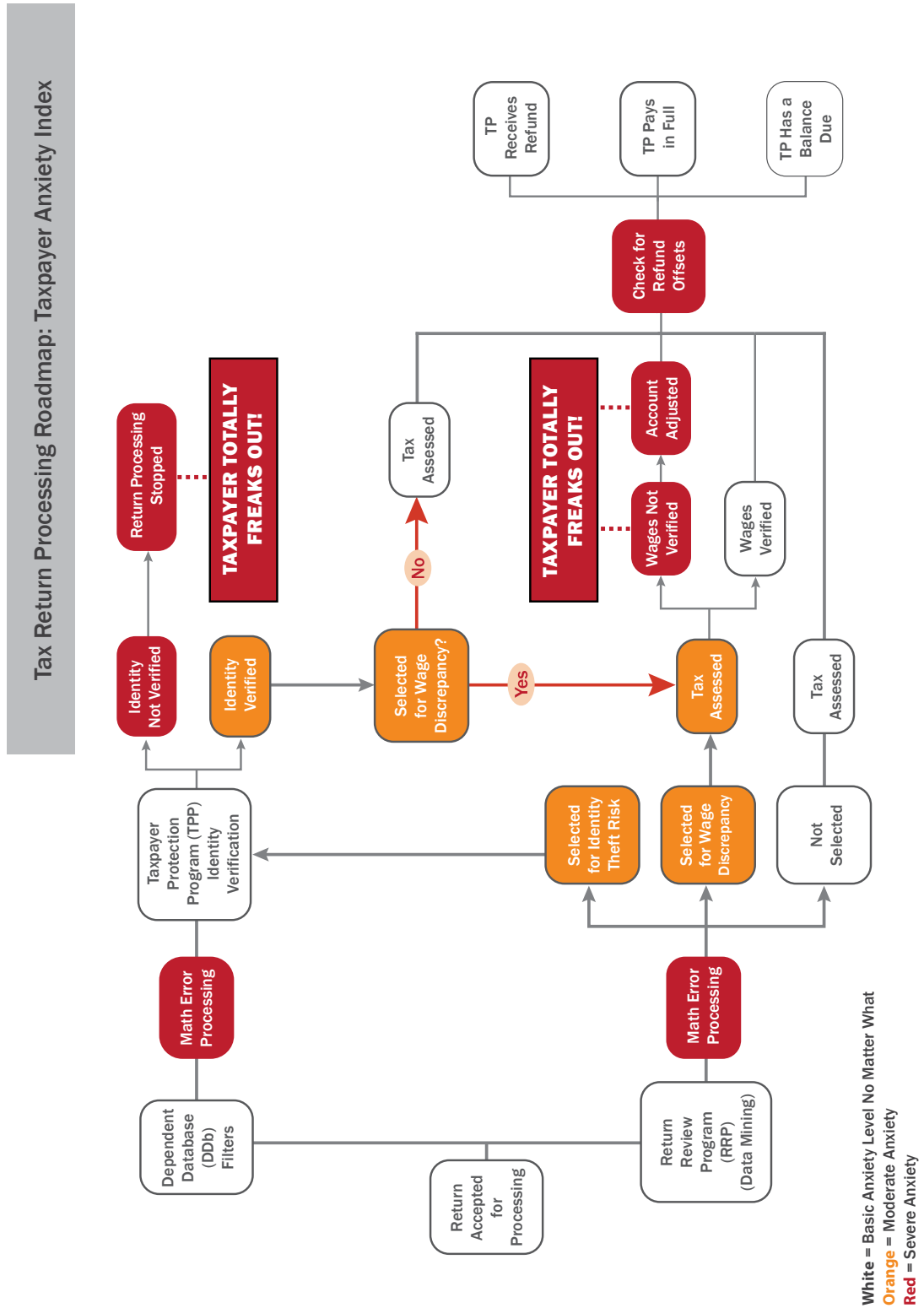
21 *Id.* at 3.

22 *Id.* at 4. This finding may explain why, in a recent TAS study of letters sent to EITC claimants who appeared to erroneously claim the EITC in a prior year, TAS saw significant compliance improvement in the next tax year by offering a toll-free Extra Help phone line to 967 taxpayers who appeared not to meet the EITC residency requirement. Although only 35 people called the line, offering the Extra Help Line averted erroneous EITC claims more effectively than not sending a letter, sending a letter without the additional phone number, or auditing the taxpayer. National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 24-25.

23 National Taxpayer Advocate 2018 Annual Report to Congress 10-16 (The Taxpayers Journey: *Roadmaps of the Taxpayers Path Through the Tax System*), <https://taxpayeradvocate.irs.gov/reports/2018-annual-report-to-congress/report-graphics>.

24 Notably, the 2018 Forrester Federal Customer Service Experience Index found that IRS ranked dead last among federal agencies in trust, with just 20 percent of customers saying they trust the IRS. Rick Parrish and Margaret Rodriguez, Forrester, *The US Federal Customer Experience Index, 2018: How US Federal Government Agencies Drive Mission Performance with the Quality of Their Experience* 11 (May 31, 2018).

FIGURE 1.1



In the tax system, unlike the financial services sector, the taxpayer doesn't have the option to express his dissatisfaction by taking his business elsewhere. There is no other federal tax agency. But the taxpayer does have the option to become noncompliant—*i.e.*, to cheat on his taxes in ways the IRS is unlikely to discover. Thus, listening to our taxpayers and meeting their service preferences is good tax administration and good for long-term tax compliance. Without it, you increase distrust, increase noncompliance, and ultimately increase tax administration costs for the agency.

### **“If You Don't Have Trust, You Have to Control.”<sup>25</sup>**

If trust by your taxpayer base is undermined, the tax agency will have to turn to more coercive measures to achieve taxpayer compliance. Now, taxpayer trust is a two-sided thing. On the one hand, taxpayers certainly want to know that other taxpayers are paying their taxes, too. On the other hand, taxpayers want to know that if they, or other taxpayers, commit a foot-fault, or experience a dire financial downturn, or take a long time recovering from a medical problem or natural disaster, or simply make a mistake because the tax laws are so confusing, the agency will not come down on them like a sledgehammer.

The twin goals of enforcing the tax laws evenhandedly and enforcing them with due regard for exigent circumstances are central to building and maintaining taxpayer trust. Yes, taxpayers want to know the IRS is going after people who are parking income and assets offshore and evading tax. That instills trust because taxpayers who *are* paying their taxes won't feel like chumps for complying with the law. But if the offshore initiative is designed so *all* international taxpayers are treated like tax evaders—as was the case in 2009 through, oh, pretty much today—well, that shows the agency as a coercive bully that does not distinguish between the *specific facts and circumstances* of taxpayers (which, in turn, violates the taxpayer's *right to a fair and just tax system*).<sup>26</sup> This, in turn, erodes trust as even domestic taxpayers will think, “Gee, if the agency treats those taxpayers that way, how will it treat me if I make a mistake?”

### **A Trust-Based, Taxpayer-Focused Tax System Is the Most Effective and Cost-Efficient Approach to Tax Administration**

The IRS, which is admittedly resource-challenged, certainly needs more field audit and collection employees. But it also needs more field outreach and education and taxpayer service employees in the community, learning about the challenges taxpayers face and integrating that learning into whatever compliance initiatives the IRS undertakes. These are the specific resources that generate trust and understanding—a human presence—which in turn fosters respect for the system and engenders voluntary compliance.

This is where my impatience with the constant IRS refrain that “we can't do that because we don't have enough resources” kicks in. It is true that there is *no* solution to the abysmal telephone assistance levels except more human beings. But it is equally true that there are many instances where the IRS's 1950s-era approaches and processes create rework for itself and significant taxpayer burden (which erodes trust). In short, the IRS needs to be much more curious about human behavior and much more creative in the ways it encourages voluntary compliance and addresses noncompliance.

25 Professor Erich Kirchler, conversation with the National Taxpayer Advocate (May 28, 2019).

26 IRC § 7803(a)(3). IRS, Publication 1, *Taxpayer Bill of Rights* (Sept. 2017), states that the *right to a fair and just tax system* means, in part, “[t]axpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay or ability to provide information timely.



### The Economic Hardship Indicator: An Opportunity to Reduce Anxiety, Minimize Taxpayer Harm, Reduce Rework, and Get to the Right Answer

One excellent example of a way to reduce taxpayer burden and minimize IRS wasted resources downstream is my proposal for the creation and use of an Economic Hardship indicator.<sup>27</sup> In various research studies over the years, TAS has empirically demonstrated that the IRS routinely places taxpayers into installment agreements (IAs) when an analysis of their financial situation shows that by paying the IRS they cannot pay their basic living expenses.<sup>28</sup> An inability to pay for one's basic living expenses is defined in Treasury regulations as "economic hardship." The Internal Revenue Code requires the IRS (1) to release any levy where a taxpayer is experiencing economic hardship<sup>29</sup> and (2) to develop "allowable living expenses" (ALEs) to ensure the agency is collecting from taxpayers who have the ability to pay.<sup>30</sup> These provisions are clear indications that Congress understood that taxpayers' fortunes fluctuate, and forcing taxpayers to forego food and shelter is not a recipe for fostering trust and compliance—nor is it the right thing for the government to do to its citizens.

The IRS has a ton of data about taxpayers' financial situation. It uses that data to select returns for audit and for collection. And yet the IRS refuses to use that data to proactively screen for economic hardship. As a result, in fiscal year (FY) 2018:

- The IRS agreed to nearly 2.9 million IAs. Over 72 percent (2,079,743) of these agreements were streamlined IAs, not requiring financial analysis or the use of ALE standards.<sup>31</sup> About 40 percent of taxpayers who entered into streamlined IAs with the IRS's Automated Collection System (ACS) in FY 2018 had incomes at or below their ALEs.<sup>32</sup>
- The overall default rate for streamlined IAs in FY 2018 was 19 percent,<sup>33</sup> which breaks down to a default rate of 39 percent for taxpayers whose incomes did not exceed their ALEs, versus six percent for taxpayers with higher incomes.<sup>34</sup> In other words, taxpayers with incomes below their ALEs were nearly seven times as likely to default.

27 See also Area of Focus: TAS Will Continue to Advocate for the IRS to Proactively Identify, Educate, and Assist Taxpayers at Risk of Economic Hardship Throughout the Collection Process, *infra*.

28 See, e.g., National Taxpayer Advocate 2018 Annual Report to Congress 286 (Most Serious Problem: *Private Debt Collection: The IRS's Expanding Private Debt Collection Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship While Inactive Private Collection Agency Inventory Accumulates*); National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 1 (Research Study: *Study of Financial Circumstances of Taxpayers Who Entered Into Installment Agreements and Made Payments While Their Debts Were Assigned to Private Collection Agencies*); and National Taxpayer Advocate 2008 Annual Report to Congress vol. 2 48 (Research Study: *Building a Better Filter: Protecting Lower Income Social Security Recipients From the Federal Payment Levy Program*).

29 IRC § 6343(a)(1)(D).

30 IRC § 7122(d). If the allowable living expense (ALE) standards exceed the taxpayer's income, the taxpayer is unable to pay his or her necessary living expenses. IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> (last visited Jun. 18, 2019). See also IRS, *Collection Activity Report (CAR), IA [Installment Agreement] Default Report, FY 2018*.

31 IRM 5.14.5.1, *Overview* (May 23, 2014). Streamlined Criteria have two tiers, up to \$25,000, and \$25,001–\$50,000. In-Business Trust Fund Express installment agreements (IAs) can be secured without securing financial information on business accounts up to \$25,000. For more information on streamlined IAs in particular, see IRM 5.14.5.2, *Streamlined Installment Agreements* (Dec. 23, 2015). The number of streamlined IAs reported above includes guaranteed IAs available to taxpayers under IRC § 6159(c), which also do not require financial analysis. IRS, CAR 5000-6 (Oct. 1, 2018); only IMF IAs.

32 IRC § 7122(d). If the ALE standards exceed the taxpayer's income, the taxpayer is unable to pay his or her necessary living expenses. IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> (last visited Jun. 18, 2019). See also IRS, *CAR, IA Default Report, FY 2018*.

33 IRS, *CAR, IA Default Report, FY 2018*.

34 *Id.* for the default rate information for streamlined IAs, and TAS Research analysis of the Automated Collection System and IA accounts, FY 2018, for the breakout in default rates between taxpayers whose incomes exceeded their ALEs and taxpayers whose incomes did not.

- 40 percent of taxpayers who entered into IAs while their debts were assigned to private collection agencies (PCAs) had incomes at or below their ALEs.<sup>35</sup>
- 37 percent of taxpayers who entered into IAs while their debts were assigned to PCAs defaulted, a frequency that rises to 44 percent when defaulted IAs that PCAs do not report to the IRS as required are taken into account.

Now, TAS has developed an algorithm that could be applied to taxpayers with outstanding tax liabilities to identify those *at risk of economic hardship*. While not determinative, the IRS could use it as a factor in prioritizing and categorizing collection cases. The indicator could also be used to trigger a “pop up” screen when a taxpayer with the indicator on his or her account calls the IRS—whether the 1040 line, the “balance due” line, the ACS line, or even field collection employees. The pop-up screen would provide the most recent data we have on the taxpayer that was used in the economic hardship algorithm and would include the questions that employees should ask to determine whether there is a real economic hardship present. The pop-up screen would be a tool to assist in determining the next step: Is the taxpayer *really* at risk of economic hardship? If not, the employee would remove the indicator and address the normal collection alternatives. But if the answer is yes, the IRS should not be pushing the taxpayer into a streamlined IA, as doing so would likely create or exacerbate an economic hardship and increase the likelihood the taxpayer will later default. Instead, we should place the taxpayer into currently not collectible status or encourage him to file an offer in compromise to resolve the debt once and for all.

TAS is also proposing that before the IRS levies against a taxpayer whom the IRS’s screen indicates may be at risk of economic hardship, the IRS should send the taxpayer a letter explaining that collection alternatives are available for taxpayers who cannot pay their liabilities and describing the steps a taxpayer must take to qualify for a collection alternative. At present, the IRS collection system favors knowledgeable taxpayers who understand how to request collection alternatives and, at least in relative terms, discriminates against taxpayers who don’t have that knowledge. That is not the way a fair tax system should work, and it needs to change. A clear letter would go a long way toward leveling the playing field by providing the same information to all affected taxpayers.

The IRS has expressed concern that such a letter might substantially increase the number of telephone calls it receives, generating a workload it can’t handle. I find this argument unpersuasive for two reasons. First, my proposal is to send letters *only* to taxpayers whom the IRS’s screen shows may be at economic risk and *only* before the IRS issues a levy. As it is, a high percentage of taxpayers against whom the IRS levies call the IRS to try to resolve their debts, so it’s not clear sending pre-levy letters to this sub-population would increase taxpayer calls substantially, if at all. Mostly, it would just shift the timing of calls from the post-levy stage to a pre-levy stage.

Second, if the IRS serves a levy and the taxpayer demonstrates economic hardship, the IRS is required by law to release the levy and doing so consumes resources. If the taxpayer works with the IRS at a pre-levy stage, the IRS would not have to devote resources to levy releases. Thus, pre-levy letters describing collection alternatives would place taxpayers without knowledge of collection alternatives in the same position as knowledgeable taxpayers—which is reason enough to send the letters—and they may

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35 This figure reflects allowance of vehicle ownership and operating expenses in calculating ALEs. If vehicle ownership expenses are not allowed, 33 percent of taxpayers who entered into IAs while their debts were assigned to Private Collection Agencies (PCAs) had incomes at or below their ALEs. For a further discussion of ALEs, see 2018 National Taxpayer Advocate Annual Report to Congress vol. 2 39-52, (Research Study: *A Study of the IRS’s Use of the Allowable Living Expense Standards*).

ultimately save the IRS resources as well. Any other approach, frankly, results in the IRS collecting from people it should not be collecting from, under the law or under its own rules and procedures.<sup>36</sup>

### There Is No More Important Entity for Achieving Trust in the Tax System Than the Taxpayer Advocate Service

In any complex system, mistakes inevitably are made, and there needs to be a problem resolution function that can correct the mistakes before harm occurs. Within the U.S. tax system, this is the role of the Taxpayer Advocate Service—a function created by Congress as a safety net for taxpayers. Being an advocate for taxpayers within the IRS is not an easy job, but it is vital for instilling and retaining trust in the system. Indeed, TAS is central to the *right to a fair and just tax system*, which includes taxpayers’ “right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.”<sup>37</sup>

I cannot speak highly enough of TAS employees. Every single day and every single hour of their working lives, they are working with taxpayers or representatives who have high levels of anxiety. Just look at the statutory definition of “significant hardship,” the criterion for eligibility for TAS assistance, which includes:

- An *immediate threat of adverse action*;
- A *delay of more than 30 days* in resolving taxpayer account problems;
- The incurring by the taxpayer of *significant costs* (including fees for professional representation) if relief is not granted; or
- *Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.*<sup>38</sup> [Emphasis added.]

People come to TAS because they are in financial distress, because the system has failed them, or because their rights have been violated in some way. The anxiety that these taxpayers or representatives feel is often downloaded onto TAS employees. And then, to resolve the taxpayer’s problem, TAS employees must turn to IRS employees for assistance and attempt to persuade them as to the right result for the taxpayer. Here, TAS employees often face IRS employees who view them suspiciously, or who just want to push the issue under the rug, or most often, are themselves just too overwhelmed with work. That TAS employees handle these situations day in and day out with grace, dignity, and patience is a daily miracle.

When I first entered the IRS as National Taxpayer Advocate, TAS had about 2,100 employees. Even as recently as FY 2010, TAS had about the same number of employees, of which 1,310 were case advocate employees involved in working 298,933 case receipts.<sup>39</sup> By FY 2018, TAS had only 1,611 employees, of which 908 employees were on rolls working 249,313 case receipts and intakes. Thus, between FY

36 I note that Congress has adopted my recommendation of an Economic Hardship filter with respect to taxpayers eligible to be sent to Private Debt Collectors under IRC § 6306. The Taxpayer First Act provides that the IRS shall exclude from Private Debt Collection taxpayers whose Adjusted Gross Income is below 200 percent of the Federal Poverty Guidelines. See Taxpayer First Act of 2019, H.R. 1957, 115th Cong. (2019). See also Area of Focus: *TAS Will Continue to Advocate for Vulnerable Taxpayers Whose Cases Are Assigned to Private Debt Collection Agencies (PCAs) and for a Reduction of Inactive PCA Inventory*, *infra*, and 2018 National Taxpayer Advocate Annual Report to Congress 277-294.

37 IRS, Publication 1, *Your Rights as a Taxpayer* (Sept. 2017).

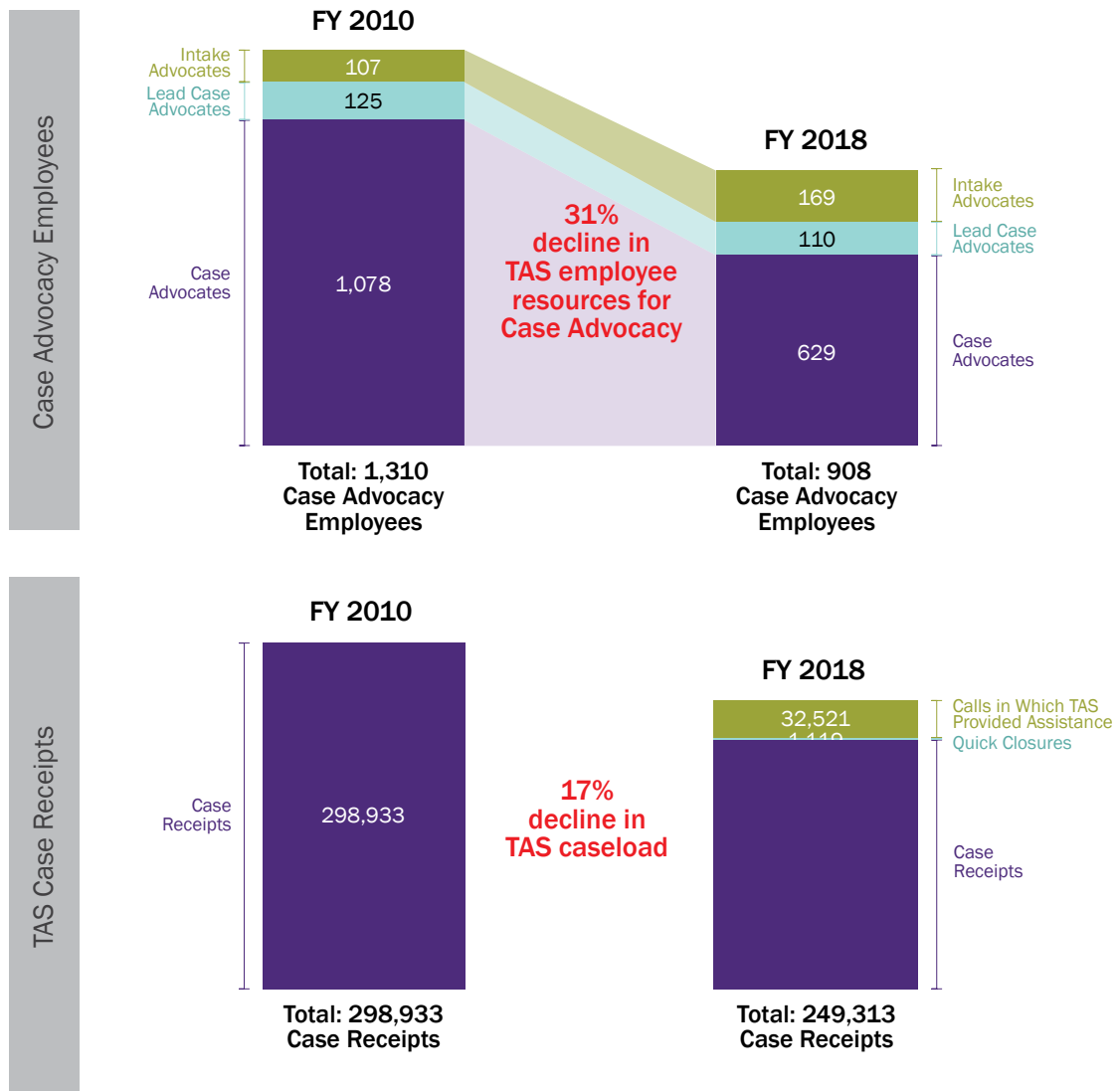
38 IRC § 7811(a)(2)(A)-(D).

39 As of September 30, 2010, there were 1,078 case advocates, 125 lead case advocates, and 107 intake advocates.

2010 and FY 2018, TAS employee resources for case advocacy decreased by 31 percent, while our caseload only decreased by 17 percent. Meanwhile our enacted appropriation remained constant, at \$205,954,000 in FY 2010 and \$206,000,000 in FY 2018.

**FIGURE 1.2**

**TAS Case Advocacy, FY 2010 vs. FY 2018**



For a while, our case receipts decreased as the IRS adopted some of our recommendations for improving its processing of identity theft cases. But for the last two years, as we discuss in the Area of Focus: *Impact of the 35-Day Partial Government Shutdown on the Taxpayer Advocate Service* and the section on Efforts to Improve Taxpayer Advocacy, we are struggling with an onslaught of cases dealing with refund freezes. Although these cases are not particularly complex, they are high-anxiety for the taxpayer. Moreover, the volume is overwhelming TAS and preventing us from addressing other cases that are desperately needing our attention for resolution.

While we are working with the IRS functions to get to the root cause of what is driving these cases to us, going forward, whether it is another surge of identity theft, or continuing refund freezes, or problems associated with implementing a new provision of law or a new system, we have to assume that the new “normal” is a glut of cases coming into TAS during the filing season and the early summer. Thus, for the first time in TAS’s history, we are considering hiring seasonal workers to help us with this casework, so our permanent case advocates can address the urgent cases that generally make up our workload.

But one thing is certain: Between the IRS’s increased focus on audit and collection—our traditional sources of significant hardship cases—and the growth of filing season cases, TAS will need small but steady increases in funding to address our workload. While we are profoundly grateful for Congress’s support of our appropriations over the years, it would be nice to see the IRS and the Administration recognize the importance of TAS as a safety net and propose funding increases for TAS, even as it seeks additional funding for audit and collection initiatives. Because, again, TAS is the most significant component for building trust in the IRS. We are worth the investment.

### My Short List: What Is Left Undone

On March 1, 2019, when I announced my upcoming retirement, I identified a “short list” of items I wanted to accomplish before I left, so the next National Taxpayer Advocate would not have to worry about them. I wrote as follows:

I have a very short list of critical items I need to accomplish with respect to TAS before I retire—including publishing new IRM chapters on Taxpayer Assistance Orders and Taxpayer Advocate Directives, finalizing the regulation governing the operations of Low Income Taxpayer Clinics, and obtaining the authority to hire attorney advisors. I have a slightly longer list of “must do” items for the IRS that Commissioner Rettig asked me to create—including automation of an economic hardship risk indicator, developing mandatory employee training on the Taxpayer Bill of Rights, developing guidance and training on identification and issuance of Program Manager Technical Advice (PMTA) memoranda, and designing rights-based Notices of Deficiency, Collection Due Process Hearing notices, and Math Error notices.<sup>40</sup>

These items have been extensively covered in my past Annual Reports to Congress and were often the subject of Taxpayer Assistance Orders or Taxpayer Advocate Directives. Regrettably, as of the date of this writing, I have no firm commitment from the IRS or Treasury on *any* of these items. While negotiations are ongoing on these items, I cannot report today that I have achieved my goal. However, hope springs eternal, and there is still more than a month left until my retirement. I intend to work

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<sup>40</sup> See Nina E. Olson, *A Personal Message from the National Taxpayer Advocate*, NTA Blog, (Mar. 1, 2019), <https://taxpayeradvocate.irs.gov/news/nta-personal-message>.

full-tilt to reach agreement with the IRS and Treasury on the items on my short list. I will report on the status of the short list items immediately before my retirement.

### Conclusion

Over the last 18 years as National Taxpayer Advocate, I have witnessed amazing events that will take me years to reflect on and sort out. I've been appointed by or served under four Presidents, seven Treasury Secretaries, and five Commissioners of both parties. Through all this time, I have tried to adhere to two goals: (i) to hold the IRS accountable to the United States' taxpayers by being their voice inside the IRS and (ii) to ensure that taxpayer rights are protected—individually and systemically. This is not an easy job. There were many days when I did not want to speak up—when it would have been so easy to just let something slide by. But that is not the job Congress designed, and to let things slide, to me, would violate the profound responsibility that has been entrusted to me as the National Taxpayer Advocate.

I leave knowing that despite its challenges, the Taxpayer Advocate Service is a strong and thriving organization full of passionate, creative, and dedicated people. I leave the next National Taxpayer Advocate the greatest gift I can—the employees of TAS. It is to them that I, and everyone else, owe our most profound gratitude.

Respectfully submitted,



Nina E. Olson  
National Taxpayer Advocate  
20 June 2019