



NATIONAL TAXPAYER ADVOCATE

Objectives Report to Congress

Fiscal Year 2021

www.TaxpayerAdvocate.irs.gov/ObjectivesReport2021

TABLE OF CONTENTS

PREFACE: National Taxpayer Advocate’s Introductory Remarks	1
SYSTEMIC ADVOCACY OBJECTIVES	6
1. Improving Taxpayers’ Experience Throughout the Year	6
2. Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services	10
3. Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act	46
4. Putting Taxpayers First, Improving Taxpayer Service, and Supporting the Development of a Comprehensive Customer Service Strategy and Related Plans to Implement the Taxpayer First Act	69
5. Protecting the Rights of Taxpayers Who Receive “Soft Letters” That Require Them to Provide Support for Their Return Positions and Sworn Statements Outside an Examination	79
CASE ADVOCACY AND TAS BUSINESS OBJECTIVES: Efforts to Improve Advocacy ...	83
REVIEW OF THE 2020 FILING SEASON	94
TAS RESEARCH	108
1. Identifying Prospective TAS Taxpayers	108
2. TAS Research Initiatives	113
APPENDICES	118
1. IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate’s 2019 Annual Report to Congress	118
2. Evolution of the Office of the Taxpayer Advocate	208
3. TAS Case Acceptance Criteria	213
4. List of Low Income Taxpayer Clinics	214
5. TAS Performance Measures and Indicators	221
6. Glossary of Acronyms	225

This page intentionally left blank.

National Taxpayer Advocate’s Introductory Remarks

On March 30, 2020, I had the honor and privilege of being sworn in as the third National Taxpayer Advocate. Starting in the midst of a pandemic and witnessing IRS offices closing one by one was not the way I envisioned my role when I accepted the position. I, like many others, have been working remotely, and my communications with the Commissioner, other IRS leaders, and TAS employees have been conducted by phone and email. This has presented obvious challenges, but there also has been a silver lining in this experience: As I have participated in conference calls with members of my leadership team, TAS employees, and the IRS’s COVID-19 response team, I have been extraordinarily impressed by their commitment and focus on the health and safety of all employees during this pandemic while still doing as much as possible to assist taxpayers. Despite our limitations, I am proud to say the spirit of TAS employees is strong. We are making the best of the situation and continuing to work our cases as best we can. IRS personnel were in similar situations and sheltering at home, including virtually all IRS telephone assistors and many IRS campus employees. Because of these IRS staffing challenges, many TAS cases could not be resolved and will remain outstanding until campus employees can safely return to their IRS facilities. I appreciate the patience and understanding I have experienced as we all work through these unprecedented circumstances.

I want to acknowledge the tremendous job the IRS has done under these constraints. On March 25, 2020, the IRS provided taxpayers with broad relief from compliance actions under its “People First Initiative.” This relief, which currently extends through July 15, 2020, provides peace of mind to many taxpayers during this national crisis by postponing certain payments related to installment agreements and offers in compromise and by limiting certain enforcement actions. In addition, the IRS has postponed over 300 filing, payment, and other time-sensitive deadlines¹ while undertaking to quickly disburse the Economic Impact Payments (EIPs) authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted on March 27, 2020. It is clear from my conference calls and the guidance the IRS is releasing that the IRS is putting taxpayers first and making meaningful efforts to provide relief to the extent possible. On behalf of taxpayers, I applaud the IRS’s efforts.

I also want to acknowledge the tremendous contributions of my predecessors — Val Oveson, who led TAS from 1998-2000, and Nina Olson, who led TAS from 2001-2019. Over the past 20 years, TAS has successfully assisted over 4.5 million taxpayers by helping them resolve their tax problems and protecting their rights,² and it has made hundreds of administrative recommendations adopted by the IRS and some 45 legislative recommendations enacted by Congress. TAS is a great organization because of its leadership and the remarkable employees who dedicate their professional careers to compassionately advocating for taxpayers every day.

As I have been settling into my job, I am mindful of the importance of balancing my internal role and my external role. IRC § 7803(c) provides both that the National Taxpayer Advocate “shall report directly to the Commissioner” (the internal role), and that the National Taxpayer Advocate

1 Department of the Treasury, News Release, *Treasury and IRS Extend Over 300 Tax Filing, Payment and Administrative Deadlines* (April 9, 2020), <https://home.treasury.gov/news/press-releases/sm970>.

2 Taxpayer Advocate Management Information System (TAMIS).

shall submit two annual reports to the House Ways and Means and Senate Finance committees each year “without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget” (the external role).

This dual-reporting responsibility provides both opportunities and challenges. The biggest opportunity is that the National Taxpayer Advocate is effectively given “two bites at the apple” to bring about systemic change on behalf of taxpayers. I can try to resolve problems internally, and if a problem doesn’t get fixed, I can bring it to the attention of Congress and the public. The related challenge is creating a relationship of trust with IRS leaders. If IRS leaders believe comments they make or documents they share during internal discussions will be publicly disclosed, they may be reluctant to trust the National Taxpayer Advocate and to work collaboratively with TAS. This is a nuanced and ongoing tension, as I am sure my predecessors know well, but as I start the position, my approach will be to work issues internally as best I can and to raise concerns publicly only after the IRS and TAS have reached an impasse. Based on my early discussions with Commissioner Rettig and other leaders, I am optimistic we can find solutions to many taxpayer problems by working together as much as possible.

During my 35 years of tax advocacy, I have come to understand and appreciate the wisdom of Commissioner Mortimer Caplin’s principles for effective tax administration, which he set forth 56 years ago in Revenue Procedure 64-22.³ It is an eloquent articulation of the IRS’s role to perform its work in a fair and impartial manner, with neither a government nor a taxpayer point of view and with the responsibility to apply and administer the law in a reasonable, practical manner with great courtesy and consideration. While proper tax administration is key to ensuring a tax system that is fair and impartial to taxpayers, it is the job of the National Taxpayer Advocate and TAS to advocate for taxpayers to ensure their rights are protected. The Taxpayer Bill of Rights and the Taxpayer First Act (TFA) underscore the guiding principle that taxpayer rights are the cornerstone for an effective tax administration. I am proud to advocate for taxpayers’ rights and to work toward improving the taxpayer experience to ensure a fair and just tax administration.

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.⁴ 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).

As we identify our objectives for the coming year, there are two overriding issues on which we plan to focus. The impact of COVID-19 on taxpayers is of greatest immediate concern because the impact has been enormous to date and its effects are continuing. Implementation of the TFA is the second issue we plan to focus on because it has the potential to bring about changes to agency operations that improve the taxpayer experience for decades to come. Before the outbreak of COVID-19, the TFA was the agency’s top strategic focus. Although its efforts have been delayed by the impact of COVID-19, they remain no less important for taxpayers and the IRS over the long run.

³ Rev. Proc. 64-22, 1964-1 C.B. 689.

⁴ IRC § 7803(c)(2)(B).

COVID-19 Challenges. Each year, more Americans interact with the IRS than with any other federal agency. The IRS's performance has huge ramifications for the United States, tax administration, and taxpayers. The IRS collects more than \$3.5 trillion in taxes and distributes hundreds of billions of dollars in benefits each year.⁵ The spread of COVID-19 brought much of the country to a grinding halt, and that was largely true of the IRS's operations — and right in the middle of the filing season no less. Despite the IRS's best efforts, there have been notable adverse taxpayer impacts, including:

- Taxpayers who filed a 2019 paper return and are entitled to refunds may be in for a long wait. The IRS had to suspend the processing of paper tax returns, and as of May 16, it estimated it had a backlog of 4.7 million paper returns.⁶ Although the IRS is reopening some of its core operations, it is not clear when it can open and log all the returns sitting in mail facilities.
- Some taxpayers whose returns were mistakenly flagged by IRS processing filters are experiencing lengthy delays in receiving their refunds. All tax returns claiming refunds are passed through filters designed to detect identity theft and other types of refund fraud. As TAS has documented, some of these filters produce “false positive rates” of more than 50 percent (meaning that more than half the taxpayers whose returns are stopped by certain filters are entitled to the refunds they claimed). Affected taxpayers are often asked to mail in documentation to substantiate their claims, but the IRS has not opened or processed many of their responses, delaying their refunds. Refund delays can have a significant financial impact on low-income taxpayers, as refunds often constitute a significant percentage of their annual household incomes. Notably, some of the refund delays have been generated by claims for the Earned Income Tax Credit or Additional Child Tax Credit.
- Individuals who did not receive some or all of their EIPs may have to wait until next year to receive them. To date, the IRS has taken the position that most taxpayers who did not receive their full payments will have to wait until they file their 2020 income tax returns to claim the amounts as credits against their 2020 tax liabilities, even though there is no legal constraint on the IRS's ability to issue additional EIP amounts as advance refunds during 2020. Congress enacted the CARES Act both to provide emergency financial relief to taxpayers on an individual level and to boost spending on the national level. We will continue to urge the IRS to provide full EIPs to eligible taxpayers throughout 2020 as rapidly as possible. Making taxpayers wait until next year to receive their EIPs harms the taxpayers and is inconsistent with congressional intent.
- Taxpayers who have needed help from the IRS have had difficulty obtaining it. The IRS shut down its Accounts Management telephone lines so taxpayers could not reach a live assistant by telephone. The IRS shut down its Taxpayer Assistance Centers, making it impossible for taxpayers to obtain in-person assistance. The IRS also shut down its mail operations, so it was unable to log or process taxpayer responses to compliance notices. The only resources readily available was IRS.gov and automated phone lines. The IRS has begun reopening its operations, but it will take some time before they are restored to full capacity.

5 Government Accountability Office, GAO-20-159, *Financial Audit: IRS's FY 2019 and FY 2018 Financial Statements* 100 (Nov. 2019), <https://www.gao.gov/assets/710/702597.pdf>.

6 IRS Operations Update Report (May 27, 2020).

There are two additional concerns to note. First, as IRS campuses are reopening and employees have returned to work, they have begun processing the backlog of work including notices and correspondence.

During the shutdown, the IRS generated over 20 million notices that could not be mailed due to closure of notice production centers between April 8 and May 31. The IRS is mailing these notices now. However, some collection notices bear old dates and include response deadlines that often have passed. For example, a notice queued up in April may bear an April date and provide a response deadline in May. The taxpayers' accounts will similarly reflect the wrong dates. For business reasons, the IRS is not reissuing the generated notices; rather, it is enclosing an "insert" in its mailings, which consists of an additional page at the end of the notice providing updated due dates information. Thus, it is critical that taxpayers and representatives read through all pages included in a taxpayer's notice and pay special attention to the due dates on the insert, but some taxpayers will not read the insert or understand its significance. Taxpayers who receive these notices may be confused and distressed believing they missed response deadlines.

Second, I would be remiss if I did not address the impact COVID-19 has been having on TAS's ability to assist taxpayers. TAS effectively serves as a "safety net" when taxpayers are experiencing economic hardship or when an IRS process is not working as it should. Our Case Advocates are telework-ready and have been able to do their jobs. However, the closure of IRS telephone lines and the inability to pick up taxpayers' letters have made it difficult for taxpayers to reach TAS. In addition, TAS Case Advocates are just that — *advocates*. They generally present the taxpayer's documentation to the IRS with a recommendation, but only employees in one of the IRS operating divisions have the authority to decide whether to grant relief. The IRS has remained sufficiently staffed to handle some issues, but it could not assist with other issues (*e.g.*, a taxpayer wants to refinance his or her mortgage, but the IRS has placed a lien on the property, and the taxpayer has filed an amended return that would eliminate the tax liability, but the amended return has been sitting unopened in an IRS facility).

In addition, some taxpayers have sought assistance from TAS to obtain their EIPs. As described above, the IRS has not established procedures to resolve EIP cases this year, advising taxpayers that they should claim unreceived payments on their 2020 income tax returns filed next year. Unless the IRS develops procedures to resolve missing payments or underpayments, TAS cannot assist taxpayers with EIP problems.

The effects of COVID-19 will continue to be felt for the foreseeable future. Social distancing requirements remain in place to differing degrees around the country. Although the IRS, like most businesses, moved rapidly to adapt its operations to the realities of telework, some components of its operations cannot be transitioned. We will continue to identify areas where taxpayers' needs are not being met and will continue to advocate for alternative approaches to meet those needs.

Taxpayer First Act. In 2019, Congress enacted TFA, the most far-reaching revisions to tax administration since the IRS Restructuring and Reform Act of 1998. The TFA included some 23 provisions recommended by the National Taxpayer Advocate. A centerpiece of the TFA is a requirement that the IRS develop four strategic plans: (i) a comprehensive taxpayer service strategy; (ii) a plan to redesign the IRS's organizational structure; (iii) a comprehensive employee training

strategy that includes training on taxpayer rights and the role of TAS; and (iv) a multi-year plan to meet IRS information technology needs. But for COVID-19, implementation of the TFA would have been the IRS's top strategic focus. Because of COVID-19, the IRS is delayed in developing these plans, but it expects to deliver its comprehensive taxpayer service strategy to Congress by the end of the year.

In this report, we detail some steps the IRS has taken to gather input from taxpayers, practitioners, and TAS, and we identify over two dozen TFA provisions that the IRS has already implemented. We also express concern that the IRS has not properly implemented a provision directing it to establish a single point of contact for identity theft victims and that it may not properly implement a provision directing it to exclude taxpayers with adjusted gross incomes at or below 200 percent of the Federal Poverty Level from assignment to private debt collection agencies after December 31, 2020.

I have been impressed by many ideas the IRS is considering, and I look forward to working with the leadership as it refines its taxpayer service strategy in the coming months.

I am very excited to serve as the National Taxpayer Advocate and to use the knowledge I have gained during my tax career to improve the taxpayer experience. Despite the current challenges, I see two unusually promising avenues for change. First, as the IRS has modified longstanding business practices to meet social distancing requirements, it has taken taxpayer-favorable steps it had resisted, such as authorizing e-signatures on documents. I plan to make a list of those practices and urge the IRS to continue many of them even when normal operations resume. Second, the IRS's focus on developing a comprehensive taxpayer service plan provides additional opportunities to, as the name of the Act suggests, put "taxpayers first."

As the IRS reopens operations and we return to normalcy, I look forward to continuing and building upon TAS's ongoing efforts to make tax administration work better for taxpayers.

Sincerely,

A handwritten signature in blue ink, appearing to read "Erin M. Collins". The signature is fluid and cursive, with a long, sweeping underline.

Erin M. Collins
National Taxpayer Advocate
29 June 2020

Improving Taxpayers' Experience Throughout the Year

COVID-19 is the major issue in tax administration currently, affecting every IRS operation and nearly every interaction taxpayers have with the agency. The pandemic has also had significant impact on TAS. As a result, much of our focus in the Fiscal Year 2021 Objectives Report to Congress is on COVID-19 and related issues. However, even as TAS grapples with the constantly changing situation, we continue to advocate on issues present before the pandemic and those that have emerged as a result of it. TAS continues to engage in transparent and open communications with the IRS, taxpayers, and stakeholders to understand their perspectives and effect change.

Below we outline some of the IRS initiatives and taxpayer issues that TAS will continue to address for the benefit of taxpayer rights and effective tax administration. Many of these issues include ongoing dialogues with the IRS to improve policies, processes, and procedures; however, some are new or emerging issues that TAS anticipates could impact taxpayers. We look forward to examining these issues collaboratively with the IRS and other stakeholders where appropriate.

TAS is working with the IRS in the following areas:

- **IRS Servicewide Multilingual Improvement Strategy:** TAS is working with the IRS to provide meaningful access to tax products and services for taxpayers with limited English proficiency (LEP). We are collaborating on:
 - Monitoring the deployment of materials from the top 20 taxpayer languages for use with LEP taxpayers;
 - Establishing Servicewide policies relative to serving LEP taxpayers;
 - Expanding access to IRS services and information to LEP taxpayers through the translation of IRS applications such as Where's My Refund, Direct Pay, Withholding Calculator, and Online Payment Agreement for Individual and Business Master File taxpayers; and
 - Monitoring and tracking implementation of an LEP indicator to establish taxpayer preference for communicating with the IRS on future issues.
- **IRS Notice Improvement Strategy:** TAS is working with the IRS Office of Taxpayer Correspondence to identify opportunities to improve the clarity and content of IRS notices and correspondence with taxpayers. We are focusing on:
 - Taxpayer notice redesign efforts to establish consistent Servicewide process flows for the creation of new taxpayer correspondence products and the update of current products to ensure all contain the proper elements to educate and inform taxpayers and protect taxpayer rights; and
 - Expansion of Taxpayer Digital Communication channels to facilitate more effective and timely communications between taxpayers and the IRS.
- **Improper Collection Statute Extensions:** The collection statute expiration date (CSED) is the amount of time the IRS is allowed to legally collect a tax balance. Sometimes, administrative errors can result in the CSED being extended beyond the period allowed by statute. We will:

- Monitor collaborative team progress to resolve thousands of incorrect CSEDs causing taxpayers to pay the incorrect amount of assessment; and
 - Track the progress of an Integrated Action Tool programming change that will properly calculate the CSED and correct erroneous accounts.
- **Expanding IRS Service and Outreach to Taxpayers:** We will collaborate with the IRS to educate and provide service to rural taxpayer communities and monitor service delivery options and channels for taxpayer assistance. Our efforts will include:
 - Expanding Virtual Service Delivery to rural locations to supplement service options and service communities that have not had face-to-face service;
 - Expanding collaborative outreach efforts to ensure taxpayers have consistent access to traditional paper and digital products as outlined in the Integrated Digital Experience Act, including Taxpayer Assistance Center locations and hours of operation to support the taxpayer's *right to quality service*;
 - Promoting voluntary compliance through expanding taxpayer access to Volunteer Income Tax Assistance/Tax Counseling for the Elderly services and the use of alternative tax preparation methods, *i.e.*, Free File, in underserved and rural communities; and
 - Developing outreach and educational materials with an emphasis on high schools and LEP.
- **Innovation Lab:** The IRS's strategy is to increase compliance through data-driven, cross-functional projects designed to corporately focus on a specific taxpayer segment, *i.e.*, employment taxes. We will:
 - Deploy notices and other communication options to new business owners through a TAS-sponsored project using behavioral insights to improve employment tax compliance through better education. We will track compliance behavior and analyze the results; and
 - Monitor Innovation Lab projects to determine the effectiveness of Servicewide environmental scans, study modeling results and the impact on compliance of misclassification of employees, along with the impact of linked business entities on enforcement actions and activities.
- **Pre-Refund Wage Verification Cases:** This continues to be an annual issue where taxpayers request TAS to assist with the processing of their refunds. The IRS has designed a number of filters to detect and prevent non-identity theft refund fraud. Despite improvements, this program negatively impacts taxpayers by causing delays in releasing legitimate refunds, high false positive rates, and often inadequate information being sent to taxpayers regarding the reasons for refund delays or steps for taxpayers to take to resolve refund holds. We plan to:
 - Work with Return Integrity Compliance Services (RICS) to analyze filter performance and selection results for opportunities to adjust filter parameters and mitigate adverse impact on taxpayers;
 - Work with RICS to identify enhancements to Return Integrity Verification Operations (RIVO) treatment streams to expedite the release of refunds held as a result of filter selection, which should reverse adverse impact to taxpayers by reducing the false positive rate; and

- Dialogue with RICS to streamline RIVO processes for taxpayers claiming hardship(s) associated with refund verification, thereby reducing TAS case receipts. In the past five years, RIVO case receipts averaged 25 percent of all TAS case receipts annually.¹
- **IRS Expansion of Electronic Filing:** The IRS announced that by late summer 2020, taxpayers will for the first time be able to electronically file their Form 1040-X, Amended U.S. Individual Income Tax Return.² We will:
 - Monitor the deployment and impact of allowing taxpayers to file Form 1040-X electronically.
- **Voluntary Disclosure Practice:** The IRS's long-standing voluntary disclosure practice (VDP) provides taxpayers with criminal exposure a means to come into compliance with the law and potentially avoid criminal prosecution.³ Historically, taxpayers who made a voluntary disclosure could often avoid civil penalties as well.⁴ On November 20, 2018, following the termination of its Offshore Voluntary Disclosure Program (OVDP) — a civil settlement program for those with offshore accounts — the IRS announced changes to its VDP.⁵ These new procedures are effective for all voluntary disclosures — both offshore and domestic — received after September 28, 2018. The new VDP imposes a litany of new taxpayer burdens, risks, and procedures, substantially decreasing the benefits of the VDP, which has been extremely helpful in promoting future compliance over the years. The 2018 memorandum increases the penalties applicable to participants, generally requiring six years of potential adjustments and a 75 percent fraud penalty on the highest year.⁶ Although the program still provides protection from criminal prosecution, it comes at a steep financial cost, and time will tell whether taxpayers continue to use it to voluntarily comply. We intend to:
 - Monitor the effects of the new VDP requirements on taxpayer disclosures and settlements to ensure taxpayer rights are not abridged and consider whether the program still provides sufficient taxpayer benefits to encourage voluntary compliance.
- **The Gig Economy and Its Changing Employee/Contractor Relationships:** California and other states are litigating to reclassify many gig economy workers from contractors to employees. We will:
 - Monitor how the IRS navigates the potential conflict between state and federal worker classification.

1 Taxpayer Advocate Management Information System, fiscal years (FYs) 2015 to 2019. RIVO cases receipts for FY 2020 through May of 2020 are 40 percent of TAS case receipts.

2 IRS, IRS Announces Form 1040-X Electronic Filing Options Coming This Summer; Major Milestone Reached for Electronic Returns, IR-2020-107 (May 28, 2020), <https://www.irs.gov/newsroom/irs-announces-form-1040-x-electronic-filing-options-coming-this-summer-major-milestone-reached-for-electronic-returns>.

3 See Internal Revenue Manual (IRM) 9.5.11.9, Voluntary Disclosure Practice (Dec. 2, 2009).

4 See, e.g., Mark E. Matthews and Scott D. Michel, *IRS's Voluntary Disclosure Program for Offshore Accounts: A Critical Assessment After One Year*, 181 DTR J-1, 4 (Sept. 21, 2010) (noting that before the Offshore Voluntary Disclosure Program, "taxpayers rarely paid any penalties in connection with voluntary disclosures on offshore accounts. Indeed, most taxpayers, relying on the advice of skilled tax professionals, many of whom have decades of prior experience in the Justice Department or IRS, simply filed amended returns and paid the tax and interest. They were never audited. No penalties were ever asserted....").

5 Memo from Deputy Commissioner for Services and Enforcement, LB&I-09-1118-014, Updated Voluntary Disclosure Practice (Nov. 20, 2018), <https://www.irs.gov/pub/foia/ig/spder/lbi-09-1118-014.pdf>.

6 IRC § 6663.

- **IRS Enforcement Strategy:** TAS anticipates an increase in bankruptcy filings given the current economic challenges. To address the expanded impact of bankruptcy filings on compliance efforts and the potential increased requests for offer in compromise (OIC) relief, we will:
 - Monitor how the IRS plans to educate and train employees on taxpayer rights associated with bankruptcy filing(s) and the impact on enforcement action(s); and
 - Continue discussions and interactions with the IRS to gauge the IRS's readiness to handle potential spikes in collection hardship cases and OIC requests.

TAS will continue the pursuit of these and other opportunities to improve tax administration for the benefit of taxpayers.

Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services

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 Appeal an IRS Decision in an Independent Forum*
- *The Right to Finality*
- *The Right to a Fair and Just Tax System*

OVERVIEW

In the middle of the tax filing season COVID-19 presented the IRS with an extraordinary challenge: to safeguard the health and safety of taxpayers and employees while administering the tax laws. To further complicate the matter, the IRS was tasked with disbursing Economic Impact Payments (EIPs) during the pandemic. Given the IRS's constraints, the IRS did an impressive job.

The IRS's main obstacles stemmed from its inability to staff core IRS functions due to the lack of portability of duties, such as answering phones, issuing notices, and opening and processing taxpayer correspondence and paper-filed returns. In the early weeks, the IRS announced the People First Initiative, which suspended many enforcement actions and provided taxpayers with much-needed filing and payment deadline postponements until July 15, 2020, among other relief. The IRS diligently issued guidance throughout the pandemic to keep taxpayers informed of its status as well as provide detailed instructions on what they should expect and how to proceed given their particular tax issues.

Despite the IRS's efforts, taxpayers still faced significant challenges. Many taxpayers experienced a sudden change in their financial status and either desperately needed their tax refund to pay bills or suddenly could not pay their tax liabilities. At the same time, taxpayers could not contact the IRS in person or by phone for months, and their mailed correspondence and paper-filed returns sat unopened and unprocessed or were even returned in some instances. In addition, the IRS could not mail notices to taxpayers for months. When it resumed notice production, some backlogged notices included outdated information, requiring the IRS to include informational inserts in the envelopes.

As a result of the complete or partial shutdown of certain core IRS operations, TAS did not have the ability to resolve many taxpayer issues, and the cases will remain outstanding until the IRS resumes operations. From the very beginning of the pandemic, TAS advocated to protect taxpayer rights. We worked with the IRS to ensure that its modified operations minimally impacted taxpayers. We

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

quickly raised issues to the IRS that arose in cases and through submissions to TAS's Systemic Advocacy Management System (SAMS). We will continue to work with the IRS as it resumes operations to ensure that the agency provides as much relief, flexibility, and guidance to taxpayers as possible to minimize taxpayer burden. The COVID-19 impact on the IRS and taxpayers will be significant and long-lasting. Because of the scope of the impact to taxpayers and the IRS, we anticipate that much of fiscal year (FY) 2021 will involve the aftermath of the COVID-19 crisis.

Moving forward, the IRS must plan for the next significant emergency to avoid some of the challenges it faced during COVID-19. The IRS's current arcane computer systems and infrastructure could not handle tax administration remotely, and it has not established across-the-board electronic communication procedures between the taxpayer and the IRS. The IRS needs to improve its infrastructure, hardware, and software to continue its mission-critical operations if another situation arises so that taxpayers do not have to put their lives on hold while the IRS recovers from the effect of the next crisis. As the IRS climbs out of the proverbial operational hole, the National Taxpayer Advocate recommends the IRS consider implementing additional procedures and increase the use of electronic exchange of documents and correspondence with taxpayers, institute the necessary improvements to its telephone systems allowing assistants to handle calls remotely, and continue to upgrade its computer systems to work in a secure remote environment.

DISCUSSION

As the pandemic unfolded, IRS executives, like those in many agencies, weighed the health and safety of taxpayers and its employees as the highest priority in making business and operational decisions. Below, we describe the IRS and TAS responses to the national emergency and discuss its impact to current and anticipated future operations. These operational changes will inevitably result in delays, reevaluation of business priorities, and staffing decisions impacting taxpayers at all stages of tax administration, from pre-filing services through audits, appeals, collection, and litigation.

On March 25, 2020, the IRS announced the People First Initiative, which provided much-needed relief to taxpayers on a variety of issues ranging from postponing filing and payment deadlines to postponing compliance actions.² During the remainder of the COVID-19 pandemic, and as the IRS resumes operations, TAS will continue to assist the IRS and taxpayers to minimize the challenges they face and to ensure that taxpayer rights are protected during this transition period.

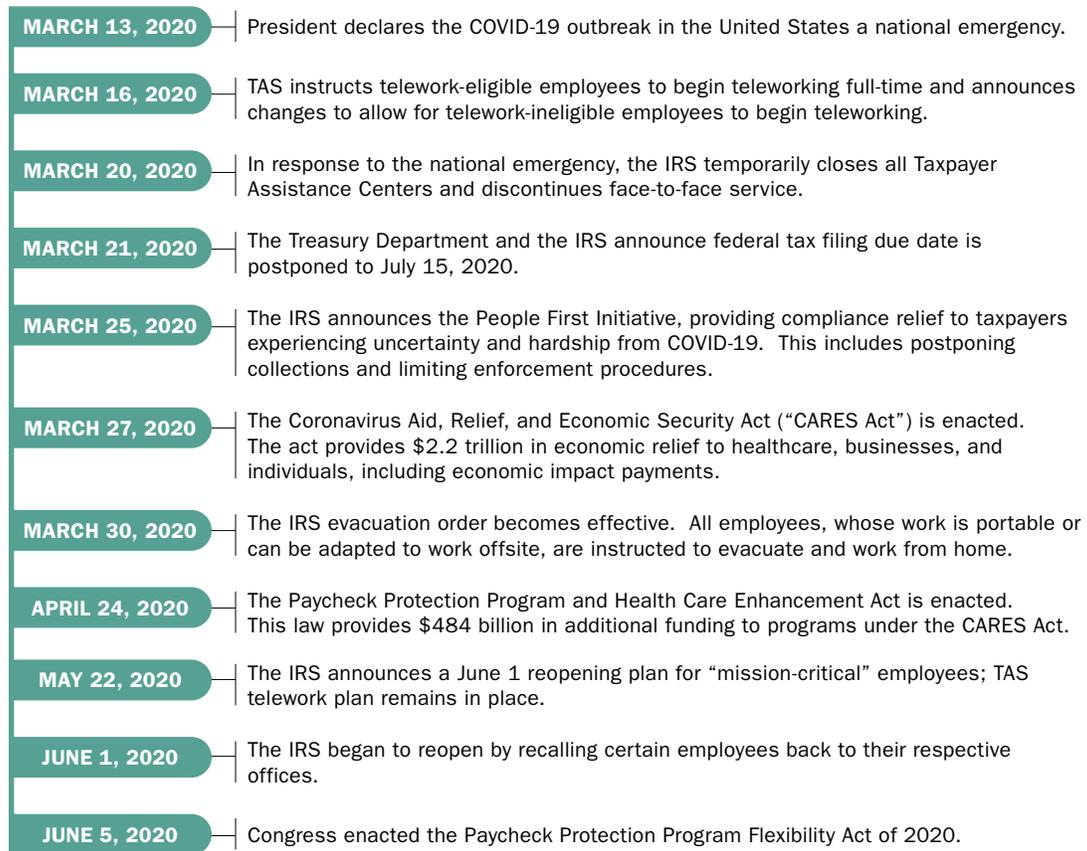
On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act.³ The primary goal of this act was to provide fast and direct economic assistance for American workers, families, and small businesses, including getting cash into the hands of citizens as quickly as possible.⁴ Figure 1.2.1 provides major dates impacting taxpayers and IRS operations.

² IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

³ The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (2020).

⁴ See Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, *infra*.

FIGURE 1.2.1, COVID-19 Timeline⁵



5 Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020); TAS, TAS Takes Measures to Protect Employees and Taxpayers (Mar. 16, 2020); IRS, Taxpayer Assistance Center Statement, <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement> (Mar. 20, 2020); IRS, Tax Day Now July 15: Treasury, IRS Extend Filing Deadline and Federal Tax Payments Regardless of Amount Owed (Mar. 21, 2020), <https://www.irs.gov/newsroom/tax-day-now-july-15-treasury-irs-extend-filing-deadline-and-federal-tax-payments-regardless-of-amount-owed>; IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>; CARES Act, Pub. L. No. 116-136, 134 Stat. 281; IRS, Human Capital Office (HCO), New Work at Home Directive Begins March 30 (Mar. 30, 2020); Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620; TAS, TAS Telework Flexibilities Remain in Place as IRS Offices Begin to Reopen (May 22, 2020). While the IRS officially started recalling some employees on June 1, 2020, some IRS employees returned to their offices before that date.

The IRS's Social Distancing in Response to Presidential Declaration of a National Emergency Negatively Impacted Taxpayer Service and Tax Administration

After the presidential declaration of a national emergency on March 13, 2020, the IRS took steps to maximize social distancing to protect the personal health and safety of taxpayers, employees, contractors, and stakeholders.⁶ As the pandemic increased in severity and spread across the nation, the IRS significantly modified operations through the following actions:

- Closed Taxpayer Assistance Centers (TACs) by ending walk-in and in-person appointments;⁷
- Ceased walk-in services at local TAS offices;⁸
- For mission-critical operations that required employees to work in a campus or IRS office setting, reduced staffing by approximately 50 percent to enhance social distancing;⁹ and
- Subsequently directed all employees to telework if their work duties are portable or could be adapted to work offsite, even if such employees were not telework-eligible.¹⁰

Understandably, as a result of these actions, the operations of many IRS functions temporarily ceased. Although the IRS worked to try to obtain laptops and needed software to give over 14,000 employees the ability to work remotely, telework was not an option for many employees.¹¹ Many employees had to adapt their work duties or were unable to work altogether, as some assignments were impossible to perform at home (*e.g.*, receiving or sending taxpayer correspondences by mail, accessing computer systems, and answering toll-free phone lines). In some instances, these operational adaptations resulted in the partial or complete cessation of core IRS functions throughout the entire country. Like prior government shutdowns, the impact to the IRS's business operations will be felt over an extended period.

Taxpayer Limitations as a Result of the COVID-19 Crisis

For TAS and the IRS to effectively assist taxpayers in resolving their tax issues, it is essential to recognize that the COVID-19 crisis caused taxpayers' lives to significantly change and, as a result, impacted the way taxpayers interact with the agency, including:

- *Unexpected Change in Financial Status.* Between the state and local restrictions imposed on business operations, the sudden spike in unemployment, and the dramatic drop in the stock market during the COVID-19 crisis, many taxpayers had an unexpected change in financial status and were more likely to experience economic hardship. In addition, the crisis caused many businesses to close with all the resulting tax issues.
- *Limited Communication Channels.* For weeks, taxpayers experienced problems communicating with the IRS in person, through the mail, and by phone. The IRS tried to steer taxpayers

6 Proclamation No. 9994, 85 Fed. Reg. 15,337 (Mar. 13, 2020).

7 IRS Commissioner, Protecting You; Protecting the Nation: New Steps to Safeguard Employees (Mar. 19, 2020).

8 *Id.*

9 *Id.*

10 IRS, New Work at Home Directive Begins March 30 (Only Employees Directed by Their Supervisor to Perform Mission Essential Work May Work From an IRS POD) (Mar. 27, 2020), <https://www.irs.gov/newsroom/new-work-at-home-directive-begins-march-30-only-employees-directed-by-their-supervisor-to-perform-mission-essential-work-may-work-from-an-irs-pod>.

11 HCO, Continuity of Operations Meeting (Mar. 12, 2020).

toward online tools to the extent possible; however, not all taxpayers are comfortable interacting with the IRS through this service channel for a variety of reasons.¹² While the IRS encouraged taxpayers to submit documents by fax, not all taxpayers had access to a fax machine while social distancing.¹³ Therefore, it might appear a taxpayer is unresponsive even though he or she made several previous attempts to respond.

- *Access to Requested Documentation.* Due to widespread business closures as well as limited operations at other governmental offices, taxpayers faced obstacles in accessing documentation requested by the IRS. As a result, resolution of tax issues may require thinking “outside the box” to identify acceptable alternative documentation. To effectively assist taxpayers, TAS will continue to work with the IRS to ensure flexibility in the acceptance of alternative documentation given the obstacles taxpayers are facing during the national emergency.
- *Changes in Address.* The state and local mandated “stay-at-home” orders coupled with sudden changes in financial status may have caused taxpayers to quickly change their living arrangements, leaving the IRS or TAS unable to reach them. The National Taxpayer Advocate recommends the IRS consider extending response deadlines before deeming the taxpayer unresponsive and either closing the matter or taking the next compliance action.
- *Increased Anxiety.* The uncertainty surrounding the pandemic causes anxiety for most people. Add in unemployment and tax compliance issues, and it might be too much for many people to handle. Given the prolonged closures of core IRS functions, it is likely that taxpayers have experienced or will experience delays in resolving their tax issues, which will add to this anxiety. The IRS should be patient and increasingly flexible wherever possible while working with taxpayers to help resolve their issues (*e.g.*, accepting alternate documentation, postponing information requests deadlines, etc.).

Lessons Learned From Previous Disasters

Disasters subject taxpayers to a variety of challenges, including compliance with tax filing and payment obligations. These difficulties, in turn, give rise to downstream complications. In the past, taxpayers who have fallen victim to disasters have not always received optimal service from the IRS. The pandemic presents an opportunity for the IRS to learn from mistakes made in the past, protect taxpayer rights, and support those whose filings and payments may have been adversely impacted by the crisis.

After Hurricanes Maria and Irma in 2017, the IRS postponed certain filing and payment deadlines and limited some field examinations to account for the communications disruptions, infrastructure failures, and traumas suffered by individual taxpayers. However, the IRS made assessments against Puerto Rican taxpayers without taking sufficient steps to ensure that they were effectively engaged in

12 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited May 13, 2020). See National Taxpayer Advocate 2019 Annual Report to Congress 6-7 (Most Serious Problem: *Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results*).

13 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (Apr. 21, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

their audits and that all required notices were in fact delivered.¹⁴ Because of this lack of engagement, audits of these taxpayers had unusually poor outcomes, evidenced by the audit non-response rate that increased by eight percent and the default assessment rate that increased by nine percent following the hurricanes.¹⁵

Going forward, when deciding how to address the COVID-19 pandemic as well as future disasters and pandemics, the IRS must examine and learn from past experiences. The IRS will need to demonstrate understanding and flexibility when conducting compliance initiatives over subsequent months and possibly years. Many taxpayers will unavoidably encounter challenges in accurately reporting their tax obligations and may miss filing and payment deadlines. This reality will inevitably lead to increased enforcement actions against taxpayers whose tax preparers may no longer be available or who may themselves still be living in the wake of tragedy.¹⁶ As the IRS develops further procedures to address the COVID-19 crisis as well as future disasters, TAS will work with the IRS to ensure that taxpayer rights are protected, especially by demonstrating flexibility when conducting compliance initiatives (*e.g.*, flexibility in determining reasonable cause for penalty relief, increased information request deadlines, flexibility in the acceptance of more alternative types of documentation).

How Temporary Adaptations in IRS, Chief Counsel, and Tax Court Operations Impacted Taxpayers

The IRS made significant changes to its operations in response to the COVID-19 crisis. However, the operational changes created challenges for taxpayers as they interacted with the IRS at all stages of their journey through the tax system. The IRS's People First Initiative attempted to address some of the compliance issues, as discussed below.

Taxpayer Service Limitations as a Result of the COVID-19 Crisis

The IRS's operational adaptations in response to the pandemic significantly impacted how it provided taxpayer services. Beginning in March, taxpayers and practitioners had difficulties contacting the IRS in person and on the phone as the IRS maximized social distancing and, as a result, rendered many taxpayer-facing functions partially or completely shut down. In the meantime, the IRS steered taxpayers to use self-help online tools, which is not necessarily accessible or preferred by some taxpayers. The impact of such decline in taxpayer services could have significant downstream consequences for taxpayers.

14 SERP Alert 17A0222, Tax Relief for Taxpayers Affected by Hurricane Harvey, Hurricane Irma, and Hurricane Maria (Aug. 29, 2017, rev. Dec. 6, 2017); IRS, Tax Relief for Victims of Hurricane Maria in Puerto Rico (Sept. 22, 2017), <https://www.irs.gov/newsroom/tax-relief-for-victims-of-hurricane-maria-in-puerto-rico>.

15 IRS Compliance Data Warehouse (CDW), Automated Information Management System (Apr. 2020) for Puerto Rican taxpayers. The audit non-response rate is determined by looking to the number of audits in which taxpayers do not reply to IRS inquiries. The default assessment rate is calculated by looking to assessments made after taxpayers do not pursue their administrative or judicial appeal rights.

16 Examinations, including substitutes for return, can be generated by unfiled returns when third-party information returns cannot be matched to a tax return. Likewise, collection activity can be, and typically is, triggered by late payment of tax liabilities.

LIMITED TELEPHONE SERVICE PREVENTED TAXPAYERS FROM DISCUSSING THEIR TAX ISSUES WITH AN IRS EMPLOYEE

For weeks, taxpayers had extremely limited ability to reach the IRS by phone. The IRS closed all of its Accounts Management (AM) phone lines supported by Customer Service Representatives (CSRs) for both taxpayers and tax professionals beginning on April 1, 2020, and slowly resumed service beginning on April 27, 2020.¹⁷ Automated phone lines remained operational during the crisis, and the IRS encouraged taxpayers and professionals to use online self-help tools.

The Practitioner Priority Service line (PPS) was temporarily closed until May 13, 2020, and the IRS was unable to process third-party authorizations in the Centralized Authorization File (CAF).¹⁸ The IRS encouraged practitioners to use self-help tools, such as e-Services accounts.¹⁹ The IRS e-Services application includes several useful tools for practitioners, such as Transcript Delivery System and Taxpayer Identification Number Matching; however, it does not provide a platform where practitioners can directly discuss taxpayer-specific issues with an IRS employee. In addition, to access the online tool, they must first pass rigorous e-authentication requirements.²⁰

Figure 1.2.2 details the number of call attempts, calls answered by assistors, and level of service for several IRS phone product lines for the week of February 16, 2020, to February 22, 2020 (before the declaration of the national emergency), and for the week of March 15, 2020, to March 21, 2020 (after the national emergency declaration and just as the IRS began to social distance) compared to similar weeks in 2019. The number of call attempts varied by product line in comparison to last year, but the number of calls answered by assistors noticeably dropped as the IRS began to social distance in March.

17 IRS SERP Alert 20A0135, Product Line Closure (Rev. Apr. 1, 2020); IRS SERP Alert 20A0191, TPP Guidance During Continued COVID-19 Closures (Apr. 29, 2020) (TPP line opened on April 27, 2020); IRS SERP Alert 20A0207, Accounts Management to Open Some Phone Lines on Monday May 18, 2020 (May 19, 2020).

18 IRS SERP Alert 20A0201, PPS Phone Line; Processing of Forms 2848/8821 (May 13, 2020). The IRS CAF Unit processes IRS Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization. IRS, The Centralized Authorization File (CAF) – Authorization Rules, <https://www.irs.gov/businesses/small-businesses-self-employed/the-centralized-authorization-file-caf-authorization-rules> (last visited May 19, 2020).

19 IRS SERP Alert 20A0201, PPS Phone Line; Processing of Forms 2848/8821 (May 13, 2020); IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (Apr. 21, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

20 IRS, FAQs About e-Services and Secure Access, <https://www.irs.gov/individuals/faqs-about-e-services-and-secure-access> (last visited June 4, 2020).

FIGURE 1.2.2, IRS Telephone Service Before and After the IRS Closed the Phone Lines²¹

Phone Line and Measure	Week Ending 2/23/19	Week Ending 2/22/20	% Change From 2019 to 2020	Week Ending 3/23/2019	Week Ending 3/21/20	% Change From 2019 to 2020
Enterprise Call Attempts	5,192,337	4,123,411	-20.6%	2,884,693	2,916,295	1.1%
Enterprise Assistor Calls Answered	783,988	837,537	6.8%	921,440	631,918	-31.4%
Enterprise Level of Service (LOS)	42.6%	54.8%	28.6%	74.8%	50.8%	-32.1%
Accounts Management (AM) Call Attempts	4,735,874	3,579,144	-24.4%	2,453,746	2,413,341	-1.6%
AM Assistor Calls Answered	655,887	701,188	6.9%	739,708	494,658	-33.1%
AM LOS	44.7%	64.1%	43.4%	83.1%	57.8%	-30.4%
Consolidated Automated Collection System (ACS) Call Attempts	276,003	362,724	31.4%	243,550	327,441	34.4%
Consolidated ACS Assistor Calls Answered	62,538	65,862	5.3%	100,653	63,909	-36.5%
Consolidated ACS LOS	25.1%	20.0%	-20.3%	47.4%	21.8%	-54.0%
PPS Call Attempts	55,213	95,943	73.8%	67,142	116,187	73.0%
PPS Assistor Calls Answered	37,489	38,585	2.9%	41,578	39,229	-5.6%
PPS LOS	88.2%	78.8%	-10.7%	80.8%	57.1%	-29.3%

Once the IRS closed the AM and PPS phone lines in April, the number of call attempts and assistor-answered calls dropped, as indicated in Figure 1.2.3. However, both numbers increased as the IRS slowly began to restore service in May.

21 Data includes only calls within a particular week and is non-cumulative for the fiscal year or planning period. IRS, JOC Snapshot Reports: Enterprise Snapshot (weeks ending Feb. 23, 2019; Mar. 23, 2019; Feb. 22, 2020; Mar. 21, 2020). IRS, JOC Snapshot Reports: Product Line Detail (weeks ending Feb. 23, 2019; Mar. 23, 2019; Feb. 22, 2020; Mar. 21, 2020).

FIGURE 1.2.3, IRS Telephone Service After Phone Lines Closed and Slowly Resumed Service²²

Line and Measure	Week Ending 04/20/19	Week Ending 04/18/20	% Change From 2019 to 2020	Week Ending 05/25/19	Week Ending 05/23/20	% Change From 2019 to 2020
Enterprisewide Call Attempts	2,941,224	618,167	-79.0%	2,309,403	3,485,718	50.9%
Enterprisewide Assistor Calls Answered	798,510	53,142	-93.3%	631,382	326,889	-48.2%
Enterprisewide LOS	59.6%	82.7%	38.8%	52.6%	28.8%	-45.3%
AM Call Attempts	2,401,478	474,973	-80.2%	1,852,730	3,184,487	71.9%
AM Assistor Calls Answered	632,267	0	-100.0%	474,284	239,486	-49.5%
AM LOS	66.9%	0%	-100.0%	56.7%	26.1%	-47.3%
Consolidated ACS Call Attempts	367,798	64,433	-82.5%	308,841	212,341	-31.2%
Consolidated ACS Assistor Calls Answered	99,605	35,065	-64.8%	105,848	54,568	-48.5%
Consolidated ACS LOS	29.8%	75.9%	154.7%	38.2%	29.9%	-21.7%
PPS Call Attempts	62,285	32	-99.9%	80,221	76,478	-4.7%
PPS Assistor Calls Answered	42,529	0	-100.0%	47,782	32,492	-32.0%
PPS LOS	87.6%	0%	-100.0%	74.5%	58.0%	-22.1%

While the number of call attempts for the week ending April 18, 2020, dropped significantly compared to the same period in 2019, a large number of taxpayers — over 600,000 during the week ending April 18, 2020 — continued to call the IRS even when it was highly publicized that phone lines were closed, most lines were unanswered, and the IRS steered taxpayers online. It appears that no matter how much the IRS attempts to drive taxpayers to the internet, many taxpayers will still attempt to use their service channel of preference. We will continue to monitor how this crisis impacts call volumes once the IRS fully reopens and determine if we can extrapolate data as to whether the IRS converted more taxpayers to use online tools or if taxpayers reverted to using the more personalized service channels.

CLOSURE OF TAXPAYER ASSISTANCE CENTERS PREVENTED MUCH-NEEDED TAXPAYER IN-PERSON ASSISTANCE

Effective March 19, 2019, the IRS closed all TACs indefinitely. Before the call centers closed, all CSRs who staff the TAC toll-free applications were instructed to stop scheduling TAC appointments. The Taxpayer Protection Program CSRs were also instructed to stop making appointments at TACs for taxpayer identity verification.²³ To deal with pre-scheduled appointments, employees of the IRS

²² Note that where AM answered zero calls, the IRS calculated level of service to be 100 percent, while we calculated it to be zero percent. AM calculated 100 percent because when the lines were closed, the callers just heard an initial upfront message. The calls never made it into the AM LOS calculation, meaning they answered zero of zero calls, or 100 percent. Data includes only calls within a particular week and is non-cumulative for the fiscal year or planning period. IRS, JOC Snapshot Reports: Enterprise Snapshot (weeks ending Apr. 20, 2019; May 25, 2019; Apr. 18, 2020; May 23, 2020) and IRS, JOC Snapshot Reports: Product Line Detail (weeks ending Apr. 20, 2019; May 25, 2019; Apr. 18, 2020; May 23, 2020).

²³ IRS SERP Alert 20A0131, All TAC Locations Closed (Mar. 19, 2020). The IRS Taxpayer Protection Program (TPP) identifies suspicious tax returns as potential identity theft. TPP sends the impacted taxpayer a letter that may instruct the taxpayer to call the TPP toll-free line. IRS, IRS Identity Theft Victim Assistance: How It Works, <https://www.irs.gov/individuals/how-irs-id-theft-victim-assistance-works> (last visited May 17, 2020).

Field Assistance function in the Wage and Investment (W&I) Division were instructed to contact taxpayers with existing appointments and attempt to resolve their issues by phone, if possible.²⁴ As of the date this report went to print, the IRS did not open TACs for face-to-face taxpayer service.²⁵

LIMITED ISSUANCE OF TRANSCRIPTS TO TAXPAYERS

Tax transcripts are often used to validate income and tax filing status for mortgage applications, student loans, and small business loan applications. They can also be useful to taxpayers and preparers in the return preparation process. Under normal circumstances, taxpayers can request transcripts either by mail on Form 4506-T, Request for Transcript of Tax Return, by calling the automated phone transcript service, or through an online application called Get Transcript Online (accessible either as a standalone application or through the Online Account application).²⁶

During the crisis, the IRS stopped processing transcript requests by mail. For those who submitted an online request for the IRS to mail the transcript, the IRS notice distribution centers were not operating, so taxpayers' requests were not honored, at least on a timely basis. Alternatively, taxpayers could download an electronic copy, but that required the taxpayers to pass the stringent e-authentication requirements. This placed many taxpayers in difficult situations without access to their transcripts. Taxpayers could potentially visit a tax professional who could electronically access their transcripts through the Transcript Delivery System on e-Services, an online tool for tax professionals;²⁷ however, a professional is likely to charge for that service. In cases where taxpayers experienced economic hardship and could not access Get Transcript Online, TAS would assist in obtaining their transcripts.²⁸

Postponement of Filing and Payment Deadlines for Certain Returns and Types of Payments

After the President declared a national emergency on March 13, 2020, the IRS quickly provided relief by issuing multiple pieces of guidance to postpone filing and payment deadlines until July 15, 2020.²⁹ While the postponed deadlines certainly provided relief, the American Bar Association (ABA) recommended that the IRS postpone the relief period to the fullest extent authorized by IRC § 7508A. Specifically, the ABA recommended that the IRS postpone deadlines falling on or after January 20, 2020, to the later of (i) July 15, 2020, or (ii) the latest day of the

24 IRS SERP Alert 20A0131, All TAC Locations Closed (Mar. 19, 2020).

25 See IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (June 8, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

26 See IRS, Welcome to Get Transcript, <https://www.irs.gov/individuals/get-transcript> (last visited May 6, 2020); IRS, Get Transcript FAQs, <https://www.irs.gov/individuals/get-transcript-faqs> (last visited May 6, 2020).

27 IRS, e-Services, <https://www.irs.gov/e-services> (last visited May 6, 2020).

28 Internal Revenue Manual (IRM) 13.1.16.10, Contacts Not Meeting TAS Criteria (Nonfrivolous Inquiries) (Mar. 28, 2017); IRM 13.1.16.11.2 (1), Quick Closure Cases (Mar. 28, 2017). As of June 6, 2020, TAS opened 1,030 transcript request cases in FY 2020, which is down 7.6 percent from the same period in 2019 (1,115 cases). TAS, Year to Date (YTD) Receipts to June 6, 2020 by Primary Core Issue Code and Special Case Code.

29 See IRS Notice 2020-17, 2020-15 I.R.B. 590; Notice 2020-18, 2020-15 I.R.B. 590; Notice 2020-20, 2020-16 I.R.B. 660; Notice 2020-23, 2020-18 I.R.B. 742; Notice 2020-35, 2020-25 I.R.B. 948. The postponement applies to income, estate, and gift taxes, generation-skipping transfer taxes, some excise taxes, and employment taxes. In addition, the IRS postponed judicial and refund claim filing deadlines, as discussed in more detail below.

Incident Period of the federally declared disaster plus 60 days.³⁰ Considering that some Volunteer Income Tax Assistance sites and all Tax Counseling for the Elderly sites were closed due to COVID-19, TAS will work with the IRS to ensure that the agency protects the taxpayer's *right to a fair and just tax system* by encouraging it to apply the maximum amount of flexibility with taxpayers, especially low-income and elderly taxpayers, who miss the postponed filing deadlines (*e.g.*, penalty relief).³¹ In addition, for taxpayers who mailed checks before the IRS campuses closed that the IRS does not attempt to process until months later, TAS will ensure that the IRS does not assess a bad check penalty against those taxpayers.³²

Suspension of Processing Paper Tax Returns Delays the Issuance of Refunds

The IRS suspended the processing of paper tax returns, including amended returns, at the end of March.³³ Of the estimated ten million pieces of mail sitting unopened as of May 16, 2020, it estimates that about half were paper-filed tax returns. (The additional pieces of mail were a combination of taxpayer correspondence, information returns, payment vouchers and payments, etc.).³⁴ While the overwhelming majority of taxpayers file electronically, taxpayers who file paper returns are experiencing extreme delays in processing their returns.³⁵ Those taxpayers who already filed a paper return were discouraged from filing a second tax return.³⁶ While many refund returns are e-filed, those taxpayers who chose to file a paper return are required to wait until the IRS

30 Letter from Tom Callahan, Chair, Section of Taxation, ABA, to Charles P. Rettig, Comm'r, I.R.S., Specific Substantive and Procedural Provisions Impacted by the COVID-19 Emergency (Apr. 29, 2020), <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2020/042920comments.pdf>. The ABA noted that IRC § 7508A(d)(1) mandates a defined postponement period for “qualified taxpayers” from the earliest incident date of the federally declared disaster until the latest incident date plus 60 days. The ABA also noted that every Federal Emergency Management Agency (FEMA) Major Disaster Declaration with respect to the COVID-19 emergency lists January 20, 2020, as the start date of the “Incident Period.” Despite the ABA’s recommendation, the IRS has indicated that it does not plan to further postpone the deadlines. Aaron Lorenzo, *Rettig: No Plans to Further Delay Tax Filing Deadline*, POLITICO (May 18, 2020).

31 IRS, Free Tax Return Preparation for Qualifying Taxpayers, <https://www.irs.gov/individuals/free-tax-return-preparation-for-you-by-volunteers> (last visited May 13, 2020).

32 IRC § 6657.

33 The IRS recently announced that it will begin to accept electronically filed Form 1040-X, Amended U.S. Tax Return, in Summer 2020. IRS, IR-2020-107, IRS Announces Form 1040-X Electronic Filing Options Coming This Summer; Major Milestone Reached for Electronic Returns (May 28, 2020), <https://www.irs.gov/newsroom/irs-announces-form-1040-x-electronic-filing-options-coming-this-summer-major-milestone-reached-for-electronic-returns>.

34 Allyson Versprille, *Virus Fears, Unopened Mail Await IRS Employees Returning to Work*, BLOOMBERG LAW: TAX (June 1, 2020), https://www.bloomberglaw.com/product/tax/document/XF00Q66000000?bna_news_filter=daily-tax-report&jcsearch=BNA%2520000001726082d211a37fed86a38f0001#jcite (citing data provided by the IRS to the U.S. House Committee on Ways and Means in a report titled “Internal Revenue Service Operations (Report on May 27, 2020)”).

35 IRS, Submission Processing, Program Management/Process Assurance, Filing Season Statistics Report for Week Ending May 23, 2020, Cumulative Individual Income Tax Returns as of May 22, 2020.

36 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited May 13, 2020).

can process paper returns and issue refunds.³⁷ Figure 1.2.4 details the Form 1040-series returns processed by the IRS as of May 22, 2020, compared to the projected number and the number received by that date in 2019. Not unexpected, but the comparison of 2019 filings to 2020 filings is impacted by the postponement of 2020 filing deadlines, which did not occur in 2019.

FIGURE 1.2.4, Total Form 1040-Series Returns Processed as of May 22, 2020³⁸

Filing Method	2019 Actual (mil)	2020 Projected (mil)	2020 Actual (mil)	% Change From 2020 Projected to Actual (mil)	% Change From 2019 to 2020 (mil)
Paper	10.8	10.2	2.7	-73 %	-75%
E-Filed	128.1	130.6	117.0	-10%	-9%
TOTAL	138.8	140.8	119.7	-15%	-14%

Many taxpayers are facing financial hardship associated with the COVID-19 crisis and need the IRS to process their paper-filed returns as soon as possible and release their refunds. In addition, because a taxpayer's return for tax year (TY) 2019 was potentially relevant in determining his or her eligibility for an EIP (as discussed later in this report), the IRS's suspension of paper return processing caused confusion for many taxpayers.³⁹

Furthermore, some taxpayers who initially elected to apply their TY 2019 refund to their TY 2020 tax liability may have had second thoughts, preferring to receive their refunds as soon as possible due to financial hardship brought on by the COVID-19 crisis. Taxpayers cannot reverse an election to apply the 2019 overpayments against the 2020 tax on an *amended* return.⁴⁰ However, if they filed a second return before the filing deadline (*i.e.*, July 15, 2020, or October 15 on extension), the second return "supersedes" the first return. The second (superseding) return is treated as the original filed return, and the taxpayer may elect to receive the overpayment as a refund.⁴¹ During normal economic times, taxpayers usually do not think about revoking this credit election. But this year, some taxpayers who elected to apply 2019 overpayments against 2020 tax did so before the pandemic affected the economy. These taxpayers may have since been rendered unemployed or insolvent, or they may be earning less (taxable) income than they expected. As a result, they may owe less tax

37 As of May 29, 2020, about 1.7 percent (1,632,700) of the total refund returns filed for TY 2019 (91,615,955) have been filed on paper. Through the corresponding cycle in 2019 (as of May 31, 2019), 7.5 percent (8,410,760) of the total TY 2018 returns (111,937,024) were paper returns. Looking only at this data, the number of processed paper refund returns has decreased about 80 percent. While the IRS was expecting paper refund returns to decline to 6,462,900 in calendar year 2020, the number of paper returns filed by this date is only about 25 percent of this projection. Individual Master File (IMF) Customer Account Data Engine; TY 2019 data as of cycle 20202301, TY 2018 data as of cycle 20192301; IRS Publication 6187, Calendar Year Projections of Individual Returns by Major Processing Categories: 2019 Update, Table 3. Calendar Year Projections of the Number of Individual Refund Returns: U.S., IRS Campuses, and Electronically Filed.

38 IRS, Submission Processing, Program Management/Process Assurance, Filing Season Statistics Report for Week Ending May 23, 2020, Cumulative Individual Income Tax Returns as of May 22, 2020.

39 See Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, *infra*; IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (Apr. 21, 2020).

40 IRM 1.2.1.4.14, Policy Statement 3-14 (Formerly P-2-88), Elections to apply income tax overpayments to estimated tax may be reversed upon showing of undue financial hardship (Oct. 21, 1971).

41 IRM 21.6.7.4.10, Superseding Returns (July 22, 2019).

than they anticipated for 2020, and if so, they need to recover their 2019 tax overpayments now to help meet their basic financial needs.

It is important to note that for individuals, a superseding individual return must be filed on paper and mailed to an IRS processing center.⁴² As noted above, processing centers were closed at the end of March to mitigate the spread of COVID-19, creating a considerable logjam of paper returns and other correspondence that will likely take the IRS months to work.⁴³ Despite these processing delays, filing a superseding return to request the issuance of the refund in 2020 will provide necessary financial relief to taxpayers sooner. In addition, the IRS may be able to manually adjust the taxpayer's account to issue the refund in 2020 upon the taxpayer demonstrating undue financial hardship.⁴⁴ Finally, taxpayers can further speed up the payment by requesting direct deposit rather than a paper check.

Limitations in Options to Authenticate Identity (Taxpayer Protection Program) Prevented Taxpayers From Receiving Timely Refunds

Under normal procedures, when the IRS Taxpayer Protection Program (TPP) flags a tax return as potential identity theft, it sends a letter to the taxpayer to request confirmation of his or her identity.⁴⁵ The IRS suspends processing the refund return until the taxpayer successfully authenticates his or her identity. Based on the type of letter issued by TPP, taxpayers are required to authenticate their identity using either the TPP telephone line, visiting a TAC, or online through the Identity Verification Service.⁴⁶ Because the IRS phone lines were down for weeks and taxpayers could not schedule TAC appointments, the IRS requested that any taxpayers who received one of these letters (issued before the notice production centers closed) confirm their identities online.⁴⁷ Unfortunately, taxpayers must pass rigorous e-authentication requirements to access the online program.⁴⁸ Only after a taxpayer has tried and failed to access the online application would the IRS instruct him or her to fax the required documentation.⁴⁹

42 Erin M. Collins, The Value of “Superseding” Returns and Processing the Additional \$500 Stimulus Benefit for Certain Non-Filers, NTA Blog, https://taxpayeradvocate.irs.gov/news/NTA_Blog_The_Value_of_a_Superseding_Tax_Return (Apr. 29, 2020).

43 IRS, New Work at Home Directive Begins March 30 (Mar. 28, 2020), <https://www.irs.gov/newsroom/new-work-at-home-directive-begins-march-30-only-employees-directed-by-their-supervisor-to-perform-mission-essential-work-may-work-from-an-irs-pod>.

44 IRM 1.2.1.4.14, Policy Statement 3-14 (Formerly P-2-88), Elections to Apply Income Tax Overpayments to Estimated Tax May Be Reversed Upon Showing of Undue Financial Hardship (Oct. 21, 1971).

45 TPP is in W&I's Return Integrity and Compliance Services (RICS) organization.

46 The TPP phone line reopened on April 27, 2020. IRS SERP Alert 20A0135, Product Line Closure (Rev. Apr. 28, 2020). Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2019-40-004, *The Taxpayer Protection Program Includes Processes and Procedures That Are Generally Effective in Reducing Taxpayer Burden* (Oct. 17, 2018); IRS, Identity Verification Service <https://www.irs.gov/identity-theft-fraud-scams/identity-verification> (last visited May 14, 2020).

47 IRS, Identity Verification Service, <https://www.irs.gov/identity-theft-fraud-scams/identity-verification>, last visited May 14, 2020). Limited phone service resumed on the TPP hotline on April 27, 2020. IRS SERP Alert 20A0191, TPP Guidance During Continued COVID-19 Closures (Apr. 24, 2020).

48 See National Taxpayer Advocate 2019 Annual Report to Congress 6-7 (Most Serious Problem: *Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results*).

49 SERP ALERT 20A0144, Treatment of TPP Taxpayers Sent to TAC during COVID-19 Shutdown (May 18, 2020).

Suspension of the Timely Issuance of Notices and Correspondences

Due to the pandemic-related closure of notice production centers, the IRS stopped printing notices and correspondence on April 8, 2020, and did not resume until June 1, 2020.⁵⁰ Over 20 million IRS notices were queued up in the system but were not mailed on the date indicated on the letter and taxpayer account. The IRS is working fervently to prioritize the 20+ million IRS notices to be issued. While under normal circumstances the IRS has the capacity to print about four million notices per week, it is unclear when the IRS will completely work through its entire backlog due to uncertainties surrounding staffing levels, vendor support, and the ability to purge certain backlogged notices.⁵¹

The suspension of timely issuance of notice and correspondence has significant consequences to taxpayers at points throughout the tax system. First, taxpayers were not adequately informed of the status of their returns, refunds, or compliance actions, as applicable. Second, many time-sensitive notices were computer-generated with the dates that have since expired (on the letters themselves and on taxpayers' accounts). While the IRS is providing additional time for payment (July 10, 2020 or July 15, 2020), it will still lead to widespread taxpayer confusion about deadlines to take certain actions.⁵²

TAS is working with the IRS as it develops and implements a communications strategy to issue guidance, such as phone line messaging, Frequently Asked Questions (FAQs), social media posts, and notice inserts, to alleviate some of the associated confusion. Taxpayers will find the original notice or correspondence and an additional document (insert) providing specific relief for compliance reflecting the new due date in the same envelope. For example, TAS worked with the IRS as it developed insert language to include with the issuance of backlogged notice and demand letters to explain the postponed deadlines to make payment and the relief provided on the accrual of penalty and interest.⁵³ We also worked with the IRS to develop inserts to include with the issuance of backlogged math error notices, which ensure taxpayers have the full time provided under the law to request abatement of a math error assessment that increases the amount of tax.⁵⁴ As the IRS works through the inventory of backlogged notices, especially time-sensitive notices, and issues appropriate guidance, TAS will ensure that taxpayer rights are protected.

Examinations and Pre-Refund Reviews

The IRS temporarily stopped opening most new examinations as part of the People First Initiative.⁵⁵ However, taxpayers undergoing existing examinations and pre-refund reviews still face challenges.

50 IRS Operations During COVID-19: Mission-Critical Functions Continue (June 8, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

51 CPS Not Mailed Report Cycle 20 for processing year 2020; IRS SERP Alert 20A0158, CRX Letters (Rev. Apr. 10, 2020); COVID-19 Correspondence Recovery Team Meetings (TAS has four representatives on the team) (May 2020).

52 SERP Alert 20A0242, IRS Issuing Backdated Correspondence (June 6, 2020).

53 See, e.g., IRS Notice 1052-A, Important! You Have More Time to Make Your Payment (May 2020), and the corresponding Spanish version, IRS Notice 1052-A (SP) (May 2020).

54 IRS, Notice 1052-B, Important! You Have More Time to Make Your Payment (June 2020). Under IRC § 6213(b)(2)(A), a taxpayer has 60 days after a notice is sent to request abatement of a math error assessment.

55 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

SUSPENSION OF NEW EXAMINATIONS

The IRS announced as part of its People First Initiative that between April 1 and July 15, 2020, it would not start new field, office, and correspondence examinations, unless deemed necessary to protect the government's interest in preserving the applicable statute of limitations.⁵⁶ It also announced the suspension of all in-person meetings in ongoing examinations. Figure 1.2.5 illustrates the number of audits by type that the IRS started at the beginning of the period of the People First Initiative, compared to the same period in 2019.

FIGURE 1.2.5, Examinations Started Between April 1 and June 1, 2020, Compared to the Same Period in 2019⁵⁷

Type of Audit	2019 (Apr. 1 to Jun. 1, 2019)	2020 (Apr. 1 to Jun. 1, 2020)	% Change
Corporations	2,445	716	-71
Employment Tax	1,185	683	-42
Individual Tax	14,188	5,013	-65
Partnership	534	114	-79
Other	1,218	332	-73
TOTAL	19,570	6,858	-65

Between April 1 and July 15, 2020, the IRS has continued to work existing examination cases and refund claims remotely, where possible. The IRS advised taxpayers to continue to respond to any IRS examination notices already received, even if just to explain their inability to fully comply with the IRS's request.⁵⁸ However, with phone lines temporarily closed and mail left unopened at the IRS, taxpayers were limited in the response methods they could use to avoid significant delays. Taxpayers and representatives could respond by e-fax, and as discussed in more detail below, the IRS accepted digital signatures and email in certain circumstances.⁵⁹ Many taxpayers may have trouble obtaining acceptable requested documentation in a timely manner. This leads to delays in examinations, and the IRS may request an extension of the statute of limitations on assessment.⁶⁰ Taxpayers and representatives will have to weigh the pros and cons of signing such statute extensions,

56 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>. In addition, for those taxpayers who meet with examination employees by phone, IRC § 7521 permits taxpayers to make an audio recording of an interview relating to the determination of any tax.

57 IRS, CDW, Examination Returns Control System (June 2020). In a small number of instances, a taxpayer is included in more than one category (e.g., both in a corporate income tax return and in an employment tax return).

58 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>. In addition, for those taxpayers who meet with examination employees by phone, IRC § 7521 permits taxpayers to make an audio recording of an interview relating to the determination of any tax.

59 Memorandum for All Services and Enforcement Employees, (1) Approval to Accept Images of Signatures and Digital Signatures (2) Approval to Receive Documents and Transmit Encrypted Documents by Email, by IRS Deputy Commissioner, Services and Enforcement (June 12, 2020).

60 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (June 8, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>. IRC § 6501.

especially where the delay was solely caused by the shutdown in IRS operations. TAS plans to protect taxpayer's *right to challenge the IRS's position and be heard* by ascertaining the status of their audits when the IRS fully reopens and working with the IRS to accept alternative documentation.

DELAYS IN PROCESSING TAXPAYER CORRESPONDENCE AND IMPACT ON OPEN CORRESPONDENCE EXAMINATIONS

Due to the disruption of mail operations and the temporary inability to process correspondence during the pandemic, TAS anticipates taxpayers who mailed correspondence to the IRS during this period will experience significant delays. Once normal operations resume, it will likely take the IRS a significant amount of time to work through the correspondence backlog. Some correspondence sent to IRS offices was even returned to the taxpayer if the recipient office was closed and no one was available to accept delivery.⁶¹ Fortunately, the tide of incoming mail has slowed due to the suspension of opening new examinations. Unfortunately, the taxpayers currently under examination may find that their examinations are taking longer to complete — not only because of the large amount of mail to work through but also because it will take the mail processing functions time to sort the examination mail from the other types of mail accumulated. TAS will protect the taxpayer's *right to challenge the IRS's position and be heard* by working with the IRS to be flexible with those taxpayers who had difficulties timely responding to IRS information requests caused by the crisis.

While the suspension of new examinations and face-to-face meetings affected all IRS examination functions, the closure of IRS campuses has and will have the greatest impact on open examinations. The campuses conduct about 75 percent of all IRS examinations, and these campus exams are conducted almost exclusively through correspondence (ground mail) using an automated system. The automated system generates and mails letters from the examining campus at various phases of the audit, including the initial contact letter informing the taxpayer of the audit and requesting additional information or documentation.⁶² A taxpayer under correspondence examination then mails the requested information to the campus conducting the examination.

With the campus closings beginning in late March, ground mail services were unable to deliver the mail to the campuses because IRS personnel was not available to receive it. This undelivered mail was either returned to the taxpayer or has been accumulating in annexes, alternate locations, and large trailers awaiting the return of campus mail-processing personnel. TAS has estimated that nearly 100,000 taxpayers undergoing a campus correspondence audit could have unprocessed mail.⁶³ This is in addition to the existing 63,000 pieces of mail previously logged by campus correspondence examination prior to the suspension of mail processing awaiting consideration.⁶⁴ In fact, between

61 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (Apr. 21, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>; SAMS Issue 42283, USPS Returning Mail to TPs for Andover Stop 360 RP.

62 IRS, 2018 IRS Data Book, Table 9a (May 2019), Examination Coverage: Recommended and Average Recommended Additional Tax After Examination, by Type and Size of Return, Fiscal Year 2018.

63 Extrapolated using the percent of correspondence received in the month following the issuance of an initial contact letter, a 30-day letter, a revised audit report, or a request for additional information. AIMS Centralized Information System (ACIS) Campus Open Case Count by Status Code 201902–202003, and ACIS Campus Open Case Count by Prior Status Code 201903–202004, ACIS Campus Closed Case Monitoring by Disposal Code 201901–202003.

64 IRS, W&I, Refundable Credit Examination Operations (RCEO), RCEO Weekly Mail Report for TAS (May 25, 2020).

April 4 and May 30, 2020, the IRS received about 205,000 pieces of correspondence, which is about 14 percent of the correspondence it received during the same period of FY 2019 (almost 1.5 million).⁶⁵

Examiners also experienced difficulties working on open correspondence examinations in which the IRS received and processed the information and documentation submitted by taxpayers and representatives. Campus examiners do not have remote access to case files because casework is largely based on paper documents housed at the campus and, at least initially, campus examiners did not have laptops to take home. W&I Refundable Credits Examination Operations prioritized TAS hardship cases, and managers went to the Atlanta campus to convert paper documents or faxes into an electronic format before examiners could address them while teleworking.⁶⁶

IN MANY CASES, TAXPAYERS WHOSE RETURNS WERE BEING SUBJECTED TO WAGE VERIFICATION OR THE EARNED INCOME TAX CREDIT AND ADDITIONAL CHILD TAX CREDIT REVIEW WERE UNAWARE THEIR REFUND WAS BEING HELD AND WHAT STEPS WERE NECESSARY TO ACHIEVE THE RELEASE OF THEIR REFUND

Due to the suspension of notice production,⁶⁷ in certain circumstances, taxpayers were not aware that the Pre-Refund Wage Verification Hold (PRWVH) program was holding their refunds and that they may need to provide the IRS with documentation verifying information on the return (*e.g.*, wages and withholding) or submit an amended return to get their refunds released.⁶⁸ Additionally, if a taxpayer's return was transferred to another IRS treatment stream because it was unable to verify information on the return, the receiving office was not able to send an initial contact letter.⁶⁹ In many cases, taxpayers were unaware as to why their refunds were held or what they could do to get them released.

Pursuant to the People First Initiative, the IRS postponed taxpayer response deadlines until July 15, 2020, for taxpayers who received notices requesting additional documentation to verify information on their return or claiming of the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC) and had deadlines that fell after April 1, 2020. The IRS encouraged taxpayers to exercise their best efforts to obtain and submit all requested information, and if unable to do so, instructed taxpayers to provide any reason such information is unavailable. It advised taxpayers that “[u]ntil July 15, 2020, the IRS will not deny these credits for a failure to provide

65 IRS, Joint Operations Center, Enterprise Adjustments – Fiscal Year Comparison, 2nd Planning Period – April through May 30, 2020 (FY 2019 and FY 2020).

66 W&I, RCEO Employees Keep the Work Moving During the COVID-19 Pandemic, W&I Offline, Atlanta Campus 4 (May/June 2020).

67 IRS Operations During COVID-19: Mission-Critical Functions Continue (June 8, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

68 IRS Notice CP 05, We're Holding Your Refund Until We Finish Reviewing Your Return; IRS Letter 4464C, Questionable Refund Letter (Dec. 2019).

69 The Return Integrity Verification Operations (RIVO) of W&I manages the Pre-Refund Wage Verification Hold Program (PRWVH), which relies on a number of filters to screen returns for possible refund fraud. When returns are selected into the PRWVH, the IRS seeks to verify information on the return, namely wages and withholding. This verification process is done by either confirming the information on the return by comparing it to W-2 data provided by the Social Security Administration, or by contacting the taxpayer's employer(s) to verify the wages. If the wages cannot be verified, they will be assigned to one of three treatment streams: Wage and Withholding Only, Automated Questionable Credit, or Exam. Which treatment stream it will be assigned to depends upon whether or not the EITC or ACTC has been claimed on the return.

requested information.”⁷⁰ However, to fairly enforce this postponed response deadline, the IRS will need to account for the delays in processing taxpayer correspondence.

In addition to the extension of these deadlines, the IRS established an e-fax number for taxpayers receiving notice CP 05A, *We’re Holding Your Refund Until We Finish Reviewing Your Tax Return*, to submit requested documents.⁷¹ On cases where the taxpayer was experiencing extreme hardship, TAS encouraged the IRS to accept alternative documentation, resulting in the earlier release of the refund.

Despite these modifications to the IRS’s normal procedures, taxpayers’ refunds continue to be frozen during the extension, and in some cases, taxpayers still don’t know the reason for the refund hold. In fact, both EITC audits and PRWVH issues continue to be the top two issues in TAS case receipts in FY 2020 through June 6, 2020.⁷²

WELCOME CHANGE: DIGITAL ACCEPTANCE AND TRANSMISSION OF DOCUMENTS AND DIGITAL SIGNATURES

Between March 27, 2020, and December 31, 2020, IRS employees can accept documents and transmit documents via email using an established secured messaging system. Employees are permitted to accept images of signatures (scanned or photographed) and digital signatures on documents related to the determination or collection of a tax liability.⁷³ TAS issued similar guidance regarding digital communications and transmission of documents in connection with open TAS cases.⁷⁴ This change is good for tax administration and, in fact, TAS has previously encouraged the IRS to digitally communicate with taxpayers. Historically, however, the IRS has resisted electronic communication due to authentication and security concerns.⁷⁵ In light of COVID-19 and closing IRS offices across the country, the IRS temporarily created an exception to its communication procedures. The National Taxpayer Advocate strongly recommends the IRS prioritize, evaluate, and determine the feasibility of extending the practice beyond 2020, and consider utilizing electronic

70 IRS, IR-2020-59, *IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program* (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

71 SERP Alert 20A0148, *R Freeze with RIVO Involvement – RIVO Notice CP 05A Issued New E-FAX Option* (Mar. 27, 2020).

72 In FY 2020 through June 6, 2020, TAS received 50,866 PRWVH cases, and 7,188 open EITC audits. TAS, *YTD Receipts to June 6, 2020*, by PCIC and Special Case Code.

73 The IRS accepted digital signatures on the following exam-related documents: extensions of statute of limitations on assessment, waivers of statutory notices of deficiency and consents to assessment; and any other statement or form needing the signature of a taxpayer or representative traditionally collected by IRS personnel outside of standard filing procedures (e.g., a case-specific Power of Attorney). Memorandum for All Services and Enforcement Employees, (1) *Approval to Accept Images of Signatures and Digital Signatures* (2) *Approval to Receive Documents and Transmit Encrypted Documents by Email*, by IRS Deputy Commissioner, Services and Enforcement (June 12, 2020).

74 Deputy National Taxpayer Advocate, *Interim Guidance, Digital Signatures and External Email Communications* (Apr. 13, 2020), https://www.irs.gov/pub/foia/ig/tas/tas-13-0420-0009_digital_signatures_and_external_email_communications.pdf.

75 See National Taxpayer Advocate, *Fiscal Year 2019 Objectives Report to Congress* vol. 2, at 36 (*IRS Responses and National Taxpayer Advocate’s Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: Recommendation 3-3*).

communication procedures and exchange of digital documents after COVID-19 for all functions within the IRS.⁷⁶

PENALTY RELIEF

The IRS should revisit certain penalty regimes that, in times of disaster, can cause unduly harsh outcomes for taxpayers. For example, penalties arising when taxpayers fail to respond to notices of unfiled or incomplete international information returns can accumulate to \$50,000 or more if taxpayers are unresponsive.⁷⁷ Taxpayers affected by disasters like COVID-19 may have legitimate reasons to be unresponsive to initial notices, and the IRS should consider suspending or waiving the application of these continuation penalties for impacted taxpayers. The IRS suspended the original deadline for filing many international information returns in case of disaster, and it would be a sensible measure to bring the treatment of the continuation penalty into line with this practice of extending time-sensitive deadlines during a disaster.⁷⁸ Accordingly, to the extent that the IRS has requested that taxpayers produce any delinquent information during this pandemic, the period for doing so should be extended beyond the 90-day window provided by the statute.⁷⁹

Collection

As part of the IRS's People First Initiative, the IRS announced widespread changes to its normal collection procedures between April 1, 2020, and July 15, 2020, to help taxpayers face the challenges of COVID-19.⁸⁰ However, the IRS's near-shutdown placed taxpayers undergoing collection actions in a difficult position, especially if they were attempting to resolve their tax debts. Taxpayers faced significant issues due to mail stoppage, suspension of notices, and inability to interact with the IRS in person and by phone. In the meantime, the interest and penalties continued to accrue on their debts. Once normal collection activities resume, the IRS will find taxpayers in even worse financial shape due to unemployment and business closures. Pursuant to the People First Initiative, taxpayers will be expected to be compliant by July 15, 2020, and many may not have financially recovered by then.

Figure 1.2.6 illustrates that the dollars posted from taxpayer delinquency accounts (TDAs) during the initial months of the national emergency were significantly less than during the same period in 2019.⁸¹ With the challenges to many businesses and the level of unemployment encountered due to COVID-19, TAS anticipates a higher rate of delinquent accounts in the foreseeable future and

76 See also Taxpayer First Act (TFA), Pub. L. No. 116-25, § 2302, 133 Stat. 1013 (2019) (Mandating the IRS to publish guidance within six months of enactment establishing uniform standards and procedures for the acceptance of taxpayers' digital signatures for powers of attorneys and disclosure authorizations.); Sally P. Schreiber, *AICPA Recommends Changes to e-Signature Requirements*, JOURNAL OF ACCOUNTANCY (June 8, 2020), <https://www.journalofaccountancy.com/news/2020/jun/aicpa-recommends-changes-to-irs-e-signature-requirements.html>.

77 See, e.g., IRC § 6038D. This code section imposes an initial \$10,000 penalty for failure to file complete international information returns. Upon notice of the penalty, taxpayers are given 90 days to provide the delinquent information. They are subject to an additional continuation penalty of \$10,000 for each 30-day period in which they do not comply, up to a maximum of \$50,000.

78 See IRS, Notice 2020-23, 2020-18 I.R.B. 742 (cross referencing Rev. Proc. 2018-58, 2018-50 I.R.B. 990).

79 IRC §§ 6038(b)(2), 6038A(d)(2), 6038C(c)(2), 6038D(d)(2), 6677(a), 6679(a)(2).

80 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

81 A Taxpayer Delinquency Account (TDA) is a case assigned to or awaiting assignment to Collection personnel.

will monitor the impact to taxpayers moving forward and assist those seeking help resolving their collection issues.

FIGURE 1.2.6, Dollars Collected From TDAs, March Through May 2020⁸²

	March	April	May
FY 2019	\$1.069 bil	\$851 mil	\$901 mil
FY 2020	\$1.125 bil	\$300 mil	\$330 mil
Percent Change From 2019 to 2020	5.2%	-64.8%	-63.3%

INSTALLMENT AGREEMENTS

The IRS suspended payments due on existing installment agreements (IAs) between April 1, 2020, and July 15, 2020; however, interest continues to accrue on any unpaid balances.⁸³ Taxpayers who had existing IAs or planned to apply for a new IA were impacted as follows:

- **Direct Debit Installment Agreements (DDIAs).** To stop automatic withdrawals on DDIAs, IRS FAQs instructed taxpayers to contact their bank directly to suspend direct debits. However, the FAQs also note that if taxpayers stop payments on DDIAs, they should provide enough notice to the bank to resume payments after July 15 to avoid a possible default of the IA.⁸⁴ This is a potential source of taxpayer confusion and could result in unintended IA defaults for taxpayers who simply forgot to timely resume payments.
- **Streamlined IAs.** Between April 1 and July 15, taxpayers who were eligible for streamlined IAs were still able to enter into those agreements online. Currently, the term for such streamlined IAs is up to 72 months.⁸⁵ To provide economic relief to taxpayers impacted by the COVID-19 crisis, the IRS could make a policy call to extend the term of streamlined IAs to up to 84 months. A streamlined 84-month IA would speed up the application process and eliminate the need for the taxpayer requiring a longer payoff term to submit financials on a Collection Information Statement.⁸⁶
- **Application for Non-Streamlined IAs.** Taxpayers who want to enter into an IA but are not eligible for a streamlined IA can mail Form 9465, Installment Agreement Request, as directed in the form's instructions and begin (and continue) to make payments until the IRS responds to

82 IRS Collection Activity Report 5000-1, FY 2020 (Apr. 2, 2020; Apr. 28, 2020; May 26, 2020), FY 2019 (Apr. 1, 2019; Apr. 30, 2019; May 28, 2019). Percentage change based on actual (non-rounded) dollars collected.

83 IRS, People First Initiative FAQs: Installment Agreements/Payment Plans, <https://www.irs.gov/newsroom/people-first-initiative-faqs-installment-agreements-payment-plans> (last visited June 14, 2020).

84 IRS, Installment Agreement Direct Debit Frequently Asked Questions, <https://www.irs.gov/newsroom/installment-agreement-direct-debit-frequently-asked-questions> (last visited May 8, 2020).

85 See IRS, Streamlined and Expanded Installment Agreements, <https://www.irs.gov/businesses/small-businesses-self-employed/streamlined-processing-of-installment-agreements> (last visited May 8, 2020). The availability of streamlined IAs is limited to: (1) individuals and out-of-business sole proprietors with an assessed balance of tax, penalties and interest up to \$50,000; (2) out-of-business taxpayers with assessed balances up to \$25,000; and (3) in-business taxpayers with income tax only assessed balances up to \$25,000.

86 IRM 5.19.1.6.4(11), Installment Agreements (IAs) (Sept. 26, 2018). Taxpayers whose debts were transferred to a private debt collection agency are already offered the option to enter 84-month IAs. IRC § 6306. See Caleb Smith, *Payment Alternatives in the COVID Era: A Humble Plea for Easier Access to Installment Agreements*, PROCEDURALLY TAXING BLOG, <https://procedurallytaxing.com/payment-alternatives-in-the-covid-era-a-humble-plea-for-easier-access-to-installment-agreements/> (May 6, 2020).

the Form 9465.⁸⁷ Due to the backlog of mail and taxpayer correspondence, processing of such applications will be delayed.

- Modifications of IAs.** Taxpayers whose financial circumstances have changed since setting up an IA may find it difficult to adhere to its terms. These taxpayers can attempt to modify their IAs. If the taxpayer has an assigned revenue officer (RO), he or she can work with the RO. For cases without an assigned RO, the taxpayer can attempt to modify the IA online. If the taxpayer requests a new monthly payment amount that does not meet the minimum required payment amount, the taxpayer will need to complete and submit IRS Form 433-F, Collection Information Statement. Unfortunately, the IRS will experience significant delays in processing these paper forms. In the meantime, the taxpayer should continue to pay to the extent possible. The taxpayer may need to wait until the IRS resumes operations to renegotiate the terms of the IA, including potentially converting from a full pay IA to a partial pay IA, if eligible.⁸⁸

Figure 1.2.7 shows the impact such changes have had on the dollars collected from IAs during the initial months of the national emergency compared to the same period in FY 2019.

FIGURE 1.2.7, Dollars Collected From IAs, March 2020 Through May 2020, Compared to Same Period in 2019⁸⁹

Year	March	April	May
FY 2019	\$1.302 bil	\$1.029 bil	\$980 mil
FY 2020	\$1.324 bil	\$778 mil	\$846 mil
Percent Change From 2019 to 2020	1.7%	-24.4%	-13.7%

OFFERS IN COMPROMISE

The People First Initiative provides the following relief for taxpayers with pending offer in compromise (OIC) requests and accepted OICs:⁹⁰

- Pending OICs.** The initiative permits taxpayers with pending OICs to provide requested additional information to support the OIC until July 15, 2020.⁹¹ Pursuant to the initiative, the IRS would not close any pending OIC requests before July 15, 2020, without the taxpayer’s consent. In addition, the IRS would not default a pending OIC for a taxpayer who has not filed 2018 or 2019 tax returns before July 15, 2020. TAS will assist eligible taxpayers who experience difficulty or extreme delays submitting such documentation for pending OICs.

87 IRS, Apply Online for a Payment Plan, <https://www.irs.gov/individuals/online-payment-agreement-application> (last visited May 11, 2020).

88 IRS, Additional Information on Payment Plans, <https://www.irs.gov/payments/payment-plans-installment-agreements#changeplan> (last visited May 9, 2020).

89 IRS Collection Activity Report 5000-5, FY 2020 (Apr. 2, 2020; Apr. 28, 2020; May 26, 2020), FY 2019 (Apr. 1, 2019; Apr. 30, 2019; May 28, 2019).

90 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

91 Note that the IRS has permitted the limited acceptance and transmission of documents electronically. Memorandum for All Services and Enforcement Employees, (1) Approval to Accept Images of Signatures and Digital Signatures (2) Approval to Receive Documents and Transmit Encrypted Documents by Email, by IRS Deputy Commissioner, Services and Enforcement (June 12, 2020).

- Accepted OICs.** The initiative gives taxpayers with accepted OICs the option to suspend all payments until July 15, 2020, although interest will continue to accrue on any unpaid balances. Taxpayers can expect to experience delays and confusion as they try to navigate the extension. Payments need to commence once the suspension period ends, which could create a hardship for which the taxpayer is not prepared. Taxpayers wishing to communicate with the IRS about these payments might experience delays getting through the phone lines. In addition, the IRS will not default an OIC for taxpayers who have not filed their delinquent TY 2018 return during this period. However, the IRS warned that they need to file their TY 2019 return (if not on extension) and any delinquent TY 2018 returns to prevent the IRS from defaulting their OIC after July 15, 2020. While the initiative provides temporary relief to taxpayers, they are still responsible for making payments after July 15, which may prove difficult if a taxpayer lost a job or had a reduction in income during this time and is unable to make payments. TAS will monitor the OIC default rate, SAMS submissions, and individual TAS cases to determine how taxpayers are impacted after July 15, 2020.

LIENS

The IRS suspended most liens initiated by field ROs and new automatic systemic liens between April 1, 2020, and July 15, 2020.⁹² Thus, the IRS generally did not file Notices of Federal Tax Lien (NFTLs) from April 1 through July 15, 2020. However, the IRS emphasized that ROs would continue to pursue high-income non-filers and perform other similar activities where warranted.⁹³

Due to mail disruptions in Florence, Kentucky, the IRS did not process mailed certificate applications for lien discharges, withdrawals, and subordinations. Until normal mail operations commenced, the IRS encouraged taxpayers to submit such certificate applications by fax.⁹⁴

LEVIES

The IRS's People First Initiative provided relief to taxpayers by suspending levies between April 1, 2020, and July 15, 2020.⁹⁵ However, taxpayers still faced challenges getting releases on levies issued before April 1, 2020, as discussed below.

- Suspension of New Levies.** The IRS suspended levies (including any seizure of personal residence) initiated by field ROs during the People First Initiative period. However, the IRS emphasized that field ROs would continue to pursue high-income non-filers and perform other similar activities where warranted. In addition, the IRS suspended automated levies like the Federal Payment Levy Program and the State Income Tax Levy Program, and the Automated

92 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>. Note that some NFTLs were filed in April and May 2020.

93 *Id.*

94 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (May 11, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

95 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

Collection System suspended issuing new paper levies.⁹⁶ Because the associated IRS notices are typically computer-generated in advance, some taxpayers may still have received them. TAS is currently monitoring the list of IRS backlogged notices to identify post-levy notices that were generated by automated levies that were stopped yet notices appeared to have generated. If a levy was issued before April 1 and the due date for requesting an administrative collection due process (CDP) hearing falls on or after April 1, 2020, and before July 15, 2020, under the relief provided in Notice 2020-23, that due date was postponed to July 15, 2020. Because the notices provided a different date than the postponed due date, it may cause taxpayers confusion.⁹⁷

- **Release of Levies.** The IRS did not automatically release levies issued before April 1, 2020. Taxpayers can request a release of a levy if they can demonstrate that the levy is causing an economic hardship (*i.e.*, the levy is preventing the taxpayer from meeting basic reasonable living expenses). To submit such a request, the taxpayer should work with the assigned RO, if any; call the number on the notice of levy; or fax the request.⁹⁸ Taxpayers can experience delays making such requests, and if the taxpayers' attempts are unsuccessful, TAS could assist them in obtaining a release.

Taxpayers also have limited ability to request a collection alternative to stop a levy (*e.g.*, IA, OIC). However, once the IRS resumes operations, taxpayers should determine whether they qualify for a return of levy proceeds.⁹⁹

OFFSET BYPASS REFUNDS NOT AVAILABLE DURING CRISIS

The IRS has the authority to offset a taxpayer's overpayment against any outstanding federal tax liability before issuing a refund.¹⁰⁰ The IRS has made a policy decision to bypass such offset if the taxpayer can demonstrate hardship.¹⁰¹ For nearly a week in April, while all campuses were closed, W&I did not have the ability to process Offset Bypass Refund (OBR) requests.¹⁰² When the function resumed operations, taxpayers might have had difficulty obtaining the documentation necessary to establish a hardship. Therefore, recognizing each taxpayer's fact and circumstances are unique, TAS recommends the IRS to be flexible in working with taxpayers and the type of documentation it deems acceptable.

96 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

97 IRS, Filing and Payment Deadlines Questions and Answers, <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers> (last visited June 9, 2020).

98 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (May 11, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

99 IRC § 6343(b).

100 IRC § 6402(a).

101 See IRM 21.4.6.5.11.1, Offset Bypass Refund (OBR) (Nov. 8, 2017). Hardship for this purpose means economic hardship within the meaning of IRC § 6343 and the regulations thereunder.

102 The Ogden campus was the last manual refunds center to close and the first to reopen (remotely). As a result, manual refunds were not available from April 6, 2020 to April 10, 2020.

Once an offset has occurred, the IRS can only reverse the offset and issue a refund if a clerical error prevented the processing of the OBR request.¹⁰³ The IRS Office of Chief Counsel has opined that the closure of an IRS campus that processes manual refund requests does not constitute a clerical error for purposes of OBRs.¹⁰⁴ Therefore, if a taxpayer's refund was offset during the office closure, currently there is no way to reverse it, and the overpayment is applied to outstanding liabilities. The National Taxpayer Advocate recommends the IRS reconsider its decision and reverse the offset when the relevant OBR processing campus was closed during the time of the offset and the taxpayer can document (or the Local Taxpayer Advocate can attest to) a hardship. The closure of the IRS campus was out of the taxpayer's control and should not have impacted the hardship analysis for him or her to receive an OBR.

LIMITED ABILITY TO QUALIFY FOR PASSPORT DECERTIFICATIONS

During the period of the People First Initiative, the IRS suspended new passport certifications to the State Department for taxpayers who have "seriously delinquent tax debt."¹⁰⁵ This generally applies to taxpayers who owe more than \$53,000 (adjusting for inflation) in tax, interest, and penalties and who do not qualify for one of several exceptions, including taxpayers under an existing IA or OIC.¹⁰⁶ Certification to the State Department prevents taxpayers from receiving or renewing passports.

The People First Initiative did not impact existing certifications, which remain in place. The IRS has indicated that the emergency decertification procedures are currently unavailable to taxpayers.¹⁰⁷ Taxpayers with existing certifications face difficulty qualifying for a non-emergency decertification if they experience problems resolving their tax liabilities due to the delays in getting an amended return processed or an IA reviewed.¹⁰⁸

LIMITED RELIEF FOR TAXPAYERS WITH DEBTS FORWARDED TO PRIVATE COLLECTION AGENCIES

Pursuant to the People First Initiative, the IRS did not forward any new delinquent accounts to private collection agencies (PCAs) during the period of the People First Initiative.¹⁰⁹ PCAs are refraining from making outgoing calls to taxpayers with the exception of when the taxpayer has

103 IRM 13.1.24.6.2, *Advocating for Taxpayers Seeking Offset Bypass Refunds* (May 11, 2020); IRM 3.17.79.3.16(5), *Offset Bypass Refunds* (Mar. 22, 2020); IRM 21.4.6.5.11.1, *Offset Bypass Refund (OBR)* (Nov. 11, 2017). There is nothing in the Code or the Treasury regulations that gives the IRS the authority to reverse the offset when there is no longer any overpayment. A doctrine known as "clerical error," however, has been relied upon as authority for the IRS to reverse certain errors. See, e.g., *Crompton-Richmond Co. v. United States*, 311 F. Supp. 1184 (S.D.N.Y. 1970); *Bugge v. United States*, 99 F.3d 740 (5th Cir. 1996).

104 TAS, *Guidance on Offset Bypass Refund Requests During COVID-19* (Apr. 16, 2020).

105 IRS, IR-2020-59, *IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program* (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

106 IRC § 7345; IRM 5.1.12.27.4, *Discretionary Exclusions From Certification* (Dec. 20, 2017) (providing a discretionary exception for pending OICs).

107 The law provides that the Department of State may issue a passport to a certified taxpayer in emergency circumstances or for humanitarian reasons. Fixing America's Surface Transportation (FAST) Act Pub. L. No. 114-94, Div. C, Title XXII, § 32101(e)(1)(B), 129 Stat. 1312, 1729-32 (2015); IRS, *IRS Operations During COVID-19: Mission-Critical Functions Continue* (May 11, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

108 IRC § 7345.

109 IRS, IR-2020-59, *IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program* (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

requested that the PCA return his or her call and have suspended the mailing of missed/late payment reminders. Further, when a taxpayer indicates he or she is not able to pay because of the effects of the pandemic, the PCA will place a hold on the account through July 15, 2020, and the PCAs will not terminate or modify existing payment arrangements during the suspension period.¹¹⁰ It is not clear if this suspension period will be extended beyond July 15, 2020, and if the PCAs will be instructed to follow these more flexible guidelines in the months to come. We recommend that the IRS consider instructing the PCAs to follow these guidelines at least through the end of 2020.

IRS Independent Office of Appeals

As part of the People First Initiative, the IRS suspended in-person conferences.¹¹¹ IRS Notice 2020-23 provided relief to taxpayers by postponing the deadlines to request CDP hearings.¹¹²

SUSPENSION OF APPEALS IN-PERSON CONFERENCES

Throughout the pandemic, employees of the IRS Independent Office of Appeals continued to work their cases. However, as part of the People First Initiative, the IRS announced that Appeals would not hold in-person conferences with taxpayers between April 1, 2020, and July 15, 2020. Instead, conferences would be held over the telephone or by videoconference.¹¹³ We will advocate that Appeals provide the taxpayer the option of postponing conferences until in-person meetings can be conducted safely. We acknowledge that this will often lead the IRS to request an extension of the statute of limitations on assessment, of which taxpayers and practitioners need to balance the pros and cons of such approach.

While the IRS was justified in canceling in-person conferences to protect the health and safety of taxpayers, representatives, and employees, we encourage the IRS Independent Office of Appeals to resume in-person conferences as soon as it is safe to commence normal operations to protect the taxpayer's *right to appeal an IRS decision in an independent forum*. For years, TAS has stressed the importance of in-person conferences to both taxpayers and the IRS Independent Office of Appeals.¹¹⁴ An in-person conference can be essential to properly explaining and settling a controversy, particularly for cases involving factual or legal complexity, credibility of witnesses, or hazards of litigation settlements.¹¹⁵

¹¹⁰ IRS, Filing and Payment Deadlines Questions and Answers, <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers> (last visited June 10, 2020).

¹¹¹ IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

¹¹² IRS, Notice 2020-23 2020-18 I.R.B. 742.

¹¹³ IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

¹¹⁴ See, e.g., National Taxpayer Advocate 2017 Annual Report to Congress 197-202 (Most Serious Problem: *Appeals: The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*).

¹¹⁵ We also continue to support the expansion of virtual conferences. Taxpayers should have the option to choose the type of conference.

COLLECTION DUE PROCESS HEARINGS

Under IRC §§ 6330 and 6320, the first time the IRS issues an NFTL or an intent to levy notice to a taxpayer, it must provide the taxpayer with an opportunity to request a CDP hearing. Under normal circumstances, the taxpayer has 30 days to timely request a CDP hearing with Appeals.¹¹⁶ In a CDP hearing, the taxpayer can raise (1) appropriate spousal defenses, such as innocent spouse claims; (2) challenges to the appropriateness of the NFTL filing; or (3) offers of collection alternatives, which may include posting of bond, the substitution of other assets, an IA, or an OIC.¹¹⁷ In certain instances, the taxpayer can also challenge the existence or amount of the tax liability that arose provided the taxpayer has not otherwise had an opportunity to do so.

If the deadline for requesting an administrative CDP hearing falls on or after April 1, 2020, and before July 15, 2020, the IRS postponed that deadline to July 15, 2020.¹¹⁸ Even with this temporary relief, it is crucial for taxpayers to keep a proof of such filing to preserve their rights, especially considering the delays in processing such requests. Also, if the taxpayer has a pending CDP hearing, his or her facts and circumstances may have changed substantially as a result of COVID-19-related issues. If a taxpayer's financial circumstances have changed drastically, he or she should consider supplementing his or her existing collection proposal. This could include a lower IA payment or OIC.

Following the CDP hearing, the IRS informs the taxpayer of its decision on a notice of determination, which also notifies the taxpayer of the right to appeal the determination to the U.S. Tax Court.¹¹⁹ As discussed below, the IRS and the Tax Court postponed this filing deadline. Once a taxpayer petitions the Tax Court, he or she will often go back to Appeals to resolve the case. Many cases do not actually get litigated in court. However, it is crucial to timely file the petition to preserve the right to go to court. It is crucial that taxpayers are educated of the importance to file a timely petition even if the case will eventually be resolved through negotiation.

Office of Chief Counsel Diligently Worked to Issue Much-Needed Guidance

The IRS Office of Chief Counsel acted quickly to issue guidance to taxpayers as the COVID-19 crisis unfolded. The Families First Coronavirus Response Act (FFCRA) enacted on March 18, 2020, and the CARES Act enacted on March 27, 2020, generated guidance projects for Counsel requiring immediate attention.¹²⁰ As of June 8, 2020, over 35,500 hours had been billed to those projects with 42 pieces of guidance issued and 40 more identified for issuance.¹²¹ However, the issuance of some guidance in the format of FAQs creates potential issues. The tolling of judicial filing deadlines in

¹¹⁶ IRC §§ 6320, 6330(a), and (b).

¹¹⁷ IRC § 6330(c)(2).

¹¹⁸ IRS, Notice 2020-23 2020-18 I.R.B. 742; Keith Fogg, *Further Thoughts on Notice 2020-23*, PROCEDURALLY TAXING BLOG, <https://procedurallytaxing.com/further-thoughts-on-notice-2020-23/> (Apr. 14, 2020). The IRS informs the taxpayer of the right to request a CDP administrative hearing on notices such as Letter 1058, Final Notice of Intent to Levy and Notice of Your Right to a Hearing (notice of intent to levy), or Letter 3172, Notice of Federal Tax Lien and Your Rights to a Hearing Under IRC 6320.

¹¹⁹ See, e.g., IRS Letter 3193, Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code (notice of determination).

¹²⁰ FFCRA, Pub. L. No. 116-127, 134 Stat. 178 (2020); CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

¹²¹ Information Provided by Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) (June 13, 2020).

IRS Notice 2020-23 was supplemented by FAQs to account for the uncertainty surrounding the date on which the U.S. Tax Court will reopen.

THE PROS AND CONS OF INFORMAL GUIDANCE

In an effort to issue guidance quickly in the face of widespread closures of core IRS functions as well as the enactment of the FFCRA and CARES Act, the IRS issued guidance in the form of FAQs.¹²² FAQs do not rise to the level of “published guidance,” and taxpayers cannot rely on them to establish substantial authority to avoid penalties for inaccurate reporting.¹²³ Actual reliance on an FAQ, however, is a factor in determining whether the taxpayer took a tax position with reasonable cause and in good faith so as to avoid a penalty. We will work to protect the taxpayer’s *right to be informed* by encouraging the Office of Chief Counsel to issue more formal guidance for legally significant issues. However, we acknowledge that the time to draft, review, and allow for public comment is lengthy, which will not allow for formal guidance to be issued before temporary relief measures have expired. Nevertheless, formal guidance is necessary for substantive issues.

In the meantime, taxpayers and practitioners are understandably concerned about relying upon the FAQs published by the IRS. To alleviate this concern, TAS will encourage the IRS to publicly state that they will follow the FAQs issued during the COVID-19 pandemic. TAS will encourage the IRS to publish a statement in the *Federal Register* that says (1) the IRS must number and provide effective dates for all FAQs and will be prohibited from deleting previously issued guidance from its website even if it has changed its position (indicating when an FAQ is obsolete, if applicable), and (2) for penalty relief purposes, taxpayers can rely on FAQs as authority for returns filed for taxable periods ending before an FAQ is obsoleted.¹²⁴ The former will add permanence and prevent the IRS from changing an FAQ without leaving any evidence.¹²⁵ If the IRS decides to change an FAQ, it should add to the FAQ instead of deleting it. For example, if the IRS changes its position with respect to the guidance included in FAQ 10, it will provide the effective dates of FAQ 10, and add FAQ 10.1 with the new position and applicable effective dates. The IRS should also consider moving obsolete FAQs to a taxpayer-accessible archive, which can be used for historical purposes, but would be presented in a way that would not confuse taxpayers as to which rule is applicable.

122 See, e.g., IRS, Filing and Payment Deadlines Questions and Answers, <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers> (last visited May 12, 2020).

123 Taxpayers can sometimes avoid penalties with respect to tax return positions that are supported by “substantial authority” even if the IRS disagrees with the positions. IRC § 6662(d)(2)(B); Treas. Reg. §§ 1.6662-4(a) and -4(d). For this purpose, “authorities” include, among other sources, the IRC, Treasury regulations, other guidance published in the Internal Revenue Bulletin (IRB), and “IRS information or press releases.” Treas. Reg. § 1.6662-4(d)(3)(iii). FAQs are not always published in the IRB and the scope of “IRS information” is undefined. Therefore, taxpayers cannot be sure that they can treat FAQs posted to an IRS website as “authority” for the purpose of avoiding penalties.

124 Alternatively, the IRS could clarify that FAQs are equivalent to “IRS information” under Treas. Reg. § 1.6662-4(d)(3)(iii).

125 Currently, the lack of permanence for FAQs leads many practitioners to print or take screen shots of every FAQ upon which they rely. However, this practice is burdensome and is not intuitive for unsophisticated taxpayers. Nina E. Olson, *IRS Frequently Asked Questions Can Be a Trap for the Unwary*, NTA Blog, <https://taxpayeradvocate.irs.gov/news/irs-frequently-asked-questions-can-be-a-trap-for-the-unwary> (July 16, 2017).

TOLLING OF JUDICIAL DEADLINES

IRS Notice 2020-23 postponed until July 15 deadlines for filing petitions or complaints with the U.S. Tax Court that expire on or after April 1 and before July 15, 2020.¹²⁶ The IRS has also stated that taxpayers can take full advantage of the relief provided by Notice 2020-23 as well as the relief provided in *Guralnik v. Commissioner*.¹²⁷ Thus, taxpayers have until the later of the agency's postponed deadline or the Court's reopening date to file their petitions.¹²⁸ Because the Court's clerk office closed on March 19, 2020, the relief period recognized by the IRS is extended to start on March 19, per *Guralnik*, rather than April 1, per Notice 2020-23. It is also possible that *Guralnik* will extend the end date of the relief beyond July 15, depending on the date the clerk's office reopens.¹²⁹

Considering that the deadline to file a petition with the U.S. Tax Court has serious legal consequences, the ABA Section of Taxation suggested that the relief in Notice 2020-23 did not go far enough. The ABA recommended tolling judicial filing deadlines between January 20, 2020, and July 14, 2020, until 60 days after the later of (1) July 15 or (2) the date on which the relevant court clerk's office opens, in accordance with IRC § 7508A(d)(1)(B).¹³⁰ To protect the taxpayer's *right to appeal an IRS decision in an independent forum*, TAS plans to encourage the Office of Chief Counsel to explore the feasibility of further tolling the judicial filing deadlines to the full extent authorized by IRC § 7508A.

FLEXIBILITY WITH TAXPAYERS WHO MISS DEADLINES

Given the uncertainty inherent in the U.S. Tax Court closure, taxpayers who do not diligently check the Court's website might miss notification of its opening. While the Court will not have jurisdiction on a case if the associated petition is untimely filed, TAS will encourage the Office of Chief Counsel and the IRS to exercise flexibility by continuing to work with those taxpayers who no longer have a prepayment forum for judicial review.¹³¹ For example, the IRS and Office of Chief Counsel could continue to work with the taxpayer to find an administrative remedy, such as educating the taxpayer about the audit reconsideration process rather than forcing the taxpayer to pay the liability and sue for a refund.

¹²⁶ Specifically, Notice 2020-23 postpones the deadlines for the time for filing all petitions with the Tax Court, for review of a decision rendered by the Tax Court, filing a claim for credit or refund of any tax, and bringing suit upon a claim for credit or refund of any tax. IRS Notice 2020-23 2020-18 I.R.B. 742.

¹²⁷ *Guralnik v. Comm'r*, 146 T.C. 230 (2016). This relief includes the time for filing all petitions with the Tax Court, or for review of a decision rendered by the Tax Court, filing a claim for credit or refund of any tax, and bringing suit upon a claim for credit or refund of any tax. In *Guralnik*, the Tax Court held that its jurisdictional court filing deadlines cannot elapse on days when the court is unavailable. In *Guralnik*, the problem had been a blizzard, whereas now it is the pandemic.

¹²⁸ The Tax Court has indicated that the court will post an announcement on its website about reopening its building and mailing address as early as possible in order to avoid a sudden *Guralnik* deadline, if applicable. Nathan J. Richman, *IRS Embraces Later Tax Court Filing Deadlines*, 167 TAX NOTES TODAY 879 (May 4, 2020).

¹²⁹ IRS, Filing and Payment Deadlines Questions and Answers, <https://www.irs.gov/newsroom/filing-and-payment-deadlines-questions-and-answers> (last visited May 12, 2020).

¹³⁰ The ABA chose January 20, 2020 as the beginning of the recommended relief period because every FEMA Major Disaster Declaration related to the COVID-19 emergency lists January 20, 2020 as the start date of the "Incident Period." Letter from Tom Callahan, Chair, Section of Taxation, ABA, to Charles P. Rettig, Comm'r, I.R.S., Specific Substantive and Procedural Provisions Impacted by the COVID-19 Emergency (Apr. 29, 2020), <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2020/042920comments.pdf>.

¹³¹ IRC § 6213.

U.S. Tax Court

The U.S. Tax Court closed its doors and canceled trial sessions in response to COVID-19 but has encouraged the parties to continue to address pending issues.¹³² The Virtual Settlement Days program is aimed at accomplishing the resolution of cases before litigation, albeit remotely.¹³³

CANCELED TRIAL SESSIONS AND MAIL DISRUPTION

The Tax Court closed on March 19, 2020, and canceled trial sessions from March 16, 2020, through June 30, 2020.¹³⁴ On May 29, 2020, the Court adopted procedures for conducting Court proceedings remotely. These procedures will be in effect until further notice.¹³⁵

For those taxpayers and practitioners who attempted to file documents with the Tax Court after it closed, the court did not open mail and, in some cases, the mail was returned as undeliverable. The Tax Court's website instructed taxpayers to resend any returned documents, including the original envelope, to the court as soon as possible after the court announces it has resumed receiving mail. Returned mail will likely cause anxiety for taxpayers. It is crucial that taxpayers keep a copy of the submitted document, proof of timely mailing through a designated delivery service, and an original envelope, if applicable, to preserve important judicial appeal rights.¹³⁶

VIRTUAL SETTLEMENT DAYS

The Tax Court press releases canceling the trial sessions state that the court expects that parties will continue to work together to exchange information and address pending issues.¹³⁷ The IRS Office of Chief Counsel recently announced that the Virtual Settlement Days program will continue remotely enabling unrepresented taxpayers to work toward resolving their pending Tax Court cases despite “stay-at-home” orders in many jurisdictions. Virtual Settlement Days are a coordinated effort to resolve Tax Court cases by giving *pro se* taxpayers the opportunity to receive free tax advice and possible representation from Low Income Taxpayer Clinics (LITCs) or other *pro bono* organizations. The program is geared to help unrepresented taxpayers receive free assistance in discussing a potential fair settlement of their tax disputes in an informal setting without the need for further litigation or a trial in the Tax Court. Taxpayers can discuss their cases and other federal tax issues with members of the IRS Office of Chief Counsel, Appeals, and Collections.

132 U.S. Tax Court, Press Release (Mar. 11, 2020); U.S. Tax Court, Press Release (Mar. 13, 2020); U.S. Tax Court, Press Release (Mar. 18, 2020); U.S. Tax Court, Press Release (Mar. 23, 2020); U.S. Tax Court, Welcome, <https://www.ustaxcourt.gov/> (last visited May 12, 2020).

133 IRS, IR-2020-87, IRS Retools Settlement Days Program in Response to COVID-19 Pandemic; Allows Unrepresented Taxpayers to Settle Their Cases Virtually and Reach Finality (May 5, 2020), <https://www.irs.gov/newsroom/irs-retools-settlement-days-program-in-response-to-covid-19-pandemic-allows-unrepresented-taxpayers-to-settle-their-cases-virtually-and-reach-finality>.

134 U.S. Tax Court, Press Release (Mar. 11, 2020); U.S. Tax Court, Press Release (Mar. 13, 2020); U.S. Tax Court, Press Release (Mar. 18, 2020); U.S. Tax Court, Press Release (Mar. 23, 2020); U.S. Tax Court, Welcome, <https://www.ustaxcourt.gov/> (last visited May 12, 2020).

135 U.S. Tax Court, Administrative Order No. 2020-02, https://www.ustaxcourt.gov/admin_orders/Admin_Order_No_2020-02.pdf (June 2, 2020). Public access to the Court's remote proceedings will be made available via real-time audio with dial-in information for each session posted on the Court website.

136 U.S. Tax Court, Welcome, <https://www.ustaxcourt.gov/> (last visited May 12, 2020).

137 See, e.g., U.S. Tax Court, Press Release (Mar. 23, 2020).

The first Virtual Settlement Days events were held in May in Detroit and Atlanta. Between both offices, more than 50 taxpayer cases were resolved. As a result of the program's success, the Office of Chief Counsel expanded Virtual Settlement Days to other offices and will host events more frequently. Additional offices scheduled to participate in the program include Los Angeles and Washington, D.C., as well as more events in Atlanta.¹³⁸

TAS plans to work with the other participating organizations to have an official role in the initiative.¹³⁹ TAS can assist taxpayers in resolving tax issues relating to tax years not yet before the court. By having TAS present with the Office of Chief Counsel, Appeals, Collection, and LITCs, the Virtual Settlement Days program can truly provide a one-stop resolution experience for taxpayers in a remote environment.

Impact of the COVID-19 Crisis on TAS Operations

TAS took early action to ensure its employees were telework-ready. By the time the IRS mandated that employees work at home, TAS had already made all of its employees telework-eligible and asked them to work remotely, allowing TAS operations to continue with fewer disruptions than most other IRS functions.¹⁴⁰ While TAS was in a better position than many IRS functions to quickly adapt to working remotely, moving all employees out of the offices did have serious consequences to our operations and advocacy efforts. Despite all the obstacles, TAS employees continued to assist taxpayers. In addition, TAS created a COVID-19 Rapid Response Team to address systemic issues by identifying emerging tax problems caused by the pandemic, raising the issues to the relevant IRS functions, and monitoring progress toward resolution.¹⁴¹

Inability to Access Paper Case Files and Send or Receive Mail

TAS employees, including employees in the Case Advocacy function in the local offices, could not access paper case files while teleworking. In addition, they could not receive or send mail for many weeks during the crisis. Initially, designated TAS employees would visit the offices to open and scan incoming mail as well as print correspondence and mail letters to taxpayers and representatives.¹⁴² However, this practice quickly stopped as state and local governments imposed stay-at-home restrictions on individuals and business operations across the country, and the IRS ultimately ceased most mail processing and ordered employees to telework. As the IRS is beginning to reopen offices and resume mail service, TAS is sending designated employees into those offices to process the mail

138 IRS, IR-2020-112, IRS Chief Counsel Goes Virtual With National Settlement Days; Helps Dozens of Taxpayers Settle Their Tax Court Cases (June 4, 2020), <https://www.irs.gov/newsroom/irs-chief-counsel-goes-virtual-with-national-settlement-days-helps-dozens-of-taxpayers-settle-their-tax-court-cases>.

139 IRS, IR-2020-87, IRS Retools Settlement Days Program in Response to COVID-19 Pandemic; Allows Unrepresented Taxpayers to Settle Their Cases Virtually and Reach Finality (May 5, 2020), <https://www.irs.gov/newsroom/irs-retools-settlement-days-program-in-response-to-covid-19-pandemic-allows-unrepresented-taxpayers-to-settle-their-cases-virtually-and-reach-finality>.

140 TAS Special Edition, TAS Takes Measures to Protect Employees and Taxpayers (Mar. 16, 2020); TAS Interim Guidance Memorandum (IGM), TAS-13-0320-0006, Interim Guidance – Advocating for Taxpayers While Preventing the Spread of COVID-19 (Mar. 17, 2020).

141 Taxpayer, practitioners, and other IRS employees submit systemic COVID issues through TAS's Systemic Advocacy Management System (SAMS).

142 TAS Special Edition, TAS Takes Measures to Protect Employees and Taxpayers (Mar. 16, 2020); TAS IGM, TAS-13-0320-0006, Interim Guidance - Advocating for Taxpayers While Preventing the Spread of COVID-19 (Mar. 17, 2020).

and send correspondence to taxpayers. TAS employees still do not have regular access to review critical paper case files necessary to take action on cases, causing delays in certain cases.

NTA Toll-Free Line Closure and Negative Impact on TAS Centralized Case Intake Operations

Taxpayers seeking TAS assistance can reach TAS by phone by either calling the National Taxpayer Advocate Toll-Free (NTATF) phone line or by calling the local TAS office phone lines. The NTATF phone line is staffed by W&I, which initially screens the calls to determine if the case meets TAS case criteria and then directly transfer the calls to TAS's Centralized Case Intake (CCI) function. While teleworking, TAS CCI employees could not initially take direct transfer calls from the NTATF phone line.¹⁴³ To address this issue, TAS negotiated workaround procedures with W&I to enable CCI employees to receive referrals electronically. These workaround procedures were short-lived due to the temporary closure of the phone line on March 23, 2020.¹⁴⁴ Without W&I answering calls on the NTATF line, the only way for taxpayers to contact TAS about their tax problems was for them to call their local TAS office, leading to a spike in call volumes on those local lines, as discussed below. TAS quickly reassigned CCI Intake Advocates to assist with retrieving messages and returning taxpayer calls from the local phone lines. In the interim, TAS partnered with the IRS to provide its CCI employees with the capability to remotely answer phone calls from a telework location. When W&I reopened the NTATF line on May 18, 2020, TAS was immediately able to resume answering calls transferred directly from the NTATF line, even while teleworking, and ensure continued service to taxpayers in need of TAS assistance.¹⁴⁵

Increased Call Volumes on TAS Local Office Lines

The COVID-19 crisis occurred during the 2020 filing season, a time when TAS was already experiencing high call volumes on our phone line.¹⁴⁶ During the period that the IRS closed the phone lines supported by CSRs, the IRS began administering EIPs.¹⁴⁷ Many taxpayers and congressional offices directed their EIP questions to the local TAS office because they did not have anywhere else to call to talk to an IRS employee. The NTATF line was not staffed by W&I during initial distributions of EIPs, resulting in taxpayers calling their local TAS office, causing a spike in the calls the local offices receive and overwhelming their voice messaging systems. Due to the lack of an IRS process to address EIP issues, TAS could not work those cases.¹⁴⁸ TAS instituted a gating process on its local office phone lines to direct taxpayers with EIP questions to the IRS website. To

143 TAS Special Edition, *TAS Takes Measures to Protect Employees and Taxpayers* (Mar. 16, 2020); TAS IGM, *TAS-13-0320-0006, Interim Guidance - Advocating for Taxpayers While Preventing the Spread of COVID-19* (Mar. 17, 2020).

144 TAS, *Daily CCI/NTATF, as of Monday 3/23/2020* (Mar. 24, 2020).

145 IRS SERP Alert 20A0204, *W&I Will Staff NTA Applications on May 18, 2020* (May 15, 2020).

146 For example, on Monday, March 16, the NTATF line received 5,055 calls and, of those calls, 2,359 calls were transferred to CCI. TAS, *Daily CCI/NTATFL, as of Monday 3/16/2020* (Mar. 17, 2020). In addition, the local office phone lines received 2,164 calls (the local office call volumes were manually collected based on the contact records entered in TAMIS).

147 On May 18, 2020, the IRS began to add about 3,500 customer service representatives on the phones to answer EIP common questions. IRS, *IR-2020-97, IRS Adds Phone Operators to Answer Economic Impact Payment Questions* (May 18, 2020), <https://www.irs.gov/newsroom/irs-adds-phone-operators-to-answer-economic-impact-payment-questions>. See Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, *infra*.

148 See Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*, *infra*.

best serve taxpayers, we further gated calls between taxpayers with an existing TAS case and those looking to open a new case to enable TAS to efficiently respond to taxpayers. As noted above, while the NTATF line was closed, CCI staff assisted with retrieving messages and returning taxpayer calls to the local phone lines.

Figure 1.2.8 details the number of calls to the local TAS phone lines during the initial months of the national emergency across the United States, compared to the same period in 2019.

FIGURE 1.2.8, Calls Answered by Local TAS Office¹⁴⁹

Week Ending	Total Calls Answered on Local Lines 2020	Total Calls Answered on Local Lines 2019	% Change From 2019 to 2020
March 9, 2020	2,404	2,168	10.9%
March 15, 2020	2,164	1,959	10.5%
March 22, 2020	2,033	2,036	-0.1%
March 29, 2020	3,571	1,762	102.7%
April 5, 2020	5,748	1,749	228.6%
April 12, 2020	6,355	2,028	213.4%
April 19, 2020	6,545	1,908	243.0%
April 26, 2020	9,017	1,987	353.8%
May 3, 2020	8,074	1,711	371.9%
May 10, 2020	7,514	1,920	291.4%
May 17, 2020	6,507	2,048	217.7%
May 24, 2020	4,085	2,027	101.5%
May 31, 2020	3,144	1,646	91.0%

Closure of IRS Functions Limited Ability to Send Operations Assistance Requests

When a taxpayer seeks assistance from TAS but TAS lacks the statutory or delegated authority to resolve the taxpayer's problem, it works with the responsible IRS business operating division (BOD) or function to resolve the issue. For example, if a taxpayer seeks a penalty abatement based on reasonable cause, TAS can perform all the necessary research and analysis to determine if the taxpayer qualifies for such abatement, but it cannot make the adjustment, so it advocates for the taxpayer by issuing an Operations Assistance Request (OAR) requesting the IRS abate the penalty. Generally, TAS completes IRS Form 12412, Operations Assistance Request (OAR), to request the IRS take the specified action on a taxpayer's account.¹⁵⁰ To effectively advocate for taxpayers in the continuously evolving environment, TAS employees were required to triage case workload to assist those taxpayers experiencing an economic burden where TAS had the ability to take actions

¹⁴⁹ TAS BOE Report (weeks ending Mar. 9, 2020, through May 31, 2020, and weeks ending Mar. 9, 2019 through June 1, 2019). The call volumes were manually collected based on the contact records entered in TAMIS. Because these calls were manually collected, they reflect only a small percentage of the number of calls received by TAS. For example, for the week ending May 31, 2020, TAS manually collected a total of 3,144 calls. However, a systemic collection showed a total of 28,493 of which only 41 percent (11,771) were calls requesting TAS assistance. TAS Application Summary (week ending May 31, 2020).

¹⁵⁰ IRM 13.1.19.1, TAS OAR Process Overview (Nov. 14, 2014).

to resolve the taxpayer’s issue.¹⁵¹ Many IRS operations were completely closed and unable to receive or process OAR requests. Others were working with significantly reduced staffing. Because the status of IRS functions changed on a daily basis, TAS developed and continually updated an internal online tool, the COVID-19 Case Processing Changes site, to enable employees to easily determine the status of IRS functions in different offices, including any special instructions or limitations on the work the functions could perform. Case Advocacy employees used this online tool to determine how to handle cases and where to send OARs. TAS met weekly with representatives from the IRS BODs to identify new ways to resolve taxpayer issues. As part of the discussions, TAS determined the types of work the IRS could perform while teleworking, the IRS units that have staff returning to specific locations (even if staffing is reduced), and resources available to perform the work. When an IRS function resumed operations and began processing OARs, TAS prioritized its cases to first send to the BOD or function the OARS for taxpayers experiencing the most extreme hardships.¹⁵²

TAS recognized the need to manage expectations and provide information to taxpayers. To accomplish this, TAS created a Coronavirus (COVID-19) Tax Relief page on the TAS website to keep taxpayers updated. The webpage provides TAS customers case-related alerts.¹⁵³

Decline in Case Receipts and Closures

Prior to the COVID-19 crisis, in FY 2020, TAS case receipts had increased nine percent when compared to the same period in FY 2019.¹⁵⁴ However, during the pandemic, despite the increase in phone calls to the local lines, TAS receipts dropped by eight percent through May 2, 2020, compared to the same period in FY 2019.¹⁵⁵ Figure 1.2.9 shows that TAS received nearly 50 percent fewer cases in April 2020 compared to April 2019. Figure 1.2.9 shows that TAS case closures dropped by 17 percent when comparing April 2020 to April 2019, due mainly to the inability of IRS functions to take actions to resolve the tax issues. TAS is closely monitoring IRS operations for reopening to initiate actions needed to assist taxpayers.

FIGURE 1.2.9, TAS Receipts and Closures, April 2019 and 2020¹⁵⁶

	Receipts	Closures
April 2019	28,253	24,149
April 2020	14,256	20,096
Percent Change	-49.5%	-16.8%

151 TAS IGM, TAS-13-0320-0008, Interim Guidance – Strong Advocacy in the COVID-19 Environment (Mar. 27, 2020).

152 *Id.*

153 TAS, Coronavirus (COVID-19) Tax Relief, <https://taxpayeradvocate.irs.gov/get-help/taxupdates> (last visited May 31, 2020).

154 Through March 14, 2020, TAS received 84,741 cases compared to 77,677 cases for the same period in FY 2019. Data obtained from TAMIS.

155 Through May 2, 2020, TAS received 115,109 cases compared to 125,258 cases for the same period in FY 2019. Data obtained from TAMIS (May 3, 2019; May 3, 2020). TAS did not take EIP cases during the initial months. Memorandum from Deputy National Taxpayer Advocate for Taxpayer Advocate Service Employees: Interim Guidance – Economic Impact Payments and TAS Case Acceptance (May 14, 2020).

156 Data obtained from TAMIS (May 1, 2019; May 1, 2020).

The COVID-19 crisis has had a significant impact on how TAS received new cases. While taxpayers previously accessed TAS assistance through various means, their options were temporarily limited. In FY 2019 through April 2019, 63 percent of TAS case receipts were referrals from IRS BODs and 18 percent came from calls to the NTATF Line. With the closure of IRS offices and the shutdown of toll-free telephone operations, including the NTATF Line, cases received through those methods dramatically dropped. The impact on TAS case receipts is shown in Figure 1.2.10. Comparing April 2019 to April 2020, case receipts from IRS BOD referrals decreased by 97 percent. Cases received through calls to the NTATF Line decreased by 77 percent, and cases received through calls to the TAS CCI line decreased by 99 percent. At the same time, cases received from calls to TAS local offices increased by 286 percent and cases received through congressional calls increased by 433 percent.¹⁵⁷

FIGURE 1.2.10, TAS Case Receipts by Method Received, Percent Change From April 2019 to April 2020¹⁵⁸

How Received	Percent Change April 2019 to April 2020
Form 911 or Correspondence	23.5%
NTA Toll-Free	-76.8%
IRS Referral	-97.0%
TAS Phone Call	286.3%
Congressional	433.4%
TAS Walk-In	-93.8%
Centralized Case Intake	-98.7%
TOTAL	-49.5%

Inability to Conduct Face-to-Face Training

During the COVID-19 crisis, TAS suspended all face-to-face training classes, including sessions with On-the-Job Instructors for new hires. While TAS diligently develops virtual training, the temporary suspension of training has impacted and will continue to impact the readiness of employees, especially new hires, during the remainder of the 2020 filing season as well as post-filing season when examination and collection cases increase.¹⁵⁹

Inability to Conduct Face-to-Face Outreach

All face-to-face taxpayer and tax practitioner outreach and education activities, including the TAS Mobile Outreach Van, were canceled during the COVID-19 crisis to maximize social distancing and comply with state and local orders. Even though face-to-face outreach is an effective way to inform taxpayers of their rights as well as the availability of TAS assistance in resolving tax problems with the IRS, COVID-19 left us no choice but to cancel.¹⁶⁰ TAS moved to a virtual outreach model and

¹⁵⁷ Data obtained from TAMIS (May 1, 2019; May 1, 2020).

¹⁵⁸ *Id.*

¹⁵⁹ TAS, TAS Transitioning to Virtual Training During COVID-19 (Apr. 22, 2020).

¹⁶⁰ See TAS Research: *Identifying Prospective TAS Taxpayers, infra*; *Case Advocacy and TAS Business Objectives: Efforts to Improve Advocacy, infra.*

will continue to conduct virtual outreach to the extent possible, including congressional outreach and other online resources.

PREPARATION FOR THE NEXT SIGNIFICANT EMERGENCY

Once the IRS resumes normal operations, it is crucial to evaluate the challenges the agency faced in providing taxpayer services and conducting mission-critical functions including compliance initiatives during the COVID-19 crisis. The IRS must prepare for the next national emergency, based on the lessons it learned from this crisis. While the circumstances of the next incident will differ, the IRS can take actions now to ensure that the agency's core operations will continue in the face of similar challenges. This will require each function taking a hard look at what worked and what did not in the face of this unexpected and unprecedented event.

IRS BODs and functions that were able to quickly adapt to teleworking and transact digitally with each other and with taxpayers were more adaptable than those with operations that were less portable. Improved technology (both hardware and software) and the ability to work and interact digitally will allow the IRS to be flexible and agile and move its operations between offices or even to remote locations when a disaster hits an area. Not all operations will function seamlessly in a remote environment, but the IRS will be better positioned if it is not such a paper-based organization. Accordingly, the National Taxpayer Advocate recommends that the IRS prioritize the modernization of its technology as well as increase the use of digital communications and the electronic production of documents in a secure environment. While we continue to believe that the IRS should provide taxpayer services in an omnichannel environment, it must have the ability to continue operations should one or more of the service channels shut down through no fault of the agency. The IRS should analyze all of the core functions to determine how to improve technology to make the duties more portable in the future. While the next crisis will certainly present different challenges, the IRS will be in a better position to address it if it takes the steps now rather than as the crisis unfolds in the future.

OBJECTIVES FOR FISCAL YEAR 2021

In fiscal year 2021, TAS will:

- Work with the IRS to reduce taxpayer burden as it develops further procedures to address the COVID-19 crisis as well as future disasters, especially by demonstrating flexibility when conducting compliance initiatives (*e.g.*, accepting alternative documentation, extending information request response deadlines, relaxing the definition of reasonable cause for penalty relief, postponing time-sensitive deadlines to the extent authorized under IRC § 7508A, etc.);
- Work with the IRS to alleviate taxpayer confusion resulting from the backlog of time-sensitive notices;
- Encourage the IRS to prioritize, evaluate, and determine the feasibility of extending the use of electronic communications, including emails, the exchange of digital documents, and digital signatures beyond 2020 for all functions within the IRS;

- Encourage the IRS to extend the term of streamlined IAs to up to 84 months. A streamlined 84-month IA would speed up the application process and eliminate the need for the taxpayer requiring a longer pay-off term to submit financials on a Collection Information Statement;
- Encourage the IRS Office of Appeals to resume in-person conferences once it is safe to do so to protect the taxpayer's *right to appeal an IRS decision in an independent forum*;
- Encourage the Office of Chief Counsel to issue more formal guidance for legally significant issues occurring during the COVID-19 pandemic. TAS will encourage the IRS to publish a statement in the *Federal Register* that says (1) the IRS must number and provide effective dates for all FAQs and will be prohibited from deleting previously issued guidance from its website even if it has changed its position (indicating when an FAQ is obsolete, if applicable), and (2) for penalty relief purposes, taxpayers can rely on FAQs as authority for returns filed for taxable periods ending before an FAQ is obsoleted;
- Encourage the Office of Chief Counsel to explore the feasibility of further tolling judicial filing deadlines to the full extent authorized by IRC § 7508A to protect the taxpayer's *right to appeal an IRS decision in an independent forum*;
- Encourage the Office of Chief Counsel and the IRS to exercise flexibility by continuing to work with those taxpayers who missed the judicial filing deadlines and thus no longer have a prepayment forum for judicial review; and
- Utilize TAS's COVID-19 Rapid Response Team and other mechanisms to address disaster-related systemic issues by monitoring and identifying emerging tax problems associated with disasters of all sorts and raise these issues with the IRS.

Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

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

OVERVIEW

While the IRS did an impressive job implementing the provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act — particularly under these unprecedented circumstances — there have been several issues in implementing the CARES Act's most significant provisions. Although the IRS has issued nearly 160 million Economic Impact Payments (EIPs), many individuals as of June 3, 2020, for a variety of reasons, have either not received the full EIP amount to which they are entitled or received an EIP at all. In most cases, these individuals will have to wait until 2021 to receive either their EIP or the full amount. Because these individuals are likely experiencing financial distress *now*, the National Taxpayer Advocate recommends the IRS continue to work on solutions and alternatives to ensure that all individuals receive the EIP in its entirety in 2020 rather than having to wait until 2021 when they file their 2020 income tax returns.

The Employee Retention Credit (ERC) is a complex refundable tax credit that employers can claim. Several of these complexities come from the determination of when a trade or business was fully or partially suspended by government order; an employer's number of full-time employees; what are qualified wages; if a business's post-COVID-19 operations are comparable to its pre-COVID-19 operations; and the application of aggregation rules.

To address these complexities, the IRS has provided considerable guidance on when and how to claim the ERC; however, several areas demand further clarification. If clarity is not provided, taxpayers will be more likely to make errors when claiming the credit, possibly resulting in an audit. Having to untangle these issues in an audit environment would drain the limited resources of both the IRS and businesses affected by COVID-19. Thus, TAS will continue to advocate that the IRS is as transparent and clear as possible regarding when and how employers should claim this credit.

Another area of complexity is the Paycheck Protection Program (PPP). If businesses meet certain requirements, loans administered through the PPP will be forgiven. To ensure this did not create a taxable event, Congress excluded forgiveness of this loan from taxable income. Thus, the question

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

became whether employers could still deduct expenses paid with this loan when the loan was forgiven and no cancellation of debt income was generated.² Issues such as this will cause taxpayer confusion, increasing the likelihood that taxpayers will make mistakes when they file returns, possibly resulting in an IRS examination, and causing yet another drain on the resources of both taxpayers and the IRS.³

Other provisions of the CARES Act are designed to provide relief by allowing businesses to utilize Net Operating Losses (NOLs) to offset prior taxable income and in some cases provide them access to refunds. For businesses to determine the optimal application of the CARES Act NOL provisions, they may need to develop complex models involving multiple tax years. The guidance the IRS has provided in the form of frequently asked questions (FAQs), while timely, is not authoritative or binding on the IRS.

The following discussion will examine these concerns in more detail and provide recommendations regarding how the IRS should address these issues.

DISCUSSION

On March 27, 2020, the President signed into law the CARES Act.⁴ The primary goal of this act was to provide fast and direct economic assistance for American workers, families, and small businesses. This was to relieve economic distress due to the many restrictions put in place to slow the spread of COVID-19. [For an overall discussion of the tax administrative impact of COVID-19, see Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services.*]

Among other things, this Act:⁵

- Offered an advance recovery rebate credit (hereafter referred to as “economic impact payments” or EIP)⁶ for individuals;⁶
- Created an ERC for employers;⁷

² IRC § 265(a)(1) and Treas. Reg. § 1.265-1 provide that no deduction is allowed to a taxpayer for any amount otherwise allowable as a deduction to such taxpayer that is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by subtitle A of the Code.

³ Colleen Murphy, *Loan Program Raises Fraud Worries for IRS*, BLOOMBERG TAX (June 3, 2020). Adding to this challenge is the IRS’s major concern that the PPP is being exploited by individuals fraudulently applying for PPP loans. “With just the sheer amount of money that’s going out, we know that when this type of situation happens, fraudsters are on high alert and ramp up all of the efforts they possibly can to get money from the government,” said Don Fort, Chief of the IRS Criminal Investigation Division. *Id.*

⁴ The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Pub. L. No. 116-136, 134 Stat. 281 (2020).

⁵ *Id.* Section 2302 of the CARES Act provides that employers may defer the deposit and payment of the employer’s portion of Social Security taxes and certain railroad retirement taxes. Section 2302(a)(3) of the CARES Act provides that section 2302 will not apply if the taxpayer “has had indebtedness forgiven under section 1106 of the CARES Act.”

⁶ CARES Act, Pub. L. No. 116-136, § 6428, 134 Stat. 281 (2020) (2020 Recovery Rebates for Individuals). When discussing the EIP, we will use the term “individual(s)” as not all recipients filed a tax return to receive the EIP. In the remaining sections of the piece, we will use the term “taxpayer(s).”

⁷ CARES Act, Pub. L. No. 116-136, § 2301, 134 Stat. 281 (2020) (Employee Retention Credit for Employers Subject to Closure due to COVID-19).

- Created the PPP;⁸ and
- Allowed taxpayers with NOLs to carry them back to offset income in prior years and obtain refunds.⁹

During the pandemic, the primary concern of the IRS's leadership was the health and safety of its employees, and to that end, the IRS shut down many of its operations that could not be conducted remotely, including the temporary closing of IRS campuses and the shutdown of all IRS taxpayer assistance phone lines.¹⁰ These steps, although necessary and something the IRS could not prepare for due to the crisis's unexpected nature, created an extremely challenging environment for the IRS to implement the provisions set out in the CARES Act.¹¹ This situation was further aggravated by years of crippling budget cuts, cumbersome paper-based systems, and the challenges of teleworking.¹² Despite these challenges, the IRS has performed admirably and has overall successfully worked to swiftly distribute much-needed EIPs to individuals while providing comprehensive guidance on how to obtain all the tax benefits provided by the CARES Act and other legislation passed to address the effects of the pandemic.¹³

Additionally, the IRS implemented an outreach campaign, working with partners in both the public and private sectors, to ensure that all eligible individuals — particularly vulnerable individuals such as the elderly, disabled, veterans, and those with limited English proficiency — were aware of the EIP and what, if anything, they needed to do to receive it. This included providing outreach materials in more than two dozen languages.¹⁴ The IRS is continuing its outreach programs to identify and send payments to these underserved populations.¹⁵

8 CARES Act, Pub. L. No. 116-136, § 1102, 134 Stat. 281 (2020) (7(a) loan program).

9 CARES Act, Pub. L. No. 116-136, §§ 2303 and 2206, 134 Stat. 281 (2020) (Modifications for Net Operating Losses and Modification of Limitation on Business Interest) (codified at IRC §§ 172(b)(1) and 163(j)).

10 See Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*, *supra*. See also SERP Alert 20A0135, Product Line Closure (Mar. 24, 2020). All IRS phone lines were shut down April 1, 2020.

11 See Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*, *supra*. To implement these provisions in addition to provisions in the Families First Coronavirus Response Act (FFCRA), and in order to prevent, prepare for and respond to Coronavirus generally, the CARES Act appropriated \$250,000,000 to remain available to the IRS through September 30, 2021. CARES Act, Pub. L. No. 116-136, § 15001, 134 Stat. 246 (2020).

12 National Taxpayer Advocate 2019 Annual Report to Congress 15 (Most Serious Problem: *Information Technology Modernization: The IRS Modernization Plan's Goal to Improve the Taxpayer Experience Is Commendable, But the IRS Needs Additional Multi-Year Funding to Bring It to Fruition*); National Taxpayer Advocate 2019 Annual Report to Congress 23 (Most Serious Problem: *IRS Funding: The IRS Does Not Have Sufficient Resources to Provide Quality Service*).

13 As of June 10, 2020, the IRS issued 273 FAQs which addressed the following topics: Employee Retention Credit (94 FAQs); Filing and Payment Deadlines Questions and Answers (40 FAQs); COVID-19-Related Tax Credits: Special Issues for Employees and Additional Questions FAQs (67 FAQs); Economic Impact Payment Information Center (62 FAQs); and Carrybacks of NOLs for taxpayers who have had Section 965 inclusions (10 FAQs). There is additional guidance in the Internal Revenue Bulletin. See, e.g., <https://www.irs.gov/irb>. Additionally, the IRS created two EIP portals, *Get My Payment* and a portal for nonfilers to file a "simple return."

14 IRS, IR-2020-96, IRS Expands Partner Materials for Economic Impact Payments; Continues Sweeping Effort to Share Details in Multiple Languages (May 15, 2020), <https://www.irs.gov/newsroom/irs-expands-partner-materials-for-economic-impact-payments-continues-sweeping-effort-to-share-details-in-multiple-languages>.

15 Despite these outreach efforts, some in Congress have asked that the IRS take steps to expand its outreach efforts in a way that does not fully rely on the Internet and will get EIP information to those taxpayers who do not have internet access. *Lawmakers Call for IRS Guidance for Those Without Internet*, 2020 TNTF 113-29 (June 8, 2020).

This piece examines the IRS's implementation of the provisions of the CARES Act and issues that arose during that implementation, such as issues that have delayed or prevented individuals from receiving their EIPs, and when or how other benefits set out in the CARES Act should be claimed. Throughout this discussion, TAS considers these issues and proposes recommendations as to how the IRS can address these problems moving forward.

Economic Impact Payments

The EIP generally mirrors the Economic Stimulus Act of 2008, as the CARES Act made the EIP an advance refundable credit against a taxpayer's 2020 tax for eligible individuals with adjusted gross income (AGI) below the phase-out thresholds.¹⁶ As of June 3, 2020, nearly 160 million individuals had received EIPs totaling more than \$267 billion.¹⁷ The CARES Act provides up to \$1,200 per qualifying individual, or up to \$2,400 for married couples filing jointly, and up to an additional \$500 per eligible dependent.¹⁸

Individuals Began Receiving Economic Impact Payments by Mid-April

Pursuant to the CARES Act, the IRS acted quickly to get payments to eligible individuals by assessing which individuals it could immediately distribute EIPs to based on available IRS information, such as a 2019 or 2018 return with direct deposit information.¹⁹ Getting payments to some other individuals posed more challenges.²⁰ The law provided that the IRS could use Form SSA-1099, Social Security Benefit Statement, or Form RRB-1099, Social Security Equivalent Benefit Statement, to determine a taxpayer's AGI if it did not have a 2018 or 2019 return on file.²¹ But these forms did not give the IRS direct information about the qualifying children of these individuals or their deposit information. Additionally, the IRS did not have information on recipients of Supplemental Security Income (SSI) or veterans benefits, since the IRS does not receive data on these

16 The Economic Stimulus Act of 2008, Pub. L. No. 110-185, § 101(e)(3), 122 Stat. 613, 614 (2008); CARES Act, Pub. L. No. 116-136, § 2201(a), 134 Stat. 281 (2020) (explaining the term "eligible individual": "[t]his includes 'any individual other than (1) [a] non-resident alien ... (2) an individual with respect to whom a deduction under section 151 is allowable to another taxpayer ... and (3) an estate or trust.'").

17 IRS, IR-2020-111, 159 Million Economic Impact Payments Processed; Low-Income People and Others Who Aren't Required to File Tax Returns Can Quickly Register for Payment with IRS Non-Filers Tool (June 3, 2020), <https://www.irs.gov/newsroom/159-million-economic-impact-payments-processed-low-income-people-and-others-who-arent-required-to-file-tax-returns-can-quickly-register-for-payment-with-irs-non-filers-tool>.

18 CARES Act Pub. L. No. 116-136, § 2201, 134 Stat. 281 (2020). There is no limitation on the number of dependents when calculating the EIP if the dependent is 16 or younger on December 31, 2020, and possesses a Social Security number (SSN) or an Adoption Taxpayer Identification Number (ATIN). Further, for the purpose of the EIP, the term "qualifying child" has the same meaning as that for the child tax credit (*i.e.*, the meaning provided by IRC § 24(c)). The total EIP for single filers whose adjusted gross incomes (AGIs) exceed \$75,000, married couples filing jointly whose AGIs exceed \$150,000, and heads of household whose AGIs exceed \$112,500, and including the additional \$500 amount for each qualifying child, will be reduced by \$5 for every \$100 above their AGI cap. All taxpayers including qualifying children, must have a valid SSN as defined by IRC § 24(h)(7). There are two exceptions: for joint returns, only one taxpayer has to have a valid SSN if one of the taxpayers is a member of the Armed Forces, and qualifying children can have an ATIN. *Id.* at § 2201(a).

19 CARES Act Pub. L. No. 116-136, § 2201, 134 Stat. 281 (2020); IR-2020-58, Tax Day Now July 15: Treasury, IRS extend filing deadline and federal tax payments regardless of amount owed (Mar. 21, 2020). Since the filing deadline was postponed to July 15, 2020, a number of taxpayers had not yet filed their 2019 return at the time the EIPs were being issued.

20 CARES Act, Pub. L. No. 116-136, § 2201(a), 134 Stat. 281 (2020).

21 *Id.*

types of benefits.²² Further, there are individuals who were eligible for the EIP but do not have a tax filing requirement and do not receive Social Security or veterans benefits.²³

To ensure that all eligible individuals received their EIPs as seamlessly as possible, the IRS took several steps:

1. Created a *Get My Payment* portal that allowed individuals to check on the status of their EIP and provide bank account information for direct deposit;²⁴
2. Established agreements with the Social Security Administration (SSA) and the Veterans Administration (VA) to share data regarding recipients of SSI and veterans benefits and ensure that these recipients would receive, at a minimum, a \$1,200 EIP;²⁵
3. Created the *Non-Filers: Enter Payment Info Here* tool, allowing individuals who did not otherwise have a filing requirement to file what the IRS referred to as a “simple return,”²⁶ essentially providing the IRS with the information it needed to issue an EIP, including information for direct deposit. This portal also allowed SSI and veterans benefits recipients to claim qualifying children (the SSA/VA data does not contain data on dependents) and provide their direct deposit information, so the eligible individuals would not have to wait to receive the EIP funds through the mail; and
4. Modified existing policies and procedures to assist individuals who typically do not have filing requirements and are not familiar with the filing process by authorizing the Low Income Taxpayer Clinic (LITC) Program Office a limited safe harbor for LITCs to assist low-income and English as a second language taxpayers eligible to receive EIPs with preparing 2019 returns.²⁷

22 Forms 1099 are not issued to the IRS for SSI or veterans benefits.

23 See CARES Act, Pub. L. No. 116-136, § 2201(a), 134 Stat. 281 (2020); Chuck Marr, et al., *Aggressive State Outreach Can Help Reach the 12 Million Non-filers Eligible for Stimulus Payments*, CENTER ON BUDGET AND POLICY PRIORITIES, (June 11, 2020). CBPP estimates that 12 million people who are eligible for an EIP must file a simple return using the IRS’s *Non-Filers: Enter Payment Info Here* tool, to claim the funds. These individuals have until October 15, 2020, to submit a simple return.

24 See IRS, *Get My Payment Frequently Asked Questions*, <https://www.irs.gov/coronavirus/get-my-payment-frequently-asked-questions> (last visited May 12, 2020) (“To help protect against potential fraud, the tool ... does not allow people to change direct deposit bank account information already on file with the IRS. If we issue a direct deposit and the bank information is invalid or the bank account has been closed, the bank will reject the deposit. We will then mail your payment as soon as possible to the address we have on file for you, and we will update Get My Payment to reflect the date your payment will be mailed. Typically, once the payment is mailed, it will take up to 14 days to receive the payment, standard mailing time.”).

25 IRS, *IR-2020-75, Veterans Affairs Recipients Will Receive Automatic Economic Impact Payments; Step Follows Work Between Treasury, IRS, VA* (Apr. 17, 2020). Initially the IRS did not intend to automatically send EIPs to SSI and veteran’s benefits recipients, but after mounting public pressure, the IRS entered into data-sharing agreement with SSA and the VA, providing them with information about who receives these benefits, and allowing them to automatically issue them EIPs. See also Lorie Konish, *Social Security Beneficiaries Do Not Have to File Tax Returns to Receive Stimulus Checks*, CNBC (Apr. 1, 2020), <https://www.cnbc.com/amp/2020/04/01/social-security-beneficiaries-do-not-have-to-file-tax-returns-to-receive-coronavirus-stimulus-checks.html>.

26 See Rev. Proc. 2020-28, 2020-19 I.R.B. 792.

27 Memorandum from Commissioner of Internal Revenue to National Taxpayer Advocate, *Safe Harbor for Low-Income Taxpayer Clinics (LITCs) Preparing Returns in Light of COVID-19 Pandemic* (Apr. 13, 2020).

more quickly.³⁶ Another benefit of using debit cards is they can be used in the future in the event Congress authorizes more stimulus payments. Unfortunately, it seems that the IRS's outreach efforts to inform individuals that some EIPs would be issued in the form of prepaid debit cards did not reach everyone, as some recipients destroyed or disposed of the card, fearing it was a scam. These individuals will have to have their preloaded debit cards reissued. Fortunately, an arrangement was reached with MetaBank, and it is offering the first reissuance of a debit card at no cost to the cardholder.³⁷ To avoid these issues going forward, TAS recommends that the IRS develop a more comprehensive outreach plan to inform and educate vulnerable individuals, such as the elderly, disabled, veterans, or those who have limited English proficiency, that they may receive debit cards and how to activate and use them.³⁸

Most individuals received their EIPs without any problem, but certain small groups of individuals have either not received their EIP or not received the entire amount. Individuals experienced many of the same problems during the issuance of the 2008 Economic Stimulus Payments, specifically:

- Delay of stimulus payments for taxpayers who purchased Refund Anticipation Loans (RALs) or Refund Anticipation Checks (RACs) to receive their tax refunds;
- Stimulus payments being deposited into the wrong bank accounts;
- Individuals not receiving stimulus payments for qualifying children; and
- Issues that resulted in incorrect, delayed, or unexpectedly reduced stimulus payments.³⁹

During this most recent stimulus payment distribution, the major issues that individuals have encountered are variations on these problems.

36 IRS, Economic Impact Payment Frequently Asked Questions, FAQs #46, *Can I Have My EIP Issued on a Debit Card?*, <https://www.irs.gov/coronavirus/economic-impact-payment-information-center#receiving> (May 20, 2020). "The determination of which taxpayers receive a debit card will be made by the Bureau of the Fiscal Service (BFS), another part of the Treasury Department that works with the IRS to handle distribution of the payments. BFS is sending nearly four million debit cards to taxpayers starting in mid-May."

37 IRS, IR-2020-105, IRS Economic Impact Payments Being Sent by Prepaid Debit Cards, Arrive in Plain Envelope; IRS.gov Answers Frequently Asked Questions (May 27, 2020); Money Network FAQs, <https://www.eipcard.com/faq> (June 1, 2020) ("Your first reissued Card will be free and then a \$7.50 fee will be applied for each additional reissued Card"). See also IRS, Economic Impact Payment Frequently Asked Questions, FAQs #50, *What Do I Do If My Prepaid Debit Card Was Lost or Destroyed?*, <https://www.irs.gov/coronavirus/economic-impact-payment-information-center#receiving> (June 4, 2020) ("Any initial reissuance fee charged to a customer from an earlier date will be reversed").

38 Lee Rood, *What Should You Do If You Threw Out or Destroyed That Stimulus Card? Members of Congress Want to Know, Too*, DES MOINES REGISTER (May 26, 2020), <https://www.desmoinesregister.com/story/news/2020/05/26/stimulus-visa-cards-iowans-seek-answers-after-many-throw-out-federal-payments/5261414002/>.

39 *Status of Economic Stimulus Payments, Hearing Before the H. Comm. on Ways and Means, Subcomm. on Oversight and Social Security*, 110th Cong. 13 (June 19, 2008) (written testimony of Nina E. Olson, National Taxpayer Advocate).

Individuals Who Had Previously Purchased Refund Anticipation Loans or Refund Anticipation Checks Saw Their Payments Sent to Inactive Virtual Accounts

The IRS suppressed issuance of EIPs to virtual accounts established when a taxpayer purchases a RAL or RAC, since these accounts no longer exist after the tax refund is transferred to the taxpayer, and then mailed the EIP to the taxpayer at his or her last known address.⁴⁰ Despite the RAL indicators on taxpayer accounts, the IRS did not suppress EIPs in all situations. Nearly 800,000 individuals who purchased RALs and RACs had their EIPs deposited to closed virtual accounts; following the deposits, banks returned the funds to the IRS, which subsequently mailed those EIPs to the individuals.⁴¹ When these taxpayers checked the status of their EIPs, the *Get My Payment* portal indicated that the IRS had already sent the payments. Taxpayers were confused by the status on the portal, as the original information said the IRS would not send EIPs to virtual accounts set up through the purchase of a RAL or RAC. After the IRS processed the returned payment, it updated the portal to reflect that the bank had returned the EIP and that the IRS would mail it to the taxpayers weeks later.

Individuals Who Receive Social Security Income or Veterans Benefits May Not Receive Credit for Their Qualifying Children Until 2021

The IRS was able to secure SSI and veterans benefits data from both the SSA and VA, allowing it to issue EIPs to SSI and veterans benefits recipients the way they normally receive their benefits (*i.e.*, via direct deposit, Direct Express debit card, or paper check). As mentioned above, the data did not contain information regarding dependents, so these individuals only received their share of the EIP.

Individuals needed to update their information on the IRS's *Non-Filers: Enter Payment Info Here* tool to claim the EIP for their qualifying children. The IRS was concerned that once it issued individuals an EIP, it did not have the authority or a process to issue additional amounts. However, it is TAS's understanding that there are no legal constraints on the IRS's authority to issue additional EIP amounts in 2020; thus, the decision to not do so is purely a business one.⁴² To balance this decision against individuals needing more time to update their information, the IRS held off issuing the EIPs to SSI recipients until the middle of May, giving these individuals until May 5 to go onto the *Non-Filers: Enter Payment Info Here* tool and update their number of dependents.⁴³ After May 5, 2020, SSI and veterans benefits recipients could no longer use the portal to update the number of their dependents and are not able to receive the \$500 per qualifying child until they file a 2020 return on which they will reconcile the EIP.

40 When a taxpayer purchases a RAL or RAC, a virtual account is established to which the refund is deposited. After the refund is transferred to the taxpayer, the virtual account no longer exists. The IRS receives an electronic indicator when a RAL or RAC is associated with a return, and the IRS was able to program its systems to send paper checks to all taxpayers whose 2019 or 2018 returns were accompanied by one of these indicators.

41 IRS response to TAS fact check (June 23, 2020). Paul Kiel, Justin Elliott, and Will Young, *Millions of People Face Stimulus Check Delays for a Strange Reason: They Are Poor*, PROPUBLICA.ORG (Apr. 24, 2020), <https://www.propublica.org/article/millions-of-people-face-stimulus-check-delays-for-a-strange-reason-they-are-poor>. As of April 23, 2020, the IRS had mailed 745,000 of the nearly 800,000 EIPs to individuals.

42 Email from Special Counsel to the National Taxpayer Advocate to Senior Advisor to the National Taxpayer Advocate (June 10, 2020) (available upon request). There is no legal barrier to paying an additional amount [of EIP] under IRC § 6428(f) based on a TY 2019 return that is filed after an advance payment was already made.

43 IRS, IR-2020-76, Special Alert for Benefit Recipients Who Do Not File a Tax Return and Have Dependents (Apr. 20, 2020).

Because these financially-strapped individuals will have to wait at least nine more months to receive this additional amount, TAS recommends the IRS continue to allow these individuals to either file paper returns or use the *Non-Filers: Enter Payment Info Here* tool to enter information about their qualifying children, and then immediately issue supplemental payments to those individuals.⁴⁴

The CARES Act's Valid Social Security Number Requirement Complicated Individuals' Receipts of the Economic Impact Payments in Certain Circumstances

Similar to other refundable credits such as the Earned Income Tax Credit and Additional Child Tax Credit, individuals and their qualifying children must have valid Social Security numbers (SSNs) to receive the EIP.⁴⁵ The exceptions to these requirements are when an individual is a member of the Armed Forces and files a joint return, only one of the individuals on the return must have an SSN, and qualifying children who have adoption taxpayer identification numbers can still qualify for the EIP.⁴⁶ This means that under the law, eligible individuals who do not have valid SSNs but whose qualifying children do would receive no EIP — not even the amounts attributable to their qualifying children. A class action complaint concerning this issue was filed on May 5, 2020, seeking a declaration that the CARES Act's denial of EIPs to undocumented aliens for their qualifying children who are U.S. citizens is unconstitutional. Further, the complaint seeks payments of up to \$500 for each U.S. citizen child, in accordance with the thresholds in the CARES Act.⁴⁷

Another issue is that an individual who has an SSN eligible for employment in the United States, but filed a joint return in 2019 (or 2018, if the 2019 return has not yet been filed) with an individual who does not have a valid SSN, will not receive an EIP in 2020. The IRS's guidance is that the individuals will have to wait until they file an individual 2020 tax return using married filing separate (MFS) status, thereby omitting the individual who does not have a valid SSN. This means these eligible individuals will not receive their EIP for at least another nine months. For example, if an individual with a valid SSN filed a joint return for 2019 (or 2018, if the 2019 return has not yet been filed) with an individual who does *not* have a valid SSN, the individual with the valid SSN can file MFS for tax year (TY) 2020 and will then receive an EIP for their share and for any qualifying children. (Because there are significant tax consequences to MFS, individuals will need to consider

44 ABA Tax Section, *Recommendations Regarding the Implementation of Various Tax-Related Provisions of the CARES Act* (May 12, 2020). The IRS has indicated that it will not be issuing additional EIP amounts at this time, and taxpayers who believe they are entitled to a larger EIP than what they received will have to wait. The IRS stated it will provide additional details on IRS.gov on the actions taxpayers will need to take in the future. See IRS, Economic Impact Payment FAQ #14, <https://www.irs.gov/coronavirus/economic-impact-payment-information-center#collapseCollapsible1589477358225> (last visited May 21, 2020).

45 CARES Act, Pub. L. No. 116-136, § 2201(a), 134 Stat. 281 (2020); IRC § 24(h)(7). To receive the EIP, a taxpayer must include on his or her tax return on file with the IRS the taxpayer identification numbers (TINs) of the taxpayer, their spouse (if filing a joint return), and any qualifying child(ren). For this purpose, a valid TIN is an SSN eligible for employment in the United States or, in the case of a qualifying child legally placed for adoption, an ATIN.

46 CARES Act, Pub. L. No. 116-136, § 2201(g)(3), 134 Stat. 281 (2020).

47 *R.V. et al. v. Mnuchin*, No. 8:20-cv-1148 (D. Md. May 5, 2020). The complaint was filed on behalf of seven U.S. citizen children and with the support of CASA, a D.C.-area immigration non-profit organization. The complaint explains that the CARES Act provides a financial lifeline to millions of people by distributing economic impact payments. However, the CARES Act provides payments solely to taxpayers who file their taxes using an SSN — meaning U.S. citizens and immigrants with work authorization — thereby denying payments to U.S. citizen children of undocumented immigrants who pay their taxes using an individual taxpayer identification number (ITIN). The complaint alleges that the CARES Act provisions deny U.S. citizen children of undocumented immigrant taxpayers the equal protection of the laws guaranteed by the U.S. Constitution.

if giving up certain tax benefits claimed when filing married filing jointly is outweighed by receiving the EIP.)⁴⁸

Individuals in this and other situations could file a superseding return in an effort to obtain the EIP in 2020 rather than having to wait until they file their 2020 tax returns.⁴⁹ However, due to programming limitations, the IRS has stated that filing a superseding return will not result in the issuance of an EIP or an additional EIP amount. TAS is concerned that these individuals who likely need their stimulus money now will have to wait several more months to even claim their EIP. Thus, TAS recommends that the IRS develop a process by which taxpayers in these and other similar situations can take steps to receive their EIPs now rather than having to wait until the 2021 filing season.

Despite Filing an Injured Spouse Claim, a Number of Individuals Had Their Economic Impact Payments Offset Against Their Spouse's Past-Due Child Support

In certain circumstances, a taxpayer's refund can be offset against outstanding tax or non-tax liabilities.⁵⁰ Unlike regular tax refunds, the EIP is only supposed to be offset against an individual's past-due child support.⁵¹ Because the EIP is separately allocated to each eligible individual in the amount of \$1,200, the non-liable spouse's portion of the EIP should not have been offset against the liable spouse's past-due child support. However, about 862,000 individuals had their portion of the EIP offset against their spouse's past-due child support,⁵² including about 26,000 of these individuals who previously identified as an injured spouse and had their portion of the EIP offset against their spouse's past due child support. For the 26,000 non-liable spouses, the IRS has been working since about the middle of April to retrieve their portion of the refunds that were improperly offset against their liable spouse's past-due child support payments, but at the time of this writing, this issue had not been corrected. Further, for the 836,000 individuals where circumstances may not demand the filing of an injured spouse claim, there has been no guidance available instructing them how to proceed.⁵³ TAS recommends that the IRS provide guidance stating that it will retrieve the non-liable

48 The IRS only refers to the recovery rebate credit as an EIP when it is issued as an advance payment in 2020. Otherwise, the taxpayer is claiming the recovery rebate on his/her 2020 tax return and it will be included in their refund along with any other refundable credits to which they might be entitled.

49 A superseding return is when a taxpayer files a second return before the filing deadline — in this case, the postponed filing deadline of July 15, 2020. For a more in-depth discussion as to when a superseding return could assist taxpayers who are experiencing financial distress, see Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*, *supra*. Individuals who are domestic violence survivors may also be in a similar situation (*i.e.*, the abusive spouse filed a joint return without the surviving spouse's knowledge, retaining the surviving spouse's portion of the EIP). Letter from ABA Tax Section Office to IRS Commissioner, *Delivery of Economic Impact Payments to Low-Income and Vulnerable Individuals* (Apr. 13, 2020). The IRS can mitigate the problem of EIPs going to spousal abusers by suppressing the portion of the domestic abuse survivor's EIP from being issued automatically where there is either a domestic violence indicator on the taxpayer's account or where a Form 8857, Request for Innocent Spouse Relief, has been filed.

50 IRC § 6402.

51 CARES Act, Pub. L. No. 116-136, § 2201(d), 134 Stat. 281 (2020); IRS, Economic Impact Payment Information Center, FAQ #31, <https://www.irs.gov/coronavirus/economic-impact-payment-information-center#calculating> (last visited May 13, 2020).

52 IRS CDW, IMF (Apr. 23, 2020). IRS response to TAS fact check (June 23, 2020).

53 Taxpayers would not have needed to file an injured spouse claim when they did not file a return in 2019 or 2018; their 2019 return has not yet been processed; or they did not have a refund and thus had no reason to file an injured spouse claim, but have now learned that their EIP has been offset against their spouse's past-due child support.

spouse's portion of the EIP regardless of whether an injured spouse claim has been filed. If the IRS determines that the non-liable spouse is required to file an injured spouse claim, taxpayers should be allowed to file Form 8379, Injured Spouse Allocation, either electronically or by fax.

Individuals in Limited Circumstances Are Being Asked to Return the Economic Impact Payments

The IRS issued about 965,000 EIPs to deceased taxpayers.⁵⁴ Initially, it seemed these payments would not have to be returned to the IRS, as early guidance said families that received extra stimulus funds for ineligible children did not have to return the funds.⁵⁵ However, on May 6, 2020, the IRS posted an FAQ notifying taxpayers that these payments “should be returned to the IRS...”⁵⁶ Like the 2008 law, there is nothing in the CARES Act that specifically states decedents are ineligible for an EIP.⁵⁷

This issue also came up in 2008, and the IRS posted the following FAQ on this issue:⁵⁸

Stimulus payments will be issued in the name of the individual eligible for payment on a filed 2007 income tax return or to the account designated by the individual on that return. This includes situations where a person dies after filing a return or where the final 2007 income tax return was filed by a personal representative or surviving spouse. Any issues or concerns involving a decedent's filed return or the related stimulus payment should be addressed by the legal representative of the decedent's estate. See Publication 559 for more useful information for survivors and personal representatives.⁵⁹

If stimulus payments were issued to a decedent taxpayer as described in the above FAQ, the IRS in 2008 did not ask that the payment be returned and took no steps to collect the payment from the decedent taxpayer's estate or family.⁶⁰

The 2020 FAQ provides guidance as to when an EIP would need to be returned for a recipient who has passed away. Specifically, the FAQ determination of eligibility is based upon two moving targets: the actual date of death versus the date the EIP is received (*i.e.*, if the date of death is before

54 IRS response to TAS fact check (June 23, 2020). As the EIPS were being issued, the IRS was aware that 837,000 of the 965,000 taxpayers had died but did not program its systems to exclude decedents.

55 IRS, Economic Impact Payment Information Center, FAQ #26, <https://www.irs.gov/coronavirus/economic-impact-payment-information-center> (last visited May 7, 2020).

56 *Id.*

57 CARES Act, Pub. L. No. 116-136, § 2201(a), 134 Stat. 281 (2020) (explaining “[t]his includes ‘any individual other than (1) [a] non-resident alien ... (2) an individual with respect to whom a deduction under section 151 is allowable to another taxpayer ... and (3) an estate or trust.’”). See also The Economic Stimulus Act of 2008, Pub. L. No. 110-185, § 101(e)(3), 122 Stat. 613, 614 (2008).

58 *Status of Economic Stimulus Payments, Hearing Before the H. Comm. on Ways and Means, Subcomm. on Oversight and Social Security*, 110th Cong. 13 (June 19, 2008) (written testimony of Nina E. Olson, National Taxpayer Advocate).

59 Nina E. Olson, *The Uncertainty of Death and Taxes: Economic Stimulus Payments to Deceased Individuals*, PROCEDURALLY TAXING BLOG, <https://procedurallytaxing.com/the-uncertainty-of-death-and-taxes-economic-stimulus-payments-to-deceased-individuals/> (May 11, 2020).

60 See, e.g., *Status of Economic Stimulus Payments: Hearing Before the H. Comm. on Ways and Means, Subcomm. on Oversight and Social Security*, 110th Cong. (June 19, 2008) (written testimony of Nina E. Olson, National Taxpayer Advocate); Nina E. Olson, *The Uncertainty of Death and Taxes: Economic Stimulus Payments to Deceased Individuals*, PROCEDURALLY TAXING BLOG, <https://procedurallytaxing.com/the-uncertainty-of-death-and-taxes-economic-stimulus-payments-to-deceased-individuals/> (May 11, 2020).

the receipt of the EIP, the instruction is the EIP should be returned to the IRS). Based upon the FAQ, an individual who died in May 2020 and whose spouse received an EIP from the IRS in June 2020 would need to send back the portion of the check attributed to the spouse who died (\$1,200).⁶¹ Rather than applying this approach, the statute could be read to deem an individual who dies in 2020 as an “eligible individual,” therefore making them eligible to receive the EIP. Conversely, under the IRS’s interpretation, an EIP that was sent to an individual who died prior to 2020 would be characterized as an improper payment and should be returned to the IRS. However, if the IRS made the payment despite having information in its possession that the individual was in fact deceased, the National Taxpayer Advocate recommends the IRS not spend its resources pursuing enforcement actions against a decedent’s estate or a family member who received an EIP for a decedent.

Similarly, individuals who are incarcerated have been advised by the IRS to return their EIPs.⁶² However, a situation could arise where a taxpayer was incarcerated at the beginning of 2020 but was released in the midst of the pandemic — especially since a number of incarcerated individuals were released to mitigate the spread of COVID-19 in the country’s prison system. Unlike a deceased individual, a released prisoner could return the EIP and then claim it when filing his/her 2020 income tax return. TAS will advocate for the IRS to provide more specific guidance regarding a released prisoner’s eligibility for receipt of an EIP.

Individuals Should Be on Alert for Scams Regarding the Economic Impact Payment

As has become all too common, fraudsters are trying to exploit the current situation for their own personal gain. The Treasury Inspector General for Tax Administration (TIGTA) has warned of the following types of EIP scams:

- Notices sent to individuals through the mail stating they need to send the IRS personal information to receive their EIP, when the IRS does not contact individuals to ask for information to send the payment;
- Requests by third parties to deposit or otherwise exchange EIP Treasury checks for cash, but the checks are subsequently determined to be fraudulent, counterfeit, or stolen;
- Tax preparer theft of EIPs;
- EIPs that have been fraudulently rerouted as a result of an unauthorized USPS address change; and
- EIP payments that were fraudulently rerouted to another bank account.⁶³

61 Frederic Lee and Jad Chamseddine, *IRS Wants Its Money Back From The Dead*, TAX NOTES (May 7, 2020), <https://www.taxnotes.com/featured-news/irs-wants-its-money-back-dead/2020/05/07/2chjz>.

62 IRS response to TAS fact check (June 23, 2020). About 74,000 incarcerated individuals received EIPs. The number of incarcerated taxpayers is based on their 2019 or 2018 tax returns. IRS, Economic Impact Payment Information Center, FAQ #12, <https://www.irs.gov/coronavirus/economic-impact-payment-information-center/#collapseCollapsible1588859690354> (last visited May 13, 2020). See also IRM 21.6.3.4.2.13, Economic Impact Payments (June 5, 2020). It is unclear what the IRS will do if taxpayers do not return the EIP. SERP IRM 21.6.3.4.2.13, Economic Impact Payments (June 5, 2020) specifies, “EXCEPTION: For those taxpayers who received the Economic Impact Payment but were not eligible, advise the taxpayer return or repay the payment.”

63 See TIGTA, *Are You a Victim of an IRS-Related Coronavirus Scam?*, https://www.treasury.gov/tigta/contact_report_treasurycheck.shtml (last visited May 13, 2020). See also TIGTA, *TIGTA-2020-5, TIGTA Urges Taxpayers to Stay Alert and Safeguard Their Economic Impact Payment* (May 14, 2020).

Individuals should be aware of these types of scams, and if they believe they have been victimized or are aware of these scams occurring, TIGTA has asked individuals to notify Treasury via an online form.⁶⁴ The IRS and state Attorneys General have also warned individuals about such scams.⁶⁵ Additionally, if individuals have not received the EIP because they suspect they are victims of identity theft, taxpayers should submit Form 14039, Identity Theft Affidavit, and notate “Stolen EIP” at the top of the form. Unfortunately, the processing of these forms will likely be delayed because IRS campuses have a backlog of correspondence as a result of the temporary closure of the IRS campuses. TAS will continue to work with the IRS to ensure individuals are informed about specific scams related to EIPs and recommend that the IRS prioritize the processing of Forms 14039 bearing an EIP notation.

When Individuals Have Questions and Concerns Regarding Their Economic Impact Payments, They Should Be Able to Easily Access IRS Resources

As the above discussion illustrates, there are several complex situations facing individuals in relation to the EIP. Already, individuals have a number of IRS resources to access online including an expansive list of FAQs that answer many of the simpler questions for individuals who have internet access.⁶⁶ It was not until May 18, 2020, that the IRS announced it had assigned 3,500 telephone representatives to answer common questions about EIPs; however, resources remain limited, and individuals who call these phone lines can expect long wait times.⁶⁷ Once individuals do reach assistors, generally these assistors will be reading the answers to the FAQs, and their responses will likely not go beyond the FAQs posted on IRS.gov. TAS recommends that the IRS ensure that assistors working the IRS phone lines are able to answer more complex questions.⁶⁸ Individuals calling this phone line should also be able to update their mailing addresses.

For its part, TAS is assisting taxpayers by working these issues systemically and is advocating for the IRS to develop procedures that will correct inaccurate EIP amounts and issue missing payments during 2020. TAS has been inundated by taxpayer and congressional requests to assist in these types of cases. However, without an IRS process in place to correct a taxpayer’s payment, TAS is unable

64 See TIGTA, *Are You a Victim of an IRS-Related Coronavirus Scam?*, https://www.treasury.gov/tigta/contact_report_treasurycheck.shtml (last visited May 13, 2020).

65 California Attorney General’s Office, *Attorney General Warns Consumers to Beware of Scams Related to Economic Impact Stimulus Payments*, (May 11, 2020), <http://www.lakeconews.com/index.php/news/community/65293-attorney-general-warns-consumers-to-beware-of-scams-related-to-economic-impact-stimulus-payments>; Kansas Attorney General Warns Public to Watch Out for Stimulus Package Scams, KWCH.com (Mar. 30, 2020), <https://www.kwch.com/content/news/Kansas-attorney-general-warns-public-to-watch-out-for-stimulus-package-scams-569230591.html> (last visited May 13, 2020); IRS, *IRS Issues Warning About Coronavirus-Related Scams; Watch Out for Schemes Tied to Economic Impact Payments*, <https://www.irs.gov/newsroom/irs-issues-warning-about-coronavirus-related-scams-watch-out-for-schemes-tied-to-economic-impact-payments> (last visited May 21, 2020).

66 Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*, *supra*.

67 IRS, *IR-2020-97, IRS Adds Phone Operators to Answer Economic Impact Payment Questions* (May 18, 2020); IRS *Operations During COVID-19: Mission-Critical Functions Continue* (May 19, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

68 National Taxpayer Advocate 2009 Annual Report to Congress 4, at 9 (Most Serious Problem: *IRS Toll-Free Telephone Service Is Declining as Taxpayer Demand for Telephone Service Is Increasing*). As was the case in 2008, taxpayers called the toll-free line for the more complex questions, which inevitably take the telephone representatives longer to resolve. TAS suggests that the IRS continue to analyze its call data and base its toll-free assistor staffing decisions on this analysis.

to resolve an EIP issue. Instead, TAS's work has been limited to instances where a problem with a taxpayer's current year return — such as wage verification or identity theft — is holding up the issuance of the EIP.⁶⁹ If the IRS developed a process to correct EIP amounts now, TAS could begin accepting these cases, working with the IRS to resolve them, and getting the money into the hands of eligible individuals.

Employee Retention Credit

The ERC is a significant tax benefit for employers, but its complexity presents opportunities for error. Employers who qualify for the ERC will receive a refundable credit against an employer's 6.2 percent share of Federal Insurance Contribution Act (FICA) wages or Railroad Retirement Tax Act (RRTA) compensation.⁷⁰ An employer can claim a refundable payroll tax credit of up to 50 percent of qualified wages (including health plan expenses) up to \$10,000 per employee, for a maximum credit amount of \$5,000 per employee, paid after March 12, 2020, and before January 1, 2021. As of June 2, 2020, the IRS had received at least 8,700 Forms 7200, Advance Payment of Employer Credits Due to COVID-19.⁷¹

To qualify, an employer must operate a trade or business and:

- Have operations fully or partially suspended by governmental order limiting commerce, travel, or group meetings due to COVID-19 during a calendar quarter, or
- Have experienced a significant decline in gross receipts in a calendar quarter when compared to 2019.

69 Because the IRS was not answering phone lines but TAS local offices were, TAS began experiencing unprecedented call volumes and voice messages from taxpayers with EIP questions. Through May 7, 2020, TAS employees answered 4,226 EIP-related calls from taxpayers. TAS is not staffed to take over the IRS's phone lines when the IRS has shutdown and stopped answering incoming calls, while continuing to assist taxpayers who qualify for TAS assistance. Memorandum from Deputy National Taxpayer Advocate for TAS Employees: Interim Guidance – Economic Impact Payments and TAS Case Acceptance (May 14, 2020). See also Memorandum from National Taxpayer Advocate to TAS Employees: Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy (June 1, 2020). TAS assistance will not expedite or improve current EIP processing. TAS will not accept cases related solely to EIP issues — even from a congressional office.

70 CARES Act, Pub. L. No. 116-136, § 2301, 134 Stat. 281 (2020) (Employee Retention Credit for Employers Subject to Closure due to COVID-19). IRC § 3111(a) (employer's share of the Old Age, Survivors, and Disability Insurance (social security) portion of FICA tax) and IRC § 3221(a) (employer's share of the social security and Hospital Insurance (Medicare) portions of RRTA tax), along with IRC § 3402 related to Federal income tax withholding, impose employment tax liability on employers. For most employers, this liability is reported on the quarterly Form 941, Employer's Quarterly Federal Tax Return.

71 This data was obtained in an April 21, 2020, email from Senior Technical Analyst, Small Business/Self-Employed Division (available upon request). The IRS received 8,700 eFaxes, but each eFax could have contained multiple Forms 7200, so the total number of forms has yet to be ascertained.

If either of these requirements is met, the taxpayer may be eligible for the ERC.⁷² This credit may appear straightforward, but there are many layers of complexity, such as:

- Determining when a trade or business was fully or partially suspended by government order;⁷³
- Determining the employer's number of full-time employees;
- Determining gross receipts for an exempt organization;
- Determining qualified wages; and
- Applying aggregation rules.⁷⁴

To answer these questions, the IRS has provided nearly 100 FAQs on the ERC. Although these FAQs are helpful to taxpayers and provide answers to many of the simpler questions surrounding the credits, areas of ambiguity remain. For example, the IRS provides that if a business is closed, but the employer is able to continue operations “comparable” to its operations prior to the closure by requiring its employees to telework, there has been no partial suspension.⁷⁵ Specifically, one of the FAQs on the ERC provides this example:

Employer C, a software development company maintains an office in a city where the mayor has ordered that only essential businesses may operate. Employer C's business is not essential under the mayor's order and must close its office. Prior to the order, all employees at the company teleworked once or twice per week, and business meetings were held at various locations. Following the order, the company ordered mandatory telework for all employees and limited client meetings to telephone or video conferences. Employer C's business operations are not considered to be fully or partially suspended by the governmental order because its employees may continue to conduct its business operations by teleworking.⁷⁶

72 CARES Act, Pub. L. No. 116-136, § 2301(3)(j), 70 Stat. 281 (2020) (Employee Retention Credit for Employers Subject to Closure due to COVID-19). If an employer receives a Small Business Interruption Loan under the Paycheck Protection Program, authorized under the CARES Act, then the employer is not eligible for the Employee Retention Credit.

73 Only orders, proclamations, or decrees from the Federal government, or any State or local government authorities apply. See IRS, COVID-19-Related Employee Retention Credits: Determining What Types of Governmental Orders May be Taken into Account for Purposes of the Employee Retention Credit FAQs, FAQ #28, <https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-what-types-of-governmental-orders-may-be-taken-into-account-for-purposes-of-the-employee-retention-credit-faqs> (last visited June 9, 2020). See also Letter from Caroline L. Harris, U.S. Chamber of Commerce, to Office of IRS Chief Counsel and Office of the Tax Policy, *Employee Retention Tax Credit (ERTC) Frequently Asked Questions (FAQs): Additional Modifications* (May 19, 2020). The Chamber recommends that the IRS allow eligible employers to claim credit on U.S. based payroll wages paid to U.S. employees with partially suspended activities due to governmental orders of non-U.S. locations.

74 CARES Act, Pub. L. No. 116-136, § 2301(d), 134 Stat. 281 (2020). The CARES Act requires that the aggregation rules under IRC §§ 52 or 414 be applied to taxpayers claiming the employee retention credit. These and other issues have been raised by a number of businesses regarding how to claim the ERC. See Scott Harty, *et al.*, *Into the Unknown: Employee Retention Credit Remains Murky*, Tax NOTES (June 8, 2020).

75 Tony Nitti, *Miss Out on A Paycheck Protection Program Loan? Don't Forget About the Employee Retention Credit*, FORBES (Apr. 30, 2020), <https://www.forbes.com/sites/anthonyнити/2020/04/30/miss-out-on-a-paycheck-protection-program-loan-dont-forget-about-the-employee-retention-credit/>.

76 IRS, COVID-19-Related Employee Retention Credits: Determining When an Employer's Trade or Business Operations are Considered to be Fully or Partially Suspended Due to a Governmental Order FAQs, FAQ #33, <https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-determining-when-an-employers-trade-or-business-operations-are-considered-to-be-fully-or-partially-suspended-due-to-a-governmental-order-faqs> (last visited May 8, 2020).

The question here is what will be considered “comparable?”⁷⁷ For example, what if the facts in the FAQ above are largely the same, but only 80 percent of the company’s employees are set up to work from home? Would that still be considered “comparable,” or will the taxpayer then have to analyze what operations are performed by employees who are not set up to work from home?

An example of another area of uncertainty is where essential businesses were required to stay open, but the state or local government order required them to implement social distancing practices and imposed restrictions on capacity, or the businesses voluntarily implemented such restrictions in accordance with Center for Disease Control and Prevention (CDC) or Department of Homeland Security (DHS) guidelines to protect their employees.⁷⁸ For example, some grocery stores restricted the number of employees and customers allowed into the store and also reduced their hours of operation. Additionally, meat packing plants, even though deemed essential and required to stay open, often worked with state governments on what steps should be taken to reduce the spread of COVID-19, such as implementing capacity limits or requiring employees who had been exposed to the virus to stay home.⁷⁹ Although there are a number of FAQs that touch on this issue, additional guidance on whether an essential business that remains open would be considered partially suspended because of restrictions due to COVID-19 — whether imposed by a governmental order or voluntarily adopted by an employer to comply with CDC and DHS guidelines — would help taxpayers comply with the credit eligibility rules.⁸⁰

It is TAS’s understanding that the IRS is in the process of addressing these ambiguities in its FAQs. At the time of this writing, TAS had not had an opportunity to review the new or revised FAQs, so it is unclear the extent to which this guidance will provide more clarity to taxpayers so they can confidently move forward with claiming this credit without concern for unintentionally violating a rule resulting in a compliance situation. The IRS will need to determine the amount of resources it wants to devote to auditing and verifying the proper allocation of this credit. It is imperative that taxpayers are prepared to support their position for claiming the credit and the amount they have claimed if contacted for audit.

The IRS has been willing to modify its FAQs in other situations where the FAQs have either been ambiguous or inconsistent with Congress’s intent. For example, in the early release of the FAQs, an issue arose regarding whether an employer may treat health plan expenses as qualified wages

77 See Letter from Caroline L. Harris, U.S. Chamber of Commerce, to Office of IRS Chief Counsel and Office of the Tax Policy, *Employee Retention Tax Credit (ERTC) Frequently Asked Questions (FAQs): Additional Modifications* (May 19, 2020). The Chamber recommends that the IRS either withdraws the FAQs that deals with comparable operations (FAQ #33) or provide specific examples of what is *not* considered “comparable” operations.

78 See Letter from Caroline L. Harris, U.S. Chamber of Commerce, to Office of IRS Chief Counsel and Office of the Tax Policy, *Employee Retention Tax Credit (ERTC) Frequently Asked Questions (FAQs): Additional Modifications* (May 19, 2020). The Chamber recommends that the IRS should clarify that this is a partial suspension for purposes of the ERTC. See also Centers for Disease Control and Prevention, *COVID-19 Ongoing Mitigation Guidance*, <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html> (last visited May 14, 2020); Department of Homeland Security, *DHS Responds: Coronavirus (COVID-19)*, <https://www.dhs.gov/coronavirus> (last visited May 21, 2020).

79 Executive Order 13917, *Delegating Authority Under the Defense Production Act With Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19* (Apr. 28, 2020) (“It is important that processors of beef, pork, and poultry ... in the food supply chain continue operating and fulfilling orders to ensure a continued supply of protein for Americans.”).

80 ABA Tax Section Office, *Recommendations regarding the implementation of various tax-related provisions of the CARES Act* (May 12, 2020).

when the employees were not working and were not getting paid. Initially, the IRS determined that continued payment of health plan expenses would not be considered *qualified wages* in that scenario for the purpose of the ERC. However, after members of Congress expressed concern regarding this interpretation, the IRS modified its FAQs, allowing the payment of such benefits to be considered *qualified wages*.⁸¹

In addition to the FAQs, the IRS opened a phone line at the beginning of May 2020 to assist taxpayers with their ERC questions.⁸² By providing these resources and clarifying areas of ambiguity, taxpayers can take the steps they need to avoid entanglement in an unnecessary audit that would result in the draining of both taxpayers' and IRS's limited resources.

Paycheck Protection Program

The CARES Act created another significant benefit to assist employers whose businesses have been affected due to the many restrictions put in place to stem the spread of COVID-19.

The PPP is a loan designed to provide an incentive for small businesses to keep their employees on payroll and to assist in paying other expenses.⁸³ The loan will be fully forgiven if businesses use the funds for certain costs including payroll, interest on mortgages, rent, and utilities.⁸⁴ A number of small businesses are eligible to apply for these loans.⁸⁵

81 See letter from Sen. Chuck Grassley, Sen. Ron Wyden, and Rep. Richard E. Neal to Treasury Secretary Steven T. Mnuchin (May 5, 2020). Senators Grassley and Wyden and Rep. Neal urged Treasury to reconsider that determination, saying it goes against congressional intent and that allowing people to keep their employer-sponsored health plans even while furloughed is important in ensuring that Americans have access to affordable health care during the pandemic. "This decision will encourage employers to help employees keep their health insurance while temporarily furloughed due to the shutdown." *Id.* See also IRS, COVID-19-Related Employee Retention Credits: Amount of Allocable Qualified Health Plan Expenses FAQs, FAQs #64-65, <https://www.irs.gov/newsroom/covid-19-related-employee-retention-credits-amount-of-allocable-qualified-health-plan-expenses-faqs> (updated May 7, 2020; last visited June 9, 2020).

82 IRS SERP Alert 20A0198, ACS CRs Responding to BMF Taxpayers Regarding the New Employer Tax Credits (May 8, 2020).

83 CARES Act, Pub. L. No. 116-136, § 1102(a)(2), 134 Stat. 281 (2020). *Small Business Administration (SBA), Paycheck Protection Program: An SBA Loan That Helps Businesses Keep Their Workforce Employed During the Coronavirus (COVID-19) Crisis*; <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program> (last visited May 19, 2020).

84 CARES Act, Pub. L. No. 116-136, § 1106, 134 Stat. 281 (2020). Payment on mortgages does not include any prepayment or payment of principal on a covered mortgage obligation. Additionally, the CARES Act also defines covered rent obligations and covered utility payments. See, e.g., CARES Act, § 1106(a)(4) and § 1106(a)(5). See also Paycheck Protection Program Flexibility Act of 2020, H.R. 7010, 116th Cong. (June 5, 2020). The PPP Flexibility Act modifies the CARES Act, widening the time frame in which incurred expenses can be covered under the PPP — to either 24 weeks after the origination of the loan or December 31, 2020, whichever comes earlier. Previously, the covered period under the CARES Act was eight weeks following the origination of the loan. Additionally, the PPP Flexibility Act of 2020 modifies the requirement for how the loan should be used. It now requires that eligible recipients use at least 60 percent of the covered loan amount for payroll costs, and may use the remaining 40 percent for any payment of interest on a covered mortgage or for rent or utility obligations. Some have lamented that determining when these loans will be fully forgiven is overly complex. See Neil Hare, *House Passes PPP Loan Forgiveness Bill, Treasury Issues Harsh Forgiveness Regulations—What You Need To Know*, FORBES (June 1, 2020).

85 The eligible businesses that can apply for this loan are: any small business concern that meets SBA's size standards (either the industry based size standard or the alternative size standard); any business, 501(c)(3) non-profit organization, 501(c)(19) veterans organization, or Tribal business concern with the greater of 500 employees, or that meets the SBA industry size standard if more than 500 employees; any business with an NAICS Code that begins with 72 (Accommodations and Food Services) that has more than one physical location and employs fewer than 500 people per location; and sole proprietors, independent contractors, and self-employed persons. See CARES Act, Pub. L. No. 116-136, § 1102(a), 134 Stat. 281 (2020).

As illustrated above, benefits bestowed upon taxpayers during this unprecedented time often create complex tax issues, and the PPP is no different. If businesses meet certain requirements, loans administered through the PPP will be forgiven. To ensure this did not create a taxable event, Congress excluded forgiveness of this loan from taxable income.⁸⁶ This immediately raised questions as to whether taxpayers who received a loan through the PPP that was either expected to be forgiven or was forgiven could deduct expenses paid with this loan.⁸⁷ In Notice 2020-32, the government took the position that no deduction is allowed for an expense that is otherwise deductible because IRC § 265 denies deductions from income of a class that is exempt from tax.⁸⁸ Although this interpretation seems reasonable from a technical perspective, members of Congress took issue with the interpretation, arguing that it blunted Congress's intent to provide economic relief to taxpayers.⁸⁹ Examples such as this will cause taxpayer confusion, possibly resulting in an IRS examination.⁹⁰ Further, considering the complexity and the newness of this program, it is not entirely clear how it will be audited, and the extent to which the IRS will need to commit resources to conduct those audits.

Net Operating Loss Carrybacks and Elections

The CARES Act allows taxpayers to elect to carry back certain NOLs.⁹¹ It also provides for the accelerated recovery of refundable alternative minimum tax credits for corporations.⁹² These provisions provide businesses flexibility to utilize NOLs to offset prior taxable income and reduce the cost of capital as they cope with the economic and business effects of the pandemic. Loss carrybacks generally allow businesses to get refunds of the taxes they paid for earlier taxable years, in some cases, by releasing another tax attribute (*e.g.*, a foreign tax credit, minimum tax credit, or general business credit) in the carryback year that is carried to another year to create an overpayment.⁹³ Taxpayers can obtain refunds by filing a Form 1045, Application for Tentative Refund, or Form 1139, Corporation Application for Tentative Refund, or an amended return (*e.g.*, on Forms 1040X and 1120X). The amount of the refunds depends on both the magnitude of the NOL and the amount of tax paid for the earlier years to which the NOL is applied. Businesses try to estimate and

86 See CARES Act, Pub. L. No. 116-136, § 1106(i), 134 Stat. 281 (2020).

87 IRC § 265(a)(1) and Treas. Reg. § 1.265-1 provide that no deduction is allowed to a taxpayer for any amount otherwise allowable as a deduction to such taxpayer that is allocable to one or more classes of income other than interest (whether or not any amount of income of that class or classes is received or accrued) wholly exempt from the taxes imposed by subtitle A of the Code.

88 IRS Notice 2020-32, 2020-21 I.R.B. 837.

89 See letter from Sen. Chuck Grassley, Sen. Ron Wyden, and Rep. Richard E. Neal, to Treasury Secretary Steven T. Mnuchin (May 5, 2020). See also S.3612 116th Congress 2d Session, *Small Business Expense Protection Act of 2020* (May 5, 2020). Separately, practitioners observed that it would be helpful for the government to clarify that the taxpayer's attributes remain intact upon forgiveness of a PPP loan (*i.e.*, because IRC § 108 is not applicable, the attribute reduction rules of IRC § 108(b) are inapplicable). ABA Section of Taxation, *Tax Implementation of the CARES Act* (May 12, 2020). They also asked for clarification about how the forgiveness should be reported and proper characterization of the loans for purposes of the public support test applicable to nonprofits.

90 Colleen Murphy, *Loan Program Raises Fraud Worries for IRS*, FORBES (June 3, 2020). Adding to this challenge is the IRS's major concern that the PPP is being exploited by individuals fraudulently applying for PPP loans. "With just the sheer amount of money that's going out, we know that when this type of situation happens, fraudsters are on high alert and ramp up all of the efforts they possibly can to get money from the government," said Don Fort, Chief of the IRS Criminal Investigation Division.

91 CARES Act, Pub. L. No. 116-136, §§ 2303 and 2306, 134 Stat. 281 (2020) (codified at IRC §§ 172(b)(1) and 163(j)(10)).

92 See CARES Act, Pub. L. No. 116-136, § 2305, 134 Stat. 281 (2020).

93 See CCA 2020-23006 (Mar. 6, 2020).

compare the value of using the NOL to offset income in future years at future tax rates with the value of carrying the NOL back to offset income at the rates applicable to prior years. They may also consider their immediate cash flow needs, the timing of the refund, and the risk that carrying the loss back will trigger an audit of an earlier year.

Recent Legislative Changes Make Election Decisions and Computations More Difficult

For tax years beginning on or before December 31, 2017, the top corporate rate was 35 percent, and NOLs could generally be carried back two years.⁹⁴ For taxable years beginning after 2017, the Tax Cuts and Jobs Act (TCJA) generally reduced the top corporate rate to 21 percent and eliminated the option to carry back NOLs for most taxpayers.⁹⁵ The TCJA also imposed a new one-time tax (albeit at lower effective rates by virtue of a deduction under IRC § 965(c) and sometimes offset by foreign tax credits) on certain accumulated foreign earnings by *deeming* them to be repatriated (*i.e.*, taxing them whether they were repatriated or not) under IRC § 965. This tax is widely referred to as the “transition tax.” Although the entire transition tax was assessed in the IRC § 965 inclusion year, taxpayers could elect to pay it in eight annual installments without interest under IRC § 965(h).

Section 2303 of the CARES Act requires a taxpayer with an NOL arising in a taxable year beginning in 2018, 2019, or 2020 to carry that loss back to each of the five preceding years unless they elect to waive the carryback, and also provided a two-year carryback of NOLs arising during a taxable year that began in 2017 and ended during 2018.⁹⁶ An election for an NOL arising in a taxable year beginning in 2018 or 2019 must be made no later than the due date, including extensions, for filing the taxpayer’s federal income tax return for the first taxable year ending after March 27, 2020.⁹⁷ This added flexibility means that taxpayers have difficult choices about when to elect to take the losses and whether to amend prior-year returns – choices that are even more complicated because of special rules that apply to those subject to the “transition tax” under IRC § 965(a).⁹⁸

To assist taxpayers, Congress enacted two special rules that apply to a year in which there was an IRC § 965 inclusion (generally 2017, 2018, or both). First, if one or more years in the carryback period are an IRC § 965 inclusion year, taxpayers may elect to exclude all such inclusion years from

94 IRC § 11 (2017); IRC § 172 (2017).

95 Section 13302 of the TCJA, Pub. L. No. 115-97, 131 Stat. 2054 (2017), amended IRC § 172(a) to limit the deduction of NOLs incurred in taxable years beginning after 2017 to 80 percent of taxable income. This limitation applied to all taxpayers. Section 11012 of the TCJA also added IRC § 461(l), which limited the amount of business deductions allowed for a taxable year in excess of business income for such year, applicable to taxpayers other than corporations. The amount of such excess deductions that could be used to offset non-business income was limited to \$250,000 for single filers and \$500,000 for joint filers. Any excess business deductions beyond these limitations were carried forward to the following year as an NOL. Section 12001 of the TCJA repealed the corporate alternative minimum tax (AMT), effective for tax years beginning after December 31, 2017. These technical rules make the carryback election decision more difficult.

96 CARES Act, Pub. L. No. 116-136, § 2303, 134 Stat. 281 (2020) (codified at IRC § 172(b)(1)). For further guidance, see IRS, Temporary procedures to fax certain Forms 1139 and 1045 due to COVID-19 (May 1, 2020), <https://www.irs.gov/newsroom/temporary-procedures-to-fax-certain-forms-1139-and-1045-due-to-covid-19>.

97 Rev. Proc. 2020-24, 2020-18 I.R.B. 750.

98 For further analysis of the complexity involved in the NOL election decisions, see, e.g., Mindy Herzfeld, *So Many Ways to Lose Your Losses*, 167 TAX NOTES FED. 749 (May 4, 2020); Josiah P. Child, et al., *A Silver Linings Guidebook: Corporate Planning for Coronavirus Losses*, 2020 TNTF 96-15 (May 18, 2020); Amy Chapman, et al., *ATNOL Carrybacks Under the CARES Act*, 167 TAX NOTES FED. 1185 (May 18, 2020); Kittle-Camp, et al., *Insight: Who CARES for Taxpayer Cash Flow? The IRS and Its Quick Refund Fix*, BLOOMBERG L. NEWS DAILY TAX REP. (May 15, 2020).

the carryback period.⁹⁹ If they do not, then a second rule provides that the taxpayers will be treated as having made an election under IRC § 965(n) to not apply the carryback to the amount included in income under IRC § 951(a) (by reason of IRC § 965) for any IRC § 965 inclusion year in the carryback period.¹⁰⁰ This means, for example, that if 2017 is an IRC § 965 inclusion year for a taxpayer, the NOL will not reduce 2017 taxable income attributable to the transition tax. This may help ensure the NOL generates a refund rather than simply offsetting transition tax liability that a taxpayer is already authorized to pay in eight annual installments under IRC § 965(h).¹⁰¹ However, calculating the transition tax may involve so many complexities that some taxpayers might be reluctant to revisit it.¹⁰²

The decision to carryback losses is further complicated if the losses might be subject to the separate return limitation year rules (*i.e.*, rules that limit the use of losses when corporations enter and exit a consolidated group),¹⁰³ or if a purchase agreement was drafted under the assumption that no losses could be carried back. The impact of the NOL carryback on global intangible low-taxed income (GILTI) and the foreign derived intangible income (FDII), which were also enacted as part of the TCJA, may also complicate the analysis. Both GILTI and FDII are taxed at reduced rates by operation of IRC § 250. It might not make sense to use current-year losses to offset income that was taxed at a lower rate or that was already offset by foreign tax credits (FTCs) for taxes paid to other jurisdictions.

In addition, a taxpayer is precluded from claiming an NOL on either Form 1045 or Form 1139 when the carryback of the NOL would release FTCs in the carryback period that normally would then be available to carry forward. The instructions advise taxpayers to file amended returns in these situations instead.¹⁰⁴ Thus, a taxpayer might have to wait for the IRS to process an amended return rather than obtaining a quick refund based on the tentative carryback adjustment procedures. Moreover, some have suggested that sourcing an NOL carryback raises complex questions because the FTC regulations that address the transition between the pre-TCJA and the post-TCJA regime did not contemplate that taxpayers might be able to carry back an NOL from a post-TCJA year into the pre-TCJA regime.¹⁰⁵

99 IRC § 172(b)(1)(D)(v)(I).

100 IRC § 172(b)(1)(D)(iv).

101 See PMTA 2018-16 (Aug. 2, 2018). The IRS's conclusion that it cannot issue a refund for an IRC § 965 inclusion year until the entire liability for that year is satisfied is controversial. See, e.g., National Taxpayer Advocate, IRS Administration of the Section 965 Transition Tax Contravenes Congressional Intent and Imposes Unintended Burden on Taxpayers, NTA BLOG, <https://taxpayeradvocate.irs.gov/news/nta-blog-irs-administration-of-the-section-965-transition-tax-contravenes-congressional-intent-and-imposes-unintended-burden-on-taxpayers?category=Tax%20News> (Aug. 16, 2018); Brian Kittle *et al.*, *Rush for NOL Carryback Cash Hits IRS Roadblock*, 167 TAX NOTES FED. 969 (May 11, 2020). However, the IRS has concluded that it may pay refunds attributable to subsequent years even if the transition tax liability is not fully satisfied. See IRS, Questions and Answers about Tax Year 2018 Reporting and Payments Arising under Section 965, FAQ #3 (Apr. 3, 2020), <https://www.irs.gov/newsroom/questions-and-answers-about-tax-year-2018-reporting-and-payments-arising-under-section-965> ("If you made a section 965(h) election on your 2017 income tax year return, the IRS will apply voluntary payments that are designated as 2018 income tax payments solely against the 2018 income tax liability.").

102 See, e.g., Mindy Herzfeld, *So Many Ways to Lose Your Losses*, 167 TAX NOTES FED. 749 (May 4, 2020).

103 See Treas. Reg. §§ 1.1502-21 and -22.

104 See, e.g., IRS, Instructions for Form 1045, at 2 (2019); IRS, Instructions for Form 1139, at 2 (2018).

105 See Mindy Herzfeld, *So Many Ways to Lose Your Losses*, 167 TAX NOTES FED. 749 (May 4, 2020) (citing T.D. 9882).

The Base Erosion and Anti-Abuse Tax (BEAT), which was enacted as part of the TCJA also complicates the analysis. The BEAT is determined in part by the extent to which the taxpayer has made deductible payments to foreign related parties.¹⁰⁶ The CARES Act amended IRC § 163(j) for tax years beginning in 2019 and 2020 by increasing the percentage of adjusted taxable income (ATI) that is used to determine a taxpayer's interest deduction limitation for the year.¹⁰⁷ For taxable years beginning in 2019 or 2020, this percentage is increased from 30 percent to 50 percent.¹⁰⁸ For purposes of BEAT, IRC § 163(j) applies to first reduce deductible third-party interest expense, and only after to related-party interest expense (*pro rata* between foreign related party and domestic related party interest expense). Additional interest expense deductible under the expanded limitation could mean more interest expense is added back to the BEAT modified taxable income calculation.¹⁰⁹ Given all of this complexity, a taxpayer may require complex models to determine the optimal application of the CARES Act provisions to exercise the *right to pay no more than the correct amount of tax*.

Timing of Net Operating Loss Carryback Elections and Refunds

The decision to carryback NOLs and claim refunds may also depend on how quickly taxpayers can obtain refunds.¹¹⁰ Helpfully, the IRS issued Notice 2020-26, which provided a six-month extension to file the application (on Form 1139 or Form 1045) requesting a tentative refund to carry back an NOL with respect to a taxable year that began during calendar year 2018 and ended on or before June 30, 2019.¹¹¹ Although there is generally no easy way to expedite tentative allowance processing, the IRS has temporarily allowed taxpayers to file Forms 1139 and 1045 by fax.¹¹²

Once a taxpayer files a timely Form 1139 or 1045, the IRS has 90 days to perform a limited examination of the application.¹¹³ The scope of this review is very narrow and limited to discovering omissions and errors of computation and to determining the amount of the decrease in the tax attributable to such carryback upon the basis of the application and examination. IRC § 6411 does not authorize any examination of the merits of the loss being carried back nor of the merits of the tax year to which the loss is carried back, and nothing in that section authorizes the IRS to examine the application beyond the 90-day period.

Unless there are material omissions or computational errors, the IRS generally pays the tentative refund by the end of the 90-day period. The IRS often attempts to pay out tentative refunds within 45 days to avoid having to pay interest on the amount refunded.¹¹⁴ Receiving a tentative refund from the IRS is not necessarily the end of the process. In fact, it may just be the beginning. The IRS must determine if it will examine the return or survey the return without an examination. If

106 IRC § 59A.

107 CARES Act, Pub. L. No. 116-136, § 2306, 134 Stat. 281 (2020) (codified at IRC § 163(j)(10)).

108 Taxpayers may elect to use the 30 percent rate instead of the 50 percent rate.

109 For an example, see, e.g., Mindy Herzfeld, *So Many Ways to Lose Your Losses*, 167 TAX NOTES FED. 749 (May 4, 2020).

110 For a more detailed discussion of practical problems that might arise, see Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency, and Restoring Much-Needed Taxpayer Services*, *supra*.

111 IRS Notice 2020-26, 2020-18 I.R.B. 744.

112 IRS, Temporary Procedures to Fax Certain Forms 1139 and 1045 Due to COVID-19, FAQ #5 (May 1, 2020), <https://www.irs.gov/newsroom/temporary-procedures-to-fax-certain-forms-1139-and-1045-due-to-covid-19>.

113 IRC § 6411(b).

114 IRC § 6611(e)(2) and (f)(4).

the taxpayer is currently under examination, the exam team may review the carryback as part of the ongoing audit. For taxpayers who are not currently under exam, the IRS can, and often does, conduct intensive examinations (after a tentative refund is paid) of the tax year(s) giving rise to the NOL. The IRS may also examine tax years to which the NOL is carried back.¹¹⁵ Although the examination of the years in the carryback period should not give rise to any increased tax liability for those years, the IRS may determine that unrelated issues in those years reduce or possibly eliminate the amount of the tentative refund paid.

All refunds in excess of \$5 million for corporate taxpayers and \$2 million for all other taxpayers (*e.g.*, individuals, partnerships, trusts, etc.) require additional review by the Joint Committee on Taxation (JCT).¹¹⁶ Unlike a tentative allowance, which can be refunded to the taxpayer prior to reporting the refund to the JCT, amended returns requesting refunds in excess of the JCT threshold are not paid until after JCT review.

Net Operating Loss Concerns

The interplay between the various provisions on complex business returns with tax attributes carrying over and carrying back over a five-year period is ripe for error or differing interpretations of the CARES Act. The IRS has released a set of FAQs that address the interaction of the new CARES Act NOL carryback provisions with taxpayers' IRC § 965(a) "transition tax" liabilities and inclusion years, including how to deal with the carryover of non-NOL attributes into the 965 inclusion year (*e.g.*, foreign tax credits and charitable contributions that are released as a result of carrying back NOLs to years preceding the IRC § 965 inclusion year). FAQ #10 does not explicitly say that taxpayers must file an amended return for their 965 inclusion year but encourages taxpayers to do so for proper accounting of any corresponding reduction to the taxpayers' remaining IRC § 965(h) tax liability.¹¹⁷ A taxpayer might infer, however, that a failure to do so could result in future problems relating to the assessment of a taxpayer's remaining IRC § 965(h) liability – *e.g.*, if the taxpayer believes his or her liability has been reduced by reason of these other attributes but does not adjust the source-year IRC § 965(h) liability through an amended return, the IRS may treat a failure to pay in full a future installment that the IRS systems still reflect as owed at the pre-adjustment amount as an acceleration event.

With the potential issues associated with these large refunds, application of JCT review and the proper application of the new rules, the Large Business and International Division will have tough choices to make as to which returns to examine and how to allocate its resources over the next few years. Taxpayers face uncertainty as the guidance issued via FAQs is non-binding on the IRS. Although we commend the IRS for quickly providing guidance on these issues and getting information out to the public, FAQs can be changed, supplemented, and amended without notice and public comment, unlike regulations. But FAQs, unlike the traditional forms of sub-regulatory guidance, are not "authority" under IRC § 6662, and if the IRS continues issuing and relying on FAQs, the regulations under IRC § 6662 need to be amended to clarify that FAQs can be used

¹¹⁵ IRC § 6501(k).

¹¹⁶ See IRC § 6405(a).

¹¹⁷ IRS, Frequently Asked Questions About Carrybacks of NOLs for Taxpayers Who Have Had Section 965 Inclusions, FAQ #10, <https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns> (last visited June 3, 2020).

to establish reasonable cause for relief from the accuracy-related penalty. Due to the complexity, severity, and size of the resulting refunds, we recommend the IRS also consider providing additional guidance in a binding and authoritative manner.¹¹⁸

OBJECTIVES FOR FISCAL YEAR 2021

In fiscal year 2021, TAS will:

- Advocate for the IRS to allow individuals who received their EIPs through federal benefit programs such as SSI or veterans benefits to either file a paper return or use the *Non-Filers: Enter Payment Info Here* tool to enter information about their qualifying children, and for the IRS to issue supplemental payments to those individuals during 2020;
- Advocate for the IRS to create a process to correct EIP amounts in 2020 rather than requiring taxpayers to wait until they file their 2020 returns in 2021;
- Advocate that the IRS provide guidance stating that it will retrieve a non-liable spouse's portion of the EIP regardless of whether an injured spouse claim has been filed;
- Advocate for the IRS to permit the electronic or fax submission of IRS Form 8379, Injured Spouse Allocation;
- Advocate that the IRS not spend its resources pursuing enforcement actions against a decedent's estate or family member who received an EIP for a decedent and did not return it;
- Conduct comprehensive outreach to external stakeholders regarding specific scams related to EIPs, particularly stakeholders that work with the disabled, elderly, veterans, and those with limited English proficiency;
- Advocate that the IRS prioritize the processing of Forms 14039, Identity Theft Affidavit, that bear the notation "Stolen EIP;"
- Advocate for the IRS to allow taxpayers to update their mailing addresses by calling a phone line devoted to EIP questions;
- Advocate for the IRS to provide clear guidance as to what is considered operations "comparable" to pre-pandemic operations for the ERC;
- Identify potential systemic delays in processing refund claims (*e.g.*, those arising from NOL carrybacks) and work with the IRS on solutions; and
- Advocate for the IRS to issue guidance to clarify the NOL carryback rules or to clarify that taxpayers can rely on FAQs to avoid penalties and to bind the IRS.

¹¹⁸ It should be noted, on May 6, 2020, the IRS updated its manual providing specific guidance for processing Form 1139 or Form 1045 with NOLs, section 965 inclusions, and 100 percent refund of FTCs filed under provisions of the CARES Act. See *generally* IRM 21.5.9.5.10.16, CARES Act of 2020 (PL 116-136, Section 2303, Section 2304, and 2305) Overview – Net Operating Losses (May 6, 2020).

Putting Taxpayers First, Improving Taxpayer Service, and Supporting the Development of a Comprehensive Customer Service Strategy and Related Plans to Implement the Taxpayer First Act

TAXPAYER RIGHTS IMPACTED¹

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

OVERVIEW

In 2019, the President signed the Taxpayer First Act (TFA), which included perhaps the most far-reaching revisions to tax administration since the IRS Restructuring and Reform Act of 1998.² Among other things, the TFA included some 23 provisions previously recommended by TAS. A centerpiece of the TFA is a requirement that the IRS develop four plans: (i) a comprehensive taxpayer service strategy; (ii) a comprehensive plan to redesign the IRS's organizational structure; (iii) a comprehensive employee training strategy that includes training on taxpayer rights and the role of TAS; and (iv) a multi-year plan to meet IRS information technology (IT) needs. Because of COVID-19, the IRS has been delayed, but it expects to deliver its comprehensive taxpayer service strategy to Congress by December 31, 2020. TAS looks forward to our continued involvement with the TFA Office on its development of the IRS's comprehensive customer service strategy and related plans.

While TAS has been working collaboratively with the IRS's TFA Office on implementing many of the TFA's provisions, we remain concerned that (1) the IRS has not properly implemented a provision directing it to establish a single point of contact for identity theft (IDT) victims and (2) it may not properly implement a provision directing it to exclude taxpayers with incomes at or below 200 percent of the Federal Poverty Level from assignment to private debt collection (PDC) agencies after December 31, 2020. Without a single point of contact, IDT victims may have to deal with multiple IRS offices and employees. In addition, when private debt collectors collect from low income taxpayers, they may collect more than the taxpayer can afford. We plan to work with the IRS on these issues in fiscal year 2021.

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 TFA, Pub. L. No. 116-25, 133 Stat. 981 (2019).

BACKGROUND

On July 1, 2019, the President signed into law the TFA with the aim of improving customer service.³ The TFA's major subtitles include: Improved Service, Sensible Enforcement, Organizational Modernization, Cybersecurity and Identity Protection, Development of Information Technology (IT), and Expanded Use of Electronic Systems. It was clearly designed to improve the IRS's interactions with taxpayers — to put taxpayers first. The TFA requires the IRS to develop a comprehensive customer service strategy and related plans for training, reorganization, and IT upgrades. It also includes 42 other provisions that must be implemented by different IRS business units, including 23 recommended by TAS.⁴ Implementation of the TFA's provisions will be a huge undertaking by the IRS with the goal of favorably changing the IRS's interactions with taxpayers and the taxpayers' experience with the IRS. TFA was enacted after congressional hearings on customer service, following the IRS's receipt of a “very poor” ranking on a key customer service benchmark cited last year by the President's Management Agenda.⁵

DISCUSSION

To Improve Taxpayer Service, the Taxpayer First Act Requires a Comprehensive Customer Service Strategy and Related Plans

Customer Service Strategy

Section 1101 of the TFA requires the IRS to deliver to Congress a customer service strategy that includes, among other things: short-term, medium-term, and long-term plans to provide assistance to taxpayers that is secure, designed to meet reasonable taxpayer expectations, and adopts appropriate best practices of customer service provided in the private sector, including online services, telephone call back services, and training of employees providing customer services. The plans must also include metrics and benchmarks for measuring the IRS's progress.⁶

Reorganization Plan

Section 1302 of the TFA requires the IRS to deliver to Congress an organizational plan, which among other things, prioritizes taxpayer services to ensure that all taxpayers easily and readily receive the assistance that they need and streamlines the agency to minimize the duplication of services and responsibilities.⁷ Although the IRS could implement the provision by planning a reorganization, the legislation does not expressly require one.

3 TFA, Pub. L. No. 116-25, § 1101(a)(1), 133 Stat. 981, 985-986 (2019).

4 See National Taxpayer Advocate 2020 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 1 (Introduction)*; IRS response to TAS information request (May 12, 2020).

5 See National Taxpayer Advocate 2019 Annual Report to Congress 3-14 (Most Serious Problem: *Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy that Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results*); H.R. REP. NO. 116-39, Part 1, at 26-28 (2019) (Conf. Rep.).

6 The strategy was originally due to Congress by July 1, 2020. Due to the COVID-19, the IRS expects to issue the IT plan in December 2020.

7 The original plan was to be delivered by September 30, 2020. Due to COVID-19, the comprehensive taxpayer service strategy as well as the plans for reorganization and training will be delivered in December 2020.

Information Technology Plan

Section 2101 of the TFA makes the IRS Chief Information Officer (CIO) responsible for the development and implementation of a multiyear strategic plan for the IT needs of the IRS that aligns with the needs and strategic plan of the IRS. The plan, which must include performance measures (for both the technology and its implementation), must also address integrated enterprise architecture, planned major acquisitions, and resources needed for implementation. In addition, the CIO must update it annually.

Training Strategy and Plans

Section 2402 of the TFA requires the IRS to deliver to Congress a training strategy that includes plans to streamline current training processes; develop annual training regarding taxpayer rights, including the role of the Office of the Taxpayer Advocate; and improve technology-based training.⁸ It also requires the IRS to develop proposals to focus employee training on early, fair, and efficient resolution of taxpayer disputes; ensure consistency of skill development and employee evaluation throughout the IRS; and include an assessment of the funding necessary to implement the training strategy.

Enhancing the Taxpayer Experience: The Taxpayer First Act Office's Process

The key to improving taxpayer service and promoting taxpayer rights is for the IRS to develop good strategies and implement them effectively. Implementing the TFA is an ongoing agency-wide effort. To facilitate this process, the Commissioner established the TFA Office, comprised of four project directors supported by several subject matter experts, including a senior member of the TAS organization. The TFA Office took primary responsibility for coordinating the required strategies and plans and is leading the integration, communications, program management, and governance activities for the other provisions.

The TFA Office's mission includes "developing a strategy for continuously improving the taxpayer experience," and it refers to its overall strategy as the "taxpayer experience" strategy. It has been gathering the information needed to make improvements, notwithstanding the current challenge of dealing with COVID-19. To assist the TFA Office, TAS provided the IRS with recommendations and comments from stakeholders as discussed below. In fiscal year 2021, TAS will continue to work with the IRS as it develops and finalizes its strategies and to partner with the IRS to implement the changes necessary to improve customer service.

Listening to Taxpayers and the Taxpayer Advocate Service

In developing its taxpayer experience strategy and reorganization plans, the TFA Office has been listening to a wide array of internal and external stakeholders, including tax professionals, IRS leadership, IRS employees, and the National Treasury Employees Union. It put special emphasis on learning more about their needs and ideas they have for improving customer service, employee training, our organizational structure, and communications before designing the strategies to provide

⁸ The training strategy was originally due to Congress by July 1, 2020. Due to COVID-19, the IRS expects to issue the strategy in December 2020.

the best taxpayer experience possible. It conducted town halls, focus groups, interviews, and forums with stakeholders, holding over 150 events to collect feedback and recommendations.⁹

For example, the TFA Office visited Taxpayer Assistance Centers to interview staff and better understand taxpayers' needs. One of the earliest listening sessions the TFA Office held was with TAS leadership and 78 Local Taxpayer Advocates to try and understand the perspective of TAS employees who work every day with taxpayers who are experiencing problems with the IRS. TAS invited the TFA Office to participate in the Low Income Taxpayer Clinic (LITC) annual conference where it held a TFA roundtable discussion with LITC leaders. The TFA Office held two listening sessions with the Taxpayer Advocacy Panel (TAP), a group of 75 citizen volunteers who advise the IRS on how to improve IRS products, services, and customer satisfaction.¹⁰ It also established both internal and external facing mailboxes to receive input, receiving and analyzing over 1,000 communications through these mailboxes.¹¹

Participation by TAS, LITCs, and TAP helped the IRS gather critical information about what taxpayers need. Unfortunately, COVID-19 prevented additional outreach and made communication with individual taxpayers more difficult.¹²

Leveraging Existing Surveys and Research

In addition to outreach, the TFA Office leveraged the information already available. Looking for additional insights, it analyzed 61 different customer satisfaction survey results, research studies, third-party research documents, industry best practices, publications, oversight reports with recommendations (from the Government Accountability Office, the Treasury Inspector General for Tax Administration, and TAS), and case studies.¹³ TAS offered over 200 recommendations to improve service.¹⁴ After absorbing this information, the TFA Office began designing the IRS's plans and strategies in a way that it believes will best position the agency to put taxpayers first.

Training Strategy

The Training Strategy Team received the results of the data collected by the TFA Office, conducted interview sessions with 18 IRS business units including TAS, collected the results of the Federal Employee Viewpoint Survey, and independently researched industry best practices for government and corporate adult learning methodologies and began to identify key issues. The IRS established a core team to complete a series of deep dive sessions on training as a key enabler for a successful taxpayer experience. The team is focusing on increased effectiveness in areas already working well and what they need to achieve goals in areas that are not. The results of the team's analysis and

9 IRS response to TAS information request (May 12, 2020).

10 Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2019 Annual Report to Congress*, *infra*.

11 IRS response to TAS information request (May 12, 2020).

12 The IRS recently asked for public comments. See IRS, *Improving Customer Experience (OMB Circular A-11, Section 280 Implementation)*, 85 Fed. Reg. 35698 (June 8, 2020) (requesting comments by July 13, 2020).

13 IRS response to TAS information request (May 12, 2020).

14 See National Taxpayer Advocate 2019 Annual Report to Congress 284-300 (Appendix 1: *Past TAS Recommendations on Taxpayer Service*) (reiterating still-relevant recommendations from 2002 to 2019); National Taxpayer Advocate 2019 Annual Report to Congress 3-14 (offering new recommendations).

synthesis of the data collected will form the basis for the Comprehensive Training Strategy. The goal of the training strategy is to ensure IRS training and development activities support IRS employees' professional development and equip employees with the competencies to provide high quality service to taxpayers and enhance the taxpayer experience. TAS will work collaboratively with the Training Strategy Team to support its goals to provide high quality service to taxpayers and enhance the taxpayer experience.

Organizational Structure

The TFA Office used two methodologies to research and plan for an organizational structure that would support a more robust Taxpayer Experience and ensure that the IRS worked efficiently and functionally. First, the TFA Office designed a Document Research Methodology to gather background research and interview key stakeholders and executive leadership. As part of this process, it gathered information, formed research questions, established a data repository, selected documentation for review, and synthesized key information from the research. Second, the TFA Office used a five-step process to analyze the information captured in interviews, research, and industry best practices, and to draft new organizational structures.

- Identify Design Insights;
- Determine Design Criteria;
- Define Organizational Design Implications;
- Create Proposed Structure Options; and
- Finalize Organizational Structure.

The goal of this process was to identify key organizational design takeaways that could serve as a baseline foundation for shaping the proposed new organizational structure and plan.

Protecting Taxpayer Rights: Implementation Has Begun on Taxpayer First Act Provisions

While the customer service strategy and related plans are still in development, the IRS has been implementing other TFA provisions, in some cases with assistance from TAS. For example, as of this writing, the TFA Office listed the following provisions as implemented:

- Low-income exceptions regarding Offers-In-Compromise (Section 1102);
- Low Income Taxpayer Clinics (Section 1402);
- Taxpayer Assistance Center closures (Section 1403);
- Seizure and sale of perishable goods (Section 1404);
- Whistleblower reforms (Section 1405);
- Information IRS is to provide during phone calls (Section 1406);
- Misdirected tax refund deposits (Section 1407);
- Public-private partnership to address refund fraud (Section 2001);
- Electronic Tax Administration Advisory Committee (Section 2002);

- Information Sharing and Analysis Center (Section 2003);
- Point of contact for identity theft victims (Section 2006);
- Notification of suspected identity theft (Section 2007);
- Improper disclosure by return preparers (Section 2009);
- Limit on re-disclosures of consent-based disclosures (Section 2202);
- Structuring transactions and IRS seizures (Sections 1201 and 1202);
- Clarification of equitable relief from joint liability “Innocent spouse relief” (Section 1203);
- Modification of procedures for issuance of third-party summons “John Doe summonses” (Section 1204);
- Notice to taxpayer of IRS contact with third party (Section 1206);
- Designated summonses (Section 1207);
- Limits on actions by IRS contractors (Section 1208);
- Penalty for failure to file (Section 3201);
- Streamlined Critical Pay Authority (Section 2103);
- Electronic signatures by taxpayers to authorize action by their practitioner (Section 2302);
- Payment of taxes by debit and credit cards (Section 2303);
- Authentication of users of IRS E-Services accounts (Section 2304);
- Repeal of requirements regarding return-free tax system (Section 2401);
- Office of the Taxpayer Advocate (Section 1301);
- Prohibition on IRS rehiring certain fired employees (Section 3001); and
- Notification of unauthorized inspection, etc. of returns (Section 3002).

Working with the IRS, TAS has been heavily involved in the implementation of the following provisions:

- Section 1301 of the TFA, which codified and expanded the Taxpayer Advocate Directive (TAD) appeal process;
- Section 1401 of the TFA, which codified the Volunteer Income Tax Assistance Grant Program (VITA); and
- Section 1402 of the TFA, which clarified that IRS employees may refer taxpayers to a specific LITC.¹⁵

¹⁵ These changes were recommended by TAS. See National Taxpayer Advocate 2019 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 8-9 (#3 Authorize the Volunteer Income Tax Assistance Grant Program); 14 (#6 Clarify that IRS Employees May Help Taxpayers Locate a Specific Low Income Taxpayer Clinic); 75-76 (#43 Codify the National Taxpayer Advocate’s Authority to Issue Taxpayer Advocate Directives). For a discussion of the VITA and LITC provisions, see IRS Pub. 5066, Low Income Taxpayer Clinics Program Report 2019 10-11 (Dec. 2019), <https://www.irs.gov/pub/irs-pdf/p5066.pdf>.

Improving the Taxpayer Advocate Directive Appeal Process for Elevating Problems

A TAD is a tool that the National Taxpayer Advocate uses to mandate systemic changes to improve a process or to grant relief to groups of taxpayers.¹⁶ While the TAD process has existed since it was first delegated to the National Taxpayer Advocate in 1998, the TFA established statutory procedures and timeframes for TAD appeals.¹⁷ It also clarified that TADs can reach the Commissioner of Internal Revenue. TAS drafted and circulated a new chapter of the Internal Revenue Manual (IRM) to implement these changes and is working with the IRS to finalize them. The new provisions should help the National Taxpayer Advocate elevate and resolve systemic problems for taxpayers.

Expanding Collaboration Between the Taxpayer Advocate Service, Low Income Taxpayer Clinics, and Volunteer Income Tax Assistance Sites

To implement the VITA and LITC provisions, TAS has been working with the IRS to update publications and the IRM that expand collaboration between VITAs and LITCs. TAS has been considering cross-referral procedures, joint outreach, and ways to encourage LITCs to provide technical assistance and training to VITA volunteers.¹⁸ These procedures should make it easier for taxpayers to access services from VITA and LITCs.

Implementation of Some Taxpayer First Act Provisions Falls Short of Congressional Requirements

Although TAS has been collaborating with the IRS to implement various TFA provisions, TAS has the following concerns:

- Section 2006 of the TFA calls for victims of IDT to have a single point of contact, but they still do not always get one; and
- Section 1205 of the TFA requires the IRS to exclude low-income taxpayers from referrals to private collection agencies (PCAs) after December 31, 2020, but some may still be referred.

To Reduce Taxpayer Burden, the Taxpayer First Act Requires Victims of Identity Theft to Have a Single Point of Contact

Tax-related IDT is an invasive crime that has a significant impact on its victims and the IRS. Since 2012, TAS has continued to recommend the IRS designate a single point of contact to assist the IDT victim in navigating his or her way through the various IRS departments.¹⁹ In section 2006 of

¹⁶ IRM 1.2.2.12.3, Delegation Order 13-3 (formerly DO-250, Rev. 1) Authority to Issue Taxpayer Advocate Directives (Jan. 17, 2001).

¹⁷ IRC § 7803(c)(2)(B)(ii)(VIII), (c)(5).

¹⁸ See IRS, Pub. 5066, Low Income Taxpayer Clinics Program Report 11 n. 12 (Dec. 2019) (explaining: “IRS employees are no longer prohibited from directing a taxpayer to a particular LITC and should do so whenever it appears a taxpayer might be eligible and in need of LITC assistance”).

¹⁹ See National Taxpayer Advocate 2017 Annual Report to Congress 218 (Most Serious Problem: *Identity Theft: As Tax-Related Identity Theft Schemes Evolve, the IRS Must Continually Assess and Modify Its Victim Assistance Procedures*); National Taxpayer Advocate 2015 Annual Report to Congress 187 (Most Serious Problem: *Identity Theft (IDT): The IRS’s Procedures for Assisting Victims of IDT, While Improved, Still Impose Excessive Burden and Delay Refunds for Too Long*); National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, at 55 (IDT Case Review Report: *A Statistical Analysis of Identity Theft Cases Closed in June 2014*); National Taxpayer Advocate 2012 Annual Report to Congress 46-47, 67 (Most Serious Problem: *The IRS Has Failed to Provide Effective and Timely Assistance to Victims of Identity Theft*).

the TFA, Congress directed the IRS to offer IDT victims a single point of contact throughout the processing of their cases.

The IRS implemented section 2006 of the TFA by designating the Identity Theft Victim Assistance (IDTVA) unit as the single point of contact.²⁰ However, the IRS recognizes that IDT cases may be complex and may require the assistance of multiple IRS functions.²¹ When such cases are referred to an IRS function outside of IDTVA, that IRS function will control the case, meaning that the IDTVA assistor will no longer serve as the single point of contact with the taxpayer.²² For example, if the Submission Processing function must adjust the IDT victim's account and the Return Integrity & Compliance Services function must release a refund freeze code, the victim will need to interact with a minimum of three individuals to resolve his or her IDT issues.

The National Taxpayer Advocate has concerns about this approach. By denying a single point of contact to IDT victims with complex cases, the taxpayer faces additional and unnecessary burdens of dealing with multiple IRS employees as the IRS has not fully complied with the TFA directive. TAS has recommended (and continues to recommend) that the IRS provide *all* IDT victims with a true single point of contact, including IDT victims with complex issues requiring the assistance of multiple IRS departments — the very taxpayers most likely to have their cases fall between the cracks — and require that single point of contact to coordinate within its own organization.²³

To Reduce Taxpayers Burdens, the Taxpayer First Act Excluded Low-Income Taxpayers From Being Referred to Private Collection Agencies

Section 1205 of the TFA requires the IRS to exclude certain tax debts from the inventory it assigns to PCAs after December 31, 2020.²⁴ Among these debts are those owed by taxpayers whose adjusted gross income (AGI), “as determined for the most recent taxable year for which such information is available,” is at or below 200 percent of the Federal Poverty Level. In applying this provision of the TFA, the IRS plans to use the AGI shown on the taxpayer's most recently filed return, even if the return was filed many years ago. In such cases, the AGI is likely to be inaccurate.

When no return is on file with the IRS, the IRS does not exclude a taxpayer's account from PCA inventory because it believes it cannot establish the taxpayer's AGI. In the context of the Automated Substitute for Return program, however, when a taxpayer does not file, the IRS is authorized to make the return — implicitly including a computation of the taxpayer's AGI — based on third-party

20 According to the Legislative Analysis and Tracking Implementation Services, the IRS implemented this TFA provision on October 15, 2019 (“Assessment has been completed. IRS is compliant with statutory requirements of this provision.”).

21 See IRM 25.23.2.3.1.1, Addressing All Taxpayer Issues (Oct. 1, 2018) (noting that IDT cases “can be complex and involve multiple functions.... In situations where you have multiple controls with another function, you must contact that functional employee or liaison”). IRM Exhibit 25.23.4-4, Identity Theft (IDT) Functional Routing and Referral Chart (Nov. 21, 2018), provides a chart for transfers of IDT cases outside of IDTVA.

22 When a case gets transferred to another function, IDTVA may send the taxpayer a Letter 86C, Taxpayer Inquiry/Forms to Another Office. IRM 25.23.4.3.3, Cases Requiring Routing/Reassignment to Other Functions (Oct. 1, 2017).

23 National Taxpayer Advocate 2017 Annual Report to Congress 218 (Most Serious Problem: *Identity Theft: As Tax-Related Identity Theft Schemes Evolve, the IRS Must Continually Assess and Modify Its Victim Assistance Procedures*).

24 IRC § 6306.

reports of income, such as W-2s or Forms 1099.²⁵ Thus, where no return was filed in the past two years (and the AGI shown on older returns is likely outdated), TAS suggested the IRS determine AGI for purposes of the PDC program on the basis of such third-party reports. TAS Research analyzed this approach in evaluating PCA inventory as of September 12, 2019, and identified almost 380,000 more taxpayers with an AGI at or below 200 percent of Federal Poverty Level, compared to the number of such taxpayers identified using only the AGI shown on the most recent tax return.²⁶

Section 1205 of the TFA also excludes from assignment to PCAs cases in which substantially all the taxpayer's income is attributable to Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) benefits. The IRS is already recalling from PCAs the accounts of SSDI beneficiaries that were previously assigned.²⁷ The IRS was able to identify them because SSDI is reported to the IRS by the Social Security Administration (SSA) on Form 1099. Unlike SSDI benefits, however, SSI benefits are not reported to the IRS. Therefore, the IRS is currently unable to systemically exclude the debts of SSI recipients from assignment to PCAs because it is not able to identify everyone who receives SSI benefits.

The IRS worked with SSA to overcome this lack of information so it could send economic impact payments to SSI recipients.²⁸ TAS will advocate for the IRS to secure a similar data sharing arrangement with SSA for the purpose of excluding SSI recipients from PCA assignment. However, in the event a similar arrangement cannot be reached, TAS will recommend legislation authorizing and requiring such a data sharing arrangement.

OBJECTIVES FOR FISCAL YEAR 2021

In fiscal year 2021, TAS will:

- Collaborate with the IRS as it develops and finalizes the TFA strategies and plans and continue to partner with the IRS to implement changes to improve customer service and the taxpayer's experience with the IRS;
- Work collaboratively with the TFA Office Training Strategy Team to support the goal of providing high quality service to taxpayers and enhancing the taxpayer experience through employee training;

25 When a taxpayer fails to file, IRC § 6020(b)(1) says the Secretary "shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise." See also Treas. Reg. § 301.6020-1(b)(1); IRM 5.18.1.2, Automated Substitute for Return (ASFR) Program Overview (Mar. 11, 2020). Any such return would necessarily require the IRS to determine AGI. Moreover, IRC § 6020(b)(2) clarifies that "[a]ny return so made and subscribed by the Secretary shall be *prima facie* good and sufficient for all legal purposes." One legal purpose is to determine whether to exclude the taxpayer from being referred to a PCA.

26 National Taxpayer Advocate 2019 Annual Report to Congress 97, 99 (Status Update: *Private Debt Collection: Forthcoming Changes to the Private Debt Collection Program Will Better Protect Low-Income Taxpayers and Achieve a Program That More Appropriately Respects Taxpayer Rights*). If there was no third-party data available or a return within the past two years, TAS Research assumed the taxpayer's AGI was at or below 200 percent Federal Poverty Level.

27 See IRS SERP Alert #20A0067, Social Security Disability Insurance (SSDI) Accounts Recalled from Private Debt Collection (PDC) (Feb. 5, 2020).

28 IRS, IR-2020-75, Veterans Affairs Recipients Will Receive Automatic Economic Impact Payments; Step follows work between Treasury, IRS, VA (Apr. 17, 2020).

- Continue to work with the IRS to finalize the TAD IRM;
- Continue to advocate for the IRS to assign a true single point of contact for all victims of identity theft (including taxpayers with complex tax issues requiring adjustments from multiple IRS departments); and
- Continue to advocate for the IRS to secure a data sharing arrangement with SSA for the purpose of excluding SSI recipients from PCA assignment. In the event a similar arrangement cannot be reached, TAS will recommend legislation authorizing and requiring such a data sharing arrangement.

Protecting the Rights of Taxpayers Who Receive “Soft Letters” That Require Them to Provide Support for Their Return Positions and Sworn Statements Outside an Examination

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Privacy*

OVERVIEW

The IRS’s use of “soft letters” to educate, inform, and encourage voluntary compliance is a useful IRS compliance and enforcement tool. However, the IRS’s soft letters have been including language aimed at compliant taxpayers that requires them to produce documents and a detailed supporting statement signed under penalties of perjury. The soft letters, which may cover more than one tax period, request information not included on a return and possibly cover years outside the statute of limitations for assessment. The information requested is akin to an IRS examination but without providing the taxpayer rights and protections afforded by an examination. One example of such a soft letter request is for a taxpayer who had reportable virtual currency transactions (Letter 6173). It is the National Taxpayer Advocate’s position that these intrusive requests violate taxpayers’ rights and should not appear in any soft letters or communications outside the examination process.

DISCUSSION

Over the years, the IRS has issued taxpayers “soft letters” for a variety of issues and purposes, including informing, educating, and encouraging voluntary compliance. However, the IRS has recently begun using some soft letters as a means to bypass the rights and protections of the examination procedures. One such example is Letter 6173, addressed to taxpayers with virtual currency transactions.

The IRS requires taxpayers to report whether they received, sold, sent, exchanged, or otherwise acquired any financial interest in any virtual currency on their annual tax return.² The Large Business and International (LB&I) Division has moved toward issue-based examinations and a compliance campaign process. The taxability of virtual currency is one such campaign that LB&I is focusing on in determining which taxpayers to select for examination.³ In 2019, to combat virtual currency abuses, the IRS sent letters to over 10,000 taxpayers who potentially failed to report income and pay the resulting tax from virtual currency transactions or did not report their transactions

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the IRC. See IRC § 7803(a)(3).

2 See IRS Form 1040, Schedule 1, used to file returns for tax year 2019.

3 IRS, IRS Announces the Identification and Selection of Five Large Business and International Compliance Campaigns, IRS News Release (July 2, 2018), <https://www.irs.gov/businesses/irs-announces-the-identification-and-selection-of-five-large-business-and-international-compliance-campaigns>.

properly.⁴ Although we applaud the IRS's efforts involving virtual currency abuses, including increased use of data analytics, we do not believe the IRS should include compliant taxpayers in its soft letter campaign. Currently, there are three virtual currency letter variations: Letter 6173, Letter 6174, and Letter 6174-A.

It is the IRS's position that soft letters come in many varieties, tailored to the sophistication of the audience and issue(s) involved. Each letter specifies options for taxpayer action, if appropriate. Some letters merely inform the taxpayer that the IRS has observed certain information about them and highlights relevant law. The stronger letters result from observations suggesting higher risk of non-compliance on the part of the recipient and urge the taxpayer to respond by a specific date (*e.g.*, file an amended return or statement under oath) or risk further action by the IRS. None of these soft letters constitute the start of an examination, but the response, or lack thereof, will factor into the IRS's next steps intended to bring taxpayers into compliance. The IRS contends that soft letters are a service to the taxpayers who receive them because they are offered an opportunity to comply if they have not or to avoid an examination if they have complied, and it is a service to the broader taxpayer community as reporting and paying compliance increase, thus improving fairness to all. Soft letters may be a useful tool in educating taxpayers and may assist in future compliance. However, as drafted, Letter 6173 is not such a letter and crosses over from educating to imposing onerous taxpayer production burdens outside the arena of an examination.

Compliant Taxpayers

What is disturbing about soft Letter 6173 is that it specifically addresses taxpayers who believe they are compliant and imposes unreasonable burdens on them outside the protection of an examination.⁵ The IRS has stated that Letter 6173 is not an examination and therefore the IRS is not required to follow the examination guidance or provide taxpayers the rights afforded them in an examination. Yet, Letter 6173 fails to inform taxpayers that the letter is not part of an examination and as written appears to be a threat directed at taxpayers who believe they are compliant.

Specifically, for the taxable years 2013 through 2017, the letter instructs taxpayers as follows:

If you believe you followed all tax and information reporting requirements relating to your virtual currency accounts, mail or eFax the following to the address or eFax number shown at the top of this letter.

- A statement of facts explaining your position. Include a complete history of previously reported income from your virtual currency transactions. Explain the actions you took to become compliant with U.S. reporting requirements and provide copies of previously filed documents that confirm your compliance.

4 IRS, IR-2019-132, IRS Has Begun Sending Letters to Virtual Currency Owners Advising Them to Pay Back Taxes, File Amended Returns; Part of Agency's Larger Efforts (July 26, 2019), <https://www.irs.gov/newsroom/irs-has-begun-sending-letters-to-virtual-currency-owners-advising-them-to-pay-back-taxes-file-amended-returns-part-of-agencys-larger-efforts>.

5 See, *e.g.*, IRC § 7605(b) (prohibiting unnecessary or repetitive examinations). See also IRS Pub. 3498, The Examination Process (explaining the examination process and taxpayers' rights before, during, and after an examination). Letter 6173 is not the only IRS letter that solicits an explanation from taxpayers who believe they complied with filing requirements. IRS Letter 6290 contains a similar request with respect to compliance with the Foreign Account Tax Compliance Act. LB&I declined to remove the request from Letter 6290.

- Your contact information, including your telephone number, complete address, and the address where you receive mail (if different).

- The following statements with your signature and date:

I, _____, declare under penalties of perjury that I have examined this entire document, including all attachments and accompanying statements, and that the enclosed is true, correct, and complete.

I also understand with respect to any submission that the IRS reserves the right to make further contacts with me and my representatives to clarify any written explanation or any other documents. Statements and documents sent under this option will be checked against information received from banks, financial advisors, and other sources for accuracy.

The letter instructs and demands that these taxpayers produce documents, together with written factual and legal support for a five-year period. Depending upon the taxpayer's specific facts and the date of the letter's issuance for some of these years the three-year assessment period may have closed.⁶ It should be noted that the IRS has not required the above information to be provided on a tax return. Yet, the soft letter is requiring it. This request is what normally happens during an IRS examination but with the numerous procedural protections of an examination. The Code, Congress, and the IRS have repeatedly acknowledged taxpayers' rights and protections, and this letter not only does not provide them — it undermines them.

The request for an explanation made outside the audit process burdens taxpayers who believe they are *compliant* and undermines their *rights to be informed* and *to privacy*, which includes the right to expect that any IRS inquiry will be no more intrusive than necessary.⁷ Moreover, the taxpayer may find it necessary to hire representation to review his or her records to provide a complete response and then still be subject to an examination later, long after the taxpayer's response, for which the taxpayer may again need representation. Letter 6173 is not consistent with the protections afforded taxpayers.⁸ The request for a sworn written statement should be removed from Letter 6173.

Non-Compliant Taxpayers

Letter 6173, like Letters 6174 and 6174-A, also addresses taxpayers who may have failed to include virtual currency on their return or who incorrectly reported the appropriate virtual currency tax consequences. The letters encourage the taxpayer to file an amended return or file a delinquent return. The letters fail to provide taxpayers with information about the application or assertion of penalties or interest should they ignore — or follow — this encouragement. Although the Code does not require taxpayers to file an amended return, it does encourage taxpayers to correct any incorrect positions set forth on the original return. One such encouragement is the ability to file a qualified amended return (QAR) that prevents the IRS from assessing the accuracy-related

6 See IRC § 6501.

7 TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

8 LB&I declined TAS's recommendation to remove the request that compliant taxpayers provide additional information under a sworn statement from Letter 6173.

penalty.⁹ A QAR is an amended return that corrects an error in a previously filed return prior to the IRS contacting the taxpayer regarding an examination of the return.¹⁰ One question that arises is whether after sending Letters 6173, 6174, or 6174-A and then opening an examination, the IRS will contend the letters, although they are not examinations when sent, are a contact regarding an examination of a return, making the taxpayer ineligible for relief from the 20 percent accuracy-related penalty by filing an amended return.¹¹

Another challenge with QARs is the exclusion for amended returns filed after the issuance of a John Doe summons.¹² If the recipients of Letters 6173, 6174, or 6174-A were identified pursuant to a John Doe summons, they are ineligible for QAR penalty relief.¹³ The letters do not provide that information to the taxpayer. As a result, taxpayers may be subject to penalties even if they correct their returns before the IRS opens an examination.

OBJECTIVES FOR FISCAL YEAR 2021

In fiscal year 2021, TAS will:

- Continue to work with LB&I toward removing burdens imposed on taxpayers who believe they are compliant resulting from soft letters such as Letter 6173;
- Work with the IRS and encourage guidance allowing accuracy-related penalty relief when filing a virtual currency amended return in response to Letters 6173, 6174, and 6174-A;
- Encourage the IRS to offer a positive incentive for taxpayers who receive Letters 6173, 6174, and 6174-A to disclose and correct errors by developing an administrative program for virtual currency reporting issues similar to the offshore disclosure initiatives to encourage voluntary compliance; and
- Work with the IRS on future soft letters to eliminate burdens on taxpayers by protecting their rights.

⁹ See IRC § 6662(d)(2)(B); Treas. Reg. § 1.6662-4(f).

¹⁰ See Treas. Reg. § 1.6664-2(c)(3)(i)(A), which includes in the definition of “qualified amended return” an amended return filed before the taxpayer is first contacted by the IRS concerning any examination with respect to the return.

¹¹ See IRC § 6662(a).

¹² See Treas. Reg. § 1.6664-2(c)(3)(i)(D) and (c)(5), Examples 5 and 6.

¹³ See Robert W. Wood and Joshua D. Smeltzer, *IRS Prepares for Battle on Cryptocurrency Reporting*, 166 TAX NOTES FEDERAL 601 (Jan. 27, 2020), which describes a John Doe summons issued to Coinbase that resulted in the release of information about 13,000 Coinbase customers.

Efforts to Improve Advocacy

CASE ADVOCACY INITIATIVES

Throughout the year, the Taxpayer Advocate Service (TAS) plays an integral role in helping taxpayers experiencing or about to experience significant economic or irreparable harm as a result of an IRS issue or outstanding liability. Through our case advocacy function, TAS works to protect taxpayer rights and help individuals, business owners and exempt organizations resolve tax-related issues that they have not been able to resolve on their own through normal IRS channels. Our local case advocates work directly with taxpayers on identifying issues, researching solutions, and advocating on their behalf within the IRS. Another important function of TAS is our ability to identify and propose solutions for larger systemic problems that may be affecting many taxpayers across the U.S.

Updating Service Level Agreements

To assist taxpayers more efficiently, the Commissioner delegated to the National Taxpayer Advocate certain tax administration authorities that do not conflict with or undermine TAS's unique statutory mission but allow TAS to resolve routine problems.¹ When TAS lacks the statutory or delegated authority to resolve a taxpayer's problem, it works with the responsible IRS business operating division (BOD) or functions to resolve the issue, a process necessary for 66 percent of TAS cases in fiscal year (FY) 2019.² Service Level Agreements (SLAs) are nationally negotiated agreements between TAS and each BOD or function that outline procedures and responsibilities for processing TAS casework when the authority to complete case transactions rests outside of TAS. Within the SLAs, BODs and functions agree to work TAS cases on a priority basis and expedite the process for taxpayers whose circumstances warrant immediate handling. In conjunction with the SLAs, the BODs and functions maintain supplemental documents (Addenda), which provide specific information on where TAS employees will send an Operations Assistance Request (OAR).

These agreements have not been updated in more than ten years, and while the basic framework contained within these agreements is sound, there are areas needing improvement. In addition to six SLAs outlining the overall OAR process for each BOD and function, there are 13 addenda where TAS employees scroll through pages of information to identify the appropriate IRS unit that will work to resolve an individual taxpayer's problem. By updating the SLAs, TAS hopes to improve OAR processing by centralizing the submission of OARs within the BODs and functions, which should reduce the number of misrouted OARs.

TAS and the BODs and functions recognize the need to update the SLAs and how cumbersome the SLA and OAR routing process can be for employees using these tools. TAS plans to work with the BODs to update the SLAs and move them into the Internal Revenue Manual (IRM) to make it

1 IRM 1.2.2.12.2, Delegation Order 13-2 (Rev. 1), Authority of the National Taxpayer Advocate to Perform Certain Tax Administration Functions (Mar. 3, 2008).

2 TAS closed 154,336 cases with OARs in FY 2019. TAS can issue more than one OAR on a case. Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2019). If the IRS already has an open control on an account, TAS must use the OAR process and request that the IRS function take the requested actions.

easier to update and keep current moving forward. This approach will reduce burden on TAS and the IRS and improve service to taxpayers.

Objectives for Fiscal Year 2021

In fiscal year 2021, TAS will:

- Collaborate with BODs and functions to create a new IRM section describing how to negotiate an SLA at a high level, addressing the process TAS and the BODs and functions will use to resolve disagreements during the negotiation process without stalling updates in the clearance process, and identifying the underlying approval process;
- Collaborate with BODs and functions to replicate the existing SLAs into unique sections within the IRM; and
- Once the new IRM section has been created begin discussions with the BODs to update the provisions in the SLAs to include, among other things, centralization of OAR routing.

TAS Continues Centralized Intake Expansion

The TAS Intake Function serves as the first contact for most taxpayers coming to TAS for assistance. Intake Advocates (IAs) are responsible for answering calls and conducting in-depth interviews with taxpayers to determine the correct disposition of their issues. IAs take actions where possible to resolve the taxpayer's issue up front, create cases on our system after validating the taxpayer meets TAS criteria, and offer taxpayers information and assistance with self-help options.

TAS has IAs located in Local Taxpayer Advocate (LTA) offices and in the Centralized Case Intake function (CCI) of TAS. When taxpayers call the National Taxpayer Advocate Toll-Free Line, which is staffed by IRS employees, they are transferred to the TAS CCI unit if the IRS assistors have been unable to assist the taxpayer and have determined that the taxpayer's issue meets TAS criteria. CCI assistors perform the same function as IAs in local TAS offices and conduct in-depth interviews with taxpayers and assist in resolving their issue or creating a case; however, their work is primarily focused on answering those calls transferred from the National Taxpayer Advocate Toll-Free line.

FIGURE 2.1³

Centralized Case Intake Calls Answered and Resulting TAS Cases Created for FYs 2019 and 2020 (Cumulative Through March)

FY 2020: 27,637 Total CCI Calls Answered



FY 2019: 29,679 Total CCI Calls Answered



■ TAS Cases Created From CCI Transferred Calls
 ■ TAS Provided Assistance Without Creating a New Case

The CCI operation recently created a new phone application for the purpose of assisting taxpayers with questions about their open TAS case. Newly-hired TAS IAs who have completed initial IA training classes will staff this new phone application. This will create a fast-track phone line for calls that are generally shorter in nature and will allow the new employees to hone their skills earlier in their training through on-the-job-training. TAS anticipates this procedure will improve customer service, reduce phone wait time, and increase our overall level of service.

Over the past few years, TAS has developed a business plan to begin taking direct transfers from the IRS 1040 Line, allowing TAS to assist taxpayers at the earliest possible time, reducing delays, and providing more uninterrupted assistance to taxpayers.⁴

Objectives for Fiscal Year 2021

In fiscal year 2021, TAS will:

- Expand the direct transfer of the 1040 Toll-Free Line calls to CCI; and
- Continue to expand its CCI operation to ensure adequate staffing is available to meet taxpayer demand.

³ Data obtained from TAMIS (Apr. 1, 2019; Apr. 1, 2020). IRS Joint Operations Center (JOC), Executive Level Summary Report (Mar. 31, 2019; Mar. 31, 2020).

⁴ For a more in-depth discussion, see National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 126-127.

TAS OUTREACH AND COMMUNITY PRESENCE

The unique mission and structure of TAS allows our LTAs to gain knowledge about the taxpayers and communities they serve.⁵ Through our case advocacy efforts, LTAs identify issues impacting their local community and craft outreach efforts specific to their needs. Typically, LTAs learn about local issues by participating in various events, including veteran events; partnering with congressional offices to conduct outreach events; visiting local shelters to assist victims of domestic violence and those with significant economic hardships; reaching out to immigrant populations; and partnering with other local agencies who assist members of the local community.

Unfortunately, with the extended shutdown of basic IRS operations and the implementation of COVID-19 social distancing policies, many of our key outreach programs have been canceled. TAS is looking for alternative and creative ways to continue our outreach to the local communities while taking into account limited face-to-face events. Although, we anticipate some challenges in our FY 2021 efforts to reach more taxpayers across the country, our focus will be on providing alternative outreach programs to assist those severely impacted by the pandemic. The longer the current environment continues, the more creative TAS will need to be to customize its outreach to taxpayers to meet their needs in different parts of the country. TAS is confident that LTAs will continue to find ways to connect with taxpayers and support them during this challenging period.⁶

Community Outreach and Problem-Solving Day Events

Between October 1, 2019, and April 30, 2020, TAS completed 3,239 community outreach events. Our LTAs used these events as platforms to inform internal stakeholders, taxpayers, tax professionals, congressional offices, and others about TAS's mission, ability to help, and taxpayer rights.

In addition to community outreach events, LTAs and their staff members conducted Problem-Solving Day (PSD) events to meet with taxpayers and representatives in person to discuss issues that taxpayers may be facing. In some instances, TAS employees were able to resolve taxpayer issues on the spot. In FY 2020, our LTAs were scheduled to conduct at least one PSD event per quarter. Despite the cancellation of many events starting in March 2020, TAS still conducted 190 events, assisting over 3,022 taxpayers and opening over 255 cases.

During TAS Awareness Week in January 2020, LTAs and their staffs visited with taxpayers in their communities. One area of focus was providing filing season tips and ways to avoid refund delays. In early March, TAS took required precautions for the health of our employees and the public safety and suspended all face-to-face outreach events. While TAS continued to engage in virtual outreach efforts, we are not reaching as many taxpayers as our previous face-to-face outreach events. As IRS offices and cities begin to reopen, we will reevaluate community outreach and PSD events as FY 2020 progresses, and if necessary, deploy alternative communication methods, including virtual outreach, to better serve communities and increase TAS awareness in FY 2021.

5 Under IRC § 7803(c)(2)(D), TAS is required to maintain at least one LTA office in each state, the District of Columbia, and Puerto Rico to service taxpayers.

6 For more information on TAS's future Outreach plans, see *Identifying Prospective TAS Taxpayers*, *infra*.

TAS Mobile Outreach Van

In FY 2020, TAS expanded its outreach capabilities with the addition of the TAS Mobile Outreach Van. The van is a mobile resource center equipped with the technology and materials necessary to provide on-site assistance to taxpayers and will increase TAS's ability to connect with taxpayers as a part of its current outreach program.

The TAS Mobile Outreach Van was delivered to our Louisville, Kentucky, office in March 2020 and immediately deployed to Nashville, Tennessee, to assist taxpayers affected by tornadoes. However, the timing of the van's arrival coincided with the beginning of the COVID-19 pandemic. Therefore, for the health and safety of our employees and taxpayers, the use of the van was suspended. Once the IRS, TAS, and local communities resume normal operations, the van will allow TAS employees to quickly respond to communities in crisis, including areas affected by economic hardships such as the closure of a large employer, and those impacted by natural disasters. TAS can quickly dispatch the van to provide support to those taxpayers who are facing hardships and are otherwise unable to contact TAS.

TAS plans to have the van centrally located between three or four offices (or more if possible) and is still assessing the best location for the van. This central location will ensure that the van receives maximum use in a cost-effective manner.

TAS Continues to Expand Its Local Presence

As discussed in prior reports, TAS is continually reevaluating the need for additional offices to best meet taxpayer needs. This ongoing effort to provide localized service is critical as the IRS decreases its local presence.⁷ In FY 2019, TAS opened new offices in El Paso, Texas, and Charlotte, North Carolina. In FY 2020, TAS has expanded its office in Birmingham, Alabama, adding significant additional staffing to meet taxpayer needs.

TAS has identified the need to expand existing offices in Las Vegas, Nevada, and Chicago, Illinois, and add additional staffing to better meet the needs of underserved taxpayers.

TAS has also identified several cities in need of future TAS offices. See Figure 2.2.

FIGURE 2.2, Future TAS Office Plans

Location	Planned Dates
San Antonio, TX	September 2020
Sioux Falls, SD	September 2020
Trenton, NJ	December 2020
Tallahassee, FL	July 2021
Grand Rapids, MI	October 2021

⁷ Effective July 1, 2019, the Taxpayer First Act, Pub. L. No. 116-25, § 1403, 133 Stat. 981 (2019), imposed new notification and reporting requirements on the IRS before it can close TACs. IRS response to TAS information request (Dec. 23, 2014; July 2, 2019); IRS response to TAS fact check (Nov. 15, 2019).

While many of these office openings have been delayed due to budget, we continue to make progress.

Looking ahead, TAS is also evaluating additional office openings in Columbus, Ohio; Savannah, Georgia; and Spokane, Washington. We are continuing to analyze TAS casework and population data to identify other underserved areas of the country in need of TAS assistance.

Objectives for Fiscal Year 2021

In fiscal year 2021, TAS will:

- Develop and implement an outreach strategy to identify more taxpayers in need of our services, which includes but is not limited to individuals and businesses unaware of the benefits TAS provides at no cost;
- Conduct PSD events to offer services to targeted audiences with an emphasis on military and veterans, Earned Income Tax Credit recipients, and taxpayers with English as a second language;
- Identify a centralized location for the TAS Mobile Outreach Van to maximize its use in a cost-effective manner;
- Continue with our plans to expand existing offices where additional staffing is needed to meet taxpayer needs; and
- Evaluate additional geographic locations in need of TAS support for future office expansions.

Taxpayer Roadmap Online Assists and Educates Taxpayer's Understanding and Ability to Navigate the Tax System

On July 10, 2019, TAS released the **2019 Taxpayer Roadmap** — a visual, high-level representation of the stages involved in a taxpayer's journey through the tax system. The map, as initially released, not only helped taxpayers understand their journey through the complexity of tax administration but also laid the structural foundation for the digital interactive tool TAS is currently developing.

As discussed in the **National Taxpayer Advocate's Fiscal Year 2020 Objectives Report to Congress**,⁸ the Taxpayer Roadmap is comprised of individual roadmaps that outline the tax administration processes a taxpayer may face when filing a tax return. These processes include tax return preparation, tax return processing, collection, examination, appeals, and litigation. The Taxpayer Roadmap illustrates how these processes connect and reflects the various paths a taxpayer may encounter as he or she goes from one process to another. It provides taxpayers and tax advisors the ability to understand the necessary steps to resolve an issue or the subsequent steps on the road to resolution.

The Taxpayer Roadmap Online Tool will take the Taxpayer Roadmap visual representation a step further. It will allow taxpayers to associate an IRS correspondence or notice with a position on the map. Taxpayers will be able to enter the specific letter or number of the IRS correspondence they have received. From there, taxpayers can access retrievable information that will explain their IRS

⁸ National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress 45-47 (Area of Focus: *TAS Is Developing an Electronic Roadmap Tool to Assist Taxpayers As They Navigate Through the Complex Tax System*).

notice, advise where they are in the tax system, how they got there, discuss their next steps, and explain their taxpayer rights. The Taxpayer Roadmap Online Tool will also provide information on how to seek assistance from a Low Income Taxpayer Clinic or TAS if a taxpayer needs additional help. The roadmap not only benefits taxpayers but will also serve as a tool for preparers and advisors assisting taxpayers.

Objectives for Fiscal Year 2021

In fiscal year 2021, TAS will:

- Complete the design phase of the Taxpayer Roadmap Online Tool;
- Explore expanding the design of the Taxpayer Roadmap Online Tool to include additional IRS processes; and
- Explore making the tool available in Spanish.

BUSINESS OBJECTIVES

Training and Employee Development Initiatives

TAS is committed to timely delivering new hire training to Case Advocates and Intake Advocates. Due to the COVID-19 pandemic and the IRS's restriction on travel and training events, TAS postponed all classroom training and quickly began preparations to convert portions of its new hire training into a virtual format. TAS evaluated the potential risks in delaying training, converting traditional classroom training into a virtual setting, and delivering a partial training plan for new hires. These risks created challenges, including:

- Delaying FY 2020 training until later in the year conflicts with our new hire training plan for FY 2021. Moving the training will stretch resources for coaching and reduce availability for some individuals to answer calls and work case inventory;
- Training in the summer months may delay other annual TAS-wide continuing professional education training classes;
- Converting face-to-face classes to virtual classes quickly and efficiently; and
- Delivering training in virtual platforms may be unstable due to network and bandwidth restrictions.

TAS is also committed to ensuring its Case Advocacy analyst staff is well-trained and has the necessary skills to perform their primary job duties, along with other duties as needs arise. Over the past several years, our organization has lost a considerable amount of institutional knowledge and skills due to retirements and other attrition. We will cross-train our analysts to increase their working knowledge through transfer of skills and knowledge sharing. Beginning in FY 2020, our analysts began participating in classroom training, virtual training, and a self-study program. TAS initiated a plan to bolster the working knowledge of our senior Area analysts and has now expanded the training plan to all local and Area analysts. This plan will continue into FY 2021 and will help provide continuity of TAS's operations nationwide.

Objectives for Fiscal Year 2021

In fiscal year 2021, TAS will:

- Continue delivering training to case advocates and intake advocates hired in FYs 2019 and 2020;
- Focus on transfer of knowledge and continuity planning to be better prepared as we continue to experience higher attrition rates; and
- Continue to explore innovative ways to design and deliver face-to-face and blended training methods to maximize student interaction while also minimizing costs without jeopardizing the health and safety of our employees.

Digital Interaction With Taxpayers

TAS continues to explore ways to improve the customer experience, communications, engagement, and advocacy opportunities for taxpayers. TAS is currently developing a pilot program using WebEx for virtual face-to-face meetings between Case Advocates and taxpayers. The pilot is not meant to replace in-person or telephone conference options; rather, it adds a digital option to communicate with taxpayers.

The WebEx pilot will enable taxpayers to use their phones, tablets, or computers to communicate with Case Advocates who can access the application from their work computers. A WebEx video conference allows TAS employees to see and hear taxpayers and share documents. WebEx has many features, but the planned pilot will only use the video conferencing, document viewing, and chat features.

The WebEx pilot will also help TAS identify the best uses for the technology and identify any challenges for taxpayers or employees using the technology. Taxpayers who are geographically remote from a TAS office might find WebEx useful and a more economical alternative to traveling for an in-person conference. Even taxpayers who are not geographically remote may prefer the convenience of WebEx.

Implementation of the WebEx pilot has been delayed due to bandwidth limitations during the COVID-19 pandemic. Accordingly, TAS plans to implement the WebEx pilot during FY 2021. TAS will also continue to explore other methods to interact digitally with taxpayers, including the current temporary process of sending case closure letters via email.⁹

Objectives for Fiscal Year 2021

In fiscal year 2021, TAS will:

- Implement the WebEx pilot; and
- Continue to look for new or additional methods to interact digitally with taxpayers.

⁹ To read more about what TAS has done so far in FY 2020 to improve the customer experience as a result of the COVID-19 pandemic, see Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*, *supra*.

TAS Recruitment, Hiring, and Employee Retention

At the time of this writing, TAS has approximately 1,612 employees. In FY 2019, TAS hired 377 permanent employees (170 from within TAS, 196 from internal IRS but outside of TAS, and 11 external). For FY 2019, just over three percent of TAS's permanent hires were external hires. However, due to attrition, TAS lost 257 employees in FY 2019, 90 employees to other BODs, and another 146 employees to retirement/other. TAS has been experiencing higher attrition rates in the recent past, with over half (817) of its employees eligible to retire by the end of 2024, high attrition will continue to be a significant challenge for TAS and the IRS.

The IRS's Human Capital Office (HCO) has been understaffed for some time. In May 2018, through an agreement with HCO, TAS detailed five of its employees to HCO to work solely on TAS internal hiring announcements to speed up TAS hiring. As of March 23, 2020, TAS's embedded personnel successfully made 183 internal hiring announcements, leading to 274 hires. HCO exclusively worked TAS external announcements and made 44 external announcements that resulted in 23 hires. HCO itself announced about 19 percent of TAS's total announcements, resulting in only about eight percent of total hires.

While HCO works all TAS external hiring announcements, TAS continues to experience poor customer service on these announcements. Both TAS and external candidates often experience significant process delays and lack of communication throughout the hiring process. TAS has had external candidates reject job offers due to process delays and lack of communication from HCO. One external TAS candidate accepted a job with a different federal agency after being frustrated with the time HCO was taking to complete the hiring process for TAS, which often takes many months to complete.

TAS is concerned that the new HCO 2022 initiative will only exacerbate its current hiring challenges. The HCO 2022 initiative will segment the hiring process within HCO, creating an "assembly line" process in which a different specialized area of HCO handles each hiring step, which differs from the current "one-stop-shop" process. TAS is concerned that this change will negatively affect HCO customer service, as it will weaken communication and make it more difficult to track the status of current announcements. TAS is also concerned that HCO will no longer use TAS's embedded HR personnel to process and accelerate TAS hiring. Finally, TAS is concerned that within this new framework, HCO may prioritize larger IRS organizations' hiring needs over the needs of smaller IRS organizations like TAS.

Given the current rate of attrition, TAS needs to be able to move quickly and hire without delays. Any slowdowns in hiring will significantly impact TAS's ability to serve taxpayers. TAS will continue to make use of its embedded human resources personnel to the greatest extent possible, so that we can continue to meet our staffing needs and the needs of taxpayers requiring our assistance.

Objectives for Fiscal Year 2021

In fiscal year 2021, TAS will:

- Work with HCO to conduct a review of recent TAS external hires to identify cases where HCO caused hiring process delays, especially where there was a lack of communication and coordination;
- Work with HCO to highlight challenges faced by TAS, specifically those arising from the HCO 2022 initiative, and recommend changes to mitigate them;
- Work with HCO to expand TAS's current agreement with HCO to delegate authority to TAS personnel embedded in HCO to process TAS external hiring actions; and
- Work with HCO to develop an IRM section on TAS Personnel Policies to support these new responsibilities.

Evaluate TAS Business Needs and Develop Our Workforce

In FY 2020, TAS began reviewing its current structure and business needs. The purpose of this review is to help identify deficiencies or redundancies within the organization so that we can streamline where necessary and focus our resources where we need them most. To be effective in its mission, TAS needs strong leaders to guide its workforce. TAS is committed to ensuring it has the right leaders hired for each of our offices and areas so that we can provide the best customer service possible to our taxpayers.

Objectives for Fiscal Year 2021

In fiscal year 2021, TAS will:

- Continue to evaluate the use of its workforce and identify any deficiencies or redundancies;
- Create a hiring plan that helps TAS best support its mission, its customers, and its employees;
- Streamline new-hire onboarding logistics where possible; and
- Develop opportunities for its employees to expand their skillsets through team projects and detail opportunities to provide a broad experience level for employees working taxpayer issues.

Improve the Federal Administrative Process by Participating in Cross-Agency Meetings

TAS regularly attends meetings and conferences as a member of the Administrative Conference of the United States (ACUS), an independent federal agency established by statute in 1964. ACUS is charged with convening expert representatives from the public and private sectors to recommend improvements to the efficiency, participation, and fairness in the federal administrative process.

TAS also regularly attends meetings and conferences as a voting member of the Coalition of Federal Ombudsman (COFO), the official organization for all Ombudsmen within the federal government. TAS participates in COFO's cross-agency discussions and collaborations aimed at educating, providing suggestions, and promoting the professionalism and effectiveness of independent, impartial Ombudsmen serving U.S. government agencies, each of whom serve an important role within the federal administrative process.

Objectives for Fiscal Year 2021

In fiscal year 2021, TAS will:

- Regularly attend meetings of ACUS and COFO both to learn about the latest developments and to provide suggestions to improve the federal administrative process.

Review of the 2020 Filing Season

INTRODUCTION

The IRS began accepting individual tax returns for processing on January 27, 2020.¹ However, like much of the world, the 2020 filing season was severely impacted by the COVID-19 pandemic.² As the country began sheltering in place, taxpayers were unable to work with return preparers, gather appropriate documentation, or meet their financial obligations by timely paying their 2019 tax due amounts and their 2020 quarterly payments, or by timely filing. On or about March 20, the IRS ceased operations in a number of key customer service areas and postponed the due date for filing individual income tax returns and making income tax payments by three months to July 15, 2020.³ No late-filing penalty, late-payment penalty, or interest will be due on these postponed payments.

On April 9, 2020, the IRS expanded similar relief to all taxpayers (individuals, trusts, estates, corporations, and other non-corporate tax filers) that had a filing or payment deadline falling on or after April 1, 2020, and before July 15, 2020. The extended time applied to all Americans, including those who live and work abroad.⁴

Understandably, the disruption caused by COVID-19 and the postponed due date had — and continues to have — an enormous impact on the 2020 filing season, reflected in the number of returns received, the volume of correspondence received from taxpayers, and toll-free telephone service. For the first time, the June Report to Congress will only report on a partial filing season, with a plan to analyze the remainder of the filing season at a later date when we have more complete data to compare with prior filing seasons.

EXTERNAL FACTORS IMPACTING THE 2020 FILING SEASON

The December 20, 2019, enactment of the Further Consolidated Appropriations Act resulted in significant, wide-ranging changes to tax provisions, requiring the IRS to make changes to over 160 tax forms, instructions, and publications.⁵ Although this effort impacted IRS resources, the IRS was able to quickly revise, repost, and reprint the necessary products prior to the start of the filing season opening on January 27, 2020.

The Wage & Investment (W&I) Division is the part of the IRS with responsibility for processing all returns and sorting all mail received by the IRS. Its Customer Account Services (CAS) and Customer Assistance, Relationships and Education (CARE) departments spearhead the IRS effort in

-
- 1 IRS, IR-2020-02, IRS Opens 2020 Filing Season for Individual Filers on Jan. 27 (Jan. 6, 2020), <https://www.irs.gov/newsroom/irs-opens-2020-filing-season-for-individual-filers-on-jan-27>.
 - 2 For a discussion of the impact of the COVID-19 pandemic, see Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*, *supra*.
 - 3 IRS, Notice 2020-18, 2020-15 I.R.B. 590, Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic (Apr. 6, 2020), <https://www.irs.gov/pub/irs-drop/n-20-18.pdf>.
 - 4 IRS, Notice 2020-23, 2020-18 I.R.B. 742, Update to Notice 2020-18, Additional Relief for Taxpayers Affected by Ongoing Coronavirus Disease 2019 Pandemic (Apr. 27, 2020), <https://www.irs.gov/pub/irs-drop/n-20-23.pdf>.
 - 5 Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, 133 Stat. 2534 (2019). This legislation included over 70 tax provisions, requiring changes to over 160 forms, instructions, and publications. IRS, W&I Business Performance Review (BPR), 2nd Quarter FY 2020, at 4 (May 2020).

ensuring a successful filing season.⁶ W&I experienced challenges meeting its fiscal year (FY) 2020 hiring goals due to low applicant pools and encountered problems with onboarding new hires.⁷ Despite efforts to mitigate these difficulties by expanding its advertising and outreach strategy, W&I was able to meet just 43 percent of its FY 2020 hiring goals as of April 10, 2020.⁸

FIGURE 3.1, W&I FY 2020 Hiring as of April 10, 2020⁹

W&I Function	2019 Vacancy Goals	2019 Actual Hires 04/15/2019	Percent	2020 Vacancy Goals	2020 Actual Hires 04/10/2020	Percent
Customer Account Services (CAS)						
Accounts Management	4,520	2,985	66%	3,300	2,740	83%
Submission Processing	8,964	3,882	43%	8,841	2,440	28%
Electronic Products and Services Support (EPSS) (Technical)	58	53	91%	184	91	49%
CAS Total	13,542	6,920	51%	12,325	5,271	43%
Customer Assistance, Relationships and Education (CARE)						
Media and Publications (M&P)- Correspondence Production Services	49	35	71%	16	8	50%
M&P-Nat'l Distribution Center	30	14	47%	15	10	67%
Field Assistance (Taxpayer Assistance Center)	30	30	100%	109	84	77%
Stakeholder, Partnerships, Education & Communication	0	0	0%	22	10	45%
CARE Total	109	79	72%	162	112	69%
Return Integrity & Correspondence Services Total	237	202	85%			
TOTAL	13,888	7,201	52%	12,487	5,383	43%

PROTECTION OF THE HEALTH AND SAFETY OF IRS EMPLOYEES

The Commissioner and his leadership team quickly developed plans and guidelines addressing and balancing the impact of COVID-19 on the health and safety of IRS employees and its effect on tax administration. In early March 2020, the Commissioner created the COVID-19 working group to identify possible effects on the workforce, provide employees with updated information on COVID-19, and provide direction on human resource flexibilities and authorities. On March 13, 2020, the Commissioner instructed the senior leadership team to immediately implement provisions in response to the President's declaration of a national emergency including maximizing telework flexibility for eligible employees, expanding leave flexibility, reducing in-person contact, implementing travel restrictions, and providing access to hygiene products to protect the health of employees and taxpayers entering facilities. For locations that remained open, the IRS reduced

⁶ The 2020 filing season was interrupted by the COVID-19 pandemic. As a result, some of the data we analyze is for the partial filing season, as the IRS suspended operations of some programs in mid- to late-March.

⁷ IRS, W&I BPR, 2nd Quarter FY 2020, at 6 (May 2020).

⁸ *Id.*

⁹ *Id.*

staffing to enhance social distancing for those who perform mission-critical work at the Tax Processing Centers.

With an already reduced workforce, the impact of COVID-19 closures, and the Taxpayer First Act,¹⁰ the IRS filing season operations were challenged. Because of the disruption in service, taxpayers had limited means to obtain customer service assistance from the IRS. A separate section in this report discusses the impact of COVID-19. The cursory information shared below is included to provide some context to what has taken place in the filing season to date:¹¹

- Due to campus and office closures, the IRS was unable to staff phone lines to assist callers beginning the week of March 21, 2020.
- After March 20, 2020, taxpayers no longer had access to face-to-face customer service.
- There is a large backlog of incoming mail (an estimated ten million pieces of mailed tax returns or correspondence¹²); the IRS was unable to process paper filed returns and receive or respond to other written correspondence from taxpayers.
- The IRS has sent only a very limited volume of outgoing taxpayer correspondence.
- There was a substantial reduction in Volunteer Income Tax Assistance (VITA), Tax Counseling for Elderly (TCE), and Low Income Taxpayer Clinic services.
- The National Distribution Center (NDC) was also shut down, depriving taxpayers of a means to acquire pre-printed forms.

In response to the COVID-19 pandemic on U.S. citizens and businesses, Congress assigned the IRS with the administration of the Economic Impact Payments (EIPs) in the height of the 2020 filing season, while its workforce was working remotely. In general, taxpayers with adjusted gross incomes below \$99,000 (\$198,000 for joint filers) were eligible for EIPs of up to \$1,200 per adult and \$500 per child.¹³ Where available, the IRS used information from taxpayers' recent tax returns to calculate the payment and to deposit the EIP directly into the same banking account reflected on the return filed. However, for the portion of the population who had no filing requirement in recent years or had not provided banking information, the IRS needed to develop workaround procedures to ensure delivery of these payments.

Given the time-sensitive nature of the payments, the IRS had to pivot, in the middle of filing season and without full staffing, to develop processes and procedures and perform system changes that would allow for the quick release of the EIPs. The IRS was tasked with establishing a process to determine which U.S. citizens were eligible for the EIP, determine the correct amount of the EIP

¹⁰ Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

¹¹ See Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*, *supra*.

¹² Allyson Versprille, *Virus Fears, Unopened Mail Await IRS Employees Returning to Work*, BLOOMBERG LAW: TAX (June 1, 2020), https://www.bloomberglaw.com/product/tax/document/XFOOQ660000000?bna_news_filter=daily-tax-report&jcsearch=BNA%2520000001726082d211a37fed86a38f0001#jcite (citing data provided by the IRS to the U.S. House Committee on Ways and Means in a report titled "Internal Revenue Service Operations (Report on May 27, 2020)").

¹³ For more information about the IRS's administration of the EIP, see <https://home.treasury.gov/policy-issues/cares/assistance-for-american-workers-and-families> (last visited June 3, 2020).

based upon their specific circumstances, determine their bank or financial account information or mailing address, and identify U.S. citizens without a tax filing obligation who may also qualify for the EIP, while having the pressure of getting the much-needed stimulus payments to Americans across the country as quickly as possible. Although there have been glitches, the IRS should be commended for timely issuing nearly 160 million payments, even with its software programming language that dates to the Kennedy administration, through June 3, 2020.¹⁴

The IRS has the current task of continuing its outreach efforts to locate and identify those citizens not on the IRS system but who nonetheless may be entitled to EIP. And in 2021, the IRS will be reviewing and correcting any underpayments as part of the 2021 filing season.

FILING SEASON PERFORMANCE

The IRS's 2020 filing season statistics indicate that of 116 million individual returns filed, 106 million were filed electronically and over 81 million were requests for refunds.¹⁵ For comparison purposes, we utilized data through April 17, 2020, which ordinarily would have been the end of the filing season if it had not been extended by three months due to COVID-19. Figure 3.2 presents an overview of returns processing and refunds during filing seasons 2018, 2019, and 2020.

Note of caution: reading too much into any statistical trends from this three-year period, given the major disruption in Filing Season 2020 and the three-month automatic extension of the filing and payment deadlines, is not a fair or accurate comparison. However, three data points stand out — during Filing Season 2020, (1) there were 24 million fewer returns processed by the traditional mid-April filing deadline, (2) the number of Free File users more than doubled from prior filing seasons, and (3) usage of IRS.gov increased 77 percent.¹⁶

14 IRS, IR-2020-111, 159 Million Economic Impact Payments Processed; Low-Income People and Others Who Aren't Required to File Tax Returns Can Quickly Register for Payment with IRS Non-Filers Tool (June 3, 2020), <https://www.irs.gov/newsroom/159-million-economic-impact-payments-processed-low-income-people-and-others-who-arent-required-to-file-tax-returns-can-quickly-register-for-payment-with-irs-non-filers-tool>.

15 IRS, Filing Season Statistics for Week Ending April 17, 2020, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-17-2020> (last visited Apr. 29, 2020).

16 There are two possible reasons for the increase in Free File participants. First, a large number of taxpayers who did not have a filing requirement elected to file a tax return this filing season, in order to expedite processing of their EIP by making sure the IRS had up-to-date bank account or address of record for them. Second, the IRS made several improvements to its Free File program designed to make the program more taxpayer-friendly. According to the revised agreement with the IRS, Free File partners:

1. Will not exclude their Free File landing page from an organic internet search;
2. Will ensure that a link on their sites is available to return taxpayers to the IRS Free File website at the earliest feasible point in the preparation process if they do not qualify for the member's Free File offer; and
3. Will regularly survey taxpayers who successfully e-filed a tax return through the Free File program, reporting their results quarterly to the IRS.

See IRS, W&I BPR, First Quarter FY 2020, at 8 (Feb. 2020).

FIGURE 3.2, Filing Season Statistics Comparing Weeks Ending April 20, 2018; April 19, 2019; April 17, 2020¹⁷

		2018	2019	2020	% Change From 2019 to 2020
Individual Income Tax Returns	Total Receipts	136,919,000	137,233,000	115,961,000 ¹⁸	-15.5%
	Total Processed	130,477,000	130,775,000	106,637,000	-18.5%
e-Filing Receipts	Total e-Filing	124,515,000	126,264,000	105,991,000	-16.1%
	Total Free File	2,538,000	2,681,000	5,631,000	110.0%
	Tax Professionals	70,983,000	70,476,000	53,651,000	-23.9%
	Self-Prepared	53,532,000	55,788,000	52,340,000	-6.2%
Total Refunds	Number	95,434,000	95,737,000	81,349,000	-15.0%
	Amount	\$265.3 bil	\$260.9 bil	\$229.3 bil	-12.1%
	Average Refund	\$2,780	\$2,725	\$2,818	3.4%
Direct Deposit Refunds	Number	80,491,000	83,249,900	68,028,000	-18.3%
	Amount	\$236.9 bil	\$238.4 bil	\$201.6 bil	-15.4%
	Average Refund	\$2,943	\$2,863	\$2,964	3.5%
Web Usage	Visits to IRS.gov	386.9 mil	421.5 mil	744.7 mil	76.7%
	Where's My Refund?	265.0 mil	317.4 mil	370.4 mil	16.8%

In the narrative that follows, we will address the taxpayer experience during Filing Season 2020 (through April 17, 2020) under the following major themes:

- Taxpayer interaction with the IRS via telephone, correspondence, or in-person assistance;
- Availability of tax forms and publications;
- Online and self-service tools;
- Service options for taxpayers living abroad;
- The transition to a revised Form 1040 and creation of Form 1040-SR; and
- Fraud detection.

17 IRS, Filing Season Statistics for Week Ending April 17, 2020, <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-17-2020> (last visited Apr. 29, 2020); Filing Season Statistics for Week Ending April 19, 2019, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-19-2019> (last visited Apr. 29, 2020); Filing Season Statistics for Week Ending April 20, 2018, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-20-2018> (last visited Apr. 29, 2020). Note: the Free File and Where's My Refund data was obtained from internal filing season reports.

18 Total receipts for Filing Season 2020 include returns filed to obtain EIP by those who may not otherwise have filed an income tax return.

TAXPAYER INTERACTIONS WITH THE IRS

The IRS aids millions of taxpayers via its website (IRS.gov), telephone, and social media platforms as well as face-to-face assistance at its Taxpayer Assistance Centers (TACs), VITA sites, and TCE sites.

Telephones

From January 1 through March 21, 2020 (the date when the IRS scaled back phone operations due to COVID-19, before closing them completely on March 24, 2020¹⁹), the IRS received 31.3 million telephone calls overall,²⁰ of which 25.3 million were directed to its Accounts Management (AM) telephone lines.²¹ The IRS achieved a 67 percent level of service (LOS) for AM in the 2020 filing season, on par with the 67 percent LOS in the 2019 filing season but a significant decline from the IRS's performance during the 2018 filing season, when the IRS reported an 80 percent LOS.²² Among taxpayers who got through to AM telephone assistors, hold times averaged 10.3 minutes in Filing Season 2020.²³

Telephone service was considerably worse on IRS telephone lines outside the AM category, particularly on the compliance telephone lines. The IRS had a LOS of 27 percent on its compliance telephone lines, and callers who managed to get through on those lines waited on hold for an average of almost 39 minutes.²⁴

The way the IRS calculates and presents filing season data is complex and does not necessarily reflect the overall experience of taxpayers seeking telephone assistance. The benchmark measure is a very narrow one and does not reflect the taxpayer experience in two respects. First, the benchmark measure reflects only calls that are directed to the IRS's AM telephone lines. Of those, 25.3 million of the 31.3 million total calls (81 percent) the IRS received came in on or were routed to AM.²⁵ The benchmark measure does not tell us anything about how the IRS handled the remaining six million calls outside of AM (such as the compliance phone lines).²⁶

Second, the denominator in the IRS's LOS computation is derived from calls routed to telephone assistors rather than from *all* calls to that phone line. Callers to the AM lines are greeted by a phone tree, and based on their responses, they are directed either to an employee for live assistance or to an automated system. Depending on the caller's response to prompts, the IRS decides whether to direct the caller to its automated offerings. In other words, automation is not a deliberate caller-selected

19 IRS, SERP Alert 20A0135, Product Line Closure (Mar. 24, 2020) (rescinded May 7, 2020).

20 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Mar. 21, 2020).

21 IRS, JOC, Snapshot Reports: Enterprise Snapshot, AM (week ending Mar. 21, 2020).

22 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Mar. 21, 2020); IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Apr. 20, 2019); IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Apr. 21, 2018). The phone service in filing season 2019 was impacted by the inability of the IRS to hire and train seasonal employees due to the 35-day government shutdown immediately prior to the opening of the filing season.

23 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Mar. 21, 2020).

24 *Id.*

25 *Id.*

26 The National Taxpayer Advocate raised these concerns in a March 7, 2019 hearing. *The Tax Filing Season: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means*, 116th Cong. 6-11 (Mar. 7, 2019) (statement of Nina E. Olson, National Taxpayer Advocate).

option. Only 23 percent of the 25.3 million calls answered by the AM lines (about six million) were routed to assistors and are included in the LOS computation, while the remaining taxpayer calls were routed to automation or reflected taxpayer hang-ups (typically because taxpayers do not want to work through the phone tree or wait on hold).²⁷ As a result, while the IRS is reporting a benchmark level of service of 67 percent, *IRS employees answered only 23 percent of the calls received on the AM lines and 25 percent of calls received on all lines.*²⁸

Telephone Service Observations

As noted above, favorable top-line numbers mask significant weaknesses in IRS telephone service. Consider the following:

- **The LOS was not consistent across all IRS telephone lines.** One compliance line — the “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 — had extremely poor service in the abbreviated 2020 filing season. The IRS received over 1.5 million calls on this line and had a LOS of almost 30 percent for the 2020 filing season. This means that more than two out of three taxpayers who attempted to call this line did not receive assistance at the time of the call. Taxpayers who spoke to an assistor waited an average of 49.7 minutes on hold.²⁹
- **Most taxpayers calling the IRS want to speak to an employee; however, 59 percent of AM calls were answered by automation.**³⁰ Callers generally have no choice regarding how and where their calls are routed; the IRS programs call-transfers based on the caller’s response to pre-recorded telephone prompt options. The IRS call tree generally does not present the taxpayer with an option to speak to a live assistor. *Thus, the LOS data reflects where taxpayers have been directed by the IRS, not necessarily where and how taxpayers need or would like to be assisted.*
- **Despite a reported LOS of 67 percent, IRS telephone assistors answered only about 23 percent of the calls the IRS received on its AM lines.** Despite the IRS reporting its benchmark LOS was 67 percent, *telephone assistors answered only six million calls out of 25.3 million calls received on the AM lines, or 23 percent.* We are not suggesting that the IRS served only 23 percent of callers; we recognize that some are adequately served through automation and some quickly hang up for personal reasons (*e.g.*, a call-waiting notification is received just after the start of the call).

These results show taxpayers are not getting the full assistance they need over the phone, jeopardizing their *rights to quality service* and *to be informed*, while potentially undermining voluntary compliance. TAS will continue to monitor the performance metrics from the telephone lines through the extended filing season (with most individual taxpayers facing a July 15, 2020, deadline to file taxes) and will supplement our findings in the Annual Report to Congress.

Understandably, the shutdown of phone lines beginning March 21 had a significant impact on taxpayers. For example, the IRS’s Taxpayer Protection Program (TPP), an automated fraud

²⁷ IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Mar. 21, 2020).

²⁸ *Id.*

²⁹ IRS, JOC, Snapshot Reports: Product Line Detail Snapshot (week ending Mar. 21 2020).

³⁰ Of the 20.2 million Accounts Management calls the IRS took during the filing season, 12.1 million were directed to automation. IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Apr. 20, 2019).

detection program, identifies and selects questionable tax returns and suspends the payment of refunds until the taxpayer verifies his or her identity. However, with the shutdown of the TPP phone line and closure of TACs during the pandemic, impacted taxpayers had no ability to authenticate their identities except through online authentication. On a positive note, taxpayers selected by the TPP for their 2019 return would receive their EIP as long as they filed a 2018 tax return, yet they would not receive their 2019 refund payment until authenticating their identity. The TPP line reopened with limited staffing on April 27.³¹

Correspondence

During FY 2018 and FY 2019, the IRS received an average of approximately seven million letters annually from taxpayers responding to proposed adjustments and other notices (*e.g.*, requesting penalty abatements, responding to math error notices, and making payment arrangements).³² With the COVID-19 pandemic shutting down IRS offices during the midst of the 2020 filing season, the IRS has been unable to receive or respond to correspondence since mid-March.

Due to the pandemic, the IRS stored unopened mail in trailers in certain locations and had mail held by the U.S. Postal Service in others because it did not have employees available to open and sort mail.³³ As of the end of May 2020, the IRS estimated that there were ten million pieces of correspondence, and a backlog of over 20 million notices that the IRS Correspondence Production Services (CPS) was unable to send to taxpayers.³⁴ The failure to timely process taxpayer responses to proposed increases in tax liability can have a significant impact on the taxpayer. For example, the IRS could no longer process paper-filed returns (original or amended returns), which would delay the release of a taxpayer's 2019 tax refund. Another example of significant impact of stalled correspondence is on taxpayers who were unable to respond to exam or collection inquiries.

People First Initiative

On March 25, 2020, the IRS launched the People First Initiative, where it committed to suspending certain compliance program actions in recognition of COVID-19-related hardship faced by taxpayers.³⁵ Under the initiative, the IRS rolled back enforcement actions. The initiative limited enforcement actions and postponed payments due under existing Installment Payment Agreements and Offers in Compromise between April 1, 2020, and July 15, 2020, to assist taxpayers during this period of uncertainty. Liens and levies initiated by field officers were suspended. Collections

31 IRS, SERP Alert 20A0135, Product Line Closure (Mar. 24, 2020) (rescinded May 7, 2020).

32 In FY 2019, the IRS received 6.9 million letters, down from 7.1 million letters in FY 2018. See IRS, JOC, Adjustments Inventory Reports: July-September Fiscal Year Comparison (FY 2018 through FY 2019).

33 See CNN, *The IRS Is Holding Mail in Trailers Amid the Pandemic*, www.cnn.com/2020/04/20/politics/irs-mail-trailers-covid/index.html (Apr. 20, 2020); POLITICO, *The IRS Is Drowning in Unopened Tax Refund Requests Amid Pandemic*, www.politico.com/news/2020/04/20/irs-tax-refund-delays-snail-mail-193786 (Apr. 20, 2020).

34 Allyson Versprille, *Virus Fears, Unopened Mail Await IRS Employees Returning to Work*, BLOOMBERG LAW: TAX (June 1, 2020), https://www.bloomberglaw.com/product/tax/document/XFOOQ660000000?bna_news_filter=daily-tax-report&jcsearch=BNA%2520000001726082d211a37fed86a38f0001#jcite (citing data provided by the IRS to the U.S. House Committee on Ways and Means in a report titled "Internal Revenue Service Operations (Report on May 27, 2020)"). CPS Not Mailed Report Cycle 20 for processing year 2020; IRS SERP Alert 20A0158, CRX Letters (Rev. Apr. 10, 2020).

35 IRS, IR-2020-59, *IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program* (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

temporarily stopped forwarding new delinquent accounts to private collection agencies or to the Department of State to prevent passport receipt or renewal. The initiative also stated the IRS would not start new field, office, or correspondence examinations during the initiative period.³⁶

Face-to-Face Service at Taxpayer Assistance Centers

The IRS Field Assistance function provides face-to-face assistance to taxpayers in the 50 states, the District of Columbia, and Puerto Rico at 358 TACs (down from 401 locations in 2011).³⁷ The number of taxpayers visiting a TAC declined from about 5.6 million in FY 2015 to 2.4 million in FY 2019.³⁸ The decline in the number of TAC visits coincides with the reduction in services offered by Field Assistance and with the IRS's strategy to expand its use of online services to taxpayers. In response to the COVID-19 crisis, TACs were temporarily closed on March 20 to ensure the safety and health of taxpayers and IRS employees.³⁹

The IRS continued its policy of encouraging taxpayers to schedule an appointment to receive assistance at any of its TACs.⁴⁰ This filing season through March 20, the number of assistor-answered calls to the TAC appointment line (659,138) was down just slightly from the 2019 filing season (675,310).⁴¹ Field Assistance provided face-to-face assistance to nearly 530,000 taxpayers, an increase of 6.6 percent compared to the same time last year.⁴² Nearly 37,000 taxpayers received assistance at TACs without an appointment because of openings in the day's calendar or the availability of staff, down 57.8 percent from the prior year.⁴³

Starting February 1, 2020, the IRS introduced a Web Service Delivery (WebSD) capability pilot that would enable taxpayers to attend a virtual appointment with a TAC assistor over the internet.⁴⁴ While the IRS does not yet have sufficient data to determine if this pilot program was a success, TAS applauds the IRS for exploring another avenue to meet the needs of taxpayers seeking face-to-face interaction.

36 IRS, IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020), <https://www.irs.gov/newsroom/irs-unveils-new-people-first-initiative-covid-19-effort-temporarily-adjusts-suspends-key-compliance-program>.

37 Although the IRS reports having 358 TACs for the 2020 filing season, 40 of these were not open due to lack of staffing as of February 20, 2020. An additional seven TACs have no permanent technical staff assigned. However, the IRS is able to keep these locations open by providing a "circuit rider." A circuit rider is an employee who travels from one office to cover an unstaffed TAC. Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2020-45-024, *Interim Results of the 2020 Filing Season 15* (Apr. 7, 2020); Government Accountability Office (GAO), GAO-12-176, *Processing Gains, but Taxpayer Assistance Could Be Enhanced by More Self-Service Tools* 18 (Dec. 2011).

38 IRS, W&I BPR 2 (Nov. 7, 2019); IRS, W&I BPR 7 (Nov. 11, 2017).

39 See IRS, Taxpayer Assistance Center (TAC) Locations Where In-Person Document Review Is Provided (Mar. 20, 2020), <https://www.irs.gov/help/tac-locations-where-in-person-document-verification-is-provided>.

40 IRS, IR 2019-67, IRS.gov: Best Place to Get Last-Minute Tax Tips and Resources (Apr. 9, 2019), <https://www.irs.gov/newsroom/irs-gov-best-place-to-get-last-minute-tax-tips-and-resources>. See also IRM 21.3.4.2.4.2, TAC Appointment Exception Procedures (Sept. 20, 2019).

41 IRS, JOC, Snapshot Reports: Product Line Detail Snapshot (week ending Mar. 21 2020).

42 IRS, 2019 Weekly Individual Filing Season Report Cumulative Statistics (Apr. 17, 2020).

43 *Id.*

44 IRS, W&I BPR, 1st Quarter FY 2020, at 11 (Feb. 2020); IRS, SERP Alert 20A0057, Web Service Delivery (WebSD) Virtual TAC (Jan. 31, 2020). WebSD may even be accessed by taxpayers via smartphone or tablet.

Availability of Tax Forms and Publications

Most taxpayers file electronically, and an estimated ten million taxpayers mail in paper tax returns.⁴⁵ Many taxpayers rely on printed versions of forms and publications. Taxpayers can usually order forms by mail from the IRS NDC, but the IRS was forced to close it (on or around March 25, 2020) due to the pandemic.⁴⁶

Taxpayers with access to the web and a printer may visit IRS.gov, where they can download and print forms, instructions, and publications. However, not all Americans find this option possible. A 2019 study revealed that 31 percent of U.S. households do not have a broadband internet connection, equating to roughly 100 million individuals.⁴⁷ A similar study conducted by Pew Research in 2019 found that racial minorities, older adults, rural residents, and those with lower levels of education and income are less likely to have broadband service at home.⁴⁸

Service Options for United States Taxpayers Living Abroad

Approximately nine million U.S. citizens live abroad.⁴⁹ There are also many international U.S. taxpayers who are neither residents nor citizens of the United States, as evidenced by Figure 3.3 showing the general trend of increased filings of individual tax returns filed by nonresident aliens during the filing season from processing years (PYs) 2014 through 2020. There was a marked decrease in such filings for this filing season, which was undoubtedly impacted by the IRS's inability to receive and process paper-filed tax returns, such as Form 1040-NR, U.S. Nonresident Alien Income Tax Return.

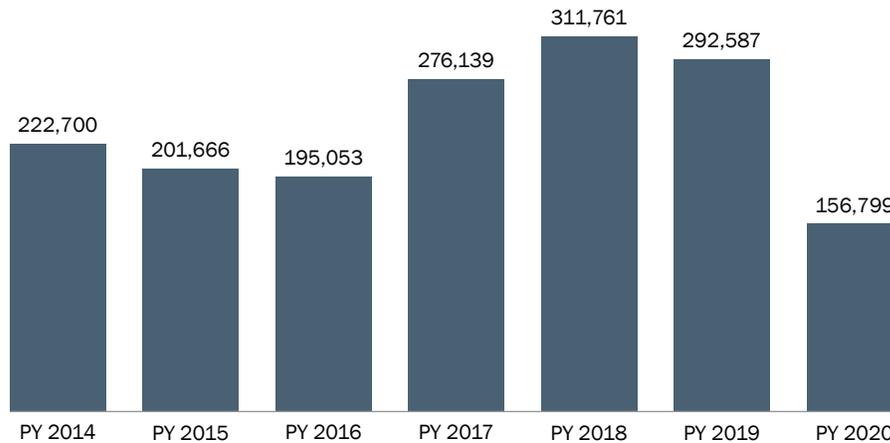
45 IRS, 2019 Weekly Individual Filing Season Report Cumulative Statistics (Apr. 17, 2020).

46 See IRS, National Distribution Center Closed (Mar. 25, 2020), www.irs.gov/forms-pubs/national-distribution-center-closed.

47 The NPD Group, Inc., *Thirty-One Percent of U.S. Households Lack a Broadband Connection* (July 25, 2019), www.npd.com/wps/portal/npd/us/news/press-releases/2019/thirty-one-percent-of-u-s-households-lack-a-broadband-connection/.

48 Pew Research Center, *Internet/Broadband Fact Sheet* (June 12, 2019), <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/>.

49 See U.S. Department of State, Bureau of Consular Affairs, *Consular Affairs by the Numbers* (rev. Jan. 2020), <https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf>.

FIGURE 3.3⁵⁰**Forms 1040-NR, U.S. Nonresident Alien Income Tax Return, Filed During the Filing Season (January Through April) for Processing Years 2014-2020**

Taxpayers living abroad generally cannot call U.S. toll-free telephone lines. In recent years, the IRS closed its overseas tax attaché offices, which eliminated the last face-to-face option for U.S. taxpayers living abroad.⁵¹

SPECIAL TOPICS**Revised Form 1040 and New Form 1040-SR**

Due to the significant changes made in the Tax Cut and Jobs Act of 2017,⁵² the IRS conducted a major redesign of the Form 1040 before the 2019 filing season. It broke the form up into a half-page front and back main form and six separate schedules. The IRS also eliminated Forms 1040A and 1040-EZ for tax years (TYs) 2018 and beyond.

50 IRS CDW, Individual Return Transaction File (IRTF) Form 1040-NR, U.S. Nonresident Alien Income Tax Return for processing year (PY) 2014 returns filed through Apr. 24, 2015; PY 2015 returns filed through Apr. 30, 2015; PY 2016 returns filed through Apr. 28, 2016; PY 2017 returns filed through Apr. 27, 2017; PY 2018 returns filed through Apr. 26, 2018; PY 2019 returns filed through Apr. 25, 2019; PY 2020 returns filed through Apr. 23, 2020. In PY 2019, nearly half of the Forms 1040NR were filed on paper. Therefore, the decline in the number of PY 2020 Forms 1040NR is likely due to the the backlog of unopened mail, resulting from the effect of COVID-19 on IRS operations.

51 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*).

52 Pub. L. No. 115-97, 131. Stat. 2054 (2017).

After receiving some criticism⁵³ of the revamped Form 1040, the IRS further simplified the Form 1040 for the 2020 filing season. Most prominently, the IRS reduced the number of schedules from six down to three for TY 2019 and beyond. For example, information on the 2018 Schedules 4 and 5 have been consolidated into revised 2019 Schedules 1, 2, or 3, and all of the information from the 2018 Schedule 6 now appears directly on the revised 2019 Form 1040.

One other significant change to tax forms for the 2020 filing season was the introduction of a new Form 1040-SR, U.S. Tax Return for Seniors. This simplified form is intended for use by taxpayers aged 65 or older, many of whom may have used former Form 1040-EZ (which was eliminated after TY 2018). Thus far this filing season, 7.3 million Forms 1040-SR have been filed.⁵⁴ With the shutdown of TCE and American Association of Retired People Foundation Tax-Aide sites in mid-March due to COVID-19, this likely impacted the number of Form 1040-SR filings.⁵⁵

Fraud Detection

The IRS has designed several filters to assist in detection and prevention of tax refund fraud, for both identity theft (IDT) and non-IDT. In the 2020 filing season, the IRS continued to make improvements to its fraud detection program. Specifically:

- The IRS improved automation to all non-IDT filters, systemically checking for the posting of third-party information daily (rather than weekly) and releasing the refunds once it verifies the information on the return; and
- The IRS corrected inefficiencies in the automated systemic matching program (*e.g.*, releasing returns when the income discrepancy would result in a larger refund for taxpayers).

These changes have resulted in two significant differences in the program, when compared to prior filing seasons:

1. The filters have been able to select many more returns for further analysis than they have in the past; and
2. Many more returns were identified for release earlier on in the filing season.

Through March 25, 2020, the non-IDT refund fraud filters selected over three million refund returns, an increase of 117 percent when compared to the same period last year.⁵⁶ One possible explanation for this increase is the adoption of improved systemic verification and reprocessing features for the non-IDT refund fraud filters, a sign that the IRS is getting better at identifying

53 See, *e.g.*, NYTIMES.COM, *The New Tax Form Is Postcard-Size, but More Complicated Than Ever* (June 25, 2018), <https://www.nytimes.com/2018/06/25/your-money/1040-income-tax-postcard.html>; NATIONAL PUBLIC RADIO, *IRS Touts New Tax Return Form for Simplification, But Critics Say It's Not That Easy* (June 28, 2018), <https://www.npr.org/2018/06/28/624430928/irs-touts-new-tax-return-form-for-simplification-but-critics-say-its-not-that-ea>.

54 IRS, Cincinnati Service Center, Cumulative Individual Income Tax Returns (as of March 20, 2020).

55 IRS, W&I BPR, 2nd Quarter FY 2020, at 3 (May 2020); AARP Foundation, *Scheduling Notice: Due to Coronavirus Concerns, AARP Foundation Tax-Aide Suspends Service Until Further Notice* (Mar. 13, 2020), <https://press.aarp.org/2020-3-13-Scheduling-Notice-Due-to-Coronavirus-Concerns-AARP-Foundation-Tax-Aide-Suspends-Service-Until-Further-Notice>.

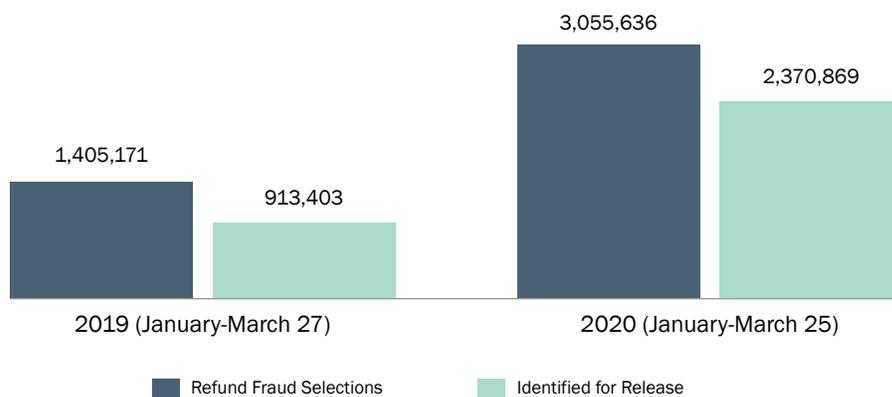
56 IRS, IDT and IVO Performance Report 4, 8-9 (Apr. 1, 2020); IRS, IDT and IVO Performance Report 4, 9 (Apr. 3, 2019). As of March 27, 2019, the non-IDT refund fraud filters had selected 1,405,171 refund returns.

questionable refund claims. This is a positive result — the IRS is identifying more fraud but also getting refunds out sooner than when it used a manual process.

Approximately 80 percent of the three million returns selected in the IRS’s non-IDT refund filters have been released, as shown in Figure 3.4. Comparing these results with the same filter selections and release rates (65 percent) for the same period during 2019, Figure 3.4 indicates the IRS is doing a much better job at systemically identifying more returns for release earlier in the process.

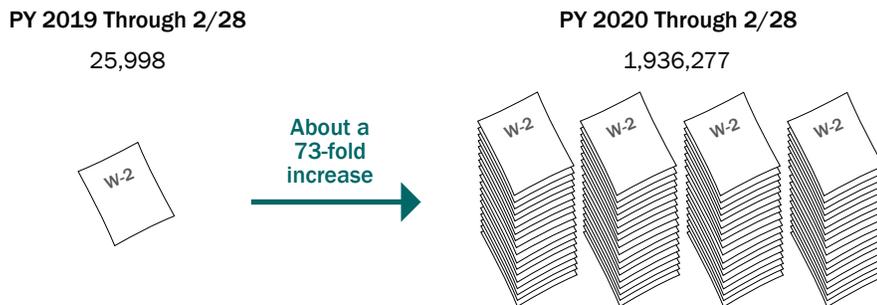
FIGURE 3.4⁵⁷

Comparison of Refund Fraud Selections and Returns Identified for Release in 2020 to the Same Period During 2019



This dramatic increase in the number of selected returns released may have been due in part to the filter’s ability to systemically identify returns for release and to the earlier availability of information reporting to the IRS. Through February 28, 2020, the IRS received 3.9 percent more Forms W-2 and 12.8 percent more Forms 1099-MISC documents than the prior year. For paper-filed Forms W-2, the IRS received a 73-fold increase over the prior year, an indication that the Social Security Administration is processing paper Forms W-2 much earlier than last year.

⁵⁷ IRS, IDT and IVO Performance Report 4, 8-9 (Apr. 1, 2020); IRS, IDT and IVO Performance Report 4, 9 (Apr. 3, 2019).

FIGURE 3.5⁵⁸**Paper W-2 Receipts Through February 28 for Processing Years 2019 and 2020**

Despite the high number of returns identified for release, concerns remain. Systems problems early in the filing season caused the misidentification of legitimate returns and created a backlog of returns, resulting in manual workarounds and delaying refund issuance.⁵⁹ Even a short delay in receiving a refund can have significant impact for low-income taxpayers who may be relying on the refund to assist with day-to-day living expenses.

In the next several months, more data should become available on the outcome of the IRS's 2020 filing season fraud detection efforts, such as false positive rates, processing times, and the amount of revenue protected.

CONCLUSION

The IRS faced significant challenges in the 2020 filing season, including a severe disruption in work for much of the country due to COVID-19 and the need for the IRS to administer the delivery of EIP to millions of Americans. On a positive note, it should be noted that 116 million Americans were able to file their individual tax returns by April 17, even with the July 15 extended due date. Over 81 million of those returns were for refunds, down 15 percent from prior year filings. One possible explanation for this decline in refund claims is that some segments of the population did not have the ability to file due to COVID-19 obstacles.

Due to the disruptions by COVID-19-related closures on or around March 20, the IRS was able to serve fewer taxpayers via telephone, correspondence, or in-person assistance this filing season. The IRS reported a 67 percent LOS as its benchmark measure of telephone performance, but that performance measure is misleading. Only 23 percent of callers to the AM lines actually spoke to a live assistant. The IRS answered fewer calls on its compliance telephone lines (27 percent LOS), and those who got through waited an average of almost 39 minutes.

⁵⁸ IRS, Information Return Master File Tax Year 2019 Forms W-2 and 1099-MISC Counts (Feb. 28, 2020).

⁵⁹ Executive Director Systemic Advocacy and Return Integrity Compliance Service Meeting Minutes (Feb. 25, 2020) (on file with TAS).

Identifying Prospective TAS Taxpayers

The Taxpayer Advocate Service (TAS) was created to help taxpayers resolve problems with the IRS, protect taxpayer rights, reduce taxpayer burden, and encourage overall service improvement at the IRS. Taxpayers typically seek TAS assistance with specific issues when: 1) they experience a tax problem that causes financial difficulty; 2) they are unable to resolve their issues directly with the IRS through normal channels; or 3) an IRS action or inaction caused or will cause them to suffer a long-term adverse impact, including a violation of taxpayer rights.¹ TAS receives cases through a number of different channels, including referrals from other IRS employees and congressional offices. In fiscal year 2019, TAS received approximately 40 percent of its cases from direct contacts, and 60 percent from referrals from congressional offices and other IRS employees.²

While TAS exists to serve all taxpayers, we recognize that there are large numbers of taxpayers across the country with IRS-related issues who do not request TAS assistance. To better serve all taxpayers, TAS has studied taxpayer populations to identify changes over the years and to better understand where TAS should be focusing its resources and outreach and advocacy efforts.

BACKGROUND

TAS defines “underserved taxpayers” as individuals who have not requested TAS assistance even though they met one of the nine qualifying criteria allowing them to receive such assistance. TAS completed a research project in 2002 to help quantify the “underserved taxpayer population” (hereinafter “TAS taxpayers” or “prospective TAS taxpayers”) in the United States and to identify certain characteristics of those taxpayers to help TAS assess the services it provides. Based in part on the results of the 2002 study, TAS implemented its initial outreach program.

In 2007, TAS wanted to understand the impact of its outreach program and update its knowledge of the size and shape of the TAS taxpayer population in the United States. TAS commissioned another multi-phase research project to update the information from the prior study and used the results to further refine its outreach efforts over the years.

Understanding that the size, demographics, and other characteristics of TAS taxpayers has continued to change, TAS commissioned a similar multi-phase research project that was completed in 2019. The objectives of this research project were to:

- Update the national estimate of the underserved taxpayer population as well as the awareness of TAS;
- Resegment the underserved taxpayer population;
- Assess awareness and likelihood of utilizing TAS among the underserved;
- Understand why underserved taxpayers do not request TAS services and what TAS can do to better reach them; and

1 See Internal Revenue Manual (IRM) 13.1.7.2, TAS Case Criteria (Feb. 4, 2015).

2 According to Taxpayer Advocate Management Information System (TAMIS) data obtained October 1, 2019, in FY 2019, TAS received 240,777 cases. Of those, 144,453 were referred by IRS employees (133,833) or congressional offices (10,620). The remaining 96,324 came from telephone calls to the NTA Toll-Free line, direct calls to local TAS offices, correspondence, walk-in, and direct requests for TAS assistance.

- Explore why TAS assistance was not requested, including whether underserved taxpayers were aware of the existence of TAS or the benefits TAS can provide to taxpayers.

METHODOLOGY

Russell Research completed three phases to collect data.³ In the first phase, data was collected from a total of 1,015 respondents of U.S. taxpayers. The study used a hybrid data collection methodology, interviewing 60 percent of the respondents by telephone, with the balance surveyed online. In the second phase, data was collected from 1,006 underserved taxpayers using the same hybrid data collection methodology.⁴

To qualify, respondents were screened to ensure that they:

- Reside in the United States;
- Are adults (*i.e.*, ages 18+);
- Have ever filed federal income taxes or are aged 65 or older and plan to file federal income taxes in 2019 for the tax year 2018;
- Experienced one or more (of nine) situations in the past two years that may result from the application of federal tax laws; and
- Have never used TAS.

In addition to collecting quantitative data from these interviews, the third phase of the research project had a qualitative aspect where the researchers utilized focus groups. Russell Research conducted four 90-minute focus groups of eight persons each in the cities of New York, Chicago, Denver, and Los Angeles.

FINDINGS

The findings⁵ showed that:

- The number of prospective TAS taxpayers in the United States continues to grow;
- The composition of the TAS taxpayer population is not skewed to one language or socioeconomic class; rather, it includes a mix of incomes and personal circumstances; and
- Lack of awareness of TAS remains a significant issue.

The 2019 study showed that the overall size of the TAS taxpayer population has continued to grow over the years. The 2007 study estimated this population to be approximately eight percent of total taxpayers, which increased to 11 percent of total taxpayers in 2019 (approximately 17 million

3 Russell Research (Russell) is a custom research firm in the market research industry. For more information, see Russell Research, *About*, <https://russellresearch.com/> (last visited June 4, 2020). Russell provides both quantitative and qualitative research, with in-house telephone and focus group facilities. TAS has conducted three different studies with Russell on taxpayers eligible for, but not seeking, TAS assistance, since 2002.

4 The confidence interval for this sample size is +/- 3.1 percent.

5 Russell Research, *Findings from the Taxpayer Advocate Service Research Program* (Dec. 27, 2019).

taxpayers).⁶ Although prospective TAS taxpayers' awareness of TAS has improved over that same time period, lack of TAS awareness is still the primary reason why those taxpayers are not utilizing TAS.

The study also showed that the demographics of this taxpayer population are like the demographics found in 2002 and 2007, with a few differences noted as well. Some of the demographic information shows that these taxpayers today are:

- Less likely to be employed;
- More likely to have health insurance;
- More likely to self-prepare returns; and
- More likely to file their taxes separately if married.

One finding in the 2019 study was particularly surprising. Approximately 58 percent of this taxpayer population (roughly ten million taxpayers) are considered middle-income, upper-middle income, or wealthy taxpayers, with low financial stress. For many years, TAS has focused its efforts on lower income taxpayers, many of whom are most likely to experience significant financial hardships. While those taxpayers continue to need TAS assistance, there are large numbers of higher income taxpayers who can benefit from knowing about TAS and the services we provide. Oftentimes, these taxpayers have complex tax issues and have trouble reaching or working with the IRS to resolve their issue without assistance.

TAS needs to expand its outreach efforts to reach those taxpayers who are in the middle- to upper-income levels to educate them on how TAS may be able to assist them. In the wake of the current economic issues experienced by taxpayers at all economic levels, awareness of TAS services will be particularly critical.

TAS AWARENESS

The previous research studies have shown that the primary reason taxpayers are not using TAS is due to lack of TAS awareness. Over the years, TAS implemented and has maintained a targeted outreach program while working to increase its visibility to taxpayers. Between 2002 and 2019, the percentage of total taxpayers who were aware of TAS by name increased from 13 percent to 25 percent. However, between 2007 and 2019, the percentage of taxpayers who were aware of TAS by name did not show a statistically significant change. Taxpayers in the 2019 study also indicated that they did not use TAS because IRS Customer Service did not tell them about TAS; their tax preparer did not tell them about TAS; or they did not think they qualified for TAS assistance.

Although some indicators of TAS awareness have been increasing, there is still room for improvement. According to the 2019 study, approximately 80 percent of prospective TAS taxpayers feel that TAS should market itself better. Taxpayers who were surveyed indicated that they primarily get their information/advertisements from local and national newspapers, cable news channels, subscription video services, Facebook, YouTube, and FM radio stations. They also suggested that the most preferred vehicles for TAS marketing would be on the official IRS notices sent to taxpayers and

⁶ The 95 percent confidence interval ranged from 13.8 million to 19.6 million taxpayers.

on IRS and TAS websites. It is important to note that TAS already has its information on official IRS notices; however, taxpayers could easily overlook the TAS-specific information because there is so much competing information included in IRS correspondence and on its webpages. Survey respondents also suggested TAS advertise in tax software packages, on free tax help websites, on television and radio, and on social media sites such as Facebook. While it is often not feasible for TAS to advertise in the traditional way of print, radio, or television, TAS should pursue efforts to improve visibility on IRS webpages and within IRS correspondence, highlighting messaging that will resonate most positively with taxpayers when describing the services TAS has to offer.

Although overall awareness of TAS has been increasing, there is room for improvement, and TAS needs to continue to expand its outreach efforts.

FOCUS GROUP FINDINGS

Taxpayers who participated in the focus groups as part of the 2019 study who were previously unaware of TAS were skeptical when informed about TAS and what TAS does for taxpayers. Taxpayers' skepticism revolved around the use of three main "trigger words" — independent, free, and qualify.⁷

First, the idea of TAS working *independently* but existing *within* the IRS was a challenging concept for these taxpayers to grasp. Many saw this verbiage as creating a dichotomy that painted an unclear picture of how TAS operates. The word "independent" or the phrase "independent organization within the IRS" created a sense of skepticism that TAS would be truly unbiased and advocate on behalf of the taxpayer.

Second, the word "free" caused taxpayers to be skeptical of TAS. Many taxpayers equated TAS services being free to the services of a public defender. In society in general, the word "free" attached to products and services is viewed as a positive. However, in the context of TAS's offerings, the word "free" prompted concerns about the quality of the organization's services. Because the services are free, taxpayers also assumed that TAS would be overwhelmed with cases, meaning they would not be able to get the level of service they felt necessary to remedy their issue.

Finally, taxpayers were concerned when they heard the word "qualify" in relation to TAS's services. The idea of qualifying for TAS's services prompted some mixed reactions, and most taxpayers interviewed assumed they would not qualify based on their income levels or the amount of taxes they pay. The idea of possibly *not* qualifying to work with the organization was off-putting for many, creating an "I can't believe I'm not getting picked" feeling.

As the focus group participants learned more about TAS, they were able to recognize several benefits to using its services. The primary benefit that taxpayers recognized was the access to one dedicated

⁷ Participants in the focus groups were read the following statement: "The Taxpayer Advocate Service is an independent organization within the Internal Revenue Service that helps Taxpayers and protects Taxpayer rights. Its job is to ensure that every Taxpayer is treated fairly, and that Taxpayers know and understand their rights under the Taxpayer Bill of Rights. The Taxpayer Advocate Service helps Taxpayers resolve problems that they can't resolve with the IRS. And the service is free. If Taxpayers qualify for TAS assistance, the Taxpayer is assigned to one advocate who works with the Taxpayer throughout their entire process doing everything possible to resolve their issue...."

advocate. Most taxpayers reported that they were often “bounced around” or transferred from department to department when calling the IRS, so having a dedicated advocate was an appealing feature that many assumed would help efficiently solve their problem.

CONCLUSION

The results of this most recent study on prospective TAS taxpayers raised several issues, including the need for TAS to expand its outreach efforts to help more taxpayers. TAS will use the study results as a guide to help with future outreach and marketing and communications efforts.

Based on the 2019 study, TAS will be looking at expanding its outreach program to help reach more taxpayers, including prospective TAS taxpayers in the middle- to upper-middle income levels and small business owners. Other future TAS outreach activities may include:

- Contacting local news stations or radio stations to cover TAS outreach events based around the TAS Mobile Outreach Van⁸ and during events such as the Pre-Filing Season Awareness Week;
- Contacting large employers within the state or local community and ask that TAS information be disseminated to employees or added to company websites with contact information for the Local Taxpayer Advocate office;
- Partnering with the Small Business Administration and local unemployment offices to inform and educate individuals and businesses about the benefit of utilizing TAS and the services it provides; and
- Exploring ways to expand TAS’s social media outreach efforts.

TAS is uniquely positioned to assist all taxpayers in resolving issues with the IRS. TAS employees understand how the IRS is organized and how it works, and many of our employees worked for other parts of the IRS before coming to TAS. We have processes and procedures in place with other IRS operating divisions regarding how our casework is handled, and we work with them daily to resolve taxpayer problems more quickly than taxpayers could do on their own.⁹ Many taxpayers will never have a problem with the IRS, but when they do have a problem and need TAS assistance, we want to be sure they are aware of TAS and that they understand the value we bring and how we can help.

It is the National Taxpayer Advocate’s goal to ensure that TAS is no longer the IRS’s “best kept secret.” TAS plans to expand its outreach and communications efforts based on the results of the 2019 study. This expanded outreach will help increase awareness of TAS for taxpayers who need our advocacy.

⁸ TAS planned to unveil the new TAS Mobile Outreach Van, which will be used to raise taxpayer awareness of TAS and provide TAS assistance in remote locations, during the celebration of TAS’s 20th anniversary in March 2020. The unveiling was postponed due to COVID-19, but TAS will target outreach and media efforts around the TAS van as it travels to different events across the country in the future. Bridget T. Roberts, The Taxpayer Advocate Service Celebrates 20 Years of Advocating for Taxpayers, NTA Blog, https://taxpayeradvocate.irs.gov/news/NTA_Blog_TAS_Celebrates_20_Years_of_Advocating_for_Taxpayers (Mar. 13, 2020).

⁹ IRS, Taxpayer Advocate Service Level Agreements (SLAs), <https://www.irs.gov/advocate/taxpayer-advocate-service-level-agreements-slas> (last visited June 4, 2020).

TAS Research Initiatives

Tax research is an important tool in developing knowledge to identify and understand tax administration issues. This knowledge promotes informed decisions and actions and contributes to the IRS's efficiency. A primary focus of TAS Research is to better understand the consequences of IRS procedures and processes and to evaluate IRS programs by understanding and balancing IRS compliance efforts with taxpayer rights and burdens.

Discussed below are three research projects underway for the remainder of fiscal year (FY) 2020 and into FY 2021.

PROPOSED ALGORITHM FOR STREAMLINED INSTALLMENT AGREEMENTS MAY REDUCE TAXPAYERS' ECONOMIC HARDSHIP

The IRS implements over 2.8 million installment agreements per year. About 70 percent of its annual installment agreements are streamlined,¹ which means the IRS does not analyze a taxpayer's ability to afford the payment arrangement. The benefit for taxpayers is this process allows an easy and quick means to establish an installment agreement for delinquent tax liabilities without the necessity of providing financial information. The IRS benefits by reducing its staff hours while collecting the outstanding tax liability. Overall, the streamlined process takes less time and establishes a monthly payment schedule. The process can be a win-win for taxpayers and the IRS.

However, there is an obvious downside. Since the IRS does not perform a financial analysis, many taxpayers enter into installment agreements they cannot afford, which leaves both the taxpayer and the IRS in an untenable position going forward. Some taxpayers must choose between foregoing purchasing basic necessities or defaulting on their installment agreement. Once a taxpayer defaults, the IRS must spend additional resources to resolve the liability while the taxpayer incurs further penalty and interest.

TAS contends that before implementing a streamlined agreement, the IRS can use data from the taxpayer's recently filed income tax returns to accurately determine both the taxpayer's income and his or her amount of allowable living expenses (ALE), which the IRS establishes annually to represent the amount the taxpayer needs to meet basic living expenses to "provide for a taxpayer's and his or her family's, health and welfare and/or the production of income."²

The IRS can verify the taxpayer's income information against third-party payer documents reported to the IRS to ensure it considers the taxpayer's total income. The IRS can also check its internal data to determine if the taxpayer has assets, which could be liquidated to satisfy the delinquent federal tax liability. To validate its contentions, TAS is conducting research to determine if an algorithm it developed will prevent future defaults by verifying its accuracy on non-streamlined installment agreements.

1 See IRS, Small Business/Self-Employed Division, Collection Activity Report (CAR) No. 5000-6 for fiscal years (FYs) 2018 and 2019, which shows that streamlined installment agreements accounted for 70 percent of all installment agreements in these two years.

2 IRM 5.19.13.3.2.2, Allowable Living Expenses (June 6, 2019).

Analysis by TAS Research for a Most Serious Problem in the National Taxpayer Advocate's 2018 Annual Report to Congress study found that about 40 percent of the Automated Collection System streamlined installment agreements were with taxpayers whose maximum ALE met or exceeded their income.³ TAS tested the algorithm it developed on a sample of about 300 cases where the IRS had entered into non-streamlined installment agreements with taxpayers, in which it conducted financial analysis before establishing the installment agreement. TAS analysis of the sample data showed that its algorithm reached the same conclusion as IRS personnel (that the taxpayer could pay) about 95 percent of the time. Of the remaining five percent of taxpayer liability cases, the IRS determined that in about a third of those cases the taxpayers could afford to pay, but it still input a backup currently not collectible (CNC) determination on their accounts. CNC status allows taxpayers in financial hardship situations to defer paying their tax bill until their situation improves. So even with those taxpayers, the IRS questioned whether they could afford an installment agreement.⁴

The IRS is considering applying TAS's algorithm to outstanding tax liabilities and if appropriate, placing an indicator on taxpayer's account when the algorithm supports an assumption that a taxpayer's allowable expenses are likely to exceed his or her income (and the taxpayer has no other systemically detected assets). This proposed indicator would alert the IRS of the taxpayer's financial situation. The indicator would trigger an inquiry for a basic financial analysis to determine if the taxpayer can afford a streamlined installment agreement, saving the IRS from reworking many cases and preventing taxpayers from agreeing to a payment they cannot afford. The indicator would inform IRS personnel of potential financial hardship since the streamlined procedure otherwise would not require financial data.

The Small Business/Self-Employed (SB/SE) Division has agreed to consider implementing this indicator but has requested that TAS test the proposed indicator's accuracy on a larger group of cases. TAS has begun a research project to test the accuracy of the TAS algorithm on all IRS non-streamlined installment agreements in FYs 2017, 2018, and 2019 and is analyzing all IRS non-streamlined installment agreements initiated in each fiscal year to determine whether the TAS algorithm also supports the taxpayer's ability to afford an installment agreement.⁵ We have coordinated this research with SB/SE, which is also testing an existing financial recovery score threshold as an effective indicator of whether the taxpayer is likely to afford an installment agreement. TAS plans to complete this research and compare the results with SB/SE's analysis on this issue by early FY 2021.

3 See National Taxpayer Advocate 2018 Annual Report to Congress 260-261 (Most Serious Problem: *IRS's Automated Collection System (ACS): ACS Lacks a Taxpayer-Centered Approach, Resulting in a Challenging Taxpayer Experience and Generating Less Than Optimal Collection Outcomes for the IRS*); National Taxpayer Advocate 2018 Annual Report to Congress vol. 2, at 39-52 (*A Study of the IRS's Use of the Allowable Living Expense Standards*).

4 See IRM 5.19.17.2.4, CNC Unable to Pay – Hardship (Oct. 30, 2019), which states that “[a]t times, the taxpayer, who meets hardship criteria, requests an IA rather than a CNC. In this scenario, establish the Installment Agreement (IA) or Partial Pay Installment Agreement (PPIA) with a back-up 53.”

5 The IRS conducts a financial analysis in all non-streamlined installment agreements; therefore, the TAS algorithm should also show the taxpayer can afford an installment agreement.

If the research supports the use of the TAS algorithm, SB/SE may implement it for streamlined cases. Using an appropriate indicator to demonstrate taxpayers' inability to afford an installment agreement rather than setting them up for default decreases IRS collections efforts downstream. TAS and SB/SE are looking into the feasibility and benefits of this approach.

TAS STUDIES IRS POTENTIAL PROCESSING ERRORS OF FORM 4029, APPLICATION FOR EXEMPTION FROM SOCIAL SECURITY AND MEDICARE TAXES AND WAIVER OF BENEFITS

Certain religious groups qualify for Social Security tax exemption if they are recognized as being officially opposed to Social Security benefits, such as retirement, disability, and death benefits.⁶ Taxpayers requesting exemption from Social Security and Medicare taxes because of religious convictions must file a Form 4029, Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits. As of the beginning of 2020, the IRS had approved about 130,000 Forms 4029 filed. TAS has identified several taxpayers erroneously assessed Social Security and Medicare taxes from which they should be exempt. Some of the same taxpayers receive these erroneous assessments in multiple years. When these erroneous assessments occur, the taxpayers must contact the IRS to abate the erroneous assessments. The taxpayers and their preparers are frustrated spending considerable time correcting these wrongly assessed taxes. Sometimes, the incorrectly assessed taxes progress to enforced collection action, creating additional burdens for the taxpayer.

TAS has determined instances where the Form 4029 approval indicator “falls off” a taxpayer’s account, while in other cases, the IRS may not notice this indicator. TAS Research has begun reviewing the processing of Forms 4029 to determine why these taxpayers receive incorrect assessments and if there is a systemic problem. Once TAS determines one or more causes, it will coordinate and work with the IRS and assist in altering its return processing procedures to eliminate any future erroneous processing of returns with an approved Form 4029.

This project will include the population of taxpayers who have submitted Form 4029 and review a statistically valid sample to determine the IRS error rate when processing returns where the taxpayer has an approved Form 4029. This study will quantify:

- The number of taxpayers with a Form 4029 indicator on their accounts and whether the taxpayers are employees or self-employed;
- The number of taxpayers with approved Forms 4029 whose accounts are no longer marked as exempt from Social Security taxes;
- The number of taxpayers later assessed additional Social Security tax;
- The number of taxpayers who never disputed the incorrect assessment of additional Social Security tax; and
- The number of taxpayers who experienced an IRS enforced collection action because of the erroneous assessment.

6 Social Security Administration (SSA), Publication No. 17-018, *How Religious Exemptions Work* (Jan. 2018), <https://www.ssa.gov/pubs/EN-17-018.pdf>.

This study will also try to identify what factors caused the IRS to mistakenly assess Social Security and Medicare taxes against many of these taxpayers. Eliminating Form 4029 processing errors will save taxpayers the burden of correcting erroneous assessments and will save the IRS a significant amount of rework by preventing erroneous Social Security tax assessments it later abates.

TAS STUDIES WHETHER CERTAIN IRS MATH ERRORS ARE COST EFFECTIVE CONSIDERING THEIR HIGH PERCENTAGE OF SUBSEQUENT ABATEMENTS

The IRC provides the IRS with the authority to summarily assess tax in certain situations without auditing a taxpayer's return when a taxpayer commits a mathematical or clerical error.⁷ When originally instituted, IRS math error authority was limited to an actual computational error on the face of the return. However, Congress later expanded math error authority to include other clerical errors, including the transposition of a taxpayer identification number or contradictory items on the tax return.⁸ Regardless of the error, when the IRS exercises its math error authority, it uses a specific math error code to identify the error made on the tax return. TAS Research will study the IRS's current use of math error authority on individual income tax returns to identify certain math errors, which the IRS frequently reverses after taxpayers contact the IRS disagreeing with the assessment.

In tax year (TY) 2016, the IRS issued about 2.3 million total math errors for nearly 500 specific reasons.⁹ Most of the math errors have a relatively small reversal rate; however, about 35 specific math errors have abatement rates of nearly 50 percent, and a few math errors have even higher abatement rates.¹⁰ Math errors with high abatement rates affected about 90,000 taxpayers in TY 2016 with these taxpayers receiving incorrect assessments totaling well over \$125 million.¹¹ This situation creates significant burden for taxpayers and rework for the IRS. The taxpayers experience the burden of correcting the erroneous math error assessment and delays in receiving their correct refund. The IRS spends resources issuing the math error, responding to taxpayers' inquiries about the math error notice, and then abating the math error assessment. A prior TAS study indicated that even where the IRS does issue a math error incorrectly, many taxpayers do not dispute it.¹² Instead of issuing certain math errors with high abatement rates, the IRS could change its procedures to correspond with taxpayers before making certain types of math error assessments.

TAS Research has completed a preliminary analysis of math errors issued by the IRS for TY 2016, including the number of math errors issued (by each specific code), the tax change, the number of IRS math error changes later reversed in full or in part, and the average percentage of the total

⁷ IRC § 6213.

⁸ IRM 21.5.4.3, General Math Error Procedures (Sept. 4, 2019).

⁹ IRS, CDW, IRTF Filed TY 2016 (Aug. 2018)

¹⁰ *Id.*

¹¹ *Id.*

¹² See National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, at 114-144 (*Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued for Claimed Dependents*). TAS examined a small sample of cases where the EITC disallowed by the IRS because of a missing or incorrect TIN had not been subsequently allowed. Our review of this sample showed that over 40 percent of these taxpayers appeared eligible for the credit based on IRS internal records.

adjustment reversed for each math error code.¹³ We intend to update this information in the coming months to also examine math errors issued in TYs 2017 and 2018 and to isolate the effect of a specific error when the IRS issues more than one math error on a tax return.

The IRS use of math error authority is much more cost effective than auditing a taxpayer. In a 2014 Treasury Inspector General of Tax Administration report, the IRS placed the cost of math error authority at only \$1.50 per return, while the cost of a correspondence audit was \$238.¹⁴ Nevertheless, for certain math errors with perennially high abatement rates, the cost may detract from revenue initially protected by the math error and may exceed the cost to the IRS of using its internal data to correct the issue without issuing the math error, or at least corresponding with the taxpayer before making the assessment. For example, the IRS cost analysis does not appear to consider subsequent IRS work to abate erroneous math error adjustments. When considered, the downstream cost to abate erroneous math error adjustments may exceed the additional tax assessed from making the correction. The taxpayer experiences unnecessary burden in responding to the math error notice, especially since the IRS often could have corrected it to prevent a change in tax without involving the taxpayer.

TAS Research intends to identify math error codes where the IRS later abates sizeable portions of tax charged through math error authority. In addition, TAS Research wants to quantify the average IRS cost of abating the erroneous assessment and whether the IRS had internal data enabling it to correct the error, allowing the return as filed with no need to contact the taxpayer.¹⁵ We plan to complete this research by the end of calendar year 2020.

13 The IRS records up to five specific math error notice codes. Therefore, in some cases, it is not possible to determine which math error changes were reversed.

14 Treasury Inspector General for Tax Administration, Ref. No. 2014-40-093, *Existing Compliance Processes Will Not Reduce the Billions of Dollars in Improper Earned Income Tax Credit and Additional Child Tax Credit Payments* 16 (Sept. 2014).

15 See National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, at 114-144 (*Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued for Claimed Dependents*). When TAS examined a sample of the returns where the math error had been subsequently reversed, TAS data showed that in 56 percent of the cases, the IRS had sufficient internal information to correct the return information.

IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate’s 2019 Annual Report to Congress

INTRODUCTION

IRC § 7803(c)(2)(B)(ii) requires the National Taxpayer Advocate to submit an Annual Report to Congress that, among other things, contains administrative recommendations to resolve problems encountered by taxpayers. For 2019, the National Taxpayer Advocate proposed 78 such recommendations to assist the IRS and Congress.¹

By way of background, IRC § 7803(c)(2)(B)(iii) requires the National Taxpayer Advocate to submit her reports “directly” to the House Committee on Ways and Means and the Senate Committee on Finance “without any prior review or comment from the Commissioner, the Secretary of the Treasury, the Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.” This provision protects the independence of the National Taxpayer Advocate’s reports.

IRC § 7803(c)(3) provides that when the National Taxpayer Advocate submits recommendations to the Commissioner, “[t]he Commissioner shall establish procedures requiring a formal response . . . within 3 months.” TAS submitted all administrative recommendations from the 2019 National Taxpayer Advocate’s report to the Commissioner shortly after publication. These included administrative recommendations made in four sections of the report — the “most serious problems” (MSP) section, the “status updates” section, the “most litigated issues” section, and the section containing TAS research studies. The Commissioner has provided written responses to these recommendations.

The IRS responded directly to administrative recommendations proposed in the MSP section of the report. In response to administrative recommendations proposed in other sections of the report, the IRS declined to respond directly, providing only general and sometimes incomplete narrative responses. The IRS has explained it believes it is only required to respond directly to administrative recommendations proposed in the MSP section and not to administrative recommendations proposed in other sections. It argues that IRC § 7803(c)(2)(B)(ii) subsections (III)–(VI), read in combination, require TAS to maintain “inventories” of actions that have been taken, that remain to be completed, and that have not been taken in response to MSPs but not to discussions in other sections of the report. The National Taxpayer Advocate disagrees.

We believe the IRS’s position misinterprets the statute and deprives Congress and the public of answers they deserve. As noted, we have submitted our administrative recommendations to the IRS pursuant to IRC § 7803(c)(3), which requires a formal response to each administrative recommendation the National Taxpayer Advocate makes. There is nothing in this subsection that limits the National Taxpayer Advocate to recommending actions that are proposed in the MSP section of the annual report. In fact, there is nothing in this subsection that limits the National Taxpayer Advocate to recommending actions that are proposed in the report at all. The intent of

1 See National Taxpayer Advocate 2019 Annual Report to Congress, <https://taxpayeradvocate.irs.gov/2019AnnualReport>.

the statute is clear: If the National Taxpayer Advocate makes an administrative recommendation to mitigate a taxpayer problem — regardless of whether or where it has appeared in a report — the IRS should evaluate it and respond in writing so that TAS, Congress, and the taxpaying public know whether the IRS plans to implement the recommendation and, if not, why not. General narrative discussions that do not address recommendations directly fail to satisfy this objective. We note in this appendix where IRS narratives are not responsive.

In this appendix, we present the problems, administrative recommendations, and responses in the following format:

- A problem statement for each MSP and status update and from some of the most litigated issues (MLIs) and TAS research studies included in the 2019 Annual Report;
- A summary analysis of the problem;²
- The National Taxpayer Advocate’s recommendations to address the problem;
- The IRS’s narrative response;
- The National Taxpayer Advocate’s comments on the IRS’s narrative response; and
- A figure showing the IRS’s responses and actions relating to each recommendation, along with the National Taxpayer Advocate’s response.

Some narratives in the 2019 Annual Report to Congress include recommendations for consideration by Congress. This appendix presents only the administrative recommendations directed to the IRS.

2019 Annual Report to Congress Recommendations and Intended Audience

Title	Narrative Included Recommendations to the IRS That Are Included in This Appendix	Narrative Included Recommendations to Congress
MSP 1: Customer Service Strategy: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results	✓	✓
MSP 2: Information Technology Modernization: The IRS Modernization Plan’s Goal to Improve the Taxpayer Experience Is Commendable, But the IRS Needs Additional Multi-Year Funding to Bring It to Fruition	✓	✓
MSP 3: IRS Funding: The IRS Does Not Have Sufficient Resources to Provide Quality Service		✓
MSP 4: Processing Delays: Refund Fraud Filters Continue to Delay Taxpayer Refunds for Legitimately Filed Returns, Potentially Causing Financial Hardship	✓	
MSP 5: Free File: Substantial Free File Program Changes Are Necessary to Meet the Needs of Eligible Taxpayers	✓	✓
MSP 6: Return Preparer Strategy: The IRS Lacks a Comprehensive Servicewide Return Preparer Strategy	✓	✓

² See National Taxpayer Advocate 2019 Annual Report to Congress, <https://taxpayeradvocate.irs.gov/2019AnnualReport>.

Title	Narrative Included Recommendations to the IRS That Are Included in This Appendix	Narrative Included Recommendations to Congress
MSP 7: Appeals: The Inclusion of Chief Counsel and Compliance Personnel in Taxpayer Conferences Undermines the Independence of the Office of Appeals	✓	
MSP 8: Multilingual Notices: The IRS Undermines Taxpayer Rights When It Does Not Provide Notices in Foreign Languages	✓	
MSP 9: Combination Letters: Combination Letters May Confuse Taxpayers and Undermine Taxpayer Rights	✓	
MSP 10: Offer in Compromise: The IRS's Administration of the Offer in Compromise Program Falls Short of Congress's Expectations	✓	
Status Update 1: Private Debt Collection: Forthcoming Changes to the Private Debt Collection Program Will Better Protect Low-Income Taxpayers and Achieve a Program That More Appropriately Respects Taxpayer Rights	✓	
Status Update 2: Automated Substitute for Return: The IRS Has Revised the Selection Criteria for Its Reinstated Automated Substitute for Return Program, But Some Concerns Remain Unaddressed	✓	
MLI 3: Accuracy-Related Penalty Under IRC § 6662(b)(1) and (2)	✓	✓
MLI 5: Summons Enforcement Under IRC §§ 7602, 7604, and 7609	✓	✓
MLI 6: Civil Actions to Enforce Federal Tax Liens or to Subject Property to Payment of Tax Under IRC § 7403		✓
MLI 8: Itemized Deductions Reported on Schedule A (Form 1040)	✓	
MLI 9: Charitable Contribution Deductions Under IRC § 170	✓	
Research Study 1: Study of Subsequent Compliance of Taxpayers Who Received Educational Letters From the National Taxpayer Advocate	✓	
Research Study 2: Study of Two-Year Bans on the Earned Income Tax Credit, Child Tax Credit, and American Opportunity Tax Credit	✓	
Research Study 4: Study of the Extent to Which the IRS Continues to Erroneously Approve Form 1023-EZ Applications	✓	

MSP #1: CUSTOMER SERVICE STRATEGY: The IRS Needs to Develop a Comprehensive Customer Service Strategy That Puts Taxpayers First, Incorporates Research on Customer Needs and Preferences, and Focuses on Measurable Results

PROBLEM

The Taxpayer First Act requires the IRS to create and submit a comprehensive customer service strategy to Congress by July 1, 2020. As the IRS develops this strategy, the National Taxpayer Advocate has identified several concerns with the IRS's current approach to customer service that the new plan should address. Most importantly, the IRS does not currently view itself as a service organization first and foremost. In addition, customer service decisions are not informed by using multi-disciplined, comprehensive research into customer needs and preferences. Forcing some taxpayers to use digital channels undermines taxpayer rights. Moreover, a service strategy would be incomplete if it did not address services to practitioners. Finally, the new strategy should correct the current absence of meaningful customer service measures to effect desired results and it should not be merely aspirational — it needs to include an implementation plan complete with cost estimates.

ANALYSIS

The IRS provides service through various communication channels such as the internet, phone, and in-person assistance. Taxpayers and representatives have different preferences for each of these channels and these preferences may vary depending on the specific needs of the taxpayer or the type of task the taxpayer or representative is trying to accomplish. The IRS must base service strategy decisions on research into customer needs, rather than on what the IRS thinks is best and lowest cost. The IRS's reduction in staff and the number of Taxpayer Assistance Centers (TACs), the switch to appointments only in the TACs and the low percentage of telephone calls answered by live assistors, leaves taxpayers with little choice but to attempt to complete tax-related tasks on the internet (which often does not resolve the taxpayer's issue) or to spend money for professional assistance.

TAS RECOMMENDATIONS

- [1-1] Ensure that each taxpayer segment and BOD are part of the overall customer service strategy to ensure the IRS is addressing the needs of all customers and responsibility is not falling on any one part of the IRS.
- [1-2] Appoint a Chief Customer Experience Officer, reporting to the Commissioner or Deputy Commissioner, to unify all taxpayer initiatives across different functions.
- [1-3] Work with NIST to determine how to make e-authentication requirements as least burdensome as possible and review the e-authentication methods used by other international taxing authorities.

- [1-4] Conduct research into why taxpayers and practitioners do not use certain service channels for particular tasks to enable the IRS to minimize any existing barriers and improve services in that area.
- [1-5] Establish a 311-type phone system to provide the taxpayer or practitioner the option to connect with an initial operator who would ask questions to understand the reason for the call. The operator would then match the caller with the specific office within the IRS that handles that particular issue or case.
- [1-6] Conduct research into why a significant number of customers who call the various IRS phone lines hang up either before or after they are placed in a queue for a particular phone line (primary and secondary abandonments).
- [1-7] Work with TAS to create a Taxpayer Anxiety Index.
- [1-8] Track the subject of taxpayer and practitioner complaints for each service channel to better understand the customer's satisfaction with actual usage of each service channel.
- [1-9] Develop meaningful and transparent measures to monitor the success of all customer service initiatives, including first contact resolution and more transparent telephone level of service measures.
- [1-10] Coordinate the team developing the Servicewide return preparer strategy to ensure consistency of strategies.
- [1-11] Collaborate with TAS throughout the development of the comprehensive customer service strategy required by the Taxpayer First Act.
- [1-12] Couple the customer service strategy with an implementation plan, complete with cost estimates for various initiatives.
- [1-13] Provide the necessary funding to the IRS for the adequate staffing, budget, and technology needed to provide a robust, world class customer service experience.

IRS NARRATIVE RESPONSE

The IRS consistently strives to deliver excellent taxpayer service by using available resources in the most effective way. Passage of the Taxpayer First Act of 2019 (TFA) provides us with an historic opportunity to transform how we interact with our diverse taxpayer base. Section 1101 of the TFA requires the IRS to deliver a written comprehensive taxpayer service strategy that includes:

- (1) a plan to provide assistance to taxpayers that is secure, designed to meet reasonable taxpayer expectations, and adopts appropriate best practices, including online services, telephone callback services, and employee training;
- (2) an assessment of opportunities to co-locate with other federal services or offer self-service options;
- (3) proposals to improve IRS taxpayer service in the short term, medium term, and long term;

- (4) a plan to update guidance and training materials for taxpayer service employees; and
- (5) metrics and benchmarks for quantitatively measuring our progress implementing the strategy.

Implementing the TFA is an agency-wide effort. To facilitate this process, we established the TFA Office, comprised of four project directors supported by a small number of subject matter experts, including a senior member of the TAS organization. The TFA Office is responsible for coordinating delivery of a comprehensive taxpayer experience strategy, a proposal to update the IRS organizational structure, and a comprehensive training strategy based on input from an array of stakeholders, including taxpayers, tax professionals, IRS leadership, oversight organizations, IRS employees, and the National Treasury Employees Union.

The IRS has conducted extensive outreach to ensure our taxpayer experience strategy thoughtfully integrates taxpayers' perspectives. For example, the TFA Office visited Taxpayer Assistance Centers to interview staff and better understand taxpayers' needs. The TFA Office also met with and gathered information from more than 100 organizations representing all types of taxpayers (individuals, small businesses, large businesses, tax-exempt entities, and taxpayers living overseas), as well as advisory groups, tax professionals, and other Federal agencies. This is just a small sample of the outreach conducted.

We recognize that taxpayers need access to effective service options to understand their tax obligations and pay their taxes timely. The taxpayer experience is the backbone of our mission. We are building our comprehensive taxpayer experience strategy based on the needs of our taxpayers and other stakeholders.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

The IRS's efforts to integrate taxpayers' perspective and experience into the development of its comprehensive customer service strategy will help the IRS develop a strategy that is responsive to taxpayer needs. It is encouraging that the IRS has adopted many of TAS's recommendations, including those partially adopted. The TFA Office has also reviewed TAS's recommendations and prior reports, leveraging TAS's knowledge and experience. This information should be particularly helpful given TAS's unique perspective and role in ensuring the Taxpayer Bill of Rights is effectuated and realized.

With the passage of the TFA, the IRS was given a congressional directive to improve the ways in which it serves taxpayers to ensure that the *right to quality service* is realized to a greater extent. The IRS has indicated that it plans to develop an omnichannel approach to interact with taxpayers, and this plan is consistent with TAS's recommendations. TAS has recommended that the IRS be mindful that taxpayers prefer to communicate in a variety of ways. Even though some groups of taxpayers may be able to resolve their issues over the phone, the accessibility of in-person Taxpayer Assistance Centers should be preserved and improved for those groups of taxpayers whose needs are more effectively addressed through quick and easy in-person support.

Furthermore, TAS has recommended that the IRS follow the example of other federal agencies, such as the General Services Administration, and create a position of a Chief Customer Experience Officer, or a similar position, to oversee a team of employees committed to monitoring and improving the taxpayer experience over all communication channels and to help implement the IRS’s comprehensive customer service strategy.

As the IRS develops improved customer service measures as part of its customer service strategy, TAS recommends that the IRS focus on linking quality metrics to specific initiatives and use those metrics to influence key organizational decisions, as required by the Taxpayer First Act. Ultimately, the IRS should base service strategy decisions on research into customer needs rather than on what seems best or on the lowest cost so that it can provide world class service to taxpayers and protect their *right to quality service*.

The National Taxpayer Advocate plans to continue our coordinated efforts and eagerly anticipates the IRS’s report to Congress in December. TAS stands ready to assist the IRS in facilitating the effective implementation of the comprehensive strategies in the report.

TAS Recommendation	[1-1] Ensure that each taxpayer segment and BOD are part of the overall customer service strategy to ensure the IRS is addressing the needs of all customers and responsibility is not falling on any one part of the IRS.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	<p>[As of April 22, 2020] As required by the TFA, the IRS is currently developing a comprehensive taxpayer experience strategy that encompasses all IRS business operating divisions and taxpayer segments, as well as other stakeholders. With this comprehensive strategy, the IRS strives to:</p> <ul style="list-style-type: none"> ■ Understand, inform, and educate our diverse taxpayer base by providing clear and timely communications and building partnerships; ■ Provide a seamless taxpayer experience by enhancing self-service and full-service capabilities, expanding access to the IRS, and simplifying the tax process; and ■ Empower our workforce to provide exceptional service. <p>This December the IRS will submit to Congress a written report detailing the comprehensive taxpayer experience strategy, organizational redesign, and training strategy developed pursuant to the TFA.</p>
TAS Response	The IRS’s efforts to date have been encouraging. Under this comprehensive strategy, TAS expects that each Business Operating Division (BOD) will consider the application of the overarching strategy to its taxpayer populations and design a specific plan for taxpayers’ needs during those interactions. The IRS can only provide a seamless taxpayer experience when all parts of the organization work in concert.

TAS Recommendation	[1-2] Appoint a Chief Customer Experience Officer, reporting to the Commissioner or Deputy Commissioner, to unify all taxpayer initiatives across different functions.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	<p>[As of April 22, 2020] The IRS understands the importance of an integrated, agency-wide approach to taxpayer service. Development of the comprehensive taxpayer experience strategy includes assessing various options to manage and oversee its delivery throughout the IRS. While our objective is to unify taxpayer experience initiatives across all IRS functions, we are still evaluating how best to achieve this goal.</p> <p>As previously noted, in December the IRS will submit to Congress a written report detailing the comprehensive taxpayer experience strategy, organizational redesign, and training strategy developed pursuant to the TFA.</p>
TAS Response	The IRS would benefit from having a Chief Customer Experience Officer (CCEO) who serves as a liaison to coordinate all service initiatives and strategies across different functions of the IRS. A CCEO would ensure that IRS senior leadership consider decisions through the lens of the taxpayers' experience. We continue to recommend the IRS consider implementing this recommendation in full in the future.

TAS Recommendation	[1-3] Work with NIST to determine how to make e-authentication requirements as least burdensome as possible and review the e-authentication methods used by other international taxing authorities.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	<p>The IRS is working with NIST to make e-authentication requirements as least burdensome as possible while retaining effectiveness. We are also exploring other effective e-authentication methods including those used by international taxing authorities.</p> <p>The IRS established the Secure Access Digital Identity (SADI) initiative to satisfy current NIST guidelines. The SADI initiative maintains a “security first” approach, which enhances the user experience by providing a high-availability platform that meets Federal compliance requirements coupled with the level of authentication for the access needed.</p> <p>We are committed to continual learning and assessment to achieve secure digital communications that are effective but not overly burdensome. For example, the IRS explores authentication opportunities by using innovation studies to:</p> <ul style="list-style-type: none"> ■ implement new and innovative ideas in a safe and well-defined environment; ■ learn about new technologies and practices; ■ improve upon current authentication, authorization, and access processes; and ■ evaluate products and offerings from outside vendors. <p>Additionally, we recently met with Canadian and Australian tax officials to share best practices and hosted the leader of the International Association of Privacy Professionals to gain insight into the global privacy community. We believe these efforts are vitally important to identifying global privacy and authentication opportunities and risks.</p>

continued on next page

TAS Response	<p>TAS welcomes the IRS implementation of the best practices it has gathered. One of the most important parts of an effective comprehensive taxpayer service strategy is enabling both taxpayers and practitioners to interact digitally with the IRS. The ability for digital communication with taxpayers and representatives was heightened by the COVID-19 pandemic and the impact to IRS operations. We continue to recommend the IRS work toward providing this means of communication with taxpayers in a safe and well-defined environment.</p>
TAS Recommendation	<p>[1-4] Conduct research into why taxpayers and practitioners do not use certain service channels for particular tasks to enable the IRS to minimize any existing barriers and improve services in that area.</p>
IRS Response	<p>IRS agrees to implement TAS recommendation in full.</p>
IRS Action	<p>The IRS strives to provide outstanding customer service through an omni-channel approach consisting of internet capabilities, correspondence, telephone, and face-to-face interactions. The annual Wage & Investment Division (W&I) Taxpayer Experience Survey provides information about why taxpayers opt to use certain service channels and the specific tasks they like to perform on each channel. Based on a statistically valid sample, findings from the 2019 Taxpayer Experience Survey reveal that taxpayers choose to go to IRS.gov before other sources for convenience. Taxpayers also view the IRS toll-free line as a convenient source for the most reliable information. Additionally, the IRS selects toll-free call transcripts for review based on key word searches to identify problem areas and emerging issues.</p> <p>Leveraging work done previously by our Research, Applied Analytics, and Statistics (RAAS) and Online Services (OLS) business units and W&I, the IRS conducted extensive research to develop the comprehensive taxpayer experience strategy mandated by the TFA. This research includes a review of recommendations and reports issued by the Treasury Inspector General for Tax Administration (TIGTA), U.S. Government Accountability Office (GAO), and the National Taxpayer Advocate’s annual reports to Congress. For additional information, the TFA Office conducted extensive outreach, as described above.</p> <p>With the comprehensive taxpayer experience strategy, the IRS strives to expand taxpayers’ access to service — particularly for underserved taxpayers, such as taxpayers with limited English proficiency. The IRS is committed to continuing to conduct research to better understand and evaluate taxpayers’ needs.</p>
TAS Response	<p>Leveraging existing research to develop a comprehensive customer service strategy makes a lot of sense and is laudable. It is important for the IRS to better understand why taxpayers or their representatives do not use certain service channels for particular tasks so that the IRS can minimize existing barriers and improve services for those tasks.</p>

TAS Recommendation	[1-5] Establish a 311-type phone system to provide the taxpayer or practitioner the option to connect with an initial operator who would ask questions to understand the reason for the call. The operator would then match the caller with the specific office within the IRS that handles that particular issue or case.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	<i>[As of April 22, 2020]</i> Development of the comprehensive taxpayer experience strategy includes assessing various options to improve telephone service. While our objective is to provide a seamless taxpayer experience across all aspects of tax administration, we are still evaluating how best to achieve this goal. As previously noted, in December the IRS will submit to Congress a written report detailing the comprehensive taxpayer experience strategy, organizational redesign, and training strategy developed pursuant to the TFA.
TAS Response	The IRS response suggests that it is still considering whether to adopt a 311 system. TAS continues to believe that a 311 system, or one similar, would facilitate increased efficiencies, decrease wait times, and improve interactions between taxpayers and appropriate IRS personnel. This type of a system, if fully implemented, would fit well within the IRS’s comprehensive omnichannel strategy.

TAS Recommendation	[1-6] Conduct research into why a significant number of customers who call the various IRS phone lines hang up either before or after they are placed in a queue for a particular phone line (primary and secondary abandonments).
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	While the IRS can monitor the volumes of calls that disconnect immediately, we currently have no way to solicit feedback from taxpayers who call the IRS but hang up prior to being placed in a queue for assistance (referred to as a “primary abandon”). IRS toll-free channels use an interactive voice response methodology that requires the taxpayer to connect to an assistor prior to being invited to participate in the customer satisfaction survey. In the past, the IRS performed studies to identify patterns in “secondary abandons,” <i>i.e.</i> , when a taxpayer hangs up after making a selection from the telephone menu options and being placed in queue for assistance. Data points to identify potential abandon patterns have included prominence on certain applications, days of the week, time of day, auto-dialers, and patterns by individuals or practitioners. We used this data to determine the effect of messaging on the toll-free lines, including the addition of wait time estimates on certain lines. Through these studies, the IRS determined that taxpayers have different tolerances depending on the telephone lines dialed and the type of issue in question. The IRS uses this information to strategically play messages that inform callers of available services, such as those on IRS.gov and automated services like “Where’s My Refund?”. As mentioned above, with the comprehensive taxpayer experience strategy, the IRS expects to further facilitate taxpayers’ access to services. The IRS is committed to continuing to conduct research to better understand and evaluate taxpayers’ needs.

continued on next page

TAS Response	<p>The IRS's response indicates that studies of secondary abandons have determined that taxpayers have different tolerances depending on the telephone lines dialed and the type of issue they are calling about. TAS continues to believe that expanding these types of studies will help the IRS to better understand taxpayer preferences and how to improve service. In addition, TAS agrees with the IRS that expanding the use of callback technology will improve service. This capability may assist in significantly reducing the number of primary and secondary abandons and in providing a more seamless taxpayer experience.</p>
--------------	---

TAS Recommendation	<p>[1-7] Work with TAS to create a Taxpayer Anxiety Index.</p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The IRS currently assesses the taxpayer experience using functional, point of transaction surveys (e.g., automated surveys on the toll-free channel and Field Assistance Comment Card Surveys), following issue resolution (e.g., Injured Spouse Customer Satisfaction surveys, the Appeals Customer Satisfaction Survey, etc.), and at the end of filing season (e.g., W&I Taxpayer Experience Survey). Taken together, these surveys provide a range of information about the taxpayer experience, including feelings about the IRS, elements of satisfaction, and potential areas for improvement.</p> <p>Given that different individuals may respond to similar circumstances in a myriad of ways — many of which are unpredictable or inextricably linked to externalities — it is not feasible to develop a standard measure for “taxpayer anxiety” that accurately reflects aspects of tax administration within IRS control. For example, taxpayer anxiety may result from the taxpayer’s financial circumstances or temperament or from tax law complexity.</p> <p>The IRS is committed to developing effective and meaningful measures by which to evaluate taxpayer service and to conducting ongoing research to better understand taxpayers’ needs as part of the comprehensive taxpayer experience strategy required by the TFA.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>TAS agrees that the IRS must develop feasible, effective, and meaningful measures to help guide its decisions about how to interact with taxpayers. In deciding how to interact with taxpayers, the IRS should consider that forcing taxpayers into digital services for transactions associated with high anxiety levels, without providing for more personal services, is unlikely to satisfy them. TAS will continue to evaluate the best method to measure and identify the types of interactions that require more personal services to help the IRS better understand taxpayers’ needs.</p>

<p>TAS Recommendation</p>	<p>[1-8] Track the subject of taxpayer and practitioner complaints for each service channel to better understand the customer's satisfaction with actual usage of each service channel.</p>
<p>IRS Response</p>	<p>IRS does not agree to implement TAS recommendation.</p> <p>Currently, overall satisfaction with IRS service channels is captured in the individual surveys administered by various IRS organizations, and more generally in the Taxpayer Experience Survey. The IRS also receives specific taxpayer complaints through Congress, the White House, the IRS Commissioner's office, the Department of Treasury, the Employee Conduct & Compliance Office, and TIGTA. The IRS tracks and monitors these inquiries, which allows IRS leadership to timely and effectively address issues raised and manage responses.</p> <p>As outlined in the Internal Revenue Manual, each business operating division has an internal process to handle taxpayer and practitioner complaints in real time. For example, employees are required to provide supervisor contact information to taxpayers upon request and to fully document interactions with taxpayers in case files for management review. The IRS also uses the Customer Early Warning System (CEWS), a partnership with Accounts Management, Submission Processing, Contact Analytics, and a number of other taxpayer-facing organizations, to identify potential service issue trends and elevate them for response.</p> <p>We view these mechanisms, along with proactive stakeholder engagement, quality/program reviews, and employee feedback, as effective ways to identify trends in taxpayer concerns. Still, we continue to evaluate the feasibility of other measures and metrics as part of the development of the comprehensive taxpayer experience strategy required by the TFA.</p>
<p>IRS Action</p>	<p>N/A</p>
<p>TAS Response</p>	<p>Under the <i>right to quality service</i>, taxpayers have a right to speak to a supervisor about inadequate service. Although each business operating division has its own internal process to handle taxpayer and practitioner complaints in real time, these efforts are not coordinated nor are they properly studied Servicewide. The IRS should conduct an agency-wide systemic review of complaints and responses to enable meaningful oversight of organizational responsiveness. TAS will continue to monitor and verify actions the IRS takes upon submission of the comprehensive report.</p>

TAS Recommendation	[1-9] Develop meaningful and transparent measures to monitor the success of all customer service initiatives, including first contact resolution and more transparent telephone level of service measures.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	Development of the comprehensive taxpayer experience strategy includes identifying meaningful and transparent measures to monitor the strategy's effectiveness. While our objective is to improve on and standardize existing measures across all IRS functions, we are still evaluating how best to achieve this goal. As noted above, in December the IRS will submit to Congress a written report detailing the comprehensive taxpayer experience strategy, organizational redesign, and training strategy developed pursuant to the TFA.
TAS Response	It is crucial that the IRS develop measures that ensure its functions are truly focusing on taxpayer service. This includes measures such as the rate of first contact resolution for each service channel and better telephone Level of Service (LOS) measures. The IRS should consider revisiting existing telephone LOS measures to improve transparency. Doing so might enable the IRS to identify gaps in performance because the current LOS measure does not capture all calls to the IRS and insufficiently gauges what the taxpayer experiences when making a telephone call.

TAS Recommendation	[1-10] Coordinate the team developing the Servicewide return preparer strategy to ensure consistency of strategies.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	Developing the comprehensive taxpayer experience strategy is a coordinated, agency-wide process. The IRS is taking a holistic approach to taxpayer service that takes into consideration tax professionals, in their dual roles as customers of IRS services and service providers to their clients (taxpayers).
TAS Response	The IRS's efforts to develop a comprehensive customer service strategy seem promising. It should be noted that the development of a comprehensive customer service strategy would be incomplete without addressing the service needs and preferences of practitioners and conducting research to determine which service channels practitioners prefer for various service tasks.

TAS Recommendation	[1-11] Collaborate with TAS throughout the development of the comprehensive customer service strategy required by the Taxpayer First Act.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	<p>Throughout the development of the comprehensive taxpayer experience strategy, the TFA Office core team has collaborated extensively with all IRS business operating divisions and functions, including TAS. The TFA Office is responsible for coordinating delivery of a comprehensive service strategy based on input from an array of stakeholders, including taxpayers, tax professionals, IRS leadership, oversight organizations, IRS employees, and the National Treasury Employees Union. The TFA Office core team is supported by a small number of subject matter experts, including a senior member of the TAS organization.</p> <p>In key ways, TAS plays an important role in developing the comprehensive taxpayer experience strategy. As a member of the senior executive team, the National Taxpayer Advocate (NTA) sits on the Innovation Advisory Council, a forum created specifically to allow senior executives and the TFA Office core team to have an open dialogue about TFA deliverables on a biweekly basis. Once a month, the core team also briefs senior executives about TFA developments at regularly-scheduled senior executive team meetings. Moreover, the TFAO hosts a biweekly meeting with senior leaders designated as TFA points of contact by each IRS function, including TAS. At these meetings, points of contact discuss significant TFA-related issues.</p> <p>Outside of these frequent interactions, the TFA Office has taken additional steps to work with TAS to develop the comprehensive taxpayer experience strategy. For example, a TFA core team member and the Acting NTA met periodically to collaborate on key aspects of the taxpayer experience strategy. Likewise, for one of its first listening sessions, the TFA core team met with TAS leadership and 78 Local Taxpayer Advocates, who represent taxpayers from across the country. The TFA Office also participated in the Low Income Taxpayer Clinic (LITC) annual conference, sponsored by TAS, and held a TFA round-table discussion with LITC national leadership. Working with the Acting NTA's staff, the TFA Office held two listening sessions with the Taxpayer Advocacy Panel, a group of 75 citizen volunteers who advise the IRS on how to improve our products, services, and customer satisfaction. Furthermore, with other members of the senior executive team, the NTA is a key reviewer of the written report to Congress detailing the three comprehensive strategies.</p>
TAS Response	The National Taxpayer Advocate welcomes the IRS's outreach efforts and collaboration with TAS. TAS anticipates continued collaboration with the IRS and stands ready to assist in facilitating the effective implementation of the future TFA comprehensive strategies.

TAS Recommendation	[1-12] Couple the customer service strategy with an implementation plan, complete with cost estimates for various initiatives.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	As noted earlier, in December the IRS intends to deliver to Congress a combined report detailing the comprehensive taxpayer experience strategy, organizational redesign, and training strategy developed pursuant to the TFA. The report will include an implementation plan and cost estimates, with future refinement to be provided in the out-years.
TAS Response	TAS stands ready to assist the IRS in effectively implementing the taxpayer experience strategy, organizational redesign, and training strategy being developed pursuant to the TFA and is ready to support the IRS with TAS's expertise acquired through decades of experience in interacting with and assisting taxpayers and their representatives.

TAS Recommendation	[1-13] Provide the necessary funding to the IRS for the adequate staffing, budget, and technology needed to provide a robust, world class customer service experience.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

MSP #2: INFORMATION TECHNOLOGY MODERNIZATION: The IRS Modernization Plan’s Goal to Improve the Taxpayer Experience Is Commendable, But the IRS Needs Additional Multi-Year Funding to Bring It to Fruition

PROBLEM

Aging IRS information technology (IT) infrastructure continues to plague the IRS and directly impact taxpayers. To address the IRS’s failing IT infrastructure and its need for updated technology, the IRS developed its Integrated Modernization Business Plan (Plan), which aims to improve “the taxpayer experience, by modernizing core tax administration systems, IRS operations and cybersecurity.” While this Most Serious Problem raises a few issues with the Plan, if implemented, the Plan would greatly improve the IRS’s IT infrastructure, make tax administration more efficient, and enable the IRS to provide better taxpayer service. While the Plan does not address all of the IRS’s IT issues, for the IRS to make any progress in modernizing its systems, its efforts must be fully funded.

ANALYSIS

In April 2019, the IRS released the Plan and a related Companion Document to address various components of the IRS IT strategy for the near future. This multi-year Plan will need to be further updated to comply with all of the requirements of the Taxpayer First Act, but the Plan is a great start, focusing in large part on updates to IRS systems to improve taxpayer experience and service. The Plan’s success will largely depend on the funding it receives, and full, dedicated, multi-year funding is needed for the Plan’s complete implementation. The IRS estimates the Plan will cost approximately \$2.3 to \$2.7 billion overall, including \$289.7 million spent in fiscal year (FY) 2019 and \$300 million forecast for FY 2020. However, it will likely need more than \$2 billion for the remaining years to meet its estimated cost for total implementation. Without this full funding, the IRS will fall short of its goals to modernize its systems and enhance taxpayer service.

A part of the IRS’s modernization will be major updates to IRS IT systems, which are some of the oldest still in use in the federal government. However, IT modernization projects are massive and generally span years. In order to be able to award funding for these projects, the IRS needs consistent multi-year funding. For example, the Plan includes the IRS’s existing efforts to standardize technology support for IRS business processes, creating an Enterprise Case Management (ECM) system. Through ECM the IRS plans to create a simplified infrastructure, hopefully eliminating the need to maintain or rebuild older IT systems. ECM is currently estimated to take six years to develop and implement, so absent continued multi-year funding, the IRS will be unable to make progress in its ECM efforts.

One concern TAS has with the Plan, is that while the Plan modernizes the Individual Master File (IMF) by implementing Customer Account Data Engine (CADE) 2, which will help the IRS provide better service and support to individual taxpayers, the Plan does not include modernization of the Business Master File (BMF). This gap in the Plan could result in an inability for the IRS to provide the same level of service to business taxpayers that it will provide to individual taxpayers.

The IRS has been rolling out numerous services to improve taxpayer service in the past several years and is looking at similar improvements to enhance taxpayer service in the near term. These improvements can help address current issues with taxpayer services. For example, overwhelmed phones can be aided by customer callback rollout, which allows taxpayers to request a call back when an employee is free instead of waiting on hold. Taxpayers with minor issues that only require a brief interaction with the IRS can use Webchat, freeing up the phone lines for customers who need more in-depth assistance, which could help to reduce call waiting times. The IRS is trying to roll out Secure Messaging, which allows taxpayers and IRS employees to exchange documentation safely, securely, and quickly without having to use traditional channels like mail and fax. New and improved online taxpayer accounts can securely provide information on amount of taxes owed, payment options, and payment history, in addition to access to tax transcripts.

TAS RECOMMENDATIONS

- [2-1] Modify the Plan to conform to the requirements of the TFA, by itemizing the anticipated project costs and potential risks if the Plan is not fully funded.
- [2-2] Conduct independent verification and validation of the updated plan to verify that it will result in complete modernization of IRS IT systems, similar to the independent verification and validation required in the TFA of the CADE 2 and ECM systems. The IRS should include for all modernization projects a process and plan to release funding as results are demonstrated in the programs relating to taxpayer and/or customer experience improvements.
- [2-3] Include in future modernization plans the modernization of the BMF system.
- [2-4] Provide the IRS with additional dedicated multi-year funding to replace its aging IT systems pursuant to a plan that sets forth specific goals and metrics and is evaluated annually by an independent third party.

IRS NARRATIVE RESPONSE

We appreciate and agree with your support for full, consistent multi-year funding for the IRS Integrated Modernization Business Plan (Modernization Plan), as well as adequate funding to maintain and update existing systems. As the National Taxpayer Advocate (NTA) recognized, the IRS has rolled out numerous services to improve taxpayer service in the past several years, with many additional improvements included in the Modernization Plan.

We also welcome the NTA's research and recognition that modernization of information technology systems is central to achieving the IRS's mission. In particular, we note the statement within the NTA's 2019 Annual Report to Congress that "improved customer service resulting from funding the IRS's modernization plans is likely to improve taxpayer trust of the IRS and, in turn, increase voluntary compliance, increasing overall revenue for the federal government."

Although they will take several years to fully implement, services such as customer callback, webchat, secure messaging, case management, and many others will help improve the taxpayer experience, as well as IRS employees’ and tax practitioners’ ability to provide efficient, high quality service. These capabilities and others will remain priorities within the customer service strategy and information technology strategic plan required by the Taxpayer First Act (TFA).

One of the key insights from the first year of the Modernization Plan was that a strong partnership and frequent communications with oversight groups (such as GAO and Congressional staff) reinforces IRS’s commitment to transparency and enhances our ongoing planning and execution. We will continue to regularly report implementation progress, challenges, successes, costs, and risks to Congress and other stakeholders, and generally welcome independent review of our plans as recommended by the NTA.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

TAS and IRS’s interests are aligned. There is no disagreement that the IRS needs to continue to invest in information technology to better serve taxpayers. For the IRS to fully implement its Modernization Plan and provide efficient, high-quality customer service, Congress needs to provide sufficient funding.

TAS Recommendation	[2-1] Modify the Plan to conform to the requirements of the TFA, by itemizing the anticipated project costs and potential risks if the Plan is not fully funded.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	As required by the TFA, the IRS is developing a multi-year strategic plan for its information technology needs. This strategic plan will supplement the Modernization Plan with additional commentary, including workforce needs, enterprise architecture concepts, and alignment with the IRS Strategic plan. The IRS also updates the Modernization Plan at least annually, itemizing the expected costs and risks for each of the programs within the plan.
TAS Response	We appreciate the IRS’s commitment to take these actions. This issue is further exacerbated by the impact of COVID-19 and the IRS’s ability to work remotely with the necessary systems in place.

TAS Recommendation	[2-2] Conduct independent verification and validation of the updated plan to verify that it will result in complete modernization of IRS IT systems, similar to the independent verification and validation required in the TFA of the CADE 2 and ECM systems. The IRS should include for all modernization projects a process and plan to release funding as results are demonstrated in the programs relating to taxpayer and/or customer experience improvements.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	Consistent with the Consolidated Appropriations Act of 2020 (PL 116-93), GAO is directed to conduct an annual review of Business Systems Modernization (BSM) funded initiatives — <i>i.e.</i> , the Modernization Plan. This independent assessment largely fulfills the intent of NTA's recommendation; therefore, an additional independent assessment will not be pursued. The IRS will rely upon this assessment, and act upon GAO's recommendations each year when it updates the Modernization Plan.
TAS Response	We understand the IRS's desire to avoid an overlap of responsibilities, given limited funding. However, the GAO annual review does not ensure a complete modernization of IRS IT; it is merely a review after the fact. The IRS would benefit from developing a process and plan to release funding as results are demonstrated in the programs relating to taxpayer and/or customer experience improvements.

TAS Recommendation	[2-3] Include in future modernization plans the modernization of the BMF system.
IRS Response	IRS does not agree to implement TAS recommendation. We agree with the importance of the Business Master File (BMF) and continued modernization of the business taxpayer experience in parallel with improvements to the individual taxpayer experience. The IRS continues to make improvements for business taxpayers in fiscal years 2019 and 2020, including customer callback on the employment tax phone application, integration of BMF data with ECM, and digital communication pilots with several types of individual, business, and tax-exempt customers. With the limited resources available for modernization of those programs already prioritized by the organization, modernization of the BMF will not be considered at this time.
IRS Action	N/A
TAS Response	We ask that the IRS keep open the possibility of modernizing its BMF system.

TAS Recommendation	[2-4] Provide the IRS with additional dedicated multi-year funding to replace its aging IT systems pursuant to a plan that sets forth specific goals and metrics and is evaluated annually by an independent third party.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

MSP # 4: PROCESSING DELAYS: Refund Fraud Filters Continue to Delay Taxpayer Refunds for Legitimately Filed Returns, Potentially Causing Financial Hardship

PROBLEM

The IRS has designed a number of filters to assist in the detection and prevention of non-identity theft (non-IDT) refund fraud (the Pre-Refund Wage Verification Hold Program or PRWVH). Despite improvements to this program for the 2019 filing season, issues persisted that affected both taxpayers and TAS, including: delays in releasing legitimate refunds, false positive rates (FPR) as high as 71 percent, and inadequate information as to the reasons for refund delays and what steps taxpayers can take to expedite the process.

ANALYSIS

Taxpayers whose returns are selected into the non-IDT refund fraud program often experience delays in receiving the refunds claimed on their original returns. About a quarter of the returns selected by a new filter for the 2019 filing season took more than 40 days to be processed. This delay was due in part to the Social Security Administration's (SSA) slow transmittal of paper Form W-2 information, which is used to verify information on returns. Further, nearly half the legitimate returns that comprise the 71 percent FPR took more than four weeks to be processed. Additionally, out of a review of 309 TAS PRWVH case receipts between August 25 and August 31, 2019, 236 waited an average of 141 days from the date the returns were filed to be screened and determinations made that the information on the returns could not be verified. While it is essential for the IRS to prevent fraud and protect revenue, these processing delays caused a financial hardship for many taxpayers. Compounding taxpayers' frustration is that not all taxpayers whose refunds are held as part of the non-IDT refund fraud program receive the same periodic update notices. When taxpayers do receive a letter, it does not always provide guidance as to what they can do to expedite the process. The financial hardship caused by refund delays, along with inadequate IRS notices, contributed to a 405 percent increase in TAS non-IDT refund fraud inventory from January 1 through September 30, 2019, compared with the same timeframe in 2017.

TAS RECOMMENDATIONS

- [4-1] Work with SSA to speed up the transmission of paper W-2 data to earlier in the year.
- [4-2] Identify acceptable FPR and Operational FPR ranges each year as part of its refund fraud projections.
- [4-3] Continue to learn from the returns that were part of the FPR to further refine the filters and continually work to lower the false positive rate.
- [4-4] Increase RIVO staffing to improve the processing time for validating information on returns, and assigning returns to a compliance stream for further treatment.

- [4-5] Send an interim letter every 60 days to all taxpayers whose returns it is holding in the PRWVH.
- [4-6] Revise Letter 4464C initial contact notice instructing taxpayers to review their returns to verify the income and withholding reported is accurate and correct, and if a mistake is identified, to file an amended return.
- [4-7] Instruct RIVO to send Letter 86C, Referring Taxpayer Inquiry/Forms to Another Office, informing taxpayers that it has referred their return to Another IRS function, and providing them with the name of the specific function and contact information.

IRS NARRATIVE RESPONSE

We appreciate your support of the IRS goals of detecting and mitigating refund fraud while working to decrease burden on taxpayers. As you note, the process for resolving cases of fraud can be complicated for some taxpayers. Roughly 98 percent of refund returns are not selected by fraud filters. The remaining 2 percent often have reported information that may not adhere to known patterns and may not have the information returns needed to validate reported amounts. Without proper validation the IRS risks issuing improper refunds.

The IRS and the Social Security Administration (SSA) are collaborating to enhance operations in both agencies, including reducing the processing time of paper Forms W-2, Wage and Tax Statement, which is a driver in the longer resolution time for some non-identity theft (IDT) cases. The False Positive Rate (FPR) calculation for 2019 is based on about 2.5 million refund returns that initially triggered the fraud filters and were held for additional review. The IDT filters detected roughly two million of these returns, and first-party fraud filters identified the remaining 500,000. We subsequently released over half of these returns after receiving valid third-party data or upon authentication of the actual taxpayer. As you note, the operational FPR specific to the first-party fraud population improved, decreasing from 72 percent to 55 percent in one year. Another factor reducing case resolution times is the amount of manual work required to validate third-party returns and route cases to the proper workstream. We continually explore ways to refine processes and identify opportunities to improve the taxpayer experience. The IRS is working on efforts to improve case resolution, including automation of manual processes as well as adding more resources to reduce processing times.

The IRS agrees that keeping taxpayers informed of their case status is important and we have made many of the changes recommended by TAS, including providing taxpayers a status update every 60 days when they are in a pre-refund wage verification hold, ensuring we send an initial contact notice to taxpayers in a timely manner, and updating the initial contact notice to instruct taxpayers to review their returns, verify they are accurate, and submit an amended return if necessary. These actions ensure taxpayers are kept aware of their case status and the options available to review and amend returns to expedite processing.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

TAS will continue to work with the IRS to ensure that the refund fraud program achieves its objective of protecting revenue while minimizing the burden on taxpayers who have filed legitimate returns. The IRS’s collaboration with the Social Security Administration to obtain paper W-2s earlier in the filing season will allow it to verify information on returns more quickly, thereby reducing the time for which legitimate returns will be held. The IRS’s shift from manual to automated processes should also help the IRS reduce processing times. TAS will continue to assist in identifying instances where such process improvements would be useful. Where the IRS cannot reduce processing times further, TAS will advocate that the IRS reduce its FPR and its Operational FPR. The IRS’s commitment to send 60-day notices to all taxpayers who have had their returns held for additional review provides more transparency to taxpayers regarding the status of their returns and what, if anything, they can do to assist in the process. TAS and the IRS will continue to work together to identify even more opportunities where communication with taxpayers can be enhanced and more information regarding the status of taxpayer refunds can be provided, thereby fully observing a taxpayer’s *right to be informed*.

TAS Recommendation	[4-1] Work with SSA to speed up the transmission of paper W-2 data to earlier in the year.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	<p>In 2019, the IRS established a working group with SSA focused on opportunities to mitigate fraud through information sharing, analytics, and risk management. One sub-group focuses specifically on wage reporting and efficient sharing of information to combat fraud.</p> <p>Also, as part of the Taxpayer First Act, requirements or thresholds for businesses to electronically file information returns such as the Form W-2 were lowered. Currently, companies filing more than 250 Forms W-2 are required to electronically file. In 2021, the threshold drops to 100 Forms W-2. By 2022, businesses that file more than 10 Forms W-2 will be required to electronically file. This change will result in a sharp decrease in the number of paper Forms W-2 that must be transcribed by the SSA before transmission to the IRS.</p>
TAS Response	Both the IRS’s efforts to work with the SSA and the provision in the Taxpayer First Act that authorizes the IRS to require more employers to file W-2s electronically will undoubtedly result in more information getting to the IRS sooner, thereby resulting in returns being verified faster. TAS will continue to work with the IRS to identify ways in which the IRS can obtain more information earlier in the filing season.

TAS Recommendation	[4-2] Identify acceptable FPR and Operational FPR ranges each year as part of its refund fraud projections.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	<p>Every year the IRS examines different fraud scenarios and their impact on taxpayers, revenue protected, false detections, and IRS workload to set refund fraud projections, including a projected False Positive Rate (FPR).</p> <p>The IRS continues to explore ways to improve the FPR. As TAS notes, the FPR dropped by 10 percent in one year and the speed of resolution increased. To the extent we are able to improve models and more effectively separate out true and false positives, we will explore scenarios resulting in further decreases in FPR. As more information returns are e-filed, resolution times are expected to continue to decrease. The IRS continues to strive to minimize the burden of these detections while protecting taxpayers and government revenue from the risks posed by third-party data breaches and highly sophisticated cybercriminals.</p>
TAS Response	TAS looks forward to continuing to work with the IRS on identifying the appropriate balance between protecting revenue and reducing burden on taxpayers who file legitimate returns by lowering both the FPR and the Operational FPR, particularly in circumstances where processing times cannot be reduced.

TAS Recommendation	[4-3] Continue to learn from the returns that were part of the FPR to further refine the filters and continually work to lower the false positive rate.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS continually evaluates changes in the tax system and makes improvements to our refund fraud detection methods, including refining our filters. We continue to improve the filters using a variety of methodologies, algorithms, data sets, and techniques to help stay ahead of fraudsters. We evaluate and monitor the performance of each filter on a weekly basis and adjust filters that are not performing as expected. We apply lessons learned from confirmed cases and consider emerging trends. We will continue to rebuild and refresh our filters and models each year to better detect emerging schemes, taking into account historical patterns. We continually explore ways to improve the false positive rate while ensuring protection to legitimate taxpayers' accounts.
TAS Response	TAS will continue to work with the IRS to identify the appropriate balance between revenue protection, FPRs, and processing times.

TAS Recommendation	[4-4] Increase RIVO staffing to improve the processing time for validating information on returns, and assigning returns to a compliance stream for further treatment.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS is hiring additional staff in the Return Integrity Verification Operation (RIVO). In addition, we continually explore ways to enhance processes to improve the taxpayer experience, such as automating manual processes to reduce process times. Automation is contingent on Information Technology resources.
TAS Response	The additional hiring in RIVO, depending on the level, will help reduce processing times and will address RIVO's limited resources. TAS will continue to advocate that the IRS adopt automated processes where possible while reducing processing times for its manual work and thus reducing processing times across the board.

TAS Recommendation	[4-5] Send an interim letter every 60 days to all taxpayers whose returns it is holding in the PRWVH.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS has implemented changes to provide taxpayers in the Pre-Refund Wage Verification Hold Program (PRWVH) a status letter every 60 days.
TAS Response	Ensuring that taxpayers receive a status letter every 60 days will appropriately observe the taxpayers' <i>right to be informed</i> , ensuring that taxpayers are aware of the status of their return and what steps they can take to resolve the issue causing the delay.

TAS Recommendation	[4-6] Revise Letter 4464C Initial Contact Notice instructing taxpayers to review their returns to verify the income and withholding reported is accurate and correct, and if a mistake is identified, to file an amended return.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	We have revised Letter 4464C to instruct taxpayers to review their returns, verify they are accurate, and submit an amended return if necessary.
TAS Response	TAS is working with the IRS to include necessary revisions to Letter 4464C. These revisions recommend taxpayers review their returns and all income information statements to ensure all income and withholding matches the information reported on the return and what to do if there is a discrepancy. This will assist in hastening the receipt of their refunds.

TAS Recommendation	[4-7] Instruct RIVO to send Letter 86C, Referring Taxpayer Inquiry/Forms to Another Office, informing taxpayers that it has referred their return to another IRS function, and providing them with the name of the specific function and contact information.
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The IRS agrees that keeping taxpayers informed of their case status is important; however, with our systemic Questionable Return Program (QRP) process, we are unable to provide specific contact information regarding the site/employee at this time. Although not issuing the Letter 86C, RIVO will collaborate with other functions to encourage a timely issuance of their initial contact letter after receipt of the referral. RIVO has also implemented an interim letter process for QRP referrals to the Automated Questionable Credit.</p>
IRS Action	N/A
TAS Response	TAS will continue to work with RIVO to identify opportunities where the taxpayer can be better informed as to the status of his or her return, including its assignment to another IRS workstream for further review and analysis.

MSP #5: FREE FILE: Substantial Free File Program Changes Are Necessary to Meet the Needs of Eligible Taxpayers

PROBLEM

To increase electronic filing (e-filing), the IRS partners with Free File, Inc. (FFI), a group of private-sector tax return preparation software providers, to offer free federal tax preparation software products accessible through IRS.gov to approximately 105 million eligible taxpayers. While the rate of e-filing has approached 90 percent for tax year 2018 individual returns, less than two percent (or about 2.5 million returns) were filed using Free File program software products. In addition, data on repeat usage suggests that taxpayers who use Free File have generally been dissatisfied with it. Among taxpayers who used Free File software in 2017, nearly half (47 percent) did not use Free File software again in 2018. Based on issues raised by ProPublica, an assessment of the program by MITRE Corporation, and previous concerns raised by the Taxpayer Advocate Service, the National Taxpayer Advocate believes that the current program is not promoting the best interests of taxpayers. FFI member companies are steering eligible taxpayers away from their Free File program software products and toward their commercial products. In addition, cross-marketing of fee-based services on Free File program software can confuse taxpayers and gives the impression of IRS endorsement. Moreover, the low usage rate of the program proves that the program is not meeting the needs and preferences of eligible taxpayers. Finally, the IRS does not perform routine quality testing of the Free File program software.

ANALYSIS

The MITRE 2019 Free File report confirmed the ProPublica allegations that many members prevented taxpayers from finding their free software services by using a coding device to hide Free File services from internet search results or buying ads that directed taxpayers towards their fee-based software products. FFI members also continue to market paid services, such as paid state tax filing services, to taxpayers who use their free services. The National Taxpayer Advocate believes that these deceptive practices violate the intent of the agreement between FFI and the IRS and create the illusion of the IRS endorsing these products. The IRS should prohibit such practices, which allow FFI members to capitalize on taxpayers' confusion, impinging on taxpayers' *right to be informed* and *to quality service*.

The MITRE 2019 Free File Report argues that the reason for the low usage rate of the program is that many taxpayers prefer to use other return preparation methods. The National Taxpayer Advocate believes that poor usage is attributable to little guidance and software options available to taxpayers when using the Free File program, which results in taxpayers selecting Free File software that lacks capability to prepare their returns. Only four of the 11 FFI members offer services to taxpayers of all ages, and even these have restrictions based on the taxpayer's state of residence, income, or eligibility for the Earned Income Tax Credit. Four other FFI members have age limitations that start before the age of 60, and only one FFI member provided Free File software in another language (Spanish). The National Taxpayer Advocate believes that the IRS should ensure

that the agreement provides an easy, assessable Free File platform for taxpayers to protect their *right to be informed, to quality service, and to a fair and just tax system.*

Finally, the MITRE 2019 Free File Report found that the IRS provides adequate oversight, but the National Taxpayer Advocate believes that the IRS should do more to protect taxpayer rights. For example, the IRS does not take sufficient steps to evaluate the quality of the return preparation in the Free File program. The IRS should conduct more quality testing of the software and survey taxpayers on their experiences to protect taxpayers' *right to quality service.*

TAS RECOMMENDATIONS

- [5-1] Explicitly prohibit the use of special coding by FFI members to exclude Free File program software from organic searches on search engines.
- [5-2] Collaborate with the National Taxpayer Advocate and the FFI member companies to determine the best way to eliminate confusion between Free File program products and other non-program free software offered by FFI members.
- [5-3] Collaborate with the National Taxpayer Advocate as it responds to the MITRE 2019 Free File Report recommendations.
- [5-4] Conduct research to determine why taxpayers eligible to use the Free File program, particularly economically disadvantaged and underserved populations, chose their method of return preparation, including fee-based methods.
- [5-5] Develop actionable goals for the Free File program before entering into a new agreement that, among other things, provide targeted use percentages aimed to substantially increase taxpayer usage and increase the percentage of taxpayers who continue to use the program from year to year.
- [5-6] Work with the National Taxpayer Advocate to create measures evaluating taxpayer satisfaction with the Free File program and test each return preparation software's ability to complete various forms, schedules, and deductions.
- [5-7] Conduct customer satisfaction surveys and routine quality testing of each Free File program software product to determine clarity of prompts, accuracy of preparation, ease of navigation, and coverage of forms and schedules.
- [5-8] Redesign the Free File Software Lookup Tool to better direct taxpayers to software providers that best meet their circumstances.
- [5-9] Provide more Free File program options for ESL taxpayers.
- [5-10] Prepare an advertising and outreach plan to make taxpayers, particularly in underserved communities, aware of the Free File program.

[5-11] Mandate that the IRS, in consultation with the National Taxpayer Advocate, submit a report to Congress by June 30, 2020, summarizing the actions it has taken to address the recommendations made by the MITRE 2019 Free File report as well as recommendations made by the National Taxpayer Advocate herein to improve the Free File program by Filing Season 2021.

[5-12] Direct the IRS to set a goal of increasing the usage rate of the Free File program to a significantly higher yet attainable level (*e.g.*, ten percent of the 70 percent of taxpayers eligible to use the program) and a goal of increasing the retention rate to 75 percent of taxpayers who used Free File in the preceding year and, if those goals are not attained by 2025, to replace Free File with an alternative approach to make tax software available to taxpayers at no or low-cost, including through the use of sole-source or multi-source contracts with tax software companies.

IRS NARRATIVE RESPONSE

The IRS continues to look for opportunities to support the improvement and growth of the Free File program. For the 2019 filing season, more than 2.8 million taxpayers chose Free File to file their returns, a 5.6 percent increase over 2018 and an 8 percent increase over 2017. This public-private partnership represents an additional choice for eligible taxpayers to file their tax return for free. The IRS believes that taxpayers should have a choice in filing options and should be educated in those options. The IRS promotes options that result in an accurate tax return filing. We are committed to providing taxpayers with viable options and tools for tax return preparation and filing, including free services, that help them effectively meet their tax obligations — whether online, as currently supported by Free File, or in-person, as supported by the Volunteer Income Tax Assistance and Tax Counseling for the Elderly programs and by Free File Fillable Forms.

Free File objectives – We continue to identify opportunities and implement changes that increase awareness and understanding of the Free File program as well as available Free File offers. When Free File launched in 2003, it was one of the few free do-it-yourself options for low-income taxpayers and less than 50 percent of all individual tax returns were filed electronically. More than 55 million returns have been filed using Free File since its inception and there are now many free do-it-yourself choices for taxpayers. Most major software providers, in addition to participating in Free File, also offer some form of free tax preparation software and e-filing outside of this partnership. While Free File was originally envisioned as a free federal tax return method, the program has grown to include many free state options. This year, four participating Free File members offer free state returns in all states with an income tax.

Eligible taxpayers – We continue to work with Free File providers and have made improvements to meet taxpayer needs in underserved populations such as the elderly, low income, and English as a second language communities. Now 33 percent of Free File, Inc. (FFI) providers offer Free File software to taxpayers of any age, and there is at least one free federal and state return option for all taxpayers of any age who have an income of \$69,000 or less. Using the Free File software look-up tool will easily generate results to determine if the taxpayer is eligible to file his or her tax return for free. Taxpayers whose income exceeds \$69,000 may use Free File Fillable Forms, which are available

to anyone regardless of age, income, or any other criteria. In addition, for the 2020 filing season, two FFI members are offering Free File software in Spanish.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

The IRS Free File Program has made significant improvements since the 2019 annual report went to print. Most importantly, the December 26, 2019, addendum to the Memorandum of Understanding (MOU) prohibited FFI's previous questionable marketing practices that received widespread press coverage and congressional inquiries. The addendum also required naming conventions for Free File program products that will eliminate much confusion between Free File program products and non-program products. In addition, the IRS has agreed to collaborate with TAS on the following: (1) further eliminating taxpayer confusion on differentiating between program and nonprogram products, (2) improving the taxpayer experience, and (3) implementing MITRE's recommendations.

TAS understands that the IRS has the authority to test the Free File program products beyond the Assurance Testing System (ATS) for Modernized e-File (MeF) Individual Tax Returns that it currently performs on all private sector products. The Free File program is a contractual arrangement between the IRS and FFI, and the terms are periodically updated. In addition, taxpayers can access the Free File program products through the IRS website, and the products now use the naming convention "IRS Free File Program delivered by (company name or product name)." Therefore, it is reasonable for taxpayers to assume that the IRS endorses the products and that it has tested the products' content (in addition to technological compatibility).

Finally, the December 2019 addendum provides that FFI will conduct random surveys of successful Free File users. However, the IRS should take a more proactive role in the development and methodology of such surveys. Allowing the industry to develop and conduct the surveys and merely report the findings to the IRS on a quarterly and annual basis does not go far enough. The IRS should have the authority to approve the language of the survey questions as well as the survey methodology.

TAS Recommendation	[5-1] Explicitly prohibit the use of special coding by FFI members to exclude Free File program software from organic searches on search engines.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS recognized there were inconsistencies in approaches by the member companies regarding web searches. As with other changes to the program, this specific change was made in an addendum to the Memorandum of Understanding (MOU) signed on December 26, 2019 stating “FFI Members are prohibited from engaging in any practice that would cause the Member’s Free File Landing Page to be excluded from an organic internet search. Each FFI Member shall standardize the naming of its Free File offer listed on the IRS Free File Website and the Member Free File Landing Page so taxpayers can link to the Member’s Free File Landing Page from organic searches.”
TAS Response	The IRS has addressed the previous questionable marketing practices in the recent addendum to the MOU with FFI.

TAS Recommendation	[5-2] Collaborate with the National Taxpayer Advocate and the FFI member companies to determine the best way to eliminate confusion between Free File program products and other non-program free software offered by FFI members.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	<p>The IRS, in conjunction with FFI, implemented a revised naming convention to bring more clarity to the Free File software products. The recently signed MOU addendum requires all Free File members to name their Free File products “IRS Free File Program delivered by (company name or product name)”. The same naming convention is in place on each member’s Free File landing page, as well as the IRS.gov/FreeFile website. Taxpayers will readily see when they are using a Free File product because it uses this new naming convention.</p> <p>The IRS will collaborate with stakeholders, including the NTA, to better understand the taxpayer experience differentiating between the IRS and member websites and find a means to measure and track customer satisfaction within the limited IRS budget.</p>
TAS Response	We agree that the new required naming convention will benefit taxpayers and prevent unnecessary confusion. We look forward to collaborating with the IRS to better understand the taxpayer experience and address any remaining taxpayer confusion.

TAS Recommendation	[5-3] Collaborate with the National Taxpayer Advocate as it responds to the MITRE 2019 Free File Report recommendations.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	We continue to review recommendations from the MITRE 2019 Free File report. We will collaborate with stakeholders, including the NTA, to collect input for our consideration when implementing MITRE's recommendations.
TAS Response	We look forward to collaborating with the IRS on the implementation of MITRE's recommendations.

TAS Recommendation	[5-4] Conduct research to determine why taxpayers eligible to use the Free File program, particularly economically disadvantaged and underserved populations, chose their method of return preparation, including fee-based methods.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS recognizes there is a need to better understand why taxpayers make the choices they do. A behavioral and awareness study will be undertaken to further explore decisions needed for the program.
TAS Response	The IRS has committed to conduct the recommended research on taxpayers, including the economically disadvantaged and underserved populations, on why they choose different methods of preparation.

TAS Recommendation	[5-5] Develop actionable goals for the Free File program before entering into a new agreement that, among other things, provide targeted use percentages aimed to substantially increase taxpayer usage and increase the percentage of taxpayers who continue to use the program from year to year.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	We agree to study the issue and use data gathered this year, in addition to customer and stakeholder input, to determine the appropriate goals prior to negotiating a new agreement.
TAS Response	The IRS has committed to develop appropriate goals before renegotiating a new agreement with FFI. We recommend the IRS develop goals that include targeted use percentages aimed at substantially increasing both taxpayer usage and the percentage of taxpayers who continue to use the program from year to year.

TAS Recommendation	[5-6] Work with the National Taxpayer Advocate to create measures evaluating taxpayer satisfaction with the Free File program and test each return preparation software's ability to complete various forms, schedules, and deductions.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	<p>The IRS agrees to evaluate taxpayer satisfaction with the Free File program and use those results to improve Free File. To that end, in the MOU addendum from December 2019, FFI agreed to begin a survey process for successful Free File users. This is the first step of an iterative process to survey taxpayers regarding their customer experience and satisfaction.</p> <p>All commercial versions of software that electronically file returns go through the Assurance Testing System (ATS) for Modernized e-File (MeF) Individual Tax Returns to make sure the basic computations are correct. Free File products are identical to the basic product software partners offer in the commercial marketplace. The IRS disagrees with testing software products using taxpayer scenarios. The IRS does not perform, and has no authority to perform, testing on private-sector products, of which Free File is a subset.</p> <p>We established an online email address and are responding to taxpayer inquiries, as well as identifying common issues to consider as improvement opportunities for the Free File program.</p>
TAS Response	The IRS has the authority to test the Free File program products beyond the Assurance Testing System (ATS) for Modernized e-File (MeF) Individual Tax Returns that it currently performs on all private sector products. The Free File program is a contractual arrangement between the IRS and FFI, and the terms are periodically updated. In addition, taxpayers can access the Free File program products through the IRS website, and the products now use the naming convention "IRS Free File Program delivered by (company name or product name)." Therefore, it is reasonable for taxpayers to assume that the IRS endorses the program products and performs testing of the products' content (in addition to technological compatibility).

TAS Recommendation	[5-7] Conduct customer satisfaction surveys and routine quality testing of each Free File program software product to determine clarity of prompts, accuracy of preparation, ease of navigation, and coverage of forms and schedules.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	<p>The recent MOU addendum states: "...FFI members shall use a statistically valid methodology to randomly select and uniformly survey taxpayers who successfully e-filed a tax return through the Free File program. This is the first step of an iterative process to survey taxpayers regarding their customer experience and satisfaction." The IRS will receive quarterly and annual findings from this process to help inform future decisions.</p> <p>While the IRS and FFI currently require a minimum listing of core Forms 1040 and schedules, most participating companies go beyond this requirement and offer nearly all available Forms 1040 and schedules. Participating companies guarantee the calculations performed by the federal Free File offering.</p>
TAS Response	The December 2019 addendum provides that FFI will conduct random surveys of successful Free File users. However, the IRS should take a more proactive role in the development and methodology of such surveys. Allowing the industry to develop and conduct the surveys and merely report the findings to the IRS on a quarterly and annual basis does not go far enough. The IRS should have the authority to approve the language of the survey questions as well as the survey methodology.
TAS Recommendation	[5-8] Redesign the Free File Software Lookup Tool to better direct taxpayers to software providers that best meet their circumstances.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The current Free File Software Lookup Tool allows taxpayers to enter criteria such as age, adjusted gross income, state of residence, and Earned Income Tax Credit or military pay received. The combinations of these criteria identify the specific companies that provide products to best fit the taxpayer's needs. We are in the process of improving this tool to better direct taxpayers to software providers. We expect these improvements to be made available in early summer 2020.
TAS Response	The IRS is taking the recommended action to improve the Free File Software Lookup Tool. Taxpayers have a <i>right to quality service</i> and the IRS's provision of a useful tool to assist taxpayers in choosing the appropriate program product will improve the overall taxpayer experience.

TAS Recommendation	[5-9] Provide more Free File program options for ESL taxpayers.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	For the 2020 filing season, two FFI members are offering Free File software in Spanish. We appreciate the NTA's perspective that the program is helpful enough to expand the program to non-English speaking taxpayers.
TAS Response	Two program software products offered in Spanish are a good start. We encourage the IRS to work with FFI to offer program products in other common languages. For example, IRS.gov provides tax information in Spanish, Mandarin Chinese, Korean, Russian, and Vietnamese.

TAS Recommendation	[5-10] Prepare an advertising and outreach plan to make taxpayers, particularly in underserved communities, aware of the Free File program.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS welcomes ideas from the NTA to increase awareness of the Free File program among underserved populations. The IRS does not have marketing funds to pursue an advertising campaign to increase Free File program awareness. However, we are building onto our communications plan to increase program awareness. The IRS issues a multitude of traditional news releases and social media promotions that include key messages about Free File on IRS.gov, as well as references in the Form 1040 instructions.
TAS Response	We understand that the IRS has no funds to pursue an advertising campaign, and we welcome the opportunity to collaborate with the IRS on additional ways to increase taxpayer awareness of the Free File program.

TAS Recommendation	[5-11] Mandate that the IRS, in consultation with the National Taxpayer Advocate, submit a report to Congress by June 30, 2020, summarizing the actions it has taken to address the recommendations made by the MITRE 2019 Free File report as well as recommendations made by the National Taxpayer Advocate herein to improve the Free File program by Filing Season 2021.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

TAS Recommendation	[5-12] Direct the IRS to set a goal of increasing the usage rate of the Free File program to a significantly higher yet attainable level (e.g., ten percent of the 70 percent of taxpayers eligible to use the program) and a goal of increasing the retention rate to 75 percent of taxpayers who used Free File in the preceding year and, if those goals are not attained by 2025, to replace Free File with an alternative approach to make tax software available to taxpayers at no or low-cost, including through the use of sole-source or multi-source contracts with tax software companies.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

MSP #6: RETURN PREPARER STRATEGY: The IRS Lacks a Comprehensive Servicewide Return Preparer Strategy

PROBLEM

Considering that about 80 million tax year 2018 individual tax returns were prepared by return preparers, and preparers interact with most functions of the IRS, the development of a comprehensive return preparer strategy is long overdue. In 2019, the IRS developed a preparer misconduct study in response to a 2018 recommendation by the Treasury Inspector General for Tax Administration. However, preparer misconduct issues are only one component of a truly comprehensive Servicewide return preparer strategy. In addition to addressing misconduct issues, the National Taxpayer Advocate recommends that the IRS develop a comprehensive strategy with the following components:

- Emphasize the taxpayer's *right to retain representation*;
- Encourage return preparer competency within the bounds of its authority;
- Address the current lack of transparency in preparer fees;
- Incorporate a comprehensive taxpayer education campaign;
- Restrict access to confidential taxpayer information on online applications to only those preparers over whom the IRS has oversight authority; and
- Track preparer noncompliance data by type of preparer.

ANALYSIS

Millions of taxpayers choose to interact with the IRS through their representatives, making them a vehicle for taxpayer compliance. However, currently there are no competency or licensing requirements for federal unenrolled tax return preparers. While the IRS does not have the authority to impose minimum competency requirements, it still has tools to encourage preparers to improve the quality of their return preparation services. In addition, the lack of transparency in preparation and filing fees at the outset of the preparation engagement prevents taxpayers from comparison shopping or even from predicting the cost before entering into the transaction. Further, because the IRS does not have the resources to maintain widespread geographic presence to enforce preparer requirements, it must empower taxpayers to protect themselves through a comprehensive taxpayer education campaign.

TAS RECOMMENDATIONS

[6-1 through 6-8]

The National Taxpayer Advocate recommends that the IRS develop a comprehensive servicewide return preparer strategy that:

1. References the taxpayer's *right to retain representation* in the mission of the strategy.
2. Increases preparer competency through outreach and education to preparers before any detection of noncompliance.
3. Requires disclosure of fees charged in connection with the preparation and filing of tax returns and enforce such requirements.
4. Includes a comprehensive public education campaign, particularly to low-income and other taxpayer populations that are vulnerable to unskilled and unethical preparers. Such a campaign should provide information to taxpayers about preparer roles, responsibilities, requirements, and reporting misconduct.
5. Limits access to confidential taxpayer information through online applications to only those preparers over whom the IRS has oversight authority.
6. Routinely tracks preparer noncompliance data by type of designation.
7. Collaborates with TAS in the development of the comprehensive servicewide return preparer strategy.
8. Incorporates service to return preparers into the comprehensive taxpayer service strategy mandated by the Taxpayer First Act, because return preparers are customers of the IRS and important vehicles of taxpayer compliance.

[6-9] The National Taxpayer Advocate recommends that Congress amend Title 31, § 330 of the U.S. Code to authorize the Secretary to establish minimum standards for federal tax return preparers.

IRS NARRATIVE RESPONSE

Return preparers play a critical role in our tax system, preparing 60 percent of all tax returns filed. While the majority of these preparers make good faith efforts to comply with the law and help their clients to do the same, even one unscrupulous preparer can cause significant harm to both taxpayers and the tax system. Our goal at the IRS is to address preparer noncompliance as quickly and efficiently as possible. We employ a multi-faceted and multi-functional approach to support and monitor preparers to ensure the accuracy of the returns they prepare. This includes, but is not limited to, diverse efforts such as criminal investigations and injunctions; visits conducted before, during, and after filing season; correspondence outreach; and other actions. However, our efforts are limited by both our lack of legislative authority to regulate return preparers and our limited resources.

In July 2018, the Treasury Inspector General for Tax Administration (TIGTA) issued a report (Reference Number: 2018-30-042) for an audit conducted to determine whether IRS procedures, guidelines, and policies pertaining to paid preparer misconduct were being effectively administered. TIGTA recommended a more coordinated strategy among the different IRS functions with the

authority to address preparer misconduct. This would allow the IRS to use its available tools more effectively. IRS agreed the Small Business/Self-Employed (SB/SE) Division would lead a cross-functional effort to develop such a strategy. We noted internal collaboration would allow us to leverage our limited resources to make recommendations on a full range of educational, civil, and criminal enforcement actions.

As a result, the Servicewide Preparer Strategy (SWPS) team was formed in May 2018. This team is comprised of representatives from multiple Business Operating Divisions (BODs) and functions, including a participant from the Taxpayer Advocate Service (TAS). The goal of the team is to develop a strategy that:

- Implements a coordinated enterprise approach to resource utilization and the decision-making process;
- Leverages technology and systems;
- Focuses on preparer misconduct through both internal and external outreach and education with taxpayers and the preparer community; and
- Implements Servicewide measures for success.

The SWPS is a multi-prong approach that addresses preparer misconduct, education of preparers and taxpayers, Servicewide collaboration, and resource utilization to improve overall compliance. The draft strategy is currently being vetted with the senior leadership team, with implementation of approved recommendations scheduled to commence in Fiscal Year 2020.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

The IRS's Servicewide Preparer Strategy (SWPS) should provide a consistent and coordinated strategy across the agency. While we were initially concerned that the strategy focuses solely on preparer misconduct, it is our understanding that the IRS Comprehensive Customer Service Strategy includes service to preparers, making coordination of the two strategies crucial.

We continue to recommend that the IRS prominently reference the taxpayer's *right to retain representation* in the SWPS. This reference, ideally in the mission statement, will serve as a reminder to all IRS employees who implement this strategy of the need to protect this fundamental taxpayer right even as they address potential preparer noncompliance.

To reduce taxpayer burden, the SWPS should address preparer incompetence and the lack of transparency in preparer fees. While the preparer and taxpayer outreach and education mentioned by the IRS is important, the IRS should explore other ways it can increase preparer competency within its authority. For example, the strategy could include a goal to increase participation in the Annual Filing Season Program. Further, the IRS should work with the Office of Chief Counsel to determine if it has the authority to impose and enforce fee disclosure requirements on preparers.

Finally, while tracking data on preparer noncompliance by designation would be imprecise due to the reasons cited by the IRS, maintaining and analyzing this data would still prove useful. The IRS

could use this information to identify trends and enable it to provide outreach and education as well as compliance treatments in a more targeted manner.

TAS Recommendation	<p>The National Taxpayer Advocate recommends that the IRS develop a comprehensive servicewide return preparer strategy that:</p> <ul style="list-style-type: none"> [6-1] References the taxpayer's <i>right to retain representation</i> in the mission of the strategy. [6-2] Increases preparer competency through outreach and education to preparers before any detection of noncompliance. [6-3] Requires disclosure of fees charged in connection with the preparation and filing of tax returns and enforce such requirements. [6-4] Includes a comprehensive public education campaign, particularly to low-income and other taxpayer populations that are vulnerable to unskilled and unethical preparers. Such a campaign should provide information to taxpayers about preparer roles, responsibilities, requirements, and reporting misconduct. [6-5] Limits access to confidential taxpayer information through online applications to only those preparers over whom the IRS has oversight authority. [6-6] Routinely tracks preparer noncompliance data by type of designation. [6-7] Collaborates with TAS in the development of the comprehensive servicewide return preparer strategy. [6-8] Incorporates service to return preparers into the comprehensive taxpayer service strategy mandated by the Taxpayer First Act, because return preparers are customers of the IRS and important vehicles of taxpayer compliance.
IRS Response	<p>IRS agrees to implement TAS recommendation in part.</p>

continued on next page

1. The taxpayer's right to retain representation is a fundamental right for all taxpayers under the Taxpayer Bill of Rights; therefore, it is not necessary to address as a separate item in the return preparer strategy.
2. The IRS will continue to address preparer competency. Outreach and education for preparers is ongoing and is provided through various avenues, such as the National Tax Forums, Stakeholder Liaison efforts, meetings with professional associations and various industry stakeholders, webinars, and a wealth of resources on IRS.gov, including a Tax Preparer Toolkit that provides resources and continuing education opportunities for preparers. The IRS also sends eNews articles, Quick Alerts, and social media messages to tax practitioners whenever new tax legislation is passed and implemented. The IRS continually engages with our tax professional partners through the Refundable Credit Summits and the Software Developers Working Group to share information and discuss challenges and lessons learned within the preparer community, with the goal of improving the quality of tax returns filed claiming refundable credits and other benefits. These activities will continue as part of the overall return preparer strategy.
3. The IRS does not have authority to impose or enforce a requirement to disclose fees charged in connection with the preparation and filing of tax returns.
4. Each year, the IRS hosts an annual "EITC Awareness Day," which is a nationwide effort to provide taxpayers more information about the Earned Income Tax Credit (EITC) through traditional and social media channels and to promote use of the EITC Assistant on IRS.gov. The 14th EITC Awareness Day was held on January 31, 2020. Using available communication resources to reach the broadest range of taxpayers, the annual EITC Awareness Day News Release informs the tax community where they can find information regarding the Free-File, Volunteer Income Tax Assistance (VITA), and Tax Counseling for the Elderly (TCE) programs. In addition, news releases inform the tax community how to choose a paid preparer and include instructions on how to report unscrupulous preparers. This information is also available on IRS.gov.
5. The Office of Professional Responsibility's (OPR's) standard operating procedures and electronic case management systems already limit access to confidential taxpayer information to only those preparers over whom the OPR has oversight authority through Circular 230. The future online account application for tax professionals is being evaluated by Online Services (OLS). Discussions regarding implementation and funding are ongoing.
6. The IRS does not track preparer noncompliance data by type of designation for several reasons. The designation in the Preparer Tax Identification Number (PTIN) system is self-reported and not always accurate regarding preparer type. In addition, preparer designations change and expire, and some preparers hold multiple designations. Finally, the IRS has seen no evidence that tracking noncompliance by type of designation will impact overall noncompliance. However, the IRS does analyze preparer data to identify non-compliance and to determine the appropriate enforcement approach.
7. TAS is currently represented on the return preparer strategy team.
8. The IRS is taking a holistic approach to developing the comprehensive taxpayer service strategy mandated by the Taxpayer First Act. This approach includes consideration of tax professionals in their dual roles as customers of IRS services and service providers to their clients (taxpayers). The Taxpayer First Act Office will continue to look for opportunities to grow and strengthen trusted partnerships with the tax professional community and their comprehensive taxpayer service strategy will be detailed in the written report to Congress required by section 1101 of the Taxpayer First Act.

continued on next page

TAS Response	<ol style="list-style-type: none"> 1. We continue to recommend that the IRS prominently reference the taxpayer's <i>right to retain representation</i> in the SWPS. This reference, ideally in the mission statement, will serve as a reminder to all IRS employees who implement this strategy of the need to protect this fundamental taxpayer right even as they address potential preparer noncompliance. 2. While the preparer and taxpayer outreach and education mentioned by the IRS is important, the IRS should explore other ways it can increase preparer competency within its authority. For example, the strategy could include a goal to increase participation in the Annual Filing Season Program. 3. Considering the significant burden imposed on taxpayers by the lack of transparency in fees charged by many preparers, as discussed in the MSP, the IRS should work with the Office of Chief Counsel to determine if it has the authority to impose and enforce fee disclosure requirements on preparers. 4. Based on the IRS response, existing IRS communications, especially those associated with EITC Awareness Day, amount to the recommended comprehensive public education campaign. 5. We look forward to working with OLS as it continues to plan the implementation of the tax professional online application. 6. While data on noncompliance by preparer designation may be imprecise due to the reasons cited by the IRS, maintaining and analyzing this data would still prove useful. Tracking noncompliance by preparer type could identify trends and enable the IRS to provide outreach and education as well as compliance treatments in a more targeted manner. 7. TAS looks forward to continued participation on the SWPS team. 8. Considering the important role preparers play in the tax system, it is crucial that the IRS Comprehensive Customer Service Strategy addresses service to preparers. As a result, coordination of the SWPS with the service strategy is essential.
--------------	---

TAS Recommendation	[6-9] The National Taxpayer Advocate recommends that Congress amend Title 31, § 330 of the U.S. Code to authorize the Secretary to establish minimum standards for federal tax return preparers.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

MSP #7: APPEALS: The Inclusion of Chief Counsel and Compliance Personnel in Taxpayer Conferences Undermines the Independence of the Office of Appeals

PROBLEM

The Office of Appeals' (Appeals) emphasis on including Counsel and Compliance in certain conferences fundamentally alters the role of Appeals and runs counter to the congressional priority of an independent Appeals process. Currently, Appeals is not gathering sufficient quantitative and qualitative data to adequately evaluate the success of a pilot program to study the effects of this inclusion. However, anecdotal reports of tax practitioners participating in the pilot validate the National Taxpayer Advocate's prior reservations about the involvement of Counsel and Compliance in conferences.

ANALYSIS

Appeals is currently in the final year of a pilot program relating to the participation of Counsel and Compliance in Appeals Team Case Leader (ATCL) cases. The involvement of Counsel and Compliance in these cases occurs whether or not taxpayers consent and jeopardizes the independence of Appeals. By definition, Appeals cases arise only when taxpayers and Compliance reach an impasse. Thus, to allow these parties to again make their case in what should be a separate and unbiased proceeding results in the impression, if not the reality, that taxpayers are facing the IRS as an institution. Moreover, Appeals Officers may have difficulty drawing their own independent conclusions at variance with positions advocated by Counsel or Compliance. Some practitioners included in the pilot report chaotic proceedings and a lessening of Appeals' effectiveness. Appeals has issued procedural guidance with respect to pilot cases, but the impact of this guidance remains uncertain. Appeals should gather and consider all available information when assessing the outcome and future of this initiative.

TAS RECOMMENDATIONS

- [7-1] Compile quantitative data regarding the efficiency and outcomes of pilot proceedings and publish that data when the pilot is complete.
- [7-2] Carefully consider and publish the reactions of taxpayers and tax practitioners who participate in the pilot.
- [7-3] Regardless of the pilot's outcome, only include Counsel and Compliance in appeals conferences with taxpayers' consent. To the extent taxpayers do not agree to this participation, offer the parties the possibility of nonbinding mediation as a means of resolving or narrowing their differences through collaborative exploration of factual and legal disputes prior to an appeals conference.

- [7-4] If the participation of Counsel and Compliance continues after the pilot, restrict this participation to ATCL cases, other than in exceptional circumstances.

IRS NARRATIVE RESPONSE

The role of the IRS Independent Office of Appeals is to resolve tax controversies, without litigation, on a basis that is fair and impartial to both taxpayers and the Government and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service. For many years, Appeals Officers have had the discretion to invite Compliance and Counsel to attend the non-settlement discussion portion of certain Appeals conferences. Under the current Appeals Team Case Leaders (ATCL) Conferencing Initiative, Compliance attendance has been made routine in conferences for some of the largest, most complex cases in Appeals. The objective is to help Appeals better understand the relevant facts and law from both the taxpayers' and the Government's perspectives. Importantly, settlement negotiations continue to occur only between the taxpayer and Appeals, without Compliance present (unless the parties agree to mediation). Including Compliance and Counsel in the non-settlement discussions of the largest, most complex cases in Appeals is intended to increase all parties' understanding of the factual and legal issues in dispute, thereby enhancing Appeals' independence in resolving those disputes.

It is important to note that Appeals does not routinely invite Compliance or Counsel to attend conferences. In most instances, an Appeals Officer is able to review the case and negotiate a settlement with the taxpayer without Compliance participation in the Appeals conference.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

Appeals' desire to include Counsel and Compliance in conferences for large cases is understandable given the complexity of such cases, but this practice compromises Appeals' independence and jeopardizes its overall mission. Such participation, regardless of taxpayers' objections, was the focus of a recently concluded three-year pilot study, and TAS applauds Appeals on its commitment to undertake and publish a survey of those involved. However, quantitative data such as cycle times and agreed case percentages would also provide an invaluable tool that all parties could utilize in assessing the fairness and viability of this potential program. TAS is sensitive to the challenges faced by Appeals and is supportive of its role as independent decisionmaker, but we have also received troubling reports from tax practitioners who have been included in the pilot. Appeals should proceed cautiously when considering next steps, including whether the policy should be continued and, if so, limiting it to LB&I cases. Accordingly, we ask that Appeals include TAS in its deliberations as Appeals evaluates the pilot and determines future policy regarding the inclusion of Counsel and Compliance in Appeals conferences.

TAS Recommendation	[7-1] Compile quantitative data regarding the efficiency and outcomes of pilot proceedings and publish that data when the pilot is complete.
IRS Response	IRS does not agree to implement TAS recommendation. Appeals considers qualitative data more informative than quantitative data in evaluating the success of this pilot. The cases involved in the pilot are Appeals' largest and most complex cases, involving unique, varied, and non-homogenous issues. Therefore, an analysis of quantitative data alone is unlikely to inform a conclusion about the success of the pilot. A better evaluation of the pilot is whether the parties to the dispute found the process helpful, and whether the Appeals Officer obtained a better understanding of the substance of the dispute that was useful in formulating a settlement basis with the taxpayer.
IRS Action	N/A
TAS Response	Although qualitative information is important, quantitative data also represents an indispensable resource for evaluating the impact of the pilot on taxpayers.

TAS Recommendation	[7-2] Carefully consider and publish the reactions of taxpayers and tax practitioners who participate in the pilot.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	The IRS Independent Office of Appeals will carefully consider and publish the reactions of taxpayers and tax practitioners who participate in the pilot on the IRS website at www.irs.gov .
TAS Response	TAS applauds Appeals for its commitment to compile and publish the reactions of pilot participants.

TAS Recommendation	[7-3] Regardless of the pilot's outcome, only include Counsel and Compliance in appeals conferences with taxpayers' consent. To the extent taxpayers do not agree to this participation, offer the parties the possibility of nonbinding mediation as a means of resolving or narrowing their differences through collaborative exploration of factual and legal disputes prior to an appeals conference.
IRS Response	IRS does not agree to implement TAS recommendation. The IRS Independent Office of Appeals will make decisions about the participation of Compliance and Counsel at Appeals conferences after the conclusion of the pilot.
IRS Action	N/A
TAS Response	TAS continues to believe that including Counsel and Compliance in Appeals conferences against the wishes of taxpayers compromises Appeals' independence and jeopardizes its mission.

TAS Recommendation	[7-4] If the participation of Counsel and Compliance continues after the pilot, restrict this participation to ATCL cases, other than in exceptional circumstances.
IRS Response	IRS does not agree to implement TAS recommendation. The IRS Independent Office of Appeals will make decisions about the participation of Compliance and Counsel at Appeals conferences after the conclusion of the pilot.
IRS Action	N/A
TAS Response	At a minimum, if the participation of Counsel and Compliance is adopted in the future, it should be limited to large cases under the jurisdiction of LB&I.

MSP #8: MULTILINGUAL NOTICES: The IRS Undermines Taxpayer Rights When It Does Not Provide Notices in Foreign Languages

PROBLEM

Persons with limited English proficiency (LEP) do not speak English as their primary language and have a limited ability to read, speak, write, or understand English. Although Executive Order 13166 requires all federal agencies to develop and implement a system allowing LEP persons to meaningfully access services, LEP taxpayers frequently do not receive IRS notices in their preferred languages, impairing their *right to be informed*. Even when the IRS has a notice already translated into Spanish, taxpayers often have no simple way to request it or notate their accounts to reflect their preference. This resulted, for example, in the IRS sending in Spanish *only one out of almost a million* notices related to renewing Individual Taxpayer Identification Numbers (ITINs) during the most recent fiscal year, 2019. Additionally, the IRS website fails to include notices and information about those notices in languages other than English.

ANALYSIS

The IRS only translates some important statutory notices into Spanish and none into languages other than English or Spanish. Of the five most commonly issued versions of the statutory notice of deficiency, only two are available in Spanish and none in any languages other than English or Spanish. Currently, the IRS has programmed its Individual Master File so Spanish notices are only received if the taxpayer has filed a Form 1040PR, which is used by residents of Puerto Rico in certain limited situations. Using U.S. Census data, TAS Research estimated a benchmark for the percentage of LEP Spanish taxpayers who should receive a notice or letter from the IRS and found that the actual percentage of Spanish notices for four key statutory notices was substantially below this benchmark. While IRS employees can manually generate some notices in Spanish upon request, a taxpayer will only receive these notices if he or she knows to request one. The IRS's Spanish webpage for notices provides only general information about understanding any IRS notice or letter, and when one searches by notice number, the results are in English.

TAS RECOMMENDATIONS

- [8-1] Place a checkbox on Form 1040 to allow taxpayers to choose to receive their notices in Spanish and, as more notices are translated, expand the 1040 checkbox to languages other than Spanish.
- [8-2] Incorporate language information from the ITIN Real Time System in the IRS's account systems so that if a taxpayer files a Form W-7 in Spanish, an indicator is systemically placed on his or her accounts.
- [8-3] Translate into the five most common non-English languages the IRS webpages that correspond to the four notices identified in the MSP (CP 11 – English Math Error on Return – Balance Due; Letter 105C – English Claim Disallowed; Letter 106C – English

Claim Partially Disallowed; Letter 854C – English Penalty Waiver or Abatement Disallowed/Appeals Procedure Explained), along with other IRS webpages that correspond to other statutory notices and taxpayer rights.

- [8-4] Develop a plan to identify additional notices that provide statutory rights and webpages that specifically pertain to those notices to be translated into the top five LEP languages by using the LEP demographics. The plan should include options to create a hyperlink or scannable code on the notices that would direct an LEP taxpayer to a webpage providing alternate language templates of the notice.
- [8-5] Create procedures similar to those used by the SSA to identify taxpayers who may have LEP, instruct employees to ask these taxpayers about language preference, and allow employees to mark a taxpayer's account to reflect this preference.
- [8-6] Place a note on all correspondence providing taxpayers with instructions explaining how to receive their notices in languages other than English.
- [8-7] Expand the LEP indicator and use the indicator to centrally coordinate and record the issuance of notices in languages other than English.

IRS NARRATIVE RESPONSE

The IRS understands the importance of preserving taxpayer rights by communicating with taxpayers who may be underserved or who may have Limited English Proficiency (LEP). The IRS has developed and implemented a system that provides persons with LEP meaningful access to our products and services, consistent with Executive Order 13166 (the Executive Order). The Executive Order requires federal agencies to assess the needs of customers with LEP to determine whether those needs are being met within resource limits. Pursuant to the Executive Order, Policy Statement 22-3 expresses the IRS commitment to serving taxpayers with LEP. The IRM 22.31.1, Multilingual Initiative, IRS Language Services, provides guidelines and procedures for implementing the requirements of the Executive Order.

To ensure compliance with the Executive Order, the IRS periodically develops a Limited-English Proficiency Customer Base Report (CBR). The CBR helps to ensure consistency and uniformity in the scope, quality, and accuracy of the assistance given to LEP taxpayers. The CBR includes data on the number and/or proportion of persons with LEP served or encountered in the eligible service population, the frequency with which persons with LEP come into contact with the program or service, the nature and importance of the program or service provided, and the resources available to provide language services.

The IRS communicates with taxpayers with LEP through multiple channels. We offer a Spanish toll-free telephone line and over-the-phone interpretation in over 350 languages, as well as telecommunications devices for taxpayers who are hearing impaired. Many of the webpages on IRS.gov are available in the five languages most commonly used by LEP taxpayers. In addition, we share various outreach materials in multiple languages, including videos and social media. The IRS

has designated Spanish as a frequently encountered language and approximately 67 tax products are available in Spanish. Approximately 192 notices and letters are available in Spanish.

To further expand our multilingual services to meet our mission of helping America’s taxpayers to understand and meet their tax responsibilities, the IRS is working to develop and implement an Enterprise Multilingual Improvement Strategy. The strategy includes gathering data through various channels involving taxpayers, community organizations, and other stakeholders. As part of that process, we will specifically consider the notices provided in languages other than English in terms of types of notices, taxpayer preference, delivery of notices, and other potential functionality.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

Since the MSP was published, the IRS is moving forward with a number of new initiatives addressing TAS’s concerns about multilingual notices. The IRS is implementing practices that meet the intent and goals of TAS’s recommendations. TAS is currently serving on the IRS’s Language Services Executive Advisory Council (LSEAC), which has highlighted several very positive developments. The IRS is moving towards developing a Schedule LEP for taxpayers to use for indicating a language preference when filing their returns and a multilingual insert that could be placed in the ten most issued notices. TAS welcomes the IRS’s development of these and other initiatives to ensure notices that provide or fulfill key statutory rights are available in languages other than English and taxpayers have a simple way to request the alternative language notices.

TAS Recommendation	[8-1] Place a checkbox on Form 1040 to allow taxpayers to choose to receive their notices in Spanish and, as more notices are translated, expand the 1040 checkbox to languages other than Spanish.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	As part of development of the IRS Enterprise Multilingual Strategy, the IRS is assessing the concept of gathering language preference information from taxpayers to help improve the experience for taxpayers with LEP. The manner in which taxpayers elect their preference is yet to be determined.
TAS Response	The development of a Schedule LEP, attached to the Form 1040, indicating language preference for notices, would aid in informing taxpayers and would be a useful tool toward compliance.

TAS Recommendation	[8-2] Incorporate language information from the ITIN Real Time System in the IRS’s account systems so that if a taxpayer files a Form W-7 in Spanish, an indicator is systemically placed on his or her accounts.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	As part the development of the IRS Enterprise Multilingual Strategy, the IRS is considering options for capturing taxpayers language preferences and indicating that preference on the taxpayer’s account. Currently, if the taxpayer submits a Form W-7(SP), the account is noted and the ITIN assignment or renewal notice will generate in Spanish. Expansion to other forms is yet to be determined.
TAS Response	Currently, the language preference captured in the ITIN Real Time System is only applied to ITIN notices, despite other information from the ITIN Real Time System, such as address, being updated in other IRS systems. As the IRS’s Enterprise Multilingual Strategy is rolled out, we recommend the language preference in the ITIN Real Time System be shared with other systems and applied to additional notices.
TAS Recommendation	[8-3] Translate into the five most common non-English languages the IRS webpages that correspond to the four notices identified in the MSP (CP 11 – English Math Error on Return – Balance Due; Letter 105C – English Claim Disallowed; Letter 106C – English Claim Partially Disallowed; Letter 854C – English Penalty Waiver or Abatement Disallowed/ Appeals Procedure Explained), along with other IRS webpages that correspond to other statutory notices and taxpayer rights.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	As part of development of the IRS Enterprise Multilingual Strategy, the IRS is studying the translation of additional IRS webpages. The specific webpages to be translated, and the languages to be provided, are yet to be determined.
TAS Response	Translation of additional webpages would be beneficial to informing taxpayers of their rights. The IRS’s commitment to providing multilingual information should include prioritizing the translation of the four webpages that TAS identified above in section 8.3, relating to key statutory notices.

TAS Recommendation	[8-4] Develop a plan to identify additional notices that provide statutory rights and webpages that specifically pertain to those notices to be translated into the top five LEP languages by using the LEP demographics. The plan should include options to create a hyperlink or scannable code on the notices that would direct an LEP taxpayer to a webpage providing alternate language templates of the notice.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	As part of the development of the IRS Enterprise Multilingual Strategy, the IRS is developing a plan to identify additional notices to be translated. The specific notices and features to be added are yet to be determined.
TAS Response	As the development of the IRS Enterprise Multilingual Strategy is visualized, we are excited about working with the IRS to translate additional notices and provide features making it easier for taxpayers requesting notices in languages other than English.

TAS Recommendation	[8-5] Create procedures similar to those used by the SSA to identify taxpayers who may have LEP, instruct employees to ask these taxpayers about language preference, and allow employees to mark a taxpayer's account to reflect this preference.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	As part the Enterprise Multilingual Strategy development activities, the IRS is considering options for capturing a taxpayer's language preferences and placing that information on the taxpayer's account. The specific methods for doing so are yet to be determined.
TAS Response	The IRS's plans to capture taxpayer language preference through employee contacts will benefit taxpayers. We recommend the IRS consider reviewing the practices of other agencies, such as the Social Security Administration.

TAS Recommendation	[8-6] Place a note on all correspondence providing taxpayers with instructions explaining how to receive their notices in languages other than English.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	As part of developing the IRS Enterprise Multilingual Strategy, the IRS is assessing the concept of gathering language preference information from taxpayers to help improve the experience for LEP taxpayers. The way in which we communicate instructions to taxpayer is still to be determined.
TAS Response	Including a multilingual insert in the top ten notices is a positive step toward the recommendation. However, we request the IRS provide a website address on all taxpayer notices referencing instructions to solicit notices in other languages.

TAS Recommendation	[8-7] Expand the LEP indicator and use the indicator to centrally coordinate and record the issuance of notices in languages other than English.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	As part of the Enterprise Multilingual Strategy development activities, the IRS is studying options to capture a taxpayer’s language preferences and indicate those preferences on the taxpayer’s account. The IRS will also explore how best to generate notices in the taxpayer’s preferred language. The ways in which this information will be used to issue notices and the languages in which those notices will be provided are yet to be determined.
TAS Response	TAS will continue to work with the IRS on language preference options for taxpayers’ accounts for the purpose of generating notices in their chosen language.

MSP #9: COMBINATION LETTERS: Combination Letters May Confuse Taxpayers and Undermine Taxpayer Rights

PROBLEM

The IRS uses the Combination Letter, which combines the Initial Contact Letter and the 30-Day Letter, in hundreds of thousands of correspondence audits. In fiscal years (FYs) 2015 to 2019, the IRS used the Combination Letter in approximately 16 percent, or about 500,000, audits. When the IRS combines two letters with very different functions, taxpayers may experience:

- Insufficient time to provide necessary documentation and resolve questionable items;
- Confusion because the inclusion of the audit report in the initial contact gives the appearance that the result of the audit is a foregone conclusion;
- Insufficient understanding of their right to appeal and the related timeframe; and
- A lower likelihood of responding to the letter as compared to taxpayers who received two separate letters.

Despite the problems Combination Letters create for taxpayers, the IRS Wage and Investment Division has plans to expand its use of the letters.

ANALYSIS

In the two-letter process, the IRS mails an Initial Contact Letter to taxpayers at the beginning of the examination to inform them that their return has been selected for examination, to specify the items under examination, and to request documentation to verify the items the IRS is examining. This letter allows taxpayers 30 days to provide support for the examined items. The 30-Day Letter is generally sent to taxpayers to communicate the audit adjustments after the IRS has considered any information that the taxpayers provided, and gives taxpayers 30 days to provide additional documentation, rebut the audit adjustments, or request an appeal of the audit adjustments prior to paying any additional tax due.

The IRS uses Combination Letters to save employee resources and reduce case cycle times (though the IRS does not have statistics to prove this) in cases where it believes the taxpayer is definitely in the wrong. The Combination Letter shortens the timeframe for taxpayers to resolve problems compared to the two-letter process, which can create several problems for taxpayers:

- (1) Taxpayers may miss deadlines to provide documentation or request an appeals conference.
- (2) Taxpayers may be confused and not respond to the IRS, because the audit report enclosed with the Combination Letter gives the appearance that the audit result is a foregone conclusion. Neither the audit report nor the Combination Letter indicate that the adjustments on the enclosed audit report are tentative. Our data found that the non-response rate for taxpayers who receive a Combination Letter was, on average, 29 percentage points higher than taxpayers who received the Initial Contact and 30-Day letters.

(3) Combination Letters simultaneously tell taxpayers that they are under audit and that they can request an administrative appeal of a determination that the IRS has not yet made. While providing documentation and requesting an appeal is not an either/or situation, the design of the Combination Letter gives the appearance that taxpayers must make a choice between these two options. Regardless, to retain their right to an appeal, taxpayers must request an appeal within 30 days of the letter date, even if they are simultaneously working with the IRS to resolve the underlying issues, meaning the appeal may be premature or moot, which wastes taxpayer and IRS employee time and resources.

TAS RECOMMENDATIONS

- [9-1] Discontinue the use of Combination Letters and provide all taxpayers undergoing an examination with a separate Initial Contact Letter and 30-Day Letter, providing taxpayers with sufficient time to submit documentation and explanations before issuing the 30-Day Letter.
- [9-2] If the IRS chooses not to discontinue use of Combination Letters, it should work with the Taxpayer Advocate Service (TAS) on a joint study to track and compare Combination Letter data with Initial Contact Letter data to identify the causes of significant discrepancies between the two populations, as well as analyze potential issues and areas for improvement.
- [9-3] Refrain from expanding the use of Combination Letters until research is conducted on the impact to taxpayers and the IRS.
- [9-4] If the IRS continues to use Combination Letters, work with TAS to redesign them to clearly communicate to taxpayers:
 - a. Their tax return is under examination;
 - b. The possible outcomes of the audit, including what happens if the taxpayer provides documentation the IRS deems inadequate;
 - c. The timeframe in which they have to request an appeal and the factors that impact this timeframe; and
 - d. The steps they must take to request an appeal.
- [9-5] Revise IRS Publication 3498-A, The Examination Process (Audits by Mail), to include guidance specific to the Combination Letter.

IRS NARRATIVE RESPONSE

The Combination Letter combines the Initial Contact Letter and the 30-Day Letter into a single letter. While the IRS generally uses a two-letter process for most of its examinations, it began using Combination Letters in 1999 to shorten the timeframe for certain correspondence examinations and to maximize employee resources. Currently, the IRS sends Combination Letters for examinations where the taxpayer was previously contacted by the IRS and subsequently selected for examination. The IRS also uses Combination Letters when it can clearly determine the taxpayer is not entitled to credits claimed on a tax return, there is a clear mathematical computation error on the tax return, or if the return includes an item that is clearly unallowable. We regularly review our programs and analyze available data to make necessary improvements or operational efficiencies, as warranted.

The National Taxpayer Advocate (NTA) is concerned that in the Combination Letter process, the letter date not only starts the 30-day timeframe in which the taxpayer must respond and provide substantiation for examined items, but also starts the clock on the taxpayer's 30-day window to request an appeal. This is incorrect; the Combination Letter does not limit the taxpayer to a single 30-day period to provide documentation. The time the taxpayer has to respond depends on how responsive the taxpayer has been to the initial letter. Internal Revenue Manual (IRM) 4.19.13.10.1 provides the various scenarios for working taxpayers' responses. There is opportunity for the taxpayer to negotiate a mutually acceptable date by which the taxpayer will send the additional documentation which may extend beyond the initial 30 days provided in the original Combination Letter.

Enclosed with the Combination Letter is an audit report showing the items in question as disallowed. With respect to this MSP #9, the NTA's Annual Report to Congress states: "neither the audit report nor the Combination Letter indicate that the adjustments on the enclosed audit report are tentative." The letter indicates the report changes are proposed. In addition, the letter also indicates the taxpayer can submit information and exercise their appeal rights.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

The IRS's commitment to refrain from expanding the use of Combination Letters pending further study as indicated in its response to TAS recommendations 9-2 and 9-3 below, is consistent with its desire to better understand the customer experience. We look forward to participating in and being a team member on the Combination Letters Study. The study's goal is to understand the impact these letters have on the taxpayers' experience and their understanding of their options and rights and to make any necessary changes to the text of the letters.

TAS Recommendation	[9-1] Discontinue the use of Combination Letters and provide all taxpayers undergoing an examination with a separate Initial Contact Letter and 30-Day Letter, providing taxpayers with sufficient time to submit documentation and explanations before issuing the 30-Day Letter.
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>The IRS has previously acted to reduce the use of the Combination Letters. We use Combination Letters on a small percentage of cases in correspondence examinations, and only when the IRS already has internal information that supports the issues or evidence of prior IRS contact on the same issue. The taxpayer has the opportunity to dispute the facts and provide supporting or correcting documentation.</p>
IRS Action	N/A
TAS Response	TAS welcomes the IRS's upcoming Combination Letter study and our joint participation toward improving taxpayer communication.

TAS Recommendation	[9-2] If the IRS chooses not to discontinue use of Combination Letters, it should work with the Taxpayer Advocate Service (TAS) on a joint study to track and compare Combination Letter data with Initial Contact Letter data to identify the causes of significant discrepancies between the two populations, as well as analyze potential issues and areas for improvement.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	The IRS agrees on the importance of better understanding the customer experience. We will work with the Wage & Investment (W&I) Division Lean Six Sigma staff to identify potential areas for improvement. The Taxpayer Advocate Service (TAS) will be included on the team conducting the study.
TAS Response	TAS looks forward to working with the W&I Division Lean Six Sigma staff to identify potential areas for improvement. A key element of the study should include data measuring the actual impact Combination Letters have on taxpayer rights, IRS resources, taxpayer responsiveness, and the exercise of appeal rights.

TAS Recommendation	[9-3] Refrain from expanding the use of Combination Letters until research is conducted on the impact to taxpayers and the IRS.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	We will refrain from expanding the use of Combination Letters to any new workstreams until the completion of the Lean Six Sigma Study noted in the IRS Response to Recommendation #9-2 is complete.
TAS Response	TAS appreciates IRS's commitment to refrain from expanding the use of the Combination Letter to new workstreams until the Lean Six Sigma Study has been completed.

TAS Recommendation	<p>[9-4] If the IRS continues to use Combination Letters, work with TAS to redesign them to clearly communicate to taxpayers:</p> <ul style="list-style-type: none"> a. Their tax return is under examination; b. The possible outcomes of the audit, including what happens if the taxpayer provides documentation the IRS deems inadequate; c. The timeframe in which they have to request an appeal and the factors that impact this timeframe; and d. The steps they must take to request an appeal.
IRS Response	IRS agrees to implement TAS recommendation in part.
IRS Action	We continuously look for opportunities to simplify and improve the clarity of notices and other communications to taxpayers. We will use the information from the study noted above in response to Recommendation #9-2 to determine if changes are necessary to the Combination Letters. The specifics of those changes are yet to be determined.
TAS Response	TAS welcomes IRS's decision to utilize the Lean Six Sigma study findings as a basis for determining necessary Combination Letter revisions.

TAS Recommendation	<p>[9-5] Revise IRS Publication 3498-A, The Examination Process (Audits by Mail), to include guidance specific to the Combination Letter.</p>
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>Publication 3498-A generally guides taxpayers through the audit process and explains their responsibilities and rights during and after an audit. The Publication does not list or provide information on specific letters, as there are numerous letters that are issued by the various examination functions in the IRS. Rather, each letter speaks to what actions need to be taken regarding the letter sent. Repeating information specific to a single letter in a publication for all letters issued by examination functions may be more confusing to taxpayers. However, we will evaluate the results of the study noted above in the IRS Response to Recommendation #9-2 to determine ways to improve our communications with taxpayers.</p>
IRS Action	<p>N/A</p>
TAS Response	<p>We acknowledge that it may not be possible or necessary for Publication 3498-A to specifically address the numerous letters issued by the various examination functions in the IRS. We are optimistic that the IRS and TAS will come to an agreement on revised Combination Letter language.</p>

MSP #10: OFFER IN COMPROMISE: The IRS's Administration of the Offer in Compromise Program Falls Short of Congress's Expectations

PROBLEM

When Congress granted the IRS broad authority to use offers in compromise (OICs) to accept less than the full amount due for some taxpayers, it urged the IRS to educate the public about OICs and adopt a liberal acceptance policy to provide an incentive for taxpayers to continue to file tax returns and pay their taxes. Both taxpayers and the IRS benefit when the IRS accepts an OIC; however, TAS research studies have shown that in 40 percent of returned and rejected OICs, the IRS never collects the amount offered by the taxpayer, much less the reasonable collection potential (RCP) it calculated. The National Taxpayer Advocate remains concerned that the IRS's administration of the OIC program falls short of Congress's expectations because the IRS oftentimes estimates a higher collection potential than the amount a taxpayer offers to compromise the liability, but then never collects that amount, rejecting viable OICs it could accept; the IRS generally fails to consider the effect of bankruptcy when considering an OIC; and the IRS is sending more accounts to its Automated Collection System (ACS) and private collection agencies (PCAs) resulting in less communication with taxpayers about OICs.

ANALYSIS

The IRS will generally accept an OIC if the amount offered reflects the taxpayer's RCP. In a 2017 study of OICs submitted by individuals, TAS concluded that: the IRS never collected the amount offered in 40 percent of the returned and rejected OICs; for rejected OICs, the IRS's calculation of an individual taxpayer's RCP was over 15 times the amount offered but over 40 times the amount actually collected; and taxpayers with accepted OICs have higher rates of future filing and payment compliance. This year, TAS reviewed 250 cases from the 2017 study and found that in 68 percent of the cases reviewed, rejection of the offer was based solely on future income. TAS also reviewed the status of the accounts after rejection and found that although the IRS assigned 82 percent of the accounts to ACS or field collection, as of the end of fiscal year (FY) 2019, the IRS was not able to collect even the amount offered in 65 percent of these cases. Furthermore, as of the end of FY 2019, 50 percent of the taxpayer accounts related to these 250 OICs either remained in the Queue, Currently Not Collectible (CNC) status, or the collection statute expired. TAS also reviewed the status of the 14,420 rejected OICs from the 2017 study where the amount offered exceeded the amount collected and determined that 13 percent of those taxpayers later declared bankruptcy.

Despite rejecting some potentially viable OICs, the IRS OIC program collects approximately 12.5 percent of the liability on accepted OICs. The IRS generally collects on delinquent accounts by assigning inventory to revenue officers and ACS. In FY 2019, 81 percent of collection inventory was assigned to ACS. When ACS cannot resolve the liability, it will either place taxpayers in CNC or shelved status. The delinquent tax dollars in the IRS's shelved inventory has increased 244 percent since 2015, and in FY 2019, 47 percent were later sent to PCAs, who do not have the ability to compromise the liability. In FY 2018, 51 percent of the IRS's aggregate collection revenues were obtained through its notice stream. Before shelving cases or assigning cases to PCAs, the

IRS could be contacting these taxpayers with targeted educational notices about the benefits of the OIC program. This would be consistent with Congressional intent and the IRS's policy to educate taxpayers about the OIC program.

TAS RECOMMENDATIONS

- [10-1] Conduct a follow-up study evaluating a statistically-valid sample of rejected OICs to determine the accuracy of future income calculations and why the IRS is not collecting the RCP.
- [10-2] Review rejected OICs where taxpayers later declared bankruptcy and determine whether the policy should be revised to consider the effect of a potential bankruptcy on the RCP on all OICs rather than only those where the taxpayer threatens bankruptcy.
- [10-3] Work with the National Taxpayer Advocate to develop a pilot program where the IRS sends informative, educational letters about the OIC program to taxpayers in CNC or shelved status.

IRS NARRATIVE RESPONSE

In recent years, we have taken many steps to improve and promote the Offer in Compromise (OIC) program. In 2010, we piloted Fresh Start procedures and formalized them in 2012. The new procedures allowed for additional exemption amounts and reduced the future income multipliers used to calculate reasonable collection potential (RCP). Since these changes, the OIC acceptance rate has increased ten percentage points from 27 percent in Fiscal Year (FY) 2010 to 37 percent in FY 2019. In 2013, we introduced the Offer in Compromise Pre-Qualifier tool on IRS.gov which allows a taxpayer to determine if they are a candidate for an OIC and calculates a potential offer amount. We have found that taxpayers who use the tool generally have a higher acceptance rate than those who do not. These changes have broadened access to the program and have allowed taxpayers to determine if they are a candidate, before submitting paperwork and paying fees.

When an OIC is rejected, we recognize that we will not collect the RCP or the taxpayer's offered amount in every case. This is the nature of a settlement program. The RCP calculation we complete represents the taxpayer's collection "potential." Absent special circumstances, if a taxpayer can fully pay their liability, or does not offer the RCP, then they are not a candidate for an OIC. We believe the current policies and resulting acceptance rates are good not only for revenue but for taxpayer compliance overall.

The Taxpayer Advocate Service (TAS) study referenced in TAS's discussion of this Most Serious Problem included OICs processed from 2009 to 2013. Our FY 2019 OIC internal program reviews did not indicate an issue with the future income calculation or the application of the Allowable Living Expenses (ALEs). However, in response to the National Taxpayer Advocate's 2018 Annual Report to Congress, we issued a memorandum to OIC employees in September 2019 reminding them that there is flexibility when applying ALEs. In our FY 2020 OIC program reviews, we will continue to verify this is understood.

Over the past 15 years, we have conducted three studies and invested significant resources reaching out to taxpayers in a currently not collectible status to educate them as to the OIC process. Each study resulted in a low response rate from contacted taxpayers, and we do not believe another study is worthwhile. As an alternative, in 2016, we added an OIC reference to balance due notices (CP501, CP503, CP504, and C504B) to reach taxpayers and provide information about the OIC program early in the process.

We appreciate your continued support and insight as we strive to further strengthen our OIC program. Below is a detailed response to your recommendations.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

We look forward to our continued dialogue on the OIC program and the protection of taxpayers’ rights.

TAS Recommendation	[10-1] Conduct a follow-up study evaluating a statistically-valid sample of rejected OICs to determine the accuracy of future income calculations and why the IRS is not collecting the RCP.
IRS Response	<p>IRS does not agree to implement TAS recommendation.</p> <p>A 2018 IRS study found that revenue collection exceeded the amount originally offered in 71 percent of cash offers and 66 percent of deferred offers that were not accepted. Additionally, the FY 2019 offer acceptance rate climbed to 69 percent when removing those cases where the information the taxpayer provided did not allow us to make a collectability determination (acceptances/acceptances + rejections).</p> <p>When an OIC is rejected, we recognize that we will not collect the RCP or the taxpayer’s offered amount in every case. This is the nature of a settlement program. We believe the current policies and resulting acceptance rates are good not only for revenue but for taxpayer compliance overall.</p>
IRS Action	N/A
TAS Response	The 2018 IRS study shows that the IRS’s RCP computation does not represent what the IRS will eventually collect in a little less than one-third of rejected OICs. This number is too large to be part of the “nature of a settlement program.” Moreover, there is a financial cost to the IRS for keeping cases in CNC status or the Queue, and an unrealistic RCP formula erodes the taxpayer’s <i>right to finality</i> .

TAS Recommendation	[10-2] Review rejected OICs where taxpayers later declared bankruptcy and determine whether the policy should be revised to consider the effect of a potential bankruptcy on the RCP on all OICs rather than only those where the taxpayer threatens bankruptcy.
IRS Response	IRS agrees to implement TAS recommendation in full.
IRS Action	We will review a sample of rejected OICs where taxpayers later declared bankruptcy and determine whether the existing policy should be revised to consider the effect of a potential bankruptcy on the RCP on OICs other than those where the taxpayer indicates he or she may file for bankruptcy.
TAS Response	We welcome the implementation of this recommendation and the ability to analyze the review's results for situations involving rejected OICs where the taxpayers subsequently declared bankruptcy.

TAS Recommendation	[10-3] Work with the National Taxpayer Advocate to develop a pilot program where the IRS sends informative, educational letters about the OIC program to taxpayers in CNC or shelved status.
IRS Response	IRS does not agree to implement TAS recommendation. As noted above, we have previously conducted three studies and invested significant resources reaching out to taxpayers to educate them on the OIC process, and all of them resulted in low response rates. It is possible there is little incentive for a taxpayer in a currently not collectible or shelved status to file an OIC, that many taxpayers with liabilities do not open letters from IRS, and that taxpayers may not have funds to make an offer or family or friends who are willing to lend them money for an offer. We include information about the OIC program in various billing notices to provide information on OICs early in the process, and we continue to promote the program through a variety of channels.
IRS Action	N/A
TAS Response	We continue to believe that targeted communication will help taxpayers use the OIC program more effectively. The IRS's increased OIC program communication on additional taxpayer notices is a benefit to informing taxpayers.

STATUS UPDATE #1:**PRIVATE DEBT COLLECTION: Forthcoming Changes to the Private Debt Collection Program Will Better Protect Low-Income Taxpayers and Achieve a Program That More Appropriately Respects Taxpayer Rights**

PROBLEM

The IRS began assigning accounts to private collection agencies (PCAs) in 2017 after the passage of the Fixing America's Surface Transportation Act in 2015. Although some positive changes to the program will take effect on January 1, 2021, concerns remain: taxpayers who are likely experiencing financial hardship and who had their accounts assigned to a PCA prior to that date will have their accounts remain in PCA inventory; recent assignment of Business Master File (BMF) cases to PCAs adds more complexity to their inventory; accounts that are assigned to PCAs are more likely to linger in inventory without any progress toward resolution; and a new direct debit payment option increases the risk that taxpayers will be subject to scammers mimicking the PCAs.

ANALYSIS

The Taxpayer First Act requires that, beginning on January 1, 2021, the IRS excludes from assignment to PCAs those accounts where (1) substantially all of a taxpayer's income is attributable to Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI); and (2) a taxpayer's adjusted gross income is at or below 200 percent of the Federal Poverty Level. However, the accounts of taxpayers who fall into one of these categories but were assigned to a PCA prior to 2021 will remain in PCA inventory beyond that date. Further, beginning August 2019, the IRS began assigning BMF accounts to PCAs. BMF accounts are generally older than individual accounts assigned to PCAs, making them more difficult to collect on than individual accounts. Adding even more complex accounts to PCA inventory seems unwise considering about 80 percent of the individual accounts assigned to PCAs from the inception of the PDC program through September 12, 2019 have stayed in inventory three months or more without the PCAs receiving any payments or organizing any installment agreements. Finally, a new direct debit payment option makes it more difficult for taxpayers to distinguish between a legitimate PCA employee and an imposter attempting to secure financial information for nefarious purposes.

TAS RECOMMENDATIONS

- [SU 1-1] Begin immediately excluding from PCA inventory, accounts of taxpayers who have adjusted gross income at or below 200 percent of the FPL, or receive SSI or SSDI, and recall from PCAs cases that currently reside in their inventory and fall into one of these two categories.

- [SU 1-2] Not assign a BMF employment tax account to a PCA if a corresponding account with a trust fund recovery penalty resides with the IRS.

[SU 1-3] Reinstate the requirement from the IRS's first PDC program requiring PCAs to return accounts to the IRS when a satisfactory payment plan or full payment has not been established within 12 months from the date the account was assigned to the PCA.

[SU 1-4] Conduct a public outreach campaign informing taxpayers that PCAs will require a signed authorization form prior to accepting direct debit payments.

IRS NARRATIVE RESPONSE

From the beginning of the Private Debt Collection (PDC) program, the IRS's approach to implementation has been to closely follow the law as to which cases are assigned to the private collection agencies (PCAs), as well as which cases are excluded from the program. In July 2019, the Taxpayer First Act was signed into law, amending the criteria for cases eligible for collection by a PCA. This change specifically applies to tax receivables identified after December 31, 2020. The IRS is working to timely implement the new eligibility criteria to exclude taxpayers identified after December 31, 2020, whose adjusted gross income does not exceed 200 percent of the poverty level or who receive Supplemental Security Income. We have already implemented programming to systemically exclude and recall cases involving recipients of Social Security Disability Insurance.

The IRS is also exploring the development of a retention period to outline how long a PCA can retain an account where no resolution has been reached. We will review current program data and take the prior PDC program's account retention policy into consideration when determining whether a retention period is appropriate.

We will continue to partner with stakeholders and will revise processes when appropriate, to ensure the law is implemented as intended, taxpayer rights are protected, and taxpayers' sensitive information is safeguarded.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

TAS looks forward to continuing to work with the IRS to ensure that the rights of all taxpayers whose accounts are assigned to PCAs are being appropriately observed. The IRS has begun implementing the provisions of the Taxpayer First Act that affect the PDC program, and on February 5, 2020, it began recalling from PCAs and excluding from future assignment to PCAs accounts of taxpayers who receive SSDI. When implementing the other TFA provisions, TAS will continue to advocate that the IRS consult third-party information such as W-2s and 1099s to determine if a taxpayer's AGI is at or below 200 percent Federal Poverty Level when a recent return is not available.³ Further, in the event the IRS is unable to secure information from SSA to identify taxpayers who receive SSI benefits, TAS will work with the IRS to explore solutions, such as recommending that Congress require SSA, through legislation to share such information with the IRS.⁴ In addition to working with the IRS to ensure the TFA provisions are properly implemented, TAS will continue to advocate that PCAs return taxpayer accounts after they have remained in

3 Systemic Advocacy Objective: *Putting Taxpayers First, Improving Taxpayer Service, and Supporting the Development of a Comprehensive Customer Service Strategy and Related Plans to Implement the Taxpayer First Act, supra.*

4 *Id.*

PCA inventory for a period of time without any resolution. Unfortunately, the IRS did not respond to recommendations 1-2 and 1-4. However, TAS will continue to advocate that the IRS retain and not refer to PCAs BMF accounts where there is an employment tax liability, if the IRS has a corresponding account with a trust fund recovery penalty, and that it develop and implement a comprehensive outreach plan that fully informs taxpayers as to the risks, benefits and processes when making direct debit payments on an outstanding liability when the account is in PCA inventory. Adoption of these recommendations would result in a program that more fully observes taxpayer rights, specifically the *right to quality service* and the *right to be informed*.

TAS Recommendation	[SU 1-1] Begin immediately excluding from PCA inventory, accounts of taxpayers who have AGI at or below 200 percent of the FPL, or receive SSI or SSDI, and recall from PCAs cases that currently reside in their inventory and fall into one of these two categories.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	TAS will continue to advocate that the provisions of the Taxpayer First Act, excluding certain types of taxpayer accounts from PCA assignment, namely those taxpayers whose AGI is at or below 200 percent Federal Poverty Level or who receive SSI or SSDI benefits, be implemented as swiftly as possible. Specifically, TAS will continue to encourage the IRS to reach an agreement with SSA, allowing it to provide the IRS with data regarding SSI recipients, and to act quickly to adopt an approach for identifying taxpayers who have AGI at or below 200 percent Federal Poverty Level. TAS will continue to advocate for this approach to consider third-party information the IRS has in its possession, such as W-2s and 1099s, to determine if a taxpayer's AGI is at or below 200 percent Federal Poverty Level when no recent returns have been filed. These advocacy efforts will ensure that all taxpayers who are likely experiencing a financial hardship are excluded from PCA assignment and protected from PCA attempts to collect on outstanding liabilities, which taxpayers may feel obliged to comply with, despite their financial circumstances.

TAS Recommendation	[SU 1-2] Not assign a BMF employment tax account to a PCA if a corresponding account with a trust fund recovery penalty resides with the IRS.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	The IRS's narrative does not address the recommendation set forth in recommendation 1-2.

TAS Recommendation	[SU 1-3] Reinstate the requirement from the IRS's first PDC program requiring PCAs to return accounts to the IRS when a satisfactory payment plan or full payment has not been established within 12 months from the date the account was assigned to the PCA.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	TAS will continue to work with the IRS to define the retention period in which taxpayer accounts will be returned to the IRS when the PCAs have been unable to make any progress toward resolving the outstanding liability.

TAS Recommendation	[SU 1-4] Conduct a public outreach campaign informing taxpayers that PCAs will require a signed authorization form prior to accepting direct debit payments.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	The IRS's narrative does not address the recommendation set forth in Recommendation 1-4.

**STATUS UPDATE #2:
AUTOMATED SUBSTITUTE FOR RETURN: The IRS Has Revised the Selection
Criteria for Its Reinstated Automated Substitute for Return Program, But Some
Concerns Remain Unaddressed**

PROBLEM

The Automated Substitute for Return (ASFR) program assists the IRS in enforcing filing compliance for taxpayers who have not filed individual income tax returns but appear to owe a tax liability. In the National Taxpayer Advocate's 2015 Annual Report to Congress, we noted that the ASFR program yielded a poor return on investment, as the IRS collected less than one third of the amount assessed, and it abated 29 percent of all ASFR assessments. TAS found that the criteria used to select cases for the ASFR program and determine liabilities were deficient, imposing undue burden on taxpayers and creating rework for the IRS. Citing resource constraints, the IRS temporarily suspended the ASFR program in 2015, but resumed selecting cases for the ASFR program on May 21, 2019.

ANALYSIS

After suspending the ASFR program for nearly four years, the IRS has reinstated the ASFR program in 2019, with two significant changes in how it selects cases. It has adopted our recommendation to consider third-party documentation and the prior filing history of taxpayers when determining which cases to select for the ASFR program. By including this information in the selection algorithm, the IRS will minimize the number of abatements, reducing both IRS rework and taxpayer burden.

To date, however, the IRS has declined to refine the ASFR abatement reason codes, making it difficult to pinpoint which business rules are most responsible for the program's inaccurate results. Without more knowledge about the source of the inaccurate results, the ASFR program will continue to impose undue burden on taxpayers and require the IRS to expend its limited resources to correct errors and abate tax.

TAS RECOMMENDATIONS

[SU 2-1] Refine ASFR abatement reason codes, making them specific enough to identify which factors contributed to the abatement.

IRS NARRATIVE RESPONSE

The Automated Substitute for Return (ASFR) program is an important component of our collection strategy to promote filing compliance, and provides a good return on investment. In Fiscal Year 2019, the ASFR program collected \$87.5 million (or \$1.5 million per direct full time equivalent employee).

We are working to refine the selection algorithm we use to select cases for the program, and are testing the inclusion of certain third-party documentation and the taxpayer's prior filing history in that process. However, there are limits to what we can do in this area as the IRS is prohibited from including exemptions and itemized deductions when it prepares substitute for return assessments.

The Tax Cuts and Jobs Act eliminated the reporting of exemptions and is also expected to reduce the number of taxpayers who itemize deductions. This will allow ASFR assessments to more accurately reflect what taxpayers would file and claim. As a result, we expect that adjustments on future ASFR assessments will be smaller. It is worth noting, however, that it is neither unusual nor undesirable for ASFR cases to have a high adjustment rate. Adjustments indicate taxpayers have filed their delinquent returns and have become compliant with their filing requirement. Reason codes are used to create informative letter paragraphs for our taxpayers, explaining the actions the IRS performed on their accounts. We use reason codes to help taxpayers fully understand the adjustment, not to provide data points for research; therefore, we have no plans to make them more specific as TAS recommends.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

TAS agrees that it is not worth creating reason codes unless they would result in tangible benefits. We also understand that the IRS’s resources are limited. However, this recommendation could save resources in the long run and seems consistent with the IRS’s commitment to taxpayer rights. By using more specific reason codes, the IRS could create more informative letters that would better help taxpayers understand the actions performed on their accounts, which is consistent with the *right to be informed*. More informative letters could also reduce calls, which would save IRS resources.

In addition, if the IRS better understood the reasons for abatements, it could use that information to make adjustments to the ASFR program that would improve the accuracy of its assessments. Improving the accuracy of assessments is consistent with the *right to pay no more than the correct amount of tax*, the *right to privacy* (*i.e.*, to expect that any IRS inquiry will be no more intrusive than necessary), and with the *right to a fair and just tax system*.

TAS Recommendation	[SU 2-1] Refine ASFR abatement reason codes, making them specific enough to identify which factors contributed to the abatement.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	TAS understands that the IRS’s resources are limited, and we agree that it is not judicious creating reason codes unless they result in tangible benefits. However, this recommendation would save resources in the long run and is consistent with the IRS’s commitment to taxpayer rights. Using more specific reason codes, the IRS could create simplified and salient informative letters to help taxpayers understand the actions performed on their accounts, which is consistent with the <i>right to be informed</i> . Simplified and salient letters would improve the taxpayer’s experience and could reduce calls, which would save IRS resources.

MLI #3: Accuracy-Related Penalty Under IRC § 6662(b)(1) and (2)

PROBLEM

Internal Revenue Code (IRC) § 6662(b)(1) and (2) authorizes the IRS to impose a penalty if a taxpayer's negligence or disregard of rules or regulations causes an underpayment of tax required to be shown on a return, or if an underpayment exceeds a computational threshold called a substantial understatement, respectively. IRC § 6662(b) also authorizes the IRS to impose the accuracy-related penalty on an underpayment of tax in six other circumstances. We identified 79 opinions issued between June 1, 2018, and May 31, 2019, where taxpayers litigated the negligence or substantial understatement components of the accuracy-related penalty, which is a notable decrease over recent years.

TAS RECOMMENDATIONS

- [MLI 3-1] Amend IRC § 6751(b)(2)(B) to clarify that written managerial approval is required prior to the assessment of the accuracy-related penalty imposed on the portion of an underpayment attributable to negligence or disregard of rules or regulations under IRC § 6662(b)(1) and consider clarifying which penalties or facts-and-circumstances result in penalties “automatically calculated through electronic means” that are exempt from the managerial-approval requirement.
- [MLI 3-2] Issue regulations clarifying that written supervisory approval required under IRC § 6751(b) must occur prior to the first time the IRS formally communicates the proposed penalties to the taxpayer in writing.
- [MLI 3-3] Update the IRM to require written supervisory approval not just “prior to the issuance of the Statutory Notice of Deficiency (SNOD)” but instead “prior to the first time the penalties are communicated to the taxpayer formally as part of a written communication that advises the taxpayer the penalties will be proposed.”

COUNSEL NARRATIVE RESPONSE

We agree that regulations should be issued that clarify when written supervisory approval required under IRC § 6751(b) must occur. We also agree that language about written supervisory approval being required “prior to the issuance of the Statutory Notice of Deficiency (SNOD)” should be removed from the IRM. The difficulty is finding a standard that can meet the vague and shifting standards under the Tax Court's holdings pending a final regulation, that is readily administrable, and that allows the Service to inform a taxpayer about the possibility of penalties and allows a supervisor to know what defenses a taxpayer has raised with respect to possible penalties before the supervisor is required to approve the penalty.

TAS COMMENTS ON COUNSEL RESPONSE

Regulations will benefit taxpayers by clarifying the timing for the supervisory approval. Additionally, removing the misleading guidance from the IRMs will prevent employees from securing supervisory approval for penalties at a time that is too late. The standard chosen for the timing of the approval should provide the taxpayer an opportunity to raise defenses to the possible penalties before the IRS communicates them in writing to the taxpayer and offers appeal rights.

TAS Recommendation	[MLI 3-1] Amend IRC § 6751(b)(2)(B) to clarify that written managerial approval is required prior to the assessment of the accuracy-related penalty imposed on the portion of an underpayment attributable to negligence or disregard of rules or regulations under IRC § 6662(b)(1) and consider clarifying which penalties or facts-and-circumstances result in penalties “automatically calculated through electronic means” that are exempt from the managerial-approval requirement.
Counsel Response	N/A – Congressional Recommendation
Counsel Action	N/A
TAS Response	N/A

TAS Recommendation	[MLI 3-2] Issue regulations clarifying that written supervisory approval required under IRC § 6751(b) must occur prior to the first time the IRS formally communicates the proposed penalties to the taxpayer in writing.
Counsel Response	See above for the Counsel narrative responding to this recommendation.
Counsel Action	See above for the Counsel narrative responding to this recommendation.
TAS Response	Regulations will benefit taxpayers by clarifying the timing for the supervisory approval.

TAS Recommendation	[MLI 3-3] Update the IRM to require written supervisory approval not just “prior to the issuance of the Statutory Notice of Deficiency (SNOD)” but instead “prior to the first time the penalties are communicated to the taxpayer formally as part of a written communication that advises the taxpayer the penalties will be proposed.”
Counsel Response	See above for the Counsel narrative responding to this recommendation.
Counsel Action	See above for the Counsel narrative responding to this recommendation.
TAS Response	Removing the misleading guidance from the IRMs will prevent employees from securing supervisory approval for penalties at a time that is too late.

MLI #5: Summons Enforcement Under IRC §§ 7602, 7604, and 7609

PROBLEM

Pursuant to Internal Revenue Code (IRC) § 7602, the IRS may examine any books, records, or other data relevant to an investigation of a civil or criminal tax liability. To obtain this information, the IRS may serve a summons directly on the subject of the investigation or any third party who may possess relevant information. If a person summoned under IRC § 7602 neglects or refuses to obey the summons; to produce books, papers, records, or other data; or to give testimony as required by the summons, the IRS may seek enforcement of the summons in a U.S. District Court.

TAS identified 60 federal cases decided between June 1, 2018, and May 31, 2019, involving IRS summons enforcement issues. The government was the initiating party in 35 cases, while the taxpayer was the initiating party in 25 cases. Overall, taxpayers fully prevailed in two cases, while two cases were split. The IRS prevailed in the remaining 56 cases.

TAS RECOMMENDATIONS

- [MLI 5-1] Amend IRC § 7602(c)(1) to clarify that the IRS must tell the taxpayer what information it needs (or needs to verify) and to give the taxpayer a reasonable opportunity to provide the information (or verification of it) before contacting a third party, unless doing so could be pointless or an exception applies.
- [MLI 5-2] Revise its letters and internal guidance to inform the taxpayer of what information it needs (or needs to verify) and to give the taxpayer a reasonable opportunity to provide the information (or verification of it) before contacting the third parties.
- [MLI 5-3] Educate industries involved in the sale of controlled substances about the prohibition on claiming any deduction or credit under IRC § 280E.

IRS NARRATIVE RESPONSE

The IRS requests information from taxpayers prior to contacting third parties for the information. When requesting information from taxpayers, functional areas are required to document their contact with the taxpayer and outline the specific actions needed. To request information from the taxpayer needed in connection with the determination or collection of a tax liability, Field Collection uses Form 9297, Summary of Taxpayer Contact, and Field Examination uses Form 4564, Information Document Request.

The Taxpayer First Act (TFA) added specific requirements for IRS prior to making contact with a third party regarding the determination or collection of a tax liability, which we are taking timely action to implement. In July 2019, we issued guidance to employees to ensure compliance with the new TFA procedures. Letter 3164, Third Party Contacts, was revised to include the time period, not to exceed one year, within which the IRS plans to make the third-party contact(s). Employees must not initiate any third-party contacts unless the employee provided the appropriate third-party

notification and 45 days have passed. Taxpayers can request a report of third-party contacts at any time, either verbally or in writing. Employees must ensure taxpayers understand their right to receive this report and may assist with such requests.

The Small Business/Self Employed (SB/SE) Examination Division is currently developing educational materials for the marijuana industry, in light of recent summons enforcement litigation in which the IRS prevailed. We will consider adding information on IRS.gov (such as in the form of a Frequently Asked Question) to convey to taxpayers that when the IRS requests information of these taxpayers, it is only done to properly determine the taxpayer’s liability within the parameters of Internal Revenue Code (IRC) § 280E.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

Under the *right to be informed*, taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. Furthermore, under the *right to privacy*, taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will be no more intrusive than necessary. Allowing a reasonable opportunity for taxpayers to provide the information (or verification of it) before contacting the third parties protects this right.

The IRS’s efforts to ensure compliance with the new Taxpayer First Act procedures regarding contacting third parties are consistent with protecting taxpayer rights. TAS will continue to work with the IRS to ensure IRS employees solicit the relevant information directly from taxpayers before contacting third parties, thereby putting the third party on notice of the taxpayer’s examination and potentially damaging the taxpayer’s reputation.

In addition, the IRS’s efforts to provide guidance and educational materials about IRC § 280E help protect the taxpayer’s *right to be informed*. TAS will continue to work with IRS on efforts to educate taxpayers about IRC § 280E to help promote voluntary compliance.

TAS Recommendation	[MLI 5-1] Amend IRC § 7602(c)(1) to clarify that the IRS must tell the taxpayer what information it needs (or needs to verify) and to give the taxpayer a reasonable opportunity to provide the information (or verification of it) before contacting a third party, unless doing so could be pointless or an exception applies.
IRS Response	N/A – Congressional Recommendation
IRS Action	N/A
TAS Response	N/A

TAS Recommendation	[MLI 5-2] Revise its letters and internal guidance to inform the taxpayer of what information it needs (or needs to verify) and to give the taxpayer a reasonable opportunity to provide the information (or verification of it) before contacting the third parties.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	<p>Under the <i>right to be informed</i>, taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. Furthermore, under the <i>right to privacy</i>, taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will be no more intrusive than necessary. Allowing a reasonable opportunity for taxpayers to provide the information (or verification of it) before contacting the third parties protects this right.</p> <p>The IRS updated Letter 3164, but it still does not include a list of the requested information that the IRS requires (or needs to verify). Including the detailed information request on the third-party contact letter provides clarity and provides the taxpayer the ability to produce the information avoiding unnecessary calls or discussions inquiring what specific information the IRS is requesting. Therefore, TAS will continue to recommend that the IRS include specific requested information on its third-party contact letters.</p> <p>The IRS's efforts to provide guidance to employees is consistent with protecting the <i>rights to be informed</i> and to <i>privacy</i>. TAS will continue to work with the IRS in helping educate its employees.</p>
TAS Recommendation	[MLI 5-3] Educate industries involved in the sale of controlled substances about the prohibition on claiming any deduction or credit under IRC § 280E.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	The IRS's efforts to provide guidance and educational materials for industries involved in the sale of controlled substances about the prohibition on claiming any deduction or credit under IRC § 280E help protect the taxpayers' <i>right to be informed</i> , and TAS will continue to work with the IRS to protect that right.

MLI #8: Itemized Deductions Reported on Schedule A (Form 1040)

PROBLEM

For the past two years, itemized deductions reported on Schedule A of IRS Form 1040 have been among the ten Most Litigated Issues. We identified 32 cases involving itemized deductions that were litigated in federal courts between June 1, 2018, and May 31, 2019. The courts affirmed the IRS position in 29 of these cases, or about 91 percent, while taxpayers fully prevailed in one case, or about three percent of the cases. The remaining two cases, or about six percent, resulted in split decisions.

TAS RECOMMENDATION

[MLI 8-1] Develop a Tax Forum presentation and communication strategy to better educate return preparers and practitioners about itemized deductions, including recordkeeping requirements.

IRS NARRATIVE RESPONSE

With the enactment of the Tax Cuts and Jobs Act (TCJA) in December 2017, some of the rules for what qualifies as an itemized deduction changed, and the standard deduction for individual taxpayers was significantly increased. As a result, considerably fewer taxpayers now itemize deductions, and the concern that Schedule A items will continue to be among the most litigated issues is potentially outdated. The IRS has released many communications on the TCJA changes, and those changes have been incorporated into annual tax products and communications as appropriate.

Recordkeeping and documentation of itemized deductions will be covered in the 2020 annual federal tax refresher course that is a part of the Return Preparer Office's Annual Filing Season Program (AFSP). Approximately 33,000 return preparers take the federal tax refresher course each year.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

The TCJA should reduce the number of taxpayers who claim itemized deductions. However, many taxpayers are still eligible to claim itemized deductions. Educating them about the documentation requirements is consistent with the taxpayers' *right to be informed*. Although the IRS's commitment to educate practitioners as part of the AFSP is not exactly what TAS recommended, it should help to address the concern. TAS will continue to work with the IRS to better educate return preparers and practitioners.

TAS Recommendation	[MLI 8-1] Develop a Tax Forum presentation and communication strategy to better educate return preparers and practitioners about itemized deductions, including recordkeeping requirements.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	Taxpayers have the right to know what they need to do to comply with the tax laws, as part of the <i>right to be informed</i> . Although the IRS's commitment to educate practitioners as part of the AFSP is not exactly what TAS recommended, it should help to address the concern. Outreach with the practitioner community is vital to a successful tax administration system. TAS will continue to work with the IRS to better educate return preparers and practitioners.

MLI #9: Charitable Contribution Deductions Under IRC § 170

PROBLEM

Subject to certain limitations, taxpayers can take deductions from their adjusted gross incomes for contributions of cash or other property to or for the use of charitable organizations. To take a charitable deduction, taxpayers must contribute to a qualifying organization. Taxpayers must also comply with certain substantiation requirements when making a contribution of \$250 or more.

Litigation generally occurred in this reporting cycle in the following three areas:

- Substantiation of the charitable contribution;
- Valuation of the charitable contribution; and
- Requirements for a qualified conservation contribution.

We identified and reviewed 17 cases decided between June 1, 2018, and May 31, 2019, with charitable deductions as a contested issue. The IRS prevailed in 13 cases, and four cases resulted in split decisions. Taxpayers represented themselves (appearing *pro se*) in seven of the 17 cases (41 percent). The IRS prevailed in all seven *pro se* cases. The deduction of conservation easement contributions is an emerging issue during this reporting period as the IRS is focused on curtailing abuse in this area by designating syndicated conservation easements as a listed transaction. We expect to see continued litigation on this issue in the future. Taxpayers must pay close attention to the elements of donating a qualified conservation easement in the absence of safe harbors or other guidance from the IRS on how they may construct a conservation easement deed that satisfies the strict statutory requirements.

TAS RECOMMENDATION

- [MLI 9-1] Develop and publish guidance to provide safe harbors and/or sample easement provisions to provide taxpayers with examples of how they may construct a conservation easement deed that satisfies the statutory requirements and prevent unnecessary litigation.

COUNSEL NARRATIVE RESPONSE

We share the goal of preventing unnecessary litigation by making it easier for taxpayers to draft deeds that are fully compliant with the requirements set forth in section 170(h) and the regulations. In fact, we released Chief Counsel Advice (202002011) in January that provides sample language for a constructive denial clause, and the office is in the process of drafting other sample clauses for taxpayers to use when they donate conservation easements.

However, published guidance on conservation easements is not likely to be issued in 2020 due to other workload priorities, including guidance implementing the Tax Cuts and Jobs Act. See the Department of the Treasury 2019-2020 Priority Guidance Plan. We will reevaluate the matter for the 2020-2021 Priority Guidance Plan. In the meantime, Chief Counsel attorneys will continue

assisting the public by participating in public outreach events relating to qualified appraisals and conservation easements.

TAS COMMENTS ON COUNSEL NARRATIVE RESPONSE

Chief Counsel Advice 202002011 should help taxpayers understand how to draft a “constructive denial clause.” Counsel’s intention to provide more sample clauses and published guidance on conservative easements is also consistent with taxpayer rights, including the *rights to be informed* and *to pay no more than the correct amount of tax*. Such guidance should also help taxpayers and the IRS avoid unnecessary litigation.

TAS Recommendation	[MLI 9-1] Develop and publish guidance to provide safe harbors and/or sample easement provisions to provide taxpayers with examples of how they may construct a conservation easement deed that satisfies the statutory requirements and prevent unnecessary litigation.
Counsel Response	See above for the Counsel narrative responding to this recommendation.
Counsel Action	See above for the Counsel narrative responding to this recommendation.
TAS Response	Providing sample language for a constructive denial clause in a Chief Counsel Advice and for planning to provide more sample clauses and published guidance on conservation easements is a great start, consistent with taxpayer rights, including the <i>rights to be informed</i> and <i>to pay no more than the correct amount of tax</i> . These are encouraging developments that should help taxpayers navigate these complex issues and help prevent unnecessary litigation.

**RESEARCH STUDY #1:
Study of Subsequent Compliance of Taxpayers Who Received Educational
Letters From the National Taxpayer Advocate**

PROBLEM

This study expands upon two studies, described in the National Taxpayer Advocate's 2016 and 2017 Annual Reports to Congress, of taxpayers who received educational letters from the National Taxpayer Advocate in January 2016 or January 2017. The National Taxpayer Advocate sent the letters to taxpayers who appeared to have claimed the Earned Income Tax Credit (EITC) in error because they did not meet the relationship or residency requirements, or another taxpayer claimed EITC with respect to the same child. The letters explained the requirements for claiming EITC with respect to a qualifying child and advised which requirement the taxpayer did not appear to meet.

In 2017, a separate group of taxpayers who appeared to have claimed EITC without meeting the residency test received a letter that included an extra help phone number the taxpayer could call to speak with a Taxpayer Advocate Service (TAS) employee about his or her eligibility for EITC. This study considers the effect of the TAS letters on taxpayers' compliance in claiming EITC in the years following the year in which they received TAS's letter.

Among this year's study findings:

- Where the error consisted of not meeting the relationship test, the TAS letter enhanced compliance for all three years following the year the taxpayer received the letter; and
- Where the error consisted of not meeting the residency test, the TAS letter that included an extra help phone number enhanced compliance for both years following the year the taxpayer received the letter.

TAS RECOMMENDATIONS

[RS 1-1] Send tailored, educational letters, similar to the TAS letters, to EITC claimants the IRS does not have current plans to audit:

1. Where the claimant does not appear to meet the relationship requirement for claiming EITC, because such a letter appears to prevent taxpayers from erroneously claiming EITC for at least three years; and
2. Where the claimant does not appear to meet the residency requirement for claiming EITC, but only if the letter includes an additional help telephone number the taxpayer can call for assistance in determining for EITC, because such a letter appears to prevent taxpayers from erroneously claiming EITC for at least two years.

IRS NARRATIVE RESPONSE

In administering the Earned Income Tax Credit (EITC), our goal is two-fold: to ensure taxpayers that are eligible for the credit are aware of it and that only eligible taxpayers claim the credit.

We understand that informed taxpayers are more likely to be compliant; therefore, we use contacts with taxpayers and tax preparers as an educational opportunity. Despite significant budget reductions, we continue to offer taxpayers multiple options for obtaining assistance for inquiries related to the EITC. Options include calling the IRS toll-free telephone line, visiting a Volunteer Income Tax Assistance or Tax Counseling for the Elderly site, or scheduling an appointment to visit a local Taxpayer Assistance Center. We also employ several EITC education tools, including the interactive EITC Assistant on IRS.gov that helps taxpayers determine if they meet the eligibility requirements for the EITC. We leverage community organizations, tax preparer groups, and government leaders to reach taxpayers eligible for the EITC and tax preparers who prepare returns that claim the EITC to increase awareness, education, and participation. We continue to conduct stakeholder summits, tax forums, webinars, and satisfaction surveys on the effectiveness of tools and products to reach specific audiences to increase awareness and to improve the quality of claims. Our annual EITC Awareness Day promotes increased participation, decreased erroneous payments, and improved accuracy of filed returns.

In addition, we partner with the tax software and tax preparation industry through our Software Developers Working Group (SDWG). Taxpayers use software to file about 97 percent of the returns that claim the EITC and tax preparers prepare more than 50 percent of the returns that claim the EITC. Goals of the SDWG include identifying best practices and software enhancements that could improve the quality of these returns, increase EITC participation for eligible taxpayers, and help paid preparers meet due diligence requirements.

In 2016, the IRS conducted a study, similar to TAS's 2016 and 2017 research, to determine the effectiveness of Dependent Database (DDB) soft notices by assessing the number of taxpayers that filed an amended return for Tax Year (TY) 2014 or changed their behavior in subsequent years. The notices were issued for the TY 2014 returns and informed the taxpayer of the requirements to claim EITC. The study results indicated that receiving a soft notice had minimal impact on taxpayers' TY 2014, 2015, and 2016 filing behavior, showing only slight improvement in taxpayer behavior compared to the control group (as with TAS's study). Consequently, the issuance of the soft notices was discontinued.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

The IRS's efforts to reach taxpayers who may be eligible to claim the EITC and its educational initiatives to help taxpayers comply with the rules for claiming the credit are consistent with taxpayers' *right to be informed*. However, IRS initiatives to date do not include sending taxpayers *tailored* messages — letters that identify the error the taxpayer appears to have made in claiming the EITC — which TAS research studies show can avert millions of dollars of erroneous claims.

The soft letters the IRS references above that were used as part of its 2016 study differed from the TAS letters in important respects.⁵ The IRS letters did not explain to the taxpayer *why specifically* it appeared that the qualifying child rules had not been met, *e.g.*, because the relationship or residency tests were apparently not met, or another taxpayer had claimed the EITC with respect to the same child. The IRS letters did not significantly affect taxpayer behavior, but the TAS letters did. TAS’s tailored educational letters improved compliance for years when the apparent error was that the relationship test was not met, and when the letter included an additional phone number, also when the residency test was not met.

TAS Recommendation	<p>[RS 1-1] Send tailored, educational letters, similar to the TAS letters, to EITC claimants the IRS does not have current plans to audit:</p> <ol style="list-style-type: none"> 1. Where the claimant does not appear to meet the relationship requirement for claiming EITC, because such a letter appears to prevent taxpayers from erroneously claiming EITC for at least three years; and 2. Where the claimant does not appear to meet the residency requirement for claiming EITC, but only if the letter includes an additional help telephone number the taxpayer can call for assistance in determining for EITC, because such a letter appears to prevent taxpayers from erroneously claiming EITC for at least two years.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	The IRS’s narrative does not address the recommendation set forth in RS 1-1. In other notices, the IRS has determined that proven behavioral elements such as simplification, salience, and cognitive load reduction minimize confusion and help taxpayers understand the actions they may take are the most effective and least burdensome to taxpayers. We recommend the IRS reconsider using a similar approach to the EITC soft letters. TAS studies demonstrate that the cost of sending letters to taxpayers that incorporate that information is outweighed by the amount of erroneous EITC claims the letters avert.

⁵ National Taxpayer Advocate 2018 Annual Report to Congress 91-104, at 102 (Most Serious Problem: *Improper Earned Income Tax Credit Payments: Measures the IRS Takes to Reduce Improper Earned Income Tax Credit Payments Are Not Sufficiently Proactive and May Unnecessarily Burden Taxpayers*).

RESEARCH STUDY #2:**Study of Two-Year Bans on the Earned Income Tax Credit, Child Tax Credit, and American Opportunity Credit**

PROBLEM

The Internal Revenue Code (IRC) authorizes the IRS to ban taxpayers from claiming certain refundable credits (the Earned Income Tax Credit (EITC), the Child Tax Credit (CTC), or the American Opportunity Tax Credit (AOTC)) for two years if it determines that the taxpayer claimed the credit recklessly or with intentional disregard of rules and regulations. A review of a representative sample of cases in which the bans were imposed as a result of audits of tax year 2016 returns shows the IRS often did not follow its own procedures:

- In 53 percent of the cases, required managerial approval for imposing the ban was not secured;
- In 82 percent of the cases, the IRS did not adequately explain to the taxpayer why the ban was imposed as required;
- In 61 percent of the cases in which the auditor was required to speak to the taxpayer before imposing the ban, no such conversation took place; and
- In 54 percent of the cases in which taxpayers submitted documents, it appeared from the documents submitted that the taxpayer believed he or she qualified for the credit.

These improper bans deprived taxpayers, if they were otherwise eligible for a credit in the ensuing two years, of significant tax benefits. For example, taxpayers who were banned from claiming EITC lost almost \$5,000 on average.

Moreover, the IRS may exercise its summary assessment authority to disallow credits that taxpayers claim while a ban on that credit is in effect. Thus, affected taxpayers may not receive a notice of deficiency that would permit them to file a petition with the Tax Court for review of the disallowance. In other situations, taxpayers may be required to petition the Tax Court multiple times to remove the effect of an erroneously imposed ban.

TAS RECOMMENDATIONS

- [RS 2-1] Revise procedures for imposing two-year bans to require IRS employees to speak with the taxpayer in every case before imposing a ban.
- [RS 2-2] Suspend the practice of automatically imposing two-year bans.
- [RS 2-3] Conduct quality reviews for at least three years in every case in which the IRS proposes to impose the two-year ban.

IRS NARRATIVE RESPONSE

The IRS continually strives to balance service and compliance initiatives to ensure fairness for all taxpayers, including by ensuring appropriate application of the statutory two-year ban on certain taxpayers who made improper prior claims of these credits.

We have taken significant steps in educating our employees and the public regarding the two-year ban imposed by the Internal Revenue Code. We provide written guidance on the ban assertion in the Internal Revenue Manual and yearly Continuing Professional Education training for our employees. In addition, we revised the CP79, We Denied the Credits you Claimed, and CP79A, We Denied the Credits you Claimed and Applied a Two-Year Ban, notices issued to inform taxpayers of the requirement to recertify. We also revised Form 8862, Information to Claim Certain Credits After Disallowance, and Publication 596, Earned Income Credit, to educate taxpayers about the Earned Income Tax Credit (EITC) requirements and the two-year ban.

We continue to ensure Correspondence Examination Technicians (CETs) understand the proper application of the two-year ban. CETs are encouraged to use sound professional judgment to make decisions on the adequacy of documentation when considering the proposal of the two-year ban during the audit process.

Disallowance of the EITC, the Child Tax Credit/Additional Child Tax Credit (CTC/ACTC), or the American Opportunity Tax Credit (AOTC) for multiple years is not considered on its own to be enough reason to impose the two-year ban. The ban is asserted based on the facts and circumstances of each case, the taxpayer's response, and a prior audit history that indicates whether the taxpayer has recklessly or intentionally disregarded the rules and regulations when claiming the credits. The majority of EITC two-year ban cases are generated from the systemic proposal of the bans on taxpayers who are being audited for the third or fourth time, and who therefore are aware that they are ineligible to claim the credit and have established a pattern of reckless or intentional disregard of the rules and regulations in continuing to improperly claim it. There is no systemic process for the assertion of the two-year ban for the CTC/ACTC or the AOTC.

Managerial approval is required for every case in which the CET proposes to assert the two-year ban. We will conduct a sample review of two-year ban cases to evaluate if managerial approval was secured and if imposing the two-year ban was the right action. We will also review the existing guidance for conducting managerial reviews of the two-year ban, and determine if revisions are warranted to ensure the reviews consider prior-year audits.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

The IRS's agreement to review a sample of cases to determine whether the required managerial review was secured and whether the ban was properly imposed should help identify problems that could lead to inappropriate bans.

The IRS's response contains a statement that raises concern. It references "taxpayers who are being audited for the third or fourth time, *and who therefore are aware* that they are ineligible to claim the credit and have established a pattern of reckless or intentional disregard." (Emphasis added.)

The fact that a taxpayer has been audited, even more than once, does not mean that the taxpayer understands the complex rules for claiming a credit and knows that he or she is ineligible for it. For example, a taxpayer may claim the EITC with respect to a different qualifying child than in the year that was previously audited, or the current audit may show the taxpayer erred in claiming the credit but for a different reason than in a previous audit. Even if the taxpayer understood the rules as a result of a previous audit, those rules may have changed. Moreover, as the TAS study shows, the IRS imposed the two-year ban on taxpayers who were previously audited only once, sometimes many years ago.

In any event, the applicable statutes do not authorize the IRS to impose a ban simply because the IRS perceives a “pattern” of noncompliance. The IRC authorizes the IRS to impose two-year bans following a final determination that the taxpayer’s claim of credit was due to *reckless or intentional disregard of rules and regulations*.⁶ The requisite state of mind must be ascertained and not merely presumed to exist.

TAS Recommendation	[RS 2-1] Revise procedures for imposing two-year bans to require IRS employees to speak with the taxpayer in every case before imposing a ban.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	The IRS’s narrative does not address the recommendation set forth in RS 2-1. TAS contends that talking with the taxpayer would reduce the rate at which bans are erroneously imposed and would allow the IRS to determine the taxpayer’s state of mind.

⁶ IRC §§ 32(k)(1)(B)(i); 24(g)(1)(B)(i); and 25(A)(b)(4)(a)(ii)(I).

TAS Recommendation	[RS 2-2] Suspend the practice of automatically imposing two-year bans.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	The IRS's narrative does not address the recommendation set forth in RS 2-2. The IRS response acknowledges that it automatically imposes two-year bans on claiming EITC (and not on CTC/ACTC or AOTC).

TAS Recommendation	[RS 2-3] Conduct quality reviews for at least three years of every case in which the IRS proposes to impose the two-year ban.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	It is unclear why the IRS proposes to replicate the 2013 and 2019 TAS studies by reviewing a sample of two-year ban cases rather than adopting this recommendation. Perhaps the results of the IRS's study will lead it to conclude, as TAS did, that every two-year ban case should be reviewed. The IRS's proposed review of its existing guidance to "determine if revisions are warranted to ensure the reviews consider prior-year audits" will not reduce the types of inappropriate bans identified by this study. The IRS is already considering prior-year audits and imposing EITC bans solely because the taxpayer was previously audited. In such cases, the ban may be inappropriate, and this automated process seems inconsistent with the statutory requirements. TAS looks forward to the study's results.

RESEARCH STUDY #4: Study of the Extent to Which the IRS Continues to Erroneously Approve Form 1023-EZ Applications

PROBLEM

Organizations recognized by the IRS as exempt under Internal Revenue Code (IRC) § 501(c)(3) may be exempt from federal tax, and contributions to them may be tax deductible. For decades, Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, was the IRS form organizations used to request recognition of IRC § 501(c)(3) status. Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, was introduced in 2014. It is a truncated version of Form 1023, consisting mainly of checkboxes, and requires applicants to attest, rather than demonstrate, that they meet the requirements for IRC § 501(c)(3) status.

One of the requirements for IRC § 501(c)(3) status is that the organization satisfy an “organizational test,” which generally means its organizing document (articles of incorporation, for a corporation) must contain adequate purpose and dissolution clauses. Form 1023-EZ applicants are not required to submit their organizing documents to the IRS; they merely attest that the organizational test has been met. Although some states make articles of incorporation available online at no charge, the IRS does not retrieve and review these publicly-available articles of incorporation when it evaluates a Form 1023-EZ application (unless the application is one that is randomly selected for pre-determination review).

In 2015, 2016, and 2017, TAS studied representative samples of articles of incorporation for corporations from 20 states that make articles of incorporation viewable online at no cost and whose Form 1023-EZ had been approved by the IRS during the preceding year. The studies found that between 26 percent and 42 percent of the time, the approved organizations did not meet the organizational test and thus did not qualify for the exempt status the IRS had conferred. In 2019, TAS repeated the study and found that 46 percent of the approved organizations did not qualify for IRC § 501(c)(3) status.

The 2019 study also found that some states provide form, or template, articles of incorporation. Depending on the template, corporations that use the template are virtually guaranteed to meet, or fail to meet, the organizational test. A review of other information that applicants provide on Form 1023-EZ, such as their websites, may provide useful insight about whether the organization qualifies for exempt status.

Form 1023-EZ was revised in 2018 to require applicants to provide a description (in 255 characters or less) of their mission or most significant activities. However, according to IRS procedures, the described mission or activities need only be “within the scope of IRC § 501(c)(3)” to be deemed sufficient. According to the 2019 study results, the IRS made erroneous determinations more frequently after it added the description field.

TAS RECOMMENDATIONS

- [RS 4-1] Require Form 1023-EZ applicants to submit their organization documents as part of the application and make a determination only after reviewing the organizing documents.
- [RS 4-2] Review Form 1023-EZ applicants' websites, if any, before making a determination.
- [RS 4-3] Ascertain the frequency with which applicants' descriptions of their mission and activities on Form 1023-EZ result in referrals of the application for further review, and if such further review is infrequent, conduct additional training on procedures for evaluating Form 1023-EZ applications.
- [RS 4-4] Revise IRS procedures to require reviewers to determine whether applicants' descriptions of their mission and activities on Form 1023-EZ clearly identify an exempt purpose, rather than requiring a determination of whether the mission or activity is "within the scope" of IRC § 501(c)(3).

IRS NARRATIVE RESPONSE

Legal and factual inaccuracies bias the implications of the statistically unrepresentative study, leading to recommendations that transgress taxpayer rights while increasing burden.

For example, the study asserts that a "common defect in organizations' purpose clauses was a lack of specificity." Yet Treas. Reg. § 1.501(c)(3)-1(b)(1)(ii) provides that as few as two words "shall be sufficient for purposes of the organizational test" if "the articles state that the organization is formed for *charitable purposes*" (emphasis original). Moreover, the study highlights the organizational test, almost to the exclusion of all other requirements, even though imperfect organizing documents do not necessarily preclude the organization from actually operating within its exempt purpose. Consequently, the recommendation to submit organizing documents would increase taxpayer burden without a proportionate benefit to Federal tax compliance.

The study admits that the 2018 addition to Form 1023-EZ of a brief narrative description of "the organization's mission or most significant activities" was at "the National Taxpayer Advocate's insistence," before conceding that this additional information "Does Not Appear to Have Affected the Erroneous Approval Rate." On the contrary, the study contends that "erroneous determinations" then became "more frequent". However, some of the determinations TAS deems "erroneous" may actually encompass organizations engaged in permissible activities such as: "low-cost or long-term loans" to "businesses that will provide training and employment opportunities for the unemployed or underemployed residents" (Rev. Rul. 74-587); low-income housing "for resale at cost" (Rev. Rul. 67-138); "educational programs" and "making mortgage loans" to needy borrowers that encourage "purchasing homes" to "combat community deterioration" (Rev. Rul. 68-655); and "awarding scholarships based on scholastic ability" even "without regard to financial need" (Rev. Rul. 69-257).

Accordingly, TAS's recommendation to "clearly identify an exempt purpose" in the narrative description runs counter to taxpayer positions that a court could accept. Likewise, the

recommendation to review applicants' websites risks converting the determination "based solely upon the facts, attestations, and representations contained in the administrative record" (Rev. Proc. 2020-5 § 3.05) into an examination of external evidence, which could compromise the applicant's right to judicial review, which is also "on the basis of the administrative record" (T.C. Rule 217). The IRS has procedures for reviewing the applicant's website if warranted (IRM 7.20.9.4.5.1(6)).

Finally, the IRS retained a research firm to assess the EZ process including the referrals for further review prior to final determination. The research firm did not recommend more review, finding no evidence that requiring current Form 1023-EZ filers to file the long Form 1023 would lower the approval rate or increase the denial rate. Empirically, the premise that the EZ form skews the outcome or grants exempt status to unqualified applicants is unsubstantiated.

TAS COMMENTS ON IRS NARRATIVE RESPONSE

All four of the TAS studies on the frequency with which the IRS erroneously approves Form 1023-EZ applications are of representative samples from the population of states that make articles of incorporation available to the public online, based on information contained in IRS databases. The studies each set out in detail the methodology that was used to analyze the data, and the methodology has remained essentially unchanged since the first study in 2015. To make the study results comparable over the years, we adapted the methodology to accommodate changes in available data, such as the increase in the number of states that make articles of incorporation available online at no cost.

As all the research studies make plain, TAS analyzed representative samples to determine whether organizations whose Form 1023-EZ application was approved met the organizational test required by IRC § 501(c)(3). It is indeed possible that some organizations are *operated* for an exempt purpose, but if they did not also satisfy the organizational test, then they should not have been recognized as exempt. (See Treasury Regulation § 1.501(c)(3)-1(a)(1), which provides that "[i]f an organization fails to meet either the organizational test or the operational test, it is not exempt.") As the IRS notes, a charitable purpose can be shown in few words, which is consistent with our treatment of California organizations that merely filed a form on which they checked a box captioned "charitable." We treated these organizations as having adequate purpose clauses.

TAS Recommendation	[RS 4-1] Require Form 1023-EZ applicants to submit their organization documents as part of the application and make a determination only after reviewing the organizing documents.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	The 2019 study shows that failing to review organizing documents caused the IRS to erroneously approve applications for exempt status 46 percent of the time (<i>i.e.</i> , of 347 organizations in the 20-state sample, 159 did not meet the organizational test). For example, the IRS approved the Form 1023-EZ submitted by an organization whose entire purpose, according to its articles of incorporation, was “to provide financial assistance to family members with mental health illness.” This organization’s articles of incorporation do not identify any exempt purpose. Moreover, the articles may actually prevent the organization from operating to further public rather than private interests – they effectively prevent it from meeting the <i>operational</i> test. This organization, like other organizations whose Form 1023-EZ is erroneously approved, may not report and pay tax on income that should be subject to tax, and donors may claim deductions for contributions to it that should not be deductible. In comparison to the potential negative impact on tax administration caused by erroneous approvals, requiring Form 1023-EZ applicants to provide their organizing documents does not present an unreasonable burden.
TAS Recommendation	[RS 4-2] Review Form 1023-EZ applicants’ websites, if any, before making a determination.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	The IRS routinely reviews the websites of applicants that are selected for predetermination review (see IRM 7.20.9.2.6), so we continue to recommend that the IRS require review of all applicants’ websites as part of the determination process.

TAS Recommendation	[RS 4-3] Ascertain the frequency with which applicants' descriptions of their mission and activities on Form 1023-EZ result in referrals of the application for further review, and if such further review is infrequent, conduct additional training on procedures for evaluating Form 1023-EZ applications.
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	The IRS's narrative does not address the recommendation set forth in RS 4-3. TAS has never recommended that Form 1023-EZ applicants be required to submit Form 1023, so the outside research firm's recommendation (or lack of recommendation) on that point seems irrelevant.

TAS Recommendation	[RS 4-4] Revise IRS procedures to require reviewers to determine whether applicants' descriptions of their mission and activities on Form 1023-EZ clearly identify an exempt purpose, rather than requiring a determination of whether the mission or activity is "within the scope" of IRC § 501(c)(3).
IRS Response	See above for the IRS narrative responding to this recommendation.
IRS Action	See above for the IRS narrative responding to this recommendation.
TAS Response	Form 1023-EZ now requires applicants to provide a short description of their mission or most significant activity. This requirement has been in place since 2018. TAS expected that the short descriptions may have lowered the erroneous approval rate, but TAS's 2019 study did not show lower erroneous approval rates compared to previous TAS studies of representative samples from the same 20 states — the erroneous approval rate was actually higher in the most recent study (46 percent in the 2019 study, compared to 37 percent in the 2015 study, 26 percent in the 2016 study, and 42 percent in the 2017 study). We believe further research would be helpful to determine the effect of the short descriptions on the rate of erroneous approvals. We noted some of the short descriptions the applicants provided, such as "Promoting cultural relationships thru food and activities" or "Build new homes to be sold to low income families," warranted further review, such as reading the applicant's articles of incorporation. TAS is not recommending that a determination as to exempt status be made solely on the basis of the short description, or that the IRS make determinations that are inconsistent with judicial precedent, but rather that the IRS review the descriptions more rigorously to determine whether additional information is needed before making a determination.

Evolution of the Office of the 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 IRC § 7811, granting the Ombudsman (now the National Taxpayer Advocate (NTA)) 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, TBOR 1 directed the Ombudsman and the Assistant Commissioner (Taxpayer Services) to jointly provide an Annual Report to Congress (ARC) 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

1 Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).

2 *Id.*

3 Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3373 (Nov. 10, 1988).

4 Pub. L. No. 104-168, § 101, 110 Stat. 1452, 1453-56 (July 30, 1996).

5 J. Comm. on Tax'n, *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 did not provide the Taxpayer Advocate with direct line authority over the existing regional and local Problem Resolution Officers (PROs) who handled cases under the Problem Resolution Program, the predecessor to the Office of the Taxpayer Advocate. At the time of the enactment of TBOR 2, 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 ARCs issued directly and independently by the Taxpayer Advocate.⁸ The first report, the Objectives Report to Congress, 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, the ARC, is on the activities of the Taxpayer Advocate during the fiscal year ending during that calendar year. Section 7803(c)(2)(B)(ii) of the IRC, as amended by the Taxpayer First Act (TFA), requires the National Taxpayer Advocate to submit this report each year and to include in it, among other things, a description of the ten most serious problems encountered by taxpayers as well as administrative and legislative recommendations to mitigate those problems. Previously, the report was required to contain a description of at least 20 of the most serious problems facing taxpayers. The report must now:

- 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;
- Contain a summary of the ten Most Serious Problems (MSPs),⁹ taxpayers have in dealing with the IRS;
- Contain an inventory of initiatives and recommendations for which action has been taken and the resulting action;
- Contain an inventory of initiatives and recommendations for which action has yet to be taken and the period of time these items have been in the inventory;
- Contain an inventory of initiatives and recommendations for which there has been no action, an explanation for the lack of action, and the responsible official;
- Identify any TAO or Taxpayer Advocate Directive (TAD)¹⁰ which was not honored by the IRS in a timely manner;

7 J. Comm. on Tax'n, *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 As originally enacted, TBOR 2 required a summary of at least 20 MSPs. In July 2019, the TFA reduced the number of MSPs to ten. See Pub. L. No. 116-25, § 1301(b)(1), 133 Stat. 981, 992 (July 1, 2019).

10 A TAD mandates that functional areas make certain administrative or procedural changes to improve a process or grant relief to groups of taxpayers (or all taxpayers). TADs are used to protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers. Internal Revenue Manual 13.2.1.6, Taxpayer Advocate Directives (July 16, 2009).

- Contain recommendations for legislative or administrative action that will resolve taxpayer problems;
- Identify areas of the tax law that impose significant compliance burdens on taxpayers, including specific recommendations for remedy;
- Identify the ten most litigated issues for each category of taxpayers, including recommendations for mitigating such disputes;
- With respect to any statistical information included in such report, include a statement of whether such statistical information was reviewed or provided by the Secretary under IRC § 6108(d) and, if so, whether the Secretary determined such information to be statistically valid and based on sound statistical methodology; 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. While both reports are to include statistical information, the TFA created a requirement whereby the National Taxpayer Advocate must coordinate research with the office of the Treasury Inspector General for Tax Administration (TIGTA). The National Taxpayer Advocate is now precluded from reporting statistical information that is included in a TIGTA report.¹¹ 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.”¹²

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.”¹³ 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.¹⁴

11 IRC § 7803(c)(2)(B)(iv).

12 J. Comm. on Tax'n, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 21 (Dec. 18, 1996).

13 *Id.*

14 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.¹⁵

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).¹⁶

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.¹⁷ 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.”¹⁸

Congress also granted the LTAs discretion to not disclose to the IRS the fact that the taxpayer contacted the Office of the Taxpayer Advocate or any information provided by the taxpayer to that office.¹⁹ RRA 98 also expanded the definition of “significant hardship” in IRC § 7811 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.²⁰

15 Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS*, 48 (June 25, 1997).

16 Pub. L. No. 105-206, § 1102(a), 112 Stat. 685, 699 (July 22, 1998).

17 *Id.* at 701.

18 IRC § 7803(c)(4)(A)(iii).

19 IRC § 7803(c)(4)(A)(iv).

20 IRC § 7811(a)(2).

The Committee Reports make clear that this list is a non-exclusive list of what constitutes a significant hardship.²¹

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 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.²²

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.²³ 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 tax system*.²⁴

The passing of the TFA in July 2019 also codified the timeframes surrounding issuance of TADs. Now, the IRS must respond to a TAD no later than 90 days after its issuance.²⁵ If the IRS decides to modify or rescind the TAD, the National Taxpayer Advocate may appeal that decision to the Commissioner of the IRS within 90 days. The Commissioner then has 90 days to either ensure compliance with the TAD or provide reasons to the National Taxpayer Advocate for the modification or rescission of the TAD. Additionally, the National Taxpayer Advocate must report on any TADs that were not honored in a timely manner in the ARC.²⁶

21 See, e.g., H.R. REP. No. 105-599, at 215 (1998) (Conf. Rep.).

22 Treas. Reg. § 301.7811-1(a)(4)(ii); 76 Fed. Reg. 18,059, 18,060-61 (Apr. 1, 2011).

23 See IR-2014-72 (June 10, 2014).

24 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, § 401, 129 Stat. 2242, 3117 (Dec. 18, 2015).

25 IRC § 7803(c)(5)(A).

26 IRC § 7803(c)(2)(B)(viii).

TAS Case Acceptance Criteria

CASE ACCEPTANCE CRITERIA



As an independent organization within the IRS, the Taxpayer Advocate Service protects taxpayer rights under the Taxpayer Bill of Rights, 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.

ECONOMIC BURDEN

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.

- 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

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.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 has impaired or will impair the taxpayer's rights.

PUBLIC POLICY

Acceptance of cases into TAS 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.

¹ IRC § 7803(c)(2)(A)(i).

² TAS changed its case acceptance criteria to generally stop accepting certain systemic burden issues. See Internal Revenue Manual (IRM) 13.1.7.3(d), Exceptions to Taxpayer Advocate Service Criteria (Feb. 4, 2015). This IRM is temporarily amended until December 31, 2020. TAS, Interim Guidance Memo (IGM) TAS-13-0220-002, Interim Guidance on Exclusion From TAS Case Acceptance Criteria Taxpayers Impacted by Pre-Refund Wage Verification Hold and Amended Returns (Feb. 14, 2020).

³ See IRM 13.1.7.2.3, TAS Case Criteria 8, Best Interest of the Taxpayer (Feb. 4, 2015).

⁴ See TAS, IGM TAS-13-0620-0012, Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy (June 1, 2020).

List of Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) represent individuals whose income is below a certain level and need to resolve tax problems with the IRS, such as audits, appeals, and tax collection disputes. LITCs can represent taxpayers in Tax Court as well as with the IRS. In addition, LITCs can provide information about taxpayer rights and responsibilities in different languages for individuals who speak English as a second language. LITCs provide services for free or a small fee. LITCs receive IRS grants but work independently to assist and advocate for taxpayers.

If you are a low-income taxpayer who needs help in resolving a tax dispute with the IRS and cannot afford representation, you may qualify for free or low-cost assistance from an LITC. Using poverty guidelines published annually by the Department of Health and Human Services (HHS), each LITC decides if an individual meets the income eligibility guidelines and other criteria before it agrees to representation. Eligible taxpayers must generally have income that does not exceed 250 percent of the poverty guidelines. Income ceilings for 2020 are shown below:

LITC Income Guidelines (250 percent of Federal Poverty Guidelines)			
Size of Family Unit	48 Contiguous States, D.C., and Puerto Rico	Alaska	Hawaii
1	\$31,900	\$39,875	\$36,700
2	\$43,100	\$53,875	\$49,575
3	\$54,300	\$67,875	\$62,450
4	\$65,500	\$81,875	\$75,325
5	\$76,700	\$95,875	\$88,200
6	\$87,900	\$109,875	\$101,075
7	\$99,100	\$123,875	\$113,950
8	\$110,300	\$137,875	\$126,825
For each additional person, add	\$11,200	\$14,000	\$12,875

LITCs receiving federal funding for the 2020 calendar year are listed below and are operated by nonprofit organizations or academic institutions. Although LITCs receive partial funding from the IRS, LITCs, their employees, and their volunteers are completely independent of the IRS.

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>.

2020 LITCs and Contact Information

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	All languages through interpreter services
AL	Montgomery	Legal Services Alabama LITC	866-456-4995 334-832-4570	All languages through interpreter services
AR	Little Rock	UA Little Rock Bowen School of Law LITC	501-916-5492	Spanish
	Springdale	Legal Aid of Arkansas LITC	479-442-0600	Spanish and Marshallese
AZ	Phoenix	Community Legal Services LITC	800-852-9075 602-258-3434	Spanish and other languages through interpreter services
	Tucson	Southern Arizona Tax Clinic	520-622-2801	Spanish and other languages through interpreter services
CA	Los Angeles	Bet Tzedek Legal Services Tax Clinic	323-939-0506	Spanish, Russian, and other languages through interpreter services
	Los Angeles	KYCC Low Income Taxpayer Clinic	213-232-2700	Spanish and Korean
	Los Angeles	Pepperdine LITC	213-673-4831	Spanish
	Los Angeles	Bookstein Low Income Taxpayer Clinic	818-677-3600	Spanish
	Orange	Chapman University Tax Law Clinic	714-628-2535	Spanish and Vietnamese
	Riverside	Inland Counties Legal Services LITC	888-245-4257 951-368-2555	Spanish, Mandarin, and other languages through interpreter services
	San Diego	Legal Aid Society of San Diego LITC	877-534-2524	Spanish, Vietnamese, Tagalog, Arabic, Farsi
	San Diego	University of San Diego LITC	619-260-7470	Spanish and other languages through interpreter services
	San Francisco	Chinese Newcomers Service Center	415-421-2111	Chinese, Cantonese, Mandarin, Vietnamese, Taishanese
	San Francisco	Justice and Diversity Center of the Bar Association of San Francisco	415-982-1600	Spanish
	San Francisco	UC Hastings Low-Income Taxpayer Clinic	415-703-8287	Spanish
	San Luis Obispo	Cal Poly Low Income Taxpayer Clinic	877-318-6772 805-756-2951	Spanish
	Santa Ana	Community Legal Aid So Cal LITC	800-834-5001 714-571-5200	Spanish, Vietnamese, Korean
	CO	Denver	Colorado Legal Services LITC	844-440-4848 303-837-1313
Denver		Denver Asset Building Coalition LITC	303-388-7030	All languages through interpreter services
Denver		University of Denver LITC	303-871-6331	Spanish and Mandarin
CT	Hamden	Quinnipiac University School of Law LITC	203-582-3238	Spanish and other languages through interpreter services
	Hartford	UConn Law School Tax Clinic	860-570-5165	Spanish and other languages through interpreter services

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
DC	Washington	The Catholic University of America LITC	202-319-6788	Spanish
	Washington	The Janet R. Spragens Federal Tax Clinic	202-885-3440	All languages through interpreter services
DE	Georgetown	Delaware Community Reinvestment Action Council LITC	877-825-0750 302-690-5000	Spanish, Hindi, Italian
FL	Ft. Myers	Florida Rural Legal Services Low Income Taxpayer Clinic	888-582-3410	Spanish and Creole
	Gainesville	Three Rivers Legal Services, Inc.	866-256-8091 352-372-0519	Spanish and other languages through interpreter services
	Miami	Legal Services of Greater Miami Community Tax Clinic	305-576-0080	Spanish, Haitian, Creole
	Plant City	Bay Area Legal Services Inc. LITC	813-752-1335	All languages through interpreter services
	Plantation	Legal Aid Services of Broward and Collier Counties	954-736-2477	Spanish and Creole
	St. Petersburg	Gulfcoast Legal Services LITC	727-821-0726	Spanish and other languages through interpreter services
	Tallahassee	Legal Services of North Florida	850-385-9007	Spanish
GA	West Palm Beach	Legal Aid Society of Palm Beach County LITC	800-403-9353 561-655-8944	Spanish
	Hinesville	JCVision and Associates, Inc.	866-396-4243 912-877-4243	Spanish
	Lawrenceville	North Georgia Low Income Taxpayer Clinic	678-646-5661	Spanish
IA	Des Moines	Iowa Legal Aid LITC	800-532-1275 515-243-2151	Spanish and other languages through interpreter services
ID	Twin Falls	La Posada Tax Clinic	208-735-1189	Spanish
IL	Chicago	Ladder Up Tax Clinic	312-630-0274	Spanish
	Chicago	Loyola Federal Income Tax Clinic	312-915-7176	All languages through interpreter services
	Elgin	Administer Justice	847-844-1100	Spanish and 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	317-429-4131	Spanish, French, Arabic, Burmese, Hakha Chin, Kinyarwanda, Maya, Swahili, Chinese, Zophei, Falam, and other languages through interpreter services
	South Bend	Notre Dame Tax Clinic	574-631-3272	Spanish and other languages through interpreter services
KS	Kansas City	Kansas Legal Services, Inc. LITC	800-723-6953 913-621-0200	Spanish, French, German, Russian, and other languages through interpreter services

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
KY	Covington	The Center for Great Neighborhoods LITC	859-547-5542	Spanish
	Louisville	Legal Aid Society Low Income Taxpayer Clinic	800-292-1862 502-584-1254	All languages through interpreter services
	Richmond	AppalRed Low Income Taxpayer Clinic	800-477-1394 859-624-1394	Spanish and other languages through interpreter services
LA	New Orleans	Southeast Louisiana Legal Services LITC	877-521-6242 504-529-1000	Spanish, Vietnamese, and other languages through interpreter services
MA	Boston	Greater Boston Legal Services LITC	800-323-3205 617-603-1569	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 for Community Action LITC	844-877-7422 413-263-6500	Spanish, Vietnamese, Cantonese, Russian, Korean
MD	Baltimore	Maryland Volunteer Lawyers Service LITC	800-510-0050 410-539-6800	All languages through interpreter services
	Baltimore	University of Baltimore LITC	410-837-5706	All languages through interpreter services
	Baltimore	University of Maryland Carey School of Law LITC	410-706-3295	All languages through interpreter services
ME	Bangor	Pine Tree Legal Assistance Inc. 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	866-673-0873 313-556-1920	Spanish and Arabic
	East Lansing	Alvin L. Storrs Low Income Taxpayer Clinic	517-432-6880	All languages through interpreter services
	Grand Rapids	West Michigan Low Income Taxpayer Clinic	800-442-2777 616-774-0672	Spanish and other languages through interpreter services
MN	Minneapolis	Mid-Minnesota Legal Aid Tax Law Project	612-334-5970	Spanish, Somali, Hmong, Arabic, Oromo, Amharic, and other languages through interpreter services
	Minneapolis	University of Minnesota LITC	612-625-5515	Somali, Spanish, Hmong, Karen, and other languages through interpreter services
MO	Kansas City	Legal Aid of Western Missouri LITC	800-990-2907 816-474-6750	Spanish and other languages through interpreter services
	Kansas City	Kansas City Tax Clinic	816-235-6201	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	All languages through interpreter services
MT	Helena	Montana Legal Services Association LITC	800-666-6899 406-442-9830	Spanish and other languages through interpreter services

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
NC	Charlotte	North Carolina Low Income Taxpayer Clinic	800-438-1254 800-247-1931 (SP) 704-376-1600	Spanish and other languages through interpreter services
	Durham	NC Central University School of Law LITC	919-530-7166	Spanish
NE	Lincoln	Legal Aid of Nebraska LITC	877-250-2016 402-348-1060	Spanish and Chinese
NH	Concord	NH Pro Bono Low-Income Taxpayer Project	603-228-6028	All languages through interpreter services
NJ	Camden	South Jersey Legal Services, Inc. LITC	800-496-4570 856-964-2010	All languages through interpreter services
	Edison	Legal Services of New Jersey Tax Legal Assistance Project	888-576-5529 732-572-9100	Spanish, Haitian-Creole, Portuguese, Hindi, Arabic
	Jersey City	Northeast New Jersey Legal Services LITC	201-792-6363	Spanish, Korean, Hindi, Urdu, Hebrew, Arabic, Portuguese, Tagalog, and other languages through interpreter services
	Newark	Rutgers Federal Tax Law Clinic	973-353-1685	Spanish
NM	Albuquerque	NMLA Low Income Taxpayer Clinic	866-416-1922 833-545-4357	All languages through interpreter services
	Farmington	Four Corners Low Income Taxpayer Clinic	505-566-3747	Spanish and Navajo
NY	Albany	Legal Aid Society of Northeastern New York LITC	800-462-2922 518-462-6765	All languages through interpreter services
	Bronx	Bronx Legal Services	917-661-4500	Spanish and other languages through interpreter services
	Brooklyn	Brooklyn Legal Services Corporation A LITC	718-487-2300	Spanish and other languages through interpreter services
	Brooklyn	Brooklyn Low-Income Taxpayer Clinic	917-661-4500	Spanish, Russian, American Sign Language, and 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
	Hempstead	Hofstra Law School Federal Tax Clinic	516-463-5934	Spanish and other languages through interpreter services
	Jamaica	Queens Legal Services LITC	917-661-4500	All languages through interpreter services
	New York	Fordham Law School	212-633-7353	Spanish, Russian, Ukrainian, and other languages through interpreter services
	New York	Mobilization for Justice	212-417-3839	Spanish, Mandarin, Korean, and other languages through interpreter services
	New York	The Legal Aid Society LITC	212-426-3013	Spanish, Chinese, and other languages through interpreter services
	Staten Island	Migration Resources Center LITC	646-827-2959	Spanish, Albanian, Russian, and other languages through interpreter services
	Syracuse	Syracuse University College of Law LITC	888-797-5291 315-443-4582	All languages through interpreter services

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
OH	Akron	Community Legal Aid Services LITC	800-998-9454	Spanish and other languages through interpreter services
	Cincinnati	Legal Aid of Greater Cincinnati LITC	800-582-2682 513-241-9400	All languages through interpreter services
	Cleveland	The Legal Aid Society of Cleveland LITC	888-817-3777 216-861-5500	Spanish and other languages through interpreter services
	Columbus	The Legal Aid Society of Columbus LITC	877-224-8374 614-224-8374	Spanish and 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	All languages through interpreter services
	Toledo	Toledo Tax Controversy Clinic LITC	419-530-4236	Arabic
OK	Tulsa	Legal Aid Services of Oklahoma LITC	918-236-9572	Spanish and other languages through interpreter services
OR	Gresham	El Programa Hispano Catolico's LITC	503-489-6845	Spanish and French
	Portland	Legal Aid Services of Oregon LITC	503-224-4086	Spanish, Mandarin, Japanese, and other languages through interpreter services
	Portland	Lewis & Clark Low Income Taxpayer Clinic	503-768-6500	Spanish and other languages through interpreter services
PA	Philadelphia	Philadelphia Legal Assistance LITC	215-981-3800	Spanish, Farsi, and other languages through interpreter services
	Pittsburgh	University of Pittsburgh School of Law LITC	412-648-1300	Spanish and French
	Villanova	Villanova Federal Tax Clinic	888-829-2546 610-519-4123	Spanish and other languages through interpreter services
	Washington	Southwestern Pennsylvania Legal Services LITC	724-225-6170	Spanish, Russian, Chinese, and other languages through interpreter services
	York	MidPenn Legal Services Low Income Taxpayer Clinic	844-675-7829	Spanish and other languages through interpreter services
RI	Providence	Rhode Island Legal Services LITC	401-274-2652	Spanish and other languages through interpreter services
SC	Greenville	South Carolina Legal Services LITC	888-346-5592	Spanish and other languages through interpreter services
SD	Vermillion	University of South Dakota School of Law Federal Tax Clinic	844-366-8866 605-658-3531	All languages through interpreter services
TN	Memphis	Memphis Area Legal Services	901-523-8822	Spanish and other languages through interpreter services
	Nashville	Tennessee Taxpayer Project	866-481-3669 865-483-8454	Spanish and other languages through interpreter services

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
TX	Fort Worth	Legal Aid of Northwest Texas LITC	800-955-3959 817-336-3943	Spanish and other languages through interpreter services
	Fort Worth	Texas A&M University School of Law Tax Clinic	817-212-4123	Spanish and other languages through interpreter services
	Houston	Houston Volunteer Lawyers LITC	713-228-0732	Spanish, Chinese, and other languages through interpreter services
	Houston	Lone Star Legal Aid LITC	800-733-8394 713-652-0077	Spanish, Vietnamese, and other languages through interpreter services
	Houston	South Texas College of Law LITC	800-646-1253 713-646-2922	All languages through interpreter services
	Lubbock	Texas Tech School of Law LITC	800-420-8037 806-742-4312	Spanish
	San Antonio	Texas Taxpayer Assistance Project	888-988-9996 210-212-3747	Spanish
UT	Provo	Centro Hispano LITC	801-655-0258 801-691-5259	Spanish, Portuguese, and other languages through interpreter services
VA	Fairfax	Legal Services of Northern Virginia LITC	866-534-5233 703-778-6800	Spanish and other languages through interpreter services
	Lexington	Washington and Lee University School of Law Tax Clinic	540-458-8918	All languages through interpreter services
	Richmond	The Community Tax Law Project	800-295-0110 804-358-5855	Spanish
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, Swahili, Portuguese, French, Punjabi, Vietnamese, and Hindi
	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	Spanish and other languages through interpreter services
	Wausau	Northwoods Tax Project	800-472-1638 715-842-1681	Spanish and Hmong

TAS Performance Measures and Indicators

Resolve Taxpayer Problems Accurately and Timely

Measure	Description	FY 2020 Target	FY 2020 March Cumulative ¹
Overall Quality of Closed Cases	Percentage of sampled closed cases meeting the prescribed attributes of advocacy, customer, and procedural focus.	93.7%	84.4%
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.	94.7%	90.3%
Procedural Focus	Percentage of sampled closed cases where TAS took actions in accordance with the tax code, Internal Revenue Manual (IRM), and technical and procedural requirements.	90.0%	86.0%
Customer Focus	Percentage of sampled closed cases where TAS took timely actions and adhered to disclosure requirements.	94.8%	76.4%
Customers Satisfied ²	Percentage of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS.	88%	
Customers Dissatisfied	Percentage of taxpayers who indicate they are somewhat dissatisfied or very dissatisfied with the service provided by TAS.	9%	
Solved Taxpayer Problem ³	Percentage of taxpayers from the customer satisfaction survey who indicate the TAS employee did their best to solve the taxpayer's problems.	88%	
Systemic Burden Receipts	Percentage of systemic burden receipts, Criteria 5 through 7, compared to all receipts excluding reopened case receipts.	38.3%	44.2%
OAR Reject Rate ⁴	Percentage of TAS's rejected OAR requests for IRS operating division or function's actions.	Indicator	3.9%
Expired OAR Rate ⁵	Percentage of OARs that were open at the end of a period where the Requested Completion Date or (if present) Negotiated Completion Date is more than five workdays overdue.	Indicator	9.1%

(continued on next page)

- Results for the following categories are unweighted, cumulative October Fiscal Year (FY) 2020 pre-dialogue and exclude Return Prepared Misconduct cases: Overall Quality of Closed Cases; Advocacy Focus; Customer Focus; and Procedural Focus. Results for the following categories are baseline and unavailable due to revision to attributes: Accuracy of Closed Advocacy Projects; Timeliness of Actions on Advocacy Projects; and Quality of Communication on Advocacy Projects. The new attribute categories will be Advocacy, Customer, and Procedural.
- Due to neutral responses by customers, the total percentage of Customers Satisfied (82 percent for FY 2019) and Dissatisfied (13 percent for FY 2019) will not add up to 100 percent. TAS administers an internally developed customer satisfaction survey annually. FY 2020 results are not available at the time of this report.
- TAS administers an internally-developed customer satisfaction survey (CSS) annually. For FY 2019, TAS revised the CSS questionnaire replacing Question 1f, *How satisfied are you that your Advocate did his or her best to solve your problem* with Question 4, *To what extent did the Taxpayer Advocate Service solve your problem* to be more inclusive of all advocates (intake and case advocates) working a taxpayer case. FY 2019 was the baseline year and therefore no results will be reported until FY 2020 survey results are available in March 2021.
- OAR Reject Rate excludes the reject reason "business operating division (BOD)/Function disagrees."
- 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 2020 BOE-BPMS Report (run date Apr. 1, 2020).

Measure	Description	FY 2020 Target	FY 2020 March Cumulative ¹
Relief Granted ⁶	Percentage of closed cases where TAS provided full or partial relief.	Indicator	76.4%
Number of TAOs Issued ⁷	Count of TAOs issued by TAS.	Indicator	84
Median – Closed Case Cycle Time	Median number of days taken to close TAS cases. This indicator does not include reopened cases.	Indicator	65
Mean – Closed Case Cycle Time	Mean number of days taken to close TAS cases. This indicator includes reopened cases.	Indicator	94.3
Closed Cases per Case Advocacy full-time equivalents (FTE)	Number of closed cases divided by total Case Advocacy FTEs realized. (This includes all labor hours reported to the Executive Director of Case Advocacy).	Indicator	170.2
Closed Cases per Direct FTE	Number of closed cases divided by direct Case Advocate FTEs realized.	Indicator	557.7
Percentage of NTA Toll-Free Calls Answered by Centralized Case Intake (CCI)	Percentage of NTA Toll-Free calls answered compared to the total number of NTA Toll-Free calls transferred to CCI.	Indicator	32.3%
CCI Created Cases	Number of cases created that met the TAS case acceptance criteria.	Indicator	13,065
Quick Closures	Number of quick closures by all Intake Advocates.	Indicator	767
CCI Assistance Provided and No Case Created ⁸	Number of calls CCI provided assistance without creating a case or quick closure.	Indicator	14,572

6 TAS tracks resolution of taxpayer issues through codes entered on the Taxpayer Advocate Management Information System at the time of closing. IRM 13.1.21.1.2.1.2, TAO/Relief Codes (Dec. 3, 2015). Internal guidance 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. IRM 13.1.21.1.2.1.3, TAO/Relief Assistance Codes (Feb. 1, 2011).

7 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.

8 Data only reflects activity of intake advocates in CCI sites using the Aspect phone system and does not include activity of intake advocates in local offices that do not have the Aspect system.

Protect Taxpayer Rights and Reduce Burden

Measure	Description	FY 2020 Target	FY 2020 March Cumulative
Overall Quality of Immediate Interventions ⁹	Percentage of the immediate interventions meeting the timeliness, technical, and communication quality attributes' measures.	80%	Baseline
Accuracy of Closed Advocacy Projects	Percentage of advocacy projects where Systemic Advocacy (SA) took correct actions in accordance with statute and IRM guidance. This includes accurate identification of the systemic issue and proposed remedy.	90%	Baseline
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%	Baseline
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.	90%	Baseline
Satisfaction of Taxpayer Advocacy Panel (TAP) members ¹⁰	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%	
Satisfaction of Systemic Advocacy Management System (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%	68%
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	40
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.	Indicator	90%
Internal Management Document (IMD) Recommendations Made to IRS	Count of TAS IMD recommendations made to the IRS.	Indicator	314
IMD Recommendations Accepted by the IRS	Percentage of TAS's IMD recommendations accepted by the IRS.	Indicator	59%
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 (ARC)).	Indicator	17
Advocacy Effort Recommendations Accepted by the IRS	Count of TAS advocacy effort recommendations accepted by the IRS.	Indicator	17

(continued on next page)

9 The FY 2019 March cumulative results are not available because Systemic Advocacy does not have an immediate intervention closure.

10 The TAP survey is administered to all Panel members. Results are not available at the time of this report.

Measure	Description	FY 2020 Target	FY 2020 March Cumulative
TAP recommendations Fully or Partially Accepted ¹¹	Percentage of fully or partially accepted TAP recommendations accepted by the IRS.	Indicator	
Number of Taxpayer Advocate Directives (TADs) Issued	TADs mandate that functional areas make certain administrative or procedural changes to improve a process or grant relief to groups of taxpayers.	Indicator	0

Sustain and Support a Fully-Engaged and Diverse Workforce

Measure	Description	FY 2020 Target	FY 2020 March Cumulative
Employee Satisfaction ¹²	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%	
Employee Participation	Percentage of employees who take the employee satisfaction survey.	58%	

ARC Results

Measure	Description	CY 2020 Target	CY 2019 Cumulative
Annual Report to Congress (ARC) Administrative Recommendations Made to IRS	Count of administrative recommendations made by TAS to the IRS through the ARC.	Indicator	78
Number of ARC Administrative Recommendations Accepted by IRS ¹³	Count of administrative recommendations in ARC accepted by IRS.	Indicator	50 ¹⁴
ARC Administrative Recommendations Accepted by IRS	Percentage of total administrative recommendations accepted by IRS in the ARC compared to the total number of recommendations made.	Indicator	64%
ARC Administrative Recommendations Implemented by IRS	Count of the recommendations accepted by IRS and implemented.	Indicator	TBD

11 FY 2020 results are not available at the time of this report.

12 Employee satisfaction (62 percent for FY 2019) and employee participation (53 percent for FY 2019) are from the annual Federal Employee Viewpoint Survey. FY 2020 results are not available at the time of this report.

13 IRS Responses to Recommendations for calendar year 2019 are included in Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2019 Annual Report to Congress*, *supra*.

14 The Administrative Recommendations Acceptance counts include both full and partial acceptance by the IRS.

Glossary of Acronyms

Acronym	Definition
A	
AARP	American Association of Retired People
ABA	American Bar Association
ACIS	AIMS Computer Information System
ACS	Automated Collection System
ACTC	Advanced Child Tax Credit
ACUS	Administrative Conference of the United States
AFSP	Annual Filing Season Program
AGI	Adjusted Gross Income
AICPA	American Institute of Certified Public Accountants
AIMS	Audit Information Management System
ALE	Allowable Living Expenses
AM	Accounts Management
AMT	Alternative Minimum Tax
AOTC	American Opportunity Tax Credit
ARC	Annual Report to Congress
ASFR	Automated Substitute for Return
ATCL	Appeals Team Case Leader
ATI	Adjusted Taxable Income
ATIN	Adoption Taxpayer Identification Number
ATS	Assurance Testing System
B	
BEAT	Base Erosion and Anti-Abuse Tax
BFS	Bureau of the Fiscal Service
BMF	Business Master File
BOD	Business Operating Division
BOE	Business Objects Enterprise
BPMS	Business Performance Management System
BPR	Business Performance Review
BSM	Business Systems Modernization
C	
CADE	Customer Account Data Engine
CAF	Centralized Authorization File
CAR	Collection Activity Report
CARE	Customer Assistance, Relationships and Education

Acronym	Definition
CARES	Coronavirus Aid, Relief, and Economic Security
CAS	Customer Account Services
CBPP	Center on Budget and Policy Priorities
CBR	Customer Base Report
CCEO	Chief Customer Experience Officer
CCI	Centralized Case Intake
CDC	Center for Disease Control and Prevention
CDP	Collection Due Process
CDW	Compliance Data Warehouse
CETS	Correspondence Examination Technicians
CEWS	Customer Early Warning System
CIO	Chief Information Officer
CNC	Currently Not Collectible
COFO	Coalition of Federal Ombudsman
COVID-19	Coronavirus Disease of 2019
CP	Computer Paragraph
CPS	Correspondence Production Services
CRX	Correspondex
CSED	Collection Statute Expiration Date
CSR	Customer Service Representative
CSS	Customer Satisfaction Survey
CTC	Child Tax Credit
CY	Calendar Year
D	
DDB	Dependent Database
DDIA	Direct Debit Installment Agreement
DHS	Department of Homeland Security
DOJ	Justice Department
E	
ECM	Enterprise Case Management
EIP	Economic Impact Payment
EITC	Earned Income Tax Credit
EPSS	Electronic Products and Services Support
ERC	Employee Retention Credit
ERTC	Employee Retention Tax Credit
ESL	English as Second Language
ESP	Economic Stimulus Payments

Acronym	Definition
F	
FAQ	Frequently Asked Question
FAST	Fixing America's Surface Transportation Act
FDII	Foreign Derived Intangible Income
FEMA	Federal Emergency Management Agency
FFCRA	Families First Coronavirus Response Act
FFI	Free File Inc.
FICA	Federal Insurance Contribution Act
FPR	False Positive Rate
FTC	Foreign Tax Credit
FTE	Full-Time Equivalent
FY	Fiscal Year
G	
GAO	Government Accountability Office
GILTI	Global Intangible Low-Taxed Income
H	
HCO	Human Capital Office
HHS	Department of Health and Human Services
I	
IA	Intake Advocate or Installment Agreement
IAT	Integrated Action Tool
IDEA	Integrated Digital Experience Act
IDT	Identity Theft
IDTVA	Identity Theft Victim Assistance
IGM	Interim Guidance Memoranda
IMD	Internal Management Document
IMF	Individual Master File
IRB	Internal Revenue Bulletin
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
IRTF	Individual Return Transaction File
IT	Information Technology
ITIN	Individual Taxpayer Identification Number
IVO	Integrity & Verification Operations
J	
JCT	Joint Committee on Taxation
JOC	Joint Operations Center

Acronym	Definition
L	
LB&I	Large Business & International
LEP	Limited English Proficiency
LITC	Low Income Taxpayer Clinic
LOS	Level of Service
LSEAC	Language Services Executive Advisory Council
LT	Letter
LTA	Local Taxpayer Advocate
M	
M&P	Media and Publications
MeF	Modernized e-File
MFJ	Married Filing Joint
MFS	Married Filing Separate
MLI	Most Litigated Issue
MOU	Memorandum of Understanding
MSP	Most Serious Problem
N	
NAICS	North American Industry Classification System
NDC	National Distribution Center
NFTL	Notice of Federal Tax Lien
NIST	National Institute of Standards and Technology
NOL	Net Operating Loss
NTA	National Taxpayer Advocate
NTATF	National Taxpayer Advocate Toll-Free
O	
OAR	Operations Assistance Request
OBR	Offset Bypass Refund
OIC	Offer in Compromise
OLS	Online Services
OPA	Online Payment Agreement
OPR	Office of Professional Responsibility
OVD	Offshore Voluntary Disclosure
P	
PCA	Private Collection Agency
PCIC	Primary Core Issue Code
PDC	Private Debt Collection
PMTA	Program Manager Technical Assistance
PPIA	Partial Pay Installment Agreement

Acronym	Definition
PPP	Paycheck Protection Program
PPS	Practitioner Priority Service
PRO	Problem Resolution Officers
PRVWH	Pre-Refund Wage Verification Hold Program
PSD	Problem-Solving Day
PTIN	Preparer Tax Identification Number
PY	Processing Year
Q	
QAR	Qualified Amended Return
QRP	Questionable Return Program
R	
RAAS	Research Applied Analytics and Statistics
RAC	Refund Anticipation Check
RAL	Refund Anticipation Loan
RCEO	Refundable Credit Examination Operations
RCP	Reasonable Collection Potential
RICS	Return Integrity and Correspondence Services or Return Integrity and Compliance Services
RIVO	Return Integrity Verification Operations
RO	Revenue Officer
RRA 98	IRS Restructuring and Reform Act of 1998
RRTA	Railroad Retirement Tax Act
S	
SA	Systemic Advocacy
SADI	Secure Access Digital Identity
SAMS	Systemic Advocacy Management System
SBA	Small Business Administration
SB/SE	Small Business/Self-Employed
SDWG	Software Developers Working Group
SERP	Servicewide Electronic Research Program
SLA	Service Level Agreement
SNOD	Statutory Notice of Deficiency
SPOC	Single Point of Contact
SRLY	Separate Return Limitation Year
SSA	Social Security Administration
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income
SSN	Social Security Number
SWPS	Servicewide Preparer Strategy

Acronym	Definition
T	
TAC	Taxpayer Assistance Center
TAD	Taxpayer Advocate Directive
TAMIS	Taxpayer Advocate Management Information System
TAO	Taxpayer Assistance Order
TAP	Taxpayer Advocacy Panel
TAS	Taxpayer Advocate Service
TBD	To Be Determined
TBOR	Taxpayer Bill of Rights
TCE	Tax Counseling for the Elderly
TCJA	Tax Cuts and Jobs Act
TDA	Taxpayer Delinquency Account
TDS	Transcript Delivery System
TFA	Taxpayer First Act
TFAO	Taxpayer First Act Office
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TP	Taxpayer
TPP	Taxpayer Protection Program
TY	Tax Year
U	
USPS	United States Postal Service
V	
VA	Veterans Administration
VITA	Volunteer Income Tax Assistance
VSD	Virtual Service Delivery
W	
W&I	Wage & Investment
WebSD	Web Service Delivery
Y	
YTD	Year to Date

This page intentionally left blank.

TAXPAYER
ADVOCATE
SERVICE

YOUR VOICE AT THE IRS



www.TaxpayerAdvocate.irs.gov