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#5**TAXPAYER BILL OF RIGHTS (TBOR): The IRS Must Do More to Incorporate the Taxpayer Bill of Rights into Its Operations****RESPONSIBLE OFFICIALS**

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

DEFINITION OF PROBLEM²

The National Taxpayer Advocate had long called for the IRS to adopt a Taxpayer Bill of Rights (TBOR) to be used as a framework for effective tax administration and for Congress to add the list of fundamental rights comprising the TBOR to the Internal Revenue Code (IRC).³ The IRS officially adopted the TBOR in 2014, and Congress followed in late 2015 by adding the list of fundamental rights to the IRC.⁴ IRC § 7803(a)(3) now states:

- 1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).
- 2 Volume 3 of the 2016 Annual Report to Congress contains an extended literature review related to this topic. See Literature Review: *Incorporating Taxpayer Rights into Tax Administration*, vol. 3, *infra*.
- 3 See, e.g., National Taxpayer Advocate, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration; Recommendations to Raise Taxpayer and Employee Awareness of Taxpayer Rights* (2013), <https://taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Toward-a-More-Perfect-Tax-System-A-Taxpayer-Bill-of-Rights-as-a-Framework-for-Effective-Tax-Administration.pdf>.
- 4 IRS, IR-2014-72, *IRS Adopts "Taxpayer Bill of Rights;" 10 Provisions to be Highlighted on IRS.gov*, in *Publication 1*, <https://www.irs.gov/uac/Newsroom/IRS-Adopts-Taxpayer-Bill-of-Rights%3B-10-Provisions-to-be-Highlighted-on-IRSGov-in-Publication-1> (June 10, 2014). Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

In discharging his duties, the Commissioner shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title, including—

This section then goes on to list the ten fundamental rights originally proposed by the National Taxpayer Advocate.

Following the adoption of the TBOR, the IRS embarked on an extensive public outreach campaign. In conjunction with the National Taxpayer Advocate, it revised Publication 1, *Your Rights as a Taxpayer*, to explain the ten rights in plain language.⁵ During the 2015 and 2016 filing seasons, the IRS published Special Edition Tax Tips and a series of weekly fact sheets covering each of the ten fundamental rights. The IRS mailed TBOR fact sheets to tax professional organizations and partners, and placed articles in online newsletters.

Although the IRS has commendably done much to make the public aware of the TBOR, it is not fulfilling Congress's mandate in IRC § 7803(a)(3) in a comprehensive or strategic manner.⁶ The IRS has declined to incorporate the TBOR into many areas of its operations, maintaining that its materials already include taxpayer rights. Despite being mandated by Congress to ensure that IRS employees are familiar with and abide by taxpayer rights,⁷ the following areas represent missed opportunities for the IRS to incorporate the TBOR into its operations:

- Employee training and messaging;
- Employee guidance such as the Internal Revenue Manual (IRM);
- Employee recognition and awards;
- Performance measures, quality measures, and customer satisfaction surveys;
- Mechanisms for holding itself accountable such as the Business Performance Review (BPR) process; and
- Policy decisions and strategic plans for serving taxpayers, including its Future State plans.

The IRS's failure to fully incorporate the TBOR into these areas creates a risk that taxpayer rights will not be fully observed during interactions with taxpayers. For example, appeal rights may be lost or the IRS may fail to consider a taxpayer's unique facts and circumstances. When the TBOR is not fully observed, taxpayers may be harmed and voluntary compliance may decline. This Most Serious Problem will gauge the IRS's progress in operationalizing the TBOR and draw on the lessons learned from other countries' experiences with implementing and adhering to a taxpayer charter.⁸

⁵ See IRS Publication 1, *Your Rights as a Taxpayer* (Dec. 2014).

⁶ In 2013, the National Taxpayer Advocate issued a report to the Principal Deputy Commissioner of the IRS, outlining how it could use the TBOR as a framework for effective tax administration. This report contained almost two dozen action items for the Taxpayer Advocate Service (TAS) as well as almost two dozen recommendations for the Commissioner of the IRS. While TAS has followed through with what it committed to doing in this report, the IRS has not fulfilled its part. National Taxpayer Advocate, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration; Recommendations to Raise Taxpayer and Employee Awareness of Taxpayer Rights* (2013), <https://taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Toward-a-More-Perfect-Tax-System-A-Taxpayer-Bill-of-Rights-as-a-Framework-for-Effective-Tax-Administration.pdf>.

⁷ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

⁸ Volume 3 of the 2016 Annual Report to Congress contains an extended literature review related to this topic. See Literature Review: *Incorporating Taxpayer Rights into Tax Administration*, vol. 3, *infra*.

ANALYSIS OF PROBLEM

Employee Training and Messaging Needs to Meaningfully Incorporate the Taxpayer Bill of Rights (TBOR)

Without Guidance From Leadership, Training Materials Incorporate the TBOR Inconsistently and Insufficiently

In 2015, Congress mandated that the IRS Commissioner “In discharging his duties . . . shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title.”⁹ This training obligation can be met in several ways — technical training, annual mandatory training, IRM instructions, messages to employees, etc. Although the IRS has incorporated taxpayer rights into some of its training courses,¹⁰ and has disseminated messages to IRS employees emphasizing the importance of observing TBOR, it has not issued any kind of operating division-wide or servicewide guidance specifically on how to incorporate the TBOR into training materials.¹¹ The Human Capital Office (HCO) reported it would be open to working with TAS to include a preliminary page about TBOR in the training materials for each leadership training course.¹² While helpful, this effort falls short of what is critically needed — to provide consistent and comprehensive directions to all employees who create training on how to incorporate the TBOR throughout their training materials, as required by IRC § 7803(a).

This lack of strategic leadership results in taxpayer rights information being inserted in IRS course materials in a piecemeal and boilerplate manner, with some courses covering taxpayer rights topics with no reference to the fundamental rights adopted by the IRS,¹³ other courses sending mixed messages about the TBOR,¹⁴ and still other courses failing to explain taxpayer rights at all.¹⁵ Notwithstanding this lack of

9 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

10 See, e.g., Automated Collection System (ACS) Basic Taxpayer Appeal Rights, Item 18755 (draft version provided to TAS on July 13, 2016); CPE Lesson 6, Taxpayer Rights and Automated Underreporter (AUR) (undated training document provided to TAS on July 13, 2016).

11 The Human Capital Office (HCO) reported that it is working on content for annual ethics discussions and plans to add TBOR information into the New Manager Orientation Program, but the IRS has not provided TAS with any evidence of guidance issued that specifically addresses how to incorporate the TBOR into all training materials. The Small Business/Self Employed (SB/SE) Operating Division stated “SBSE was asked to incorporate TBOR into training in 2014, but we cannot locate that guidance/communication.” IRS response to TAS information request (July 13, 2016).

12 IRS response to TAS information request (July 13, 2016); IRS response to TAS fact check (Dec. 16, 2016).

13 The current ACS course, *Basic Taxpayer Appeal Rights*, never mentions the TBOR by name nor does it cite any of the ten fundamental rights. It references “appeal rights” but never articulates that taxpayers have the *right to appeal an IRS decision in an independent forum*, thus overlooking a key part of this right — the independence of the Office of Appeals or the U.S. Tax Court. IRS, *ACS Basic Taxpayer Appeal Rights*, Item 18755 (draft version provided to TAS on July 13, 2016). The IRS states it is currently updating this training, which will become *ACS New Recruit Course 18755 - Taxpayer Appeal Rights*, and will incorporate the TBOR, the Freedom of Information Act, and other information related to taxpayer rights. IRS response to TAS fact check (Dec. 16, 2016). Another example provided by the IRS references the legislation, TBOR 2, but makes no reference to the TBOR adopted by the IRS and Congress, reflecting a lack of awareness about the difference between prior legislation granting specific rights and the statement of principles adopted by the IRS. IRS response to TAS information request (July, 13, 2016).

14 See Return Integrity & Compliance Services (RICS) Integrity & Verification Operations (IVO), Training 29048-102 (Dec. 2014). This training states, “As an IVO employee, it is also your responsibility to protect the rights of the *good taxpayer*” (emphasis added), implying that only “good” taxpayers have rights. Leaving aside the definitional issues of what, precisely, a “good” taxpayer is, this statement is a false and dangerous generalization because the TBOR rights are guaranteed to *all* taxpayers. They are foundational to the structure of effective tax administration.

15 For example, the Examination Toll-Free Telephone Assistor Training covers topics related to taxpayer rights, such as taxpayer authentication and power of attorney, without discussing the rights and their significance. Exam Toll-Free Telephone Assistor Training Course 12256-102 (Rev. June 2013). This course has not been updated since 2013, despite a prior discussion of its inadequate coverage of taxpayer rights. See National Taxpayer Advocate’s 2013 Annual Report to Congress 53.

direction at a servicewide level, Examination prepared an excellent course on taxpayer rights that could be a model for other IRS courses.¹⁶ This training discusses what the fundamental rights mean and provides examples of how the rights apply in specific situations with references to IRC provisions, Treasury Regulations, Revenue Procedures, and Internal Revenue Manuals (IRMs).¹⁷ Such training should be shared with other IRS functions with guidance to prepare similar training.

Employee Messaging About the Taxpayer Bill of Rights (TBOR) Should Motivate Employees to Improve the Protection of Taxpayer Rights and Should Be Ongoing

Employee messaging can communicate TBOR information and help create a shared mindset among employees.¹⁸ During the 2015 filing season, the Small Business/Self Employed (SB/SE) Division sent out a series of six employee emails from the Directors of Collection and Examination.¹⁹ Each email focused on one or two fundamental rights and gave examples of what employees already do each day to recognize these rights. While helpful, this messaging would have been even more beneficial if used to improve the protection of taxpayer rights, as opposed to recognizing what has always been done, and thus merely upholding the status quo.²⁰

An email to employees from the Director of Field Collection provides a great example of effective TBOR messaging:²¹

Two important rights in the Taxpayers' Bill of Rights (TBOR) are the Right to be Informed and the Right to Quality Service. These are also closely related to vital "customer satisfaction" measures we monitor. This fiscal year we want to continue to stress the criticality of making sure our customers are aware of the status of their case. Generally, interaction with a field Revenue Officer of the Internal Revenue Service has the potential for adding uncertainty and anxiety in the lives of those we serve. While we must do our best to bring them into voluntary compliance with the tax laws, treating each taxpayer with dignity, respect, and courtesy go a long way in instilling trust in the system. Likewise, periodically letting the taxpayer know where we are in the process of resolving their case gives the customer knowledge about the process and a sense they have a role in the outcome — peace of mind. Please continue to make this effort for the public you serve. This year, Field Collection saw improvement in the Customer Satisfaction measure, "Keeping the Taxpayer up to date on the Collection Process" from 54% satisfied (1st Quarter 2016) to 57% satisfied (2nd Quarter 2016). We also saw improvement in "Courtesy and professionalism of the assigned RO" from 72% to 77% satisfied! However, we still need to improve in "Notifying the TP of case closure" (where we saw a decline from 56% to 55% satisfied). Imagine how you would want to be treated by the IRS, or how you would want your friends and family members treated?

This message focuses on two fundamental rights, connects those rights to specific customer satisfaction measures where results have increased recently, and nudges employees to try to improve other related measures where results have declined.²² TAS is unaware of similar communications from other IRS

16 IRS, *Taxpayer Rights Self Study Guide*, Fiscal Year (FY) 2014 Exam CPE Training 57089 (undated document provided to TAS on July 13, 2016). This training will be part of the curriculum for new hire revenue agents and tax compliance officers in 2016.

17 *Id.*

18 See Literature Review: *Incorporating Taxpayer Rights into Tax Administration*, vol. 3, *infra*.

19 IRS response to TAS information request (July 13, 2016) (emails on file with TAS).

20 See Literature Review: *Incorporating Taxpayer Rights into Tax Administration*, vol. 3, *infra*.

21 IRS response to TAS information request (July 13, 2016).

22 IRS response to TAS information request (July 13, 2016) (email on file with TAS).

managers.²³ Messaging must be ongoing and delivered in a variety of ways, not only in the filing season following the adoption of the TBOR or in a single message from one director. TBOR annual refreshers similar to mandatory briefings currently available on the Enterprise Learning Management System can become yet another example of ongoing messaging.²⁴ TAS will undertake the development of a TBOR annual training, and work with the IRS Operating Divisions and functions to develop content that is relevant to their work.

The IRS Has Not Adequately Incorporated the Taxpayer Bill of Rights (TBOR) Into Its Guidance and Written Materials

The IRS Has Provided Little Direction to Employees on How to Incorporate the Taxpayer Bill of Rights (TBOR) into Internal Revenue Manual (IRM) Guidance, Letters, and Notices

The IRS has provided little guidance to employees responsible for drafting IRMs and taxpayer correspondence that focuses on how to incorporate the TBOR into these materials.²⁵ In 2016, the National Taxpayer Advocate spoke at the Internal Management Document (IMD) Virtual Conference²⁶ on how to incorporate taxpayer rights into IRM drafts and reviews.²⁷ In addition, the Servicewide Policy,

Directives and Electronic Research office sent an email to be distributed to all IRM authors that included boilerplate language advising authors to review and update their content related to the TBOR, without further explanation.²⁸ More comprehensive training is needed for all employees drafting IRMs and taxpayer correspondence, similar to the training the National Taxpayer Advocate provided to TAS employees.²⁹ This training used examples of IRM sections negotiated by TAS as well as those with potential for adding TBOR information. The training included best practices and tips for how to identify which fundamental rights apply, how to explain what they mean, and how to apply them to the particular situation.

Until the IRS provides this training or a similar training to its employees, TBOR information will continue to be added inconsistently, if at all. Some IRM sections include a proper discussion of TBOR or a fundamental

This lack of strategic leadership results in taxpayer rights information being inserted in IRS course materials in a piecemeal and boilerplate manner, with some courses covering taxpayer rights topics with no reference to the fundamental rights adopted by the IRS.

23 Other examples of TBOR messaging provided by the IRS include a short description of the TBOR in the FY 2016 Exam Program Letter and a token reference to TBOR in the document, SB/SE Examination Operating Unit FY 2015 Priorities. IRS response to TAS information request (July 13, 2016).

24 Annual mandatory briefings for all employees include courses on ethics, physical security, information systems security, privacy and disclosure, records management, and section 1204 of the Restructuring and Reform Act of 1998 (RRA 98), which relates to the use of enforcement statistics to evaluate employees and the fair and equitable treatment retention standard. IRS, Mandatory Briefing Timeframes, Mandates & Certification Requirement, <http://e-learning.web.irs.gov/Briefings/docs/Briefings/2016/Mandatory%20Briefing%20Timeframes.pdf> (Nov. 25, 2016). IRM 1.5.2.7, *Restructuring and Reform Act of 1998 (RRA 98) Section 1204* (Jan. 1, 2015).

25 See IRS response to TAS information request (July 13, 2016).

26 This conference was conducted by the Servicewide Policy, Directives, and Electronic Research Office on May 3, 2016, and this session was intended for all IRM authors and managers.

27 TAS representatives also spoke at an Internal Management Document (IMD) Oversight Council meeting in 2015 and requested IRM authors go through their IRMs to see if they needed new or updated references. IMD Oversight Council Meeting Minutes (May 20, 2015).

28 Email from Servicewide Policy, Directives and Electronic Research to IMD Coordinators (May 26, 2015) (on file with TAS).

29 TAS continues to focus on ensuring employees receive ongoing education in protecting taxpayer rights, tax law and procedures, and on how to advocate effectively for taxpayers. To meet this objective, the National Taxpayer Advocate conducted a webinar training on how to incorporate the TBOR into the IRM, which was viewed by all TAS employees. TAS, *Taxpayer Bill of Rights: Persuasive Writing and Research for IRM Reviews*, https://www.irsvideos.gov/Presentation?post_id=1445 (Aug. 2015).

right, including how it specifically applies in a situation,³⁰ but others merely include token references to the fundamental rights³¹ or fail to articulate the connection to the TBOR or the fundamental rights at all.³² In one example provided by the IRS, the IRM states “Taxpayers should receive quality customer service.”³³ This phrasing, instead of a clear “Taxpayers have the right to quality service,” weakens the meaning of the TBOR. Further, even when the IRM does point out a specific action that should be taken by the IRS to properly observe one of the specific rights, the IRM fails to provide any remedy for taxpayers if such action is not taken.

The IRS Has Declined to Accept Many of TAS’s Suggestions to Add Taxpayer Bill of Rights (TBOR) References into Its Guidance, Correspondence, and Publications

Between October 1, 2015 and November 2, 2016, TAS has made 402 recommendations to the IRS, seeking to change guidance, correspondence, or publications to better observe a TBOR right or add a reference to a particular right. The IRS has only adopted 136 (or about 49 percent) of the 280 recommendations that are not currently in process, being monitored, or being negotiated.³⁴

An example of one such recommendation not adopted is IRM 25.13.1.3, *Erroneous Correspondence Procedures – Report Erroneous Correspondence Process*, which provides IRS employees with the procedures for reporting any correspondence (*i.e.*, notices, letters, transcripts, faxes, etc.) that was improperly sent to a taxpayer or correspondence that contains errors. This IRM states “All IRS employees are responsible for reporting any case of erroneous taxpayer correspondence (or potential case) to the Office of Taxpayer Correspondence, Data Metrics & Error Resolution (DMER) office through the Report Erroneous Correspondence process.”³⁵ TAS submitted the following recommended language to help employees understand how this responsibility relates to the TBOR:

Taxpayers have the Right to Confidentiality, which means they can trust that the information they provide to the IRS will not be disclosed unless authorized by the taxpayer or the law. Employees can support this right by reporting erroneous taxpayer correspondence, which may prevent future unauthorized disclosures and build taxpayer trust.

The IRS refused to add this language, or alternative TBOR language, stating:

Not necessary. We have already outlined OTC [Office of Taxpayer Correspondence] areas of responsibility.

30 See, e.g., IRM 4.46.1.4, *Principles of Collaboration* (Mar. 9, 2016).

31 See, e.g., IRM 25.23.1.4, *Identity Theft and the IRS* (Sept. 22, 2016) (stating the TBOR “grants all taxpayers important rights” without more detail). This IRM section was provided as an example from the IRS in response to TAS’s information request.

32 See, e.g., IRM 4.46.3.5.6, *Opening Conference (Meeting) Participants* (Mar. 14, 2016) (discussing who may receive confidential information and warning examiners to be wary of who is in the room, but failing to make the connection to the *right to confidentiality* included in the TBOR). This IRM section was provided as an example from the IRS in response to TAS’s information request.

33 IRM 4.46.1.1, *Introduction* (Mar. 9, 2016). This IRM was provided as an example from the IRS in response to TAS’s information request.

34 The 280 recommendations include recommendations that have been adopted, recommendations that have not been adopted, and recommendations that have been elevated to the TAS Technical Liaison after negotiations between the author and the TAS reviewer were unsuccessful. The remaining recommendations of the 402 are currently in process, being monitored, or being negotiated.

35 IRM 25.13.1.3, *Erroneous Correspondence Procedures – Report Erroneous Correspondence Process* (Oct. 14, 2015).

However, the OTC areas of responsibility in the IRM say nothing about taxpayer rights, and the refusal to include this reminder represents a missed opportunity for the IRS to make taxpayer rights a part of its daily operations, and fails to fulfill the mandate of IRC § 7803(a).³⁶

Including the Taxpayer Bill of Rights (TBOR) in Employee Recognition and Awards Would Reinforce the TBOR As Part of the IRS's Culture

The IRS has multiple award systems for recognizing employee accomplishments. There are various monetary as well as nonmonetary awards presented by managers, heads of office, and the Commissioner of Internal Revenue.³⁷ The awards vary among their focus — employees can be recognized for exceptional contributions, for “going the extra mile,” for demonstrating a sustained, strong commitment to achieving the strategic objectives, for outstanding strategic thinking and leadership, and for distinguished service, including military, public, and community service.³⁸ The IRS should create a special award at the Commissioner's level to encourage employees to protect and support the TBOR, to demonstrate the leadership's commitment to the TBOR principles, and to ingrain those principles in the IRS's culture.

The Taxpayer Bill of Rights (TBOR) Could Be Better Applied In Developing and Reviewing Quality Measures, Performance Standards, and Customer Satisfaction Surveys

The IRS can use the TBOR as a lens through which to view IRS metrics.³⁹ In response to TAS's information request, two IRS operating divisions took their quality measurement standards and grouped them according to the relevant TBOR right.⁴⁰ While this is a good start, the exercise of assigning different standards to the different rights is not effective unless the results are reported in a similar way so that employees can see which rights are being supported and which require improvement. TAS does this in its “Taxpayer Rights Assessment,” which takes various IRS performance indicators, such as the cycle time to correspond in an identity theft case, and links them to fundamental rights, such as the *right to be informed*.⁴¹ Other IRS offices could similarly use the TBOR to organize their metrics and report success. In addition, TBOR should be used to help create new quality measurements to ensure the IRS is meaningfully measuring adherence to taxpayer rights.

While some IRS offices are effectively incorporating the TBOR into quality and customer satisfaction measures, one area where the IRS seems deficient across the board is in measuring employee performance. The IRS evaluates its employees on a number of critical job elements (CJEs). To TAS's knowledge, the IRS has provided no guidance to employees on how to incorporate the TBOR into CJEs. Instead, the IRS maintains that several of the CJE components already relate to taxpayer rights, including customer satisfaction and quality of business results.⁴² CJE components may include questions that

36 IRM 25.13.1.1, *Overview of Taxpayer Correspondence Services* (Oct. 14, 2015).

37 See, e.g., IRM 6.451.1.9, *Performance Awards* (May 20, 2011); IRM 6.451.1.15, *IRS Employee Recognition Program* (May 20, 2011).

38 IRS internal webpage, <http://hco.web.irs.gov/erp/awards.html> (Nov. 9, 2016).

39 See Literature Review: *Incorporating Taxpayer Rights into Tax Administration*, vol. 3, *infra*.

40 Both the Large Business & International Division (LB&I) and the Wage & Investment Division (W&I) provided documents to TAS demonstrating how their quality standards reflect the different TBOR rights. IRS response to TAS information request (July 13, 2016). In response to TAS's fact check, the IRS stated that because TAS did not request a crosswalk of the quality standards and TBOR rights, TAS should “not infer from the IRS response provided that the other IRS BODs [Business Operating Divisions] do not have quality standards that reflect the different TBOR rights.” IRS response to TAS fact check (Dec. 16, 2016).

41 See *Taxpayer Rights Assessment: IRS Performance Measures and Data Relating to Taxpayer Rights*, *supra*. The National Taxpayer Advocate started publishing the Taxpayer Rights Assessment annually in 2014.

42 IRS response to TAS information request (July 13, 2016).

Based on the IRS response [regarding Future State], the IRS appears to believe the Taxpayer Bill of Rights (TBOR) is not relevant to what capabilities will be required for the Future State (such as the capability for a person to speak with an IRS employee), but is only relevant in prioritizing how to deliver the capabilities it has decided on and in making a post-hoc justification for funding. The IRS disregards taxpayer rights by not considering the TBOR upfront.

relate to taxpayer rights, such as “Did we provide meaningful outreach to all customers?”⁴³ However, to truly incorporate the TBOR, the CJEs should make the connection between the component and the relevant TBOR rights — the *right to be informed* and the *right to a fair and just tax system*. Linking the desired employee action to a particular right would increase employee awareness of the TBOR and make the employee accountable for observing the TBOR when interacting with taxpayers or working on a taxpayer’s case. The IRS can also use the TBOR as impetus to update and expand existing CJEs in order to better evaluate how an employee’s performance supports the TBOR.

Similar to its position regarding CJEs, the IRS maintains that existing customer satisfaction survey questions relate to the TBOR, while declining to use the TBOR to inform the creation of additional questions.⁴⁴ An Appeals customer satisfaction survey included multiple questions regarding the Alternative Dispute Resolution (ADR) process, asking about general satisfaction, savings in time, savings in money, and whether the taxpayer thought the ADR process and the arbitrator or mediator was impartial.⁴⁵ Appeals could use the TBOR to create additional questions, asking not just if the ADR process was impartial, but whether taxpayers felt the ADR mediator was independent from the IRS, part of the *right to appeal an IRS decision in an independent forum*. There may be situations where customers answered affirmatively to certain questions that implicate taxpayer rights, but did not feel that all of their rights were observed. This information could be captured by adding additional questions, such as “Do you feel the IRS observed your right to [insert relevant right]?”, a question that has been posed by other countries in their customer surveys.⁴⁶

The IRS Should Hold Itself Accountable Through Reporting in the Business Performance Review (BPR)

To make the TBOR more concrete and hold itself accountable, the IRS could implement a program to periodically report on what actions it has taken to further the principles of the TBOR.⁴⁷ This could be easily accomplished through the Business Performance Review (BPR) process, which is a quarterly report used to measure and evaluate a division’s performance against established strategic plans, and to share significant accomplishments as well as evolving concerns with the IRS senior leadership.⁴⁸ Some BPRs already do report on efforts that advance taxpayer rights. For example, Appeals reported in a recent BPR that it has taken actions to mitigate the risk of negative perceptions of Appeals’ independence.⁴⁹ This

43 IRS response to TAS information request (July 13, 2016).

44 In response to TAS’s information request, LB&I and W&I provided documents to TAS grouping the questions in their customer satisfaction surveys by the TBOR right that is implicated. *Id.*

45 IRS, *FY 2015 Appeals Final Survey Instrument* (2015). For a discussion of the National Taxpayer Advocate’s concerns about Appeals’ ADR program, see Most Serious Problem: *Alternative Dispute Resolution (ADR): The IRS is Failing to Effectively Use ADR As a Means of Achieving Mutually Beneficial Outcomes for Taxpayers and the Government*, *infra*.

46 See Literature Review: *Incorporating Taxpayer Rights into Tax Administration*, vol. 3, *infra*.

47 See Finance Act 2009, c 10, § 92 (Eng.) (requiring annual reporting on the Her Majesty’s Revenue and Customs (HMRC) charter); HMRC, *Your Charter Annual Report: April 2014 to March 2015* (2016), <https://www.gov.uk/government/publications/your-charter-annual-report-2014-to-2015>. See Literature Review: *Incorporating Taxpayer Rights into Tax Administration*, vol. 3, *infra*.

48 IRM 4.46.2.8 *Headquarters Reports* (July 22, 2011).

49 IRS, Appeals Business Performance Review (BPR), Third Quarter – FY 2016 (Aug. 4, 2016).

reporting would be more effective if the BPR grouped together actions and successes that further the TBOR so a function or operating division can clearly see how it is making progress on implementing the TBOR and areas where improvement is needed.

The IRS Does Not Provide Evidence That It Considers the Taxpayer Bill of Rights (TBOR) When Making Policy Decisions or Creating Strategic Plans

Recent Changes to IRS Policy Fail to Adequately Consider TBOR

The IRS has provided no evidence that it considers the TBOR when creating policies and plans. For example, the Office of Appeals has moved towards a policy of providing appeal conferences by telephone as the default, and only offering in-person conferences under limited circumstances.⁵⁰ It appears that Appeals considered some taxpayer rights in coming up with exceptions to this policy. For example, the Appeals employee should consider whether there are numerous conference participants, such that there's a risk of unauthorized disclosure, which relates to the *right to confidentiality*. However, it is not clear Appeals considered how this policy would impact other rights, such as the *right to quality service*. By not providing taxpayers with a method to challenge the denial of a face-to-face conference, the IRS is also infringing on a taxpayer's *right to challenge the IRS and be heard*.

The IRS Does Not Adequately Consider the TBOR in Its Long-Term Plans

The TBOR is noticeably absent from some of the IRS's long term strategic plans, including its Future State vision.⁵¹ The IRS's Future State webpage includes a passage at the bottom, stating "The Taxpayer Bill of Rights is a foundational component underlying the future vision of the IRS and reflects the agency's ongoing commitment to respecting taxpayer rights. For example, the right to quality service is a central part of these efforts."⁵² However, in response to TAS's question regarding how TBOR is being considered and how Future State teams have been instructed to consider TBOR, the IRS acknowledges:

Specific guidance has not been provided to the Groups related to specific requisites, as the groups are currently developing plans on "what" capabilities and functionalities will be needed to attain the envisioned Future State. The "how" to deliver them will be considered once the plans are completed, compiled, and analyzed for their interdependencies, prioritization, and sequencing.⁵³

Not including the TBOR in deciding "what" a taxpayer needs will lead to infringements of taxpayer rights. As an example, the IRS has decided that one such need is greater access to taxpayer accounts for third parties like tax return preparers and tax software companies. Such access is intended to compensate for taxpayers for whom online accounts are insufficient. By not considering key taxpayer rights, such as the rights *to be informed*, *to quality service*, *to confidentiality*, and *to a fair and just tax system*, the IRS does not adequately consider that "what" some taxpayers may need is not greater preparer access — which leads

50 See IRM 8.6.1.4.1, Conference Practice (Oct. 1, 2016). For further discussion on Appeals' decision to limit taxpayer's access to face-to-face hearings, see Most Serious Problem: *Appeals: The Office of Appeals' Approach to Case Resolution Is Neither Collaborative Nor Taxpayer Friendly and Its "Future Vision" Should Incorporate Those Values*, *infra*.

51 See Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*, *infra*.

52 IRS, *IRS Future State*, <https://www.irs.gov/uac/newsroom/irs-future-state> (last updated Mar. 4, 2016).

53 IRS response to TAS information request (July 13, 2016).

to increased compliance costs for taxpayers who may prefer to handle their own accounts — but instead alternatives for communicating with the IRS.⁵⁴

The IRS's response regarding the Future State goes on to state that the TBOR will be a requisite to consider when developing business cases for investments.⁵⁵ Such post-hoc consideration of the TBOR is clearly inadequate. Based on the IRS response, the IRS appears to believe the TBOR is not relevant to what capabilities will be required for the Future State (such as the capability for a person to speak with an IRS employee), but is only relevant in prioritizing how to deliver the capabilities it has decided on and in making a post-hoc justification for funding. The IRS disregards taxpayer rights by not considering the TBOR upfront.

CONCLUSION

Congress mandated that the IRS Commissioner “In discharging his duties . . . shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title.”⁵⁶ In order for the IRS to operationalize the TBOR, it must incorporate it into the daily actions and interactions IRS employees take every day. By not instructing employees to consider and include the TBOR in training, guidance, correspondence, measures, performance appraisals, policy decisions, and strategic plans, the IRS misses opportunities for reinforcing the TBOR as an important part of the IRS's way of doing things. Furthermore, by insisting that the IRS's preexisting practices and materials already recognize taxpayer rights, the IRS avoids using the TBOR as a way to improve the treatment of taxpayers and the protection of their rights.

54 See Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*, *infra*; Most Serious Problem: *Worldwide Taxpayer Service: The IRS Has Not Adopted “Best-in-Class” Taxpayer Service Despite Facing Many of the Same Challenges as Other Tax Administrations*, *supra*.

55 IRS response to TAS information request (July 13, 2016).

56 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Issue guidance at a servicewide level and an operating division-wide level to employees who author training materials, internal guidance, and correspondence with detailed instructions regarding how to incorporate the TBOR into those materials.
2. Collaborate with TAS to create an annual mandatory briefing on the TBOR, which should be designated as mandatory for all employees by the IRS's Human Capital Office.
3. Create an award to be given by the Commissioner of Internal Revenue to recognize special achievements in supporting taxpayer rights and the TBOR.
4. Require operating divisions and functions to report the results of their performance measurements and quality measurements according to the relevant TBOR rights associated with each measure.
5. Update the IRS's guidance for developing CJs to instruct employees to incorporate the TBOR into the CJs for all positions.
6. Provide instructions from senior leadership to all Future State teams to consider the TBOR in developing Future State plans and to document how Future State plans affect taxpayer rights.