

Introduction: The Most Serious Problems Encountered by Taxpayers

IRC § 7803(c)(2)(B)(ii)(III) requires the National Taxpayer Advocate to submit an annual report to Congress that contains a summary of ten “Most Serious Problems” encountered by taxpayers.¹ While we use the methodology described below to identify the Most Serious Problems, the list remains inherently subjective in many respects.

A. METHODOLOGY OF IDENTIFYING THE MOST SERIOUS PROBLEMS

The National Taxpayer Advocate is in a unique position to identify the most pressing problems that the IRS faces and negatively impacts taxpayers’ service and their rights. Because TAS is an independent part of the IRS, it can serve as the advocate for the taxpayer and use the experience of its staff to identify taxpayer problems to make recommendations to improve the IRS from within the organization. TAS also works with hundreds of thousands of taxpayers and practitioners every year through its casework and outreach events, so it sees problems from an external perspective. TAS employees interact regularly with taxpayers and IRS employees to resolve taxpayers’ individual problems and make systemic fixes to widespread problems.

The National Taxpayer Advocate becomes aware of potential Most Serious Problems through multiple channels. Trends in TAS’s casework, referrals from congressional offices, research studies completed by TAS and outside groups, advocacy projects worked by the TAS’s Office of Systemic Advocacy, and findings from IRS taskforces and teams on which TAS participates often reveal issues. Additionally, the National Taxpayer Advocate hears directly from individuals, including IRS employees, taxpayers, tax practitioners, other external stakeholders, and through TAS’s Systemic Advocacy Management System and other channels.²

The National Taxpayer Advocate considers several factors in identifying, evaluating, and selecting the Most Serious Problems encountered by taxpayers. The ten issues in this year’s report are selected largely according to the following criteria:

- Impact on taxpayer rights;
- Number of taxpayers impacted;
- Financial impact on taxpayers;
- Visibility, sensitivity, and interest to stakeholders, Congress, and external indicators (*e.g.*, media, etc.);
- Barriers to tax law compliance, including cost, time, and burden;
- Taxpayer Advocate Management Information System (TAMIS) inventory data; and
- Emerging issues.

¹ In previous years, Congress tasked the National Taxpayer Advocate with identifying at least the 20 most serious problems impacting taxpayers. This change was the result of the recent passage of the Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

² The Systemic Advocacy Management System is a database of systemic issues and information reported online to TAS by IRS employees and members of the public, <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams>. TAS reviews and analyzes the submissions and determines a course of action, which can include information-gathering projects, immediate interventions, and advocacy projects. Internal Revenue Manual (IRM) 1.4.13.4.9.2, Systemic Advocacy Management System (SAMS) (Sept. 17, 2019).

B. TAXPAYER ADVOCATE MANAGEMENT INFORMATION SYSTEM LIST

The identification of the Most Serious Problems reflects not only the mandates of Congress and the IRC, but also TAS's integrated approach to advocacy — using individual cases to detect trends and identifying systemic problems in IRS policy and procedures or the IRC. TAS tracks individual taxpayer cases on its internal system, TAMIS. The top 25 case issues, listed in Appendix 1, reflect TAMIS receipts based on taxpayer contacts in fiscal year (FY) 2020, a period spanning October 1, 2019, through September 30, 2020.

C. DATA COMPILATION AND VALIDATION

The data cited in the National Taxpayer Advocate's annual reports generally come from one of three sources: (i) publicly available data such as the IRS Data Book, Government Accountability Office reports, and Treasury Inspector General for Tax Administration reports; (ii) IRS databases to which TAS has access; and (iii) IRS data that IRS operating divisions provide pursuant to TAS information requests. After TAS compiles data, TAS's Office of Research and Analysis confirms it. In accordance with IRC § 7803(c)(2)(B)(ii)(XII), TAS then sends all data in the Most Serious Problem section of the report to the IRS for final verification prior to publication.

On the rare occasion where TAS and the IRS have a disagreement about data or the presentation of the data, we generally discuss it, and if a disagreement persists, we note it in the report. This process ensures data integrity and full transparency regarding data sources and reliability.

D. THE IMPACT OF COVID-19

In the middle of the 2020 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 longest filing season ever. Before we introduce the Most Serious Problems, we want to highlight some challenges the IRS faced and continues to face in light of the COVID-19 pandemic.

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

After the President declared a national emergency due to the COVID-19 pandemic, the IRS took steps to maximize social distancing to protect the personal health and safety of taxpayers, employees, contractors, stakeholders, and local communities.³ These precautions resulted in the partial or complete cessation of core IRS functions nationwide. The IRS's main challenge was that many core operations (*e.g.*, answering phones, opening and processing taxpayer correspondence and paper-filed returns, and issuing notices) were not portable. To further complicate matters, the IRS was tasked with administering the relief provisions in Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), including distribution of economic impact payments (EIPs) "as rapidly as possible" early in the pandemic.⁴

³ Proclamation No. 9994, 85 Fed. Reg. 15, 337 (Mar. 13, 2020).

⁴ The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, § 2201, 134 Stat. 281 (2020).

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;⁵
- Ceased walk-in services at local TAS offices;⁶
- For mission-critical operations that required employees to work in a campus or IRS office setting, the IRS modified staffing to enhance social distancing;⁷ and
- 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.⁸

Understandably, as a result of these actions, the operations of many IRS functions temporarily ceased. Although the IRS obtained laptops and needed software to give employees the ability to work remotely (having issued more than 15,000 laptops to customer service representatives and thousands more to non-customer-facing employees),⁹ telework was not an option for some employees. 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 correspondence 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.

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

6 *Id.*

7 *Id.*

8 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>.

9 IRS response to fact check request (Nov. 19, 2020).

FIGURE 1.0.1, COVID-19 Timeline¹⁰

March 13, 2020	President declares the COVID-19 outbreak in the United States a national emergency.
March 16, 2020	TAS instructs telework-eligible employees to begin teleworking full-time and announces changes to allow for telework-ineligible employees to begin teleworking.
March 20, 2020	In response to the national emergency, the IRS temporarily closes all Taxpayer Assistance Centers and discontinues face-to-face service.
March 21, 2020	The Treasury Department and the IRS announce federal tax filing due date is postponed to July 15, 2020.
March 25, 2020	The IRS announces the People First Initiative, providing compliance relief to taxpayers experiencing uncertainty and hardship from COVID-19. This includes postponing collections and limiting enforcement procedures.
March 27, 2020	The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") is enacted. The act provides \$2.2 trillion in economic relief to healthcare, businesses, and individuals, including economic impact payments.
March 30, 2020	The IRS evacuation order becomes effective. All employees, whose work is portable or can be adapted to work offsite, are instructed to evacuate and work from home.
April 24, 2020	The Paycheck Protection Program and Health Care Enhancement Act is enacted. This law provides \$484 billion in additional funding to programs under the CARES Act.
May 22, 2020	The IRS announces a June 1 reopening plan for "mission-critical" employees; TAS telework plan remains in place.
June 1, 2020	The IRS began to reopen by recalling certain employees back to their respective offices.
June 5, 2020	Congress enacted the Paycheck Protection Program Flexibility Act of 2020.
Aug. 28, 2020	The Treasury Department and the IRS issued guidance for employers to defer withholding and payment of the employee's portion of Social Security tax if wages are below a certain amount.
Nov. 2, 2020	The IRS announced the Taxpayer Relief Initiative, providing temporary revised collection procedures to assist taxpayers in settling their tax debts.
Nov. 21, 2020	Deadline for taxpayers to register for Economic Impact Payments and to claim the supplemental \$500 payments for qualifying children.

¹⁰ 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 (Mar. 20, 2020), <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>; 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, 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); IRS, IR-2020-195, Guidance Issued to Implement Presidential Memorandum Deferring Certain Employee Social Security Tax Withholding (Aug. 28, 2020); IRS, IR-2020-248, IRS Makes It Easier to Set Up Payment Agreements; Offers Other Relief to Taxpayers Struggling With Tax Debts (Nov. 2, 2020); IRS, IR-2020-260, Register by Nov. 21 to Get an Economic Impact Payment; Same Deadline for Federal Beneficiaries to Get Missed \$500 Per Child Payments (Nov. 19, 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 Struggled to Maintain Adequate Telephone Service or Provide Taxpayers With Face-to-Face Service at Taxpayer Assistance Centers for Months

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. 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.

The IRS's decision to shut down core operations significantly reduced the services it provided to taxpayers and practitioners. Beginning in March 2020, taxpayers and practitioners had difficulty contacting the IRS in person and on the phone, and their mailed correspondence and paper-filed returns sat unopened and unprocessed for months. As an alternative, the IRS steered taxpayers to use self-help online tools, which were not necessarily accessible or preferred by some taxpayers.¹¹

In early June, the IRS slowly recalled limited staff, but efforts to maximize social distancing remain in place today and many employees are still teleworking.¹² By October, the IRS's internal networks supported approximately 57,000 employees online concurrently.¹³ However, the impact of COVID-19 could have significant downstream consequences for taxpayers for months to come. Due to the continuing spread of the virus, office shutdowns might be required again during the 2021 filing season. If that happens, some of these problems are likely to recur.

While the IRS's "People First Initiative" Provided Temporary Relief From Enforcement Actions, Some Taxpayers Still Faced Compliance Challenges

In the early weeks of the pandemic, 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.¹⁴ The IRS temporarily stopped opening most new examinations and suspended most collection actions between April 1 and July 15 as part of the initiative (with the notable exception of compliance actions required to prevent the expiration of limitation periods for assessment or collection).¹⁵ However, taxpayers undergoing existing examinations and collection actions still faced challenges. The IRS's operational adaptations placed taxpayers undergoing enforcement actions in a difficult position due to mail stoppage, suspension of notices, and inability to interact with the IRS in person, by phone, and through the mail. Meanwhile, even while enforcement actions were suspended, interest and penalties continued to accrue on tax liabilities. Those taxpayers undergoing examinations and collection actions that commenced before the national emergency still needed to interact with the IRS.

11 IRS, IR-2020-99, IRS.gov Helps Taxpayers Get Tax Information They Need; Find Tools for Filing, Paying, Checking Accounts and Answering Questions (May 21, 2020), <https://www.irs.gov/newsroom/irs-gov-helps-taxpayers-get-tax-information-they-need-find-tools-for-filing-paying-checking-accounts-and-answering-questions>.

12 Wage and Investment Division (W&I), Business Performance Review Quarter 3 FY 2020 3 (Aug. 7, 2020).

13 *IRS in the Pandemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Government Operations*, 116th Cong., at 5 (Oct. 7, 2020) (statement of Charles P. Rettig, IRS Commissioner), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Rettig%20Testimony.pdf>.

14 IRS, Filing and Payment Deadline Extended to July 15, 2020 - Updated Statement (Mar. 21, 2020), <https://www.irs.gov/newsroom/payment-deadline-extended-to-july-15-2020>; 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>.

15 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>.

The IRS developed temporary workaround procedures to enable taxpayers and representatives to digitally communicate with the IRS, but these procedures are set to expire at the end of 2020.¹⁶ In addition, in early November, the IRS announced the IRS Taxpayer Relief Initiative to provide relief to taxpayers struggling to settle their tax debts due to COVID-19 by making it easier to enter into installment agreements and by providing additional relief.¹⁷

The IRS Temporarily Halted Opening and Processing Mail, Resulting in a Backlog of Unprocessed Tax Returns and Taxpayer Correspondence

Beginning in March 2020, the IRS stopped opening and processing mail. IRS campuses fully resumed mailroom operations by June 3, 2020, but still have not worked through the entire backlog.¹⁸ The mail backlog included paper-filed returns (original and amended), paper checks, and taxpayer correspondence, meaning that millions of taxpayers waited extended periods for the IRS to process their returns or review submitted documents. As of the Commissioner's testimony on November 20, 2020, the IRS still had a significant backlog of correspondence, including approximately three million pieces of unopened mail and 6.8 million returns in process.¹⁹

For taxpayers expecting refunds, the long delays were frustrating, and this frustration was compounded for those who experienced a sudden financial hardship and desperately need their tax refunds. In addition to burdening taxpayers, processing delays resulted in overpayment interest costs and rework for the IRS.²⁰

After Closing for Weeks, the IRS Notice Production Centers Mailed Backlogged Notices That Were Confusing and Outdated

The IRS fully closed its notice production centers by April 8 with partial reopening by June 15. The IRS was able to program some systems to stop or postpone system generation of some, but not all, correspondence, which resulted in a backlog of work once Correspondence Production Services reopened.²¹ After reopening the centers in early June, due to programming limitations and the extensive manual time requirements to correct the notices, the IRS determined that it could not reasonably have the backlogged notices reflect updated response dates promptly. The IRS mailed notices as originally generated, and millions of taxpayers received notices bearing dates that were weeks or even months old, many with response dates that had passed. The IRS included an informational insert in over 1.8 million notices for the purpose of informing taxpayers

16 See, e.g., Memorandum From Sunita B. Lough, Deputy Commissioner, Services and Enforcement Employees for All Services and Enforcement Employees, Control Number: NHQ-01-0620-0002, (1) Approval to Accept Images of Signatures and Digital Signatures [and] (2) Approval to Receive Documents and Transmit Encrypted Documents by Email (June 12, 2020), <https://www.irs.gov/pub/foia/ig/spder/nhq-01-0620-0002.pdf>; IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (Oct. 23, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

17 IRS, IR-2020-248, IRS Makes It Easier to Set Up Payment Agreements; Offers Other Relief to Taxpayers Struggling With Tax Debts (Nov. 2, 2020).

18 Email from Charles Rettig, IRS Commissioner, to all IRS employees (June 3, 2020).

19 *IRS Operations and COVID-19 Recovery, Hearing Before the H. Comm. on Ways and Means, Subcomm. on Oversight*, 116th Cong. (Nov. 20, 2020) (statement of Charles P. Rettig, IRS Commissioner), <https://www.c-span.org/video/?478161-1/irs-oversight-hearing>.

20 The IRS generally provided penalty relief by abating failure to file, failure to pay, and bad or dishonored check penalties once they processed the returns and checks as received on the "IRS received date" rather than on the date the IRS actually processed it. IRC §§ 6651(a), 6657; TAS, Case Guidance: IRS Continues to Process Mail Backlog (Aug. 24, 2020); SERP Alert 20A0339, Paper Check Processing Delays (Aug. 13, 2020); IRS SERP Alert 20A0321, Bad Check Penalty Relief Due to Remittance Processing Delays (Aug. 3, 2020). In addition, the IRS paid interest to individual taxpayers who filed their tax year (TY) 2019 returns on or before July 15, 2020. The overpayment interest accrued from the original April 15 due date, rather than from the postponed due date of July 15. IRC §§ 6611; 7508(c); IRS, Millions of Taxpayers Receive a Tax Refund Interest Payment, <https://www.irs.gov/newsroom/millions-of-taxpayers-receive-a-tax-refund-interest-payment> (last visited Oct. 20, 2020).

21 See IRS, SERP Alert 20A0211, Postponement of Account Settlement of Balance Due Tax Returns (May 20, 2020) (Rev. July 2, 2020).

that tax had been assessed against them and demanding that they pay a balance due (“notice and demand”), math error notices, or Collection Due Process.²² The inserts informed taxpayers of the new, updated pay-or-respond deadlines, but some taxpayers inevitably were confused and did not know whether or how to respond.²³ Because telephone service was limited, many taxpayers did not know where to turn.²⁴

Some Taxpayers Did Not Receive Their Full EIPs Due to IRS Programming Errors or Factual Issues and the IRS Decided It Did Not Have the Resources to Resolve This Year

On March 27, 2020, the CARES Act was signed into law. It directed the IRS to make EIPs of \$1,200 to each “eligible individual” and an additional \$500 for each qualifying child “as rapidly as possible.”²⁵ The IRS took immediate steps and made significant efforts to expedite programming its systems; coordinate with the Social Security Administration, the Department of Veterans Affairs, and the Bureau of the Fiscal Service; issue guidance to the public; create a dedicated Coronavirus webpage; and develop two online tools (“Get My Payment” and “Non-Filers Enter Payment Info Here”) to provide eligible individuals with the ability to track their EIPs or file a short return listing their qualified children to receive an additional child payment. The IRS began issuing these payments around April 10, 2020. As of October 7, 2020, the IRS delivered more than 160 million payments, totaling more than \$270 billion, most by direct deposit and some by paper check or prepaid debit card.²⁶

The IRS reached out to potentially eligible individuals who typically do not file federal income tax returns and had not yet registered to claim EIPs.²⁷ Because the EIP is an advance of a credit for an individual’s 2020 tax return, the IRS must issue the payment by the end of 2020. The IRS encouraged individuals to register for the EIP through an online “Non-Filers” tool created for taxpayers without a return filing obligation by November 21, 2020, to allow the IRS time to process and pay the EIP this calendar year.²⁸

22 See Erin M. Collins, Keep an Eye on Your Mailbox: Millions of Backlogged Notices Are Being Mailed Over the Next Few Months, Some Reflect Expired Action Dates. But Don’t Panic, See Inserts Providing Extended Due Dates, NATIONAL TAXPAYER ADVOCATE BLOG (June 22, 2020), <https://www.taxpayeradvocate.irs.gov/news/ntablog-a-digital-mailbox-rule-is-required-as-the-irs-steers-taxpayers-toward-self-help-digital-tools/>; IRS, IRS Statement on Balance Due Notices (June 12, 2020), <https://www.irs.gov/newsroom/irs-statement-on-balance-due-notices>.

23 Notice 1052-A, Important! You Have More Time to Make Your Payment; Notice 1052-B, Important! You Have More Time to Make Your Payment; Notice 1052-C, Important! You Have More Time to Appeal; *Id.* A supplemental Letter 544-C was mailed on August 7, 2020, advising taxpayers that they had until September 8, 2020, to request a CDP hearing. SERP Alert 20A0333, Federal Payment Levy Program (FPLP) and State Income Tax Levy Program (SITLP) Collection Due Process (CDP) Notices (Aug. 12, 2020); IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue (Oct. 23, 2020), <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue>.

24 In October 2020, the IRS also issued supplemental 3064C letters notifying taxpayers who received 105-C, Claim Disallowed and 106-C, Claim Partially Disallowed, letters of the incorrect dates included in the letters and providing correct dates. IRS SERP Alert 20A0440, 105C/106C Incorrect Dates and Supplemental Correspondence (Oct. 21, 2020).

25 CARES Act, Pub. L. No. 116-136, § 2201, 134 Stat. 281, 335 (2020) (codified at IRC § 6428).

26 See *IRS in the Pandemic: Hearing Before the Subcomm. on Government Operations of the H. Comm. on Oversight and Reform*, 116th Cong. (Oct. 7, 2020) (written statement of Charles P. Rettig, IRS Commissioner).

27 IRS, IR-2020-242, To Help Non-Filers, IRS Sets Nov. 10 as ‘National EIP Registration Day,’ Register at IRS.gov for Economic Impact Payment (Oct. 23, 2020), <https://www.irs.gov/newsroom/to-help-non-filers-irs-sets-nov-10-as-national-eip-registration-day-register-at-irsgov-for-economic-impact-payment>.

28 *Id.*

The significant majority of eligible individuals receive their EIPs promptly and without incident.²⁹ However, some eligible individuals did not receive their EIPs, and other individuals did not receive the full amounts.³⁰ The IRS initially took the position that many of these individuals would have to wait until they filed their 2020 tax returns (in 2021) to claim recovery rebate credits against their 2020 tax liabilities.³¹ However, it subsequently agreed to correct its programming errors and pay additional amounts in 2020 in certain circumstances, primarily to individuals with issues that could be identified and resolved via automation.³²

Other EIP administration issues resulted from IRS system limitations that require the agency to rely on manual processes. Where the EIP had been disbursed based on information in the IRS's system, the IRS initially said the individual had to wait until filing a 2020 return next year to claim a 2020 recovery rebate credit. Some individuals, after receiving their EIPs, filed 2019 returns that should have resulted in increased EIP amounts.³³ The challenge the IRS faced was determining how to identify which individuals filed subsequent returns permitting increased EIP amounts, then manually adjusting their account information, and manually issuing second payments — a time-consuming task. This is yet another example of how aged IRS systems that rely too heavily on manual processes can burden taxpayers, requiring eligible individuals to wait nearly an entire year to receive payments Congress directed the IRS to disburse to them “as rapidly as possible.” By year-end, many individuals still had not received the full amount of EIP for which they are eligible and will need to claim a recovery rebate credit on their 2020 income tax return.

E. THE MOST SERIOUS PROBLEMS ENCOUNTERED BY TAXPAYERS IN 2020

In the Most Serious Problems we included in this year's annual report, we tried to be cognizant of the impact of COVID-19. The challenges faced by taxpayers, representatives, and the IRS during the COVID-19 crisis were heightened by the IRS's reliance on outdated technology and a decade of budget cuts. To improve taxpayer service and to enable the IRS to do a better job of collecting taxes that are due under the law, the IRS requires significant additional resources.

- 29 IRS, IR-2020-180, IRS Takes New Steps to Ensure People With Children Receive \$500 Economic Impact Payments (Aug. 14, 2020), <https://www.irs.gov/newsroom/irs-takes-new-steps-to-ensure-people-with-children-receive-500-economic-impact-payments>. See also Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2020-46-041, *Interim Results of the 2020 Filing Season: Effect of COVID-19 Shutdown on Tax Processing and Customer Service Operations and Assessment of Efforts to Implement Legislative Provisions* (June 2020), <https://www.treasury.gov/tigta/auditreports/2020reports/202046041fr.pdf>. TIGTA generally gave the IRS high marks for its efforts. Payments started going out on April 10, just two weeks after the passage of the CARES Act, and by TIGTA's reckoning, about 98 percent of the payment amounts were correctly computed.
- 30 Government Accountability Office, GAO-20-701, *COVID-19: Federal Efforts Could Be Strengthened by Timely and Concerted Actions* (Sept. 21, 2020), <https://www.gao.gov/reports/GAO-20-701/>.
- 31 National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 46-68 (Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*).
- 32 For example, some of the programming errors related to qualifying children claimed on the non-filer tool, injured spouses who had their portion of the EIP erroneously offset against their spouses' past due child support, and taxpayers who filed a joint return with an incarcerated spouse had their portion of the EIP erroneously stopped. See *IRS in the Pandemic: Hearing Before the Subcomm. on Government Operations of the H. Comm. on Oversight and Reform*, 116th Cong. (Oct. 7, 2020) (written statement of Erin M. Collins, National Taxpayer Advocate). In addition, the U.S. District Court for the Northern District of California entered a permanent injunction in *Scholl v. Mnuchin*, No. 20-cv-05309 (N.D. Cal. Oct. 14, 2020), prohibiting the IRS from denying an EIP to someone who is incarcerated if they meet the criteria.
- 33 For example, when the IRS issued the EIP to an eligible individual, it correctly applied the CARES Act and relied on the individual's 2018 return information in determining the amount of the EIP. After the issuance of the EIP, the individual filed a 2019 return reflecting a qualifying child who was not included on the 2018 return. Although the individual may be entitled to an additional \$500 payment, the IRS's system was not programmed to identify which EIP recipients filed subsequent returns and whether it needed to recalculate if any additional payments should be made. The CARES Act instructed the IRS to use the information in its system, either 2018 return information or 2019 return information, in calculating the advance credit for 2020. The CARES Act provided a true-up provision for additional payments with the filing of the individual's 2020 income tax return. TAS encouraged the IRS to find workarounds to make additional payments, but considering the IRS's current IT capabilities, the task was significant.

For the 2020 annual report, the ten Most Serious Problems are as follows:

1. IRS RECRUITMENT, HIRING, AND EMPLOYEE RETENTION: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies

The IRS's success as an agency depends almost entirely on its workforce. Even with outdated technology and a shrinking budget, the IRS has continued to serve as the accounts receivable department for the U.S. government while also administering social programs and implementing congressional mandates. Because the agency's success relies so heavily upon its workforce and their skillsets, it is imperative that the IRS not only receive the funding necessary to support programs but also be able to attract, hire, and retain the right talent at the right time to deliver these programs. While technology has helped somewhat in mitigating workforce losses, the IRS faces an inability to simultaneously hire and maintain full-time equivalent employees while also trying to catch up and replenish the losses incurred over the past decade. As the IRS faces the realities that come with an aging workforce, its inability to attract, hire, and retain younger generations of workers threatens its ability to fairly and efficiently administer the tax laws while providing the best customer service to our nation's taxpayers.

2. TELEPHONE AND IN-PERSON SERVICE: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing

The IRS typically receives about 100 million telephone calls per year.³⁴ The Accounts Management (AM) phone lines have the highest call volumes and are used for account inquiries and tax law questions. The IRS closed all AM phone lines supported by Customer Service Representatives (CSRs) for both taxpayers and tax professionals beginning on March 30, 2020, and began slowly resuming phone service on April 27, 2020. Automated phone lines remained operational throughout the pandemic. A main reason the IRS initially struggled to provide service on the assistor-supported lines was the inability of CSRs to perform their duties while teleworking. The IRS addressed this issue by shipping thousands of laptops to CSRs at their telework locations. All major phone lines reopened by June 26, 2020, but callers continue to experience long waits.

3. ONLINE RECORDS ACCESS: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration

Due to limited technology systems, the IRS operates under a largely paper-based system, requiring taxpayers to keep copies of paper correspondence or call the IRS for assistance. This system leads to inefficiencies because taxpayers lack the ability to access necessary filing information, resulting in taxpayer delays and dissatisfaction with tax administration. Taxpayers should be provided a simple way to access their IRS tax records and account information. The National Taxpayer Advocate recognizes the IRS is aware of these customer expectations and is progressing toward providing similar services. However, due to years of limited funds, the IRS has only been able to add some online services in a piecemeal fashion. The COVID-19 pandemic highlighted the necessity for robust online services to taxpayers and their representatives.

³⁴ IRS, Joint Operations Center Snapshot Reports, Enterprise Total (week ending Sept. 30, 2020).

4. **DIGITAL COMMUNICATIONS: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers**

To protect the health and safety of taxpayers and employees, the IRS shut down all Taxpayer Assistance Centers (TACs) on March 19. Although the IRS has some videoconferencing capability, the TACs could not continue to provide service while employees teleworked. The IRS lacks the server capacity to virtually connect employees working remotely with taxpayers seeking TAC appointments. The IRS began to gradually reopen TACs in phases starting on June 29, but taxpayers must make appointments and limited services are available. The COVID-19 related closures and resulting challenges exposed critical shortcomings in IRS service and communication channels.

5. **E-FILING AND DIGITALIZATION TECHNOLOGY: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources**

For those taxpayers with the capability, electronic filing (e-filing) has many benefits for taxpayers and IRS. The transmission of data is quick, more accurate, and less costly. Digitalizing data also gives the IRS more flexibility to allow employees to work remotely. The IRS's antiquated IT systems and infrastructure present significant obstacles to expanding e-filing and digitizing paper returns. For example, although taxpayers can e-file returns and forms, more than 40 active forms still require paper filing. The IRS should expand its electronic filing capabilities to allow all taxpayers an e-filing option, regardless of the return or any associated schedules, documents, and attachments. And for those taxpayers that choose or do not have the ability to electronically file it must also improve the processing of paper returns by expanding existing technology and implementing new technology. These actions will reduce burden to both taxpayers and the IRS, as well as produce long-term cost savings.

6. **INFORMATION TECHNOLOGY MODERNIZATION: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts**

Despite its responsibility for collecting the most tax revenue in the world and its vital role in social benefits administration, the IRS operates with severely outdated information technology (IT) systems and infrastructure. Without a substantial overhaul of its IT systems, the IRS cannot provide first-rate taxpayer service or efficiently carry out its voluntary compliance, enforcement and collection efforts. The consequence of not fully modernizing IT systems can range from minor inconvenience (*e.g.*, requiring taxpayers who choose to e-file their tax returns to still submit some paper forms) to major catastrophe (*e.g.*, taxpayers being unable to e-file or make payments, and the IRS being unable to process tax returns and disburse refunds). As the nation's tax collector, the IRS can ill afford to have system outages.

7. **CORRESPONDENCE EXAMS: Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits**

The Restructuring and Reform Act of 1998 required that IRS correspondence "include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee." However, more than 20 years later, the IRS still has not meaningfully implemented this provision regarding its correspondence audit programs, which is the largest percentage of all examinations. This makes it difficult and frustrating for taxpayers or their representatives to reach a single point of contact at the IRS who is accountable and knowledgeable about their audit. The

IRS correspondence audit program, as designed, leaves taxpayers without the ability to reach a single point of contact — which diminishes the customer experience, creates IRS inefficiency, and hinders opportunities to engage and educate our nation's taxpayers.

8. INTERNATIONAL: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS

The National Taxpayer Advocate applauds Congress and the IRS for their enforcement efforts to curtail international tax abuses. However, the IRS's treatment of IRC §§ 6038 and 6038A foreign information reporting penalties as systemically assessable is legally unsupportable, administratively problematic, and imposes costs, delays, and stress for taxpayers. Bifurcating income tax and international information penalties has created inefficient, expensive, and unnecessary procedures for taxpayers with offshore income and assets. This approach is unsuited to these penalties, as demonstrated by high abatement rates.

9. AMENDED RETURNS: The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year

The IRS typically processes amended tax returns within 16 weeks. Although true for most amended returns, a subset takes longer to process. For example, if the amended return is selected for audit, processing will likely take several more months and sometimes the IRS will simply stop processing them. In these situations, the "Where's My Amended Return?" tool is of little help because it does not explain where an amended return is in the processing pipeline or estimate when processing will be complete. When taxpayers request an abatement of tax on an amended return, the IRS sometimes refuses to consider the claim and issues a denial form letter without an adequate explanation to the taxpayer. In FY 2019, the IRS's failure to keep taxpayers informed of the status of their amended returns generated over 2.2 million calls, 1.4 million of which it was able to answer, and resulted in over 9,400 TAS cases.

10. REFUND DELAYS: Taxpayers Whose Legitimate Refunds Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds

Taxpayers expect to receive their refunds quickly, and the IRS says it issues most within "21 calendar days" of e-filing (or within six weeks of mailing). But for about 25 percent of the returns flagged for income verification, refunds took longer than 56 days in 2020, and for about 18 percent of those flagged for identity verification, refunds took longer than 120 days. When taxpayers call the IRS about their refunds or use the "Where's My Refund?" tool on the IRS website or the IRS2go app, often they cannot get specific information about the cause of the delay, what the IRS needs, and when they can expect the refund. The IRS needs technology upgrades and procedural improvements to provide more prompt service, to provide transparency, and information to better manage taxpayer expectations.

Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies

RESPONSIBLE OFFICIAL

Robin Bailey Jr., Human Capital Officer

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*

EXPLANATION OF THE PROBLEM

The IRS's success as an agency depends almost entirely on its workforce. Even with outdated technology and a shrinking budget, the IRS has continued to serve, relatively successfully, as the accounts receivable department for the U.S. government² while also administering social programs and implementing congressional mandates.³ Because the agency's success relies so heavily upon its workforce and their skillsets to accomplish their mission and provide quality taxpayer service, it is imperative that the IRS not only receive the funding necessary to support programs but also be able to attract, hire, and retain the right talent at the right time to deliver these programs. Between fiscal years (FYs) 2010 and 2019, the IRS budget was cut by 20.4 percent after adjusting for inflation.⁴ Since FY 2010, the decrease in overall IRS staffing has been

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 "Last year we collected \$3.5 trillion — 95 percent of the gross revenue of the U.S. government ... [w]e cannot have a functioning government without a functioning IRS." *The 2019 Tax Filing Season and the 21st Century IRS, Hearing Before the S. Finance Comm.*, 116th Cong. (Apr. 10, 2019) (statement of IRS Commissioner Charles P. Rettig). See also THE ONLINE TAX GUY, *IRS Commissioner: You're Going to Be Seeing a Lot of Me* (June 11, 2019), <https://theonlinetaxguy.com/2019/06/11/irs-commissioner-youre-going-to-be-seeing-a-lot-of-me/> (citing to statement of IRS Commissioner Charles P. Rettig at the AICPA Engage 2019 conference).

3 The IRS has been tasked with several additional duties including implementing a variety of congressional mandates, issuing Economic Impact Payments, assisting with implementation of Affordable Care Act provisions, etc. See, e.g., the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (2020); the Patient Protection and Affordable Care Act ("ACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010).

4 IRS response to TAS information request (Oct. 2, 2019). Data is rebased to FY 2010 using the Gross Domestic Product Chained Price Index (GDP Index). See Office of Management and Budget, *Fiscal Year 2020 Budget of the U.S. Government, Historical Tables*, Table 10.1 (showing year-to-year increases in the GDP index), <https://www.whitehouse.gov/omb/historical-tables/> (last visited Dec. 15, 2019).

staggering. In FY 2019, the IRS had 73,554 full-time equivalent (FTE) positions, a decrease of 22 percent from 94,711 FTE positions in FY 2010.⁵ While technology has helped somewhat in mitigating workforce losses, the IRS is faced with an inability to simultaneously fill and maintain FTEs while also trying to catchup and replenish the losses incurred over the past decade. As we have seen, the IRS has been unable to meet its projected hiring each year. Between FYs 2017 and 2019, the IRS failed to hire over 5,000 FTEs for which it had allocated funding.⁶ This is 5,000 FTEs who were not available to carry out critical IRS work; an inability to fill and maintain FTEs will make it impossible for the IRS to improve taxpayer service.⁷ Further, as the IRS faces the realities that come with an aging workforce, its inability to attract, hire, and retain younger generations of workers threatens its ability to fairly and efficiently administer the tax laws while providing the best customer service to our nation's taxpayers.

ANALYSIS

The issues with an aging workforce and the difficulties in attracting younger workers are not new or unique to the IRS.⁸ Many federal agencies have faced similar ongoing problems for years. As of September 2019, approximately 44 percent of all federal employees were over the age of 50, while only eight percent were under the age of 30.⁹ This places the federal government in a difficult situation. To compound the situation, the IRS has faced additional challenges as agency resources have been reduced over the past decade due to budget cuts and sequestration, limiting its ability to engage in the level of hiring necessary to ensure the agency has qualified employees ready to step in as experienced employees retire.

With the start of each new Congress, the Government Accountability Office (GAO) updates its list of federal programs and operations that are high-risk.¹⁰ In its 2019 “High-Risk Series” report, GAO addressed the issues surrounding “Human Capital Management,” which it has listed as high-risk in every report since 2001. In its most recent report, GAO stated, in part:

Mission-critical skills gaps both within federal agencies and across the federal workforce pose a high risk to the nation because they impede the government from cost-effectively serving the public and achieving results.... Additionally, the changing nature of federal work and the high percentage of employees eligible for retirement could produce gaps in leadership and institutional knowledge and

5 These figures exclude seasonal and part-time employees. FTE is defined by the IRS as the total number of regular straight-time hours worked (*i.e.*, not including overtime or holiday hours) by employees divided by the number of compensable hours applicable to each fiscal year. This excludes positions funded by reimbursements from other federal agencies and private entities for services performed for these external parties. IRS, 2019 Data Book, Table 31: Collections, Costs, Personnel, and U.S. Population, Fiscal Years 1990-2019 (2020).

6 Chief Financial Office (CFO) FY 2017-2020 Operational Plan vs. Actual Full-Time Equivalent (FTE); IRS response to TAS information request (Sept. 16, 2020) (source: Integrated Financial System).

7 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*, *infra*. See also National Taxpayer Advocate 2019 Annual Report to Congress 3-13 (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*).

8 According to the Office of Personnel Management (OPM) in 2018, about 83 percent of federal agencies struggled with staffing shortages and 63 percent reported gaps in the knowledge and skills of their employees. OPM, *2018 Federal Workforce Priorities Report* 18 (Feb. 2018), <https://www.opm.gov/policy-data-oversight/human-capital-management/federal-workforce-priorities-report/2018-federal-workforce-priorities-report.pdf>.

9 OPM, *FedScope Sept. 2019 Employment Data*, <https://www.fedscope.opm.gov> (last visited Oct. 21, 2020).

10 They are considered high-risk due to their vulnerabilities to fraud, waste, abuse, and mismanagement. GAO, GAO-19-157SP, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas* (Mar. 6, 2019), <https://www.gao.gov/products/GAO-19-157sp>.

could threaten to aggravate the problems created from existing skills gaps.... Mission-critical skills gaps are a contributing factor in making other areas across the government high risk.¹¹

The IRS Faces Various Hurdles in Its Efforts to Keep Pace With Attrition and an Increasing Workload

The IRS has been facing human capital management issues for over a decade. According to IRS data, at the end of FY 2020, of the 81,115 employees on payroll, 17,406 (approximately 21 percent of the IRS workforce) were eligible to retire, and that number rises to 20,767 (approximately 26 percent of the IRS workforce) who would be eligible to retire within the next year.¹² Adding the average number of employees who leave the IRS each year for the private sector or another job (on average 5,576 employees),¹³ approximately 32 percent of IRS employees could leave over the next year. If the IRS does not make significant changes, these staffing shortages will compound and pose significant threats to the U.S. Treasury and harm taxpayer services and taxpayer rights.

If the IRS does not make significant changes, these staffing shortages will compound and pose significant threats to the U.S. Treasury and harm taxpayer services and taxpayer rights.

The National Taxpayer Advocate is concerned that the IRS's Human Capital Office (HCO) is not equipped to handle the influx of hiring the IRS needs. In its FY 2021 annual budget, the IRS requested additional funding in support of the Taxpayer First Act, its Integrated Modernization Business Plan, and the Program Integrity Cap. These investments total over 3,200 FTEs.¹⁴ Both the IRS Commissioner and the National Taxpayer Advocate have testified before Congress in support of additional funding for the IRS. If HCO doesn't address the challenges detailed below, the additional hiring needs and backfilling of normal attrition will continue to challenge the IRS.

The IRS does face certain challenges in this arena that are not fully within its control. For example: 1) the General Schedule (GS) pay system makes it difficult for the IRS to compete with benefits and salaries in the private sector, particularly with lower level positions;¹⁵ 2) the IRS's contract with the National Treasury

11 GAO, GAO-19-157SP, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas* (Mar. 6, 2019), <https://www.gao.gov/products/GAO-19-157sp>.

12 IRS HCO, Human Capital Analytics and Technology, IRS Workforce Retirement Insight (last visited Oct. 21, 2020).

13 IRS HCO, IRS Gains and Losses Report by BOD FY 2017 – FY 2020 PP17; IRS response to TAS information request (Oct. 2, 2020). This data was derived from IRS National Finance Center transactions from Oct. 2, 2016, to Aug. 29, 2020.

14 IRS, Pub. 4550, Congressional Budget Justification & Annual Performance Plan 131 (Feb. 2020), https://irssource.web.irs.gov/CFO/Documents/CB_PGS_BF_F_CJ_FY2021.pdf.

15 The Partnership for Public Service, *A Time for Talent: Improving Federal Recruiting and Hiring* 1 (Aug. 2020), [https://ourpublicservice.org/wp-content/uploads/2020/08/A-Time-for-Talent.pdf#:~:text=A%20TIME%20FOR%20TALENT%20a%20AUGUST%202020%20A,serve%20and%20by%20transforming%20the%20way%20government%20works;Federal%20Salary%20Council,Report%20of%20the%20Federal%20Salary%20Council%20Working%20Group%205%20\(Oct.%2021,%202020\),https://cdn.govexec.com/media/gbc/docs/pdfs_edit/102120ew1.pdf](https://ourpublicservice.org/wp-content/uploads/2020/08/A-Time-for-Talent.pdf#:~:text=A%20TIME%20FOR%20TALENT%20a%20AUGUST%202020%20A,serve%20and%20by%20transforming%20the%20way%20government%20works;Federal%20Salary%20Council,Report%20of%20the%20Federal%20Salary%20Council%20Working%20Group%205%20(Oct.%2021,%202020),https://cdn.govexec.com/media/gbc/docs/pdfs_edit/102120ew1.pdf).

Employees Union (NTEU) limits the agency's ability to recruit employees from outside of the IRS;¹⁶ and 3) the Office of Personnel Management (OPM) administrative rules prevent or make "direct-hire" authority very difficult to obtain for most positions in the IRS.¹⁷ There are, however, changes the IRS can make to help alleviate some of these problems, including focusing strongly on recruitment, streamlining its hiring processes, collaborating more closely with the individual IRS Business Operating Divisions (divisions), and giving the divisions more meaningful roles and control over their own hiring.

The IRS's Human Capital Office Should Collaborate More Closely With Business Operating Divisions to Improve Its New HCO 2022 Initiative

IRS HCO has known about these human capital challenges for some time, but the IRS had not taken an in-depth look at an IRS-wide strategic human capital plan or workforce plan since 2005-2006.¹⁸ Staff reductions and budget cuts have reduced the ability of HCO's Employment Office and the divisions to accomplish necessary hiring. Because of the significant number of IRS employees who will be eligible to retire soon, HCO acknowledged that both hiring and developing new employees are now critical needs for the IRS.¹⁹ Recognizing these challenges, HCO launched its "HCO 2022" initiative in May 2019.²⁰

HCO 2022 is the IRS's attempt to overhaul its Human Capital Office to better meet the needs of its customers. HCO established the HCO 2022 project with a vision of working with individual IRS divisions to collaboratively build an "HR [Human Resources] Service Delivery Model" to meet the IRS's talent management needs. While the IRS's HCO 2022 project addresses some of the human capital issues the IRS is facing, we are concerned the initiatives will not solve the issues, thus requiring additional improvements.

The IRS Is Not Meeting the Goals Set Forth in the Office of Personnel Management's End to End Hiring Initiative or Its Pledge to Applicants

Understanding that the federal government would be soon facing a significant loss of employees primarily due to retirement, in March 2017, OPM set forth its "End to End Hiring Initiative."²¹ At the outset of the document, OPM sets forth its "Pledge to Applicants," which is also on the first page of the "Delegated Examining Operations Handbook," the primary guide for HR specialists.²² That pledge states:

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- 16 Article 13, § 1.B of the 2019 National Agreement between the IRS and NTEU requires the IRS to provide first consideration to IRS employees for all bargaining unit vacancies, requiring hiring managers to review and consider all IRS applicants listed on the certificate prior to being permitted to review and/or consider any external candidates. The hiring managers also must make a determination to select or not select IRS applicants before any external candidates can be referred for consideration. 2019 IRS National Agreement, https://www.treasury.gov/tigta/foia/efoia-imds/chapter400-inv/400-exhibits/NTEU_IRS_Contract.pdf.
 - 17 Direct-hire authority allows agencies with delegated authority to hire individuals without regard to §§ 3309-3318 of title 5, United States Code, to positions for which: 1) Public notice has been given; and 2) OPM determines there is a severe shortage of candidates or a critical hiring need. 5 U.S.C. §§ 3309-3318. OPM may issue direct-hire authority for one or more of the following: occupational series, grades (or equivalent), and geographical location. Requests for direct-hire authority must be submitted by the agency's Chief Human Capital Officer (or equivalent) at the agency's headquarters level. 5 C.F.R. § 337.201.
 - 18 See IRS Human Capital Strategic Plan: 2005-2009 (2005), <http://hco.web.irs.gov/pdf/irshcstratplan.pdf>. See also IRS Human Capital Office, Workforce Plan (Mar. 2006), <http://hco.web.irs.gov/pdf/wkfrplan2006.pdf>.
 - 19 IRS HCO, HCO 2022 (Phase 1) Project Charter (Draft Version 5) (May 24, 2019); IRS response to TAS information request (Oct. 2, 2020).
 - 20 The purpose of HCO 2022, which was established in phases, is to create a "Human Capital Delivery Model that is competent, agile and customer centric" and that "will optimize and enhance" the current hiring processes. IRS HCO, HCO 2022 (Phase 1) Project Charter (Draft Version 5) (May 24, 2019); IRS response to TAS information request (Oct. 2, 2020).
 - 21 OPM, *End to End Hiring Initiative* (Mar. 2017), <https://www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform/reference/end-to-end-hiring-initiative.pdf>.
 - 22 OPM, *Delegated Examining Operations Handbook*, https://www.opm.gov/policy-data-oversight/hiring-information/competitive-hiring/deo_handbook.pdf.

We recognize that a Government's most important asset is its people. To attract talented people to the service of the Nation, we believe the application process should enable rather than deter job seekers. To that end, we will work to ensure a process that reflects these principles:

1. A user-friendly application process that is not unduly burdensome or time consuming;
2. Clear, understandable job announcements and instructions for applying;
3. Timely and informed responses to questions about the requirements and the process;
4. Prompt acknowledgment that their application has been received;
5. Regular updates on the status of their applications as significant decisions are reached; and
6. A timely decision-making process.²³

The "Pledge to Applicants" has been around for almost 20 years.²⁴ Based on our discussions with IRS hiring managers, it appears the IRS is currently failing in most of these pledges.²⁵ As a professional organization, potential candidates for IRS vacancies demand, and should be able to expect, a professional, efficient hiring process. When the IRS cannot offer that, its reputation is tarnished, further hindering its ability to attract quality candidates to fill vacant positions.

Regarding an efficient hiring process, OPM's End to End Hiring initiative set a goal of 80 days from the time the IRS division validates the need to fill a position to the day the selected candidate starts his or her first day on the job.²⁶ IRS's HCO has also adopted this goal of an 80-day hiring cycle time as one of its "Key Performance Measures" for FY 2020.²⁷ This is a reasonable goal, but the IRS continues to fall short. According to information set forth in HCO's FY 2020 Business Performance Review, its actual hiring cycle time for FY 2020 was approximately 120 days, nearly 50 percent longer than its target goal for the year.²⁸ This four-month lag between the time the IRS identifies a need to fill a position to when the new employee starts can result in delays in IRS operations because a job is going unfilled, or it can cause the IRS to lose potential external candidates who are not willing to wait that long to start a new job. This is one area where the IRS needs to improve to ensure the agency has the employees it needs to carry out its mission.

Lack of Trained Human Capital Office Staff Compounds Existing IRS Hiring Problems

In its End to End Hiring Initiative, OPM also recognized and acknowledged several challenges federal hiring agencies are experiencing that may hinder their ability to meet these goals. Some of those challenges included:

- "Availability of trained human resources staff conducting various steps of the hiring process; and
- Availability of managers dedicated to engage in the hiring process, beginning with reviewing workforce requirements, staffing and recruiting plans in order to select individuals best suited for the position."²⁹

23 OPM, *End to End Hiring Initiative* 3 (Mar. 2017), <https://www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform/reference/end-to-end-hiring-initiative.pdf>.

24 See OPM, *Memorandum for Human Resources Directors* (MSG-087a) (Dec. 13, 2002), <https://www.chcoc.gov/content/pledge-applicants>.

25 TAS interviews of IRS subject matter experts from the Wage and Investment, Tax Exempt and Government Entities, Small Business/Self-Employed, Large Business and International, and Chief Financial Officer divisions (Oct. 2020).

26 OPM, *End to End Hiring Initiative* 27 (Mar. 2017), <https://www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform/reference/end-to-end-hiring-initiative.pdf>.

27 IRS response to TAS information request (Nov. 2, 2020).

28 IRS response to TAS information request (Oct. 28, 2020).

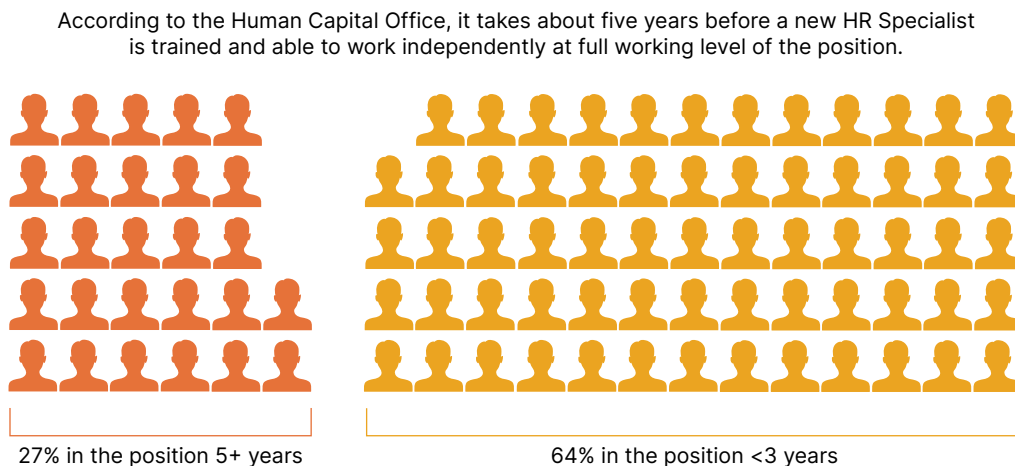
29 OPM, *End to End Hiring Initiative* 29 (Mar. 2017), <https://www.opm.gov/policy-data-oversight/human-capital-management/hiring-reform/reference/end-to-end-hiring-initiative.pdf>.

For the IRS, the lack of trained human resources staff is an issue that HCO is facing today, resulting in some of the delays in its hiring processes. Like many IRS divisions, HCO has its own recruitment, hiring, and retention challenges. HCO recently acknowledged that between its diminishing budget and increased employee attrition over the last eight to ten years, it has lost critical skillsets that have reduced its ability to effectively meet its customers' needs and as a result, customer dissatisfaction with its services has increased.³⁰

At the end of FY 2020, there were approximately 293 GS-201 Series Human Resource Specialists employed by HCO.³¹ Of those 293 employees, 188 (64 percent) have been in the position less than three years. On the other end, 81 of the 293 employees (27 percent) have been in the position five years or more.³²

FIGURE 1.1.1

GS-201 Human Resources Specialists Employed by the Human Capital Office, End of FY 2020



While it is good to have a number of new employees in these positions, it is concerning that nearly two-thirds of the employees in these positions have less than three years of experience. According to HCO, it takes approximately five years before a new HR Specialist is trained and able to work independently at the full working level of the position,³³ which equates to just 27 percent of its current HR Specialists.³⁴ The lack of trained HR Specialists and the lack of experience has hampered HCO's timeliness goals and has contributed to the IRS failing to hire over 5,000 employees between FYs 2017-2019, as discussed above.³⁵

30 IRS, HCO 2022 – Executive Champion Townhall – June/July 2020, slide 2 (July 7, 2020); IRS response to TAS information request (Oct. 2, 2020).

31 Length of Service of GS-201s (HR Specialists) (Sept. 30, 2020) (derived from National Finance Center Payroll via Treasury Enterprise Data Management (EDM) Data Warehouse Tabular Model); IRS response to TAS information request (Oct. 2, 2020).

32 *Id.*

33 IRS response to TAS information request (Oct. 28, 2020) (Internal Revenue Service Standard Position Description #98758).

34 Length of Service of GS-201s (HR Specialists) (Sept. 30, 2020) (derived from National Finance Center Payroll via Treasury EDM Data Warehouse Tabular Model); IRS response to TAS information request (Oct. 2, 2020).

35 CFO FY2017-2020 Operational Plan vs Actual FTE; IRS response to TAS information request (Sept. 16, 2020).

According to HCO's new plan, HCO will do all of the operational HR work, and individual IRS divisions will not be allowed to substantially participate in the hiring process.³⁶ Previously, several IRS divisions had their own HR staff members conduct the hiring work for their own division, but in FY 2020, HCO removed that authority from the individual divisions and took all that work back. This centralization of all hiring in HCO has the potential to further delay an already broken hiring process. Now, if a division has an issue with one of its announcements or packages, it has no control over the employee working the announcement or package. The centralized HCO hiring process does not allow for direct communications between the IRS functions and the HCO individuals working the hiring announcements. This causes further delays and creates more frustration when functions are trying to ensure their jobs are announced accurately and worked quickly so that they can fill these critical vacancies.

To gain further insight on these human capital issues from the customer perspective, TAS interviewed subject matter experts from all four of the primary IRS divisions and one of the principal offices in October 2020.³⁷ This qualitative study gathered information on their experiences with IRS hiring, including barriers encountered and recommendations to strengthen the process for the future. In our discussions with the respondents, the consensus was a general dissatisfaction with HCO's level of service to the agency. Many of the respondents that we interviewed felt that HCO's new hiring process – built around an assembly-line concept where different people work the same hiring package depending on what stage it is at, is not as efficient as the previous end-to-end processing. The respondents feel that the assembly-line concept is less effective because there is no accountability or personal ownership for a hiring package from beginning to end. If there is a question or issue with a hiring package, respondents indicated that they often do not know whom to contact because there is no longer a single point of contact in the HCO Employment Office for a hiring package. Given the barriers already inherent in hiring into government jobs, the IRS should not have to struggle internally with those tasked with hiring.

In our discussions with the subject matter experts from different divisions, there were several issues noted with HCO's new hiring processes. For example:

Time:

- Several respondents indicated that the processes to hire and bring on new employees simply takes too long.

Communication:

- Several respondents voiced concerns over a general lack of communication with HCO in the new hiring processes;
- Communication was not only noted as an issue with the IRS divisions but with the actual applicants. Respondents provided examples where applicants reached out personally to the hiring manager because of the length of time that had passed since the applicant heard anything about the vacancy for which he or she applied;
- Because the hiring packages are not worked by the same HCO employee from beginning to end, several respondents indicated they have a hard time determining who they need to talk to when a question arises, as the HR Specialists only know their piece of the process; and

36 IRS, HCO 2022 – Executive Champion Townhall – June/July 2020, slide 4 (July 7, 2020); IRS response to TAS information request (Oct. 2, 2020).

37 IRS, At-a-Glance: IRS Divisions and Principal Offices, <https://www.irs.gov/about-irs/at-a-glance-irs-divisions-and-principal-offices> (last visited Dec. 15, 2020).

- Possibly the most alarming, respondents indicated that there was a period of time in FY 2020 when HCO HR Specialists were told to disregard emails, phone calls, and other communications from their customers so that they could focus on learning the new processes.

Qualification Issues:

- Several respondents noted multiple experiences where an employee was fully onboarded, only to have HCO later come back and say that the individual does not qualify for the position. This requires the division to remove the employee from the position and work through related grievances.

General Errors:

- The respondents also provided several examples of HCO staff making general errors during the hiring process, which ultimately cause further delays before the IRS can fill positions. Respondents believed that this is primarily due to the turnover and lack of experience with HCO's HR Specialists who are working the hiring packages.

Another significant issue raised in these discussions was the additional delays to the process due to personnel security, including fingerprinting and background checks. Respondents raised concerns that this particular issue will balloon and become even more problematic when the IRS has additional hiring surges in the near future, which will further hamper its ability to fill vacant positions.

This feedback, while anecdotal, indicates that there is much the IRS can do internally to improve how it handles the hiring process. While respondents were generally appreciative of the hard work of the HCO staff and their willingness to help overall, customers believe that the new HCO processes are more time-consuming, take more division resources, are prone to errors on the HCO side, and generally lack communication and transparency from HCO through the process. From a customer service perspective, the new processes are currently failing. It is crucial that the IRS take steps to immediately address these concerns and design a hiring process that best meets the needs of the entire agency. The IRS should not be in a position where it is spending more time fighting to fill a position than it is focusing on its core mission.

The IRS Should Expand Current Recruitment Strategies and Increase Investment and Efforts Spent on Employee Recruitment to Target New Talent

While there is much work for the IRS to do in how it implements hiring, there is also much it needs to do with regards to whom it hires. At its core, the IRS needs to rethink its approach to attracting new talent. Instead of posting a job online and waiting for candidates to apply, the agency should increase investment and efforts spent on finding and attracting new talent. It should improve methods to proactively seek out and attract the right talent rather than waiting for talent to find the IRS. For example, the IRS could consider a strengthened on-campus and virtual university presence to attract high-caliber students early for summer internships, in hopes of attracting them for future positions. The IRS should consider the use of external recruiters, referrals, and search firms to expand the search network for certain mission-critical positions. It should participate more in non-university career fairs, career open houses, and networking with professional associations, trade groups, and civics associations to create networking circles and affinity groups to help identify or recommend candidates. It should consider the use of diversity and skill-focused ad campaigns. Finally, the IRS should incentivize recruitment by providing bonuses paid to employees for successful referrals that result in the hiring of a new employee to the IRS.

Even though the IRS has its own corporate recruitment function within HCO, which can be beneficial in managing and coordinating agency recruitment efforts, we believe the bulk of IRS recruitment should follow a hybrid approach where individual IRS divisions lead their recruitment efforts instead of the efforts occurring centrally at the corporate level. The divisions leading the efforts would then coordinate with and receive support from HCO. This hybrid approach would ensure agency-wide coordination while allowing for more proactive, targeted recruitment. However, because most of the divisions do not have the funds to support their own recruitment staff, they must rely on HCO recruitment efforts.

At its core, the IRS needs to rethink its approach to attracting new talent... It should improve methods to proactively seek out and attract the right talent rather than waiting for the talent to find the IRS.

Under a hybrid approach, IRS staff and senior leaders from each of the divisions would lead in building and maintaining relationships with colleges and universities across the country, including conducting regular on-campus information sessions with students and serving as guest lecturers. Divisions would not see results immediately, as this requires long-term investment, but the IRS needs to spend more time, money, and effort in these areas to build its brand and convince potential candidates that the IRS is a great place to start and build their career. A decentralized hybrid approach to recruitment allows for a more personal connection with candidates and their potential future colleagues and would help candidates better understand the job for which they are applying.

The IRS Should Study and Learn From Recruitment Strategies Used by Other Federal Agencies and the Private Sector

The IRS should consider the successes and best practices of other federal agencies and the private sector with recruitment efforts. For example, the Federal Deposit Insurance Corporation (FDIC) invests heavily in building long-term relationships with over 600 universities and colleges through its “Corporate Recruitment” program that enlists more than 300 employees to participate in outreach and talent attraction efforts.³⁸

The recruitment model that the National Aeronautics and Space Administration (NASA) follows takes a long-term approach in developing future talent for future workforce needs.³⁹ NASA invests in long-term partnerships with academia, and its outreach plans focus on finding candidates with the knowledge and capabilities required to perform essential work. It relies heavily on fellowship and internship programs and

38 The Partnership for Public Service, *A Time for Talent: Improving Federal Recruiting and Hiring* 9 (Aug. 2020), <https://ourpublicservice.org/wp-content/uploads/2020/08/A-Time-for-Talent.pdf#:~:text=A%20TIME%20FOR%20TALENT%20a%20AUGUST%202020%20A,serve%20and%20by%20transforming%20the%20way%20government%20works> (highlighting the success of FDIC’s program and its use of scannable QR codes on agency business cards).

39 FEDWEEK, *MSPB Holds Up NASA Hiring Strategy as Model to Follow* (May 27, 2020), <https://www.fedweek.com/federal-managers-daily-report/mspb-cites-nasas-hiring-strategies-as-model-for-other-agencies/>.

expands its recruitment outreach to potential candidates via social media.⁴⁰ Another successful aspect of NASA's model is that it is continuously changing and adapting. After conducting a recruitment event or a new approach, NASA analyzes its strategy afterward to ensure it has met its goals, and if not, it changes its approaches or tries something different.⁴¹

The National Institutes of Health (NIH) utilizes robust search committees to attract talent. These committees, consisting of internal and external experts, identify and reach out personally to recruit potential employees, highlighting the effectiveness of personal outreach.⁴² In the private sector, for example, Amazon Web Services proactively keeps networking channels and events with former employees and others with affinity with the company, and it uses this network to ask for recommendations for qualified candidates when it has vacancies to fill.⁴³ The IRS should take note and learn from these other agencies, as its recruitment strategies and efforts need to be more robust to attract its future workforce.

As Needed Skills Change, the IRS Must Adapt Its Recruitment Efforts

The IRS must also consider what its future work looks like and be agile enough to adjust its recruitment efforts as the future of IRS work changes. As the IRS looks to make improvements in how it serves taxpayers, it should also look at whether hiring employees with unique skillsets will further that effort. If there is a drive to make more information and services available electronically, the IRS needs to consider the skillsets it will need to make this vision a reality, which will likely involve more emphasis on the information technology-related fields.

In this year's Most Serious Problem on information technology (IT) modernization,⁴⁴ TAS received several recommendations from IRS IT that are relevant for this discussion. For example:

- The IRS needs a workforce equipped with next-generation skills in advanced analytics and artificial intelligence;
- Current federal standards for job classification are inadequate to meet the increasing demand for deep talent in analytics and artificial intelligence. The IRS needs to make efforts to determine core educational requirements of a next-generation workforce prepared to deal with new challenges that originate from multiple interdisciplinary domains involving statistics, applied mathematics, computer science, engineering, economics, physics, and social sciences;
- While the IRS has made progress in recent years to deepen and expand collaborative research with industry and academia, catalyzing the application of novel and non-traditional approaches to tax administration and bringing needed enthusiasm, the amount of funding on such partnerships is a tiny fraction of what the IRS requires to create breakthrough research capabilities. While many analytical problems are both exciting and rewarding, it is unlikely that the IRS could attract top talent from universities without a major increase in funding; and
- To attract critically needed talent in advanced analytics and artificial intelligence, the IRS should consider a two-year fellowship program, sponsored by the IRS Commissioner, with a salary

40 FEDWEEK, *MSPB Holds Up NASA Hiring Strategy as Model to Follow* (May 27, 2020), <https://www.fedweek.com/federal-managers-daily-report/mspb-cites-nasas-hiring-strategies-as-model-for-other-agencies/>.

41 *Id.*

42 The Partnership for Public Service, *A Time for Talent: Improving Federal Recruiting and Hiring* 7 (Aug. 2020), <https://ourpublicservice.org/publications/a-time-for-talent/> (highlighting the success of NIH's search committees).

43 *Id.* at 9.

44 See Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *infra*.

commensurate with skills and experience. Candidates would need to hold a graduate degree in a suitable field to qualify. The Food and Drug Administration has a good example of what such a program could look like.

The number of businesses and agencies competing for good IT talent today is huge. If the IRS wants to be competitive in recruiting this type of top-notch talent, it will need to make significant changes.

The IRS Needs to Expand Its Ability to Hire External Candidates

In addition to focusing on recruitment efforts, the IRS needs to expand its ability to hire externally. Under the current union contract, the IRS is required to consider internal applicants first for any bargaining unit position vacancy announcement. The result is that the IRS often finds itself simply shuffling existing employees around between positions rather than bringing in new employees. The time spent announcing a position internally first and then having to go through the external process is significant and can be a waste of time and resources. While we recognize that giving existing IRS employees the first opportunity to compete for a position is important, the agency's need to hire new employees is as well. The IRS should work with NTEU to negotiate procedures that allow the agency to announce a certain percentage of positions externally without going through an internal announcement first. The goal would be to increase the overall IRS workforce while also preserving the advantage for existing IRS employees.

The Human Capital Office and IRS Divisions Should Work Together to Reevaluate and Improve Strategies Aimed at Retaining Skilled Employees

Once the IRS finds the right talent, it must work at retaining that talent. The key to building and sustaining a vibrant workforce lies in investing in and cultivating talent in the workforce and creating incentives for employees to stay. Employee retention and employee advancement go hand-in-hand, as employees unsatisfied with their job or unable to see opportunities for advancement often leave for other jobs. IRS workflows require specialized, well-trained personnel to audit a taxpayer, collect tax debt, process correspondence, or answer tax law questions, and those specialized employees have been retiring or otherwise leaving for other agencies or the private sector during the past decade and taking their expertise and institutional knowledge with them. The IRS needs to be able to maintain the right mix of veteran employees and new employees so that there is enough time for the necessary knowledge transfer to take place and help ensure business continuity. If the knowledge transfer does not happen, the loss of talent is even more noticeable as it takes significant time and resources to attract, hire, and train replacements for those employees. When the IRS finds those replacements, it needs to do a better job of helping them see the opportunities for advancement within the agency.

In March 2017, HCO published its employee "Retention Strategy."⁴⁵ A few months before the publication of its "Retention Strategy," HCO merged "IRS Servicewide Retention" efforts and "IRS Engagement" efforts to create the "Engagement & Retention" office.⁴⁶ Employee retention is probably the most challenging of the three issues (recruitment, hiring, and retention), especially when the bulk of IRS attrition is due to retirements. Ultimately, employers can only do so much to retain employees looking forward to retirement. As HCO acknowledges in the 2017 Retention Strategy, "as staffing decreases, the remaining staff has to do

⁴⁵ See IRS HCO, Retention Strategy (Mar. 2017), https://irssource.web.irs.gov/Linked%20Documents%20Library/HCO-Engagement_2017_Retention_Strategy.pdf.

⁴⁶ *Id.*

more with less while still meeting legislative mandates and levels of service” feeding into “a cycle of decreasing morale and more attrition.”⁴⁷ Similar to a centralized recruitment model, having employee retention work focused at the corporate level does not seem to work. Like recruitment efforts, employee retention should be more decentralized and have a larger focus for the individual IRS divisions to take the lead with support provided by HCO.

The IRS needs to be able to maintain the right mix of veteran employees and new employees so that there is enough time for the necessary knowledge transfer to take place and help ensure business continuity. If the knowledge transfer does not happen, the loss of talent is even more noticeable as it takes significant time and resources to attract, hire, and train replacements for those employees.

Additionally, the IRS needs to think creatively about different ways that it can retain employees. One way to help retain employees is by providing career path options so that they want to stay long-term. For example, the IRS could consider implementing a rotational program where IRS employees work on rotating six-month assignments in different parts of the IRS. This type of program would benefit both employees and the IRS as it would allow employees to see firsthand what different parts of the IRS have to offer for different job opportunities, and it would help place employees where their interests and skillsets fit best. HCO could also explore the possibility of partnering with the private sector to further develop IRS employees. Both the IRS and private sector companies compete for similar candidates, and both the IRS and those private sector companies could benefit from a partnership where employees participate in a fellowship program and are allowed to work in either the IRS or a partner private sector company for a period of time. Like the internal rotational program discussed above, this would help candidates see firsthand what the IRS and the partner private sector companies have to offer and would help place employees in positions where they are more likely to be happy and stay long-term. Finally, the IRS could do a better job of identifying emerging leaders early on in their careers, developing their skills, and putting them on a leadership fast-track so that we do not lose these individuals to the private sector or other government agencies. Many IRS divisions would be happy to partner with HCO and other IRS divisions to help set up these types of employee retention programs, as they would benefit all of the IRS.

47 See IRS HCO, Retention Strategy (Mar. 2017), https://irssource.web.irs.gov/Linked%20Documents%20Library/HCO-Engagement_2017_Retention_Strategy.pdf.

CONCLUSION AND RECOMMENDATIONS

The IRS has known about employee recruitment, hiring, and retention issues for years, and it has not made any meaningful strides toward improvement. This should be a serious concern and top priority for Congress, OPM, and the IRS as it is threatening the IRS's ability to fulfill its mission and ultimately harming taxpayer services and impairing voluntary compliance. While we recognize that HCO has a difficult job to support an agency the size of the IRS, if the IRS cannot fulfill its mission, the downstream effects will be felt across the federal government and the country. The IRS's inability to attract, hire, and retain younger generations of workers has been going on for too long, and the IRS needs to make significant changes.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Hire additional HR Specialists to meet hiring demand.
2. Restructure internal hiring processes to improve cycle times.
3. Renegotiate the hiring process with the NTEU to allow for up to 50 percent of all hiring announcements to be filled externally.
4. Provide the IRS divisions with a single point of contact in the assigned HCO Employment Office for each of their hiring packages.
5. Allow the divisions to work their own announcements and hiring packages, when requested, while providing oversight, quality review, and technical support to ensure they follow the proper processes.
6. Conduct a research study to learn from successful recruitment strategies used by other federal agencies and the private sector.
7. Invest more time, effort, and money and be more proactive in its recruitment efforts.
8. Rather than hiring out to contractors, bring background check staff back to the IRS as full-time employees.
9. Dedicate more funding for recruitment efforts.
10. Work with the Department of Treasury to seek approval for additional direct-hire authority for critical IRS positions beyond IRS IT, and consider seeking legislative changes to expand critical pay authority for IRS positions beyond IRS IT.

IRS COMMENTS

We appreciate the importance of an engaged workforce to our success in fairly and efficiently administering the tax laws and service our nation's taxpayers. As the Advocate notes, recruiting and retention efforts can face significant hurdles. Despite these challenges, we have made major strides over the past two years to streamline hiring activities, enhance the collaboration between the Human Capital Office (HCO) and the IRS business operating divisions, strengthen external partnerships, and increase transparency in the hiring process.

Here are some of the ways we are streamlining hiring and improving recruitment and retention, which address many of the Advocate's concerns:

- In April 2019, the IRS HCO restructured the hiring process, more than doubling hiring production and eliminating the hiring request backlog. A key aspect of this success was the adoption of a hiring “workstation” concept, a best practice at other federal agencies, which aligns hiring activities across the three major phases of the hiring process. This model improves transparency, accountability, and efficiency while providing a solid foundation for career development and training of human resources (HR) professionals.
- A career development program (Career+) was implemented to assess the proficiency levels of the HR staff and support the development of training plans. This effort resulted in the implementation of an 8-week comprehensive training course for the HCO hiring staff.
- We assigned Business Account Managers (BAMs) to each business unit to serve as a single point of contact to provide personalized, dedicated, and comprehensive service throughout the hiring process.
- The IRS is implementing a new Servicewide Knowledge Management initiative, which will greatly improve the transfer of knowledge from seasoned employees to our newer hires.
- We are exploring ways to make the hiring process more agile through negotiations with NTEU on our National Agreement.
- In 2019, we engaged the Schatz Strategy Group to assess and analyze the IRS recruitment strategy compared to other federal agencies and the private sector.
- Regarding recruitment, we recently reestablished our Recruitment Office, held enterprise-wide forums to share best practices, and increased our presence on social media and virtual platforms. Results of these efforts were shown in over 26,500 applicants and 700 recent graduate hires in the past seven months.

We recognize that we still have more work to do in the areas of recruitment, hiring, and retention; to that end, we appreciate the Advocate’s recommendations to increase funding and expand flexibilities for these activities. We will continue to refine and improve our strategies in these areas and are committed to attracting and retaining the best and the brightest talent available.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS acknowledges the efforts made by the IRS in some areas of hiring and recruitment. However, there is still room for improvement in supporting the IRS’s hiring and recruitment needs now and into the future. The IRS’s greatest resource is its employees, and it should do more to ensure the Service is adequately staffed. As the organization charged with carrying out hiring and recruitment, HCO is a service organization whose role is to meet the needs of the various business units and functions within the IRS. As such, HCO needs to ensure that it understands these needs and develops policies in line with them.

The IRS states it has streamlined hiring activities, enhanced collaboration between HCO and the IRS divisions, and increased transparency in the hiring process. However, when we spoke with HCO customers from across the IRS, their feedback indicated otherwise. Some of the main concerns raised involved time (to bring candidates onboard), and communication (or lack thereof) from HCO. While HCO has assigned Business Account Managers to each business unit to serve as a single point of contact, those outside of HCO have indicated that they often did not know whom to reach out to when they had a question or an issue with a hiring package. According to their customers, HCO has not done enough to streamline hiring activities, enhance collaboration with the divisions, and increase transparency in the hiring process – issues that are critical to address if the IRS is to make meaningful progress in recruiting and timely hiring qualified employees.

Regarding recruitment, the IRS states it has “engaged the Schatz Strategy Group to assess and analyze the IRS recruitment strategy compared to other federal agencies and the private sector...” However, we do not yet know the results of that assessment and how the IRS will use that assessment to improve recruitment efforts. While we are happy to see the IRS’s success with 26,500 applicants and 700 recent graduate hires in the past seven months, without further context, we do not know what these numbers show. How many applicants do we normally have in a similar seven-month period? How many of those applicants were already IRS employees? How many of those applicants were under the age of 30? How many of those recent graduates were already IRS employees?

We appreciate the IRS’s acknowledgement that it still has work to do in the areas of recruitment, hiring, and retention. TAS will continue to advocate for the IRS’s hiring and recruitment needs and push HCO to ensure it is meeting the needs of the entire IRS to better position the IRS to provide quality service and protect taxpayer rights.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Hire additional HR Specialists to meet hiring demand.
2. Restructure internal hiring processes to improve cycle times.
3. Renegotiate the hiring process with the NTEU to allow for up to 50 percent of all hiring announcements to be filled externally.
4. Provide the IRS divisions with a single point of contact in the assigned HCO Employment Office for each of their hiring packages.
5. Allow the divisions to work their own announcements and hiring packages, when requested, while providing oversight, quality review, and technical support to ensure they follow the proper processes.
6. Conduct a research study to learn from successful recruitment strategies used by other federal agencies and the private sector.
7. Invest more time, effort, and money and be more proactive in its recruitment efforts.

8. Rather than hiring out to contractors, bring background check staff back to the IRS as full-time employees.
9. Work with the Department of Treasury to seek approval for additional direct-hire authority for critical IRS positions beyond IRS IT, and consider seeking legislative changes to expand critical pay authority for IRS positions beyond IRS IT.

Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing

RESPONSIBLE OFFICIALS

Charles Rettig, Commissioner, Internal Revenue

Sunita Lough, Deputy Commissioner for Services and Enforcement

Jeffrey Tribiano, Deputy Commissioner for Operations Support

Nancy Sieger, Acting Chief Information Officer

James Clifford, Project Director, Taxpayer First Act Office – Customer Service Strategy

Robert Ragano, Project Director, Taxpayer First Act Office – Information Technology

TAXPAYER RIGHTS IMPACTED¹

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

EXPLANATION OF THE PROBLEM

The ability to speak to an IRS employee and receive quality service, whether over the phone or in person, is critical to meeting taxpayer needs as part of the IRS's mission to provide "top quality service."² However, the IRS's level of service (LOS) on IRS phone lines remains low,³ and more Taxpayer Assistance Center (TAC) offices have closed in the last two years.⁴ The pandemic only exacerbated this problem. To improve customer service, the IRS must update its technology to support innovative tools for assisting and communicating with taxpayers and increase its levels of staffing and future workforce hiring to support taxpayers. Although this

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 IRS, The IRS Mission, <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority> (last visited July 31, 2020).

3 IRS's Fiscal Year (FY) 2020 budget for Taxpayer Services supported an LOS of 60 percent. IRS, Pub. 4450, Congressional Budget Justification & Annual Performance Report and Plan Fiscal Year 2021, at 12 (Feb. 2020).

4 Between 2011 and 2014, the number of TACs declined from 401 to 382, and the number of TACs with zero or one full-time employee increased from 37 to 80. IRS Wage and Investment Division (W&I) response to TAS information request (Dec. 23, 2014). As of the end of calendar year (CY) 2017, the IRS operated 371 TACs in 50 states, the District of Columbia, and Puerto Rico. Nina E. Olson, Overall the Filing Season at Taxpayer Assistance Centers Ran Smoothly, But Room for Improvement Remains, NATIONAL TAXPAYER ADVOCATE BLOG, www.taxpayeradvocate.irs.gov/news/ntablog-overall-the-filing-season-at-taxpayer-assistance-centers-ran-smoothly-but-room-for-improvement-remains/ (July 11, 2018). There are currently 358 TACs. IRS response to TAS information request (Sept. 30, 2020).

Most Serious Problem focuses on telephone and in-person service, other Most Serious Problems in this report will discuss additional aspects of the omnichannel approach to customer service.⁵

ANALYSIS

The Taxpayer First Act Provides a Great Opportunity to Reimagine Customer Service

Congress is aware of low levels of IRS customer service and has annually approved budgets with projected low telephone LOS. However, in July 2019, it passed the Taxpayer First Act (TFA),⁶ requiring the IRS to create and submit a comprehensive customer service strategy to Congress, which the IRS plans to deliver in December 2020.⁷ This is the perfect time for the IRS to rethink and implement its new approach to customer service. In the private sector, companies take bold and innovative approaches to reach customers, and the IRS can be creative, too.⁸

One TFA strategy proposal is its plan to create a “concierge,” or seamless, service for taxpayers, which the National Taxpayer Advocate wholeheartedly endorses. Once implemented, this system would greatly improve taxpayers’ experience by allowing them to efficiently get their problem solved using their preferred method of communication to work with the IRS. The IRS strategy provides:

[A] taxpayer could begin their journey on IRS.gov, then could shift to ‘click-to-call’ or chat options to engage an assistor without leaving the channel they initially entered. With the introduction of Artificial Intelligence (AI) and robotics, the IRS would assist in diagnosing issues not resolved on the web and shepherd the taxpayer to a “concierge” type assistor, proactively. If the account issue is complex in nature, the concierge would escalate the issue to a subject matter expert (SME). If a SME is not readily available, the concierge would use an appointment process or callback technology to facilitate the transition between interactions and make the process seamless for the taxpayer.⁹

A concierge system will considerably improve customer service, but the IRS faces several challenges to make it work. First, the IRS is working to develop its Enterprise Case Management (ECM) system, which will consolidate various information and case management systems across the IRS and replace them with a cloud-based case management system.¹⁰ But due to the lack of a dedicated multiyear funding commitment, the process will be slow to final completion based upon the number of existing standalone systems that the IRS must replace. Without such a system, a customer service representative (CSR) lacks the taxpayer’s complete

5 See Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*; Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*; Most Serious Problem: *E-Filing and Digitalization Technology: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources*; Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration, infra.*

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

7 See TFA, Pub. L. No. 116-25, § 1101, 133 Stat. 981 (2019).

8 For instance, Capital One has begun creating a presence in communities by building cafes that offer traditional banking services as well as financial coaching classes and workshops. However, the cafes also provide space for community events, all within a coffee shop environment. Capital One, *Nine Things You Can Do at a Capital One® Café* (Oct. 24, 2020), <https://www.capitalone.com/learn-grow/money-management/explore-capital-one-cafes/>.

9 IRS, FY 2022 Treasury Departmental Budget Submission 13 (June 5, 2020).

10 See also Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts, infra*; IRS, *IRS Creates New Enterprise Digitalization and Case Management Office*; Smith, Abold-LaBrecche to Serve as Co-directors (July 21, 2020), <https://www.irs.gov/newsroom/irs-creates-new-enterprise-digitalization-and-case-management-office-smith-abold-labrecche-to-serve-as-co-directors>.

taxpayer history. In fact, with the implementation of a robust ECM that is widely available online, taxpayers could efficiently answer their own questions in some instances.¹¹

Second, to be effective, the concierge system will require higher-grade employees who are well-trained on technical issues and possess a strong working knowledge of IRS systems and routes of possible resolution for a wide variety of procedural and technical issues. It will need to ensure CSRs are trained to effectively communicate with taxpayers so that the nature of the taxpayer's problem is quickly identified and fully understood. Employees will need training on the various areas of the IRS so that they have competency to quickly route the taxpayer to the correct subject matter expert or proper function within the IRS.

The IRS Faces Challenges Before It Can Make Improvements

Level of Service Measurements Do Not Accurately Portray a Taxpayer's Experience With the IRS

The IRS received about 100.5 million telephone calls in FY 2020.¹² Calls to the Accounts Management (AM) telephone lines account for over 82 percent of all "Enterprise Total" calls in FY 2020, as these lines are where taxpayers go for answers to tax law questions, account inquiries, adjustments to accounts, and resolution of the "majority of issues and questions" to settle accounts.¹³

The IRS uses the CSR LOS as the rate of success a taxpayer has in reaching a CSR. However, this measure does not account for the total number of taxpayer calls the IRS receives or the time it took the average taxpayer to reach a CSR.¹⁴ The current budget requested by the IRS and approved by Congress targets LOS measurements for FY 2021 at 60 percent, which is an acknowledgement that the IRS and Congress expect that four out of every ten taxpayers calling the IRS cannot get through to a CSR due to staffing issues.¹⁵ This projection for FYs 2020 and 2021, which will likely be lower for FY 2020 due to the COVID-19 pandemic, is a decrease from previous years.¹⁶ Figure 1.2.1 shows a breakdown of the LOS on some of the main telephone lines.

11 See Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *infra*.

12 IRS, Joint Operations Center (JOC) Snapshot Reports, Enterprise Total (week ending Sept. 30, 2020).

13 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2020), Internal Revenue Manual (IRM) 21.1.1.1.3, Responsibilities - Accounts Management, Compliance Services and Field Assistance (Oct. 1, 2020). Enterprise total refers to the total number of calls the IRS receives on its toll-free assistance lines. National Taxpayer Advocate 2017 Annual Report to Congress 22, 24 (Most Serious Problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).

14 The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The CSR LOS formula is: (Assistor Calls Answered + Automated Calls Answered (Info Messages)) divided by (Assistor Calls Answered + Automated Calls Answered (Info Messages) + Emergency Closed + Secondary Abandons + (Add either Calculated Busy Signal OR Network Incompletes) + (Add either Calculated Network Disconnects OR Total Disconnects)). IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2020). In contrast to the LOS measure, the Treasury Inspector General for Tax Administration (TIGTA) has noted that other agencies with similar telephone lines look at the "Level of Access," an indicator that reflects the total of all callers seeking assistance that ultimately receives the assistance from IRS. See TIGTA, Ref. No. 2019-40-041, *Telephone Performance Measures Do Not Provide an Accurate Assessment of Service to Taxpayers* (June 2019).

15 IRS, Pub. 4450, Congressional Budget Justification & Annual Performance Report and Plan Fiscal Year 53 (Feb. 2020). W&I plans to deliver a FY 2021 CSR LOS of 50 percent and a Filing Season CSR LOS of 55 percent. This will result in essentially five out of every ten taxpayers calling the IRS to not be able to get through to a CSR. IRS response to TAS fact check (Nov. 16, 2020).

16 The LOS had a low of 38.1 percent in FY 2015 but had risen to 75.9 percent in FY 2018. IRS, Pub. 4450, Congressional Budget Justification & Annual Performance Report and Plan Fiscal Year 114 (Feb. 2020).

FIGURE 1.2.1, Call Attempts, Calls Answered, and LOS for IRS Phones, FYs 2018-2020¹⁷

Line and Measure	FY 2018	FY 2019	FY 2020	Percent Change From FY 2019 to FY 2020
Enterprisewide Call Attempts	98,532,231	99,373,456	100,514,299	1.1%
Enterprisewide Assistor Calls Answered	34,703,578	28,558,862	24,192,386	-15.3%
Enterprisewide LOS	68.96%	56.23%	51.17%	-9.0%
AM Call Attempts	77,715,282	76,814,886	82,578,446	7.5%
AM Assistor Calls Answered	25,295,849	21,257,015	17,852,748	-16.0%
AM LOS	75.92%	65.42%	53.15%	-18.8%
Consolidated ACS Call Attempts	12,073,311	15,033,568	11,995,745	-20.2%
Consolidated ACS Assistor Calls Answered	5,924,227	4,663,706	4,206,875	-9.8%
Consolidated ACS LOS	52.71%	34.27%	39.83%	16.2%
PPS (Practitioner Priority Service) Call Attempts	3,099,832	3,484,100	4,775,636	37.1%
PPS Assistor Calls Answered	2,233,960	2,139,275	1,875,399	-12.3%
PPS LOS	84.88%	78.29%	56.28%	-28.1%

The IRS's use of the LOS measure to gauge the customer experience is misplaced. The Treasury Inspector General for Tax Administration (TIGTA) noted that, "[t]he LOS only measures the success rate of access to the telephone system using the number of calls answered by CSRs."¹⁸ The COVID-19 pandemic demonstrated one deficiency with the IRS's LOS measurement when the IRS reported 100 percent LOS on closed AM phone lines because all callers received a recorded message.¹⁹ This shows that the IRS must change its measurement for LOS before it can identify where to focus its improvements. However, the IRS does not intend to change how the LOS is measured and instead is working to improve the LOS numbers.²⁰

First Contact Resolution as a Customer Satisfaction Measurement

There are additional ways to measure taxpayers' experience when contacting the IRS. According to TAS research, the primary drivers for telephone satisfaction were the time it took to get through on the phone and

17 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2019); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2020).

18 TIGTA, Ref. No. 2019-40-041, *Telephone Performance Measures Do Not Provide an Accurate Assessment of Service to Taxpayers* 7 (June 12, 2019).

19 National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 18 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*). The phone lines were shut down during the pandemic, but since all taxpayers got through and received an automated message, the LOS measured at 100 percent.

20 IRS response to TAS information request (Sept. 30, 2020). The IRS reports that changes to improve the LOS measurement include such things as hiring staff, opening a new call site, redesigning notices, text chatting, utilizing callback technology, upgrading functionality for Online Payment Agreement and Online Account applications, and processing IRM changes.

the number of steps required to get to someone who could help.²¹ Likewise, “first contact resolution” (or FCR) is a metric strongly tied to high customer satisfaction.²² It measures “the percentage of all calls that are resolved on the first attempt, without the agent needing to refer the customer to a colleague, their manager or calling the customer back.”²³ A majority (77 percent) of respondents to the FY 2020 survey of customer satisfaction on the AM line reported that their call eliminated the need for future calls; that group reported an overall satisfaction of 90 percent.²⁴ However, respondents who reported needing to make additional calls only reported a general satisfaction rate of 70 percent.²⁵ The most suggested improvement on that survey after “other” was if the IRS could resolve the taxpayer’s issue.²⁶ Using FCR in the IRS customer service plan will more accurately gauge the taxpayer’s experience when calling the IRS and could lead to more fine-tuned improvements.

The IRS Should Expand Callback Technology to All Phone Lines

The IRS has identified many of the technological updates needed to create a concierge system. For instance, customer callback technology (“callback”) is “an automated service that lets taxpayers choose between waiting on the line or receiving a call back when an assistor is available.”²⁷ It allows the taxpayer the flexibility of receiving a call back from the IRS instead of waiting on hold for the next representative.

The IRS concluded the first phase of Customer Callback technology testing on August 30, 2019.²⁸ In FY 2019, IRS customer callback saved taxpayers contacting certain IRS telephone lines regarding their balance due an estimated 111,000 hours of “hold” time.²⁹ In January 2020, the IRS offered callbacks to 31.5 percent of its queued calls, and 68.4 of those taxpayers used the feature.³⁰ In June 2020, the IRS offered the callback feature to 28.5 percent of the queued calls, and 67.8 percent of those taxpayers used the feature.³¹ The IRS estimates that using the callback feature saved 50,973 hours on hold in January 2020 and 35,638 hours in

21 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, at 64 (*A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

22 Jeff Rumburg & Eric Zbikowski, *The Seven Most Important Performance Indicators for the Service Desk*, METRICNET, https://www.thinkhdi.com/~media/HDICorp/Files/Library-Archive/Rumburg_SevenKPIs.pdf (last visited Oct. 6, 2020).

23 International Finance Corp., *Measuring Call Center Performance: Global Best Practices*, <https://www.ifc.org/wps/wcm/connect/3a656e01-ad18-459a-b1ed-87784c1f1616/Tool+9.4.+Measuring+Call+Center+Performance.pdf?MOD=AJPERES&CVID=jENLHxM> (last visited Oct. 6, 2020).

24 IRS, W&I, Accounts Management Toll-Free Customer Satisfaction Survey FY 2020 Semiannual Report 6 (July 30, 2020).

25 *Id.*

26 IRS, W&I, Accounts Management Toll-Free Customer Satisfaction Survey FY 2020 Semiannual Report 8-9 (July 30, 2020). Thirty-seven percent of respondents reported “other” to improve their experience and 35 percent said that resolving their issue would improve their experience.

27 IRS SERP Alert 20A0272, Customer Callback FAQs (June 25, 2020). Callback saves the caller’s place in the queue and when an assistor becomes available, the Callback system automatically calls him or her back. No assistor training is required. To an assistor, it looks just like any other inbound call. Callbacks are offered to randomly selected taxpayers when estimated wait times are greater than 15 minutes. Callback is currently offered on these applications: AM: App 25 – BMF Accounts; App 42 – EIN, SB/SE: App 10 – Bal Due; App 12 – Bal Due Agreed; App 841 – AUR. Based upon the taxpayer’s estimated wait time, the callback system will “assign” the taxpayer to one of five predetermined callback buckets (20, 29, 38, 47, or 56 minutes). IRS response to TAS fact check (Nov. 16, 2020).

28 W&I, FY 2019 Q4 Business Performance Review (BPR) 11 (Nov. 2019).

29 W&I, FY 2020 Q1 BPR 10-11 (Feb. 2020).

30 IRS, W&I, Customer Account Services, JOC, Program Management Office, Customer Callback (CCB) FY 20 Quarterly Status Update 04/01/20-06/30/20, at 4 (July 7, 2020). In January 2020, the IRS had 704,000 calls in its queue and offered 204,000 callbacks to taxpayers (31.5 percent of the queued calls) and 137,000 taxpayers used the callback feature, an acceptance rate of 68.4 percent.

31 IRS, W&I, Customer Account Services, JOC, Program Management Office, Customer Callback (CCB) FY 20 Quarterly Status Update 04/01/20-06/30/20, at 4 (July 7, 2020). In June 2020, the IRS had 407,000 calls in its queue, and it offered 107,000 taxpayers the callback feature (28.5 percent of the queued calls) and 74,000 taxpayers accepted the service, an acceptance rate of 67.8 percent.

June 2020.³² These measures show a meaningful improvement for taxpayers, and the IRS should extend the callback feature to all major phone lines.

The TFA mandates the IRS include callback services as part of its customer service strategy.³³ Among respondents to an IRS study, 74 percent of taxpayers who did not recall being offered the callback option were “very interested” or “somewhat interested” in the option.³⁴ The IRS uses the callback feature with five telephone lines but plans to expand it to 11 more lines, for a total of 16.³⁵ If the IRS received sufficient dedicated multiyear funding, it could upgrade its phone system to allow for a full roll-out of callback technology on all lines instead of expanding it in a piecemeal fashion.

The IRS Can Address Long Wait Times With Estimated Times and Text Chats

Customer satisfaction survey results from the Small Business/Self-Employed (SB/SE) Automated Collection System (ACS) Interactive Voice Recognition (IVR) line show that the largest number of taxpayer comments for improvement related to improving wait time.³⁶ And of the respondents to the AM toll-free FY 2020 customer satisfaction survey who reported that the call length was unreasonable, 77 percent also said it was because of the wait time.³⁷ TAS research demonstrates that among the taxpayers who used the telephone but were unable to resolve their problem, about 41 percent reported that their problem was unresolved because the hold time to talk to a CSR was too long.³⁸ The IRS should research why taxpayers hang up either before or after they are placed in a queue.³⁹ For FY 2020, the wait time on the AM phone line was 16.8 minutes compared to 8.3 minutes on the National Taxpayer Advocate toll-free line.⁴⁰ To assist taxpayers, the IRS could update its technology to create an online “contact dashboard” like the California Franchise Tax Board uses⁴¹ that would allow a user to find the hours of operation along with estimated wait times for various contact methods.⁴² A taxpayer calling the IRS could save time by using this tool to determine the best time to call. The IRS shares an estimated wait time on major phone lines once the taxpayer calls, but it is difficult for the IRS to predict time on the smaller lines. None of this information is available to taxpayers online.

In 2017, the IRS started a text chat pilot within its ACS program.⁴³ Text chat generally assists taxpayers who receive certain ACS letters, visit certain IRS.gov web pages, or are routed out of the Online Payment Agreement application when attempting to establish an installment agreement. Using text chat has shown

32 IRS, W&I, Customer Account Services, JOC, Program Management Office, Customer Callback (CCB) FY 20 Quarterly Status Update 04/01/20–06/30/20, at 6 (July 7, 2020).

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

34 IRS, W&I Strategies and Solutions Research Group 1, Highlights from the 2019 Taxpayer Experience Survey (TES) 13 (Feb. 2020).

35 IRS response to TAS information request (Sept. 30, 2020); IRS, SERP Alert 20A0459, Planned Customer Callback Temporary Outage (Nov. 6, 2020).

36 IRS, SB/SE Research, SBSE ACS IVR Customer Satisfaction Report Survey Year 2019 (April 2019 through March 2020) 9 (Sept. 2020). On the survey, the taxpayer is asked to report the number of minutes to resolve his or her issue, including wait time. However, the taxpayer is only asked to report satisfaction with the call once he or she reached a representative.

37 IRS, W&I, Accounts Management Toll-Free Customer Satisfaction Survey FY 2020 Semiannual Report 31 (July 30, 2020).

38 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, at 85 (*A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

39 See National Taxpayer Advocate 2019 Annual Report to Congress 10 (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*). IRS response to TAS information request (July 2, 2019). National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 127 (*IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate’s 2019 Annual Report to Congress*).

40 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Executive Level Summary (week ending Sept. 30, 2020).

41 See California Franchise Tax Board, *myFTB Features* (July 8, 2020), <https://www.ftb.ca.gov/myftb/features.html>.

42 California Franchise Tax Board, *Wait Times*, <https://www.ftb.ca.gov/help/time-frames/#contact> (last visited Sept. 30, 2020).

43 Director, Collection Inventory Delivery and Selection, Interim Guidance on ACS Text Chat Pilot (May 22, 2019).

positive results with an average wait time of 91 seconds in FY 2019 and 35 seconds in FY 2020.⁴⁴ The IRS should expand the use of text chat as a way for taxpayers to get the personal service they need efficiently. Such an application would also support the concierge system.

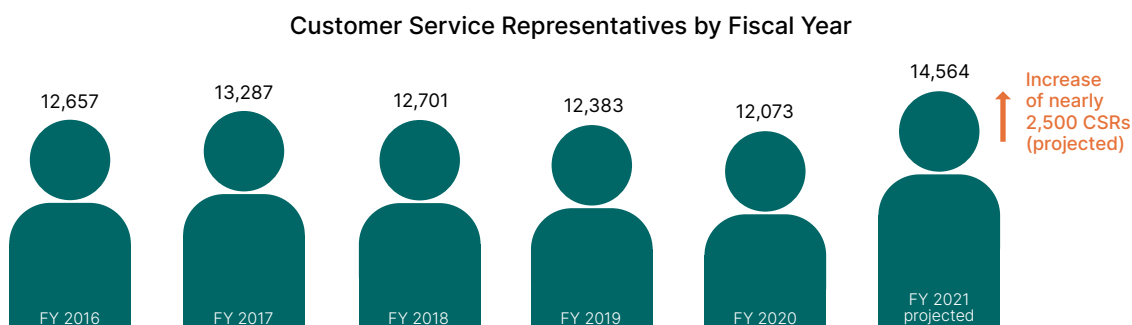
The Natural Language Pilot Saves Taxpayer Time

The IRS is piloting an application called “Natural Language,” which allows interaction with the taxpayer by having the phone system ask an open-ended question and wait for a response. Based on the taxpayer’s response, the taxpayer can receive self-service through automation, or the system routes the taxpayer to an assistor.⁴⁵ A soft launch of this pilot is tentatively planned for January 19, 2021, through February 4, 2021.⁴⁶ This tool can help taxpayers navigate the phone system and speak with an employee trained in a specific area quickly.

The IRS Needs to Increase the Customer Service Representative Skillset and Staffing Levels to Improve Current Levels of Service

Sufficient staffing and an increased skillset are critical for offering personal service. Figure 1.2.2 shows the level of staffing for FYs 2016 through the end of September 2021 (projected).

FIGURE 1.2.2⁴⁷



Additionally, the operating plan for FY 2019 included a taxpayer services budget of \$2.56 billion to allow for 28,531 full-time taxpayer service employees. However, the enacted budget for FY 2020 saw a decrease of funding to \$2.54 billion to provide for 26,760 taxpayer service employees (a decrease of 1,771 employees).⁴⁸ The enacted budget for taxpayer services in FY 2021 then increased to approximately \$2.56 billion but allowed for only 25,678 taxpayer service employees, a decrease of 2,853 full-time employees from FY 2019.⁴⁹ These levels of staffing and funding bring LOS measurements that do not meet the needs of taxpayers. To improve the LOS and implement the changes discussed above, the IRS not only requires more staff but also

⁴⁴ For a detailed discussion of this pilot and its results, see *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *infra*.

⁴⁵ IRS, W&I, Customer Account Services, JOC, Program Management Office, Natural Language Pilot on Economic Impact Payment (EIP) Line 2 (Sept. 20, 2020).

⁴⁶ *Id.* at 7.

⁴⁷ IRS response to TAS information request (Sept. 30, 2020); IRS response to TAS fact check (Nov. 16, 2020).

⁴⁸ IRS, Pub. 4450, Congressional Budget Justification & Annual Performance Report and Plan Fiscal Year 2021, at 1 (Feb. 2020).

⁴⁹ *Id.*

the ability to hire the right skillsets for positions. It is a good step to increase CSRs in FY 2021, and we hope Congress will continue to fund the IRS to further prioritize this.

Taxpayer Assistance Centers Provide a Unique Service Within the IRS

TACs are unique because they provide the IRS with a physical presence in local communities. TAC employees assist taxpayers “whose issues cannot be resolved through other convenient and efficient methods or who choose to obtain information and assistance in the TAC” and sometimes offer necessary face-to-face service for issues such as identity verification.⁵⁰ In FY 2020, through March 14, 2020, 943,448 taxpayers received face-to-face assistance at TACs.⁵¹ From June 29 through September 12, 2020, TACs offered limited service by appointment,⁵² with 78,695 taxpayers receiving face-to-face service after the stay-at-home order lifted for TAC employees.⁵³

TACs provide a wide range of key services, such as account inquiries, account adjustments, refund inquiries, and tax law assistance.⁵⁴ To schedule an appointment for services, taxpayers must call a toll-free appointment line.⁵⁵ When a taxpayer calls the appointment line, the IRS employee must identify the taxpayer’s issue and provide any self-help options available on IRS.gov or resolve the issue if he or she is trained to do so.⁵⁶ If a taxpayer arrives at a TAC without an appointment, the TAC will provide a same-day appointment if one is available; if not, the TAC will direct the taxpayer to the toll-free line.⁵⁷ Facilitated Self Assistance (FSA) kiosks, discussed below, are also offered to taxpayers without an appointment who need a service they can complete on the IRS website.⁵⁸

Five situations require the taxpayer to visit a TAC since the IRS cannot fix the problem on the TAC appointment line, including when a taxpayer requests an immediate levy release.⁵⁹ However, these taxpayers must still call the appointment line to schedule. To incorporate the spirit of concierge service under TFA, the IRS should allow taxpayers who must seek in-person TAC assistance to schedule their appointments online instead of having to call the toll-free line first.

50 IRM 21.3.4.1.1, Background (Oct. 1, 2020). See IRM 21.3.4.2 for a full list of services available at a TAC, which vary by location. IRM 21.3.4.2, Standard Services in a Taxpayer Assistance Center (Oct. 1, 2019).

51 IRS response to TAS information request (Sept. 30, 2020).

52 On March 20, 2020, TACs were closed due to the COVID-19 pandemic. IRS, Taxpayer Assistance Centers Statement (Mar. 20, 2020), <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>. TACs were opened on a limited basis on June 29, 2020. IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (rev. Aug. 3, 2020). IRS response to TAS fact check (Nov. 16, 2020).

53 IRS response to TAS information request (Sept. 30, 2020).

54 IRM 21.3.4.2, Standard Services in a Taxpayer Assistance Center (TAC) (Oct. 1, 2019).

55 IRM 21.3.4.2.4, Taxpayer Assistance Center (TAC) Appointment Service (Feb. 8, 2018). In many instances the taxpayer can receive assistance from the employee who takes his or her call on the appointment line. In FY 2020 (through March 2020), 75 percent of respondents to a customer satisfaction survey reported that the CSR taking their call for a TAC appointment offered to address their problem over the phone. IRS, Field Assistance Appointment Services Report FY 2020 Q2, at 2 (Apr. 2020).

56 IRM 21.3.4.2.4.5.1, Addressing, Targeting and Resolving Issues Without an Appointment (Oct. 9, 2019). Self-help tools can include the ability to get a transcript. IRS, Welcome to Get Transcript, <https://www.irs.gov/individuals/get-transcript> (last visited Oct. 22, 2020).

57 IRM 21.3.4.2.4.2, TAC Appointment Exception Procedures (Oct. 1, 2019). Managerial discretion does allow TAC employees to make an exception for special situations, including an elderly taxpayer, taxpayer with a disability, or a taxpayer who has traveled a long distance.

58 IRM 21.3.4.2.2, Facilitated Self Assistance (FSA) (Oct. 1, 2018).

59 IRM 21.3.4.2.4.5.5, Taxpayer Issues That Require a TAC Visit (Oct. 1, 2019). The five issues are alien clearance (sailing permits); Individual Taxpayer Identification Number; immediate levy or lien release; Letter 5747C - TAC authentication only and Letter 5071C/4883C only if failed telephone authentication; and Secure Access Authentication.

With its 358 TACs, the IRS does not plan to expand or close TAC offices in FY 2021 and has an “aggressive” hiring plan to staff previously unstaffed TAC offices.⁶⁰ In TAS’s 2017 survey, TACs and the IRS website received the highest customer satisfaction ratings;⁶¹ therefore, expanding TAC services represents a good customer service investment.⁶² Even though the IRS is not increasing the number of TAC offices, it can still expand in-person service to taxpayers. For instance, there are six TAC locations that have temporarily moved and are now co-located with a local Social Security Administration office.⁶³ Though services are limited and require appointments for this co-located option, they may ease a taxpayer’s travel burden in some instances.⁶⁴

FSA kiosks with internet access to IRS.gov and SSA.gov are in TAC offices for taxpayer assistance. These kiosks are offered to taxpayers without an appointment when they have a service they can accomplish on the IRS website. Future expansion of kiosks could include “connection to a live assistor, in-person identity proofing for online accounts, printer capabilities for printing transcripts and notices, and credit card payments.”⁶⁵ In these situations, TAC employees would serve as facilitators rather than provide actual assistance.

Virtual Service Delivery Is Technology Particularly Useful for Taxpayer Assistance Centers

Another taxpayer tool is Virtual Service Delivery (VSD), which uses “video conferencing technology to assist taxpayers at IRS partner sites to provide alternative service delivery channels.”⁶⁶ Thirty IRS partner sites offer VSD to support customer assistance.⁶⁷ In the first two quarters of FY 2019, 606 taxpayers used VSD services, and during the comparable period in FY 2020, only 143 taxpayers used VSD because service was abruptly ended as a result of the COVID-19 pandemic.⁶⁸ Despite the low numbers using VSD, taxpayers who use the tool report a high level of satisfaction. In the FY 2019 annual survey of Field Assistance services, VSD users reported the highest overall customer satisfaction (98 percent) compared to taxpayers who called the appointment line (90 percent) and taxpayers who used a kiosk (89 percent).⁶⁹ However, taxpayers rated VSD the lowest ratings for privacy of contact (79 percent) and easy-to-find office (59 percent).⁷⁰ These are areas of videoconferencing technology the IRS should improve. TIGTA reviewed the VSD program and found that low usage may be due to a lack of vision and meaningful performance measures, without which “it is not

60 IRS response to TAS information request (Sept. 30, 2020).

61 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, at 64 (*A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

62 *Id.* at 85.

63 IRM 21.3.4.2.4.5.6.2, TACs Co-located in Social Security Administration (SSA) Offices (Oct. 1, 2020). The six locations are Presque Isle, ME; Norwich (New London), CT; Danville, VA; North Platte, NE; Mansfield, OH; and Mount Vernon, IL.

64 See IRM 21.3.4.2.4.5.6.2(2) for information on what services are not available at a co-located TAC office.

65 IRS response to TAS information request (Oct. 21, 2020).

66 IRM 21.3.4.2.3, Virtual Services Delivery (VSD) (Oct. 1, 2020). See also IRM 21.3.4.2.3 for a list of services available through VSD and those that are not available. For additional information on this topic, see Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *infra*. TAS has had three operational VSD locations (located in Kenai, AK; Tampa, FL; and Spokane, WA) to interact with taxpayers. However, TAS will be discontinuing the use of this technology and migrating to other interactive technologies including WebEx, Zoom, and secure email (discussed in detail later).

67 IRS response to TAS information request (Sept 30, 2020). IRS response to TAS fact check (Nov. 16, 2020).

68 IRS response to TAS information request (Sept 30, 2020). As of September 30, 2020, it was unclear when VSD services would resume.

69 IRS response to TAS information request (Sept. 30, 2020). In the first quarter of FY 2020, VSD users reported an overall satisfaction rate of 94 percent. In the third quarter of FY 2020, VSD users reported an overall satisfaction rate of 79 percent. IRS response to TAS information request (Sept. 30, 2020). The cause for this decline, perhaps due to COVID-19 complications, could be one area for the IRS to investigate.

70 IRS response to TAS information request (Sept. 30, 2020).

possible to objectively measure whether the program is operating effectively or efficiently.”⁷¹ Nonetheless, TIGTA suggested that the IRS work to expand the services available through VSD, in particular the ability to verify identification to resolve an identity theft problem.⁷² Unfortunately, four VSD sites were closed in FY 2020 based on decisions made by the partnering organizations, and the IRS does not have plans in FY 2021 to expand VSD services.⁷³ As of September 1, 2020, VSD services are still not operational at TACs or partner sites due to COVID-19; it is unknown when services will resume at partner sites.⁷⁴

VSD is a tool to enhance existing face-to-face options, but the IRS should not expand it at the expense of in-person contact with the IRS. Videoconferencing technology could fill voids in TAC services or provide service in remote areas, especially during large-scale emergencies. The IRS is not allowing circuit-riding, which is when TAC employees travel between offices, during the COVID-19 pandemic, and the IRS could have used videoconferencing to fill this gap.⁷⁵ Going forward, videoconferencing could be expanded to post offices and other federal, state, or local government organizations that maintain service during emergencies.⁷⁶ As part of the TFA, the IRS reported in its Taxpayer Experience Strategy it planned to shift VSD to “Virtual Face-to-Face” (referred to as WebSD, discussed below), which would allow a scheduled video chat with an IRS employee, using computer, tablet, or mobile phone.⁷⁷

The IRS Has Adopted Pilots to Enhance Taxpayer Assistance Center Presence in Communities

The IRS had two pilots planned prior to the COVID-19 pandemic to test if providing temporary, or “pop up,” TAC services is possible. One pilot, “IRS Community Assistance Visits,” has not yet launched but will test providing limited face-to-face assistance offsite to taxpayers in remote areas during two-day visits.⁷⁸ The IRS also started a WebSD pilot, which “enables taxpayers to attend a virtual appointment from any remote location over the internet” staffed by a group of TAC assistants.⁷⁹ It is similar to VSD technology except taxpayers can have access from any computer, tablet, or mobile phone. The IRS planned for the pilot to start on February 1, 2020, and run for 120 days, but COVID-19 intervened.⁸⁰ The IRS resumed the pilot on October 30, 2020, but due to the pandemic limiting services, it is currently offering WebSD only for taxpayers who needed assistance related to Economic Impact Payments.⁸¹ The IRS plans to continue a pilot of this program in FY 2021.⁸² In 2018, TIGTA noted that a web-based pilot such as WebSD could prove easier

71 TIGTA, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* 4 (Nov. 13, 2018). TIGTA also pointed out that many VSD partner sites are located near a TAC office and taxpayers prefer to use a TAC, and the IRS does not advertise the VSD program. *Id.* at 8-9.

72 TIGTA, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* 10-12 (Nov. 13, 2018).

73 IRS response to TAS information request (Sept. 30, 2020). The decision to close a VSD site is made by the participating organization. The four sites were closed in Christian County Library, Hopkinsville, KY; Human Resources Development Commission (HRDC), La Vale (Cumberland), MD; Salvation Army Rockland County, Spring Valley, NY; and PACE Coalition, Elko, NV.

74 IRS response to TAS information request (Sept. 30, 2020).

75 *Id.*

76 Erin M. Collins, Lessons Learned From COVID-19: The Critical Need to Improve IRS Digital Services, NATIONAL TAXPAYER ADVOCATE BLOG (Sept. 1, 2020), <https://www.taxpayeradvocate.irs.gov/news/ntablog-lessons-learned-from-covid-19-the-critical-need-to-improve-irs-digital-services/>.

77 IRS response to TAS information request (Oct. 21, 2020).

78 IRS, W&I, BPR Q2 FY 2020, at 9 (May 7, 2020).

79 IRS, W&I, BPR Q1 FY 2020, at 10 (Jan. 31, 2020).

80 IRS, SERP Alert 20A0057, Web Service Delivery (WebSD) Virtual TAC (Jan. 31, 2020). Topics available to through WebSD include notices/math errors, refund inquiries, individual taxpayer tax law inquiries, prior year return, Automated Underreporter Program, and balance due inquiries. To join the pilot, the CSR scheduling the appointment would offer the option once he or she determined that a face-to-face appointment was necessary.

81 IRS, SERP Alert 20A0089, Web Service Delivery Virtual TAC (Oct. 27, 2020). EIP is an advance recovery rebate credit offered through the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) in the beginning of the COVID-19 pandemic. CARES Act, Pub. L. No. 116-136, § 6428, 134 Stat. 281 (2020).

82 IRS response to TAS information request (Oct. 21, 2020). IRS response to TAS fact check (Nov. 16, 2020).

for taxpayers to use than VSD; it also noted that success is contingent partly on the quality of the internet connectivity, and the pilot will need clear objectives and performance measures.⁸³ Congress should provide dedicated multiyear funding to ensure TAC virtual face-to-face capabilities such as WebSD are realized and then maintained.

Problems Related to COVID-19 Highlight Where the IRS Can Improve Phone and Taxpayer Assistance Center Service

In response to the COVID-19 pandemic, the IRS closed all TAC offices and discontinued all face-to-face service on March 20, 2020, unexpectedly leaving many taxpayers without face-to-face assistance during filing season.⁸⁴ The phone lines were impacted on March 30 when the IRS instructed all employees with portable work to telework even if they were not currently eligible to telework. Only employees with mission-critical work they could not accomplish remotely could return to an IRS office.⁸⁵ While the phones were not in operation as a result of the COVID-19 pandemic, the IRS continued to receive 600,000 calls during the week ending April 18, 2020, that went unanswered.⁸⁶ This data shows there will always be a population of taxpayers who prefer or need to speak to someone to resolve their tax problem.

On March 14, 2020, just prior to the stay-at-home order taking effect, there were 3,595 CSRs with laptops, a prerequisite for telework.⁸⁷ By September 30, 2020, 14,502 CSRs had laptops and were teleworking.⁸⁸ Employees did not require other technical updates to be telework-ready. In FY 2021, all CSRs will be eligible to telework if they have access to high-speed internet and a private workspace.⁸⁹ This is great progress and beneficial for taxpayer service. A CSR working from home can largely perform the same tasks as if he or she is working from an IRS office.⁹⁰

Even though all major phone lines reopened by June 26, callers continue to experience long waits.⁹¹ For the week ending September 19, 2020, of the almost 1.7 million calls made to the AM phone lines, only about 22 percent (approximately 388,000 calls) were answered by a CSR, with an average wait time of about 22 minutes.⁹² The IRS needs dedicated multiyear funding to provide for more CSR hiring to improve customer service, and it needs to maintain the current level of telework. The callback feature, which was unavailable

83 TIGTA, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* 12-14 (Nov. 13, 2018).

84 IRS, Taxpayer Assistance Center Statement, <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement> (Mar. 20, 2020); National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 18 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*).

85 IRS, Human Capital Office (HCO), New Work at Home Directive Begins March 30 (Mar. 30, 2020).

86 National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 18 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*).

87 IRS response to TAS information request (Sept. 30, 2020). A breakdown of employees with laptops is as follows: Accounts Management had 238; Collection ACS had 185; SB/SE ACS had 1,800; and Campus Exam had 1,372.

88 IRS response to TAS information request (Sept. 30, 2020). A breakdown of employees with laptops is as follows: Accounts Management had 9,824; SB/SE ACS had 2,900; and Campus Exam had 1,778. No information was provided for Collection ACS.

89 IRS response to TAS information request (Sept. 30, 2020). These two requirements are the major reason why some CSRs are not currently teleworking.

90 IRS response to TAS information request (Sept. 30, 2020). Campus Examination did report some problems related to paper-based inventory when employees and their managers were not allowed to enter IRS buildings. Some jobs like Campus Support operations must be done in an office. Specialized units such as the Centralized Authorization File Unit are not portable, but the IRS is working to make the work portable.

91 W&I, BPR Q3 FY 2020, at 3-4 (Aug. 7, 2020).

92 For comparison, during the same week in FY 2019, about 41 percent of the calls were answered by a CSR (304,869 out of 942,564), and the average speed of answer was almost 13 minutes. The IRS reports a LOS for the week ending Sept. 19, 2020, of 44 percent, but this number also includes calls answered by automation. IRS JOC Snapshot Reports: Enterprise Snapshot (week ending Sept. 19, 2020).

during the COVID-19 shutdown, resumed on June 25, 2020.⁹³ Going forward, this tool could alleviate staff shortages during a state of emergency; however, the IRS must prioritize the importance of the callback feature so it does not face additional disruptions.

To protect the health and safety of taxpayers and employees, the IRS shut down all TACs on March 20, 2020, as part of its stay-at-home order.⁹⁴ Although the IRS has some videoconferencing capability, TACs could not continue to provide service. The IRS lacks the hardware and server capacity to virtually connect employees working remotely with taxpayers seeking TAC appointments. The IRS reopened the TAC offices in phases and offered limited face-to-face service on June 29, 2020.⁹⁵ Since July 27, 2020, between 200 and 220 TAC offices have provided face-to-face services.⁹⁶ But the staffing problem is not resolved. As of September 22, 2020, 457 frontline TAC employees were not in the office because of the stay-at-home order.⁹⁷ The IRS is replacing TAC employees' desktops with laptops, with planned completion of the conversion by the end of the 2020 calendar year.⁹⁸ Although telework for TAC employees will allow for "assignment of portable account work" when the IRS must close offices, the IRS needs to study this avenue more closely.⁹⁹ These upgrades will be essential for dealing with future service disruptions and require dedicated multiyear funding.

Taxpayers Suffered Sudden Loss of Free Tax Preparation Services Due to the COVID-19 Shutdown

Eligible low-income and elderly taxpayers can have their income tax returns prepared free at volunteer partner sites participating in the IRS's Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.¹⁰⁰ In calendar year (CY) 2019, VITA and TCE in combination prepared approximately 3.6 million tax returns.¹⁰¹ However, once the COVID-19 pandemic hit during the 2020 filing season, 10,792 of the 11,014 partner sites closed.¹⁰² In CY 2020, VITA and TCE prepared 2.5 million tax returns, a decrease of nearly 30 percent from last year.¹⁰³

The IRS Office of Stakeholder Partnerships, Education and Communication (SPEC), which oversees the VITA and TCE programs, is developing a strategy to meet the needs of taxpayers who rely on the services provided by VITA and TCE partners. It acknowledges that face-to-face assistance is a preferred way to provide tax preparation services, and it will be allowing grant recipients to use grant money to buy personal protective gear.¹⁰⁴ However, SPEC is also taking proactive measures to allow contactless tax preparation. It is guiding partners to allow a "completely contactless, virtual option, using security-compliant software for file-sharing, videoconferencing, and signing documents."¹⁰⁵ One existing program uses a type of facilitated

93 IRS, SERP Alert 20A0272, Customer Callback (June 25, 2020).

94 IRS, Taxpayer Assistance Centers Statement (Mar. 20, 2020), <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>.

95 IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (rev. Aug. 3, 2020).

96 IRS response to TAS information request (Sept. 30, 2020). The number fluctuates due to COVID-19.

97 *Id.*

98 *Id.*

99 *Id.*

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

101 IRS, Filing Season Weekly Reports cumulative through Oct. 16, 2020 (Oct. 23, 2020).

102 IRS response to TAS information request (Sept. 30, 2020).

103 *Id.*

104 *Id.*

105 *Id.*

self-assistance technology already available in TAC offices. With this service, a VITA/TCE partner gets access to laptops and software to help multiple taxpayers at once while identifying taxpayers who need one-on-one assistance.¹⁰⁶ These improvements will likely reduce taxpayer burden during any future large-scale disruption of service.

CONCLUSION AND RECOMMENDATIONS

Taxpayers trying to reach the IRS often face long wait times and may not reach a CSR. With the enactment of the TFA, the IRS has the opportunity to pursue novel approaches to improving its customer service via an omnichannel approach.¹⁰⁷ Many of these approaches have already proven to be a success, such as the callback feature. However, the IRS cannot implement all approaches because it does not have the staffing or IT resources. To embrace the concierge system of service envisioned by the TFA, the IRS must receive sufficient dedicated multiyear funding to improve outdated technology and increase staffing levels with the right skillset – the workforce of the future. The IRS must also understand the taxpayer experience through better measurements before it can determine where to appropriately focus its improvements. Improved customer service is not an option; it is a requirement. Americans deserve best in class service and top-quality tax administration.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Prioritize expanding customer callback technology to relieve taxpayers of the frustration associated with long hold times and low levels of service.
2. Provide taxpayers with the option of receiving face-to-face service through videoconferencing technology. The IRS's use of this technology was restricted during the initial months of the pandemic due to limited bandwidth, which the IRS must address as it further incorporates this technology into its operations.
3. Continue to explore the feasibility of incorporating and providing incentives for partner sites to implement the use of videoconferencing software into the VITA and TCE programs.
4. Ensure meaningful performance measures for existing and/or newly emerging telephone, online, and in-person assistance methods to objectively measure customer service.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide dedicated multiyear funding to increase the “Level of Service” on both the IRS's Accounts Management and Compliance telephone lines to 80 percent, with average hold times not to exceed five minutes.¹⁰⁸ The IRS needs congressional support to continue and maintain upgrades allowing the IRS to make new investments in staffing, training, and improved telecommunications technology.

¹⁰⁶ IRS, Pub. 5047, IRS Offers Facilitated Self Assistance (Nov. 2012).

¹⁰⁷ See National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).

¹⁰⁸ National Taxpayer Advocate 2019 Purple Book, Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 7-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*).

IRS COMMENTS

The IRS is continually working to improve service delivery to taxpayers who have questions or need assistance. All face-to-face and toll-free customer service was suspended in late March 2020, in response to state and local shelter-in-place orders due to the COVID-19 pandemic. The IRS immediately began developing plans to safely return to business and re-establish in-person and telephone services including the rapid enabling of employees to telework.

The IRS began reopening toll-free telephone lines on April 13, 2020, with the major toll-free telephone lines open by June. For example, after reopening, the Automated Collection System (ACS) level of service (LOS) was 58.7%, with an average wait time of 15 minutes. By the end of September, nearly 11,000 telework and in-office Customer Service Representatives (CSR) were answering calls and/or working priority paper inventory. The IRS was able to deliver a fiscal year (FY) 2020 CSR LOS of 53.1% (53.5% for the extended filing season) and end the FY with a paper inventory of comparable to previous years, plus any correspondence mail yet to be opened. The CSR LOS is dependent on the level of funding available for staffing resources to address telephone demand for assistors. The IRS has a full suite of measures and metrics used to evaluate services available for taxpayers online, in-person, on the telephone, and related to paper processing.

The IRS quickly deployed a dedicated Economic Impact Payment (EIP) toll-free line, to provide informational recordings, on April 11, 2020. In mid-May, the IRS staffed the line with vendor-provided assistors to answer non-account EIP-related questions. The EIP line included Over-the-Phone Interpreter service to allow for assistance in multiple languages. Through the end of July, this line had handled over 1.9 million calls. The IRS also assisted with answering over 185,000 FEMA calls with a 99.6% LOS in the wake of several hurricanes that hit the country during 2020.

Taxpayer Assistance Centers (TAC) began a return to limited, appointment-only, service in late June. In FY 2020, we provided face-to-face assistance to more than a million taxpayers, including almost 80,000 taxpayers without appointments. We continue to resolve many potential visits through the TAC toll-free appointment service line. The IRS plans to relaunch a pilot in early FY 2021 of the Web Service Delivery to assess our capability to provide face-to-face service to taxpayers via a virtual connection.

The IRS continues to develop technology improvements. Text chat has expanded to 11 of the 19 ACS call sites (including bilingual sites), and now allows taxpayers to attach documents such as installment agreement forms and delinquent returns. The IRS plans to expand customer callback from five to 16 toll-free applications in FY 2021, with future expansions planned subject to available funding. The IRS is exploring natural language capabilities on the EIP line to allow callers to self-route to get help with queries.

To mitigate the pandemic impact, most training for customer service focused employees is being conducted virtually. The IRS developed a strategy for VITA/TCE partners to provide virtual

assistance where needed, increased hiring to reduce the number of unstaffed TACs to the lowest level since 2017, and is equipping more employees with new laptops for in-office and remote work.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS acknowledges the efforts made by the IRS to restore taxpayer services after the state and local shelter-in-place orders across the country took effect. The IRS navigated a process of enabling employees to telework. The IRS also continued working on implementing new technology, such as the callback feature, which has proven to be a success for the IRS and taxpayers. It ensured training was available in the new virtual environment.

However, even before the pandemic, the IRS requested funding levels that only allow for a 60 percent LOS. This did not allow for top quality customer service. The pandemic only exacerbated existing problems. TAS identified weak spots brought on by the pandemic, such as an inability to obtain tax preparation services through VITA or TCE. To offer the best service possible to taxpayers and to fulfill the IRS's plan to create a concierge system for taxpayers, the IRS must receive dedicated multiyear funding. This funding should prioritize callback technology and videoconferencing technology, both services that benefit taxpayers. Last, the IRS must consider metrics such as first contact resolution when it makes its decisions for allocating resources for taxpayer service.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Prioritize expanding customer callback technology to relieve taxpayers of the frustration associated with long hold times and low levels of service.
2. Provide taxpayers with the option of receiving face-to-face service through videoconferencing technology. The IRS's use of this technology was restricted during the initial months of the pandemic due to limited bandwidth, which the IRS must address as it further incorporates this technology into its operations.
3. Continue to explore alternative telephonic support by developing an automated telephone tool designed to complete specific software-based tasks and/or voice chatbot. Either system could handle routine questions or tasks which would free up CSRs for those individuals who have more complex issues or have a need to speak with a human.
4. Continue to explore the feasibility of incorporating and providing incentives for partner sites to implement the use of videoconferencing software into the VITA and TCE programs.
5. Ensure meaningful performance measures for existing and/or newly emerging telephone, online, and in-person assistance methods to objectively measure customer service.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide dedicated multiyear funding to increase the “Level of Service” on both the IRS’s Accounts Management and Compliance telephone lines to 80 percent, with average hold times not to exceed five minutes.¹⁰⁹ The IRS needs congressional support to continue and maintain upgrades allowing the IRS to make new investments in staffing, training, and improved telecommunications technology.

¹⁰⁹ National Taxpayer Advocate 2019 Purple Book, Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 7-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*).

Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration

RESPONSIBLE OFFICIALS

Karen Howard, Director, Office of Online Services

Eric Hylton, Commissioner, Small Business/Self-Employed Division

Kenneth Corbin, Commissioner, Wage and Investment Division

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Retain Representation*
- *The Right to a Fair and Just Tax System*

EXPLANATION OF THE PROBLEM

As the IRS moves forward with putting taxpayers first in delivering its strategies, it must continually emphasize innovation and creativity to ensure success. To provide top quality service, as measured through the eyes of the taxpayers, the IRS needs to consistently leverage existing technology and identify emerging programs to pursue innovative solutions and improvements. One area for improvement is its online access to taxpayer records. Due to limited technology systems, the IRS operates under a largely paper-based system, requiring taxpayers to keep copies of paper correspondence, call the IRS for assistance, or use a patchwork of electronic applications to gather necessary information to meet their tax obligations. This system leads to inefficiencies because taxpayers lack the ability to access necessary filing information, resulting in taxpayer delays and dissatisfaction with tax administration. Taxpayers must have a simple way to access their IRS tax records and account information to meet their tax filing and payment obligations.

Despite the many benefits of digital communication and online accounts, it is critical the IRS maintain telephone and in-person service options. Millions of taxpayers still do not have access to broadband internet, while other taxpayers strongly prefer to interact with the IRS by telephone or in person for certain categories

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).

of transactions.² For these reasons, we believe it is essential that the IRS maintain a robust omnichannel service environment while it enhances its digital offerings.³

ANALYSIS

Robust Online Accounts Would Modernize Information Sharing Between the IRS and Taxpayers

Technology is reshaping how taxpayers and the IRS communicate with each other. The commercial growth of online services has heightened taxpayers' expectations for quality online services they can use to conduct tax communications and transactions. For years, the IRS has steered taxpayers toward digital self-help and has continuously expanded its offerings of digital service options. However, many of these offerings are standalone systems, they do not offer complete information, and they are not available to all taxpayers. As the IRS continues to resume its business operations that were partially or completely shut down at the inception of the COVID-19 pandemic, it should continue to evaluate what it needs to do to administer the tax laws and provide necessary taxpayer services, especially under similar conditions in the future.

Because financial institutions and other state tax agencies⁴ provide access to key information online, customers have come to expect secure and convenient access to their personal information with features such as:

- View account balance and tax year or account period details;
- View estimated payments and credits before filing a return;
- View payment history;
- View a list and images of tax returns;
- View a list and images of notices and correspondence;
- View and update contact information;
- View proposed assessments;
- View a list of authorized representatives (tax professional or a tax professional with a power of attorney) and manage who can access their account;
- View a list of activities that occurred on their account, such as the last time the taxpayer or their authorized representative accessed the account;
- Calculate a balance due for a date in the future;
- File a power of attorney (POA);
- File a nonresident withholding waiver request;
- Protest a proposed assessment;
- Chat with a customer service representative about confidential matters;
- Send a secure message with attachments;
- Receive an email when a notice or correspondence is sent; and

2 National Taxpayer Advocate 2017 Annual Report to Congress 36 (Most Serious Problem: *Online Accounts: The IRS's Focus on Online Service Delivery Does Not Adequately Take Into Account the Widely Divergent Needs and Preferences of the U.S. Taxpayer Population*).

3 For more perspective on the importance of providing taxpayers with multiple channels to interact with the IRS, 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*).

4 The California Franchise Tax Board (CA FTB) provides a model for what can be achieved currently, including engaging in electronic chats about confidential matters in an easily accessible electronic portal, tool, or application. See CA FTB, My FTB, Features, <https://www.ftb.ca.gov/myftb/features.html> (last visited Dec. 16, 2020).

- Allow an authorized representative full or partial access to the taxpayer's Online Account records and information.

The National Taxpayer Advocate recognizes the IRS is aware of these customer expectations and is progressing toward providing similar services as soon as possible. However, due to years of limited funds, the IRS has only been able to add some online services in a piecemeal fashion. Taxpayers deserve better service from the IRS. The COVID-19 pandemic highlighted the necessity of robust online services for taxpayers and their representatives.

Since 2016, the IRS has offered taxpayers an Online Account application. Over time, the capabilities and popularity of the Online Account have increased. Taxpayers accessed the Online Account application over 23 million times in fiscal year (FY) 2020.⁵ As shown in Figure 1.3.1, the IRS has provided several other online applications to assist taxpayers. Because the Online Account does not reflect all the information from these other applications, there is no consolidated place where taxpayers can view all their information.

FIGURE 1.3.1, IRS Online Self-Assistance Applications⁶

Application Name	Taxpayer Function	Information From Application Reflected in Online Account	Type of Taxpayer Account	Number of Transactions or Sessions, FY 2019	Number of Transactions or Sessions, FY 2020 (Through August 2020)
Online Account	View key information such as balance due and payment history, make a payment online, request a plan via Online Payment Agreement, or access tax records via Get Transcript	N/A	Individual	Number unavailable	23,000,000
Get Transcripts Online	Retrieve a variety of transcripts online to view, print, or download	Yes	Individual	20,861,000	46,064,000
Get Transcripts by Mail	Receive a return or account transcript through mail	Yes	Individual and Business	2,545,000	2,156,000
Where's My Refund	Learn status of refund	No	Individual	368,841,000	758,260,000
Where's My Amended Return	Verify receipt and processing status for amended return (Form 1040X)	No	Individual	5,340,000	4,743,000
Direct Pay	Pay directly from bank account	Yes	Individual	9,420,257	11,841,916

⁵ IRS response to TAS fact check (Nov. 24, 2020).

⁶ IRS response to TAS information request (Oct. 6, 2020; Oct. 9, 2020; Oct. 16, 2020; Oct. 20, 2020; and Nov. 3, 2020). The volume for Online Account transactions was corrected as a result of the IRS response to TAS fact check (Nov. 24, 2020). The measure of transactions or sessions records the number of times an application was successfully accessed, or for applications where taxpayers use an application to conduct a transaction (such as make a payment), the number represents successfully completed transactions. Some of the applications listed in Figure 1.3.1 can be accessed through the Online Account. These applications are noted in the third column of the figure.

Most Serious Problem #3: Online Records Access

Application Name	Taxpayer Function	Information From Application Reflected in Online Account	Type of Taxpayer Account	Number of Transactions or Sessions, FY 2019	Number of Transactions or Sessions, FY 2020 (Through August 2020)
Online Payment Agreements	Request a payment agreement for certain taxpayers	Yes	Individual and Business	786,000	844,000
ID Verify	Verify identity so the IRS can process a federal income tax return filed with the taxpayer's name and taxpayer identification number	No	Individual	132,000	211,000
Get an Identity Protection Personal Identification Number (PIN)	Validate identity and retrieve an Identity Protection PIN online	No	Individual	Number unavailable	488,000
Modernized Internet Employer Identification Number	Apply for and receive an employer identification number (EIN) over the web	No	Individual and Business	4,990,000	6,914,000
Transcript Delivery Service – Reporting Agents	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	237,000	374,000
Transcript Delivery Service – States	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	534,000	604,000
Transcript Delivery Service – Third Parties	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	104,127,000	108,119,000
Income Verification Express Service (IVES)	Retrieve transcripts from an online secure mailbox to verify income of a borrower	No	Individual and Business	14,027,000	16,696,000
Free Application for Federal Student Aid (FAFSA) on the Web	Access tax return information and transfer it directly to the FAFSA form	No	Individual	18,691,000	27,498,000
Tax Withholding Estimator	Perform a “paycheck checkup” and learn how to adjust current-year withholding to avoid tax underpayments	No	Individual	Number unavailable	8,193,000
Interactive Tax Assistant (ITA)	Receive answers to basic tax law questions	No	Individual and Business	1,198,000	3,236,000

Below we will discuss the challenges taxpayers are facing and why the IRS must upgrade its systems and provide a robust Online Account for all taxpayers and its employees to assist taxpayers with issues.

Taxpayers Struggle Navigating a Piecemeal System of Online Applications That Have Limited Capabilities and Incomplete Information

As shown in Figure 1.3.1, taxpayers' usage of online applications demonstrates their desire to obtain their information electronically. However, the present system has many downfalls. The IRS has not fully integrated information and access between online applications and a taxpayer's Online Account. The information from the Where's My Refund tool is not available in a taxpayer's Online Account, and during 2020, the information from Get My Payment (Economic Impact Payment) tool was also not incorporated into the Online Account.⁷ Taxpayers wanting to know the date the IRS received and processed their tax returns would not know which transcript to review, and even then, the transcript may be confusing to a taxpayer. For example, for taxpayers who filed their return before the due date, the transcript lists the tax return received date as the due date of the tax return with no explanation. The transcript may list a return posted date that is later than the date the IRS issued a refund, further confusing the taxpayer. The taxpayer may also have to wait months after filing a return to see the information in a transcript in the Online Account. Wage and Income transcripts are not available until mid-May of the processing year.⁸ The IRS made some key updates in September 2020 so that the Online Account immediately shows electronic payments, which means taxpayers do not have to wait until the payments show up on a transcript to confirm them.

While taxpayers can access some applications through the Online Account, such as Get My Transcript and the Online Payment Agreement, others such as the Identity Protection PIN are only available outside the Online Account. Taxpayers using IRS online applications for the first time may face difficulty authenticating their identities.⁹ Some applications have a common login and password; this can actually be a problem for taxpayers who may have accessed an application years ago and misplaced their login information or perhaps forgot that they had used another application.¹⁰

Another issue is that each application is limited in what taxpayers can accomplish. For instance, the Online Payment Agreement is limited to individual taxpayers whose tax debts are below \$50,000 (\$100,000 if requesting a full pay agreement)¹¹ and business taxpayers with a balance of \$25,000 or less.¹² Taxpayers seeking an installment agreement outside of the IRS's streamline criteria must mail or fax in their request forms rather than using an online application. Similarly, taxpayers seeking an offer in compromise can use the IRS's online Offer in Compromise Pre-Qualifier tool to learn if they qualify but then cannot submit the offer online; rather, they must mail or fax in the forms.¹³

7 In January 2021, the IRS plans to make the amount of Economic Impact Payment received by the taxpayer available in the Online Account. IRS response to TAS fact check (Nov. 24, 2020).

8 View Your Account Information, <https://www.irs.gov/payments/view-your-tax-account> (last visited Dec. 16, 2020).

9 In FY 2020, the collective authentication rate for the IRS online applications requiring the highest level of assurance authentication, such as the Online Account, was about 42 percent, meaning 58 percent of taxpayers could not use the applications. For a detailed discussion of authentication issues with IRS online applications, see Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *infra*.

10 Once a taxpayer has signed up for Get My Transcript, the Online Payment Agreement, or an Online Account, he or she must use the same login and password information for the Identity Protection PIN, even though this application is separate. IRS, Get an Identity Protection PIN, <https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin> (last visited Dec. 16, 2020). Taxpayers are able to use Forgot My Username and Forgot My Password functions. IRS response to TAS fact check (Nov. 24, 2020).

11 Internal Revenue Manual (IRM) 21.2.1.57, Online Payment Agreement (OPA) for IMF Debts (Oct. 1, 2020).

12 IRM 21.2.1.57.1, Online Payment Agreements for Certain BMF Debts (Oct. 1, 2020).

13 IRS, Offer in Compromise Pre-Qualifier, https://irs.treasury.gov/oic_pre_qualifier/ (last visited Dec. 16, 2020).

Taxpayers cannot access all the information they need through an online application. For example, the transcripts available through the Get My Transcript application do not provide the taxpayer with the actual tax return information, which a taxpayer might need to verify which child he or she claimed as a dependent on a return. The only way for the taxpayer to view a copy of the actual return filed is to mail a request to the IRS, pay a \$43 fee, and wait up to 75 days.¹⁴ Additionally, it can take up to five months after filing a tax return for the transcript viewable in the Online Account to reflect the return information.¹⁵ Many of the IRS's electronic applications are not available to business taxpayers, including Where's My Refund, Get Transcript Online, and the Online Account.

Some of the online applications only provide information temporarily, lacking the capability for the taxpayer to view the information later. An example is the employer identification number (EIN) application, which allows taxpayers to apply for an EIN online and receive it immediately once approved. The IRS warns that once it provides the EIN confirmation notice, it can *never* regenerate the notice, even if the taxpayer needs a copy to show proof of the EIN, so taxpayers should save a copy.¹⁶ Taxpayers who need to verify their information to file a return must call the IRS if they have lost a copy of the EIN notice.

Security, uniformity, and ease of use are key to successful online applications, including a robust Online Account.

The IRS created the online application, Where's My Refund, which provides basic information such as an acknowledgement that the IRS received the tax return. However, for some taxpayers, the application only supplies a reference code and an IRS phone number, requiring them to call to learn basic information such as if the IRS applied their refund to an outstanding balance due for another tax period.¹⁷ When the IRS holds a taxpayer's refund and asks the taxpayer to verify identity, income, or withholding, the taxpayer must wait to receive a notice in the mail rather than having the ability to be notified or respond online. Once the taxpayer submits a response, he or she does not know if the IRS received the response or is processing the refund until he or she receives another paper notice or the refund itself. From January 1 through October 2, 2019, the IRS took more than four weeks to release taxpayer refunds it held for potential non-identity theft refund fraud.¹⁸ With an integrated Online Account system, these taxpayers could access further information about the status of their refunds, submit inquiries about their account, or provide the required information. Security, uniformity, and ease of use are key to successful online applications, including a robust Online Account.

14 IRS Form 4506, Request for a Copy of Tax Return (Oct. 2020).

15 Information from paper returns with a balance due filed on or before the April 15 due date will post to the transcript in mid to late June. <https://www.irs.gov/individuals/transcript-availability> (last visited Dec. 18, 2020).

16 CP 575A, Employer Identification Number (EIN) Has Been Assigned to You.

17 IRM 21.4.1.6(3) states, "In some instances, the refund callback number will be provided, along with a unique reference number, for further assistance."

18 IRS, IDT and IVO Performance Report Appendix, Non-IDT Extended Refile Rate Calculation, Slide 3 (Oct. 9, 2019).

Taxpayers Have an Urgent Need for Full Access to Their Information in the Online Account Now

Although the IRS is working on several initiatives related to the Online Account, taxpayers cannot afford to wait years for these changes. In FYs 2021-2022, the IRS plans the following actions:

- **Expanded Online Account:** Taxpayers will be able to make a payment, and certain taxpayers can create a short-term payment plan within their Online Account.
- **Tax Professional Account:** Tax professionals and taxpayers will be able to establish digital authorizations (Form 8821, Tax Information Authorization) and Power of Attorney (Form 2848, Power of Attorney and Declaration of Representative) with eSignature.
- **Secure Document Exchange:** More individuals and large and small businesses will have expanded access to secure messaging and file sharing.
- **Authentication:** Some digital self-service applications will have new, more secure ways to authenticate, meeting governmentwide digital identity guidelines.
- **Expand Digital Notifications:** Taxpayers will be able to view electronic (PDF) copies of additional notices not previously available in the Online Account and opt-out of paper delivery for some notices.
- **Digital Signatures:** Authenticated taxpayers and representatives will be able to electronically sign and submit certain forms and documents.¹⁹

In FYs 2023-2025, the IRS plans to further expand the Online Account by allowing taxpayers to update contact information and use secure two-way messaging.²⁰

The IRS introduced new functionalities in its Online Account that allow taxpayers to view a few specific notices and navigate to a message center.²¹ It also plans to implement a feature to alert taxpayers to new notices. These are positive steps, but they fall short of what taxpayers need right now. As of late 2020, only six notices are available in the Online Account, with another five planned for mid-2021.²² Of the notices chosen, most are purely informational notices about adjustments or other past actions. The IRS should instead prioritize notices that provide statutory rights and deadlines to act, such as the statutory notice of deficiency, providing an opportunity to challenge the liability in U.S. Tax Court; the math error notice, providing the taxpayer 60 days to request an abatement; and the Collection Due Process (CDP) hearing notice, providing 30 days to request a CDP hearing.²³ During FYs 2017-2019, the IRS received an average of 6,745 delinquent CDP hearing requests each year.²⁴ Placing important notices with deadlines to exercise taxpayer rights in the Online Account could make it easier for taxpayers to keep track of the deadlines and

19 IRS, Taxpayer First Act: Improving the online experience through Expanded Digital Services (Oct. 14, 2020). IRS response to TAS fact check (Nov. 24, 2020).

20 *Id.*

21 IRS response to TAS information request (Oct. 6, 2020).

22 The six notices initially added to the Online Account and their past volumes for FY 2019 are: CP 21A - Data Processing Adjustment Notice, Balance Due of (444,787); CP 60 - We Removed a payment Erroneously Applied to Your Account - Balance Due (316,281); CP 141 - Return Filed - Initial Balance Due Notice - Individual Retirement Account File (IRAF) Taxes or Penalties Due (32,074); CP 521 - Monthly Installment Agreement (IA) Payment Reminder (volume unknown); CP 01A - We Assigned You an Identity Protection Personal Identification Number (IP PIN) (3,620,563); CP 62 - Notice of Credit Transfer - We Credited Your Account (51,492). The additional five planned notices are: CP 14 - Balance Due, No Math Error (9,145,871); CP 49 - Overpayment Adjustment - Refund Applied to Other Liabilities (8,763,313); CP 39 - Overpaid Taxes Applied to Your Balance Due from a Secondary Social Security Number (SSN) (447,103); CP 14H - Owed Minimum Essential Health Coverage Payment (Shared Responsibility Payment) (739,850); CP 721A - Data Processing Adjustment Notice, Balance Due (Spanish) - Cambios a su Planilla - Saldo Adeudado - (275). IRS response to TAS information request (Oct. 6, 2020).

23 See IRC §§ 6213(a), (b); 6320(a); 6330(a).

24 Individual Master File (transactions posted on or before cycle 202039). CDP hearing requests received after the 30-day deadline are referred to as Equivalency Hearing requests.

exercise their rights. Although the IRS has set a target for placing more notices in the Online Account during FY 2022, it does not have a definitive plan for how many notices it will be adding to the Online Account, when it will add them, and how they will be prioritized.²⁵

The IRS has beneficial elements planned for the Online Account, including the ability to select language preference for future notices, change the taxpayer's address, and view alerts that new notices have been posted within the taxpayer's Online Account.²⁶ However, the IRS could do more to notify taxpayers about the status of their accounts. While the Online Account already includes certain notifications at the top, they are primarily broader public service style messages one might find on IRS.gov, such as the availability of disaster assistance or a reminder to file a return if the taxpayer has not done so.²⁷ There are only a few notifications specific to the taxpayer, such as if the taxpayer is in jeopardy of a lien or levy or if a short term payment plan is past due.²⁸ The IRS could be tailoring more notifications to specific taxpayer situations, such as if the taxpayer had a deadline to provide documentation in an examination case.

The IRS is also planning future capabilities for its online application related to POA authorizations, the Tax Professional Account. By the third quarter of FY 2022, the IRS plans to allow users to view and cancel pending requests, view and print confirmation of a submission, view and resubmit incomplete requests due to system error, and save data entries across sessions.²⁹ Further, the IRS plans to give taxpayers and tax professionals the ability to view and print authorizations by the third quarter of FY 2023. While positive, these developments are still years away. To support representatives and taxpayers, the IRS must prioritize an online application for representatives that allows them to view tax information for their clients for the years they hold an authorization. Without this access, representatives must rely on paper mail, or they may ask taxpayers to give them access to their personal Online Accounts, potentially jeopardizing the taxpayer's privacy and security. The IRS states it has no plans for the Tax Professional Account to include external notifications, which slows down the ability for representatives to help clients since clients may not know when a document needs a signature or when the IRS has processed an authorization.

Unfortunately, there are several Online Account features not planned, such as the ability for taxpayers to view images of their past tax returns and information returns filed by third parties; file documents and request actions (*e.g.*, request a CDP hearing, field assignment, or Appeals hearing); view IRS employee contact information for any open Examination, Collection, or Appeals action; and view the status of compliance interactions (*e.g.*, the IRS received documentation and the examiner is reviewing).

Additional Complexities Due to COVID-19

The pandemic and resulting impact on taxpayers emphasized the urgent need for a robust Online Account. During the pandemic, the IRS took the unprecedented step to protect the health and safety of its employees, their families, taxpayers, and local communities by shutting down some of its operations for months, including notice printing sites. The IRS had already digitally created many notices and placed them in the printing queue. Months passed, and when the IRS printed and mailed the notices, they still reflected the

²⁵ IRS response to TAS information request (Oct. 6, 2020).

²⁶ *Id.*

²⁷ *Id.*

²⁸ IRS response to TAS fact check (Nov. 24, 2020).

²⁹ IRS response to TAS information request (Oct. 6, 2020).

original dates, including due dates. Taxpayers' accounts of record reflected the original date on the notices, not the later date when the notices were mailed.

The total backlog, meaning all notices that were created but were not able to be printed and sent out on the date appearing on the notice, was approximately 31.2 million notices.³⁰ However, when addressing this backlog, the IRS did not treat all notices similarly, leading to taxpayer confusion. We anticipate future challenges as taxpayers and the IRS work through the different notice scenarios:

- The IRS purged approximately 12.3 million notices and never sent them, but they may still appear on the taxpayer's account of record;³¹
- The IRS purged approximately 543,000 notices, regenerated them with new dates, and later sent them out;³²
- The IRS sent approximately 1.8 million notices with original dates on the notice that were prior (sometimes by months) to when they were mailed, but included an insert explaining that the taxpayer had additional time to take an action;³³
- The IRS sent approximately 38,000 notices with original dates on the notice prior to when they were mailed, and taxpayers received a subsequent notice explaining they had additional time to take an action, but the subsequent notice failed to include a copy of the original notice;³⁴ and
- The IRS sent approximately 18 million notices with original dates on the notice prior to when they were mailed but included no insert or subsequent notice providing an explanation.³⁵

Despite the IRS's efforts to prioritize which backlogged notices it should mail first, which notices were statutorily required, and which notices had incorrect dates and required an explanation or new deadline, the lack of transparency and communication created a situation confusing for IRS employees, taxpayers, and representatives, impairing their ability to effectively comply and increasing levels of stress. For example, some taxpayers may have received no communication from the IRS for months during the COVID-19 emergency when they had a balance due with interest accruing. This was due to the IRS purging certain balance due notices and then not recreating and mailing them for approximately six months.³⁶ Conversely, for notices that were not purged but sent out as generated when the printing sites reopened, some taxpayers received demands for payment even when they had already made a payment.³⁷

An Online Account would have allowed the IRS to electronically post the notices and create an alert informing taxpayers to help mitigate the confusion. Taxpayers who received a backdated CDP hearing notice may have been especially confused, as some received an insert with their notices providing one date to request

30 IRS response to TAS information request (Nov. 24, 2020).

31 *Id.*

32 *Id.*

33 *Id.* The IRS sent 1,764,952 notices with Notice 1052-A, Important! You Have More Time to Make Your Payment (May 2020), which provided revised deadlines for notice and demand correspondence. The IRS sent 28,074 notices with Notice 1052-B, Important! You Have More Time to Make Your Payment (June 2020), which provided revised deadlines for math error notices. The IRS sent 47,497 notices with Notice 1052-C, Important! You Have Additional Time to Appeal (July 2020), which provided revised deadlines for Collection Due Process hearing notices.

34 IRS response to TAS information request (Nov. 24, 2020); IRS email response to TAS (Dec. 1, 2020). The supplemental notices provided a revised deadline for requesting a CDP hearing or a revised deadline for a taxpayer to file suit in court to challenge a refund disallowance.

35 IRS response to TAS information request (Nov. 24, 2020); IRS email response to TAS (Dec. 1, 2020).

36 IRS, IRS to Restart Sending 500 Series Balance Due Notices, <https://www.irs.gov/newsroom/irs-to-restart-sending-500-series-balance-due-notices> (Oct. 23, 2020; rev. Nov. 16, 2020). Additionally, for notices that were not purged but sent out as generated when the printing sites reopened, some taxpayers received demands for payment even when they had already made a payment.

37 Alexis Gravely, *Neal Asks IRS to Halt Tax Bills Amid Mail Backlog*, TAX NOTES TODAY (Aug. 21, 2020).

a hearing,³⁸ while other taxpayers later received an additional notice providing a different date to request a hearing. Viewing copies of these notices online would help taxpayers confirm whether their notice provided the first revised deadline or the second. Although the situation is understandable, it is unacceptable for the IRS to issue almost 20 million notices that create confusion and uncertainty.³⁹

Another area where a robust Online Account would have mitigated problems with the COVID-19 emergency is incoming mail from taxpayers. During June 2020, the IRS had a backlog of 12.3 million pieces of unopened mail,⁴⁰ with 5.3 million remaining in early October 2020.⁴¹ Taxpayers' paper refund returns and identity theft documentation supporting the validity of the refunds sat unopened and unprocessed.

The IRS provided for "digital transmission" of Form 1139, Corporation Application for Tentative Refund, and 1045, Application for Tentative Refund, which allow taxpayers to claim quick refunds (tentative allowances) for prior year minimum tax liability and net operating loss deductions pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) legislation.⁴² Still, the "digital transmission" did not mean taxpayers could submit forms online; rather, they were merely given the option to fax in their forms. Having a portion of the Online Account where taxpayers could file key forms or requests would have provided an additional resource for taxpayers to quickly receive their tax benefits provided in the pandemic relief legislation rather than deal with delays and uncertainty.

Greater Taxpayer Access to Online Records Will Also Benefit the IRS and TAS

The IRS expects to save millions of dollars in postage and printing by placing taxpayer notices in Online Accounts.⁴³ Placing additional information about the status of taxpayers' accounts could reduce customer service representative time as fewer taxpayers would need to call in to learn about the status of their case in examination or collection, confirm whether the IRS received and processed a document, or discover which power of attorneys are on file for which tax years. Online Accounts could free up valuable customer service representatives for taxpayers who can only use the telephone or mail to contact the IRS. During FY 2019, the Wage and Investment exam line received over one million taxpayer calls.⁴⁴ A survey of taxpayers who underwent correspondence examinations revealed that over 40 percent called the correspondence toll-free line simply to check the status of their audit with the majority calling more than once.⁴⁵ Some taxpayers reported calling solely to inform the IRS they had sent the requested documentation.

If the IRS posted notices in the Online Account and provided a notification page where taxpayers could see what information the IRS is requesting and the related due dates, taxpayers may provide the information

38 IRS, Notice 1052-C, Important! You Have Additional Time to Appeal (July 2020), provides all taxpayers receiving this notice until August 13, 2020, to request a CDP hearing.

39 The IRS mailed a total of 19,810,542 notices with dates appearing on the notices that were prior to the dates they were mailed. IRS response to TAS information request (Nov. 24, 2020).

40 *2020 Filing Season and IRS COVID-19 Recovery: Hearing Before the S. Committee on Finance*, 116th Cong. (June 30, 2020) (oral testimony of Charles P. Rettig, Commissioner of Internal Revenue).

41 *IRS in the Pandemic: Hearing Before the H. Government Operations Subcommittee, Comm. on Oversight and Reform, Ways and Means Comm.*, 116th Cong. (Oct. 7, 2020) (oral testimony of Charles P. Rettig, Commissioner of Internal Revenue).

42 IRS, Temporary procedures to fax certain Forms 1139 and 1045 due to COVID-19, <https://www.irs.gov/newsroom/temporary-procedures-to-fax-certain-forms-1139-and-1045-due-to-covid-19> (Oct. 29, 2020). See CARES Act, Pub. L. No. 116-136, §§ 2303, 2305, 134 Stat. 281 (2020).

43 IRS response to TAS information request (Oct. 6, 2020).

44 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2020).

45 IRS Customer Satisfaction Survey, W&I Refundable Credits Examination Operations (RCEO) IVR FY 2019 (May 2020).

more quickly, potentially resulting in shorter cycle times for examinations and collection cases.⁴⁶ Finally, placing information online such as past tax returns, information returns filed by the third parties, and clear due dates for filing forms and making payments will likely result in fewer taxpayer errors and a greater number of taxpayers meeting their filing and payment obligations on time.⁴⁷ Because the U.S. tax system is built on voluntary compliance, the IRS benefits greatly from providing top quality service and increasing trust with tax administration, leading to more taxpayers meeting their tax obligations on their own and reducing the need for compliance actions. The IRS recognizes the need to expand secure digital options for taxpayers and professionals to interact efficiently with the IRS while maintaining and improving traditional service options but has lacked the IT funding to move forward with the speed and accuracy required by taxpayers.⁴⁸

Because the U.S. tax system is built on voluntary compliance, the IRS benefits greatly from providing top quality service and increasing trust with tax administration, leading to more taxpayers meeting their tax obligations on their own and reducing the need for compliance actions.

TAS receives many cases each year related to IRS delays. During FYs 2018-2019, TAS received approximately a quarter of its cases under criteria five or six, meaning the taxpayer experienced a delay of more than 30 days after the IRS's promised deadline to resolve a tax account problem or had not received a response or resolution to the problem or inquiry by the date promised.⁴⁹ Viewing the status of a case in examination, appeals, collection, or another part of the IRS would keep taxpayers informed about where their case stood and may mitigate the need for a TAS case. TAS works with the IRS to provide taxpayers with copies of IRS notices. Placing all notices online would allow TAS to focus more on obtaining relief for the taxpayer without the added time and burden of establishing the paper trail between the taxpayer and the IRS.

CONCLUSION AND RECOMMENDATIONS

Although the IRS has taken positive steps and plans to expand online applications to provide greater access to information, there still remains a large gap between the IRS's offerings and the robust online experience taxpayers need and a quality tax administration requires. The COVID-19 emergency highlighted the

46 "Every year IRS receives millions of pieces of correspondence from audited taxpayers that IRS staff manually process. As a result, weeks can pass before taxpayer documentation is reviewed and taxpayers may make repeated calls or be asked to resubmit the same documentation." See United States Government Accountability Office (GAO), Report to the Committee on Finance, U.S. Senate, *IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden* 20 (June 2014).

47 IRS Research Directors Coordinating Council, Deloitte and ASR Analytics demonstrates that making it easier for taxpayers to pay what they owe via user-friendly, self-service platforms (in addition to traditional service channels) improves voluntary compliance and satisfaction with services. IRS, Behavioral Insights Toolkit (May 1, 2017).

48 GAO, GAO-20-656, *Taxpayer Service Measures* 10 (Sept. 24, 2020).

49 TAS, Business Performance Review (4th Quarter FY 2019; 4th Quarter FY 2018). See IRM 13.1.7.2.2, TAS Case Criteria 5-7, Systemic Burden (Feb. 4, 2015).

downfalls of relying on paper. Although the IRS has contemplated many improvements to the Online Account, the National Taxpayer Advocate recommends expediting the completion date of improvements such as integrating a case management system, providing business taxpayers with full access to the same information individual taxpayers have within the Online Account, and integrating secure messaging and document upload capabilities. Without additional funding, the IRS cannot timely expand its Online Account, which requires taxpayers to rely on the phone and mail for their tax records, resulting in taxpayer burden and harm.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Provide business taxpayers access to Online Accounts.
2. Prioritize posting to the Online Account notices that provide the taxpayer with statutory or administrative rights, a deadline for action, or notice of a potential intrusive enforcement action, such as levy.
3. Develop a timeline for when all remaining notices used by the IRS, outside the 11 notices already scheduled, will be available to be viewed within taxpayers' Online Accounts.
4. Update the programming for the Online Account application so taxpayers can view available notices that were issued prior to when the taxpayer signed up for the Online Account.
5. Provide access to all self-assistance online applications through the Online Account.
6. Update and consolidate Online Account information to reflect information from all other IRS online applications.
7. Integrate secure messaging so that taxpayers can initiate and view messages and upload and download documents to and from the IRS within their Online Accounts.
8. Place taxpayer-specific alerts and notifications on the main dashboard of taxpayers' Online Accounts to notify them of the status of their cases and specific deadlines for action.
9. Allow taxpayers to add, change, or remove authorized representatives through the Online Account.
10. Allow taxpayers to give authorized representatives access to Online Account records for the authorized tax years.
11. Allow taxpayers to update their address and other contact information through the Online Account.
12. Allow taxpayers to make certain requests and file certain forms through the Online Account, such as a CDP request, a penalty abatement request, or a tentative carryback application for refund where e-file is not otherwise available.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Continue to fund the technological upgrades the IRS requires to provide an enhanced level of service that the country deserves to improve its overall operations.
2. Provide sufficient funding for the Business Systems Modernization account to enable the IRS to replace its 1960s technology systems, create an integrated case management system, and offer robust Online Accounts for taxpayers and practitioners.⁵⁰

⁵⁰ National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance)*.

IRS COMMENTS

We agree with the National Taxpayer Advocate on the need for robust online services as one part of our omni-channel approach to customer service consisting of internet capabilities, correspondence, telephone, and face-to-face interactions. We have focused for several years now on prioritizing, building and delivering the services that are most needed, while also considering feasibility given significant resource and technology constraints. The IRS systematically reviews taxpayer and stakeholder feedback, market research, and strategic priorities to inform our product prioritization and development.

Since launching Online Account for individual taxpayers in 2016, the IRS has added many new features using an agile development process with releases approximately every nine weeks. The IRS has a long list of ideas and must continuously prioritize which features to work on with the available capacity, taking into consideration the taxpayer and business benefit and the level of effort. The team has prioritized features that don't otherwise exist online, or where there were opportunities for significant user experience improvements. Current features available to individual taxpayers via their Online Account include personalized messaging on the home page with reminders to file, lien or levy status, payment plan details and status, and any pending payments. Additionally, in November we added a Message Center where taxpayers can view and download digital copies of six high priority notices. These notices cover 23% of the notice volume sent by the IRS, totaling more than 26 million notices, and taxpayers can view through Online Account any of these notices issued since November 15, 2020. In January we plan to display a taxpayer's Economic Impact Payment amount in Online Account, providing a digital way to look this up when filing 2020 tax returns for taxpayers who have misplaced or have not received the related notices and need to claim additional amounts.

In accordance with the Taxpayer First Act (TFA), the IRS recently developed a 10-year strategy for improving the taxpayer experience. This strategy will help drive prioritization and decision making going forward. The TFA Taxpayer Experience Strategy includes plans to further expand on existing Online Account features and add new ones. However, any future expansion or acceleration would be dependent on receipt of funding.

In Fiscal Year (FY) 2021, the IRS plans to add additional notices, show the taxpayer's address on file, enable taxpayers to sign tax professional authorizations, and offer the option to create a short-term payment plan in Online Account. In partnership with the Bureau of the Fiscal Service, the IRS plans to enable taxpayers in FY 2022 to make payments through Online Account, allowing taxpayers to view their balance and pay it in a single session online without having to reenter information, better enabling voluntary compliance and improving the user experience. In FYs 2022-2024, the IRS plans to add the option to update contact information, allow opt-in and -out of paper notices, allow access to secure messaging in Online Account, and add additional features for tax professionals.

We appreciate the National Taxpayer Advocate's support for additional and consistent funding for digital modernization and the National Taxpayer Advocate's recognition of the positive steps the IRS has taken to expand online services for taxpayers. The IRS is committed to high-quality, seamless

experience — through expanded digital service options as well as through improved traditional channels — in order to help resolve diverse taxpayer needs and promote voluntary tax compliance.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS appreciates that the IRS is forward-thinking in regard to providing taxpayers comprehensive access to their online records through the Online Account and other applications. As discussed in the Most Serious Problem and the IRS response, there are many future features the IRS is planning that will greatly benefit taxpayers. Providing business taxpayers with the same access to online records as individual taxpayers will be critical to ensuring all taxpayers can easily access the information they need to comply with their tax obligations.

Throughout the Most Serious Problem, we illustrate problems with relying on a piecemeal system of online applications, where taxpayers must use one application to find some information and then another application to find additional information or take an action. The IRS has made some progress in integrating applications. The IRS's future plans to allow taxpayers to view a balance and pay it in a single session will encourage taxpayer compliance and reduce taxpayer frustration. Another step forward is the plan to make information regarding Economic Impact Payments available in the Online Account starting in early 2021. However, the IRS has not committed to integrating all its taxpayer-facing online applications into the Online Account. This step is key to making access to online records simpler for taxpayers. Although the IRS states that it is prioritizing features that do not otherwise exist online, it should also make adjustments to existing features so they are easier to use and integrated in one place.

The Most Serious Problem discusses the downfalls of relying primarily on transcripts to inform taxpayers about their accounts. As explained, the transcript can be confusing to taxpayers, who cannot easily ascertain from the transcript when a return was filed or when a refund was issued. Additionally, the transcript lacks key information shown on a taxpayer's return, such as the dependents claimed for certain tax benefits. The IRS has not committed to posting actual copies of returns within the Online Account, and we hope this is something it will reconsider in the near future.

TAS is pleased to learn the IRS has already begun posting notices in the Online Account, starting with the six notices that were part of a November 2020 update. The IRS indicates that the notices chosen represent a significant portion of all notices the IRS sends. While it is positive that the IRS is focusing on posting high-volume taxpayer notices in the Online Account, TAS believes the IRS should not only consider volume but also the impact on taxpayer rights when it chooses which notices to include next. Many of the notices included or planned are primarily informational notices. Missing from the list of notices currently available or planned for FY 2021 are some key taxpayer

notices such as the statutory notice of deficiency, which provides a taxpayer's only opportunity to challenge a liability in court prior to paying it; the CDP notice, which offers the taxpayer a deadline to request a hearing before the IRS Independent Office of Appeals; and the refund disallowance notice, which sets a two-year deadline to challenge a refund disallowance. TAS encourages the IRS to develop a prioritization plan for posting notices that considers the impact on taxpayer rights as well as volume.

The IRS must accelerate its timeframe for posting additional notices in the Online Account. The 31.2 million notices created during mid-2020 that could not be mailed on time due to the COVID-19 pandemic demonstrate how it is crucial for taxpayers to have access to their notices online. As taxpayers are grappling to understand the impact of the late-mailed or purged notices and what it means for their account balances and due dates, the IRS can leverage the Online Account to provide information. For example, even if a taxpayer lost a copy of his or her refund disallowance notice, and this notice is not yet included in the Online Account, the IRS could use personalized messaging to provide an alert to the taxpayer regarding when his or her deadlines expire for administratively appealing the disallowance or challenging it in court. The Most Serious Problem gives examples of other personalized status updates.

Overall, the IRS has made great strides toward providing more taxpayer information online. TAS understands that funding will continue to dictate when and what improvements the IRS can make to online services. Notwithstanding this restriction, TAS believes the following recommendations will help the IRS prioritize changes that will make it simpler for taxpayers to access their tax information online and will promote taxpayer rights.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide business taxpayers access to an online account similar to the IRS's Online Account that is available to individual taxpayers.
2. Prioritize posting to the Online Account notices that provide the taxpayer with key statutory or administrative rights, a deadline for action, or notice of a potential intrusive enforcement action, such as levy.
3. Develop a timeline for when all remaining notices used by the IRS, outside the 11 notices already scheduled, will be available to be viewed within taxpayers' Online Accounts.
4. Provide access to all self-assistance online applications through the Online Account.
5. Update and consolidate Online Account information to reflect information from all other IRS online applications.
6. Integrate secure messaging so that taxpayers can initiate and view messages and upload and download documents to and from the IRS within their Online Accounts.
7. Place taxpayer-specific alert banners on the main dashboard of taxpayers' Online Accounts to provide information regarding their status of their cases and highlight important deadlines,

- such as the due date for providing documentation in an examination, the assignment of a balance due case to a Revenue Officer, or the deadline to request a CDP hearing.
8. Allow taxpayers to add, change, or remove authorized representatives through the Online Account.
 9. Allow taxpayers to give authorized representatives access to Online Account records for the authorized tax years.
 10. Allow taxpayers to update their address and other contact information through the Online Account.
 11. Allow taxpayers to make certain requests and file certain forms through the Online Account, such as a CDP request, a penalty abatement request, or a tentative carryback application for refund where e-file is not otherwise available.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Continue to fund the technological upgrades the IRS requires to provide an enhanced level of service that the country deserves to improve its overall operations.
2. Provide sufficient funding for the Business Systems Modernization account to enable the IRS to replace its 1960s technology systems, create an integrated case management system, and offer robust online accounts for taxpayers and practitioners.⁵¹

⁵¹ National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance)*.

Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers

RESPONSIBLE OFFICIALS

Robert Choi, Chief Privacy Officer, Privacy, Governmental Liaison and Disclosure
 Amalia Colbert, Deputy Chief, Appeals and Project Director, Taxpayer First Act Office
 Nancy Sieger, Acting Chief Information Officer
 Karen Howard, Director, Office of Online Services
 Eric Hylton, Commissioner, Small Business/Self-Employed Division
 Kenneth Corbin, Commissioner, Wage and Investment Division

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

EXPLANATION OF THE PROBLEM

During the early months of the COVID-19 crisis, taxpayers experienced additional difficulties interacting with the IRS. Taxpayers could not receive assistance from IRS employees by telephone or in person because the IRS shut down telephone call centers and Taxpayer Assistance Centers (TACs) to protect the health and safety of taxpayers, IRS employees, contractors, stakeholders, and local communities.² IRS facilities that process paper also shut down, so the IRS could not open or process paper tax returns and other mailed correspondence.³ In addition, revenue agents and revenue officers began working remotely, which intensified the need for alternative methods of communication, such as the use of email or electronic means to upload documentation.

The COVID-19 related closures and resulting challenges exposed critical shortcomings in IRS service and communication channels. Going forward, it is clear that the IRS must increase the availability and use of digital communications, including the electronic exchange of correspondence and documents in a secure

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 Wage and Investment (W&I), Business Performance Review Q3 Fiscal Year (FY) 2020 3-4 (Aug. 7, 2020); IRS SERP (Servicewide Electronic Research Program) 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); IRS, Taxpayer Assistance Centers Statement (Mar. 20, 2020), <https://www.irs.gov/newsroom/taxpayer-assistance-center-statement>.
 3 Email from Charles Rettig, IRS Commissioner, to all IRS employees (June 3, 2020).

environment for critical services. To improve taxpayer service and avoid widescale service shutdowns during a future national or local emergency, the IRS should address:⁴

- The crucial need to maintain an omnichannel service environment;
- Taxpayers' need for an expanded and permanent way to digitally transmit and sign documents;
- Authentication barriers for many digital applications;
- Taxpayers' difficulty signing up for Taxpayer Digital Communications Secure Messaging;
- Limited digital communication options for taxpayers (individuals and businesses);
- The need for all digital applications to be mobile-ready; and
- Limited virtual face-to-face service options.

At the drafting of this report, the IRS Taxpayer First Act Office (TFAO) was finalizing the statutorily required Taxpayer First Act Report to Congress.⁵ The planned report includes a Taxpayer Experience Strategy with a section devoted to "Expanded Digital Services," which TAS highly endorses and recommends the IRS move forward with as soon as is practical.⁶ Many of the strategy's proposals to expand digital services are referenced herein. However, it is crucial that the IRS receives sufficient funds to implement such proposals provided in the TFAO report.

The COVID-19 related closures and resulting challenges exposed critical shortcomings in IRS service and communication channels. Going forward, it is clear that the IRS must increase the availability and use of digital communications, including the electronic exchange of correspondence and documents in a secure environment for critical services.

This analysis does not include issues related to online account applications for individual taxpayers, tax professionals, or business taxpayers, which is discussed separately.⁷ However, the expansion of digital services available to taxpayers through these online accounts is critical. For taxpayers who sign up for online accounts, such accounts could provide a single-entry point to receive the numerous digital services provided by the IRS.

4 IRS actions to address these items are consistent with the IRS Strategic Plan, which includes an objective to "[e]xpand secure digital options for taxpayers and professionals to interact efficiently with the IRS, while maintaining and improving traditional service options." IRS, IRS Strategic Plan FYs 2018 – 2022, <https://www.irs.gov/about-irs/irs-strategic-plan>. IRS actions to address these items are also consistent with the Taxpayer Experience Pillar of the IRS Integrated Modernization Business Plan. IRS, IRS Integrated Modernization Business Plan 17-20 (Apr. 2019), https://www.irs.gov/pub/irs-utl/irs_2019_integrated_modernization_business_plan.pdf.

5 See Taxpayer First Act, Pub. L. No. 116-25, § 1101, 133 Stat. 981 (2019); TFAO response to TAS information request (Oct. 13, 2020).

6 TFAO response to TAS information request (Oct. 13, 2020).

7 See Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

It Is Crucial to Maintain an Omnichannel Service Environment

Before discussing the many benefits of digital communication, it is critical to note that the IRS must still maintain telephone, mail, and in-person service options. Millions of taxpayers (about 27 percent of U.S. adults) still do not have broadband internet at home.⁸ In addition, many taxpayers lack sufficient computer skills to interact electronically or may strongly prefer to interact with the IRS by telephone, in-person, or in writing. For these reasons, it is essential that the IRS maintain a robust omnichannel service environment while enhancing its digital offerings.⁹

ANALYSIS

During the COVID-19 crisis, with the temporary closure of TACs, assistor-supported telephone lines, and mail processing centers, the IRS encouraged taxpayers to use digital service options.¹⁰ The pandemic exposed shortcomings in the IRS's portfolio of digital options, which the IRS addressed by developing temporary workaround procedures. The IRS must build upon these short-term initiatives and expand and make permanent improvements in its digital service offerings, as discussed below.

Taxpayers Need an Expanded and Permanent Way to Digitally Transmit and Sign Documents¹¹

Pre-pandemic, taxpayer and practitioners faced the day-to-day challenges resulting from the limited ability to digitally transmit and sign documents. The temporary closure of IRS offices and mail facilities made it impossible for IRS employees to receive paper documents from taxpayers and representatives. As a temporary workaround, the IRS issued guidance, effective through 2020, authorizing employees to accept and transmit documents related to the determination or collection of a tax liability by email. The guidance also permitted employees to accept images of signatures (scanned or photographed) and electronic signatures on documents related to the determination or collection of a tax liability.¹² TAS issued similar guidance regarding digital communications and transmission of documents for open TAS cases.¹³

The IRS put these temporary procedures in place to keep compliance work progressing toward resolution and accept "low risk" forms and requests in the easiest way possible for taxpayers during COVID-19 restrictions.¹⁴ These temporary procedures have been positively received, and we recommend the IRS make these changes permanent.¹⁵ The IRS has indicated that it will determine whether to extend the effective dates of the

8 Monica Anderson, Pew Research Center, *Mobile Technology and Home Broadband 2019*, at 3 (June 13, 2019).

9 For more details on taxpayer needs and preferences, 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*); Emily A. Vogels and Monica Anderson, Pew Research Center, *Americans and Digital Knowledge* (Oct. 9, 2019).

10 IRS, IR-2020-99, IRS.gov Helps Taxpayers Get Tax Information They Need; Find Tools for Filing, Paying, Checking Accounts and Answering Questions (May 21, 2020), <https://www.irs.gov/newsroom/irsgov-helps-taxpayers-get-tax-information-they-need-find-tools-for-filing-paying-checking-accounts-and-answering-questions>.

11 See Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*, for a detailed discussion of the IRS's plans to securely exchange documents through the online account applications.

12 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).

13 Deputy National Taxpayer Advocate, Interim Guidance, Digital Signatures and External Email Communications (July 8, 2020).

14 Privacy, Governmental Liaison and Disclosure (PGLD) response to TAS information request (Oct. 13, 2020).

15 See, e.g., James Creech, *The IRS Cracks Open the Door to Electronic Communications*, *PROCEDURALLY TAXING* (May 14, 2020), <https://procedurallytaxing.com/the-irs-cracks-open-the-door-to-electronic-communications>.

procedures and include additional types of documents based on the success of the temporary initiative.¹⁶ The IRS Enterprise Digitalization and Case Management Office is evaluating how the IRS can best increase digital intake across the IRS.¹⁷

In addition, during 2020, the IRS expanded the list of forms on which it will temporarily accept electronic signatures. For example, on August 28, 2020, the IRS announced that it will accept electronic signatures on ten forms that cannot be electronically filed, and it subsequently added six more forms on September 10, 2020.¹⁸ The IRS will accept electronic signatures on these forms if signed and postmarked by December 31, 2020.¹⁹ It indicated that the reason for the temporary change in procedure is to reduce in-person contact and lessen the risk to taxpayers and tax professionals, allowing both groups to work remotely to timely file forms.²⁰ We continue to recommend the IRS make these procedures permanent.²¹

Section 2302 of the Taxpayer First Act (TFA) requires the IRS to publish guidance establishing uniform standards and procedures for the acceptance of taxpayers' electronic signatures for any request for disclosure of a taxpayer's return or return information (e.g., Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization).²² To comply, the IRS has taken the following actions:

- The IRS has approved an interim process allowing for representatives to electronically submit Form 2848 by attaching a document to a secure messaging platform.²³
- Beginning in January 2021, the IRS will offer taxpayers and representatives the option of using electronic signatures on third-party authorization forms and uploading the documents to a secure communication platform, Taxpayer Digital Communication, which will be accessible on IRS.gov. The new "Submit Forms 2848 and 8821 Online" page will provide a way to upload Forms 2848 and 8821 (signed by taxpayers and representatives either electronically or in ink). The uploaded documents will transmit to the Centralized Authorization File units for the standard review and processing.²⁴
- The IRS has also accelerated plans to offer this capability on the upcoming tax professional online account application. The tax professional online account application will allow tax professionals to interface with their clients' taxpayer online accounts to enable the establishment and management of authorizations (Forms 2848 and 8821) completely online, utilizing electronic signatures.²⁵ The IRS plans to launch the tax professional online account application mid-2021 and add further capabilities in the future.²⁶

16 PGLD response to TAS information request (Oct. 13, 2020).

17 *Id.*

18 IRS, IR-2020-206, *IRS Adds Six More Forms to List That Can Be Signed Digitally; 16 Now Available* (Sept. 10, 2020).

19 IRS SERP Alert 20A0383, *Use of E-Signatures on Certain Forms* (Sept. 10, 2020).

20 IRS, IR-2020-206, *IRS Adds Six More Forms to List That Can Be Signed Digitally; 16 Now Available* (Sept. 10, 2020).

21 See *IRS in the Pandemic: Hearing Before the Subcomm. on Government Operations of the H. Comm. on Oversight and Reform*, 116th Cong. (Oct. 7, 2020) (written statement of Erin M. Collins, National Taxpayer Advocate); National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 10-45 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*).

22 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); IRC § 6061(b)(3).

23 W&I response to TAS information request (Oct. 6, 2020).

24 IRS Deputy Commissioner Services and Enforcement, *IRS to Offer Electronic Signature Solutions for Third-Party Authorization Forms* (Oct. 30, 2020).

25 W&I response to TAS information request (Oct. 6, 2020). For more information on the online account for tax professionals, see Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

26 Office of Online Services (OLS), *Tax Pro Account Briefing 5* (Aug. 2020).

The National Taxpayer Advocate urges the IRS to accept electronic signatures on all documents that require a signature and to continue to allow and expand its use of secure digital communications permanently.

The IRS is also developing an e-Signature strategy. The IRS has indicated that it aims to develop a strategy that is customer-friendly, accessible to a broad customer base, compliant with federal mandates and requirements, and consistent with IRS policy.²⁷ The strategy will incorporate a robust e-authentication process to identity-proof and authenticate the signer. It will also establish a Servicewide approach to the strategic goals, objectives, and initiatives needed for electronic signature implementation.²⁸ Once the IRS assesses, identifies, and eliminates any data security vulnerabilities or file size limitation issues, if applicable, the National Taxpayer Advocate urges the IRS to accept electronic signatures on all documents that require a signature and to continue to allow and expand its use of secure digital communications permanently. We recommend the IRS continue soliciting practical suggestions and input from external stakeholders on how to best use electronic signatures.²⁹

Authentication Remains a Barrier for Many Digital Applications

For taxpayers to access many of the digital services provided by the IRS, they must first satisfy strict IRS e-authentication requirements. The IRS developed these strict authentication requirements to comply with guidelines issued by the National Institute of Standards and Technology (NIST)³⁰ and applies them to the Secure Access e-authentication platform for taxpayers to access most digital applications.³¹ Effective authentication requirements are necessary to screen out often highly sophisticated hackers and other unauthorized persons. However, taxpayers also experience difficulties authenticating their identities to access digital applications.³² For example, the collective authentication rate for IRS online applications requiring the highest level of assurance authentication, such as taxpayer online accounts and the Taxpayer Digital Communication Secure Messaging (TDC SM) program, was about 42 percent in fiscal year (FY) 2020.³³

27 Email from Director, Identity Assurance, PGLD, e-Signature Integrated Project Team Update (Oct. 7, 2020).

28 PGLD response to TAS information request (Oct. 13, 2020).

29 See, e.g., IRS Pub. 5316, Internal Revenue Service Advisory Council, Public Report 37-41 (Nov. 2019); IRS Pub. 3415, Electronic Tax Administration Advisory Committee Annual Report to Congress 42 (June 2020); Letter from Christopher W. Hesse, Chair, AICPA Tax Executive Committee, to Charles P. Rettig, Comm'r, IRS, *Temporary IRS Guidance for Electronic Signature Program* (Aug. 19, 2020); Letter from Tom Callahan, Chair, Section of Taxation, ABA, to Charles P. Rettig, Comm'r, IRS, COVID-19 Response (Apr. 3, 2020); Letter from Jerry Gaddis, President, National Association of Enrolled Agents to Charles P. Rettig, Comm'r, IRS, Uniform Standards for Electronic Signatures (Apr. 1, 2020).

30 NIST *Special Publication 800-63-2, Electronic Authentication Guidelines* (Sept. 2013); Office of Management and Budget (OMB), M-19-17, *Enabling Mission Delivery Through Improved Identity, Credential, and Access Management (ICAM) Policy 2*, 7 (May 21, 2019).

31 Not all TDC SM installations require authentication via Secure Access. For example, the Large Business and International Division manually authenticates users using WebEx. IRS response to TAS fact check (Nov. 20, 2020).

32 For additional information about the information needed to pass Secure Access authentication, see IRS, *Secure Access: How to Register for Certain Online Self-Help Tools*, <https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools> (last visited Oct. 16, 2020); National Taxpayer Advocate Fiscal Year 2020 Objectives Report 108 (Area of Focus: *Facilitate Digital Interaction Between the IRS and Taxpayers While Still Maintaining Strict Security of Taxpayer Information*).

33 PGLD response to TAS information request (Oct. 13, 2020). Note that the option to receive an activation code by mail was not available for several months during the COVID-19 pandemic, and this impacted the verification rate.

This means about 58 percent of taxpayers who attempted to set up an account could not register for one because they could not satisfy the strict authentication requirements.

Since the IRS developed Secure Access, NIST has issued even more rigorous e-authentication guidelines for federal agencies.³⁴ To comply with these rigorous guidelines, the IRS is developing the next iteration of Secure Access, called the Secure Access Digital Identity (SADI) platform. SADI integrates one or more credential service providers (CSPs) to complete identity verification and issue credentials to access applications.³⁵ Using this approach will allow other federal agencies to accept credentials if they use the same CSP, reducing the burden on taxpayers interacting with several federal agencies. Under the SADI platform, the registration and login processes will change by requiring new information to establish the user's digital identity in the identity proofing process (*e.g.*, passport or driver's license).³⁶ As the IRS further develops the SADI platform, it plans to test it on diverse populations to understand its impact on different demographics.³⁷ The IRS is planning to test SADI on one online application in July 2021 (ID Verify) with plans to implement SADI on other digital applications by September 2024.³⁸ As it performs testing of the platform, we recommend that the IRS continue to assess how the new requirements will impact different demographics and determine the feasibility of potentially increasing accessibility while also maintaining compliance with NIST guidelines.

The Identity Assurance group in Privacy, Governmental Liaison and Disclosure (PGLD) and Identity and Access Management group in Information Technology have ongoing discussions with NIST regarding implementing SADI and leveraging CSPs to identity-proof and authenticate taxpayers and representatives. The IRS plans to share the results of the initial SADI pilot with NIST to better understand and solve challenges while balancing security and accessibility. The IRS has also provided comments on NIST guidelines under development, including a recommendation to reconsider the evidence requirements for the three identified Identity Assurance Levels (IALs) to allow agencies to accept risk to balance accessibility/pass rates and security.³⁹

To raise the verification rates, PGLD's Identity Assurance is working with the IRS Office of Online Services to implement the Secure Access Virtual Assistant. When error messages occur during the authentication process, the Virtual Assistant provides guidance to help the user overcome the error. This tool is aimed at improving the user experience by providing self-guided help and information on the most common errors taxpayers encounter during the three main steps of the Secure Access identity proofing process.⁴⁰

Taxpayers Face Difficulty Signing Up for Taxpayer Digital Communications Secure Messaging

The TDC SM program, which currently utilizes the eGain Solve communication platform, provides taxpayers with an option to digitally communicate with IRS employees in a secure manner rather than through paper correspondence, fax, and telephone calls. Specifically, TDC SM enables taxpayers to digitally submit

34 NIST *Special Publication 800-63-3, Digital Identity Guidelines* (June 2017).

35 IRS PGLD, Identity and Access Management and Identity Assurance, Secure Access Digital Identity (SADI) & App Integration Overview 3 (Sept. 2020).

36 *Id.* at 4-5.

37 Meeting Between PGLD and TAS, Overview of SADI with TAS (Sept. 22, 2020); PGLD response to TAS information request (Oct. 13, 2020).

38 PGLD response to TAS information request (Oct. 13, 2020).

39 *Id.* For a detailed description of how IALs are determined, see National Institute of Standards and Technology, *Special Publication 800-63-3, Digital Identity Guidelines*, § 6.1 (June 2017).

40 *Id.*

documentation quickly and securely through their web browser at their own convenience, allowing quicker resolution of their compliance issues. Because it reduces or eliminates the need to call or mail correspondence to the IRS, the program was a much-needed communication channel during the COVID-19 crisis.⁴¹

The TDC SM program is only available to taxpayers invited by the IRS to participate. Taxpayers who participate in the program must consent to receive information via the TDC SM platform by agreeing to the Terms of Service presented on first use. Taxpayers receive an invitation by letter (Correspondence Exam) or in person (Field Exam) requesting them to log into their secure accounts.⁴² Once the taxpayer passes the strict authentication requirements and registers, the program allows him or her to send messages and securely attach and submit digital documentation.⁴³

TDC SM is also available to taxpayer's representatives.⁴⁴ Appropriate authorizations must be on file. Once the representative authenticates his or her identity (using the representative's own Social Security number), the representative is assigned a secure messaging mailbox to receive copies of communications between the IRS and the client.⁴⁵

These IRS organizations are currently using or have used TDC SM:

- Taxpayer Advocate Service (TAS): Conducted a TDC SM pilot in 2017 and 2018 but discontinued after experiencing a low participation rate.⁴⁶
- Small Business/Self-Employed Division (SB/SE): Began using TDC SM in FY 2017 with Schedule A Correspondence Exams but has since expanded to include most issues worked by the program. SB/SE now offers TDC SM in all five Correspondence Exam locations. In September 2020, it also expanded to one campus of automated underreporter (AUR) and plans to expand to additional campuses in 2021.⁴⁷ In addition, Field Exam initiated a test in 2018 and is planning a possible expansion nationwide.⁴⁸
- Large Business and International Division (LB&I): The Affordable Care Act group began using TDC SM in 2017 to communicate with Branded Prescription Drug fee payers. Since May 2020, LB&I Advanced Pricing and Mutual Agreement uses it to communicate with representatives of taxpayers with international tax issues. LB&I Compliance began using TDC SM on May 15, 2020 and has steadily expanded the program to include more businesses and business users.⁴⁹
- Independent Office of Appeals: Began using TDC SM in October 2020.⁵⁰

41 Appeals Office Provides Guidance for Secure Messaging Pilot Program, *Tax Notes* (Oct. 2, 2020); Memorandum, Appeals Taxpayer Digital Communications Secure Messaging Pilot, by Director, Case and Operations Support, IRS Independent Office of Appeals, Deputy Commissioner, Services and Enforcement (Oct. 2, 2020).

42 Appeals Office Provides Guidance for Secure Messaging Pilot Program, *Tax Notes* (Oct. 2, 2020).

43 Nathan J. Richman, *IRS Secure Messaging Pilot Coming to More Campuses*, *Tax Notes* (Aug. 5, 2020).

44 SB/SE, LB&I, TE/GE, and the Independent Office of Appeals are currently conducting TDC pilots. Meeting between TAS and IRS Office of Online Services (Sept. 18, 2020). TAS conducted a TDC pilot in 2017 and to 2018. LB&I has actively used the TDC Secure File Sharing-Secure Messaging (SFS-SM) program since May 15, 2020 and is considering ways to expand such usage. LB&I response to TAS information request (Oct. 6, 2020).

45 Nathan J. Richman, *IRS Secure Messaging Pilot Coming to More Campuses*, *Tax Notes* (Aug. 5, 2020).

46 See National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress 108-112 (Area of Focus: *Facilitate Digital Interaction Between the IRS and Taxpayers While Still Maintaining Strict Security of Taxpayer Information*).

47 SB/SE response to TAS information request (Oct. 8, 2020); Meeting Minutes, Meeting Between TAS and SB/SE AUR on the topic of AUR TDC (Sept. 18, 2020).

48 SB/SE response to TAS information request (Oct. 8, 2020); Nathan J. Richman, *IRS Secure Messaging Pilot Coming to More Campuses*, *Tax Notes* (Aug. 5, 2020); IRS SERP Alert 20A0363, Expansion of TDC in SB/SE Correspondence Exam (Aug. 26, 2020).

49 LB&I response to TAS information request (Oct. 6, 2020); IRS response to TAS fact check (Nov. 20, 2020).

50 Memorandum, Appeals Taxpayer Digital Communications Secure Messaging Pilot, by Director, Case and Operations Support, IRS Independent Office of Appeals, Deputy Commissioner, Services and Enforcement (Oct. 2, 2020).

- Tax Exempt and Government Entities (TE/GE): TE/GE Tax Exempt Bonds uses the program to provide more streamlined communication with locality bond issuers, representatives, and conduit borrowers.⁵¹

The SB/SE use of TDC SM has had favorable results for those who sign up. In August 2020, SB/SE reported a satisfaction rate of over 80 percent in August 2020, and updates to the program have reduced audit time for both the IRS and taxpayers.⁵² However, taxpayers have difficulty passing authentication requirements to register. Of the taxpayers who are invited to participate and attempt to create an account, the TDC SM authentication success rate is about 55 percent, meaning that about 45 percent of the taxpayers who attempt to participate cannot authenticate (or choose not to continue).⁵³ As stated in Figure 1.4.1, 12 percent or fewer of taxpayers invited to participate in SB/SE TDC SM actually sign up for an account during each phase of the program.⁵⁴

FIGURE 1.4.1, SB/SE TDC SM Rate of Sign Ups From FYs 2017-2020

Implementation Phase (Periods Generally Ending in March)	Invitations Sent	Signups (Passing Secure Access Authentication)	Percentage of Invitations That Signed Up
Phase I: FY 17/18	9,150	1,071	12%
Phase II: FY 18/19	18,841	2,205	12%
Phase III: FY 19/20	50,527	5,657	11%
Feb. to Sept. 2020	24,000	2,335	10%

Until the IRS develops online accounts for individual taxpayers, tax professionals, and business taxpayers that provide a full service experience, including the TDC SM functionality to correspond with IRS employees and securely attach and submit documents, TDC SM is a useful standalone digital tool.⁵⁵ However, once the IRS incorporates TDC SM functionality into the online account applications for individuals, professionals, and business taxpayers, it may not need to maintain TDC SM separate and apart from the online account applications.

Taxpayers Would Benefit From an Expansion of Taxpayer Digital Communications eGain Text Chat

The Automated Collection System (ACS) program in SB/SE implemented the ACS Text Chat pilot on the TDC platform in November 2017.⁵⁶ The text chat directs taxpayers to the appropriate online service options where possible to reduce the need to call the IRS. Text chat provides general assistance to taxpayers who receive certain ACS letters, visit certain IRS.gov web pages, or were routed out of the Online Payment

51 IRS response to TAS fact check (Nov. 20, 2020).

52 Nathan J. Richman, *IRS Secure Messaging Pilot Coming to More Campuses*, TAX NOTES (Aug. 5, 2020).

53 SB/SE response to TAS information request (Oct. 8, 2020); Meeting Minutes, Meeting Between TAS and SB/SE AUR on the topic of AUR TDC (Sept. 18, 2020).

54 SB/SE response to TAS information request (Oct. 8, 2020). For many of the invitations sent to taxpayers, there is no response at all, or the taxpayer sends a payment and have no need for secure messaging. IRS response to TAS fact check (Nov. 20, 2020).

55 See Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

56 Director, Collection Inventory Delivery and Selection, Interim Guidance on ACS Text Chat Pilot (May 22, 2019).

Agreement application when attempting to establish an installment agreement. Initially, the pilot was implemented as unauthenticated text chat. With unauthenticated text chat, the IRS assistors do not have access to taxpayer information and cannot access the taxpayer's account. Taxpayers are also prevented from providing their Taxpayer Identification Number.

ACS launched authenticated text chat in June 2019. With authenticated text chat, the assistors can provide responses to specific questions based on the taxpayer's entry point after the taxpayer authenticates. Beginning in June 2020, taxpayers could also attach documents during an authenticated chat session.⁵⁷ To access authenticated text chat, the text chat assistor provides the taxpayer with a link to the e-authentication page. Once authenticated, taxpayers are routed back to the assistor on the TDC platform. If the taxpayer fails authentication, he or she can continue with unauthenticated text chat.⁵⁸ ACS has expanded the program to five additional IRS office locations since the beginning of the COVID-19 pandemic and now supports text chats in Spanish.⁵⁹ Figure 1.4.2 shows the statistics of unauthenticated and authenticated text chat.

FIGURE 1.4.2, Performance Metrics for ACS Unauthenticated and Authenticated Text Chat⁶⁰

Performance Metrics	FY 2018	FY 2019	FY 2020
Total Chats Connected	29,836	98,571	328,815
<i>Unauthenticated Chat</i>	29,333	94,225	320,584
<i>Authenticated Chat (Added June 2019)</i>	N/A	4,346	8,231
Average Wait Time	36s	1m, 31s	35s
Average Handle Time	7m, 42s	6m, 54s	6m, 48s
<i>Unauthenticated Chat</i>	7m, 42s	6m, 48s	6m, 13s
<i>Authenticated Chat</i>	N/A	15m, 23s	21m, 50s
Percent Abandoned	1.70%	2.40%	1.30%
Resolution Rate	71%	76%	75%
<i>Unauthenticated Chat</i>	71%	76%	75%
<i>Authenticated Chat</i>	N/A	83%	75%
Customer Satisfaction (Out of 5 Stars)	4	4	4.1

ACS's implementation of text chat has had favorable results. Most notable are the low percentage of users who abandoned text chat, the high resolution rates, and high customer satisfaction rates for both types of text chats. Given these results, taxpayers would benefit from the availability of text chat beyond ACS, and we recommend the IRS increase use for taxpayers.

⁵⁷ SB/SE Business Performance Review FY 2020 Third Quarter 9 (Aug. 20, 2020).

⁵⁸ Director, Collection Inventory Delivery and Selection, Interim Guidance on ACS Text Chat Pilot (May 22, 2019).

⁵⁹ IRS response to TAS fact check (Nov. 20, 2020).

⁶⁰ OLS response to TAS information request (Oct. 13, 2020). Authenticated chats involve more individualized interactions and generally more complex, contributing to the longer handle times.

Digital Communication Options Are Currently Limited for Business Taxpayers

Many of the existing or planned digital communication tools are aimed at assisting individual taxpayers and their representatives. The expansion of digital communication options to business taxpayers is constrained by the complexities involved in authenticating and authorizing business taxpayer representatives. The IRS relies on a resource-intensive manual consent process to identity-proof and authorize business taxpayer representatives. To authenticate a business taxpayer to use TDC SM in LB&I, this process involves several steps, including: (1) communicating with the primary business contact(s) to confirm willingness to participate in the program; (2) sending the consent form to the taxpayer, corporate officer, or authorized representative by mail, eFax, or email; (3) verifying the information included on the signed and dated consent form returned by mail, eFax, or email; (4) verifying the information included on the form; (5) in the case of a new audit, calling the taxpayer, corporate officer, or authorized representative to further authenticate through a series of questions about the tax return; and (6) sending the account username to the taxpayer, corporate officer, or authorized representative once authentication is complete.⁶¹

The Taxpayer Experience Strategy in the Taxpayer First Act Report to Congress identifies business online accounts as a priority. The planned online account for businesses will include secure document exchange capability. This initiative will start with identification of the best and most secure way to authenticate business entities. The strategy schedules business authentication work to begin in FY 2022 with developing the business online accounts projected to start by FY 2026.⁶² We recommend the IRS consider moving up the start date to provide business online capabilities as soon as practicable.

All Digital Applications Should Be Mobile-Ready

As the IRS releases digital service options, it must consider how taxpayers will access such services. In 2019, about 37 percent of U.S. adults mostly used a smartphone when accessing the internet. In addition, about 17 percent of U.S. adults are now “smartphone only” internet users (*i.e.*, they own a smartphone but do not subscribe to broadband internet service at home).⁶³ While not all IRS digital applications are either mobile-ready or mobile-optimized,⁶⁴ the IRS is making progress. Several digital applications are both mobile-ready and mobile-optimized.⁶⁵ Further transition of applications to mobile-ready or mobile-optimized status is anticipated as part of the IRS response the 21st Century Integrated Digital Experience Act, though none are scheduled. In addition, the Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress aims to make all applications mobile-ready.⁶⁶

Supplementing its effort to make services mobile-ready, the IRS is incorporating mobile technology into its notices. On October 9, 2020, the IRS announced that it added QR barcode technology to notices sent to

61 OLS response to TAS information request (Oct. 13, 2020). Authenticated chats involve more individualized interactions and generally more complex, contributing to the longer handle times. For example, LB&I is leveraging a consent process to invite business representatives to use secure messaging with the audit of LB&I taxpayers including corporations, subchapter S corporations, partnerships with assets greater than \$10 million.

62 Taxpayer First Act Office response to TAS information request (Oct. 13, 2020); OLS response to TAS information request (Oct 13, 2020). Budget priorities and realities may influence the exact timing of the delivery of business online accounts.

63 Monica Anderson, Pew Research Center, *Mobile Technology and Home Broadband 2019*, at 2-4 (June 13, 2019).

64 “Mobile ready” is defined to mean that some layouts, content, and elements resize to mobile viewports and that the application is largely usable in those circumstances with only (relatively) minor inconveniences. “Mobile optimized,” would be mean all of the above would react for mobile viewports, and follow the standards included in the IRS Online Design Guide based upon the U.S. Web Design System. OLS response to TAS information request (Oct. 13, 2020).

65 Such applications include: Direct Pay, Online Account, Tax Exempt Organization Search, Where Is My Amended Return, and Free File Lookup Tool. OLS response to TAS information request (Oct. 13, 2020).

66 OLS response to TAS information request (Oct. 13, 2020).

millions of taxpayers. The CP14 and CP14 IA notices, the first legal notices informing taxpayers they owe a balance, are now equipped with QR bar codes so that taxpayers can use their smartphones to scan the code to go directly to IRS.gov and securely access the information they need to resolve their account balance online without the need to call or interact with the IRS directly. The IRS is assessing the possibility of adding QR codes to other balance due notices in the future.⁶⁷

Virtual Face-to-Face Service Options Are Currently Limited

Videoconference technology allows taxpayers and representatives to be seen, heard, and share documents with the IRS without being physically present.⁶⁸ The following IRS organizations have incorporated videoconferencing technology into their operations:

- Wage and Investment Division (W&I) Field Assistance: W&I Field Assistance offers Virtual Service Delivery (VSD) as a face-to-face service option at about 30 community partner locations such as nonprofit offices and state and local government buildings.⁶⁹ However, VSD generally relies on old technology that only enables two-way communications from dedicated sites.⁷⁰
- The IRS Independent Office of Appeals: Appeals offers WebEx technology for virtual face-to-face conferences between taxpayers, representatives, and Appeals Officers.⁷¹
- SB/SE Field and Specialty Exam: SB/SE has issued guidance setting forth the guidelines for Field and Specialty Exam employees to use WebEx videoconferencing technology to interact with taxpayers.⁷²
- IRS Office of Chief Counsel: The IRS Office of Chief Counsel and the U.S. Tax Court are conducting pre-trial conferences and trials using videoconferencing technology.⁷³

The IRS has distributed the Zoom for Government (ZoomGov) videoconferencing software to employees' workstations throughout the agency for internal and external meetings.⁷⁴ TAS is also evaluating the feasibility of using ZoomGov videoconferencing technology for virtual face-to-face meetings between Case Advocates and taxpayers (or their representatives). Videoconferencing is not meant to replace in-person or telephone conference options; rather, it adds a digital option to communicate with taxpayers and their representatives.

The Taxpayer Experience Strategy in the Taxpayer First Act Report to Congress includes plans to expand virtual face-to-face capabilities throughout the agency. The plans would enable taxpayers to schedule a video chat with an IRS employee using a computer, tablet, or mobile phone. This technology is planned to begin in FY 2021 with incremental increases over the next three to five years. The report includes plans to expand the availability of digital kiosks in the next three to five years. Such planned kiosks will connect to a live assistor,

67 IRS, IR-2020-233, IRS Adds QR Technology to Key Balance Due Notices to Help Taxpayers (Oct. 9, 2020).

68 IRS, Appeals Virtual Conferences – Webex, <https://www.irs.gov/appeals/appeals-virtual-conferences-webex> (last visited Oct. 6, 2020).

69 TAS also has had three operational VSD locations (located in Kenai, AK; Tampa, FL, and Spokane, WA) to interact with taxpayers. TAS, *Contact Us*, <https://www.taxpayeradvocate.irs.gov/contact-us/> (last visited Nov. 11, 2020); Internal Revenue Manual (IRM) 13.1.16.8, Sources of TAS Cases and Initial Intake Actions (Aug. 14, 2020). TAS will be discontinuing the use of this technology, and migrating to other interactive technologies.

70 TFAO response to TAS information request (Oct. 13, 2020); OLS response to TAS information request (Oct. 13, 2020); W&I response to TAS information request (Oct. 27, 2020); Treasury Inspector General for Tax Administration, Ref. No. 2019-IE-R002, *Although Virtual Face-to-Face Service Shows Promise, Few Taxpayers Use It* (Nov. 13, 2018); IRM 4.21.3.4.2.3, Virtual Services Delivery (VSD) (Oct. 1, 2018).

71 IRS, Appeals Virtual Conferences – Webex, <https://www.irs.gov/appeals/appeals-virtual-conferences-webex> (last visited Oct. 11, 2020).

72 Director, Examination Field and Campus Policy, SB/SE, Interim Guidance on WebEx for Taxpayer-Facing Interactions (Sept. 2020).

73 United States Tax Court, Press Release (May 29, 2020).

74 Email from IT Information Services, Advisory – ZoomGov 5.1.3 Enterprise (Sept. 30, 2020).

facilitate in-person identity-proofing for online accounts, enable the printing of transcripts and notices, and permit credit card payments. Return on investment analysis, budget considerations, and dialogue with IRS partners will determine how much the agency expands kiosks.⁷⁵

The planned expansion of virtual face-to-face service is promising. We recommend that the IRS evaluate the feasibility of expanding the use of virtual face-to-face technology to as many taxpayer-facing functions as possible. While existing bandwidth restrictions may impede the IRS from initially deploying widescale use of this technology — limited bandwidth prevented the IRS from using videoconferencing technology for internal purposes during the COVID-19 closures⁷⁶ — such expansion could help fill current or future voids in face-to-face service at TACs and in communication with revenue agents or revenue officers. In addition, taxpayers geographically remote from a TAC or TAS local office would find using videoconferencing technology more helpful and economical than traveling for an in-person conference. Even taxpayers who are geographically close may prefer the convenience of a virtual meeting.

CONCLUSION AND RECOMMENDATIONS

The COVID-19 pandemic exposed critical shortcomings in IRS service and communication channels. In many cases, the IRS addressed such shortcomings by developing temporary workaround procedures. To provide excellent taxpayer service and plan for any future emergencies, the IRS must build upon such temporary initiatives and make permanent improvements in the IRS's digital service offerings. Taxpayers need the option to correspond with the IRS digitally, including attaching and transmitting documents in a secure manner. In addition, the success of the TDC text chat pilot illustrates the need to expand this program beyond ACS. Expanding the use of videoconferencing software to all taxpayer-facing functions would benefit taxpayers, especially those who live in remote geographic locations or simply prefer this means of communication. The IRS must increase accessibility to digital services by increasing the e-authentication verification rates while also maintaining compliance with NIST guidelines. Finally, the provision of high-quality digital services necessitates a shift in IRS culture, in which IRS employees embrace a completely new way of communicating with taxpayers.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Maintain a robust omnichannel service environment at the same time that it enhances its digital offerings.
2. Accept electronic signatures on all documents that require a signature, once the IRS assesses, identifies, and eliminates any data security vulnerabilities, if applicable.
3. Make permanent the use of a secured messaging system with taxpayers and their representatives.
4. Make permanent and expand the list of documents the IRS will accept and transmit by email using an established secured messaging system, once the IRS assesses, identifies, and eliminates any data security vulnerabilities and file size limitation issues, if applicable.
5. Assess how the new SADI platform will impact different demographics and determine the feasibility of potentially increasing accessibility to digital applications as they are integrated with SADI, while also maintaining compliance with NIST guidelines.

⁷⁵ TFAO response to TAS information request (Oct. 13, 2020).

⁷⁶ IRS Leaders Alert, COVID-19 Daily Manager Update (Mar. 20, 2020).

6. Expand the availability of TDC eGain Text Chat beyond ACS.
7. Continue to develop digital service tools that are mobile-ready.
8. Expand the use of virtual face-to-face technology to taxpayer-facing functions as permitted, while ensuring proper authentication and authorization controls are in place.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide sufficient funding for the IRS to quickly and safely expand digital services including those proposed by the Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress.

IRS COMMENTS

The IRS has aimed to increase digital communications and services over the past decade, but funding constraints and operational challenges impeded progress. The COVID-19 pandemic highlighted the critical need to expand digital options to not only promote efficiency but also preserve health and safety. Digital options for taxpayers, tax professionals, and IRS employees are fundamental to effective tax administration.

In response to COVID-19 concerns, the IRS took steps to protect employees, taxpayers, and their representatives by minimizing the need for in-person contact. Taxpayer representatives expressed concerns with securing handwritten signatures for forms required to be filed or maintained on paper. To alleviate these concerns and promote timely filing, the IRS implemented temporary deviations that allow taxpayers and representatives to electronically sign and submit specific forms. We are reassessing this policy to see how the temporary accommodations may be expanded and, in some cases, made permanent.

As detailed in the Taxpayer First Act, Taxpayer Experience Strategy, the IRS is committed to providing increased options for communicating digitally and an improved online experience for all taxpayers while expanding this service to tax professionals. Because digital services will not meet every need, the IRS must continue to provide taxpayers assistance through a variety of channels — including mail, web, telephone, and in person. We will integrate those channels with expanded digital options to seamlessly guide taxpayers to the resources that will best resolve their issue. As the report mentions, Taxpayer Digital Communications Secure Messaging provides taxpayers with an option to digitally communicate with IRS employees in a secure manner and submit electronic documentation quickly and securely at their own convenience. Text chat for taxpayers with collection questions has expanded to 11 of the 19 Automated Collection System call sites (including bilingual sites), and now allows taxpayers to attach documents such as installment agreement forms and delinquent returns.

Securing our systems and taxpayer data is a top priority for the IRS. In 2017, the National Institute of Standards and Technology (NIST) released Special Publication (SP) 800-63-3 that provided

updated digital identity guidelines and created a new framework for federal agencies to improve the security of their identity-proofing and authentication standards. The guidelines redefined how federal agencies implement digital identity services and included substantially more rigorous authentication requirements. By utilizing Credential Service Providers (CSPs) and conducting emerging technology Innovation Studies and usability surveys, the IRS is working to expand identity proofing and authentication options to meet taxpayers' digital service needs and mobile service expectations while adhering to NIST requirements.

Taxpayers deserve personalized digital services that meet their needs and expectations. The IRS is committed to meeting these expectations and creating a positive digital services experience that increases trust in government and promotes voluntary tax compliance.

TAXPAYER ADVOCATE SERVICE COMMENTS

The IRS's commitment to increase digital communication options for taxpayers and representatives, as reflected in its Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress, will ensure that taxpayers' right to quality service is realized to a greater extent. It is encouraging that the IRS plans to reassess, with a possibility of expanding or making permanent, temporary procedures permitting electronic signatures and digital submission of documents. These temporary procedures were implemented to accommodate taxpayers and representatives as they interacted with the IRS during service limitations associated with the COVID-19 pandemic, but these expanded options to digitally communicate with the IRS will also prove useful to both taxpayers and IRS employees under normal operating conditions.

While the IRS is making great strides to provide digital services to taxpayers and representatives, it also acknowledges the need to maintain an omnichannel approach to taxpayer service which is consistent with TAS's longstanding recommendations. Allowing taxpayers and representatives to choose the service channel that best suits their needs at any given point in their interactions with the agency is crucial to improve their experience. Pursuant to the Taxpayer Experience Strategy, the IRS not only plans to maintain the different service channels, but it also plans to integrate the various channels to seamlessly guide taxpayers to the resources that will best resolve their issue.

For those taxpayers and representatives who choose to use a digital service channel, they can only gain access to many of the digital applications if they pass the rigorous authentication requirements required by NIST. As the IRS complies with the more rigorous NIST requirements and utilizes CSPs to identity proof taxpayers and representatives, we reiterate the need to continually evaluate how such procedures impact accessibility of the suite of digital applications. Specifically, the IRS should monitor how such authentication requirements impact different demographics and determine the feasibility of potentially increasing accessibility while also strictly adhering to the NIST requirements.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Maintain a robust omnichannel service environment at the same time that it enhances its digital offerings.
2. Accept electronic signatures on all documents that require a signature, once the IRS assesses, identifies, and eliminates any data security vulnerabilities, if applicable.
3. Make permanent the use of a secured messaging system with taxpayers and their representatives.
4. Make permanent and expand the list of documents the IRS will accept and transmit by email using an established secured messaging system, once the IRS assesses, identifies, and eliminates any data security vulnerabilities and file size limitation issues, if applicable.
5. Assess how the new SADI platform will impact different demographics and determine the feasibility of potentially increasing accessibility to digital applications as they are integrated with SADI, while also maintaining compliance with NIST guidelines.
6. Expand the availability of TDC eGain Text Chat beyond ACS.
7. Continue to develop digital service tools that are mobile-ready.
8. Expand the use of virtual face-to-face technology to taxpayer-facing functions as permitted, while ensuring proper authentication and authorization controls are in place.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide sufficient funding for the IRS to quickly and safely expand digital services including those proposed by the Taxpayer Experience Strategy of the Taxpayer First Act Report to Congress.

Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division
 Eric Hylton, Commissioner, Small Business/Self-Employed Division
 Jeff Tribiano, Deputy Commissioner for Operations Support
 Nancy Sieger, Acting Chief Information Officer

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Quality Service*
- *The Right to a Fair and Just Tax System*

EXPLANATION OF THE PROBLEM

Electronic filing (e-filing) has many benefits for taxpayers and the IRS. The transmission of data is quick and accurate, the automated processing of an e-filed form eliminates the need for the costly manual transcription of millions of lines of data, and the increased accuracy of the data imported reduces the need to resolve transcription errors. Digitalizing data also gives the IRS more flexibility to allow employees to work remotely.

While most taxpayers prefer e-filing when it is available, some prefer to file paper returns or must file on paper because they do not have access to a computer or broadband internet. Therefore, even as the IRS expands its e-filing options, it must maintain options that allow taxpayers to choose their preferred method of filing.

The IRS's antiquated information technology (IT) systems and infrastructure present significant obstacles to expanding e-filing and digitizing paper returns. Taxpayers can e-file some returns and forms; however, more than 40 active forms still require paper filing. Some taxpayers who e-file experience processing delays because the IRS cannot digitally accept certain documents attached to an e-filed return, requiring the taxpayer to file them separately on paper.²

The IRS should expand its electronic filing capabilities to allow all taxpayers an e-filing option, regardless of the return or any associated schedules, documents, and attachments. It must also improve the processing of paper returns by expanding existing technology and implementing new technology to reduce processing delays. These actions reduce burden to taxpayers and the IRS and produce long-term cost savings.

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 Form 8453, U.S. Individual Income Tax Transmittal for an IRS e-file Return (2020).

ANALYSIS

Taxpayers who e-file their returns gain the benefit of faster processing of their return, digital confirmation of filing and receipt, and the flexibility to file from anywhere if they can access the internet. Taxpayers who file by mail must rely on the IRS's ability to process mail efficiently, transcribe their return information accurately, and process payments and refunds promptly. The forced shutdown of the IRS's mail processing campuses during the 2020 filing season exposed the inflexibility of these interdependent manual processes. Between mid-March and June 1, the IRS could not process paper returns due to the COVID-19 shutdown, and as of November 20, 2020, it estimated there was a backlog of individual returns of one million unopened paper returns and 6.8 million returns it had not fully processed.³ Whereas, the IRS continued processing e-filed returns during the shutdown.

The pandemic reinforced the importance of the IRS embracing digitalization technology to allow taxpayers to transmit documents to the IRS electronically. It must develop a program to accept all forms through electronic means and capture and process the information submitted, either manually, electronically, or via a combination of the two.

There are many reasons the IRS cannot electronically process forms, including complexity, inclusion of attachments, and the potential tax impact on related or joint filers; however, none are true barriers to expanding e-filing or digital imaging of paper returns. The operational challenges arising under the pandemic forced the IRS to reconsider its stance on electronic communication, such as accepting wet (*i.e.*, handwritten) signatures.⁴ The IRS temporarily deviated from the wet signature requirement for more than a dozen forms in response to the pandemic and permitted the use of electronic signatures. This allowed taxpayers and their representatives to fulfill their filing responsibilities without being in the same physical location or relying on the mail to transfer documents and allowed the IRS to conduct its business untethered to a physical location.

The pandemic reinforced the importance of the IRS embracing digitalization technology to allow taxpayers to transmit documents to the IRS electronically. It must develop a program to accept all forms through electronic means and capture and process the information submitted, either manually, electronically, or via a combination of the two. Figure 1.5.1 provides a list of active forms that taxpayers cannot e-file and the number of each filed during 2019.⁵

3 *Hearing with IRS Commissioner Charles Rettig: Hearing Before the H. Ways and Means, Subcomm. on Oversight*, 116th Cong. (Nov. 20, 2020) (statement of Charles Rettig, IRS Commissioner).

4 *See, e.g.*, Form 2848, Power of Attorney and Declaration of Representative (Feb. 2020).

5 Some forms listed in this table are submitted multiple times for the same purpose before the IRS processes them properly. E-filing would cut down on repeated submissions and the overall volume of mail and follow-up calls.

FIGURE 1.5.1, Processing Year (PY) 2019 Filings of Forms Ineligible for e-Filing⁶

Forms	PY 2019 Filings
Form 2848, Power of Attorney and Declaration of Representative	2,318,162
Form W-7, Application for IRS Individual Taxpayer Identification Number	1,526,880
Form 8821, Tax Information Authorization	873,426
Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Currently e-filing is not available for Foreign-owned U.S. Disregarded Entities)	286,100
Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund	219,745
Form 1065X, Amended Partnership Return	103,264
Form 8332, Release of Claim to Exemption for Child by Custodial Parent	96,311
Form 14039, Identity Theft Affidavit	59,250
Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	55,891
Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts	55,235
Form SS-4, Application for Employer Identification Number (for foreign companies)	53,950
Form 1139, Corporation Application for Tentative Refund	39,191
Form 8833, Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)	38,206
Form 730, Monthly Tax Return for Wagers	23,889
Form 12153, Request for a Collection Due Process or Equivalent Hearing	23,278
Form 8038-G, Information Return for Tax-Exempt Governmental Bonds	22,000
Form 1120-RIC, U.S. Income Tax Return for Regulated Investment Companies	18,331
Form 1120-PC, U.S. Property and Casualty Insurance Company Income Tax Return	16,515
Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes	15,182
Form 8275, Disclosure Statement	8,383
Form 8703, Annual Certification of a Residential Rental Project	6,226
Form 843, Claim for Refund and Request for Abatement	5,486
Form 1120-REIT, U.S. Income Tax Return for Real Estate Investment Trusts	4,101
Form 3115, Application for Change in Accounting Method	3,267
Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues	2,695
Form 1120-L, U.S. Life Insurance Company Income Tax Return	513
Form 8854, Initial and Annual Expatriation Information Statement	312
Form 14039-B, Business Identity Theft Affidavit	232
Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap	225

6 Data compiled from the IRS Compliance Data Warehouse (CDW) Individual Returns Transaction File (IRTF), Business Returns Transaction File (BRTF), Individual Master File (IMF), Business Master File (BMF), Modernized Tax Return Data Base (MTRDB), Electronic Tax Administration Research and Analysis System (ETARAS), Entity Application Programs (EAP), and Centralized Authorization File (CAF) databases. There are other forms that must be filed on paper but which are not transcribed (or for which complete data is not readily available) including: Form 56, Notice Concerning Fiduciary Relationship; Form 211, Application for Award for Original Information; Form 1045, Application for Tentative Refund; Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer (when Part 1 Boxes A and B are present); Form 4466, Corporation Application for Quick Refund of Overpayment of Estimated Tax; Form 4506, Request for Copy of Tax Return; Form 5074, Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI); Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests; Form 8802, Application for United States Residency Certification; Form 8809-I, Application for Extension of Time to File FATCA Form 8966; Form 8822, Change of Address; Form 8898, Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession; and Form 8918, Material Advisor Disclosure Statement.

The IRS does not have a comprehensive plan showing when the remaining forms will be available for e-filing and when taxpayers can digitally submit non-form attachments. Quite simply, the IRS needs to make long-term investments in technology that would enable all taxpayers to e-file all forms and supporting documents.⁷

Modernized e-File System

The IRS provides a detailed set of communication procedures, transmission formats, business rules, and validation procedures that dictate what information taxpayers can and cannot e-file through the Modernized e-File (MeF) System.⁸ When determining the rules on e-filing, the IRS consults with the private industry to understand the latest digitalization strategies and solutions available in the marketplace, including costs and benefits.⁹ Before the IRS can change the business rules for e-filing, it determines the impact to processing and balances the competing priorities of reducing taxpayer burden while minimizing administrative burdens and downstream risk beyond the IRS's ability to manage.

When a taxpayer submits an e-filed return, the IRS automatically matches information on the return against its own records to determine whether to accept or reject the return. This process shifts the burden to the taxpayer of identifying and correcting an error causing the return to reject.¹⁰ If the taxpayer cannot correct the problem, he or she must file a paper return. While an automated process allows the IRS expeditious return processing and issuance of refunds, it means fewer taxpayers can e-file successfully.¹¹

Processing Costs

The cost of processing paper returns is enormous. The IRS spent more than \$77 million processing nearly 17 million¹² paper Forms 1040 in fiscal year (FY) 2019. It spends about \$4.78 to process a paper return compared to \$0.18 for an electronically filed return.¹³ Each paper filing is labor-intensive, requiring more than a dozen manual touches to process.¹⁴ The IRS must handle and store all that paper, spending \$37 million a year to manage, ship, process, transfer, and retrieve paper records.¹⁵ E-filing alleviates many of these costs. Over 920,000 taxpayers used tax preparation software but were unsuccessful in e-filing their 2018 tax return before needing to mail a paper return to the IRS.¹⁶ If those taxpayers had been able to electronically transmit their returns, the IRS could have realized significant cost savings and the taxpayers could have benefited by receiving expedited refund payments and improved data entry accuracy.

7 IRS response to TAS information request (Oct. 29, 2020).

8 See, e.g., IRS Pub. 4164, Modernized e-File (MeF) Guide for Software Developers and Transmitters (Dec. 2019).

9 IRS response to TAS information request (Oct. 29, 2020).

10 For example, an e-filed return would not be accepted for processing if the taxpayer's identity could not be confirmed. In that instance, a taxpayer would need to file a paper return.

11 Over 920,000 taxpayers used tax preparation software for their 2018 tax return and attempted to e-file the return but were unable to and had to mail a paper return to the IRS. IRS CDW, IRTF Entity table.

12 Approximately 16.8 million individual income tax returns were filed in FY 2019. IRS, FY 2019 Data Book Tables 3 and 4 (June 2020) (difference between total individual income tax returns and electronically filed individual income tax returns filed in FY 2019).

13 The total pipeline and non-pipeline cost per return is \$4.78. The processing cost for an electronically filed return is \$0.18. IRS, Document 6746, Cost Estimate Reference FY 2019 (June 2020).

14 IRS Services and Enforcement PMO (S&E PMO) Digitalization Overview (Oct. 2019).

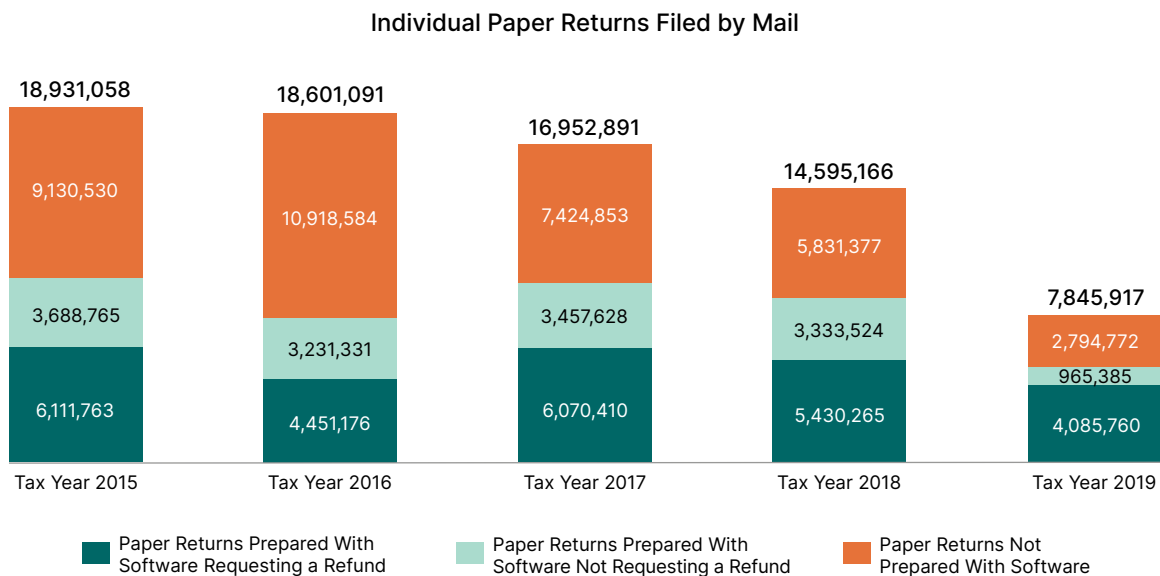
15 *Id.* A portion of this cost is attributable to the handling and storage of paper returns.

16 IRS CDW, IRTF Entity table.

Refund Delays

Although the number of taxpayers filing paper returns is steadily declining, millions of taxpayers continue to file paper returns by mail, as shown in Figure 1.5.2. More than half of taxpayers who file by mail prepare the return using tax software.¹⁷ Taxpayers filing by mail who were unable to e-file their return because of the IRS's technological shortcomings experienced longer wait times to receive their refund.¹⁸ Taxpayers who e-filed their return claiming a refund generally received their refund via direct deposit within seven to 21 days or by paper check within 30 days.¹⁹

FIGURE 1.5.2²⁰



Transcription Errors

When processing paper returns, such as Form 1040, a submission processing employee manually enters the information from each line into IRS systems. Manual data entry inevitably leads to transcription errors, which then must be identified and corrected. For example, after the redesign of Form 1040 in 2018 to the “postcard” format,²¹ the IRS manually processed some returns without capturing all the data.²²

Since the IRS generally has no way of identifying transcription errors that are not systemic, taxpayers are in the difficult position of self-identifying any errors the IRS may make during the manual entry. It is not until

¹⁷ IRS CDW, IRTF Entity table, IRTF F1040 table.

¹⁸ Even with the excessive processing delays during the tax year 2019 filing season, 84 percent of taxpayers who prepared their return on software and filed by mail were seeking a refund.

¹⁹ IRS, Where's My Refund?, <https://www.irs.gov/refunds> (last visited Dec. 21, 2020).

²⁰ IRS CDW, IRTF Entity table, IRTF F1040 table. The IRS continues to process 2019 returns. These numbers are as of November 17, 2020.

²¹ U.S. Dept. of Treasury, Treasury, IRS Announce Development of Postcard-Size Form 1040 for 2019 (June 29, 2018), <https://home.treasury.gov/news/press-releases/sm421>.

²² IRS response to TAS information request (Oct. 29, 2020).

the IRS sends a notification of additional tax due or other adjustment that the taxpayer learns of an issue. The taxpayer then has the daunting task of determining the cause of the error and correcting it.

The IRS reviews about two percent of manually transcribed returns to evaluate the accuracy of the processing.²³ However, that review is a measure of employee performance, not quality assurance. The average accuracy rate based on quality review held steady at about 80 percent during calendar year (CY) 2019 and the first nine months of CY 2020.²⁴ Any error rate related to manual transcription of paper returns is inherent to the transcription process — a process eliminated with electronic filing. Thus, more e-filed returns leads to fewer transcription errors.

Paper Processing Options

There are four campus facilities that process paper submissions. The IRS shifted processing between those locations based on resources to overcome the backlog of mail submissions caused by the pandemic.²⁵ The IRS plans to eliminate submission processing at two of those locations by 2025. As the IRS streamlines submission processing, it should ensure its paper processing campuses have the appropriate tools and technology to handle all individual paper filers and retain the flexibility to handle disruptions caused by disasters and unforeseen events.

Scanning Technology

The IRS engaged private industry and other government entities to explore the latest digitalization strategies and solutions²⁶ for processing forms that vary in type, length, and complexity. One such technology, Optical Character Recognition (OCR), incorporates a photoelectric machine that reads the information from a form and computer software that captures the data. OCR can be used on a digital file the taxpayer transmits or on a paper document the IRS scans into a digital format. The IRS should expand the use of OCR and similar technologies to automate processing and reduce the need for manual transcription, which would allow it to accept more forms and attachments electronically.

2-D Barcoding

Processing errors resulting from manual data transcription could be significantly reduced if the IRS worked with software providers to implement 2-D barcoding. 2-D barcoding adds a horizontal or vertical bar code containing the return information when printed. The IRS can record and capture the information reported on a return by scanning the barcode, eliminating the need for line-by-line data entry. The Government Accountability Office (GAO),²⁷ Treasury Inspector General for Tax Administration (TIGTA),²⁸ and the

23 IRS response to TAS information request (Oct. 29, 2020); IRS Submission Processing (SP) Filing Season Statistics Report, Report for Week Ending October 3, 2020.

24 IRS response to TAS information request (Oct. 29, 2020).

25 *Hearing with IRS Commissioner Charles Rettig: Hearing Before the H. Ways and Means, Subcomm. on Oversight*, 116th Cong. (Nov. 20, 2020) (statement of Charles Rettig, IRS Commissioner).

26 In July 2018, the Digitalization Working Group (DWG) issued a Request for Information (RFI), and shared information with both the Social Security Administration and U.S. Census Bureau to gain industry and peer insights on best practices for document imaging and digitalization technology and solutions.

27 GAO, GAO-18-544, *Tax Fraud and Compliance: IRS Could Further Leverage the Return Review Program to Strengthen Tax Enforcement* (July 2018).

28 TIGTA, Ref. No. 2007-40-105, *Additional Action Is Needed to Expand the Use and Improve the Administration of the Free File Program* (June 28, 2007).

National Taxpayer Advocate²⁹ have urged the IRS to explore this technology, which it already uses on IRS Form K-1.³⁰ However, the 2-D barcoding the IRS uses is limited to fewer than 100 characters and would need to be upgraded to scan forms with significantly more characters, such as the Form 1040-series. Expanding 2-D barcoding would require upfront investment into new machines capable of reading barcodes but would lead to faster, more accurate processing of paper returns, with downstream cost savings for each return that an IRS employee does not need to manually transcribe.

CONCLUSION AND RECOMMENDATIONS

In the wake of the COVID-19 pandemic, the IRS has taken a fresh look at new — and not-so-new — technologies it has rejected in the past.³¹ The IRS should provide a means for taxpayers to file any form electronically. It should use existing technology to digitize information to allow taxpayers to send forms and returns that the IRS does not currently permit taxpayers to e-file.

And for taxpayers who choose or are required to paper file their return, the IRS should incorporate technology to reduce processing transcription errors. These practices would produce long-term cost savings and significantly reduce burden on both taxpayers and the IRS.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Make and publish an e-file plan for the forms that taxpayers cannot e-file.
2. Reevaluate the MeF System to allow for e-filing of all forms, schedules, and attachments.
3. Expand the use of optical character recognition and 2-D barcoding to improve processing of paper filings and reduce processing transcription errors.
4. Make permanent all temporary changes to electronic or digital signature requirements the IRS implemented in response to the COVID-19 pandemic.

29 See National Taxpayer Advocate 2021 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Require the IRS to Work With Tax Software Companies to Incorporate Scanning Technology for Individual Income Tax Returns Prepared Electronically But Filed on Paper)*.

30 IRS, 2-D Bar Coding for Schedules K-1 is the Preferred Method, <https://www.irs.gov/e-file-providers/two-dimensional-bar-coding-for-schedules-k-1-is-the-preferred-method> (last visited Dec. 21, 2020).

31 See, e.g., 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 Nov. 16, 2020).

IRS COMMENTS

We continuously strive to improve how we process returns, whether filed electronically or on paper. Electronic return filing continues to trend upward, and overall through September 30, 2020, individual electronically filed returns were up 9.1% and electronically filed business returns were up 5.7% from last year. For FY 2020, the IRS processed over 150 million individual and almost 30.7 million business electronically filed returns.

Free File also continues to outpace last year. As of November 21, 2020, total returns filed through the Free File program are up over 300%, due in part to returns filed through the Non-Filer application or via the many partners that offered a streamlined entry for non-filers to claim their Economic Impact Payment (EIP). All of the IRS partners in the Free File Initiative (FFI) stepped up to provide a variety of Non-Filer utilities, including products in Spanish and an online Non-Filers tool to enable taxpayers to file for the EIP. As of November 21, 2020, over 8 million citizens received their EIP thanks to the FFI's efforts.

When removing EIP from consideration, Free File still marked a 50% increase this year as more than 4.2 million taxpayers used one of the free online partner products. To continue expanding the program, the IRS also introduced a host of new web changes for the Free File pages on IRS.gov. These changes, which were released in September, were based on the findings and recommendations from last summer's independent review of the program along with findings from focus group research conducted in December 2018. The IRS is currently assessing other recommendations from external stakeholders and oversight agencies, including the Treasury Inspector General for Tax Administration, National Taxpayer Advocate, Internal Revenue Service Advisory Council (IRSAC), and Government Accountability Office, among others, to inform future improvements.

The IRS has also expanded electronic filing options to include an electronic version of amended Form 1040 returns. The ability to electronically file the Form 1040X, Amended U.S. Individual Income Tax Return, has been an important goal of the IRS, the tax software, and tax professional industry for many years. It is also an ongoing recommendation from the IRSAC and the Electronic Tax Administration Advisory Committee. The availability of an electronically filed Form 1040X is a great success for IRS modernization efforts, given the numerous challenges to adding this form to the e-file family due to the details needed on the form. As of November 21, 2020, over 144,000 electronically filed amended returns have been accepted from 18 industry partners. Electronically filing Form 1040X provides taxpayers with a quicker, easier way to submit amended returns, streamlines work for the IRS and the entire tax community, and minimizes errors normally associated with manually completing the form.

Given the many benefits of e-filing, digitalization and technologies such as 2-D barcoding and Optical Character Recognition, the IRS continues to support their implementation. However, the speed with which we can execute these improvements is sometimes limited by available resources.

TAXPAYER ADVOCATE SERVICE COMMENTS

As the IRS rightly points out, the number of taxpayers using electronic filing is growing. When the IRS offers new e-filing options, such as introducing the ability to electronically file Form 1040X, a large number of taxpayers are ready and waiting to use the new service. There is clearly a substantial demand for the service from taxpayers. The IRS also deserves praise for announcing the 2021 launch of online submission of Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization. Combined, the IRS received nearly 3.2 million of those two forms in 2019. Offering electronic filing of these forms provides better service to taxpayers and will reduce the IRS's paper processing workload.

The IRS cannot further expand e-filing options without the necessary resources from Congress, but nothing stands in the way of the IRS making an e-file plan for the forms that taxpayers cannot e-file and publishing it. Without a published schedule for upgrades, the IRS's plan for improving the e-file system seems to be "the squeaky wheel gets the grease," but that is not an effective long-term strategy. Instead of addressing forms one at a time, the IRS needs to establish a plan for all forms to be part of the MeF System and allow itself to be held accountable for meeting established goals.

The IRS supports more widespread implementation of e-filing, digitalization, and technologies such as 2-D barcoding and Optical Character Recognition, but points to lack of resources. Resource limitations are an ongoing issue for the IRS but should not stand in the way of having a plan ready for future upgrades as resources become available.

As the IRS extended the temporary deviation from the wet signature requirement on at least 20 forms³² and allows electronic signatures for an additional six months, it should consider allowing electronic signatures on a permanent basis.

RECOMMENDATIONS

Administrative Recommendations to the IRS

1. Make and publish an e-file plan for the forms that taxpayers cannot e-file.
2. Reevaluate the MeF System to allow for e-filing of all forms, schedules, and attachments.
3. Expand the use of optical character recognition and 2-D barcoding to improve processing of paper filings and reduce processing transcription errors.
4. Make permanent all temporary changes to electronic or digital signature requirements the IRS implemented in response to the COVID-19 pandemic.

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

Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts

RESPONSIBLE OFFICIALS

Jeff Tribiano, Deputy Commissioner for Operations Support
Nancy Sieger, Acting Chief Information Officer

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 a Fair and Just Tax System*

EXPLANATION OF THE PROBLEM

Despite its responsibility for collecting the most tax revenue in the world and its vital role in social benefits administration, the IRS operates with severely outdated information technology (IT) systems and infrastructure. Without a substantial overhaul of its IT systems, some of which were originally developed in the 1960s, and transformation of how the IRS interacts with taxpayers, the IRS cannot provide first-rate taxpayer service or efficiently carry out its enforcement and collection efforts. The IRS will require significant, sustained multiyear funding from Congress to modernize its IT systems.

The consequence of not fully modernizing IT systems can range from minor inconvenience (*e.g.*, requiring taxpayers who choose to e-file their tax returns to still submit some paper forms) to major catastrophe (*e.g.*, taxpayers being unable to e-file or make payments, and the IRS being unable to process tax returns and disburse refunds). As the nation's tax collector, the IRS can ill-afford to have its systems crash (even for a day, as occurred during the last day of the 2018 filing season). Significant disruptions in IRS operations can erode taxpayer confidence in the tax administration system and ultimately lead to reduced levels of tax compliance.

ANALYSIS

Background

A Supreme Court Justice famously opined that “taxes are the lifeblood of government.”² Indeed, the IRS is responsible for collecting approximately \$3.6 trillion in taxes each year — roughly 96 percent of all federal

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 *Bull v. United States*, 295 U.S. 247, 259 (1935).

revenue.³ In addition, the agency is tasked with administering recurring social benefits programs such as the Earned Income Tax Credit (EITC) and one-time financial relief programs such as the Economic Stimulus Payments in 2008 and Economic Impact Payments (EIPs) in 2020. Despite these enormous and critical responsibilities, the IRS is overwhelmingly reliant on “legacy” IT systems — which the IRS’s IT function has defined as systems that are at least 25 years old, use obsolete programming languages (e.g., Common Business-Oriented Language (COBOL)), or lack vendor support, training, or resources to maintain.⁴

In recent years, much has been written about the IRS’s antiquated IT systems.⁵ The IRS can modernize some legacy systems, replace some with new technology, and retire or decommission others that no longer serve their intended purpose. The Treasury Inspector General for Tax Administration (TIGTA) issued a report in August 2020 that found the IRS had not developed a coordinated plan to address updating, replacing, or retiring its legacy systems.⁶ Of the 231 legacy systems TIGTA identified, 45 were due for modernization, and 34 should have been retired.⁷

In a recent congressional hearing, the Government Accountability Office (GAO) noted that the IRS was still reliant on the Individual Master File (IMF), a system initially developed over 50 years ago, to update taxpayer account data, assess taxes, and generate refunds.⁸ The IRS is continuing to develop the Customer Account Data Engine 2 (CADE 2) to replace core functions of the IMF. The GAO has identified CADE 2 — which uses modern computing language, is faster to process, and is more adaptable — as one of the federal government’s critical IT acquisitions.⁹ Unfortunately, the IRS is not expected to complete the second phase of CADE 2 until 2024, partially because the project had been “rebaselined” seven times from 2016 to 2019 due to budget cuts, hiring freezes, and changes in scope.¹⁰

Analogy: An apt analogy is to think of the IRS’s IT systems as a 1960s-era car. The IMF is the engine, and while it has impressively served the needs of the IRS for over 50 years, with the IRS modifying it to coax a few more years out of it, it is time for an engine replacement. While it may be possible for aficionados of classic cars to integrate modern technology for safety (e.g., anti-lock brakes, airbags) or convenience (e.g., Bluetooth, GPS navigation), at some point it simply is no longer practical or cost-effective to transform a 1960s-era car to safely drive the

3 IRS, 2019 Data Book 1 (June 2020); *IRS in the Pandemic, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Government Operations*, 116th Cong., at 1 (Oct. 7, 2020) (statement of Charles P. Rettig, IRS Commissioner), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Rettig%20Testimony.pdf>.

4 IRS response to TAS information request (Oct. 19, 2020). Current IRS criteria for legacy system includes (but is not limited to): aged software applications (25 years or older); obsolete programming languages (e.g., Assembler Language Code, COBOL, or Visual BASIC); outdated development methodology or lack of industry adoption; lack of vendor support; lack of resource and training; or outdated architecture adoption.

5 See, e.g., National Taxpayer Advocate 2019 Annual Report to Congress 15-22 (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 Fiscal Year 2019 Objectives Report to Congress 47-51 (Area of Focus: *The IRS’s Enterprise Case Management Project Shows Promise, But to Achieve 21st Century Tax Administration, the IRS Needs an Overarching Information Technology Strategy With Proper Multi-Year Funding*).

6 See TIGTA, Ref. No. 2020-20-044, *Legacy Systems Management Needs Improvement* 1 (Aug. 19, 2020).

7 *Id.*

8 GAO, GAO-21-178T, *Information Technology: IRS Needs to Address Operational Challenges and Opportunities to Improve Management* 4, 9 (Oct. 7, 2020) (statement of Vijay A. D’Souza, Director, Information Technology and Cybersecurity). See also IRS, Customer Account Data Engine (CADE) 2 Database Implementation (DI) – Privacy Impact Assessment (Oct. 4, 2010).

9 GAO, GAO-20-249SP, *Information Technology: Key Attributes of Essential Federal Mission-Critical Acquisitions* 41-42 (Sept. 2020). CADE 2 will benefit the IRS by “enabling increased agility in response to changing taxpayer priorities and legislation, reduced IT costs and complexity, reduced workforce risk, and reduced burden of manually intensive processes on IRS employees by enabling automated calculations.”

10 GAO, GAO-20-249SP, *Information Technology: Key Attributes of Essential Federal Mission-Critical Acquisitions* 41 (Sept. 2020).

roads in 2020. Similarly, the IRS cannot afford to continually retrofit safety (e.g., fraud detection filters) and convenience (e.g., e-filing, Direct Pay) features into an antiquated platform. The IRS, and taxpayers, would be much better served with a brand new electric vehicle, one capable of integrating new features seamlessly via software updates without needing to repeatedly take it off the road (or offline) for maintenance.

Impact of COVID-19

With its antiquated IT systems holding it back, the IRS has had to deal with unprecedented challenges imposed by the COVID-19 pandemic for much of 2020. The disruption caused by the pandemic revealed the IRS's IT-related challenges for managing its workforce and serving taxpayers.

The IRS's primary workforce-related obstacle stemmed from its inability to continue core functions (such as answering phones, issuing notices, and opening and processing taxpayer correspondence, mailed payments, and paper-filed returns) during the height of the 2020 filing season with the majority of staff under an emergency evacuation order.¹¹ For example, the IRS was unable to quickly implement a programming fix to halt the creation of more than 20 million systemically-generated notices, which it could not mail to taxpayers due to shifting of staffing and resources.¹² When the IRS resumed its mailing operations, it mailed millions of notices bearing dates that had already passed, along with inserts containing updated due-date information. In June 2020, the National Taxpayer Advocate published a blog entry anticipating that this would result in confusion among taxpayers.¹³

The IRS workforce, like much of the rest of the country, had to overcome unforeseen obstacles as it dealt with COVID-19. To ensure its employees could continue to work during the pandemic, the IRS had to figure out ways to securely allow remote connectivity of employees to key IT systems. The IRS issued more than 15,000 laptops to customer service representatives and thousands more to non-customer-facing employees.¹⁴ The IRS's internal networks support approximately 57,000 employees online concurrently, all in a secure environment.¹⁵

To provide relief for taxpayers impacted by the COVID-19 pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020.¹⁶ Most notably, the CARES Act authorized an advance recovery rebate credit (hereafter referred to as "economic impact payments" or EIP) for individuals, which Congress directed the IRS to distribute. Given the time-sensitive nature of the payments, the IRS had to pivot, in the middle of the filing season without full staffing, to develop processes and procedures and perform system changes that would allow for the quick release of the EIPs. Although there have been glitches, the National Taxpayer Advocate commends the IRS for timely delivering 165 million EIPs to taxpayers.¹⁷

11 See *Supplemental Review of the 2020 Filing Season*, *infra*; IRS response to TAS fact check (Nov. 19, 2020).

12 Erin Collins, Keep an Eye on Your Mailbox: Millions of Backlogged Notices Are Being Mailed Over the Next Few Months, Some Reflect Expired Action Dates. But Don't Panic, See Inserts Providing Extended Due Dates, NATIONAL TAXPAYER ADVOCATE BLOG, <https://www.taxpayeradvocate.irs.gov/news/ntablog-keep-an-eye-on-your-mailbox-millions-of-backlogged-notices-are-being-mailed-over-the-next-few-months-some-reflect-expired-action-dates-but-dont-panic-see-inserts-providing-extended/> (June 22, 2020).

13 *Id.*

14 IRS response to TAS information request 7 (Oct. 19, 2020); IRS response to TAS fact check (Nov. 19, 2020).

15 *IRS in the Pandemic*, *Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Government Operations*, 116th Cong., at 5 (Oct. 7, 2020) (statement of Charles P. Rettig, IRS Commissioner), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Rettig%20Testimony.pdf>.

16 The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).

17 IRS response to TAS fact check (Nov. 19, 2020).

Despite the IRS's admirable performance handling the challenges of the pandemic, some taxpayers experienced unusual difficulties in their dealings with the IRS. While a portion of those difficulties is attributable to the impossibility of anticipating and planning for the impacts of a national shutdown, some difficulties would have been substantially lessened if the IRS had better technology and more staff to meet the needs of taxpayers. For an in-depth discussion of the IRS response to the COVID-19 pandemic and implementation of CARES Act provisions, refer to the National Taxpayer Advocate's Fiscal Year 2021 Objectives Report to Congress.¹⁸

Modernization Plan

In April 2019, the IRS released a six-year Integrated Modernization Business Plan ("modernization plan") to improve IT infrastructure, make tax administration more efficient, and enable the IRS to provide better taxpayer service.¹⁹ The modernization plan clarified that it involves "more than the replacement of aged infrastructure, software products, and outdated code... it will also address how IRS workforce processes and culture will evolve to sustain ongoing innovation and transformation."²⁰

The modernization plan became even more important after the Taxpayer First Act (TFA) became law on July 1, 2019. The TFA established the position of the IRS Chief Information Officer (CIO) responsible for the "development, implementation, and maintenance of information technology," as well as the security and integration of technology into IRS systems. The CIO is also directed to develop and implement a multiyear strategic plan for the IRS's IT needs.²¹ However, Congress did not provide additional funding to the IRS in the TFA, including funding for the modernization efforts.

The modernization plan contains four "pillars" critical to the agency's mission and future development.

1. **Taxpayer Experience.** Incorporate experiences from all parties across the federal tax ecosystem, including business taxpayers, taxpayer representatives, and tax return preparers (*e.g.*, web/mobile applications, taxpayer digital communications);
2. **Core Tax Services and Enforcement.** Overhaul core tax systems to provide quicker and easier tax filing services through data-driven decision-making, real-time tax processing, and core taxpayer administration integration (*e.g.*, CADE 2, Enterprise Case Management (ECM));
3. **Modernized IRS Operations.** Accelerate the adoption of emerging technologies to enhance taxpayer services (*e.g.*, artificial intelligence, data digitization, robotics process automation); and
4. **Cybersecurity and Data Protection.** New technologies must function as security stewards of sensitive taxpayer information (*e.g.*, identity and access management, vulnerability and threat management).

To advance in these areas, the IRS set forth two phases for delivering these capabilities — phase one was planned for fiscal years (FYs) 2019 to 2021, and the second phase to take place in FYs 2022 to 2024. The IRS described this modernization plan as a "six-year road map for achieving necessary modernization of IRS

18 See National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 10-45 (Systemic Advocacy Objective: *Protecting the Rights of Taxpayers Impacted by the COVID-19 National Emergency and Restoring Much-Needed Taxpayer Services*); National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 46-68 (Systemic Advocacy Objective: *Reducing Burden Resulting From the Implementation of the Coronavirus Aid, Relief, and Economic Security (CARES) Act*).

19 IRS Pub. 5336, IRS Integrated Modernization Business Plan (Apr. 2019).

20 *Id.* at 4.

21 TFA, Pub. L. No. 116-25, §§ 2101-2103, 133 Stat. 981 (2019).

systems and processes to improve taxpayer service”²² — a perfect analogy to go with the IRS’s quest to replace its 1960s-era car with a sleek, modern electric vehicle capable of taking full advantage of the new road map.

Pillar One: Taxpayer Experience

The goal of this modernization pillar is to have the IRS deliver a service experience comparable to private industry. The leading financial institutions in the world have invested heavily into ensuring their customers remain engaged, whether it be via online account access, live chat support, mobile phone apps, or a global network of ATMs that can handle transactions from customers. With smart investments and bold leadership, there is no reason the IRS cannot match the best financial institutions in private industry for customer service.

The IRS is exploring ways to expand its offering of online account tools for taxpayers.²³ Robust online accounts would be helpful to many taxpayers accustomed to viewing account information online from private sector financial institutions and even some government agencies. However, as a federal agency, the IRS faces certain challenges that do not apply to private companies. For example, the IRS is subject to oversight from multiple entities, including the IRS Oversight Board, the Secretary of Treasury, GAO, TIGTA, and various congressional committees²⁴ — each of which might have its own version of how the IRS should proceed. In addition, as a federal agency, the IRS must adhere to standards and protocols imposed by the Federal Information Security Modernization Act and by the National Institute of Standards and Technology.²⁵ Such limitations have hindered the IRS’s efforts to provide complete account information to taxpayers, necessitating more IRS employees to answer phone calls and respond to correspondence about matters that many taxpayers would handle quickly and efficiently online if the functionality were available.

Similarly, taxpayer representatives would benefit enormously from online account access. While a typical taxpayer can go many years without having to contact the IRS with account questions, some practitioners have to contact IRS personnel multiple times a day. Hold times on the Practitioner Priority Service telephone line can be long (average of 12.7 minutes in FY 2020), and hold times when practitioners must call the IRS’s compliance telephone lines can be even longer.²⁶ For inquiries such as balance inquiries, requests for transcripts, or obtaining copies of correspondence, telephone calls are not nearly as effective as a robust online account.²⁷

The California Franchise Tax Board (FTB) has launched an online account service called “MyFTB” on its website. This online account tool provides real-time access to tax account information to individuals, business representatives, and tax professionals. Besides “view-only” account access, taxpayers (or their representatives)

22 IRS Pub. 5336, IRS Integrated Modernization Business Plan 4 (Apr. 2019).

23 See Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

24 See IRS, IRS Oversight Organizations, <https://www.irs.gov/about-irs/irs-oversight-organizations> (last visited Nov. 5, 2020).

25 See Cybersecurity & Infrastructure Security Agency, Federal Information Security Modernization Act, <https://www.cisa.gov/federal-information-security-modernization-act> (last visited Nov. 2, 2020); National Institute of Standards and Technology, <https://www.nist.gov/> (last visited Nov. 2, 2020).

26 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot Product Line Detail 14 (week ending Sept. 30, 2020). The BMF Customer Response line had an average wait time of 35.3 minutes. IRS, JOC, Snapshot Reports: Enterprise Snapshot Product Line Detail 3 (week ending Sept. 30, 2020).

27 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*, *supra*.

can file a power of attorney, file certain forms, protest a proposed assessment, live chat with a customer service representative, or send a secure message (with attachments).²⁸

When we spoke with the FTB in September 2020 regarding its technology strategy, a key lesson shared with us was that IRS divisions should partner more closely with IT staff to ensure alignment of goals throughout the project.²⁹ MyFTB did not happen overnight; it was the culmination of years of support from FTB leadership and sustained funding from California taxpayers.³⁰

Clearly, there are multiple layers of challenges for the IRS to consider as it seeks to use technology to improve the taxpayer experience. California and other states³¹ have shown that with a significant investment of time and resources, it is possible to overcome security and privacy obstacles to offer taxpayers a comparable online experience they are accustomed to receiving from private sector firms.

Pillar Two: Core Taxpayer Service and Enforcement

The absence of modernized IT systems prevents the IRS from providing core taxpayer services and conducting its enforcement efforts as effectively as it could. For example, the IRS currently uses over 60 discrete case management systems it has developed over many years to support the individual needs of multiple business units.³² Many of these systems are incapable of communicating with each other, resulting in redundancies, bottlenecks, and increased risk. The result is that taxpayers are harmed, practitioners' efforts are hindered, and the IRS is hampered in delivering on its mission to provide U.S. taxpayers top quality service and apply the tax law with integrity and fairness to all.

The absence of modernized IT systems prevents the IRS from providing core taxpayer services and conducting its enforcement efforts as effectively as it could.

Taxpayers will benefit if the IRS takes a taxpayer-centric approach to servicing their accounts. ECM is an example of a solution geared toward core taxpayer service. The IRS formally began the ECM initiative in January 2015 and has the daunting task of consolidating case management systems and information across the IRS and replacing them with a cloud-based case management system to improve taxpayer service.³³

²⁸ See State of California FTB, *MyFTB*, <http://ftb.ca.gov/myftb/features.html> (last visited Oct. 23, 2020). For further discussion on MyFTB and IRS online account capabilities, see Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*, *supra*.

²⁹ State of California FTB response to TAS questions (Sept. 4, 2020).

³⁰ The State of California FTB reported that it took six years and two months to develop its online tools (including MyFTB) and spent nearly \$423 million on projects relating to the hardware and software to implement the systems behind its online tools. State of California FTB response to TAS questions (Sept. 4, 2020).

³¹ See, e.g., New York Department of Taxation and Finance, <http://tax.ny.gov/online/learnmore.htm> (last visited Oct. 23, 2020).

³² See TIGTA, Ref. No. 2020-20-061, *The Enterprise Case Management Solution Deployment Is Delayed, and Additional Actions Are Needed to Develop a Decommissioning Strategy* 1 (Sept. 21, 2020).

³³ *Id.*

The IRS awarded an ECM software contract with a value of more than \$45 million, with plans for deployment of Release 1.0 by the end of calendar year 2020.³⁴ The first phase of ECM was demonstrated in September 2020 to the Tax Exempt/Government Entities (TE/GE) division, with a full rollout expected in December 2020.³⁵ The IRS estimates it will require an additional \$255 million over the next four years to implement its ECM plan.³⁶ Implementation of the ECM plan should be a top priority, and Congress should provide the funding necessary for the IRS to complete the project.

The Return Review Program (RRP) is an example of a system that supports the core enforcement efforts of the IRS. RRP is a key system for detecting tax fraud and preventing the issuance of questionable refunds that uses predictive modeling techniques to identify subtle data patterns as it protects the integrity of the tax system.³⁷ The Electronic Fraud Detection System (EFDS) is the primary platform by which the IRS screens, verifies, and refers to a treatment process potentially fraudulent returns selected by RRP.³⁸ The IRS has plans to phase out EFDS (a system created in 1994) as part of the ECM plan.³⁹ The IRS's investment in fraud detection systems that would allow it to retire the antiquated EFDS platform should pay many dividends.

Another key element of the modernization plan is the transition to CADE 2 and the retirement of IMF. CADE 2 is expected to offer an integrated, near real-time environment to support the processing of individual tax returns, information returns, payments, and other transactions.⁴⁰ Curiously enough, the modernization plan does not include any mention of replacing the IRS's Business Master File (BMF), which contains records pertaining to business taxpayers and exempt organizations.⁴¹

Pillar Three: Modernized IRS Operations

The goal of this modernization pillar is to enable the IRS to retire or decommission legacy systems in place of more sustainable infrastructure. One example of this is to move away from paper documents and toward full data digitization. If the IRS processes documents (both internal to the IRS and from taxpayers) electronically, it can capture the data in digital form — without the need to scan the document and/or manually transcribe the data.

Another tangible way the IRS can achieve modernized operations is to move to cloud-based data storage. Because the IRS handles so much sensitive taxpayer information, it has to be concerned about data security and has historically been reluctant to forgo the old-fashioned computer disk backup protocol for data storage. However, with increasing security features available for cloud-based data storage, it is just a matter of how soon the IRS will embrace cloud-based data storage. The IRS has started pursuing cloud-based solutions,

34 See TIGTA, Ref. No. 2020-20-061, *The Enterprise Case Management Solution Deployment Is Delayed, and Additional Actions Are Needed to Develop a Decommissioning Strategy* 4 (Sept. 21, 2020).

35 IRS Case Management Milestone: New Foundational and Business Capabilities Delivered in TE/GE FY 2020 Partial Release (Sept. 30, 2020).

36 IRS response to TAS information request (Oct. 1, 2020).

37 Individual returns are run throughout the RRP and scored to identify suspicious returns exceeding certain tolerances for false or inflated wages and/or withholding claimed on returns. Internal Revenue Manual (IRM) 25.25.11.1, Program Scope and Objectives (Mar. 24, 2020). See also IRM 25.25.2.2, Data Mining Screening (June 3, 2020).

38 IRM 25.25.2.22, Returns Not in EFDS (Feb. 26, 2020).

39 See TIGTA, Ref. No. 2015-20-093, *Review of the Electronic Fraud Detection System* 1 (Sept. 29, 2015); IRS, W&I response to TAS information request (Oct. 22, 2020); Most Serious Problem: *Refund Delays: Taxpayers Whose Legitimate Refunds Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds*, *infra*.

40 IRS Pub. 5336, IRS Integrated Modernization Business Plan 22 (Apr. 2019).

41 See IRM 25.71.2, Overview of Exempt Organizations Business Master File (Jan. 1, 2020). The BMF and the Exempt Organizations Master File were merged January 1, 1981, and the resulting file is referred to as the EO/BMF.

having added 26 systems, projects, and applications leveraging cloud infrastructure in FY 2020.⁴² For example, the IRS utilizes leading commercial cloud providers to host and deliver secure, agile, and efficient cloud-based solutions.⁴³

Pillar Four: Cybersecurity and Data Protection

The final modernization pillar relates to the protection of taxpayer data. As the guardian of valuable taxpayer data, the IRS will always be a target of hackers and identity thieves. The IRS estimates there are more than 2.5 million unauthorized access attempts per day, including denial-of-service attacks, unsuccessful intrusion attempts, probes or scans, and other unauthorized connectivity attempts.⁴⁴ As one of the nation's largest repositories of sensitive data, the IRS has strategically deployed enterprise safeguards to detect and prevent emerging cyber threats (*e.g.*, insider threats, social engineering, and unauthorized access to sensitive information).⁴⁵

The IRS takes seriously its responsibility to develop and maintain an agencywide, proactive approach to security, which necessitates continued investment in cutting-edge technology to defend against expanding cyber threats. One of the most significant cybersecurity-related challenges that the IRS has articulated is the disadvantage in attracting specialized talent when competing with private sector, where its competitors can offer compensation packages commensurate with qualifications.⁴⁶

Risk of Catastrophic Systems Failure

Because the IRS's core IT systems are among the oldest in the federal government,⁴⁷ its reliance on outdated and unsupported IT has been described as “a ticking time bomb.”⁴⁸ With the IRS collecting trillions of dollars (the IRS collected \$3.6 trillion in FY 2019),⁴⁹ a catastrophic disruption in government operations could occur if core IRS IT systems suffered a long-term failure. The IRS Commissioner reiterated the importance of protecting against catastrophic systems failure, pointing out that “we cannot have a functioning government without a functioning IRS.”⁵⁰

Shortly before the 2018 filing season began, GAO had warned that “relying on these antiquated systems for our nation's primary source of revenue is highly risky, meaning the chance of having a failure during the filing season is continually increasing.”⁵¹ IRS leadership had foreshadowed in an October 2017 congressional hearing that the antiquated IT infrastructure has increased “the potential for a catastrophic system failure.”⁵²

⁴² IRS response to TAS information request (Oct. 19, 2020).

⁴³ *Id.*

⁴⁴ IRS response to TAS fact check (Nov. 19, 2020).

⁴⁵ IRS response to TAS information request (Oct. 19, 2020).

⁴⁶ *Id.*

⁴⁷ GAO, GAO-16-468, *Information Technology: Federal Agencies Need to Address Aging Legacy Systems* 28-30 (May 2016).

⁴⁸ *Federal Agencies' Reliance on Outdated and Unsupported Information Technology: A Ticking Time Bomb*, Hearing Before the House Comm. on Oversight and Government Reform, 114th Cong. 2d Sess. (May 25, 2016).

⁴⁹ IRS, 2019 IRS Data Book 1 (June 2020).

⁵⁰ *The 2019 Tax Filing Season and the 21st Century IRS*, Hearing Before the S. Finance Comm., 116th Cong., at 1 (Apr. 10, 2019) (statement of Charles P. Rettig, IRS Commissioner).

⁵¹ See Frank Konkeli, *The IRS System Processing Your Taxes Is Almost 60 Years Old*, NEXTGOV 2 (Mar. 19, 2018) (quoting David Powner, GAO's director of Information Technology Management Issues), <https://www.nextgov.com/it-modernization/2018/03/irs-system-processing-your-taxes-almost-60-years-old/146770/>.

⁵² *Internal Revenue Service's Information Technology Modernization Efforts*, Hearing Before the H. Ways and Means Comm. Subcomm. on Oversight, 115th Cong., at 1 (Oct. 4, 2017) (statement of Jeffrey J. Tribiano, IRS Deputy Commissioner for Operations Support, and Silvana Gina Garza, IRS Chief Information Officer), <https://gop-waysandmeans.house.gov/wp-content/uploads/2017/10/20171004OS-Testimony-Tribiano-Garza.pdf>.

The concerns were well-founded, and on April 17, 2018, an IRS systems outage prevented taxpayers from electronically submitting their tax returns and payments on the day of the filing deadline for submitting 2017 tax returns for individuals. The outage was attributed to a malfunction in hardware supporting the IMF — a legacy system that requires ongoing support every year.⁵³ The IRS gave taxpayers an extra day to file to mitigate the damage from the crash, but the systems failure created significant confusion and anxiety among taxpayers and preparers, serving as a wakeup call and a warning of future problems if the IRS cannot replace its legacy systems soon.

Funding

The IRS cannot implement its modernization plan that includes ECM and online services until Congress provides adequate, predictable funding — which is outside of the IRS's control.⁵⁴ Not only must Congress provide the IRS with sufficient appropriations, but such funding must be consistent and reliable from year to year. In addition, the IRS must internally allocate enough of its budget to IT modernization in a manner that will not allow interruption of the modernization efforts.

There are at least two factors in play that make it challenging for IRS modernization projects to proceed as planned. First, there is a real risk that Congress cannot timely pass an appropriations bill. When that happens, the government operates on a “continuing resolution” — a stopgap funding measure that freezes the level of funding at prior year levels. This risk is not unique to the IRS or to IT, but it makes planning for modernization more difficult. Second, there is a risk that money and personnel budgeted for systems modernization get diverted to other IT projects. GAO noted in recent congressional testimony that the IRS has often had to shift its IT resources to implement tax law changes versus ongoing activities that it had planned to enhance its systems.⁵⁵ When there are competing priorities, it is tempting for the IRS to shift funds from one area to pay for another area that is seemingly more time-sensitive.

Example: Assume modernization Project X is estimated to cost \$90 million over three years. Congress funds the IRS budget request in year one, and the IRS allocates \$30 million of its budget to Project X. In year two, Congress does not pass an appropriations bill on time, and the IRS operates on a continuing resolution. By the time a full budget for year two is finalized by Congress, the period for requesting bids from contractors has expired, delaying Project X by three months. In year three, Congress approves IRS funding timely but not in the amount requested. In addition, Congress has directed the IRS to administer a one-time economic stimulus payment to over 150 million taxpayers, due within 90 days of the legislation's passage. To account for this budget shortfall, the Commissioner halts funding for Project X altogether in year three.

53 See Aaron Boyd & Frank Konkel, *IRS' 60-Year-Old IT System Failed on Tax Day Due to New Hardware*, NEXTGOV (Apr. 19, 2018) (citing an IRS official), <https://www.nextgov.com/it-modernization/2018/04/irs-60-year-old-it-system-failed-tax-day-due-new-hardware/147598/>.

54 The IRS is planning technological customer service focused features as part of the new comprehensive “customer service strategy” required by the TFA, which will be released in a forthcoming report. See TFA, Pub. L. No. 116-25, § 2302, 133 Stat. 1013 (2019). Each of these forthcoming new customer service features, such as concierge support to help shepherd taxpayers calling the IRS to the right people and a robust AI-powered employee assistant, will require dedicated multiyear funding and refinement of the budget requests to allow the IRS to invest in the technological infrastructure, such as additional server capacity, that will be a prerequisite for implementation. See IRS, FY 2022 Treasury Departmental Budget Submission 12-13 (June 5, 2020) (describing some of the new features including concierge support and use of artificial intelligence).

55 *IRS in the Pandemic*, Hearing Before the H. Comm. on Oversight and Reform, Subcomm. on Government Operations, 116th Cong. (Oct. 7, 2020) (statement of Vijay A. D'Souza, Director, Information Technology and Cybersecurity), <https://www.rev.com/blog/transcripts/house-oversight-hearing-on-irs-operations-transcript-october-7>.

The IRS had estimated that full implementation of its modernization plan over six years would cost \$2.3 to \$2.7 billion.⁵⁶ Congress appropriated \$150 million in FY 2019 and \$180 million in FY 2020 to the IRS for modernization efforts.⁵⁷ The President's budget for FY 2021 allocated \$300 million for IRS modernization,⁵⁸ while the appropriations bill by Congress for FY 2021 initially had \$250 million in appropriations for business systems modernization.⁵⁹ The full-year continuing resolution for FY 2021 caused the modernization funding to revert to the FY 2020 level of \$180 million.⁶⁰

Even using the lower limit of the modernization plan cost (\$2.3 billion), the IRS would need sustained funding of nearly \$400 million a year over the six-year period ending in FY 2024. Figure 1.6.1 shows that the modernization plan is severely underfunded, even if Congress appropriates the full amount of the proposed FY 2021 budget.

FIGURE 1.6.1, Estimated Modernization Funding Shortfall, FYs 2019-2024 (in Millions)⁶¹

FY (Plan Year)	2019 1st Yr	2020 2nd Yr	2021 3rd Yr	2022 4th Yr	2023 5th Yr	2024 6th Yr
Upper Limit IT Modernization plan (Even Funding on \$2.7B)	\$450	\$450	\$450	\$450	\$450	\$450
Lower Limit IT Modernization plan (Even Funding on \$2.3B)	\$383	\$383	\$383	\$383	\$383	\$383
FY Appropriations Approved by Congress in Budget	\$150	\$180	\$250			
FY Appropriations Received by IRS	\$150	\$180	\$180			
Lower Limit Dollars Needed to Makeup Prior & Current Year Shortfall(s) [\$2.3B]	\$233	\$437	\$640			
Upper Limit Dollars Needed to Makeup Prior & Current Year Shortfall(s) [\$2.7B]	\$300	\$570	\$840			

56 IRS Fact Sheet, FS-2019-9, IRS Modernization Plan Provides Plan to Improve Services for Taxpayers, Tax Community (Apr. 2019), <https://www.irs.gov/newsroom/irs-modernization-plan-provides-plan-to-improve-services-for-taxpayers-tax-community>.

57 Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, 133 Stat. 2441 (Dec. 20, 2019); Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, 133 Stat. 145 (Feb. 15, 2019).

58 Office of Management and Budget, *Budget of the U.S. Government, Fiscal Year 2021*, at 86, https://www.whitehouse.gov/wp-content/uploads/2020/02/budget_fy21.pdf.

59 See S. Comm. on Appropriations, Committee Print of FY 2021 Financial Services and General Government Funding Bill (Oct. 29, 2020), <https://www.appropriations.senate.gov/imo/media/doc/FSGGFY2021.pdf>.

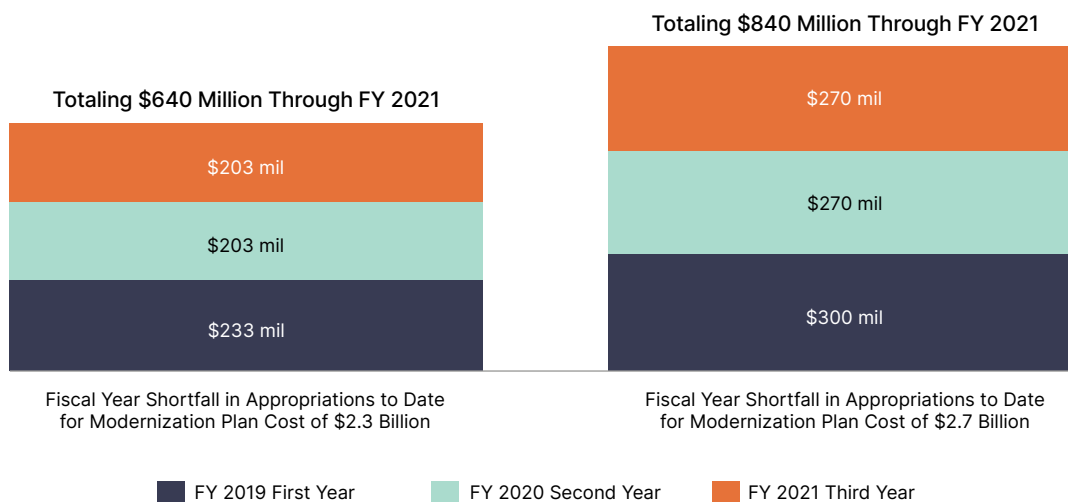
60 See H.R. 8337, Continuing Appropriations Act, 2021 and Other Extensions Act, Pub. L. No. 116-159 (2020). On December 27, 2020, the President signed H.R. 133, Consolidated Appropriations Act, 2021, 116th Cong. (2020), Div. E, appropriating \$223 million for IRS business systems modernization.

61 Upper limit and lower limit funding for IT modernization are from IRS Fact Sheet, FS-2019-9, divided by six for the years in the modernization plan. Congressional IRS appropriation amounts for 2019, \$150M; 2020, \$180M; and 2021, \$250M are respectively from Pub. L. No. 116-93, 133 Stat. 2441 (2019), Pub. L. No. 116-6, 133 Stat. 145 (2019), and H. Comm. on Appropriations, FY 2021 Financial Services and General Government Funding Bill (July 7, 2020). IRS appropriations or expected amounts for 2019, \$150M; 2020, \$180M; and 2021, \$180M are respectively from Pub. L. No. 116-93, 133 Stat. 2441 (2019), Pub. L. No. 116-6, 133 Stat. 145 (2019), and Pub. L. No. 116-159, § 101 (2020). Lower limit shortfall is derived by adding prior year shortfall dollars plus (lower limit dollars minus IRS appropriations or expected dollars) for each FY. Upper limit shortfall is derived by adding prior year shortfall dollars plus (upper limit dollars minus IRS appropriations or expected dollars) for each FY. Numbers for each year were rounded separately so the cumulative shortfall may exceed the total of the individual year shortfalls.

As Figure 1.6.1 shows, the IT modernization plan will require funding of between \$383 million and \$450 million per year, from the IRS's own estimates. Yet the amounts appropriated by Congress in the past three years fell substantially short of that amount, as depicted in Figure 1.6.2.

FIGURE 1.6.2⁶²

Estimated Cumulative IT Modernization Funding Shortfall, FYs 2019-2021



Unless IT modernization funding is dramatically increased in the next three years, it is not feasible that the IRS will achieve its modernization plan goals by FY 2024. This is akin to receiving an estimate from an auto mechanic for \$5,000 to replace a transmission and getting authorization for a loan to finance the project, only to have the bank disburse only 40 percent of the funds to cover the cost of the repair. Congress needs to provide the IRS with full funding — provided to the IRS in a consistent and reliable manner — to implement its IT modernization plan.

The urgency of the IRS modernizing its IT systems is such that the House Majority Leader recently proposed a \$2 billion addition to the Technology Modernization Fund (TMF) — a revolving fund administered by the General Services Administration and the federal CIO — to fund the technology refresh.⁶³ For example, the Customs and Border Protection received a \$15 million loan from the TMF to upgrade its last remaining

62 Upper limit and lower limit funding for IT modernization are from IRS Fact Sheet, FS-2019-9, divided by six for the years in the modernization plan. Congressional IRS appropriation amounts for 2019, \$150M; 2020, \$180M; and 2021, \$250M are respectively from Pub. L. No. 116-93, 133 Stat. 2441 (2019), Pub. L. No. 116-6, 133 Stat. 145 (2019), and H. Comm. on Appropriations, FY 2021 Financial Services and General Government Funding Bill (July 7, 2020). IRS appropriations or expected amounts for 2019, \$150M; 2020, \$180M; and 2021, \$180M are respectively from Pub. L. No. 116-93, 133 Stat. 2441 (2019), Pub. L. No. 116-6, 133 Stat. 145 (2019), and Pub. L. No. 116-159, § 101 (2020). Lower limit shortfall is derived by adding prior year shortfall dollars plus (lower limit dollars minus IRS appropriations or expected dollars) for each FY. Upper limit shortfall is derived by adding prior year shortfall dollars plus (upper limit dollars minus IRS appropriations or expected dollars) for each FY. Numbers for each year were rounded separately so the cumulative shortfall may exceed the total of the individual year shortfalls.

63 Letter from House Majority Leader Steny Hoyer to Secretary of the Treasury Steven T. Mnuchin (July 31, 2020), <https://www.majorityleader.gov/sites/democraticwhip.house.gov/files/attachments/Hoyer%20Letter%20to%20Mnuchin%20on%20TMF.pdf>.

COBOL-coded mainframe application.⁶⁴ The IRS has never secured TMF funding, but it should continue to explore all options.

The IRS can also take cues from the private sector. In many for-profit enterprises, an investment in IT is a business decision substantiated by an expectation of a positive return on that investment. The IRS is different in that, as a governmental agency, it has a statutory obligation to conduct certain tasks, whether there is a return on that investment or not. But often, the IRS may be able to show IT modernization will have a net-positive effect. For example, perhaps the Exam function can show it could complete 40 percent more audits if it had the most up-to-date ECM software. Or the Collection function might estimate it could take in receipts 30 days faster if certain online payment tools were available to its taxpayers. If the IRS divisions requesting the programming change can articulate the expected return on investment of the requested IT modernization effort, it would help IT prioritize competing requests. Having a record of the anticipated return on investment for each project will help Congress keep the IRS accountable for how it spends its funds earmarked for IT modernization.

Challenges With Maintaining Antiquated Information Technology Systems

IRS legacy systems are facing significant risks due to their reliance on outdated programming languages, antiquated hardware, and a shortage of human resources with critical skills.⁶⁵ For example, GAO noted that the IRS's reliance on primitive Assembler Language Code or obsolete COBOL, developed in the 1950s, exposes these legacy systems to rising operating costs and a decrease in staff available with the proper skillsets to maintain these systems.⁶⁶

Because IRS legacy systems still require significant programming to prepare for each filing season and other purposes, the shrinking pool of qualified programmers poses a growing concern. There simply are few qualified IT personnel proficient in the antiquated COBOL programming language, so even expert computer programmers hired by the agency need extensive training before they can program some IRS systems.⁶⁷

The older a system becomes, the more difficult it is to maintain. The sooner the IRS can replace its antiquated 1960s-era car, the less it must spend on maintaining the vehicle. In addition to improved taxpayer service, one benefit of IT modernization is that the IRS expects its legacy IT operations and maintenance (O&M) expenditures to fall as its IT systems become more modernized.

64 *Pandemic or Not, Federal Agencies Continued Efforts to Update Their Legacy Systems and Adopt Modern Ways of Buying, Developing and Implementing Technology*, NEXTGOV (Oct. 22, 2020), <https://www.nextgov.com/it-modernization/2020/10/whats-next-it-modernization/169428/>.

65 See GAO, GAO-18-298, *IRS Needs to Take Additional Actions to Address Significant Risks to Tax Processing* (June 2018). See also Most Serious Problem: *IRS Recruitment, Hiring, and Employee Retention: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies*, *supra*.

66 See GAO, GAO-18-298, *IRS Needs to Take Additional Actions to Address Significant Risks to Tax Processing* (June 2018).

67 See GAO, GAO-19-471, *Agencies Need to Develop Modernization Plans for Critical Legacy Systems* (June 2019).

FIGURE 1.6.3, IRS Information Technology, Past and Future

IT procured 1960s-era tools and technologies that were state-of-the-art then but obsolete to serve taxpayers in modern era. Therefore, IT needs to modernize its arsenal to better serve taxpayers.

Dated IRS IT Tools and Services ⁶⁸	IRS 2020 to Future IT Tools and Services ⁶⁹
Systems: <ul style="list-style-type: none"> • Accounts Management System • Individual Master File (IMF)/Business Master File (BMF) • Electronic Fraud Detection System (EFDS) • Integrated Data Retrieval System (IDRS) 	Systems: <ul style="list-style-type: none"> • Enterprise Case Management • Customer Account Data Engine 2 (CADE 2) • Automated Fraud Detection Filters Using Machine Learning • Real Time Tax Processing
Taxpayer Correspondence Options: <ul style="list-style-type: none"> • Paper Filing • Wet Signature 	Taxpayer Correspondence Options Expanded: <ul style="list-style-type: none"> • Paperless Filing for All Forms • Digital/Electronic Signature
Taxpayer Service Options: <ul style="list-style-type: none"> • Phone Based Customer Service • Mail Correspondence • Fax Service • Walk-in (in person) 	Taxpayer Service Options Expanded: <ul style="list-style-type: none"> • Integrated Telephone Assistance (e.g., Customer Callback) • Online Services including Self Service Portal • Digital Communications (e.g., Web Chat, Secure Messaging) • Mobile-Ready Application
Information Technology Skills: <ul style="list-style-type: none"> • Basic Statistics and Mathematics • Computer Science • Business-Oriented Language (e.g., COBOL and Assembler Language Code (ALC)) 	Information Technology Skills: <ul style="list-style-type: none"> • Data Science • Artificial Intelligence Skills • Image Processing • Open Source Language (e.g., Java, Python) • Cloud Engineers

However, the longer it takes the IRS to roll out new technology, the more it will spend on O&M. This becomes especially true when we account for the costs of operating dual systems during an extended transition phase. For example, the Taxpayer Advocate Service continues to spend resources maintaining the Taxpayer Advocate Management Information System (TAMIS) for its case management, while the IRS spends millions developing a usable ECM platform that can replace TAMIS. IRS IT should continue working with the IRS divisions to identify the priority ECM components to reduce overall O&M costs.

Staffing Challenges

Along with funding issues, the IRS has several challenges for hiring the right staffing to oversee IT modernization. First is identifying the right subject matter experts. When dealing with legacy systems written in obsolete programming languages, there is a limited population of individuals with the appropriate technical competencies.

68 This is not an all-inclusive list of IRS IT tools that are obsolete. See TIGTA, Ref. No. 2020-20-044, *Legacy Systems Management Needs Improvement* (Aug. 19, 2020); IRS, FY 2022 Treasury Departmental Budget Submission (June 5, 2020). See also TIGTA, Ref. No. 2020-20-061, *The Enterprise Case Management Solution Deployment Is Delayed, and Additional Actions Are Needed to Develop a Decommissioning Strategy* 1 (Sept. 21, 2020).

69 This is not an all-inclusive list of IRS future IT tools. See IRS Pub. 5336, *IRS Integrated Modernization Business Plan* (Apr. 2019).

Second, even if the desired IT personnel are identified, how can the IRS attract and retain these employees, while largely constrained by the General Schedule pay system for federal employees? Although Congress recently reinstated the IRS's ability to offer critical pay (that is, compensation levels higher than typical government pay scale) to key IT employees, the IRS will still need to develop a robust recruiting strategy that proactively seeks IT expertise.⁷⁰ For example, the IRS may streamline its hiring processes and collaborate more closely with the IRS divisions by giving them more control over their own hiring.⁷¹

Third, the IRS should consider how it organizes itself internally. The IT professionals working under the CIO might be extremely well-versed in best practices, industry standards, and the latest technology offerings, but if the IRS divisions do not have counterparts who are trained and knowledgeable about both the business needs and the technical aspects, then there is a risk of a disconnect between what the IRS divisions need and what IT can deliver.

The ability to recruit, hire, and retain the next generation of employees will determine the IRS's ability to fulfill its IT mission, ultimately determining the IRS's effectiveness, while impacting taxpayer service and taxpayer rights and the ability to administer necessary social programs.

Competing Priorities

Each filing season, the IRS must make numerous programming changes to various IT systems. Whenever there is new tax legislation, such as the CARES Act, the IRS is tasked with the responsibility to implement major changes, often in a short amount of time. To manage requests for IT products and services, the IRS has instituted a Unified Work Request (UWR) process. A UWR is a written agreement between IRS IT and IRS divisions that seek IT's assistance. The primary goal of the UWR process is to register the demand for IT products and services in a transparent manner before making data-driven decisions to approve or deny such requests from IRS divisions.⁷²

Because of such competing priorities and a finite IT budget and resources, it is understandable how UWRs unrelated to filing season or new legislation can receive lower priority, which may cause delays as the IRS staff creates workarounds.

CONCLUSION AND RECOMMENDATIONS

Because taxpayers deserve first-rate customer service, and because the fiscal health of the federal government depends on the IRS's collection capability, it is critical that the IRS modernize its IT systems and infrastructure. Apart from the risk of catastrophic collapse, the lack of modern IT systems harms taxpayers, inconveniences tax practitioners, and hinders the IRS from delivering its mission to provide taxpayers top quality service and to apply the tax law with integrity and fairness to all.

We are not advocating that Congress provide the IRS with a blank check, rather a more predictable flow of funds to implement IRS's modernization efforts. With additional funding and proper oversight, we are

⁷⁰ TFA, Pub. L. No. 116-25, § 2103, 133 Stat. 981 (2019).

⁷¹ See Most Serious Problem: *IRS Recruitment, Hiring, and Employee Retention: Quality Taxpayer Service and Protection of Taxpayer Rights Are Directly Linked to the IRS's Need to Improve Its Recruitment, Hiring, and Retention Strategies*, *supra*.

⁷² See IRM 2.22.1, Unified Work Request (UWR) Process (Jan. 27, 2020).

optimistic the IRS can modernize its IT systems, provide better taxpayer service, more efficiently collect tax revenue, and reduce its IT systems maintenance costs.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Compile data on the operations and maintenance costs of all legacy systems to assist in prioritizing decommissioning decisions.
2. Prioritize the development of a Servicewide centralized system to store digital tax records to allow the IRS to go completely paperless.⁷³
3. Create CIO liaisons for each IRS division knowledgeable about both the business needs and the technical aspects to bridge the disconnect between the needs of the IRS divisions and what IT can deliver.
4. Compile a list of IT lessons learned during COVID-19, documenting the problems taxpayers experienced due to IT-related challenges during the pandemic so it can be better prepared for the future.
5. Expand modernization efforts to include BMF to provide the same level of service to business taxpayers it will provide to individual taxpayers.
6. Ensure the amount requested for its IT budget is sufficient and sustainable to fund its multiyear modernization plan.
7. Consider seeking financial assistance from the Technology Modernization Fund.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide the IRS with sufficient, sustained funding to improve taxpayer service and modernize its IT systems over a predictable multiyear period, allowing the IRS to properly implement its modernization plan as a whole and not in pieces.⁷⁴
2. Ensure that any increase in funding for enforcement (including program integrity cap adjustments) is coupled with a commensurate increase in funding for service and operations support so taxpayers seeking to respond to the IRS can do so easily. This way, the IRS need not prioritize IT over enforcement.⁷⁵

⁷³ See Most Serious Problem: *E-Filing and Digitalization Technology: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources*, *supra*.

⁷⁴ For more detailed recommendations, see National Taxpayer Advocate 2020 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 6-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*).

⁷⁵ *Id.*

IRS COMMENTS

The IRS appreciates the National Taxpayer Advocate's support for significant, sustained multi-year funding to modernize the IT systems that enable 21st century taxpayer service and fairness in our tax system. The IRS interacts with more Americans than any other public or private organization. As the National Taxpayer Advocate recognized, IT systems are critical to all aspects of tax administration, including collection of almost \$3.6 trillion in revenue each year (representing almost 96 percent of the gross revenue of the United States, each year), administering various subsidies such as the Earned Income Tax Credit, distributing hundreds of billions of dollars in tax refunds, delivering hundreds of billions of dollars in any potential future stimulus payments, providing customer service to tens of millions of taxpayers, and, as we saw in 2020, providing rapid financial relief to individuals and businesses when necessary.

The IRS also appreciates the National Taxpayer Advocate's recognition of the unprecedented challenges posed by the COVID-19 pandemic and the outstanding performance of our employees in delivering more than 160 million Economic Impact Payments totaling more than \$270 billion and implementing other CARES Act provisions, provisioning more than 15,000 IRS customer service representatives and other employees with laptops, and growing network capacity five-fold to support over 59,000 employees working remotely at one time – all during the middle of the longest filing season in history.

As the National Taxpayer Advocate noted, IRS is making considerable progress delivering upon the initiatives within the IRS Integrated Modernization Business Plan, despite appropriated funding at just over half the requested level. In the first two years of the plan, the IRS deployed secure online account features for individuals, the first iteration of a cloud-based case management system to improve taxpayer service, customer callback on several toll-free phone lines, and over 35 other capabilities to improve our technology infrastructure, systems, and cybersecurity defenses.

Although some of the IRS's core tax administration applications use aged programming languages, they operate on current, state-of-the-art hardware. In fact, at the end of FY 2020, the IRS's aged hardware percentage was 16 percent, below the industry standard of 20 to 25 percent. As the National Taxpayer Advocate describes, the primary risk in maintaining these systems is that there is a small and shrinking pool of engineers and developers who can make the changes required to prepare for each filing season and promptly respond to new legislation. We are mitigating these risks with robust training and a focus on transferring knowledge to our next generation of technical experts.

The IRS remains committed to transparent reporting on modernization progress, challenges, successes, costs, and risks to Congress and other stakeholders. We share the National Taxpayer Advocate's vision for improved taxpayer service, more effective revenue collection, and more efficient operations, in part through the modernization of the IRS's information technology.

TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate shares many of the sentiments expressed in the IRS response to this Most Serious Problem. Without question, the IRS is increasingly being asked to do more with less. The fallout of the COVID-19 pandemic exacerbated the challenges, but the IRS has performed admirably during this crisis to continue delivering quality service to taxpayers.

As the nation's primary revenue collector, the IRS is tasked with a role that is too important for Congress to short circuit its necessary investment in technology. It is vital that the IRS succeed in these efforts.

We are aligned with the IRS regarding the need for Congress to fully fund the IRS's efforts to modernize its systems. The IRS has devoted a substantial amount of thought and resources into developing its modernization plan; Congress should help, not hinder, the IRS's efforts to implement that plan.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Compile data on the operations and maintenance costs of all legacy systems to assist in prioritizing decommissioning decisions.
2. Expedite the development of a Servicewide centralized system to store digital tax records to allow the IRS to go completely paperless.⁷⁶
3. Create CIO liaisons for each IRS division knowledgeable about both the business needs and the technical aspects to bridge the disconnect between the needs of the IRS divisions and what IT can deliver.
4. Compile a list of IT lessons learned during COVID-19, documenting the problems taxpayers experienced due to IT-related challenges during the pandemic so it can be better prepared for the future.
5. Expand modernization efforts to include BMF to provide a comparable level of service (e.g., online accounts, digital services, shorter processing cycles (CADE 2), etc.) to business taxpayers it will provide to individual taxpayers.
6. Ensure the amount requested for its IT budget is sufficient and sustainable to fully fund its multiyear modernization plan.
7. Consider seeking financial assistance from the Technology Modernization Fund.

⁷⁶ See Most Serious Problem: *E-Filing and Digitalization Technology: Failure to Expand Digitalization Technology Leaves Millions of Taxpayers Without Access to Electronic Filing and Wastes IRS Resources*, *supra*.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide the IRS with sufficient, sustained funding to improve taxpayer service and modernize its IT systems over a predictable multiyear period, allowing the IRS to properly implement its modernization plan as a whole and not in pieces.⁷⁷
2. Ensure that any increase in funding for enforcement (including program integrity cap adjustments) is coupled with a commensurate increase in funding for service and operations support so taxpayers seeking to respond to the IRS can do so easily. This way, the IRS need not prioritize IT over enforcement.⁷⁸

⁷⁷ For more detailed recommendations, see National Taxpayer Advocate 2020 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 6-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*).

⁷⁸ *Id.*

Taxpayers Encounter Unnecessary Delays and Difficulties Reaching an Accountable and Knowledgeable Contact for Correspondence Audits

RESPONSIBLE OFFICIALS

Eric Hylton, Commissioner, Small Business/Self-Employed Division

Kenneth Corbin, Commissioner, Wage and Investment Division

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 a Fair and Just Tax System*

EXPLANATION OF THE PROBLEM

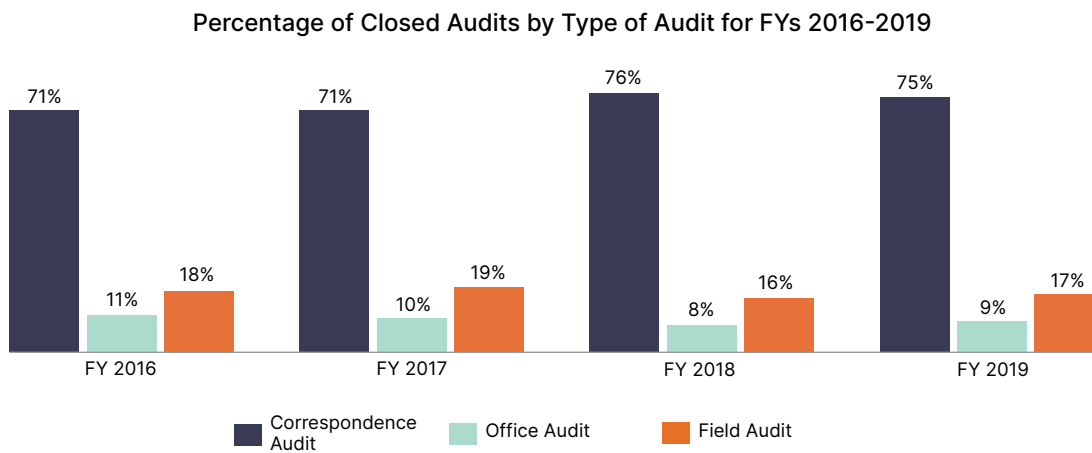
In response to taxpayer complaints about the inability to contact IRS staff directly, the IRS Restructuring and Reform Act of 1998 (RRA 98), section 3705(a) required that IRS correspondence “include in a prominent manner the name, telephone number, and unique identifying number of an Internal Revenue Service employee.” However, more than 20 years later, the IRS still has not meaningfully implemented this provision regarding its correspondence audit programs. This makes it difficult and frustrating for taxpayers or their representatives to reach a single point of contact at the IRS who is accountable and knowledgeable when they are seeking answers to questions about their audit or the information they submitted. The IRS correspondence audit program, as designed, leaves taxpayers solely dependent on toll-free phone services that operate with limited availability or the receipt of IRS notifications issued with uncertain timeframes. The inability to reach a single point of contact diminishes the customer experience, creates IRS inefficiency, hinders opportunities to engage and educate our nation’s taxpayers and decreases potential for developing and building trust with the IRS.

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).

ANALYSIS

More than 70 percent of the audits conducted by the IRS are correspondence audits.² Although the number of taxpayers selected for IRS audit has declined in recent years,³ the percentage of IRS audits conducted by correspondence has increased from fiscal years (FYs) 2016 to 2018 with a slight decrease in 2019, as shown in Figure 1.7.1. Because correspondence audits represent one of the most significant tools the IRS employs to achieve voluntary compliance, the taxpayer's ability to interact and communicate with the IRS is vitally important to the success of the correspondence audit process, the quality of service provided, and the fair and just treatment of taxpayers.

FIGURE 1.7.1⁴



What Are Correspondence Audits?

Correspondence audits are examinations conducted by mail for a single tax year involving no more than a few issues that the IRS can resolve by reviewing simple documents.⁵ Some of the highest volume issues addressed by correspondence audits during FY 2019 included the Earned Income Tax Credit (EITC); employee business expenses; nonfilers; items related to Schedule C, Profit or Loss From Business; and questionable refunds.⁶ While these issues seem simple, many of these audit categories can encompass complicated rules, procedures, or factual situations that could give rise to taxpayer questions or the need for assistance.

2 IRS Compliance Data Warehouse (CDW), Audit Information Management System (AIMS) Closed Case Database FYs 2016 to 2019 (Oct. 2020). Correspondence audits include audits closed by campus tax examiners in the Wage and Investment (W&I) and Small Business/Self-Employed (SB/SE) Operating Divisions.

3 IRS CDW, AIMS Closed Case Database FYs 2016 to 2019 (Oct. 2020). Correspondence audits include audits closed by campus tax examiners in the W&I and SB/SE Operating Divisions. The IRS conducted a total of 1,111,323 income tax audits in FY 2016; 1,008,122 in FY 2017; 967,242 in FY 2018; and 752,306 in FY 2019.

4 IRS CDW, AIMS Closed Case Database FYs 2016 to 2019 (Oct. 2020); IRS response to TAS fact check (Nov. 24, 2020). For purposes of this figure, correspondence audits include audits closed by campus tax examiners in the W&I and SB/SE Operating Divisions. Office audits include audits closed by tax compliance offices in SB/SE. Field audits include audits closed by revenue agents in SB/SE and Large Business and International (LB&I) Operating Divisions. Due to rounding issues, the FY 2019 percentages exceed 100 percent.

5 See National Taxpayer Advocate 2018 Annual Report to Congress vol. 2, at 117 (*Introduction to the Exam Process: Promoting Voluntary Compliance and Minimizing Taxpayer Burden in the Selection and Conduct of Audits*).

6 IRS CDW, AIMS Closed Case Database FY 2019 (Oct. 2020).

Unlike other IRS audits, correspondence audits are not assigned to a single examiner who will work the case in its entirety and serve as the taxpayer's single point of contact for questions.⁷ Taxpayers undergoing a correspondence audit are referred to a toll-free number where they may discuss their case with an IRS phone assistant who generally holds no responsibility for the actions or determinations made with their audit.⁸ The high volume of correspondence audits combined with limited communication alternatives, insufficient levels of service, and the inability to contact a knowledgeable and accountable IRS employee often cause unnecessary taxpayer burden and hinder several taxpayer rights, including the *right to quality service*.⁹

The Current Correspondence Audit Process

The IRS has stated that 95 percent of the Wage and Investment (W&I) and Small Business/Self-Employed (SB/SE) correspondence audit inventory is automated,¹⁰ and that the correspondence audit program was specifically designed to be a mail-based workstream.¹¹ Although Internal Revenue Manual (IRM) 4.19.13.10.1, Taxpayer Responses - Prior to Status 24, requires a telephone contact when a taxpayer provides requested audit documentation the IRS determines to be insufficient, the IRS notes that correspondence audit programs do not have the resources to contact every taxpayer by telephone.¹² It also indicates that it processes non-response cases using the Automated Correspondence Examination system (ACE) and describes the ACE system as a system that will automatically process the case through creation, statutory notice, and closing process, requiring no tax examiner involvement when a taxpayer fails to reply to the correspondence.¹³ Only when a correspondence audit receives a response from a taxpayer or representative is the correspondence assigned to one employee, who will generally field any subsequent case activities and responses from the taxpayer.¹⁴ This practice provides the perfect opportunity for the IRS to give the taxpayer the name and direct phone number of the employee assigned when it receives the taxpayer's response. The IRS explains that given the design of the correspondence audit program, these employees do not have telephones capable of receiving direct external incoming calls.¹⁵

Taxpayers with questions at any point during the correspondence audit process are directed to the IRS's Correspondence Examination Toll-Free Lines, the numbers provided on the taxpayer's initial contact notice of audit.¹⁶ By placing a toll-free number on correspondence audit notices, the IRS believes it has satisfied RRA 98, section 3705(a).¹⁷ The IRS believes this is the most efficient method to address correspondence audit inquiries and notes these toll-free lines allow it to answer all correspondence examination telephone calls

7 National Taxpayer Advocate 2018 Annual Report to Congress vol. 2, at 119 (*Introduction to the Exam Process: Promoting Voluntary Compliance and Minimizing Taxpayer Burden in the Selection and Conduct of Audits*).

8 National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 2, at 51 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2018 Annual Report to Congress*).

9 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).

10 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, at 53 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2014 Annual Report to Congress*).

11 National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 2, at 49 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2018 Annual Report to Congress*).

12 *Id.*

13 *Id.*

14 *Id.* at 51.

15 *Id.*

16 *Id.* at 52.

17 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, at 48 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2014 Annual Report to Congress*).

corporately for all campus operations, affording the taxpayer the ability to reach an experienced assistor at any campus for immediate assistance without waiting for a return call from an individually-assigned examiner.¹⁸

Correspondence Audit Toll-Free Lines Do Not Provide Sufficient Levels of Service

While the IRS views this toll-free corporate approach as the most efficient alternative, toll-free lines often fail to provide an adequate level of customer service. In FY 2019, W&I worked about 570,000 correspondence audits, generating more than a million calls to its toll-free line. Only about 400,000 of these callers reached an examiner, resulting in a 40.7 percent level of service.¹⁹ The average wait time to reach an assistor was 35 minutes, and over 600,000 taxpayers²⁰ disconnected their calls either before or after they entered the queue to reach the selected assistance.²¹

SB/SE toll-free results were somewhat better, reflecting that SB/SE worked nearly 500,000 correspondence audits in FY 2019, generating over 300,000 calls to its toll-free lines. Over 160,000 of these callers reached an examiner, resulting in a 59.9 percent level of service.²² Taxpayers calling the SB/SE correspondence audit toll-free line experienced an average wait time of 28 minutes to reach an assistor, while almost 150,000 of these callers²³ disconnected their call either before or after they entered the queue to reach the assistance they selected.²⁴

As shown in Figures 1.7.2 and 1.7.3, these FY 2019 levels of service are not unusual and represent the level of customer service taxpayers have customarily experienced when calling the IRS correspondence audit toll-free lines.²⁵ IRS correspondence audit toll-free lines are staffed insufficiently to adequately support the quantity of examinations conducted.

18 National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, at 48-50 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2014 Annual Report to Congress*).

19 W&I opened nearly 320,000 correspondence audits in FY 2019 and continued to work about 250,000 correspondence audits carried over from prior FYs. IRS CDW, AIMS Closed Case Database for FY 2019 (Oct. 2020), IRS CDW, Individual Master File (IMF) Transaction History for correspondence audits opened in FY 2019 (Oct. 2020), and IRS, Joint Operations Center (JOC) Snapshot Reports: Product Line Detail, W&I Exam phone line (week ending Sept. 30, 2020).

20 IRS, JOC Snapshot Reports: Product Line Detail, W&I Exam phone line (week ending Sept. 30, 2020).

21 *Id.*

22 SB/SE opened about 289,000 correspondence audits in FY 2019 and continued to work about 203,000 correspondence audits carried over from prior FYs. IRS CDW, AIMS Closed Case Data FY 2019 (Oct. 2020), IRS CDW, IMF Transaction History for opened correspondence audits (Oct. 2020), and IRS, JOC Snapshot Reports: Product Line Detail, SB/SE Exam phone line (weeks ending Sept. 30, 2017; Sept. 30, 2018; Sept. 30, 2019; and Sept. 30, 2020).

23 IRS, JOC Snapshot Reports: Product Line Detail, SB/SE Exam phone line (week ending Sept. 30, 2020).

24 *Id.*

25 IRS CDW, IMF Transaction History for correspondence audits opened in FYs 2016-2019 (Oct. 2020) and IRS, JOC Snapshot Reports: Product Line Detail, SB/SE and W&I Exam phone line (week ending Sept. 30, 2020).

FIGURE 1.7.2, W&I Correspondence Audits Opened Compared With Toll-Free Telephone Statistics for FYs 2016-2019²⁶

Fiscal Year	Audits Opened	Calls Received	Calls Answered	Level of Service
2016	462,654	1,351,822	489,295	40.2%
2017	481,664	1,484,849	541,043	40.2%
2018	447,566	1,440,366	517,395	40.2%
2019	319,558	1,098,142	392,227	40.7%

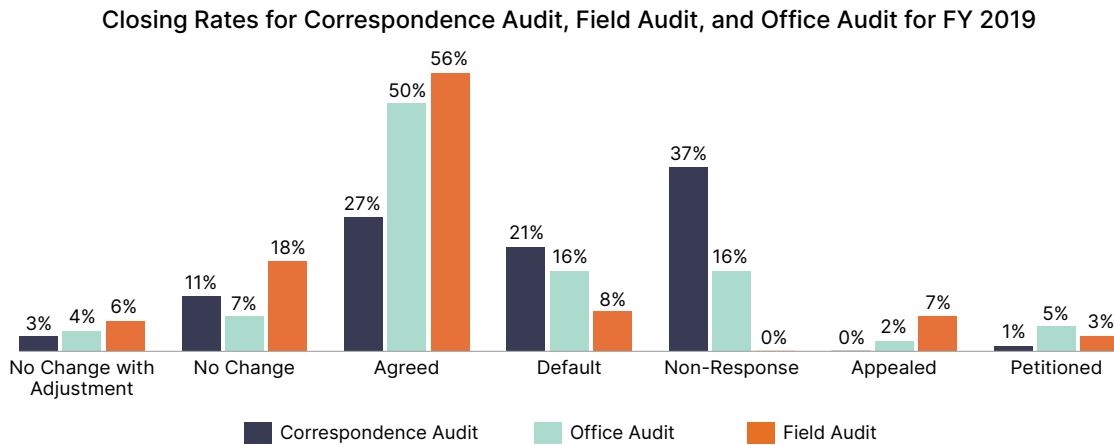
FIGURE 1.7.3, SB/SE Correspondence Audits Opened Compared to Toll-Free Telephone Statistics for FYs 2016-2019²⁷

Fiscal Year	Audits Opened	Calls Received	Calls Answered	Level of Service
2016	301,567	412,853	241,225	65.8%
2017	348,985	435,512	236,213	60.8%
2018	298,466	468,569	245,140	60.8%
2019	289,334	317,737	162,730	59.9%

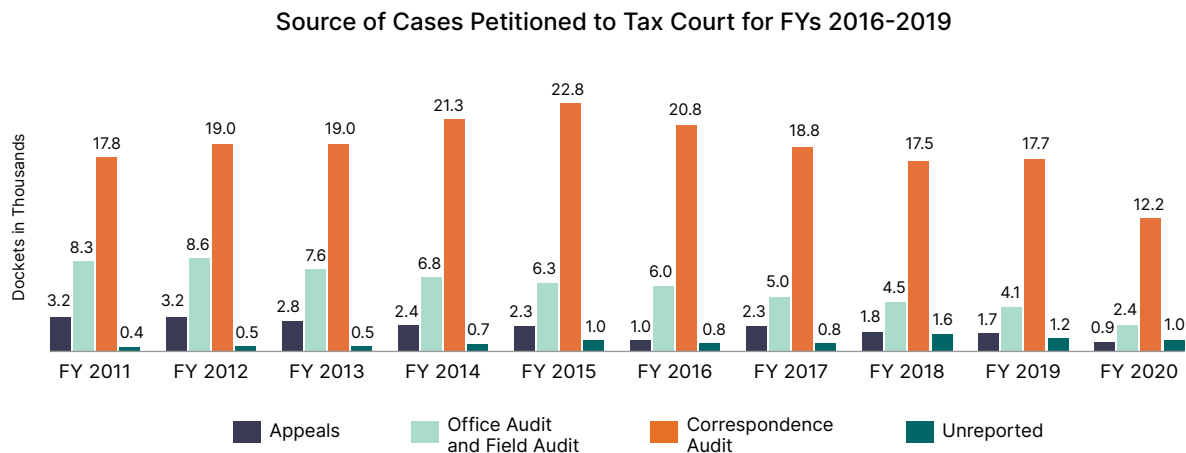
Despite the high call volumes discussed, audit results reflected that taxpayers subject to correspondence audit are less likely to participate in the audit process. As shown in Figure 1.7.4, correspondence audits resulted in the lowest agreement rate and the highest non-response rate of all other IRS audits. Cases closed “non-response” are cases where the taxpayers did not participate in the audit process because they did not respond to audit notifications or the postal service returned the audit notifications as “undeliverable.”

26 This figure compares audits opened in FYs 2016-2019 to toll-free telephone statistics since taxpayers are more likely to call the IRS at the beginning of an audit. IRS CDW, IMF Transaction History for correspondence audit opened in FYs 2016-2019 (Oct. 2020) and IRS, JOC Snapshot Reports: Product Line Detail, W&I Exam phone line (weeks ending Sept. 30, 2017; Sept. 30, 2018; Sept. 30, 2019; and Sept. 30, 2020).

27 This figure compares audits opened in FYs 2016-2019 to toll-free telephone statistics since taxpayers are more likely to call the IRS at the beginning of an audit. IRS response to TAS fact check (Nov. 24, 2020); IRS, JOC Snapshot Reports: Product Line Detail (week ending Sept. 30, 2019); IRS, JOC Snapshot Reports: Product Line Detail, SB/SE Exam phone line (weeks ending Sept. 30, 2017; Sept. 30, 2018; Sept. 30, 2019; and Sept. 30, 2020).

FIGURE 1.7.4²⁸


Correspondence audits also resulted in the highest rate of audit deficiencies assessed by default²⁹ and produced the highest volume of petitions to the U.S. Tax Court as shown in Figure 1.7.5.

FIGURE 1.7.5³⁰


28 IRS CDW, AIMS Closed Case Database FY 2019 (Oct. 2020). The No Change with Adjustment category applies to no changed examined returns if there is an adjustment to the tax base data such as income or deduction items but no change in the tax liability or refundable credits.

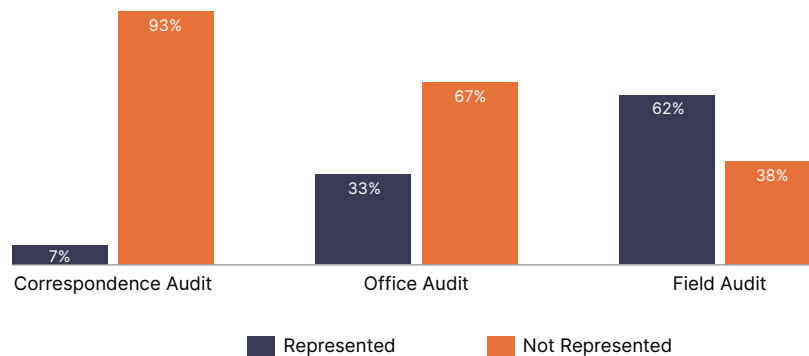
29 IRM 4.8.9.26, Defaulted Notices (July 9, 2013). The IRS may assess a proposed audit deficiency by default if the taxpayer does not petition the U.S. Tax Court within 105 days of the date a Statutory Notice is issued (165 days if the taxpayer resides outside of the U.S.). IRS CDW, AIMS Closed Case Database FY 2019 (Oct. 2020).

30 Counsel Automated Tracking System, TL-708B. The unreported category are petitioned cases not from Appeals, Office Audit, Field Audit, or Correspondence Audit.

The contrast between high call volume and low taxpayer response rate suggests that the level of service, or type of service provided on the correspondence audit toll-free lines, does not meet taxpayer needs. Further, the absence of personal interaction inherent to the correspondence audit process results in missed opportunities for the IRS to discuss the issues under audit and to educate taxpayers to improve future compliance. This is particularly impactful because so few of these taxpayers have representation and may be limited in their ability to secure assistance. As shown in Figure 1.7.6, only seven percent of the taxpayers undergoing correspondence audits in FY 2019 had representation, while 62 percent of the taxpayers undergoing field examinations were represented by tax professionals.³¹

FIGURE 1.7.6³²

Individual Tax Return Closed Audits by Representation for
Correspondence Audits, Office Audits, and Field Audits for FY 2019



Correspondence Audit Response Time Can Be Lengthy

Because correspondence audit is a “mail-based workflow,” the taxpayer’s ability to effectively and timely communicate with the IRS by mail is also a critical component of the correspondence audit process. The IRS correspondence audit programs, however, cannot respond to correspondence promptly. In FY 2019, the IRS classified, on average, 67 percent³³ of the correspondence received in W&I correspondence audit and 54 percent³⁴ of the correspondence received in SB/SE correspondence audit as “overage,” meaning the IRS had not addressed within 30 days of the date received, requiring it to issue an interim letter.³⁵

31 IRS, CDW AIMS Closed Case Database and IMF Transaction History for FY 2019 individual correspondence audits where a power of attorney was on file with the IRS during the audit. For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I and SB/SE. Office audits include audits closed by tax compliance offices in SB/SE. Field audits include audits closed by revenue agents in SB/SE and LB&I. A power of attorney (POA) on file during the audit was used as a proxy to determine representation.

32 IRS, CDW AIMS Closed Case Database and IMF Transaction History for FY 2019 individual correspondence audits where a POA was on file with the IRS during the audit; IRS response to TAS fact check (Nov. 24, 2020). For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I and SB/SE. Office audits include audits closed by tax compliance offices in SB/SE. Field audits include audits closed by revenue agents in SB/SE and LB&I. A POA on file during the audit was used as a proxy to determine representation.

33 W&I, Refundable Credits Examination Operations Weekly Mail Report for TAS, FY 2019 data.

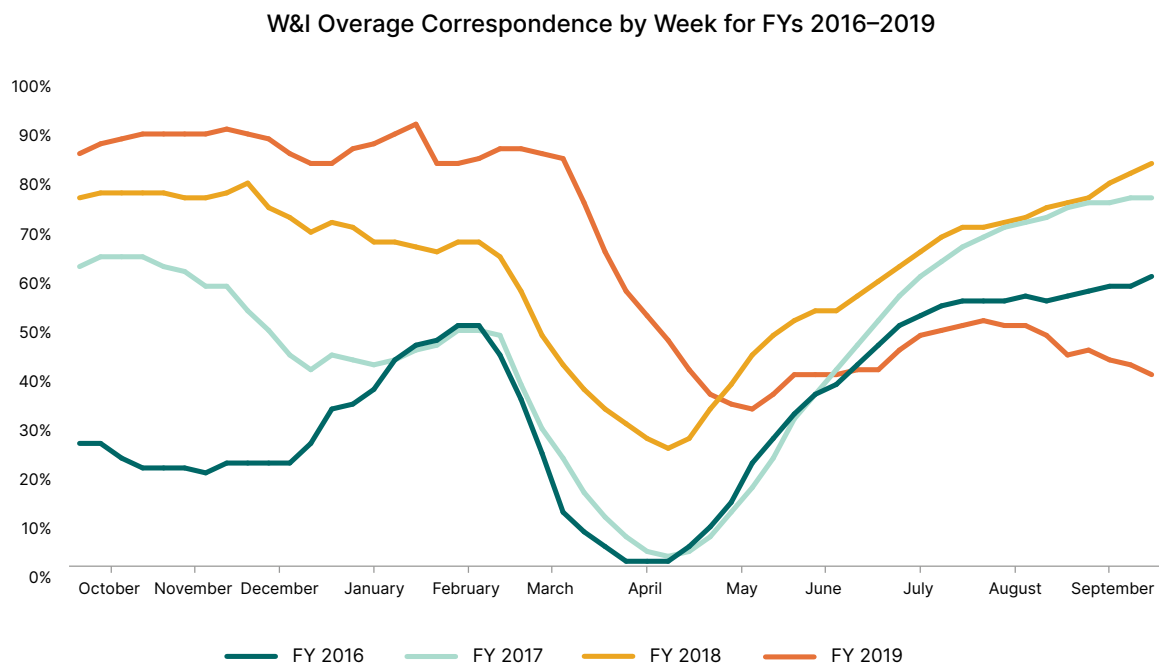
34 SB/SE Campus Operation Business Results (COBR) FY 2019, Corr Exam and Pass-Through Entities Reports FY 2019 year to date ending Sept. 30, 2019.

35 IRM 4.19.13.11, Monitoring Overage Replies (July 30, 2020).

The IRS sends interim letters to notify the taxpayer that the IRS will require additional time (generally 75 days) to provide a response. The IRS can extend this timeframe when the volume of overage correspondence renders the 75-day timeframe unachievable.³⁶ Taxpayers with questions about their audit or the documentation they have submitted cannot contact the examiner who will work their case. Although the assistants staffing the correspondence audit toll-free lines may view the documents the taxpayer has supplied, they generally cannot, with any certainty, provide a determination regarding the adequacy of the documents submitted or provide a timeframe in which the taxpayer might expect a reply. This inability to reach a knowledgeable, accountable IRS employee negatively affects customer satisfaction and often may lead taxpayers and their representatives to feel they have sent their correspondence into the proverbial “black hole.”

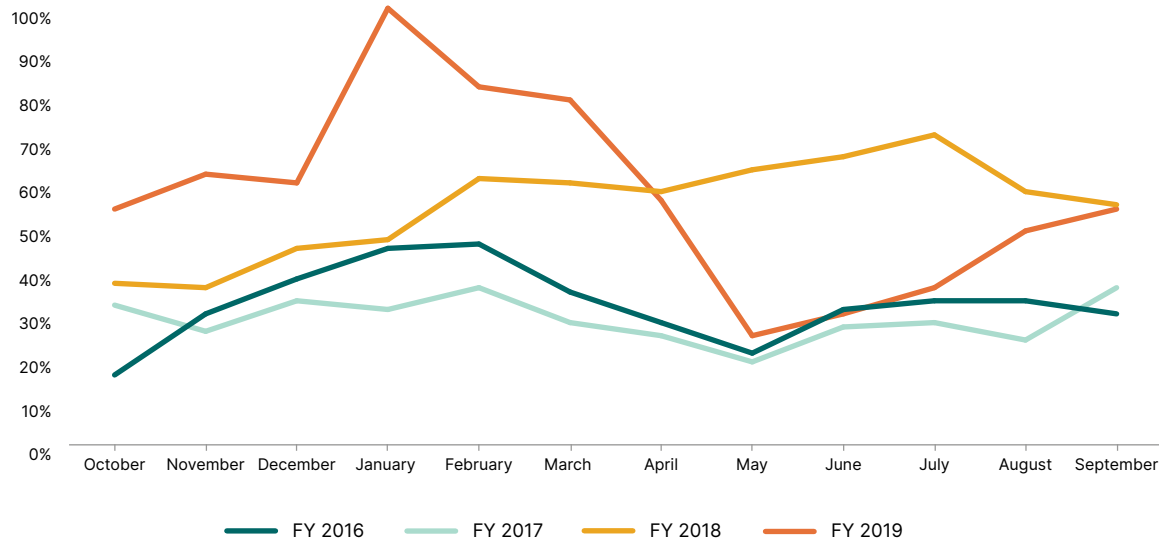
Much like the level of service on correspondence audit toll-free phone lines, the level of overage correspondence experienced in FY 2019 is not unusual and appears to trend in a pattern similar to that experienced in prior years, as shown in Figures 1.7.7 and 1.7.8.

FIGURE 1.7.7³⁷



³⁶ IRM 4.19.13.11, Monitoring Overage Replies (July 30, 2020).

³⁷ W&I, RCEO Weekly Mail Report for TAS, FY 2016 through 2019 data. W&I provided weekly overage data. Figure 1.7.7 shows the weekly variation of the data even though the x-axis depicts months.

FIGURE 1.7.8³⁸**SB/SE Overage Correspondence by Month for FYs 2016-2019**

Results of the IRS's correspondence audit customer satisfaction surveys indicate how taxpayers view the overall correspondence audit process. Although the IRS's FY 2019 work product reviews indicate that both W&I and SB/SE have been highly successful in meeting the agency's standards, IRS customer satisfaction survey results indicate that correspondence audit programs are far less successful in meeting the standards of our nation's taxpayers.

As shown in Figure 1.7.9, IRS correspondence audit reviews reflected high marks in phone and case-related accuracy, professionalism, and timeliness. IRS customers, however, rated their overall satisfaction with the correspondence audit experience at 59 percent and 51 percent for SB/SE and W&I respectively, with the time taken to complete the audit identified among the taxpayers' chief concerns.³⁹ These results show that measures for select components of the correspondence audit process are not indicative of taxpayers' satisfaction with the overall correspondence audit experience.

³⁸ IRS response to TAS fact check (Nov. 24, 2020); SB/SE COBR, Corr Exam and Pass-Through Entities Reports for all months of FYs 2016 through 2019.

³⁹ IRS W&I response to TAS information request (Oct. 1, 2020) (from Internal Revenue Service Customer Satisfaction Survey, FY 2019, W&I RCEO Mail/Online Annual Report); IRS SB/SE response to TAS information request (Oct. 7, 2020) (from SB/SE Campus Exam Mail Customer Satisfaction Report, Survey Year 2018 (April 2018 through March 2019)).

FIGURE 1.7.9, FY 2019 Correspondence Audit Quality and Customer Satisfaction⁴⁰

	SB/SE	W&I
Phone Accuracy	91.6%	87.9%
Phone Professionalism	99.4%	99.3%
Phone Timeliness	96.4%	95.0%
Paper Accuracy	98.7%	96.9%
Paper Professionalism	99.1%	98.6%
Paper Timeliness	99.4%	99.1%
Customer Satisfaction	59.0%	51.0%

Impact of Insufficient Service and Communication Alternatives

Insufficient service and communication alternatives impact more than just customer satisfaction and can have consequences that result in reduced IRS efficiency. Taxpayers assessed tax deficiencies due to a lack of timely response or lack of understanding about the documentation required may need to request audit reconsideration of these unpaid deficiencies once the IRS assesses the tax. To do this, taxpayers must provide documentation that the IRS had not considered during the audit process.⁴¹ The need to revisit completed audits results in duplicative IRS efforts and use of additional IRS resources.

In FY 2019, W&I completed 11,284 correspondence audit reconsiderations, and SB/SE completed audit reconsiderations totaling 6,081.⁴² As shown in Figure 1.7.10, correspondence audits produce a significantly higher reconsideration rate than that experienced by IRS's field and office audit programs.

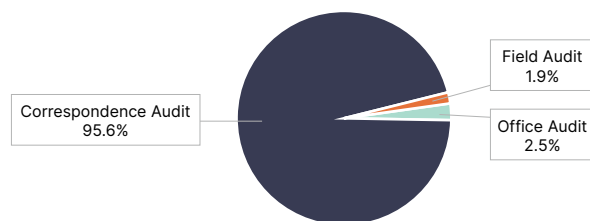
40 IRS SB/SE response to TAS information request (Oct. 7, 2020) (from FY 201909 COBR Workbooks, Corr Exam and Pass Through Entities, Exam Quality and Employee-Customer Satisfaction). IRS W&I response to TAS information request (Oct. 1, 2020) (from Internal Revenue Service Customer Satisfaction Survey, FY 2019, W&I RCEO Mail/Online Annual Report). IRS W&I response to TAS information request (Oct. 1, 2020) (from W&I Correspondence Exam Phones and Paper, Quality Measures, FY 2019). IRS SB/SE response to TAS information request (Oct. 7, 2020) (from SB/SE Campus Exam Mail Customer Satisfaction Report, Survey Year 2018 (April 2018 through March 2019)). Percentage reflects overall customer satisfaction rate for paper in the absence of an overall customer satisfaction rate.

41 IRM 4.13.1.2(1), Definition of an Audit Reconsideration (Dec. 16, 2015).

42 IRS CDW AIMS Closed Case Database and Enforcement Revenue Information Management System FY 2019. For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I and SB/SE. Office audits include audits closed by tax compliance offices in SB/SE. Field audits include audits closed by revenue agents in SB/SE and LB&I.

FIGURE 1.7.10⁴³

Audit Reconsideration for Correspondence Audit, Office Audit, and Field Audit for FY 2019



Taxpayers unable to reach a knowledgeable and accountable point of contact frequently seek assistance requiring the utilization of resources by other areas within the IRS. In FY 2019, TAS provided service to almost 16,000 taxpayers seeking assistance during their EITC-related correspondence audits, rendering this among the highest volume of issues that brought taxpayers to TAS. TAS further assisted approximately 1,700 additional taxpayers seeking assistance for audit reconsideration of these EITC correspondence audit determinations and over 2,000 taxpayers seeking reconsideration of assessments made because of non-filer correspondence audits.⁴⁴ The volume of correspondence audit-related cases received in TAS⁴⁵ clearly demonstrates that taxpayers unable to obtain sufficient assistance by calling the correspondence audit toll-free lines find other avenues within IRS — such as TAS — to obtain the assistance they require.

Correspondence Audit and COVID-19

The impact of COVID-19 further pronounced the shortcomings of the IRS's correspondence audit programs. As a part of its People First Initiative,⁴⁶ the IRS announced it would generally not start new audits during the period of April 1, 2020, through July 15, 2020. Existing technology and communication limitations, however, brought many of the IRS's correspondence audits already in progress to a standstill. Because of the COVID-19 shutdown, the IRS suspended correspondence audit toll-free phone assistance in March 2020 and did not resume it until September 28, 2020.⁴⁷ Because the IRS does not provide a single point of contact for taxpayers undergoing correspondence audits, these taxpayers, solely reliant on the IRS's correspondence audit toll-free lines for information, were left with no ability to call the IRS regarding correspondence audits in progress during the shutdown. The suspension of toll-free phone line services allowed employees to perform duties associated with the receipt and control of mail and with addressing overaged correspondence.⁴⁸ Correspondence backlogs experienced during this timeframe resulted in the IRS classifying over 90 percent of

⁴³ IRS CDW AIMS Closed Case Database and Enforcement Revenue Information Management System FY 2019. For purposes of this figure, correspondence audits include audits closed by campus tax examiners in W&I and SB/SE. Office audits include audits closed by tax compliance offices in SB/SE. Field audits include audits closed by revenue agents in SB/SE and LB&I.

⁴⁴ TAS provided service to 15,841 taxpayers seeking assistance during EITC-related correspondence audits, 1,684 taxpayers with audit reconsiderations and another 2,130 taxpayers seeking reconsideration of non-filer correspondence audits. Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2019).

⁴⁵ TAS cases received in FY 2019 with a primary issue code of 610, 620, 630, or 639 compared to the examination started. Data obtained from TAMIS (Oct. 1, 2019) and IRS CDW, AIMS Closed Case Database (Oct. 2020).

⁴⁶ See IRS News Release IR-2020-59, IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Programs (Mar. 25, 2020).

⁴⁷ IRS W&I response to TAS information request (Oct. 1, 2020).

⁴⁸ *Id.*

the mail received in W&I and SB/SE campus operations as overage.⁴⁹ As a result of correspondence backlogs, taxpayers, in some instances, received interim letters requesting they allow up to an additional six months⁵⁰ to receive a reply, further showcasing the need for improved communication alternatives.⁵¹

The Taxpayer First Act Calls for Improved IRS Efficiency and Effectiveness

The Taxpayer First Act (TFA)⁵² signed into law on July 1, 2019, included several provisions designed to improve customer service and ensure that the IRS enforces tax laws in a fair and impartial manner. Among these provisions, TFA Section 1101 required the IRS to develop a thorough customer service strategy that would include private sector customer service best practices to meet reasonable customer expectations. Section 1302 called for redesigning the organization to minimize the duplication of services and to ensure that taxpayers easily receive needed assistance. Section 2101 further called for the development and implementation of a multiyear strategic plan for IRS information technology that aligns with the IRS's needs and strategic plan.⁵³ Although the IRS has taken steps to improve the correspondence audit process and the level of service, resulting customer satisfaction rates indicate it could do more to meet customer expectations.

Although the IRS has taken steps to improve the correspondence audit process and the level of service, resulting customer satisfaction rates indicate it could do more to meet customer expectations.

Improvements to Toll-Free Phone Technology

In September 2020, the IRS provided correspondence audit examiners with all necessary equipment to answer the correspondence audit toll-free phone lines from alternate locations, preventing the suspension of correspondence audit toll-free operations if future emergency situations dictate the need for employees to work from remote locations.⁵⁴ Additional technology could also provide correspondence audit examiners the ability to receive direct external calls, removing phone system limitations that prevent these examiners from serving as a taxpayer's single point of contact during the correspondence audit process.⁵⁵

49 RCEO Weekly Mail Report for TAS, 20200822, reflected overage mail at 92.61 percent and COBR FY20, 202008 Corr-Exam-PTE Report, reflected SB/SE overage mail at 97.2 percent as of 08/22/2020.

50 See National Taxpayer Advocate 2018 Annual Report to Congress 135 (Most Serious Problem: *Correspondence Examination: The IRS's Correspondence Examination Procedures Burden Taxpayers and Are Not Effective in Educating the Taxpayer and Promoting Future Voluntary Compliance*).

51 Taxpayers reported to TAS, Systemic Advocacy, the receipt of interim letters with six-month response timeframes. TAS is currently exploring this issue.

52 See TFA, Pub. L. No. 116-25.

53 National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 69-78 (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*).

54 IRS W&I response to TAS information request (Oct. 1, 2020).

55 National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 2, at 51 (*IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2018 Annual Report to Congress*).

Although not yet implemented, the IRS is also currently working to introduce telephone callback technology that would address insufficient levels of service on its correspondence audit and other toll-free phone lines.⁵⁶ This technology will enable callers to request a call back rather than waiting on hold to reach the next available assistor. Introducing callback technology will serve to reduce the lengthy hold times experienced by taxpayers and will reduce the need for taxpayers to make multiple calls to reach assistance. While this technology will improve the customer correspondence audit toll-free phone experience and reduce the volume of repeated unsuccessful attempts to these toll-free lines, it will not reduce the actual volume of callers requiring assistance. Based on the IRS's staffing model discussed below, introducing callback technology may require that the IRS further divert resources from completing correspondence audit activities to meet customer callback expectations.

Increased Communication Alternatives

In August 2020, the SB/SE correspondence audit program expanded its communication alternatives through the Secure Messaging feature of its Taxpayer Digital Communications (TDC) program. This initiative, originally piloted in 2016, offers certain taxpayers the ability to communicate electronically with the IRS during their audit. TDC Secure Messaging enables taxpayers to receive messages from the IRS, respond to questions, and upload documents using the IRS's Secure Messaging Portal. Taxpayers invited to participate in this program must authenticate their identities via IRS Secure Access. They then receive a notification to their registered email address to log into the TDC Secure Messaging portal to view messages.

Using TDC Secure Messaging shows potential for improving the customer's correspondence audit experience and the correspondence audit process. TDC Secure Messaging offers a more expedient communication alternative to traditional mail. Further, TDC Secure Messaging enables taxpayers to access other IRS online services such as e-Services and Get Transcripts using the same account login name and password. The use of TDC Secure Messaging has been introduced in all five of SB/SE's correspondence audit campuses, with potential for successful expansion to other correspondence audit programs.⁵⁷ The IRS indicated that using TDC Secure Messaging has resulted in a reduction in the time needed for audit completion and a significant increase in customer satisfaction, reporting customer satisfaction rates consistently ranging near 83 percent with TDC Secure Messaging.⁵⁸ Further, the IRS indicates that the exam deployment of TDC Secure Messaging uses a feature of the software called "sticky agent," which automatically directs replies to the examiner assigned without clerical research or intervention.⁵⁹ This feature would complement the IRS's efforts to provide taxpayers with a single point of contact should the IRS do so.

By expanding the use of TDC Secure Messaging to a larger volume of taxpayers, calls to the correspondence audit toll-free phone lines will decline. W&I customer satisfaction surveys reflected that 41 percent of the taxpayers surveyed called the correspondence audit toll-free line to simply check the status of their case. Of these callers, 77 percent called more than once, and 39 percent called five or more times. Twelve percent of the callers surveyed indicated that they called merely to inform the IRS they had sent in the requested documentation. Of these callers, 61 percent called in more than once, with 31 percent indicating that

56 Most Serious Problem: *Telephone and In-person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*, *supra*.

57 IRS response to fact check (Nov. 24, 2020).

58 IRS SB/SE response to TAS information request (Oct. 7, 2020).

59 *Id.*

they called five or more times to relay this information.⁶⁰ If TDC is widely used, the ability to submit documents and request status updates through TDC could positively impact call volumes experienced on the correspondence audit toll-free phones.

CONCLUSION AND RECOMMENDATIONS

The IRS staffs W&I and SB/SE correspondence audit programs with a finite group of examiners who hold responsibility for both staffing the correspondence audit toll-free phone lines and auditing tax returns selected for correspondence audit.⁶¹ The interdependence of the correspondence audit staffing structure clarifies that the current random shifting of resources from toll-free phones to audit activities will not increase the number of taxpayers serviced or improve the overall correspondence audit customer experience. Providing taxpayers who have responded to their correspondence audit notifications with the name and contact information for the examiner most knowledgeable and responsible for their case, however, will improve efficiency and the customer experience and is necessary for tax administration. Shifting these callers to an examiner who can serve as a single point of contact and act to progress their case will reduce the number of callers to the correspondence audit toll-free lines. This will enable callers recently receiving audit notifications who have not yet responded increased opportunity to reach assistance at this crucial point in the audit when general audit assistance is most appropriate.

The IRS indicates that the level of service provided on the correspondence audit toll-free phones and correspondence audit response timeframes are both factors under consideration when the IRS determines the number of correspondence audits it will conduct each year. The IRS indicates it uses historical data that incorporates these measures when determining the number of correspondence audits planned for completion.⁶² The consistency displayed regarding the level of service provided by the correspondence audit toll-free phone lines and the trends identified regarding overage mail during the time period of FYs 2016 to 2019 suggest the IRS not only views these insufficient levels of customer service as acceptable, it builds them into the correspondence audit planning process.

Based on staffing levels, current staffing policies, and the number of audits conducted, the IRS's correspondence audit programs by design do not have the capacity to provide personal contact to every taxpayer subjected to a correspondence audit. However, the IRS should modify the correspondence audit planning process to appropriately ensure it can provide service to taxpayers responding to audit inquiries. Should technology alone fail to achieve sufficient improvements, the IRS must be willing to revisit the volume and timing of audits it introduces into its audit workstream. The volume of audits conducted should be commensurate with the IRS's ability to provide quality service that minimizes audit cycle time, provides for reasonable response timeframes, adequately services toll-free phone inquiries, and allows the IRS to provide taxpayers responding to their audit notifications the name and contact information to an IRS employee who can serve as the taxpayer's single point of contact throughout the correspondence audit process.

60 IRS W&I response to TAS information request (Oct. 1, 2020) (from Internal Revenue Service Customer Satisfaction Survey, W&I RCEO IVR FY 2019 Annual Report Issued May 2020).

61 IRS W&I response to TAS supplemental information request (Oct. 5, 2020); IRS SB/SE response to TAS supplemental information request (Oct. 6, 2020).

62 IRS W&I response to TAS information request (Oct. 1, 2020); IRS SB/SE response to TAS information request (Oct. 7, 2020).

As discussed, provisions of the TFA have mandated that the IRS develop customer service strategies, redesign the organization to promote efficiency, and introduce technology to include private sector customer service best practices. The IRS has taken steps to improve the correspondence audit process; however, with TFA mandates, it must revise its approach to the correspondence audit process in an effort to substantially improve the customer experience.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Provide taxpayers responding to correspondence audit notices the name, telephone number, and unique identifying number of an IRS employee who can serve as their direct contact throughout the correspondence audit process, along with the employee's secure email address or the TDC Secure messaging access needed to send and receive documents and communicate electronically with the assigned examiner.
2. Ensure that the volume and timing of audits conducted are commensurate with the IRS's ability to provide correspondence audit toll-free phone services, timely correspondence responses, and timely audit completion.
3. Expand TDC Secure Messaging capabilities to all correspondence audit programs.

IRS COMMENTS

Correspondence Exam is a critical part of the IRS's overall compliance approach to fair and balanced tax administration. The IRS designed Correspondence Exam to work single issue (non-complex) and single year cases that can easily be resolved via mail, allowing for broader geographic coverage. The program supports the IRS strategic goal to protect the integrity of the tax system by encouraging compliance through administering and enforcing the tax code.

As previously noted in the IRS responses to the 2014 and 2018 National Taxpayer Advocate Annual Report to Congress, it is not practical to assign one employee to handle all aspects of a taxpayer's correspondence examination from beginning to end. When we receive a written response from a taxpayer, it is assigned to one tax examiner to review,⁶³ and when the tax examiner sends a letter in response, the letter identifies the tax examiner by name and includes Exam's toll free telephone number since tax examiners do not have direct telephone lines. When taxpayers call the Correspondence Exam toll-free line, their call is routed to the next available assistor. Phone assistants are trained and experienced tax examiners, have access to the taxpayer's case history, and work with the taxpayer toward case resolution. However, if a taxpayer responds to an examination letter with correspondence and later calls the toll-free line and is not satisfied at the end of the call, they can request that the assigned tax examiner return their call.

⁶³ IRM 4.19.10.1.5.1(6), Correspondence Examination Letters (Dec. 8, 2017). Letters mailed on cases in the corporate inventory will include the appropriate Business Operating Division (BOD) corporate toll-free number, "Tax Examiner" as person to contact, and the site-specific identification number. If the letter sent is in reply to taxpayer correspondence, the letter, case history, and all letter attachments must identify the originating tax examiner to provide information for any subsequent contact, if needed.

Since 2017, Correspondence Exam has improved communications by digitizing a population of case files. Although transparent to taxpayers, some taxpayer correspondence is digitized and uploaded to the case file. Digitized cases improve customer service by increasing the visibility of case information. Telephone assistors can electronically view correspondence previously sent in by the taxpayer, regardless of which IRS site received the correspondence. This assists in resolving taxpayer inquiries more expeditiously.

We continued to improve communications with taxpayers with the expansion of secure messaging within Taxpayer Digital Communications (TDC) to all five SB/SE campuses. With TDC, taxpayers who sign up can submit documents online and easily ask questions. They do this without waiting in a queue, at their convenience, and on their own schedule. In general, like with paper correspondence, these messages are directed back to the examiner who last worked their case. The current customer satisfaction rating is 83.2 percent, and it is our expectation that as more taxpayers take advantage of this communication vehicle, we'll continue to see this high level of customer satisfaction.

Regarding the Earned Income Tax Credit (EITC), the IRS currently staffs a year-round toll-free telephone line in order to answer questions on EITC correspondence audits, many of which contain an audit issue for the Child Tax Credit/Additional Child Tax Credit. Our employees who answer these toll-free calls are trained and experienced, and best equipped to answer taxpayer telephone calls related to these potential audit issues. To enhance the taxpayer experience on the phone, a new Fast Track option will be implemented in 2021 for taxpayers inquiring about whether we received their documentation. This option will reroute incoming customer calls to an assistor to provide taxpayers with information on the receipt and status of their correspondence. We will continue to leverage available technology, as budget permits, to enhance taxpayers' experience when interacting with the IRS.

TAXPAYER ADVOCATE SERVICE COMMENTS

While the IRS advises that it is not practical to assign one employee to handle all aspects of a taxpayer's correspondence examination, the described procedures suggest that correspondence audits are primarily assigned and worked by one employee. The simple lack of a direct telephone line, however, prevents the taxpayer from contacting the assigned employee directly, enabling the assigned examiner to serve as the taxpayer's single point of contact for assistance. Correspondence examiners hold responsibility for both staffing the correspondence audit toll-free phone lines and for auditing the tax returns selected for correspondence audit. It is unclear why these employees can audit returns and answer calls, yet it is impractical for correspondence examiners to answer calls from the taxpayers they are assigned to audit.

Recently implemented telephone and TDC technology, could serve to enhance the IRS's ability to provide taxpayers a single point of contact for correspondence audit assistance, and demonstrates that IRS has the capability to provide correspondence audit examiners with phone lines equipped to receive direct incoming calls. As stated, the inability to reach a single point of contact diminishes the customer experience, creates IRS inefficiency, and hinders opportunities to engage and educate our nation's taxpayers. Providing taxpayers who have responded to their correspondence audit notifications with the contact information of the assigned examiner will improve the customer experience, improve efficiency and is necessary for tax administration. Because correspondence exam is recognized as a critical part of the IRS's overall compliance approach to fair and balanced tax administration, the IRS must be willing to reconsider its current approach to the correspondence audit process — the process used to conduct the highest percentage of taxpayers audits throughout the IRS. In light of the fact that correspondence audits result in the highest rate of audit deficiencies assessed by default⁶⁴ and produced a high volume of petitions to the U.S. Tax Court, this is an area ripe for improvement.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide taxpayers responding to correspondence audit notices the name, telephone number, and unique identifying number of an IRS employee who can serve as their direct contact throughout the correspondence audit process, along with the employee's secure email address or the TDC Secure messaging access needed to send and receive documents and communicate electronically with the assigned examiner.
2. Ensure that the volume and timing of audits conducted are commensurate with the IRS's ability to provide correspondence audit toll-free phone services, timely correspondence responses, and timely audit completion.
3. Expand TDC Secure Messaging capabilities to all correspondence audit programs.

64 IRM 4.8.9.26, Defaulted Notices (July 9, 2013). The IRS may assess a proposed audit deficiency by default if the taxpayer does not petition the U.S. Tax Court within 105 days of the date a Statutory Notice is issued (165 days if the taxpayer resides outside of the U.S.). IRS CDW, AIMS Closed Case Database FY 2019 (Oct. 2020).

The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS

RESPONSIBLE OFFICIALS

Eric Hylton, Commissioner, Small Business/Self-Employed Division

Doug O'Donnell, Commissioner, Large Business and International Division

Kenneth Corbin, Commissioner, Wage and Investment Division

TAXPAYER RIGHTS IMPACTED¹

- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Finality*
- *The Right to a Fair and Just Tax System*

EXPLANATION OF THE PROBLEM

The IRS's treatment of IRC §§ 6038 and 6038A foreign information reporting penalties² as systemically³ assessable is legally unsupportable, administratively problematic, and imposes costs, delays, and stress for taxpayers.⁴ Bifurcating income tax and international information penalties has created inefficient, expensive, and unnecessary procedures for taxpayers with offshore income and assets. The IRS assesses the IRC §§ 6038 and 6038A penalties either systemically at the time of a late-filed return or manually at the conclusion of an examination. In the former case, taxpayers are not contacted prior to assessment to determine whether a relevant defense, such as reasonable cause, would apply.⁵ Instead, remedial steps and requests for relief become possible only after the penalties have been systemically assessed. This administrative approach is unsuited to

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 In this Most Serious Problem, we are focusing on IRC §§ 6038 and 6038A as the most direct means of analyzing problems common to most, if not all, of the other foreign information reporting penalties set forth in Chapter 61. Although we specifically examine the assessability of penalties under IRC §§ 6038 and 6038A, the same arguments are generally applicable to other provisions found in Chapter 61 of the code.

³ Systemic penalties are those that are electronically asserted as an automatic matter whenever a late-filed corporate or partnership tax return includes an information return required by one of these code sections.

⁴ Assessable penalties are generally defined as those due and payable upon notice and demand. Unlike penalties subject to deficiency procedures, assessable penalties carry no rights to a 30-day letter, agreement form, or notice requirements prior to assessment. Internal Revenue Manual (IRM) 20.1.9.1.1, Common Terms (Oct. 24, 2013). As discussed further below, the IRC §§ 6038 and 6038A penalties are sometimes assessed manually during an examination. Although still not ideal, this is somewhat less problematic as, in practice, taxpayers often are given the opportunity to furnish missing information and to avoid the penalty in the first instance or to have it simultaneously abated.

⁵ See IRC §§ 6038(c)(4)(B) and 6038A(d)(3).

these penalties, as demonstrated by high abatement rates of 55 percent when measured by number of penalties and 71 percent when measured by dollar value.⁶

The National Taxpayer Advocate applauds Congress and the IRS for their enforcement efforts to curtail international tax abuses. However, the National Taxpayer Advocate's opinion is that the statutory framework provides authority for imposing the IRC §§ 6038 and 6038A penalties, not for summarily assessing those penalties.⁷ As with the Report of Foreign Bank and Financial Accounts (FBAR) penalty, enforcement actions to collect these penalties should be brought by the Department of Justice.

ANALYSIS

Description of the IRC §§ 6038 and 6038A Penalty Regime

IRC § 6038 requires U.S. persons to furnish certain information regarding foreign business entities they control. This information is typically provided on Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, which is attached to taxpayers' annual income tax returns.⁸ Failure to timely provide this information results in a \$10,000 penalty, even if this information does not affect taxpayers' ultimate tax liabilities.⁹ The IRS notifies taxpayers that the penalty has been assessed. If the taxpayer does not provide the required information within 90 days, the statute imposes an additional penalty (sometimes referred to as a "continuation penalty") for each 30-day period that the failure continues. This increase is capped at \$50,000.¹⁰

Similarly, IRC § 6038A requires 25 percent foreign-owned domestic corporations to report specified information as an attachment to the corporate income tax return. This information is generally reported on Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.¹¹ The penalty under IRC § 6038A begins at \$25,000, and the continuation penalty, which commences 90 days after notification of assessment, is \$25,000 for each 30-day period, without an upper limit.¹²

Originally, these penalties were imposed manually on taxpayers whose missing filings were discovered during an audit. That manual process is still a part of current audit practice. However, beginning January 1, 2009, the IRS began systemic assessment of the monetary penalty under IRC § 6038(b)(1) regarding Forms 5471 attached to late-filed Forms 1120, U.S. Corporation Income Tax Return.¹³ Beginning on January 1, 2014, the IRS expanded its systemic assessment of the monetary penalty under IRC § 6038(b)(1) to Form 5471

6 These numbers reflect data from calendar year (CY) 2018. Abatement rates generally increase as more time elapses from the assessment date. For example, the IRS has abated 64 percent of these penalties assessed in 2017 and 78 percent of the initial amount of the dollar assessments. IRS response to TAS information request (Oct. 8, 2020). These circumstances and a detailed analysis of the abatement rates from CYs 2014 to 2018 are discussed below.

7 The statutory authority for the government's collection of the unassessed IRC §§ 6038 and 6038A penalties is found at IRC § 7402(a) (jurisdiction to make and issue in civil actions such judgment and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws) and 28 U.S.C. § 1340 (general jurisdiction of the district courts of the United States in civil actions involving internal revenue). The statute does not provide the IRS with the ability to automatically assess and collect the penalties.

8 IRM 8.11.5.1, Introduction of International Penalties (Dec. 18, 2015). Partnerships are also subject to the IRC § 6038 filing requirement and must attach Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, to their partnership tax return.

9 IRC § 6038(b)(1); Treas. Reg. § 1.6038-2(k)(4).

10 IRC § 6038(b)(2).

11 IRM 8.11.5.1, Introduction of International Penalties (Dec. 18, 2015).

12 IRC § 6038A(d)(1) and (2). See also Treas. Reg. 1.6038A-4 (d)(4).

13 IRM 21.8.2.20.2(1), Form 5471 Penalties Systemically Assessed from Late Filed Form 1120 Series or Form 1065 (Mar. 26, 2018).

attached to late-filed Form 1065, U.S. Return of Partnership Income.¹⁴ Similarly, on January 1, 2013, the IRS began systemically assessing a monetary penalty under IRC § 6038A(d)(1) on Form 5472 attached to late-filed Form 1120 series returns.¹⁵ Thus, the systemic penalty regime has expanded in the last decade to cover a much greater number of taxpayers.

As mentioned, the IRS treats these penalties as summarily assessable, as they are not subject to deficiency procedures, wherein taxpayers receive a notice of deficiency alerting them of the potential assessment and explaining taxpayers' options for contesting or complying with the penalty assessment.¹⁶ The notice of deficiency also informs taxpayers of the last day to petition the Tax Court for pre-assessment and prepayment review.¹⁷ Many penalties related to income tax filings are not summarily assessable (that is, they are generally subject to deficiency procedures). For example, deficiency procedures apply when the IRS determines that noncompliance resulted in an underpayment of tax. Common penalties associated with deficiency actions include IRC § 6662 accuracy-related penalties. This regime requires the IRS to determine a deficiency and allow the taxpayer to petition the Tax Court for a redetermination before making an assessment and initiating any collection action.

Summarily assessable penalties are primarily found in IRC §§ 6671 through 6720C. Chapter 68,¹⁸ Subchapter B, titled "Assessable Penalties," allows the IRS to assess and collect penalties "in the same manner as taxes"¹⁹ without first sending a notice of deficiency. Summary assessments are made without a deficiency determination and "shall be paid upon notice and demand... and collected in the same manner as taxes." Most of these "penalties" are included in Chapter 68 of the IRC. Chapter 68, Subchapter A, titled "Additions to the Tax and Additional Amounts," allows the IRS to impose penalties for failure to file or pay tax, understatements or underpayments of tax, and penalties for fraudulent behavior. However, Chapter 61 penalties, which include the IRC §§ 6038 and 6038A penalties, are not in Chapter 68, and, in the view of the National Taxpayer Advocate, among others, are therefore not assessable.²⁰

The IRC §§ 6038 and 6038A Penalties Are Convoluting and Punitive in Their Operation

To systemically impose a \$10,000 penalty per missing or incomplete Form 5471 (\$25,000 for Form 5472) when the taxpayer may be missing tens or even hundreds of such forms can cause a highly disproportionate penalty, particularly when failure to file may not affect the underlying tax liability. Further, these penalties can increase dramatically if the taxpayer becomes subject to the continuation penalty, which is manually assessed upon examination. This punitive approach runs counter to the guiding principles of IRS penalties. As cautioned in the IRS penalty handbook, "Penalties should... be objectively proportioned to the offense [and] be used as an opportunity to educate taxpayers and encourage their future compliance."²¹

14 IRM 21.8.2.20.2(2), Form 5471 Penalties Systemically Assessed from Late Filed Form 1120 Series or Form 1065 (Mar. 26, 2018).

15 IRM 21.8.2.21.2(1), Form 5472 – Information Return of a 25% Foreign Owned U.S. Corporation or a Foreign Corporation Engaged in a Trade or Business (Oct. 1, 2016).

16 IRM 4.8.9.8(1), Preparing Notices of Deficiency (July 9, 2013).

17 See IRM 4.8.9.10.2, Dating Notices (July 9, 2013); see paragraphs 1 and 3.

18 Chapter 68 is contained within Title 26, Subtitle F.

19 IRC § 6671(a).

20 There are, however, some "penalties" that are not found in Chapter 68, but these are authorized by a cross-reference to a code section within Chapter 68 or to another code section that authorizes the Secretary to summarily assess the penalty without first sending a notice of deficiency.

21 IRM 20.1.1.2.1, Encouraging Voluntary Compliance (Nov. 25, 2011).

The impact of the IRC §§ 6038 and 6038A penalties on taxpayers does not end with the initial penalty and potential continuation penalty. When these penalties are asserted, the IRS can propose a reduction of the foreign tax credit (FTC) on the underlying return. Ultimately, the initial penalty can reduce the FTC by ten percent of any FTC claimed or deemed paid to any foreign country, and the continuation penalty reduces the FTC by an additional five percent per 90-day period.²² Failure to provide the information required by IRC §§ 6038 and 6038A can also result in an accuracy-related penalty. All these consequences can have a serious financial impact on a taxpayer, even though the information on the missing form itself may result in no change to the taxpayer's underlying liability, and therefore should be applied only when appropriate.

As cautioned in the IRS penalty handbook, “Penalties should... be objectively proportioned to the offense [and] be used as an opportunity to educate taxpayers and encourage their future compliance.”

IRC §§ 6038 and 6038A penalties are systemically assessed as an automatic matter when IRS systems detect late information returns.²³ As evidenced by high abatement rates (discussed below), much of this late filing is ultimately determined to result from benign circumstances, including ignorance of the filing requirements, unavailability of the requisite information, and IRS error.²⁴

The inequities in the IRS's approach are exacerbated by treating these penalties as summarily assessable. Often, these penalties are due and owing even before taxpayers know of their existence.²⁵ The IRS does allow taxpayers to seek a post-assessment, pre-payment review in the IRS Independent Office of Appeals, which can include a reasonable cause defense.²⁶ Nevertheless, administrative relief depends on IRS discretion, which, in the case of these penalties, is generally only subject to judicial oversight if taxpayers can afford to first pay the penalty and then incur the cost of taking the case to federal court.²⁷ Further, some tax practitioners have reported accelerated collection activity, even while the penalties are still under review.²⁸

22 IRC § 6038(c). The FTC reduction is not to exceed the greater of \$10,000 or the income of the foreign business entity for the tax period. The extent of the FTC reduction is offset by the monetary penalty.

23 See IRM 21.8.2.20.2, Form 5471 Penalties Systemically Assessed from Late-Filed Form 1120 Series or Form 1065 (Mar. 26, 2018); IRM 21.8.2.21.2, Form 5472 Penalties Systemically Assessed from Late-Filed Form 1120 Series (Oct. 1, 2019). IRS response to TAS information request (Oct. 1, 2020).

24 These examples are drawn from TAS's observations in this area. See also IRS response to TAS information request (Oct. 1, 2020).

25 IRM 20.1.9.3.2, Penalty Letters, Notice Letters, and Notices (Nov. 30, 2015). See also IRM 20.1.9.3.3.(2), Penalty Assertion (Mar. 21, 2013); IRM 21.8.1.26.1, Form 5471 Penalties (Oct. 1, 2019).

26 IRS response to TAS information request (Oct. 1, 2020); IRC §§ 6038(c)(4)(B) and 6038A(d)(3); IRM 8.11.5.1, Introduction of International Penalties (Dec. 18, 2015).

27 Chief Counsel Directives Manual 34.2.1.1, Suits for a Refund of Tax/Counterclaims (Aug. 11, 2004). For a legislative recommendation to address the issue of “pay to play” judicial review, see National Taxpayer Advocate 2018 Annual Report to Congress 364-386 (Legislative Recommendation: *Fix the Flora Rule: Give Taxpayers Who Cannot Pay the Same Access to Judicial Review as Those Who Can*). Taxpayers can seek review in the applicable federal district court or Court of Federal Claims.

28 Andrew Velarde, *Practitioners Fault Accelerated Assessable Penalty Collection*, TAX NOTES TODAY (Mar. 18, 2020); Megan Brackney, *Problems Facing Taxpayers with Foreign Information Return Penalties and Recommendations for Improving the System (Part 2)*, PROCEDURALLY TAXING (Jan. 7, 2020), <https://procedurallytaxing.com/the-irs-and-foreign-information-return-penalties-part-2/>.

Several Commentators Have Questioned the IRS's Legal Authority to Treat These Penalties as Assessable

The IRS justifies the taxpayer-unfriendly regime surrounding the IRC §§ 6038 and 6038A penalties by explaining that it has little choice regarding the treatment of these penalties.²⁹ These penalties are neither imposed on tax deficiencies nor calculated referencing anything on the return itself. Further, they are not subject to deficiency procedures that would allow a pre-payment judicial review.³⁰ The IRS's position is that since deficiency procedures are unavailable, the penalties must be summarily assessable³¹ even though they are not listed in Chapter 68, Subchapter B of the IRC, which is where assessable penalties are enumerated.³²

The IRS finds a sweeping grant of authority to assess these penalties in IRC § 6201(a), which allows the IRS to assess “taxes (including interest, additional amounts, additions to the tax, and assessable penalties).”³³ In *NFIB v. Sebelius*,³⁴ the Supreme Court agreed that the plain language of IRC § 6201 places assessable penalties within the definition of a tax for purposes of granting the IRS the authority to assess those penalties.³⁵ To the IRS, this in turn gives it the ability to summarily assess penalties not subject to deficiency procedures, whether or not those penalties are listed in Chapter 68, Subchapter B.³⁶ In other words, even though the IRC fails to explicitly recognize these penalties as assessable, they must be treated as assessable because they are not subject to deficiency procedures. In the National Taxpayer Advocate's view, this is a circular argument without legal support.

Several commentators find the IRS's analysis to be overly broad and unpersuasive.³⁷ For example, Collins and Hahn point out that “a statute providing for a penalty and the IRS's authority to assess that penalty are two very distinct issues.”³⁸ In their view, although the IRC §§ 6038 and 6038A penalties are provided for in the IRC, the authority to assess those penalties is not. To collect these penalties, the Department of Justice must sue the taxpayer to collect any unpaid penalties. To these authors, the contention that IRC § 6201 allows the assessment of IRC §§ 6038 and 6038A penalties represents an overreach. As they see it, the authority granted by IRC § 6201(a) applies to the enumerated items, which, although extensive, do not include IRC §§ 6038 and 6038A penalties residing within Chapter 61. Thus, although IRC § 6201 contemplates the collection of assessable penalties enumerated in Chapter 68, Subchapter B, it does not provide authority, either directly or indirectly, for the assessment of IRC §§ 6038 and 6038A penalties. Collins and Hahn raise the possibility that the last ten years of assessments are legally dubious and therefore open to challenge.³⁹

29 IRS response to TAS information request (Oct. 1, 2020).

30 IRM Exhibit 20.1.9-4, International Penalties Subject to or Not Subject to Deficiency Proceeding (July 8, 2015).

31 IRS response to TAS information request (Oct. 1, 2020); IRM 8.11.5.1, Introduction of International Penalties (Dec. 18, 2015).

32 Chapter 68, Subchapter B includes IRC §§ 6677 through 6725.

33 IRS response to TAS information request (Oct. 1, 2020).

34 *NFIB v. Sebelius*, 567 U.S. 519 (2012), 546. See also IRS response to TAS information request (Oct. 1, 2020).

35 In support of its position, the IRS also cites *Wheaton v. U.S.*, 888 F. Supp. 622, 626 (D.N.J. 1995) (acknowledging that penalties under IRC § 6038 are not subject to deficiency procedures). It also relies on *Heydemann v. United States*, 2008 WL 2502188 at *2 (D. Md. April 23, 2008) (there is “no requirement that the initial assessment of § 6038 penalties requires prior notice”). While these decisions arguably support the proposition that deficiency procedures are inapplicable to IRC § 6038 penalties, they do not directly consider the legal questions of whether the IRS has statutory authority to assess these penalties.

36 IRS response to TAS information request (Oct. 1, 2020).

37 To date, courts have not directly ruled on this issue.

38 Erin Collins and Garrett Hahn, *Foreign Information Reporting Penalties: Assessable or Not?* TAX NOTES TODAY (July 9, 2018) 211-213. After publication of this article, Erin Collins was appointed IRS National Taxpayer Advocate.

39 *Id.*

Following a slightly different line of analysis, Horwitz concludes that the IRS has no direct means of assessing or otherwise collecting IRC §§ 6038 and 6038A penalties or any other penalties in Chapter 61.⁴⁰ He reasons that because these penalties are not a tax and are not assessed and collected in the same way as a tax, “(1) the IRS is not authorized to assess them; (2) the IRS cannot file tax liens or levy against assets to collect them; and (3) the collection due process provisions do not apply.”⁴¹ Horwitz concurs with Collins and Hahn that the IRS’s only recourse is to ask the Department of Justice to sue the taxpayer seeking to collect any unpaid penalties.

Agostino and Colasanto summarize an emerging consensus among commentators: “Like Collins, Hahn, and Horwitz, we conclude that there is no authority in the code authorizing the summary assessment of these penalties.”⁴² Further, Agostino and Colasanto suggest that these penalties should be adjudicated as part of the deficiency procedures.⁴³ They also contend that penalties made the subject of summary assessments should be abated by the IRS.⁴⁴

Although these commentators follow slightly different analytical paths, they all arrive at the same conclusion. Each argues that the IRS lacks the legal ability to treat IRC §§ 6038 and 6038A as giving rise to assessable penalties. This is an area of controversy that could easily generate unwelcome litigation for the IRS, but more important, one that imposes unreasonable burdens on taxpayers and is inconsistent with the statutes.

Systemic Assessment Is Resulting in the Reversal of Many Unnecessary Penalties

What makes this issue more than academic is that taxpayers are adversely impacted by the IRS’s treatment of these penalties as summarily assessable. Even if, as a legal matter, the IRS has the right to summarily assess these penalties on the late-filed return, this does not mean it should do so. The penalty regime, as applied by the IRS, is highly burdensome for taxpayers. The IRS should adopt a different path forward that will be more equitable for taxpayers and administratively more effective for all concerned.

An overhaul of the IRC §§ 6038 and 6038A penalty regime is long overdue. The need for this reinvention is evidenced by the prevailing abatement rates. Although abatements are always preferable to improperly assessed and collected penalties, high abatement rates indicate flawed policies. For the IRC §§ 6038 and 6038A penalties, these abatement rates, in the aggregate, are exorbitantly high. Such is the case where the penalties are systemically imposed as a preprogrammed, automatic matter. Penalties applied manually during examination are abated at a lower rate in comparison with those of the systemic penalties.

TAS analyzed abatement rates for the IRC §§ 6038 and 6038A penalties in terms of both numbers and dollars. Along the way, we paid particular attention to the abatement rates for systemic versus manual assessments, which are substantially disparate, as demonstrated in Figures 1.8.1-3.⁴⁵ When these penalties are applied systemically, the abatement percentage, measured by number of penalties, ranges from 55 to 72 percent, and by

40 Robert Horwitz, *Can the IRS Assess or Collect Foreign Information Reporting Penalties?* TAX NOTES TODAY (Jan. 31, 2019) 301-305.

41 *Id.* at 301.

42 Frank Agostino and Phillip Colasanto, *The IRS’s Illegal Assessment of International Penalties*, TAX NOTES TODAY (Apr. 8, 2019) 261-269.

43 *Id.*

44 *Id.*

45 IRS response to TAS information request (Oct. 8, 2020). Because the numbers for the manual versus systemic assessments under each Code section were in similar proportion, if not similar volumes, TAS has combined the data for these two penalties to present more simplified numbers. Abatement rates generally increase as more time elapses from the assessment date. Assessments and abatements of zero dollars are excluded from this analysis.

dollar value of penalties ranges from 71 to 88 percent.⁴⁶ Manual assessments are abated at rates ranging from 17 percent to about 39 percent by number, and from eight percent to about 66 percent by dollar.⁴⁷

FIGURE 1.8.1, Systemic Assessments of IRC §§ 6038 and 6038A Penalties⁴⁸

Calendar Year Penalty Assessed	Number of Penalties Assessed	Dollar Amount Assessed	Number of Abatements	Dollars Abated	Abatement Percentage by Number	Abatement Percentage by Dollar
2014	9,736	\$282,345,000	7,050	\$241,801,922	72%	86%
2015	9,316	\$236,038,000	6,632	\$194,566,666	71%	82%
2016	9,170	\$366,397,100	6,166	\$322,142,928	67%	88%
2017	8,892	\$220,715,000	5,653	\$172,101,999	64%	78%
2018	9,889	\$253,087,500	5,468	\$179,532,000	55%	71%

FIGURE 1.8.2, Manual Assessments of IRC §§ 6038 and 6038A Penalties⁴⁹

Calendar Year Penalty Assessed	Number of Penalties Assessed	Dollar Amount Assessed	Number of Abatements	Dollars Abated	Abatement Percentage by Number	Abatement Percentage by Dollar
2014	389	\$33,268,121	150	\$21,875,043	39%	66%
2015	241	\$5,695,002	41	\$721,000	17%	13%
2016	610	\$45,148,635	180	\$4,571,000	30%	10%
2017	708	\$38,371,300	194	\$3,622,433	27%	9%
2018	1097	\$58,328,617	268	\$4,906,750	24%	8%

⁴⁶ IRS response to TAS information request (Oct. 8, 2020).

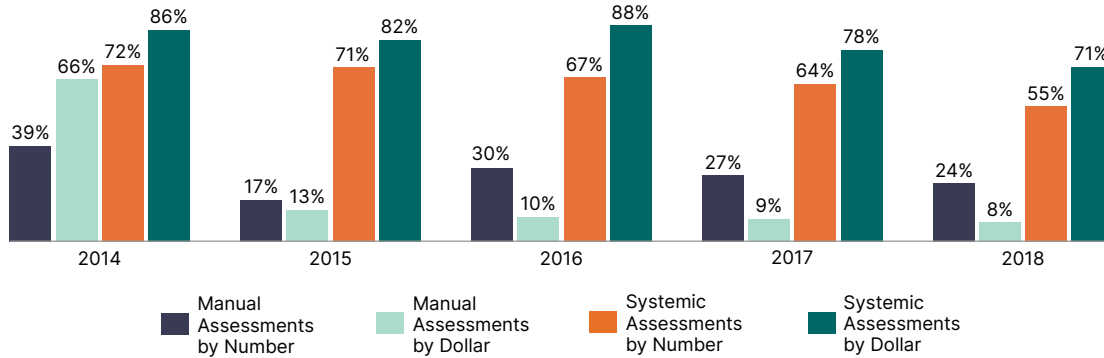
⁴⁷ Compliance Data Warehouse (CDW) Individual Master File (IMF) and Business Master File (BMF) data as of the end of fiscal year (FY) 2020.

⁴⁸ Figure 1.8.1 presents BMF data. Figure 1.8.2 presents a combination of data from BMF and IMF sources. IRS response to TAS information request (Oct. 8, 2020).

⁴⁹ IRS response to TAS information request (Oct. 8, 2020); CDW IMF and BMF data as of the end of FY 2020.

FIGURE 1.8.3⁵⁰

Abatement Rates: Manual Versus Systemic Assertions



As demonstrated in the above analysis, the abatement rates for penalties applied manually during exams are higher than they could be. However, the extent of systemically applied penalties that are later abated indicates a broken system. Taxpayers subject to the systemic penalty receive a letter in the mail informing them, generally for the first time, of a late return and that they must pay the assessed penalty.⁵¹ The IRS then offers various avenues of administrative relief, including reasonable cause abatements.⁵² When the IRS undertakes these reviews, it grants abatements at a startling rate, thus raising the inference that the reason for noncompliance was benign.

The IRS deserves credit for properly abating penalties that should not be enforced. It also has implemented some taxpayer-favorable measures, such as allowing an abatement of these penalties whenever a related IRC § 6651 penalty receives a first-time abatement.⁵³ However, the IRS is administering a systemic penalty regime that abates penalties at least 55 percent of the time and has a reversal rate of about 71 percent when measured in terms of dollars.⁵⁴ Notwithstanding the high number of eventual abatements, taxpayers can still experience a significantly adverse impact from the initial assessment. Taxpayers, many of whom are making good-faith efforts to comply with often-onerous U.S. information reporting regimes, are sometimes confronted with unexpected penalties that can be disproportionate and punitive. They can cause stress, create distractions, and cost legal fees to defend. Because these penalties are summarily assessed, taxpayers must depend on the IRS's benevolence and discretion as they seek administrative relief.⁵⁵ If either is in short supply,

50 IRS response to TAS information request (Oct. 8, 2020); CDW IMF and BMF data as of the end of FY 2020. Note, the percentages in this figure do not add up to 100 percent because each bar represents the individual abatement rate for a particular mode of assessment (manual or systemic) presented in terms of dollars abated and in terms of number of abatements.

51 IRM 20.1.9.3.2, Penalty Letters, Notice Letters, and Notices (Nov. 30, 2015).

52 IRS response to TAS information request (Oct. 1, 2020). For Form 5471, see IRM 20.1.9.3.5, Reasonable Cause (July 8, 2015), and Treas. Reg. 1.6038-2(k)(3); for Form 5472, see IRM 20.1.9.5.5, Reasonable Cause (July 8, 2015), and Reg. 1.6038A-4(b). See also IRM Exhibit 20.1.9-7, Sample CP 215 Notice (Nov. 30, 2015).

53 The IRS estimates that approximately 40 percent of the systemic abatements result from this circumstance, and another 25 percent of abatements are attributable to corrections from taxpayers or the IRS. IRS response to TAS information request (Oct. 1, 2020).

54 IRS response to TAS information request (Oct. 8, 2020). These numbers reflect data from CY 2018. Abatement rates generally increase as more time elapses from the assessment date.

55 Although the IRS points out that many of these penalties are abated in ways that often require little intervention from taxpayers, taxpayers find it far more desirable to avoid unnecessary penalties than to obtain relief later. IRS response to TAS information request (Oct. 1, 2020). For example, TAS knows from its own experience in advocating for taxpayers how difficult it can sometimes be to obtain a first-time abatement, even where such relief is governed by mechanical rules that should be easily applied.

taxpayers must pay the penalty to seek judicial review. Further, where the penalty amount is \$10,000, some taxpayers may reluctantly agree to the penalty rather than incur the accounting or legal fees to fight against it.

Systemic Application and Subsequent Abatement of the IRC §§ 6038 and 6038A Penalties Squanders IRS Resources and Risks Future Noncompliance by Taxpayers

Although the burden of these assessments falls most heavily on taxpayers, it also negatively affects the IRS itself. Systemic application of the penalties is easy, but the subsequent reversals represent a drain on IRS resources. Any time a taxpayer contests the penalties, they must be reviewed by an examiner.⁵⁶ If the penalties cannot be resolved at that level, then taxpayers can seek an independent pre-payment appeal. All these proceedings require individual attention from IRS personnel.⁵⁷ Over time these demands not only squander scarce IRS funds, but also necessitate the dedication of significant personnel hours. These hours could be more productively allocated elsewhere if the IRS implemented a narrowly tailored penalty system that accurately detected bad actors.

Instead, the current approach does little more than irritate taxpayers and paint the IRS in a bad light. Some taxpayers and practitioners have realized that if they do not attach these forms to a late return, they can avoid systemic assessment of the penalties. Such an approach is antithetical to good tax administration. The IRS's accuracy rate regarding these penalties would be significantly improved if it simply relied on the flip of a coin or the spin of a roulette wheel. This reality cannot help but breed irritation against the IRS and disrespect for the reliability of its procedures. Almost inevitably, this will generate additional noncompliance not only in the international information reporting area, but in other aspects of taxpayers' interactions with the IRS.⁵⁸ As the Internal Revenue Manual itself recognizes, "A wrong [penalty] decision, even though eventually corrected, has a negative impact on voluntary compliance."⁵⁹ It is imperative that the IRS get this right, both to facilitate good tax administration and to protect taxpayer rights.

CONCLUSION AND RECOMMENDATIONS

Beyond legal concerns, the current approach of systemically assessing the IRC §§ 6038 and 6038A penalties as summarily assessable harms taxpayers and is disadvantageous to the IRS.⁶⁰ The IRS should rethink this practice and provide a more effective system that is proportional and educational. Doing so would protect taxpayer rights, increase tax compliance, and preserve IRS resources. The IRS should discontinue its policy of treating the IRC §§ 6038 and 6038A penalties as assessable, as the IRC does not provide the authority for such actions.

The penalty regime could be improved in several ways, and TAS would partner with the IRS in exploring and formulating these best practices. The IRS could utilize systemically generated soft letters for late filed returns

⁵⁶ IRS response to TAS information request (Oct. 1, 2020).

⁵⁷ For example, according to the IRS, five to ten percent of abatements in this area are attributable to reasonable cause, which is an especially time-consuming way of providing relief. IRS response to TAS information request (Oct. 1, 2020).

⁵⁸ In a study of Schedule C filers, TAS found that when these taxpayers were subject to penalties that could reasonably be perceived as unfair — those assessed by default, abated, or appealed — they had lower levels of compliance in subsequent years. National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, at 1-14 (*Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*).

⁵⁹ IRM 20.1.1.3(4), Responsibilities (Nov. 21, 2017).

⁶⁰ These problems and many of the observations set forth below are equally applicable to other foreign information reporting penalties set forth in Chapter 61.

informing the taxpayer of the relevant penalty. These letters could educate taxpayers regarding applicable law, identify the missing or late information returns, and provide taxpayers an opportunity to comply with their filing requirements as a means of forestalling assertion of the penalty.⁶¹ Similarly, the IRS could provide a first-time abatement for all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, to educate taxpayers and streamline tax administration.⁶² These approaches would benefit all parties in that it would foster a better understanding of the law by taxpayers, facilitate information gathering, and substantially decrease the number of penalties asserted. Good faith taxpayers would have their rights protected, while the IRS would still receive the desired information. Likewise, both parties would be freed from the respective burdens generated by unnecessary penalties.

To protect taxpayer rights and reduce taxpayer burden, we strongly recommend that Congress amend the IRC to allow deficiency procedures for all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties. As one possibility, these IRC sections could be amended to add a cross-reference directing that the penalties be asserted in the same way as other IRC sections subject to deficiency procedures. This approach would allow taxpayers to contest these penalties before Tax Court judges familiar with tax law in a pre-payment judicial forum.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Stop erroneously assessing Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, and refer assessment and collection efforts to the Department of Justice when appropriate.
2. Send soft notices to taxpayers upon discovery of late-filed international information returns as a means of enhancing compliance and minimizing the number of penalties being asserted.
3. Extend eligibility for the first-time abatement to all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, regardless of whether the underlying return was filed late.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Expand deficiency procedures to cover Chapter 61, including the IRC §§ 6038 and 6038A penalties.⁶³

61 The IRS uses such letters in the case of the continuation penalties discussed above. It also sends mailings that it refers to as “soft letters” in similar circumstances. See, e.g., Letter 6290 relating to failure to report foreign accounts on Form 8938, Statement of Specified Foreign Financial Assets, or failure to file Form 8938. This latter group of letters, however, does not provide previously noncompliant taxpayers with a mechanism for avoiding application of penalties in the first instance.

62 IRM 20.1.1.3.3.2.1, First Time Abate (FTA) (Nov. 21, 2017); IRM 20.1.9.3.5(3), Reasonable Cause (July 7, 2015); 20.1.9.5.5(3), Reasonable Cause (July 8, 2015). The first-time abatement is applied to the IRC §§ 6038 and 6038A penalties when it is applied to the underlying return, but it could also be applied more broadly without reference to the underlying return.

63 See Legislative Recommendation: *Repeal Flora and Expand the Tax Court’s Jurisdiction, Giving Taxpayers Who Cannot Pay The Same Access to Judicial Review as Those Who Can*, *infra*.

IRS COMMENTS

While the U.S. income tax system is based on self-disclosure and self-assessment by taxpayers, there are inherent challenges with obtaining and verifying taxpayer information in the international context. Accordingly, Congress enacted statutory penalties in Internal Revenue Code (IRC) Chapter 61 for failure to timely file information returns relating to cross-border business activities. These information returns relate to both foreign taxpayers' activities and investments in the U.S. and U.S. taxpayers' activities and investments abroad. The IRS also utilizes the information in these annual returns to monitor and enforce tax compliance for other tax years and for other taxpayers (such as other shareholders or partners). The Treasury Inspector General for Tax Administration (TIGTA) recommended that the IRS consider systemic assessment of these penalties in 2006. After studying the issue further, the IRS began systemic assessment of some international information return penalties in 2009, and TIGTA evaluated IRS progress with implementing systemic assessment in 2013.

We disagree with the fundamental premise of the MSP that the IRS lacks legal authority to assess Chapter 61 penalties. The IRC provides two methods to assess penalties, either (1) pursuant to deficiency procedures or (2) as assessable penalties, that is, those penalties not subject to deficiency procedures. Penalties under Chapter 61, including IRC § 6038 and § 6038A, are meant to enforce reporting requirements and are not based on the tax shown on a return or the existence of a deficiency. As such, there is no legal basis for us to apply deficiency procedures to these penalties and the IRS has consistently treated Chapter 61 penalties as assessable.

IRC § 6201(a) provides the IRS authority to assess assessable penalties, that is, those penalties not subject to deficiency procedures. Neither that section nor the IRC in general limits assessable penalties to those described under IRC Subchapter 68B. To read the "Assessable Penalties" heading of that subchapter as the exclusive location of assessable penalties would be contrary to IRC § 7806, which expressly prohibits giving any legal effect to descriptive matter relating to the content of the IRC. Accordingly, there is authority to treat these penalties as immediately assessable, and the IRS is not required to first request that the Department of Justice file a suit to obtain a judgement for the penalties before collecting them.

The assessment of these penalties at filing, much like with other assessable penalties, provides the most equitable treatment of enforcement as it doesn't require the IRS to apply case selection criteria for examination. Meaning, all corporations and partnerships are held to the same standards of the law. The IRS recognizes the abatement rates for these systemically assessed penalties on corporations and partnerships are relatively high. We look forward to partnering with TAS to explore whether there are more efficient methods of administering these penalties while maintaining the equitable treatment afforded through systemic assessments.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS agrees with the IRS regarding the importance of international information returns for tax administration and voluntary compliance. We understand that systemic assessment is sometimes the best and most equitable way to impose certain penalties for the IRS — but such is not always the case for taxpayers. When the majority of assessed penalties is ultimately abated, however, this indicates that other, more effective and efficient ways of seeking taxpayer compliance should be explored.

TAS looks forward to collaborating with the IRS to develop and implement programs and policies that drive compliance through communication and education. Such programs could include the issuance of soft letters prior to the assessment of penalties so that taxpayers have the opportunity to avoid penalties when they come into compliance. Also, if the IRS implemented a systemic first-time abatement for these penalties, this would represent a more streamlined and comprehensive version of what is already occurring as a practical matter for many systemically assessed IRC §§ 6038 and 6038A penalties. Both the soft letters and the systemic first-time abatement we recommend would present a means of generating compliance in a manner that preserves resources and reduces burdens for taxpayers and the IRS.

From a broader perspective, the National Taxpayer Advocate is unpersuaded by the IRS's legal argument that it has the right to assess these penalties. TAS concurs with the IRS that the IRC does not provide authority for the use of deficiency procedures with respect to Chapter 61 penalties. Nevertheless, the IRS has not provided any unambiguous statutory language or on-point judicial rulings based on which these penalties can be assessed.

IRC § 6201 simply states that assessable penalties can be assessed and the cases cited by the IRS only decide that penalties not subject to deficiency procedures do not require deficiency procedures.⁶⁴ These circumstances, either individually or in combination, cannot provide a basis for determining that Chapter 61 penalties are assessable in the first instance. The IRS primarily relies on the circular logic that just because the IRS cannot apply deficiency procedures, it therefore, by definition, must be able to resort to summary assessments. These are not either/or propositions, and the authority to assess is in no way conferred by the unavailability of deficiency procedures. Based on the National Taxpayer Advocate's reading of the law, and that of some commentators, the IRS simply has no ability to assess Chapter 61 penalties under the IRC as currently codified. This unfortunate and likely unintended situation is why assessment and collection of Chapter 61 penalties should be referred to the Department of Justice.

Although under current law, deficiency procedures do not apply to Chapter 61 penalties, we strongly recommend that Congress provide taxpayers with a statutory notice of deficiency giving them the opportunity to petition the U.S. Tax Court for reconsideration of the penalty. All taxpayers should have the chance to obtain judicial review of adverse IRS determinations. The IRS's position is that Chapter 61 penalties are assessable and not subject to judicial review unless a taxpayer is wealthy

64 See *Wheaton v. U.S.*, 888 F. Supp. 622, 626 (D.N.J. 1995); *Heydemann v. United States*, 2008 WL 2502188 (D. Md. Apr. 23, 2008).

enough to first fully pay the penalties assessed and proceed to U.S. District Court or the U.S. Court of Federal Claims.

Long-term reliance on the Department of Justice for such enforcement is not an efficient and taxpayer-favorable long-term outcome. TAS welcomes the prospect of working with the IRS and Congress to seek legislation making Chapter 61 penalties subject to deficiency procedures. In the meantime, we look forward to collaborating with the IRS in pursuing our administrative recommendations that would yield a fair and just tax system for both taxpayers and the IRS.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Stop erroneously assessing Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, and refer assessment and collection efforts to the Department of Justice when appropriate.
2. Send soft notices to taxpayers upon discovery of late-filed international information returns as a means of enhancing compliance and minimizing the number of penalties being asserted.
3. Extend eligibility for the first-time abatement to all Chapter 61 penalties, including the IRC §§ 6038 and 6038A penalties, regardless of whether the underlying return was filed late.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Expand deficiency procedures to cover Chapter 61, including the IRC §§ 6038 and 6038A penalties.⁶⁵

⁶⁵ See Legislative Recommendation: *Repeal Flora and Expand the Tax Court's Jurisdiction, Giving Taxpayers Who Cannot Pay The Same Access to Judicial Review as Those Who Can*, *infra*.

The IRS Processes Most Amended Returns Timely But Some Linger for Months, Generating Over a Million Calls That the IRS Cannot Answer and Thousands of TAS Cases Each Year

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Eric Hylton, Commissioner, Small Business/Self-Employed Division

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 a Fair and Just Tax System*

EXPLANATION OF THE PROBLEM

The IRS leads taxpayers to expect that it will process their amended returns within 16 weeks. While this is true for most amended returns, a subset takes longer to process or hits snags that the IRS does not explain very well. The IRS does not disclose to taxpayers that if their amended returns are selected for audit, processing will likely take several more months and sometimes the IRS will simply stop processing them. In these situations, the Where's My Amended Return tool, which is not available to business taxpayers, is of little help because it has only three statuses (received, adjusted, or completed) and does not explain where an amended return is in the processing pipeline or estimate when processing will be complete.

In fiscal year (FY) 2019, the IRS's failure to set clear expectations and keep taxpayers informed of the status of their amended returns generated over 2.2 million calls, 1.4 million of which it was able to answer, and resulted in over 9,400 TAS cases.² Many taxpayers file an amended return to request a refund of a tax overpayment, but the IRS also has the statutory authority to consider a taxpayer's request to reduce an assessed tax that remains unpaid, *i.e.*, a request for abatement.³ The IRS has exercised that authority and established procedures for processing amended returns requesting an abatement.⁴ However, it sometimes refuses to consider the claim and issues a form letter without an adequate explanation to the taxpayer. The form letter

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 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, FY 2019; Taxpayer Advocate Management Information System (TAMIS), case receipts with Primary Core Issue Code (PCIC) 330 (amended return processing), FY 2019.

3 IRC § 6404(a) authorizes the IRS, among other things, to abate the unpaid portion of the assessment of any tax which "is excessive in amount," meaning "in excess of the correct tax liability." Treas. Reg. § 301.6404-1(a).

4 Internal Revenue Manual (IRM) 25.6.1.10.1(2), (3), Requests for Abatement (Sept. 20, 2016). See also IRM 1.2.1.4.15, Policy Statement 3-15 (Formerly P-2-89), Reconsideration of an Unpaid Assessment (Sept. 20, 1999) (relating to requests for abatement in the context of audit reconsiderations).

simply states the law does not allow a claim to reduce tax owed and instructs the taxpayer to pay the tax followed by another amended return.

ANALYSIS

An amended return is not defined in the IRC, and taxpayers are not required to file an amended return.⁵ The Supreme Court has held an amended return is a creature of administrative origin and grace.⁶ In practice, taxpayers regularly file amended returns to correct an error on a previously filed return, and the IRS has adopted specific procedures for handling amended returns.⁷ Most individual taxpayers receive a refund after they file an amended return. The IRS's announced timeframe for processing individuals' amended returns is 16 weeks.⁸ The IRS advises that it often takes three to four months to process corporations' amended returns.⁹

Taxpayers who file amended income tax returns include:

- Individuals filing Form 1040X, Amended U.S. Individual Income Tax Return;¹⁰
- Corporations filing Form 1120X, Amended U.S. Corporation Income Tax Return, or other Form 1120-series amended returns such as Form 1120-S, U.S. Income Tax Return for an S Corporation, and checking a box on the form to indicate that the return is an amended return;
- Partnerships filing Form 1065X, Amended Return or Administrative Adjustment Request (AAR), or Form 1065, U.S. Return of Partnership Income, and checking a box on the form to indicate that the return is an amended return; and
- Estates and trusts filing Form 1041, U.S. Income Tax Return for Estates and Trusts, and checking a box on the form to indicate that the return is an amended return.

In distinguishing between a request for abatement (*i.e.*, a request for a “decrease in the tax that was assessed”) and a request for refund (*i.e.*, “a request for the return of a paid assessment”), the IRS notes that “[a]lthough IRC Section 6404(b) provides that taxpayers have no right to file a claim for abatement of income, estate, or gift tax, the Service will consider a taxpayer’s request for an abatement of such taxes where the taxpayer files an amended return with the IRS that shows a decrease in the tax that was assessed.”¹¹

Various codes on IRS computer systems show the receipt of an amended return and its movement through different IRS functions as it is processed.¹² The codes do not show the correction the taxpayer *sought* on the

5 There is no statutory provision that authorizes the filing of amended returns or requires the IRS to accept them, although the IRS has discretion to accept them. See *Hillsboro National Bank v. Comm’r*, 460 U.S. 370, 378, n. 10 (1983).

6 *Badaracco v. Comm’r*, 464 U.S. 386, 393 (1984) citing *Hillsboro National Bank v. Comm’r*, 460 U.S. 370 (1983).

7 The IRS’s procedures for accepting and processing amended returns are described in various places throughout the IRM. See, e.g., IRM 21.5.2, Account Resolution, Adjustments Guidelines (Oct. 1, 2020); IRM 21.6.7, Individual Tax Returns, Adjusting Individual Tax Accounts (Oct. 1, 2020); and IRM 3.11.217, Returns and Documents Analysis, Form 1120-S Corporation Income Tax Returns (Jan. 1, 2020).

8 See IRS, Form 1040X, Amended U.S. Individual Income Tax Return, Frequently Asked Questions, <https://www.irs.gov/filing/amended-return-frequently-asked-questions> (last visited Dec. 11, 2020) (noting that processing time is 16 weeks whether the amended return is filed electronically or not).

9 IRS Form 1120X, Amended U.S. Corporation Income Tax Return at 3 (Nov. 2016).

10 IRS Compliance Data Warehouse (CDW), Individual Master File (IMF) Transaction History File, Business Master File (BMF) Transaction History File (Oct. 1, 2020).

11 IRM 25.6.1.10.1(2), (3), Requests for Abatement (Sept. 20, 2016). Taxpayers may claim an abatement of tax other than income, estate, or gift tax by filing IRS Form 843, Claim For Refund and Request for Abatement. See Treas. Reg. § 301.6404-1(c).

12 A description of the methodology used to obtain counts and processing times is found in Appendix A, following this Most Serious Problem.

amended return, but they do show what adjustment *was made* to a taxpayer's account after an amended return was filed. The outcomes can be grouped into the following four categories:

- Category 1: The IRS agreed the taxpayer made an overpayment of tax and issued a refund to the taxpayer (or offset the overpayment to the taxpayer's tax liability for a different year);
- Category 2: The IRS abated some or all the tax, *i.e.*, the IRS adjusted its records to show the taxpayer owed less tax than the amount shown on the original return;
- Category 3: The IRS adjusted its records to show the taxpayer owed more tax than the amount shown on the original return; or
- Category 4: The IRS did not make any change to its records to reflect information shown on the amended return. This category includes cases in which the IRS rejected or declined to consider the change proposed on the amended return, and where the IRS disallowed refunds requested on an amended return.

Figure 1.9.1 shows an estimate of the number of amended returns the IRS processed in FYs 2017-2019 by the type of filer and the ensuing adjustment to the taxpayer's account, according to the categories described above.

FIGURE 1.9.1, Estimated Number of Amended Returns Processed, FYs 2017-2019, by Type of Form and Category of Outcome¹³

Fiscal Year	Form	Category 1 Refund	Category 2 Decrease in Tax	Category 3 Increase in Tax	Category 4 No Change	Total
FY 2017	Form 1040X	1,739,302	91,591	694,823	590,039	3,115,755
	Form 1120X	18,352	1,637	3,836	161,470	185,295
	Form 1065X	905	0	0	81,130	82,035
	Form 1041	12,016	1,091	4,869	26,230	44,206
FY 2018	Form 1040X	1,889,628	98,922	712,322	678,877	3,379,749
	Form 1120X	17,256	1,550	3,564	162,482	184,852
	Form 1065X	566	0	0	82,889	83,455
	Form 1041	11,281	1,056	4,368	28,210	44,915
FY 2019	Form 1040X	1,570,199	98,010	652,698	633,701	2,954,608
	Form 1120X	15,291	1,426	3,464	170,366	190,547
	Form 1065X	427	0	0	92,171	92,598
	Form 1041	10,887	1,028	4,297	42,119	58,331

¹³ CDW IMF and BMF Transaction History Tables, cycle post 202039. To protect taxpayer confidentiality, the number of cases is shown as zero whenever the actual number of cases was less than ten.

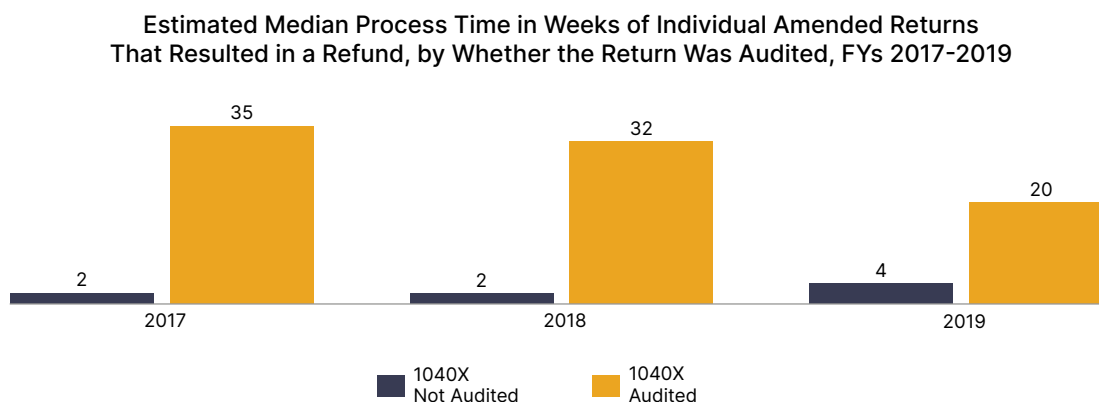
As the “Total” column in Figure 1.9.1 shows, individual taxpayers file the most amended returns; corporations file the next largest number of amended returns.¹⁴ In terms of outcome, most individual taxpayers belong to Category 1 (*i.e.*, the taxpayer was issued a refund, or the overpayment was offset to a different year’s tax liability). Most business taxpayers belong to Category 4 (*i.e.*, no change). The Category 4 “no change” outcome is the second most likely outcome for individual taxpayers. Thus, this discussion focuses on the two largest groups of taxpayers — individuals and corporations — and Categories 1 and 4 outcomes.¹⁵

Estimated median processing time of amended returns varied depending on whether the IRS examined, or audited, the amended return, as discussed below.

Examinations Add Months to Median Processing Time

As Figure 1.9.2 shows, the estimated overall median processing time for *individual* amended returns that resulted in a refund was never more than four weeks overall when the return was not audited. (Estimated median processing time for these amended returns doubled from two weeks to four weeks from FYs 2017-2019 but was well within the announced 16-week timeframe.) In FY 2017, estimated median processing time for these *audited* returns stretched up to 35 weeks; by FY 2019, it had decreased to 20 weeks, a significant improvement compared to FY 2017, but still 25 percent longer than taxpayers were told to expect.¹⁶

FIGURE 1.9.2¹⁷



14 Due to the COVID-19 pandemic, the IRS closed processing centers, imposed social distancing restrictions upon reopening, and prioritized the processing of current year (2019) returns; it therefore processed significantly fewer amended returns in FY 2020. For example, the IRS processed only 1,704,560 Forms 1040X and 120,573 Forms 1120X in FY 2020, a decline of 42 percent and 37 percent, respectively, compared to the 2,954,608 Forms 1040X and 190,547 Forms 1120X shown on Figure 1.9.1 as processed in FY 2019. CDW, IMF and BMF Transaction History Tables, cycle post 202039.

15 As Figure 1.9.1 shows, in FY 2019, the IRS processed 2,203,900 Forms 1040X that were in Category 1 or 4. In contrast, in FY 2020 the IRS processed only 1,424,249 of these amended returns, a decline of 35 percent. In FY 2019, the IRS processed 185,657 Forms 1120X that were in Category 1 or 4, compared to 117,296 in FY 2020, a decline of 27 percent.

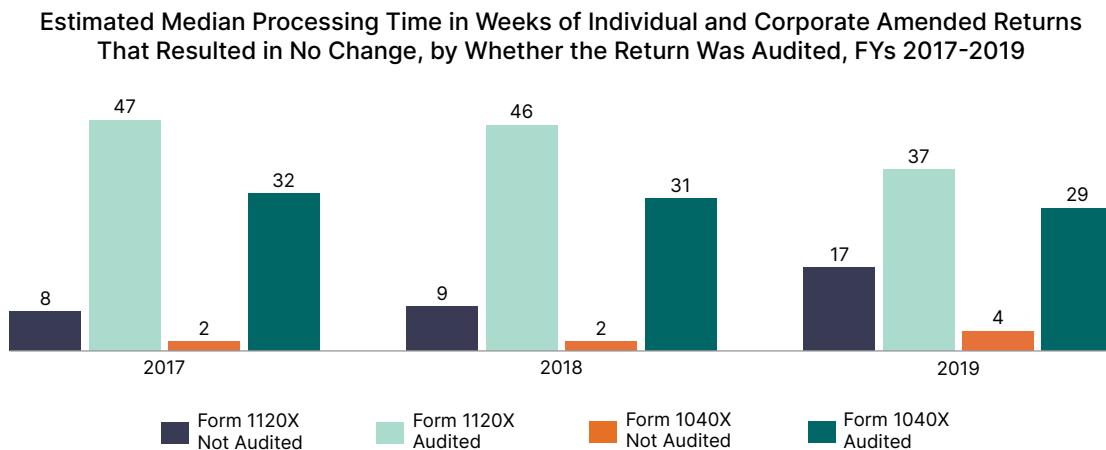
16 The maximum processing time for one of these amended returns in FYs 2017-2019 was 97 weeks, *i.e.*, the taxpayer waited almost two years to receive the requested refund.

17 CDW, IMF and BMF Transaction History Tables, Individual Return Transaction File (IRTF) F1040, Business Return Transaction File (BRTF) F1120, Audit Information Management System (AIMS) Closed Case File, cycle post 202039.

For many individual taxpayers and most business taxpayers, amended returns result in no change to their tax liability. Figure 1.9.3 shows the estimated median processing times for these amended returns filed by individuals *and* by corporations according to whether the return was audited. While individuals' *unaudited* returns in this category were processed in two to four weeks, estimated median processing time for corporations' *unaudited* amended returns increased from eight to 17 weeks in FYs 2017-2019.

For *audited* individual and corporate amended returns that resulted in no change, estimated median processing time in FY 2017 was 32 weeks for individuals and 47 weeks for corporations. By FY 2019, these estimated median processing times were 29 weeks for individuals and 37 weeks for corporations.¹⁸

FIGURE 1.9.3¹⁹



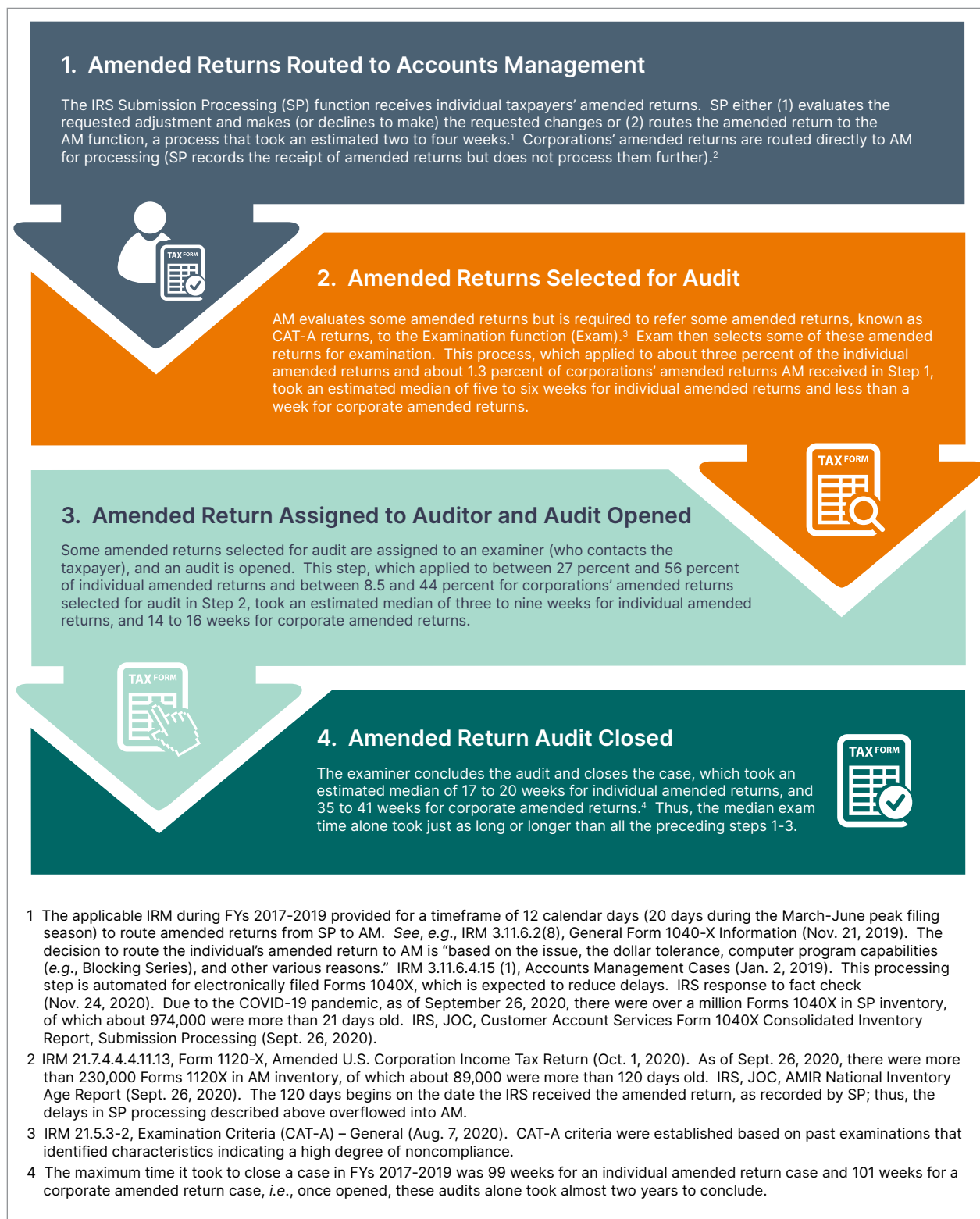
Whether a taxpayer files an amended return on paper or electronically, the IRS processes it manually.²⁰ In terms of outcomes, most taxpayers belong to Category 1 or Category 4 (*i.e.*, the taxpayer either received a refund or no change resulted from the amended return). The processing steps generally followed by *audited* amended returns filed by individuals and corporations with estimated processing timeframes for Category 1 and Category 4 cases in FYs 2017-2019 are summarized in Figure 1.9.4.²¹

18 The maximum processing time for these amended returns in FYs 2017-2019 was 100 weeks, occurring in four individual amended return cases and four corporate amended return cases, *i.e.*, these taxpayers waited almost two years for the IRS to take action such as rejecting or declining to consider the change proposed on the amended return or disallowing a refund requested on an amended return.

19 CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

20 IRS response to TAS information request (Oct. 6, 2020). Most amended returns were filed on paper. Electronic filing became available to individuals in 2020, which allows automation of part of the process as described below. IRS, IR-2020-182, Now available: IRS Form 1040-X Electronic Filing; Major IRS Milestone Helps Taxpayers Correct Tax Returns With Fewer Errors, Speeds Processing (Aug. 17, 2020). Business taxpayers have long been able to file amended returns electronically (and some are *required* to file electronically, see, *e.g.*, IRC § 6511(e) and Treas. Reg. § 301.6011-5(a), (d)(4) & (f), effective for taxable years ending on or after Dec. 31, 2006, obliging corporations with assets of \$10 million or more that are required to file at least 250 returns each calendar year to file original and amended income tax returns electronically), but most Forms 1120X are not filed electronically. In FYs 2017, 2018, and 2019 respectively, 15,092, 15,552, and 16,707 Forms 1120X were filed electronically. IRS response to TAS information request (Oct. 6, 2020).

21 See Appendix A following this Most Serious Problem for additional data about processing times.

FIGURE 1.9.4, Processing Steps for Audited Amended Returns, FYs 2017-2019²²

22 CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

DELAYED REFUNDS CAUSE THE GOVERNMENT TO INCUR INTEREST CHARGES

The government is required to pay interest on the overpayments taxpayers claim, and the interest generally begins to accrue 45 days after the taxpayer requests a refund from the IRS.²³ Thus, delays in processing amended returns on which taxpayers seek refunds contribute to overpayment interest.²⁴

Millions of Taxpayers Call the IRS Seeking Information About Their Amended Returns

Since 2013, the IRS has provided a “Where’s My Amended Return” tool.²⁵ The tool is accessible online at IRS.gov or by calling a toll-free number for an automated phone system, referred to as the amended return hotline. The tool allows taxpayers to ascertain whether the IRS received their amended return, whether the IRS made any adjustment to their accounts, and whether processing of the amended return is complete. However, beyond these three statuses (received, adjusted, or completed), the tool does not explain where an amended return is in the processing pipeline or estimate when processing will be complete.²⁶ Moreover, the application is not available for business taxpayers or for taxpayers who file an amended return with a foreign address, among others.²⁷ In FY 2019, taxpayers accessed the tool online through IRS.gov more than five million times and called the amended return hotline more than 2.2 million times; 1.4 million of these calls were answered.²⁸

Taxpayers Seek Assistance From TAS in Resolving Amended Return Issues

In each of FYs 2017-2019, the fourth most common reason taxpayers came to TAS was for assistance in resolving problems caused by amended return processing.²⁹ Past analysis of TAS cases with this issue showed that the underlying factor in these cases is that the processing period greatly exceeded the IRS’s announced

23 IRC § 6611(e)(1).

24 Taxpayers are required to make a claim of refund from the IRS before they bring a refund suit. IRC § 7422(a). If the IRS disallows the claim of refund, or if the claim goes unanswered for six months, the taxpayer may seek a tax refund by paying the tax and bringing suit in a U.S. district court or the U.S. Court of Federal Claims within two years from the disallowance. IRC § 6532(a); 28 U.S.C. § 1346(a)(1); *Flora v. United States*, 362 U.S. 145 (1960). If the IRS does not disallow the claim, the IRS’s position is that a taxpayer may file a refund suit any time after the initial six-month period provided in IRC § 6532(a). See IRS Chief Counsel Notice CC-2012-012, Period of Limitations for Refund Suits Absent Waiver or Issuance of a Notice of Claim Disallowance (June 1, 2012). See also IRM 34.5.2.2, Pre-Litigation Activity (Dec. 21, 2012), noting that “[i]f the taxpayer does not waive a notice of claim disallowance, and the Service has not issued such notice, then the taxpayer may file a refund suit at any time after six months from the filing of the administrative claim.” Thus, for example, a taxpayer whose timely administrative refund claim remains unaddressed for six months could bring a refund suit years later, and if successful would be entitled to interest on the overpayment for those intervening years.

25 IRM 21.2.1.59, Where’s My Amended Return (WMAR) (Mar. 30, 2016).

26 IRS, Form 1040X, Amended U.S. Individual Income Tax Return, Frequently Asked Questions, <https://www.irs.gov/filing/amended-return-frequently-asked-questions> (last visited Dec. 11, 2020).

27 IRM 21.2.1.59, Where’s My Amended Return (WMAR) (Mar. 30, 2016). The application is also not available with respect to claims for abatement filed on Form 843, Claim for Refund and Request for Abatement, applications and claims for carrybacks, Forms 1040 with “amended” or “correct” written or stamped on the return, or amended returns routed/received by specialized functions (e.g., Examination, Bankruptcy, Integrity Verification, etc.) outside processing operations.

28 IRS response to TAS information request (Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration* (Oct. 2, 2020) (reporting that in FY 2019 there were 5.34 million sessions using the application); IRS, IRS.gov Usage Reports, Top Content Pages, for URL www.irs.gov/filing/wheres-my-amended-return, Jan.-Dec. 2019; IRS, JOC, Snapshot Reports: Enterprise Snapshot (FY 2019), showing that 2,209,447 net attempts to call the amended return hotline (excluding callers who dialed this number, but should have dialed another number and including callers who dialed another number but should have dialed this number), of which 536,490 were automatically answered and 907,793 were answered by assistors. See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Difficulty Reaching IRS Representatives Due to Outdated Information Technology and Insufficient Staffing*, *supra*, for the National Taxpayer Advocate’s recommendations for improving telephone service to taxpayers.

29 For FY 2019, there were 9,427 new TAS cases in which the PCIC was 330, IRS delays in processing amended returns. The PCIC defines the most significant policy, procedure, or issue within the IRS that generated the TAS case. IRM 13.1.16.18.1, Taxpayer Issue Code (Aug. 14, 2020). There were 7,713 such cases in FY 2017 and 8,767 such cases in FY 2018. TAMIS case receipts with PCIC 330 (amended return processing).

timeframe.³⁰ As discussed above, processing time is considerably lengthened when taxpayers' amended returns are audited. A review of TAS cases that were closed in FY 2019, discussed below, suggests that taxpayers encounter an additional difficulty: the IRS may refuse to consider their amended returns on which they request an abatement of tax.

In Letter 916C, the IRS Declines to Consider Amended Returns Requesting Abatement of Tax

The IRS has the statutory authority to abate income taxes; it has exercised that authority and has adopted procedures for processing amended returns that request abatement.³¹ As Figure 1.9.1 shows, the IRS abated taxes in about 100,000 cases each year in FYs 2017-2019 (Category 2 cases). Yet, in some situations the IRS refuses to consider these claims.

For some amended returns requesting an abatement of tax the IRS sends the taxpayer Letter 916C, Claim Incomplete for Processing; No Consideration.³² Letter 916C is a blank template, with the IRS employee developing the content of the letter by selecting among pre-written paragraphs including Paragraph M.³³

Paragraph M of Letter 916C says:

The law allows you to file a claim for a refund of taxes you have paid. However, the law doesn't allow you to file a claim to reduce the tax you owe. If you disagree with the amount of tax you owe, you can appeal our decision. To appeal our decision, you must:

- Pay the tax you owe.
- File an amended return with documentation that supports a reduction in the tax you owe.
- File your claim for refund within 3 years from the date you filed your return or 2 years from the date you paid your tax, whichever is later.³⁴

The reference to the option to “appeal our decision” in paragraph M does not refer to the right to an administrative appeal, which is not available in tax abatement cases, but rather to the right to pay the assessed tax, request a refund from the IRS (which may include an administrative appeal), and if unsuccessful, bring a refund suit in a U.S. district court or the U.S. Court of Federal Claims.³⁵ While taxpayers are required to pay the assessed tax before they may bring a refund suit in federal court, there is no requirement that they pay an assessed tax before they seek abatement of some or all of the tax from the IRS.³⁶

30 TAS Report: The PCIC 330 Amended Return Study (Sept. 25, 2007), on file with TAS.

31 IRC § 6404(a); IRM 25.6.1.10.1, Requests for Abatement (Sept. 20, 2016); IRM 25.6.1.10.1.1(3), Abatement Authority (Nov. 18, 2011). See also IRM 1.2.1.4.15, Policy Statement 3-15 (Formerly P-2-89), Reconsideration of an Unpaid Assessment (Sept. 20, 1999).

32 IRM 21.5.3.4.6.3, No Consideration Procedures (July 21, 2020), noting that **Letter must advise the taxpayer why the claim is not being considered.** (Emphasis in original.)

33 IRM 21.5.3.4.6 (2), No Consideration and Disallowance of Claims and Amended Returns (Oct. 1, 2020).

34 Letter 916C was revised in 2020 and the quoted text is now found in Paragraph N. IRM 21.5.3.4.6, No Consideration and Disallowance of Claims and Amended Returns (Oct. 1, 2020) has been updated to replace the reference to Paragraph M with a reference to Paragraph N. All the Letters 916C in the TAS cases that contained Paragraph M were issued when the content of Paragraph M was as quoted above.

35 If the amended return claimed a refund instead of an abatement of tax, and the IRS decides to disallow the claim, it issues Letter 105C, Claim Disallowed or Letter 106C, Claim Partially Disallowed. IRM 21.5.3.4.6 (2), No Consideration and Disallowance of Claims and Amended Returns (Oct. 1, 2020); IRM 21.5.3.4.6.1, Disallowance and Partial Disallowance Procedures (Oct. 1, 2020). A taxpayer may request an administrative appeal of the disallowance, and if unsuccessful may bring a refund suit in a U.S. district court or the U.S. Court of Federal Claims. The two-year period for bringing a refund suit under IRC § 6532(a) is not suspended while the taxpayer seeks administrative review of the disallowance. Treas. Reg. § 301.6532-1(d).

36 As noted above, taxpayers must generally pay the assessed tax before they may bring a refund suit. *Flora v. United States*, 362 U.S. 145 (1960).

The IRS justifies including Paragraph M in Letter 916C when requests for abatement do not contain adequate explanation or documentation by affirming that:

This procedure was established to provide a courtesy to the taxpayers, to allow AM CSR's [Customer Service Representatives] to consider a claim, even though the taxpayer may not have paid the tax they owe. Instead of outright denying the claim, AM CSR's will review the claim in full and determine if it is fully processable and contains all the necessary supporting documentation.³⁷

The IRS also notes: "[t]hat is why in IRM 21.5.3.4.6(3), we advise our CSR's not to deny claims based solely on the nonpayment of tax, rather to consider the claims if they contain all of the necessary documentation."

It appears the IRS considers requests for tax abatement, but only if the request is submitted with adequate explanation and documentation. When the request is incomplete, rather than asking taxpayers to provide the missing information, taxpayers are told that "the law doesn't allow you to file a claim to reduce the tax you owe."³⁸ This practice is unacceptable. The IRS should contact the taxpayer and provide a reasonable period of time to submit documentation in support of the request for abatement.

Each Year, TAS's Inventory Includes Abatement Requests the IRS Did Not Consider

In FY 2019, TAS closed 9,602 cases in which the primary issue was IRS delays in processing amended returns.³⁹ Of these, there were 240 "no consideration" cases in which the taxpayer, after filing an amended income tax return, was issued Letter 916C that was viewable on IRS databases.⁴⁰ Even though these cases comprise a small portion (three percent) of TAS cases involving delays in processing amended returns, they demonstrate inconsistencies in the IRS's treatment of amended returns.

Of the 240 cases, in 52 cases the taxpayer sought an abatement of tax rather than a refund. In 22 of these 52 cases (42 percent), Letter 916C informed the taxpayer that the law does not allow claims for abatements. Either Paragraph M was selected (18 cases) or a fill-in paragraph contained the same information (four cases).⁴¹ In all 22 cases except one, this was the only reason given for not considering the claim (*i.e.*, in only one case was the taxpayer advised that the supporting information was not complete).

CONCLUSION AND RECOMMENDATIONS

Most amended returns filed by individuals result in a refund, and the IRS usually processes these amended returns within its announced timeframe of 16 weeks, although auditing these returns increased processing time to a median of 20 weeks in FY 2019. Amended returns filed by individuals and corporations often do

³⁷ IRS response to TAS information request (Oct. 6, 2020).

³⁸ In contrast, when agents in the field audit an amended return, the examiner is instructed that if the taxpayer fails to appear for an interview or to provide substantiation, to provide the taxpayer with the following explanation: "We are disallowing your request for abatement in full because we did not receive a response to our request for supporting information." IRM 4.10.11.3.2(6), Requests for Abatement (Sept. 4, 2020).

³⁹ TAMIS closed cases with PCIC 330 (amended return processing) FY 2019.

⁴⁰ TAMIS cases closed in FY 2019 where a word search of the TAMIS history contained "916C" or "no consider" or "no-consider," excluding cases in which the taxpayer filed the amended return to resolve issues that IRS fraud filters identified when processing the original return (these amended returns were not filed to adjust a tax liability or claim a refund). The amended returns were filed by individual taxpayers in 189 cases and by an estate or trust in five cases.

⁴¹ In eight of the 22 cases, Exam instructed AM to select Paragraph M or include this information in the fill-in paragraph.

not result in any change in liability. When they are not audited, these amended returns are usually processed timely (within a median time of four weeks for individuals and 17 weeks for corporations in FY 2019). When these amended returns are audited, processing times increase significantly, reaching an estimated median of 29 weeks for individuals and 37 weeks for corporations in FY 2019; these taxpayers wait seven or eight months to learn, *e.g.*, that their claimed refund or request for tax abatement was denied. The main driver of increased processing times for audited amended returns is the time it takes to conduct the audit.

The IRS has the authority to abate income taxes. It has exercised that authority and adopted procedures for considering requests for tax abatement submitted on an amended return. About 100,000 amended returns result in tax abatement each year. However, a review of TAS cases shows that when the IRS refuses to consider requests for tax abatement, it frequently cites as the reason for its refusal that the law doesn't allow taxpayers to file a claim to reduce the tax they owe. That response is misleading and undermines taxpayers' *rights to be informed and to pay no more than the correct amount of tax.*

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Change its procedures by:
 - a. Revising the IRM to provide that if a request for tax abatement is incomplete, the employee should solicit the necessary documentation from the taxpayer, and if the documentation is not forthcoming or is insufficient, the employee should deny the request, explain the reason for the denial, and explain the different procedures that apply to requests for tax abatement and requests for refund;
 - b. If the IRS determines the taxpayer is not entitled to an abatement, issuing a 30-day letter providing taxpayers the right to file a protest with the Independent Office of Appeals⁴² for abatement of tax and updating and clarifying the IRM's No Immediate Tax Consequence provisions by referencing abatement cases;
 - c. Removing any selectable paragraph in Letter 916C that states the law does not allow taxpayers to file a claim to reduce the tax they owe or appears to advise taxpayers that they cannot seek an abatement of tax without first paying the amount of tax already assessed (Paragraph N in the current version of Letter 916C); and
 - d. Revising the IRM to instruct employees not to use a fill-in paragraph in Letter 916C to state the law does not allow taxpayers to file a claim to reduce the tax they owe or to inform taxpayers they cannot seek an abatement of tax without first paying the amount of tax already assessed.
2. Identify and address the cause of lengthy examination times for amended returns.
3. Identify and address the cause of the increase in processing time for corporations' unaudited amended returns.
4. Add additional status updates to the "Where's My Amended Return" tool to allow taxpayers to see when the IRS selects their amended return for audit, when it assigns the audit to an examiner, and what an estimated completed processing time is based on the return's current status.

42 See IRM 8.1.1.3.2, No Immediate Tax Consequence Cases (Oct. 1, 2016).

IRS COMMENTS

The IRS is committed to processing amended returns accurately and efficiently. On August 17, 2020, the IRS began receiving electronic Forms 1040X, Amended U.S. Individual Income Tax Return, which has been an important goal for the IRS and our industry partners for many years. Electronically filing a Form 1040X will reduce errors and decrease processing time. As of November 21, 2020, over 144,000 electronically filed amended returns have been accepted from 18 industry partners. Future upgrades will allow taxpayers to file an electronic amended return for the current and two prior years. And, although the IRS has been converting more complex paper amended returns into electronic Correspondence Imaging System (CIS) cases for years, we initiated a pilot process in October 2020 to convert less complex paper amended returns to CIS cases. If the pilot is successful streamlining our ability to work and resolve these cases, we plan to implement the process Servicewide.

We are making progress in reducing the Business Masterfile (BMF) amended return inventory that has increased due to the lapse in appropriations in 2019 and office closures due to COVID-19 in 2020. As of November 2020, the current BMF inventory is about 670,000 cases, down 20 percent from a peak of 840,000 cases one year prior. We anticipate BMF amended return processing will increase once new employees are trained and are focused on this inventory.

Our efforts to ensure compliance with the tax laws extend to amended returns. Before determining whether to survey or examine an assigned claim for refund, examiners thoroughly review the return to identify large, unusual, or questionable items per IRM 4.10.2.3, In-Depth Pre-Contact Analysis, and evaluate the audit potential of the entire return, and possibly, for related returns for the same or other tax years. The examination is not limited to the issues raised in the claim for refund if there are other issues that warrant further consideration (IRM 4.10.11.2.4 and 4.10.11.3.3). Therefore, the effort and time required to examine an amended return can rise to the same level as in other examinations, although current data shows the cycle time for examinations on amended returns is lower than other examinations both in Field and Campus operations (269 days in fiscal year 2020 compared to 319 days for all examinations). The length of any audit is based on the unique facts and circumstances of each case, the timeliness of taxpayer responses to IRS letters, and may be affected by the need to balance competing priorities or extenuating circumstances such as disasters. To help expedite examinations, campuses began forwarding claims and assigning cases to the field electronically in July 2020.

We are always seeking to improve how we communicate with taxpayers and will consider how the “Where’s My Amended Return” tool could be improved in this regard, taking into account cost and competing IT priorities. We will also review and consider other recommendations provided by the National Taxpayer Advocate.

Some amended returns include requests for abatement of tax owed, before the tax is paid. Currently, we consider these requests where sufficient documentation is provided. We do so as a courtesy to taxpayers, to allow the Service to consider a claim even though the taxpayer has not paid the assessed

tax that is due. We are working with the IRS Office of Chief Counsel to determine how best to address the concerns raised by the Advocate with our procedures in addressing requests for abatement that are incomplete.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS understands that there are good reasons why amended returns may take almost as much time to audit as other returns. TAS looks forward to the improved processing times expected to result from electronic filing, electronic assignment of some cases that are assigned for exam, and scanning some paper returns so they are accessible in the CIS database. In any event, taxpayers should be given more realistic estimates of what the expected processing time will be; the IRM should be adjusted if the current 16 week expected processing time is no longer accurate, and the Where's My Amended Return tool should be improved accordingly. The Form 1120X instructions should likewise be adjusted if the referenced processing time of three to four weeks is not accurate.

However, the IRS's explanation for lengthy processing times for amended returns filed by businesses is not supported by the data in this report, which is based on operations for FYs 2017-2019. There was indeed a government shutdown due to a lapse of appropriations in FY 2019, as the IRS notes, but amended return processing times improved in FY 2019 compared to FYs 2017 and 2018. The COVID-19 pandemic affected IRS operations, but not until FY 2020.

The National Taxpayer Advocate appreciates the IRS's willingness to work with the IRS Office of Chief Counsel to better address requests for abatement. As with any other taxpayer request, the IRS should advise taxpayers when they need to submit additional information in order for their request to be considered. The blanket statement currently in use (that the law doesn't allow taxpayers to file a claim to reduce the tax owed) without further explanation is not appropriate and often confusing for taxpayers. Providing the taxpayer an administrative review or initiating a specific request for documentation prior to rejection should be standard procedures. The IRS should also consider permitting these taxpayers to appeal their cases to the Independent Office of Appeals rather than having to pay the tax the taxpayer believes is not due, then file another claim of refund, or bring a refund suit in order for the IRS to review their documentation. Taxpayers have the *right to pay no more than the correct amount of tax*, and the IRS should assist them with that determination.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Revise the IRM to provide that if a request for tax abatement is incomplete, the employee should solicit the necessary documentation from the taxpayer, and if the documentation is not forthcoming or is insufficient, the employee should deny the request, explain the reason for the denial, and explain the different procedures that apply to requests for tax abatement and requests for refund.
2. If the IRS determines the taxpayer is not entitled to an abatement, issue a 30-day letter providing taxpayers the right to file a protest with the Independent Office of Appeals⁴³ for abatement of tax and updating and clarifying the IRM's No Immediate Tax Consequence provisions by referencing abatement cases.
3. Remove any selectable paragraph in Letter 916C that states the law does not allow taxpayers to file a claim to reduce the tax they owe or appears to advise taxpayers that they cannot seek an abatement of tax without first paying the amount of tax already assessed (Paragraph N in the current version of Letter 916C).
4. Revise the IRM to instruct employees not to use a fill-in paragraph in Letter 916C to state the law does not allow taxpayers to file a claim to reduce the tax they owe or to inform taxpayers they cannot seek an abatement of tax without first paying the amount of tax already assessed.
5. Identify and address the cause of lengthy examination times for amended returns.
6. Identify and address the cause of the increase in processing time for corporations' unaudited amended returns.
7. Add additional status updates to the "Where's My Amended Return" tool to allow taxpayers to see when the IRS selects their amended return for audit, when it assigns the audit to an examiner, and what an estimated completed processing time is based on the return's current status.
8. Revise the IRM and Form 1120X instructions to more accurately reflect the expected processing time for amended returns.

43 See IRM 8.1.1.3.2, No Immediate Tax Consequence Cases (Oct. 1, 2016).

Appendix A

METHODOLOGY

Traditional amended return data found on IRS databases includes items such as IRS received dates, transaction codes, action codes, and transaction dates. For example, we identified individual amended returns by searching taxpayer accounts for a transaction code of 971 and an action code of 120. The data in this report was gathered according to the following methodology:

1. Only one amended return per taxpayer per fiscal year was taken into account. If a taxpayer filed more than one amended return in the same fiscal year, whether or not it was with respect to the same tax year, only the earliest amended return was included, and processing times were computed with respect to that amended return. If a taxpayer filed more than one amended return with respect to the same tax year, the amended returns were all included in the analysis to the extent they were filed in different fiscal years.
2. Also not included in the analysis are individual amended returns that were filed after an audit was opened and amended returns that were filed with a function other than Submission Processing (*e.g.*, IRS Appeals, IRS Exam, Automated Underreporter Unit).
3. The analysis of individual amended returns is limited to individual amended returns filed on Form 1040X, although the IRS also processes as amended returns some filings taxpayers submit on another IRS form, such as Form 1040, U.S. Individual Income Tax Return, that indicate the filing is intended to be an amended return.
4. Other Business Master File returns not included in Figure 1.9.1 include, *e.g.*, employment tax, estate tax, gift tax, excise tax, and tax-exempt organization returns.

Processing Times of Audited Amended Returns in Categories 1 or 4

Step 1: SP routes amended returns to AM: In FYs 2017-2019, SP received 2,152,508; 2,383,472; and 1,998,609 Category 1 and 4 Forms 1040X, respectively. SP routed 909,464 (42 percent); 929,902 (39 percent); and 791,716 (40 percent) of these returns to AM in FYs 2017-2019, respectively.⁴⁴ This step took an estimated median of two weeks, three weeks, and four weeks in FYs 2017-2019, respectively. In addition, SP routed 183,817; 184,605; and 194,508 Forms 1120X in Categories 1 and 4 to AM in FYs 2017-2019, respectively.

Step 2: AM refers CAT-A returns to Exam, and Exam selects some of them for audit: This process, which affected a small portion of amended returns, took an estimated median of five to six weeks for individual amended returns, and less than a week for corporate amended returns, as shown in Figure 1.9.A1.

⁴⁴ IRS CDW, IMF Transaction History File (Oct. 2, 2020). In contrast, in FY 2020, the *total* number of Forms 1040X that SP closed (*i.e.*, the number disposed of in SP or routed to another function) for all categories of outcomes was only 792,918. IRS, JOC, Customer Account Services Form 1040X Consolidated Inventory Report, Submission Processing (Sept. 26, 2020).

FIGURE 1.9.A1, Estimated Number of Amended Returns in Categories 1 and 4 Referred From AM to Exam and Selected for Audit, and Processing Time⁴⁵

Fiscal Year	1040X Returns Referred to Exam by AM and Selected for Audit	1040X Returns Transferred From SP to AM That Were Referred to Exam and Selected for Audit	Median Number of Weeks	1120X Returns Referred to Exam by AM and Selected for Audit	1120X Returns Received by AM That Were Referred to Exam and Selected for Audit	Median Number of Weeks
FY 2017	30,405	3.3%	6	2,410	1.3%	0
FY 2018	26,571	2.9%	5	2,218	1.2%	0
FY 2019	24,007	3.0%	6	2,488	1.3%	0

Step 3: Some amended returns that were selected for audit are assigned to an examiner, who contacts the taxpayer and opens an audit: This process, which affected only a portion of the amended returns that were selected for audit, took an estimated three to eight weeks for individual amended returns and 14 to 16 weeks for corporate amended returns, as shown in Figure 1.9.A2.⁴⁶

FIGURE 1.9.A2, Estimated Number of Amended Returns in Categories 1 and 4 Selected for Audit That Were Assigned and an Audit Opened, and Processing Times⁴⁷

Fiscal Year	1040X Returns for Which an Audit Was Opened	1040X Returns Selected for Audit That Were Audited	Median Number of Weeks	1120X Returns for Which an Audit Was Opened	1120X Returns Selected for Audit That Were Audited	Median Number of Weeks
FY 2017	16,910	56%	4	1,059	44%	16
FY 2018	12,735	48%	9	583	26%	16
FY 2019	6,440	27%	3	211	8.5%	14

Step 4: The examiner concludes the audit and closes the case: This process took an estimated median of 16 to 21 weeks for individual amended returns, and 30 to 40 weeks for corporate amended returns, as shown in Figure 1.9.A3.

⁴⁵ CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

⁴⁶ As Figure 1.9.A2 shows, a significant portion of amended returns selected for audit and assigned to an examiner are not actually audited. If the examiner concludes that an examination is not warranted, the examiner will "survey" the return instead. See IRM 4.10.2.5.1, Conditions Allowing Survey of Returns After Assignment (Sept. 9, 2019), providing that a "return will be surveyed after assignment if, after conducting the initial return screening, in-depth pre-contact analysis, and/or evaluating the audit potential the following conditions are met: a. The taxpayer (or representative) has not been contacted, b. Taxpayer records have not been inspected, and c. The examiner determined an examination will most likely not result in a material change in the taxpayer's tax liability."

⁴⁷ CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

FIGURE 1.9.A3, Estimated Number of Amended Returns in Categories 1 and 4 for Which an Open Audit Was Concluded, and Processing Times⁴⁸

Fiscal Year	1040X Returns for Which an Audit Was Begun and Completed	Median Number of Weeks	1120X Returns for Which an Audit Was Begun and Completed	Median Number of Weeks
FY 2017	16,760	21	973	41
FY 2018	12,606	18	541	39
FY 2019	6,328	16	200	35

48 CDW, IMF and BMF Transaction History Tables, IRTF F1040, BRTF F1120, AIMS Closed Case File, cycle post 202039.

Taxpayers Whose Legitimate Returns Are Flagged by IRS Fraud Filters Experience Excessive Delays and Frustration in Receiving Their Refunds

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division
Nancy Sieger, Acting Chief Information Officer

TAXPAYER RIGHTS IMPACTED¹

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

EXPLANATION OF THE PROBLEM

The IRS's fraud filters flagged 5.2 million refunds in 2020.² It released most after verifying the taxpayer's identity or income and withholding (*i.e.*, most were legitimate refund claims).³ Taxpayers expect to receive their refunds quickly, and the IRS says it issues most within "21 calendar days" of e-filing (or within six weeks of mailing).⁴ But for about 25 percent of the returns flagged for income verification, refunds took longer than 56 days in 2020, and for about 18 percent of those flagged for identity verification, refunds took longer than 120 days.⁵

When taxpayers call the IRS about their refunds or use the Where's My Refund (WMR) tool on the IRS website or the IRS2go app, they cannot get specific information about the cause of the delay, what the IRS needs, and when they can expect the refund. Even if they could, the refund might be stuck between functions.⁶ This absence of specific information combined with the economic burden caused by delays drove over 65,000 taxpayers to seek TAS assistance with pre-refund identity or income verification in 2020. Income verification has been the number one reason for taxpayers to ask for TAS's help over the last three years.⁷

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 IRS, Identity Theft (IDT) and Integrity Verification Operation (IVO) Modeling Analysis Performance Report (Oct. 7, 2020) (data as of September 30, 2020).

3 IRS, IDT, and IVO Performance Report 3, 8-9 (Oct. 7, 2020).

4 IRS, Tax Season Refund Frequently Asked Questions, <https://www.irs.gov/refunds/tax-season-refund-frequently-asked-questions> (last visited Oct. 15, 2020). About 89.1 percent of individuals e-filed in fiscal year (FY) 2019. IRS 2018 Data Book (Sept. 30, 2019) (154,094,555 individuals filed, as shown in table 2, and 137,242,019 individuals e-filed, as shown in table 4).

5 IRS, RRP Non-IDT Performance Report 3 (Oct. 7, 2020); IDT, and IVO Performance Report 6 (Oct. 7, 2020). The IRS shutdown due to COVID-19 caused some of these delays. See *Supplemental Review of the 2020 Filing Season*, *infra*.

6 Internal Revenue Manual (IRM) 21.5.6.4.35.3.1, -R Freeze Phone Procedures for Accounts with Return Integrity Verification Operations (RIVO) Involvement (Oct. 1, 2020).

7 Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2020; Oct. 1, 2019; Oct. 1, 2018).

Although the IRS has tried to expedite refunds, it needs technology upgrades and procedural improvements to do more. Upgrades would also improve communications with taxpayers, which would help the IRS provide better service and manage taxpayer expectations.

ANALYSIS

Background

Recent Legislation Gives the IRS Time to Verify Refunds Before Paying

Beginning in the 2017 filing season, the Protecting Americans From Tax Hikes (PATH) Act required employers and most other payers to submit third-party reporting information (*e.g.*, Form W-2, Wage and Tax Statement, and Form 1099-MISC, Miscellaneous Information) by January 31.⁸ It also required the IRS to hold all refunds to taxpayers claiming the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit until February 15.⁹ By accelerating third-party information reporting and delaying refunds, Congress made it easier for the IRS to match returns to third-party information reporting documents before paying refunds.

Recent legislation also permits the IRS to require more employers to report income and withholding electronically. In 2020, employers filing fewer than 250 Forms W-2 were exempt from the electronic filing requirement, but the Taxpayer First Act (TFA) reduced this threshold to 100 in 2021 and to ten thereafter.¹⁰ Once implemented, these changes should reduce the number of paper Forms W-2 that the Social Security Administration (SSA) must transcribe and accelerate the matching process.

Section 1206 of the TFA amended IRC § 7602(c) in 2019 to require the IRS to provide the taxpayer with notice that it intends to contact third parties at least 45 days prior to any contact. Thus, unless the IRS contacts the taxpayer to get authorization to make contact sooner (or another exception applies), a manual verification process that requires the IRS to contact a third party will take over 45 days.

The IRS's Return Integrity Verification Operation Aims to Prevent Fraud and Identity Theft

The IRS's Return Integrity Verification Operation (RIVO) prevents refund fraud by both taxpayers and third-party identity thieves.¹¹ When RIVO screens a return for potential identity theft (IDT), its Taxpayer Protection Program (TPP) asks the taxpayer to authenticate his or her identity either over the phone, online, by mail, or by visiting a Taxpayer Assistance Center (TAC).¹² If the taxpayer does not authenticate, the IRS does not process the return. If the taxpayer does not respond, the IRS eventually archives the return. If the taxpayer authenticates, RIVO's Pre-Refund Wage Verification Hold Program (PRWVH) screens it to determine if the income and withholding on the return match the IRS's Information Returns Master File (IRMF) data.¹³

8 Section 201 of the PATH Act of 2015 amended IRC § 6071 to require that certain information returns be filed by January 31, generally the same date that employee and payee statements are due. See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 201 (2015).

9 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 201 (2015) (codified at IRC §§ 6071(c) and 6402(m)).

10 See TFA, Pub. L. No. 116-25, § 2301, 133 Stat. 981 (2019) (codified at IRC §§ 6011(e) and 6724(c)). In the case of a partnership, the number will be 200 for calendar year (CY) 2018, 150 for CY 2019, 100 for CY 2020, and 50 for CY 2021. *Id.*

11 IRM 25.25.6.1.7, Taxpayer Protection Program Overview (Apr. 28, 2020).

12 *Id.*

13 The IRMF maintains third-party payor data reported to the IRS.

When RIVO screens returns selected by non-IDT filters, it may contact employers or other third parties regarding income and withholding discrepancies, missing payor information, or questionable IRMF documents.¹⁴ If not verified and released during this stage, the return may be forwarded to other treatment streams, such as examination.¹⁵

The Return Integrity Verification Operation Has Been Working With TAS, But It Still Delays Many Legitimate Refunds

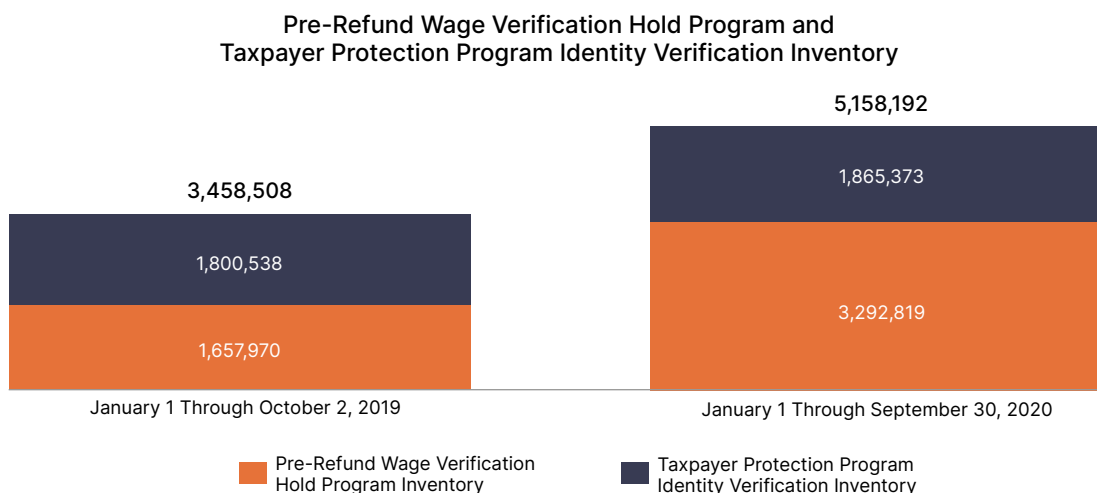
TAS recommended improvements to the RIVO program that are designed to keep taxpayers informed of the progress of their returns and refunds. The IRS agreed with many and has taken the following steps to improve the program in 2020:¹⁶

- The IRS and the SSA have been collaborating to reduce the processing time of paper Forms W-2;
- The IRS provides taxpayers whose refunds have been delayed by the PRWVH process with an interim letter every 60 days;
- The IRS issued a second TPP letter to those who do not authenticate their identity in response to the first letter;¹⁷ and
- The IRS has updated its initial contact Letter 4464C, Questionable Refund Hold, to instruct taxpayers to review the income and withholding they reported and to file an amended return to correct any errors. This new language should help empower taxpayers to accelerate their refunds.

The Return Integrity Verification Operation Screens Millions of Returns

The PRWVH and TPP programs review all returns claiming refunds and flag millions for additional screening each year, as shown in Figure 1.10.1.

FIGURE 1.10.1¹⁸



¹⁴ IRM 25.25.3.2, Verification of Income (Oct. 1, 2020).

¹⁵ IRM 25.25.13.3(3), Account Resolution Research (June 3, 2020).

¹⁶ See National Taxpayer Advocate Fiscal Year 2021 Objectives Report to Congress 138-143 (Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2019 Annual Report to Congress*).

¹⁷ IRS response to TAS information request (Oct. 22, 2020) (item 23).

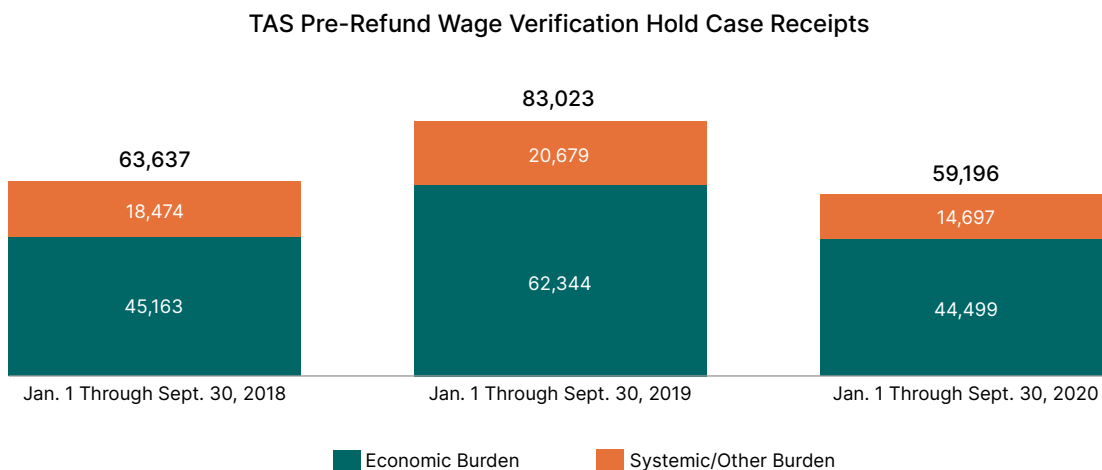
¹⁸ IRS, IDT, and IVO Performance Report 3, 8-9 (Oct. 7, 2020); IRS, IDT, and IVO Performance Report 3, 8 (Oct. 9, 2019). The returns selected automatically each year by PRWVH have been increasing because the IRS has been automating some of its filters.

Most returns flagged for additional screening by RIVO are not fraudulent. It verified and released 72 percent of the refunds processed by the PRWVH program and 63 percent of those processed by TPP in calendar year (CY) 2019.¹⁹

Tens of Thousands of Taxpayers Come to TAS for Assistance

When taxpayers need their refunds quickly to avoid an economic burden, or a systemic problem exists (e.g., the IRS has not responded within established timeframes), taxpayers may ask TAS for assistance.²⁰ In PRWVH cases, TAS checks to see if the taxpayer's third-party information reporting documents are on the system.²¹ If they are and they match the return, TAS may ask RIVO to release the refund. If not, TAS may ask the taxpayer to provide a written statement from the employer (or payor) or to permit RIVO to contact the employer (or payor). TAS helps tens of thousands of taxpayers with these delays each year, as shown in Figures 1.10.2 and 1.10.3.

FIGURE 1.10.2²²

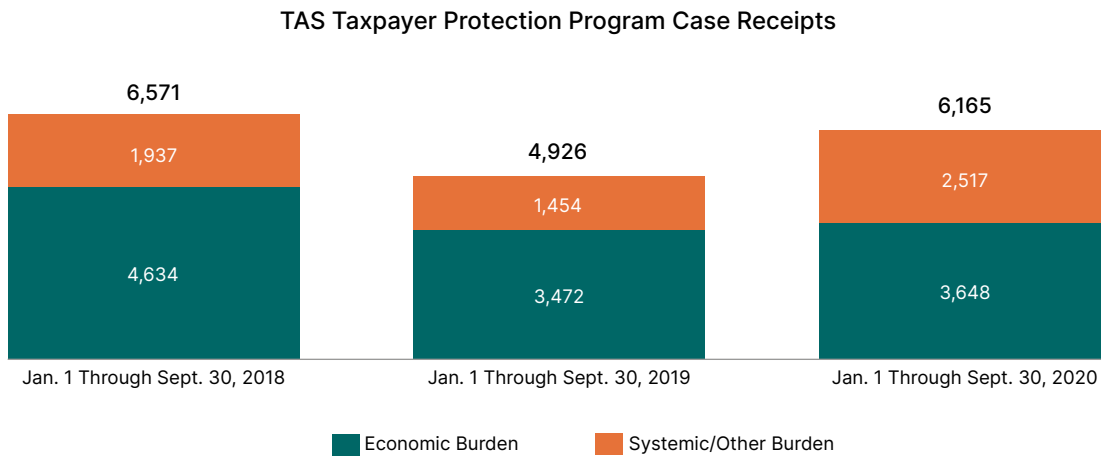


¹⁹ IRS, RRP Non-IDT Performance Report 15 (Jan. 29, 2020); Wage and Investment (W&I), Business Performance Review Q4 FY 2020 (Nov. 5, 2020) (showing the IDT false detection rate for 2019). The non-IDT false detection rate was 66 percent in CY 2020 as of October 7. IRS, RRP Non-IDT Performance Report 2 (Oct. 7, 2020); Comparable figures are not available for IDT in 2020.

²⁰ IRM 13.1.7, Taxpayer Advocate Service (TAS) Case Criteria (Feb. 5, 2016).

²¹ TAS, Case Assistance by Issue Code (CABIC), Issue Code 045, Initial Actions (July 2020).

²² TAMIS (Oct. 1, 2020; Oct. 1, 2019; Oct. 1, 2018).

FIGURE 1.10.3²³

In 2019, TAS accepted PRWVH cases that met its eligibility criteria any time after the IRS could issue refunds (*i.e.*, after February 15 for many returns), but TAS changed its criteria on February 14, 2020, to delay acceptance of PRWVH cases until four weeks after the filters stopped the refund.²⁴ As a result, TAS received fewer PRWVH cases in 2020 than in 2019. TAS determined that its involvement during the first four weeks added little to no value, and this additional time allowed the IRS to release more refunds on its own. Of the refunds it released, 63 percent were released within 28 days, thus supporting TAS's decision to alter its criteria.²⁵ Another factor that may have reduced TAS's PRWVH caseload was the IRS's inability to accept calls between March 21 and the end of April – calls that might otherwise have generated referrals from the IRS to TAS.²⁶ Notwithstanding these factors, the number one reason that taxpayers asked TAS for assistance during 2020 was for help with the PRWVH program, and this has been the number one reason for the last three years.²⁷

Manual Procedures and Referrals to Other Functions Delay Refunds

Manual Reviews Delay Refunds

The IRS's systemic checks were quick in 2020 — two days on average for IDT cases after the taxpayer authenticated his or her identity and five days on average for automated PRWVH filter selections after the IRS received the third-party information reporting data.²⁸ The returns flagged by other (non-automated) filters were delayed longer — 39 days on average for certain manual filters used by PRWVH because they

²³ TAMIS (Oct. 1, 2020; Oct. 1, 2019; Oct. 1, 2018).

²⁴ TAS also accepted cases referred by Congress or if the taxpayer needed TAS's help to bypass a refund offset. TAS, TAS-13-0220-0002, Interim Guidance on Exclusion from TAS Case Acceptance Criteria Taxpayers Impacted by Pre-Refund Wage Verification Hold and Amended Returns (Feb. 14, 2020); SERP Alert 20A0037, TAS Referrals (Jan. 21, 2020).

²⁵ IRS, RRP Non-IDT Performance Report 3 (Oct. 7, 2020).

²⁶ See, e.g., IRS SERP Alert 20A0135, Product Line Closure (issued Mar. 24, 2020 and rescinded May 7, 2020); IRS SERP Alert 20A0191, TPP Guidance During Continued COVID-19 Closures (Apr. 29, 2020) (TPP line opened on April 27); IRS SERP Alert 20A0207, Accounts Management to Open Some Phone Lines on Monday May 18, 2020 (May 19, 2020); IRS, SERP Alert 20A0172, RIVO Compliance Treatment Inventories/Notice Changes Due to Ogden Site Centralized Printing Services Closures (issued Apr. 10, 2020 and rescinded Sept. 29, 2020: "RICS cannot issue letters/notices for any inventory type until further notice.").

²⁷ TAMIS (Oct. 23, 2020).

²⁸ IRS response to TAS information request (Oct. 22, 2020) (items 16 and 17).

require manual reviews — and some of these reviews take much longer because they require third-party contacts.²⁹ About a quarter of them took longer than 56 days.³⁰ Returns flagged and authenticated by TPP before PRWVH verified them were delayed by 67 days on average, and 18 percent were delayed over 120 days (though the IRS shutdown due to COVID-19 caused some of these delays).³¹

Some Returns Get Stuck in Transit Between Functions

When RIVO transfers a return from the PRWVH program to another IRS function such as Examination, the IRS does not immediately assign an employee to work the case.³² From the taxpayer's perspective, his or her refund seems to get stuck. RIVO does not currently track this period³³ but is in the preliminary stages of developing a methodology.³⁴ For tax year 2018 returns processed in 2019, PRWVH referred 149,405 returns to another compliance function.³⁵ These referrals sometimes delayed valid refund requests. The IRS issued full refunds on 17,736 (12 percent) after a median of 47 weeks (*i.e.*, 329 days), and as of September 24, 2020, 29,365 (20 percent) had still not reached the function — they were still sitting in transit between functions.³⁶

The IRS should eliminate the time returns are in transit between functions by automatically assigning them in downstream functions and notifying the taxpayer. The IRS's Wage and Investment (W&I) Division should adopt as a measure the number of taxpayers who wait more than 60 days for their refunds. This measure would help the IRS focus on removing the roadblocks that some taxpayers face in getting their refunds.

Technology Upgrades and Procedural Changes Could Improve Service

Taxpayers expect to receive their refunds shortly after they file their returns. Although the IRS website warns that refunds requested on returns with errors or affected by IDT or fraud could take longer, taxpayers submitting legitimate refund requests do not expect a delay. The IRS's website says “we issue most refunds in less than 21 calendar days” of e-filing (or within six weeks of mailing).³⁷ Both the PRWVH and TPP send letters that say the process can take longer — up to 60 days with PRWVH or up to nine weeks after a taxpayer verifies his or her identity with TPP.³⁸ But not all taxpayers receive, read, or understand the IRS's letters.³⁹

29 IRS, RRP Non-IDT Performance Report 3 (Oct. 7, 2020).

30 *Id.*

31 IRS, IDT, and IVO Performance Report 6 (Oct. 7, 2020). The IRS is working with TAS to conduct a focus group to determine why taxpayers do not always verify their identity promptly; however, it was postponed due to COVID-19.

32 After TAS recommended RIVO send the taxpayer a letter to provide a contact in another function before closing a case as unverified, it responded: “...with our systemic Questionable Return Program (QRP) process, we are unable to provide specific contact information regarding the site/employee at this time...” National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 143 (Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2019 Annual Report to Congress, IRS Response to Recommendation 4-7*).

33 IRS, W&I Comprehensive Data Dictionary Plus the Agency Priority Goal (Feb. 27, 2020).

34 W&I response to TAS information request (Oct. 23, 2020) (item 20) (“Cycle Time is currently not tracked, however, RIVPM is in the preliminary stages of establishing a methodology for tracking cycle time.”).

35 Compliance Data Warehouse (CDW) Individual Master File (IMF) Transaction History and IRTF F1040 Tables (Nov. 12, 2020).

36 *Id.* (all data is as of September 24, 2020).

37 IRS, Tax Season Refund Frequently Asked Questions, <https://www.irs.gov/refunds/tax-season-refund-frequently-asked-questions> (last visited Oct. 15, 2020).

38 IRM 25.25.6.2, Written Responses to Letter 4883C, Letter 5071C, Letter 5447C, Letter 5747C, Letter 6167C, or Letter 5216 (Oct. 1, 2020). Although one recent survey indicated that nearly eight in ten taxpayers are willing to wait up to at least 30 “additional” days for the IRS to verify their identity, it is unclear what they viewed as the baseline. W&I Strategies & Solutions, Highlights from the 2019 Taxpayer Experience Survey (TES) 4 (Feb. 2020). Moreover, most were not willing to wait an additional 60 days or more. *Id.*

39 For example, one TAS study found “almost 40 percent [of those receiving an Earned Income Tax Credit (EITC) audit notice]... did not understand what the IRS was questioning ... [and] only about half of the respondents felt that they knew what they needed to do in response to the audit letter.” See, e.g., National Taxpayer Advocate 2018 Annual Report to Congress vol. 2, at 100, 103-104 (Research Study: *What Influence Do IRS Audits Have on Taxpayer Attitudes and Perceptions? Evidence From a National Survey*).

Moreover, even these timeframes can be unrealistic.⁴⁰ If taxpayers try to determine the status of their refunds, they are likely to be frustrated for many reasons.

Customer Service Representatives Do Not Provide Specific Information

When a taxpayer calls the toll-free line to ask about a refund, a customer service representative (CSR) may tell him or her to ensure his or her income, expenses, and credits are correct and to file an amended return if necessary.⁴¹ Because CSRs are not required to compare return information to payor data,⁴² they generally do not give taxpayers specific information about the cause of the delay or ways to expedite the refund.⁴³ CSRs often have to fill out a form and refer the issue to RIVO or send the taxpayer to TAS so that TAS can explain why the IRS is holding his or her refund.⁴⁴ Although some IDT victims who call about an open case can use a program-specific toll-free number and get a particular employee's contact information,⁴⁵ the IRS has no similar system or program-specific toll-free number for non-IDT cases.⁴⁶

The IRS should change its procedures to require CSRs to (1) analyze the taxpayer's account so they can provide the same guidance as TAS,⁴⁷ and (2) have RIVO employees respond to taxpayer inquiries that the CSR cannot answer.⁴⁸ Once a RIVO employee responds to the taxpayer, he or she should serve as a single point of contact for the taxpayer's PRWVH follow-up questions, at least until the IRS issues the refund or opens a case in another function.⁴⁹

Online Tools Do Not Provide Specific Information Until Refunds Are Approved

IRS websites and letters raise the expectation that taxpayers can track refunds with precision on the WMR tool on IRS.gov or the IRS2Go app. But this tool and app have only three statuses (*i.e.*, return received, refund approved, or refund sent). They only provide a personalized estimate of when the taxpayer will receive

40 CSRs were recently advised to inform taxpayers calling about TPP verification: "advise the taxpayer it could take 16 weeks or longer to process their documentation, due to COVID delays." IRS, SERP Alert 20A0144, Treatment of TPP Taxpayers Sent to TAC during COVID-19 Shutdown (July 30, 2020).

41 IRM 21.5.6.4.35.3.1.2(2), -R Freeze Phone Procedures for Accounts with Return Integrity Verification Operations (RIVO) Involvement (Oct. 1, 2019).

42 IRM 1.1.13.4.2, Modernization Development and Delivery (MDD) (Dec. 21, 2018).

43 IRM 21.5.6.4.35.3.1, -R Freeze Phone Procedures for Accounts with Return Integrity Verification Operations (RIVO) Involvement (Oct. 1, 2020); *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules and H. Subcomm. on Government Operations*, 115th Cong. (2018) (statement of Nina E. Olson, National Taxpayer Advocate).

44 See, e.g., IRM 21.5.6.4.35, -R Freeze (Oct. 1, 2020) (referral to TAS on Form 911); IRM 21.5.6.4.35.3, -R Freeze Overview for Accounts with Return Integrity Verification Operations (RIVO) Involvement (Jan. 13, 2020) (referral to RIVO on Form 4442).

45 IRM 25.23.12.5.1(7), Telephone Inquiries Regarding Identity Theft Victim Assistance (IDTVA) Tax-Related Cases (Oct. 1, 2020) ("If you are unable to assist the taxpayer by responding to their questions and concerns as it relates to the open IDTVA case, use the IDTVA tool to find the controlling IDTVA employee's contact information. Provide the taxpayer with the IDTVA toll-free number (855-343-0057), IDTVA's employee's name, six-digit extension and Tour of Duty (TOD), and availability based on the taxpayer's time").

46 For further discussion of this issue, see, e.g., National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 160-167 (Appendix 1: *IRS Responses to Administrative Recommendations Proposed in the National Taxpayer Advocate's 2019 Annual Report to Congress, IRS Response to Recommendation 19-2*).

47 The IRS provides specific information about the discrepancy by letter before contacting third parties. See IRM 25.25.3.9, Manual Verification Procedures (Oct. 1, 2020) (discussing Letter 6255C). In addition, the IRS plans to "provide taxpayers with visibility to third-party data before filing." See IRS Integrated Modernization Business Plan 24 (Apr. 2019), https://www.irs.gov/pub/irs-utl/irs_2019_integrated_modernization_business_plan.pdf.

48 RIVO employees work cases referred to the Automated Questionable Credit or Wage/Withholding Only programs. IRM 25.25.11, Wage and Withholding Only (WOW) (Notice CP 05A) Procedures (Sept. 15, 2020); IRM 25.25.7, Automated Questionable Credit Program (Sept. 15, 2020). RICS is responsible for many of the resulting examinations. See IRM 4.19.20, Automated Correspondence Exam (ACE) Processing Overview (Dec. 16, 2019).

49 For a further discussion of this issue, see, e.g., National Taxpayer Advocate 2018 Annual Report to Congress 52-64 (Most Serious Problem: *Navigating the IRS: Taxpayers Have Difficulty Navigating the IRS, Reaching the Right Personnel to Resolve Their Tax Issues, and Holding IRS Employees Accountable*).

a refund after the IRS has approved it; an automated refund hotline provides the same information.⁵⁰ The IRS website says that “sometimes, when we are still reviewing your return... [the tool or app] will display instructions or an explanation of what we are doing.”⁵¹ But the tool and app do not remind taxpayers that they will need to wait another eight to nine weeks for their refund after they authenticate their identity.⁵² They also do not alert taxpayers that the IRS has not received or processed third-party information reporting documents or let them know if the IRS has referred their returns to another function (*e.g.*, Examination).

The IRS should develop modern technology to ensure its fraud screens do not delay legitimate refunds while still blocking fraudulent claims.

The IRS should improve service by updating the WMR tool, the IRS2Go app, and the automated refund hotline with more specific information about why refunds are delayed; what the IRS needs (*e.g.*, verification of taxpayers’ identity, income, or withholding, or permission to contact a third party); a convenient way to provide the information (*e.g.*, via upload, phone, fax, or in person); an updated estimate of when the IRS will issue the refund if the taxpayer responds to inquiries timely; and whom to contact for more information.

Many Taxpayers Cannot Verify Their Identity Online

Even though some TPP letters offer taxpayers the option to verify their identities using the IRS’s ID Verify website, many cannot.⁵³ Before a taxpayer can use ID Verify, he or she must first get through “Secure Access” — the same authentication required for creating an online account. Less than half succeeded in 2020.⁵⁴ Although online security is important, unsuccessful attempts frustrate taxpayers. The IRS has tentative plans to allow taxpayers to reach ID Verify after authenticating through a new system called Secure

50 IRM 21.4.1.4, Refund Inquiry Response Procedures (Oct. 1, 2020). Despite being automated, this hotline received 22.9 million calls and only provided a 60 percent level of service in FY 2020. IRS, Joint Operations Center, Snapshot Report (Sept. 30, 2020).

51 IRS, Tax Season Refund Frequently Asked Questions, <https://www.irs.gov/refunds/tax-season-refund-frequently-asked-questions> (last visited Oct. 21, 2020). Although nine out of ten respondents to one recent survey used web-enabled cell phones, only about a third were willing to use the IRS2Go app to get information about their refunds. W&I Strategies & Solutions, Highlights from the 2019 Taxpayer Experience Survey (TES) 7 (Feb. 2020). The IRS says it has improved the messages for returns suspended in the TPP. IRS response to TAS information request (Oct. 22, 2020) (“At the beginning of the filing season, a change request was carried out to enhance messaging for Where’s My Refund for accounts in the Taxpayer Protection Program”).

52 IRM 21.4.1.6, Internet Refund Fact of Filing (IRFOF) (Oct. 1, 2018); IRM Exhibit 21.4.1-3, Internet Refund Fact of Filing Reference Numbers (June 22, 2018). The tool may display a code that a telephone assistor can explain if the taxpayer calls the IRS or finds meaning of the code in the IRM. Although two of the codes translate to “Refund delayed, pulled for review,” they do not appear to indicate that the refund has been delayed by TPP or PRWVH, explain what the IRS needs to process the refund, or give the taxpayer an updated estimate of when he or she can expect his or her refund. *Id.*

53 ID Verify is an IRS website that allows taxpayers to verify their identity using the IRS letter they received, the return referenced in the letter, a previous year return, and supporting documents filed with those returns. See, *e.g.*, IRS, Understanding Your 5071C Letter, <https://www.irs.gov/individuals/understanding-your-5071c-letter> (last visited Oct. 28, 2020).

54 The collective authentication rate for those IRS online applications requiring the highest level of assurance authentication (LOA3), such as online accounts and taxpayer digital communications, was about 42 percent in FY 2020. PGLD response to TAS information request (Oct. 13, 2020). For additional information about the information needed to pass Secure Access authentication, see IRS, Secure Access: How to Register for Certain Online Self-Help Tools, <https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools> (last visited Oct. 16, 2020). Note that the option to receive an activation code by mail was not available for several months during the COVID-19 pandemic, and this impacted the verification rate.

Access Digital Identity beginning in July 2021, but it is not clear how much easier it will be for taxpayers to authenticate.⁵⁵

Taxpayers Are Only Temporarily Allowed to Verify Their Identity by Fax

During the COVID-19 shutdown, taxpayers could not verify their identity by phone or in person at a TAC because the IRS closed its call centers and TACs. The IRS began allowing taxpayers to submit verification documents by eFax (or mail) if they were unable to use other verification methods.⁵⁶ The IRS should continue to accept verification information by eFax, at least until it has an easier way to accept it electronically.

Technology Upgrades Could Expedite Refunds and Save Resources

RIVO uses an obsolete case management and screening system called Return Review Program Legacy Component (RRPLC) (or Electronic Fraud Detection System), which the IRS has been planning to replace for more than a decade.⁵⁷ Just maintaining RRPLC has cost the IRS about \$26 million over the last two fiscal years,⁵⁸ but due to budget constraints, most other modernization backlog items planned for FY 2020 were put on hold.⁵⁹ Nonetheless, small fixes can have large payoffs.

Example: In January 2020, W&I reiterated its longstanding request for upgrades to RRPLC because the system lacked the ability to systemically update and verify certain withholding and income information.⁶⁰ Even if that information confirmed the taxpayer was due a refund, the system did not release the refund automatically.⁶¹ W&I requested upgrades estimated to cost \$19,249.51 because manual procedures (*i.e.*, uploading information and releasing refunds), which can result in errors and delays, consumed about *100 full-time employees each year*.⁶²

Other upgrades to various systems could help the IRS release refunds more quickly. Once the IRS determines that it should release a refund, its systems can take ten days to do so.⁶³ A more robust systemic process could release refunds more frequently (*e.g.*, every day). It might also save the IRS time and the cost of paying interest on delayed refunds. Similarly, many returns that PRWVH cannot verify are sent to other treatment

55 IRS, Secure Access Digital Identity (SADI) & App Integration Overview (Sept. 2020). For further discussion of the IRS's new authentication protocol, see Most Serious Problem: Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers, *supra*.

56 IRS, SERP Alert 20A0144, Treatment of TPP Taxpayers Sent to TAC during COVID-19 Shutdown (rev. July 30, 2020).

57 See Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2017-20-080, *The Return Review Program Increases Fraud Detection; However, Full Retirement of the Electronic Fraud Detection System Will Be Delayed* 7 (Sept. 25, 2017). Although the IRS recently replaced one of RRPLC's screening components called Discoverer with a system called the Selections and Analytics Platform (or SNAP), other parts of the system are still obsolete.

58 W&I response to TAS information request (Oct. 23, 2020) (item 14).

59 *Id.* (item 13).

60 TAS discussed this problem in 2018. See National Taxpayer Advocate 2018 Annual Report to Congress 79, 88 (Most Serious Problem: False Positive Rates: The IRS's Fraud Detection Systems Are Marred by High False Positive Rates, Long Processing Times, and Unwieldy Processes Which Continue to Plague the IRS and Harm Legitimate Taxpayers) ("Because Electronic Fraud Detection System (EFDS) does not interact with the IRS system that maintains third-party income information, employees must enter the third-party information into EFDS one document at a time, and then manually release the refunds.").

61 IRS, Unified Work Request (UWR) #234153 (Jan. 31, 2020); W&I response to TAS information request (Oct. 23, 2020) (RPT Governance Board Minutes (Aug. 2020)).

62 IRS, UWR #234153 (Jan. 31, 2020); W&I response to TAS information request (Oct. 23, 2020) (RPT Governance Board Minutes (Aug. 2020)).

63 W&I response to TAS information request (Oct. 23, 2020) (item 5(d) discusses the manual release of TPP refunds); IRM 21.4.4.3(3)(a), Why Would a Manual Refund Be Needed? (Oct. 1, 2020) (indicating a manual refund may be necessary if a taxpayer needs it in less than ten days); IRM 25.6.1.9.12.2.1, Generalized Unpostable Framework (GUF) (May 15, 2017) (indicating items that do not "post" to the IRS's master file are sorted and addressed weekly).

streams manually.⁶⁴ A systemic referral process could expedite refunds. If the IRS scanned taxpayer and employer correspondence and stored it on RRPLC or an upgraded system, then various functions could avoid duplicate requests for information. However, these improvements are not a priority if they are viewed as maintenance of an obsolete legacy system.

The IRS has denied several of RIVO's requests.⁶⁵ The TFA, which became law on July 1, 2019,⁶⁶ requires the IRS Chief Information Officer to develop and implement a multiyear strategic information technology modernization plan.⁶⁷ Although the IRS has not released its plan as of this writing, it should give priority to the upgrades that would speed refunds to taxpayers and improve service as part of the IRS's overall business service modernization.

CONCLUSION AND RECOMMENDATIONS

The IRS should develop modern technology to ensure its fraud screens do not delay legitimate refunds while still blocking fraudulent claims. The technology should also timely inform taxpayers about their refund delays; ways to expedite their refund (*e.g.*, by verifying their identities, ensuring the IRS has their information reporting documents, or responding to other IRS inquiries); contact information for relevant IRS employees; and an up-to-date estimate of when the IRS will pay the refund (if verified). CSRs, the refund hotline, the IRS's WMR tool, and IRS2Go app should all provide taxpayers with the same up-to-date information. If taxpayers call, CSRs should research and disclose the reason for the delay and what the taxpayer needs to do to expedite the case. The IRS should also permit CSRs to refer a taxpayer to a RIVO employee who should act as the taxpayer's single point of contact for followup questions. If the IRS fails to keep taxpayers informed, more taxpayers will be harmed, and they will continue to ask TAS for help.

The IRS should continue to allow taxpayers to provide documents needed to authenticate their identities by fax, email, or document upload. When merely receiving documents electronically, the IRS should not require significantly more authentication than when it receives a fax or letter from the taxpayer. Removing unnecessary barriers to electronic submissions would reduce taxpayer burden, especially for taxpayers with mobility or transportation challenges, and would free up TAC employees to assist taxpayers with problems requiring in-person presence. As discussed elsewhere in this report, a secure online account platform could allow those taxpayers to elect to receive letters, notices, and other updates on the status of their returns electronically without the need to mail correspondence.⁶⁸

64 W&I response to TAS information request (Oct. 23, 2020) (item 8).

65 For a discussion of the IRS's challenges with IT modernization, see, *e.g.*, Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *supra*.

66 TFA, Pub. L. No. 116-25, § 2101, 133 Stat. 981 (2019).

67 TFA, Pub. L. No. 116-25, §§ 2101-2103, 133 Stat. 981, 985-86 (2019).

68 See, *e.g.*, Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *supra*; Erin M. Collins, Lessons Learned From COVID-19: The Critical Need to Improve IRS Digital Services, NATIONAL TAXPAYER ADVOCATE BLOG (Sept. 1, 2020), <https://www.taxpayeradvocate.irs.gov/news/ntablog-lessons-learned-from-covid-19-the-critical-need-to-improve-irs-digital-services/>.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate preliminarily recommends that the IRS:

1. Offer taxpayers with refunds flagged during the fraud screening processes an electronic option that provides them with:
 - a. More accurate estimates of when they can expect to receive a refund (*e.g.*, offer estimates before the refund is approved instead of just afterward);
 - b. What specific information the IRS needs to verify;
 - c. Whom the taxpayer can contact with questions; and
 - d. How to upload identity verification information (*e.g.*, by using a cell phone or camera) without first passing through Secure Access.
2. Make permanent the temporary procedures that allow taxpayers to submit identity verification documents by eFax, at least when other modes of communication are unavailable.
3. Upgrade IRS systems so the taxpayer is automatically informed of the status of his or her case when it moves to another treatment stream (*e.g.*, Examination) or when a case is automatically opened in those downstream functions, and so any authorized IRS employee can see the status of the case and related taxpayer correspondence.
4. Fund technology upgrades to expedite legitimate refund requests while continuing to modernize and replace obsolete IRS systems.
5. Update procedures so CSRs can provide specific information to taxpayers about how to expedite a refund (*i.e.*, identify a specific discrepancy) and ask that RIVO employees respond to the taxpayer's inquiry.
6. Measure and evaluate W&I's performance based on how many taxpayers with legitimate refunds its fraud filters flag and how many must wait more than 60 days to receive their refunds.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide the IRS with predictable multiyear funding to expand digital services, expedite the release of legitimate refunds, and keep taxpayers informed about the status of their refunds, as part of its overall modernization plan.⁶⁹

⁶⁹ For more detailed recommendations, see National Taxpayer Advocate 2020 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 6-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*). See also Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *supra*; Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *supra*.

IRS COMMENTS

We appreciate your support of the IRS goals of detecting and mitigating refund fraud while working to decrease burden on taxpayers who have filed legitimate returns. Roughly 98% of refund returns are not selected by fraud filters. The remaining 2% 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. In 2019, the Taxpayer Protection Program (TPP) identity theft (IDT) filters protected \$2.5 billion in revenue and Return Review Program (RRP) Non-IDT filters protected \$1 billion in revenue.

We understand the concerns of how refund delays can impact taxpayers, and we continue to collaborate with internal and external partners, including the Taxpayer Advocate Service, to refine and automate refund fraud filters where appropriate. Each year, we consider several factors to make the most efficient selections and improve performance while continuing to achieve our high level of protection:

- **Measure and monitor:** The IRS added new metrics to reports of IDT and Non-IDT selections to track the resolution timeframe for false-positives to ensure no significant increase in process times.
- **Improve model selection through advanced analytics:** The IRS refreshes RRP models and filters for IDT and Non-IDT annually. The IRS reviews and updates dependent database filters annually to improve performance. We are also testing other selection approaches to determine effectiveness.
- **Improve case processes through automation:** The IRS conducted a significant overhaul of the RRP Non-IDT and systemic verification process to automate verification and processing of returns. Instead of scoring returns once at filing, the IRS is now re-scoring returns every time new third-party data is received and moving the case to the right process status instead of waiting for a manual verification. We are seeking updates to our technology and evaluating other ways to further improve these processes.
- **Improve taxpayer communications:** For 2020, all returns held in TPP for more than 90 days were scheduled for a second notice. Due to resources impacted by COVID-19, the secondary letter process was on hold until October 2020. Non-IDT selections were scheduled for interim notice every 60 days.
- **Leverage third-party data:** In 2018, the IRS began a pilot with the Bureau of the Fiscal Service (BFS) to determine if bank account information on a TPP return can be validated by BFS (a process also used for other agency payments). Based on the 2019 preliminary results, the IRS sent a secondary notice to taxpayers with matching accounts after 45 days of no response. During 2020, because of COVID-19, returns with matching bank information were immediately released from TPP.

Due to COVID-19, taxpayers experienced significant delays in the return process because of the closure of IRS sites and processes. The IRS worked to mitigate these delays by resolving as many cases

(including IDT inventory) as possible using available resources and data. As of November 2020, the IRS has not closed any cases due to no response from taxpayers, and will continue to extend the timeline to allow taxpayers to resolve their issues quickly once they are able to contact the IRS.

TAXPAYER ADVOCATE SERVICE COMMENTS

We all agree that IDT and non-IDT screens help protect taxpayers and the government, and that most taxpayers receive their refunds without delay. But a substantial number of taxpayers whose legitimate refunds are delayed by the IRS's screening process do not know the reason for the delay. TAS appreciates RIVO's ongoing efforts to (1) track the resolution timeframe for false-positives, (2) improve return selection through advanced analytics, (3) rescore returns every time new third-party data is received, (4) send more regular notices to taxpayers whose refunds are delayed, and (5) leverage more third-party data, such as bank account information that can be validated by BFS. These activities should help reduce false positives, speed the release of legitimate refunds, and improve customer service. However, the IRS needs to take additional steps to fully address these problems and provide more transparency to taxpayers whose refunds are being held and a status update regarding the timing of the pending determination.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Offer taxpayers with refunds flagged during the fraud screening processes an electronic option that provides them with:
 - a. More accurate estimates of when they can expect to receive a refund (*e.g.*, offer estimates before the refund is approved instead of just afterward);
 - b. What specific information the IRS needs to verify;
 - c. Whom the taxpayer can contact with questions; and
 - d. How to upload identity verification information (*e.g.*, by using a cell phone or camera) without first passing through Secure Access.
2. Make permanent the temporary procedures that allow taxpayers to submit identity verification documents by eFax, at least when other modes of communication are unavailable.
3. Upgrade IRS systems so the taxpayer is automatically informed of the status of his or her case when it moves to another treatment stream (*e.g.*, Examination) or when a case is automatically opened in those downstream functions, and so any authorized IRS employee can see the status of the case and related taxpayer correspondence.
4. Fund technology upgrades to expedite legitimate refund requests while continuing to modernize and replace obsolete IRS systems.

5. Update procedures so CSRs can provide specific information to taxpayers about how to expedite a refund (*i.e.*, identify a specific discrepancy) and ask that RIVO employees respond to the taxpayer's inquiry.
6. Measure and evaluate W&I's performance based on how many taxpayers with legitimate refunds its fraud filters flag and how many must wait more than 60 days to receive their refunds.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Provide the IRS with predictable multiyear funding to expand digital services, expedite the release of legitimate refunds, and keep taxpayers informed about the status of their refunds, as part of its overall modernization plan.⁷⁰

⁷⁰ For more detailed recommendations, see National Taxpayer Advocate 2020 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 6-8 (*Provide the IRS With Sufficient Funding to Meet Taxpayer Needs and Improve Federal Tax Compliance*). See also Most Serious Problem: *Digital Communications: Limited Digital Communications With the IRS Make Problem Resolution Unnecessarily Difficult for Taxpayers*, *supra*; Most Serious Problem: *Information Technology Modernization: Antiquated Technology Jeopardizes Current and Future Tax Administration, Impairing Both Taxpayer Service and Enforcement Efforts*, *supra*.