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 the ten "Most Serious Problems" encountered by taxpayers.[1] While we use the method described below to identify the Most Serious Problems, the list remains inherently subjective in many respects.

A. METHODOLOGY OF THE MOST SERIOUS PROBLEM LIST

The National Taxpayer Advocate is in a unique position to identify the most serious problems facing taxpayers because we receive input from a wide variety of sources. Through our Case Advocacy operations, TAS helps hundreds of thousands of taxpayers to resolve their account problems with the IRS every year. We help many types of taxpayers including individuals, businesses, and exempt organizations, and we work with both unrepresented taxpayers and taxpayers represented by tax professionals. Some cases come to us directly, while others come through congressional referrals.

As part of our Systemic Advocacy operations, TAS leaders meet frequently with organizations that work in the tax administration field, and we maintain an online portal through which members of the public and IRS employees can call our attention to systemic problems that affect groups of taxpayers or all taxpayers.[2] We receive hundreds of submissions each year. We review them all, and we create "advocacy projects" to address priority problems. TAS employees also work on cross-functional teams with other parts of the IRS to address areas that impact taxpayer rights and taxpayer service.

The National Taxpayer Advocate considers the input from these sources and assesses the following factors in selecting the Most Serious Problems encountered by taxpayers:

- 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);
- Barriers to tax law compliance, including cost, time, and burden;
- Taxpayer Advocate Management Information System (TAMIS) inventory data; and
- Emerging issues.

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.

C. THE MOST SERIOUS PROBLEMS ENCOUNTERED BY TAXPAYERS IN 2022

For the 2022 annual report, the ten Most Serious Problems are:

1. PROCESSING DELAYS: Paper Backlogs Caused Refund Delays for Millions of Taxpayers

The IRS still depends on outdated manual practices and a human assembly line for its paper processing operations, and paper is its Kryptonite. For the past 2.5 years, millions of taxpayers have experienced significant delays waiting for the IRS to process paper-filed tax returns and issue corresponding refunds. These unprecedented paper processing and refund delays are the product of the IRS falling behind during the pandemic, combined with its reliance on antiquated processing technology and manual data entry. Collectively, this resulted in backlogs that overwhelmed the IRS and even caused it to have to transform a campus cafeteria, conference rooms, and hallways into makeshift paper storage space. The IRS needs to modernize its antiquated paper processing procedures to clear the paper backlogs, streamline processing for the future, and improve related taxpayer services and the taxpayer experience.

2. COMPLEXITY OF THE TAX CODE: The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike

The tax laws are overly complex, burden America's taxpayers, and negatively impact voluntary compliance. The system of preparing and filing taxes is too difficult because it is costly and time-consuming. This is especially problematic for taxpayers who access social programs through the IRS and for small business taxpayers. Some of this complexity exists because the IRC is antiquated and does not mirror modern life. The tax code can be simplified by making it easy to understand, which would make it easier for the IRS to administer, and easier for taxpayers to comply with their tax obligations. Simplifying the Code is the most important step Congress can take to reduce taxpayer compliance burdens. Simplification is essential to the integrity of the U.S. tax system and will enhance voluntary compliance.

3. IRS HIRING AND TRAINING: Weaknesses in the Human Capital Office's Hiring, Recruitment, and Training Programs Are Undermining the IRS's Efforts to Achieve Appropriate Staffing to Meet Taxpayer Needs

Over the past decade, the IRS's budget was reduced by more than 15 percent in inflation-adjusted terms, resulting in reduced staffing levels not seen since the 1970s. As staffing declined, so did taxpayer service levels. The Inflation Reduction Act of 2022 provided the IRS with much-needed funding and presented an excellent opportunity to improve taxpayer service. With this new funding, the IRS will need to recruit, hire, and train new employees on a historic scale as the IRS has never attempted to hire beyond its current capacities. It must do this while also keeping pace with the rate of attrition and accounting for the estimated 50,000 IRS employees expected to be lost through attrition within the next six years. To hire thousands of new employees over the next decade and replace employees who have retired or otherwise left, the IRS must increase its current hiring capacity to meet this demand and focus on the training of its employees. The IRS must also prioritize recruitment and counter recruitment challenges it faces in a competitive job market. The agency must work to revamp its training quality and overall efficiency. New IRS employees cannot provide an appropriate level of service on day one; they need significant resources and time to receive quality training, which can often mean both classroom-type and on-the-job training over an extended period. A workforce equipped with next-generation skills needs advanced training throughout their careers, which requires investment and dedicated budgetary resources. For years, the IRS has been developing and implementing a comprehensive training strategy as described in the IRS's Taxpayer First Act

Report to Congress. However, the IRS Human Capital Office (HCO) did not have dedicated budgetary resources needed to launch this vision. Without the appropriate reallocation of funding and a long-term investment in training strategy, HCO will continue to struggle. Although TAS is encouraged by the incremental progress recently in the areas of hiring, recruitment, and training, the IRS has much more work to do to increase HCO hiring capacity, improve recruitment strategies, and start implementation of its robust training program.

4. TELEPHONE AND IN-PERSON SERVICE: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions

Though the IRS is increasing staffing and implementing technology designed to improve the customer experience, processing backlogs caused the demand for telephone and in-person service to remain high, while customer service levels continued to remain unacceptably low. The fiscal year 2022 post-pandemic filing season saw little improvement in telephone and Taxpayer Assistance Center services. Taxpayers and practitioners rely heavily on the ability to reach an IRS employee for account actions and answers to their inquiries. Lack of sufficient service jeopardizes compliance, frustrates taxpayers, and impacts the taxpayers' *right to quality service*.

5. ONLINE ACCESS FOR TAXPAYERS AND TAX PROFESSIONALS: Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS

Providing tax information and services accessible through a robust online account and seamlessly integrated digital communication tools are essential for taxpayers, their representatives, and IRS employees. Taxpayers or their representatives wanting to interact online need and deserve quality service options and quick responses from the IRS. Today, most taxpayers and tax professionals can't depend on receiving either, causing dissatisfaction that can lead to distrust in tax administration. In recent years, the IRS developed standalone self-assistance web applications that allow taxpayers to perform a single task, such as resolving their inquiries via an automated voicebot or chatbot, sending and receiving secure digital messages, uploading documents, and viewing basic account information. While each application and tool has standalone value and facilitates a particular interaction, the IRS has not leveraged its utility by making them accessible from a central hub that provides a seamless taxpayer experience. As the IRS continues to introduce new self-assistance applications and improve existing ones, it should determine its priorities using a taxpayer-centric approach. The IRS must prioritize the experience of individual and business taxpayers as customers and provide an intuitive central hub with one-click access to all authenticated and unauthenticated self-assistance applications.

6. E-FILE AND FREE FILE: E-Filing Barriers and the Absence of a Free, Easy-to-Use Tax Software Option Cause Millions of Taxpayers to Continue to File Paper Tax Returns

The high number of e-filed returns shows that taxpayers are committed to e-filing, despite the obstacles they sometimes encounter. It is in the IRS's best interest to encourage this trend by making the e-file process more straightforward and user-friendly. By making all forms and schedules compatible with e-filing, as well as making taxpayers' information returns and payment histories downloadable from their online accounts, the IRS can facilitate quick and accurate e-filing for individuals. Opportunities for improvement also exist for business taxpayers, who are sometimes discouraged from e-filing information returns and employment tax returns on account of cumbersome technology. Enhancing this capacity while developing an IRS-run direct e-file option could take a creaky system still managing to produce good results and create a comprehensive e-file system that would benefit both taxpayers and the IRS. This transformation would improve the taxpayer experience, remove barriers to tax filing, improve the timeliness of refunds, and further voluntary compliance.

7. IRS TRANSPARENCY: Lack of Transparency About Processing Delays and Other Key Data Frustrates Taxpayers and May Undermine Voluntary Compliance

This Most Serious Problem addresses the importance of transparency and providing taxpayers with access to information. These bedrock principles of tax administration are especially critical since the IRS has recently received a significant increase in funding to be used for enforcement, customer service, and technology enhancements. It is also critical that the IRS provide taxpayers with complete, accurate, and timely information about the status of their refunds, and clear, concise, and reliable guidance on a variety of complex tax issues. A tax administration agency fully transparent and clear about how taxpayers can comply with their tax obligations and where their return is in the processing pipeline results in trust between the IRS and taxpayers, ultimately yielding optimal voluntary compliance.

8. RETURN PREPARER OVERSIGHT: Taxpayers Are Harmed by the Absence of Minimum Competency Standards for Return Preparers

Return preparers prepare over half of individual income tax returns and play a key role in tax administration. Many taxpayers are ill-equipped to assess a preparer's expertise in tax laws and tax return preparation. The absence of minimum competency standards for preparers of federal tax returns leaves taxpayers, particularly low-income taxpayers, vulnerable to return preparers' inadvertent errors that could cause them to overpay their tax – or to underpay their tax and face subsequent IRS enforcement action. Recent IRS data shows that taxpayers are harmed by non-credentialed return preparers. For example, about 92 percent of the total amount of 2020 Earned Income Tax Credit audit adjustments (in dollars) occurred on returns prepared by non-credentialed paid return preparers. Because taxpayers are financially responsible for inaccurately prepared returns, minimum competency standards for return preparers are an important taxpayer protection measure. Taxpayers should be able to rely on and trust qualified preparers.

9. APPEALS: Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals

Appeals plays a crucial role in administrative case resolution within the IRS. However, over the past decade, Appeals has faced challenges with funding and employee attrition that made providing top-notch taxpayer service difficult. The average Appeals case takes about a year to resolve, which means that taxpayers may be frustrated and discouraged with the process by the time it runs its course. With increased hiring and training and modernized systems for electronic case files, Appeals can improve cycle times, an important step toward quality taxpayer service. Appeals can also make important strides in reinforcing its role as an independent office within the IRS by adopting more taxpayer-friendly practices regarding conferences, by empowering Appeals Officers as final decision makers, and by providing taxpayers with access to Appeals Case Memoranda and post-settlement conferences, where applicable.

10. OVERSEAS TAXPAYERS: Taxpayers Outside of the United States Face Significant Barriers to Meeting their U.S. Tax Obligations

Many taxpayers face challenges understanding their tax obligations and accessing information and services from the IRS. However, taxpayers living overseas face additional challenges in virtually every aspect of their taxpayer experience. Whether they are U.S. citizens, resident aliens living abroad, or foreign persons with U.S. tax obligations, the laws that apply to these taxpayers are very complex.

These taxpayers are subject to highly complicated rules for determining whether they need to file a U.S. tax return and, if so, their correct U.S. tax liability. They have even more limited access to IRS customer service than domestic taxpayers, and they routinely face delays in receiving correspondence. They also face barriers in obtaining Taxpayer Identification Numbers, electronically filing returns, and accessing assistance from both the IRS and private industry. The National Taxpayer Advocate urges the IRS to take concrete steps to reduce the burden on these taxpayers and to better support them in their attempts to comply with U.S. law.

Endnotes

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

2 The Systemic Advocacy Management System (SAMS) is a database of systemic issues and information reported online to TAS by IRS employees and members of the public. IRS, SAMS, https://www.irs.gov/advocate/systemic-advocacy-management-system-sams. TAS reviews and analyzes the submissions and determines a course of action, which may include information-gathering projects, immediate interventions, and advocacy projects. Internal Revenue Manual 1.4.13.4.9.2, Systemic Advocacy Management System (SAMS) (July 16, 2021).

Most Serious Problems: At a Glance

Services Taxpayers Want and the Problems the IRS Faces in Delivering Them

This "At a Glance" covers each of the ten Most Serious Problems we identify in this report. It summarizes the problems taxpayers face, notes why the problem is serious, and provides some key statistics. The "Taxpayer Perspective" for each Most Serious Problem includes statistics primarily sourced from the IRS-sponsored Comprehensive Taxpayer Attitude Survey regarding taxpayer attitudes and preferences.

IRS employees have worked admirably throughout the pandemic. However, the IRS still has much work to do including addressing staffing challenges, removing barriers to e-filing returns, supporting taxpayers living overseas, hiring and training employees to meet the growing volume of taxpayer needs and improve customer service, addressing processing delays, increasing transparency, expanding the functionality of online accounts, improving digital communication with taxpayers, improving competency standards for return preparers, simplifying and modernizing the tax code, and assisting more taxpayers by answering a significantly higher percentage of phone calls.

Most Serious Problem: **Processing Delays**

Taxpayer Perspective

66%

of returns resulted in refunds

Why This Is a Most Serious Problem: The IRS is understaffed, has antiquated technology, and has an inventory backlog of nearly six million paper tax returns. Together with the pandemic, these issues have caused lengthy refund delays for millions of taxpayers, some lasting ten months or longer.

Key Statistics: At the end of filing season, the IRS had not finished processing about 29 million items that it will need to manually process while taxpayers continue to wait for their refunds.

Most Serious Problem: **Complexity of the Tax Code**

Taxpayer Perspective

33%

"completely" or "mostly" disagree that they trust the IRS to help them understand their tax obligations

Why This Is a Most Serious Problem: Simplifying the tax code means making it easy to understand, easy for the IRS to administer, and less burdensome on everyone, whether they are preparing tax returns or being audited. Simplifying the tax code is the most important step Congress can take to reduce taxpayer compliance burdens, increase voluntary compliance, and improve the processing efficiency and verification of annual tax returns.

Key Statistics: The IRC contains 9,834 code sections – many containing detailed subsections – and a six-volume set of corresponding regulations. An individual taxpayer is estimated to spend 13 hours and $240 out-of-pocket costs just to prepare and file one annual tax return. For a small business, the amount of time and money spent on tax compliance is roughly 82 hours and $2,900. Individual taxpayers spent a total of 897 million hours in FY 2022 just on recordkeeping. This is in addition to the 1.15 billion hours spent on tax preparation of individual returns. Business entities spent about 1.14 billion hours and $48.3 billion on tax preparation in FY 2022.

"Taxpayer Perspectives" are preferences or attitudes expressed in the "Comprehensive Taxpayer Attitude Survey 2021;" IRS: Research, Applied Analytics, and Statistics.

Most Serious Problem: **IRS Hiring and Training**

Taxpayer Perspective

34%
do not trust the IRS to fairly enforce tax laws, the highest percentage since 2014

Why This Is a Most Serious Problem: Failure to hire and properly train employees harms taxpayer rights, erodes crucial taxpayer services, and undermines confidence in tax administration. Current hiring practices are barely keeping up with employees who leave or retire. The IRS needs more employees to provide the best possible customer service.

Key Statistic: An estimated 50,000 IRS employees are expected to be lost through attrition within the next six years.

Most Serious Problem: **Telephone and In-Person Service**

Taxpayer Perspective

88%
agree the IRS should focus on improving in-person and phone call assistance

81%
agree that it is important for the IRS to provide office locations with an onsite IRS representative

75%
agree that it is important to provide community-based tax clinics at convenient locations

Why This Is a Most Serious Problem: Taxpayers need the IRS to increase staffing and technology and explore ways to improve the quality of service on phones and in person. Lack of sufficient service jeopardizes compliance, frustrates taxpayers, and impacts the taxpayers' *right to quality service*.

Key Statistics: In FY 2022, only about 15 percent of phone calls made to the IRS reached live assistance, a small improvement compared to 11 percent in FY 2021. The IRS serviced about 15 percent of the 10.8 million callers attempting to schedule a Taxpayer Assistance Center appointment in FY 2022.

Most Serious Problem: **Online Access for Taxpayers and Tax Professionals**

Taxpayer Perspective

84%
find a personal online account valuable

81%
want to be able to email questions to the IRS

Why This Is a Most Serious Problem: A robust online account and easy-to-use digital communication tools are highly desired among taxpayers, their representatives, and IRS employees. Taxpayers who cannot find an answer online may face long delays if they decide to phone the IRS, visit a Taxpayer Assistance Center, or send a letter.

Key Statistics: Only about 20 million unique taxpayers accessed their Online Account in FY 2022. The most used function within Online Account is viewing an account transcript. Users did not complete any actions beyond viewing basic account information in about 74 percent of sessions.

Most Serious Problem: **E-File and Free File**

Taxpayer Perspective

93%
rated e-filing tax returns as an important IRS service

Why This Is a Most Serious Problem: When taxpayers cannot e-file their tax returns and other IRS forms or schedules, they face delays in processing, the possibility of transcription errors, and longer waits for their refunds. Unlike paper returns, e-filing benefits taxpayers and the IRS by reducing errors and speeding up return processing and refund payments.

Key Statistics: Individual taxpayers e-filed approximately 92 percent of returns received by the IRS in 2022. However, those who e-filed experienced almost 34 million rejected e-file attempts, and roughly 31 percent of these taxpayers endured more than one rejection. In 2022, only two percent of all taxpayers used Free File even though approximately 70 percent of taxpayers qualify for Free File.

Most Serious Problem: **IRS Transparency**

Taxpayer Perspective

86%

agree that the more information and guidance the IRS provides, the more likely people are to correctly file their tax returns

Why This Is a Most Serious Problem: Transparency is critical to having a fair and effective tax administration. Congress has given the IRS substantial funding to improve tax administration, and the IRS should be transparent about how it plans to use the funding fairly, equitably, and prudently.

Key Statistics: There are nearly 41,000 webpages comprising IRS.gov, making it difficult for taxpayers to find answers to their questions. In FY 2022, the IRS only answered less than 15 percent of the calls received, and taxpayers had to wait on hold for an average of 24 minutes.

Most Serious Problem: **Return Preparer Oversight**

Taxpayer Perspective

88%

categorized paid tax professionals as a valuable source of getting tax advice or information

Why This Is a Most Serious Problem: Return preparers prepare over half of individual income tax returns and play a key role in tax administration. Return preparers without credentials are not required to pass any competency tests or take any educational courses on tax return preparation, and they are not subject to any ethical rules.

Key Statistics: Paid return preparers prepared 53 percent of individual income tax returns in 2021. Of those, approximately 58 percent were prepared by non-credentialed return preparers. Paid return preparers prepared about 79 percent of Earned Income Tax Credit returns, but over 92 percent of the total amount of audit adjustments occurred on returns prepared by non-credentialed return preparers.

Most Serious Problem: **Appeals**

Taxpayer Perspective

40%

feel too many resources are devoted to enforcement and not enough to customer service

Why This Is a Most Serious Problem: Taxpayers wishing to review their case by the IRS Independent Office of Appeals have been experiencing long delays, with the average case spending more than a year in Appeals' inventory.

Key Statistics: Once Appeals receives a case, it sits for an average of nearly seven weeks before being assigned to an Appeals Officer. Between FY 2010 and FY 2017, the number of Appeals employees fell by approximately 40 percent. Unsurprisingly, cycle times have increased by 111 percent from FY 2017 to FY 2022. Taxpayers with cases in Appeals can currently expect a resolution in an average of 379 days – over six months longer than in 2017.

Most Serious Problem: **Overseas Taxpayers**

Taxpayer Perspective

93% want the ability to file taxes electronically

91% want to read information on the IRS website

86% want a toll-free number to ask questions

Why This Is a Most Serious Problem: Overseas taxpayers face more burdens and are less able to access IRS services by phone, online, or in person. Their e-file rates are significantly lower, and limited availability of tax products in languages other than English hamper their ability to understand their complex tax obligations.

Key Statistics: The U.S. Department of State estimates that there are approximately nine million U.S. citizens living abroad. In tax year 2020, over 260,000 overseas taxpayers claimed the foreign earned income and housing exclusion tax benefit and nearly 250,000 overseas taxpayers claimed the foreign tax credit. Overseas taxpayers lack access to affordable tax preparation services, with only 11 full service Volunteer Income Tax Assistance sites open overseas, all on U.S. military bases.

PROCESSING DELAYS

Paper Backlogs Caused Refund Delays for Millions of Taxpayers

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Several decades into the information age, the IRS found itself knee-deep in *paper*. The IRS is hamstrung by a lack of electronic scanning technology and a resulting reliance on manual data entry. Its technology challenges created an inventory backlog early in the pandemic that carried over from one filing season to the next. For the past 2.5 years, millions of taxpayers have experienced financial hardships and inconvenience as the IRS has taken ten months or longer to process paper-filed tax returns and issue related refunds, six months or longer to process taxpayer correspondence,[1] and an average of more than a full year to issue refunds to victims of identity theft.[2]

When taxpayers experience refund delays, they call the IRS. Largely because of the processing delays, the IRS has received more than half a billion telephone calls over the past 2.5 years. Only 13 percent reached an IRS telephone assistor. Other taxpayers sought to speak with an IRS employee in person at one of the agency's hundreds of Taxpayer Assistance Centers (TACs), but due to limited staffing, the IRS requires taxpayers to make advance appointments, which have been limited or sometimes not available. Overall, the unprecedented processing delays created by a combination of the pandemic and the IRS's antiquated processing technology have led to widespread taxpayer frustration and both individual and business financial hardships for millions of taxpayers.[3]

EXPLANATION OF THE PROBLEM

The IRS has been operating with staffing shortages, using antiquated technology, relying on a human assembly line, and deploying outdated manual practices where modern technology offers a practical alternative.[4] During the pandemic, taxpayers continued to mail paper returns and correspondence, even during the period the IRS closed its offices for health and safety reasons. In 2020, it quickly fell behind in processing paper-filed tax returns as paper-filled trucks and containers lined its parking lots and developed unprecedented processing backlogs that carried over into 2021 and then 2022.[5] This year, the IRS tried to work through its paper backlogs through additional hiring, mandatory overtime for staff, and "surge teams" of employees reassigned from other IRS business units. Despite these efforts, IRS processing delays and paper backlogs have continued to be a Most Serious Problem for taxpayers.

Paper processing delays cause refund delays to impacted taxpayers. Most individual taxpayers receive refunds, and some depend upon timely refunds to meet critical day-to-day living expenses.[6] All want their refunds as quickly as possible. Until the IRS implements modernization upgrades that allow it to operate efficiently and paperless, it must manage and timely process the paper it receives, or taxpayers will continue to experience refund delays.

Today, the IRS still relies on employees to manually transcribe all required digits from millions of paper tax returns to get the information into its systems. This is an antiquated process at a time when most financial activity is conducted digitally, and many state revenue agencies have long since moved away from manual data entry.[7] Data transcription is meticulous work and prone to data-entry errors, and it is not an efficient use of limited IRS resources. Regardless of whether taxpayers choose to paper file returns or are forced to do so because of limitations of IRS systems, it is unacceptable that millions of taxpayers have endured months-long delays before receiving the refunds they are owed.

Practical solutions exist. While the IRS commendably has sought to achieve "healthy" paper inventory levels by end of 2022, it is important to note that its baseline for measuring "healthy" is pre-pandemic inventory levels. That would be an improvement compared with the last two years, but the agency needs to do better.[8] The IRS should be working toward a goal of eliminating its antiquated processes for processing paper returns. Modernizing IRS paper processing procedures and improving related taxpayer services should be a priority both to clear existing paper backlogs and to streamline processing for the future.

ANALYSIS

In 2019, prior to the COVID-19 pandemic, the IRS used aged technology programmed with legacy computer systems in its paper tax return processing operations. Within IRS Submission Processing, the centralized system the IRS uses to process returns is outdated and decades old. While the IRS used some automation technology in its processing of paper before the pandemic, much of it was already outdated and inefficient. Paper processing challenges caused refund delays to impacted taxpayers. Most individual taxpayers receive refunds, some depend upon timely refunds to meet critical day-to-day living expenses, and all want their refunds as quickly as possible.[9]

The IRS still relies on staff to manually input all required digits from millions of paper tax returns to get the information into its systems. That must change. But until the IRS implements modernization upgrades that allow it to operate efficiently and paperless, it must manage and timely process the paper it receives or else taxpayers will continue to experience unacceptable delays in receiving their refunds and IRS responses to their inquiries.

Staffing inadequacies occurred during the pandemic and continue to persist. During the last two filing seasons, IRS employees were only able to answer about 11 percent of taxpayer telephone calls, meaning that most taxpayers received no service when trying to call the IRS.[10] Hiring remains a significant challenge, and inadequate staffing of IRS Submission Processing operations is contributing to the IRS's taxpayer service deficiencies.[11] In fiscal year 2022, the IRS received Direct Hire Authority and onboarded over 2,800 new Submission Processing employees and 1,600 contractors.[12] In addition, the IRS temporarily reassigned approximately 2,000 employees from other IRS functions to Submission Processing.[13] Despite these efforts, the IRS had other options and actions it could have taken, and still can take, that would positively impact the taxpayer service experience.

FIGURE 2.1.1, Cafeteria of an IRS Facility in Austin[14]

IRS cafeterias should be permanently reserved for hard-working staff, not used to store overflow paper tax returns.

Additionally, the IRS missed opportunities before and during the pandemic, including not expeditiously using the $1.5 billion of additional funds provided by the American Rescue Plan Act of 2021 to hire additional employees and not implementing technology solutions such as return scanning.[15] Instead of utilizing more technology to unbury itself from under its paper mountain, the IRS mainly relied on trying to hire and reassigning its limited staff to surge teams to assist with paper backlogs.[16]

Legislative Changes Contributed to Delays During the 2022 Filing Season

Similar to the prior filing season, the 2022 filing season was affected by COVID-19 legislative changes. Many taxpayers needed to reconcile the Recovery Rebate Credit (RRC) on their tax returns in the 2022 filing season. In addition, many taxpayers had to navigate reconciling the Advance Child Tax Credit (AdvCTC) for the first time, and many had to reconcile both the RRC and AdvCTC on their tax returns. At the end of the filing season, the IRS remained buried in a backlog of work of about 29 million tax returns and pieces of correspondence.[17] The processing inventory backlog the IRS needed to manually work included about 5.3 million pieces of taxpayer correspondence and Accounts Management cases (excluding amended tax returns) and over 13 million paper tax returns, including over two million filed in the prior year.[18] As of December 9, 2022, the IRS had about 5.1 million pieces of taxpayer correspondence and Accounts Management cases (excluding amended returns) as well as 2.6 million paper tax returns and an additional 1.5 million amended returns awaiting processing.[19]

The inventory level and calendar year in which a return was filed are relevant because the IRS generally processes tax returns on a first-in, first-out basis.[20] Thus, even if the taxpayer was due a refund, the IRS did not begin processing the paper returns it received in calendar year (CY) 2022 until it first processed all the paper returns received in CY 2021.[21] While processing delays primarily affected taxpayers who filed paper returns, millions of taxpayers who e-filed their returns were also adversely impacted.

Taxpayers who e-file error-free tax returns and provide accurate direct deposit information typically received refunds promptly. But millions of e-filed returns were not error free, which meant they required employee review for issues such as math errors, thus suspending the payment of the refund. In these cases, refunds were delayed, often by months and in some cases over a year.

Taxpayers made the largest number of errors trying to reconcile the RRC and/or AdvCTC.[22] When IRS systems detected disparities, math error notices were generated. During the 2022 filing season, the IRS issued over 11 million math error notices to taxpayers, and as of November, the IRS had issued over 17 million during 2022.[23] When taxpayers responded to the math error notices, the responses often were added to the backlog of paper submissions. This resulted in paper processing delays for taxpayers, including those who acted timely to protect their taxpayer rights, and further refund delays.

Return Statistics Associated With 2022

During 2022, the IRS processed items carried over from 2021 plus most returns filed and correspondence received in 2022. The National Taxpayer Advocate appreciates the efforts of IRS employees and management to move closer toward being current and understands that returns or correspondence inventories carried over into 2023 will be less than the carryover inventories during the last two years. However, taxpayers whose returns are still awaiting processing; are sitting in the Error Resolution unit, the reject unit, or the unpostable unit; are awaiting verification for potential identity theft; or are still waiting for the IRS to process their correspondence have unmet priority needs. The IRS must continue to follow an all-hands-on-deck strategy to end the backlog once and for all.

Figure 2.1.2 depicts the large volume of original and amended individual and employment tax returns and claims for refund the IRS received during the last four years. Thereafter, Figures 2.1.3-5 illustrate the challenges and delays that impacted taxpayers in 2022. The data in these figures reflects a point in time and does not show the total number of returns filed, correspondence received, or items processed during the preceding periods.

FIGURE 2.1.2, Tax Returns Received by Type and Year[24]

Returns Received – Type/Year	CY 2019	CY 2020	CY 2021	CY 2022
Paper Forms 1040	16,948,000	14,852,000	16,202,000	12,798,000
Electronic Forms 1040	138,047,000	152,232,000	151,765,000	151,429,000
Paper Forms 1040-X	2,882,013	2,486,555	2,129,027	1,029,097
Electronic Forms 1040-X	0	144,214	1,802,284	2,016,412
Paper Forms 941	12,770,328	11,594,459	10,775,793	1,942,919
Electronic Forms 941	12,093,323	12,939,196	14,199,749	15,629,173
Forms 941-X	325,718	338,678	738,422	1,369,000
Forms 1045	6,720	28,695	18,825	25,000
Forms 1139	4,360	22,882	16,337	14,000

FIGURE 2.1.3, Status of Inventory Requiring Manual Processing (as of April 22, 2022)[25]

	Individual	Business	Not Specified	Total
Paper Returns Awaiting Processing				
Received in Calendar Year 2021	1,600,000	700,000		2,300,000
Received in Calendar Year 2022	4,600,000	4,500,000	2,000,000	11,000,000
Total Paper Returns Awaiting Processing	**6,200,000**	**5,200,000**	**2,000,000**	**13,300,000**
Paper and Electronic Returns – Processing Suspended	**5,300,000**	**1,600,000**		**6,800,000**
Amended Returns Inventory	**2,600,000**	**1,100,000**		**3,700,000**
Total Unprocessed Returns	**14,100,000**	**7,900,000**	**2,000,000**	**23,800,000**
Correspondence/Accounts Management Cases (excluding amended returns)	**2,200,000**	**1,000,000**	**2,100,000**	**5,300,000**
Total Inventory Requiring Manual Processing	**16,300,000**	**8,900,000**	**4,100,000**	**29,300,000**

FIGURE 2.1.4, Status of Inventory Requiring Manual Processing (as of October 14, 2022)[26]

	Individual	Business	Not Specified	Total
Paper Returns Awaiting Processing				
Received in Calendar Year 2021				
Received in Calendar Year 2022	3,300,000	4,600,000	100,000	7,900,000
Total Paper Returns Awaiting Processing	**3,300,000**	**4,600,000**	**100,000**	**7,900,000**
Paper and Electronic Returns – Processing Suspended	**4,500,000**	**1,500,000**		**6,000,000**
Amended Returns Inventory	**1,400,000**	**700,000**		**2,100,000**
Total Unprocessed Returns	**9,200,000**	**6,800,000**	**100,000**	**16,100,000**
Correspondence/Accounts Management Cases (excluding amended returns)	**1,900,000**	**800,000**	**1,900,000**	**4,600,000**
Total Inventory Requiring Manual Processing	**11,100,000**	**7,600,000**	**2,000,000**	**20,700,000**

FIGURE 2.1.5, Status of Inventory Requiring Manual Processing (as of December 9, 2022)[27]

	Individual	Business	Not Specified	Total
Paper Returns Awaiting Processing				
Received in Calendar Year 2021				
Received in Calendar Year 2022	1,000,000	1,500,000	100,000	2,600,000
Total Paper Returns Awaiting Processing	**1,000,000**	**1,500,000**	**100,000**	**2,600,000**
Paper and Electronic Returns – Processing Suspended	**4,300,000**	**1,600,000**		**5,900,000**
Amended Returns Inventory	**600,000**	**900,000**		**1,500,000**
Total Unprocessed Returns	**5,900,000**	**4,000,000**	**100,000**	**10,000,000**
Correspondence/Accounts Management Cases (excluding amended returns)	**2,000,000**	**800,000**	**2,300,000**	**5,100,000**
Total Inventory Requiring Manual Processing	**7,900,000**	**4,800,000**	**2,400,000**	**15,100,000**

IRS Processing Operations Must Be Healthier Than Ever to Best Serve Taxpayers

Improving the immediate health and developing a solid strategic plan for the long-term health of its processing operations, especially how it works paper, is critical for the IRS to be an efficient 21st century tax administration. Notably, the IRS needs to reimagine itself as a modern agency and move on from considering the pre-pandemic inventory levels as the benchmark for a healthy inventory.[28] To better serve taxpayers in the future, the IRS should seek to become healthier than before by improving the processing of its inventory while enhancing its customer service levels and options.

Funding Brings Hope of Modernization to IRS Processing Operations

In August, Congress passed the Inflation Reduction Act, which provides the IRS with supplemental funding of nearly $80 billion over the next ten years.[29] The legislation includes about $3.2 billion to improve taxpayer services, $4.8 billion to modernize the IRS's information technology (IT) systems, $25.3 billion to support taxpayer services and enforcement operations, and the balance for enforcement.[30] The paper backlogs and broader customer service deficiencies require priority attention.[31] If this additional funding is prudently spent, the IRS should be able to bring about a complete modernization makeover of its paper processing operations, with the ability to hire and train an advanced workforce, replace outdated technology and systems, and dramatically improve taxpayer services and the taxpayer experience.[32]

Automated Solutions Can Mitigate Hiring and Training Issues

As the IRS continues to struggle to hire and train new staff, automated solutions are an option to mitigate staffing issues. One example of such automation is the IRS's adoption of its FixERS tool, an automated way to process the IRS's Error Resolution System case inventory that historically the IRS processed manually.[33] The FixERS tool worked over 12 million individual returns that otherwise would have waited to be worked by an IRS tax examiner, which is the equivalent of 108 full-time employees using the antiquated IRS manual processing methods.[34] Automation enabled the IRS to work nearly 97 percent of eligible return errors within three days of receipt.[35] Improvements brought about by using modern automation had clear benefits for the IRS, but most importantly, it helped reduce delays for taxpayers. Automation is the best solution to help the IRS improve its processing health. TAS recommends that the IRS continue to leverage additional FixERS capabilities and other IT upgrades to improve the filing season experience and achieve efficiencies.

The IRS Should Expand Electronic Filing for Taxpayers to Help Digitally Divert the Paper Returns It Receives[36]

Presently, taxpayers e-file over 90 percent of individual tax returns and only about 69 percent of business tax returns.[37] Although some taxpayers choose not to e-file their federal tax returns, e-filing is the best choice for those who are able to do so. Some taxpayers would prefer to e-file their returns but cannot for a variety of reasons, including that IRS systems are not programmed to electronically accept some of its own forms.[38] Expanding electronic filing so more taxpayers can use it will reduce the IRS's volume of manual paper processing. Taxpayers are likely to quickly reap the benefits of an IRS that is less reliant on staff to manually transcribe returns from paper to computer.

Scanning Technology Can Digitally Clear Current Paper Jams and Prevent Future Ones

Scanning technology has been available for years and is cost-effective. If the IRS had used it during the pandemic, processing and refund delays would have been less extreme. While the IRS has contemplated the use of scanning in its processing operations, its indecisiveness and lack of strategy never produced follow-through or meaningful pursuit of it.[39] The lack of scanning technology as part of its data intake process puts the IRS several decades behind a significant number of state revenue agencies that incorporated this technology years ago.[40]

In March 2022, the National Taxpayer Advocate issued a Taxpayer Advocacy Directive (TAD) to the IRS, instructing it to implement scanning technology with the goal of substantially reducing or eliminating the challenges of processing paper-filed tax returns.[41] More machine-read returns mean fewer returns that require manual data transcription. Several months later, the IRS Deputy Commissioners responded to the TAD by partially modifying and partially rescinding the TAD's directed actions, but the response lacked specificity.[42] Due to the magnitude of the backlog and its negative impact on taxpayers, the National Taxpayer Advocate appealed the IRS Deputy Commissioners' decision to the IRS Commissioner.[43] After several months, the IRS Commissioner provided the National Taxpayer Advocate a general response indicating that the IRS planned to conduct further scanning of some, but not all, individual and business paper returns, and that detailed plans were in development.[44]

Scanning technology is an immediately available solution that will improve the processing pipeline with fewer transcription errors. Modern scanning technology does not sacrifice accuracy for speed and makes minimal errors, in contrast to the IRS's manual transcription error rate for paper returns of 22 percent.[45] IRS staff spent approximately 2.4 million direct hours preparing and manually inputting paper tax returns in its systems in 2022. Scanning would help the IRS accomplish this work in much less time and with greater accuracy.[46] And although the IRS slowly tested various scanning pilot programs during the pandemic, taxpayers experiencing refund delays were not the focal point.[47] The IRS should have used its scanning pilots as a possible solution to expedite refund delivery.

CURRENT IRS PROCESSING TECHNOLOGY
MANUAL • COSTLY • PRONE TO ERRORS

22%	2.4 mil
manual transcription error rate	hours spent preparing and manually inputting paper returns

The Negative Impacts of IRS Processing Delays

With most taxpayers eligible to receive refunds, the impact of IRS processing delays may affect taxpayers in important and financially damaging ways.[48] For individual taxpayers and families, refund delays may leave them unable to afford rent, food, or medicine. For business taxpayers, delays in providing congressionally authorized pandemic relief may have required some businesses to lay off workers or even to shutter operations.[49] For various reasons, taxpayers claimed many pandemic relief benefits via paper filing. This was also the case with refunds claimed on IRS Form 1139, Corporation Application for Tentative Refund, which taxpayers cannot e-file and where at one point taxpayers faced average IRS processing wait times over 165 days, far exceeding the 90-day statutory requirement.[50]

Collateral Impact on Congress

Taxpayers who cannot connect with the IRS or have difficulty resolving a tax issue often contact their members of Congress for help. Members of Congress have routinely been reaching out to the IRS or referring constituents to TAS to provide advocacy services for case resolution. Congressional offices and ultimately TAS should not be overburdened with constituent/taxpayer cases that are easily avoidable. Members of Congress and their constituents need TAS to focus its limited resources on taxpayer advocacy issues where it is uniquely positioned to add value and not divert its resources to serve as a backup IRS processing function.

CONCLUSION AND RECOMMENDATIONS

The IRS must modernize its processing operations to create a paperless work environment built on a solid foundation and designed for present and future success. To achieve this, the IRS must leave the era of the Flintstones and advance to the era of the Jetsons and beyond. The IRS must develop and execute a detailed and specific strategic plan to deploy its additional funding in a swift, tactical way that eliminates delays in paper processing and refund delivery and improves all facets of the taxpayer experience involving the processing of tax returns and related taxpayer correspondence.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Expedite the processing of paper tax returns by developing a plan to implement optical character recognition, 2-D bar coding, or similar technology to automate the processing of these returns during the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season.
2. Prioritize the processing of refund returns prior to returns with tax due or no tax during the 2023 filing season.
3. Automate error resolution for all error codes and conditions using the FixERS tool or other tool during the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season.
4. Develop and post on IRS.gov an easy-to-read dashboard that provides weekly information on the filing season, including the total number of returns in inventory, the number of returns beyond normal processing times, the number of returns in suspense status, and the anticipated timeframes for working through the backlog.

5. Provide inventory level status updates for each specific area of Submission Processing in a weekly report distributed to all impacted business units, including TAS.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Amalia Colbert, Commissioner, Small Business/Self-Employed Division

IRS COMMENTS

The IRS is not only committed to becoming healthy with our inventories and enhancing our customer service levels and options but also to comprehensively modernizing paper processing. The Inflation Reduction Act provides the IRS with supplemental funding of nearly $80 billion over the next ten years, part of which is earmarked to improve and support taxpayer services and modernize information technology systems. The IRS has been collaborating with a third-party vendor to pilot a scanning and digitalization solution. As of September 30, 2022, the IRS scanned and processed almost 135,000 tax returns through the pilot. For the 2023 filing season (FS) and beyond, the IRS is hoping to scan and process millions of tax returns using a digitalization solution. In the interim, we continue to develop and expand automated options such as the FixERS tool to process Error Resolution System (ERS) cases effectively and efficiently. During processing year (PY) 2022, the tool processed five error codes (13.2 million through 10/26/2022) with 100% accuracy. Only about 3% of the cases required manual intervention. For PY 2023, the IRS is planning to add 16 additional error codes to FixERS for a total of 21, including 9 of the 11 highest volume that come to the ERS.

Millions of taxpayers rely on their refunds for a variety of financial obligations. The Service's goal for FS 2023 is to return to pre-COVID processing guidelines, which means prioritizing returns that request a refund. The IRS continues to explore ways to deliver transparent messaging to taxpayers about their refunds by facilitating quicker responses to delays, increasing the use of lower-level authentication tools, reducing the need to involve other service channels such as the telephones, and identifying actions taxpayers may take to resolve delays. We are targeting the Where's My Refund (WMR) and Where's my Amended Return (WMAR) applications for enhancements in three key areas. Those enhancements include:

- Remove identify theft restrictions for certain scenarios that prevent users from accessing WMAR.
- Import ERS records into the WMR database and then tailor simple messages about the delay and possible actions taxpayers can take to speed up the processing of their return and refund.
- Enable WMR to receive and recognize specific return codes for certain types of return filtering delays and provide more specific and transparent messaging, including possible actions taxpayers may take to take action to resolve delays.

The IRS continues to expand Document Upload Tool (DUT) capabilities and has requested funding to develop a DUT for victims of identity theft to submit Form 14039, Identity Theft Affidavit.

Hiring and positioning our staff to best serve taxpayers is critical to bringing processing inventories to a healthy level and achieving our mission. Accounts Management onboarded over 5,500 employees in preparation for FS 2023 and Submission Processing selected more than 1,200 applicants during

October and continues to onboard contractors for clerical support. Options such as Direct Hire Authority and surge teams were invaluable to securing the necessary manpower to work inventories and staff the telephones. We are considering using surge teams in 2023 and are analyzing data to determine our needs. Even with adequate levels of funding, there are collateral challenges such as hiring clerical staff, lead technicians, and managers to support the new employees. Our Human Capital Office continues to provide strategies and tools for recruiting, hiring, developing, retaining, and transitioning a highly skilled and high-performing workforce to support the IRS mission accomplishments.

TAXPAYER ADVOCATE SERVICE COMMENTS

The IRS's response presents fewer answers for taxpayers than it does questions. Taxpayers need more transparency; they need clear answers as to how the IRS will quickly fix its problems and reasons to be optimistic for the future. While the IRS has been confronted with remarkable challenges during the pandemic, that does not justify the duration of its unprecedented processing delays and the significant refund delays impacting and harming taxpayers for a third straight year. Good news, the IRS has made considerable progress reducing the inventory backlog and is starting the 2023 filing season in an improved position from the two prior years. But millions of taxpayers are still waiting for their refunds and returns to be processed. Those taxpayers do not see the IRS as "healthy." Notably, the IRS continues to use "healthy" in the context of pre-pandemic inventory levels and guidelines as a benchmark for success. Although the pre-pandemic health of the IRS is certainly an improvement compared to the last 2.5 years, the IRS and taxpayers deserve better. From a taxpayer's point of view, the last three filing seasons have been brutal, resulting in delayed refunds, unanswered calls, inability to meet face-to-face, and failure of the IRS to post transparent updates, which leaves taxpayers in limbo. As we prepare to enter another filing season, the IRS once again is positioned to carry over a large volume of processing inventory. Taxpayers cannot afford to wait for refunds they should have received months sooner, and the IRS cannot continue the practice of carrying over millions of unprocessed returns every year. The backlog must be eliminated once and for all.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Expedite the processing of paper tax returns by developing a plan to implement optical character recognition, 2-D bar coding, or similar technology to automate the processing of these returns during the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season.
2. Prioritize the processing of refund returns prior to returns with tax due or no tax during the 2023 filing season.
3. Automate error resolution for all error codes and conditions using the FixERS tool or other tool during the 2023 filing season or, if that is not feasible, by the start of the 2024 filing season.

4. Develop and post on IRS.gov an easy-to-read dashboard that provides weekly information on the filing season, including the total number of returns in inventory, the number of returns beyond normal processing times, the number of returns in suspense status, and the anticipated timeframes for working through the backlog.
5. Provide inventory level status updates for each specific area of Submission Processing in a weekly report distributed to all impacted business units, including TAS.

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8 *Id.*

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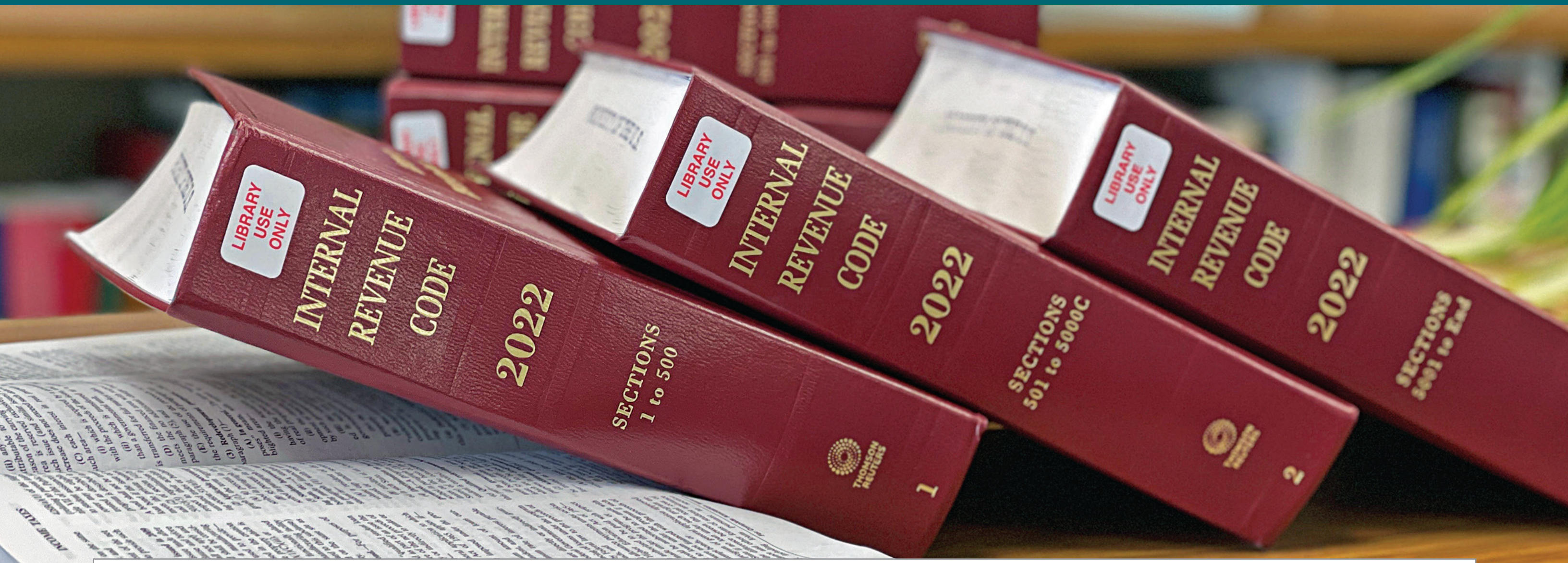

COMPLEXITY OF THE TAX CODE

The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

U.S. tax laws are overly complex. As a result, they burden America's taxpayers and negatively impact voluntary tax compliance. The current system of preparing and filing tax returns is too difficult, costly, and time-consuming. This is especially true for small businesses and taxpayers accessing social benefits through the tax system. Some of this complexity exists because the Internal Revenue Code (hereinafter "the Code") does not mirror modern life and has failed to evolve with the times. Making the rules easier to understand and follow would improve tax administration and compliance.

This Most Serious Problem looks at legislative and informational improvements to simplify and modernize the Code. Simplifying the Code means making it easy to understand, easy for the IRS to administer, and less burdensome on everyone, whether they are preparing tax returns, trying to comply with tax laws, or being audited. Simplifying the Code is the most important step Congress can take to reduce taxpayer compliance burdens, increase self-assessment and voluntary compliance, and improve the processing efficiency and verification of annual income tax returns.[1] Simplification is essential to the integrity of the U.S. tax system and to the broader civic participation of American taxpayers.[2]

EXPLANATION OF THE PROBLEM

The Code contains 9,834 code sections – many containing detailed subsections – and a six-volume set of corresponding regulations.[3] Many of these sections are unnecessarily complex and archaic as they were drafted decades ago, and the tax laws impose a complex system of requirements that do not match today's world. Complexity is a problem because complex rules lead to confusion, errors, and distrust, which reduces self-assessment and voluntary compliance. Some examples of how family structures are changing, and families, businesses, and taxpayers earn a living in the 21st century include:

- Family units are increasingly diverse with multigenerational households, split custody, blended families, and nonmarried cohabitating partners.
- We conduct business in new ways. The internet has expanded opportunities for people to start new types of businesses.
- Families and businesses are more mobile than ever. Especially during the COVID-19 pandemic, taxpayers may have relocated frequently. Individuals may be "digital nomads" whose residency may not be fixed. Businesses may operate remotely without fixed business locations.
- The concept of work has changed. The internet has allowed for more flexible work arrangements. Those earning income may not be tied to just one employer or fixed location. There are many gig economy workers, independent contractors, and small or microbusiness owners.

While technological innovation reduces barriers to entry for starting a business, the tax burdens endure. The Code must be modernized and adapted.

ANALYSIS

Simplicity matters so that taxpayers understand the rules and can comply with them efficiently.[4] However, "simple" does not necessarily equate to fewer words; in the context of the Code, it means the tax laws should be clear and easy for a taxpayer to understand, rely on, and use. The goal should be to draft clear and easy to understand laws. But just as important, Congress should draft fair, easily administrable laws with an eye toward reducing burden on both taxpayers and the IRS.

While the Code Does More Than Raise Revenues, Complexity Is Avoidable

The Code is the product of legislative changes throughout the decades. Much of the complexity stems from the desire to use the tax laws for more than raising revenue. It is a method of implementing social and economic policy objectives.[5] For example, Congress has entrusted the IRS to administer many social benefits through the tax system, such as the Earned Income Tax Credit (EITC), Child Tax Credit (CTC), Additional Child Tax Credit (ACTC), and the American Opportunity Tax Credit (AOTC). These programs provide critical financial assistance to American taxpayers.

The realities of the legislative process have produced a complex set of sunsets and phase-outs. As tax provisions are enacted through the reconciliation process, the "Byrd Rule" creates the need for expiration dates on laws that affect the budget.[6] This means many tax provisions are what have been called by one external stakeholder "Hokey Pokey" provisions: one year they are in the Code, and one year they are out.[7] The uncertainty jeopardizes tax compliance and administration of the tax system, and taxpayers struggle to learn the rules from one year to the next. It makes it difficult for individual taxpayers to plan. It makes it hard for small businesses to plan capital expenditures.[8] It is also hard for the IRS to keep up with the changes. It must edit forms, publish guidance, train staff, and update computer systems.[9] This is important as taxpayers look to the IRS to provide explanations via its publications, website, customer service telephone lines, and online chat functions.

Some argue this complexity is inevitable, given the use of tax expenditures and non-revenue-raising uses of the Code, and may even be necessary to achieve fairness or provide social benefits.[10] However, it is the position of the National Taxpayer Advocate that there is room to simplify and modernize the current Code to make it more accessible to America's taxpayers and more administrable by the IRS.

Complexity creates the following issues, as shown in Figure 2.2.1.

FIGURE 2.2.1

TAX COMPLEXITY CHALLENGES

Burdens Taxpayers

- Creates onerous compliance burdens on individuals and businesses. Taxpayers devote excessive time and resources to preparing and filing tax returns.
- Forces taxpayers to bear monetary costs to comply by hiring tax return preparers or buying tax preparation software.
- Rewards taxpayers who can afford expensive tax advice and discriminates against taxpayers who cannot.

Undermines Trust in the Tax System and Reduces Voluntary Compliance

- Alienates taxpayers as they do not understand the rules.
- Confuses taxpayers who do not understand how their taxes are computed and creates a perception people are not paying their fair share.
- Leads to lower levels of tax compliance, as taxpayers make inadvertent and deliberate errors.
- Facilitates tax avoidance by enabling taxpayers to structure transactions to reduce liabilities or commit fraud.

Difficult to Administer

- Requires the IRS to update forms, publications, and computer systems, train employees on changes, and respond to millions of taxpayer questions regarding rule changes.
- Impedes the IRS's ability to detect noncompliance through audits or other means.
- Requires the IRS to spend valuable resources answering questions and providing guidance regarding the Code's complex provisions.

Out of Touch With Modern Life

- Excludes families and businesses from credits and deductions because the Code does not reflect life in the 21st century.
- Impacts economic growth.

Americans Spend So Much Time and Money on Tax Preparation Because the Code is Burdensome

Time and Financial Burdens

The financial burden and time commitment for complying with our nation's complex tax system is astronomical. For example:

- An individual taxpayer is estimated to spend 13 hours and $240 out-of-pocket costs to prepare and file one annual tax return.[11]
- For a small business, the time and money spent on tax compliance is roughly 82 hours and $2,900.[12]
- Individual taxpayers spent a total of 897 million hours in fiscal year (FY) 2022 on recordkeeping. This is in addition to the 1.15 billion hours spent on tax preparation of individual returns.[13]
- Business entities spent about 1.14 billion hours and $48.3 billion on tax preparation in FY 2022.[14]
- Many small businesses/sole proprietorships file a Schedule C to report their business income and expenses. For tax year (TY) 2021, about 16 percent of individual income tax returns filed for that year included a Schedule C.[15]
- For many small businesses, time is their most valuable asset. As an external stakeholder stated in a discussion with TAS, each hour spent on tax compliance is an hour less they can spend assisting a customer.[16] Some are spending the equivalent of two full weeks a year on tax return preparation.[17]
- In FY 2022, U.S. taxpayers collectively spent $89.7 billion on tax preparation and 3.2 billion hours on recordkeeping and tax preparation.[18] If this time were monetized, this constitutes $94.6 billion spent on tax preparation in FY 2022 alone.[19] The enormity of the dollars spent on this roughly equals the gross domestic product of the Dominican Republic.[20]
- The IRS hourly paperwork compliance burden is over six billion hours.[21]
- It is estimated that tax compliance burden is 71 percent of the annual federal paperwork burden.[22]

The time spent on recordkeeping and tax preparation is excessive. This is time business owners could spend on growing their businesses. It is time individual taxpayers could earn wages or care for family members. The estimates may be low as they only include the cost of preparing federal income tax returns, not state tax documents. They do not include the costs of education, government administration, and tax litigation.[23]

Since the National Taxpayer Advocate last addressed complexity as one of the Most Serious Problems in the 2014 Annual Report to Congress, we can reflect on some progress toward simplification.[24] The Tax Cuts and Jobs Act (TCJA) of 2017 increased the standard deduction significantly while eliminating certain itemized deductions.[25] As a result, we can see a significant shift toward claiming the standard deduction rather than itemizing deductions (see Figure 2.2.2). Pre-TCJA, 31 percent of tax returns claimed itemized deductions, and 69 percent used the standard deduction. Since TCJA, only 9.7 percent of returns claim itemized deductions, and 90.3 percent of returns use the standard deduction.[26] This signifies a reduced time burden for individual taxpayers, who no longer have to collect records or compute itemized deductions. This is a small step on the path toward simplification. Yet, the National Taxpayer Advocate notes this was a policy decision with a negative financial impact on many who previously benefited from Schedule A deductions like uncapped state and local taxes and unreimbursed employee business expenses.

FIGURE 2.2.2, Tax Returns Claiming Standard Deduction Versus Itemized Deductions[27]

	Pre-TCJA		Post-TCJA							
	TY 2017		TY 2018		TY 2019		TY 2020		TY 2021 (Through September 2022)	
	Count	Percent	Count	Percent	Count	Percent	Count	Percent	Count	Percent
Standard Deduction	105,674,873	69.0	137,121,824	88.7	148,776,754	89.5	145,883,368	90.3	132,909,065	91.3
Itemized Deduction	47,453,918	31.0	17,471,552	11.3	17,455,642	10.5	15,745,379	9.7	12,701,725	8.7
Total	153,128,791	100.0	154,593,376	100.0	166,232,396	100.0	161,628,747	100.0	145,610,790	100.0

Costs and Risks

It is costly to keep records, comply with the Code, and prepare and file tax returns, and additional complexities arise regarding the time necessary to retain records. The whole process is stressful. Most taxpayers want to do the right thing; they want to comply. But it is difficult to do it on their own. Often, they are compelled to pay for tax software or tax professionals to help them understand their tax obligations. In TY 2020, 92.7 percent of taxpayers filed returns using tax software.[28] For TY 2021, of the individual tax returns filed through October 2022, 96 percent were filed via tax software.[29] This imposes a monetary cost on those taxpayers who paid for software to prepare and file their returns. Because the law requires filing annual tax returns, the government should bear the costs associated with filing. The high cost of return preparation driven by the complexity of the Code creates a disparity between those who can afford tax professional assistance and those who cannot. Low-income filers face higher compliance costs relative to their resources.[30]

Complex rules make claiming refundable credits too difficult without software or professional assistance. This costs money and drains resources from households.[31] For TY 2020, over half of the taxpayers claiming the EITC (50.4 percent), used a paid tax return preparer.[32] For TY 2021, over 15.2 million people claiming the EITC paid for tax return preparation essentially to claim a public benefit provided by Congress.[33] The high cost of tax return preparation may drive taxpayers to rely on noncredentialled tax return preparers who may not adhere to the rules either intentionally or unintentionally, potentially causing problems for taxpayers down the road. The Department of the Treasury and the National Taxpayer Advocate believe unscrupulous and unregulated tax return preparers contribute to refundable credit noncompliance, fraud, and improper payments.[34] An improper payment is any payment that should not have been made, was made in an incorrect amount, or was made to an ineligible recipient.[35] For FY 2021, the IRS calculated and reported the following dollar amount and percentage rate of improper payments for three of its high-priority programs susceptible to improper payments:

- EITC: The IRS estimates 28 percent ($19.0 billion) of the total EITC payments of $68.3 billion were improper.[36]
- ACTC: The IRS estimates 13 percent ($5.2 billion) of the total ACTC payments of $39.4 billion were improper.[37]
- AOTC: The IRS estimates 26 percent ($1.9 billion) of the total AOTC payments of $7.1 billion were improper.[38]

Taxpayers suffer the consequences, as they are ultimately responsible for any tax liabilities resulting from these improperly prepared returns.[39] Moreover, these errors increase burdens to tax administration and negatively impact the tax gap.

Complexity Undermines Public Trust, Self-Assessment, and Voluntary Compliance

The complexity of the Code undermines public trust in government and the IRS; conversely, simplifying the Code would enhance understanding and public confidence in the fairness of the tax system.[40]

Taxpayers may make inadvertent mistakes due to misunderstanding the law. The IRS may assess penalties against people who made every effort to comply with the law. This erodes trust in the system and may inhibit self-assessment and voluntary compliance, the bedrock upon which our tax system is based. It further erodes public trust in our government. The Code should be drafted clearly and administered fairly and equitably by the IRS with timely guidance to inform taxpayers.

"…[E]nforcement of the law is not only a means to raise revenue. It is also a matter of fundamental fairness. It is important for honest taxpayers to know that, when they file their taxes accurately with the IRS, other people are doing the same." -Secretary Janet Yellen[41]

Complexity also creates opportunities to engage in tax fraud or aggressive tax avoidance maneuvers. Fraudsters seek refuge behind the complexity, as it may be difficult for the IRS to detect noncompliance. In FY 2022 alone, the IRS assessed fraud penalties totaling $306,823,808.[42]

The combination of inadvertent mistakes, reduced self-assessment and voluntary compliance, and outright fraud generates a significant financial risk to tax administration. Complexity contributes to the "tax gap," which is the tax liability owed versus what is voluntarily paid.[43] The most recent estimates of the tax gap place it at $496 billion, with projections growing to $540 billion per year.[44]

Modernize the Internal Revenue Code: The Code Is Outdated and Does Not Reflect Modern Society

Outdated Code Does Not Fit Modern Families

The American family has changed, and the Code has not kept up, as divorce, cohabitation, blended families, and multigenerational family arrangements have become more common.[45]

BLENDED • COHABITATION • DIVORCE MULTIGENERATIONAL

The American family has changed, and the Internal Revenue Code has not kept up.

Childcare arrangements are increasingly challenging,[46] as it has become common for children to split their time between different households, and an increasing number live with or are supported by non-parent relatives.[47] Only 51.6 percent of children living in families with incomes at or below 200 percent of the Federal Poverty Level were in families with married couples.[48] Children of low-income households were more likely to live with a single parent or in multigenerational households, a cohabitating household, or a family with at least one non-biological child, as compared to children of higher income families.[49] The qualifying child rules for EITC and ACTC should more accurately reflect their target population.[50]

The individual income tax laws are structured so an individual taxpayer files a return once a year based on a filing status such as being single or part of a family unit. The unit is based on legal relationships, child residency, and support. There are five child-related provisions that use the definition of qualifying child: Head of Household (HoH) filing status, Child and Dependent Care Credit, CTC, EITC, and the dependency exemption.[51] The Code and the way child credits are structured were established when the traditional family was a married two-parent household. Determining who can claim a child, given the outmoded standards, leads to administrative conflicts, with many children being excluded entirely.[52] The rules do not allow for more than one caregiver to claim the same child; they instead have a complicated system of tiebreaker rules that are hard for even tax professionals to apply.[53]

Selecting the applicable filing status is also difficult to understand. Many taxpayers are not formally divorced or legally separated but are living separate lives. The IRS prohibits them from claiming HoH filing status unless they meet additional requirements of IRC § 7703(b).[54] If they select the married filing separately status but do not have access to the Social Security number for their estranged spouse, they are forced to paper file.[55] Unfortunately, for the 2020 through 2022 filing seasons, paper filing a tax return prolonged the time it took to receive a refund by many months.[56] That delay has an impact on those already facing financial hardships. A study has shown that even a one-week delay in the refund would put 30 percent of families in a financial situation that would prevent them from paying bills on time.[57] The National Taxpayer Advocate continues to call for the IRS to enable all taxpayers to e-file tax returns.[58]

Outdated Code Excludes Children

Congress should adapt the Code to ensure children can access tax benefits. As the cost of housing increases, households may also include multiple unrelated working adults and cohabitating families. Data shows families are moving to less fixed household types where the composition changes through the course of the year.[59] The standards used to determine eligibility may exclude children not in traditional childcare or housing arrangements.

The refundable credits, including EITC and ACTC, are meant to provide financial support to those caring for children. However, the current requirements for these credits leave claimants who make errors exposed to examination and exclude children in need of aid from accessing tax benefits.[60] Furthermore, EITC and ACTC are directed toward a population of taxpayers least equipped to navigate its complexity.[61]

Qualifying Child: Uniform Definitions Should Be Uniform

The term qualifying child is defined in IRC § 152(c). It is meant to be a common definition throughout the Code, yet there are confusing and complicated deviations from this uniform definition. Figure 2.2.3 illustrates the complexity of these deviations.

For example, a qualifying child for EITC must be under 19 (or 24 if a student), while a qualifying child for the CTC must be under 17.[62] IRC § 152(c)(2) lists different qualifying "relationships" that would make someone a qualifying child for benefits like the CTC or EITC. This list includes children, grandchildren, stepchildren, nieces, and nephews. In the case of a taxpayer who is married but seeking to be treated as unmarried for claiming the HoH status, the list is more limited. Only a child or stepchild – *not* a grandchild – will allow the taxpayer to meet the requirements to be considered unmarried for HoH filing status.[63] These variations are complex and needlessly confusing. Not surprisingly, many taxpayers do not understand the differences in requirements, so they assume qualifying for one automatically means they qualify for the other.[64] Uniformity on qualified child requirements throughout the Code would reduce complexity. The National Taxpayer Advocate recommends modernizing the definition of a qualifying child so the rules should reflect real-life living arrangements.[65]

FIGURE 2.2.3, Definitions of Qualifying Child[66]

	IRC § 152 Qualifying Child Common Definition	Deviations
Relationship Test	Child or descendant of such a child, or brother, sister, stepbrother, stepsister, or descendant of any such relative	**Head of Household:** For a married person seeking to be treated as unmarried for claiming HoH status: only child or stepchild; not grandchild
Residency Test	Same principal place of abode as the taxpayer for more than one-half of the year	**EITC:** Abode must be in the United States
Age Requirement	Must be under 19 or 24 if a student	**CTC:** Must be under 17
Support Test	Has not provided over one-half of individual's own support for the calendar year	**EITC:** Does not apply this test
Other Requirements		**EITC and HoH:** Do not apply special rules for divorced parents from IRC 152(e) **Dependent:** Must be a citizen, national of the United States, resident of the United States, or a contiguous country (*i.e.*, Mexico or Canada) unless adopted by a citizen or national of United States **CTC:** Must be a citizen, national, or resident of the United States

Illustration of How the Requirements Exclude Taxpayers

IRC § 152(c)(1)(B) requires the qualifying child to have the same principal place of abode for more than one-half of the year as the individual claiming the child as a dependent. This residency test results in the greatest number of erroneous EITC claims.[67] This may result from more complicated custody and childcare arrangements. If a child lives between parents or other caregivers' homes, the child may be excluded entirely from receiving tax benefits.

Example: Children Are Excluded From Social Benefits

A taxpayer who is a single mother works in a hospital on the night shift every weekday. She has two children and earns $31,200 a year. She relies on the grandmother of the children for childcare. The children stay with the grandmother for part of the year and attend school in the school district where the grandmother lives. The children live with their father for three months over the summer. However, this mother provides most of the financial support for her children throughout the year.

When this taxpayer prepares her taxes, she attempts to figure out if she can claim the EITC and CTC for her children. She reads the instructions for Form 1040 (114 pages), which informs her she may need a Schedule 8812. She reads the section on EITC, which points her to IRS.gov/EITC. She visits the website, which provides a dizzying array of links about the credit. She looks at Publication 596, Earned Income Credit (44 pages). She has spent several hours learning that her children must reside with her for over six months (183 days) to be able to claim them on her return.[68] A year of 365 days minus 90 days with their father over the summer leaves 275 days. Her children are with her mother 180 nights a year (five nights a week for nine months). The children reside with her only 95 days a year. She wonders if her mother would be able to claim her children to receive the EITC funds. She decides to pay a tax preparer to help her figure this out. She pays $240. The preparer explains that no adult meets the 183-day requirement. Even if the children had stayed with their grandmother enough days to meet the threshold, she was retired and only received Social Security, which does not count as earned income. The children will not have access to those funds since no parent or caregiver meets the criteria. This taxpayer just spent about 13 hours and at least $240 on tax preparation services to determine she is not entitled to credits that would help her support her family, a result inconsistent with Congress's intent when creating these credits.[69]

Complex Rules Are Difficult for the IRS to Administer

The web of rules that govern qualifying children are inconsistent, unintuitive, and outdated. The IRS lacks independent sources of information to verify whether the taxpayer claiming a child meets the multitude of requirements.[70] The shift to administering social benefits through the Code places tax return preparers in difficult positions. They are not social workers; yet they are now engaged in a due diligence process of reconciling all the benefits to which a taxpayer may or may not be entitled.[71]

According to the Department of the Treasury's FY 2020 Report, EITC claimants account for more than 40 percent of audits conducted on individual taxpayers.[72] In more than 40 percent of cases where the IRS originally flagged the EITC claim as invalid, and the taxpayer received assistance from TAS, the IRS ruling was reversed.[73] Claiming EITC involves over 20 separate determinations, including tiebreaker rules.[74] Seventy percent of improper EITC payments are from authentication errors.[75] This involves authenticating the relationship, residency, filings status, and custodial arrangements. "Qualifying child" errors are the most significant EITC overclaim in terms of dollars, caused by the failure to provide proof of the residency test and the relationship test.[76] The IRS does not have a database to show relationships between taxpayers or verify where children live or the other information necessary to validate the accuracy of this refundable credit prior to issuing a refund. The IRS does not have the statutory authority to address these issues at the point of receiving the return; instead, it addresses the overclaims through a long audit process.[77]

To reduce complexity in administering the rules around the EITC, the National Taxpayer Advocate has recommended separating the EITC into two credits: a worker credit and a child credit.[78] When Congress enacts a provision, the data used to substantiate entitlement to the provision should be data that is accessible, such as using the vehicle identification number to confirm entitlement to electric vehicle credits.[79] The annual wage data (Forms W-2) required to verify the worker credit is already available to the IRS, and it can easily use the data to verify entitlement to the worker credit.

Furthermore, complexity is hard for the IRS to manage. With each addition to the Code, the IRS must generate forms, draft publications, update computer codes, train staff, and answer millions of telephone calls. The IRS cannot handle the volume of inquiries it receives currently.[80]

Contemporary Small Businesses

It is not only families that have changed dramatically since the enactment of the Internal Revenue Code of 1986. Modern businesses also pose a new reality. The existing tax laws do not reflect the current work environment.[81] In 2021, 16 percent of Americans earned money from the gig economy as independent contractors without withholding.[82] Taxpayers may take on multiple gigs to make ends meet. They receive information from multiple third-party platforms, making tax compliance difficult.[83] It can take 40 hours to learn about depreciation methods, recordkeeping, and reporting it on tax forms.[84] These gig economy workers do not receive tax guidance from the service platforms.[85] The National Association for the Self-Employed reported:

- Thirty-four percent of those who reported earning income from the gig economy did not know they needed to file quarterly estimated tax payments;[86]
- Forty-three percent had not set aside money to pay their taxes and did not know how much they owed;[87] and
- Ninety percent indicated they used a tax preparer or software, and over 50 percent of those who relied on the preparer or software paid over $150.[88]

Self-employed individuals, which includes gig workers, sole proprietorships, and independent contractors, must submit quarterly estimated tax payments.[89] The quarterly due dates are illogical. The first and fourth estimated payments are due two weeks after the close of the quarter while the second and third are due two weeks before the close of the quarter.[90] This is confusing and does not set up taxpayers for success. It is challenging for self-employed individuals with incomes that are highly variable to estimate and pay for periods of time that are inconsistent.[91] To address this inconsistency, Congress should amend IRC § 6654(c)(2) to reflect a standard date of the 15th day after the quarter ends.[92]

Another example of complexity was the legislative change reducing the reporting requirements from $20,000 to $600 on Form 1099-K.[93] On December 23, 2022, the IRS postponed changing this threshold until 2023 due to lack of guidance and taxpayer confusion.[94] In light of the challenges, the National Taxpayer Advocate would ask that Congress carefully consider the threshold and that the IRS issue guidance quickly.

Example: Small Business Taxpayers Burdened by the Code

In need of a more flexible schedule, in 2021, a taxpayer became a rideshare driver for a rideshare app. Before then, he had never been an independent contractor. In 2022, he must complete his annual taxes. The driver believed the rideshare app was tracking everything. In January 2022, he gets a Form 1099-NEC from the company reporting his income. In March, he goes to a return preparer to do his taxes. The return preparer asks for his records and the amount he paid in estimated tax payments. The driver tells the preparer he only has a Form 1099-NEC and can log into the rideshare app to see his trips. He did not keep any other records because he did not know anything else would be required. He also did not pay any estimated taxes because this is his first time hearing about such payments.

In the past, he had worked as an employee and was accustomed to having withholding taken from his paycheck. His preparer can glean from the app the total number of miles driven while on routes. The preparer can use that with the standard mileage rate of 62.5 cents per mile.[95] But the preparer tells him there is an option of using actual expenses with depreciation or an IRC § 179 deduction. They will have to run the numbers both ways to see which is more advantageous. This doubles the time it takes to calculate the expense deduction. The driver did not keep a mileage record of trips from his home to his first ride each day. His preparer informs him that if there were a home office, the mileage would be considered business mileage, but if not, those amounts would be considered personal.[96] This further complicates the ability to compute the allowable IRC § 179 deduction for the vehicle. The preparer tells the driver it may be too late for him and that he may face penalties for this year but explains his obligations for the next year.

A gig economy worker like the one described above and more traditional small business owners face many recordkeeping obligations. An alternative to this time-consuming burden could be a standard business deduction that would be a percentage of gross receipts.[97] It functions much like the option between claiming a standard deduction or itemizing deductions. Schedule C small businesses could have the option of claiming a standard deduction or, if their expenses are greater, they could maintain the necessary records and compute their actual expenses. A standard business deduction would accommodate gig economy workers, especially those paid by online platforms and who receive Forms 1099.[98] They could easily calculate gross receipts, take a standard deduction against it, and within minutes comply with their tax obligations. This could radically reduce the time burdens facing many small businesses.

CONCLUSION AND RECOMMENDATIONS

The issues raised above are only a fraction of the challenges caused by complexities throughout the Code. Other taxpayers, including overseas taxpayers, large corporations, multinational companies, partnerships, estates, and exempt organizations face their own issues due to Code complexity.[99] The tax laws should be simple enough for people and business owners to prepare their own returns or at least understand their returns. The Code should not inadvertently entrap taxpayers; rather, it should clearly delineate each taxpayer's obligations and benefits. The tax laws should identify and minimize areas of noncompliance. The Code should make it easy for the IRS to administer the tax laws while also reducing burdens on taxpayers and practitioners.

Congress has the unique opportunity to update the Code and simplify it in the process. Congress must remove the complexity in the Code and eliminate burdens on taxpayers. The National Taxpayer Advocate recommends simplifying and modernizing the tax laws to enhance understanding and public confidence in the fairness of the tax system, reduce taxpayer compliance burdens, and improve tax administration.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Use uniform definitions throughout the Code.
2. Adopt a consistent and more modern definition of "qualifying child" throughout the Code.
3. Restructure the EITC and CTC by allowing separate worker and child credits to make it simpler for taxpayers and reduce improper payments.[100]
4. Amend IRC § 6654(c)(2) to set the estimated tax installment deadlines 15 days after the end of each calendar quarter (*i.e.*, April 15, July 15, October 15, and January 15).[101]

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IRS HIRING AND TRAINING

Weaknesses in the Human Capital Office's Hiring, Recruitment, and Training Programs Are Undermining the IRS's Efforts to Achieve Appropriate Staffing to Meet Taxpayer Needs

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

The *right to quality service* is a fundamental taxpayer right. High quality taxpayer service enables taxpayers to voluntarily comply with their tax filing and reporting obligations and thus facilitates tax compliance. Conversely, inadequate taxpayer service makes it more difficult for taxpayers to comply with their tax filing and reporting obligations, which can reduce tax compliance.

To improve taxpayer service, the IRS must have more employees and must ensure its employees are well trained. Over the past decade, the IRS's budget was reduced by more than 15 percent in inflation-adjusted terms, resulting in reduced staffing levels not seen since the 1970s.[1] As staffing has declined, so have taxpayer service levels. The IRS has not had enough employees to transcribe paper-filed returns, resulting in refund delays of ten months or longer for millions of taxpayers. It has not had enough employees to answer taxpayer telephone calls, with the result that only about one out of every ten calls is being answered by an IRS telephone assistor. It has not had enough employees to staff its Taxpayer Assistance Centers (TACs), causing some TACs to close and others to limit appointments. It has not had enough employees to process taxpayer correspondence, with delays of eight months or more common.

Not surprisingly, the IRS has ranked poorly in customer satisfaction surveys. The American Customer Satisfaction Index's ranking of federal agencies placed the Treasury Department, which interacts with the public primarily through the IRS, "dead last."[2] Forrester Research's U.S. Customer Experience Index ranked 221 companies and federal agencies and similarly found the IRS ranked last among all brands and agencies in customer satisfaction.[3]

With the additional funding Congress provided in the Inflation Reduction Act (IRA), the IRS now has sufficient resources to hire more employees and to train them. However, all IRS business units must work through the IRS's Human Capital Office (HCO) to hire employees, and the current pressures that HCO faces result in HCO being a bottleneck that impedes hiring across the agency. The IRS is taking too long to approve, process, and list job announcements, the quality of the announcements is often inadequate, and its initial screening of applications is taking too long and sometimes results in selecting candidates for consideration who are not, in the view of the business units, the most qualified.

EXPLANATION OF THE PROBLEM

The IRS is not only the nation's tax administrator but also a service provider and administrator of social benefits. Top quality service is fundamental to the IRS mission, and the success of this mission begins with its employees, future hiring, and continuous training. The pandemic contributed to the undermining of taxpayer service, notably with taxpayers experiencing significant delays in getting their returns processed, receiving their refunds, and receiving service in person and on its toll-free lines.[4] This past filing season,[5] the IRS received 73 million calls, telephone assistors answered ten percent of calls, and hold times averaged 29 minutes.[6] Simply put, nine out of ten phone calls to the IRS went unanswered by telephone assistors. Many of the IRS's challenges stem from inadequate staffing, including limited staffing in Submission Processing and telephone call centers. In addition, the IRS estimates 63 percent (52,000 of 83,000) of employees are eligible to retire in the next six years.[7] Hiring and adequately training the right quantity and quality of new employees while keeping up with the pace of retirements cannot be overstated as it will not only enhance taxpayer service but also protect taxpayer rights.

To gain further insight on hiring, recruitment, and training hurdles from the perspective of some of HCO's customers (IRS business, service, enforcement, and operations divisions) and to identify remaining obstacles that the IRS needs to address, TAS once again interviewed subject matter experts from various IRS Business Operating Divisions (BODs) in September and October 2022. These interviews gathered information on their experiences with IRS hiring, recruitment, and training, including barriers encountered and recommendations to strengthen the process for the future. In our discussions with the subject matter experts from different divisions, dissatisfaction was a theme, and several issues stood out:

- Hiring delays were a common issue raised in all interviews with varying levels of concern and significance;
- Issues with vetting of candidates by HCO including instances where an applicant was referred to the selecting official in a BOD but did not qualify despite HCO vetting;
- Delays in the hiring process due to fingerprinting and background checks;
- Issues with the bundling of hiring announcements caused BODs to compete for the same applicants;
- More resources and investment needed in overall IRS recruitment efforts;
- The lack of communication on what is happening with IRS University and long-term IRS training strategy and plans; and
- Difficulty securing training space, especially without enough advance notice.

While anecdotal, these comments by the BOD hiring and training officials are indicative that there is much the IRS must do internally to improve how it handles the hiring, recruitment, and training processes. While respondents were generally appreciative of the hard work of HCO staff and its willingness to help overall, respondents believed that there was significant room for improvement. This was consistent with our analysis from discussions with HCO and the responses to our information requests that constituted the core of our research.

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 and provide the best possible customer service to our nation's taxpayers. There is no doubt that certain hurdles are outside of the IRS's control. However, to alleviate the problems highlighted above, the IRS needs to make significant changes and reallocate more resources to HCO's hiring and training efforts to support the mission of the IRS and prevent further harm to taxpayer service.

ANALYSIS

The IRA[8] provided the IRS with much-needed funding (approximately $80 billion over the next decade) and presents an excellent opportunity to improve taxpayer service. In September 2022, the Secretary of the Treasury announced plans for the IRS to first hire 5,000 more customer service representatives to enhance its telephone operations and triple the number of taxpayers served at TACs.[9] Both services are fundamental to basic taxpayer service.

With this new funding, the IRS must prioritize and revolutionize its hiring, recruitment, and training processes. It should invest in revamping HCO as a foundation to its success. To improve IRS taxpayer service, HCO will need to recruit, hire, and train new employees on a historic scale the IRS has never attempted beyond its current capacities. HCO must do this while also keeping pace with the rate of attrition and accounting for the estimated 52,000 IRS employees expected to be lost through attrition within the next six years.[10] To hire thousands of new employees over the next decade and replace employees who have retired or otherwise left, the IRS must increase its current hiring capacity to meet this demand and focus on the training of its employees. The IRS must be able to show Congress and the American public that the IRA funding is a good investment providing measurable and immediate impact. In addition to addressing hiring challenges with the new funding, the IRS must prioritize recruitment and counter recruitment challenges it faces in a competitive job market. The agency must work to revamp its training quality and overall training efficiency. The IRS has yet to start its long-awaited IRS University that was announced in response to a Taxpayer First Act requirement.[11]

The IRS has recently made progress to address some recruitment and hiring challenges. On February 24, 2022, the U.S. Office of Personnel Management (OPM) granted the IRS limited Direct Hire Authority (DHA) for up to 10,000 employees to address immediate hiring needs more quickly within the IRS Wage and Investment (W&I) Division's Accounts Management and Submission Processing organizations.[12] The IRS has been working to hire up to 10,000 employees before this hiring flexibility ends on December 31, 2023.[13] The IRS is also seeking to expand the use of Streamlined Critical Pay beyond information technology (IT) employees and increase the number of positions designated for Critical Position Pay beyond IT; this proposal is awaiting approval from the Treasury Department and OPM.[14] Per our recommendation, the IRS is working on the documentation and justification required for submission of OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates for a group or category of General Schedule (GS) positions.[15] To increase HCO's hiring capacity, in fiscal year (FY) 2021, HCO was given the authority to hire an additional 250 employees within HCO.[16] The HCO Strategic Talent Analytics & Recruitment Solutions Office (HCO STARS) is also increasing staffing, with plans to add 15 recruiters in 2022 to meet IRS recruiting demands.[17] Although TAS is encouraged to see incremental progress, the IRS has much more work to do to increase HCO hiring capacity, improve recruitment strategies, and start implementation of a robust training program. Below, we will highlight some of these remaining challenges that the IRS needs to address and offer recommendations to address them.

Hiring

As the IRS acknowledged in its Strategic Plan for FYs 2022-2026, attrition remains a significant challenge for the IRS because of its aging workforce.[18] The majority of IRS hiring is simply to backfill positions due to retirements while there are relatively fewer planned new hires aimed at enhancing current staffing levels. Until the IRS releases its updated planning estimates, which take into account the enactment of the IRA, TAS does not have access to estimates or final hiring objectives within the IRS. TAS will continue to focus on hiring challenges and successes.

FIGURE 2.3.1, IRS Workforce Planning Estimates for FY 2023 Prior to Enactment of the IRA[19]

Business Operating Division	Planned Attrition Hires (100% Backfill)	FY 2023 New Hires (Pre-IRA)
Chief Financial Officer	37	41
Communications & Liaison	23	29
Criminal Investigation	238	274
Enterprise Digitalization & Case Management Office	5	61
Facilities Management & Security Services	79	0
Human Capital Office	180	252
Independent Office of Appeals	146	247
Information Technology	456	212
IRS NEXT	0	1
Large Business and International	338	559
National Headquarters (Reserved)	11	5
National Taxpayer Advocate (Taxpayer Services)	306	103
Office of Equity, Diversity & Inclusion	18	9
Office of Chief Procurement Officer	36	0
Office of Professional Responsiblity	0	6
Office of Online Services	7	108
Office of the Chief Risk Officer	0	0
Privacy, Governmental Liaison & Disclosure	33	11
Research, Applied Analytics & Statistics	31	36
Return Preparer Office	15	16
Small Business/Self-Employed	3,164	2,280
Tax Exempt and Government Entitities	106	183
Taxpayer Experience Office	1	35
Wage and Investment Taxpayer Services	6,276	4,400
Wage and Investment (Operations Support and Enforcement)	167	181
Whistleblower Office	1	5
Grand Total	**11,674**	**9,054**

Figure 2.3.1 shows the estimated attrition hiring and FY 2023 new hiring that the different BODs made prior to the enactment of the IRA. As illustrated, the IRS planned to backfill 11,674 positions in FY 2023, with the majority of those projected for the W&I and Small Business/Self-Employed Divisions. The IRS had also planned to hire 9,054 new hires prior to the enactment of the IRA in FY 2023. This figure shows how much of hiring is done to just keep up with the pace of attrition relative to new hires. It also provides a breakdown of the parts of the IRS for which the backfills and new hires are planned.

Figure 2.3.2 outlines the hiring activities of the IRS over the past three fiscal years. As illustrated in Figure 2.3.2, in the past three fiscal years, the IRS lost 2,986; 3,852; and 3,714 employees, respectively, due to retirement. The IRS made progress in FY 2022 in hiring more external hires than the two previous fiscal years. It lost fewer employees due to non-retirement separations relative to the two preceding years. Although these figures show an improvement, there is a lot to be done; as the IRS acknowledged in its Strategic Plan FY 2022-2026, it has an estimated 63 percent (52,000 of 83,000) of employees eligible to retire in the next six years.[20] Many of these positions will need to be filled to maintain the status quo in addition to any new hiring the IRS plans as a result of the increase in appropriations.

FIGURE 2.3.2, IRS Human Capital Office Processing of Hires, Non-Retirement Separations, and Retirements for FYs 2020-2022[21]

	FY 2020	FY 2021	FY 2022
Total External Hires	8,290	14,644	15,248
Non-Retirement Separations	8,775	10,610	8,031
Retirements	2,986	3,852	3,714
Sum of Non-Retirement Separations and Retirements	11,761	14,462	11,745
Total Hires (Internal and External)	17,007	23,506	23,821

The Human Capital Office Needs to Reduce the Average Cycle Time for Hires

The IRS has increased hiring efforts as a result of recent appropriation increases. With increased funding provided by the IRA, Treasury Secretary Janet Yellen committed to fully staffing all IRS TAC offices, increasing IRS telephone Level of Service to 85 percent, and cutting wait times for telephone service in half over the coming filing season.[22] As of October 27, 2022, W&I had onboarded 4,000 new employees to help answer telephones, with the goal of hiring another 1,000 by year-end.[23] In FY 2022, the IRS hired 5,950 new hires, which includes the employees hired to assist with telephones via its DHA as of September 2022.[24]

HCO made improvements to the hiring process in FY 2022. It expanded its use of contractors to support hiring and personnel security processes.[25] HCO entered into interagency agreements with OPM to support hiring and the U.S. Department of Veterans Affairs to support personnel security.[26] Additionally, in FY 2022, to support a surge in hiring activity, the IRS created a surge team of 58 individuals from different BODS to volunteer to assist with the onboarding portion of the hiring process in HCO.[27] HCO hired an additional 133 human resource specialists in FY 2022 as of September 24, 2022.[28] TAS commends HCO's efforts in these improvements.

However, TAS continues to remain concerned about the delays in hiring and the average cycle time for hires. The current hiring process remains lengthy and burdensome. The IRS needs to significantly shorten its average time-to-hire so it can compete better with the pace of other employers in the labor market. To measure success in this arena, OPM has set a time-to-hire goal – measured by the number of days that lapse after a request to hire is sent to an agency's Human Resources function until the day of a new employee's entrance on duty – of 80 calendar days.[29]

FIGURE 2.3.3, Average Time to Hire and Average Cycle Time of All Regular Hiring and Filing Season Hiring for FY 2022[30]

Type of Hire	Average Cycle Time From Announcement to Start Date (Entry on Duty)	Time to Hire (Overall Average)	Time to Hire (Without DHA)	Time to Hire (With DHA)
IRS Wide	109.16 Days	80.63 Days	87.04 Days	57.53 Days
IRS-Internal	94.42 Days	54.64 Days	54.64 Days	N/A
IRS-External	172.14 Days	90.41 Days	104.44 Days	57.53 Days

As shown in Figure 2.3.3, in FY 2022, the IRS's time-to-hire averaged 81 days overall, with 104 days for external hires without using DHA authority and 58 days for external hires using DHA.[31] For a comparison, the IRS's time-to-hire average overall was about 88 days in FY 2021 (about 94 days when hiring external candidates), which is beyond the OPM goal but a significant improvement over the 120 days in FY 2019.[32] Although the FY 2022 results of this measure are an improvement for the IRS, it does not show a complete picture of the hiring process. In FY 2022, the average cycle time from the start of a job announcement to the start date (entry on duty) of the new employee was 109 days overall but 172 days for external hires.[33] The background check and personnel security process, which are not under HCO's control, add time to this measure. Under the time-to-hire metric, external hires that applied to positions that were not DHA approved had to wait on average about 104 days before starting their new job.

One of the best ways to expedite the current hiring process is to allow the IRS additional flexibilities in hiring that bypass some of the most time-consuming and frustrating parts of the hiring process. One such method is via DHA, which refers to hiring individuals into the Competitive Civil Service (GS-15 and below or equivalent) in permanent or nonpermanent positions by bypassing some of the hiring processes to allow for quicker hiring.[34] Figure 2.3.3 also illustrates that DHA improves the average IRS time-to-hire relative to the overall time to hire. Based on these results, TAS recommends that the IRS pursue DHA for more critical positions across the service, beyond what has been requested to date, because the IRS will also need the appropriate support staff (*e.g.*, secretaries, analysts, managers) to support significant increases in technical and critical positions.[35] Given that many of these potential applicants applying externally may not be incentivized to wait 104 days (as shown above for hires without DHA) or a full 172 days (as shown above for average cycle time for external applicants), DHA, which averaged about 58 days for external hires, reduced the waiting period and placed the IRS in a much better position. Accordingly, TAS advocates for the IRS to expand this flexibility in hiring. TAS also advocates for more flexibilities, such as special pay rates. TAS recommends that the IRS continue to raise awareness internally about the process for special pay rates and encourage submission of OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates as needed for a group or category of GS positions.

The Human Capital Office Should Improve Communication With Business Operating Divisions on Applicant Qualifications and Improve Human Resources Specialist Training

During our interviews with subject matter experts from various BODs, several IRS organizations expressed concern that, in some cases, applicants for certain positions are determined to be unqualified when they are qualified and those who are not qualified are determined to be qualified. Some applicants were initially determined to be qualified for the position and subsequently selected; later, it was determined they were unqualified and had to be told they were no longer selected for the position. These errors and time delays are not good for the applicant or the IRS. TAS believes these mistakes are attributable to a lack of communication between HCO and the BODs and the need for better training for human resources specialists. It is imperative that human resources specialists be appropriately trained before qualifying applicants for positions. Failure to do so may negatively impact the organization, and in some cases, the applicants. This is a work in progress, and HCO is working to address these concerns, but quick improvement is imperative to its success. TAS will continue to monitor the results of these efforts.

The IRS Should Invest in Upgrading the Current IRS Background Investigation System Technology to Eliminate Delays and Reduce Manual Workload

The IRS made improvements in the hiring process as highlighted above. However, barriers still exist in some areas, including the security clearance and fingerprinting processes. Fingerprinting appointment availability continues to be a challenge. Based on anecdotal information from interviews, some applicants must wait up to several weeks before they can get a fingerprint appointment to continue through the hiring process. TAS commends the IRS for launching a real-time Telephone Assistance Call Line in the Personnel Security office to assist applicants, employees, and contractors with background investigation issues that resulted in rejection.[36] The IRS also implemented an internal training plan for new hires to improve operations and supplemented staffing with contractor support, and in FY 2023, personnel security processes will undergo a review to determine areas for enhancement and improvement.[37] Although these measures will hopefully reduce the burden, more work is needed to improve this process as employees cannot be onboarded without necessary background checks and security clearance. To further streamline the personnel security and employee screening processes, TAS recommends that the IRS reallocate budgetary resources to invest in a web-based personnel security inventory management system to upgrade current IRS background investigation system technology to eliminate antiquated processes, reduce manual workload, and improve interconnection with other systems. A centralized, web-based personnel security inventory management system is a good investment that will help reduce the current delays in the hiring process.

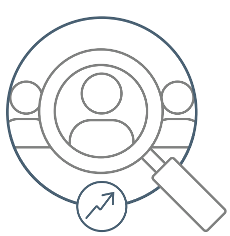
TAS also encourages HCO to work with IRS Facilities Management and Security Services, the Treasury Department, and other stakeholders to consider additional ways to shorten the security clearance, background check, and fingerprinting processes, including by considering outsourcing parts of the process to additional contractors.

Recruitment

The IRS Needs to Brand Itself as a Desired Agency to Work for and Reallocate Additional Budgetary Resources to the Human Capital Office's Strategic Talent Analytics and Recruitment Solutions Division to Expand Recruitment Efforts

In FY 2022, the IRS used digital tools to reach 47,338 potential candidates, with 2,891 candidates applying for positions.[38] It shared recruitment events and announcements with 1,558 public interest organizations.[39] It hosted 16 in-person direct-hire events and ten virtual direct hire events in FY 2022, engaging more than 24,900 people, with offers made for 5,363 positions for Clerks and Tax Examiners and 2,878 positions for Contact Representatives.[40]

TAS commends the IRS for these recruitment efforts; however, the IRS has room for improvement in branding and marketing itself and developing long-lasting partnerships with academia and industry.



The IRS needs to recruit numerous high quality applicants promptly and needs to dramatically ramp up its recruitment efforts from current levels to meet its goal.

The IRS needs to recruit numerous high quality applicants promptly and dramatically ramp up its recruitment efforts from current levels to meet its goal. In today's job market, with employee expectations in a post-COVID-19 work environment, the average employee values having competitive benefits and more remote work flexibility. The IRS has made strides to increase attractive benefits such as its recent adoption of childcare subsidies for employees who meet certain income guidelines. The IRS is also offering recruitment bonuses and employee referral bonuses and exploring the use of student loan repayment, eldercare subsidies, and remote working options to attract talent.[41] This is a great start, but the IRS needs to do more to market and advertise these benefits to potential job seekers.

The IRS should increase focus on and devote resources to marketing and branding itself to potential applicants as a great employer. Successful marketing and branding should demonstrate to prospective employees what the agency represents and what career paths are available and highlight current employee experiences through multiple channels. These efforts require a long-term investment by the agency.

While the IRS has made progress in recent years to deepen and expand collaborative partnerships with industry and academia, budget constraints have limited the resources dedicated to such partnerships. The IRS can do more to attract critically needed talent for a next-generation workforce prepared to deal with new challenges that originate from multiple interdisciplinary areas of study beyond the traditional degrees upon which the agency has long relied. More than ever, the IRS needs employees with backgrounds in statistics, applied mathematics, computer science and artificial intelligence, engineering, economics, finance, physics, and social sciences. To be competitive in recruiting top-notch talent, the IRS will need to dedicate even more resources to recruitment than it has done to date, including further expanding its current recruitment cadre and moving beyond the traditional recruitment tactics upon which it has relied. TAS recommends that the IRS reallocate additional budgetary resources to the HCO STARS team so it can implement an updated Strategic Recruitment Plan that will increase recruitment partnerships with private sector recruiting firms, universities, community colleges, and any other sources where diverse and qualified applicants may be underemployed.

Employee Retention

The IRS Needs to Reduce Employee Turnover Rates and Improve Employee Retention Rates

Once the IRS can recruit and hire employees, it must focus on employee retention to preserve the resources spent in the hiring and training processes. According to the IRS's Corporate Leadership Engagement Action Plan, it has an average estimated turnover cost of $10,000 per employee.[42] These are dollars wasted that the IRS has spent on recruiting, hiring, and training the departing employees. The IRS understands the importance of retaining employees and to demonstrate this, includes a strategy in its FYs 2022-2026 Strategic Plan to enhance retention through increased focus and analysis on mission-critical positions and improve succession planning to maintain institutional knowledge and reduce workload disruptions.[43] TAS commends the IRS for focusing on retention and implementing the action plan to ensure IRS leadership is focused on engaging its employees. However, TAS is concerned that the action plan may not be robust enough to retain employees with less than one year of service. In FY 2020, the IRS retained close to 80 percent of employees with less than one year of service, but that number decreased to less than 70 percent in FY 2021.[44] Further, the IRS had issues retaining employees under the age of 30 as retention rates between FYs 2020-2021 were between 63-68 percent for this age group, lower than employees above age 30.[45] TAS recommends that the IRS update its FYs 2022-2025 Corporate Leadership Engagement Action Plan to include specific actions the IRS will take to improve retention rates of employees with less than one year of service and employees under the age of 30 and specific actions to further reduce the overall turnover rates of employees. Perhaps if the IRS puts a greater focus on improving the employee experience and creating a sense of employee growth and community, it will not only help it build a healthier workforce but will also help reduce employee turnover costs in the long term.

Training

The IRS Needs to Provide a Dedicated Operational Budget for the Implementation and Operationalization of IRS University

New IRS employees cannot start working on day one – they need significant resources and time to receive quality training, which can often mean both classroom-type and on-the-job training over an extended period of time. A workforce equipped with next-generation skills needs advanced training, which requires investment and dedicated budgetary resources. For years, the IRS has been in the process of developing and implementing a comprehensive training strategy as described in the IRS's Taxpayer First Act Report to Congress.[46] It is the National Taxpayer Advocate's opinion that training and leveraging of existing skillsets are critical to the success of any organization. The IRS has the challenge of providing up-to-date training to existing employees and also training and developing a new workforce. The National Taxpayer Advocate has concerns as to the vision, organizational buy-in, and slow implementation of IRS University (IRSU) to be successfully implemented to meet the needs of the IRS workforce of the future and to reach the standing of a quality service organization.

However, despite the lack of dedicated funding in the past few years for this project, the IRS made some advancements in its implementation of IRSU. According to HCO's responses to TAS information requests, HCO is partnering with the business units to implement IRSU in three phases.[47] In phase one, the IRS developed a training strategy, IRSU structure, and employee development life cycle.[48] The IRS designed, developed, and released new hire training and created a Customer Service/Taxpayer Experience school.[49] Phase two saw the completion of the job analysis and development of all 14 mission critical occupation competency models, skills assessments, and career paths.[50] Additionally, the IRS developed an IRSU playbook outlining how HCO will establish IRSU and its roles and responsibilities.[51] While TAS has yet to review the materials or see concrete outcomes from the first two phases of IRSU, we are hopeful that the IRS is moving in the right direction and look forward to partnering with the IRS to improve its training program.

The IRS has yet to implement phase three of the IRSU plan, which includes acquiring a solution for automated skills assessments and career paths; fully operationalizing, opening, and utilizing IRSU; and standing up a Center of Excellence for the Treasury Department in FY 2023.[52] According to HCO's responses to TAS information requests, the IRS has neither a timeline for completion of phase three nor the required budgetary resources, leaving the agency at a critical juncture as timely completion of this phase is necessary to ensure an adequate training mechanism is operating and fully functional.[53] The IRS must be prepared to properly onboard its new employees and have robust training courses and options available to hit the ground running as new employees are hired. Hiring and training are foundational to the IRS's mission and must be priority one for the agency. TAS plans to monitor the IRS progress in this area in FY 2023.

The IRS should work with the Department of the Treasury and the U.S. General Services Administration to expedite the federal procurement process for the implementation of IRSU. This should include requesting approval of blanket purchase agreements (BPAs) for facilities for training so HCO can fully implement phases one and two of its plan. BPAs are a type of federal procurement contract agreement established by a government buyer with a schedule contractor to fill repetitive needs for supplies or services under the Federal Acquisition Regulation.[54] The IRS has been allowed to award BPA contracts in IT in the past.[55] The use of BPAs would significantly reduce the time to acquire training expertise for both building IRSU and delivering technical, professional, and leadership training.[56] BPAs would also allow HCO to streamline current training acquisition and ensure the use of best-in-class vendors.[57]

Without the appropriate reallocation of funding and a long-term investment in IRSU, the IRS will continue to struggle to build the envisioned workforce of the future. According to HCO's responses to TAS information requests, HCO estimates that it will need $123 million over five years to stand up and run IRSU.[58] In addition to standup costs, IRSU needs a dedicated and adequate operating budget.[59] The IRS spends approximately $45 million per year on training, which includes equipment, contracts, vendor fees, and training travel.[60] Funding for training has not increased for many years and is not sufficient to deliver the training IRS employees need.[61] To meet demand, IRSU would require an initial operational budget of at least $90 million, with a ten percent increase each year the IRS expands under the IRA.[62] According to HCO, this is a great investment because it is just $1,125 per employee per year on training and development.[63] TAS recommends that the IRS reallocate budgetary resources to provide an adequate, dedicated operational budget to HCO's teams leading the implementation of IRSU to establish the infrastructure to fully open IRSU and to better align IRS long-term training capacity with long-term hiring capacity.

Given the opportunity to create a new training program, the IRS must focus on a comprehensive plan that delivers both technical knowledge and practical experience to employees. Embedded in this strategy should be the means for employee career mobility and continued development of technical skills as employees shift their professional goals. A comprehensive training plan that interplays with a comprehensive hiring and recruitment strategy is key to a proper functioning IRS to ensure it has a pipeline of incoming and future talent that is trained and ready to achieve its mission year after year. The agency cannot accomplish that goal without first investing in the full implementation of IRSU. The implementation of IRSU was not funded in the past two years and was dependent on reallocating funding from other sectors.[64] Using the newly appropriated funds, the IRS must capitalize on the momentum to invest in IRSU to implement its corporate training model, actualize plans for reducing training time, and ensure training efficacy improves to meet all its employees' needs.

CONCLUSION AND RECOMMENDATIONS

With new funding provided by Congress, the IRS must prioritize, overhaul, and revolutionize its hiring, recruitment, and training processes. It should invest more in revamping HCO as a foundation to its success and gaining the trust of IRS leadership and employees. The IRS must implement further improvements in HCO's hiring capacity than it has to date. It must streamline processes to shorten the amount of time that it takes to hire new employees and hire the right employees. HCO must also dramatically increase its recruitment efforts and seek ways to be more competitive in its hiring. Furthermore, the IRS needs to demonstrate its successes, lead by example for current and future employees and leaders, expand efforts to brand itself as a desired agency to work for, and develop partnerships with academia and industry to attract top talent. To reduce delays in the hiring process attributable to personnel security and background checks, the IRS should invest in and upgrade its current background investigation system technology to eliminate delays and reduce manual workload. Additionally, the IRS needs to reduce employee turnover rates to better improve employee retention rates, especially among younger age employees. Finally, the IRS should invest in IRSU and provide a dedicated operational budget for the implementation and operationalization of IRSU and work within the organization to gain buy-in for its vision.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Pursue DHA authority for more critical positions across the service, beyond what has been requested to date, because the IRS will also need the appropriate support staff (*e.g.*, secretaries, analysts, managers) to support significant increases in technical and critical positions.
2. Continue to raise awareness internally about the process for special pay rates and encourage submission of OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates as needed for a group or category of GS positions.
3. Reallocate budgetary resources to invest in a web-based personnel security inventory management system to upgrade current IRS background investigation system technology to eliminate antiquated

processes, reduce manual workload, and improve interconnection with other systems. This will further streamline the Personnel Security process and reduce delays during the employee background check and employee screening processes.

4. Reallocate additional budgetary resources to the HCO STARS team so it can implement an updated Strategic Recruitment Plan that will increase recruitment partnerships with private sector recruiting firms, universities, community colleges, and any other sources where diverse and qualified applicants may be underemployed.
5. Update its FYs 2022-2025 Corporate Leadership Engagement Action Plan to include specific actions the IRS will take to improve retention rates of employees with less than one year of service and employees under the age of 30 and specific actions to further reduce the overall turnover rates of employees.
6. Reallocate budgetary resources to provide the necessary dedicated operational budget to HCO's teams leading the implementation of IRSU to establish the infrastructure to fully open IRSU and to better align IRS long-term training capacity with long-term hiring capacity.

RESPONSIBLE OFFICIALS

Jeffrey Tribiano, Deputy Commissioner for Operations Support

Kevin McIver, IRS Human Capital Officer

Nikole Flax, Director, Inflation Reduction Act 2022 Transformation and Implementation Office

IRS COMMENTS

The IRS agrees that recruitment, hiring, and training are foundational to its ability to provide taxpayers with quality service and fair enforcement. This priority is reflected in both the IRS Strategic Plan FY 2022-2026 and the Human Capital Operating Plan. The Inflation Reduction Act provided significant multiyear funding that will allow the IRS to address critical human capital challenges in innovative and impactful ways. Our strategy to improve in these areas will be a key component in the agency's transformation plans, and our goal is a redesigned hiring process that is simplified, digitized, and automated, where possible, in order to reduce unnecessary applicant workload and minimize unnecessary delays.

Despite the challenges noted in the report, the IRS continues to make major strides in enhancing recruitment strategies and streamlining hiring activities. Time-to-hire has decreased from 120 days in FY20 to 81 days in FY22, while overall hiring has increased. Much of this improvement resulted from executing the Direct Hire Authority (DHA) OPM granted the IRS to hire up to 10,000 Accounts Management and Submission Processing employees through December 31, 2023.

In November 2022, OPM granted the IRS DHA for 14,300 positions, including 9,800 in enforcement, taxpayer service, technology modernization, and delivery of critical services, and 4,500 Operations Support positions including IT, Procurement, Human Resources, and Personnel Security. The IRS is developing a recruitment and hiring action plan for DHA positions and planning to increase DHA events.

These DHAs will further reduce the time-to-hire, and the IRS is pursuing innovative solutions to relieve bottlenecks in the post-selection process. For example, each DHA selectee requires appropriate pre-employment background investigation to ensure suitability and credentialing for sensitive positions. In addition to hiring more personnel security specialists to conduct background investigations, the IRS is outsourcing parts of the process and exploring expanding alternate fingerprinting locations and improving technology. Executing these new DHAs will permit the IRS to quickly fill these positions and begin the transformation envisioned by the Inflation Reduction Act.

We have improved our ability to predict and prepare for hiring needs by improving hiring capacity and workforce planning processes and adding 400+ foundational hires in HCO in FY22. We have completed an assessment of our ability to retain employees and continue to expand programs to address challenges in this area and improve the employee experience, including a childcare subsidy program, student loan repayment program, and a roadmap for requesting special pay authorities. Still, we recognize that additional improvements are necessary to allow us to meet the challenges ahead.

We recognize the importance of a well-trained workforce in serving the taxpayer as well as the impact of career development and training on employee retention. As part of the 2021 Taxpayer First Act Report to Congress, the IRS outlined the framework for a new IRS University (IRSU) to serve as an innovative, centralized learning function to improve training and encourage collaboration across the organization. We appreciate the Advocate's support to fully fund IRSU.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS appreciates and has noted the IRS's efforts to date. However, based on our analysis, including interviews of HCO customers from across the IRS, the IRS has much more work to do to increase HCO hiring capacity, improve recruitment strategies, and start implementation of a robust training program. As the IRS noted, DHA has improved the time-to-hire, but the numbers have not improved much for non-DHA position hires. We encourage the IRS to continue to request that Congress and OPM provide DHA authority and additional hiring flexibilities as needed for more positions. One area of concern that still remains is the fingerprinting and background check processes, which need to be improved and the length of time for these processes be reduced. We hope the IRS makes significant changes in this area including by providing for more opportunities to implement automation "in order to reduce unnecessary applicant workload and minimize unnecessary delays," as the IRS envisions in its response.

The IRS states that it has "improved [its] ability to predict and prepare for hiring needs by improving hiring capacity and workforce." We have not seen that yet but look forward to seeing the results of these efforts in the coming years. We commend HCO in adding over 400 foundational hires in FY 2022, and we anticipate HCO will be able to make progress as a result of its increased capacity. We commend the IRS in recognizing the need to fully invest in IRSU so that it can implement its IRSU vision outlined in the Taxpayer First Act Report to Congress.

TAS will continue to advocate with internal and external stakeholders that the IRS receive the support and flexibilities it needs to meet its hiring needs so it can better serve taxpayers. TAS will also continue to offer insight and collaborate with the IRS so the IRS can achieve its mission of providing quality service and protecting taxpayer rights. TAS will continue to advocate for the IRS's hiring, recruitment, and training needs and push the IRS to ensure it is providing adequate funding for IRSU.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Pursue DHA authority for more critical positions across the service, beyond what has been requested to date, because the IRS will also need the appropriate support staff (*e.g.*, secretaries, managers) to support significant increases in technical and critical positions.
2. Continue to raise awareness internally about the process for special pay rates and encourage submission of OPM Form 1397, Special Salary Rate Request Form, to request that OPM establish higher rates of basic pay or special rates as needed for a group or category of GS positions.
3. Reallocate budgetary resources to invest in a web-based personnel security inventory management system to upgrade current IRS background investigation system technology to eliminate antiquated processes, reduce manual workload, and improve interconnection with other systems. This will further streamline the Personnel Security process and reduce delays during the employee background check and employee screening processes.
4. Reallocate additional budgetary resources to the HCO STARS team so it can implement an updated Strategic Recruitment Plan that will increase recruitment partnerships with private sector recruiting firms, universities, community colleges, and any other sources where diverse and qualified applicants may be underemployed.
5. Update its FYs 2022-2025 Corporate Leadership Engagement Action Plan to include specific actions the IRS will take to improve retention rates of employees with less than one year of service and employees under the age of 30 and specific actions to further reduce the overall turnover rates of employees.
6. Reallocate budgetary resources to provide the necessary dedicated operational budget to HCO's teams leading the implementation of IRSU to establish the infrastructure to fully open IRSU and to better align IRS long-term training capacity with long-term hiring capacity.

Endnotes

1 *On IRS Operations and Improving the Taxpayer Experience: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 117th Cong. (2022) (statement of Kenneth Corbin, Comm'r, Wage and Investment Division, and Chief Taxpayer Experience Officer, IRS).

2 American Customer Satisfaction Index, *Federal Government Report 2021*, at 3 (2022).

3 Katie Deighton, *Customer Experience Is Getting Worse*, Wall Street J. (June 7, 2022), https://www.wsj.com/articles/customer-experience-is-getting-worse-11654639388.

4 For a more in-depth discussion of IRS processing delays, *see* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *supra*. For a more in-depth discussion of IRS telephone and in-person service, *see* Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions*, *infra*.

5 The IRS 2022 tax filing season for individuals began January 24, 2022, and ran until April 18, 2022. IRS, IR-2022-08, 2022 Tax Filing Season Begins Jan. 24; IRS Outlines Refund Timing and What to Expect in Advance of April 18 Tax Deadline (Jan. 10, 2022), https://www.irs.gov/newsroom/2022-tax-filing-season-begins-jan-24-irs-outlines-refund-timing-and-what-to-expect-in-advance-of-april-18-tax-deadline.

6 IRS, Joint Operations Center, Snapshot Reports: Enterprise Snapshot/Enterprise Total (week ending Apr. 23, 2022).

7 IRS, Pub. 3744, Strategic Plan Fiscal Year 2022-2026, at 14 (July 2022).

8 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, § 10301, 136 Stat. 1818 (2022).

9 Janet Yellen, Sec'y of Treasury, Remarks at IRS facility in New Carrollton, Maryland, (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952.

10 *The Filing Season and IRS Budget: Hearing Before the S. Comm. on Finance*, 117th Cong. (Apr. 7, 2022) (statement of Charles Rettig, Comm'r, Internal Revenue), https://www.irs.gov/newsroom/written-testimony-of-charles-p-rettig-commissioner-internal-revenue-service-before-the-senate-finance-committee-on-the-filing-season-and-the-irs-budget. In his testimony, the Commissioner explains the IRS needs to hire 52,000 IRS employees to maintain current levels, due to losses through attrition within the next six years.

11 *See* IRS, Taxpayer First Act Report to Congress (Jan. 2021), https://www.irs.gov/pub/irs-pdf/p5426.pdf. The Taxpayer First Act, Pub. L. No. 116-25, § 2402, 133 Stat. 981, 1014 (2019) required that the Commissioner of Internal Revenue submit to Congress a written report providing a comprehensive training strategy for employees of the IRS.

12 IRS response to the National Taxpayer Advocate's 2021 Annual Report to Congress (Apr. 25, 2022); *see* 5 C.F.R. § 337.202 for the definition of Direct Hire Authority (DHA). As one federal agency website explains, DHA "expedites hiring by eliminating rating and ranking, veterans' preference, as well as typical selection procedures. All applicants who meet the minimum qualification requirements will be referred to the hiring manager for consideration and may be selected." Department of the Interior, *Direct Hire Authority Quick Reference Guide*, https://www.doi.gov/sites/doi.gov/files/direct-hire-authority-quick-reference-guide.pdf (May 4, 2021).

13 TAS Recommendations and IRS Responses, TAS Recommendation 2-3 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-02-irs-recruitment-hiring-and-training/ (last visited Dec. 19, 2022); IRS response to the National Taxpayer Advocate's 2021 Annual Report to Congress (Apr. 25, 2022).

14 *Id.*; Critical pay authority is an authority provided under 5 U.S.C. § 5377 and 5 C.F.R. § 535. Section 2103 of the Taxpayer First Act, *Streamlined Critical Pay Authority for Information Technology Positions*, reinstated streamlined critical pay authority for positions in IRS IT operations (which had lapsed in 2013) until Sept. 30, 2025. This section also allows the IRS to pay recruitment, retention, relocation incentives, and performance bonuses to streamlined critical pay appointees in positions in IT operations. *See* IRC § 7812.

15 TAS Recommendations and IRS Responses, TAS Recommendation 2-4 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-02-irs-recruitment-hiring-and-training/ (last visited Dec. 19, 2022). *See also* National Taxpayer Advocate 2021 Annual Report to Congress 51, 58-59 (Most Serious Problem: *IRS Recruitment, Hiring, And Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_02_Recruitment.pdf.

16 TAS Recommendations and IRS Responses, TAS Recommendation 2-12 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-02-irs-recruitment-hiring-and-training/ (last visited Dec. 19, 2022).

17 *Id.*

18 IRS, Pub. 3744, Strategic Plan FY 2022-2026, at 14 (July 2022).

19 IRS response to TAS information request (Oct. 31, 2022). The numbers in this figure are planning estimates and are based on 100 percent attrition backfills, the projected FY 2023 new hires, and on end-of-year Chief Financial Officer hiring ceiling guidance provided to the HCO Workforce Planning Office on August 24, 2022. These estimates do not reflect IRA planned increases, which HCO anticipates will result in larger increases in planned hiring.

20 IRS, Pub. 3744, Strategic Plan FY 2022-2026, at 14 (July 2022).

21 The data in this figure is derived from the HCO Human Capital Data Management & Technology Database and includes all employees – permanent, temporary, and seasonal. IRS responses to TAS information requests (Aug. 13, 2021; Oct. 29, 2021; Nov. 8, 2021; Dec. 15, 2021). HCO provided the FY 2022 data on October 31, 2022. IRS response to TAS information request (Oct. 31, 2022).

22 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, 136 Stat. 1818 (2022); *see* Janet Yellen, Sec'y of Treasury, Remarks at the IRS facility in New Carrollton, Maryland, https://home.treasury.gov/news/press-releases/jy0952 (last visited Sept. 20, 2022).

23 IRS, IR-2022-191, IRS Quickly Moves Forward with Taxpayer Service Improvements; 4,000 Hired to Provide More Help to People During 2023 Tax Season on Phones (Oct. 27, 2022), https://www.irs.gov/newsroom/irs-quickly-moves-forward-with-taxpayer-service-improvements-4000-hired-to-provide-more-help-to-people-during-2023-tax-season-on-phones. For a more in-depth discussion of IRS telephone and in-person service, *see* Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Question*, *infra*.

24 IRS response to TAS information request (Oct. 31, 2022).

25 *Id.*

26 *Id.*

27 *Id.*

28 *Id.*

29 Erich Wagner, *OPM Announces Adjustments to Annual Time-to-Hire Metrics*, GovExec (Feb. 26, 2020) https://www.govexec.com/management/2020/02/opm-announces-adjustments-annual-time-hire-metrics/163361/. *See also* OPM, *Memorandum: Time-to-Hire Reporting Requirements* (Feb. 25, 2020), https://www.chcoc.gov/content/time-hire-reporting-requirements-1; Chief Human Capital Officers Counsel, *Updated Instructions for Reporting Annual Time-to-Hire* (T2H) 3 (Dec. 2019), https://chcoc.gov/sites/default/files/Time-to-Hire%20Instructions.pdf.

30 IRS response to TAS information request (Oct. 31, 2022). This data was compiled by HCO using USA Staffing for the period between October 1, 2021, through September 30, 2022. Entry on Duty dates were only included in this count if an announcement was posted, and the announcement open period was fewer than 100 days.

31 IRS response to TAS information request (Oct. 31, 2022).

32 IRS responses to TAS information requests (Aug. 13, 2021; Nov. 8, 2021).

33 It is important to distinguish cycle time from time to hire. Cycle time is a measure that includes applicants who apply to rosters and can take longer as a result compared to time to hire because an applicant could apply to a roster 99 days after it opened. This is because for rosters and registers, the applicant does not apply to an announcement within a two-week window. In comparison, the measure of time to hire is based on the definition by OPM. It is measured by the number of days it takes to hire from the day a hiring request is sent to an agency's Human Resources function until the day of a new employee's entrance on duty. Erich Wagner, *OPM Announces Adjustments to Annual Time-to-Hire Metrics*, GovExec (Feb. 26, 2020), https://www.govexec.com/management/2020/02/opm-announces-adjustments-annual-time-hire-metrics/163361/. *See also OPM, Memorandum: Time-to-Hire Reporting Requirements* (Feb. 25, 2020), https://www.chcoc.gov/content/time-hire-reporting-requirements-1; Chief Human Capital Officers Counsel, *Updated Instructions for Reporting Annual Time-to-Hire* (T2H) 3 (Dec. 2019), https://chcoc.gov/sites/default/files/Time-to-Hire%20Instructions.pdf.

34 *See* 5 C.F.R. § 337.202 for the definition of DHA. As one federal agency website explains, DHA "expedites hiring by eliminating rating and ranking, veterans' preference, as well as typical selection procedures. All applicants who meet the minimum qualification requirements will be referred to the hiring manager for consideration and may be selected." Department of the Interior, *Direct Hire Authority Quick Reference Guide*, https://www.doi.gov/sites/doi.gov/files/direct-hire-authority-quick-reference-guide.pdf (May 4, 2021).

35 The IRS has requested additional DHA for critical Services and Enforcement and Operations Support positions. The Treasury Department submitted these requests to OPM on October 17, 2022. IRS response to TAS information request (Oct. 31, 2022). However, TAS believes that the IRS will require DHA for more positions.

36 IRS response to TAS information request (Oct. 31, 2022).

37 *Id*.

38 *Id*.

39 *Id*.

40 *Id*.

41 *Id*.

42 IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan 16 (July 13, 2022).

43 IRS, Pub. 3744, Strategic Plan FY 2022-2026 (July 2022).

44 IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan 29 (July 13, 2022).

45 *Id*.

46 *See* IRS, Taxpayer First Act Report to Congress (Jan. 2021), https://www.irs.gov/pub/irs-pdf/p5426.pdf.

47 IRS responses to TAS information requests (Oct. 20, 2022; Oct. 31, 2022).

48 *Id*.

49 *Id*.

50 *Id*.

51 *Id*.

52 *Id*.

53 *Id*.

54 *See* 48 C.F.R. § 8.405-3.

55 *See*, *e.g.*, Alexandra Kelley, *IRS Awards $70 Million Contract For Digital Modernization*, NextGov (Apr. 1, 2022), https://www.nextgov.com/it-modernization/2022/04/irs-awards-70-million-contract-digital-modernization/363938/.

56 IRS response to TAS information request (Oct. 31, 2022).

57 *Id*.

58 IRS responses to TAS information requests (Oct. 20, 2022; Oct. 31, 2022).

59 IRS response to TAS information request (Oct. 31, 2022).

60 *Id*.

61 *Id*.

62 *Id*.

63 *Id*.

64 IRS responses to TAS information requests (Oct. 20, 2022; Oct. 31, 2022).

TELEPHONE AND IN-PERSON SERVICE

Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Each year, millions of taxpayers call the IRS's tax assistance phone lines and visit IRS Tax Assistance Centers (TACs) to obtain the help needed to meet tax filing and payment obligations. Though the IRS is working to increase staffing and implement technology designed to improve the customer experience, processing backlogs caused the demand for telephone and in-person service to remain high, while customer service levels continued to remain unacceptably low. In fiscal year (FY) 2021, the IRS Enterprise telephone lines reached an all-time service low, with only 11 percent of calls reaching a live assistor.[1] The FY 2022 post-pandemic filing season brought little improvement with only 13 percent of callers reaching live assistance.[2] Face-to-face appointments at the IRS's TACs similarly declined and showed little improvement during the FY 2022 filing season.[3] Taxpayers and practitioners alike rely heavily on the ability to reach an IRS employee for account actions and answers to their inquiries. Lack of sufficient service jeopardizes compliance, frustrates taxpayers, and impacts the taxpayers' *right to quality service*.[4] Taxpayers need the IRS to increase staffing and technology and explore opportunities to eliminate processes that create obstacles and hinder telephone and TAC office service delivery. Phone and in-person assistance are fundamental services that taxpayers expect and deserve. Until these services are provided, taxpayers cannot trust in our tax system.

EXPLANATION OF THE PROBLEM

Undoubtedly, the pandemic sparked a host of challenges impacting the delivery of IRS services. In March 2020, the IRS closed its offices and processing centers, severely diminishing or halting in-person services and many processing activities for several months.[5] As TAC sites reopened and telephone assistance resumed, unresolved FY 2020 tax return and correspondence processing backlogs, exacerbated by the American Rescue

Plan Act legislative changes and increased FY 2021 and FY 2022 inventory receipts, continued to stretch IRS resources thin, further hindering the IRS's ability to provide adequate telephone and face-to-face TAC services to our nation's taxpayers.

As of October 27, 2022, the IRS's Wage and Investment (W&I) Division had onboarded 4,000 new employees to help answer telephones, with the goal of hiring another 1,000 by year-end, an effort that should ultimately increase telephone assistance.[6] To further increase access to telephone assistance, the IRS has expanded customer callback technology to 31 of its toll-free telephone applications and implemented the use of chatbots to service callers on several Accounts Management (AM) toll-free telephone lines.[7] The IRS also introduced chatbots on Automated Collection System telephone lines, where most taxpayers owing less than $25,000 can now set up payment plans using chatbot services.[8] To more efficiently assist callers inquiring about refunds, the IRS also updated its self-help Where's My Refund? automated tool to allow taxpayers to check the status of current year refunds and those of two prior years.[9] Additionally, the IRS provided a new Where's My Amended Return? automated tool to provide general information on amended returns.[10] Despite these measures, FY 2022 IRS Enterprise telephone assistance remained deficient, while as of October 31, 2022, 34 of the IRS's 360 TAC locations still remained closed or unstaffed.[11] Tax issues can be complex, and while automated services can be helpful, taxpayers deserve the ability to reach live telephone and in-person TAC office assistance when needed, and the IRS must work toward meeting these basic taxpayer needs.

ANALYSIS

There are about 62 telephone lines that comprise the IRS's agencywide telephone "Enterprise." Approximately 35 of these phone lines reside within the IRS's W&I AM function, which typically accounts for about 80 to 85 percent of the total call volume IRS receives.[12] In addition to answering calls, AM is responsible for processing activities related to original and amended tax returns and associated correspondence.[13] Because AM customer service representatives (CSRs) divide their time between two key roles during the filing season: (1) answering calls and (2) assisting with the processing of returns and taxpayer correspondence, the more time spent working one means less time spent working the other. Further, the IRS pulled many seasoned CSRs offline to provide training for new hires and training updates for existing CSRs before the start of the next filing season. Albeit short-term, taking CSRs offline to complete training duties further strained already limited resources. It is well-known that the percentage of calls the IRS answered was unacceptably low prior to the COVID-19 pandemic, and with the high call volume experienced during the last couple of years, the percent of phone calls answered has plummeted even lower.[14]

TAS has historically recommended the IRS improve telephone customer service levels to reach an 85 percent Level of Service (LOS), a goal the IRS has stated it will seek to achieve during the 2023 filing season.[15] To accomplish the 85 percent goal, however, the IRS will logically have to assign most or even all of its CSRs to answer phone calls. The potential sacrifices the IRS will have to make and the collateral effects to achieve this goal are concerning. Time CSRs spend answering phone calls means time CSRs are not spending on their other key filing season role: processing original and amended returns and paper correspondence. Taxpayers, many quite literally, cannot afford to have the IRS take steps that have potential for increasing or creating a new processing backlog.

Answering taxpayer phone calls and processing tax returns and correspondence are two core aspects of the IRS mission that it must be able to handle. The IRS must continue to learn from the lessons of past filing seasons, to improve taxpayer service, to avoid causing self-inflicted challenges, and to not aim to achieve the highest LOS if it comes at the cost of creating processing backlogs. Although the IRS should accomplish both – a high percentage of calls answered and elimination of backlogs – in the short term, CSRs must rotate between both key roles during the 2023 filing season to minimize processing delays and provide the best possible service for taxpayers in the long term.[16]

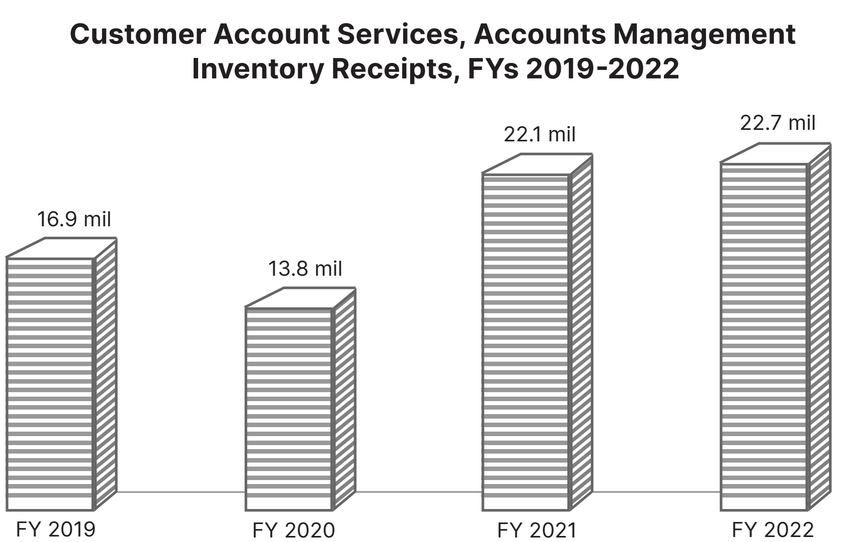
We all share the goal of a fully staffed and modernly equipped IRS that operates with 21st century technology and efficiency. But the IRS must get current in processing returns and correspondence and put the backlog behind us once and for all. Backlogs create processing delays that result in increased TAC visits from taxpayers requesting the status of their tax returns and correspondence and increased call volume, as shown in Figure 2.4.1. Similarly, shifting employees from telephone assistance toward return and correspondence processing causes a decline in telephone service, which may promote an increase in correspondence receipts as shown in Figure 2.4.2. It is important to note that AM's dual phone and processing responsibilities have a circular effect on IRS customer service delivery – necessitating a balanced approach rather than a singular focus on one responsibility to the detriment of the other.

FIGURE 2.4.1, IRS Enterprise Call Attempts, Calls Answered, Percentage of Calls Answered by an IRS Employee, and Total LOS for IRS Phones, FYs 2019-2022[17]

	FY 2019	FY 2020	FY 2021	FY 2022
Enterprise Total Call Attempts	99.4 mil	100.5 mil	281.7 mil	173.3 mil
Enterprise Total Calls Answered	51.5 mil	47.5 mil	72.2 mil	51.8 mil
Enterprise Calls Answered by a Live Assistor	28.6 mil	24.2 mil	32.0 mil	21.7 mil
Percentage of Enterprise Calls Answered by a Live Assistor	29%	24%	11%	13%
Percentage of Enterprise Calls Answered With Automated Assistance	27%	26%	10%	8%
Enterprise LOS	56%	51%	21%	21%

In FY 2022, only 21.7 million of the 173.3 million calls placed to an IRS telephone line were answered by an assistor (13 percent). Another eight percent of these callers received automated assistance, rendering the total service on all IRS telephone lines at 21 percent – similar to the service experienced in FY 2021, when call volume reached 281.7 million calls. The key difference between the two years was that in FY 2022, the IRS shifted the primary focus of its CSRs from phones to inventory backlog reduction. Though the IRS received 108.4 million fewer calls, 20.4 million fewer calls were answered – thus maintaining the same service level experienced in FY 2021. Additionally, as the volume of calls answered declined, FY 2022 AM paper correspondence and return receipts increased, surpassing the FY 2021 volume, and adding challenges to the clearance of the existing IRS processing backlog.[18]

FIGURE 2.4.2[19]



As shown in Figure 2.4.3, 134.9 million (78 percent) of the calls the IRS received were directed to ten telephone lines in the IRS Enterprise. The remaining 38.4 million calls (22 percent) were spread across the IRS's remaining 52 telephone lines in varying volumes.[20] "Net Attempts" reflects the attempts made to reach each of the ten highest volume telephone lines. "Assistor Calls Answered" reflects the number of calls that reached a live assistor, while "Total Calls Answered" refers to all calls answered live and via automated assistance. The LOS is based on calls that are serviced both by live assistance and through automation and provides an indication of how well the IRS is meeting caller demand. Service levels suggest that the IRS should explore options to improve service on these telephone lines. The IRS should consider whether it could consolidate any of the remaining 52 telephone lines within the main 1-800-829-1040 number, service them with chatbot technology, or operate them on a reduced schedule, freeing resources for improved access to the IRS's higher volume telephone lines, particularly those lines that directly impact face-to-face customer service delivery at IRS TAC offices.

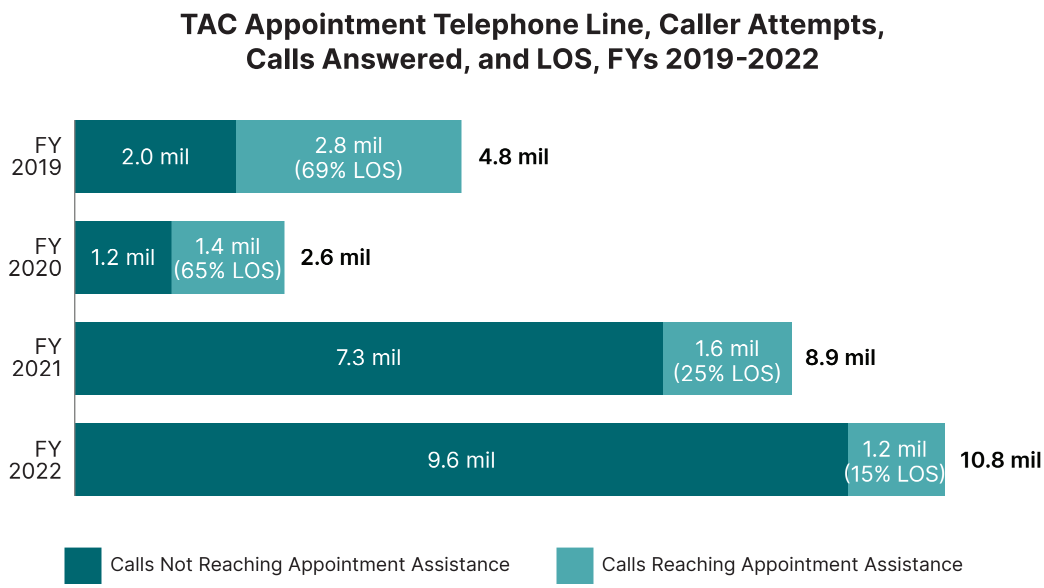
FIGURE 2.4.3, Top Ten IRS Enterprise Telephone Lines by Volume of Call, FY 2022[21]

Telephone Line	Phone Number	Net Attempts	Assistor Calls Answered	Percentage of Calls Answered by a Live Assistor	Total Calls Answered (Live and by Automation)	LOS
Individual Income Tax	800-829-1040	30.9 mil	3.0 mil	10%	4.4 mil	18%
Refund Hotline – Automated Only	800-829-1954	27.5 mil	0.0 mil	0%	20.9 mil	11%
Practitioner Priority Service	866-860-4259	12.7 mil	2.0 mil	16%	2.0 mil	17%
Refund Call Back	800-829-0582	11.3 mil	0.8 mil	7%	3.7 mil	13%
TAC Appointment Scheduling	844-545-5640	10.8 mil	1.2 mil	11%	1.2 mil	15%
AM Installment Agreement/ Balance Due	Enterprise Transfer	10.4 mil	2.9 mil	28%	2.9 mil	28%
Wage and Investment IMF Customer Response	800-829-0922	10.0 mil	0.7 mil	7%	2.0 mil	13%
Taxpayer Protection Program	800-830-5084	8.8 mil	1.0 mil	11%	1.0 mil	13%
Business and Specialty Tax Services	800-829-4933	8.0 mil	1.5 mil	19%	1.6 mil	26%
Automated Collection Service	800-829-3903, 800-829-7650	4.4 mil	1.9 mil	43%	2.2 mil	52%

Insufficient Telephone Service Negatively Impacts Taxpayer Assistance Center Office Service Delivery

The continued reduction in telephone services experienced during FYs 2021 and 2022 likely led to the substantial increases experienced in the volume of taxpayers seeking face-to-face assistance at IRS TAC office locations and the declines in service experienced on the TAC appointment scheduling telephone line. During FY 2022, the volume of callers attempting to schedule TAC appointments ranked the TAC appointment telephone line the fifth highest in volume of the 62 lines comprising the IRS Enterprise. As shown in Figure 2.4.4, after FY 2020 TAC office shutdowns, surges occurred in FYs 2021 and 2022 appointment demand. In FY 2022, call attempts exceeded ten million callers, up from the 4.8 million calls received during the FY 2019 pre-pandemic period.[22]

FIGURE 2.4.4[23]



During FY 2022, the IRS only serviced about 15 percent of the 10.8 million callers attempting to schedule a TAC appointment. On its website, the IRS instructs taxpayers to locate their local TAC office and make an appointment by calling the "appointment number for that office."[24] The IRS provides an automated locator tool for taxpayers to find their local office; however, there is only one phone number (844-545-5640) for scheduling all TAC office appointments across the United States. While local TAC offices may have the capacity to accommodate an appointment, the inability to reach scheduling assistance on the IRS's TAC appointment scheduling telephone line prevented many taxpayers and representatives from scheduling an appointment.

Taxpayers visiting an IRS TAC office in hopes of obtaining assistance often experience more frustration upon learning they cannot receive assistance without an appointment. The IRS recognized this difficulty, and on April 13, 2022, it implemented a virtual appointment referral process (Web Service Delivery (WebSD)) to assist these taxpayers.[25] To take advantage of the referral process, however, the taxpayer's issue must be one that the IRS can resolve through virtual interaction, and the taxpayer must possess the necessary technology to participate in the appointment via a computer or other personal device with internet connectivity. The IRS advised taxpayers referred for virtual appointments that it would contact them within one business day.[26] Though this process assisted some taxpayers, it did not sufficiently serve all taxpayers, as shown in the following example, and did little to address the underlying problem – the inability to schedule a TAC appointment. TAS received the following correspondence from an 88-year-old mother after filing a tax return for her deceased son.

> *My son died Sept. 8, 2021, leaving the need for a tax return for income covering Jan. 1, 2021, to Sept. 7, of 2021. The return was completed by a CPA and needed fiduciary documents added, so was mailed classified to Kansas City, MO, IRS March 14, 2022.*
>
> *March ended, so did April and May and I became concerned there was no correspondence. Then began the phone calls, emails, and conversations to elicit information about the status of the return. Phone call after phone call and punching numbers would get to a point and then exit without explanation. I then began a search for an appointment for someone to help me find the status of my son's return. Eventually I*

> *could get to the point of identifying [the] return and give them my identity. At that point the answer was (computer) we can't help you and a cut off.*
>
> *MORE SEARCHING BROUGHT ME TO AN APPOINTMENT WITH A PERSON TO HELP!!!! After waiting and waiting and cut offs, "enough" I said and walked into the Federal Building in Richmond Va. in search of the IRS. What I found was a huge open office space with 30 plus chairs in rows and at least 8 cubicles for interviews. ONLY ONE AGENT, ONE TAXPAYER AND ONE YOUNG EMPLOYEE were there. I explained my troubles and held out my documents of proof---the girl would not look at them as she explained I MUST have an appointment! She took my name, told me to go home and I would have a call in 48 hours for the appointment!!!! 48 hours and on --- no call! ---- from March to the middle of July and no one seems to care!...*[27]

Taxpayers fortunate enough to reach assistance on the IRS's TAC appointment telephone line are generally provided alternatives to TAC appointments when other resolution options are available.[28] If an appointment is necessary, the telephone assistor will determine the nature of the appointment and schedule an appointment based on TAC office appointment availability. If the IRS can handle the visit outside of a TAC location, it may instead offer taxpayers a Virtual Service Delivery (VSD) appointment or an opportunity to utilize the WebSD option.[29] A VSD appointment is an appointment held using IRS-provided videoconferencing equipment that the taxpayer can access at a community partner location, such as a public library. A WebSD appointment is a more recently introduced option that now provides taxpayers the opportunity to meet with a TAC representative virtually via a personal computer or device with internet access, in lieu of an in-office appointment.[30] Whether the taxpayer seeks a virtual appointment or an in-office appointment, taxpayers generally must first be able to reach the TAC appointment telephone line to schedule an appointment.

Access to Taxpayer Assistance Center Help Should Be Easier

As the IRS continues its efforts to divert call volume away from its limited in-person telephone assistance and toward self-help technology-driven alternatives such as automated tools and chatbot services, it is reasonable to offer taxpayers the ability to schedule virtual or in-office appointments online. The IRS should provide taxpayers with options. Businesses commonly use electronic appointment scheduling, as do many taxpayers when making medical appointments, reservations, and the like. The use of electronic appointment scheduling would not only reduce calls to the IRS's struggling TAC appointment telephone line but would also enhance the customer experience. Self-scheduling would eliminate the bottleneck experienced when trying to access the TAC appointment telephone line, reduce call volume, improve telephone line accessibility for taxpayers who do not have internet, and reduce taxpayer burden. The IRS should design an appointment scheduling tool to capture any information necessary for the IRS to determine the specific reason for the appointment, the appropriate type of appointment (virtual, in-person, or both if appropriate, allowing the taxpayer to choose), prepare for the appointment, or contact the taxpayer in advance of the appointment to provide any necessary guidance or assistance. Electronic appointment scheduling should further screen taxpayers' service needs and direct them to alternative assistance for issues that an IRS TAC office cannot handle.

The IRS Should Expand Web Service Delivery Services and Make Web Service Delivery Readily Accessible

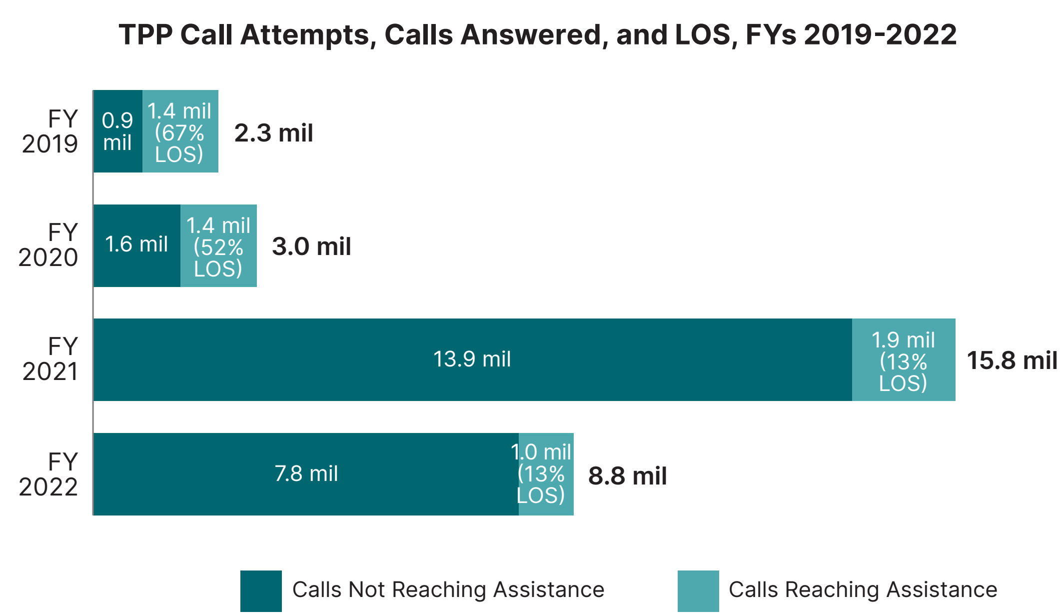
The IRS launched Phase 2 of its WebSD virtual appointment pilot on March 15, 2022, with the goal of expanding WebSD virtual appointments to a permanent nationwide program that provides taxpayers another option for receiving assistance.[31] Though the IRS increased the number of employees providing WebSD services from 16 to 32, the demand for WebSD appointments has been low while walk-in demand at IRS TAC offices has increased.[32] Currently, the IRS offers WebSD appointments only to taxpayers who can first reach an assistor on the IRS's TAC appointment telephone line or taxpayers who walk into a TAC office without an appointment.[33] WebSD appointments are further limited to taxpayers with a single issue, which must involve an Economic Impact Payment, a balance due, math errors/notices, refund inquiries, Automated Underreporter (CP 2000) notices, prior year returns, or an individual income tax law question – many topics for which the IRS maintains a separate telephone line or that the IRS can generally resolve over the phone, provided the taxpayer can reach assistance.[34]

Virtual WebSD appointments provide a promising option for taxpayers to meet and interact with the IRS without needing to travel to IRS TAC offices, which may be located a considerable distance from their homes. WebSD appointments also have the potential to produce lower no-show rates than in-office appointments while producing similar customer satisfaction results, as determined by a recent telehealth study comparing no-show rates and customer satisfaction results between virtual and in-office medical appointments.[35] To fully capitalize on the WebSD initiative, the IRS must make taxpayers aware of the availability of WebSD services on its website, afford taxpayers a means to self-schedule without first contacting the TAC appointment telephone line, and expand WebSD services to include a wider range of services that would otherwise bring taxpayers into an IRS TAC office, such as identity verification activities associated with the IRS's Taxpayer Protection Program (TPP). Potential WebSD benefits such as reduced call volume and increased taxpayer telephone access are currently diminished because most WebSD candidates must first reach the TAC appointment scheduling telephone line. Due to the limited nature of the inquiries qualifying for WebSD services, these inquiries are often screened and resolved by phone, which highlights both the need for improved levels of phone service and the limited usefulness of the current WebSD services offered.

Taxpayer Protection Program Verification Must Be Easier to Accomplish

During FY 2022, the volume of calls received on the IRS's TPP telephone line ranked this line the eighth highest in call volume in the IRS Enterprise. The TPP telephone line provides assistance to taxpayers whose returns the IRS has halted in the processing stream due to suspected identity theft. Though many taxpayers can authenticate their identity by phone, the inability to reach such assistance prevented many taxpayers from doing so.[36] Taxpayers unable to reach the IRS's TPP telephone line and those unable to authenticate their identity by telephone or online e-Services generally must make an appointment to authenticate in person at one of the IRS's TAC office locations – a task not easily accomplished.[37]

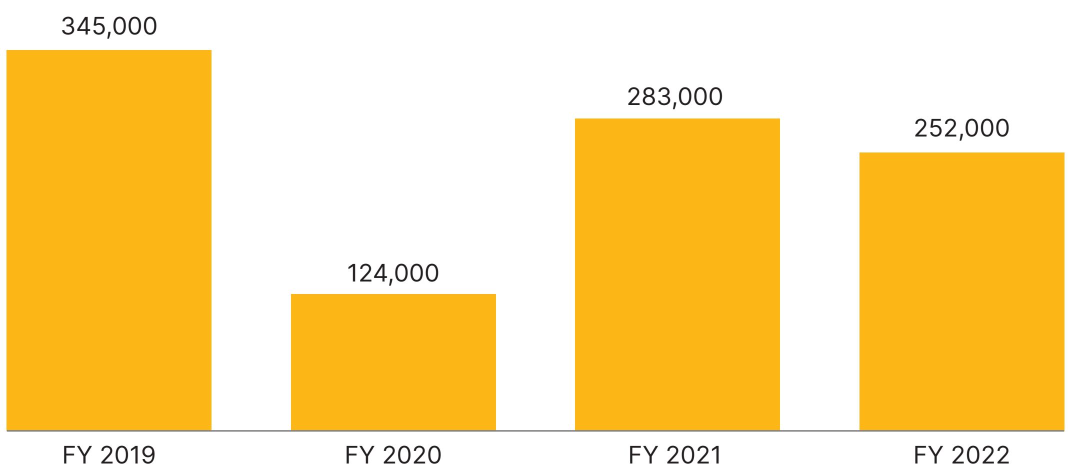
FIGURE 2.4.5[38]



In FY 2022, only about one million of the 8.8 million taxpayers trying to reach the IRS's TPP telephone line were successful, resulting in a service level of only 13 percent and an increase in TAC office appointment demand. As Figure 2.4.6 shows, thousands of taxpayers seek TAC appointments each year for the purpose of TPP identity verification. Though 252,000 taxpayers completed the identity verification process in TAC offices during FY 2022, approximately 2.4 million individual income tax returns still remained suspended awaiting taxpayer identity verification at the end of FY 2022.[39]

FIGURE 2.4.6[40]

TPP Identity Verifications Completed by TAC Offices, FYs 2019-2022



With limited service on both the IRS's TPP and TAC appointment scheduling telephone lines, the IRS should expand WebSD to include TPP identity verification activities while also exploring the implementation of an alternate identity verification process similar to the Acceptance Agent Program already in use by the IRS. The IRS currently uses Certifying Acceptance Agents (CAAs) and Acceptance Agents (AAs) to verify the identity and foreign/alien status of individuals applying for an Individual Taxpayer Identification Number (ITIN). CAAs and AAs are persons or entities (businesses or organizations) who, pursuant to a written agreement with the IRS, are authorized to assist individuals and other foreign persons who do not qualify for a Social Security number but who still need a Taxpayer Identification Number to process a Form 1040 and other tax schedules.[41] The CAA and AA conduct in-person interviews with each applicant to facilitate the application process by reviewing the necessary documents and forwarding completed Forms W-7 to the IRS.[42] Though CAAs providing ITIN assistance often charge for their services, any similarly crafted TPP identity verification program should seek to reduce or eliminate any fees associated with this process. Use of CAAs and AAs for some or all types of TPP identity verifications would provide an alternative to TAC appointments for TPP identity verification, alleviate taxpayer burden, minimize the volume of taxpayers calling the TPP and TAC appointment telephone lines, and minimize the volume of taxpayers requiring TAC office appointments for identity verification purposes. Furthermore, until the IRS is caught up with the existing identity verification backlog, it should consider other options to include utilizing revenue agents, revenue officers, or TAS employees to assist with these verifications as well as the processing and release of any associated refunds.

The IRS Should Staff All Taxpayer Assistance Center Offices to Meet Customer Demand

Per the IRS, "TAC staffing levels have fallen significantly since 2014, resulting in several closures and severely understaffed TACs. Increasing staffing levels will allow the IRS to re-open TACs and restore office hours, improving the ability for taxpayers to schedule appointments sooner, and ultimately fostering more productive exchanges with the IRS."[43] Though there is consensus that the IRS needs to increase staffing to meet TAC office customer demand, determining the level of TAC office demand and the volume of actual face-to-face appointments can be a challenge. The IRS reports TAC assistance as "Total TAC Contacts," a term that lacks transparency. Total TAC contacts include both face-to-face and non-face-to-face contacts.[44] Face-to-face contacts involve providing assistance to taxpayers who are physically present in the TAC office for an appointment and those visiting a TAC office to pick up forms, make payments, and drop off current year tax returns and documents.[45] Non-face-to-face contacts involve answering taxpayer correspondence and working tax account related inventory.[46] When comparing the volume of calls on the IRS's TAC appointment line to the actual face-to-face appointments conducted, the volume of face-to-face appointments is surprisingly low, as shown in Figure 2.4.7.

FIGURE 2.4.7, TAC Appointment Telephone Line Data and TAC Contact Analysis, FY 2022[47]

1.	**Number of Calls to the IRS TAC Appointment Line**	10,779,159
2.	**Number of Calls That Did Not Reach Live Assistance on the IRS TAC Appointment Line**	9,592,307
3.	**Number of Calls Reaching Live Appointment Assistance** (Row 1 Minus Row 2)	1,186,852
4.	**Calls Reaching Appointment Assistance With No Appointment Scheduled (Calls Resolved by Phone or Appointment Availability Did Not Meet Taxpayer Scheduling Needs)**	500,729
5.	**Number of Calls Resulting in a Scheduled Appointment** (Row 3 Minus Row 4)	686,123
6.	**Walk-In Appointments (Appointments Conducted Without a Scheduled Appointment)**	18,214
7.	**No-Shows (Taxpayer Did Not Attend Scheduled Appointment)**	36,629
8.	**Face-to-Face Appointments Provided to Taxpayers** (Row 5 Plus Row 6, Minus Row 7. This is a TAS Computation – IRS TAC Offices Do Not Track Face-to-Face Contacts by Appointment Status)	667,708
9.	**Other Face-to-Face Contacts (Taxpayer Obtained Tax Forms, Dropped Off a Current Year Return/Documents, Made a Payment or Received Other Services Not Classified as an Appointment)** (Row 10 minus Row 8. TAS Computation – IRS TAC Offices Do Not Track Face-to-Face Contacts by Appointment Status)	628,128
10.	**Total Face-to-Face Appointments and Other Face-to-Face Contacts** (Row 8 plus Row 9)	1,295,836
11.	**Non-Face-to-Face Contacts Completed (Correspondence and Tax Account Related Inventory)**	60,609
12.	**Total FY 2022 TAC Contacts Reported** (Row 10 Plus Row 11)	1,356,445

In FY 2022, taxpayers made 10,779,159 calls to the TAC office appointment telephone line, with only 1,186,852 calls (11 percent) reaching an employee for assistance. Of the calls reaching assistance, 500,729 were either resolved by phone or the IRS did not schedule an appointment because appointment availability did not meet the caller's scheduling needs (IRS data does not make a quantifying distinction between the two). Only 686,123 calls (58 percent) reaching assistance were resolved with a scheduled TAC appointment. As shown, over nine million calls did not reach a live assistor for appointment scheduling services. Should access to appointment scheduling improve, the volume of face-to-face appointments will increase; however, increased demand beyond existing TAC appointment capacity would result in a reduced service level, a measure not currently captured for face-to-face appointment services. Most notable is that only 667,708 (49 percent) of the FY 2022 total TAC contacts reported represented taxpayers who attended an actual face-to-face appointment. The remaining 688,737 (51 percent) were non-face-to-face contacts that resulted from TAC office employees working correspondence and tax account related inventory or taxpayers simply visiting the TAC office to pick up forms, drop off a current year tax return, or make a payment.

As it works to increase telephone staffing, the IRS is also working to increase TAC office staffing to meet increased face-to-face appointment demand. The IRS should make all efforts to open and staff closed and unstaffed offices and resume its Community Assistance Visits (CAV) initiative. The IRS CAV initiative is an effort that involves mobilizing TAC employees to visit low-income and underserved communities that do not have access to an IRS TAC office. The IRS postponed the CAV initiative initially slated to begin in March 2020 with visits to six low-income and underserved communities due to the pandemic. The CAV initiative was not resumed in FY 2022.[48]

Taxpayer Assistance Center Offices Should Offer Expanded Hours

During FY 2022, IRS Field Assistance offered taxpayers the opportunity to seek Saturday assistance during its Taxpayer Experience Day events. These events occurred on the second Saturday of each month from February through August at participating TAC office locations. The Saturday events provided service to 17,924 taxpayers without requiring an appointment (with 5,100 taxpayers receiving needed TPP identity verification assistance).[49] Though these Taxpayer Experience Day events utilized volunteers from various IRS business units including TAS, the success of these events demonstrated that there is both demand and need for TAC offices to be available to the public during timeframes outside of the traditional work week. To improve the taxpayer experience and fulfill taxpayer in-person service needs, the IRS should explore the possibility of maintaining extended office hours and regular Saturday hours throughout the filing season, particularly at select offices where appointment volumes are high, and the IRS often cannot meet demand during the business week alone.

Taxpayer Assistance Center Office Submissions Contribute to the IRS's Paper Inventory

Paper is the IRS's "kryptonite," and COVID-19 processing backlogs highlighted the detrimental impact that high volumes of paper-filed tax returns, amended returns, and paper documents have on the IRS as an agency.[50] TAC offices contribute to paper document receipts because they often receive current year tax return submissions and frequently secure taxpayer documentation for the resolution of taxpayer account issues.[51] The IRS manually documents tax returns and other paper documents received in IRS TAC offices for tracking purposes and ships them to IRS campuses.[52] The receiving campus employees complete the tracking process and manually direct the documents to the appropriate work unit, which may involve scanning prior to assignment and processing.[53] This results in additional work for TAC and campus employees and additional processing delays for taxpayers. In the interest of reducing paper inventory, processing delays, shipping costs, and manual processing burdens, the IRS should explore methods for converting paper documents received in TAC offices to electronic submissions at the initial point of receipt. Implementing a process that would allow TAC offices to forward documents and tax return submission electronically at the point of receipt (perhaps directly into the processing stream) would reduce the volume of paper inventory backlogs, improve efficiency, reduce mailing delays, and increase customer satisfaction, while also advancing the IRS's goals of going paperless and increasing the percentage of tax returns filed electronically.[54]

CONCLUSION AND RECOMMENDATIONS

Despite FY 2022 budget and staffing limitations, the IRS has continued to reduce the backlog, increase alternatives to telephone and in-person service, improve processing functions, and increase staffing. As the IRS continues to hire and train more employees and implement technology to improve its processes, it must continue to explore new opportunities to improve customer services, fulfill in-person customer service demand, and reduce taxpayer burden. With increased funding provided by the Inflation Reduction Act, Treasury Secretary Janet Yellen committed to fully staffing all IRS TAC offices, increasing IRS telephone LOS to 85 percent, and cutting wait times for telephone service in half over the coming filing season.[55] Though

TAS has advocated for and wholeheartedly agrees with the Treasury Secretary's commitments, concern exists regarding the IRS's ability to accomplish these commitments during the 2023 filing season given the IRS's current challenges. To better meet customer service needs, CSRs must juggle phone service with inventory processing demands. In addition to increased TAC office staffing, the IRS should further consider extended TAC hours, technology-based solutions for TAC appointment scheduling and paper document submissions, expanded WebSD services, and implementation of an AA program for TPP identity verification. Telephone and TACs are essential services that the IRS must provide for all taxpayers seeking assistance.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Fully staff all TAC office locations and offer extended or Saturday hours in high volume locations.
2. Automate the TAC appointment scheduling process.
3. Expand WebSD services to include TPP verification and other high demand TAC services.
4. Implement a process similar to the IRS's AA program for purposes of conducting TPP identity verification. To increase taxpayer service and location options, consider utilizing IRS employees from other functions (Compliance, TAS, etc.) to perform collateral identity verification duties.
5. Explore opportunities for TAC offices to digitalize document and tax return submissions on site.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Melanie Krause, Acting Deputy Commissioner, Services Enforcement

Nancy Sieger, Chief Information Officer

Harrison Smith, Co-Director, Enterprise Digitalization and Case Management Office

IRS COMMENTS

The pandemic created unprecedented challenges with our ability to service customers through normal telephone and face-to-face assistance channels. The IRS would like to thank the National Taxpayer Advocate for recognizing our initiatives to expand services for taxpayers seeking telephone and face-to-face assistance. The IRS is aggressively pursuing year-round hiring and streamlining the process through Direct Hire Authority. To achieve the approved filing season Level of Service, we directed remote locations to complete their annual refresher, skill-up, and continuing professional education training in the October through December period and limited the amount of training scheduled for January. This will allow us to focus on inventory closures in our campus locations prior to the start of the official filing season. To help reduce additional call backs and help mitigate telephone demand on the Practitioner Priority Service line, we increased the number of Transcript Delivery System transcripts tax professionals were permitted to order over the phone from ten per client to 30. In 2023, chatbot services will expand to an intent engine which provides users the ability to type a question directly into a text field. Chatbot logic will then guide the customer to the best resource. We will continue to expand voicebot and chatbot services to redirect taxpayer telephone demand, allow taxpayers to self-service, and give us more flexibility scheduling inventory work. Eliminating labor intensive paper return processing is fundamental to improving the taxpayer experience. The agency is actively taking steps to accelerate the digitalization of paper which includes expanded scanning services and allowing processing centers to scan Forms 1040 with up to 15 attachments in 2023.

As it relates to in-person service, we currently have 361 Taxpayer Assistance Centers (TAC) to service taxpayers compared to 358 TACs last year. We are also working toward finalizing our Optimal Staffing Strategy, a two-year staffing plan which will establish appropriate staffing levels to ensure cash payments can be made in every state and enable full staffing at locations that are currently unstaffed or staffed by a single technical employee. In the meantime, we will continue to offer expanded hours and services to taxpayers through our successful Taxpayer Experience Day initiatives and Community Assistance Visits in 2023.

The current appointment process remains efficient and effective as it provides us an opportunity to educate taxpayers on alternative service options and, in some cases, precludes the need to travel to a TAC for service. For those taxpayers who are unable to call for an appointment or who arrive at a TAC with an emergency or immediate issue, they still may receive assistance, subject to staffing and capacity. No appointment is necessary when making a non-cash payment, dropping off a federal tax return, or requesting forms.

We understand that some taxpayers in remote locations still prefer or need to interact with us in person, and for them we offer virtual assistance through Web Service Delivery. We are in phase two of the pilot with plans to transition to a long-term sustainable program in fiscal year 2023. The pilot continues to provide the necessary data to determine the needs and demand of virtual service in our TACs. Preliminary results from the test show that many of our TAC services can be provided virtually for taxpayers unable to schedule an appointment through the toll-free lines.

The IRS is dedicated to providing excellent service and to delivering the best service possible to the widest range of taxpayers. We will continue to explore ways to balance telephone demand, work paper cases, and provide in-person service to reduce taxpayer burden and help taxpayers and their representatives understand and meet their tax obligations. Examples of additional actions to support an improved taxpayer experience next filing season include hiring 5,000 more Customer Service Representatives to achieve a higher level of telephone service, detail employees from functions outside of Accounts Management to assist with answering calls, expand customer callback options to cover almost all calls, increase scanning services so that by 2023 filing season we will begin to scan a portion of TY 2022 paper Forms 1040, U.S. Individual Income Tax Return, expand the use of the document upload tool to allow taxpayers to respond to some notices digitally by simply uploading a picture onto IRS.gov, continue deploying surge teams to allocate more resources for services, and continue hiring to expand the number of staffed TAC locations.

TAXPAYER ADVOCATE SERVICE COMMENTS

Year-round hiring, expanded chatbot services, and accelerated digitalization of paper and scanning services are all positive steps toward increasing LOS. Staffing strategies that will enable full staffing of unstaffed or understaffed TAC offices is likewise key toward improving IRS in-person service.

Though the continuation of Taxpayer Experience Day initiatives that enlist the participation of several IRS functions to offer expanded hours is a positive interim solution, long-term staffing strategies should also provide for extended hours or Saturday hours in high volume TAC locations as needed to meet customer demand.

The efficiency and effectiveness of the current TAC appointment process remains questionable. Requiring taxpayers to first reach an appointment scheduling telephone line to obtain in-person or virtual appointment services creates a bottleneck, frustrates taxpayers, and severely hampers taxpayer access to TAC appointment services. Though the current process may be efficient and effective for the IRS, the efficiency and effectiveness of this process from a taxpayer perspective appears limited. In FY 2022, there were over ten million calls to the TAC appointment scheduling telephone line, with only 11 percent of these calls reaching live assistance. Only 58 percent of taxpayers reaching assistance obtained a scheduled appointment. For those reaching appointment assistance, the current process does afford the IRS an opportunity to resolve the taxpayer's issue – possibly precluding the need for an appointment; however, the volume of these resolutions cannot be clearly determined. Because the number of successful resolutions is combined with the number of taxpayers unable to obtain an acceptable appointment, actual resolution volume alone is not available. However, judging by the combined number, successful resolutions would appear relatively low when compared to overall appointment demand. Though pre-appointment contact is a positive step toward reducing unnecessary appointments, it is noted that pre-contact efforts could be conducted upon the electronic scheduling of an appointment, preserving the taxpayer's appointment if needed, while reducing the call volume and taxpayer burden associated with the current scheduling process.

WebSD further offers a convenient alternative to telephone and in-office appointments. It is acknowledged that WebSD is in phase two of its pilot process and that the IRS is currently gathering necessary data to determine the needs and demand of virtual service in IRS TAC offices. With preliminary results showing that many TAC services can be provided virtually, we are hopeful that WebSD and other alternatives, such as the creation of a process similar to the IRS's Acceptance Agent Program, can offer taxpayers in need of TPP verification improved service, reduced processing delays, and less taxpayer burden.

The National Taxpayer Advocate remains concerned that the IRS will focus on increasing the LOS on the telephones at the expense of not working the existing paper backlog, paper returns, and correspondence expected to be received during the 2023 filing season. The IRS must focus on long-term results and put the paper backlog behind us once and for all. In 2023, the IRS must not sacrifice paper processing at the expense of answering more calls to meet an artificial goal. It is a difficult balancing act between phones and processing but at this point, paper is the main disrupter, and it must be eliminated. Good customer service cannot be achieved with the level of the paper inventory the IRS has been carrying month after month. The IRS has no option but to clear the paper backlog before CSRs can provide quality service to taxpayers at the level and quality taxpayers deserve.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Fully staff all TAC office locations and offer extended or Saturday hours in high volume locations.
2. Automate the TAC appointment scheduling process.
3. Expand WebSD services to include TPP verification and other high demand TAC services.
4. Implement a process similar to the IRS's AA program for purposes of conducting TPP identity verification. To increase taxpayer service and location options, consider utilizing IRS employees from other functions (Compliance, TAS, etc.) to perform collateral identity verification duties.
5. Explore opportunities for TAC offices to digitalize document and tax return submissions on site.

Endnotes

1 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2021). "Enterprise telephone lines" refers to all calls across all IRS phone lines. Calls reaching a live assistor is the sum of "Assistor Calls Answered" divided by the "Net Attempts" to a telephone line.

2 *Id.*

3 IRS, Calendar Year (CY) Individual Return Filing and Services Report, Cumulative Statistics (week ending Oct. 8, 2022). The report shows that although total TAC contacts increased by 24.3 percent, TAC face-to-face appointments declined by 18 percent when compared to the same period in 2021. Total contacts include non-face-to-face contacts (correspondence and tax account related inventory) and taxpayer TAC visits to make payments, obtain forms, and drop off current year returns or documents – actions that do not require an appointment. *See* Internal Revenue Manual (IRM) 21.3.4.2.4.2(10), TAC Appointment Exception Procedures (June 27, 2022).

4 *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).

5 National Taxpayer Advocate 2021 Annual Report to Congress 68 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_03_Telephone.pdf.

6 IRS, IR-2022-191, IRS Quickly Moves Forward with Taxpayer Service Improvements; 4,000 Hired to Provide More Help to People During 2023 Tax Season On Phones, https://www.irs.gov/newsroom/irs-quickly-moves-forward-with-taxpayer-service-improvements-4000-hired-to-provide-more-help-to-people-during-2023-tax-season-on-phones (last visited Dec. 9, 2022).

7 IRS, W&I, Business Performance Review (BPR) Q2, FY 2022, at 14 (May 16, 2022); IRS, W&I, BPR Q3, FY 2022, at 5 (Aug. 10, 2022). Customer callback is an automated feature that allows taxpayers to provide their telephone numbers and opt for an IRS employee to call them back rather than wait on hold. *See* National Taxpayer Advocate 2021 Annual Report to Congress 72 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_03_Telephone.pdf.

8 Jory Heckman, *IRS Expands AI-Powered Bots to Set Up Payment Plans with Taxpayers Over the Phone*, Fed. News Network, https://federalnewsnetwork.com/artificial-intelligence/2022/06/irs-expands-ai-powered-bots-to-set-up-payment-plans-with-taxpayers-over-the-phone/ (last visited Dec. 9, 2022); IRS, W&I, BPR Q2, FY 2022, at 14 (May 16, 2022).

9 IRS, Where's My Refund?, https://www.irs.gov/refunds (last visited Dec. 9, 2022).

10 IRS, Where's My Amended Return?, https://www.irs.gov/filing/wheres-my-amended-return (last visited Dec. 9, 2022).

11 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2022); IRS, Status of Unopened Mail and Backlog Inventory Report (Nov. 4, 2022). November 4, 2022 Status of Unopened Mail and Backlog Inventory Report states "TAC Update. As of October 31, 2022, of the 360 TAC locations, 326 are open and 34 are closed or unstaffed."

12 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total; IRS, JOC, Snapshot Reports: Accounts Management (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022). Net AM attempts divided by net Enterprise attempts for FY 2020, FY 2021, and FY 2022 produced percentages of 82 percent, 85 percent, and 82 percent, respectively.

13 *See* IRM 21, Customer Account Services. The IRMs in part 21 discuss the various processing activities for which AM is responsible.

14 National Taxpayer Advocate 2021 Annual Report to Congress 75 (Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_03_Telephone.pdf; Erin M. Collins, Update on IRS Progress in Working Through Its Backlog of Paper-Filed Tax Returns and Correspondence, National Taxpayer Advocate Blog (Nov. 10, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-update-on-irs-progress-in-working-through-its-backlog-of-paper-filed-tax-returns-and-correspondence-part-3/.

15 *Id.*

16 *Id.*

17 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2019; Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022). "Percentage of Enterprise Calls Answered by a Live Assistor" is calculated by dividing "Enterprise Calls Answered by a Live Assistor" by "Enterprise Total Call Attempts." "Enterprise Total Call Attempts" refers to all calls across all IRS phone lines. The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The 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)). LOS cannot be computed with the numbers provided in Figure 2.4.1 alone.

18 IRS, Customer Account Services (CAS), CAS AM Paper Inventory Reports; Receipt Comparison Report (weeks ending Oct. 2, 2021; Oct. 1, 2022).

19 *Id.*

20 IRS, JOC, Snapshot Reports: Product Line Detail (week ending Sept. 30, 2022).

21 *Id.* The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The 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)). LOS cannot be computed with the data provided in Figure 2.4.3 alone.

22 IRS, JOC, Snapshot Reports: Product Line Detail, TAC Appointment (weeks ending Sept. 30, 2019; Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (week ending Sept. 30, 2019).

23 IRS, JOC, Snapshot Reports: Product Line Detail, TAC Appointment (weeks ending Sept. 30, 2019; Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022). The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The 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)). LOS cannot be computed with the data provided in Figure 2.4.4 alone.

24 IRS, Contact Your Local IRS Office, https://www.irs.gov/help/contact-your-local-irs-office (last visited Dec. 9, 2022).

25 IRS, W&I, BPR Q2, FY 2022, at 11 (May 16, 2022).

26 *Id.*

27 Personal communication provided to TAS (July 30, 2022). Consent to release statement signed July 30, 2022 (on file with TAS).

28 IRM 21.3.4.2.4.5.1, Addressing, Targeting and Resolving Issues Without an Appointment (June 27, 2022).

29 IRS, SERP Alert 22A0077, Web Service Delivery (WebSD) Virtual TAC (Mar. 9, 2022).

30 *Id.*

31 IRS, W&I, BPR Q2, FY 2022, at 11 (May 16, 2022).

32 *Id.*

33 *Id.*

34 IRS, SERP Alert 22A0077, Web Service Delivery (WebSD) Virtual TAC (Mar. 9, 2022); Web Service Delivery (WebSD) Pilot 2 Questions and Answers.

35 Brenden Drerup et al., *Reduced No-Show Rates and Sustained Patient Satisfaction of Telehealth During the COVID-19 Pandemic*, Telemedicine and E-Health, Dec. 2021, https://www.liebertpub.com/doi/10.1089/tmj.2021.0002 (last visited Dec. 9, 2022).

36 IRM 25.25.6.1.7(3), Taxpayer Protection Program Overview (Oct. 1, 2022).

37 *Id.*; IRM 21.3.4.2.4.5.5, Taxpayer Issues That Require a TAC Visit (Jan. 11, 2021). 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.

38 IRS response to TAS information request (Sept. 14, 2022); IRS, JOC, Snapshot Reports: Enterprise Snapshot, Product Line Detail, TPP (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022). The IRS's formula for determining LOS is more complex than just number of calls received divided by number of calls answered. The 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)). LOS cannot be computed with the data provided in Figure 2.4.5 alone.

39 IRS response to TAS information request (Oct. 24, 2022); IRS, Taxpayer Protection Program Inventory Report (Sept. 29, 2022).

40 IRS response to TAS information requests (Sept. 14, 2022; Oct. 24, 2022).

41 IRS, How to Become an Acceptance Agent for IRS ITIN Numbers, https://www.irs.gov/individuals/international-taxpayers/how-to-become-an-acceptance-agent-for-irs-itin-numbers (last visited Dec. 9, 2022); IRS, New ITIN Acceptance Agent Program Changes, https://www.irs.gov/individuals/new-itin-acceptance-agent-program-changes (last visited Dec. 9, 2022).

42 *Id.*

43 IRS PowerPoint presentation, FY 2024 Treasury Departmental Budget Request 15 (June 24, 2022).

44 IRS, Wage & Investment Data Dictionary 113 (Dec 14, 2020).

45 *Id.* at 107.

46 *Id.* at 109.

47 IRS, JOC, Snapshot Reports: Product Line Detail, TAC Appointment (Sept. 30, 2022); IRS responses to TAS fact check, rows 4 through 7, and rows 10 through 12 (Nov. 30, 2022); note: line 8 is the mathematical result of row 3 minus row 4, plus row 6, minus row 7; row 9 is the mathematical result of row 10 minus row 8. TAS performed the computations in rows 8 and 9 to make a distinction between the volume of face-to-face contacts that could have resulted from an appointment and the face-to-face contacts not requiring an appointment. IRS Field Assistance only tracks face-to-face contacts without regard to appointment status.

48 TAS Recommendations and IRS Responses, TAS Recommendation 3-6 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-03-telephone-and-in-person-service/ (last visited Dec. 9, 2022).

49 IRS response to TAS information requests (Sept. 14, 2022; Oct. 24, 2022).

50 *See* David Hood et al., *Fixing the IRS: Paper Addiction Remains Agency's 'Kryptonite*,' Bloomberg Tax, https://news.bloombergtax.com/daily-tax-report/fixing-the-irs-paper-addiction-remains-agencys-kryptonite (last visited Dec. 9, 2022).

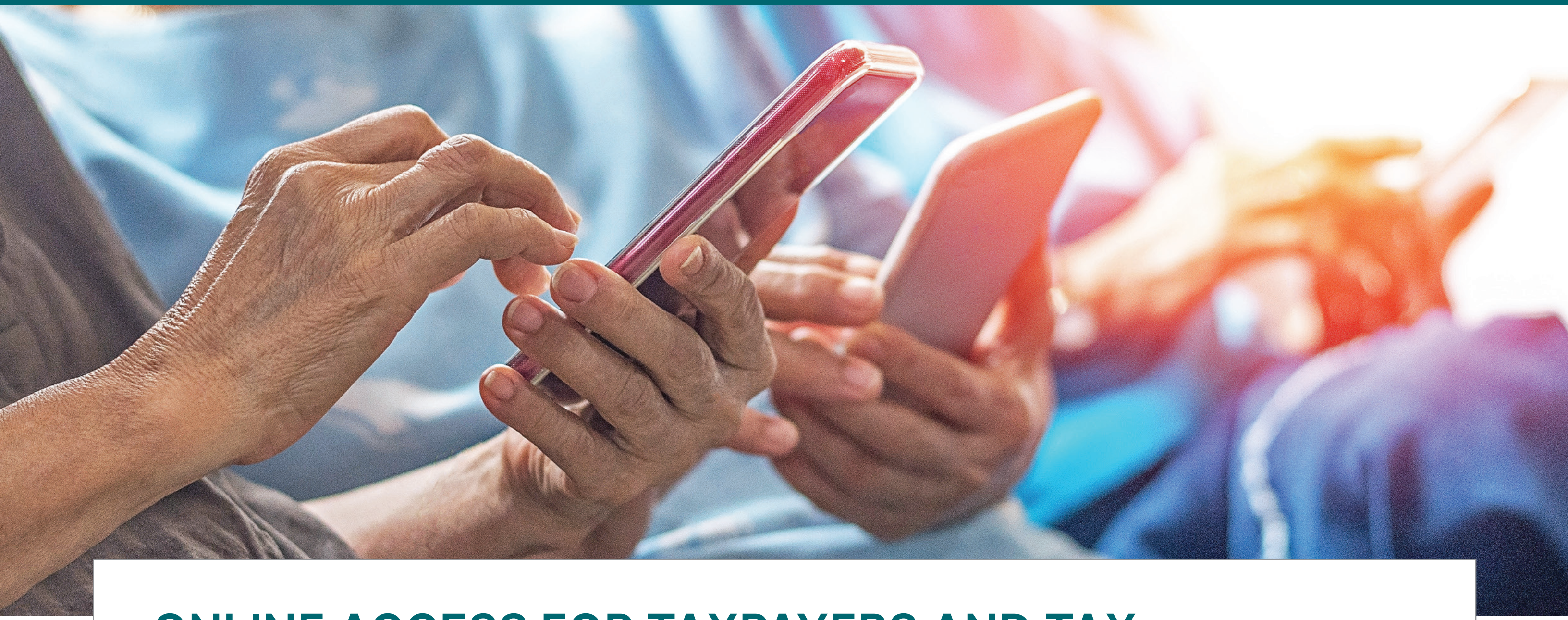
51 IRM 21.3.4.2.4.2, TAC Appointment Exception Procedures (June 27, 2022).

52 IRM 21.3.4.8.7, Non-Remittance Acknowledgment Transmittals Form 3210 Process (Oct. 1, 2018).

53 *Id*.

54 National Taxpayer Advocate 2021 Annual Report to Congress 136 (Most Serious Problem: *E-Filing Barriers: Electronic Filing Barriers Increase Taxpayer Burden, Cause Processing Delays, and Waste IRS Resources*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_08_Efiling.pdf.

55 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, 136 Stat. 1818 (2022); *see* Janet L. Yellen, Secretary of the Treas., Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), https://home.treasury.gov/news/press-releases/jy0952 (last visited Dec. 9, 2022).



ONLINE ACCESS FOR TAXPAYERS AND TAX PROFESSIONALS

Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Providing tax information and services accessible through a robust online account and seamlessly integrated digital communication tools are essential for taxpayers, their representatives, and IRS employees. Taxpayers or their representatives who cannot find an answer or resolve their issue using digital self-help tools are facing long delays when phoning the IRS, visiting a Taxpayer Assistance Center (TAC), or sending a letter. During the last three years, IRS customer service representatives (CSRs) answered an all-time low of 11 percent of calls to IRS toll-free telephone lines.[1] As the IRS struggles to resolve its processing backlog, some taxpayers' refunds from the 2021 filing season have been delayed more than ten months, leaving taxpayers confused and frustrated.[2] Despite the IRS's efforts to resolve the paper correspondence processing backlog since the start of the pandemic, 52 percent of correspondence remains unworked in IRS inventory beyond standard processing timeframes.[3] Taxpayers or their representatives wanting to interact online need and deserve quality service options and quick responses from the IRS. Today, most taxpayers and tax professionals can't depend on receiving either, causing dissatisfaction that can lead to distrust in tax administration.

EXPLANATION OF THE PROBLEM

Annual Organisation for Economic Co-operation and Development (OECD) surveys reveal a fast-growing trend of tax administrations worldwide incorporating digital tools such as virtual assistants, video communication, and electronic document submission.[4] The survey showed significant increases in online account use, email, and digital assistance and decreases in phone, in-person, and mail transactions.[5] Over 40 percent of administrations reported shifts of 75 percent or more from paper to digital communications.[6] The 2022 OECD survey identified three emerging trends: greater understanding of taxpayer preferences, more self-service options, and a joined-up approach for tax administration services and across the government.[7] Those three goals echo the guidance the U.S. government gives to federal agencies like the IRS on managing the customer experience and improving service delivery to strengthen public trust in federal agencies.[8] Public trust in the IRS is at the core of our nation's system of self-assessment and voluntary tax compliance. When taxpayers can quickly communicate with the IRS to resolve issues and receive answers to their questions simply and securely, it has a positive effect on the taxpayer experience, which in turn raises taxpayers' overall satisfaction and trust in the IRS.[9]

The IRS, along with tax agencies around the world, accelerated implementation of digital communications, services, and products because of the challenges brought on with the COVID-19 global pandemic. To its credit, the IRS rapidly implemented several new applications to meet the demands of the COVID-19 relief legislation, such as applications to manage the disbursement of Economic Impact Payments and advance payments of the Child Tax Credit to eligible taxpayers. During the rapid implementation, the IRS developed standalone self-assistance web applications that allowed taxpayers to perform a single task, such as resolving their inquiries via an automated voicebot or chatbot, sending and receiving secure digital messages, uploading documents, and viewing basic account information. However, the IRS did not integrate all its new tools into a central hub with one-click access along with other existing digital tools such as Where's My Refund?, Where's My Amended Return?, and Online Account that can be accessed from the IRS.gov home page. While each application and tool has standalone value and facilitates a particular kind of interaction, the IRS has not leveraged their utility by making them all accessible from a central hub that provides a seamless taxpayer experience.

Depending on several factors, including the sensitive or private nature of the information that can be accessed, applications require different levels of identity authentication, pursuant to National Institute of Standards and Technology (NIST) guidelines.[10] IRS Online Account requires higher levels of authentication than digital tools such as Where's My Refund? and Where's My Amended Return?, which is necessary to protect taxpayer data but results in fewer taxpayers with access to their Online Account. Twenty-one percent of would-be IRS online services users could not complete identity proofing and were denied access.[11] Some taxpayers were able to complete the identity proofing process using the online self-service process or video chat verification. Taxpayers who are unable (or unwilling) to verify their identity online need an in-person option to verify their identity and obtain credentials for future online access to Online Account and other applications requiring authentication.

Suppose a taxpayer has completed the identity proofing process by providing acceptable documentation that assures he or she is whom he or she claims to be and accessed his or her own Online Account.[12] If that taxpayer wanted to find out the status of his or her refund from his or her most recent return, the status of an amended return he or she filed for the prior year, and change his or her email address in Online Account, the taxpayer would have to find and access three different log-in processes: one for Online Account, a second for Where's My Refund?, and again for Where's My Amended Return?.

In 2021, the IRS launched the Tax Pro Account.[13] Although, the title – Tax Pro Account – is a bit of a misnomer. Tax Pro Account only provides basic functions for a tax professional to digitally sign and transmit a Power of Attorney or Tax Information Authorization through the client's Online Account. Depending on the type of the authorization, the tax professional may view the client's tax information, and in some cases, take certain actions on his or her behalf. Within Tax Pro Account, the tax professional can view and retrieve the completed authorizations and access transcripts of clients' tax accounts, if authorized, through the Transcript Delivery System (TDS). However, Tax Pro Account does not offer secure messaging, document upload, or chatbots. These limited capabilities do not provide tax professionals the tools needed to help their clients effectively. Authorized representatives are a key component of successful tax administration; they assist with efficient resolution of issues. The IRS should upgrade Tax Pro Account to allow authorized representatives to access all information in their client's Online Account.[14] The IRS has a thorough process in place to ensure only authorized representatives have access to client information.[15] Once a representative has been duly authorized, the representative should be able to:

- View all clients' Online Accounts through their Tax Pro Account portal;
- View all changes and new information posted in the taxpayer's account;
- View all notices and letters mailed to the taxpayer;
- View the status of pending refunds and requests;
- View information on digital payment options;
- Upload requested documents relating to notices or correspondence on a tax issue; and
- Send messages to an IRS employee working his or her client's case.

Integrating other tools into Online Account and Tax Pro Account to become a one-stop solution for online and digital offerings that combine communications and interactions with individual and business taxpayers as well as with tax professionals who represent these taxpayers may sound like a common sense solution. However, one of the underlying challenges to integrating technology servicewide is the IRS's siloed approach for managing digital tools among its various operating divisions. The IRS's Office of Online Services works with the operating divisions to maintain consistency and adherence to standards for digital products; however, operating divisions within the IRS provide guidance to division employees about how digital tools may be used to communicate with taxpayers.

An individual taxpayer may want to perform multiple tasks on a single visit to IRS.gov, such as uploading a document to prove eligibility for a credit claimed on last year's return and then seeking information on claiming dependents for next year's return using the Interactive Tax Assistant. The IRS does not provide a simple way to navigate between those tasks. From the IRS's perspective, it makes sense to group taxpayers by the type of taxes they pay and returns they file, but from the taxpayer's perspective, it's all one IRS, and all IRS tools should be accessible from a central hub, regardless of the entry point for the taxpayer on IRS.gov. As the IRS continues to improve Online Account functionality and enhance digital communication tools, it must do so using a taxpayer-centric approach.

The Inflation Reduction Act provided much-needed funding to the IRS, including $4.75 billion, or six percent, of its total funding, to "business systems modernization."[16] TAS and the newly created Taxpayer Experience Office are well-suited to the task of ensuring that modernization is taxpayer-centric, with its mission to ensure enterprise-wide focus on improving taxpayer experience.

ANALYSIS

Increased digital functionality will improve the taxpayer experience and support the IRS's mission of providing America's taxpayers top-quality service. These options play a role greater than mere efficiency and convenience. When taxpayers lack digital service options, the option to communicate with the IRS online, or the ability to provide digital signatures or documents, they are relegated to methods such as paper, mail, or calling crowded customer service lines. In 2022, taxpayers experienced long wait times, with average wait times of 25 minutes outside of filing season, over 27 minutes during filing season, and CSRs only answering about 11 percent of the calls, frustrating taxpayers and tax professionals.[17]

In September 2021, the Taxpayer Experience Office released a Taxpayer Experience Strategy Roadmap, a high-level plan that outlined its priorities for the next four years.[18] Improved online service offerings fall within two of the six focus areas articulated in the roadmap: Expanded Digital Services and Seamless Taxpayer Experience.[19] As the IRS implements its multiyear strategy outlined in the Taxpayer Experience Strategy Roadmap and plans how to use Inflation Reduction Act funding to modernize tax return processing and tax administration, it must prioritize upgrades from the perspective of the taxpayer as a customer. When government interactions are unnecessarily protracted, it costs Americans time and represents a "time tax" as referenced by President Biden's Executive Order to transform the federal customer experience.[20]

Taxpayer-Centric Approach

Congress, the Office of Management and Budget, and the White House have unequivocally instructed the IRS to improve the customer experience.[21] An example of the IRS falling short of a taxpayer-centric approach has been the implementation of the Taxpayer Digital Communication (TDC) program. The IRS intends TDC to enable taxpayers and their representatives to communicate and securely share files and documents with the IRS. A Treasury Inspector General for Tax Administration (TIGTA) report noted that "the IRS's management of the TDC program was more focused on completing the installations than maximizing the IRS's ability to communicate digitally with taxpayers."[22] When launching TDC, the IRS did not proactively identify functions or operations for which digital communication may have provided sizable benefits for both taxpayers and IRS employees.[23] Instead, the IRS allowed any IRS program, function, or business unit wishing to explore a digital communication installation to express interest.[24] As the IRS makes further technological upgrades, it must prioritize the experience of individual and business taxpayers as customers and provide an intuitive central hub with one-click access to all authenticated and unauthenticated self-assistance applications.

TAS held focus groups in 2022 to gather ideas from tax professionals about taxpayers' needs and preferences for online services. Participants expressed feeling frustrated, exasperated, disappointed, and angry with their inability to effectively communicate with the IRS.[25] Common themes from participants revealed through the focus groups included difficulty transmitting information to the IRS and uncertainty about whether the IRS received and processed correspondence from the taxpayer.[26] Another theme was that many taxpayers have legitimate fears of the IRS that make them reluctant to interact with it.[27] Participants gave examples of how clients experienced panic upon receiving any IRS correspondence.[28] Some taxpayers simply do not want to talk to the IRS unless they absolutely must. Even if a portion of taxpayers prefer traditional methods of phone and mail for communicating, the IRS should strive to provide an Online Account capable of completing all taxpayer interactions in an easy, user-friendly, and intuitive way. Taxpayers who prefer to self-help and not to speak with an IRS employee should be able to find out general information on a tax topic, see how it impacts their personal situation, and obtain assistance, if needed, to complete required interactions online.

Online Account

We commend the IRS for launching Online Account for individual taxpayers in 2016 and for the continued upgrades to add functions and capabilities within Online Account, but there is still a long way to go before achieving robust functionality. Prior to FY 2022, Online Account allowed users to view their account balance, request copies of transcripts, and view payment options. The IRS has added capabilities that allow taxpayers to view notices within Online Account; however, taxpayers can currently view only 17 notices (including two Spanish notices), and there are plans to only add three more during FY 2023.[29] The IRS updates Online Account approximately every nine weeks but does not provide all users with notification of upgrades.[30] It should inform users of any upgrades since their most recent login.

As shown in Figure 2.5.1, the IRS has seen a 63 percent increase in unique visitors to Online Account in FY 2022 compared to FY 2021. After logging in, users can view basic account information displayed on the main page within Online Account. The most used function within Online Account is viewing an account transcript, which occurred in over 19 percent of logged-in sessions. Users made payments in 5.2 percent of sessions and set up a payment plan in 0.7 percent of sessions. However, users did not complete any actions beyond viewing basic account information in about 74 percent of sessions.

FIGURE 2.5.1[31]

Online Account FY 2022 Statistics

Activity	Increase over FY 21
119.5M sessions of users accessed View Your Account Information Page	▲15%
79.1M authenticated user sessions	▲57%
19.9M unique users have accessed their online account	▲63% *Nov. 14, 2021 - Sept. 30, 2022 compared to Oct. 1, 2020 - Sept. 30,2021*

Actions taken after viewing balance information	Increase over FY 21
6.3M payments worth **$42.8B** made directly within Online Account • **712K** payments that resulted from being directed out from Online Account to Direct Pay	▲214% *when transactions were only available through Direct Pay*
848K payment plans established or revisions made via Online Account • **129K** established within Online Account • **718K** that were directed out of Online Account to complete transaction in Online Payment Agreement	▲42%
98K notices generated digital-only and avoided printing because of going paperless through Online Account Profile preferences	
• **23.6M** sessions navigated to Get Transcript	▲55%
• **17M** sessions with a download	▲56%

As shown in Figure 2.5.2, there are 17 active IRS self-assistance applications, and only four are available within Online Account.[32] During FY 2022, the IRS added an option to make a payment and view additional notices within Online Account.[33] While those capabilities are certainly useful to taxpayers who need them, a customer-focused analysis of the needs of the average taxpayer would also prioritize answering questions, challenging a tax bill, and obtaining a refund status.[34]

FIGURE 2.5.2, IRS Online Self-Assistance Applications[35]

Application Name	Available Tool(s)	Information From Application Reflected in Online Account	Type of User	Number of Transactions or Sessions, FY 2021	Number of Transactions or Sessions, FY 2022
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	50,494,907	79,052,719
Get Transcripts Online	Retrieve a variety of transcripts online to view, print, or download	Yes	Individual	75,800,782	89,123,005
Get Transcripts by Mail	Receive a return or account transcript through mail	Yes	Individual and Business	2,335,174	923,528
Where's My Refund?	Learn status of refund	No	Individual	632,361,686	447,729,355

Application Name	Available Tool(s)	Information From Application Reflected in Online Account	Type of User	Number of Transactions or Sessions, FY 2021	Number of Transactions or Sessions, FY 2022
Where's My Amended Return?	Verify receipt and processing status for amended return (Form 1040X)	No	Individual	13,636,740	18,146,178
Direct Pay	Pay directly from bank account	Yes	Individual	16,517,988	13,678,621
Online Payment Agreements	Request a payment agreement for certain taxpayers	Yes	Individual	1,483,003	1,582,486
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	588,026	885,957
IP PIN	Validate identity and retrieve an Identity Protection PIN online	No	Individual	617,865	1,333,572
Modernized Internet Employer Identification Number	Apply for and receive an employer identification number over the web	No	Individual and Business	7,149,000	7,000,247
Transcript Delivery Service - Reporting Agents	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	401,377	683,699
Transcript Delivery Service - States	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	336,042	309,581
Transcript Delivery Service - Third Parties	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	240,613,460	588,169,518
Income Verification Express Service	Retrieve transcripts from an online secure mailbox to verify income of a borrower	No	Individual and Business	15,370,941	8,279,561
Free Application for Federal Student Aid (FAFSA) on the Web	Access tax return information and transfer it directly to the FAFSA form	No	Individual	15,310,299	13,936,090
Tax Withholding Estimator	Estimate income tax for current tax year and compare that estimate with current withholding	No	Individual	4,771,417	3,893,705
Interactive Tax Assistant	Receive answers to basic tax law questions	No	Individual and Business	2,238,380	1,407,997

One of our 2020 recommendations the IRS declined to adopt was to make all self-assistance applications available through Online Account.[36] Our recommendation was not to make self-assistance applications available exclusively within Online Account but rather accessible from Online Account. The IRS responded that adopting our recommendation would add to taxpayer burden because Online Account requires a more thorough authentication process than some of the more basic self-assistance applications (*e.g.*, Where's My Refund?, Where's My Amended Return?, Tax Withholding Calculator). Once a user authenticates and logs into a secure application such as Online Account or Tax Pro Account, the user should have one-click access to applications and tools that both do and do not require authentication. That is the kind of taxpayer-centric approach the IRS needs to embrace to improve the taxpayer experience and reduce taxpayer burden.

Business Online Account

The IRS strategic plan includes the development of a Business Online Account (BOLA). Unfortunately, due to complexity, budget, and resources constraints, the IRS has not implemented the first iteration. In our 2021 Annual Report to Congress, we recommended that the IRS prioritize and expedite efforts to deliver BOLA to business taxpayers by the end of fiscal year (FY) 2023.[37] The IRS agreed to the recommendation, dependent on adequate funding, with features that would allow business taxpayers to make, schedule, cancel, and view tax payments online.[38] The IRS expects to launch an early version in FY 2023; however, it will only have basic functionality that will allow business taxpayers to view and manage tax record authorizations related to the Income Verification Express Service (IVES).[39] Once the IRS receives funding provided through the Inflation Reduction Act,[40] it must accelerate deployment of additional features, such as reminders for upcoming tax return or information return filing due dates, payment options, and document upload capability. Unless BOLA provides a suite of useful tools, the IRS should not expect large numbers of business taxpayers to sign up and use it. We recommend the IRS develop a robust Online Account for business taxpayers by FY 2024, including features such as providing due dates for upcoming tax return or information return filings, sending reminders, and listing payment due dates and payment options.

Promoting Awareness of Online Account

The IRS must improve awareness of Online Account, Tax Pro, BOLA (when launched), and the suite of standalone digital services among taxpayer-facing employees and must try to educate those employees about how to make the most of the digital services available. The IRS offers information to employees monthly during "Digital Day" information sharing events. However, attendance at the events is optional, and only approximately 2,000 of the IRS's approximately 86,000 employees attend Digital Day events annually.[41] If IRS employees are not familiar with Online Account capabilities, their ability to assist taxpayers and educate them about Online Account will be severely limited. We recommend providing mandatory training on Online Account to all taxpayer-facing employees.

The IRS faces parallel challenges of adding functionality to Online Account and attracting new users. Among the over 20 million unique users who have accessed Online Account, the median age is 39, and the median adjusted gross income is $62,000.[42] The ability to attract new users may be hindered by the limited number of applications available within Online Account. However, it's unclear because although the IRS gathers some detailed data about the quality of taxpayers' experiences when using Online Account and whether their needs were met, other variables may contribute to the challenge of attracting new users.

As the IRS continues to improve the functionality of Online Account, it must also raise awareness of Online Account. Currently, the IRS's primary ways of promoting Online Account are through a link on the IRS.gov homepage and a short video about setting up an Online Account on the IRS YouTube channel. It has undertaken some additional practices to inform taxpayers about Online Account. For example, when the IRS mails paper copies of digitally available notices to taxpayers that they can view in Online Account, it includes an additional paper notice in the envelope that informs taxpayers about Online Account.[43] All taxpayer communications present opportunities to inform taxpayers about Online Account. For example, if a taxpayer receives a notice with an invitation to use the unauthenticated Documentation Upload Tool (DUT), the IRS should offer the taxpayer an opportunity to register for an Online Account after he or she finishes using DUT. If the taxpayer is invited to use the TDC portal, the IRS should leverage most taxpayer interactions to raise awareness of Online Account. A taxpayer that creates an account to access Secure Messaging in the TDC portal can use the same credentials to access their IRS Online Account.

The IRS should also collaborate with stakeholders who provide tax return preparation software to educate taxpayers about Online Account when they file their tax returns. If the tax return preparation industry included information about Online Account in tax return software, it could reach a broader range of taxpayers and encourage them to use Online Account as their first stop for tax information.

Identity Authentication Procedures

Through the implementation of the Secure Access Digital Identity initiative, the IRS has increased taxpayers' ability to access online services. During FY 2022, only about 20 million unique users accessed Online Account.[44]

ONLY ABOUT 20 MILLION UNIQUE USERS accessed Online Account during FY 2022.

Over 98 percent of users who successfully completed the identity proofing process and received credentials subsequently used those credentials to log in to an online IRS tool requiring authentication.[45] Twenty-one percent of would-be users either abandoned the process, or could not complete identity proofing and were denied access.[46] Some taxpayers were able to complete the identity proofing process using the online self-service process or video chat verification. The IRS outsources identity proofing and credential management services to a Credential Service Provider (CSP), and the CSP is also responsible for assisting taxpayers who have difficulty completing the process.[47] Individuals who provide identity proofing assistance are known as "trusted referees." Because the CSP is completing those processes, the IRS is unable to obtain detailed data on the customer experience when undergoing identity proofing.

Identity Proofing Taxpayers With Individual Taxpayer Identification Numbers

The IRS must continue to expand access to online services to taxpayers who face additional obstacles. While some users fail the identity proofing process because they are not who they claim to be, legitimate taxpayers can fail the identity proofing process because of barriers to providing acceptable identity documentation. They may fail identity proofing because they have difficulty using technology to complete the process, *e.g.*, if the digital image of their documents is of insufficient quality.

Following a recommendation in our 2021 Annual Report to Congress,[48] the IRS has implemented a solution for some taxpayers with an Individual Taxpayer Identification Number (ITIN) to complete identity proofing with the CSP by uploading their IRS CP565 notice containing their ITIN and providing the required identity proofing documents (*e.g.*, non-U.S. passport, certificate of naturalization, national identification card).[49] Taxpayers living overseas may now create an account with the CSP, including ITIN holders.[50] On December 4, 2022, the IRS implemented a process for ITIN holders to register with the CSP to access IRS online services. However, taxpayers living abroad still face challenges communicating with the IRS.[51]

In-Person Identity Proofing

The IRS has identified a need for an in-person identity proofing capability for those who experience challenges completing the process online. This should be a priority to improve access for those taxpayers. If a taxpayer cannot complete the identity proofing process to access his or her Online Account, that taxpayer can visit a TAC and attempt to complete the action he or she attempted to do through Online Account. However, the TAC cannot provide the taxpayer with credentials to access his or her IRS Online Account or any IRS digital service requiring high-level authentication and credentials. The IRS should offer alternatives for in-person identity proofing and obtaining credentials for future access to IRS online applications that require secure access.[52] The IRS should ensure services are available to customers through a channel of their choosing.

Tax Pro Account

Tax professionals are a vital part of the U.S. tax system; in calendar year 2021, there were over 783,000 individuals authorized to prepare tax returns for a fee.[53] They assist with other tax administration issues and alleviate taxpayer barriers to compliance. Improving the functionality of Tax Pro Account would support tax professionals and taxpayers who rely on them. When a representative cannot perform the necessary functions to service his or her client's tax account through Tax Pro Account, the representative must contact the IRS. Time-intensive contacts such as drafting correspondence and making phone calls with lengthy hold times inhibits quick resolution of issues and can increase the cost the taxpayer must pay for the representative's services.

The IRS rolled out Tax Pro Account in 2021 for use by tax professionals with a Centralized Authorization File (CAF) number in good standing assigned as an individual and a CAF address in the 50 United States or the District of Columbia. A CAF number is a unique nine-digit identification number and is assigned the first time a representative files a third-party authorization with IRS.

The IRS should expand Tax Pro Account's features to allow authorized representatives access to all their client's tax records through the representative's Tax Pro Account to provide and perform the full scope of assistance. Through a Tax Pro Account and appropriate authorization, tax professionals should have the ability to perform actions such as request an installment payment agreement, view the status of a tax return, respond to a notice, request penalty relief or abatement for their client, apply for an extension of time to file, obtain a tax balance, and much more. While the IRS ultimately plans to expand functionality, this must be a priority as the agency moves toward a digital tax system.

One action that tax professionals can complete in Tax Pro Account is initiating a representation authorization. To digitally complete an authorization for representation through Tax Pro Account, a tax professional must have an active Tax Pro Account and receive approval from a taxpayer with an active Online Account.[54] The IRS processes representation authorizations initiated in Tax Pro Account and signed by the taxpayer in Online Account much faster than any other submission methods, which can take several days to several weeks.[55] However, the benefits of fast processing are limited. Even after the IRS has recorded the taxpayer's authorization that the representative can review his or her tax information, the tax professional has no way to access the information available in the taxpayer's Online Account.

Since its July 2021 launch through December 1, 2022, there were 284,013 sessions where a representative logged into the Tax Pro Account. Although the primary function available through Tax Pro Account is completing representation agreements, there have only been 18,930 completed power of attorney requests.[56] Tax Pro Account helps the IRS avoid one-at-a-time paper processing of representation authorizations that led to processing backlogs that began during the pandemic and infringed upon the taxpayers' *right to retain representation*.[57] In its current state, the most useful function for certain authorized representatives is providing them direct access to TDS to retrieve transcripts of taxpayer accounts. Enhancing features and capabilities and adding access to self-assistance and digital communication tools within Tax Pro Account may make this application more appealing to taxpayers' representatives and help boost usage.

CONCLUSION AND RECOMMENDATIONS

After decades of severe underfunding,[58] the IRS has the opportunity to make improvements in digital tax administration services in both customer service and compliance areas. TAS made 36 recommendations related to digital communication tools and Online Account since 2020. The IRS has agreed to adopt or partially adopt 33 but has pointed to funding limitations in implementing 20 of the recommendations. Prioritizing TAS prior recommendations early in the planning would start the IRS on the right path toward making historic improvements in taxpayer experience and service and would allow the IRS to continue to be a worldwide leader in tax administration.

As the IRS continues to introduce new self-assistance applications and improves existing ones, it should determine its priorities using a taxpayer-centric approach. A critical element is making all self-assistance applications available to individual and business taxpayers through an intuitive central hub with one-click access between applications. Another part of a taxpayer-centric approach is meeting taxpayers where they are. The IRS should leverage routine taxpayer contacts, such as return filing, to inform taxpayers about the IRS's digital tools and ensure employees are educated about the latest updates. Some self-assistance applications require taxpayers to provide identity verification documents. For those unable to complete online identity proofing with a CSP, provide in-person alternatives to assist taxpayers with identity proofing and obtaining credentials for future access to IRS online applications that require secure access. A taxpayer-centric approach also means the IRS must empower tax professionals with a Tax Pro Account that allows them to provide fast, efficient service to their clients.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide individual and business taxpayers an intuitive central hub with one-click access to all authenticated and unauthenticated self-assistance applications.
2. Require mandatory annual training for all taxpayer-facing IRS employees on Online Account and digital communication tools so they can educate taxpayers about them and allow employees to view taxpayer information as the taxpayer views it in Online Account.
3. Deploy a robust Online Account for business taxpayers by FY 2024, including features such as populating due dates for upcoming tax return or information return filings, sending reminders, and listing payment due dates and payment options.
4. For those unable to complete online identity proofing with a CSP, provide in-person alternatives, such as training TAC staff or other IRS employees to act as trusted referees to assist taxpayers with identity proofing and obtaining credentials for future access to IRS online applications that require secure access.
5. Add increased capabilities and functionality to Tax Pro Account, such as viewing notices and letters and uploading requested documents to provide authorized representatives seamless access to their clients' Online Accounts through Tax Pro Account.

RESPONSIBLE OFFICIALS

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Kathleen Walters, Chief Privacy Officer, Privacy, Governmental Liaison and Disclosure

IRS COMMENTS

The IRS is strongly committed to expanding digital services. We share the National Taxpayer Advocate's vision for online accounts for individual and business taxpayers that allow them to view their personalized tax information and transact via self-service. The Inflation Reduction Act funding affords the IRS the funding and opportunity to implement numerous improvements to the online services offered to taxpayers and tax professionals. In the IRS Strategic Plan FY2022-2026, the agency expressed commitment to the goal to "provide quality and accessible services to enhance the taxpayer experience." This objective includes expanding and promoting digital services, including online accounts, digital filing, and taxpayer self-service options.

In FY2022, the IRS launched many new online account features, some of which are listed below. Digital options for taxpayers, tax professionals, and IRS employees are fundamental to effective tax administration. We are working toward a future where taxpayers who wish to do so may transact much of their business with the IRS digitally in a safe and secure environment. We acknowledge the NTA's recognition that effective authentication of those who interact with the IRS is critical to preventing identity theft and protecting the integrity of the tax system. The IRS continues to collaborate with our Credential Service Providers to assess and improve their in-person proofing capabilities to ensure compliance with federal guidelines and IRS requirements.

The IRS agrees that expanding Tax Pro Account capabilities and integrating additional features such as ability to view letters and notices, view payment information, and communicate with IRS, and evolving the Tax Pro Account into a "one-stop solution" serving individual and business taxpayers, will benefit taxpayers, tax professionals, and the agency. Over the course of three releases the IRS has expanded the offerings available through Tax Pro Account to include submission and processing of Power of Attorney and Tax Information Authorizations online, increased visibility into the progress and status of pending authorizations and will soon expand capabilities to view and revoke authorizations.

The IRS plans to continue expanding the array of digital services available through Tax Pro Account and has developed a list of possible future features that was developed based on the feedback received from the tax professional community. Possible future features and enhancements include: (1) viewing taxpayer info; (2) acting on behalf of a taxpayer; (3) integrating with secure messaging and chat; (4) supporting business taxpayers, international filers, and overseas taxpayers; (5) supporting tax professionals working as part of the business; (6) supporting additional authorization types; (7) providing access to case status and contact history; (8) allowing taxpayers to view and revoke active authorizations; and (9) allowing taxpayers to initiate a POA/TIA.

In FY 2022, the IRS continued to improve online account with the addition of several new features such as the ability to sign up to receive email notifications for new notices and when there is a pending authorization request from a tax professional, the option to go paperless for notices available online, in-app notifications that help taxpayers stay up to date with relevant and timely information regarding their tax account, the addition of advance child tax credit information, and online account in Spanish.

Between FY 21 and FY 22, the IRS was able to provide taxpayers with digital copies of 17 IRS notice types in their online account through the Notices and Letters feature. The Notices and Letters feature provide taxpayers with access to a set of digital notices within their online accounts and includes relevant links to Frequently Asked Question pages to help answer questions taxpayers may have regarding the notice or their tax account. The Wage & Investment Office of Taxpayer Correspondence has prioritized 72 additional notices for inclusion into online account. With the launch of the Notices and Letters feature in November 2020, the IRS published Notice 1450 to inform taxpayers receiving paper notices of the availability of digital copies of those notices online.

Business Online Account development is planned to begin in early 2023. The initial and subsequent product releases will include product features based on customer research and business needs.

Since 2019, IRS has promoted the awareness of online account with employees via Digital Day, which is a monthly, virtual product demo and Q&A event. Employee polling indicates that significantly more employees are aware of online account in 2022 than in 2019. IRS plans to continue monthly product demo events promoting online account.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS appreciates that the IRS shares the National Taxpayer Advocate's vision for online accounts for individual and business taxpayers that allows them to view their personalized tax information and transact via self-service. TAS looks forward to the vision becoming a reality with the additional funding provided by the Inflation Reduction Act. The planned improvements described in the IRS response will improve online access for taxpayers and tax professionals. However, the reason online access continues to be a most serious problem for taxpayers is that today, taxpayers and tax professionals who want to interact online lack easy access to the digital tools they need to fully manage their tax account online and communicate quickly with the IRS through a central hub.

The Inflation Reduction Act funding allows the IRS to improve the experience of taxpayers and tax professionals when interacting with the IRS. As the IRS continuously brings on new users of online services, it should provide support and instructions as new users familiarize themselves with the operation of IRS digital tools. Taxpayer-facing employees should be educated with the tools and applications so they can assist with technical assistance requests. Merely providing product demo events on a voluntary attendance basis may be insufficient to adequately train employees helping taxpayers learning to use IRS digital tools.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide individual and business taxpayers an intuitive central hub with one-click access to all authenticated and unauthenticated self-assistance applications.
2. Require mandatory annual training for all taxpayer-facing IRS employees on Online Account and digital communication tools so they can educate taxpayers about them and allow employees to view taxpayer information as the taxpayer views it in Online Account.
3. Deploy a robust Online Account for business taxpayers by FY 2024, that includes features such as populating due dates for upcoming tax return or information return filings, sending reminders, and listing payment due dates and payment options.
4. For those unable to complete online identity proofing with a CSP, provide in-person authentication alternatives to assist taxpayers with identity proofing and obtaining credentials for future access to IRS online applications that require secure access.

5. Add increased capabilities and functionality to Tax Pro Account, such as viewing notices and letters and uploading requested documents to provide authorized representatives seamless access to their clients' Online Accounts through Tax Pro Account.

Endnotes

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9 OMB Circular No. A-11, 280.3 (Aug. 2022).

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20 Executive Order 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government (Dec. 13, 2021).

21 *See* OMB Circular No. A-11, 280.3 (Aug. 2022); Executive Order 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government (Dec. 13, 2021); 21st Century IDEA, Pub. L. No. 115-336, 132 Stat. 5025; TFA, Pub. L. No. 116-25, 133 Stat. 981 (2019).

22 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2023-30-003, *More Should Be Done to Expand and Increase Use and Availability of the IRS's Taxpayer Digital Communication Tools* 5 (2022), https://www.tigta.gov/sites/default/files/reports/2022-12/202330003fr.pdf.

23 *Id.* at 1.

24 *Id.*

25 TAS Tax Forum Focus Groups (2022).

26 *Id.*

27 *Id.*

28 TAS Tax Forum Focus Groups (2022).
29 IRS response to TAS information request (Nov. 1, 2022).
30 *Id.*
31 *Id.*
32 *Id.* The first digital notices were made available in November 2020. IRS response to TAS fact check (Dec. 14, 2022).
33 Online Account Status Briefing (Aug. 31, 2022).
34 *See* OMB Circular No. A-11, 280.3 (Aug. 2022); Executive Order 14058, Transforming Federal Customer Experience and Service Delivery To Rebuild Trust in Government (Dec. 13, 2021).
35 IRS response to TAS information request (Nov. 1, 2022).
36 TAS Recommendations and IRS Responses, TAS Recommendation 3-4 (2020), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2020-msp-3-online-records/ (last visited Dec. 2, 2022).
37 TAS Recommendations and IRS Responses, TAS Recommendation 6-2 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-06-online-accounts/ (last visited Dec. 2, 2022).
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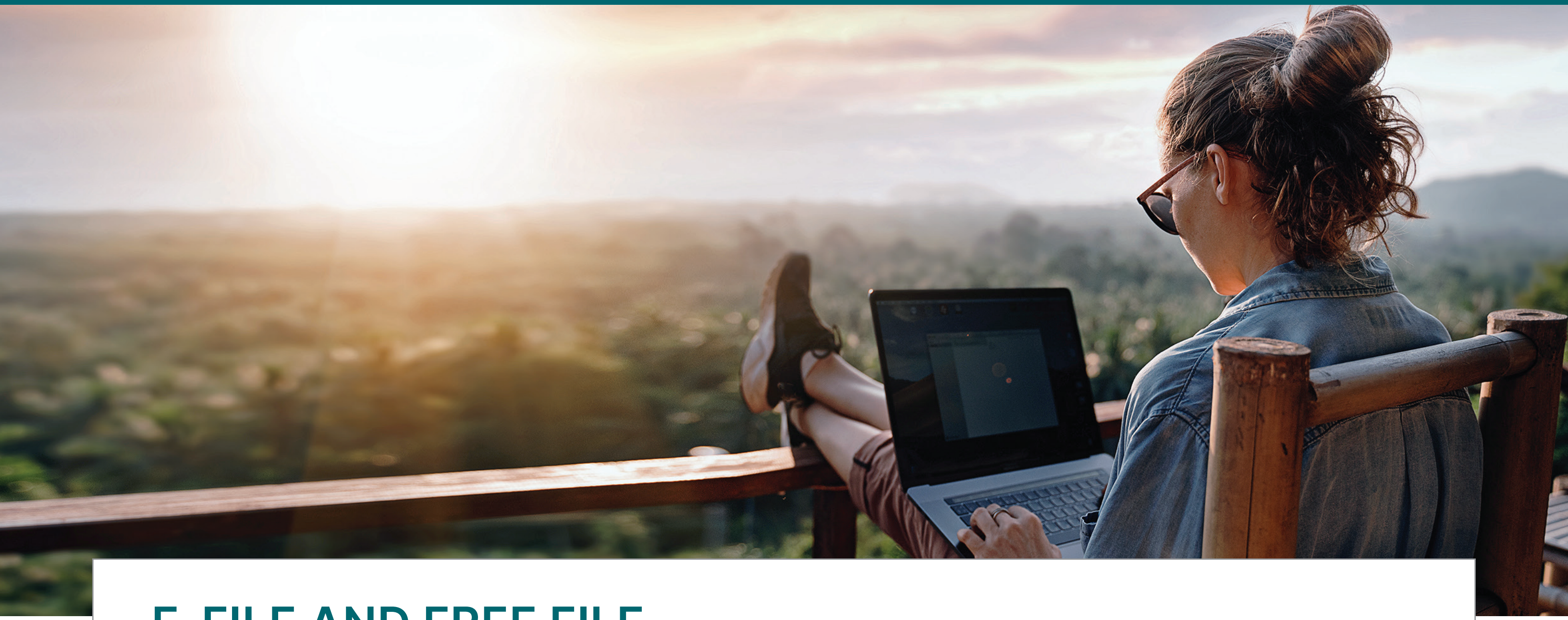
39 IRS response to TAS information request (Oct. 24, 2022). The IVES program is used by mortgage lenders and others within the financial community to confirm the income of a borrower during the processing of a loan application.
40 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1818 (2022) [hereinafter referred to as the "Inflation Reduction Act"].
41 IRS response to TAS information request (Nov. 1, 2022); IRS, Web Focus Report, IRS Workforce (Nov. 19, 2022).
42 IRS response to TAS information request (Nov. 1, 2022).
43 *Id.*

44 IRS response to TAS information request (Oct. 27, 2022).
45 *Id.*
46 *Id.*
47 *See* IRM 21.2.1.58.2, Secure Access Digital Identity (SADI) (Mar. 1, 2022). Our 2021 Annual Report to Congress recommended that the IRS add additional CSPs. TAS Recommendations and IRS Responses, TAS Recommendation 7-6 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-07-digital-communications (last visited Dec. 2, 2022). The IRS is engaged and working collaboratively with Treasury and the Government Services Administration to prepare for integrating Login.gov as an additional CSP. IRS response to TAS information request (Oct. 27, 2022).
48 TAS Recommendations and IRS Responses, TAS Recommendation 7-7 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-07-digital-communications/ (last visited Dec. 2, 2022); *see also* Taxpayer Advocacy Panel 2020 Annual Report 62 (recommending the IRS should establish a system whereby overseas taxpayers can communicate, file documents, and conduct other interactions with the IRS via electronic means, such as email).
49 An ITIN is a tax processing number issued by the IRS to an individual who is required to have a U.S. Taxpayer Identification Number but who does not have and is not eligible to obtain a Social Security number from the Social Security Administration.
50 IRS response to TAS information request (Oct. 27, 2022); IRS response to TAS fact check (Dec. 14, 2022).
51 *See* Most Serious Problem: *Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations*, *infra*.
52 NIST, Special Publication 800-63-3(a), 4.4.2 IAL2 Trusted Referee Proofing Requirements (June 2017). NIST provides CSPs latitude to use "trusted referees — such as notaries, legal guardians, medical professionals, conservators, persons with power of attorney, or some other form of trained and approved or certified individuals — that can vouch for or act on behalf of the applicant in accordance with applicable laws, regulations, or agency policy."
53 IRS Response, Most Serious Problem: *Return Preparer Oversight: Taxpayers Are Harmed by the Lack of Minimum Competency Standards for Return Preparers*, *infra* (Sept. 15, 2022).
54 IRS, Who Can Use This Service, https://www.irs.gov/tax-professionals/use-tax-pro-account (last visited Dec. 2, 2022). To submit an authorization equivalent to a Form 2848 using the Tax Pro Account, practitioners must have a license to practice in the 50 United States or the District of Columbia as an attorney or certified public accountant and authority to practice before the IRS or be enrolled with the IRS as an enrolled agent, enrolled actuary, or enrolled retirement plan agent.
55 *See* Erin M. Collins, The IRS Hasn't Processed My Power of Attorney Form. Should I Submit Another?, National Taxpayer Advocate Blog (Jan. 19, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-irs-hasnt-processed-my-power-of-attorney-form-should-i-submit-another/. Signed agreements initiated through the Tax Pro account go through a verification that the tax professional is in good standing and are recorded to the CAF within 48 hours of the taxpayer's acknowledgement.
56 Online Account Status Briefing (Sept. 28, 2022).
57 *See* Erin Collins, The IRS Hasn't Processed My Power of Attorney Form. Should I Submit Another?, National Taxpayer Advocate Blog (Jan. 19, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-irs-hasnt-processed-my-power-of-attorney-form-should-i-submit-another/
58 Janet Yellen, Sec'y of Treasury, Remarks at IRS facility in New Carrollton, Maryland, (Sept. 15, 2022) ("Since 2010, the agency's budget has declined by 18 percent in real terms."), https://home.treasury.gov/news/press-releases/jy0952.



E-FILE AND FREE FILE

E-Filing Barriers and the Absence of a Free, Easy-to-Use Tax Software Option Cause Millions of Taxpayers to Continue to File Paper Tax Returns

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

When taxpayers cannot electronically file (e-file) their tax returns, including IRS forms or schedules, attachments, and other documents, they face delays in processing, the possibility of transcription errors, and longer waits for their refunds. Unlike paper returns, e-filing benefits taxpayers and the IRS with reduced errors and quicker return processing and refund payments. The mechanism for undertaking e-filing, however, can be unduly burdensome and often places significant obstacles in the paths of otherwise willing e-filers.

EXPLANATION OF THE PROBLEM

Most U.S. adults are legally required to file federal income tax returns, which are essential to determining the amount of their liabilities and obtaining refunds.[1] Taxpayers have a right to expect that this process will be as easy and straightforward as possible, and the IRS has an interest in facilitating it, because the U.S. tax system relies on self-assessment and voluntary compliance for the collection of revenue.

Approximately 92 percent of individual taxpayers e-filed during processing year (PY) 2022.[2] All too often, however, the e-file process was unnecessarily frustrating and costly for many taxpayers.[3] In PY 2022, only two percent of all taxpayers used Free File, the result of the IRS's Free File Inc. partnership with the tax return preparation industry.[4] This is the case even though the IRS targets Free File eligibility at 70 percent of taxpayers.[5] Many businesses also faced obstacles to e-filing.[6]

Although the IRS has achieved good e-file numbers among individual taxpayers and is taking meaningful steps to enhance e-filing by businesses, significant room for improvement remains. Among other things, it should aggressively pursue innovations that other countries have long embraced.[7] The IRS should facilitate e-filing by enhancing the functionality of the process, both by making shorter-term improvements and by pursuing longer-term systemic transformation to lessen the delays associated with paper returns.

A high-quality e-file system, designed and provided by the IRS, will streamline the filing process for taxpayers, encourage compliance, and help prevent future paper return backlogs.

ANALYSIS

Taxpayers Are E-Filing Despite Obstacles

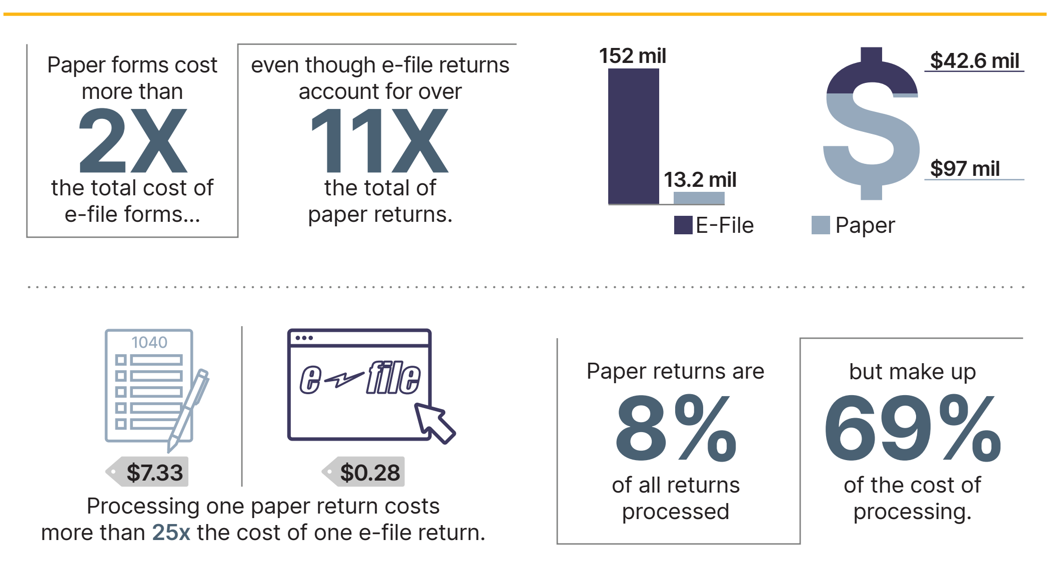
The Overwhelming Majority of Individual Returns Are E-Filed

During 2022, individual taxpayers e-filed approximately 92 percent of returns received by the IRS.[8] Specifically, 152 million returns were e-filed, while 13.2 million were filed on paper.[9] Even though the paper filings appear insignificant on a proportionate basis, they have nevertheless caused huge processing backlogs, disruptions to taxpayer service, and extraordinary delays in processing and payment of refunds.[10] Thus, taxpayers are well advised to e-file whenever they can, and the IRS has a significant interest in reducing the volume of paper returns to the smallest possible number while respecting the need or desire of taxpayers who choose to file paper returns.

Not only does e-filing result in quicker and better service from a taxpayer perspective, but it also saves the IRS resources. A paper-filed return may need to be handled by multiple employees during processing, whereas the IRS processes an e-filed return using automation and only requires human intervention if the return has an issue. According to the IRS, a paper-filed Form 1040 costs $7.33 to process, whereas an equivalent e-filed return costs only $0.28.[11] In the aggregate, this means that the total cost of processing all e-filed Forms 1040 was approximately $42.6 million, whereas the total cost of processing paper Forms 1040 was approximately $97 million. Even though paper returns account for only about eight percent of the total number of returns, they represent about 69 percent of the total costs of processing returns.[12]

FIGURE 2.6.1[13]

Cost Comparison of E-Filed Versus Paper-Filed Tax Returns



Taxpayers have demonstrated their eagerness to e-file, and the IRS desperately needs to increase e-filing capabilities for all taxpayers, whether individuals, businesses, tax-exempt entities, estates, trusts, or filers of employment tax returns or information returns. The IRS must eliminate the need for paper filing. The logical next step is for the IRS to facilitate this by continuing to make e-filing easier and more seamless.

Individual Taxpayers Face Needless Effort and Cost to E-File

Even though overall e-filing numbers are encouraging, individual horror stories abound. Some commenters to a *Washington Post* editorial related their experiences and observations as follows: "On Tax Day, as I worked toward a free file on TurboTax, I had to add one item of miscellaneous income from a small court settlement. Simple, right? Not to TurboTax. I was forced into paying for the Deluxe edition which ended up costing me over $100. ..."[14] "I pay taxes in both Sweden and the US. My US taxes take weeks with lots of frustration. In Sweden maybe five minutes and sending off an SMS [text message]."[15]

One challenge encountered by some taxpayers is that they attempt to e-file but are unexpectedly blocked from doing so. This happens when a return triggers an IRS business processing rule in the Modernized e-File (MeF) system. The IRS generally designs these rules to prevent identity theft and refund fraud, but the most commonly triggered MeF rules, many of which seek to validate taxpayer identity, can also be the result of a simple typo or misplaced prior year records. Each year, these rules generate millions of rejected e-file returns.

In PY 2022, just under 21 million taxpayers have collectively experienced approximately 33.8 million rejected e-file attempts.[16] Roughly 31 percent of these taxpayers endured more than one rejection in attempting to e-file their return. Among taxpayers experiencing this rejection, only approximately half were able to rectify the issues and successfully e-file.[17] For the unsuccessful half of taxpayers, these rejections generally ended up as paper returns, or, in some cases, as nonfiled returns.[18] A few errors are common across many of these rejected returns, and for taxpayers who cannot fix them, these returns make a significant contribution to the paper return processing load.[19] This is particularly unfortunate because the IRS is forcing taxpayers who are eager to e-file to instead file paper returns, which take longer for the IRS to process and can result in transcription errors.[20]

TAS has recommended that the IRS consider ways to adjust the MeF rules to accommodate e-filing more easily.[21] The IRS could accept a return that it has rejected several times due to a particular business rule violation and then route the electronic return directly to a unit for manual processing. If needed information is missing, it is not necessarily an improvement for a taxpayer to simply paper file the flawed return without understanding that there is a deficiency in the return. The IRS should consider the possibility that accepting those flawed returns electronically and segregating them for manual attention may represent an improvement in processing over the current paper system. Going forward, the IRS needs to consider options to decrease paper while ensuring the accuracy of returns.

The IRS and e-file software providers should emphasize continued education informing taxpayers of the types and importance of prior year data necessary for e-filing. These pieces of information are not arbitrarily chosen but instead are intended as controls to prevent identity theft. While identity thieves should not have an open invitation to steal someone's tax refund, this concern could be better balanced by allowing taxpayers the opportunity to e-file, followed by a subsequent manual review.[22] At a minimum, this approach would still be more seamless and convenient for taxpayers when compared with paper filing and would be more efficient for the IRS.

Additional frustrations for taxpayers often come from the tax software they purchase to assist in accurately preparing their returns. As one personal finance columnist has observed, "People pay to get their tax returns prepared because the 1040 form – and most IRS schedules and forms – are incomprehensible to a normal person."[23] However, the tax software, which should simplify matters and facilitate e-filing, does not always do so. For example, since most tax return preparation software relies on a question-and-answer (Q&A) format, it can sometimes generate forms with incorrect values that taxpayers need to override. Depending on the software and the particular override, the software company may include disclaimers that warn that the override will prevent e-filing. This is based on a business decision of the company rather than on an IRS rule or program and can lead to unnecessary stress, frustration, and paper filing.[24]

It is reasonable for the costs of tax return preparation software to rise as the sophistication of its services increases. However, these escalating costs are a reoccurring complaint that has been raised regarding commercial tax return preparation software. Commercial software includes features based on a cost-benefit analysis, which means that taxpayers whose tax situations are uncommon may get halfway through their tax returns only to find that they need to shop around for a different product or pay for an upgrade to enter all their dependents or claim a credit to which they are entitled. Allegations were raised that the "Free Edition" of one software product "comes with traps that can push customers lured with the promise of 'free' into paying, some more than $200."[25]

Although the IRS has a good working relationship with the tax software industry, the IRS has no direct control over the business decisions made by commercial tax return preparation software companies. Nevertheless, tax software has become an inextricable part of the self-assessment and voluntary tax compliance system, and software providers and the IRS currently exist in a mutually dependent partnership. As a result, the IRS should continue to work closely with these companies to encourage transparency and fairness in their dealings with taxpayers.

Free File Is Underutilized and Has Not Met Expectations

In 2002, the IRS and certain commercial tax return preparation software providers (known as the Free File Alliance) entered a public-private partnership.[26] Its purpose was to induce software providers to make available free tax return preparation to a broad swath of the American public. After negotiations between the Free File Alliance and the IRS, it was agreed that the alliance would offer software enabling free tax return preparation to at least 60 percent of taxpayers in exchange for a commitment from the IRS not to develop systems that would directly compete with the software providers.[27]

The Free File Alliance offers two methods for free e-filing, "IRS Free File" and "Free File Fillable Forms." Free File consists of a variety of software provided by the members of the Alliance, and it enables taxpayers below a certain adjusted gross income (AGI) threshold to file for free using Q&A-type software similar to paid options.[28] Free File Fillable Forms, which is less widely known, is also designed by an industry partner and allows taxpayers of any income level to e-file, but it is not a software program; instead, it is a digitized set of tax forms that require the taxpayer to fill out the forms manually but with the benefit of e-filing for quicker processing and refunds.[29] Taxpayers using Free File Fillable Forms require a degree of sophistication and patience, as this method does not offer additional guidance beyond existing IRS instructions and publications, which means that some eligible taxpayers may be uncomfortable with or intimidated by this option.

Both programs have fallen short of expectations. There is no standardization of Free File software, with the result that not all eligible taxpayers can file using any given program.[30] Some eligible taxpayers, due to their specific tax situations, may discover that no Free File offering contains the forms or schedules they require, and those taxpayers have no choice but to pay to e-file, redo their returns in Free File Fillable Forms, or paper file.[31] Free File Fillable Forms is little-used and contains limitations that make it hit-or-miss for taxpayers, who might find that a key option is unavailable on one of their schedules.[32] Again, these taxpayers are left with no option other than to pay to e-file or paper file their returns. For all these reasons, only about two percent of taxpayers used Free File to e-file their 2021 returns, even though the assortment of Free File programs is targeted at 70 percent of filers based upon their AGI.[33] The Treasury Inspector General for Tax Administration concluded that complexity and insufficient oversight of the Free File program were causal factors of this low taxpayer participation.[34]

The portion of the agreement prohibiting the IRS from competing with the industry was removed in 2019.[35] As a result, the IRS can explore a range of alternative solutions that would better accommodate the needs of taxpayers and more comprehensively facilitate e-filing. Congress recognized the importance of this endeavor in 2022 as part of the Inflation Reduction Act, which appropriated funding for the IRS to study the costs of developing and running a free direct e-file tax return system.[36] Some expressed hope that this could be the impetus for improving a broken system.[37] The IRS should embrace this obligation as an opportunity to chart a course toward a reenvisioned and revitalized tax system.[38]

The Biggest Short-Term Opportunity to Improve E-Filing Exists in the Business Returns Space

The number of e-filed business returns, although good, has lagged in comparison with individual returns. For instance, in 2022, individuals had an e-file rate of 92 percent, whereas business income tax returns had an e-file rate of 70 percent.[39] Employment tax returns had an e-file rate of only 58 percent.[40] Accordingly, focusing on ways of facilitating additional e-filing of business returns could yield significant benefits for this group of taxpayers as well as the IRS.

One source of difficulty for many businesses has been the Filing Information Returns Electronically (FIRE) system. Registering with FIRE requires numerous stages of authentication that, for some business owners, become more burdensome than beneficial, leading to abandonment and paper filing of information returns.[41] Further, as the Electronic Tax Administration Advisory Committee (ETAAC) noted in its annual report to Congress, in 2021, FIRE suffered "performance issues throughout the information return filing season and outages throughout the day on the critical filing deadline," highlighting the need for "a plan to upgrade FIRE with a modern platform."[42]

The Taxpayer First Act (TFA) included a phased threshold to require employers filing a certain number of information returns to do so electronically, but the system remains too convoluted to be an attractive option for many employers below that threshold, and the lowered threshold of ten information returns has yet to take effect.[43] TFA also mandated an online portal for filing Forms 1099, which is expected to go live in January 2023 and will be available to replace FIRE first for Forms 1099, and then in January 2024, for all information returns currently accepted by FIRE.[44] This portal should represent a major forward step for taxpayers and the IRS, and according to ETAAC, "This progress is an excellent example of what the IRS can accomplish with a properly funded technology initiative."[45] Modernizing these components of information return e-filing will be crucial in engaging paper filers and creating the information technology (IT) infrastructure needed to carry out Congress's vision. Currently, approximately 99.5 percent of all information returns, such as Forms 1099, are e-filed.[46] This additional progress will help deal with the anticipated upswing in information returns occurring on account of digital asset reporting and other investments.[47]

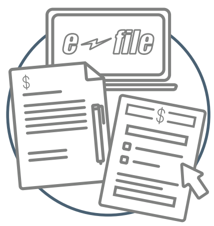
Where employment tax returns are concerned, barriers are both behavioral and structural. Research undertaken by the IRS Small Business/Self-Employed Division indicates some of the main reasons why companies file their employment tax returns on paper are because it appears cheaper and easier, because they have always done so, and because their tax return preparers advise them to do so.[48] An important factor in this behavior can be traced to the circumstance that businesses are only able to e-file employment tax returns through the use of payroll software providers.[49] This dependence has a number of downsides, including increased costs and security concerns. Until businesses can e-file directly with the IRS, these obstacles will remain, and many businesses will continue to opt to file on paper. If the IRS developed this capacity and made strong educational efforts about the benefits of e-filing, behavioral barriers, such as habit, would likely quickly reverse themselves.

The IRS has taken meaningful strides regarding the e-filing of business income tax returns and information returns. There is still room for progress, however, particularly in the case of employment tax returns.[50]

Significant improvement in this area will require continued determination on the part of the IRS and the allocation of additional long-term resources by either the IRS or Congress.

The Way Forward

The IRS can and should take note of obstacles to e-filing and strive to mitigate those challenges, especially in the business return space. These efforts are important but should also parallel an initiative to develop a more comprehensive solution. The Inflation Reduction Act takes initial steps in this regard, as it appropriated funds for the IRS to study and report to Congress within nine months of the bill's passage on the costs of an agency-run free return filing system.[51] The study must include taxpayer opinions and the views of an independent third party on the IRS's ability to deliver such a system.



The National Taxpayer Advocate strongly supports providing taxpayers with more free options to prepare and file their tax returns. While many taxpayers will continue to use preparers or commercial software, taxpayers should not be required to incur fees to comply with their tax return filing obligations.

This study could well represent the beginning of an e-file transformation within the United States. Conversations of a similar nature have been going on since the time of the Reagan administration but have resulted in little progress on account of the reluctance of a resource-starved IRS and the opposition of the tax return preparation industry.[52] Over time, a groundswell of support has developed toward a more direct relationship between the IRS and taxpayers in the e-file process.

This relationship has been conceptualized as taking one of two broad forms. The more limited of these approaches would allow taxpayers to log into an IRS online account, see all the information returns and wage statements that have been provided by third parties to the IRS, and use that information to e-file directly with the IRS for free. Taxpayers would still calculate their own taxes, but the burden of information-gathering would be significantly decreased and transparency would be increased. Taxpayers would still be responsible for the ultimate accuracy of their returns and retain a filing obligation.

The broader approach, variously referred to as "pre-fill," "auto-fill," or "return-free filing," would involve the IRS using the information returns and wage statements that it already receives from third parties to estimate a taxpayer's taxable income. Taxpayers would need to only make any appropriate corrections; report any additional income, deductions, or credits not already captured by the IRS; sign the return; and electronically submit it to the IRS. One recent study based on Treasury Department data estimated that over 40 percent of tax returns could be accurately populated using only current year information returns and the prior year return.[53] Over 30 countries have adopted variants of this system, with large swaths of their populations being able to avoid the tax return preparation and filing burden by simply validating the correctness of the government-populated returns.[54]

Based on the experiences of other countries, there are a variety of ways to achieve a return-free filing environment.[55] For instance, the United Kingdom has developed a widespread real-time withholding system that adjusts from one paycheck to the next so that many taxpayers do not have to file a return at all because their withholding accurately captures their income and credits.[56] Finland sends precompleted tax returns to all taxpayers, who only need to take action if the furnished return is not accurate; if it is correct, taxpayers simply do nothing.[57] Australia, which offers prefilled tax returns through an online portal for easy, free e-filing, offers return-free filing to low-income people who owe no tax and have had no tax withheld, although people in that situation need to provide a form verifying that they do not need to file.[58] Taxpayers benefit by the time and money saved on simplified tax return preparation, and with accurate and widespread withholding, governments benefit from low tax gaps and reduced expenditures on revenue collection and enforcement.[59] However, these countries generally enact simpler tax laws than the United States, which facilitates this type of tax administration, and the complexities of the U.S. tax code pose a challenge to prepopulated returns for many taxpayers.[60]

Some have advocated for the United States to move toward similar streamlining. President Ronald Reagan introduced the idea of a prefilled simple return as part of his tax reform plan in 1985, and the IRS Restructuring and Reform Act of 1998 directed the IRS to study the possibility of return-free filing.[61] Currently, a bill has been proposed that would require the IRS to send all taxpayers a prefilled return and allow those taxpayers for whom the return is correct to avoid filing altogether.[62]

The National Taxpayer Advocate strongly supports providing taxpayers with more free options to prepare and file their tax returns. While many taxpayers will continue to use preparers or commercial software, taxpayers should not be required to incur fees to comply with their tax return filing obligations. A free direct e-file tax return system will provide taxpayers with more options. In addition, taxpayers should be able to timely access third-party information returns, such as Forms W-2 and 1099, and download that information into their tax software.

However, the National Taxpayer Advocate is concerned about proposals to create prepopulated returns that taxpayers simply sign and submit. Tax liabilities are partly based on factors that the IRS cannot know, including changes to marital status, number of dependents, or cash receipts. Also, taxpayers may fail to furnish a required form such as Form 8962 or attach required information returns. Rather than providing taxpayers with a prepopulated form and expecting taxpayers to understand the complexities of the tax code or make corrections, we believe it is more appropriate to allow taxpayers to fill in those details themselves through prompts or a Q&A format, aided by the improved digital availability of downloadable third-party information returns, and e-file their returns for free.

CONCLUSION AND RECOMMENDATIONS

As evidenced by the overwhelming number of e-filed returns, taxpayers are willing to e-file and desire to receive refunds quickly and accurately. It is in the IRS's best interest to encourage this trend by making the e-file process more straightforward and user-friendly for taxpayers. Opportunity for improvement exists in the context of business taxpayers, who are sometimes discouraged from e-filing information returns and employment tax returns on account of cumbersome technology. Enhancing this capacity while at the same time developing an IRS-run direct e-file option could take a creaky system that is still managing to produce good results and create a comprehensive e-file system that would benefit both taxpayers and the IRS. This transformation would significantly improve the taxpayer experience, remove barriers to tax filing, improve the timeliness of refunds, and further self-assessment and voluntary compliance.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Evaluate the feasibility of accepting imperfect e-filed tax returns and directing them to appropriate treatment streams for further review.
2. Provide taxpayers with access via an online account to Forms W-2 and 1099 as well as IRS prior year payments or credits early in the filing season in a downloadable format that taxpayers can upload to the tax software of their choice.

3. Make all IRS forms and schedules compatible with e-filing.
4. Implement necessary IT upgrades to enable business taxpayers to more easily e-file information and employment tax returns, including amended employment tax returns.
5. Use lessons learned from the congressionally funded e-filing study to begin development of a comprehensive, direct e-file system that encompasses many of the attributes already adopted by other countries.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Harrison Smith, Co-Director, Enterprise Digitalization and Case Management Office

Nancy Sieger, Chief Information Officer

IRS COMMENTS

The IRS agrees that expanding the individual and business electronic filing process to accept more forms digitally, as well as navigating in a paperless direction through digitalization, will benefit both the taxpayer and the agency. The Inflation Reduction Act (IRA) affords us the funding and opportunity to implement digital initiatives. In the IRS Strategic Plan FY2022-2026, one of the objectives of the agency is to "increase digitalization to streamline processes, improve access to digital data, and lessen our environmental impact."

The IRS continues to expand the e-file system to improve the taxpayer's experience, while working to prevent fraudulent tax filings. The IRS is working to add more forms to the e-file platform, building on paperless capabilities. Our development strategy includes soliciting input from internal and external stakeholders and working with the Taxpayer Experience Office (TXO) on sequencing the top priority forms.

We continue to partner with Free File Incorporated (FFI) to offer multiple Guided Free File options targeted to 70% of the population with a qualifying Adjusted Gross Income (AGI) and the Free File Fillable Forms program available to all income levels. IRS Free File is well positioned to deliver for the 2023 filing season and will promote the program via news releases, social media, and other channels. The IRS remains focused on working with FFI and others to continue enhancing and growing the e-file program.

The IRS constantly monitors all business rules in the Modernized Electronic Filing (MeF) system to verify that returns containing erroneous data are in fact rejecting back to the transmitter. In some situations, the taxpayer receives an explanation about what they can do to correct their return and resubmit electronically. For example, during the last filing season we established a business rule identifying when the Form 8962, Premium Tax Credit (PTC), was not included. This afforded taxpayers the opportunity to correct the omission, resubmit the return electronically and prevent a simple mistake from delaying their refunds, and aligns with the previous recommendation to provide this upfront opportunity to correct the error. It also eliminated the need for the IRS to issue downstream correspondence. These business rules are in place to support our commitment to prevent the electronic filing of fraudulent tax returns and promote an improved taxpayer experience.

The business e-file rate continues to increase, and the electronic filing of employment tax returns remain a priority. Education efforts are ongoing to remove some of the perceived barriers to filing business returns electronically. Employment tax returns continue to experience organic growth of approximately 2-3% yearly. Absent any legislative mandate requirement to e-file employment tax returns, companies have the choice to mail the return. The lack of mandate is affecting the growth of e-file rate for employment tax returns, which currently stands around 50%. This equates to us receiving over 14 million paper employment tax returns each quarter.

To overcome difficulties our customers encounter when using the Filing Information Returns Electronically (FIRE) system, the IRS Information Returns Modernization (IR Mod) Program is launching a user friendly Online 1099 portal geared towards small business taxpayers. In January 2024, the IR Mod platform will expand the Online 1099 portal to support additional information returns (IR) currently processed through FIRE and will eventually support all information returns in later releases.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS agrees with the IRS regarding the importance of e-filing. Moving from paper returns to e-filing reduces processing time, removes the possibility of transcription errors, facilitates taxpayer refunds, and preserves IRS resources. Individual e-file rates are excellent, and business e-file rates are good. Nevertheless, these rates still have room for improvement and the taxpayer experience could still be enhanced.

TAS applauds the IRS for its current efforts and future plans for improving e-filing access. Providing the maximum amount of feedback, consistent with fraud protections, when MeF rules are violated gives good-faith taxpayers an opportunity to correct inadvertent errors and contributes to quality tax administration. In addition to providing taxpayers information in cases such as a missing Form 8962, the IRS should also consider accepting imperfect e-filed tax returns and directing them to appropriate treatment streams for further review. Where information returns are concerned, the IRS initiative to launch the Online 1099 portal, which will one day be expanded to support all information returns, holds great promise.

To improve the tax return e-filing experience, the IRS should work toward providing taxpayers with access to their Form W-2 and 1099 information early in the filing season via their Online Account as well as IRS prior year payments in a downloadable format that taxpayers can upload to the tax software of their choice. TAS also suggests that the IRS include all information from the Form W-2, including state and local tax information to use in preparing state or local returns, to improve the experience for the taxpayer and ease the filing process. As a longer-term strategy, the IRS should take what it learns from the congressionally funded e-filing study and begin development of a comprehensive, direct e-file system that encompasses many of the attributes already adopted by other countries. TAS credits the IRS for its current efforts to improve e-filing and urges continued long-term initiatives that will enhance the e-file experience for both individuals and businesses while generating a continued rise in e-file rates that will benefit both taxpayers and the IRS.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Evaluate the feasibility of accepting imperfect e-filed tax returns and directing them to appropriate treatment streams for further review.
2. Provide taxpayers with access via an online account to Forms W-2 and 1099 as well as IRS prior year payments or credits early in the filing season in a downloadable format that taxpayers can upload to the tax software of their choice.
3. Make all IRS forms and schedules compatible with e-filing.
4. Implement necessary IT upgrades to enable business taxpayers to more easily e-file information and employment tax returns, including amended employment tax returns.
5. Use lessons learned from the congressionally funded e-filing study to begin development of a comprehensive, direct e-file system that encompasses many of the attributes already adopted by other countries.

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19 The numbers of triggered MeF rules are not equal to the number of rejected e-file returns since a rejected return may have triggered multiple MeF rules. IRS response to TAS information request (Oct. 12, 2022).

20 The IRS utilizes MeF rules for several reasons, including to combat identity theft and refund fraud.

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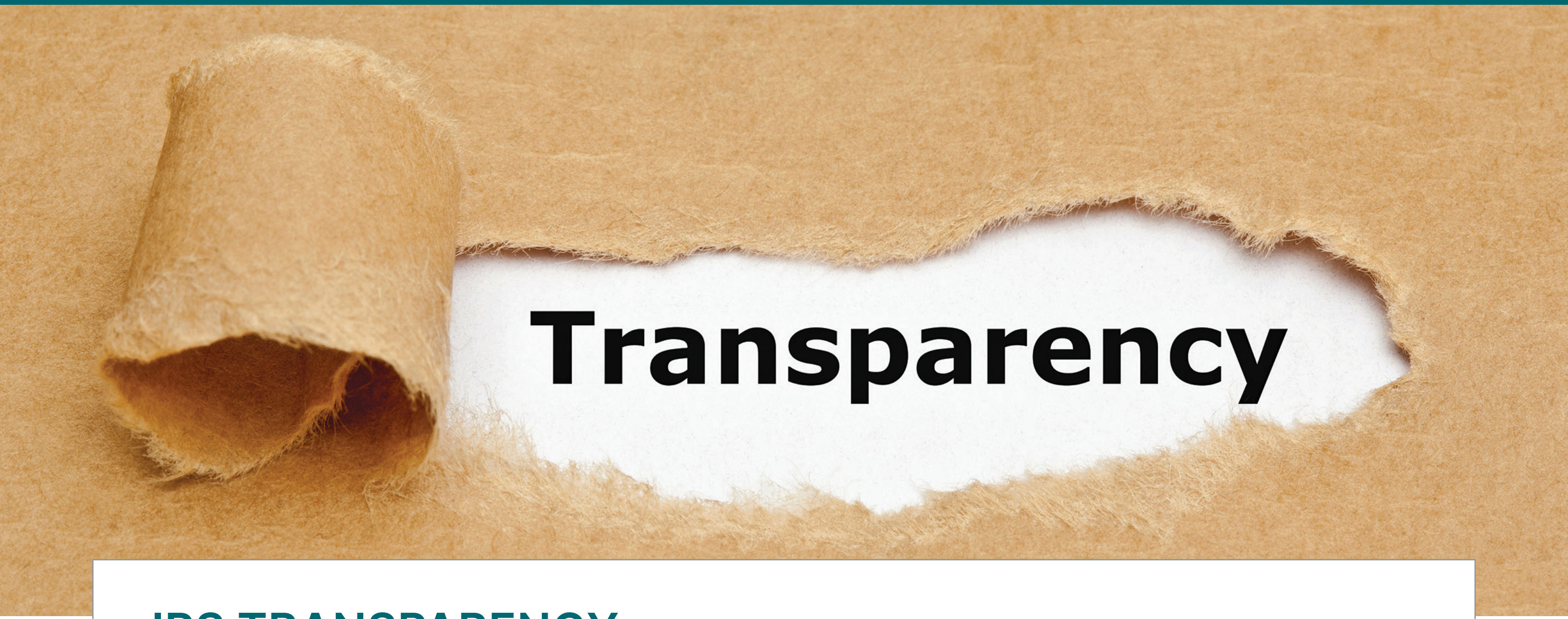


IRS TRANSPARENCY

Lack of Transparency About Processing Delays and Other Key Data Frustrates Taxpayers and May Undermine Voluntary Compliance

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Transparency is a critical element of a fair and effective tax administration system. Access and transparency have never been more important than now. Congress has given the IRS significant additional funding to improve tax administration, and it is incumbent on the IRS to be transparent about its plans and outcomes to demonstrate to Congress and the taxpaying public that it is using the funding fairly, equitably, and prudently.

The IRS provides taxpayers with access to certain information about the status of their refunds and delays in processing returns, and it provides answers to basic tax law questions. But many in the tax community believe the IRS does not adequately communicate with taxpayers and is too limited in what it discloses publicly. Historically, taxpayers have struggled to get precise information about when the IRS would process their returns, pay refunds, and address their correspondence, along with the reasons for delays. The pandemic has exacerbated that issue.

While the IRS provides taxpayers with voluminous amounts of information on IRS.gov to assist them in complying with their tax filing and payment obligations, a cluttered website causes taxpayers to struggle to find the information they are looking for. When taxpayers do find information they are seeking, they sometimes are surprised to discover they cannot rely on all IRS guidance. When taxpayers cannot find any guidance on their issue, they often are not able to find out whether the IRS is in the process of developing such guidance and, if so, when it will be issued. The IRS's lack of transparency and lack of access regarding updated communications and guidance are barriers to taxpayers voluntarily complying with their tax obligations and have led to frustration with the tax system.

EXPLANATION OF THE PROBLEM

Since fiscal year (FY) 2010, the IRS budget has been reduced by nearly 20 percent after adjusting for inflation, and its staffing has declined as well.[1] Reduced budget and staffing caused challenges for taxpayers and the IRS. During this time, the IRS has not provided taxpayers clear explanations of the challenges or the impact to overall service. The IRS was recently appropriated a significant amount of funding to use over the next ten years to improve taxpayer service, modernize its systems, improve operations, and increase enforcement against certain taxpayers, and it must provide regular updates on the use of this funding.[2] The IRS must be fully transparent to taxpayers, tax practitioners, stakeholders, the public, and all oversight organizations that it is applying the funds wisely, fairly, and equitably, particularly in the area of enforcement.[3] Any failure of the IRS to fully embrace providing access and transparency risks eroding the public's confidence in the IRS, thereby threatening the bedrock principle upon which tax administration is based – taxpayers voluntarily complying through self-assessment.

Another aspect of transparency is whether the IRS provides taxpayers with information regarding the status of their return and how to voluntarily comply with their tax obligations. Despite the IRS's efforts to provide such information, taxpayers all too often feel in the dark about their interactions with the IRS and how to best comply with their obligations. Taxpayers need access to phone assistance, in-person assistance, timely responses to correspondence inquiries or replies, and accessible IRS.gov information.

FIGURE 2.7.1

A lack of transparency causes problems for taxpayers in many areas, including:

- Difficulty accessing specific information about their refunds, processing delays, and their case before the IRS;
- Difficulty obtaining answers to questions;
- Difficulty determining upon what IRS guidance they can rely; and
- Difficulty identifying what new guidance the IRS is developing and its projected completion date.

ANALYSIS

Taxpayers and the Public Need Regular Updates on How the IRS Plans to Use the Inflation Reduction Act Funding

As part of the Inflation Reduction Act, the IRS is scheduled to receive a significant influx of funding over the next decade for improvements to technology, customer service, and enforcement and to cover operational costs.[4] After the President signed this legislation into law, the Treasury Department put certain constraints on how the IRS could use the funding in the area of enforcement.[5] For taxpayers and the public to have confidence that the IRS is using this funding fairly and equitably – particularly in the area of enforcement – the IRS must be fully transparent to taxpayers, practitioners, the American public, Congress, and other oversight agencies, including TAS.[6] If the IRS is not fully transparent as to how it will apply the funds, there is a risk that the public could believe the IRS is not allocating the money in a fair and equitable manner. A lack of transparency could jeopardize one of the bedrock principles of our tax system: taxpayers voluntarily complying with their tax obligations through self-assessment.[7]

The Secretary of the Treasury made clear this expectation of transparency when she directed that the IRS's operational plan include how it will allocate the recent increase in funding it receives through the Inflation Reduction Act.[8] In response, the IRS announced on August 19, 2022, the creation of the Inflation Reduction Act 2022 Transformation & Implementation Office, charged with developing this operational plan.[9] This plan will undoubtedly be a useful roadmap as the IRS moves forward over the next decade implementing long-lasting improvements to tax administration. However, for the initial operational plan to be meaningful, it must contain details and provide specific performance metrics that outside parties can monitor and verify to measure the results of how the IRS has applied the funds and the success of its efforts to transform the IRS.[10] Objective timeframes and milestones of the implementation of the funds must be specific and clear. The National Taxpayer Advocate recommends that the operational plan be a living document, regularly updated and modified as the IRS accomplishes transformational changes and identifies new objectives. Requiring and updating such performance measures, timeframes, and objectives will reassure the public that the IRS is using the funds appropriately.

Further, as the implementation process proceeds, there will likely be modifications made to the plan as new priorities are identified and unforeseen circumstances arise. Thus, the IRS should regularly update this operational plan, making the public and external stakeholders aware of any changes to its implementation, and provide the opportunity for external suggestions and comments. Such a level of transparency will give taxpayers and external stakeholders confidence that the IRS is using the funds in a fair, efficient, and equitable manner.

Taxpayers Need More Transparency on the Status of the Filing Season, Processing Delays, Refund Delays, and How to Comply With Their Tax Obligations

Taxpayers Have Difficulty Obtaining Information on Their Refunds, Processing Delays, and Their Cases Before the IRS

During the past several years, millions of taxpayers have experienced return processing and refunds delays due to an IRS backlog.[11] These delays drove many taxpayers to Where's My Refund?, which they accessed 557.2 million times in FY 2022, and Where's My Amended Return?, which was accessed 20.8 million times during the same timeframe.[12] However, the information these tools provide taxpayers is limited, as it will only tell taxpayers one of three things: return received; refund approved; or refund sent.[13] If there was an issue, the taxpayer was not provided any details about what needed to be done or the timing involved with the delay.

The IRS has made some enhancements to the Where's My Refund? tool recently, such as allowing taxpayers to check their refund status for prior tax years.[14] The IRS plans to make further upgrades to the Where's My Refund? tool for the 2023 filing season, including information about refunds that the IRS has adjusted through its math error authority.[15] Despite these upgrades, limitations to the Where's My Refund? tool remain, such as not providing taxpayers with information regarding processing delays caused by errors on the return or by possible identity theft concerns. Until the applications, tools, or taxpayers' online accounts have additional functionality, the combination of processing delays along with limited or no specific information as to the status of the taxpayer's refund will likely drive taxpayers to their phones seeking answers from an IRS assistor. This further burdens an already overwhelmed phone system, as the IRS only answered 14 percent of calls to the IRS's 1040 telephone line for FY 2022.[16]

The IRS has taken steps to add more information to Where's My Refund? about refund delays. In 2021, the IRS's Return Integrity and Compliance Service submitted a unified work request (UWR) to update Where's My Refund? to provide taxpayers with more information about refund delays, such as the IRS reviewing their return for accuracy, but the IRS denied the UWR. However, recently upgrades to Where's My Refund? have received initial approval as a Development, Modernization, and Enhancement project, but implementation is contingent on a final funding decision.[17]

During the COVID-19 pandemic, the IRS began providing taxpayers with more general information regarding processing delays. After much prompting by the National Taxpayer Advocate and outside stakeholders, the IRS created a webpage, "IRS Operations During COVID-19: Mission-critical functions continue" (hereafter called the Operational page), where it posts information about a number of processing issues, such as delays in processing returns and amended returns.[18] For example, the page says:

> As of October 21, 2022, we had 5.1 million unprocessed individual returns received this year. These include tax year 2021 returns and late filed prior year returns. Of these, 2.1 million returns require error correction or other special handling, and 3.0 million are paper returns waiting to be reviewed and processed. This work does not typically require us to correspond with taxpayers, but it does require special handling by an IRS employee so, in these instances, it is taking the IRS more than 21 days to issue any related refund.[19]

Although this is a good start at transparency, the operational page does not provide specifics such as how far along the IRS is in processing these 5.1 million returns (*e.g.*, were they filed in April? June?) and does not provide reliable estimates as to when the IRS will complete the processing of these returns. In fact, the section entitled, "How long you may have to wait," describes what steps the IRS takes to process returns and provides taxpayers only limited information about how long it might take the IRS to process the remaining returns.[20] It would be more helpful to taxpayers if the IRS formatted these numbers to allow taxpayers to see the progress the IRS has made in processing returns and issuing refunds. Adding this information in a more user-friendly format, such as a dashboard, would provide taxpayers with more transparency regarding the status of processing returns and make it easier for oversight organizations and congressional committees to monitor the IRS's progress in processing returns.[21]

A more user-friendly format, such as a dashboard, would provide taxpayers with more transparency regarding the status of processing returns.

It is the National Taxpayer Advocate's understanding that the IRS had agreed to provide more detailed information about the processing of returns in a dashboard format for the 2023 filing season. Unfortunately, this project is inexplicably delayed or no longer moving forward.[22] Taxpayers are entitled to access key information impacting their tax obligations, tax filings, and overall tax administration.

Beyond information on the status of their refunds or where the IRS is in processing returns, taxpayers could also benefit from being able to determine the status of an issue they are trying to resolve with the IRS. Recently, the IRS created a Documentation Upload Tool (DUT) that allows taxpayers who are subject to a correspondence exam to upload documentation in support of their position, but the correspondence examination DUT only tells taxpayers that the IRS has received their documents. To be even more useful, the IRS should expand the tool to inform taxpayers that the IRS has reviewed the documentation they submitted.[23] Alternatively, the IRS should add such a feature to a taxpayer's online account where they could receive updates regarding documentation they submitted via the DUT or their online account. Once reviewed, the system could update the taxpayer as to whether the items were sufficient, or if not, why.

The IRS could expand a similar tool to other areas where taxpayers have submitted a form or documentation for IRS consideration, such as when taxpayers submit Form 14039, Identity Theft Affidavit, requesting relief from tax-related identity theft.[24] Providing access to information and making these tools more available to taxpayers would provide them with important information regarding the status of the documentation they submitted to the IRS and alleviate the frustration taxpayers experience when calling the IRS to obtain a status update on their issue. Reaching the IRS to obtain such information is extremely difficult. In FY 2022, the IRS only answered about 14 percent of the calls received, and taxpayers had to wait long periods of time to reach a customer service representative (CSR), with an average hold time of about 24 minutes.[25] As the IRS moves forward in reinventing and transforming customer service, it should seriously consider expanding the use of these types of tools, whether it be through a taxpayer's online account or some other application.[26] Access is key to achieving transparency, whether through CSRs, walk-in Taxpayer Assistance Centers, online accounts, other applications or tools, or IRS.gov.

Taxpayers Have Difficulty Obtaining Answers to Questions

IRS.gov provides taxpayers with a wealth of information, including:

- Forms, instructions, and publications;
- Press releases;
- FAQs; and
- Discussions on popular topics such as deductions and credits.

In FY 2022, the IRS reported about 5.3 billion page views on IRS.gov.[27] The information taxpayers need to answer their questions and comply with their tax filing and payment obligations might be available somewhere on the nearly 41,000 webpages comprising IRS.gov, but pinpointing the exact information is so challenging that the website's value is reduced.[28] The volume of webpages and amount of inconsistent and duplicate information may be due in part to the fact that each Operating Division (OD) controls the specific areas on the IRS website for which that OD is responsible. In other words, there is no specific group overseeing and approving each OD's contributions to IRS.gov to ensure that webpages are user-friendly, consistent, and free of content duplication. The IRS is aware of the challenges facing IRS.gov, and its Online Services function is working to reduce duplication of the webpages. But Online Services must negotiate this effort with the ODs. The IRS could improve the process by giving a specific group within the IRS, such as Online Services, the authority to approve or deny web content, which would streamline website consistency.

In the long term, to assist taxpayers in navigating the nearly 41,000 webpages, the IRS should consider placing a chatbot on the IRS.gov landing page, which would allow taxpayers to ask questions, and the chatbot would provide a brief answer linking to the relevant IRS.gov pages. This would eliminate the need for taxpayers to sift through thousands of webpages to find what they need.

Despite the voluminous amounts of information provided to taxpayers on IRS.gov, there are instances where the IRS has omitted information taxpayers need from the website. For example, when taxpayers want to extend the two-year period for filing a refund suit in a U.S. district court or the U.S. Court of Federal Claims to dispute a notice of claim disallowance, they must sign and submit a Form 907, Agreement to Extend the Time to Bring Suit, to the IRS for its consideration.[29] If the IRS agrees to the extension, an authorized IRS official will sign Form 907 prior to the expiration of the two-year period to file suit. However, there is currently no information regarding this process on IRS.gov, including where to send the form. Thus, many taxpayers and even some taxpayers' representatives are not aware of the option of extending the two-year period or how to request such an extension. Failure to secure an extension before the expiration of the two-year period for filing suit means the IRS is barred from issuing a refund, even if the taxpayer is entitled to one.[30]

Taxpayers Have Difficulty Determining If They Can Rely on IRS Guidance

It is reasonable for taxpayers to believe that they can rely on all guidance the IRS provides with equal amounts of confidence, whether it is a publication on its webpage, FAQs, or instructions on how to complete a form.

The reality is that taxpayers can rely on different types of guidance to different degrees. Most IRS guidance, such as instructions, publications, and FAQs, are informal, and taxpayers may not rely upon the guidance in all circumstances. Thus, if taxpayers are later audited or seek relief from accuracy-related penalties, they may find the support for their position is limited since the guidance was informal (*i.e.*, taxpayers can only rely on such guidance that is reasonable and in good faith to support a reasonable cause defense from accuracy-related penalties).[31] Conversely, guidance the IRS publishes in the Internal Revenue Bulletin (Bulletin) is considered "formal," meaning taxpayers can rely upon it in an audit situation or use it to obtain penalty relief.[32] Although not published in the Bulletin, on October 15, 2021, the IRS clarified that taxpayers can rely on certain FAQs for purposes of penalty relief.[33] This includes FAQs developed in connection with recently enacted tax legislation or emerging issues.[34]

Although this development is welcome to taxpayers who use FAQs to find answers to their tax law questions, determining which FAQs possess a higher degree of reliability remains confusing. For example, the FAQs site for the Advance Child Tax Credit (AdvCTC) lacks a disclaimer at the top of the page explaining that the IRS developed the FAQs to help provide guidance on recently enacted changes to the AdvCTC, meaning taxpayers can rely on those FAQs for certain types of penalty relief. Instead, there is a hyperlink to a fact sheet that opens in a separate window that explains to what extent taxpayers can rely upon the AdvCTC FAQs.[35] It would be much clearer to label these FAQs at the top of each page.[36]

Further, the extent to which taxpayers can rely upon other informal guidance, such as forms and instructions, is equally unclear. Thus, the IRS should clearly state that reliance upon such informal guidance provides taxpayers with a reasonable cause defense against any negligence or other component of the accuracy-related penalty. In regard to formal guidance, the IRS must make clear to taxpayers that they can rely upon other guidance published in the Bulletin for the purposes of penalty relief and support in an audit situation for positions they have taken on their returns.

The IRS could make publications and instructions more useful to taxpayers by providing information about the laws and regulations upon which they are based. Current IRS publications omit any discussion of passed laws or regulations and do not direct taxpayers to the precise origins of the rules with which they must comply. The primary reason for this omission is to keep the publications simple. Although this objective is justified, the publications and instructions should, at a minimum, hyperlink to relevant statutes and regulations so taxpayers and tax professionals can easily locate the laws upon which the IRS bases guidance. Additionally, IRS publications could contain QR codes that would direct taxpayers to the laws and regulations referenced within them.

Taxpayers and Tax Professionals Have Difficulty Determining What New Guidance the IRS Is Developing and the Expected Completion Date

Each year, the IRS and the Treasury Department release a Priority Guidance Plan (PGP) that identifies what topics it intends to produce additional guidance on, usually in the form of regulations, notices, revenue rulings, or revenue procedures. Both internal and external stakeholders can provide recommendations for inclusion in this plan. The IRS and Treasury consider recommendations using a variety of factors,[37] and if a recommendation is ultimately adopted, the IRS will add it to the PGP.[38]

The current layout of the PGP makes it difficult for taxpayers, their representatives, and outside stakeholders to easily assess what guidance is currently under development and its current status.[39] The IRS could improve the layout of the PGP and make it more useful and navigable if it took the form of a living spreadsheet or dashboard that showed:

- The type of guidance the IRS will issue,
- The types of issue(s) the guidance will address,

- When the PGP received the recommendation, and
- The current status of the guidance.

In addition to improving the display of formal guidance under development, the IRS could share with taxpayers and tax professionals what informal guidance – such as forms, instructions, and publications – are under development, so they can provide comment and prepare for any last-minute changes that may require them to devote more time to completing returns and complying with tax obligations. Recently, the IRS made major revisions to the instructions for filing Form 1065 Schedule K-2, Partners' Distributive Share Items – International, and Schedule K-3, Partner's Share of Income, Deductions, Credits, etc. – International.[40] These significant revisions took some taxpayers and representatives by surprise. It would be beneficial to develop an informal guidance plan similar to the PGP that would let taxpayers and those in the tax community know that the IRS is revising certain documents and when the IRS will release new updates.

CONCLUSION AND RECOMMENDATIONS

As the IRS moves forward with developing and implementing its plan for how it will use the influx of funds it is scheduled to receive over the next ten years, transparency is a critical part of this process to foster trust between the IRS and the public. Full transparency will give taxpayers and the public at large confidence that the IRS is using the funds wisely, fairly, and equitably.

FULL TRANSPARENCY
will give taxpayers and the public at large confidence that the IRS is using the funds wisely, fairly, and equitably.

The IRS needs to ensure it is fully transparent as to the status of taxpayers' refunds, return processing delays, and where taxpayer cases or issues reside before the IRS. Further, the challenges in finding relevant, reliable information on IRS.gov impedes transparency by making it more difficult for taxpayers to get answers to their questions. The IRS is not fully transparent as to what guidance taxpayers can rely on, what new guidance the IRS is in the process of developing, and when the IRS plans to release the guidance. Lack of transparency undermines taxpayer trust, thereby potentially compromising self-assessment and voluntary compliance.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Make the operational plan due six months from the enactment of the Inflation Reduction Act available to the public by posting it on IRS.gov.
2. Commit to providing to the public and oversight organizations regular reports regarding the allocation of the increased funding and include performance metrics that show the results of how the IRS has applied the funds.
3. Improve Where's My Refund?, IRS2Go, and online accounts by providing taxpayers increased functionality, including specific information about the cause of their refund delay and an estimated date when the IRS might issue their refund.
4. Post a filing season dashboard and provide weekly information throughout the year on the filing season statistics, including the total number of returns in inventory, number of returns held beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, while acknowledging that the situation is fluid and timeframes may change along with circumstances.
5. Clearly state on all guidance the extent to which the taxpayer can rely upon it either for penalty relief or in an audit.

6. In conjunction with IRS Chief Counsel, update the PGP to be a living document that specifies the type of guidance the IRS is developing, the issues it will address, the current status of the guidance, and the estimated date of completion.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Amalia Colbert, Commissioner, Small Business/Self-Employed Division

IRS COMMENTS

The pandemic posed unprecedented challenges to our ability to service customers through normal telephone, inventory, and processing avenues. We established, and continue to post, information on IRS.gov giving the public updates about operational and processing timeframes.

In August 2022, the IRS established the Inflation Reduction Act (IRA) 2022 Transformation & Implementation Office and immediately began developing operational and strategic plans to implement legislative provisions. The influx of funding from IRA 2022, will allow the IRS to pursue significant improvements to our technology and customer service channels with an eye toward greater transparency. Once the IRS prepares the strategic operational plan for the Secretary of the Treasury we will work with Treasury to ensure there is transparency to the public on the IRS's plan to transform tax administration and improve service to taxpayers.

Prior to the passage of IRA 2022, the Service continually took steps to process returns timely and give taxpayers refund information through quick, easy to use, low level authentication tools such as Where's my Refund? (WMR) and Where's my Amended Return? (WMAR). Many taxpayers get the information they need from these applications and never have to contact us again. However, in our continuous efforts to improve transparency, we requested funding to enhance WMR. We added two prior years of data to the available information. Additional planned enhancements include providing explanations for frequent math errors, return received, refund approved, and refund sent statuses for accounts where the IRS received the return, but the refund is delayed, and improved messaging for returns delayed in the Taxpayer Protection Program or Error Resolution System (ERS). In addition, there are plans to update the look and feel of WMR to more closely mirror other IRS.gov content, improve navigation, translate content into six additional languages, and allow married filing joint taxpayers and taxpayers who choose direct deposit the ability to initiate their own refund trace.

Making the IRS healthy in terms of inventories and communicating account statuses/resolutions to taxpayers are the IRS's top priorities. The IRS deployed surge teams with resources from all over the agency to target and resolve correspondence, amended returns, and ERS inventories. These teams will continue their work through the end of 2022. To improve timeframes for identity theft cases, we requested funding to develop a Document Upload Tool (DUT) so taxpayers can self-submit Form 14039, Identity Theft Affidavit. Since May 2022, Certified Acceptance Agents (CAA) submitted several hundred Forms 13551, Application to Participate in the IRS Acceptance Agent Program, through the DUT.

To assist in taxpayers' understanding of IRS' forms, instructions, and publications, we apply the concepts outlined in the Plain Writing Act to every product we produce. We solicit public input on our products by working with the Taxpayer Advocacy Panel and Internal Revenue Service Advisory Council. An early draft of our products' revisions is forwarded to the Taxpayer Advocate Service and hundreds of others for review and comment, from which we get many comments on simplifying language, which we work to address. We also provide early release drafts of our products at IRS.gov/DraftForms. Each of those draft postings has a cover page that gives the link of IRS.gov/FormsComments for the public to provide comments about draft or final forms. We conclude each of our instructions and publications with a paragraph encouraging taxpayers to send us comments and suggestions on how to make the product simpler, either by mail or via our website.

Notably, regulations and documents published in the Internal Revenue Bulletin (IRB) are the authoritative position of Treasury and the IRS and therefore, are generally authorities on which a taxpayer may rely to the extent they are not outweighed by other contrary authorities. Other forms of guidance not published in the IRB or otherwise identified in Treas. Reg. § 1.6662-4(d)(3) may not provide penalty relief unless, under facts and circumstances of each case, they help support a reasonable cause defense. These less formal forms of guidance are intended to provide information to taxpayers more quickly.

When considering the Priority Guidance Plan (PGP), it is important to remember that it is issued jointly with Treasury and is a living document that is updated on a quarterly basis as projects are completed and others are added. Items are generally added to the PGP if they are expected to be completed during the plan year. Thus, any changes to the PGP process would require Treasury's input.

Additionally, partnering with key external stakeholders such as the Federation of Tax Administrators and the Council for Electronic Revenue Communication Advancement board of directors affords the IRS opportunities to further explore transparency. Our quarterly meetings allow us to maintain and build relationships, provide a strategic forum to share high-level key messages and emerging issues, and gather feedback to improve services.

TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate understands the enormous challenges the COVID-19 pandemic has caused the IRS over the past three years. The recent increase in funding through the passage of the Inflation Reduction Act will aid the IRS in addressing many of these challenges and ideally transform the IRS into a more modern tax administration agency. The immediate steps the IRS took after passage of the IRA put the agency on the right path to implementing these funds. However, as the IRS moves forward with this implementation process, it is critical that it is fully transparent as to how these funds will be applied, particularly in the area of enforcement; it is equally important that the IRS measures the performance of the outcomes of how these funds have been applied. The IRS can take an important step toward embracing transparency by ensuring that the Strategic Operational Plan is made available to the public and by providing a real and meaningful opportunity for the public to offer its observations and opinions on the plan.

The National Taxpayer Advocate acknowledges that the IRS has made several significant changes over the years to provide taxpayers with more information regarding the processing of their returns and when they can expect their refunds and is pleased that it continues to make strides in this direction. Yet, too many taxpayers – far too often – feel in the dark about when their return will be processed and what might be causing delays. The IRS could ease these concerns by providing taxpayers with more information on either its Where's My Refund? tool or the taxpayer's Online Account about reasons for delays. For example, the IRS could inform a taxpayer that it is reviewing his or her return for possible identity theft or errors and provide timeframes or action items. The more information the IRS provides taxpayers and the more transparent it is, the less likely taxpayers are to call the IRS to inquire about refund delays.

The IRS offers a multitude of resources for taxpayers to access and use when complying with their tax obligations, and it needs to ensure that this information is consistent and easy to access. Most taxpayers likely believe that they can rely on information created by the IRS and posted on its website and are not aware of the different degrees to which they can rely upon certain information. Thus, at a minimum, the IRS should clearly identify on its guidance the extent to which taxpayers can rely upon it.

Transparency is a bedrock principle of tax administration and the foundation upon which voluntary compliance through self-assessment rests. Although the IRS has made progress, it needs to do more to ensure that it is fully transparent by providing timely, easily accessible information to taxpayers. Silence is not golden when taxpayers and representatives are looking for guidance, assistance, or answers.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Make the operational plan, due six months from the enactment of the Inflation Reduction Act, available to the public by posting it on IRS.gov and allow for stakeholder comments on the plan and future improvements.
2. Commit to providing to the public and oversight organizations regular reports regarding the allocation of the increased funding and include performance metrics that show the results of how the IRS has applied the funds.
3. Improve Where's My Refund?, IRS2Go, and online accounts by providing taxpayers increased functionality, including specific information about the cause of their refund delay and an estimated date when the IRS might issue their refund.
4. Post a filing season dashboard and provide weekly information throughout the year on the filing season statistics, including the total number of returns in inventory, number of returns held beyond normal processing times, number of returns in suspense status, and the anticipated timeframes for working through them, while acknowledging that the situation is fluid and timeframes may change along with circumstances.
5. Clearly state on all guidance the extent to which the taxpayer can rely upon it either for penalty relief or in an audit.
6. In conjunction with IRS Chief Counsel, update the PGP to be a living document that specifies the type of guidance the IRS is developing, the issues it will address, the current status of the guidance, and the estimated date of completion.

Endnotes

1 *See* National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 3 (Legislative Recommendation: *Revamp the IRS Budget Structure and Provide Sufficient Funding to Improve the Taxpayer Experience and Modernize the IRS's Information Technology Systems*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_01_StrengthRights_2.pdf.

2 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, 136 Stat. 1818 (2022).

3 "[I]t is important to understand the difference between providing data, which is often difficult to decipher, and providing information which makes the tax story understandable. The real challenge is to take a very complex situation – which is largely particular to the individual group – and make it understandable to a wider audience." Quattrochi, Zahira, Group Head of Tax at Anglo American, presenting at KPMG's Responsible Tax Project webinar (June 24, 2021), https://responsibletax.kpmg.com/article/understanding-tax-transparency.

4 Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 1818 (2022). The Inflation Reduction Act appropriates the funding as follows: $3.2 billion for taxpayer services; $45.6 billion for enforcement; $25.3 billion for operations support; and $4.8 billion for business systems modernization (amounts have been rounded).

5 Memorandum from Janet L. Yellen, Sec'y of the Treasury, to Charles P. Rettig, Comm'r, Internal Revenue (Aug. 17, 2022), https://www.taxcontroversy360.com/wp-content/uploads/2022/08/2022-27034_TNT_Docs_treasury.pdf (last visited Dec. 13, 2022). For example, Secretary Yellen directed the IRS to not increase the audit rates of taxpayers earning under $400,000 annually, stating "that audit rates will not rise relative to recent years for households making under $400,000 annually."

6 Government Accountability Office (GAO), GAO-22-106032, *Tax Compliance: IRS Audit Trends for Individual Taxpayers Vary by Income* (2022). Even prior to the passage of the Inflation Reduction Act, GAO noted some raised concerns about who the IRS selects for audit, stating that, "Because audit rates for higher-income taxpayers have seen a larger decline than audit rates for lower-income taxpayers, the tax community has raised concerns about whether IRS is equitably selecting taxpayers for audit." *Id.* at 1.

7 IRS, IR-2019-159, IRS Releases New Tax Gap Estimates; Compliance Rates Remain Substantially Unchanged from Prior Study (Sept. 26, 2019), https://www.irs.gov/newsroom/irs-releases-new-tax-gap-estimates-compliance-rates-remain-substantially-unchanged-from-prior-study.

8 Memorandum to Charles P. Rettig, IRS Commissioner, from Janet L. Yellen, Secretary of the Treasury, IRS Operational Plan (Aug. 17, 2022). The Inflation Reduction Act contained a similar provision before it was stricken during the Byrd process. Cong. Pascrell, Chair, Subcommittee on Oversight, made a similar request that the IRS provide him with an outline of how it intends to use the additional resources by August 30, 2022. *See* Letter from Rep. Bill Pascrell, Jr., Chair, Subcomm. on Oversight, to Charles P. Rettig, Comm'r, Internal Revenue (Aug. 16, 2022), https://pascrell.house.gov/uploadedfiles/2022.08.16_bp_to_irs_re_ira_.pdf (last visited Dec. 13, 2022).

9 Email from IRS Commissioner Charles P. Rettig to all IRS and TAS employees, "New Office to Oversee Landmark Legislation" (Aug. 19, 2022).

10 Letter from Sen. Mike Crapo, Ranking Member, Comm. on Fin. et al., to Charles P. Rettig, Comm'r, Internal Revenue 8 (Sept. 22, 2022), https://www.finance.senate.gov/download/sfc-gop-letter-to-commr-rettig-wrt-80b-funding (last visited Dec. 13, 2022).

11 *See* Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*, *supra*.

12 IRS response to TAS information request (Oct. 19, 2022). This sum represents the total number of successful and unsuccessful Where's My Refund? query attempts.

13 *See* IRS, What to Expect for Refunds This Year, https://www.irs.gov/refunds/what-to-expect-for-refunds-this-year (last visited July 14, 2022).

14 The IRS has provided several tools through which taxpayers can check their refund status, including Where's My Refund?, Where's My Amended Return?, and the IRS2Go app. Where's My Refund? now provides refund information for the 2021, 2020, and 2019 tax years. Taxpayers should still view their Online Account to see payment history, prior year adjusted gross income, or other tax records. *See* IRS, Where's My Refund?, https://www.irs.gov/refunds (last visited Oct. 31, 2022). *See also* Most Serious Problem: *Online Access for Taxpayers and Tax Professionals: Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS*, *supra*.

15 IRS response to TAS information request (Oct. 19, 2022). Under IRC § 6213, the IRS is allowed to make an assessment upon discovering a mathematical or clerical error without having to use deficiency procedures. Unfortunately, the IRS won't be able to specify on Where's My Refund? the nature of the math error that allows for the adjustment because the IRS states such an explanation is "Official Use Only."

16 IRS, Joint Operations Center (JOC), Snapshot Reports: Product Line Detail for the 800-829-1040 telephone line (Sept. 30, 2022). *See also* Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions*, *supra*.

17 IRS response to TAS information request (Oct. 19, 2022).

18 *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 (last visited Sept. 7, 2022).

19 *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 (last visited Nov. 1, 2022), at "Filed a Tax Return" (updated Oct. 28, 2022).

20 *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 (last visited Oct. 24, 2022). The section entitled, "What you need to do" states, "If you filed electronically and received an acknowledgement, you do not need to take any further action other than promptly responding to any requests for information. If you are due a refund, filed on paper more than six months ago, and Where's My Refund? does not indicate we received your return, you should resubmit your tax return, electronically if possible."

21 Letter from Sen. Ron Wyden, Chair, U.S. Senate Comm. on Fin., to Charles P. Rettig, Comm'r, Internal Revenue (Sept. 13, 2022). "Keep taxpayers better informed electronically. The IRS has been expanding the information available to taxpayers and

practitioners on IRS.gov, the "Where's my Refund?" tool, the "Where's my Amended Return?" tool, and in online accounts. These tools save many from the frustration of having to call or write to the IRS."

22 TAS Recommendations and IRS Responses, TAS Recommendation 4-1 (2021), https://www.taxpayeradvocate.irs.gov/news/directory-entry/2021-msp-04-transparency-and-clarity/ (last visited Nov. 1, 2022). "The IRS is in the process of launching a "Filing Season Processing Times" page on IRS.gov to regularly provide updated information for the most commonly filed individual and business tax return types, letters, notices, and other forms."

23 *See* Most Serious Problem: *Online Access for Taxpayers and Tax Professionals: Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS*, *supra*.

24 *See* IRS, IRS Operations During COVID-19: Mission-Critical Functions Continue, at "Victims of Identity Theft who Sent a Form 14039 or Form 14039-B, Identity Theft Affidavit" (updated Sept. 16, 2022), https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue (last visited Oct. 24, 2022).

25 *See* Most Serious Problem: *Telephone and In-Person Service: Taxpayers Continue to Experience Difficulties and Frustration Obtaining Telephone and Face-to-Face Assistance to Resolve Their Tax Issues and Questions*, *supra*; IRS, JOC, Snapshot Reports: Product Line Detail for the 800-829-1040 telephone line (Sept. 30, 2022).

26 *See* Most Serious Problem: *Online Access for Taxpayers and Tax Professionals: Inadequate Digital Services Impede Efficient Case Resolution and Force Millions of Taxpayers to Call or Send Correspondence to the IRS*, *supra*.

27 IRS response to TAS information request (Oct. 19, 2022).

28 *Id*.

29 IRC § 6532(a)(2).

30 IRC § 6514(a)(2). "A refund of any portion of an internal revenue tax shall be considered erroneous and a credit of any such portion shall be considered void … (2) In the case of a claim filed within the proper time and disallowed by the Secretary, if the credit or refund was made after the expiration of the period of limitation for filing suit, unless within such period suit was begun by the taxpayer."

31 *See* Treas. Reg. § 1.6664-4(b) (certain facts and circumstances, such as consulting IRS guidance including publications, FAQs, or instructions, may be considered by the IRS to demonstrate that the taxpayer reasonably relied upon this guidance and acted in good faith).

32 Although items published in the Bulletin do not have the force and effect of Treasury Regulations, they may nonetheless be used as precedents. This includes Revenue Rulings and Revenue Procedures.

33 IRS, IR-2021-202, IRS Updates Process for Frequently Asked Questions on New Tax Legislation and Addresses Reliance Concerns (Oct. 15, 2021), https://www.irs.gov/newsroom/irs-updates-process-for-frequently-asked-questions-on-new-tax-legislation-and-addresses-reliance-concerns (last visited Sept. 12, 2022).

34 *Id*. This announcement goes on to say that FAQs will now be announced in a news release and posted on IRS.gov in a separate Fact Sheet. These Fact Sheet FAQs will be dated to enable taxpayers to confirm the date on which any changes to the FAQs were made. Additionally, prior versions of Fact Sheet FAQs will be maintained on IRS.gov.

35 The statement in the FAQ Fact Sheet refers to Treas. Reg. § 1.6664-4(b) and is consistent with the analysis in the prior comment, which describes what facts and circumstances may be taken into account when the IRS is considering reasonable cause relief.

36 *See, e.g.*, IRS Fact Sheet FS-2022-32, IRS Revises the 2021 Child Tax Credit and Advance Child Tax Credit Frequently Asked Questions (July 2022), https://www.irs.gov/pub/taxpros/fs-2022-32.pdf (last visited Sept. 6, 2022).

37 Internal Revenue Manual 32.1.1.4.1, Priority Guidance Plan (Aug. 2, 2018).

38 *Id*.

39 Treasury Department Priority Guidance Plan, 2021-2022 Fourth Quarter Update, (Aug. 17, 2022), https://www.irs.gov/pub/irs-utl/2021-2022-pgp-4th-quarter-update.pdf.

40 *See* IRS, Changes to the 2021 Partnership Instructions for Schedules K-2 and K-3 (Form 1065), https://www.irs.gov/forms-pubs/changes-to-the-2021-partnership-instructions-for-schedules-k-2-and-k-3-form-1065 (last visited Nov. 14, 2022).

RETURN PREPARER OVERSIGHT

Taxpayers Are Harmed by the Absence of Minimum Competency Standards for Return Preparers

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Return preparers prepare over half of individual income tax returns and play a key role in a successful tax administration. Taxpayers, with limited tax knowledge themselves, are ill-equipped to assess a preparer's expertise in tax laws and tax return preparation. Anyone can hold themselves out to be a return preparer, and not all return preparers have professional credentials. Return preparers without credentials are not required to pass any competency tests or take any educational courses on tax return preparation, and they are not subject to any ethical rules.

The absence of minimum competency standards for preparers of federal tax returns leaves taxpayers, particularly low-income taxpayers, vulnerable to return preparers' inadvertent errors that could cause them to overpay their tax – or to underpay their tax and face IRS enforcement action subjecting them to additional tax, penalties, and interest. In fact, about 92 percent of the total amount of dollars of audit adjustment made on 2020 returns claiming the Earned Income Tax Credit (EITC) occurred on returns prepared by non-credentialed return preparers. Those errors harm our most vulnerable taxpayers. Minimum competency standards would also likely professionalize the return preparation industry and weed out unscrupulous return preparers. Because taxpayers are ultimately financially responsible for inaccurately prepared returns, minimum competency standards for return preparers are an important taxpayer protection measure.

EXPLANATION OF THE PROBLEM

Both taxpayers and the tax system depend heavily on the ability of return preparers to prepare accurate tax returns. Taxpayers are often ill-equipped to navigate the complicated tax laws and must seek the services of return preparers to prepare and file their tax returns. For example, the IRS received 146 million 2021 individual income tax returns through September 29, 2022, and paid return preparers prepared 53 percent of those returns.[1] Of the 2021 individual income tax returns that paid return preparers prepared through September 29, 2022, non-credentialed return preparers prepared approximately 58 percent.[2] Of the approximate 12.9 million 2021 business returns received through September 29, 2022, paid return preparers prepared nearly 79 percent.[3]

Anyone can hold themselves out to be a return preparer, and not all return preparers have professional credentials. Return preparers who hold attorney, certified public accountant (CPA), or enrolled agent (EA) credentials must pass competency examinations, satisfy continuing education requirements, and are subject to standards of conduct in 31 C.F.R. Part 10, which are reprinted in Treasury Department Circular 230, Regulations Governing Practice Before the Internal Revenue Service. In addition, the IRS requires volunteer preparers to pass competency examinations as part of the Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.[4] However, most paid preparers are non-credentialed and are not required to pass any competency tests or take any educational courses on tax return preparation, and they are not subject to any ethical rules.[5]

The evolution of the commercial tax return preparation and filing industry has made it easier for inexperienced and untrained preparers to enter into the business. Tax return preparation software is widely available, reasonably priced, and the user-friendly question-and-answer format enables a person with almost no knowledge or skill to prepare a tax return by simply working through the software's prompts. Undoubtedly, software has opened the doors to enable anyone, with good or ill intent, to present oneself as a return preparer.[6]

The lack of minimum competency standards harms taxpayers in the following ways:

- Taxpayers may not understand the differences in the education and training requirements of various return preparer credentials;
- Taxpayers are ultimately financially responsible for inaccurately prepared tax returns;
- Low-income taxpayers are at significant risk of harm caused by incompetent or unscrupulous return preparers;
- Research studies and IRS data found more noncompliance among non-credentialed return preparers;
- Non-credentialed preparers cannot represent taxpayers on audits of prepared returns;
- Not all return preparers are subject to standards of conduct or ethical rules; and
- The lack of minimum competency standards forces the IRS to take a reactive approach to return preparer noncompliance.

ANALYSIS

Background

National Taxpayer Advocate's Legislative Proposals

Since 2002, the National Taxpayer Advocate has been a strong proponent of legislation providing the IRS authority to establish a return preparer oversight program that would include minimum competency standards for paid return preparers.[7] The National Taxpayer Advocate's legislative proposals included a program to register, test, and certify unenrolled preparers. To strengthen the program, the proposals provided for increased preparer penalties and improved due diligence requirements. The National Taxpayer Advocate also recommended that the IRS mount a comprehensive taxpayer education campaign to inform taxpayers how to choose a competent preparer and remind them to obtain a copy of the tax return with the preparer's signature.[8] Such proposed oversight has received widespread support from various practitioner groups and members of Congress.[9]

*Pre-*Loving *Return Preparer Program*

Pursuant to 31 U.S.C. § 330, the Secretary is authorized to regulate the practice of representatives before the Department of the Treasury. Circular 230 defines "practice" and prescribes who may practice before the IRS. In 2009, the IRS determined that it had administrative authority to regulate paid tax return preparation as "practice" before the IRS.[10] The IRS initiated extensive hearings and discussions with stakeholder groups to receive comments and develop a system within which all parties believed they could operate. The IRS, together with Treasury, implemented the program in 2011. However, it was terminated in 2013 after a U.S. district court held, and the U.S. Court of Appeals for the D.C. Circuit affirmed, in *Loving v. Internal Revenue Service* that the IRS does not have the authority to impose preparer standards without statutory authorization.[11]

Since the 2011 IRS return preparer program was terminated, the Department of the Treasury has supported return preparer oversight in its "Greenbook" of revenue proposals.[12] House and Senate members have introduced legislation to provide the IRS with the statutory authority to establish and enforce minimum standards. Most recently, Congressmen Panetta and Rice sponsored bipartisan authorizing legislation, the Taxpayer Protection and Preparer Proficiency Act of 2021.[13]

The IRS's Voluntary Annual Filing Season Program

Absent mandatory minimum competency standards, the IRS created the voluntary Annual Filing Season Program (AFSP) to encourage the accurate preparation of individual income tax returns by unenrolled preparers. In addition to satisfying annual continuing education requirements and annually renewing their Preparer Tax Identification Number (PTIN),[14] participating preparers must consent to adhere to the duties, restrictions, and sanctions relating to practice before the IRS in Circular 230.[15] Upon completion of these requirements, preparers receive a Record of Completion, which enables them to represent taxpayers before the IRS during an examination of a tax return or claim for refund they prepared and signed (or prepared if there is no signature space on the form).[16] They are included in a public database of return preparers on the IRS website.[17] Unfortunately, participation in the program is low as the IRS only issued approximately 62,000 AFSP Records of Completion in calendar year (CY) 2021.[18]

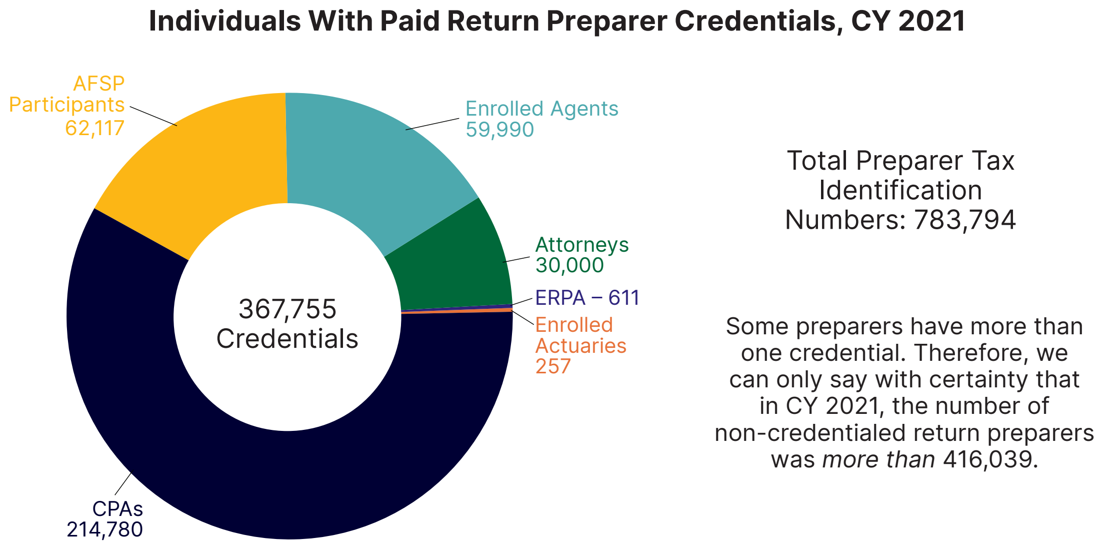
Several States Have Return Preparer Oversight Programs

Six states have varying degrees of oversight over return preparers who prepare state tax returns: California, Connecticut, Iowa, Maryland, New York, and Oregon.[19] Approximately 17,000 preparers who prepared 2020 individual income tax returns were subject to the requirements of at least one of these six states.[20] The stringency of the requirements varies among the states. Of the six states, only Maryland and Oregon have minimum competency examinations. California, New York, and Oregon have qualifying minimum education or training requirements to enter the profession. Further, five states have continuing education requirements, with the exception being Connecticut.[21] However, oversight in six out of 50 states is not enough to protect taxpayers, especially when there is no uniformity among the requirements imposed by each state.

Taxpayers May Not Understand the Differences in the Education and Training Requirements of the Various Return Preparer Credentials

Selecting a return preparer can be a daunting task for many taxpayers. There are many different types of paid return preparers, including attorneys, CPAs, EAs, enrolled retirement plan agents (ERPAs), enrolled actuaries, AFSP participants, and non-credentialed preparers (also called unenrolled return preparers).[22] Many taxpayers are confused by the options and do not understand the difference between the preparers' credentials. Figure 2.8.1 provides the number of individuals with each of the different paid return preparer credentials.

FIGURE 2.8.1[23]



Note that the sum of the credentials in Figure 2.8.1 is 367,755, which is significantly lower than the total number of PTINs, 783,794. The difference (416,039) is not the number of non-credentialed return preparers because some return preparers possess more than one credential. Therefore, we can only say with certainty that in CY 2021, the number of non-credentialed returns preparers was *more than* 416,039.

The different return preparer credentials listed in Figure 2.8.1 have varying degrees of required training. Attorneys and CPAs are subject to education and examination requirements set by state licensing authorities. EAs must pass a three-part IRS examination and complete continuing education requirements.[24] The IRS requires AFSP participants to complete continuing education requirements to participate in the program. It no longer accepts ERPA applications, but existing ERPAs had to pass an examination in the past, and to renew the credential, they must satisfy continuing education requirements.[25] The Joint Board of Enrollment of Actuaries administers the enrolled actuary program and sets the standards, which include experience and knowledge requirements.[26] Even volunteer preparers who participate in the VITA or TCE programs must complete training courses, pass an examination before the IRS certifies them, and complete annual training to ensure they are current on new tax laws.[27] In contrast, non-credentialed return preparers, the largest category of paid return preparers, have no required training.

We are not advocating that taxpayers select one type of return preparer over another. Taxpayers should have the ability to make informed decisions upon entering into a transaction that could have serious financial consequences. A substantial portion of non-credentialed return preparers are very knowledgeable and highly skilled, but nothing prevents inept or unscrupulous return preparers from joining the profession and causing harm to taxpayers. Unfortunately, taxpayers may not understand the differences in the credentials or have the ability to assess the competency of a preparer's expertise in tax return preparation. A 2017 national poll conducted by a coalition of consumer advocates and community organizations found that 68 percent of respondents believed that either the state or federal government already required paid return preparers to be licensed, when in reality, at that time, only four states (California, Maryland, New York, and Oregon) required mandatory standards for paid tax return preparers.[28]

Each year, the IRS publishes tips on selecting a tax return preparer, including these practical tips: check with the Better Business Bureau, ask about fees, make sure the preparer signs and enters the PTIN on the return, be wary of promises to obtain larger refunds, check the preparer's credentials, etc.[29] However, merely warning taxpayers about the potential incompetence or outright fraud in the return preparer population is insufficient. Congress should authorize the IRS to do more to protect taxpayers.

Taxpayers Are Ultimately Financially Responsible for Inaccurately Prepared Tax Returns

Without any federal oversight in place, taxpayers must conduct their own due diligence when choosing a tax professional. As noted above, it is difficult for an average taxpayer to understand the difference between the various types of return preparer credentials. Further, if a return preparer prepares an inaccurate return, the taxpayer is ultimately financially responsible for the resulting balance due. Many taxpayers possess a false sense of security when they mistakenly believe that their return preparer is responsible for a mistake on the tax return they prepared. It is the taxpayer who must pay the IRS any additional amounts due, including penalties and interest. Taxpayers cannot simply point a finger at their return preparer to avoid liability for an inaccurately prepared return. In addition, the IRS may not necessarily abate a penalty for reasonable cause merely because the taxpayer relied on an inept return preparer.[30]

Low-Income Taxpayers Are at Significant Risk of Harm Caused by Incompetent or Unscrupulous Return Preparers

Refundable tax credits, such as the EITC, Child Tax Credit, Additional Child Tax Credit, and American Opportunity Tax Credit have brought into the tax system low-income and other vulnerable taxpayers who would not otherwise need to file a return or who would file very simple returns with no tax return preparation assistance. Due to the complexity of refundable credits, many taxpayers who are eligible to claim the credits reach out to paid return preparers to prepare and file their tax returns. These taxpayers are susceptible to the harm created by incompetent or unscrupulous return preparers. A 2014 TAS phone survey of taxpayers eligible for assistance from Low Income Taxpayer Clinics found that "the low-income population is vulnerable and more likely than the population at large to be taken advantage of by unskilled or unscrupulous tax return preparers."[31]

As illustrated in Figure 2.8.2, non-credentialed return preparers prepared a substantial percentage of prepared 2020 returns claiming EITC.

FIGURE 2.8.2, Tax Year (TY) 2020, Forms 1040 Filed With and Without Schedule EIC (Form 1040), Earned Income Credit, by Type of Paid Preparer Credential (Through September 29, 2022)[32]

Preparer Credential	EITC Returns Prepared	EITC Paid Preparer Returns	Non-EITC Returns Prepared	Non-EITC Paid Preparer Returns
CPA	1,199,411	9.29%	23,109,202	31.64%
EA	1,125,029	8.71%	9,751,250	13.35%
Unknown	368,001	2.85%	1,803,486	2.47%
Attorney	42,408	0.33%	741,791	1.02%
Enrolled Actuary	3,319	0.03%	10,449	0.01%
ERPA	79	0.00%	224	0.00%
Non-Credentialed/Unenrolled	10,172,519	78.79%	37,617,464	51.51%
Total	**12,910,766**	**100.00%**	**73,033,866**	**100.00%**

As indicated in Figure 2.8.2, paid non-credentialed return preparers prepared almost 79 percent of the prepared 2020 individual income tax returns with Schedule EIC (Form 1040), Earned Income Credit, compared to only 52 percent of the prepared individual income tax returns without a Schedule EIC.

The negative impact of no federal minimum competency standards on low-income taxpayers is illustrated in the data on TY 2020 EITC audit adjustments in Figure 2.8.3.

FIGURE 2.8.3, TY 2020 EITC Audit Adjustments by Paid Preparer Credential (Through September 29, 2022)[33]

Preparer Credential	EITC Returns Prepared by Paid Return Preparers Under Audit	Paid Return Preparer EITC Returns Under Audit	Total EITC Audit Adjustments	Dollars Adjusted in EITC Audits
Attorney	207	0.17%	$765,044	0.14%
CPA	4,523	3.68%	$13,295,650	2.38%
Enrolled Actuary	36	0.03%	$173,341	0.03%
EA	5,888	4.80%	$21,643,327	3.88%
ERPA	2	0.00%	$8,936	0.00%
Non-Credentialed/ Unenrolled	110,377	89.91%	$515,024,295	92.22%
Unknown	1,726	1.41%	$7,552,133	1.35%
Total	**122,759**	**100.00%**	**$558,462,726**	**100.00%**

Paid return preparers prepared about 79 percent of 2020 EITC returns, but over 92 percent of the total amount of audit adjustments (in dollars) occurred on returns prepared by non-credentialed paid return preparers. Requiring all paid return preparers to demonstrate minimum competency in the tax laws and return preparation could reduce the amount of errors made on returns, especially those claiming EITC, and the impacted taxpayers would avoid the burdens associated with enforcement actions.

Research Studies and IRS Data Found Noncompliance Among Non-Credentialed Preparers

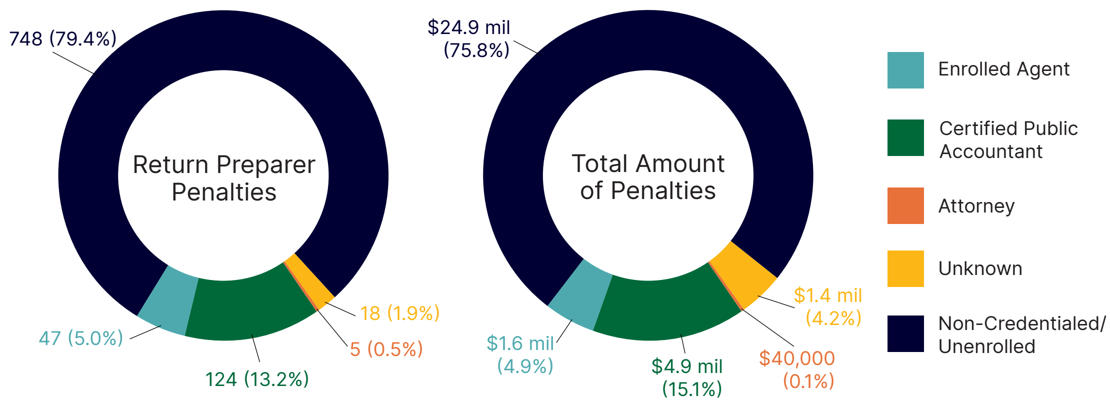
Numerous studies have consistently found significant noncompliance on returns prepared by non-credentialed return preparers.[34] For example, the Government Accountability Office,[35] the Treasury Inspector General for Tax Administration (TIGTA),[36] and the New York State Department of Taxation and Finance[37] conducted "shopping visits" during which officials posed as taxpayers seeking return preparation assistance. Each of the shopping visit studies found significant inaccuracies reported on the returns prepared during those visits.

A 2014 IRS study found that non-credentialed return preparers not affiliated with a national tax return preparation firm were responsible for "the highest frequency and percentage of EITC overclaims." The IRS study found that half of the EITC returns prepared by unaffiliated non-credentialed return preparers contained overclaims, and the overclaim averaged between 33 percent and 40 percent.[38] Again, as stated above, the impacted taxpayer clients have the ultimate financial responsibility to pay the resulting balance due when they are subject to enforcement action by the IRS.

IRS data also shows that it assessed a significant percentage of return preparer penalties for individual income tax returns against non-credentialed paid return preparers. As illustrated in Figure 2.8.4, the IRS assessed approximately 76 percent of the return preparer penalties during CY 2021 for individual income tax returns against non-credentialed paid return preparers.

FIGURE 2.8.4[39]

Return Preparer Penalties Assessed for Individual Income Tax Returns by Preparer Credential, CY 2021 Through September 22, 2022



*Totals may not equal 100% due to rounding.

Further, a review of IRS Discriminant Index Function (DIF) scores – an IRS estimate of the likelihood that an audit of the taxpayer's return would produce an adjustment – showed that the returns prepared by non-credentialed paid return preparers are more likely noncompliant than those prepared by credentialed paid return preparers. Specifically, non-credentialed paid return preparers prepared about 44 percent of 2020 individual income tax returns in the three highest deciles of DIF scores. This is compared to 36 percent of the returns in those same DIF score deciles prepared by credentialed preparers. Thus, based on DIF scores, it appears that non-credentialed paid return preparers are preparing returns with a higher level of noncompliance.[40]

Non-Credentialed Preparers Cannot Represent Taxpayers on Audits of the Prepared Return

The IRS has taken steps within its statutory authority to limit the ability of certain types of return preparers to represent taxpayers before the IRS. Attorneys, CPAs, and EAs have unlimited representation rights, meaning with the proper authorizations, they can represent their clients on any matters including audits, payment/collection issues, and appeals.[41] AFSP participants have limited representation rights, meaning they can represent clients whose returns they prepared and signed, but only before revenue agents, customer service representatives, and similar IRS employees, including TAS.[42] Non-credentialed return preparers can only prepare tax returns and cannot represent taxpayers before the IRS.[43] While the IRS does provide information about the different representation abilities among the credentials on its website,[44] it is reasonable for many taxpayers to assume that the person who prepares their return would also be able to represent them on an audit of that return.

Not All Return Preparers Are Subject to Standards of Conduct or Ethical Rules

Non-credentialed return preparers are not necessarily subject to any ethical rules or standards of conduct. Authorizing IRS oversight over non-credentialed return preparers would bring these return preparers under the purview of Circular 230, which the Office of Professional Responsibility (OPR) administers and enforces.[45] Circular 230 is a body of regulations that provide standards of conduct for the profession and details the covered tax professionals' duties and obligations, sanctions for violations, and administrative procedures for discipline.[46] In addition, the proposed IRS-developed minimum competency exam should include ethics topics and introduce return preparers to the standards of conduct required under Circular 230.

To strengthen the enforcement of these standards of conduct, the IRS should conduct a robust outreach and education campaign on how to report suspected violations of Circular 230.[47] The targeted recipients of these outreach and education efforts should be taxpayers, tax professionals, and IRS employees.

The Lack of Minimum Competency Standards Forces the IRS to Take a Reactive Approach to Return Preparer Noncompliance

Without a proactive program requiring minimum competency standards, the IRS is left with a reactive approach to return preparer oversight. The IRS has Title 26 penalties and sanctions under Circular 230 at its disposal.[48] However, these enforcement measures only allow the IRS to intervene *after* harm to a taxpayer has occurred.

The most effective preventive approach is to ensure that the return preparers are competent in the tax laws. Return preparers should demonstrate their competency before they even begin to prepare taxpayers' returns. A competency test would ensure that the preparers have basic tax law knowledge, the skills to complete tax forms, and the ability to find information in the tax form instructions, publications, and other IRS guidance. In addition, because the tax laws continually evolve, annual continuing education requirements are key to ensuring that return preparers stay informed on the latest tax law changes. Thus, the establishment of minimum standards would professionalize the industry, protect taxpayers by ensuring that return preparers are competent in the tax laws, and likely get rid of a majority of unprofessional or unethical individuals.

Preventing Return Preparers From Going Underground and Maintaining Accessibility of Return Preparation Services

Requiring non-credentialed paid return preparers to demonstrate competency will impose a monetary cost that they will ultimately pass on to their taxpayer clients. Requiring these return preparers to pass a competency examination and complete continuing education courses will demand a significant time commitment from them. As a result, some preparers might opt to "go underground." That is, they will continue to prepare returns, but they will not provide the appropriate preparer signature and PTIN on the prepared return, in many cases making it appear as if the taxpayer self-prepared the tax return. The IRS refers to preparers who do not adequately identify themselves on returns they prepare as "ghost preparers." Each year, the IRS issues a warning to taxpayers about the harm imposed by ghost preparers.[49] While there is a real risk of driving some preparers underground, the IRS can address this risk in a variety of ways. First, the IRS can strengthen its taxpayer awareness campaign immediately before and during the filing season to ensure that taxpayers understand what to expect from their return preparer and where to report preparers who violate the requirements.[50] Second, the IRS is working on improving its ability to effectively identify ghost preparers. Third, to send a clear message to potential ghost preparers, the IRS should prioritize the assessment and collection of the IRC § 6695 return preparer penalties, especially the IRC § 6695(b) penalty for failure to sign the return and the IRC § 6695(c) penalty for failure to furnish a PTIN.[51]

There is also a risk that the burdens imposed on return preparers by the proposed oversight program would drive some return preparers out of the profession. This is a concern that the IRS should address once it obtains the legislative authority to design and implement the program. Taxpayers have the *right to retain representation*.[52] While it is important that such representation is competent, it must also be accessible. As the IRS designs each aspect of the oversight program, it is crucial that it strives to minimize the burden imposed on return preparers. The benefit of imposing each program requirement must be weighed against the risk that it could ultimately harm taxpayers by impacting the accessibility or affordability of return preparation services, especially for low-income and international taxpayers. It must also consider the administrability of each requirement. For example, if the IRS obtains legislative authority to impose minimum standards on paid return preparers, after it consults all impacted stakeholders, it must balance the benefits gained by imposing the requirements on nonsigning return preparers against the burden imposed on these tax professionals. It must also consider how the IRS would be able to identify violations and enforce the requirements.[53]

CONCLUSION AND RECOMMENDATIONS

The absence of minimum competency standards for paid return preparers leaves taxpayers vulnerable to inadvertent errors that could cause them to overpay their tax – or to underpay their tax and face IRS collection action. It leaves some taxpayers open to unscrupulous preparers, many of whom the IRS could eliminate if it professionalized the return preparation industry.

IRS data and external research studies support the need for minimum competency standards for paid return preparers as a taxpayer protection measure. To minimize the harm inflicted on taxpayers and the tax system, Congress must provide the IRS statutory authority to establish minimum competency standards for paid federal tax return preparers. Minimum competency standards are an important and necessary taxpayer protection measure because such standards would increase the accuracy of tax returns and protect taxpayers from unqualified return preparers. Such an oversight program would also provide taxpayers with more certainty that individuals who hold themselves out as return preparers actually have the basic skills necessary to prepare the tax return. Enacting appropriate legislation is common sense to ensure accuracy in tax return filings and protect U.S. taxpayers.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Conduct a robust outreach and education campaign on how to report suspected violations of Circular 230, with the targeted recipients of these outreach and education efforts to include taxpayers, tax professionals, and IRS employees.
2. Strengthen its taxpayer awareness campaign immediately before and during the filing season to ensure that taxpayers understand what to expect from their return preparer (*e.g.*, sign return, provide PTIN, furnish copy of return) and where to report preparers who violate the requirements.
3. Prioritize the assessment and collection of the IRC § 6695 return preparer penalties, especially the IRC §6695(b) penalty for failure to sign the return and the IRC § 6695(c) penalty for failure to furnish a PTIN.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend title 31, section 330 of the U.S. Code to authorize the Secretary to establish minimum standards for federal tax return preparers.

RESPONSIBLE OFFICIALS

Amalia Colbert, Commissioner, Small Business/Self-Employed Division

Kimberly Rogers, Director, Return Preparer Office

Timothy McCormally, Acting Director, Office of Professional Responsibility

Kenneth Corbin, Commissioner, Wage and Investment Division

IRS COMMENTS

The IRS agrees that statutory authority to implement and enforce minimum competency standards for return preparers would yield new and important opportunities to serve taxpayers and safeguard the tax system. As GAO, IRS and TAS have observed since the *Loving v. IRS* decision, the Office of Professional Responsibility (OPR) currently only has jurisdiction over individuals who represent taxpayers before the IRS (*i.e.*, attorneys, CPAs, enrolled agents, or participants in the IRS's Annual Filing Season Program). Thus, OPR cannot prevent incompetent or unscrupulous return preparers from preparing tax returns unless they engage in representational activities.

That said, the IRS has used its extant return preparer authority to ensure return preparers apply for and use Preparer Tax Identification Numbers (PTINs) on returns they prepare for compensation and sign the returns they prepare. The Return Preparer Office's (RPO) mission is to improve taxpayer compliance by ensuring minimum standards for tax professionals and providing them with ongoing support. Moreover, OPR addresses whether tax practitioners are fit to practice before the IRS by investigating allegations of misconduct (including violating the Internal Revenue Code's return preparer provisions), making disciplinary determinations, and promoting awareness of the requirements of Treasury Circular 230. Under *Loving*, however, these efforts cannot extend to uncredentialed preparers.

To coordinate the IRS response to non-compliance concerning return preparation, the IRS established the IRS Servicewide Preparer Strategy (SWPS) in November 2020.[54] The SWPS identified six strategic goals related to encouraging preparer compliance.[55] In April 2022 the IRS provided TAS with the SWPS Communication Plan in response to the 2018 TAS MSP recommendation #7-3.[56] The SWPS Communication Plan outlines the IRS's intent to facilitate return preparer compliance through communication with return preparers and industry groups as well as taxpayers, using a variety of communication channels designed to reach these audiences where they are, such as IRS.gov, news releases, social media, filing season outreach, and paid ads (if funding is available). Thus, Stakeholder Liaison has engaged in filing season awareness campaigns targeted to business taxpayers through various industry organizations and individual taxpayers through community-based organizations. New for filing season 2023 are two related publications — P4717, *Help your preparer get your tax return right*, and P5610, *How to Report Suspected Abusive Tax Promotions or Preparers*.

The OPR's Outreach Communications Plan contemplates extensive outreach and education efforts to external and internal stakeholders on Circular 230 standards, due diligence and other obligations of tax practitioners, and when and how effective referrals to OPR and RPO should be made (*e.g.*, IRS enforcement personnel are required to make referrals to OPR when certain penalties are imposed).

TAXPAYER ADVOCATE SERVICE COMMENTS

Minimum competency standards for paid return preparers are an important taxpayer protection measure. The absence of such standards leaves taxpayers, especially low-income taxpayers, vulnerable to inadvertent errors that could cause them to file inaccurate tax returns and potentially face IRS enforcement action. It also leaves some taxpayers open to unscrupulous preparers, many of whom the IRS could eliminate if it professionalized the return preparation industry.

The IRS, including the RPO and OPR, currently has limited jurisdiction to protect taxpayers from the harm caused by non-credentialed paid return preparers. Authorizing IRS oversight would enable RPO to ensure that this category of return preparers has the training they need to prepare accurate federal income tax returns. It would bring these return preparers under the purview of Circular 230, and OPR would be able to enforce ethical rules and standards of conduct against them.

To protect taxpayers both before and after it receives return preparer oversight authority, the IRS must ensure that taxpayers are well informed about return preparer requirements and the differences between the various return preparer credentials. The IRS must provide information to taxpayers before and during the filing season each year on what they have the right to expect from their return preparer and where to report preparers who violate the requirements. Such taxpayer awareness is especially crucial to protect them against the harm caused by ghost preparers. In addition to educating taxpayers, the IRS should leverage its relationship with the software industry to assist in identifying ghost preparers.

RECOMMENDATIONS

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Endnotes

1 IRS, Compliance Data Warehouse (CDW) Individual Returns Transaction File Table (IRTF) Tax Year (TY) 2021 (Nov. 2022).

2 IRS, CDW, IRTF TY 2021, Return Review Program (RPP) Preparer Tax Identification Number Table (PTIN) (Nov. 2022).

3 IRS, CDW, Business Return Transaction File TY 2021 (Nov. 2022). Form 990 series preparer indicator or preparer tax identification numbers were not available for TY 2021.

4 IRS, Pub. 5166, VITA/TCE Volunteer Quality Site Requirements 5 (Oct. 2022); IRS, Pub. 5101, Intake/Interview & Quality Review Training (Aug. 2022); IRS, Pub. 4961, VITA/TCE Volunteer Standards of Conduct – Ethics Training, 2022 Returns (Oct. 2022).

5 In CY 2021, of the 783,794 professionals with PTINs, more than 416,039 did not possess a credential. IRS response to TAS information request (Sept. 30, 2022).

6 For a detailed discussion of the participants in the tax preparation industry, see Government Accountability Office (GAO), GAO-19-269, *Tax Refund Products: Product Mix Has Evolved and IRS Should Improve Data Quality* 4-9 (2019).

7 *See*, *e.g.*, National Taxpayer Advocate 2002 Annual Report to Congress 216-230 (Legislative Recommendation: *Regulation of Federal Tax Return Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc2002_section_two.pdf.

8 *See*, *e.g.*, National Taxpayer Advocate 2013 Annual Report to Congress 61-74 (Most Serious Problem: *Regulation of Return Preparers: Taxpayers and Tax Administration Remain Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined From Continuing its Efforts to Effectively Regulate Unenrolled Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2013-ARC_VOL-1_S1-MSP-5.pdf; National Taxpayer Advocate 2009 Annual Report to Congress 41-69 (Most Serious Problem: *The IRS Lacks a Servicewide Return Preparer Strategy*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/1_09_tas_arc_vol_1_preface_toc_msp.pdf; National Taxpayer Advocate 2002 Annual Report to Congress 216-230 (Legislative Recommendation: *Regulation of Federal Tax Return Preparers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc2002_section_two.pdf; *Fraud in Income Tax Return Preparation: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 109th Cong. 6-19 (2005) (statement of Nina E. Olson, National Taxpayer Advocate).

9 For more details, see National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 5-8 (Legislative Recommendation: *Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*).

10 *See* IRS, Pub. 4832, Return Preparer Review 33 (Dec. 2009).

11 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014).

12 *See*, *e.g.*, Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2023 Revenue Proposals* 83-86 (Mar. 2022).

13 Taxpayer Protection and Preparer Proficiency Act of 2021, H.R. 4184, 117th Cong. (2021).

14 A PTIN is an identification number that anyone who is paid to prepare or assist in preparing federal tax returns or claims for refund must use on returns or claims for refund. IRS, PTIN Requirements for Tax Return Preparers, https://www.irs.gov/tax-professionals/ptin-requirements-for-tax-return-preparers (last visited Dec. 1, 2022).

15 31 C.F.R. Part 10; IRS, General Requirements for the Annual Filing Season Program Record of Completion, https://www.irs.gov/tax-professionals/general-requirements-for-the-annual-filing-season-program-record-of-completion (last visited Dec. 1, 2022); Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

16 Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

17 IRS, Directory of Federal Tax Return Preparers with Credentials and Select Qualifications, https://irs.treasury.gov/rpo/rpo.jsf (last visited Dec. 1, 2022).

18 IRS response to TAS information request (Sept. 30, 2022).

19 *Registered Tax Preparers*, State of Cal. Franchise Tax Bd., https://www.ftb.ca.gov/tax-pros/california-tax-education-council.html (last visited Dec. 1, 2022); *Paid Preparers and Facilitators*, Conn. State Dep't of Revenue Servs., https://portal.ct.gov/DRS/TSC/Paid-Preparers/Preparers (last visited Dec. 1, 2022); *Guidance: Income Tax Return Preparers*, Iowa Dep't of Revenue, https://tax.iowa.gov/guidance-tax-return-preparers (last visited Dec. 1, 2022); *Registration – Individual Tax Preparers*, Md. Dep't of Labor, https://www.dllr.state.md.us/license/taxprep/taxpreplic.shtml (last visited Dec. 1, 2022); *Tax Preparer and Facilitator Registration and Continuing Education*, N.Y. State Dep't of Taxation and Fin., https://www.tax.ny.gov/tp/reg/tpreg.htm (last visited Dec. 1, 2022); *Exam Requirements*, Or. Bd. of Tax Practitioners, https://www.oregon.gov/obtp/Pages/ExamRequirements.aspx (last visited Dec. 1, 2022).

20 IRS, CDW, PTIN, IRTF (Nov. 2022).

21 For a summary of the various state requirements, see *Tax Preparer Regulations by State*, Surgent, https://www.theincometaxschool.com/preparer-regulations-by-state/ (last visited Dec. 1, 2022).

22 For an explanation of the various credentials, see IRS, Understanding Tax Return Preparer Credentials and Qualifications, https://www.irs.gov/tax-professionals/understanding-tax-return-preparer-credentials-and-qualifications (last visited Dec. 1, 2022).

23 IRS response to TAS information request (Sept. 30, 2022).

24 IRS, Enrolled Agent Information, https://www.irs.gov/tax-professionals/enrolled-agents/enrolled-agent-information (last visited Dec. 1, 2022).

25 IRS, Enrolled Retirement Plan Agent (ERPA) Program Changes, https://www.irs.gov/retirement-plans/enrolled-retirement-plan-agent-erpa-program-changes (last visited Dec. 1, 2022).

26 IRS, Enrolled Actuary Information, https://www.irs.gov/tax-professionals/enrolled-actuaries/enrolled-actuary-information (last visited Dec. 1, 2022).

27 IRS, Pub. 5166, IRS Volunteer VITA/TCE Volunteer Quality Site Requirements 4-6 (Oct. 2022); IRS, Pub. 5101, Intake/Interview & Quality Review Training (Aug. 2022); IRS, Pub. 4961, VITA/TCE Volunteer Standards of Conduct – Ethics Training, 2022 Returns (Oct. 2022).

28 Michael Best, *Public Views on Paid Tax Preparation 2017: Strong Public Support Continues for New Consumer Protections to Prevent Errors and Fraud*, Consumer Fed'n of Am. 3 (Mar. 2017).

29 *See*, *e.g.*, IRS, Tax Tip 2021-14, Tips to Help People Choose a Reputable Tax Preparer (Feb. 5, 2021).

30 *United States v. Boyle*, 469 U.S. 241 (1985); IRC § 6664(c)(1); Treas. Reg. § 1.6664-4.

31 National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, at 1-26 (Research Study: *Low Income Taxpayer Clinic Program: A Look at Those Eligible to Seek Help from Clinics*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/2014-ARC_VOL-2_1-LITC-Program-508.pdf.

32 IRS, CDW, IRTF TY 2018-2021, PTIN, and Audit Information Management System Table (through Sept. 29, 2022).

33 *Id.*

34 For a more detailed discussion of the findings of these studies, see National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 5-8 (Legislative Recommendation: *Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*).

35 GAO, GAO-06-563T, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors* (2006). Of the 19 returns prepared during the visits, 17 computed the wrong tax liability.

36 TIGTA, Ref. No. 2008-40-171, *Most Tax Returns Prepared by a Limited Sample of Unenrolled Preparers Contained Significant Errors* (2008). Of the 28 returns prepared by non-credentialed preparers visited, 61 percent were prepared incorrectly.

37 Statement of Jamie Woodward, Acting Comm'r, N.Y. Dep't of Taxation and Fin., before IRS Tax Return Preparer Review Pub. Forum (Sept. 2, 2009). In the 2008 and 2009 visits, they found "an epidemic of unethical and criminal behavior," and they made over 20 arrests and secured 13 convictions.

38 IRS, Pub. 5162, Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns 24-26 (Aug. 2014).

39 IRS, CDW, IRTF TY 2018-2021, PTIN, and Individual Master File Transaction History table (through Sept. 29, 2022).

40 IRS, CDW, IRTF, PTIN. A sample of one million TY 2020 individual income tax returns prepared by credentialed and non-credentialed preparers was used to perform propensity score matching to protect against self-selection bias since a taxpayer could intentionally select a non-credentialed preparer. Preparers who had an AFSP effective date in CY 2021 were placed in the credentialed category. A propensity score was calculated based on the following variables: adjusted gross income quartiles, total positive income (TPI) class, head of household and married filing joint filing statuses, an EITC indicator, a Schedules C or F indicator, and an age over 50 indicator. These characteristics were used to create a matched sample of returns prepared by credentialed and non-credentialed preparers. DIF deciles of TY 2020 returns were then calculated for each TPI class, and each return was placed in its respective DIF decile within the credentialed and non-credentialed preparer groups.

41 31 C.F.R. § 10.3.

42 IRS, AFSP, https://www.irs.gov/tax-professionals/annual-filing-season-program (last visited Dec. 1, 2022).

43 Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

44 IRS, Understanding Tax Return Preparer Credentials and Qualifications, https://www.irs.gov/tax-professionals/understanding-tax-return-preparer-credentials-and-qualifications (last visited Dec. 1, 2022).

45 Before the IRS was enjoined from administering the return preparer program in *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd*, 742 F.3d 1013 (D.C. Cir. 2014), registered tax return preparers were subject to Circular 230. 31 C.F.R. § 10.8(c).

46 31 C.F.R. Part 10.

47 During the last three fiscal years, the number of cases in OPR's inventory is significantly lower than immediately preceding years. In fiscal year (FY) 2022, OPR had 54 cases in its inventory; in FY 2021, 56 cases; in FY 2020, 47; in FY 2019, 171; and in FY 2018, 227. IRS response to TAS information request (Oct. 13, 2022).

48 31 C.F.R. Part 10; IRC §§ 6694, 6695, 6700, 6701, 6713, 7216.

49 *See*, *e.g.*, IRS, Tax Scams/Consumer Alerts, https://www.irs.gov/newsroom/tax-scams-consumer-alerts (last visited Dec. 1, 2022); IRS, IRS Criminal Investigation Issues 10 Tips to Avoid Tax Season Fraud (Jan. 19, 2022), https://www.irs.gov/compliance/criminal-investigation/irs-criminal-investigation-issues-10-tips-to-avoid-tax-season-fraud.

50 Complaints are filed on IRS Form 14157, Return Preparer Complaint, https://www.irs.gov/pub/irs-pdf/f14157.pdf.

51 *See* TIGTA, Ref. No. 2020-30-027, *Tax Return Preparer With Delinquent Tax Returns, Tax Liabilities, and Preparer Penalties Should Be More Effectively Prioritized* (2020), https://www.tigta.gov/reports/audit/tax-return-preparers-delinquent-tax-returns-tax-liabilities-and-preparer-penalties.

52 IRC § 7803(a)(3)(I).

53 *See* IRS Notice 2011-6, 2011-3 I.R.B. 315.

54 IRS, Deputy Commissioner Services and Enforcement, Approved IRS Servicewide Preparer Strategy (Nov. 2020).

55 Specifically, the six strategic goals are:

- Establish governance, improve leverage and centralize compliance activities.
- Reduce opportunities for preparer misconduct and identify non-compliance.
- Make a multi-year commitment to preparer related research.
- Continue improvements in information technology and information sharing.
- Coordinate Servicewide to enhance communication and coordination to ensure our employees are engaged and understand the overall SWPS.
- Communicate key messages with external partners and stakeholder groups that advance the goals of SWPS to improve preparer conduct and access to information.

56 IRS, Communication Plan: Servicewide Preparer Strategy (Apr. 2022).

APPEALS

Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers wishing to obtain review of their case by the IRS Independent Office of Appeals (Appeals) have been experiencing long delays, with the average case spending more than a year in Appeals' inventory.[1] When Appeals hears cases, taxpayers encounter policies determined more for the convenience of Appeals than the needs of taxpayers. A timely appeal in a fair and unbiased forum, carrying the perception and reality of independence, is an essential aspect of taxpayer rights and quality tax administration.

EXPLANATION OF THE PROBLEM

An Appeals review represents taxpayers' last, and often best, chance to settle their cases administratively within the IRS. Such resolutions constitute the ideal scenario for taxpayers and the IRS, as they minimize costs and expedite finality. However, case delays, inflexible policies by Appeals, and an apparent lack of independence are hampering this process, which leaves some taxpayers with concerns and doubts about Appeals' independence.

Once a case is transferred to Appeals,[2] it sits for an average of 48 days before being assigned to an Appeals Officer (AO).[3] These AOs are themselves overwhelmed, as their numbers have fallen by approximately 33 percent since fiscal year (FY) 2010.[4] Unsurprisingly, cycle times have increased by 103 percent from FY 2017 to FY 2022.[5] Once AOs are able to focus on a taxpayer's case, they may lack general training and specific subject matter expertise, which have been diminishing on account of institutional attrition. Practitioners report that in many instances they feel an added burden to educate AOs on administrative procedures, the IRC, the law, or evidentiary rules, and this additional work causes taxpayers to incur extra costs. This scenario, although not Appeals' fault, is taxpayers' problem, as they are left wondering what has become of their cases, why they should pay additional costs, and how to capture the attention of overworked AOs.

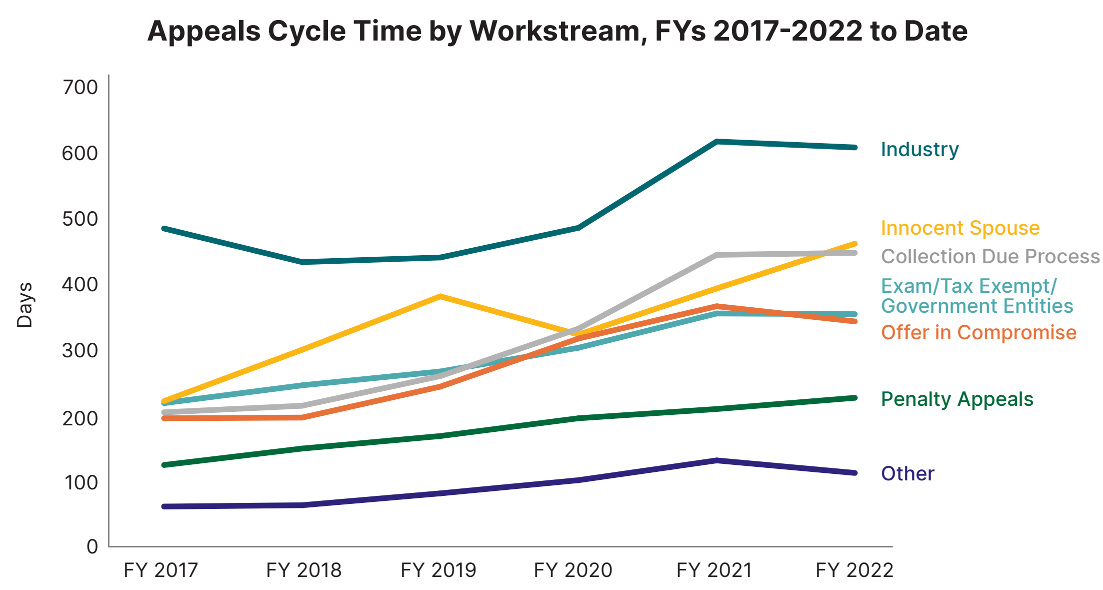
After waiting out initial delays, taxpayers are subject to certain Appeals policies that represent a "take it or leave it" proposition. For example, taxpayers sometimes find that the AO with whom they are interacting lacks the practical authority to settle their case.[6] Sometimes, taxpayers may feel that the assigned AO is simply a conduit between the taxpayer and a technical guidance coordinator who is actually deciding the case. Other procedures impact independence, such as situations in which the IRS Office of Chief Counsel (IRS Counsel) and Compliance are invited to Appeals hearings beyond the pre-conference,[7] even if taxpayers object.[8] In these cases, it is possible or even probable that the AO has a prior working relationship with the Compliance agent or Counsel attorney. Further, at the conclusion of many Appeals proceedings, the AO provides an explanatory Appeals Case Memorandum (ACM) to the Compliance team but does not provide a copy to the taxpayer. Although many of Appeals' challenges are not of its own making, taxpayers should still have a right to expect Appeals proceedings that are timely, fair, and independent.

ANALYSIS

Appeals' Delays Have Adverse Consequences for Taxpayers

Taxpayers with nondocketed cases in Appeals can currently expect a resolution in an average of 365 days – 103 percent (185 days) longer than in FY 2017.[9] Cycle times, which vary depending on the complexity and type of case involved, have generally been trending upward for all major Appeals workstreams, as shown in Figure 2.9.1.[10]

FIGURE 2.9.1[11]



These expanding cycle times have a real-world impact on taxpayers. As related by one practitioner who focuses on collection cases, her clients generally come to Appeals eager to quickly resolve their issues.[12] Although taxpayers provide the requisite information, delays of various sorts within Appeals can cause cases to linger on for months and even years. In some situations, so much time is wasted that taxpayers have to repeatedly submit new and updated financial information. They are left frustrated and angry as their financial lives remain on hold while they wait for Appeals to conclude their cases.

Another practitioner lamented that taxpayers sometimes bear the negative consequences from AOs' inability to keep up with their inventories.[13] The result can be that taxpayers are left in limbo. In one situation, even though the taxpayer wanted to drop the appeal and move forward by fully paying the balance, it was impossible to do so until an AO was finally assigned and able to pick up the case.[14]

An additional complication, exacerbated by the pandemic, is that taxpayers whose refund claims have been disallowed by the IRS generally have two years to obtain the refund or to file a petition in a U.S. district court or the U.S. Court of Federal Claims, unless they enter into an extension agreement with the IRS by signing Form 907, Agreement to Extend the Time to Bring Suit.[15] This two-year period is sometimes nearing a close by the time taxpayers conclude their dealings with Appeals, and taxpayers, practitioners, and AOs may not know of the need for a Form 907 extension or may face bureaucratic hurdles within Appeals when attempting to obtain such an extension.[16] TAS has been working with Appeals to streamline these procedures and to develop alternative solutions that would mitigate these timing issues.[17] Of course, taxpayers can protect themselves by filing a petition in the U.S. Tax Court, but such a step imposes unnecessary burdens on taxpayers wishing to obtain timely and fair case resolutions. The National Taxpayer Advocate has suggested that the IRS issue guidance pursuant to IRC § 7508A to postpone the deadline under IRC § 6532 for notices of claim disallowance that the IRS issued since the start of the COVID-19 pandemic and for which the period of filing suit has not yet expired.[18] At this time, IRS Counsel is not interested in providing a postponement.[19]

Account and Processing Support Currently Represents a Bottleneck Within Appeals

When cases arrive at Appeals, they go to Account and Processing Support (APS) for intake, technical processing, and transfer to an Appeals office, where they are assigned to individual AOs. If a petition has already been filed by the taxpayer in the U.S. Tax Court, APS sends the case to IRS Counsel, which will file an answer with the Tax Court before the case comes back to APS to continue in the Appeals workflow.[20] As described more fully below, Appeals temporarily prioritized cases docketed in the Tax Court over non-docketed cases, to address increased inventory arising from communications challenges during the COVID-19 pandemic, causing longer delays for non-docketed cases.[21] Regardless, APS is the gateway to Appeals, and the gate has become perilously narrow.

During FY 2022, approximately 74,000 cases arrived at Appeals.[22] Each of these cases had to await the attention of someone in APS, which had only 195 employees by the end of FY 2022.[23] APS has experienced a "brain drain," with many of its senior employees moving into other parts of the IRS where there was the possibility for career advancement and enhanced compensation.[24] Finding themselves with an overwhelming workload and no meaningful career path within Appeals, many APS employees looked for better alternatives elsewhere. A well-staffed and experienced group of APS personnel is essential to the smooth and efficient operation of Appeals, and the lack of such a group helps explain the average 48 days in APS inventory before a case is first transferred to an Appeals office.[25] This is important because while cases sit with APS, taxpayers are in limbo, unable to contact anyone in Appeals about the status of their cases.

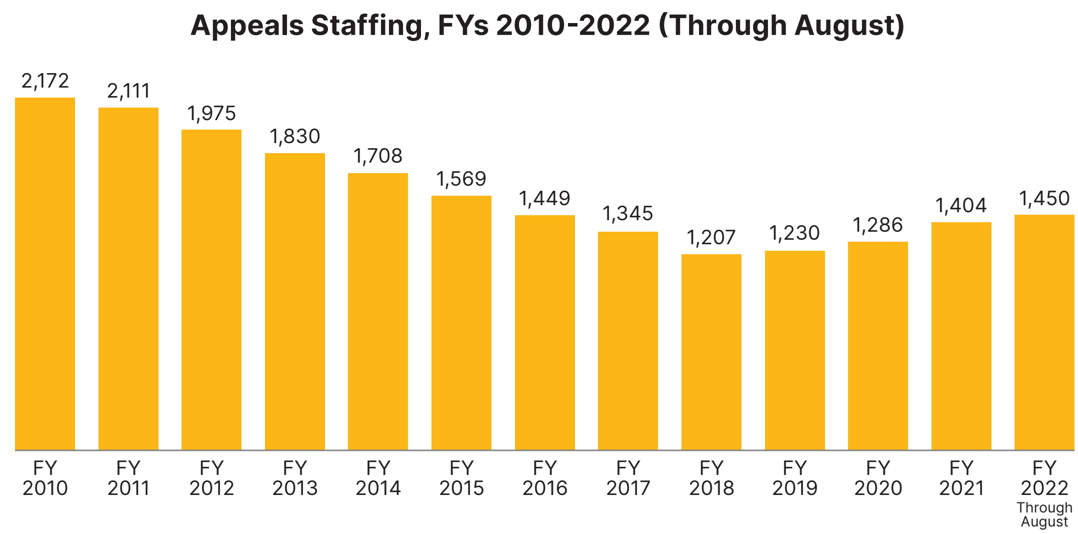
To its credit, Appeals recognizes this problem and is attempting to develop a more attractive career path for APS personnel within Appeals.[26] Further, Appeals is striving to hire additional APS employees.[27] This effort is somewhat undercut, however, by the circumstance that entry-level IRS personnel in general earn roughly the same as new Waffle House employees and others just starting out in the retail industry.[28] To the extent possible, the IRS should allocate some of the Inflation Reduction Act of 2022 funds to implement a competitive tiered pay structure, which would provide opportunities for advancement and retention of experienced APS personnel and AOs.[29]

Appeals is also instituting steps to increase the efficiency of APS's efforts, including leveraging modernization and technology. These steps include working with Compliance to receive electronic case files, which can be more quickly processed and transferred to Appeals offices.[30] Likewise, Appeals is seeking ways in which APS can eliminate some extraneous duties, allowing employees to focus on their core tasks.[31] Successfully staffing APS and enhancing its productivity is a crucial starting point in reducing the long cycle times within Appeals.

Appeals Officers Are Understaffed and Overwhelmed

Another component of the delay issue is a lack of AOs, which has been a problem for years. Between FYs 2010 and 2017, the population of Appeals employees fell by approximately 40 percent.[32] Staffing has remained relatively constant since then with some recent improvements.[33] However, maintaining or even moderately increasing staffing levels, especially as case receipts begin to rise after the height of the COVID-19 pandemic, is a recipe for expanding backlogs and delays.[34]

FIGURE 2.9.2[35]



In real-life terms, this means AOs, who are confronted with daunting caseloads, may not give taxpayers and their arguments the full attention they deserve and may simply rush them through to clear inventories. One practitioner described recent proceedings in which he had requested the case files, but the AOs were pushing hard to hold the hearings before they had even furnished the files.[36] Another practitioner remarked that in numerous Collection Due Process cases, his clients had been hurried through proceedings held by AOs who did not seem familiar with their cases and were uninterested in discussing the specifics, instead appearing to value their own efficiency of process above considerations of fair and just tax administration.[37]

Various factors have affected AO workloads. Among other things, Appeals has been flooded with cases from the Automated Underreporter (AUR) program and Correspondence Exam, which have increased the demands on AOs.[38] In many current cases, a statutory notice of deficiency is issued before a case is developed or worked, and the case goes straight to assessment and potentially collection or to the U.S. Tax Court if the taxpayer files a petition. For docketed cases, Counsel sends the case to Appeals for assignment. Approximately 60 percent of Campus docketed cases currently result from a statutory notice of deficiency issued by the AUR unit.[39] Most of these cases are only minimally developed, if at all, and, as a group, they significantly increase the burden on taxpayers, the Court, Counsel, and AOs. To deal with this problem, some have even suggested that the IRS suspend the issuance of most new AUR and Correspondence Exam notices.[40] TAS has urged the AUR and Correspondence unit to undertake additional contact attempts before issuing a statutory notice of deficiency for those cases with 12 months or more on the statute of limitations for assessment.[41]

Appeals has agreed to examination assistance procedures with Exam for certain docketed cases in which Appeals receives new information that must be evaluated.[42] For historical context,[43] this approach is consistent with the principles underlying the adoption of the Appeals Judicial Approach and Culture (AJAC) program in 2014.[44] To facilitate Appeals' workflow and protect its independence, AJAC allowed Appeals to return matters to Compliance for additional factual development when taxpayers raised new issues or presented new evidence.[45]

Appeals has also adopted strategies to expedite the resolution of docketed cases. These procedures include deploying additional AOs, prioritizing docketed casework in Exam Appeals, streamlining initial contact with taxpayers or their representatives through the use of telephone calls, and encouraging a greater use of oral testimony where appropriate.[46]

Another challenge for Appeals has been retaining experienced AOs. Appeals has been working hard to increase staffing and has been relatively successful in hiring new AOs.[47] The problem, though, is that they have been losing AOs on account of attrition. Hiring and training AOs is not a quick process, which means that as Appeals rebuilds its workforce, taxpayers experience delays and uncertainty. Figure 2.9.3 shows this pattern.

FIGURE 2.9.3[48]

Appeals Hiring vs. Attrition, FYs 2017-2022 to Date

	Hiring	Attrition	Net Employees
FY 2017	+24	-71	-47
FY 2018	+3	-88	-85
FY 2019	+140	-77	+63
FY 2020	+100	-83	+17
FY 2021	+153	-90	+63
FY 2022	+163	-105	+58

=5 employees

This attrition has not only largely offset Appeals' energetic hiring efforts, but, in practice, has meant that veteran AOs are routinely replaced by inexperienced AOs. This is problematic because fledgling AOs must initially spend time in training before they can start handling cases, which can be especially challenging when it comes to more complex cases. Even then, it inevitably takes time to overcome the learning curve and approach the productivity of the veteran employees they are replacing. Further, the subject matter expertise that is lost as AOs retire or otherwise move out of Appeals can take years to recover.

Appeals has hired heavily from the Compliance side of the IRS, which has its benefits and its drawbacks, as those employees possess important IRS knowledge but may also hold ingrained biases. One practitioner commented that some AOs, particularly newer AOs, often consider Appeals an extension of Exam without the ability to consider new information.[49] Compliance personnel tend to look at issues as being right or wrong, whereas an AO's function is to weigh nuanced factors in determining the hazards of litigation and to resolve even those cases that fall into a gray area. Because many AOs are not attorneys, they must develop the skillset to review a case and analyze it the way that a court would evaluate it, reaching a decision based on facts, credibility of witnesses, applicable law, and the rules of evidence – not an easy task, especially for non-lawyers. The same practitioner has observed inconsistency in quality among Appeals' personnel in understanding the application of law and described a case in which the AO refused to accept canceled checks from a bank statement as proof of payment. On the other hand, hiring from outside the IRS raises its own quality issues, as it takes time to learn IRS internal procedures, administrative guidance, tax returns, and schedules. Another practitioner referenced a situation in which the AO seemed like she had never seen a Schedule C before, and the practitioner essentially had to educate her.[50]

Appeals can remedy some of these problems with a careful blend of internal and external hires and with more comprehensive training of new and inexperienced AOs. Among other things, this training should focus on the proper role of an AO, the importance of independence, the nuances of hazards of litigation settlements, and an understanding of both the letter and spirit of *ex parte* limitations. AOs should receive ongoing training throughout their careers and not just at the onset of their employment.[51] Such training can represent a crucial step in helping to improve the consistency and quality of AO performance.

Appeals must also find ways of limiting attrition, which it has done by creating career ladders for lower-graded employees.[52] It has also attempted to create higher-graded career ladders, but the IRS Human Capital Office (HCO) halted these efforts due to requirements of the Office of Personnel Management.[53] Beyond these efforts, Appeals also must be able to ramp up hiring so that it can restore AO numbers to near-2010 levels with qualified applicants. For this broad hiring to occur, the IRS must allocate Appeals the necessary funding, and IRS HCO must function more effectively and efficiently than it has in recent years.[54] If Appeals is able to achieve critical mass, this will help stabilize institutional knowledge and ensure sufficient staffing to address daunting case receipts and spiraling cycle times.

Appeals' Culture Prioritizes the IRS Over Taxpayers[55]

Appeals Must Operate Independently of IRS Influence

Many of the delays discussed above are beyond Appeals' direct control. Nevertheless, the National Taxpayer Advocate appreciates that Appeals is working to address these issues and expedite the Appeals process. Just as important as a timely appeal, however, is an accessible forum in which taxpayers can obtain an even-handed outcome. Appeals must be independent, both in fact and in appearance. Its mission of achieving the maximum number of fair case resolutions requires that Appeals favor neither the IRS nor taxpayers. This unbiased outlook is essential to arrive at objective evaluations of IRS positions and to negotiate case settlements with taxpayers.

Congress has long understood the importance of an independent Appeals function within the IRS as a means of minimizing litigation, which is burdensome and expensive to both taxpayers and the government. Accordingly, Congress codified Appeals' operations as part of the IRS Restructuring and Reform Act of 1998 (RRA 98).[56] Later, the IRS took steps to preserve Appeals' independence by placing parameters around *ex parte* communications between IRS personnel and Appeals.[57] In 2019, Congress then weighed in by codifying the office and retitling it the "Internal Revenue Service **Independent** Office of Appeals"[58] (emphasis added). As explained in the legislative history of the Taxpayer First Act, the intent of the provision was to "reassure taxpayers of the independence" of Appeals.[59] The National Taxpayer Advocate does not believe that anyone assumes that changing the name to include "independent" actually makes the organization independent; rather, it is the actions that will support this conclusion and sway the taxpayer's perception of an unbiased Appeals function. "Independent" should not be in name only.

Congress's legislative efforts are based in the recognition that Appeals is in constant jeopardy of having its culture subsumed within the larger IRS culture. Appeals must guard against this gravitational pull if it is to fulfill its mission. For example, Appeals has some offices that are located in the same posts of duty as other IRS personnel in many cities and also receives advice from IRS Counsel.[60] While Appeals is generally not bound by this advice,[61] these repeated interactions almost inevitably create a combined institutional comfort, familiarity, and credibility that can unintentionally put taxpayers at a disadvantage and negatively impact the appearance of objectivity. As a result, Appeals should at least consider the desirability and feasibility of seeking segregated office space and having its own independent Counsel, similar to that currently sought by TAS.[62] The lack of apparent independence will negatively impact its mission.

A more immediately achievable step that would further the perception of evenhandedness is to require AOs share the ACM with taxpayers at the close of the case.[63] AOs draft the ACM at the end of an appeals proceeding to explain the analysis and support the outcome. The ACM, which can be quite detailed, is shared within the IRS but not with affected taxpayers. Arguably, circulation of the ACM does not represent *ex parte* communication, as the matter has been administratively concluded within the IRS. Nevertheless, the failure to share the ACM with taxpayers does impact taxpayers' perception of Appeals' objectivity. These cases are resolved based upon a taxpayers' request for administrative appeal, and it seems reasonable that taxpayers should be allowed to see the documentation setting forth the reasoning that governed their outcomes. In some instances, the issue impacts a tax position on a future tax return, and taxpayers should have an understanding of how the Appeals resolution impacts subsequent return positions. Failure to do so makes Appeals look very much like an IRS operating division, functioning to support the larger IRS institution. Such a relationship and all such appearances greatly impede the fact and appearance of independence.

Once Appeals has closed a case, AOs in certain situations have the option of holding a post-settlement conference with the originating function.[64] The purpose of this conference is to help Compliance understand the rationale for the Appeals decision and to allow Compliance to use delegated authority to settle cases with the same or related taxpayers in a manner consistent with the Appeals decision. However, this post-settlement conference is not open to the taxpayer, and the taxpayer is kept in the dark regarding discussions that may impact the future actions of Compliance. Further, if the Compliance team provides negative feedback to the AO, the possibility exists that the AO may be inclined to settle similar cases differently in the future to avoid conflict with other IRS personnel.[65] By routinely sharing the ACM with both Compliance and the taxpayer and by allowing taxpayers to attend the post-settlement conference, even if only in a monitoring capacity, Appeals can ensure transparency in the decision-making process and defuse potential conflict from Compliance.

Taxpayers Should Be Able to Meet in Person With Their Decisionmaker

Taxpayers and their representatives have historically recognized the importance of the right to sit down across a table and discuss their case with an AO who can independently bring about its ultimate resolution. For example, the American Bar Association Section of Taxation has explained, "In order for taxpayers to be amenable to the administrative Appeals process, they must feel that their legal arguments and perspective on an issue have been heard – and for that, there is no substitute for a face-to-face conference."[66] Likewise, a member of the American Institute of Certified Public Accountants (AICPA) commented, "For many taxpayers… Appeals is the first opportunity they have to present their case and have a discussion about their particular situation. By limiting face-to-face conferences, taxpayers lose the sense that their tax positions and perspectives are considered impartially."[67]

To its credit, Appeals now makes an effort to facilitate such meetings, and taxpayers are generally entitled to an in-person conference.[68] In practice, however, that right is subject to some meaningful limitations, such as the ability of the assigned office to accommodate an in-person conference or the availability of a local AO with subject matter expertise. Absent a conjunction of these circumstances, taxpayers can only obtain an in-person conference if they request a case transfer and are willing to travel to an available location.[69]

The need to seek a case transfer to accommodate an in-person conference often carries a steep price in terms of delay. One practitioner explained that if taxpayers have been waiting a year for Appeals consideration, they don't want to hear that it will take months to reassign the case for an in-person conference.[70]

Even when in-person conferences are actually held, practitioners have expressed frustration regarding the increasing prevalence of decisions being taken out of the hands of the assigned AO. They lament that settlements, rather than being determined by AOs with specific case knowledge, are increasingly governed by Appeals subject matter experts and technical guidance coordinators who are based in different field offices and who are not necessarily made available to taxpayers.[71] Among other things, settlement authority is limited when issues are designated for litigation by Counsel or established as coordinated issues, which theoretically maintains the independence of AOs but creates an environment in which that independence is highly likely to be underutilized.[72]

Practitioners have expressed to TAS the perception that these subject matter experts take a meaningfully different approach, compared to the AOs assigned to their cases. One practitioner commented that these people are sometimes not trained as AOs, don't have the same priorities, and often don't understand hazards settlements. Sometimes they aren't even at the Appeals conference, especially in the case of coordinated issues, in which, according to the practitioner, all that is provided is a broad memo applicable to all taxpayers.[73] Another practitioner raised the core issue of who is the real decisionmaker – Appeals or subject matter experts?[74] AOs themselves have apparently complained of their hands being tied, with one veteran AO reportedly telling a taxpayer off the record that he couldn't settle the case and that if he offered the taxpayer anything beyond what was approved by Counsel, he would get fired.[75]

The inability to engage directly with an independent decisionmaker in hopes of obtaining a case-specific settlement generates the same type of frustration as practical limitations in receiving an in-person conference. The desire of taxpayers and practitioners is straightforward, although admittedly difficult for Appeals to accommodate. The reoccurring theme arising in TAS's interaction with taxpayers and tax practitioners is their wish to sit across the table from a knowledgeable, unbiased party who possesses the authority to resolve the case based on the prevailing facts and circumstances.

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To be fair, in most appeals, the assigned AO has general discretion to resolve a case, and taxpayers are well-served by, and content with, appeals conferences held by phone or videoconference. Given this reality, it is even more important that Appeals' generally good work not be obscured by the quantitatively small number of cases in which taxpayers are unable to obtain a timely in-person appeal or where an AO lacks the authority to negotiate a specific settlement.[76] Even though limited in numbers, these cases fuel the public impression of lack of independence, which negatively impacts Appeals.

To increase the accessibility and timeliness of in-person conferences, as Appeals gains additional resources, it should make a priority of expanding its general staffing, its specialized expertise among AOs, and its geographic footprint. Appeals should also realize that actual or practical limitations on AOs' settlement authority cause significant consternation within the practitioner community and jeopardize the perception of Appeals as an independent office within the IRS. Accordingly, Appeals should work with the IRS to ensure that the discretion of AOs is abridged in only the most essential of situations and should make every effort to locate settlement authority with AOs rather than with subject matter experts or other national office personnel, even where such personnel are called upon to assist.[77] This discretion should include the right to determine that a taxpayer's specific facts and circumstances fall outside of coordinated issue guidelines.

Appeals Should Respect the Wishes of Taxpayers When Inviting IRS Employees to Conferences

Historically, Counsel and Compliance provided input into Appeals conferences via the case file and, if the case was particularly large or complex, at a pre-conference. The subsequent Appeals conference, sometimes referred to as the hearing, then was devoted to presentation of the taxpayer's case and settlement negotiations between the taxpayer (or the taxpayer's representative) and the AO. Counsel and Compliance personnel often did not attend such conferences, leaving taxpayers and AOs free to develop rapport, seek common ground, and pursue case resolution.

In 2016, Appeals revised provisions of the Internal Revenue Manual (IRM) to highlight AOs' discretion to include personnel from Counsel and Compliance in conferences, particularly in large and complex cases.[78] These personnel are not made a party to the actual settlement discussions, which occur near the conclusion of the conference, but they are typically given the opportunity to present an oral argument, and some even question taxpayers and their representatives during the hearing. Although Appeals has agreed to solicit and consider the views of taxpayers before inviting Counsel and Compliance to attend a conference, it has so far declined to make taxpayer consent a prerequisite for such attendance.[79]

Including Counsel and Compliance personnel over taxpayer objections violates the spirit of RRA 98 and dilutes the ability of taxpayers to present their cases in an independent forum.[80] It also runs counter to the purpose of an independent appeals conference, which is neither to give Compliance a second chance nor to transform Appeals into a mediation forum. Instead, the mission and credibility of Appeals rest on its ability to undertake direct and unbiased settlement negotiations with taxpayers and their representatives, apart from other IRS functions.

AOs should be expert enough and empowered enough to hold conferences without Counsel or Compliance involvement. The hesitancy or inability to deal with these challenging cases without bringing in outside experts points to training and staffing deficiencies in Appeals' current workforce. Likewise, it hints at a culture in which Appeals is reluctant to make unpopular decisions that potentially draw the ire of Counsel or Compliance. Appeals justifies Counsel and Compliance participation on efficiency grounds, but in cases where taxpayers object to this inclusion, Appeals should seek ways of understanding IRS positions and clarifying disputes with taxpayers that do not imperil its independence, either in perception or in fact.[81]

Appeals points to positive customer satisfaction surveys and argues that many taxpayers find the inclusion of Counsel and Compliance in hearings to be helpful in the resolution of their cases.[82] TAS has been told, however, that such proceedings do not always operate as intended, and their success rests with the personal strength of the AO in charge of the case. One practitioner observed that stronger AOs ask Compliance to leave the room when appropriate, but in some cases, more vocal or aggressive Counsel attorneys have remained in the room even into the settlement discussion, interrupting and pushing back on those negotiations, making the conference a bad experience.[83]

Even accepting, for the sake of argument, that the rosy picture painted by Appeals is correct and that most taxpayers appreciate the involvement of Counsel and Compliance in conferences, this is all the more reason why such participation should only occur if taxpayers consent. If the vast majority of taxpayers and their representatives do, in fact, welcome Counsel and Compliance participation and are persuaded that AOs are trained and empowered to prevent IRS personnel from interfering with settlement discussions, then Appeals has little to lose from allowing the small minority of taxpayers who feel differently to have the right to decline such inclusion. Giving taxpayers no choice in such a central aspect of their own conference is heavy-handed and runs counter to the taxpayer-centric model of tax administration that an Independent Office of Appeals should embrace.

CONCLUSION AND RECOMMENDATIONS

A common refrain from taxpayers, practitioners, and stakeholders is that Appeals has a crucial role to play within the IRS and that AOs generally bring a high degree of skill and professionalism to their cases. However, over the past decade, Appeals has faced challenges with funding and employee attrition that have made providing top-notch taxpayer service difficult. Currently, the average Appeals case takes about a year to resolve, which means that by the time taxpayers hear from an AO to discuss their cases, they may already be frustrated and exhausted by the process. With increased hiring and training, as well as modernized systems for electronic case files, Appeals will be able to improve cycle times, an important step toward quality taxpayer service. Appeals can also make important strides in reinforcing its role as an independent office within the IRS by adopting more taxpayer-friendly practices regarding conferences and by empowering AOs as final decisionmakers.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Continue efforts to increase hiring of APS personnel and AOs while designing career paths that encourage advancement and retention within Appeals.
2. Dedicate resources, including circuit riding to cities without an Appeals presence, to provide meaningful in-person conferences expeditiously and without the need for burdensome travel on the part of taxpayers and practitioners.
3. Empower AOs to make independent decisions on their assigned cases, with technical guidance coordinators and other subject matter experts limited to advisory roles in all but the rarest situations.
4. Change the IRM to require that all ACMs be shared with both the taxpayer and the Compliance function and, where post-settlement conferences are held, taxpayers must be invited to attend, even if in a monitoring capacity.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 7803(e) to provide that, where taxpayers whose cases are nondocketed have a right to a conference with the Independent Office of Appeals, this conference will only include personnel from the Office of Chief Counsel or the Compliance functions of the IRS if taxpayers consent to that participation.[84]

RESPONSIBLE OFFICIAL

Andrew Keyso, Chief, Independent Office of Appeals

IRS COMMENTS

The IRS Independent Office of Appeals (Appeals) is proud of our unique role within tax administration of fairly and impartially resolving tax disputes without litigation, and we are committed at every level of the organization to enriching the taxpayer experience. We appreciate the National Taxpayer Advocate's input on how Appeals can improve its service to taxpayers and their representatives.

The Covid-19 pandemic imposed unprecedented demands on Appeals, and we are pleased with the creativity and ingenuity our employees showed in adapting work processes to ensure that Appeals continued to fulfill its responsibility to hear taxpayer appeals. Appeals employees transitioned cases to paperless formats, created electronic case closing processes to facilitate remote work, and conducted Appeals hearings through videoconference to provide taxpayers with a "face to face" option. Appeals reprioritized its work to address a spike in cases docketed in the U.S. Tax Court that resulted from difficulties taxpayers faced communicating with the IRS during the pandemic, and our employees worked and closed over 7,500 of these docketed cases using streamlined procedures that focused on quick resolutions for taxpayers. The efforts of our employees are reflected in the fact that many of these process changes will continue as best practices post-pandemic, and that cycle times, after peaking in 2021, began decreasing in 2022 and will continue to do so in 2023.

Appeals takes very seriously our mandate under the Taxpayer First Act to be independent from the IRS compliance functions and impartial in our consideration of taxpayer cases. Promoting an independent and impartial mindset requires continued emphasis, which Appeals provides through regular employee training and through the tone set by Appeals management. We are actively recruiting applicants from industry and public accounting, on the theory that an Appeals which is independent of IRS Compliance should have a workforce with a diversity of professional backgrounds. We will continue, within the bounds of our allocated budget, to strive to hire the best and brightest into Appeals, and to ensure these employees recognize their role as impartial arbiters who take the time to listen to, and hear, taxpayer concerns with an eye toward resolving cases consistent with the hazards of litigation faced by each side. In certain specialized cases, the Appeals Officer may coordinate with other Appeals employees, such as technical guidance coordinators, engineers, appraisers, and economists, for assistance – akin to how a law or accounting firm may employ in-house experts on specialty topics. It is essential to taxpayer fairness for Appeals to have a way to coordinate issues and ensure consistency in settlements nationwide.

Conferences are the key way in which Appeals hears the taxpayer's position, understands the legal and factual considerations informing the taxpayer's dispute with the IRS, and is able to propose a resolution to the taxpayer. During the conference, the taxpayer and their representative engage with Appeals in discussing potential settlements. At the conclusion of their case, the taxpayer and representative should clearly understand exactly how and why their case was resolved. Compliance is generally not present for the settlement discussions. Appeals shares the Appeals Case Memorandum memorializing the case resolution with Compliance so that Compliance can also understand the reasons for the settlement reached between the taxpayer and Appeals. Similarly, informational post-settlement conferences help Compliance understand the rationale for the Appeals decision. Post-settlement conferences are available only in cases originating from the IRS's Large Business & International (LB&I) Division and worked by an Appeals Team Case Leader (ATCL), some of the largest and most complex cases received in Appeals. These conferences are not a forum for Compliance to express disagreement with or critique the Appeals resolution.

Appeals' policies and procedures are informed by regular feedback from external stakeholders. We participate every year in the Nationwide Tax Forums, this year engaging with an audience of almost 8,000 tax practitioners about our ongoing efforts to improve the taxpayer experience. We also launched a *Practitioners Perspectives* series of panel discussions (available for playback on IRS.gov), in which practitioners share insights and input with Appeals technical employees on key workstreams and issues. In addition, every taxpayer or representative with a pending appeal is invited to participate in our customer satisfaction survey. Our survey results consistently show that the majority of Appeals customers are satisfied with the service they receive from Appeals, including the fairness of Appeals employees.

We recognize there is always room for improvement. Based on the feedback from external stakeholders, we recently updated our initial contact letters to provide the contact information of the assigned Appeals Officer's manager so that taxpayers and their representatives have a second point of contact should additional help be needed. We are also updating our policies and communications to ensure taxpayers and representatives understand that Appeals offers conferences by telephone, video, and in person, and that it is generally their choice how to meet with us. We will continue to listen to taxpayer and practitioner feedback and prioritize improvements to the taxpayer experience in Appeals during 2023.

TAXPAYER ADVOCATE SERVICE COMMENTS

TAS applauds Appeals' efforts to address challenges, many of which are not of its own making. The COVID-19 pandemic presented Appeals' personnel and operations with substantial obstacles that it has successfully navigated. Appeals has also energetically addressed the flood of docketed appeals arriving in its inventory and is actively engaged in hiring additional AOs. This hiring will help alleviate case delays, but the attrition of veteran AOs sometimes leaves taxpayers with inconsistent experiences when bringing cases to Appeals. Training that focuses on the proper role of an AO, the importance of independence, the nuances of hazards of litigation settlements, and an understanding of both the letter and spirit of *ex parte* limitations, along with designing career paths that encourage advancement and retention within Appeals, will go a long way toward continuing to improve the consistency and quality of Appeals proceedings.

TAS agrees with Appeals regarding the importance of independent and unbiased case resolutions. Appeals deserves credit for its willingness to engage with the tax community and for the circumstance that the majority of taxpayers coming before Appeals are satisfied with their interactions and case outcomes. Nevertheless, additional steps need to be taken to preserve Appeals' independence and to foster a culture of taxpayer service. For example, although there is a role for technical experts and case coordination in certain situations, the pervasive use of these resources creates the perception, if not the reality, that Appeals is part of a larger IRS institution that simply dictates settlement terms to taxpayers. As a result, Appeals should empower AOs to make independent decisions on their assigned cases with technical guidance coordinators and other subject matter experts limited to advisory roles in all but the rarest situations.

Similarly, Counsel and Compliance actively participate in only a small portion of Appeals conferences and in many of those cases are welcomed, or at least accepted, by taxpayers and their representatives. This circumstance should make it easy for Appeals to respect the wishes of taxpayers who object to such participation. AOs routinely resolve legal issues and factual disputes without having Counsel and Compliance actively engaged in conferences, and AOs should be able to cope, even in the most complicated proceedings, where, for whatever reason, taxpayers prefer to seek case resolution without other IRS personnel.

Once Appeals proceedings are closed, taxpayers should receive a copy of the ACM and an invitation to attend the post settlement conference, if it is held. The National Taxpayer Advocate does not believe Appeals' role is to assuage or educate Compliance. While Compliance may well have a legitimate interest in understanding the rationale for an Appeals settlement and the impact this may have on future years, taxpayers are likewise entitled to this reasoning. Appeals explains that the communications occurring via these mechanisms are purely informational, but this only reinforces the need for transparency regarding the outcomes of taxpayers' own cases.

Appeals would benefit from continued progress toward a culture of improved taxpayer service and reinforcement of taxpayer rights. This would enhance the perception that Appeals provides an independent review in a fair and equitable forum while costing Appeals relatively little in terms of resources and efficiency. Appeals is essential to achieving administrative case resolutions within the IRS, and these steps will help ensure that taxpayers continue to value Appeals as a way to resolve their cases impartially, independent of the perspectives of Counsel and Compliance.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Continue efforts to increase hiring of APS personnel and AOs while designing career paths that encourage advancement and retention within Appeals.
2. Dedicate resources, including circuit riding to cities without an Appeals presence, to provide meaningful in-person conferences expeditiously and without the need for burdensome travel on the part of taxpayers and practitioners.
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4. Change the IRM to require that all ACMs be shared with both the taxpayer and the Compliance function and, where post-settlement conferences are held, taxpayers must be invited to attend, even if in a monitoring capacity.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 7803(e) to provide that, where taxpayers whose cases are nondocketed have a right to a conference with the Independent Office of Appeals, this conference will only include personnel from the Office of Chief Counsel or the Compliance functions of the IRS if taxpayers consent to that participation.[85]

Endnotes

1 Cycle time is defined as the time between when Appeals receives a case and when Appeals closes a case. IRS response to TAS information request (Aug. 24, 2022).

2 For simplicity, there are three main types of Appeals cases: (1) administrative appeals (non-docketed cases), (2) cases docketed in the U.S. Tax Court (docketed cases), and (3) collection and bankruptcy matters.

3 IRS response to TAS information request (Aug. 24, 2022). Appeals Technical Employee (ATE) is the umbrella term used to refer to any Appeals employee who is assigned a case for settlement consideration. This includes both Settlement Officers and Appeals Officers. For purposes of this Most Serious Problem, TAS will adopt the commonly used term "Appeals Officer" as a collective reference for ATEs. Internal Revenue Manual (IRM) Exhibit 8.1.1-1, Common Terms Used in Appeals (Oct. 1, 2016).

4 Government Accountability Office (GAO), GAO-18-6549, *Tax Administration: Opportunities Exist to Improve Monitoring and Transparency of Appeal Resolution Timeliness* (2018), www.gao.gov/assets/700/694840.pdf; IRS response to TAS information request (Aug. 24, 2022).

5 IRS response to TAS information request (Aug. 24, 2022); IRS response to TAS fact check (Nov. 25, 2022).

6 *See*, *e.g.*, TAS conversation with practitioner group (July 13, 2022).

7 For more background regarding the steps in an Appeals proceeding, including the pre-conference, see National Taxpayer Advocate 2017 Annual Report to Congress 204-205 (Most Serious Problem: *Appeals*: *The IRS's Decision to Expand the Participation of Counsel and Compliance Personnel in Appeals Conferences Alters the Nature of Those Conferences and Will Likely Reduce the Number of Agreed Case Resolutions*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_18_AppealsCounsel.pdf.

8 The Examination and Collection functions of the IRS comprise IRS Compliance. For an in-depth discussion of the process that led to the IRS's current practice regarding Counsel and Compliance participation in conferences, see National Taxpayer Advocate 2017 Annual Report to Congress 203-210 (Most Serious Problem: *Appeals*: *The IRS's Decision to Expand the Participation of Counsel and Compliance Personnel in Appeals Conferences Alters the Nature of Those Conferences and Will Likely Reduce the Number of Agreed Case Resolutions*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_18_AppealsCounsel.pdf. For TAS's current recommendation to Congress on this topic, see National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 78-80 (Legislative Recommendation: *Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_05_StrengthTPRappeals_39.pdf. *See also* Appeals, Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps (Sept. 2021), www.irs.gov/pub/irs-utl/atcl_update.pdf.

9 IRS response to TAS information request (Aug. 24, 2022); IRS response to TAS fact check (Nov. 25, 2022).

10 Appeals notes that the 35-day shutdown in FY 2019 and the COVID-19 pandemic for FYs 2020-2022 significantly impacted cycle time, as Appeals employees were mandatorily kept out of the office, creating delays in moving case files and other case-related materials. IRS response to TAS fact check (Nov. 26, 2022).

11 IRS response to TAS information request (Aug. 24, 2022). This figure excludes one workstream, coordinated industry cases, for the sake of clarity because while the cycle times of these cases follow the same trend, the 61 cases from this workstream closed in FY 2021 took an average of 1,589 days to resolve, and since this is so much higher than all other workstreams, the inclusion of coordinated industry cases in this figure would render the trends difficult to portray.

12 TAS conversation with practitioner group (June 21, 2022).

13 *Id.*

14 *Id.*

15 IRC § 6532(a)(1), (2). If the taxpayer does not file a timely refund suit, any refund issued after the period for filing suit is an erroneous refund. IRC § 6514(a)(2). Any extension must be executed by the taxpayer and the IRS before the two-year period has expired. Rev. Rul. 71-57, 1971-1 C.B. 405.

16 *See* Erin M. Collins, Notice of Claim Disallowance: Don't Make This Mistake, National Taxpayer Advocate Blog (Apr. 15, 2022), https://www.taxpayeradvocate.irs.gov/news/nta-blog-notice-of-claim-disallowance-dont-make-this-mistake/.

17 *Id.*

18 National Taxpayer Advocate Priority Guidance Plan Recommendation #2 (June 3, 2022) (on file with TAS). *See* IRS, Office of Tax Policy and Internal Revenue Service Priority Guidance Plan, https://www.irs.gov/privacy-disclosure/priority-guidance-plan (last visited Oct. 27, 2022).

19 IRS response to TAS fact check (Nov. 25, 2022).

20 IRM 8.20.5.5.1.1(4), (6), Docketed List Responsibilities (July 1, 2017). According to Appeals, this should be changing, as Counsel no longer wants the administrative file shipped to them in most cases. *See* IRS response to TAS fact check (Nov. 25, 2022).

21 IRS response to TAS fact check (Nov. 25, 2022).

22 *Id.*

23 *Id.*

24 *Id.*

25 IRS response to TAS information request (Aug. 24, 2022).

26 *Id.*

27 *Id.*

28 Naomi Jagoda, *IRS or Waffle House? Hot Market Fuels Struggle to Fill Key Roles*, Bloomberg Daily Tax Rep. (Apr. 19, 2022), https://news.bloomberglaw.com/daily-tax-report/irs-or-waffle-house-hot-market-fuels-struggle-to-fill-key-roles.

29 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14 (commonly referred to as the "Inflation Reduction Act of 2022"), Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831-32 (2022).

30 IRS response to TAS information request (Aug. 24, 2022).

31 IRS response to TAS information request (Aug. 24, 2022).

32 GAO, GAO-18-6549, *Tax Administration: Opportunities Exist to Improve Monitoring and Transparency of Appeal Resolution Timeliness* (2018), www.gao.gov/assets/700/694840.pdf.

33 IRS response to TAS information request (Aug. 24, 2022).

34 In FY 2021, cases receipts were 72,216, while in FY 2022 they increased to 74,000. IRS response to TAS information request (Aug. 24, 2022); IRS response to TAS fact check (Nov. 25, 2022).

35 IRS response to TAS information request (Aug. 24, 2022).

36 TAS conference call with practitioner group (July 13, 2022).

37 *Id.*

38 IRS response to TAS information request (Aug. 24, 2022).

39 *Id.*

40 Letter from the American Bar Association (ABA) Section of Tax'n to the Comm'r of Internal Revenue (Apr. 5, 2022).

41 National Taxpayer Advocate 2021 Annual Report to Congress 153-154 (Most Serious Problem: *Correspondence Audits*: *Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences to Taxpayers, the IRS, TAS, and the Tax Court*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_09_Correspondence.pdf.

42 *See* IRM 4.19.13.17.3, Docketed Case Examination Assistance (Apr. 6, 2022), recently updated to mirror IRM 8.4.4.1, Docketed Case Examination Assistance Request Overview (Jan. 17, 2017).

43 National Taxpayer Advocate 2015 Annual Report to Congress 82-90 (Most Serious Problem: *Appeals*: *The Appeals Judicial Approach and Culture Project Is Reducing the Quality and Extent of Substantive Administrative Appeals Available to Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_08_Appeals.pdf.

44 IRS, Internal Guidance Memorandum AP-08-0714-0005, Implementation of the Appeals Judicial Approach and Culture (AJAC) Project, Collection – Phase 2 (July 10, 2014).

45 *Id.*

46 Memorandum to all Independent Office of Appeals Employees from Andrew Keyso, Chief, Office of Appeals (Apr. 19, 2022). Note that the flip side of prioritizing docketed casework inevitably is additional delay for nondocketed cases.

47 IRS, Pub. 6511, Independent Office of Appeals Focus Guide (Nov. 2022).

48 IRS response to TAS information request (Aug. 24, 2022).

49 TAS conference call with practitioner group (July 13, 2022).

50 *Id.*

51 Appeals points out that it engages in this kind of training at hiring. Appeals also provides some ongoing training in various substantive areas, frequently in the form of workshops. IRS response to TAS fact check (Nov. 25, 2022).

52 IRS response to TAS information request (Aug. 24, 2022).

53 *Id.*

54 National Taxpayer Advocate 2021 Annual Report to Congress 51-65 (Most Serious Problem: *IRS Recruitment, Hiring, and Training: The Lack of Sufficient and Highly Trained Employees Impedes Effective Tax Administration*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_MSP_02_Recruitment.pdf.

55 Appeals suspended in-person conferences on account of the pandemic in March 2020 and recommenced such conferences in May 2022. IRS response to TAS information request (Aug. 24, 2022). The issues discussed in this section have long challenged taxpayers and their representatives, and there is no reason to believe that anything has improved during the pandemic. IRS, IR-2020-59, Appeals Conferences Stopped: IRS Unveils New People First Initiative; COVID-19 Effort Temporarily Adjusts, Suspends Key Compliance Program (Mar. 25, 2020).

56 RRA 98, Pub. L. No. 105-206, § 1001(a)(4), 112 Stat. 685, 689 (1998); 144 Cong. Rec. S7622 (July 8, 1998) (statement of Sen. Roth).

57 *See* Rev. Proc. 2012-18, 2012-10 I.R.B. 455, *amplifying, modifying, and superseding* Rev. Proc. 2000-43, 2000-43 I.R.B. 404; *see also* Notice 2011-62, 2011-32 I.R.B. 126.

58 Taxpayer First Act, Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019) (codified at IRC § 7803(e)); H.R. No. 116-39, pt. 1, at 29 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).

59 H.R. No. 116-39, pt. 1, at 29 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).

60 IRC § 7803(e)(6)(B). *See also* H.R. No. 116-39, pt. 1, at 30 (2019) (accompanying H.R. 1957, which was enacted into law without change to this provision as H.R. 3151).

61 IRM 8.1.10.4.4(3), Communications with Counsel (Oct. 1, 2012).

62 National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 81-83 (Legislative Recommendation: *Clarify That the National Taxpayer Advocate May Hire Legal Counsel to Enable Her to Advocate More Effectively for Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_07_StrengthTAS_40.pdf.

63 IRM 8.6.2.2, Introduction to Appeals Case Memos (ACMs) (Aug. 17, 2017). The ACM is a report the AO prepares to adequately explain and support the basis on which a work unit is disposed. Every Appeals work unit requires an ACM. IRM 8.6.2.3.5, 5402 and ACM Case Closing Procedures (July 26, 2022); IRM 8.6.2.3.4, Routing Form 5402 and ACM Feedback to LB&I for Non-ATCL Cases (Mar. 16, 2015).

64 IRM 8.1.10.4.1.4, Post-Settlement Conferences (June 21, 2012). These post-settlement conferences are only available in cases originating from the LB&I Division that are worked by an Appeals Team Case Leader. *See* IRS response to TAS fact check (Nov. 25, 2022); IRM 8.7.11.13.1(1), Post Settlement Conference Scope (Sept. 4, 2018).

65 These conferences are not intended to provide an opportunity for Compliance to critique Appeals' determinations or to replace existing formal dissent procedures available to LB&I. IRS response to TAS fact check (Nov. 25, 2022). *See* IRM 8.7.11.13(3), Post Settlement Conference (Sept. 4, 2018).

66 *ABA Members Comment on Recent Appeals Division Practice Changes*, Tax Notes Today, 2017 TNT 89-10 (May 10, 2017); National Taxpayer Advocate 2017 Annual Report to Congress 195-202 (Most Serious Problem: *Appeals*: *The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_17_AppealsRestrictions.pdf.

67 *IRS Reform: Resolving Taxpayer Disputes: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 115th Cong. (2017) (statement of Chastity K. Wilson, AICPA); National Taxpayer Advocate 2017 Annual Report to Congress 195-202 (Most Serious Problem: *Appeals*: *The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_17_AppealsRestrictions.pdf.

68 IRM 8.6.1.5.1, Conference Practice (Sept. 25, 2019). For an in-depth discussion of Appeals' conference practices, see National Taxpayer Advocate 2017 Annual Report to Congress 195-202 (Most Serious Problem: *Appeals*: *The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC17_Volume1_MSP_17_AppealsRestrictions.pdf.

69 IRM 8.6.1.5.1, Conference Practice (Sept. 25, 2019). This IRM encourages AOs to use conference locations that are reasonably convenient for taxpayers, their representatives, and Appeals. Difficult choices arise for taxpayers, however, when no such convenient locations are available in the near-term.

70 TAS conversation with practitioner group (July 13, 2022).

71 IRS response to TAS fact check (Nov. 25, 2022).

72 Proposed Reg. § 301.7803–2(c)(21); IRM 4.10.28, Examination of Returns, Designation of Cases for Litigation (Apr. 4, 2022); IRM 8.7.3, Appeals, Technical and Procedural Guidelines, Domestic and International Operations Programs (Dec. 1, 2022). Appeals states that Appeals Coordinated Issues are needed to help to ensure consistency in settlements throughout the country. *See* IRM 8.7.3.3, Coordinated Issues (Oct. 1, 2012); IRS response to TAS fact check (Nov. 25, 2022).

73 TAS conversation with practitioner group (June 7, 2022). Appeals states, "Our international issue coordinators are all trained as AOs and many, but not all (*i.e.*, some of our recent external hires straight out of private consulting and law firms, etc.) of our TGCs have been trained as AOs. All of the specialists attend Appeals Basic Training if they had not previously attended before joining our area focused on internal work (Area 11) or Technical Guidance." IRS response to TAS fact check (Nov. 25, 2022).

74 TAS conversation with practitioner group (July 13, 2022).

75 TAS conversation with practitioner group (July 14, 2022).

76 As previously discussed, this lack of authority can be either explicit or implicit. *See* Proposed Reg. § 301.7803–2(c)(1)-(24).

77 Appeals states that settlement authority always rests with Appeals Team Case Leaders or Appeals Team Managers and that subject matter experts or other technical experts do not have settlement authority. However, TAS is concerned that increased reliance on subject matter experts and increased issue coordination abridges settlement authority in practice, even if a boundary exists on paper. IRS response to TAS fact check (Nov. 25, 2022).

78 IRM 8.6.1.5.4, Participation in Conferences by IRS Employees (Oct. 1, 2016). For a more in-depth discussion of this topic, see National Taxpayer Advocate 2019 Annual Report to Congress 62-68 (Most Serious Problem: *Appeals: The Inclusion of Chief Counsel and Compliance Personnel in Taxpayer Conferences Undermines the Independence of the Office of Appeals*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC19_Volume1_MSP_07_APPEALS.pdf; National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 78-80 (Legislative Recommendation: *Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_05_StrengthTPRappeals_39.pdf.

79 Appeals, Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps (Sept. 2021), www.irs.gov/pub/irs-utl/atcl_update.pdf.

80 "This legislation requires the agency to establish an independent Office of Appeals – one that may not be influenced by tax collection employees or auditors." 144 Cong. Rec. S7622 (July 8, 1998) (statement of Sen. Roth). Appeals states that the ATCL Conferencing Initiative applies to the most complex cases, which represent less than one percent of Appeals' caseload. IRS response to TAS fact check (Nov. 25, 2022). TAS's primary concern in this context, however, is not with the number of cases in which Counsel and Compliance participate, but with the circumstance that this participation can occur without the consent of taxpayers.

81 IRS response to TAS fact check (Nov. 25, 2022).

82 Appeals, Appeals Team Case Leader Conferencing Initiative: Summary of Findings and Next Steps (Sept. 2021).

83 TAS conversation with practitioner group (July 13, 2022).

84 National Taxpayer Advocate 2022 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 78-80 (Legislative Recommendation: *Require Taxpayers' Consent Before Allowing IRS Counsel or Compliance Personnel to Participate in Appeals Conferences*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_PurpleBook_05_StrengthTPRappeals_39.pdf.

85 *Id.*

OVERSEAS TAXPAYERS

Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

All taxpayers face barriers to accessing information and services from the IRS, a situation only exacerbated by the COVID-19 pandemic.[1] At all times, however, overseas taxpayers face additional burdens at virtually every step of the process in complying with their U.S. tax obligations. This group includes U.S. citizens and resident aliens living or working abroad, as well as foreign individuals and businesses with U.S. tax obligations. These taxpayers are subject to highly complicated rules for determining whether they need to file a U.S. tax return and, if so, the correct amount of their U.S. tax liability. They also face barriers in obtaining Taxpayer Identification Numbers (TINs), electronically filing tax and information returns, and accessing assistance from both the IRS and private industry.

EXPLANATION OF THE PROBLEM

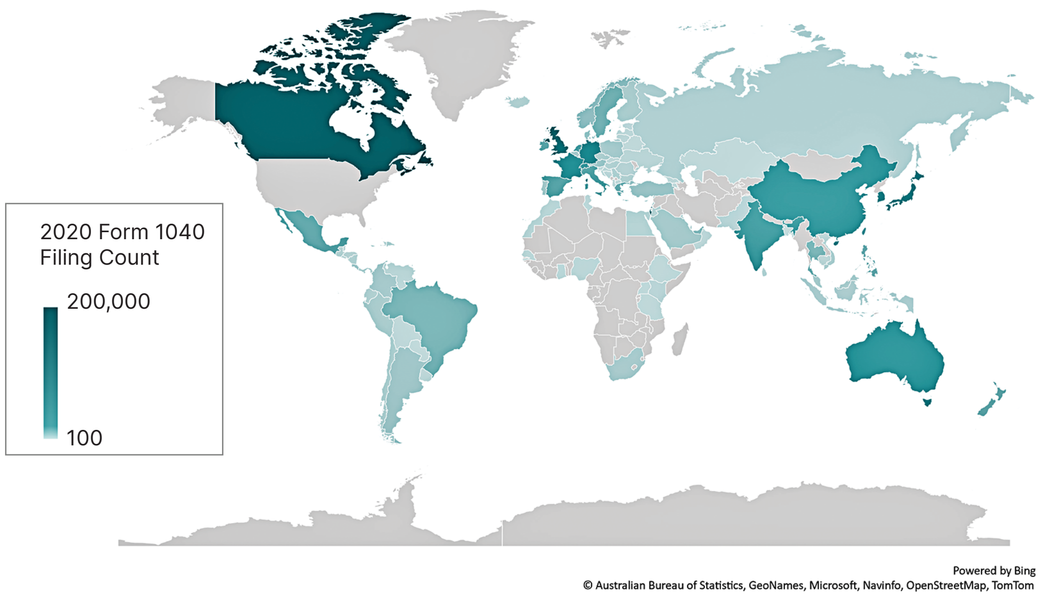
Who Is Impacted. The U.S. Department of State estimates that there are approximately nine million U.S. citizens living abroad.[2] This diverse group includes approximately 196,000 military personnel stationed all over the world,[3] 9,000 overseas State Department employees,[4] and 163,000 U.S. students attending school abroad.[5] It also includes U.S. citizens who move abroad to work for a foreign company, "digital nomads" who move abroad but continue to work remotely for their U.S.-based employer, and U.S. citizens who move overseas after retirement. The population of U.S. citizens abroad also includes so-called accidental Americans, individuals who hold U.S. citizenship despite being born outside of the United States or with an otherwise tenuous connection with the United States; a study commissioned by American Citizens Abroad estimates there may be nearly half a million such individuals.[6]

According to the Federal Voting Assistance Program, the foreign country with the largest number of U.S. citizen residents is Canada, followed by the United Kingdom, Israel, France, and Australia.[7] Because U.S.

tax obligations apply to U.S. citizens and U.S. resident aliens located anywhere in the world, these taxpayers abroad are subject to U.S. tax on their worldwide income, regardless of their country of residence. And these U.S. tax obligations may be in addition to tax obligations imposed by their country of residence.

FIGURE 2.10.1[8]

Country of Residence of Form 1040 Filers Living Overseas



U.S. citizens and resident aliens residing abroad are not the only overseas taxpayers with U.S. tax obligations. Foreign individuals and businesses with U.S.-source income or operations may also have U.S. tax obligations. This group includes not only multinational businesses but also foreign citizens, often referred to as non-resident aliens, with U.S.-source income such as interest, dividends, rents, royalties, pensions, annuities, or compensation for personal services.[9] For example, this group might include an Australian citizen who worked temporarily in the United States during the tax year, a Mexican citizen with U.S.-source interest or dividend payments, or a Chinese retiree who worked in the United States and who is now receiving U.S.-source pension or annuity payments.[10]

Challenges Faced: Overseas taxpayers face heightened barriers to their ability to meet their U.S. tax obligations. The laws to which they are subject are extremely complex, yet they have access to less support and fewer resources than taxpayers in the United States. As the IRS acknowledged in the Taxpayer First Act Report to Congress, foreign taxpayers are less able to access IRS services by phone, online, or in person; their e-file rates are significantly lower; and limited availability of tax products in languages other than English hampers their ability to understand their complex tax obligations.[11]

ANALYSIS

Complex Tax Laws and Inadequate Service Make Compliance Challenging Even for Conscientious Taxpayers

The Laws Applicable to U.S. Taxpayers Abroad Are Very Complicated

Overseas taxpayers are subject to an alphabet soup of confusing and complicated tax law provisions, such as GILTI,[12] FIRPTA,[13] PFIC,[14] and FATCA.[15] While some of these regimes are applicable primarily to large businesses and high-income taxpayers, complexity abounds for both U.S. citizens and residents abroad and foreign persons with U.S. tax obligations.

One of the most commonly claimed tax benefits available to U.S. citizens and resident aliens living abroad is the foreign earned income and housing exclusion in IRC § 911. In tax year (TY) 2020, for example, over 260,000 taxpayers living overseas filed a Form 2555, Foreign Earned Income, to claim this benefit.[16] This provision allows eligible taxpayers to exclude from gross income a certain amount of income earned overseas and the value of certain overseas housing benefits provided by an employer. To be eligible for the foreign earned income and housing exclusion, taxpayers must determine that their tax home is in a foreign country, that they had foreign earned income, and that they were a *bona fide* resident of a foreign country or were physically present in a foreign country for the requisite number of days.[17] Taxpayers must apply a complex set of rules to determine the location of their tax home, whether or not certain days count in meeting the *bona fide* resident or substantial presence test, whether different types of income are eligible for exclusion, and, for the housing exclusion, country- and even city-specific limitations on the exclusion amount.[18]

Another common tax benefit claimed by U.S. citizens abroad is the foreign tax credit, which allows an eligible taxpayer to claim a credit against U.S. tax for certain taxes paid to a foreign government.[19] For TY 2020, nearly 250,000 overseas taxpayers filed a Form 1116, Foreign Tax Credit, to claim this benefit.[20] The rules governing the foreign tax credit are so complex that the IRS has created the 32-page Publication 514, Foreign Tax Credit for Individuals – in addition to the 24-page instructions to the Form 1116, Foreign Tax Credit – to assist individual taxpayers in determining their eligibility for and the amount of their foreign tax credit.

A significant number of U.S. citizens abroad are also subject to information reporting requirements under the Foreign Account Tax Compliance Act (FATCA), the Bank Secrecy Act (which requires filing a Report of Foreign Bank and Financial Accounts (FBAR)),[21] or both. These regimes both come with the risk of large monetary penalties. Specified persons, which include U.S. citizens, resident aliens, and certain non-resident aliens, are subject to FATCA and required to attach Form 8938, Statement of Specified Foreign Assets, to their income tax return if they have specified foreign financial assets exceeding specified thresholds.[22] There is no single reporting threshold for FATCA; instead, the asset value at which reporting is required depends on whether or not the individual is living in the United States or abroad and whether the individual files a joint return with a spouse.[23]

The FBAR reporting regime requires U.S. citizens and residents to report each foreign account in which they have a financial interest or over which they have signature or other authority when the combined value of those accounts exceeds $10,000 at any time during the calendar year.[24] While there is a uniform reporting threshold for FBAR, the definition of foreign financial accounts is complex and could include assets that are not obviously financial accounts, such as foreign pensions.[25] Individuals subject to FBAR must file FinCEN Form 114, Report of Foreign Bank and Financial Accounts, separately from their tax return by submitting it electronically through the Financial Crimes Enforcement Network's (FinCEN's) Bank Secrecy Act E-Filing System.[26]

While the rules for determining who is subject to these reporting regimes and what assets are subject to reporting are complex, the stakes are very high from the perspective of penalties. In FATCA, civil penalties begin at $10,000 for taxpayers who fail to file a complete Form 8938 and max out at $50,000.[27] In FBAR, non-willful violations of reporting requirements are subject to penalties of up to $10,000 (adjusted yearly for inflation);[28] willful violations are subject to penalties of up to the greater of 50 percent of the account balance or $100,000 (adjusted for inflation), whichever is higher.[29] Both FATCA and FBAR violations might also give rise to criminal penalties. While the purpose of these regimes may be to prevent tax avoidance by requiring reporting of "offshore" holdings, they can be a substantial financial trap for the unwary, particularly for "accidental Americans" who were born and reside overseas.[30]

U.S. citizens and resident aliens are not alone in facing tax compliance challenges. Foreign persons with income or activities connected with the United States must follow complicated rules to determine whether their income is from U.S. sources or is effectively connected with the conduct of a U.S. trade or business, and subject to U.S. tax. Different rules apply for determining whether different types of income must be included in the U.S. gross income of non-resident aliens and how that income is taxed. For example, whether pension benefits paid to a non-resident alien are considered U.S.-source income depends on what percentage of the benefits are attributable to services performed in the United States.[31] To the extent the pension benefits paid to a non-resident alien are subject to U.S. tax, the benefits are considered income effectively connected with a U.S. trade or business and taxed at the rates that apply to U.S. persons.[32] By contrast, U.S. Social Security benefits – 85 percent of which non-resident aliens are required to include in their U.S. gross income – are considered fixed or determinable annual or periodic income and subject to tax at a flat rate of 30 percent.[33] Taxpayers must apply complicated rules like these for each type of income – such as interest, dividends, rents, royalties, or compensation for personal services – to determine whether the income is U.S.-source and includable in U.S. gross income. Taxpayers must then apply another complicated set of rules for each type of income to determine whether they can exclude some or all of that type of income. To further add to the complexity, overlaying the generally applicable rules are an entirely different set of rules set forth in various tax treaties between the United States and foreign countries.[34] Whether a foreign individual will ultimately be subject to U.S. tax will depend to a large extent on their country of residence and the terms of the tax treaty, if any, between that country and the United States.

Overseas Taxpayers Have Little Support in Understanding Complicated Tax Laws

Despite the extreme complexity of the tax laws that apply to this population, taxpayers abroad have access to very limited support from the IRS. As of 2015, the IRS had closed its last four overseas tax attaché offices, in London, Frankfurt, Paris, and Beijing.[35] As the National Taxpayer Advocate noted in her 2015 Annual Report, these closures deprived overseas taxpayers of valuable and necessary services.[36] Domestic taxpayers have the option of making an appointment at a local Taxpayer Assistance Center (TAC) but, with the closure of the last overseas attaché offices, taxpayers living overseas no longer have access to face-to-face customer service. In 2014 and 2015, the attachés collectively hosted 19 formal outreach events focusing on topics like filing requirements, FBAR, the foreign tax credit, and tax law changes; they were attended by approximately 1,500 individuals.[37] In fiscal year (FY) 2014 alone, the London attaché office received over 5,000 taxpayer visits, and the Frankfurt office had over 3,000 phone contacts.[38] Taxpayers who relied on these services, especially older, less digitally savvy taxpayers, struggled to find alternative assistance,[39] and the closure of these offices cut the IRS off from a valuable source of feedback about issues facing taxpayers abroad.[40]

Overseas taxpayers also lack access to affordable tax preparation services. The Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs provide free tax preparation assistance for qualifying taxpayers. However, during the most recent filing season, only 11 full service VITA sites operated overseas, and they were all on U.S. military bases.[41] No VITA and TCE sites offer virtual tax preparation services to taxpayers located outside the United States.[42] Overseas taxpayers report struggling to locate paid tax return preparers in their country of residence.[43] Although the IRS website includes a directory of credentialed tax professionals in a large number of foreign countries, it is difficult to locate on the website.[44] Taxpayers who do locate a preparer who is qualified to assist with their U.S. return must often pay high fees to have even a basic U.S. tax return prepared and will likely need to engage a different preparer to assist them in meeting their tax obligations in their country of residence.[45]

Another challenge, particularly for non-resident aliens, is that most IRS tax products continue to be in English only. Although the IRS's multilingual initiative has made significant progress in making tax information available in more languages, there is still much progress to be made. So far, only 71 tax products have been translated into one or more foreign languages.[46] While some products important to taxpayers abroad, like Publication 519, U.S. Tax Guide for Aliens, have been translated into multiple languages – Korean, Russian, Spanish, Vietnamese, and Chinese (Simplified and Traditional) – other products of relevance to overseas taxpayers, such as the Forms 1040-NR, U.S. Nonresident Alien Income Tax Return, and W-7, Application for U.S. Individual Taxpayer Identification Number, are available only in English and Spanish.[47] Other commonly used forms, like Forms 2555, Foreign Earned Income, and 1116, Foreign Tax Credit, are available only in English.[48]

Ultimately, taxpayers who are unable to find the assistance that they need in understanding their U.S. tax obligations, either from the IRS or from paid preparers, are more likely to seek assistance from unreliable sources like social media, or they may avoid filing at all.

Taxpayers Living Overseas Face Delays and Other Challenges in Obtaining Taxpayer Identification Numbers

One prerequisite to filing a tax return with the IRS is obtaining a TIN. For entities, that means obtaining an Employer Identification Number (EIN). For individuals who are not eligible to receive a Social Security number (SSN), that means obtaining an Individual Taxpayer Identification Number (ITIN). Individuals who need an ITIN might include foreign nationals with U.S. filing requirements, non-citizen spouses or dependents of U.S. citizens or U.S. resident aliens living abroad, or foreign investors in U.S. businesses who need an ITIN to avail themselves of tax treaty benefits. Even without COVID-19 delays, the processing time for TIN applications can be long, and, for ITIN applicants, the process is very burdensome. Inability to obtain a TIN can ultimately hamper taxpayers' ability to comply with their U.S. tax obligations.

Taxpayers who need an ITIN to file a return, claim a credit, or pay taxes must apply for the ITIN, either on their own or on behalf of a dependent, by submitting Form W-7. They must submit Form W-7 on paper, and, unless an exception applies, a copy of the tax return on which the applicant's ITIN is required must accompany it.[49] The applicant must also provide original supporting identity documents, such as a birth certificate or passport.[50] Taxpayers must mail these highly sensitive documents, along with the application, to the IRS.[51] Alternatively, a taxpayer may provide copies of the required identity documents, but the copies must have been certified by the issuing agency.[52]

Taxpayers who are uncomfortable mailing sensitive identity documents to the IRS or who cannot obtain certified copies of the requisite identity documents have the option of using a Certifying Acceptance Agent (CAA) to authenticate their identity documents and submit the authenticated copies to the IRS ITIN Unit.[53] However, CAA services are not always convenient. As the Taxpayer Advocacy Panel pointed out in its 2021 Annual Report, a taxpayer might have to travel hundreds of miles to a CAA, potentially to another country.[54] Access to CAA services is unlikely to improve in the near term, either. The IRS announced a one-year moratorium on new CAA applications starting on August 15, 2022.[55] Even if taxpayers have access to a CAA, their services are not generally provided free of charge. As of the 2021 filing season, 67 VITA/TCE partners offered CAA services.[56] Of those, only one operated outside of the United States, on the Ramstein Air Force Base in Germany.[57] U.S.-based taxpayers who need to apply for an ITIN may submit their application in person by making an appointment at a TAC, which can verify original documents free of charge and submit verified copies of those documents to the IRS ITIN Unit.[58] But this option is not available to taxpayers abroad.

As of the week of September 10, 2022, the average processing timeframe for ITIN applications submitted with a return was 60 days and 49 days for applications submitted without a return.[59] However, because this time is measured from the date when the IRS receives the application to the date when an employee enters the ITIN into the system and puts the taxpayer's original documents in the mail to be returned, it doesn't capture the full length of the application process from the perspective of the taxpayer.[60] For example, this cycle time doesn't include the time during which the application was in the mail to or from the IRS.[61] It also doesn't account for any time that the application is in suspense awaiting additional information from the taxpayer, even though IRS guidelines assume that it will take 45 days to receive a response from the taxpayer.[62] Taxpayers applying for an ITIN could easily be without their passport for months.

The process for applying for an EIN is less arduous than applying for an ITIN, but the fastest and easiest method for obtaining an EIN is not available to businesses with foreign owners. The IRS offers four methods for obtaining an EIN: (1) submitting a Form SS-4, Application for Employer Identification Number, by mail, (2) submitting Form SS-4 by fax, (3) applying by telephone, or (4) applying online.[63] In FY 2021, the IRS issued approximately 7.7 million EINs, 93 percent of which it issued through the online application tool, which provides the applicant with an EIN almost instantaneously.[64] However, to use the online application tool, the responsible party for the entity must have an SSN or ITIN.[65] Foreign responsible parties who do not have an SSN or ITIN must submit their application by mail or by fax or must call a non-toll-free telephone number to request an EIN.[66] For FY 2021, the Level of Service on that telephone line was 40 percent.[67]

According to the IRS website, the IRS processes faxed EIN requests within four business days and mailed requests within four weeks.[68] As of the week of September 17, 2022, the IRS was actually exceeding these processing timeframes, working faxed applications within two days of receipt and working mailed applications within 21 days of receipt.[69] However, the IRS also acknowledged that COVID-19 had significant impacts on its EIN inventory, preventing it from providing an average processing time for faxed and mailed EIN applications over FYs 2020 and 2021.[70] While current processing of EIN requests submitted by mail and by fax appear to be consistent with the timeframes on the IRS website, future disruptions could again cause delays for overseas taxpayers, delays they would not face if they were able to use the online application tool.

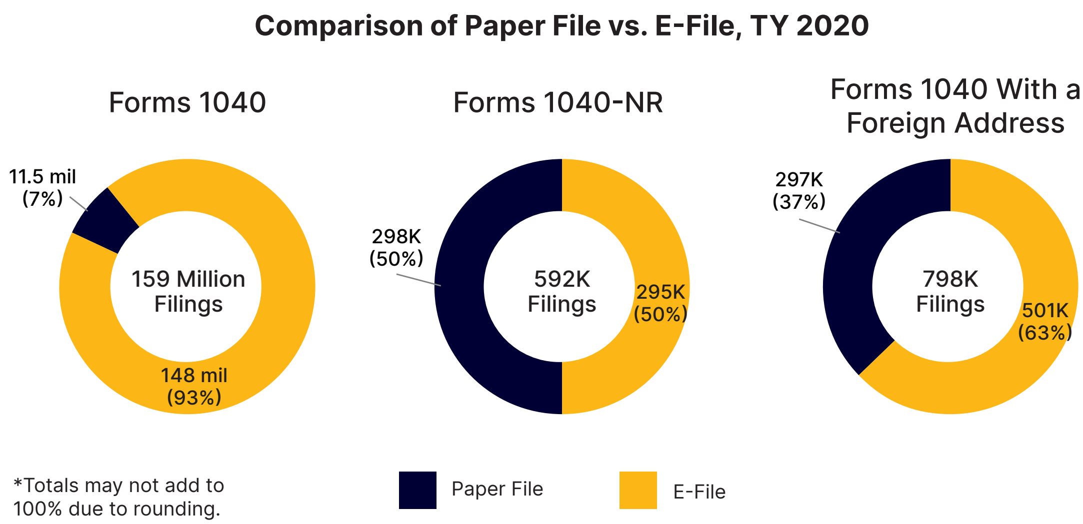
Delays in receiving a TIN can negatively impact taxpayers in a variety of ways. Businesses cannot meet their filing obligations until they receive an EIN. For individuals, delays in issuing or renewing ITINs can result in the disallowance of credits and other tax benefits.[71] Such delays can also cause problems with reporting and recouping of tax withholding. For example, when a foreign person sells real property located in the United States, proceeds from the sale are subject to income tax withholding under the Foreign Investment in Real Property Tax Act (FIRPTA).[72] Generally, the buyer of the property must withhold the appropriate amount of tax, remit the tax to the IRS, and file Form 8288, U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests, by the 20th day after the date of the transfer.[73] Form 8288 must include the seller's TIN.[74] The IRS uses this information to match the withholding reported on Form 8288 with the withholding reported by the seller on the seller's U.S. income tax return. However, if the seller doesn't already have an ITIN, it is virtually impossible for the seller to obtain an ITIN within the 20-day period between the sale and Form 8288 due date. Furthermore, it is extremely difficult for the IRS to connect the FIRPTA withholding credit to the correct income tax return and to give the seller credit for the withholding when the seller's ITIN is not included on the original Form 8288.

Overseas Taxpayers Face Barriers to E-Filing

E-filing is crucial to avoiding refund delays and the numerous other negative outcomes associated with paper processing backlogs.[75] Unfortunately, international individual taxpayers face additional obstacles and, therefore, e-file at substantially lower rates than domestic individuals. For example, in TY 2020, only 63 percent of taxpayers residing overseas e-filed their Forms 1040.[76] For Forms 1040-NR, the e-file rates were even lower at 50 percent.[77] By contrast, the overall e-file rate for TY 2020 was 93 percent.[78]

The IRS noted in the Taxpayer First Act Report that the disparity between domestic and international e-file rates presented a tremendous opportunity to increase use of the IRS e-file program by international taxpayers.[79] Although the report didn't identify any potential root causes for the disparity,[80] we have identified several possibilities. As discussed in the previous section, taxpayers who need to apply for an ITIN must submit a paper ITIN application or Form W-7. Taxpayers who apply for an ITIN cannot electronically file a return during the same calendar year that the IRS assigns their ITIN.[81] This means that all new ITIN applicants are essentially prevented from e-filing.

FIGURE 2.10.2[82]



Another possible barrier to e-filing could be the need to attach self-created statements to returns. For example, U.S. citizen taxpayers and resident aliens married to non-resident aliens may elect to file jointly with their non-resident alien spouse.[83] To make the joint filing election, the taxpayers must attach a taxpayer-generated election statement to their return.[84] The IRS's Modernized E-File System accepts PDF attachments to returns. However, if the software that the taxpayer uses doesn't accommodate taxpayer-generated statements, he or she cannot e-file his or her return. Overseas taxpayers must often attach other self-generated statements, such as those reporting income from a foreign employer or other source not reported to the IRS through standard information reporting channels.[85] E-file may also be unavailable for the form the taxpayer needs to file. While the IRS has made significant progress in expanding the number of tax forms that taxpayers can e-file, some forms, such as the Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, must still be filed exclusively on paper.[86]

Lower e-filing rates may also be attributable to other software limitations. Overseas taxpayers report struggling to find tax return preparers with knowledge in U.S. tax law. The IRS website offers a searchable directory of e-file providers, but unlike the preparer directory, this directory does not allow the user to search by foreign country or to otherwise locate foreign e-file providers.[87] The ability of an overseas taxpayer to use commercial software is also limited by the variety of forms that each vendor supports. For example, many large commercial software vendors do not support the filing of Forms 1040-NR. Even the IRS Free File Fillable Forms application doesn't offer taxpayers the option of filing Form 1040-NR.[88] Similarly, taxpayers abroad who meet Free File eligibility criteria may be unable to use the Free File program because the Free File provider whose services they qualify for doesn't support a form that they need.[89] While several Free File participants do support Forms 1040-NR, 1116, and 2555,[90] each Free File participant has different eligibility criteria, and supported forms for each offer are not listed on the IRS website.[91] This can make it extremely challenging for taxpayers to determine whether there is a Free File offer that will meet their needs. Overseas users also report challenges in accessing Free File because vendors require U.S.-based credentials, like a U.S. telephone number.[92] VITA and TCE sites, which offer free e-filing of returns that are within the scope of service for the VITA/TCE program, have a limited overseas presence, operating only on U.S. military bases.[93]

Foreign businesses also face barriers to meeting their information return filing obligations. Beginning in September 2021, the IRS replaced Form 4419, Application for Filing Information Returns Electronically (FIRE), with a new online-only application platform.[94] Taxpayers use this platform to obtain a Transmitter Control Code (TCC) and access FIRE, the IRS's information return filing system. To better protect the integrity of the information return system, a FIRE user must create a Secure Access account to access the new application platform.[95] This requires the user to verify his or her identity with ID.me, a third-party vendor. Until recently, users were required to provide an SSN to have their identity validated by ID.me for access to IRS applications.[96] As of December 4, 2022, ID.me will also validate the identity of users with an ITIN who are seeking access to IRS applications.[97] This is a positive change that will expand access to both FIRE and other IRS online applications for foreign taxpayers. However, it does not provide a solution for entities with foreign responsible officials who do not have and are not eligible for an SSN or an ITIN.[98] As a consequence, such entities cannot create a new Secure Access account, obtain a new TCC, or get access to the FIRE system. Eventually, the IRS will require all FIRE users, including those who already have a TCC, to validate their identities using the IRS authentication process.[99] This means that more foreign FIRE users are potentially at risk of losing access to the FIRE system, too. These limitations on access are particularly consequential given that the law requires taxpayers to file many information returns electronically and that the IRS and Treasury recently proposed regulations that would lower the threshold for mandatory e-filing and expand the number of forms required to be electronically filed.[100]

Customer Service Challenges Are Magnified for Taxpayers Abroad

Many taxpayers struggle to access the resources they need, whether it's responding to a notice, accessing information online, or reaching a live human on the phone. And these customer service challenges have been further magnified by the pandemic. For overseas taxpayers, though, customer service challenges have long been a regular facet of the taxpayer experience.

Unlike domestic taxpayers who have access to a variety of toll-free lines, the IRS provides *one* telephone line for taxpayers outside of the United States, and it is not toll-free.[101]

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In apparent recognition of time differences between the United States and overseas taxpayers' locations, the international line offers extended hours; it is staffed from 6 a.m. to 8 p.m. Eastern Time for tax law questions, and from 6 a.m. to 11 p.m. Eastern Time for all other inquiries.[102] Free, real-time, over-the-phone-interpreter services are also available in over 350 languages.[103] However, during FY 2021, the Level of Service on the international line was 40 percent and, for callers who were eventually connected with an employee, the average time they waited for assistance was 17 minutes.[104] While 17 minutes isn't an exorbitant amount of time to be waiting in the queue, it could easily be costly for a taxpayer calling from overseas. Because customer callback isn't available on the international line, taxpayers must stay in queue and don't have the option of requesting a call back instead.[105]

Even if taxpayers can reach an IRS employee, they often find that the employee is unable to help them with their particular issue.[106] The IRS doesn't post any information on its website about what tax law issues are within the scope of service on the international line, so there is no way for taxpayers to determine prior to calling and waiting on hold whether the IRS customer service representative will be able to answer their question or otherwise provide the assistance that they need.

Taxpayers outside of the United States face challenges receiving and responding to IRS postal correspondence. In FY 2021, the IRS issued over 1.3 million notices and other correspondence to foreign addresses.[107] The law requires the IRS to send many IRS notices, such as notices of deficiency and notices of federal tax lien, by postal mail.[108] But postal systems and address conventions vary widely by country, and mail delivery takes longer, in some cases significantly longer, to reach its destination when the recipient is in a foreign country. However, IRS system limitations may be contributing to the problem. Although the IRS has a variety of instructions and job aids for use by employees in correctly inputting foreign addresses, its information technology infrastructure is ultimately designed to accommodate domestic addresses.[109] Foreign address information must be input into fields formatted for domestic addresses.[110] When correspondence for an overseas taxpayer is generated, there is no programming in place that specifically identifies the address as foreign and makes any corresponding adjustments to the way the address is formatted or printed.[111]

Mail delays can prevent the taxpayer from responding within the designated period or otherwise taking timely action as required by the IRS notice or letter. In some cases, mail arrives after the response deadline. For example, a taxpayer might receive a letter seeking additional information in connection with the processing of his or her amended return. If the letter provides a response date within 30 days, and that 30-day period has already passed when the taxpayer receives the letter, the taxpayer might conclude that it is too late to respond and decline to pursue the issue further. Even if the IRS is willing to accept the late response, the taxpayer does not know this. The IRS can – and should – remedy this problem by revising IRS correspondence and employee procedures to allow a longer response time for taxpayers residing outside of the United States.

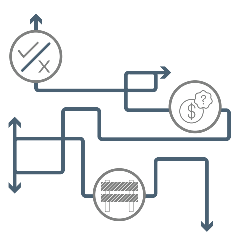
In some circumstances, however, the response timeframe is set forth by statute, making mailing delays consequential. For example, IRC § 6213(b)(1) creates an exception to the general rule that, before assessing a deficiency, the IRS must issue to the taxpayer a statutory notice of deficiency giving the taxpayer the opportunity to dispute the deficiency in the U.S. Tax Court. In the case of mathematical and clerical errors, as defined in IRC § 6213(g)(2), the IRS may assess the resulting deficiency without having to issue a deficiency notice. Instead, the IRS must provide notice of the assessment to the taxpayer, and the taxpayer then has 60 days to contest the assessment.[112] If the taxpayer contests the assessment within the designated period, the IRS must abate it and issue the taxpayer a deficiency notice if it intends to assess the deficiency again.[113] However, if the taxpayer doesn't contest the assessment within the 60-day period, the taxpayer loses the right to have the assessment abated.[114] With statutory notices of deficiency, the IRC recognizes that taxpayers located outside the United States need more time to receive and respond to correspondence; IRC § 6213(a) gives taxpayers located outside of the United States 150 days from the mailing date of the deficiency notice, instead of the standard 90 days, to file a petition with the Tax Court. But no such exception exists for math error notices issued to taxpayers overseas. The lack of an extended response time for math error notices issued to taxpayers located abroad meaningfully disadvantages those taxpayers. In FY 2021, over 63,000 taxpayers with foreign addresses received at least one math error notice, so the population at risk is far from trivial.[115]

Postal problems and delays also appear to interfere with the ability of overseas taxpayers to receive refunds. During FY 2021, the IRS issued over 13,000 taxpayers with foreign addresses a replacement refund check.[116] The IRS also issued nearly 70,000 letters to taxpayers with foreign addresses alerting them that their refund check had expired and instructing them to request a new one.[117] Even if foreign taxpayers can receive their mail, they often report challenges cashing checks mailed to them by the IRS. Outside stakeholders reported that banks in a variety of countries were unable or unwilling to cash checks issued by the U.S. Treasury, leaving taxpayers without access to their tax refund.[118] The IRS has recently taken steps to facilitate direct deposit refunds to taxpayers abroad. In March 2022, the IRS switched to using the International Treasury Service (ITS) for international direct deposit.[119] Unlike with the prior platform, there are no longer any limits on the refund amount the IRS can deposit directly, and ITS does not require the taxpayer to maintain an account with a U.S. intermediary or third-party domestic bank.[120] The transition to ITS is a positive change with the potential to alleviate some problems overseas taxpayers are having in accessing their refunds.

The IRS recently implemented another policy change with the potential to alleviate customer service burdens on taxpayers outside of the United States by expanding access to online tools and applications. To access public-facing IRS applications, the IRS requires individuals to authenticate their identity. In 2021, the IRS implemented the Secure Access Digital Identity platform as the new identity proofing and authentication solution.[121] And, until December 4, 2022, individuals who did not have an SSN could not authenticate their identity using the identity proofing solution offered by the current IRS vendor, ID.me.[122] As a result, foreign individuals without an SSN could not access IRS applications that require a taxpayer to authenticate his or her identity. However, as of December 4, 2022, ID.me began authenticating the identity of ITIN holders so that those individuals could access IRS online applications that require identity proofing.[123] Such applications include IRS Online Account, which provides self-help solutions for taxpayers who need to designate a representative, make a payment, manage a payment plan, or access certain IRS notices and letters; the Get IP PIN portal, which taxpayers use to request or retrieve an Identity Protection Personal Identification Number (IP PIN); and the online Identity and Tax Return Authentication portal, which taxpayers whose returns are identified as potentially fraudulent can use to verify their identity with the IRS.[124] While it is too soon to evaluate the full impact of this change in policy, this is a step in the right direction toward improving the taxpayer experience for taxpayers living overseas.

CONCLUSION AND RECOMMENDATIONS

The tax law, as it applies to taxpayers outside of the United States, is extremely complex and procedurally and administratively difficult. Whether it's determining what income taxpayers need to report, what forms they need to file, or whether there is even a requirement to file, U.S. citizens abroad and foreign persons with U.S. tax obligations must navigate a landscape of complex rules, nuanced analyses, and exceptions to exceptions. At the same time, these taxpayers have limited access to IRS support and resources.



U.S. citizens abroad and foreign persons with U.S. tax obligations must navigate a landscape of complex rules, nuanced analyses, and exceptions to exceptions. At the same time, these taxpayers have limited access to IRS support and resources.

They face barriers to obtaining TINs and to electronically filing returns. They have even more limited access to telephone customer service than domestic taxpayers, and they face long delays in receiving IRS correspondence through the mail, if it arrives at all.

Some burdens on overseas taxpayers, such as time differences and postal delays, are beyond the control of the IRS to resolve. And others, like tax law complexity, would require a significant act of Congress. We also recognize that the need to authenticate the identity of individuals who interact with the IRS is critical to preventing identity theft and protecting the integrity of the tax system. However, there are meaningful steps that the IRS can and should take to better accommodate the needs of taxpayers outside of the United States and to better facilitate their ability to meet their U.S. tax obligations. First and foremost, the IRS must develop a comprehensive agencywide customer service strategy for both U.S. citizens and resident aliens abroad and foreign individuals with U.S. tax obligations. As part of this strategy, the IRS should address how the agency can better support overseas taxpayers in understanding their U.S. tax obligations. The IRS should build on existing informational resources, including forms, publications, and FAQs, that can be helpful for overseas taxpayers and create a true "one-stop shop" for taxpayers outside of the United States on IRS.gov. The IRS should also look to partner with the Department of State to more effectively connect with taxpayers who need tax information. Overseas taxpayers often look to U.S. embassies and consulates for assistance with issues involving the U.S. government. The IRS could leverage that channel of communication by partnering with the Department of State to post U.S. tax information or links to IRS.gov on State Department webpages.

The IRS also needs to do more to help with electronic filing by taxpayers abroad. Many overseas taxpayers cannot electronically file because of e-file system and software limitations. While the IRS has made great progress in expanding the number of forms taxpayers can e-file, it should continue to expand the number of forms that taxpayers can file electronically. The IRS should conduct a study, which includes outreach to private industry, to better understand why overseas taxpayers are e-filing at such low rates and how to remove the barriers causing this. The IRS should also be sure to include common international forms, such as Forms 1040-NR, 1116, and 2555, in the design for the free online filing platform it has announced plans to study.[125]

The IRS needs to do more to improve customer service for overseas taxpayers. Expanding online identity proofing to include users with ITINs was a big step in the right direction, making many online tools available to foreign taxpayers for the first time. However, the IRS still needs to ensure that foreign entities whose responsible officials do not have and are not eligible for an SSN or ITIN are able to access the FIRE system and file their information returns electronically. The IRS should implement customer callback on the international line and provide more detailed information on IRS.gov about the scope of services available on the international telephone line. It must do more to provide face-to-face customer service options for overseas taxpayers. This should include the option to make a virtual TAC appointment and should allow the taxpayer to receive all the services provided by an in-person TAC visit, including identity proofing for individuals whose returns the IRS flagged for potential identity theft and review of identity documents for ITIN applications. The IRS should also consider building on the success of existing programs, like VITA and TCE, and look to partner with the State Department and other agencies to host VITA sites overseas. The IRS might also build on the success of its Taxpayer Experience Day initiative and offer something similar at U.S. embassies or consulates abroad. While the challenges facing taxpayers living overseas will continue to be great, the IRS must do more to reduce the burden on these taxpayers and to better support them in their attempts to comply with U.S. law.

Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Develop a comprehensive customer service strategy for both U.S. citizens and resident aliens abroad and foreign individuals with U.S. tax obligations.
2. Explore ways to partner with the U.S. Department of State to make tax information available through State Department platforms and to provide tax customer service at U.S. embassies and consulates.
3. Conduct a study to identify barriers to e-filing for overseas taxpayers. The IRS should use the results to formulate a strategy to reduce those barriers and to increase e-file rates by taxpayers located outside of the United States.
4. Deploy an identity proofing solution available to individuals who do not have and are not eligible for an SSN or ITIN and who need to access the FIRE system.
5. Offer customer callback on the international telephone line and provide more detailed information on the IRS website about the services offered on the international telephone line.
6. Revise correspondence and employee procedures to give overseas taxpayers an extended timeframe within which to provide responses to all requests for information or to otherwise take action.
7. Offer virtual TAC appointments to taxpayers overseas. These appointments should offer all services available to taxpayers in the United States, including identity verification for individuals whose returns were flagged for possible ID theft and verification of identity documents for ITIN applicants.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6213(b)(2)(A) to allow taxpayers 120 days to request an abatement of tax when a math error notice is mailed to them outside the United States.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

Nikole Flax, Commissioner, Large Business and International Division

Kathleen Walters, Chief Privacy Officer, Privacy, Governmental Liaison and Disclosure

IRS COMMENTS

The IRS continues to address service challenges strategically and operationally for overseas taxpayers. The IRS Taxpayer First Act Report to Congress identified a Taxpayer Experience Strategy, including an international strategy, for reaching underserved communities and the IRS FY 2022-2026 Strategic Plan identifies as a specific objective, addressing the needs of underserved communities, including international taxpayers, to improve their ability to participate in the tax system.

Furthermore, the funding provided under the Inflation Reduction Act (IRA) will allow the agency to significantly improve service to all taxpayers, including those located overseas. We are currently in the process of planning our strategic priorities and will have more specifics to share in the coming months. As we make additional progress on taxpayer service tools, including online account and digital services, this will afford additional opportunities for issue resolution for taxpayers located overseas.

The IRS provides a variety of services and resources tailored to the needs of overseas taxpayers. The International Call Center, staffed Monday through Friday, answers tax law and account related calls from overseas taxpayers. There is also a separate number specifically for tax professionals or software providers calling about an e-file issue that is not account related. Assistors on these lines have the option of conferencing in an interpreter, if necessary. The IRS will evaluate the ability to implement Customer Callback options for international callers based on available technology and in conjunction with the overall Taxpayer Experience Strategy.

The IRS website (IRS.gov) houses online tools and information for both individual and business overseas taxpayers. Landing pages are present for both individual and business taxpayers that include a wealth of information regarding tax administration. For example, the Interactive Tax Assistant self-directed tool allows taxpayers to find answers to eight common individual tax questions such as claiming the Foreign Tax Credit, Earned Income Exclusion, and Individual Tax Identification Number eligibility, and we continually explore adding additional tax law topics. Taxpayers may also use the Online Account feature to secure account balances, make payments, and view or establish payment agreements. The IRS is exploring virtual appointments via Web Service Delivery for taxpayers outside the United States. Currently, Web Service Delivery is a pilot program designed to test our capability to provide an additional service channel to this taxpayer segment.

In 2022, the IRS conducted virtual Volunteer Income Tax Assistance (VITA) training at 22 military bases in Europe and Asia. The military established regular VITA sites in Kosovo, Japan, Korea, United Kingdom, Netherlands, and Germany that generated 3,497 returns. The IRS also had stand-alone Facilitated Self-Assistance sites in Italy, Kuwait, Korea, Turkey, Saudi Arabia, Egypt, and Germany. Additionally, we take proactive steps for international taxpayers such as updating foreign addresses from e-filed returns and assisting with identify theft. During FY 2022, the IRS proactively issued over 1,700 identity protection personal identification numbers to taxpayers with foreign addresses who experienced identity theft or who were at risk. In addition, during FY 2022, over 1,000 foreign taxpayers were able protect their account by voluntarily opting into the identity protection personal identification numbers program.

The IRS imposed a moratorium on the Certifying Acceptance Agent program in August 2022. The Certifying Acceptance Agents assist with the Individual Tax Identification Number application process by authenticating identity documents and submitting applications. The moratorium will allow us to implement significant modernization efforts resulting in more efficient processing of properly submitted applications that will shorten processing times from months to weeks.

While it is true that e-filing rates for taxpayers residing overseas are lower than taxpayers overall, the IRS has made strides in this area. According to the Taxpayer First Act Report to Congress, only 48.8% of taxpayers residing overseas e-filed, but in 2020, the number was 63%, reflecting an increase of 15 percentage points. The IRA requires the IRS to conduct a study, which includes outreach to private industry, to better understand why overseas taxpayers e-file at lower rates, and how to remove barriers. These findings will allow the IRS to identify steps to improve the e-file rate and international taxpayer experience, consistent with the overarching objective in the IRS FY 2022-2026 Strategic Plan to address the needs of underserved international taxpayers.

TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate recognizes that the IRS currently provides some services and resources specifically directed at taxpayers living overseas. The IRS has also recently implemented changes with the potential to improve customer service for overseas taxpayers, such as making identity proofing available to taxpayers with ITINs and transitioning to the ITS system for international direct deposit payments. We are pleased to see that the IRS already has plans to implement some of our recommendations, like an e-file study and virtual TAC service for taxpayers abroad. Ultimately, however, taxpayers living overseas continue to face significant barriers to meeting their tax obligations. While recent changes are encouraging, our recommendations reflect the importance of continuing to find ways to better meet the overall needs of these taxpayers.

RECOMMENDATIONS

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Develop a comprehensive customer service strategy for both U.S. citizens and resident aliens abroad and foreign individuals with U.S. tax obligations.

2. Explore ways to partner with the U.S. Department of State to make tax information available through State Department platforms and to provide tax customer service at U.S. embassies and consulates.
3. Conduct a study to identify barriers to e-filing for overseas taxpayers. The IRS should use the results to formulate a strategy to reduce those barriers and to increase e-file rates by taxpayers located outside of the United States.
4. Deploy an identity proofing solution available to individuals who do not have and are not eligible for an SSN or ITIN and who need to access the FIRE system.
5. Offer customer callback on the international telephone line and provide more detailed information on the IRS website about the services offered on the international telephone line.
6. Revise correspondence and employee procedures to give overseas taxpayers an extended timeframe within which to provide responses to all requests for information or to otherwise take action.
7. Offer virtual TAC appointments to taxpayers overseas. These appointments should offer all services available to taxpayers in the United States, including identity verification for individuals whose returns were flagged for possible ID theft and verification of identity documents for ITIN applicants.

Legislative Recommendation to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6213(b)(2)(A) to allow taxpayers 120 days to request an abatement of tax when a math error notice is mailed to them outside the United States.

Endnotes

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5 National Association for Foreign Student Affairs, Association of International Educators, *Study Abroad Participation by State: Academic Year 2019-2020*, https://www.nafsa.org/sites/default/files/media/document/State-by-State-19-20-study-abroad-statistics.pdf (last visited Nov. 9, 2022). These statistics reflect the suspension of study abroad programs in March 2020. The number of U.S. students studying abroad during previous periods was significantly higher.

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10 *Id.*

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16 IRS, CDW, IRTF, IRTF Entity Database (Oct. 12, 2022).

17 IRC § 911

18 *Id.* *See also* IRS, Pub. 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad (Jan. 26, 2022); IRS, Instructions to Form 2555, Foreign Earned Income (Nov. 1, 2021).

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22 *See* IRC § 6038D(a) & (b); Treas. Reg. § 1.6038D-2(a).

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26 *See* IRS, Pub. 5569, Report of Foreign Bank & Financial Accounts (FBAR) Reference Guide (Mar. 2022).

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