

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.

METHODOLOGY OF THE MOST SERIOUS PROBLEMS 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 referrals from congressional offices and the IRS.

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 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, interest to stakeholders and Congress, and external indicators (*e.g.*, media);
- Barriers to tax law compliance, including cost, time, and burden;
- Taxpayer Advocate Management Information System inventory data;
- Emerging issues; and
- Input from TAS Local Taxpayer Advocates.

1 Prior to 2019, Congress tasked the National Taxpayer Advocate with identifying at least 20 of the most serious problems encountered by taxpayers. The Taxpayer First Act, enacted in 2019, amended the law to require the National Taxpayer Advocate to identify the ten most serious problems encountered by taxpayers. See Pub. L. No. 116-25, 133 Stat. 981 (2019).

2 The Systemic Advocacy Management System (SAMS) is a database through which IRS employees and members of the public can submit issues for TAS’s consideration and on which TAS employees record subsequent action on those issues. IRS, Systemic Advocacy Management System (SAMS), <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams>. TAS reviews and analyzes all SAMS 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), https://www.irs.gov/irm/part1/irm_01-004-013.

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 been working admirably to improve IRS service. However, the IRS still has much work to do including addressing processing delays; mitigating staffing challenges like hiring and training employees to meet the growing volume of taxpayer needs; transparently delivering clear and timely taxpayer guidance; developing qualitative metrics to better assess and improve taxpayer telephone and in-person service delivery; better educating taxpayers to the importance of relying on credentialed return preparers while vigorously enforcing preparer penalties; providing prompt resolution for taxpayers affected by identity theft; expanding IRS online account functionality; protecting international taxpayers from harsh penalties; supporting taxpayers living overseas; and ensuring taxpayers and tax professionals perceive the IRS Independent Office of Appeals as sufficiently independent.

* IRS Filing Statistics for the week ending Oct. 27, 2023. All other “Taxpayer Perspectives” are preferences or attitudes expressed in the “Comprehensive Taxpayer Attitude Survey 2022;” IRS: Research, Applied Analytics, and Statistics.

Most Serious Problem: Processing

Taxpayer Perspective

65%

of returns resulted in refunds*

Why This Is a Most Serious Problem: In 2023, millions of taxpayers once again experienced significant burden and frustration while awaiting refunds or other IRS actions necessary to comply with their tax obligations and resolve tax account issues. These delays not only have negative financial implications for taxpayers awaiting refunds but also for the government, as the IRS must pay interest on overpayments it does not timely refund.

Key Statistics: The IRS had an inventory backlog of over six million pieces of Accounts Management correspondence and amended tax returns as of October 28, 2023. This backlog was identical in size to the backlog of these items at the end of 2022, but nearly 70% of this inventory was overage, almost 20% higher than last year. Refund processing delays resulted in the IRS paying approximately \$1.4 billion in additional interest on individual and business amended returns and applications for tentative refunds.

Most Serious Problem: IRS Hiring, Recruitment, and Training

Taxpayer Perspective

26%

do not trust the IRS to fairly enforce tax laws

92%

agree that the IRS should focus on improving in-person and phone assistance

Why This Is a Most Serious Problem: IRS staffing levels in the past decade have fallen to lows not seen since the 1970s. Insufficient staffing has caused the quality of taxpayer service to decline on telephone lines and at Taxpayer Assistance Centers and significant IRS processing delays to arise.

Key Statistics: In FY 2023, the IRS hired 30,742 employees (including internal hires), but 18% of current IRS employees are eligible for retirement, with estimates of 37% in the next five years. The IRS's time to hire averaged 134 days overall but was over 193 days for external hires where no direct hiring authority exists, likely causing the IRS to lose qualified candidates.

Most Serious Problem: IRS Transparency

Taxpayer Perspective

90%

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: Some taxpayers and tax professionals still struggle to access information from the IRS, including finding clear and timely guidance on which they can rely, determining the status of pending issues, understanding IRS correspondence and whether they must respond to it, and reaching an IRS employee with the knowledge to answer their questions and the authority to resolve their problems.

Key Statistic: Through April 22, 2023, the IRS achieved an 85% Level of Service on key toll-free lines but had only answered 35% of the calls it received. Achieving this high level of service resulted in customer service representatives being idle 34% of the time, contributing to a growth in the backlog of Forms 1040-X. As of the end of the 2023 filing season, it took the IRS about seven months to process Forms 1040-X.

Most Serious Problem: Telephone and In-Person Service

Taxpayer Perspective

92%

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

83%

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

Why This Is a Most Serious Problem: The way the IRS calculates its Level of Service is far more optimistic than the reality taxpayers face when calling the IRS. Several states have just one Taxpayer Assistance Center location for in-person service, and many are not fully staffed or operate on a limited schedule.

Key Statistics: Although the IRS reported a 51% Level of Service in FY 2023, live assistants answered only 29% of total calls. Automated responses answered 18% of the total calls, and the IRS did not answer the rest, or the caller disconnected. The IRS initiated a disconnect on 16.3 million calls in FY 2023. The IRS answered only 34% of the calls seeking an appointment at a Taxpayer Assistance Center.

Most Serious Problem: Return Preparer Oversight

Taxpayer Perspective

89%

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

Why This Is a Most Serious Problem: Even though tax return preparers prepare over half of the individual returns filed each year, many have no credentials and are subject to no minimum standards. Because taxpayers bear responsibility for the accuracy of their own returns, inept or dishonest preparers harm taxpayers by subjecting them to unanticipated tax deficiencies, penalties, interest, overpaid taxes, or lost refunds.

Key Statistics: For TY 2022, almost 60% of Preparer Tax Identification Numbers, which the IRS requires a tax return preparer to use to file a return, belonged to non-credentialed preparers. In the prior tax year, non-credentialed preparers filed about 79% of prepared returns claiming the Earned Income Tax Credit (EITC); their returns account for 91% of the associated audits and generate 94% of EITC audit adjustments.

Most Serious Problem: Identity Theft

Taxpayer Perspective

77%

trust the IRS to protect their tax account records from cyber criminals

Why This Is a Most Serious Problem: Each year, the IRS flags millions of returns for potential fraud. Before receiving their refunds, taxpayers who have filed legitimate returns deal with inadequate notices and difficulties authenticating their identity. Meanwhile, victims of tax related identity theft experience long delays to have their returns processed and receive their refunds.

Key Statistics: In 2022, the IRS suspended processing of 4.8 million tax returns, most with adjusted gross incomes less than 250% of the Federal Poverty Level and requested these taxpayers authenticate their identities before it would release their refunds. In 2023, victims of tax-related Identity theft waited nearly 19 months to have their returns processed and receive their refunds.

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

Taxpayer Perspective

90%

find a personal online account valuable

86%

want to be able to email questions to the IRS

Why This Is a Most Serious Problem: Taxpayers and tax professionals lack a comprehensive online account with integrated digital communication tools to access tax information and services. When taxpayers cannot quickly communicate with the IRS to resolve issues digitally, it negatively affects the taxpayer experience, which in turn impacts taxpayers' overall satisfaction and trust in the IRS.

Key Statistics: During FY 2023, nearly 17 million individuals accessed their online accounts; however, that represents only 11% of the taxpayers who filed a TY 2022 return. Since the IRS launched online services for tax professionals and their clients, Tax Pro, in July 2021, tax professionals and their clients have completed only 11,342 power of attorney authorizations and 3,705 tax information authorizations through Tax Pro while over 3.5 million were filed by paper, e-fax, or Taxpayer Digital Communication.

Most Serious Problem: International

Taxpayer Perspective

44%

feel the IRS devotes too many resources to enforcement

Why This Is a Most Serious Problem: U.S. persons who receive money from abroad or who have certain foreign financial interests and cross-border business activities are potentially subject to a wide range of U.S. reporting requirements. Many of these requirements come with significant penalty exposure when a filing is late, incomplete, or inaccurate. Moreover, the IRS automatically assesses and broadly applies these harsh and often unexpected penalties.

Key Statistics: Between 2018 and 2021, the IRC § 6039F penalty for undisclosed gifts from foreign sources created over 4,000 penalties totaling \$1.7 billion, with an average penalty of over \$425,000 and 92% assessed against individuals most commonly earning \$400,000 or less. During this same period, a yearly average of over 10,000 IRC §§ 6038 and 6038A penalties were assessed against both sole proprietors, over 71% with incomes not exceeding \$400,000, and other business structures, over 60% with less than \$1 million of total assets, for failure to file certain documents totaling nearly \$435 million per year.

Most Serious Problem: Compliance Challenges for Taxpayers Abroad

Taxpayer Perspective

90%

agree that the more guidance from the IRS, the more likely people are to correctly file taxes

89%

want a toll-free number to ask questions

Why This Is a Most Serious Problem: Taxpayers abroad face vast difficulties in complying with their U.S. tax obligations, as they face filing requirements not typically applicable to taxpayers living in the United States. The IRS offers limited assistance and guidance, and taxpayers often lack accessible, real-time customer service assistance from the IRS.

Key Statistics: According to the U.S. Department of State, roughly nine million U.S. citizens reside abroad as of 2020. The IRS issued over 1.3 million notices and other correspondence to foreign addresses in FY 2021 and over 1.6 million in FY 2022.

Most Serious Problem: Appeals

Taxpayer Perspective

74%

trust the IRS to fairly enforce the tax laws

Why This Is a Most Serious Problem: The lack of independence and operational efficiency in the IRS Independent Office of Appeals (Appeals) undermines taxpayer trust and prolongs dispute resolution.

Key Statistics: In FY 2023, Appeals hired 91 new Appeals Officers. Of those, 87% were current IRS employees, and only 13% were external hires. Of the internal hires, 77% came directly from IRS Compliance positions. From FY 2022 to FY 2023, the average wait for a taxpayer to receive an Appeals conference after assignment to an Appeals Officer increased from 116 days to 146 days, a nearly 26% increase in states with a permanent Appeals presence. In areas with little or no Appeals presence assigned, the average wait time doubled from 120 days to 243 days.



PROCESSING

Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

In 2023, millions of taxpayers once again experienced significant burden and frustration while awaiting refunds or other IRS actions necessary to comply with their tax obligations and resolve tax account issues.¹ Throughout 2023, the IRS's backlog associated with paper-filed original and amended returns continued to delay the processing of much-needed taxpayer refunds and assistance with tax account issues. However, there was some good news during the 2023 filing season. Taxpayers calling the 1040 toll-free telephone line² experienced shorter wait times and were more likely to get through to speak with a customer service representative (CSR), but answering the phones is only half the battle.³ Because the IRS prioritized telephone service over other IRS operations such as processing amended returns, working identity theft returns, and responding to taxpayer correspondence, Accounts Management (AM) CSRs responsible for answering calls were not able to process amended returns and answer taxpayer correspondence. This created a new backlog by the end of the 2023 filing season.⁴ As a result, individual and business taxpayers experienced delays. These delays not only have negative financial implications for taxpayers awaiting refunds but also for the government, as the IRS must pay interest on overpayments it does not timely refund.⁵

¹ National Taxpayer Advocate Fiscal Year 2024 Objectives Report to Congress iii (Preface: *National Taxpayer Advocate's Introductory Remarks*), <https://www.taxpayeradvocate.irs.gov/reports/2024-objectives-report-to-congress/preface/>.

² Individual taxpayers can call 1-800-829-1040, 7 a.m. to 7 p.m. local time, Monday through Friday.

³ IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Accounts Management (AM) (week ending Apr. 22, 2023); see Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In Person Service*, *infra*.

⁴ National Taxpayer Advocate Fiscal Year 2024 Objectives Report to Congress iii (Preface: *National Taxpayer Advocate's Introductory Remarks*), <https://www.taxpayeradvocate.irs.gov/reports/2024-objectives-report-to-congress/preface/>; see Most Serious Problem: *Identity Theft: Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft*, *infra*.

⁵ IRC § 6611.

EXPLANATION OF THE PROBLEM

The IRS typically enters each new calendar year with a carryover inventory of unprocessed original and amended returns, correspondence, and AM cases (*e.g.*, requests for account adjustments). Figure 2.1.1 shows the carryover inventory for 2018 through 2022, along with the existing unprocessed inventory on October 28, 2023. Due to varied filing due dates and constant receipts throughout the year, it is normal for the IRS to carry some volume of unprocessed inventory into the next calendar year. For this reason, both the volume of inventory and processing timeliness determine the success of the IRS's processing effort. Typically, year-end overage inventory and backlogs grow during the subsequent filing season as new tax return filings generate additional taxpayer correspondence and the need for more processing actions.⁶ However, during the pandemic, the inventory backlog reached all-time highs. Unfortunately, overage inventory is not just a product of the pandemic.⁷ As of October 28, 2023, unprocessed amended returns, correspondence, and AM cases totaled 6.2 million, with 69.5 percent of this inventory classified as overage, an indication that the IRS must do more to reduce the backlog and overage cases carried over into each new filing season.

FIGURE 2.1.1, Volume of Unprocessed Amended Returns, Correspondence, and AM Cases Comparing Calendar Years (CYs) 2018-2022 and 2023 Through October 28, 2023⁸

	12/29/2018	12/28/2019	12/26/2020	12/25/2021	12/31/2022	10/28/2023
Unprocessed Correspondence and AM Cases (Requests for Account Adjustments)	1.3 mil	1.9 mil	3.2 mil	5.5 mil	4.9 mil	4.3 mil
Unprocessed Amended Returns (Individual and Business)	0.4 mil	0.5 mil	0.8 mil	2.5 mil	1.3 mil	1.9 mil
Total Unprocessed AM Inventory	1.7 mil	2.4 mil	4.0 mil	8.0 mil	6.2 mil	6.2 mil
Percentage of Unprocessed Inventory Classified as Overage	35.2%	42.7%	44.6%	60.3%	49.7%	69.5%

In September 2022, to improve customer service, Treasury Secretary Janet Yellen committed to increasing IRS telephone service by answering 85 percent of calls to the toll-free 1040 line, cutting wait times for telephone service in half during Filing Season (FS) 2023, and fully staffing all IRS Taxpayer Assistance Center (TAC) offices.⁹ Though resulting improvements to customer service were praiseworthy, the shifting of resources from processing activities to telephone service detracted from the IRS's previous backlog progress, rendering the volume of AM unprocessed amended returns, cases, and taxpayer correspondence on April 22, 2023, similar to the volume experienced during the same April 22, 2022, time period, as shown in Figure 2.1.2. During this time, the IRS transferred resources from one IRS activity to another, creating a new problem to solve an old one.

⁶ IRS, AM Inventory Report (AMIR), National Inventory Age Report (weeks ending Dec. 31, 2022, and Apr. 22, 2023).

⁷ Overage inventory refers to correspondence, amended returns, AM cases, and other work products that the IRS has not processed within the prescribed processing timeframe for the identified work product.

⁸ IRS, AMIR, National Inventory Age Report (weeks ending Dec. 29, 2018; Dec. 28, 2019; Dec. 26, 2020; Dec. 25, 2021; Dec. 31, 2022; and Oct. 28, 2023, respectively).

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

FIGURE 2.1.2, Volume of AM Unprocessed Amended Tax Returns, Correspondence, and AM Cases, Weeks Ending April 23, 2022, and April 22, 2023¹⁰

	4/23/2022	4/22/2023
Unprocessed Correspondence and AM Cases	5.3 mil	5.0 mil
Unprocessed Amended Returns	2.0 mil	2.4 mil
Total Unprocessed AM Inventory	7.3 mil	7.4 mil

Refund delays can have a devastating impact for many taxpayers, but they also have a costly ramification for the government. Based on average processing timeframes and refund amounts, CY 2022 amended returns and tentative refund application processing delays resulted in the IRS paying approximately \$1.4 billion in additional interest, as shown in Figure 2.1.3.

FIGURE 2.1.3, Return Volume, Refund Volume, Average Processing Timeframe, Average Refund Amount, and Interest Paid by Return Type, CY 2022¹¹

Return Type	Volume of Returns Processed	Volume of Refunds Issued	Average Processing Timeframe in Days	Average Refund Amount	Interest Paid Due to Processing Delays
Form 1040-X, Amended U.S. Individual Income Tax Return	4.2 mil	2.3 mil	162	\$4,317	\$135.9 mil
Form 1045, Application for Tentative Refund	439	385	150	\$47,679	\$295,934
Form 1139, Corporation Application for Tentative Refund	3,003	2,792	87	\$952,011	\$33.3 mil
Form 941-X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund	2.1 mil	1.6 mil	124	\$68,581	\$1.2 bil
Form 1120X, Amended U.S. Corporation Income Tax Return	88,134	23,668	168	\$359,710	\$27.4 mil
Total	6.4 mil	3.9 mil			\$1.4 bil

¹⁰ IRS, AMIR, National Inventory Age Report (weeks ending Apr. 23, 2022, and Apr. 22, 2023).

¹¹ IRS, Compliance Data Warehouse (CDW), Individual Master File (IMF) and Business Master File (BMF) (Sept. 2023); IRS response to TAS information request (Sept. 2, 2023). Form 1045 data: Because CDW's IMF extract does not contain the carryback claim date, we approximated the Form 1045 refund processing time based on the date of the most relevant adjustment transaction code (TC) 295. Additionally, we made a downward adjustment to the Form 1045 processing time in the amount of 88 days, which is derived from the average number of days between the carryback claim date and the TC 295 date for Form 1139 filers in BMF who received a refund. This adjustment reflects an approximation and was necessary due to the carryback claim date most often exceeding the TC 295 adjustment date. Refunds generated from Forms 1045 and 1139 began accruing interest on the 46th day after the form was received. As such, we adjusted to estimate the amount of the interest that accrued after the filing of the amended return or application for tentative refund. Form 941-X data: A significant portion of Form 941-X filings include claims for COVID-19-related credits, the bulk of which stems from Employee Retention Credits (ERCs). Interest on these credits and other amended returns, such as Forms 1040-X and 1120X, generally accrue from the presumptive date of the return filing. We produced the interest estimate for these amended returns by computing a daily interest amount – equal to the total interest subsequent to the amended return date divided by the total days between the ERC transaction date (presumptive filing date) and the date of the refund – and multiplying by the total days elapsed between the amended return date and the date of the refund. For interest paid data, average processing timeframes are based on those returns that have completed processing as of September 28, 2023, and do not consider timeframes associated with returns that the IRS received that remain unprocessed. Amounts greater than one million have been rounded.

Additionally, refund-related processing delays can lead to financial difficulties for businesses relying on refunds for the payment of operating expenses, and such delays impact individual taxpayers who rely on refunds to pay necessary living expenses. Delayed responses and processing actions hinder individual and business taxpayers, affecting their *rights to be informed, to finality, and to quality service*.¹²

Though the largest portion of the IRS's FS 2023 backlog resided in AM, it is necessary to view the backlog from a wider perspective when exploring the factors that contribute to processing backlogs. Areas where backlogs continue to persist include:

- Processing of amended returns;
- Processing of correspondence and AM cases;
- Processing of paper returns; and
- Resolution of returns suspended in the processing stream.

Increasing CSR training and implementing a balanced workload approach could improve processing productivity without causing high CSR idle time or the creation of new backlogs, but we acknowledge it may decrease the speed at which a CSR can answer a call. It is a delicate workload balancing act, but the IRS must put the year-after-year backlog behind us once and for all.

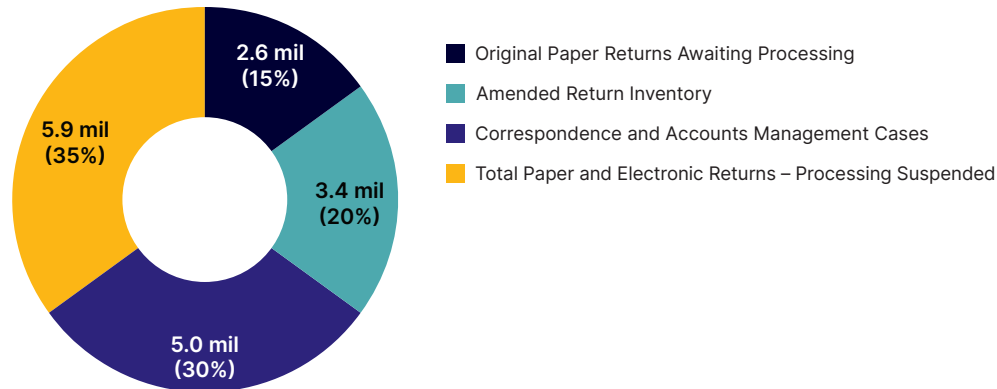
ANALYSIS

As shown in Figure 2.1.4, the IRS backlog has a variety of components, with each component typically resulting from a processing activity requiring human intervention. At the end of FS 2023, the IRS's processing backlog consisted of approximately 16.9 million documents. Of these documents, 2.6 million (15 percent) were originally filed paper individual and business tax returns while 3.4 million (20 percent) were individual and business amended tax returns, and 5.0 million (30 percent) involved paper correspondence from individual and business taxpayers providing the IRS with documentation, seeking account information, or requesting account resolution.¹³ The remaining 5.9 million (35 percent) was attributable to individual and business tax returns suspended in the processing stream due to IRS filters and processing difficulties.¹⁴ The IRS has made progress in several of these processing areas but has continued to face challenges with the timely processing of amended returns, correspondence, and AM casework.

12 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Dec. 6, 2023). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

13 IRS, AMIR National Inventory Age Report (week ending Apr. 22, 2023). Row totals and column totals may differ because of rounding.

14 Suspended return totals include potential or suspected identity theft cases that are fully processed returns prevented from posting to the IRS's Master File pending authentication of the taxpayer's identity. The IRS retains these cases in its "unpostable" inventory and permits their release to post upon taxpayer authentication.

FIGURE 2.1.4¹⁵**Components of the IRS Backlog at the End of Filing Season 2023****Amended Returns and Applications for Tentative Refund**

The processing backlog associated with amended returns and the application for tentative refunds resulted in refund delays for millions of taxpayers. This backlog included Forms 1040-X, 1045, 1139, 941-X, and 1120X. Many taxpayers filed refund claims associated with the Employee Retention Credit (ERC), net operating losses, or other relief provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).¹⁶ Of the amended returns and applications for tentative refunds filed from January 1, 2022, through December 31, 2022, and processed as of September 28, 2023, individuals waited approximately 5.5 months for Form 1040-X refunds with average refunds exceeding \$4,000 and five months for Form 1045 refunds averaging almost \$48,000.¹⁷ Similarly, businesses waited almost three months to receive Form 1139 refunds with refunds averaging more than \$950,000, about four months to receive Form 941-X refunds that averaged approximately \$69,000, and 5.5 months for Form 1120X refunds that averaged almost \$360,000.¹⁸

Employee Retention Credit

During the COVID-19 pandemic, Congress provided relief to incentivize employers to keep employees on the payroll despite pandemic-related difficulties. It further extended and expanded ERC provisions that helped businesses combat pandemic-related hardships and retain employees during the period of March 12, 2020, through December 31, 2020, allowing for the continuation of the credit through the end of 2021.¹⁹ These legislative changes increased the number of amended returns filed to claim the ERC credit and significantly contributed to the IRS's already existing backlog of amended returns.

Since the inception of the ERC, taxpayers have struggled to determine eligibility, and the IRS has likewise struggled to process these claims, due to both the volume and the complexity of the law. This complexity and the lucrative nature of the credit led to a host of scams marketed by unscrupulous actors providing bad

¹⁵ IRS, AMIR National Inventory Age Report (week ending Apr. 22, 2023). Row totals and column totals may differ because of rounding.

¹⁶ See Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, §§ 2301-2308, 134 Stat. 281 (2020).

¹⁷ IRS, CDW, IMF and BMF (Sept. 2023). Note that average processing timeframes are based on those returns that have completed processing as of September 28, 2023, and do not consider timeframes associated with returns that were received yet remain unprocessed.

¹⁸ IRS, CDW, IMF and BMF (Sept. 2023). Note that average processing timeframes are based on those returns that have completed processing as of September 28, 2023, and do not consider timeframes associated with returns that were received yet remain unprocessed.

¹⁹ See Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020); American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021); Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 § 80604, 135 Stat. 429 (2021).

or misleading advice or encouraging small business owners to claim the credit regardless of eligibility. ERC claim processing timeframes had declined to a nine- to ten-week average (down from the 55-week average experienced when the credit was introduced), but the IRS later stalled the processing as it was concerned that business owners were being victimized. As of September 28, 2023, TAS Research estimates that the IRS had processed over 3.5 million ERC claims filed on original and amended Forms 941, 943, and 944 and had credited approximately \$230 billion on these claims – claims originally estimated by the Congressional Budget Office to cost the government only \$85 billion.²⁰ As shown in Figure 2.1.5, taxpayers filed the vast majority of ERC claims on original or amended Forms 941, with a significant volume of unprocessed Form 941-X filings still awaiting processing at the end of fiscal year (FY) 2023.

FIGURE 2.1.5, Forms 941-X Received; ERC Claims Processed and Credited; and Average Weeks for Processing, CYs 2020-2022 and 2023 Through September 30, 2023²¹

Year Claim Filed	Total 941-X Claims Filed	Total Processed Forms 941-X With ERC Credits Reflected on Taxpayer Accounts	Total Amount of Forms 941-X ERC Claims Paid	Average Weeks for ERC Processing
2020	338,678	13,145	\$2,579,434,147	55
2021	738,422	718,462	\$52,138,381,872	19
2022	1,369,000	1,483,432	\$99,950,193,819	9
January 1, 2023, Through July 31, 2023	1,743,353	785,832	\$38,022,480,920	10
August 1, 2023, Through September 30, 2023	439,043	841	\$57,093,317	1
Total	4,628,496	3,001,712	\$192,747,584,075	
Form 941-X Claims Still Pending on September 30, 2023	800,224			

Starting in mid-July, the IRS all but stopped processing these returns while it revised its procedures to handle the complexity and increase in aggressive and misleading marketing that may have lured honest small businesses and organizations into erroneously claiming the credit.²² In September 2023, the IRS encouraged businesses to review IRS guidance to determine eligibility and worked to develop initiatives to

20 IRS, CDW, BMF and Business Return Transaction File (BRTF) (Sept. 28, 2023); letter from Congressional Budget Office, to Sen. Kyrsten Sinema, *Re: The Budgetary Effects of the Employee Retention Tax Credit During the Coronavirus Pandemic* (July 16, 2021), <https://www.cbo.gov/system/files/2021-07/57365-Sinema.pdf>.

21 IRS, CDW, BMF and BRTF (Sept. 28, 2023); IRS, JOC, AM Research, Analysis and Data (RAD) Reports: COVID, COVID Business Credits (FY 2023 through Sept. 30, 2023); National Taxpayer Advocate 2022 Annual Report to Congress 37 (Most Serious Problem: Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_01_Processing-Delays.pdf; IRS, JOC, AM RAD Report: COVID, COVID Business Credits (Nov. 18, 2023). As of November 18, 2023, 966,345 unprocessed 941-X ERC claims were pending.

22 IRS, IRS Operations: Status of Mission-Critical Functions, Status of Processing Form 941, Employers Quarterly Federal Tax Returns (Oct. 27, 2023), <https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions>.

allow businesses that fell victim to aggressive promoters to withdraw unprocessed erroneous claims while formulating a settlement program to make it easier for victims to make repayment of improperly received ERC refunds.²³

Also in September 2023, the IRS announced a moratorium on the processing of ERC claims newly filed between September 14, 2023, and December 31, 2023.²⁴ Though it indicated it would continue to process ERC claims filed before the moratorium at a slower pace due to stricter compliance reviews, the IRS has all but ceased processing as taxpayers continue to file new ERC claims at a significant rate.

At the end of FY 2023, the IRS had about 800,000 unprocessed Form 941-X claims, 95 percent (762,000) of which contained claims for the ERC credit.²⁵ Though over 86 percent of these unprocessed claims were less than 120 days old at FY 2023 year-end, the dynamics of this inventory are changing rapidly. From mid-August through mid-October 2023, taxpayers filed ERC claims at an average weekly rate of approximately 45,000 while IRS processing of these claims slowed to an average weekly rate of just 150.²⁶ Continuing at this rate, the IRS will carry over almost 1.3 million ERC claims into FS 2024. With FS 2024 quickly approaching and Treasury's continued commitment to deliver an 85 percent level of telephone service, the National Taxpayer Advocate is very concerned that the IRS will not begin working the majority of these claims until after the close of FS 2024.

These stoppages and delays have left taxpayers with legitimate ERC claims no way to check on the status of their claims and no idea how long processing might take. Neither the IRS nor business taxpayers experiencing financial hardship can afford to wait for illegitimate claims to be voluntarily withdrawn before the IRS addresses and processes legitimate claims. To provide the relief Congress intended, it is critical that the IRS develop an improved screening process to better identify legitimate claims and significantly increase the volume of ERC claims it processes (allows or disallows in full or part) or assigns to an auditor to begin an examination.

Correspondence and Accounts Management Cases

The IRS Needs to Improve the Balance Between Telephone and Processing Services, Train Customer Service Representatives in Remote Call Centers to Perform Processing Duties, and Provide Taxpayers the Service to Which They Are Entitled

Taxpayer correspondence, AM cases, and amended returns combined comprised about 50 percent of the IRS's processing backlog at the end of FS 2023.²⁷ The IRS's Submission Processing function receives and works the least complex amended returns. The remaining paper correspondence and paper-filed amended returns are then sorted, scanned, and converted to digital images that CSRs primarily in the IRS's ten campus-based call

23 IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 14, 2023), <https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros>; IRS News Release, IR-2023-193, IRS Announces Withdrawal Process for Employee Retention Credit Claims; Special Initiative Aimed at Helping Businesses Concerned About an Ineligible Claim Amid Aggressive Marketing Scams (Oct. 19, 2023), <https://www.irs.gov/newsroom/irs-announces-withdrawal-process-for-employee-retention-credit-claims-special-initiative-aimed-at-helping-businesses-concerned-about-an-ineligible-claim-amid-aggressive-marketing-scams>.

24 IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 14, 2023), <https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros>.

25 IRS, RAD Report, COVID Business Credits (week ending Sept. 30, 2023).

26 IRS, RAD Report, COVID Business Credits (week ending Sept. 30, 2023). The time period covers August 19, 2023, through October 14, 2023.

27 IRS, Wage and Investment (W&I) Division data (week ending Apr. 22, 2023). Row totals and column totals may differ because of rounding.

centers use to work.²⁸ Approximately 14,800 campus-based call center CSRs performed both processing and phone assistance duties and accounted for about 70 percent of the IRS's total AM CSR staff at the end of FS 2023.²⁹ Although another 6,500 CSRs staffed an additional 15 remote calls centers across the United States, the IRS did not train these remote call center CSRs to complete processing duties, thus limiting them to providing only telephone assistance.³⁰

Increased CSR telephone staffing during FS 2023 worked to meet Treasury's goal of answering 85 percent of the calls to its 1040 toll-free line; however, results were less favorable on numerous other phone lines and less than favorable from a processing perspective. The increased ratio of CSRs staffing telephones triggered and perpetuated a greater imbalance between phones and processing, resulting in backlogs that continue to negatively impact taxpayer service. From January through April 22, 2023, CSRs spent 3.73 million hours staffing telephones to achieve a Level of Service in excess of 85 percent, but it came with a huge cost.³¹ CSRs spent 1.27 million of those hours waiting for the phone to ring (idle time) while amended return, correspondence, and AM case inventories continued to climb.³² At the conclusion of FS 2023, the IRS redirected campus-based CSR resources to address processing backlogs, but lack of training prevented remote call center CSRs from contributing to this paper reduction effort.³³

The IRS needs to strike a better balance between telephone service and processing inventory. With increased hiring and paperless processing, the IRS should reexamine the use of CSRs in its remote call centers. By providing remote CSRs with the training needed to perform processing activities, the IRS could improve its flexibility between telephone and processing duties (reducing available time between phone calls when telephone demand is low), expand CSR authority to perform more account resolution actions while assisting taxpayers over the phone, and reduce the volume of unprocessed cases, correspondence, and amended returns carried into each new filing season. Though increased technology may reduce some portion of the IRS's processing and telephone demand, increased training and utilization of remote call center CSRs could improve processing and telephone service levels throughout the year, improving the taxpayer experience for all taxpayers who call and correspond with the IRS.

Systemic First-Time Penalty Abatements Would Increase Fairness and Reduce Correspondence and Calls to the IRS's Toll-Free Telephone Line

Calls and correspondence received in AM often concern taxpayer requests for penalty abatement. Though CSRs field many of these requests over the toll-free telephone line, taxpayers frequently submit these requests in writing, necessitating CSR consideration and account action and increasing the volume of paper the IRS must process. In other cases, taxpayers who are unaware the IRS will consider penalty relief miss abatement opportunities and are left to unfairly pay more than those taxpayers aware of the administrative relief available.³⁴

28 Internal Revenue Manual (IRM) 3.13.6.1.1, Background (Dec. 1, 2017), https://www.irs.gov/irm/part3/irm_03-013-006; IRM 3.13.6.2.4 Batch Cover Sheet - Outside the Scope of the Campus Work Type (Sept. 2, 2021), https://www.irs.gov/irm/part3/irm_03-013-006; and IRM 21.1.1.3, Customer Service Representative (CSR) Duties (June 2, 2023), https://www.irs.gov/irm/part21/irm_21-001-001. "All employees assigned to Accounts Management, Field Assistance and Compliance Services are considered CSRs."

29 IRS response to TAS information request (Oct. 2, 2023). As of April 22, 2023, the IRS indicated that 14,763 CSRs staffed campus-based call centers while 6,451 CSRs worked in IRS remote call centers.

30 IRS response to TAS information request (Sept. 2, 2023). As of April 22, 2023, the IRS indicated that 14,763 CSRs staffed campus-based call centers while 6,451 CSRs worked in IRS remote call centers.

31 IRS, Ready Agent Hours (RAH) Report (Jan. 1, 2023, through Apr. 22, 2023).

32 *Id.*

33 IRS response to TAS information request (Oct. 2, 2023). CSRs at remote call centers are only trained to handle telephone traffic while campus CSRs are trained on telephone inquiries, correspondence, and adjustment inventory. This is in keeping with the longstanding decision to have remote call site CSRs maintain their primary focus on phone calls to service post-filing season customer demand while allowing campus-based CSR resources to address the paper reduction effort.

34 IRC § 7803(a)(3)(C) provides that taxpayers have the "right to pay no more than the correct amount of tax."

Each year, millions of taxpayers file untimely returns or make late payments resulting in the IRS assessing failure-to-file, failure-to-pay, or failure-to-deposit penalties.³⁵ Under existing administrative procedures, the IRS will provide “first-time abatement” (FTA) penalty relief for failure-to-file, failure-to-pay, and failure-to-deposit penalties. The administrative abatement is provided if a taxpayer is otherwise compliant and has not used FTA within the prior three years.³⁶ However, many taxpayers are unaware of this administrative relief provision. The IRS generally provides FTA only if a taxpayer requests it or requests reasonable cause relief.³⁷

As of October 2023, the IRS had granted FTA to nearly 125,000 taxpayers for penalties associated with filing their 2022 tax returns.³⁸ Another 1.4 million taxpayers appeared to be eligible for FTA penalty relief but did not request it.³⁹ A relatively small percentage of sophisticated taxpayers (or perhaps taxpayers paying for professional assistance) received penalty abatements just by asking while the overwhelming majority of taxpayers unaware of FTA did not request or receive such relief. The National Taxpayer Advocate strongly recommends that for FS 2024 the IRS systemically apply FTA to all eligible taxpayers. The systemic application of FTA would have the two-fold benefit of increasing taxpayer fairness while reducing the volume of calls and correspondence received regarding these penalty abatement requests.

Relatedly, TAS proposes the IRS grant taxpayers who qualify for both reasonable cause and FTA penalty relief the ability to substitute a reasonable cause defense in lieu of FTA. The IRS should not force taxpayers to use their once-in-three-years FTA waiver when reasonable cause applies. The IRS is considering, and TAS supports, systemically applying FTA to promote fairness and reduce burdens for both taxpayers and the IRS. TAS plans to continue working with the IRS to ensure that similarly situated taxpayers receive equitable treatment in the abatement of these penalties. Until then, taxpayers who are assessed one of these penalties may still have time to request penalty abatement and should contact the IRS for abatement consideration.

Paper Returns Awaiting Processing

At the end of FS 2023, original paper returns awaiting processing comprised only 15 percent of the backlog, down from 46 percent at the end of FS 2022.⁴⁰ This was a welcome change. But those who experienced delays still faced multiple challenges. Historically, original paper returns were a significant portion of the IRS’s processing backlog, primarily due to the human resources required for manual data entry of return information. TAS has long advocated for improvements that would alleviate paper processing delays resulting from the IRS’s manual data entry method of processing paper-filed tax returns.⁴¹ The good news is that the IRS is moving in the right direction to reduce paper processing delays, which will translate to quicker refunds and faster IRS responses. Two solutions that have figured prominently in discussions for combating paper return backlogs involve the implementation of document scanning and the expansion of electronic filing.

35 IRS, 2022 Data Book, Table 26, Civil Penalties Assessed and Abated, by Type of Tax and Type of Penalty, Fiscal Year 2022, at 60 (2023), <https://www.irs.gov/pub/irs-pdf/p55b.pdf>.

36 IRM 20.1.1.3.3.2.1, First Time Abate (FTA) (Mar. 29, 2023) (providing an administrative waiver from failure-to-file penalties under IRC §§ 6651(a)(1), 6698(a)(1), or 6699(a)(1)); failure-to-pay penalties under IRC § 6651(a)(2) and 6651(a)(3); and failure-to-deposit penalties under IRC § 6656), https://www.irs.gov/irm/part20/irm_20-001-001r. See also IRS, Penalty Relief Due to First Time Abate or Other Administrative Waiver, <https://www.irs.gov/payments/penalty-relief-due-to-first-time-abate-or-other-administrative-waiver> (last visited Dec. 20, 2023).

37 IRM 20.1.1.3.3.2.1(3), First Time Abate (FTA) (Mar. 29, 2023), https://www.irs.gov/irm/part20/irm_20-001-001r. IRS personnel can apply FTA unilaterally if they identify taxpayer eligibility on their own initiative.

38 IRS, CDW, IMF, TY 2022 Returns (Oct. 2023). Data reflects FTAs for returns with tax periods ending in 2022. The number of FTAs may increase as time progresses, allowing for additional taxpayers to request and receive FTA relief. The IRS confirmed the TAS estimate but was unable to complete the verification necessary to arrive at the exact number.

39 *Id.*

40 IRS, W&I, Weekly Report (weeks ending Apr. 22, 2022, and Apr. 22, 2023). Row totals and column totals may differ because of rounding.

41 National Taxpayer Advocate 2022 Annual Report to Congress 39 (Most Serious Problem: *Processing Delays: Paper Backlogs Caused Refund Delays for Millions of Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_01-Processing-Delays.pdf.

Implementation of Scanning Technology

In 2023, the IRS implemented the use of scanning technology to digitize and process certain returns, starting with Forms 1040, 940, and 941. If successful, full implementation of Form 1040 scanning, along with the scanning of Forms 940 and 941, would dramatically reduce the number of paper tax returns that require manual data entry. Reducing and eventually eliminating manual data entry will reduce errors and processing delays. In the next phase, the IRS will need to expand document scanning to other high volume, paper-filed individual and business tax returns. The IRS has high aspirations for accomplishing the paperless processing of all tax returns by FS 2025 and will provide taxpayers the option to submit paperless correspondence to the IRS as early as FS 2024.⁴² By July 14, 2023, however, the IRS had scanned only about 500,000 Forms 940, just over 200,000 Forms 941, and 38,000 paper Forms 1040 into the IRS's Modernized e-File (MeF) processing system.⁴³ That is a small portion compared to the nearly 55 million paper tax returns the IRS receives each year.⁴⁴ But it is a start. As part of its Strategic Operating Plan (SOP), the IRS stated a goal to scan and digitize millions of business and individual tax returns in 2023; however, with less than one million scanned by mid-July, reaching this goal looks unlikely, but one can hope.⁴⁵

It is imperative that the IRS get this right, as paperless processing will not only improve processing time for issuing taxpayer refunds but also reduce filing, storage, and retrieval costs and delays and conserve IRS resources it can redirect to other post-processing activities to improve the customer experience. If successful, it would be a win-win for taxpayers and tax administration.

Electronic Filing Considerations

Electronic filing further reduces the volume of paper-filed returns IRS campuses receive that require manual processing. E-filing generally provides a faster, more error-free processing experience. As of October 20, 2023, taxpayers filed approximately 12.7 million (eight percent) individual income tax returns on paper.⁴⁶ Considering about ten years ago only 83 percent of individuals filed electronically, we have made progress.⁴⁷ Unfortunately, many taxpayers still cannot electronically file the IRS's own forms due to the IRS's own systems. The IRS is painfully aware of these challenges; therefore, several SOP initiatives focus on correcting and removing these barriers to allow these taxpayers a path forward. However, we must not forget that many taxpayers choose to or have no other option but to file paper returns for a variety of reasons. In these instances, the IRS must accommodate taxpayers' choices without imposing unreasonable delays.

Direct File

One solution the IRS is exploring is a pilot, Direct File, to provide an agency-run, free, direct e-file tool as an option for taxpayers. The IRS is looking to implement the test pilot of the system during FS 2024.⁴⁸ The IRS does not intend the initiative to replace existing electronic filing options, rather to provide an additional option for taxpayers. As part of this initiative, the IRS will need to address the impact of its Direct File tool's inability to file state tax returns and potential negative consequences to state taxing authorities. And it will need to build configuration-driven software; update the software to keep pace with tax law changes;

42 U.S. Department of the Treasury Press Release, IRS Launches Paperless Processing Initiative (Aug. 2, 2023), <https://home.treasury.gov/news/press-releases/jy1666>.

43 IRS News Release, IR-2023-126, Building on [FS] 2023 Success, IRS Continues to Improve Service, Pursue High-Income Individuals Evading Taxes, Modernize Technology (July 14, 2023), <https://www.irs.gov/newsroom/building-on-filing-season-2023-success-irs-continues-to-improve-service-pursue-high-income-individuals-evading-taxes-modernize-technology>.

44 IRS, Pub. 6292, Fiscal Year Return Projections for the United States: 2023–2030, 4 (June 2023), <https://www.irs.gov/pub/irs-pdf/p6292.pdf>.

45 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 12 (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

46 IRS, FS Statistics Weekly Report (week ending Oct. 20, 2023).

47 IRS, Pub. 55-B, Internal Revenue Service 2013 Data Book iii (Mar. 2014), <https://core.publish.no.irs.gov/pubs/pdf/p55-b--2014-03-00.pdf>.

48 IRS, Pub. 5788, IRS Report to Congress: Inflation Reduction Act § 10301(1)(B) IRS-Run Direct E-File Tax Return System 20 (May 2023), <https://www.irs.gov/pub/irs-pdf/p5788.pdf>.

and ensure taxpayer information is private, secure, and protected from fraud. The IRS will also need to devote substantial customer service and support for its e-file tool for this program to be a success. As the IRS develops and implements its Direct File pilot, TAS will continue to work with the IRS to provide comments and recommendations.

Electronic Filing Expansion

Despite the significant benefits of electronic filing, there are approximately 150 to 200 IRS forms that taxpayers cannot e-file with the IRS.⁴⁹ During 2023, the IRS worked with internal and external stakeholders to determine which additional returns it would pursue to include in its 2024 electronic filing program, considering factors such as tax return volume, cost, and the effort involved in making the return acceptable via electronic filing.

Because of resources and existing backlogs, the IRS should consider the work involved in the processing of paper returns in addition to the effort required to simply develop the return for electronic filing acceptance. Backlogs in processing amended returns and applications for tentative refund, along with interest costs, suggest that the IRS should prioritize these returns when determining forms to include in the IRS's electronic filing program. And the IRS should include all returns it accepts electronically to the IRS's MeF for automated processing – including Form 1040-X, which taxpayers can e-file, but the IRS still must manually process, resulting in unnecessary refund delays and potential errors.

Electronic Filing Rejections

Although the National Taxpayer Advocate applauds the IRS's efforts to decrease fraud and correct errors on original electronic submissions, she thinks there are multiple options to accomplish that goal without the IRS rejecting proper electronically filed valid returns, especially returns requesting refunds. Because filing a tax return is also a significant trigger for determining the application of penalties and the start of assessment and refund statutes, this is an important issue. Unfortunately, the rejection of valid tax returns for electronic filing purposes has been a topic of controversy for some time.

The Tax Court's four-part test (the *Beard* test) for determining whether a document is sufficient for statute of limitation purposes should be the standard.⁵⁰ In other words, did the document constitute a "return?" To be a valid return, the document must: 1) provide sufficient data to calculate tax liability; 2) purport to be a return; 3) be an honest and reasonable attempt to satisfy the requirements of the tax law; and 4) be executed by the taxpayer under penalties of perjury.⁵¹ Noting that the IRS rejects a significant volume of valid returns solely based on electronic filing criteria, the National Taxpayer Advocate continues to advocate that the IRS accept these electronic returns and direct them to an appropriate treatment stream for resolving discrepancies.⁵² Though the need for return perfection may still result in delays, the taxpayer would receive an acknowledgement of receipt and avoid the additional burden and delays associated with filing a paper return. The IRS can accept the e-filed return, assign it for issue resolution, determine if it can process the return, or determine if the return is potentially fraudulent.

⁴⁹ IRS response to TAS information request (Aug. 10, 2023).

⁵⁰ *Beard v. Comm'r*, 82 T.C. 766, 777 (1984), *aff'd per curiam*, 793 F.2d 139 (6th Cir. 1986).

⁵¹ *Id.*

⁵² National Taxpayer Advocate 2021 Annual Report to Congress 139 (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.

During FY 2023, 150.9 million individuals filed an electronic Form 1040, and 19.4 million taxpayers experienced rejection of their return.⁵³ Nearly 14 million taxpayers were able to achieve return acceptance while nearly 5.6 million taxpayers had a Form 1040 return that went unfiled or was filed on a paper form. Over 3.7 million taxpayers could not resubmit their Form 1040 electronically because the primary Social Security number (SSN) was already used on a previously accepted return.⁵⁴ In many cases, taxpayers were readily able to correct the rejected return and resubmit the return electronically. In other cases, taxpayers had no choice and had to resubmit the return on paper.

For these electronic filing rejections, TAS strongly encourages the IRS change its filters and allow taxpayers to file the returns electronically. Many of these rejected documents are valid returns, though there may be an error or problem with the information reflected on the return. For example, one type of rejection occurs when a return is filed reflecting a dependent's SSN that has already been included on another tax return as a dependent. The rejection requires the taxpayer to file a paper return even though that taxpayer may be entitled to claim the dependent. Likewise, once a return is filed reflecting a primary SSN, the IRS will reject any e-filed return reflecting the same primary SSN – even if the previous filing was erroneous or fraudulent and the second submission was that of the legitimate taxpayer. If a taxpayer was the victim of fraud, the IRS still requires the taxpayer to file a paper return adding additional burden for the victim. In tax year (TY) 2022, the volume of individual returns electronically rejected because the primary SSN was used on a previously filed electronic return for the same tax period made this the second most frequent reason for electronic filing rejection.⁵⁵ Duplicated dependency SSNs were the ninth most frequent cause for electronic filing rejection.⁵⁶

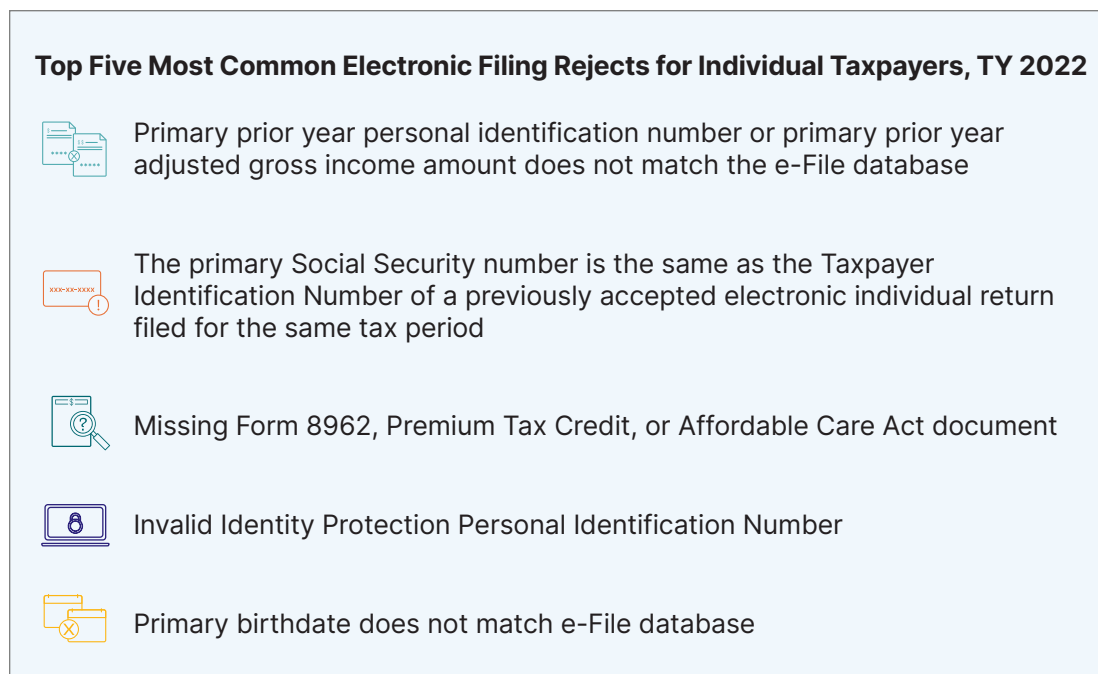
These rejections cause additional burden and delay for taxpayers who are potentially victims of identity theft. In addition, they often impact separated or divorced taxpayers who may not claim legitimate dependents and credits on e-filed returns because the non-qualifying parent or other non-qualifying individual already claimed the dependents on a previously filed return. Figure 2.1.7 shows the most common reasons that the IRS rejects e-filed returns.

⁵³ IRS, CDW, Electronic Tax Administration Research and Analysis System (ETARAS) (Sept. 2023).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

FIGURE 2.1.7⁵⁷

The IRS should accept these returns electronically and assign them to a workstream to address either the missing or duplicated information. For example, if both parents separately claim their child, the IRS could audit both parents and determine which parent is entitled to claim the child and any associated credits. The IRS should not reject the valid e-filed return of the parent who happened to file second and require the submission of a paper return. Similarly, victims of identity theft should not have to deal with the additional challenges of paper filing because someone stole their identity and filed a false return. The IRS can address several issues by flagging these valid returns and working to perfect the return after electronic acceptance and before it releases any overpayments.

Paper and Electronic Returns – Processing Suspended

Delays resulting from returns suspended in the processing stream due to processing difficulties or IRS filters (processing programs designed to stop the IRS from issuing refunds on questionable returns) negatively affect taxpayers. Processing difficulties accounted for 5.9 million (35 percent) of the returns delayed or unprocessed as of April 22, 2023.⁵⁸ Previously these issues required human intervention. But the IRS implemented technology to address several processing difficulties that caused many tax returns to fall out of the processing stream for corrective actions, allowing for reduced processing time and quicker refunds.

⁵⁷ IRS, CDW, ETARAS (Sept. 2023).

⁵⁸ IRS, W&I Weekly Report, Suspended Returns IMF and Suspended Returns BMF (week ending Apr. 22, 2023). Note that suspended return totals include potential identity theft cases that are fully processed returns prevented from posting to the IRS's Master File pending authentication of the taxpayer's identity. The IRS retains these cases in its "unpostable" inventory.

Processing Difficulties – Processing Rejects and Error Resolution

Processing rejects (not associated with electronic filing) and error resolution cases accounted for 2.4 million of the returns suspended in the processing stream.⁵⁹ Employees in the IRS's Submission Processing function typically work these issues. In 2022, the IRS implemented the use of an Integrated Automation Technology tool aptly named "FixERS" because it provides an automated means to *fix* returns sent to the IRS's Error Resolution System (ERS). The FixERS tool is a great example of what the IRS can do with technology. In 2022, the tool processed six types of errors, enabling ERS tax examiners to correct 55 errors an hour for a total of 13.5 million returns – work that would have otherwise required an additional 118 full-time equivalents (FTEs) to complete.⁶⁰ In 2023, the IRS expanded the use of the FixERS tool for the correction of an additional 15 error types, nine of which comprise the top errors by volume.⁶¹ Continued successful expansion of the IRS's FixERS tool should substantially reduce processing difficulties and delays experienced by taxpayers with returns requiring correction in the ERS portion of the IRS's processing backlog. The ability to use technology during the processing of tax returns has significantly improved taxpayer service and reduced processing times.

Return Filters and Unpostables

Of the remaining 3.5 million returns suspended in processing on April 22, 2023, 1.4 million involved returns flagged by the IRS's Taxpayer Protection Program identity theft filters and 2.1 million returns that went "unpostable."⁶² Unpostables are transactions, payments, and returns unable to post to the IRS's Master File due to the programming of specific conditions.⁶³ Though unpostables can occur for a variety of reasons, identity theft was the highest volume cause of unpostable return conditions in FY 2023.⁶⁴

Identity theft issues impact millions of taxpayers each year, resulting in considerable delays and taxpayer burden.⁶⁵ Between identity theft return filters and unpostables, a large portion of the IRS's suspended and delayed returns are derived from the IRS's identity theft precaution measures. Historically, the IRS's identity theft filters have had a high false detection rate, resulting in the IRS delaying legitimate returns until taxpayers verify their identity. TY 2023 looks to be similar, with the IRS anticipating a false detection rate of 54 percent during CY 2023.⁶⁶ Based on the high volume of false detections, taxpayers and the IRS would benefit from improvements to IRS systems that would reduce false identity theft detection rates and identity theft unpostable conditions.

59 IRS, W&I Weekly Report, Suspended Returns IMF and Suspended Returns BMF (week ending Apr. 22, 2023).

60 IRS, Business Performance Review (BPR), Q1 FY 2023, at 6 (Feb. 23, 2023). An FTE is equal to the number of hours a full-time employee works for an organization.

61 IRS, BPR, Q1 FY 2023, at 6 (Feb. 23, 2023).

62 IRS, W&I Weekly Report, Suspended Returns IMF and Suspended Returns BMF (week ending Apr. 22, 2023).

63 IRM, 3.12.279.1.1, Background (Jan. 1, 2021), https://www.irs.gov/irm/part3/irm_03-012-279r.

64 IRS, CDW, IRTF and BRTF (Sept. 28, 2023).

65 See Most Serious Problem: *Identity Theft: Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft*, *infra*.

66 IRS, BPR, Q3 FY 2023, at 14 (Aug. 16, 2023). False detection rates were 61 percent and 47 percent for CYs 2021 and 2022, respectively. Though not yet determined, IRS calendar year planning projected a 54 percent false detection rate for FY 2023.

CONCLUSION AND RECOMMENDATIONS

For several years, processing and refund delays, coupled with inadequate service, have plagued taxpayers, rendering it difficult for them to resolve their tax issues, obtain responses to inquiries, or receive timely receipt of their refunds. During FS 2023, the IRS prioritized its 1040 toll-free telephone service, which made it easier for many taxpayers to reach the IRS by phone but resulted in difficulties obtaining timely refunds or responses to their correspondence and account resolution requests. By accepting and processing a wider range of amended returns electronically and systemically applying FTA relief, the IRS could reduce manual processing activities and delays. These actions along with the acceptance of valid rejected e-filed returns would reduce taxpayer burden for thousands of taxpayers. Though technology may improve communication methods and reduce some portion of the IRS's manual processing activities, the complexity of our nation's tax system will always present a need for human interaction and human processing intervention. Taxpayers deserve quality services that allow for the timely processing of tax returns, correspondence, tax account adjustments, and the ability to reach the IRS in person or by phone. Telephone service should not come at the cost of processing delays. The IRS should train and use remote call center CSRs for expanded processing activities to provide more timely processing actions and adopt a balanced workload approach that acknowledges necessary tradeoffs between telephones and processing services. These actions would complement the IRS's stated SOP objectives while improving efficiency and reducing taxpayer burden.⁶⁷

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Expediently address the processing of valid ERC claims, particularly for taxpayers experiencing financial hardships.
2. Train remote call center CSRs to complete processing duties to increase AM processing capacity; reduce amended return, correspondence, and AM case processing delays; minimize backlogs; and improve the taxpayer experience.
3. Program information technology systems to systemically apply FTA to all eligible taxpayers beginning in FS 2024 while also providing taxpayers the ability to substitute a reasonable cause defense when substantiated by the taxpayer.
4. Prioritize the acceptance of amended business and employment tax returns and applications for tentative refund requests for inclusion in the e-file program and electronic processing, along with the electronic processing of e-filed Forms 1040-X, which the IRS accepts electronically but processes manually.
5. Electronically process those returns otherwise required to be paper-filed upon rejection and direct these imperfect e-filed returns to treatment streams for resolution.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

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

⁶⁷ IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.



IRS HIRING, RECRUITMENT, AND TRAINING

Shortcomings in the IRS's Employee Hiring, Retention, Recruitment, and Training Programs Adversely Affect the Quality of Taxpayer Service the IRS Provides and Undermine Effective Tax Administration

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Public trust in the IRS is at the core of our nation's system of voluntary tax compliance and self-assessment. Taxpayers have the *right to quality service* from the IRS,¹ and that service is substantially reliant upon proper staffing and training of its employees so the IRS can assist taxpayers. When IRS staffing or training falls to insufficient levels, service quality suffers and taxpayers experience burden and frustration, which undermine voluntary compliance and burden tax administration.² Further, the IRS operating at less than full strength harms taxpayers' *rights to challenge the IRS's position and be heard* and *to a fair and just tax system*. IRS staffing levels in the past decade have fallen to lows not seen since the 1970s.³ Insufficient staffing has caused the quality of taxpayer service to decline on telephone lines and at Taxpayer Assistance Centers (TACs) and significant IRS processing delays to arise.⁴ Even when the IRS can recruit enough staff, it struggles to attract, onboard, retain, and train the talent it needs because of "[i]neffective and outdated policies,

1 See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Nov. 22, 2023). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

2 The IRS is primarily responsible for the Treasury Department's public interaction, and the Treasury Department continues to rank in last place in the American Customer Satisfaction Index for consecutive years. See American Customer Satisfaction Index, *Federal Government Report 2021*, at 3 (2022), <https://theacsi.org/news-and-resources/reports/2022/01/25/acsi-federal-government-report-2021/>; American Customer Satisfaction Index, *Federal Government Report 2022*, at 2 (2023), <https://theacsi.org/news-and-resources/reports/2023/01/31/federal-government-report-2022/>.

3 *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 Div., and Chief Taxpayer Experience Officer, IRS).

4 For a more in-depth discussion of IRS customer service and telephone related issues, see Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Fails to Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*, *infra*. For a more in-depth discussion of IRS processing delays, see Most Serious Problem: *Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *supra*.

technologies and processes.”⁵ To protect and enhance the taxpayers’ *right to quality service*, the IRS must attract top talent to its workforce and appropriately train its employees.

EXPLANATION OF THE PROBLEM

Providing top quality service is integral to the IRS’s mission, and success hinges on its ability to recruit, hire, train, and retain employees and develop its future managers and leaders. Many of the IRS’s challenges are traceable to simply not having adequate staffing. Attrition compounds cause for concern because about 18 percent of IRS employees are currently retirement eligible and can leave at any time, with 37 percent of IRS employees estimated as retirement eligible in the next five years.⁶ The IRS must move quickly and efficiently to not fall further behind in its race against attrition and to fill the void of future managers and leaders.

Yet, the IRS takes much too long to approve, process, and list job announcements, and its initial screening of applications sometimes results in selecting candidates for consideration who may not be the most qualified.⁷ Consistent, significant employee attrition combined with the often lengthy hiring process have left the IRS severely understaffed and unable to adequately recruit, hire, and train much-needed new employees over the past decade.⁸ Inadequately trained IRS employees may be at risk of giving taxpayers incomplete or wrong information, making incorrect determinations, or mistakenly recording information inaccurately into IRS databases.

Furthermore, the ongoing challenges with recruiting and hiring employees continue to compromise the IRS’s ability to collect revenue, which may erode confidence in the tax system over time, leading to noncompliance. The IRS must use the new funding provided by the Inflation Reduction Act (IRA)⁹ as an opportunity to significantly improve its hiring, recruitment, and training processes. Thus far, the IRS believes the IRA funding has made a difference, enabling it to hire more employees to improve its telephone customer service. But this effort is a marathon, not a sprint, and the Human Capital Office (HCO) still has numerous hurdles to jump.¹⁰

- 5 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 102 (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.
- 6 Email dated Dec. 19, 2023 from the IRS Chief Human Capital Officer. The volume of IRS retirement eligible employees within the next five years varies and estimates are as high as 63 percent. IRS, Pub. 5530, Fiscal Year 2024 Budget in Brief (Feb. 2023), <https://www.irs.gov/pub/irs-pdf/p5530.pdf>. Attrition is defined as the departure of employees from an organization for any reason (voluntary or involuntary), including resignation, termination, death, or retirement, in a fiscal year and is used interchangeably with the term employee turnover. See Human Resources Glossary, Gartner, <https://www.gartner.com/en/human-resources/glossary/attrition> (last visited Nov. 28, 2023).
- 7 We used information from our interviews with IRS Business Operating Divisions (BODs) and functions, hiring and training subject matter experts (SMEs), and other data obtained from information requests to support this statement.
- 8 *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 Div., and Chief Taxpayer Experience Officer, IRS). For a more in-depth discussion of IRS hiring challenges over the past decade, see National Taxpayer Advocate 2022 Annual Report to Congress 59 (Most Serious Problem: *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*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_03_Recruitment.pdf.
- 9 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”].
- 10 *IRS Oversight Hearing, Joint Hearing Before the House Subcomm. on Oversight and Subcomm. on Accountability*, 117th Congress, at 26:52 (Oct. 24, 2023) (statement of Danny Werfel, Comm’r, Internal Revenue), <https://www.c-span.org/video/?531340-1/irs-oversight-hearing>.

ANALYSIS

The IRS's mission is to “[p]rovide America’s taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.”¹¹ Fulfilling that mission requires the IRS to overcome the challenge of employee attrition, attract and hire the right talent at the right time, and timely train all employees. If the IRS does not make significant changes, these staffing shortages will compound and pose significant threats to federal tax administration and taxpayer rights.

To gain direct insight on issues encountered with hiring, recruitment, and training, TAS interviewed subject matter experts (SMEs) on hiring and training from various IRS Business Operating Divisions (BODs) and functions again this year. Consistent with prior years, these interviews yielded that several challenges remain, and though anecdotal, the issues and recommendations that follow highlight some of those TAS considered paramount. The IRS must increase hiring capacity and continue to remove obstacles in the hiring process. It should work in support of reducing the pay disparity between federal and non-federal employees to help deepen the talent pool from which it can recruit. The IRS should continue to enhance its benefits package to help it attract and compete for desired recruits, improve employee retention rates, and reduce employee turnover rates. In the training realm, the IRS must make customer service a priority in training its employees; it needs HCO to increase its own staffing so it can meet the training needs of IRS BODs.

Hiring

The IRS Should Increase Hiring Capacity and Continue to Remove Obstacles in the Hiring Process

The IRA provided the IRS with much-needed funding that allowed the IRS to ramp up hiring efforts to add thousands of new employees over the next decade.¹² In fiscal year (FY) 2023, HCO made a series of improvements to the hiring process, including creating a new hiring calculator to measure the additional hiring resources needed to meet demand.¹³ HCO was able to use Direct Hire Authority (DHA),¹⁴ which expedites parts of the hiring process, to expand its own personnel to meet the hiring demand of the BODs.¹⁵ This authority provides agencies the ability to hire more efficiently and quickly into the federal government’s Competitive Civil Service (General Schedule (GS) 15 and below or equivalent) in permanent or nonpermanent positions.¹⁶ But even with DHA, the delays still caused good candidates to take jobs elsewhere before the IRS was even able to offer them a job. With the personnel hired with this authority, HCO was able to complete over 31,880 hiring actions in FY 2023, which include making final job offers, compared to about 23,800 in FY 2022.¹⁷ HCO was also able to provide BODs new hiring dashboards and tracking models for planning ahead and keeping track of their hires.¹⁸ Figure 2.2.1 shows the breakdown of the IRS internal and external hiring gains for FY 2023. The IRS Wage and Investment Division hired the most internal and external hires, with a total of 19,063 combined hires out of the total 31,880 hires for all BODs combined in

11 Internal Revenue Manual (IRM) 1.1.1.2(1), IRS Mission (July 29, 2019), https://www.irs.gov/irm/part1/irm_01-001-001.

12 Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

13 IRS response to TAS information request (Sept. 27, 2023).

14 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.” Office of Personnel Management (OPM), Direct Hire Authority, <https://www.opm.gov/policy-data-oversight/hiring-information/direct-hire-authority/#url=Fact-Sheet> (last visited Nov. 21, 2023). DHA enables an agency to hire, after public notice is given, any qualified applicant without regard to 5 U.S.C. §§ 3309-3318, 5 CFR pt. 211, or 5 CFR pt. 337, subpt. A.

15 IRS response to TAS information request (Sept. 27, 2023).

16 See generally 5 C.F.R. pt. 337, subpt. B. See also 5 C.F.R. § 337.202.

17 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023). According to HCO, the IRS defines “hiring action” as an “Actual Hire,” which results in a person filling a position – this could be an internal or external hire. The number of actual hires is calculated by counting records that have an established start date. IRS response to TAS fact check (Dec. 11, 2023).

18 IRS response to TAS information request (Sept. 27, 2023).

FY 2023.¹⁹ The Small Business/Self-Employed Division followed with 4,924 combined hires out of the total 31,880 hires for all BODs combined in FY 2023.²⁰ But HCO still lacks the necessary resource investments, including core human resources technology and sufficient staffing, to be able to keep up with the hiring demand.

FIGURE 2.2.1, IRS Internal and External Hiring Gains, FY 2023²¹

IRS Business Operating Division	External Total	Internal Total	Grand Total
Appeals	61	496	557
Communications and Liaison	25	36	61
Chief Financial Office	12	124	136
Criminal Investigation	298	383	681
Enterprise Case Management Office	1	5	6
Equity, Diversity and Inclusion	32	17	49
Facilities Management and Security Services	35	215	250
Human Capital Office	322	411	733
Headquarters	37	66	103
Information Technology	1,428	752	2,180
Large Business and International	259	1,248	1,507
Office of the Chief Risk Officer	3	6	9
Office of Online Services	27	40	67
Office of Professional Responsibility	0	2	2
Privacy, Government Liaison, and Disclosure	24	223	247
Procurement	80	44	124
Research, Applied Analytics, and Statistics	85	97	182
Return Preparer Office	4	36	40
Small Business/Self-Employed	1,879	3,045	4,924
Taxpayer Advocate Service	117	499	616
Tax Exempt and Government Entities	102	215	317
Taxpayer Experience Office	6	13	19
Wage and Investment	11,568	7,495	19,063
Whistleblower Office	0	7	7
Grand Total	16,405	15,475	31,880

One advancement was the IRS's ability to improve the employee security clearance and fingerprinting processes by employing new functionality that bridged the divide between the personnel security software system, Automated Background Investigation System, and the hiring software system, USA Staffing (USAS),

¹⁹ IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023).

²⁰ IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023).

²¹ IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023). HCO provided TAS with FY 2023 hiring data derived from USAS hiring data through September 30, 2023.

helping to speed up this previously lagging area of the process.²² Additionally, HCO worked with Facilities Management and Security Services (the IRS owners of the employee fingerprinting process) to obtain fingerprint scheduling data and align it with hiring data to provide insight and address delays in the process.²³ Even though HCO hired 419 hiring personnel in FY 2023, HCO Talent Acquisition was on a hiring pause and currently has over 100 vacancies, as well as a need for 57 more positions, just to keep pace with projected growth due to hiring demand.²⁴ Without a strong HCO, building the IRS workforce of the future will continue to face obstacles and experience challenges because all parts of the IRS depend upon HCO's success.

Although TAS commends the recent improvements HCO has made, the National Taxpayer Advocate recognizes that the IRS still faced significant challenges in FY 2023 and anticipates challenges in FY 2024. These challenges included HCO's current capacity to meet the increased hiring demand and the length of time it took to hire, measured by the time-to-hire and average cycle time indicators. As a result, HCO must make significant improvements in FY 2024 and beyond to outpace current attrition and meet this demand. In addition, the length of the hiring process continues to burden the IRS. According to some IRS SMEs on hiring, HCO must increase the number of HCO hiring personnel or supplement current HCO personnel with contractors to meet the increased hiring demands.

Another part of the problem the IRS can address with more staffing is significantly shortening its hiring process time to better compete with the pace of other federal, state, and private sector employers in the labor market. The Office of Personnel Management (OPM) has set a time-to-hire goal for all federal agencies – 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.²⁵ Cycle time is a different measure that includes the number of days the announcement is posted and can include applicants who apply to rosters. This means that cycle time includes 12-month open, continuous roster announcements.²⁶ This can take longer as compared to time to hire because an applicant may apply to a longstanding announcement or a roster long after it opened. TAS analyzed the data using both measures.

FIGURE 2.2.2, Average Cycle Time and Time to Hire for Regular and Filing Season Hiring, FY 2023²⁷

Type of Hire	IRS-Wide (Internal and External)	IRS – Internal	IRS – External
Average Cycle Time From Announcement to Start Date (Entry on Duty) (Without DHA)	134 days	118 days	193 days
Average Cycle Time From Announcement to Start Date (Entry on Duty) (With DHA)	110 days	89 days	115 days
Time to Hire (Overall Average Combined)	68 days	51 days	85 days
Average Time to Hire (Without DHA)	61 days	52 days	98 days
Average Time to Hire (With DHA)	75 days	45 days	82 days

22 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023).

23 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023).

24 IRS response to TAS fact check (Dec. 11, 2023); IRS response to TAS information request (Sept. 27, 2023).

25 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>.

26 IRS response to TAS fact check (Dec. 11, 2023).

27 IRS response to TAS information request (Sept. 27, 2023).

As shown in Figure 2.2.2, in FY 2023, the IRS's time to hire averaged 68 days overall, with 98 days for external hires not using DHA and 82 days for external hires using DHA.²⁸ For comparison, the IRS's time-to-hire average overall was about 88 days in FY 2022, with 104 days for external hires not using DHA and 58 days for external hires using DHA.²⁹ The 98 days for time to hire without DHA in FY 2023 (an improvement from 104 days in FY 2022) and 82 days with DHA for external hires in FY 2023 (an increase from 58 days in FY 2022) are both beyond the OPM goal of 80 days.³⁰ When thinking about the length of the hiring process, ask yourself: how long would you be willing to wait for a final job offer?

To show a complete picture of the hiring process, we also must examine the average cycle time from announcement to start date (entry on duty).³¹ In FY 2023, the average cycle time from the start of a job announcement to the start date (entry on duty) for a new employee without DHA was 134 days overall and 193 days for external hires. The average cycle time with DHA was 110 days overall and 115 days for external hires.³² For comparison, in FY 2022, the average cycle time from the start of a job announcement to the start date (entry on duty and without DHA) of a new employee was 109 days overall and 172 days for external hires.³³ Due to the increase in demand for hiring, the hiring process took longer in FY 2023 than in FY 2022, but because of DHA, the IRS was able to fill some specific positions faster than before.

Because the administrative process to get extensions for DHA burdens the agency, the IRS needs broad and flexible legislative DHA to address limitations resulting from the current DHA, including the quantity of eligible positions and the duration a DHA position is open.³⁴ Some IRS SMEs on hiring explained that they wished DHA was for a longer period of time and was broader, allowing the use of DHA for more positions within the agency.

HCO also pointed to technological improvements needed to better serve its customers. HCO explained that the IRS needs additional investment in technological capabilities to assist with hiring.³⁵ It needs a mechanism for hiring officials to see a vacancy status from start to finish, the absence of which often causes frustration for hiring officials within the BODs and results in inquiries to HCO, slowing down the process.³⁶ An automated mechanism with this capability would reduce the frustration and resulting burden on HCO.³⁷

Some IRS SMEs on hiring and training stated that there is a need for HCO Talent Acquisition to provide more timely communication to its customers. TAS encourages the IRS to provide more resources to HCO Talent Acquisition so that it can improve the timeliness of its communications with all parties during the hiring process. Another frustration from SMEs was the inconsistency with the way HCO certifies certain

28 IRS response to TAS information request (Sept. 27, 2023).

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

30 IRS responses to TAS information request (Oct. 31, 2022; Sept. 27, 2023).

31 It is important to look at both the cycle time and time-to-hire calculations to get a more accurate assessment of IRS hiring measures due to the complexity of types of IRS announcements and different definitions used.

32 IRS response to TAS information request (Sept. 27, 2023).

33 IRS responses to TAS information request (Oct. 31, 2022; Sept. 27, 2023). It is important to distinguish cycle time from time to hire. Cycle time, a measure that includes applicants who apply to rosters, can take longer as a result compared to time to hire because an applicant could apply to a roster long 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-to-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 IRS response to TAS information request (Sept. 27, 2023).

35 *Id.*

36 *Id.*

37 *Id.*

applicants who are qualified versus those not qualified. TAS urges the IRS to provide resources for additional training to HCO hiring personnel to ensure they qualify or disqualify applicants for positions in a consistent manner and eliminate frustrating discrepancies and inconsistencies.

Recruitment

Reducing Pay Disparity Between Federal and Non-Federal Employees Will Likely Deepen the Talent Pool From Which the IRS Can Recruit

In current form, it would be unreasonable to expect the IRS to consistently out-recruit the competition. For many job seekers, pay is the initial, and often most critical, point of consideration when deciding whether to apply for a position or pursue a career path. Pay may represent the highest hurdle the IRS has to overcome to receive serious consideration in recruiting today's job seekers. The Federal Salary Council reported that on average in 2023, federal employees earned over 27.54 percent less pay than non-federal employees earned for performing the same level of work, an increase compared to the 24.09 percent difference in 2022.³⁸

Congress enacted the Federal Employees Pay Comparability Act (FEPCA) decades ago to reduce this pay disparity down to five percent, but the act has not addressed the problem it was enacted to solve.³⁹ Because the FEPCA has not been followed since 1994 primarily due to budgetary concerns and an unreliable statutory formula, it is more of a symbolic solution to the pay disparity issue than a literal one.⁴⁰ While budgetary concerns are perpetual and require a heavier lift, developing a credible methodology to produce outcomes consistent with the spirit of the FEPCA is an important step in furthering the law's purpose. Raising pay for federal employees to minimize the difference in pay should help the IRS and other federal agencies better attract talented employees.

Enhancing the IRS's Benefits Package Can Help It Attract and Compete for Desired Recruits

Although the IRS's current benefits package is valuable, recruits likely undervalue it, as they may not consider the sum of its total value as sufficient to offset lower pay.⁴¹ Per OPM, federal agencies have flexibility to adjust benefits packages for competitive purposes.⁴² Therefore, the IRS must continue to enhance its benefits package to make it more attractive so it can compete for the quantity and quality of employees it needs. TAS commends the IRS for recently implemented offerings to its benefits package, including a student loan repayment program and expanded eligibility for its childcare subsidy program.⁴³

Beyond increased pay, the IRS could expand the eligibility scope and value of bonus awards while maintaining a high performance bar for its employees to earn them. It could also expand pay opportunities for certain positions to allow employees to grow in their careers, which helps retention by showing recruits there is a pathway to higher pay when committing their career to the IRS.⁴⁴ The IRS should consider contracting with recruiting firms that would help it reach solid candidates at the higher GS grade levels. This would give the IRS flexibility and free up recruitment staff to focus on other priorities, such as providing staffing for DHA

38 Federal Salary Council, *Report of the Federal Salary Council Working Group 4* (Nov. 14, 2023), <https://federalnewsnetwork.com/wp-content/uploads/2023/11/FSC-Working-Group-Report-2025.pdf>; Federal Salary Council, *Recommendations for 2024* (Feb. 4, 2023), <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/federal-salary-council/recommendation22.pdf>.

39 Federal Employees Pay Comparability Act of 1990, Pub. L. 101-509, Title V, § 529 [Title I, § 101(a)(1)], 104 Stat. 1427, 1431 (1990) (codified at 5 U.S.C. § 5304).

40 See generally The President's Pay Agent, *Annual Report of the President's Pay Agent for Locality Pay in 2024: Report on Locality-Based Comparability Payments for the General Schedule* (Oct. 3, 2023), <https://www.opm.gov/media/qyhbqbox/report-on-locality-based-comparability-payments-for-the-general-schedule.pdf>.

41 Some SMEs on hiring that TAS interviewed indicated that recruits may likely undervalue the IRS's current benefits package.

42 See OPM, Federal Employee Compensation Package, <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/federal-employee-compensation-package/> (last visited Dec. 4, 2023).

43 IRS response to TAS information request (Sept. 27, 2023).

44 The GS pay cap is statutory. See 5 U.S.C. § 5547(b)(2) and 5 C.F.R. §§ 550.106 - 550.107.

events. TAS encourages the IRS to hire more staffing for HCO's Strategic Talent Acquisition and Recruiting Solutions (STARS) program in particular so it can increase staffing at DHA events and expedite processes where the IRS is using hiring authorities to speed up hiring processes.

The IRS must account for attrition and quickly race to recruit, hire, and train employees before experienced IRS staff retire or depart. It recognized that its own workforce may be a recruiting resource and created the Employee Referral Bonus Program (ERBP). ERBP boasts a financial incentive for IRS employees to tap into their own professional networks and refer an unlimited number of potential candidates for certain hard-to-fill positions.⁴⁵ However, the referral bonus is only \$500 per new hire and may not be as attractive as it could be to achieve the best results from employee-driven recruiting. Likewise, HCO stated that having additional authority over recruitment and relocation bonuses, retention bonuses, merit awards, incentives for critical skills, and student loan repayments would bolster the IRS's competitiveness.⁴⁶

Inherent challenges that apply to working in government, such as uncertainty about government shutdowns, may dissuade some job seekers from considering working in federal service. For the undeterred job seekers, revamping the culture and public perception of the IRS is especially critical to the IRS gaining time and consideration as a career landing spot. Out of 432 subagencies ranked on the annual Best Places to Work list, the IRS placed an uninspiring 285th.⁴⁷ Because long-tenured employees heavily comprise the current IRS workforce, the IRS must interest younger employees and its future workforce in careers with the agency so it can better recruit and retain talented employees and build its managers and leaders of the future.⁴⁸

The IRS should efficiently utilize all hiring authorities in its toolkit, including OPM's Pathways Recent Graduates and Presidential Management Fellow programs.⁴⁹ These programs, designed under Schedule D authority,⁵⁰ help agencies recruit and hire well-qualified students and recent graduates by streamlining and shortening the hiring process and creating a pipeline for new talent. Prioritizing these programs will help the IRS to replenish its aging workforce with fresh talent it can put into career tracks and address key knowledge competency gaps. For these reasons, the IRS should prioritize employee recruitment.

Employee Retention

The IRS Should Improve Employee Retention Rates and Reduce Employee Turnover Rates

Just as recruiting and hiring quality talent is crucial to the success of the IRS workforce, retaining its workforce is imperative to maintaining continuous success and stability. Hiring new employees fills staffing needs, but replacing experienced employees with new ones is typically not an equal trade because of decreases in productivity and customer service quality.⁵¹ Employee turnover is part of the normal course of business, but the elevated rate of IRS employee turnover should concern taxpayers and the IRS alike. Information on

45 IRS response to TAS information request (Sept. 27, 2023).

46 National Treasury Employees Union (NTEU), NTEU Chapter 73, Employee Referral Bonus Program (ERBP), <https://www.nteu73.org/employee-referral-bonus-program-erbpb> (last visited Nov. 30, 2023).

47 IRS response to TAS information request (Sept. 27, 2023); IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan (updated May 1, 2023).

48 Traci DiMartini, IRS Chief Human Capital Officer, FEDGOV TODAY, at 07:00 and 7:20 (Sept. 8, 2023), <https://fedgovtoday.com/2023/09/08/irs-is-hiring-impact-of-logjam-at-pentagon-latest-from-the-u-s-maritime-administration/>.

49 See OPM, Student and Recent Graduates, <https://www.opm.gov/policy-data-oversight/hiring-information/students-recent-graduates/#url=graduates> (last visited Oct. 20, 2023); OPM, Presidential Management Fellow Program, Value Proposition and Overview (last visited Oct. 20, 2023), <https://www.pmf.gov/agencies/value-proposition-and-overview/>.

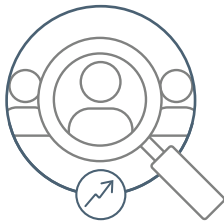
50 The general Schedule D provisions were designed to appoint individuals to the excepted service under the programs. Schedule D Provisions, 5 C.F.R. pt. 213. See generally 5 C.F.R. § 213.3402.

51 This information is from our interviews with IRS BODs and hiring and training SMEs. This topic was a discussion that came up several times with the overarching theme being that new employees take time and training to reach the same level of productivity as that of an experienced employee.

the IRS's retention index shows the challenges the IRS faces retaining employees of certain demographics.⁵² IRS employees aged 39 and younger have the lowest rates of retention, specifically employees aged 29 and younger, and the IRS has challenges retaining early stage career employees with four to ten years of service.⁵³

Employee turnover doesn't just reduce the number of trained and experienced employees the IRS has ready to serve taxpayers and fulfill its mission; it also wastes money. The IRS estimates an average cost of \$10,350 per employee that it recruits, hires, and trains but who later departs the agency.⁵⁴ Although enhancing retention is part of its FYs 2022-2026 Strategic Plan, the IRS should update its strategy by making it a higher priority.

The IRS will benefit by adopting a more competitive strategic approach to employee retention, especially for mission-critical and notoriously difficult to staff positions. To achieve improved retention rates, the IRS must use available resources to essentially re-recruit existing employees with a goal of keeping its trained and experienced talent within its workforce. While the IRS may not have the most extensive array of resources at its disposal, it should use all that it has.



To achieve improved retention rates, the IRS must use available resources to essentially re-recruit existing employees with a goal of keeping its trained and experienced talent within its workforce.

Special payment incentives may not solve all of the staffing problems, but they do provide the IRS a valuable and immediately available resource to recruit, relocate, and retain employees, and the IRS should use this resource to the fullest reasonable extent possible.⁵⁵ Generally, the law provides federal agencies compensation flexibility to use special payment incentives for the purpose of building and maintaining a quality workforce.⁵⁶ Increasing the deployment of special payment incentives may help persuade more IRS employees to remain with the IRS and thus result in higher retention rates. At a minimum, using special payment incentives will cause employees to consider more strongly keeping their career with the IRS because it shows employees the value the agency places on their skillset and commitment. The IRS should be using special payment incentives to keep valuable employees and their institutional knowledge from taking their talents elsewhere.

The IRS would benefit from developing a robust plan to eliminate or expand limits on aggregate amounts for employee awards and bonuses to improve employee retention rates and allow the agency to better compete with other agencies on employee benefits. Through such a plan, the IRS can develop additional employee incentives it can provide to become more competitive. For example, it can study the feasibility of providing

52 Although the IRS has increased its pace of hiring, the rate of employee turnover and attrition continues to be a problem. IRS response to TAS information request (Sept. 27, 2023); IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan 16 (updated May 1, 2023).

53 IRS response to TAS information request (Sept. 27, 2023); IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan 16 (updated May 1, 2023); IRS response to TAS information request (Sept. 27, 2023); FYs 2022-2025 Corporate Leadership Engagement Action Plan (July 13, 2022).

54 IRS response to TAS information request (Sept. 27, 2023); IRS, FYs 2022-2025 Corporate Leadership Engagement Action Plan 16 (updated May 1, 2023); IRS response to TAS information request (Sept. 27, 2023); FYs 2022-2025 Corporate Leadership Engagement Action Plan (July 13, 2022).

55 See Treasury Inspector General for Tax Administration, Ref. No. 2023-10-043, *Expanded Use of Special Payment Incentives Could Help Improve Recruitment and Retention Efforts* (2023); IRM 6.575.1, IRS Recruitment, Relocation, Retention, and Extended Assignment Incentives (Nov. 8, 2023), https://www.irs.gov/irm/part6/irm_06-575-001.

56 5 U.S.C. § 5753; 5 C.F.R., pt. 575, subpts. A-C; IRM 6.575.1, IRS Recruitment, Relocation, Retention, and Extended Assignment Incentives (Nov. 8, 2023), https://www.irs.gov/irm/part6/irm_06-575-001.

more recruitment and relocation bonuses, retention bonuses, merit awards, incentives for critical skills, and expanding upon current incentives for employees to allow the agency to better compete with other agencies on employee benefits.

Retention is also impacted by how employers meet employee needs, and improving the reasonable accommodation (RA) process will benefit both the IRS and its employees. An RA is an adjustment or alteration to work duties that enables an otherwise qualified individual with a substantially limiting impairment to apply for a job, perform job duties, or enjoy benefits and privileges of employment.⁵⁷ There are a range of regulations and laws that require federal agencies to ensure all qualified individuals with limitations have the same equal opportunities as other employees.⁵⁸ In essence, RAs are important because they provide employees with equal opportunity to perform their best.

Different limitations typically require different solutions so RAs are not workable with a one-size-fits-all approach. Ideally, the RA process should focus on providing comprehensive solutions tailored to the unique needs of the individual. The IRS should view every RA request as unique because although persons may have similar limitations, they may not have the same challenges or job duties. Therefore, employee customers should be the central focus of the RA process. The IRS should consider developing customer satisfaction surveys to secure input from employee customers as a simple way for it to gain valuable insight on how to improve its RA process. The RA process is inherently an employee retention issue because employees who request RAs may become frustrated at the lack of timeliness addressing their needs and could decide to leave the IRS.

At minimum, speeding up the pace of the RA process is a must.⁵⁹ In FY 2023, the IRS took an average of nearly 160 workdays (not calendar days) to process RA requests for its employees.⁶⁰ By improving efficiency in its RA process, the IRS can ensure employee needs are timely addressed and that all employees have equal opportunity to perform at their best, which is likely to positively impact employee retention and taxpayer service quality.

Training

The Office of Management and Budget (OMB) notes that training and development are among the most critical areas that contribute to the success of an organization and its workforce in accomplishing its mission.⁶¹ It is well-known that the tax code and tax administration are complex.⁶² Consequently, newly hired IRS employees must complete a training process that requires significant time and resources to produce quality results, with delivery often requiring the IRS to utilize virtual and in-person settings, and to provide on-the-job training over an extended period of time. The time it takes for the IRS to onboard and fully train a

57 IRS, Equity, Diversity and Inclusion at IRS (Mar. 16, 2023), <https://www.irs.gov/about-irs/equity-diversity-and-inclusion-at-irs>; IRS, Pub. 5339, Affirmative Action Plan for the Recruitment, Hiring, Advancement, and Retention of Persons with Disabilities (Mar. 2023), <https://www.irs.gov/pub/irs-pdf/p5339.pdf>.

58 IRS, Equity, Diversity and Inclusion at IRS (Mar. 16, 2023), <https://www.irs.gov/about-irs/equity-diversity-and-inclusion-at-irs>; IRS, Pub. 5339, Affirmative Action Plan for the Recruitment, Hiring, Advancement, and Retention of Persons with Disabilities (Mar. 2023), <https://www.irs.gov/pub/irs-pdf/p5339.pdf>.

59 IRM 1.20.2, Providing Reasonable Accommodation for Individuals with Disabilities (June 11, 2021), https://www.irs.gov/irm/part1/irm_01-020-002. This IRM establishes guidance that the IRS must follow in processing requests for reasonable accommodation, including timeframes.

60 Information provided by Deputy Director of TAS Equity, Diversity & Inclusion (Nov. 28, 2023). Failure to provide the accommodation in a prompt manner may result in a violation of the Rehabilitation Act. See 29 C.F.R. § 1614.203(d)(3)(i)(O).

61 See OPM, Training and Development Policy Wiki, <https://www.opm.gov/WIKI/training/Index.aspx> (last visited Nov. 28, 2023).

62 For a more in-depth discussion, see National Taxpayer Advocate 2022 Annual Report to Congress 45 (Most Serious Problem: Complexity of the Tax Code: The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_02_Complexity.pdf.

new employee varies, but for some IRS positions, it can be a lengthy process before the IRS considers a new employee fully trained.⁶³ The time that elapses during hiring and onboarding has a direct impact on training and ultimately when new IRS employees can begin working and to what degree.

The Human Capital Office Must Ensure It Can Meet the Training Needs of IRS Business Operating Divisions

HCO plays a vital and central role in pooling resources and providing all forms of support including technical, procedural, and customer service training through the IRS.⁶⁴ As such, coordination between HCO and BODs is integral to a smooth process but is an area in need of considerable improvement.⁶⁵ Generally, IRS SMEs on training indicated that the right HCO support immensely helps their training efforts, according to those TAS interviewed. However, HCO's accessibility, particularly onsite at training locations and its capability to properly support training needs have declined over the years, per the IRS SMEs on training TAS interviewed. To keep training moving, some BODs filled the voids by simply absorbing the work from HCO. While this has temporarily enabled some BODs to maintain the status quo of their respective training regimens, the absence of HCO support has left little structure for training, where the individual IRS BODs fend for their own interests and sometimes struggle to secure basic needs such as reserving training space and getting proper technology equipment. To alleviate these constraints, the IRS should revamp the Classroom Learning Services (CLS) located within the Enterprise Talent Development Division of HCO by providing more personnel and resources. This will allow it to provide more classroom services, conduct and schedule training, increase or reestablish training support at sites CLS no longer supports, and alleviate pressure on BODs that compete for classroom training space and equipment.

The IRS can learn from historic and current stakeholder information to improve its confusing training system. It is essential to satisfy the training needs of BODs to ensure that the new employees coming onboard are timely trained. By partnering closely with the BODs throughout the process, HCO can efficiently prioritize specific needs and make sure the necessary resources are timely so the BODs can meet the training challenges posed by this historic hiring surge.

The IRS Should Make Customer Service a Priority Focus of Its Training Efforts

In 2019, Congress enacted the Taxpayer First Act (TFA) mandating the IRS to submit to Congress a written report providing a comprehensive training strategy, which the IRS described in its 2021 Taxpayer First Act Report to Congress.⁶⁶ Among the requirements, the TFA report contains IRS proposals to focus training of employees who interface with taxpayers and their direct managers on early, fair, and efficient resolution for taxpayers. Nonetheless, obstacles such as ineffective communication and coordination between HCO and the BODs result in a lack of transparency and confusion within the training arena.⁶⁷ To provide this level of high quality, comprehensive customer service, the IRS must ensure it has enough employees and that its employees are always properly equipped with the tools and resources the law and its mission demands.

63 See also National Taxpayer Advocate 2021 Annual Report to Congress 51, 58 (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.

64 IRS response to TAS information request (Sept. 27, 2023) (highlighting HCO's vital role in the training process).

65 This information is from our interviews with IRS BODs and hiring and training SMEs, who indicated that coordination between HCO and BODs is integral to a smooth training process.

66 See Taxpayer First Act of 2019, Pub. L. No. 116-25, § 2402, 133 Stat. 981, 1014 (2019). See also IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), <https://www.irs.gov/pub/irs-pdf/p5426.pdf>.

67 To support this statement, we used information from our interviews with IRS BODs and functions and hiring and training SMEs, who indicated that coordination between HCO and BODs is integral to a smooth training process.

Customer service, when done correctly, improves the culture of an organization, and culture is an area that the IRS needs to improve. The IRS must understand the difficulties of tax administration from the customers' perspective; its employees need to demonstrate empathy toward understanding and resolving taxpayer issues. The IRS should ensure its employees consistently exhibit timely and clear communication skills and knowledge of the tax law and its internal procedures, which will allow it to provide faster resolution and shorter turnaround times to build a reputation for having efficient customer service. Good customer service includes usage of the latest technology and regular follow-up while being available and transparent. These qualities are key to exhibiting quality customer service and earning the trust of taxpayers. The newest employees to the most seasoned executives must demonstrate these qualities and reinforce them through the IRS's training curriculum and daily activities.

Keys to Exhibiting Good Customer Service and Earning Taxpayer Trust



Understanding of the difficulties of tax administration from the taxpayer perspective



Expressing empathy and understanding while resolving taxpayer issues



Timely and clear communication skills



Knowledge of tax law and internal procedures



Use of the latest technology



Regular follow-up contacts with taxpayers

CONCLUSION AND RECOMMENDATIONS

To ensure fairness, efficiency, and protection of taxpayer rights, the IRS must urgently focus on resolving challenges with employee hiring, recruitment, retention, and training. Its employees are its greatest asset and deserve quicker hiring and onboarding, robust training, and defined career paths with ongoing support and continuing education throughout their careers. This comprehensive approach requires the IRS to increase hiring capacity and continue to remove obstacles in the hiring process. To help deepen the talent pool from which it can recruit, the IRS should work to support competitive ways to reduce the pay disparity between federal and non-federal employees and continue to enhance its benefits package to help attract and compete for desired recruits. The IRS must use the competitive resources it has available now, such as special payment incentives, and develop new strategies to improve its employee retention rates to outpace employee turnover and attrition. Investing in the training of skilled professionals means that HCO should increase staffing to ensure it can meet the current training needs of the IRS BODs, with customer service and taxpayer rights priority focal points of its efforts. The effectiveness of this vital agency hinges not only on the efficiency of its procedures but also on the caliber of training of its employees.

Overcoming these challenges is not just a matter of bureaucratic efficiency; it is paramount for the bedrock of our federal tax system and the quality of customer service that taxpayers have the right to receive. A well-trained, customer-focused, and mission-committed IRS workforce is fundamental to ensuring the fair and accurate administration of tax laws that in turn sustain our vital government functions. By prioritizing these issues and developing strategic solutions to address them, the IRS can become more efficient and invest in the solutions that help guarantee it treats taxpayers equitably, enforces tax laws justly, and strengthens trust in our tax system.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Invest in more technological capabilities to assist the hiring process. HCO needs an automated mechanism for hiring officials to see their real-time vacancy status from start to finish to improve hiring, reduce frustration for BOD hiring officials, and reduce the resulting inquiries to HCO.
2. Develop a robust plan to expand or eliminate limits on aggregate amounts for employee awards and bonuses to improve employee retention rates and allow the agency to better compete with other agencies on employee benefits.
3. Explore providing additional recruitment and relocation bonuses, retention bonuses, merit awards, and incentives for critical skills and expand current incentives for employees to allow the agency to better compete with other agencies on employee benefits.
4. Consider contracting with recruiting firms that would better assist the IRS in reaching qualified candidates for employment in the higher GS grade level positions.
5. Hire more staffing for HCO's STARS program, in particular to allow for more staffing at DHA events and to expedite processes where the IRS is using hiring authorities to speed up hiring processes.
6. Allocate more staffing resources to HCO Talent Acquisition so it can provide more timely communication to its customers.
7. Provide training for HCO hiring personnel to improve the selection process and ensure BODs receive only qualified applicants.
8. Allocate more support and personnel in the CLS located within the Enterprise Talent Development Division of HCO so it can provide classroom services, conduct and schedule trainings, increase or reestablish training support at sites CLS no longer supports, and alleviate the pressure on BODs from competing for classroom training space and equipment.
9. Work with the Office of Legislative Affairs and relevant offices within Treasury to develop a legislative recommendation to provide the IRS with broad legislative DHA to address the current DHA limits and expiration dates because the administrative process to get extensions for DHA through OPM burdens the agency.⁶⁸
10. During FY 2025, require the IRS Chief Diversity Officer to complete a comprehensive review of the agency's RA program, including but not limited to case processing procedures, staffing utilization, training, and management oversight of case monitoring; provide a written report to the IRS Commissioner on her findings and recommendations for improving the RA program; and reduce the processing time of RA requests consistent with applicable law and the Internal Revenue Manual.

68 IRS response to TAS information request (Sept. 27, 2023).

RESPONSIBLE OFFICIALS

Jeffrey Tribiano, Deputy Commissioner, Operations Support

Douglas O'Donnell, Deputy Commissioner, Services and Enforcement

Traci DiMartini, Human Capital Officer

David Padrino, Chief Transformation and Strategy Officer

Carrie Holland, Chief Diversity Officer, IRS Office of Equity, Diversity and Inclusion

Transparency

IRS TRANSPARENCY

The IRS Still Does Not Provide Sufficient Clear and Timely Information to the Public, Causing Confusion and Frustration and Complicating Agency Oversight

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Although the IRS made great strides during the 2023 filing season, some taxpayers and tax professionals still struggle to access information from the IRS. They have difficulty finding clear and timely guidance on which they can rely, determining the status of pending issues, understanding IRS correspondence and whether they must respond to it, and reaching an IRS employee with the knowledge to answer their questions and the authority to resolve their problems. These issues stem from the lack of effective two-way communication between the IRS and the taxpayers who have to interact with it, creating the potential for confusion, mistrust, and frustration with the tax system.

To properly set and manage expectations, taxpayers and tax professionals need clear and detailed information. While the IRS has communicated certain service improvements and objectives to the public, agency messaging on some issues has portrayed IRS modernization in ways that omit relevant context or sufficient detail, causing confusion and false expectations. As a result, there is a risk that overly optimistic messaging may erode trust over time if the taxpayer experience differs from what the IRS claims to have accomplished. Also, without more specific and measurable data on the use of funds and future IRS plans, Congress and stakeholders will not have enough information to provide informed oversight and help guide the IRS in its decision-making.

EXPLANATION OF THE PROBLEM

The IRS's Strategic Operating Plan (SOP)¹ acknowledges numerous problems impacting taxpayers and tax professionals and lays out a high-level framework for how the agency intends to transform its operations to address the challenges it faces. The National Taxpayer Advocate commends the IRS for recognizing problems

¹ IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

and working toward improving service and tax administration but is concerned with the lack of specificity and broad scope of the initiatives in the published plan. As the IRS progresses with the initiatives identified in the SOP, it presents IRS leadership the opportunity to be transparent throughout the process, share its prioritization of initiatives, and provide updates and detailed information to the public and IRS employees to gauge feedback.

Properly implementing Inflation Reduction Act (IRA) funding does not just involve revitalizing certain IRS services.² It involves establishing a framework that will allow the IRS to remain responsive to taxpayer needs going forward and rebuilding the agency to provide quality service by improving its customers' experience based upon the foundation of taxpayer rights. But just as important to transforming the agency, the IRS should continue to foster closer relationships with stakeholders and create open two-way lines of communication so that taxpayers and tax professionals can continue to provide insights on the problems that the IRS needs to address, both now and as the IRS implements initiatives and looks to understand what has worked and what has not. Open and clear communication with taxpayers and stakeholders is not a one-time fix for the agency; rather, it is an opportunity for continuous collaboration to ensure the agency can remain responsive to the needs of the tax community.

Problems from inadequate transparency include:

- IRS messaging on some aspects of its reform progress omits relevant details and sets incorrect expectations;
- The IRS has not done enough to consistently and proactively engage stakeholders to timely obtain and consider their feedback;
- The IRS is often not proactive in issuing timely legal guidance, which requires taxpayers and tax professionals to figure out the relevant law or procedures on their own, and it sometimes issues guidance inconsistent with the expectations of the tax community, requiring taxpayers, tax professionals, related businesses, and stakeholders to reverse course at the last minute;
- The IRS does not always notify taxpayers of errors or programming changes to IRS tools;
- The IRS does not provide enough transparency to taxpayers seeking information from the IRS on the status of claims, refunds, and the resolution of issues; and
- On rare occasion, the IRS has acted inappropriately. While occasional mishaps are hard to prevent in an agency as large as the IRS, the agency's reluctance to quickly acknowledge a mistake may create the perception that mishaps are commonplace, which is not reality. Candor and prompt acknowledgement of errors build credibility. Lack of candor and delay in correcting a mistake can erode it.

ANALYSIS

What Is Transparency, and Why Does It Matter?

"Transparency" is the government's obligation to share with citizens the information they need to make informed decisions and hold officials accountable for the conduct of the people's business.³ Government accountability means that public officials have an obligation to explain their decisions and actions to citizens.

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, §10301, 136 Stat. 1818, 1831-32 (2022).

³ The Freedom of Information Act reflects the belief that citizens have a right to know what their government is doing and that the burden is on the government to prove otherwise. See 5 U.S.C. § 552; Benny L. Kass, *The New Freedom of Information Act*, 53 A.B.A. J. 667 (1967), <https://www.jstor.org/stable/25724099>. It requires that the government operate on the presumption of disclosure and that the public may readily obtain information from the government, subject to certain exemptions. In general, sunshine laws require transparency and disclosure in government or business by making meetings, records, votes, deliberations, and other official actions available for public observation, participation, and/or inspection.

At its core, transparency is about establishing trust and improving the communication of the IRS with the tax community and with Congress. All relationships depend on honest and straightforward communication, and one's mandatory relationships with government institutions are no exception.⁴ Full transparency is important for:

- *Accountability*: The IRS needs to provide straightforward and detailed information about its decisions, actions, and reform plans so stakeholders can give informed feedback, and Congress can take any action needed to modify the law.
- *Simplicity*: Taxpayers need clear answers to their questions so they do not have to spend time struggling to understand tax law requirements.
- *Trust*: Taxpayers will be increasingly willing to engage with the IRS when they know IRS employees can provide them with prompt and knowledgeable answers, help find fair and effective resolutions to issues, and help them be compliant with the tax laws.

Accountability: Specific, Clear Information From the IRS Allows for Better Stakeholder Feedback and Improved IRS Decision-Making

In Promoting Its Efforts Toward Reform, the IRS Has Sought to Sell Its Successes in Ways That Do Not Provide Sufficient Detail About Its Progress

Some IRS communications in 2023 portray IRS modernization in ways that omit relevant context or sufficient detail and that some may perceive as an overly optimistic version of actual progress, sometimes leading to unrealistic expectations. While this type of messaging may be reassuring in the short term, taxpayers and tax professionals must deal with the underlying realities; the gap between messaging and actual progress, along with unrealistic expectations, over time erode trust in tax administration. As a non-partisan administrator of the U.S. tax system, the IRS should provide full and candid information about the state of its operations, not just pick and choose the data that makes the agency look best. In the words of Commissioner Werfel, the IRS “must be transparent about [its] work, be responsible stewards of the taxpayer dollars we receive, and collaborate with Congress and other oversight entities.”

One example of the lack of detail is how the IRS touted its successes with its Paperless Processing Initiative⁵ but omitted important context. The IRS has said that “taxpayers are now able to digitally submit all correspondence and responses to notices.”⁶ However, the IRS did not explain that while taxpayers and tax professionals may submit documents digitally through the Document Upload Tool (DUT), the agency has not yet developed an IRS-wide streamlined backend system to manage the processing of those submissions. The IRS must still do some manual sorting and processing for documents submitted through DUT, which has created delays and unrealistic expectations of timing.⁷ Some notices do not fit the criteria to allow for a digital response, such as when the notice requires a pen/ink signature. IRS messaging silently omits those notices from the definition of “all” for this purpose, which is confusing to taxpayers and tax professionals who expect to be able to submit documents digitally but find that this option is not available for some notices. Elimination of paper is a good thing for tax administration, but it is only the first step in the paperless process.

4 See White House, Fifth U.S. Open Government National Action Plan (Dec. 2022), <https://open.usa.gov/assets/files/NAP5-fifth-open-government-national-action-plan.pdf>; George Yin, *Reforming (and Saving) the IRS by Respecting the Public's Right to Know*, 100 Va. L. Rev. 1115 (2014), <https://virginialawreview.org/articles/reforming-and-saving-irs-respecting-publics-right-know/>.

5 See, e.g., IRS Fact Sheet, FS-2023-25, IRS Achieves Key Paperless Processing Initiative Goal, Outlines Improvements for Filing Season 2024 (Nov. 2023), <https://www.irs.gov/newsroom/irs-achieves-key-paperless-processing-initiative-goal-outlines-improvements-for-filing-season-2024>.

6 *Id.*

7 See Most Serious Problem: *Online Account Access for Taxpayers and Tax Professionals: Digital Services Remain Inadequate, Impeding Efficient Case Resolution and Forcing Millions of Taxpayers to Call or Send Correspondence to the IRS*, *infra*.

The IRS needs to properly manage the expectations of taxpayers and tax professionals while it works on establishing a more efficient backend system for processing DUT receipts before creating the next backlog of documents.

Similarly, the IRS announced that taxpayers may electronically submit Form 1040-X, Amended U.S. Individual Tax Return, but it has not emphasized that the agency continues to process these forms manually, resulting in long delays in both data intake and the issuance of refunds. As of the end of the 2023 filing season, it took the IRS about seven months to process Forms 1040-X⁸ and, as of November 11, 2023, about 770,000 Forms 1040-X remain unprocessed.⁹ While any step taken toward reduction of paper submissions is positive, IRS messaging should not overstate what it has accomplished, and it needs to set realistic expectations regarding timing. Taxpayers and tax professionals who submit documents electronically likely expect faster processing times than with paper submissions and are confused and surprised to find that significant delays still occur.

IRS communications have also celebrated the agency's 85 percent Level of Service (LOS) responding to taxpayer phone calls in 2023. That was a significant achievement and a vast improvement over the prior year. However, the IRS selectively chooses data for its LOS metric in several ways, and the LOS metric does not equate to the percentage of total calls that live assistants answered. While it achieved its 85 percent LOS based upon its metrics, it answered just 35 percent of all taxpayer calls received.¹⁰ The LOS measure is also not the same for all lines, with some lines having a lower LOS than others. Notably, the LOS in fiscal year (FY) 2023 on the Practitioner Priority Service (PPS) line, the primary phone line for taxpayers' representatives, was only 34 percent, with an average wait time of 16 minutes.¹¹ Additionally, achieving the 85 percent LOS during the 2023 filing season came at a cost to millions of taxpayers. To reach 85 percent, the IRS temporarily reassigned employees to focus on answering phones even when call volumes were low, shifting them away from their other responsibilities, which include processing amended returns and handling taxpayer correspondence. Having customer service representatives (CSRs) primarily working the phone caused the CSRs to be idle 34 percent of the time.¹² Being idle essentially means the CSRs were waiting for the phone to ring and not working on other tasks. Not surprisingly, the focus on the phones once again led to a growth in the backlog of amended returns and paper correspondence.¹³ Despite this temporary increase in attention to phones, tax professionals in focus group sessions on IRS Transparency at the 2023 IRS Nationwide Tax Forums reported continuing dissatisfaction with IRS phone service both in terms of wait times and in receiving knowledgeable answers from the IRS employees with whom they spoke.¹⁴ In the National Taxpayer Advocate's conversations with tax professionals at the IRS Nationwide Tax Forums, many expressed confusion and displeasure with the IRS's representation that it was answering 85 percent of calls in under four minutes; this was not the experience they had when calling the PPS line.

8 IRS, Accounts Management (AM) Research, Analysis, and Data Reports, Form 1040-X (week ending Apr. 22, 2023).

9 IRS, IRS Operations: Status of Mission-Critical Functions (Dec. 8, 2023), <https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions>.

10 See National Taxpayer Advocate Fiscal Year 2024 Objectives Report to Congress vi (Preface: *National Taxpayer Advocate's Introductory Remarks*), <https://www.taxpayeradvocate.irs.gov/reports/2024-objectives-report-to-congress/>.

11 IRS, Joint Operations Center (JOC), Snapshot Reports: Product Line Detail for the 866-860-4259 Telephone Line (Sept. 30, 2023). See also Most Serious Problem: *Telephone and In-Person Service: Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service*, *infra*.

12 IRS, Ready Agent Hours Report (Jan. 1-Apr. 22, 2023).

13 From December 2022 through the filing season, the inventory of amended tax returns more than doubled from 1.5 million to 3.4 million, and the inventory of taxpayer responses to IRS notices and other AM cases awaiting processing increased from 4.9 million to 5.0 million. IRS, Wage and Investment data (weeks ending Dec. 23, 2022; Apr. 22, 2023).

14 2023 IRS Nationwide Tax Forums TAS Focus Groups, IRS Transparency 5 (Oct. 2023).

The IRS has described its progress on developing a Direct File pilot that will allow taxpayers to e-file returns directly with the IRS, suggesting that the success and expansion of Direct File is all but certain.¹⁵ However, according to a report by the Treasury Inspector General for Tax Administration (TIGTA), the IRS's public survey on Direct File may have overestimated taxpayer interest in the possibility of such a tool and led taxpayers to think the tool would have more options than will immediately be available, such as the ability to file state tax returns. Additionally, the IRS could not provide TIGTA with any supporting documentation for how the IRS estimated the tool's costs.¹⁶ The IRS needs to be transparent and provide detailed information to the public on the specifics of the pilot, its successes, its challenges, the associated costs, and the usage of the pilot program.

The IRS has highlighted its improvements to in-person assistance, noting that it has opened or reopened 50 Taxpayer Assistance Centers (TACs) since the start of November 2022.¹⁷ TAS commends this much-needed improvement; however, the public statements do not tell the whole story. On the positive side, the IRS exceeded the number of taxpayers assisted at TACs in the prior year, but it closed or was unable to open 43 TACs because of staffing shortages at some point during the 2023 filing season, and it did not fully staff 230 TACs.¹⁸ Falling well short of Secretary Yellen's directive to fully staff all TACs by 2023, as of September 2023, 266 of the 363 TACs (73 percent) were less than fully staffed, limiting service appointments available to taxpayers.¹⁹ Again, the National Taxpayer Advocate is appreciative of the IRS providing these much-needed services but is concerned that the representations fall short on the details, misleading the public. Also, these resources are largely unavailable to taxpayers living, working, or doing business outside of the United States.²⁰

High-profile statements on the status of Employee Retention Credit (ERC) claims have also not always matched reality. For example, in September 2023, the IRS announced a moratorium on the processing of newly filed claims but indicated it would continue to process ERC claims filed prior to the moratorium.²¹ However, data shows that the IRS had all but stopped processing these claims by that time, and they continue to be paused as of the writing of this Most Serious Problem.²² Although the term "processing" generally means taking an action such as allowing the claim in full or part, disallowing the claim in full or part, or assigning to a revenue agent for examination, the IRS seems to be using the term "processing" to include stepping back and strategizing how to proceed – not the actions most taxpayers think of as processing. As a result, hundreds of thousands of pre-moratorium claims are still waiting on the IRS to process them, and taxpayers await refunds while the number of post-moratorium claims continue to pile up.²³

15 IRS Fact Sheet, FS-2023-25, IRS Achieves Key Paperless Processing Initiative Goal, Outlines Improvements for Filing Season 2024 (Nov. 2023), <https://www.irs.gov/newsroom/irs-achieves-key-paperless-processing-initiative-goal-outlines-improvements-for-filing-season-2024>.

16 TIGTA, Ref. No. 2024-408-002, *Inflation Reduction Act: Assessment of a Free and Electronic Direct Filing Tax Return System* 9 (2023), <https://www.tigta.gov/reports/audit/inflation-reduction-act-assessment-free-and-electronic-direct-filing-tax-return>.

17 IRS Fact Sheet, FS-2023-25, IRS Achieves Key Paperless Processing Initiative Goal, Outlines Improvements for Filing Season 2024 (Nov. 2023), <https://www.irs.gov/newsroom/irs-achieves-key-paperless-processing-initiative-goal-outlines-improvements-for-filing-season-2024>.

18 See TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), <https://www.tigta.gov/reports/inspection-evaluation/inflation-reduction-act-assessment-irs-efforts-deliver-expected>.

19 Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), <https://home.treasury.gov/news/press-releases/jy0952>; IRS response to TAS fact check (Dec. 12, 2023). Fully staffed TACs means having all available workstations in a TAC filled with the appropriate type of face-to-face employee.

20 See Most Serious Problem: *Compliance Challenges for Taxpayers Abroad: Taxpayers Abroad Continue to Be Underserved and Face Significant Challenges in Meeting Their U.S. Tax Obligations*, *infra*.

21 IRS News Release, IR-2023-169, To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros (Sept. 15, 2023), <https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros>.

22 See Most Serious Problem: *Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *supra*.

23 *Id.*

The list could go on. The point is that it shouldn't. The question going forward is how to ensure that IRS reform efforts focus on long-term progress rather than short-term narratives. Stakeholders debated this issue at length in the run-up to the IRS Restructuring and Reform Act of 1998 (RRA 98),²⁴ legislation that led to extensive reforms at the IRS. The bipartisan commission assigned by Congress at the time to investigate IRS reform stated in a 1997 report that unless the IRS could be “insulated from political interference,” the result would be that the IRS would take a “reactive” approach to reform efforts, with “scattered attention to a host of non-strategic issues.”²⁵

THE IRS MUST FOCUS ON LONG-TERM PROGRESS rather than short-term narratives

To that end, the commission considered the appropriate role for the Treasury Department in tax administration.²⁶ The commission found that Treasury's increased involvement in IRS oversight “often amount[ed] to little more than costly and sporadic exercises in micro-management that lack the necessary strategic and long-term focus. ... The Commission is confident that Treasury, the President, and [the] IRS would save resources and improve tax administration if the Treasury spent less time ‘in the details,’ and more time focused on priority matters and overall accountability at the IRS.”

Before Congress passed RRA 98, the working assumption initially was that the IRS would be removed from the Treasury Department.²⁷ Ultimately Congress decided to leave the IRS within the Treasury Department but to also establish an IRS Oversight Board, consisting primarily of people from the private sector with experience running large service organizations who could provide independent guidance to “ensure that the IRS is moving forward in a cogent, focused direction.”²⁸ While the IRS Oversight Board still exists by statute, it has been effectively defunct since 2015 when it suspended operations.²⁹ As such, it remains unresolved how to insulate the IRS from the sometimes short-term goals of the Treasury Department. But it is important for tax administration that the IRS remain insulated from political interference and focus on its mission of providing America's taxpayers with top-quality service by helping them understand and meet their tax responsibilities and by enforcing the law with integrity and fairness.

24 IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (1998) [hereinafter referred to as RRA 98].

25 See Report of the National Commission on Restructuring the Internal Revenue Service, A Vision for a New IRS (June 25, 1997), <https://www.taxnotes.com/tax-notes-today-federal/legislative-and-policy-issues/full-text-irs-restructuring-commissions-final-report-part-1-2/1997/06/26/12db0>.

26 *Id.* (“While Treasury retains its rightful place as the developer of tax policy for the executive branch, it generally is, and should remain, removed from tax administration.”).

27 George Guttman, *The IRS Oversight Board: One Year in*, TAX NOTES, Dec. 10, 2001, at 1375, <https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration-issues/news-analysis-irs-oversight-board-one-year/2001/12/12/10cp5>.

28 Report of the National Commission on Restructuring the Internal Revenue Service, A Vision for a New IRS (June 25, 1997), <https://www.taxnotes.com/tax-notes-today-federal/legislative-and-policy-issues/full-text-irs-restructuring-commissions-final-report-part-1-2/1997/06/26/12db0>.

29 See Armando Gomez, *Can the IRS Yet Achieve the Restructuring Commission's Vision?*, 20 PITT. TAX REV. 23, 39 (2022), <https://taxreview.law.pitt.edu/ojs/taxreview/article/view/167>. Some other statutory changes remain effective, however. For example, RRA 98 established the five-year term for the IRS Commissioner. IRC § 7803(a)(1)(B); RRA 98, Pub. L. No. 105-206, § 1102(a), 112 Stat. 685, 697 (1998).

The IRS Needs to Take a More Centralized and Permanent Approach to Engaging External Stakeholders and Seeking Comments From Stakeholders

The IRS has emphasized that feedback from external stakeholders is an important part of implementing the initiatives in its reform plan.³⁰ To maximize the value of potential feedback, the IRS should provide stakeholders with specific and detailed information on its plans, provide a centralized location on IRS.gov for opportunities to comment, and effectively manage the comments it receives.

Publicizing requests for feedback in different ways can make it difficult for stakeholders to keep track of all the issues on which the IRS is seeking comments, as well as the specific email addresses where they should send comments. For example, to publicize the request for comments on SOP Initiative 2.3, the IRS created an email address where stakeholders could submit comments (wi.otc.cam@irs.gov), which it noted in certain email newsletters and sent to various IRS advisory committees and groups advancing taxpayer interests.³¹ For Initiative 2.4, the IRS created a separate email address (LBI.SOP.Initiative.Feedback@irs.gov) that it announced in a news release.³² Stakeholders who did not see a particular email or presentation with the information may have missed the opportunity to comment.

The IRS should list all comment opportunities on IRS.gov and consider designing pages so stakeholders can submit comments directly on the website, similar to the existing online page that allows for stakeholders to submit comments about IRS forms and publications.³³ An added benefit of a centralized approach to comments is that it would create a more permanent, ongoing approach to stakeholder feedback. Reform should be an ongoing process of incremental improvement that public feedback continuously informs.

In seeking feedback on some SOP initiatives, the IRS has sought to leverage some of its existing relationships with stakeholder groups, such as the Electronic Tax Administration Advisory Committee, the Internal Revenue Service Advisory Council, and the Taxpayer Advocacy Panel. These groups provide valuable feedback to the IRS on many issues. Having these groups available for comment further underscores the importance of establishing long-term institutional approaches to feedback.

Simplicity: Taxpayers Shouldn't Have to Struggle to Figure Out How to Comply and Claim Benefits

Confusing or Late Legal Guidance Causes Problems for Taxpayers, Tax Professionals, Related Businesses, and Stakeholders, Potentially Requiring Them to Reverse Course at the Last Minute

When IRS guidance isn't timely or doesn't settle issues with certainty, the agency effectively passes the burden of interpreting tax law to taxpayers and tax professionals while retaining for itself the option of later choosing a position. Taxpayers should not have to get an advanced degree in tax law to understand their obligations. They need straightforward, plain language information on what the law requires so they can meet their obligations effectively and foresee how the law will impact their transactions.

30 See, e.g., IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 3, 32, 54, 125 (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

31 IRS response to TAS information request (Oct. 2, 2023).

32 IRS News Release, IR-2023-171, IRS Requests Comments On Expanding Tax Certainty and Issue Resolution Programs for Business Taxpayers (Sept. 15, 2023), <https://www.irs.gov/newsroom/irs-requests-comments-on-expanding-tax-certainty-and-issue-resolution-programs-for-business-taxpayers>.

33 IRS, Comment on Tax Forms and Publications (Feb. 14, 2023), <https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications>.

STRAIGHTFORWARD, PLAIN LANGUAGE IS NECESSARY

Taxpayers should not have to get an advanced degree in tax law to understand their obligations

For example, in the lead-up to the 2023 filing season, the IRS was slow to clarify its position on two significant issues of widespread concern, leading to uncertainty and confusion for taxpayers, tax professionals, and related businesses.³⁴ The first involved the taxability for federal income tax purposes of special state relief payments or tax refunds paid in 2022 to residents of 21 states to help offset the costs of inflation or the pandemic. Despite considerable high-profile uncertainty on the federal tax treatment of such payments and requests by numerous states for guidance, the IRS did not clarify its position until February 10, 2023, after the filing season had begun.³⁵ Because filing had already started, tax return software developers had already devoted resources to deciding how to treat the amounts and programmed their software accordingly (knowing the risk that the IRS might later take a different view but having little or no option). Any taxpayers who filed returns reporting the payments as taxable would have needed to file amended or superseding returns to exclude the payments. The IRS could have avoided such cost and confusion with more timely and proactive guidance.

Another example of late guidance involved the changes to reporting thresholds for the issuance of Forms 1099-K, Payment Card and Third Party Network Transactions, by third-party settlement organizations such as Venmo, PayPal, and Cash App. The expansion of the reporting requirements from prior law had led to widespread concern that many taxpayers would receive incorrect Forms 1099-K and not know how to account for them when filing their tax return. Third-party settlement organizations and users of the apps repeatedly asked the IRS to provide guidance. Despite nearly two years of lead time, on December 23, 2022, the IRS effectively pulled the plug, postponing implementation of the lowered reporting threshold for one year.³⁶ Then, at the end of 2023, the IRS issued another one-year postponement, announcing on November 21, 2023, that it will again delay the \$600 Form 1099-K reporting threshold for third-party settlement organizations due to the “complexity of the new provision, the large number of individual taxpayers affected, and the need for stakeholders to have certainty with enough lead time.”³⁷ Although delaying the implementation of the new legislation is favorable to taxpayers and should reduce taxpayer confusion and frustration during 2024, early and clear guidance could have reduced the anticipated burdens. Once again, the National Taxpayer Advocate recommends the IRS continue to provide guidance and education to reduce burdens as it implements the transition starting in 2025 and provide specific guidance to taxpayers who receive an incorrect Form 1099-K for personal use.

The continuing saga of ERC claims should also serve as lessons learned to the IRS on how it should have developed early guidance and processes when implementing new legislation. The ERC is a refundable credit that Congress first authorized in 2020 during the COVID-19 pandemic to provide employers with additional

34 See Erin M. Collins, The IRS Must Be Proactive in Issuing Timely and Clear Guidance to Resolve Tax Reporting Ambiguities, NATIONAL TAXPAYER ADVOCATE BLOG (Aug. 30, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-the-irs-must-be-proactive-in-issuing-timely-and-clear-guidance/>.

35 IRS News Release, IR-2023-23, IRS Issues Guidance on State Tax Payments to Help Taxpayers (Feb. 10, 2023), <https://www.irs.gov/newsroom/irs-issues-guidance-on-state-tax-payments-to-help-taxpayers>.

36 IRS Notice 2023-10, 2023-3 I.R.B. 403, Revised Timeline Regarding Implementation of Amended Section 6050W(e), <https://www.irs.gov/pub/irs-drop/n-2023-10.pdf>.

37 IRS News Release, IR-2023-221, IRS Announces Delay in Form 1099-K Reporting Threshold for Third Party Platform Payments in 2023; Plans for a Threshold of \$5,000 for 2024 to Phase in Implementation (Nov. 21, 2023), <https://www.irs.gov/newsroom/irs-announces-delay-in-form-1099-k-reporting-threshold-for-third-party-platform-payments-in-2023-plans-for-a-threshold-of-5000-for-2024-to-phase-in-implementation>; IRS Notice 2023-74, 2023-51 I.R.B. 1, Revised Timeline Regarding Implementation of Amended Section 6050W(e), <https://www.irs.gov/pub/irs-drop/n-23-74.pdf>.

funds to help them retain employees. However, a cascade of issues, many but not all within the IRS's control, led to extensive delays in processing ERC claims³⁸ and ultimately to potentially fraudulent claims.³⁹ While the IRS issued guidance relatively quickly after Congress first enacted ERC legislation,⁴⁰ the guidance and rules for eligibility confused many small business owners.⁴¹ Taxpayers and tax professionals were largely unable to reach knowledgeable IRS representatives who could clarify how the rules would apply in their situation.⁴² The processes the IRS developed for ERC claims relied on manual processing of paper submissions at a time when few employees were available to work those claims.⁴³ A TIGTA audit found that the IRS did not timely update its programming and procedural guidance, adequately train employees on processes, or appropriately prioritize ERC claims.⁴⁴ The combination of confusing rules, lack of documentation of eligibility requirements on amended returns, and inefficient processes created fertile ground for ERC mills to lure business owners into filing fraudulent claims. As problems snowballed for the IRS, the agency has had to look for new solutions to pull itself out from the situation, such as a moratorium on the processing of new claims⁴⁵ and procedures allowing taxpayers to withdraw existing claims.⁴⁶ The September 14, 2023, news release announcing the moratorium also stated that the IRS was developing a settlement program for taxpayers who had received an improper ERC payment and that it would provide more details in Fall 2023. However, as of the drafting of this Most Serious Problem, taxpayers are still waiting to learn the terms and conditions of the settlement program. Overall, while it was a difficult assignment for the IRS to develop an efficient method to manage ERC claims during the pandemic, the path the IRS took led to the current situation. Hindsight is a wonderful thing, but the ability to understand what caused the challenges and delays is important for the IRS to understand to make better decisions in the future. Going forward, the IRS should be proactive, ensure that its guidance and procedures are timely, simple, and practical for both taxpayers and IRS employees, and address any failures in processes before they spiral out of control.

SOP Initiative 1.7 aims to “[p]rovide earlier legal certainty,” noting that in recent years, the IRS has been able to provide guidance “only for priority issues, leaving many taxpayers unaware of how the IRS views the application of the law and whether certain positions will be accepted.”⁴⁷ One project in the initiative is to expand capacity in the Office of Chief Counsel and the Department of the Treasury Office of Tax Policy to

38 TIGTA, Ref. No. 2022-46-059, *Delays Continue to Result in Businesses Not Receiving Pandemic Relief Benefits* (2022), <https://www.tigta.gov/reports/audit/delays-continue-result-businesses-not-receiving-pandemic-relief-benefits>.

39 See Jonathan Curry & Lauren Loricchio, *IRS Halts ERC Claims Processing Amid ‘Tsunami’ of Fraud*, TAX NOTES, Sept. 18, 2023, <https://www.taxnotes.com/taxpractice/credits/irs-halts-erc-claims-processing-amid-tsunami-fraud/2023/09/18/7h96l>.

40 The IRS did not timely address all issues and is still releasing guidance. For example, the IRS only recently, in November 2023, issued a 14-page legal advice memorandum on whether employers could have relied on recommendations that the Occupational Safety and Health Administration made in 2020 and 2021 to meet the definition of an “eligible employer” for purposes of the ERC. IRS, Memorandum AM 2023-007, *Issues Related to Whether an Employer Experienced a Full or Partial Suspension of the Operation of a Trade or Business Under Section 2301 of the Coronavirus Aid, Relief, and Economic Security Act or Section 3134 of the Internal Revenue Code Due to Communications From the Occupational Safety and Health Administration* (Nov. 3, 2023), <https://www.irs.gov/pub/irsoa/am-2023-007.pdf>.

41 Government Accountability Office (GAO), GAO-22-104582, *Tax Equity: Enhanced Evaluation Could Improve Outreach to Small Business Owners* (2022), <https://www.gao.gov/products/gao-22-104582>; Juan F. Vasquez Jr. et al., *ERC Audits and the IRS’s \$80 Billion Cash Infusion*, TAX NOTES, Oct. 31, 2022, <https://www.taxnotes.com/tax-notes-today-federal/compliance/erc-audits-and-irs-80-billion-cash-infusion/2022/10/31/7f9bg>.

42 Letter from Pat Cleary, National Association of Professional Employer Organizations, to Janet L. Yellen, Sec’y of the Treasury, TAX NOTES, Apr. 7, 2022, <https://www.taxnotes.com/tax-notes-today-federal/credits/employer-org-calls-more-action-erc-processing-backlog/2022/04/13/7dcpv>.

43 TIGTA, Ref. No. 2021-46-064, *Effects of the COVID-19 Pandemic on Business Tax Return Processing Operations* (2021), <https://www.tigta.gov/reports/audit/effects-covid-19-pandemic-business-tax-return-processing-operations>.

44 TIGTA, Ref. No. 2022-46-059, *Delays Continue to Result in Businesses Not Receiving Pandemic Relief Benefits* (2022), <https://www.tigta.gov/reports/audit/delays-continue-result-businesses-not-receiving-pandemic-relief-benefits>.

45 IRS News Release, IR-2023-169, *To Protect Taxpayers From Scams, IRS Orders Immediate Stop to New Employee Retention Credit Processing Amid Surge of Questionable Claims; Concerns From Tax Pros* (Sept. 14, 2023), <https://www.irs.gov/newsroom/to-protect-taxpayers-from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros>.

46 IRS News Release, IR-2023-193, *IRS Announces Withdrawal Process for Employee Retention Credit Claims; Special Initiative Aimed at Helping Businesses Concerned About an Ineligible Claim Amid Aggressive Marketing, Scams* (Oct. 19, 2023), <https://www.irs.gov/newsroom/irs-announces-withdrawal-process-for-employee-retention-credit-claims-special-initiative-aimed-at-helping-businesses-concerned-about-an-ineligible-claim-amid-aggressive-marketing-scams>.

47 IRS, Pub. 3744, *IRS Inflation Reduction Act Strategic Operating Plan 32* (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

proactively address more taxpayer questions using both formal and informal legal guidance and rulings. The second project in the initiative is to develop additional guidance tools to address current challenges and, where possible, provide greater certainty for taxpayers.⁴⁸

These projects remain largely in the early stages, but they are promising. Taxpayers and tax professionals need more IRS guidance, both formal and informal. In addition, the IRS needs to continue its work updating the organization and searchability of IRS.gov to make it easier for taxpayers and tax professionals to find applicable guidance once it does become available. Taxpayers and tax professionals often first look to use self-help tools and online resources to address tax questions and issues but get frustrated when the available information is not readily identifiable or is buried in pages of links with unclear titles.⁴⁹

The IRS's Office of Online Services has an ambitious plan of ongoing projects to make IRS.gov content easier to find, understand, and use. The projects include user testing, journey mapping, and initiatives to make content more searchable and improve its placement on the website. A recent joint project by the IRS's Taxpayer Experience Office and the Wage and Investment Division demonstrates the type of improvements the IRS can make by analyzing gaps in compliance. Following a study indicating that recently divorced taxpayers, who before divorce were generally in compliance, had begun to receive balance due notices, the team developed a landing page to centralize information on tax issues relating to divorce with the goal of providing clear guidance to improve compliance for these individuals.⁵⁰ The next steps should be to continue to study the effectiveness of the page and the effects on compliance for this group of taxpayers and to decide whether the IRS needs to make further changes.

Reliance on IRS guidance remains an issue.⁵¹ Informal guidance like FAQs and online tools project the appearance of certainty, but taxpayers can't actually rely on such informal guidance to defend the merits of their positions in an audit or in litigation.⁵² The IRS is making efforts to become more transparent about this by adding language to IRS.gov explaining when taxpayers can rely on IRS guidance,⁵³ but the next step forward is to minimize or eliminate this uncertainty altogether. Informal guidance should include direct references to formal law, such as through citations, hyperlinks, or QR codes, wherever informal guidance advises taxpayers to commit to a tax position. After taxpayers read clear descriptions in informal guidance and understand the framework for the rules, many will then be able to understand the more technical language in formal guidance. Such citations also help keep informal guidance up to date and eliminate errors by facilitating review within the Office of Chief Counsel and the IRS. Most informal guidance receives periodic review, but IRS employees do not always have enough time to fit a lengthy review into their workload.

48 IRS response to TAS information request (Sept. 15, 2023).

49 See Erin M. Collins, IRS.gov – How Usable Is It? (Part One), NATIONAL TAXPAYER ADVOCATE BLOG (Aug. 9, 2022), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-irsgov-website-1/>; Erin M. Collins, IRS.gov – How Usable Is It? (Part Two), NATIONAL TAXPAYER ADVOCATE BLOG (Aug. 11, 2022), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-irsgov-website-2/>.

50 IRS, Filing Taxes After Divorce or Separation, <https://www.irs.gov/individuals/filing-taxes-after-divorce-or-separation> (Oct. 31, 2023); IRS response to TAS information request (Sept. 21, 2023).

51 See discussion in National Taxpayer Advocate 2022 Annual Report to Congress 120-121 (Most Serious Problem: IRS Transparency: Lack of Transparency About Processing Delays and Other Key Data Frustrates Taxpayers and May Undermine Voluntary Compliance), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_07_Transparency.pdf.

52 Taxpayers can cite their reliance on some informal guidance to seek relief from certain penalties. See IRS, General Overview of Taxpayer Reliance on Guidance Published in the Internal Revenue Bulletin and FAQs (July 28, 2023), <https://www.irs.gov/newsroom/general-overview-of-taxpayer-reliance-on-guidance-published-in-the-internal-revenue-bulletin-and-faqs>. See also *Miller v. Comm'r*, 114 T.C. 184, 195 (2000) ("Taxpayers rely on such publications at their peril. Administrative guidance contained in IRS publications is not binding on the Government, nor can it change the plain meaning of tax statutes."); Joshua D. Blank & Leigh Z. Osofsky, *The Inequity of Informal Guidance*, 75 Vand. L. Rev. 1093, 1110-1116 (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3909897 (arguing that the "two tiers of formal and informal tax law systematically disadvantage taxpayers who lack access to sophisticated advisors").

53 In response to a recommendation in the National Taxpayer Advocate 2022 Annual Report to Congress that the IRS clearly state on all guidance the extent to which the taxpayer can rely on the guidance either for penalty relief or in an audit, the IRS has agreed to update the IRS.gov reliance webpage to include a reference to other IRS.gov webpages, publications, forms, instructions, and other types of informal guidance made public by the IRS as subject to the same reliance limitations as FAQs. The IRS will also add a link to the updated page on the bottom of the IRS.gov homepage under *Know Your Rights*. IRS response to TAS fact check (Dec. 11, 2023).

Specific, pinpointed citations to underlying law would help IRS reviewers – as well as taxpayers and tax professionals – more quickly search for applicable legal developments and determine whether the wording in the guidance is the best characterization of the law. Going forward, the absence of citations in informal guidance would also indicate when there is no formal guidance directly on point.

The IRS Should Notify Taxpayers of Errors or Programming Changes to IRS Tools, Including Direct E-File

The IRS intends to expand the availability of tools such as calculators and chatbots as part of its efforts to create additional informal guidance.⁵⁴ A direct e-file system would also constitute an IRS tool, in that its user prompts and structure would serve as informal guidance that taxpayers would rely on in deciding what reporting positions to take. IRS tools can be helpful to taxpayers in understanding their obligations, but they involve some special transparency considerations. Errors in tools can arise even when there are no mistakes in the interpretation of law, due to the possibility of bugs in the programming. The IRS must identify and fix programming errors just as transparently as any updates it makes to written IRS guidance like FAQs.

In 2023, TAS found that the IRS Withholding Estimator tool was, in some situations, providing estimates that were erroneously low.⁵⁵ This was not due to a misinterpretation of applicable law, rather an issue in the calculation and display of results. Nonetheless, taxpayers who relied on the tool's estimate could have withheld too little, putting them at risk of penalties and additional, unexpected tax due at the time of filing for which they might not have set aside adequate funds. The IRS corrected the calculation error, but the Withholding Estimator webpage and FAQs do not yet notify the public of the error.⁵⁶

The landing page for IRS tools should include a link where users can find the history of material changes to the tool or IRS programing errors, with plain language descriptions of how the changes affect users, particularly in the case of errors that may adversely affect taxpayers or expose them to risk of examination or penalties.⁵⁷ The IRS should consider adding a comments box directly on the page where users could provide feedback regarding potential errors or problems they encounter.

Some tools, like an IRS direct e-file system, may be so impactful that the IRS should actively alert prior users when there are material updates. With a direct e-file system, for example, if the IRS were to modify the programming during filing season or change the language of user prompts, taxpayers who had already filed their return may be adversely affected and may need an opportunity to file an amended or superseding return.

Tools should advise taxpayers to print summaries for their records in case they later need to prove reliance on that tool. The IRS's Withholding Estimator and Interactive Tax Assistant already provide useful summaries that include the user prompts, user inputs, and the tool's recommendations. However, neither tool clearly directs taxpayers to print the summary for their records. As online accounts develop additional functionality, the IRS should consider creating a feature that allows taxpayers to save these summaries to their online account and request alerts regarding any material changes to tools they have used.

54 IRS response to TAS information request (Sept. 15, 2023). The IRS did not refer to calculators or chatbots in its response to the TAS information request. Rather, these tools are included as examples of what the IRS might create, based on existing IRS tools and news of recent IRS efforts in this area. See, e.g., IRS News Release, IR-2023-178, IRS Expands Use of Chatbots to Help Answer Questions on Key Notices; Expands on Technology That's Served 13 Million Taxpayers (Oct. 4, 2023), <https://www.irs.gov/newsroom/irs-expands-use-of-chatbots-to-help-answer-questions-on-key-notices-expands-on-technology-thats-served-13-million-taxpayers>.

55 IRS, Tax Withholding Estimator (Nov. 16, 2023), <https://www.irs.gov/individuals/tax-withholding-estimator>. According to the IRS, the error was due to the computations not appropriately including the deduction for Qualified Business Income for self-employed individuals.

56 TAS Systemic Advocacy, Information Gathering Project 67012, 2023 Tax [Withholding] Estimator Underestimates SE Tax; IRS, Tax Withholding Estimator, <https://apps.irs.gov/app/tax-withholding-estimator> (last visited Dec. 15, 2023); IRS, Tax Withholding Estimator FAQs (Nov. 15, 2023), <https://www.irs.gov/individuals/tax-withholding-estimator-faqs>.

57 Sensitive information could be withheld.

Trust: A Lack of Transparency Can Lead to Taxpayer Skepticism and Reduced Voluntary Tax Compliance

Taxpayers Need More Information on the Status of Their Claims With the IRS and in the Resolution of Issues

In focus group sessions on IRS Transparency at the 2023 IRS Nationwide Tax Forums, tax professionals discussed having difficulties reaching someone at the IRS on the phone, getting the IRS to respond to correspondence, or receiving explanations of the reason for IRS delays.⁵⁸ When tax professionals did reach someone on the phone, they reported that the representatives they spoke with often did not adequately understand the relevant tax law requirements and could not provide the assistance needed. One tax professional described calling the IRS to follow up on IRS correspondence on a specific taxpayer issue; however, each time the tax professional called, the agent could not provide any information on what steps the IRS had taken or what additional information it needed.⁵⁹

Tax professionals in the focus groups also expressed frustration that the IRS did not adequately respond either to confirm the receipt of information or to keep the tax professionals apprised of developments on claims. Tax professionals explained that the IRS generally either tells them to allow 30 to 60 days for processing or sends a letter asking to allow an additional 60 days, a process that may repeat indefinitely with no resolution. Tax professionals stated that they would like an acknowledgment when the IRS receives information or correspondence as well as defined timelines of when the IRS will follow up.⁶⁰

IRS tools like Where's My Refund?⁶¹ and Where's My Amended Return?⁶² continue to provide only limited information, primarily indicating whether the IRS received the return, approved a refund, or sent a refund. In the focus groups on IRS Transparency, tax professionals explained that Where's My Refund? worked adequately for simple returns that did not involve problems but that it did not provide helpful information for returns that had issues requiring further action.⁶³ The IRS has stated that integrating refund status information into individual online accounts is a high priority and is currently targeting May 2024 for the initial release of Where's My Refund? integration into individual online accounts.⁶⁴

The IRS SOP includes plans to provide more up-to-date information on wait times and processing times. The IRS currently lists some of this information on an "IRS Operations" page on IRS.gov,⁶⁵ where it posts updates on several issues, such as delays in processing returns and amended returns. However, the information on this page is vague and isn't presented in a user-friendly format. For example, the page currently states that as of November 11, 2023, the IRS had 953,000 unprocessed individual returns, including 2022 and 2021 returns that need review or correction, and that it is taking the IRS more than 21 days to issue a refund relating to these returns. The next section explains that returns received in the current year with problems could take more than 120 days to resolve. Many taxpayers in this situation who come to this page for information would likely have already waited more than the 21 or 120 days described on the page. Providing a minimum period of delay without information on the expected timing of resolution or a maximum period of delay is not completely helpful for taxpayers who need to know when to expect an action from the IRS.

58 2023 IRS Nationwide Tax Forums TAS Focus Groups, IRS Transparency 5 (Oct. 2023).

59 *Id.* at 6.

60 *Id.* at 6.

61 IRS, Where's My Refund? (Oct. 18, 2023), <https://www.irs.gov/refunds>.

62 IRS, Where's My Amended Return? (June 27, 2023), <https://www.irs.gov/filing/wheres-my-amended-return>.

63 2023 IRS Nationwide Tax Forums TAS Focus Groups, IRS Transparency 5 (Oct. 2023).

64 IRS response to TAS fact check (Dec. 11, 2023).

65 IRS, IRS Operations: Status of Mission-Critical Functions (Dec. 8, 2023), <https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions>.

When the IRS Makes Inaccurate Statements or Representations, It Should Act Quickly to Acknowledge and Correct Them

The Tax Court recently granted, in part, a taxpayer's motion to impose sanctions against the IRS pursuant to IRC § 6673(a)(2)(B) because "the objective actions of [IRS] counsel [rose] to the level of bad faith" for the failure to notify the court about a backdated document and not timely correcting the error in *LakePoint Land II, LLC v. Commissioner*.⁶⁶ The document related to a penalty that required timely written supervisory approval under IRC § 6751(b). The IRS supervisor had signed the penalty lead sheet in February 2017 but backdated her signature, making it appear that she had signed it in July 2016.⁶⁷ In seeking judgment on the issue in court, the IRS Office of Chief Counsel submitted the backdated penalty lead sheet along with a declaration incorrectly stating that the IRS supervisor had signed the sheet in July 2016. The taxpayer pressed the issue, and the Office of Chief Counsel eventually had to concede the backdating of the document and the inaccurate statements in the declaration. However, the Office of Chief Counsel delayed its concession for months after submitting the document and then pivoted to an alternative argument to try to prevail in the case.⁶⁸ Though the Tax Court acknowledged "the actions of [IRS] counsel may have begun as unintentional and unknowing," it found that such actions "have multiplied the proceedings in this case unreasonably and vexatiously," thereby making the government "vulnerable to liability for the costs, expenses, and fees attributable to the services of the taxpayer's attorney's professional services that are required as an appropriate response to the misconduct."⁶⁹

Based on the National Taxpayer Advocate's personal experience as a former employee in the Office of Chief Counsel, IRS employees do not intentionally and knowingly misrepresent information, but when operations or Counsel employees present inaccurate information to a court, the effect on public trust can be long-lasting. An incident like in *LakePoint* may give life to speculation about the extent of IRS misconduct and bad faith, which may undermine public trust and voluntary compliance. While the IRS can't entirely forestall such behavior on the part of certain employees, when it occurs, it must take appropriate steps to take ownership, acknowledge it, and rectify it. It should be noted that on October 11, 2023, the Office of Chief Counsel held a mandatory training for all Division Counsel attorneys on how to properly evaluate evidence of IRC § 6751(b) supervisory approval of penalties for cases in litigation. The National Taxpayer Advocate commends the Office of Chief Counsel for taking the issue seriously and taking appropriate steps so that such mishaps do not happen in the future. However, given that similar allegations of backdating have now arisen in other cases,⁷⁰ the Office of Chief Counsel should promptly complete the review in regard "of syndicated conservation easement cases to ensure that the evidentiary record about supervisory approval is properly presented and that the agency pursues or continues to pursue penalties only where appropriate."⁷¹ The National Taxpayer Advocate also recommends that the IRS make the findings public, directly contact any negatively affected taxpayers, and take the necessary steps to rectify the situation.⁷²

66 T.C. Memo. 2023-111. If the attorney is appearing on behalf of the IRS Commissioner, the Tax Court may require the United States to "pay such excess costs, expenses, and attorneys' fees in the same manner as such an award by a district court." IRC § 6673(a)(2)(B).

67 *LakePoint Land II, LLC v. Comm'r*, T.C. Memo. 2023-111, slip op. at 3.

68 *Id.* at 11-12.

69 *Id.* at 12-13. See also IRC § 6673(a)(2)(B).

70 See Kristen A. Parillo, *Easement Litigants Allege Penalty Backdating in Three More Cases*, TAX NOTES, Aug. 21, 2023, <https://www.taxnotes.com/tax-notes-today-federal/charitable-giving/easement-litigants-allege-penalty-backdating-three-more-cases/2023/08/21/7h38t>; see also Kristen A. Parillo, *Easement Litigants Allege Dodgy Penalty Approval by IRS Employees*, TAX NOTES, Oct. 3, 2023, <https://www.taxnotes.com/tax-notes-today-federal/audits/easement-litigants-allege-dodgy-penalty-approval-irs-employees/2023/10/03/7hdtk>.

71 *LakePoint Land II, LLC v. Comm'r*, No. 13925-17 (T.C. Sept. 7, 2023) (joint motion for continuance of trial), <https://www.taxnotes.com/tax-notes-today-federal/conservation-easements/irs-partnership-reach-settlement-conservation-easement-case/2023/09/13/7h909>.

72 As these events were unfolding, the Treasury Department issued proposed regulations and a proposed legislative amendment to IRC § 6751, both of which would allow for supervisory approval of applicable penalties at the last possible moment, seriously eroding the taxpayer protections provided by the statute. This is addressed further in two legislative recommendations in the National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Clarify That Supervisory Approval Is Required Under IRC § 6751(b) Before Proposing Penalties) and (Require an Employee to Determine and a Supervisor to Approve All Negligence Penalties Under IRC § 6662(b)(1))*.

CONCLUSION AND RECOMMENDATIONS

Taxpayers, tax professionals, stakeholders, and industry expect and deserve a well-functioning tax system based upon fairness and equity that protects taxpayer rights and ensures everyone pays their fair share of taxes. A transparent and efficient tax administration will build taxpayers' trust in the IRS, resulting in an effective and fair voluntary tax system that fully implements the Taxpayer Bill of Rights.

The funding in the IRA provides a unique opportunity to modernize, and the IRS cannot afford to waste it or lose the trust of Congress and taxpayers. The IRS needs to adopt a long-term focus in its reform efforts, provide clear and specific data on its modernization plans and progress, and develop lasting channels of communication that allow for feedback from external stakeholders. It needs to increase its capacity to issue clear and timely guidance and continue working on improvements to IRS.gov to make such guidance easier to access. Finally, the IRS needs to improve its processes for responding to taxpayer and tax professional inquiries to consistently provide knowledgeable, prompt, and helpful information that correctly answers questions or advances the resolution of issues and gains the trust of the American people.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Provide quarterly updates of milestones accomplished and an annual report updating the SOP. Include performance metrics for stated objectives that will allow for the evaluation of outcomes, including specific deadlines on when the IRS will meet these objectives.
2. Provide specific and verifiable details on the Direct File pilot; the number of taxpayers utilizing the tool; processing successes, issues, and lessons learned associated with the tool; and the costs of a direct e-file system.
3. Set up a centralized location on IRS.gov to inform the public of requests for feedback on modernization initiatives, with information on how to submit comments.
4. Add information to IRS tools notifying taxpayers when the IRS has made material changes and updated features.
5. Develop processes to more consistently and timely acknowledge the receipt of taxpayer correspondence and provide accurate timelines on when the IRS expects to respond or act.
6. Provide weekly information throughout the year on 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.
7. Publicly disclose the findings of its review of syndicated conservation easement cases on the potential backdating of penalty documents.

RESPONSIBLE OFFICIALS

Douglas O'Donnell, Deputy Commissioner, Services and Enforcement

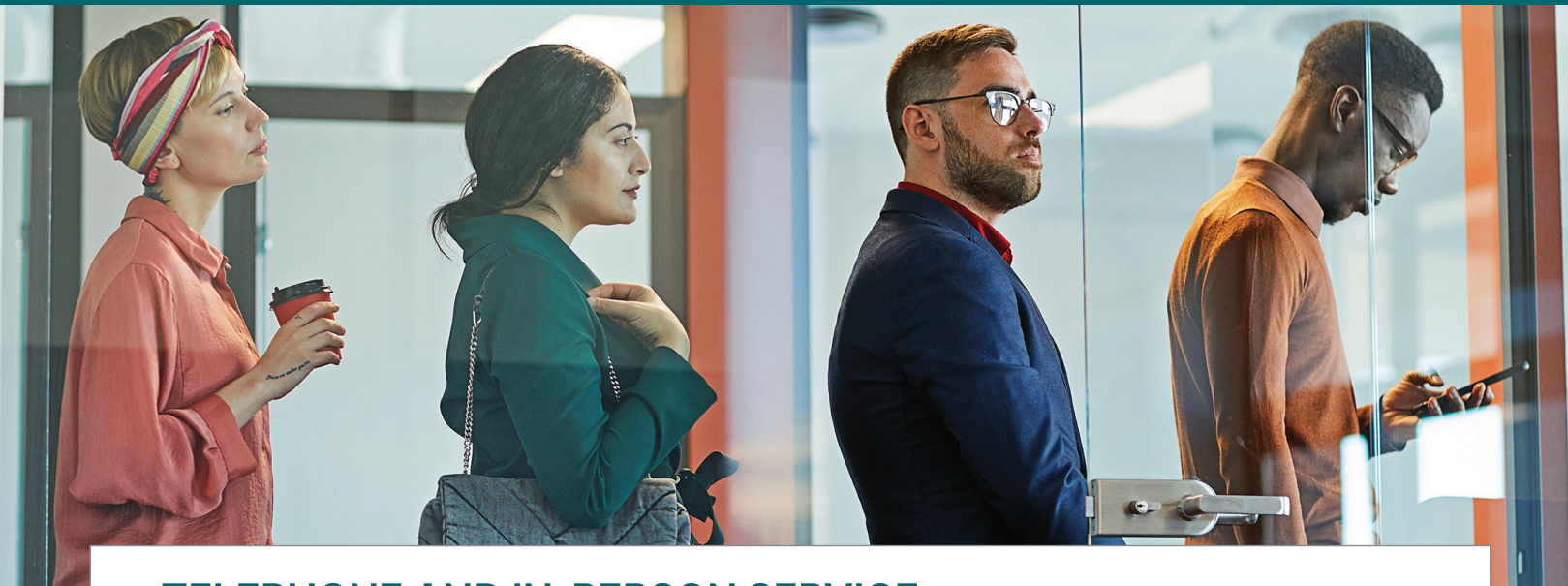
Kenneth Corbin, Commissioner, Wage and Investment Division, and Chief Taxpayer Experience Officer

Teresa Hunter, Chief Financial Officer

Karen Howard, Director, Office of Online Services

David Padrino, Chief Transformation and Strategy Officer

William Paul, Acting Chief Counsel



TELEPHONE AND IN-PERSON SERVICE

Despite Improvements in Its Service Levels, the IRS Still Does Not Provide Taxpayers and Tax Professionals With Adequate, Timely Telephone and In-Person Service

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

When taxpayers call the IRS, they expect and deserve quality service without suffering long wait times.¹ In 2023, telephone service was considerably better; however, it is still not providing the level of service that taxpayers and tax professionals need throughout the year. And based upon its Level of Service (LOS) measurement, the IRS is not able to accurately determine how to best provide that quality service.

The IRS's LOS metrics tell taxpayers nothing about how many calls the IRS transferred, whether taxpayers had to call multiple times, and whether the taxpayer ultimately received the information they needed. The IRS LOS does not measure whether customer service representatives (CSRs):

- Provide dependable and accurate assistance;
- Provide responsive assistance;
- Provide knowledgeable and courteous service; or
- Have the ability or training to answer taxpayer questions at the initial point of contact.

Although the IRS significantly improved phone service over the past year, the way the IRS calculates LOS paints a picture far more optimistic than the reality of the taxpayer's experience when calling for assistance and does not address "quality service." Tax professionals have been frustrated with the wait times and low LOS, incurring unnecessary costs due to IRS delays or CSRs' inability to answer questions.

¹ See Taxpayer Bill of Rights (TBOR), <https://www.taxpayeradvocate.irs.gov/taxpayer-rights> (last visited Dec. 15, 2023). The rights contained in TBOR are also codified in IRC § 7803(a)(3).

Taxpayers who need face-to-face service can make an appointment to visit Taxpayer Assistance Centers (TACs) for free tax help to address their tax questions and receive support if they face language barriers. Although TACs exist throughout the United States, several states have just one TAC location, and many are not fully staffed or operate on a limited schedule causing challenges for taxpayers. Many TACs do not meet the needs of taxpayers who live too far away or can't make an appointment at a time that works for them.

EXPLANATION OF THE PROBLEM

When taxpayers need assistance meeting their federal tax return filing and payment obligations, they obtain service through two of the IRS's primary service channels: telephone help lines and TACs.² Taxpayers and tax professionals unable to get their questions answered experience increased burden or may not be able to resolve their issues. When taxpayers cannot reach the IRS by phone or in person, it not only harms them but also the IRS by creating costly, multiyear negative impacts on IRS processing when taxpayers turn to paper correspondence to communicate with the IRS.³

The IRS reports CSR LOS as a key indicator of how well it is providing phone service. As it directs increasing numbers of taxpayers to self-service options, the IRS needs better measures of the taxpayer experience to ensure that those who need to speak with a live assistor can reach one and resolve their issue. The CSR LOS the IRS reports suffers from these deficiencies:

- CSR LOS accounts for about 77 to 85 percent of the total call volume the IRS receives, but it excludes important phone lines, such as those that taxpayers call with questions about balances owed and requests for help making payment arrangements, where LOS in fiscal year (FY) 2023 was 53 percent;⁴
- CSR LOS doesn't measure whether the IRS resolved the caller's issue; and
- Without a comprehensive measure of service, CSR LOS hinders the IRS from making effective decisions on allocating taxpayer services resources.

Taxpayers seeking face-to-face assistance at a TAC may experience difficulties. Some taxpayers do not live or work close to a TAC location or can't receive service at a suitable time. Some taxpayers can't get assistance from TACs because TAC standard operating hours are 8 a.m. to 4:30 p.m., Monday through Friday. Other taxpayers couldn't get an appointment because of staffing shortages (*e.g.*, the IRS couldn't open 43 TACs during the 2023 filing season), and it had 230 TACs not fully staffed.⁵ As of September 2023, 266 of the 363

2 See IRS, Service to Taxpayers (Apr. 14, 2023), <https://www.irs.gov/statistics/service-to-taxpayers>.

3 See Most Serious Problem: Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions, *supra*.

4 IRS, Joint Operations Center (JOC), Snapshot Reports: Enterprise Snapshot, Enterprise Total; IRS, JOC, Snapshot Reports: Accounts Management (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022; Sept. 30, 2023). Net Accounts Management (AM) attempts divided by net Enterprise attempts for FY 2020, FY 2021, FY 2022, and FY 2023 produced percentages of 82 percent, 85 percent, 82 percent, and 77 percent, respectively. IRS, JOC, Snapshot Reports: Product Line Detail (week ending Sept. 30, 2023). 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)).

5 See Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf>.

TACs (73 percent) were less than fully staffed, limiting service appointments available to taxpayers.⁶ The IRS's inability to fully staff all TAC locations emphasizes the need to provide alternative methods of service. It must scale up alternative face-to-face service options to meet taxpayer needs, including offering service during non-standard hours, hosting service pop-up events in rural areas, and assisting taxpayers via videoconferencing.

Despite improvements during FY 2023, taxpayers still lack quality service due to the following issues:

- The IRS makes critical resource allocations to achieve a benchmark LOS on phones instead of focusing on improving the taxpayer experience, including whether and how easily taxpayers resolved their issue;
- Antiquated technology limits the ability of CSRs to assist callers; and
- TACs do not offer more options and times for taxpayers to use their services.

ANALYSIS

Calls for improved taxpayer service have come from both the legislative and executive branches, and Congress has issued the IRS a mandate to improve taxpayer service.⁷ The Taxpayer First Act requires the IRS to develop and implement strategies to improve taxpayers' experiences with the IRS. During the past year, the Inflation Reduction Act (IRA) funding provided the IRS the ability to hire additional CSRs, increase LOS, and improve IRS customer service.⁸

IRS Level of Service Metrics Do Not Measure How Many Taxpayers Had Their Issues Resolved

The Office of Management and Budget (OMB) designated IRS as one of 25 high-impact federal service providers and issued guidance to manage customer experience and improve service delivery.⁹ OMB guidance identifies seven factors that affect how customers experience federal services, none of which the IRS addresses in its CSR LOS measure.¹⁰ These factors include:

- Satisfaction (whether the customer is satisfied with service received);
- Confidence/trust (whether the interaction increased confidence in the federal program/service or the ability to serve its relevant population);
- Effectiveness/quality (whether the customer's need was addressed or issue was resolved);
- Ease/simplicity (whether it was easy to complete what needed to be done);
- Efficiency/speed (whether it took a reasonable amount of time to complete what needed to be done);
- Equity/transparency (whether the customer was treated fairly/understood what was being asked of the customer throughout the process); and
- Employee helpfulness (whether employees the customer interacted with were helpful).

6 Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), <https://home.treasury.gov/news/press-releases/jy0952>; IRS response to TAS fact check (Dec. 12, 2023). Fully staffed TACs means having all available workstations in a TAC filled with the appropriate type of face-to-face employee.

7 Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019); 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"]; OMB, Preparation, Submission, and Execution of the Budget, Circular No. A-11, Section 280 (July 10, 2020).

8 Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019); Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 1818 (2022).

9 OMB, Preparation, Submission, and Execution of the Budget, Circular No. A-11, Section 280 (July 10, 2020).

10 According to OMB, it developed the factors using leading practices from the private and public sectors, including Fortune 500 companies, market research institutions, and international organizations.

The IRS surveys a fraction of callers who receive live assistance to assess these metrics, but that information is not publicly reported or combined with CSR LOS.¹¹ Basic customer surveys may only reveal that taxpayers are unhappy with a service without providing insight into why and what actions leaders can take to improve. Government agencies such as the Veterans Health Administration use human-centered design research to identify the top pain points for its customers.¹² Human-centered design creates products and services around the needs, wants, perspectives, and behaviors of people. It uses empathy and understanding to meet the needs of users, looking more at the nuances of individuals' behaviors and experiences than opinions. A core component of human-centered design is to learn what customers need using qualitative research methods such as interviews, firsthand observation, and focus groups.¹³ To comply with the OMB guidance to manage the customer experience and improve service delivery, the IRS needs a focused approach to improve the taxpayer experience, as some segments of the taxpaying population face unique challenges in getting access to the information and services needed to comply with their tax obligations.¹⁴

In 2022, Treasury Secretary Janet Yellen set ambitious goals for 2023 “to transform the IRS into a 21st century agency” and set even higher goals for 2024, focusing on achieving a CSR LOS of 85 percent and reducing average call wait times to five minutes or less.¹⁵ The Treasury Inspector General for Tax Administration (TIGTA) performed a study to assess how the IRS performed during Filing Season (FS) 2023 in meeting the expectations laid out by Secretary Yellen.¹⁶ It found that the IRS met only two of the Secretary's five expectations, one of which was improving CSR LOS on the Accounts Management (AM) toll-free phone lines during FS 2023 from approximately 15 percent to 85 percent and the other of which was reducing the average wait time from nearly 30 minutes to 15 minutes.¹⁷ Taxpayers generally contact the AM telephone lines seeking assistance with tax law questions and account inquiries and checking on the status of their tax return or tax refund.

Achieving the staffing levels necessary to reach an 85 percent CSR LOS inevitably leads to idle time for CSRs between calls. From January through April 22, 2023, CSRs spent 3.73 million hours staffing telephones to achieve a CSR LOS in excess of 85 percent; however, CSRs spent 1.27 million of those hours waiting to receive calls.¹⁸ The IRS makes significant resource allocations with their associated costs to achieve a benchmark CSR LOS. However, the CSR LOS metric is not a measurement of the quality of service the IRS provides to taxpayers or the overall taxpayer experience; rather, it is a metric on answering calls.

11 IRS response to TAS information request (Oct. 3, 2023).

12 See NADZEYA SHUTAVA, ET AL., *PARTNERSHIP FOR PUBLIC SERVICE, DESIGNING A GOVERNMENT FOR THE PEOPLE* (2022), <https://ourpublicservice.org/publications/designing-a-government-for-the-people/>.

13 *Id.*

14 See IRS, Pub. 5426, *Taxpayer First Act Report to Congress* (Jan. 2021), <https://www.irs.gov/pub/irs-pdf/p5426.pdf>.

15 Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), <https://home.treasury.gov/news/press-releases/jy0952>; Janet L. Yellen, Sec'y of the Treasury, Remarks at IRS Headquarters in Washington, D.C. (Nov. 7, 2023), <https://home.treasury.gov/news/press-releases/jy1888>.

16 TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf>; Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), <https://home.treasury.gov/news/press-releases/jy0952>. The five goals were resolving the backlogs of paper-filed tax returns and other tax account inventory; staffing the IRS's TACs to full capacity; improving the level of telephone service from approximately 15 percent to 85 percent and reducing the average wait time from nearly 30 minutes to 15 minutes; automating the scanning of millions of individual paper-filed tax returns to expedite the processing of tax returns and issuance of refunds; and providing taxpayers with the ability to receive and respond to notices online.

17 TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf>; see also National Taxpayer Advocate 2021 Annual Report to Congress 66, 73 (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 (where TAS recommended the IRS should be staffed to answer at least 85 percent of taxpayer calls).

18 IRS, Ready Agent Hours (RAH) Report (Jan. 1, 2023, through Apr. 22, 2023); see Most Serious Problem: *Processing: Ongoing Processing Delays Burden and Frustrate Taxpayers Awaiting Refunds and Other Account Actions*, *supra*.

Approximately 35 phone lines reside within the IRS's Wage and Investment AM function, which typically accounts for about 77 to 85 percent of the total call volume the IRS receives.¹⁹ As shown in Figure 2.4.1, CSRs answered 27.3 million taxpayer calls in FY 2023 with live assistance, 5.6 million more calls compared to FY 2022.²⁰

FIGURE 2.4.1, IRS Enterprise Phone Lines: Call Attempts, Calls Answered, Calls Answered by an IRS Employee, and Total LOS, FYs 2020-2023²¹

IRS Enterprise Phone Lines	FY 2020	FY 2021	FY 2022	FY 2023
Enterprise Total Call Attempts	100.5 mil	281.7 mil	173.3 mil	92.9 mil
Enterprise Total Calls Answered	47.5 mil	72.2 mil	51.8 mil	44.3 mil
Enterprise Calls Answered by a Live Assistor	24.2 mil	32.0 mil	21.7 mil	27.3 mil
Enterprise LOS	51%	21%	21%	51%
Enterprise Calls Answered by a Live Assistor	24%	11%	13%	29%
Enterprise Calls Answered With Automated Assistance	23%	14%	17%	18%

Although the IRS reported a 51 percent CSR LOS in FY 2023, live assistors answered only 29 percent of the total calls. Automated responses answered 18 percent of the total calls, and the IRS did not answer the rest, or the caller disconnected. The improvements in CSR LOS from 21 to 51 percent between FY 2022 and FY 2023 came with a sharp decrease in the number of IRS-initiated disconnects, which occur when the IRS connects calls to sites that are closed or unable to provide service due to high demand. The IRS initiated a disconnect on over 74 million calls in FY 2022 and reduced that number to 16.3 million in FY 2023.²² That reduction is a significant improvement, but the IRS is still disconnecting far too many calls.

The IRS uses AM's CSR LOS as a primary indicator of how well the IRS is meeting caller demand; however, it does not reflect the percentage of total calls that live assistors answered. CSR LOS reflects only calls directed to the IRS's AM telephone lines and serviced by live assistance and calls where prerecorded responses provided taxpayers information. Live assistors answered only one of every four calls on AM lines while the remaining taxpayer calls were completed using automated self-service options or reflected disconnected calls.²³

Taxpayers who speak with a CSR may not resolve their issue because the CSR lacks the information or the tools to help them do so. CSRs are the frontline employees who answer calls on IRS phone lines. They provide general tax information, furnish updates on the status of taxpayer returns/refunds/accounts, and adjust taxpayer accounts, when appropriate. Often CSRs are the IRS's first, and sometimes only, contact with a taxpayer. The IRS trains CSRs to communicate with taxpayers and be knowledgeable about tax law and IRS operational procedures. As of July 30, 2023, there were 14,460 trained CSRs working independently.²⁴

19 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; Sept. 30, 2023). Net AM attempts divided by net Enterprise attempts for FY 2020, FY 2021, FY 2022, and FY 2023 produced percentages of 82 percent, 85 percent, 82 percent, and 77 percent, respectively.

20 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2023).

21 IRS, JOC, Snapshot Reports: Enterprise Snapshot, Enterprise Total (weeks ending Sept. 30, 2020; Sept. 30, 2021; Sept. 30, 2022; Sept. 30, 2023). "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)).

22 IRS response to TAS information request (Nov. 16, 2023).

23 IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2023).

24 IRS response to TAS information request (Oct. 3, 2023).

During FY 2023, AM hired 5,626 new CSRs, and as of August 26, 2023, about 71 percent had completed training.²⁵ Although the IRS has significantly improved the availability of phone service, much of its resources have gone toward restoring more than 10,000 positions that have been depleted over the past decade.²⁶ During FY 2023, the IRS spent \$800 million of the \$3.2 billion provided for taxpayer services in the IRA on expenses such as hiring additional CSRs to enhance LOS and reduce the paper backlog.²⁷ The IRS anticipates exhausting all IRA taxpayer services funding in just four years.²⁸

The IRS's attrition rate is nearly 26 percent higher than the average for federal agencies, and in the next five years, about 63 percent of IRS employees will be eligible for retirement.²⁹ That means any plan to improve phone and in-person service must rely on improving the quality of each interaction rather than relying on an ever-increasing number of employees to improve service levels. The IRS plans to improve service delivery by increasing self-service options for taxpayers by 50 percent over the next three years to reduce demand for live service, reducing taxpayer frustration through feature-rich customer callback enhancements, and enhancing assistor services through multichannel agent desktop and automation.³⁰

Since 2019, the IRS has expanded use of callback technology to improve the taxpayer experience. Customer callback options are now available on 116 taxpayer-facing applications, covering up to 95 percent of taxpayers calling the IRS for toll-free live assistance.³¹ The IRS's callback technology lets taxpayers provide their callback number, hang up, and move on with other activities while awaiting a call back once an assistor becomes available. In January 2023, the IRS switched to a more advanced callback system that offers more dynamic scheduling and reporting and future optional expansion features, such as text alerts.³² The IRS uses four performance metrics to evaluate the callback system: number of callers offered callback, percent of callers electing callback, success rate in reconnecting, and taxpayer time saved.³³

Although the IRS improved telephone service throughout FY 2023 compared to FY 2022, CSR LOS declined after the filing season once the IRS reallocated resources, averaging only 51 percent over FY 2023.³⁴ The IRS deserves credit for the improvement in phone service, but its reported metrics can be misleading. When the IRS reports an 85 percent CSR LOS, it does not mean that 85 percent of taxpayers who called one of the IRS's 102 phones lines received assistance and does not reflect how many callers were satisfied with their experience.

To determine whether IRS telephone lines are operational and whether the IRS affords taxpayers simple, fast, and accessible customer service, TIGTA made test calls to all 102 telephone lines in service during FS 2023 (85 lines that provide live assistance and 17 that provide automated assistance through recorded messages) and identified that the IRS needs to improve to ensure that taxpayers receive top quality service when contacting

25 IRS response to TAS information request (Oct. 3, 2023).

26 IRS, Pub. 5530, Fiscal Year 2024 Budget in Brief (Feb. 2023), <https://www.irs.gov/pub/irs-pdf/p5530.pdf> (explaining that staff levels fell because of unfunded inflation increases, growing needs for expanded information technology systems, and various legislative mandates).

27 IRS, Pub. 5530, Fiscal Year 2024 Budget in Brief (Feb. 2023), <https://www.irs.gov/pub/irs-pdf/p5530.pdf>.

28 *Id.*

29 *Id.*

30 IRS, Strategic Development Executive Steering Committee Governance Baseline (Aug. 17, 2023).

31 U.S. Dep't of the Treasury, Filing Season 2023 Report Card: IRS Delivered Significantly Improved Customer Service (Apr. 17, 2023), <https://home.treasury.gov/news/press-releases/jy1421>.

32 IRS, Wage and Investment (W&I) Business Performance Review (BPR) Q1 FY 2023, at 7 (Feb. 23, 2023).

33 IRS, W&I BPR Q3 FY 2023, at 21 (Aug. 16, 2023).

34 IRS, JOC, Snapshot Reports: Enterprise Snapshot for Enterprise Total, Accounts Management, and Consolidated Automated Collection Service data (week ending Sept. 30, 2023).

IRS customer service telephone lines.³⁵ The test calls revealed that calls to 21 IRS phone lines resulted in hold times exceeding 30 minutes, five lines where assistance was unavailable due to staffing shortages, and two where the IRS initiated a disconnect.³⁶

There are 62 telephone lines that comprise the IRS's agencywide telephone "Enterprise." Among the top ten Enterprise lines by call volume, two (installment agreement/balance due lines and the Taxpayer Protection Program line) are not included in the CSR LOS measure the IRS reports publicly. Of the 92.9 million total call attempts the IRS Enterprise phone system received in FY 2023, live assistors and automation answered 44.3 million (48 percent) calls.³⁷

FIGURE 2.4.2, Top Ten IRS Enterprise Telephone Lines by Volume of Calls, FY 2023³⁸

Telephone Product Lines	Net Attempts	Assistor Calls Answered	Percentage of Calls Answered by a Live Assistor	Total Calls Answered (Live and by Automation)	LOS
Refund Hotline – Automated Only	16.2 mil	0.3 mil	0%	11.6 mil	65%
Individual Income Tax (Primary Line for Individual Taxpayers)	13.7 mil	4.1 mil	30%	5.0 mil	69%
Installment Agreement/Balance Due	8.4 mil	4.4 mil	52%	4.4 mil	53%
Business and Specialty Tax Services	7.0 mil	2.6 mil	37%	2.6 mil	49%
Practitioner Priority Service	6.7 mil	1.9 mil	29%	1.9 mil	34%
TAC Appointment Scheduling	5.7 mil	1.9 mil	34%	1.9 mil	49%
Taxpayer Protection Program	5.4 mil	1.6 mil	29%	1.6 mil	31%
Refund Call Back	4.0 mil	0.8 mil	21%	2.3 mil	58%
Wage and Investment – Individual Master File (IMF) Customer Response	3.4 mil	1.0 mil	29%	1.6 mil	61%
Business Master File (BMF) Customer Response	2.5 mil	0.7 mil	27%	0.7 mil	31%
Total	73.0 mil	19.3 mil		33.6 mil	

35 TIGTA, Ref. No. 2024-IE-R001, *Actions Are Needed to Improve the Quality of Customer Service in Telephone Operations* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-11/2024ier001fr.pdf>.

36 *Id.*

37 IRS, JOC, Snapshot Reports: Enterprise Snapshot for Enterprise Total, Accounts Management, and Consolidated Automated Collection Service data (week ending Sept. 30, 2023). All numbers in Figure 2.4.2 are rounded; however, the percentage change is calculated on the actual numbers.

38 IRS, JOC, Snapshot Reports: Product Line Detail (week ending Sept. 30, 2023). "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)).

The IRS routed 73 million (79 percent) of the calls it received to ten telephone lines in the IRS Enterprise based on the taxpayers' issue. The remaining 20 million calls (21 percent) were spread across the IRS's remaining 52 telephone lines in varying volumes.³⁹ "Net Attempts" reflect the attempts made to reach each of the ten highest volume telephone lines. "Assistor Calls Answered" reflect the number of calls that reached a live assistor while "Total Calls Answered" refers to all calls answered live and via automated assistance. These measures are useful for measuring the demand on IRS phone lines but not the taxpayer experience when taxpayers call the IRS for assistance.

While the IRS reported a 69 percent LOS on the Individual Income Tax line, LOS was much lower on other lines. Taxpayers calling the Installment Agreement/Balance Due line received only a 53 percent LOS. Assistors working the Balance Due line answer questions about balances owed and help taxpayers make payment arrangements. Taxpayers who cannot reach the IRS through this line risk becoming subjects of enforced collection actions, such as bank and wage levies and the filing a Notice of Federal Tax Lien. Taxpayer representatives calling the Practitioner Priority Service line experienced only a 34 percent LOS. When representatives cannot reach a CSR, it impedes their ability to help the taxpayers they represent.

The IRS created a new measure – Level of Service (Automation) (LOS(A)) – to capture the combined number of taxpayers who call seeking assistance from the IRS and receive a response to their inquiry by an assistor or through automated interactions based on taxpayer responses to prompts, such as the Where's My Refund? or Where's My Amended Return? lines. LOS(A) was 39.3 percent in FY 2022 and 66 percent in FY 2023.⁴⁰ While IRS service has improved according to its own LOS and LOS(A) measurements, taxpayers do not get to interact with live or automated assistance in more than a third of all calls. Callers captured in the LOS measurement still may not receive an answer to their question or resolve their issue. The IRS should modify its measure of LOS on telephones to factor in the quality of the experience of callers, including measuring whether taxpayers received the information requested, whether they needed to speak with multiple IRS employees, and whether the IRS provided additional information such as links to materials or videos.⁴¹ This data would allow the LOS to better reflect the caller's experience.

Figure 2.4.3 shows the IRS uses additional metrics to measure phone service, including the number of Assistor Calls Answered; Average Speed of Answer, the average time that customers waited in an assistor queue before the IRS connected them to an agent; and Average Handle Time, the average amount of time an assistor spent helping the customer (includes talk time, hold time, and after-call work called wrap time).⁴² What these numbers don't indicate is whether callers who spent 26 minutes total call time had their question answered or issue resolved.

39 IRS, JOC, Snapshot Reports: Product Line Detail (week ending Sept. 30, 2023); IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2023). All numbers are rounded; however, the percentage change is calculated on the actual numbers.

40 IRS, Pub. 5530, Fiscal Year 2024 Budget in Brief 1 (Feb. 2023), <https://www.irs.gov/pub/irs-pdf/p5530.pdf>; IRS response to TAS information request (Oct. 3, 2023).

41 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)).

42 IRS response to TAS information request (Oct. 3, 2023).

FIGURE 2.4.3, Phone Service Metrics, FY 2023⁴³

Telephone Line	CSR LOS	Assistor Calls Answered	Average Speed of Answer	Average Handle Time	Total Call Time
Enterprise	51%	27,257,751	13.3 minutes	15 minutes	28.3 minutes
Accounts Management	52%	17,934,696	10 minutes	16 minutes	26 minutes

IRS Level of Service Metrics Do Not Adequately Measure Taxpayer Satisfaction With IRS Phone Tree Choices

Callers cannot indicate whether they prefer to receive automated assistance. A phone tree greets callers to the AM lines. Depending on the options a taxpayer selects, the phone system determines whether to direct the caller to a live assistor or one of its automated offerings. During FY 2023, 15.7 million callers were greeted by a phone tree, then selected an application to resolve tax account issues, obtained tax information, or otherwise directed themselves to the appropriate source of assistance.⁴⁴ It is important for the IRS to analyze whether its phone tree system meets the needs of the taxpaying public and whether automated assistance resolves taxpayer issues. Not all IRS units have a public phone number that taxpayers can dial directly. For example, a taxpayer calling to inquire about the location of their passport submitted to obtain an Individual Taxpayer Identification Number may not be able to reach a live assistor by navigating the phone tree. Taxpayers deserve to reach a live assistor when necessary to resolve their issue, and the IRS must provide appropriate staffing to meet taxpayer demand.⁴⁵ We recommend the IRS measure satisfaction with IRS phone tree choices when it conducts toll-free customer satisfaction surveys.

The IRS continuously selects and invites some toll-free callers to participate in customer satisfaction and experience surveys. It uses an automated Interactive Voice Recognition system to invite select callers to take a survey immediately after speaking with a CSR. The objective of the survey is to identify what AM Toll-Free staff and managers can do to improve customer service and to track callers' satisfaction with AM phone service attributes over time.⁴⁶ Callers who only interacted with the automated telephone system are not eligible to participate in the survey.⁴⁷ Thus, the IRS has no way of measuring whether callers routed to automated assistance would have preferred the IRS route them to a live assistor, potentially generating additional follow-up calls to the IRS.

Figure 2.4.4 shows taxpayers are most dissatisfied when they need to make multiple calls to resolve their issues, with 34 percent of survey respondents in the first quarter of FY 2023 having called five or more times and 68 percent having called more than once.⁴⁸

⁴³ IRS response to TAS information request (Oct. 3, 2023).

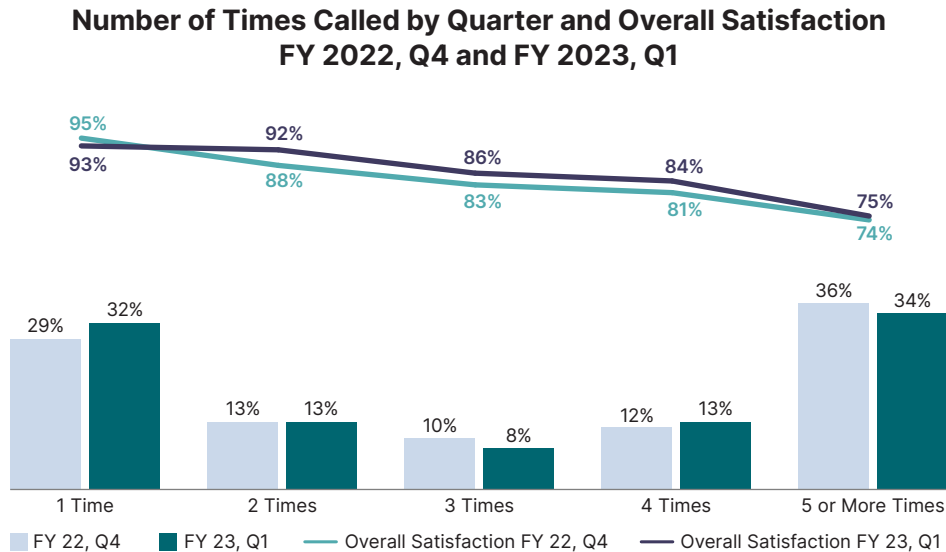
⁴⁴ IRS, W&I Comprehensive Data Dictionary (2024); IRS, JOC, Snapshot Reports: Enterprise Snapshot (week ending Sept. 30, 2023).

⁴⁵ See National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress vol. 1, at 6-8 (Introduction: *The National Taxpayer Advocate's Remarks on the Role of Trust and Taxpayer Advocate Service in Fostering Tax Compliance*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume1.pdf.

⁴⁶ IRS response to TAS information request (Oct. 3, 2023).

⁴⁷ *Id.*

⁴⁸ *Id.*

FIGURE 2.4.4⁴⁹

Note: There are no significant differences between FY 2022, Q4 and FY 2023, Q1 for these questions.

Note: Overall Satisfaction percentages are those who chose "Agree" or "Somewhat Agree."

Overall satisfaction decreases as the number of calls increases, with approximately an 18-point decrease in satisfaction from those who called once to those who called five or more times. The IRS can address one-call resolution by 1) using operational data to identify the specific call reasons; 2) conducting interviews with taxpayers to develop the "worst case" journey maps of how the first and subsequent calls unfold and the source of pain points; and 3) commissioning a study of best practices among like institutions with similar complex issues to learn process, people, or technology solutions to improve the customer experience.⁵⁰

Customer Service Representative Training Cannot Overcome Limitations of Antiquated Technology

CSRs answering calls need to be prepared to encounter a wide variety of issues. A CSR is considered trained after successful completion of classroom training and on-the-job training.⁵¹ Taxpayers who speak with a CSR may not resolve their issue because the CSR lacks the information or the tools to help them do so. For example, CSRs on AM phone lines cannot view all notices and letters the IRS has mailed the taxpayer, which can limit the CSR's ability to provide information about the taxpayer's specific circumstances.

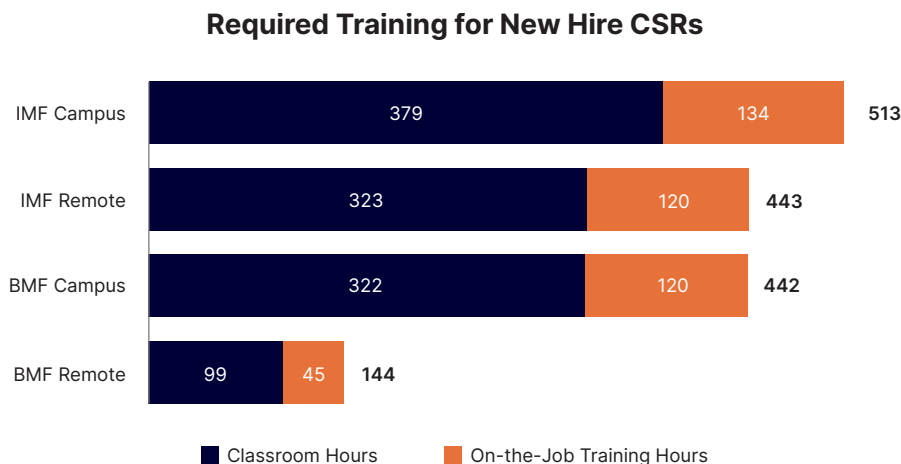
Figure 2.4.5 shows that CSRs working at campus locations responsible for answering IMF calls and paper processing must complete 513 hours of training before working the full scope of telephone and inventory duties independently, which takes 15 weeks to complete. CSRs answering only BMF calls remotely do not complete training on paper processing and thus have the fewest number of training hours at 144.⁵²

49 There are no significant differences between FY 2022 Q4 and FY 2023 Q1 for these questions. Overall satisfaction percentages are those who chose "agree" or "somewhat agree."

50 IRS response to TAS information request (Oct. 3, 2023).

51 *Id.*

52 IRS response to TAS information request (Oct. 3, 2023).

FIGURE 2.4.5⁵³

A background in tax is not a requirement for new CSRs, and even after completing the necessary training to answer incoming taxpayer calls independently, CSRs may not be able to answer all taxpayer questions. Similar to any new job position, it is not unusual for new CSRs to spend time in the position before they gain the experience to provide correct and useful information. CSRs provide a valuable service and have a wide range of information to provide to taxpayers and tax professionals, and training is key to their success.

Additional obstacles, such as limited space for in-person training and delays in procuring computers and peripheral equipment, can delay onboarding of new CSRs.⁵⁴ The IRS Strategic Operating Plan includes initiatives to improve the availability and accessibility of taxpayer services by ensuring employees have the right tools to perform their work.⁵⁵ The IRS provides CSRs with the tools necessary to perform their job, but they suffer from a common flaw. They are all based on antiquated systems that manage individual and business taxpayer accounts and distribute taxpayer data across the IRS. The IRS's processing system has been the backbone for core tax processing for millions of taxpayer accounts since the 1960s and is one of the oldest systems in the government. To put that in context, the IRS has been using the same information system as the foundation for all its taxpayer information data management since before the invention of push-button telephones.⁵⁶ Even experienced, highly knowledgeable CSRs can only work as fast as the technology with which the IRS equips them. Because of limitations in the technology of the IRS's core processing systems, CSRs cannot view the correspondence a taxpayer or professional has submitted or received from the IRS, further limiting their ability to help callers resolve their issues. A taxpayer can provide a CSR with a notice or letter number, and a CSR can provide general information about the purpose of the correspondence but cannot specify what specific documentation the taxpayer needs to provide to resolve the issue as they cannot view the letter sent to the taxpayers. CSRs can see some tax account data; however, to effectively assist all callers, CSRs need a holistic view of taxpayers' accounts in real-time during live phone calls to address the taxpayers' issues, including viewing correspondence sent to or received from the taxpayer and information discussed during a voicebot interaction.

⁵³ IRS response to TAS information request (Oct. 3, 2023).

⁵⁴ IRS responses to TAS information request (Sept. 26, 2023; Oct. 3, 2023).

⁵⁵ IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

⁵⁶ Associated Press, *President Starts Countdown for Fair*, THE GETTYSBURG TIMES, Apr. 23, 1963, at 11.

The IRS Must Leverage Taxpayer Interactions With Voicebots to Improve Live Assistance

In addition to live assistors, the IRS provides phone service to taxpayers using bots and other automated assistance. The IRS used bots to increase self-service capabilities for general taxpayer inquiries in English and Spanish so those with more complex issues could get through to live assistors on the phone.⁵⁷ Voicebots are software powered by artificial intelligence that allow a caller to navigate an interactive voice response system. For taxpayers calling with common questions, voicebots can provide quick answers and help free up CSRs to concentrate on more complex inquiries. The IRS deployed voicebots to the Economic Impact Payment and Advance Child Tax Credit lines to offer self-assistance on general procedures and tax law issues without requiring taxpayers to authenticate their identity for assistance based on their personally identifiable information.⁵⁸ The IRS deployed the first voicebot on Balance Due lines in January 2022.⁵⁹ In June 2022, the IRS expanded voicebot capabilities, allowing taxpayers with a balance due to create installment agreements after completing an identity verification procedure – without needing to speak with a CSR.⁶⁰ The voicebot answers taxpayer inquiries about payments, collection notices, and general collection issues. Voicebots handled more than 2.7 million calls in FY 2023, and 48 percent were contained within the voicebot without the need to escalate to a live assistor.⁶¹

When a taxpayer interacts with a voicebot, the IRS measures quantitative data, such as total calls, the number and percent of calls the voicebot answers, and the number and percent transferred for live assistance.⁶² However, the IRS is doing little to measure customer satisfaction with the assistance taxpayers receive from voicebots. The IRS has not been able to implement a survey to measure customer satisfaction with the assistance taxpayers receive from voicebots. IRS executives are prioritizing updates, including a customer satisfaction survey, for updates to the voicebot platform in the upcoming fiscal years.⁶³

When taxpayers cannot resolve their issue after interacting with a voicebot, they can continue to wait for a live assistor. For the 52 percent of callers who interact with a voicebot but ultimately need to speak with a live CSR, the IRS is unable to leverage the information from the bot interaction to support the work of the CSR due to its current system's limitations. When the taxpayer must provide the same information a second time, it unnecessarily wastes the time of the taxpayer and CSR, and longer calls mean CSRs can assist fewer taxpayers. Bots can contribute to an omnichannel service model by identifying the issue that prompted the taxpayer to call and helping CSRs better prepare to assist the taxpayer in resolving their issue.

Taxpayers may also seek self-assistance by interacting with a chatbot on IRS.gov. Chatbots simulate human conversation through web-based text interaction that uses artificial intelligence-powered software to respond to natural language prompts.⁶⁴ Taxpayers unable to resolve their issue with a chatbot can request to connect to a live assistor during regular business hours. After the taxpayer interacts with a chatbot, the IRS asks a single yes/no question to evaluate their experience: “Was the information presented helpful?”⁶⁵ Although voicebots and chatbots are new technologies for the IRS, the IRS should prioritize implementing comprehensive measures of the taxpayer experience when interacting with voicebots and chatbots.

57 See IRS, Using Voice and Chat Bots to Improve the Collection Taxpayer Experience (Sept. 29, 2022), <https://www.irs.gov/about-irs/using-voice-and-chat-bots-to-improve-the-collection-taxpayer-experience>.

58 IRS response to TAS information request (Oct. 3, 2023).

59 See IRS, Using Voice and Chat Bots to Improve the Collection Taxpayer Experience (Sept. 29, 2022), <https://www.irs.gov/about-irs/using-voice-and-chat-bots-to-improve-the-collection-taxpayer-experience>.

60 *Id.*

61 IRS response to TAS information request (Nov. 16, 2023).

62 IRS response to TAS information request (Oct. 3, 2023).

63 IRS response to TAS fact check (Dec. 12, 2023).

64 IRS News Release, IR-2022-56, IRS Unveils Voice and Chat Bots to Assist Taxpayers With Simple Collection Questions and Tasks; Provides Faster Service, Reduced Wait Times (Mar. 10, 2022), <https://www.irs.gov/newsroom/irs-unveils-voice-and-chat-bots-to-assist-taxpayers-with-simple-collection-questions-and-tasks-provides-faster-service-reduced-wait-times>.

65 IRS response to TAS information request (Oct. 3, 2023).

Face-to-Face Service Hours at Taxpayer Assistance Centers Do Not Meet Taxpayer Needs

The IRS provides face-to-face taxpayer assistance at local TAC offices across the country, the District of Columbia, and Puerto Rico.⁶⁶ TACs are staffed by IRS employees trained to provide services such as:

- Account inquiries (help with letters, notices, and levies on wages or bank accounts);
- Adjustments (changes to tax account information or payments);
- Basic tax law assistance (answers related to individual federal tax returns);
- Acceptance of cash payments or creation of payment arrangements;
- Authentication of the identity of individuals identified as potential victims of tax-related identity theft;
- Ordering of transcripts and tax forms; and
- Information on IRS.gov resources and tools.⁶⁷

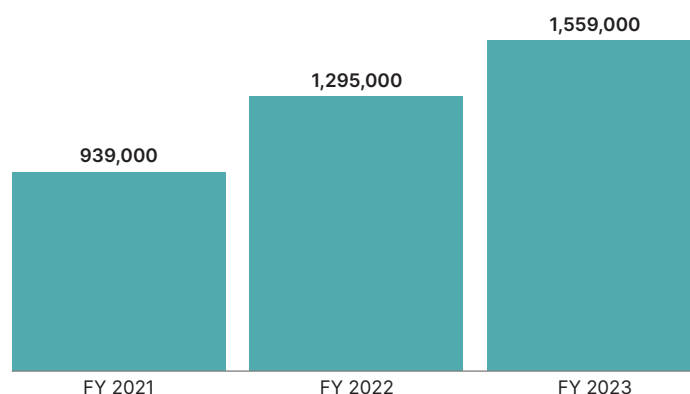
Taxpayers seek help at TACs for many reasons; the top five issues in FY 2023 were Taxpayer Protection Program identity verification, transcripts, refund inquiries, non-cash payments, and balance due/installment agreements/collection notices.⁶⁸ Since 2011, the number of TAC locations has declined from 401 to 363,⁶⁹ and the IRS has no plans to open or close any new TACs in FY 2024.⁷⁰

Customer satisfaction surveys of taxpayers assisted at TACs indicate that shortcomings in IRS service are based on the availability of service rather than the quality of service provided. Taxpayers serviced at TACs rate the quality of their service 88 percent or higher.⁷¹ The highest proportions of agreement among taxpayer experience components were for the helpfulness of employees and professionalism of the representative.⁷²

Figure 2.4.6 shows the increase in taxpayers who received assistance at a TAC in the aftermath of the pandemic.

FIGURE 2.4.6⁷³

Taxpayers Who Received Assistance at a TAC, FYs 2021-2023



⁶⁶ IRS response to TAS information request (Oct. 3, 2023).

⁶⁷ IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren't Near Agency Offices (July 14, 2023), <https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices>.

⁶⁸ IRS response to TAS fact check (Dec. 12, 2023).

⁶⁹ IRS, W&I Inventory Report (week ending Apr. 15, 2023).

⁷⁰ IRS response to TAS information request (Oct. 3, 2023).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

While the IRS exceeded the number of taxpayers it assisted in the prior years in FY 2023, it still fell short of Secretary Yellen's directive to fully staff the TACs.⁷⁴ The IRS defines full staffing at a TAC location as having all available workstations in a TAC filled with the appropriate type of face-to-face employee.⁷⁵ For a TAC to be open with less than full staffing, the IRS must have at least one trained employee permanently assigned to the TAC to provide service to taxpayers.⁷⁶ During FY 2023, the IRS reopened 16 TACs it had closed since the beginning of the pandemic, and it opened four new TACs in Puerto Rico and one new TAC in Mississippi.⁷⁷ Despite funding provided in the IRA and the IRS's agreement to a 2022 National Taxpayer Advocate recommendation to fully staff all TACs, the IRS fully staffed fewer than 100 TAC locations (27 percent) during FY 2023.⁷⁸

Employee attrition affects staffing levels at TACs. While the IRS wants to expand and fill new positions, it first needs to fill the positions associated with individuals leaving the agency or business unit. For example, during the period from October 1, 2022, to April 30, 2023, 344 TAC employees either separated from the IRS or moved to another position within the IRS.⁷⁹ Therefore, the hiring of 576 new employees during that period only resulted in a net gain of 232 employees to staff the TACs during FS 2023.

The IRS Must Expand Taxpayer Assistance Center Service Hours to Include Weekends

Recognizing the importance of providing face-to-face assistance to taxpayers outside of normal business hours, the IRS expanded its hours for certain TACs one Saturday a month during the filing season to allow taxpayers to receive assistance without an appointment.⁸⁰ About 2,800 IRS and TAS employees volunteered to work at 93 TAC locations that participated in the IRS's "Taxpayer Experience Days" focused around FS 2023.⁸¹ Although a welcome relief for many taxpayers in some cities, taxpayers experienced difficulties due to the high volume of participants and the IRS's inability to timely service these taxpayers, leaving some frustrated. Saturday walk-in events relied on IRS employees who volunteered to meet staffing needs and thus did not have consistent hours or frequency.

Taxpayers demonstrated a desire for Saturday service, though the IRS scheduled Saturday events only once a month during the filing season and relied on IRS volunteers to meet staffing needs. As shown in Figure 2.4.7, only 2,313 taxpayers in FY 2021 received walk-in assistance at a TAC Saturday event while 17,914 taxpayers in FY 2022 and 16,534 taxpayers in FY 2023 received assistance at Saturday events. Taxpayers should be able to receive Saturday TAC service year-round.

74 TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf>.

75 IRS response to TAS information request (Oct. 3, 2023).

76 *Id.*

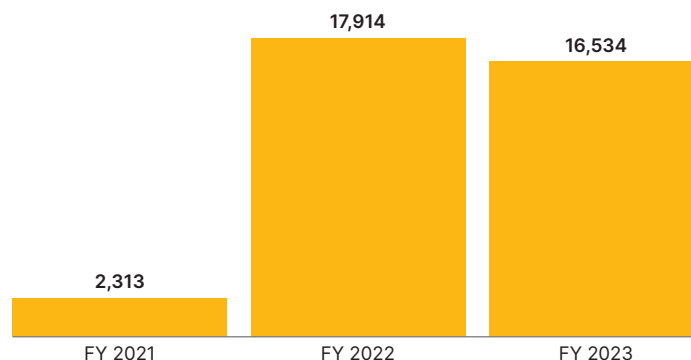
77 The reopened TAC locations are Casper, WY; Binghamton, NY; West Nyack, NY; Overland Park, KS; Longview, TX; Santa Fe, NM; Queensbury, NY; Charlottesville, VA; La Crosse, WI; Cranberry Township, PA; Colorado Springs, CO; Joplin, MO; Jackson, TN; Augusta, ME; Bellingham, WA; and Trenton, NJ. The new TAC location is Greenville, MS; TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf>.

78 TAS Recommendations and IRS Responses, TAS Recommendation 4-1 (2022), <https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-04-telephone-and-in-person-service/>; IRS response to TAS information request (Oct. 3, 2023).

79 TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-09/2023ier010fr.pdf>.

80 See IRS News Release, IR-2023-66, Special Saturday Help From IRS Available Without an Appointment on April 8 at Multiple Taxpayer Assistance Centers (Apr. 3, 2023), <https://www.irs.gov/newsroom/special-saturday-help-from-irs-available-without-an-appointment-on-april-8-at-multiple-taxpayer-assistance-centers>.

81 IRS response to TAS fact check (Dec. 12, 2023).

FIGURE 2.4.7⁸²**Taxpayers Receiving Assistance During Taxpayer Experience Days**

Secretary Yellen has made a goal for FS 2024 to increase TAC hours of in-person assistance to over 8,000 more hours than last filing season.⁸³ Consistent with Secretary Yellen's goal, the IRS plans to launch a pilot to test the feasibility of offering appointments before and after normal business hours in selected locations during the next filing season.⁸⁴ This is a positive and critical step toward meeting taxpayer needs.

The IRS Must Expand Virtual Taxpayer Assistance Center Appointments

In addition to servicing taxpayers in a face-to-face environment, the IRS also assists taxpayers virtually by using Virtual Service Delivery (VSD) or Web Service Delivery (WebSD); both programs allow taxpayers to interact with IRS employees in real time. VSD allows a taxpayer to receive face-to-face assistance via IRS-provided videoconferencing equipment at a community partner location, such as a public library. The IRS offers VSD at 13 locations and held 166 virtual appointments in FY 2022 and 191 appointments in FY 2023.⁸⁵ While VSD requires taxpayers to travel, WebSD allows taxpayers to meet with IRS representatives in a virtual conference using personal devices over the internet. The IRS assisted 7,239 taxpayers through WebSD in FY 2022 and 11,102 in FY 2023, far more than VSD during the same period.⁸⁶ WebSD Pilot 2 virtual conferencing began March 15, 2022, and will end on December 31, 2023. Virtual conferencing grants access to TAC services for taxpayers who can't visit a TAC office in person. The IRS should continue to offer options for virtual appointments at TACs permanently.

The IRS Needs to Expand Access to Service by Increasing the Number of Community Assistance Visits

Following a 2021 National Taxpayer Advocate recommendation, the IRS relaunched its Community Assistance Visit (CAV) program in June 2023 for the first time post-pandemic, with events in nine cities between June and September 2023.⁸⁷ The National Taxpayer Advocate is appreciative of the IRS's efforts to conduct and staff CAVs (pop-up TACs) to expand their reach and assist taxpayers. CAVs act as temporary TACs that provide outreach to underserved communities and taxpayers living in rural communities identified

⁸² IRS response to TAS fact check (Dec. 12, 2023).

⁸³ Janet L. Yellen, Sec'y of the Treasury, Remarks at IRS Headquarters in Washington, D.C. (Nov. 7, 2023), <https://home.treasury.gov/news/press-releases/jy1888>.

⁸⁴ IRS response to TAS information request (Sept. 28, 2023).

⁸⁵ IRS response to TAS information request (Nov. 16, 2023).

⁸⁶ IRS response to TAS information request (Oct. 3, 2023). IRS response to TAS fact check (Dec. 12, 2023).

⁸⁷ 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/>; IRS response to TAS information request (Oct. 3, 2023).

as traditionally underserved, generally in areas over 120 minutes driving distance from the nearest TAC.⁸⁸ Generally, pop-up TACs operate for three days to offer walk-in one-on-one assistance to individual and business taxpayers with similar services as TACs.⁸⁹ When selecting locations for CAVs, the IRS considers many factors, including number of Form 1040 filers, number of late-filed or balance due returns, number of identity theft notices, population size of limited English proficiency taxpayers, population size of those self-identifying as belonging to a Native American/American Indian tribe or an Alaskan Native Corporation, locations with social vulnerability based on demographic and economic factors, and proximity to current TAC locations.⁹⁰

At one CAV event in 2023, IRS Field Assistance partnered with the Lihue Public Library to host a CAV in the city of Lihue on the Hawaiian island of Kauai. Kauai Island does not have a TAC, and the CAV allowed local taxpayers to receive services without traveling by plane or boat to the next closest TAC in Honolulu, on Oahu Island, nearly 100 miles away.⁹¹ CAVs provide a critical component of the IRS's taxpayer service model by providing access and meeting taxpayers where they are. The IRS should expand its efforts to secure public facilities through partnership with local businesses and city officials and provide frontline assistance to bring in-person service to taxpayers located remotely.

CONCLUSION AND RECOMMENDATIONS

The IRS's plan for improving service delivery includes increasing self-service options for taxpayers by 50 percent over the next three years to reduce demand for live service, reducing taxpayer frustration through feature-rich customer callback enhancements, enhancing assistor services through multichannel agent desktop and automation, and improving in-person contact management and scheduling functionality at TACs.⁹² While ensuring more taxpayers can connect to a live person for assistance when needed, the IRS must also focus on the quality of a taxpayer's experience when contacting the IRS for assistance and collect meaningful data to allow it to evaluate the quality of service on all channels, including self-assistance options.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Adopt alternate measures of service on telephones that combine the existing CSR LOS calculation with the seven customer experience factors outlined in OMB Circular No. A-11, Section 280, by the end of FY 2024.
2. Add questions to the toll-free customer satisfaction surveys to measure satisfaction with IRS phone tree choices by the end of FY 2024.
3. Provide CSRs with a holistic view of taxpayers' accounts in real time during a phone call, including correspondence sent to or received from the taxpayer, information discussed during a voicebot interaction, and tax account data by the end of FY 2025.
4. Implement comprehensive measures of the taxpayer experience when interacting with voicebots and chatbots by the end of FY 2024 and allow taxpayers to provide feedback to identify ways to improve the technology and determine core reasons for the requests to elevate the call to a live person.

88 See IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), <https://www.irs.gov/pub/irs-pdf/p5426.pdf>.

89 CAVs can assist taxpayers with making payment arrangements but cannot accept payments. IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren't Near Agency Offices (July 14, 2023), <https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices>.

90 IRS response to TAS information request (Oct. 3, 2023). IRS response to TAS fact check (Dec. 12, 2023).

91 IRS, W&I, The Insider, Hawaii: FA Volunteers Resolve Taxpayers' Concerns During Community Assistance Visit (last visited Nov. 15, 2023) (on file with TAS).

92 IRS, Strategic Development Executive Steering Committee Governance Baseline (Aug. 17, 2023).

5. Increase availability of TAC in-person assistance to ensure taxpayers can obtain an appointment within seven days and extend hours of operation beyond 8 a.m. to 4:30 p.m., Monday through Friday, including regular Saturday hours, by the end of FY 2025.
6. Establish a metric to measure the number of hours TACs were available for in-person service.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division

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

David Padrino, Chief Transformation and Strategy Officer



RETURN PREPARER OVERSIGHT

The Lack of Return Preparer Oversight Endangers Taxpayers, Burdens the IRS, and Harms Tax Administration

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Tax return preparers prepare over half of the individual income tax returns filed on an annual basis. Taxpayers, the IRS, and our voluntary tax system rely on the quality and integrity of these preparers.¹ Return preparers are the frontline defense in preventing fraud and errors, and they play an essential role in tax administration. Many of them, however, have no credentials and are subject to no minimum standards, such as competency tests and continuing education.² However, our tax laws are complicated, and our economic and social situations are complex. The absence of practice requirements and IRS oversight exposes taxpayers to a greater risk of incompetent or unethical actions by preparers. Because taxpayers bear responsibility for the accuracy of their own returns, inept or dishonest preparers harm taxpayers by subjecting them to unanticipated tax deficiencies, penalties, interest, overpaid taxes, or lost refunds. Furthermore, taxpayers' sensitive financial and personal information must be safeguarded by preparers who have a high degree of tax knowledge, education, and ethical standards.

¹ IRS, Pub. 5296, Comprehensive Taxpayer Attitude Survey (CTAS) 2021 Executive Report 33 (Apr. 2022), <https://www.irs.gov/pub/irs-pdf/p5296.pdf>.

² Hereafter, these preparers will be referred to as “non-credentialed preparers.” For purposes of this Most Serious Problem, “non-credentialed preparers” refers to tax professionals not otherwise covered by 31 C.F.R. Part 10, reprinted in Treasury Department Circular 230. Professionals covered by Circular 230 include certified public accountants, attorneys, enrolled agents, enrolled actuaries, and enrolled retirement plan agents engaged in practice before the IRS. The IRS may grant special appearances to certain individuals (e.g., students of a low-income taxpayer clinic) to authorize practice before the IRS. Additionally, Circular 230 extends to participants in the Annual Filing Season Program, which is an opt-in educational program for preparers who consent to adhere to the standards articulated in Circular 230 Subpart B (duties and restrictions relating to practice before the IRS) and section 10.51 (relating to incompetence and disreputable conduct). See Rev. Proc. 2014-42, § 4.05(4), 2014-29 I.R.B. 192.

EXPLANATION OF THE PROBLEM

The current unregulated state of the preparer industry sometimes lends itself to a “Wild West” environment that victimizes taxpayers. Some real-life examples of preparer misconduct include:

- A Utah accounting firm was charged with claiming over \$11 million in fraudulent Employee Retention Credits³ and sick and family leave wage credits on behalf of clients;⁴
- A preparer in New Jersey was arrested after filing more than 1,000 false tax returns claiming over \$124 million in pandemic-related tax credits for businesses owned by himself and others;⁵
- An Ohio preparer was charged with filing returns without obtaining approval from clients and even forging client checks, then hiding the money in a secret account;⁶
- A California preparer filed thousands of tax returns reporting improper deductions, including returns deducting mortgage interest for taxpayers who are not homeowners;⁷ and
- Another California preparer routinely stole the identities of clients, using their data to file fraudulent returns and depositing the refunds onto a prepaid credit card.⁸

Sometimes taxpayers collaborate with unscrupulous preparers while on other occasions, well-intentioned, unsophisticated taxpayers are victimized by the errors or misdeeds of their preparers. Although tax professionals falling within Circular 230 are not immune from sanctionable behavior, IRS statistics show that non-credentialed preparers often generate a disproportionate level of audit adjustments. For example, approximately 94 percent of the total dollar value of audit adjustments made on prepared tax year (TY) 2021 returns claiming the Earned Income Tax Credit (EITC) were made to returns prepared by non-credentialed preparers.⁹ Because this group has a hand in over 40 million returns each year, both taxpayers and tax administration are placed at risk by the absence of minimum preparer standards and oversight.¹⁰ The incongruity of this situation is well-captured by the National Consumer Law Center, which observed that in most states, “there are more regulatory requirements for hairdressers than tax preparers. Yet the impact of a bad haircut is far less damaging than an inaccurate tax return.”¹¹ A vast array of other professions that deal with public trust and safety, ranging from nurses to public school teachers to electricians, likewise require credentialing and licensing as a matter of course.

Accordingly, the National Taxpayer Advocate is concerned that:

- Non-credentialed preparers demonstrably harm taxpayers;
- Stakeholder calls for preparer regulation have so far gone unheeded;
- Legal limitations present an obstacle to adequate oversight;
- Return preparers lack adequate incentives to voluntarily come within the established oversight umbrella; and
- Administrative deterrents to bad behavior are insufficient.

3 See IRC § 3134.

4 Dep’t of Justice Press Release, U.S. Attorney’s Office, District of Utah, Utah County Residents and an Accounting Business Charged in \$11 Million COVID-Related Tax Fraud Scheme, (Feb. 3, 2023), <https://www.justice.gov/usao-ut/pr/utah-county-residents-and-accounting-business-charged-11-million-covid-related-tax-fraud>.

5 Madeleine Ngo, *Over 3,100 Charged With Pandemic Relief Fraud*, Justice Dept. Says, N.Y. TIMES, Aug. 23, 2023, <https://www.nytimes.com/2023/08/23/business/pandemic-relief-fraud-justice-department.html>.

6 Blake Ellis, *Tax Preparer Horror Stories*, CNN, Feb. 18, 2014, <https://money.cnn.com/2014/02/18/pf/taxes/tax-preparers/index.html>.

7 Michelle Singletary, *Seven Red Flags That Your Tax Preparer is a Fraud*, WASH. POST, Mar. 3, 2023, <https://www.washingtonpost.com/business/2023/03/03/tax-preparer-fraud/>.

8 Blake Ellis, *Tax Preparer Horror Stories*, CNN, Feb. 18, 2014, <https://money.cnn.com/2014/02/18/pf/taxes/tax-preparers/index.html>.

9 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) TY 2018-2022, Return Preparers and Providers (RPP) Database, and Audit Information Management System (AIMS) Closed Case Database (through Sept. 28, 2023).

10 *Id.*

11 Blake Ellis, *Tax Preparer Horror Stories*, CNN, Feb. 18, 2014, <https://money.cnn.com/2014/02/18/pf/taxes/tax-preparers/index.html>.

ANALYSIS

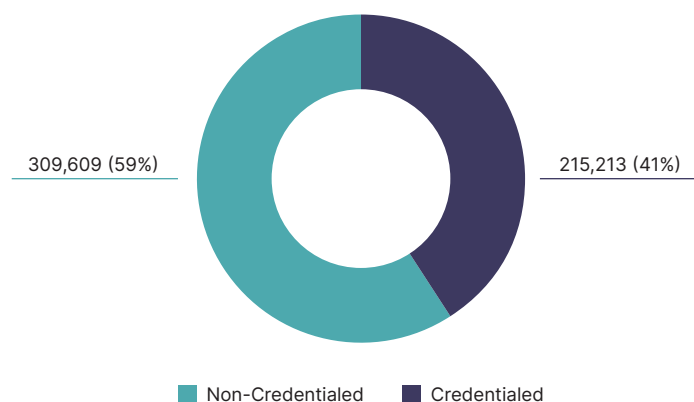
Non-Credentialed Preparers Demonstrably Harm Taxpayers

Various datapoints illustrate the extent of the problem presented by non-credentialed preparers. This data presents a picture of non-credentialed preparers as targeting lower-income taxpayers and producing individual income tax returns that are subject to higher-than-usual audit rates.

The IRS identifies tax return preparers by their Preparer Tax Identification Number (PTIN). IRC § 6109 requires that preparers register for PTINs and include these numbers, along with their names, on returns that they file. The IRS considers those who neglect these requirements “ghost preparers,” and if identified by the IRS, they are subject to penalties on a per-return basis.¹² Because the IRS cannot determine the number of ghost preparers, the total number of tax return preparers is unknown, but for TY 2022, there were over 500,000 unique PTINs recorded on returns, almost 60 percent of which belonged to non-credentialed preparers.¹³ Figure 2.5.1 shows this predominance of non-credentialed preparers.

FIGURE 2.5.1¹⁴

**PTINs Recorded on Prepared Individual Returns
Credentialed Versus Non-Credentialed Preparers, TY 2022**



The types of returns prepared by non-credentialed versus credentialed preparers vary, but non-credentialed preparers disproportionately serve lower-income taxpayers. For instance, clients who claim the EITC are more likely to hire non-credentialed preparers than credentialed preparers.¹⁵ While the dollars involved in each of these returns may not be as significant as those involved in the returns of wealthier taxpayers, eligibility for these tax credits can be complex, and mistakes by preparers can be catastrophic for EITC taxpayers, as those errors can deprive taxpayers of funds on which they rely to meet their basic living expenses.

¹² IRC § 6695; Treas. Reg. § 1.6695-1.

¹³ IRS, CDW, IRTF TY 2018-2022, RPP Database (through Sept. 28, 2023).

¹⁴ *Id.* These values represent the count of credentialed or non-credentialed return preparers who prepared at least one individual income tax return in TY 2022.

¹⁵ IRS, CDW, IRTF TY 2018-2022, RPP Database, and AIMS Closed Case Database (through Sept. 28, 2023).

An analysis of returns claiming the EITC demonstrates the alarming dangers posed by non-credentialed preparers. Figure 2.5.2 shows, for TY 2021 tax returns, the number of returns claiming the EITC, the number of audits of EITC returns, and the number of audit adjustments on those returns for credentialed versus non-credentialed preparers.

FIGURE 2.5.2, Audit Rates and Dollars Adjusted on Prepared EITC Returns, Credentialed Versus Non-Credentialed Preparers, TY 2021¹⁶

Type of Preparer	Credentialed	Non-Credentialed
Returns Claiming EITC	3,307,125	12,500,722
Percentage of EITC Returns	21%	79%
Audits on EITC Returns	5,912	63,215
Percentage of Audits on EITC Returns	9%	91%
Audit Adjustments on EITC Returns	3,434	50,592
Percentage of EITC Audit Adjustments	6%	94%

This troubling comparison shows that while non-credentialed preparers file about 79 percent of prepared returns claiming the EITC, their returns account for 91 percent of the associated audits and generate 94 percent of audit adjustments, results that are disproportionate to their numbers.¹⁷ By contrast, credentialed preparers' EITC returns are subject to significantly fewer audits, and when audited, these returns are adjusted at relatively lower rates compared to their numbers. This snapshot of data drawn from prepared returns claiming the EITC suggests that non-credentialed preparers are less equipped than their credentialed counterparts to accurately determine their clients' tax liabilities. In turn, this poor performance subjects taxpayers to a range of potential hardships, including refund delays or refunds that must be paid back, penalties for inaccurate returns, and even fees for other tax professionals to assist in solving the problems created by their non-credentialed preparers. Taxpayers may not be aware that non-credentialed preparers cannot represent them before the IRS, including during an audit, which can leave taxpayers helpless when they are most in need of assistance.

The data surrounding credits claimed on Form 7202, Credit for Sick Leave for Certain Self-Employed Individuals, show a similar phenomenon. Congress established this credit to provide assistance for certain taxpayers seriously impacted by COVID-19.¹⁸ Unfortunately, it also had the unintended consequence of acting as a beacon for predatory tax return preparers. Of prepared returns claiming this credit, 82 percent were generated by non-credentialed preparers.¹⁹ However, non-credentialed preparers were responsible for 99 percent of the credits disallowed by IRS Examination.²⁰ Once again, non-credentialed preparers caused harm to many taxpayers in the form of frustrated expectations and potential penalties.

The IRS is working to identify unscrupulous preparers more proactively so that it can protect taxpayers. The Research, Applied Analytics, and Statistics (RAAS) group within the IRS defines an "unscrupulous preparer" as any preparer whom the Refundable Credit Return Preparer Strategy has identified as having submitted

16 IRS, CDW, IRTF TY 2018-2022, RPP Database, and AIMS Closed Case Database (through Sept. 28, 2023). Due to the ongoing nature of audits for TY 2021, these numbers should not be considered final. The column reflecting "Audit Adjustments on EITC Returns" shows only positive audit adjustments, meaning those audits that result in taxpayers owing money to the IRS. Negative or no-change audit adjustments are outside the scope of this analysis.

17 IRS, CDW, IRTF TY 2018-2022, RPP Database, and AIMS Closed Case Database (through Sept. 28, 2023).

18 IRS News Release, IR-2021-31, New IRS Form Available for Self-Employed Individuals to Claim COVID-19 Sick and Family Leave Tax Credits Under FFCRA (Feb. 8, 2021), <https://www.irs.gov/newsroom/new-irs-form-available-for-self-employed-individuals-to-claim-covid-19-sick-and-family-leave-tax-credits-under-ffcra>.

19 IRS, CDW, Sick and Family Leave Data from Form 7202 in IRTF, IMF (through Sept. 28, 2023).

20 *Id.*

large numbers of client returns that break a rule related to that program.²¹ Recent analysis by the IRS, building on a study from Stanford University, shows that unscrupulous preparers are a significant driver of disproportionate EITC audit rates for taxpayers of racial minorities and may be contributing to a racial disparity within tax administration.²²

Unscrupulous preparers concentrate in lower-income neighborhoods with minority populations and often prey on marginalized communities.²³ Non-credentialed preparers comprise the overwhelming majority of this predatory group (approximately 92 percent).²⁴ The IRS's current inability to oversee return preparers, particularly non-credentialed preparers, makes it difficult, if not impossible, to adequately protect lower-income and racial minority taxpayers from preparers who may end up subjecting them to taxes, penalties, and interest they cannot afford. This lack of authority is harming taxpayers and jeopardizing quality tax administration.



Of the preparers that prey on marginalized communities

92%

are non-credentialed

Stakeholder Calls for Preparer Regulation Have So Far Gone Unheeded

Consistent with the troubling picture painted by the data, stakeholders generally agree that non-credentialed preparers should be subject to minimum standards and oversight. While specific ideas and proposals vary, there is widespread consensus that allowing non-credentialed preparers to operate without regulation is perilous for both taxpayers and the tax system.

As explained by the American Institute of Certified Public Accountants (AICPA), “Ensuring that tax preparers are competent and ethical, and that the IRS has the tools it needs to conduct appropriate oversight, is critical to maintaining taxpayer confidence in our tax system and protecting the interests of the American taxpayer.”²⁵ Similarly, the Government Accountability Office (GAO) has concluded that a lack of regulation “can put some taxpayers at risk of receiving insufficient or incompetent tax preparation services. As a result, some taxpayers may be exposed to potentially burdensome enforcement actions.”²⁶

21 IRS response to TAS information request (Aug. 31, 2023). The IRS does not necessarily have a specific servicewide definition of “unscrupulous preparer” common across all contexts. IRS response to TAS fact check (Nov. 2, 2023).

22 Letter from Comm’r Danny Werfel, Internal Revenue, to Sen. Ron Wyden, Chair, S. Comm. on Finance (May 15, 2023), https://www.finance.senate.gov/imo/media/doc/werfel_letter_to_sen_wyden.pdf; Hadi Elzayn et al., *Measuring and Mitigating Racial Disparities in Tax Audits*, STANFORD INST. FOR ECON. POLY RSCH. (Jan. 2023), <https://siepr.stanford.edu/publications/working-paper/measuring-and-mitigating-racial-disparities-tax-audits>; Jonathan Curry, *IRS: “Unscrupulous” Paid Preparers a Key Factor in Racial Audit Gap*, TAX NOTES, June 26, 2023, at 2237, <https://www.taxnotes.com/tax-notes-today-federal/tax-system-administration/irs-unscrupulous-paid-preparers-key-factor-racial-audit-gap/2023/06/23/7gwz5>.

23 Letter from Comm’r Danny Werfel, Internal Revenue, to Sen. Ron Wyden, Chair, S. Comm. on Finance (May 15, 2023), https://www.finance.senate.gov/imo/media/doc/werfel_letter_to_sen_wyden.pdf.

24 IRS response to TAS information request (Aug. 31, 2023).

25 AICPA, *AICPA Signals Strong Support for Tax Preparer Regulation Legislation* (June 30, 2021), <https://www.aicpa-cima.com/news/article/aicpa-signals-strong-support-for-tax-preparer-regulation-legislation>.

26 GAO, GAO-23-105217, *Paid Tax Return Preparers: IRS Efforts to Oversee Refundable Credits Help Protect Taxpayers but Additional Actions and Authority Are Needed* 33 (2022), <https://www.gao.gov/assets/gao-23-105217.pdf>.

A lack of oversight opens the door to several potential abuses. For example, a representative of the Consumer Financial Protection Bureau has noted that some preparers “use the return filing process as an opening to sell high-priced loan products that can carry outrageously high fees.”²⁷ Likewise, TAS has received descriptions of multiple cases in which clients of non-credentialed preparers experienced refund and even identity theft, only to learn that in the rare situation that the Department of Justice (DOJ) successfully prosecutes those preparers, there is nothing stopping them from setting up a new business and continuing to harm more taxpayers.²⁸ We have heard stories of an often-unsavory triumvirate formed among financial technology companies (fintechs), large banks, and unscrupulous preparers, who sometimes combine to manipulate unwitting taxpayers into buying products, such as high-fee debit cards, loans, and online accounts, that these taxpayers do not need and cannot afford.²⁹

Further, other stakeholders, such as the Electronic Tax Administration Advisory Committee, agree that return preparers should be subject to regulation and oversight and made subject to minimum standards.³⁰ In a recent conversation with TAS, representatives of one stakeholder group commented that the vast majority of return preparers are professional and want to comply with the rules but that the IRS needs to have authority to administer reasonable competency tests followed by continuing education and the ability to police bad actors.³¹ Among other things, participants in this conversation lamented that bad behavior on the part of preparers falls especially hard on non-English-speaking and other underserved communities.³²

Likewise, the National Association of Enrolled Agents has testified to Congress that enrolled agents “have, for some time, supported the efforts to bring order to the chaos all too easily found in the return preparer community. ... We believe that taxpayers and the tax community are better served by the basic proposition that tax returns should only be done by a preparer who has shown competency through testing on that particular return.”³³

Finally, taxpayers themselves have definite views regarding the need for oversight. The 2018 IRS Comprehensive Taxpayer Attitudes Survey found that the vast majority of taxpayers believe tax preparers should be held to ethical and competency standards.³⁴ Specifically, over 70 percent of respondents believe it is very important that tax preparers demonstrate ethical behavior and competence.³⁵

27 Leslie Book, *Unscrupulous Return Preparers Draw Attention At The ABA Tax Section Midyear Meeting*, PROCEDURALLY TAXING (Feb. 14, 2023), <https://www.taxnotes.com/procedurally-taxing/unscrupulous-return-preparers-draw-attention-aba-tax-section-midyear-meeting/2023/02/14/7h72q?pt=18>.

28 Discussions with outside stakeholders (Aug. 7, 2023). The discussions with outside stakeholders TAS conducted occurred with practitioners and members of stakeholder groups speaking either in their individual capacities or as representatives of their organizations.

29 Discussions with outside stakeholders (Aug. 7, 2023).

30 IRS, Pub. 3415, *Electronic Tax Administration Advisory Committee Annual Report to Congress 44* (June 2023), <https://www.irs.gov/pub/irs-pdf/p3415.pdf>.

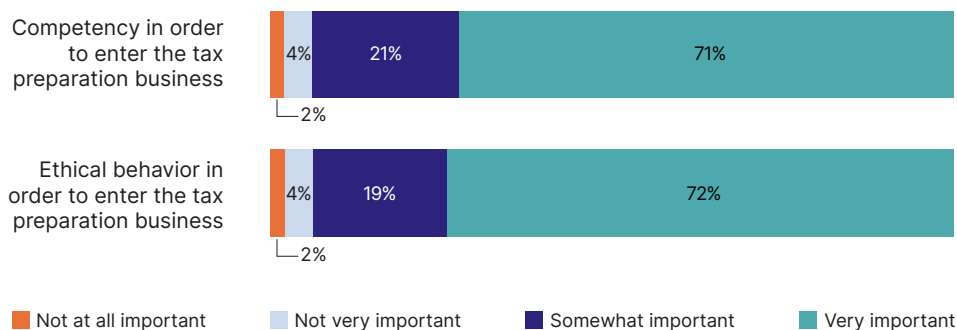
31 Discussions with outside stakeholders (Aug. 3, 2023).

32 *Id.*

33 *The Implementation of the IRS Paid Tax Return Preparer Program: Hearing Before Subcommittee on Oversight of House Committee on Ways and Means*, 112th Cong. (2011) (Statement of Lonnie Gary, EA, USTCP Chairman, Government Relations Committee National Association of Enrolled Agents) 69, <https://www.govinfo.gov/content/pkg/CHRG-112hhrg70890/html/CHRG-112hhrg70890.htm>.

34 IRS, Pub. 5296, *CTAS 2018 Executive Report 42* (Nov. 2018), <https://core.publish.no.irs.gov/pubs/pdf/p5296--2019-03-00.pdf>.

35 *Id.*

FIGURE 2.5.3³⁶**Taxpayer Attitudes About the Importance of Tax Preparer Standards**

*Totals may not equal 100% due to rounding.

Legal Limitations Present an Obstacle to Adequate Oversight

Rarely has there been such consensus among stakeholders, taxpayers, and the IRS regarding so important an area of tax administration. Normally, this broad agreement would have long ago resulted in the type of standards and oversight that almost everyone believes should be in place. Nevertheless, legal obstacles currently prevent these overdue standards and regulations from being put into place.

Loving v. IRS and subsequent related cases have held that the IRS can only regulate practitioners representing taxpayers before it.³⁷ Simply acting as a return preparer does not, in the eyes of the courts, rise to the level of “practice before the IRS.”³⁸ As a result, tax return preparation activities are not generally subject to IRS oversight under existing law.

The IRS does have statutory authority to impose certain preparer penalties, based on specific circumstances.³⁹ Nevertheless, the courts have taken the ability to determine and enforce basic educational and competency standards out of the hands of the IRS. Now, only credentialed preparers, such as enrolled agents, certified public accountants, and attorneys, fall within the scope of the IRS Office of Professional Responsibility. However, even if these practitioners misbehave to such an extent that they are suspended or disbarred from practice before the IRS, they can still continue preparing tax returns.

This state of affairs has led to the range of abuses and taxpayer harms described above and poses an ongoing threat to taxpayers and the tax system. Accordingly, as both the National Taxpayer Advocate and the IRS have previously recommended, Congress should consider passing legislation that would restore the IRS’s ability to establish educational requirements for and conduct oversight of return preparers.⁴⁰ Diligent, informed, and ethical return preparers are a crucial element of tax administration and the protection of taxpayer rights, and they are a key component to the success of the voluntary tax system.

36 IRS, Pub. 5296, CTAS 2018 Executive Report 42 (Nov. 2018), <https://core.publish.no.irs.gov/pubs/pdf/p5296--2019-03-00.pdf>.

37 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff’d*, 742 F.3d 1013 (D.C. Cir. 2014); *Sexton v. Hawkins*, 119 A.F.T.R.2d 2017-1187, (D. Nev. 2017).

38 *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff’d*, 742 F.3d 1013 (D.C. Cir. 2014); *Sexton v. Hawkins*, 119 A.F.T.R.2d 2017-1187, (D. Nev. 2017); *Ridgely v. Lew*, 55 F.Supp.3d 89 (D.D.C. 2014).

39 See, e.g., IRC § 6694(a), (b).

40 National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 5 (Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_PurpleBook_02_ImproveFiling_3.pdf.



DILIGENT • INFORMED • ETHICAL

Return preparers are key
to the voluntary tax system

Return Preparers Lack Adequate Incentives to Voluntarily Come Within the Established Oversight Umbrella

Absent legislation giving the IRS oversight authority regarding return preparers, the IRS only has authority with respect to those preparers who willingly subject themselves to IRS regulation. Most commonly, this occurs when those wishing to prepare tax returns enroll in the IRS's Annual Filing Season Program (AFSP).⁴¹ Under this program, tax return preparers obtain 18 hours of continuing education, renew their PTINs, and consent to adhere to the obligations in Circular 230, Subpart B, setting forth the duties and restrictions relating to practice before the IRS and section 10.51, defining incompetence and disreputable conduct.⁴² Voluntary entrance by preparers into this program is a benefit to taxpayers because these preparers undertake basic levels of professional education and agree to follow professional standards administered by the IRS. It is also helpful to the IRS, as it gives the IRS a mechanism to oversee the competence and integrity of participating preparers.

Accordingly, the IRS has a huge incentive to induce return preparers to join the AFSP and to persuade taxpayers to hire AFSP participants. Toward this end, the IRS provides participants in the AFSP with certain perks, such as listing them in a public directory of tax return preparers and granting them limited representation rights.⁴³ To this point, however, these benefits have not resonated with most non-credentialed preparers. Only about 65,000 preparers participated in the AFSP, as compared with the approximately 310,000 active non-credentialed preparers in 2022.⁴⁴

The IRS can do a better job of educating the public regarding the differences between non-credentialed and credentialed preparers. The IRS does caution taxpayers that with the level of trust placed in these individuals, it is important to hire someone worthy of that trust.⁴⁵ Taxpayers, however, can only connect with this information if they happen to search online for terms that bring up these useful IRS webpages.⁴⁶ Members of the general public, who often receive recommendations for preparers more by word of mouth than through online research, would be unaware of these IRS materials. They may also be unaware of the differences between a credentialed and non-credentialed preparer and unaware of the potential downstream consequences of using a non-credentialed preparer. The IRS, its stakeholders, members of the tax return

41 IRS, Annual Filing Season Program, <https://www.irs.gov/tax-professionals/annual-filing-season-program> (last visited Nov. 6, 2023). Others, such as attorneys and certified public accountants, are automatically subject to Circular 230 where practice before the IRS is concerned. Nevertheless, Circular 230 does not require any education or knowledge regarding tax return preparation.

42 IRS, Annual Filing Season Program, <https://www.irs.gov/tax-professionals/annual-filing-season-program> (last visited Nov. 6, 2023); Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

43 IRS, Annual Filing Season Program, <https://www.irs.gov/tax-professionals/annual-filing-season-program> (last visited Nov. 6, 2023).

44 IRS response to TAS information request (Aug. 16, 2023); IRS, CDW, IRTF TY 2018-2022, RPP Database, and AIMS Closed Case Database (through Sept. 28, 2023).

45 IRS, Need Someone to Prepare Your Tax Return?, <https://www.irs.gov/tax-professionals/choosing-a-tax-professional> (last visited Nov. 6, 2023).

46 *Id.*

preparation industry, members of the press, and members of Congress all need to educate taxpayers about the risks of using non-credentialed preparers. Together, all parties need to protect taxpayers from incompetent or unscrupulous return preparers.

The IRS encourages preparers to voluntarily come within the credentialing umbrella by, among other things, promoting the AFSP to preparers via social media posts, annual news releases, online reminder letters, and advertising at the IRS Nationwide Tax Forums.⁴⁷ The IRS Return Preparer Office does not have a budget line item for these efforts, however, and they are primarily focused on preparers who are already tuned into the IRS.⁴⁸ TAS urges the IRS to increase this budget and use it to expand its educational activities aimed at both taxpayers and preparers. This might take the form of a strong, optimized social media presence that creatively highlights the desirability of working with AFSP participants or other credentialed preparers and how taxpayers can locate them. Even relatively small and inexpensive steps, such as signage promoting the use of credentialed preparers at Taxpayer Assistance Centers, could help protect potentially vulnerable taxpayers from preparer abuse. These additional expenditures and the enhanced outreach they would bring would benefit taxpayers, credentialed preparers, AFSP participants, and ultimately the IRS.

This publicity effort should also extend to the IRS's free tax assistance programs, Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE).⁴⁹ These programs provide free tax return preparation services to taxpayers who generally earn less than \$60,000 a year, who have disabilities, who speak limited English, or who are 60 years of age or older.⁵⁰ VITA and TCE volunteers must pass tax law training that meets or exceeds IRS standards and that highlights the importance of maintaining taxpayer privacy and confidentiality.⁵¹ Each return they prepare is subject to quality review.⁵² These programs exist to assist underserved taxpayers rather than to exploit them and provide an excellent alternative to the dangers posed by non-credentialed preparers. As a result, the IRS should encourage the use of VITA and TCE wherever possible and should seek additional congressional funding to ensure the existence of robust and sustainable programs, which would benefit both taxpayers and the IRS.

Administrative Deterrents to Bad Behavior Are Insufficient

Assertive Use of Preparer Penalties

In addition to educational and promotional efforts surrounding credentialed preparers, the AFSP, VITA, and TCE, the IRS should make better use of all of its existing statutory tools to fight unethical or incompetent preparers. Although the IRS lacks necessary broad regulatory authority over return preparers, it does have the ability to sanction preparers, including via penalties, for specific actions or inactions.⁵³ For example, preparers who take unreasonable positions on clients' returns face penalties of the greater of \$1,000 or 50 percent of the income earned by preparing that return, and in the case of willful or reckless conduct, those penalties increase substantially.⁵⁴ Lapses of diligence regarding prepared returns, such as failure to furnish taxpayers with copies of their own returns or failure to sign prepared returns, come with smaller penalties, but those penalties can stack up if preparers repeat those failures across many clients' returns.⁵⁵

47 IRS response to TAS information request (Aug. 16, 2023).

48 *Id.*

49 IRS, Free Tax Return Preparation for Qualifying Taxpayers, <https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers> (last visited Nov. 6, 2023).

50 *Id.*

51 *Id.*

52 *Id.*

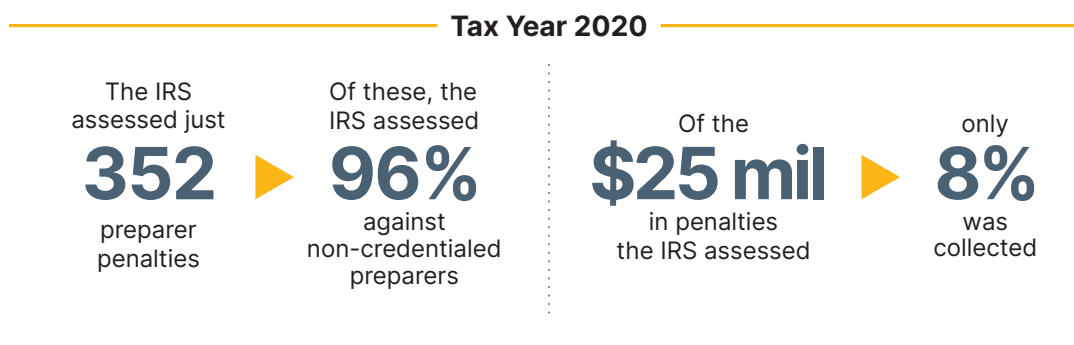
53 IRC §§ 6694, 6695, 6700, 6701, 6713, 7206, 7207, 7216, 7408.

54 IRC § 6694(a), (b).

55 IRC § 6695.

Penalties are inherently retroactive in nature, and that is a significant drawback when it comes to protecting taxpayers. The IRS can only assert some of these penalties after an audit of the taxpayer's return. In other cases, such as many of the penalties under IRC § 6695, the IRS has no straightforward way to identify preparers who may be violating the statute. As just one illustration, if a preparer perpetually fails to sign client returns, the IRS cannot easily tell without other evidence that there was a preparer involved in the return at all.

The result is that the IRS assesses relatively few preparer penalties, and very few of those penalties are paid. For example, in TY 2020, the IRS assessed only 352 preparer penalties.⁵⁶ Beyond that, of the almost \$25 million in assessed penalties, the IRS collected only eight percent.⁵⁷ The IRS assessed approximately 96 percent of these penalties against non-credentialed preparers, and by dollars assessed, 98 percent go to non-credentialed preparers.⁵⁸ The fact that sanctionable behavior is occurring overwhelmingly on the non-credentialed side of the return preparer profession indicates that the IRS could cut substantially into the most egregious activity by this group if it more aggressively enforced the penalties at its disposal.



Some stakeholders have suggested that the IRS's approach to enforcement needs more teeth.⁵⁹ Others agree that there are no meaningful consequences even for egregiously bad actors.⁶⁰ These practitioners have described situations where, after observing clusters of refund theft and fraud, they made numerous referrals to the DOJ, only to discover it took no investigative or enforcement action and the bad actors are continuing to prepare tax returns.⁶¹

In addition, the IRS itself receives and investigates an astonishingly low number of preparer misconduct complaints. For example, in calendar year 2022, the Return Preparer Office received 1,609 complaints and referred 239, or 15 percent, for further action.⁶² These odds favor unscrupulous and incompetent preparers. In the absence of authority to regulate return preparers, the IRS could do a better job of maximizing the enforcement tools it already has.

56 IRS, CDW, IRTF TY 2018-2022, PTIN, and Enforcement Revenue Information System (ERIS) (through Jan. 28, 2023). Additional preparer penalties stemming from TY 2020 returns are likely to occur. When considering the same preparer penalties assessed during FY 2022 (this is the most recent full year of data in the ERIS database), 883 preparers were assessed at least one of these penalties.

57 IRS, CDW, IRTF TY 2018-2022, PTIN, and ERIS (through Jan. 28, 2023). 2020 reflects the most recent year for which TAS has relatively complete data.

58 IRS, CDW, IRTF TY 2018-2022, PTIN, and ERIS (through Jan. 28, 2023).

59 Discussions with outside stakeholders (Aug. 3, 2023).

60 Discussions with outside stakeholders (Aug. 7, 2023).

61 *Id.*

62 IRS response to TAS information request (Aug. 15, 2023). Other IRS functional units and divisions of Treasury, including IRS Criminal Investigation and the Treasury Inspector General for Tax Administration, may also receive complaints about return preparers. IRS response to TAS fact check (Nov. 2, 2023). The reasons why some complaints are not referred vary. Some are duplicate complaints about the same preparer, others do not meet referral criteria, and in some instances, no violation is found to have occurred.

Accordingly, the existing return preparer penalty structure, which itself is fairly light, is insufficiently used as a deterrent by the IRS. The IRS should carefully administer these penalties and limit them to incidents of egregious behavior by preparers so as not to jeopardize taxpayers' ability to obtain tax return preparation services. Nevertheless, the IRS can and should do more to protect taxpayers from bad actors by advisedly, but aggressively, employing the existing return preparer penalties.

For example, the IRS should explore the feasibility of systemically assessing IRC § 6695(c) preparer penalties when return preparers use expired or otherwise invalid PTINs. Theoretically, this could have the unintended consequence of somewhat increasing preparers abandoning PTINs altogether and becoming ghost preparers. Nevertheless, penalties do exist that the IRS can and should vigorously apply against ghost preparers when they are identified. Where PTIN violations are concerned, the IRS should consider a legally permissible means of mailing letters to the associated taxpayers and informing them that the IRS has penalized their preparer for a PTIN violation or, at a minimum, letting them know that the preparer did not properly complete required preparer information.⁶³ While making it clear that preparer selection is up to taxpayers, the letter could also explain the benefits of credentialed preparers and could highlight the AFSP, VITA, and TCE. Although oversight authority is still needed, a more energetic application of existing penalties, along with increased transparency to taxpayers regarding the transgressions of their preparers, could go a long way toward deterring such misbehavior.

Preparer Tax Identification Number Revocation

Additionally, Congress should consider allowing the IRS to revoke PTINs in the case of demonstrably bad behavior by preparers. If Congress is reluctant to furnish the IRS with a broad grant of authority, it could always limit PTIN revocations to violations of the already established return preparer penalty statutes. The IRS currently can refuse or revoke electronic filing information numbers (EFINs) if preparers fail to pass suitability checks and subsequent reviews or if they are prohibited by federal court injunction or another federal or state action from participating in IRS e-file.⁶⁴ Congress should allow PTIN revocation under similar circumstances. In the meantime, the IRS should expand its capacity for more assertively using its EFIN-monitoring power to deter preparers from engaging in wrongdoing. There is no one-size-fits-all solution to stop aggressive and unscrupulous return preparers. However, the IRS should have multiple tools and the necessary oversight to identify and stop bad and unethical behavior.

Consolidated Management

Participants in one conversation with TAS also suggested that enforcement efforts would benefit greatly if the IRS brought them under a single cohesive management structure rather than spreading them across the agency, as is currently the case.⁶⁵ TAS's own experience in researching this issue has borne out this observation. Along the way, we communicated with representatives of the Return Preparer Office; the Office of Professional Responsibility; the Small Business/Self-Employed Division; the Wage and Investment Division; and the IRS's RAAS function.⁶⁶ Many of them own small portions of the return preparer activity undertaken by the IRS, but none has comprehensive authority in this area. Likewise, the available data in this space, which is needed to evaluate return preparer competence and to undertake enforcement activity against bad actors, is difficult to obtain and can sometimes fall through the cracks.

63 For example, the IRS sometimes sends the CP591 letter to taxpayers when the IRS suspects that taxpayers' returns claiming one or more refundable credits may be inaccurate and when those taxpayers may have hired a tax preparer to prepare their returns. This letter does not identify the preparer as having been penalized, but after informing taxpayers of the potential problem with their returns, it reminds taxpayers that they are ultimately responsible for the correctness of their returns and then provides tips on selecting a tax preparer. A carefully worded similar letter might present a legally permissible way to inform taxpayers of PTIN violations on their returns. At a minimum, the IRS should explore such an approach.

64 IRS, Pub. 3112, IRS E-File Application & Participation (Oct. 2022), <https://www.irs.gov/pub/irs-pdf/p3112.pdf>; Rev. Proc. 2007-40, 2007-26 I.R.B. 1488.

65 Discussions with outside stakeholders (Aug. 3, 2023).

66 IRS responses to TAS information requests (Aug. 10, 2023; Aug. 15, 2023; Aug. 16, 2023; Aug. 31, 2023).

For example, TAS asked each of these IRS business units how many preparer due diligence letters were sent out to credentialed versus non-credentialed preparers. These letters typically are mailed when the IRS suspects that a preparer has not met due diligence requirements on client returns claiming EITC or related benefits.⁶⁷ None of the IRS groups receiving our inquiry was able to tell us how many of the letters were mailed out, the credentialed status of recipients, or what group within the IRS, if any, might have this information. The absence of centralization regarding return preparer activity is a serious systemic flaw that the IRS should correct. The IRS has approved a servicewide preparer strategy, which relies on a cross-functional team to achieve its goals.⁶⁸ However, placing these efforts within a unified management structure could best facilitate meaningful improvement.

To its credit, the IRS is taking some steps that could potentially be helpful in this area. It undertakes escalating measures, called “treatments,” including warning letters, preparer audits, and educational visits, aimed at certain tax return preparers whom the IRS has identified as in need of education or more direct intervention.⁶⁹ Additionally, the IRS is proposing expanded and increased penalties for unscrupulous preparers and is accelerating an existing research effort aimed at detecting and ensuring compliance among ghost preparers.⁷⁰ These are commendable initiatives, but they should represent only the early steps along a path toward more vigorous enforcement activity against incompetent or dishonest tax return preparers, the majority of whom appear to be non-credentialed. Without oversight and the ability to discipline unscrupulous preparers or bar them from preparing returns, however, the IRS will remain limited in its ability to protect vulnerable taxpayers.

CONCLUSION AND RECOMMENDATIONS

The IRS’s inability to oversee return preparation places taxpayers and the tax system at risk. The available data suggests that the most common bad actors in this industry are non-credentialed preparers. The IRS, however, is extremely limited in the tools it has at its disposal to regulate incompetent or dishonest preparers. The tax community shares a broad consensus that preparer regulation is highly desirable. Nevertheless, judicial decisions that the IRS has no such authority stand in the way of much-needed preparer oversight. It is up to Congress to provide this much-needed oversight capacity to the IRS.

As a result, Treasury should continue to join TAS in advocating for bipartisan legislation providing the IRS with the authority to implement regulations in this area.⁷¹ These legislative efforts have historically received bipartisan support. At the same time, the IRS should step up its efforts to provide preparers with encouragement to voluntarily bring themselves within the IRS’s purview. Further, the IRS should carefully, but more aggressively, apply the existing return preparer penalties to deter tax return preparers from acting in ways that are negligent or dishonest.

67 See, e.g., letters listed on IRS.gov, *Reaching Out to Paid Preparers*, <https://www.eitc.irs.gov/tax-preparer-toolkit/preparer-compliance-focused-and-tiered/reaching-out-to-preparers/reaching-out> (last visited Nov. 6, 2023).

68 No action is currently being taken to implement this strategy due to the proposed IRS reorganization. IRS response to TAS fact check (Nov. 2, 2023).

69 IRS response to TAS information request (Aug. 10, 2023).

70 Letter from Comm’r Danny Werfel, Internal Revenue, to Sen. Ron Wyden, Chair, S. Comm. on Finance (May 15, 2023), https://www.finance.senate.gov/imo/media/doc/werfel_letter_to_sen_wyden.pdf.

71 Historically, oversight initiatives have received bipartisan support. See, e.g., Dep’t of the Treasury, *General Explanation of the Administration’s Fiscal Year 2024 Revenue Proposals* 181-184 (Mar. 2023), <https://home.treasury.gov/system/files/131/General-Explanations-FY2024.pdf>; Michael Cohn, *Trump Budget Calls for More Oversight of Tax Preparers*, ACCT. TODAY (Feb. 13, 2018), <https://www.accountingtoday.com/news/trump-budget-calls-for-more-federal-oversight-of-paid-tax-preparers>.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Expand the scope of its efforts to educate taxpayers regarding the importance of relying on credentialed preparers, including AFSP participants, rather than non-credentialed preparers.
2. Increase publicity for the VITA and TCE programs and seek additional annual funding from Congress to support and develop those programs.
3. Vigorously enforce return preparer penalties where appropriate, including through the use of systemically assessed IRC § 6695(c) penalties and letters to taxpayers whose preparers have received return preparer penalties.
4. Establish a single function within the IRS to be responsible for all matters regarding tax return preparation to consolidate authority and better protect taxpayers from incompetent or unscrupulous return preparers.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend Title 31 § 330 of the U.S. Code to authorize the Secretary to establish minimum standards for paid federal tax return preparers.⁷²
2. Amend IRC § 6109 to authorize the Secretary to revoke PTINs concurrently with the assessment of sanctions for violations of established minimum standards for paid federal tax return preparers.⁷³

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

⁷² These minimum standards could be as limited as simply authorizing the Secretary to make all return preparers subject to the same rules and responsibilities as those participating in the IRS's AFSP. For legislative language generally consistent with this recommendation, see Taxpayer Protection and Preparer Proficiency Act of 2019, S. 1192 & H.R. 3330, 116th Cong. (2019) and other bills cited herein.

⁷³ National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 5 (Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers)*, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_PurpleBook_02_ImproveFiling_3.pdf.



IDENTITY THEFT

Lengthy Issue Resolution Delays and Inadequate Notices Burden Taxpayers Who Are Victims of Identity Theft or Whose Returns the IRS Has Flagged for Possible Identity Theft

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Individuals who are victims of tax-related identity theft are waiting an average of nearly 19 months for the IRS to process their returns and send their refunds. Yes, you read that correctly: for many victims, that's *more than a year and a half!* During the pandemic, the IRS's policy decisions to prioritize other areas (such as shuffling employees to answer telephone lines) contributed to these unreasonable processing delays that continued throughout 2023 and are expected to continue into 2024. But there is a second group of taxpayers also harmed. Each year, the IRS flags millions of returns for potential identity theft. Taxpayers who have filed legitimate returns deal with inadequate notices and difficulties authenticating their identity. Until a taxpayer completes authentication, the IRS cannot process their tax return or send their refund.

EXPLANATION OF THE PROBLEM

With enough identifying information, a criminal can fraudulently file an individual or company's tax return. The U.S. Federal Trade Commission (FTC) received about 2.8 million fraud and identity theft reports in 2021, a 22 percent increase from the year prior.¹ Reports of associated financial losses topped \$5.9 billion in 2021, an increase of over 70 percent compared with 2020.²

1 FED. TRADE COMM'N, CONSUMER SENTINEL NETWORK DATA BOOK 2021 (2022), <https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2021>.

2 FTC Press Release, *New Data Shows FTC Received 2.8 Million Fraud Reports from Consumers in 2021* (Feb. 22, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/02/new-data-shows-ftc-received-28-million-fraud-reports-consumers-2021-0>.

Identity theft is a persistent problem that affects taxpayers, the IRS, and tax administration. Many taxpayers may not even know of the theft until they try to electronically file their tax return, only to have IRS systems reject it due to a previous filing using their Social Security number. The IRS's Identity Theft Victim Assistance (IDTVA) program, among other things, helps these taxpayers resolve their identity theft issues.³

Though the IRS has taken steps to prevent tax-related identity theft, its efforts have resulted in millions of taxpayers facing significant problems including refund delays. Both the IDTVA program and the IRS efforts to prevent identity theft are experiencing significant challenges, including:

- Taxpayers who are victims of tax-related identity theft often must wait nearly 19 months for the IRS to process their returns and send their refunds;⁴
- IRS systems for detecting and preventing identity theft have struggled with high false detection rates, subjecting taxpayers who filed legitimate returns to refund delays;
- Taxpayers receive only one letter asking them to authenticate their identity when the IRS suspects an identity thief may have filed a tax return, and taxpayer response rates to these letters are low; and
- Some taxpayers are having to wait too long to receive their Identity Protection Personal Identification Numbers (IP PINs), delaying access to an underutilized tool for preventing tax-related identity theft.

ANALYSIS

Taxpayers Who Are Victims of Tax-Related Identity Theft Often Must Wait Nearly 19 Months for the IRS to Send Their Refunds and Process Their Returns

Taxpayers who are victims of tax-related identity theft can seek assistance from the IRS's IDTVA program.⁵ Unfortunately, extremely long cycle times plague the IDTVA program due to several factors, including the IRS temporarily shutting down during the beginning of the pandemic and the issuance of pandemic relief in the form of Economic Impact Payments and Advance Child Tax Credit payments. Together, these created a significant increase in IDTVA case receipts.⁶ (Note: These delays have caused a significant hardship for taxpayers, particularly low-income taxpayers who rely on their refunds to pay their day-to-day living expenses, as 69 percent of these taxpayers had adjusted gross income at or below 250 percent of the Federal Poverty Level in fiscal year (FY) 2023.)⁷ Figure 2.6.1 shows the increase in case receipts and cycle times as well as the IRS's continued struggle to close IDTVA-Accounts Management (AM) inventory.

3 IRS, IRS Identity Theft Victim Assistance: How It Works, <https://www.irs.gov/individuals/how-irs-id-theft-victim-assistance-works> (last visited Dec. 4, 2023).

4 IRS, Accounts Management (AM) IDTVA, Research Analysis and Data (RAD), Correspondence Imaging System (CIS) Closed Case Cycle Time for the Identity Theft (IDT) Victims Unit Reports, Fiscal Year (FY) 2023.

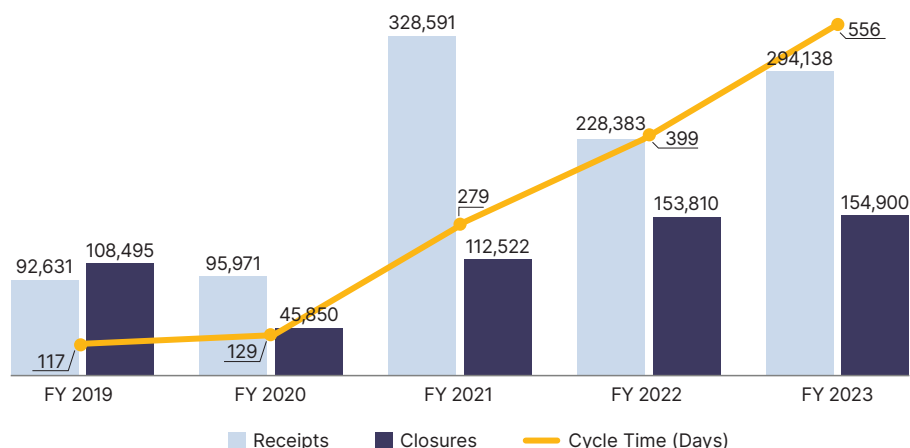
5 The IRS's AM group works most identity theft cases.

6 Internal Revenue Manual (IRM) 25.23.2.3.1, Dependent Identity Theft (Oct. 1, 2022), https://www.irs.gov/irm/part25/irm_25-023-002r. On November 9, 2020, the IRS began working cases where a dependent's identity had been improperly used. This opened an entire subset of the identity theft population after the 2019 tax season for the IRS to work. Cycle time begins with IDTVA receipt of the identity theft claim and ends when the IDTVA employee takes action to correct the taxpayer's account.

7 Taxpayers typically become aware that their identity has been used to file a fraudulent return when they attempt to e-file their tax return and the IRS rejects it or when they receive an IRS notice informing them that they owe the IRS money. IRS, Compliance Data Warehouse (CDW), Individual Master File (IMF) and Individual Returns Transaction File (IRTF) (Sept. 28, 2023).

FIGURE 2.6.1⁸

Identity Theft Victim Assistance Individual Case Receipts, Closures, and Cycle Times



In FY 2019, the IRS received 92,631 IDTVA receipts, and in FY 2021, that number jumped to 328,591.⁹ This increase in AM case receipts drove up cycle times from 117 days in FY 2019 to 279 days in FY 2021 and to 556 days, nearly 19 months, in FY 2023, its highest point to date.¹⁰ This 556-day time period falls far outside the 120-day time period the IRS typically strives for when resolving IDTVA claims.¹¹

The IRS's cycle times for IDTVA cases increased due to the significant rise in identity theft cases and the challenges that continuing IRS operations faced during pandemic (*i.e.*, employees could not enter worksites and process these claims).¹² However, the IRS prioritized certain aspects of its customer service, most notably achieving an 85 percent Level of Service (LOS) on certain toll-free lines, which came at the expense of other IRS operations including the processing of IDTVA claims. To achieve this 85 percent LOS goal, the IRS used extra funding to hire about 5,000 employees to answer incoming calls.¹³ Besides hiring new employees, the IRS also took most AM customer service representatives (CSRs) off their assigned duties and reassigned them to answer incoming calls on the toll-free lines.¹⁴ This included reassigning 572 identity theft CSRs

8 IRS, Joint Operations Center (JOC), AM RAD, CIS Closed Case Cycle Time for the AM Individual Taxpayer IDT Victims Unit Reports, for FY 2019 through FY 2023. In FY 2019, the IRS did not provide a breakout for only AM IDTVA inventory so the actual time may be slightly higher. Customer Accounts Service (CAS), IDTVA IMF Account in Inventory Reports, FY 2019 through FY 2023.

9 IRS, JOC, CAS, AM Paper Inventory Report, IDTVA Reports, AM, FYs 2019, 2021, and 2023.

10 IRS, JOC, AM IDTVA, RAD, CIS Closed Case Cycle Time for the Identity Theft Victims Unit Reports, FYs 2019, 2021, and 2023. Note: The 556-day time period is for IDTVA cases AM works that make up the vast majority of IDTVA cases. These cases include individual IDTVA cases worked in AM but do not include individual IDTVA cases involving a compliance issue worked in AM. The time period for all IDTVA cases is slightly less, running at an average of 497 days to reach resolution.

11 IRM 25.23.2.2.3, IDT Case Processing Time Frames (Mar. 16, 2023), https://www.irs.gov/irm/part25/irm_25-023-002r. The IRS is advising taxpayers that it typically resolves IDTVA cases within 120 days, but due to extenuating circumstances, it is taking the IRS on average 480 days to resolve these cases (processing timeframe was increased from 430 days to 480 days per IRM Procedural Update 23U0987).

12 IRS, Servicewide Electronic Research Program Alert 20A0135, Product Line Closure (Mar. 24, 2020). The IRS shut down all phone lines on April 1, 2020.

13 Janet L. Yellen, Sec'y of the Treasury, Remarks at the IRS Facility in New Carrollton, Maryland (Sept. 15, 2022), home.treasury.gov/news/press-releases/jy0952.

14 National Taxpayer Advocate Fiscal Year 2024 Objectives Report to Congress 1 (*Review of the 2023 Filing Season*), <https://www.taxpayeradvocate.irs.gov/reports/2024-objectives-report-to-congress/full-report/>.

from identity theft paper inventory to the AM phone lines.¹⁵ If the IRS reassigns identity theft CSRs to work AM phone lines in the 2024 filing season, this will likely further delay the closure of more IDTVA cases, aggravating an already untenable situation.

Perhaps this trade off was understandable so taxpayers could obtain the answers they needed during filing season, but we are now more than three years from the beginning of the pandemic. The IRS should be able to figure out how to provide taxpayers with the customer service they need without siphoning it from other critical programs. The continuation of these extraordinary cycle times is unreasonable, burdens taxpayers, and compromises taxpayer rights.

IRS Systems for Detecting and Preventing Identity Theft Have Struggled With High False Detection Rates, Subjecting Taxpayers Who Filed Legitimate Returns to Refund Delays

The IRS created the Taxpayer Protection Program (TPP) to identify and stop the processing of returns filed by identity thieves to prevent the issuance of fraudulent refunds. To prevent fraud, it screens returns by running them through a series of filters. After the IRS applies the filters to the return information, the return receives a score; if that score exceeds a certain threshold, the IRS will route the return to the TPP.¹⁶ Once the filters select a return as potential identity theft, the IRS issues letters to taxpayers instructing them to authenticate their identity and return information. The most common letters the IRS sends to taxpayers instruct them to either authenticate online, over the phone, or in person at a Taxpayer Assistance Center (TAC).¹⁷ The IRS will not complete processing of these returns or issue refunds associated with them until taxpayers complete the authentication process.¹⁸

The IRS's programming of its identity theft fraud detection systems' filters and models is a tricky balancing act. The filters must be broad enough to detect most of the possible identity theft returns while also minimizing the number of legitimate returns selected into the program. When the filters select legitimate returns into the TPP, the IRS commonly refers to this as the "false detection rate" (FDR).¹⁹ Over the past few years, the IRS has consistently set its FDR target at about 50 percent, and each year the FDR has exceeded this target, with the exception of calendar year (CY) 2022, when it achieved an FDR of about 47 percent.²⁰ Figure 2.6.2 shows the FDR for the TPP over the past three years.

15 IRS response to TAS information request (Sept. 21, 2023). The 572 employees were permitted to work IDTVA cases during their allotted overtime.

16 See IRM 25.25.6.1(1) and (3), Program Scope and Objectives (Nov. 1, 2021), https://www.irs.gov/irm/part25/irm_25-025-006r; IRM 25.25.3.1(1), Program Scope and Objectives (Aug. 30, 2019), https://www.irs.gov/irm/part25/irm_25-025-003r.

17 IRS, Letter 5071C, Potential Identity Theft during Original Processing with Online Option (Jan. 3, 2023).

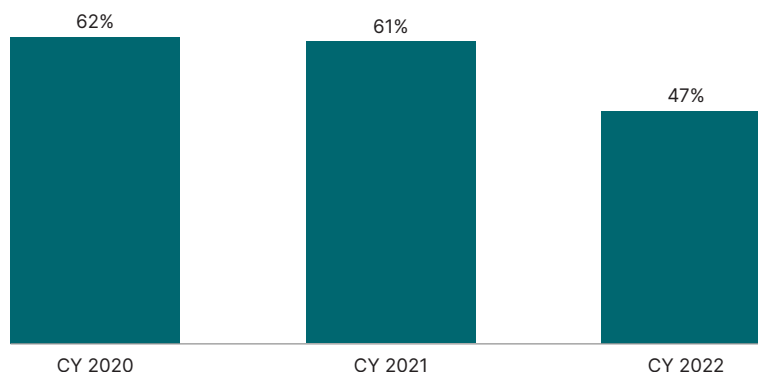
18 The IRS can release returns that TPP selects and holds without taxpayer contact if the IRS receives enough third-party data on the return allowing the IRS to confirm its authenticity.

19 A false positive occurs when a system selects a legitimate return and delays the refund past the prescribed review period. IRS response to TAS information request (Oct. 19, 2017).

20 IRS, Wage and Investment (W&I) Business Performance Review (BPR) Q3, FY 2023 (Aug. 2023).

FIGURE 2.6.2²¹

**Taxpayer Protection Program False Detection Rates
2020, 2021, and 2022**



Acknowledging that the IRS's identity theft fraud detection system will always select legitimate returns into the TPP, it is critical that the filters keep the FDR at a reasonable level. The IRS should take steps to ensure that the lower FDR in CY 2022 is the beginning of a trend – and not a blip – putting the FDRs more in line with its regular target of about 50 percent, which is the target range experienced by merchants.²² A lower FDR will reduce the number of taxpayers who filed legitimate returns having their returns selected into the TPP, thus eliminating the need for taxpayers to spend time authenticating their identity and return information to obtain their refund.

Additionally, it is important that the authentication process is quick and simple. However, IRS data indicates that taxpayers experience difficulties authenticating their identity and return information. In CY 2022, it took taxpayers 46 days on average to authenticate their identities.²³ The IRS has been working with TAS to develop a survey to better understand why it takes taxpayers so long to complete the authentication process. This survey will help the IRS identify the barriers taxpayers may experience when attempting to complete the authentication process (*e.g.*, taxpayers don't understand the letters, have difficulty answering the online authentication questions, or can't get an appointment at a TAC).

Taxpayers Receive Only One Letter Asking Them to Authenticate Their Identity When the IRS Suspects an Identity Thief May Have Filed a Return, But Taxpayer Response Rates to These Letters Are Low

When the IRS is questioning whether a return is legitimate, it will send taxpayers one letter asking them to authenticate their identity, and it will not process their return and issue their refund until the taxpayer responds to the letter and completes the authentication process. Because the IRS is holding taxpayers' refunds, it would be reasonable to assume taxpayers would quickly respond to these letters. However, about half of the authentication letters sent out in CY 2022 resulted in no response. In 2022, the IRS suspended processing of 4.8 million tax returns and requested taxpayers authenticate their identities before releasing their refunds.²⁴ Out of those, the IRS resolved about two million tax returns suspected of identity theft through

²¹ IRS, W&I, BPR Q3, FY 2023 (Aug. 2023); IRS, W&I, BPR Q4, FY 2022 (Nov 2022).

²² Keith Briscoe, *Fraud and False Declines: Fighting the Downward Spiral With Collaboration*, THE PAYPERS, Apr. 28, 2017, <https://www.thepayers.com/expert-opinion/fraud-and-false-declines-fighting-the-downward-spiral-with-collaboration/768755>.

²³ IRS, W&I, BPR Q3, FY 2023 (Aug. 2023).

²⁴ IRS, IDT and Integrity and Verification Operation (IVO) Inventory End of Year Main Report (Dec. 31, 2022).

internal research or taxpayer responses and released the refunds; taxpayers confirmed nearly 255,000 as identity theft. However, over 2.5 million returns remained suspended as of December 31, 2022, because the taxpayers still had not authenticated their identities with the IRS.²⁵

There are many reasons a taxpayer might not respond to an authentication letter. For example, the IRS presumes that if a taxpayer does not respond to an authentication letter, it was likely that the identity thief received it and abandoned their plan to steal the refund upon realizing the IRS was aware of the fraud. This is a legitimate explanation that makes up a portion of the roughly 2.5 million taxpayers who did not respond to IRS authentication letters. But there are also other possible explanations for this high no-response rate that the IRS needs to examine, including that the taxpayer never received the authentication letter, or they received it but didn't understand it.

Taxpayers May Not Receive Authentication Letters

Some taxpayers may not respond to the letters because they never received them. One issue is that the IRS does not track the number of TPP letters returned as undeliverable.²⁶ Therefore, it cannot place an indicator on a taxpayer's account that the post office returned a letter or notice or investigate to find a more recent address. We recommend the IRS track the number of TPP letters returned as undeliverable to better understand the magnitude of this issue. Additionally, when letters are returned as undeliverable, the IRS should conduct research to determine if the taxpayer has a more recent address.

Another issue occurs because the IRS will only send an authentication letter to the address used on the tax return that the TPP filters selected.²⁷ Even when a taxpayer calls to update their address, the IRS will not update it because it does not want to possibly send the letter to the individual attempting to perpetrate the fraud.²⁸ Though it's logical to want to prevent fraudulent refunds, the IRS burdens taxpayers with these rules, particularly those who are transient or move frequently, and most are low-income. (Note: Nearly 69 percent of the taxpayers whose returns the IRS selected into TPP in FY 2023 had income at or below 250 percent of the Federal Poverty Level.²⁹) When the taxpayer contacts the IRS to update their address, the IRS should verify the address the taxpayer has provided by conducting independent research.

Even If Taxpayers Receive Their Authentication Letter, They May Struggle to Understand It and the Process

Taxpayers and practitioners have often complained that IRS identity theft authentication letters are overly complex and unclear. During a conversation about the authentication process with Low Income Taxpayer Clinic practitioners, they stated that many taxpayers – particularly those who speak English as a second language – find both the letters and the authentication process complicated and confusing. To the IRS's credit, it has taken these criticisms to heart and made an initial step toward improving the clarity of these letters.³⁰ If taxpayers cannot understand the letters in plain language, they will either call the IRS's TPP toll-free phone line to seek additional information, or they will simply not take any action to authenticate their identities.

25 IRS, IDT and Integrity and Verification Operation (IVO) Inventory End of Year Main Report (Dec. 31, 2022).

26 IRS response to TAS information request (Sept. 21, 2023).

27 See IRM 25.25.6.1, Program Scope and Objectives (Nov. 1, 2021), https://www.irs.gov/irm/part25/irm_25-025-006r.

28 IRM 25.25.6.2(4), Procedures for When the Caller Has Not Received or Lost the Taxpayer Protection Program (TPP) Letter (May 23, 2023), https://www.irs.gov/irm/part25/irm_25-025-006r.

29 IRS, CDW, IMF and IRTF (Sept. 28, 2023).

30 The IRS revised Letter 5071C, Potential Identity Theft during Original Processing with Online Option, on January 3, 2023.

In 2023, taxpayers who attempted to call the toll-free line to seek clarification regarding authentication letters had trouble reaching a CSR, as only about 31 percent of taxpayers who called the TPP line reached an IRS assistor.³¹

The IRS recently studied how to improve taxpayer responses to these letters by examining the usage of QR codes, which taxpayers scan with their smartphone to visit a website that explains the letter and what they need to do next. In 2022, it found that only about 18 percent of taxpayers who received a letter with an insert that included a QR code actually used the code; its 2023 pilot showed that for taxpayers who received a letter with a QR code directly embedded, the usage rate ranged from 44-58 percent.³² This was the case for all age groups, including taxpayers aged 60 or older, the age group least likely to use the QR code.³³ The findings support that taxpayers are more likely to use embedded QR codes, but the IRS should not use the codes as a replacement for important information included in letters. Some taxpayers will not use the QR code or do not have the necessary smartphone to access the information. The IRS should build on this study and develop another study that focuses more on the letter content and tests variations on the language to deliver the same message and see what yields a better response rate.

In addition to content, the IRS should explore whether sending multiple authentication letters rather than merely sending one would increase the taxpayer response rate. To examine this possibility, TAS is conducting a study where it is sending letters to nearly 4,000 taxpayers it suspects filed legitimate returns but whose refunds the IRS has not issued because the taxpayers haven't responded to the IRS to authenticate their identity.³⁴ These TAS letters offer assistance with identity authentication. The IRS should conduct its own study determining whether sending multiple letters increases taxpayers' response rates.

Some Taxpayers Have to Wait Too Long to Receive Their Identity Protection Personal Identification Numbers, Delaying Access to an Underutilized Tool for Preventing Tax-Related Identity Theft

The IRS Is Behind in Processing These Requests Made on Paper Forms

Any taxpayer who wants to protect themselves from tax-related identity theft can request an IP PIN, and taxpayers who have experienced tax-related identity theft are automatically issued an IP PIN at the time the IDTVA program resolves their case.³⁵ The IP PIN is a unique number known only to the taxpayer and the IRS. Taxpayers in the IP PIN program receive a new IP PIN annually.

Taxpayers without a tax-related identity theft case who would like an IP PIN can apply online, by mail with a completed Form 15227, Application for an Identity Protection Personal Identification Number, or by visiting a TAC in person.³⁶ Online and in person are probably the most expedient ways to get an IP PIN, but the online method requires an authentication process that some taxpayers might find burdensome. The in-person method requires taxpayers to travel to a TAC.³⁷ Figure 2.6.3 breaks down how taxpayers requested IP PINs in FY 2022.

31 IRS, JOC Snapshot Product Line Detail Report (Sept. 30, 2023). One reason for this low LOS is that the IRS focused a number of its resources on specific AM phone lines to meet an 85 percent LOS goal. Unfortunately, the IRS did not include the TPP phone line in this 85 percent LOS goal, likely contributing to the continued frustration for taxpayers who sought information about their refund delays and steps to take.

32 IRS TPP Letter Pilot, Final Analysis FY 2023, slide 11 (Aug. 21, 2023).

33 IRS TPP Letter Pilot, Final Analysis FY 2023 (Aug. 21, 2023).

34 TAS sent letters to taxpayers whom it suspects filed legitimate returns. TAS looked at certain criteria on the returns to make this determination, including if the taxpayer received a refund in subsequent years, the taxpayer's age, and the amount of taxpayer's withholding, among other things.

35 IRM 25.23.2.9.1.1, Automatic Enrollment in the IP PIN Program (Feb. 2, 2023), https://www.irs.gov/irm/part25/irm_25-023-002r.

36 See IRS, Get an Identity Protection PIN (IP PIN), <https://www.irs.gov/identity-theft-fraud-scams/get-an-identity-protection-pin> (last visited Sept. 15, 2023).

37 *Id.*

FIGURE 2.6.3, Methods for Requesting an IP PIN During the 2022 Filing Season³⁸

Taxpayer Assistance Center	Form 15227	Online
5,800	6,400	491,000

For taxpayers who request an IP PIN by mailing Form 15227 to the IRS, processing times have increased. The IRS currently aims to process these requests within 120 days of receiving them;³⁹ however, in FY 2023 through September 30, 2023, 60 percent of the IP PIN applications took beyond 120 days, increasing taxpayer anxiety.⁴⁰ The increase in IDTVA cases over the last several years has increased processing delays, and the IRS needs to ensure it is devoting enough resources to processing paper IP PIN requests in a timely fashion. It should consider providing taxpayers with an application they can electronically submit to the IRS. Although taxpayers using this method would not receive an IP PIN instantaneously like they would if they use the online application, the processing time would be shorter for these electronically submitted forms.

Identity Protection Personal Identification Numbers Are an Underutilized Identity Theft Protection Tool

The IP PIN is a valuable and underutilized identity theft protection tool for taxpayers. Anyone concerned about tax-related identity theft can request an IP PIN; however, only about 525,000 taxpayers opted into the IP PIN program in CY 2022.⁴¹ The FTC received over 1.1 million reports of identity theft in 2022.⁴² Thus, there were more than double the number of individuals affected by identity theft than those who requested IP PINs. There are a few possible explanations for this low participation rate. Taxpayers may be reluctant to voluntarily opt into the program because they can't opt out of it. It's understandable that the IRS would not permit taxpayers who have been victims of tax-related identity theft to opt out because the IRS needs to protect the government fisc and prevent issuing improper refunds to bad actors. However, this justification does not apply to taxpayers who voluntarily opt into the program. The IRS should provide these taxpayers a way to opt out of the IP PIN program before the next filing season.

Another possible explanation is that taxpayers aren't aware of the availability of this option and how it can protect them against tax-related identity theft. The IRS should expand its outreach efforts, ensuring that financial institutions, local law enforcement, and state taxing authorities know of the IRS's IP PIN program and can inform individuals how to access it. For example, if taxpayers have been victims of financial identity theft, such as finding irregular charges to their bank accounts, their bank should inform them about getting an IP PIN if they are also concerned about tax-related identity theft. Once informed, taxpayers can visit the IRS website and request an IP PIN as an added precaution. This type of collaboration with private-public stakeholders will expand awareness of this effective identity theft protection tool.

38 IRS, W&I, BPR Q4, FY 2022 (Nov. 2022). Data is as of early October 2022.

39 IRM 25.23.12.6.1, Responding to Telephone Inquiries Regarding Form 15227 for Obtaining an IP PIN (Oct. 1, 2023), https://www.irs.gov/irm/part25/irm_25-023-012r.

40 IRS, JOC, CAS, CAS AM Paper Inventory Reports, FY 2023 IDTVA Inventory Report (week ending Sept. 30, 2023). In FY 2023, the IRS received approximately 42,230 IP PIN applications. Recently, the IRS extended the overage timeframe for processing IP PIN requests from 90 days to 120 days. IRM 25.23.12.6.1, Responding to Telephone Inquiries Regarding Form 15227 for Obtaining an IP PIN (Oct. 1, 2023), https://www.irs.gov/irm/part25/irm_25-023-012r. On average, it is taking the IRS 480 days to process some applications.

41 IRS, W&I, BPR Q1, FY 2023, at 6 (Feb. 23, 2023).

42 FTC Press Release, *New FTC Data Show Consumers Reported Losing Nearly \$8.8 Billion to Scams in 2022* (Feb. 23, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/02/new-ftc-data-show-consumers-reported-losing-nearly-88-billion-scams-2022>.

CONCLUSION AND RECOMMENDATIONS

Tax-related identity theft is a continuous problem that plagues taxpayers and the IRS, and its prevalence has increased in recent years due to pandemic-related circumstances that enticed many bad actors. For those individuals or businesses that have been victims of identity theft it is a difficult, unpleasant, and emotional experience. Victims of identity theft may feel overwhelmed, helpless, angry, isolated, betrayed, and even embarrassed. This crime may trigger fears regarding financial security and the ability to trust again. The IRS should do everything possible to timely assist these victims and provide them with the peace of mind that the IRS is looking out for their best interests and protecting their rights.

Although the IRS has worked diligently to prevent tax-related identity theft, there is still room for improvement. The FDRs of IRS identity theft filters and models have consistently been too high in past years, only coming down to a more reasonable level in FY 2022, and too few taxpayers respond to IRS letters asking them to authenticate their identities. Taxpayers who avail themselves of one of the most effective ways to protect themselves from tax-related identity theft may have to wait more than 120 days for the IRS to complete their initial IP PIN request if they submit their request by mail.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Refrain from having IDTVA employees perform other duties unrelated to working identity theft cases until the average cycle time for resolving IDTVA cases is less than 90 days.
2. Program identity theft filters to consistently have an FDR below 50 percent.
3. Conduct a pilot where the IRS sends taxpayers authentication letters using different versions of plain language and tests sending multiple letters in close proximity of one another to determine if these changes improve the taxpayer response rate.
4. Track when the IRS receives authentication letters returned as “undeliverable” and develop procedures to have IRS employees conduct research to verify a taxpayer’s most recent address.
5. Provide a process by which taxpayers can electronically submit Form 15227 and ensure the process routes the forms to the appropriate unit within 48 hours of receipt.
6. Conduct outreach to private-public stakeholders making them aware of the availability of IP PINs and how taxpayers can request them.
7. Provide taxpayers who voluntarily opt into the IP PIN program a means by which they can opt out of the program.

RESPONSIBLE OFFICIAL

Kenneth Corbin, Commissioner, Wage and Investment Division



ONLINE ACCOUNT ACCESS FOR TAXPAYERS AND TAX PROFESSIONALS

Digital Services Remain Inadequate, Impeding Efficient Case Resolution and Forcing Millions of Taxpayers to Call or Send Correspondence to the IRS

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers and tax professionals lack a comprehensive online account¹ with integrated digital communication tools to access tax information and services that are essential for tax administration and quality service. Taxpayers and tax professionals wanting to interact online need and deserve quality self-service options and quick responses from the IRS. When taxpayers cannot quickly communicate with the IRS to resolve issues and receive answers to their questions simply and securely, it negatively affects the taxpayer experience, which in turn impacts taxpayers' overall satisfaction and trust in the IRS. The lack of an intuitive, self-service avenue to interact online with the IRS forces taxpayers and tax professionals to pursue alternative methods that delay resolution, such as calling for assistance, seeking in-person assistance at a Taxpayer Assistance Center (TAC), forgoing assistance, or submitting paper documents. Unfortunately, the COVID-19 pandemic caused delays and frustration that severely limited these conventional methods.²

EXPLANATION OF THE PROBLEM

Bringing the IRS into the 21st century by expanding digital functionality is necessary to improve the taxpayer experience and raise taxpayers' overall satisfaction and trust in the IRS. Public trust in the IRS is at the core of our nation's system of self-assessment and voluntary tax compliance.³

- 1 Collectively Individual Online Accounts (IOLAs), Business Tax Accounts (BTAs), and Tax Pro Accounts (Tax Pro). The analysis reflects online account upgrades through November 30, 2023.
- 2 Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2024-400-006, *Final Results of the 2023 Filing Season* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-11/2024400006fr.pdf>.
- 3 See Office of Management and Budget (OMB) Circular No. A-11, 280.1-280.4 (Aug. 2023), <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>; Exec. Order No. 14058, 86 Fed. Reg. 71,357 (Dec. 13, 2021), <https://www.federalregister.gov/documents/2021/12/16/2021-27380/transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-in-government>; Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981 (2019).

When taxpayers lack digital service options, such as communicating with the IRS online, accessing tax data online, or digitally signing documents, the IRS forces them to use more conventional methods (*e.g.*, mailing or faxing paper documents, calling customer service lines, or visiting in person at a TAC). If a taxpayer has the option to use self-help methods to answer questions or resolve issues, the conventional assistance channels have shorter wait times for those taxpayers that need or want in-person or telephone assistance. Providing multiple service channels would allow the IRS to provide faster service and responses and eliminate delays, which would improve customer service for all taxpayers. A win-win.

Robust online accounts and digital services would provide taxpayers flexibility.⁴ A key benefit of expanding online account functionalities and digital services is providing taxpayers and tax professionals faster service with the convenience of 24/7 availability.

Here are some examples of how the IRS harms taxpayers and tax professionals with its insufficient online account tools:

- The lack of robust functionality forces taxpayers to resort to more conventional forms of communication, thereby resulting in slower resolution times, increased taxpayer frustration and confusion, and scarce IRS resources for those that need the personal touch.
- Individual online accounts (IOLAs) still lack comprehensive features, including the ability to track submissions through the entire lifecycle of a return (filing through the closing of any controversy issue), submit offers in compromise online, chat with a revenue officer, and calculate payoffs for any balances due.
- Business taxpayers have little access to online services and tools, forcing them to call the IRS or fax or mail in documents, thus slowing resolution times and increasing taxpayer frustration.
- Tax Pro Accounts (Tax Pro) for tax professionals offer too few functionalities and thus remain underutilized. Without expanded functionalities, including access to client tax data, the IRS forces tax professionals to call for assistance or submit paper documents on behalf of taxpayers.
- Reporting agents have little access to online services, forcing them to either call the IRS or fax or mail in documents, thus slowing resolution times and increasing frustration.
- The Document Upload Tool (DUT) only provides taxpayers and tax professionals with the ability to electronically upload documents, eliminating the need to mail, fax, or email a document. It does not provide a backend workflow process. Without an efficient DUT backend workflow process and integration with an enterprise case management system, the IRS requires its employees to manually process DUT submissions, which will cause delays. Until the IRS implements a backend workflow process and case management system integration, the National Taxpayer Advocate is concerned this will cause the next backlog of submissions. Additionally, failure to manage taxpayer expectations for DUT will create confusion regarding expected response times.
- The IRS could enhance the taxpayer experience through increased promotion of online account options for both taxpayers and tax professionals and through IRS employee training on how to use these resources to better assist taxpayers.
- Taxpayers and tax professionals who struggle with completing the identity verification process required to set up online accounts are unable to use these vital resources.⁵

4 See also OMB Memorandum No. M-23-22, *Delivering a Digital-First Public Experience* (Sept. 2023), <https://www.whitehouse.gov/omb/management/ofcio/delivering-a-digital-first-public-experience/>.

5 Twenty-one percent of new users failed a step in the verification process. IRS response to TAS information request (Oct. 13, 2023).

ANALYSIS

A 2022 TAS research report compared online accounts and the digital services available for individuals on IRS.gov to the taxing authorities of 41 U.S. states, the District of Columbia, Puerto Rico, and three foreign countries.⁶ The report identified three areas where the IRS website lacked features commonly found on other taxing authority websites:

1. Filing options on the taxing authority's own website;⁷
2. The ability to receive and respond to most notices online; and
3. Robust in-person and digital contact options.

In April 2023, the IRS released the IRS Strategic Operating Plan (SOP) outlining how it intends to use the Inflation Reduction Act (IRA) funding.⁸ If completed accordingly, many of the objectives have the potential to transform the modernization of online accounts and digital services through projects, such as improving self-service options, building status-tracking tools, and expanding digital response options. Additionally, the objectives would address the examples of taxpayer and tax professional issues listed previously.⁹ Many projects and initiatives are underway; however, the IRS still has much work to complete. As the IRS implements its SOP, it should continue developing online account functionality with a taxpayer-centric approach that prioritizes the experience and needs of individual and business taxpayers and tax professionals with input from stakeholders.

On September 22, 2023, the Office of Management and Budget (OMB) issued memorandum M-23-22, *Delivering a Digital-First Public Experience*, which provides guidance to agencies on how to design and deliver websites and digital services to the public. It includes and summarizes many best practices for digital services shared by the National Taxpayer Advocate including:

- Provide services to the public in a manner that maximizes self-service or transaction completion;
- Design and deliver digital options with users at the center of the experience;
- Prioritize customization to help users complete more relevant tasks more quickly;
- Ensure accessibility for people of diverse abilities;
- Provide content that is authoritative and easy to understand;
- Ensure the design of digital services incorporates appropriate privacy safeguards; and
- Build a digital workforce capable of delivering information and services to the public.¹⁰

6 National Taxpayer Advocate 2022 Annual Report to Congress 222 (TAS Research Report: A Review of Online Accounts and Web Services Offered by U.S. State and Foreign Country Taxing Authorities), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_CA_Online-Accounts.pdf. These foreign countries are the United Kingdom, Australia, and Canada.

7 For purposes of the study, online filing did not include those websites that simply referred visitors to third-party filing options, such as Free File or commercial service providers. National Taxpayer Advocate 2022 Annual Report to Congress 229 (TAS Research Report: A Review of Online Accounts and Web Services Offered by U.S. State and Foreign Country Taxing Authorities), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_CA_Online-Accounts.pdf. The IRS is conducting a Direct File pilot during the 2024 filing season. IRS, Pub. 5788, Inflation Reduction Act § 10301(1)(B) IRS-run Direct e-File Tax Return System (May 2023), <https://www.irs.gov/pub/irs-pdf/p5788.pdf>.

8 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>; 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).

9 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 26-27, 42, 52 (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

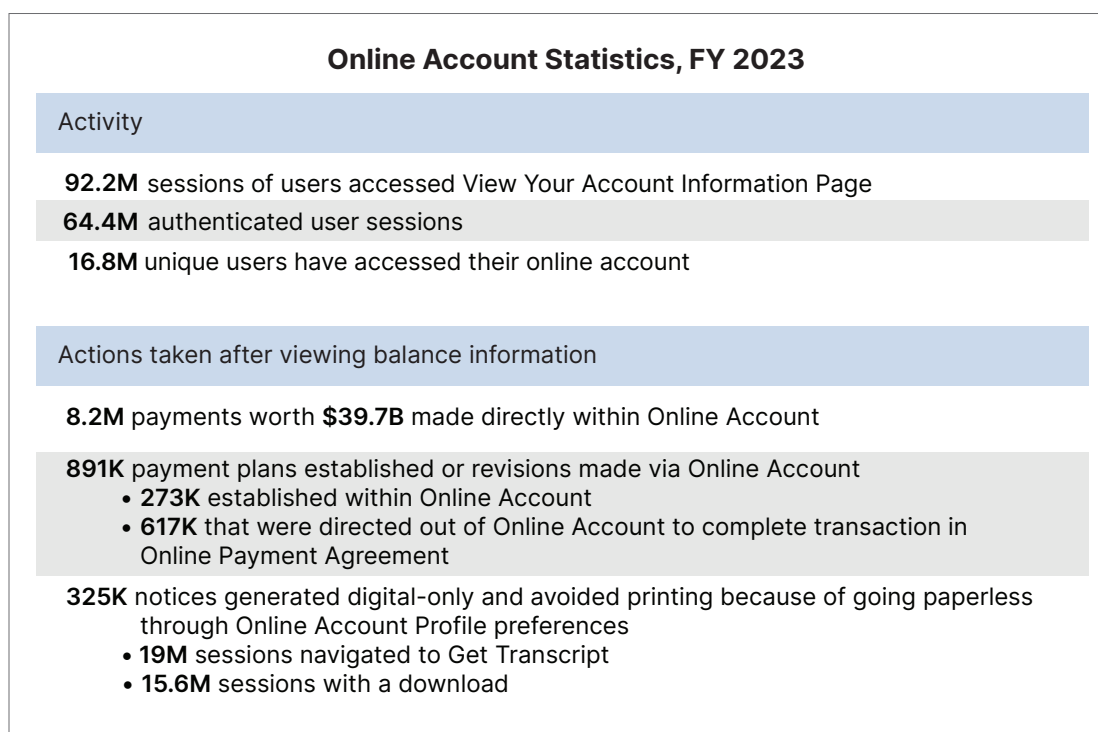
10 OMB Memorandum No. M-23-22, *Delivering a Digital-First Public Experience* (Sept. 2023) (implementing the 21st Century Integrated Digital Experience Act, Pub. L. No. 115-336, 132 Stat. 5025 (2018)), <https://www.whitehouse.gov/omb/management/ofcio/delivering-a-digital-first-public-experience/>.

Individual Online Accounts Still Lack Full Functionality

The IRS continued to expand IOLA functionality over the past year and plans to further develop it as part of its SOP.¹¹ In 2023, IOLAs allow individual taxpayers to view basic account information, make payments, enter into payment plans, and view and download certain notices. TAS commends the IRS for continuing to expand the functionality and capabilities within IOLA. However, the IRS has more work to do before achieving fully functional accounts that entice taxpayers to select IOLA as their preferred communication method. We look forward to working with the IRS on continued improvements.

Almost 17 million unique users accessed IOLAs in fiscal year (FY) 2023. As shown in Figure 2.7.1, taxpayers made 8.2 million payments worth \$39.7 billion through online accounts in FY 2023. Additionally, the IRS sent approximately 325,000 notices as digital-only because taxpayers opted to go paperless.¹² This is a good start that benefits both taxpayers and the IRS. For many taxpayers and tax professionals, paperless is seen as more efficient, and it is also more efficient for the IRS. When the IRS does not have to process a paper submission or paper notice, it saves time and shifts resources to other customer service functions.

FIGURE 2.7.1¹³



As shown in Figure 2.7.2, there are 16 active IRS self-assistance applications, and only four are available within IOLA. The remaining 12 are only available outside of the IOLA account. And these 12 applications do not require the same level of authentication so they can only provide very limited information.¹⁴

11 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 26-27, 42, 52 (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

12 IRS response to TAS information request (Oct. 25, 2023).

13 *Id.*

14 *Id.*

FIGURE 2.7.2, IRS Online Self-Assistance Applications¹⁵

Application Name	Available Tool(s)	Information From Application Reflected in Online Account	Type of User	Number of Transactions or Sessions, FY 2023
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	64,379,786
Get Transcripts Online	Retrieve a variety of transcripts online to view, print, or download	Yes	Individual	82,522,766
Get Transcripts by Mail	Receive a return or account transcript through mail	Yes	Individual and Business	614,905
Where's My Refund?	Learn status of refund	No	Individual	303,132,924
Where's My Amended Return?	Verify receipt and processing status for amended return (Form 1040-X)	No	Individual	13,951,765
Direct Pay	Pay directly from bank account	Yes	Individual	12,536,719
Online Payment Agreements	Request a payment agreement for certain taxpayers	Yes	Individual	2,020,102
Identity and Tax Return Verification Service (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	824,934
IP PIN	Validate identity and retrieve an Identity Protection Personal Identification Number online	No	Individual	2,272,461
Modernized Internet Employer Identification Number	Apply for and receive an Employer Identification Number online	No	Individual and Business	7,202,661
Transcript Delivery Service – Reporting Agents	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	1,009,057
Transcript Delivery Service – States	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	314,753
Transcript Delivery Service – Third Parties	Retrieve a variety of account transcripts through mail, fax, or online	No	Individual and Business	885,556,641
Income Verification Express Service	Retrieve transcripts from an online secure mailbox to verify income of a borrower	No	Individual and Business	4,830,097

15 IRS response to TAS information request (Oct. 25, 2023).

Most Serious Problem #7: Online Account Access for Taxpayers and Tax Professionals

Application Name	Available Tool(s)	Information From Application Reflected in Online Account	Type of User	Number of Transactions or Sessions, FY 2023
Free Application for Federal Student Aid (FAFSA) Online	Access tax return information and transfer it directly to the FAFSA form	No	Individual	15,852,507
Tax Withholding Estimator	Estimate income tax for current tax year and compare that estimate with current withholding	No	Individual	4,205,039
Interactive Tax Assistant	Receive answers to basic tax law questions	No	Individual and Business	1,558,618

In the National Taxpayer Advocate's 2020 and 2022 Annual Reports to Congress, TAS recommended making all self-assistance applications available through the IOLA as well as a standalone application.¹⁶ The IRS declined to adopt these recommendations.¹⁷ TAS's recommendation was not to make self-assistance applications available exclusively within IOLA but rather accessible from IOLA. Having a one-stop shop, in our opinion, will increase usage and improve the customer experience for those who select IOLA as their preferred method of communication. In 2020, the IRS responded that adopting our recommendation would add to taxpayer burden because IOLA 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).¹⁸ But the IRS missed the point. These applications do not provide the necessary information when taxpayers encounter a problem. In 2022, the IRS responded that even though the recommendation "is consistent with taxpayer expectations," it would not commit to a one-click access framework.¹⁹ TAS continues to recommend that once a user authenticates and logs into a secure online account, they should have one-click access to all self-assistance applications as well as access to applications outside of IOLA. Additionally, TAS recommends the IRS provide expanded information through self-assistance applications if the taxpayer logs into a secure online account. The IRS needs to design IOLA as a mobile-friendly and device-agnostic service. Taxpayers have a *right to be informed* about delays, the cause of the delay, and how they can correct the problem; that information is not available with the lower level of authentication.²⁰

-
- 16 National Taxpayer Advocate 2022 Annual Report to Congress 99 (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*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_05_Online-Access.pdf; National Taxpayer Advocate 2020 Annual Report to Congress 55 (Most Serious Problem: *Online Records Access: Limited Electronic Access to Taxpayer Records Through an Online Account Makes Problem Resolution Difficult for Taxpayers and Results in Inefficient Tax Administration*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_03_OnlineRecords.pdf.
- 17 TAS Recommendations and IRS Responses, TAS Recommendation 5-1 (2022), <https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-05-online-access-for-taxpayers-and-tax-professionals/> (last visited Sept. 19, 2023); 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. 5, 2023).
- 18 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. 5, 2023).
- 19 TAS Recommendations and IRS Responses, TAS Recommendation 5-1 (2022), <https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-05-online-access-for-taxpayers-and-tax-professionals/> (last visited Dec. 5, 2023).
- 20 See IRC § 7803(a)(3)(A).

To improve the customer experience, we recommend online accounts increase functionality, including the ability to:

- Verify receipt of submissions and documents;
- Track submissions throughout the entire lifecycle of a tax return (processing, examination, collections, administrative appeal);
- Determine where their return is in the process, including the assigned employee and manager's names and contact information;
- View and import Forms W-2 and 1099 into their tax return software;
- Submit offers in compromise online;
- Calculate payoffs for any balances due;
- Request penalty relief or abatement;
- View taxpayer-specific disaster relief postponement dates;
- Determine assessment and collection statute expiration dates;
- View a calendar of relevant due dates;
- View all IRS communications;
- Access the online tools for people of diverse abilities;
- Chat with IRS personnel and schedule a follow-up call if necessary; and
- Communicate with personnel from Examination, Appeals, or Counsel or their manager.

Business Tax Accounts Are Only Available to Limited Business Taxpayers²¹

In the fall of 2023, the IRS launched an early version of Business Tax Accounts (BTA) that is only available to sole proprietors. The very limited functionality allows sole proprietors to view their business profile, manage authorized users, and generate and download Letters 6575, Tax Certificate for Award Use, and 6574, Business Tax Compliance Report. The IRS SOP describes numerous features, including several TAS has recommended, that the IRS could make available in the near future (2024-2026).²² The IRS should continue deployment of additional features with a taxpayer-centric approach. Unless BTA provides a suite of useful tools available for all businesses, the IRS should not expect large numbers of business taxpayers to sign up and use it. TAS recommends the IRS develop a comprehensive online account for business taxpayers by FY 2025, including features such as document upload, secure messaging, due date reminders for upcoming tax return or information return filings, payment options, and refund tracking.

Tax Pro Accounts Lack Comprehensive Features

In 2021, the IRS introduced Tax Pro for use by tax professionals who have met certain requirements.²³ Once tax professionals are able to access Tax Pro, they are only able to perform limited functions, such as electronically filing Forms 2848, Power of Attorney and Declaration of Representative, or 8821, Tax Information Authorization; viewing a list of their active authorizations for individual taxpayers; withdrawing authorizations for individual taxpayers; and requesting individual clients' transcripts of account.²⁴ Even with proper authorizations, tax professionals cannot view any business taxpayer information in Tax Pro, forcing tax professionals to call the IRS or submit material on paper.

²¹ Internally, the IRS refers to these accounts as Business Online Accounts (BOLAs).

²² IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

²³ A Centralized Authorization File (CAF) number is a unique nine-digit identification number that is assigned the first time a representative files a third-party authorization with the IRS. See IRS, What is a CAF number?, <https://www.irs.gov/businesses/small-businesses-self-employed/what-is-a-caf-number> (last visited Dec. 5, 2023). To use Tax Pro, tax professionals must have a CAF number and be in good standing with the IRS, and their associated address must be in one of the 50 states or the District of Columbia.

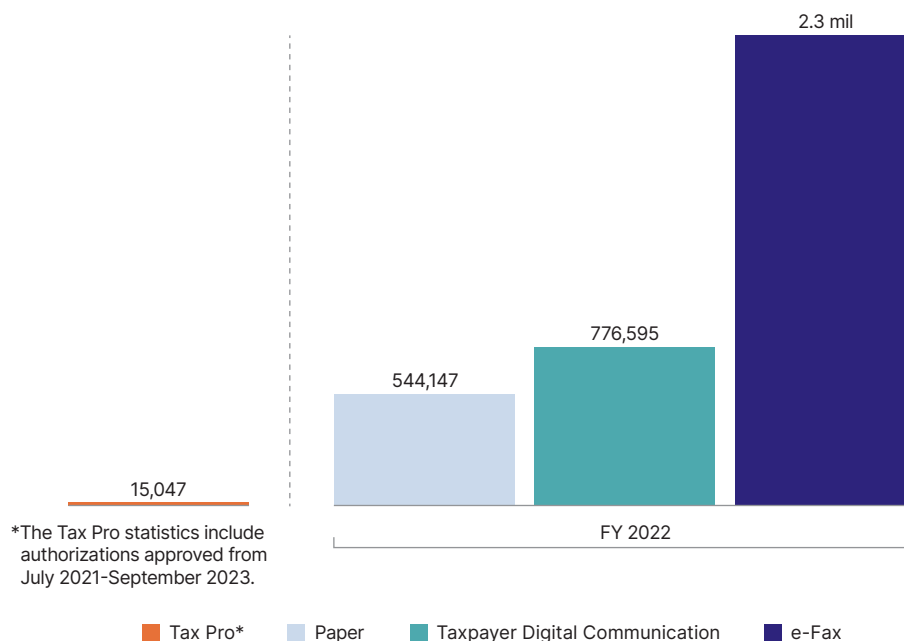
²⁴ See Erin M. Collins, Attention Tax Professionals: Check Your Tax Pro Account, NATIONAL TAXPAYER ADVOCATE BLOG (Aug. 30, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-attention-tax-professionals-check-your-tax-pro-account/>.

Tax professionals play a vital role in the tax system. They assist with tax administration issues and alleviate taxpayer barriers to compliance. Improving the functionality and ease of Tax Pro would support tax professionals and the taxpayers who rely on these professionals. When a representative cannot perform the necessary functions to service a client's tax account through Tax Pro, 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.

Since Tax Pro launched in July 2021, tax professionals and their clients have completed only 11,342 power of attorney authorizations and 3,705 tax information authorizations through Tax Pro, as the system was clunky.²⁵ In comparison, during FY 2022, tax professionals submitted 2.3 million authorizations through e-Fax; 776,595 authorizations through Taxpayer Digital Communication (TDC); and 544,147 authorizations on paper.²⁶

FIGURE 2.7.3²⁷

Power of Attorney and Tax Information Authorizations by Source



The IRS must enhance its capabilities and add access to self-assistance and digital communication tools within Tax Pro. Robust functionality will not only make this application more appealing to tax professionals and help boost usage, but it will provide better customer service and potentially reduce unnecessary client fees and delays.

25 IRS response to TAS information request (Oct. 25, 2023). See also TIGTA, Ref. No. 2023-40-033, *Opportunities Exist to Improve the Accuracy of Information in the Centralized Authorization File and Increase the Use of the Tax Pro Account System* (2023), <https://www.tigta.gov/reports/audit/opportunities-exist-improve-accuracy-information-centralized-authorization-file-and->

26 TIGTA, Ref. No. 2023-40-033, *Opportunities Exist to Improve the Accuracy of Information in the Centralized Authorization File and Increase the Use of the Tax Pro Account System* 9 (2023), <https://www.tigta.gov/reports/audit/opportunities-exist-improve-accuracy-information-centralized-authorization-file-and->

27 IRS response to TAS information request (Oct. 25, 2023). See also TIGTA, Ref. No. 2023-40-033, *Opportunities Exist to Improve the Accuracy of Information in the Centralized Authorization File and Increase the Use of the Tax Pro Account System* (2023), <https://www.tigta.gov/reports/audit/opportunities-exist-improve-accuracy-information-centralized-authorization-file-and->

TAS held focus groups during the 2022 IRS Nationwide Tax Forums 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.²⁸ TAS recommends the IRS expand Tax Pro's features to allow authorized representatives access to all their clients' tax records through the representative's Tax Pro account to provide and perform the full scope of assistance. Through Tax Pro and with appropriate authorization, tax professionals should have the ability to perform actions on behalf of their clients such as:

- View the entirety of their clients' online account information (to the extent of their authorization);
- Request an installment payment agreement;
- View the status of a tax return;
- View all notices and correspondence;
- Respond to correspondence and notices;
- Request an offer in compromise;
- Verify submissions;
- Track submissions throughout the entire process lifecycle of a tax return (processing, examination, collections, administrative appeal);
- Calculate payoffs for any balances due;
- Communicate with the IRS throughout the process;
- Have the ability to schedule a call with an IRS employee;
- Request a Centralized Authorization File number;
- View taxpayer-specific disaster relief postponement dates;
- Determine assessment and collection statute expiration dates;
- Request penalty relief or abatement for their client; and
- Apply for an extension of time to file for their client.

Tax Pro should also expand to include clients who are business taxpayers, not only individual taxpayers. While the IRS ultimately plans to expand functionality and include business taxpayers, this must be a priority as the agency moves toward a 21st century digital tax system.

Reporting Agents Lack Online Account Access

Reporting agents (RAs) play a major role in the tax system. When authorized by Form 8655, Reporting Agent Authorization, RAs may sign and file returns and make tax deposits and payments on behalf of their clients.²⁹ Even though RAs file millions of returns and make substantial deposits and payments with the IRS, they are not eligible for any of the three existing online accounts (*i.e.*, IOLA, BTA, or Tax Pro) and do not have a version of online accounts that reflect the scope of RA authorization.³⁰ For tax year (TY) 2022, the IRS authorized RAs to file over 3.4 million Form 940 filings and nearly 3.9 million Form 941 filings.³¹

28 Observations from TAS's Focus Group Interviews, 2022 IRS Nationwide Tax Forums.

29 IRS, Form 8655, Reporting Agent Authorization (Oct. 2018), <https://www.irs.gov/pub/irs-pdf/f8655.pdf>.

30 Tax Pro requires a CAF number, but RA authorizations are at the company level so no CAF number exists. See IRS, Tax Pro Account, <https://www.irs.gov/tax-professionals/tax-pro-account> (last visited Dec. 5, 2023); IRS, Form 8655, Reporting Agent Authorization (Oct. 2018), <https://www.irs.gov/pub/irs-pdf/f8655.pdf>.

31 IRS, Compliance Data Warehouse (CDW), Business Return Transaction File (BRTF), TY 2022 (Nov. 15, 2023).

Because RAs lack an intuitive, self-service avenue to interact online with the IRS, they are forced to call for assistance, forgo assistance, or submit paper documents. Given the important role RAs play in the tax system,³² TAS recommends providing RAs access to online accounts with a set of tools that reflect the scope of RA authorization.

Document Upload Tool Lacks an Efficient Workflow Process

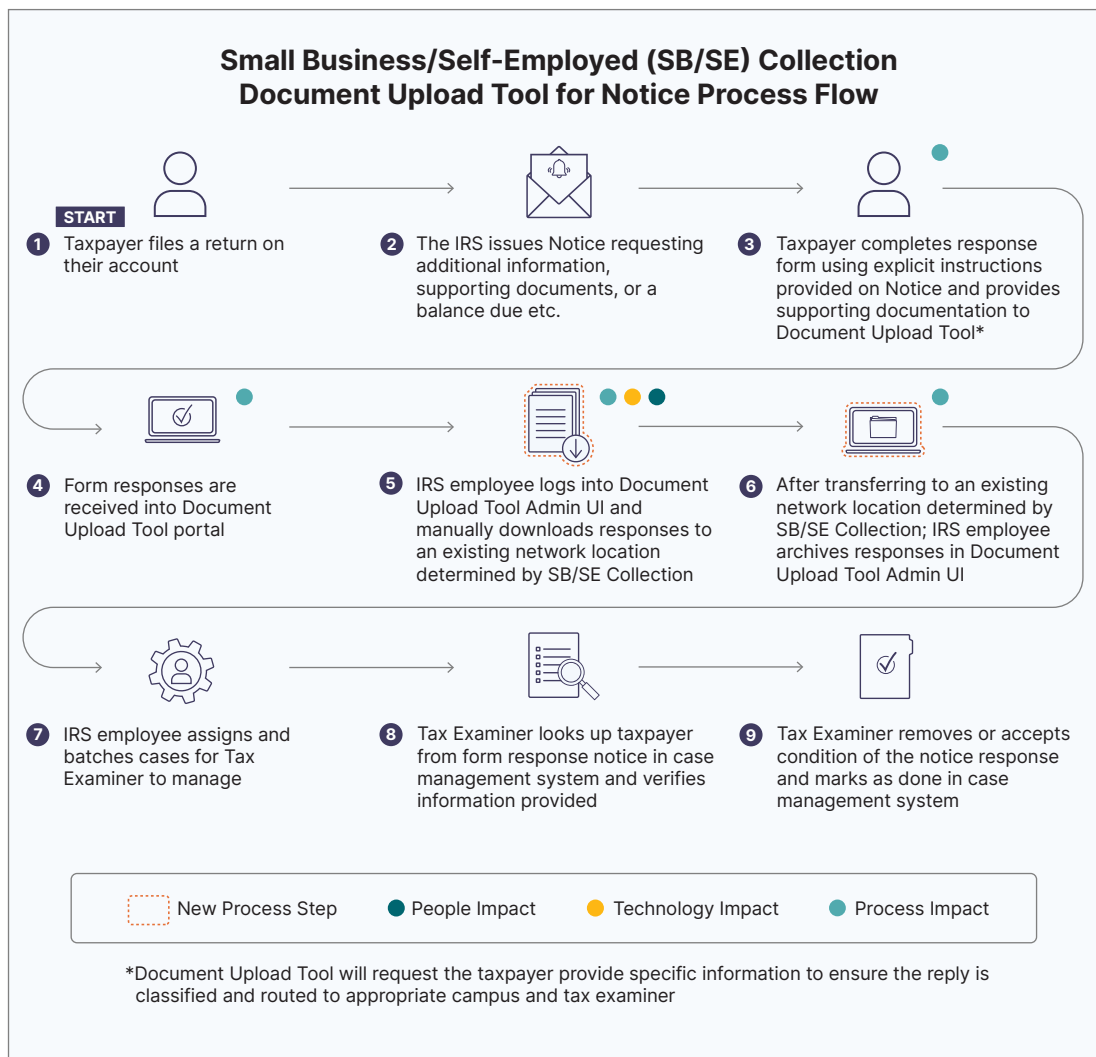
In 2023, the IRS continued to expand the availability of DUT.³³ DUT allows taxpayers or tax professionals to securely provide documentation online for notices requiring a response.³⁴ However, TAS has concerns about the IRS workflow to process documents received through DUT. Currently, documents received through DUT require a manual process after receipt. So once again, the IRS is getting it half right. Although DUT allows taxpayers and tax professionals to reduce paper submissions, the IRS has not established an efficient backend workflow to process DUT submissions without creating a new type of backlog. As shown in Figure 2.7.4, after receiving a document on DUT, IRS Business Operating Divisions (BODs) must log into the DUT tool, download the response, and then route the document to the network location designated by the BOD.³⁵

32 See IRS, Reporting Agents File (RAF), <https://www.irs.gov/businesses/small-businesses-self-employed/reporting-agents-file-raf> (last visited Dec. 5, 2023).

33 TIGTA, Ref. No. 2023-IE-R010, *Inflation Reduction Act: Assessment of the IRS's Efforts to Deliver Expected Improvements for the 2023 Filing Season* (2023), <https://www.tigta.gov/reports/inspection-evaluation/inflation-reduction-act-assessment-irss-efforts-deliver-expected>; IRS News Release, IR-2023-148, *Inflation Reduction Act 1-Year Report Card: IRS Delivers Dramatically Improved 2023 Filing Season Service, Modernizes Technology, Pursues High-Income Individuals Evading Taxes* (Aug. 16, 2023), <https://www.irs.gov/newsroom/inflation-reduction-act-1-year-report-card-irs-delivers-dramatically-improved-2023-filing-season-service-modernizes-technology-pursues-high-income-individuals-evading-taxes>; Janet L. Yellen, Sec'y of the Treasury, Remarks at IRS Headquarters in Washington, D.C. (Nov. 7, 2023), <https://home.treasury.gov/news/press-releases/jy1888>.

34 IRS, IRS Document Upload Tool (Oct. 27, 2023), <https://www.irs.gov/help/irs-document-upload-tool>; IRS response to TAS information request (Oct. 13, 2023).

35 IRS response to TAS information request (Oct. 12, 2023).

FIGURE 2.7.4³⁶


TAS recommends the IRS develop an IRS-wide workflow for processing DUT submissions and integrate submissions with an enterprise case management system to deliver documents quickly and efficiently to the correct IRS employees.

The IRS Fails to Adequately Promote Awareness of Online Accounts

The IRS should improve awareness of online accounts and standalone digital services among taxpayers, tax professionals, and IRS employees. Not only should the IRS provide education about how to make the most of the available online accounts and digital services, but it should also timely provide notification to taxpayers, tax professionals, and IRS employees of upgrades and new features.

36 IRS response to TAS information request (Oct. 12, 2023).

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 91,000 employees attend Digital Day events annually.³⁷ If IRS employees are not familiar with online account capabilities, their ability to assist and educate taxpayers and tax professionals about online accounts will be severely limited. TAS recommends providing mandatory training about online accounts to all taxpayer-facing employees and IRS-wide updates about new features and upgrades to online accounts and standalone digital services.

The IRS should continue to promote online accounts and educate taxpayers and tax professionals about the user benefits and data safety within online accounts. All communications with taxpayers and tax professionals present opportunities to promote and educate. The IRS has undertaken some practices to inform taxpayers and tax professionals about the availability of online accounts, including through links on the IRS.gov homepage. Additionally, for example, when the IRS mails paper copies of digitally available notices that are viewable in online accounts, it includes an additional paper notice in the envelope that informs taxpayers about online accounts.³⁸ The IRS conducts a biannual webinar with a step-by-step demonstration of online accounts for approximately 5,000 tax professionals.³⁹ However, the IRS should use all communications with taxpayers and tax professionals as an opportunity to promote online accounts. For example, if a taxpayer receives a notice with an invitation to use the unauthenticated DUT,⁴⁰ the IRS should offer the taxpayer an opportunity to register for an online account after using the DUT. The annual filing season community events provide an opportunity to demonstrate online accounts, educate taxpayers about the benefits of their use, and respond to online account questions. Also, TAS recommends that when a taxpayer or practitioner signs into online accounts, the IRS provide a “What’s New” banner at the top of the screen to highlight recent upgrades to online accounts.

Taxpayers Need More Options for Identity Proofing

To ensure the security of taxpayer data, taxpayers and tax professionals must create an account using an identity proofing process that confirms the identity of the account creator. 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.⁴¹ There is no government CSP that meets the security requirements.⁴²

Taxpayers can have trouble completing the identity proofing process for many reasons, including having unacceptable documents or being former victims of identity theft. Twenty-one percent of would-be users failed a step in the identity proofing process. The most common issues were: (1) failing the financial records or telecom verification checks (23 percent of failures) and (2) uploading and verifying identity documents, typically due to blurry images or failed document security checks (19 percent of failures). Where taxpayers cannot complete this process, the CSP serves as a “trusted referee” to assist the taxpayer with identity proofing. Fourteen percent of all CSP credentials are completed using a trusted referee.⁴³

37 IRS response to TAS information request (Oct. 25, 2023).

38 IRS response to TAS information request (Sept. 13, 2023).

39 IRS response to TAS information request (Oct. 25, 2023).

40 Unauthenticated DUT allows taxpayers to use the invitation from the IRS to submit documents without creating an online account.

41 ID.me serves as the only IRS CSP.

42 TIGTA, Ref. No. 2023-2S-070, *Key Events of the IRS’s Planning Efforts to Implement Login.gov for Taxpayer Identity Verification* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-10/20232S070fr.pdf>.

43 IRS response to TAS information request (Oct. 13, 2023). Prior to the involvement of trusted referees, the CSP offers multiple layers of real-time human review to assist users during the self-service identity verification process. Discussions with outside stakeholders (Nov. 16, 2023).

The IRS should maintain the security of taxpayer information but also strive to improve the taxpayer experience for those who need or want additional assistance accessing online accounts. Not all taxpayers have the technological literacy or internet availability to prove their identity without assistance. Some taxpayers simply prefer to complete identity proofing in person. In its SOP, the IRS stated a goal of expanding the number of CSPs in FY 2023 to give taxpayers and tax professionals choices, but it has not implemented this.⁴⁴ In May 2023, the IRS launched an in-person identity proofing pilot for those who experience challenges completing the process online. The IRS sent approximately 24,000 invitations to authenticate in person. Of those invited, 597 taxpayers scheduled in-person verification appointments, and the IRS verified 189 to receive credentials.⁴⁵ TAS recommends the IRS continue to explore in-person identity proofing options and expanding the number of CSPs so that all taxpayers can create online accounts if they choose.

CONCLUSION AND RECOMMENDATIONS

The IRS has the potential to transform tax administration and bring the IRS into the 21st century with the modernization of online services for taxpayers and tax professionals using IRA funding and the IRS SOP.⁴⁶ This year, the IRS launched BTA and expanded the services available in IOLA and Tax Pro, but it has more work to do. As the IRS continues to expand the services and functionality available in online accounts, it should remain focused on improving the taxpayer experience with efficient, understandable tools. Taxpayers and tax professionals need and deserve reliable, quality customer service using their chosen communication method.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Add increased capabilities and functionality to IOLA, including the ability to track submissions through the entire process, submit offers in compromise online, and calculate payoffs for any balances due, to provide individuals with robust self-service options available at the convenience of the taxpayer.
2. Provide individual and business taxpayers with one-click access to all authenticated and unauthenticated self-assistance applications from an intuitive, centralized location.
3. Deploy a comprehensive online account for business taxpayers by FY 2025, including features such as due date reminders for upcoming tax return or information return filings, payment options, and refund tracking.
4. Add increased capabilities and functionality to Tax Pro, such as viewing notices and letters and uploading requested documents, to provide authorized representatives seamless access to their clients' online accounts through Tax Pro.
5. Provide RAs with access to online services with the ability to file Form 8655 electronically, access return transcripts, and verify business name and Employer Identification Numbers electronically.
6. In FY 2024, create an IRS-wide digital backend workflow for processing DUT submissions and integrate submissions with an enterprise case management system to deliver the document quickly and efficiently to the correct IRS employees.

44 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 44 (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>; TIGTA, Ref. No. 2023-2S-070, *Key Events of the IRS's Planning Efforts to Implement Login.gov for Taxpayer Identity Verification* (2023), <https://www.tigta.gov/sites/default/files/reports/2023-10/20232S070fr.pdf>. See Jonathan Curry, *Declared Dead 18 Months Ago, ID.me Is Now Top IRS ID Checker*, TAX NOTES, Aug. 28, 2023, at 1514-16, <https://www.taxnotes.com/lr/resolve/tax-notes-today-federal/declared-dead-18-months-ago-id-me-is-now-top-irs-id-checker/7h4nx>.

45 IRS response to TAS information request (Oct. 13, 2023).

46 Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831-32 (2022); IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

7. Require mandatory annual training for IRS employees on IOLA, Tax Pro, BTA, and digital communication tools to allow employees to educate taxpayers about the applications.
8. Timely notify taxpayers, tax professionals, and IRS employees of new features and upgrades available in IOLA, Tax Pro, BTA, and digital communication tools.
9. Expand taxpayer identity proofing options, including increasing the number of CSPs and expanding in-person identity assistance to taxpayers.
10. Provide kiosks in central locations to give taxpayers access to their online account.
11. Incorporate best practices set forth in OMB Memorandum M-23-22, *Delivering a Digital-First Public Experience*.

RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division, and Chief Taxpayer Experience Officer

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

Karen Howard, Director, Office of Online Services

Kaschit Pandya, Acting Chief Information Officer

Holly Paz, Commissioner, Large Business and International Division

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

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



INTERNATIONAL

The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

U.S. persons who receive money from abroad or who have certain foreign financial interests and cross-border business activities are potentially subject to a wide range of U.S. reporting requirements. Many of these requirements come with significant penalty exposure when a filing is late, incomplete, or inaccurate. These international information return (IIR) penalties harm sometimes unsuspecting lower-income taxpayers, small businesses, and immigrants. The majority of these penalties are automatically assessed,¹ broadly applied, needlessly harsh, and often unexpected.²

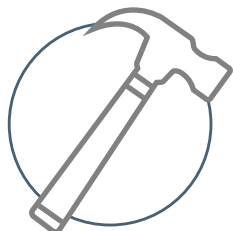
EXPLANATION OF THE PROBLEM

Congress established the IIR penalty regime primarily to combat tax avoidance and discourage U.S. taxpayers from hiding income and assets abroad. The National Taxpayer Advocate appreciates Congress's efforts to prevent tax avoidance; however, most high net worth individuals and large companies have sophisticated advisors and generally avoid these penalties or successfully obtain abatements. By contrast, lower-income individuals, immigrants, and small businesses' advisors do not have the same expertise, and these taxpayers tend to inadvertently trigger the penalty. By statute, many of these information return penalties apply even when there is no underlying tax liability. The statutory structure is wide-ranging, and taxpayers are confronted with a complex series of information reporting requirements and associated penalties covering,

¹ Although penalties may be automatically assessed, taxpayers may seek and, in some cases, receive penalty relief by asserting defenses. See, e.g., Treas. Reg. § 1.6038-2(k)(3)(ii).

² IIR reporting requirements and the related penalties are located in Chapter 61, Subchapter A, Part III, Subpart A & B. These penalties are the primary focus of this Most Serious Problem. Certain other IIR penalties are set forth in Chapter 68, Subchapter B, Part I. These are specifically established as assessable penalties and will be broadly addressed in the latter portion of this Most Serious Problem.

among other things, specified foreign financial assets,³ certain interests in foreign business entities,⁴ and gifts or inheritances from foreign sources.⁵ Although the IRS must follow statutory mandates, it has meaningful discretion in how to implement these requirements. Rather than promoting tax compliance through taxpayer education and support, the IRS has opted to flex its administrative muscle and bring down the enforcement hammer on good-faith taxpayers and bad actors alike.



Rather than promoting tax compliance through taxpayer education and support, the IRS has opted to flex its administrative muscle and bring down the enforcement hammer on good-faith taxpayers and bad actors alike.

As a result of this approach, many taxpayers are exposed to potentially life-changing penalties for failure to meet information filing requirements that are obscure and complex. For example, some “accidental Americans” who were born in the United States but lived the bulk of their lives abroad have faced huge tax liabilities and IIR penalties, even though they never thought of themselves as U.S. citizens.⁶ Likewise, a U.S. person holding a controlling interest in a foreign partnership could face significant penalties, even though the partnership generates no taxable income.⁷ Similarly, a relatively unsophisticated taxpayer receiving a once-in-a-lifetime tax-free gift could lose a substantial portion of that gift to penalties simply because they had no idea of a reporting obligation.⁸

In the foreign gift context, the penalties can be huge; over the years 2018-2021, even taxpayers who reported \$400,000 or less in income received an average penalty of over \$235,000.⁹ Also, the IRS imposes a substantial amount of IIR penalties on the non-wealthy. For instance, 71 percent of individual IRC § 6038 penalties are assessed against lower- to middle-income taxpayers (those reporting under \$400,000 in income).¹⁰ Likewise, 83 percent of systemic business IRC §§ 6038 and 6038A penalties are assessed against small and midsize businesses (those with assets under \$10 million).¹¹

The National Taxpayer Advocate is concerned that IIR penalties:

- Are systemically assessed, without any prior review or opportunity to establish reasonable cause or other defenses;
- Are often erroneously classified as assessable and therefore must be paid before judicial review, which deprives taxpayers of review in the U.S. Tax Court and causes financial hardship; and
- Are disproportionate in comparison with any potential underlying tax and fall particularly hard on lower-income taxpayers and small businesses.

3 IRC § 6038D.

4 IRC § 6038.

5 IRC § 6039F.

6 See, e.g., Vivienne Walt, Why ‘Accidental Americans’ Are Desperate to Give Up Their U.S. Citizenship, TIME, Dec. 23, 2020, <https://time.com/5922972/accidental-americans-fatca/>; Darla Mercado, Why ‘Accidental Americans’ Have an Uphill Battle With the IRS, CNBC, Oct. 3, 2019, <https://www.cnbc.com/2019/10/03/why-accidental-americans-have-an-uphill-battle-with-the-irs.html>.

7 IRC § 6038(a).

8 IRC § 6039F.

9 IRS, Compliance Data Warehouse (CDW), Individual and Business Master File (IMF/BMF), Individual and Business Returns Transaction File (IRTF/BRTF) (Sept. 2023). Throughout this narrative, all penalty statistics associated with total assets/income stratification reflect data from the most common income tax returns, representing about 96 percent of businesses filing Forms 1120, 1120F, or 1065 and at least 75 percent of individuals filing Form 1040 for which IIR penalties were assessed. All data from CDW referenced in this Most Serious Problem narrative is based on the analysis of IIR penalties assessed in calendar years 2018-2021.

10 IRS, CDW, IMF and IRTF (Sept. 2023).

11 IRS, CDW, BMF and BRTF (Sept. 2023).

ANALYSIS

International Information Return Penalties Are Disproportionately Harsh When Compared With the Offense

Taxpayers Can Fall Victim to International Information Return Penalties in a Range of Situations

The IIR penalty framework, established by statute, generally follows a common approach for information returns that are late, missing, or incomplete.¹² Typically, upon learning of their filing obligation, taxpayers voluntarily file missing information returns – albeit late – only to have their compliance rewarded with a harsh penalty. Upon receipt of a late IIR, the IRS’s computer system automatically assesses the penalty, and the IRS begins its collection procedures.¹³ To add insult to injury, many of these penalties bear no relation to any underlying taxable income.

The IRS also assesses these penalties manually at the conclusion of the examination process. During an examination, if the examiner becomes aware of a missing or incomplete form, they notify the taxpayer of the penalty and provide time to undertake the requisite reporting. If the taxpayer does not provide the information timely, the IRS can, in many cases, propose a continuation penalty, which can aggregate to alarming levels.

For example, IRC § 6038D requires a person holding specified foreign financial assets to undertake reporting with respect to those assets on a Form 8938, Statement of Specified Foreign Financial Assets, attached to their annual income tax return.¹⁴ The initial penalty for failing to do so is \$10,000, and if taxpayers do not respond in the first 90 days, the IRS assesses an additional \$10,000 every 30 days, up to a ceiling of \$50,000.¹⁵ IRC § 6038(b) imposes an identical reporting requirement and penalty on U.S. persons who control certain foreign business entities.¹⁶ In neither case does the taxable income, or lack thereof, generated by the applicable assets or entities impact the penalties.

Similarly, IRC § 6048 generally imposes a reporting requirement upon, among other things, parties responsible for certain foreign trusts,¹⁷ which often includes expatriates with retirement funds in their countries of residence.¹⁸ These responsible parties must provide information on Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, or Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner, within the applicable deadline¹⁹ or face penalties under IRC § 6677.²⁰ That code section provides for an initial penalty equal to the greater of \$10,000 or 35 percent²¹ of the gross reportable amount, and if taxpayers have not provided responsive information after

12 See generally IIR penalties in Chapter 61, Subchapter A, Part III, Subpart A, and Chapter 68, Subchapter B, Part I. These penalties are not applied in a completely uniform manner. However, they generally follow a common approach.

13 Systemically assessed penalties are those that are automatically assessed electronically without initial review or action from IRS personnel. Assessments made based on actions taken by IRS personnel are referred to as “manual assessments.”

14 IRC § 6038D(a).

15 IRC § 6038D(d).

16 IRC § 6038.

17 IRC § 6048(a).

18 Rev. Proc. 2020-17, 2020-12 I.R.B. 539, and Rev. Proc. 2014-55, 2014-44 I.R.B. 753, provide exemptions from this information reporting requirement in some situations, but the exemptions are not comprehensive enough to resolve all situations where taxpayers may be subject to penalties for interacting with their own retirement funds.

19 The due dates for Forms 3520 and 3520-A were provided in IRS Notice 97-34, 1997-1 CB 422, Information Reporting on Transactions with Foreign Trusts and on Large Foreign Gifts, and were later amended and codified by the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Surface Transportation Act), Pub. L. No. 114-41, 129 Stat. 443, in an off-code provision.

20 IRC § 6677. There is a reasonable cause exception for the penalties under IRC § 6677(d) and relief provided under Rev. Proc. 2020-17 for transactions with certain tax-favored foreign retirement trusts and tax-favored nonretirement trusts.

21 In the case of reporting required of U.S. persons under IRC § 6048(b), the initial penalty is reduced to the greater of \$10,000 or five percent of the gross reportable amount.

90 days, then every 30 days the IRS assesses a \$10,000 continuation penalty up to the full gross reportable amount.²² Penalties measured against the gross reportable amount, which can include something as simple as biweekly contributions to certain self-funded foreign retirement plans,²³ can multiply quickly.

To make matters worse, the IRS often does not immediately consider requests for reasonable cause relief for IIR penalties. Taxpayers are exposed to IIR penalties either when missing returns are identified during an audit or when they come forward and file late information returns. The IRS tells taxpayers that they can submit requests for reasonable cause relief, but that it may not consider those requests, in which case they will have to resubmit them later in the process.²⁴ This cavalier approach is unfair to taxpayers and inefficient for the tax system. As a result, the IRS should review reasonable cause relief requests before assessing penalties.

IIR penalties begin as substantial and can grow to be exorbitant. This alone is concerning, but the scope of these penalties is especially troubling when considering that the statute provides that the IRS can impose them when there is little or no underlying taxable income involved. Additionally, these penalties can fall particularly hard on immigrants who retain interests from their home countries.²⁵ Often, these interests can generate substantial U.S. tax penalties, even when they are relatively small interests and even though they may not generate any taxable income.

Gifts From Foreign Persons Are Traps for the Unwary

The approach taken to reporting foreign gifts and bequests well illustrates the inherent unfairness of the IIR penalty regime. IRC § 6039F requires U.S. persons who receive foreign gifts or bequests worth more than \$10,000²⁶ to submit information returns to the IRS. For each month that the taxpayer fails to report the gift or bequest, the IRS can assess a penalty of five percent of the total amount of the gift, up to a maximum of 25 percent. For gifts and bequests from foreign individuals or estates, the IRS provides administrative guidance raising the reporting threshold to \$100,000,²⁷ but the penalties themselves remain the same.²⁸ The code's explicit requirement impacts gifts from foreign corporations and partnerships, whereas the IRS's administrative guidance impacts those from foreign individuals and estates.

These penalties can be unexpected and severe for unsophisticated taxpayers. Imagine a lower- or middle-income U.S. taxpayer receiving a \$500,000 inheritance from a foreign relative. Because this bequest is excludable from income,²⁹ the taxpayer may not realize that there was an information reporting requirement until after the fact. In this scenario, the recipient of the tax-free inheritance could suddenly end up with an IIR penalty of up to \$125,000, depending on how many months have elapsed since the receipt of the inheritance. As with several other IIR penalties, these penalties are potentially subject to an abatement for reasonable cause.³⁰ Nevertheless, the taxpayer cannot be certain that the IRS will grant this relief and, in the meantime, is exposed to the delay, cost, and stress inherent in seeking relief from the IRS.

22 IRC § 6677(a).

23 IRC § 6048(a)(3)(B)(ii)(I). Contributions to certain employer-funded retirement plans are excludable from IRC § 6048(a) reporting.

24 IRS, Delinquent International Information Return Submission Procedures, <https://www.irs.gov/individuals/international-taxpayers/delinquent-international-information-return-submission-procedures> (last visited Nov. 20, 2023).

25 Discussions with outside stakeholders (Aug. 15, 2023).

26 IRC § 6039F(d) provides for a cost-of-living adjustment to the \$10,000 threshold.

27 This increased threshold is not subject to a cost-of-living adjustment, unlike the \$10,000 statutory threshold.

28 Notice 97-34, § VI-B.1.

29 IRC § 102.

30 IRC § 6039F(c)(2).

The available data shows that the IRC § 6039F penalty can be severe. Between 2018 and 2021, there were over 4,000 penalties assessed against individuals and businesses, totaling \$1.7 billion.³¹ During this period, the average penalty was approximately \$426,000 while the median penalty was approximately \$58,000,³² as shown in Figure 2.8.1.

FIGURE 2.8.1, IRC § 6039F Penalty Data, Businesses and Individuals, Aggregated for 2018-2021³³

Number of Penalties	Total Dollars Assessed	Average Penalty (Mean)	Median Penalty
4,038	\$1,718,381,301	\$425,553	\$57,714

The IRC § 6039F penalties have an especially heavy impact on individual taxpayers: 92 percent were assessed against individuals.³⁴ Figure 2.8.2 shows penalty data by year for individual taxpayers.

FIGURE 2.8.2, IRC § 6039F Penalty Data for Individuals, 2018-2021³⁵

Year	Total Penalties Assessed	Total Dollars Assessed	Average Penalty (Mean)	Median Penalty
2018	586	\$77,274,037	\$131,867	\$39,160
2019	1,015	\$238,326,771	\$234,805	\$56,560
2020	837	\$282,289,168	\$337,263	\$60,000
2021	1,297	\$246,414,866	\$189,988	\$52,978

Further, a startling number of these penalties are assessed against lower- and middle-income individuals. Figure 2.8.3 illustrates the income breakdown of these assessments.

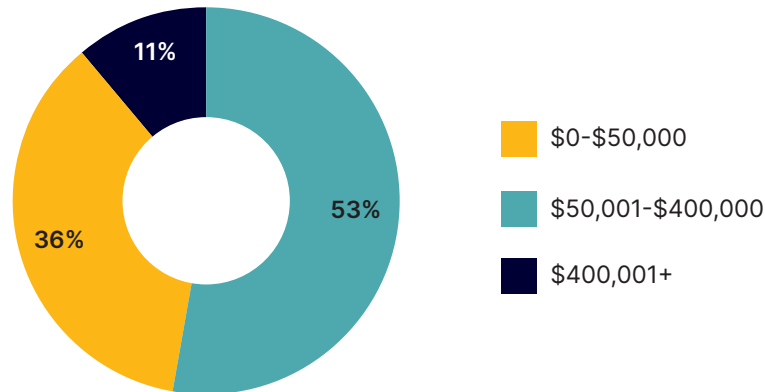
31 IRS, CDW, IMF/BMF (Sept. 2023).

32 *Id.* The median is the value in the middle of a data set, meaning that 50 percent of data points have a value smaller or equal to the median and 50 percent of data points have a value higher or equal to the median.

33 IRS, CDW, IMF/BMF (Sept. 2023). Because of such factors as the broad penalty relief provided in IRS Notice 2022-36, 2022-36 I.R.B. 188, Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, and processing delays due to COVID-19, penalty data in any given recent year may not be illustrative of long-term trends. For this reason, we are presenting a four-year average alongside annual data. TAS provides penalty data based on when penalties are assessed rather than by the tax year for which they are assessed to facilitate presentational clarity and to illustrate current policy and trends. The IRS states that IRC § 6039F penalty data is not necessarily indicative of its future expectations due to recent changes undertaken with the administration of the program. IRS response to TAS fact check (Nov. 16, 2023).

34 IRS, CDW, IMF/BMF (Sept. 2023). This 92 percent is based on the total number of IRC § 6039F penalties assessed.

35 IRS, CDW, IMF (Sept. 2023).

FIGURE 2.8.3³⁶**IRC § 6039F Penalties by Total Positive Income, 2018-2021**

The penalties assessed against the lower- and middle-income individuals are daunting. During the years 2018-2021, the mean penalty for taxpayers with \$50,000 or less in total positive income was \$226,000 while the median penalty was \$50,000.³⁷ For taxpayers with between \$50,000 and \$400,000 in total positive income, the mean penalty was \$242,000 and the median was \$53,000.³⁸ These penalties are excessively punitive and go well beyond what the IRS needs to promote tax compliance.

The IRS abates these penalties at rates often exceeding 50 percent, which highlights the stress and burden this framework places on taxpayers.³⁹ Taxpayers should not be receiving startling letters informing them of \$200,000 penalties that are more likely to be abated than collected. This problem is exacerbated by the circumstance that these penalties are not directly eligible for the first-time abatement (FTA). Further, when taxpayers provide reasonable cause statements for their late filing, IRS Campus employees routinely ignore the reasonable cause statement, assess the penalty, and furnish taxpayers with their right to go to the IRS Independent Office of Appeals, which often concedes these penalties based on factors such as reasonable cause.⁴⁰ It should not go unnoticed that most of the late filings are voluntarily filed, and the IRS rewards taxpayers by assessing penalties. The IRS's actions cause undue hardship, burden taxpayers, and create unnecessary work for other IRS operating divisions.

In many cases, failures to file simply result from a basic ignorance of reporting obligations. This is particularly true when there are no federal income tax consequences involved. Additional transparency and clarity regarding filing requirements could contribute significantly to compliance, which would be beneficial to both taxpayers and the IRS. For example, the IRS should update Schedule B (Form 1040), Interest and Ordinary Dividends, and the related instructions to include foreign gifts as potentially reportable transfers.

³⁶ IRS, CDW, IMF and IRTF (Sept. 2023). Total positive income reflects the total of all positive income and adjustment lines.

³⁷ IRS, CDW, IMF and IRTF (Sept. 2023).

³⁸ *Id.*

³⁹ IRS, CDW, IMF (Sept. 2023). After being systemically flagged, these penalties are manually assessed. However, at that time, IRS personnel simply perform a mechanical function and do not apply judgment regarding discretionary factors, such as whether reasonable cause should be provided. See Internal Revenue Manual (IRM) 21.8.2.19.2, Form 3520 & Applicable Penalties (Oct. 4, 2022), https://www.irs.gov/irm/part21/irm_21-008-002r; IRM 21.8.2.19.3, Form 3520-A & Applicable Penalties (Nov. 7, 2022), https://www.irs.gov/irm/part21/irm_21-008-002r.

⁴⁰ Letter from Blake Vickers, Chair, Am. Inst. of Certified Pub. Accts. Tax Exec. Comm., to Andrew Keyso, Chief, IRS Indep. Off. of Appeals, and Lia Colbert, Comm'r, Small Bus./Self-Employed (Aug. 14, 2023), <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fus.aicpa.org%2Fcontent%2Fdam%2Faicpa%2Fadvocacy%2Ftax%2Fdownloadabledocuments%2F2023%2Faicpa-letter-on-form-3520-appeals-acm-to-campus-submit.docx>.

The IRS has already used its discretion to create an increased threshold for reporting in the case of taxpayers receiving gifts or bequests from foreign individuals or estates rather than from business entities. TAS appreciates this decision and guidance, insofar as they go, but they are incomplete. Whereas IRC § 6039F(d) provides for a cost-of-living adjustment to the \$10,000 reporting threshold, the IRS's administrative guidance providing the \$100,000 threshold creates no such cost-of-living adjustment. The IRS should revise Notice 97-34 to create a comparable cost-of-living adjustment for the \$100,000 threshold, which would enable more taxpayers to avoid the burden of reporting and the perils of misreporting gifts and bequests that would be completely unreportable by beneficiaries if received from a U.S. source instead of a foreign source.⁴¹ While this step would not solve the problem of disproportionate IIR penalties, it would represent significant and very feasible progress toward more equitable treatment of gifts and bequests from foreign individuals and estates.

International Information Return Penalties Are Not Just the Problem of the Rich

These penalties are sometimes thought of as a niche issue impacting only the very wealthy with lucrative and vast holdings abroad. Nevertheless, data with respect to IRC § 6039F, as well as IRC §§ 6038 and 6038A, make clear that this is far from the case. Instead, the IIR regime sweeps lower- and middle-income taxpayers into its broad and punitive grasp.



These penalties are sometimes thought of as a niche issue impacting only the very wealthy with lucrative and vast holdings abroad. But the international information return regime sweeps lower- and middle-income taxpayers into its broad and punitive grasp.

For example, as Figure 2.8.3 shows, the IRS imposed 53 percent of IRC § 6039F penalties against taxpayers with between \$50,000 and \$400,000 of income.⁴² Remarkably, another 36 percent of the taxpayers incurring this penalty had income between zero and \$50,000.⁴³ Collectively, this group of taxpayers, whose income ranged from zero to \$400,000, was assessed an average penalty of over \$235,000.⁴⁴ This is not just a rich person's problem and overwhelmingly impacts unsophisticated lower- and middle-income taxpayers.

This same phenomenon is apparent in the context of IRC §§ 6038 and 6038A penalties. When the IRS applies IRC § 6038 penalties to individuals, 71 percent are assessed against taxpayers with income of \$400,000 or less.⁴⁵ The average penalty amount for these individuals is over \$42,500.⁴⁶ Figure 2.8.4 shows this income stratification.

41 According to the U.S. Bureau of Labor Statistics, \$100,000 in 1997, when the IRS created this guidance, is today the equivalent of over \$190,000. U.S. Bureau of Lab. Stats., CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm (last visited June 13, 2023).

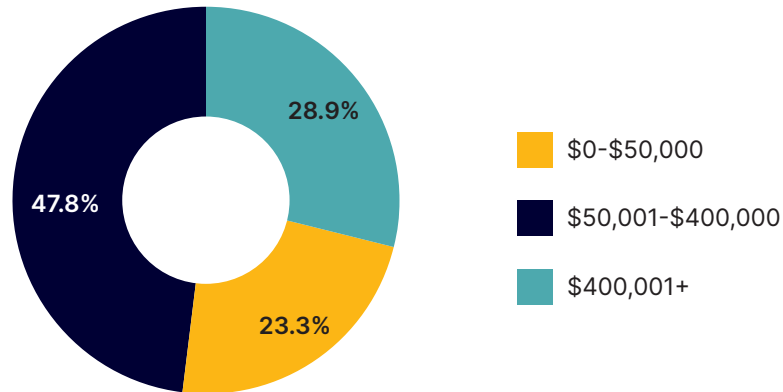
42 IRS, CDW, IMF and IRTF (Sept. 2023).

43 *Id.*

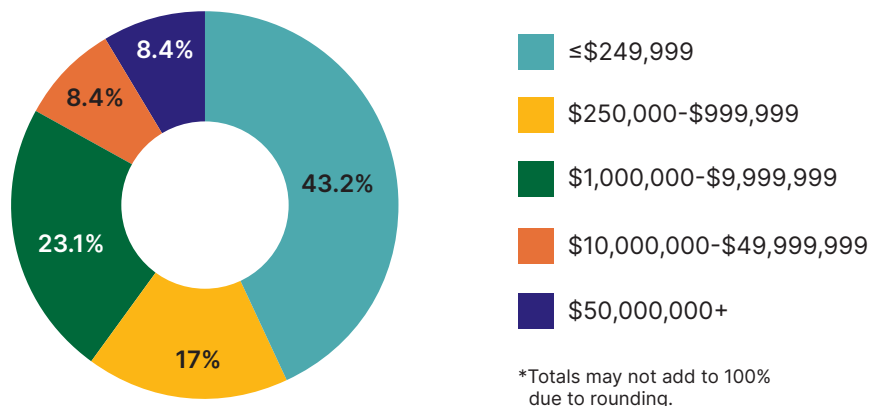
44 *Id.*

45 *Id.*

46 *Id.*

FIGURE 2.8.4⁴⁷**Individual IRC § 6038 Penalties by Total Positive Income, 2018-2021**

IIR penalties do not only impact lower- and middle-income individual taxpayers. Small and midsize businesses also bear a disproportionate burden. Specifically, small and midsize businesses comprise the overwhelming majority (83 percent) of systemic IRC §§ 6038 and 6038A penalty assessments, with the remaining 17 percent attributed to large businesses with assets greater than or equal to \$10 million.⁴⁸ In dollar terms, small and midsize businesses are subject to 64 percent of the aggregate business penalties imposed under IRC §§ 6038 and 6038A.⁴⁹ Figure 2.8.5 illustrates this distribution.

FIGURE 2.8.5⁵⁰**Systemic Business IRC §§ 6038 and 6038A Penalties by Total Assets, 2018-2021**

⁴⁷ IRS, CDW, IMF and IRTF (Sept. 2023).

⁴⁸ IRS, CDW, BMF and BRTF (Sept. 2023). The IRS classifies business size based on amount of assets. In this subsection, we focus on businesses receiving systemic assessments, as the vast majority of IIR penalties assessed to businesses are imposed via that mechanism.

⁴⁹ IRS, CDW, BMF and BRTF (Sept. 2023).

⁵⁰ *Id.*

IRC §§ 6038 and 6038A do provide for abatements based on reasonable cause. Even here, though, better outcomes correlate to greater resources. Analysis undertaken by TAS Research indicates that abatements of IRC § 6038 penalties are more likely to be received by larger businesses.⁵¹

The reach of IIR penalties goes far beyond the mega-wealthy and the Fortune 500. It broadly affects lower- to middle-income individuals and small and midsize businesses. The often-large penalties generated by the regime, combined with other compounding factors raise serious concerns regarding equity, due process, and access to justice.

Interplay With Foreign Account Tax Compliance Act and Report of Foreign Bank and Financial Accounts Penalties

IIR penalties intertwine with related reporting obligations, which complicates compliance and increases penalty exposure. For example, taxpayers with foreign accounts and assets must substantially duplicate information reporting required by the Foreign Account Tax Compliance Act (FATCA) regime⁵² and the information reporting required by the Financial Crimes Enforcement Network (FinCEN), which is satisfied by submitting the Report of Foreign Bank and Financial Accounts (FBAR).⁵³ Much of the information requested by the two Treasury Department bureaus is duplicative, yet affected individuals must complete separate forms for each, and failures to report correctly and completely in either or both contexts result in a separate, overlapping set of penalties, even when little or no tax is owed. This duplication is costly and burdensome and can lead to the mistaken belief that reporting for one has satisfied the requirement for the other.⁵⁴ Such is not the case, however, and taxpayers are at risk of potentially causing IIR penalties or FBAR penalties, the latter of which can be exorbitant if the FBAR reporting failure is deemed to be “willful.”⁵⁵

The IRS has become increasingly aggressive in asserting that taxpayers’ failures to file are willful, which leads to draconian penalties for good-faith errors.⁵⁶ In prior years, the National Taxpayer Advocate has proposed legislative recommendations to address these problems:

1. Reduce taxpayer reporting burden and government costs to process and store the same or similar information twice by eliminating duplicative filing requirements for taxpayers with foreign accounts and assets;⁵⁷

51 IRS, CDW, BMF and BRTF (Sept. 2023). The abatement rate for these penalties assessed from 2018 through 2021 was 72 percent for partnerships and corporations reporting less than \$1 million in total assets, compared to an abatement rate of 85 percent for those corporations and partnerships reporting \$100 million or more of total assets.

52 See Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat 71 (2010) (adding Chapter 4 of IRC §§ 1471-1474; IRC § 6038D), collectively referred to as the Foreign Account Tax Compliance Act; 31 U.S.C. § 5314 and 31 C.F.R. §§ 1010.350, 1010.306(c).

53 See *id.*

54 See also National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act)*.

55 See also National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Modify the Definition of “Willful” for Purposes of Determining Report of Foreign Bank and Financial Accounts Violations and Reduce the Maximum Penalty Amounts)*.

56 See Erin M. Collins, Foreign Information Penalties: Part Three: Keeping a Watchful Eye on the FBAR Guard Dog, NATIONAL TAXPAYER ADVOCATE BLOG (May 2, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-chapter-61-foreign-information-penalties-part-three/>.

57 National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration 13 (Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act)*, https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_PurpleBook_02_ImproveFiling_6.pdf.

2. Clarify that the government has the burden to establish willfulness by clear and convincing evidence before asserting a civil willful FBAR penalty and that the government cannot meet this burden by relying on the Schedule B attached to a return;⁵⁸ and
3. Eliminate 31 U.S.C. § 5321(a)(5)(C)(i)(I), which would narrow the statutory maximum civil penalty for a willful FBAR violation to no greater than 50 percent of the balance in the account at the time of the violation so that a \$100,000 penalty is not imposed with respect to low-balance accounts.⁵⁹ These challenges continue to be a thorn in the side of U.S. taxpayers and cause unnecessary burdens.

Systemic Application of International Information Return Penalties Squanders the Resources of Both Taxpayers and the IRS

The disproportionality of IIR penalties is bad enough when considered in isolation. The harsh results sometimes generated by these penalties, however, are exacerbated because IIR penalties are systemically assessed. This occurs as an automatic matter when IRS systems process late information returns.⁶⁰ Systemically assessing penalties when taxpayers willingly come forward and file their late returns discourages voluntary compliance.⁶¹ This is especially problematic because these penalties, assessed in haste and without consideration of case-specific facts and circumstances, can only be dealt with after the time-consuming and burdensome dedication of resources by both taxpayers and the IRS.

For many IIR penalties, much of this late filing is ultimately determined to result from innocent circumstances, including unavailability of the requisite information and IRS error.⁶² This situation inevitably generates a large number of penalty abatements. Although abatements are always preferable to improperly assessed and collected penalties, high abatement rates indicate flawed policies and that there may be a better way to proceed.

TAS analyzed abatement rates for the IRC §§ 6038 and 6038A penalties since they are the most frequently assessed IIR penalties, averaged across 2018-2021. We analyzed this data for systemic and for manual (Individual Master File) assessments in terms of both numbers and dollars, as shown in Figure 2.8.6.⁶³ Across these four years, for systemic assessments, the abatement percentage, measured by number of penalties, was 74 percent and by dollar value was 84 percent.⁶⁴ Manual assessments for individual taxpayers were abated at a rate of only 27 percent by number and 16 percent by dollar amount.⁶⁵

58 National Taxpayer Advocate 2023 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 75 (Modify the Definition of "Willful" for Purposes of Finding Report of Foreign Bank and Financial Accounts Violations and Reduce the Maximum Penalty Amounts), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_PurpleBook_04_ReformPenInts_34.pdf.

59 *Id.*

60 The IRS uses systemic assessment for business taxpayers rather than individual taxpayers. See IRM 21.8.2.20.2, Form 5471 Penalties Systemically Assessed from Late-Filed Form 1120 Series or Form 1065 (Oct. 1, 2023), https://www.irs.gov/irm/part21/irm_21-008-002r; IRM 21.8.2.21.2, Form 5472 Penalties Systemically Assessed from Late-Filed Form 1120 Series (Oct. 1, 2023), https://www.irs.gov/irm/part21/irm_21-008-002r.

61 See Daniel N. Price, Response to request for public comments on Forms 3520 and 3520-A, OMB No. 1545-0159 (Feb. 9, 2023), https://www.pricetaxlaw.com/_files/ugd/6311c3_2d54fe7a201141bb9b89af2da098e83e.pdf.

62 These examples are drawn from TAS's observations. See also IRS response to TAS information request (Oct. 1, 2020).

63 IRS, CDW, IMF/BMF (Sept. 2023). Because the numbers for the manual versus systemic assessments under each code section were in similar proportion, if not similar volumes, TAS has combined the data for these two penalties to present more simplified numbers. Abatement rates generally increase as more time elapses from the assessment date.

64 IRS, CDW, BMF (Sept. 2023).

65 IRS, CDW, IMF (Sept. 2023).

FIGURE 2.8.6, IRC §§ 6038 and 6038A Data, Annual Averages for 2018-2021⁶⁶

Type of Assessment	Number of Penalties Assessed	Dollar Amount Assessed	Number of Abatements	Dollars Abated	Abatement Percentage by Number	Abatement Percentage by Dollar
Systemic	10,052	\$390.8 million	7,484	\$327.8 million	74%	84%
Manual (Individual Master File)	915	\$44.0 million	248	\$7.2 million	27%	16%

With abatement rates as high as 74 percent by number of penalties, the IRS should not be burdening taxpayers with a procedure that automatically and mechanically assesses penalties and then leaves things to be worked out later. Instead, it is more sensible and equitable for the IRS to apply an element of caution in IIR penalty administration. This is precisely what occurs when the IRS applies penalties manually, which involves discretion and oversight of IRS personnel. The result of this human deliberation, as opposed to unthinking, systemic action, is the assessment of far fewer penalties that the IRS must subsequently abate.

The IRS should also adopt an approach that elevates education over retribution. As TAS previously proposed, the IRS should extend FTA to cover IIR penalties, which it could implement systemically.⁶⁷ This policy would represent a more streamlined and comprehensive version of what is already occurring as a practical matter for many systemically assessed and subsequently abated IIR penalties.⁶⁸

The IRS could mail a letter to taxpayers who would have incurred an IIR penalty but for use of such an FTA to inform them of the waiver, clarifying where they went wrong and explaining that there will be no more administrative waiver for the next three years. This policy would add an important element of humane tax administration to the otherwise heavy-handed and mechanical functioning of the IIR penalty regime.

Classification of International Information Return Penalties as Immediately Assessable Can Subject Taxpayers to an Additional Layer of Hardship

Some Taxpayers May Face What Feels Like Strict Liability

The IRS is best served by focusing on compliance rather than retribution. Nevertheless, IIR penalties disproportionately and indiscriminately punish taxpayers while narrowing their options for judicial review. This limitation on the terms of judicial oversight is especially problematic given the harsh terms of IIR penalties.

66 IRS, CDW, IMF (Sept. 2023). Because of such factors as the broad penalty relief provided in IRS Notice 2022-36 and processing delays due to COVID-19, penalty data in any given recent year may not be illustrative of long-term trends. For this reason, we are presenting a four-year average.

67 National Taxpayer Advocate 2020 Annual Report to Congress 131 (Most Serious Problem: *International: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf.

68 FTA is applied to IIR penalties when it is applied to the underlying return, but it could also be applied more broadly without reference to the underlying return. National Taxpayer Advocate 2020 Annual Report to Congress 128 (Most Serious Problem: *International: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf.

Some IIR penalties are specifically designated as assessable by Chapter 68, Subchapter B of the IRC, or explicitly cross-reference other portions of the IRC providing authority to immediately assess the penalties.⁶⁹ Other IIR penalties, residing within Chapter 61, Subchapter A, such as the IRC §§ 6038, 6038A, and 6039F(c)(1)(B) penalties, have historically also been treated by the IRS as assessable. The IRS immediately assesses such penalties, and taxpayers have no recourse to U.S. Tax Court review because jurisdiction in that court generally depends on the existence of a deficiency.⁷⁰ Instead, taxpayers wishing to obtain judicial review of an assessable penalty must pay that penalty, and only then are they able to contest it in a federal district court or the U.S. Court of Federal Claims.⁷¹

This jurisdictional requirement and the out-of-pocket expense it entails can be exasperating for many taxpayers, but where IIR penalties are concerned, it can represent an insurmountable obstacle on account of the sometimes-huge penalty assessments. Such is particularly the case for lower- to middle-income taxpayers, who may be prevented from seeking judicial review, even of obviously incorrect IRS determinations, by the combined cost of the penalty and associated legal fees. One professional group explained to TAS that the government often delays settlement discussions until late in the litigation process, effectively requiring litigants to incur legal fees in the range of \$100,000 just to contest the penalties in court.⁷²

JUDICIAL REVIEW FOR SOME TAXPAYERS

$$\text{Cost of Penalty} + \text{Legal Fees} = \text{Insurmountable Obstacle}$$

The IRS does allow taxpayers to seek a post-assessment, prepayment review in the IRS Independent Office of Appeals, which can include a reasonable cause defense. Nevertheless, administrative relief depends on IRS discretion, which leaves many at the mercy of the IRS given the limited options for judicial review.⁷³ For non-wealthy taxpayers, treatment of IIR penalties as assessable can create a *de facto* strict liability situation, in which these taxpayers are effectively barred from challenging IRS administrative decisions because of their lack of sufficient wealth. The entire IIR penalty regime, incorporating disproportionately large penalties that are systemically assessed and can be difficult to challenge, raises serious concerns regarding equity, due process, and access to judicial review.

69 See, e.g., IRC §§ 6039F(c)(1)(B), 6677(e), 6679(b). By contrast, penalties calculated by looking to an understatement of tax on taxpayers' underlying returns are generally subject to deficiency procedures. In this circumstance, the IRS must issue taxpayers a statutory notice of deficiency giving them the opportunity for prepayment review in Tax Court. If the case cannot be resolved administratively, the IRS can only assess and collect the penalty when no judicial review is sought or when the Tax Court and other subsequent appellate courts sustain the IRS's position. Other penalties, however, typically those determined without reference to the underlying return, are treated as assessable penalties.

70 See generally IRC §§ 6211-6213.

71 IRC § 7422.

72 Discussions with outside stakeholders (July 25, 2023).

73 See National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Expand the U.S. Tax Court's Jurisdiction to Hear Refund Cases)*; National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Provide That Assessable Penalties Are Subject to Deficiency Procedures)*.

The Farhy Decision Presents the IRS With Both Problems and Opportunities

In a recent decision in *Farhy v. Commissioner*, the U.S. Tax Court ruled that the IRS could not assess and collect IRC § 6038(b) penalties because Congress had failed to grant the statutory authority to do so.⁷⁴ The analysis of the *Farhy* opinion appears to make its holding applicable, by analogy, to most IIR penalties within Chapter 61, Subchapter A.⁷⁵ This outcome throws much of the IIR penalty regime and the IRS's ability to enforce it into disarray.⁷⁶

The government is appealing the *Farhy* opinion to the D.C. Circuit Court of Appeals and arguing that the Tax Court's decision should be reversed.⁷⁷ Regardless of how the D.C. Circuit ultimately rules, the IRS and Congress should treat *Farhy* as a golden opportunity to revisit the IIR penalty regime and make it more fair for taxpayers.

The IRS's reliance on systemic assessments also raises the legal issue of whether the IRS has met the requirements of IRC § 6751(b) by providing only a notation of penalty approval from the IRS reporting system, the Accounts Management System, as proof of supervisory approval.⁷⁸ This issue is currently being litigated in the U.S. Tax Court.⁷⁹

The IRS should work with Congress to make all IIR penalties subject to deficiency procedures. This would solve the IRS's immediate enforcement problem while representing a substantial benefit for taxpayers. Since taxpayers would be granted a forum in the U.S. Tax Court in which to seek prepayment judicial review, they would no longer face the potential inequity of being shut out of the court system on account of lack of sufficient financial resources. For the first time, lower- and middle-income taxpayers would have access to the same due process afforded wealthy taxpayers in the context of IIR penalties. The IRS would also have an incentive to proceed cautiously in asserting IIR penalties, as impacted taxpayers could cost-effectively challenge these penalties.

If IIR penalties were subject to deficiency procedures, the IRS would also immediately benefit. The IRS cannot effectively move forward before resolution of the issue raised in *Farhy*, and this approach would provide the IRS with much-needed certainty. It would also definitively clarify the issue in a way that is equitable for taxpayers and protects their due process rights. This matters because tax compliance is most effective when taxpayers feel they are being treated fairly.⁸⁰ Adopting deficiency procedures for IIR penalties would provide significant benefits for both taxpayers and tax administration.

74 *Farhy v. Commissioner*, 160 T.C. No. 6 (Apr. 3, 2023). See also Erin M. Collins, Chapter 61 Foreign Information Penalties: Part One: Taxpayers and Tax Administration Need a Legislation Fix, NATIONAL TAXPAYER ADVOCATE BLOG (Apr. 20, 2023) <https://www.taxpayeradvocate.irs.gov/news/nta-blog-chapter-61-foreign-information-penalties-part-one/>.

75 Andrew Velarde, *Official Says Info Return Penalty Suits Not Feasible After Farhy*, TAX NOTES, June 5, 2023, at 1409, <https://www.taxnotes.com/tax-notes-today-international/penalties/official-says-info-return-penalty-suits-not-feasible-after-farhy/2023/05/30/7qs0m>.

76 See, e.g., Nathan J. Richman, *Appeals Plans to Concede Unassessable Penalty CDP Cases*, TAX NOTES, June 9, 2023, at 1457, <https://www.taxnotes.com/tax-notes-today-international/information-reporting/appeals-plans-concede-unassessable-penalty-cdp-cases/2023/06/09/7qvhw>. Appeals has since treated this as a coordinated issue. IRS response to TAS fact check (Nov. 16, 2023).

77 Leslie Book, *Government Files Notice of Appeal in Farhy*, PROCEDURALLY TAXING (July 14, 2023), <https://www.taxnotes.com/procedurally-taxing/government-files-notice-appeal-farhy/2023/07/14/7h6r6>.

78 Andrew Velarde, *IRS Looks to Fight Informational Return Penalty Approval Case*, TAX NOTES, Sept. 1, 2023, at 1300, <https://www.taxnotes.com/tax-notes-today-international/penalties/irs-looks-fight-information-return-penalty-approval-case/2023/09/01/7h801>.

79 Ching Tzu Lu a.k.a. Susan Lu, *Petitioner v. Comm'r*, No. 10523-23L (T.C. filed July 1, 2023).

80 Marjorie E. Kornhauser, *A Tax Morale Approach to Compliance: Recommendations for the IRS*, 8 Fla. Tax Rev. 599 (2007), <https://journals.upress.ufl.edu/ft/article/view/388/367>; John Hasseldine and Peggy Hite, *Key Determinants of Compliance and Noncompliance*, TAX NOTES, Oct. 23, 2007, <https://www.taxnotes.com/tax-notes-today-federal/compliance/key-determinants-compliance-and-noncompliance/2007/10/23/xkzr>.

CONCLUSION AND RECOMMENDATIONS

When a taxpayer voluntarily corrects the failure to file an IIR, their good-faith action has the unexpected effect of causing the IRS to automatically assess a penalty. Furthermore, in light of the *Farhy* opinion, the IRS's ability to assess and collect most IIR penalties may be jeopardized. If the IRS does not administratively abate the assessed penalty, taxpayers will need to pay the penalty in full before seeking judicial review.

The IIR penalty regime is characterized by attributes that impose significant hardships on taxpayers, especially for lower- to middle-income taxpayers and small and midsize businesses. The penalties themselves are often disproportionate and extraordinarily harsh when considered in light of the underlying tax liabilities involved. Rather than being imposed on taxpayers who are voluntarily filing late information returns correcting an honest mistake or curing past noncompliance, they should be reserved for bad actors. To make matters worse, the majority of IIR penalties are systemically assessed, which leads to the broad imposition of these penalties, even when they may be inappropriate under the circumstances. Because the IRS has treated IIR penalties as assessable penalties, taxpayers are also deprived of a prepayment forum in the U.S. Tax Court and can only obtain review of IRS administrative actions by first paying the penalties and then taking the case to a federal district court or the Court of Federal Claims.

These factors have historically placed taxpayers subject to IIR penalties in a difficult position and may have caused extreme financial hardship for many. Given the U.S. Tax Court's recent decision in *Farhy v. Commissioner*, however, the IRS has problems of its own. Nevertheless, the IRS continues to systemically assess and collect these penalties. The solution for taxpayers and the IRS is a comprehensive administrative and statutory reform of the IIR penalty regime in which the IRS enforces penalties in a way that is more educational than punitive and imposes them via a system similar to deficiency procedures. Taxpayers have the *right to a fair and just tax system*,⁸¹ and the IRS's procedural approach to IIR penalties continues to cause hardship and inequities for many. Protection of taxpayer rights is a bedrock aspect of quality tax administration.

ADMINISTRATIVE RECOMMENDATIONS TO THE IRS

The National Taxpayer Advocate recommends that the IRS:

1. Stop automatic assessment and collection of Chapter 61 IIR penalties prior to considering the taxpayer's specific facts and circumstances, including providing the taxpayer their appeal rights with the Independent Office of Appeals.
2. Update the Internal Revenue Manual to require review of any reasonable cause relief requests before assessing penalties when these requests are submitted in conjunction with IIRs potentially giving rise to penalties.
3. Extend eligibility for FTA to all IIR penalties regardless of whether the underlying return was filed late.
4. Revise Notice 97-34 or issue guidance to make the administrative \$100,000 threshold subject to the same inflation adjustments as the \$10,000 threshold set forth in IRC § 6039F.
5. Update Schedule B and the related instructions to include foreign gifts as potentially reportable transfers.

⁸¹ See IRC § 7803(a)(3)(J).

LEGISLATIVE RECOMMENDATIONS TO CONGRESS

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6212 to require the Secretary to establish procedures to send a notice of IIR penalties to the taxpayer by certified mail or registered mail for adjudication with the U.S. Tax Court prior to assessing any “assessable penalty” or other IIR penalty listed in Chapter 61, Subchapter A, Part III, Subpart A.⁸²
2. Clarify that the government has the burden to establish willfulness by clear and convincing evidence before asserting a civil willful FBAR penalty and that the government cannot meet this burden by relying on the Schedule B attached to a return.⁸³
3. Eliminate 31 U.S.C. § 5321(a)(5)(C)(i)(I), which would have the effect of narrowing the statutory maximum civil penalty for a willful FBAR violation to no greater than 50 percent of the balance in the account at the time of the violation so that a \$100,000 penalty is not imposed with respect to low-balance accounts.⁸⁴
4. Amend IRC § 6038D and 31 U.S.C. § 5314 to eliminate duplicative reporting of assets on Form 8938 where a foreign financial account is correctly reported or reflected on an FBAR while ensuring continued IRS access to foreign financial asset data for both tax compliance and financial crime enforcement purposes.⁸⁵

RESPONSIBLE OFFICIALS

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

Holly Paz, Commissioner, Large Business and International Division

Kenneth Corbin, Commissioner, Wage and Investment Division

⁸² See National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Provide That Assessable Penalties Are Subject to Deficiency Procedures)*.

⁸³ National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Modify the Definition of “Willful” for Purposes of Determining Report of Foreign Bank and Financial Accounts Violations and Reduce the Maximum Penalty Amounts)*.

⁸⁴ *Id.*

⁸⁵ National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act)*.



COMPLIANCE CHALLENGES FOR TAXPAYERS ABROAD

Taxpayers Abroad Continue to Be Underserved and Face Significant Challenges in Meeting Their U.S. Tax Obligations

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Taxpayers abroad face vast difficulties in complying with their U.S. tax obligations. Many find themselves trying to navigate a complex tax system they do not understand, and the IRS offers limited assistance and guidance. Taxpayers outside the United States face filing requirements not typically applicable to taxpayers living in the United States, with the added layer of complexity of applying the laws and treaties unique to the country in which they reside. Taxpayers lack accessible, real-time customer service assistance from the IRS, and help from private tax professionals, if available, is often expensive; both contribute to additional burden for these taxpayers. Taxpayers abroad may face severe penalties if they fail to file forms, some of which they may not even be aware.¹ The complexity of the tax code, the inability to easily comply, and the fear of severe penalties are so great that some taxpayers choose to relinquish their U.S. citizenship.²

EXPLANATION OF THE PROBLEM

International taxpayers face a complex tax code that, combined with the lack of IRS service and a comprehensive plan targeted at fixing these issues, results in frustration and non-compliance.

¹ See Most Serious Problem: *International: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient*, *supra*.

² Kate Dore, *The Top Reason Why Americans Abroad Want to Dump Their U.S. Citizenship*, CNBC, May 18, 2021, <https://www.cnbc.com/2021/05/18/the-top-reason-why-americans-abroad-want-to-dump-their-citizenship.html> (citing a 2021 study of over 3,100 U.S. citizens living overseas that found nearly one in four were considering giving up their citizenship and more than four in ten of those citing U.S. tax compliance as their reason). On October 2, 2023, the U.S. State Department published a Proposed Rule to reduce the current fee for processing requests for a Certificate of Loss of Nationality of the United States from \$2,350 to \$450, citing anecdotal evidence suggesting that "difficulties due at least in part to stricter financial reporting requirements imposed by the Foreign Account Tax Compliance Act (FATCA) ... may well be a factor" in the motivation for U.S. citizens to renounce their citizenship. See Schedule of Fees for Consular Services-Administrative Processing of Request for Certificate of Loss of Nationality (CLN) Fee, 88 Fed. Reg. 67687 (Oct. 2, 2023) (to be codified at 22 C.F.R. § 22.1). Public Comments to the Proposed Rule are also replete with recitations of compliance with U.S. tax laws as a reason for relinquishing U.S. citizenship.

The burden and expense of filing tax and international information returns (IIRs), especially when a large percentage of individuals do not owe tax,³ further the problem. The frustrations, time, expense, and complexity domestic taxpayers face are magnified for taxpayers abroad and exacerbated by the added layer of another country's tax laws and the potential for severe penalties for mistakes and omissions.

Challenges and issues that taxpayers abroad continue to face in meeting their U.S. federal tax obligations include:

- Significant difficulties complying with complex tax laws and filing requirements, finding affordable and competent help, and accessing declining IRS customer service options;
- Difficulty obtaining an Individual Taxpayer Identification Number (ITIN) and no ability to efficiently check the status of their application; and
- Timeframes for taxpayers abroad to respond to key IRS notices are insufficient, and in the case of certifications for passport revocations, non-existent.

ANALYSIS

U.S. taxation of individual taxpayers abroad is extremely complex. The United States, unlike almost every other country, taxes its citizens and residents on worldwide income, regardless of the taxpayer's residency ("citizen-based taxation"). This means the U.S. tax code requires a U.S. citizen or a resident alien⁴ to file a U.S. income tax return reporting all worldwide income, regardless of where the individual lives. Additionally, the U.S. tax regime applies to nonresident aliens⁵ and foreign businesses with U.S.-source income and operations. Foreign persons are generally subject to "net-basis" U.S. tax on income that is effectively connected with a U.S. trade or business.⁶ Foreign persons are also subject to a "gross-basis" U.S. tax at a 30 percent rate on certain other categories of U.S.-source income (*e.g.*, interest, dividends, rents, royalties) subject to exceptions and limitations.⁷

Because the U.S. tax code's application is so broad, it captures many types of taxpayers. For example, U.S. citizens who move overseas and do not relinquish their U.S. citizenship remain subject to U.S. tax law. Also "accidental Americans"⁸ have U.S. tax obligations even though they often do not realize it and may not even be aware they are U.S. citizens. Citizens of other countries who come to the United States temporarily can be subject to U.S. taxation, such as foreign students who may have a U.S. filing obligation.⁹ In some cases, individuals who have never been in the country are subject to U.S. taxation; for example, the United States may tax a foreign person who receives dividends from a U.S. corporation on the dividends. In addition to intricate statutory rules for the taxation of foreign income of U.S. persons and U.S. income of foreign persons, the United States has bilateral income tax treaties with 66 countries.¹⁰

3 Approximately 62 percent of individual international taxpayers reported zero tax liability between 2016 and 2021. IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File (IRTF) Tax Years (TYs) 2016-2021 (through Sept. 28, 2023).

4 A resident alien is defined as an individual who is not a U.S. citizen and: (1) is a lawful permanent resident of the U.S. (*i.e.*, a green card holder); (2) meets the substantial presence test under IRC § 7701(b)(3) and Treas. Reg. § 301.7701(b)-1(c); or (3) makes an election under IRC § 7701(b)(4) to be treated as a resident alien. IRC § 7701(b); Treas. Reg. § 301.7701(b)-1.

5 Nonresident aliens are individuals who are not U.S. citizens or resident aliens. See IRC § 7701(b)(1)(B).

6 See generally IRC §§ 871, 872, 881, 882. A U.S. person is any citizen or resident of the United States, a domestic partnership or corporation, or any estate or trust that is not considered foreign. Any person who does not fit the definition of a U.S. person is considered a foreign person. See generally IRC § 7701.

7 See generally IRC §§ 871 and 881.

8 "Accidental Americans" are citizens of a foreign country who were born in the United States and only lived there for a brief time or were born outside the United States to a parent with U.S. citizenship.

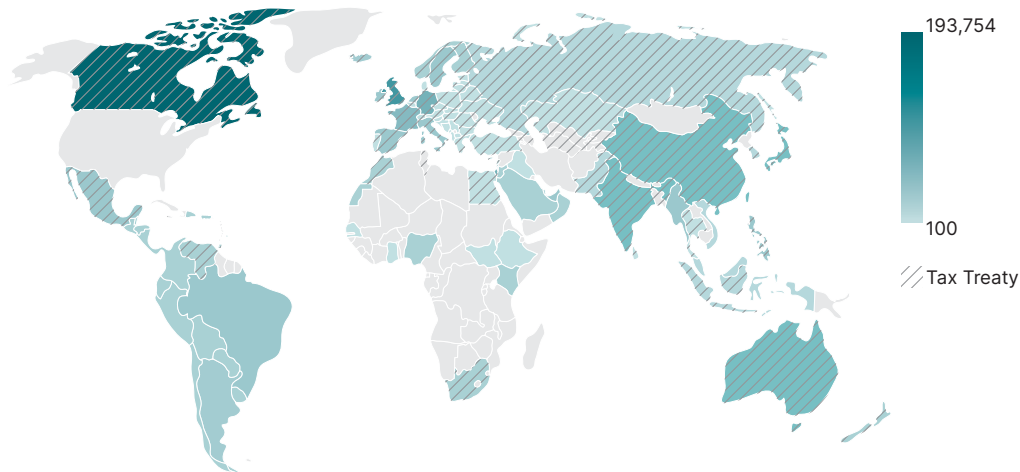
9 IRS, Foreign Students, Scholars, Teachers, Researchers and Exchange Visitors (Nov. 8, 2023), <https://www.irs.gov/individuals/international-taxpayers/foreign-students-scholars-teachers-researchers-and-exchange-visitors>.

10 IRS, United States Income Tax Treaties – A to Z (Oct. 27, 2023), <https://www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z>. See also IRS, Tax Treaty Tables (May 22, 2023), <https://www.irs.gov/individuals/international-taxpayers/tax-treaty-tables>. For a recent case illustrating the complexity of applying statutory requirements and treaty provisions, see *Aroeste v. United States*, No. 3:22-cv-00682, 2023 WL 8103149 (S.D. Cal. Nov. 20, 2023) (holding that a Mexican citizen with U.S. lawful permanent residency status was not a "U.S. person" required to file a Report of Foreign Bank and Financial Accounts).

Because of the broad and complicated nature of the U.S. tax system, it is difficult to quantify the number of taxpayers impacted. According to the U.S. Department of State, roughly nine million U.S. citizens reside abroad as of 2020, including military personnel, students studying abroad, and State Department employees.¹¹ Other estimates and methodologies vary, ranging from 3.9 to 4.8 million (not including military).¹² Estimates may not include “accidental Americans”¹³ and do not include non-resident individuals and foreign businesses with U.S. tax obligations. While the exact numbers are unclear, the number of taxpayers abroad with U.S. tax obligations is significant.

FIGURE 2.9.¹⁴

U.S. International Individual Tax Filers by Country, TY 2021



The IRS acknowledged in the Taxpayer First Act Report to Congress that international taxpayers have less access to IRS services and much lower e-filing rates.¹⁵ In her 2022 Annual Report to Congress, the National Taxpayer Advocate recommended that the IRS develop a comprehensive customer service strategy for U.S. citizens and resident aliens abroad and foreign individuals with U.S. tax obligations, and the IRS agreed.¹⁶ However, the IRS has not conducted any studies to assess the population’s needs.¹⁷ Because of the complexity of the tax laws and lack of IRS service and assistance, the number of taxpayers abroad who may not comply, either inadvertently or intentionally, is unknown but potentially sizeable. Until the IRS assesses the international population and makes a concerted effort to educate and assist this population in meeting its U.S. tax obligations, noncompliance will continue.

- 11 See U.S. Dep’t. of State, Bureau of Consular Affs., Consular Affairs by the Numbers (2020), <https://travel.state.gov/content/dam/travel/CA-By-the-Number-2020.pdf>. TAS is not aware of a more recent government study.
- 12 ACA/DEG Analysis of Revenue Effects of Residence-Based Taxation, AM. CITIZENS ABROAD (Apr. 28, 2022), <https://www.americansabroad.org/articles/aca-deg-analysis-of-revenue-effects-of-residence-based-taxation/>; State of the Overseas Voter, Fed. Voting Assistance Program, <https://www.fvap.gov/info/reports-surveys/overseas-citizen-population-analysis> (last visited Dec. 7, 2023).
- 13 Banking organizations estimated that in Europe in 2016 there were more than 110,000. See Vivienne Walt, *Why ‘Accidental Americans’ Are Desperate to Give Up Their U.S. Citizenship*, TIME, Dec. 23, 2020, <https://time.com/5922972/accidental-americans-fatca/>.
- 14 IRS, CDW, IRTF TY 2021 (through Sept. 28, 2023).
- 15 IRS, Pub. 5426, Taxpayer First Act Report to Congress (Jan. 2021), <https://www.irs.gov/pub/irs-pdf/p5426.pdf>.
- 16 TAS Recommendations and IRS Responses, TAS Recommendation 10-1 (2022), <https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-10-overseas-taxpayers/> (last visited Dec. 7, 2023).
- 17 IRS response to TAS information request (Oct. 4, 2023).

Taxpayers Abroad Experience Significant Difficulties Complying With Complex Tax Laws, Finding Help to Ensure Compliance, and Accessing Declining IRS Customer Service Options

The Complexity of the Code Adds to the Filing Challenges Taxpayers Abroad Face

The complexity of the U.S. tax code is a barrier to return filing. The average American taxpayer finds the tax code extremely difficult to understand; this is equally true for taxpayers abroad.¹⁸ There are numerous complex and confusing areas that leave taxpayers abroad perplexed and searching for help, including determining resident status, eligibility for credits, and business and retirement issues.

Taxpayers who are not U.S. citizens must determine their resident status, which can be difficult. They must figure out whether they are resident aliens by meeting either the green card test or the substantial presence test.¹⁹ Because the code taxes resident and nonresident aliens differently, this determination is crucial, and an incorrect determination can cost taxpayers money. Similarly, while taxpayers abroad may claim certain benefits like the foreign earned income exclusion, foreign housing allowance, and the foreign tax credit,²⁰ the rules for determining eligibility for these benefits are complicated by any standard.²¹ Taxpayers residing abroad must navigate complicated tax laws if they own businesses. Many provisions are relatively new,²² and the application of the tax on global intangible low-taxed income (GILTI) to small businesses operating overseas has been particularly challenging.²³ Retirement plans present another area of complexity. U.S. taxpayers who participate in foreign workplace retirement plans need to determine whether the code taxes them on the contributions, earnings, and transfers of assets between plans,²⁴ which requires the taxpayers to figure out the laws of the United States and the country they reside in as well as any relevant tax treaties.²⁵

The requirements to file numerous IIRs are one area of significant complexity.²⁶ The tax code may significantly penalize taxpayers for failing to comply with the requirements or incorrectly completing the forms.²⁷ These IIRs are convoluted, and the instructions are not intuitive, *e.g.*, Forms 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner. The forms' instructions are often inconsistent and confusing regarding due dates. Taxpayers must file the forms on paper,²⁸ and the compliance burden

18 National Taxpayer Advocate 2022 Annual Report to Congress 45, 48 (Most Serious Problem: *Complexity of the Tax Code: The Complexity of the Tax Code Burdens Taxpayers and the IRS Alike*), <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/most-serious-problems>.

19 IRC § 7701(b)(1)(A)(i), (ii). The substantial presence test requires an exhaustive and confusing computation of the number of days they were physically present in the United States during the current year and the preceding two years. IRC § 7701(b)(1)(A)(ii). See also IRS Topic No. 851, Resident and Nonresident Aliens (June 15, 2023), <https://www.irs.gov/taxtopics/tc851>. Even if a taxpayer doesn't qualify, they can still choose to be treated as a U.S. resident for part of the year under the first year election. See IRC § 7701(b)(1)(A)(iii).

20 See generally IRC §§ 901, 903, 904, 911, 912. For instance, U.S. taxpayers abroad may be entitled to claim the foreign tax credit if they paid foreign taxes on income that is also subject to U.S. tax. IRC § 901. In TY 2021, approximately 271,000 taxpayers filed Form 1116, Foreign Tax Credit (Individual, Estate, or Trust). IRS CDW, IRTF TY 2021 (through Sept. 28, 2023).

21 Publication 514, a 49-page document, suggests that taxpayers may also need to see other publications and forms. IRS, Pub. 514, Foreign Tax Credits for Individuals (Jan. 31, 2023).

22 See Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

23 IRC § 951A; Ines Zemelman, EA, *Global Intangible Low-Taxed Income (GILTI): What It Is, How It Works & Examples*, TAXES FOR EXPATS (Aug. 21, 2023), <https://www.taxesforexpats.com/articles/foreign-business/global-intangible-low-taxed-income-gilti.html>.

24 See Christopher R. Callahan, U.S. Tax Laws Governing Foreign Pensions, TAX NOTES, Dec. 6, 2022; *Debunked: Three Myths About International Retirement Plans*, H&R BLOCK (Dec. 1, 2022), <https://www.hrblock.com/expat-tax-preparation/resource-center/income/retirement/international-retirement-plan-myths/>.

25 See, *e.g.*, IRS, The Taxation of Foreign Pension and Annuity Distributions (Mar. 9, 2023), <https://www.irs.gov/businesses/the-taxation-of-foreign-pension-and-annuity-distributions>.

26 Some of these include IRS Forms 3520, 3520-A, 5471, 5472, 8858, 8865, 8854, 8833, and 1120-FSC; for residents of U.S. territories, these include Forms 4563, 5074, 8689, and 8898.

27 For a detailed discussion on the penalties associated with IIRs, see Most Serious Problem: *International: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient*, *supra*.

28 See Letter from the American Institute of Certified Public Accountants (AICPA) Tax Executive Committee to Ryan K. Bessey, Senior Program Analyst, IRS Office of Servicewide Penalties (Aug. 14, 2023), <https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/2023/aicpa-comments-on-suggestions-for-changes-to-form-3520-and-instructions-submit.pdf>.

is substantial, with the IRS estimating it takes on average 54 hours to prepare and file Form 3520 and 43 hours for Form 3520-A.²⁹ The IRS took a much-needed step to clarify these forms' applicability to foreign retirement plans when it issued Rev. Proc. 2020-17 to exempt certain plans from reporting under IRC § 6048.³⁰ Nonetheless, burdens still exist,³¹ and the IRS should consider providing additional clarification, including whether the IRS will provide reporting relief to foreign pensions where deferral of tax on earnings is available under a tax treaty.

One reason for the complexity with IIRs is the overlapping statutory reporting requirements under the Foreign Account Tax Compliance Act (FATCA) and Bank Secrecy Act.³² FATCA requires U.S. citizens, residents, and certain nonresidents to report information on foreign financial assets to the IRS when the assets' value exceeds certain thresholds.³³ The Bank Secrecy Act requires U.S. citizens and residents to report foreign accounts to the Financial Crimes Enforcement Network (FinCEN) when their combined value exceeds \$10,000 at any time during the year.³⁴ Individuals must complete separate forms for each law: they file Form 8938, Statement of Specified Foreign Financial Assets, with their annual income tax return to comply with FATCA and FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to comply with the Bank Secrecy Act.³⁵ Individuals are subject to significant penalties for failure to report assets on one or both forms, even when they owe little or no tax.³⁶ The filing burden is disproportionately greater to international taxpayers, as they must file Form 8938 at considerably higher rates than domestic individuals, as Figure 2.9.2 shows.

29 IRS, 2022 Instructions for Form 3520, at 13 (Dec. 2023), <https://www.irs.gov/pub/irs-pdf/i3520.pdf>; IRS, 2022 Instructions for Form 3520-A, at 7 (Dec. 2023), <https://www.irs.gov/pub/irs-pdf/i3520a.pdf>.

30 Rev. Proc. 2020-17, 2020-12 I.R.B. 539, <https://www.irs.gov/pub/irs-drop/rp-20-17.pdf>.

31 See, e.g., Letter from AICPA Tax Executive Committee to Ryan K. Bessey, Senior Program Analyst, IRS Office of Servicewide Penalties (Aug. 14, 2023), <https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/2023/aicpa-comments-on-suggestions-for-changes-to-form-3520-and-instructions-submit.pdf> (suggesting an exception for certain pension plans); *Foreign Trust Transaction Reporting Must Be Improved, Firm Says*, TAX NOTES, Feb. 9, 2023 (private law firm provides suggested improvements to Forms 3520 and 3520-A, including increasing the reporting thresholds); Roy A. Berg & Marsha-Laine Dungog, *U.S. Income Tax Treatment of Australian Superannuation Funds*, TAX NOTES, Oct. 10, 2016 (suggesting that Australian superannuation arrangements be exempted from reporting).

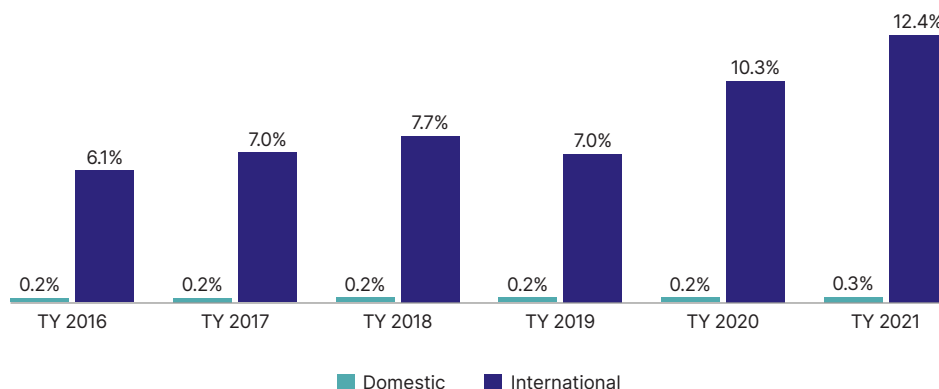
32 Additionally, the National Taxpayer Advocate encourages Congress and the IRS to take legislative and regulatory action to reduce the duplicative burdens. See National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Eliminate Duplicative Reporting Requirements Imposed by the Bank Secrecy Act and the Foreign Account Tax Compliance Act)*.

33 Pub. L. No. 111-147, Title V, Subtitle A, § 511, 124 Stat. 71, 109-10 (2010) (codified at IRC § 6038D).

34 31 U.S.C. § 5314; 31 C.F.R. § 1010.306(c).

35 The authority to enforce the FBAR reporting requirements has been redelegated from FinCEN to the Commissioner of Internal Revenue by means of a Memorandum of Agreement between FinCEN and IRS. See 31 C.F.R. § 1010.810(g).

36 For example, in the context of FATCA, civil penalties begin at \$10,000 for taxpayers who fail to file a complete Form 8938 plus an additional penalty of up to \$50,000. IRC § 6038D(d). Non-willful violations of FBAR reporting requirements are subject to penalties of up to \$10,000 (adjusted annually for inflation). 31 U.S.C. § 5321(a)(5)(B)(i); 31 C.F.R. § 1010.821. Willful violations of FBAR reporting requirements are subject to penalties of up to the greater of 50 percent of the account balance or \$100,000 (adjusted for inflation), 31 U.S.C. § 5321(a)(5)(C), (D)(ii).

FIGURE 2.9.2³⁷**Domestic and International Taxpayers Filing Form 8938, TYs 2016-2021**

Adding to the burden on international taxpayers, the IRS offers the vast majority of tax forms and instructions in English only. The main publication for international taxpayers is Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad, a 35-page publication that includes information on filing requirements, withholding and self-employment tax, key exclusions and deductions, and tax treaties, among other things. However, the IRS publishes it in English only;³⁸ the IRS should provide Publication 54 in other languages so that non-English speaking taxpayers can understand and comply with their U.S. tax obligations.

Taxpayers Abroad Lack Affordable, Qualified Tax Return Preparers and Free IRS Return Preparation Assistance

Due to the complexity of the tax code, individual taxpayers abroad often resort to using paid preparers to help them meet their tax filing obligations, as Figure 2.9.3 shows.

FIGURE 2.9.3, Individual Returns Filed Using a Paid Return Preparer by Type of Taxpayer, Tax Years (TYs) 2018-2021³⁹

Tax Year	International Taxpayers Using a Paid Return Preparer	Domestic Taxpayers Using a Paid Return Preparer
2018	62%	54%
2019	49%	49%
2020	61%	53%
2021	64%	53%

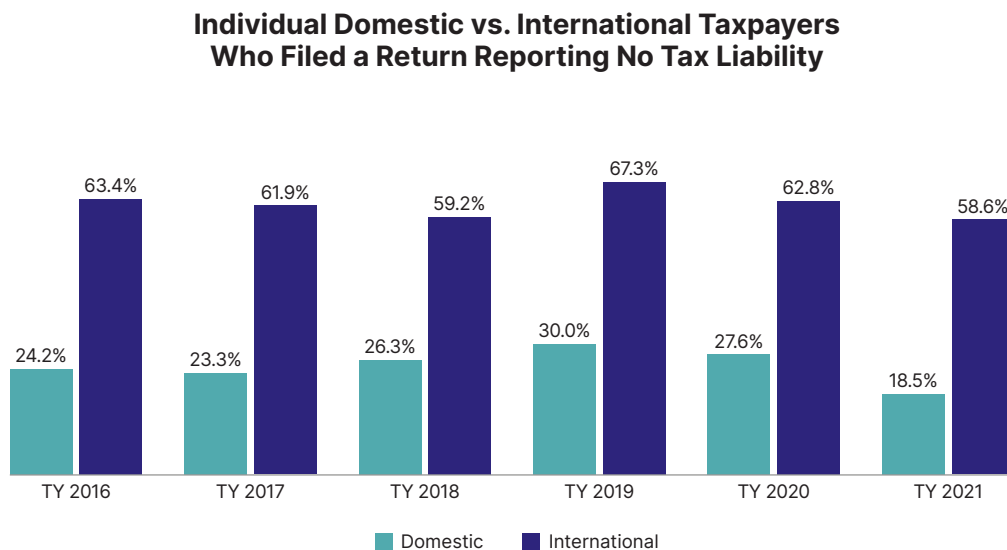
³⁷ IRS, CDW, IRTF, Modernized Tax Return Data Base, Business Returns Transaction File, TYs 2016-2021 (through Sept. 28, 2023).

³⁸ IRS, Forms and Publications Index Search, <https://www.irs.gov/forms-pubs-all-search> (last visited Nov. 28, 2023). In contrast, Publication 519, U.S. Tax Guide For Aliens, is available in several languages. IRS, About Publication 519, U.S. Tax Guide for Aliens (Aug. 3, 2023), <https://www.irs.gov/forms-pubs/about-publication-519>.

³⁹ IRS, CDW, IRTF TYs 2018-2022 (through Sept. 28, 2023). Thus, with the exception of TY 2019 (when pandemic-related stimulus from the Coronavirus Aid, Relief, and Economic Security Act encouraged filing or use of the Non-Filer portal), individuals residing abroad had their tax return prepared by paid preparers at a higher rate than those in the United States.

However, there is a lack of return preparers abroad with sufficient knowledge and expertise to prepare U.S. tax returns, and those available may charge exorbitant fees.⁴⁰ The IRS Directory of Federal Tax Return Preparers With Credentials and Select Qualifications reflects the shortage of qualified professionals for some countries.⁴¹ The absence of qualified preparers arguably contributes to non-compliance, as taxpayers may not file if they don't understand the law and cannot find a reasonably priced, qualified, and competent professional to prepare their returns. Further, the majority of the individual taxpayers abroad who filed Forms 1040 and 1040NR in TYs 2016 through 2021 reported no tax liability.⁴² The disparity in the numbers of international taxpayers who reported no tax liability compared to domestic taxpayers who reported no tax liability is significant, as shown in Figure 2.9.4. However, the cost of filing the return is much higher for international taxpayers, which adds to their burden and especially affects lower-income taxpayers.⁴³ Outside stakeholders report that the burden and high cost of filing a return, especially when there is no tax liability, can lead taxpayers abroad to question the need to file a return or to justify not filing at all.⁴⁴ In fiscal year (FY) 2021, 56 percent of individual international filers reported adjusted gross income (AGI) of less than \$25,000, 68 percent less than \$50,000, and 76 percent less than \$75,000. Only less than five percent had AGI greater than \$400,000.⁴⁵

FIGURE 2.9.4⁴⁶



40 One stakeholder relayed that an individual had to pay an entire month's salary to have her return prepared. Discussions with outside stakeholders (Aug. 2023). See also National Taxpayer Advocate 2022 Annual Report to Congress 171 n. 45 (Most Serious Problem: Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf (noting that American Citizens Abroad estimated that return preparation fees for individual U.S. returns for U.S. citizens abroad are generally between \$2,000 and \$3,000, while the National Society of Accountants estimated that average fees for a Form 1040 prepared in the United States in 2021 was \$220 or \$323, depending on whether the return included itemized deductions).

41 For example, Thailand, a country from which 7,409 individual income tax returns were filed in TY 2021, lists only five preparers, all but one in Bangkok. Mexico, a country from which 10,929 individual income tax returns were filed in TY 2021, lists only 23 preparers. See IRS, Directory of Federal Tax Return Preparers with Credentials and Select Qualifications, <https://irs.treasury.gov/rpo/rpo.jsf> (last visited Dec. 18, 2023); IRS, CDW, IRTF, TYs 2016-2022 (through Sept. 28, 2023).

42 IRS, CDW, IRTF, TYs 2016-2021 (through Sept. 28, 2023).

43 See note 40, *supra*.

44 Discussions with outside stakeholders (Aug. 2023).

45 IRS, CDW, IRTF TY 2021 (through Sept. 28, 2023).

46 No tax liability is defined as having a "Total Tax" of \$0 before payments and refundable credits. IRS, CDW, IRTF TYs 2016-2021 (through Sept. 28, 2023).

Taxpayers abroad also have almost no ability to access free IRS return preparation assistance. The IRS manages free tax return preparation services for qualifying taxpayers through its Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs.⁴⁷ The IRS conducted virtual VITA training at 22 military bases in Europe and Asia in 2022 and established regular VITA sites in Germany, Japan, Korea, Kosovo, the Netherlands, and the United Kingdom.⁴⁸ While TAS welcomes this development, these sites are on military bases and are not accessible to many taxpayers abroad, who need real-time assistance and services. In the absence of in-person services, the IRS should provide taxpayers abroad free assistance through virtual IRS-sponsored VITA or TCE appointments.

The IRS Has No In-Person Assistance Options Outside of the United States and Puerto Rico, a Problem That Has Persisted for Many Years

The lack of affordable and knowledgeable return preparers or free return preparation services abroad leaves taxpayers on their own to figure out how to comply with the complex rules they encounter when filing their tax returns. This would reasonably drive many of these taxpayers to seek assistance from the IRS, but IRS customer service options are limited. Taxpayers abroad continue to face serious customer service and support deficiencies, with one of the prime deficiencies being no access to in-person assistance. At one time, the IRS had 15 foreign attaché posts that allowed taxpayers abroad free and convenient access to in-person IRS assistance.⁴⁹ Citing decreased appropriations, the IRS closed its last four tax attaché offices in Beijing, Frankfurt, London, and Paris in 2014 and 2015. With these closures, the IRS completely erased its international footprint for in-person customer service.

Domestically, the IRS is ramping up its in-person customer service, but nothing similar is happening abroad. In November 2022, the IRS announced plans to hire over 700 employees to staff more than 270 Taxpayer Assistance Centers (TACs) in the United States.⁵⁰ However, aside from the U.S. territory of Puerto Rico, the IRS has no TACs abroad, as shown in Figure 2.9.5.

47 See IRS, Free Tax Return Preparation for Qualifying Taxpayers (Nov. 16, 2023), <https://www.irs.gov/individuals/free-tax-return-preparation-for-qualifying-taxpayers>. The IRS manages the VITA and TCE programs, but IRS partners operate and volunteers who have passed tax law training that meets IRS standards staff them.

48 See National Taxpayer Advocate 2022 Annual Report to Congress 168 (Most Serious Problem: *Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations*) (IRS comments to report), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf.

49 See National Taxpayer Advocate 2015 Annual Report to Congress 72, n.4 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_07_International-TP-Service.pdf.

50 IRS News Release, IR-2022-197, IRS Announces Job Openings to Hire Over 700 New Employees Across the Country to Help Taxpayers in Person (Nov. 9, 2022), <https://www.irs.gov/newsroom/irs-announces-job-openings-to-hire-over-700-new-employees-across-the-country-to-help-taxpayers-in-person>.

FIGURE 2.9.5

International Taxpayer Assistance Center Locations



On October 20, 2023, the IRS announced that it had reopened 50 TACs with Inflation Reduction Act (IRA)⁵¹ funding and had also started a special series of events called Community Assistance Visits (CAVs).⁵² CAVs are temporary TACs designed to provide taxpayers in underserved areas a chance to meet face-to-face with the IRS.⁵³ However, there are no international CAVs.⁵⁴ Due to the temporary nature of CAVs, offering this service internationally would be a way for the IRS to provide much-needed customer service while still assessing long-term solutions. IRS Commissioner Danny Werfel has noted that as far as getting taxpayers the help they need, “in-person assistance is a vital piece that the IRS cannot overlook.”⁵⁵ Unfortunately, the IRS continues to neglect this vital service for international taxpayers. The IRS needs to provide in-person service abroad, including reopening foreign tax attachés and/or establishing international TACs. Until the IRS rectifies this problem, it should provide virtual TAC appointments for taxpayers abroad.⁵⁶

51 An Act to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14, Pub. L. No. 117-169, 136 Stat. 1818, 1831-33 (2022) [hereinafter referred to as the “Inflation Reduction Act”]; see also Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 251, 137 Stat. 10, 30-31 (rescinding some of the funding).

52 IRS News Release, IR-2023-194, IRS Launches New Initiatives Using Inflation Reduction Act Funding to Ensure Large Corporations Pay Taxes Owed; Continues to Improve Service and Modernize Technology with Launch of Business Tax Account (Oct. 20, 2023), <https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account>.

53 IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren’t Near Agency Offices (July 14, 2023), <https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices>.

54 The IRS identified Ciales, Puerto Rico, as an additional location to host a CAV. IRS News Release, IR-2023-194, IRS Launches New Initiatives Using Inflation Reduction Act Funding to Ensure Large Corporations Pay Taxes Owed; Continues to Improve Service and Modernize Technology with Launch of Business Tax Account (Oct. 20, 2023), <https://www.irs.gov/newsroom/irs-launches-new-initiatives-using-inflation-reduction-act-funding-to-ensure-large-corporations-pay-taxes-owed-continues-to-improve-service-and-modernize-technology-with-launch-of-business-tax-account>.

55 IRS News Release, IR-2023-127, IRS Continues Reopening Closed Taxpayer Assistance Centers; Begins Special Series of Community Assistance Visits to Help Taxpayers in 8 States to Expand Service for People Who Aren’t Near Agency Offices (July 14, 2023), <https://www.irs.gov/newsroom/irs-continues-reopening-closed-taxpayer-assistance-centers-begins-special-series-of-community-assistance-visits-to-help-taxpayers-in-8-states-to-expand-service-for-people-who-arent-near-agency-offices>.

56 The IRS did not conduct face-to-face (i.e., in-person) assistance, outreach, or education outside of the United States and Puerto Rico in 2023. IRS response to TAS information request (Sept. 22, 2023).

In the absence of in-person service, the IRS needs to provide alternative support. Yet, other IRS services are lacking, and it has cut programs that were available to taxpayers abroad without replacing them.⁵⁷ A program specifically geared toward international taxpayers was the International Individual Taxpayer Assistance (IITA) team, which the IRS created in 2012 and included representatives from IRS Business Operating Divisions and TAS. The IITA team did useful work, including producing videos aimed to assist individual taxpayers abroad. Recognizing the importance of support to the international community, the National Taxpayer Advocate recommended the IRS make the team permanent, but the IRS did not agree.⁵⁸ Taxpayers abroad desperately need an IRS team devoted to assist them with their unique and complex needs.

The IRS also needs to improve other methods of communications and assistance. It provides only one dedicated telephone line for international taxpayers (the International Taxpayer Service Call Center).⁵⁹ This is not a toll-free line, and the IRS does not offer customer callback as an option.⁶⁰ Therefore, the taxpayer must wait on the line until an IRS representative gets to the call. While the IRS does offer extended hours of operation for this line,⁶¹ it is not convenient for all taxpayers considering the differences in global time zones. Taxpayers have cited chronic problems with dropped calls and inability to reconnect to the original agent, resulting in inefficient service and duplicative calls and explanations by taxpayers.⁶² Further, the IRS limits this line to questions regarding tax accounts, such as overpayment status, balances owed, and correspondence; it refers taxpayers to a website that provides resources on more complex tax topics.⁶³ This is frustrating, time-consuming, and expensive for taxpayers who waited on hold for a representative only to find out their questions are ones that the representative cannot answer. The IRS should establish a toll-free number or other workable free alternative dedicated to international taxpayers, devise a way to connect taxpayers with more complex questions to an IRS employee with specialized knowledge, and provide a customer callback option.⁶⁴

Problems Accessing Online Resources and Limited Payment and Refund Options Persist

Many IRS systems still are not compatible with the needs of taxpayers abroad. While the IRS has made technological strides in accessibility, many are inapplicable to these taxpayers because of IRS limitations. For example, the IRS offers an online account application that allows individual taxpayers to access tax records, make and view payments, view their accounts and balances, create and view payment plans, obtain transcripts, and more.⁶⁵ To access an online account, taxpayers must first create an account through a credential service provider (CSP).⁶⁶ Taxpayers living outside of the United States who have a government-issued credential and a Social Security number may verify their identity through the CSP self-service option. However, taxpayers living outside of the United States who don't have a U.S. phone number, mailing address, or Social Security

57 See National Taxpayer Advocate 2015 Annual Report to Congress 72 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/ARC15_Volume1_MSP_07_International-TP-Service.pdf.

58 See National Taxpayer Advocate 2012 Annual Report to Congress 262, 265-67, 273 (Most Serious Problem: *Challenges Persist for International Taxpayers as the IRS Moves Slowly to Address Their Needs*), <https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/Most-Serious-Problems-International-Taxpayer-Issues.pdf>.

59 IRS, Contact My Local Office Internationally (July 24, 2023), <https://www.irs.gov/help/contact-my-local-office-internationally>.

60 Last year, the National Taxpayer Advocate recommended that the IRS offer customer callback on the international telephone line. The IRS agreed to explore the possibility, noting it would need to evaluate the feasibility within the IRS call center infrastructure. See TAS Recommendations and IRS Responses, TAS Recommendation 10-5 (2022), <https://www.taxpayeradvocate.irs.gov/news/directory-entry/2022-msp-10-overseas-taxpayers/> (last visited Dec. 7, 2023).

61 The hours of operation are from 6 a.m. to 11 p.m. (Eastern Time, U.S. and Canada).

62 Systemic Advocacy Management System Issue 68439 (July 25, 2023).

63 See IRS, Find Information on Complex Tax Topics (June 13, 2023), <https://www.irs.gov/help/find-information-on-complex-tax-topics>.

64 TAS has a dedicated phone line for all incoming international calls. This line is programmed to automatically route calls from abroad to the appropriate TAS office depending on the country of origin and TAS business hours. While this line is not toll-free, it guarantees that the call is directed to the appropriate office, thus saving time and frustration. The IRS should provide a similar service that would help alleviate wait times. TAS, TAS Provides One-Stop Phone Service for Taxpayers Living Abroad (Apr. 18, 2023), <https://www.taxpayeradvocate.irs.gov/news/tas-provides-one-stop-phone-service-for-taxpayers-living-abroad>.

65 IRS, Your Online Account (Oct. 10, 2023), <https://www.irs.gov/payments/your-online-account>.

66 The IRS outsources identity proofing and credential management to a CSP, which is also responsible for assisting taxpayers who have difficulty completing the process.

number need to take additional steps to verify and complete the process through a video chat call and the submission of supplementary documents. If these taxpayers cannot verify their identities through the CSP, the IRS has no practical alternative method for them to establish their identities and gain access to these online systems.

Taxpayers abroad also face difficulties in making payments to and receiving payments from the IRS. The current IRS system cannot accept electronic payments from foreign bank accounts.⁶⁷ Therefore, foreign taxpayers can only make electronic payments through a U.S. financial institution or U.S. corresponding bank. Similarly, they can only make international wire transfers, which can be expensive, from a U.S. financial institution or corresponding bank or a bank that has a banking relationship with a U.S. bank, if the taxpayers have a bank account with the foreign bank.⁶⁸ Otherwise taxpayers have to either make a paper remittance or pay with a credit card. Fortunately, the IRS is in the planning stages of the Make Payments Easy Initiative, which will allow taxpayers abroad to make electronic payments to the IRS directly from their foreign bank accounts.⁶⁹

Direct deposit of refund options for foreign taxpayers are even more limited. The only current option for international direct deposit of refunds is a manual refund issued through the International Treasury Service (ITS), which is only available for refunds over \$1,000,000 or for TAS hardship situations.⁷⁰ Between November 2022 and July 2023, the IRS issued just 12 manual refunds through ITS to taxpayers in six countries.⁷¹ Thus, for all practical purposes, this option is unavailable to almost all international taxpayers.

The IRS's Strategic Operating Plan Fails to Specify How It Will Address Customer Service Gaps

While the IRS has received significant funding from the IRA,⁷² it is unclear how much it will devote to improving service deficiencies and reducing the burden on international taxpayers. The IRS's Strategic Operating Plan (SOP) lists its priorities for the funding.⁷³ Specific provisions relating to international taxpayers in the IRS SOP are almost non-existent,⁷⁴ and it is unclear the extent to which the general improvements in service and technological enhancements will apply to international taxpayers. With the IRA funding, the IRS can analyze the needs of international taxpayers and provide much-needed outreach, education, and customer service to assist them in understanding and complying with their tax obligations. Squandering this opportunity will only further perpetuate the difficulties taxpayers abroad experience.

Taxpayers Abroad Struggle to Obtain Individual Taxpayer Identification Numbers and Efficiently Check Their Application Status

Individuals who are not eligible for Social Security numbers must use an ITIN to file their tax returns.⁷⁵ The process for obtaining an ITIN burdens and confuses taxpayers. The IRS states that it takes up to 11 weeks for international taxpayers to receive an ITIN,⁷⁶ although processing times can fluctuate throughout the

67 IRS response to TAS information request (Sept. 13, 2023).

68 *Id.*

69 IRS response to TAS information request (Sept. 13, 2023).

70 *Id.*

71 *Id.*

72 Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 1818, 1831-33 (2022); see also Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 251, 137 Stat. 10, 30-31 (rescinding some of the funding).

73 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

74 A search of the word "international" in the IRS SOP results in 12 hits with only four actually involving provisions relating to international taxpayers.

75 See IRC § 6109(d), (i); Treas. Reg. § 301.6109-1(d)(3)(ii). Individuals eligible for Social Security numbers are U.S. citizens, lawful permanent residents (green card holders), non-citizens who are authorized to work in the United States, and non-citizens who need a Social Security number to receive certain benefits and services. For more information on who qualifies for a Social Security number, see Abigail F. Kolker & William R. Morton, Cong. Rsch. Serv., R47483, *Noncitizen Eligibility for Employment Authorization and Work-Authorized Social Security Numbers (SSNs)* (Mar. 22, 2023), <https://crsreports.congress.gov/product/pdf/R/R47483>.

76 See IRS, Instructions for Form W-7, Application for IRS Individual Taxpayer Identification Number (Nov. 2023), <https://www.irs.gov/pub/irs-pdf/iw7.pdf>.

year,⁷⁷ and the IRS rejected approximately 26 percent of the applications processed in FY 2022.⁷⁸ Taxpayers may only apply for an ITIN when they need one to file a federal income tax return, unless a limited exception applies.⁷⁹ To apply, the individual must complete Form W-7, Application for IRS Individual Taxpayer Identification Number, and submit it with their income tax return (unless an exception applies) and identification documents (*e.g.*, a passport or birth certificate).⁸⁰ The documents must be the originals or copies certified by the issuing agency as exact copies.⁸¹

International taxpayers have two options to submit the application: (1) mail Form W-7 to the IRS and include the original documents or certified copies, thus risking the originals being lost or not timely returned by the IRS⁸² or (2) pay to use a Certifying Acceptance Agent (CAA) who reviews the documents and submits the application to the IRS with copies of the documents.⁸³ Taxpayers located in the United States also have the option to get help by making an appointment at a designated TAC, but there are no TACs outside the United States and Puerto Rico. Failure to provide requisite identity documents often results in rejection of the application. For applications the IRS processed in FY 2022, taxpayers had an almost 15 percent higher rate of success for receiving an ITIN when submitting via a CAA than individuals who submitted their applications directly (84.1 percent to 69.4 percent) and approximately half the rejection rate (15.9 percent to 30.5 percent).⁸⁴ As of February 2023, there are 410 Acceptance Agents⁸⁵ and CAAs in 43 foreign countries.⁸⁶ While it is actively conducting outreach to increase the number of domestic CAAs, the IRS should also focus on increasing the number of foreign CAAs.⁸⁷ It generally costs a taxpayer several hundred dollars to use a CAA, which is often too expensive for low-income individuals. While some VITA sites currently offer CAA services,⁸⁸ they may not use VITA grant funds for this purpose. The IRS should explore expanding the scope of its VITA program to allow grant funds to be used to provide certification services for taxpayers at VITA sites.

77 See, *e.g.*, IRS, IRS Operations: Status of Mission-Critical Functions, Requested an Individual Taxpayer Identification Number (ITIN) (Dec. 1, 2023), <https://www.irs.gov/newsroom/irs-operations-status-of-mission-critical-functions>.

78 IRS, CDW, Entry Application Programs (EAP) FY 2022 (through Sept. 28, 2023).

79 See Internal Revenue Manual (IRM) 3.21.263.5.2, Filing Tax Return versus Exception Criteria (Jan. 1, 2023), https://www.irs.gov/irm/part3/irm_03-021-263r. ITINs expire if not used on a tax return at least once every three years, and all ITINs issued prior to 2013 have expired. IRC § 6109(i)(3).

80 IRC § 6109(i)(2). The IRS accepts 13 types of identification documents. See IRM 3.21.263.5.6(4), ITIN Documentation Requirements (Nov. 12, 2021), https://www.irs.gov/irm/part3/irm_03-021-263r.

81 IRC § 6109(i)(2); IRM 3.21.263.6.3.4.2.1(4), Supporting Identification Document Certification Requirements (Mar. 16, 2023), https://www.irs.gov/irm/part3/irm_03-021-263r. Employees of U.S. consulates and embassies may be able to certify foreign documents.

82 See, *e.g.*, TAS, TAS Helps Locate Missing Passports Filed With Individual Taxpayer Identification Number (ITIN) Request (Sept. 23, 2020), <https://www.taxpayeradvocate.irs.gov/news/successstories-tas-helps-locate-missing-passports-filed-with-individual-taxpayer-identification-number-itin-request/>.

83 IRC § 6109(i)(1); Treas. Reg. § 301.6109-1(d)(3)(ii), (iv); IRM 3.21.263.4.2, Acceptance Agents Form W-7 Documentation Requirements (Jan. 1, 2022), https://www.irs.gov/irm/part3/irm_03-021-263r.

84 IRS, CDW, EAP, FY 2022 (through Sept. 28, 2023).

85 Acceptance Agents are agents who are authorized by the IRS to assist individuals obtain ITINs. They review necessary documents and forward completed Forms W-7 to the IRS. However, they cannot certify original documents. IRS, How to Become an Acceptance Agent for IRS ITIN Numbers (Aug. 22, 2023), <https://www.irs.gov/individuals/international-taxpayers/how-to-become-an-acceptance-agent-for-irs-itin-numbers>.

86 IRS response to TAS information request (Sept. 13, 2023).

87 Relatedly, the IRS needs to ensure an end to the moratorium on accepting CAA applications that has been in place since August 2022 and is currently expected to last until the end of 2023. See IRS, New ITIN Acceptance Agent Program Changes (Nov. 20, 2023), <https://www.irs.gov/individuals/new-itin-acceptance-agent-program-changes>. While the purpose of the moratorium is laudable – modernizing the application process to include electronic filing – it is concerning that it has lasted as long as it has.

88 IRS, VITA Sites that Offer CAA Services, <https://www.irs.gov/individuals/vita-sites-that-offer-caa-services> (last visited Dec. 15, 2023).

ITINs are critical for taxpayers to be able to comply with their U.S. tax obligations, but delays receiving them occur because the application and tax return are submitted and processed on paper, not electronically.⁸⁹ If a taxpayer abroad wants to know the status of an application or is struggling with the documentation rules, it can be difficult to get assistance. All ITIN applications go to the IRS's Austin ITIN unit, which has specialized training and experience, but there is no way for taxpayers to contact the Austin ITIN unit by phone for questions on their specific application.⁹⁰



Individual Taxpayer Identification Numbers are critical for taxpayers to be able to comply with their U.S. tax obligations. But the IRS processes the applications and related returns on paper, which causes delays.

The IRS SOP stated a generalized intention to modernize the ITIN process.⁹¹ To better serve taxpayers, prevent unnecessary delays, and encourage voluntary compliance, the National Taxpayer Advocate recommends the IRS modernize the ITIN process to allow taxpayers to apply for an ITIN throughout the year and submit alternate proof of a filing requirement other than an annual tax return;⁹² allow CAAs to electronically file Form W-7 with copies of the supporting documentation; and modernize the Real-Time System (RTS) the IRS uses to process W-7 forms to enhance data quality and management, including a process for logging documents upon receipt. The IRS should also provide dedicated phone resources, including a phone number to the Austin ITIN unit, to assist taxpayers with the ITIN application process and prominently display current estimates of ITIN processing times on the ITIN landing page of the IRS website.

Timeframes for Taxpayers Abroad to Respond to Key IRS Notices Are Insufficient and in Some Cases Non-Existent

It generally takes longer for mail sent from the United States to reach taxpayers abroad. Contributing to the delays are the variations in postal systems by country and problems with taxpayers not updating their foreign address.⁹³ While it is not possible to determine the average mailing time due to external factors in other countries, it can be significant.⁹⁴ Many IRS notices are time-sensitive, requiring responses within a certain timeframe. Failure to take timely action often carries serious consequences. The IRS issued over 1.3 million notices and other correspondence to foreign addresses in FY 2021 and over 1.6 million in FY 2022.⁹⁵

89 While the IRS announced its Paperless Processing Initiative as part of its SOP, it did not eliminate any paper processing from the Form W-7 application process. IRS response to TAS information request (Sept. 14, 2023).

90 IRS response to TAS information request (Sept. 14, 2023).

91 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan 22 (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

92 See Erin M. Collins, Most Taxpayers Needing a New ITIN Are Prohibited From Filing Electronically, Causing Unnecessary Refund Delays, NATIONAL TAXPAYER ADVOCATE BLOG (Feb. 6, 2023), <https://www.taxpayeradvocate.irs.gov/news/nta-blog-most-taxpayers-needing-a-new-itin-are-prohibited-from-filing-electronically-causing-unnecessary-refund-delays/>.

93 The IRS has developed an "update my foreign address" application. Once this application is available to the public for the Individual Online Account, it should help prevent delays due to inaccurate addresses. IRS, Individual Online Account (IOLA) & Tax Pro Account Status Briefing (Sept. 27, 2023) (on file with TAS). While the results remain to be seen, this is a step in the right direction.

94 See Laura Snyder et al., *Mission Impossible: Extraterritorial Taxation and the IRS*, TAX NOTES (Mar. 22, 2021) (citing a 2020 Taxpayer Advocacy Panel study concluding that it is common for it to take more than 50 days, and sometimes more than 100, for mail from the IRS to reach international recipients).

95 IRS, CDW, Notice Delivery System, FY 2022 (through Sept. 28, 2023); National Taxpayer Advocate 2022 Annual Report to Congress 173, n.107 (Most Serious Problem: Overseas Taxpayers: Taxpayers Outside of the United States Face Significant Barriers to Meeting Their U.S. Tax Obligations), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_10_Overseas.pdf.

For taxpayers abroad, lack of timely notification causes them to lose critical administrative, due process, and judicial rights. In several instances, the IRS provides taxpayers abroad either no additional time or insufficient additional time. For example, the IRS sends paper correspondence to taxpayers who are subject to correspondence and Automated Underreporter (AUR) examinations.⁹⁶ The IRS only provides taxpayers with a foreign address 15 additional days to respond to an AUR audit inquiry;⁹⁷ the IRS gives taxpayers abroad 45 days and domestic taxpayers 30 days. Even more egregious, the IRS provides taxpayers abroad no additional time in the case of a correspondence exam.⁹⁸ If the taxpayer does not timely provide information, the IRS will generally issue a notice of deficiency. Further, while an extension to provide documentation to the IRS in a correspondence exam may be available upon request, many taxpayers may not be aware of this option. The IRS should provide additional time upfront without putting the burden on a taxpayer to request an extension. While the IRS can administratively extend response time for some notices, others, such as Collection Due Process (CDP) and math error notices, are statutory.⁹⁹ Because of the significant legal consequences these notices impart, Congress should consider amending the CDP and math error notice requirements to allow taxpayers located outside of the United States additional time to respond.¹⁰⁰

Taxpayers Should Receive a Separate Notice Informing Them of Passport Revocation and Providing Them With Appeal Rights

There is also one instance in which a lack of any type of notice can have a profound effect on taxpayers, especially those abroad. IRC § 7345 provides for the revocation or denial of passports in the case of certain tax delinquencies. The IRS is required to certify individuals to the Department of State when they have a “seriously delinquent tax debt.”¹⁰¹ The Department of State will generally not renew a passport or issue a new passport upon receiving the certification and can also revoke a passport. The IRS does not send a standalone precertification notice; rather, it only notifies the taxpayer at the time it makes the certification.¹⁰² While a

96 IRS response to TAS information request (Sept. 15, 2023). The IRS uses correspondence examinations to look at limited issues on a taxpayer's return, and they are generally narrower in scope than a regular audit. The AUR program compares income reported on a taxpayer's return to information provided to the IRS by third parties. See IRS, How the IRS Ensures Compliance With the Tax Laws (Oct. 23, 2023), <https://www.irs.gov/about-irs/how-the-irs-ensures-compliance-with-the-tax-laws>.

97 IRM 4.19.3.22.8(7)a, Correspondence (June 28, 2021), https://www.irs.gov/irm/part4/irm_04-019-003r.

98 Any taxpayer may request an extension, and the IRS will grant an automatic 30-day extension for the first request. IRM 4.19.13.11.7(2), Taxpayer Requests Additional Time to Respond (Apr. 6, 2022), https://www.irs.gov/irm/part4/irm_04-019-013r.

99 CDP notices allow taxpayers to request a hearing before the Independent Office of Appeals (Appeals) to review a filed Notice of Federal Tax Lien or a proposed levy, but they must do so within 30 days of the date of the CDP notice. IRC §§ 6320(a)(3)(B), 6330(a)(3)(B). After the hearing, Appeals issues a notice of determination, which allows taxpayers 30 days in which to request judicial review of the determination. IRC §§ 6320(c), 6330(d)(1). While the Supreme Court recently held that this 30-day time limit is not jurisdictional and may be tolled in *Boechler, P.C. v. Comm'r*, 596 U.S. 199 (2022), a taxpayer must establish that equitable tolling applies. Math error notices allow a taxpayer 60 days in which to request abatement of a “summary assessment” of tax arising from mathematical or clerical errors as defined in IRC § 6213(g). See IRC § 6213(b)(1), (2)(A). If a taxpayer timely requests abatement, the IRS must abate the summary assessment and then follow deficiency procedures under IRC § 6212 if it wishes to reassess an increase in tax. IRC § 6213(b)(2)(A).

100 While the IRC allows taxpayers outside the United States an additional 60 days (150 days total) to challenge a deficiency determination under IRC § 6213(a), it does not afford them a similar extension of the 30-day period under IRC §§ 6320(c) and 6330(d)(1). Congress should amend IRC § 6330(d) to allow additional time to request a CDP hearing and to request judicial review of a CDP determination, consistent with IRC § 6213(a). See National Taxpayer Advocate 2002 Annual Report to Congress 244 (Legislative Recommendation: *Collection Due Process*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/arc2002_section_two.pdf; see also National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Give Taxpayers Abroad Additional Time to Request a Collection Due Process Hearing and to File a Petition Challenging a Notice of Determination in the U. S. Tax Court)*. Similarly, IRC § 6213(b)(2)(A) does not allow taxpayers outside of the United States any additional time to challenge a math error notice. To protect taxpayer rights and promote consistency, Congress should amend IRC § 6213(b)(2)(A) to allow taxpayers an additional 60 days (120 days total) to request an abatement of tax when a math error notice is addressed to a person outside the United States. See National Taxpayer Advocate 2024 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (Give Taxpayers Abroad Additional Time to Request Abatement of a Math Error Assessment)*.

101 A “seriously delinquent tax debt” is defined as unpaid, legally enforceable taxes (including interest and penalties) totaling more than \$50,000 (adjusted annually for inflation), for which the IRS has filed a Notice of Federal Tax Lien and all administrative remedies under IRC § 6320 have lapsed or been exhausted, or a levy has been issued. IRC § 7345(b)(1).

102 IRC § 7345(d). The only direct notice the IRS provides to taxpayers that their passports may be revoked is a paragraph on the second page of a CDP levy notice (Letter 1058) that the IRS may have issued months or even years prior to making a certification. A seriously delinquent tax debt certification is not the reason for the notice.

taxpayer can challenge a certification in court, this can be costly and time-consuming. Because of the vital importance of a passport to Americans, especially those abroad, the IRS should provide a precertification notice to taxpayers that allows them to appeal a proposed IRS certification of a seriously delinquent tax debt.¹⁰³

CONCLUSION AND RECOMMENDATIONS

Taxpayers abroad continue to face significant challenges complying with their U.S. tax obligations. The extreme complexity of the tax code is magnified by the interpretation and application of the U.S. tax laws through the tax laws of the countries in which taxpayers reside and the technical treaties that may exist between the United States and their countries. Taxpayers abroad are a community the IRS underserves, and they need help that is unavailable from the IRS in person and is difficult and sometimes expensive to otherwise obtain. They experience unique burdens without the benefit of IRS services. While simplification of the tax code is up to Congress, unless and until that occurs, it is incumbent upon the IRS to do more to help taxpayers abroad understand and comply with their tax obligations. The IRS can and should take actions administratively, such as facilitating in-person and remote filing assistance through VITA and TCE and modernizing the ITIN processing system. With the additional funding provided by the IRA, the IRS can cure deficiencies in service to taxpayers abroad if it makes them a priority. In the absence of assistance and support from the IRS, taxpayers abroad may demonstrate waning compliance.

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Clarify the scope of Rev. Proc. 2020-17 to provide certainty regarding the reporting requirements of foreign workplace retirement plans under IRC § 6048, including foreign pensions where deferral of tax on earnings is available under a U.S. tax treaty.
2. Translate the most common international tax forms and instructions, starting with Publication 54, into multiple languages other than English.
3. Provide in-person services abroad including reopening foreign tax attachés and/or TACs, beginning with cities with the highest number of filers. Until it does, the IRS should offer or facilitate virtual TAC, VITA, and TCE appointments to taxpayers outside of the United States, with the same services available to domestic taxpayers.
4. Develop a cross-functional team solely focused on assisting international taxpayers. The team should have regular meetings, objectives, and measurable results.
5. Provide a toll-free international telephone line or alternative free service dedicated solely to taxpayers abroad.
6. Provide greater accessibility to online accounts for taxpayers abroad who cannot authenticate through the current CSP.

103 See Nina E. Olson, The IRS's New Passport Program: Why Notice to Taxpayers Matters (Part 1 of 2), NATIONAL TAXPAYER ADVOCATE BLOG (Feb. 6, 2023), <https://www.taxpayeradvocate.irs.gov/news/ntablog-the-irss-new-passport-program-why-notice-to-taxpayers-matters-part-1-of-2/>; Nina E. Olson, The IRS's New Passport Program, How Lack of Notice Harms Taxpayers (Part 2 of 2), NATIONAL TAXPAYER ADVOCATE BLOG (Feb. 6, 2023), <https://www.taxpayeradvocate.irs.gov/news/ntablog-the-irss-new-passport-program-how-lack-of-notice-harms-taxpayers-part-2-of-2/>.

7. Modernize the ITIN application process to: 1) allow taxpayers to apply for an ITIN throughout the year and submit alternate proof of a filing requirement other than an annual tax return; 2) allow CAAs to electronically file Form W-7 with copies of the supporting documentation; and 3) improve the RTS the IRS uses to process W-7 forms to enhance data quality and management, including a process for logging documents upon receipt. The IRS should also provide dedicated resources and a phone number to the Austin ITIN unit and prominently display current estimates of ITIN processing times on the ITIN landing page of the IRS website.
8. Explore expanding the scope of the VITA program to allow grant funds to be used to provide ITIN certification services for taxpayers at VITA sites.
9. Allow taxpayers located outside the United States an additional 60 days upfront to respond to all IRS correspondence that requires a response or other action from the taxpayer.
10. Provide a precertification notice to taxpayers that allows them to attempt to resolve tax liabilities and appeal a proposed IRS certification of a seriously delinquent tax debt before the IRS sends a certification regarding passport revocation to the Department of State. This notice should give taxpayers outside of the United States an additional 60-day response time beyond that provided domestically.

Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6038D and 31 U.S.C. § 5314 to eliminate duplicative reporting of assets on IRS Form 8938 where a foreign financial account is correctly reported or reflected on an FBAR while ensuring continued IRS access to foreign financial asset data for both tax compliance and financial crime enforcement purposes.
2. Amend IRC §§ 6320(a)(3)(B), 6330(a)(3)(B), and 6330(d)(1) to allow 90 days (*i.e.*, an additional 60 days) (i) to request a CDP hearing after the issuance of a CDP lien or levy notice and (ii) to file a petition for review in the U.S. Tax Court after the IRS issues a notice of determination if the notice is addressed to a person outside the United States.
3. Amend IRC § 6213(b)(2)(A) to allow taxpayers 120 days to request an abatement of tax when a math error notice is addressed to a person outside the United States.

RESPONSIBLE OFFICIALS

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

Holly Paz, Commissioner, Large Business and International Division

Kenneth Corbin, Commissioner, Wage and Investment Division

David Padrino, Chief Transformation and Strategy Officer, Transformation and Strategy Office



APPEALS

Despite Some Improvements, Many Taxpayers and Tax Professionals Continue to Perceive the IRS Independent Office of Appeals as Insufficiently Independent

WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

The lack of independence and operational efficiency in the IRS Independent Office of Appeals (Appeals) process undermines taxpayer trust and prolongs dispute resolution. When taxpayers are unable to resolve their issue in Appeals or question the impartiality of Appeals, they may opt for costly litigation instead, adding financial and emotional strain. These issues erode confidence in the tax system, are burdensome, and compromise the taxpayer's statutory *right to appeal an IRS decision in an independent forum*.

EXPLANATION OF THE PROBLEM

Appeals is an essential forum for taxpayers to administratively resolve IRS disputes. Independence and operational efficiency are twin pillars that support a thriving Appeals function. While Appeals is dedicated to these principles, the National Taxpayer Advocate has concerns about Appeals' current operations and structure. These include:

- Not all Appeals decisions are autonomous and transparent;
- The perception exists that Chief Counsel attorneys attend Appeals conferences to develop issues for trial;
- Proposed regulations limit Appeals' independence;
- Taxpayers experience significant delays scheduling in-person conferences;
- A compliance culture lives within the Appeals organization;
- Appeals needs to use the Alternative Dispute Resolution (ADR) program to its full potential; and
- Appeals needs to do additional work to ensure its independence.

ANALYSIS

Background

A process for administratively appealing an IRS decision has existed in one form or another since 1927.¹ The Taxpayer First Act of 2019 (TFA) marked a significant legislative effort to modernize the IRS and enhance taxpayer rights by codifying the formal establishment of Appeals.² This provision sought to provide taxpayers with a fair and impartial forum for resolving tax disputes, thereby reducing the need for costly and time-consuming litigation.³ While the TFA aimed to make the tax dispute resolution process more efficient and less burdensome for taxpayers,⁴ challenges related to scheduling conferences, resource limitations, and a prevailing compliance culture within Appeals hinder effectiveness. On a positive note, in May 2020, the IRS Commissioner appointed Andrew Keyso as the Chief of Appeals. The National Taxpayer Advocate applauds his efforts to listen to internal and external stakeholders to improve the independence and functionality of Appeals. But the culture and operations are slow to change. The National Taxpayer Advocate is optimistic that with the additional Inflation Reduction Act funds, the Chief of Appeals will be able to hire the necessary staff to improve the organization and provide better service for taxpayers. But some of the challenges are unrelated to funding.

Not All Appeals Decisions Are Autonomous and Transparent

Recent data and observations indicate that Appeals Officers (AOs) often lack autonomy in making settlement decisions based on the hazards of litigation.⁵ This is contrary to the intended role of AOs to independently assess the hazards of litigation and guide the settlement process. This perceived lack of autonomy undermines the integrity of the Appeals process and erodes taxpayer confidence in the system.

In a typical case, a taxpayer interacts with an AO who has the authority to settle a case. Appeals also employs specialists, such as subject matter experts and technical guidance coordinators, who work behind the scenes on coordinated issues.⁶ These specialists often approach cases differently than AOs and are not as accessible to taxpayers as an AO. While AOs aim to resolve cases based on a taxpayer's unique facts and circumstances, their settlement authority can be limited on cases involving Appeals specialists and coordinated issues.⁷

We have heard from taxpayers and practitioners that they are frustrated as Appeals specialists often inform AOs and taxpayers that they cannot approve a settlement that deviates from undisclosed, nationwide settlement parameters for a coordinated issue or industry.⁸ This lack of transparency hinders meaningful

1 H.R. REP. NO. 116-39, pt. 1, at 28 n.5 (2019).

2 Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019) (codified at IRC § 7803(e)); H.R. REP. 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).

3 H.R. REP. NO. 116-39, pt. 1, at 29 (2019). Congress enacted this provision to “foster confidence in the integrity of the IRS and the independence of its administrative proceedings and to encourage voluntary compliance [by way of] an independent administrative appeals function within the IRS.”

4 In February 2023, the Treasury Inspector General for Tax Administration (TIGTA) determined that Appeals personnel were not always notifying taxpayers of their IRC § 7803(e)(7) case file access rights or documenting their case management system with the specific coding or history narrative as directed by internal guidance. Further, when Appeals personnel sent case files, they did not always provide them to the taxpayer more than ten calendar days before the Appeals conference, as required by statute. TIGTA, Ref. No. 2023-15-010, *Actions Have Been Taken to Implement Taxpayer First Act Provisions Related to the IRS Independent Office of Appeals; However, Some Improvements Are Still Needed* (2023), <https://www.tigta.gov/reports/audit/actions-have-been-taken-implement-taxpayer-first-act-provisions-related-irs>.

5 Appeals Technical Employees have varying official titles, such as AO, Settlement Officer, and Appeals Team Case Leader. For simplicity, this Most Serious Problem refers to the basket of titles collectively as “Appeals Officers” or “AOs,” and these should be read as including Settlement Officers and Appeals Team Case Leaders.

6 See Internal Revenue Manual (IRM) 8.7.3.3, Coordinated Issues (Oct. 1, 2012) (governs when and to what extent Appeals cases engage specialists), http://www.irs.gov/irm/part8/irm_08-007-003.

7 See IRM 8.7.3.3.2(1), Appeals Coordinated Issues with Review and Concurrence (Dec. 1, 2022) (“An ACI with Review and Concurrence ... is an issue with Service-wide impact or importance, requiring Technical Specialist evaluation to ensure uniformity and consistency nationwide. ... [The AO] must obtain the Technical Specialist's tentative approval of the settlement proposal and/or settlement range before any settlement options are discussed with the taxpayer.”), http://www.irs.gov/irm/part8/irm_08-007-003.

8 Discussions with outside stakeholders (Sept. 28, 2023). See IRM 8.7.3.3, Coordinated Issues (Oct. 1, 2012) (governs when and to what extent Appeals cases engage specialists), http://www.irs.gov/irm/part8/irm_08-007-003.

negotiation and often leads to a breakdown in the settlement process. Taxpayers cannot meaningfully engage in a discussion on case resolution if Appeals makes the decision based on undisclosed settlement standards to which taxpayers are not privy. Many times, taxpayers are not communicating with the decision-maker or do not have access to the decision-maker since a “wizard behind the curtain” exists who is making decisions for the assigned AO in coordinated cases.⁹

Many practitioners perceive the current system as encouraging a “one-size-fits-all” approach to settlements involving coordinated issues, disregarding the unique facts and circumstances of individual cases. This often forces taxpayers into unnecessary litigation, as they think they may receive a more impartial consideration of their unique facts and circumstances in Tax Court. The lack of autonomy and transparency in the Appeals process undermines public confidence in the tax system. Courts base their decisions on the unique facts and circumstances of each case, a practice that practitioners perceive is not consistently followed by the current Appeals process.

— THE LACK OF AUTONOMY AND TRANSPARENCY —
IN THE APPEALS PROCESS
undermines public confidence in the tax system.

The current practice of relying on undisclosed settlement parameters concerning coordinated issues is at odds with the judicial mindset and culture that Appeals should embody. Additionally, because they might lack training, experience, or confidence in their understanding of complex issues, AOs may defer to specialists even if they are not required to do so. This problem is exacerbated for AOs who are new to the role or unfamiliar with the complexity of certain issues they handle. Appeals does not require AOs to have prior litigation experience or a working knowledge of the rules of evidence, which courts often rely upon in reaching a decision.¹⁰ Many AOs face challenges in determining how to correctly assess the hazards of litigation.

Appeals should make it explicit that specialists serve only as consultants. The AO should be the one responsible for understanding the legal issues and facts and for assessing the hazards of litigation independently. Appeals should reevaluate its current list of 48 coordinated issues to determine if Appeals can grant AOs more autonomy in these matters.¹¹

At the conclusion of each Appeals case, the AO must draft an Appeals Case Memorandum (ACM) or its equivalent¹² that explains the rationale for the settlement decision. Appeals provides that ACM to the examination division.¹³ Independence should require that Appeals share the ACM with the taxpayer at the same time. While AOs are supposed to verbally discuss the rationale for a decision with a taxpayer, these discussions do not always include the same analysis of the hazards of litigation as determined by the AO in the ACM. Taxpayers should not see AOs as being in close association with the IRS function that raised the issue. It is not the job of Appeals to help the IRS in developing its cases or issues; it must remain neutral and be independent.

⁹ Discussions with outside stakeholders (Sept. 28, 2023).

¹⁰ See IRS, Standard Position Descriptions for Appeals Officers, SPD Nos. 95758 (Grade 11), 92930 (Grade 12), 92931 (Grade 13), 92932 (Grade 14), and 93207 (Grade 15), none of which require experience in tax litigation or expertise with rules of evidence.

¹¹ This list identifies issues on which AOs must seek guidance from specialists. It does not provide the settlement standards used by Appeals specialists. For a current list, see IRS, Appeals Coordinated Issues and Appeals Settlement Guidelines (May 5, 2023), <https://www.irs.gov/appeals/appeals-coordinated-issues-and-appeals-settlement-guidelines>. See IRS response to TAS fact check (Dec. 7, 2023) (confirming 48 total coordinated issues).

¹² See IRM 8.6.2.2, Introduction to Appeals Case Memos (ACMs) (Aug. 17, 2017), http://www.irs.gov/irm/part8/irm_08-006-002. For less complicated matters, the IRM allows for Form 5402, Appeals Transmittal and Case Memo, in lieu of an ACM. See IRM 8.6.2.3.2, Using Form 5402 as the Appeals Case Memo (ACM) (Mar. 16, 2015), http://www.irs.gov/irm/part8/irm_08-006-002.

¹³ See IRM 8.6.2.2.2, Types of Appeals Case Memos (ACM) (Mar. 16, 2015), http://www.irs.gov/irm/part8/irm_08-006-002; IRM 8.6.2.2.1, Four Major Sections of an Appeals Case Memo (ACM) (Mar. 16, 2015), http://www.irs.gov/irm/part8/irm_08-006-002.

If Appeals continues to share the ACM with Compliance, the National Taxpayer Advocate recommends that Appeals share a copy with the taxpayer at the close of every case to protect a taxpayer's *right to be informed* about the rationale behind an Appeals decision.¹⁴

The Perception Exists That Chief Counsel Attorneys Attend Appeals Conferences to Develop Issues for Trial

The presence of IRS Chief Counsel attorneys at initial conferences in large and certain coordinated cases appears to compromise Appeals' independence, thereby affecting the quality of settlements and overall taxpayer confidence in the Appeals process.¹⁵ Practitioners report a concern with the presence of Chief Counsel attorneys as it is seen as geared toward developing issues for trial for the benefit of the IRS. This atmosphere discourages taxpayers and impedes the likelihood of reaching a fair and impartial settlement.

The Office of Chief Counsel is the chief legal advisor to the IRS on all matters pertaining to the interpretation, administration, and enforcement of the internal revenue laws (as well as all other legal matters). Counsel attorneys provide legal guidance and interpretive advice to the IRS. As such, Counsel attorneys "speak with one voice" and might not provide independent advice to AOs on evaluating the hazards of litigation.

The National Taxpayer Advocate recommends that Appeals engage external experts to assist on complex matters to properly assess hazards of litigation in valuation issues, difficult cases, or issues of first impression. The ability to use external experts would provide an additional level of independence. This would also ensure the Appeals process focuses on achieving a fair and impartial settlement.

Proposed Regulations Limit Appeals Independence

There are proposed regulations implementing the Taxpayer First Act that potentially undermine the independence of Appeals.¹⁶ They prohibit Appeals from considering a taxpayer's argument that a Treasury regulation, IRS notice, or revenue procedure is invalid unless there is an unreviewable decision from a federal court. The proposed regulations define an unreviewable decision as "a decision of a Federal court that can no longer be appealed to any Federal court because all appeals in a case have been exhausted or the time to appeal has expired and no appeal was taken."¹⁷

The regulation also excepts from Appeals consideration arguments a taxpayer raises that the IRS asserts is a frivolous position (*e.g.*, "constitutional" issues).¹⁸ However, there are situations in which the IRS wrongly proposes a frivolous return penalty for constitutional issues. For example, a taxpayer may properly assert a valid Fifth Amendment privilege against self-incrimination. If the IRS proposes a frivolous return penalty, the

14 IRC § 7803(a)(3)(A).

15 Although no formal definition of a "large case" within Appeals exists, we use the term to mean cases involving organizations with assets of \$10 million or more and cases with specified coordinated issues.

16 Prop. Reg. §§ 301.7803-2 and 301.7803-3, 87 Fed. Reg. 55,934 (Sept. 13, 2022) (Resolution of Federal Tax Controversies by the Independent Office of Appeals), <https://www.federalregister.gov/documents/2022/09/13/2022-19662/resolution-of-federal-tax-controversies-by-the-independent-office-of-appeals>. See also Jeffrey S. Luechtefeld, *Proposed Regs Limit the Independence of the Office of Appeals*, Tax NOTES, Oct. 17, 2022, at 373, <https://www.taxnotes.com/lr/resolve/tax-notes-today-federal/proposed-regs-limit-the-independence-of-the-office-of-appeals/7f737>.

17 Prop. Reg. § 301.7803-2(c)(18), 87 Fed. Reg. 55,934, 55,942 (Sept. 13, 2022).

18 Prop. Reg. § 301.7803-2(c)(1), 87 Fed. Reg. 55,934, 55,937 (Sept. 13, 2022).

[The Proposed Regulation] provides that Appeals consideration is not available for an administrative determination made by the IRS with respect to a particular taxpayer in which the IRS rejects a frivolous position, which includes any case solely involving the failure or refusal of the taxpayer to comply with the tax laws because of frivolous moral, religious, political, *constitutional*, conscientious, or similar grounds. (emphasis added).

AO will not be able to judge the hazards of litigation on that issue. Under the proposed regulation, Appeals cannot consider the case, thereby requiring these taxpayers to litigate the issue without an administrative appeals review.¹⁹

In other words, the proposed regulations state that an AO cannot consider the hazards of litigation on an issue that questions the validity of an official agency interpretation where the IRS may still appeal a judicial decision on that interpretation, even if the original decision was in the taxpayer's favor.²⁰ This would effectively tie the AO's hands, forcing them to align with the IRS's official position rather than making an independent assessment of the probability of a taxpayer succeeding in challenging a regulation, notice, or revenue procedure even if a court has already found in the taxpayer's favor.

This is not a purely academic concern. For example, multiple cases²¹ have held IRS notices invalid because of the agency's violation of the Administrative Procedure Act (APA).²² Yet, under the proposed regulations, AOs are prohibited from considering the legal hazards concerning the IRS's compliance with the APA during the period in which the IRS has appealed or still could appeal such decisions. What then is the role of the Independent Office of Appeals? Is it an arm of the IRS, or is it independent? These proposed regulations restrict Appeals' ability to act independently in resolving cases without litigation.²³

The IRS should revisit the proposed regulations implementing the TFA that limit the AO's ability to independently consider all the hazards of litigation, even those contrary to the IRS's official position when the IRS is actively appealing a judicial decision. This is one reason why Appeals needs its own independent legal counsel rather than relying on the "one voice" of counsel.

Taxpayers Experience Significant Delays Scheduling In-Person Conferences

The foundation of an effective Appeals process is the opportunity for taxpayers to engage directly with the decision-maker.²⁴ Yet, current scheduling practices and operational constraints undermine the value of in-person meetings, leading to resolution delays and in some cases, forcing taxpayers to opt for litigation instead of the Appeals process.

Taxpayers report significant delays in scheduling Appeals conferences, particularly for coordinated issues. Some taxpayers face wait times of nine to 12 months, which is sometimes longer than obtaining a Tax Court date.²⁵ Some practitioners attribute this to the current work arrangement where some AOs are in the office only one day a week, leading to a bottleneck of face-to-face conference requests.²⁶ This delay is counterproductive to the resolution process, undermines the purpose of the Appeals system, and is contrary to the taxpayer's *right to quality service*.

19 See *Youssefzadeh v. Comm'r*, No. 14868-14 L (T.C. Nov. 6, 2015) (order distinguishing a taxpayer's Fifth Amendment invocation for portions of Schedule B from a refusal to file a meaningful tax return on constitutional grounds).

20 Prop. Reg. § 301.7803-2(c)(18)-(20). See also IRS, Interim Guidance Memorandum AP-08-0922-0011, Interim Guidance for Cases in Which Taxpayers Raise Arguments Regarding the Validity of a Treasury Regulation or Procedural Validity of an IRS Notice or Revenue Procedure (Sept. 14, 2022), <https://www.irs.gov/pub/foia/ig/appeals/ap-08-0922-0011.pdf>.

21 See, e.g., *Green Valley Invs., LLC v. Comm'r*, 159 T.C. 80 (2022); *CIC Servs., LLC v. IRS*, 141 S.Ct. 1582 (2021); *Mann Constr., Inc. v. United States*, 27 F.4th 1138 (6th Cir. 2022).

22 5 USC § 551, et seq.

23 See Jeffrey S. Luechtefeld, *Proposed Regs Limit the Independence of the Office of Appeals*, TAX NOTES, Oct. 17, 2022, at 373, <https://www.taxnotes.com/lr/resolve/tax-notes-today-federal/proposed-regs-limit-the-independence-of-the-office-of-appeals/7f737>.

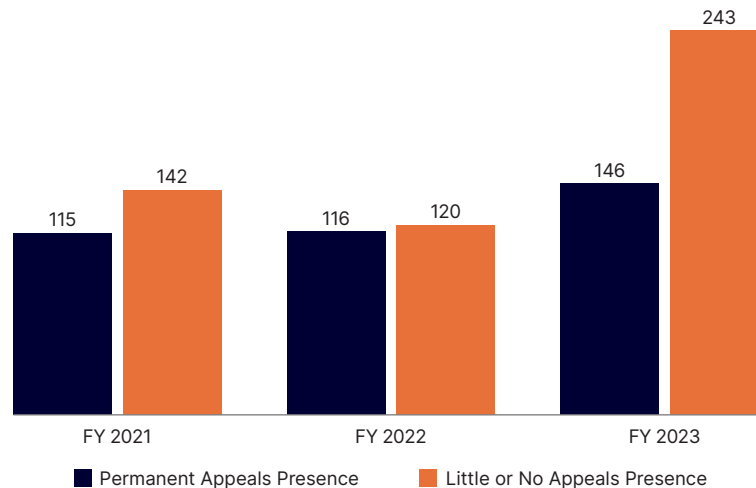
24 "Conferences are a key way in which Appeals hears the taxpayer's position, understands the law and facts in dispute and proposes a resolution [...]. During the conference, the Appeals officer will engage with taxpayers in discussing potential settlements. At the conclusion of their appeal, they should understand exactly how and why their case was resolved." IRS News Release, IR-2023-101, Improving Nationwide Access to IRS Appeals; Public Input Wanted (May 11, 2023), <https://www.irs.gov/newsroom/improving-nationwide-access-to-irs-appeals-public-input-wanted>.

25 Discussions with outside stakeholders (Sept. 28, 2023).

26 *Id.*

FIGURE 2.10.1

**Average Number of Days for a Taxpayer to Get an Appeals Conference
Once the IRS Assigns an Appeals Officer**



Currently, Appeals does not have a permanent presence in every state, but it must continue to provide in-person conferences in all states to meet the needs of taxpayers. For fiscal year (FY) 2021 to FY 2023, there were 11 states with little to no Appeals presence.²⁷ All other states, including the District of Columbia, have at least one permanent Appeals office.

Practitioners report no net improvement in the time the IRS assigns a case to Appeals until a first conference in the post-pandemic era.²⁸ Appeals data confirms this, as the average time for a taxpayer to get an Appeals conference once Appeals receives the case has increased by 27 percent²⁹ from FY 2021 to FY 2023 in states with a permanent Appeals presence³⁰ and by 71 percent³¹ in the same period for states without a permanent Appeals presence.³²

In-person meetings are more than a procedural formality; they offer substantive benefits to taxpayers. Being in the same room allows for easier document review, provides an opportunity for the AO to judge credibility of witnesses, and provides more effective communication between taxpayers and the AO. Yet, some practitioners note that this benefit disappears if the AO is physically present but defers the ultimate decision to a specialist who is present only telephonically or virtually.³³

27 These include Alaska, Arkansas, Idaho, Kansas, Montana, New Mexico, North Dakota, Rhode Island, South Dakota, Vermont, and Wyoming. See IRM 8.6.1.5.1.1, Circuit Riding (Sept. 25, 2019), http://www.irs.gov/irm/part8/irm_08-006-001r. As of this report, Appeals also has a presence in Albuquerque, New Mexico. IRS response to TAS fact check (Dec. 7, 2023).

28 Discussions with outside stakeholders (Oct. 10, 2023).

29 We estimate a 27 percent increase (146 divided by 115 minus one) for non-docketed closed examination sourced cases (Primary Business Codes 201-207). These numbers do not include collection work or docketed cases.

30 IRS response to TAS information request (Sept. 7, 2023).

31 We estimate a 71 percent increase (243 divided by 142 minus one) for non-docketed closed examination sourced cases (Primary Business Codes 201-207). These numbers do not include collection work or docketed cases.

32 Appeals uses Process (P) Measure Reports to compute cycle time for the various process measures on non-docketed cases. IRM 8.10.1.10.1.8, Process (P) Measure Report (Oct. 15, 2014), http://www.irs.gov/irm/part8/irm_08-010-001. The average time for a taxpayer to get an Appeals conference once Appeals receives the case, known as the P4 measure, was 116 days for FY 2021 through FY 2022 in states with a permanent Appeals presence. This increased to an average of 146 days for FY 2023 through July 31, 2023. The P4 measure was an average of 131 days for FY 2021 through FY 2022 in states without a permanent Appeals presence, which increased to an average of 243 days for FY 2023 through July 31, 2023. IRS response to TAS information request (Sept. 7, 2023).

33 Discussions with outside stakeholders (Sept. 28, 2023).

Because of these issues, some taxpayers are bypassing the Appeals process altogether and petitioning the Tax Court, leading to an unnecessary burden on the court system and increased cost for taxpayers.³⁴ This is contrary to the intended function of Appeals as a mechanism for efficient and fair resolution of tax disputes.³⁵

The National Taxpayer Advocate recommends Appeals review and optimize its scheduling process to reduce wait times for taxpayer conferences, particularly for coordinated issues. Appeals' current work-from-home policy should emphasize the prioritization of taxpayer access to in-person conferences.

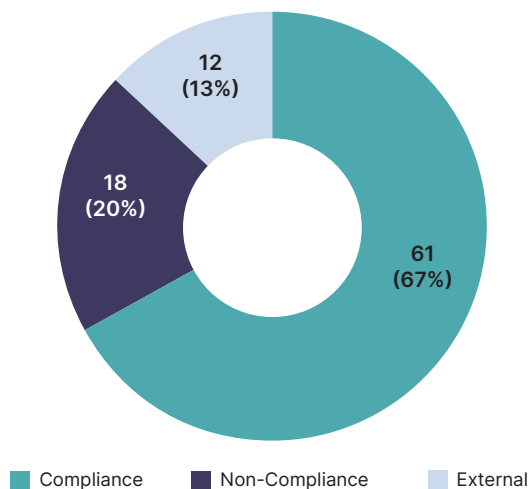
The National Taxpayer Advocate also recommends that Appeals emphasize the importance of the AO as the primary decision-maker. When AOs must rely on the advice of specialists, those specialists should be available in person so taxpayers and their representatives can address their unique facts and circumstances directly with the decision-maker.³⁶

A Compliance Culture Lives Within the Appeals Organization

The prevailing compliance culture within Appeals poses challenges to its independence and effectiveness. Appeals recruits most AOs from IRS Compliance, often leading to a mindset focused on defending Compliance's position rather than impartially assessing the hazards of litigation. This mindset transition can take years and, in some cases, may never completely occur without adequate and ongoing training.³⁷

FIGURE 2.10.2

Appeals Officers Hired by Source, FY 2023



³⁴ Discussions with outside stakeholders (Sept. 28, 2023).

³⁵ On May 11, 2023, in coordination with the National Taxpayer Advocate, Appeals sought public comments on how to improve access for taxpayers who do not live near an Appeals office. IRS News Release, IR-2023-101, Improving Nationwide Access to IRS Appeals; Public Input Wanted (May 11, 2023), <https://www.irs.gov/newsroom/improving-nationwide-access-to-irs-appeals-public-input-wanted>. The National Taxpayer Advocate applauds Appeals for its willingness to seek public comments on this important matter, as Appeals data and practitioner comments show there is still work to do concerning taxpayer access to the Appeals process.

³⁶ Cf. Discussions with outside stakeholders (Sept. 28, 2023).

³⁷ See National Taxpayer Advocate 2022 Annual Report to Congress 141 (Most Serious Problem: *Appeals: Staffing Challenges and Institutional Culture Remain Barriers to Quality Taxpayer Service Within the IRS Independent Office of Appeals*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/01/ARC22_MSP_09_Appeals.pdf. See also James P. Walsh & Leonidas C. Charalambides, *Individual and Social Origins of Belief Structure Change*, 130 J. Soc. PSYCHOL. 517 (1990), <https://doi.org/10.1080/00224545.1990.9924614> (finding the likelihood of mindset change depends on how self-conscious one is of a current mindset; as the more subconscious filters are hidden, the greater the probability is of rigidity of a prior mindset).

For example, in FY 2023, Appeals hired 91 new AOs.³⁸ Of those, 87 percent were current IRS employees, and only 13 percent were external hires.³⁹ Of all the internal hires, 77 percent came directly from IRS Compliance positions and the other 23 percent from other IRS positions.⁴⁰ Therefore, many taxpayers and practitioners observe that AOs come to the job with a compliance mindset⁴¹ that sidelines a judicial attitude toward settlement.⁴²

The National Taxpayer Advocate recommends that Appeals continue to actively recruit AOs from outside the IRS, possibly offering compensation differentials to attract experienced talent. Additionally, the IRS Human Capital Office must work with Appeals leadership to provide the necessary resources to aid in the expeditious hiring of candidates for Appeals to fulfill its mission. Hiring a mix of candidates would not only bring diverse perspectives to the Appeals process but could reduce the influence of a compliance-centric mindset. To retain external hires and ensure their effective transition into the new AO role, Appeals should allocate resources for increased and ongoing training focused on the impartial assessment of litigating hazards and resulting settlement negotiations.

Appeals Needs to Use the Alternative Dispute Resolution Program to Its Full Potential

ADR is a tool the IRS uses to resolve tax disputes without litigation (*e.g.*, Fast Track Settlement (FTS), Fast Track Mediation, Post-Appeals Mediation).⁴³ The IRS designed these programs to expedite the resolution process. When these programs are successful, they expedite resolution of a tax controversy, saving time and money, eliminating the need for litigation, reducing the burden on taxpayers and the IRS, and protecting taxpayer rights: a win-win. The ADR process can also provide the parties an avenue to articulate their positions before a neutral mediator who can provide valuable feedback on the strengths and weaknesses of those positions, triggering additional settlement discussions and possible resolution of the issues.

A 2023 report from the Government Accountability Office (GAO) highlights significant shortcomings in the IRS's management and use of ADR programs.⁴⁴ Figure 2.10.3 illustrates the relatively steady decline in ADR cases closed since FY 2013.⁴⁵

38 These were AOs who did not serve in an AO job series immediately prior to their hiring. Other AO hiring consisted of promotions or other transfers from existing AO job series.

39 See Most Serious Problem: *IRS Hiring Recruitment, and Training: Shortcomings in the IRS's Employee Hiring, Retention, Recruitment, and Training Programs Adversely Affect the Quality of Taxpayer Service the IRS Provides and Undermine Effective Tax Administration*, *supra*.

40 IRS, Human Resources Reporting Center, Workforce Planning and Management Reports, Migration Reports, External Hire Report for FY 2023 (Oct. 5, 2023). Compliance positions include Internal Revenue Agent, Internal Revenue Officer, Criminal Investigator, Tax Law Specialist, Tax Examining Technician, and Tax Specialist.

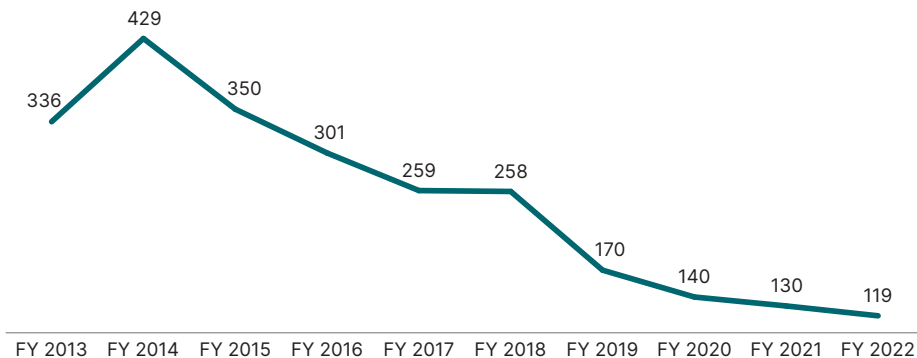
41 Discussions with outside stakeholders (Oct. 10, 2023). Compliance decisions are usually binary in that the decisions are limited to either allowing or disallowing items.

42 Appeals defines judicial attitude toward settlement in IRM 8.6.4.2.5, Judicial Attitude Towards Settlement (June 16, 2020), http://www.irs.gov/irm/part8/irm_08-006-004.

43 Available ADR programs include FTS for the Large Business and International (LB&I), Small Business/Self-Employed (SB/SE), and Tax-Exempt/Government Entities (TE/GE) Divisions for examination matters; Fast Track Mediation – Collection for collection matters; Rapid Appeals Process available to most LB&I cases or SB/SE estate and gift cases; and Post Appeals Mediation (if IRS Appeals settlement discussions are unsuccessful and the remaining disputed issues are fully developed). See IRS News Release, IR-2023-136, IRS Invites Public Input on Ways to Improve Dispute Resolution Programs; Suggestions Wanted (July 27, 2023), <https://www.irs.gov/newsroom/irs-invites-public-input-on-ways-to-improve-dispute-resolution-programs-suggestions-wanted>.

44 GAO, GAO-23-105552, *IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits* (2023), <https://www.gao.gov/products/gao-23-105552>. The GAO conducted its study, in part, because of the National Taxpayer Advocate's report "that the use of ADR programs has steadily declined, while resolving disputes through the IRS appeals process is taking longer."

45 Data on ADR usage includes FTS for LB&I, SB/SE, and TE/GE; Fast Track Mediation for Collections; Rapid Appeals Program; and Post Appeals Mediation. Data describe cases that closed in that fiscal year. GAO, GAO-23-105552, *IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits* (2023), <https://www.gao.gov/products/gao-23-105552>.

FIGURE 2.10.3**IRS Alternative Dispute Resolution Cases Closed, FYs 2013-2022**

Notably, use of ADR has declined by 65 percent between FY 2013 and FY 2022.⁴⁶ This is concerning, especially given the lack of comprehensive data collected to understand the reasons behind the decline.

The decrease in the use of ADR and the lack of sufficient data to track program management make it harder to determine its success or failure. Absent data, objective measures, and taxpayer feedback, it is difficult to evaluate how ADR programs are working and to measure the value of the programs. When taxpayers and the government rely only on the full appeals process (*i.e.*, without first going through ADR), it takes more time and consumes more public and private resources. One recommendation to increase usage would be for Appeals to provide training to both educate and incentivize employees to offer ADR to taxpayers.

The FTS program offers taxpayers a chance to resolve disputes quickly using Appeals as a mediator, even while their case is still in the hands of Compliance. However, some tax professionals note that Compliance often rejects these FTS requests from taxpayers, stating that the taxpayer and the government are “too far apart.”⁴⁷ This reasoning is flawed because mediation is especially useful when both sides are far apart and unable to agree. Therefore, the parties being “too far apart” should be a reason to accept a taxpayer’s request for FTS, not to deny it.

Additionally, when Compliance denies an FTS request, it does not inform Appeals or keep records for analyzing trends. This lack of communication and data means Appeals is unaware of the number of FTS requests made, their outcomes, or how Appeals might improve the program. Without this information, Appeals cannot measure how well the ADR programs are working or understand the reasons behind the significant drop in their use.⁴⁸ GAO recommended that Appeals implement a system of regular monitoring of taxpayer experiences with ADR and use taxpayer feedback for real-time improvements.

46 According to the Appeals Centralized Database System. See GAO, GAO-23-105552, *IRS Could Better Manage Alternative Dispute Resolution Programs to Maximize Benefits* 10 (2023), <https://www.gao.gov/products/gao-23-105552>.

47 Discussions with outside stakeholders (Sept. 11, 2023). See also IRS response to TAS information request (Nov. 1, 2023), providing the following public comment:

In one anecdotal example, a practitioner was informed that PAM is only appropriate in “close” cases, though the Service employee communicating that information was unable to provide any authority for that rule nor were they able to provide objective parameters regarding what would constitute a “close” case.

Letter from American Bar Ass’n Tax Section, to Danny Werfel, Comm’r, Internal Revenue (Sept. 15, 2023), <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2023/091523comments.pdf>.

48 See Figure 2.10.3, *infra*, showing a drop in ADR cases from 336 in FY 2013 to 119 in FY 2022.

On July 27, 2023, the Chief of Appeals initiated a taxpayer feedback mechanism by requesting public comments on how to improve ADR programs.⁴⁹ The National Taxpayer Advocate agrees with the GAO report's findings and recommends that where the case remains under the jurisdiction of Compliance and the IRS denies the taxpayer's ADR request for reasons other than those in the established guidelines (*e.g.*, the parties are "too far apart"),⁵⁰ Compliance must share the data with Appeals. Additionally, Appeals should track this and related data to make data-driven decisions on improving ADR programs.

Another significant concern is the absence of an obligation for Compliance to provide a substantial explanation as to why it rejected a taxpayer's ADR request. Taxpayers are left without the reasons for the denial and no way forward to contest the decision. This limited transparency can contribute to perceptions that the IRS is not committed to the ADR initiatives and that it bases its decision on convenience to Compliance rather than facts and law.

Appeals Needs to Do Additional Work to Ensure Its Independence

The statutory establishment of Appeals in 2019 was a deliberate and considered response by Congress to the pressing need for an appeals function within the IRS that was independent from the agency's influence. The emphasis on independence is a recurring theme in the legislative history of the TFA, which underscores Congress's commitment to ensuring fairness and impartiality in the administrative appeals process.⁵¹ The very positioning of this provision as the first section of the TFA demonstrates its fundamental importance to protecting taxpayer rights.⁵²

Since the TFA's enactment, there have been commendable strides toward achieving Congress's vision of an independent Appeals office. But there is still work to be done. Congress's vision of an appeals function free of IRS influence is a goal that remains only partially fulfilled. The TFA, as it stands, lays a solid foundation, but the structure built upon it requires further development to fully realize Appeals' independence.

Key to future discussions of the IRS and Congress are proposals that some may view as extreme, yet they remain fundamental in cementing the independence of Appeals. One such topic for future discussion is the provision for Appeals to have its own independent legal counsel. This move would ensure that the IRS appeals process is free of agency influence in both reality and public perception, thereby bolstering taxpayer morale and confidence in the system's impartiality. Another significant topic of discussion is that the Secretary of the Treasury should appoint the Chief of Appeals instead of the IRS Commissioner.⁵³ This change would further distance Appeals from the agency's influence by ensuring the head of the appeals function is not beholden to the person in charge of IRS compliance. As discussions advance, bold topics such as these are necessary for meaningful discussions on how to fully realize Congress's goal of a truly independent administrative appeals function within the IRS.

49 IRS News Release, IR-2023-136, IRS Invites Public Input on Ways to Improve Dispute Resolution Programs; Suggestions Wanted (July 27, 2023), <https://www.irs.gov/newsroom/irs-invites-public-input-on-ways-to-improve-dispute-resolution-programs-suggestions-wanted>.

50 See IRS, Pub. 5022, Fast Track Settlement – A Process for Prompt Resolution of Small Business Self Employed Tax Issues (Sept. 2021), <https://www.irs.gov/pub/irs-pdf/p5022.pdf>.

51 See, *e.g.*, H.R. REP. NO. 115-637, pt. 1, at 17 (Apr. 13, 2018) (accompanying H.R. 5444).

In order to foster confidence in the integrity of the IRS and the independence of its administrative proceedings, as well as to encourage voluntary compliance, the Committee believes it is advisable to codify the role of an independent administrative function within the IRS and establish a new Independent Office of Appeals. In doing so, the Committee seeks to reassure taxpayers of the independence of the persons providing the administrative review.

52 See Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019).

53 Discussions with outside stakeholders (Sept. 11, 2023).

CONCLUSION AND RECOMMENDATIONS

To ensure the taxpayers' *right to appeal an IRS decision in an independent forum*, the Appeals process must operate independently, free from external influence, including influence from the IRS.⁵⁴ This independence must exist in both practice and perception to reinforce the taxpayers' *right to a fair and just tax system*.⁵⁵ Further, by addressing current operational inefficiencies, Appeals protects the taxpayers' *right to quality service*, resulting in prompt, courteous, and professional assistance in their dealings with the IRS.⁵⁶

Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Prioritize in-office availability of AOs to reduce wait times and increase taxpayer access for in-person conferences.
2. Require technical guidance coordinators and other specialists, whose advice the AO relies upon, be available in person if requested so taxpayers can address their unique facts and circumstances directly with those specialists.
3. Provide additional budget to contract outside experts on complex matters and hire attorneys that report to the Chief of Appeals.
4. Revise the Internal Revenue Manual to require Appeals to share all ACMs with taxpayers and establish policies and mandatory procedures to effectively track these efforts.
5. Hire more AOs from outside the IRS who have the necessary qualifications and experience to reduce the influence of a compliance mindset on Appeals' culture.
6. Provide continuous education for all AOs emphasizing a judicial attitude toward settlement to reduce a compliance mindset.
7. In collaboration with Compliance, restructure the current ADR process to provide (a) an ability to appeal the initial determination to Compliance upper management, (b) the creation of a centralized group within Appeals responsible for reviewing Compliance denials of ADR requests, (c) clearer guidance on issues excluded from ADR consideration, and (d) a written explanation to taxpayers citing the basis for the denial.
8. In collaboration with Compliance, collect consistent, reliable data on what happens to taxpayer requests to use ADR as well as the results of each ADR program, such as resolutions achieved for the time and costs invested.

RESPONSIBLE OFFICIAL

Andrew Keyso, Chief, Independent Office of Appeals

⁵⁴ See IRC § 7803(a)(3)(E).

⁵⁵ See IRC § 7803(a)(3)(J).

⁵⁶ See IRC § 7803(a)(3)(B).