

STATEMENT OF

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AND

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Chairmen Jordan and Meadows, Ranking Members Krishnamoorthi and Connolly, and Members of the Subcommittees:

Thank you for inviting me to testify at your hearing today on IRS operations.¹

As you know, I lead the Taxpayer Advocate Service (TAS), an independent organization within the IRS that advocates for taxpayers. TAS has two main functions – “case advocacy” and “systemic advocacy.” In most years our case advocacy operations assist more than 200,000 taxpayers in resolving account problems with the IRS.² On the systemic side, TAS identifies problems that are harming groups of taxpayers, and we make administrative and legislative recommendations to mitigate those problems. By statute, I am required to submit two annual reports to the congressional tax-writing committees each year, and I describe, and make recommendations to mitigate, the “most serious problems” facing taxpayers in my December 31 report.³

Throughout my tenure as the National Taxpayer Advocate, TAS has completed significant research into taxpayer needs, preferences, and ability to interact with the IRS through various service channels. Our work has focused not only on understanding the taxpayer service needs and preferences of U.S. taxpayers,⁴ but also on how IRS traditional audit, compliance, and collection techniques affect taxpayers’ understanding of the tax law, their relationship and attitudes to the tax administrator, and their subsequent compliance behavior.⁵ In addition to our research studies, surveys and

¹ The views expressed herein are solely those of the National Taxpayer Advocate. The National Taxpayer Advocate is appointed by the Secretary of the Treasury and reports to the Commissioner of Internal Revenue. However, the National Taxpayer Advocate presents an independent taxpayer perspective that does not necessarily reflect the position of the IRS, the Treasury Department, or the Office of Management and Budget. Congressional testimony requested from the National Taxpayer Advocate is not submitted to the IRS, the Treasury Department, or the Office of Management and Budget for prior approval. However, we are providing courtesy copies of this statement to both the IRS and the Treasury Department.

² By statute, we maintain at least one office in each state. See IRC § 7803(c)(2)(D)(i)(I). We serve as a *de facto* “safety net” to help taxpayers who are experiencing financial hardships as a result of the way the IRS is administering the tax code and to help all taxpayers who are falling through the cracks of the bureaucracy. About 85 percent of TAS’s budget and personnel are dedicated to case advocacy.

³ See IRC § 7803(c)(2)(B). TAS case receipts declined to less than 170,000 in FY 2017.

⁴ See, e.g., 2017 National Taxpayer Advocate Annual Report to Congress vol. 2, 62-146 (Research Study: *A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*); 2016 National Taxpayer Advocate Annual Report to Congress vol. 2, 1-30 (Research Study: *Taxpayers’ Varying Abilities and Attitudes toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*); 2015 National Taxpayer Advocate Annual Report to Congress vol. 2, 101-110 (Research Study: *Understanding the Hispanic Underserved Population*); 2014 National Taxpayer Advocate Annual Report to Congress vol. 2, 1-26 (Research Study: *Low Income Taxpayer Clinic Program: A Look at Those Eligible to Seek Help From the Clinics*).

⁵ See, e.g., 2017 National Taxpayer Advocate Annual Report to Congress vol. 2, 147-194 (Research Study: *Audits, ID Theft Investigations, and Taxpayer Attitudes: Evidence from a National Survey*); 2015 National Taxpayer Advocate Annual Report to Congress vol. 2, 68-100 (Research Study: *Audit Impact Study*); 2014 National Taxpayer Advocate Annual Report to Congress vol. 2, 27-42 (Research Study:

focus groups, in 2016 I travelled the breadth and depth of the US and convened 12 Public Forums on Taxpayer Needs and Preferences, in conjunction with Members of the U.S. House of Representatives and the Senate, including Chairman Meadows. The complete transcripts of these fascinating public meetings are available on our website.⁶ I have also convened two International Conferences on Taxpayer Rights, with the third one coming up in Amsterdam in May of this year.⁷ Our body of work is designed to help the IRS improve tax administration and better meet taxpayer needs and preferences; it also enables us to identify emerging issues of concern.

The significant work conducted by TAS in this area has led me to identify the following concerns and challenges facing taxpayers and the IRS that I will discuss in this testimony:

- 1. IRS Funding:** Since FY 2010, the IRS budget has been reduced by 20 percent on an inflation-adjusted basis, and the IRS workforce has declined by about the same percentage. These reductions have led to significant cuts in taxpayer service levels and have prevented the IRS from deploying new technology that would improve the taxpayer experience.
- 2. Tax Reform:** In 2017, Congress passed the most comprehensive tax law reform since the Tax Reform Act of 1986. The IRS faces serious challenges as it implements and administers the new law – ranging from issuing guidance, to creating new forms and publications, to answering basic questions about the new law. The stakes are high for both taxpayers and the IRS. The IRS is dedicating significant resources to these efforts, and my office will continue to support the IRS to ensure that taxpayers have the information and assistance they need to comply with the new tax law.
- 3. Filing Season Taxpayer Service Issues:** While the IRS generally ran a smooth filing season, especially given the mid-season enactment of “extender” provisions,⁸ taxpayers were burdened by a continued push to online-only services, inconsistent service on phone lines, and an overly restrictive appointment-only system at the Taxpayer Assistance Centers (TACs).

Estimating the Impact of Audits on The Subsequent Reporting Compliance of Small Business Taxpayer: Preliminary Results); 2013 National Taxpayer Advocate Annual Report to Congress vol. 2, 1-14 (Research Study: *Do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*); 2013 National Taxpayer Advocate Annual Report to Congress vol. 2, 33-56 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*); 2012 National Taxpayer Advocate Annual Report to Congress vol. 2, 1-70 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*); 2009 National Taxpayer Advocate Annual Report to Congress vol. 2, 19-34 (Research Study: *Subsequent Compliance Behavior of Delinquent Taxpayers: A Compliance Challenge Facing the IRS*).

⁶ See <https://taxpayeradvocate.irs.gov/news/national-taxpayer-advocate-public-forums>.

⁷ See www.TaxpayerRightsConference.com for paper, videos, and more information about the conference.

⁸ Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (Feb. 9, 2018).

- 4. Filing Season Fraud Detection Issues:** Overly broad fraud detection filters resulted in high false positive rates, causing refund delays for hundreds of thousands of taxpayers. Although the IRS strives each year to identify emerging fraud issues and designs filters to flag fraudulent returns and prevent the payment of erroneous refunds, it does not take the same care to ensure that the filters do not unnecessarily burden legitimate and compliant taxpayers.
- 5. Tax Law Questions:** Beginning in 2014, the IRS, despite my strong objections, made the decision to answer tax law questions only during the filing season. While it is my understanding that the IRS intends to answer questions this year regarding the new tax law outside the filing season, it is unclear whether the IRS will continue to answer such questions once the tax law is no longer considered new, even if taxpayers only understand the implications after they have filed their 2018 tax returns.
- 6. Omnichannel Presence:** I have long advocated that the IRS develop an online account application, but it must be positioned as just one component of an omnichannel service strategy. The IRS should not focus on online services to the exclusion of other service channels such as telephone and face-to-face interactions with taxpayers. If taxpayers face too many obstacles in their attempted interactions with the IRS, their frustrations will mount and their willingness to voluntarily comply in the future may suffer.
- 7. Private Debt Collection:** I am concerned about the manner in which the IRS is administering the current private debt collection (PDC) program. TAS's review of IRS data has found the PDC program is burdening low income taxpayers and Social Security retirement and disability recipients. Additionally, the IRS has refused to allow TAS to monitor collection agency calls to taxpayers, so TAS is hindered in its ability to address issues regarding the conduct of the collection agencies and their treatment of taxpayers.
- 8. Passport Denial and Revocation:** In 2018, the IRS began to implement a section of the Fixing America's Surface Transportation Act that impacts the ability of a taxpayer with a "seriously delinquent tax debt" to obtain or continue to hold a U.S. passport. I am concerned about the inadequate notice given to taxpayers before their debts are certified as seriously delinquent as well as the IRS's refusal to exercise its broad discretion to exclude taxpayers working with TAS from this program.
- 9. TAS Independence:** TAS is the voice of the taxpayer at the IRS. I made several recommendations in my most recent Annual Report to Congress to strengthen the independence of TAS so it can more effectively advocate for taxpayers and taxpayer rights. In this statement, I highlight three recommendations that I believe would go a long way toward strengthening TAS's advocacy; namely, codifying the National Taxpayer Advocate's authority to (1)

issue Taxpayer Advocate Directives (TADs), (2) obtain files and attend meetings upon the request of a taxpayer, and (3) make personnel decisions with respect to all TAS employees.

10. Enterprise Case Management: Although the IRS has faced significant hurdles as it has attempted to obtain and implement a service-wide enterprise case management (ECM) system, ECM remains critical to taxpayers and the operations of the IRS going forward. I am encouraged by the IRS’s regrouping and refocusing of the ECM project and look forward to working with the IRS to address the technology needs of the agency.

I. IRS Funding Has Been Cut by About 20 Percent Since FY 2010, and These Funding Reductions Have Affected Taxpayer Service Levels

Since FY 2010, IRS funding has been cut substantially. As the following chart shows, the IRS’s appropriated budget has been reduced by 9 percent in straight dollar terms and by 20 percent after accounting for the effects of inflation.

IRS Budget in Nominal and Inflation-Adjusted Dollars (in millions), FYs 2010-2018

Type of Dollars	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Percentage Reduction FYs 2010 - 2018
Nominal	\$12,146	\$12,122	\$11,817	\$11,199	\$11,291	\$10,945	\$11,235	\$11,235	\$11,111	9%
Inflation-Adjusted	\$12,146	\$11,865	\$11,325	\$10,580	\$10,506	\$10,119	\$10,291	\$10,092	\$9,762	20%

Source: IRS Chief Financial Officer. FY 2018 numbers do not include supplemental funding of \$320 million to implement the recent tax reform legislation.

While the IRS, like any organization, must strive to achieve efficiencies, these funding reductions have substantially weakened the agency’s capacity to meet taxpayer needs in two ways. First, most of the IRS budget is spent on personnel, and fewer employees means less capacity for direct taxpayer service. Over the past decade, for example, the IRS has generally received more than 100 million telephone calls every year.⁹ There is no substitute for having enough IRS employees to answer those calls. Also over the past decade, the IRS has received an average of nearly 10 million pieces of correspondence from taxpayers relating to tax adjustments.¹⁰ There is no substitute for having enough employees to read and process those letters. In addition, the IRS operates more than 350 Taxpayer Assistance Centers (TACs) that provide face-to-face

⁹ IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* (final week of each fiscal year for FY 2008 – FY 2017).

¹⁰ IRS, Joint Operations Center, *Adjustments Inventory Reports: July-September Fiscal Year Comparison* (FY 2008 – FY 2017).

service for taxpayers who seek it, and there is no substitute for having enough employees to staff these offices.

Second, funding reductions have limited the IRS's ability to modernize its existing Information Technology systems and to develop new systems. To cite one example, most large businesses and government agencies that operate telephone call centers, including the Social Security Administration and the Department of Veterans Affairs, have deployed "customer callback" technology. That way, when its switchboard is overloaded, callers are given the option of receiving a call back when the next telephone assistor is available rather than waiting on hold. To date, the IRS has not had the funding to implement customer callback technology.

Similarly, the IRS currently houses various bits of taxpayer data on some 60 case management systems that generally are not capable of communicating with each other. As a result, when a taxpayer calls to discuss an account issue with a customer service representative, the representative sometimes cannot access the required information because it is housed on a system to which the representative doesn't have access or cannot assist the taxpayer without accessing multiple systems. As I discuss later in this statement, the IRS is seeking to develop an integrated Enterprise Case Management system that has the potential to vastly simplify taxpayer interactions with the IRS – as well as improve the efficiency of IRS compliance work – but it requires funding to complete the project.

In my own organization, the Taxpayer Advocate Service, we are operating with an antiquated case management system known as the Taxpayer Advocate Management Information System (TAMIS). Years ago, TAS obtained approval to build a new case management system known as the Taxpayer Advocate Service Integrated System (TASIS), and we came fairly close to the finish line. But the IRS pulled the plug on the project after spending about 60 percent of the system's estimated cost because of funding limitations. Apart from wasting almost \$20 million, this decision requires us to spend more money to maintain the old system with belts and suspenders and impairs our ability to serve taxpayers as efficiently as we should.

Consistent with the IRS's inflation-adjusted budget reduction of 20 percent since FY 2010, the IRS workforce has declined by 19 percent over that period.¹¹ The effects have been particularly steep in certain areas. Within taxpayer service, the number of employees conducting pre-filing taxpayer assistance and education has fallen by

¹¹ A portion of the personnel reduction reflects efficiency gains that have resulted from increases in the e-file rate. Between FY 2010 and FY 2017, the number of paper-filed returns declined from 43.7 million to 19.9 million. See IRS, *Filing Season Statistics* (final reports for FY 2010 and FY 2017). In 2017, the e-file rate reached 87 percent. *Id.* I have recommended that the IRS do more to save on data transcription costs by utilizing scanning technology to process tax returns that are prepared electronically but filed on paper. See *National Taxpayer Advocate Purple Book: Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 17 (Dec. 2017). I have also recommended that Congress require employers filing more than five Forms W-2, 1099-MISC or 941 to file them electronically, which would further save on transcription costs and make the data available for the IRS to use earlier in the filing season to identify and stop improper refund claims. *Id.* at 21.

23 percent. One major impact of that reduction is that the agency is less able to help newly formed small businesses understand their rights and responsibility under the tax laws, including the need to pay estimated taxes and to collect and pay over employment taxes. Since many first-time business owners have never had to deal with the tax requirements of being a business owner, the IRS's limited outreach and education capacity causes more businesses to fall behind on their taxes and potentially face bankruptcy or insolvency. This gap is particularly acute with respect to workers in the "gig" economy.¹² We owe it to these taxpayers to do better.

The following chart shows the decline in the number of IRS employees by employment status, budget category, and job category.

¹² For a discussion of the tax challenges faced by gig economy workers, see National Taxpayer Advocate 2017 Annual Report to Congress 165-171 (Most Serious Problem: *Participants in the Sharing Economy Lack Adequate Guidance from the IRS*).

Personnel Summary, by Employment Status, Budget Activity, and Selected Personnel Type, Fiscal Years 2010 – 2017

Employment status, budget activity, and selected personnel type	Average positions realized [1]								Trend
	2010	2011	2012	2013	2014	2015	2016	2017	2010 - 2017
Internal Revenue Service, total	94,711	94,709	90,280	86,974	84,133	79,890	77,924	76,832	-18.9%
Employment status:									
Permanent [2]	93,027	92,452	88,308	84,985	82,406	78,294	76,446	75,253	-19.1%
Other [3]	1,684	2,257	1,972	1,989	1,727	1,596	1,478	1,579	-6.3%
Budget activity:									
Examinations and collections	44,802	44,685	41,814	39,454	37,608	35,542	33,426	32,604	-27.2%
Filing and account services	25,592	25,423	25,041	24,881	23,972	22,308	23,668	24,063	-6.0%
Information services	6,432	6,628	6,208	6,708	6,711	6,788	6,300	6,089	-5.3%
Prefiling taxpayer assistance and education	6,076	6,180	5,814	5,505	5,449	5,349	5,009	4,700	-22.6%
Shared services and support	5,862	5,811	5,308	5,061	5,097	5,016	4,861	4,780	-18.5%
Investigations	4,364	4,197	4,258	3,691	3,581	3,410	3,184	3,080	-29.4%
Regulatory	1,234	1,260	1,241	1,223	1,239	1,137	1,034	959	-22.3%
Business Systems Modernization	337	512	596	451	476	340	442	557	65.3%
Health Insurance Tax Credit Administration	12	13	--	--	--	--	--	--	--
Selected personnel type:									
Revenue agents	13,879	13,969	13,011	12,270	11,659	10,862	10,174	9,759	-29.7%
Seasonal employees	11,158	10,479	11,538	11,108	10,030	8,819	10,005	10,671	-4.4%
Customer service representatives [4]	18,582	10,191	9,472	9,131	8,837	8,441	8,235	9,113	-10.6% [5]
Tax examiners [4]	--	9,587	9,282	8,724	8,416	8,294	8,267	7,887	-17.7% [5]
Revenue officers	6,042	5,621	5,186	4,748	4,439	3,994	3,525	3,434	-43.2%
Special agents	2,739	2,618	2,581	2,509	2,437	2,326	2,184	2,124	-22.4%
Tax technicians	1,720	1,808	1,679	1,515	1,418	1,357	1,227	1,110	-35.4%
Attorneys	1,571	1,573	1,529	1,497	1,473	1,415	1,361	1,346	-14.3%
Appeals officers	847	859	851	811	761	841	949	888	4.9%

[1] Represents the number of full-time equivalent (FTE) positions actually used to conduct IRS operations. Excludes positions funded by reimbursements from other Federal agencies and private entities for services performed for these external parties. In contrast, IRS labor force counts in Table 31 (Internal Revenue Service and Chief Counsel Labor Force, Compared to National Totals for Federal and Civilian Labor Forces, by Gender, Race/Ethnicity, Disability, and Veteran Status) represent the total number of persons, including full-time, part-time, and seasonal workers, employed during the fiscal year.

[2] Includes seasonal employees on permanent appointments; excludes employees on permanent appointments with work schedules of less than 80 hours per pay period.

[3] Includes employees on permanent appointment on fewer than 80 hours per pay period of work schedule.

[4] Prior to FY 2012, Tax Examiners were classified as Customer Service Representatives.

[5] Because tax examiners were reported separately from customer service representatives beginning in FY 2011, this table shows the percentage change in each category from FY 2011 to FY 2017.

Source: IRS Data Books from FY 2010 - FY 2017, Table 30.

In the area of taxpayer service, as I discuss in greater detail later in this statement, the IRS has responded to reduced funding levels by developing a strategy to “migrate” taxpayers from personal service options (the phones and the TACs) to the Internet. As I have previously recommended, the IRS is acting wisely in expanding its online offerings, including the development of “online accounts.” For many taxpayers, the Internet may be their preferred way of interacting with the agency. But for many taxpayers, online options are not feasible or desirable. A TAS survey conducted in 2016 found that more than 41 million U.S. taxpayers lack broadband access at home,

including 14 million taxpayers with no Internet access at home at all.¹³ In general, broadband access is less available in rural areas, and our survey found that low income, elderly, and disabled taxpayers were disproportionately likely to lack broadband access. Also of note, more than half of the respondents reported they do not feel comfortable sharing their personal financial information over the Internet.¹⁴

In my public forums, I regularly heard that taxpayers are more willing to use the Internet to obtain a form or seek general information than to handle an identity theft or collection matter, where a conversation is preferred. And it should be emphasized that online resources are not a substitute for personal service, even for Internet-savvy taxpayers. According to IRS data, 46 percent of taxpayers who call the IRS have previously visited IRS.gov but required additional assistance.¹⁵

As I discuss later this statement, IRS telephone performance has improved over the last few years as measured by the “official” Accounts Management Customer Service Representative Level of Service (LOS). But this measure is flawed in important respects, and the apparent improvement should therefore be considered with some important caveats:

- Beginning in 2014, the IRS substantially restricted the scope of tax-law questions it would answer. It announced that it would answer only “basic” questions during the filing season, declaring “more complex” questions out-of-scope.¹⁶ It also announced it would stop answering *almost all* tax-law questions after the filing season, notwithstanding that more than 15 million taxpayers typically file their returns later in the year.¹⁷ Because of the new restrictions, some taxpayers have simply stopped calling.
- The IRS’s official LOS dropped to historically low levels for several years, including down to 38 percent in FY 2015.¹⁸ These deficiencies were highly publicized, probably discouraging some taxpayers from calling in future years.
- The official IRS measure excludes calls to many telephone lines that are not classified as “Accounts Management” (AM) lines, and the LOS was substantially lower on the non-AM lines in FY 2017. Thus, the exclusion of those lines inflated

¹³ See National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2 (Research Study: *Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

¹⁴ *Id.*

¹⁵ IRS response to TAS information request (Dec. 12, 2017).

¹⁶ IRS, e-News for Tax Professionals – Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013).

¹⁷ During 2017, about 17 million returns were filed after the filing season. See IRS, *2017 Filing Season Statistics* (comparing week ending Dec. 29, 2017 with week ending April 21, 2017).

¹⁸ IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* (Sept. 30, 2015).

the official LOS measure. Telephone lines can also be shifted back-and-forth between the AM and non-AM categories. From FY 2016 to FY 2017, for example, the IRS moved the “Installment Agreement/Balance Due” line from the AM category to the non-AM category. In FY 2017, this line received 8.6 million calls and the LOS was only 42 percent.¹⁹ Yet because the line was reclassified as non-AM, it was excluded from the official AM measure. In all, the IRS reports 89 percent of all calls were received on the AM lines in FY 2016, but that percentage dropped to 78 percent in FY 2017.²⁰ For all IRS lines, the LOS was 68 percent in FY 2017.²¹

- When a taxpayer calls an AM telephone line, the taxpayer must navigate a telephone tree and respond to various prompts by selecting among options. Depending on how the IRS programs the telephone tree and how the taxpayer responds, a call may be routed either to a telephone assistor or to automation. The official LOS measure only counts calls routed to telephone assistors. In FY 2016, 46 percent of taxpayer calls to the AM telephone lines were routed to assistors.²² In FY 2017, this percentage dropped to 41 percent.²³ We are not certain whether this reduction is attributable to changes in taxpayer circumstances, IRS re-programming of the telephone tree to reduce the number of calls routed to assistors, or a combination of the two. But regardless of cause, the effect of routing fewer calls to telephone assistors was to increase the official LOS measure.

As a result of these factors, the IRS official LOS for FY 2016 reflected the results of roughly 48.3 million AM calls routed to telephone assistors despite the fact that the IRS received 117.5 million total calls, and for FY 2017, it reflected the results of roughly 30.5 million AM calls routed to telephone assistors despite the fact that the IRS received 95.6 million total calls. *Put differently, the IRS measures the official LOS in such a way as to exclude consideration of the significant majority of the calls it receives; in FY 2017, the official LOS reflected the results of only 32 percent of its calls.*

The story is similar when examining service levels at the IRS’s Taxpayer Assistance Centers. Historically, the TACs were known as “walk-in sites” and generally assisted all taxpayers who showed up. In 2017, the IRS changed its policy by limiting service to taxpayers who called in advance to schedule appointments. Whereas the IRS served more than five million taxpayers in the TACs in past years, only 3.3 million taxpayers were served in FY 2017, and the IRS is projecting it will serve just 3.0 million taxpayers

¹⁹ IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* (Sept. 30, 2017).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

in FY 2018.²⁴ The IRS says the reductions in TAC appointments have occurred primarily because its assistants resolve many problems over the phone when taxpayers call for appointments. And that is true in many cases.

But the fact remains that the IRS turns away many taxpayers who visit the TACs – some of whom travel considerable distances to get there. Many are elderly taxpayers who have used the TACs regularly for many years and don't know the IRS has shifted to an appointment-only model. Last year, TAS Local Taxpayer Advocates witnessed several instances when the TACs turned away taxpayers even when the TACs were virtually empty and had the capacity to serve these taxpayers. Numerous practitioners have told me they have been turned away when they attempted to make significant payments that their clients simply wanted date-stamped. And although the TACs keep track of the number of taxpayers they serve, they do not maintain a count of the number of taxpayers they turn away – and there are many. Thus, TAC service levels remain a concern.

I highlight the limitations of the relatively positive telephone and TAC measures not to criticize the IRS, but to illustrate the impact of the funding reductions. Like many organizations that put their best foot forward, the IRS produces data points that suggest it has substantially improved its taxpayer services. In fact, the headline data points mask important limitations regarding how taxpayer service is provided, and when those limitations are considered, it becomes clear that taxpayer service levels are unacceptably low.

Congress has consciously reduced the IRS's budget in recent years for a variety of reasons, including the mistrust that arose due to the procedures the agency used to screen tax-exemption applications, inappropriate conference spending, and the effects of sequestration. With the change of personnel – including the pending nomination of a new Commissioner and a new Chief Counsel – and the implementation of new procedures to address the problems of recent years, I am hopeful Congress will provide the IRS with the funding it needs to better meet the needs of U.S. taxpayers.

Congress need not – and should not – grant the IRS a blank check. Additional funding can be provided for specific purposes, such as the acquisition and deployment of customer callback technology or an Enterprise Case Management system. In providing additional funding, Congress could also direct the IRS to use the funding to achieve specific goals, such as resolving a specified number of taxpayer contacts at the point of first contact (known as “first-contact resolution”). In that way, Congress can use its oversight authority to set agency goals, and then the IRS may receive the funding it requires to deliver on those goals.

²⁴ See IRS Wage & Investment Division, *Business Performance Review 7* (4th Quarter – FY 2017, Nov. 9, 2017) (showing the number of TAC visits was 5.6 million in FY 2015, 4.5 million in FY 2016, and 3.3 million in FY 2017, with a projected 3.0 million contacts in FY 2018).

Accordingly, I recommend that Congress:

- Provide the IRS with modest annual increases in its appropriations to enable the IRS to better meet taxpayer needs.
- Consider providing the additional funds to achieve specified goals.

II. The IRS Faces Significant Challenges With Meeting the Increased Demand for Guidance and Service Resulting from the Tax Cuts and Jobs Act (TCJA)

On December 22, 2017, Congress passed the Tax Cuts and Jobs Act (TCJA),²⁵ enacting the most sweeping changes to U.S. tax law since the Tax Reform Act of 1986.²⁶ For example, with respect to individual taxpayers, it suspended the deduction for personal exemptions, increased the standard deduction, suspended certain itemized deductions, capped the deductions for state and local taxes, and changed tax rates and brackets. With respect to business taxpayers, it reduced corporate rates, required employers to use new withholding tables, added a deduction for business income from pass-throughs, increased depreciation allowances, repealed the corporate AMT, and added a wide range of international tax provisions to bring back offshore profits.²⁷

Implementing TCJA will be a major effort for the IRS in Fiscal Years (FYs) 2018 and 2019. The IRS plans to create or revise about 450 forms, instructions and publications, which is twice the number in a normal year.²⁸ As of April 4, 2018, the IRS's Tax Reform Enterprise Integrated Project Plan had over 8,500 "to do" items related to tax reform. The IRS and Treasury have added 18 TCJA items to the second quarter update to its 2017-2018 Priority Guidance Plan – guidance that it hopes to issue by June 30, 2018.²⁹ In addition, the IRS is planning hundreds of outreach events, including the IRS Nationwide Tax Forums, held each summer in five cities around the country, and is posting materials on IRS.gov.³⁰ It also plans to work with consumer groups, business groups, the payroll community, and local organizations to identify their questions and concerns.

²⁵ Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017). We are referencing the short title of the bill, H.R. 1, rather than the law.

²⁶ Pub. L. No. 99-514, 100 Stat. 2085 (1986).

²⁷ Pub. L. No. 115-97, §§ 11001 (individual rates), 11021 (increased standard deduction), 11041 (suspension of personal exemptions), 11042 (limitation on state and local tax deduction), 11045 (suspension of itemized deductions), 13001 (corporate rate), 11011 (deduction for business income from pass-throughs), 13201-13206 (depreciation rules), 13101 (Section 179 expensing), 12001-12002 (corporate AMT), 14101 *et. seq.* (provisions related to foreign income and repatriation).

²⁸ IRS, *Tax Reform Implementation Office (Q&As), Frequently Asked Questions: Implementing the New Tax Law* (last visited Feb. 22, 2018).

²⁹ Department of the Treasury, *2017-2018 Priority Guidance Plan* (Feb. 7, 2018), <https://www.irs.gov/privacy-disclosure/priority-guidance-plan>.

³⁰ *Id.*

The IRS faces a significant challenge in trying to achieve a proper balance between providing guidance quickly and incorporating comments from stakeholders to ensure their concerns are reflected in the final rules. I applaud the IRS's efforts to get guidance out quickly. In doing so, it should clearly communicate to taxpayers that guidance in certain areas may be later modified, as new questions and issues emerge.

The guidance regarding employee withholding is illustrative of this tension. Taxpayers obviously need guidance as soon as possible so that they can take advantage of the incentives provided by the new law. In addition, some taxpayers could face an unexpected tax bill and underpayment penalties next filing season, if they do not make sufficient estimated tax payments or withhold enough from each paycheck during 2018.³¹ The IRS updated the Form W-4, *Employee's Withholding Allowance Certificate*, and its online withholding calculator on February 28, 2018.³² While continuing to pursue formal guidance, it has also been posting Frequently Asked Questions (FAQs), Publications, Forms, Notices, Announcement, Instructions, and other forms of "informal" guidance on its website (*i.e.*, guidance not published in the Internal Revenue Bulletin and that does not incorporate formal comments from stakeholders).³³ While such guidance is helpful, IRS examiners are instructed not to rely on some informal guidance and the IRS may later delete the postings or change them.³⁴

In addition to these concerns, it is also unclear whether the IRS will meet the increased need for service by taxpayers and practitioners who have questions that they need the IRS to answer in person or over the phone. Over 14 million individual taxpayers do not have internet access in their homes, and over 41 million do not have broadband.³⁵ Yet, the IRS has generally been reducing the scope of the questions its customer service representatives will answer for those lucky enough to get through on the phone.³⁶ The

³¹ Individuals may generally avoid the estimated tax penalty if their withholding (plus any quarterly estimated tax payments) is at least the lesser of 100 percent of the prior year's tax liability or 90 percent of the current year's tax liability. IRC § 6654.

³² IR-2018-36 (Feb. 28, 2018).

³³ See, e.g., IRS, *Questions and Answers about Reporting Related to Section 965 on 2017 Tax Returns*, <https://www.irs.gov/newsroom/questions-and-answers-about-reporting-related-to-section-965-on-2017-tax-returns> (Mar. 19, 2018). For problems with some forms of informal guidance, such as FAQs, see Nina E. Olson, *IRS Frequently Asked Questions Can Be a Trap for the Unwary*, NTA BLOG, <https://taxpayeradvocate.irs.gov/news/irs-frequently-asked-questions-can-be-a-trap-for-the-unwary> (July 16, 2017).

³⁴ Memo for Area Directors, Examination – Field from Director, Examination - Field and Campus Policy, SBSE-04-0517-0030, *Interim Guidance on use of Frequently Asked Questions (FAQs) and Other Items Posted to IRS.gov* (May 18, 2017).

³⁵ See National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 62, 63 (Research Study: *A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

³⁶ TAS comparison of the 2006 Publication Method Guide with the 2018 Interactive Tax Law Assistant (ITLA) (Feb. 16, 2018) (indicating that 55 more questions were deemed out of scope in 2018); National Taxpayer Advocate 2005 Annual Report to Congress 1, 2 (Most Serious Problem: *Trends in Taxpayer*

IRS's outreach needs to be effective and its customer service representatives need to be trained to answer questions about the new law.

In 2014, the IRS stopped answering most tax law questions on the phones and in the Taxpayer Assistance Centers (TACs) after the filing season.³⁷ Since then, I have recommended that the IRS answer both basic and complex tax law questions throughout the year on all service channels -- online, phones, in-person -- and ensure that its telephone assistants have the resources and training necessary to answer them completely.³⁸ Senior IRS officials have informed me they will maintain a dedicated phone line for tax law questions related to tax reform after this filing season, but it is unclear the scope and depth of assistance that will be available.

Implementation of tax reform creates other risks for the IRS not directly related to the new law. Each year the IRS and Chief Counsel plan technology improvements and guidance projects that will assist both taxpayers and IRS employees. Although Congress has provided IRS with additional funds for tax reform implementation, hiring new personnel takes time, even on an expedited basis. Therefore, on risk of tax reform is not whether the IRS will implement it but rather that normally scheduled work and improvements will not get done as and when they need to get done. The cumulative effect of putting planned process and administrative improvements on the back burner creates burdens for taxpayers and the IRS going forward. As I discuss in this testimony, Congress should keep this risk in mind as it provides the IRS with its annual appropriation.

Accordingly, I recommend that the IRS take the following actions:

- Ensure there is an effective ongoing two-way dialog between IRS decisionmakers and taxpayers about what guidance is a priority, and how the TCJA should be interpreted and administered.
- When it issues informal guidance, the IRS should generally follow up by requesting comments from stakeholders and issuing formal guidance that taxpayers can rely on, which incorporates the comments.
- Answer a wide range of tax law and TCJA questions by phone and in person all year long.

Service) (indicating that in the last year the IRS “[d]eclared 225 questions “out of scope” for walk-in and 117 questions “out of scope” for toll-free phone assistors.”).

³⁷ National Taxpayer Advocate 2016 Annual Report to Congress 1, 6 (Special Focus: *IRS FUTURE STATE: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*) (“In 2014, the IRS ceased all tax [return] preparation in the TACs and eliminated post-April 15 tax law phone and TAC assistance.”).

³⁸ See, e.g., National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *TELEPHONES: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).

- Track the types of out of scope questions the IRS receives so that it can provide more and better guidance in those areas, and make more informed decisions about expanding the scope of the questions it should be answering.

III. Filing Season: Taxpayer Service Limitations Impact Taxpayers

The tax return filing season is the most demanding time of year for providing taxpayer service. As of April 7, 2018, the IRS had received more than 36 million calls on its toll-free lines this filing season and about 342 million visits to IRS.gov.³⁹ This filing season brought additional challenges as the IRS has been closed twice since January 1 due to lapses in appropriations. The Bipartisan Budget Act of 2018, signed into law 10 days after the IRS began accepting returns included numerous retroactive changes affecting returns already being filed. Despite these challenges, the IRS has slightly improved on its FS 2017 performance thus far, processing nearly 104 million total individual income tax returns and providing an overall telephone level of service (LOS) of 72 percent.⁴⁰ While these headline results appear to indicate a successful filing season for the IRS, it is important to take a closer look behind these numbers to evaluate the service provided to taxpayers.

a. The IRS Continues to Steer Taxpayers Toward Online Self-Help Tools Without Adequately Addressing the Widely Divergent Service Needs and Preferences of the U.S. Taxpayer Population

Given the current budget environment, it is understandable that the IRS points taxpayers toward less costly self-service options. However, migration toward more online interaction between the IRS and taxpayers, at the expense of personalized services, harms taxpayers and is unlikely to save resources in the long term.⁴¹ I have long advocated that the IRS develop an online account application, but it must be positioned as one among several components of an omnichannel service strategy.⁴² This type of strategy would allow taxpayers seeking assistance from the IRS to have as seamless and effortless an experience as possible.

³⁹ IRS, *2018 Filing Season Statistics*, (week ending April 6, 2018); IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending April 7, 2018).

⁴⁰ IRS, *2018 Filing Season Statistics* (Mar. 31, 2018); IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending April 7, 2018).

⁴¹ For a more detailed discussion of this issue, see National Taxpayer Advocate 2017 Annual Report to Congress 36-48 (Most Serious Problem: *ONLINE ACCOUNTS: The IRS's Focus on Online Service Delivery Does Not Adequately Take Into Account the Widely Divergent Needs and Preferences of the U.S. Taxpayer Population*).

⁴² See, e.g., See National Taxpayer Advocate 2009 Annual Report to Congress 95-109 (Most Serious Problem: *The IRS Lacks a Servicewide e-Services Strategy*).

Taxpayers must be the focus of this strategy, and their needs and preferences paramount.⁴³ Taxpayers may be willing to use one service channel for one type of task, but want to use another for a different task. Sometimes, their first choice of service does not meet their needs. For example, 46 percent of taxpayers calling the IRS already checked IRS online resources and still need assistance.⁴⁴ If taxpayers face too many obstacles in their attempted interactions with the IRS, their frustrations will mount and their willingness to voluntarily comply in the future may suffer.

In 2016 and 2017, TAS conducted a nationwide survey of U.S. taxpayers about their needs, preferences, and experiences with IRS taxpayer service conducted entirely by telephone (landline and cell phone).⁴⁵ The findings of this survey confirm the need to maintain an omnichannel service strategy. For example, the survey found that approximately 41 million U.S. taxpayers have no broadband access at all in their homes.⁴⁶ Taxpayers with internet service connections slower than broadband will likely experience delays when attempting to access large files or complex web pages – including irs.gov, which has over 135,000 webpages.⁴⁷ Vulnerable populations, including low income taxpayers, elderly taxpayers, and taxpayers with disabilities, are especially impacted by this issue. But more than 20 percent of the “Not Low Income” taxpayer population also do not have broadband access in their homes, as illustrated in the chart below:⁴⁸

No Broadband Access by Demographic Group

Taxpayer Population	Estimated Percentage
Not Low Income	21.8%
Low Income	35.5%
Senior	41.7%
Disabled	31.2%

⁴³ For a more detailed discussion of this issue, see National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *TELEPHONES: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).

⁴⁴ IRS response to TAS information request (Dec. 12, 2017).

⁴⁵ National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2, 62-146 (Research Study: *A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*); National Taxpayer Advocate 2016 Annual Report to Congress, vol. 2, 1-30 (Research Study: *Taxpayers’ Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*).

⁴⁶ See National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2, 62-146 (Research Study: *A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*) (95 percent confidence level).

⁴⁷ IRS response to TAS fact check (Dec. 19, 2017).

⁴⁸ See National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2, 62-146 (Research Study: *A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*) (95 percent confidence level).

In addition, taxpayers choose different channels of communication to accomplish different types of service tasks.⁴⁹ When getting help with more complicated issues like understanding a notice or asking tax law questions, taxpayers are more likely to contact the IRS over the phone or visit a Taxpayer Assistance Center (TAC).⁵⁰ Specifically, in TAS's recent survey on Taxpayers' Varying Abilities and Attitudes, approximately 50 percent disagreed with the statement "I feel secure sharing personal financial information over the Internet."⁵¹ The recent Equifax data breach likely increased the apprehension found by the TAS survey. It also solidifies the need to fully staff other service channels, because if one service channel is unexpectedly suspended the users of the suspended channel should have other options to communicate with the IRS.

The IRS must also upgrade the technology available for taxpayers using its online resources. Taxpayers who have online access and prefer to interact digitally with the IRS are required to pass a multi-factor e-authentication process, called Secure Access, to open an account on many IRS online applications. For FY 2018 through February 28, 2018, of the approximately 1.8 million online account registration attempts, only about 15 percent were successful.⁵² I am not suggesting that the IRS reduce its security protections, but it is essential that the agency acknowledges that Secure Access creates a barrier to entry. Moreover, it could explore other e-authentication methods, including voice recognition.

Accordingly, I recommend that the IRS take the following actions:

- Develop an omnichannel approach to taxpayer service delivery to meet the needs and preferences of taxpayers and representatives who either cannot or prefer not to use the online account application for their particular interaction with the agency.
- The Commissioner of Wage & Investment, the Director of Online Services, in collaboration with TAS, should undertake a joint collaborative and comprehensive study of taxpayer needs and preferences by taxpayer segment,

⁴⁹ National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 62, 81 (Research Study: *A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

⁵⁰ National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 62, 81 (Research Study: *A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

⁵¹ National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2, 62-146 (Research Study: *A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*) (95 percent confidence level).

⁵² IRS, Wage and Investment Division, JOC, Online Account Monthly Report (Feb. 2018). The IRS suspended Secure Access during this period, from mid-October until early December 2017 due to the data breach at Equifax, the company contracted by the IRS to verify taxpayers' identities for the program. Such breaches affect taxpayer willingness to use online systems for tax transactions and many implemented credit freezes in the wake of the breach and thus may be unable to get through security to self-verify.

using telephone, online, and mail surveys, focus groups, town halls, public forums, and research studies (including TAS research studies and literature reviews). These initiatives should be designed to determine taxpayer needs and preferences, and not be biased by the IRS's own desired direction. This study should contain recommendations jointly agreed to by the principals for a comprehensive 21st century taxpayer service strategy.

- Upgrade technology used to provide taxpayer services, including adding a callback option for its telephone operations.

b. The IRS Is Not Adequately Measuring and Improving Taxpayers' Access to Assistance and the Quality of Answers Taxpayers Receive on Its Service Channels, Particularly over Its Telephone Lines.

As of April 7, 2018, the IRS has received over 36 million telephone calls this filing season.⁵³ To evaluate its telephone service during filing season, the IRS primarily relies on the Customer Service Representative (CSR) LOS, which is designed to indicate taxpayer access to telephone assistance. The IRS has been able to provide an overall LOS of 72 percent on its telephone lines so far in FS 2018, with an LOS of 79 percent on its Account Management (AM) lines.⁵⁴ These levels mark a slight improvement from the IRS's performance during FS 2017.⁵⁵ While the IRS should be commended for these results, the LOS statistics viewed alone can be misleading because they do not necessarily indicate that a greater number of taxpayers received the assistance they needed.

First, the LOS was not uniformly high across all IRS telephone lines. For example, the LOS for Consolidated Automated Collection Service (ACS) lines, where taxpayers call to reach the IRS's compliance functions and discuss payment options, was just 55 percent during FS 2018 with average wait times of 25 minutes.⁵⁶ In particular, the "Installment Agreement/ Balance Due" line had a LOS of below 50 percent for FS 2018 with wait times of about 30 minutes.⁵⁷ This means that close to half of all taxpayers calling these lines will fail to get assistance.

⁵³ IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Mar. 31, 2018). Note that filing season numbers are drawn from the "Planning Period" statistics 2018 reported on the JOC website for the period beginning on January 1, which correlates with the start of filing season.

⁵⁴ IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending April 7, 2018). The AM lines LOS is often the "headline measure" for telephone service because it is where taxpayers go for answers to tax law and account inquiries. However, the percentage of calls classified as AM has decreased in recent years, as fewer telephone lines are now included in this category.

⁵⁵ For the same period in FS 2017, the IRS provided an overall LOS of 69.5 percent and a 78 percent LOS on its AM lines. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending April 7, 2018).

⁵⁶ IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending April 7, 2018).

⁵⁷ IRS, JOC, *Snapshot Reports: Product Line Detail* (week ending April 7, 2018).). The Installment Agreement/ Balance Due line was grouped with Accounts Management until 2017, when it was moved to

Second, the IRS actually answered almost 1 million fewer calls than in FS 2017.⁵⁸ Of the calls that the IRS does consider “answered,” over half are routed to automated responses.⁵⁹ While these results can partially be attributed to a greater number of taxpayers utilizing self-help service solutions, they are also the result of the IRS’s ongoing attempt to reduce personal interactions with taxpayers. For example, starting in 2016, the IRS stopped systemically sending out Letter 16, *Request for Taxpayer Contact*, notices, which serve as a final reminder for the taxpayer to call the IRS about unpaid taxes and potentially discuss alternative payment arrangements.⁶⁰ The revised notice sent out was explicitly designed to reduce the number of inbound phone calls to the IRS’s backlogged Consolidated ACS lines.⁶¹ Thus, the fact that the IRS has received fewer phone calls on those lines as a result of this practice does not indicate that fewer taxpayers need assistance over the phone; it merely indicates that fewer taxpayers are getting the nudge to do so.

Third, measures like the LOS do not provide qualitative information about the assistance a taxpayer receives on a telephone call. Achieving a high LOS can be a hollow result if the IRS is unable to answer taxpayers’ questions over the phone or guide them to an appropriate solution to resolve their issues.

In order to more thoroughly evaluate the its telephone service and its service on other communication channels, the IRS should incorporate additional measures aimed at assessing taxpayer satisfaction. The “single biggest driver of customer satisfaction” is the First Contact Resolution (FCR).⁶² While the industry standard for FCR is above 70 percent,⁶³ almost 40 percent of taxpayers calling the IRS felt one call did not fully

the Consolidated ACS lines. This move allowed the IRS to show a higher LOS on its AM lines, while the LOS on the Consolidated ACS lines decreased drastically.

⁵⁸ IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending April 7, 2018).

⁵⁹ On AM lines, assistor calls answered make up only 44 percent of total calls answered. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending April 7, 2018). Taxpayers calling the IRS are not provided the option of whether to be routed to automation or speak with a live telephone assistor, and thus may be routed to the incorrect location and forced to start their journey over. TAS has previously recommended that the IRS institute a system similar to a 311 system to address this concern. See National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *TELEPHONES: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).

⁶⁰ An LT16 notice is typically sent after an LT11, which informs the taxpayer of the IRS’s intent to levy. The number of LT 16 notices dropped from about 1.8 million annually to just 866,000 in 2016. See IRS, ACS Optimization/ RAAS, *ACS LT16 Notice Test Pilot Report*, 3 (Sept. 27, 2017).

⁶¹ IRS, ACS Optimization/ RAAS, *ACS LT16 Notice Test Pilot Report*, 3 (Sept. 27, 2017).

⁶² FCR “measures the percentage of all calls that are resolved on the first attempt, without the agent needing to refer the customer to a colleague, their manager, or calling the customer back.” International Finance Corp., *Measuring Call Center Performance: Global Best Practices*, 7 (June 2010).

⁶³ International Finance Corp., *Measuring Call Center Performance: Global Best Practices* 7 (June 2010).

resolve their problems.⁶⁴ These results show taxpayers are not getting the full assistance they need over the phone, jeopardizing their *right to quality service* and *right to be informed* while potentially undermining voluntary compliance.

In addition to FCR, the IRS should use other qualitative metrics to examine why taxpayers prefer and choose particular channels and optimize all aspects of that experience instead of attempting to modify their behavior.⁶⁵ In the private sector, companies are increasingly using customer experience mapping and customer journey analytics to understand why customers choose particular channels to accomplish particular tasks and to determine whether they are able to reach the right resource on the channel they choose.⁶⁶ Gaps in the journey occur where search and navigation fail to arrive at the optimal result and customers abandon their task.⁶⁷ For the IRS, this sort of analysis is critical to identify the shortcomings in its taxpayer service and learn at what points taxpayers are likely to abandon their attempts to get help.

Accordingly, I recommend that Congress direct the IRS to take the following actions:

- Develop a comprehensive strategy for improving its telephone service to be included in its next strategic plan and in its annual appropriations requests, with specific initiatives to increase taxpayer satisfaction.
- Incorporate qualitative measures, such as the First Contact Resolution rate, used by other government agencies and in the private sector to measure a caller's overall experience and satisfaction with a call.

c. The IRS Continues to Limit the Availability of Assistance in Taxpayer Assistance Centers (TACs).

Since 2011, the IRS has closed 30 TACs and reduced TAC staffing by about 30 percent.⁶⁸ At the end of 2016, the IRS moved from a walk-in system for TAC service to

⁶⁴ National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 62, 85 (Research Study: *A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

⁶⁵ For a discussion of metrics used in the private sector, see National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 229-234 (Literature Review: *Improving Telephone Service Through Better Quality Measures*) and National Taxpayer Advocate 2017 Annual Report to Congress 22-35 (Most Serious Problem: *TELEPHONES: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*).

⁶⁶ Maxie Schmidt-Subramanian and Andrew Hogan, Forrester Research, *How to Measure Digital Customer Experience*, 3 (Jun 21, 2016).

⁶⁷ Deanna Laufer, Forrester Research, *How to Build the Right CX Strategy* 6 (Jan. 10, 2017).

⁶⁸ I am pleased that H.R. 5440 § 205, which unanimously passed the Ways and Means Committee on April 11, 2018, directs the IRS to notify Congress and provide reasons prior to closing a TAC and requires that the IRS provide notice (including by non-electronic means) to affected taxpayers 90 days in advance of the closure. IRS response to TAS information request (Sept. 13, 2017; Nov. 3, 2017).

a mostly by-appointment-only system.⁶⁹ Prior to the implementation of this system, 5.6 million taxpayers visited TACs in FY 2015.⁷⁰ In FY 2017, the first full year of the appointment system, only 3.3 million taxpayers visited TACs, a decrease of about 41 percent.⁷¹ Thus far in FY 2018, even fewer taxpayers have had face-to-face appointments, as the IRS plans to serve only 3 million taxpayers at TACs during the current fiscal year.⁷² While the IRS's policy is to provide walk-in services at TACs for certain services, like making a payment or picking up a form, it no longer advertises that on its website, and some taxpayers and their representatives continue to be turned away when visiting TACs to make payments. As illustrated below, taxpayers visiting TACs are greeted with a sign on the door that appointments are required, without an indication that some walk-ins could be accepted.⁷³

⁶⁹ IRS, *Contact Your Local Office*, <https://www.irs.gov/help-resources/contact-your-local-irs-office> (last visited Aug. 16, 2017).

⁷⁰ IRS Wage & Investment Division, *Business Performance Review 7* (4th Quarter – FY 2017, Nov. 9, 2017).

⁷¹ *Id.*

⁷² TIGTA, Ref. No. 2018-40-028, *Interim Results of the 2018 Filing Season* (Apr. 5, 2018).

⁷³ See National Taxpayer Advocate 2017 Annual Report to Congress 117-127 (Most Serious Problem: *TAXPAYER ASSISTANCE CENTERS (TACs): Cuts to IRS Walk-In Sites Have Left the IRS With a Substantially Reduced Community Presence and Have Impaired the Ability of Taxpayers to Receive In-Person Assistance*).

Taxpayer Assistance Center – Des Moines, IA



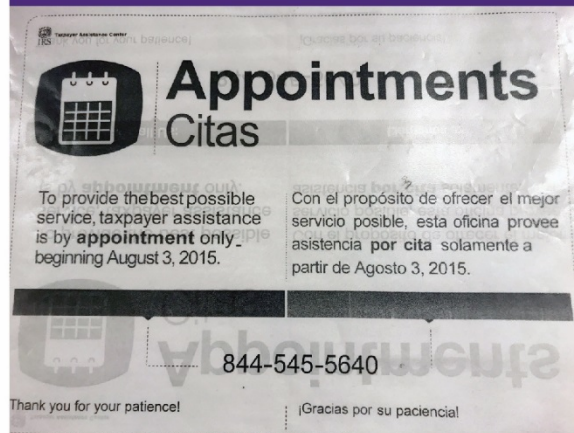
Taxpayer Assistance Center – Little Rock, AR



Taxpayer Assistance Center – Plantation, FL



Taxpayer Assistance Center – Seattle, WA



Failing to have a strong face-to-face service component erodes the IRS’s community presence and public trust and jeopardizes taxpayers’ rights, particularly the *right to quality service*.⁷⁴

⁷⁴ See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated

Accordingly, I recommend that Congress direct the IRS to:

- Allow taxpayers to make an appointment or walk in to a TAC.

IV. Filing Season: Issues with Fraud Detection and High False Positive Rates Continue to Plague the IRS and Taxpayers

Each filling season the IRS develops systemic filters against which refund returns are processed in order to identify returns that may be submitted by identity thieves or by taxpayers whose income or withholding has been inflated. The IRS reviews these filters each year and makes adjustments to them in order to address new schemes or identity theft behavior. However, the IRS does not devote the same level of attention to preventing "false positives" -- delaying or freezing the refunds due to legitimate taxpayers with legitimate returns.

Last year, the IRS had a False Positive Rate (FPR) of over 60 percent for both identity theft and non-identity theft filters, and it looks like the rate will be even higher for this filing season. High FPRs harm legitimate taxpayers and create unnecessary work for the IRS. While it is impossible to develop filters that result in a zero false positive rate, the IRS can reduce the FPR significantly below 60 percent and still prevent issuance of improper payments. That is, with respect to preventing fraud and minimizing FPRs, the IRS can walk and chew gum at the same time.

Refund fraud detection filters unnecessarily burden legitimate taxpayers.

The IRS continues its efforts to mitigate identity (IDT) theft and non-IDT refund fraud through its Return Integrity Operations (RIO) function, which is housed in the IRS Wage and Investment Division (W&I). This function is tasked with detecting both IDT and non-IDT refund fraud. RIO uses two systems to detect possible fraud –the Dependent Database (DDb) and the Return Review Program (RRP), which contain filters and models.⁷⁵

This is the second year that IRS has received Form W-2 and Form 1099-MISC (Non-Employee Compensation) information by January 31st and also delayed issuing EITC and ACTC refunds until February 15th, pursuant to the PATH Act. The purpose of these provisions, in part, was to identify income misreporting and other errors in the return processing phase and to reduce improper payments. As the tables below show,

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

⁷⁵ The Dependent Database (DDb) and the Return Review Program (RRP) systems use filters and rules to score each return. If the return receives a certain score and is flagged as potentially fraudulent, the return goes to the Taxpayer Protection Program (TPP) or the Income Wage Verification (IWV) program for further scrutiny. IRM 25.25.2.1, *(IVO) Program Scope and Objectives* (Mar. 29, 2017); IRM 25.25.6.1, *(TPP) Program Scope and Objectives* (July 14, 2017).

these provisions have been highly effective in giving the IRS access to reports of wages, withholding, and nonemployee compensation, and this information has been extremely helpful in identifying and reducing improper refunds.

W-2 Receipts

Cycle 5	Cycle 7	Cycle 5	Cycle 7	Cycle 5	Cycle 7
TY 2015 FS 2016	TY 2015 FS 2016	TY 2016 FS 2017	TY 2016 FS 2017	TY 2017 FS 2018	TY 2017 FS 2018
12,453,769	95,492,467	130,086,268	214,724,338	98,305,885	221,282,379
% Change Cycle 5 to Cycle 7 (W/I same year)					
	667%		65%		125%

% Change Between Fiscal Years

Cycle 5	Cycle 7
% Change from FS 2016 to FS 2017	
945%	125%
% Change from FS 2017 to FS 2018	
-24%	3%
% Change from FS 2016 to FS 2018	
689%	132%

Cycle 5 corresponds with January 31st.
Cycle 7 corresponds with February 15th.

1099 Misc Receipts

Cycle 5	Cycle 7	Cycle 5	Cycle 7	Cycle 5	Cycle 7
TY 2015 FS 2016	TY 2015 FS 2016	TY 2016 FS 2017	TY 2016 FS 2017	TY 2017 FS 2018	TY 2017 FS 2018
286,222	2,304,914	833,502	4,976,151	1,444,134	13,819,760
% Change Cycle 5 to Cycle 7 (W/I same year)					
	705%		497%		857%

1099 Misc

Cycle 5	Cycle 7
% Change from FS 2016 to FS 2017	
191%	116%
% Change from FS 2017 to FS 2018	
73%	178%
% Change from FS 2016 to FS 2018	
405%	500%

Cycle 5 corresponds with January 31st.
Cycle 7 corresponds with February 15th.

While I, of course, share the goal of detecting and mitigating refund fraud, I have major concerns about the IRS's management of this program.⁷⁶ My concerns are three-fold:

- Filters used to detect refund fraud are designed too broadly, which has contributed to the selection of about 789,000 non-IDT refund fraud returns from January 1 through March 19, 2018, a 535 percent increase when compared to the same time period last year.⁷⁷
- These filters incurred high false positive rates (FPRs) of 50 percent or higher in filing season 2017,⁷⁸ meaning that of all returns flagged as potentially fraudulent,

⁷⁶ See, e.g., National Taxpayer Advocate 2016 Annual Report to Congress 151-160; National Taxpayer Advocate 2015 Annual Report to Congress 45-55, 180-87; National Taxpayer Advocate 2014. Annual Report to Congress vol. 2, 44-90; National Taxpayer Advocate 2013 Annual Report to Congress 75-83; National Taxpayer Advocate 2012 Annual Report to Congress 42-67, 95-110; National Taxpayer Advocate 2011 Annual Report to Congress 48-73; National Taxpayer Advocate 2009 Annual Report to Congress 307-317; National Taxpayer Advocate 2008 Annual Report to Congress 79-94; National Taxpayer Advocate 2007 Annual Report to Congress 96-115; National Taxpayer Advocate 2005 Annual Report to Congress 25-54, 180-191; National Taxpayer Advocate 2004 Annual Report to Congress 133-136; National Taxpayer Advocate 2003 Annual Report to Congress 175-181.

⁷⁷ IDT & IVO *Selections Performance Report* (Mar. 21, 2018), slide 2.

⁷⁸ IRS response to TAS information request (Oct. 27, 2017).

more than half turned out to be legitimate. A false positive occurs when a system selects a legitimate return and delays the refund past the prescribed review period.

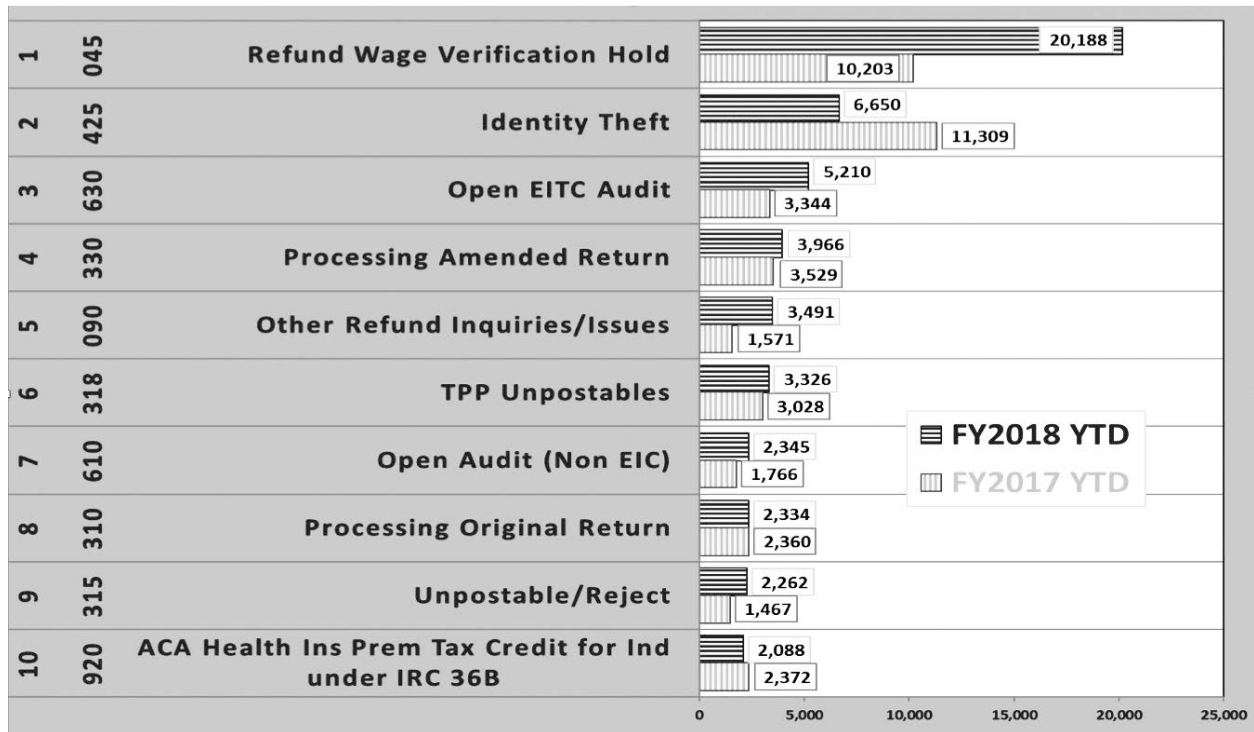
- Outdated IRS systems used to manage refund fraud cases cause processing problems, ultimately resulting in the assignment of more IRS employees to conduct manual tasks, greater delays in taxpayers obtaining their refunds, and significant increases to cases coming into TAS.

The issues described above result in unnecessary delays of refunds to hundreds of thousands of taxpayers with legitimate returns. Even a short delay in a refund being issued can significantly harm a low income taxpayer who may be relying on the refund to assist with day-to-day living expenses or to help cover high cost items such as medical and educational expenses. These program flaws also generate downstream costs for the IRS. If a taxpayer's refund is delayed, the taxpayer will likely call the IRS to inquire about the delay, which in turn ties up the phone lines, making it more difficult for other taxpayers to reach the IRS to get their questions answered.

Additionally, the high FPRs have significant downstream consequences for taxpayers seeking TAS assistance. TAS Integrity & Verification Operation (IVO) pre-refund wage verification refund hold case receipts from October 1, 2017 through March 31, 2018 have increased from 10,203 to 20,188 cases, or 98 percent, when compared to the same time period last year.⁷⁹ The chart below illustrates how TAS's IVO case receipts have exploded during filing season 2018 when compared to changes in TAS's other top issue codes.

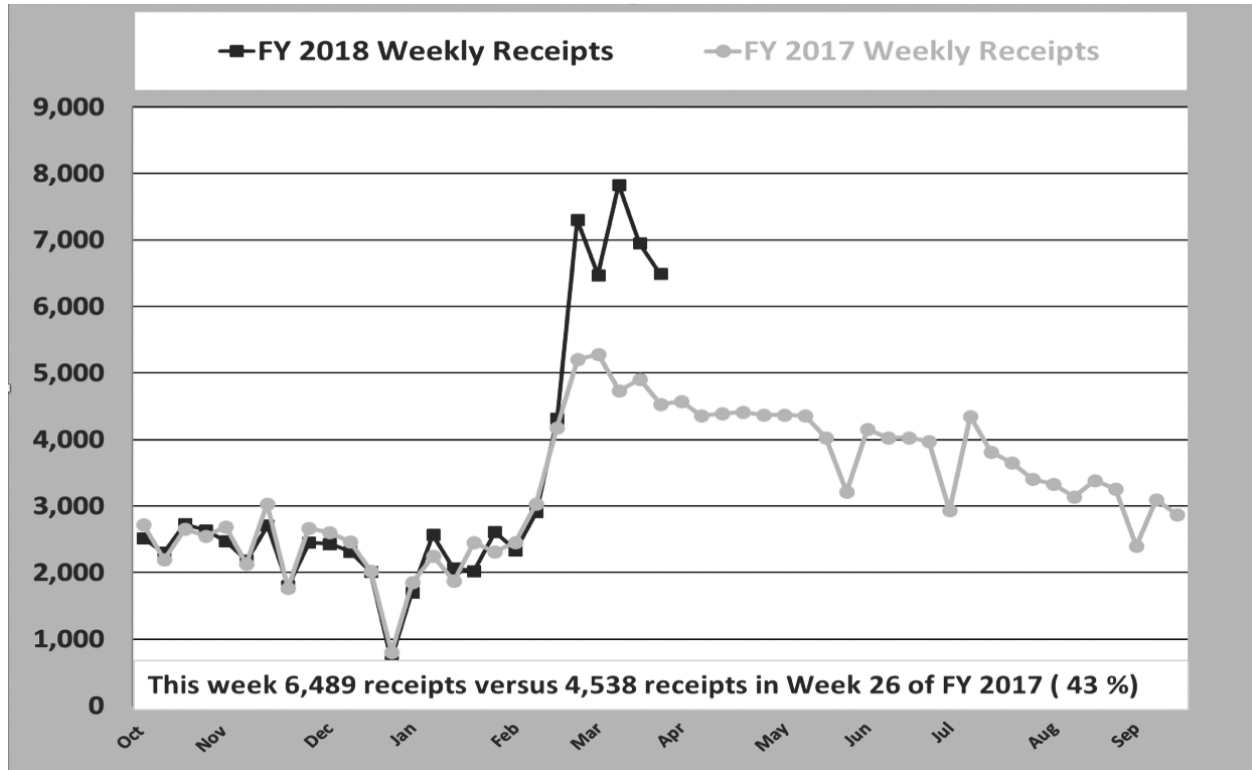
⁷⁹ Data obtained from Taxpayer Advocate Management System (TAMIS) (Apr. 1, 2017; Apr. 1, 2018).

The Top Ten Receipts in FY 2018 by Volume of Receipts YTD versus FY 2017 YTD



As a result of the influx of IVO cases, TAS's overall case receipts are up by almost ten thousand cases this far in FY 2018 compared with the same time period last year. This trend is demonstrated in the weekly receipts as shown in the figure below.

TAS Weekly Receipts for FY 2018 versus FY 2017



This increase has resulted in a precipitous drop in the level of service (LOS) on the TAS Centralized Case Intake (CCI) toll-free phone line from about 60 percent to 44 percent from January 1 to April 7, 2018 when compared to the same time period in the previous year.⁸⁰ Notably, affected taxpayers waited on hold for an average exceeding fifty minutes.⁸¹

IRS fraud detection filters are too broad.

Following a Treasury Inspector General for Tax Administration (TIGTA) audit, the IRS added filters I and J for filing season 2018 to detect improper reporting of wages on returns in which the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC) was claimed.⁸² Filter I detects discrepancies between third party data and the return, and filter J identifies returns when the data is not able to be verified. Filter H, which has been in place for some time, is designed to identify potentially suspicious

⁸⁰ Cumulative and comparative data for TAS Centralized Case Intake (CCI) call sites (Mar. 26, 2018).

⁸¹ Cumulative and comparative data for TAS Centralized Case Intake (CCI) call sites (Mar. 26, 2018).

⁸² TIGTA Ref. No. 2018-40-015, *Employer Noncompliance with Wage Reporting Requirements Significantly Reduces the Ability to Verify Refundable Tax Credit Claims Before Refunds Are Paid* (Feb. 26, 2018).

returns. More specifically, this filter contains a rule that applies "tolerance" amounts for mismatches between income and withholding reported by third parties and taxpayers. If any of these or other rules and risk factors are triggered, the taxpayer's return is more likely to be selected for further scrutiny.⁸³ The design of these filters has contributed to a 535 percent increase in cases selected for pre-refund wage verification.

As noted earlier, EITC and ACTC taxpayers whose returns are caught up in these filters have already experienced delays of their refund issuance until February 15 under the PATH Act, and now are facing further delays of 60 days or longer from that date. The frustration of this delay is compounded by the fact that taxpayers cannot receive information regarding the processing of their returns when they call the IRS, because the IRS customer service representatives (CSRs) do not have access to the Electronic Fraud Detection System (EFDS), the case management system for the pre-refund wage verification program. Therefore, CSRs cannot view the taxpayer's case history.⁸⁴

High false positive rates undermine the effectiveness of fraud filters.

The IRS has not calculated the FPRs for the current filing season, but in February 2018, it projected a rate of 68 percent for its IDT filters for CY 2018, but did not set any such goals for its non-IDT filters.⁸⁵ The actual CY 2018 rate is likely to be much higher, given the significant increase in cases selected for further scrutiny. In CY 2017 through September 2017, IDT filters selected 1,939,165 returns and had an FPR of 62 percent,⁸⁶ while non-IDT refund fraud filters selected 90,410 returns and had an FPR of 66 percent.⁸⁷ During the same time period, taxpayers whose returns were associated with these FPRs had their refunds delayed by more than six weeks.⁸⁸ In contrast, other tax administration agencies have illustrated that it is possible to have low FPRs while still stopping fraudulent returns.⁸⁹ Despite having the capability to adjust filters to be more fine-tuned in a matter of weeks or even days, the IRS has not exercised this capability.⁹⁰ I urge the IRS to use these capabilities to modify filters and adjust its

⁸³ Fraud detection filters consist of a number of rules. The filter combines all the outcomes of the rules that are programmed (*i.e.*, income on return does not match third party documentation). After analyzing what rules have been broken, a score will be assessed on the return, determining if that return will be selected for further scrutiny.

⁸⁴ National Taxpayer Advocate 2017 Annual Report to Congress 225.

⁸⁵ Wage & Investment Division Business Performance Review (Feb. 6, 2018).

⁸⁶ IRS response to TAS information request (Oct. 27, 2017). The IRS does not yet have final FPRs available for CY 2017.

⁸⁷ IRS Response to TAS information request (Oct. 23, 2017).

⁸⁸ IRS response to TAS information request (Oct. 27, 2017). The IRS does not yet have refund delay information for CY 2017.

⁸⁹ National Taxpayer Advocate 2017 Annual Report to Congress 222. See *also* National Taxpayer Advocate 2016 Annual Report to Congress 153-157.

⁹⁰ IRS response to TAS information request (May 23, 2017); IRS response to TAS information request (Oct. 19, 2017). The IRS made no changes to its fraud filters between January 1, 2017 through

tolerances when it is clear that they are too broad and are selecting too many legitimate returns.

An outdated fraud detection system causes manual rework.

One of the new filters discussed above selected about 303,000 EITC and ACTC returns as potentially fraudulent because no third-party wage information had been posted as of February 15, 2018, about two weeks after the January 31 deadline established by law.⁹¹ Once these accounts were selected as potentially fraudulent, the IRS anticipated that EFDS would be able to release returns in bulk when income on the return could be verified with third party information. However, because EFDS does not interact with the IRS system that maintains third-party wage information, employees must enter the third-party information into EFDS one document at a time, and then manually release the refunds. What makes this so exasperating is that the IRS has been claiming for more than a decade that it will retire its EFDS system in favor of a more modern, sophisticated system.⁹² This is just the latest example of how old systems harm taxpayers and create more work for the IRS.

Accordingly, I recommend that Congress:

- Require the IRS to establish a maximum acceptable FPR goal within industry accepted standards and an actionable timeline to achieve that goal.
- Ensure that the IRS allocates adequate funds to substitute and retire the EFDS case management system as a part of the major information technology investments authorized by the recently passed appropriations legislation.⁹³

V. The IRS Should Do a Better Job of Answering the Right Tax Law Questions at the Right Time

I remain deeply concerned about the IRS's commitment to answering tax law questions. As I have noted previously, the IRS ceased answering tax law questions after April 15 in 2014, and currently maintains a policy of only answering tax law questions during

September 30, 2017. The IRS had an annual meeting prior to the current filing season in which it reviewed prior year filters and discussed possible modifications to the filters for the current filing season.

⁹¹ See IRC § 6071, requiring that certain information returns be filed by January 31, generally the same date as the due date for employee and payee statements.

⁹² See National Taxpayer Advocate 2016 Annual Report to Congress 109-120 (Most Serious Problem: *ENTERPRISE CASE MANAGEMENT (ECM): The IRS's ECM Project Lacks Strategic Planning and Has Overlooked the Largely Completed Taxpayer Advocate Service Integrated System (TASIS) As a Quick Deliverable and Building Block for the Larger ECM Project*).

⁹³ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141 Div. E, Title I (2018) (allocating \$110,000,000 for investment in IRS business systems modernizations through Sept. 30, 2020).

filing season.⁹⁴ While it is my understanding that the IRS intends to answer questions this year regarding the new tax law outside of filing season, it is unclear if the IRS will continue to answer such questions once the tax law is no longer considered new, even if taxpayers only understand the implications after they have filed their 2018 tax returns.

The IRS designates tax law topics as in-scope and out-of-scope. An employee receiving a tax law inquiry relies mainly on the Interactive Tax Law Assistant (ITLA) to determine if the issue the taxpayer presents is deemed in-scope and can therefore be answered. However, it is not clear to the taxpayer from the IRS website or any other publicly available source that TAS has located what topics the taxpayer can raise to the IRS and actually obtain an answer.

Many taxpayers, such as those who file extensions or who have quarterly reporting requirements, have a legitimate need to have tax law questions answered beyond the approximately three month long filing season. However, I have not seen any policy from the IRS that clearly states what precisely it will answer about the new tax law and for how long it will answer those questions, whether as a result of questions being asked outside of filing season or questions being initially or eventually deemed out-of-scope. For example, the new tax law adjusted the Alternative Minimum Tax (AMT), which is currently a topic deemed out-of-scope.⁹⁵ Will the IRS change the AMT to in-scope for the purpose of answering questions about the new tax law or will it remain out-of-scope and taxpayers impacted by the change will be unable to seek assistance from the IRS?

Until the fall of 2015, the IRS had a program called Electronic Tax Law Assistance (ETLA), which allowed the IRS to learn directly from taxpayers what questions they needed addressed. In conjunction with a system called R-Mail, IRS employees with subject matter expertise could answer taxpayer questions that were not already available in ETLA and the responses would then be recorded for future taxpayers in ETLA. However, as of September 30, 2015, the IRS discontinued ETLA and R-Mail due to concerns about cost and low usage.⁹⁶ This kind of program is ideally suited for the 21st use of artificial intelligence technology; it would learn what topics taxpayers actually need assistance with, beyond the ones the IRS is willing to address. This approach will enable the IRS to better meet the actual needs of taxpayers.

⁹⁴ Internal Revenue Manual (IRM) 21.3.4.3.4, *Tax Law Assistance* (Oct. 27, 2016). With limited exceptions, the IRS ceases to answer tax law questions as of the current year's due date for filing a tax return, IRS Form 1040. Nineteen topics are currently designated as year-round topics and the IRM provides for a limited exception at the manager's discretion to answer other topics outside of filing season. See also National Taxpayer Advocate 2016 Annual Report to Congress 1, 6 (Special Focus: *IRS FUTURE STATE: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*) ("In 2014, the IRS ceased all tax [return] preparation in the TACs and eliminated post-April 15 tax law phone and taxpayer assistance center (TAC) assistance.").

⁹⁵ TAS review of the 2018 ITLA (Feb. 16, 2018).

⁹⁶ See email from Chief, Electronic Services and Programs, SE:W:CAS:AM:ESP (Aug. 13, 2015).

Accordingly, I recommend that Congress:

- Require the IRS to answer tax law questions year-round.
- Deem all questions related to the new tax law as in-scope for a reasonable period.
- Direct the IRS to Establish a method to respond to uncommon or complex questions (*i.e.*, those that are out-of-scope for the phones and TACs) via email or call back, utilizing Artificial Intelligence and pattern recognition technology.

VI. The IRS Continues to Struggle With Implementation of Certain Provisions of the Affordable Care Act

The IRS is charged with implementing certain provisions of the Patient Protection and Affordable Care Act of 2009, also known as the Affordable Care Act (ACA).⁹⁷ While many of the provisions impacting individuals became effective in tax year (TY) 2014, some provisions of the ACA impacting employers become effective in TY 2015. The IRS has generally discharged its significant ACA responsibilities well. However, issues of concern continue to arise over the years.

In 2017, the IRS incorrectly sought amended returns from taxpayers with religious coverage exemptions.

The Amish and Mennonite communities have long been recognized as a constitutionally protected class.⁹⁸ Among other things, they may seek religious exemption from participating in Medicare and Social Security benefit programs and making payments toward and receiving benefits for death, disability, old-age, or retirement; accordingly, the IRS has developed procedures to process their income tax returns taking the exemption into account.⁹⁹

In September 2017, an Amish community representative contacted TAS regarding the IRS issuing Letter 6002, *Silent Return Filers – ACA*, to many taxpayers in the Amish community. This letter advised the taxpayers that their tax return for 2014 and/or 2015 was missing information about healthcare coverage and requested they file an amended return to either report full-year coverage, claim a coverage exemption, or

⁹⁷ Patient Protection and Affordable Care Act of 2009 (ACA), Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act (HCERA) of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

⁹⁸ The United States Supreme Court held in *State of Wisconsin v. Yoder*, 406 U.S. 205 (1972), that the First and Fourteenth Amendments prevent a state from compelling the Amish to cause their children to attend formal high school to age 16.

⁹⁹ See IRC § 1402(g)(1); IRS Form 4029, *Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits*.

report a shared responsibility payment. The Amish taxpayers were concerned because they had correctly filed their Form 1040, *U. S. Individual Income Tax Return*, and either reported an Exemption Certificate Number (ECN) received from the Health Insurance Marketplace or that processing of the ECN was “pending.”¹⁰⁰

TAS elevated this issue to the Wage & Investment (W&I) Division of the IRS; W&I informed us that letters were inadvertently mailed to a group of taxpayers. The error was caused by a programming glitch in the way data was transcribed from the Form 8965, *Health Coverage Exemptions*, the form taxpayers use to report health care coverage exemptions granted by the Marketplace or claimed on their return.¹⁰¹ Although W&I was unable to accommodate TAS’s request to send corrected letters to impacted taxpayers, TAS partnered with W&I to draft guidance on IRS.gov for affected taxpayers and to help employees address this issue, as well as language to share with the Amish community.¹⁰²

As a related issue, in my 2016 Annual Report to Congress, I made a Legislative Recommendation regarding the unnecessary compliance burdens many taxpayers in the Amish and Mennonite communities experience when applying for certain tax-related exemptions.¹⁰³ In addition to applying to the Marketplace for an Individual Shared Responsibility Payment (ISRP) exemption under IRC § 5000A(d)(2), taxpayers in these communities must apply for a similar exemption from Social Security and Medicare taxes by submitting to the Social Security Administration (SSA) Form 4029, *Application for Exemption from Social Security and Medicare Taxes and Waiver of Benefits*.

In this report, I recommended Congress amend IRC § 5000A(d)(2) to authorize the Secretary of the Treasury to grant the religious exemption for purposes of the ISRP to the taxpayer and to each person for whom the taxpayer would be liable under IRC § 5000A(a) if the taxpayer has already received approval from the SSA and the IRS for the exemption as provided in IRC § 1402(g)(1), and the related regulations, and if the exemption is still valid.¹⁰⁴ Although the recent Tax Cuts and Jobs Act eliminated the

¹⁰⁰ Currently IRC § 5000A requires nonexempt individuals to have minimum essential health coverage or make an individual shared responsibility payment (ISRP) when they file a tax return. IRC § 5000A(d)(2) provides an exemption from the ISRP for individuals who are members of a “recognized religious sect or division thereof.” Section 155.605 (c) of Title 45 of the Code of Federal Regulations (Health and Human Services regulations) provides that the Marketplace makes the eligibility determination for the exemption provided in IRC § 5000A(d)(2).

¹⁰¹ Meeting between Wage & Investment (W&I) (September 28, 2017); Email from W&I to TAS (Sept. 29, 2017).

¹⁰² Servicewide Electronic Research Program (SERP) Alert 17A0236; IRS, *Understanding Your Letter 6002*, <https://www.irs.gov/individuals/understanding-your-letter-6002> (last visited Apr. 12, 2018).

¹⁰³ National Taxpayer Advocate 2016 Annual Report to Congress 407-09 (Legislative Recommendation: *AFFORDABLE CARE ACT (ACA): Streamline the Religious Exemption Process for the Individual Shared Responsibility Payment (ISRP)*).

¹⁰⁴ See S. 2568 Equitable Access to Care and Health Act (EACH Act), introduced on March 19, 2018 by Senators S. Brown, D-Ohio, and R. Portman, R-Ohio (“a bill to amend section 5000A of the Internal Revenue Code of 1986 to provide an additional religious exemption from the individual health coverage mandate, and for other purposes.”).

ISRP for tax years beginning after 2018, the need for certain taxpayers to secure exemptions from the ISRP still exists for tax years 2014 through 2018.¹⁰⁵ This is especially significant because for filing season (FS) 2018, the IRS implemented procedures to address “silent returns” (*i.e.*, returns that do not have the minimum essential coverage (MEC) checkbox marked; Form 8965; or an amount for the ISRP), discussed below.

Taxpayers still face confusion about the impact of the Affordable Care Act (ACA) on their tax returns.

While the Tax Cuts and Jobs Act repealed the ISRP requirement of the ACA, it does not take effect until 2019. Thus, taxpayers must still maintain MEC or timely secure a waiver or exemption, or face a penalty. The 2018 filing season marked the first time the IRS would not accept tax returns that are silent on an individual’s healthcare coverage. As of February 28, 2018, there were 104,641 e-filed tax returns that were rejected for not addressing the taxpayers’ health care coverage status.¹⁰⁶ Rejecting these “silent returns” is the least burdensome approach for administering the ISRP requirement because it allows taxpayers to correct the omission immediately or explain why they are entitled to an exemption.¹⁰⁷ However, the IRS should do more to proactively alert taxpayers of the ISRP requirements and make it easier for taxpayers to secure an exemption and avoid “silent returns” in the first place.¹⁰⁸

The IRS implemented the Employer Shared Responsibility Payment (ESRP) assessment process without issuing formal guidance, such as a Revenue Procedure.

Certain provisions of the ACA that impact employers became applicable in TY 2014. For example, under IRC § 4980H(a), an employer shared responsibility payment (ESRP) (up to \$2,000 per employee) will be assessed if an applicable large employer (ALE)¹⁰⁹ did not offer MEC to its full-time employees (and their dependents) and at least one of its full-time employees was allowed a premium tax credit.¹¹⁰ Under § 4980H(b),

¹⁰⁵ Pub. L. No. 115-97, 131 Stat. 2054.

¹⁰⁶ TIGTA, Ref. No. 2018-40-028, *Interim Results of the 2018 Filing Season* (Apr. 5, 2018).

¹⁰⁷ In the past, the IRS accepted silent returns and then later corresponded with taxpayers about the coverage mandate, causing taxpayers to expend time and money months after believing their tax obligations were complete.

¹⁰⁸ See National Taxpayer Advocate 2016 Annual Report to Congress 407-409 (Legislative Recommendation: *Affordable Care Act (ACA): Streamline the Religious Exemption Process for the Individual Shared Responsibility Payment (ISRP)*).

¹⁰⁹ ALEs are employers that had an average of 50 or more full time employees, including full time equivalent employees, during the prior calendar year. IRC § 4980H(c)(2).

¹¹⁰ IRC § 4980H(a).

an ESRP (up to \$3,000 per employee) will be assessed if an ALE offers MEC but it is not considered affordable.¹¹¹

The IRS provided transition relief for TY 2014, making TY 2015 the first year the ESRP was applicable.¹¹² The IRS was scheduled to implement the ESRP review process on TY 2015 case inventory in March 2017. On November 1, 2017, the IRS began sending Letter 226-J to ALEs advising of their potential assessments of the ESRP for TY 2015.¹¹³ The IRS reported that as of January 2, 2018, 3,820 such letters were issued.¹¹⁴

On March 21, 2018, the Treasury Inspector General for Tax Administration (TIGTA) issued a report evaluating the IRS's implementation of processes to ensure compliance with the ESRP and related information reporting requirements.¹¹⁵ TIGTA found the IRS's delayed implementation of the ESRP assessment process was due in part to incomplete or inaccurate data used by the IRS to select ALEs, along with unclear instructions and processing procedures.

In my Fiscal Year 2018 Objectives Report to Congress, issued on June 30, 2017, I discussed two issues similar to those identified in the TIGTA report:

- Even though the ESRP and related information reporting requirements became effective in TY 2015, the IRS had not set forth procedures it will use to propose and assess the ESRP. Employers need to know how they will be notified of any proposed ESRP assessments, how long they will have to respond, and whether they may request a pre-assessment appeal.
- The TIGTA report stated that no Revenue Procedure providing guidance to taxpayers on notices proposing the ESRP was issued.¹¹⁶ IRS management stated the Revenue Procedure was not issued because it did not receive final approval from the Department of Treasury. However, the IRS did provide

¹¹¹ The preamble (section XV.D.7.a) to the final Regulations under § 54.4980H, 2014-9 I.R.B. 541, describes transition relief that applies to various aspects of the ESRP. For purposes of section 4980H(a), an ALE is treated as offering coverage to its full-time employees (and their dependents) for a month if, for that month, it offers coverage to 95 percent or, if greater, five, of its full-time employees. For 2015 (and for an ALE with a non-calendar year plan year, for the months in 2016 that are part of the 2015 plan year), 70 percent is substituted for 95 percent. However, an ALE continues to be subject to an assessable ESRP payment under 4980H(b).

¹¹² Notice 2013-45, *Transition Relief for 2014 Under § 6055 (§ 6055 Information Reporting), 6056 (§ 6056 Information Reporting) and 4980H (Employer Shared Responsibility Provisions)* (July 9, 2013).

¹¹³ See IRS, *Small Business/Self-Employed (SB/SE) Business Performance Report 5*, 1st Qtr. FY 2018.

¹¹⁴ *Id.*

¹¹⁵ TIGTA, Ref. No. 2018-43-022, *Affordable Care Act: Processes to Identify Employers Subject to the Employer Shared Responsibility Payment Need Improvement* (Mar. 21, 2018).

¹¹⁶ TIGTA, Ref. No. 2018-43-022, *Affordable Care Act: Processes to Identify Employers Subject to the Employer Shared Responsibility Payment Need Improvement 5* (Mar. 21, 2018).

informal guidance to ALEs by updating its Frequently Asked Questions and posting the sample letter that informs ALEs of their potential ESRP liability.¹¹⁷

- The Objectives Report addressed concerns about the information reports the IRS relies on to verify data relevant to the ESRP liability. If the IRS receives incomplete or inaccurate data, it may erroneously assess ESRP on some ALEs, with costly and time-consuming consequences.
- The TIGTA report noted the IRS had no centralized process or system by which multiple IRS programs could perform taxpayer identification number (TIN) validation. TIGTA recommended that the IRS develop a Service-wide TIN validation strategy to reduce the number of TIN validation systems and programs to streamline and consolidate TIN validation efforts.¹¹⁸

Accordingly, I recommend that:

- Congress amend IRC § 5000A(d)(2) to provide that the Secretary of the Treasury has the authority to grant the religious exemption for purposes of the ISRP, if the taxpayer has already received approval from the SSA and the IRS for the exemption set forth in IRC § 1402(g)(1).
- The IRS proactively alert taxpayers of the ISRP requirements and make it easier for taxpayers to secure an exemption.
- The IRS formalize the procedures it will use to assess ESRP under IRC § 4980H that clarifies how ALEs will be notified of any proposed ESRP, how long they have to respond, and the process by which to request a pre-assessment appeal.

VII. IRS Data Show the Private Debt Collection (PDC) Initiative Burdens Low Income Taxpayers, Including the Disabled and Elderly

IRC § 6306(c) requires the IRS to outsource the collection of tax receivables the IRS includes in “potentially collectible inventory” (PCI).¹¹⁹ PCI is a term that is undefined in

¹¹⁷ IRS, Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, <https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act#Making> (last visited Apr. 12, 2018).

¹¹⁸ TIGTA, Ref. No. 2018-43-022, *Affordable Care Act: Processes to Identify Employers Subject to the Employer Shared Responsibility Payment Need Improvement* 15-19 (Mar. 21, 2018).

¹¹⁹ Subsection (c) was added to IRC § 6306 by Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733-36 (2015). The IRS has been assigning tax debts to private collection agencies (PCAs) for about a year. IRS News Release IR-2017-74, *Private Collection of Some Overdue Federal Taxes Starts in April; Those Affected Will Hear First From IRS; IRS Will Still Handle Most Tax Debts* (Apr. 4, 2017), <https://www.irs.gov/newsroom/private-collection-of-some->

the statute, Treasury regulations, or administrative guidance. I urged the IRS, as it prepared to implement its private debt collection (PDC) initiative, to exercise discretion in interpreting the term PCI.¹²⁰ The IRS agreed in theory to exclude taxpayers receiving Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI), but to date it has not implemented this exclusion.¹²¹ Further, I recommended excluding from the definition of PCI the debts of taxpayers who receive Social Security Administration (SSA) retirement benefits and whose incomes are less than 250 percent of the federal poverty level.¹²²

The measure of 250 percent of the federal poverty level is important: it is used to identify taxpayers who are likely to be unable to pay for representation or user fees, or are likely to have economic hardship.¹²³ The IRS itself does not seek to collect from low income Social Security retirement recipients through automated levies because it recognizes that these taxpayers are likely experiencing economic hardship.¹²⁴ The IRS rejected my suggestion, with results described below.

Accounts of SSA retirement recipients and low income taxpayers were assigned to Private Collection Agencies (PCAs).

The debts of SSA retirement recipients were assigned to private collection agencies (PCAs) even though their incomes were less than 250 percent of the federal poverty

[overdue-federal-taxes-starts-in-april-those-affected-will-hear-first-from-irs-irs-will-still-handle-most-tax-debts](#).

¹²⁰ National Taxpayer Advocate 2016 Annual Report to Congress 172, 191 (Most Serious Problem: *The IRS Is Implementing a PDC Program in a Manner That Is Arguably Inconsistent with the Law and That Unnecessarily Burdens Taxpayers, Especially Those Experiencing Economic Hardship*).

¹²¹ The IRS has excluded debts that are designated as Currently Not Collectible – Hardship from assignment to PCAs.

¹²² I am pleased to see that H.R. 5444 § 305, which was approved unanimously in the Ways and Means Committee on April 11, 2018, addresses my recommendation to exclude taxpayers whose incomes are less than 250 percent of the federal poverty level from referral to a PCA. See the U.S. Dept. of Health and Human Resources, Poverty Guidelines, <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references> (last visited April 11, 2018), showing that the poverty level for a single person is \$12,140 in 2018.

¹²³ Congress has determined that 250 percent of the federal poverty level is the income level below which taxpayers cannot afford representation in IRS disputes and are therefore vulnerable to overreaching. To assist these taxpayers, Congress enacted IRC § 7526 to authorize funding for the Low Income Taxpayer Clinic (LITC) grant program. LITCs represent low income taxpayers in controversies with the IRS and conduct education and outreach to taxpayers who speak English as a second language. The Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 41105, 132 Stat. 64, 157 (Feb. 9, 2018) bars the IRS from imposing certain user fees on taxpayers whose incomes do not exceed 250 percent of the federal poverty level.

¹²⁴ For purposes of administering the IRS's automatic levy program, the Federal Payment Levy Program (FPLP), the IRS adopted 250 percent of the federal poverty level as a measure that serves as a proxy for economic hardship. The SSA retirement income of taxpayers with incomes less than 250 percent of the federal poverty level is not subject to FPLP levies. See Internal Revenue Manual (IRM) 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016). See also IRC § 7526, discussed below.

level. Some of these SSA retirement recipients actually made payments, in some cases pursuant to installment agreements (IAs). Of those who made payments:¹²⁵

- More than half had incomes *below the federal poverty level*:¹²⁶
 - These taxpayers' median income was \$4,730;¹²⁷ and
 - The incomes of those who entered into IAs were less than their allowable living expenses (ALEs) *100 percent of the time*.¹²⁸
- 42 percent had incomes at or above the federal poverty level and below 250 percent of the federal poverty level:¹²⁹
 - These taxpayers' median income was \$19,542;¹³⁰ and
 - The incomes of those who entered into IAs were less than their ALEs *100 percent of the time*.¹³¹

In addition to showing how the PDC program burdens SSA retirement income recipients, IRS data demonstrates the burden to taxpayers with incomes less than 250 percent of the federal poverty level *in general*. Overall, of taxpayers who made payments while their debts were assigned to PCAs:

- 19 percent had incomes *below the federal poverty level*.¹³²

¹²⁵ The payments were subject to commissions payable to PCAs. Under IRC § 6306(e)(1), the IRS is authorized to pay commissions to PCAs of up to 25 percent of the amount collected.

¹²⁶ National Taxpayer Advocate 2017 Annual Report to Congress 10, 17 (Most Serious Problem: *The IRS's Private Debt Collection Program Is Not Generating Net Revenues, Appears to Have Been Implemented Inconsistently with the Law, and Burdens Taxpayers Experiencing Economic Hardship*), describing data current through Sept. 28, 2017.

¹²⁷ *Id.*

¹²⁸ National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2, 2, 9 (Research Study: *Study of Financial Circumstances of Taxpayers Who Entered Into Installment Agreements and Made Payments While Their Debts Were Assigned to Private Collection Agencies*), describing data current through Sept. 28, 2017. The allowable living expense (ALE) standards determine how much money taxpayers need for basic living expenses such as housing and utilities, food, transportation, and health care, based on family size and where they live. See IRM 5.15.1.7(2), *Financial Analysis Handbook, Allowable Expense Overview* (Oct. 2, 2012); IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

¹²⁹ National Taxpayer Advocate 2017 Annual Report to Congress 10, 17 (Most Serious Problem: *The IRS's Private Debt Collection Program Is Not Generating Net Revenues, Appears to Have Been Implemented Inconsistently with the Law, and Burdens Taxpayers Experiencing Economic Hardship*), describing data current through Sept. 28, 2017.

¹³⁰ *Id.*

¹³¹ Individual Returns Transaction File (IRTF), Information Returns Master File (IRMF), Compliance Data Warehouse (CDW), data current through Sept. 28, 2017.

- These taxpayers' median income was \$6,386;¹³³ and
- The incomes of those who entered into IAs were less than their allowable living expenses (ALEs) 100 percent of the time.¹³⁴
- 25 percent had incomes at or above the federal poverty level and below 250 percent of the federal poverty level:¹³⁵
 - These taxpayers' median income was \$23,096;¹³⁶ and
 - The incomes of those who entered into IAs were less than their ALEs 84 percent of the time.¹³⁷

The PDC program was intended to assist the IRS in collecting debts from taxpayers who could afford to pay but the IRS was not able to address because of resource constraints. It was not intended to collect payments from taxpayers who, under the IRS's own ALE guidelines, cannot afford to pay the tax without rendering themselves and their families unable to pay their basic living expenses. Thus, based on IRS data about how the PDC program is operating, I believe the debts of *all* taxpayers whose incomes are less than 250 percent of the federal poverty level should be excluded from assignment to PCAs.

TAS participation in PCA oversight has been restricted.

Because the IRS refuses to allow TAS representatives to participate in monitoring calls between PCAs and taxpayers, I am unable to provide insight into why taxpayers so frequently make payments they appear unable to afford. Despite congressional interest

¹³² National Taxpayer Advocate 2017 Annual Report to Congress 10, 15 (Most Serious Problem: *The IRS's Private Debt Collection Program Is Not Generating Net Revenues, Appears to Have Been Implemented Inconsistently with the Law, and Burdens Taxpayers Experiencing Economic Hardship*), describing data current through Sept. 28, 2017.

¹³³ *Id.* at 14.

¹³⁴ National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2, 2, 9 (Research Study: *Study of Financial Circumstances of Taxpayers Who Entered Into Installment Agreements and Made Payments While Their Debts Were Assigned to Private Collection Agencies*), describing data current through Sept. 28, 2017.

¹³⁵ National Taxpayer Advocate 2017 Annual Report to Congress 10, 15 (Most Serious Problem: *The IRS's Private Debt Collection Program Is Not Generating Net Revenues, Appears to Have Been Implemented Inconsistently with the Law, and Burdens Taxpayers Experiencing Economic Hardship*), describing data current through Sept. 28, 2017.

¹³⁶ *Id.*

¹³⁷ National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2, 2, 8 (Research Study: *Study of Financial Circumstances of Taxpayers Who Entered Into Installment Agreements and Made Payments While Their Debts Were Assigned to Private Collection Agencies*), describing data current through Sept. 28, 2017.

in this issue, the IRS has not modified its procedures to include TAS in the monitoring process.¹³⁸

The phenomenon of taxpayers making payments they cannot afford is particularly worrisome considering that PCAs are permitted to “restructure” IAs in the event of nonpayment.¹³⁹ PCA IAs may be restructured an unlimited number of times, without the PCA ever collecting financial information from the taxpayer or seeking IRS approval of the restructured IA. In contrast, the IRS can reinstate a defaulted IA without managerial approval or financial information only if the taxpayer did not default on an IA in the previous 12 months.¹⁴⁰ Otherwise, “financial statement analysis is required to re-evaluate the taxpayer’s ability to pay.”¹⁴¹ I intend to scrutinize the data on this year’s PDC operations to determine the frequency of PCA defaults and restructuring, and to compare PDC default rates with IRS default rates.

I am also concerned about how PCAs contact taxpayers. One recent situation that came to my attention involved a taxpayer who had been represented by a Low Income Taxpayer Clinic (LITC). The PCA appears to have contacted the *parents* of one of the *students* who volunteered at the clinic with respect to this case. My office is working with the clinic to try and determine how this could have happened.¹⁴² We will share our findings with the IRS and, if appropriate, with the Treasury Inspector General for Tax Administration.

Accordingly, I recommend that the IRS:

- Exclude from assignment to PCAs the debts of taxpayers with incomes below 250 percent of the federal poverty level.

¹³⁸ In a congressional hearing earlier this year, a Member of Congress asked Secretary of the Treasury Steven Mnuchin why the IRS is not allowing TAS representatives to monitor calls placed by PCAs to taxpayers. Secretary Mnuchin committed to follow up with the IRS. See *Hearing on the President’s Fiscal Year 2019 Budget Proposal With U.S. Secretary of the Treasury Steven Mnuchin*: Hearing Before the H. Comm. On Ways & Means, 115th Cong. (Feb. 15, 2018).

¹³⁹ See IRS PCA Policy and Procedures Guide (PPG), section 11.5.2. PCAs conduct operations in compliance with the most current version of the PPG.

¹⁴⁰ See IRM 5.14.11.5 (2), *Considerations after Default or Termination, Including Reinstatement* (Jan. 1, 2015), providing for reinstatement of an IA without managerial approval or financial information only where default was caused by an additional liability or where the restructured IA meets “streamlined” criteria and the taxpayer has not defaulted in the previous 12 months. “Streamlined” IAs are available where the taxpayer’s aggregate unpaid balance of assessments is \$50,000 or less and can be paid in installments over a period of up to six years. IRM 5.14.5.2, *Streamlined Installment Agreements* (Dec. 23, 2015).

¹⁴¹ IRM 5.14.11.5 (3), *Considerations after Default or Termination, Including Reinstatement* (Jan. 1, 2015).

¹⁴² Systemic Advocacy Management System (SAMS) issue 37170. SAMS is an online tool through which IRS employees and the public may report systemic problems to TAS, <https://www.irs.gov/advocate/systemic-advocacy-management-system-sams>.

- Require PCAs to include a TAS representative in the process of monitoring or reviewing phone calls between taxpayers and PCAs.

VIII. The IRS's Procedures for Certifying Seriously Delinquent Tax Debts for Purposes of Passport Denial or Revocation Impair Taxpayer Rights

In early 2018, the IRS began implementing section 32101 of the Fixing America's Surface Transportation (FAST) Act, which requires the Department of State to deny an individual's passport application and allows the Department of State to revoke or limit an individual's passport if the IRS has certified the individual as having a seriously delinquent tax debt.¹⁴³

Taxpayers do not receive adequate notice prior to the IRS certifying their seriously delinquent tax debts.

The statute requires two forms of notification to taxpayers: a notice sent "contemporaneously" with transmitting a certification or decertification to the Department of State, and language in Collection Due Process (CDP) hearing notices about the certification of seriously delinquent tax debts and the denial, revocation, or limitation of passports.¹⁴⁴ The IRS appears to be interpreting the word "contemporaneously" as "simultaneously," and sends the stand-alone certification notice within three or four days of the certification. The IRS's interpretation of this requirement impairs the taxpayer's *right to be informed* and *right to challenge the IRS's position and be heard* because taxpayers may not learn the IRS has certified their tax debts until *after certification*. Instead, the IRS should send a notice *30 days prior*, which meets the "contemporaneously" requirement, and then if the taxpayer does not resolve the issue, the IRS could also send a simultaneous notice.

In the analogous context of passport denial or revocation for unpaid child support,¹⁴⁵ the Court of Appeals for the Second Circuit has found the statute meets Constitutional due process requirements because it provides for notice and an opportunity to be heard prior to the state agency certifying the unpaid child support to the Department of State.¹⁴⁶ In contrast, the only notice taxpayers receive prior to the IRS certifying their

¹⁴³ Pub. L. No. 114-94, Div. C, Title XXXII, § 32101, 129 Stat. 1312, 1729-33 (2015) (codified as IRC § 7345) (hereinafter FAST Act). A "seriously delinquent tax debt" is an "unpaid, legally enforceable federal tax liability of an individual," which has been assessed, is greater than \$51,000 (this amount has been adjusted for inflation), and meets either of the following criteria: (1) a notice of lien has been filed under IRC § 6323 and the Collection Due Process (CDP) hearing rights under IRC § 6320 have been exhausted or lapsed; or (2) a levy has been made under IRC § 6331. IRC § 7345(b).

¹⁴⁴ IRC §§ 7345(d), 6320(a)(3)(E), 6331(d)(4)(G)).

¹⁴⁵ The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 requires the Department of State to deny a passport application and allows it to revoke or limit a passport if the person owes delinquent child support exceeding \$5,000 (subsequently lowered to \$2,500). Pub. L. No. 104-193, 110 Stat. 2105, 2251 (codified as 42 U.S.C. § 652(k)(1)).

¹⁴⁶ *Weinstein v. Albright*, 261 F.3d 127 (2nd Cir. 2001), *aff'g* 2000 WL 1154310 (S.D.N.Y. 2000).

seriously delinquent tax debts is language embedded in the CDP hearing notice. This language may not constitute effective notice because it is buried within four or more pages of other information. Additionally, over three-quarters of the individual taxpayers potentially eligible to be certified did not receive the benefit of this language because they received their CDP notices prior to the IRS including it.¹⁴⁷ Despite my repeated requests, the IRS has no intention of giving these taxpayers additional, advanced notice.

Providing a stand-alone notice prior to certification would serve the purpose of the statute by encouraging taxpayers to act quickly to resolve their tax debts and come into compliance. It would also save the IRS resources by avoiding the need to process certifications and decertifications for taxpayers who may have acted in response to the prior notice. In addition to the information included on the IRS's current certification notice, a pre-certification stand-alone notice should list all ways in which a taxpayer can avoid or reverse certification, beyond just full payment or a payment plan such as an installment agreement or offer in compromise.

The IRS undermines taxpayers' statutory right to seek assistance from the Taxpayer Advocate Service (TAS) by not excluding taxpayers who come to TAS prior to being certified.

Although the IRS has exercised its discretion to create a number of exclusions from passport certification that promote taxpayer compliance, protect taxpayer rights, and treat taxpayers fairly, it has refused to exclude taxpayers who are experiencing a significant hardship and have an already open TAS case *prior to certification*.¹⁴⁸ Certifying taxpayers who are actively working with TAS to resolve their debts before being certified does not serve the purpose of the statute – which is to assist the IRS in collecting intractable or ignored tax debts and to promote compliance.¹⁴⁹

TAS accepts cases only from taxpayers who are suffering or are about to suffer a significant hardship, as defined in the Internal Revenue Code and Treasury Regulations,¹⁵⁰ and only keeps cases open if taxpayers are working to achieve a resolution.¹⁵¹ If we can get the taxpayer into compliance and resolve the taxpayer's issues with the IRS, then the purpose of IRC § 7345 has been satisfied. If TAS is unable to resolve the taxpayer's account, then when we close a case the IRS can certify

¹⁴⁷ These taxpayers owe over \$50,000 in unpaid assessments and received a CDP notice by December 31, 2016, which was not undeliverable, unclaimed, or refused, and did not receive a subsequent CDP notice in 2017. Some of the total number of taxpayers with tax debts of more than \$50,000 will meet statutory or discretionary exclusion criteria.

¹⁴⁸ IRM 5.19.1.5.19.4, *Discretionary Certification Exclusions* (Jan. 8, 2018).

¹⁴⁹ S. Rep. No. 114-45, at 57 (2015). See also Government Accountability Office, GAO 11-272, *Federal Tax Collection: Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes* (Mar. 2011), <http://www.gao.gov/new.items/d11272.pdf>.

¹⁵⁰ IRC § 7811(a)(2); Treas. Reg. § 301.7811-1(a)(4)(ii).

¹⁵¹ IRM 13.1.21.1.3.19, *No or Partial Reply from Taxpayer* (Feb. 2, 2011).

the account if it still qualifies as a seriously delinquent tax debt. Of the approximately 4,200 TAS cases with balances due over \$50,000 that were closed in fiscal year 2017 and which were not previously determined by Collection to be currently uncollectible, more than 75 percent involved either exam or collection issues. TAS closed 70 percent of these cases (approximately 2,700) with full or partial relief.

In early 2018, I issued almost 800 Taxpayer Assistance Orders (TAOs), ordering the IRS to exclude from certification taxpayers with an already open TAS case prior to certification. The IRS ultimately agreed to exclude from certification those TAS taxpayers for whom the TAOs were issued, except for those who were duplicates, who met another exception, or who could not be located in the IRS systems. However, the IRS indicated that after the initial implementation of the passport program, it will not exclude taxpayers who are eligible for certification and who have an open TAS case originating prior to the taxpayer's certification, unless they meet another exclusion criterion under the statute or Internal Revenue Manual. Pursuant to the authority provided by Delegation Order 13-3,¹⁵² I issued a Taxpayer Advocate Directive on April 6, 2018, directing the IRS to exclude from certification all taxpayers with an open TAS case at the time of certification (*i.e.*, taxpayers who came to TAS before certification).

The legislative history makes clear Congress intended to “permit revocation of a passport only after the IRS has followed its examination and collection procedures under current law and the taxpayer’s administrative and judicial rights have been exhausted or lapsed.”¹⁵³ One of a taxpayer’s administrative rights and rights under the Taxpayer Bill of Rights (TBOR) is to seek assistance from TAS. The IRS has also refused to exclude taxpayers exercising other administrative rights, such as Equivalent Hearings,¹⁵⁴ Collection Appeals Program (CAP) procedures,¹⁵⁵ and the Post Appeals Mediation program.¹⁵⁶ Refusing to exclude taxpayers working with TAS or exercising established administrative rights does not achieve the purpose of the law and violates taxpayer rights.

Accordingly, I recommend that Congress:

¹⁵² IRM 1.2.50.4, *Delegation Order 13-3 (formerly DO-250, Rev. 1)* (Jan. 17, 2001).

¹⁵³ H.R. Rep. No. 114-357, at 530-32 (2015).

¹⁵⁴ Equivalent Hearings (EHs) have the same purpose as CDP hearings — to provide the taxpayer with the opportunity to raise any relevant issues related to the unpaid tax, the lien, or the proposed levy, including the appropriateness of the collection action, collection alternatives, spousal defenses, and under certain circumstances, the underlying tax liability. IRM 5.19.8.4.3, *Equivalent Hearing (EH) Requests and timeliness of EH Requests* (Nov. 1, 2007). See generally IRC § 6330(c)(2).

¹⁵⁵ The Collection Appeals Program (CAP) allows a taxpayer to appeal certain collection actions and is available in a wider set of circumstances than a CDP hearing. IRM 8.24.1, *Collection Appeals Program and Jeopardy Levy Appeals, Collection Appeals Program (CAP)* (Dec. 2, 2014).

¹⁵⁶ IRC § 7123 requires the IRS to establish procedures for nonbinding mediation on any issue unresolved after appeals procedures or an unsuccessful attempt to enter into a closing agreement or an offer in compromise (OIC).

- Amend IRC § 7345 to exclude taxpayers from certification of a seriously delinquent tax debt if they have an open TAS case.
- Require the IRS to issue a stand-alone notice to all taxpayers 30 days (90 days if addressed to taxpayers outside the United States) prior to certifying their seriously delinquent tax debts. The notice should discuss the consequences of certification and all options available to taxpayers to avoid or reverse certification.

IX. Congress Can Improve Customer Service and Better Protect Taxpayer Rights by Strengthening the Independence of the National Taxpayer Advocate and the Taxpayer Advocate Service

To improve customer service and protect taxpayer rights, Congress should improve the effectiveness of TAS. While I suggested a wide range of improvements in my last annual report, three are particularly important: codifying the National Taxpayer Advocate's authority to (1) issue Taxpayer Advocate Directives (TADs), (2) obtain files and attend meetings, and (3) make personnel decisions with respect to all TAS employees.

Why Codify Taxpayer Advocate Directives?

TAS is charged with independently advocating for taxpayers both in specific cases and systemically.¹⁵⁷ IRC § 7811 authorizes the National Taxpayer Advocate to issue a TAO to assist a specific taxpayer if “the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.”¹⁵⁸ The National Taxpayer Advocate has no comparable statutory authority to advocate for systemic change. To fill this gap, the Commissioner delegated to the National Taxpayer Advocate the non-delegable authority to issue a Taxpayer Advocate Directive (TAD). She may issue a TAD to require an IRS unit to change procedures “to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment or provide an essential service to taxpayers.”¹⁵⁹ The Commissioner and the Deputy Commissioners retain the authority to modify or rescind a TAD.

¹⁵⁷ IRC § 7803(c)(2)(A).

¹⁵⁸ IRC § 7811(a)(1)(A). IRC § 7811(b) establishes the terms of the Taxpayer Assistance Order (TAO). The Commissioner and the Deputy Commissioner may modify or rescind a TAO “only if a written explanation of the reasons for the modification or rescission is provided to the National Taxpayer Advocate.” IRC § 7811(c). In addition, IRC § 7803(c)(2)(B)(ii)(VII) directs the National Taxpayer Advocate to identify in her Annual Report to Congress any TAO “which was not honored by the Internal Revenue Service in a timely manner.”

¹⁵⁹ Delegation Order 13-31 (formerly DO-250, Rev. 1), *reprinted* as IRM 1.2.50.4 (Jan. 17, 2001). See also IRM 13.2.1.6 (July 16, 2009).

However, IRS units have not always complied with, or even timely responded to TADs, and when the Deputy Commissioner has modified or rescinded them, he or she has not always provided an adequate or timely explanation. The fact that a TAD is not a statutory authority contributes to this problem. Moreover, it is not clear that the National Taxpayer Advocate has the authority to formally elevate TADs to the Commissioner or to require the IRS to provide a written explanation of the reasons for any modification or rescission.

Why Codify Access to Files and Meetings?

By and large, the National Taxpayer Advocate has significant access to IRS systems and data. Yet, both in the context of specific cases and systemic advocacy, the IRS has occasionally declined to provide TAS with access to: (1) audit files of taxpayers with cases open in TAS; (2) meetings between the IRS and taxpayers with cases open in TAS, when the taxpayer has requested TAS's attendance; and (3) information required for the National Taxpayer Advocate to analyze a systemic problem for the Annual Report to Congress. Although no law prevents the IRS from providing TAS with information or access to meetings, at least some IRS employees do not believe they are statutorily required to do so.¹⁶⁰ In some instances, the National Taxpayer Advocate has had to issue TAOs to obtain access to taxpayer audit files or attend IRS-taxpayer conferences at the taxpayer's request.

Why Codify the National Taxpayer Advocate's Authority to Make Personnel Decisions for all TAS Employees?

IRC § 7803(c) directs the National Taxpayer Advocate to operate independently from the IRS both in advocating for systemic change, as well as in advocating on behalf of specific taxpayers. To bolster this independence, the IRS Restructuring and Reform Act of 1998 (RRA 98) conference report states that the National Taxpayer Advocate "has the responsibility to evaluate and take personnel actions (including dismissal) with respect to any local Taxpayer Advocate or *any employee in the Office of the National Taxpayer Advocate.*"¹⁶¹ This provision ensures the National Taxpayer Advocate, and not other IRS officials, is solely responsible for evaluating the performance of her employees, whose jobs often entail questioning and challenging IRS positions. The language in the report, if adopted, would have protected all TAS employees from the prospect of being dismissed by the IRS over the objection of the National Taxpayer Advocate. However, the current language of the statute only provides the National Taxpayer Advocate with the authority to "evaluate and take personnel actions (including

¹⁶⁰ IRC § 6103(h)(l) provides that "returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes."

¹⁶¹ H.R. Rep. No. 105-599, at 214 (1998) (Conf. Rep.) (emphasis added). The report states that the conference committee adopted the Senate amendment with respect to the National Taxpayer Advocate provisions, except as modified. *Id.* at 216. This provision was not modified, so the language quoted above reflects the conference agreement.

dismissal) with respect to any employee of any local office.”¹⁶² Thus, it leaves out TAS employees in the national office who address systemic issues.¹⁶³

Accordingly, I recommend that Congress:

- Grant the National Taxpayer Advocate non-delegable authority to issue a TAD.¹⁶⁴
- Clarify that the National Taxpayer Advocate shall have access to tax returns and return information with respect to cases open in TAS, and shall have the right to participate in meetings between taxpayers and the IRS when asked to do so by the taxpayer.¹⁶⁵
- Clarify that the National Taxpayer Advocate has the responsibility to evaluate and take personnel actions with respect to all employees of the Office of the Taxpayer Advocate.¹⁶⁶

¹⁶² IRC § 7803(c)(2)(D)(i)(II).

¹⁶³ Along the same lines, the National Taxpayer Advocate is not currently authorized to hire (or even backfill attorneys) to assist with her statutory duties. For more detail, see National Taxpayer Advocate 2017 Purple Book 71-72 (*Clarify that the National Taxpayer Advocate May Hire Legal Counsel*); National Taxpayer Advocate 2016 Annual Report to Congress 37-39; National Taxpayer Advocate 2011 Annual Report to Congress 573-581; National Taxpayer Advocate 2002 Annual Report to Congress 198-215. H.R. 1661, 108th Cong. § 335 (2003) would have authorized the National Taxpayer Advocate to “appoint a counsel in the Office of the Taxpayer Advocate to report solely to the National Taxpayer Advocate.”

¹⁶⁴ While H.R. 5444 § 402(a), which was approved unanimously by the Ways and Means Committee on April 11, 2018, addresses the responsibilities of the IRS in responding to a TAD, I am concerned that the current language predicates those procedures on the *administratively* delegated authority from the IRS Commissioner to the National Taxpayer Advocate to issue a TAD. Since the underlying authority to issue a TAD is administrative, such authority could be rescinded and render any codified language that follows moot. I strongly urge Congress to codify the National Taxpayer Advocate’s authority to issue a TAD along with the procedures for response to a TAD. For a similar recommendation, see National Taxpayer Advocate 2017 Purple Book 68-69 (*Codify the National Taxpayer Advocate’s Authority to Issue Taxpayer Advocate Directives*); National Taxpayer Advocate 2016 Annual Report to Congress 39-41 (Special Focus: *Codify the Authority to Issue a Taxpayer Advocate Directive (TAD) and Clarify the Appeal Process Applicable to Taxpayer Assistance Orders (TAOs) and TADs*). For legislative language that is consistent with this recommendation, see the Improving Assistance for Taxpayers Act, H.R. 5342, 115th Cong. § 2 (2018); Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 402(a) (2015) and S. 2333, 114th Cong. § 402(a) (2015).

¹⁶⁵ For more detail, see National Taxpayer Advocate 2016 Annual Report to Congress 34-36 (Special Focus: *Reinforce the National Taxpayer Advocate’s Right of Access to Taxpayer and IRS Information and to Meetings Between the IRS and Taxpayers*); National Taxpayer Advocate 2017 Purple Book 70 (*Clarify the Taxpayer Advocate Service’s Access to Files, Meetings, and Other Information*). Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. § 403 (2015) and S. 2333, 114th Cong. § 403 (2015) would grant TAS access to case-related files and meetings, but does not address TAS’s access to information needed to report on systemic issues.

¹⁶⁶ For more detail, see National Taxpayer Advocate 2017 Purple Book 76-77 (*Clarify the Authority of the National Taxpayer Advocate to Make Personnel Decisions to Protect the Independence of the Office of the Taxpayer Advocate*).

X. Although the IRS Has Experienced Failures and Setbacks with Its Enterprise Case Management (ECM) Project, Recent Changes Show Promise

I have written in my past Annual Reports and congressional testimony about how the IRS's IT systems, and particularly its case management systems, require a significant investment of funding to promote efficiency gains, improve taxpayer service, and develop 21st century compliance approaches. An adequately funded, staffed, and skilled IRS IT function underpins all core tax administration activities, including taxpayer service, prompt issuance of refunds, selection and assignment of compliance work, and protection of taxpayers and the public from refund fraud and identity theft. The current state of IRS technology substantially limits the IRS's ability to carry out effective tax administration. As an example, the IRS currently possesses the two oldest information system databases, each nearly six decades old, in the entire federal government.¹⁶⁷

The IRS has been working on an enterprise case management (ECM) project over the past few years and has identified more than 60 separate case management systems to include in the project. The age, number, and lack of integration across these systems, as well as the lack of digital communication and record keeping, cause waste and delay, and make it difficult for IRS employees, including those in TAS, to perform their jobs efficiently and provide quality service to taxpayers. This causes frustration for taxpayers and IRS employees alike.

Multiple antiquated systems are ineffective and inefficient.

The IRS's current case management system structure requires employees to retrieve data from many systems manually, which, in turn, requires maintaining both paper and electronic records. Employees transcribe or otherwise import information from paper and other systems into their own case management systems, and ship, mail, or fax an estimated hundreds of thousands, if not millions, of case management files and supporting documents annually within or between business functions for activities such as case work, management approval, quality review, and responses to Appeals and Counsel. In addition, in many circumstances, IRS employees must create "work-arounds" due to current case management system limitations.

To ameliorate these problems, ECM requires a significant investment of both time and money to promote productivity and efficiency gains, and to improve taxpayer service. Indeed, success of the ECM project is critical to establish online accounts to effectively

¹⁶⁷ See GAO, GAO-16-468, *Information Technology: Federal Agencies Need to Address Aging Legacy Systems* (May 2016) (discussing aging IT systems throughout the government and listing the IRS's Individual Master File (IMF) and Business Master File (BMF) as the two oldest investments or systems at 56 years old each).

serve taxpayers and their representatives. ECM is necessary both to integrate different IRS systems as well as to link to some existing systems.

Challenges should not stop progress on an ECM overhaul.

As I have previously noted and external reviews have validated, the IRS did not properly vet the software product that it selected for the ECM project, despite the fact that this software had failed with other IRS case management projects. The IRS also did not seek a product that would be a better fit for its case management needs. As a result, the IRS spent tens of millions of dollars on work that ultimately cannot be used for the ECM project.¹⁶⁸

However, despite this failure and waste of funds, the IRS has regrouped and refocused its ECM efforts under new leadership over the last year or so. Realizing and acknowledging the flaws with its past efforts, the IRS has gone back to the drawing board and I am encouraged by its recent ECM approach. For example, the IRS has issued multiple requests for information to private industry and scheduled demonstrations to learn about potential case management solutions and products. The IRS has also reached out to other federal agencies and state governments to learn about their ECM experiences. The IRS appears to be setting realistic timelines for ECM progress and is sticking to them.

Most importantly, the IRS has adopted the approach that the ECM will have the *taxpayer as the center of the system*. That is, data would be arrayed by taxpayer, rather than the current approach which isolates taxpayer records in numerous systems based on the related IRS operations, few of which communicate with each other.

Today, no IRS employee, much less the taxpayer or the taxpayer representative, has a 360-degree view of the taxpayer's account and interactions with the IRS.

TAS is committed to continue working with the IRS to develop an ECM solution and is willing to assist with the testing of new products as the IRS ultimately designs and programs the new ECM system. TAS is well-situated for such a testing role, as it has a taxpayer-centric view as well as ECM experience from its development of the Taxpayer Advocate Service Integrated System (TASIS).¹⁶⁹

It is also vitally important that the IRS take steps to address its aging legacy systems while it develops an ECM system, which could take several years.

¹⁶⁸ See, e.g., National Taxpayer Advocate 2016 Annual Report to Congress 115 (Most Serious Problem: *ENTERPRISE CASE MANAGEMENT (ECM): The IRS's ECM Project Lacks Strategic Planning and Has Overlooked the Largely Completed Taxpayer Advocate Service Integrated System (TASIS) As a Quick Deliverable and Building Block for the Larger ECM Project*).

¹⁶⁹ *Internal Revenue Service FY 2016 Budget Request, Hearing Before S. Subcomm. on Financial Services and S. General Government Comm. on Appropriations, 114th Cong. 33 (2015)* (statement of Nina E. Olson, National Taxpayer Advocate). To date, the IRS invested approximately \$20 million in TASIS Release 1, with about 70 percent of the programming completed.

Thus, the IRS requires substantially more funding for IT in general and ECM specifically. However, given its past ECM failures, it is imperative that the IRS be transparent in its efforts and articulate a clear strategy that will assure both Congress and taxpayers that this money will be spent appropriately. I encourage Congress to monitor the IRS's IT and ECM spending closely (perhaps by conditioning funding on the achievement of certain milestones) and not simply hand the IRS a blank check.

Accordingly, I recommend that Congress:

- Provide the IRS with additional IT and ECM funding to develop an effective enterprise case management system as the IRS develops and presents a detailed ECM plan.
- Provide the IRS with adequate funding to maintain its current IT systems while it develops an ECM system.

XI. Conclusion

In this testimony, I have tried to offer practical recommendations the IRS can adopt to be more responsive to taxpayer service needs and preferences as well as suggest actions Congress can take to provide improved oversight and direction to the IRS. It is crucial that Congress outline priorities for the IRS, with targeted additional funding, such as for ECM, and that oversight hearings be held to ensure the IRS is meeting targets and appropriately spending allocated funds.

Two decades have elapsed since Congress last reviewed and updated the laws governing IRS operations. Much has changed during that time, and tax administration would benefit from a fresh review of those laws. Such a review would help the IRS become a taxpayer-centric 21st century tax administration agency. If IRS reform legislation is enacted, continued oversight from Congress will be important to ensure the IRS is implementing the legislation in the manner intended.