

FEDERAL WORKFORCE TAX ACCOUNTABILITY

HEARING

BEFORE THE
SUBCOMMITTEE ON
GOVERNMENT OPERATIONS

OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS

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FEDERAL WORKFORCE TAX ACCOUNTABILITY

Wednesday, March 18, 2015,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:04 p.m. in room 2247, Rayburn House Office Building, the Honorable Mark Meadows (chairman of the subcommittee), presiding.

Present: Representatives Meadows, Massie, Mulvaney, Carter, Connolly, Maloney, and Lynch.

Mr. MEADOWS. The Subcommittee on Government Operations will come to order.

Without objection, the Chair is authorized to declare a recess at any time. We do have votes coming up pretty shortly, so we are going to try to fast track and at least get your opening Statements.

Our Federal employees are held accountable by paying taxes, by the Code of Ethics for what they sign and acknowledge for the executive branch. The Code of Ethics dictates that Federal employees must “satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State and local taxes that are imposed by law.”

Certainly the President’s Fiscal Year 2016 budget asks that the taxpayer spend some \$275 billion to fund the executive branch payroll. Federal salaries now average over \$75,000 per person. Yet, according to the IRS, more than 100,000 Federal civilian employees owe more than \$1 billion in unpaid Federal income tax for 2013.

In prior work, the GAO has identified tens of thousands of Federal employees and contractors with access to classified information that were delinquent in their taxes, including many of them who had accrued tax debt following the adjudication of their security clearance.

The GAO also found thousands of Federal contractors with substantial amounts of unpaid Federal taxes. For example, in the VA-HHS contract for healthcare-related services, a contractor was paid over \$100,000 in Federal funds and the contractor had an unpaid tax debt of over \$18 million.

At the same time, owners were buying multimillion dollar properties and luxury vehicles but not paying their payroll taxes. Employees and contractors who do not play by the rules, who consciously ignore the channels and processes in place to fulfill their tax obligation, must be held accountable.

This particular hearing is to address those particular issues. We look forward to hearing from our witnesses in terms of your poten-

tial ideas and solutions or ramifications. We welcome you here today and thank you so much.

Mr. MEADOWS. Chairman Chaffetz will be soon introducing or reintroducing some legislative reform that is aimed at addressing the tax delinquent Federal employees and contractors, including those who have access to national security information.

It is with that potential reintroduction of legislation that we hold this hearing. I am joined by my friend and colleague from the 11th congressional District, the Ranking Member of this subcommittee. I will now recognize him for his opening remarks, Mr. Connolly.

Mr. CONNOLLY. I thank my friend the Chairman.

I welcome all of the witnesses at the table.

From the outset, let us be clear. While members and stakeholders may debate the particulars of how we can best address serious and willful tax delinquency committed by Federal employees, contractors, grant recipients and for that matters, Members of Congress and their staffs, there is absolutely no disagreement among members here on this dais or of stakeholders in the crowd I am sure that all Americans should pay their fair taxes in full and on time.

Any disagreement or debate that may arise this afternoon simply reflects legitimate differences over what would be the most effective approach and what set of tools would be optimal to deal with the challenge of serious tax delinquency while preserving sacred constitutional principles such as the right to due process of law, even the presumption of innocence.

I have the privilege of representing the dedicated and far too under-appreciated Federal employees and contractors that protect our borders, administer Social Security and Medicare, and support our warfighters, among so many other critical missions.

I have great empathy for my constituents who express justified resentment over Congress' repeatedly highlighting those few instances of outrageous, willful tax delinquency to unfairly tarnish the entire Federal work force and contracting communities.

The reality is that Federal employees pay their taxes at a substantially higher rate than the general public. Indeed, 97 percent of the Federal work force paid their taxes in full and on time in 2013, an impressive figure that significantly exceeded the general public's compliance rate of 91 percent.

Furthermore, through levies and wage garnishments, the IRS already recovers almost all tax delinquent debts of Federal employees. The Majority's longstanding obsession with advancing legislation that mandates firing Federal workers who have fallen behind in their taxes seems to me a classic example of the solution in search of a problem.

Consider the last Congress in the official cost estimate of the so-called Federal Employee Tax Accountability Act, the Joint Committee on Taxation of the Congress, bipartisan, reported that enacting the legislation would "have a negligible effect on revenues."

In that same cost estimate, the Congressional Budget Office, a non-partisan office, scored the legislation and actually projected that enacting the bill would increase Federal spending by \$1 million in the first year and about half a million dollars in every year thereafter.

Make no mistake, the unfair effort by some to target all Federal employees as tax scoff offs has nothing to do with improving our Nation's tax compliance rate or lowering the deficit. Spending more than \$1 million of taxpayer funds to implement a counter-productive bill that only targets our Nation's civil servants, while ignoring our Nation's multibillion tax gap is neither a prudent nor a wise policy response.

Let us remember, this committee has highlighted in the past that every year the IRS cannot collect or does not collect about \$350 billion a year, not from Federal employees but money owed the Federal Government that just is not collected because of lack of resources.

No one disputes these tax debts must eventually be paid. However, while simply firing an employee may feel good, it will not properly address the problem. In fact, it would undermine the ability of the government to collect those unpaid taxes on behalf of the American people because that individual is now unemployed.

The Internal Revenue Service Federal Employee Delinquency Initiative and its Federal Payment Levy Program have already proven effective in holding Federal workers accountable for paying their taxes and recouping back taxes.

I would be interested in working with my colleagues to explore whether we can double down on those proven programs that, in fact, do work. The bottom line is we can improve upon the Federal work force that is an already impressive and admirable tax compliance rate of 97 percent by focusing on better execution of existing programs as opposed to creating new duplicative bureaucracies and a punitive work ethic. I do not think it is going to prove useful with our Federal workers.

I certainly stand ready to hear the testimony today and hear the facts, but I must confess at the beginning, I wonder what the problem we are trying to solve is.

With that, I yield back, Mr. Chairman.

Mr. MEADOWS. I thank the Ranking Member for his opening Statement.

I will hold the record open for five legislative days for any members who would like to submit written Statements.

I would say the Ranking Member and I believe wholeheartedly that painting a broad brush with our Federal employees is not something we want to do. As we introduce the witnesses, I would ask let us look at how do we address this? How is your agency different from some of those performing better?

If we do not have to pass legislation to make this happen, I think we are all in agreement that it is more about accountability than it is trying to paint a broad brush.

Mr. CONNOLLY. Mr. Chairman, I want to be very clear. In no way should my remarks be inferred as you having painted any such broad brush. I know you did not.

Mr. MEADOWS. I thank you.

We will recognize our panel of witnesses. I am pleased to welcome Mr. Brad Huther, Chief Financial Officer, U.S. Department of Housing and Urban Development; Mr. E.J. Holland, Jr., Assistant Secretary for Administration, U.S. Department of Health and Human Services; Mr. Seto Bagdoyan, Director, Audit Services, Fo-

rensic Audits and Investigative Service, U.S. Government Accountability Office; Mr. Alan Chvotkin, Executive Vice President and Counsel, Professional Services Council; and Ms. Maureen Gilman, Legislative and Political Director, National Treasury Employees Union. Welcome to all of you.

Pursuant to committee rules, all witnesses will be sworn before they testify. Please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Mr. MEADOWS. In order to allow time for discussion, please limit your oral testimony to 5 minutes. Your entire written Statement will be made a part of the record.

We will recognize our first witness for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF BRAD HUTHER

Mr. HUTHER. Thank you, Chairman Meadows, Ranking Member Connolly, and other distinguished members of the subcommittee.

My name is Brad Huther. I am the Chief Financial Officer at the Department of Housing and Urban Development. I am honored to be here today on behalf of the Department. It is my privilege to testify before this distinguished subcommittee.

I have been with HUD for approximately 6 months having been confirmed by the Senate on September 17, 2014. I am additionally pleased to work alongside a strong team of colleagues in the Office of the Chief Financial Officer to achieve Secretary Castro's vision.

Prior to joining HUD, I served over 30 years in senior leadership positions with the Federal Government at the U.S. Patent and Trademark Office, the United States Census Bureau and the Office of the Secretary of Commerce.

My non-government professional experience includes serving as the President and Chief Executive Officer of the International Intellectual Property Institute as a distinguished adjunct professor in residence at American University.

Over the past 25 years, the CFO Act of 1990 has played a central role in improving financial performance and importantly, accountability based largely on private sector models. At HUD, Secretary Castro is committed to strengthening our core financial operations so that all senior financial and program management officials can sharpen their focus on the strategically important issues of financial analysis, forecasting and the leveraged management of every dollar we spend.

I appreciate the subcommittee's interest in examining the issue of the accountability of Federal employees and contractors. Building a stronger HUD is a key priority for Secretary Castro, Deputy Secretary Coloretti and the new leadership team at the department.

We are working diligently to increase transparency and accountability, to eliminate inefficiency and I ensure that all employees meet high ethical standards. These efforts will help everyone at the

department fulfill our critical mission of creating strong, sustainable, inclusive communities and quality, affordable homes for all.

Like all Federal employees and all citizens, HUD employees have a responsibility to satisfy their tax obligations. The vast majority of HUD employees do meet their tax requirements. Of course the goal of the department is to have all employees comply with their tax obligations and we have taken steps to help employees meet those responsibilities.

The earnings and leave Statements of all employees includes a reminder of the Federal tax filing deadline and a notice that employees are unable to pay the taxes owed, they should contact the Internal Revenue Service to discuss payment options.

Further, HUD makes counseling available to any employees who need assistance managing their personal finances.

Despite these efforts, there are some employees who do not meet their tax obligations. These employees, like all taxpayers, are subject to the enforcement and collection efforts of the IRS. They also receive the same due process protections as their fellow citizens.

As the subcommittee examines this issue, it is important for both the subcommittee and the public to understand that Section 6103 of the Internal Revenue Code protects the confidentiality of tax information and prohibits its disclosure unless the statutory exception applies.

Furthermore, the responsibility to take enforcement action to recover unpaid taxes rests appropriately with the IRS.

Let me reassure the subcommittee that the department remains firmly committed to the goal of building an accountable work environment and a work force where each and every employee is meeting his or her ethical and legal obligations, including tax requirements.

Again, I wish to thank the subcommittee for the opportunity to appear before you today.

[Prepared Statement of Mr. Huther follows:]



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

Testimony of Brad Huther
U.S. House Committee on Government Reform and Oversight, Subcommittee on
Government Operations
Hearing on Federal Workforce Tax Accountability for the
Department of Housing and Urban Development
Wednesday, March 18, 2015

Chairman Chaffetz, Ranking Member Cummings, Chairman Meadows, Ranking Member Connolly, and distinguished members of the Subcommittee.

My name is Brad Huther and I am the Chief Financial Officer at the Department of Housing and Urban Development (HUD). I am honored to be here today on behalf of the Department, and it is my privilege to testify before this distinguished Subcommittee.

I have been with HUD for approximately six months, having been confirmed by the Senate on September 17, 2014. I am pleased to work alongside a strong team of colleagues in the Office of the Chief Financial Officer to achieve Secretary Castro's vision.

Prior to joining HUD, I served for over thirty years in senior leadership positions with the federal government at the U.S. Patent & Trademark Office, the U.S. Census Bureau, and the Office of the Secretary of Commerce. My non-government professional experience includes serving as the President and Chief Executive Officer for the International Intellectual Property Institute and as a Distinguished Adjunct Professor in Residence at American University.

Over the past 25 years, the CFO Act of 1990 has played a central role in improving financial performance and accountability based largely on private sector models. At HUD, Secretary Castro is committed to strengthening our core financial

operations so that all senior financial and program management officials can sharpen their focus on the strategically important issues of financial analysis, forecasting and leveraged management of every dollar we spend.

I appreciate the Subcommittee's interest in examining the issue of tax accountability of Federal employees and contractors.

Building a stronger HUD is a key priority for Secretary Castro, Deputy Secretary Coloretti, and the new leadership team at the Department. We are working diligently to increase transparency and accountability, eliminate inefficiency, and ensure that all employees meet high ethical standards. These efforts will help everyone at the Department fulfill our critical mission of creating strong, sustainable, inclusive communities, and quality affordable homes for all.

Like all Federal employees, and all citizens, HUD employees have a responsibility to satisfy their tax obligations. The vast majority of HUD employees do meet their tax requirements. Of course, the goal of the Department is to have all employees comply with their tax obligations, and we have taken steps to help employees meet those responsibilities. The earnings and leave statement of all employees includes a reminder of the Federal tax filing deadline and a notice that if employees are unable to pay the taxes owed, that they should contact the Internal Revenue Service (IRS) to discuss payment options. Further, HUD makes counseling available to any employees who need assistance managing their personal finances.

Despite these efforts, there are some employees who do not meet their tax obligations. These employees, like all taxpayers, are subject to the enforcement and collection efforts of the IRS. They also receive the same due process protections as their fellow citizens.

As the Subcommittee examines this issue, it is important for both the Subcommittee and the public to understand that Section 6103 of the Internal Revenue Code protects the confidentiality of tax information and prohibits its disclosure, unless a statutory exception applies. Furthermore, the responsibility to take enforcement action to recover unpaid taxes rests appropriately with the IRS.

I want to reassure the Subcommittee that the Department remains firmly committed to the goal of building an accountable work environment and a workforce where each and every employee is meeting his or her ethical and legal obligations, including tax requirements.

Again, I wish to thank the Subcommittee for the opportunity to appear before you today.

Mr. MEADOWS. Thank you so much.
 Mr. Holland, you are recognized for 5 minutes.

STATEMENT OF E.J. HOLLAND, JR.

Mr. HOLLAND. Thank you, Chairman Meadows, Ranking Member Connolly and distinguished members of the subcommittee.

I am E.J. Holland, Jr., Assistant Secretary for Administration, U.S. Department of Health and Human Services. I am honored to be here on behalf of our department. It is my privilege to testify before this distinguished committee on a matter which we believe to be very important.

While I am incredibly honored to serve this Administration, I frankly am relatively new to civil service. I came here 5 years ago after a 41-year career in the private sector practicing law and serving in senior executive roles at three separate Fortune 500 companies.

Now, as Assistant Secretary for Administration at the department, I serve in a role similar to a chief administrative officer in a private sector company. My division is responsible for supporting some 80,000-plus employees in matters of technology, real eState, human resources and security services.

I came to serve in government with a commitment to help make government efficient and effective. Your invitation and my commitment to American taxpayers bring me here today.

You have invited me to testify regarding the tax accountability of Federal employees. Let me begin by saying that at the Department of Health and Human Services, we expect our employees to be exemplary citizens.

Our Code of Ethics requires that each of us satisfy in good faith our obligations as citizens, including all just financial obligations, especially those such as Federal, State and local taxes that are imposed by law.

We believe that Federal employees hold the public trust and should be held to a high standard of conduct. We agree that Federal employees, like all employees, should pay Federal as well as State and local taxes.

It also is of utmost importance that I communicate to you that HHS is not privy to information about tax delinquency of our individual employees. It is the Internal Revenue Service that collects tax delinquency information and only the IRS has the procedures in place to recover funds from HHS or other government employees who might be delinquent in paying their taxes.

Our understanding is that IRS sends our payroll provider, in our case, Defense Finance and Accounting Services, one of the four authorized Federal payroll providers, the information needed to collect any tax levies. DFAS notifies and collects from the Federal employee without any intervention by the Department of Health and Human Services.

Even if we were privy to tax delinquency matters of our employees, we would have to establish a nexus or a connection between an employee's position in the tax delinquency in order to take any administrative action against the employee under current law.

Under OPM governmentwide regulations, unsuitability, evidence that a job applicant is dishonest in meeting financial obligations from Federal programs such as taxes, may result in a negative suitability determination. However, this does not automatically make the applicant ineligible for Federal employment but may be a consideration based on individual circumstances.

While there is not current law strictly barring a person with seriously delinquent tax debts from Federal employment, we do have laws and regulations that we follow that significantly restrict the awarding of contracts to delinquent offerors.

The Federal Acquisition Regulations, the so-called FAR, requires contractor offerors, in certain circumstances, certify whether they have been notified about delinquencies in Federal taxes and I understand the Federal Acquisition Regulatory Counsel is developing regulatory changes to the FAR to implement the new requirements in the Appropriations Act.

In summary, we do not currently have any authority to enforce tax delinquency laws on the employees of Health and Human Services. We are not privy to information regarding specific employees who might be delinquent in paying their taxes.

We, at HHS, do believe taxpayers, regardless of their income or their place of employment, should be held accountable for filing accurate tax returns and paying taxes they owe on time. We are fully supportive of enforcing those laws.

[Prepared Statement of Mr. Holland follows:]



Testimony of

E.J. Holland, Jr.

Assistant Secretary for Administration

U.S. Department of Health and Human Services

Before the

Subcommittee on Government Operations

U.S. House Committee on Oversight & Government Reform

March 18, 2015

Chairman Chaffetz, Ranking Member Cummings and distinguished subcommittee members:

I am E.J. Holland, Jr., the Assistant Secretary for Administration at the U.S. Department of Health and Human Services (HHS). I am honored to be here on behalf of my Department. It is my privilege to testify before this distinguished committee on what I believe is an important issue.

While I am incredibly honored to serve in this Administration, I am relatively new to civil service. I came here five years ago, after a 41 year career in the private sector, practicing law and serving in senior executive positions at three successive Fortune 500 companies. Now as Assistant Secretary for Administration at HHS, I serve in a role similar to Chief Administrative Officer in the private sector. My division, the Office of the Assistant Secretary for Administration, is responsible for supporting over 80,000 employees, in such areas as technology, real estate, human resources and security services. I came to serve in government with the commitment to help make the government efficient and effective. Your invitation and my deep commitment to the American taxpayers bring me here today.

You have invited me to testify regarding the tax accountability of federal employees. Let me begin by saying that, at HHS, we expect our employees to be exemplary citizens. Our code of ethics requires that each of us "satisfy in good faith our obligations as citizens, including all just financial obligations, especially those such as federal, state, or local taxes that are imposed by law."¹ We believe that Federal employees hold the public trust and should be held to a high

¹ 5 C.F.R. § 2635.809.

standard of conduct. We agree that federal employees, like all citizens, should pay their Federal, as well as state and local, taxes.

It also is of utmost importance that I communicate to you that HHS is not privy to information about tax delinquency matters of our employees. It is the Internal Revenue Service (IRS) that collects tax delinquency information. Only the IRS has the procedures in place to recover funds from HHS employees who are delinquent in paying taxes. Our understanding is that the IRS sends our payroll provider, Defense Finance and Accounting Services (DFAS), one of four authorized government payroll providers, the information needed to collect any tax levies. DFAS notifies and collects from the Federal employee without any intervention by HHS personnel. Even if HHS were privy to tax delinquency matters of our employees, HHS would have to establish a nexus or connection between an employee's position and the tax delinquency in order to take any administrative action against the employee.

Under OPM government-wide regulations on suitability (5 CFR part 731), evidence that a job applicant is dishonest in meeting financial obligations from Federal programs, such as taxes, may result in a negative suitability determination. This does not automatically make the applicant ineligible for Federal employment but may be a consideration based on individual circumstances. While there is not a current law strictly barring a person with seriously delinquent tax debts from Federal employment, we do have laws and regulations that we follow that significantly restrict the awarding of contracts to tax delinquent offerors. The Consolidated and Further Continuing Appropriations Act, 2015 (Public Law 113-235, division E, sections 744 and 745), includes prohibitions against awarding contracts to any entity which has a Federal tax liability or has been convicted of a felony criminal violation under any Federal law. The Federal Acquisition Regulation (FAR) requires that contract offerors in certain circumstances certify whether they have been notified about delinquencies in Federal taxes and the Federal Acquisition

Regulatory Council is developing regulatory changes to the FAR to implement the new requirements in the Appropriations Act.

In summary, Mr. Chairman, we do not currently have any authority to enforce tax delinquency laws on the employees of HHS. We are not privy to information regarding specific employees who might be delinquent in paying their taxes. We at HHS believe that taxpayers, regardless of their income and regardless of their place of employment, should be held accountable for filing accurate tax returns and paying the taxes they owe on time and are fully supportive of implementing the law.

Mr. MEADOWS. Thank you, Mr. Holland.
Mr. Bagdoyan, you are recognized for 5 minutes.

STATEMENT OF SETO BAGDOYAN

Mr. BAGDOYAN. Good afternoon, Chairman Meadows, Ranking Member Connolly and members of the subcommittee.

I am pleased to be here today to discuss the results of reports GAO issued in September 2013 and July 2014 on the Federal tax debt of Federal employees and contractors with security clearances.

I would note that Federal law does not preclude individuals with tax debt from holding such clearances. However, tax debt may be an indicator of potential current or future financial pressure and vulnerability to compromise.

According to ODNI, several million Federal employees and contractors were eligible for or held clearances as of October 2013, more than half.

Circumstances in which such clearance-holders face financial pressure create an inverted risk pyramid, with those suitable for Federal employment that may require some type of clearance at the relatively lower risk top and those with access to classified TS/SCI level information at the relatively higher risk bottom. Disclosure of such information could cause, in some cases, grave damage to national security.

With this risk as backdrop, I will now outline our key findings.

In July 2014, we reported that about 83,000 DOD employees and contractors eligible for various clearances during 2006–2011 had Federal tax-debt totaling more than \$730 million to millions of dollars. About 40 percent had voluntary repayment plans with IRS. About 25 percent were eligible for a top secret or SCI clearance. About 76 percent accrued tax debt after being deemed eligible for a clearance and most noteworthy, in terms of increased potential vulnerability, about 31 percent had access to classified information and owed about \$229 million.

In September 2013, we reported that about 8,400 non-DOD, non-intelligence civilian agency employees and contractors eligible for clearances during the period of our analysis from 2006–2011 owed about \$85 million in tax debt as of June 2012. The median debt was about \$3,800 and debts ranged once again from \$100 to several millions of dollars. About half had voluntary repayment plans with IRS. About half were eligible for a top secret clearance and about 76 percent accrued their tax debt after being deemed eligible for a clearance.

We further reported that because Section 6103 of the Internal Revenue Code restricts access to tax information without taxpayer consent, investigators primarily relied on clearance applicants self reporting their debts and validation techniques such as use of credit reports to detect tax debt.

However, each of these are shortcomings. Self reporting is a relatively weak front end control without in-depth, independent verification and credit reports only contain information on debts for which IRS filed a lien on debtors' properties.

Additionally, Federal agencies do not routinely review the tax compliance of clearance holders. There is no process to detect unpaid tax debt accrued after an individual has been favorably adjudicated unless it is self reported, reported by a security manager due to garnishment of wages or discovered during a clearance renewal or upgrade.

Our findings underscore the importance of thoroughly assessing clearance applicants and holders with detailed and timely insight into their financial status while simultaneously balancing important concerns and tradeoffs about privacy and security. Such insight could help provide reasonable assurance that these individuals are not unduly exposed to financial pressure and mitigate related vulnerabilities to compromise.

In the July 2013 report, we recommended that ODNI in consultation with other agencies evaluate the feasibility of developing a system that could obtain tax debt information through an automated means for investigating and adjudicating clearance applicants and monitoring the debt status of clearance holders.

An ODNI working group is in the process of looking into this matter and we continue to monitor their progress. We will continue to periodically report on it.

Mr. Chairman, this concludes my Statement. I look forward to the subcommittee's questions.

[Prepared Statement of Mr. Bagdoyan follows:]



United States Government Accountability Office

Testimony

Before the Subcommittee on
Government Operations, Committee on
Oversight and Government Reform,
House of Representatives

For Release on Delivery
Expected at 1:00 p.m., ET
Wednesday, March 18, 2015

SECURITY CLEARANCES

Additional Mechanisms May Aid Federal Tax-Debt Detection

Statement of Seto J. Bagdoyan, Director,
Forensic Audits and Investigative Service

GAO Highlights

Highlights of GAO-15-467T, a testimony before the Subcommittee on Government Operations, Committee on Oversight and Government Reform, House of Representatives

Why GAO Did This Study

According to ODNI, several million civilian and military federal employees and contractors were eligible to hold a security clearance as of October 2013. The number of personnel determined eligible for clearance underscores the importance of conducting thorough assessments of security-clearance applicants as these clearances may allow individuals to gain access to classified information that, through unauthorized disclosure, in some cases might cause exceptionally grave damage to U.S. national security. Federal laws do not prohibit an individual with unpaid federal taxes from holding a security clearance, but tax debt poses a potential vulnerability that must be considered in making a broader determination about whether an applicant should be granted a security clearance.

This testimony focuses on: (1) the extent to which clearance holders had unpaid federal tax debts, and (2) actions to improve the detection of federal tax debt in the security-clearance process. This testimony is based on and summarizes key findings and a recommendation from two prior reports GAO issued in September 2013 and July 2014 (GAO-13-733 and GAO-14-686R).

GAO is not making any new recommendations in this testimony.

View GAO-15-467T. For more information, contact Seto Bagdoyan at (202) 512-6722 or BagdoyanS@gao.gov.

March 18, 2015

SECURITY CLEARANCES

Additional Mechanisms May Aid Federal Tax-Debt Detection

What GAO Found

In its prior work, GAO found that tens of thousands of federal employees and contractors who were adjudicated as eligible for national security clearances had unpaid federal tax debts. Specifically:

- In July 2014, GAO reported that about 83,000 Department of Defense (DOD) employees and contractors who were determined eligible for a security clearance or related interim clearance owed approximately \$730 million in unpaid taxes as of June 2012.
- In September 2013, GAO reported that about 8,400 non-DOD civilian executive-branch employees and contractors with clearances owed about \$85 million in unpaid federal taxes as of June 2012.

Because some federal employees and contractors have security-clearance records in both the DOD and non-DOD databases GAO used to perform this work, some individuals may be in both analyses of DOD and non-DOD security clearance holders who owe federal taxes. It is also important to note that the national security-clearance databases GAO used to perform this work do not maintain information on the denial of security clearances on the basis of an individual's unpaid federal tax debt. Thus, GAO was not able to determine the number of individuals who were denied security clearances for this reason.

The Office of the Director of National Intelligence (ODNI), which is responsible for developing uniform and consistent policies related to the security-clearance process, is working with other federal agencies to explore actions to improve the detection of federal tax debts owed by current clearance holders and applicants, but these efforts are in the initial planning stages. In September 2013, GAO reported that additional mechanisms that provide large-scale detection of federal tax debt could improve federal agencies' ability to detect tax debts owed by security-clearance applicants and security-clearance holders. Access to the federal tax information needed to obtain the tax-payment status of applicants is restricted under section 6103 of the Internal Revenue Code (26 U.S.C. § 6103), which generally prohibits disclosure of taxpayer data to federal agencies and others. Federal agencies may obtain information on federal tax debts directly from the Internal Revenue Service if the applicant provides consent, but this manual process is not conducive to large-scale detection of unpaid federal taxes. In September 2013, GAO recommended that the Director of National Intelligence work with other agencies to evaluate the feasibility of routinely obtaining federal debt information through an automated mechanism for the purposes of investigating and adjudicating clearance applicants, as well as for ongoing monitoring of current clearance holders' tax-debt status. ODNI concurred with GAO's recommendation. ODNI and its working group have taken initial steps to address GAO's recommendation, but efforts to develop an automated system to perform federal tax-compliance checks are in the initial planning stages. As such, GAO will continue to monitor ODNI's efforts in this area.

Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee:

I am pleased to be here today to provide GAO's perspectives on the issue of federal tax debts owed by federal employees and contractors with national security clearances. This is an important issue as the Office of the Director of National Intelligence (ODNI) reported that, as of October 2013, several million federal employees (civilian and military) and contractors held—or were individuals eligible to hold—a security clearance.¹ The number of personnel determined eligible for clearance underscores the importance of security-clearance adjudicators conducting thorough vulnerability assessments of security-clearance applicants as these clearances may allow individuals to gain access to classified information that, through unauthorized disclosure, can in some cases cause exceptionally grave damage to U.S. national security.

Federal law does not expressly prohibit an individual with unpaid federal taxes from being granted a security clearance; however, unpaid tax debt does pose a potential vulnerability that is to be considered in making a broader determination of whether an applicant should be granted a security clearance. Specifically, federal regulations state that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds, and that adjudicating officials must weigh an individual's inability or unwillingness to satisfy debts, such as federal tax debts, as they relate to an individual's financial and personal conduct

¹Office of the Director of National Intelligence, *2013 Report on Security Clearance Determinations* (April 2014). In September 2014, we reported that data ODNI provides to Congress on total employees eligible for access to classified information may include inaccurate Department of Defense (DOD) data. Specifically, we found that the DOD data that are included in annual reports to Congress likely overstate the total number of DOD employees eligible to access classified information, in part because the DOD data does not have up-to-date information about the current population of DOD employees. Without accurate data, DOD's ability to reduce the total population of clearance holders and minimize risk and reduce costs to the government will be hampered. In response to our September 2014 report, DOD stated that the agency would convene a meeting of action officers and analysts to identify strategies for reviewing, analyzing, and resolving the discrepancies in the total number of employees and the number of employees eligible to access classified information. We are continuing to monitor this issue. See GAO, *Personnel Security Clearances: Additional Guidance and Oversight Needed at DHS and DOD to Ensure Consistent Application of Revocation Process*, GAO-14-640 (Washington, D.C.: Sept. 8, 2014).

when making the security-clearance determination.² The Director of National Intelligence (DNI) is the Security Executive Agent for the federal government. In this role, the DNI is responsible for developing uniform and consistent policies related to the security-clearance process. The security-clearance process begins with a determination by executive agencies regarding which of their civilian and contractor positions require access to classified information. The individuals identified must then be sponsored by their agency for a security clearance and undergo an investigation. The Office of Personnel Management (OPM) and its contractors conduct background investigations of security-clearance applicants for most executive agencies, including the Department of Defense (DOD). Following the investigation, federal agencies are to determine whether an applicant is eligible for a personnel security-clearance on the basis, in part, of the results of the background investigation.

My testimony today relates to key findings from our prior work on security-clearance holders in the civilian and DOD agencies and their contractors who owe federal taxes. Specifically, my remarks will focus on two areas: (1) the number of individuals with unpaid federal taxes, if any, who are in DOD's and OPM's security-clearance databases and the magnitude of any unpaid federal tax debt;³ and (2) plans and actions to improve the detection of federal tax debt in the security-clearance process undertaken by ODNI and others.

My statement is based on our two prior reports, issued in July 2014 and September 2013, related to the security-clearance process and mechanisms used to identify unpaid federal tax debts owed by applicants, federal employees, and contractors.⁴ For the July 2014 report, we

²32 C.F.R. Part 147, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (2011).

³The national security-clearance databases we refer to in this testimony are OPM's Central Verification System (CVS), which maintains security-clearance information from non-DOD civilian agencies, and the Joint Personnel Adjudication System (JPAS), which maintains security-clearance information for DOD employees and contractors. As part of our prior work, we did not review security-clearance information from the intelligence community, which is maintained in the Scattered Castles database.

⁴See GAO, *Security Clearances: Tax Debts Owed by DOD Employees and Contractors*, GAO-14-686R (Washington, D.C.: July 28, 2014), and *Security Clearances: Additional Mechanisms May Aid Federal Tax-Debt Detection*, GAO-13-733 (Washington, D.C.: Sept. 10, 2013).

compared DOD's security-clearance information to Internal Revenue Service (IRS) data on known tax debts. We also reviewed relevant laws, regulations, and guidance and interviewed officials from ODNI, the Department of the Treasury (Treasury), OPM, and DOD. For the September 2013 report, we compared OPM's security-clearance information to the IRS's known tax debts. We also reviewed relevant laws and regulations and interviewed officials from ODNI, Treasury, OPM, and three selected federal agencies that represented more than half of the clearance holders in OPM's database. The reports cited in this statement each provide further details on our scope and methodology. The work on which this statement is based was performed in accordance with generally accepted government auditing standards.

Federal Employees and Contractors with Security Clearances Owed Hundreds of Millions of Dollars in Federal Taxes

In our prior reviews examining information in the DOD and OPM databases of security-clearance holders,⁵ we found tens of thousands of federal employees and contractors who were adjudicated as eligible for national security clearances and had unpaid federal tax debts.⁶ Specifically:

- In July 2014, we reported that about 83,000 DOD employees and contractors were determined eligible for secret, top-secret, or sensitive compartmented information (SCI) clearances,⁷ or related interim clearances at the same time that they had unpaid federal tax

⁵As mentioned, the national security-clearance databases we refer to in this testimony are OPM's Central Verification System (CVS), which maintains security-clearance information from non-DOD civilian agencies, and the Joint Personnel Adjudication System (JPAS), which maintains security-clearance information for DOD employees and contractors. As part of our prior work, we did not review security-clearance information from the intelligence community, which is maintained in the Scattered Castles database.

⁶See GAO-13-733 and GAO-14-686R.

⁷SCI relates to positions that require access to unique or uniquely productive intelligence sources or methods vital to U.S. security.

debt, which totaled more than \$730 million as of June 30, 2012.⁸ DOD reported to GAO that about 3.2 million civilian and military employees and contractors held or were approved for similar clearances from January 1, 2006, to December 31, 2011, which was the time frame for our analysis of clearance eligibility.⁹

- In September 2013, we reported that about 8,400 non-DOD, civilian executive-branch employees and contractors who were adjudicated as eligible for a security clearance during the same period owed approximately \$85 million in unpaid federal taxes as of June 2012. About 240,000 employees and contractors of civilian executive-branch agencies, excluding known employees and contractors of DOD and intelligence agencies, were favorably adjudicated during that period.

Because some federal employees and contractors have security clearance records in both the DOD and OPM databases, some of these individuals may be included in both of our analyses of DOD and OPM security-clearance holders that owe federal taxes.¹⁰ Our analyses include both initial investigations when an individual is applying for a clearance and reinvestigations when an individual is upgrading to a higher clearance level or renewing an existing clearance. It is also important to note that the national security-clearance databases we used to perform our work do not maintain information on the denial of security clearances on the basis of an individual's nonpayment of federal taxes. Thus, we

⁸We report tax debts owed as of June 30, 2012 because these were the most-recent data available at the time we began our work. Our analysis includes tax debts from taxes receivable, which have been self-reported by the taxpayer or court-ordered; and write-offs, which are determined by the IRS to have little or no chance of collection. In addition, the IRS database we used for this analysis does not reflect amounts owed by businesses and individuals that have not filed tax returns and for which the IRS has not assessed tax amounts due. Our analysis did not attempt to account for businesses or individuals that underreported taxes. We identified \$100 as a minimum amount because the IRS defines this threshold for some purposes as a de minimis amount, below which any amount is so small as to make accounting for it unreasonable or impractical.

⁹As mentioned, we previously reported that the DOD data likely overstate the total number of DOD employees eligible to access classified information, in part because the DOD data does not have up-to-date information about the current population of DOD employees. See GAO-14-640.

¹⁰Identifying clearance holders with tax debt in both the non-DOD and DOD populations was beyond the scope of our prior reviews, which were conducted separately and published in September 2013 and July 2014.

were not able to determine the number of individuals who were denied security clearances for this reason.

For the population of DOD employees and contractors with clearances and tax debt, the median debt amount owed was about \$2,700, and tax debts ranged from a minimum of about \$100 to millions of dollars. For these 83,000 DOD employees and contractors, in July 2014, we also found the following:

- **About 40 percent of the individuals were in a repayment plan with the IRS.**¹¹ According to IRS data, about 34,000 of these 83,000 individuals with tax debt had a repayment plan with the IRS to pay back their debt as of June 30, 2012. The tax debt owed by those on a repayment plan was approximately \$262 million.
- **About half of individuals with tax debt were federal employees.** About 44,500 of the approximately 83,000 individuals with tax debt were federal employees, while the rest were employees of federal contractors or had an "other" designation used to identify other categories of individuals.¹² Federal employees owed approximately \$363 million of the \$730 million (about 50 percent) of unpaid taxes owed by DOD clearance holders.
- **About 25 percent of the individuals with tax debt were eligible for a top-secret or SCI clearance.** About 20,400 of these 83,000 individuals were adjudicated as eligible for a top-secret or SCI clearance during our time frame (Jan. 1, 2006, to Dec. 31, 2011), while the others were favorably adjudicated as eligible for a secret clearance. DOD employees with top-secret or SCI-level clearances owed over \$249 million in tax debt.
- **Most individuals accrued tax debt after clearance adjudication.** About 63,000 individuals (about 76 percent) accrued tax debts only

¹¹Repayment plans, or installment agreements, are monthly payments made to the IRS that allow individuals or entities to repay their federal tax debt over an extended period. According to ODNI officials, if an individual has a repayment plan with the IRS and is honoring the plan, this is a mitigating factor and, in the absence of other adjudicative concerns, may result in a determination to grant initial or continued eligibility for access.

¹²According to ODNI, the "other" category consists of individuals who held or were approved for security clearances but could not be categorized as either a federal employee or a contractor.

after they were determined eligible for a security clearance. About 20,000 individuals (about 24 percent) accrued their tax debt before they were determined eligible for a security clearance.

For the population of non-DOD employees and contractors with clearances and tax debt,¹³ the median debt amount owed was approximately \$3,800, and tax debts ranged from a minimum of about \$100 to millions of dollars. For these 8,400 non-DOD employees and contractors, in September 2013, we also found the following:

- **About half of the individuals were in a repayment plan with the IRS.** According to IRS data, about 4,200 of these 8,400 individuals with tax debt had a repayment plan with the agency to pay back their debt as of June 30, 2012. The tax debt owed by those on a repayment plan was approximately \$35 million.
- **About half of the individuals were federal employees.** About 4,700 of the approximately 8,400 individuals with tax debt were federal employees, while the rest were employees of federal contractors or had an "other" designation used to identify other categories of individuals.
- **About half of the individuals with tax debt were eligible for a top-secret clearance.** About 4,200 of these 8,400 individuals were favorably adjudicated as eligible for a top-secret clearance during our time frame (Apr. 1, 2006, to Dec. 31, 2011), while the others were favorably adjudicated as eligible for a secret clearance.
- **Most individuals accrued tax debt after clearance adjudication.** Approximately 6,300 individuals (about 76 percent) accrued tax debts only after the issuance of the security clearance. Approximately 2,000 individuals (about 25 percent) accrued their tax debt before the approval for the security clearance.¹⁴

¹³As mentioned, some of these 8,400 non-DOD employees and contractors may be included in the population of 83,000 DOD clearance holders with tax debt if they held clearances for both DOD and non-DOD positions during our 5-year time frame.

¹⁴Percentages may not add due to rounding.

Actions to Improve Federal Tax-Compliance Checks for Clearance Holders and Applicants Are in the Initial Planning Stages

In September 2013, we reported that federal agencies may obtain information on federal tax compliance directly from the IRS if the applicant provides consent. However, obtaining consent waivers is a manual process and thus it is not conducive to the large-scale detection of unpaid federal taxes owed by security-clearance applicants.¹⁵ Additionally, the consent waiver generally provides limited visibility into an applicant's overall tax-debt status because the form requires the requesting agency to identify the specific time periods for which it is requesting disclosure, and, as such, the agency may not obtain the complete tax-debt history of the individual nor would it be of use during the duration of time between reinvestigations.

In September 2013, we also reported that additional mechanisms that provide large-scale, routine detection of federal debt could improve the ability of federal agencies to identify individuals who owe federal debts, including federal taxes, but statutory privacy protections limit access to this information.¹⁶ As we reported, federal agencies may obtain information on federal tax debts directly from the IRS if the applicant provides consent, but federal agencies do not have a mechanism, such as one that Treasury uses, to collect unpaid federal debts. Enhancing federal investigative agencies' access to federal debt information, including federal taxes, for the purpose of both investigating and adjudicating security-clearance applicants, as well as ongoing monitoring of current clearance holders' tax-debt status, would better position agencies to make fully informed decisions about eligibility for security clearances. Thus, we recommended in September 2013 that the ODNI, in consultation with OPM and Treasury, should evaluate the feasibility of federal agencies routinely obtaining federal debt information from Treasury, or a similar automated mechanism that includes federal taxes, for the purposes of investigating and adjudicating clearance applicants, as well as for ongoing monitoring of current clearance holders' tax-debt status. If this is found to be impractical, we recommended that ODNI consider whether an exception to federal privacy law is advisable and, if so, develop a legislative proposal, in consultation with Congress, to

¹⁵GAO-13-733.

¹⁶GAO-13-733. Access to the federal tax information needed to obtain the tax payment status of applicants is restricted under section 6103 of the Internal Revenue Code, which generally prohibits disclosure of taxpayer data to federal agencies and others, including disclosures to help validate an applicant's certifications about the nature and extent of his or her tax debt. 26 U.S.C. § 6103.

authorize access to tax-debt information. Both ODNI and OPM concurred with our September 2013 recommendation.

As we reported in July 2014 in following up on this recommendation, officials from ODNI's interagency working group stated that the working group began exploring sources of information to provide automated federal tax-compliance checks for the purposes of investigating and adjudicating clearance applicants, as well as for ongoing monitoring of current clearance holders' tax-debt status.¹⁷ For example, ODNI officials stated that the IRS assigned a program manager in January 2014 to oversee the development or modification of IRS systems to accomplish automated tax-compliance checks. As part of this work, the officials stated that they were also exploring whether an exception to section 6103 of the Internal Revenue Code would be advisable to facilitate the sharing of taxpayer information for the purpose of making security-clearance determinations.¹⁸ Officials from the interagency working group stated their goal was to establish an automated federal tax-compliance check by 2017, which is the current planned time frame for full implementation of the revised Federal Investigative Standards for background investigations.¹⁹ However, as of July 2014 the officials also noted that efforts to develop an automated system to perform a federal tax-compliance check were still in the initial planning stages. As such, the officials noted that project plans were still in development, funding had not yet been established, and technologies were not yet fully developed.

Because ODNI is exploring actions to improve the detection of federal tax debts owed by current clearance holders and applicants, it is too early to assess the results of these efforts. We believe these efforts, if implemented, might help to detect the tax debts of federal employees and contractors who hold or apply for a national security clearance. However,

¹⁷GAO-14-686R.

¹⁸26 U.S.C. § 6103.

¹⁹In December 2012, the Security and Suitability Executive Agents (the DNI and the Director of OPM) jointly issued revised Federal Investigative Standards for background investigations. The revised investigative standards require tax-compliance checks as part of any security-clearance investigation or reinvestigation. OPM believes that this change will accommodate the addition of any new tax checks that are authorized. As mentioned, full implementation of the revised standards is currently planned for 2017.

because these efforts are in the initial planning stages, we will continue to monitor ODNI's efforts in this area.

Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee, this concludes my prepared remarks. I would be pleased to answer any questions you or other Members may have at this time.

GAO Contact

For questions about this statement, please contact Seto Bagdoyan at (202) 512-6722 or BagdoyanS@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement.

Mr. MEADOWS. Thank you for your work and your testimony.
Mr. CHVOTKIN.

STATEMENT OF ALAN CHVOTKIN

Mr. CHVOTKIN. Thank you, Mr. Chairman and members of the subcommittee.

PSC is also a strong proponent of creating a fair, balanced, and competitive Federal contracting marketplace with a level playing field for businesses.

No entity should have an unfair competitive advantage by failing to pay taxes over those firms that pay their taxes. Companies that violate the tax laws should be held accountable for those violations and punished accordingly.

In addition, in the Federal contracting market, those companies should be carefully evaluated to ensure they are "presently responsible" parties, decisions separate from punishment for past violations before being eligible to receive future Federal contracts.

The principal requirements for tax compliance are found in the Federal tax laws and enforced by the Internal Revenue Service. There are also provisions, as Mr. Holland mentioned, in the Federal Acquisition Regulation to identify and provide due process before an agency takes action against contractors who fail to comply with the tax laws. The Federal Acquisition Regulation applies only to contracts, not to grants.

The FAR specifically includes an enumerated list of causes for suspension and debarment and authorization to act against a contractor for having delinquent Federal taxes in an amount that exceeds \$3,000. The FAR also contains guidance about what constitutes a delinquent tax debt and clearly provides that such debts must be finely determined, meaning that there is not a pending administrative or judicial challenge and all appeal rights have been exhausted.

To identify contractors that may have violated Federal tax laws that have a tax delinquency, the System for Award Management, called SAM, is the Federal contractor registration system that all perspective contractors must use to enter detailed information about their company in order to be eligible to compete for Federal contracts.

SAM requires companies to certify that they have not been convicted of or had any civil judgment rendered against them because of a tax evasion or violation of Federal tax laws. SAM also requires contractors to annually certify whether or not they have been notified of any tax delinquency in excess of \$3,000.

Under the Treasury's Federal Payment Levy Program, Treasury is authorized to withhold a percentage of any Federal payment in order to satisfy a Federal tax debt. For Federal contractors, Treasury is authorized to withhold up to 100 percent of that payment.

Despite the clear and effective initiatives to ensure contractor compliance with tax laws, policy riders regarding contractor compliance have been included in a myriad of appropriations laws over the past several years. These different approaches adopted by appropriations acts make it difficult to achieve a truly government-wide approach and also creates significant confusion within the

government and the contractor community about reporting and compliance requirements.

PSC believes that the current FAR provisions, which have been in place since 2008, have had a positive impact on addressing Federal contractor compliance with Federal tax laws. Legislation that codifies, clarifies, and offers minimally invasive improvements to the Federal Acquisition Regulation could be beneficial. However, such legislation must be tailored carefully to avoid creating new challenges or new circumstances.

We understand that Chairman Chaffetz is planning to reintroduce his Contractor Tax Accountability Act. PSC recommends that the committee adopt the improvements that I have identified in my prepared Statement to better align it with current regulations and practices, including repealing prior years appropriations acts, clearly stating that the provisions of the bill supersede those prior appropriations act provisions.

Your invitation letter also requested we comment on the vulnerability posed by tax delinquent workers, including Federal employees and contractor personnel with security clearances.

An assessment of a contractor employee's or a Federal employee's current compliance with tax laws is and should be a factor in the initial security clearance and background investigation and Federal adjudication process. It is, and should be, taken into account in the periodic reinvestigation of an individual's continued suitability for that clearance.

We support the current Federal Government adjudication guidelines that evaluate the whole person when considering the specific impact of any single behavior and see no need to change those adjudicatory guidelines.

However, if there are to be any changes to the security clearance process or adjudication standards regarding tax law compliance, it must treat all individuals who are applying for or holding a clearance equally.

To repeat what others have said, it is important to note that Federal contracting companies often have little ability to address cleared personnel's compliance with tax laws because it is the Federal Government that manages that clearance process and personnel privacy issues prevent companies from knowing about the tax status of their employees unless they are told.

Nevertheless, using continuous evaluation and monitoring techniques could improve the overall compliance with the tax laws by all cleared personnel regardless of whether they are a Federal or a contract employee.

That concludes my Statement. I look forward to your questions.
[Prepared Statement of Mr. Chvotkin follows:]



Statement of
Alan Chvotkin, Esq.
Executive Vice President & Counsel
Professional Services Council

"Federal Workforce Tax Accountability"

Subcommittee on Government Operations

House Committee on Oversight and Government
Reform

U.S. House of Representatives

March 18, 2015

Introduction

Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee, thank you for the invitation to testify before you this morning on behalf of the Professional Services Council's nearly 400 member companies and their hundreds of thousands of employees across the nation.¹ This committee is rightfully focused on ensuring that appropriate steps are being taken to ensure the all taxpayers—whether a contractor, grantee, a contractor or grantee employee, a federal civilian employee or a member of the uniformed military—are complying with existing tax laws and paying their taxes.

PSC is also a strong proponent of creating a fair, balanced, and competitive federal contracting marketplace with a level playing field for businesses that wish to compete for federal contracting opportunities. No entity should have an unfair competitive advantage by failing to pay taxes over those firms that pay their taxes. Companies that violate the tax laws should be held accountable for those violations and punished accordingly. In addition, in the federal contracting market, those companies should be carefully evaluated to ensure they are “presently responsible” parties before being eligible to receive future federal contracts. There has been substantial activity in this area in the past several years.

We also support initiatives that take into consideration an individual's tax law compliance as part of any required background investigation or security clearance adjudication or reinvestigation and this testimony addresses this issue, as well.

Oversight of Contractor Tax Compliance

There has been a great deal of attention and oversight to understanding federal contractor compliance with federal tax law. Of course, the principal requirements are found in the federal tax laws and the compliance regimes and audit activities undertaken by the Internal Revenue Service (IRS) to ensure that all businesses are adhering to our nation's tax code. There are also provisions in the Federal Acquisition Regulation (FAR) to identify and take action against contractors that have failed to

¹ For over 40 years, PSC has been the leading national trade association of the government technology and professional services industry. PSC's nearly 400 member companies represent small, medium, and large businesses that provide federal agencies with services of all kinds, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social, environmental services, and more. Together, the association's members employ hundreds of thousands of Americans in all 50 states. See www.pscouncil.org.

comply with the tax laws.² However, enactment of inconsistent legislative provisions over the past several years, predominately within the various appropriations laws, and interim guidance from agencies seeking to get ahead of FAR rulemaking activities, have led to inconsistent and confusing federal contracting policies.

First, the FAR directly addresses contractor compliance with federal tax laws. FAR Part 9 addresses contractor debarment, suspension and ineligibility. It specifically includes, within an enumerated list of causes for suspension or debarment, the authorization to act against a contractor “for having delinquent federal taxes in an amount that exceeds \$3,000.” FAR Part 9 also contains guidance about what constitutes a “delinquent tax debt” and clearly provides that such debts must be “finally determined,” meaning that there is not a pending administrative or judicial challenge and all judicial appeal rights have been exhausted. FAR Part 9 also states that a contractor is not “delinquent” where it has entered into an installment agreement with the IRS and the FAR provides examples of such installment plans. The FAR also provides for certain protections for contractors that have filed for bankruptcy protection.

To identify contractors that may have violated federal tax laws or that have a tax delinquency, the System for Award Management (SAM)³ requires companies to certify that they have not been convicted of, or had any civil judgments rendered against them, because of any tax evasion or violations of federal tax law. SAM also requires contractors to annually certify whether or not they have been notified of any delinquent federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied. Lastly, the SAM registration process includes an automated matching of the contractor’s Tax Identification Number against the IRS’ records. A false certification in SAM can also be a violation of the False Statements Act, which can result in significant penalties for contractors, and is an independent cause for evaluating a contractor’s “present responsibility” for being awarded federal contracts.

Within the Treasury Department there is a program that can match federal payments, including contract payments, to individuals or companies that are not tax compliant. The

² The FAR only applies to federal contracts. There are separate regulations that cover federal grants. (See the Final Rule “Federal Awarding Agency Regulatory Implementation of Office of Management and Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” published on December 19, 2014 and effective December 26, 2014, available at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-19/pdf/2014-28697.pdf>). The FAR does provide for reciprocal recognition treatment of procurement and “non-procurement” suspension or debarment.

³ SAM is the federal contractor registration system that all prospective federal contractors must use to routinely enter detailed information about their company in order to be eligible to compete for federal contracts.

program, title the Federal Payment Levy Program,⁴ is managed by Treasury's Financial Management Services. It cross references the known tax delinquent accounts with any pending federal payments that are due to an individual or a company. Under the program, Treasury is authorized to withhold a percentage of any federal payment in order to satisfy any federal tax debt. Typically the withholding amount is 15 percent of the payment, but for a federal contractor payment, Treasury is authorized to withhold up to 100 percent of the payment.

Despite these clear and effective initiatives to ensure contractor compliance with federal tax laws, policy riders regarding contractor compliance with tax laws have been included in a myriad of appropriations laws over the past several years. In the Consolidated Appropriations Act of 2012⁵ there were five individual provisions in different divisions of that law that prohibited contracting with entities that had unpaid tax debts unless the covered agency suspension and debarment official had reviewed the case and determined that suspension or debarment was not necessary to protect the government's interest. In the fiscal year 2015 Consolidated and Further Continuing Appropriations Act (CR-omnibus),⁶ two provisions were included. One provision imposed a government-wide approach and was included in the general government section of Division E (covering Financial Services and General Government);⁷ the other (dissimilar) provision was applicable to only those agencies covered by Division B (Commerce, Science and Justice) of the CR-omnibus Act.⁸ Unfortunately, the language in Division B uses different certification requirements, is triggered by different monetary thresholds, and is entirely silent about the role of the covered agencies' suspension and debarment officials. These different approaches adopted via appropriations acts makes it difficult to achieve a truly government-wide approach and also creates significant confusion within the government and contractor communities about the reporting and compliance requirements and the subsequent processes agencies will follow if there is an actual or reported tax delinquency.

These statutory provisions also differ from the existing FAR structure, primarily by failing to include a de minimus threshold that would constitute a "delinquent tax debt" and by failing to include meaningful definitions of other key terms, such as when a tax debt has

⁴ General information about the Federal Payment Levy Program is available at <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Federal-Payment-Levy-Program>.

⁵ P.L. 112-74

⁶ P.L. 113-235

⁷ Section 735

⁸ Section 523

not been “fully adjudicated.” Currently, the Defense Acquisition Regulation Council has the lead role in developing a FAR interim rule⁹ to implement the two provision in the fiscal year 2015 CR-omnibus, but it is not yet clear how the discrepancies between these two provisions, and with FAR Part 9, will be addressed. In addition, the Department of Defense has issued a Class Deviation establishing its own contract clause that is to be immediately included in DoD contracts. That clause requires DoD contractors to represent whether they have, or do not have, any unpaid tax liabilities.¹⁰

To complete the snapshot of the current landscape, stand-alone legislative proposals have been introduced in both the House and Senate that address contractor and grantee compliance with tax law.

Is Legislation Needed?

The bill that has garnered the most recent attention on this topic was the “Contracting and Tax Accountability Act of 2013” (H.R. 882), introduced in the last Congress by the now chair of the full committee, Congressman Jason Chaffetz. A nearly identical version of H.R. 882—also introduced by Chairman Chaffetz—was introduced this week. The Contractor and Tax Accountability Act of 2015 requires that the head of any executive agency that issues a solicitation for a contract, or that offers a grant, in an amount greater than the simplified acquisition threshold (currently set at \$150,000) to (1) require each offeror to certify that such person does not have a seriously delinquent tax debt; and (2) authorize the Secretary of the Treasury to disclose information limited to describing whether such person has a seriously delinquent tax debt. Under the bill, an affirmative self-certification of a seriously delinquent tax debt is considered to be definitive proof that the person is not a responsible party and, as such, would prohibit the award of the contract or grant to the offeror. The bill further requires contractors and grantees found to have a “seriously delinquent tax debt”—whether they be identified via self-certification or by the Treasury verification—to be considered for suspension or debarment, unless waived by the agency head.

PSC believes that the current FAR provisions, which have been in place since 2008, have had a positive impact on addressing federal contractor compliance with federal tax laws. Legislation that codifies, clarifies, and offers minimally invasive improvements to the Federal Acquisition Regulation could be beneficial. However, such legislation must be

⁹ FAR Case 2015-011

¹⁰ See DFARS Class Deviation 2015-00005: “Class Deviation—Prohibition Against Using Fiscal Year 2015 Funds to Contract with Corporations that Have an Unpaid Tax Liability or Felony Conviction Under Federal Law,” December 29, 2015, available at <http://www.acq.osd.mil/dpap/policy/policyvault/USA007416-14-DPAP.pdf>

tailored carefully to avoid creating new challenges or points of confusion. The Contractor and Tax Accountability Act of 2015 is a step in the right direction, but PSC has several recommendations aimed at improving the bill text to better align it with current regulations and practices.

First, the FAR requires all federal contractors, regardless of the dollar value of their contracts, to register and annually update their business information in SAM in order to be eligible to receive a federal contract. As I stated earlier, it is in SAM that contractors represent whether or not they have any delinquent tax debts. The Contracting and Tax Accountability Act of 2015, however, requires contractors to represent their tax delinquent status on a contract-by-contract basis for any contract that is above the simplified acquisition threshold. Because of the inclusion of the simplified acquisition threshold in the bill, it is possible that a company that has represented that they currently have a seriously delinquent tax in SAM would escape having to make a similar representation on a contract that has an estimated value below the simplified acquisition threshold. It should also be noted that contracts below the simplified acquisition threshold are typically performed by small businesses. While we have not conducted any analysis of reports of contractor non-compliance with federal tax laws, on the surface many of the publicly available reports suggest that contractor tax non-compliance occurs most frequently among sole proprietors or other small businesses. PSC is a strong proponent of reducing government-unique reporting and compliance burdens, particularly for small businesses, but we believe that on the issue of tax compliance, all companies—regardless of size—should be treated consistently. Therefore, PSC recommends that the reference to the simplified acquisition threshold be removed from the bill.

The Contracting and Tax Accountability Act of 2015 is also silent on establishing a de minimus threshold that would clearly define a “seriously delinquent tax debt.” FAR Part 9 includes such a threshold, set at \$3,000. This committee’s written report to accompany H.R. 882 from the 113th Congress stated that the IRS typically does not issue a notice of lien unless the debt exceeds \$10,000.¹¹ To avoid confusion and better align the bill with the FAR, PSC recommends that the bill specifically reference the \$10,000 de minimus threshold within the definition of “seriously delinquent tax debt.” Additionally, the bill should require the current FAR threshold of \$3,000 to be updated to reflect the \$10,000 threshold in the bill.

¹¹ See House Report 113-35 (to accompany H.R. 882), April 12, 2013, at <https://www.congress.gov/113/crpt/hrpt35/CRPT-113hrpt35.pdf>.

PSC also recommends that the bill be revised to clarify that seriously delinquent tax debts only are defined as such if they have been “finally determined.” FAR Part 9 provides that delinquent tax debts must be “finally determined” before triggering any suspension and debarment proceeding. FAR Part 9 also clarifies that a tax liability is not “finally determined” if there is a pending administrative or judicial challenge. FAR Part 9 also includes specific examples regarding when a liability would not be considered “finally determined” and exempts liabilities that are being repaid through IRS managed installment agreements. While the Contracting and Tax Accountability Act of 2015 closely mirrors some of the exclusions enumerated in the FAR with regard to pending appeals of tax liens and installment agreements, it does not clearly state that all delinquencies must be “finally determined” before a suspension or debarment action is initiated. Clarifying this issue by adding such qualifier would help while preserving the intent of the legislation.

PSC also recommends including language in the bill regarding the suspension and debarment procedures that should be followed in the event that a company, the IRS or a contracting agency identifies a contractor with a seriously delinquent tax debt. FAR Part 9 has well-established procedures for suspension or debarment that include a number of due process protections for contractors. While we believe that FAR Part 9 would likely be followed for any contractor disclosure of tax delinquency, it would be helpful if the bill specifically referenced the FAR Part 9 procedures.

Lastly, to avoid any confusion between the enacted fiscal year 2015 CR-omnibus appropriation act and those prior appropriations provisions discussed earlier in this testimony, PSC recommends that the Contractor and Tax Accountability Act of 2015 either repeal those provisions or clearly state that the provisions of the bill supersede all prior appropriations act provisions.

Cleared Contractor and Federal Employee Compliance with Tax Law

The invitation letter to testify today also requested that PSC comment on the vulnerability posed by tax delinquent workers, including federal employees and contractor personnel, with security clearances.

An assessment of a contractor employee’s or a federal employees’ current compliance with tax law is, and should be, a factor in the initial security clearance background investigation and federal adjudication process. It is, and should be, taken into account in the periodic reinvestigation of an individual’s continued suitability to hold a security clearance. We support the current federal government adjudication guidelines that

evaluate the “whole person” when considering the specific impact of any single behavior and see no need to change those adjudicatory guidelines. However, if there are to be any changes to the security clearance processes or adjudication standards regarding tax law compliance, it must treat all individuals who are applying for or holding a clearance—whether a federal employee, a member of the military, officials from state or local governments, or contractor personnel—equally.

It is important to note here, too, that federal contracting companies have little ability to address cleared personnel’s compliance with tax law because it is the federal government that manages the background investigation and the adjudication of personnel that require a security clearance to perform functions under the contract. When contractor personnel are denied a security clearance—for whatever reason—limited information about why the clearance was denied is shared by the government with the contractor employee’s company. Individual privacy protections are the primary reason that limited information is shared. Similar privacy protections exist under the Internal Revenue Code that would make it very difficult for federal contracting companies to police the tax compliance of their employees.

All employees with a clearance are also required to disclose to their security officer or to the agency sponsoring their clearance any “adverse information,” but the experience of many is that the strong economic interests of having a clearance and the fear of the immediate denial of that clearance often mitigates against individual disclosures. In addition, since there are no clear standards for determining what tax status is “adverse,” many cleared individuals do not believe they have an obligation to report on such information.

That said, we do believe there are opportunities that can improve overall compliance with tax law by cleared personnel regardless of whether they are federal or contractor employees. In the post-Sargent Manning and Navy Yard events, continuous evaluation and monitoring is one evolution that may be able to offer benefit on this front. Under current security clearance processes, a one-time snap shot is taken of the financial standing and other criteria of a person being considered for granting an initial clearance. Furthermore, since the re-evaluation of cleared personnel holding confidential, secret, or top secret clearances only occurs every 15, 10, or 5 years respectively, it is possible that personnel with seriously delinquent tax debts (or other behaviors) could go undetected for several years. However, technological and other advances associated with the background investigation process has led the federal government to undertake several pilot programs to evaluate the feasibility of the continuous monitoring and

evaluation of cleared personnel to regularly identify any facts that would suggest the need for a more frequent evaluation of a person's suitability for a clearance.

Conclusion

Chairman Meadows and Ranking Member Connolly, thank you for inviting PSC to testify today on these important issues. Before taking any further action on the Contractor and Tax Accountability Act of 2015 that Chairman Chaffetz and the committee staff have worked diligently on, we hope the committee will adopt our recommendations for improvements. We believe that our recommendations provide helpful clarifications while still preserving the PSC-supported intent of the legislation. We also look forward to working with you and your staff on viable options for addressing the related concerns about security clearances.

I look forward to answering your questions.

Mr. MEADOWS. Thank you for your testimony.
 Ms. Gilman, you are recognized for 5 minutes.

STATEMENT OF MAUREEN GILMAN

Ms. GILMAN. Chairman Meadows, Ranking Member Connolly, and members of the subcommittee, thank you for the opportunity to provide NTEU's views on tax compliance issues in the Federal work force.

I would like to extend regrets from NTEU's President, Colleen Kelly, who wanted to be here today but is recovering from back surgery.

Let me begin by stating that NTEU firmly believes that every Federal employee should pay their taxes in a timely manner. There are currently rules in place that allow Federal employees to be disciplined and even terminated for serious tax delinquency.

NTEU believes that termination for tax delinquency can be appropriate in some cases, but we believe that a blanket policy of termination is not warranted and will likely lead to more revenue going uncollected.

Under current law, agencies can take disciplinary against employees for failure to satisfy their just financial obligations, including their obligations to pay Federal taxes. These actions can range from counseling to removal.

In addition, there is also an efficient and successful process currently in place to recover taxes owed by Federal employees who become delinquent. In 1997, Congress authorized establishment of the Federal Payment Levy Program which allows the IRS to continuously levy up to 15 percent of certain Federal payments made to delinquent taxpayers.

Under the FPLP, the IRS shares tax debt information with the Bureau of the Fiscal Service, which is responsible for most Federal payments. If a match is found, a 30-day notice is given, then the IRS authorizes BFS to levy all eligible Federal payments to that individual.

The levy remains in effect until the debt is paid in full or until the taxpayer makes other arrangements to pay off the debt. Federal payments that can be levied through the FPLP include Federal salaries. It is important to note, however, that Federal payments, including salaries to delinquent employees, are exempt from the levy program under certain circumstances, including when a taxpayer is in bankruptcy, when they have applied for relief as an innocent spouse, or when the IRS has determined that they are in a hardship situation.

Therefore, one reason a Federal employee that owes taxes may not currently be under the FPLP program is that they qualify for one of these exemptions. Another reason could be that the process of determining the delinquency and implementing the levy has simply not been completed.

NTEU believes that prioritizing and providing adequate resources to the Federal Payment Levy Program would be a much better solution than a blanket employment bar. It would be a win-

win by helping to get Federal employees with tax debt into compliance while recovering additional revenue that is owed.

If, however, legislation is pursued that would prohibit Federal employment for those with tax debt, we believe it is critically important to include exemptions similar to those in the FPLP, especially a hardship exemption that represents a consistent and transparent standard, as well as a notice and grace period for those working earnestly to resolve their debts.

As you know, the U.S. Tax Code is incredibly complex. People can end up owing additional taxes for many non-nefarious reasons. For example, if they took deductions they thought were allowed but were not or they got bad advice from an inexperienced or unscrupulous preparer or a joint filer got inaccurate information about a spouse's earnings.

NTEU believes that intent should be a consideration when determining whether a Federal employee should be terminated due to tax delinquency. We also believe that ability to pay should be a consideration.

If an employee is in such dire financial straits that he or she is exempt from the levy program, it is not disrespect for the law but lack of wherewithal that is behind the non-payment. Clearly firing that individual, who might otherwise get back on track, repay the debt as well as become a tax compliant, contributing member of society, rather than someone not working and possibly collecting government benefits, does not seem to make economic sense.

In fact, the Joint Committee on Taxation and the Congressional Budget Office, who scored one version of legislation that would require firing tax delinquent Federal employees as raising negligible revenue but costing an additional \$1 million in administrative costs in the first year alone.

We urge the subcommittee to consider options such as prioritizing the levy program that will improve tax compliance within the Federal work force while bringing in additional revenue that is owed before moving to a blanket policy of termination.

Thank you again for the opportunity to provide this testimony. I would be happy to answer any questions.

[Prepared Statement of Ms. Gilman follows:]



**Statement of
National Treasury Employees Union**

On

**Examining potential reforms to ensure federal employees and contractors
satisfy in good faith their financial obligations, including federal taxes**

Presented to

**House Committee on Oversight and Government Reform
Subcommittee on Government Operations**

March 18, 2015

Chairman Meadows, Ranking Member Connolly, and distinguished members of the Subcommittee, I would like to thank you for allowing NTEU to appear before you to discuss tax compliance issues in the federal workforce. I am Maureen Gilman, Legislative and Political Director at NTEU, and am here today on behalf of our National President, Colleen Kelley.

Mr. Chairman, I want to be very clear that NTEU firmly believes that each and every federal employee should pay their taxes in a timely manner. There are currently rules in place that track federal workers' federal tax compliance, and that allow federal employees to be disciplined and even terminated for serious tax delinquency. NTEU believes that termination for tax delinquency can be appropriate in some cases, but we believe that a blanket policy of terminating a worker's employment or preventing a job applicant from obtaining gainful employment without taking into account the reasons for the delinquency and the circumstances surrounding repayment ability is not wise and will likely lead to more revenue going uncollected.

We are also concerned about creating a separate tax administration system for certain individuals, based solely on federal employment, and want to ensure that federal employees are not deprived of the rights afforded to all other taxpayers. We are troubled by proposals that would grant access to individual federal employee's taxpayer information, which under current law, must remain confidential, and cannot be shared with a worker's manager or with other outside entities and individuals.

Processes Already in Place

As stated previously, NTEU firmly believes each and every federal employee should pay their taxes in a timely manner and believes that the federal government already has enhanced processes to ensure compliance by federal employees.

Under 5 C.F.R. 2635.809, agencies can take disciplinary action against employees for failure to satisfy their "just financial obligations," including their obligation to pay Federal, state, and local taxes. These disciplinary actions can range from counseling to removal.

This Office of Government Ethics regulation, part of the government-wide standards of ethical conduct, provides: Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a just financial obligation includes any financial obligation acknowledged by the employee or reduced to judgment by a court. In good faith means an honest intention to fulfill any just financial obligation in a timely manner.

Federal Employee/Retiree Delinquency Initiative (FERDI)

In 1993, the Internal Revenue Service (IRS) initiated the Federal Employee/Retiree Delinquency Initiative (FERDI), to promote federal tax compliance among current and retired federal employees, as well as military personnel and retirees. According to the Internal Revenue Manual, the program incorporates the purpose and intent of Office of Government Ethics regulations 5 CFR 2635.809, discussed previously.

The broad objectives of FERDI are to enhance the federal government's tax administration process by improving the compliance of federal employees and annuitants in regard to their responsibility for filing tax returns and paying taxes, thereby helping to ensure the public's confidence in the tax system. The program combines reaching out to federal agencies to raise their awareness of this issue and prioritizing efforts to reduce unpaid tax cases.

Beginning in 1993, the IRS began periodically matching its records of outstanding taxes and non-filed tax returns against federal personnel records to identify federal workers and annuitants who either had outstanding taxes or had not filed their tax returns. IRS entered into agreements with the Defense Manpower Data Center, which receives personnel data files on many of the government's active and retired civilian and military workers, and the U.S. Postal Service, which maintains and processes similar data for postal workers, to match these personnel records against a data file of outstanding taxes and unfiled tax returns. Most agencies, accounting for over 95 percent of the federal workforce, participate in this matching process.

Agencies that participate in the matching process and agencies where IRS is able to perform a match using W-2 information annually receive a letter from IRS informing them of the number of employees with outstanding taxes or unfiled tax returns. These letters also contain IRS' assessment of the agency's rate of compliance. Because of restrictions imposed by confidentiality laws, these agencies do not receive information on the specific names of individual employees whom IRS has identified as not complying with the nation's tax laws.

The program has been successful in reducing tax delinquency among federal employees and retirees. In 2013, the overall FERDI non-compliance rate was 3.27 percent, translating into a 96.73% tax compliance rate for the federal community. No other individuals, nor set of occupations or groups of retirees are subject to a similar tax oversight initiative.

Federal Payment Levy Program

Mr. Chairman, in addition to laws and regulations in place that allow federal employees to be disciplined for failing to meet their tax obligations, there is also an efficient process currently in place to recover taxes owed. In 1997, Congress included a provision in the Taxpayer Relief Act of 1997 (P.L. 105-34), which became Section 6331 (h) of the Internal Revenue Code, authorizing the establishment of the Federal Payment Levy Program (FPLP), which allows IRS to continuously levy up to 15 percent of certain federal payments made to delinquent taxpayers.

Under FPLP, the IRS sends an electronic file containing tax debt information to the Department of Treasury's Financial Management Service (FMS). The FMS then searches for matches between the names and taxpayer identification numbers (TINs) in its database on pending federal payments and the names and TINs in its database on delinquent tax accounts. If a match is found, the FMS notifies the IRS, which in turn notifies the taxpayer in question of its intent to levy certain federal payments to that individual until the tax debt is paid in full. If 30 days pass with no reply from the taxpayer, the IRS authorizes FMS to levy all eligible federal payments to that individual. The levy remains in effect until the debt is paid in full, or until the taxpayer makes other arrangements with the IRS to pay off the debt.

The list of federal payments that can be levied through the FPLP include: federal employee retirement annuities, federal payments made to a contractor/vendor doing business with the government; federal employee travel advances or reimbursements, certain Social Security benefits, and importantly federal salaries.

Since inception of the FPLP in 2000, the program has brought in over two and a half billion dollars, and in Fiscal Year 2010, collected \$618 million.

Hardship Exemptions

While the levy program has clearly succeeded in collecting tax debt owed by federal employees, it is important to note that federal payments, including salaries, to delinquent employees are exempt from the levy program under certain circumstances. These circumstances include, when a taxpayer is in bankruptcy, when they have applied for relief as an innocent or injured spouse, or the IRS has determined they are in a hardship situation. Therefore, the likely reason any federal employee that owes taxes but is not currently under the FPLP program is that they qualify for one of the hardship exemptions under the program. To terminate these employees without considering their financial situation does not serve any purpose other than to ensure that the government would lose the potential to collect taxes owed when the employee's financial situation improves.

In recent years, the IRS has taken numerous steps to help taxpayers having difficulties meeting their tax obligations because of unemployment of a family member or other financial problems. The steps include additional flexibility on offers in compromise and missed payments, postponement of collection actions and expedited levy releases.

These actions by the IRS are a recognition that in the current economic climate, it is more important than ever that taxpayers experiencing financial hardship be provided with additional flexibilities to help them resolve their financial difficulties and become compliant. As Nina Olson, the National Taxpayer Advocate, has said, when dealing with non-compliant taxpayers, the focus should not just be on getting them compliant for a single year, but on keeping them compliant in the future as well.

Mr. Chairman, like many in the general public, federal employees have been affected by the recent economic downturn through the loss of jobs of family members and the loss of value of their homes, and some from reduced wages owing to unpaid furlough days stemming from sequestration and the 2013 shutdown. Therefore, we believe at a minimum, it is imperative that any legislative proposal provide a hardship exemption, to protect workers who are facing financial hardship from termination. We also believe it is important to provide notice and a grace period for those working earnestly to resolve their debts.

Due Process

Mr. Chairman, some may point to the high rate of tax compliance by IRS employees, and the fact that they can be terminated for various tax infractions under the IRS Restructuring and Reform Act of 1998 (RRA 98) as evidence that mandatory termination for tax violations is an effective policy.

Section 1203 of RRA98 requires the Commissioner of the IRS to terminate an employee for certain specifically enumerated violations committed by the employee in connection with the performance of the employee's official duties. It is worth underscoring that Section 1203 requires that before any action is taken, there must be a final administrative or judicial determination and that the employee's actions were willful.

Mr. Chairman, unlike Section 1203, many past legislative proposals have provided federal workers with minimal due process rights and did not require a similar determination of willfulness. As you know, the U.S. tax code is incredibly complex and people can end up owing additional taxes for many non-nefarious reasons: they took deductions they thought were allowed, but weren't; they got bad advice from an inexperienced or unscrupulous preparer; a joint filer got inaccurate information about a spouse's earnings. If the IRS were to bring a criminal prosecution against an individual, intent would be a required element. We believe that intent should be a consideration when determining whether a federal employee should be terminated due to tax delinquency.

We also believe that ability to pay should be a consideration. If an employee is in such dire financial straits that he or she is not eligible for wage garnishment, it is not disrespect for the government, but lack of wherewithal, that is behind the non-payment. Clearly, firing that individual, who might otherwise get back on track and repay the debt, as well as become a tax compliant, contributing member of society, rather than someone not working and collecting benefits, does not seem to make economic sense.

In addition to the lack of consideration of the circumstances surrounding the federal employee's tax delinquency, we have concerns as to how that delinquency would be established. Under many of the past legislative proposals, a prospective or current federal employee would be prohibited from federal employment based on the mere issuance of a notice of a federal tax lien (NFTL). The IRS files a NFTL to secure the government's interest as a creditor in competition with other creditors in certain situations, such as bankruptcy proceedings or sales of real estate. The federal tax lien is a claim against a taxpayer's property, including property that they acquire after the lien arises. It is not a final determination of liability and should not be the final determination of whether a federal employee or applicant is eligible for federal employment.

Job Applicants

Mr. Chairman, in addition to the serious concerns we have about the adverse impact that changes could have on current federal employees, we also have a number of questions and concerns about how the process for determining the eligibility of an applicant for federal employment with a tax debt would work. In particular, who would be responsible for investigating an applicant's tax situation and making the determination of whether or not they are eligible for federal employment? And would an applicant have the right to respond to any problems that are found? If it is determined that they are not eligible for employment, do they have the right to appeal that decision? And who would be responsible for hearing and deciding such an appeal?

I would note that recent Administration efforts have directed OPM to work with executive departments and agencies to reform and streamline the federal hiring process by reducing the

amount of time it takes to fill vacant positions. The Committee itself has also recognized the need to streamline the processes by which job applicants apply for vacancies and agencies fill them, and has urged agencies to develop plans for reducing the time it takes to hire Federal employees. Requiring federal agencies to review and make determinations of each individual applicant's tax situation would almost certainly extend the hiring process, create additional costs, and threaten to reverse progress made recently in streamlining federal hiring.

Conclusion

Mr. Chairman, as I have said throughout my testimony, I believe that everyone has a responsibility to pay the taxes they owe. And according to IRS data, more than 96 percent of the federal community is meeting their tax responsibilities in a timely manner, a higher rate than the general public. For those who do not, there are currently penalties under the tax code. There are also penalties that agencies can apply when employees are violating ethics rules. But singling out and requiring federal employees that owe back taxes to be fired and creating a huge new program to check the tax status of all federal job applicants, is not the best way to address this problem. Some may owe taxes because of the actions of a spouse, a previous failed business enterprise or financial hardship. Denying them federal employment that they are otherwise qualified for, will certainly be unfair in some situations and in many situations will lead to a higher likelihood that the government will never receive the taxes it is owed. This outcome was confirmed when the Joint Committee on Taxation and the Congressional Budget Office scored one version of legislation on this topic as raising "negligible" revenue, but costing an additional \$1 million in administrative costs in the first year alone.

Thank you. I would be happy to answer any questions.

Mr. MEADOWS. Thank you, Ms. Gilman.

I appreciate the testimony of all the witnesses. Thank you for staying close to the five minute deadline. Some of you actually came in under, so I thank you.

I am going to defer on my questions because we will have votes shortly. I am going to recognize the gentleman from Kentucky, Mr. Massie, for 5 minutes.

Mr. MASSIE. Thank you, Mr. Chairman.

Ms. Gilman, first of all, I want to offer congratulations. When I look through the list here, I see the delinquency rate for the Department of Treasury, I assume that would include members of your union, is the lowest on the list which I am hoping would be the case. It is 1.2 percent which is admirable compared to the other members here and even the population in general, especially the population in general.

My question is, what is it that the Treasury is doing right that everybody else is maybe missing?

Ms. GILMAN. Let me say that the National Treasury Employee Union represents employees throughout the Federal Government but we do represent the bulk of employees who work for the Treasury Department.

Within Treasury, only IRS employees have had historically more stringent rules about tax compliance than the rest of the Federal work force. That continues today. They have had historically rules within the IRS manual on conduct involving tax violations that have made them subject to termination for many, many years.

Since that time, there have been provisions included in the Tax Code known as the ten deadly sins which involve termination for willing and knowing violations of tax rules. I think there is sometimes a misperception that those rules involve non-payment. They do not. They involve purposely not filing returns that an employee knows are supposed to be filed or purposely under-reporting or lying about your income.

The idea of whether or not your ability to pay is actually not part of that is considered in whether or not you face termination at the IRS.

Mr. MASSIE. Would it be safe to say that the Treasury has a higher standard than the other organizations on the list and how maybe enforcement mechanisms and that is how you achieved a rate that is about one-third?

Ms. GILMAN. The IRS does, not all of Treasury.

Mr. MASSIE. The IRS.

I think Mr. Huther pointed out that just because you are a Federal employee does not mean that you are not still deserving of the protections of the laws and your civil liberties should still be intact. We should not single out, for instance, Federal employees.

When you apply to work at a bank, I know this because the bankers I have talked to in my district lament the fact that so many young people have horrible credit ratings are no longer eligible to be employed by their bank. To work at a bank, you have to go through credit checks. This is for you, Mr. Holland. Do employees at HHS, your organization, have to go through a credit check as a condition of employment?

Mr. HUTHER. Congressman Massie, it depends on the nature of the position. But for the vast majority of employees, at the time of their initial entry or periodically throughout the course of their careers, they would rarely be subject to a credit check per se. Those in the Senior Executive Service level and other higher ranking management officials and the career service, could be but it is a function really of the disclosure documents that they provide at the time of their filing of ethics Statements and the like.

Mr. MASSIE. Mr. Holland?

Mr. HOLLAND. The situation at the Department of Health and Human Services is the same as Mr. Huther describes at the Department of Housing and Urban Development. It depends upon the situation and depends upon the particular position.

Mr. MASSIE. I think Mr. Bagdoyan who pointed out that even on a credit report only if the IRS had resorted to a lien would it show up on a credit report. Is that true?

Mr. HOLLAND. That would be my understanding but I am not an expert in credit reports.

Mr. MASSIE. It still might be worth doing.

Mr. Bagdoyan, I have a question for you. When you went through the numbers and looked at the individuals who were eligible for clearance, how many of them are in bankruptcy? Can you know that or not?

Mr. BAGDOYAN. We did not identify those who were in bankruptcy. That was not in our scope. I can double check.

Mr. MASSIE. I want to get in one question. Should the government verify tax information for top secret and SCI-cleared individuals?

Mr. BAGDOYAN. That would certainly be a consideration for the overall toolbox, but as several of the other panelists testified, the Section 6103 protections afforded tax information would preclude that and doing it in real time unless the taxpayer, in this case the security clearance applicant, consented for that information to be accessed.

Mr. MASSIE. Thank you very much. My time has expired.

Mr. MEADOWS. I thank the gentleman.

The Chair recognizes the Ranking Member, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. I thank the Chair.

I would like to pick up on that very last point, Mr. Bagdoyan. Section 6103, which you referred to, was written by Congress and sent to the Internal Revenue Code, is that correct?

Mr. BAGDOYAN. I believe that is correct.

Mr. CONNOLLY. What do you think the purpose of that provision was?

Mr. BAGDOYAN. Obviously to protect the privacy of taxpayer information.

Mr. CONNOLLY. Speaking of privacy, Mr. Huther and Mr. Holland, you get a list every month of people who are tax delinquent, your employees?

Mr. HOLLAND. I am afraid not, Mr. Connolly, we do not get such a list.

Mr. CONNOLLY. Who would know since you do not know?

Mr. HOLLAND. The Internal Revenue Service knows.

Mr. CONNOLLY. Even if you wanted to take corrective measures, you are not privy to that information, is that correct?

Mr. HOLLAND. Yes, sir, that is correct.

Mr. CONNOLLY. Following up on Mr. Massie's point, if there were a lien, you might be notified as the employer so that you could comply with withholding, correct?

Mr. HOLLAND. Actually, we do not even know then. We have, as do all the Federal agencies, one of four Federal payroll providers that pay our employees. Matters of liens are handled directly between the lienholder and the payroll provider. They do not need to involve the department and we do not know when that happens.

Mr. CONNOLLY. Mr. Bagdoyan, you talked about your audit at DOD over a 5-year period. Those numbers in macros sound impressive but you pointed out that the range of taxes owed was from \$100 to in the millions, correct?

Mr. BAGDOYAN. That is correct, Mr. Connolly.

Mr. CONNOLLY. What percentage of the people would you say were involved in relatively small amounts of money?

Mr. BAGDOYAN. I do not have that off the top of my head. I can look into it and get back to you.

Mr. CONNOLLY. That would be very useful because just the macro numbers alone do not tell you much of a story. As Ms. Gilman pointed out, there may be lots of reasons somebody might be technically delinquent.

For example, if you file your taxes late, legally late, you seek an extension and you file in October instead of April 15. In compiling what you owe, assuming for a moment you owe money, you may find after filing what you think you owe, your tax preparer, that the IRS has a small interest fee or a small penalty fee that is relatively tens of dollars.

Technically, you owe that to the IRS. You technically are delinquent. It is a matter of their accounting versus your accounting. You are absolutely legally within the law, you took advantage of a legal provision to extend when you file because you are busy in April, but what you owe is calculated slightly differently by the IRS and you pay it.

Ms. Gilman gave a bunch of examples of people who might find themselves in perfectly understandable circumstances. Ms. Gilman, one of them might be a messy divorce, correct?

Ms. GILMAN. That is correct, Mr. Connolly.

Mr. CONNOLLY. If somebody finds themselves in that circumstance, they might even be advised by their attorneys before you pay the taxes or even file them on time because of a messy divorce, you may not want to reveal x, y or z. You may want to wait until this is settled and then we can settle.

It may not be because of a willful desire not to pay your taxes, it may be because something else is at work that affects that tax obligation, is that correct?

Ms. GILMAN. That is correct.

Mr. CONNOLLY. Is it possible, Ms. Gilman, that somebody owes taxes and may not know it?

Ms. GILMAN. Yes, it is. I believe it is often the case that there is a lien filed and people are unaware of the lien.

Mr. CONNOLLY. I know of cases where the IRS had the wrong address or somebody moved. IRS is only obligated to notify you with the best available information they have, correct?

Ms. GILMAN. That is correct.

Mr. CONNOLLY. With the best of intentions, you may be innocent except IRS has decided otherwise and they have not reached you?

Ms. GILMAN. That is right.

Mr. CONNOLLY. By the way, I find what is driving this legislation really interesting because one of the things you have to concede if you want to go forward with this kind of legislation, it seems to me, is you have to concede the omniscience of the IRS. The IRS cannot possibly be mistaken, so when it declares you are delinquent, you are delinquent.

I find that a little ironic when so many of my friends have bashed the IRS for mistakes, for incompetence and for getting it wrong. In this one case, if you are a Federal employee, we just assume they always get it right.

I yield back, Mr. Chairman.

Mr. MEADOWS. I thank the Ranking Member.

They have called votes at this particular point. Just so you all know, I am going to recognize the gentleman from South Carolina for 5 minutes, Mr. Mulvaney, but the Ranking Member may pop out as we are getting close to a deadline. Mr. Mulvaney.

Mr. MULVANEY. Thank you, Mr. Chairman and the Ranking Member.

Thanks to everyone for doing this. It has been very helpful.

I want to stay on the issue that Mr. Massie finished with and Mr. Connolly began with, the Section 6103 protections which I think we would all agree is probably well reasoned and sound.

Mr. BAGDOYAN, did I hear you or Mr. Holland say you folks require some people to waive that as part of their background for a security clearance?

Mr. BAGDOYAN. That is my understanding that if the applicant for a security clearance is asked about their financial status, they have the option of waiving their 6103.

Mr. MULVANEY. Is the option to waive it or are they required to waive it?

Mr. BAGDOYAN. I believe it is an option but I can double check on that and get back to you.

Mr. MULVANEY. It occurs to me there are ways to fix this. To Mr. Connolly's opening point, Mr. Connolly, I do not think the issue here is about the amount of money involved. I think the issue is about trust in government and the credibility that government workers have.

I think both you and I know because of what we have chosen to do for a living, we are held to a higher standard. I think taxpayers, ordinary folks, expect Federal workers to be held to at least a slightly higher standard.

It strikes me that may be looking at reforms to 6103 to make it more waivable, require it to be waived, if you want to work for the Federal Government might be something we could look at.

Mr. CONNOLLY. Would my friend yield?

Mr. MULVANEY. I would be happy to.

Mr. CONNOLLY. Thank you, Mr. Mulvaney.

My only point in questioning Mr. Bagdoyan about the amounts was simply to get a sense of the scope. I was not trying to make the point that \$100 does not matter. I was only trying to find out how many are in the millions.

Mr. MULVANEY. I was actually speaking to your opening, reclaiming my time, comments about whether or not this was a fiscal responsibility bill. I do not think it is. The CBO report would be meaningless unless we are trying to show people that the government can properly work and that people who work for it are good and honest people.

What intrigues me the most is what Mr. Massie asked you, Ms. Gilman, the fact that Treasury seems to have it down. Your delinquency rate is well below 2 percent, roughly a third of what the average is across every other agency.

You are doing it without the heavy hand of Congress on you folks and it strikes me that the rules that you put in place, specifically IRS, might actually work. Why not do it everywhere?

Ms. GILMAN. One thing I think is different about the IRS is that people at the IRS have 6103 authority. Information about their employees is available to the agency at the IRS unlike any other agency because they administer the Tax Code.

It has been a tradition there for as long as I am aware that the IRS existed that they were able to look into their own employees' tax compliance because they administer the Code.

Mr. MULVANEY. One of my takeaways is, again to the Ranking Member's point, that the IRS has a much lower delinquency rate than anybody else. What is different about the IRS? They have 6103 authority over their own employees and I think you said they have a different code of ethics, was that the term you used?

Ms. GILMAN. They have both a manual that has always included provisions on the importance of tax compliance. They also have some statutory rules that apply only to the IRS about truthfulness and taxes.

Mr. MULVANEY. Maybe this is specific to Treasury, I do not know, but I think you said IRS folks can actually be terminated for nonpayment under certain circumstances?

Ms. GILMAN. Yes.

Mr. MULVANEY. Is that the case at HUD or HHS? Can you be terminated for non-payment of taxes?

Mr. HUTHER. Not that I am aware of, sir.

Ms. GILMAN. If it is found to be a violation of rules that you are not complying with your just financial obligations, including Federal taxes, then you can be terminated for that.

Mr. MULVANEY. My point is not that maybe that needs to be fixed or changed; my point is it seems to work. If we are looking for ways to encourage, to use a positive term, more Federal workers to file their taxes on time and do the right thing, maybe the model already exists and maybe the IRS is something we could look at, for a change, as a model for use at other agencies.

With that, I yield back the balance of my time. Thank you, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman from South Carolina.

As I said, they have called votes. I want to be sensitive to each one of you. In recognition of the hard work the committee has done,

I am going to submit my questions for you in writing and let you respond in writing. That way we can adjourn this hearing and let you go so you do not have to wait for an hour.

I do want to say thank you, each one of you, for your testimony. It is important, I think, that we point out this is not about the hardship cases because we all think about the hardship cases of when we could not afford to pay a tax or we had a spousal issue or something else.

This really is about making sure Federal employees adhere to the highest standards. That is what the American taxpayers want, that is what they believe. If you are getting paid by the Federal Government, you ought to pay back into the Treasury.

In doing that, it is imperative that we work together. If you have recommendations on how we can accomplish this without legislative intervention, we are certainly all ears and willing to hear that. I want to thank each of you for your testimony and for appearing here today.

There is no other business. Without objection, the subcommittee stands adjourned.

[Whereupon, at 1:55 p.m., the subcommittee was adjourned.]

