

**CONTINUED OVERSIGHT OVER THE INTERNAL
REVENUE SERVICE**

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
GOVERNMENT OPERATIONS

AND THE

SUBCOMMITTEE ON HEALTHCARE, BENEFITS, AND
ADMINISTRATIVE RULES

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

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CONTINUED OVERSIGHT OVER THE INTERNAL REVENUE SERVICE

Tuesday, April 17, 2018

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON GOVERNMENT OPERATIONS JOINT
WITH SUBCOMMITTEE ON HEALTHCARE, BENEFITS, AND
ADMINISTRATIVE RULES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
Washington, DC

The subcommittees met, pursuant to call, at 10:08 a.m., in Room 2154, Rayburn House Office Building, Hon. Jim Jordan presiding.

Present: Representatives Jordan, Meadows, Walker, Hice, Issa, Sanford, Massie, Grothman, DeSantis, Mitchell, Blum, Krishnamoorthi, Connolly, Maloney, Norton, and Lawrence.

Also Present: Representatives Gianforte and Duncan.

Mr. JORDAN. The Subcommittees on Healthcare, Benefits, and Administrative Rules, and Government Operations, will come to order.

Without objection, the presiding member is authorized to declare a recess at any time.

We will get to our witnesses here in a second. We will do some opening statements and then hear their testimony, but we appreciate everyone being with us this morning, especially our three important witnesses.

Today is tax day, the deadline for American taxpayers to file their taxes with the Internal Revenue Service. We have before us the Acting Commissioner of the IRS, its Inspector General, and the National Taxpayer Advocate, all who play a role in taxpayer service, tax enforcement, IRS oversight, and implementing the tax code with fairness and integrity.

Integrity at the IRS is something I want to address in particular today, something former Commissioner John Koskinen disregarded as was made clear to this committee during his tenure as he tried to cover up IRS targeting conservative groups. While under subpoena, 422 backup tapes potentially containing up to 24,000 emails were conveniently destroyed. The continued shortcomings make it difficult for taxpayers to trust the IRS.

At our most recent hearing about the IRS mismanagement, we learned that the agency rehired bad employees who engaged in fraud, who were under investigation, and who repeatedly violated internal policies and the law.

In January we wrote to the IRS to ensure this problem has been fixed. Today we plan to hear an update on whether full compliance is actually in place.

But we are seeing repeated failures. There is yet another report issued in February highlighting the IRS continues to give bonuses to employees who have had all kinds of shortcomings in their record, with recent misconduct and tax compliance issues as part of those shortcomings.

Only at the IRS are bad employees, those with conduct issues, unauthorized access to taxpayer information, rewarded with bonuses.

Another area of concern is the IRS' implementation of the employer mandate. In April of 2017, TIGTA assessed the IRS was not capable of starting to implement Obamacare's employer shared responsibility provision, finding processes were not functioning. But then in March, TIGTA issued a report finding that the process to identify employers subject to the employer mandate needed improvement, the Inspector General's reporting problems for the IRS enforcing the employer mandate. Yet last November, when Mr. Koskinen was heading out the door, the IRS decided to start collecting penalties from companies going all the way back to 2015. I know many members have concerns about this, and we will have questions about this, particularly Congressman Hice from Georgia.

This month we requested documents about the IRS' capacity to evaluate compliance and assess penalties regarding the employer mandate. In 2016 the Government Accountability Office released a report suggesting that the IRS is systematically evading the law when issuing their expansive regulations. In February we requested documents from Treasury about IRS rulemaking practices. Mr. Kautter, I am still waiting for those documents.

We need to hear how these and other issues will be resolved. The American people are tired of this pattern of IRS abuse. It is time for the Internal Revenue Service to fulfill its duties with fairness and integrity.

Thank you to our witnesses for appearing here today on tax day, and I look forward to your testimony.

With that, I think we will allow our Democratic colleagues, the Ranking Members, to offer their opening statements if they wish, when they arrive, but I will turn now to the gentleman from Georgia, Mr. Hice, for an opening statement, and then we will get right to our witnesses.

Mr. HICE. Thank you, Mr. Chairman.

As you mentioned, today is one of the most dreaded days in America, tax day. I hope that the recent passage of the tax reform bill will provide relief to American citizens and hopefully less dread in the future as this day comes upon them.

Not only does this hearing allow us to continue our oversight of the IRS, but it is also the first since the passage of the Tax Cut and Jobs Act, and so this is particularly good timing for the hearing that we have today.

The new tax cuts are critical to individuals and small businesses, and the IRS must move quickly to implement that law. It is my sincere hope that the culture and the management problems that have proven so prevalent at the IRS throughout the course of previous administrations does not imperil the implementation of the Tax Cuts and Jobs Act and the reforms that are in it.

The IRS has been entrusted with the most powerful tools of the Federal Government. I think it is safe to say that nothing strikes fear in the heart of a person like receiving a letter from the IRS, and the abuses that have taken place in the past are unacceptable.

I personally have experienced the aggressive IRS tactics prior to running for office. In fact, as a pastor I joined a group of other pastors that since then has turned into thousands of pastors to fight to resist the IRS intimidation and their chilling efforts to chill freedom of speech in churches. That fight, of course, is still ongoing.

Ninety-eight percent of tax compliance is voluntary. This means that the IRS must work with, not against, taxpayers. This starts with ensuring taxpayers receive the best customer service possible at every level. I am sure the witnesses today will probably say that the IRS needs more money to provide better services. I disagree with that personally, but nonetheless Congress has provided additional resources this year to improve customer service and implement tax reforms.

But we have to be clear that these additional funds cannot be used as an opportunity for the IRS to sweep its longstanding problems under the rug. To quote the Taxpayer Advocate, "Limited resources cannot be used as an all-purpose excuse for mediocrity." It is time for the IRS to hold itself to the same high standards that it requires of the American taxpayers. And this committee, I can assure you, will be watching closely.

I want to thank our witnesses for being here today. I look forward to hearing your testimony.

I yield back.

Mr. JORDAN. I thank the gentleman.

I now recognize the gentleman from Virginia for an opening statement.

Mr. CONNOLLY. I thank you, Mr. Chairman.

I guess I couldn't disagree more vehemently than with my friend who just spoke. Year after year, the IRS has been asked to do more with less. Since 2010, when the Republicans took over Congress, the number of individual tax returns filed increased by 11 percent, while the IRS budget in inflation terms decreased by 20 percent. That might have something to do with the mediocrity that was just characterized.

These funding reductions have substantially weakened the agency's capacity to enforce the tax code and meet taxpayer needs. In fact, it looks like it has delivered.

Over the same time, the IRS workforce has been reduced by 18,000, leaving one-third the number of enforcement agents and less than half the number of customer service representatives. That might have something to do with customer service quality.

In her written testimony for today's hearing, Nina Olson, the Taxpayer Advocate, states: "There is no substitute for having enough IRS employees to answer the 100 million telephone calls and 10 million pieces of correspondence the IRS receives every year."

The IRS budget constraints are impeding the agency's ability to update its outdated IT systems, something this committee on a bipartisan basis has been concerned about, delaying more than \$200 million in investments. Approximately 59 percent of the informa-

tion technology systems at the IRS have aged beyond their useful life, leaving the IRS and taxpayers at risk of a cyber intrusion or a catastrophic failure that prevents taxpayers from filing tax-related paperwork.

The recently passed Trump tax scheme will only exacerbate these issues in the coming years. The law contains 119 provisions that must be addressed by the IRS, and its estimated to cost the agency \$397 million to implement. This figure includes the need to hire over 1,700 new employees, reprogram approximately 140 IT systems, revise or create roughly 450 different tax forms and publications and instructions, issue guidance and other activities to help taxpayers comply with the new law.

In the recently passed omnibus spending bill, as my friend did indicate, Congress did provide IRS a total of \$11.4 billion for Fiscal Year 2018, an increase of \$196 million over the previous fiscal year. Despite an increase of \$196 million, funding for the IRS is still below the \$12.1 billion the agency received before the Republicans took over the Congress in 2010.

Now, despite all these increased responsibilities with the new tax code, they are still below their funding level of eight years ago.

Additionally, the omnibus directs the IRS to spend \$320 million to implement changes in that new tax law, which means that funding for other IRS functions will probably have to be reduced to meet that requirement. So net new funding for normal IRS activities actually goes down.

The increased funding in Fiscal Year 2018 will do little to address the need for increased enforcement capacity or the well-documented customer service problems my friend just talked about that have plagued the IRS. This week the House will vote on legislation that includes new IT and cyber requirements for the IRS. The 21st Century IRS Act would, among other things, promote electronically filed tax returns, enforce strict standards for confidentiality safeguards among IRS contractors, and strengthen efforts to combat identity theft. If Congress wants the IRS to deploy 21st century technology to improve services it provides, we must provide adequate resources to enable it to do so.

However, it is important to recognize that new technology alone cannot replace the nearly 9,500 customer service representatives that the IRS has lost since Fiscal Year 2010. For example, 46 percent of taxpayers calling the IRS have already checked IRS online resources and still need assistance. Depending on online resources also ignores the millions of households across the country that have no broadband access, especially low-income and elderly taxpayers. Additionally, those who reach out to the IRS by phone or through a taxpayer assistance center often have more complicated issues that can't easily be addressed simply online. Therefore, while I support efforts to modernize the IRS IT systems—in fact, I passionately advocate for it—these efforts must be done in conjunction with, not at the exclusion of, increasing customer service employees needed to answer those phones and provide thoughtful guidance to taxpayers.

I hope my colleagues on both sides of the aisle will recognize that our constituents deserve better, and now is the time to fully and adequately fund the IRS so it can do so.

I yield back.

Mr. JORDAN. I thank the gentleman.

Today we have before us Mr. David Kautter, Acting Commissioner of the Internal Revenue Service. We welcome you here for the first time, Mr. Kautter, and look forward to your testimony and your participation with the questions from our members.

Mr. George, the Inspector General for the Treasury and for Tax Administration. He has been in front of our committee many times. We welcome you back, Mr. George.

And, of course, Ms. Olson, Nina Olson, the National Taxpayer Advocate at the IRS, has been in front of us several times as well. We welcome you back and look forward to all your testimony.

You know how it works. You have to stand up and we swear you in, and then you get your 5 minutes. So if you will please stand, raise your right hand.

[Witnesses sworn.]

Mr. JORDAN. Let the record show each witness answered in the affirmative.

Mr. Kautter, we are going to start with you. You have 5 minutes, and then we will move right down the list.

WITNESS STATEMENTS

STATEMENT OF HON. J. DAVID KAUTTER

Mr. KAUTTER. Mr. Chairmen Jordan and Meadows, Ranking Members Krishnamoorthi and Connolly, and members of the subcommittees, thank you for the opportunity to provide you with an update on IRS operations. My appearance today is particularly appropriate since, as has been noted, this is tax day, and the filing deadline is at midnight tonight.

In case you haven't filed yet, just a reminder that we have a six-month extension request available on IRS.gov. Look for Form 4868.

As of last Friday, 119 million returns have been filed and refunds have gone out quickly to more than 86 million taxpayers so far. About 92 percent of the returns have been filed electronically, and the average refund is up by \$16 from last year, to \$2,831. Visits to IRS.gov are up by 24 percent.

On my way over here this morning I was told that a number of IRS systems are unavailable at the moment. We are working to resolve this issue, and taxpayers should continue to file their returns as they normally would.

Having said that, this year's tax season is a good example of what the IRS must do more of going forward, delivering for the nation's taxpayers.

Following five months on the job at the IRS, I would like to share with you my observations about the IRS so far and offer a few thoughts about how to improve its performance in the future.

When I agreed to Secretary Mnuchin's request to serve as the Acting IRS Commissioner, I told him that if I was going to bring value to this role, I needed to approach my responsibilities with an analytical, unbiased perspective, and that is what I have tried to do. At one point in my career I served on the Senate staff, but most of my career, more than four decades, has been spent as a tax practitioner running large business units within a Big Four firm. I

spent 13 of those years as the Director of National Tax within my firm, and after leaving public accounting I spent four years as a full-time professor at American University, where I established a tax center focused on small businesses and middle-income taxpayers.

I frequently dealt with the IRS throughout my career, and I like to think I came to the IRS with an objective, unbiased view of the tax agency. Clearly, the IRS has had significant difficulties during the past five years, both from an internal operations point of view and when it comes to dealing with taxpayers. Those difficulties have been well documented by these subcommittees, TIGTA, and others.

As I have met with people at the IRS, I have several observations that I would like to share with you today.

First, my personal experience is that the vast majority of its employees and its current career senior leadership are committed to helping taxpayers, to operating an efficient agency, and to doing the right thing. They realize they need to do better, and they realize they need to serve taxpayers, not the other way around.

Second, I found the senior career leadership currently in place to be open-minded, forward thinking, and willing to implement change. It is worthwhile to keep in mind that the vast majority of the leadership now in place at the IRS is new. The Deputy Commissioner for Services and Enforcement has been in her job just over a year. The Deputy Commissioner, which is the second of the two primary deputy commissioners, has been in his job for a little over two years. Most of the leaders of our internal operations and support functions have been in place for less than two years.

This is a group that seems not only open to change but eager to change. Having said that, my view is that the path to improvement involves the critical elements of leadership, measurement, and accountability. These are areas where the IRS must do better.

At this point, my belief is that there are six key things that need to change at the IRS, and all flow from the elements I just mentioned.

First and foremost, the IRS needs to make improvements in taxpayer service to help taxpayers meet their obligations under the tax law. While enforcement is important, leadership needs to make clear that taxpayer assistance and enforcement are part of a continuum and not mutually exclusive concepts.

Second, for operations support work, we need to be clear that we must be judicious stewards of taxpayer dollars. While following the many rules of contracting, hiring, and firing are important, developing new ways of operating more efficiently, especially when it comes to software development, technology, and cyber security are not a "nice to have," they are part of the job.

Third, measurements that determine whether various parts of the IRS are facilitating compliance with the law and being careful stewards of taxpayer dollars are critical.

Fourth, there needs to be accountability. I cannot stress this enough. That has not been a strength of the IRS in recent years.

Fifth, the IRS needs to be adequately funded, but with oversight.

Finally, the cardinal rule of organizational management is that structure follows strategy. I would consider restructuring the IRS

in a manner that facilitates a focus on taxpayer service and operational efficiency.

I think the IRS is heading in the right direction, but there is still a long way to go. For example, I think the IRS is doing a solid job implementing tax reform, but that promises to be a lengthy and intensive effort. And with the tax deadline approaching tonight, I think the work of the IRS this filing season is an encouraging sign of the agency's commitment to taxpayers.

As someone who has been in this business for over 40 years, I am impressed that the IRS has delivered an extremely smooth filing season so far in view of the legislation enacted in February, which required the IRS to adjust its systems after the tax filing season had begun.

IRS has answered 23 million taxpayer questions this filing season. The average hold time this filing season is less than 6 minutes, down a minute from last year.

Still, I think the IRS needs to do better in a range of areas. The IRS needs to do more, it needs to continue to get better, and it needs to enhance accountability.

Chairmen Jordan and Meadows, Ranking Members Krishnamoorthi and Connolly, and members of the subcommittees, that concludes my statement. I would be happy to answer your questions. Thank you.

[Prepared statement of Mr. Kautter follows:]

**WRITTEN TESTIMONY OF
DAVID J. KAUTTER
ACTING COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON HEALTHCARE, BENEFITS AND ADMINISTRATIVE
RULES AND
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
ON IRS OPERATIONS
APRIL 17, 2018**

INTRODUCTION

Chairmen Jordan and Meadows, Ranking Members Krishnamoorthi and Connolly and members of the Subcommittees, thank you for the opportunity to provide you with an update on IRS operations.

After a career of more than four decades in the tax community, most of it in the private sector, I began serving as the IRS's Acting Commissioner in November 2017. During the five months I have been at the IRS, I have had the opportunity to examine its areas of focus, its direction and its operations.

One of the things I wanted to do when I came to the IRS was to ensure there was a fresh perspective at the agency and a clear focus on taxpayer service. I believe the IRS is taking a fresh look at how it can best fulfill its mission. In my view, the IRS needs to continue working on a number of areas, including improving taxpayer service; becoming more effective and efficient in its operations; and increasing accountability throughout the agency.

It is clear that, while the potential is there to continue making improvements, the IRS needs to execute on that potential, and there is still much to be done. There are many new leaders in place in key positions at the IRS, and I believe the current IRS leadership team and the entire workforce are committed to this effort. During my remaining time as Acting Commissioner, I will work to ensure the IRS continues taking steps to improve its operations and focuses on the right course.

IMPROVING TAXPAYER SERVICE

The IRS is mindful of the need to do everything possible to provide taxpayers and their representatives with secure, high-quality assistance and services, through every available channel. I have been impressed by the significant amount of time and resources the agency spends each year to fulfill this critical

part of its mission. The workforce remains dedicated to helping taxpayers understand and meet their filing obligations.

The most visible service the IRS provides each year is delivery of a smooth tax filing season. I'm pleased to report that the 2018 filing season began on schedule on January 29 and has gone well in terms of tax return processing and the operation of our information technology systems. As of March 30, the IRS received more than 94.1 million individual returns. We have issued more than 73.3 million refunds for more than \$212.3 billion. About 80 percent of returns filed so far claimed a refund, with the average refund totaling approximately \$2,900. It is important to note that, although today is the tax filing deadline for individuals, the work of the filing season continues throughout the year, as IRS employees continue to process tax returns, including amended returns, and returns for which taxpayers had requested an extension beyond April 17.

Every bit as important as efficiently processing tax returns is the IRS's responsibility for helping taxpayers understand the tax law and assisting them when they have questions. While all of the IRS's service channels are important, taxpayer needs have been evolving, with more people conducting their business using digital tools at the time and place of their choosing. The IRS has invested significant resources in developing a series of online tools and applications, such as "Where's My Refund?" so that those who prefer to interact with the IRS online can do so easily and securely. The plan is to continue investments in online tools and offerings and modernizing the taxpayer experience.

The IRS provides a wealth of tax information on IRS.gov, which was visited more than 495 million times during Fiscal Year (FY) 2017, and more than 324 million times so far this filing season. The most heavily used part of our website is the "Where's My Refund?" electronic tracking tool, which was used about 278 million times in FY 2017, and more than 240 million times already this filing season.

Here are several key online applications the IRS has developed in response to increased taxpayer demand for online services:

- Get Transcript, which allows taxpayers to go online, verify their identity with strengthened security, and download a copy of their tax records from prior years. Taxpayers used this tool 15.5 million times in FY 2017 and 7.4 million times so far this fiscal year;
- Online Payment Agreement, a secure, safe and easy process taxpayers can use to set up a payment plan and pay their tax obligations over time. A total of 798,000 online agreements were set up in FY 2017, and 303,000 have been set up so far this fiscal year; and
- Direct Pay, which provides taxpayers with a secure, free, quick and easy online option for making tax payments. This tool was used 10.2 million times in FY 2017 and has been used 4.1 million times so far this fiscal year.

We also are continuing the development, over time, of online accounts at the IRS where taxpayers can log in securely, obtain the information they need about their account and interact with the IRS as needed.

In 2016, we took the first step toward a fully functional IRS online account with the launch of an application on IRS.gov that provides information to taxpayers who have straightforward balance inquiries. We followed that up with another feature that lets taxpayers see recent payments posted to their account. We anticipate the online account will remain a key point of contact between the IRS and taxpayers, and we will add other features to this platform, as they are developed and tested with taxpayers and tax professionals.

Some taxpayers would rather interact with the IRS on the telephone or face-to-face. Our toll-free telephone line, which constitutes one of the world's largest customer service phone operations, is critical to taxpayer service. In FY 2017, the IRS received more than 52 million taxpayer calls, with more than 40 percent, or about 23 million, handled by our customer service representatives. The rest were calls made to lines providing automated messages containing helpful tax information.

In regard to phone service, I'm pleased to report that during the 2018 filing season we are again seeing a strong level of service (LOS) on our toll-free lines, as we did in 2017. As of March 31, our phone LOS was over 78 percent, and we anticipate that the average for the 2018 filing season as a whole will be about 80 percent. Average LOS during the 2017 filing season was 75 percent, and 70 percent for the 2016 filing season. The average hold time for a call this busy filing season was less than six minutes, compared to around seven minutes last year.

The IRS has also been successful in providing timely assistance to taxpayers who visit one of our Taxpayer Assistance Centers (TACs) around the country. This is the second year that all TACs are offering appointments in advance, a process that we have found dramatically cuts wait times for TAC visitors. As in 2017, we have had no reports of long lines during the 2018 filing season – clear evidence that the appointment process reduces burden on taxpayers who seek in-person assistance.

We have also found this arrangement provides major advantages to the taxpayer. First, when a person calls for an appointment, we can tell them what documents they need to bring with them, reducing the number of return trips. Second, the IRS employee making the appointment can often help the taxpayer resolve their issue over the phone or refer them to the resources they need, eliminating the need to visit a TAC. So far this year, about half of those who called for an appointment were able to resolve their issue without actually having to come in for an appointment. This is an important point, because TAC

employees can now spend more time with those who do visit, as they tend to have more complex issues that cannot be resolved over the phone.

We expect that the total number of taxpayers served at TACs this year will be in excess of 5 million, including both in-person visits and instances where taxpayers were able to resolve their issue when calling for an appointment. While we encourage taxpayers to make appointments in advance, so they can be assured of quick and efficient service, we also do whatever we can to serve taxpayers who show up without an appointment.

INCREASING EFFICIENCY, EFFECTIVENESS AND ACCOUNTABILITY

A critical component of making the IRS more accountable, effective and efficient involves being responsive to Congress and other organizations that oversee the agency and recommend improvements. In this regard, the Treasury Inspector General for Tax Administration (TIGTA) plays an extremely important role. The IRS has been, and will continue, working to improve our actions to respond to the recommendations TIGTA makes in its audits of IRS operations.

I believe we are making important progress in this area. Since I became Acting Commissioner in mid-November, TIGTA has issued 21 reports, 18 of which contained recommendations. Those 18 reports proposed a total of 106 recommendations. The IRS has accepted 94 of those recommendations, which amounts to 88.7 percent. We are moving as quickly as we can to implement those recommendations, and I believe those recommendations will make a difference.

As an example of our efforts to become more responsive to TIGTA's recommendations, I would like to provide the Subcommittees with an update on the process we use to rehire former employees, which was the subject of a TIGTA report issued in July 2017.

The IRS is committed to properly evaluating prior performance and conduct issues during the rehiring process. We have procedures in place – which we continue to refine – to consider prior performance and conduct in the hiring process to the extent permissible by law. The IRS hiring process requires our human capital professionals to fully evaluate conduct and performance issues.

To strengthen this process, we have updated our policies and practices, and are continuing to explore additional methods to ensure that we meet hiring needs while considering all prior performance and conduct issues. These efforts include the corrective actions we have taken in response to the recommendations made in TIGTA's July 2017 report, which were completed in October 2017.

Our updated process allows us to review and document derogatory performance and conduct information on former IRS employees who apply through the external hiring process, regardless of the age of that information. Substantiated derogatory information on former employees is forwarded to the selecting official for consideration prior to making a tentative job offer. The selecting official is required to document any decision to select a former employee with prior conduct or performance issues, and our Human Capital Office is charged with maintaining the documentation.

We are monitoring and evaluating the impact of the new procedures and we anticipate this review will be completed in the next several weeks.

IMPLEMENTING THE NEW TAX LAW

The IRS's work to implement the Tax Cuts and Jobs Act provides a good illustration of how the agency is working to be more effective and efficient in fulfilling its mission. The IRS has put in place a disciplined project management approach to tax reform implementation that has already yielded results. This is critical, given the wide scope of the new law: early on, we determined the IRS would need to create or change an unusually large number of forms and publications, update scores of tax processing systems, retrain our workforce and educate the taxpaying public about the changes.

We began in early January, by setting up a special Tax Reform Implementation Office, or TRIO, with members from across the agency who bring tremendous experience and leadership. The TRIO is coordinating our efforts and interacting with our business divisions and our Office of Chief Counsel to ensure a smooth roll-out of everything needed to implement the law.

Regarding our implementation activities, we are well on our way towards drafting all new or revised forms related to tax reform by the end of April, with early release of the draft forms and instructions for comment planned for the summer. Work also continues on reprogramming about 140 information technology systems, with special focus on returns processing and compliance systems, to ensure those systems are ready for next year's tax filing season.

We also identified income tax withholding as an area in which it was critical to implement changes in response to the new law as soon as possible. The IRS moved quickly to begin revising the withholding system to take into account various changes made by the statute. This issue affects every taxpayer who receives a paycheck. We started in January by issuing updated withholding tables for employers to use in 2018 that take into account the changes in rates and brackets, increases in the standard deduction and the repeal of personal exemptions in the Tax Cuts and Jobs Act. Then at the end of February, we released an update to our Withholding Calculator on IRS.gov to help employees

adjust their withholding based on changes in the law and their particular financial situation. Also in February, we issued a revised 2018 Form W-4, *Employee's Withholding Allowance Certificate*, to more fully reflect the new law.

The IRS widely publicized the release of the Withholding Calculator and the 2018 W-4 to encourage employees to check their withholding. The IRS continues to encourage taxpayers to check their withholding, and to do so as soon as possible. For example, in late March, we conducted a "Paycheck Checkup" public awareness campaign to get the word out to taxpayers about what they can do to make sure the correct amount of tax is being withheld from their pay.

Another important area where the IRS has made significant early progress on tax reform implementation involves the guidance taxpayers and tax professionals need to understand and navigate the new law. This involves both formal guidance, such as regulations and notices, and other information such as Frequently Asked Questions (FAQs) and press releases.

While much of the guidance will take time to develop, we determined certain areas needed to be addressed quickly. For example, in late December, we released initial guidance to help corporations begin complying with the transition tax imposed on untaxed foreign earnings of foreign subsidiaries of U.S. companies under new code section 965, which became effective upon enactment of the new law. We followed that up with additional notices, and also released a set of FAQs with information to assist taxpayers filing their 2017 tax returns, including how to report section 965 income and how to report and pay the associated tax liability.

Chairmen Jordan and Meadows, Ranking Members Krishnamoorthi and Connolly, and Members of the Subcommittees, I am confident the IRS is moving forward in the right direction. I remain committed to doing everything possible, while I am Acting Commissioner, to ensure the agency continues making needed improvements in its operations. This concludes my statement, and I would be happy to take your questions.

Mr. JORDAN. Thank you, Mr. Kautter.
Mr. George, you are up.

STATEMENT OF HON. J. RUSSELL GEORGE

Mr. GEORGE. Chairmen, Ranking Members, members of both subcommittees, thank you for the opportunity to provide a status report on the 2018 filing season and other challenges facing the IRS.

A continuing challenge the IRS faces each year in processing tax returns is the implementation of tax law changes. The recent Tax Cuts and Jobs Act will result in significant changes to both business and individual income taxes.

The IRS indicates that implementation will require it to create or revise about 450 forms, publications, and instructions. Moreover, the IRS estimates that 140 information technology systems will require modification.

TIGTA's initial assessment found that the IRS used several well-established processes to immediately begin implementing the new provisions. This assessment was the first in a series of reviews we will be conducting to monitor the IRS' efforts to implement the first major tax reform legislation of more than 30 years.

The IRS is projecting its toll-free telephone level of assistance to be 80 percent for this year's filing season, a slight increase from the 79 percent achieved last year. The IRS also plans to assist 3 million taxpayers at tax assistance centers, a 9 percent decrease from last fiscal year.

For the 2018 filing season, the IRS transitioned all of its taxpayer assistance centers to an appointment service model. Although the IRS reports that it had 363 tax assistance centers, 24 are not open because they have not been staffed.

Improper payments are another continuing challenge to the IRS encounters. The IRS now receives wage documents earlier in the filing season, but the law does not give the IRS authority to systematically adjust refundable credits when the income used to compute the credit is not supported by third-party income documents.

We estimate the IRS issued nearly \$25 billion in improper payments associated with refundable credits in Fiscal Year 2017. It is unlikely that this situation will improve significantly without additional authority or compliance resources.

As the IRS continues to expand its online tools to assist taxpayers, the risk of unauthorized access to taxpayer accounts increases. As such, it is critical that the methods the IRS uses to authenticate individuals' identities provide a high level of confidence that tax information and services are provided only to authorized individuals. The IRS spends a significant amount of time and resources combatting external attempts to compromise our nation's tax system. However, our work has shown that more actions are needed to address internal threats.

Hiring employees of high integrity is critical to the IRS protecting taxpayer information from internal threats. In two separate reports we found that the Service rehired hundreds of employees with prior conduct performance issues. Hiring employees with serious financial problems and integrity issues and giving them access to taxpayer information is a risky practice that must end.

In response to our 2014 report, the IRS said its process was more than adequate to mitigate risks to America's taxpayers. However, in July of 2017, we reported that the IRS had not effectively implemented our past recommendations and rehired more than 200 former employees who were previously terminated from the IRS or who had separated while under investigation for conduct or performance issues. The IRS has agreed to the recommendations from our July 27th report, which we will follow up with an audit later this year.

The IRS has also provided awards to employees with misconduct, including the Federal compliance issues relating to tax. Using taxpayer funds to reward IRS employees with tax problems sends the wrong message to the vast majority of taxpayers who pay their taxes in full and on time. In March of 2014, we reported that the IRS provided \$2.8 million in monetary awards to more than 2,800 employees disciplined for recent conduct issues.

In February of this year, we reported that the IRS had made progress in this area. However, we did find that nearly 2,000 current employees with tax compliance or misconduct issues received more than \$1.7 million in awards. The IRS has also agreed to our recommendations relating to awards.

In conclusion, TIGTA plans to provide continuing audit coverage of the IRS' efforts to provide high-quality service to taxpayers and to operate efficiently and effectively.

Chairmen, Ranking Members, members of the subcommittees, this ends my statement. Thank you for the opportunity to share my views.

[Prepared statement of Mr. George follows:]

**JOINT HEARING BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
SUBCOMMITTEE ON HEALTH CARE, BENEFITS
AND ADMINISTRATIVE RULES AND
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES**

**“Continued Oversight of the
Internal Revenue Service”**



**Testimony of
The Honorable J. Russell George
Treasury Inspector General for Tax Administration**

April 17, 2018

Washington, D.C.

TESTIMONY
OF
THE HONORABLE J. RUSSELL GEORGE
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION
before the
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
SUBCOMMITTEE ON HEALTH CARE, BENEFITS
AND ADMINISTRATIVE RULES AND
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

"Continued Oversight of the Internal Revenue Service"
April 17, 2018

Chairman Jordan, Chairman Meadows, Ranking Member Krishnamoorthi, Ranking Member Connolly, and Members of the Subcommittees, thank you for the opportunity to provide a status report on the 2018 Filing Season¹ and other challenges currently facing the Internal Revenue Service (IRS).

The Treasury Inspector General for Tax Administration (TIGTA) was created by Congress in 1998 with a statutory mandate of ensuring integrity in America's tax system. It provides independent audit and investigative services to improve the economy, efficiency, and effectiveness of IRS operations. TIGTA's oversight activities are designed to identify high-risk systemic inefficiencies in IRS operations and to investigate exploited weaknesses in tax administration. TIGTA plays the key role of ensuring that the approximately 81,000 IRS employees² who collected more than \$3.4 trillion in tax revenue, processed more than 246 million tax returns, and issued more than \$437 billion in tax refunds during Fiscal Year (FY) 2017,³ have done so in an effective and efficient manner while minimizing the risk of waste, fraud, and abuse.

In this section of my testimony, I will discuss the status of the 2018 tax return filing season, the IRS's efforts to implement recently enacted tax legislation, and our work to address other key management challenges.

¹ The period from January 1 through mid-April when most individual tax returns are filed.

² Total IRS staffing as of January 7, 2017. Included in the total are approximately 16,200 seasonal and part-time employees.

³ IRS, *Management's Discussion & Analysis, Fiscal Year 2017*.

STATUS OF THE 2018 FILING SEASON

In April 2018, TIGTA reported its interim results of the IRS's 2018 Filing Season, and we plan to issue a report with the final results of our analysis later this calendar year. During Calendar Year (CY) 2018, the IRS expects to receive approximately 153.7 million individual income tax returns (approximately 16.2 million paper filed and 137.5 million electronically filed (e-filed)). As of March 2, 2018, the IRS had received approximately 61.2 million tax returns — 57.8 million (94.5 percent) were e-filed and 3.4 million (5.5 percent) were filed on paper. The IRS has issued 48.5 million refunds totaling approximately \$147.6 billion.

One challenge that the IRS faces each year is the implementation of tax law changes. The Protecting Americans from Tax Hikes Act of 2015 (PATH Act)⁴, the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (Disaster Relief Act),⁵ and the Tax Cuts and Jobs Act of 2017⁶ all affected the 2018 Filing Season. The PATH Act includes provisions intended to reduce fraudulent refundable tax credit claims. The Disaster Relief Act, enacted in September 2017, includes provisions to provide assistance to victims of hurricanes Harvey, Irma, and Maria. The Tax Cuts and Jobs Act of 2017 includes 119 tax provisions that will result in significant changes to both business and individual income taxes. Although most of these provisions impact Tax Year 2018 and beyond, there are 21 provisions that affect the 2018 Filing Season requiring the IRS to take immediate action.

The passage of the Bipartisan Budget Act of 2018,⁷ which was signed into law on February 9, 2018, presents even greater challenges. This legislation includes an additional 51 provisions that extend expired tax provisions and make further modifications to disaster relief provisions. Thirty-one of the 51 (61 percent) tax provisions relate to deductions and credits that can be claimed on a 2017 tax return. These 31 provisions require the IRS to update publications, forms, instructions, and computer programming to allow taxpayers to take advantage of these provisions. In fact, some taxpayers may have already filed tax returns based on previously expired tax law and may now need to amend their returns. We are evaluating the implementation of these extender provisions as part of a separate review.

⁴ Pub. L. No. 114-113, Div. Q, 129 Stat. 2242, 3040-128 (codified in scattered sections of the I.R.C.).

⁵ Pub. L. No. 115-63, 131 Stat. 1168 (codified in scattered sections of the I.R.C. and Title 49 of the U.S. Code).

⁶ Pub. L. No. 115-97, 131 Stat. 2054.

⁷ Pub. L. No. 115-123, 132 Stat. 64.

Increased technology-based services to provide taxpayer assistance

Taxpayers have multiple options to choose from when they need assistance from the IRS. The IRS notes that its website is the best source for taxpayers to receive answers to their tax questions. As of March 3, 2018, the IRS reported 242.9 million visits to IRS.gov this filing season. Taxpayers can also interact with the IRS using the mobile application IRS2Go, which lets taxpayers access information and a limited number of IRS online tools. As of March 1, 2018, the IRS reported that the IRS2Go mobile application had 5.6 million active users. In addition, the IRS uses various forms of social media, including YouTube, Twitter, Tumblr, and Facebook. As of March 1, 2018, there were 393,447 views of IRS YouTube videos and a total of 156,733 Twitter followers.

The risk of unauthorized access to tax accounts increases as the IRS expands its online tools. For example, in March 2018, we reported concerns over the IRS's Transcript Delivery System (TDS), which allows external third-party customers to view and obtain tax information of both individuals and businesses.⁸ We found that processes and procedures to authenticate e-Services users, including those users accessing the TDS application, do not comply with Federal Government information security standards. The IRS continued to use single-factor authentication to authenticate users even though a risk-assessment in both CYs 2011 and 2015 rated e-Services as requiring multifactor authentication.

Furthermore, we reported that the IRS has ineffective processes and procedures to ensure that legitimate taxpayers authorized the release of their tax transcript information to Income and Verification Express Services (IVES) Program participants or the participants' clients. We recommended that the IRS implement processes and procedures to ensure that legitimate taxpayers authorized the release of their tax transcripts. In addition, we recommended that the IRS discontinue offering tax transcripts via those processes in which the IRS cannot confirm whether legitimate taxpayers authorized the release of their tax transcripts.

It is critical that the methods that the IRS uses to authenticate individuals' identities provide a high level of confidence that tax information and services are provided only to individuals who are entitled to receive them. In February 2018, TIGTA reported that the IRS has made progress in improving its electronic authentication

⁸ TIGTA, Ref. No. 2018-40-014, *Transcript Delivery System Authentication and Authorization Processes Do Not Adequately Protect Against Unauthorized Release of Tax Information* (Mar. 2018).

controls.⁹ For example, the IRS deployed a more rigorous electronic authentication process that provides two-factor authentication via a security code sent to text-enabled mobile phones. The IRS also completed or updated electronic authentication risk assessments for 28 of its online applications to determine appropriate levels of authentication assurance, and enhanced its network monitoring and audit log analysis capabilities.

However, our review also identified that network monitoring tools the IRS purchased to improve the prevention and detection of automated attacks were not fully implemented due to issues related to resources, incompatibility, and higher priorities. In addition, controls to prevent fraudulent users from improperly creating profiles were not fully implemented. Further, the IRS is not fulfilling requirements for monitoring audit logs for suspicious activity. This is due to inadequate processes for generating and reviewing audit log reports as well as failure to ensure that reports are useful for investigating and responding to suspicious activities.

Toll-free telephone level of assistance increases

As of March 17, 2018, approximately 33 million total attempts and 23.1 million net attempts¹⁰ were made by taxpayers to call the IRS through the various customer service toll-free telephone assistance lines. The IRS reports that 11.8 million calls were answered by automation, while telephone assistants answered nearly 6.4 million calls and provided a 78.1 percent Level of Service¹¹ with a six minute Average Speed of Answer. The IRS forecasts an 80 percent Level of Service for the 2018 Filing Season. The Level of Service for the 2017 Filing Season was 79.1 percent.¹² TIGTA has a separate audit assessing the IRS's telephone performance measures.¹³

Initiatives to better assist taxpayers seeking face-to-face assistance

Each year, many taxpayers seek assistance from one of the IRS's 363 walk-in offices (Taxpayer Assistance Centers, or TACs). Although the IRS reports that it has 363 TACs for the 2018 Filing Season, 24 TACs are not open because they are not staffed. The IRS plans to assist approximately 3 million taxpayers at the TACs in FY

⁹ TIGTA, Ref. No. 2018-20-007, *Electronic Authentication Process Controls Have Been Improved, But Have Not Yet Been Fully Implemented* (Feb. 2018).

¹⁰ Total call attempts represent calls received during open and after hours. Total net call attempts represent calls received during open hours.

¹¹ The primary measure of service to taxpayers. It is the relative success rate of taxpayers who call for live assistance on the IRS's toll-free telephone lines.

¹² As of April 22, 2017.

¹³ TIGTA, Audit No. 201840025, *Follow-up Review of Telephone Performance Measures*.

2018, approximately a 9 percent decrease from FY 2017. The IRS indicated that due to budget cuts, its strategy of appointment service at the TACs, and continued promotion of alternative service options, it has reduced the number of employees who assist taxpayers at the TACs.

To better assist those individuals seeking assistance from a TAC, the IRS transitioned all of its TACs to an appointment service model. As of February 28, 2018,¹⁴ IRS employees had answered nearly 1 million calls to schedule an appointment; 492,000 of these necessitated that the taxpayers actually visit a TAC. Because the IRS attempts to resolve taxpayers' questions or provide the taxpayers with information on alternative services when they call, it was able to assist 466,000 taxpayers on the telephone, eliminating the need for the taxpayers to visit a TAC. The IRS also noted that taxpayers who travel to a TAC without an appointment will be assisted if an employee is available. As of February 28, 2018, the IRS reported that it provided assistance to nearly 96,000 taxpayers who visited a TAC without an appointment.

The IRS also offers Virtual Service Delivery, which allows taxpayers to remotely interact with an IRS employee through both video and audio. For example, a taxpayer can access an IRS virtual service workstation at a public library or nonprofit and interact with an IRS employee located at a TAC. For the 2018 Filing Season, three IRS business units offer Virtual Service Delivery. Field Assistance offers the service at 31 partner sites. The Office of Appeals operates 10 Virtual Service Delivery sites at a combination of IRS offices and partner sites that enable taxpayers to interact with an Appeals officer located at an IRS campus. The Taxpayer Advocate Service offers Virtual Service Delivery at three partner sites and one IRS office. In addition, the IRS continues to co-locate staff with the Social Security Administration (SSA) to better assist taxpayers. The IRS has placed employees in four SSA locations.¹⁵

The Volunteer Program also has a significant role in the IRS's efforts to improve taxpayer service and facilitate participation in the tax system. It provides no-cost Federal tax return preparation and e-filing to underserved segments of the taxpayer population, including low-income, elderly, disabled and rural taxpayers, those with limited English proficiency, and Native Americans. As of March 4, 2018, approximately 1.5 million tax returns have been prepared at the 9,666 Volunteer Program sites

¹⁴ Thus far for FY 2018, *i.e.*, October 1, 2017, through February 28, 2018.

¹⁵ Norwich, Connecticut; Presque Isle, Maine; North Platte, Nebraska; and Denville, Virginia.

nationwide. TIGTA is currently conducting a review of the IRS's efforts to expand customer service options to taxpayers seeking face-to-face assistance.¹⁶

IMPLEMENTATION OF NEW TAX LEGISLATION

The Tax Cuts and Jobs Act made significant changes to the tax code that impact individuals, businesses, and tax-exempt organizations, and will affect both domestic and international taxes. In April 2018,¹⁷ TIGTA reported on our initial assessment of the IRS's implementation efforts. This is the first report in a series of reviews that we will be conducting to monitor the IRS's efforts to implement the first major tax reform legislation in more than 30 years. The IRS indicates that implementation will require it to create or revise about 450 forms, publications, and instructions and modify about 140 information technology systems (for tax return processing and compliance activities).

Prior to the enactment of the Tax Cuts and Jobs Act, the IRS's Legislative Affairs function monitored the pending legislation to identify provisions that would affect the IRS, and in turn informed the various IRS operating divisions so they could begin to assess how to achieve the implementation. Once the law was enacted, the IRS used several well-established processes to immediately begin the difficult and large-scale task of implementing it. For example, Legislative Affairs:

- Input the tax provisions into the Legislative Analysis Tracking and Implementation Services (LATIS) system, which is used to manage, coordinate, and track the actions that the IRS takes to implement legislative provisions. Our comparison of provisions in the Tax Cuts and Jobs Act to the LATIS found that the IRS has established tracking of all provisions.
- Worked with the various IRS operating divisions to identify the division responsible for implementing each of the provisions and required each such division to develop an Implementation Action Plan. Action plans outline the steps that need to be taken to implement a provision, as well as estimated delivery dates. As of March 6, 2018, Implementation Action Plans were received and specific action items were entered into the LATIS for all provisions.

The IRS also established a multifaceted oversight structure to coordinate implementation activities. This included creating an Executive Steering Committee to

¹⁶ TIGTA, Audit No. 201840028, *Strategy to Assist Taxpayers Who Seek Face-to-Face Assistance*, audit currently in planning.

¹⁷ TIGTA, Ref. No. 2018-44-027, *Tax Cuts and Jobs Act: Assessment of Implementation Planning Efforts* (Apr. 2018).

ensure collaboration takes place among the various IRS operating divisions and address areas of concern that may arise. The IRS also stood up the Tax Reform Implementation Office (TRIO) to centralize responsibility for leading and coordinating IRS implementation efforts. Finally, the IRS created the Tax Reform Implementation Council to share implementation activities among the individual operating divisions to identify areas of concern for issues that may impact other operating divisions.

Recognizing the resources needed to implement legislation of this scale, the IRS worked with the Department of the Treasury and estimated that implementation would cost approximately \$397 million, which includes hiring 1,734 full-time equivalent positions to implement tax reform over the next two calendar years. The recently enacted Consolidated Appropriations Act, 2018,¹⁸ provides the IRS with \$320 million to implement new tax legislation.

The IRS's Communications and Liaison function is developing and preparing to deliver a major educational outreach initiative to help ensure that taxpayers understand and navigate the changes in the Tax Cuts and Jobs Act. This outreach strategy includes hundreds of events and sessions across the country to reach taxpayers and tax professionals. For example, during the week of February 5, 2018, the IRS conducted five working group sessions with external stakeholders to field comments, questions, and concerns about the new tax law and offer information.

To support other customer service-related initiatives, the IRS is developing projections related to the number of toll-free telephone calls and individuals seeking walk-in assistance. The IRS will then use these estimates to develop specific hiring plans for telephonic and walk-in assistance. The IRS is also assessing its hiring needs for delivering the appropriate information technology system changes, including whether direct hire authority will be required. Direct hire authority is intended to reduce the length of the hiring process, which the IRS estimates takes anywhere from 90 to 120 calendar days.

Implementation of the Employer Shared Responsibility Payment

The IRS is also continuing to implement key provisions of the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010 (collectively referred to as the Affordable Care Act (ACA)),¹⁹ including the

¹⁸ Pub. L. No. 115-141.

¹⁹ Pub. L. No. 111-148, 124 Stat. 119 (codified as amended in scattered sections of the U.S. Code), as amended by Pub. L. No. 111-152, 124 Stat. 1029.

Employer Shared Responsibility Provision. The Employer Shared Responsibility Provision applies to employers that had an average of 50 or more full-time employees, including full-time equivalent employees, during the prior calendar year. These employers are referred to as Applicable Large Employers. Under the provision, Applicable Large Employers must offer health insurance to full-time employees (and their dependents) during the calendar year through an employer-sponsored plan beginning in January 2015, or a shared responsibility payment may apply.

On November 1, 2017, the IRS began sending letters advising Applicable Large Employers of their potential assessments of the Employer Shared Responsibility Payment for Tax Year 2015. The IRS uses a multi-step process to identify the Applicable Large Employers that are potentially responsible for the Employer Shared Responsibility Payment. For Tax Year 2015, the IRS identified 32,240 Applicable Large Employers with potential Employer Shared Responsibility Payments totaling over \$4.3 billion. However, TIGTA reported that the IRS's process to identify Tax Year 2015 Applicable Large Employers potentially liable for the Employer Shared Responsibility Payment failed to identify 840 employers potentially subject to more than \$113 million in Employer Shared Responsibility Payments.²⁰ The difference in identified Applicable Large Employers occurred because the data used by the IRS were not complete or accurate.

INFORMATION TECHNOLOGY CHALLENGES

Successful modernization of IRS systems and the development and implementation of new information technology applications are critical to meeting the IRS's evolving business needs, as well as to enhancing services provided to taxpayers. The IRS's reliance on legacy, *i.e.*, older, systems and aged hardware, as well as its use of outdated programming languages, pose significant risks to the IRS's ability to accomplish its mission. Modernizing the IRS's computer systems has been a persistent challenge for many years and will likely remain a challenge for the foreseeable future.

The IRS has a large and increasing amount of aged computer hardware, some of which are three to four times older than industry standards. In its FY 2016 President's Budget Request, the IRS noted that its information technology infrastructure poses significant risk of failures. However, it is unknown when these failures will occur, how severe they will be, or whether they will have material impacts on tax administration during the filing season.

²⁰ TIGTA, Ref. No. 2018-43-022, *Affordable Care Act: Processes to Identify Employers Subject to the Employer Shared Responsibility Payment Need Improvement* (Mar. 2018).

In September 2017, TIGTA reported that the IRS has not yet achieved its stated objective of reducing the percentage of its aged information technology hardware to an acceptable level of 20 to 25 percent. In fact, the IRS's percentage of aged information technology hardware has steadily increased from 40 percent at the beginning of FY 2013 to 64 percent at the beginning of FY 2017.²¹ Aged information technology hardware, when combined with the fact that components of the infrastructure and systems are interrelated and interdependent, make outages and failures unpredictable and introduce security risks to critical taxpayer data.

EFFORTS TO COMBAT IDENTITY THEFT AND ASSIST VICTIMS

TIGTA has issued a number of reports that address the IRS's efforts to detect and prevent the filing of fraudulent individual and business tax returns by identity thieves, as well as the IRS's efforts to assist victims. Tax scams are constantly evolving, requiring the IRS to continually adapt its detection and prevention processes. The IRS continues to improve its processes to detect and resolve identity-theft issues and provide victim assistance. Nonetheless, additional actions can be taken to further these efforts.

Identity-theft tax refund fraud occurs when an individual uses another person's or business's name and Taxpayer Identification Number to file a fraudulent tax return for the purpose of receiving a fraudulent tax refund. For the 2018 Filing Season, the IRS is using 200 identity-theft filters to identify potentially fraudulent individual tax returns and prevent the issuance of fraudulent tax refunds. These filters incorporate criteria based on characteristics of confirmed identity-theft tax returns, such as amounts claimed for income and withholding, filing requirements, prisoner status, taxpayer age, and filing history. Tax returns identified by these filters are held during processing until the IRS can verify the taxpayer's identity. As of March 1, 2018, the IRS reported that the identity-theft filters had helped identify 682,530 potentially fraudulent returns for review. As of that date, the IRS had confirmed 1,571 fraudulent tax returns and prevented the issuance of \$7.3 million in fraudulent tax refunds.

To prevent fraudulent tax returns from entering the tax processing system, the IRS continues to expand processes to reject e-filed tax returns and prevent paper tax returns from posting. For example, as of February 21, 2018, the IRS had locked approximately 35.7 million taxpayer accounts of deceased individuals. The locking of a

²¹ TIGTA, Ref. No. 2017-20-051, *Sixty-Four Percent of the Internal Revenue Service's Information Technology Hardware Infrastructure Is Beyond Its Useful Life* (Sept. 2017).

tax account results in the rejection of an e-filed tax return and the prevention of a paper-filed tax return from posting to the Master File if the Social Security Number (SSN) associated with a locked tax account is used to file a tax return. According to the IRS, as of February 28, 2018, it had rejected approximately 7,376 fraudulent e-filed tax returns, and as of March 15, 2018, it had stopped 1,442 paper-filed tax returns from posting to the Master File.

In September 2015, TIGTA reported on the IRS's efforts to address the growing threat of business-related identity theft. In response to our audit, the IRS began implementing processes to detect identity theft on business returns at the time tax returns are processed.²² The IRS developed filters to identify business returns with characteristics of identity theft. According to the IRS, for the 2018 Filing Season it increased the number of filters from 28, used in the 2017 Filing Season, to 44 in order to identify potentially fraudulent business tax returns and prevent the issuance of fraudulent tax refunds. TIGTA is currently conducting a follow-up audit.²³

Most employment identity theft victims have not been notified

Taxpayers' stolen identities are sometimes used by others to gain employment. This type of identity theft can cause a significant burden due to the incorrect computation of taxes and Social Security benefits based on income that does not belong to the taxpayer. In February 2018, TIGTA reported²⁴ that most identified victims remain unaware that their identities are being used by other individuals for employment. A programming error limited the IRS notifications to only those victims who were not identified in prior years. As a result, the IRS did not notify 458,658 repeat victims of employment identity theft that it identified in both Processing Year (PY) 2017 and on a tax return processed prior to PY 2017. On September 27, 2017, the IRS prepared an information technology request to correct this programming error.

The IRS plans to evaluate its notice program and determine an appropriate course of action with respect to previously identified potential victims of employment identity theft who were not victims in PY 2017. During the period February 2011 to December 2015, the IRS identified almost 1.1 million taxpayers who were victims of employment identity theft. These individuals have not been notified that their identities are being used by others for employment.

²² TIGTA, Ref. No. 2015-40-082, *Processes Are Being Established to Detect Business Identity Theft; However, Additional Actions Can Help Improve Detection* (Sept. 2015).

²³ TIGTA, Audit No. 201740007, *Effectiveness of IRS Efforts to Detect and Prevent Identity Theft*, report scheduled for June 2018.

²⁴ TIGTA, Ref. No. 2018-40-016, *Most Employment Identity Theft Victims Have Not Been Notified That Their Identities Are Being Used by Others for Employment* (Feb. 2018).

REFUND FRAUD INVOLVING USE OF PRISONER SOCIAL SECURITY NUMBERS

Refund fraud associated with the use of prisoner SSNs remains a significant problem for tax administration. TIGTA has issued a number of reports on this issue, and the IRS has taken steps to improve its processes. However, further improvements can be made to increase the IRS's identification of prisoner returns. In CY 2016, the IRS identified more than 14,000²⁵ fraudulent tax returns as a result of its prisoner fraud filters. The refunds claimed on those tax returns totaled more than \$860 million. As a result of its other fraud detection efforts, *i.e.*, identity-theft filters, the IRS also prevented the issuance of an additional \$8.2 billion in refunds claimed using prisoner SSNs.

To combat refund fraud associated with tax returns filed using prisoner SSNs, the IRS compiles a list of prisoners (the Prisoner File) received from the Federal Bureau of Prisons and State Departments of Corrections. To further its efforts to identify prisoner tax returns, the Bipartisan Budget Act of 2013,²⁶ enacted in December 2013, amended the Improper Payments Elimination and Recovery and Improvement Act,²⁷ authorizing the IRS to use prisoner information provided by the SSA. The IRS first began using the SSA prisoner file as part of the 2017 Filing Season prisoner identification process.

In July 2017, TIGTA reported that IRS processes do not effectively ensure that the Federal Bureau of Prisons and the State Departments of Corrections comply with prisoner reporting requirements.²⁸ TIGTA identified 861 prisons that reported to the SSA but did not report to the IRS. TIGTA also identified 272,931 prisoners who were in Federal Bureau of Prisons or State Departments of Corrections facilities but were not reported to the IRS. Approximately \$48 million in potentially fraudulent refunds were claimed by 16,742 individuals incarcerated in institutions that did not report to the IRS.

In addition, TIGTA found that the IRS processes to validate and use prisoner data are limited in their ability to detect potentially fraudulent tax returns. For example, the IRS does not use prisoner records where the information provided by the reporting institution for a prisoner is not valid to process tax returns. As such, any return filed

²⁵ This is a 41 percent decrease from CY 2015. The IRS attributes the decline to fraudsters submitting fewer claims as a result of it paying fewer refunds in prior years because of improved screening processes.

²⁶ Pub. L. No. 113-67, § 204, 127 Stat. 1165, 1179-81.

²⁷ Pub. L. No. 111-204, 124 Stat. 2224 (2010).

²⁸ TIGTA, Ref. No. 2017-40-041, *Actions Need to Be Taken to Ensure Compliance With Prisoner Reporting Requirements and Improve Identification of Prisoner Returns* (July 2017).

using the mismatched prisoner information will not be evaluated for potential prisoner fraud. Our review of the 1.1 million records that the IRS identified as having a mismatch found that 471,864 (41 percent) contained a valid SSN, *i.e.*, an SSN issued by SSA, in IRS files, which could indicate a prisoner's use of a stolen SSN.

Finally, TIGTA also found that the validation process incorrectly identified 4,158 prisoner records as not matching IRS records when, in fact, the information provided by the Federal Bureau of Prisons and State Departments of Corrections did match IRS records. As a result, any tax return filed using one or more of these prisoner identities will not be assigned a prisoner indicator or evaluated using the prisoner fraud filters. TIGTA identified 1,113 tax returns with refunds totaling more than \$1.7 million that were not identified as prisoner tax returns as a result of this error.

IMPROPER REFUNDABLE CREDIT PAYMENTS

The IRS issued an estimated \$24.9 billion in potentially improper payments in FY 2017, which included Earned Income Tax Credit (EITC) improper payments of \$16.2 billion, Additional Child Tax Credit (ACTC) improper payments of \$7.4 billion, and American Opportunity Tax Credit (AOTC) improper payments of \$1.3 billion.²⁹

TIGTA has reported that the IRS is significantly understating its estimate of improper payments associated with ACTC and AOTC credits in its reports to Congress. The IRS erroneously rates the risk associated with these two credits as a medium risk when, in fact, the risk is high. This rating is contrary to the IRS's own National Research Program³⁰ and compliance data which, when analyzed, show a high risk of improper payments.

The effectiveness of traditional compliance tools to address identified erroneous claims continues to diminish. Information provided by the IRS for inclusion in the *Department of the Treasury's Agency Financial Report Fiscal Year 2017* clearly shows that the amount of EITC the IRS is protecting has declined, whereas the amount of estimated EITC improper payments has increased since FY 2015. IRS management stated that the decline in volume of returns worked and the associated dollars protected results from reduced resources and personnel. While the PATH Act has provided the IRS with wage documents earlier in the filing season, it does not give the IRS authority to

²⁹ TIGTA computed these amounts using the same data sources and methodology the IRS uses to compute the potential improper payment rate for the EITC.

³⁰ The National Research Program provides the IRS with compliance information that is statistically representative of the taxpayer population. The IRS uses each tax year's National Research Program results to update the EITC improper payment rate.

systemically adjust refundable credits when the income used to compute the credit is not supported by third-party income documents. The IRS must still audit each tax return to prevent or recover these unsupported refundable credits.

Currently, under the Internal Revenue Code, the IRS can use its math error authority to address erroneous EITC claims by systemically correcting mathematical or clerical errors. The IRS must conduct an audit to address potentially erroneous refundable credit claims for which it does not have math error authority. The IRS estimated that it costs \$1.50 to resolve an erroneous EITC claim using math error authority, compared to \$278 to conduct a pre-refund audit.³¹ It should be noted that the majority of potentially erroneous EITC claims that the IRS identifies do not contain the types of errors for which it has math error authority.

Recognizing its inability to address the majority of potentially erroneous claims identified, the IRS continues to request additional authority (referred to as correctable error authority) that would allow it to correct tax returns during processing when:

- **The information provided by the taxpayer does not match the information contained in Government databases** — e.g., income information reported on the tax return does not match Form W-2, *Wage and Tax Statement*, from the SSA.
- **The taxpayer has exceeded the lifetime limit for claiming a deduction or credit.** In January 2018,³² we reported that our analysis of tax returns with an AOTC claim processed as of April 30, 2017, identified 612,707 tax returns for which a student had already been claimed for the AOTC for four years. We estimate these taxpayers received more than \$1 billion in erroneous AOTC payments. The IRS does not have the authority to systemically deny claims at the time tax returns are processed for students who have already received the AOTC for four years.
- **The taxpayer has failed to include documentation with his or her return that is required by statute.**

³¹ Cost to use math error authority as of June 25, 2014, as provided by the IRS. The IRS provided the cost of a pre-refund audit based on FY 2010 financial data.

³² TIGTA, Ref. No. 2018-40-012, *Results of the 2017 Filing Season* (Jan. 2018).

PRIVATE DEBT COLLECTION

The Fixing America's Surface Transportation Act³³ (FAST Act), enacted in 2015, mandated that the IRS use private collection agencies (PCA) to collect certain "inactive receivables."³⁴ TIGTA is reviewing the IRS's planning and implementation of the Private Debt Collection (PDC) program, as well as initial program results.³⁵ This review is assessing the establishment of policies and procedures for the PCAs, program quality metrics, and the IRS's communication strategy. TIGTA is also evaluating initial program results, such as PDC program costs and benefits, inventory selection criteria and results, compliance with Federal law, security of taxpayer information and protection of taxpayer rights, the taxpayer complaint process, IRS case-recall procedures, subsequent tax noncompliance by PCA taxpayers, and the sharing of information between the IRS and PCAs. TIGTA is also reviewing the data protection measures of the PCAs participating in the PDC program.³⁶ Furthermore, TIGTA is reviewing whether PCA performance complies with the vendors' statements of work and meets the expectations and goals established by the IRS,³⁷ and it will continue to assess the IRS's implementation of the PDC program.

Based on what TIGTA has learned during its investigation of the impersonation scam, the Office of Investigations provided the IRS with different ways to notify taxpayers about the program and that their accounts were assigned to the PCAs. The Office of Investigations has also provided integrity and safety briefings to the PCAs' employees. TIGTA will closely monitor incoming impersonation complaints involving the PCAs, and we will take appropriate action and notify the IRS, the PCAs, and the public if we identify an impersonation scheme related to the PDC program.

³³ Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733-36 (2015) (codified as I.R.C. (§) 6306.

³⁴ The term "inactive receivables" means: receivables removed from active inventory due to inability to locate the taxpayer; inventory in which one-third of the collection statute of limitations has expired; or assigned inventory in which more than 365 days have passed since contact with the taxpayer occurred.

³⁵ TIGTA, Audit No. 201630029, *Planning and Implementation of the IRS's Private Debt Collection Program*, report scheduled for June 2018.

³⁶ TIGTA, Audit No. 201720010, *Private Debt Collection Data Protection*, report scheduled for May 2018.

³⁷ TIGTA, Audit No. 201830011, *Biannual Reporting of Private Debt Collection Contractor Performance*, report scheduled for December 2018.

AWARDS AND REHIRING OF EMPLOYEES WITH CONDUCT AND TAX COMPLIANCE ISSUES

In March 2014, TIGTA reported concerns about the IRS's practices for granting employee awards.³⁸ TIGTA found that, with few exceptions, the IRS did not consider Federal tax compliance or other misconduct prior to issuing awards. Between October 1, 2010, and December 31, 2012, more than 2,800 IRS employees with recent substantiated conduct issues resulting in disciplinary action received approximately \$2.8 million in monetary awards and more than 27,000 hours in time-off awards. Among these were more than 1,100 IRS employees with substantiated Federal tax compliance problems.

In response to recommendations made in the March 2014 report, the IRS Human Capital Officer completed a feasibility study in September 2014 and concluded that an agency-wide policy limiting the issuance of certain types of awards was warranted for cases in which employees have engaged in serious misconduct. In December 2014, the Department of the Treasury implemented a policy³⁹ that requires management to consider all misconduct and discipline during the 12-month period or relevant performance year, as appropriate, prior to the effective date of the award, when determining whether to grant an award (performance or otherwise). Furthermore, any monetary recognition awarded to an employee involved in misconduct that warranted a suspension or higher penalty must be justified in writing and approved by the Commissioner or an official designated by the Commissioner and reported to the Department of the Treasury each December.

In December 2014, TIGTA reported similar concerns with respect to the rehiring of former employees. Specifically, 824 (11.5 percent) of 7,168 former IRS employees rehired between January 1, 2010 and September 30, 2013, had prior substantiated conduct or performance issues.⁴⁰ IRS officials stated that prior conduct and performance issues did not play a significant role in deciding which candidates were best qualified for hiring. TIGTA recommended that the IRS Human Capital Officer work with General Legal Services and the Office of Personnel Management to determine

³⁸ TIGTA, Ref. No. 2014-10-007, *The Awards Program Complied With Federal Regulations, but Some Employees With Tax and Conduct Issues Received Awards* (Mar. 2014).

³⁹ The Department of the Treasury, Office of the Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer, Transmittal Number TN-15-006, *Monetary Recognition and Employee Misconduct (Non-SES)* (Dec. 2014).

⁴⁰ TIGTA, Ref. No. 2015-10-006, *Additional Consideration of Prior Conduct and Performance Issues Is Needed When Hiring Former Employees* (Dec. 2014).

whether, and during what part of the hiring process, the IRS could fully consider prior conduct and performance issues. The IRS agreed with this recommendation.

Since the issuance of the above reports, Congress has enacted the Consolidated Appropriations Act, 2016,⁴¹ which prohibits the IRS from granting employee bonuses and awards or from rehiring former employees without taking their tax compliance and prior conduct into account. However, in February 2018, TIGTA's follow-up review found that the award screening procedures that have been implemented do not fully comply with the Department of the Treasury and Consolidated Appropriations Act requirements.⁴² IRS procedures did not result in the screening of all recommended awards to employees with misconduct, discipline, and Federal tax noncompliance issues. Specifically, we identified 26 employees with recent substantiated § 1203(b) violations,⁴³ who received awards in FYs 2016 and 2017. We also found that in FY 2016 the IRS issued more than \$1.1 million in awards and other forms of recognition to 1,147 employees who were not screened per the IRS procedures. These employees had received disciplinary or adverse actions ranging from admonishment to removal.

In FY 2017, the IRS issued almost \$642,000 in awards to 815 employees who had not been screened per IRS procedures and had received discipline ranging from admonishment to written reprimand for a tax or conduct matter. Furthermore, prior to issuing the awards, the IRS did not screen employees with outstanding tax compliance issues that had not resulted in discipline. However, it should be noted that the procedures implemented did result in measurable improvement compared to controls we reported on in December 2014. For example, the IRS denied 1,080 (80 percent) of the 1,340 awards it screened in FYs 2016 and 2017.

As part of another follow-up audit, TIGTA reported in July 2017 that the IRS had not effectively updated or implemented hiring policies to fully consider past IRS conduct and performance issues prior to making a tentative decision to hire former employees, including those who were terminated or separated during an investigation of a

⁴¹ Pub. L. No. 114-113, 129 Stat. 2242 (2015).

⁴² TIGTA, Ref. No. 2018-10-005, *The Internal Revenue Service Has Implemented Some Screening Procedures, but Employees With Recent Tax and Conduct Issues Continue to Receive Awards* (Feb. 2018).

⁴³ Section 1203 of the IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, states that the IRS shall terminate the employment of any IRS employee if there is a final determination that the employee committed certain acts of misconduct, including willful violations of tax law. Section 1203(b) describes 10 specific acts or omissions for which IRS employees are required to be removed; two of the 10 acts relate to IRS employee tax compliance.

substantiated conduct or performance issue.⁴⁴ From January 1, 2015 through March 31, 2016, the IRS hired more than 2,000 employees who had been previously employed by the IRS. More than 200 (approximately 10 percent) of the more than 2,000 rehired employees were previously terminated from the IRS or separated while under investigation for a substantiated conduct or performance issue.

Some rehired employees had past employment issues. For example, 60 of the 824 employees we identified in our prior report as having been rehired with prior substantiated employment issues between January 1, 2010 and September 30, 2013 were rehired again between January 1, 2015 and March 31, 2016. Of these 60 employees, five had additional documented conduct or performance issues substantiated within nine days to 19 months after being rehired. Three of the employees had the same issue in their prior employment. TIGTA is planning another follow-up review in this area later this calendar year.

EXCESS IRS OFFICE SPACE

TIGTA estimates that the IRS could reduce costs through more effective workspace sharing. This would reduce the need for more than 10,000 workspaces and reduce rental costs by approximately \$80 million over five years. The IRS will spend more than \$600 million on real estate costs in FY 2018. The IRS reported a workstation (cubicle) utilization rate of only 66 percent as of December 2017. Since March 2012, the IRS has reduced its total office space by approximately two million square feet, which represents nearly an 8 percent reduction. However, the rate of employee attrition has outpaced space reduction efforts. The IRS has not capitalized on underutilized workspace reduction cost savings that could be achieved from better utilization of employee "hoteling" (managers and employees sharing unassigned workspaces). Potential savings would include reduced rental, workspace buildout, furnishing, and equipment costs. The IRS could not provide TIGTA with any documentary evidence demonstrating measurable progress in releasing underutilized workspaces as a result of highly mobile employees and employees who participate in frequent or recurring telework. TIGTA made five recommendations for improvement and the IRS generally agreed with TIGTA's findings and recommendations.

⁴⁴ TIGTA, Ref. No. 2017-10-035, *The Internal Revenue Service Continues to Rehire Former Employees With Conduct and Performance Issues* (July 2017).

TELEPHONE IMPERSONATION SCAM

Since the fall of 2013, a significant amount of our Office of Investigations' workload has consisted of investigating a telephone impersonation scam in which more than 2.2 million intended victims have received unsolicited telephone calls from individuals falsely claiming to be IRS or Department of the Treasury employees. The callers demand money under the pretense that the victim owes unpaid taxes. To date, over 13,000 victims have purportedly paid more than \$65 million to these criminals.

The telephone impersonation scam continues to be one of TIGTA's top priorities; it has also landed at the top of the IRS's list of "Dirty Dozen" tax scams. The number of complaints we have received about this scam have cemented its status as the largest, most pervasive impersonation scam in the history of our agency. It has claimed victims in every State.

Here is how the scam works: the intended victim receives an unsolicited telephone call from a live person or from an automated call dialer. The caller, using a fake name and sometimes a fictitious IRS employee badge number, claims to be an IRS or Treasury employee. The scammers use Voice over Internet Protocol technology to hide their tracks and use caller identification (ID) spoofing technology to make it appear as though the calls are originating from Washington, D.C., or elsewhere in the United States. In some cases, they have even spoofed their caller ID number to make it appear as if they are calling from the IRS 1-800 number or the TIGTA Complaint Hotline.

The callers may even know the last four digits of the victim's SSN or other personal information about the victim. The caller claims that the intended victim owes the IRS taxes and that, if those taxes are not paid immediately, the victim will be arrested or charged in a lawsuit. Other threats for nonpayment include the loss of a driver's license, deportation, or loss of a business license. They often leave "urgent" messages to return telephone calls and often call the victim multiple times.

According to the victims we have interviewed, these scammers then demand that the victims immediately pay the money using Apple iTunes gift cards, Target gift cards, Best Buy gift cards, prepaid debit cards, wire transfers, Western Union payments or MoneyGram payments in order to avoid being immediately arrested. They are typically warned that if they hang up, the local police will come to their homes to arrest them immediately. Sometimes the scammers also send bogus IRS e-mails to support their claims that they work for the IRS. By the time the victims realize that they have been scammed, the funds are long gone.

TIGTA has made many arrests in connection with this scam and has numerous investigations underway. In October of 2016, after an extensive three-year investigation, TIGTA, the Department of Justice, and the Department of Homeland Security announced the indictment of 56 individuals and five call centers located in India. It is anticipated that on June 14, 2018, 21 of these defendants will be sentenced for their roles in the scam. In January 2018 and February 2018, in two separate IRS impersonation scam investigations, two additional individuals were sentenced to 46 months' imprisonment and 51 months' imprisonment, respectively. To date, as a result of TIGTA's commitment to protecting taxpayers, a total of 111 individuals have been charged in Federal court for their involvement in IRS impersonation scams. Although the investigations and prosecutions have reduced the number of scam calls being placed by over 90 percent, we are still receiving reports that between 4,000 and 10,000 individuals are receiving calls each week.

In addition to the criminal prosecutions, to thwart scammers using robo-dialers, we have created and instituted an "Advise and Disrupt" strategy. The strategy involves cataloguing the telephone numbers that have been reported by intended victims. We then use our own automated call dialers to make calls to those telephone numbers to advise the scammers that their activity is criminal and to cease and desist their activity. Utilizing this technique, we have placed more than 168,000 automated calls back to the scammers. We are also working with the telephone companies to have the scammers' telephone numbers shut down as soon as possible. As of March 31, 2018, we have used the Advise and Disrupt strategy to identify more than 1,327 telephone numbers associated with the scam. We have successfully shut down 97 percent of them, in some cases within a week. In an effort to keep IRS impersonation scam telephone calls from ever reaching their intended victims, TIGTA, the Federal Trade Commission, and the Federal Communications Commission have begun a collaborative effort with the telecommunications providers to formulate additional methods to combat and disrupt telephone-based scams.

TIGTA also shares scam-related telephone numbers with consumer scam identification websites on the Internet. This provides intended victims an additional tool to help them determine if the call they have received is part of a scam. All they have to do is type the telephone number into any search engine, and the response will indicate whether the telephone number has been identified as part of the impersonation scam. These efforts are producing results: our data show that it now takes more than 200 calls to defraud one victim, whereas in the beginning of the scam it took only a double digit number of attempts.

Further, TIGTA is engaged in public outreach efforts to educate taxpayers about the scam. These efforts include publishing press releases, granting television interviews, issuing public service announcements, conducting town hall meetings, and providing testimony to Congress. The criminals view this scam as they do many others; it is a crime of opportunity. Unfortunately, while we plan on arresting and prosecuting more individuals, the scam will not stop until people stop paying the scammers money. Our best chance at defeating this crime is to continue to educate people so they do not become victims in the first place. Every innocent taxpayer we protect from this crime is a victory.

We at TIGTA take seriously our mandate to provide independent oversight of the IRS in its administration of our Nation's tax system. Accordingly, we plan to provide continuing audit, investigative, and inspections and evaluations coverage of the IRS's efforts to operate efficiently and effectively.

Chairman Jordan, Chairman Meadows, Ranking Member Krishnamoorthi, Ranking Member Connolly, and Members of the Subcommittees, thank you for the opportunity to share my views.

Mr. JORDAN. Thank you, Mr. George.
Ms. Olson, you are recognized.

STATEMENT OF NINA E. OLSON

Ms. OLSON. Mr. Chairmen and Ranking Members and members of the subcommittees, thank you for inviting me to testify today at today's hearing on IRS operations. As you well know, Congress has passed the most comprehensive tax law reform since 1986. The IRS faces serious challenges as it implements and administers the new law, from issuing guidance to creating new forms and publications, to answering basic questions about the new law. The stakes are high for both taxpayers and the IRS. The IRS is dedicating significant resources to these efforts, and my office will continue to support the IRS to ensure that taxpayers have the information and assistance they need to comply with the new tax law.

Tax reform notwithstanding, the IRS still must fulfill its continuing tax administration duties. Since Fiscal Year 2010, the IRS budget has been reduced by 20 percent on an inflation-adjusted basis, and the IRS workforce has declined about that same percentage. These reductions have led to significant cuts in taxpayer service levels, including a 23 percent decline in the number of employees conducting pre-filing taxpayer assistance and education.

Moreover, these cuts have prevented the IRS from deploying new technology that would improve the taxpayer experience, including customer call-back technology.

While the IRS generally ran a smooth 2018 filing season, this morning notwithstanding, especially given the mid-season enactment of extender provisions, taxpayers were burdened by an overly-restrictive appointment-only system at the taxpayer assistance centers and inconsistent service on phone lines. The IRS' official measure of telephone service, its account management customer service representative level of service, or LOS, excludes the significant majority of taxpayer telephone calls the IRS receives. In Fiscal Year 2017, the official LOS reflected the results of only 32 percent of IRS calls. Thus, unlike the official LOS of 79 percent for the accounts management lines, the Fiscal Year 2018 LOS for calls to the installment agreement balance due line was only 50 percent. These are people calling to make payments to us.

The IRS' response to its resource constraints has been to push taxpayers to online self-service. Now, I have long advocated that the IRS develop an online account application, but it must be positioned as just one component of an omni-channel service strategy, including telephone and in-person assistance. Taxpayers must be the focus of this strategy, and their needs and preferences paramount.

In 2016 and 2017, TAS conducted a nationwide survey of U.S. taxpayers about their needs, preferences, and experiences with IRS taxpayer service. The survey results confirm that taxpayers choose different channels of communication to accomplish different types of service tasks. We found that about 41 million U.S. taxpayers do not have broadband access in their homes. About 50 percent disagreed with the statement "I feel secure sharing personal financial information over the Internet." Forty-six percent of taxpayers calling the IRS already checked IRS online resources and still needed

assistance. And we found the single biggest driver of customer satisfaction is the first contact resolution rate. Yet, almost 40 percent of taxpayers calling the IRS felt one call did not fully resolve their problems.

Another filing season problem is the unacceptably high false-positive rates, or FPRs, associated with IRS' identity theft and fraud detection filters. While the IRS has improved its detection of questionable refund returns, it has not devoted the same level of attention to preventing false positives, resulting in significant delays or freezes of refunds due to hundreds of thousands of legitimate taxpayers filing legitimate returns.

In 2017, the FPR was over 60 percent for both identity theft and non-identity theft filters, and the rate will be higher this year. High FPRs harm legitimate taxpayers and create unnecessary and often manual work for the IRS and for the Taxpayer Advocate Service. Our cases in this area have increased 98 percent this year over last year.

The IRS can, while stopping fraud, can also reduce false positives. It can and should be able to walk and chew gum at the same time.

Finally, the current state of IRS technology substantially limits the IRS' ability to carry out effective tax administration. As an example, the IRS possesses the two oldest information system databases, each nearly six decades old, in the entire Federal Government. Today, no IRS employee, much less the taxpayer or the taxpayer's representative, has a 360-degree view of the taxpayer's account and interactions with the IRS.

Improving taxpayer service and IRS operations generally requires a combination of strong leadership and adequate resources. I encourage Congress provide more funding to the IRS to improve taxpayer service and modernize its technology, and to pair that funding with sufficient oversight to ensure the funds are well spent.

Thank you.

[Prepared statement of Ms. Olson follows:]

STATEMENT OF

NINA E. OLSON

NATIONAL TAXPAYER ADVOCATE

JOINT HEARING ON

CONTINUED OVERSIGHT OVER THE INTERNAL REVENUE SERVICE

BEFORE THE

SUBCOMMITTEE ON HEALTH CARE, BENEFITS, AND ADMINISTRATIVE RULES

AND

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

U.S. HOUSE OF REPRESENTATIVES

APRIL 17, 2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Employment status, budget activity, and selected personnel type	Average positions realized [1]								Trend
	2010	2011	2012	2013	2014	2015	2016	2017	2010 - 2017
Internal Revenue Service, total	94,711	94,709	90,280	86,974	84,133	79,890	77,924	76,832	-18.9%
Employment status:									
Permanent [2]	93,027	92,452	88,308	84,985	82,406	78,294	76,446	75,253	-19.1%
Other [3]	1,684	2,257	1,972	1,989	1,727	1,596	1,478	1,579	-6.3%
Budget activity:									
Examinations and collections	44,802	44,685	41,814	39,454	37,608	35,542	33,426	32,604	-27.2%
Filing and account services	25,592	25,423	25,041	24,881	23,972	22,308	23,668	24,063	-6.0%
Information services	6,432	6,628	6,208	6,708	6,711	6,788	6,300	6,089	-5.3%
Prefiling taxpayer assistance and education	6,076	6,180	5,814	5,505	5,449	5,349	5,009	4,700	-22.6%
Shared services and support	5,862	5,811	5,308	5,061	5,097	5,016	4,861	4,780	-18.5%
Investigations	4,364	4,197	4,258	3,691	3,581	3,410	3,184	3,080	-29.4%
Regulatory	1,234	1,260	1,241	1,223	1,239	1,137	1,034	959	-22.3%
Business Systems Modernization	337	512	596	451	476	340	442	557	65.3%
Health Insurance Tax Credit Administration	12	13	--	--	--	--	--	--	--
Selected personnel type:									
Revenue agents	13,879	13,969	13,011	12,270	11,659	10,862	10,174	9,759	-29.7%
Seasonal employees	11,158	10,479	11,538	11,108	10,030	8,819	10,005	10,671	-4.4%
Customer service representatives [4]	18,582	10,191	9,472	9,131	8,837	8,441	8,235	9,113	-10.6% [5]
Tax examiners [4]	--	9,587	9,282	8,724	8,416	8,294	8,267	7,887	-17.7% [5]
Revenue officers	6,042	5,671	5,186	4,748	4,439	3,994	3,575	3,434	-43.2%
Special agents	2,739	2,618	2,581	2,509	2,437	2,326	2,184	2,124	-22.4%
Tax technicians	1,720	1,808	1,679	1,515	1,418	1,357	1,227	1,110	-35.4%
Attorneys	1,571	1,573	1,529	1,497	1,473	1,415	1,361	1,346	-14.3%
Appeals officers	847	859	851	811	761	841	949	888	4.9%

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴ *Id.*

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

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

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

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

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

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

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

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

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

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

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

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

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

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

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

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

Accordingly, I recommend that Congress:

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

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

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

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

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

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

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

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

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

³⁰ *Id.*

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

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

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

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

³² IR-2018-36 (Feb. 28, 2018).

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Filing Season: Taxpayer Service Limitations Impact Taxpayers

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

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

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

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

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

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

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

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

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

No Broadband Access by Demographic Group

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁷¹ *Id.*

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

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



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

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

Accordingly, I recommend that Congress direct the IRS to:

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

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

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

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

Refund fraud detection filters unnecessarily burden legitimate taxpayers.

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

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

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

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

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

W-2 Receipts

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

% Change Between Fiscal Years

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

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

1099 Misc Receipts

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

1099 Misc

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

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

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

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

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

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

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

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

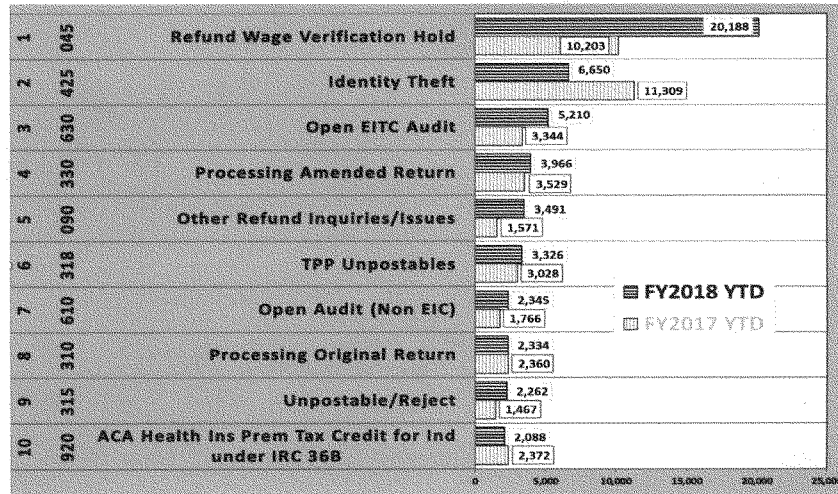
- Outdated IRS systems used to manage refund fraud cases cause processing problems, ultimately resulting in the assignment of more IRS employees to conduct manual tasks, greater delays in taxpayers obtaining their refunds, and significant increases to cases coming into TAS.

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

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

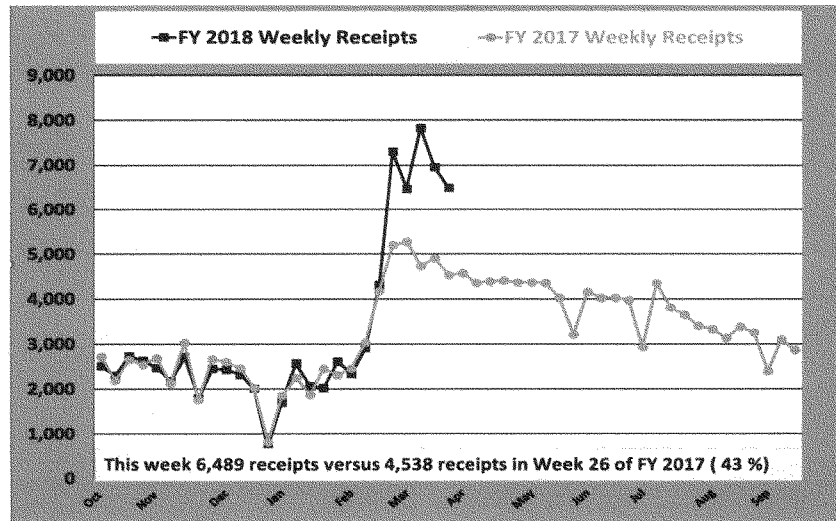
⁷⁹ Data obtained from Taxpayer Advocate Management System (TAMIS) (Apr. 1, 2017; Apr. 1, 2018).

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



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

TAS Weekly Receipts for FY 2018 versus FY 2017



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

IRS fraud detection filters are too broad.

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

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

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

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

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

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

High false positive rates undermine the effectiveness of fraud filters.

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

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

⁸⁴ National Taxpayer Advocate 2017 Annual Report to Congress 225.

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

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

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

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

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

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

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

An outdated fraud detection system causes manual rework.

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

Accordingly, I recommend that Congress:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Accordingly, I recommend that Congress:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹¹⁰ IRC § 4980H(a).

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

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

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

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

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

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

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

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

¹¹⁴ *Id.*

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

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

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

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

Accordingly, I recommend that:

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

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

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

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

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

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

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

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

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

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

overdue federal taxes starts in april those affected will hear first from irs irs will still handle most tax debts.

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

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

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

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

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

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

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

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

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

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

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

¹²⁷ *Id.*

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

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

¹³⁰ *Id.*

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

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

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

TAS participation in PCA oversight has been restricted.

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

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

¹³³ *Id.* at 14.

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

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

¹³⁶ *Id.*

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

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

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

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

Accordingly, I recommend that the IRS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Accordingly, I recommend that Congress:

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

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

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

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

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

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

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

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

Why Codify Taxpayer Advocate Directives?

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

¹⁵⁷ IRC § 7803(c)(2)(A).

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

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

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

Why Codify Access to Files and Meetings?

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

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

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

¹⁶⁰ IRC § 6103(h)(1) provides that "returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes."

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

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

Accordingly, I recommend that Congress:

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

¹⁶² IRC § 7803(c)(2)(D)(i)(II).

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

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

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

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

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

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

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

Multiple antiquated systems are ineffective and inefficient.

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

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

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

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

Challenges should not stop progress on an ECM overhaul.

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

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

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

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

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

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

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

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

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

Accordingly, I recommend that Congress:

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

XI. Conclusion

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

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

Mr. JORDAN. Thank you, Ms. Olson.

I now recognize the gentleman from Georgia for his 5 minutes of questioning.

Mr. HICE. Thank you, Mr. Chairman.

Mr. Kautter, the IRS decided to begin enforcing the employer mandate this past fall, as Commissioner Koskinen was leaving office. This was the first time that the IRS ever actually enforced that employer mandate since the law came into existence in 2010. Is that correct?

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

Mr. HICE. Okay. And at this point, I understand your agency is issuing penalty letters to employers. I understand somewhere in the ballpark of 9,000 or so letters have been sent out. Is that right?

Mr. KAUTTER. Yes, sir. It is around 10,000 at this point.

Mr. HICE. Ten thousand, okay. Were these employers notified prior to receiving a penalty letter? I mean, after all, we are talking years of no enforcement, and then all of a sudden this is a pretty big change coming down the pike. These employers are accustomed to this employer mandate not being enforced. Were they notified beforehand?

Mr. KAUTTER. No, the letter is the first they have heard from the IRS on this.

Mr. HICE. Okay. That sounds pretty harsh, to say the least, for these folks to be living for years under no enforcement, and then all of a sudden being slapped with it.

Mr. George, TIGTA has examined the IRS' ability to enforce the employer mandate. I understand that you have found multiple problems with the enforcement systems for that employer mandate. Is that correct?

Mr. GEORGE. That is correct, Congressman.

Mr. HICE. Okay. Can you briefly explain what some of those problems are?

Mr. GEORGE. Yes. Our review of the IRS' process to identify tax year 2015 applicable large employers potentially liable for the employer shared responsibility payment found that the IRS did not identify 840 employers potentially subject to more than \$113 million in employer shared responsibility payments. Now, the difference in identified applicable large employers occurred because the data used by the IRS were not complete or accurate.

We subsequently made five recommendations to improve the process. The IRS agreed with all five of those recommendations, and we certainly shall follow up with them to see if they enact those changes.

Mr. HICE. Okay. So, change is coming, but would you be able to say with a strong degree of confidence right now that the IRS is effectively and accurately enforcing the employer mandate?

Mr. GEORGE. I would say this, sir: When the IRS puts its mind to something, it gets the job done.

Mr. HICE. But that is not my question. You said they have problems. The solution to those problems has not yet been implemented. So the assumption I have is at this point they can't with confidence say that this is being handled effectively and accurately.

Mr. GEORGE. Until we have had a chance to analyze the actions taken, that is correct, sir.

Mr. HICE. Sure. Okay.

Mr. Kautter, are you familiar with the President's Executive Order 13765?

Mr. KAUTTER. Yes, sir.

Mr. HICE. Okay. And you understand that basically that directs the Federal agencies to ease the financial burdens of the Affordable Care Act?

Mr. KAUTTER. Yes, sir.

Mr. HICE. Okay. Is the IRS subject to that executive order?

Mr. KAUTTER. It is.

Mr. HICE. Okay. It seems to me pretty obvious that it is rather burdensome for employers, having no previous communication whatsoever, to all of a sudden be forced with penalties on the employer mandate. Would you agree with that?

Mr. KAUTTER. I would.

Mr. HICE. Okay. So based on your testimony and based on the executive order, why would the IRS be rushing to enforce the employer mandate?

Mr. KAUTTER. Sure. So, let me give you a little bit of background, if I can.

Mr. HICE. Not too much. I have less than a minute, still have some questions.

Mr. KAUTTER. Okay. At this point, the letters are the IRS' best estimate of what the employers owe. There have been constant negotiations as those letters have gone out. About 3,000 of the 10,000 letters that have gone out, cases have been settled, and in 82 percent of those cases the employers have not owed anything as a result of the letter.

What we found are two responses when we have gone to employers. One is the forms were filled out incorrectly. So once we work with the taxpayer, there is nothing owed. And then in the other 18 percent of the cases the employers have basically said we haven't been able to determine the amount of the penalty ourselves, we were waiting to hear from you.

Mr. HICE. Okay. But we still have the admission that we can't accurately be doing this. We have an executive order not to do it, or to ease the burden, not specifically on the employer mandate but to ease the burden that comes with this.

My question to you would be would you agree that we need to cease the enforcement of this employer mandate until your agency at least can straighten out the mess and for this committee to review all the documents that we have requested?

Mr. KAUTTER. Well, I think we have done a pretty good job, Congressman, of trying to straighten out the problems that —

Mr. HICE. But my question is, Mr. Chairman—and I know my time just expired. But the question is this thing needs to cease until the problems are resolved and this committee gets the documents that have been requested and until—I mean, these employers don't even know that it has been reinstituted, or instituted for them.

Mr. KAUTTER. We are trying to work with everyone who we have sent a letter out to, Congressman, and our challenge is it is the law, and I don't think anybody on this committee wants the IRS

determining which laws it is going to enforce and which ones it is going to ignore.

Mr. HICE. But it was not enforced for eight years, and now all of a sudden it is being enforced, even with an executive order.

I thank you for your graciousness, Mr. Chairman. I yield back.

Mr. KAUTTER. I cannot disagree.

Mr. HICE. Thank you.

Mr. JORDAN. The gentleman from Virginia is recognized.

Mr. CONNOLLY. I thank the Chair.

Mr. JORDAN. If you could hold for one second?

Mr. CONNOLLY. Sure.

Mr. JORDAN. With unanimous consent, I ask that Mr. Gianforte be allowed to participate in today's hearing, along with Mr. Duncan.

Mr. CONNOLLY. We have no objection.

Mr. JORDAN. The gentleman is recognized.

Mr. CONNOLLY. Welcome to the panel.

Mr. Kautter, I was just going to remind you, but you didn't need reminding, to be advised not to enforce a provision of the United States law would put you in grave jeopardy, actually, until and unless Congress repeals the law or parts of the law, which it has tried to do and hasn't succeeded. He is all for it; I am not. And thank God there were enough votes to block that. So it remains the law on the books, it is working, and the IRS has a constitutional responsibility to uphold the law. Is that not correct?

Mr. KAUTTER. That is correct.

Mr. CONNOLLY. It was also characterized as all of a sudden companies are unaware. The law has been on the books how long?

Mr. KAUTTER. Since 2010.

Mr. CONNOLLY. So that is how many years?

Mr. KAUTTER. Eight years.

Mr. CONNOLLY. So it is not exactly all of a sudden, is it?

Mr. KAUTTER. No.

Mr. CONNOLLY. And the individual mandate idea, one might remember, came from the Heritage Foundation. In fact, when Bill Clinton was president and had a health care program, Newt Gingrich, et al., objected to it precisely because it lacked an individual mandate. So the idea that it is all of a sudden and a terrible thing, and the novel interpretation that the President's executive order to ease the burden could be construed as suspend enforcement, those are two very different things, are they not?

Mr. KAUTTER. Yes, sir.

Mr. CONNOLLY. Thank you.

Commissioner Kautter, is it true that IRS' budget is only about 80 percent of what it was in 2010?

Mr. KAUTTER. That is true.

Mr. CONNOLLY. And that is how many years ago?

Mr. KAUTTER. That would be eight years.

Mr. CONNOLLY. So even with inflation, that is a big cut.

Mr. KAUTTER. Yes, sir.

Mr. CONNOLLY. Is it also true you have 18,000 fewer employees than you did in 2010?

Mr. KAUTTER. Yes, sir.

Mr. CONNOLLY. I am just spit-balling here, but could that level, that magnitude of cuts and employee decreases, have anything to do with performance at IRS?

Mr. KAUTTER. Those reductions have had an impact on the performance at the IRS. Yes, sir.

Mr. CONNOLLY. Your predecessor testified once before this committee that one of the problems plaguing IRS, besides those that also affect performance and quality of service, is aging IT systems. Is that true?

Mr. KAUTTER. Yes, sir.

Mr. CONNOLLY. And I think he said one system that is still in operation went back to the administration of Lyndon Johnson. Is that true?

Mr. KAUTTER. It does. Yes, sir.

Mr. CONNOLLY. Lord almighty, that is a long time ago.

I don't know, could you just elaborate a little bit on how aging IT systems might also, on top of budget cuts and personnel reductions, affect performance?

Mr. KAUTTER. Certainly. The IRS hardware, 59 percent of it is obsolete; 32 percent of its software is at least two updates behind, so that is out of date. The IRS systems are subject to 2.5 million cyber attacks a day.

Mr. CONNOLLY. I am sorry. Would you repeat that statistic?

Mr. KAUTTER. The IRS systems are subject to 2.5 million cyber attacks a day, 1 million of which are sophisticated attacks. So that is on an average day.

Mr. CONNOLLY. So you are saying that works out to something, if I am doing my math right, like three-quarters of a billion a year?

Mr. KAUTTER. Yes, sir.

Mr. CONNOLLY. Wow.

Ms. Olson, are you concerned at all about what we are hearing?

Ms. OLSON. I am very concerned, obviously, on the cyber security. On the taxpayer service side, and enforcement, there is a real impact with our aging taxpayer systems, IT systems. The IRS, depending on how you count it, has between 60 to 200 case management systems where taxpayer data is stored, and how that impacts taxpayers is if you call the IRS, the person on the phone assisting you will not see the whole picture of what is going on. They may not have access to 40 of those 60 major systems, so they can't tell you. They can say "I can see that you wrote us, but I have no idea what you wrote us about, and I can't see what is being done on that."

Mr. CONNOLLY. And presumably aging systems, Mr. Kautter and Ms. Olson, also can't be encrypted. They don't adjust to current encryption methodologies or software, and therefore they are vulnerable to the hacking you described.

Mr. KAUTTER. They are more vulnerable. Yes, sir.

Mr. CONNOLLY. And how many Americans have data stored at the IRS?

Mr. KAUTTER. Pretty much all.

Mr. CONNOLLY. All.

Mr. KAUTTER. Pretty much.

Mr. CONNOLLY. So the threats are real threats that you are dealing with every day, with 2.5 million cyber attacks.

Mr. KAUTTER. Yes, sir.

Mr. CONNOLLY. And with aging equipment, that threat is enhanced.

Mr. KAUTTER. It is. I mean, I think, Congressman, just one point. Over years, over recent years, what the IRS has done a pretty good job of is taking the technology money that it has, the IT money, and using it to update the core filing system so that the equipment that surrounds the core filing system is in pretty good shape. It is not as good as we would like, but it uses old language, and it is built block upon block, so it is not as integrated as it needs to be. Where a lot of our old equipment rests is in the day to day functioning of the laptops that the employees have, the printers and so forth.

About two weeks ago we conducted four calls with IRS managers, about 3,000 managers. What impressed me was the theme that came through was a workforce that wants to do well but feels as though it is handicapped by the tools and the equipment that it has.

Mr. CONNOLLY. Mr. Chairman, my time is up, although on a lighter note I am informed, I hope reliably, one silver lining in legacy systems, the Chinese don't know how to hack into COBOL.

[Laughter.]

Mr. CONNOLLY. I thank the Chair for his indulgence.

Mr. JORDAN. I thank the gentleman.

The gentleman from North Carolina is recognized for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman. I want to thank my vice-chair for his eloquent opening remarks and questioning and pitch hitting.

I thank all of you for coming. Obviously, many of you, this is not your first rodeo in terms of the date or when you come to try to give what I would say is the annual to-do list.

Ms. Olson, I want to say thank you for your work. Obviously, you have been very responsive to my personal office, but also from a committee standpoint on helping taxpayers. So I look forward to making sure that there is a good relationship, and I want to reinforce that—a good relationship, if not great relationship—with Ms. Olson. There has been previously, but we want to make sure we have that going forward, and we will be looking at that very closely.

Mr. Kautter, I am assuming that—you are nodding yes—that you will do that.

Mr. KAUTTER. Before I joined government I was a fan of Ms. Olson. I read her reports, her two reports, religiously every year, and I think she does great work.

Mr. MEADOWS. That is great. So now in this new position, we want to make sure that you not only read her reports but that they actually get implemented. So we will go forward from there.

Ms. Olson, I would ask, can you tell me about the false positives in terms of fraudulent reports?

Ms. OLSON. Well, I stand with everyone here about stopping refund fraud and improper payments coming out from the system. But I have been concerned for the last four years that the false-positive rate, the rate of stopping legitimate returns beyond the normal time for just being able to review them and determine, oh,

this is a legitimate return, these returns to be false-positive are already past that timeline, and that is what makes them false. And then they turn out to be from legitimate taxpayers.

My concern is the way the filters and the rules are run. I think there are almost 200 rules that are in the systems to identify these things, and I am very concerned about their interaction, and I think that the IRS has been focusing a lot on stopping the fraud but not enough on the refinements. And I try to keep reminding people this is the 21st century, we have data mining techniques, artificial intelligence, all sorts of things. We can learn from past experience and focus as much on not harming the legitimate taxpayers.

I have talked to tax administrations around the world, and all of them are shocked at the over 60 percent false-positive rates.

Mr. MEADOWS. So what do you say to that, Mr. Kautter?

I mean, Mr. George, do you see that happening as well, false positives?

Mr. GEORGE. We are currently taking a look at this very issue, Mr. Meadows, and we will be issuing a report shortly. I agree with Ms. Olson that it is an issue for anyone who is entitled to a refund not to get it, but it is also extraordinarily important that Congress keep in mind that once the IRS lets money go out the door, it is almost next to impossible to get it.

I want to give time for the Commissioner to respond, but I will say this, that the IRS itself reports that if they are able to use something called math error authority, or, in effect, the ability to correct mistakes that they identify internally before the money goes out, it costs the IRS about \$1.50. But once the money goes out, in order to do a pre-audit review, it is \$278.

Mr. MEADOWS. So, Mr. Kautter, based on Mr. George's testimony, what would stop us from being able to do that? Do you need a legislative fix to help you?

Mr. KAUTTER. I don't think it is a legislative fix, Congressman. I think it is a matter of balance.

Mr. MEADOWS. A matter of what?

Mr. KAUTTER. Of balance.

Mr. MEADOWS. Okay.

Mr. KAUTTER. So the IRS has put in place, as the taxpayer advocate states, about 200 filters. That may be too many. But it is this balance of trying to protect taxpayer dollars from going out the door and trying to protect —

Mr. MEADOWS. Yes, but when you get to 60 percent false positive, let me just tell you, once you go beyond 50 percent, you have a problem, because what you have is you have the assumption that it is wrong even though you have it kicking out as a fraudulent claim.

Mr. KAUTTER. There is no question, we need to look at it.

Mr. MEADOWS. Well, you need to do more than look at it. Do you have a plan to address that and to bring the false positives under 50 percent?

Mr. KAUTTER. I will go back and develop a specific plan.

Mr. MEADOWS. What would be a reasonable timeframe to get a plan to this committee on how you are going to do that?

Mr. KAUTTER. We are constantly looking at it. So I would think within, say, two to three months.

Mr. MEADOWS. So within 90 days you can have a plan to this committee on how you are going to get false positives under 50 percent.

Mr. KAUTTER. Yes, sir. I think we can do that.

Mr. MEADOWS. All right.

In my 11 seconds—well, I don't have any time remaining, so I will yield back to the Chairman.

Mr. JORDAN. We would have let you go there.

We will now go to the Ranking Member, I think, and then we will come to Ms. Norton, I believe, if that is all right. So the Ranking Member is recognized.

Mr. KRISHNAMOORTHY. Thank you, Chairmen Jordan and Meadows, and Ranking Member Connolly, for facilitating this joint subcommittee hearing.

Thank you to all of you for testifying today, and all the audience members for coming, and all of my colleagues as well.

I also want to thank basically these witnesses specifically for participating in this very important hearing.

In the recently passed Tax Cuts and Jobs Act, I was dismayed by my Republican colleagues' decision to cap the state and local tax deduction, otherwise known as the SALT deduction, at just \$10,000 per person or family. In my district, the 8th Congressional District of Illinois, the average family files a SALT deduction of nearly \$14,000 a year. Furthermore, one in every three tax filers in Illinois relies on this important deduction annually. In 2015, for example, Illinois residents deducted \$1.4 billion and saved a total of \$345 million on their Federal tax returns thanks to SALT. As a result, our local institutions received critical funding for public services, while my constituents avoided being subject to double taxation.

Mr. Kautter, welcome back. I am sure you have heard that before.

Mr. KAUTTER. That is the best day of my life when that show went off TV.

[Laughter.]

Mr. KRISHNAMOORTHY. The Pew Charitable Trusts published an interactive map illustrating the most recent SALT deduction data. This data showed that the average SALT deduction for working families in the U.S. is \$12,471. The first question, very basic, is this number higher or lower than the devastating \$10,000 cap imposed by the Tax Cuts and Jobs Act?

Mr. KAUTTER. It would be higher.

Mr. KRISHNAMOORTHY. Thank you. It is higher. It is \$2,471 higher, is it not?

Mr. KAUTTER. Yes, sir.

Mr. KRISHNAMOORTHY. Well, it should come as no surprise that state and local tax jurisdictions across the country are introducing legislation to circumvent changes to the SALT deduction. Are you aware of these efforts?

Mr. KAUTTER. Yes, sir.

Mr. KRISHNAMOORTHY. And in my home state of Illinois, where \$2,500 is, naturally, a lot of money for most hard-working families,

elected officials are trying to restore full deductibility to contributions to local services. In fact, both Democratic and Republican legislators in the Illinois Assembly have proposed legislation to create the Illinois Excellence Fund, a law that will mitigate the damage caused by the Republican changes to the SALT deduction. As this legislation forges ahead and other states begin to follow suit, I sincerely hope the IRS will recognize the validity of these proposals.

Thank you, and I yield back the balance of my time.

Mr. JORDAN. I thank the gentleman.

I think we will go to Ms. Norton, and then move to Mr. Grothman. Since that was sort of a combination opening statement and some questions, we will get back to you, Mr. Krishnamoorthi.

Ms. NORTON. I thank you, Mr. Chairman. I thank you for this hearing.

I am particularly interested in this hearing because the Americans I represent who live in the District of Columbia pay the highest Federal taxes per capita in the United States, higher per capita than any member of this committee, and they do so without a vote on the House floor and with no vote in the Senate. We do have a vote in this committee, which I intend to use.

This tax cut is not yet popular with the American people, but they will be looking for service from the IRS, and certainly my residents will be.

I note that the IRS has an amazing half the number of customer services than it had in 2010. Now, I congratulate the IRS on what it has done with digital upgrading, but at the same time the IRS has closed 30 taxpayer assistance centers, and that is again over the last eight years.

Mr. Kautter, does the IRS believe, for example—this is for you and Ms. Olson—that whatever digital impact we now have, that that will make up for loss of half the customer service representatives and the closing of 30 taxpayer assistance centers?

Mr. KAUTTER. Thank you, Congresswoman. What the IRS is trying to do is meet taxpayers in the way they want to be met. In other words —

Ms. NORTON. And you think they do not want to be met face to face? Particularly now I ask this question when there are 100 new provisions that they have never seen before, that you have never seen before, that you have to enforce. You think that they would just as soon go online?

Mr. KAUTTER. Oh, no. I think there are some taxpayers clearly who would prefer to be dealt with face to face, some that would like to discuss issues on the phone, and then an increasing number prefer technology. The number of —

Ms. NORTON. Do you think taxpayers who are, let us say, over 55, 65, prefer the digital approach or the face to face approach, Mr. Kautter?

Mr. KAUTTER. Interestingly, I think most would prefer face to face or on the phone, but an increasing number do prefer technology.

Ms. NORTON. What has the IRS done this year to make up for the fact that there are going to be hordes of people coming forward to say what do these 100 new provisions mean? Will you be able to accommodate these people with half the number of customer

service representatives and with no assistance in their communities in the case of 30 of those centers that have now been closed? Are you able to accommodate this rush of need for assistance in light of what the Congress has put on your shoulders to bear?

Mr. KAUTTER. We will try to do the best we can with the resources we have available to us.

Ms. NORTON. What do you think, Ms. Olson? What will be the effect of the 100 new provisions as people try to figure out their taxes in an entirely new way for the first time?

Ms. OLSON. Our survey that we did of U.S. taxpayers, a representative sample of U.S. taxpayers nationwide over the last two years showed that taxpayers, many will go online. But for tax law questions and tax issues like notices and needing to resolve a problem, they want to either talk to someone or they want in-person assistance. And although there does seem to be some concentration in low-income and elderly, it is really surprising how many not-low-income people prefer talking over the phone to resolve a problem.

Ms. NORTON. Is this going to increase with the new provisions? For example, SALT is —

Ms. OLSON. Absolutely. No matter how good your system is online, people have specific circumstances, and I am particularly concerned that in the past the IRS has ended its tax law phone line after today.

Ms. NORTON. What does that mean, please?

Ms. OLSON. They have a dedicated tax law question line, and since 2014 that line has discontinued as of the last day of the filing system.

Ms. NORTON. Mr. Kautter, why is that happening, and what does it do?

Mr. KAUTTER. In the past it has been a matter of resources. We continue to answer certain tax law questions —

Ms. NORTON. Now, these are tax law questions put by —

Ms. OLSON. Taxpayers.

Ms. NORTON.—taxpayers, not lawyers, taxpayers.

Mr. KAUTTER. That is right. And we have decided for all of this year, we will answer questions with respect to the new tax law throughout the year.

Ms. NORTON. So wouldn't this be the time you need a tax line? Because there are 100 new tax laws.

Mr. KAUTTER. And that is what we intend to do.

Ms. NORTON. But the tax law line is gone as of today, according to Ms. Olson.

Mr. KAUTTER. I guess what I was trying to say, Congresswoman, and I wasn't clear, this year we will keep that tax law line with respect to the new Tax Cuts and Jobs Act open for the entirety of the year.

Ms. NORTON. This is very important, Mr. Chairman, as I yield back my time. We have learned at this hearing that this tax law line, which was discontinued in 2014, will be renewed, and I must thank the IRS for that in light of the new tax law. And I thank you very much, Mr. Chairman.

Mr. JORDAN. I thank the gentle lady.

I think, just to clarify, you have had the tax question line open, and it just always closed on filing date.

Mr. KAUTTER. That is right.

Mr. JORDAN. Now they are going to keep it open for a longer period of time.

Mr. KAUTTER. Right.

Mr. JORDAN. Right, just to be clear.

The gentleman from Wisconsin is recognized.

Mr. GROTHMAN. First of all, this is to Mr. George a little bit. Thanks for being here, first of all. You guys are always very impressive.

You issued reports last July on the IRS giving out awards to employees with serious misconduct issues. There have been examples, apparently, of employees even being removed and rehired. Could you comment on that? Do you think that has been cleared up? How can that possibly go on? What type of culture would there be where you let somebody go and then rehire them, or give out bonuses to people who are engaged in misconduct?

Mr. GEORGE. Congressman, it was simply an issue of a lack of—I want to say common sense in some instances, but of a process that allowed the person making the hiring decision to have all of the information he or she needed regarding the candidate by their side or in the paperwork associated with the candidate's application.

Mr. GROTHMAN. So you mean the person made the hiring decision and didn't have access to the file on this person in the past?

Mr. GEORGE. Well, I don't necessarily want to use the word "access," but they didn't have it with them while making that decision. We have been told now that has changed and that the IRS has implemented policies where the hiring decision-maker will have all of the relevant information relating to the candidate, especially someone who previously worked at the IRS.

Mr. GROTHMAN. Okay. I know some people want to hire more people for the IRS. Years ago I used to do tax returns, and at the time sometimes you would have a sticky question and you would ask the IRS questions. Quite frankly, at the time I and the other preparers almost unanimously felt that the Wisconsin Department of Revenue understood Internal Revenue Service laws better than the average IRS employee.

So to me, the important thing is not hiring more employees, because what is the sense of hiring an employee if they give you the wrong answers, right?

Do you guys, in your audits, do you test IRS employees to see if they are giving right or wrong answers to inquiries?

Mr. GEORGE. That was a regular process that we did employ many years ago, and when we initially did this, especially at taxpayer assistance centers, the numbers were abysmal. I mean, more than 50 percent, almost 60 percent of the information or the answers given to our testers were inaccurate.

Mr. GROTHMAN. I will cut you off just because I will ask you to follow up. I mean, 60 percent, I believe this. When I was doing taxes, that is entirely believable. You would ask an IRS employee a tax question, 60 percent of the time they would give you a wrong answer. That would be typical of my experience 25 years ago.

Go ahead.

Mr. GEORGE. But it has improved dramatically, though, since then. So I don't have the latest figures. We can supply that for the record. But it has improved tremendously, and we don't do it every single year in terms of having people vet the taxpayer assistance centers, so I will supply that information for the record.

Mr. GROTHMAN. Okay. Do you have a guess? I mean, is it 20 percent wrong, 30 percent wrong?

Ms. OLSON. If I might add —

Mr. GROTHMAN. Sure.

Ms. OLSON. One of the ways it improved is that the IRS then, after those abysmal numbers, it took a whole bunch of more complex questions and put them in what they call "out of scope." So the numbers improved because the IRS just simply refused to answer questions that it was getting wrong.

Mr. GROTHMAN. Oh, like schools.

Ms. OLSON. Yes, there you go. So one of the things we are going to do this summer is we are going to be testing—my office is going to be calling the tax law line, posing some typical questions relating to the new tax law to see how they are being answered, or are they even in scope.

Mr. GROTHMAN. That is a real good idea. If you are hiring new people who don't know the tax law, that is worse than hiring nobody at all, correct? Do we all agree on that? If you are in an audit or the IRS audits you and asks for more money and interest and penalties, and you say this is the way the IRS told me to fill out the return, what does the IRS do? I know what the IRS will do. What will the IRS do to you?

Ms. OLSON. You know, one side effect of the funding or just priorities is that the training for the employees in the Wage and Investment Division who answered the phones last year was \$87 per employee. That is it.

Mr. GROTHMAN. Well, okay.

Mr. GEORGE. I found, sir, that they are not Draconian. If you can reasonably state and point to a time when you called into the IRS and the information that they provided you, they will take that into consideration. That is anecdotal, but that is still my understanding.

Mr. GROTHMAN. Thank you.

Mr. JORDAN. Now to turn to the gentle lady from New York, Ms. Lawrence.

Ms. LAWRENCE. Thank you, Mr. Chair.

I have a question for Mr. Kautter. As we know, the new tax law, I feel strongly, does a lot of damage to our community. In Michigan, the poorest 20 percent of families will pay \$120 more in taxes by the year 2027, and the richest will pay 1 percent.

However, Working Women and I sent a letter to Gene DeLauro outlining the impact that this law will have on women in low-income families, because Working Women represents the largest portion of low-income working people in America. However, you have stressed that you are reducing the assistance centers. Is the IRS planning specific outreach and assistance to vulnerable groups to better assist them in the next tax season, including working women and mothers? Can you tell me the details of what the new

outreach campaigns, community work, advertising, and new materials have you planned?

Mr. KAUTTER. About 19 percent of the funds we have asked for to implement tax reform involves outreach to taxpayers. We are in the process of developing a detailed plan, so I don't have those details at this point as to which groups we will reach out to and in what manner.

Ms. LAWRENCE. So you don't know who you are reaching out to, you just know you need to do it.

Mr. KAUTTER. We are developing a plan at the moment. Yes, ma'am.

Ms. LAWRENCE. So through the Chair, it is important that we know who you are reaching out to and what the plan is, and I don't expect the plan to be two days before the next tax season. So what is the date for the new plan?

Mr. KAUTTER. It should be developed by early summer. So I would think mid-June at the latest, probably before then.

Ms. LAWRENCE. I want you to know that I am very concerned because I get calls in my congressional office. We are talking about the accuracy of the information that the employees are given, but actually getting to a person is an extreme challenge right now, and it is frustrating, especially for those.

Ms. OLSON, you know that going online is not an action to a lot of people and to our seniors. It is extremely challenging. And so while you have to have a sense of the challenge that the public is having now just to get to resources, and it is not acceptable.

Ms. OLSON. You know, there are only about 390 IRS employees charged with doing outreach and education to individual taxpayers, the 150 million U.S. individual taxpayers. There are only about 96 IRS employees charged with doing outreach and education of small businesses and self-employed, and that goes to the cuts of pre-filing assistance and education and outreach, being in the communities.

It is not just about telling taxpayers what the law is but hearing from them what their challenges are so that then you can do better online materials, better —

Ms. LAWRENCE. Ms. Olson, that gets back to Mr. Kautter. It doesn't do us any good if you create a plan that is not going to solve the problem, and we have a serious problem. We implemented a tax plan, we have cut the workforce in the IRS, we have now not done our outreach, we are doing a plan, and I am telling you I am very, very concerned.

Mr. KAUTTER. Thank you, Congresswoman. I agree, we need a meaningful plan that reaches those folks who need help. Let me just say with respect to the phones, this filing season the average wait time has been about 6 minutes. Last year it was 7. This year it is 6 minutes. In addition, we are looking at some features like amending the phone assistance line so taxpayers know how long the wait is, and to add a call-back feature.

So I think there are some things we can do that are fairly straightforward that we need to do. But the numbers I have at the moment say the average wait time so far this busy season has been about 6 minutes.

Ms. LAWRENCE. If I could, you say some of these taxpayers can be helped by the phone, but in 2018, 33 million calls have been

made to the IRS, and only 6.4 million have been answered by a real person or a tax assistant. This information is what we have, and you are saying it is 6 minutes to an answer, and so many of these people aren't even getting an answer.

Mr. KAUTTER. Many folks, when they call the telephone numbers, are prompted to see if their question can be answered by a recorded message, and many taxpayers opt to opt out of talking to a live person and go to a recorded message with respect to the topic they are interested in.

Ms. LAWRENCE. My time, I have gone over, but I just want to close with this. The reduction in the workforce, we cannot continue to say that we have this overall objective and our philosophy and our values if you don't have the workforce and the trained workforce to perform the job. It is not acceptable for you as the leadership to not bring that to Congress and be truthful about what is happening. It is one thing to try to be appeasing in these hearings. It is another thing for us to hear the truth, and I hear from those Federal employees who are inundated with lack of resources and technology without having enough resources to perform the job that they swore and took an oath to.

I am going to continue to push this and not sit here and listen to "we are trying, and our philosophy is to perform the job" when we know we are not. We have to roll up our sleeves and fix this.

And I yield back. Thank you.

Mr. MEADOWS. Mr. Chairman, with your indulgence.

Mr. Kautter, Ms. Lawrence makes a very good point. I used to manage a phone center. There is no way possible that your sworn testimony right now is accurate. If her numbers are accurate in terms of the number of calls that went unanswered, there is no way that 6 minutes is the average wait time. So I would ask you to maybe, before you enter that into the record, to go back and have a look at that and let's make sure we get accurate information. I am just telling you.

Mr. KAUTTER. Yes, sir. Well, I will confirm that, but I would also say that many people, as I mentioned, many people opt out of —

Mr. MEADOWS. I get that. But even with that, if there are that many unanswered phone calls, there is no way that it can be 6 minutes, Mr. Kautter. I used to manage a phone center.

Mr. JORDAN. I appreciate the gentleman.

The gentleman from California is recognized.

Mr. ISSA. Thank you, Mr. Chairman.

You know, there is always an impossible question, Mr. Kautter, but I am going to ask you the impossible question.

Today, how can the American people know that a Lois Lerner couldn't do again what she did to so many Americans?

Mr. KAUTTER. That is a hard question. Thank you. I think the IRS —

Mr. ISSA. And by the way, after you I am going to the Inspector General and ask the same question.

[Laughter.]

Mr. KAUTTER. Having been there five months, I will give you my impression. I think over the last couple of years the IRS has implemented a number of changes with respect to reporting structures and with respect to annual evaluations to make sure that these

sorts of things don't happen again. It is partly the people you hire, it is partly the processes that you have in place, and I think the IRS has tried to be judicious in who it hires, and it has tried to be pretty deliberate about its annual review process structurally and through HR processes. Thank you.

Mr. ISSA. Mr. George, as you know, Lois Lerner had already abused people when she was at the Federal Election Commission. She had already testified before Congress, this committee in the '90s, that going after the Republican Party of Florida and not the Democratic Party of Florida for the exact same illegal donors' money, that, in fact, she was already a bad actor with a long history who, it is not surprising, hated Republicans, hated conservatives, was a strident Democratic activist.

So I appreciate the Commissioner's "we have to hire better," but from a systems standpoint, which is what you look at so often, from a systems standpoint, where are the checks and balances? Who is it besides yourself, sometimes locked out of the process, but who is it besides yourself who is the watchdog to look for these and, early on, stop the kinds of abuses that Lois Lerner did for most of the Obama Administration?

Mr. GEORGE. It is not a single point of contact, Congressman. It starts from the hiring of the person to the managing of that person during the process, and to looking at the results that person achieves or doesn't achieve. It is a multifaceted enterprise. The bottom line is, it is impossible to stop someone who, with ill intent, who can put on a facade that will get them through the door, get them access to sensitive information, and that allowed them to engage in egregious behavior. So it does require at all times people monitoring the activity of their subordinates and of supervisors. When you see something wrong, you have to say something about it.

Mr. ISSA. As you know, the groups that were being asked absurd questions, sometimes unlawful questions, and not being granted their status were saying things, but it went on deaf ears at the time. It was a process. There was no one to complain to, essentially, within the process.

So let me ask you a related question, and then I want to get to Ms. Olson. If somebody is guilty of sexual harassment at the IRS, do you today have a process that only takes one offense, one claim in order to open an active investigation and go to the bottom of that to prevent it from happening a second time?

Mr. GEORGE. It is a very fact-specific answer. If it is something that occurred outside of the workplace and is within local law authority jurisdiction, we have to be deferential to the separation of Federal and state —

Mr. ISSA. But I am talking about on the worksite, if somebody does something that would qualify for that, there is in most of the agencies a fairly rapid response where, for political leaning wrongdoing, it is less obvious. Is that a fair statement?

Mr. GEORGE. That is a fair statement. But again, for the administrative versus criminal, that is a distinction that has to be made. But that problem does exist within the IRS as you know.

Mr. ISSA. Ms. Olson, I am using those two examples because they do seem like they are both important and they both have to be

dealt with systematically. As an outsider looking in, what should we know?

Ms. OLSON. You know, I have thought a lot about my organization's role in that whole process. We had 19 cases come in over two-and-a-half years dealing with C4 issues out of a million cases, and it is really hard to see a pattern with that. But I have really thought that most of those taxpayers complained to their congressional offices, and we really need to rely on the congressional offices to raise to my office when you see those kinds of cases and those kinds of concerns, get them to us, because if they really are, then I can get them to the Inspector General, or we can delve into it just an employee who doesn't understand, is it leadership, what is it and where does it need to go, because 19 out of a million, I am not going to see a pattern. But if they come from a congressional office, that will help us. They will be better developed, and I may be able to get more than 19. That will at least be a protection going forward.

Mr. ISSA. Excellent. Thank you.

Yield back.

Mr. JORDAN. I thank the gentleman.

The gentle lady from New York is recognized.

Ms. MALONEY. Thank you, Mr. Chairman, and welcome to all the panelists.

First, Mr. Chairman, I would like to ask unanimous consent to place in the record a letter from EPIC.org to the Chairman of the committee, the Electronic Privacy Information Center.

Mr. JORDAN. Without objection.

Ms. MALONEY. Thank you.

My first question is to Inspector General George. Good to see you again. I know you used to work for the committee, and it is nice to see your presence here with us today.

For years the IRS has struggled to keep the information technology systems up to date and in line with industry standards. So my question to you is, how does aging IT threaten the IRS' ability to do its job?

Mr. GEORGE. This question was addressed slightly earlier in more detail, but I will give you from my perspective. Aging IT depends, of course, on the particular system you are referring to. So, for example, a laptop could be considered aged after three years. A mainframe, it could be five to ten years. And then, of course, you have the master file and the Kade, and as you are aware, because you have been involved in this issue for many years, they are still using software or language from the 1960s.

So it is a problem, especially if you try to adapt to a 21st century environment. The IRS had many grand plans for modernization to make it easier for taxpayers to identify their tax obligation and to comply with it. Unfortunately, because of budgetary constraints, they have had to make hard choices. Some of those again include whether to implement extenders, and now with the new tax law changes, the largest in 30 years, provide more customer service, people answering phones, or—and this is an area that really hasn't been touched upon, but going after people who owe money; in other words, doing examinations and audits. I mean, it is almost at a record low, and the IRS, hence the American taxpayers, the honest

taxpayers, are being harmed because the IRS has had to have made very tough decisions, which I don't necessarily fault them on because of the lack of resources.

Ms. MALONEY. Well, it really hurts IT workers because they are very much in demand and they are very well paid, and I can imagine that it is hard to recruit them, and you need them in order to modernize for the 21st century. One of the biggest sticking problems has been the IRS' inability to hire and retain experienced IT workers and professionals because of the pay gap.

I know from 1998 to 2013 the IRS was able to address this by hiring 40 individuals under what is known as the streamlined critical pay authority. So I would like to ask the Acting Commissioner, is it accurate to say that the IRS filled a total of 168 positions critical to this area of IT over the past 15 years by using this program? But I understand the program has expired and that you can no longer hire from this program, and what has that meant to the agency?

Mr. KAUTTER. You are exactly right, Congresswoman. The ability to hire and to streamline critical pay was enacted in 1998. Between then and 2017, I think the actual number is 171 people that have been hired under that program. We were authorized to hire 40 people at a time. The most we ever had was 30. The last person on that program left in September of 2017.

Under streamlined critical pay, which we have asked for for the last three years, we would be able to hire somebody in six weeks, which now takes six months, and we would be able to pay them competitively, which we cannot do at the moment. So our ability to deal with data analytics, cyber security and other critical technology needs is limited at the moment.

Ms. MALONEY. So right now that authority has expired, and you are calling for it to be re-implemented because this would help you address many of the issues that we are talking about today?

Mr. KAUTTER. Yes, ma'am. It is included in the President's budget.

Ms. MALONEY. It is included in his budget?

Mr. KAUTTER. It is in the budget.

Ms. MALONEY. Mr. George?

Mr. GEORGE. I would just add, though, there is a secondary hiring authority that is government-wide that can be used. The difference is the pay differential. Under the special authority that the IRS had, they could pay substantially more, up to the Vice President's salary, whereas under the existing program it is less, but it is rarely used in government, and I don't believe the IRS at this time has anyone at that rate.

Ms. MALONEY. But you say this authority is in the President's budget?

Mr. KAUTTER. It is.

Ms. MALONEY. But the funding is not in the President's budget. Is that the problem?

Mr. KAUTTER. It is included for the Fiscal Year 2019 budget. It was also in 2018, and it wasn't included in the final bill.

Ms. MALONEY. Okay. Well, my time has expired. Thank you.

Mr. JORDAN. Thank you.

The gentleman from Montana is recognized.

Mr. GIANFORTE. Thank you, Mr. Chairman, and thank you for letting me sit in today.

To the committee, being here on tax day, this is game day for the IRS.

Mr. KAUTTER. Yes, sir.

Mr. GIANFORTE. Ms. Olson, in your testimony you discuss metrics for customer service regarding taxpayer phone calls. Have those metrics been improving or getting worse over the last three years?

Ms. OLSON. It depends on what your metric is. If you are looking at the level of service on the phone, a percentage of calls that are answered, the calls from taxpayers who want to speak to a live human being on the main phone line, that has been improving. My observation has been that it has been improving at the expense of other phone lines, and the measure doesn't reflect a comprehensive measure of all the phone lines the IRS has.

The other thing that we did this year is that we did a survey of private sector, private industry customer service practices and the measures that they used, and based on our research, which we reported in our annual report, the most important measure that they used was first contact resolution rate. The IRS doesn't measure that. And when we did find some measures just from survey, in our survey we found that the vast majority of taxpayers did not have their issue resolved on the first point of contact.

Mr. GIANFORTE. Okay. Thank you, Ms. Olson.

Mr. Kautter, I know you are acting head for just five months, so you are just getting started, so I want to tell you a little story. Prior to being here, I built a technology business focused on customer service, and we had about 2,000 major corporations all over the world, including 170 Federal agencies that we work with. We handled about 8 million customer interactions a day on behalf of our clients, and our mission was really to help organizations instrument and improve customer service. That is what we did.

So I want to talk to you for part of my time here about how you are driving a culture of customer service within IRS. The first question: Who is in charge? Who on your executive team is responsible for customer experience?

Mr. KAUTTER. I think it is the Commissioner, frankly. It is me. Yes, sir.

Mr. GIANFORTE. So you have no one on your team whose sole focus is customer experience?

Mr. KAUTTER. In the executive team, we don't. That is a responsibility of everyone on the team.

Mr. GIANFORTE. That is fine. I would just encourage you to consider that.

If you had to name the top two or three customer service metrics that are important to the agency, what would they be?

Mr. KAUTTER. I think the first one would be the level of assistance in complying with the law, and I think it would be a broader measure than just phone response. In other words —

Mr. GIANFORTE. Do you think citizens are happiest if you are following the law?

Mr. KAUTTER. I think it is assisting citizens to comply with the law. So it is providing advice to taxpayers in a way that is meaningful to them.

Mr. GIANFORTE. Do you have a dashboard from this individual who is responsible for customer service that shows you how you are doing on the most important metrics? And how often do you review those metrics?

Mr. KAUTTER. I do not believe we have a dashboard at the moment.

Mr. GIANFORTE. Okay. Let me switch topics for a second. In your opening testimony, you said that 92 percent of taxpayers are filing online, and you also testified that the website is down today. So in a real sense, this is game day for the IRS, and it seems the IRS can't get out of the locker room. So my question for you is, on the biggest day of the year for the IRS, how did you prepare for game day, and why were those preparations deficient?

Mr. KAUTTER. Sure. So, we have—well, first of all, taxpayers can continue to prepare their returns and submit them to their electronic Turbotax, Intuit. They can continue. The challenge we have is between the transmission from the software providers—H&R Block, Intuit—to the IRS systems. So taxpayers will be unaffected at the moment. They can file, fill out the return, give it to their submitter. Then the challenge is the transmission, as I said, between that processor and the IRS.

We have backup systems that we are bringing up online, and I haven't had an update since we have been in the hearing, but hopefully we will have that issue resolved quickly.

Mr. GIANFORTE. Okay. I did get an update, and it says that the IRS direct payment system is down, which means people cannot pay the IRS currently. Clearly, we understand the significance of this. Generally, for most Americans, there is one day when they interact with the IRS. It is today. And the system, by your testimony, that 92 percent of Americans use is not available.

So with that, my time is up and I yield back.

Mr. JORDAN. I thank the gentleman.

Mr. George, has the IRS hired people who they previously fired?

Mr. GEORGE. Yes.

Mr. JORDAN. And in one instance there were specific instructions not to rehire this individual who they had previously fired. Is that accurate?

Mr. GEORGE. That is my understanding, yes.

Mr. JORDAN. And does the IRS give bonuses to their employees?

Mr. GEORGE. Yes, they do.

Mr. JORDAN. In 2016, wasn't there approximately 1,000 employees at the Internal Revenue Service who had trouble paying their taxes on time or had some kind of tax complication of their own who received a bonus?

Mr. GEORGE. That is correct.

Mr. JORDAN. And last year, isn't it true that there were approximately 2,000 employees at the IRS who got bonuses, and yet during the year they had some kind of disciplinary action against them?

Mr. GEORGE. Correct.

Mr. JORDAN. So, Commissioner, when you talk about the critical pay, the streamlined critical pay, you have to remember the background, and there is a reason why—I just went through a few of them—why the Congress is a little reluctant to give you this ability

to hire whomever you want and pay them just about whatever you want in light of what we just went through with Mr. George.

Mr. KAUTTER. I agree. I mean, it is indefensible to be in the position that the IRS has been in. Back in 2014, Mr. George's organization made a series of recommendations, all of which we implemented. We stopped about 80 percent of the payments that would have gone to people who had performance problems. We didn't stop 100 percent.

In February, Mr. George's organization made three more recommendations, which we have implemented. But it is indefensible for those types of payments to be made. It shouldn't be.

Mr. JORDAN. Again, I appreciate that, and I appreciate the fact that you as the interim commissioner understand how the American taxpayer looks at this, 2,000 employees with disciplinary actions getting a bonus of their hard-earned tax money, 1,000 employees who can't file their taxes right getting a bonus when they are in the business of collecting tax money from the American taxpayer. And then for you to ask for, oh, by the way, we have to have this streamlined critical pay ability to pay folks way above the Federal pay scale which, frankly, a lot of Americans think is too high already, that is just tough, and I don't know that you are going to find a receptive audience, at least with Republicans, on that issue. We will look at it.

Now, we talked earlier with Mr. Hice—and I know he wants to come back to it—about the employer mandate. So, Obamacare is passed in 2010. It starts to be implemented in 2013, but the employer mandate for small businesses was not implemented, was not enforced until just the end of last year. Is that right?

Mr. KAUTTER. Yes, sir.

Mr. JORDAN. So what happened at just the end of last year where suddenly it was, shazam, we have to enforce it now? Mr. Koskinen has one foot out the door, and all of a sudden the last thing he does before he officially leaves as the commissioner is say we are going to now enforce something that we haven't since the law passed seven years prior, and we haven't since it has been in effect, in essence, since 2013, but suddenly we are going to do it.

Mr. KAUTTER. Sure. So, let me give you the chronology as I understand it. The employer mandate was deferred until taxable year 2015. The information returns required in 2015 were due June of 2016. When the IRS got that data, there were about 330 applicable large employers who could be subject to the penalty. So June of 2016 IRS has the data to determine who has provided coverage and who hasn't. It was not ready, frankly, to process those effectively. It took about 15 months for it to determine that the population of employers likely to owe the mandate is about 33,000. So it started to send those notices.

So June of 2016, they have the information. It takes them about 15 months to process it. November, before I get to the IRS, the notices go out. At this point about 10,000 notices have gone out. The potential population is about 33,000 employers who have said they haven't provided coverage. The notices are based on the data that was submitted by the employers in 2016. Of the 10,000 letters that have gone out, about 3,000 cases have been settled, and of those 3,000, as I mentioned earlier, 82 percent—so we sent letters out

saying it looks like this amount is owed in those 3,000 cases that we settled. Eighty-two percent of those, the employer owed nothing. In part, the forms had been filled out incorrectly.

So, as I said, we have gotten two responses in general in the cases where we talked to taxpayers. One is we filled out the paperwork incorrectly or a third-party processor filled it out incorrectly, and the other 18 percent has been pretty much we knew we didn't provide coverage, we knew we owed the penalty, and we were waiting to find out how much it was because we can't determine it on our own.

Mr. JORDAN. I will go to the gentleman from Georgia for some follow-up.

Mr. HICE. Thank you, Mr. Chairman.

I do want to continue down this line of thought, and I regret that the gentleman from Virginia was not able to follow my reasoning and thought with this. I am in no way asking you or anyone else not to abide by the law, but the fact is the law has not been followed, has not been enforced for eight years, requiring the employer mandate, and then all of a sudden it is, by your own sworn testimony, without any notification, it is implemented and businesses are facing penalties without any notification that it is now being implemented.

So, it is wrong. It is wrong yesterday, it is wrong today, it will be wrong tomorrow for us basically to communicate that this law is not going to be enforceable, and then all of a sudden start penalizing them for not being in compliance. That is the point. And for that reason we ought to continue not enforcing it until we get our act together here, until these employers are notified that this is going to be enforced.

What are the total number of companies not in compliance? What is the universe?

Mr. KAUTTER. Our estimate for 2015 is about 33,000.

Mr. HICE. All right, 33,000, which I find very difficult to believe, to be very honest with you. Do you know how many businesses there are in America that employ over 50 people?

Mr. KAUTTER. I believe it is about 330,000, 340,000.

Mr. HICE. Okay. By my rough estimates, and this is by 2010, the 2010 Census, there are almost 28 million businesses, small businesses, that employ less than 50 people. The Treasury says that 96 percent are less than 50 people. That means 4 percent are 50 people or more. That is over a million, over a million companies that employ over 50 people.

Now, you say 33,000 are not in compliance. Am I supposed to believe, then, that we have a law that we say is not going to be enforced, and yet only 33,000 out of a million are not in compliance? So you have almost a million companies out there complying with the law that they are told they don't need to comply with. It doesn't add up.

Mr. KAUTTER. I will go back and check our numbers, Congressman.

Mr. HICE. But it doesn't add up, any number that it is. You say 500,000. Whatever number it is, are we really to believe that these companies are complying with a law that they have already been

told they don't need to comply with because it is not going to be enforced?

Mr. KAUTTER. From the data that I have seen, the vast majority of companies do provide health care coverage for their employees. So the 330,000 is the number of applicable large employers that are not providing the coverage.

Mr. HICE. The numbers don't add up to me, and I want to get to the bottom of all of this because how in the world do you pick 10,000 out of a million, even if your own statements right here are correct, that 33,000 are not in compliance, but we are only reaching out to 10,000 of those? How do we determine which 10,000 or whatever number it may be that we are going to pick on?

Mr. KAUTTER. First we have looked at those employers who clearly state they do not provide coverage. So we started with them, with a group of those, and we are continuing to send out letters periodically.

Mr. HICE. And so we start with them and say you are now under penalty for not complying with a law that we said you didn't have to comply with yet because it is not going to be enforced. I mean, that whole concept is wrong.

Mr. KAUTTER. Congressman, the letter is not an assessment. The letter says based on the data that we have in front of us, it looks like you owe this amount. And then there is a discussion, and as I have said, in 82 percent of these 3,000 cases that we settled it has been agreed that the employer didn't owe anything.

Mr. HICE. I understand that. Here is part of my problem with all this, and it is just part of the problem. Under Commissioner Koskinen, we know that there was targeting of certain groups and individuals. The last thing Koskinen does when he leaves is instate a law that has previously been not enforced. How do we know that this 10,000 is not still targeting certain groups? We have a million companies out here, and we are supposed to believe that they have all been complying with something that has been communicated is not going to be enforced? The numbers don't add up, and then all of a sudden we have 10,000 of them that we are penalizing.

I want to know, how do you pick these? I hear what you are saying, but the whole thing just smells fishy. I think we need a backup and make sure we know what we are doing before we start imposing penalties on companies that have been communicated just the opposite.

Mr. KAUTTER. I think that is fair, Congressman, and let me get more detail to you.

Mr. HICE. Thank you, and I yield back.

Mr. JORDAN. I thank the gentleman.

Commissioner, we sent you a letter a week-and-a-half ago that goes right to what the gentleman from Georgia was asking about. I believe we are still waiting for you guys to respond. So the documents and the responses we requested will go a long way, I think, into clearing up the very real concerns that the gentleman has.

Let me just ask, do you anticipate us getting the response and the documents sometime soon?

Mr. KAUTTER. We do. We had a good conversation with the staff yesterday, and I think we can get most of the information you requested to you pretty quickly.

Mr. JORDAN. That would be important. Thank you.

The gentleman from North Carolina is recognized.

Mr. MEADOWS. Mr. Kautter, let me come back to the customer service side of things, because the gentleman from Montana was asking you some unique questions, and when you answered the way you did it gave me a real concern, mainly because I have been to the IRS and talked to some of your employees. I found the vast majority, in fact, the overwhelming majority of them want to just serve this country and do their job.

And yet, if we are not placing importance on customer service, you will continue to get bad customer service, and it is partly because of the system that we created that creates bad customer service. I didn't see anybody sitting back eating bon-bons when I was there. I mean, they were actually working.

So in doing that, how can you expect good customer service if you don't have a senior-level person with the responsibility of the customer experience, like the gentleman from Montana outlined?

Mr. KAUTTER. I think his point is an excellent point.

Mr. MEADOWS. So here is my request of you. If you would take some of your senior officials and you require them to call into the same phone center that we have to call into, make it mandatory. The punishment of having them do that alone would require them to do things differently, I promise you. Let me just tell you, you have no idea what it is like to call in and get the type of—I have often said, in the private sector, if CEOs would only go into their own phone system, they would change it immediately because there are certain companies—and I won't name them in this public forum—that I don't do business with just because I can't get to anybody.

I would say that the IRS, it is a systemic problem. Ms. Olson would agree with that. I have talked with her a number of times on that.

So why don't we do that? Would you agree in this particular venue to take your top 10 senior officials and make them call in at random during the random hours for the customer service experience, and then report back to Congress in 90 days on what they found?

Mr. KAUTTER. I will do that, Congressman. I will tell you, I was a tax practitioner for 40 years and, believe it or not, the telephone service today is remarkably better than it had been, which is not to say it is where it should be, and I think it has to start at the top. I think it has to start with a commissioner who emphasizes taxpayer service. And as I tried to emphasize in my oral statement

Mr. MEADOWS. You did.

Mr. KAUTTER.—it has to be infused in everything this agency does.

Mr. MEADOWS. All right. Let me go to the issue that the gentlemen from Ohio and Georgia have mentioned, on the mandate and the enforcement. Do you enforce every single law that you have with the same priorities?

Mr. KAUTTER. I would hope so. I mean, I would hope that we implement everything within the Internal Revenue Code.

Mr. MEADOWS. Well, maybe since this is your first hearing, I will give you a swing and a miss on that particular answer.

Does the IRS—let me ask it a different way—put a different priority on who they go after, on who they audit? Is there a matrix which is going after those who they think might be the problem?

Mr. KAUTTER. Sure. The taxpaying population is segmented with respect to a selection for audit. So, for example, for individuals, the likelihood of being audited for someone who makes more than \$1 million —

Mr. MEADOWS. But you have criteria is my point.

Mr. KAUTTER. Oh, yes, very detailed.

Mr. MEADOWS. So in your testimony a few minutes ago, what was really troubling is it sounded like you were going after the people that were honest with you and said we didn't provide it, and the other 23,000 you didn't.

Mr. KAUTTER. No, that is not —

Mr. MEADOWS. That is what it sounded like.

Mr. KAUTTER. No. Then I am sorry. I did not properly convey. The plan is to approach all 33,000 —

Mr. MEADOWS. But you went after the 10,000 that admitted they were not providing it first, because they were the most honest with you. So you went after the first 10,000 that said, hey, by the way, we didn't provide it.

Mr. KAUTTER. We went after those who were clearly in violation of the law.

Mr. MEADOWS. By their own admission.

Mr. KAUTTER. By their own admission.

Mr. MEADOWS. But that is my whole point. So the 23,000 that make it more difficult for you, they are getting a little bit of delayed action.

Mr. KAUTTER. Not much, but yes, sir, a little bit.

Mr. MEADOWS. Okay. So the ones who admitted that they hadn't—and here is the interesting point that both the gentlemen have been making. The IRS did not have their act together as it related to this particular implementation of this particular law. Is that correct?

Mr. KAUTTER. That is correct.

Mr. MEADOWS. So inaction and inability on the part of IRS creates a crisis for the taxpayer. Do you see that as fair?

Mr. KAUTTER. I don't think it is fair for taxpayers to be disadvantaged when the IRS can't function properly. I just do not think that is fair.

Mr. MEADOWS. So this is a question of fairness, to me. We start to look at this, we have 10,000 people who say we didn't do it, we wanted to comply. By the way, we didn't provide the insurance, so they are the ones who won't complain to Ms. Olson. It is the other 23,000 that will. So when we look at that, are they getting treated differently because they admitted that they didn't do it, versus the ones who did?

Mr. KAUTTER. By the time the process is completed, all 33,000 —

Mr. MEADOWS. That is not the question I asked. Are they getting treated differently? Did you send out the same demand letters to all 33,000?

Mr. KAUTTER. All 33,000 will get the same letter. It is just a matter of timing.

Mr. MEADOWS. You are answering a good question that I didn't ask. Did you send out the same response to all 33,000 at the same time?

Mr. KAUTTER. We did not send 33,000 out on the same day.

Mr. MEADOWS. So people are getting treated differently.

Mr. KAUTTER. In that sense, yes, sir.

Mr. MEADOWS. Okay. Here is what I would ask you to do, because you seem like a fair guy. I would ask you to re-look at this with some of your senior officials and work with the National Taxpayer Advocacy group, with Ms. Olson's group, because we are creating a situation that individual taxpayers are getting treated differently based on their response. But we are also creating a situation where ultimately, because of our inability to implement a law, that they are getting perhaps penalties that they wouldn't normally get because of our inability for 15 months, according to your sworn testimony, that we didn't have our act together.

It is bad enough when we have a law that is clear and it gets implemented that we go after people, but it is really bad when it is not clear and we are holding them accountable. Can you re-look at that for this committee?

Mr. KAUTTER. Yes, sir.

Mr. MEADOWS. All right. I yield back.

Mr. JORDAN. I thank the gentleman.

The gentleman from Wisconsin is recognized.

Mr. GROTHMAN. No, thank you, Mr. Chairman.

Mr. JORDAN. Okay. Well, I will do a couple of quick things. All right. I appreciate that.

Commissioner, the Office of Personnel Management has indicated that there are approximately a quarter of a million Federal employees whose salaries are now redacted, compared to 3,400 that were in the previous year. A number of those redactions are IRS employees. Now taxpayers can't see what some people are actually making.

Do you know what the number is of IRS employees who fall into that category?

Mr. KAUTTER. I do not. Sorry. I just became aware of the issue yesterday, so I just don't. I can get back to the committee on that.

Mr. JORDAN. Okay. We would appreciate knowing the number of folks there.

Let me do one other quick thing. There was a Memorandum of Understanding that the IRS was exempt from the typical OIRA rulemaking process. My understanding is that that is no longer in existence as of just a few weeks ago. Is that accurate?

Mr. KAUTTER. That is correct. Last week we reached agreement, Treasury Department reached agreement with OMB on a new Memorandum of Understanding which I think strikes a pretty good balance between greater OMB review of regulations that might impose a burden on the American public while letting Treasury get regulations out in a timely fashion. It was a very thoughtfully negotiated agreement, and I think it is going to be pretty effective.

Mr. JORDAN. Okay. Well, we appreciate that step, what I would consider a step in the right direction. It is my understanding,

though, that the IRS still, most of the regulations you view as interpretive versus actually rulemaking requirements, and therefore still a bunch of what you do doesn't go through the typical rule-making authority.

I see Ms. Olson nodding her head.

So I would hope we can improve that as we go forward, as well.

Mr. KAUTTER. Sure. What the Office of Management and Budget typically reviews are regulations. Regulations have the force and effect of law once finalized. So OMB has looked at those for decades. There is a lot of what is called sub-regulatory guidance that is issued by the Internal Revenue Service, which are expressions of the IRS view of the law. So fact sheets, frequently asked questions, revenue rulings, and those are not typically subject to review by the Office of Management and Budget, and they were specifically considered as part of this negotiation.

Mr. JORDAN. Right, but you can obviously see the problem. If you as the agency get to define what you believe is interpretive and guidance and don't have to follow the rules even though you got rid of the Memorandum of Understanding which exempted you from all of them in the first place, but now you are not, it is basically the same difference.

Mr. KAUTTER. Yes, sir. That is not our intent.

Mr. JORDAN. Okay.

The gentleman from North Carolina.

Mr. MEADOWS. So, Mr. Kautter, can you give us a copy of this new MOU?

Mr. KAUTTER. Yes, sir.

Mr. MEADOWS. All right. If you will do that.

The gentleman from Ohio's point is this. I know the IRS has had a unique—I want to thank you for working with OMB to look at a more transparent regulatory process. If your, as you called it—what was it, sub-regulation?

Mr. KAUTTER. Sub-regulatory guidance.

Mr. MEADOWS. That is a unique one for the IRS. Normally they call it guidance in other areas. But if it has the function of law—i.e., somebody is going to get audited and a penalty would be attached to that—then it would still come under the review process. Is that your —

Mr. KAUTTER. Yes, sir. That is correct.

Mr. MEADOWS. All right. I yield back. I thank the gentleman.

Mr. JORDAN. I thank the gentleman. We look forward to getting that memorandum.

I would just say, Mr. Commissioner, you have a tough job. God bless you for taking it on, even for whatever length of time, until Mr. Rettig is confirmed. But when you have an agency that has rehired people they were specifically told not to rehire, it is giving bonuses to people who haven't actually paid their taxes, giving bonuses to people who have been disciplined, I just think you have a tough job, particularly in light of what we just witnessed with the previous Commissioner and what took place at the IRS over the last several years and the whole targeting scandal. But I feel like I have the confidence that you are going to do it right and get us the information we need in a timely fashion.

I want to thank all of you for the work you do, Ms. Olson, Mr. George, for the numerous times you have appeared before this committee with important information for the American taxpayer. And, Commissioner, thank you for being with us today.

And with that, we are adjourned.

[Whereupon, at 11:58 a.m., the subcommittees were adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD



Oversight & Government Reform Hearing
Continued Oversight over the Internal Revenue Service

Tuesday, April 17, 2018

STATEMENT & QUESTIONS

For years, the American public has been subject to the abusive practices of the IRS. The IRS has misled Congress and failed the American taxpayer. The IRS institutes burdensome mandates on the American people, but fails to hold itself to the same standards. Multiple Oversight hearings have shown that the IRS has a history of not playing by its own rules and failing to maintain required records. That's why today, I am reintroducing the Ditto Act.

Under this bill, every time the IRS obtains a record from someone who kept a record because of IRS guidance, the IRS must maintain that record for at least 3 years. The Ditto Act prevent another "accident" where the IRS improperly deletes information and does not maintain records.

This bill provides a level playing field. It tells the American taxpayer that its government is operating under the same set of rules as the American people.

- Acting Commissioner Kautter, do you believe the IRS should be held to the same record-keeping requirements as the American people?
- Has the IRS begun to remediate its inability to properly maintain records?

The passage of the Tax Cuts and Jobs Act helps us turn on the engines of economic growth in our communities, stop the government from overtaxing North Carolinians to prop up failed economic policies, and frees people from Obamacare's erroneous individual mandate tax that punishes lower and middle income families for not buying health insurance they don't want or cannot afford.

While the repeal takes effect next year, the Trump administration is working to remove the harmful effects of the individual mandate today. Last Monday, the administration announced that those who live in counties with no insurer or only one choice will be able to apply for a hardship exemption from the mandate. This applies to citizens in 95



of 100 North Carolina with just once Obamacare insurer. I commend the Trump administration for broadening the exemptions from the individual mandate.

- Mr. Kautter, does the IRS plan to collect penalties related to the individual mandate for the 2017 filing period?
- Would the same be true for the 2018 filing period?

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April 17, 2018

The Honorable Trey Gowdy, Chairman
The Honorable Elijah Cummings, Ranking Member
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

RE: "Continued Oversight Over the Internal Revenue Service" April 17, 2018 Hearing

Dear Chairman Gowdy and Ranking Member Cummings:

We write to you regarding the hearing on "Continued Oversight Over the Internal Revenue Service"¹ to bring your attention to *EPIC v. IRS*, a Freedom of Information Act case to obtain the tax records of President Trump.²

As you are aware, candidates for the Presidency have routinely released tax record information to the American public. Mr. Trump broke with that tradition even though he pledged to make this information publicly available. That fact combined with legitimate questions about the President's financial relations with a foreign government that sought to influence the outcome of the 2016 Presidential election provided the basis for EPIC's FOIA case to the IRS.³

On April 15, 2017, EPIC filed a Freedom of Information Act lawsuit against the IRS to enable the public release of President Trump's tax records.⁴ As EPIC stated in the original FOIA request to the agency:

¹ *Continued Oversight Over the Internal Revenue Service: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 115th Cong. (2018), <https://oversight.house.gov/hearing/continued-oversight-over-the-internal-revenue-service/> (April 17, 2018).

² *EPIC v. IRS*, No. 17-5225 (D.C. Cir. appeal docketed Oct. 4, 2017).

³ The Electronic Privacy Information Center ("EPIC") is a nonpartisan research center established in 1994 to focus public attention on emerging privacy and civil liberties issues. EPIC, *About EPIC*, <https://epic.org/epic/about.html>. EPIC is also a leading advocate for civil liberties and democratic values in the information age. In response to the finding of the Intelligence Community that the Russian government interfered with the 2016 Presidential election, EPIC launched a new project on Democracy and Cybersecurity. EPIC, *Democracy and Cybersecurity*, <https://epic.org/democracy/>.

⁴ Press Release, EPIC, *EPIC v. IRS: A Freedom of Information Act Lawsuit to Obtain the Tax Returns of Donald J. Trump* (Apr. 15, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-v-IRS-Press-Release-Apr-2017.pdf>; *EPIC v. IRS*, 261 F. Supp. 3d (D.D.C. 2017).

EPIC Statement
House Oversight Committee

1

EPIC v. IRS
April 17, 2018

Privacy is a Fundamental Right.

At no time in American history has a stronger claim been presented to the IRS for the public release of tax records to “correct misstatements of fact.”⁵ If the Freedom of Information Act means anything, it means that the American public has the right to know whether records exist in a federal agency which reveal that the U.S. President has financial dealings with a foreign adversary.⁶

There is a key provision in the Internal Revenue Code that permits the release of tax records in certain circumstances to correct misstatements of fact. This provision, 26 U.S.C. § 6103(k)(3), was enacted to ensure the “integrity and fairness [of the IRS] in administering the tax laws” in the aftermath of the Watergate scandal and related misuses of tax information by the Nixon White House.⁷ It allows the IRS to release tax records “with respect to any specific taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact.”⁸ Former IRS Commissioner Margaret Milner Richardson stated that § 6103(k)(3) “permits the IRS to disclose tax return information to correct misstatements of fact without a waiver from the taxpayer.”⁹ In other words: the IRS does not need a waiver from President Trump to release his tax returns.

The IRS has used this disclosure power before. In 2000, the IRS used its § 6103(k)(3) authority to make ten separate disclosures of tax information.¹⁰ Indeed, as Senator Grassley has observed, § 6103(k)(3) dictates that certain “type[s] of factual misstatements should trigger disclosure of return information” depending on the “consequences of these misstatements” and “their degree of seriousness.”¹¹

There has never been a more compelling request presented to the IRS than the request from EPIC to obtain the tax records of President Donald J. Trump. Many individuals, including the President, have published conflicting statements of fact about the contents of Donald J. Trump’s tax returns and the extent of his business dealings with the Russian government. Following the election, President Trump tweeted on January 11, 2017: “Russia has never tried to use leverage over me. I HAVE NOTHING TO DO WITH RUSSIA - NO DEALS, NO LOANS, NO NOTHING!”¹² However, family members, public figures, and news organizations have squarely disputed the President’s denials of Russian financial ties, including Donald Trump, Jr., Eric Trump, Sen. Chris Murphy, The New York Times, The Washington Post, and CBS News.

The IRS has the authority to release the President’s tax returns with the approval of the Joint Committee on Taxation. We urge the House Oversight Committee to support this release. The public

⁵ 26 U.S.C. § 6103(k)(3).

⁶ FOIA Request from EPIC to IRS (Feb. 16, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-17-02-16-IRS-FOIA-20170216-Request.pdf>.

⁷ *Confidentiality of Tax Return Information: Hearing Before the Comm. on Ways and Means, 94th Cong. 22–23 (1976)* (statement of Donald C. Alexander, Commissioner of Internal Revenue).

⁸ 26 U.S.C. § 6103(k)(3).

⁹ *Final Remarks by Margaret Milner Richardson, Commissioner of Internal Revenue*, Fed. B.A. Sec. Tax’n Rep., Spring 1997, at 6, 9.

¹⁰ Internal Revenue Serv., *Disclosure Report for Public Inspection Pursuant to Internal Revenue Code Section 6103(p)(3)(C) for Calendar Year 2000* at 3 (2001).

¹¹ 127 Cong. Rec. 22,510 (1981).

¹² *EPIC v. IRS*, 261 F. Supp. 3d 1, 4 (D.D.C. 2017).

has a right to review the tax returns of President Trump and to know about the extent of Russian interference with the 2016 Presidential election.

We ask that this statement be entered in the hearing record. EPIC looks forward to working with the Committee on these issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

/s/ John Davisson

John Davisson
EPIC Counsel

/s/ Christine Bannan

Christine Bannan
EPIC Policy Fellow

**Questions for the Record for Mr. J. Russell George
Treasury Inspector General for Tax Administration**

**Submitted by Rep. Glenn Grothman
House Committee on Oversight and Government Reform**

You testified that some years ago your office gauged the accuracy of information provided by customer service representatives at the IRS and that it was determined more than fifty or sixty percent of the information or the answers provided was incorrect.

1. What is the current rate at which questions posted to IRS Customer Service Representatives by taxpayers are answered either correctly or incorrectly?

Answer:

The IRS reported the following for Fiscal Year 2017:

- *Customer Accuracy – Tax Law was 96.7 percent. This measure reflects the percentage of correct answers given by a live assistor on toll-free tax law inquiries.*
- *Customer Accuracy – Accounts was 96 percent. This measure reflects the percentage of correct answers given by a live assistor on toll-free account inquiries.*

We are reviewing the methodology used by the IRS to calculate these rates as part of our review of the IRS's Telephone Performance Measures and expect to issue a final report in November 2018.

Hearing Get-Backs
Mr. David Kautter
Assistant Secretary for Tax Policy, Department of the Treasury
Acting Commissioner, Internal Revenue Service

House Committee on Oversight and Government Reform
Joint Subcommittee Hearing on "Continued Oversight Over the Internal Revenue
Service"
April 17, 2018

1. **Rep. Meadows** raised the issue of false positives with respect to refund fraud, and noted that there is about a 60% rate with respect to false positives. He then asked **Acting Commissioner Kautter** to report back to the Committee in 90 days to detail the IRS plans to reduce the false positive rate to under 50%.

Response:

Rep. Meadows included this question in the May 10, 2018, Questions for the Record for this hearing. This question is being addressed with the other Questions for the Record response.

2. **Rep. Lawrence** asked if the IRS is planning specific outreach and assistance to "vulnerable groups" (e.g., working mothers, low-income women, etc.) to better assist them in the next tax season, and specifically with the new tax law.

Response:

This year, the IRS is undertaking a major outreach and communications effort focused on the new provisions in the Tax Cuts and Jobs Act in advance of the 2019 filing season. This initiative includes our effort to reach out to the underrepresented groups. Work has already started on a number of areas, including working to educate taxpayers about withholding changes and encouraging taxpayers to review their withholding through the Paycheck Checkup campaign. Our formal agency communications and outreach plan is under development and will reflect the latest legal guidance being developed on key provisions. The plan is being developed by a cross-functional IRS team, which includes members from the Taxpayer Advocate Service. The plan will be available to the public this summer. We will be happy to share the plan with you when it is finalized.

3. **Rep. Meadows** asked **Acting Commissioner Kautter** to double check a statement he made in his testimony, that "the average hold time for a call this busy filing season was less than six minutes" and to get back to the Committee after verifying the accuracy of this statement.

Response:

Rep. Meadows included this question in the May 10, 2018, Questions for the Record for this hearing. This question is being addressed with the other Questions for the Record response.

4. Rep. Hice noted that there are over 1 million companies in the U.S. that have 50+ employees, and then asked the **Acting Commissioner** if the IRS really found that only 33,000 of those employers owe the employer shared responsibility payment.

Response:

In July 2017, based on self-reporting by employers, IRS identified a total of 332,760 Applicable Large Employers (ALEs) for Tax Year 2015. ALEs that self-reported that they either met Section 4980H transition relief for tax year 2015 for ALEs with fewer than 100 full-time employees and/or had no assessable employees were excluded from the population of employers potentially liable for an employer shared responsibility payment (ESRP).

The Treasury Inspector General for Tax Administration (TIGTA) in a report dated March 21, 2018, identified 33,000 ALEs that were potentially liable for a Tax Year 2015 ESRP. At the time of the TIGTA audit, the IRS had identified over 32,000 ALEs that were potentially liable for an ESRP. Since the TIGTA audit was completed, we have identified an inventory of about 50,000 ALEs that are potentially liable for a Tax Year 2015 ESRP.

5. Rep. Hice expressed concern that of the 33,000 employers IRS found to owe the employer shared responsibility payment, IRS has sent letters to a select 10,000 of them. He then asked the **Acting Commissioner** how the IRS picked those 10,000 employers to receive letters, and mentioned "IRS targeting" from past years.

Response:

IRS is sending Letters 226-J based on the classification of cases as either: section 4980H(a), section 4980(b), or combined section 4980(a) and (b) as explained below. First, we are sending Letters 226-J to all section 4980H(a) cases, that is to all employers that failed to offer at least 70% of their full-time employees/dependents minimum essential coverage and at least one full-time employee received a premium tax credit. Second, with respect to Section 4980H(b) employers, IRS is sending letters to all employers above a certain threshold and to a random sample below the threshold. Section 4980H(b) cases involve employers that offered coverage to at least 70% of their full-time employees and dependents but at least one full-time employee received a premium tax credit. Third, with regard to Section 4980H(a) and 4980(b) cases, IRS is sending letters to all employers above a certain threshold and to a random sample below the threshold. Employers within this category failed Sections 4980H(a) and 4980H(b) for different months of the year.

6. Rep. Jordan asked when the committee will receive a response and related documents to a letter sent a week and a half ago regarding **Rep. Hice's** concerns about IRS's enforcement of the employer shared responsibility payment and findings that certain employers owe penalties.

Response:

IRS plans to send an interim response and supplement it when all of the requested data is obtained. We expect the response to be sent by early July, 2018.

7. Rep. Meadows asked the **Acting Commissioner** if he agrees to require his top 10 senior IRS officials to call-in to the main IRS toll-free service line, and then report back to the Committee in 90 days as to what those officials found and what their customer service experience was.

Response:

Rep. Meadows included this question in the May 10, 2018, Questions for the Record for this hearing. This question is being addressed with the other Questions for the Record response.

8. Rep. Meadows noted the IRS's findings that 33,000 employers owe the employer shared responsibility payment, and how the IRS has sent letters to 10,000 of such employers. He then expressed concern that the IRS may be treating taxpayers who are similarly situated, differently, with regard to penalties and the employer shared responsibility payment. **Rep. Meadows** then asked **Acting Commissioner Kautter** to revisit this issue and work with the **National Taxpayer Advocate** to ensure all taxpayers are being treated equally.

Response:

We continue working with the National Taxpayer Advocate and are making progress on this issue.

We select cases to work based on available resources to timely work the cases. We stagger the mailing of the Letters 226-J to ensure that the IRS employees assigned to this program can timely review employers' responses and promptly advise the employers of the outcome of their cases. We are sending Letters 226-J based on the classification of cases as either: section 4980H(a), section 4980(b), or combined section 4980(a) and (b) as explained below. First, we are sending Letters 226-J to all section 4980H(a) cases, that is to all employers that failed to offer at least 70% of their full-time employees/dependents minimum essential coverage and at least one full-time employee received a premium tax credit. Second, with respect to Section 4980H(b) employers, IRS is sending letters to all employers above a certain threshold and to a random sample below the threshold. Section 4980H(b) employers involve employers that offered coverage to at least 70% of their full-time employees and dependents but at least one full-time employee received a premium tax credit. Third, with regard to Section 4980H(a) and 4980(b) cases, IRS is sending letters to all employers above a certain threshold and to a random sample below the threshold. Employers within this category failed Sections 4980H(a) and 4980H(b) for different months of the year.

9. Rep. Jordan noted that OPM recently indicated about ¼ million federal employees – a number of which are apparently IRS employees – have had their salaries redacted (compared to 3,400 in the previous year), so that taxpayers can no longer see what those employees are actually making. He then asked **Acting Commissioner Kautter** how many IRS employees fall into this category of federal employees whose salaries were redacted.

Response:

Rep. Jordan included this question in the May 10, 2018, Questions for the Record for this hearing. The question is being addressed with the other Questions for the Record response.

10. Rep. Meadows asked for a copy of the new memorandum of understanding with OMB that exempts certain IRS sub-regulatory guidance from the standard OIRA rulemaking process.

Response:

Submitted to the Committee on April 17, 2018.

**Questions for the Record for Ms. Nina Olson
National Taxpayer Advocate, Taxpayer Advocate Service**

**Submitted by Rep. Jim Jordan
Chairman, Subcommittee on Healthcare, Benefits, and Administrative Rules
House Committee on Oversight and Government Reform**

As part of your 2017 annual report to Congress, the "Purple Book" compilation of legislative recommendations, you described a need to clarify the authority of the National Taxpayer Advocate to make personnel decisions.¹ Specifically, your concerns were in relation to the independence of the Taxpayer Advocate Services (TAS) and your ability to make certain decisions regarding your employees.

Question:

What does Congress need to do in order to give you this authority and how will it assist in the execution of the TAS's vital mission?

Response:

As part of the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress created the position of National Taxpayer Advocate and the Office of the Taxpayer Advocate (also known as the Taxpayer Advocate Service). In doing so, it aimed to provide the National Taxpayer Advocate with sufficient independence to enable her and TAS employees to advocate forcefully for the protection of taxpayer rights, even when doing so puts them into conflict with the agency's position. The personnel provisions in RRA 98 were central to providing this independence; Congress and the National Commission on Restructuring the Internal Revenue Service had heard testimony from witnesses who described the retaliation that occurred when employees of TAS's predecessor function had advocated on behalf of taxpayers.

In the Purple Book, I made two legislative recommendations that I believe are important for purposes of strengthening the independence of the Office of the Taxpayer Advocate regarding personnel: (i) clarify that the National Taxpayer Advocate has the authority to make personnel decisions with respect to *all* employees of the Office of the Taxpayer Advocate and (ii) clarify that the National Taxpayer Advocate may hire attorney-advisors for attorney positions. I believe Congress intended to do both things when it enacted RRA 98, but as I'll describe below, a drafting glitch and a Treasury Department policy have created obstacles.

¹ National Taxpayer Advocate, Purple Book: Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration (2017), https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-ARC/ARC17_PurpleBook.pdf

1. Clarify the Authority of the National Taxpayer Advocate to Make Personnel Decisions with Respect to All Employees of the Office of the Taxpayer Advocate.²

RRA 98 granted the National Taxpayer Advocate the authority to make independent personnel decisions. Because of a drafting glitch, however, the statute and the accompanying conference committee report provided inconsistent descriptions of the scope of that authority. The RRA 98 conference report said the National Taxpayer Advocate "has the responsibility to evaluate and take personnel actions (including dismissal) with respect to any local Taxpayer Advocate or any employee in the Office of the Taxpayer Advocate." (Emphasis added.) However, the underlying statute was more limited, providing that the National Taxpayer Advocate has the responsibility to "evaluate and take personnel actions (including dismissal) with respect to any employee of any local office."³

Because a statute takes precedence over inconsistent committee report language, the result is that the National Taxpayer Advocate has independent personnel authority over TAS employees of local offices but does not have independent personnel authority over other TAS employees. I see no principled basis for this distinction. Employees in TAS's Systemic Advocacy function and National Office functions often engage with the IRS when negotiating over difficult issues or cases. To ensure these employees can advocate for taxpayer interests independently and without concern about possible retaliation, they require protection from IRS control to the same extent as employees in the local offices.

Yet under current procedures, the National Taxpayer Advocate must obtain IRS approval to take personnel actions relative to these employees. This requirement undermines TAS's independence, as it puts many TAS employees under the control of the IRS for critical issues such as staffing, hiring, evaluations, bonuses, promotions, and disciplinary actions. To better ensure these employees will act independently and without fear of repercussions if they advocate "too zealously," I recommend that Congress modify the statutory language of IRC §7803(c)(2)(D) to conform to the conference committee language.

2. Clarify that the National Taxpayer Advocate May Hire Attorney-Advisors.⁴

The hiring of attorney-advisors also relates to the National Taxpayer Advocate's authority to maintain independent staff. The RRA 98 conference report stated that "the conferees intend that the National Taxpayer Advocate be able to hire and consult

² National Taxpayer Advocate Purple Book Recommendation #47: *Clarify the Authority of the National Taxpayer Advocate to Make Personnel Decisions to Protect the Independence of the Office of the Taxpayer Advocate.*

³ IRC § 7803(c)(2)(D).

⁴ National Taxpayer Advocate Purple Book Recommendation #43: *Clarify That the National Taxpayer Advocate May Hire Legal Counsel.*

counsel as appropriate.” As discussed below, the IRS permitted the National Taxpayer Advocate to hire attorneys until 2015, but that authority has been restricted because of a Treasury Department General Counsel's directive.

After the enactment of RRA 98, the IRS Office of Chief Counsel (OCC) established the position of “Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program)” to manage and coordinate OCC's legal advice for the National Taxpayer Advocate. However, that individual reports to, and her performance is evaluated by, the IRS Chief Counsel. IRC § 7803(b) provides that the IRS Chief Counsel reports to both the General Counsel of the Department of the Treasury and the Commissioner of Internal Revenue. All personnel in the OCC report to the IRS Chief Counsel. Therefore, when the National Taxpayer Advocate wishes to develop or articulate a position that is contrary to the OCC's position, a conflict arises: The Division Counsel/Associate Chief Counsel cannot provide the National Taxpayer Advocate with independent legal advice because she is obligated to follow the position of the IRS Chief Counsel.

Since 2004, with the approval of the Commissioner of Internal Revenue, TAS has employed attorneys to provide independent legal advice and analysis. TAS attorneys do not purport to offer formal legal advice or represent the agency. However, they enable the National Taxpayer Advocate to develop an independent perspective (*i.e.*, a perspective that emphasizes taxpayer rights). Specifically, TAS attorneys provide support in legally complex taxpayer cases and they write large sections of the National Taxpayer Advocate's Annual Reports to Congress, including legislative recommendations that we are statutorily required to provide.

In 2015, the IRS for the first time prevented TAS from hiring attorney-advisors to backfill existing attorney positions.⁵ It cited Treasury Department General Counsel Directive No. 2 as its rationale, even though this Directive had existed for years and TAS had previously been allowed to fill attorney positions. The Directive states: “Except for positions in the Inspectors General offices or within the Office of the Comptroller of the Currency, attorney positions shall not be established outside of the Legal Division” unless the General Counsel or Deputy General Counsel(s) provides a waiver. On November 29, 2016, the National Taxpayer Advocate presented a written request for a waiver, but to date TAS has not received one, notwithstanding that the IRS otherwise employs hundreds of attorneys outside the Legal Division (*i.e.*, outside the IRS Office of Chief Counsel). The bottom line is that TAS has been prevented from backfilling attorney positions for nearly three years.

The General Counsel may resolve this problem by granting a waiver. Absent that, I recommend that Congress codify the conference committee report language to ensure

⁵ TAS was told it could hire individuals with legal credentials to occupy analyst positions, but it could not continue to hire them for attorney-advisor positions (position classification standard GS-905). As a practical matter, qualified attorneys want to be recognized as such, both for reasons of status and for future employment potential. Therefore, a prohibition against hiring attorneys to serve in attorney-advisor positions substantially restricts the pool of qualified attorneys willing to work for TAS.

the Office of the Taxpayer Advocate continues to have the legal expertise it requires to evaluate IRS programs, recommend solutions, and provide independent legal analysis to support TAS case advocates working on complex taxpayer cases.

