Volume 1

NATIONAL TAXPAYER ADVOCATE

Objectives Report to Congress

Fiscal Year 2019

www.TaxpayerAdvocate.irs.gov/2019ObjectivesReport

Contents

PREFACE: National Taxpayer Advocate's Introductory Remarks

The Internal Revenue Code requires the National Taxpayer Advocate to submit two annual reports to the House Committee on Ways and Means and the Senate Committee on Finance.[1] The National Taxpayer Advocate is required to submit these reports directly to the Committees without any prior review or comment from the Commissioner of Internal Revenue, the Secretary of the Treasury, the IRS Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.[2] The first report, due by June 30 of each year, must identify the objectives of the Office of the Taxpayer Advocate for the fiscal year beginning in that calendar year.

In this report, we also provide an assessment of the 2018 filing season, and in Volume 2, we publish the IRS's responses to the administrative recommendations we proposed in the National Taxpayer Advocate's 2017 Annual Report to Congress, along with our comments on the responses.

The IRS Will Deliver Tax Reform, But at What Cost?

As we describe in this report, *Area of Focus: Taxpayers Need More Guidance and Service to Understand and Comply With the Tax Cuts and Jobs Act*, the IRS is facing the herculean task of implementing tax reform, which the IRS says involves programming 140 systems, writing or revising 450 forms and publications, and issuing some form of guidance about dozens of Tax Cuts and Jobs Act provisions. The IRS also is substantially revising Form 1040 and must train its employees — particularly outreach employees and telephone assistors — in light of the significant changes in the law. It's a very heavy lift.

Make no mistake about this. I have no doubt the IRS will deliver what it has been asked to do. But this amazing achievement comes at a cost. Since fiscal year (FY) 2010, the IRS's funding has been cut substantially. As Figure 1.1 shows, the IRS's appropriated budget has been reduced by nine percent in straight dollar terms and by 20 percent after accounting for the effects of inflation.

FIGURE 1.1, IRS Budget in Nominal and Inflation-Adjusted Dollars (in millions), FYs 2010–2018[3]

Type of Dollars	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	% 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%**

1 Internal Revenue Code (IRC) § 7803(c)(2)(B).

2 IRC § 7803(c)(2)(B)(iii).

3 IRS Chief Financial Officer. Fiscal year (FY) 2018 numbers do not include supplemental funding of $320 million to implement the recent tax reform legislation.

During this period, the IRS implemented two major new programs — the Affordable Care Act (ACA) and the Foreign Account Tax Compliance Act (FATCA). To accomplish this, the IRS effectively placed a moratorium on all Information Technology (IT) projects that were not related to the filing season, the ACA, or FATCA. Only in the last year or so has the IRS begun to look forward with its systems planning and development, but because of the demands of tax reform and reprogramming its systems to reflect the new Form 1040, it is expected there will be another moratorium on systems and programming revisions unrelated to tax reform/filing season system improvements. In our *Area of Focus: The IRS's Enterprise Case Management Project Shows Promise, But to Achieve 21st Century Tax Administration, the IRS Needs an Overarching Information Technology Strategy with Proper Multi-Year Funding,* we discuss the implications for taxpayers if the IRS falls further behind the rest of the world with respect to its underlying systems and customer-facing technology.

But the broader impact of the challenges of the last several years is that the IRS has lost funding and lost people across the board, as Figure 1.2 shows.

FIGURE 1.2, Locations With Specified Employees in the Last Pay Period of the Fiscal Year[4]

Number of Locations, Employees, or Visitors	2011	2012	2013	2014	2015	2016	2017	% Change Since FY 2011
Appeals Officers (AOs)	1,129	1,058	958	881	795	739	744	-34%
Revenue Officers (ROs)	4,402	4,035	3,703	3,441	3,191	3,072	2,898	-34%
Revenue Agents (RAs)	11,849	11,160	10,413	9,688	9,009	8,789	8,138	-31%
Stakeholders Liaison Outreach Employees	137	123	119	110	105	98	105	-23%
Stakeholder Partnerships, Education and Communication Outreach Employees (SPEC)	522	475	444	405	386	365	311	-40%
Taxpayer Assistance Centers (TACs)	401	401	398	382	378	376	371	-7%
TAC Service Reps	1,639	1,515	1,484	1,520	1,423	1,267	1,140	-30%
Taxpayer Advocate Service, Case Advocates	996	945	919	862	784	726	683	-31%

4 For FYs 2011 through 2016, employee counts for Appeals Officers, Revenue Officers, Stakeholder Liaison Outreach, and Stakeholder Partnerships, Education and Communication Outreach are from the IRS response to TAS fact check (Dec. 16, 2016). Taxpayer Assistance Center (TAC) Office figures for FYs 2011–2014 from IRS response to TAS fact check (Dec. 23, 2014). TAC Office figures for FY 2015 from Wage and Investment (W&I) analyst (Dec. 13, 2066). TAC Office figures for FY 2016 from the IRS response to TAS fact check (Dec. 20, 2016). TAC Office figures for FY 2017 from the IRS response to TAS fact check (Nov. 3, 2016). The remaining data is obtained from a TAS query of the IRS Human Resources Reporting Center, *Position Report by Employee Listing for the ending pay period*. TAC customer service representative and Revenue Agent figures are from the IRS Human Resources Reporting Center, *Position Report by Employee Listing for the ending pay period for FY 2011 to 2017*. TAC Service representatives are non-supervisory employees in the 501 job series. Revenue Agent counts exclude agents in Appeals and the Taxpayer Advocate Service. The Stakeholder Liaison Outreach employees were transferred to the Communication and Liaison (C&L) Office on April 2, 2017 so employee counts were not included. Figures for IRS Offices for FY 2011 to FY 2017 are from IRS Human Resources Reporting Center, *Position Report by Employee Listing for the ending pay period for FY 2011 to 2017*. The counts of TAS caseworkers are from the Integrated Financial System. IRS response to TAS information request (Oct. 13, 2017). In response to TAS's information request for the number of outreach employees assigned to each state, territory, and the District of Columbia in FY 2017, the IRS responded that Communication & Liaison (C&L) had 105 employees assigned to outreach activities spread over 33 states and the District of Columbia. However, the IRS response to fact check stated that these numbers only account for Small Business/Self-Employed (SB/SE) Stakeholder Liaison (SL) employees. Therefore, we do not have details regarding any additional outreach employees.

Because of these reductions, the IRS doesn't have enough employees to answer the phones, to conduct outreach and education, or to provide basic taxpayer service. The compliance and enforcement side of the house has been cut by even more. So, in addition to answering the fewest number of enterprise-wide taxpayer calls in recent memory,[5] the IRS also has the lowest individual audit rate in memory (0.6 percent) and its collection actions are way down.[6] In fact, the IRS has suppressed collection notices because it doesn't have the resources to handle the incoming phone calls and correspondence prompted by those notices.[7]

The Current State of IRS Customer Experience Lags Far Behind Other Government Agencies and the Private Sector

In this environment, it is critical for the IRS to direct its resources where they have the greatest positive effect on achieving tax compliance, particularly *voluntary* tax compliance. Over the long run, voluntary compliance is the least expensive form of compliance to maintain. It is also the least burdensome from the taxpayer's perspective. Importantly, voluntary tax compliance is heavily linked to customer service and the customer experience.

The President's Management Agenda for 2018 states: "Federal customers … deserve a customer experience that compares to — or exceeds — that of leading private sector organizations, yet most Federal services lag behind the private sector."[8] The Agenda identifies several Cross-Agency Priority (CAP) Goals, including *CAP Goal 1: Modernize IT to Increase Productivity and Security*, and *CAP Goal 4: Improving Customer Experience with Federal Services*.[9] The Agenda notes that "the 2016 American Consumer [sic] Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector."[10]

How do the American Customer Satisfaction Index (ACSI) and the Forrester Federal Customer Experience Index assess the IRS's customer service relative to other federal agencies and the private sector?

Well, the American Customer Satisfaction Index ranks the Treasury Department 12 out of 13 Federal Departments and says the Treasury Department's score is effectively an IRS score because "most citizens make use of Treasury services via the [IRS] tax-filing process."

The Forrester Federal Customer Experience Index ranks private sector companies and federal agencies based on a variety of factors that influence the customer experience on a scale from zero to 100. Its 2018 Survey contains some particularly alarming findings regarding the IRS. We have long questioned whether the IRS's customer service performance measures accurately capture the taxpayer experience. For example, the IRS reports it achieved a "Level of Service" on its toll-free telephone lines of 80 percent during the 2018 filing season, which is widely understood to mean that IRS telephone assistors answered 80 percent of taxpayer calls. In fact, IRS telephone assistors answered only 29 percent of the calls the

5 *See Review of the 2018 Filing Season*, *infra*.

6 IRS, *Fiscal Year 2017 Enforcement and Service Results* 3, 8, https://www.irs.gov/pub/irs-news/fy_2017_enforcement_and_services_results_final.pdf. *See also* National Taxpayer Advocate 2017 Annual Report to Congress 49-63 (Most Serious Problem: *Audit Rates: The IRS is Conducting Significant Types and Amounts of Compliance Activities That It Does Not Deem to Be Traditional Audits, Thereby Underreporting the Extent of Its Compliance Activity and Return on Investment, and Circumventing Taxpayer Protections*).

7 IRS, *ACS Optimization/RAAS: ACS LT 16 Notice Redesign Test Pilot Report* 3-4 (Sept. 27, 2017).

8 *President's Management Agenda* 7, https://www.performance.gov/PMA/Presidents_Management_Agenda.pdf.

9 *Id*. at 14 & 28.

10 *Id*. at 28. The correct name of the index is the American "Customer" Satisfaction Index.

IRS received.[11] Similarly, the IRS reports it achieved a customer satisfaction level of 90 percent on its toll-free lines during FY 2017.[12] Yet the IRS only surveys the subset of taxpayers whose calls were answered by telephone assistors and completed.

As compared with the IRS's own performance measures that paint a very positive portrait of customer service, the 2018 Forrester Federal Customer Experience Index found the following:

- The private sector average score for Customer Experience (CX) is 69, the federal average score is 59, and the ***IRS's score is 54 out of 100, which is considered "very poor."***[13] [Emphasis added.] This places the IRS twelfth out of 15 rated agencies, behind the U.S. Postal Service, the Department of Veterans Affairs, the U.S. Citizenship and Immigration Services, and the Social Security Administration, among others.[14]
- In the category of **Comply with Directives and Advice,** Forrester found that "for every 1-point increase in an agency's CX Index score, 2.0% more customers will do what the organization asks of them. Because of poor federal CX, just 58% of federal customers said that they do what agencies require … *Just 61% of Internal Revenue Service (IRS) customers say that they follow its rules**, which shows that not even the threat of jail and fines always outweighs the power of a bad customer experience***."[15] [Emphasis added.]
- In the category of **Inquire for Official Information,** Forrester found that "when a federal agency's CX Index score rises by 1 point, 2.5% more customers are likely to seek its authoritative advice or expertise. … **[T]he IRS inspires a mere 13% of its customers to seek its expertise.**" [Emphasis added.] This is less than half the federal agency average of 32 percent and has serious implications for tax reform implementation.[16]
- In the category of **Speak Well of Federal Agencies**, Forrester found that "as a federal agency's CX Index score improves by 1 point, 4.4% more customers will say positive things about the organization. … **The IRS lagged other agencies again, as a mere 24% of its customers said that they would speak well of it.**"[17] [Emphasis added.] This placed the IRS dead last among the 15 federal agencies ranked and at about half the federal agency average of 47 percent.
- In the category of **Trust Agencies**, Forrester found that "[e]ach time a federal agency's CX Index score rises by 1 point, 2.8% more customers will trust the organization. … **[J]ust 20% of customers say that they trust the IRS.**"[18] [Emphasis added.] Again, this placed the IRS

11 During Filing Season 2018, the IRS received 42.5 million calls overall. About 35.7 million were routed to the Accounts Management (AM) lines. Of the 35.7 million calls routed to the AM lines, over 13 million were routed to telephone assistors and about 10.4 million were answered by telephone assistors. The balance of the AM calls (22.6 million) either were routed to automation or reflected taxpayer hang-ups. Thus, the AM Level of Service reflected the results of only about 31 percent of taxpayer calls (13 million calls routed to telephone assistors divided by 42.5 million overall net attempts), and IRS telephone assistors answered only about 29 percent of taxpayer calls to the AM telephone lines (10.4 million calls answered divided by 35.7 million net attempts). IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 2018).

12 IRS, *Fiscal Year 2017 Enforcement and Service Results*, https://www.irs.gov/pub/irs-news/fy_2017_enforcement_and_services_results_final.pdf.

13 Rick Parrish & Margaret Rodriguez, Forrester, *The US Federal Customer Experience Index, 2018: How US Federal Government Agencies Drive Mission Performance with the Quality of Their Experience* 8 (May 31, 2018).

14 *Id*. at 5.

15 *Id*. at 10.

16 *Id*. at 10-11.

17 *Id*. at 11.

18 *Id*.

dead last among the 15 federal agencies ranked and at about half the federal agency average of 40 percent.

- In the category of **Forgive Agencies That Make Mistakes**, Forrester found "[f]or every 1-point increase in an agency's CX Index score, 2.7% more customers are willing to forgive the agency when it makes mistakes. … **[O]nly 22% of IRS customers said that they would forgive it for an error.**"[19] [Emphasis added.] Yet again, this placed the IRS dead last among the 15 federal agencies ranked and at about half the federal agency average of 40 percent.

To reiterate: The ACSI and Forrester rankings are widely respected and are cited extensively in the President's Management Agenda, and their findings show that IRS customer service ranks at or near the bottom among all federal agencies. The fact that these rankings stand in stark contrast to the IRS's own performance measures underscores the need for the IRS to devise new measures that better reflect the taxpayer experience.

To be sure, the significant cuts to the IRS's budget combined with the need to implement several significant new laws in recent years has stretched the IRS very thin. But the ACSI and Forrester results show that taxpayers are not being well served. The aptly named Taxpayer First Act, which the House passed on a unanimous 414-0 vote in April, would direct the IRS to develop a comprehensive customer service strategy within one year.[20] That is an important step in the right direction. I have also recommended that Congress provide the IRS with more funding along with more oversight — and I will encourage the next Commissioner make customer service improvements a top priority.

The Way Forward: Key Challenges the IRS Must Address to Improve the Customer Experience and Maintain Voluntary Compliance

In the Fiscal Year 2019 Objectives Report to Congress that follows, we highlight several of the areas that, if improved, could begin to build taxpayer trust, which is strongly linked to tax compliance.[21]

1. **Taxpayer Service**: Private industry and experts say the #1 driver of customer satisfaction is the First Contact Resolution (FCR) rate.[22] As we discuss in the *Area of Focus*: *The IRS's Failure to Create an Omnichannel Service Environment Restricts Taxpayers' Ability to Get Assistance Using the Communication Channels That Best Meet Their Needs and Preferences*, measures like telephone level of service (LOS) are secondary and can be manipulated to look favorable while not reflecting the customer's actual experience. Yet the IRS does not measure its FCR rate consistently or across every service channel. The IRS continues to ignore significant data showing taxpayers prefer multiple channels for different types of interactions. Notably, 41 million U.S. taxpayers do not have broadband access in their homes, with 14 million having no internet access in their homes

19 Rick Parrish & Margaret Rodriguez, Forrester, *The US Federal Customer Experience Index, 2018: How US Federal Government Agencies Drive Mission Performance with the Quality of Their Experience* 11 (May 31, 2018).

20 H.R. 5444, 115th Cong. § 11201 (2018).

21 See, *e.g.*, Erich Kirchler, Christopher Kogler & Stephan Muehlbacher, *Cooperative Tax Compliance: From Deterrence to Deference*, Current Directions in Psychological Science 23(2) 87-92 (2014); Katharina Gangl, Eva Hoffman & Erich Kirchler, *Tax authorities' interaction with taxpayers: A conception of compliance in social dilemmas by power and trust*, New Ideas in Psychology 37 13-23 (2015); Tom R. Tyler, Phillip Atiba Goff & Robert J. MacCoun, *The Impact of Psychological Science on Policing in the United States: Procedural Justice, Legitimacy, and Effective Law Enforcement*, Psychological Science in the Public Interest 16(3) 75-109 (2015); National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 152 (Research Study: *Audits, Identity Theft Investigations, and Taxpayer Attitudes: Evidence From a National Survey*).

22 Jeff Rumburg & Eric Zbikowski, MetricNet, *The Five Most Important KPI's for the Call Center*, 5 (Feb. 20, 2013).

at all.[23] Moreover, even sophisticated taxpayers and representatives want to speak with the IRS about tax matters. Thus, the way forward must include an omnichannel approach to customer service that focuses on FCR.[24]

Despite this widely accepted approach, the IRS's new FY 2018-2022 Strategic Plan touts the savings of digital interactions and introduces a new measure that will determine its "success" at meeting Strategic Goal 1: *Empower and Enable All Taxpayers to Meet Their Tax Obligations.* Specifically, the Enterprise Self-Assistance Participation Rate "measures the percent of instances where a taxpayer uses one of the IRS's self-assistance service channels *(i.e.,* automated calls, web services) versus needing support from an IRS employee (*i.e.,* face-to-face, over the phone, via paper correspondence)."[25] Thus, we have the IRS explicitly stating it will have achieved success if there is *less* personal interaction with its taxpayers! The measure, in fact, sets up self-assist in opposition to (*i.e.*, "versus") personal support — sending a clear message to employees and taxpayers alike that omnichannel service is neither a priority nor a strategic goal for the IRS — unlike in the private sector.

2. **Online Services:** The IRS is far behind most Organization of Economic Cooperation and Development (OECD) countries[26] (and many non-OECD countries) in developing an online account. As we discuss in the Filing Season section of this report, as well as in our Volume 2 comments on the IRS's response to our 2017 Most Serious Problem recommendations,[27] only about 30 percent of taxpayers who seek to create an online taxpayer account are able to do so because of stringent authentication requirements. The IRS is right to prioritize data security, but the agency must not neglect the importance of providing improved telephone and in-person services for all taxpayers.

   The features of the online account, for those taxpayers able to create one, are and will continue to be limited because of profoundly archaic IRS IT architecture and the need to pull information from more than 60 different case management systems. Moreover, the tools that are being tested to email with taxpayers are clunky and burdensome, and the IRS imposes the same stringent security requirements on taxpayers seeking to *send* the IRS information electronically as it imposes on taxpayers seeking to *retrieve* account information electronically. Thus, most taxpayers and representatives end up faxing or using U.S. mail or overnight delivery services — placing the IRS squarely in the 20th century. Finally, rules governing communication with the IRS, such as the "mailbox rule" of Internal Revenue Code § 7502, have not been updated for 21st century tax administration.[28]

3. **Enterprise Case Management:** As noted above, the IRS has more than 60 case management systems, all storing data and records pertaining to different aspects of a taxpayer's interactions

23 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 61-146 (Research Study: *A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*.)

24 An omnichannel service environment allows taxpayers to contact the IRS through the channel of their choice and receive a consistently high quality of service. National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 230 (Literature Review: *Improving Telephone Service Through Better Quality Measures*).

25 IRS, *Strategic Plan Fiscal Year 2018–2022*, 12 https://www.irs.gov/pub/irs-pdf/p3744.pdf.

26 See http://www.oecd.org/ for a list of member countries.

27 IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: *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*, *infra*.

28 *See* National Taxpayer Advocate Purple Book, Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration, 26-27 (Dec. 2017) (Recommendation #12: *Revise the "Mailbox Rule" to Apply to Electronically Submitted Documents and Payments in the Same Manner As It Applies to Mailed Submissions*).

with the IRS. There is no one system or repository of data that contains a 360-degree view of the taxpayer's activity and engagement with the tax system, so often the left hand doesn't know what the right hand is doing. For example, telephone and other assistors cannot see what is happening in certain systems and so cannot assist taxpayers with related issues; they must send off a form to the appropriate area to take action, thereby ensuring that the FCR rate for these issues is zero!

As we discuss in the *Area of Focus*: *The IRS's Enterprise Case Management Project Shows Promise, But to Achieve 21st Century Tax Administration, the IRS Needs An Overarching Information Technology Strategy With Proper Multi-Year Funding*, the IRS is working on development of an "Enterprise Case Management" (ECM) system that promises to bring much of the most important taxpayer data and records into a critical few systems that then can be made available to employees, analysts, and researchers in a permission-based structure. Congress needs to ensure that the IRS keeps on the right track with the 360-degree taxpayer view design. Without this system, and the improvements to the underlying systems (see below), the IRS cannot provide a robust Online Account and must create manual processes or workarounds for new categories of work (*e.g.*, ACA and FATCA). Moreover, the current structure creates rework for IRS employees and tremendous burden for taxpayers who must send and resend documentation that is stored on different systems and not retrievable by the appropriate employees. Without ECM, a virtual case file is non-existent.

4. **Underlying IT Systems:** According to the Government Accountability Office, the IRS has the two oldest databases in the federal government — the Individual and Business Master Files. The age of IRS legacy systems causes patches and workarounds that create risks when trying to integrate with more current IT hardware and software (*e.g.,* the April 17 stoppage to the filing and payment system[29]). It is not clear to what extent Customer Account Data Engine 2 (CADE2) has improved the filing experience much less reduced employee workarounds — although CADE2 can post items daily, the underlying systems largely operate on a weekly cycle, keeping the IRS back in the 1960s or 1970s with return processing. Again, the utility of modernized ECM and Online Accounts will be limited if the IRS does not bring its underlying systems into the 21st century.
5. **Automation, Artificial Intelligence, and Big Data:** The IRS regularly uses technology and big data to identify fraud and noncompliance, but it fails to use technology to help taxpayers get to the right answer or prevent or minimize harm to taxpayers. This is particularly true when the IRS devises tools and utilizes data or automation to identify compliance issues or automate workstreams. As we discuss in the *Area of Focus*: *The IRS's Private Debt Collection Program, Which Has Yet to Generate Net Revenues, Continues to Unnecessarily Burden Taxpayers Experiencing Economic Hardship and Produces Installment Agreements With High Default Rates*, the IRS could use the data it has in-house to identify taxpayers who are at risk of economic hardship and therefore are highly unlikely to be able to pay their basic living expenses if the IRS collects their back-tax debts.[30] The IRS could then screen these taxpayers out of the group assigned to Private Collection Agencies. The IRS's continuing refusal to use data in this taxpayer-friendly approach constitutes a serious violation of the taxpayers' *rights to privacy* and *to a fair and just tax system*.

   In the *Area of Focus*: *The IRS Has Expanded Its Math Error Authority, Reducing Due Process for Vulnerable Taxpayers, Without Legislation and Without Seeking Public Comments*, we also

29 *See* IR-2018-100 (Apr. 17, 2018).

30 IRC § 6343(a); IRM 5.15.1, *Financial Analysis Handbook* (Nov. 17, 2014).

discuss the IRS's failure to use historic data to resolve certain math errors without burdening the taxpayer.

And in the *Area of Focus*: *High False Detection Rates Associated with Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers*, we describe the significant burden the IRS places on legitimate taxpayers because it is not utilizing state-of-the-art techniques to design and adjust its fraud detection filters (consisting of rules and models) to minimize false detections. As a result, for calendar year 2017 (through September), the false detections rate was 62 percent for identity theft (IDT) fraud filters and 66 percent for non-IDT fraud filters.

6. **Geographic Presence:** Activities like outreach and education, congressional and media relations, examinations, and collections in a country as large and diverse as ours require local knowledge and interaction.[31] Yet 12 states do not have Appeals or Settlement Officers within their borders, and 14 states do not have Stakeholder Liaison employees whose job is to conduct education and outreach to Small Business and Self-Employed taxpayers.[32]

   As we discuss in our Filing Season section of this report, of the 371 Taxpayer Assistance Centers, 24 are not staffed and 87 have only one employee. The number of field employees in exam, collection, appeals, and taxpayer service has shrunk significantly over the years, replaced by large centralized sites of employees who never look a taxpayer in the face. As TAS research studies have shown, personal contacts — while more costly initially — produce better response, resolution, and agreement rates than less personal contacts and also result in better educated taxpayers.[33] The private sector, particularly the banking industry, acknowledges the importance of a local presence even as it continues to improve its digital experience. TAS Local Taxpayer Advocates are often the only "face" of the IRS in the community, and because we are an independent voice, we cannot adequately substitute for an IRS presence.

7. **IRS Personnel Challenges:** Closely related to IT and geographic presence challenges, but not directly discussed in this report, is the state of the IRS workforce. The IRS can do more to attract the best and brightest job candidates, even for limited periods, in IT, Exam, Collection, or Appeals. It has not really changed its recruiting to address the fact that people move from one job to another and that a career in government is no longer viewed as a lifetime commitment. The IRS could make the case to young workers that spending some years in government service will provide them with skills and perspective that simply can't be found elsewhere and will be very useful for their futures.

   The IRS could also recruit people who are mid-career and are looking for a more stable work environment for a period of time. I believe people will work for the IRS if the jobs and work are presented in the right light. TAS has had no problem recruiting people from outside the IRS at all levels, and this "fresh blood" has reinvigorated many of our offices. These new recruits help current employees not feel worn down and see their jobs in a new light.

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31 For a detailed discussion of this topic, see National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 245 (Literature Review: *Fostering Taxpayer Engagement Through Geographic Presence*).

32 IRS response to TAS information request (Oct. 13, 2017). The geographic outreach data provided in the IRS response to TAS information request does not include in-person speeches given by IRS employees who are not dedicated outreach employees. IRS response to TAS fact check (Nov. 20, 2017).

33 *See, e.g.*, National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 15 (Research Study: *A Comparison of Revenue Officers and Automated Collection System in Addressing Similar Employment Tax Delinquencies*).

Conclusion

The Taxpayer Advocate Service has made modest, actionable recommendations in each of the areas mentioned above that, if implemented, would help earn taxpayer trust and confidence in the IRS. While some of our recommendations require some expenditure of funds, all of them would eliminate wasted resources applied to downstream work. They would improve the FCR rate of many IRS functions, should the IRS ever measure it. Yet, as demonstrated by the IRS's response to our recommendations on these issues made in the National Taxpayer Advocate's 2017 Annual Report to Congress and reproduced here in the Volume 2 of this report, the IRS still resists some common-sense solutions.[34] Sometimes it claims it is doing what we suggest (when it is not); other times it pleads lack of resources for not implementing something (when continuing on the current path wastes resources). However, I believe many of the responses are driven by the concern I discussed at the beginning of this Preface; namely, that the IRS as an organization is stretched so thin that it cannot contemplate doing another thing, even if it would save it resources downstream, reduce rework for its employees, or reduce burden for taxpayers or enhance taxpayer protections.

To the extent this is true, we are placing tax administration at risk. I encourage everyone — Members of Congress, the Administration, taxpayers, and tax professionals — to think deeply about what we want the IRS to look like in the 21st century. If we want an agency that is not at the bottom of the customer experience chart, then we need to take the steps to support it — through proper funding, oversight, and respect.

Respectfully submitted,

Nina E. Olson
National Taxpayer Advocate
June 27, 2018

34 There were a total of 100 Most Serious Problem recommendations from the 2017 Annual Report to Congress. As of June 20, 2018, the IRS said it agreed or partially agreed with 35 recommendations. The other 65 recommendations it declined to adopt.

Review of the 2018 Filing Season

INTRODUCTION

During the 2018 filing season, the IRS processed most returns successfully, with most taxpayers receiving a timely refund. For many taxpayers who needed help from the IRS, however, the experience was challenging. Although the IRS benchmark telephone measure shows the agency answered 80 percent of its calls for the first time in over ten years, that measure does not take into account the majority of the calls the IRS receives. Taxpayers calling the IRS's compliance telephone lines had a much lower percentage of calls answered, and callers who managed to get through on those lines waited on hold for an average of 24 minutes. The IRS served fewer taxpayers who sought help at Taxpayer Assistance Centers (TACs) and continued its policy of answering only a limited scope of tax-law questions on its toll-free telephone lines and in TACs. Additionally, its identity theft and pre-refund wage verification filters and certain processing glitches significantly delayed refunds for hundreds of thousands of taxpayers who filed legitimate returns, causing frustration, additional work for the IRS and, in some cases, financial hardship.

Filing Season Performance

The filing season began on January 29, 2018. That was one of the latest starts in recent years. It ended late as well. On the final day of the filing season, hardware failures in the IRS's processing systems prevented taxpayers and practitioners from filing their tax returns, over 90 percent of which are submitted electronically,[1] forcing them to decide to either wait for the systems to come back online or mail their tax returns and payment, if required.[2] To its credit, the IRS responded quickly and was able to get the systems operational by late afternoon, and it communicated that it would extend the filing deadline by one day — from the April 17, 2018 due date for individuals and businesses with a filing or payment requirement to April 18.[3]

Although a relatively new piece of hardware caused the April 17 crash, the incident illustrates the fragility of the IRS's aging technology infrastructure.[4] The National Taxpayer Advocate and other

1 The IRS's filing season statistics indicate that 124.5 million individual returns were filed electronically, out of 136.9 million. IRS, *Filing Season Statistics for Week Ending April 20, 2018*, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-20-2018. *See also* Figure 2.1, Filing Season Statistics Comparing Weeks Ending April 22, 2016; April 21, 2017; and April 20, 2018.

2 Direct Pay is an option available to taxpayers on the irs.gov website. On April 17, taxpayers saw an error message "Planned Outage: April 17, 2018 – December 31, 9999." Alan Rappeport, *I.R.S. Website Crashes on Tax Day as Millions Tried to File Returns*, N.Y. Times, Apr. 17, 2018, https://www.nytimes.com/2018/04/17/us/politics/want-to-pay-your-taxes-come-back-later-says-irs.html.

3 IRS, *IRS Systems are Back Up and Running; Millions of Tax Returns Accepted; Taxpayers Have Until Midnight Wednesday to File Their Taxes*, IR-2018-101 (April 18, 2018).

4 *See, e.g.*, Jeff Stein, Damian Paletta, and Mike DeBonis, *IRS to Delay Tax Deadline by One Day After Technology Collapse*, Wash. Post, Apr. 17, 2018, https://www.washingtonpost.com/business/economy/irs-electronic-filing-system-breaks-down-hours-before-tax-deadline/2018/04/17/4c05ecae-4255-11e8-ad8f-27a8c409298b_story.html?noredirect=on&utm_term=.fc6604bd294b, and Alan Rappeport, *I.R.S. Website Crashes on Tax Day as Millions Tried to File Returns*, N.Y. Times, Apr. 17, 2018, https://www.nytimes.com/2018/04/17/us/politics/want-to-pay-your-taxes-come-back-later-says-irs.html.

stakeholders have recommended for years[5] that Congress act to provide necessary funding and oversight to bring IRS technology into the 21st century.[6]

For most taxpayers, the IRS consistently does an excellent job of processing their returns. Figure 2.1 presents an overview of returns processing and refunds during the 2016, 2017, and 2018 filing seasons.

FIGURE 2.1, Filing Season Statistics Comparing Weeks Ending April 22, 2016; April 21, 2017; and April 20, 2018[7]

		2016	2017	2018	% Change 2017–2018
Individual Income Tax Returns	Total Receipts	136,528,000	135,638,000	136,919,000	0.9%
	Total Processed	129,456,000	128,847,000	130,477,000	1.3%
e-Filing Receipts	Total e-Filing	122,546,000	122,164,000	124,515,000	1.9%
	Tax Professionals	70,864,000	70,401,000	70,983,000	0.8%
	Self-Prepared	51,682,000	51,763,000	53,532,000	3.4%
Total Refunds	Number	97,079,000	97,104,000	95,434,000	-1.7%
	Amount	$263.2 bil	$268.3 bil	$265.3 bil	-1.1%
	Average Refund	$2,711	$2,763	$2,780	0.6%
Direct Deposit Refunds	Number	81,221,000	81,646,000	80,491,000	-1.4%
	Amount	$234.3 bil	$239.4 bil	$236.9 bil	-1.1%
	Average Refund	$2,884	$2,932	$2,943	0.4%

5 See, e.g., 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*); *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules and the H. Subcomm. on Government Operations*, 115th Cong. 46-48 (2018) (statement of Nina E. Olson, National Taxpayer Advocate). *See also* Government Accountability Office (GAO), GAO-16-468, *Information Technology: Federal Agencies Need to Address Aging Legacy Systems* (May 2016) (discussing aging Information Technology (IT) systems throughout the government and listing the IRS's Individual Master File and Business Master File as the two oldest investments or systems at 56 years old each).

6 See, National Taxpayer Advocate 2017 Annual Report to Congress 1-11 (*Preface: Introductory Remarks by the National Taxpayer Advocate*) (discussion on the IRS Funding Landscape and its "Present State,") and National Taxpayer Advocate 2016 Annual Report to Congress 1-41 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration*) (discussion on Budget and Oversight). *See also* Area of Focus: *The IRS's Enterprise Case Management Project Shows Promise But to Achieve 21st Century Tax Administration, the IRS Needs an Overarching Information Technology Strategy With Proper Multi-Year Funding*, *infra*.

7 IRS, *Filing Season Statistics for Week Ending April 20, 2018*, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-april-20-2018, *Filing Season Statistics for Week Ending April 21, 2017*, https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-21-2017.

From January 1 through April 21, 2018, the IRS received 42.5 million telephone calls overall,[8] of which 35.7 million were directed to its "Accounts Management" (AM) telephone lines.[9] Just over 13 million of those calls were directed to telephone assistors, and the IRS answered 80 percent of them,[10] nearly the same as the 79 percent level in Filing Season (FS) 2017,[11] although this performance measure does not account for the majority of calls the IRS receives. (As discussed in more detail below, the IRS routes most calls to automated responses.) Among taxpayers who got through to AM telephone assistors, hold times declined from 6.5 minutes in FS 2017 to 5.1 minutes in FS 2018.[12]

Telephone service was considerably worse on IRS telephone lines outside the Accounts Management category, particularly on the compliance lines. For example, the IRS received over 1.9 million calls on its "Installment Agreement/Balance Due" line, which taxpayers generally call if they cannot pay their tax liabilities in full and are seeking to arrange a payment plan.[13] The IRS answered only 49 percent of these calls during FS 2018, and taxpayers who got through waited an average of 28.7 minutes on hold.[14]

In 2017, the IRS provided face-to-face assistance to taxpayers in the 50 states, the District of Columbia, and Puerto Rico at 371 TACs, of which 24 were unstaffed, 87 had only one employee, and five were only staffed seasonally.[15] In fiscal year (FY) 2017, the first full year the IRS required taxpayers to schedule appointments in advance of visiting any TACs to receive face-to-face service,[16] taxpayer visits to TACs decreased by 27 percent from the previous year.[17] While the IRS has given TAC managers the discretion to make exceptions to the advance scheduling requirement in response to complaints from TAS and others, the general rule requiring advance appointments remains, and taxpayers receiving same-day appointments declined by 49 percent during the first half of FY 2018 compared with the same period in FY 2017.[18] We continue to hear from practitioners that walk-in taxpayers (and even practitioners trying to make payments on behalf of their clients) are often turned away.

Both on the phones and in the TACs, the IRS has continued a policy adopted in 2014 that sharply limits the authority of IRS employees to answer tax-law questions. During filing season, telephone assistors answer only "basic" questions and are generally prohibited from answering any tax-law questions outside the filing season, other than those related to the recently enacted tax reform law for the remainder of

8 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot, Enterprise Total* (week ending Apr. 21, 2018).

9 IRS, JOC, *Snapshot Reports: Enterprise Snapshot, Accounts Management (AM)* (week ending Apr. 21, 2018).

10 *Id.*

11 *Id.*

12 *Id.*

13 IRS, JOC, *Snapshot Reports: Product Line Detail Snapshot* (week ending Apr. 21, 2018).

14 *Id.*

15 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*).

16 IRS News Release IR-2016-172, *Tax Preparedness Series: IRS Face-To-Face Help Now by Appointment* (Dec. 20, 2016). IRS response to TAS fact check (Dec. 20, 2016).

17 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*).

18 IRS Wage & Investment (W&I) Division, *Business Performance Review* 12 (May 10, 2018).

2018 or specifically related to an account issue about which the taxpayer is calling.[19] TAS has conducted spot testing of the tax-law line, and while the IRS has kept that line open beyond the filing season, TAS callers have found assistors unable to answer basic questions. Moreover, one assistor told us he did not expect to receive more detailed training until later in the year.[20]

Also during FS 2018, the IRS delayed issuing hundreds of thousands of refunds associated with legitimate tax returns because the returns were flagged as potentially fraudulent. As discussed below and later in this report, the IRS uses more than 200 "filters"[21] to identify potentially fraudulent returns, and these filters produce high "false detection" rates over 50 percent.[22]

In the narrative that follows, we will address the taxpayer experience during FS 2018 under the following major themes:

- The impact of several changes in the Protecting Americans from Tax Hikes Act of 2015 (PATH Act) that Congress directed the IRS to implement;
- Interactions with the IRS through phones, correspondence, face-to-face meetings (TACs), and online access; and
- Special topics, including identity theft and refund fraud, the Affordable Care Act (ACA), and services for U.S. taxpayers living abroad.

As a threshold matter, we note that Congress passed the Tax Cuts and Jobs Act, the largest overhaul of the Internal Revenue Code (IRC) since 1986,[23] in December 2017. Because most provisions of the law did not take effect until January 1, 2018, taxpayers will not feel the law's main impact until they file their 2018 tax returns during the 2019 filing season.[24] However, certain changes, such as a lower threshold for deducting medical expenses, apply for 2017 returns. Additionally, some taxpayers adjusted charitable contributions, property and income tax payments, and mortgage interest payments in 2017 to maximize benefits based on the change in the law.[25]

19 For a more detailed discussion on telephone and TAC service, see National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress vol. 2 IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress, 10–18 Telephones, and 105–111 TACs. *See also,* 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*), and 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*).

20 Area of Focus: *Taxpayers Need More Guidance and Service to Understand and Comply with the Tax Cuts and Jobs Act*, *infra*.

21 TIGTA, *Interim Results of the 2018 Filling Season*, 2018-40-028, 14 (Apr. 5, 2018).

22 Area of Focus: *High False Detection Rates Associated with Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers*, *infra*. *See also* National Taxpayer Advocate 2017 Annual Report to Congress 219-26 (Most Serious Problem: *Fraud Detection: The IRS Has Made Improvements to Its Fraud Detection Systems, But a Significant Number of Legitimate Taxpayer Returns Are Still Being Improperly Selected by These Systems, Resulting in Refund Delays*).

23 Tax Cuts and Jobs Act, Pub. L. No. 115-97.

24 For planning purposes, the impact of the new law is immediate. To the extent that taxpayers — both individuals and businesses — take tax considerations into account in their decision-making, changes that took effect on January 1, 2018 are already relevant. The new law also may affect the amount of estimated tax payments paid by self-employed persons throughout 2018.

25 Dave Gardner, *What to Do Now About the New Tax Law*, The Daily Camera, Dec. 23, 2017.

IMPACT OF THE PROTECTING AMERICANS FROM TAX HIKES ACT

The PATH Act, enacted by Congress in December 2015, included several provisions that directly impact taxpayers, employers, and IRS processes. These provisions:

- Advanced the due date to January 31 for employers to report wage information on Forms W-2 to the Social Security Administration (SSA) and for payors of non-employee compensation to report that income on Forms 1099-MISC to the IRS;[26]
- Directed the IRS to hold the refunds of taxpayers claiming either the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC) until February 15;[27] and
- Required the deactivation of Individual Taxpayer Identification Numbers (ITINs).

We will address the continuing impact of each of these provisions below.

Earlier Deadline for Information Reporting Documents

The PATH Act accelerated the due dates to January 31 for certain information reporting documents, such as Form W-2, *Wage and Tax Statement*, and Form 1099-MISC, *Miscellaneous Income,* reporting non-employee compensation. Prior to 2017, the due date for these information reporting forms was the last day of February (or March, if filed electronically).

Employers file Forms W-2 with the SSA, which sends the W-2 data to the IRS. Prior to the PATH Act, the IRS received W-2 data after the filing season when it had already issued most refunds. Moving up the W-2 filing deadline was to allow the IRS more time to verify the legitimacy of tax returns claiming refunds by comparing the return data against the data reported on Forms W-2 filed by employers before paying out refunds. In practice, however, some employers, including federal agencies, do not file their Forms W-2 by the deadline, and others file them on paper, which means the data is not available until the SSA enters and transmits it to the IRS.[28] These delays have undermined some of the projected benefits of the law and caused the IRS to hold returns. During FS 2018, the IRS selected about 369,300 EITC and ACTC returns as potentially fraudulent because it had not received the third-party wage information needed for matching.[29]

Further exacerbating the issue are problems inherent in the IRS's aging legacy systems. In the above case, the IRS had anticipated that it could release these held returns in bulk using the Electronic Fraud Detection System (EFDS) once it received and verified the information.[30] However, the IRS third-party information file did not communicate with EFDS, so employees had to manually release refunds one at a time as they entered the third-party information into EFDS.[31]

26 Protecting Americans from Tax Hikes (PATH) Act of 2015, Pub. L. No. 114-113 § 201 (codified at IRC § 6071).

27 PATH Act, § 201(b) (codified at IRC § 6402(m)).

28 Government Accountability Office, GAO-18-90R, *Tax Information Returns: Shared Service Centers Generally Transmitted Federal Wage and Tax Data on Time for Tax Year 2016* 2 (Nov. 2017) (noting "[o]ne factor for the new January 31 deadline was testimony given in a 2015 Senate Finance Committee hearing indicating that federal agencies were not sending W-2 data soon enough for states' tax authorities to use before issuing tax refunds.").

29 IRS, *IDT [Identity Theft] & IVO [Integrity Verification and Operation] Selections Performance Reports*, slide 16 (May 9, 2018).

30 The Electronic Fraud Detection System previously selected returns for fraud detection and is in the process of being retired. It is currently used only as a case management system of fraud detection inventory.

31 *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules & the H. Subcomm. on Government Operations*, 115th Cong. (Apr. 17, 2018) (statement of Nina E. Olson, National Taxpayer Advocate).

The Treasury Inspector General for Tax Administration (TIGTA) has reported that in the 2017 filing season the IRS was able to match tax returns against Forms W-2 at the time of return processing for 87 percent of returns (through mid-June).[32] Not surprisingly, however, the percentage was much lower early in the filing season. Of note, the IRS could data match only about half the returns filed between January 23 and February 2, 2017.

Figure 2.2 summarizes the timing of the receipt of Forms W-2 compared with the filing of tax returns for tax year (TY) 2016 through June 15, 2017.

FIGURE 2.2, Timing of Forms W-2 Compared to Filing of the Tax Return, Tax Year 2016 Forms Filed in 2017[33]

Filing Period	Tax Returns Filed	Forms W-2 Available at Time of Tax Return Processing	Percent of Tax Returns	Forms W-2 Available After Processing	Percent of Tax Returns	Total Tax Returns With a Form W-2	Percent of Tax Returns
January 23 to February 2	11,249,701	5,501,889	49%	5,653,144	50%	11,155,033	99%
February 3 to February 16	19,270,837	16,152,107	84%	2,973,088	15%	19,125,195	99%
February 17 to April 20	56,218,819	52,982,909	94%	2,797,655	5%	55,780,564	99%
April 21 to May 18	6,321,191	6,053,928	96%	180,592	3%	6,234,520	99%
May 19 to June 15	1,435,991	1,385,374	96%	19,450	1%	1,404,824	98%
Total	**94,496,539**	**82,076,207**	**87%**	**11,623,929**	**12%**	**93,700,136**	**99%**

32 TIGTA, Ref. No. 2018-40-025, *Late Receipt of Wage Reporting Documents Reduces Fraud Detection Capabilities and Increases Taxpayer Burden* (Mar. 26, 2018).

33 *Id.*

In summarizing its findings, TIGTA wrote:

> Forms W-2 that are not available at the time of tax return filing can result in the IRS selecting legitimate tax returns as potentially fraudulent which increases taxpayer burden. For example, we analyzed the 11,623,929 tax returns with Forms W-2 on file after the tax return was filed and identified that 56,610 (0.5 percent) tax returns were selected for fraud treatment, of which 41,993 (74 percent) were determined to be a legitimate taxpayer and not fraudulent. If the IRS had the Forms W-2 at the time the tax returns were filed, these tax returns would likely have not been selected for fraud treatment.[34]

As TIGTA suggests, the inability to data match a significant number of returns early in the filing season undermines the benefits Congress envisioned. When the IRS processes tax returns before performing data matching, it pays more improper claims and delays more legitimate refunds.

Late Information Reporting and Unconnected Systems Adversely Affect the Release of Refunds on Returns Claiming the Earned Income Tax Credit (EITC) and Additional Child Tax Credit

The EITC was enacted as a work incentive in the Tax Reduction Act of 1975 and has become one of the government's largest means-tested anti-poverty programs. In processing year 2017,[35] more than 27 million taxpayers received about $65 billion in EITC benefits. However, the EITC program has a relatively high improper payment rate.[36] To reduce the improper payment rate, Congress included a directive in the PATH Act that requires the IRS to delay payment of any refund that includes the EITC or the refundable ACTC until February 15 of each filing year.[37] Combined with the requirement that employers accelerate the issuance of Forms W-2 and that other payors accelerate the issuance of Forms 1099-MISC, the refund hold until February 15 is intended to reduce the improper payment rate by permitting time for income data matching before paying out EITC and ACTC claims. Taxpayers claiming these benefits can submit their returns prior to February 15, but the IRS holds the returns until that date.[38] Figure 2.3 shows the impact of the PATH provisions on taxpayers claiming the EITC.

34 TIGTA, Report 2018-40-025, *Late Receipt of Wage Reporting Documents Reduces Fraud Detection Capabilities and Increases Taxpayer Burden* (Mar. 26, 2018).

35 IRS, *Statistics for Tax Returns with EITC [Earned Income Tax Credit]*, https://www.eitc.irs.gov/eitc-central/statistics-for-tax-returns-with-eitc/statistics-for-tax-returns-with-eitc (last visited Jun. 12, 2018).

36 An improper payment is defined as "any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements" and ''any payment to an ineligible recipient." Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111–204, § 2(e) (2010) amending Improper Payments Information Act of 2002, Pub. L. No. 107-300 (2002) by striking § 2(f) and adding (f)(2). The IRS estimates that for fiscal year (FY) 2016, between 22.2 percent ($15.5 billion) and 25.9 percent ($18.1 billion) of the total EITC program payments of $69.8 billion were improper. Department of Treasury, *Agency Financial Report Fiscal Year 2016*, 49 (Nov. 2016).

37 Unlike traditional anti-poverty and welfare programs, the EITC was designed to have an easy "application" process by allowing an individual to claim the benefit on his or her tax return. This approach virtually eliminates the significant costs associated with up-front eligibility verification in traditional social welfare programs, but results in a high improper payment rate.

38 IRC § 6402(m).

FIGURE 2.3, Comparison of Refund Issuance Dates on Returns Receiving EITC, Filing Seasons 2016–2018[39]

Week Ending	2016 Cumulative	2017 Cumulative	2018 Cumulative	Percentage Difference 2016–2018
Jan. 25, 2018	855,083			
Feb. 1, 2018	7,424,783			
Feb. 8, 2018	11,104,413			
Feb. 15, 2018	13,627,831	11,260,446	10,645,675	-21.9%
Feb. 22, 2018	15,533,821	13,367,603	12,727,288	-18.1%
Mar. 1, 2018	16,995,981	15,265,718	14,507,455	-14.6%
Mar. 8, 2018	18,166,010	16,691,389	15,948,693	-12.2%
Mar. 15, 2018	19,134,737	17,814,073	17,104,596	-10.6%
Mar. 22, 2018	19,971,655	18,775,735	18,065,972	-9.5%
Mar. 29, 2018	20,713,482	19,635,955	18,906,548	-8.7%
Apr. 5, 2018	21,468,224	20,459,066	19,653,263	-8.5%
Apr. 12, 2018	22,323,775	21,351,318	20,487,404	-8.2%
Apr. 19, 2018	23,494,074	22,534,564	21,568,297	-8.2%

The IRS added two additional filters to screen returns in the 2018 filing season, and EITC and ACTC taxpayers who already experienced delays of their refunds until February 15 under the PATH Act faced further delays of 60 days or longer if one of these filters flagged their returns. Filter "I" detects mismatches between items reported on the return and those reported by third parties, and filter "J" identifies returns with unverifiable data.[40] These filters, in addition to those already in place, have contributed to a 495 percent increase in cases selected for pre-refund wage verification.[41]

In fact, cases associated with these and other filters caused a 180 percent increase in TAS's Pre-Refund Wage Verification Program case receipts in FY 2018, compared to the same period in FY 2017,[42] making it TAS's number one case issue. In the eight-month period from October 2017 through the end of May, receipts increased from 14,132 cases in 2017 to 39,497 cases in 2018,[43] showing the downstream consequences of refund delays as most of these taxpayers contact TAS for assistance due to economic hardships from delayed refunds.

39 IRS, Compliance Data Warehouse (CDW), Individual Returns Transaction File and Individual Master File (Tax Year (TY) 2015 returns filed in 2016, TY 2016 returns filed in 2017, and TY 2017 returns filed in 2018). For TY 2018, there were 17 tax returns processed prior to Feb. 15, 2018. The reason these refunds were processed earlier than the IRS processing guidelines could not be determined so these counts are included in the Feb. 15, 2018 cumulative total.

40 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).

41 *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules & the H. Subcomm. on Government Operations*, 115th Cong. (Apr. 17, 2018) (statement of Nina E. Olson, National Taxpayer Advocate).

42 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Jun. 1, 2017; Jun. 1, 2018).

43 *Id.*

Deactivation of Individual Taxpayer Identification Numbers and Related Math Error Authority

The PATH Act requires ITINs to expire based on the year of issue or lack of use in the last three tax years.[44] The IRS began implementing this requirement at the end of 2016, but as detailed in the related Area of Focus,[45] it adopted a slower schedule than the legislation required. In 2016 and 2017, the IRS deactivated 15.2 million ITINs, deactivating approximately 1.5 million solely due to the middle digits (roughly tied to age of issuance), not lack of use.[46] TAS is concerned about the IRS's erroneous deactivation of ITINs for non-use, and TIGTA reports that the IRS erroneously deactivated over 130,000 ITINs because of flaws in its systems.[47] TAS will be reviewing submissions on its Systemic Advocacy Management System to identify issues related to erroneous deactivations and will be advocating for those taxpayers.

The PATH Act also authorizes the IRS to disallow credits and exemptions for returns with an expired, revoked, or otherwise invalid ITIN through its math error procedures.[48] The IRS's notices regarding these math errors may not have been effective because of the 152,000 tax returns that received a math error for an expired ITIN last year, taxpayers subsequently renewed the expired ITINs for only 33,056 (22 percent) of these returns.[49] TAS will be reviewing math errors for expired ITINs that occurred during and directly after the current filing season. As discussed in the Area of Focus, TAS will pursue changes to the related math error notices.

TAXPAYER INTERACTIONS WITH THE IRS

Telephones

The IRS relies primarily on the Accounts Management (AM) Customer Service Representative (CSR) Level of Service (LOS) as its benchmark measure of taxpayer access to telephone assistance. The IRS received more than 42.5 million telephone calls during the filing season[50] and reported an overall LOS of 80 percent on its AM telephone lines.[51] This level marks a slight improvement from the IRS's performance during FS 2017.[52] While the IRS should be commended for these results, the LOS statistics viewed in isolation can be misleading because they do not reflect the overall experience of taxpayers seeking telephone assistance.

44 PATH Act § 203(d).

45 Area of Focus: *Recent Legislation Provides Opportunities for Needed Changes to the Individual Taxpayer Identification Number Program, But the IRS Must Ensure Any Changes Preserve Taxpayer Rights*, *infra*.

46 IRS response to TAS information request (Oct. 12, 2017).

47 TIGTA, *Some Legal Requirements to Deactivate Individual Taxpayer Identification Numbers Have Not Been Met*, 2018-40-011, 9-10 (Jan. 29, 2018).

48 Under these procedures, the IRS can summarily assess and immediately collect tax without first providing the taxpayer access to the Tax Court unless the taxpayer requests an abatement within 60 days. PATH Act § 203(e) (codified at IRC § 6213(g)(2)).

49 To determine these numbers, TAS assumed a successful renewal occurred if the renewed ITIN was issued in the same or later month when the math error notice was generated. CDW (data retrieved by TAS Research Nov. 14, 2017).

50 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 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.

51 *Id*. The IRS reports the Accounts Management (AM) Customer Service Representative Level of Service (LOS) as its benchmark measure of telephone performance.

52 For the same period in filing season 2017, the IRS provided an overall LOS of 70.7 percent and a 79.1 percent LOS on its AM lines. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 2018).

Breakout of IRS Telephone Lines

To understand the IRS's telephone statistics, a few concepts are important:

- The IRS tracks the total number of calls it receives, which is known as the "Enterprise Total." The Accounts Management (AM) telephone lines are the largest subset of the Enterprise Total, accounting for 84 percent of all calls during the filing season. The IRS generally directs calls to the AM lines for account inquiries and answers to tax-law questions, among other things.[53] The remaining 16 percent of calls reflect a combination of calls to the Consolidated Automated Collection System lines, which include most of the IRS's compliance service operations, and certain other low-volume telephone lines.[54]
- Calls generally are directed either to telephone assistors or to receive an automated response. Whether a call is routed to a telephone assistor or to automation generally depends on the telephone number the taxpayer calls and how the caller responds to the automated prompts he or she encounters.
- The benchmark LOS measure generally reflects only calls routed to CSRs on the AM telephone lines. Notably, this measure does not reflect calls directed to non-AM telephone lines or AM calls directed to automation.

Figure 2.4 shows the IRS's performance during the 2017 and 2018 filing seasons for the AM total, many of the filing season-related phone lines that are components of the AM total, a few lines of special interest, and the Enterprise total. Most phone lines show an improvement in service, marked by a higher LOS and shorter times on hold ("Average Speed of Answer"). At the same time, there were one million fewer call attempts on the AM lines, falling from 36.9 million in 2017 to 35.7 million in 2018. There was a five percent increase in calls answered by an assistor, from 9.9 million calls to 10.4 million. Generally, shorter wait times may mean that fewer taxpayers hang up and attempt a repeat call.[55]

53 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Sept. 30, 2017). For the Jan. 1- Apr. 21, 2018 period the IRS received 42.5 million calls Enterprise-wide, and of that total, 35.7 million calls were directed to the AM telephone lines (84 percent). IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 21, 2018).

54 IRM 21.1.1.1.3 (May 21, 2018).

55 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 21, 2018) (source of AM and Enterprise Total data); IRS, JOC, *Snapshot Reports: Product Line Detail* (Apr. 21, 2018) (source of all other data except the Taxpayer Protection Program (TPP) line); IRS, JOC, *FY 2018 Weekly TPP Snapshot Report* (Apr. 21, 2018) (source of TPP line data). Data from Jan. 1–Apr. 21, 2018. Dialed attempts, sometimes called Net Attempts, is the number of callers intended for a given product line. Dialed attempts excludes callers who dialed the number, but should have dialed another number, and includes callers who dialed another number but should have dialed this number. IRS, FY17 *Snapshot & ELS Reporting Guidelines*, Version 2017.02 (Mar. 3, 2017).

FIGURE 2.4, 2017 AND 2018 Filing Season Statistics for Toll-Free Telephone Lines[56]

	2017				2018				Percent Change	
Telephone Line	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	ASA Percentage Change	LOS Percentage Change
Accounts Management (AM) [SUM of 29 Lines]	36,853,126	9,872,802	6.5	79.1%	35,668,223	10,422,742	5.1	80.0%	-22%	1%
Refund Hotline 800-829-1954	13,155,827	138,167	5.4	74.9%	12,713,310	115,577	3.9	83.0%	-27%	11%
Individual Income Tax Services 800-829-1040	8,121,605	2,238,786	5.1	81.3%	7,894,684	2,434,719	3.5	79.1%	-31%	-3%
Transcript 800-908-9946	2,073,759	159,197	6.0	86.6%	1,568,196	206,723	7.1	75.2%	19%	-13%
Wage & Investment IMF Customer Response 800-829-0922	1,818,893	749,240	5.1	80.5%	1,797,884	820,456	3.5	82.0%	-31%	2%
Refund Call Back 800-829-0582	1,787,379	539,793	6.6	74.9%	1,482,996	538,468	4.3	80.7%	-34%	8%
Business & Specialty Tax Services Line 800-829-4933	1,440,368	719,092	10.3	77.0%	1,587,233	787,089	8.5	77.3%	-18%	0%
Identity Protection Specialized Unit (IPSU) 800-908-4490	1,079,399	663,230	8.3	82.8%	906,515	507,904	3.5	83.3%	-59%	1%
Self Employed IMF Customer Response 800-829-8374	864,595	338,973	5.1	79.3%	876,086	388,652	3.8	80.4%	-26%	1%
ACA Hotline 800-919-0452	737,028	495,149	8.5	76.7%	817,981	547,746	8.1	81.1%	-5%	6%
Tax Law 866-883-0217	718,472	459,566	10.5	71.8%	659,111	467,691	8.9	79.1%	-15%	10%
PPS 866-860-4259	683,674	487,346	6.9	81.0%	886,265	692,443	3.3	90.7%	-51%	12%
BMF Customer Response 800-829-0115	683,239	486,811	10.0	82.1%	691,943	500,688	8.5	83.7%	-15%	2%
International 8775 (855-790-8775)	223,201	140,284	4.4	78.8%	215,713	148,192	3.0	81.9%	-32%	4%
Tax Exempt and Government Entities (TE/GE) 877-829-5500	199,771	122,162	8.4	74.0%	205,323	123,777	8.4	72.7%	0%	-2%
Individual Taxpayer Identification Number (ITIN) 800-908-9982	189,254	121,148	7.6	73.6%	203,591	137,935	6.0	79.1%	-21%	7%
NTA 877-777-4778	175,879	91,629	2.7	77.2%	308,477	167,734	3.7	75.2%	40%	-3%
VITA Location 800-906-9887	53,428	35,390	3.3	74.4%	48,890	35,115	2.2	82.5%	-32%	11%
TAC Appointment 844-545-5640	2,188,336	1,514,657	4.8	80.3%	2,232,666	1,438,502	5.7	76.0%	18%	-5%
Installment Agreement/Balance Due	2,656,759	1,071,182	46.8	40.3%	1,941,044	947,294	28.7	49.0%	-39%	21%
Taxpayer Protection Program 800-830-5084	1,368,597	879,273	13.8	77.8%	1,753,421	1,051,828	12.4	70.1%	-10%	-10%
Forms Order Line 800-829-3676 (800-TAX-FORM)	886,921	554,807	1.6	90.9%	994,055	506,605	7.4	69.0%	356%	-24%
Amended Return Hotline 866-464-2050	518,197	337,970	7.4	78.4%	447,167	325,396	4.1	88.6%	-45%	13%
Enterprise Total (Includes AM, Compliance, Forms Order Line, ASK TAS, and EPSS)	**44,327,213**	**13,176,265**	**11.6**	**70.7%**	**42,512,830**	**13,521,301**	**8.7**	**72.9%**	**-25%**	**3%**

56 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 21, 2018) (source of AM and Enterprise Total data); IRS, JOC, *Snapshot Reports: Product Line Detail* (Apr. 21, 2018) (source of all other data except the Taxpayer Protection Program (TPP) line); IRS, JOC, *FY 2018 Weekly TPP Snapshot Report* (Apr. 21, 2018) (source of TPP line data). Data from Jan. 1–Apr. 21, 2018.

Telephone Service Observations

As noted above, favorable top-line numbers mask significant weaknesses in IRS telephone service. Consider the following:

- **The LOS was not uniformly high across all IRS telephone lines.** During FS 2018, the IRS received 6.8 million calls to telephone lines not included in the AM umbrella, such as those directed to the compliance functions. These calls accounted for 16 percent of the total calls IRS received this filing season. Taxpayers calling the IRS's compliance functions to discuss payment options waited 24 minutes on average to speak with a telephone assistor, and the LOS on these lines was 54 percent.[57] Of particular note, the "Installment Agreement/Balance Due" line had an LOS below 50 percent for FS 2018, meaning that more than half of all taxpayers did not receive assistance at the time of the call, and wait times for taxpayers who got through were nearly 30 minutes.[58]
- **Although we believe most taxpayers calling the IRS want to speak to an employee, the IRS phone tree appears to direct most calls to automation. Indeed, of AM calls answered, 55 percent were deemed "answered" by automated messages.**[59] Callers generally have no choice regarding how and where their calls are routed — the IRS programs transfers based on the caller's response to pre-recorded telephone prompt options. The IRS call tree generally does not present the taxpayer with an option to speak to a live assistor. Thus, the LOS data reflects where taxpayers have been directed by the IRS, not where and how taxpayers need or would like to be assisted.
- **A significant number of calls to the IRS are not included in the benchmark LOS figure.** As noted above, the benchmark LOS only measures the results of "net attempts" to the AM lines that are routed to telephone assistors. Since the IRS routed 16 percent of "net attempts" to non-AM telephone lines and 55 percent of AM calls were answered by automated lines (rather than telephone assistors), the benchmark LOS reflects the results of only about 31 percent of the calls the IRS received.[60]
- **IRS telephone assistors answered only about 29 percent of the calls the IRS received on its AM lines.** When the IRS reports its LOS was 80 percent, that is widely understood to mean telephone assistors answered 80 percent of the calls the IRS received. In fact, telephone assistors answered only about 10.4 million calls out of 35.7 million calls received on the AM lines, or 29 percent. We are not suggesting that the IRS only served 29 percent of callers. While we believe

57 The LOS for the Consolidated Automated Collection Service (ACS) lines, which taxpayers call to reach the IRS's compliance functions and discuss payment options, was just 54 percent during FS 2018, with average wait times of 24 minutes. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 2018).

58 *Id*. The Installment Agreement/Balance Due line was grouped with AM until 2017, when it was moved to 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.

59 Of the 23.2 million calls considered "answered" during the filing season, 10.4 million were answered by telephone assistors (45 percent), with the balance considered "answered" with automated messages. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 2018).

60 During filing season 2018, the IRS received 42.5 million calls overall. About 35.7 million were routed to the AM lines. Of the 35.7 million calls routed to the AM lines, about 13.0 million were routed to telephone assistors and about 10.4 million were answered by telephone assistors. The balance of the AM calls (22.6 million) were either routed to automation or reflected taxpayer hang-ups. The AM Customer Service Representative Level of Service generally is computed by dividing the number of calls answered by telephone assistors by the number or AM calls routed to telephone assistors. Calls made to IRS telephone lines outside the Accounts Management umbrella and calls routed to automation are excluded from that calculation. Because the number of calls routed to telephone assistors was about 13.0 million and the number of calls received by the IRS overall was about 42.5 million, the AM LOS reflected the results of only about 31 percent of taxpayer calls. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 2018).

almost all taxpayers who call are seeking to speak with a telephone assistor, some are adequately served through automation and some quickly hang up for personal reasons *(e.g.,* a call-waiting notification is received just after the start of the call). But when telephone assistors answer only 29 percent of taxpayer calls during a period when the IRS reports a "Level of Service" of 80 percent, the need for more reliable and robust performance measures is apparent.

- **Measures like the LOS do not provide qualitative information about the assistance a taxpayer receives on a telephone call.** Achieving a high LOS does not mean much if the IRS is unable to answer taxpayers' questions over the phone or guide them to an appropriate solution to resolve their issues. 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 First Contact Resolution (FCR).[61] Almost 40 percent of taxpayers calling the IRS felt one call did not fully resolve their problems.[62] These results show taxpayers are not getting the full assistance they need over the phone, jeopardizing their *rights to quality service* and *to be informed*, while potentially undermining voluntary compliance.[63]

Correspondence

There is a pool of AM employees that the IRS shifts between answering the phones and responding to taxpayer correspondence.[64] As a result, the IRS faces a difficult choice in deciding which service to prioritize. If it assigns more employees to answer taxpayer telephone calls, it will fall further behind in processing taxpayer responses to proposed adjustment notices. If it assigns more employees to process taxpayer responses to proposed adjustment notices, it will answer fewer telephone calls. Since 2008, the IRS has received an average of nearly ten million letters annually responding to proposed adjustments and other notices (*e.g.*, requesting penalty abatements, responding to math error notices, and making payment arrangements).[65] The failure to timely process taxpayer responses to proposed increases in tax liability can have a significant impact on the taxpayer.

Figure 2.5 shows examples of key AM correspondence inventory levels at the conclusion of recent filing seasons. The "IMF Overall" category includes all taxpayer correspondence from individual taxpayers that is not handled by another function within the IRS; the "Amended Return/Duplicate Filing" category includes correspondence in which taxpayers are seeking to file amended returns;[66] and the "Injured Spouse" category includes Forms 8379, *Injured Spouse Allocation,* received from taxpayers.[67]

61 Jeff Rumburg & Eric Zbikowski, MetricNet, *The Five Most Important KPI's for the Call Center*, 5 (Feb. 20, 2013), https://ccng.com/uploads/five_most_important_kpis_for_the_call_center_metricnet.pdf.

62 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*).

63 For further discussion on IRS phone service, see Area of Focus: *The IRS's Failure to Create an Omnichannel Service Environment Restricts Taxpayers' Ability to Get Assistance Using the Communication Channels That Best Meet Their Needs and Preferences*, *infra*. *See also* IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: *Telephones*, *infra*. *See also* 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*).

64 Internal Revenue Manual (IRM) 21.1.1.6, *Customer Service Representative (CSR) Duties* (Oct. 1, 2016).

65 Over the past decade, annual taxpayer correspondence in response to proposed adjustments has ranged from a low of 7.3 million letters to a high of 11.8 million letters and has averaged approximately ten million per year. *See* IRS, JOC, *Adjustments Inventory Reports: July-September Fiscal Year Comparison* (FY 2006 through FY 2017).

66 Amended returns are not accepted through e-file and thus must be filed on paper.

67 A taxpayer who participated in the filing of a joint return may request that his or her share of the credit balance be refunded where it otherwise would be applied to a past-due obligation of the other spouse.

The amended return inventory and percentage of overaged amended return inventory (more than 45 days old) has shown a significant increase from 2017 to 2018.[68] This increase is reflected in TAS receipts which increased about 25 percent from the 2017 filing season compared to 2018.[69]

FIGURE 2.5, Selected Correspondence Inventory Levels, April[70]

	Week Ending 4/23/16	Week Ending 4/22/17	Week Ending 4/21/18	% Change 2017–2018
IMF Correspondence	226,996	192,522	153,440	-20.30%
Overage	38.8%	29.9%	35.0%	17.1%
Amended Return/Duplicate Filing	237,445	273,567	356,988	30.5%
Overage	42.60%	15.9%	23.1%	45.3%
Injured Spouse	107,821	93,136	95,127	2.1%
Overage	37.70%	15.0%	20.4%	36.0%

Face-to-Face Service at Taxpayer Assistance Centers

This filing season, the IRS continued its policy of requiring taxpayers to schedule an appointment to receive assistance at any of its 371 TACs.[71] Thus, the TACs, previously known as "walk-in" sites, have been completely transformed to become "appointment only" sites.[72] To schedule an appointment, a taxpayer must call the TAC Appointment Line (844-545-5640).[73] The telephone assistor determines the taxpayer's need and, if possible, directs taxpayers to resources where they may find answers to their questions.[74] The telephone assistor schedules an appointment for the taxpayer if the assistor determines the need meets the criteria for visiting a TAC — not simply because the taxpayer requests an appointment.[75] During this filing season, TAS received complaints from taxpayers regarding the

68 TAS has expressed concern about overage inventories in the past. *See, e.g.*, National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 65-66. Similarly, TIGTA issued an audit report in February 2016, Ref. No. 2016-40-023, *Continued Inconsistent Use of Over-age Correspondence Lists Contributes to Taxpayer Burden and Unnecessary Interest Payments* (Feb. 2016).

69 TAS received 2,070 Amended Return cases in filing season 2017 (January through April) compared to 2,591 cases in FY 2018 (January through April). Data obtained from TAMIS (Feb. 1; 2017; Mar. 1; 2017; Apr. 1, 2017; Feb. 1, 2018; Mar. 1, 2018; and Apr. 1, 2018).

70 IRS, JOC, Customer Account Services, Accounts Management Paper Inventory Reports, *National Inventory Age Report* (weeks ending Apr. 23, 2016; Apr. 22, 2017; and Apr. 21, 2018). The Injured Spouse figures reflect taxpayers affected by offsets from the Debtor Master File or from the Financial Management Service and covers debts related to child support, student loans, *etc*.

71 IRS News Release IR-2018-29, *Avoid the Rush: Visits to Taxpayer Assistance Centers Require Appointments* (Feb.18, 2018).

72 For a more detailed discussion, 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*).

73 The TAC Appointment Line achieved a 76.0 percent LOS during filing season 2018 with an average wait time of 5.7 minutes. Total calls to the appointment line rose by nearly 45,000 from filing season 2017 to 2,232,666 in filing season 2018. IRS, JOC, *Snapshot Reports: Product Line Detail Snapshot* (week ending Apr. 21, 2018).

74 IRM 21.1.1.6, *Customer Service Representative (CSR) Duties* (Oct. 1, 2016).

75 IRS, *Field Assistance Appointment Desk Guide* (Dec. 5, 2016) (noting the phone assistor will first try to provide direct assistance, and second, provide information on alternative service options). Even if offered an appointment, the taxpayer may decline if the available dates and times do not work. In those instances, the taxpayer may be left with having to choose a "second best" option.

assertiveness of telephone assistors when steering the taxpayer away from a TAC appointment and toward online services.[76]

The IRS view is it is serving more taxpayers under the appointment-only approach since Accounts Management employees who staff the TAC appointment line can assist many taxpayers by either answering their questions or directing them to a self-help option. For example, an assistor may save a trip to an IRS office for taxpayers looking for forms or publications by telling them how to download from IRS.gov or giving a centralized number to call to request mailed copies. The IRS says its staff is thereby freed up to assist taxpayers who truly require face-to-face assistance. In addition to the push toward using online self-help options, taxpayers visiting TACs are greeted with a sign on the door that appointments are required, with an exception only for limited services such as making a "limited payment," picking up a tax form, or dropping off a current year tax return.[77]

The appointment-only approach can negatively impact taxpayers who need assistance urgently and cannot wait to obtain an appointment.[78] TAS has previously reported examples of the IRS turning taxpayers without an appointment away from a TAC in situations where a focus on assisting the taxpayer might have resulted in a different outcome.[79] TAS is pleased that the IRS's current guidance to employees includes managerial discretion to assist taxpayers without appointments if the taxpayer has a hardship or can be assisted without affecting other scheduled appointments.[80] However, serving taxpayers without appointments remains an exception — and one that is granted on a case-by-case basis. As noted previously, the number of taxpayers receiving same-day appointments declined by 49 percent during the first half of FY 2018 compared with the same period in FY 2017.[81]

TAS remains concerned that the IRS data captures interactions with taxpayers but does not capture the full taxpayer experience. For instance, in the example above where a CSR instructs the taxpayer to download forms or publications, there is no way to know if the taxpayer ultimately located and downloaded the publication needed.

The IRS made these changes in conjunction with several reductions in service, such as limiting the scope of tax law questions and terminating its longstanding service of assisting taxpayers with tax return

76 Systemic Advocacy Management System (SAMS) Issue 37328. 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.

77 *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*). The IRS updated Publication 5202, *Appointment Only Poster for Field Assistance Taxpayer Assistance Centers (English-Spanish Version)* in February 2017. The prior August 2015 version contained no exceptions, stating only the following: "To provide the best possible service, taxpayer assistance is by appointment only."

78 The IRS will, in some circumstances, "double book" an appointment if the taxpayer has an urgent need. However, this will happen only when the taxpayer is able to explain the need, and the phone assistor is able to recognize the urgency. There are exception criteria for taxpayers who show up at a TAC without an appointment. Likewise, the taxpayer will need to explain the need, and a TAC employee needs to recognize the taxpayer should receive service.

79 National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 68-70.

80 IRM 21.3.4.2.4.2, *TAC Appointment Exception Procedures* (July 29, 2016).

81 IRS Wage and Investment Division (W&I), *Business Performance Review* 12 (May 10, 2018).

preparation.[82] Regarding tax law questions, the IRS moved 55 topics from in-scope to out-of-scope between 2006 and 2018.[83]

If the IRS's current trend continues, taxpayers soon may not have the option for in-person assistance from an IRS employee. For at least the decade preceding FY 2016, more than five million taxpayers sought in-person assistance at TACs every year.[84] Subsequent to its new "appointment only" policy, the number of taxpayers visiting a TAC declined from about 5.4 million in FY 2015 to nearly 3.2 million in FY 2017, and visits have declined by an additional 15 percent this year.[85] At the same time, the IRS has reduced the number of TACs from 401 to 371 since 2011.[86] At the end of FY 2017, 24 TACs had no staff, while 87 had only one employee.[87]

The IRS has completed a pilot where TAC employees provided face-to-face assistance to taxpayers using SSA office space.[88] These sites differ from typical TACs in that the location information is provided only to those who have a scheduled appointment, and the office does not stock tax forms and publications. But it may provide a less costly means of providing face-to-face assistance in remote areas, and we appreciate the IRS's efforts in this regard.

As a separate matter, the IRS is developing a proof of concept where SSA employees will assist with identity verification for taxpayers.[89] Taxpayers impacted by identity theft may need to visit a TAC to authenticate their identities in some instances before the IRS can release their tax refunds. Completing the verification process at an SSA office may be more convenient for the taxpayer, especially if the nearest TAC is further away.

We continue to be concerned about the limitations on walk-in service for taxpayers. An "appointments preferred" approach would be reasonable, but the "appointments required" approach the IRS has adopted (notwithstanding permitted managerial discretion that seems to be infrequently exercised) sends the wrong message to taxpayers. If a taxpayer takes the time to travel to an IRS assistance site, the IRS should do everything it can to assist that taxpayer. If the TAC has too many taxpayers to assist at the time, the IRS should utilize the process it used for decades, namely, have Revenue Agents or Revenue Officers on call to assist during these overload times.

82 GAO has reported the number of tax law questions answered by the IRS during the filing season alone dropped from 795,000 in 2004 to 110,000 in 2013. GAO-14-133, *2013 Tax Filing Season: IRS Needs to Do More to Address the Growing Imbalance between the Demand for Services and Resources* 26 (Dec. 2013); GAO, GAO-07-27, *Tax Administration: Most Filing Season Services Continue to Improve, but Opportunities Exist for Additional Savings* 29 (Nov. 2006) (supplemented with more precise IRS data provided to TAS by the IRS W&I for 2004 through 2006).

83 During the 2018 filing season, TAS conducted a review of in-scope and out-of-scope questions between 2006 to 2018. 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).

84 IRS W&I, *Business Performance Review* 7 (Nov. 9, 2016), showing 5.5 million visits in FY 2014 and 5.6 million visits in FY 2015. The figure dropped to 4.5 million visits for FY 2016 as additional TACs transitioned to appointment-only.

85 IRS W&I Division, *Business Performance Review* 12 (May 10, 2018). National Taxpayer Advocate 2017 Annual Report to Congress 119 (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*).

86 In 2011, the IRS operated 401 TACs. IRS response to TAS information request (Dec. 23, 2014). The IRS operated 371 TACs, a reduction of 7.5 percent. IRS response to TAS fact check (Nov. 3, 2017).

87 IRS response to TAS fact check (Nov. 3, 2017).

88 IRS W&I, *Business Performance Review* 29 (Feb. 9, 2017).

89 *Id.*

Availability of Tax Forms and Publications

While a majority of taxpayers continue to file electronically, about 20 million taxpayers mail in paper tax returns.[90] Many of these taxpayers, along with a number of other taxpayers, rely on printed versions of forms and publications. Taxpayers may request forms and publications if they lack broadband internet service or if the internet is not accessible to them. A 2016 TAS survey 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.[91]

Furthermore, Congress enacted the Bipartisan Budget Act of 2018 on February 9, 2018,[92] which extended and modified certain tax provisions retroactively for the 2017 tax year. Consequently, the IRS issued Notice 1437 announcing that "updated versions of tax forms will only be available on IRS.gov" since "most tax forms were printed for distribution prior to the signing of [the] new legislation."[93] This means that taxpayers who lacked access to the internet had no direct option for obtaining the correct forms. Additionally, even taxpayers who *can* access forms online experienced the delayed availability of forms. For example, the IRS did not finalize the instructions to claim a qualified plug-in electric vehicle credit in 2017 until March 1, 2018.[94] While this may be understandable, given the late enactment date, these delays create taxpayer burden.

Online and Self-Service Tools

Online tools have become a more significant part of the filing season experience over time.[95] This trend will continue, especially in light of the IRS's "Future State" initiative that includes directing taxpayers to more online and self-help tools.[96] Broadly, there are two categories of online tools: general access tools and taxpayer account tools.

General access tools allow taxpayers to obtain general information that is not case-specific. A few examples of what a taxpayer might accomplish on the IRS website (IRS.gov) include:

- Downloading tax forms, instructions, and publications;[97]
- Locating the TAC nearest to where the taxpayer lives;[98] and
- Using the Interactive Tax Assistant to find answers to general tax law questions such as who may be claimed as a dependent or whether a taxpayer may deduct medical expenses.[99]

90 The IRS received 152.2 million returns in calendar year 2017. Approximately 132.3 million of these (87 percent) were E-filing receipts. IRS, *Filing Season Statistics for Week Ending December 29*, 2017 (updated Jan. 12, 2018), https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-29-2017.

91 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 63 (*A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*) (TAS based the analysis in this report on 3,735 survey responses obtained as of February 2017).

92 Bipartisan Budget Act of 2018, Pub. L. No. 115-123.

93 IRS, Notice 1437, *Information About Your Tax Forms*, (Feb. 2018).

94 IRS, Instructions for Form 8936, *Qualified Plug-in Electric Drive Motor Vehicle Credit (Including Qualified Two-Wheeled Plug-in Electric Vehicles)*, Cat. No. 67912V (Mar. 1, 2018).

95 *See* Area of Focus: *The IRS's Failure to Create an Omnichannel Service Environment Restricts Taxpayers' Ability to Get Assistance Using the Communication Channels That Best Meet Their Needs and Preferences*, *infra*.

96 IRS, *Future State Initiative*, https://www.irs.gov/uac/newsroom/future-state-initiative (last visited June 13, 2018).

97 IRS, *Forms & Publications*, https://www.irs.gov/forms-pubs (last visited June 13, 2018).

98 IRS, *Contact Your Local IRS Office*, https://www.irs.gov/help-resources/contact-your-local-irs-office (last visited June 13, 2018).

99 IRS, *Interactive Tax Assistant (ITA)*, https://www.irs.gov/uac/interactive-tax-assistant-ita-1 (last visited June 13, 2018).

Taxpayer account tools generally require that the taxpayer pass an authentication test before getting any information or accessing features. Examples of account tools include:

- *Get Transcript*, where the taxpayer can view tax account information;[100]
- *Direct Pay*, where the taxpayer can make payments to the IRS;[101] and
- *View Your Tax Account Information*, where the taxpayer may view payment histories and remaining balance due for certain tax years.[102]

A general access tool can meet relatively simple needs, such as obtaining and printing tax forms or instructions — if the taxpayer has the ability to access the website. As noted above, 14 million individual taxpayers do not have internet access in their homes, and more than 41 million do not have broadband.[103] Even if a taxpayer does have internet access to obtain forms and instructions, he or she is left to determine on his or her own the answer to a question. Interactive tools are helpful, but locating the correct answer is dependent on the series of filtering questions matching the taxpayer's circumstances. As noted in the prior discussion on telephone service, the IRS will not answer tax law questions after the filing season that are unrelated to tax reform, so these tools are the only option available to taxpayers for much of year.

Taxpayers wishing to access account tools face a different challenge. Generally, these tools require that the taxpayer pass "multi-factor authentication." This security measure is intended to ensure the person requesting access is the true taxpayer and not an imposter. For example, to access an account transcript online for the first time, the taxpayer will need:

- His or her Social Security number (SSN), date of birth, filing status, and mailing address from the latest tax return,
- An email account,
- An account number from a credit card, mortgage, home equity loan, home equity line of credit, or car loan, and
- A mobile phone with the taxpayer's name on the account (*i.e.,* not pay-as-you-go minutes).

After the user enters some initial information to validate his or her identity, the IRS will send a one-time use security code via text message to the taxpayer's cell phone.[104] Since the launch of the program in November 2016, only about one in five taxpayers who attempt to create an account pass the necessary e-authentication requirements. Through May of this year, about 6.7 million attempts to establish online accounts have been made.[105]

100 IRS, *Welcome to Get Transcript*, https://www.irs.gov/individuals/get-transcript (last visited June 13, 2018).

101 IRS, *Welcome to Direct Pay!*, https://www.irs.gov/payments/direct-pay (last visited June 13, 2018).

102 IRS, *View Your Tax Account Information*, https://www.irs.gov/uac/view-your-tax-account (last visited June 13, 2018).

103 *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*).

104 The taxpayer has the option of requesting that the activation code be mailed to the address of record. IRS, *Secure Access: How to Register for Certain Online Self-Help Tools*, https://www.irs.gov/individuals/secure-access-how-to-register-for-certain-online-self-help-tools (last visited June 9, 2018). However, waiting "5 to 10 days for mail delivery of the activation code" hinders the taxpayer's ability to immediately resolve the issue.

105 IRS, JOC Reports, *Monthly Accounts Dashboard* (period ending May 31, 2018).

Not all taxpayer account tools require multi-factor authentication. For example, *Where's My Refund* allows the taxpayer to check when the IRS is likely to issue his or her tax refund.[106] The only information the user needs to provide is the SSN (or Individual Taxpayer Identification Number), filing status, and expected refund amount.[107] As the IRS tries to transition taxpayers from using personal service to using online service, it is incumbent on the agency to develop ways to measure the effectiveness of online services at meeting taxpayer needs. To date, adequate measures do not exist.

SPECIAL TOPICS

Identity Theft and Refund Fraud

The nature of stolen identity refund fraud, also referred to as tax-related identity theft (IDT), and refund fraud as a whole continues to evolve as the IRS implements various filters (consisting of rules and data mining models) to combat increasingly sophisticated refund fraud schemes. As mentioned above, TAS has seen a spike in case receipts due to the addition of new filters and the overly broad filters in place from prior years.

For purposes of analyzing the taxpayer experience, it is useful to divide taxpayers into two categories: (1) taxpayers whose returns are flagged on suspicion of refund fraud *unrelated to IDT* and (2) taxpayers whose returns are flagged on suspicion of refund fraud *related to IDT*. A more detailed discussion of the two categories follows.

Pre-Refund Wage Verification

One way the IRS screens for fraud is by looking for misreported income or tax withholding. For example, a taxpayer may file a return that misstates income or the amount of tax withheld by the employer to generate an inflated refund. Under the IRS's Pre-Refund Wage Verification Program, the IRS will freeze a claimed refund if electronic filters and rules flag the income or withholding as suspicious until it can verify the amounts. While these screens are essential to combat the epidemic of refund fraud, they delay the processing of legitimate returns as well. Even a short delay in receiving a refund can have significant impact for a low income taxpayer who may be relying on the refund to assist with day-to-day living expenses.[108]

Over the past two calendar years (CYs), well over half of the returns held by the IRS for pre-refund wage verification have been determined to be false detections. In CY 2016 (through September), the false detection rate was 54 percent, increasing to 66 percent in CY 2017 for the same period.[109]

106 IRS, *"About Where's My Refund?,"* https://www.irs.gov/refunds/about-wheres-my-refund (last visited June 23, 2018).

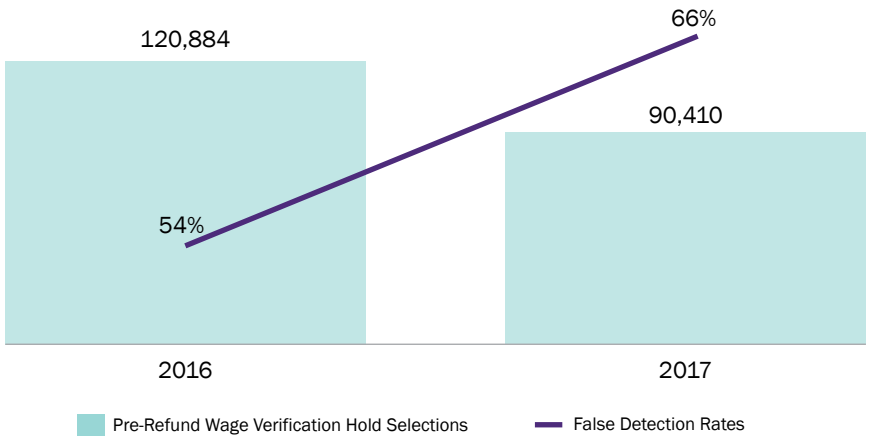
107 IRS Publication 2043, *IRS Refund Information Guidelines for the Tax Preparation Community*.

108 Area of Focus: *High False Detection Rates Associated with Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers*, *infra*. *See also* IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: *Fraud Detection: The IRS Has Made Improvements to Its Fraud Detection Systems, But a Significant Number of Legitimate Taxpayer Returns Are Still Being Improperly Selected by These Systems, Resulting in Refund Delays*, *infra*.

109 IRS Response to TAS Information Request (Oct. 19, 2017).

FIGURE 2.6[110]

Pre-Refund Wage Verification Hold Selections With False Detection Rates January 1 Through September 30 for 2016 and 2017



As discussed above, for 2018, the IRS implemented changes to its fraud filters and created two additional fraud filters (referred to as filters "I" and "J") that increased Pre-Refund Wage Verification inventory. *As of May 2, 2018, the non-identity theft filters selected in excess of 1.1 million returns for verification in CY 2018 compared to 186,419 for the same period in CY 2017, which reflects a 495 percent increase.*[111] Additionally, the IRS anticipated that its case management system, EFDS, would have the ability to release returns in bulk when it could systematically verify the income and withholding against third-party information. Systemic limitations did not allow this to occur, resulting in a less efficient manual release process further delaying taxpayers' receipt of refunds.[112]

These program flaws also generate downstream costs to TAS and the IRS. Taxpayers whose refunds are delayed will likely call the IRS to find out why, which in turn ties up the phone lines, making it more difficult for other taxpayers to reach the IRS to get their questions answered (or their correspondence processed timely, since many employees handle both correspondence and phone lines). Taxpayers who are suffering economic hardships or cannot obtain information about their refunds, are contacting TAS to ask for help in obtaining a refund release. *TAS pre-refund wage verification refund hold cases from January 1, 2018, through May 31, 2018, have increased from 10,937 to 36,980 cases, or 238 percent, when compared to the same period last year.*[113] Of the 36,980 TAS pre-refund wage verification refund hold cases in this five month period, 33,182 (90 percent) involved economic hardships and 463 cases necessitated the issuance of Taxpayer Assistance Orders — more than the *total* number of TAOs issued in any year since 2000.[114]

110 IRS Response to TAS Information Request (Oct. 19, 2017).

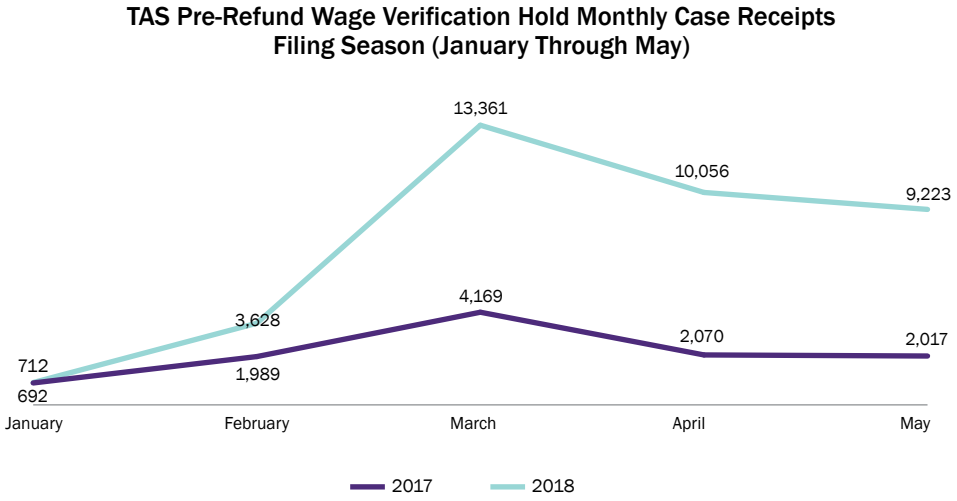
111 *IDT & IVO Selections Performance Report* slide 2 (May 9, 2018).

112 Area of Focus: *High False Detection Rates Associated With Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers*, *infra*; *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules and the H. Subcomm. on Government Operations*, 115th Cong. 46-48 (2018) (statement of Nina E. Olson, National Taxpayer Advocate).

113 Data obtained from TAMIS (Jun. 1, 2017; Jun. 1, 2018).

114 Data obtained from TAMIS (Oct. 1, 2010; Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; Oct. 1, 2015; Oct. 1, 2016, Oct. 1, 2017; Jun. 1, 2018).

FIGURE 2.7[115]



Identity Verification

As of May 2, 2018, the Taxpayer Protection Program (TPP) selected 1.6 million returns in CY 2018 compared to 1.5 million returns over the same period in CY 2017, an increase of five percent. The IRS sends a letter instructing the taxpayer to verify his or her identity by calling the TPP phone line, and the taxpayer must provide certain information from a prior-year return and successfully answer certain authentication questions. Taxpayers failing oral authentication with a phone assistor, or for taxpayers deemed at high risk for identity impersonation, are required to visit a TAC. As a result, taxpayers desperate to complete this process and receive their refunds need to make an appointment at a TAC, as discussed above.

As tax-related identity theft refund fraud schemes become more sophisticated, the ongoing challenge for the IRS is to refine its filters and screening methods in real time. Currently, the IRS is heavily focused on a phishing scam where a criminal takes control of tax practitioners' computers to steal the information that was used on prior-year returns.[116] Seventy-five companies reported taxpayer data breaches in January and February of this year, a nearly 60 percent increase from the same time last year.[117] Data breach incidents, where identity thieves have access to sensitive taxpayer information, make it more difficult for the IRS to create filters that can differentiate between legitimate and illegitimate tax returns.

115 Data obtained from TAMIS (Jun. 1, 2017; Jun. 1, 2018).

116 *See, e.g.*, IRS, *Protect Yourself; Protect Your Clients*, https://www.irs.gov/tax-professionals/protect-your-clients-protect-yourself (last visited June 23, 2018).

117 *See, e.g.*, IRS News Release IR-2018-68, *Summit partners warn tax pros to be on alert; step up security measures* (Mar. 22, 2018).

At the same time, as discussed in detail later in this report, the IRS's fraud detection systems have a history of high false detection rates.[118] In calendar year 2017 (through September), the false detection rate for IDT filters was 62 percent, meaning that of all returns flagged as potentially fraudulent, nearly two-thirds were legitimate.[119] High false detection rates lead to significant downstream consequences for both the IRS and taxpayers. When legitimate taxpayers are ensnared by over-inclusive IRS identity theft and refund fraud detection filters, they may experience protracted refund delays as they navigate the authentication processes to prove they are the true tax return filers.

AFFORDABLE CARE ACT

The IRS No Longer Accepts Tax Returns Silent on Health Care Coverage, Thereby Minimizing Downstream Processing Delays and Reducing Taxpayer Burden

The Patient Protection and Affordable Care Act of 2009 (ACA)[120] requires individuals to obtain qualifying minimum essential coverage (MEC), receive an exemption from the coverage requirement, or pay an individual shared responsibility payment (ISRP). Under the recently-enacted Tax Cuts and Jobs Act, taxpayers must continue to report coverage, qualify for an exemption, or pay the ISRP for tax years 2017 and 2018. Tax returns that didn't report a full-year MEC, attach an exemption (Form 8965, *Health Coverage Exemptions*), or pay an ISRP, are referred to as "silent returns."

For the 2018 filing season, the IRS announced it would no longer accept electronically filed tax returns where the taxpayer does not address the health coverage requirements of the ACA, stating, "After a review of our process and discussions with the National Taxpayer Advocate, the IRS has determined identifying omissions and requiring taxpayers to provide health coverage information at the point of filing makes it easier for the taxpayer to successfully file a tax return and minimizes related refund delays."[121] The National Taxpayer Advocate supports this decision, because taxpayers who e-file now find out immediately that they have omitted this information, rather than receiving an IRS letter weeks down the road while their refunds are frozen.

In 2017, the IRS Inadvertently Issued Letter 6002, *Silent Return Filers – ACA*, to Certain Taxpayers

In September 2017, the IRS inadvertently mailed Letter 6002, *Silent Return Filers – ACA*, to many taxpayers who had, in fact, filed Form 8965 with their returns to report an exemption secured from the Health Insurance Marketplace. The letter requested that the taxpayers file an amended return to report full-year coverage, claim a coverage exemption, or report a shared responsibility payment. Although the Wage and Investment (W&I) division of the IRS did not accommodate TAS's request to send corrected

118 Area of Focus: *High False Detection Rates Associated with Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers*, *infra*. *See also* IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: *Fraud Detection*: *The IRS Has Made Improvements to Its Fraud Detection Systems, But a Significant Number of Legitimate Taxpayer Returns Are Still Being Improperly Selected by These Systems, Resulting in Refund Delays, infra.*

119 IRS Wage & Investment Division, *Business Performance Review* 9 (Feb. 9, 2017). A false detection occurs when a system selects a legitimate return and delays the refund past the prescribed review period.

120 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 of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

121 IRS, ACA Information Center for Tax Professionals, https://www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals (last visited June 18, 2018).

letters to impacted taxpayers, TAS partnered with W&I to draft guidance on the IRS website for impacted taxpayers, and an alert was issued to help IRS employees address this issue.[122]

Employer Shared Responsibility Payment Letters Sent Out to Applicable Large Employers

IRC § 4980H(a)(1) provides that an Applicable Large Employer (ALE) must offer MEC to its full-time employees. In general, an employer is considered an ALE if it employs 50 or more full-time workers (or FTEs), or a combination of full-time and part-time employees that equals at least 50 FTEs.[123]

IRC § 4980H provides that ALEs will be subject to an employer shared responsibility payment (ESRP) if (1) it fails to offer its full-time employees the opportunity to enroll in MEC under an eligible employer-sponsored plan, and (2) a Premium Tax Credit (PTC) was paid to at least one full-time employee. The amount of the ESRP under IRC § 4980H(a) is $2,000 per full-time employee per year (determined on a monthly basis).[124] If an ALE offers MEC but it is not considered affordable, it will be assessed an ESRP of $3,000 for each employee (determined on a monthly basis) that purchases health insurance from the exchange and is granted a tax credit and/or subsidy for health insurance.[125]

The President issued an executive order on January 20, 2017, requiring all agencies in the executive branch with responsibilities under the ACA to "minimize the unwarranted economic and regulatory burdens of the Act."[126] The order stated that the agencies should "exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act" that would impose a burden.[127]

On November 1, 2017, the IRS began sending letters to certain ALEs, advising them of potential assessments of the ESRP under IRC § 4980H.[128] In the Fiscal Year 2018 Objectives Report to Congress, the National Taxpayer Advocate raised a concern that 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.[129]

On March 21, 2018, TIGTA issued a report on the IRS's implementation of processes to ensure compliance with the ESRP.[130] TIGTA reported that the delayed implementation of the ESRP assessment process was due in part to unissued guidance on the ESRP procedures.

The fact the IRS began sending ESRP assessment letters, with no advanced notice to employers, was a major topic of concern and discussion during an April 17, 2018, House Oversight and Government

122 IRS, *New ACA Soft Notices*, SERP Alert 17A0236 (Sept. 8, 2017).

123 IRC § 4980H(c)(2).

124 IRC § 4980H(c)(1). The employer shared responsibility payment (ESRP) provisions provide an inflation adjustment mechanism beginning in years after 2014. IRC § 4980H(c)(5).

125 IRS § 4980H(b)(1).

126 White House, Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal* (Jan. 20, 2017).

127 *Id.*

128 As of March 23, 2018, the IRS had mailed 8,747 letters to certain Applicable Large Employers (ALEs), advising them of potential assessments of the ESRP, and had processed just over $10M in payments. *See* IRS, *Small Business/Self-Employed (SB/SE) Business Performance Report* (1st Qtr. FY 2018).

129 National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 92-97 (Area of Focus: *While the IRS Continues to Do a Reasonable Job in Administering the Affordable Care Act (ACA), Taxpayers Still Encounter Difficulties Attempting to Comply with the Complex Provisions*).

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

Reform Committee hearing attended by the National Taxpayer Advocate and the Acting Commissioner of the IRS.[131] Chairman Meadows noted that there were concerns with how the ESRP assessments were implemented, and asked the Acting Commissioner to work with the National Taxpayer Advocate to take a second look at the process.

Following the hearing, a coalition of organizations representing employers sent a letter to the U.S. Department of the Treasury, the Department of Health and Human Services, and the IRS expressing their concern "regarding the unlawful and deeply flawed process by which the Administration has begun assessing tax penalties" under the Affordable Care Act's employer mandate."[132]

Extension of Time to Provide Health Coverage Forms

In Notice 2018-06, the IRS extended the 2018 due date for certain entities to provide 2017 health coverage information forms to individuals. These entities had until March 2, 2018, to provide Forms 1095-B and 1095-C to individuals instead of the original due date of January 31, 2018. Because of this extension, individuals may not have received their Forms 1095-B or 1095-C by the time they were ready to file their 2017 individual income tax returns. While taxpayers could use other information about their health coverage to complete their filings, the purpose of these forms is to make calculating and reporting coverage easier for the taxpayer. Thus, the extension likely increased both taxpayer burden and the risk of taxpayer misreporting.

General ACA Tax Return Data

The following figure provides information regarding the comparison of individual taxpayers who claimed the PTC on their TY 2016 and TY 2017 returns through April 2017 and April 2018.

FIGURE 2.8, Comparison of Premium Tax Credit Returns on Forms 8962 for TY 2016 & TY 2017 (Filed Jan. 1 Through Apr. 27, 2017 & Jan. 1 Through Apr. 26, 2018)[133]

	TY 2016	TY 2017	Percent Change from TY 2016 to TY 2017
Forms 8962	5.1 million	4.9 million	-3.9%
Total PTC Claimed	17.6 billion	$22.1 billion	25.6%
Average PTC	3,455	$4,558	31.9%
Returns Reporting APTC	4.9 million (96% of returns with Forms 8962)	4.7 million (96% of returns with Forms 8962)	-4.1%
Total APTC Reported	19.4 billion	$24.4 billion	25.8%
Forms 8962 Submitted With Prepared Returns	3.2 million (63% of returns with Forms 8962)	3.1 million (63% of returns with Forms 8962)	-3.1%

131 *Continued Oversight Over the Internal Revenue Service: Joint Hearing Before the H. Subcomm. on Health Care, Benefits, and Administrative Rules and the H. Subcomm. on Government Operations*, 115th Cong. (2018) (transcript of testimony).

132 *See* Ad Hoc Coalition Letter to Treasury-HHS on Employer Mandate Issues (May 30, 2018).

133 IRS, CDW, Individual Returns Transaction File (IRTF) TY 2016 (data extracted May 2017) and TY 2017 (data extracted June 2018). This preliminary data is based on TY 2016 returns that posted as of April 27, 2017 and TY 2017 returns that had posted as of April 26, 2018; and is subject to change as the IRS reviews the data, processes additional TY 2017 returns, and conducts compliance activities.

Individual taxpayers who did not have minimum essential coverage or qualify for an exemption were required to report an ISRP on their tax returns. Figure 2.9 provides comparison of ISRPs on TY 2016 and TY 2017 returns through April 2017 and April 2018.

FIGURE 2.9, Comparison of Individual Shared Responsibility Payment Returns for TY 2016 & TY 2017 (Filed Jan. 1 Through Apr. 27, 2017 & Jan. 1 Through Apr. 26, 2018)[134]

	TY 2016	TY 2017	Percent Change from TY 2016 to TY 2017
Returns With ISRP	4.0 milllion	3.6 million	-10.0%
Average ISRP	$708	$766	8.2%
Prepared Returns Reporting ISRP (Paid or Volunteer)	2.6 million (65%)	2.3 million (64%)	-11.5%
Returns Filed With Forms 8965, *Health Coverage Exemptions*	10.7 million	10.4 million	-2.8%
Returns Filed With Forms 8965 Claiming Household Coverage Exemption (Form 8965 Part II)	3.9 million	3.6 million	-7.7%
Returns Filed With Forms 8965 Claiming Coverage Exemption (Form 8965 Part III)	8.0 million	8.0 million	0.0%
Prepared Returns Filed With Forms 8965	5.8 million (54%)	5.4 million (52%)	-6.9%

SERVICE OPTIONS FOR U.S. TAXPAYERS LIVING ABROAD

TAS remains concerned about service options for taxpayers located overseas.[135] In 2016, approximately nine million U.S. citizens lived abroad, compared with about 6.8 million in 2013.[136] The number of U.S. citizens living abroad continues to grow, while current services are limited. There are also many international U.S. taxpayers who are neither residents nor citizens of the United States, as evidenced by the increase in individual tax returns filed by nonresident aliens during the filing season from tax years 2013 through 2017.[137]

134 IRS, CDW, IRTF TY 2016 (data extracted May 2016) and TY 2017 (data extracted June 2018). This preliminary data is based on TY 2016 returns that had posted as of April 27, 2017 returns and TY 2017 returns that had posted as of April 26, 2018; and is subject to change as the IRS reviews the data, processes additional TY 2016 and TY 2017 returns, and conducts compliance activities.

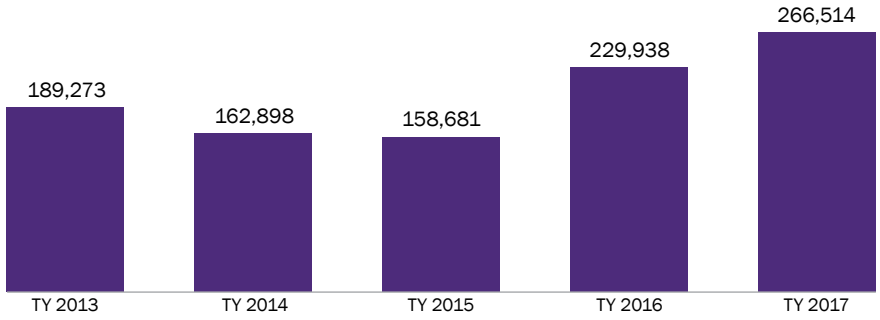
135 For past reporting on these concerns, see National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress 78-79. *See also* National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*).

136 *See* U.S. Department of State, Bureau of Consular Affairs, *Consular Affairs by the Numbers* (Mar. 2018), https://travel.state.gov/content/dam/travel/CA_By_the_NumbersCA-By-the-Numbers-2018-FINAL.pdf. U.S. Department of State, Bureau of Consular Affairs, *Who We Are and What We Do: Consular Affairs by the Numbers* (Jan. 2013), https://travel.state.gov/content/dam/ca_fact_sheettravel/CA%20Fact%20Sheet%202014.pdf.

137 IRS, CDW, Individual Returns Transaction File for TY 2015 (as of Apr. 29, 2017, cycle 201717).

Figure 2.10[138]

Forms 1040-NR, *U.S. Nonresident Alien Income Tax Return*, Filed During the Filing Season (January Through April) for Tax Years 2013-2017



Taxpayers living abroad generally cannot call U.S. toll-free telephone lines, yet in 2015, the IRS terminated the Electronic Tax Law Assistance program through which taxpayers could submit tax law questions to the IRS on its website and receive a response via email. In recent years, the IRS closed its overseas tax attaché offices, which eliminated the last face-to-face option for taxpayers.[139]

CONCLUSION

The IRS delivered a generally successful filing season for most taxpayers, but results were mixed for taxpayers who required assistance. The IRS's benchmark measure of telephone performance shows the IRS answered 80 percent of its calls for the first time since 2007, but that performance measure fails to account for the majority of telephone calls the IRS received. The IRS answered fewer calls on its compliance telephone lines, and those who got through waited an average of 24 minutes. Moreover, the IRS served fewer taxpayers in its TACs and continued its policy of answering only a limited scope of tax law questions on the phone and in-person. Lastly, the IRS's identity theft and pre-refund wage verification filters and processing problems significantly delayed refunds for hundreds of thousands of taxpayers who had filed legitimate returns, harming some taxpayers and creating additional work for the IRS.

138 IRS, CDW, IRTF Form 1040-NR, U.S. Nonresident Alien Income Tax Return for TY 2013 filed through Apr. 24, 2014; TY 2014 filed through Apr. 30, 2015; TY 2015 filed through Apr. 28, 2016; TY 2016 returns filed through Apr. 27, 2017; and TY 2017 filed through Apr. 26, 2018.

139 IRS had 15 attaché offices at one time. The last was closed in December 2015. Memorandum from Acting Deputy Commissioner, International (LB&I), *Post Closures of Frankfurt, London and Paris* (Feb. 18, 2015) (on file with TAS). For a detailed discussion, see National Taxpayer Advocate 2015 Annual Report to Congress 72-81 (Most Serious Problem: *International Taxpayer Service: The IRS's Strategy for Service on Demand Fails to Compensate for the Closure of International Tax Attaché Offices and Does Not Sufficiently Address the Unique Needs of International Taxpayers*).

Area of Focus #1 Taxpayers Need More Guidance and Service to Understand and Comply With the Tax Cuts and Jobs Act

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Tax Cuts and Jobs Act Implementation Will Be Challenging

On December 22, 2017, Congress passed the Tax Cuts and Jobs Act (TCJA),[2] enacting the most sweeping changes to U.S. tax law since the Tax Reform Act of 1986.[3] For example, for individuals, the TCJA repealed personal exemptions, increased the standard deduction, repealed certain itemized deductions, capped the deductions for state and local taxes, and changed tax rates and brackets.[4] For businesses, 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 alternative minimum tax, and added a wide range of international tax provisions to bring offshore profits back to the U.S.[5]

Implementing the TCJA will be a major effort in fiscal years (FYs) 2018 and 2019. It requires the IRS to reprogram 140 systems and create or revise about 450 forms, instructions, and publications — twice the number required in a normal year.[6] As of May 29, 2018, the IRS's Tax Reform Implementation Office and Tax Reform Implementation Council (TRIC) had developed a Tax Reform Enterprise Integrated Project Plan containing over 9,000 tasks.[7]

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

2 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.

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

4 Pub. L. No. 115-97 §§ 11001 (individual rates), 11021 (increased standard deduction), 11041 (repeal of personal exemptions), 11042 (limitation on state and local tax deduction), and 11045 (repeal of itemized deductions).

5 Pub. L. No. 115-97 §§ 13001 (corporate rates), 11011 (deduction for business income from pass-throughs), 13201-13206 (depreciation rules), 13101 (Section 179 expensing), 12001-12002 (corporate alternative minimum tax), 14101 *et. seq.* (provisions related to foreign income and repatriation).

6 IRS, *Tax Reform Implementation Office (Q&As), Frequently Asked Questions: Implementing the New Tax Law* (Feb. 8, 2018). However, the IRS plans to spend most of its Tax Cuts and Jobs Act (TCJA) implementation funding for fiscal year (FY) 2018 ($291 million) on operations support (IT), with smaller increases for services ($19 million) and enforcement ($10 million). See IRS, *FY 2018 Section 113 Spending Plan for Tax Reform* (June 1, 2018), https://online.wsj.com/public/resources/documents/IRSdocumentspending06012018.pdf?mod=article_inline. For additional information on implementation, see Treasury Inspector General for Tax Administration, Ref. No. 2018-44-027, *Tax Cuts and Jobs Act: Assessment of Implementation Planning Efforts* (Apr. 11, 2018).

7 TAS analysis of Tax Reform Enterprise Integrated Project Plan (May 29, 2018).

The IRS and Treasury added 20 TCJA items to the 2017–2018 Priority Guidance Plan — guidance that they have recently issued or planned to issue by June 30, 2018.[8] They hope to release a total of 25–30 items by August 15.[9] As of May 14, the IRS's tax reform website included 86 items: 27 News Releases, Fact Sheets & Statements; 7 Tax Reform Tax Tips; 6 Frequently Asked Questions (FAQs); 3 YouTube Videos; 5 Publications; 29 Legal Guidance items; and 9 Other Information items.[10]

In addition, the IRS is planning hundreds of outreach events, such as the IRS Nationwide Tax Forums held each summer in five cities around the country.[11] It also plans to work with consumer groups, business groups, the payroll community, and local organizations to educate them and identify their questions and concerns. Although the IRS reviews written comments from its stakeholders, its general approach seems focused on pushing information out rather than engaging in a two-way dialog with taxpayers, an internal focus that increases the importance of TAS's involvement in the implementation process.

TAS Will Continue to Assist With Tax Cuts and Jobs Act Implementation and Communication Plans

TAS assists the IRS by attending TRIC meetings to voice the taxpayer's perspective and will continue to do so in FY 2019, even though the focus of these meetings is on the timeliness (rather than the content) of TCJA implementation. TAS also participates in the IRS's communications team and plans to offer recommendations concerning the IRS's TCJA communications plan when it becomes available.

After receiving questions from the public about changes to tax laws that had not changed,[12] the National Taxpayer Advocate recommended the IRS create a document or interactive tool to help people determine if the most commonly used tax provisions have changed. Because the IRS declined to do so, TAS created one and posted it on the TAS website.[13]

TAS Will Continue to Advocate for the IRS to Waive Penalties Due to a Lack of Timely and Reliable Guidance

Taxpayers need guidance quickly to do routine tax planning and to avoid underpayment penalties at year-end,[14] but it takes time to issue quality guidance that addresses the public's concerns. The IRS has recognized that taxpayers should not be penalized as a result of its delay in issuing guidance. It waived the estimated tax underpayment penalty for "transition tax" payments due on or before January 15, 2018, from certain taxpayers who directly or indirectly own a foreign corporation with deferred foreign

8 Department of the Treasury, *2017–2018 Priority Guidance Plan* (May 9, 2018), https://www.irs.gov/privacy-disclosure/priority-guidance-plan.

9 *See, e.g.*, Stephanie Cumings, *Kautter Talks Timelines for TCJA Guidance*, 2018 TNT 94-5 (May 15, 2018).

10 IRS, *Tax Reform*, https://www.irs.gov/newsroom/tax-reform (last updated May 10, 2018).

11 IRS, *Tax Reform Implementation Office (Q&As), Frequently Asked Questions: Implementing the New Tax Law* (Feb. 8, 2018).

12 *See, e.g.*, *Washington Journal: Nina Olson on the IRS and New Tax Law* (C-Span television broadcast Jan. 29, 2018), https://www.c-span.org/video/?440278-4/washington-journal-nina-olson-discusses-irs-implementation-tax-law.

13 *See* https://taxpayeradvocate.irs.gov/taxchanges.

14 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 (110 percent for those with income over $150,000, except for certain farmers or fishermen) or 90 percent of the current year's tax liability. IRC § 6654. The IRS updated the Form W-4, *Employee's Withholding Allowance Certificate*, and its online withholding calculator on February 28, 2018. IR-2018-36 (Feb. 28, 2018).

earnings.[15] However, it has not done so for individuals or small businesses who underestimate what they owe because of uncertainty about the law.[16]

Due to the TCJA, it is easier for taxpayers to inadvertently underpay estimated taxes this year. For example, income tax deductions are taken into account for purposes of computing self-employment taxes, but the TCJA suggests the new 20 percent income tax deduction for pass-through entities might not be allowed for purposes of computing self-employment taxes.[17] As another example, the 20 percent deduction may be limited or unavailable to those in a "specified service trade or business."[18] If businesses do not know if they are "specified," they may incorrectly assume they can take the deduction, potentially triggering estimated tax penalties.

To address questions about the TCJA, the IRS has been posting more informal or "soft" guidance on its website (*i.e.*, guidance not published in the Internal Revenue Bulletin and that does not incorporate public comments) than usual.[19] While soft guidance is helpful because it can be issued quickly, IRS examiners are instructed not to rely on it, and the IRS may later delete the postings or change its position.[20] In other words, taxpayers could be wrong about their tax liability, even if they are relying on a reasonable interpretation of an ambiguous law or "soft" guidance from the IRS. Because taxpayers should be entitled to rely on any guidance from the IRS and reasonable interpretations of an ambiguous law, TAS will advocate for the IRS to waive any resulting penalties.[21]

15 Notice 2018-26, 2018-16 IRB 480.

16 In general, there is no "reasonable cause" exception to the estimated tax penalty. *See* IRC § 6654.

17 IRC § 1402(a), which is in Subtitle A [Income Taxes], Chapter 2 [Tax on Self-Employment (SE) Income] of the Code, provides that with limited exceptions, the term "net earnings from self-employment," upon which SE taxes are imposed, means the "gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle [Subtitle A – Income Taxes] which are attributable to such trade or business…." Similarly, Treas. Reg. 1.1402(a)-1 (a)(1) says that SE income is reduced by "the deductions allowed by Chapter 1 [of Subtitle A – Income Taxes] of the Code which are attributable to such trade or business." The 20 percent deduction under IRC § 199A is an income tax deduction allowed by Chapter 1 (of Subtitle A), which would suggest it **is** deducted for purposes of computing SE tax. However, IRC § 199A(f)(3) says the deduction is **only** allowed for purposes of "this chapter" (*i.e.*, Chapter 1, and not Chapter 2).

18 IRC § 199A(d)(1)(2)(A) (cross referencing IRC § 1202(e)(3)(A)). As of June 4, the IRS had not issued guidance concerning IRC § 199A.

19 *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 Frequently Asked Questions (FAQs), see Nina Olson, *IRS Frequently Asked Questions Can Be a Trap for the Unwary*, NTA Blog (July 16, 2017), https://taxpayeradvocateTaxpayerAdvocate.irs.gov/news/irs-frequently-asked-questions-can-be-a-trap-for-the-unwary.

20 *See* Memorandum from Director, Examination – Field and Campus Policy to Area Directors, Examination – Field, SBSE-04-0517-0030, *Interim Guidance on use of Frequently Asked Questions (FAQs) and Other Items Posted to IRS.gov* (May 18, 2017), https://www.irs.gov/pub/foia/ig/sbse/sbse-04-0518-0022.pdf. *See also* Chief Counsel Directives Manual (CCDM) 31.1.1.2.1 (Aug. 11, 2004); Chief Counsel Notice CC-2003-014 (May 8, 2003) (requiring employees to follow guidance published in the Internal Revenue Bulletin (IRB)). The IRS sometimes informs taxpayers they can rely on proposed rules until final rules become effective. *See, e.g.*, Notice 2018-28, 2018-16 IRB 492 ("Before the issuance of the regulations described in this notice, taxpayers may rely on the rules described in sections 3 through 7 of this notice."). However, we have not seen similar statements in FAQs or Fact Sheets.

21 IRC § 6404(f) provides that the Secretary shall abate any portion of a penalty or addition to tax attributable to erroneous written advice provided by the IRS to the taxpayer. The IRS rarely issues written advice, except using automated systems such as the interactive tax assistants (ITAs) on its website. TAS will consider recommending that IRC § 6404(f) be interpreted or updated to cover written advice provided via automated systems, such as by the IRS's withholding calculator or the various ITAs on IRS.gov.

TAS Will Continue to Advocate for the IRS to Do More to Help Taxpayers Avoid Estimated Tax Penalties

It is also more difficult for wage earners to project their tax liability this year. They can adjust their withholding using Form W-4, *Employee's Withholding Allowance Certificate*, but this form is not very transparent.[22] It requires taxpayers to request withholding levels based on the abstract concept of "allowances." It is difficult to determine how much withholding is associated with each allowance, except through trial and error. To increase transparency and help taxpayers avoid estimated tax penalties even if they cannot project their future tax liability, TAS will advocate for the IRS to allow them to designate a specific amount or a specific percentage to withhold from each paycheck (*e.g.*, the estimated tax penalty safe harbor of 100 percent or 110 percent of the prior year's tax).

TAS Will Recommend Ways to Improve Service by Phone

In addition to written guidance, taxpayers and practitioners have questions that they need the IRS to answer in person or over the phone. Although over 14 million individual taxpayers do not have internet access in their homes and over 41 million do not have broadband,[23] the IRS has generally been reducing the scope of the questions its customer service representatives will answer.[24] In 2014, it stopped answering most tax law questions after the filing season.[25] Since then, the National Taxpayer Advocate has recommended that the IRS answer both basic and complex tax law questions throughout the year on all service channels — online, in-person, and by phone — and ensure that its customer service representatives (CSRs) have the resources and training necessary to answer them completely.[26] This year the IRS agreed to continue to answer tax law questions related to tax reform after the filing season.[27]

To learn how the IRS presents itself to taxpayers, TAS called the IRS's customer service numbers.[28] We navigated the menu options (generally four or five levels deep) to reach a CSR and posed the types of questions that the IRS is likely to receive. We did not call enough to obtain a statistically representative sample, but wanted to know what a caller might experience. Perhaps because our calls were during off-peak times (avoiding Monday and Friday) and after the filing season, they lasted less than 15 minutes, on average. However, the CSRs often failed to answer our questions. In some cases, our calls were transferred to a recording and disconnected. One recording told us that nobody could answer our

22 Many self-employed taxpayers also earn wages subject to withholding. For tax year 2016 more than nine million taxpayers made estimated tax payments, and most of them (70 percent) also claimed credits for wage withholding. TAS Analysis of Estimated Tax Payments and Withholding (May 31, 2018). However, the W-4 worksheets do not cover those with self-employment income. *See* Form W-4 (*Deductions, Adjustments and Additional Income Worksheet*, requesting on line 6, "an estimate of your 2018 nonwage income," but not addressing any associated self-employment tax).

23 *See* National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 8 (Research Study: *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*); 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*).

24 TAS comparison of the 2006 Publication Method Guide with the 2018 Interactive Tax Law Assistant (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 Service*) (indicating that in the last year the IRS "[d]eclared 225 questions 'out of scope' for walk-in and 117 questions 'out of scope' for toll-free phone assistors.").

25 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 preparation in the TACs and eliminated post-April 15 tax law phone and TAC assistance.").

26 *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*).

27 IRS response to TAS information request (Mar. 2, 2018).

28 We dialed 800-829-1040 and 800-829-4933.

call because of "budget cuts." If we were lucky, we reached a CSR who transferred us to the "tax law" department where we had to repeat our questions.

When we asked about provisions that had not changed (*e.g.*, the treatment of Social Security), a few CSRs did not know if the provisions had changed and either transferred us to a recording that disconnected us or advised us to search IRS.gov and ended the call.[29] When we asked about provisions that had changed and were addressed by the statute, a few CSRs read us a script that happened to answer our questions (*e.g.*, about the Affordable Care Act). However, a few CSRs insisted the questions could only be answered during the filing season or that our questions (*e.g.*, about the treatment of dependents) could not be answered because they were not related to tax reform. One CSR incorrectly stated that answers to our question had not yet been determined. Others read us scripts that did not answer our questions and referred us to IRS.gov. Finally, when we asked a question that neither the statute nor the IRS had answered, on one occasion we were told that the IRS was not answering tax law questions, and on another we were transferred to a recording and disconnected.

CSRs might have been able to provide better answers if they had (1) more complete knowledge about what has changed and what has not, (2) training on the TCJA changes, and (3) access to the latest guidance from the IRS by topic. At present, guidance is listed in date order on the tax reform landing page on IRS.gov, and one CSR told us he expected to receive training on the TCJA toward the end of the year. In addition to TAS's continuing advocacy for the IRS to expand its service on the phone, TAS will advocate for it to provide both CSRs and the public with an up-to-date and organized list of the tax law changes that includes links to the most recent guidance by topic.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Review Systemic Advocacy Management System submissions from taxpayers and have Local Taxpayer Advocates conduct outreach, in each case, to learn what taxpayers find confusing and identify areas where clarifying guidance is needed;
- Participate in the tax reform implementation effort (*e.g.*, the TRIC) to help ensure the IRS considers the taxpayer's perspective;
- Review the IRS's plans for employee training and taxpayer outreach and education;
- Call the IRS's customer service lines to develop additional recommendations about how to improve service;
- Advocate for the IRS to allow taxpayers to rely on soft guidance to avoid penalties;
- Advocate for the IRS to waive penalties resulting from a lack of timely guidance on the new law; and
- Advocate for the IRS to make it easier for taxpayers to withhold enough to avoid penalties even if they do not project their liability for the current year.

29 TAS subsequently posted a document on IRS.gov to help people determine if the most frequently claimed provisions had changed. *See* https://taxpayeradvocate.irs.gov/taxchanges.

Area of Focus #2 The IRS's Failure to Create an Omnichannel Service Environment Restricts Taxpayers' Ability to Get Assistance Using the Communication Channels That Best Meet Their Needs and Preferences

TAXPAYER RIGHT(S) IMPACTED[1]

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*

DISCUSSION

The National Taxpayer Advocate has previously recommended that the IRS adopt an omnichannel approach to taxpayer communication as a part of the *right to quality service*.[2] This approach would allow the taxpayer to choose the way to communicate with the IRS that best meets his or her needs and preferences. Taxpayers seeking assistance from the IRS as they attempt to comply with their federal tax obligations should have as seamless and effortless of an experience as possible.

For years, the National Taxpayer Advocate has expressed concern over the IRS's increased reliance on online self-help tools while neglecting other channels. This approach ignores the needs of the millions of taxpayers who do not have internet access or prefer more personal forms of communication.[3] If taxpayers cannot get the assistance they need and their questions go unanswered, they are less likely to be able to comply with their federal income tax obligations.[4] Furthermore, restricting or reducing taxpayers' access to service methods violates fundamental taxpayer rights, particularly the *right to quality service* and the *right to be informed*.

In the 2018 Consolidated Appropriations Act, Congress provided additional funds for the IRS to support taxpayer services and instructed the IRS to make improving its help lines a priority.[5] The Cross Agency Priority goals included in the President's Management Agenda also highlighted the need for improved customer experience with federal services, and set the specific goal of providing a modern, streamlined, and responsive customer experience.[6] These directives present the IRS the opportunity to revamp its customer service strategy and focus on the needs of taxpayers. The IRS should prudently invest funds to improve the taxpayer experience over all channels of communication, and TAS is

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

2 *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*).

3 *See* National Taxpayer Advocate 2015 Annual Report to Congress 3-13 (Most Serious Problem: *Taxpayer Service: The IRS Has Developed a Comprehensive "Future State" Plan That Aims to Transform the Way It Interacts With Taxpayers, But Its Plan May Leave Critical Taxpayer Needs and Preferences Unmet*).

4 *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*).

5 H.R. 1625, 115th Cong. Div. E, Title I, § 104 (2018).

6 Office of Budget and Management, *CAP Goal Action Plan: Improving Customer Experience with Federal Services*, 2 (2018).

available to assist the IRS in developing a new, omnichannel approach to taxpayer service.

An omnichannel approach to taxpayer communication would allow the taxpayer to choose the way to communicate with the IRS that best meets his or her needs and preferences.

The IRS Continues to Drive Taxpayers to Access Its Online Resources as an Attempt to Supplant Rather Than Enhance Other Forms of Communication

To respond to taxpayers' questions, the IRS must ensure taxpayers have adequate access to the assistance they need, regardless of the channel of communication they choose. About 14 million individual taxpayers do not have internet access in their homes, and over 41 million do not have broadband.[7] TAS's research has shown that even among taxpayers who have broadband access, many still use different channels to accomplish different types of service tasks.[8] When getting help with more complicated issues, such as 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).[9]

The National Taxpayer Advocate is concerned that the IRS is attempting to drive taxpayers to use online self-help solutions while making a conscious effort to reduce the volume of personal assistance it provides. In filing season 2018, the IRS actually received two million fewer calls enterprise-wide than in 2017, and call volume decreased by over 20 percent on the IRS's Consolidated Automated Collection System lines, which include most of the IRS's compliance service operations.[10] This decrease is partially due to the IRS making it more difficult for taxpayers to find the appropriate numbers to call for assistance. For example, prior to fiscal year (FY) 2016, the IRS sent out an average of 1.8 million Letter 16 (LT16) notices annually, which request a taxpayer to call the IRS about unpaid taxes.[11] However, in FY 2016, the IRS stopped systematically issuing this notice, cutting the number of notices sent out to just 866,000.[12] The purpose of this reduction was to reduce the amount of inbound phone calls to the backlogged Automated Collection System lines.[13] *Thus, the IRS intentionally decreased the number of phone calls it received by drastically reducing the number of letters sent out to trigger taxpayers to seek help from the IRS over the phone to make alternative payment arrangements.*

The redesigned LT16 notices the IRS sent were "engineered specifically to reduce inbound telephone calls."[14] Instead of explicitly instructing taxpayers to call the IRS, the redesigned letters "encouraged taxpayers to use self-service channels and reduced the visual prominence of the telephone contact

7 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 62, 71–72 (Research Study: *A Further Exploration of Taxpayers' Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*). Without broadband access, it is not feasible for taxpayers to download materials with larger file sizes, such as forms, instructions, and publications.

8 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*).

9 *Id.*

10 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 21, 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.

11 An LT16 notice is typically sent after an LT11, which informs the taxpayer of the IRS's intent to levy. *See* IRS, Automated Collection System (ACS) Optimization/Research, Analytics & Applied Statistics (RAAS), *ACS LT16 Notice Test Pilot Report*, 3 (Sept. 27, 2017).

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

13 *Id.* For a full discussion on the impact of the redesigned LT16 notices, see Area of Focus: *TAS Is Researching Specific Ways That the IRS Can Improve Its Notices and Letters to Educate Taxpayers and Protect Taxpayer Rights*, *infra*.

14 *Id.* at 22.

number on the printed notice."[15] As noted above, getting help with a notice is one of the areas where taxpayers prefer speaking with a telephone assistor, not using online resources.[16] Merely removing the prominence of the number did not eliminate the taxpayers' need for assistance over the phone; it just made it more difficult for taxpayers to get to the assistance they needed. The redesigned notices actually resulted in *more telephone calls to incorrect numbers not printed on the notice*, creating an unnecessary burden on taxpayers and telephone assistors alike.[17] Instead of driving taxpayers to the self-service options it prefers, the IRS should present taxpayers with sufficient information about all its service channel options available and give taxpayers the opportunity to choose the channel that is best for them.

Similarly, the IRS has drastically reduced the availability of service for taxpayers in its TACs. Over the course of calendar year 2016, the IRS moved from a walk-in system for TAC service to a predominantly appointment-only system.[18] Prior to the implementation of this system, 5.4 million taxpayers visited TACs in FY 2015.[19] However, in FY 2016, only 4.4 million taxpayers visited TACs as the IRS phased in the appointment-only system.[20] By FY 2017, the first full year of the appointment system, just 3.2 million taxpayers visited TACs, over two million fewer than before the IRS implemented this system.[21] While the IRS does still provide walk-in assistance at TACs for some services, like making a payment or picking up a form, it no longer advertises this on its website. Taxpayers visiting TACs are greeted with a sign on the door that appointments are required, with minimal indication that some walk-ins could be accepted.[22]

15 See IRS, ACS Optimization/RAAS, *ACS LT16 Notice Test Pilot Report*, 22 (Sept. 27, 2017).

16 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*).

17 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*); IRS, ACS Optimization/RAAS, *ACS LT16 Notice Test Pilot Report*, 23 (Sept. 27, 2017).

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

19 IRS response to TAS information request (Sept. 13, 2017).

20 *Id*.

21 IRS response to TAS information request (Nov. 3, 2017). IRS had 401 TAC locations in 2011, but that number is down to 371 in 2017.

22 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*).

FIGURE 3.2.1, Signs on Entrances to Taxpayer Assistance Centers[23]

Taxpayer Assistance Center – Des Moines, IA

Taxpayer Assistance Center – Little Rock, AR

Taxpayer Assistance Center – Plantation, FL

Taxpayer Assistance Center – Seattle, WA

23 These photographs were updated on May 21, 2018.

The factors that are most likely to shape a taxpayer's experience seeking assistance with the IRS are the ease of accessing a particular resource, the effectiveness of that resource in addressing the taxpayer's problem, and the emotional impact of the interaction.

Thus, the National Taxpayer Advocate remains concerned about the services the IRS provides for taxpayers seeking assistance. According to Forrester's 2018 Federal Customer Experience Index for 2018, the IRS scored just 54 out of 100, below the federal average score of 59 and well below the private sector average score of 69.[24] In particular, the index showed the IRS inspires a mere 13 percent of taxpayers to seek its expertise, which ranked last among federal agencies.[25] These results show the IRS is failing to engage taxpayers and communicate with them effectively, which can have negative consequences for voluntary compliance. Forrester's study notes, "Just 61% of Internal Revenue Service (IRS) customers say that they follow its rules, which shows that *not even the threat of jail and fines always outweighs the power of a bad customer experience*."[26]

Understanding the Gaps in a Taxpayer's Journey to Get Assistance Will Allow the IRS to Better Improve Its Service and Likely Increase Voluntary Compliance

To develop an omnichannel environment, the IRS should examine why taxpayers prefer and choose particular channels and optimize all aspects of that experience instead of attempting to modify their behavior.[27] The factors that are most likely to shape a taxpayer's experience seeking assistance with the IRS are the ease of accessing a particular resource, the effectiveness of that resource in addressing the taxpayer's problem, and the emotional impact of the interaction.[28] A favorable customer experience regarding these factors creates a sense of customer loyalty, which is crucial to a relational approach to taxpayer service and can increase voluntary compliance.[29]

Over the coming year, TAS will explore how taxpayers navigate the IRS and identify ways the IRS can improve its service to reduce the burden on taxpayers seeking assistance. In the private sector, companies are increasingly using customer experience mapping and customer journey analytics to understand the context behind why customers choose particular channels to accomplish particular tasks and identify whether they are able to reach the right resource on the channel they choose.[30] Gaps in the journey occur where search and navigation fail to arrive at the optimal result, and customers abandon

24 Rick Parrish and Margaret Rodriguez, Forrester Research, *Federal Customer Experience Index, 2018*, 3, 5 (May 31, 2018). The American Consumer Satisfaction Index study of citizen satisfaction with different federal departments showed a similar result, as just 61 percent of taxpayers were satisfied with the Treasury Department, compared to the federal department average of 70 percent. *See* American Customer Satisfaction Index (ACSI), *Citizen Satisfaction by Federal Department*, (Jan. 30, 2018).

25 Rick Parrish and Margaret Rodriguez, Forrester Research, *Federal Customer Experience Index, 2018*, 11 (May 31, 2018).

26 *Id.*

27 In the 2017 Annual Report to Congress, the National Taxpayer Advocate recommended that the IRS evaluate its telephone service from the taxpayer's perspective instead of just relying on efficiency metrics like the Level of Service. *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*).

28 Bobby Cameron and Tim Harmon, Forrester Research, *Elevate Omnichannel Customer Experience With Continuous Business Services* 3 (May 4, 2015) ("While firms historically have designed channels according to their go-to-market costs, customers increasingly make choices based on experience.").

29 While some companies tend to avoid focusing on the emotional aspect of customer relations because it is viewed as abstract and irrational, research has shown that how an experience makes customers feel has a bigger influence on their loyalty to a brand than effectiveness or ease in most industries. Deanna Laufer, Forrester Research, *How to Build the Right CX Strategy* 4 (Jan. 10, 2017).

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

their task.[31] Analyzing this information helps companies understand what they need to do differently to help customers find the information they need.

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. If taxpayers face too many obstacles in their attempted interactions with the IRS, their frustrations may mount and their willingness to voluntarily comply in the future may suffer. In the 2017 Annual Report to Congress, the National Taxpayer Advocate identified some of these negative trigger points that drive taxpayer frustration with the service provided by the IRS, particularly over the telephone.[32] For taxpayers, frustration occurs when they feel their time is being wasted and they are unable to reach the assistance they need. TAS's Service Priorities Project Survey showed that long hold times or time spent waiting in the calling queue was the most common reason why taxpayers reported being unable to resolve an issue on the phone.[33]

To eliminate this trigger point for a negative service experience, TAS recommended the IRS create a callback feature, which would allow taxpayers the choice to have the next available customer service representative call them back instead of needlessly waiting on hold.[34] TAS will continue to advocate for a callback feature and other telephone technology updates to reduce taxpayer burden in getting assistance from the IRS.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Advocate for improving in-person and telephone service options to better develop an omnichannel taxpayer service environment;
- Review how taxpayers navigate getting assistance from the IRS and identify parts of the journey that lead to a negative experience or lead the taxpayer to abandon his or her attempt to get help; and
- Provide suggestions to the IRS on how to prioritize investment of additional funding provided by Congress to improve taxpayer service across all channels of communication.

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

32 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*).

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

34 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*).

Area of Focus #3 The IRS's Enterprise Case Management Project Shows Promise, But to Achieve 21st Century Tax Administration, the IRS Needs An Overarching Information Technology Strategy With Proper Multi-Year Funding

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Quality Service*
- *The Right to a Fair and Just Tax System*

DISCUSSION

The National Taxpayer Advocate has previously written about how the IRS's information technology (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.[2] 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. For example, the IRS currently possesses the two oldest information system databases, each nearly six decades old, in the entire federal government.[3] The IRS's technology issues came to the fore on Tax Day 2018, as IRS systems crashed, preventing taxpayers from submitting their tax returns and payments and necessitating the IRS to grant a one-day extension.[4]

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.

1 *See* Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). *See* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 *See, e.g.*, 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*); *Joint Hearing On Continued Oversight Over the Internal Revenue Service Before H. Subcomm. on Health Care, Benefits, and Administrative Rules and H. Subcomm. on Government Operations*, 115th Cong. 46-48 (2018) (statement of Nina E. Olson, National Taxpayer Advocate).

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

4 *See* Jeff Stein, Damian Paletta, and Mike DeBonis, *IRS to Delay Tax Deadline by One Day After Technology Collapse*, The Washington Post, Apr. 17, 2018, https://www.washingtonpost.com/business/economy/irs-electronic-filing-system-breaks-down-hours-before-tax-deadline/2018/04/17/4c05ecae-4255-11e8-ad8f-27a8c409298b_story.html?noredirect=on&utm_term=.fc6604bd294b.

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 casework, management approval, quality review, and responses to Appeals and Counsel. In addition, in many circumstances, IRS employees must create "workarounds" due to current case management system limitations.[5]

The IRS has adopted the approach that Enterprise Case Management will have the *taxpayer as the center of the system*.

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

The National Taxpayer Advocate continues to support the IRS's ECM efforts and need for adequate funding and is particularly encouraged by the progress that the IRS has made in the last year or so. However, she emphasizes that:

- The IRS needs to continue to use the lessons learned from a failed earlier iteration of the ECM project as it moves forward with its current ECM effort; and
- The IRS needs to continue to leverage the extensive investment of time, money, and effort expended on the Taxpayer Advocate Service Integrated System (TASIS), and use its design work and lessons learned in the current ECM project.

The IRS Needs to Continue to Use the Lessons Learned From a Failed Earlier Iteration of the Enterprise Case Management Project As It Moves Forward With Its Current Enterprise Case Management Effort

As the National Taxpayer Advocate discussed in recent congressional testimony, the IRS did not properly vet the software product that it selected for the ECM project, despite the software's failure with other IRS case management projects.[6] 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 it ultimately cannot use for the ECM project.[7]

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 refocused its efforts, and the National Taxpayer Advocate is encouraged by its

5 The IRS identified more than 400 such workarounds. IRS, *Enterprise Case Management (ECM) Program Business Consensus Meeting* 5 (Mar. 21, 2018).

6 *See Joint Hearing On Continued Oversight Over the Internal Revenue Service Before H. Subcomm. on Health Care, Benefits, and Administrative Rules and H. Subcomm. on Government Operations*, 115th Cong. 47 (2018) (statement of Nina E. Olson, National Taxpayer Advocate); *see also* National Taxpayer Advocate 2016 Annual Report to Congress 116 (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*).

7 *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*).

recent ECM approach. For example, the IRS has issued multiple requests for information to industry and scheduled demonstrations to learn about potential case management solutions and products.[8] The IRS has also reached out to other federal agencies and state governments to learn about their ECM experiences, as previously recommended by the National Taxpayer Advocate.[9] 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 record, 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.

The IRS Needs to Continue to Leverage the Extensive Investment of Time, Money, and Effort Expended on the Taxpayer Advocate Service Integrated System, and Use the Design Work and Lessons Learned in the Current Enterprise Case Management Project

As the National Taxpayer Advocate has recommended in the past, the IRS is actively engaging TAS in the ECM process and using the lessons learned from the development of the now derailed TASIS in its current ECM effort. As discussed in the 2016 Annual Report to Congress, TAS worked over several years to develop more than 4,500 business requirements for TASIS.[10] It is critical that the IRS continue to leverage the extensive business requirements, development, and process design work that went into TASIS as it continues to pursue an ECM solution. The IRS can use the lessons learned from the development of TASIS in its current ECM effort to reimagine its business processes and make them more efficient and user-friendly, thereby enabling it to thrive technologically in the 21st century.[11]

Enterprise Case Management is critical for the IRS to be a 21st century tax agency and allow IRS employees to properly do their jobs and provide 21st century service to taxpayers.

The National Taxpayer Advocate is also encouraged that the IRS is engaging its employees in its current ECM effort, which she has recommended in the past.[12] For example, the IRS has been engaging its business units to learn about current processes, systems, and workarounds. As a result, as mentioned above, the IRS has learned of several hundred workarounds used by IRS employees to deal with gaps and shortcomings in their current case management systems or business processes. This information will be valuable as the IRS works to design its new ECM system.

Active and comprehensive employee engagement at the outset of the ECM project is critical ECM foundational work, and is what TAS did when it developed TASIS, which was designed as a comprehensive replacement for its largely obsolete current case management system called the Taxpayer Advocate Management Information System. IRS employees are the front-line users of IRS

8 For a description of an IRS Request for Information, see https://www.fbo.gov/index?s=opportunity&mode=form&id=f2ef8e74927e11203cc978340993624e&tab=core&tabmode=list& (last visited Apr. 4, 2017).

9 *See* National Taxpayer Advocate 2016 Annual Report to Congress 114.

10 *See* National Taxpayer Advocate 2016 Annual Report to Congress 117 (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*).

11 National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 104.

12 *See* National Taxpayer Advocate 2016 Annual Report to Congress 114 (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*); National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 103.

systems, and understanding their interactions with those systems and ways to make current processes and procedures more efficient is crucial to having a more functional and polished ECM product that will maximize employee productivity and ultimately benefit taxpayers and practitioners.

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 TASIS.

The IRS Requires Multi-Year Funding to Completely Upgrade and Revamp Its Information Technology Infrastructure, Including Enterprise Case Management

As mentioned above, the IRS's computer systems crashed on Tax Day 2018, preventing taxpayers from submitting their tax returns and payments and necessitating the IRS to grant a one-day extension.[13] The crash was attributed to an issue with an 18-month-old piece of hardware supporting the IRS's Individual Master File system, which dates back to 1960.[14] Indeed, the potential for the failure of IRS systems during the filing system had been mentioned only a month before the crash.[15]

As highlighted by the systems crash on Tax Day, the IRS's IT systems are antiquated and it desperately needs to upgrade and revamp its IT infrastructure, including ECM. To accomplish this daunting task, the IRS should formulate a clear, comprehensive multi-year plan, complete with milestones, that can demonstrate to Congress that the IRS needs multi-year funding for this endeavor. For a project of this magnitude, the uncertainty and fluctuations of the annual appropriations process will not work. The National Taxpayer Advocate notes that members of Congress have recently introduced legislation that would address the modernization, management, and development of IRS IT, and the House passed one of these bills.[16] However, although this proposed legislation is a step in the right direction, it is unlikely to affect the desired change unless Congress also provides multi-year IT funding, with the appropriate oversight and milestones.

13 *See* Jeff Stein, Damian Paletta, and Mike DeBonis, *IRS to Delay Tax Deadline by One Day After Technology Collapse*, The Washington Post, Apr. 17, 2018, https://www.washingtonpost.com/business/economy/irs-electronic-filing-system-breaks-down-hours-before-tax-deadline/2018/04/17/4c05ecae-4255-11e8-ad8f-27a8c409298b_story.html?noredirect=on&utm_term=.fc6604bd294b.

14 *See* Aaron Boyd and Frank Konkel, *IRS' 60-Year-Old IT System Failed on Tax Day Due to New Hardware*, Nextgov (Apr. 19, 2018), https://www.nextgov.com/it-modernization/2018/04/irs-60-year-old-it-system-failed-tax-day-due-new-hardware/147598/.

15 *See* Frank Konkel, *The IRS System Processing Your Taxes is Almost 60 Years Old*, Nextgov (Mar. 19, 2018) (quoting the GAO's director of IT management issues, who stated: "To IRS's credit, it keeps these old systems running during the file season, but relying on these antiquated systems for our nation's primary source of revenue is highly risky, meaning the chance of having a failure during the filing season is continually increasing."), https://www.nextgov.com/it-modernization/2018/03/irs-system-processing-your-taxes-almost-60-years-old/146770/.

16 On March 21, 2018, Representative Walorski introduced legislation that would modernize and improve the management of IRS information technology, including ECM. *See* IRS Information Technology Accountability Act, H.R. 5362, 115th Cong. (2018). On April 10, 2018, Representative Bishop, along with several other representatives, introduced legislation that included provisions to modernize IRS information technology. This legislation was passed by the House on April 18, 2018. *See* 21st Century IRS Act, H.R. 5445, 115th Cong. (2018).

CONCLUSION

ECM is critical for the IRS to be a 21st century tax agency and allow IRS employees to properly do their jobs and provide 21st century service to taxpayers. The IRS requires substantially more multi-year 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 it will spend this money appropriately. The National Taxpayer Advocate encourages 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.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Continue to collaborate with the IRS in the ECM development process, particularly by lending its case management building expertise and sharing TASIS's relevant business requirements, design work, and lessons learned from this process;
- Work with the IRS to assist with the testing of new products, as the IRS designs and programs the new ECM system; and
- Advocate that Congress provide multi-year funding for the IRS to completely upgrade and revamp its IT infrastructure, including ECM.

Area of Focus #4 High False Detection Rates Associated With Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Quality Service*
- *The Right to Finality*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Tax refund fraud remains a significant concern for the IRS and taxpayers. In calendar year 2016, tax refund fraud cost the government approximately $1.6 billion.[2]

Although not all tax refund fraud involves identity theft, and not all identity theft involves tax refund fraud (*e.g.*, employment-related identity theft does not involve the theft of tax refunds), there are enough similarities between the two that it is appropriate to discuss them together. As the nature of tax refund fraud schemes evolves, it becomes even more important for the IRS to design and implement targeted filters, rules, and data mining models[3] to combat increasingly sophisticated refund fraud schemes while minimizing the rate at which the IRS incorrectly treats legitimate taxpayers as participants in those schemes (*i.e.*, the false detection rate).[4]

Pre-Refund Wage Verification

The IRS runs all tax returns claiming refunds through a variety of fraud filters. Depending upon the characteristics of the return, the IRS may select the return for screening and then attempt to match the information on the return with third-party information it has available. One filter that is used to select returns for screening looks for false reporting of income or tax withholding. For example, a taxpayer may file a return that understates income or overstates the amount of tax withheld by the employer to generate an inflated refund. Under the IRS's Pre-Refund Wage Verification Program, the IRS can freeze a claimed refund that has suspicious amounts of income or withholding until the amounts can be verified.

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

2 Government Accountability Office, GAO-18-224, *Tax Fraud and Noncompliance: IRS Can Strengthen Pre-Refund Verification and Explore More Uses* 1 (Jan. 30, 2018); Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2017-40-017, *Efforts Continue to Result in Improved Identification of Fraudulent Tax Returns Involving Identity Theft; However, Accuracy of Measures Needs Improvement* 7 (Feb. 7, 2017).

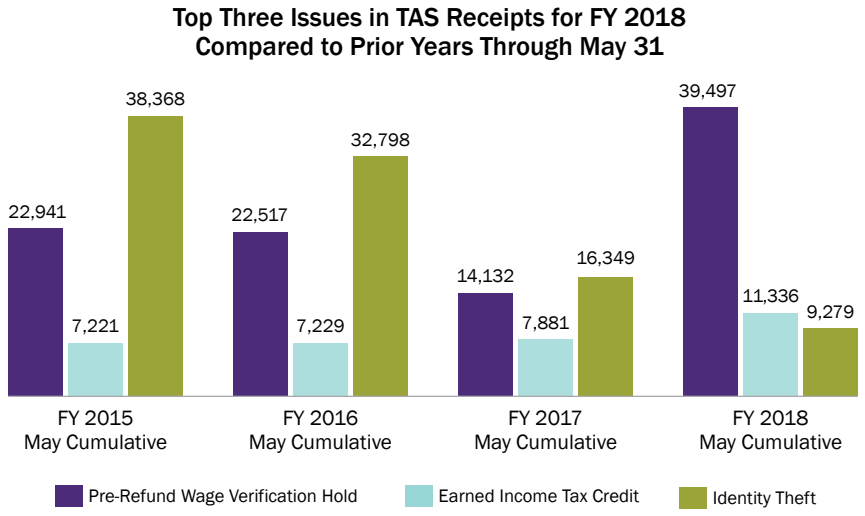
3 The IRS uses various filters to screen returns for either possible identity theft (IDT) or non-IDT refund fraud. These filters consist of both *rules* and *models*. Rules are binary in nature – *i.e.*, the rule is broken and the return will be selected for further analysis, or the rule is not broken and the return will continue through normal processing. Models, on the other hand, evaluate characteristics of the return and a total score is given to the return. If the score is above a prescribed threshold, a return will be selected for further analysis for either IDT or non-IDT refund fraud. Internal Revenue Manual (IRM) 25.25.2.1(1), *Program Scope and Objectives* (Mar. 29, 2017).

4 *See* IRS response to TAS recommendations from the IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: *Fraud Detection: The IRS Has Made Improvements to Its Fraud Detection Systems, but a Significant Number of Legitimate Taxpayers Are Still Being Improperly Selected by These Systems, Resulting in Refund Delays*, *infra*.

While these filters are necessary to combat the epidemic of refund fraud, this benefit is offset somewhat by the cost – which is the delayed processing of some legitimate returns the filter catches, known as "false positives."[5] Taxpayers whose legitimate refund claims have been frozen by these filters are further inconvenienced because the Pre-Refund Wage Verification function does not provide a mechanism for the taxpayer to directly contact the function. Further exacerbating their frustration, when taxpayers call to inquire about the delay in processing their refund, the IRS assistor does not have access to the IRS database that shows the status of the review.

In fiscal year (FY) 2018, Pre-Refund Wage Verification is currently the number one issue among TAS case receipts (with a 180 percent increase from the prior year, through May), supplanting identity theft as the top issue for the first time since 2011.

FIGURE 3.4.1[6]



Identity Verification

Some of the IRS's filters look specifically for characteristics of identity theft. As part of the Taxpayer Protection Program (TPP), which uses a series of filters, the IRS freezes returns flagged as suspicious for identity theft until it can verify the identity of the taxpayer filing the return. As of May 17, 2018, the TPP selected approximately 1.66 million suspicious tax returns, up slightly from approximately 1.64 million returns it selected over the same period in 2017.[7]

If the IRS holds a taxpayer's refund for identity verification under the TPP, it sends a letter instructing the taxpayer to verify his or her identity by calling the TPP phone line. However, taxpayers may not

5 In prior reports, TAS has referred to a "false positive rate." The IRS prefers to use the term "false detection rate;" we will use the terms interchangeably in this report. The false detection rate measures the percentage of returns where the taxpayer is able to verify either his/her identity or the information on their return after having his/her return selected for further scrutiny by one of the IRS's fraud filters.

6 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (June 1, 2015; June 1, 2016; June 1, 2017; June 1, 2018).

7 IRS Return Integrity & Compliance Services (RICS), *Update of the Taxpayer Protection Program (TPP)* (May 23, 2018); IRS RICS, *Update of the Taxpayer Protection Program (TPP)* (May 24, 2017).

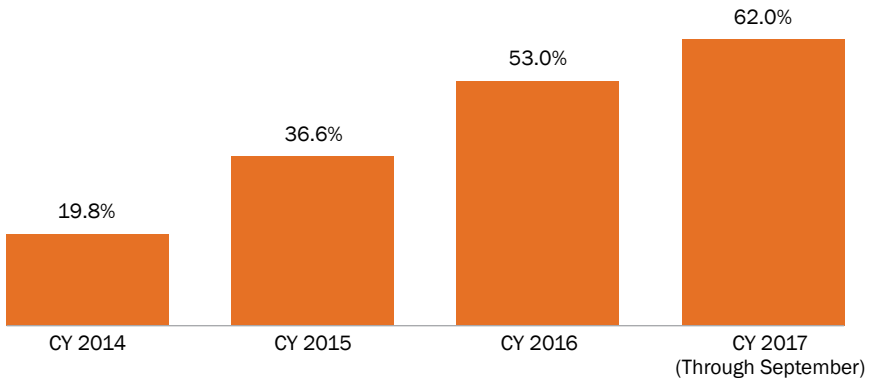
have been able to get through to an assistor, as the level of service on the TPP phone line has dipped as low as 42 percent during the 2018 filing season.[8] If a taxpayer is unable to authenticate over the phone, he or she will be instructed to make an appointment to verify in person at a Taxpayer Assistance Center, which may delay the refund even further.

IRS Fraud Detection Filters Are Overly Broad

The IRS's fraud detection systems have a history of high false detection rates. In calendar year (CY) 2017 (through September), the false detection rate for TPP identity theft filters was 62 percent, meaning that of all returns flagged as potentially fraudulent, nearly two-thirds were legitimate.[9] There has been a significant upward trend in false detection rates for the TPP filters in recent years.

FIGURE 3.4.2[10]

Taxpayer Protection Program: False Detection Rates, Calendar Years 2014-2017



The IRS's non-IDT fraud filters are also overly broad, with a false detection rate of 66 percent for CY 2017 (through September).[11]

In the 2018 filing season, the IRS added two new filters designed to detect improper reporting of wages on returns in which the taxpayer claimed the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC). Because the EITC and the ACTC are phased out when a taxpayer's income reaches a certain threshold, these new filters are, in practice, targeting low income taxpayers. When the release of the refund is delayed for any amount of time past normal timeframes, there is potential to create financial hardship.

8 Joint Operations Center, *Weekly Taxpayer Protection Program (TPP) Report* (week ending Mar. 17, 2018).

9 IRS response to TAS information request (Nov. 6, 2017). As of June 21, 2018, the IRS was unable to provide updated data on false detection rates for the full calendar year 2017.

10 IRS Wage & Investment Division, *Business Performance Review* (May 5, 2016; May 11, 2017); IRS response to TAS information request (Nov. 6, 2017).

11 IRS response to TAS information request (Oct. 19, 2017). The false detection rate measures the percentage of returns where the taxpayer is able to verify either his/her identity or the information on their return after having his/her return selected for further scrutiny by one of the IRS's fraud filters.

For the 2018 filing season, the IRS has a fraud filter that 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. The design of these filters has contributed to a 500 percent increase of cases selected into the Integrity & Verification Office (IVO).[12]

The National Taxpayer Advocate understands the IRS's desire to curb refund fraud by relying on systemic fraud filters using data analytics. However, when such filters routinely have false detection rates above 50 percent, causing legitimate taxpayers to wait additional weeks to receive their tax refunds, the IRS has a responsibility to review and adjust these filters.[13] The IRS has the capability to adjust its fraud filters in real time during the filing season, but told TAS that it has not exercised this capability for its non-identity theft fraud filters.[14]

Other tax administration agencies have demonstrated that it is possible to have low false detection rates while still effectively stopping fraudulent returns.[15] For example, rather than relying on rules, the IRS can build sophisticated models using data mining and "machine learning" to minimize the false detections without impairing its ability to stop improper payments. Additionally, predictive models could be designed and used to assist the IRS in making intelligent estimations as to how many truly fraudulent returns should be identified during the filing season and the number of false detections that will occur. For the last six months, the National Taxpayer Advocate and her staff have been meeting with experts from the private sector and other tax agencies to learn about current developments in this area and advanced methods to both improve true positive detection and minimize false detections.

In a hearing before the House Committee on Oversight and Government Reform shortly after the 2018 filing season, the acting IRS Commissioner acknowledged the need for the IRS to make improvements in its screening methods. The acting Commissioner agreed to work with the National Taxpayer Advocate to provide a report to this Committee (within 90 days of the April 17, 2018 hearing) detailing how the IRS can lower its false detection rate to below 50 percent for its fraud detection systems.[16]

High False Detection Rates Can Lead to Significant Downstream Consequences

High false detection rates can lead to significant downstream consequences for taxpayers and for the IRS. When legitimate taxpayers are ensnared by over-reaching IRS fraud detection filters, they may experience protracted delays in receiving their refund as they navigate the authentication processes to prove they are the true tax return filers or provide additional information to the IRS to verify the income or withholding on their returns. During the 2018 filing season, 70 percent of taxpayers received

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

13 IRS response to TAS information request (Oct. 19, 2017).

14 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 September 30, 2017. The IRS does have an annual meeting prior to the upcoming filing season in which it reviews prior year filters and discusses possible modifications to the filters for the upcoming filing season.

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

16 *See Continued Oversight Over the Internal Revenue Service: Hearing Before the House Oversight and Government Reform Committee, Subcommittee on Healthcare, Benefits and Administrative Rules, and Subcommittee on Government Operations*, 115th Cong. 2018) (statement of David J. Kautter, Acting Commissioner, Internal Revenue Service), *available at* https://oversight.house.gov/wp-content/uploads/2018/04/Kautter-IRS_Testimony_04172018.pdf.

refunds, and the average refund amount was more than $2,780.[17] Many taxpayers, particularly those with low income, depend on timely receipt of their refunds.

For the IRS, it causes additional work for assistors who interact with the taxpayers to unfreeze their refunds and make account adjustments. Many of these victims come to TAS for assistance in unwinding the harm; much of this is rework the IRS could avoid if it set reasonable limits on acceptable false detection rates for its fraud filters. Within the upcoming year, TAS Research will attempt to quantify the downstream consequences of excessively high false detection rates.

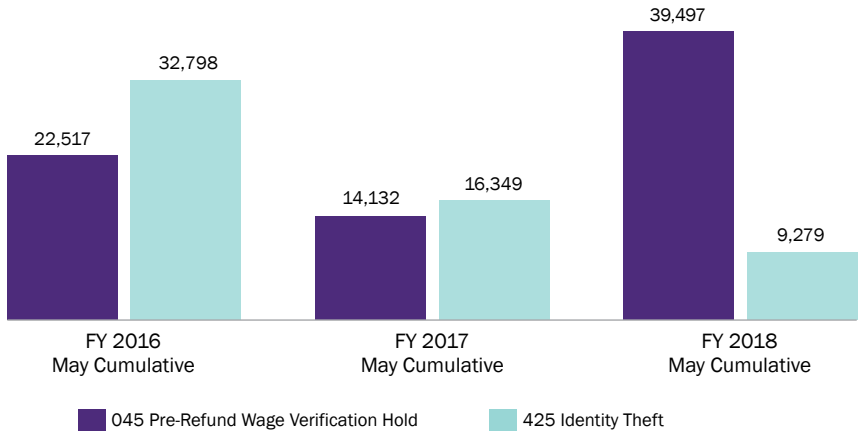
Identity Theft Case Trends

In recent years, there has been a downward trend in taxpayers reporting that they have been the victims of tax-related identity theft. The number of people who reported to the IRS that they were victims of identity theft declined 65 percent from approximately 699,000 in CY 2015 to 242,000 in CY 2017.[18] As of January 2018, the IRS-wide inventory of unresolved identity theft cases was just over 19,000 – less than half of the inventory three years ago.[19]

TAS is also seeing a decline in identity theft case receipts. However, TAS has experienced an increase in Pre-Refund Wage Verification cases. So while fewer taxpayers may face problems from being victimized by an identity thief, more taxpayers are having their legitimate tax refund claims held up.

FIGURE 3.4.3[20]

TAS Pre-Refund Wage Verification Hold and Identity Theft Receipts



17 IRS, Filing Season Statistics for Week Ending April 20, 2018, https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-april-20-2018.

18 *The 2017 Tax Filing Season: Internal Revenue Service Operations and the Taxpayer Experience: Hearing Before S. Comm. on Finance*, 115th Cong. (2017) (statement of John A. Koskinen, Commissioner of Internal Revenue). IRS, *ID Theft Report* (Dec. 2017).

19 IRS, *ID Theft Report* (Dec. 2017). Within the Taxpayer Advocate Service, in FY 2017 (through May), there were identity theft case receipts of 16,349 — half the 32,798 identity theft cases it received by the same point in FY 2016. Data obtained from TAMIS (June 1, 2016; June 1, 2017; June 1, 2018).

20 Data obtained from TAMIS (June 1, 2016; June 1, 2017; June 1, 2018).

Expansion of Identity Protection Personal Identification Numbers

Victims of identity theft whose cases were conclusively resolved by the IRS may be assigned an Identity Protection Personal Identification Number (IP PIN) for use when filing future returns. The IRS implemented IP PINs so it would know a tax return was submitted by the correct Social Security number owner and allow it to pass through its identity theft filters. For taxpayers who have been assigned an IP PIN, the IRS will not process an electronically-filed tax return unless the taxpayer provides the IP PIN when filing. If the IP PIN is provided, the return will be processed without delay. If the tax account contains an identity theft indicator and the tax return lacks an IP PIN or contains an inaccurate IP PIN, the return will be rejected if filed electronically.

The use of IP PINs is an effective way to prevent taxpayers from being repeatedly victimized by identity thieves. For residents of certain states (District of Columbia, Florida, and Georgia), taxpayers may voluntarily opt-in to be assigned an IP PIN. The National Taxpayer Advocate has recommended that the IRS expand the IP PIN program to all taxpayers who wish to protect their accounts. A proposed bill entitled "The Taxpayer First Act" includes a provision that would require the IRS to issue IP PINs to any taxpayer who requests one.[21]

CONCLUSION

TAS understands and supports the need for a variety of revenue protection strategies. But the IRS must recognize the need for approaches that minimize the burden on legitimate taxpayers. To accomplish this, the IRS needs to take advantage of advanced technologies, including predictive modeling and textual analytics, and build these into their fraud detection practices. In addition, the IRS should design these models in real time, allowing them to be recalibrated easily during the filing season. By doing so, it could simultaneously block more fraudulent returns and reduce the number of legitimate refund claims it flags, thereby reducing inconvenience to taxpayers, avoiding imposing possible financial hardship, and minimizing its own unnecessary rework.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Examine cases selected by the IRS's Return Review Program to determine if the accelerated third-party reporting has resulted in more accurate selection for the IVO program;
- Work very closely with the IRS to identify the various technologies and strategies that can be used to improve its fraud detection practices;
- Seek inclusion of TAS representatives in the fraud detection model design and planning process;
- Advocate for the IRS to establish definitive maximum acceptable false detection rate goals that are within industry accepted standards; and
- Advocate for the expansion of the IP PIN opt-in process to include all taxpayers.

21 *See* Taxpayer First Act, H.R. 5444, 115th Cong. § 405 (passed by the House 414-0 on Apr. 18, 2018, and referred to the Senate Committee on Finance on Apr. 19, 2018). The Taxpayer First Act also directs the IRS to assign a single point of contact to victims of identity theft who shall have the ability to work a case across functions to resolve issues involved in the taxpayer's case until full resolution.

Area of Focus #5 The IRS's Private Debt Collection Program, Which Has Yet to Generate Net Revenues, Continues to Unnecessarily Burden Taxpayers Experiencing Economic Hardship and Produces Installment Agreements With High Default Rates

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to Confidentiality*
- *The Right to a Fair and Just Tax System*

DISCUSSION

The IRS implemented the current Private Debt Collection (PDC) initiative more than a year ago.[2] When the program had been in place for about six months, IRS data showed that of taxpayers who made payments while their debts were assigned to private collection agencies (PCAs):

- 44 percent had incomes below 250 percent of the federal poverty level, a measure the IRS sometimes uses as a proxy for economic hardship;[3] and
- 45 percent who entered into an installment agreement (IA) had incomes less than their allowable living expenses (ALEs), meaning they did not have enough income to pay for their basic living expenses.[4]

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 The Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733–36 (2015) (FAST Act) (adding subsections (c) and (h) to IRC § 6306) requires the IRS to enter into qualified tax collection contracts for the collection of "inactive tax receivables." The IRS began assigning tax debts to private collection agencies (PCAs) in April 2017. 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-overdue-federal-taxes-starts-in-april-those-affected-will-hear-first-from-irs-irs-will-still-handle-most-tax-debts.

3 National Taxpayer Advocate 2017 Annual Report to Congress 10, 11 (Most Serious Problem: *Private Debt Collection: 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. See the discussion of 250 percent as a measure of economic hardship below.

4 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 2, 7–8 (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*). 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 IRS, *Collection Financial Standards*, https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards (last visited June 5, 2018).

The measure of 250 percent of the federal poverty level is important. The IRS uses it to identify taxpayers who are likely to be in economic hardship.[5] Congress adopted the measure to identify taxpayers who cannot afford representation in IRS disputes and are therefore vulnerable to overreaching.[6] Recent legislation adopts the measure to excuse some taxpayers from paying user fees to enter into IAs.[7] Still more recently, on April 18, 2018, the U.S. House of Representatives, in a bipartisan vote, passed the Taxpayer First Act, H.R. 5444, which excludes taxpayers whose incomes are less than 250 percent of the federal poverty level from referral to a PCA.[8] With the clear bipartisan support of at least one House of Congress, the IRS could exercise its discretion to exclude taxpayers whose incomes are less than 250 percent of the federal poverty level from the PDC program and focus the program on those who can afford to pay, instead of people who, by the IRS's own definition, cannot afford to pay.

The PDC program continues to burden taxpayers who are likely in economic hardship. As of the second quarter of fiscal year (FY) 2018 (through March 29, 2018), IRS data shows that of taxpayers who made payments while their debts were assigned to PCAs:

- 46 percent had incomes below 250 percent of the federal poverty level;[9] and
- 43 percent who entered into an IA had incomes less than their ALEs.[10]

The PDC program appears to result in IAs with high default rates. The overall default rate for IAs that taxpayers enter into when their debts are assigned to PCAs is 28 percent.[11] The overall default rate on IAs that taxpayers enter into outside the PDC program (*i.e.*, when their debts are not assigned to PCAs) is 16 percent.[12]

5 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 Social Security Administration (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* U.S. Dept. of Health and Human Resources, *Poverty Guidelines* (Jan. 31, 2017), https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references (last visited June 5, 2018), showing that the poverty level for a single person in 2017 was $12,060 and $12,140 in 2018.

6 To assist taxpayers with incomes below 250 percent of the federal poverty level, 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.

7 Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 41105, 132 Stat. 64, 157 (Feb. 9, 2018).

8 Taxpayer First Act, H.R. 5444, § 305, 115th Cong. (April. 17, 2018). This bipartisan bill passed with a recorded vote of 414-0. *See* H.R. 5444: Taxpayer First Act, https://www.govtrack.us/congress/votes/115-2018/h146 (last visited June 5, 2018).

9 Compliance Data Warehouse (CDW) data as of Mar. 29, 2018. We used data from two sources to determine taxpayers' income: the income shown on the taxpayer's most recently filed 2016-2017 individual federal income tax return; and, if the taxpayer did not file a 2016 or 2017 return, the taxpayer's income from the Information Returns Master File (IRMF) wage and Form 1099 income (for example, SSA, miscellaneous, interest, dividend, Individual Retirement Account (IRA), and pension income) for 2017.

10 *See* IRS, *Collection Financial Standards*, https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards (last visited June 5, 2018), using ALEs for 2017. As discussed below, 20,862 taxpayers made payments while their debts were assigned to PCAs. Of these taxpayers, 9,819 entered into an IA; the incomes of 4,236, or 43 percent, were less than their ALEs.

11 CDW data as of Mar. 29, 2018, discussed below.

12 IRS, Collection Activity Report, *Installment Agreement (IA) Default Report FY 2017 For 12 Month Period Ending Cycle: 201739*, discussed below.

According to the IRS, the PDC program generated net revenue in FY 2018 but has yet to break even.[13] About two percent of the dollars assigned for collection have been collected thus far.[14] To date, the IRS has assigned the debts of 304,444 taxpayers to PCAs.[15] The IRS plans to assign between 700,000 to 800,000 debts to PCAs in calendar year 2018 but does not yet have projections of PDC program revenues and costs.[16]

The PDC Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship

Figure 3.5.1 summarizes the incomes of taxpayers who made commissionable payments while their debts were assigned to a PCA since the program's inception.[17]

FIGURE 3.5.1, Income of 20,862 Taxpayers Who Made Payments While Their Debts Were Assigned to PCAs, Compared to the Federal Poverty Level and Dollars Collected, Program Inception April 10, 2017 Through March 29, 2018

	Total Number of Taxpayers Who Made Payments	Percent of Taxpayers Who Made Payments	Dollars Collected	Percent of Dollars Collected
Below Federal Poverty Level	*5,221*	*25%*	*$ 7,153,897*	*17%*
At or Above Federal Poverty Level and Below 250 Percent of Federal Poverty Level	*4,356*	*21%*	*$ 5,840,930*	*14%*
Subtotal, Below 250 Percent Federal Poverty Level	**9,577**	**46%**	**$ 12,994,827**	**31%**
At or Above 250 Percent Federal Poverty Level	11,285	54%	$ 29,424,310	69%
Overall	**20,862**	**100%**	**$ 42,419,137**	**100%**

As Figure 3.5.1 demonstrates, almost a third of the PDC program dollars collected were from taxpayers with incomes less than 250 percent of the federal poverty level. *The median income of the 5,221 taxpayers whose incomes were below the federal poverty level was $1,457.* The median income of the 4,356 taxpayers whose incomes were at or above the federal poverty level and less than 250 percent of the federal poverty level was $23,340.

13 Private Debt Collection (PDC) Program Scorecard from program for fiscal year (FY) 2018 through Mar. 15, 2018, showing total revenues/collection of $28,861,647 and total costs of $10,262,248 for FY 2018, and showing total revenue/collections of $35,443,592 and total costs of $45,583,324 from the start of the program through Mar. 15, 2018.

14 PDC Program Scorecard from program for FY 18 through Mar. 15, 2018, showing $1,434,052,408 of receivables were assigned in FY 18 (of which two percent were collected), and $2,353,645,787 were assigned from the start of the program through Mar. 15, 2018 (of which 1.5 percent were collected).

15 PDC Program Scorecard from program for the start of the program through Mar. 15, 2018.

16 IRS response to TAS information request (Apr. 10, 2018).

17 Under IRC § 6306(e)(1), the IRS is authorized to pay commissions to PCAs of up to 25 percent of the amount collected. Generally, payments taxpayers make more than ten days after their accounts are assigned to a PCA are commissionable.

Taxpayers Who Enter Into Installment Agreements While Their Debts Are Assigned to PCAs Default More Frequently Than Other Taxpayers With Installment Agreements

TAS identified 18,738 taxpayers who entered into IAs while their debts were assigned to PCAs. PCAs can only offer taxpayers "streamlined" IAs, which do not require financial information from the taxpayer. Streamlined IAs are available to taxpayers who owe no more than $50,000 and can satisfy the liability within six years (and within the statutory period for collecting taxes) and to taxpayers who owe between $50,001 and $100,000 and can satisfy the liability within seven years (and within the statutory period for collection).[18]

Whether or not their debts are assigned to a PCA, taxpayers enter into IAs, including streamlined IAs, and sometimes default on the agreement. For example, a 2016 TAS research study found that 25 percent of taxpayers who owed more than $1,000 and entered into streamlined IAs with the IRS in 2014 had defaulted by September 2016.[19] Some of these taxpayers entered into streamlined IAs even though their incomes were less than their allowable living expenses; they defaulted 26 percent of the time.[20] For FY 2017, according to the IRS, the overall IA default rate for streamlined IAs was 16 percent.[21] The streamlined IA default rate for individual taxpayers whose accounts were assigned to the IRS's Automated Collection System was 21 percent.[22]

18 *See Streamlined Processing of Installment Agreements*, https://www.irs.gov/businesses/small-businesses-self-employed/streamlined-processing-of-installment-agreements (last visited June 5, 2018).

19 National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 61 (Research Study: *The Importance of Financial Analysis in Installment Agreements (IAs) in Minimizing Defaults and Preventing Future Payment Noncompliance*), showing that of 2,534,055 taxpayers who entered into a streamlined IA in 2014, 632,729, or 25 percent, defaulted by Sept. 2016.

20 *Id.*, showing that of 879,384 taxpayers whose incomes were less than their ALEs and who entered into a streamlined IA in 2014, 229,758, or 26 percent, defaulted by Sept. 2016.

21 IRS, Collection Activity Report, *IA Default Report FY 2017 For 12 Month Period Ending Cycle: 201739*. The default rate for streamlined IAs varied depending on the IRS function with responsibility for the account when the taxpayer entered into the streamlined IA. For example, Field Collection streamlined IAs had a default rate of 23 percent, while Exam streamlined IAs had a default rate of 13 percent.

22 Automated Collection System (ACS) is the IRS function that receives calls from taxpayers with delinquent tax liabilities. *See* IRM 5.19.5.1, *Program Scope and Objectives* (Mar. 9, 2018). IRS, Collection Activity Report, *IA Default Report FY 2017 For 12 Month Period Ending Cycle: 201739*.

Figure 3.5.2 shows taxpayers' income levels and the default rate for IAs they entered into and defaulted on between April 10, 2017 and March 29, 2018, while their debts were assigned to a PCA.

FIGURE 3.5.2, Relationship of Income to the Federal Poverty Level and to Allowable Living Expenses of 18,738 Taxpayers Who Entered Into Installment Agreements While Their Debts Were Assigned to PCAs, and Default Rates, Program Inception April 10, 2017 Through March 29, 2018[23]

Income Compared to Poverty Level	Number of Taxpayers	Percent of Taxpayers	Number of Taxpayers With Income Less Than Allowable Living Expenses	Percent of Taxpayers With Income Less Than Allowable Living Expenses	Default Rate
Income Below the Federal Poverty Level	4,567	24%	4,567	100%	28%
Income at or Above the Federal Poverty Level and Below 250 Percent of the Federal Poverty Level	4,417	24%	3,515	80%	28%
Income at or Above 250 Percent of the Federal Poverty Level	9,754	52%	328	3%	28%
Total	**18,738**	**100%**	**8,410**	**45%**	**28%**

As Figure 3.5.2 shows, taxpayers whose incomes were below the federal poverty level defaulted on their IAs more than a quarter of the time, *even though their ALEs exceeded their incomes 100 percent of the time*. Taxpayers whose incomes were at or above the federal poverty level and below 250 percent of the federal poverty level also defaulted on their IAs more than a quarter of the time, *even though their ALEs exceeded their incomes 80 percent of the time*. Taxpayers with incomes above 250 percent of the federal poverty level were unlikely to have ALEs in excess of their incomes, but they still defaulted at the same rate as taxpayers in the other two income groups. The PDC initiative as implemented does not involve any financial analysis and thus does not take into account *any* of these taxpayers' specific facts and circumstances. For lower income taxpayers, the consequence is that they are *not* paying for things they need. They are not meeting their basic living expenses.

The IRS Has Not Honored Its Commitment to Exclude the Debts of Some Vulnerable Taxpayers From Assignment to PCAs

At the urging of the National Taxpayer Advocate, the IRS agreed to exclude from assignment to PCAs the debts of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) recipients and requested assistance from the Social Security Administration (SSA) in identifying affected taxpayers.[24] SSA declined, and the IRS has not taken additional steps to explore alternatives for

23 Defaulted IAs were identified in the CDW as IA cases with a subsequent TC 971 AC 163 and a balance due for at least one tax year that was covered by the IA.

24 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*).

excluding the debts of SSI/SSDI recipients from assignment to PCAs.[25] As a result, the debts of 12,107 SSDI recipients were assigned to PCAs in FY 2018 (Oct. 1, 2017 through Mar. 29, 2018). Further, 322 SSDI recipients whose incomes were less than 250 percent of the federal poverty level *made payments* in FY 2018 while their debts were assigned:

- 128 had incomes below the federal poverty level. These taxpayers' median income was $7,344, yet they paid $1,083 on average; and
- 194 had incomes at or above the federal poverty level and below 250 percent of the federal poverty level. These taxpayers' median income was $19,385, yet they paid $640 on average.

In its response to the National Taxpayer Advocate's 2017 Annual Report to Congress recommendations, the IRS referenced its "manual process that requires the PCA to stop collection efforts and return an account to the IRS when the taxpayer states they receive SSDI or SSI."[26] As discussed below, this "manual process" does not appear effective. Moreover, it is the opposite of a big data approach in which the government is expected to use data it has to avoid burdening taxpayers. The IRS has simply decided that it is too difficult to extract and use its data; it has instead shifted the burden onto disabled and elderly taxpayers.

Private Collection Agencies May Not Be Returning Cases to the IRS As Required

PCAs are required to report the reasons for returning a case to the IRS.[27] Four situations in which a PCA is required to return a case suggest the taxpayer is in economic hardship:

- Where the taxpayer states he or she is a recipient of SSDI or SSI;[28]
- Where the PCA is unable to collect because the taxpayer "indicates that payment of the balance due immediately or through a payment arrangement would leave him or her unable to pay necessary living expenses or a medical hardship is reported;"[29]
- Where the PCA has requested a "voluntary payment," *i.e.*, a payment that does not fully pay the liability and is not made pursuant to an installment agreement.[30] A request for a voluntary payment is permitted only where the taxpayer cannot pay the liability immediately or pursuant to an installment agreement, and is not allowed where the taxpayer "expresses they are unable to pay;" and

25 IRS response to TAS information request (Apr. 10, 2018). The IRS's IRMF, a database stored in the CDW, includes information from Form SSA-1099, on which Social Security benefits, including Social Security Disability Insurance income (SSDI) (but not Supplemental Security Income (SSI), discussed below) is reported.

26 IRS response to Recommendation 1-3, National Taxpayer Advocate 2017 Annual Report to Congress (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*) reported in National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress vol. 2.

27 PCAs conduct operations according to provisions in the PCA Policies and Procedures Guide (PPG). References to the PPG are to the Apr. 4, 2018 version. PPG § 17.1, *Production Management Reports*, § 17.3.1, *Return Tracking Report*.

28 PPG § 14.2, *Return of Account by PCA*. The IRS has not honored its commitment to exclude the debts of SSDI and SSI recipients from assignment to PCAs.

29 PPG § 12.3, *PCA Unable to Collect*.

30 PPG § 10.2.1, *Voluntary Payments*. If the taxpayer makes the voluntary payment, the PCA returns the account to the IRS, indicating "Voluntary Payment" as the reason for the return. If the taxpayer does not make the requested voluntary payment, the PCA indicates the reason for the return as "Unable to Collect."

- Where the taxpayer entered into a payment arrangement, but missed more than three monthly payments in a rolling 12-month period (or missed any payments during a disaster or emergency) "and is unable to restructure and unable to make voluntary payments."[31]

According to PCA reports, in FY 2018 through March 15, 2018, PCAs returned 2,663 cases to the IRS because the taxpayer was an SSDI or SSI recipient.[32] As noted above, the debts of 12,107 SSDI taxpayers alone were assigned to PCAs in about the same period (FY 2018 through March 29, 2018). Thus, the approach the IRS has adopted, of placing the onus on the taxpayer to volunteer the information that he or she is a recipient of SSDI or SSI, does not appear to effectively prevent PCAs from seeking to collect from these taxpayers. The IRS is unable to identify from PCA reports the number of cases that were returned for any of the other reasons listed above.[33]

The IRS Plans to Enlarge the PDC Initiative

In selecting cases to assign to PCAs, the IRS segments its inventory of "inactive tax receivables" according to how the liability was assessed (*e.g.*, an agreed assessment; "combo cases," discussed below; or AUR cases, discussed below).[34] The IRS then randomly selects PDC cases according to characteristics of the account such as the inventory segment it belongs to and the amount owed.[35]

In February 2018, the IRS began implementing Release 2 of the PDC initiative, which entails assigning to PCAs "unagreed compliance assessments." "Unagreed compliance assessments" are liabilities that arose pursuant to:

- the Automated Underreporter (AUR) computer system;[36]

31 PPG § 11.5.2, *Missed Payments*. The IRS does not track the number of PCA IAs that have been restructured. When PCAs do return cases to the IRS because of missed payments, the return is reported as "unable to collect;" *i.e.*, these defaulted IAs are not separately identified or tracked as a reason for returning a case. IRS response to TAS information request (Apr. 10, 2018).

32 IRS response to TAS information request (Apr. 10, 2018).

33 The IRS also does not know how often cases are returned because the PCA is unable to locate or unable to contact the taxpayer. IRS response to TAS information request (Apr. 10, 2018), citing "inconsistency in the PCA's interpretation of the return criteria" and noting that "[t]he PDC Project Office is working to analyze the data provided for other returns. Over the next several months, the team will continue to work closely with RAAS [IRS Research, Applied Analytics, and Statistics] and conduct focused reviews to identify the discrepancies and provide the PCAs with clarifying guidelines on reporting the reasons for returning cases to the IRS." In the meantime, there is a wide variation in the rate at which PCAs return accounts to the IRS. PDC Program Scorecard from program for FY 2018 through Mar. 15, 2018, showing the cumulative number of returned cases ranged from 983 to 2,174, depending on the PCA.

34 IRC § 6306(c)(2)(A) provides that "[t]he term 'inactive tax receivable' means any tax receivable if (i) at any time after assessment, the Internal Revenue Service removes such receivable from the active inventory for lack of resources or inability to locate the taxpayer, (ii) more than 1/3 of the period of the applicable statute of limitation has lapsed and such receivable has not been assigned for collection to any employee of the Internal Revenue Service, or (iii) in the case of a receivable which has been assigned for collection, more than 365 days have passed without interaction with the taxpayer or a third party for purposes of furthering the collection of such receivable."

35 IRS response to TAS information request (Apr. 10, 2018).

36 The Automated Underreporter (AUR) is an automated program that identifies discrepancies between the amounts that taxpayers reported on their returns and what payors reported via Form W-2, Form 1099, and other information returns. IRM 4.19.3.2(3)-(8), *Overview of IMF Automated Underreporter* (Aug. 26, 2016). For a full discussion of this type of "unreal audit" see National Taxpayer Advocate 2017 Annual Report to Congress 49 (Most Serious Problem: *Audit Rates: The IRS Is Conducting Significant Types and Amounts of Compliance Activities That It Does Not Deem to Be Traditional Audits, Thereby Underreporting the Extent of Its Compliance Activity and Return on Investment, and Circumventing Taxpayer Protections*).

- a substitute for return;[37] or
- an audit that resulted in a default assessment.[38]

In general, PCAs are instructed to advise taxpayers with "compliance assessments" who dispute their liability to file an original return, contact AUR (the PCA is to provide the AUR contact number) or contact IRS Exam (at the number "shown on the Exam unit's most recent correspondence").[39] The PCA is directed to place a 60-day hold on collection activity if the taxpayer states he or she needs time to gather tax information to determine what type of action to pursue.

Release 2 also includes cases in which there is an unfiled return (referred to as "combo cases"), cases in which there is a liability for the individual shared responsibility payment, and trust fund recovery penalty cases.[40] Release 3 includes preparing to hire special compliance personnel.[41] Business debts are included in Release 4, which is scheduled to be implemented in February 2019.[42]

Additional Concerns

The IRS has refused to allow TAS representatives to participate in monitoring calls between PCAs and taxpayers, despite congressional interest in this issue.[43] Thus, we are not able to provide insight into why taxpayers agree to make payments they cannot afford.

An issue that has caused confusion among taxpayers and their representatives stems from the fact that tax transcripts show whether a debt has been designated as Currently Not Collectible (CNC), but not the reason for the designation.[44] Consequently, taxpayers and their representatives have mistakenly believed a debt was designated as CNC due to the taxpayer's economic hardship, and thus should not have been assigned to a PCA when the debt was designated as CNC for another reason (such as

37 A substitute for return (SFR) is a return prepared for a taxpayer by the IRS when it has no record of receiving a return and has not been able to obtain one from someone whom the IRS expected to file. IRC § 6020(b) allows the IRS to prepare a return on behalf of the taxpayer based on available information. The taxpayer may reduce the SFR liability by filing an original return that reflects allowable deductions and credits about which the IRS had no information at the time the SFR was prepared.

38 IRS response to TAS information request (Apr. 10, 2018).

39 PPG § 12.22, *Compliance Assessments*.

40 IRS response to TAS information request (Apr. 10, 2018). Where the only liability is for the individual shared responsibility payment, and the taxpayer disagrees with the assessment, PCAs are directed to return the case to the IRS. PPG § 12.23, *Shared Responsibility Payment (SRP)*.

41 IRS response to TAS information request (Apr. 10, 2018). IRC § 6306(e)(2) requires the IRS to use funds it retains from PCA collections to fund a "special compliance personnel program account" under IRC § 6307. IRC § 6307(d)(1) defines "special compliance personnel" as "individuals employed by the Internal Revenue Service as field function collection officers or in a similar position, or employed to collect taxes using the automated collection system or an equivalent replacement system."

42 In assigning various types of inventory, the IRS will also consider factors such as the available inventory, IT readiness, IRS resource impacts, and PCA readiness in terms of training. IRS response to TAS information request (Apr. 10, 2018).

43 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 to see why the IRS was not allowing TAS to participate in the monitoring. *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. (2018).

44 The IRS may designate an account as Currently Not Collectible (CNC) - Hardship where "collection of the liability would create a hardship for taxpayers by leaving them unable to meet necessary living expenses." Other reasons for designating a debt as CNC include where the IRS was unable to locate the taxpayer, expiration of the period of limitations on collection, or death of the taxpayer with no collection potential from the decedent's estate. *See* IRM 5.16.1.2, *Currently Not Collectible Procedures* (Jan. 1, 2016).

because the IRS was unable to locate or unable to contact the taxpayer).[45] Providing the reason for the CNC designation on tax transcripts would assist taxpayers and practitioners in the context of the PDC program and in other contexts as well.[46]

Recent developments may affect how the IRS administers the PDC program. The Taxpayer First Act, H.R. 5444, excludes taxpayers whose incomes are less than 250 percent of the federal poverty level from referral to a PCA.[47] The National Taxpayer Advocate has been working to achieve the same result. On April 23, 2018, the National Taxpayer Advocate issued a Taxpayer Advocate Directive (TAD) to the Commissioner, Small Business/Self-Employed Division (SB/SE), ordering the IRS not to assign to PCAs the debt of any taxpayer whose income was less than 250 percent of the federal poverty level.[48] On May 14, 2018, the SB/SE Commissioner appealed the TAD to the Deputy Director for Services and Enforcement. The National Taxpayer Advocate was not provided a copy of the appeal at that time and thus did not have the opportunity to review the appeal and potentially modify the TAD before June 20, 2018, when the Deputy Director for Services and Enforcement rescinded the TAD. The National Taxpayer Advocate became aware of the appeal on June 20, 2018 and obtained a copy of it. On June 22, 2018, the National Taxpayer Advocate advised the Deputy Director for Services and Enforcement that she would review the SB/SE Commissioner's appeal and would likely issue another TAD proposing an alternative means of better balancing the IRS's legal obligation to operate the PDC program with longstanding statutory provisions Congress adopted to prevent the IRS from taking collection action against taxpayers in economic hardship. Appendix A includes the original TAD, the appeal, the response from the Deputy Commissioner for Services and Enforcement, and the National Taxpayer Advocate's June 22, 2018 memo.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Ascertain the extent to which taxpayers enter into IAs with a duration of more than five years while their debts are assigned to PCAs, and the default rates for these IAs;
- Evaluate the accuracy of the underlying assessment in cases assigned to PCAs as part of Release 2 and the outcomes of IAs organized by PCAs as part of Release 2;
- Investigate whether PCAs return cases to the IRS where the only liability is for the individual shared responsibility payment and the taxpayer disagrees with the assessment;
- Continue to seek inclusion of TAS employees in the IRS's process for listening to calls between PCAs and taxpayers;

45 TAS Information Gathering Project 36766.

46 For example, the IRS generally does not impose levies where the taxpayer's account is in CNC-Hardship status. *See* IRM 5.11.1.3.1, *Pre-Levy Considerations* (Nov. 9, 2017). Under IRC § 6343 (a)(1)(D), a levy is required to be released when the IRS determines the levy is creating an economic hardship, *i.e.*, the levy will cause the individual to be unable to pay his or her reasonable necessary living expenses.

47 Taxpayer First Act, H.R. 5444, § 305, 115th Cong. (Apr. 17, 2018).

48 Pursuant to Delegation Order No. 13-3, the National Taxpayer Advocate has the authority to issue a TAD "to mandate administrative or procedural changes 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." Internal Revenue Manual (IRM) 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001). *See also* IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

- Continue to work with the IRS to adjust the information shown on tax transcripts to indicate whether a tax liability was placed in Currently Not Collectible status due to the taxpayer's economic hardship; and
- Seek direct communication with the Commissioner, Social Security Administration, to explore how the debts of SSDI and SSI recipients can be shared with the IRS so they can be excluded from assignment to PCAs.

APPENDIX A

TAXPAYER ADVOCATE SERVICE
YOUR VOICE AT THE IRS

THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE

April 23, 2018

Response Due: June 25, 2018
Completed By: July 25, 2018

MEMORANDUM FOR MARY BETH MURPHY
COMMISSIONER,
SMALL BUSINESS/SELF-EMPLOYED DIVISION

FROM: Nina E. Olson
National Taxpayer Advocate

SUBJECT: Taxpayer Advocate Directive **2018-1**, *Do Not Assign to Private Collection Agencies the Debts of Taxpayers Whose Incomes Are Less Than 250 Percent of the Federal Poverty Level*

TAXPAYER ADVOCATE DIRECTIVE

Delegation Order No. 13-3 grants the National Taxpayer Advocate the authority to issue a Taxpayer Advocate Directive (TAD). A TAD may be issued to (1) mandate administrative or procedural changes to improve the operation of a functional process, or (2) grant relief to groups of taxpayers (or all taxpayers) when its implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers.[1]

Internal Revenue Manual (IRM) 13.2.1.6.1 (July 16, 2009) provides that in advance of issuing a TAD, the National Taxpayer Advocate attempts to work with and communicate with the owners of the process in order to correct the problem. I included the issue of the IRS's implementation of the private debt collection (PDC) initiative as a Most

[1] Pursuant to Delegation Order No. 13-3, the National Taxpayer Advocate has the authority to issue a TAD "to mandate administrative or procedural changes 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." Internal Revenue Manual (IRM) 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001). *See also* IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

Serious Problem in my two most recent Annual Reports to Congress, and supported my position with this year's TAS research study.[2] I also met with the you and Commissioner Koskinen on at least two occasions to discuss my concerns. These reports and our meetings serve as a formal memorandum issued to the responsible operating area within the meaning of IRM 13.2.1.6.1.2 (July 16, 2009). Therefore, all procedural requirements for issuing this TAD have been satisfied.[3]

The PDC initiative as it is currently being administered affects the most vulnerable taxpayers whom the IRS would most likely not collect from because they cannot meet their basic living expenses. Thus, I now direct you to take the following actions with respect to the PDC initiative:

> Do not assign to private collection agencies the debt of any taxpayer whose income was less than 250 percent of the federal poverty level, as shown on the taxpayer's most recent return filed in the last three years, or if no return was filed in the last three years, as shown on the Information Returns Master File (IRMF) wage and Form 1099 income for the most recent year data is available.

Please provide a written response to this TAD on or before **June 25, 2018**, or elevate this TAD to the Deputy Commissioner for Services and Enforcement within ten (10) calendar days of the date on this TAD.[4] If you are complying with this TAD, the actions above must be completed no later than **July 25, 2018.**

I. Issues

In 2015, Congress enacted legislation requiring the IRS to enter into "qualified tax collection contracts" for the collection of "inactive tax receivables," a term defined by the statute.[5] The statute also defines "tax receivables" as accounts the IRS includes in "potentially collectible inventory."[6] The term "potentially collectible inventory" is not defined in the statute or Treasury regulations, allowing the IRS the flexibility to define it in a way that does not unnecessarily burden taxpayers who are likely experiencing economic hardship.

The IRS, for purposes of administering the Federal Payment Levy Program (FPLP), adopted 250 percent of the federal poverty level as a measure that serves as a proxy

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[2] *See* 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*); National Taxpayer Advocate 2017 Annual Report to Congress 10-21 (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*); vol. 2, 1-11 (Research Study: *Study of Taxpayers Who Entered Into Installment Agreements and Made Payments While Their Debts Were Assigned to a Private Collection Agency*, attached.

[3] IRM 13.2.1.6.2(1), *TAD Appeal Process* (July 16, 2009).

[4] See IRM 13.2.1.6.2(1)(a), *TAD Appeal Process* (July 16, 2009).

[5] IRC § 6306(c), added by the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102,129 Stat. 1312, 1733-36 (2015) (FAST Act).

[6] IRC § 6306(c).

for economic hardship. The IRS applies a low income filter to identify and exclude these taxpayers' federal payments, such as Social Security Administration (SSA) retirement income, from FPLP levies.[7] Congress recently adopted the measure of 250 percent of the federal poverty level in recent legislation that excuses some taxpayers from paying user fees to enter into installment agreements.[8]
Still more recently, on April 18, 2018, the U.S. House of Representatives passed the Taxpayer First Act, H.R. 5444, which excludes taxpayers whose incomes are less than 250 percent of the federal poverty level from referral to a PCA.[9] This bipartisan bill passed with a recorded vote of 414-0.[10] The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) determined the bill would have minimal revenue effect.[11] Given the harm the PDC program imposes on low income taxpayers, as my reports have demonstrated, the IRS does not need to await Senate action to do the right thing to protect these vulnerable taxpayers.

II. Procedural History

I have voiced concerns about the implementation of the current PDC initiative since 2016, specifically its impact on taxpayers who are likely experiencing economic hardship.[12] In December of 2016, the IRS Commissioner determined that some planned procedures, such as assigning the debts of Social Security Disability Insurance (SSDI) recipients to private collection agencies (PCAs), would not be implemented.[13] However, the IRS declined to exercise the discretion I believe it has under the law to define "potentially collectible inventory" to exclude the debts of other vulnerable taxpayers from assignment.

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[7] *See* IRM 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016). For a description of the TAS model to estimate the income and expenses of taxpayers whose federal payments had been subject to FPLP levies, which led to the adoption of the 250 percent proxy for economic hardship, see National Taxpayer Advocate 2008 Annual Report to Congress vol. 2, 48 (Research Study: *Building a Better Filter: Protecting Lower Income Social Security Recipients from the Federal Payment Levy Program*).
[8] Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 41105, 132 Stat. 64, 157 (Feb. 9, 2018).
[9] Taxpayer First Act, H.R. 5444 § 305, 115th Cong. (April. 17, 2018).
[10] *See* H.R. 5444: Taxpayer First Act, https://www.govtrack.us/congress/votes/115-2018/h146.
[11] Congressional Budget Office Cost Estimate, Taxpayer First Act, H.R. 5444 (Apr. 16, 2018), https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr5444.pdf, reporting that "[t]he staff of the Joint Committee on Taxation (JCT) estimates that enacting the bill would reduce revenues by $102 million over the 2019-2028 period, and CBO estimates that enacting H.R. 5444 would decrease direct spending by $51 million over the same period. On net, H.R. 5444 would increase deficits by $52 million over the period" and noting that "CBO and JCT estimate that enacting H.R. 5444 would not increase net direct spending or significantly affect on-budget deficits in any of the four consecutive 10-year periods beginning in 2029."
[12] *See* 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*).
[13] The IRS has not honored its commitment to exclude SSDI recipients' debts from assignment to PCAs.

I discussed my concerns in the 2016 Annual Report to Congress and in the National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress.[14] As discussed below, data about how the PDC program is affecting taxpayers shows that my concerns about how the program would affect taxpayers who are likely in economic hardship were well founded. The program as currently administered affects the most vulnerable taxpayers, some of whom have incomes below the federal poverty level. The IRS would most likely not collect from these low income taxpayers because they cannot meet their basic living expenses.

III. Analysis

As discussed above, the IRS does not generally impose FPLP levies on SSA retirement recipients whose incomes are less than 250 percent of the federal poverty level. However, the IRS assigned some of these taxpayers' debts to PCAs. Some SSA retirement recipients with incomes less than the federal poverty level actually made payments while their debts were assigned, in some cases pursuant to IAs. Of those who made payments:[15]

- More than half had incomes *below the federal poverty level*:[16]
  - These taxpayers' median income was $4,730;[17] and
  - The incomes of those who entered into IAs were less than their allowable living expenses (ALEs) *100 percent of the time*.[18]

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[14] 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*); National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 29-35 (Area of Focus: *The Design of the IRS's Private Debt Collection (PDC) Program Will Disproportionately Burden Taxpayers in Economic Hardship and Impose Unnecessary Costs on the Public Fisc*), attached.

[15] 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.

[16] 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.

[17] *Id.*

[18] 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.

- 42 percent had incomes at or above the federal poverty level and below 250 percent of the federal poverty level:[19]
  - These taxpayers' median income was $19,542;[20] and
  - The incomes of those who entered into IAs were less than their ALEs *100 percent of the time*.[21]

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*:[22]
  - These taxpayers' median income was $6,386;[23] and
  - The incomes of those who entered into IAs were less than their allowable living expenses (ALEs) *100 percent of the time*.[24]

- 25 percent had incomes at or above the federal poverty level and below 250 percent of the federal poverty level: [25]
  - These taxpayers' median income was $23,096;[26] and
  - The incomes of those who entered into IAs were less than their ALEs *84 percent of the time*.[27]

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[19] 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.

[20] *Id.*

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

[22] 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.

[23] *Id.* at 14.

[24] 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.

[25] 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.

[26] *Id.*

[27] 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.

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.

IV. Requested Actions

Because the IRS has refused to revise its procedures, I am issuing this TAD to protect the rights of taxpayers and prevent undue burden. In light of the significant harm taxpayers are suffering as a result of the IRS's failure to act, I direct you to take the following actions:

> Do not assign to private collection agencies the debt of any taxpayer whose income was less than 250 percent of the federal poverty level, as shown on the taxpayer's most recent return filed in the last three years, or if no return was filed in the last three years, as shown on the Information Returns Master File (IRMF) wage and Form 1099 income for the most recent year data is available.

Please provide a written response to this TAD on or before **June 25, 2018**, or elevate this TAD to the Deputy Commissioner for Services and Enforcement within ten (10) calendar days of the date on this TAD. If you are complying with this TAD, the actions above must be completed no later than **July 25, 2018.** Please send any response or questions to me, with a copy to TAS Attorney Advisor Jill MacNabb.

Attachments

1. 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*).
2. National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 29- 35 (Area of Focus: *The Design of the IRS's Private Debt Collection (PDC) Program Will Disproportionately Burden Taxpayers in Economic Hardship and Impose Unnecessary Costs on the Public Fisc*).
3. National Taxpayer Advocate 2017 Annual Report to Congress 10-21(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).*
4. National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 1-11 (Research Study: *Study of Taxpayers Who Entered Into*

Installment Agreements and Made Payments While Their Debts Were Assigned to a Private Collection Agency).

cc: David J. Kautter, Acting Commissioner of Internal Revenue
Kirsten Wielobob, Deputy Commissioner, Services and Enforcement

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

MAY 14 2018

MEMORANDUM FOR KIRSTEN B. WIELOBOB
DEPUTY COMMISSIONER, SERVICES AND ENFORCEMENT

FROM: Mary Beth Murphy
Commissioner, Small Business/Self Employed

SUBJECT: Taxpayer Advocate Directive 2018-1, Do Not Assign to Private Collection Agencies the Debts of Taxpayers Whose Incomes are Less Than 250 Percent of the Federal Poverty Level

In accordance with IRM 13.2.1.6.2 (TAD Appeal Process), I appeal the above referenced Taxpayer Advocate Directive (TAD) dated April 23, 2018. The TAD directed the Commissioner, Small Business/Self Employed Division to take the following action:

> Do not assign to collection agencies the debt of any taxpayer whose income was less than 250 percent of the federal poverty level, as shown on the taxpayer's most recent filed return in the last three years, or if no return was filed in the last three years, as shown on the Information Returns Master File (IRMF) wage and Form 1099 income for the most recent year data is available.

In short, I disagree with this directive and appeal the action. The directive to exclude cases is not authorized in the Internal Revenue Code (IRC). Congress defined the debts that must be collected under qualified tax collection contracts in IRC § 6306(c) and those that may not be collected under such contracts in IRC § 6306(d). The law does not exclude taxpayers whose income is below 250 percent of the federal poverty level. The IRS does not have the legal authority to expand on or change the law. Therefore, the IRS cannot implement this exclusion as it is outlined in the directive.

However, the specific issues raised in the TAD are addressed as follows:

Redefining the term "potentially collectible inventory" is inconsistent with established IRS collection practices which Congress understood

We agree that the term, "potentially collectible inventory", is not defined in the statute or Treasury regulations. However, the IRS defines it as the inventory of accounts to which Collection could apply resources; it does not include accounts in payment arrangement

status or determined to be uncollectible by the IRS. Use of this term within IRS was known to Congress when drafting the Private Debt Collection (PDC) statute. Altering the IRS definition for the purpose of implementing this directive would be inconsistent with established IRS collection practices which Congress understood.

Reliance on 250 percent of the federal poverty level as a measure in unrelated programs, statutes, and draft legislation, does not support using that standard to exclude cases from PDC

The IRS does use 250 percent of the federal poverty level as a measure of "low-income" so as to exclude taxpayer cases from the Federal Payment Levy Program (FPLP). Cases excluded from the FPLP are still subject to collection activity through other workstreams.

Similarly, there is no relationship between the recent statutory waiver of installment agreement user fees and the PDC program. To the contrary, excluding low-income taxpayers from the fee (under some circumstances) supports that Congress still expects such taxpayers to enter into installment agreements.

Finally, the recent proposed legislation for a similar exclusion from PDC in Taxpayer First Act, H.R. 5444, does not alter the IRS's collection practices under current law.

Taxpayers with incomes below 250 percent of the federal poverty level are not excluded from the IRS collection system and often make arrangements to pay in full

PCAs offer payment arrangements to taxpayers in a manner consistent with IRS installment agreement procedures. A taxpayer's proposal to pay is accepted without requesting financial information if the case meets certain criteria. However, if a taxpayer reports an inability to pay in full or through a payment arrangement, procedures are in place for the PCA to return the account to the IRS. Additionally, if a taxpayer assigned to a PCA indicates full payment or a payment arrangement would leave them in a hardship situation, the agency is required to return the account to the IRS.

Based on the reasons set forth above, I appeal the action outlined in the TAD. I respectfully request you rescind this TAD in accordance with the authority vested in delegation order 13-3.

Thank you for your consideration.

DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

June 20, 2018

MEMORANDUM FOR NINA E. OLSON
NATIONAL TAXPAYER ADVOCATE

FROM: Kirsten Wielobob
Deputy Commissioner for Services and Enforcement

SUBJECT: Taxpayer Advocate Directive 2018-1, Do Not Assign to Private Collection Agencies the Debts of Taxpayers Whose Incomes are Less Than 250 Percent of the Federal Poverty Level

On May 14, 2018, the Commissioner, Small Business/Self Employed Division (SB/SE) appealed TAD 2018-1 to me, consistent with IRM Section 13.2.1.6.2(1). The TAD directed the Commissioner, SB/SE to take the following action:

> Do not assign to collection agencies the debt of any taxpayer whose income was less than 250 percent of the federal poverty level, as shown on the taxpayer's most recent filed return in the last three years, or if no return was filed in the last three years, as shown on the Information Returns Master File (IRMF) wage and Form 1099 income for the most recent year data is available.

Under Delegation Order 13-3, I am rescinding the TAD for the reasons described in the Commissioner, SB/SE's May 14, 2018, appeal.

The law is specific about the categories of tax receivables that should be excluded from referral to private collection agencies. See IRC § 6306(d). Neither the statute nor the Conference Report accompanying its enactment includes the exclusion requested in the TAD. See H.R. Rept. No. 114-357, at 532-536 (2015).

The TAD suggests that IRS rely on the bill passed by the U.S. House of Representatives that contains the 250 percent income exclusion. While the bill demonstrates the intent of the House, it does not alter enacted law. Enforcing the language of a bill would upend the legislative process and would create significant uncertainty about IRS' enforcement of enacted laws. See, e.g., Pub. L. No. 111-148, 124 Stat. 119 (2010).

cc: Mary Beth Murphy, Commissioner, Small Business/Self Employed Division

TAXPAYER ADVOCATE SERVICE
YOUR VOICE AT THE IRS

THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

June 22, 2018

MEMORANDUM FOR KIRSTEN WIELOBOB
DEPUTY COMMISSIONER FOR SERVICES AND ENFORCEMENT

FROM: Nina E. Olson
National Taxpayer Advocate

SUBJECT: Taxpayer Advocate Directive 2018-1, Do Not Assign to Private Collection Agencies the Debts of Taxpayers Whose Incomes Are Less Than 250 Percent of the Federal Poverty Level

On April 23, 2018, I issued a Taxpayer Advocate Directive (TAD) to the Commissioner, Small Business Self Employed Division (SB/SE), directing the IRS not to assign to PCAs the debt of any taxpayer whose income is less than 250 percent of the federal poverty level. On May 14, 2018, the SB/SE Commissioner appealed the TAD to you. The memorandum appealing the TAD does not indicate that any other person was intended to receive a copy of the appeal, and I was not provided a copy of the appeal at that time.

On June 20, 2018, you rescinded the appealed TAD "for the reasons described in the Commissioner, SB/SE's May 14, 2018 appeal." I became aware that the SB/SE Commissioner had appealed the TAO for the first time when I read your June 20, 2018 memo. Therefore, I did not have an opportunity to review the SB/SE Commissioner's response, consider her concerns, and potentially modify my recommendation prior to your response. I did not have an opportunity, as I ordinarily do, to submit a memo to you responding to the SB/SE Commissioner's concerns.

On June 21, I obtained a copy of the SB/SE Commissioner's appeal, which I will now review. I will likely issue another TAD proposing an alternative means of addressing this problem, in light of evidence about how the program continues to harm taxpayers. As I noted in my 2017 Annual Report to Congress, in roughly the first six months of the PDC program (April 10-September 28, 2017), the recent returns of 4,141 taxpayers who

made payments while their debts were assigned to private collection agencies (PCAs) showed:

- 19 percent had incomes *below the federal poverty level*;
- 28 percent had incomes below $20,000; and
- 45 percent who entered into installment agreements (IAs) had incomes less than their allowable living expenses (ALEs)

As I am reporting in my FY 2019 Objectives Report, from the program's inception on April 10, 2017 through March 29, 2018, of the 18,738 taxpayers who entered into IAs while their debts were assigned to PCAs:

- 24 percent had incomes *below the federal poverty level*;
- 43 percent had incomes less than their ALEs.

The overall default rate for IAs that taxpayers enter into when their debts are assigned to PCAs is 28 percent. The overall default rate on IAs that taxpayers enter into outside the PDC program (*i.e.*, when their debts are not assigned to PCAs) is 16 percent.

I believe our shared goal is to balance the IRS legal obligation to operate the PDC program with longstanding statutory provisions Congress adopted to prevent the IRS from taking collection action against taxpayers in economic hardship. Based on the data above, it is clear that the IRS has not yet achieved the appropriate balance. I will continue to explore solutions that would achieve a better balance.

cc: David Kautter, Acting Commissioner, Internal Revenue
Mary Beth Murphy, Commissioner, Small Business Self Employed Division

Area of Focus #6 Some IRS Procedures for the Certification Program Related to Denial or Revocation of Passports Ignore Legislative Intent and Impair Taxpayer Rights

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Be Informed*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Confidentiality*
- *The Right to a Fair and Just Tax System*

DISCUSSION

In early 2018, the IRS began implementing the legislatively-directed program to certify taxpayers' seriously delinquent tax debts to the Department of State.[2] Under the law, the Department of State must deny an individual's passport application and may revoke or limit an individual's passport if the IRS has certified the individual as having a seriously delinquent tax debt. This term refers to an "unpaid, legally enforceable federal tax liability of an individual," which has been assessed, is greater than $51,000, and meets either of the following criteria: (1) a notice of lien has been filed under Internal Revenue Code (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.[3]

Although the IRS began by certifying only about 1,500 taxpayers in February, it had certified 9,356 taxpayers as of May 4, 2018.[4] The IRS will increase certification by five to ten percent each week until it certifies all taxpayers meeting the criteria.[5] After that, certifications will occur systemically on a weekly basis. Although the number of taxpayers eligible for certification fluctuates, as of April 2018 there were approximately 436,400 taxpayers who met certification criteria and did not meet a discretionary or statutory exclusion.[6] TAS has been working with the Small Business/Self-Employed (SB/SE) division to ensure the IRS's plans and procedures support the purpose of the statute and protect taxpayer rights.

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

2 Pub. L. No. 114-94, Div. C, Title XXXII, § 32101, 129 Stat. 1312, 1729-32 (2015) (codified at IRC § 7345) (hereinafter FAST Act).

3 FAST Act § 32101(a) (codified as IRC § 7345(b), 32101(f)).

4 TAS conference call with the Small Business/Self-Employed Division (Feb. 22, 2018); IRS response to TAS information request (May 15, 2018).

5 IRS response to TAS information request (May 15, 2018).

6 *Id.*

The IRS Does Not Provide Taxpayers With a Stand-Alone Notice Prior to Passport Certification, and Its Certification Notice and the Department of State's Notice Lack Key Information

Under the statute, the IRS must notify the taxpayer of a certification or decertification when it transmits it to the Department of State.[7] It must also include in its CDP hearing notices information about the certification of seriously delinquent tax debts and the denial, revocation, or limitation of passports.[8] As discussed in the National Taxpayer Advocate's 2017 Annual Report to Congress, the IRS's refusal to provide any additional notice beyond these requirements impairs the taxpayer's *rights to be informed* and *to challenge the IRS's position and be heard* because taxpayers may not learn the IRS has certified their tax debts until after certification.[9]

Additionally, the IRS's passport certification notice is inadequate because it provides only two options for taxpayers to prevent the Department of State from denying, revoking, or limiting a taxpayer's passport: full payment of the liability or alternate payment arrangements, such as an installment agreement (IA) or offer in compromise (OIC). The notice lacks any language about other situations where tax debts may be excluded from the program, such as if the taxpayer is a victim of identity theft or qualifies for currently not collectible (CNC) hardship status. Of the 316 decertifications the IRS had sent to the Department of State as of May 4, 2018, one of the top three reasons for decertification was the taxpayer receiving CNC hardship status.[10] The notice also fails to inform taxpayers that if they have emergency or humanitarian reasons for needing to travel, the Department of State can make an exception, and the taxpayer should contact the Department of State directly.

Likewise, the letter the Department of State sends to notify certified taxpayers that it is holding their passport applications also omits information about the emergency and humanitarian exception, as well as information about TAS.[11] If a taxpayer has been trying to work with the IRS unsuccessfully or is suffering from a significant hardship, the taxpayer should be directed to TAS, not the IRS.

TAS Will Continue to Advocate for the IRS to Exclude Already Open TAS Cases From Passport Certification, Like Other Exclusions That Promote Compliance and Protect Taxpayer Rights

The statute provides exceptions to passport certification for debts timely paid through IAs and OICs and for debts for which collection is suspended because the taxpayer has a requested or pending CDP hearing or has requested relief from joint liability (known as innocent spouse relief). Additionally, the IRS has exercised its discretion to create exceptions that promote taxpayer compliance, protect taxpayer rights, and treat taxpayers fairly. These exceptions include debts that:

- Are determined to be in CNC status due to hardship;
- Result from identity theft;

7 The statute requires "contemporaneous notice." The notice must explain the taxpayer's right to bring suit in U.S. Tax Court or a U.S. district court to determine whether the certification was erroneous or whether the IRS has failed to reverse it. FAST Act § 32101(a) (codified at IRC § 7435(d)).

8 FAST Act § 32101(b) (codified at IRC §§ 6320(a)(3)(E), 6331(d)(4)(E)).

9 National Taxpayer Advocate 2017 Annual Report to Congress 73-83 (Most Serious Problem: *Passport Denial and Revocation: The IRS's Plans for Certifying Seriously Delinquent Tax Debts Will Lead to Taxpayers Being Deprived of a Passport Without Regard to Taxpayer Rights*).

10 IRS response to TAS information request (May 15, 2018). In addition to currently not collectible (CNC) hardship status, the two most common reasons for decertification were pending installment agreements and expiration of the statutory limitations period for collecting the tax.

11 Dept. of State, Letter 695 – *Debts, Clearance Holds, 06 - IRS – Seriously Delinquent Tax Debt* (May 20, 2015).

- Belong to a taxpayer in a disaster zone;
- Belong to a taxpayer in bankruptcy;
- Belong to a deceased taxpayer;
- Are included in a *pending* OIC or IA; and
- For which there is a pending claim, and the resulting adjustment is expected to result in no balance due.[12]

However, this list omits a key exception for taxpayers with already open TAS cases at the time of certification. The passport certification program was intended to help the IRS collect the unpaid tax debts of recalcitrant taxpayers and to increase compliance.[13] The reasoning behind the passport certification program is not to penalize taxpayers for their unpaid debts but to "serve as an incentive to individuals wishing to obtain passports to comply with their tax obligations, thus reducing the level of tax delinquencies and promoting compliance."[14]

TAS has taken a proactive approach with its cases involving taxpayers who owe or may soon owe greater than $51,000 by informing taxpayers about the potential for passport certification and assisting them in resolving their tax debts or correcting their accounts to avoid certification occurring.[15] Approximately three months prior to the implementation of the passport program, TAS identified about 750 taxpayers who met the criteria for certification and was able to fully resolve 121 (about 16 percent) of these cases preemptively before the IRS began certifying taxpayers.[16]

The number of TAS cases with taxpayers potentially eligible for certification fluctuates as taxpayers resolve their liabilities, meet an exclusion, or otherwise have their TAS cases closed. From the beginning of fiscal year (FY) 2018 through April, TAS received approximately 4,900 cases where the taxpayer owed more than $51,000.[17] Of these cases, approximately two-thirds involved a collection or exam issue, with over half involving more than one issue.[18] These numbers are similar to FY 2017, where 75 percent of the approximately 4,200 closed TAS cases with balances due over $50,000 involved exam or collection issues.[19] TAS closed 70 percent of the FY 2017 cases (approximately 2,700) with full or partial relief.[20]

12 Internal Revenue Manual (IRM) 5.19.1.5.19.4, *Discretionary Certification Exclusions* (Dec. 26, 2017).

13 "The Committee is aware that the amount of unpaid Federal tax debts continues to present a challenge to the IRS. The Committee is also aware that a significant amount of unpaid Federal tax debt is owed by persons to whom passports have been issued… The Committee believes that tax compliance will increase if issuance of a passport is linked to payment of one's tax debts." S. Rep. No. 114-45, at 57 (2015).

14 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.

15 As discussed later in this section, the National Taxpayer Advocate has issued an Interim Guidance Memorandum with instructions on how her employees should advocate and use Taxpayer Assistance Orders with respect to passport cases.

16 Taxpayer Advocate Management Information System (TAMIS) (data extracted Nov. 27, 2017 and May 18, 2018). Full relief was determined when an account was closed prior to January 17, 2018, and the taxpayer issues related to audit reconsideration, levy, identity theft, amended returns, automated underreporter reconsiderations, and various other issues were fully resolved. Full relief does not necessarily mean the taxpayer's liability was adjusted below the certification threshold or that the taxpayer met a certification exclusion. Thus, some of these taxpayers may be certified in the future.

17 This reflects TAS case receipts from October 1, 2017 through April 30, 2018. TAMIS (data extracted by TAS May 25, 2018); Accounts Receivable Dollar Inventory (ARDI) and Individual Master File (IMF) data (includes data posted by Apr. 26, 2018).

18 *Id.* ARDI and IMF data (includes data posted by April 26, 2018).

19 The approximately 4,200 closed TAS cases excludes accounts previously reported as CNC hardship by the IRS and therefore not subject to certification.

20 This reflects TAS case receipts from October 1, 2017 through April 30, 2018. TAMIS (data extracted by TAS May 25, 2018); ARDI and IMF data (includes data posted by April 26, 2018).

This fiscal year, TAS has achieved a resolution that would avoid certification or qualify the taxpayer for decertification in many of the cases where taxpayers were potentially eligible for certification. TAS has closed approximately 2,750 cases so far where a taxpayer was potentially eligible for certification. Of these cases, about 28 percent of the taxpayers no longer have a liability, and another approximately 14 percent were closed due to an IA, OIC, CNC hardship status, or pending innocent spouse request.[21] TAS achieved full or partial relief for two-thirds of these cases.[22]

Recognizing the significant rights that may be abridged when a person's passport is taken, Congress intended for passport certification to occur only once a taxpayer's administrative rights have been exhausted or lapsed. Taxpayers working with TAS are exercising important administrative rights – rights expressly granted to them by Congress. As part of the *right to a fair and just tax system*, taxpayers have the right to seek assistance from TAS if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.[23]

In January 2018, the National Taxpayer Advocate issued almost 800 Taxpayer Assistance Orders (TAOs) to the IRS, requesting it exclude from passport certification those taxpayers who met the criteria for certification but who had an already open TAS case. After initially appealing the TAOs, the IRS ultimately agreed to exclude from certification only those TAS taxpayers for whom the TAOs were issued. The IRS indicated that it would not exclude taxpayers who are eligible for certification but who have an open TAS case after the initial implementation of the passport program, unless they meet another exclusion criterion under the statute or the Internal Revenue Manual (IRM). Since the initial TAOs were issued, TAS has opened 30 new cases with taxpayers it has identified as potentially eligible for passport certification.[24] The National Taxpayer Advocate followed up by issuing a Taxpayer Advocate Directive to the Commissioner of SB/SE on April 6, 2018, directing the IRS to exclude from certification all taxpayers with an open TAS case at the time of proposed certification, until they no longer have an open TAS case. Appendix A includes the original Taxpayer Advocate Directive, the response from the Commissioner of SB/SE, the response from the National Taxpayer Advocate, and the response from the Deputy Commissioner for Services and Enforcement. The National Taxpayer Advocate has elevated this issue to the Acting Commissioner and has requested a meeting with him so he can review the IRS's position.

For taxpayers who are already certified prior to opening a TAS case, TAS will work with them to resolve their tax debts or submit documentation to show they meet one of the other exceptions, such as identity theft or CNC hardship status. Additionally, TAS will be assisting taxpayers in meeting decertification criteria by exploring whether a certification was erroneous, or by having a liability recalculated to reflect the taxpayer never owed the seriously delinquent tax debt. In April, the National Taxpayer Advocate issued an Interim Guidance Memorandum to TAS employees instructing them to issue TAOs for taxpayers with already open TAS cases who are eligible for certification but have not been certified, and for taxpayers who were certified prior to coming to TAS but who will meet decertification criteria as a result of the requested action.[25]

21 This reflects TAS case receipts from October 1, 2017 through April 30, 2018. TAMIS (data extracted by TAS May 25, 2018); ARDI and IMF data (includes data posted by April 26, 2018).

22 *Id*.

23 *See* IRS Publication 1, *Your Rights as a Taxpayer* (Sept. 2017).

24 From January 17, 2018 through April 30, 2018, TAS opened 30 cases with the primary or secondary issue code 930, Passport Revocation/Denial.

25 Memorandum from Nina Olson, National Taxpayer Advocate to Taxpayer Advocate Service Employees (Apr. 26, 2018), https://www.irs.gov/pub/foia/ig/spder/tas-13-0418-0001_passport_igm.pdf.pdf.

Due to the phased-in schedule for certifying seriously delinquent tax debts, only 73 (1.5 percent) of the TAS cases potentially eligible for certification at some point during FY 18 have actually been certified thus far, and only 64 remain certified.[26] For the seven cases where TAS worked with a taxpayer to become decertified, TAS was able to have the taxpayer's account reflect decertification within an average of 11 weeks from the time the case was opened to when the decertification code was added to the IRS account, although this does not include additional time to transmit the decertification to the Department of State and have the Department of State's systems updated.[27] TAS has only been able to definitively identify seven taxpayers who opened a TAS case after being certified.[28]

In addition to an exclusion for already open TAS cases, TAS will explore the need for additional discretionary exclusions, such as the potential for excluding taxpayers whose liability results from a mixed entity or scrambled Social Security number (SSN). These cases may occur if two returns are filed by different taxpayers with the same SSN.[29] TAS will work with the IRS to research the feasibility of excluding these taxpayers and other potential reasons for exclusion that arise through TAS casework.

As Taxpayers Become Eligible for Decertification, the IRS Must Ensure Decertifications Are Transmitted Timely to the Department of State

If a certification is found to be erroneous, the debt is fully satisfied, it becomes legally unenforceable, or it ceases to be a seriously delinquent tax debt due to a statutory exception, the IRS must reverse the certification and notify the Department of State and the taxpayer.[30] The IRS will systemically send certifications and decertifications to the Department of State on a weekly basis, with decertifications required by law to generally be sent within 30 days of a taxpayer meeting the criteria.[31] The Department of State will hold passport applications of certified taxpayers open for 90 days before denying them to allow the taxpayers to resolve their tax debts. However, this period may not provide relief for taxpayers, who either need a passport during this time or who are unable to resolve their tax debts and have their accounts decertified in time. During FY 2018 through May 19, the IRS answered only 52 percent of calls on its balance due line, with an average wait time of over 27 minutes.[32]

Although the IRS has developed an expedited decertification procedure for taxpayers with pending passport applications who are abroad or have travel planned within 45 days, it may not provide relief

26 This reflects TAS case receipts from October 1, 2017 through April 30, 2018. TAMIS (data extracted by TAS May 25, 2018); ARDI and IMF data (includes data posted by April 26, 2018).

27 TAMIS (data extracted by TAS May 25, 2018); ARDI and IMF data (includes data posted by April 26, 2018). The average amount of time between when a taxpayer's account reflects a basis for decertification (*e.g.*, all certified modules have been marked as CNC hardship, etc.) and when the decertification is transmitted to the Department of State is approximately two weeks. The IRS does not delay inclusion in the file sent to the Department of State to match the timing of the taxpayer's reversal notice. IRS response to TAS information request (May 15, 2018).

28 TAS Research identified ten cases where we could not discern whether the case was opened before or after certification because of the difficulty of comparing a weekly cycle to the timing of a certification notice and related posting on the IMF. TAMIS (data extracted by TAS May 25, 2018); ARDI and IMF data (includes data posted by April 26, 2018).

29 In a scrambled Social Security number (SSN) case, two taxpayers file a return with the same SSN, and the correct SSN for each taxpayer cannot be determined. In a mixed entity case, there may be an inadvertent taxpayer error, tax preparer error, or processing error. IRM 3.13.5.26, *Scrambled TIN Cases* (Jan. 1, 2016); IRM 3.13.5.27, *Mixed Entity/Multiple Filing Conditions* (Jan. 1, 2015).

30 FAST Act § 32101(a) (codified at IRC § 7345(c)).

31 *Id.* (codified at IRC § 7345(c)(2)). An erroneous certification requires the decertification notice to be sent to the Department of State as soon as practicable. *Id. See* IRM 5.19.1.5.19.8, *Certification Process* (Dec. 26, 2017); IRM 5.19.1.5.19.9, *Reversal of Certification* (Dec. 26, 2017).

32 IRS, Joint Operations Center, *Snapshot Reports: Product Line Detail Snapshot* (week ending May 19, 2018).

for some taxpayers.[33] TAS understands based on a small number of cases so far that the IRS has been able to manually send expedited decertifications to the Department of State very quickly on a case-by-case basis. However, the IRS is limited due to the restriction on who can make the decertification. IRC § 7345(g) restricts both certifications and decertifications to only the Commissioner of Internal Revenue, the Deputy Commissioner for Services and Enforcement, or the Commissioner of an operating division. It is foreseeable that the number of expedited decertification requests could increase significantly as the IRS proceeds to full implementation of the passport program by certifying all eligible taxpayers, and this could affect the IRS's ability to handle these cases quickly on an individual basis. TAS will be closely monitoring the timelines achieved for expedited decertifications and will revisit whether changes are necessary to the expedited procedures once the program is fully implemented. Additionally, TAS will advocate for taxpayers who may not meet the expedited criteria but who have another urgent need for a passport to be decertified expeditiously.

The IRS and the Department of State Do Not Adequately Inform Taxpayers About the Exception for Emergency and Humanitarian Circumstances

As discussed above, neither the IRS passport certification notice nor the Department of State passport hold notice includes information about the exception for emergency and humanitarian travel. Both the IRS webpage and the Department of State webpage on passport action as a result of a seriously delinquent tax debt lack information about this exception.[34] Although the IRM includes instructions for IRS employees to refer taxpayers who may have emergency or humanitarian needs to the Department of State,[35] TAS will also identify taxpayers in our casework and refer them directly to the Department of State. TAS will also be seeking further information from the Department of State about how this exception has been administered historically for other persons denied passports[36] and will advocate for both the Department of State and the IRS to make this exception more public by placing information on their websites and notices.

The IRS Recently Proposed Expanding a Treasury Regulation to Allow the Department of State to Share Taxpayer Information With Contractors

The IRS issued a notice of proposed rulemaking in March 2018 that would add the Department of State to the list of agencies who may share taxpayer information with contractors for the purposes of tax administration.[37] Under the current regulation to which the Department of State would be added, there are a number of safeguards.[38] Among other provisions, disclosure is limited to when and to the extent necessary to reasonably, properly, or economically perform the contract; there are penalties for unauthorized inspection or disclosure of the returns or return information by the contractors or subcontractors; and the contract shall be made available to the IRS before it is executed. TAS plans to request from the IRS a copy of any Department of State contracts that it reviews to determine whether they comply with the Taxpayer Bill of Rights, specifically the *right to confidentiality*.

33 *See* IRM 5.19.1.5.19.9.1, *Expedited Decertification* (Dec. 26, 2017).

34 Department of State, https://travel.state.gov/content/travel/en/News/passports/passports-and-seriously-delinquent-tax-debt.html (last visited Mar. 23, 2018); IRS, https://www.irs.gov/businesses/small-businesses-self-employed/revocation-or-denial-of-passport-in-case-of-certain-unpaid-taxes (last visited Mar. 23, 2018).

35 IRM 5.1.12.27.7, *Taxpayer Notification* (Dec. 20, 2017); IRM 5.19.1.5.19.8, *Certification Process* (Dec. 26, 2017).

36 *See, e.g.*, 22 U.S.C. § 2714, which requires passport revocation and denial for convicted drug traffickers but provides an exception allowing the Department of State to issue a passport in emergency circumstances or for humanitarian reasons.

37 The FAST Act authorizes the IRS to disclose taxpayer identity information and the amount of a taxpayer's seriously delinquent tax debt to the Department of State for the purposes of carrying out the program for denying, revoking, or limiting an individual's passport due to a seriously delinquent tax debt. FAST Act § 32101(c) (codified at IRC § 6103(k)(11).

38 Treas. Reg. § 301.6103(n)-1.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Advocate that the certification notice the IRS sends to the taxpayer includes information about all certification exclusions and information about the emergency and humanitarian exception;
- Contact the Department of State to find out more information about the exception for emergency and humanitarian circumstances and whether TAS may forward requests directly to the Department of State;
- Request the Department of State add information about TAS to its passport hold notice;
- Conduct an analysis and prepare a Taxpayer Rights Impact Statement, identifying all taxpayer rights and risks associated with the program and submit to the IRS and the Department of State with recommendations;
- Assist taxpayers in meeting decertification criteria by resolving their tax debts, meeting a certification exception, or proving the certification was erroneous or the taxpayer did not owe the underlying liability;
- Assist taxpayers in having their accounts decertified timely to the Department of State; and
- Request from the IRS and review contracts allowing the Department of State to disclose taxpayer information to contractors to ensure the contracts protect taxpayer rights.

APPENDIX A: TAXPAYER ADVOCATE DIRECTIVE 2018-1, TAS PASSPORT EXCLUSION

TAXPAYER ADVOCATE SERVICE
YOUR VOICE AT THE IRS

THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

April 6, 2018

Response Due: April 16, 2018
Completed By: June 5, 2018

MEMORANDUM FOR MARY BETH MURPHY
COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED DIVISION

FROM: Nina E. Olson
National Taxpayer Advocate

SUBJECT: Taxpayer Advocate Directive 2018-1, Exclude TAS Cases From Certification as a Seriously Delinquent Tax Debt When the Taxpayer Comes to TAS Before Certification and Continue Excluding these Cases While They Remain Open in TAS

TAXPAYER ADVOCATE DIRECTIVE

Delegation Order No. 13-3 grants the National Taxpayer Advocate the authority to issue a Taxpayer Advocate Directive (TAD) "to mandate administrative or procedural changes 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."[1]

Internal Revenue Manual (IRM) 13.2.1.6.1 (July 16, 2009) provides that in advance of issuing a TAD, the National Taxpayer Advocate shall attempt to work with and communicate with the owners of the process to correct the problem. In my Fiscal Year 2018 Objectives Report to Congress, I discussed the IRS's refusal to exclude TAS cases that were in TAS prior to certification, from certification of a seriously delinquent tax debt for the purposes of passport denial, revocation, or limitation.[2] I repeatedly made my request for the exclusion of all

[1] Internal Revenue Manual (IRM) 1.2.50.4, *Delegation Order 13-3 (formerly DO-250, Rev. 1)* (Jan. 17, 2001). *See also* IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).
[2] National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 36-42.

already open TAS cases to John Koskinen, the then Commissioner of Internal Revenue and to you as the Commissioner, Small Business / Self Employed division (SB/SE).[3] In September 2017, you responded to my request in writing, outlining the factors considered in the IRS's decision not to exclude TAS cases from passport certification.[4] In my 2017 Annual Report to Congress, I listed as one of the Most Serious Problems, "The IRS's Plans for Certifying Seriously Delinquent Tax Debts Will Lead to Taxpayers Being Deprived of a Passport Without Regard to Taxpayer Rights."[5] On January 25, 2018, I posted a blog on my website about the IRS's implementation of the passport certification program and its refusal to exclude from certification those cases that are already open in TAS prior to certification.

Finally, I issued almost 800 Taxpayer Assistance Orders (TAOs) to you in January of this year, requesting that you exclude from passport certification those taxpayers who met the criteria for certification but who had an already open TAS case. You appealed the TAOs to Kirsten Wielobob, Deputy Commissioner for Services and Enforcement, who 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, Kirsten Wielobob stated in her TAO response that after implementation of the passport program she would not exclude taxpayers who are eligible for certification and who have an open TAS case originating prior to the taxpayer's certification, unless they met another exclusion criterion under the statute or the IRM. My reports to Congress, my written requests to IRS leadership, my blog, and the TAOs serve as a formal memorandum issued to the responsible operating area within the meaning of IRM 13.2.1.6.1.2 (July 16, 2009). Therefore, all procedural requirements for issuing this TAD have been satisfied.[6]

For the reasons detailed below, pursuant to the authority provided by Delegation Order 13-3, I direct you to take the following actions with respect to the certification of seriously delinquent tax debts for the purposes of passport denial, limitation, or revocation:

1. Exclude from certification all taxpayers with an open TAS case at the time of certification (*i.e.,* taxpayers who came to TAS before certification). This can be accomplished by programming an exclusion for all taxpayer

[3] *See e.g.*, Email from National Taxpayer Advocate to Commissioner of the Internal Revenue (Mar. 7, 2017); email from National Taxpayer Advocate to Commissioner, Small Business / Self Employed division (SB/SE) (July 28, 2018).
[4] Email from SB/SE Commissioner to National Taxpayer Advocate (Sept. 20, 2017)
[5] National Taxpayer Advocate 2017 Annual Report to Congress 73-83.
[6] *See* IRM 13.2.1.6.1.3, *Issuing TADs* (July 16, 2009).

accounts with a transaction code (TC) 971 Action Code (AC) 154 that has not been reversed or removed.[7]

2. Continue to exclude taxpayers identified as having a TC 971 AC 154 at the time of certification for the entire time their cases remain open in TAS, until the TC 971 AC 154 is reversed or removed.

3. Reverse the certification for any taxpayers identified by TAS as having had an open TAS case at the time of certification and who still have an open TAS case, identified by a TC 971 AC 154.

If you decide to comply with this TAD, the above actions must be taken by no later than June 5, 2018.[8] If you decide to appeal this TAD, within 10 days please provide a written response with a detailed explanation of your reasons as to why the proposed action cannot or will not be implemented on or before June 5, 2018.[9] If you need an extension of time to respond, please request one from me before April 16, 2018.

I. Issues

The passport certification program was intended to help the IRS collect from recalcitrant taxpayers who have substantial tax debts and to increase compliance.[10] The reasoning behind the passport certification program is not to penalize taxpayers for their unpaid debts, but to "serve as an incentive to individuals wishing to obtain passports to comply with their tax obligations, thus reducing the level of tax delinquencies and promoting compliance."[11]

Recognizing the significant rights that may be abridged when a person's passport is taken, Congress intended for passport certification to occur only once a taxpayer's administrative rights had been exhausted or lapsed. Taxpayers working with TAS are exercising important administrative rights – rights expressly

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[7] This transaction code and action code exclude open TAS cases from being referred to a Private Collection Agency and can similarly be used to exclude open TAS cases from being certified to the Department of State for passport action.

[8] TAS estimates that if the volume of cases is manageable, a manual process could be used to look up and remove the applicable accounts within a couple weeks. For the cases to be excluded systemically by adding the relevant transaction code / action code to the program, TAS estimates that the IRS could accomplish this in 60 days if it is prioritized and expedited due to the urgency of the situation.

[9] *See* IRM 13.2.1.6.2, *TAD Appeal Process* (July 16, 2009).

[10] "The Committee is aware that the amount of unpaid Federal tax debts continues to present a challenge to the IRS. The Committee is also aware that a significant amount of unpaid Federal tax debt is owed by persons to whom passports have been issued… The Committee believes that tax compliance will increase if issuance of a passport is linked to payment of one's tax debts." S. Rep. No. 114-45, at 57 (2015).

[11] 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.

granted to them by Congress. As part of the *right to a fair and just tax system*, taxpayers have the right to seek assistance from TAS if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.[12] Certifying taxpayers who have already come to TAS before the IRS certifies them and are actively working to resolve their tax liabilities would harm taxpayers who are voluntarily trying to come into compliance.

I have written extensively about how excluding already open TAS cases from passport certification does not frustrate the purpose of the statute, and in fact, serves the purpose intended by Congress by allowing TAS to assist taxpayers in coming into compliance and resolving their unpaid tax debts.

II. Procedural History

On January 16, 2018, I issued almost 800 Taxpayer Assistance Orders (TAOs) to you, which requested the IRS exercise its discretionary authority to exclude from passport certification the taxpayers that TAS had determined were eligible for certification, did not meet a certification exclusion, and currently had an open TAS case. On January 19, 2018, you responded to the TAOs, stating you were appealing them. On January 25, 2018, I sustained the TAOs and issued a memorandum to Kirsten Wielobob, Deputy Commissioner for Services and Enforcement, reiterating my order for the taxpayers to be excluded.

On February 15, 2018, Kirsten Wielobob responded to the TAOs, agreeing to exclude from certification the taxpayers with already open TAS cases who did not meet another exclusion. However, she stated the exclusion of open TAS cases would not apply prospectively to any new TAS cases. She stated it is public information that the IRS has begun passport certification, and taxpayers with new TAS cases could circumvent the law by seeking TAS assistance. Additionally, she reiterated arguments made in the past for not excluding TAS cases – that these taxpayers would be systemically decertified upon meeting another exclusion and they would receive the benefit of the 90-day period in which the Department of State will hold their applications open.

I plan to issue an Interim Guidance Memorandum (IGM) to my employees, instructing Local Taxpayer Advocates (LTAs) to issue TAOs ordering the IRS to exclude from certification all taxpayers they identify as eligible for certification, who do not meet another exclusion, and who have an open TAS case at the time of certification. Additionally, this IGM will instruct the LTAs to issue TAOs for taxpayers who were certified prior to coming to TAS, requesting the IRS take actions that will result in the taxpayer meeting a criterion for decertification. I am also instructing the LTAs to issue TAOs requesting expedited decertification where the taxpayer qualifies for decertification, has an urgent need for a passport, and meets the expedited criteria set out in the IRM.

[12] *See* IRS Publication 1, *Your Rights as a Taxpayer* (Sept. 2017).

III. Analysis

Seeking assistance from TAS is an important administrative right and a taxpayer right under the Taxpayer Bill of Rights

The legislative history of IRC § 7345 clearly says that 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.*"[13] (Emphasis added.) The right to receive assistance from TAS is one such administrative right. In the Taxpayer Bill of Rights adopted by the IRS (and codified at IRC § 7803(a)(3)), Right #10 is "The Right to a Fair and Just Tax System." In IRS Publication 1, *Your Rights as a Taxpayer*, "The Right to a Fair and Just Tax System" is defined to include "the right to receive assistance from the Taxpayer Advocate Service." Therefore, certifying taxpayers who seek assistance from TAS or who have cases pending with TAS is plainly inconsistent with the legislative directive that the IRS act "only after . . . the taxpayer's administrative and judicial rights have been exhausted or lapsed."

Taxpayers who come to TAS are trying to resolve their tax liabilities, which serves the purpose of the statute

The passport certification program was intended to assist the IRS in collecting substantial tax debts from recalcitrant taxpayers. As the legislative history cited above makes clear, Congress intended to exclude taxpayers from certification if they are attempting to come into compliance and satisfy their debts. That intent is also reflected in the statutory exceptions to certification. The IRS has recognized that beyond the statutory exclusions, certifying taxpayers with pending Installment Agreements (IAs) and Offers in Compromise (OICs) would not serve the purpose of the statute. Taxpayers who come forward to pursue IAs and OICs, or who have demonstrated that collection would cause them a hardship, are trying to comply and do not represent the recalcitrant taxpayers with significant tax debts that Congress was seeking to help the IRS collect.

Although a taxpayer with a pending payment or a pending offer may not yet be in full compliance, the IRS has determined it will forbear on certifying the tax debt while the taxpayer is taking action to come into compliance. If a taxpayer does not successfully come into compliance (*e.g.,* if the IA or OIC is rejected and thus is no longer considered pending), the IRS can certify the taxpayer's debt at that time, assuming the taxpayer is currently eligible for certification and does not meet an exception or exclusion.

The same principle applies to cases open in TAS. Forbearing on certifying open TAS cases (*i.e.*, while TAS is developing the taxpayer's case and attempting to

[13] H.R. Rep. No. 114-357, at 531-32 (2015).

get the taxpayer into compliance) would be consistent with the other discretionary exclusions to certification that allow a taxpayer to come into compliance. As discussed below, once TAS closes a taxpayer's case, the taxpayer would be subject to certification if he or she did not meet another statutory or discretionary exclusion to the same extent as a taxpayer whose IA or OIC is rejected.

Taxpayers already working with TAS will be harmed if certified while working with TAS

Although the current discretionary exclusions are available to all taxpayers, TAS taxpayers included, the fact that a taxpayer is working with TAS may be evidence that the taxpayer is having difficulty meeting one of the exclusions for which the taxpayer is eligible. A taxpayer may be working with TAS because he or she is having difficulty proving identity theft or because collection would leave the taxpayer unable to pay basic living expenses. If the normal processes are not working for a specific taxpayer and the taxpayer seeks assistance from TAS, as the law authorizes, that taxpayer should not receive a harsher result than a taxpayer who works directly with the IRS. Such an outcome would be inconsistent with congressional intent in creating the Taxpayer Advocate Service as an administrative option for qualifying taxpayers.

Certifying taxpayers who have already been working with TAS may encourage these taxpayers to seek a quick fix to become decertified, without fully resolving their tax issues – the reason they came to TAS. For example, a taxpayer who is having trouble proving eligibility for CNC hardship status and has been working with TAS to provide documentation may feel pressured into a payment plan that leaves the taxpayer unable to pay basic living expenses. Another taxpayer who believes she does not owe the entire liability and is working with TAS to compile documentation for an audit reconsideration may feel pressured to pay the entire liability in order to have the certification reversed immediately. Certifying taxpayers who are already working with TAS will infringe upon the taxpayers' *right to a fair and just tax system, right to challenge the IRS's position and be heard*, and *right to pay no more than the correct amount of tax*.

There are safeguards in place to ensure taxpayers do not use TAS to circumvent the passport provisions.

Excluding taxpayers who have already been working with TAS to resolve their tax debts prior to certification does not frustrate the statute. Under section 7803(c)(2)(A)(i), one of the statutory functions of TAS is to assist taxpayers in resolving problems with the IRS. If TAS can get the taxpayer into compliance and resolve the taxpayer's issues with the IRS, then the purpose of IRC § 7345 has been satisfied. TAS accepts cases only from taxpayers who meet the statutory and regulatory definition of significant hardship[14] and keeps cases open

[14] IRC § 7811(a)(2); Treas. Reg. § 301.7811-1(a)(4).

only if taxpayers are working to achieve a resolution.[15] If TAS is unable to resolve the taxpayer's account, then when TAS closes its case, the IRS can certify the account if it still qualifies as a seriously delinquent tax debt.

If a taxpayer had the sophistication and foresight to avoid certification prior to it occurring, a taxpayer could do so with many of the exclusions. For example, a taxpayer could request an IA and apply for a passport during the period that it was pending. A taxpayer could also start paying on an IA and stop once a passport was issued. In the same way that a taxpayer would be certified once the IA was rejected or defaulted upon, a taxpayer would be certified once he is no longer working with TAS to resolve the tax debt and TAS closes the case. Deferring certification in these circumstances while providing certification when taxpayers seek assistance from TAS to resolve their tax debts contravenes congressional intent in making TAS a viable option for taxpayers who meet TAS case-acceptance criteria.

Excluding Already Open TAS Cases is in Accord with Current IRS Policy

Excluding already open TAS cases is in accordance with IRS Policy Statements 5-1 and 5-2, which provide that the IRS is responsible for taking all appropriate actions provided by law to compel non-compliant taxpayers to file their returns and pay their taxes and that the IRS is committed to educating and assisting taxpayers who make a good faith effort to comply. When a taxpayer voluntarily comes to TAS for assistance with a tax issue before the account has been certified to the Department of State for passport denial or revocation, the taxpayer is making a good faith effort to comply with the tax laws.

Furthermore, through the process of working with taxpayers, TAS educates them so they remain in compliance. TAS's recent track record supports this position. Of the approximately 4,200 TAS cases with balances due over $50,000 that were closed in fiscal year 2017 and that were not previously determined by Collection to be currently uncollectible, TAS closed 70 percent of these cases (approximately 2,700) with full or partial relief. Of note, more than 75 percent of these cases involved either exam or collection issues, demonstrating that these are taxpayers who are working to resolve their tax debts. Thus, excluding TAS cases that are already open in TAS prior to certification is in accord with IRS Policy Statements 5-1 and 5-2. Excluding the taxpayers' accounts from certification also will be more efficient for the IRS, because certification is no longer necessary if TAS can get the taxpayers into compliance.

Passport certification is an enforcement action, as evidenced by the amendment to IRC §§ 6220(a)(3)(E) and 6331(d)(4)(G), which now require that passport certification language appear on collection notices. Because the IRS has a policy of generally forbearing on taking collection action while a taxpayer is working with TAS, it should similarly forebear on certifying a seriously delinquent

[15] IRM 13.1.21.1.3.19, *No or Partial Reply from Taxpayer* (Feb. 1, 2011).

tax debt while a taxpayer is working with TAS. To do otherwise makes little sense and would have the effect of treating taxpayers who come to TAS less favorably than taxpayers who work with the IRS directly.

The expedited decertification procedures and the 90-day holding period provided by the Department of State may not provide relief to taxpayers

The IRS has frequently responded to my request for the exclusion of open TAS cases by citing the 90-day holding period provided by the Department of State in which it will delay rejecting a certified taxpayer's passport application. While this period may be helpful to taxpayers with relatively straightforward issues that can be resolved quickly, it will not be useful to many TAS taxpayers.

The average TAS collection case stays open for 86 days from receipt to completion of all actions necessary to resolve the taxpayer's problem. Combining this time with the up-to-10-days required for an expedited decertification to be transmitted to the Department of State (and then additional time for the Department of State to update its systems), the 90-day period will be inconsequential for many TAS taxpayers. Furthermore, taxpayers without upcoming planned travel (and thus who do not qualify for expedited decertification) will be harmed when they do not meet the 90-day time frame and must reapply for a passport, including paying the $135 application fee a second time.

IV. Requested Actions

For the foregoing reasons, I direct you to take the following actions with respect to the certification of seriously delinquent tax debts for the purposes of passport denial, limitation, or revocation:

1. Exclude from certification all taxpayers with an open TAS case at the time of certification. This can be done be accomplished by programming an exclusion for all taxpayer accounts with a transaction code (TC) 971 Action Code (AC) 154 that has not been reversed or removed.[16]

2. Continue to exclude taxpayers identified as having a TC 971 AC 154 at the time of certification for the entire time their cases remain open in TAS, until the TC 971 AC 154 is reversed or removed.

3. Reverse the certification for any taxpayers identified by TAS as having had an open TAS case at the time of certification and who still have an open TAS, identified by a TC 971 AC 154.

[16] This transaction code and action code exclude open TAS cases from being referred to a Private Collection Agency and can similarly be used to exclude open TAS cases from being certified to the Department of State for passport action.

Please provide a written response to the TAD on or before April 16, 2018 indicating whether you plan to comply with the TAD or appeal it. If you are appealing the TAD, please include in the written response a detailed explanation of your reasons as to why the proposed action cannot or will not be implemented by June 5, 2018. If you are complying with this TAD, the actions above must be taken by no later than June 5, 2018.

cc: Dave Kautter, Commissioner of Internal Revenue
Kirsten Wielobob, Deputy Commissioner for Services and Enforcement

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

APR 17 2018

MEMORANDUM FOR KIRSTEN B. WIELOBOB
DEPUTY COMMISSIONER, SERVICES AND ENFORCEMENT

FROM: Mary Beth Murphy
Commissioner, Small Business/Self Employed Division

SUBJECT: Taxpayer Advocate Directive 2018-1, Exclude TAS Cases From Certification as a Seriously Delinquent Tax Debt When the Taxpayer Comes to TAS Before Certification And Continue Excluding these Cases While They Remain Open in TAS

In accordance with IRM 13.2.1.6.2 (TAD Appeal Process), I appeal the above referenced Taxpayer Advocate Directive (TAD) dated April 6, 2018. The TAD directed the Commissioner, Small Business/Self Employed Division to take the following actions:

1. Exclude from certification all taxpayers with an open TAS case at the time of certification. This can be accomplished by programming an exclusion for all taxpayer accounts with a Transaction Code (TC) 971 Action Code (AC) 154 that has not been reversed or removed[1].

2. Continue to exclude taxpayers identified as having a TC 971 AC 154 at the time of certification for the entire time their cases remain open in TAS, until the TC 971 AC 154 is reversed or removed.

3. Reverse the certification for any taxpayers identified by TAS as having had an open TAS case at the time of certification and who still have an open TAS, identified by a TC 971 AC 154.

I disagree with these directives and appeal all three actions.

The issues raised by the National Taxpayer Advocate in support of the TAD are addressed as follows.

[1] This transaction code and action code exclude open TAS cases from being referred to a Private Collection Agency and can similarly be used to exclude open TAS cases from being certified to the Department of State for passport action.

Seeking assistance from TAS is an important administrative right and a taxpayer right under the Taxpayer Bill of Rights.

Congress clearly defined when a taxpayer has a "seriously delinquent tax debt" in IRC § 7345, and provided only two statutory exceptions to that definition: (1) a liability being paid in a timely manner pursuant to an installment agreement under IRC § 6159 or an agreement under IRC § 7122; and (2) a liability for which collection has been suspended because the taxpayer requested either a CDP hearing under section 6330 or innocent-spouse relief under section 6015. Neither section 7345 nor its legislative history supports a Congressional intent for categorical exclusion from certification for taxpayers who seek assistance from TAS or who have cases pending with TAS. Each certified taxpayer has had the opportunity to exercise Collection Due Process rights prior to certification.

Taxpayers who come to TAS are trying to resolve their tax liabilities, which serves the purpose of the statute.

Taxpayers who seek TAS assistance are not necessarily trying to resolve their entire tax liabilities, but may be seeking assistance to resolve a specific issue related to the tax liability, with no final resolution plan for the entire liability. TAS caseworkers have no IRM obligation to fully resolve a taxpayers' liability before closing a TAS case. TAS noted that a taxpayer with a pending installment agreement or offer may not yet be in full compliance, but the IRS will forbear certifying the taxpayer while the taxpayer is taking action to become fully compliant. TAS stated that this same principle should apply to cases open in TAS, and IRS should forbear certifying open TAS cases while TAS is developing the case and attempting to get the taxpayer into compliance. Taxpayer accounts are not identified as a pending installment agreement or a pending offer if the taxpayer is not in full filing compliance. Therefore, excluding taxpayers assigned to TAS as "TAS works to get the taxpayer into compliance" would not be consistent with the treatment of taxpayers not assigned to TAS. Moreover, if a taxpayer who was excluded due to an open TAS case does not come into compliance and ultimately meet an exception, the purpose of the statute is defeated. That taxpayer could apply for and obtain a passport while their case was pending in TAS.

Taxpayers already working with TAS will be harmed if certified while working with TAS.

All taxpayers, including those with an open TAS case, that meet any of the exclusion criteria will not be certified. For taxpayers with an open TAS case that do not meet the exclusion criteria, TAS can work the case with the business unit, even though the taxpayer's seriously delinquent tax debt has been certified to the State Department. If TAS, the taxpayer, and business unit reach a resolution that qualifies for exclusion, the taxpayer will be decertified. If resolution and decertification occurs within 90 days of the

date the State Department notifies the taxpayer of their passport application denial, the taxpayer's passport application will not be impacted.

Taxpayers seeking assistance from TAS will not receive a "harsher result" than a taxpayer working directly with the IRS. Categorically excluding TAS cases, however, would result in disparate treatment among taxpayers because taxpayers who choose to engage the IRS directly would remain certified while working to come into compliance, whereas taxpayers who choose to seek TAS assistance would not be certified.

There are safeguards in place to ensure taxpayers do not use TAS to circumvent the passport provisions.

We understand that TAS performs an individual assessment of each case received in their inventory, and in doing so, can expedite the status to meet exception criteria if the circumstances warrant. If after such analysis the circumstances do not warrant exception criteria, the IRS would not want the case excluded from certification. Excluding a case from certification without any such analysis or application of criteria would seem arbitrary. Moreover, if a taxpayer who was excluded due to an open TAS case does not come into compliance by meeting an exception, the purpose of the statute is defeated. We understand TAS concerns about taxpayers potentially having the foresight to avoid certification by falsely requesting or entering into an installment agreement only long enough to obtain a passport. We previously committed to TAS that we will continually monitor the processes to determine whether any changes are needed.

Excluding already open TAS cases is in accordance with current IRS policy.

The way in which the IRS will administer the passport program is entirely consistent with the policies enunciated in Policy Statements 5-1 and 5-2.

Categorically excluding all open TAS cases from the certification process would result in the inconsistent application of the law to similarly-situated taxpayers. Under IRC § 7345, all taxpayers have the same ability to qualify for exclusion from certification, for example, by entering into an installment agreement. If, however, all open TAS cases are categorically excluded from the certification process, then section 7345 would apply inconsistently, depending on whether a taxpayer qualifies for TAS assistance.

The expedited decertification procedures and the 90-day holding period provided by the Department of State may not provide relief to taxpayers.

The passport program expedited decertification procedures were designed to provide an accelerated decertification for taxpayers with a pending Passport application with an imminent need to travel. Taxpayers must meet a statutory exception or IRS discretionary exclusion to be decertified. However, if an unusual issue arises, the IRS

remains committed to working with TAS to address it at that time. Moreover, TAS may assist taxpayers to get expedited relief by putting them in pending OICs or IAs, which are discretionary exclusions. This can be done well under the 90-day period provided by DOS for taxpayers to resolve their seriously delinquent tax debts and under the estimated period that TAS resolves the average case. Cases that take longer than 90 days to resolve will also be decertified, but the taxpayer will need to reapply for a passport.

Based on the reasons set forth above, it would not be appropriate to agree with the National Taxpayer Advocate's directed actions to exclude all open TAS cases from the passport certification process. Therefore, I respectfully appeal all three actions outlined in the TAD. I request you rescind this TAD in accordance with the authority vested in delegation order 13-3.

cc: Nina E. Olson, National Taxpayer Advocate

TAXPAYER ADVOCATE SERVICE
YOUR VOICE AT THE IRS

THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

April 27, 2018

Response Due: May 7, 2018
Completed By: June 26, 2018

MEMORANDUM FOR KIRSTEN WIELOBOB
DEPUTY COMMISSIONER FOR SERVICES AND ENFORCEMENT

FROM: Nina E. Olson
National Taxpayer Advocate

SUBJECT: Taxpayer Advocate Directive 2018-1, Exclude TAS Cases from Certification as a Seriously Delinquent Tax Debt When the Taxpayer Comes to TAS Before Certification and Continue Excluding these Cases While They Remain Open in TAS

TAXPAYER ADVOCATE DIRECTIVE

I am writing this memorandum in support of Taxpayer Advocate Directive (TAD) 2018-1, which was issued to the Commissioner, Small Business / Self Employed (SB/SE) Division on April 6, 2018. TAD 2018-1 contained the following directives:

1. Exclude from certification all taxpayers with an open TAS case at the time of certification (*i.e.,* taxpayers who came to TAS before certification). This can be accomplished by programming an exclusion for all taxpayer accounts with a transaction code (TC) 971 Action Code (AC) 154 that has not been reversed or removed.[1]

2. Continue to exclude taxpayers identified as having a TC 971 AC 154 at the time of certification for the entire time their cases remain open in TAS, until the TC 971 AC 154 is reversed or removed.

3. Reverse the certification for any taxpayers identified by TAS as having had an open TAS case at the time of certification and who still have an open TAS case, identified by a TC 971 AC 154.

[1] This transaction code and action code exclude open TAS cases from being referred to a Private Collection Agency and can similarly be used to exclude open TAS cases from being certified to the Department of State for passport action.

I requested a response by April 16, 2018. On April 17, 2018, the Commissioner, SB/SE appealed this TAD to you in accordance with IRM 13.2.1.6.2, which states, "The only avenue of appeal, should a functional area disagree with the TAD, is to the Deputy Commissioner for Services and Enforcement."[2]

I. Authority

TAD 2018-1 was issued pursuant to Delegation Order No. 13-3, which grants the National Taxpayer Advocate the authority to issue a TAD "to mandate administrative or procedural changes 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."[3] This authority may not be redelegated.

II. Issue

The passport certification program was created pursuant to a statutory directive intended to help the IRS collect delinquent tax debts from recalcitrant taxpayers with substantial liabilities.[4] The reasoning behind the passport certification program is not to penalize taxpayers for their unpaid debts, but to "serve as an incentive to individuals wishing to obtain passports to comply with their tax obligations, thus reducing the level of tax delinquencies and promoting compliance."[5]

Recognizing the significant rights that may be abridged when a person's passport is taken, Congress intended for passport certification to occur only after a taxpayer's administrative rights have been exhausted or lapsed. Taxpayers working with TAS are exercising important administrative rights – rights expressly granted to them by Congress.[6] Moreover, as part of the *right to a fair and just tax system*, taxpayers have the right to seek assistance from TAS if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.[7] Certifying taxpayers who are actively working with TAS to resolve their tax liabilities would harm taxpayers who are voluntarily trying to come into compliance.

I have written extensively about how excluding already open TAS cases from passport certification does not frustrate the purpose of the statute and, in fact, serves the purpose

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[2] IRM 13.2.1.6.2, *TAD Appeal Process* (July 16, 2009).
[3] Internal Revenue Manual (IRM) 1.2.50.4, *Delegation Order 13-3 (formerly DO-250, Rev. 1)* (Jan. 17, 2001). *See also* IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).
[4] Pub. L. No. 114-94, Div. C, Title XXXII, § 32101, 129 Stat. 1312, 1729-32 (2015) (codified as IRC § 7345). The Senate Finance Committee report explaining this provision stated: "The Committee is aware that the amount of unpaid Federal tax debts continues to present a challenge to the IRS. The Committee is also aware that a significant amount of unpaid Federal tax debt is owed by persons to whom passports have been issued… The Committee believes that tax compliance will increase if issuance of a passport is linked to payment of one's tax debts." S. Rep. No. 114-45, at 57 (2015).
[5] 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.
[6] See IRC §§ 7803(a)(3), 7803(c)(A)(i), and 7811.
[7] *See* IRS Publication 1, *Your Rights as a Taxpayer* (Sept. 2017).

intended by Congress by allowing TAS to assist taxpayers in coming into compliance and resolving their unpaid tax debts.[8]

III. Procedural History

On January 16, 2018, I issued almost 800 Taxpayer Assistance Orders (TAOs) to the SB/SE Commissioner, which requested the IRS exercise its discretionary authority to exclude from passport certification taxpayers who TAS had determined were eligible for certification, did not meet a certification exclusion, and currently had an open TAS case. On January 19, 2018, the SB/SE Commissioner responded to the TAOs, stating she was appealing them. On January 25, 2018, I sustained the TAOs and issued a memorandum to you, reiterating my order for the taxpayers to be excluded.

On February 15, 2018, you responded to the TAOs, agreeing to exclude from certification the taxpayers with already open TAS cases who did not meet another exclusion. However, you stated the exclusion of open TAS cases would not apply prospectively to any new TAS cases.

On April 6, 2018, I issued TAD 2018-1, which requested the IRS exclude from certification TAS cases that were already open prior to certification and while they remained open. I also requested that the IRS reverse certification for any taxpayers who were certified while having a case open in TAS. On April 17, 2018, the Commissioner, SB/SE responded, disagreeing with and appealing all requested actions within the TAD.

I plan to issue an Interim Guidance Memorandum (IGM) to TAS employees instructing Local Taxpayer Advocates (LTAs) to issue TAOs ordering the IRS to exclude from certification all taxpayers they identify as eligible for certification who do not meet another exclusion, and who have an open TAS case at the time of certification. Additionally, the IGM will instruct LTAs to issue TAOs for taxpayers who were certified prior to coming to TAS and who will meet an exclusion as a result of TAS's assistance, ordering the IRS take actions that will result in the taxpayer meeting a criterion for decertification. I am also instructing the LTAs to issue TAOs requesting expedited decertification where the taxpayer qualifies for decertification, has an urgent need for a passport, and meets the expedited criteria set out in the IRM.

IV. Analysis

The lack of a statutory exclusion for TAS cases open prior to certification does not negate Congress's expressed intent to exclude taxpayers from certification until their administrative rights have been exhausted or lapsed – and access to TAS is one such right.

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[8] *See e.g.*, National Taxpayer Advocate 2017 Annual Report to Congress 73-83 (Most Serious Problem: *Passport Denial and Revocation: The IRS's Plans for Certifying Seriously Delinquent Tax Debts Will Lead to Taxpayers Being Deprived of a Passport Without Regard to Taxpayer Rights*).

The legislative history of IRC § 7345 clearly says that 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.*"[9] (Emphasis added.) The right to receive assistance from TAS is one such administrative right, which Congress expressly provided when it codified IRC §§ 7803(c)(A)(i) and 7811. IRS Publication 1, *Your Rights as a Taxpayer*, summarizes the Taxpayer Bill of Rights adopted by the IRS (and codified at IRC § 7803(a)(3)) and defines "The Right to a Fair and Just Tax System" to include "the right to receive assistance from the Taxpayer Advocate Service."

The IRS has created many exclusions from certification that are not directly referenced in the statute or explicitly referenced in the legislative history but that promote taxpayer compliance, protect taxpayer rights, and treat taxpayers fairly.[10] These discretionary exclusions, such as for pending Installment Agreements (IAs) or Currently not Collectible (CNC) hardship status, are supported by the legislative history, which indicates the passport certification program was intended to help the IRS collect the unpaid tax debts of recalcitrant taxpayers and to increase compliance.[11] The fact that the statute does not reference a pending IA or CNC hardship status does not mean that these exclusions are not supported by the legislative history. Under similar reasoning, taxpayers who voluntarily seek out TAS assistance *before* certification are trying to resolve outstanding tax issues and are not the recalcitrant taxpayers Congress was seeking to address.

TAS has a proven track record of promoting taxpayer compliance and assisting taxpayers in resolving outstanding liabilities. Therefore, an exclusion for already open TAS cases clearly serves the purpose of the statute and is supported by the legislative history. As noted in TAD 2018-1, TAS closed with full or partial relief approximately 70 percent of fiscal year (FY) 2017 cases with balances more than $50,000 that were not previously determined by Collection to be currently uncollectible. Furthermore, through the process of working with taxpayers, TAS educates them so they remain in compliance prospectively.

TAS cases often involve multiple issues, and TAS works with taxpayers to try to resolve all their tax issues.

The SB/SE Commissioner's response to the TAD states that taxpayers who are seeking TAS assistance are not necessarily trying to resolve their entire tax liabilities but may only be seeking to address a single issue related to a liability. This response reflects an ignorance about the breadth and depth of TAS's work, which I frankly find appalling after 18 years of TAS operations. During fiscal years 2012 through 2017, an average of

[9] H.R. Rep. No. 114-357, at 531-32 (2015).
[10] *See* IRM 5.19.1.5.19.4, *Discretionary Certification Exclusions* (Dec. 26, 2017).
[11] "The Committee is aware that the amount of unpaid Federal tax debts continues to present a challenge to the IRS. The Committee is also aware that a significant amount of unpaid Federal tax debt is owed by persons to whom passports have been issued… The Committee believes that tax compliance will increase if issuance of a passport is linked to payment of one's tax debts." S. REP. NO. 114-45, at 57 (2015).

59 percent of TAS cases involved more than one issue. *TAS Internal Revenue Manual sections (IRMs) require an action plan that addresses every issue in the case as well as a review before the case is closed to ensure every action has been completed and all related issues have been addressed.*[12] These requirements are reinforced through a quality review process and a vigorous system of case reviews.[13] TAS training materials emphasize the importance of identifying and addressing all of a taxpayer's issues.[14] TAS IRMs also require a case to continue moving toward resolution.[15] When a case stalls because of a taxpayer's unwillingness to provide information, TAS case advocates are expected to inform the taxpayer of the consequences of closing the case without resolution and then, if the taxpayer remains unresponsive, to close the case.[16]

The SB/SE response distinguishes taxpayers who receive an exclusion due to a pending IA on the basis that a taxpayer must be in full filing compliance before an IA is considered pending. However, TAS also works diligently to bring taxpayers into full filing compliance. TAS training materials instruct case advocates to make a compliance check prior to closing a case and address any related issues, including missing tax returns, balances due, and account freezes.[17] Furthermore, in FY 17, TAS worked 3,523 cases where the primary issue was getting the taxpayer into an installment agreement. Our average cycle time was 85 days and our relief rate was 75% for these cases. Because of the complexity of some TAS cases, case resolution may take longer than in cases where the taxpayer does not require TAS assistance. As explained in TAD 2018-1, however, such a taxpayer should not receive a harsher result than a taxpayer who works directly with the IRS. To restate a key point: To treat taxpayers seeking TAS assistance more harshly than taxpayers in closely analogous circumstances would undermine Congress's purpose in creating TAS and would undermine the value of "the right to receive assistance from the Taxpayer Advocate Service", which the IRS itself says is a central component of the Taxpayer Bill of Rights, "Right to a Fair and Just Tax System."

The IRS's approach could coerce taxpayers to enter into installment agreements or make payments even if they do not owe the entire liability or are unable to afford basic living expenses.

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[12] IRM 13.1.18.2.3, *Develop an Action Plan* (Feb. 1, 2011) and IRM 13.1.21.1.2, *Closing Actions* (May 4, 2016).
[13] FY 2018 TAS Program Letter, Advocacy Reviews. One of TAS's quality attributes through which it measures case quality is "Resolved all issues," which requires employees to "take all necessary actions to completely and accurately resolve taxpayer's issue prior to case closure."
[14] TAS, Case Advocate Training, Case Processing/TAMIS Module 1 (Student Guide), Training 20219-102 (Apr. 2015).
[15] IRM 13.1.18.6*, Subsequent Actions and Case Resolution* (May 5, 2016).
[16] IRM 13.1.21.1.3.19, *No or Partial Reply From Taxpayer* (Feb. 1, 2011).
[17] "Prior to closing the case, make a compliance check and address any related issues. This includes any missing tax returns, balances due, and account freezes." TAS, BMF Phase I, Employment Taxes (Student Guide), Training 32610-102 (Mar. 2016). "As an advocate for the taxpayer, all related issues must be addressed on all of the taxpayer's accounts. This following list of related issues is not all inclusive: Advising the taxpayer to file any delinquent tax returns…" TAS, Case Advocate Training, Case Processing/TAMIS Module 1 (Student Guide), Training 20219-102 (Apr. 2015).

The IRS has repeatedly stated that all the exclusions are available to all taxpayers, including TAS taxpayers. However, TAS taxpayers generally seek TAS assistance because the normal channels have not worked, which may mean an exclusion is not equally available to all taxpayers. TAD 2018-1 provided the examples of taxpayers who should qualify for and are trying to prove identity theft or CNC hardship status. If the IRS is refusing to process the taxpayer's identity theft affidavit or is incorrectly computing the taxpayer's basic living expenses, then these taxpayers do not have the same access to these exclusions unless they are able to work with TAS to resolve their issues and have their accounts adjusted accordingly. By refusing to exclude TAS cases open prior to certification, the IRS is impermissibly encroaching on the taxpayer's statutory right to seek assistance from TAS.

As discussed in TAD 2018-1, a taxpayer who has a time-sensitive need for a passport may feel pressured into paying the entire liability or entering into a payment plan, even if she does not owe the entire liability or the payment would prevent her from paying her basic living expenses. In a case where the taxpayer did not owe the entire liability, TAS would need to work with the taxpayer and the IRS to seek a refund of payments. In a case where a taxpayer is forced to pay on an IA that he or she cannot afford, the resulting harm to the taxpayer may be significant and, in some cases, irreversible.

Taxpayers come to TAS in cases where they are unable to resolve their problems with the IRS or the normal procedures are not working.

The SB/SE response to the TAD reflects a continued misunderstanding of TAS case work. The response implies that TAS taxpayers are similarly situated as other taxpayers, and they come to TAS because they are choosing not to work directly with the IRS. This response reflects ignorance of the statute and regulations describing a taxpayer's eligibility for TAS assistance – namely, that the taxpayer must be experiencing, or be about to experience, "significant hardship" as a result of IRS actions or inaction.[18] In reality, taxpayers often come to TAS because the normal procedures are not working, and they have been unable to resolve their problems working directly with the IRS. During the first quarter of fiscal year (FY) 2018, approximately half of all TAS cases were referred to TAS either by the IRS or by a Congressional office,[19] as opposed to a taxpayer reaching out to TAS directly. During the same period, the number one reason for TAS case receipts – comprising 27 percent of incoming cases – was a systemic or procedural failure, precisely the type of problem a taxpayer could not remedy on his or her own by working directly with the IRS. Additionally, 25 percent of TAS cases received during the first quarter of FY 2018 were due to a delay of 30 days or more over the IRS's stated normal processing time.[20] To expect a taxpayer who needs a passport to continue working directly with the IRS despite such a delay further violates the taxpayer's *right to a fair and just tax system*.

[18] IRC § 7811(a)(2); Treas. Reg. § 301.7811-1(a)(4)(ii).
[19] TAS Business Performance Review, 1st Quarter FY 2018.
[20] TAS Business Performance Review, 1st Quarter FY 2018.

Taxpayers working with TAS may not be able to resolve their cases in 90 days, and even when they can, they may still be negatively affected.

The IRS has frequently cited the 90-day holding period provided by the Department of State as a kind of safeguard, but has never addressed the TAS case data cited in TAD 2018-1, my Annual Report to Congress, and the passport TAOs. When the average cycle time for a TAS collection case is 88 days, from start to completion of all actions necessary to resolve the taxpayer's account, there will likely be taxpayers whose decertifications are not transmitted to and processed by the Department of State within 90 days. In addition, the IRS is incorrect to conclude that if a taxpayer can resolve his or her liability in 90 days and the Department of State does not reject the passport application, then the taxpayer will not have been harmed. There may be taxpayers who need a passport within those 90 days and must delay travel. There may also be taxpayers who need the passport as a form of valid identification or for a background check.

Excluding TAS taxpayers, even if they are later certified, does not frustrate the purpose of the statute.

The IRS has repeatedly argued that excluding taxpayers who have a case open with TAS prior to certification will frustrate the purpose of the statute and allow taxpayers to circumvent it. If a taxpayer who works with TAS does not resolve his or her tax liability and is certified once the case is closed, the purpose of the statute will have been met. Further, the IRS will be honoring the legislative history that indicates a taxpayer should not be certified until after exhausting his or her administrative rights.

As explained in the TAD, if a taxpayer wanted to postpone certification to circumvent the statute, there are other methods for doing this, such as requesting an IA that the taxpayer does not intend to pay. An exclusion for already open TAS cases would be *less* susceptible to abuse because, as noted, we are not requesting that TAS cases be excluded from certification where a taxpayer seeks TAS assistance after being certified. We are only requesting an exclusion where a taxpayer comes to TAS *before* being certified. Furthermore, 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,[21] and only keeps cases open if taxpayers are working with TAS to achieve a resolution.[22] To suggest taxpayers would open TAS cases solely to circumvent the passport statute ignores TAS's case acceptance criteria.

At most, that is a theoretical concern – and one that could arise in other areas as well. Since TAS began operating in its present form in 2000, we have closed more than four million cases. We are not aware of any instance at any time on any issue where taxpayers systemically opened TAS cases to circumvent the law. That is not to say no taxpayer has ever done so. But when dealing with millions of taxpayers, policies should not be based on a theoretical risk of abuse in a small number of cases. TAS would be

[21] IRC § 7811(a)(2); Treas. Reg. § 301.7811-1(a)(4)(ii).
[22] IRM 13.1.21.1.3.19, *No or Partial Reply from Taxpayer* (Feb. 1, 2011).

as concerned as the IRS leadership if its services were misused – arguably even more concerned – and if systemic abuses ever arise, we would be the first to address them. We find it unacceptable, however, to create procedures that deny appropriate avenues of relief to large numbers of taxpayers based on possible risks that have not materialized and, based on history, are extremely unlikely to materialize.

V. Requested Actions

For the foregoing reasons, I request that you direct the Commissioner, SB/SE and any other relevant IRS personnel to take the following actions with respect to the certification of seriously delinquent tax debts for the purposes of passport denial, limitation, or revocation:

1. Exclude from certification all taxpayers with an open TAS case at the time of certification. This can be accomplished by programming an exclusion for all taxpayer accounts with a transaction code (TC) 971 Action Code (AC) 154 that has not been reversed or removed.[23]

2. Continue to exclude taxpayers identified as having a TC 971 AC 154 at the time of certification for the entire time their cases remain open in TAS, until the TC 971 AC 154 is reversed or removed.

3. Reverse the certification for any taxpayers identified by TAS as having had an open TAS case at the time of certification and who still have an open TAS, identified by a TC 971 AC 154.

Please provide a written response to the TAD on or before May 7, 2018 indicating whether you plan to sustain, modify, or rescind it. If you sustain all or a portion of the TAD, I ask that the actions identified herein be taken by no later than June 26, 2018. If you do not sustain the TAD in full, please provide a written response by May 7, 2018 that explains your reasoning in detail.

CC: Dave Kautter, Acting Commissioner of Internal Revenue
William Paul, Acting Chief Counsel
Janice Feldman, Division Counsel/Associate Chief Counsel (NTA)

[23] This transaction code and action code exclude open TAS cases from being referred to a Private Collection Agency and can similarly be used to exclude open TAS cases from being certified to the Department of State for passport action.

DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

May 17, 2018

MEMORANDUM FOR NINA E. OLSON
NATIONAL TAXPAYER ADVOCATE

FROM: Kirsten Wielobob
Deputy Commissioner for Services and Enforcement

SUBJECT: Taxpayer Advocate Directive 2018-1, Exclude TAS Cases From Certification as a Seriously Delinquent Tax Debt When the Taxpayer Comes to TAS Before Certification and Continue Excluding these Cases While They Remain Open in TAS

On April 17, 2018, the Commissioner, Small Business/Self Employed Division appealed the directives in the subject TAD to me, consistent with IRM Section 13.2.1.6.2(1). The subject TAD directed the Commissioner, Small Business/Self Employed Division to take the following actions:

1. Exclude from certification all taxpayers with an open TAS case at the time of certification. This can be accomplished by programming an exclusion for all taxpayer accounts with a Transaction Code (TC) 971 Action Code (AC) 154 that has not been reversed or removed.[1]

2. Continue to exclude taxpayers identified as having a TC 971 AC 154 at the time of certification for the entire time their cases remain open in TAS, until the TC 971 AC 154 is reversed or removed.

3. Reverse the certification for any taxpayers identified by TAS as having had an open TAS case at the time of certification and who still have an open TAS, identified by a TC 971 AC 154.

Under Delegation Order 13-3, I am rescinding the subject TAD for the reasons described below.

[1] This transaction code and action code exclude open TAS cases from being referred to a Private Collection Agency and can similarly be used to exclude open TAS cases from being certified to the Department of State for passport action.

Congress's statutory framework protects taxpayers' administrative and judicial rights, providing ample opportunity for taxpayers to address their liability before facing certification.

The Fixing America's Surface Transportation (FAST) Act requires the Department of State to deny a passport application by, and authorizes it to revoke the passport of, any individual that the Internal Revenue Service (IRS) certifies as having a "seriously delinquent tax debt." Pub. L. No. 114-94, § 32101(e), 129 Stat. 1311, 1732 (2015). Internal Revenue Code (IRC) § 7345 governs the IRS's certification process and provides taxpayers a limited right to judicial review.

IRC § 7345(b)(1) sets forth the elements of a "seriously delinquent tax debt," which include a requirement that the liability must exceed $50,000.[2] In addition, the IRS must have filed a notice of federal tax lien under IRC § 6323 (with the taxpayer's collection-due-process (CDP) rights under IRC § 6320 having lapsed or been exhausted) or made a levy under IRC § 6331 with respect to the liability for it to be considered a "seriously delinquent tax debt."[3] Congress also provided two statutory exceptions to the definition: (1) a liability being paid in a timely manner pursuant to an installment agreement under IRC § 6159 or an agreement under IRC § 7122; and (2) a liability for which collection has been suspended because the taxpayer requested either a CDP hearing under IRC § 6330 or innocent spouse relief under IRC § 6015.

The Conference Report accompanying enactment of the FAST Act indicates that the definition of "seriously delinquent tax debt," as enacted, fulfills Congress's intention to permit revocation 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. See H. Rept. 114-357, 531-532.

How the statute operates in practice underscores how well the law, as enacted, operates to protect taxpayer rights. Consistent with the statute, a taxpayer has ample opportunity to respond to IRS balance due notices prior to being certified to the Department of State as having "significant tax debt." To meet passport certification criteria, a tax liability must have been subject to issuance of a levy under IRC § 6331, or a Notice of Federal Tax Lien (NFTL) must have been filed and the taxpayers' right to a hearing on the filing of the NFTL must have been exhausted or lapsed. Both the IRC § 6331 notice of intent to levy and the IRC § 6330 notice of a right to a CDP hearing are generally given at least 30 days before the day of the first levy for that tax liability. The taxpayer then has 30 days to request a CDP hearing with Appeals, during which they can challenge the proposed collection action and request a collection alternative, or challenge the appropriateness of collection activity by claiming they are in a hardship situation. Based on IRC § 6320, taxpayers are entitled to CDP appeal rights for each tax period for which an NFTL has been filed. The taxpayer then has 30 days in which to

[2] This amount is annually indexed for inflation. For 2018, the amount is $51,000.
[3] A liability will not be considered a seriously delinquent tax debt based on a levy unless pre- or post-levy CDP rights were provided regarding the levy.

request a CDP hearing. In making a CDP determination, Appeals will verify applicable law and administrative procedures were met, consider relevant issues relating to the unpaid tax, the filing of the NFTL, or the proposed levy; and consider whether the action taken or proposed balances the government's need for the efficient collection of taxes with the taxpayer's legitimate concern that any collection action be no more intrusive than necessary. As a result, the typical case has been in process for 160 days, and possibly longer, by the time a taxpayer faces certification.

Throughout this period, the IRS is willing to work with taxpayers to resolve their tax issues and offers options to taxpayers who cannot pay their balance due. Also throughout this period, taxpayers may seek and receive TAS assistance. Indeed, as part of the administrative process just described, taxpayers receive IRS Publication 1, Your Rights as a Taxpayer, which summarizes the Taxpayer Bill of Rights adopted by the IRS (and codified at IRC § 7803(a)(3)) and makes taxpayers aware of the right to a fair and just tax system, which encompasses a right to receive TAS assistance.

The statement in the Conference Report accompanying enactment of IRC § 7345 that a taxpayer's administrative and judicial rights must be "exhausted or lapsed" prior to certification does not clearly support a Congressional intent for categorical exclusion from certification for taxpayers who seek assistance from TAS or who have cases pending with TAS, since a taxpayer may seek and receive TAS assistance at any time. Nor does the statute, with its explicit exception for taxpayers who are exhausting their administrative right to a CDP hearing (a right that attaches on receipt of the NFTL or the final notice of intent to levy and which lapses if the taxpayer does not respond within 30 days), evidence such an intention.

The legislative history emphasizes the importance of ensuring payment of unpaid Federal tax debts, and the IRS has exercised its discretion to provide additional exceptions consistent with that intent.

A report by the Senate's Committee on Finance, relating to the Senate bill that (with some amendments) was enacted as § 7345, provides some clarity on Congress's reasons for requiring IRS certification to the Department of State of seriously delinquent tax debt:

> The Committee is aware that the amount of unpaid Federal tax debts continues to present a challenge to the IRS. The Committee is also aware that a significant amount of unpaid Federal tax debt is owed by persons to whom passports have been issued. In 2011, for example, the Government Accountability Office reported that approximately 224,000 persons issued U.S. passports in 2008 owed in aggregate $5.8 billion. Federal law currently permits the Department of State to refuse an application for a passport or revoke a passport based on the existence of certain debts, including delinquent child support, but does not have authority to consider the existence of tax debt. . . . The Committee believes that tax compliance will increase if issuance of a passport is linked to payment of one's tax debts.

S. Rept. No. 114-45, 57 (2015). The Government Accountability Office (GAO) report that is referenced in conjunction with enactment of the passport certification program states that "IRS enforcement of federal tax laws is vital—not only to identify tax offenders—but also to promote broader compliance by giving taxpayers confidence that others are paying their fair share." GAO, "Federal Tax Collection: Potential for Using Passport Issuance to Increase Collection of Unpaid Taxes," GAO-11-272, 16 (Mar. 2011).[4]

The discretionary exceptions the IRS will apply in determining if a taxpayer has a "seriously delinquent tax debt" are generally consistent with Congress' focus on harnessing certification as a way to incentivize payment of tax debt. For example, the IRS excludes taxpayers who are in pending installment agreements or offers-in-compromise, as these taxpayers have proposed a specific payment amount and are in full filing compliance. The IRS has also exercised its discretion to exclude taxpayers from whom payment cannot reasonably be expected, such as taxpayers who are in bankruptcy, who are deceased, or whose accounts are in currently not collectible status due to hardship (which applies if a taxpayer is unable to pay reasonable basic living expenses).

In contrast, the TAS case acceptance criteria cover economic burden (which is not limited to hardship), systemic burden, and public policy concerns, and many do not relate to the taxpayer's ability to pay. See IRM 13.1.7 (Feb. 5, 2016). In addition, taxpayers working with TAS may never come into compliance. According to TAS case closure procedures, upon resolution of the issue(s) for which the taxpayer sought assistance, the TAS caseworker may advise the taxpayer of the need to file any delinquent returns and of options for paying a balance due, but only upon the taxpayer's request does the TAS caseworker keep the case open to help resolve such outstanding issues. See IRM 13.1.21.1.1 (May 4, 2016); see also IRM 13.1.21.1.3.6, Balance Due (providing guidance for the Case Advocate to *address* issues such as payment alternatives but only to advise the taxpayer "normal collection procedures may resume if the taxpayer doesn't take steps to address the balance owed."). Excluding such a taxpayer from certification during the entire pendency of the TAS case would allow that taxpayer to apply for and obtain a passport even if they are not in, and never come into, compliance, thus defeating the purpose of the statute.

You raised a concern that taxpayers may have the foresight to avoid certification by falsely requesting or entering into an installment agreement only long enough to obtain

[4] The GAO report also notes that Federal law already allows the linkage of debt collection with the passport issuance process in certain areas, including for child support enforcement, and states that such currently-operating programs could serve as a starting point in determining the appropriate criteria and safeguards needed for any IRS-Department of State passport certification program. The child support enforcement program denies or revokes passports with respect to individuals with arrears of $2,500, with each state child support enforcement agency having discretion over whether to allow any exceptions.

agreement only long enough to obtain a passport.[5] IRS procedures expressly state that the exclusion will not apply if an installment agreement request is made solely to delay collection. See IRM 5.1.12.27.4(1)(F) (Dec. 20, 2017) (referencing IRM 5.14.3.2, Installment Agreement Request Made to Delay Collection (Jun. 12, 2009)). The IRS will continually monitor the process to determine whether any changes are needed.

The IRS has developed processes to implement the passport certification program in a manner that is fair to all taxpayers, including those receiving TAS assistance.

The passport certification procedures are applied consistently to all taxpayers, and taxpayers are free to seek TAS assistance to resolve their underlying tax liabilities at any time. The non-exclusion of TAS cases from certification does not prevent taxpayers from seeking or receiving assistance from TAS.

Taxpayers receiving assistance from TAS will not receive a "harsher result" than a taxpayer working directly with the IRS. Any taxpayer, including a taxpayer with an open TAS case, who satisfies a statutory or discretionary exclusion will not be certified to the Department of State. Even once a taxpayer's seriously delinquent tax debt has been certified to the Department of State, the taxpayer can seek assistance from or continue to work with TAS to address the underlying liability or demonstrate they qualify for an exclusion.

It is important to remember that a taxpayer who has a time-sensitive need for a passport, whether they are working with TAS or not, had previous opportunities to address the liability, including exercising their CDP rights and working with Appeals. If denial of their passport, instead of the certification prerequisite levy issuance or lien filing, was the incentive for the taxpayer to come forward to resolve the liability, the taxpayer may have to quickly submit any required documentation to support their situation. If resolution and decertification occurs within 90 days of the date the Department of State notifies the taxpayer of their passport application denial, the taxpayer's passport application will not be impacted. This 90-day period is in addition to the over 160 days in which a typical case will have already been in process with the IRS.

Categorically excluding all open TAS cases from the certification process, in contrast, would result in the inconsistent application of the law to similarly-situated taxpayers. Under IRC § 7345, all taxpayers have the same ability to qualify for exclusion from certification, for example, by entering into an installment agreement. If, however, all open TAS cases are categorically excluded from the certification process, then IRC § 7345 would apply inconsistently, depending on whether a taxpayer seeks and qualifies for TAS assistance.

[5] A similar concern would arise with respect to taxpayers seeking TAS assistance as a way to delay or avoid certification, if the IRS were to categorically exclude all TAS cases from certification as the subject TAD requests.

Conclusion

Based on the reasons set forth above, I rescind the Taxpayer Advocate Directive to exclude all open TAS cases from the passport certification process.

cc: Mary Beth Murphy, Commissioner, Small Business/Self Employed Division

Area of Focus #7 The IRS Has Expanded Its Math Error Authority, Reducing Due Process for Vulnerable Taxpayers, Without Legislation and Without Seeking Public Comments

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

DISCUSSION

When the IRS processes a return that contains a math or clerical error (*e.g.*, omitting a required Taxpayer Identification Number), it is authorized to change the return and summarily assess tax — without first providing the taxpayer a "notice of deficiency," which grants taxpayers the right to access the Tax Court.[2] Ever since its enactment in 1926, the IRS has sought to expand this authority (called "math error authority" or MEA).[3] For example, since 2012 the Treasury has been asking Congress to authorize it to use its regulatory authority to expand the types of issues it could address using MEA (called "correctable error" authority).[4]

The IRS Recently Discovered Long-Dormant "Post-Processing" Math Error Authority

Although Congress has been willing to authorize use of MEA in specific instances, it has so far declined to give the IRS a broad grant of authority to issue regulations to expand the types of issues it could

1 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 Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a), 129 Stat. 2242, 3117 (2015) (codified at IRC § 7803(a)(3)). Division Q is also called the Protecting Americans from Tax Hikes (PATH) Act.

2 See IRC § 6213(b), (g).

3 The Revenue Act of 1926, Pub. L. No. 69-20 § 274(f), 44 Stat 9, 56 (1926) (codified at IRC §§ 6213(b), (g)). In 1976, when math error authority (MEA) was expanded to include "clerical" errors, a House report said that "[t]he term mathematical error, has been interpreted by the Service to include several types of error which are broader in nature than literal errors of arithmetic.... Court opinions, however, generally have limited the scope of the term, mathematical error, to arithmetic errors involving numbers which are themselves correct." H.R. Rep. No. 94-658, at 289 (1976).

4 See, *e.g.*, Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2013 Revenue Proposals* 168–169 (Feb. 2012); Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2017 Revenue Proposals* 225–226 (Feb. 2016). The Treasury Inspector General for Tax Administration (TIGTA) appears to support this recommendation. See, *e.g.*, TIGTA, Rep. No. 2016-40-036, *Without Expanded Error Correction Authority, Billions of Dollars in Identified Potentially Erroneous Earned Income Credit Claims Will Continue to Go Unaddressed Each Year* (Apr. 27, 2016). For concerns about it, see, *e.g.*, National Taxpayer Advocate 2015 Annual Report to Congress 329–339; National Taxpayer Advocate 2017 Purple Book 44-45; Nathan J. Richman, *Expanding Math Error Authority Could Worsen 2 Tax Systems Issues*, 2017 TNT 127-2 (July 05, 2017).

address using MEA.[5] However, the IRS recently issued a Program Manager Technical Advice (PMTA), which concludes it is authorized to use MEA *after* it has processed returns and issued refunds, expanding MEA without legislation and without issuing a regulation.[6]

Particularly when the IRS's adjustments are incorrect, this expansion will have a significant adverse effect on the *rights to pay no more than the correct amount of tax* and *to appeal an IRS decision in an independent forum*. It will also increase the likelihood that low income taxpayers who rely on the earned income tax credit (EITC) for the means to live will be deprived of it without sufficient due process, raising questions about the constitutionality of using post-processing MEA for this purpose — questions that the IRS has not seriously considered.

Math Error Procedures Raise Concerns When the Assessments Are Erroneous

As discussed in prior reports, the IRS's pre-existing MEA raises the following concerns when the resulting assessments are (or may be) erroneous:[7]

- The IRS does not try to resolve apparent discrepancies before burdening taxpayers with summary assessments that they are expected to disprove;[8]
- IRS communication difficulties, fewer letters (*i.e.*, one math error notice vs. three or more letters from exam), and shorter deadlines (*i.e.*, 60 days vs. more than 120 days in an exam) make it more difficult for taxpayers to respond timely (*e.g.*, because they want to call the IRS to make sure they understand the letter before responding);
- Because it is easier to miss math error deadlines, more taxpayers — particularly low income taxpayers — will lose access to the Tax Court; and
- Internal Revenue Code § 7605(b) generally prohibits the IRS from examining a return more than once, but the IRS can examine a return after making a math error adjustment.[9]

5 For example, Section 203(e) of the PATH Act (codified at IRC § 6213(g)(2)(O)) expanded the definition of a math or clerical error to encompass the inclusion on a return of an Individual Taxpayer Identification Number which has expired, been revoked by the Secretary, or is otherwise invalid. There are now 17 specific types of errors that can trigger a math error adjustment. *See* IRC § 6213(g)(2)(A)-(Q).

6 Memo from Deputy Associate Chief Counsel (Procedure & Administration) to National Taxpayer Advocate, POSTS-129453-17, *TIGTA Report/Section 6213 Math Error Assessment Authority* (Apr. 10, 2018).

7 *See, e.g.*, National Taxpayer Advocate 2014 Annual Report to Congress 163; National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 5, 91-92; National Taxpayer Advocate 2011 Annual Report to Congress 74; National Taxpayer Advocate 2006 Annual Report to Congress 311; National Taxpayer Advocate 2003 Annual Report to Congress 113; National Taxpayer Advocate 2002 Annual Report to Congress 25, 186; National Taxpayer Advocate 2001 Annual Report to Congress 33. These concerns would all be heightened if the IRS had authority to use correctable error or math error authority more broadly, as it has proposed.

8 As an example, a TAS study of math errors triggered by incorrect Taxpayer Identification Numbers (TINs) found that the IRS subsequently reversed at least part of these math errors on 55 percent of the returns. National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, 114, 120 (Research Study: *Math Errors Committed on Individual Tax Returns – A Review of Math Errors Issued on Claimed Dependents*). The IRS could have resolved 56 percent of these errors using information already in its possession (*e.g.*, a similar TIN listed for the same dependent on a prior year return), rather than assessing tax and asking the taxpayer to explain the apparent discrepancy. *Id.* Because it did not do this work before assessing math errors, the IRS burdened taxpayers, as well as its own employees who had to process the abatements. Moreover, in 41 percent of the cases where the IRS could have corrected the TINs (and in another 11 percent where it could have corrected at least one TIN) without contacting the taxpayer, the taxpayer did not respond and was denied a tax benefit — $1,274 on average — that he or she was eligible to receive. *Id.*

9 *See* National Taxpayer Advocate 2017 Annual Report to Congress 49–63.

The IRS's Newfound Post-Processing Math Error Authority Raises Additional Concerns

The IRS plans to use its newfound post-processing MEA to recover refundable credits, including the EITC, from taxpayers over a year after processing their returns.[10] Post-processing adjustments make it more difficult for taxpayers to:

- Discuss the issue with a preparer who could help them respond;
- Access underlying documentation to demonstrate eligibility;
- Recall and explain relevant facts;
- Return any refunds (or endure an offset) without experiencing an economic hardship; and
- Learn how to avoid the problem before the next filing season.

Perhaps for the same reasons, the law limits how long after filing the IRS can make assessments, and the IRS tries to maintain the "currency" of its audits.[11] If the IRS is doing a good job, it should be able to detect math and clerical errors while processing returns. If the IRS took seriously the taxpayer's *right to quality service*, it would flag such discrepancies when processing return filings or not at all.[12] Such a policy would avoid penalizing taxpayers for the IRS's lack of timeliness in detecting potential discrepancies. Moreover, there does not seem to be a good reason to reduce the due process we provide to taxpayers if the issue is so complicated that the IRS cannot even detect the error when processing the return.

The IRS's Analysis Did Not Seriously Consider Due Process Concerns

The law does not explicitly bar the IRS from using MEA after processing the return or authorize it to do so.[13] However, there is no indication that Congress contemplated post-processing MEA. A 1929 House report said the IRS could make math error assessments "at any time," but it was merely distinguishing the math error assessment process from regular deficiency procedures, under which an assessment could only be made after the period for filing an appeal had expired.[14] There would not have been a need for post-processing adjustments in 1926 because MEA only applied to arithmetic errors appearing on the face of the return, which the IRS detected while processing returns.

10 IRS Response to TAS Information Request (Apr. 17, 2018). The IRS has committed to address a recommendation by TIGTA to recover refundable credits claimed on returns filed in 2016. *See* TIGTA, Ref. No. 2017-40-042, *Processes Do Not Maximize the Use of Third-Party Income Documents to Identify Potentially Improper Refundable Credit Claims* (July 17, 2017); TIGTA, Ref. No. 2018-40-032, *The Internal Revenue Service Is Not in Compliance with Improper Payment Requirements* 11–12 (Apr. 9, 2018).

11 IRC § 6501(a) (assessment limitations period); IRS, *Reducing the Federal Tax Gap, A Report on Improving Voluntary Compliance* 36 (Aug. 2, 2007), https://www.irs.gov/pub/irs-news/tax_gap_report_final_080207_linked.pdf (discussing audit currency).

12 The concerns with post-processing MEA would all be heightened if Congress were to authorize the IRS to address facts and circumstances inquires using correctable error authority. In addition, post-processing MEA will not reduce the improper payment rate because that rate is supposed to be determined without regard to payments that are subsequently recovered. *See* Government Accountability Office (GAO), GAO-18-377, IMPROPER PAYMENTS: *Actions and Guidance Could Help Address Issues and Inconsistencies in Estimation Processes* (May 2018).

13 IRC § 6213(b)(1). When first enacted in 1929, the law said:

> [i]f the taxpayer is notified that, on account of a mathematical error appearing on the face of the return an amount of tax in excess of that shown upon the return is due, and that an assessment of the tax has been or will be made on the basis of what would have been the correct amount of tax but for the mathematical error, such notice shall not be considered … as a notice of a deficiency … nor shall such assessment or collection be prohibited…" [as it is when the IRS issues a notice of deficiency]. The Revenue Act of 1926, Pub. L. No. 69-20 § 274(f), 44 Stat. 9, 56 (1926).

14 H.R. Rep. No. 69-1, at 11 (1926) (section 274(f) "provides that in the case of a mere mathematical error appearing upon the face of the return, assessment of a tax due to such mathematical error may be made at any time and that such assessment shall not be regarded as a deficiency notification.").

The IRS's recent PMTA did not seriously consider whether the IRS's interpretation could be held to violate procedural due process.[15] Due process "is flexible and calls for such procedural protections as the particular situation demands."[16] Accordingly, more process is required when the government deprives people with literacy challenges and language barriers of the means to live (*e.g.*, terminating welfare benefits) than when it collects taxes from sophisticated, high-income taxpayers.

A sophisticated taxpayer can obtain pre-payment judicial review of a math error adjustment by timely figuring out how to file a petition, and a wealthy one can pay the tax and obtain post-payment judicial review. Moreover, in 1931 the Supreme Court indicated that due process does not require the government to provide a sophisticated taxpayer with the right to petition a court to re-determine his tax liability before paying.[17]

However, it was not until 1975 that Congress enacted today's EITC, a means-tested tax credit to assist the working poor.[18] Because the recovery of EITC is more like the termination of welfare than a tax, it is likely that the government is required to offer more procedural protection before recovering EITC than before collecting taxes.

In 1970, the Supreme Court held the government must provide a hearing to welfare recipients before terminating their benefits.[19] The hearing must permit them to appear personally with or without counsel before the decision-making official and to confront or cross-examine adverse witnesses.[20] It explained the "termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits."[21] Moreover, "written submissions are an unrealistic option for most [welfare] recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance."[22] In other words, the government is required to provide more process when it is depriving potentially illiterate individuals of their "means to live" (*e.g.*, by recovering EITC) than when it is merely collecting taxes from sophisticated, high-income individuals.

While the IRS's procedures may satisfy the requirements of procedural due process, the government should not assume that they do without seriously considering this issue in the context of the EITC.[23] For example, the PMTA did not discuss whether the IRS's automated math error procedures sufficiently empower EITC recipients who "lack the educational attainment necessary to write effectively and

15 Memo from Deputy Associate Chief Counsel (Procedure & Administration) to National Taxpayer Advocate, POSTS-129453-17, *TIGTA Report/Section 6213 Math Error Assessment Authority* (Apr. 10, 2018).

16 *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (internal citations omitted).

17 *See, e.g.*, *Phillips v. Comm'r*, 283 U.S. 589 (1931). *See also Bob Jones Univ. v. Simon*, 416 U.S. 725, 746–48 (1974) (post-deprivation hearing sufficient when revoking tax exemption); *Todd v. United States*, 849 F.2d 365, 369 (9th Cir. 1988) (collecting cases). A pre-deprivation hearing is not even required before terminating disability benefits. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

18 *See* Pub. L. No. 94-12, § 204, 89 Stat. 26 (1975) (codified at IRC § 32).

19 *Goldberg v. Kelly*, 397 U.S. 254 (1970). *Accord Sniadach v. Family Fin. Corp. of Bay View*, 395 U.S. 337 (1969) (pre-deprivation hearing required before garnishing half of a person's wages).

20 *Goldberg v. Kelly*, 397 U.S. at 268 (1970).

21 *Goldberg v. Kelly*, 397 U.S. at 264. *Mathews* distinguished disability from welfare benefits, in part, on the basis that disability benefits are "not based upon financial need." *Mathews v. Eldridge*, 424 U.S. 319, 340 (1976).

22 *Goldberg v. Kelly*, 397 U.S. at 264.

23 *See, e.g.*, Leslie Book, *Annual TIGTA Review of IRS Erroneous Payments and The Possible Expansion of Math Error Powers*, Procedurally Taxing Blog (Dec. 22, 2014), http://proceduralltaxing.com/annual-tigta-review-of-irs-erroneous-payments-and-the-possible-expansion-of-math-error-powers (suggesting the use of MEA to disallow EITC benefits could raise constitutional concerns); Megan Newman, *The Low-Income Tax Gap: The Hybrid Nature of the Earned Income Tax Credit Leads to its Exclusion from Due Process Protection*, 64 Tax Law. 719 (2011) (discussing related issues).

who cannot obtain professional assistance" to figure out how to obtain a hearing and show they were entitled to the EITC they claimed.[24] MEA procedures do not even require the IRS to send notice to the taxpayer's last known address, as required for a notice of deficiency.[25] Even if the IRS's procedures are sufficient, a court might try to avoid this analysis by holding that the statute does not authorize the IRS to use MEA post-processing.[26]

In addition, if the IRS wants to take the unprecedented step of using post-processing MEA, it should do so only after considering public comments and issuing a final regulation. Even a regulation could be subject to challenge.[27] In the absence of a validly-adopted regulation, however, the IRS's position will be given more limited deference (if any) by a court.[28] More importantly, public comments received as part of the rulemaking process could help inform the IRS's consideration of these issues.

CONCLUSION

After nearly 100 years, the IRS has suddenly decided that it has post-processing MEA, which it may use to require taxpayers to prove they are entitled to benefits long after filing their returns, when they are less likely to recall the relevant facts or to have access to relevant records, a preparer, or refunds that have been expended. The IRS made this historic expansion of MEA without express legal authority and without first asking for public comments from stakeholders.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Advocate for the IRS not to apply math error adjustments after processing returns; and
- If the IRS decides to move forward with this expansion of its MEA, advocate for it to do so only after issuing a proposed regulation and considering public comments from stakeholders.

24 *Goldberg v. Kelly*, 397 U.S. at 264.

25 *Compare* IRC § 6212 (requiring notice of deficiency that includes a phone number for the Local Taxpayer Advocate to be mailed by certified or registered mail to the taxpayer's last known address) *with* IRC § 6213(b)(1) (requiring only that a math error notice contain an explanation of the alleged error). Even if the IRS uses the same mailing addresses and procedures for math error notices, the more limited statutory requirement means there fewer remedies when the taxpayer does not receive the notice.

26 *See, e.g., Nat'l Cable Television Assn., Inc. v. United States et al.*, 415 U.S. 336 (1974) (reading the user fee law narrowly to avoid constitutional problems).

27 5 U.S.C. § 551 *et seq*.

28 Legislative rules, adopted after notice and comment, are generally entitled to deference unless they (1) contradict an unambiguous statute, or (2) adopt an unreasonable construction of it. *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.,* 467 U.S. 837 (1984). Other agency pronouncements are not. *See, e.g., Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) ("[T]he weight [accorded to an agency judgment] in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control."). For further discussion of the appropriate standard of review, see, *e.g., Kristin E. Hickman, IRB Guidance: The No Man's Land of Tax Code Interpretation*, 2009 Mich. St. L. Rev. 239, 260 (2009) ("Since the Court's decision in *Mead*, most courts and commentators have assumed or concluded that *Skidmore* provides the appropriate evaluative standard for revenue rulings and, to a lesser extent, other IRB guidance as well, although not everyone agrees."). However, judicial doctrines requiring deference to agency interpretations have been subject to significant limitations in recent years. *See, e.g.*, Richard Pierce, *The Future of Deference*, 84 Geo. Wash. L. Rev. 1293, 1299–1308 (2016).

Area of Focus #8 The Systemic First Time Abatement Policy As Currently Applied by the IRS Would Override Reasonable Cause Relief and Jeopardize Fundamental Taxpayer Rights

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Currently, the IRS offers taxpayers who are subject to failure to file, failure to pay, or failure to deposit penalties a First Time Abatement (FTA) of those penalties, provided that taxpayers are in compliance and have not utilized the FTA within the last three years.[2] This abatement proceeds from a manual review that is triggered by a request from the taxpayer.

The First Time Abatement Provides an Important Mechanism for Penalty Relief

Occasionally, otherwise-compliant taxpayers make good faith mistakes regarding the filing of their tax return or payment of their tax obligations. Further, not all of these errors are eligible for the reasonable cause abatement provided by Internal Revenue Code (IRC) §§ 6651(a) and 6656(a).[3] For instance, as discussed in the 2001 Annual Report to Congress:

> A taxpayer mailed his 2000 return on April 15 with a check for $200,000, which was in full payment of the balance due on his return. On April 20 the return was sent back to him for insufficient postage — the required postage was $1.50, but he mistakenly put $1.40 on the envelope. Subsequently he mailed the return with the required postage on April 21 but the tax return was deemed late. The taxpayer was assessed the failure to file penalty in the amount of $10,000, as well as the failure to pay penalty.[4]

The National Taxpayer Advocate proposed the FTA to address just such situations where the error in question does not qualify for a reasonable cause abatement.[5] Shortly thereafter, it was adopted by the IRS.[6] Nevertheless, the IRS has implemented FTA so that it supplants, rather than complements, reasonable cause.

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

2 Internal Revenue Manual (IRM) 20.1.1.3.3.2.1, *First Time Abate (FTA)* (Nov. 21, 2017).

3 Reasonable cause is generally available with respect to penalties for failing to file returns or pay or deposit taxes. IRC §§ 6651(a) and 6656(a). Nevertheless, this abatement is available only if taxpayers exercised ordinary business care and not willful neglect. Treas. Reg. §§ 301.6651-1(c), 301.6656-1.

4 National Taxpayer Advocate 2001 Annual Report to Congress 188 (Legislative Recommendations: *First Time Penalty Waiver*).

5 National Taxpayer Advocate 2001 Annual Report to Congress 188–192 (Legislative Recommendations: *First Time Penalty Waiver*).

6 Office of Servicewide Penalties (OSP), *Decision Document Regarding Whether to Continue to Apply First Time Abatement (FTA) Before Reasonable Cause; and Whether FTA Should Be Applied Systemically* 1 (Jan. 30, 2018).

The First Time Abatement, As Currently Applied, Can Yield Inequitable Treatment of Taxpayers

If an FTA is requested, and if the taxpayer qualifies, the FTA will be automatically granted. The FTA is applied by the IRS, however, without first looking to see if the taxpayer might be eligible for a reasonable cause abatement.[7] This rule of precedence, also known as "stacking," is problematic because once the IRS grants an FTA, a taxpayer does not again become potentially eligible for another three years.[8] In some situations, this stacking rule can result in disparate treatment of taxpayers.

For example, assume that a taxpayer files a late return in year one for reasons that would qualify for a reasonable cause abatement, as well as for the FTA. Assume further that in year three, the taxpayer is subject to a late payment penalty for reasons that do not meet the reasonable cause standards. In this scenario, the taxpayer would receive the FTA in year one but would be afforded no relief in year three.

By contrast, if the IRS considered reasonable cause, which is a *statutory* remedy, prior to application of FTA, the taxpayer would have received the reasonable cause abatement in year one. This approach would have preserved eligibility for the FTA over the next three years, thus enabling its use in year three against the failure to pay penalty. Moreover, this approach adheres to the *right to a fair and just tax system*, which means that taxpayers should have their tax liability determined based on the specific facts and circumstances of their particular case.

Automating Application of the FTA Is a Commendable Policy, If Done Correctly

The IRS Office of Servicewide Penalties is proposing to automate application of the FTA.[9] This step would have some tangible benefits to both taxpayers and the IRS. It would likely result in the provision of an additional 1.35 million FTAs, yielding an extra $261 million in annual abatements.[10] Further, the IRS estimates that it would free up approximately 99-167 personnel who could be reallocated elsewhere.[11] In fact, use of the systemic FTA was first proposed by the National Taxpayer Advocate in 2010.[12] As a long-time proponent of this practice, the National Taxpayer Advocate applauds the IRS for exploring potential automation of this policy. The IRS must take care, however, to adopt the proper stacking rule so as to ensure that the automated FTA fully benefits taxpayers.

FTA Automation Should Not Be Implemented in a Way That Overrides Reasonable Cause Relief

As currently conceived, the IRS's proposal for automating the FTA would continue to mandate the application of FTA over reasonable cause, even if a taxpayer had a clear-cut case in favor of reasonable cause relief. In effect, the proposed policy would write reasonable cause out of the law for the year in which the FTA was applied. It would violate taxpayers' *right to pay no more than the correct amount of tax*, *right to challenge the IRS's position and be heard*, and *right to a fair and just tax system*.[13] Additionally,

7 IRM 20.1.1.3, *Criteria for Relief from Penalties* (Nov. 21, 2017). For the applicable law regarding reasonable cause, see Treas. Reg. §§ 301.6651-1(c), 301.6656-1.

8 OSP, *Decision Document Regarding Whether to Continue to Apply First Time Abatement (FTA) Before Reasonable Cause; and Whether FTA Should Be Applied Systemically* 1 (Jan. 30, 2018).

9 *Id.*; *see also* Office of Chief Counsel Memorandum, POSTN-117216-17 (Sept. 28, 2017).

10 IRS, *Automatic First Time Abatement Proposal* (Nov. 3, 2017).

11 OSP, *Decision Document Regarding Whether to Continue to Apply First Time Abatement (FTA) Before Reasonable Cause; and Whether FTA Should Be Applied Systemically* 5–6 (Jan. 30, 2018).

12 National Taxpayer Advocate 2010 Annual Report to Congress 202–204 (Most Serious Problem: *The IRS's Over-Reliance on Its "Reasonable Cause Assistant" Leads to Inaccurate Penalty Abatement Determinations*).

13 IRC § 7803(a)(3)(C), (D), and (J).

the IRS would be elevating its own internally created remedy (*i.e.*, the FTA) over a statutory remedy created by Congress (*i.e.*, the reasonable cause abatement).

The IRS should develop systems that first consider eligibility for reasonable cause prior to automatic application of the FTA. While these systems are being put into place, or if they prove impracticable, the IRS could apply other policies that would continue to preserve primacy of the reasonable cause abatement. For example, the systemic FTA could be automatically applied, accompanied with the sending of a "soft letter" explaining the reasons for the abatement.[14] Thereafter, those taxpayers believing they qualified for reasonable cause could present their cases to the IRS and, where eligible, could have reasonable cause applied in lieu of the FTA, thus preserving FTA as a future remedy.

The IRS has opposed this approach, however, arguing that it would require additional resources and would nullify some of the desired savings from adoption of the systemic FTA.[15] Resource maximization, however, is not an acceptable justification for overriding taxpayer rights.

The IRS should implement the program in a way that is fair for all taxpayers and that allows the consideration of reasonable cause before the FTA is permanently applied. Such an adjustment would have an incremental cost to the IRS, but would result in a redesigned program of which the IRS could be proud, and that taxpayers could believe genuinely had their best interests at heart. Programs such as these develop trust in the tax system and reinforce the IRS's legitimacy, which is crucial for the successful function of the voluntary tax system.[16]

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Work with the IRS to develop a systemic FTA program that preserves reasonable cause as the primary mechanism for relief where taxpayers qualify;
- Collaborate with the IRS to establish training and policies targeted toward enabling personnel to more accurately evaluate and apply reasonable cause criteria in lieu of resorting to the FTA; and
- Advocate for taxpayers who receive an FTA when reasonable cause would have been applicable by entering into case-specific dialogues with Operating Divisions and issuing taxpayer assistance orders where appropriate.

14 National Taxpayer Advocate 2010 Annual Report to Congress 204 (Most Serious Problem: *The IRS's Over-Reliance on its "Reasonable Cause Assistant" Leads to Inaccurate Penalty Abatement Determinations*).

15 OSP, *Decision Document Regarding Whether to Continue to Apply First Time Abatement (FTA) Before Reasonable Cause; and Whether FTA Should Be Applied Systemically* (Jan. 30, 2018).

16 National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 7 (Research Study: *When do Accuracy-Related Penalties Improve Future Reporting Compliance by Schedule C Filers?*).

Area of Focus #9 Recent Legislation Provides Opportunities for Needed Changes to the Individual Taxpayer Identification Number Program, But the IRS Must Ensure Any Such Changes Preserve Taxpayer Rights

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Challenge the IRS's Position and Be Heard*

DISCUSSION

Individual Taxpayer Identification Numbers (ITINs) are required for individuals who are ineligible for Social Security numbers (SSNs) but who are required to file tax returns and pay taxes.[2] As discussed extensively in past Annual Reports to Congress, IRS policies have made it difficult for taxpayers to apply for and receive ITINs.[3] Yet, the IRS has not taken necessary steps to alleviate taxpayer burden and has declined to implement many of the National Taxpayer Advocate's recommendations such as allowing ITIN applications from all applicants year-round and providing adequate alternatives to submitting original documents. In recent years, Congress has passed laws that shape the direction of the ITIN program, from prescribing application procedures and ITIN expiration dates to limiting certain tax benefits that ITIN holders can claim. In fiscal year (FY) 2019, TAS will review and advocate based on the IRS's actions in response to legislative changes as well as recent ITIN trends, focusing on:

- How the IRS will adjust ITIN application procedures based on the foreseeable decrease in ITIN applications;
- How the IRS will modify its deactivation schedule based on past renewals and predicted volumes;
- How the IRS will communicate ITIN-related math error adjustments to taxpayers;
- How the IRS intends to use math error authority retroactively after processing returns to recoup refundable credits paid to ITIN taxpayers in error;
- How the IRS can provide existing Spanish versions of IRS publications and correspondence to taxpayers with a communicated preference for Spanish; and
- When the IRS will issue its study on ITIN applications required by legislation.

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

2 IRC § 6109; Treas. Reg. § 1.6109-1.

3 See, e.g., National Taxpayer Advocate 2016 Annual Report to Congress 239-252 (Most Serious Problem: *Individual Taxpayer Identification Numbers (ITINs): IRS Processes for ITIN Applications, Deactivations, and Renewals Unduly Burden and Harm Taxpayers*); National Taxpayer Advocate 2012 Annual Report to Congress 154-179 (Most Serious Problem: *The IRS's Handling of ITIN Applications Imposes an Onerous Burden on ITIN Applicants, Discourages Compliance, and Negatively Affects the IRS's Ability to Detect and Deter Fraud*).

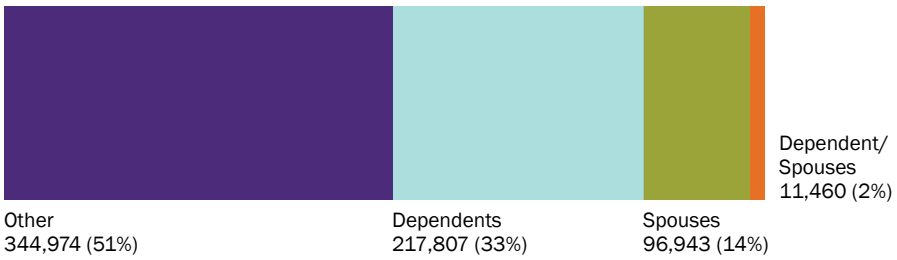
Recent Legislative Changes and a Likely Decrease in Individual Taxpayer Identification Number Applications and Returns Create an Opportunity to Implement Taxpayer-Friendly Changes to the Program

In 2017, Congress passed the Tax Cuts and Jobs Act (TCJA), which changes certain tax benefits for tax years 2018 through 2025 that were previously available to ITIN holders.[4] The TCJA requires a qualifying child to have an SSN issued by the tax return due date for the taxpayer to claim the Child Tax Credit (CTC), including the refundable portion known as the Additional Child Tax Credit (ACTC); whereas before, a timely-issued ITIN was sufficient.[5] The new law eliminated the dependency exemption, which could previously be claimed for ITIN holders residing in the United States, Canada, or Mexico and meeting other requirements.[6] However, the TCJA creates a nonrefundable $500 credit for dependents of a taxpayer other than qualifying children, which includes U.S. resident children.[7] The law retains the same rules for the American Opportunity Tax Credit (AOTC), meaning students with ITINs issued by the return due date may still claim this refundable credit.

Despite the new and retained tax benefits for ITIN holders, there will likely be a sizable decrease in dependent ITIN applications because of the termination of the dependency exemption and the restriction on the CTC. In processing years (PYs) 2014 through 2017, the IRS received an average of 218,000 dependent ITIN applications and 97,000 applications for spouses, together comprising about half of all ITIN applications, as shown in Figure 3.9.1.[8]

FIGURE 3.9.1[9]

ITIN Applications, Average for Processing Years 2014-2017



4 This bill was introduced as the Tax Cuts and Jobs Act but was passed under a different title. Pub. L. No 115-97, 131 Stat. 2054 (2017) (hereinafter TCJA).

5 TCJA § 11022 (codified as IRC § 24(h)(7)).

6 TCJA § 11041(a) (codified as IRC § 151(d)(5)).

7 The children's ITINs must be issued by the tax return due date. TCJA § 11022 (codified as IRC § 24(h)(4)).

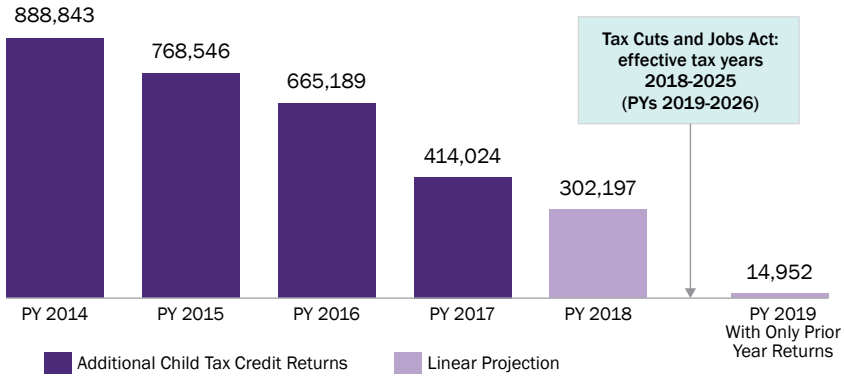
8 Compliance Data Warehouse (CDW) (data retrieved by TAS Research Mar. 15, 2018). During processing years (PYs) 2014–2017, the IRS received an average of 217,807 ITIN applications for dependents, 96,943 for spouses, and 11,460 for applications for individuals who were either a dependent or spouse, totaling 326,210 applications. The IRS received an average of 671,184 total ITIN applications per year during PYs 2014–2017.

9 CDW (data retrieved by TAS Research Mar. 15, 2018).

We can expect these numbers, especially for dependents, to drop sharply as a result of the tax law changes. Returns claiming the ACTC for only children with ITINs have already been declining in recent years — from approximately 889,000 in PY 2014 to about 414,000 in PY 2017.[10] Without the benefit of the CTC and ACTC for children with ITINs, we expect returns claiming these credits for children with ITINs to plummet, as shown in Figure 3.9.2.

FIGURE 3.9.2[11]

Additional Child Tax Credit Returns With Individual Taxpayer Identification Number Children Only, Filed in Processing Years (PYs) 2014-2017, and Projected Returns for PYs 2018-2019



As a result, many of these ITINs are likely to expire for lack of use. An even greater number of ITINs have been used to claim the dependency exemption in recent years – an average of 1.3 million during the last four processing years.[12] Thus, the recent provision eliminating the dependency exemption is likely to cause a further decline in new ITIN applications as well as an increase in ITINs expiring for non-use. Although ITIN holders may still claim the refundable education credit known as the AOTC, far fewer ITIN holders claim the AOTC (an average of 62,000 during the last four processing years) relative to the ACTC or dependency exemption.[13] In addition, the new nonrefundable credit for qualifying dependents may not help taxpayers who have sufficient withholding and no tax liability to be reduced.

The new tax law may also affect how many ITIN returns are filed. For taxpayers who previously claimed tax benefits for children or family members with ITINs, there may be less of an incentive to file a return if the return will not result in a refund. Additionally, the Department of Homeland

10 CDW (data retrieved by TAS Research Apr. 12, 2018).

11 *Id.*

12 The number of returns claiming Additional Child Tax Credit (ACTC) with only ITIN dependents was extracted from the Individual Returns Transaction File on the IRS CDW for the indicated PY on Mar. 15, 2018. For the PY 2018 and PY 2019 projections, TAS estimated the number of ACTC returns using a linear time series projection from PY 2014–PY 2017 data (R-Square = .95) and subtracted the estimated percentage of returns for tax year (TY) 2018 because the ACTC can no longer be claimed for children with ITINs for TY 2018. TAS estimated the percentage of TY 2018 returns at approximately 90 percent based on TY 2016 returns comprising about 90 percent of the returns received in PY 2017. TAS has focused on ACTC data since it is a refundable credit and the volume of returns claiming ACTC has been larger than the number of returns claiming the non-refundable CTC.

13 TAS Research, CDW (data retrieved by TAS Research Apr. 12, 2018).

The Treasury Inspector General for Tax Administration reported that the IRS erroneously deactivated over 130,000 Individual Taxpayer Identification Numbers (ITINs) because of flaws in its systems. Although the IRS systemically reactivated these ITINs and allowed the tax benefits, it only implemented systemic programming to prevent future errors for about 13 percent of the errors.

Security has announced it will issue a notice of proposed rulemaking by July of this year, clarifying its definition of "public charge."[14] Under Section 212(a)(4) of the Immigration and Nationality Act, a person seeking admission to the United States or to adjust permanent resident status is inadmissible if at the time of applying, it is determined that the person is likely at any time to become a public charge.[15] If the Department of Homeland Security determines who is likely to become a public charge by considering among other factors whether an individual has claimed refundable tax credits or has claimed dependents (or been claimed as a dependent on a tax return), such a policy could have a chilling effect.[16] Taxpayers could fear that filing a return and claiming tax benefits to which they are entitled could ultimately prevent them from receiving permanent resident status.

With the foreseeable drop in ITIN applications, the IRS should reconsider its refusal to adopt several National Taxpayer Advocate recommendations that it had previously declined to implement.[17] For example, it may now be feasible to:

- Return all original documents by certified mail, given the predicted drop in dependent ITIN applicants, who have the most restricted alternatives to mailing original documents;[18]
- Allow Taxpayer Assistance Centers to certify all documents for dependents, given that the new law reduces the incentive to fraudulently obtain an ITIN for a dependent due to the prohibition on claiming the CTC (including the refundable portion);[19] and
- Allow certifying acceptance agents to certify all types of identification documents for dependent ITIN applicants.

If the IRS Accelerates Its Previously Planned Deactivation Schedule, It Must Provide Adequate Notice to Taxpayers Prior to Deactivating ITINs

At the end of 2016, the IRS began implementing the provision of the Protecting Americans from Tax Hikes (PATH) Act that requires the deactivation of ITINs based on age or lack of use.[20] Instead of

14 Department of Homeland Security, Inadmissibility and Deportability on Public Charge Grounds, Regulation Identifier Number (RIN) 1615-AA22, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1615-AA22 (Fall 2017).

15 8 U.S.C. § 1182(a)(4).

16 *See* Nicole Narea, *DHS May Exclude Immigrants Who Use Tax Breaks, CHIP*, 2018 Law360 87-184 (Mar. 28, 2018). 8 U.S.C. § 1182(a)(4).

17 *See, e.g.*, National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress vol. 2, 116.

18 For a discussion of the problems returning original documents to ITIN applicants, see National Taxpayer Advocate 2015 Annual Report to Congress 203-204.

19 The IRS had previously declined to adopt this policy based on the risk of accepting fraudulent documents. National Taxpayer Advocate Fiscal Year 2017 Objectives Report to Congress vol. 2, 117. Although Certifying Acceptance Agents and Taxpayer Assistance Centers will certify all 13 types of original documents for primary and secondary taxpayers, they will only certify two or three types of documents, respectively, for dependents. IRS, Instructions for Form W-7 (Oct. 2017). *See* Treasury Inspector General for Tax Administration (TIGTA), Ref. No, 2012-42-081, *Substantial Changes Are Needed to the Individual Taxpayer Identification Number Program to Detect Fraudulent Applications* (July 16, 2012).

20 Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 203(d) (2015) (hereinafter PATH Act). The PATH Act requires ITINs to expire after three tax years of non-use or on a staggered schedule based on the year they were issued.

deactivating ITINs based on the PATH Act schedule, the IRS created a slower schedule based on the middle digits of the ITINs, which are roughly correlated to the year issued. In 2016 and 2017, the IRS deactivated 15.2 million ITINs, approximately 1.5 million of which were deactivated solely due to the middle digits and not a lack of use.[21] The IRS based its schedule partly on the resources required to renew the ITINs, but at the end of the 2017 filing season, it had received less than half the projected renewals.[22] The IRS recently agreed to a Treasury Inspector General for Tax Administration (TIGTA) recommendation to speed up the ITIN deactivation schedule. Although expediting the schedule will bring it more in line with the statute, TAS will be closely following any changes to see that the IRS provides adequate notice to taxpayers prior to deactivating new groups of ITINs.

TAS remains concerned about issues with the IRS's deactivation of ITINs for non-use. TIGTA reported that the IRS erroneously deactivated over 130,000 ITINs because of flaws in its systems.[23] Although the IRS systemically reactivated these ITINs and allowed the tax benefits, it only implemented systemic programming to prevent future errors for about 13 percent of the errors. The IRS disagreed with TIGTA's recommendation to modify its methodology for identifying ITINs eligible for deactivation and implemented manual processes to address the rest of the errors. Without a systemic fix, there are likely to be future erroneous deactivations. TAS will review submissions on its Systemic Advocacy Management System to identify issues related to erroneous deactivations and raise them with the IRS. TAS will also advocate for individuals with erroneously deactivated ITINs to have them reinstated and receive tax benefits to which they are entitled.

TAS Will Continue to Request Changes to Math Error Notices That Fail to Effectively Inform Individual Taxpayer Identification Number Taxpayers About How to Remedy Related Problems

The PATH Act authorizes the IRS to disallow credits and exemptions for returns with an expired, revoked, or otherwise invalid ITIN through its math error procedures, which allow the IRS to summarily assess and immediately collect tax without first providing the taxpayer access to the Tax Court unless the taxpayer requests an abatement within 60 days.[24] Current math error notices for expired ITINs do not clearly explain which credits are being denied for which persons or what the taxpayer can do to remedy the problem.[25] Taxpayers receiving these notices may not understand that they can and need to renew the expired ITINs, as only 22 percent of those who had received these notices subsequently renewed the associated ITINs, despite having a tax administration purpose for the ITINs.[26] These inadequate notices impair taxpayers' *rights to be informed* and *to challenge the IRS's position and be heard* because taxpayers may not know to request an abatement. TAS will work with the IRS on improving notice clarity to specify which credits are denied for which ITINs and how taxpayers

21 IRS response to TAS information request (Oct. 12, 2017).

22 The IRS estimated that approximately 450,000 taxpayers would apply to renew ITINs that expired at the beginning of 2017, but had received only about 176,000 renewals as of the week of April 17, 2017. IRS response to TAS information request (Nov. 29, 2016). IRS, Submission Processing (SP), Program Management/Process Assurance (PMPA) Branch, *Filing Season Statistics Report for Week Ending April 22, 2017*, 10. *See also* TIGTA, *Some Legal Requirements to Deactivate Individual Taxpayer Identification Numbers Have Not Been Met*, 2018-40-011, 8 (Jan. 29, 2018).

23 TIGTA, *Some Legal Requirements to Deactivate Individual Taxpayer Identification Numbers Have Not Been Met*, 2018-40-011, 9–10 (Jan. 29, 2018).

24 PATH Act § 203(e) (codified at IRC § 6213(g)(2)).

25 National Taxpayer Advocate 2017 Annual Report to Congress 188-189.

26 Of the 152,000 tax returns that received a math error for an expired ITIN, taxpayers subsequently renewed the expired ITINs for only 33,056 (22 percent) of these returns. To determine these numbers, TAS assumed a successful renewal occurred if the renewed ITIN was issued in the same or later month when the math error notice was generated. CDW (data retrieved by TAS Research Nov. 14, 2017).

can renew the ITINs. In FY 2019, TAS will be contracting with a graphic design professor to study how people visually read and retain information and will use findings from this study as the basis for future notice changes.

The IRS Must Adhere to the Taxpayer Bill of Rights When It Recoups Tax Benefits Paid in Error to Taxpayers Whose Individual Taxpayer Identification Numbers Were Deactivated or Should Have Been Deactivated

In response to a recent TIGTA report, the IRS has agreed to review and recover tax benefits erroneously paid to 1,298 taxpayers with ITINs that were active but should have been deactivated, and 9,818 taxpayers whose returns included deactivated ITINs but were incorrectly processed.[27] The IRS response does not indicate whether this will be accomplished through examination or math error; however, the IRS has proposed in the past to use math error authority to *retroactively* disallow previously allowed credits for ITIN holders.[28] As discussed in another Area of Focus in this report, the IRS has issued Program Manager Technical Advice that concludes the IRS is authorized to use math error authority after it has processed a return and issued a refund.[29] In addition to the concerns discussed in the Area of Focus, the use of retroactive math error authority is especially problematic for deactivated ITINs because there may be confusion as to whether an ITIN should have been deactivated under the law, was actually deactivated by the IRS, or should have been deactivated but was active when the return was filed. Of the approximate 11,000 taxpayers from whom the IRS agreed to review and recoup benefits, approximately 1,300 had active ITINs at the time, which may lead taxpayers to think that the IRS math error notice itself was issued by mistake.

TAS Will Research How the IRS Can Implement a Process to Provide Limited English Proficiency Taxpayers With Existing Spanish Versions of IRS Correspondence and Documents

The majority of ITIN taxpayers come from Spanish-speaking countries, and over half of Hispanic taxpayers speak exclusively Spanish at home;[30] however, notices to ITIN taxpayers (excluding correspondence specifically related to the ITIN application) are not sent in Spanish except under very limited circumstances.[31] In 2017, the IRS sent out 874,657 ITIN deactivation notices, but only two were issued in Spanish.[32] This finding is directly contrary to the IRS's contention in its response to our 2017 Most Serious Problem recommendation that "In all efforts [to reach ITIN filers], the IRS was responsive to taxpayer language preferences."[33] Despite having foreign language versions for many forms, publications, and correspondence, and having a universal Limited English Proficiency (LEP)

27 TIGTA, *Some Legal Requirements to Deactivate Individual Taxpayer Identification Numbers Have Not Been Met*, 2018-40-011, 10, 12 (Jan. 29, 2018).

28 *See* TAS Internal Management Document/Single Point of Contact record 5399, *6015 - Retroactive Claim Notice (PATH) – (short version) Letter* (Sept. 8, 2017).

29 Memo from Deputy Associate Chief Counsel (Procedure & Administration) to National Taxpayer Advocate, POSTS-129453-17, *TIGTA Report/Section 6213 Math Error Assessment Authority* (Apr. 10, 2018). *See* Area of Focus: *The IRS Has Expanded Its Math Error Authority, Reducing Due Process for Vulnerable Taxpayers, Without Legislation and Without Seeking Public Comments*, *supra*.

30 In 2014, 50 percent of ITIN applicants came from Mexico and another seven percent came from Guatemala. National Taxpayer Advocate 2015 Annual Report to Congress 199. Forrester Research, Inc., *The Taxpayer Advocate Service: Hispanic Underserved Analysis*, Q4 2014, 13 (Dec. 2014).

31 *See* National Taxpayer Advocate 2017 Annual Report to Congress 188.

32 IRS, Servicewide Notice Information Program (Nov. 8, 2017).

33 *See* IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress: *Individual Taxpayer Identification Numbers (ITINs): The IRS's Failure to Understand and Effectively Communicate with the ITIN Population Imposes Unnecessary Burden and Hinders Compliance*, *infra*.

account indicator, the IRS currently cannot or does not use this indicator to provide LEP taxpayers with documents in their primary language when available.

TAS has initiated a research project to assess the need for Spanish language correspondence and the viability of using the existing LEP account indicator to cause the Spanish version of standard letters and notices to be issued to all taxpayers who have expressed a preference for Spanish communications.[34] The TAS initiative will review IRS research on LEP community needs,[35] the programming required for utilizing the LEP account indicator to generate Spanish letters and notices,[36] and staffing resources for conducting Spanish communications, which the IRS has historically tracked and measured in other operations.[37] This project will alleviate burden for ITIN taxpayers whose primary language is Spanish.

The IRS Has Not Yet Completed the Study on the Individual Taxpayer Identification Number Application Process Required by the Protecting Americans From Tax Hikes Act

The PATH Act required the IRS to conduct a study on the effectiveness of the ITIN application process. The IRS Research, Applied Analytics, and Statistics office delivered a draft report to internal stakeholders in early 2017, and the IRS provided a draft report to TAS in December 2017. However, the IRS has not provided any additional updates to TAS on when it will complete the report. The study is especially important considering the predicted decreases in ITIN applications and returns as a result of the recent tax reform legislation. It could provide valuable data that may serve as the basis for improvements to the ITIN application process for the 2019 filing season and also enhance the protection of taxpayer rights. TAS will track and review the effect of the tax law changes on ITIN applications and returns during the 2019 filing season and the renewal period preceding it in late 2018.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Review its Systemic Advocacy Management System for issues related to erroneous deactivations to raise systemic problems with the IRS;
- Assist individuals whose ITINs have been erroneously deactivated to reactivate their ITINs and receive tax benefits to which they are entitled;
- Propose changes to the math error notice for deactivated ITINs to clarify which credits are denied for which ITINs and how the taxpayer can remedy the problem by renewing the ITINs;
- Conduct a research project to assess the need for Spanish language correspondence and the viability of using the existing LEP account indicator to cause the issuance of the Spanish version of standard letters and notices to taxpayers who have expressed their preference for Spanish communications; and
- Track and review the number of ITIN applications and ITIN returns received during the 2019 filing season and the renewal period preceding it, which may be affected by the recent tax reform legislation.

34 Systemic Advocacy Management System (SAMS) Information Gathering Project 37056.

35 IRS, *Business Performance Review* (W&I) 27 (Aug. 10, 2017) references a Limited English Proficiency (LEP) study.

36 *See* IRM Exhibit 2.4.19-5, *Command Code FRM77 Input* (Jan. 1, 2016), referencing transaction code 971 and action code 192, which have been available since 2011 but have not been effectively utilized.

37 *See generally* IRM 1.4.16, *Accounts Management Guide for Managers* (Jan. 1, 2018), and IRM 1.4.19, *Automated Underreporter Technical and Clerical Managers and Coordinators Guide* (Nov. 1, 2017), for IRS directives to document full-time equivalents (or staff years) for Spanish services.

Area of Focus #10 TAS Is Researching Specific Ways That the IRS Can Improve Its Notices and Letters to Educate Taxpayers and Protect Taxpayer Rights

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Be Informed*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

DISCUSSION

Clear, concise, and accurate correspondence from the IRS to taxpayers is essential to educating and empowering taxpayers. If drafted appropriately, correspondence can cultivate positive relationships and help taxpayers comply with their tax obligations. For example, Letter 3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code*, carries crucial information related to a taxpayer's right to exercise his or her right to appeal a Collection Due Process (CDP) hearing determination to the U.S. Tax Court. With potentially erroneous Earned Income Tax Credit (EITC) claims, correspondence to taxpayers fosters compliance because taxpayers learn the rules.[2]

The IRS's current approach to correspondence does not maximize these opportunities. It could save time, money, and rework by using direct, specific communication that taxpayers can understand and use. The IRS needs to gain expertise from many fields — psychology, cognitive science, graphic art — to improve its communication to educate taxpayers and protect their rights.

TAS Identified Improvements to the Notices That Include Critical Information About the Right to Appeal a Case to the U.S. Tax Court

The United States Tax Court plays a "unique and critical role as a prepayment forum" that taxpayers can access without having to pay the disputed amount of tax in advance.[3] The Tax Court has jurisdiction over a multitude of issues, including appeals from CDP hearings.[4] The statutory notice of deficiency also brings important information regarding the right to appeal to the Tax Court.[5] The current

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

2 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 15-39 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently In Error and Were Not Audited But Were Sent an Educational Letter From the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC*); National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 32–52 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Sent an Educational Letter From the National Taxpayer Advocate*).

3 Hon. James S. Halpern, *What Has the U.S. Tax Court Been Doing? An Update*, 2016 TNT 106-8, Tax Notes Today (June 2, 2016).

4 See IRC §§ 6320 and 6330 for Collection Due Process (CDP) jurisdiction.

5 See IRC § 6212 for information on the statutory notice of deficiency.

language in several IRS CDP notices of determination and statutory notices of deficiency confuses taxpayers, especially *pro se* taxpayers.

For example, Letter 3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of the Internal Revenue Code*, refers to "a 30-day period beginning the day after the date of this letter" within which taxpayers may petition the Tax Court for review of the IRS's determination to proceed with collection by lien or levy.[6] Several recent court cases demonstrate that the language in these notices confuses taxpayers and may cause them to misinterpret the deadline to file a petition with the Tax Court.[7] If a taxpayer misses the deadline, the Tax Court does not have jurisdiction to review the IRS's determination, and the taxpayers are deprived of their CDP rights.[8]

To address practitioners' criticisms of these two groups of notices, TAS started an ongoing review of these notices in fiscal year (FY) 2018. As part of this review, TAS reviewed the legal requirements for each notice and identified the key components that should be conveyed. The team also held discussions with small groups of stakeholders to hear their experiences with the notices and solicit any ideas for improvements. The stakeholders included attorneys, certified public accountants, enrolled agents, and members of the Taxpayer Advocacy Panel.

Research demonstrates that, for the cost of preparing and mailing a letter, the IRS can improve the improper payment rate for the Earned Income Tax Credit (EITC), reduce burden for taxpayers, reduce costs associated with Appeals, and avoid future incorrect EITC claims.

The stakeholders offered useful insights. For instance, some participants said that important deadlines should be displayed on top and in bold format. For the statutory notice of deficiency, the stakeholders recommended that the notice clearly explain that, even if the notice provides the taxpayer with an IRS contact number, contacting the IRS will not extend the timeframe in which to file a petition in Tax Court. Another suggestion from the group is that the CDP notices should include a date by which to file a Tax Court petition. The National Taxpayer Advocate made this legislative recommendation in her 2017 Annual Report to Congress,[9] and others in the tax field have called for similar reform.[10] TAS will continue this team throughout FY 2019 and will propose fully redesigned notices that address these taxpayer rights concerns.

6 IRS Letter L3193, *Notice of Determination: Concerning Collection Action(s) Under Section 6320 and/or 6330 of The Internal Revenue Code* (Dec. 2016).

7 In at least four recent cases, taxpayers filed their petitions one day late because they miscalculated the time period for filing their Tax Court petitions. *See, e.g., Duggan v. Comm'r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 4100-15L (2015); *Pottgen v. Comm'r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 1410-15L (2016); *Integrated Event Management, Inc. v. Comm'r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 27674-16SL (2017); *Protter v. Comm'r*, Order of Dismissal for Lack of Jurisdiction, Tax Ct. No. 22975-15SL (2017). These cases are not cited for precedent, rather only for the fact patterns showing taxpayers miscalculated the deadline to file.

8 If the taxpayer does not request a hearing within the 30-day period, the taxpayer may still be entitled to an equivalent hearing with Appeals but will not have any appeal rights allowing the taxpayer to file for judicial review of the equivalency hearing determination. Treas. Reg. § 301.6330-1(i).

9 National Taxpayer Advocate 2017 Annual Report to Congress 299-306 (Legislative Recommendation: *Collection Due Process and Innocent Spouse Notices: Amend IRC §§ 6320, 6330, and 6015 to Require That IRS Notices Sent to Taxpayers Include a Specific Date by Which Taxpayers Must File Their Tax Court Petitions, and Provide That a Petition Filed by Such Specified Date Will Be Treated As Timely*).

10 Carl Smith, Procedurally Taxing, *CDP Notice of Determination Sentence Causing Late Pro Se Petitions*, http://proceduralltaxing.com/cdp-notice-of-determination-sentence-causing-late-pro-se-petitions (Mar. 24, 2016).

TAS Research Shows Pre-Filing Season Letters Can Improve Earned Income Tax Credit (EITC) Compliance

The EITC is targeted at low income workers (primarily workers with children)[11] and has become one of the government's largest means-tested anti-poverty programs.[12] However, as the Department of Treasury reported, the EITC rules of eligibility are "complex and lead to high overclaim error rates."[13] In addition to complex rules, the population eligible to claim the EITC is constantly churning, with approximately one-third of the eligible population changing every year.[14]

In 2016, the National Taxpayer Advocate began studying how educational letters sent to EITC taxpayers before the filing season could impact EITC compliance going forward. TAS sent letters to about 6,500 taxpayers who appeared to have erroneously claimed EITC on their 2014 returns. The TAS letter explained the requirements for claiming EITC in plain language, identified the specific requirement the recipient did not appear to meet, and suggested sources of additional information and assistance, including TAS. Results of the study showed the TAS letter averted noncompliance on 2015 returns where the 2014 return appeared erroneous because the relationship test was not met. If the TAS letter had been sent to all taxpayers whose 2014 returns appeared to be erroneous because the relationship test was not met, it would have averted about $47 million of erroneous EITC claims.

TAS continued this study in 2017.[15] If the results for the 2017 study (in terms of the relationship test) were projected to the entire 2015 population, it would result in a savings of over $53 million in erroneous EITC claims.[16] In the 2017 study, TAS added an additional sample of 1,197 taxpayers who were offered in the letter the availability of a dedicated "Extra Help" telephone line staffed by TAS employees trained to answer taxpayer questions about the letter and the EITC eligibility rules. If projected to the entire 2015 population who only broke a Dependent Database rule indicating the child may not have resided with the taxpayer, sending the TAS letter with the available Extra Help telephone line would result in a savings of over $44 million in erroneous EITC claims.[17] TAS also added information about the childless EITC in all letters.

This research demonstrates that, for the cost of preparing and mailing a letter, the IRS can improve the improper payment rate for EITC, reduce burden for taxpayers, reduce costs associated with Appeals,

11 Pub. L. No. 94-12, § 204, 89 Stat. 26 (1975).

12 Congressional Budget Office, *Federal Means-Tested Programs and Tax Credits – Infographic* (Feb. 11, 2013), https://www.cbo.gov/publication/43935.

13 Department of Treasury, *Agency Financial Report Fiscal Year 2016* 160 (Nov. 2016).

14 IRS, *EITC Fast Facts*, https://www.eitc.irs.gov/partner-toolkit/basic-marketing-communication-materials/eitc-fast-facts/eitc-fast-facts. For a detailed explanation for how EITC eligibility and benefits calculation works, see National Taxpayer Advocate 2015 Annual Report to Congress 240-242.

15 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Not Audited But Were Sent an Educational Letter From the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC*).

16 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Not Audited But Were Sent an Educational Letter From the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC*); National Taxpayer Advocate Blog, *EITC – How a Simple Educational Letter Can Help Avert Noncompliance*, https://taxpayeradvocate.irs.gov/news/nta-blog-eitc-how-a-simple-educational-letter-can-help-avert-noncompliance.

17 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Not Audited But Were Sent an Educational Letter From the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC*).

and avoid future incorrect EITC claims. TAS will build on this research in FY 2019. All notices in the study will now include mention of the Extra Help telephone line, and some of the letters will be designed in consultation with a graphics and visual learning expert. In addition, TAS will conduct focus group sessions with notice recipients to learn what they found helpful or confusing about the notice.

CONCLUSION

Correspondence issued by the IRS plays a crucial role in tax administration. If drafted appropriately, it can educate and empower taxpayers, conserve resources by reaching IRS goals early in the process of working a case, and save money by preventing erroneous claims. The IRS's current approach with taxpayers overlooks some valuable opportunities to maximize the benefits of informing, educating, and interacting with taxpayers, and the IRS needs to carefully study how best to communicate with taxpayers. IRS correspondence should consider building a customer-service based relationship with taxpayers. The IRS should study what taxpayers need to know to respond to notices and tailor its notices to the needs of particular taxpayer populations.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Pursue further improvements to notices that contain legally significant deadlines; and
- Continue research into the effects of sending pre-filing season correspondence to taxpayers making potentially erroneous EITC claims.

Area of Focus #11 IRS Studies Focus on How to Maximize Revenue Collection Without Regard to Taxpayer Needs and Preferences for Contact

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Be Informed*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to a Fair and Just Tax System*

DISCUSSION

The IRS sends Letter 16, *Request for Taxpayer to Contact ACS*, to taxpayers who have not taken sufficient action to resolve an outstanding tax liability.[2] The IRS usually sends the letter to taxpayers when the case is assigned to the Automated Collection System (ACS) for collection and prior lien and levy actions have not resulted in taxpayer contact.[3] This is an important step in communication with the taxpayer, reminding them of their debt and "nudging" them to contact the IRS. However, the IRS has stopped the issuance of systemically generated Letters 16, dramatically reducing the number of such letters that it mails to taxpayers, apparently to allow ACS employees the opportunity to work on backlogged correspondence.[4] Figure 3.11.1 shows the total number of Letters 16 that the IRS has sent out for the past four fiscal years (FYs).

FIGURE 3.11.1, Number of Letters 16 Sent by the IRS Between FYs 2014–2017[5]

Fiscal Year	Letters Sent
2014	1,906,425
2015	1,694,674
2016	866,105
2017	458,631

This reduction in notification is a tangible cut in service to taxpayers, who will receive less communication from the IRS. Since the IRS has stopped the systemic issuance of Letter 16, the overall number of Letters 16 issued by ACS has been significantly reduced, and the annual decrease that we see now will likely decline even more. In fact, between FYs 2015 and 2017, the issuance of Letter 16 dropped approximately 73 percent.

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

2 IRS, *ACS LT 16 Notice Redesign Test Pilot Report* 3 (Sept. 27, 2017).

3 Automated Collection System (ACS) was created to provide taxpayers or their representatives with the opportunity to resolve delinquent tax obligations with a single telephone contact. Internal Revenue Manual (IRM) 5.19.5.1, *Program Scope and Objectives* (March 9, 2018).

4 IRS, *ACS LT 16 Notice Redesign Test Pilot Report* 3 (Sept. 27, 2017).

5 ACS, *Customer Service Activity Report Fiscal Years 2014–2017*; IRS, *ACS LT 16 Notice Redesign Test Pilot Report* (Sept. 27, 2017).

Recent IRS Research Illuminates the Focus of IRS Collection Correspondence

In 2017, the IRS convened a team to study how six redesigned versions of Letter 16, each with a different focus, could meet four goals:

- Increase payment compliance and account resolution;
- Increase the use of self-service tools;
- Reduce taxpayer burden; and
- Reduce IRS costs.[6]

The IRS defines taxpayer compliance as making a full payment, making a one-time partial payment, or setting up an installment agreement (IA); however, receiving full payment is the IRS's preferred outcome.[7] While overall compliance did improve for three of the redesigned notices, only one of the redesigned notices showed a statistically significant improvement in full payment over the control (current) notice (and that improvement only appeared on high dollar accounts), and one notice, the IA notice, had statistically worse full payment results.[8] Five of the redesigned notices did show a statistically significant improvement in partial payments.[9] Only the redesigned notice dedicated to informing the taxpayer about IAs led to a statistically significant improvement in IAs over the control notice.[10]

As mentioned above, one focus of the redesigned notices was to increase taxpayer use of self-service tools. If taxpayers have questions, they are first directed to online tools. In each redesigned notice, the IRS phone number is offered as a last resort on the bottom of the first page. Taxpayers are left to figure out what the correct answer is to their case, which can lead to errors and resolutions that expose taxpayers to economic harm.

The IRS also measured how much the redesigned notices lowered IRS costs by concentrating on the cost of labor to manage the resulting inbound mail and phone calls for each redesigned notice.[11] Compared to the control notice, the redesigned notices led to a decrease between 2.3 percent and 28.4 percent in IRS costs.[12] The IRS should reduce costs when possible, but that reduction should not occur at the price of taxpayer service.

Research shows that complex issues are best handled by telephone rather than self-help tools. A 2017 TAS study on taxpayer service preferences found that for simple tasks, such as obtaining tax forms, taxpayers preferred using the internet. However, for more complex tasks, such as getting an answer

6 IRS, *ACS LT 16 Notice Redesign Test Pilot Report* 2 (Sept. 27, 2017). Even though taxpayer burden is considered a goal for this research, the IRS could only reliably measure the number of taxpayers receiving the maximum failure-to-pay penalty. The metrics to evaluate this goal include: percentage of notices that resulted in approved penalty abatement or penalty abatement request, the dollar amount of penalties and interest prevented, and the number of inbound telephone or mail contact. *Id.* at 13. The study did not address aspects such as readability or quality of the correspondence content. TAS participated in this project by providing input from the taxpayer's perspective.

7 IRS, *ACS LT 16 Notice Redesign Test Pilot Report* 15 (Sept. 27, 2017).

8 *Id.* at 15–17. When high balance accounts are considered, the behavioral notice is statistically worse for full payment results. *Id.* The six redesigned test notices each focused on certain aspects to study. They were labeled accordingly: Minimalist, Color, Behavioral, Urgent, Visual, and Installment Agreement.

9 *Id.* at 18.

10 *Id.*

11 *Id.* at 23.

12 *Id.*

to a tax question, taxpayers preferred calling the IRS or visiting in person.[13] Results from the IRS's notice redesign project also show that many taxpayers want to contact the IRS by phone. Depending on the redesigned notice, there was a reduction between 12 percent and 33 percent of taxpayers contacting the IRS by phone compared to the control group.[14] However, placing the phone number in an inconspicuous place did not deter taxpayers from finding *any* way to reach the IRS by phone. *All the redesigned notices resulted in more calls to phone numbers not printed on the notice compared to the control group and four of the redesigned notices generated more inbound mail.*[15] These expenses were included in the total cost estimate of each notice. Each notice resulted in lower costs to the IRS than the control notice, but it is not clear how the IRS measured the cost of all phone calls to a number not listed on Letter 16.[16]

One of the goals of the study was to reduce taxpayer burden. However, the only metric that could be reliably measured by the study was the number of taxpayers with a maximum failure-to-pay penalty.[17] As a result, this study does not shed light on the amount of time taxpayers spent trying to solve their problem on their own, how many times they tried to contact the IRS, or if the resolution met their needs.

TAS Is Conducting a Study of Collection Notices to Observe Taxpayer Behavior

Collection notices that meet the needs of taxpayers will save IRS resources and reduce taxpayer burden. To this end, TAS will be conducting its own study to test the impact of different language and messages in IRS collection notices throughout FY 2019, testing several versions of messages to see what types of responses are elicited from taxpayers. TAS will plan to send a collection notice to an identified population of taxpayers. TAS's review will focus on four criteria:

- Did the taxpayer respond?
- How did the taxpayer respond?
- What did the taxpayer tell us in that response?
- What outcome did the taxpayer receive?

Furthermore, TAS will retain the services of a "professor in residence" to assist with graphic design options based on an understanding of how people absorb information. Unlike the recent IRS research discussed above, the TAS research study will focus on comparing and contrasting the behavioral response obtained from each letter and what the desired behavior should be, based on each taxpayer's facts and circumstances. Last, TAS will explore how communicating at different stages of the collection process impacts the four criteria for success.

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

14 IRS, *ACS LT 16 Notice Redesign Test Pilot Report* 22–23 (Sept. 27, 2017).

15 *Id.* at 23.

16 *Id.*

17 *Id.* at 24.

CONCLUSION

Currently, IRS collection notices focus on bringing in as much revenue as possible at the lowest cost. Raising revenue and reducing costs should be goals for the IRS. However, these goals should not be achieved at the price of harming taxpayers.

The IRS should try to communicate with taxpayers with outstanding tax debts so that they understand their rights as taxpayers and their collection alternatives. The content, timing, and modality of communications, and the way that information is presented, all affect a taxpayer's response, including whether the IRS receives the information it needs to get to the correct result for both the IRS and the taxpayer. To achieve this correct result, IRS studies should explore the behavior, needs, and preferences of particular taxpayer populations rather than trying to drive taxpayer behavior in ways that are merely convenient and cheap for the IRS, but which may not meet taxpayer needs.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Conduct a study of collection notices to observe taxpayer behavior and make recommendations to improve notices.

Area of Focus #12 IRS Policies Are Limiting Taxpayers' Access to Quality Appeals

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to a Fair and Just Tax System*

DISCUSSION

A robust administrative dispute resolution program represents an indispensable element of effective tax administration. To the extent successful, it enhances voluntary compliance and inspires public confidence in the integrity and efficiency of the IRS.[2] A fundamental aspect of the IRS Office of Appeals' (Appeals') mission is to reach mutually acceptable settlements with taxpayers so that the greatest number of cases can be closed without resort to litigation.[3] Appeals represents taxpayers' last, and sometimes best, opportunity to negotiate an administrative resolution of their cases. As previously discussed by the National Taxpayer Advocate, however, this role goes unserved and this mission unmet any time taxpayers perceive that their access to a quality appeal has been curtailed.[4]

Accordingly, the National Taxpayer Advocate remains concerned that:

- Appeals continues to limit the availability and geographic proximity of in-person conferences;
- Some Appeals Technical Employees (ATEs) are going through the motions of furnishing appeals in form, while failing to provide quality, substantive case reviews;[5]
- IRS Office of Chief Counsel (Counsel) and Compliance personnel can be invited to participate in Appeals proceedings against the wishes of taxpayers; and
- IRS Counsel can rely on the vaguely defined concept of sound tax administration to deny taxpayers the right to an appeal.[6]

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

2 Internal Revenue Manual (IRM) 8.1.1.1(1), *Accomplishing the Appeals Mission* (Oct. 1, 2016).

3 IRM 8.1.1.1(2), *Accomplishing the Appeals Mission* (Oct. 1, 2016).

4 National Taxpayer Advocate 2017 Annual Report to Congress (Most Serious Problem #17: *The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*) 195–202, (Most Serious Problem #18: *The IRS's Decision to Expand the Participation of Counsel and Compliance Personnel in Appeals Conferences Alters the Nature of Those Conferences and Will Likely Reduce the Number of Agreed Case Resolutions*) 203–210; National Taxpayer Advocate 2016 Annual Report to Congress 203–210; National Taxpayer Advocate 2015 Annual Report to Congress (Most Serious Problem #8: *The Appeals Judicial Approach and Culture Project Is Reducing the Quality and Extent of Substantive Administrative Appeals Available to Taxpayers*) 82–90.

5 Appeals Technical Employee is an umbrella term used to refer to any Appeals employee who is assigned a case for settlement consideration. IRM Exhibit 8.1.1-1, *Common Terms Used In Appeals* (Oct. 1, 2016). *See also* IRM 8.1.3.3(3), *Appeals Employees Involved in Settling and Processing Appeals Cases* (Oct. 1, 2012).

6 As discussed in more detail below, Counsel has the authority to bypass Appeals while a case is still within IRS jurisdiction (see IRM 33.3.6, *Designating a Case for Litigation* (Aug. 11, 2004)) or to prevent a case from being returned to Appeals once it has gone to tax court (see Revenue Procedure 2016-22, 3.03).

Appeals Continues to Limit the Availability and Geographic Proximity of In-Person Conferences

In October 2016, Appeals adopted a default rule favoring telephone conferences and allowing in-person conferences only under certain defined circumstances.[7] In response to objections from a range of stakeholders and the National Taxpayer Advocate, Appeals reinstated its prior policy of allowing in-person conferences in field cases.[8] The National Taxpayer Advocate commends Appeals for responding to stakeholder concerns, but continues to believe that in-person conferences should also be available with respect to campus cases and those who feel their issues will benefit from being heard by an Appeals employee who is geographically proximate to the taxpayer.[9]

The outcry resulting from Appeals' October 2016 guidance points out the importance taxpayers and practitioners place on in-person conferences as a vehicle for the effective and efficient presentation of cases, especially those involving complex factual or legal issues or requiring ATEs to assess the credibility of witnesses. Toward that end, Appeals should not only expand the formal availability of in-person conferences, but also should increase the physical accessibility and geographic proximity of those conferences. A greater presence within the taxpayer community would allow ATEs to better understand and address the local economic and social issues faced by the taxpayers who come before them.[10]

The ability of taxpayers to receive a thorough, fair, and unbiased case review at Appeals is essential to the successful functioning of the voluntary tax compliance system.

Appeals could, by leveraging attrition from the campuses, increase staffing in local field offices with ATEs of various grades and designations such that the office could cover cases ranging from Earned Income Tax Credit to itemized deductions to Schedule C controversies.[11] This step would not only expand Appeals' geographic footprint and facilitate the accessibility of in-person appeals to taxpayers, but would allow Appeals to implement the call for an ATE permanently located in every state, the District of Columbia, and Puerto Rico currently proposed in the Grassley-Thune bill, a policy which the National Taxpayer Advocate has long recommended.[12]

7 IRM 8.6.1.4.1, *Conference Practice* (Oct. 1, 2016).

8 National Taxpayer Advocate 2017 Annual Report to Congress (Most Serious Problem #17: *The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*) 195–202; IRS, Interim Guidance Memorandum (IGM) AP-08-1017-0017, *Appeals Conference Procedures*, (Oct. 13, 2017).

9 Over the last ten to 15 years, the IRS has gradually consolidated many of its Compliance and Appeals operations away from geographically dispersed field offices and into large campus locations. Treasury Inspector General for Tax Administration (TIGTA) Audit Ref. No. 2010-10-021, *Appeals Has Made Considerable Progress in its Campus Centralization Efforts, But Some Opportunities Exist for Improvement* (Feb. 19, 2010).

10 National Taxpayer Advocate 2017 Annual Report to Congress (Most Serious Problem #17: *The IRS Office of Appeals Imposes Unreasonable Restrictions on In-Person Conferences for Campus Cases, Even As It Is Making Such Conferences More Available for Field Cases*) 198.

11 As attrition occurs in campus locations, new hires and more senior personnel who seek such transfers can gradually be distributed among local field offices. Those cases that are assigned to campus locations should, however, be made eligible for a transfer to the field to accommodate an in-person appeal. Alternatively, Appeals could find a way to provide in-person Appeals at campus locations.

12 Taxpayer Bill of Rights Enhancement Act of 2017, S. 1793, 115th Congress. National Taxpayer Advocate 2014 Annual Report to Congress (Most Serious Problem #4: *The IRS Lacks a Permanent Appeals Presence in 12 States and Puerto Rico, Thereby Making It Difficult for Some Taxpayers to Obtain Timely and Equitable Face-to-Face Hearings with an Appeals Officer or Settlement Officer in Each State*) 46–54; National Taxpayer Advocate 2014 Annual Report to Congress (Legislative Recommendation #2: *Require that Appeals Have At Least One Appeals Officer and Settlement Officer Located and Permanently Available within Every State, the District of Columbia, and Puerto Rico*) 311–314.

Some Appeals Technical Employees Are Going Through the Motions of Furnishing Appeals in Form, While Failing to Provide Quality, Substantive Case Reviews

Beyond physical accessibility and geographic proximity, Appeals must perpetuate a culture of providing high-quality dispute resolution. The National Taxpayer Advocate is aware of several situations in which ATEs have conducted an appeal in name only, in that they complied with most of the technical requirements for such a proceeding, but displayed a reluctance to carefully consider the factual and legal arguments presented to them. For example, some ATEs have attempted to treat scheduling calls and other ministerial interactions as the basis for precipitously closing Appeals cases.[13] Likewise, the Taxpayer Advocate Service has received reports from tax practitioners of situations in which ATEs indicated that they had already formed an IRS-friendly view of the case that was unlikely to change, regardless of any additional material submitted.[14]

The ability of taxpayers to receive a thorough, fair, and unbiased case review at Appeals is essential to the successful functioning of the voluntary tax compliance system. Generally, people who feel they have been treated in a procedurally fair manner by an organization are more likely to trust that organization and are more willing to accept even a negative outcome.[15] Further, "people value respectful treatment by authorities and view those authorities that treat them with respect as more entitled to be obeyed."[16] Conversely, taxpayers who do not believe they have received a quality appeal may be more likely to take their case to court and could be less compliant in the future.[17]

Counsel and Compliance Can Be Invited to Participate in Appeals Proceedings Against the Wishes of Taxpayers

Also in October 2016, Appeals revised its Internal Revenue Manual guidance to encourage the inclusion of Counsel and Compliance in conferences.[18] This emphasis generated significant concern within the tax practitioner community and on the part of the National Taxpayer Advocate.[19] Among other things, stakeholders expressed fears that the inclusion of Counsel and Compliance in Appeals conferences would fundamentally change the nature of those conferences and would jeopardize Appeals' independence, both real and perceived. The National Taxpayer Advocate further warned that adding Counsel and Compliance to Appeals conferences could generate additional costs for the government and taxpayers in the form of fewer case resolutions, additional litigation, and reduced long-term compliance.[20]

13 TAS conference call with practitioners associated with the American Bar Association (ABA) (Jan. 25, 2018).

14 TAS conference call with practitioners associated with the ABA (Apr. 28, 2016).

15 Melinda Jone and Andrew J. Maples, *Mediation as an Alternative Option in Australia's Tax Disputes Resolution Procedures*, 27 Austl. Tax F., 525, 531 (2012).

16 *Id*.

17 National Taxpayer Advocate 2017 Annual Report to Congress (Most Serious Problem #18: *The IRS's Decision to Expand the Participation of Counsel and Compliance Personnel in Appeals Conferences Alters the Nature of Those Conferences and Will Likely Reduce the Number of Agreed Case Resolutions*) 208–09; National Taxpayer Advocate 2016 Annual Report to Congress (Most Serious Problem #15: *The IRS Is Failing to Effectively Use ADR As a Means of Achieving Mutually Beneficial Outcomes for Taxpayers and the Government*) 214.

18 IRM 8.6.1.4.4, *Participation in Conferences by IRS Employees* (Oct. 1, 2016).

19 National Taxpayer Advocate 2017 Annual Report to Congress (Most Serious Problem #18: *The IRS's Decision to Expand the Participation of Counsel and Compliance Personnel in Appeals Conferences Alters the Nature of Those Conferences and Will Likely Reduce the Number of Agreed Case Resolutions*) 203–210; *IRS Reform: Resolving Taxpayer Disputes: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 225th Cong. (2017) (statement of Chastity K. Wilson, Am. Inst. Cert. Pub. Accts.).

20 National Taxpayer Advocate 2017 Annual Report to Congress (Most Serious Problem #18: *The IRS's Decision to Expand the Participation of Counsel and Compliance Personnel in Appeals Conferences Alters the Nature of Those Conferences and Will Likely Reduce the Number of Agreed Case Resolutions*) 203–210.

Subsequently, Appeals clarified that, although Counsel and Compliance would be involved in Appeals proceedings, their participation would end prior to the commencement of settlement negotiations.[21] Nevertheless, if Counsel and Compliance are still allowed an additional opportunity for advocacy, the dynamic of the Appeals conference is changed, and the ATE's role as independent decisionmaker is jeopardized. Accordingly, the increased involvement of Counsel and Compliance in the Appeals process continues to trouble both tax practitioners and the National Taxpayer Advocate, particularly given that Appeals has so far been unwilling to condition participation on the consent of taxpayers.

In its response to our recommendations in the 2017 Annual Report to Congress, Appeals emphasizes that this initiative is currently being implemented only as part of "a limited pilot focused on a very small population of large, complex cases involving well-represented taxpayers."[22] Mandating the inclusion of Counsel and Compliance, however, even as part of a pilot in large cases where taxpayers may be well represented, fundamentally disregards the very purpose of the Appeals conference and jeopardizes Appeals' long-term effectiveness. As a result, Appeals should consult with the National Taxpayer Advocate, tax practitioner groups, and other stakeholders when evaluating the results of the pilot and determining what subsequent measures, if any, to adopt.

IRS Counsel Can Rely on the Vaguely Defined Concept of Sound Tax Administration to Deny Taxpayers the Right to an Appeal

IRS Counsel has authority to bar cases from Appeals' consideration if, in Counsel's view, the loss of this right would be "in the interest of sound tax administration." For example, under the terms of Revenue Procedure 2016-22, Counsel can prevent a case docketed in the U.S. Tax Court from being returned to Appeals for settlement negotiations by making such a determination, which, once made, cannot be appealed either within the IRS or to the Tax Court.[23] This step is intended to be taken primarily with respect to cases possessing a significant issue common to other cases in litigation for which it is important that the IRS maintain a consistent litigating position.[24] Few actual parameters exist, however, to circumscribe this authority, and, although it requires signoff from Counsel executives, it is potentially subject to overzealous application.[25]

Likewise, IRS Counsel can accelerate a case or category of cases from Compliance directly past Appeals and into court by designating such cases for litigation, also on the basis of sound tax administration.[26] From a broad perspective, this practice may have some justification where cases present virtually identical factual and legal issues, and where the IRS is convinced that it has no hazards of litigation. For example, industry-wide or tax shelter issues may, in limited circumstances, be appropriate for this type of resolution.[27]

21 Nina Olson, *Appeals Should Facilitate Mutual Respect and Trust by Allowing Taxpayers a Choice in the Expanded Participation of Counsel and Compliance in Appeals Conferences*, NTA Blog (June 21, 2017), https://taxpayeradvocate.irs.gov/news/appeals-should-facilitate-mutual-respect-and-trust-by-allowing-taxpayers-a-choice-in-the-expanded-participation-of-counsel-and-compliance-in-appeals-conferences.

22 National Taxpayer Advocate FY 2019 Objectives Report to Congress vol. 2, *infra*.

23 Rev. Proc. 2016-22, 3.03.

24 *Id.*

25 *Id.* Further, Facebook is currently challenging Counsel's use of this power in the District Court for the Northern District of California on the grounds that it violated the taxpayer's *right to appeal an IRS decision in an independent forum* of IRC § 7803(a)(3)(E). *Facebook, Inc. & Subsidiaries v. Commissioner* (Dkt #021959-16).

26 IRM 33.3.6, *Designating a Case for Litigation* (Aug. 11, 2004).

27 *See* IRM 33.3.6.1(1), *Purpose and Effect of Designating a Case for Litigation* (Aug. 11, 2004).

Nevertheless, the National Taxpayer Advocate has recently received complaints regarding this practice and such designations have been occurring with increased frequency.[28] In all but the most unusual circumstances, taxpayers should be allowed to exercise their *right to appeal an IRS decision in an independent forum*,[29] and, at a minimum, be able to argue that their cases are distinguishable from another group of cases being judicially challenged by the IRS. The right to an appeal protects the integrity of the voluntary tax compliance system and preserves the resources of both taxpayers and the IRS. As a result, the National Taxpayer Advocate urges the IRS to exercise great restraint in its use of this non-statutory power to override one of the ten fundamental taxpayer rights enacted by Congress.

In a bipartisan vote, the House of Representatives recently passed major IRS reform legislation that creates a statutory office of Appeals and specifies that all taxpayers will generally have the right to an appeal.[30] As part of this legislation, the House requires that the IRS Commissioner provide taxpayers with a precise and detailed description of why a request for an appeal was denied due to sound tax administration or any similar basis. Likewise, the Commissioner must furnish taxpayers with the procedures for protesting to the Chief Counsel the decision to bar an appeal in these circumstances. This legislation recognizes the importance of an independent Appeals process, which should not be threatened by indiscriminate use of the sound tax administration mechanism.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Encourage and work with Appeals to expand its geographic footprint;
- Advocate for taxpayers who do not receive a high-quality independent appeal by maintaining close contact with the tax practitioner community, entering into issue- and case-specific dialogues with Appeals, and issuing taxpayer assistance orders where appropriate;
- Monitor the impact of Appeals' emphasis on including Counsel and Compliance in conferences; and
- Determine the extent to which Counsel is designating cases for litigation based on the doctrine of sound tax administration, and whether this designation is limited to appropriate cases.

28 Marie Sapirie, *The Increase in Cases Designated for Litigation*, 150 Tax Notes 1223 (Mar. 14, 2016).
29 IRC § 7803(a)(3)(E).
30 Taxpayer First Act, H.R. 5444, 115th Cong. § 101 (2018).

Efforts to Improve Taxpayer Advocacy

As the voice of the taxpayer within the IRS, TAS works with taxpayers, external stakeholders, and the IRS to advocate for implementing processes and procedures and administering the tax code in a manner that reduces taxpayer burden and protects taxpayer rights. TAS continually strives to refine our advocacy efforts to ensure that we understand the taxpayer experience and can identify areas for improvement for both TAS and the IRS. Among many strategies to enhance our advocacy efforts this year, TAS increased outreach; provided empathy training to leaders and employees; participated in the secure digital messaging pilot; and improved our website. At the National Tax Forums, we made tax presentations, provided case resolution rooms for tax practitioners with clients who were experiencing unresolved matters with the IRS, and provided focus group discussions on tax matters important to tax practitioners. TAS has also expanded the Centralized Case Intake (CCI) function and opened new TAS offices, with plans to open more between now and the end of fiscal year (FY) 2019. Finally, the National Taxpayer Advocate is currently planning the fourth International Conference on Taxpayer Rights in May 2019.

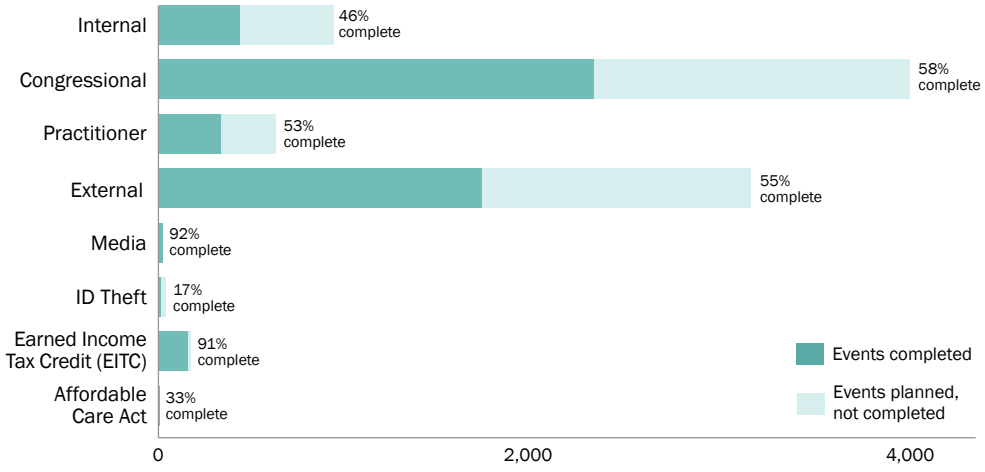
TAS CONTINUES TO EXPAND COMMUNITY OUTREACH

Local Taxpayer Advocates (LTAs) represent the National Taxpayer Advocate at the community level and are responsible for completing outreach events to inform internal and external stakeholders about the TAS mission and services. TAS outreach plays a critical role in building relationships with stakeholders and creating a presence in local communities.

Through March 2018, TAS offices scheduled over 5,900 planned outreach activities for FY 2018, exceeding FY 2017's efforts.[1] Outreach in FY 2019 will focus on raising awareness of emerging tax law issues from tax reform, identifying local initiatives, strengthening congressional relationships, reaching external audiences, and educating IRS employees on taxpayer rights.

FIGURE 4.1

FY 2018 Planned Outreach Completed Through March 31 for Events Through September 30, 2018



1 Data obtained from Taxpayer Advocate Service Outreach Hub (Mar. 31, 2018).

Successful Problem Solving Days Outreach Events

Problem Solving Day (PSD) events provide LTAs and Case Advocates (CAs) with the ability to meet in person with taxpayers and their representatives to address unresolved IRS issues. CAs are prepared to assist taxpayers and resolve issues on the spot, if possible.

After launching the initiative mid-FY 2017, LTAs conducted PSD events throughout FY 2018, holding at least one event per quarter in their area. To date, TAS offices have completed over 250 events, assisting over 3,000 taxpayers and opening 312 cases to resolve account issues.[2]

LTAs seek out PSD opportunities in their communities either by partnering with existing events or by creating new ones. Typical events might include annual practitioner continuing education sessions or congressional resource fairs that bring together groups of taxpayers or those who represent taxpayers before the IRS. In FY 2018, TAS began exploring large-scale opportunities by partnering with the American Bar Association and Low Income Taxpayer Clinics to target specific communities with significant senior citizen populations.

LTAs will promote the problem solving events to raise awareness of the opportunity for taxpayers to meet face-to-face with TAS employees to receive assistance. These face-to-face interactions will also provide TAS employees the chance to educate taxpayers and their practitioners about their rights when dealing with the IRS.

Focus for Fiscal Year 2019

In FY 2019, TAS will:

- Work closely with outreach partners to expand the number of PSD events throughout the country;
- Strengthen relationships with congressional offices through quarterly contacts by LTAs;
- Conduct outreach to educate and learn about topics taxpayers find confusing and provide guidance; and
- Analyze Systemic Advocacy Management System submissions to identify sources of taxpayer concern.

Focusing on Local Issues Helps Individualize Taxpayer Service

The unique structure of TAS, with at least one local office in every state, allows LTAs to gain knowledge about the taxpayers and communities they serve. The LTAs focus on identifying issues that impact the local population and crafting outreach specific to their communities. LTAs learn about local issues through congressional cases, local PSDs, community events, and other community-specific sources such as local tax professional organizations. Customizing TAS outreach results in meeting the needs of individual communities. For example, TAS offices frequently participate in Veteran Stand Down events, visit local shelters for victims of domestic violence, reach out to immigrant populations, or partner with local agencies based on the needs of their local populations.

2 Data obtained from Taxpayer Advocate Service Outreach Hub (Mar. 31, 2018).

Focus for Fiscal Year 2019

In FY 2019, TAS will:

- Ensure local TAS offices schedule a "Problem Solving Day" event each quarter;
- Identify new organizations and populations for community outreach opportunities;
- Educate and communicate on tax reform as appropriate;
- Raise awareness of and advocate for taxpayer rights;
- Advocate for taxpayers subject to the IRS Private Debt Collection program; and
- Promote the National Taxpayer Advocate's Blog through LTAs' community networks.

TAS Brings Empathy in Action to Internal Revenue Manual Guidance

TAS seeks to provide its employees with up-to-date guidance to help them in their advocacy efforts. In our role as advocates, TAS employees must consider whether IRS actions impact taxpayer rights and put themselves in the shoes of the taxpayer to understand the taxpayer's complete situation. This year, TAS provided Case Advocacy employees with training focused on using empathy to assist taxpayers. The Empathy in Action initiative began in FY 2018 by training Case Advocacy leadership, which then personally delivered the training to their employees so they could connect better with taxpayers and understand the unique challenges they face, while learning to better understand taxpayers' emotional states.

Additionally, TAS released interim guidance memoranda (IGM) to assist employees who are advocating for taxpayers the IRS has assigned to a Private Collection Agency (PCA) and taxpayers facing passport revocation or denial.[3] While both IGMs provide procedural instructions necessary to assist taxpayers, more importantly, they seek to increase employee's awareness of the taxpayer's situation and to show empathy when presenting solutions. TAS is expanding its Empathy in Action initiative to include updating its day-to-day operational guidance to include reminders of how even mundane tasks, such as transferring a case to another office, can impact our customers, and encourage employees to consider how an action will impact a taxpayer before acting.

Focus for Fiscal Year 2019

In FY 2019, TAS will:

- Update Internal Revenue Manual (IRM) 13, *Taxpayer Advocate Case Procedures*, to:
  - Emphasize employees' responsibility to actively listen to taxpayer situations and take actions designed to empathize with taxpayers suffering from hardships;
  - Continue to ensure the IRM is providing current guidance to protect taxpayers under the Taxpayer Bill of Rights as employees work to resolve taxpayer issues;
- Train employees to identify how to expand advocacy during the revisions of the IRM including language to assist taxpayers; and
- Analyze the impact IRS implementation of new tax legislation has on taxpayer rights and burden and issue interim guidance to help employees advocate for taxpayers, as appropriate.

3 Interim Guidance Memorandum (IGM) TAS-13-1217-006, *Interim Guidance on Advocating for Taxpayers Whose Module(s) the IRS Assigned to a Private Collection Agency* (Dec. 27, 2017) and IGM TAS-13-0418-0001, *Advocating for Taxpayers Facing Passport Revocation/Denial* (Apr. 26, 2018).

TAS SEEKS TO ENSURE TAXPAYERS HAVE ACCESS TO A LOCAL TAS OFFICE

TAS Will Evaluate and Expand Its Local Presence to Best Meet Taxpayer Needs

Under Internal Revenue Code (IRC) § 7803(c)(2)(D) the National Taxpayer Advocate is required to maintain at least one office in each state. The National Taxpayer Advocate and her staff are evaluating locations for additional TAS offices to meet the needs of underserved taxpayers. The IRS continues to shrink its local presence by closing Taxpayer Assistance Centers and reducing the number of its field compliance offices and personnel, rendering it even more important that TAS provide localized service. TAS uses case receipts and demographic data to identify underserved areas. Based on this analysis, TAS is working to open new offices in 2018 in Tallahassee, Florida; Charlotte, North Carolina; and El Paso, Texas. Additionally, TAS is planning to open new offices in Trenton, New Jersey; Grand Rapids, Michigan; San Antonio, Texas; Columbus, Ohio; Spokane, Washington; Mobile, Alabama; and Savannah, Georgia, as budget and space permit.

In addition to evaluating potential new offices, TAS is monitoring whether current staffing distribution meets the needs of taxpayers. While we reported last year that our inability to track calls made directly to our local offices impacted our ability to see the complete volume of work in each office, we have identified a solution to capture this information going forward. TAS is developing a Contact Record screen in our case management system. The Contact Record will gather information on all taxpayer contacts with our offices, including those contacts that do not result in a TAS case. This data, coupled with case-related data, will provide a more complete picture of the staffing required to meet taxpayer need.

Focus for Fiscal Year 2019

In FY 2019, TAS will:

- Analyze case receipts and taxpayer geographic data to identify locations that need TAS assistance but do not have easy access to a local office;
- Implement a Contact Record screen to track call volumes to local offices; and
- Use the data collected from the contact record to assist in evaluating the size of the existing TAS offices to ensure they are accurately sized to meet the demands of the local taxpayers.

TAS EXPANDS ITS CENTRALIZED CASE INTAKE STRATEGY

Under the TAS Intake Strategy, all intake advocates (IAs) conduct in-depth interviews with taxpayers to determine the correct disposition of their issue(s). They assist taxpayers with self-help options, take actions where possible to resolve the issue upfront, create cases after validating the taxpayer meets TAS criteria, or refer the taxpayer to the appropriate IRS Division for assistance. The Intake Strategy includes the CCI function, which consists of groups of IAs located throughout the country. IRS employees who handle taxpayer calls from the National Taxpayer Advocate toll-free line transfer calls they believe meet TAS criteria directly to CCI sites, providing the taxpayer immediate access to a TAS employee.

The implementation of CCI has resulted in the resolution of 35 percent of taxpayer issues at first contact without the need to create a case that would otherwise require additional work by a CA through the second quarter of 2018.[4] The expansion initiative includes TAS IAs taking calls directly from the

4 TAS, *Business Performance Review (BPR)*, 2nd Quarter Fiscal Year 2018.

IRS 1040 toll-free line. The expansion will result in increased resolution of taxpayer issues at first contact, allowing CAs to focus on analyzing and resolving more complex taxpayer issues. Taxpayers seeking TAS assistance will be directed toward self-help when appropriate or will have an in-depth discussion of the issue so that intake advocates can explain to taxpayers how TAS will work with them through the process until their issue has been resolved. They will prepare taxpayers for what information they may need to supply when the CA contacts them once they have analyzed the account.

Focus for Fiscal Year 2019

In FY 2019, TAS will:

- Expand the CCI function to accept the direct transfer of 1040 Toll Free line calls, increasing the upfront service to our taxpayers;
- Complete the Infrastructure Upgrade Project to replace the ASPECT telephone system; and
- Complete development of a system change in our inventory system to track all calls regardless of whether or not they become a case.

COMMUNICATIONS, STAKEHOLDER LIAISON AND ONLINE SERVICES INITIATIVES IMPROVE TAXPAYER ADVOCACY AND SERVICE

Taxpayer Digital Communication Pilot

TAS will restart the Taxpayer Digital Communication (TDC) pilot it began in April 2017. The Secure Messaging system introduces a new communication alternative through which taxpayers and CAs can communicate and share documents via a secure web-based portal. The 2017 pilot ran for six months with over 700 invitations to participate[5] made to specific taxpayers located in four cities (Cleveland, Ohio; Dallas, Texas; Nashville, Tennessee; and New Orleans, Louisiana), with specific types of Earned Income Credit or Levy cases only.

Commentary and preliminary data received confirmed TAS's hypothesis regarding the inability of unrepresented, low income taxpayers to utilize digital systems such as this. While hundreds of TAS taxpayers were offered the option of using the TDC system, fewer than a dozen setup or used an account. The results underscored the importance of having an omnichannel universe available to all taxpayers. Our preliminary data highlights the need to explore different approaches for authenticating taxpayers' access to IRS digital services. Varied approaches to authenticating a taxpayer's identification are particularly important for taxpayers sending information or documents, but not necessarily for communicating via secure messaging.

At the six-month mark the pilot was put on hold, due to IRS suspending authentication because of contract issues. At that point, TAS evaluated some early information, which included employee comments, qualifying taxpayers' inability to pass the authentication step, and other data. Based on that information, TAS decided to restart the effort in June 2018 for another six months in the original four TAS offices, but now will allow acceptance of a broader range of issues into the pilot.

To determine these additional issues, TAS created a team of non-bargaining unit and bargaining unit employees to explore expansion options. A team of TAS employees composed of LTAs, CAs, and

5 National Taxpayer Advocate 2017 Annual Report to Congress 43 (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*).

Analysts vetted all case types. The team's recommendations were presented to TAS leadership for final decision. We expect that expanding the types of cases the pilot accepts will capture a wider audience of taxpayers who will be able to authenticate and utilize the system in communicating with TAS to resolve their tax issues.

TAS's Website Serves as a Source for Taxpayers to Easily Find Information About Common Tax Issues

TAS's website, www.TaxpayerAdvocate.irs.gov, is a compilation of plain language, easy-to-understand tax help for many common tax issues. As we move into FY 2019, we will focus much of our content on new tax reform provisions, educating taxpayers on how the changes impact them in filing season 2018 and beyond.

Focus for Fiscal Year 2019

In FY 2019, TAS will:

- Collect data from the TDC pilot to assess if and how taxpayers and TAS employees can use the system to better resolve the issues with electronic document sharing;
- Assess the effectiveness of the TDC system in assisting TAS and its customers in working through their tax issues; and
- Continue to enhance web presence with "get help" information on tax issues, with a specific focus on educating and raising awareness of the new tax reforms to be implemented with the 2018 tax returns.

TAS TRAINS EMPLOYEES AND DEVELOPS LEADERS TO IMPROVE ADVOCACY, PROVIDE BETTER SERVICE TO TAXPAYERS, AND PROTECT TAXPAYER RIGHTS

TAS trains its employees on a wide variety of subjects to ensure employees have up-to-date technical knowledge about tax law and procedures. This allows TAS to advocate effectively for taxpayers and to protect their rights. The National Taxpayer Advocate led the effort in FY 2018 to emphasize the information contained in her Annual Reports to Congress, particularly the Most Litigated Issues (MLIs). The MLIs identify the top ten issues taxpayers litigate in the court system and analyze trends in litigation. This provides employees training on the most prevalent tax issues litigated in federal courts and provides strategies to assist and advocate for taxpayers in resolving their issues before resorting to the court system.

Topics covered include appeals from Collection Due Process, penalties such as accuracy-related penalties, failure-to-file and failure-to-pay penalties, definition of gross income, and discussion of trade or business expenses. We also trained our employees on how to effectively advocate for taxpayers who had tax modules assigned to PCAs.

During FY 2018, TAS re-introduced our successful symposium-style training format, which dedicates specific weeks for our employees to go "offline" and focus on concentrated training without distractions. In preparation for this, TAS canvassed employees for their training needs and developed over 40 courses[6] offered through a variety of delivery options, including live virtual sessions and studio recordings enhanced with local onsite facilitation and case study discussion.

6 Information received from TAS Director of Employee Support and Development (Feb. 21, 2018).

In FY 2019, TAS will develop training on tax year 2018 tax law changes to prepare for the 2019 filing season. We will train our employees on issues related to the Tax Cuts and Jobs Act of 2017,[7] with a special emphasis on identifying and elevating concerns about areas of the law causing confusion for taxpayers. TAS will continue to develop courses based on MLIs from our Annual Reports to Congress.[8] Courses under development include topics such as liens, innocent spouse relief, charitable contributions, and military issues. We will also emphasize low-cost on-demand training by using Lynda.com, a leading online learning platform that helps users learn business, software, technology, and creative skills to enhance their personal skills and achieve business goals.

TAS will continue preparing its employees for leadership positions through Leadership 365, an onboarding, orientation, and training program for new TAS leaders in their first year with TAS. It provides a consistent approach for welcoming, educating, and acclimating new TAS leaders. TAS is launching a Leadership Development Program to develop intake and lead intake advocate employees. The initiative is designed to address a gap in our organization's succession planning by helping participants develop their leadership skills and preparing them for a future leadership role. TAS is also implementing a mock interview team that will enable employees to request a mock interview from a trained team member and receive constructive recommendations to improve their interview skills.

Focus for Fiscal Year 2019

In FY 2019, TAS will:

- Generate training opportunities from the wealth of technical knowledge contained in our Annual Reports to Congress and use this technical and legal expertise to advance advocacy for our taxpayers;
- Train employees on aspects of the Tax Cut and Jobs Act of 2017 to ensure TAS employees are equipped to help taxpayers as they file their 2018 returns;
- Explore innovative low-cost virtual and local face-to-face training methods to maximize student interaction while minimizing costs;
- Look for new ways to develop leaders to offset retirement attrition, such as strengthening our leadership programs and training for all managers and implementing the newly created Leadership Development Program for intake and lead intake advocate positions; and
- Incorporate ways to promote the protection of taxpayers' rights in all our training and development efforts.

Advocacy Community Networks

In FY 2019, the National Taxpayer Advocate will focus on leveraging the knowledge base of the diverse TAS workforce by creating Advocacy Community Networks (ACNs). Each ACN will focus on a specific advocacy topic, teaming subject matter experts and LTAs from across TAS to identify and research emerging advocacy issues while cooperatively fostering practical areas of employee expertise. The ACNs will brief TAS leadership and provide recommendations to proactively address the issues identified. Additionally, ACNs will act on recommendations approved by TAS leadership to create guidance for TAS to add to its website, www.TaxpayerAdvocate.irs.gov.

7 Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97.

8 National Taxpayer Advocate 2017 Annual Report to Congress 345 (Most Litigated Issues: *Introduction*).

Focus for Fiscal Year 2019

In 2019 TAS will:

- Create the ACNs;
- Engage TAS leadership in network groups allowing them to provide valuable viewpoints on emerging issues; and
- As new tax legislation is enacted or new administrative procedures are implemented, ACNs will identify guidance and information to add to the TAS website.

TAS WORKS TO RESOLVE HIRING BACKLOGS DESPITE HUMAN CAPITAL OFFICE DELAYS

TAS hiring is one of our greatest organizational challenges. All IRS and TAS hiring is centralized under the Human Capital Office (HCO). Staff reductions and budget cuts have reduced the ability of HCO's Employment Office to accomplish necessary hiring. HCO implemented a process to prioritize all hiring; however, hiring for more visible projects, such as filing season and implementation of the Tax Cuts & Jobs Act, continues to overshadow hiring for smaller organizations, such as TAS, hindering the ability to fill critical vacant positions.

To alleviate the problem in the short term, TAS detailed two staff members to HCO to work TAS specific hiring packages full time to address the backlog. We recently hired two additional staff to also work TAS hiring packages. The IRS acquired resources (details from other federal agencies and Treasury's Administrative Resource Center) externally to help address the backlog.

TAS held discussions with HCO leadership and assumed responsibility for processing its own hiring actions. TAS has also drafted interim guidance to assume responsibility for most TAS human resource-related activities. This is in line with the National Taxpayer Advocate's statutory authority in IRC § 7803 (c)(2)(C)(i) & (D)(i), which gives the National Taxpayer Advocate the authority to take personnel actions with respect to any employee of any local office.

Focus for Fiscal Year 2019

In FY 2019, TAS will:

- Continue to process its own hiring actions; and
- Finalize interim guidance and an IRM on TAS personnel policies.

THE FOURTH INTERNATIONAL CONFERENCE ON TAXPAYER RIGHTS WILL HIGHLIGHT GOOD GOVERNANCE AND REMEDIES

On May 3-4, 2018, the National Taxpayer Advocate convened the third International Conference on Taxpayer Rights, hosted by the International Bureau of Fiscal Documentation (IBFD) in Amsterdam, Netherlands. The conference has seen an increase from 23 countries represented the first year to 43 countries represented in its third year.[9] This year's conference was at capacity with 160 government officials, scholars, and practitioners from around the world gathering to explore how taxpayer rights

9 International Bureau of Fiscal Documentation Report (Apr. 27, 2018).

globally serve as the foundation for effective tax administration. For two days, eight panels discussed topics that included:[10]

- *Perspectives on Taxpayer Rights: A Multidisciplinary Approach;*
- *Preventing Disputes: Early Warnings and Intervention, and Early Resolution;*
- *Taxpayer Protections in Cross-Border Taxation;*
- *Penalties: Theory and Administration;*
- *Taxpayer Access to Appeals and Mediation;* and
- *Good Governance and Remedies: Taxpayer Rights in Application*.

The National Taxpayer Advocate is currently planning the fourth International Conference on Taxpayer Rights for May 23-24, 2019 in Minneapolis, Minnesota, hosted by the University of Minnesota Law School, and sponsored by Tax Analysts and IBFD.

Focus for Fiscal Year 2019

In FY 2019, the National Taxpayer Advocate will:

- Plan and convene the fourth International Conference on Taxpayer Rights in May 2019.

ADVOCATING FOR TAXPAYERS BY IMPROVING IRS GUIDANCE AND COMMUNICATIONS

Improve Taxpayer Rights and Reduce Taxpayer Burden

Systemic Advocacy works with subject matter experts throughout TAS to ensure that changes to the IRM and other external documents such as forms, letters, and publications are technically, legally, and procedurally accurate and do not create undue taxpayer burden or infringe upon taxpayer rights. TAS negotiates changes to the IRM to protect taxpayer rights and works with the IRS to mitigate undue burdens imposed by some procedures, policies, or authorities. In light of the recent changes to the tax law, this process will be of heightened importance as TAS reviews copious forms, publications, and guidance related to the new law to ensure the protection of taxpayer rights in the implementation of the law.

TAS continues to advocate for guidance in the IRM on how to clear correspondence to taxpayers (*i.e.*, so-called external guidance). This will be especially important as the IRS faces the challenge of updating correspondence impacted by tax reform. In the absence of guidance, TAS accepted an invitation to work with the Office of Taxpayer Correspondence (OTC) and the business units to identify correspondence products impacted by tax reform and accelerate processing activities applicable to Computer Paragraph (CP) Notices and Correspondex (CRX) Letters. Through 2019, TAS's continued collaboration with OTC will help ensure timely updates of products.

TAS has tirelessly advocated for all taxpayer rights under Public Law 105-206. A most recent example included TAS insistence the IRS include the LTA address and contact information on statutory notices of deficiency. Specifically, in a National Taxpayer Advocate Annual Report to Congress, TAS recommended automation to ensure LTA local contact information was systemically-generated on

10 Third International Conference on Taxpayer Rights, https://taxpayerrightsconference.com/ (last visited May 31, 2018).

statutory notices of deficiency.[11] Collaborating with IRS OTC, TAS Systemic Advocacy, and Business Systems and Planning, systemic programing updates are underway to ensure notices generated include local TAS LTA contact information so taxpayers have access to their local TAS office for assistance.

The need to maintain up-to-date IRMs is a servicewide challenge. TAS has initiated an internal review of our own IRMs to determine where guidance is outdated. TAS Internal Management Document (IMD)/Single Point of Contact (SPOC) developed a plan to help the TAS IRM authors and program managers update their guidance. TAS IMD/SPOC will provide each author and program manager with specific training opportunities and assistance with the technical skills needed to update TAS IRMs.

Many taxpayers receive correspondence from the IRS that tells them they must respond within a certain number of days from the date printed on the top of the letter or notice. This requires the taxpayers to calculate their response deadline. Within the spirit of the Plain Writing Act, TAS believes the IRS should calculate the actual response date and print this date. This will reduce taxpayer burden, protect taxpayer rights, and improve taxpayer understanding of the action(s) they need to take to remain in compliance with the law. TAS IMD/SPOC is working with OTC to get the actual response date printed on the top of IRS correspondence with taxpayers.

Focus for Fiscal Year 2019

In FY 2019, TAS will:

- Monitor the implementation of the programming to ensure LTA addresses are included in statutory notices of deficiency;
- Timely review products through the IMD/SPOC process with a particular focus on products impacted by the new tax reform law; and
- Advocate for changes to IRS correspondence to taxpayers to print the actual response date to reduce taxpayer burden, improve taxpayer understanding, and safeguard their rights.

11 National Taxpayer Advocate 2014 Annual Report to Congress 237-243 (Most Serious Problem: *Statutory Notices of Deficiency: Statutory Notices of Deficiency Do Not Include Local Taxpayer Advocate Office Contact Information on the Face of the Notice*); 296 (Legislative Recommendation: *Contact Information Statutory Notices of Deficiency: Revise IRC § 6212 to Require the IRS to Place Taxpayer Advocate Contact Information on the Face of the Statutory Notice of Deficiency and Include Low Income Taxpayer Clinic Information With Notices Impacting that Population*).

TAS Research Initiatives

The National Taxpayer Advocate is a strong proponent for the role of theoretical, cognitive, and applied research in effective tax administration. TAS is currently conducting many new and continuing research initiatives. A primary focus of TAS Research initiatives is to better understand taxpayer compliance behavior and to evaluate IRS programs by balancing the goals of taxpayer compliance with minimizing taxpayer burden. The following discussion summarizes several research initiatives TAS will begin or continue to conduct for the remainder of fiscal years (FYs) 2018 and 2019.

DISCUSSION

Impact of Taxpayers' Perceptions of IRS Service and Enforcement on Voluntary Compliance

TAS will confirm previous study findings and gain further understanding about how taxpayers' attitudes and trust in government affect their tax compliance. A prior TAS Research study indicates trust in government has a significant impact on the compliance of taxpayers who file Schedule C returns.[1] The current TAS study explores how trust in the IRS, as well as taxpayers' perceptions of legitimacy or coerciveness of the IRS powers to enforce compliance, affect taxpayers' accurate voluntary reporting of income and expenses.

The design of this study incorporates both treatment (test) and control groups to allow a comparison of groups receiving a treatment such as an audit to similar groups who were not audited. The treatment groups consist of taxpayers who either (1) were subject to audit of their Schedule C income tax return or (2) experienced IRS identity theft procedures, either because they were a victim of identity theft or because the IRS suspected them of submitting a fraudulent return. The control groups consist of taxpayers filing Schedule C income tax returns indicating noncompliance but not selected for audit and taxpayers whose primary income consisted of wages and who have not experienced IRS identity theft processing procedures. The Schedule C taxpayer group will be further stratified by the type of employee conducting the audit (*i.e.*, field, office, or campus) and whether the audit adjustments were positive, negative, or showed no change in tax.

Data collection was completed earlier in FY 2018, and a contractor is working with TAS Research analyzing the survey results. Preliminary findings from this study were published in 2017.[2] Data analysis will be completed in FY 2018.

It is expected that the research findings will inform the IRS about taxpayers' perceptions of IRS audits, including their trust in the IRS and their view of the legitimacy of IRS powers, and how these perceptions affect their subsequent reporting compliance. The study will also explore how an interaction with the IRS, based on known or suspected identity theft, impacts the taxpayers' views of the agency, as well as their subsequent reporting compliance. Given the IRS's limited resources for conducting audits, it is imperative that compliance interactions with the IRS encourage future voluntary compliance.

1 National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 1–70 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

2 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 148–194 (Matthias Kasper, Sebastian Beer, Erich Kirchler and Brian Erard, Research Study: *Audits, Identity Theft Investigations, and Taxpayer Attitudes: Evidence from a National Survey*).

Effect of Behavioral Messaging on Taxpayer Compliance

This multi-year study, begun in FY 2017 and continuing through FY 2018 and into FY 2019, will explore whether behavioral messaging can favorably influence compliance norms and trust in the IRS, resulting in improved taxpayer compliance. This research explores the extent to which the several different applied treatments impacted taxpayer compliance. The study will focus on whether different communication appeals can influence taxpayers' responsiveness to the IRS.

Building on prior research in behavioral economics and economic psychology, this original research design will examine the potential of different messages or appeals to promote delinquent taxpayers' payment morale. The draft proposal targets three groups of individuals: (1) taxpayers who receive the first delinquency notice (after the notice and demand) after failing to pay schedule C income tax, (2) taxpayers who have repeatedly ignored payment notifications and are receiving their final delinquency notice prior to being assigned to Taxpayer Delinquent Status, and (3) taxpayers whose liabilities have been assigned to the collection queue.

Many idiosyncratic factors drive noncompliance behavior at the individual level, but they can be categorized into three broad groups: (1) information constraints, (2) lack of tax morale, and (3) inability to pay. To test the role of information constraints, the message offered taxpayers will emphasize basic information. To test the importance of tax morale, and the potential to increase compliance from the redesigned notice, messages appealing to taxpayer's social norms (moral suasion) and stressing the negative consequences of noncompliance will be presented. Finally, to test to what extent inability to pay drives noncompliance, targeted messages that offer taxpayers the opportunity to commit to repaying their tax debt at a specific point in the future will be used. In some instances, the notices will also provide a phone number for the taxpayer to call to receive assistance.

TAS anticipates that this study will yield three crucial insights for tax administration. First, it offers a cost-effective opportunity to understand the drivers of noncompliance. Second, it will permit an examination of the effects of service provision (*e.g.*, phone assistance) on tax revenues. Third, by promoting an understanding of taxpayer behavior at different stages of the collection process, it will facilitate the design of more effective administrative policies and procedures.

Effect of Educational Letters on Taxpayers Who Claim the Earned Income Tax Credit (EITC) Apparently in Error

TAS plans to build on its 2016 and 2017 studies that explored the effect of educational letters on taxpayers' subsequent compliance with the Earned Income Tax Credit (EITC).[3] These prior studies sent educational letters to taxpayers who appeared to have erroneously claimed the EITC on their tax year (TY) 2014 or TY 2015 returns. The letter explained the requirements for claiming EITC and identified the error the taxpayer appeared to have made. Both studies explored the extent to which the letter affected taxpayers' subsequent compliance.

In the 2017 study, TAS sent the same letter sent in 2016 to taxpayers who appeared to have erroneously claimed EITC on their TY 2015 returns, prior to filing their TY 2016 return, except the 2017 letter also

3 National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 31–52 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Sent an Educational Letter From the National Taxpayer Advocate*); National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 13–40 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently In Error and Were Not Audited But Were Sent an Educational Letter From the Taxpayer Advocate Service, Part 2: Validation of Prior Findings and the Effect of an Extra Help Phone Number and a Reminder of Childless-Worker EITC*).

reminded taxpayers they could be eligible for the childless-worker EITC. In addition, TAS sent a separate letter to a group of taxpayers who appeared to have erroneously claimed EITC because the residency test was not met. The letter to this group was the same as the letter sent to other taxpayers who appeared to not have met the residency test, except that it included a toll-free number taxpayers could call to speak to a TAS employee about their eligibility for EITC.

The 2017 study had the following main findings:

- For taxpayers who appeared to not meet the residency requirement, the TAS letter with an extra help telephone number averted erroneous EITC claims more effectively than not sending a letter, sending a letter without the additional phone number, or auditing the taxpayer. Sending the TAS letter with the extra help phone number to all taxpayers whose 2015 returns appeared to be erroneous because the residency test was not met would have averted more than $44 million in erroneous EITC claims;
- For taxpayers who appeared to not meet the relationship requirement, the TAS letter averted erroneous EITC claims more effectively than not sending a letter. Sending the TAS letter to all taxpayers whose 2015 returns appeared to be erroneous because the relationship test was not met would have averted nearly $53 million (the estimate was $47 million in the prior year) of erroneous EITC claims;
- For audited taxpayers who appeared to have claimed the same qualifying child as another taxpayer (*i.e.*, there were duplicate claims) who then claimed EITC in the subsequent year, the audits were the least effective in modifying their behavior; and
- The 2017 TAS letter sent to taxpayers who appeared not to have met the residency test on their TY 2015 returns included an extra help phone number (as opposed to the letter sent to all taxpayers reminding them of the childless-worker EITC) resulted in more taxpayers claiming the childless-worker EITC on their 2016 returns, compared to those taxpayers who received the last year's TAS letter without the notification that the taxpayer may still be entitled to the childless-worker EITC.

In 2019, TAS plans to again study taxpayers who appeared to erroneously claim the EITC in TY 2018. In addition to validating the results of the prior two studies, TAS plans the 2019 letters to offer a telephonic help line to taxpayers who did not meet the relationship test and to taxpayers who claimed an EITC dependent already claimed by another taxpayer. TAS wants to determine if the offer of additional personal assistance to taxpayers who appear to not meet the relationship test will show an even greater improvement in subsequent compliance with EITC rules. After its prior two studies did not show that the TAS educational letter significantly prevent taxpayers from claiming an EITC dependent already claimed by another taxpayer, TAS plans to test whether the offer of a help line will be more effective at preventing taxpayers from claiming dependents already claimed by another taxpayer. TAS also plans to test redesigned letters that are more visually appealing and present information in a manner more easily understood by taxpayers. The study will test the effect of redesigned letters on taxpayer behavior. Finally, the study will also include focus groups to provide qualitative information on the effectiveness of the content and layout of the messages included in the redesigned letters.

Study of the IRS Offer in Compromise Program for Business Taxpayers

The IRS conducted an offer in compromise (OIC) study over a decade ago that examined the frequency of taxpayers submitting multiple offers within a short period of time, the future compliance of taxpayers

with accepted offers, and a comparison of the dollars collected when an OIC was rejected versus dollars collected through other collection methods.[4]

In 2017, TAS Research completed a study evaluating the effectiveness of the IRS OIC program for individual taxpayers.[5] The study found that fewer than ten percent of individual taxpayers "churn," defined as submitting multiple OICs within a six-month period. Furthermore, nearly half of the taxpayers who churn ultimately receive an accepted OIC, suggesting that individual taxpayers are not trying to game the system, but are legitimately seeking an acceptable offer. In addition, individual taxpayers with accepted OICs were significantly more likely (16 percent) to timely file their subsequent income tax returns for the next five years when compared to taxpayers whose OICs were not accepted.

TAS will begin work on a new study in 2018 that will follow a similar methodology as the 2017 TAS OIC study, but will focus on business taxpayers with tax delinquencies. Like the previous study, TAS will:

- Quantify the number of business taxpayers who have submitted multiple OICs in a short amount of time;
- Examine the subsequent filing and payment compliance for the next five years after the IRS accepts a business taxpayer's OIC;
- Determine if subsequent compliance continues beyond the five years required as part of the accepted OIC agreement;
- Compare the amount the IRS could have collected on a rejected or returned OIC to the amount collected subsequently;[6] and
- Determine if the IRS realizes its estimation of the reasonable collection potential when it rejects an offer.

The 2018 TAS OIC study will quantify the dollars collected from business taxpayers with rejected or returned OICs and compare that to what the IRS could have collected if it had accepted the offers from these taxpayers. TAS will evaluate whether the IRS left money on the table when it rejected or returned a business taxpayer's offer in favor of pursuing other collection methods such as refund offsets, voluntary payments, or levies. The study will also explore the future compliance of offers returned as unprocessable because of unfiled returns. TAS expects to complete the study in FY 2019.

The Effectiveness of and Possible Improvements to Allowable Living Expense Standards

The IRS developed the allowable living expense (ALE) standards in 1995 to establish consistency in the application of expense allowances, such as food expenses, household expenses, medical expenses, housing expenses, and transportation expenses, in determining taxpayers' available funds to meet their tax liabilities.[7] These ALE standards have come to play a large role in many types of collection cases.[8] Based on concerns identified by the National Taxpayer Advocate, the IRS entered into a joint agreement with

4 IRS, *Offer in Compromise Program: An Analysis of Various Aspects of the OIC Program* (Sept. 2004).

5 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 41–60 (Research Study: *A Study of the IRS Offer in Compromise Program*).

6 Previously, the IRS worked with the taxpayer to secure any unfiled returns, so that the OIC could still be considered. However, in 2016, the IRS implemented new procedures, which require an offer to be returned as unprocessable if research shows the taxpayer has unfiled returns. Small Business/Self-Employed Division (SB/SE) Interim Guidance Memorandum (Apr. 13, 2016).

7 Internal Revenue Code (IRC) § 7122(d)(2)(A); SB/SE, *2015 Allowable Living Expenses Project* (Sept. 2015).

8 Internal Revenue Manual (IRM) 5.15.1, *Overview and Expectations* (Oct. 17, 2014).

TAS in 2007 to not decrease the allowance amount for any ALE category unless economic conditions changed significantly, such as a major sustained recession or depression.[9]

Despite the 2007 joint agreement, by 2014, the IRS believed that economic circumstances dictated lowering many ALEs.[10] While TAS does not question the IRS analyses of the data, which led to a decrease in the ALEs, TAS does not believe that decreases in expenditures necessarily equate to a price decrease in the cost of the expense. Rather, expenditures may show a decrease because consumers are no longer able to afford to purchase the item. For example, an elderly person may no longer be able to afford to purchase all his or her prescription drugs, even though a doctor has determined their necessity. Undoubtedly, many other examples exist where consumers are no longer purchasing needed items because of their personal economic circumstances. However, because of this situation, the monies being spent on ALE items will decrease creating a corresponding decrease in the amount of the expense allowed. Additionally, the IRS does not consider some basic expenses as necessary. For example, the IRS will not routinely allow expenses for home internet access even though many schools expect students to have home internet access and even though the IRS encourages taxpayers to interact with the IRS in an online environment.

Although the Internal Revenue Manual clearly states that other expenses should be allowed as determined to be necessary for the taxpayer's necessary living expenses,[11] practitioners have raised concerns that IRS personnel are often unwilling to deviate from the ALEs, regardless of circumstances.[12] While TAS appreciates the consistency that ALEs have brought to the financial analysis of taxpayers with delinquent tax debts, the IRS must be willing to deviate from the ALEs.[13]

In FYs 2018 and 2019, TAS plans to conduct a study to review the IRS financial analysis of collection information statements for the following issues:

1. The incidence of taxpayers having expenses in a specific ALE category exceeding the ALE standard;
2. The incidence of taxpayers having expenses in one or more ALE categories, which exceed the ALE for the category and these excess expenses are disallowed even though the taxpayer's total expenses are less than the sum of all relevant ALE standards;
3. The incidence of the IRS not allowing an expense because it is outside of the current accepted ALEs; and
4. The incidence of the IRS not allowing an expense because it is outside of the accepted ALEs, but the taxpayer's total expenses are less than the sum of all relevant ALE standards.

Unfortunately, records of IRS financial analysis do not always contain sufficient detail to answer the research questions. Based on a prior review of financial statements, TAS expects to review about 1,500 cases to obtain sufficient information to complete this study. We believe the results of this study will provide important data to substantiate the need for the IRS to make changes in how it administers ALEs. An accurate and consistent financial analysis will likely create more durable installment agreements while

9 SB/SE, *2015 Allowable Living Expenses Project iii* (Sept. 2015).

10 *Id.*

11 IRM 5.15.1.1(7), *Overview and Expectations* (Nov. 17, 2014).

12 *See, e.g.*, TAS, *2017 IRS Nationwide Tax Forums, TAS Focus Group Report: Preparers' Experiences with Installment Agreements* 9–10 (Oct. 2017).

13 IRC § 7122(d)(2)B). In addition, pursuant to the Taxpayer Bill of Rights (TBOR), the taxpayer has the *right to a fair and just tax system*. *See* TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights are now listed in the Code. *See* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

fostering taxpayer trust in the IRS to accommodate their individual necessities. Moreover, it will adhere to the taxpayer's *right to a fair and just tax system*, which says taxpayers can "expect the tax system to consider the facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely."[14]

Study of Math Error Cases Requiring Rework by the IRS

Internal Revenue Code (IRC) § 6213(b) provides the IRS authority to adjust returns and summarily assess tax to resolve mathematical or clerical mistakes on tax returns.[15] The statute permits the IRS to make such an additional assessment without issuing a statutory notice of deficiency. The taxpayer has 60 days to request an abatement of the additional tax. If the taxpayer makes a timely appeal but does not provide the documentation to abate the math error assessment, the IRS must follow normal deficiency assessment procedures and issue the taxpayer a statutory notice of deficiency. However, if the taxpayer does not appeal the additional assessment within 60 days, the assessment cannot be appealed to the U.S. Tax Court, which is the only prepayment judicial forum available to the taxpayer.[16]

The 2011 National Taxpayer Advocate's Annual Report to Congress included a study showing that a large proportion of math error adjustments related to an incorrect dependent taxpayer identification number were ultimately reversed. Over half of these math error adjustments were reversed, returning the originally claimed refund to the taxpayer. Worse, the IRS initially adjusted these taxpayers' accounts and issued a math error notice, even though its own systems contained the information to correct the taxpayer mistake in about 56 percent of the cases. The study determined that not only do some math errors inconvenience the taxpayer, the IRS spends millions of dollars correcting erroneous math error assessments and paying interest on delayed refund amounts.[17]

While the correction of mistakes affecting the true tax owed theoretically saves the IRS time and money, in practice many math errors are issued in situations where an error is easily corrected by the IRS using internal data, and in many cases the taxpayer has provided an accurate reporting of the tax. Determining situations where math error adjustments are likely to be subsequently abated will assist the IRS with making modifications to its math error programs to eliminate the issuance of math errors in situations where the cost of making the adjustment is not cost effective.

Therefore, TAS is analyzing the different types of math errors issued by the IRS to determine which have the highest reversal rates. After this determination is made, TAS will calculate both the costs of the initial math error adjustment and its subsequent reversal. This study should help the IRS to refine its math error program and adapt its procedures to increase cost effectiveness, while reducing taxpayer burden.

Eligible Taxpayer Population Not Using TAS Services

In 2018, TAS is studying the population of taxpayers who qualify for but do not use TAS services. TAS refers to these taxpayers as the "underserved taxpayers." In addition to producing a new estimate of the underserved population of taxpayers, TAS seeks to better understand these taxpayers, including how best to reach and communicate with this audience.

14 See TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

15 See Area of Focus: *The IRS Has Expanded Its Math Error Authority Without Legislation and Without Seeking for Public Comments*, *supra*.

16 IRC § 6213(b)(1).

17 National Taxpayer Advocate 2011 Annual Report to Congress vol. 2, 113-144 (Research Study: *Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued for Claimed Dependents*).

TAS previously conducted a marketing analysis of the underserved during 2001-2002 and 2007, followed by a 2012 online panel survey to estimate the underserved population.[18] However, the 2012 survey achieved significantly different results than the prior survey. With the current study, TAS will verify the accuracy of the prior survey and obtain greater detail about the composition of the TAS underserved population. In addition, TAS will build on previously used segmentations of the underserved population and will explore why underserved taxpayers have not sought TAS assistance.

A contractor will develop, administer, and summarize the findings of two surveys, each of which includes 1,000 U.S. taxpayers. One survey will focus on determining the size of the underserved population. The second survey will focus on determining the demographic characteristics of the underserved, including quantifying taxpayers in the previously defined categories of Surviving Spouses and Seniors, Unmarried Low Income**,** and Struggling Young Families. Additionally, the contractor will explore possible new categorizations of the TAS underserved population.

Finally, the contractor will also design and conduct two focus groups of underserved taxpayers. This qualitative study will gain more in-depth knowledge of the audience and explore why TAS assistance was not sought, which channels would best reach taxpayers, and how to increase the underserved population's use of TAS services.

FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Confirm previous study findings and gain further understanding about how taxpayers' attitudes and trust in government affect their tax compliance. The current study explores how trust in the IRS, as well as taxpayers' perceptions of legitimacy or coerciveness of the IRS powers to enforce compliance, affect taxpayers' accurate voluntary reporting of income and expenses.
- Continue a multi-year study exploring whether outreach and education can favorably influence compliance norms and trust in the IRS, resulting in improved taxpayer compliance. This research will focus on whether different communication appeals can influence taxpayers' responsiveness to the IRS in the collection context.
- Validate the results of TAS's 2016 and 2017 studies that explored the effect of educational letters on taxpayers' subsequent compliance with the EITC. In 2019, TAS plans the educational letters to include a telephonic help line to taxpayers who did not meet the relationship test and to taxpayers who claimed an EITC dependent already claimed by another taxpayer. TAS wants to determine if this offer of additional personal assistance will further improve subsequent compliance with EITC rules.
- Evaluate dollars collected from business taxpayers with rejected or returned OICs. TAS will analyze the dollars the IRS could have collected if it accepted the offer versus what the IRS ultimately collected from the taxpayer. We will also examine the subsequent filing and payment compliance for the next five years after the IRS accepts a business taxpayer's OIC.
- Conduct a study to review the IRS financial analysis of collection information statements. The results of this study will provide important data to substantiate the need for the IRS to make changes in how it administers allowable living expenses.

18 Forrester Research, *Omnibus Mail Survey for the Taxpayer Advocate Service*, Q2/Q3 2012, 20 (Sept. 17, 2012).

- Conduct research to determine which types of math errors have the highest reversal rates. TAS will calculate both the costs of the initial math error adjustment and its subsequent reversal. This study should help the IRS to refine its math error program and adapt its procedures to increase cost effectiveness, while reducing taxpayer burden.
- Engage in research to identify the population of taxpayers who qualify for TAS assistance but do not use it. TAS will use this information to better reach underserved populations and to refine our communication methods going forward.

TAS Technology

OVERVIEW

Technology helps support and drive our mission of advocating for taxpayers. Having the right information provided by software tools and the necessary hardware supporting these tools ensures our ability to provide excellent taxpayer support and customer experience to foster tax compliance. Without the necessary technology at our disposal, our abilities to nimbly advocate for taxpayers are severely limited.

The National Taxpayer Advocate learned in 2017 that the IRS does not plan to complete the Taxpayer Advocate Service Integrated System (TASIS) which had its funding paused in March 2014 after $20 million was spent on the system.[1] Despite this setback, we continue to advocate to ensure the foundational elements of TASIS are included as key parts of the IRS Enterprise Case Management (ECM) project currently underway. As mentioned earlier in this report, ECM has adopted a taxpayer-centric stance, and the IRS is continuing work to make ECM a reality.

While the IRS has abandoned completing TASIS, and ECM continues in development, TAS proactively sought out funding to improve its legacy case management application, Taxpayer Advocate Management Information System (TAMIS). Upgrading TAMIS will deliver some of the capabilities and features already found in other IRS case management applications. The upgrades to TAMIS are slated for delivery by September 30, 2018, and will increase our ability to serve taxpayers seeking assistance.[2] At the same time, TAS will continue to participate in the ECM development process ensuring that the TASIS foundations are part of the overall ECM discussion.

TAS Advocates Improved Legacy Case Management

In the 2016 Annual Report to Congress, the National Taxpayer Advocate continued to bring attention to the risks surrounding not completing TASIS. Specifically, the report highlighted that if the IRS did not complete TASIS, the current TAS case management application, TAMIS, would need to be upgraded. The IRS would "be forced to invest time and funds in upgrading TAMIS, an obsolete legacy system" to support current TAS casework.[3]

Through the National Taxpayer Advocate's persistent pursuit of funding, which originally began in 2014, TAS secured IRS Information Technology funding for critical updates to TAMIS in 2017. Although TAS's antiquated system cannot be converted into a modern-day case management system, the IRS is making key fundamental changes to TAMIS while it continues its work on a broader ECM solution. These critical updates include the ability to attach documents to cases — a common capability on most systems today — and improvements to capturing taxpayer interactions. These changes bring TAS closer to virtual case files and improved efficiencies to support the TAS intake strategy.

1 *Internal Revenue Service Fiscal Year (FY) 2017 Budget Request: Hearing Before the S. Subcomm. on Financial Services and S. General Government Comm. on Appropriations*, 114th Cong. 27 (2016) (statement of Nina E. Olson, National Taxpayer Advocate).

2 IRS Applications Development - Purisolve, *IRS TAMIS Integrated Master Schedule (IMS)*, (April 27, 2018).

3 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*).

Document Attachments

The critical capability of attaching electronic documents to cases in TAMIS has a direct benefit not only to taxpayer service but also to employee engagement. By attaching documents, TAS can build cases more efficiently during the intake process, and Case Advocates will be able to ensure that vital information related to a taxpayer's case is secure and quickly accessible. Employees can move toward eliminating paper case files and benefit from having all the relevant case data available any time they need it.

Improving Initial Contact With Taxpayers

Each year, changes in IRS business processes, along with changes in tax law, require TAS to adapt to serve our taxpayers. As a part of our initial contact with taxpayers, the National Taxpayer Advocate established a case intake strategy that expands on the current local office case intake function. This expansion led to the Centralized Case Intake (CCI) organization and created a need for additional technology to support initial taxpayer contact. Unfortunately, delays in acquiring a modern-day case management system present a gap in TAS's ability to effectively collect data from the initial taxpayer contact.

As a part of CCI, TAS implemented a process for direct call transfers from IRS to TAS for taxpayers who meet TAS criteria for assistance. The TAS intake strategy focuses on taxpayer service and contact to increase the ability of taxpayers to speak to TAS as early as possible so TAS can better understand their issues and build more complete cases. Using our intake strategy with the CCI process, we can interview taxpayers and determine the best course of action, including routing work faster and serving taxpayers more effectively.

TAMIS was not designed to differentiate between less complex cases needing less information that could be closed quickly and those with more complexity. This forces advocates to spend time documenting various data fields in TAMIS that are not applicable to some cases. To eliminate this time-consuming, wasteful feature, development of the "quick case closure screen" is underway and is scheduled to be completed by September 30, 2018. Once these changes to TAMIS are available, advocates will be able to capture the minimum information required quickly and efficiently, creating more time to focus on serving taxpayers. In addition, TAMIS will be able to provide additional critical information gathered on the taxpayer's first contact and assist in identifying systemic and emerging issues that require additional analysis and attention.

Although these changes will improve technology for advocates and allow for more time focused on the taxpayer issues and actions, they still fall short when measured against a modern-day case management system. TAS is appreciative of the IRS's efforts to move in the right direction under ECM and its incorporation of TASIS principles toward that initiative and looks forward to seeing tenets of TASIS delivered as a part of ECM.

APPENDIX 1: Evolution of the Office of the Taxpayer Advocate

The Office of the Taxpayer Ombudsman was created by the IRS in 1979 to serve as the primary advocate, within the IRS, for taxpayers. This position was codified in the Taxpayer Bill of Rights (TBOR 1), included in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).[1]

In TBOR 1, Congress added Internal Revenue Code (IRC) § 7811, granting the Ombudsman (now the National Taxpayer Advocate) the statutory authority to issue Taxpayer Assistance Orders (TAOs) if, in the determination of the Ombudsman, a taxpayer is suffering or is about to suffer significant hardship because of the way the Internal Revenue laws are being administered by the Secretary.[2] Further, TBOR 1 directed the Ombudsman and the Assistant Commissioner (Taxpayer Services) to jointly provide an Annual Report to Congress about the quality of taxpayer services provided by the IRS. This report was delivered directly to the Senate Committee on Finance and the House Committee on Ways and Means.[3]

In 1996, the Taxpayer Bill of Rights 2 (TBOR 2) amended IRC § 7802 (the predecessor to IRC § 7803), replacing the Office of the Taxpayer Ombudsman with the Office of the Taxpayer Advocate.[4] The Joint Committee on Taxation set forth the following reasons for change:

> To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the Taxpayer Ombudsman is not an independent advocate for taxpayers. In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, Congress believed it appropriate to elevate the position to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas.[5]

In TBOR 2, Congress not only established the Office of the Taxpayer Advocate, but also described its functions:

- To assist taxpayers in resolving problems with the IRS;
- To identify areas in which taxpayers have problems in dealings with the IRS;
- To the extent possible, propose changes in the administrative practices of the IRS to mitigate those identified problems; and
- To identify potential legislative changes which may be appropriate to mitigate such problems.[6]

Congress did not provide the Taxpayer Advocate with direct line authority over the regional and local Problem Resolution Officers (PROs) who handled cases under the Problem Resolution Program (PRP),

1 Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).
2 *Id*.
3 *Id*. at 3737.
4 Pub. L. No. 104-168, § 101, 110 Stat. 1452, 1453 (July 30, 1996).
5 Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 20 (Dec. 18, 1996).
6 Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453 - 54 (July 30, 1996).

the predecessor to the Office of the Taxpayer Advocate. At the time of the enactment of TBOR 2, Congress believed it sufficient to require that "all PROs should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc."[7]

TBOR 2 also replaced the joint Assistant Commissioner/Taxpayer Advocate Report to Congress with two Annual Reports to Congress issued directly and independently by the Taxpayer Advocate.[8] The first report is to contain the objectives of the Taxpayer Advocate for the fiscal year beginning in that calendar year. This report is to provide full and substantive analysis in addition to statistical information and is due no later than June 30 of each calendar year.

The second report is on the activities of the Taxpayer Advocate during the fiscal year ending during that calendar year. The report must:

- Identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness;
- Contain recommendations received from individuals who have the authority to issue a TAO;
- Describe in detail the progress made in implementing these recommendations;
- Contain a summary of at least 20 of the Most Serious Problems (MSPs) taxpayers have in dealing with the IRS;
- Include recommendations for such administrative and legislative action as may be appropriate to resolve such problems;
- Describe the extent to which regional PROs participate in the selection and evaluation of local PROs; and
- Include other such information as the Taxpayer Advocate may deem advisable.

The stated objective of these two reports is "for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate are not official legislative recommendations of the Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury."[9]

Finally, TBOR 2 amended IRC § 7811, extending the scope of a TAO, by providing the Taxpayer Advocate "with broader authority to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws."[10] For the first time, the TAO could specify a time period within which the IRS must act on the order. The statute also provided that only the Taxpayer Advocate, the IRS Commissioner, or the Deputy Commissioner could modify or rescind a TAO, and that any official who so modifies or rescinds a TAO must respond in writing to the Taxpayer Advocate with his or her reasons for such action.[11]

7 Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 21 (Dec. 18, 1996).

8 Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453 - 54 (July 30, 1996).

9 Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, 21 (Dec. 18, 1996).

10 *Id*. at 22.

11 Pub. L. No. 104-168, § 102(b), 110 Stat. 1452, 1456 (July 30, 1996).

In 1997, the National Commission on Restructuring the Internal Revenue Service called the Taxpayer Advocate the "voice of the taxpayer." In its discussion of the Office of the Taxpayer Advocate, the Commission noted:

> Taxpayer Advocates play an important role and are essential for the protection of taxpayer rights and to promote taxpayer confidence in the integrity and accountability of the IRS. To succeed, the Advocate must be viewed, both in perception and reality, as an independent voice for the taxpayer within the IRS. Currently, the [N]ational Taxpayer Advocate is not viewed as independent by many in Congress. This view is based in part on the placement of the Advocate within the IRS and the fact that only career employees have been chosen to fill the position.[12]

In response to these concerns, in the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress amended IRC § 7803(c), renaming the Taxpayer Advocate as the National Taxpayer Advocate and mandating that the National Taxpayer Advocate could not be an officer or an employee of the IRS for two years preceding or five years following his or her tenure as the National Taxpayer Advocate (service as an employee of the Office of the Taxpayer Advocate is not considered IRS employment under this provision).[13]

RRA 98 provided for Local Taxpayer Advocates (LTAs) to be located in each state, and mandated a reporting structure for LTAs to report directly to the National Taxpayer Advocate.[14] As indicated in IRC § 7803(c)(4)(B), each LTA must have a phone, fax, electronic communication, and mailing address separate from those of the IRS. The LTA must advise taxpayers at their first meeting of the fact that "the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate."[15]

Congress also granted the LTAs discretion to not disclose the fact that the taxpayer contacted the Office of the Taxpayer Advocate or any information provided by the taxpayer to that office.[16] The definition of "significant hardship" in IRC § 7811 was expanded in 1998 to include four specific circumstances:

1. An immediate threat of adverse action;
2. A delay of more than 30 days in resolving taxpayer account problems;
3. The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or
4. Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.[17]

The Committee Reports make clear that this list is a non-exclusive list of what constitutes a significant hardship.[18]

Prior to 2011, Treasury Regulation § 301.7811-1 had not been updated since it was first published in 1992. Consequently, after Congress expanded the definition of "significant hardship" in the statute in

12 National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS*, 48 (June 25, 1997).
13 Pub. L. No. 105-206, § 1102(a), 112 Stat. 685, 699 (July 22, 1998).
14 *Id*. at 701.
15 Internal Revenue Code (IRC) § 7803(c)(4)(A)(iii).
16 IRC § 7803(c)(4)(A)(iv).
17 IRC § 7811(a)(2).
18 *See, e.g.*, H.R. Conf. Rep. No. 105-599, at 215 (1998).

1998, the definition in the regulation was inconsistent. However, on April 1, 2011, the IRS published in the Federal Register final regulations under IRC § 7811 that contain a definition of significant hardship consistent with existing law and practice.[19]

The National Taxpayer Advocate has long since advocated that the IRS establish a TBOR. In June 2014, the IRS finally adopted the Taxpayer Bill of Rights — a set of ten fundamental rights that taxpayers should be aware of when dealing with the IRS.[20] One of those ten rights is the *right to a fair and just tax system*, which gives taxpayers the right to receive assistance from the Office of the Taxpayer Advocate if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels. In December 2015, Congress enacted IRC §7803(a)(3), which requires the Commissioner to ensure that employees of the IRS are familiar with and act in accord with taxpayer rights, including the *right to a fair and just system*.[21]

19 Treas. Reg. § 301.7811-1(a)(4)(ii); 76 Fed. Reg. 18,059, 18,060-61 (April 1, 2011).

20 See IR-2014-72 (June 10, 2014).

21 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, § 401, 129 Stat. 2242, 3117 (Dec. 18, 2015).

APPENDIX 2: Taxpayer Advocate Service Case Acceptance Criteria

As an independent organization within the IRS, TAS protects taxpayer rights under the Taxpayer Bill of Rights, helps taxpayers resolve problems with the IRS, and recommends changes to prevent future problems. TAS fulfills its statutory mission by working with taxpayers to resolve problems with the IRS.[1]

TAS case acceptance criteria fall into four main categories:

Economic Burden	**Economic burden cases are those involving a financial difficulty to the taxpayer: an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer.**
Criteria 1	The taxpayer is experiencing economic harm or is about to suffer economic harm.
Criteria 2	The taxpayer is facing an immediate threat of adverse action.
Criteria 3	The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
Criteria 4	The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.
Systemic Burden	**Systemic burden cases are those in which an IRS process, system, or procedure has failed to operate as intended, and as a result the IRS has failed to timely respond to or resolve a taxpayer issue.**[2]
Criteria 5	The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
Criteria 6	The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
Criteria 7	A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
Best Interest of the Taxpayer	**TAS acceptance of these cases will help ensure that taxpayers receive fair and equitable treatment and that their rights as taxpayers are protected.**[3]
Criteria 8	The manner in which the tax laws are being administered raises considerations of equity, or has impaired or will impair the taxpayer's rights.
Public Policy	**Acceptance of cases into TAS under this category will be determined by the National Taxpayer Advocate and will generally be based on a unique set of circumstances warranting assistance to certain taxpayers.**[4]
Criteria 9	The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

1 Internal Revenue Code (IRC) § 7803(c)(2)(A)(i).

2 TAS changed its case acceptance criteria to generally stop accepting certain systemic burden issues. See IRM 13.1.7.3(d) (Feb. 4, 2015).

3 See IRM 13.1.7.2.3 (Feb. 4, 2015).

4 See Interim Guidance Memorandum (IGM) TAS-0317-008, *Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy* (Mar. 22, 2017).

APPENDIX 3: List of Low Income Taxpayer Clinics

Low Income Taxpayer Clinics (LITCs) represent low income taxpayers before the Internal Revenue Service and assist taxpayers in audits, appeals, collection matters, and federal tax litigation. LITCs can also help taxpayers respond to IRS notices and correct account problems.

If you are a low-income taxpayer who needs assistance in resolving a tax dispute with the IRS and cannot afford representation, or if you speak English as a second language and need help understanding your taxpayer rights and responsibilities, you may qualify for help from an LITC that provides free or low-cost assistance. Using poverty guidelines published annually by the Department of Health and Human Services (HHS), each clinic decides if you meet the income eligibility guidelines and other criteria before it agrees to represent you. Eligible taxpayers must generally have incomes that do not exceed 250 percent of the poverty guidelines. Income ceilings for 2018 are shown below:

FIGURE 7.3.1, LITC Income Guidelines (250 percent of Federal Poverty Guidelines)

Size of Family Unit	48 Contiguous States, D.C., and Puerto Rico	Alaska	Hawaii
1	$30,350	$37,950	$34,900
2	41,150	51,450	47,325
3	51,950	64,950	59,750
4	62,750	78,450	72,175
5	73,550	91,950	84,600
6	84,350	105,450	97,025
7	95,150	118,950	109,450
8	105,950	132,450	121,875
For each additional person, add	10,800	13,500	12,425

LITCs receiving federal funding for the 2018 calendar year are listed below. LITCs are operated by nonprofit organizations or academic institutions. Although LITCs receive partial funding from the IRS, clinics, their employees, and their volunteers are completely independent of the IRS. This is not a recommendation by the IRS that taxpayers retain an LITC or other similar organization to represent them before the IRS; the decision to obtain representation will not result in the IRS giving preferential treatment in handling the dispute or problem.

In lieu of an LITC, low income taxpayers may be able to receive assistance from a referral system operated by a state bar association, a state or local society of accountants or enrolled agents, or another nonprofit tax professional organization.

Contact information for clinics may change, so please check for the most recent information at www.TaxpayerAdvocate.irs.gov/about/litc.

Low Income Taxpayer Clinic List

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
AK	Anchorage	Alaska Business Development Center LITC	800-478-3474 907-562-0335	Other languages through interpreter services.
AL	Montgomery	Legal Services Alabama LITC	866-456-4995 334-832-4570 251-433-6560	Other languages through interpreter services.
AR	Little Rock	UALR Bowen School of Law LITC	501-324-9441	Spanish
	Springdale	Legal Aid of Arkansas	800-967-9224 479-442-0600	Spanish, Marshallese
AZ	Phoenix	Community Legal Services LITC	800-852-9075 602-258-3434	Spanish, Other languages through interpreter services.
	Tucson	Southern Arizona Tax Clinic	520-622-2801	Spanish, Other languages through interpreter services.
CA	Fresno	Central California Legal Services LITC	800-675-8001 559-570-1200	Spanish, Hmong, Cambodian, Other languages through interpreter services.
	Los Angeles	Bet Tzedek Legal Services Tax Clinic	323-939-0506	Spanish, Russian, Other languages through interpreter services.
	Los Angeles	KYCC Low Income Taxpayer Clinic	213-232-2700	Spanish, Korean
	Los Angeles	Pepperdine LITC	213-673-4831	Spanish
	Northridge	Bookstein Tax Clinic	818-677-3600	Spanish
	Orange	Chapman University Tax Law Clinic	877-242-7529 714-628-2535	Spanish, Vietnamese, Mandarin, Other Languages through interpreter services.
	Riverside	Inland Counties Legal Services LITC	888-245-4257 951-368-2555	Spanish, Other languages through interpreter services.
	San Diego	Legal Aid Society of San Diego LITC	877-534-2524	Spanish, Vietnamese, Tagalog, Arabic, Other languages through interpreter services.
	San Diego	University of San Diego LITC	619-260-7470	Spanish, Other languages through interpreter services.
	San Francisco	Chinese Newcomers Service Center	415-421-2111	Cantonese, Mandarin, Toisanese, Vietnamese
	San Francisco	Justice and Diversity Center of the Bar Association of San Francisco	415-982-1600	Spanish
	San Luis Obispo	Cal Poly Low Income Taxpayer Clinic	877-318-6772 805-756-2950	Spanish, Other languages through interpreter services.
	Santa Ana	Legal Aid Society of Orange County LITC	800-834-5001 714-571-5200	Spanish, Vietnamese, Korean, Farsi, Chinese, Other languages through interpreter services.
CO	Denver	Colorado Legal Services LITC	844-440-4848 303-837-1321	Spanish, Other languages through interpreter services.
	Denver	University of Denver Graduate Tax Program LITC	303-871-6331	Spanish, Mandarin
CT	Hamden	Quinnipiac University School of Law LITC	203-582-3238	Spanish, Other languages through interpreter services.
	Hartford	UConn Law School Tax Clinic	860-570-5165	Spanish, French, Chinese (Mandarin), Other languages through interpreter services.
DC	Washington	The Catholic University of America LITC	202-319-6788	Spanish, Other languages through interpreter services.
	Washington	The Janet R. Spragens Federal Tax Clinic	202-274-4144	All languages through interpreter services.
	Washington	UDC David A. Clarke School of Law LITC	202-274-7315	All languages identified in DC Language Access Act.

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
DE	Wilmington	Delaware Community Reinvestment Action Council LITC	877-825-0750 302-690-5000	Spanish, Hindi
FL	Gainesville	Three Rivers Legal Services, Inc.	866-256-8091 904-394-7450	Spanish
	Miami	Legal Services of Greater Miami Community Tax Clinic	305-576-0080	Spanish, Haitian, Creole
	Plant City	Bay Area Legal Services Inc. LITC	813-232-1343	All languages through interpreter services.
	Plantation	Legal Service of Broward and Collier Counties LITC	954-765-8950	Spanish, Creole
	St. Petersburg	Gulfcoast Legal Services LITC	727-821-0726	Spanish, Other languages through interpreter services.
	Tallahassee	Legal Services of North Florida LITC	850-385-6852	Spanish, Other languages through interpreter services.
	West Palm Beach	Legal Aid Society of Palm Beach County LITC	800-403-9353 561-655-8944	Spanish
GA	Atlanta	The Philip C. Cook Low Income Taxpayer Clinic	404-413-9230	Spanish
	Hinesville	JCVision and Associates, Inc.	866-396-4243 912-877-4243	Spanish
HI	N/A			
IA	Des Moines	Iowa Legal Aid LITC	800-532-1275 515-243-2151	Spanish, Other languages through interpreter services.
ID	Boise	University of Idaho College of Law LITC	877-200-4455 208-364-6166	Spanish
	Twin Falls	La Posada Tax Clinic	208-735-1189	Spanish
IL	Chicago	Center for Economic Progress Tax Clinic	312-252-0280	Spanish, Mandarin
	Chicago	Loyola University Chicago School of Law LITC	312-915-7176	All languages through interpreter services.
	Elgin	Administer Justice	877-778-6006 847-844-1100	Spanish, Other languages through interpreter services.
	Wheaton	Prairie State Legal Services LITC	855-829-7757	All languages through interpreter services.
IN	Bloomington	Indiana Legal Services LITC	800-822-4774 812-339-7668	Spanish, Other languages through interpreter services.
	Indianapolis	Neighborhood Christian Legal Clinic	855-275-7550 317-429-4131	Spanish, Chinese, French, Russian, Arabic, Burmese, Karen, Hakha Chin
	South Bend	Notre Dame Tax Clinic	574-631-3272	Spanish, Other languages through interpreter services.
KS	Kansas City	Kansas Legal Services, Inc. LITC	800-723-6953 913-621-0200	Spanish, French, German, Russian, Other languages through interpreter services.
KY	Covington	Center for Great Neighborhoods LITC	859-547-5542	Spanish
	Louisville	Legal Aid Society, Inc.	800-292-1862 502-584-1254	All languages through interpreter services.
	Richmond	AppalRed Low Income Taxpayer Clinic	800-477-1394 859-624-1394	All languages through interpreter services.
LA	New Orleans	Southeast Louisiana Legal Services LITC	877-521-6242 504-529-1000	Spanish, Vietnamese

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
MA	Boston	Greater Boston Legal Services LITC	800-323-3205 617-371-1700 617-603-1569 617-603-1661(SP)	All languages through interpreter services.
	Jamaica Plain	Legal Services Center of Harvard Law School LITC	866-738-8081 617-522-3003	All languages through interpreter services.
	Springfield	Springfield Partners for Community Action LITC	844-877-4722 413-263-6500	Spanish, Vietnamese, Cantonese, Russian, Korean
	Waltham	Bentley University Low Income Taxpayer Clinic	800-273-9494 781-891-2083	Spanish, Portuguese, Russian, Chinese, Haitian Creole
MD	Baltimore	Maryland Volunteer Lawyers Service LITC	800-510-0050 410-547-6537	All languages through interpreter services.
	Baltimore	University of Baltimore School of Law LITC	410-837-5706	All languages through interpreter services.
	Baltimore	University of Maryland Carey School of Law LITC	410-706-3295	Spanish, French, Other languages through interpreter services.
ME	Bangor	Pine Tree Legal Assistance LITC	207-942-8241	All languages through interpreter services.
MI	Ann Arbor	University of Michigan LITC	734-936-3535	All languages through interpreter services.
	Detroit	Accounting Aid Society LITC	866-673-0873 313-556-1920	Spanish, Arabic
	East Lansing	Alvin L. Storrs Low Income Taxpayer Clinic	517-432-6880	All languages through interpreter services.
	Grand Rapids	West Michigan Low Income Taxpayer Clinic	800-442-2777 616-774-0672	Spanish, Other languages through interpreter services.
MN	Minneapolis	Mid-Minnesota Legal Aid Tax Law Project	800-292-4150 612-334-1441	Spanish, Somali, Hmong, Russian, Arabic, Oromo, Amharic, Other languages through interpreter services.
	Minneapolis	University of Minnesota LITC	612-625-5515	Somali, Spanish, Hmong, Karen
MO	Kansas City	Legal Aid of Western Missouri	800-990-2907 816-474-6750	Spanish, Other languages through interpreter services.
	Kansas City	Kansas City Tax Clinic	816-235-6201	All languages through interpreter services.
	St. Louis	Washington University School of Law LITC	314-935-7238	Spanish
MS	Oxford	Mississippi Taxpayer Assistance Project	888-808-8049 662-234-2918	All languages through interpreter services.
MT	Helena	Montana Legal Services Association LITC	800-666-6899 406-442-9830	Spanish, Other languages through interpreter services.
NC	Charlotte	Western North Carolina LITC	800-438-1254 800-247-1931(SP) 704-376-1600	Spanish, Other languages through interpreter services.
	Durham	North Carolina Central University School of Law LITC	919-530-7166	Spanish, Other languages through interpreter services.
NE	Omaha	Legal Aid of Nebraska LITC	877-250-2016 402-348-1060	Spanish, Other languages through interpreter services.
NH	Concord	NH Pro Bono Low-Income Taxpayer Project	603-228-6028	All languages through interpreter services.

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
NJ	Camden	South Jersey Legal Services LITC	800-496-4570 856-964-2010	Spanish, Other languages through interpreter services.
	Edison	Legal Services of New Jersey Tax Legal Assistance Project	888-576-5529 732-572-9100	Spanish, Haitian Creole, Portuguese, Korean, French, Other languages through interpreter services.
	Jersey City	Northeast New Jersey Legal Services LITC	201-792-6363	Spanish, Korean, Hindi, Urdu, Hebrew, Arabic, Portuguese, Tagalog, Other languages through interpreter services.
	Newark	Rutgers Federal Tax Law Clinic	973-353-1685	Spanish
NM	Albuquerque	Instituto Legal Mobile Tax Clinic	505-944-9065	Spanish
	Albuquerque	New Mexico Legal Aid LITC	866-416-1922 505-243-7871	Spanish, Other languages through interpreter services.
NV	Las Vegas	Nevada Legal Services LITC	855-657-5489 702-386-0404	Spanish, Mandarin, Other languages through interpreter services.
	Las Vegas	Rosenblum Family Foundation Tax Clinic	702-795-8486 702-895-2080	All languages through interpreter services.
NY	Albany	Legal Aid Society of Northeastern New York LITC	800-462-2922 518-462-6765	All languages through interpreter services.
	Bronx	Legal Services NYC-Bronx LITC	917-662-4500 718-928-3700	Spanish, Other languages through interpreter services.
	Brooklyn	Brooklyn Legal Services Corp A LITC	718-487-2300	Spanish, Other languages through interpreter services.
	Brooklyn	Brooklyn Low-Income Taxpayer Clinic	917-662-4500 718-237-5528	Spanish, Russian, Haitian Creole, American Sign Language, Other languages through interpreter services.
	Buffalo	Erie County Bar Association Volunteer Lawyers Project LITC	800-229-6198 716-847-0662	All languages through interpreter services.
	Central Islip	Touro Law Center LITC	631-761-7080	Spanish, Other languages through interpreter services.
	Hempstead	Hofstra Law School Federal Tax Clinic	516-463-5934	Spanish, Other languages through interpreter services.
	Jamaica	Queens Legal Services LITC	917-661-4500	Spanish, Chinese, Other languages through interpreter services.
	New York	Fordham Law School Tax Clinic	212-636-7353	Spanish, Other languages through interpreter services.
	New York	Mobilization for Justice	212-417-3839	Spanish, Mandarin, Other languages through interpreter services.
	New York	The Legal Aid Society LITC	212-426-3013	Spanish, Mandarin, Chinese, Other languages through interpreter services.
	Syracuse	Syracuse University College of Law LITC	888-797-5291 315-443-4582	All languages through interpreter services.

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
OH	Akron	Community Legal Aid Service LITC	800-998-9454	Spanish, Other languages through interpreter services.
	Cincinnati	Legal Aid of Greater Cincinnati LITC	800-582-2682 513-241-9400	Spanish, Other languages through interpreter services.
	Cleveland	The Legal Aid Society of Cleveland LITC	888-817-3777 216-687-1900	Spanish, Other languages through interpreter services.
	Columbus	The Legal Aid Society of Columbus LITC	877-224-8374 614-224-8374	Spanish, American Sign Language, Other languages through interpreter services.
	Columbus	Southeastern Ohio Legal Services LITC	800-837-2508 740-354-7563	All languages through interpreter services.
	Toledo	Legal Aid of Western Ohio LITC	888-534-1432 877-894-4599	Spanish, Other languages through interpreter services.
OK	Tulsa	Legal Aid Services of Oklahoma LITC	888-534-5243 405-247-0361	Spanish, Other languages through interpreter services.
OR	Gresham	El Programa Hispano Catolico's LITC	503-489-6845	Spanish, French
	Portland	Legal Aid Services of Oregon LITC	888-610-8764 503-224-4086	Spanish, Mixteco Bajo, Mandarin, Japanese, Other languages through interpreter services.
	Portland	Lewis & Clark Low Income Taxpayer Clinic	503-768-6500	All languages through interpreter services.
PA	Philadelphia	Philadelphia Legal Assistance	215-981-3800	Spanish, Other languages through interpreter services.
	Pittsburgh	University of Pittsburgh School of Law LITC	412-648-1300	Spanish, French, Other languages through interpreter services.
	Villanova	Villanova Federal Tax Clinic	888-829-2546 610-519-4123	Spanish, Other languages through interpreter services.
	Washington	Southwestern Pennsylvania Legal Services LITC	724-225-6170	Spanish, Russian, Chinese, Other languages through interpreter services.
	York	The Low-Income Taxpayer Clinic of MidPenn Legal Services	844-675-7829	Spanish, Other languages through interpreter services.
RI	Providence	Rhode Island Legal Services LITC	800-662-5039 401-274-2652	Spanish, Other languages through interpreter services.
SC	Charleston	Charleston Trident Urban League's Taxpayer Center	843-769-8173	Spanish
	Greenville	South Carolina Legal Services LITC	888-346-5592	Spanish, Other languages through interpreter services.
SD	Vermillion	University of South Dakota LITC	844-366-8866 605-677-6342	All languages through interpreter services.
TN	Memphis	Memphis Area Legal Services LITC	901-523-8822	Spanish
	Oak Ridge	Tennessee Taxpayer Project	866-481-3669 865-483-8454	Spanish, Other languages through interpreter services.

State	City	Clinic Name	Public Phone Number	Languages Served in Addition to English
TX	Denton	North Texas Low Income Taxpayer Clinic	866-256-1556 940-293-2201	Spanish, American Sign Language, Other languages through interpreter services.
	Fort Worth	Legal Aid of Northwest Texas LITC	800-955-3959 817-336-3943	Spanish, Other languages through interpreter services.
	Fort Worth	Texas A&M University School of Law LITC	817-212-4062	Spanish, Other languages through interpreter services.
	Houston	Houston Volunteer Lawyers LITC	713-255-1829	Spanish, Chinese, Other languages through interpreter services.
	Houston	Lone Star Legal Aid LITC	800-733-8394 713-652-0077	Spanish, Vietnamese, Other languages through interpreter services.
	Houston	South Texas College of Law Houston LITC	800-646-1253 713-646-2900	Spanish, Vietnamese, Other languages through interpreter services.
	Lubbock	Texas Tech University School of Law LITC	800-420-8037 806-742-4312	Spanish
	San Antonio	Texas Rio Grande Legal Aid-Texas Taxpayer Assistance Project	888-988-9996 210-212-3747	Spanish, Other languages through interpreter services.
UT	Provo	Centro Hispano LITC	801-655-0258	All languages through interpreter services.
	Salt Lake City	University of Utah College of Law LITC	801-587-2439	Spanish
VA	Fairfax	Legal Services of Northern Virginia LITC	866-534-5233 703-778-6800	Spanish, Other languages through interpreter services.
	Lexington	Washington and Lee University School of Law Tax Clinic	540-458-8918	All languages through interpreter services.
	Richmond	The Community Tax Law Project	800-295-0110 804-358-5855	Spanish, Other languages through interpreter services.
VT	Burlington	Vermont Low Income Taxpayer Clinic	800-889-2047	All languages through interpreter services.
WA	Seattle	University of Washington Federal Tax Clinic	866-866-0158 206-685-6805	Spanish, Russian, Chinese, Korean
	Spokane	Gonzaga University Federal Tax Clinic	800-793-1722 509-313-5791	All languages through interpreter services.
WI	Milwaukee	Legal Action of Wisconsin LITC	855-502-2468 414-274-3400	All languages through interpreter services.
	Milwaukee	The Legal Aid Society of Milwaukee, Inc.	888-562-8135 414-727-5326	All languages through interpreter services.
	Wausau	Northwoods Tax Project	800-472-1638 715-842-1681	Spanish, Hmong, American Sign Language
WV	Charleston	Legal Aid of West Virginia LITC	800-642-8279 304-343-3013	All languages through interpreter services.
WY	Cheyenne	Wyoming Low Income Taxpayer Clinic	877-432-9955 307-432-0807	Spanish

APPENDIX 4: TAS Performance Measures and Indicators

Resolve Taxpayer Problems Accurately and Timely

Measure	Description	FY 2018 Target	FY 2018 March Cumulative[1]
Overall Quality of Closed Cases	Percentage of sampled closed cases meeting the prescribed attributes of advocacy, customer and procedural focus.	94.0%	93.3%
Advocacy Focus	Percentage of sampled closed cases where TAS advocated effectively in resolving taxpayers' issue, protecting taxpayers' rights, taking substantive actions, issuing Operations Assistance Requests (OAR) and Taxpayer Assistance Orders (TAOs) and keeping taxpayers informed.	94.9%	94.9%
Customer Focus	Percentage of sampled closed cases where TAS took timely actions and adhered to disclosure requirements.	95.0%	94.1%
Procedural Focus	Percentage of sampled closed cases where TAS took actions in accordance with the tax code, Internal Revenue Manual (IRM), and technical and procedural requirements.	90.0%	88.6%
OAR Reject Rate[2]	Percentage of TAS's rejected OAR requests for IRS operating division or function's actions.	Indicator	3.1%
Expired OAR Rate[3]	Percentage of OARs that were open at the end of a period where the Requested Completion Date (RCD) or (if present) Negotiated Completion Date (NCD) is more than five workdays overdue.	Indicator	5.1%
Customers Satisfied[4]	Percentage of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS.	88%	
Customers Dissatisfied	Percentage of taxpayers who indicate they are somewhat dissatisfied or very dissatisfied with the service provided by TAS.	9%	
Solved Taxpayer Problem[5]	Percentage of taxpayers from the customer satisfaction survey who indicate the Taxpayer Advocate Service employee did their best to solve the taxpayer's problems.	88%	
Relief Granted[6]	Percentage of closed cases where TAS provided full or partial relief.	Indicator	80.1%
Number of TAOs Issued[7]	Count of TAOs issued by TAS.	Indicator	898

(continued on next page)

1 Results for the following categories are pre-dialogue unweighted, cumulative October through January 2018: Overall Quality of Closed Cases; Advocacy Focus; Customer Focus; and Procedural Focus. Results for the following categories are post-dialogue weighted October-January 2018 with pre-dialogue weighted February 2018: Accuracy of Closed Advocacy Projects; Timeliness of Actions on Advocacy Projects; and Quality of Communication on Advocacy Projects.

2 Operations Assistance Request (OAR) Reject Rate excludes reject reason business operating division (BOD)/Function disagrees.

3 This metric is a point estimate as of the date the report is run and is not cumulative. Results will vary depending on report run date. March fiscal year (FY) 2018 Business Objects Enterprise - Business Performance Management System report used run date Apr. 1, 2018.

4 Due to neutral responses by customers, the total percentage of Customers Satisfied (88 percent for FY 2017) and Dissatisfied (nine percent for FY 2017) will not add up to 100 percent. TAS administers an internally developed customer satisfaction survey annually. FY 2018 results are not available at the time of this report.

5 TAS administers an internally developed customer satisfaction survey annually. FY 2018 results are not available at the time of this report. FY 2017 results showed 87 percent for this survey question.

6 TAS tracks resolution of taxpayer issues through codes entered on Taxpayer Advocate Management Information System (TAMIS) at the time of closing. Internal Revenue Manual (IRM) 13.1.21.1.2.1.2 (Dec. 03, 2015) requires case advocates to indicate the type of relief or assistance they provided to the taxpayer. The codes reflect full relief, partial relief, or assistance provided.

7 Internal Revenue Code (IRC) § 7811 authorizes the National Taxpayer Advocate to issue a Taxpayer Assistance Order (TAO) when a taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the tax laws are being administered.

Measure	Description	FY 2018 Target	FY 2018 March Cumulative
Median – Closed Case Cycle Time	Median number of days taken to close TAS cases. This indicator *does not* include reopened cases.	Indicator	53
Mean – Closed Case Cycle Time	Mean number of days taken to close TAS cases. This indicator includes reopened cases.	Indicator	76.6
Closed Cases per Case Advocacy FTE	Number of closed cases divided by total Case Advocacy full-time equivalents (FTEs) realized. (This includes all labor hours reported to the Executive Director of Case Advocacy).	Indicator	108.6
Closed Cases per Direct FTE	Number of closed cases divided by direct Case Advocate FTEs realized.	Indicator	291.5
Systemic Burden Receipts	Percentage of systemic burden receipts, Criteria 5 through 7, compared to all receipts excluding reopened case receipts.	38.0%	41.2%
Percentage of NTA Toll Free Calls Answered by Centralized Case Intake (CCI)	Percentage of NTA Toll Free calls answered compared to the total number of NTA Toll Free calls transferred to CCI.	Indicator	51%
CCI Created Cases	Number of cases created that met the TAS case acceptance criteria.	Indicator	22,003
Quick Closures	Number of quick closures by all Intake Advocates.	Indicator	465
CCI Assistance Provided and No Case Created[8]	Number of calls CCI provided assistance without creating a case or quick closure.	Indicator	11,641

8 Data only reflects activity of intake advocates in Centralized Case Intake (CCI) sites using the Aspect phone system and does not include activity of intake advocates in local offices that do not have the Aspect system.

Protect Taxpayer Rights and Reduce Burden

Measure	Description	FY 2018 Target	FY 2018 March Cumulative
Accuracy of Closed Advocacy Projects	Percentage of advocacy projects where Systemic Advocacy (SA) took correct actions in accordance with statute and IRM guidance. This includes accurate identification of the systemic issue and proposed remedy.	95%	94.5%
Timeliness of Actions on Advocacy Projects	Percentage of advocacy projects where SA took timely actions in accordance with IRM guidance, including contacting the submitter, developing an action plan, and working the project without unnecessary delays or periods of inactivity.	95%	93.2%
Quality of Communication on Advocacy Projects	Percentage of advocacy projects where SA provided substantive updates to the submitter during the initial and subsequent contacts, contacted internal and external stakeholders, wrote correspondence following established guidelines, and took outreach and education actions when appropriate.	95%	93.8%
Overall Quality of Immediate Interventions[9]	Percentage of the immediate interventions meeting the timeliness, technical, and communication quality attributes' measures.	90%	N/A
Systemic Advocacy Management System (SAMS) Review Process Median Days	Median count of days it takes SA to complete the three-level review process from the issue submission date to the date issue is closed on SAMS.	Indicator	32
Satisfaction of SAMS Users	Percentage of SAMS users who indicate they agree or strongly agree to the survey question, "I would recommend SAMS to others as a way to elevate systemic issues."	80%	66%
Satisfaction of Taxpayer Advocacy Panel (TAP) members[10]	Percentage of satisfaction of TAP members who indicate they agree or strongly agree to the member survey question, "I have been satisfied as a member of the TAP."	90%	N/A
Projects Validated as Involving a Systemic Issue	Percentage of overall advocacy projects closed that the Director (Processing Technical Advocacy, Exam Technical Advocacy, or Collection Technical Advocacy) validates as a systemic issue.	95%	100%
Internal Management Document (IMD) Recommendations Made to IRS	Count of TAS IMD recommendations made to the IRS.	Indicator	533
IMD Recommendations Accepted by the IRS	Percentage of TAS's IMD recommendations accepted by the IRS.	Indicator	50%
Advocacy Effort Recommendations Made to the IRS	Count of advocacy effort recommendations. Advocacy efforts include projects, task forces, collaborative teams, Advocacy Issue Teams and rapid response teams (excludes IMD/SPOC and Annual Report to Congress).	Indicator	15
Advocacy Effort Recommendations Accepted by the IRS	Count of TAS advocacy effort recommendations accepted by the IRS.	Indicator	15
TAP recommendations Fully or Partially Accepted	Percentage of fully or partially accepted TAP recommendations accepted by the IRS.	Indicator	N/A

9 The FY 2018 March cumulative results are not available because Systemic Advocacy does not have an immediate intervention closure.

10 The Taxpayer Advocacy Panel (TAP) survey is administered to all Panel members.

Sustain and Support a Fully-Engaged and Diverse Workforce

Measure	Description	FY 2018 Target	FY 2018 March Cumulative
Employee Satisfaction[11]	Percentage of satisfaction of employees who respond satisfied or very satisfied to the employee satisfaction survey question, "Considering everything, how satisfied are you with your job?"	75%	
Employee Participation	Percentage of employees who take the employee satisfaction survey.	70%	

11 Employee satisfaction (74 percent for FY 2017) and employee participation (68 percent for FY 2017) are from the annual Federal Employee Viewpoint Survey (FEVS). FY 2018 results are not available at the time of this report.

APPENDIX 5: Glossary of Acronyms

Acronym	Definition
ABA	American Bar Association
AC	Action Code
ACA	Affordable Care Act
ACD	Aspect Automatic Call Distributer
ACN	Advocacy Community Networks
ACS	Automated Collection System
ACTC	Advanced Child Tax Credit
ADR	Alternative Dispute Resolution
AFSP	Annual Filing Season Program
AFTC	Armed Forces Tax Council
ALE	Allowable Living Expense or Applicable Large Employer
AM	Accounts Management
AMT	Alternative Minimum Tax
AOTC	American Opportunity Tax Credit
ARC	Annual Report to Congress
ARDI	Accounts Receivable Dollar Inventory
ASFR	Automated Substitute for Return
ATCL	Appeals Team Case Leader
ATE	Appeals Technical Employees
AUR	Automated Underreporter
BMF	Business Master File
BOD	Business Operating Division
BOE	Business Objects Environment
BPMS	Business Performance Measurement System
BPR	Business Performance Reviews
CA	Case Advocate
CAA	Certifying Acceptance Agent
CADE	Corporate Accounts Data Engine
CAP	Cross Agency Priority or Collection Appeals Program
CCA	Chief Counsel Advice
CCDM	Chief Counsel Directives Manual
CCI	Centralized Case Intake
CDP	Collection Due Process
CDW	Compliance Data Warehouse
CFSRT	Critical Filing Season Readiness Training
CJ	Congressional Justification
CJE	Critical Job Element

Acronym	Definition
CLP	Career Learning Plan
CNC	Currently Not Collectible
CP	Computer Paragraph
CPI	Consumer Price Index
CPI-U	Consumer Price Index - Urban
CRX	Correspondex
CSR	Customer Service Representative
CTC	Child Tax Credit
CX	Customer Experience
CY	Calendar Year
D.C.	District of Columbia
ECM	Enterprise Case Management
ECN	Exemption Certification Number
EFDS	Electronic Fraud Detection System
EIC	Earned Income Credit
EITC	Earned Income Tax Credit
EO	Exempt Organizations
ESAPR	Enterprise Self-Assistance Participation Rate
ESRP	Employer Shared Responsibility Payment
FAQ	Frequently Asked Question
FAST	Fixing America's Surface Transportation or Field Assistance Scheduling Tool
FATCA	Foreign Account Tax Compliance Act
FCR	First Contact Resolution
FDR	False Detection Rate
FEVS	Federal Employee Viewpoint Survey
FICA	Federal Insurance Contributions Act
FPLP	Federal Payment Levy Program
FRDAA	Fraud Reduction and Data Analytics Act
FS	Filing Season
FTA	First Time Abatement
FTE	Full-Time Equivalent
FTI	Federal Tax Information
FY	Fiscal Year
GAO	Government Accountability Office
HCO	Human Capital Office
HHS	Health and Human Services
HR	Human Resource
IA	Intake Advocate or Installment Agreement

Acronym	Definition
IBFD	International Bureau of Fiscal Documentation
ID	Identity
IDP	Individual Development Plan
IDT	Identity Theft
IDTVA	Identity Theft Victim Assistance
IGM	Interim Guidance Memoranda
IMD	Internal Management Document
IMF	Individual Master File
IMS	Integrated Master Schedule
IP	Internet Protocol
IP PIN	Identity Protection Personal Identification Number
IPSU	Identity Protection Specialized Unit
IRA	Individual Retirement Arrangement
IRB	Internal Revenue Bulletin
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRMF	Information Returns Master File
IRS	Internal Revenue Service
ISRP	Individual Shared Responsibility Payment
IT	Information Technology
ITA	Interactive Tax Assistant
ITLA	Interactive Tax Law Assistant
ITIN	Individual Taxpayer Identification Number
IUP	Infrastructure Upgrade Project
IUP- ER	Upgrade Program-Endpoint Replacement
IVO	Integrity & Verification Operations
JCT	Joint Committee on Taxation
JOC	Joint Operations Center
LB&I	Large Business & International
LEP	Limited English Proficiency
LIF	Low Income Filer
LITC	Low Income Taxpayer Clinic
LOS	Level of Service
LT	Letter
LTA	Local Taxpayer Advocate
MEA	Math Error Authority
MEC	Minimum Essential Coverage
MISC	Miscellaneous Income
MSP	Most Serious Problem

Acronym	Definition
N/A	Not Applicable
NCD	Negotiated Completion Date
NIST	National Institute of Standards and Technology
NTA	National Taxpayer Advocate
OAR	Operations Assistance Request
OECD	Organization for Economic Cooperation and Development
OIC	Offer in Compromise
OLS	Office of Online Services
OMB	Office of Management and Budget
OSP	Office of Servicewide Penalties
OTC	Office of Taxpayer Correspondence
PATH	Protecting Americans from Tax Hikes
PCA	Private Collection Agency
PDC	Private Debt Collection
PII	Personal Identifying Information
PIN	Personal Identification Number
PMA	President's Management Agenda
PMPA	Program Management/Process Assurance
PMTA	Program Manager Technical Advice
PPG	Policy and Procedures Guide
PR	Puerto Rico
PRP	Problem Resolution Program
PSD	Problem Solving Day
PTC	Premium Tax Credit
Pub. L. No.	Public Law Number
PY	Processing Year
QC	Qualifying Child
RAAS	Research Applied Analytics and Statistics
RAC	Refund Anticipation Checks
RAL	Refund Anticipation Loan
RCD	Requested Completion Date
RICS	Return Integrity and Correspondence Services
RIN	Regulation Identifier Number
ROI	Return on Investment
RRA 98	IRS Restructuring and Reform Act of 1998
RRP	Return Review Program
SA	Systemic Advocacy
SAMS	Systemic Advocacy Management System

Acronym	Definition
SB/SE	Small Business/Self-Employed Division
SDWG	Software Developers Working Group
SERP	Servicewide Electronic Research Program
SE Tax	Self-Employment Tax
SFR	Substitute for Return
SNOD	Statutory Notice of Deficiency
SP	SharePoint or Submission Processing or Spanish
SPB	Strategic Business Plan
SPEC	Stakeholder Partnerships, Education, and Communication
SPOC	Single Point of Contact
SPP	Service Priority Project
SRP	Shared Responsibility Payment
SSA	Social Security Administration
SSCRA	Soldiers & Sailors Civil Relief Act
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income
SSN	Social Security Number
TAC	Taxpayer Assistance Center
TAD	Taxpayer Advocate Directive
TAMIS	Taxpayer Advocate Management Information System
TAMRA	Technical and Miscellaneous Revenue Act of 1988
TAO	Taxpayer Assistance Order

Acronym	Definition
TAP	Taxpayer Advocacy Panel
TAS	Taxpayer Advocate Service
TASIS	Taxpayer Advocate Service Integrated System
TBOR	Taxpayer Bill of Rights
TC	Transaction Code
TCE	Taxpayer Counseling for the Elderly
TCJA	Tax Cuts and Jobs Act
TDC	Taxpayer Digital Communications
TES	Taxpayer Experience Survey
TE/GE	Tax Exempt and Government Entities division
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TNT	Tax Notes Today
TPP	Taxpayer Protection Program
Treas. Reg.	Treasury Regulation
TRIC	Tax Reform Implementation Council
TRIO	Tax Reform and Implementation Office
TTK	TAS-Tool Kit
TY	Tax Year
U.S.	United States
VITA	Volunteer Income Tax Assistance
VSD	Virtual Service Delivery
W&I	Wage & Investment
WMR	Where's My Refund

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