

SPECIAL FOCUS

IRS FUTURE STATE: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21st Century Tax Administration

INTRODUCTION

In the 2015 Annual Report to Congress (ARC), the National Taxpayer Advocate identified the IRS's plans for its "Future State" as the number one most serious problem facing taxpayers.¹ Among other things, she cited concerns about the IRS's lack of transparency with taxpayers and Congress about the plans; the move away from person-to-person assistance and compliance contacts in favor of impersonal electronic "self-service;" and the reliance on private third parties to provide for-fee assistance for core tax administration services previously provided by the IRS for free, thereby increasing taxpayer costs for the "privilege" of paying their taxes.

The IRS has partially addressed the National Taxpayer Advocate's concerns. For example, almost immediately after the issuance of the Annual Report to Congress, the IRS created a webpage on irs.gov dedicated to the "Future State" and uploaded numerous documents.² The IRS Commissioner also made clear in congressional testimony and elsewhere that the IRS did not intend to eliminate phone or in-person assistance.³ Moreover, during the Nationwide Tax Forums this summer, the IRS held a presentation on the "Future State," attended by over 2,200 practitioners and preparers, and also sponsored a suggestion booth.⁴

These steps, however commendable, have not fully addressed the core of the National Taxpayer Advocate's concerns, namely, that the IRS has failed to adequately study and incorporate into its "Future State" plans the needs and preferences of United States taxpayers — an incredibly diverse and complex population. In a budget environment in which the IRS has seen its annual appropriation decreased by about 19 percent on an inflation-adjusted basis, it is tempting and even understandable for the IRS to try to move taxpayers

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- 1 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*).
 - 2 IRS, <https://www.irs.gov/uac/newsroom/irs-future-state> (last visited Dec. 20, 2016).
 - 3 "As we improve the online experience, we understand the responsibility we have to serve the needs of all taxpayers, whatever their age, income, or location. We recognize there will always be taxpayers who do not have access to the internet, or who simply prefer not to conduct their transactions with the IRS online. The IRS remains committed to providing the services these taxpayers need. We do not intend to curtail the ability of taxpayers to deal with us by phone or in person." *Tax Return Filing Season: Hearing Before the H. Subcomm. on Oversight, Comm. on Ways and Means, 114th Cong.* (Apr. 19, 2016) (written statement of John Koskinen, Commissioner, Internal Revenue Service). See also *Can the IRS Protect Taxpayers' Personal Information? Hearing Before the H. Subcomm. on Research and Technology, Comm. on Science, Space and Technology, 114th Cong.* (Apr. 14, 2016) (statement of John Koskinen, Commissioner, Internal Revenue Service), <https://www.irs.gov/uac/written-testimony-of-commissioner-koskinen-before-the-house-science-space-and-technology-committee-on-cybersecurity-and-protecting-taxpayer-information>, and John A. Koskinen, Commissioner of Internal Revenue, Address Before the National Press Club (Mar. 24, 2016), <https://www.irs.gov/uac/March-24-2016-Commissioner-Koskinen-Speech-to-National-Press-Club>.
 - 4 10,723 practitioners and preparers attended the IRS Nationwide Tax Forums. Of those, 2,263 attended the presentation "IRS Future State Initiative" at five Tax Forums in 2016. Email from IRS Office of Online Services to TAS (Dec. 13, 2016).

to less costly methods of communication, or channels, including digital self-service options.⁵ But as tax administrators throughout the world have learned, and as the National Taxpayer Advocate discusses in this annual report, many of these shifts are only superficially less costly.⁶ This is so because even the best-designed digital environment cannot accommodate the sheer complexity of the tax code and the limitless variety of taxpayers' lives and circumstances. This constrained communication, coupled with automated impersonal and often harmful IRS actions, can alienate the taxpayer population and over time may undermine compliance. Even if there is no negative compliance impact (which the National Taxpayer Advocate does not believe), it is not a recipe for good government if a large portion of U.S. taxpayers are alienated from and distrustful of the one government agency they interact with at least annually throughout their adult lives.

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For these reasons, and given her statutory role as “an independent voice for the taxpayer within the IRS,”⁷ in this Special Focus, the National Taxpayer Advocate has attempted to identify and make recommendations to address the challenges the IRS faces to become a 21st century, taxpayer-centric tax administrator. The first and most obvious is the compelling need for tax reform. In our first legislative recommendation, *Simplify the Internal Revenue Code Now*, we describe in detail the burdens the current, hideously complex Code imposes on taxpayers and the IRS alike. But suffice it to say here that a Code consisting of four million words⁸ and requiring six billion hours of taxpayer time when meeting their filing requirements⁹ is simply too complex to administer well. Add to that the fact that the federal government “spends” more money through the tax code each year than it spends to fund the entire federal

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- 5 In FY 2010, the agency's appropriated budget stood at \$12.1 billion. For FY 2016, its budget was \$11.2 billion, a reduction of nearly eight percent over the six-year period. Inflation over the same period is estimated at nearly 11 percent. See Office of Management and Budget, *Fiscal Year 2016 Budget of the U.S. Government, Historical Tables* (230-31), Table 10.1, <https://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/hist.pdf> (showing Gross Domestic Product (GDP) and year-to-year increases in the GDP). In addition, the IRS has had to implement the statutory requirements of the Patient Protection and Affordable Care Act and the Foreign Account Tax Compliance Act during this time, causing a further drain on its resources.
 - 6 See Most Serious Problem: *Worldwide Taxpayer Service: The IRS Has Not Adopted “Best-in-Class” Taxpayer Service Despite Facing Many of the Same Challenges as Other Tax Administrations and Literature Review: Taxpayer Service in Other Countries*, vol. 3, *infra*.
 - 7 National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* 48 (June 25, 1997).
 - 8 To determine the number of words in the Internal Revenue Code (IRC), TAS downloaded Title 26 of the U.S. Code (*i.e.*, the IRC) from the website of the U.S. House of Representatives, <http://uscode.house.gov>. We copied the file into Microsoft Word, and used the “word count” feature to compute the number of words. The online version of Title 26 we used was current through December 12, 2016. In Word, the document ran 10,928 single-spaced pages. The printed code contains certain information that does not have the effect of law, such as a description of amendments that have been adopted, effective dates, cross references, and captions. The word count feature also counts page numbers, the table of contents, and the like. Therefore, our count somewhat overstates the number of words that are officially considered a part of the tax code, although as a practical matter, a person seeking to determine the law will likely have to read and consider many of these additional words, including effective dates, cross references, and captions. Other attempts to determine the length of the Code may have excluded some or all of these components, but there is no clearly correct methodology to use, and we found no easy way to selectively delete information from a document of this length.
 - 9 The TAS Research function arrived at this estimate by multiplying the number of copies of each form filed for calendar year 2015 by the average amount of time the IRS estimated it took to complete the form. While the IRS's estimates are the most authoritative available, the amount of time the average taxpayer spends completing a form is difficult to measure with precision. This TAS estimate may be low because it does not take into account all forms and, as noted in the text, it does not include the amount of time taxpayers spend responding to post-filing notices, examinations, or collection actions. Conversely, the TAS estimate may be high because IRS time estimates have not necessarily kept pace fully with technology improvements that allow a wider range of processing activities to be completed via automation.

government through the appropriations process.¹⁰ Clearly, the Internal Revenue Code (IRC) is due for an overhaul.

In Public Forums, Tax Forum Focus Groups, and TAS Workgroups, two other broad themes emerged. First, ours is a voluntary compliance system that rests on the cooperation of taxpayers, large and small. It requires engagement with taxpayers. For taxpayers to be engaged, the IRS needs to *talk to the taxpayer!* Here is how one TAS employee stated it: “Sometimes nothing can replace the sound and the tone of a human voice, especially in a crisis situation. IRS must present a human side to the agency to foster and keep voluntary compliance.”¹¹

The last broad theme is the need for establishing minimum standards of and testing for competency of federal tax return preparers. The National Taxpayer Advocate has long recommended a pragmatic oversight regime designed to protect U.S. taxpayers from unscrupulous and incompetent return preparers.¹² She reiterates that recommendation here, and notes that without such standards and oversight, the entire tax system is at risk.

In addition to these three foundational themes, there are several other areas of tax administration requiring attention before the IRS can become a world-class 21st century tax administration. These challenges include:

- **IRS Budget and Oversight:** To fairly, effectively, and efficiently administer the tax system, the IRS must receive increased funding, but such funding should be tied to additional congressional oversight of IRS strategic and operational plans;

¹⁰ In FY 2016, the Treasury Department estimated “tax expenditures” amounted to more than \$1.4 trillion. At the same time, discretionary appropriations amounted to less than \$1.2 trillion. The federal budget consists of discretionary spending for government operations that Congress sets through annual appropriations acts and mandatory spending that is established through eligibility and benefit formulas, such as Social Security and Medicare benefits, as well as interest on the federal debt. For FY 2016, appropriated funds totaled about \$1.17 trillion. See Congressional Budget Office, *An Update to the Budget and Economic Outlook: 2016 to 2026*, Table 1-3 (Aug. 2016), <https://www.cbo.gov/sites/default/files/51118-2016-08-BudgetProjections.xlsx>. For a list and description of tax expenditures, see Office of Tax Analysis, U.S. Department of the Treasury, *Tax Expenditures* (Sept. 2016), <https://www.treasury.gov/resource-center/tax-policy/Documents/Tax-Expenditures-FY2018.pdf>. The Joint Committee on Taxation also publishes estimates of tax expenditures. There are some differences in methodology between the Treasury Department’s methodology and the Joint Committee’s methodology, and the Joint Committee’s most recent estimate of tax expenditures for FY 2016 was more than \$1.3 trillion — also greater than federal appropriations but somewhat less than the Treasury Department’s estimate. See J. COMM. ON TAX’N, JCX-141R-15, *Estimates of Federal Tax Expenditures for Fiscal Years 2015-2019* (Dec. 2015), <https://www.jct.gov/publications.html?func=startdown&id=4857>.

¹¹ TAS, *Executive Briefing, Future State Discussion Analysis* 41 (Sept. 2016). Here is more wisdom from TAS employees: The Future State completely changes the expectations that the taxpaying public can have of the IRS. These taxpayers have always known they could come to an IRS walk-in office or call the IRS toll-free line in order to have their questions answered. However, this is a change in the basic “contract” between the IRS and the taxpaying public. This means that some taxpayers will be comfortable and confident in their ability to understand the tax law and meet their obligations, while other taxpayers will likely feel “left behind” in the Future State. *Id.* at 18.

And:

You can’t replace verbal communication and excel in voluntary compliance, nor customer service. *Id.* at 23.

¹² National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 71-78; National Taxpayer Advocate 2013 Annual Report to Congress 61-74 (Most Serious Problem: *Regulation of Return Preparers: Taxpayers and Tax Administration Remains Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined From Continuing Its Efforts to Effectively Regulate Unenrolled Preparers*); National Taxpayer Advocate 2009 Annual Report to Congress 41-69 (Most Serious Problem: *The IRS Lacks a Servicewide Return Preparer Strategy*); National Taxpayer Advocate 2006 Annual Report to Congress 197-221 (Most Serious Problem: *Oversight of Unenrolled Return Preparers*); National Taxpayer Advocate 2004 Annual Report to Congress 67-88 (Most Serious Problem: *Oversight of Unenrolled Return Preparers*); National Taxpayer Advocate 2003 Annual Report to Congress 270-301 (Legislative Recommendation: *Federal Tax Return Preparers: Oversight and Compliance*); National Taxpayer Advocate 2002 Annual Report to Congress 216-30 (Legislative Recommendation: *Regulation of Federal Tax Return Preparers*).

- **IRS Culture:** To create an environment that encourages taxpayer trust and confidence, the IRS must change its culture from one that is enforcement-oriented to one that is service-oriented;
- **IRS Mission Statement:** To ensure the IRS recruits, hires, and trains employees with the appropriate skill sets, the IRS must revise its mission statement to explicitly acknowledge the IRS's dual mission of collecting revenue and disbursing benefits, as well as the foundational role of the Taxpayer Bill of Rights;
- **Understanding Taxpayer Needs and Preferences:** To ensure that the IRS designs its Current and Future State initiatives based on actual taxpayer needs and preferences, the IRS must actively and directly engage with the taxpayer populations it serves as well as undertake a robust research agenda that furthers an understanding of taxpayer compliance behavior;
- **Taxpayer Rights and the Future State:** To ensure that taxpayer rights, and the Taxpayer Bill of Rights specifically, are the foundation for tax administration the IRS should undertake a comprehensive review of key taxpayer rights provisions in the IRC and issue proposed guidance for public comment, updating these provisions to protect taxpayer rights in the digital environment envisioned by the IRS Future State;
- **Grossly Outdated Technology and Infrastructure:** To enable the IRS to meet the major technology improvements required for a 21st century tax administration, even as it fulfills current operational technology demands, the IRS must articulate a clear strategy that will reassure Congress and taxpayers the funding will be well-spent; and
- **Office of the Taxpayer Advocate:** To protect taxpayer rights and ensure a fair and just tax system, Congress should take steps to strengthen the Taxpayer Advocate Service.

The National Taxpayer Advocate has listed the need for additional IRS funding and oversight first because without adequate funding, taxpayers are being and will be harmed by the “efficiencies” the IRS imposes to deal with budget reductions. However, she links the IRS need for more funding with the need for more congressional oversight of the agency’s priorities. Congressional oversight is necessary to ensure that the IRS appropriately allocates and applies that funding, and that taxpayer needs — not just the agency’s internal needs — are met.

To achieve the appropriate level and allocation of IRS funding, in the sections that follow, the National Taxpayer Advocate identifies and discusses key elements that must be addressed, including a change in IRS culture from enforcement-focused to service first. We must embed taxpayer rights into every aspect of the agency's mission. We must understand how to improve taxpayer morale, including what factors influence taxpayer compliance behavior and what taxpayers need and prefer in order to meet their tax obligations. Similarly with tax reform — we must understand compliance behavior even as we legislate tax policy. Otherwise, we will pass laws with which taxpayers cannot comply.

In writing this Special Focus, the National Taxpayer Advocate has relied heavily on the wealth of information obtained throughout 2016 from her 12 Public Forums on Taxpayer Needs and Preferences; focus groups with practitioners and preparers about the “Future State” held at five Nationwide Tax Forums; and discussion meetings held with all employees in each office of the Taxpayer Advocate Service (TAS). All of these materials, including full transcripts of the Public Forums, are available to the public at <https://taxpayeradvocate.irs.gov/public-forums>. In addition, we include in Volume 2 of this report the interim findings of a nationwide taxpayer survey about their needs and preferences.¹³ Thus, to an unusual extent for government, the analysis and recommendations presented here reflect the perspectives of taxpayers and their representatives, as well as the combined experience of the National Taxpayer Advocate and her employees, whose job it is to advocate for taxpayers.

13 See Research Study: *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*, vol. 2, *infra*.

IRS BUDGET AND OVERSIGHT: To fairly, effectively, and efficiently administer the tax system, the IRS must receive increased funding, but such funding should be tied to additional congressional oversight of IRS strategic and operational plans.

Simply put, the IRS cannot function well in the 21st century with the budget it has today. More funding is paramount — for taxpayer service, for compliance functions, for the agency’s enforcement function (Criminal Investigation), for technology, and for its “support” operations like security and real estate.

The National Taxpayer Advocate has served in her position for over 15 years, and she has witnessed firsthand how IRS officers and employees struggle to meet the often competing demands placed on them by new legislation, congressional priorities, natural and other emergencies, the identity theft epidemic, and taxpayer needs and preferences. Each year the IRS must deliver a filing season in which it processes some 150 million individual tax returns and issues over 115 million refunds totaling over \$345 billion,¹⁴ while guarding against between \$22 and \$24 billion in identity theft and refund fraud.¹⁵ At the same time, it must incorporate new legislative changes — almost 5,900 since 2001, an average of more than one a day¹⁶ — and major new programs like the Affordable Care Act (ACA) and the Foreign Account Tax Compliance Act (FATCA). Thus, the IRS spreads thin the resources it has, and every decision to apply resources in one place means that another area goes begging. Understandably, it focuses on what it considers its major obligations — the filing season, new legislation, and the area of information technology and cybersecurity. The consequences of this “big item” focus are that smaller, important, taxpayer-facing service is reduced or eliminated, including the community presence of education and outreach, Taxpayer Assistance Centers (TACs), compliance personnel, and Appeals officers. For example:

- Despite the IRS’s increased ability to handle taxpayer calls using automation, the percentage of calls the IRS answered from taxpayers seeking to speak with a telephone assistant dropped from 87 percent to 53 percent between fiscal year (FY) 2004 and FY 2016.¹⁷ Among the callers who got through, the average time spent waiting on hold increased from just over 2.5 minutes in FY 2004 to nearly 18 minutes in FY 2016.¹⁸ Comparing FY 2004 with FY 2016, the number of calls the IRS received from taxpayers on its Accounts Management telephone lines increased from 71 million to 104 million, yet the number of calls answered by telephone assistants declined from 36 million to 26 million.¹⁹
- In 2014, the IRS ceased all tax preparation in the TACs and eliminated post-April 15 tax law phone and TAC assistance.
- The IRS has also reduced the number of TACs (also known as walk-in sites) from 401 to 376 (six percent) since 2011.²⁰ Additionally, 22 TACs have no staff, and 95 have only one employee.²¹

14 IRS Pub. 55B, IRS Data Book 2015 (Mar. 2016), Tables 2, 7 and 8. Figures are for FY 2015.

15 Treasury Inspector General for Tax Administration, Ref. 2015-40-026, *Efforts Are Resulting in the Improved Identification of Fraudulent Tax Returns Involving Identity Theft 2* (Apr. 24, 2015).

16 For an in-depth discussion of the need for tax reform and the methodology of this calculation, see Legislative Recommendation: *Simplify the Internal Revenue Code Now*, *infra*.

17 *Compare* IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* (week ending Sept. 30, 2016) with IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* (week ending Sept. 30, 2004). The Accounts Management telephone lines (previously known as the Customer Account Services telephone lines) receive the significant majority of taxpayer calls. However, taxpayer calls to compliance phone lines and certain other categories of calls are excluded from this total.

18 *Id.*

19 *Id.*

20 In 2011, the IRS operated 401 TACs. IRS response to TAS information request (Dec.23, 2014). Today the IRS operates 376 TACs, a reduction of six percent. IRS response to TAS fact check (Dec. 20, 2016).

21 IRS response to TAS fact check (Dec. 20, 2016).

- Sixteen states have no Appeals or Settlement Officers present within their boundaries, and 14 states have no IRS liaisons to Small Business/Self-Employed taxpayers within their boundaries.²²

Figure S.1 shows the reduction in IRS geographic presence and employees between 2011 and 2016.

FIGURE S.1, Locations With Specified Employees in the Last Pay Period of the Fiscal Year²³

Number of Locations, Employees, or Visitors	2011	2012	2013	2014	2015	2016
IRS Offices (Cities)	541	523	510	499	479	470
Appeals Officers (AOs)	1,129	1,058	958	881	795	739
Revenue Officers (ROs)	4,402	4,035	3,703	3,441	3,191	3,072
Revenue Agents (RAs)	11,959	11,258	10,502	9,776	9,090	8,871
Stakeholder Liaison Outreach Employees	137	123	119	110	105	98
Stakeholder Partnerships, Education and Communication Outreach Employees	522	475	444	405	386	365
Taxpayer Assistance Centers (TACs)	401	401	398	382	378	376
TAC Service Reps	1,639	1,515	1,484	1,520	1,423	1,267

At the same time, taxpayer returns and forms filed increased between tax year (TY) 2011 and TY 2015. Overall, filings grew nearly four percent from 234,567,000 in TY 2011 to 243,249,000 in TY 2015.²⁴

We discuss the effects of this reduction in our Most Serious Problems, herein, on the structure of the IRS and the lack of a geographic presence in communities.²⁵

- 22 Appeals response to TAS information request (June 6, 2016). Puerto Rico lacks an Appeals or Settlement Officer in addition to the 16 states. IRS response to TAS fact check (Dec. 15, 2016). IRS Human Resources Reporting Center, *Report of SB/SE Job Series 0526, Stakeholder Liaison Field Employees* as of the week ending October 1, 2016 (report generated Dec. 1, 2016). The District of Columbia lacks an IRS liaison in addition to the 14 states. See Most Serious Problem: *Geographic Focus: The IRS Lacks an Adequate Local Presence in Communities, Thereby Limiting Its Ability to Meet the Needs of Specific Taxpayer Populations and Improve Voluntary Compliance, infra.*
- 23 Figures for Appeals Officers, Revenue Officers, Revenue Agents, Stakeholder Liaison Outreach, SPEC Outreach, and Taxpayer Assistance Center (TAC) Service Representatives are from the IRS response to TAS fact check (Dec. 16, 2016). TAC customer service representative figures are from the IRS Human Resources Reporting Center, *Position Report by Employee Listing for the ending pay period for FY 2011 to 2016*, Nov. 2, 2016. The IRS response to TAS Fact Check (Dec. 16, 2016) showed the following counts for TAC customer service representative: Fiscal Year (FY) 2011 – 1,977, FY 2012 – 1,839, FY 2013 – 1,775, FY 2014 – 1,803, FY 2015 – 1,678, and FY 2016 – 1,477. TAS was unable to replicate the IRS TAC employee figures. 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, 2106). TAC Office figures for FY 2016 from the IRS response to TAS fact check (Dec. 20, 2016).
- 24 IRS, *Databook Returns Filed Tax Year (TYs) 2011-2015* (Nov. 30, 2016). This total includes individual income tax returns, business-entity income tax returns, employment tax returns, estimated tax forms, and certain other returns and forms.
- 25 See Most Serious Problems: *IRS Structure: The IRS's Functional Structure Is Not Well-suited for Identifying and Addressing What Different Types of Taxpayers Need to Comply*, and *Geographic Focus: The IRS Lacks an Adequate Local Presence in Communities, Thereby Limiting Its Ability to Meet the Needs of Specific Taxpayer Populations and Improve Voluntary Compliance, infra.* See also Literature Review: *Geographic Considerations for Tax Administration*, vol. 3, *infra.*

Downstream Costs of IRS Budget Cuts Can Outweigh Savings, Increase Taxpayer and IRS Burden, and Erode Taxpayer Trust

Far too often, in response to budget constraints, the IRS makes penny-wise, pound-foolish decisions. For example, the recently announced revised rules about the limited availability of face-to-face Appeals conferences, and changes to settlement authority of certain Appeals' personnel, has led to criticism from key tax professional groups.²⁶ The National Taxpayer Advocate personally provided several suggestions to the Chief of Appeals and other senior Appeals officials that, if adopted, would address many of Appeals' concerns about wise use of resources while not vitiating the taxpayer's *rights to appeal an IRS decision in an independent forum* and *to a fair and just tax system*.²⁷ Instead, far from reducing overall costs, Appeals' proposed procedures will increase costs for both the IRS and the taxpayer by shifting issue resolution to more expensive litigation venues or downstream to the IRS compliance functions or the Taxpayer Advocate Service, increasing unnecessary rework. Either way, taxpayer confidence in and patience with the IRS is eroded.

Initiatives designed to save IRS resources are too often focused inward on the IRS's own needs — how it can gain cost savings in one area so it can reapply them elsewhere. Again, while this is understandable in the present environment, it is not right. These decisions do not adequately take account of taxpayer needs and preferences, taxpayer burden, or the downstream costs incurred because taxpayers have not received the assistance they need.

For example, over the last two years, the IRS has been moving slowly to an appointment-only system for assistance in the TACs. These locations were formerly known as “walk-in centers,” but for all intents and purposes, in the 2017 filing season, the IRS will not be accepting “walk-ins.” While the National Taxpayer Advocate has long recommended the IRS offer taxpayers the *option* of making appointments, she is opposed to making TACs available *exclusively* by appointment.²⁸ The following testimony from the National Taxpayer Advocate Public Forum in San Antonio illustrates the myopia of this policy:

[S]everal months ago I had a client that I was assisting to help make sure that he did not get a lien filed. And so from that perspective he had filed a 2014 tax return and underpaid by several hundred thousand dollars.

Well, he settled that case and came into the money that he needed to pay to the IRS. So I said, okay, well, cut me the check made out to the IRS, folks, of course. And, and I will go

26 See, e.g., Letter from Joan C. Arnold, American College of Tax Counsel, to Kirsten Wielobob, Chief Appeals (Oct. 10, 2016); Coalition for Effective and Efficient Tax Administration, letter to Kirsten Wielobob, Chief Appeals (Oct. 21, 2016); Memorandum from Kenneth M. Horwitz, Texas Society of Certified Public Accountants to Commissioner of Internal Revenue (May 13, 2016) (Preserving and Improving Access to Face-to-Face Appeals Conferences). See also Statement of Jaime Vasquez, Chamberlain, Hrdlicka, White, Williams & Aughtry, National Taxpayer Advocate Public Forum 52 (Aug. 30, 2016):

So what I've seen is that cases that don't need to go to [T]ax [C]ourt can be resolved with the IRS appeals office. And with the cutback of the number of local IRS appeals officers, what's happening is that people's cases are getting shipped to IRS campus offices where they're not getting a face-to-face person who can help resolve their case. And you know, as we all know, sometimes when you're dealing with someone face to face walking them through the particular records and their life circumstances, cases tend to be resolved. These are why such things as mediations are so successful.

27 For a detailed discussion of our concerns about the Office of Appeals concept of operations, see Most Serious Problem: Appeals: The Office of Appeals' Approach to Case Resolution Is Neither Collaborative Nor Taxpayer Friendly and Its "Future Vision" Should Incorporate Those Values, *infra*.

28 See National Taxpayer Advocate 2014 Annual Report to Congress 122-33 (Most Serious Problem: Access to the IRS: Taxpayers Are Unable to Navigate the IRS and Reach the Right Person to Resolve Their Tax Issues); National Taxpayer Advocate Fiscal Year 2013 Objectives Report to Congress 42-45; National Taxpayer Advocate 2012 Annual Report to Congress 302-18 (Most Serious Problem: The IRS Lacks a Servicewide Strategy that Identifies Effective and Efficient Means of Delivering Face-to-Face Taxpayer Services).

and walk it into the IRS office. Well, that was just when I found out that that local office had just been closed. So there I was with a [\$240,000] check and, you know, I was like, you know, I made several phone calls. No success.

And after a week of sitting with this \$240,000 check, I was getting really embarrassed, of course. No one wants to sit on that much, you know, money for, for someone else. Finally got in touch with an IRS revenue officer who put me in touch with the collection officer for the day who said that, and who had finally, they could accept the [\$240,000] check. And I thought to myself, you know, this is ridiculous.

You know, here I am trying to, you know, help my client getting in compliance with the IRS and we can't even pay the IRS.²⁹

The Role of Congressional Oversight in Achieving Effective 21st Century Tax Administration

As stated above, the IRS has to make difficult choices every day, and those choices have consequences for taxpayers and tax administration. The National Taxpayer Advocate believes there are many things the IRS can do to apply its resources more effectively, particularly with respect to compliance initiatives (indeed, the National Taxpayer Advocate publishes over 1,000 pages a year, via her Annual Reports to Congress, identifying areas for improvement and making recommendations). But the simple fact remains, even with these improvements, the IRS needs more funding. It cannot become a 21st century tax administration without adequate support from Congress.

Sometimes nothing can replace the sound and the tone of a human voice, especially in a crisis situation. IRS must present a human side to the agency to foster and keep voluntary compliance.

That support is not just financial. The National Taxpayer Advocate believes there is a key role for congressional oversight both as a preliminary to and a consequence of additional funding. This oversight should focus on the effectiveness of IRS service and compliance activities with respect to the 150 million individual taxpayers and ten million business taxpayers, especially small businesses and self-employed individuals. Is the IRS availing itself of the most important insights of behavioral science?³⁰ For example, during the first two weeks of January before the 2016 filing season, the National Taxpayer Advocate sent out about 7,100 letters to taxpayers who had claimed the Earned Income Tax Credit (EITC) on their 2014 returns but whose claims were flagged by the IRS Dependent Database (DDb) as being highly questionable. The IRS did not audit these taxpayers because of insufficient resources. The letters were strictly educational and tailored to the specific rule “broken” by the taxpayer; they were written in a helpful tone and clearly stated the taxpayer was not under audit. These letters had a statistically significant positive impact on the EITC compliance of this group of taxpayers. Thus, projected against the population of EITC filers who violated these particular rules, for the cost of a letter and postage, the IRS could prevent \$47 million in EITC noncompliance.³¹ TAS is repeating this test in the 2017 filing season; in this version, we will be offering some EITC taxpayers

29 Statement of Jaime Vasquez, Chamberlain, Hrdlicka, White, Williams & Aughtry, National Taxpayer Advocate Public Forum, 48-49 (Aug. 30, 2016).

30 For a discussion of the application of behavioral insights to tax administration, see *Most Serious Problem: Voluntary Compliance: The IRS Is Overly Focused on So-Called “Enforcement” Revenue and Productivity, and Does Not Make Sufficient Use of Behavioral Research Insights to Increase Voluntary Tax Compliance*, *infra*. See also *Literature Review: Behavioral Science Lessons for Taxpayer Compliance*, vol. 3, *infra*.

31 For a copy of the letters sent, and a detailed discussion of this research study, see *Research Study: Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits Apparently in Error and Were Sent an Education Letter from the National Taxpayer Advocate*, vol. 2, *infra*.

a dedicated “Extra Help” line in which trained TAS employees will answer taxpayer questions *before* the taxpayers file their returns.

Nevertheless, the IRS relies on audits as its primary compliance tool for maintaining reporting compliance — closing nearly 874,000 individual taxpayer audits in FY 2016, with 84 percent of those through correspondence.³² To understand the effectiveness of this application of resources, we need to know what percentage of IRS audits result in no change, by type of audit. Research has shown that when an audit results in no change, the taxpayer is more likely to report less income in the future.³³ Where there is an assessment, what percentage of audits are reopened later as audit reconsiderations, resulting in unnecessary downstream re-work? Of the audits that result in a Tax Court case, what percentage are settled — and why — by IRS Appeals or Chief Counsel employees? How much audit activity results in future voluntary compliance? Since the point of an audit is not just to assess additional tax but to ensure that the same errors or positions do not occur again, what percentage of audited taxpayers understand why the adjustments were made? These are just a few of the questions that overseers should be asking of the IRS to ensure that current and additional funding is spent wisely and effectively.

As part of the reorganization mandated by Congress in the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98), Congress held joint annual hearings, over five years, to review the IRS strategic plan.³⁴ The hearing participants included three members (two majority and one minority) from each of the congressional committees with jurisdiction over the IRS — Senate Finance Appropriations, and Governmental Affairs; and House Ways and Means Appropriations and Governmental Reform and Oversight. The hearings were to cover the following topics:

- (1) IRS progress in meeting its objectives under its strategic and business plans;
- (2) IRS progress in improving taxpayer service and compliance;
- (3) IRS progress on technology modernization; and
- (4) The annual filing season.³⁵

The National Taxpayer Advocate recommends that Congress reinstitute this commendable practice. By holding recurring joint oversight hearings, the IRS will have the opportunity to articulate, with specificity, its need for additional resources and its plans for applying them. Hearing from both the IRS and outside experts — including tax professional organizations, business representatives, Low Income Taxpayer Clinics, and behavioral scientists — Congress will better understand the challenges that both the IRS and taxpayers face. It can then make informed decisions about the level and general application of resources necessary for the IRS to provide U.S. taxpayers with a 21st century tax administration they can trust and admire.

32 IRS, Compliance Data Warehouse, Automated Information Management System (AIMS) Closed Case Database.

33 National Taxpayer Advocate 2015 Annual Report to Congress vol. 2, 67-98 (Research Study: *Audit Impact Study*); National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 27-42 (Research Study: *Estimating the Impact of Audits on the Subsequent Reporting Compliance of Small Business Taxpayers: Preliminary Results*).

34 Pub. L. No. 105-206, § 4001, enacting IRC § 8021(f), and § 4002, amending IRC § 8022, 112 Stat. 685, 783-84 (1998).

35 H. REP. No. 105-364, at 84-85 (1997). The Restructuring Commission earlier recommended that Congress create a joint committee on IRS administration, which would conduct joint hearings on similar topics. National Commission on Restructuring the IRS, *A Vision for a New IRS* 2-3 (June 15, 1997).

Recommendations

The National Taxpayer Advocate recommends that Congress:

- Reinstating the joint review of the IRS strategic plans and budget provided for under IRC §§ 8021(f) and 8022.
- Requiring the IRS to submit a comprehensive “Future State” plan that describes, in sufficient detail, its vision for a 21st century IRS, including an explanation of how that vision meets the needs and preferences of different U.S. taxpayer segments, and describes the challenges and obstacles the IRS faces in achieving this “Future State.”
- Providing funding for IRS initiatives that enhance and maintain voluntary compliance, align with the specific needs and preferences of taxpayers as they attempt to comply with the tax laws, and eliminate unnecessary downstream re-work.

IRS CULTURE: To create an environment that encourages taxpayer trust and confidence, the IRS must change its culture from one that is enforcement-oriented to one that is service-oriented.

In its *Snapshot of A Better Way for Tax Reform* blueprint, the House Republicans' Tax Reform Task Force describes "A Service First IRS," noting that "[a] simpler, fairer tax code will require a simpler, fairer IRS with one mission: Put the taxpayers first."³⁶ Congress has addressed this issue before. In the IRS Restructuring and Reform Act of 1998 (RRA 98), it directed the IRS to "restate its mission to place a greater emphasis on serving the public and meeting taxpayers' needs."³⁷

Yet today, the IRS's annual appropriation of \$11.2 billion allocates 43 percent to Enforcement, with only 21 percent attributable to taxpayer service. Of the \$2.3 billion allocation for Taxpayer Service, 73 percent is attributable to operational items like receiving and processing tax returns and payments, and only 27 percent is attributable to functions such as outreach and education.³⁸ In other words, outreach and education activities constitute less than six percent of the IRS budget.

... outreach and education activities constitute less than six percent of the IRS budget.

If a tax agency views its primary mission as "enforcing" the tax laws, it will design its procedures and apply its resources to "hunt down" those taxpayers it views as noncompliant.³⁹ It justifies this approach by rationalizing that law-abiding taxpayers want to know that all taxpayers are paying their fair share. The problem with this approach is that it undermines the willingness of taxpayers to comply by focusing most of its resources on those who are not willing to comply. Taxpayers who are willing to comply are left without adequate support.

In an enforcement-oriented tax agency, if taxpayers don't get the help they need to comply and they make a mistake, they are treated as if they are tax evaders. This treatment in turn breeds resentment and increases the risk that the taxpayer who was willing to comply is no longer willing to do so. In this way, the underlying assumption by the tax agency that taxpayers will evade tax becomes a self-fulfilling proposition. The agency ends up converting a compliant taxpayer into a noncompliant one.⁴⁰

What if the tax agency adopted a different approach toward taxpayers? What if it assumed that taxpayers, by and large, wanted to obey the law and that the primary mission of the tax agency was to facilitate that compliance by providing taxpayers with the assistance, education, and clarity they need to meet their tax obligations? What if we started out accepting that taxpayers will make mistakes and, until proven otherwise, assume those mistakes are not attributable to a tax evasion motive? This matters because tax noncompliance, like most human behavior, is driven by a broad spectrum of factors, from just plain

36 House Republicans' Tax Reform Task Force, *A Better Way for Tax Reform*, http://abetterway.speaker.gov/_assets/pdf/ABetterWay-Tax-Snapshot.pdf.

37 RRA 98, Pub. L. No. 105-206, Title I, § 1002, 112 Stat. 685 (1998).

38 Consolidated Appropriations Act, 2016, Pub. Law 114-113, enacted Dec. 18, 2015. FY 2016 Operating Plan, Integrated Financial System (IFS).

39 See Written Statement of Pam Olson, PricewaterhouseCoopers, National Taxpayer Advocate Public Forum 20-22 (Feb. 23, 2016):

Those of you who know me know that I've not been fond of use of the word enforcement when it comes to the IRS because I think enforcing the law is an action that compels people to do something and it is not something that has to be visited on the average taxpayer. The average taxpayer wants to voluntarily comply and we just need to make sure they have the tools and the resources to do it. They may need advice or assistance but rarely do they need an enforcement action to compel them to pay their tax or to punish them for failing to do so.

40 For a discussion of the drivers of voluntary compliance, see Most Serious Problem: *Voluntary Compliance: The IRS Is Overly Focused on So-Called "Enforcement" Revenue and Productivity, and Does Not Make Sufficient Use of Behavioral Research Insights to Increase Voluntary Tax Compliance*, *infra*.

This is not to say we should ignore those who are actively evading tax. Rather, it is to say we should *design* our tax system around the taxpayers who are trying to comply, instead of those who are actively trying not to.

carelessness to ignorance to confusion to polemics to avarice. By focusing on the source or reasons for a taxpayer's noncompliance, and not just on the end result of the behavior, we have a better chance of changing the behavior and improving tax compliance going forward.⁴¹

This is not to say we should ignore those who are actively evading tax. Rather, it is to say we should *design* our tax system around the taxpayers who are trying to comply, instead of those who are actively trying not to.

Bringing About a Cultural Shift: You Get What You Measure

The National Commission on Restructuring the IRS summarized the agency's culture in this way:

The culture of IRS is overly risk averse, based on a tradition of valuing checks and controls over creative approaches to solving problems. In order to evolve into a more taxpayer focused, responsive organization, a cultural shift must occur at the IRS. The positives of the culture are that employees will execute orders and follow directions. The negatives are that the IRS environment often does not encourage personal or organizational growth, and stifles creativity, innovation, and quick problem resolution.⁴²

Changing an organization's culture begins with understanding what drives employees' and officers' behavior. Basically, you get what you measure. The IRS's own annual announcement of measures and successes reflects this enforcement-heavy mentality — enforcement dollars assessed (via liens and levies), enforcement dollars collected, liens filed, levies issued.⁴³ It includes five pages of “enforcement” results and only one page — six items — of taxpayer service results. There is no mention of how much in the way of tax or penalties are abated annually because they were incorrectly or inappropriately assessed, or how many TAS cases resulted in full or partial relief, or how many outreach or education events were held in-person so that IRS employees and officers (including those in the audit and collection functions) could hear directly about taxpayer concerns. The IRS does not track how many people were turned away from TACs (formerly known as “walk-in sites” but now appointment-only).⁴⁴

41 See Written Statement of Leslie Book, Professor, Villanova Law School, National Taxpayer Advocate Public Forum 55 (Feb. 23, 2016):

I think, however, getting back to trust and how that relates to taxpayers there is no question that sanctions alone is really not the way, a sanctioned based approach is not the only way to encourage voluntary compliance. There needs to be an emphasis on insuring that interactions with taxpayers enhances trust and trust between the taxpayer and the IRS is a two-way street but if the taxpayers have an absence of trust in what the IRS is doing it leads to kind of spirals and increases non-compliance.

42 National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* 12-13 (June 25, 1997).

43 IRS, *Fiscal Year 2015 Enforcement and Service Results*, <https://www.irs.gov/uac/newsroom/fiscal-year-2015-enforcement-and-service-results>.

44 Since 2014, the National Taxpayer Advocate has published in the Annual Report to Congress a “report card” on the IRS, listing measures that would give a sense of whether the IRS is treating taxpayers right. This list of measures is organized under each of the ten taxpayer rights stated in the Taxpayer Bill of Rights and could serve as a starting point for a more comprehensive and balanced set of performance measures. See *Taxpayer Rights Assessment: IRS Performance Measures and Data Relating to Taxpayer Rights*, *infra*.

If we want IRS employees to focus on increasing taxpayer confidence and trust in the tax system, if we want taxpayers to feel engaged in the tax system they are all a part of, then we need to find ways to encourage and reward the IRS workforce for engaging with the population and viewing the taxpayer as a partner in trying to achieve or maintain voluntary compliance.

If we want IRS employees to focus on increasing taxpayer confidence and trust in the tax system, if we want taxpayers to feel engaged in the tax system they are all a part of, then we need to find ways to encourage and reward the IRS workforce for engaging with the population and viewing the taxpayer as a partner in trying to achieve or maintain voluntary compliance.⁴⁵

Notwithstanding the ubiquitous use of the term “enforcement” throughout IRS training, guidance (including the Internal Revenue Manual), and testimony, there is only one true “enforcement” function in the IRS, and that is the Criminal Investigation function. Every other taxpayer-facing part of the IRS is in the business of serving the taxpayer by encouraging voluntary compliance. Yes, there are some employees who utilize tools that compel action, like liens and levies. But activities such as audits and appeals should be viewed first and foremost as educational opportunities, not “enforcement” mechanisms. In an audit, the IRS can learn about the challenges taxpayers face in complying with the laws, and taxpayers can learn about what, in the eyes of the IRS, they reported incorrectly on the return. In some instances, taxpayers can learn that they can’t get away with something they thought they could; on the other hand, the IRS might just learn that it was wrong about an issue, or actually change its position on an aspect of tax law.

As we discuss in the Most Serious Problem about IRS structure herein, the greatest economies for a service-oriented organization are achieved by operating as small units that are located in the proximity of their customers.⁴⁶ Through structural design, performance measures, and, most importantly, training that reinforces engagement with the taxpayer and understanding taxpayer needs and preferences, the IRS can promote voluntary compliance and become a respected and appreciated federal agency.

Recommendation

The National Taxpayer Advocate recommends that the IRS publish an annual report card on comprehensive measures that not only show traditional “enforcement” measures but disclose how the IRS performed in providing assistance and service in meeting taxpayer needs and preferences, as well as increasing voluntary compliance over time. These measures, in turn, should form the basis for Executive performance commitments and assessments.

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- 45 See Written Statement of Elizabeth Atkinson, LeClair Ryan, National Taxpayer Advocate Public Forum 29 (May 13, 2016):
Our tax code is very, very complicated and it’s better for the IRS to be in a position of listening to the taxpayer than having an authoritarian type of regime that not only makes the taxpayer feel like he or she is not being listened to, but sometimes leads to incorrect results and downstream compliance problems because the person is so turned off to the tax system by their experience, they don’t feel like complying anymore.
- 46 See Most Serious Problem: *IRS Structure: The IRS’s Functional Structure Is Not Well-Suited for Identifying and Addressing What Different Types of Taxpayers Need to Comply*, *infra*.

IRS MISSION STATEMENT: To ensure the IRS recruits, hires, and trains employees with the appropriate skill sets, the IRS must revise its mission statement to explicitly acknowledge the IRS’s dual mission of collecting revenue and disbursing benefits, as well as the foundational role of the Taxpayer Bill of Rights.

In RRA 98, Congress directed the IRS to restate its mission statement with an emphasis on taxpayer service.⁴⁷ Accordingly, the IRS adopted the following mission statement: “Provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and *by applying the tax law* with integrity and fairness to all.”⁴⁸ (Emphasis added.) In 2009, with no public discussion, the IRS quietly made a profound change to that mission statement, which now reads: “Provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and *enforce the tax law* with integrity and fairness to all.” (Emphasis added.) As noted in the preceding discussion of IRS culture, this shift in tone and emphasis, from “apply” to “enforce,” has significant consequences for taxpayers, and is closely related to the issue of agency culture.

A second problem with the agency’s current mission statement is its failure to acknowledge and articulate that the 21st century IRS has two specific lines of business: both revenue collector and benefits administrator. The IRS collects over \$3 trillion annually and issues over \$403 billion in refunds.⁴⁹ The Earned Income Tax Credit (EITC), a refundable credit for low and moderate income working families and individuals, accounts for almost \$67 billion in credits paid to 27 million taxpayers.⁵⁰ The tax code is increasingly used to promote various social and economic policies through the mechanism of tax credits and other tax expenditures.⁵¹ Taking an enforcement-oriented approach to these inherently complex provisions, instead of one based on problem identification and understanding of the root causes of noncompliance, can deter eligible taxpayers from claiming benefits to which they are entitled under the law and prevent ineligible taxpayers from understanding what they did wrong.

Instead, by explicitly recognizing the IRS’s role as a benefits administrator in its mission statement, the IRS will have to rethink how it conducts major aspects of its work.⁵² To fulfill this aspect of its mission, it will have to hire employees whose skills are better suited for this educational and compliance work. Thus, for the EITC and other tax provisions specifically targeted to the low income population, the IRS will have to hire or train employees with skills that are drawn from the social work profession.⁵³ These

47 RRA 98, Pub. L. No. 105-206, Title I, § 1002, 112 Stat. 685 (1998).

48 IRM 1.1.1.1.1 (Mar. 1, 2006).

49 IRS Pub. 55B, IRS Data Book 2015 (Mar. 2016), Table 1. Figures are for FY 2015.

50 IRS, *About EITC*, <https://www.eitc.irs.gov/EITC-Central/abouteitc> (last visited Dec. 31, 2016). For Tax Year 2015, 27.3 million taxpayers had claimed \$66.9 billion in EITC (after math error processing, but prior to any audit of the tax return). IRS, Compliance Data Warehouse, *Individual Returns Transaction File* (includes Tax Year 2015 returns posted as of cycle 47).

51 For a discussion of the complexity and lack of transparency these provisions create, see Legislative Recommendation: *Simplify the Internal Revenue Code Now*, *infra*. For recommendations about reforming the EITC and other Family Status provisions, see Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*, *infra*. The National Taxpayer Advocate has previously discussed design elements that should be considered when running social benefit programs through the tax code. See National Taxpayer Advocate 2009 Annual Report to Congress, vol. 2, 75-104 (*Running Social Programs Through the Tax System*).

52 See Statement of Pam Olson, PricewaterhouseCoopers LLP, National Taxpayer Advocate Public Forum 47 (Feb. 23, 2016): I think the most important thing is for the IRS to fully embrace the multifaceted responsibilities that it has with respect to both collecting tax as well as administering benefit system and administering lots of other things and making sure that it is factoring that into how it plans its service.

53 For a detailed discussion of the challenges faced by EITC taxpayers, see Most Serious Problem: *Earned Income Tax Credit (EITC): The Future State’s Reliance on Online Tools Will Harm EITC Taxpayers*, *infra*.

employees will have the skills not only to employ interviewing techniques that are designed to elicit information without fear, but also to focus on educating the taxpayer going forward.

Finally, the IRS mission should explicitly acknowledge that the Taxpayer Bill of Rights (TBOR) underlies all of its actions. As we discuss later in this report, while the IRS has done a commendable job publicizing the TBOR to taxpayers, it still has considerable work to do integrating the TBOR in the life, training, and ethos of the agency.⁵⁴ Explicit mention in the mission statement would reinforce to IRS employees, and reassure taxpayers, that the TBOR is a guiding principle for all IRS actions.

Recommendation

The National Taxpayer Advocate recommends that the IRS revise its mission statement to re-emphasize a non-coercive approach to tax administration, recognize the IRS's dual roles of revenue collector and benefits administrator, and explicitly affirm the role of the TBOR as the guiding principle for tax administration.

54 See Most Serious Problem: *Taxpayer Bill of Rights (TBOR): The IRS Must Do More to Incorporate the TBOR into Its Operations*, *infra*.

UNDERSTANDING TAXPAYER NEEDS AND PREFERENCES: To ensure that the IRS designs its Current and Future State initiatives based on actual taxpayer needs and preferences, the IRS must actively and directly engage with the taxpayer populations it serves as well as undertake a robust research agenda that furthers an understanding of taxpayer compliance.

In 2005, Congress directed the IRS to conduct a comprehensive review of its current portfolio of services and develop a five-year strategic plan for taxpayer service.⁵⁵ That plan, the Taxpayer Assistance Blueprint (TAB), has since been updated annually, by congressional directive.⁵⁶ Far from being a strategic plan, the TAB has deteriorated into a list of unrelated initiatives. Meanwhile, IRS budget cuts and consequent elimination or radical restructuring of core taxpayer services have increased taxpayer burden and cost.

An understanding of taxpayer needs and preferences is a prerequisite for effective tax administration.⁵⁷ As Figure S.2 shows, the IRS and TAS have separately undertaken different surveys attempting to identify taxpayer needs. The way one asks questions on the surveys, and the very method of conducting the survey, has consequences for the reliability and usefulness of the data collected. For example, a recent Pew Research Center analysis of survey techniques concluded that online-only surveys have a bias against African-Americans and Hispanics.⁵⁸

55 H. REP. No. 109-307, at 209 (2005).

56 See S. REP. No. 113-80, at 27 (2013); see also IRS Pub. 4701, *Annual Report to Congress: The Taxpayer Assistance Blueprint Taxpayer Service Improvements* (Nov. 2015), <http://core.publish.no.irs.gov/pubs/pdf/p4701-2015-11-00.pdf>.

57 See Statement of Leslie Book, Professor, Villanova School of Law, National Taxpayer Advocate Public Forum 27 (Feb. 23, 2016): I think a fundamental starting point in thinking about service is that the IRS needs to know whom it is serving and the characteristics and challenges associated with a particular group of taxpayers or parties it is regulating. It sounds easy enough but knowing the taxpayer actually is a very resource intensive endeavor. An agency fixated on efficiency and delivering services at lowest possible short term costs without knowing the impact and burdens of its actions may find itself pushing more serious problems down the road while at the same time jeopardizing taxpayer rights.

58 Pew Research Center, *Evaluating Online Nonprobability Surveys: Vendor Choice Matters; Widespread Errors Found for Estimates Based on Blacks and Hispanics* (May 2, 2016), <http://www.pewresearch.org/2016/05/02/evaluating-online-nonprobability-surveys/>. “Online nonprobability survey vendors want to provide samples that are representative of the diversity of the U.S. population, but one important question is whether the panelists who are members of racial and ethnic minority groups are representative of these groups more broadly. This study suggests they are not.” *Id.* at 4.

FIGURE S.2, Summary of Taxpayer Surveys

Survey	Description/Purpose	Methodology	Sample Size	Data Collection Frequency	Survey Conducted
Low Income Taxpayer Clinic Survey	<p>The Low Income Taxpayer Clinic (LITC) Program provides tax representation or advice to low income individuals who need help resolving issues with their federal income tax returns.</p> <p>TAS multi-purpose study to learn more about taxpayers who are eligible for help from LITCs. The study gathered information on:</p> <ul style="list-style-type: none"> • eligible taxpayers' awareness and use of LITC services, • the types of issues for which they would consider using clinics, • demographic information, and • other items. 	Telephone Random Digit Dialed (RDD) landline and cellphone	1,143 934 English 204 Spanish	One time	2014
The Taxpayer Advocate Service: Hispanic Survey	<p>Findings are representative of the low income population (household income at or below 250% of the poverty level), including Spanish speakers of this population.</p> <p>TAS Multi-purpose study to evaluate taxpayer knowledge, beliefs, barriers and perception of TAS and the IRS among US Hispanics.</p>	Telephone Random Digit Dialed (RDD) landline and cellphone	1,014 US General Population Hispanics ages 18 and older 432 English 582 Spanish	One time	2014
Service Priorities Survey	<p>TAS Multi-purpose taxpayer survey to explore:</p> <ul style="list-style-type: none"> • Taxpayers' use of IRS services by delivery channels, as well as service users satisfaction and issue resolution with services, and willingness to use and importance of delivery channels; • Taxpayers' understanding of their rights and responsibilities with IRS • Internet use and abilities 	Telephone Random Digit Dialed (RDD) landline and cellphone	4,000 By mid-November, 1,910 completed 1,106 landline, 804 cell phone	Depends on funding	2016
Taxpayer Experience Survey	<p>Multi-purpose taxpayer survey to explore:</p> <ul style="list-style-type: none"> • Taxpayers' awareness and use of IRS services and service channels, as well as service users satisfaction with services; • Taxpayers' behavior patterns and potential areas for improvements based on their pre-filing, filing, and post-filing experiences (includes experience with refunds & notices); and • Knowledge of ACA requirements. 	Online Panel / Phone	3,689 (2,986 online English; 403 online Spanish; 300 Phone English)	Annually	2016

Table continued on next page. ▶

FIGURE S.2, Summary of Taxpayer Surveys (continued)

Survey	Description/Purpose	Methodology	Sample Size	Data Collection Frequency	Survey Conducted
TAC Expectations Survey	Survey of TAC users designed to capture TAC customer demographic profile, measure overall and service delivery satisfaction, and the extent to which TAC customer service and performance expectations were met from the taxpayer perspective. Data from this research endeavor helps Field Assistance assess and modify its business model.	<p>Paper / In-person</p> <p>Used cluster analysis to categorize TACs. 3 visits (pre-filing, filing, post-filing) to each of the 5 different TAC types for a total of 15 visits:</p> <ul style="list-style-type: none"> • High volume, High wait; Medium Volume, High Overhead; • Medium volume, Low overhead; • Low Volume, Less complex; and • Low Volume, Complex Task. 	1,519 in FY 2013	Every three years	FY 2013 completed, 2016 in analysis
Web - First Strategy Conjoint	<p>Conjoint survey aimed at understanding how taxpayers' preferences shift with changes to service offerings. This conjoint survey offers participants different scenarios for services, with tradeoffs to see which options are the most important to participants. The study objectives are to:</p> <ul style="list-style-type: none"> • Determine the effect of potential service changes on preference for TAC and phone. • Assess baseline preferences for online services and identify potential methods for increasing preference for online services. • Explore how potential service changes, including the addition of new online service options, affect taxpayer preference for higher cost channels, such as TAC and phone. • Suggest how the IRS can facilitate a preference shift to web-first service options. 	Online Panel	1,604	Every year or two depending on funding	2015 - 2016
IRS Oversight Board - Comprehensive Taxpayer Attitude Survey (CTAS) 2015	Telephone survey which captures taxpayers' tax compliance attitudes, service channel preference, and behaviors (can be compared to findings from previous surveys)	Random Digit Dialed Telephone - landline and cell phone	1,000 - 707 landline, 293 cell phone	Annually. Survey may be discontinued given the uncertain status of the IRS Oversight Board.	2015

The IRS has heavily relied upon the Web-First Strategy Conjoint Survey to build its online account. That survey, conducted fully online, is helpful in understanding what taxpayers who are *already online* are willing to do with regard to *online tax administration*. But the survey ignores those taxpayers who are not online or who are unwilling to participate in online surveys.⁵⁹

During the last year, TAS has conducted a survey by telephone (landline and cellphone) of U.S. taxpayers, including those taxpayers who have used IRS service channels in the recent past.⁶⁰ Although our analysis is preliminary, TAS is able to report results on particular segments of the individual taxpayer population, including:

- Not Low Income taxpayers (taxpayers with total positive income (TPI) above 250 percent of the federal poverty level);⁶¹
- Low Income taxpayers (taxpayers TPI at or below 250 percent of the federal poverty level);
- Elderly taxpayers (taxpayers age 65 or older); and
- Disabled taxpayers (taxpayers who self-identified as having a significant disability).

The survey findings for these categories of taxpayers, reported below, are statistically representative of all taxpayers in these categories.⁶² The importance of the responses of the low income taxpayer population is particularly significant, since these taxpayers constitute over 46 percent of the individual taxpayers filing returns in 2016.⁶³ TAS conducted this survey entirely by telephone (landline and mobile phone) in order to ensure it was not biased against taxpayers who were not online or unwilling to answer surveys online.

The study found that Low Income, Senior, and Disabled taxpayers are less likely to have broadband access and more likely to have no internet access than the Not Low Income taxpayers. More than 33 million U.S. taxpayers have no broadband access at home, including 14 million U.S. taxpayers who have no internet access at home. Notably, 28.5 percent, 40 percent, and 31.9 percent of the Low Income, Senior, and Disabled taxpayers, respectively, had no broadband access at home, significantly limiting their online activities.

59 For a more detailed discussion of our concerns about the IRS online account, see Most Serious Problem: *Online Accounts: Research into Taxpayer and Practitioner Needs and Preferences Is Critical as the IRS Develops an Online Taxpayer Account System*, *infra*. See also Literature Review: *Customer Considerations for Online Accounts Introduction*, vol. 3, *infra*.

60 See Research Study: *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*, vol. 2, *infra*.

61 Total Positive Income (TPI) is calculated by summing the positive values from the following income fields from a taxpayer's most recently filed individual tax return: wages; interest; dividends; distribution from partnerships, small business corporations, estates, or trusts; Schedule C net profits; Schedule F net profits; and other income such as Schedule D profits and capital gains distributions. Losses reported for any of these values are treated as zero.

62 For this interim analysis, the confidence interval ranges from +/- 3 percent to 10 percent, depending on the sample size for each question, with most questions falling into the +/- range of 5 percent or better. TAS Research expects confidence levels to improve upon receipt of the complete data set of 4,000 surveys. For a more detailed discussion of the survey design and methodology, see Research Study: *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*, vol. 2, *infra*.

63 Of the 135.8 million individual taxpayers who had filed TY 2015 individual income tax returns through Cycle 43 of 2016, nearly 63 million taxpayers (46.2 percent) had TPI at or below 250 percent of federal poverty level. These numbers exclude filers who are claimed as a dependent on another tax return. Individual Returns Transaction File for Tax Year 2015 (returns processed through October 31, 2016) on the IRS Compliance Data Warehouse.

The IRS has heavily relied upon the Web-First Strategy Conjoint Survey to build its online account. That survey, conducted fully online, is helpful in understanding what taxpayers who are *already online* are willing to do with regard to *online tax administration*. But the survey ignores those taxpayers who are not online or who are unwilling to participate in online surveys.

FIGURE S.3⁶⁴

Taxpayers Without Broadband Access at Home by Demographic Group

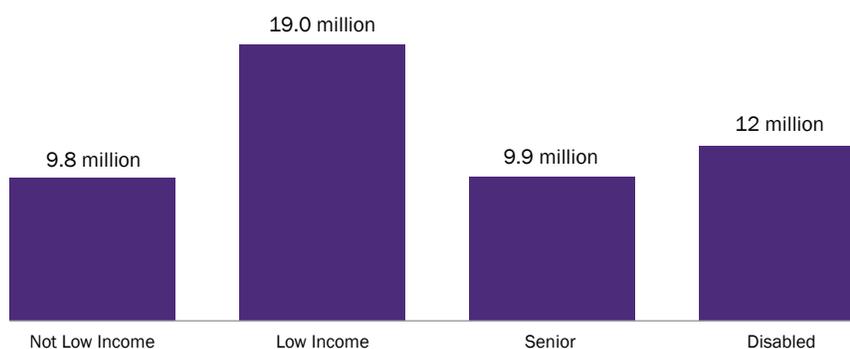
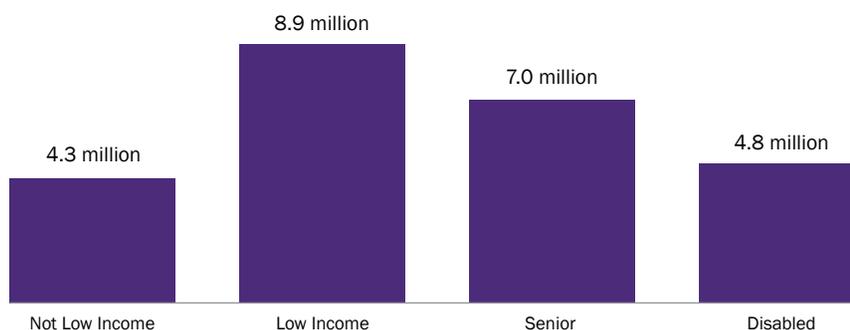


FIGURE S.4⁶⁵

Taxpayers Without Internet Access at Home by Demographic Group



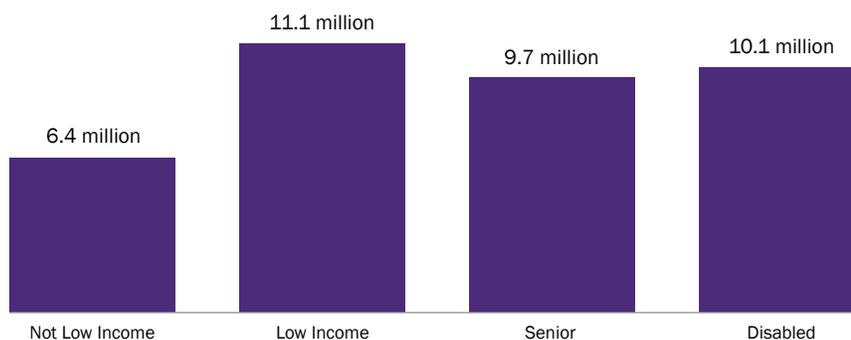
64 See Research Study: *Taxpayers' Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*, vol. 2, *infra*.

65 *Id.*

The Not Low Income taxpayer group is online more frequently (from home, work, or elsewhere) than the vulnerable groups. Almost 19 percent of the combined Low Income, Senior, and Disabled taxpayer populations said they go online less than once a week or never.

FIGURE S.5⁶⁶

Taxpayers Who Access the Internet Less Than Once a Week, or Not at All, by Demographic Group



Low Income Taxpayers are more likely than Not Low Income taxpayers to access the internet from libraries or through their smartphones.⁶⁷ Access to IRS online accounts via public computers can create serious risks to the privacy of taxpayer data. Moreover, taxpayers whose internet access is through their smartphones report being seriously disadvantaged in performing tasks like uploading resumes and filling out online job applications.⁶⁸ Other complex tasks such as filing a tax return may also pose similar challenges. These findings have significant consequences for a large part of the taxpayer population as the IRS shifts to online accounts, audits, and communication.

The IRS has published several “vignettes” that depict how different types of taxpayers will interact online with the IRS of the future.⁶⁹ Both the Individual (EITC) taxpayer and the Small Business taxpayer vignettes contemplate in-home or in-work broadband access and taxpayers who are comfortable with online tasks. The TAS survey findings show that for large portions of the taxpayer population, taxpayers continue to be uncomfortable with many aspects of online interaction. For example, all of the vulnerable groups (Low Income, Elderly, and Disabled) are less comfortable sending emails on the internet than the Not Low Income. Similarly, all of the vulnerable groups, particularly Seniors, feel they are less

⁶⁶ See Research Study: *Taxpayers’ Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*, vol. 2, *infra*.

⁶⁷ For underlying data, see *id*.

⁶⁸ Written Statement of Aaron Smith, Pew Research Center, National Taxpayer Advocate Public Forum 1-2 (Feb. 23, 2016):
In a recent survey that we conducted about job seeking online, for example, these “smartphone only” users were far more likely than other Americans to have used their smartphone for highly complex tasks, such as filling out a job application or even creating a resume or cover letter. And in general, a substantial number of non-broadband adopters indicate that performing even relatively basic online job-seeking activities — such as emailing an employer, or filling out an online application — can be challenging without the benefit of a dedicated home connection.”

⁶⁹ See <https://taxpayeradvocate.irs.gov/public-forums> and <https://www.irs.gov/uac/newsroom/future-state-and-irs-activities>. For a detailed discussion of the flawed assumptions relating to the Individual (EITC) vignette, see Most Serious Problem: *Earned Income Tax Credit (EITC): The Future State’s Reliance on Online Tools Will Harm EITC Taxpayers*, *infra*.

More than 33 million U.S. taxpayers have no broadband access at home, including 14 million U.S. taxpayers who have no internet access at home. Notably, 28.5 percent, 40 percent, and 31.9 percent of the Low Income, Senior, and Disabled taxpayers, respectively, had no broadband access at home, significantly limiting their online activities.

skilled than the Not Low Income at doing research on the internet. And most importantly, more than half of the Low Income, Senior, and Disabled taxpayers stated they did not feel secure sharing personal financial information over the Internet. Indeed, even among the Not Low Income population, over 43 percent of taxpayers said they do not feel secure sharing their personal financial information over the Internet.

Finally, significant percentages of all taxpayer segments did not feel secure sharing personal information with a government agency. Only 38 percent of the Not Low Income population, 33 percent of the Low Income, 17 percent of the Seniors, and 32 percent of Disabled taxpayers were comfortable sharing personal information with the government. These findings have profound implications for taxpayers' willingness to interact with the IRS online in all but the most rudimentary of actions.

These survey findings were mirrored in testimony and comments made at the National Taxpayer Advocate's Public Forums on Taxpayer Needs and Preferences, as well as the Focus Groups at IRS Tax Forums and TAS employee meetings.⁷⁰ From all the data and public suggestions, it is clear that an inadequate emphasis on and provision of in-person assistance will harm U.S. taxpayers in the 21st century.

Recommendations

To ensure that both the present and future states of the IRS serve taxpayers well, the National Taxpayer Advocate recommends that:

- The IRS, in collaboration with the National Taxpayer Advocate, undertake a comprehensive study of taxpayer needs and preferences by taxpayer segment, utilizing telephone, online, and mail surveys, focus groups, town halls, public forums, and research studies. These initiatives should be designed to solicit *taxpayer* needs and preferences, and not be biased by the IRS's own desired direction.
- Congress require the IRS and the National Taxpayer Advocate to jointly report on the results of this comprehensive study through a re-invigorated TAB.

⁷⁰ See, e.g., Oral Statement of Susan Diehl, PenServ Plan Services, Inc., National Taxpayer Advocate Public Forum 18 (Apr. 8, 2016):

What I have observed is that the new individual and business taxpayer experience of the future model seemed to provide little room for personal contact. Granted, this will fit well into the constraints of the budget, but I fear that many will suffer and suffer greatly. Let's consider retirees who have extremely involved questions. Who will help them? Will this model result in more unanswered phone calls with no resolution, or a resolution that comes too late leaving the taxpayer in a penalty situation.

See also Taxpayer Advocate Service, *Executive Briefing: Future State Discussion Analysis 18* (Sept. 2016):

The IRS will be faceless. A taxpayer's only interactions with a human at the IRS will be when there is an enforcement-type action taken with regard to the taxpayer's account. It will leave many taxpayers without basic services needed to comply with the tax system. On one hand, the described scenario might decrease calls and staffing during the initial processing but it could very easily increase calls and staffing after processing because the taxpayer requires clarification of changes and adjustment to his/her account. We have experienced numerous calls when the bar on the "Where's my refund" application changes unexpectedly.

TAXPAYER RIGHTS AND THE FUTURE STATE

Since adopting the National Taxpayer Advocate's proposed Taxpayer Bill of Rights (TBOR), the IRS has made commendable efforts to inform taxpayers about their rights.⁷¹ As we observe later in this report, however, the IRS has a more uneven record in complying with the congressional mandate, codified in Internal Revenue Code (IRC) § 7803(a)(3), to educate IRS employees about the TBOR.⁷²

The National Taxpayer Advocate believes that taxpayer rights, and the TBOR specifically, should be the foundation for tax administration, including any strategic vision for the future. Yet few documents pertaining to the Future State that have been made available to the National Taxpayer Advocate address the TBOR, and those that do only nominally mention it, utilizing a checklist approach at best. None explains how the proposed Future State design and initiatives will specifically advance the general rights stated in the TBOR and the specific protections afforded by the IRC.⁷³

At each of the National Taxpayer Advocate's Public Forums on Taxpayer Needs and Preferences, the panelists and audience members were provided copies of IRS Future State "vignettes" pertaining to individual and small business taxpayers.⁷⁴ These vignettes provide the most detailed representation of the Future State made public to date. As such, they offer insight into how the IRS thinks it will interact with the taxpayers of the future.

At every Public Forum, panelists and audience members expressed serious concerns about the interactions described in the vignettes. A threshold concern was that the system the IRS is designing seems to be stacked in the IRS's favor — *i.e.*, in both vignettes, the taxpayer lost; he or she was wrong. Nowhere did the vignette demonstrate how the taxpayer could prevail in the system of the future. Public Forum panelists and audience members alike commented on this aspect of the Future State:

I find it funny that in both scenarios, there's more taxes. I think that reflects the idea that this model is about the IRS finding new ways to use technology for their benefit, and not for taxpayer purposes.⁷⁵

I'm a CPA, and I've been practicing for 35 years, but my primary reason for coming here, at least — I read your year-end report, and even just seeing these future state diagrams here, and what struck me is there's an arrogance unfortunately of the IRS that they can do this themselves, and they don't need any input from taxpayers. And the examples here — both end up resolving in more tax being owed, is like, we were right, you were wrong, pay us the money.⁷⁶

71 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)).

72 See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)). For a detailed discussion of the IRS's TBOR efforts, see Most Serious Problem: *Taxpayer Bill of Rights (TBOR): The IRS Must Do More to Incorporate the TBOR into Its Operations*, *infra*.

73 The National Taxpayer Advocate has identified specific taxpayer rights concerns relating to "Real Time" tax administration before. See National Taxpayer Advocate 2012 Annual Report to Congress 180-91 (Most Serious Problem: *The Preservation of Fundamental Taxpayer Rights Is Critical as the IRS Develops a Real-Time Tax System*); National Taxpayer Advocate 2011 Annual Report to Congress 284-295 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*).

74 <https://taxpayeradvocate.irs.gov/public-forums>. For a reproduction and discussion of the EITC vignette, see Most Serious Problem: *Earned Income Tax Credit (EITC): The Future State's Reliance on Online Tools Will Harm EITC Taxpayers*, *infra*.

75 Statement of Audience Member, National Taxpayer Advocate Public Forum 39 (Aug. 18, 2016).

76 Statement of Audience Member, National Taxpayer Advocate Public Forum 55-56 (Aug. 18, 2016).

Other panelists noted that the basic assumptions about the taxpayer population illustrated in the vignettes were seriously flawed.⁷⁷ For example, the vignette for individual taxpayers involved an EITC claimant, and as we discuss in a Most Serious Problem later in this report, it assumes that the average EITC recipient has broadband access and a desktop computer in her home, has a high enough education level to hold a middle-school math teacher job, has a sufficient credit history to create an IRS online account, and can navigate and understand the complex provisions of the tax code.⁷⁸ None of these assumptions is accurate with respect to the average EITC recipient. For example, in eight of the 11 cities in which the National Taxpayer Advocate held Public Forums, the starting salary of a middle school math teacher is above the EITC income eligibility for a two-person household. In essence, the entire vignette is based on a nonexistent taxpayer profile. Yet this has not stopped the IRS from building its vision upon this illusion or, at a minimum from using this grossly inaccurate profile to illustrate its vision.

Moreover, the IRS Future State vignettes seem to envision a completely digital interaction with taxpayers about intensely factual and specific matters. Participants in every Public Forum, every Tax Forum focus group, and every TAS group meeting felt this vision was unrealistic and harmful to taxpayers.⁷⁹ Here are just a few of the statements from Public Forum participants.

Because real life situations of real people are so unique that you couldn't make them up, you know, they just — the way that people come to us and with their circumstances, you go, Oh my God how did this happen, but this is the way it is and you have to deal with it. And you're helping them. We couldn't even imagine it.

And again, it's just very arrogant of any computer person who decided to design and think that that's all the options that there are. There's always — you have to be able to think outside the box. That's where a live human being will always be better.⁸⁰

The future vision of the IRS assumes that taxpayers have access to technology and will be able to navigate the IRS's online system to resolve their tax issues. We know from representing vulnerable populations, such as the poor, disabled and elderly, in dealing with our current tax system that they will have no easier time navigating some new online system. There will still be barriers created by poor literacy, mental and physical impairments in the complicated nature of our tax system, as well as new ones, such as access to technology and understanding how to use it. Given this, the IRS's future state vision could make the tax issues of low income and otherwise vulnerable taxpayers worse if they use the online system without fully appreciating what they are agreeing to and what rights they may be foregoing.

77 See Oral Statement of Polly Bone, Texas RioGrande Legal Aid, Inc., National Taxpayer Advocate Public Forum 54-55 (Aug. 30, 2016):

First of all, this vignette, I'm wondering why whoever wrote it may think this is hardly representative of the people who get the earned income tax credit. ... I looked up the starting salaries of teachers here in SAISD and with what, one child her full year, she would not qualify for an earned income tax credit So this isn't representative at all. My client would more than likely be someone who would be a provider or a health home provider, something that goes in and takes care of elderly people during the day or someone who works in housekeeping at one of our many hotels here in San Antonio.

78 See Most Serious Problem: *Earned Income Tax Credit (EITC): The Future State's Reliance on Online Tools Will Harm EITC Taxpayers*, *infra*.

79 <https://taxpayeradvocate.irs.gov/public-forums>.

80 Statement of Audience Member, National Taxpayer Advocate Public Forum 57-58 (Aug. 18, 2016).

In addition, given the issues the IRS has in replying to mail, I do not have much confidence that electronic communications will be acted upon in a timely manner either.⁸¹

Our first choice of action, typically, if it is fairly straightforward we can compare numbers and see, okay, yeah, there was a mistake, something was missing. We didn't have certain information. Whatever it might be. We could probably handle that by correspondence. Write a check or write a letter. We will get it resolved. A lot of times we need to get on the phone.

So one concern that I have, I think our office has in general with the future state is really looking towards heavy reliance on electronics, technology, to be able to tell us the information that we need. Our experience has been that tells us half the story. It tells us what the IRS thinks is going on or what's in their system that might be causing a problem. But it doesn't actually resolve everything. We have had access to online services in the past, and it gives us some information about what is going on, why the IRS is sending this notice, what might have triggered it, that we can maybe troubleshoot and figure out here is what is missing, or here's what they don't have. But the rest of the story typically takes a phone call.⁸²

And again, because people need back tax help, they need to get copies of their transcripts. In looking at the different ways that the IRS is considering how to get transcripts, I think if you're there on a Tuesday online, the moon is waxing and, you know, there's like a gerbil in the room, you qualify. I think it's like a very narrow set of people that are going to be able to use that.⁸³

Digital Communications and the "Mailbox Rule"

Underlying these general concerns is the potential for erosion of very specific taxpayer rights. For example, under IRC § 7502, if a taxpayer can demonstrate he has mailed a particular document to the IRS on or before the statutory due date, it will be deemed to be timely filed. The Secretary is authorized to promulgate regulations setting forth how "*prima facie* evidence of delivery and the postmark date shall apply to certified mail and electronic filing."⁸⁴ This rule is known as the "timely mailed, timely filed" or "mailbox" rule. To date, the IRS has not explained how this rule will be applied in the Future State.

For example, let's look at Jane, the EITC taxpayer described in the IRS's vignette. Suppose Jane receives a math error notice under IRC § 6213 giving her 60 days to request abatement of the tax and receive deficiency procedures. On day 60, Jane logs on to her IRS account and sends an email requesting an abatement. The IRS receives the email on day 61. In discussions with the Office of Chief Counsel, the National Taxpayer Advocate has been advised that the mailbox rule would not apply to this email, and thus Jane did not respond timely, the assessment stands, and she loses her right to deficiency procedures. This means she also loses the opportunity to petition the United States Tax Court, the only judicial

81 Written Statement of Arthur Bartlett, Legal Services of Southern Piedmont, National Taxpayer Advocate Public Forum 20-21 (Apr. 4, 2016).

82 Oral Statement of Rollin J. Groseclose, Johnson Price Sprinkle, National Taxpayer Advocate Public Forum 25-26 (Apr. 4, 2016).

83 Oral Statement of Robin McKinney, Maryland CASH Campaign, National Taxpayer Advocate Public Forum 44 (May 13, 2016).

84 IRC § 7502(c)(2).

For the Future State to succeed, the IRS and Congress should consider how the mailbox rule will apply to digital communications, weighing the alternatives in the light most favorable to the taxpayer.

forum in which a taxpayer can challenge a deficiency without paying the tax first, undermining her *right to appeal an IRS decision to an independent forum*. When the National Taxpayer Advocate pointed out that the taxpayer could prove when the email was sent (just as a facsimile log can show when a fax transmission occurred), representatives of the Office of Chief Counsel stated that emails and facsimile dates can be altered by the taxpayer, just as postage meter dates can be altered, and therefore the mailbox rule should not apply to digital communications. Under this approach, only the unsophisticated will utilize digital communications where the date of a document is critical.

Here, then, we have the heart of the problem with the Future State. It is designed around a fundamental suspicion that all taxpayers are likely to cheat, rather than giving taxpayers the benefit of the doubt and assuming they will not manipulate dates. If we really care about taxpayer rights, including the right to appeal to an independent forum, we should design a system that is based on the premise that most taxpayers are willing and trying to comply with the tax laws. For the Future State to succeed, the IRS and Congress should consider how the mailbox rule will apply to digital communications, weighing the alternatives in the light most favorable to the taxpayer.

What's an Audit? Taxpayer Rights and Real-Time Adjustments During the Filing Season

An even more troubling issue arises when we consider the impact of the IRS's increasing ability to identify errors and questionable returns while a return is being processed and before a refund is issued. In general, the accelerated due date for Forms W-2 and 1099-Misc (used to report non-employee compensation)⁸⁵ is an extremely important and positive development, one that the National Taxpayer Advocate has proposed since 2009.⁸⁶ But shifting examinations of returns into the filing season has profound implications for taxpayer rights that the IRS has neither acknowledged nor addressed. For example, there is a question about what rights accrue during income-matching and other pre-refund “reviews” of returns.

The National Taxpayer Advocate has previously written about “real” versus “unreal” audits. IRC § 7602(a)(1) grants the IRS the authority to examine any books, papers, records, or other data that may be relevant to ascertain the correctness of any return. The IRS interprets this provision narrowly; thus Automated Underreporter (AUR), Automated Substitute for Return (ASFR), Substitute for Return (SFR), and math and clerical error assessments, along with the entire category of questionable refund and return procedures are not classified as “real” audits.⁸⁷ As Figure S.6 shows, this classification system results in the majority of taxpayer compliance contacts being “unreal” audits — far outstripping what the IRS classifies as “audits” and the National Taxpayer Advocate calls “real” audits.⁸⁸

85 Pub. L. No. 114-113, Division Q, Title II, § 201, 129 Stat. 3040, 3076 (2015).

86 See National Taxpayer Advocate 2009 Annual Report to Congress 338-45 (Legislative Recommendation: *Direct the Treasury Department to Develop a Plan to Reverse the “Pay Refunds First, Verify Eligibility Later” Approach to Tax Return Processing*); see also National Taxpayer Advocate 2012 Annual Report to Congress 180-91 (Most Serious Problem: *The Preservation of Fundamental Taxpayer Rights Is Critical as the IRS Develops a Real-Time Tax System*); National Taxpayer Advocate 2011 Annual Report to Congress 284-95 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*).

87 An attempt to resolve a discrepancy between a taxpayer's return and third party data does not constitute an examination because the IRS “merely” is asking the taxpayer to explain the discrepancy. Rev. Proc. 2005-32, § 4.03, 2005-1 C.B. (206).

88 See, Nina Olson, *What's an audit, anyway?*, NATIONAL TAXPAYER ADVOCATE BLOG (Jan. 25, 2012), <https://taxpayeradvocate.irs.gov/news/what's-an-audit-anyway>.

FIGURE S.6, Real vs. Unreal Audits: FY 2015 Occurrences Relating to Returns Filed for Tax Year 2014⁸⁹

Adjusted Gross Income Category	FY 2015 Exams	Exam Coverage %	FY 2015 ASFR	FY 2015 AUR	FY 2015 Math Error	FY 2015 Combined	Returns Filled in Calendar Year 2014	Combined Coverage %
No adjusted gross income	20,263	1%	184,776	12,544	31,329	248,448	2,401,182	10%
\$1 under \$25,000	427,452	1%		930,554	708,164	2,052,646	54,757,719	4%
\$25,000 under \$50,000	150,191	0%		1,101,847	479,513	1,717,095	34,032,631	5%
\$50,000 under \$75,000	65,710	0%		557,679	283,301	897,614	19,418,889	5%
\$75,000 under \$100,000	56,460	0%		351,880	178,036	580,175	12,574,091	5%
Subtotal - under \$100,000	720,076	1%	184,776	2,954,504	1,680,343	5,495,978	123,184,512	4%
\$100,000 under \$200,000	98,403	1%		600,769	232,752	921,406	17,349,237	5%
\$200,000 under \$500,000	59,395	1%		210,091	47,287	313,689	5,020,982	6%
\$500,000 under \$1,000,000	18,149	2%		34,040	6,339	58,030	808,547	7%
\$1,000,000 under \$5,000,000	14,657	4%		12,546	2,861	29,769	370,989	8%
\$5,000,000 under \$10,000,000	2,174	8%		658	261	3,060	26,559	12%
\$10,000,000 or more	3,529	21%		335	288	4,055	16,797	25%
Total	916,383	0.6%	184,776	3,812,943	1,970,131	6,825,987	146,777,623	4.7%

⁸⁹ Data from Individual Returns Transaction File, Individual Master File, and Notice Delivery System from the Compliance Data Warehouse. The audits represent taxpayers where the IRS posted a transaction code 420 to at least one individual taxpayer account in FY 2015. In some cases, the return was accepted as filed prior the IRS contact. The statistics for returns secured through Automated Substitute for Return (ASFR) are from the IRS FY 2015 Collection Activity Report No. 5000-139. Since ASFR returns are not filed by the taxpayer, no adjusted gross income (AGI) is associated with the return. The number of taxpayers receiving an Automated Underreporter (AUR) contact are those who received a CP 2000 or CP 2501 notice from the IRS in FY 2015. The combined coverage rate removes duplicates, so that a taxpayer is only counted once even if affected by two or more of these compliance programs in FY 2015. Taxpayers who received FY 2015 compliance actions on tax returns in more than one AGI category are counted in each AGI category. The coverage rate is computed by dividing by the number of individual income tax returns filed in each AGI category for Tax Year 2014.

At every Public Forum, panelists and audience members expressed serious concerns about the interactions described in the vignettes. A threshold concern was that the system the IRS is designing seems to be stacked in the IRS's favor — *i.e.*, in both vignettes, the taxpayer lost; he or she was wrong. Nowhere did the vignette demonstrate how the taxpayer could prevail in the system of the future.

The National Taxpayer Advocate's position is that for purposes of IRC § 7602, an audit includes both pre-refund and post-refund examinations of returns that require the taxpayer to provide some level of documentation. This definition has several consequences relating to the taxpayer's *right to finality* and the *right to appeal an IRS decision in an independent forum*. First, it more accurately states the audit rate, which will be higher than what the IRS currently reports, and it changes the incidence of the audit rate. Second, and more importantly, it protects taxpayers from multiple reviews of the same return — it forces the IRS to identify *all* issues relating to the return that require some sort of documentation and address those issues as early as possible in one proceeding.⁹⁰ Third, and most importantly, it provides the taxpayer with an appeal to the IRS Office of Appeals. Currently, when a taxpayer disagrees with an “unreal” audit's proposed assessment, the taxpayer receives a Statutory Notice of Deficiency, with no opportunity to seek an administrative appeal to the IRS Office of Appeals. The taxpayer's only option is to go to the U.S. Tax Court, the cost of which may be prohibitive for many taxpayers. In “real” audits, on the other hand, taxpayers generally receive 30-day letters offering them a chance to request an administrative appeal before petitioning the Tax Court.

Effect of Erroneous IRS Advice Communicated Digitally

The reliance on online “communications” and “digital notifications” raises the question of whether such communication constitutes erroneous written advice for purposes of interest abatement. IRC § 6404(f)(1) requires the IRS to abate penalties and additions to tax attributable to deficiencies where a taxpayer relied on erroneous written advice from the IRS. The IRS's vision of its Future State, and its current Taxpayer Digital Communication pilot, utilize the online account and secure emails to exchange information, including answers to taxpayer questions. If the IRS provides a “tailored digital communication,” as it does in the vignette about Bennett, the Small Business taxpayer, is that “written advice” under IRC § 6404(f)? Moving people from the phones (oral advice) to emails and other digital communications increases the IRS cost of inaccuracy, because failure to be accurate will cost the public fisc through interest abatements. In the past, the IRS has responded to risks like this by minimizing and dumbing down the specific advice it provides to taxpayers, as it has in the case of declaring entire areas of tax law “out of scope” for purposes of telephone tax law assistance. Thus, by moving to a digital format, the IRS may be reducing the assistance it provides to taxpayers, and this will increase their costs of tax compliance by driving them to tax preparers who charge a fee. Receiving overly broad or unreliable “digital notifications” is not a desirable Future State.

These issues are not new, and they are only the most obvious examples. They were first raised in 2011, both at the public hearing held by the IRS on Real Time Tax Administration,⁹¹ and in the National

90 IRC § 7605(b) protects taxpayers from unnecessary examinations and inspections and generally allows the Secretary to conduct only one inspection of a taxpayer's books of account for each taxable year.

91 Comments of T. Keith Fogg, Director, Villanova Law School Federal Tax Clinic, Real Time Tax System Initiative (Dec. 8, 2011), http://www.irs.gov/pub/irs-utl/t_keith_fogg_aba_tax_section_and_low_income_tax_clinic.pdf (last visited Aug. 2, 2012).

Taxpayer Advocate's 2011 and 2012 Reports to Congress.⁹² In numerous meetings of the IRS senior leadership and Future State teams, the National Taxpayer Advocate has asked the IRS and the Office of Chief Counsel to articulate its position and explain to the public how it will protect taxpayers from repetitive audits in the Future State. To date, neither the IRS nor the Office of Chief Counsel has provided any response. To design a Future State without addressing these and related concerns means that the Future State is not based on taxpayer rights, and taxpayer rights will be layered on as an afterthought rather than serving as a foundation for the future of tax administration.

Recommendation

The National Taxpayer Advocate recommends that the Office of Chief Counsel, in collaboration with the National Taxpayer Advocate, immediately undertake a comprehensive review of key taxpayer rights provisions in the IRC and issue proposed guidance for public comment, updating these provisions to protect taxpayer rights in the digital environment envisioned by the IRS Future State. These provisions include the application of the mailbox rule and the erroneous advice rule to digital communications, and the definition of an "examination" or "audit" in light of the substantial pre-refund review activity envisioned by the Future State.

92 National Taxpayer Advocate 2012 Annual Report to Congress 180-91 (Most Serious Problem: *The Preservation of Fundamental Taxpayer Rights Is Critical as the IRS Develops a Real-Time Tax System*); National Taxpayer Advocate 2011 Annual Report to Congress 284-95 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*).

GROSSLY OUTDATED TECHNOLOGY AND INFRASTRUCTURE: To enable the IRS to meet the major technology improvements required for a 21st century tax administration even as it fulfills current operational technology demands, the IRS must articulate a clear strategy that will reassure Congress and taxpayers the funding will be well-spent.

The current state of the IRS’s technology limits how much and how quickly the IRS can advance to its “Future State.” But the impact of technology on *today’s* tax administration cannot be overstated. As we discuss later in a Most Serious Problem on Enterprise Case Management,⁹³ the IRS has two of the oldest information systems in the federal government.⁹⁴ Think about that — the nation’s revenue accounts are accessed and stored on five-decade old technology.

Today, the IRS has at least 60 major case management systems, and estimates range anywhere from 60 to 200 repositories of case data. This means that when a taxpayer calls the IRS for information about his or her account, the employee on the phone often doesn’t have access to the relevant system, can’t answer the taxpayer’s question, and has to send a referral to another IRS function to handle (one that has access to the relevant system). This all but certainly leads to the taxpayer calling or writing again, creating a vicious cycle of ever more work for the IRS and the taxpayer.

In the National Taxpayer Advocate’s Public Forums, taxpayers and practitioners alike spoke with enthusiasm about how an online account could provide them basic information without having to wait endlessly on the telephone. But the IRS’s ability to provide the full and seamless experience taxpayers and representatives want is far from a reality. For example, taxpayer representatives were particularly eager to see copies of notices that had been sent to their clients, since many clients don’t retain them or misplace them.⁹⁵ Yet most IRS notices are “vapor” — they don’t exist on IRS systems except as a record that such-and-such notice number was sent. Moreover, most letters and correspondence the IRS sends to taxpayers in audits and collection are not retained on IRS systems as digital images. Even if they were, the IRS would have to program between all of its case management systems and the online account in order for the information to be uploaded into the account. This is years away, and in the meantime, taxpayers and their representatives will continue to call and write.

In the Public Forums, the Nationwide Tax Forum focus groups, and the TAS group meetings, all participants expressed concern about the security of an online account.⁹⁶ The IRS shares those concerns and has been consulting with both government and private sector experts on this matter. The IRS cannot

93 See 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*, *infra*.

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

95 See Oral Statement of Robert Hamilton, MidPenn Legal Services Low Income Taxpayer Clinic, National Taxpayer Advocate Public Forum 9-10 (Apr. 8, 2016):

Major sources of delay in helping our clients is attempting to locate their notices, letters or records from the IRS, but the IRS already has, or should have, on file, particularly those documents submitted in connection with an audit.

The Form 2848, *Power of Attorney*, which our clients fill out at the beginning of representation, allows me to have access to their online transcripts, where I can obtain a clearer picture of what has transpired on their IRS account and where the taxpayer stands in the audit process; however, these transcripts only provide me with the dates of a notice or a letter that was issued, a short phrase summarizing that notice and the amount of the adjustment made to the client’s account.

It would be much more useful if, for example, all of these documents could actually be uploaded, opened and viewed directly through the online services function; however, while these online upgrades and online interfaces could surely enhance my representation of taxpayers, I have serious doubts about taxpayers utilizing and relying exclusively on online services as a replacement to direct person-to-person contact with the IRS representatives.

96 See <https://taxpayeradvocate.irs.gov/public-forums>.

The IRS has two of the oldest information systems in the federal government. Think about that — the nation’s revenue accounts are accessed and stored on five-decade old technology.

balance the need for security with the need for access — security must be *paramount*. But the IRS must clearly acknowledge — to Congress, to the taxpaying public, and in its Future State plans — that there are consequences to the high level of security. Such high security means that only a limited segment of taxpayers will be able or willing to use the online account. The most recent data show that only 34 percent of taxpayers who attempted to create an online account were able to do so.⁹⁷ The taxpayers who sought to establish online accounts were the early adopters — the ones most eager and comfortable with online financial transactions. Yet even among that group, only one-third got through. That means two-thirds of the U.S. taxpayer population will still need telephone or face-to-face assistance.

As the IRS conducts its Taxpayer Digital Communication pilot this year, it will be interesting to see if taxpayers will be willing to engage digitally with the IRS in audits and other interactions.⁹⁸ If they agree to communicate via email, do they continue to do so throughout the audit, or do they revert to more personal methods such as phone calls? Will the IRS leverage technology to provide clear and individual explanations, or will taxpayers feel frustrated with the IRS templates for responses to questions and issues? Will IRS employees be able to respond to specific questions, or will they send canned responses? Will the IRS learn from these dialogues and update its responses and guidance? It hasn’t done that in its analog processes, so what is it about the Future State that makes us think it will do so in the digital environment?

The Consequences of Insufficient Information Technology (IT) Funding to Fundamental Tax Administration Operations

The multiple demands on the IT function of the IRS create the same difficulties as the budget constraints on the IRS overall. In recent years, the IRS understandably has decided to focus most of its IT resources and talent on several major projects, including the Return Review Program (RRP), the Enterprise Case Management (ECM) system, International Data Exchange Service (IDES, for information sharing under FATCA and inter-government agreements), and Information Sharing and Reporting (IS&R, for Affordable Care Act implementation). But this approach leaves most of the IT needs of smaller functions, and even important projects for the larger functions, unfunded and unaddressed. Thus, chronic underfunding of the IRS IT function creates taxpayer burden and wasted resources from manual and unnecessary rework.

Even in areas that are currently the subject of major IT activity, the excuse of “no funding” arises. Currently, the IRS is moving to develop the RRP to replace the aging Electronic Fraud Detection System (EFDS).⁹⁹ But, as we discuss in a Most Serious Problem herein, a system is only as good as the intelligence that goes into it.¹⁰⁰ The IRS’s filters and business rules used for detecting fraudulent returns and identity theft had many false positive rates (FPRs) over 50 percent. This means that legitimate

97 The pass rate was 28 percent on Nov. 16, 2016, 29 percent on Nov. 17, 2016, and increased to 34 percent as of Dec. 18, 2016. IRS response to TAS Fact Check (Dec. 20, 2016).

98 For a discussion of TAS’s participation in the Taxpayer Digital Communication (TDC) pilot, see *TAS Case Advocacy*, *infra*.

99 W&I’s Business Modernization Office Return Review Program is a new integrated system that adds to the Service’s capability to detect, resolve and prevent criminal and civil tax non-compliance and fraud.

100 See Most Serious Problem: *Fraud Detection: The IRS’s Failure to Establish Goals to Reduce High False Positive Rates for Its Fraud Detection Programs Increases Taxpayer Burden and Compromises Taxpayer Rights*, *infra*. See also Literature Review: “False Positive” Determinations in Fraud Detection, vol. 3, *infra*.

taxpayers are burdened unnecessarily while the IRS goes about its important work of detecting and stopping questionable returns.

In the private sector, financial and other institutions have found that false positives cost the business more through customer base erosion than does actual fraud. Thus, they have a strong incentive to minimize the rate and burden of false positives.

Because taxpayers cannot just leave the IRS and find themselves another tax administrator, it is incumbent on the IRS to respond *in real time* during the filing season to rules that have high false positive rates. Institutions throughout the government and the private sector accept the importance of using incoming data in real time to minimize false positives. When TAS recommended creating a dedicated sub-team of an IT Executive Steering Committee to accomplish programming approvals quickly, the IRS responded it already had an operational structure in place that addresses fraud model modifications in an almost real time atmosphere. Yet the Business Rules and Requirements Management office that must approve all business rule modifications does not meet regularly.¹⁰¹ Thus, the IRS wastes the funds it does have by having to work the phone calls and letters from 1.2 million legitimate taxpayers whose \$9 billion in refunds were delayed.¹⁰²

Recommendation

The National Taxpayer Advocate recommends that Congress require the IRS to provide a detailed plan of its ECM strategy, including the RRP and the IRS strategy for reducing FPR in refund fraud detection, as well as a detailed report about the components and progress on the Taxpayer Advocate Service Integrated System (TASIS).¹⁰³

101 See National Taxpayer Advocate FY 2017 Objectives Report to Congress, vol. 2, 23.

102 Most Serious Problem: *Fraud Detection: The IRS's Failure to Establish Goals to Reduce High False Positive Rates for Its Fraud Detection Programs Increases Taxpayer Burden and Compromises Taxpayer Rights*, *infra*.

103 For a discussion of TASIS, see Most Serious Problem: *Enterprise Case Management (ECM): The IRS's ECM Project Lacks Strategic Planning and Has Overlooked the Largely Completed Taxpayer Advocate Service Information System as a Quick Deliverable and Building Block for the Larger ECM Project*, *infra*.

OFFICE OF THE TAXPAYER ADVOCATE: To protect taxpayer rights and ensure a fair and just tax system, Congress should take steps to strengthen the Taxpayer Advocate Service.

It has been 18 years since the establishment of the Office of the Taxpayer Advocate and the positions of National Taxpayer Advocate and Local Taxpayer Advocates under RRA 98. The Taxpayer Advocate Service (TAS) is now well-established. Since 2001, it has assisted about four million taxpayers in cases involving significant hardship, obtaining in whole or in part the relief taxpayers requested in over 75 percent of those cases. In the area of systemic advocacy, the IRS accepts, on average, more than half of our administrative recommendations, and enacted 32 of our legislative recommendations, including incorporating the Taxpayer Bill of Rights into the Code, and the IRS and Treasury have adopted additional recommendations by regulation.¹⁰⁴ The National Taxpayer Advocate has testified or submitted written testimony at over 60 congressional hearings, and the Annual Report to Congress is recognized as an important source of information about tax administration and taxpayer rights.

Our work in growing and strengthening TAS has not been without its challenges. Maintaining TAS's independence within an agency that is resistant to change and has a predilection for maintaining the status quo demands constant vigilance.¹⁰⁵ But over the years, progress has been made. The IRS senior leadership recognizes the important role TAS plays in reviewing IRS policies and actions, and acknowledges our role as an advocate for the taxpayer in those discussions.

Having sat at the IRS senior leadership table for almost 16 years (to our knowledge, longer than any other IRS official), the National Taxpayer Advocate is well aware of the challenges the IRS faces on a daily basis. But her job, and that of her employees, is to speak up for the taxpayers whose lives are impacted by the decisions the IRS makes daily in response to those challenges. This is very difficult work — trying to alter the course of an organization that is heading full-tilt in a particular direction.

The statutory framework of the Office of Taxpayer Advocate is what underlies the success of TAS. Without the strong language and structure of IRC §§ 7803(c) and 7811, the National Taxpayer Advocate would be a substanceless mouthpiece, and TAS a token gesture. But even a strong foundation can be improved. To enhance the effectiveness of the Office of the Taxpayer Advocate in advocating for taxpayers, the National Taxpayer Advocate offers the following ideas for consideration.

Reinforce the National Taxpayer Advocate's Right of Access to Taxpayer and IRS Information and to Meetings Between the IRS and Taxpayers

By and large, the National Taxpayer Advocate and her employees have significant access to IRS systems and data. Yet over the years, both in the context of specific cases and systemic advocacy, including during the preparation of the Annual Report to Congress, the IRS has:

- Refused to allow the National Taxpayer Advocate and other TAS employees access to the audit files of taxpayers with cases open in TAS;
- Refused to allow the National Taxpayer Advocate and her employees to attend meetings between the IRS and taxpayers with cases open in TAS, even when the taxpayer him or herself requests TAS attendance;

¹⁰⁴ See *National Taxpayer Advocate Legislative Recommendations with Congressional Action*, *infra*.

¹⁰⁵ See *supra* for a discussion of IRS culture; see also *Most Serious Problem: IRS Structure: The IRS's Functional Structure Is Not Well-Suited for Identifying and Addressing What Different Types of Taxpayers Need to Comply*, *infra*.

- Refused to provide the National Taxpayer Advocate with data she requires for analyzing a most serious problem of taxpayers in the context of the Annual Report to Congress; and
- Refused to consent to publication of such data on the basis it is “official use only,” even though no exception or exclusion applies under the Freedom of Information Act.

IRC § 6103 sets out the confidentiality protections of tax returns and return information. It categorically states, “Returns and return information shall, without written request, be open to inspection by or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure for tax administration purposes.”¹⁰⁶ Under IRC § 7803(c), the National Taxpayer Advocate’s tax administration duties are extraordinarily broad, encompassing all of tax administration.¹⁰⁷ Therefore, there is no basis for the IRS to decline to make accessible to the National Taxpayer Advocate or her employees a taxpayer’s administrative file (including the audit file) relating to a case open or pending in TAS. Similarly, when a taxpayer requests that TAS participate in conferences or meetings between IRS employees and the taxpayer, there is no basis for the IRS to deny TAS that access.¹⁰⁸ Yet these refusals keep occurring. Therefore, the National Taxpayer Advocate recommends that Congress clarify the extent of TAS’s access to tax returns and tax return information with respect to cases open and pending in TAS, including the ability to participate in meetings between the taxpayer and the IRS, at the taxpayer’s request.

Moreover, where the National Taxpayer Advocate, in the course of exercising her statutory tax administration duties, identifies an issue as a most serious problem of taxpayers, or is investigating the systemic causes of taxpayer problems in general, there is no basis for the IRS to decline to make available to her any data, information, records it has compiled, or is preserving relating to that issue. However, because TAS has encountered numerous instances over the years in which IRS officials have declined to

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¹⁰⁶ IRC § 6103(h)(1).

¹⁰⁷ See IRC § 7803(c)(2)(A)(i)-(iv).

¹⁰⁸ See Oral Statement of Jim Oliver, Jim Oliver & Associates, PC., National Taxpayer Advocate Public Forum 37-38 (Aug. 30, 2016).

This was a very complex problem. The [taxpayer] advocate tracked down the IRS auditor in Ogden who was handling the problem. The IRS auditor in Ogden informed us with the advocate on the phone it was against policy for them to engage in a conference call with the advocate and a taxpayer representative at the same time. I don’t know that policy, but that’s what this person said and refused, refused to engage in a conference call where I needed to talk to how complex this problem was and how it needed to be fixed.

provide her access to certain information, the National Taxpayer Advocate recommends that Congress clarify her right to such information.¹⁰⁹

Include Local Taxpayer Advocate Office Phone Numbers and Addresses in Statutory Notices of Deficiency

IRC § 6212(a) provides that any notice proposing a deficiency of tax “shall include a notice to the taxpayer of the taxpayer’s right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.” IRC § 7803(c)(2)(D)(i)(I) requires the National Taxpayer Advocate to “appoint local taxpayer advocates and make available at least 1 such advocate for each State.” Since the year 2000, when TAS first began its formal operations, the National Taxpayer Advocate has tried to get the IRS to include *on the Statutory Notice of Deficiency (SNOD)* the actual “location and phone number of the appropriate office.” As we discussed in an earlier Annual Report, the IRS has consistently declined to do so.¹¹⁰

In the past, the IRS and Chief Counsel maintained it satisfied this statutory mandate by including in the SNOD a stuffer notice listing all of the TAS local taxpayer advocate offices (Notice 1214), rather than the information pertaining to the *appropriate* office. With the IRS’s declining budget, the IRS in recent years has presented the National Taxpayer Advocate with a Hobson’s Choice — either agree to putting an internet address on the SNOD for taxpayer’s to look up the “appropriate” TAS location and phone number, or agree to TAS paying for the annual cost of printing at least three million Notices 1214 for inclusion in the SNODs.¹¹¹

As we discussed earlier in this report, about one-third of the U.S. individuals do not have home broadband access, concentrated in lower income, elderly, and minority populations.¹¹² For these millions of taxpayers to access the internet to complete a search for a TAS local office, they must seek out wi-fi. And even so, they often have pay-as-you-go cell phone contracts. Thus, the use of a general internet address on the SNOD does not provide the mandated TAS contact information to a large swath of the taxpayer population. The alternative proposal of TAS endlessly paying for stuffer notices reduces funds available for its direct case advocacy on behalf of taxpayers. Instead, for a modest upfront investment, the IRS could develop a technology-based solution.

109 This issue arose recently in the context of this Annual Report to Congress. In an unprecedented move, the IRS declined to respond to the Enterprise Case Management (ECM)-related information requested by TAS as part of our development of a Most Serious Problem. The IRS took the position that ECM is internal to the IRS and “cannot be categorized as a most serious problem ‘encountered by taxpayers.’” IRS response to TAS research request (Nov. 3, 2016). Thus it declined to provide us with data and financial information the National Taxpayer Advocate had deemed necessary to her analysis of the problem. As such, TAS was unable to obtain the bulk of the information it sought to prepare this Most Serious Problem. TAS obtained the information used in this Most Serious Problem from external sources and from IRS information outside of the formal Most Serious Problem process. See Most Serious Problem: *Enterprise Case Management (ECM): The IRS’s ECM Project Lacks Strategic Planning and Has Overlooked the Largely Completed Taxpayer Advocate Service Information System as a Quick Deliverable and Building Block for the Larger ECM Project, infra.*

110 See National Taxpayer Advocate 2014 Annual Report to Congress 237-44 (Most Serious Problem: *Statutory Notices of Deficiency: Statutory Notices of Deficiency Do Not Include Local Taxpayer Office Contact Information on the Face of the Notices*).

111 The estimate of the cost for one year’s worth of Notice 1214 for SNODs issued by the Small Business/Self-Employed Operating Division was \$47,000. This does not include any SNODs issued by W&I with respect to Earned Income Tax Credit audits.

112 See discussion of taxpayer needs and preferences, *supra*; see also Most Serious Problem: *Online Accounts: Research into Taxpayer and Practitioner Needs and Preferences is Critical as the IRS Develops an Online Taxpayer Account System* and Research Study: *Taxpayers’ Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups, infra.*

Since 2013, TAS has proposed that the IRS program its notice-generation system to allow for matching between the taxpayer's last known address (used on the notice) and the "location and phone number of the appropriate [local TAS] office." TAS has submitted Unified Work Requests (UWRs) to the IRS requesting such programming. To date, the IRS has denied all such requests. Therefore, in order to ensure that all taxpayers have the *right to a fair and just tax system*, the National Taxpayer Advocate recommends that Congress establish a date certain by which the IRS shall be required to complete programming for including the specific phone number and address of the appropriate local TAS office, based on the taxpayer's last known address.¹¹³

Provide the National Taxpayer Advocate the Authority to Hire Independent Counsel, Comment on Regulations, and File Amicus Briefs in Litigation Raising Taxpayer Rights Issues

The National Taxpayer Advocate is required by law to assist taxpayers in resolving problems with the IRS, to identify areas in which taxpayers have frequent problems or that are the subject of frequent litigation, and to identify administrative and legislative solutions to reduce controversy and mitigate such problems.¹¹⁴ The mission of the Office of the Taxpayer Advocate would be advanced by additional statutory authority in three areas: *amicus curiae* briefs pertaining to taxpayer rights; the administrative rulemaking process; and the ability to hire independent counsel.

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The National Taxpayer Advocate is not authorized to participate in litigation.¹¹⁵ While the conduct of relevant trials themselves may be best left to trial lawyers equipped to advocate zealously on behalf of individual clients, precedential issues of interest to numerous taxpayers may come before the judiciary with no one representing the rights of taxpayers in general. In the case of the Small Business Administration (SBA), the Chief Counsel for Advocacy has statutory authority to represent the interests of small businesses by appearing as *amicus curiae*.¹¹⁶

Although the National Taxpayer Advocate is charged with representing the interests of individuals, including low income taxpayers, there is no statutory requirement that the IRS address the National Taxpayer Advocate's comments before publishing final regulations. In the case of the SBA, the Chief Counsel for Advocacy has statutory authority to represent the interests of small businesses by providing comments that the IRS must consider before publishing any final regulation.¹¹⁷ In the case of small businesses, Congress recognized this need by legislatively mandating regulatory review on their behalf by a counsel dedicated to this function. The rights of individual taxpayers, including low income taxpayers, may fall in a gap in regulatory review. While the National Taxpayer Advocate is often included in pre-publication circulation

¹¹³ The right to a fair and just tax system means "[t]axpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels." IRS Pub. 1, *Your Rights as a Taxpayer* (Dec. 2014).

¹¹⁴ IRC § 7803(c)(2)(A)(i)-(iv).

¹¹⁵ See 28 U.S.C. § 516 ("Except as otherwise authorized by law, the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, and securing evidence therefor, is reserved to officers of the Department of Justice"); 5 U.S.C. § 3106 ("Except as otherwise authorized by law, the head of an Executive department or military department may not employ an attorney or counsel for the conduct of litigation in which the United States, an agency, or employee thereof is a party"); IRC § 7452 (indicating that the Secretary of the Treasury "shall be represented by the Chief Counsel"). See also Program Manager Tech. Assistance 00566, *Authority for the National Taxpayer Advocate to File Amicus Briefs with the Courts of the United States* (Oct. 2, 2002).

¹¹⁶ 5 U.S.C. § 612(b).

¹¹⁷ IRC § 7805(f).

of proposed or temporary regulations, the IRS is not required to address her comments in the published preambles to final regulations. The National Taxpayer Advocate believes that tax administration would be improved if the public knew what her concerns were with respect to regulations and how the IRS addressed (or did not address) those concerns.

When Congress reorganized the IRS in 1998, the Senate passed legislation providing for counsel to the National Taxpayer Advocate to be appointed by and report directly to the National Taxpayer Advocate and to operate within the Office of the Taxpayer Advocate.¹¹⁸ In sponsoring this provision, Senator Charles Grassley (R-Iowa) offered the following rationale:

The purpose of doing this is to give the Taxpayer Advocate ready access to legal opinions and legal judgments. Currently, the Taxpayer Advocate must put requests into the Office of Chief Counsel. In order to make the Taxpayer Advocate more independent, which is what this bill does, it logically follows that the Taxpayer Advocate should have its own legal counsel. This will guarantee it fast, confidential legal advice to help those taxpayers in greatest need. Because it is the taxpayers in greatest need who go to the Taxpayer Advocate.¹¹⁹

This provision was eliminated in the conference agreement. Still, the conference report noted that the “conferees intend that the National Taxpayer Advocate be able to hire and consult counsel as appropriate.”¹²⁰

Accordingly, to assist the National Taxpayer Advocate in fulfilling her statutory duties, TAS employs several attorney-advisors and has done so for more than a decade. The first round of hiring began in 2003 after the National Taxpayer Advocate briefed the Commissioner, and it has continued since that time. TAS requires independent attorney-advisors because the office often takes positions, both in working taxpayer cases and in systemic advocacy, that are directly contrary to the position of the IRS and the Office of Chief Counsel. TAS attorney-advisors do not purport to offer formal legal advice or represent the agency, but they are indispensable in enabling the National Taxpayer Advocate to develop an independent perspective and advocate as the law intends.¹²¹

In 2015, we were informed that TAS’s longstanding ability to hire attorney-advisors within TAS is inconsistent with Treasury Department General Counsel Directive No. 2, which states: “Except for positions in the Inspectors General offices or within the Office of the Comptroller of the Currency, attorney positions shall not be established outside of the Legal Division” unless the General Counsel or Deputy General Counsel(s) provides a waiver. On November 29, 2016, the National Taxpayer Advocate submitted a memorandum to the Acting General Counsel, Department of the Treasury, requesting that Treasury General Counsel Directive No. 2 be modified to include the Office of the Taxpayer Advocate

118 H. REP. NO. 105-599, at 215 (1998) (Conf. Rep.).

119 144 Cong. Rec. § 4460 (May 7, 1998) (statement of Sen. Grassley).

120 H. REP. NO. 105-599, at 216 (1998) (Conf. Rep.).

121 The Office of Chief Counsel has created the position of “Special Counsel to the National Taxpayer Advocate” to manage and coordinate Office of Chief Counsel support for the National Taxpayer Advocate and her headquarters employees. The Special Counsel and her staff are responsible for providing legal advice for programs and services related to the mission of TAS. The Special Counsel’s work is very helpful to the functioning of TAS in working many taxpayer cases, reviewing proposed regulations, coordinating with other divisions within the Office of Chief Counsel, reviewing training materials, and the like. However, the Special Counsel to the National Taxpayer Advocate reports to the IRS Chief Counsel and receives her performance reviews from the Chief Counsel. When the National Taxpayer Advocate wishes to articulate a position in her independent role that is contrary to the Office of Chief Counsel’s position, the Special Counsel is obligated to follow the position of the Chief Counsel.

along with the Inspectors General offices and the Office of the Comptroller of the Currency as Treasury offices excepted from the policy against hiring and employing attorney-advisors.¹²²

Set TAS's Annual Appropriations Level Through a Separate Account Rather Than as Part of the IRS's Taxpayer Services Account

The IRS is currently funded through four appropriations accounts — Taxpayer Services, Enforcement, Operations Support, and Business Systems Modernization. Funding for TAS is provided through the Taxpayer Services account, and except to the extent specified in an appropriations act, the IRS may decide how much funding to provide to TAS. This “power of the purse” may compromise TAS’s independence because the IRS can — explicitly or implicitly — penalize TAS if the National Taxpayer Advocate or other TAS employees criticize IRS policies and programs that they believe fail to respect taxpayer rights.

The “power of the purse” may compromise TAS’s independence because the IRS can — explicitly or implicitly — penalize TAS if the National Taxpayer Advocate or other TAS employees criticize IRS policies and programs that they believe fail to respect taxpayer rights.

In most years since FY 2006, the Appropriations Committees have addressed this concern by including language in appropriations acts that provides a minimum funding level for TAS. But the decision to provide a minimum TAS funding level is not institutionalized. It is made on an *ad hoc* basis from year to year. In most years, in fact, the Administration’s budget request asks that Congress *not* provide TAS with a minimum funding level,¹²³ and in some years, one house of Congress has specified a minimum funding level for TAS while the other has not.¹²⁴

By creating a separate appropriation for TAS within the IRS budget — much like the Inspectors General have a separate appropriation with the Treasury Department’s budget — this independence issue can be resolved on a permanent basis.

Codify the Authority to Issue a Taxpayer Advocate Directive (TAD) and Clarify the Appeal Process Applicable to Taxpayer Assistance Orders (TAOs) and TADs

IRC § 7811 authorizes the National Taxpayer Advocate to issue a TAO if she “determines the taxpayer is suffering or about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Secretary.”¹²⁵ Only the National Taxpayer Advocate, the Commissioner of Internal Revenue, or the Deputy Commissioner of Internal Revenue may modify or

122 It is worth noting that as of Oct. 20, 2016, there were 278 attorney-advisors in the IRS whose positions were outside the Office of Chief Counsel. In addition to the attorneys in TAS, there were 238 attorney-advisors in the Small Business/Self-Employed Division’s estate and gift tax area (pursuant to an express waiver from General Counsel Directive No. 2), 14 attorneys in the Office of Professional Responsibility, six attorneys in the Large Business & International Division, four attorneys in the Human Capital Office, two attorneys in the Return Preparer Office, and one attorney each in the Commissioner’s Office, the Chief Financial Officer’s Office, and the Tax Exempt & Government Entities Division. IRS Human Resources Reporting Center (Oct. 10, 2016).

123 See, e.g., IRS, *Congressional Justification for FY 2015 Budget at IRS 95* (“The IRS supports adequate funding for the Taxpayer Advocate Service. Specifying the TAS funding level in law prevents the IRS from proposing an operating plan that allocates resources in the best interest of taxpayers”), <https://www.treasury.gov/about/budget-performance/CJ15/10.%20-%202015.%20IRS%20CJ.pdf>.

124 For FY 2016, for example, the Senate bill provided a minimum funding level for TAS, but the House bill did not. Compare S. 1910, 114th Cong. (2015) with H.R. 2995, 114th Cong. (2015). For FY 2017, both houses provided a minimum funding level for TAS. See S. 3067, 114th Cong. (2016); H.R. 5485, 114th Cong. (2016).

125 IRC § 7811(a)(1)(A). IRC § 7811(b) establishes the terms of the Taxpayer Assistance Order (TAO).

rescind the TAO, and “only if a written explanation of the reasons for the modification or rescission is provided to the National Taxpayer Advocate.”¹²⁶

Similarly, in the course of assisting taxpayers in resolving problems or identifying areas in which taxpayers have problems in dealing with the IRS, the National Taxpayer Advocate from time to time confronts procedural obstacles. In such cases, the Commissioner of Internal Revenue has delegated to the National Taxpayer Advocate the authority to issue TADs that direct IRS units to change procedures “to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers.”¹²⁷ However, the IRS may not comply with or even respond to a TAD because it comes not under a statute but merely a delegated power that the Commissioner could revoke. In practice, the Commissioner or Deputy Commissioner, along with the National Taxpayer Advocate, may rescind or modify a TAD.¹²⁸

Recommendations

To enhance the independence of the Office of the Taxpayer Advocate and ensure that the rights of taxpayers, including the most vulnerable and unrepresented, are considered and protected in tax administration, regulations, and litigation, the National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 7803(c) to clarify, pursuant to IRC § 6103(h)(1), that the National Taxpayer Advocate shall have access to tax returns and return information with respect to cases open and pending in TAS, and shall have the right to participate in meetings between taxpayers and the IRS when asked to do so by the taxpayer.
2. Amend IRC § 7803(c) to clarify that, in furtherance of her tax administration duties, the National Taxpayer Advocate shall have access to all data, statistical information, and documents necessary to perform a “full and substantive analysis” of the issues.¹²⁹
3. Amend IRC § 6212(a) to require the IRS to include on and within the SNOD itself the specific phone number and address of the appropriate local TAS office, based on the taxpayer’s last known address.
4. Authorize the National Taxpayer Advocate to submit *amicus curiae* briefs in federal appellate litigation on matters relating to the protection of taxpayer rights.
5. Require the IRS to submit proposed or temporary regulations to the National Taxpayer Advocate on a pre-publication basis for comment within a reasonable time, and address those comments in the preamble to final regulations.
6. Authorize the National Taxpayer Advocate to appoint independent counsel who report directly to the National Taxpayer Advocate, provide independent legal advice, help prepare *amicus curiae* briefs and comments on proposed or temporary regulations, and assist the National Taxpayer Advocate in preparing the Annual Report to Congress and in advocating for taxpayers individually and systemically.
7. Create a separate appropriation for TAS within the IRS budget to ensure that TAS funding is controlled by Congress and not by IRS.

¹²⁶ IRC § 7811(c).

¹²⁷ Delegation Order 13-31 (formerly DO-250, Rev. 1), *reprinted* as IRM 1.2.50.4 (Jan. 17, 2001); see also IRM 13.2.1.6 (July 16, 2009).

¹²⁸ *Id.*

¹²⁹ IRC § 7803(c)(2)(B)(i).

8. Grant to the National Taxpayer Advocate non-delegable authority to issue a TAD with respect to any IRS program, proposed program, action, or failure to act that may create a significant hardship for a segment of the taxpayer population or for taxpayers at large, and require that, to object to a directive, the IRS would have to respond timely in writing.
9. Amend IRC § 7811 to clarify the process by which the IRS shall appeal a TAO, and require the Commissioner of Internal Revenue or the Deputy Commissioner of Internal Revenue to raise his or her objections to a TAO (*i.e.*, appeal the Order) issued by the National Taxpayer Advocate by responding in writing within a reasonable time, as established by the National Taxpayer Advocate in the TAO. If the order is modified or rescinded, a detailed explanation of the reasons for such modification or rescission should be provided.¹³⁰

¹³⁰ See Taxpayer Rights Act of 2015, S. 2333, 114th Cong. §§ 401 & 402 (2015); Taxpayer Rights Act of 2015, H.R. 4128, 114th Cong. §§ 401 & 402 (2015) (addressing aspects of Taxpayer Assistance Orders and Taxpayer Advocate Directives).