

LR #1 Codify the Taxpayer Bill of Rights and Enact Legislation that Provides Specific Taxpayer Protections

PROBLEM

Taxpayer rights are central to voluntary compliance. If taxpayers believe they are being treated, or can be treated, in an arbitrary and capricious manner, they will mistrust the system and be less likely to comply of their own volition. By contrast, taxpayers will be more likely to comply if they have confidence in the fairness and integrity of the tax system.¹

The Internal Revenue Code (Code or IRC) provides dozens of real and substantive rights that protect taxpayers from unfair and unjust treatment and provide opportunities to challenge arbitrary and capricious government actions. However, taxpayers may not avail themselves of their rights because they are unaware of them. A 2012 survey found less than half of all U.S. taxpayers believe they have rights before the IRS, and only 11 percent said they knew what those rights are.² Taxpayers have no simple way to identify or locate rights in the Code because they are scattered throughout its various sections. It is even more difficult for taxpayers to find “off-code” provisions in different pieces of legislation. Although Congress has passed multiple pieces of legislation with the title of “Taxpayer Bill of Rights,” none of these laws provide a foundational, general description of taxpayer rights.³

In response to these concerns raised by the National Taxpayer Advocate, on June 10, 2014, the IRS formally adopted the Taxpayer Bill of Rights (TBOR).⁴ While this was a significant achievement for increasing taxpayers’ awareness of their rights, and an important first step toward integrating taxpayer rights into all aspects of tax administration, more can be done to cement these fundamental concepts as a permanent part of our tax system.⁵ Specifically, placing a list of the ten core taxpayer rights and five taxpayer responsibilities in the Code would reassure taxpayers that these rights are a fundamental part of our tax system. Furthermore, it would reinforce the unwritten social contract between taxpayers and the IRS by laying out in clear language what is expected of taxpayers and what rights they can expect the IRS to honor.

Although codifying the TBOR would improve awareness of taxpayer rights, the TBOR itself is only as effective as the specific statutory rights that give it effect. When these underlying rights and protections are ignored, weakened, or diluted, the effectiveness of the TBOR is also diminished. There are multiple

- 1 TAS research has shown that trust in government and fairness appear to have significant influence on the compliance behavior of self-employed taxpayers. National Taxpayer Advocate 2013 Annual Report to Congress, vol. 2 33-56 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*).
- 2 Forrester Research Inc., *The TAS Omnibus Analysis*, from North American Technographics Omnibus Mail Survey, Q2/Q3 2012 20 (Sept. 2012).
- 3 See Technical and Miscellaneous Revenue Act, Pub. L. No. 100-647, § 6226, 102 Stat. 3342, 3730 (1988) (containing the “Omnibus Taxpayer Bill of Rights,” also known as TBOR 1); Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996) (also known as TBOR 2); Internal Revenue Service Restructuring and Reform Act, Pub. L. No. 105-206, 112 Stat. 685 (1998) (Title III is known as “Taxpayer Bill of Rights III” or TBOR 3). These laws create specific rights in certain instances, but they do not create a thematic, principled-based list of overarching taxpayer rights.
- 4 See *IRS Adopts “Taxpayer Bill of Rights;” 10 Provisions to be Highlighted on IRS.gov*, in *Publication 1*, IR-2014-72, (June 10, 2014). See IRS, Taxpayer Bill of Rights, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights#informed>.
- 5 The National Taxpayer Advocate has recommended that Congress codify the Taxpayer Bill of Rights several times, beginning in her 2007 Annual Report to Congress. See National Taxpayer Advocate 2007 Annual Report to Congress 478-98 (Legislative Recommendation: *Taxpayer Bill of Rights and De Minimis “Apology” Payment*).

reasons this occurs. Some specific rights contain gaps in coverage and fail to protect taxpayers in all appropriate situations. Rights also become diluted over time when they are not updated to take into account the current environment or fine-tuned to reflect changes in tax administration. Another reason certain rights become ineffective is the lack of an enforceable remedy for a violation of the right. In some cases, specific taxpayer protections are not effective because they are based on administrative practice instead of a statutory direction, and thus are subject to change. Finally, a major reason specific rights are impaired is the IRS fails to properly implement and protect them. This Annual Report to Congress has focused in depth on some of the specific rights provided to taxpayers by the IRS Restructuring and Reform Act of 1998 (RRA 98) and how the IRS is not adequately applying some of the protections that Congress established. For all of the reasons discussed above, the tax system is long overdue for an overhaul to fine-tune existing rights and provide new taxpayer protections.

Since RRA 98 was passed over 16 years ago, there has been no major taxpayer protection legislation passed by both houses of Congress. Although there have been a number of significant taxpayer protection bills introduced,⁶ none of them have received full Congressional approval. The National Taxpayer Advocate believes the time is right for taxpayer rights legislation. The passage of time has shown where new protections and remedies are needed. Without providing these specific taxpayer protections, the TBOR becomes merely a statement of principles, without any teeth to ensure that these fundamental rights are protected on a daily basis, and that taxpayers have remedies and the IRS is held accountable for any violations of these rights.

Beyond codifying the TBOR and providing specific taxpayer protections, there are two essential elements necessary for effective protection of taxpayer rights: funding and oversight. The IRS will be severely hampered in its ability to implement new policies, procedures, and systems for protecting taxpayer rights if it does not receive adequate funding. If there is agreement that taxpayers have certain basic rights, then this places on Congress and the Executive Branch the responsibility to fund the IRS so it can deliver these rights. In addition, this report illustrates what can happen in the years following significant taxpayer protection legislation if there is not regular monitoring—the rights erode over time. RRA 98 required Congress to hold annual joint hearings to review among other things the IRS's progress in meeting its objectives and improving taxpayer service and compliance.⁷ Each hearing was conducted jointly by majority and minority members of the House Committees on Ways and Means, Appropriations, and Government Reform and Oversight and the Senate Committees on Finance, Appropriations, and Governmental Affairs. In order to achieve lasting change, new taxpayer rights legislation should include a similar requirement for periodic hearings without the limitation of five years.

6 Broad taxpayer protection legislation has been introduced in both houses, but has failed to pass either house. See e.g., S. 3355, 112th Cong. (2012) (introduced by Senator Bingaman); H.R. 6050, 112th Cong. (2012) (introduced by Rep. Becerra).

7 Pub. L. No. 105-206, § 4001, 112 Stat. 685, 783 (1998). Note that the statute refers to a “joint review [to] be held at the call of the Chairman of the Joint Committee.” The legislative history, however, makes clear that there was to be “one annual joint hearing” before June 1 of each of the succeeding 5 calendar years. H.R. REP. NO. 105-599, at 328 (1998) (Conf. Rep.).

RECOMMENDATION

To promote taxpayers' awareness of their rights and increase confidence in the fairness of the tax system, the National Taxpayer Advocate recommends that Congress:

- Codify the Taxpayer Bill of Rights that sets forth the fundamental rights and obligations of U.S. taxpayers as detailed below.
- Enact past legislative recommendations as well as those from this year's Annual Report that relate to each of the core taxpayer rights.
- Provide an appropriate level of funding for the IRS so it can properly undertake, implement, and train its employees about the taxpayer right provisions.
- Require annual joint oversight hearings to help identify and address problem areas, with specific focus on how the IRS is meeting the needs of particular taxpayer segments, including individuals, small businesses, and exempt organizations and how it is protecting taxpayer rights.

SPECIFIC LEGISLATIVE RECOMMENDATIONS FOR PROTECTING TAXPAYER RIGHTS

Over the last year, the National Taxpayer Advocate and her staff have developed a “cross-walk” listing of existing statutory taxpayer rights that maps them to the specific rights comprising the Taxpayer Bill of Rights.⁸ As part of this process, we were able to identify gaps in taxpayer protections. While some rights, such as the *right to appeal an IRS decision in an independent forum*, have a significant number of enforceable protections, others, such as the *right to quality service*, have few.

Starting with her first Annual Report to Congress in 2001, the National Taxpayer Advocate has made legislative recommendations to Congress each year that would further the protection of taxpayer rights. Many of these recommendations have been introduced in bills by the House of Representatives or the Senate, with some being signed into law. These recommendations are necessary to strengthen existing rights as well as to create new ones. The new recommendations in this year's report focus specifically on identifying situations where the current statutory rights fall short, and need to be updated or expanded to provide rights and remedies in certain situations. Enactment of these recommendations will provide taxpayers with remedies for violations of their rights, thereby improving voluntary compliance.

Ten Taxpayer Rights⁹

1. The Right to Be Informed

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

- *Amend IRC § 7701 to Provide a Definition of “Last Known Address,” and Require the IRS to Mail Duplicate Notices to Credible Alternative Addresses.*¹⁰ Amend IRC § 7701 to add a definition

8 See Taxpayer Advocate Service, *What the Taxpayer Bill of Rights Means for You*, <http://taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights/What-the-Taxpayer-Bill-of-Rights-Means-for-You> (last visited Dec. 22, 2014).

9 These rights and their descriptions were negotiated between the National Taxpayer Advocate and other divisions of the IRS and use the official language adopted by the IRS and incorporated into Publication 1, *Your Rights as a Taxpayer* (June 2014). See IRS, *Taxpayer Bill of Rights*, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights>.

10 See National Taxpayer Advocate 2012 Annual Report to Congress 525-35. See also National Taxpayer Advocate 2008 Annual Report to Congress 449-51 (Legislative Recommendation: *Mailing Duplicate Notices to Credible Alternate Addresses*).

of “last known address” that incorporates case law, including the Fifth Circuit’s holdings in the *Mulder*¹¹ and *Terrell*¹² cases, and current regulations. Direct the Secretary of Treasury to: (1) develop procedures for checking third-party databases for credible alternate addresses prior to sending notices that establish legal rights and obligations (*i.e.*, Statutory Notices of Deficiency, Collection Due Process notices, notices of federal tax lien, etc.); and (2) when the IRS learns that its records do not contain a taxpayer’s correct address, and the taxpayer has a credible alternate address, require the IRS to mail the notice simultaneously to the last known and credible alternate addresses (as defined by the Secretary).

- *ANNUAL NOTICES: Require the IRS to Provide More Detailed Information on Certain Annual Notices it Sends to Taxpayers.*¹³
 - Amend IRC § 6159 to require the IRS to provide on annual installment agreement statements sent to taxpayers, within one year of the enactment date, a detailed breakdown of information showing the last balance due at the beginning of the year, additions to this amount attributable to interest and penalties (and the type of penalty), both cumulatively and for the last 12 months, and how payments (including refund offsets) received since the beginning of the year are applied to tax, penalties, and interest.
 - Amend IRC § 7524 to require the IRS to provide on annual reminder notices sent to taxpayers with delinquent accounts, within one year of the enactment date, a detailed breakdown of information showing the last balance due at the beginning of the year, additions to this amount attributable to interest and penalties (and the type of penalty), both cumulatively and for the last 12 months, and how payments (including refund offsets) received since the beginning of the year are applied to tax, penalty, and interest.
- *IRS CORRESPONDENCE: Codify § 3705(a)(1) of RRA 98, Define “Manually Generated,” and Require Contact Information on Certain Notices in All Cases.*¹⁴
 - Codify RRA 98 § 3705(a)(1).
 - Define the term “manually generated correspondence” as correspondence issued as a result of an IRS employee exercising his or her judgment in working or resolving a specific taxpayer case or correspondence, or where the employee is asking the taxpayer to provide additional case-related information.
 - Require the IRS to provide the name, telephone number, and unique identification number of an IRS manager on notices with legal impact, such as those that start the running of a statute of limitations or trigger appeal rights (such as the Statutory Notice of Deficiency), where such notices have been automatically generated without employee review.

11 *Mulder v. Comm’r*, 855 F.2d 208 (5th Cir. 1988).

12 *Terrell v. Comm’r*, 625 F.3d 254 (5th Cir. 2010).

13 See Legislative Recommendation: *ANNUAL NOTICES: Require the IRS to Provide More Detailed Information on Certain Annual Notices it Sends to Taxpayers*, *infra*. This recommendation also relates to the *right to pay no more than the correct amount of tax*.

14 See Legislative Recommendation: *IRS CORRESPONDENCE: Codify § 3705(a)(1) of RRA 98, Define “Manually Generated,” and Require Contact Information on Certain Notices in All Cases*, *infra*. This recommendation also relates to the *right to quality service and the right to a fair and just tax system*.

- *ACCESS TO THE IRS: Require the IRS to Publish a Public Phone Directory and Report on Implementing an Operator System Similar to “311” Lines.*¹⁵ Require the IRS, within 180 days, to:
 - Publish, on IRS.gov, its current Practitioner Directory or a similar directory that provides the same detailed information regarding the names and contact information for managers of local IRS groups or territories for different functions of the IRS, as well as managers of service and compliance functions located in IRS campuses. Require the IRS to provide an electronic or paper copy of the directory for a particular state or geographic area, if requested by a taxpayer.
 - Develop a report detailing the administrative steps necessary to implement an operator system for its main toll-free phone line, similar to a 311 telephone line. Under such a system, all taxpayers would call a single nationwide toll-free phone number and answer a limited number of questions through an interactive voice response system before being transferred to an operator. If the taxpayer were requesting a specific piece of information such as an account balance or transcript, the operator would provide the information to the taxpayer. For calls regarding other IRS functions and offices, the operator would transfer the taxpayer to the specific office handling the taxpayer’s individual issue or case. Such report should be provided to the Senate Committee on Finance and the House Committee on Ways and Means.

- *Worker Classification.*¹⁶
 - Direct the Department of Treasury and the IRS to publish guidance on classification for both income and employment taxes.
 - Direct the IRS to develop a program similar to the Employment Status Indicator of the United Kingdom.
 - Repeal § 530 of the Revenue Act of 1978¹⁷ and replace it with an IRC provision to eliminate unnecessary confusion and clearly state that it applies to both income taxes and employment taxes. Require the IRS to consult with affected industries. Lift ban on guidance and require the Secretary to issue associated guidance, including guidance with specific industry focus.
 - Amend IRC § 7436 to permit workers to petition the U.S. Tax Court to review the IRS’s classification determinations.
 - Require service recipients engaged in a trade or business to issue Forms 1099-MISC to S corporations (as defined in IRC 1361(a)(1)) and increase the penalties for failure to comply with the information reporting requirements of IRC 6041A.¹⁸

15 See Legislative Recommendation: *ACCESS TO THE IRS: Require the IRS to Publish a Public Phone Directory and Report on Implementing an Operator System Similar to “311” Lines*, *infra*. This recommendation also relates to the *right to quality service*.

16 See National Taxpayer Advocate 2008 Annual Report to Congress 375-90. Two parts of this recommendation, regarding voluntary income tax withholding agreements and backup withholding for noncompliant Schedule C filers are omitted here because similar recommendations are made below. See National Taxpayer Advocate 2005 Annual Report to Congress 381-96 (Legislative Recommendation: *Measures to Reduce Noncompliance in the Cash Economy*). This recommendation also relates to the *right to quality service*. S. 1796, 111th Cong. (2009) (introduced by Senator Baucus) and S. 1289, 112th Cong. (2011) (introduced by Senator Carper) included parts of this recommendation.

17 Pub. L. 95-600, 92 Stat. 2763, 2885-86.

18 The original recommendation, which applied to incorporated service providers, has been amended here to only apply to S corporations.

- Direct Treasury and the Joint Committee on Taxation to report on the operation of the revised worker classification rules and provide recommendations to increase compliance.
- Require the IRS and the Department of Labor to conduct targeted public awareness campaigns to inform workers of the comparative rights afforded to employees and independent contractors, the tax consequences associated with each classification, and the opportunity to enter into voluntary income tax withholding agreements.

2. The Right to Quality Service

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

- *Direct the Treasury Department to Develop a Plan to Reverse the “Pay Refunds First, Verify Eligibly Later” Approach to Tax Return Processing.*¹⁹ Direct the Treasury Department to prepare a report identifying the administrative and legislative steps required to allow the IRS to receive and process information reporting documents before it processes tax returns. The Treasury Department should be given a full year to prepare its report in light of the complexity of the issue and the actions that would be required of the IRS, the Social Security Administration, private employers, and financial institutions. The goal should be to fully implement required changes within five years from the time the report is completed.
- *Tuition Reporting: Allow TIN Matching by Colleges.*²⁰ Allow colleges and universities to verify Taxpayer Identification Numbers with the IRS prior to filing annual information returns on tuition payments.
- *Free Electronic Filing for All Individual Taxpayers.*²¹ Revise IRC § 6011(f) to provide that the Secretary shall make electronic return preparation and electronic filing available without charge to all individual taxpayers. Alternatively, Congress could direct the Secretary to conduct a study, in conjunction with the Office of the Taxpayer Advocate, to evaluate the feasibility of providing taxpayers with both a template for use in preparing their returns and a direct filing portal for use in filing returns. The portal would also enable taxpayers to access a government-controlled database from which taxpayers could import third-party information reports, such as W-2s and 1099s, for use in preparing their returns.²² The study should result in a report describing options considered and conclusions reached, and should be submitted to the House Ways and Means and Senate Finance committees within two years.

19 See National Taxpayer Advocate 2009 Annual Report to Congress 338-45.

20 See National Taxpayer Advocate 2013 Annual Report to Congress 319-23.

21 See National Taxpayer Advocate 2004 Annual Report to Congress 471-77. S. 2861, 110th Cong. (2008) (introduced by Senator Schumer) included parts of this recommendation. There have been numerous bills introduced regarding the recommendation of a direct filing portal, including: S. 1289, 112th Cong. (2011) (introduced by Senator Carper); H.R. 5801, 110th Cong. (2008) (introduced by Rep. Lampson); S. 1074, 110th Cong. (2007) (introduced by Senator Akaka); and S. 1321, 109th Cong. (2005) (introduced by Senator Santorum).

22 See National Taxpayer Advocate 2012 Annual Report to Congress 232-50.

- *Grant Program for Free Tax Preparation for Low Income Taxpayers.*²³ Create an IRS administered grant program for free tax preparation for low income taxpayers. Specifically, grants would be made for demonstration projects as seed money to attract other grants, much like the awards being made under the Violence Against Women Act and welfare to work legislation. The grant would be issued to an organization that is serving as the lead for a coalition of groups, including banks, city or state economic development agencies or health and human services offices, welfare groups, and other social service organizations. The programs would target a significant number of taxpayers (either in a concentrated urban area or more dispersed throughout a larger geographic area).
- *RETURN PREPARATION: Require the IRS to Provide Return Preparation to Taxpayers in Taxpayer Assistance Centers and Via Virtual Service Delivery.*²⁴ Require the IRS to provide return preparation for vulnerable populations (including low income, disabled, and elderly taxpayers) in Taxpayer Assistance Centers (TACs) and via virtual service delivery. Provide sufficient funding for IRS personnel to offer return preparation in TACs.
- *Refund Delivery Options.*²⁵ Require the Department of Treasury and the IRS to:
 1. Evaluate the entire refund process to determine opportunities to shorten the turnaround time;
 2. Develop a pilot program to determine how the inclusion of a Revenue Protection Indicator in the acknowledgement file will impact tax administration. Evaluate the feasibility of including such information in the current “Where’s My Refund” online application;
 3. Evaluate existing stored value card programs to distribute government benefits, with particular emphasis on the experience of the Financial Management Service’s Direct Express Program to distribute Social Security benefits;
 4. Incorporating lessons learned from existing programs, develop a stored value card program to distribute refunds to individual taxpayers before the filing season following the next filing season; and
 5. Conduct an annual public awareness campaign to provide accurate information to taxpayers regarding available refund delivery alternatives, associated turnaround times, and any other pertinent information.
- *VIRTUAL SERVICE DELIVERY (VSD): Establish Targets and Deadlines for the Development and Implementation of VSD in Brick & Mortar Locations, in Mobile Tax Assistance Units, and Over*

23 See National Taxpayer Advocate 2002 Annual Report to Congress vii-viii. This recommendation was made in the introduction of the 2002 report, and was not included in the list of formal legislative recommendations. However, there have been numerous bills introduced in both the House of Representatives and the Senate supporting this recommendation, and two laws have been passed relating to this recommendation. See Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Div. D, Title 1, 121 Stat. 1844, 1975-76 (2007); Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, Div. C, Title 1, 123 Stat. 3034, 3163 (2009).

24 See Legislative Recommendation: *RETURN PREPARATION: Require the IRS to Provide Return Preparation to Taxpayers in Taxpayer Assistance Centers and Via Virtual Service Delivery*, *infra*.

25 See National Taxpayer Advocate 2008 Annual Report to Congress 427-41. S. 3355, 112th Cong. (2012) (introduced by Senator Bingaman); H.R. 6050, 112th Cong. (2012) (introduced by Rep. Becerra); S. 3215, 111th Cong. (2010) (introduced by Senator Bingaman); H.R. 5047, 111th Cong. (2010) (introduced by Rep. Becerra); H.R. 4994, 111th Cong. (2010) (introduced by Rep. Lewis), included parts of this recommendation.

*the Internet.*²⁶ Establish targets and timelines for development and implementation of VSD in brick and mortar locations, including non-IRS facilities, in mobile tax assistance units, and via taxpayer digital communications over the Internet. Provide funding, or require the IRS to allocate funding, sufficient to enable continued implementation of VSD initiatives in brick and mortar locations, in mobile tax assistance units, and over the Internet.

- *Develop a Form 1023-EZ and Reduce Costs to Taxpayers and the IRS by Implementing “Cyber Assistant.”*²⁷ Require the IRS to develop a Form 1023-EZ;²⁸ and require and provide sufficient funding for the IRS to implement Cyber Assistant for use in preparing applications for recognition of exempt status.
- *Require the IRS to Establish a Voluntary Compliance Program for Exempt Organizations.*²⁹ Require the IRS to create a broad-based, formal, and ongoing voluntary compliance program for exempt organizations similar to those offered in the areas of employee plans, tax-exempt bonds, and Indian tribal governments within 270 days.

3. The Right to Pay No More than the Correct Amount of Tax

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

- *Another Marriage Penalty – Taxing the Wrong Spouse.*³⁰
 1. Eliminate joint and several liability for joint filers. Require married taxpayers to file a split-column tax return, which identifies separate items of income, deduction, credit, and payment, similar to the combined return adopted by a number of states.³¹
 2. Repeal the rule of *Poe v. Seaborn*³² that each spouse is taxed on one-half of any community income. Apply the federal rules for allocating a nonresident alien’s community income to all couples, with slight modification.
 3. Require the IRS to exhaust efforts to collect against assets under the liable spouse’s control before collecting against assets under the nonliable spouse’s control, unless such efforts would be futile.

26 See Legislative Recommendation: *VIRTUAL SERVICE DELIVERY (VSD): Establish Targets and Deadlines for the Development and Implementation of VSD in Brick & Mortar Locations, in Mobile Tax Assistance Units, and Over the Internet, infra.*

27 See National Taxpayer Advocate 2011 Annual Report to Congress 562-65. Part of this recommendation, requiring the IRS to allow administrative review of its conclusion that an organization’s exempt status was automatically revoked, is omitted here because it is included in a recommendation below. See Legislative Recommendation: *EO JUDICIAL AND ADMINISTRATIVE REVIEW: Allow IRC § 501(C)(4), (C)(5), or (C)(6) Organizations to Seek a Declaratory Judgment to Resolve Disputes About Exempt Status and Require the IRS to Provide Administrative Review of Automatic Revocations of Exempt Status, infra.*

28 On July 1, 2014, the IRS released a revised Form 1023-EZ. See IRM 21.3.8.11.8, *Form 1023-EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code* (Nov. 18, 2014). The new form does not require organizations to furnish any documents in support of their claim that they are tax exempt, or to even provide a narrative description of their proposed activities. They merely attest that they meet the requirements for tax exemption. Legislative direction is needed to clarify the nature and amount of information organizations should be required to provide in order for the IRS to make a determination about their tax exempt status.

29 See National Taxpayer Advocate 2007 Annual Report to Congress 537.

30 See National Taxpayer Advocate 2005 Annual Report to Congress 407-32. The National Taxpayer Advocate proposed a different version of this recommendation in 2001. See National Taxpayer Advocate 2001 Annual Report to Congress 129-45 (Legislative Recommendation: *Separate Liability Election*). This recommendation also relates to the *right to a fair and just tax system*.

31 If Congress were to enact this provision, many of the other recommendations regarding relief from joint and several liability would be moot.

32 282 U.S. 101 (1930).

- *Allow Taxpayers to Raise Innocent Spouse Relief as a Defense in Collection Action.*³³ Amend IRC §§ 6015 and 66 to specify that taxpayers may raise innocent spouse relief as a defense in a proceeding brought under any provision of title 26 (including §§ 6213, 6320, 6330, 7402, and 7403) or any case under title 11 of the United States Code.
- *Credits and Refunds.*³⁴ Amend IRC § 6015(g)(3) so that, when relief is granted in full or in part under IRC § 6015(c), payments made after the date of filing an innocent spouse claim can be refunded.
- *Amend IRC § 6511 to Allow Refund Claims Past the Return Statute Expiration Date (RSED) When Excess Collection is Due to IRS Error.*³⁵ Require the IRS to send out annual statements to taxpayers under continuous levy showing payments received, penalties assessed, and interest charged, along with a detailed breakout of the application of such payments to tax, penalties, and interest for all relevant tax years.³⁶ This annual statement is necessary since taxpayers who discover errors have a limited window of time to request refunds of overpayments. Alternatively, the National Taxpayer Advocate recommends that IRC § 6511 be amended to allow taxpayers two years from the date they learn of the excess collection to make refund claims if the excess collection is due to IRS negligence. This legislative recommendation would provide relief to taxpayers where the excess collection is due to IRS negligence.
- *Adjustment of Estimated Tax Penalty in Accordance with Amended Returns.*³⁷ Amend IRC § 6654 to clarify that, for purposes of the estimated tax penalty, the return for the taxable year is the original return or any subsequently filed amended return.

4. The Right to Challenge the IRS's Position and Be Heard

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

- *Mandate that the IRS, in Conjunction with the National Taxpayer Advocate, Review Any Proposed Expanded Math Error Authority to Protect Taxpayer Rights.*³⁸ Require the IRS to develop math error notices that clearly describe what is being changed and why, and tell the taxpayer what

33 See National Taxpayer Advocate 2010 Annual Report to Congress 377-82. This recommendation also relates to the *right to challenge the IRS's position and to be heard* and the *right to appeal*. This recommendation also included a provision to amend §§ 6015 and 66 to specify that taxpayers may request equitable relief at any time before the expiration of the period of limitations on collection. This provision was omitted here because the IRS has adopted this recommendation in Rev. Proc. 2013-34. See also National Taxpayer Advocate 2009 Annual Report to Congress 378-80 (Legislative Recommendation: *Allow Taxpayers to Raise Relief Under Internal Revenue Code Sections 6105 and 66 as a Defense in Collection Actions*).

34 See National Taxpayer Advocate 2001 Annual Report to Congress 155-58. This recommendation also included a provision to modify IRC § 6015(g) to provide guidance to the Secretary for developing a broader interpretation of the issuance of refunds under IRC § 6015(f). This provision was omitted here because of changes made by Rev. Proc. 2013-34.

35 See National Taxpayer Advocate 2006 Annual Report to Congress 547-48.

36 See Legislative Recommendation: *ANNUAL NOTICES: Require the IRS to Provide More Detailed Information on Certain Annual Notices it Sends to Taxpayers, infra*.

37 See National Taxpayer Advocate 2001 Annual Report to Congress 220. S. 213, 107th Cong. (2002) (introduced by Senator Shaw) included parts of this recommendation.

38 See National Taxpayer Advocate 2011 Annual Report to Congress 524-30. See also National Taxpayer Advocate 2002 Annual Report to Congress 185-97 (Legislative Recommendation: *Math Error Authority*) (recommending amending IRC § 6213(g)(2) to limit the definition of mathematical and clerical error and repealing IRC § 6213(g)(2)(M), which authorizes the IRS to use math error summary assessment procedures for an entry on the return with respect to a qualifying child for the Earned Income Tax Credit, where the taxpayer has been identified as the non-custodial parent of that child by the Federal Case Registry of Child Support Orders established under § 453(h) of the Social Security Act).

steps he or she should take to contest the change. The National Taxpayer Advocate further recommends that Congress consider the following issues in connection with any future expansions of math error authority under IRC § 6213(g):

1. Confine use of math error authority to instances that are not factually complex, can be verified on accurate, reliable government databases, and do not require the IRS to analyze facts and circumstances or weigh the adequacy of information.
2. Permit the IRS to use math error authority in conjunction with private third-party databases only where the information has been identified as reliable and accurate, and thus, would not subject the IRS to constraints in litigation.
3. Restrict math error authority in situations with a high abatement rate, where the use of math error authority appears to be unduly burdening compliant taxpayers by requiring them to submit additional documentation within a 60-day timeframe compared to a 90-day timeframe when deficiency procedures are used.

To ensure that future grants of math error authority observe these limits, the National Taxpayer Advocate recommends that Congress require the Department of Treasury, in conjunction with the National Taxpayer Advocate, to evaluate and report to Congress on whether any proposed expansions satisfy these criteria. The report should analyze the burdens and benefits of the proposed use of math error authority, considering downstream costs such as those for audit reconsideration and Taxpayer Advocate Service intervention, and rigorously analyze the proposed expansions for accuracy and suitability.

- *Crediting an Overpayment Against an Unassessed, Outstanding Tax Liability.*³⁹ Amend IRC § 6402 to change the term “liability” to “assessed liability,” thereby permitting the IRS to credit any overpayment only against an *assessed* tax liability.

5. The Right to Appeal an IRS Decision in an Independent Forum

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals’ decision. Taxpayers generally have the right to take their cases to court.

- *Strengthen the Independence of the IRS Office of Appeals and Require at Least One Appeals Officer and Settlement Officer in Each State.*⁴⁰
 1. Require that Appeals have at least one Appeals Officer and Settlement Officer located and regularly available within every state, the District of Columbia, and Puerto Rico, and allow taxpayers access to telephonic, correspondence, or face-to-face hearings with the local office when requested.
 2. Provide that each Appeals office maintain separate office space, separate phone, facsimile, and other electronic communication access, and a separate post office address from any IRS office co-located with the Appeals office.

³⁹ See National Taxpayer Advocate 2008 Annual Report to Congress 442-45.

⁴⁰ See National Taxpayer Advocate 2009 Annual Report to Congress 346-50. This recommendation also relates to the *right to challenge the IRS’s position and be heard* and the *right to a fair and just tax system*. H.R. 4375, 112th Cong. (2012) (introduced by Rep. Johnson) and S. 2291, 112th Cong. (2012) (introduced by Senator Cornyn) included parts of this recommendation. See also Legislative Recommendation: ACCESS TO APPEALS: Require that Appeals Have at Least One Appeals Officer and Settlement Officer Located and Permanently Available Within Every State, the District of Columbia, and Puerto Rico, *infra*.

- *EO JUDICIAL AND ADMINISTRATIVE REVIEW: Amend IRC § 7428 to Allow IRC § 501(c)(4), (c)(5), or (c)(6) Organizations to Seek a Declaratory Judgment to Resolve Disputes About Exempt Status and Require the IRS to Provide Administrative Review of Automatic Revocations of Exempt Status.*⁴¹ Amend IRC § 7428 to allow taxpayers seeking exempt status as IRC § 501(c)(4), (c)(5), or (c)(6) organizations to seek a declaratory judgment on the same footing as currently allowed for taxpayers seeking exempt status as IRC § 501(c)(3) organizations. Amend IRC § 6033(j) to require the IRS to adopt administrative review procedures for organizations treated as having had their exempt status automatically revoked.
- *Allocate to the IRS the Burden of Proving It Properly Imposed the Two-Year Ban on Claiming the Earned Income Tax Credit.*⁴² Amend IRC § 32(k) to provide that the IRS has the burden of proof as to whether it is appropriate to impose the two-year ban on claiming Earned Income Tax Credit.
- *Final Determination Rights.*⁴³ Amend IRC § 6015 to allow the IRS to rescind a determination letter issued under IRC § 6015 with the agreement of the taxpayer, as permitted under IRC § 6212(d).⁴⁴ Amend IRC § 6015(e)(1)(A) to require the IRS to provide in the notice of final determination the last date to petition the Tax Court. Also, provide for the taxpayer to be able to petition the Tax Court by the later of the date the Secretary specifies in the notice of final determination or 90 days from the date of the notice. Include in IRC § 6015(e)(1)(A)(ii) language that would allow taxpayers outside the United States 150 days to petition the Tax Court, as is currently provided taxpayers who receive a notice of deficiency.
- *Effect of Automatic Stay Imposed in Bankruptcy Cases Upon Innocent Spouse and CDP Positions in Tax Court.*⁴⁵
 1. Amend IRC §§ 6015, 6320, and 6330 to include language similar to that contained in IRC § 6213(f), which provides that in any case under 11 U.C.S. (a bankruptcy case), the running of the time period prescribed by IRC § 6213(a) (90 day or 150 day period) for filing a petition in the Tax Court regarding a deficiency is suspended for the period of time which the debtor-taxpayer is prohibited by reason of the automatic stay from filing such petition, plus 60 days thereafter. In the alternative, Congress should amend each of those sections to include a cross-reference to IRC § 6213, which would provide that rules similar to the rules of IRC § 6213 shall apply for purposes of determining the time for filing a petition.

41 See Legislative Recommendation: *EO JUDICIAL AND ADMINISTRATIVE REVIEW: Amend IRC § 7428 to Allow IRC § 501(c)(4), (c)(5), or (c)(6) Organizations to Seek a Declaratory Judgment to Resolve Disputes About Exempt Status and Require the IRS to Provide Administrative Review of Automatic Revocations of Exempt Status*, *infra*. This recommendation also relates to the *right to be informed*.

42 See National Taxpayer Advocate 2013 Annual Report to Congress 311-15.

43 See National Taxpayer Advocate 2001 Annual Report to Congress 159-65. This recommendation also relates to the *right to be informed*. This recommendation also included a provision to amend IRC § 6015(e) to allow the taxpayer the right to petition the U.S. Tax Court in determinations made under IRC § 6015(f) (requests for equitable relief from joint and several liability), which was enacted by Pub. L. 109-432 § 408, 120 Stat. 2922, 3061 (2006).

44 IRC § 6015(c) provides for taxpayers who are no longer married or living together to separate their portion of tax liability for any liability which is assessed with respect to the return. IRC § 6015(g)(3) specifically states that no credit or refund shall be allowed as a result of an election under subsection (c).

45 See National Taxpayer Advocate 2004 Annual Report to Congress 490-492. H.R. 3479, 113th Cong. (2013) (introduced by Rep. Thornberry); S. 725, 113th Cong. (2013) (introduced by Senator Cornyn); H.R. 4375, 112th Cong. (2012) (introduced by Rep. Johnson); and S. 2291, 112th Cong. (2012) (introduced by Senator Cornyn) include parts of the recommendation.

2. As yet another option, the National Taxpayer Advocate recommends that Congress add a new provision to the Code to make clear that the time for filing a Tax Court petition will be tolled whenever a taxpayer is prohibited from filing such petition by reason of the automatic stay, regardless of whether a deficiency is at issue.

■ *Collection Due Process Hearing.*⁴⁶

1. Retain the Collection Due Process procedure as a necessary, essential, and statutory taxpayer right.
2. Amend IRC § 6330(c)(2)(B) to provide that, regardless of whether the taxpayer actually received a statutory notice of deficiency, had an opportunity to dispute such liability, or self-assessed the liability on a tax return, the taxpayer may raise issues relating to the existence or amount of any liability that is eligible for an audit reconsideration or a Doubt as to Liability Offer in Compromise. Amend IRC § 6330(c)(3)(C) to provide that the Office of Appeals shall not issue a Notice of Determination in said case until such reconsideration and administrative appeal of the underlying liability has been concluded and the results taken into consideration in making the determination under that paragraph.
3. Amend the flush language of IRC § 6320(a)(2) to provide that the Secretary shall send the notice required under IRC § 6320(a)(1) not more than five business days after the day the notice of lien is mailed or otherwise submitted for filing. Further, amend IRC § 6320(a)(3)(B) to provide that the taxpayer has 30 days from the date the notice is provided under IRC § 6320(a)(2) to request a hearing.

■ *Restructuring and Reform of Collection Due Process Provisions.*⁴⁷

1. Amend IRC §§ 6330(a)(2) and (a)(3)(C) to require the IRS to issue the CDP levy notice at the time it undertakes its first levy action with respect to a tax. Such notice shall describe the specific levy action (levy source, date levy will occur) and provide a name and contact information for the IRS employee whom the taxpayer can contact in order to otherwise resolve the tax debt.
2. Amend IRC § 6330(a)(2)(C) to clarify that when the IRS mails a Notice of Right to a CDP Hearing prior to a proposed levy, it shall send that CDP notice by certified or registered mail but not with “return receipt requested.”
3. Clarify the role and scope of Tax Court oversight of Appeals’ continuing jurisdiction over the taxpayers’ cases under IRC § 6330(d)(2). The scope of continuing judicial oversight should include review of the IRS’s authority to release levies under IRC § 6343(a) and to return levy proceeds under IRC § 6343(d).
4. Codify the IRS Collection Appeals Program (CAP).
5. Codify the IRS Audit Reconsideration process.

⁴⁶ This recommendation also included a list of administrative recommendations to the IRS, which are not included here. See National Taxpayer Advocate 2004 Annual Report to Congress 451-70. Part of this recommendation, to amend IRC § 6330(d) to restrict judicial review to issues other than the underlying liability, is also not included because it was superseded by a later recommendation that would limit, but not remove entirely, the Tax Court’s authority to review the underlying liability. See National Taxpayer Advocate 2005 Annual Report to Congress 447-63 (Legislative Recommendation: *Restructuring and Reform of Collection Due Process Proceedings*).

⁴⁷ See National Taxpayer Advocate 2005 Annual Report to Congress 447-63. This recommendation also included a provision that would consolidate judicial review of Collection Due Process cases in U.S. Tax Court, which was enacted as part of the Pension Protection Act of 2006, Pub. L. No. 109-280, § 854, 120 Stat. 780, 1019 (2006).

6. Amend IRC § 6330(c)(2)(B) to specifically include “audit reconsideration” as an alternative to be considered *within* the CDP hearing process.
 7. Amend IRC § 6330(d)(1) to provide that where a taxpayer is precluded from raising the underlying liability because he has already received a notice of deficiency or he participated meaningfully in a prior hearing or proceeding, the Tax Court’s authority to review the underlying liability shall be limited to a determination of whether the Appeals Officer abused his discretion in failing or refusing to consider the underlying liability in the CDP hearing.
- *Collection Due Process.*⁴⁸ Amend IRC § 6330(a)(2) and subsection (a)(3)(b) as necessary to provide the taxpayer outside the United States an additional 30-day period to request a hearing in response to a Collection Due Process notice. Additionally, amend IRC § 6330(d) to allow an additional 30-day response period to taxpayers appealing a CDP determination from outside the United States.
 - *Collection Due Process and Uneconomical Levies.*⁴⁹ Amend IRC § 6330(c) to clarify that the Appeals hearing officer, prior to making his determination under IRC § 6330(c)(3), must verify that the IRS conducted the required analysis under IRC § 6331(j), and must also consider that analysis in balancing the government’s interest in efficient tax collection with the taxpayer’s legitimate concern about the intrusiveness of the proposed levy action.
 - *Authorize the IRS Office of Appeals to Rescind Notices of Determination Issued in Collection Due Process Cases.*⁵⁰ Amend IRC § 6330 to permit the IRS Office of Appeals, with the consent of the taxpayer, to rescind Collection Due Process Notices of Determination (NODs) in cases where the taxpayer has raised a legitimate concern regarding the NOD within the 30-day period of petitioning the Tax Court, and before the taxpayer has requested Tax Court review.
 - *Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions.*⁵¹ Amend IRC §§ 6320 and 6330 to extend Collection Due Process rights to “affected third parties,” known as nominees, alter egos, and transferees, who hold legal title to property subject to IRS collection actions.
 - *APPELLATE VENUE IN NON-LIABILITY CDP CASES: Amend IRC § 7482 to Provide That The Proper Venue to Seek Review of a Tax Court Decision in All Collection Due Process Cases Lies With the Federal Court of Appeals for the Circuit in Which the Taxpayer Resides.*⁵² Amend IRC § 7482(b)(1)(A) to provide that proper appellate venue for all CDP cases lies with the circuit court of appeals based on the taxpayer’s legal residency.

48 See National Taxpayer Advocate 2002 Annual Report to Congress 244.

49 See National Taxpayer Advocate 2006 Annual Report to Congress 551-52.

50 See National Taxpayer Advocate 2011 Annual Report to Congress 548-51.

51 See National Taxpayer Advocate 2012 Annual Report to Congress 544-52.

52 See Legislative Recommendation: *APPELLATE VENUE IN NON-LIABILITY CDP CASES: Amend IRC § 7482 to Provide That The Proper Venue to Seek Review of a Tax Court Decision in All Collection Due Process Cases Lies With the Federal Court of Appeals for the Circuit in Which the Taxpayer Resides, infra*. This recommendation also relates to the *right to be informed*.

- *STANDARD OF REVIEW: Amend IRC § 6330(d) to Provide for a De Novo Standard of Review of Whether the Collection Statute Expiration Date Is properly Calculated by the IRS.*⁵³ Amend IRC § 6330(d) to provide for a *de novo* standard of review by the Tax Court of whether the Collection Statute Expiration Date is properly calculated by the IRS pursuant to IRC § 6330(c)(1).

6. The Right to Finality

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

- *Elimination of Lengthy Collection Statutes for Limitations Extension.*⁵⁴ Eliminate the IRS's inventory of lengthy Collection Statute Expiration Date (CSED) extensions by enacting legislation that will terminate all CSED extensions on accounts that were in existence before January 1, 2000 and were granted in connection with installment agreements. This provision should be similar to RRA 98 § 3461(c), which eliminated many lengthy CSED extensions as of December 31, 2002 but which did not apply to CSED extensions granted in connection with installment agreements. To ensure that taxpayers who were granted the IRS CSED extensions prior to the effective date of RRA 98 are subject to the same policies and procedures applicable to taxpayers today, a new sunset provision should be enacted to give the IRS two years to take enforcement action if it is appropriate to do so, after which the collection statute will expire.
- *Provide a Fixed Statute of Limitations for U.S. Virgin Islands Taxpayers.*⁵⁵ Provide that the filing of a non-fraudulent return with the U.S. Virgin Islands (USVI) by a person claiming to be a *bona fide* USVI resident is treated as the filing of a return with the IRS so that the filing starts the statute of limitations under IRC § 6501. This change should apply to tax years after 1986. However, it should only be effective with respect to assessments made 90 or more days after it is enacted to allow the IRS time to wrap up any ongoing examinations. As a correlative matter, require the USVI to automatically provide copies of returns filed with its Bureau of Internal Revenue to the IRS within a reasonable period of time.
- *Enact a Statute of Limitations to Limit the Retroactive Effect of Revocation of an Organization's Exempt Status.*⁵⁶ Enact a statute of limitation for revocation of exempt status, generally for three years, that would run from the filing of the return for the year in question. As under current law, in case of substantial omission of items from the return, the statute would run for six years, but in case of fraud, tax evasion, or non-filing of the return, the statute of limitation would not run. The time-bar would apply not only to the effective date of revocation but also to the introduction of past facts from closed years as a reason for revocation. Statutory certainty regarding the period in issue would help to align revocation with assessment.

53 See Legislative Recommendation: *STANDARD OF REVIEW: Amend IRC § 6330(d) to Provide for a De Novo Standard of Review of Whether the Collection Statute Expiration Date Is properly Calculated by the IRS, infra*. This recommendation also relates to the right to pay no more than the correct amount of tax, the right to challenge the IRS's position and be heard, the right to finality, and the right to a fair and just tax system.

54 See National Taxpayer Advocate 2006 Annual Report to Congress 520-56.

55 See National Taxpayer Advocate 2009 Annual Report to Congress 391-99.

56 See National Taxpayer Advocate 2010 Annual Report to Congress 391-95.

7. The Right to Privacy

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

- *Impose Collection Protections on Refund Offsets for EITC Recipients.*⁵⁷ Amend IRC § 6402 by adding language to limit the amount of the tax refund attributable to the Earned Income Tax Credit (EITC) that the Secretary can offset pursuant to IRC §§ 6402(a) through (e). The provision should prohibit the Secretary from offsetting the refund by more than 15 percent of the portion attributable to the EITC.
- *Waiver of Levy Prohibition Under IRC § 6331(k).*⁵⁸ Amend IRC § 6331 to prohibit the IRS from requiring the taxpayer to waive the IRC § 6331(k) prohibition on levies as a condition precedent to the IRS's consideration or acceptance of installment payments or an Offer in Compromise.
- *Apply Uniform Limits and Extensions to Levy Actions on Social Security Benefits.*⁵⁹
 1. Codify IRS administrative policy of exempting all taxpayers with incomes at or below 250 percent of the poverty level from Federal Payment Levy Program (FPLP) levies under IRC § 6331(h);
 2. Modify “specified payments” under IRC § 6331(h) to exclude amounts exempt under IRC § 6334(a)(9) due to a taxpayer's standard deduction and personal exemptions for all levies on Social Security benefits;
 3. Limit both FPLP and paper levies of Social Security benefits to 15 percent of these payments;
 4. Codify existing IRS administrative practice to require the release of FPLP levies upon expiration of the Collection Statute Expiration Date (CSED); and
 5. Prohibit the IRS's post-CSED collection by paper levy upon a taxpayer's fixed and determinable right to future Social Security benefits unless:
 - a. The taxpayer has exhibited flagrant conduct within three months of the CSED as determined by IRS personnel; and
 - b. The levy is limited to the balance due at the CSED.
- *Amend IRC § 7403 to Provide Taxpayer Protections Before Lien Foreclosure Suits on Principal Residences.*⁶⁰ Amend IRC § 7403 to preclude an IRS employee from requesting that the

⁵⁷ See National Taxpayer Advocate 2009 Annual Report to Congress 365-70.

⁵⁸ See National Taxpayer Advocate 2008 Annual Report to Congress 446-48.

⁵⁹ See National Taxpayer Advocate 2009 Annual Report to Congress 371-77. This recommendation also relates to the *right to finality*. See also National Taxpayer Advocate 2006 Annual Report to Congress 527-30 (Legislative Recommendation: *Levy Actions on Fixed and Determinable Rights*); National Taxpayer Advocate 2005 Annual Report to Congress 466-67 (Legislative Recommendation: *Social Security Levies*) (recommending Social Security payments be exempt altogether from levy).

⁶⁰ See National Taxpayer Advocate 2012 Annual Report to Congress 537-43. This recommendation also relates to the *right to a fair and just tax system*. In 2013, the IRS issued interim guidance that adopted this recommendation. See IRS Interim Guidance Memorandum SBSE-05-0414-0032 (Apr. 18, 2014) (reissuing IRS Interim Guidance Memorandum SBSE-05-0413-035 (Apr. 30, 2013) (Principal Residence Suit Foreclosure Recommendations), available at [http://www.irs.gov/pub/foia/ig/spder/SBSE-05-0414-0032\[1\].pdf](http://www.irs.gov/pub/foia/ig/spder/SBSE-05-0414-0032[1].pdf)). The National Taxpayer Advocate believes this recommendation should be made permanent through codification.

attorney general direct the filing of a civil action to foreclose the federal tax lien against a taxpayer's principal residence in U.S. District Court, unless the IRS employee has received executive-level approval after determining that: (1) the taxpayer's other property or rights to property, if sold, are insufficient to pay the amount due, including the expenses of the proceedings; and (2) the foreclosure and sale of the residence will not create an economic hardship due to the financial condition of the taxpayer.

8. The Right to Confidentiality

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

■ *Confidentiality/Disclosure and Disclosure of Returns and Return Information.*⁶¹

- Disclosure of returns and return information should be limited to those rare instances in which an agency has demonstrated a compelling need for that information which cannot be reasonably obtained from another source. All such disclosures should be subject to the appropriate safeguards and procedures for maintaining the confidentiality of the tax information in the hands of another agency. The Code should specify limits on the amount and use of disclosed information, and make all violations of those limits subject to civil and criminal sanctions.
- Disclosure provisions should be designed so as to minimize access to such information by contractors. Where contractors must be used by an agency, the disclosures should be limited to a “fact of filing” or “match/mismatch” acknowledgement. If such a narrow disclosure provision is unworkable, then the disclosure of tax information should be limited to the number of nontax administration contractors that the IRS can adequately safeguard.
- Prior to any statutory expansion of disclosure exceptions, Treasury and the IRS should conduct a pilot of the proposed program. The pilot should be conducted for a number of years in order to measure the true impact that the proposed disclosure may have on voluntary tax compliance by the participants.
- Any initial statutory authorization should be subject to a five-year sunset provision. Prior to reauthorization, Treasury and the IRS should prepare a report assessing the impact the provision has had on taxpayer privacy and taxpayer voluntary compliance as well as whether advances in public or private sector technology have reduced the need for taxpayer information.
- Finally, every ten years, the Congress should direct the Secretary of the Treasury to review all disclosure exceptions in IRC § 6103, make recommendations about their continued necessity, including suggesting repeal where technological or private sector advances have minimized the need for the disclosure, and report such findings and recommendations to the Joint Committee on Taxation.

⁶¹ See National Taxpayer Advocate 2003 Annual Report to Congress 232-55.

- *Content-Based Disclosures of Tax Return Information Under IRC § 6103(c).*⁶² Amend IRC § 6103(c) to limit the disclosure of tax returns and tax return information requested through taxpayer consent solely to the extent necessary to achieve the purpose for which consent was requested.
 - Additionally, IRC § 6103(p)(3)(C) should be amended to require the Secretary of the Treasury to include in the Treasury's annual disclosure report to the Joint Committee on Taxation detailed information about the number and types of disclosures pursuant to taxpayer consent. Requiring the IRS to track disclosures made through IRC § 6103(c) consent will enable the IRS to monitor how § 6103(c) consents are being used and whether increased taxpayer education or oversight are necessary to protect taxpayer information.
 - To provide a deterrent to misusing taxpayer return information obtained pursuant to a § 6103(c) consent, IRC §§ 7213A and 7431 should be amended to apply criminal and civil sanctions. Implementing criminal and civil sanctions of up to \$1,000 per violation will dissuade lenders from using tax return information for reasons outside the scope of the taxpayer's consent.
 - To ensure that lenders no longer ask individuals to sign blank or incomplete forms, IRC § 7431 should be amended to impose a civil penalty of \$500 for each attempt to obtain a signed blank or incomplete Forms 4506, 4506-T, and 2858, subject to a reasonable cause exception.
- *Filing Issues: Use and Disclosure of Tax Return Information.*⁶³ Congress should amend IRC §§ 7216 and 6713 to:
 1. Prohibit use or disclosure of tax return information for purposes other than tax preparation and filing of returns. The statutes should specifically prohibit the use or disclosure of information for the business solicitation of nontax-related products or services, including but not limited to those related to tax refund delivery and the protection from IRS audit.
 2. Specifically state the exception currently in Treas. Reg. § 301.7216-2(e), which provides that IRC § 7216(a) does not apply to a tax return preparer who is lawfully engaged in the practice of law or accountancy. This exception allows the individual to use or disclose tax return information to another employee or member of the preparer's law or accounting firm for purposes of rendering other legal or accounting services for the taxpayer.
 3. Clarify the reach of IRC § 7216(a) to include preparers of returns other than income tax returns, volunteers, individuals who perform other businesses in addition to return preparation, and contractors performing services in connection with return preparation.
 4. Specifically state that the regulations issued thereunder must require safe harbor language to include in all written consents. The safe harbor language should address the limitations and duration of the consents as well as provide detailed contact information for the taxpayers to report violations or inquire about their rights.

62 See National Taxpayer Advocate 2007 Annual Report to Congress 554-55. This report also makes an administrative recommendation for the IRS to amend Form 4506 and related forms to allow taxpayers to specify the reasons for which they are granting consent. See *id.* at 123.

63 See National Taxpayer Advocate 2006 Annual Report to Congress 496-502.

5. Prohibit the disclosure or use of information to or by any tax return preparer located outside of the United States, unless the taxpayer has provided written consent.

- *Authorize Treasury to Issue Guidance Specific to IRC § 6713 Regarding the Use and Disclosure of Tax Return Information by Preparers.*⁶⁴ Amend IRC § 6713 to authorize the Secretary to prescribe regulations under IRC § 6713. Specifically, Congress should amend IRC § 6713 as follows:
 1. Amend subsection (b) to read: “(b) Exceptions. — Except as otherwise provided in regulations prescribed by the Secretary under subsection (d), the rules of section 7216(b) apply for purposes of this section.”
 2. Create subsection (d) to read: “(b) Regulations. — The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section.”
- *Protect Taxpayer Privacy in Whistleblower Cases.*⁶⁵ Amend IRC § 7623 or other applicable provisions to require redaction of third-party return information in administrative and judicial proceedings relating to a whistleblower claim, with an opportunity for the taxpayer to request further redactions before disclosure. The taxpayer would have a subsequent right of action for civil damages for unauthorized disclosure by the whistleblower.

9. The Right to Retain Representation

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic (LITC) if they cannot afford representation.

- *Referral to Low Income Taxpayer Clinics.*⁶⁶ Amend IRC § 7526(c) to add a special rule stating that notwithstanding any other provision of law, IRS employees may refer taxpayers to Low Income Taxpayer Clinics receiving funding under this section. This change will allow IRS employees to refer a taxpayer to a specific clinic for assistance. In making such referrals, the IRS should maintain its current disclaimer language to prevent any misconception that taxpayers may be either advantaged or disadvantaged in their cases based on their decision of whether to use a clinic.
- *Designate that Attorneys’ Fees Awarded Pursuant to IRC § 7430 are Ineligible for Offset to Satisfy a Litigant’s Preexisting Government Debts.*⁶⁷ Amend IRC § 7430 to declare that attorneys’ fees are ineligible for offset to satisfy a litigant’s preexisting federal government debt.

10. The Right to a Fair and Just Tax System

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are

64 See National Taxpayer Advocate 2007 Annual Report to Congress 547-48.

65 See National Taxpayer Advocate 2010 Annual Report to Congress 396-99.

66 See National Taxpayer Advocate 2007 Annual Report to Congress 551-53. H.R. 6050, 112th Cong. (2012) (introduced by Rep. Becerra); S. 3355, 112th Cong. (2012) (introduced by Senator Bingaman); S. 1573, 112th Cong. (2011) (introduced by Senator Durbin); H.R. 5047, 111th Cong. (2010) (introduced by Rep. Becerra); S. 3215, 111th Cong. (2010) (introduced by Senator Bingaman); H.R. 4994, 111th Cong. (2010) (introduced by Rep. Lewis) and H.R. 5719, 110th Cong. (2008) (introduced by Rep. Rangel) included this recommendation.

67 See National Taxpayer Advocate 2010 Annual Report to Congress 406-09.

experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

Recommendations Related to Complexity

- *Enact Tax Reform Now.*⁶⁸ Reform the tax code, based on six core principles, to eliminate tax law complexity as the most serious problem facing taxpayers. The six core principles are: (1) The tax system should not “entrap” taxpayers; (2) The tax laws should be simple enough so that most taxpayers can prepare their own returns without professional help, simple enough so that taxpayers can compute their tax liabilities on a single form, and simple enough so that IRS telephone assistants can fully and accurately answer taxpayers’ questions; (3) The tax laws should anticipate the largest areas of noncompliance and minimize the opportunities for such noncompliance; (4) The tax laws should provide some choices, but not too many; (5) Where the tax laws provide for refundable credits, they should be designed in a way that the IRS can effectively administer; and (6) The tax system should incorporate a periodic review of the tax code—in short, a sanity check. Comprehensive tax reform should eliminate all tax expenditures, unless the benefits of a particular tax incentive outweigh the complexity created by the special rule. The National Taxpayer Advocate also recommends that Congress direct the IRS to provide each taxpayer with a “taxpayer receipt” presenting a general breakdown of how federal dollars are spent.
- *Attainment of Age Definition.*⁶⁹ Amend IRC § 7701 by adding a new subsection as follows: “Attainment of Age. An individual attains the next age on the anniversary of his date of birth.”
- *Amend IRC § 7703(b) to Remove the Household Maintenance Requirement and to Permit Taxpayers Living Apart on the Last Day of the Tax Year Who Have Legally Binding Separation Agreements to be Considered “Not Married.”*⁷⁰ Amend IRC § 7703(b) to remove the cost of maintaining a household test and permit taxpayers living apart on the last day of the tax year who have a legally binding separation agreement to be considered “not married.”
- *FILING STATUS: Clarify the Definition of “Separate Return” in IRC § 6013 and Allow Taxpayers Who Petition the Tax Court to Change Their Filing Status to Married Filing Jointly in Accordance with the Tax Court’s Rules of Practice and Procedure.*⁷¹ Amend IRC § 6013(b)(1) by clarifying the term “separate returns” means any return that is not a joint return. Amend IRC § 6013(b)(2)(B) to allow taxpayers the right to change their filing status to married filing jointly after filing a Tax Court petition in response to a Statutory Notice of Deficiency, in accordance with rules of practice and procedure of the Tax Court or, in the alternative, eliminate IRC § 6013(b)(2)(B).
- *Community Property Laws.*⁷² Amend IRC § 6321 to disregard state community property tax laws in applying IRC § 66.

68 See *id.* at 365-72. See also National Taxpayer Advocate 2005 Annual Report to Congress 375-80 (Legislative Recommendation: *A Taxpayer-Centric Approach to Tax Reform*). S. 727, 112th Cong. (2011) (introduced by Senator Wyden) included parts of the recommendation relating to the reduction of the number of tax preferences.

69 See National Taxpayer Advocate 2003 Annual Report to Congress 308-11.

70 See National Taxpayer Advocate 2012 Annual Report to Congress 513-20.

71 See Legislative Recommendation: *FILING STATUS: Clarify the Definition of “Separate Return” in IRC § 6013 and Allow Taxpayers Who Petition the Tax Court to Change Their Filing Status to Married Filing Jointly in Accordance with the Tax Court’s Rules of Practice and Procedure*, *infra*. This recommendation also relates to the *right to pay no more than the correct amount of tax*.

72 See National Taxpayer Advocate 2001 Annual Report to Congress 221.

- *“Innocent Spouse” Relief Fixes: Provide the Tax Court with Jurisdiction to Review Community Property Relief Determinations Under IRC § 66(c).*⁷³ Provide the Tax Court with jurisdiction to review the IRS’s community property relief determinations under IRC § 66(c).
- *Measures to Reduce Noncompliance in the Cash Economy.*⁷⁴
 1. Amend IRC § 3406 to create a three-pronged reporting and payment system that encourages compliance in certain cash economy transactions by: (1) instituting backup withholding on payments to taxpayers who have demonstrated “Substantial Noncompliance”; (2) releasing backup withholding on payments to Substantially Noncompliant taxpayers who have demonstrated “Substantial Compliance,” and who agree to schedule and make future estimated tax payments through the IRS Electronic Funds Transfer Payment System (EFTPS); and (3) providing that payors will not be required to institute backup withholding on payments to taxpayers (independent contractors) who present payors with a valid IRS “Compliance Certificate.”
 2. Amend IRC § 6302(h) to require the IRS to promote making estimated tax payments through EFTPS.
 3. Amend IRC § 3402(p)(3) to specifically authorize voluntary withholding agreements between independent contractors and service-recipients (as defined in IRC § 6041A(a)(1)), and to specify that independent contractors who enter into voluntary agreements with payor service recipients will be treated as employees only to the extent specified in the agreement, and allow such independent contractors to continue to deduct ordinary and necessary business expenses under IRC § 162(a).
- *SECTION 501(c)(4) POLITICAL CAMPAIGN ACTIVITY: Enact an Optional “Safe Harbor” Election That Would Allow IRC § 501(c)(4) Organizations to Ensure They Do Not Engage in Excessive Political Campaign Activity.*⁷⁵ Enact an optional “safe harbor” election similar to IRC § 501(h) that would allow IRC § 501(c)(4) organizations to elect the use of a numerical test, based solely on their expenditures (*i.e.*, without counting volunteer activities), to determine the amount of political campaign activity they may engage in without jeopardizing their exempt status.

73 See National Taxpayer Advocate 2006 Annual Report to Congress 534-43. Certain parts of this recommendation are omitted here because they repeat earlier recommendations. See National Taxpayer Advocate 2001 Annual Report to Congress 159-65 (Legislative Recommendation: *Final Determination Rights*). Parts of this recommendation, which the IRS has implemented administratively are also omitted, specifically the requirement to establish a reconsideration process for innocent spouse claims (see IRM 25.15.17, Reconsiderations (July 29, 2014)) and the elimination of the two year limitation period for taxpayers seeking equitable relief under IRC § 6015 or IRC § 66 (see Rev. Proc. 2013-34).

74 See National Taxpayer Advocate 2005 Annual Report to Congress 381-96; see also National Taxpayer Advocate 2007 Annual Report to Congress 490-502 (Legislative Recommendation: *Measures to Address Noncompliance in the Cash Economy*). This recommendation also relates to the *right to a fair and just tax system*. Part of this recommendation, to amend IRC § 6041A to require third-party information reporting for applicable payments to corporations is omitted because it is included above. See National Taxpayer Advocate 2008 Annual Report to Congress 375-90 (Legislative Recommendation: *Worker Classification*). S. 1321, 109th Cong. (2005) (introduced by Senator Santorum) would require a study of the use of voluntary withholding agreements and for the IRS to promote estimated tax payments through the EFTPS. S. 3795, 111th Cong. (2010) and S. 1289, 112th Cong. (2011), both introduced by Senator Carper, would require financial institutions to report all accounts to the IRS by eliminating the \$10 threshold on interest reporting. Finally, S. 3795, 111th Cong. (2010) (introduced by Senator Carper) would authorize voluntary withholding upon request.

75 See Legislative Recommendation: *SECTION 501(c)(4) POLITICAL CAMPAIGN ACTIVITY: Enact an Optional “Safe Harbor” Election That Would Allow IRC § 501(c)(4) Organizations to Ensure They Do Not Engage in Excessive Political Campaign Activity*, *infra*. This recommendation also relates to the *right to be informed*.

Recommendations Related to the Office of the Taxpayer Advocate

- *Recommendations related to Revising the Taxpayer Assistance Order (TAO) Authority Under IRC §7811 and Protecting TAS Confidentiality.*⁷⁶
 1. Amend IRC § 7811 to require the Commissioner or the Deputy Commissioner of Internal Revenue to raise his or her objections to a TAO issued by the National Taxpayer Advocate by responding in writing within a reasonable time, as established by the National Taxpayer Advocate in the TAO, and to provide a detailed written explanation of the reasons for the TAO modification or rescission.⁷⁷
 2. If the TAO is modified or rescinded by the Deputy Commissioner, grant the National Taxpayer Advocate authority to elevate the TAO to the Commissioner of Internal Revenue and require the Commissioner to provide a detailed written response with explanation of the reasons for his or her final decision within timeframes established by the National Taxpayer Advocate in the TAO.⁷⁸
 3. Amend IRC § 7811 to include “impairment of taxpayer rights” as a definition of “significant hardship” for purposes of issuing a TAO.⁷⁹
 4. Amend IRC § 7803(c)(4)(A)(iv) to clarify that, notwithstanding any other provision of the Code, Local Taxpayer Advocates have the discretion to withhold from the IRS the fact that a taxpayer contacted the Taxpayer Advocate Service (TAS) or any information provided by a taxpayer to TAS.⁸⁰
 5. Amend IRC § 7803(c)(4)(A) to provide that in litigation before a federal court, Local Taxpayer Advocates shall not through discovery or compulsory process be required to disclose the fact that the taxpayer contacted the Taxpayer Advocate Service or any information provided by the taxpayer to TAS, unless the court determines that such testimony or disclosure is necessary to: (a) prevent a manifest injustice; (b) help establish a violation of law; or (c) prevent harm to the public health or safety, of sufficient magnitude in the particular case to outweigh the integrity of the Taxpayer Advocate Service in general by reducing the confidence of taxpayers in future cases that their communications will remain confidential.⁸¹

76 These recommendations are based on legislative recommendations contained in the National Taxpayer Advocate's 2011 and 2002 Annual Reports. However, some portions were modified to clarify the position of the National Taxpayer Advocate. See National Taxpayer Advocate 2011 Annual Report to Congress 573-81 (Legislative Recommendation: *Codify the Authority of the National Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives*); National Taxpayer Advocate 2002 Annual Report to Congress 198-215 (Legislative Recommendation: *The Office of the Taxpayer Advocate*). H.R. 1661, 108th Cong. (2003) (introduced by Rep. Rangel) and H.R. 1528, 108th Cong. (2003) (introduced by Rep. Portman and passed by the House) included the recommendations regarding confidentiality of taxpayer communications and the position of counsel to the National Taxpayer Advocate.

77 National Taxpayer Advocate 2011 Annual Report to Congress 573-81 (Legislative Recommendation: *Codify the Authority of the National Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives*) (recommendation is modified).

78 This provision was not included in the recommendations in the National Taxpayer Advocate's 2002 and 2011 Annual Reports to Congress.

79 National Taxpayer Advocate 2002 Annual Report to Congress 198-215 (Legislative Recommendation: *The Office of the Taxpayer Advocate*).

80 *Id.*

81 *Id.*

- *Codify the Authority of the Office of the Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives.*⁸² In addition to the proposals related to the TAO authority discussed immediately above, the National Taxpayer Advocate recommends that Congress:
 1. Authorize the National Taxpayer Advocate to submit *amicus curiae* briefs in federal appellate litigation on matters relating to the protection of taxpayer rights that the National Taxpayer Advocate has identified as concerns in her Annual Reports to Congress.
 2. Require the IRS to submit proposed or temporary regulations pre-publication to the National Taxpayer Advocate for comment within a reasonable time, and address those comments in the preamble to final regulations.
 3. Authorize the National Taxpayer Advocate to appoint an independent counsel who reports directly to the National Taxpayer Advocate, to provide independent legal advice, including submission of *amicus curiae* briefs and comments on proposed or temporary regulations.
 4. Grant to the National Taxpayer Advocate nondelegable authority to issue a Taxpayer Advocate Directive (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 the Commissioner or the Deputy Commissioner of Internal Revenue to raise his or her objections to a TAD issued by the National Taxpayer Advocate by responding in writing within a reasonable time, as established by the National Taxpayer Advocate in the TAD, and to provide a detailed written explanation of the reasons for the TAD modification or rescission.⁸³
 5. If the TAD is modified or rescinded by the Deputy Commissioner, grant the National Taxpayer Advocate authority to elevate the TAD to the Commissioner of Internal Revenue and require the Commissioner to provide a detailed written response with explanation of the reasons for his or her final decision within timeframes established by the National Taxpayer Advocate in the TAD.⁸⁴
 6. Amend IRC § 7811 to include “impairment of taxpayer rights” as a definition of “significant hardship” for purposes of issuing a TAD.⁸⁵
- *Enact a Uniform Federal Agency External Ombudsman Act.*⁸⁶ Enact a Federal Agency External Ombudsmen Act to ensure protections to and create uniformity among all future federal external ombudsmen.

82 See National Taxpayer Advocate 2011 Annual Report to Congress 573-81 (Legislative Recommendation: *Codify the Authority of the National Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives*).

83 National Taxpayer Advocate 2011 Annual Report to Congress 573-81 (Legislative Recommendation: *Codify the Authority of the National Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives*) (recommendation is modified).

84 This provision was not included in the recommendations in the National Taxpayer Advocate’s 2002 and 2011 Annual Reports to Congress.

85 National Taxpayer Advocate 2002 Annual Report to Congress 198-215 (Legislative Recommendation: *The Office of the Taxpayer Advocate*).

86 See National Taxpayer Advocate 2010 Annual Report to Congress 412-13.

- *CONTACT INFORMATION ON STATUTORY NOTICES OF DEFICIENCY: Revise IRC § 6212 to Require the IRS to Place Taxpayer Advocate Service Contact Information on the Face of the Statutory Notice of Deficiency and Include Low Income Taxpayer Clinic Information with Notices Impacting that Population.*⁸⁷ Revise IRC § 6212 to require the IRS to do the following:
 1. Include language on the face of the Statutory Notice of Deficiency (SNOD) informing the taxpayer of the right to contact a local office of TAS. Such language should also provide the address and phone number of the TAS office aligned with the taxpayer's last known residence.
 2. For SNODs determined by the IRS, in consultation with the National Taxpayer Advocate, to have a significant probability of impacting low income taxpayers, include language on the face of the notice describing Low Income Taxpayer Clinics (LITCs) and provide a website link that lists contact information for all the LITCs.
 3. For SNODs that are certain to impact low income taxpayers (*e.g.*, those proposing to assess the Earned Income Tax Credit), also include in the envelope used to mail the SNOD Publication 4134, *Low Income Taxpayer Clinic List*, which provides information on the services provided by LITCs and contact information for each clinic.
- *Clarify that the Emergency Exception to the Anti-Deficiency Act Includes IRS Activities that Protect Taxpayer Life and Property.*⁸⁸ Clarify that the emergency exception to the Anti-Deficiency Act includes IRS activity involving the safety of human life, including taxpayer life, or the protection of property, including taxpayer property. Alternatively, the National Taxpayer Advocate recommends that Congress clarify that the National Taxpayer Advocate's authority to issue TAOs pursuant to IRC § 7811 continues during a lapse in appropriations and includes the authority to incur obligations in advance of appropriations, and that the IRS can incur obligations in advance of appropriations to comply with any TAO issued under IRC § 7811.
- *De Minimis Apology Statement.*⁸⁹ Amend IRC § 7811 to grant the National Taxpayer Advocate the discretionary, nondelegable authority to compensate taxpayers where the action or inaction of the IRS has caused excessive expense or undue burden to the taxpayer, and the taxpayer meets the IRC § 7811 definition of significant hardship. Discretionary payments should range from a minimum of \$100 up to a maximum of \$1,000, indexed for inflation. The National Taxpayer Advocate also recommends that, unless otherwise provided by specific appropriation, authorize the Secretary of the Treasury to allocate no more than \$1 million per year to "apology" payments. Furthermore, amend IRC § 7803(c)(2)(B)(ii) to require the National Taxpayer Advocate to include in her Annual Report to Congress a section summarizing the awards made under this amendment. Finally, amend the Code to exclude these "apology" payments from gross income.

87 See Legislative Recommendation: *CONTACT INFORMATION ON STATUTORY NOTICES OF DEFICIENCY: Revise IRC § 6212 to Require the IRS to Place Taxpayer Advocate Service Contact Information on the Face of the Statutory Notice of Deficiency and Include Low Income Taxpayer Clinic Information with Notices Impacting that Population, infra*. This recommendation also relates to the *right to retain representation*.

88 See National Taxpayer Advocate 2011 Annual Report to Congress 552-57.

89 See National Taxpayer Advocate 2007 Annual Report to Congress 478-89. S. 1289, 111th Cong. (2011) and S. 3795, 111th Cong. (2010), both introduced by Senator Carper, include parts of this recommendation.

Recommendations Related to Tax Return Preparers and Payroll Service Providers

■ *Federal Tax Preparers Oversight and Compliance*⁹⁰

1. Increase the preparer penalties under IRC §§ 6695(a) through (e) with respect to certain requirements for preparation of income tax returns for other persons, from \$50 per occurrence to \$100 per occurrence.
2. Increase the preparer penalty under IRC § 6695(f) for negotiation of a refund check from \$500 per check to \$1,000 per check.
3. Amend IRC § 6695(g) to impose a tiered penalty structure for violation of the EITC due diligence requirements: for the first year in which a penalty is imposed, the penalty would be \$100 per occurrence; for the second year, \$500 per occurrence; and for the third year, \$1,000 per occurrence. Provide for waiver, or abatement of penalties, in whole or in part, where the preparer enrolls in EITC education courses and demonstrates an ability to comply with due diligence requirements.⁹¹
4. Amend IRC § 6695(g) to require the EITC due diligence certification to be signed, under penalties of perjury, by the return preparer and attached to the taxpayer's income tax return; that it include a description of how and when the preparer obtained the information upon which he based the EITC eligibility determination (for example, from original documents, the taxpayer's statements, or from prior year's records); and that the preparer be required to certify that he or she has a system of recordkeeping for the information outlined in the regulations and a record retention policy of three years.
5. Amend IRC § 6695 to authorize the Secretary to impose a civil penalty against a tax return preparer who, by reason of intentional misstatement, misrepresentation, fraud, or deceit or any unlawful act causes a taxpayer a tax liability attributable to the Earned Income Tax Credit (EITC), in an amount equal to the tax attributable to the disallowed EITC.
6. Amend IRC § 6695 to impose a penalty of \$100 per occurrence on persons who fail to sign or include certain information on specified IRS forms prepared by them for a fee, including applications for offers in compromise, financial information statements of individuals and businesses, and similar forms.
7. Amend the Internal Revenue Code to authorize the Secretary to impose a \$1,000 penalty, in addition to other available sanctions, on Electronic Return Originators (ERO) who repeatedly fail to comply with ERO Program requirements. Where preparers, including EROs, commit violations by charging a fee for services that is a percentage of the taxpayer's refund or is based on a return item, or failing to advise the taxpayer of the fact that a Refund Anticipation Loan product is a loan and the terms of that loan, the penalty shall be the greater of \$100 per occurrence or 50 percent of the fee for such service.

90 See National Taxpayer Advocate 2003 Annual Report to Congress 270-301. This recommendation also included a provision to increase the IRC § 6694(a) preparer penalty for understatements due to unrealistic positions from \$250 to \$1,000, and the IRC § 6694(b) penalty for intentional disregard of the rules and regulations from \$1,000 to \$5,000, which were enacted by Pub. L. 110-28, § 8246(b), 121 Stat. 112, 203 (2007). Numerous bills have been introduced that would increase return preparer penalties. See, e.g., H.R. 5047, 111th Cong. (2010) (introduced by Rep. Becerra); S. 1219, 110th (2007) (introduced by Senator Bingaman); S. 1321, 109th Cong. (2005) (introduced by Senator Santorum); S. 882, 108th Cong. (2003) (introduced by Senator Baucus).

91 Pub. L. No. 112-41, § 501, 125 Stat. 428, 459 (2011) increased the penalty under IRC § 6695(g) from \$100 to \$500.

8. Amend the Internal Revenue Code to authorize the Secretary to impose a \$1,000 penalty per occurrence against any person who willfully and intentionally misrepresents his or her professional status on a Power of Attorney authorizing him or her to represent a taxpayer before the Internal Revenue Service, or who willfully and intentionally practices before the IRS without proper authorization, under rules prescribed by the Secretary.
 9. Increase the preparer penalty under IRC § 6713 for unauthorized disclosure or use of information by preparers from \$250 to \$500 per disclosure or use, and increase the aggregate amount of penalties imposed on a preparer during any calendar year from \$10,000 to \$25,000.
 10. Require the Secretary, in consultation with the National Taxpayer Advocate, to study the impact that cross-marketing tax preparation services with other consumer products and services has on the accuracy of returns and tax compliance, and report the results of that study to the House Committee on Ways and Means and the Senate Committee on Finance within one year of its establishment.
 11. Require the Commissioner of Internal Revenue to appoint two consumer protection advocates to the Electronic Tax Administration Advisory Committee.
- *The Time Has Come to Regulate Federal Return Preparers.*⁹² Enact a registration, examination, certification, and enforcement program for unenrolled tax return preparers. This program should consist of the following components:
1. Any tax return preparer as defined in IRC § 7701(a)(36) other than an attorney, certified public accountant, or enrolled agent must register with the IRS, and Congress should authorize the IRS to impose a per-return penalty for failure to register, absent reasonable cause.
 2. All registered preparers must pass an initial examination designed by the Secretary to test the technical knowledge and competency of unenrolled return preparers to prepare federal tax returns. The exam can be administered in two separate parts. The first part would address the technical knowledge required to prepare relatively less complex Form 1040-series returns. The second part would test the technical knowledge required to prepare business returns, including complex sole proprietorship schedules.
 3. All registered preparers must complete CPE requirements as specified by the Secretary. The Secretary should have the authority to permit preparers to satisfy such requirements by instead passing a specified examination.

⁹² See National Taxpayer Advocate 2008 Annual Report to Congress 423-26; see also National Taxpayer Advocate 2002 Annual Report to Congress 216-30 (Legislative Recommendation: *Regulation of Federal Tax Return Preparers*) and National Taxpayer Advocate 2003 Annual Report to Congress 270-301 (Legislative Recommendation: *Federal Tax Return Preparers: Oversight and Compliance*). This recommendation also relates to the *right to be informed* and the *right to pay no more than the correct amount of tax*. The IRS implemented many of the procedures recommended. However, some of the procedures, including the requirements that paid tax-return preparers pass an initial certification exam and complete at least 15 hours of continuing education courses each year, were found invalid under *Loving v. Commissioner*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff'd* 742 F.3d 1013 (D.C. Cir., Feb. 11, 2014). *Loving* held that the IRS did not have the authority to regulate tax-return preparers under 31 U.S.C.S. § 330. Since January 1, 2011, all paid tax-return preparers and enrolled agents are required to have a Preparer Tax Identification Number (“PTIN”) and the *Loving* decision did not invalidate this requirement. See IRC §6109. The National Taxpayer Advocate recommends that Congress codify all of these recommendations. There have been numerous bills introduced in both the House of Representatives and the Senate incorporating aspects of this recommendation, see, e.g., S. 3355, 112th Cong. (2012) (introduced by Rep. Bingaman); H.R. 6050, 112th Cong. (2012) (introduced by Rep. Becerra).

4. All registered preparers must renew their registration every year,⁹³ at which point they must show evidence of completion of CPE requirements.
 5. The Secretary should be authorized and directed to conduct a public awareness campaign to inform the public about the registration requirements and offer guidelines about what taxpayers should look for in choosing a qualified tax return preparer.
- *Assessment of Civil Penalties Against Preparers of Fraudulent Returns.*⁹⁴ Amend the IRC to provide that when the issuance of an erroneous refund to a return preparer is due to fraud, the IRS may impose a penalty, in addition to other penalties provided by law, equal to 100 percent of that erroneous refund.
 - *Taxpayer Protection from Third-Party Payer Failures.*⁹⁵
 1. Amend the Code to define “third-party payer” as any person who provides services of filing, reporting, withholding, and payment of employment taxes on behalf of client taxpayers if such person has the authority, control, receipt, custody, or disposal of client taxpayers’ funds intended by the taxpayers to be used for the purpose of making federal payroll tax deposits;
 2. Amend the Code to make a third-party payer jointly and severally liable for the amount of tax collected from client employers, but not paid over to the Treasury, plus applicable interest and penalties;
 3. Amend the Code to authorize the Secretary of the Treasury to require third-party payers that have the authority, control, receipt, custody or disposal of client funds intended for the purpose of making federal payroll tax deposits to: (1) register with the IRS; (2) be sufficiently bonded; and (3) provide mandatory disclosure on the form prescribed by the IRS to client taxpayers that the employer may be potentially responsible for unpaid payroll taxes and that the employer can and should periodically verify, through IRS, that their employment tax liability is satisfied in full;
 4. Amend the U.S. Bankruptcy Code to clarify that IRC § 6672 penalties survive bankruptcy, even when the debtor is not an individual.
 - *Protect Taxpayers and the Public Fisc from Third-Party Misappropriation of Payroll Taxes.*⁹⁶
 1. Amend the IRC to require any person who enters into an agreement with an employer to collect, report, and pay any employment taxes to furnish a performance bond that

93 The original recommendation required renewal every three years. Currently, the IRS requires preparers to renew Preparer Tax Identification Numbers every year. See IRM 1.32.19.21.7, *Obtaining and Renewing a Preparer Tax Identification Number (PTIN)* (Nov. 8, 2012).

94 See National Taxpayer Advocate 2011 Annual Report to Congress 558-61.

95 See National Taxpayer Advocate 2007 Annual Report to Congress 538-44. This recommendation also included a provision to clarify that the Trust Fund Recovery Penalty applies to third party payers, which was not included here because the IRS implemented this administratively. See Interim Guidance Memorandum, SBSE-05-0711-044, *Interim Guidance for Conducting Trust Fund Recovery Penalty Investigations in Cases Involving a Third-Party Payer* (July 1, 2011) (also incorporated in IRM 5.1.24.5.8, *Trust Fund Recovery Penalty (TFRP) Investigations* (Aug. 15, 2012)). See also National Taxpayer Advocate 2004 Annual Report to Congress 394-99 (Legislative Recommendation: *Protection from Payroll Service Provider Misappropriation*). S. 900, 113th Cong. (2013) (introduced by Senator Mikulski); S. 1773, 110th Cong. (2007) (introduced by Senator Snowe); S. 3583, 109th Cong. (2006) (introduced by Senator Snowe); S. 1321, 109th Cong. (2005) (introduced by Senator Santorum) included parts of this recommendation.

96 See National Taxpayer Advocate 2012 Annual Report to Congress 553-59. Part of the recommendation regarding IRC § 6672 penalties surviving bankruptcy has been omitted here because it was included above. See National Taxpayer Advocate 2007 Annual Report to Congress 538-44 (Legislative Recommendation: *Taxpayer Protection from Third-Party Payer Failures*).

specifically guarantees payment of federal payroll taxes collected, deducted, or withheld by such person from an employer and from wages or compensation paid to employees.

2. Amend IRC § 3504 to require agents with an approved Form 2678, *Employer/Payer Appointment of Agent*, to allocate reported and paid employment taxes among their clients using a form prescribed by the IRS and impose a penalty for the failure to file absent reasonable cause.

- *OFFERS IN COMPROMISE: Authorize the National Taxpayer Advocate to Determine Whether an Offer in Compromise Submitted by a Victim of Payroll Service Provider Fraud Is “Fair and Equitable.”*⁹⁷ To address the inherent conflict with the IRS determining whether acceptance of an offer in compromise by a victim who was defrauded by a payroll service provider is fair and equitable, Congress should specify that such determination be made by National Taxpayer Advocate.

Recommendations Related to Penalties

- *Reforming the Penalty Regime.*⁹⁸ Congress should have the IRS (1) collect and analyze more detailed penalty data on a regular basis, and (2) conduct an empirical study to quantify the effect of each penalty on voluntary compliance. This quantitative research should also identify changes to penalty laws and penalty administration that would improve voluntary compliance. Congress should appropriate additional funds for this research, as necessary. Without such research, any penalty analysis will be somewhat subjective and superficial. Nonetheless, the limited data and analysis that are available suggest the following changes to the major penalty provisions would promote voluntary compliance based on the principles described above:
 1. Prevent IRS systems from automatically assessing accuracy-related penalties without considering all of the facts and circumstances;
 2. Consider the feasibility of clarifying the definition of a “tax shelter” for purposes of the substantial understatement penalty;
 3. Restructure the penalty for failure to file a “reportable transaction” information disclosure;⁹⁹
 4. Improve the proportionality and effectiveness of the failure to file penalty for those who are more than six months late;
 5. Reduce the penalty for late filers who timely pay within a period of extension;

97 See Legislative Recommendation: *OFFERS IN COMPROMISE: Authorize the National Taxpayer Advocate to Determine Whether an Offer in Compromise Submitted by a Victim of Payroll Service Provider Fraud Is “Fair and Equitable,”* *infra*.

98 See National Taxpayer Advocate 2008 Annual Report to Congress 414-18. For a more detailed discussion of this topic and each of the recommendations, see National Taxpayer Advocate 2008 Annual Report to Congress, vol. 2 2-45 (Research Study: *A Framework for Reforming the Penalty Regime*). This recommendation also included a provision to clarify that the Trust Fund Recovery Penalty applies to third party payers, which was not included here because the IRS implemented this administratively. See Interim Guidance Memorandum, SBSE-05-0711-044, *Interim Guidance for Conducting Trust Fund Recovery Penalty Investigations in Cases Involving a Third-Party Payer* (July 01, 2011) (also incorporated in IRM 5.1.24.5.8, Trust Fund Recovery Penalty (TFRP) Investigations (Aug. 15, 2012)).

99 The Small Business Jobs Act of 2010 enacted a similar recommendation to modify the penalty for failure to include reportable transaction information with a return so that it bears a proportional relationship to the amount of any tax savings realized. Pub. L. No. 111-240, 124 Stat. 2504, 2560 (2010). See National Taxpayer Advocate 2008 Annual Report to Congress 419-22 (Legislative Recommendation: *Modify Internal Revenue Code Section 6707A to Ameliorate Unconscionable Impact*) (also expressing concern about the lack of a “reasonable cause” exception, the “stacking” of multiple § 6707A penalties, and the potential imposition of the § 6707A penalty on taxpayers who derived no tax benefit whatsoever).

6. Reduce the number of failure to pay penalty rates and eliminate interaction with the failure to file penalty;¹⁰⁰
 7. Simplify the prior year estimated tax payment safe harbor and encourage taxpayers to use it;
 8. Simplify the estimated tax penalty computation and provide an automatic waiver of *de minimis* estimated tax penalties;
 9. Allow the IRS to abate estimated tax penalties for first-time estimated taxpayers who have reasonable cause; and
 10. Reduce the penalty for failure to make tax deposits in the prescribed manner.
- *Revise the Willfulness Component of the Trust Fund Recovery Penalty Statute to Encourage Business Owners to Continue Operation of Financially Struggling Businesses When the Tax Liability Accrues Due to an Intervening Bad Act.*¹⁰¹ Amend IRC § 6672 to provide that the conduct of a responsible person who obtains knowledge of trust fund taxes not being timely paid because of an intervening bad act shall not be deemed willful if the delinquent business: (1) promptly makes payment arrangements to satisfy the liability based upon the IRS's determination of the minimal working capital needs of the business, and (2) remains current with payment and filing obligations.
 - *Legislative Recommendations to Reduce the Burden of Filing a Report of Foreign Bank and Financial Accounts (FBAR) and Improve the Civil Penalty Structure.*¹⁰²
 1. Cap the civil FBAR penalty at the lesser of (a) ten percent of the unreported account balance or five percent for non-willful violations (similar to the IRS's mitigation guidelines), and (b) forty percent of the portion of any underpayment attributable to the improperly undisclosed accounts (similar to the penalty for undisclosed foreign financial assets (*e.g.*, assets not reported on Form 8938) under IRC § 6662(j)).¹⁰³
 2. Eliminate or waive the civil penalty for failure to report an account on an FBAR if there is no evidence the account was used in connection with a crime and:¹⁰⁴
 - a. The account information was already provided to the IRS, for example, on a Form 8938, *Statement of Specified Foreign Financial Assets*, or by a third party (*e.g.*, a financial institution or government);¹⁰⁵

100 H.R. 1661, 108th Cong. (2003) (introduced by Rep. Rangel) and H.R. 1528, 108th Cong. (2003) (introduced by Rep. Portman and passed/agreed to in Senate with amendment) included parts of this recommendation.

101 See National Taxpayer Advocate 2010 Annual Report to Congress 400-05.

102 See Legislative Recommendation: *FOREIGN ACCOUNT REPORTING: Legislative Recommendations to Reduce the Burden of Filing a Report of Foreign Bank and Financial Accounts (FBAR) and Improve the Civil Penalty Structure*, *infra*. This recommendation also relates to the *right to be informed*, the *right to pay no more than the correct amount of tax*, the *right to challenge the IRS's position and be heard*, the *right to appeal an IRS decision in an independent forum*, and the *right to confidentiality*.

103 To avoid stacking, only one penalty should apply to understatements of income from foreign financial assets not disclosed on either a Form 8938 or an FBAR.

104 Under this recommendation, the civil FBAR penalty could still be waived on the basis of reasonable cause as is the case under current law.

105 Because the Financial Crimes Enforcement Network (FinCEN) may not be authorized to receive all of the account information provided to the IRS by third parties, it may be advisable for legislation to distinguish between information available to the IRS and information available to FinCEN. An alternative would be to have the disclosure of account information to the IRS by third parties create a presumption that, in the absence of evidence to the contrary, a taxpayer's failure to provide the same information was due to reasonable cause and was not willful.

- b. The amount of unreported income from the account does not create a substantial understatement under IRC § 6662(d);¹⁰⁶ or
 - c. The taxpayer resides in the same jurisdiction as the account.
3. Clarify that the government has the burden to establish actual willfulness (*i.e.*, specific intent to violate a known legal duty, rather than mere negligence or recklessness) before asserting a willful FBAR penalty, and cannot meet this burden by relying solely on circumstantial evidence.¹⁰⁷
 4. Authorize the IRS to modify closing agreements with the taxpayer's consent, particularly when necessary to promote equity or public policy (including consistency). The National Taxpayer Advocate also recommends directing the IRS to use this authority to amend offshore voluntary disclosure closing agreements to make them consistent with the terms of agreements publicly offered to similarly-situated taxpayers in subsequent IRS programs.
 5. Align the FBAR filing deadline and threshold(s) with the Form 8938 filing deadline and threshold(s). Specifically, increase the \$10,000 FBAR filing threshold to match the threshold applicable to Form 8938 (*i.e.*, at least \$50,000), adjust it for inflation, and change the FBAR filing due date to coincide with the due date applicable to a taxpayer's federal income tax return and Form 8938 (including extensions). If Congress aligns these due dates and thresholds, it should also consider requiring the Treasury Department to consolidate the reporting of foreign accounts (*i.e.*, the FBAR and Form 8938) so that taxpayers only have to report them on one form. To facilitate this change, legislation should clarify that the IRS may disclose certain account information to FinCEN without violating IRC § 6103. The legislation should require the IRS to highlight (on the new form) any information not subject to the normal confidentiality rules (*e.g.*, because it is not part of the tax return).¹⁰⁸
- **MANAGERIAL APPROVAL: Amend IRC § 6751(b) to Require IRS Employees to Seek Managerial Approval Before Assessing the Accuracy-Related Penalty Attributable to Negligence under IRC § 6662(b)(1).**¹⁰⁹ Amend IRC § 6751(b)(2)(B) to require written managerial approval prior to assessment of the accuracy-related penalty imposed on the portion of underpayment attributable to negligence or disregard of rules or regulations under IRC § 6662(b)(1), and specify which penalties and facts or circumstances result in penalties “automatically calculated through electronic means.”

¹⁰⁶ Even if the understatement is substantial, legislation could require the government to consider whether it was reasonable for the taxpayer to believe that any unreported income would be offset by foreign tax credits in connection with its reasonable cause determination.

¹⁰⁷ Under current law, the government is only required to establish willfulness by a preponderance of the evidence. See, *e.g.*, *United States v. McBride*, 908 F. Supp. 2d 1186 (D. Utah 2012) (applying the “preponderance” standard, rather than “clear and convincing,” or “beyond a reasonable doubt”).

¹⁰⁸ Congress might also clarify that taxpayers not otherwise required to file a tax return could, nonetheless, use the same form to satisfy their reporting obligations under the Bank Secrecy Act.

¹⁰⁹ See Legislative Recommendation: **MANAGERIAL APPROVAL: Amend IRC § 6751(b) to Require IRS Employees to Seek Managerial Approval Before Assessing the Accuracy-Related Penalty Attributable to Negligence under IRC § 6662(b)(1)**, *infra*. This recommendation also relates to the *right to quality service* and the *right to pay no more than the correct amount of tax*.

- *ERRONEOUS REFUND PENALTY: Amend Section 6676 to Permit “Reasonable Cause” Relief.*¹¹⁰ To allow for consideration of taxpayers’ facts and circumstances before imposing a penalty for erroneously claiming a credit or refund, the National Taxpayer Advocate recommends that Congress amend IRC § 6676 to permit relief from the penalty for individual taxpayers who acted with reasonable cause and in good faith.
- *Small Business Burdens – Payroll Deposit Tax Penalties.*¹¹¹ Amend IRC § 6656 to clarify that: (1) the reasonable cause exception to the Federal Tax Deposit (FTD) penalty shall specifically apply to instances where a taxpayer has made a timely deposit, but failed to make the deposit in the prescribed manner and such failure was not due to willful neglect; and (2) in no circumstance shall the FTD penalty exceed two percent of the underpayment amount when a taxpayer has made a timely deposit, but failed only to make the deposit in the prescribed manner.

Recommendations Related to Collection

- *Offers in Compromise: Effective Tax Administration.*¹¹²
 1. *Equitable Considerations:* The National Taxpayer Advocate recommends that the IRS be given more specific direction to compromise tax liabilities in cases where it is inequitable to collect them, notwithstanding the fact that such amounts are legally due pursuant to a technical application of the Code and not subject to abatement under other rules. Equitable consideration offers (ECOs) would replace equity/policy Effective Tax Administration offers as a basis for compromise.¹¹³
 2. *Hardship Considerations:* Add new paragraph 7122(c)(5) of the Code to read as follows: “RULES RELATING TO OFFERS BASED UPON HARDSHIP. — Notwithstanding any other provision of this title, unless the taxpayer has a recent unexplained history of noncompliance with tax filing or payment obligations, the Secretary may compromise

110 See Legislative Recommendation: *ERRONEOUS REFUND PENALTY: Amend Section 6676 to Permit “Reasonable Cause” Relief, infra*. See also National Taxpayer Advocate 2011 Annual Report to Congress 544-47 (Legislative Recommendation: *Amend the Erroneous Refund Penalty to Permit Relief in Case of Reasonable Cause for Claim to Refundable Credits*). This recommendation also relates to the *right to challenge the IRS’s position and be heard*.

111 See National Taxpayer Advocate 2004 Annual Report to Congress 400. See also National Taxpayer Advocate 2001 Annual Report to Congress 222 (Legislative Recommendation: *Federal Tax Deposit (FTD) Avoidance Penalty*). Numerous bills included part of this recommendation. See, e.g., S. 1321, 109th Cong. (2005) (introduced by Senator Santorum); H.R. 1661, 108th Cong. (2003) (introduced by Rep. Rangel); H.R. 1528, 108th Cong. (2003) (introduced by Rep. Portman and passed/agreed to in Senate with amendment).

112 See National Taxpayer Advocate 2004 Annual Report to Congress 433-50.

113 The National Taxpayer Advocate recommended specific language as follows: Add new paragraph 7122(c)(4) of the Code to read as follows: “SPECIAL RULES RELATING TO OFFERS BASED UPON EQUITABLE CONSIDERATIONS. — Notwithstanding any other provision of this title, the Secretary shall compromise a liability when it is inequitable to collect any unpaid tax (or any portion thereof, including penalties and interest). (A) It shall be deemed inequitable to collect an income tax liability in excess of the economic benefit received from the transaction to which the liability relates. For purposes of this section, a transaction shall include all related transactions. (B) In other cases, the Secretary shall consider all of the facts and circumstances, including: i. whether the taxpayer acted reasonably and in good faith under the circumstances, such as, by taking reasonable actions to avoid or mitigate the situation; ii. whether an income tax liability is disproportionate to (even if not in excess of) the economic benefit received from the transaction to which the liability relates; iii. whether the taxpayer is a victim of a third-party bad act or other unexpected event; iv. whether the taxpayer has a recent history of compliance with tax filing and payment obligations or a reasonable explanation for noncompliance; v. whether any IRS employee has not followed standard procedures in connection with the case, including applicable published administrative guidance (such as the Internal Revenue Manual); vi. whether IRS action or inaction has unreasonably delayed resolution of the taxpayer’s case; and vii. any other relevant fact or circumstance indicating that justice, equity, or public policy justifies the compromise. No single fact or circumstance described in clause (i)-(vii), above, shall be determinative of whether to compromise a liability under subparagraph (B). This determination shall be made without regard to the taxpayer’s ability to fully pay the liability. Compromises under this paragraph 7122(c)(4) may require appropriate adjustments to basis, carryovers, or other tax attributes.

a liability if collection of unpaid tax (or any portion thereof, including penalties and interest) would cause a hardship for the taxpayer or for a third party, without regard to whether the taxpayer is a person or an entity. This determination shall be made without regard to the taxpayer's ability to fully pay the liability.”

3. *Offer Processing Order*: Add new sub-paragraph 7122(c)(3)(C) of the Code to read as follows: “in the case of an offer in compromise submitted on more than one basis, the Secretary shall evaluate the taxpayer's bases for compromise in the order indicated by the taxpayer, and the Secretary's decision to compromise on one basis shall not depend on whether the Secretary would be willing to compromise on another basis; and”.
- *Improve Offer in Compromise Program Accessibility*.¹¹⁴ Modify IRC § 7122(c) so that taxpayers are not required to include a partial payment with “lump-sum” offer applications. Alternatively, modify the offer in compromise (OIC) rules as follows:
 1. Provide taxpayers with the right to appeal to the IRS Appeals function the IRS's decision to return an OIC before or after accepting it for processing. The IRS could use the existing Collection Appeals Process, which allows it to review appeals in just five days.
 2. Provide an exception to the partial payment requirement for taxpayers who do not have immediate access to current income and liquid assets that could be used to fund an offer without incurring significant costs (e.g., taxable income or penalties resulting from the withdrawal of assets from a qualified retirement plan). For those taxpayers who have immediate access to such funds, the partial payment requirement should be 20 percent (for lump-sum offers) of any current income and liquid assets that could be disposed of immediately without significant cost.
 3. Apply the low income exception in cases where payment of the combined OIC user fee and partial payment (or borrowing for such payments) would cause an economic hardship.
 - *Waiver of Installment Agreement Fees for Low Income Taxpayers*.¹¹⁵ Implement an installment agreement (IA) user fee waiver for low income taxpayers and adopt a graduated scale for other IA user fees based on the amount of work required.
 - *Return of Levy or Sale Proceeds*.¹¹⁶
 1. Amend IRC § 6343(b) to extend the period of time within which a third party can request a return of levied funds or the proceeds from the sale of levied property from nine months to two years from the date of levy. This amendment will also extend the period of time available to taxpayers under IRC § 6343(d) within which to request a return of levied funds or sale proceeds.

114 See National Taxpayer Advocate 2006 Annual Report to Congress 507-19. H.R. 6050, 112th Cong. (2012) (introduced by Rep. Becerra); S. 3355, 112th Cong. (2012) (introduced by Senator Bingaman); S. 1289, 112th Cong. (2011) (introduced by Senator Carper); H.R. 4994, 111th Cong. (2010) (introduced by Rep. Lewis); H.R. 2342, 111th Cong. (2009) (introduced by Rep. Lewis), included parts of this recommendation.

115 See National Taxpayer Advocate 2006 Annual Report to Congress 141-56 (Most Serious Problems). H.R. 4375, 112th Cong. (2012) (introduced by Rep. Johnson); S. 2291, 112th Cong. (2012) (introduced by Senator Cornyn) included parts of the recommendation.

116 See National Taxpayer Advocate 2001 Annual Report to Congress 202-09. There have been numerous bills introduced in the House of Representatives and Senate that include parts of this recommendation. See, e.g., H.R. 5719, 110th Cong. (2008) (introduced by Rep. Rangel), and S. 882, 108th Cong. (2003) (introduced by Senator Baucus and incorporated in H.R. 1528 through an amendment, which passed in lieu of S. 882) (including the requirement to reinstate retirement accounts).

2. Amend IRC §§ 6532(c)(1) and (2) to extend the period of time within which a suit or proceeding under IRC § 7426 shall begin from nine months to two years from the date of levy or agreement giving rise to such action.¹¹⁷
3. Amend IRC § 6343(d) to extend the period of time within which a taxpayer shall request a return of levied funds or the proceeds from the sale of levied property to a period of four years from the date of levy or sale of the levied property where the IRS's action with regard to that levy was in reckless or flagrant disregard of established IRS rules, procedures, or regulations and the taxpayer incurred significant harm as a result of that action. Interest shall be allowed and paid with respect to such levies as permitted under IRC § 6343(c).
4. Amend the following code sections to authorize reinstatement of funds to retirement accounts and other pension plans where the IRS levied upon the plans in error or in flagrant disregard of established IRS rules, procedures, or regulations and the funds were returned under IRC § 6343(d): (1) § 401 Qualified Pension, Profit Sharing, Keogh and Stock Bonus Plans; (2) § 408 Individual Retirement Account, SEP-Individual Retirement Account; and (3) § 408A Roth Individual Retirement Account. Further, amend these code sections to provide that the IRS shall abate all tax and interest assessed as a result of the levy.

- *Amend IRC § 6343(a) to Permit the IRS to Release Levies that Impose Economic Hardship on Business Taxpayers.*¹¹⁸ Amend IRC § 6343(a)(1)(d) to: (1) permit the IRS, in its discretion, to release a levy against the taxpayer's property or rights to property if the IRS determines that the satisfaction of the levy is creating an economic hardship due to the financial condition of the taxpayer's business; and (2) require the IRS, in making the determination to release a levy against a business on economic hardship grounds, to consider the economic viability of the business, the nature and extent of the hardship (including whether the taxpayer exercised ordinary business care and prudence), and the potential harm to individuals if the business is liquidated, as well as whether the taxes could be collected from a responsible person under an IRC § 6672 Trust Fund Recovery Penalty (TFRP) assessment.
- *Levy on Mutual Funds, including Money Market Funds.*¹¹⁹ Amend IRC § 6332 to include a new paragraph (d) to read: "Special Rule for agent of mutual funds, including money market funds. Any agent for a mutual fund including money market funds shall dispose of sufficient shares at market value to satisfy the amount due on such levy up to the market value of share owned by the person against whom the tax is assessed."

117 Under IRC § 7426, any person (other than the taxpayer) who claims the IRS wrongfully levied upon property he or she has an interest in or lien on, to satisfy the tax liability of another, may file a wrongful levy suit against the United States in federal district court.

118 See National Taxpayer Advocate 2011 Annual Report to Congress 537-43. This recommendation also relates to the *right to privacy*. H.R. 4368, 112th Cong. (2012) (introduced by Rep. McDermott) included part of this recommendation.

119 See National Taxpayer Advocate 2002 Annual Report to Congress 247.

- *Strengthening Taxpayer Protections in the Filing and Reporting of Federal Tax Liens.*¹²⁰ Amend the Code to:
 1. Require that prior to filing a Notice of Federal Tax Lien (NFTL), the IRS must review the taxpayer's information (including IRS and available third party information) concerning the taxpayer's assets, income, and the value of the equity in the assets; and make a determination, weighing all facts and circumstances, that (1) the NFTL will attach to property, and (2) that the benefit to the government of the NFTL filing outweighs the harm to the taxpayer and that the NFTL filing will not jeopardize the taxpayer's ability to comply with the tax laws in the future.
 2. Allow a taxpayer to appeal any lien filing determination to the IRS Office of Appeals before the NFTL is filed. The IRS must notify taxpayers of their right to have an appeals officer review an NFTL determination.
 3. Explicitly provide under IRC § 7432 for civil damages for improper NFTL filing or failure to make the required NFTL determination described above.
 4. Clarify that under IRC § 7433, a taxpayer may bring an action for improper lien filing or failure to make the required lien determination described above.
 5. Amend § 605(a)(3) of the Fair Credit Reporting Act to:
 - a. Require removal of derogatory lien filing information from credit reports six years from the "refile by" date on the lien unless the lien is refiled.
 - b. Require immediate removal of derogatory lien filing information from credit reports if the lien is released within two years from the date of filing.
 - c. Require removal of derogatory lien filing information from credit reports within two years from the date of release if released more than two years from the date of the NFTL filing.
 - d. Require immediate removal of all information about the NFTL filing if the IRS withdraws such a notice under IRC § 6323(j).

- *MANAGERIAL APPROVAL FOR LIENS: Require Managerial Approval Prior to Filing a Notice of Federal Tax Lien in Certain Situations.*¹²¹
 1. Codify § 3421 of RRA 98 to require IRS employees to obtain managerial approval prior to filing an NFTL where it is likely that the NFTL will cause a hardship, will do little to protect the government's interest in the taxpayer's property or rights to property, or will impair the taxpayer's ability to pay the tax, including the following three categories: (1) the taxpayer's income falls below 250 percent of the federal poverty level; (2) the taxpayer's account has been placed in currently not collectible status due to economic hardship; or (3) the taxpayer has entered into an installment agreement (IA) with the IRS.

¹²⁰ See National Taxpayer Advocate 2009 Annual Report to Congress 357-64. H.R. 6050, 112th Cong. (2012) (introduced by Rep. Becerra); S. 3355, 112th Cong. (2012) (introduced by Senator Bingaman); H.R. 6439, 111th Cong. (2010) (introduced by Rep. Hastings); H.R. 5047, 111th Cong. (2010) (introduced by Rep. Becerra); and S. 3215, 111th Cong. (2010) (introduced by Senator Bingaman) included parts of this recommendation.

¹²¹ See Legislative Recommendation: *MANAGERIAL APPROVAL FOR LIENS: Require Managerial Approval Prior to Filing a Notice of Federal Tax Lien in Certain Situations*, *infra*. This recommendation also relates to the *right to privacy*.

2. Require the IRS supervisor, as part of the managerial approval process, to consider the following: (1) whether the NFTL would attach to property; (2) whether the benefit of filing an NFTL for the government would outweigh the harm to the taxpayer; and (3) whether the NFTL filing will jeopardize the taxpayer's ability to comply with the tax laws in the future.
3. Require the IRS to take disciplinary action against employees who fail to secure managerial approval prior to filing an NFTL in the situations required by law.

- *Repeal Private Debt Collection (PDC) Practices.*¹²² Repeal IRC § 6306, thereby terminating the PDC initiative.
- *Eliminate the Suspension of the Collection Statute During Qualified Hospitalization Resulting from Service in a Combat Zone.*¹²³ Amend IRC § 7508(a) to eliminate the suspension of the collection statute during any period of qualified hospitalization after service in a combat zone or performance of combatant activities in a contingency operation.

Additional Recommendations

- *Direct Deposit of Income Tax Refunds.*¹²⁴ Amend the Code to create a process through which the IRS and financial institutions work together to identify the incorrect recipient of a direct deposit refund and request the return of the improperly deposited funds. The Right to Financial Privacy Act, 12 U.S.C. § 3401 *et seq.*, prohibits financial institutions from releasing financial records except under limited circumstances. 12 U.S.C. § 3413(c) provides an exception to the financial disclosure rules, allowing for the sharing of financial records in accordance with procedures in the Code. The Code should be amended to establish a formal procedure through which the IRS can receive limited information about an account holder who receives a misdirected direct deposit refund. The information provided to the IRS would be limited to the account holder's name, Social Security number, and necessary contact information to allow the IRS to contact the account holder and attempt to recover the misdirected funds. The National Taxpayer Advocate further recommends that Congress amend Title 31, Money and Finance, of the current U.S. Code to treat misdirected direct deposit refunds in the same manner as checks. 31 U.S.C. § 3343 provides a fund for the replacement of checks that are lost, stolen, destroyed, or defaced. There is currently no similar provision available providing a fund for the replacement of direct deposit refunds misdirected as a result of fraud.
- *Expand Definition of Taxpayer Identification Number (TIN) to Include Internal Revenue Service Number (IRSN).*¹²⁵ Amend IRC §§ 151(e), 32(c)(1)(F), and 32(c)(3)(D) to require a taxpayer to provide a valid TIN or IRSN in order to claim an exemption and the Earned Income Tax Credit (EITC). This recommendation would enable an identity theft victim who files a tax return using an IRSN or similar replacement number to claim an exemption or the EITC.

122 See National Taxpayer Advocate 2006 Annual Report to Congress 458-62. H.R. 5719, 111th Cong. (2009) (introduced by Rep. Lewis); H.R. 5719, 110th Cong. (2008) (introduced by Rep. Rangel); H.R. 695, 110th Cong. (2007) (introduced by Rep. Van Hollen); S. 335, 110th Cong. (2007) (introduced by Senator Dorgan); and H.R. 3056, 110th Cong. (2007) (introduced by Rep. Rangel and passed by the House) included this recommendation.

123 See National Taxpayer Advocate 2009 Annual Report to Congress 381-83.

124 See National Taxpayer Advocate 2005 Annual Report to Congress 464-65.

125 See National Taxpayer Advocate 2007 Annual Report to Congress 545-46.

- *Broaden Relief from Timeframes for Filing a Claim for Refund for Taxpayers with Physical or Mental Impairments.*¹²⁶ Amend IRC § 6511(h)(2) to define a financially disabled individual as follows:
 1. First, replace the existing requirement that the individual impairment be medically determinable with a provision that it be determined by a qualified medical or mental health professional. For this purpose, Congress should specify that a qualified medical or mental health professional is an individual who is licensed by the state in which he or she practices to provide direct medical or mental health treatment to another individual.
 2. Second, replace the existing requirement that the impairment leaves the individual unable to manage his financial affairs with the requirement that the impairment materially limits the management of those affairs.
- *Exclude Settlement Payments for Mental Anguish, Emotional Distress, and Pain and Suffering from Gross Income.*¹²⁷ Amend IRC §104(a)(2) to exclude from gross income payments received as settlement for mental anguish, emotional distress, and pain and suffering.
- *Provide a Uniform Definition of a Hardship Withdrawal from Qualified Retirement Plans.*¹²⁸ Establish uniform rules regarding the availability and tax consequences of hardship withdrawals from tax-advantaged retirement plans and arrangements.
 1. Hardship withdrawals should be permitted when a participant is faced with an “unforeseeable emergency.” Examples of an unforeseeable emergency may include: (1) expenses for medical care incurred by the employee, the employee’s spouse or dependents; (2) payments necessary to prevent the eviction of the employee from his or her principal residence or foreclosure on the mortgage on that residence; (3) loss of property due to casualty; or (4) severe financial hardship resulting from an extended period of unemployment.
 2. Such hardship distributions be made exempt from the ten percent additional tax imposed by IRC § 72(t).
- *IRS Authority to Issue Refunds and Credits After Entry of Small Case Tax Court Decision.*¹²⁹ Amend IRC § 6512 to permit the IRS to issue refunds and credits after entry of a Tax Court decision and before it becomes final. This authority should be permissive rather than mandatory so that the IRS is not required to issue the refund or credit if it expects the decision to be vacated before it becomes final.
- *Allow Individual U.S. Taxpayers Residing Abroad the Option to Choose the Currency of Their Country of Residence as Their Functional Currency.*¹³⁰ Amend IRC § 985 to allow individual U.S. taxpayers residing abroad: (1) to adopt the local currency as their functional currency with respect to certain activities associated with their residence in a foreign country (e.g., activities of a qualified residence unit or QRU), giving individuals the flexibility currently extended to business taxpayers; and (2) to use an average exchange rate or other reasonable method of accounting to convert foreign currency into U.S. dollars in order to determine the individual’s

126 See National Taxpayer Advocate 2013 Annual Report to Congress 302-10.

127 See National Taxpayer Advocate 2009 Annual Report to Congress 351-56.

128 See *id.* at 384-90.

129 See National Taxpayer Advocate 2004 Annual Report to Congress 493.

130 See National Taxpayer Advocate 2011 Annual Report to Congress 566-72.

taxable income and gain for taxpayers who do not adopt the QRU and have the U.S. dollar as their functional currency for the taxable year.

- *Amend the Adoption Credit to Acknowledge Jurisdiction of Native American Tribes.*¹³¹ Amend IRC § 7871(a) to include IRC § 23 in the list of Code sections for which a Native American tribal government is treated as a “State.” If a Native American tribal government is treated as a State for purposes of IRC § 23, its determination that a child has special needs would enable adoptive parents to claim the special needs adoption credit, provided that the other requirements of the Internal Revenue Code are met.
- *LATE-FILED RETURNS: Clarify § 523(a) of the Bankruptcy Code to Provide that a Late-Filed Tax Return May Be Considered a Return for Purposes of Obtaining a Bankruptcy Discharge.*¹³² To address conflicting judicial interpretations as to whether the “applicable filing requirements” language in § 523(a) of the Bankruptcy Code imposes a timely filing requirement, the National Taxpayer Advocate recommends that Congress clarify this language to provide that a late-filed tax return may be considered a return for purposes of obtaining a bankruptcy discharge.

Five Taxpayer Responsibilities¹³³

1. The Responsibility to Be Honest

Taxpayers have the responsibility to be truthful in preparing their tax returns and in all other dealings with the IRS.

2. The Responsibility to Provide Accurate Information

Taxpayers have the responsibility to answer all relevant questions completely and honestly, to provide all required information on a timely basis, and to explain all relevant facts and circumstances when seeking guidance from the IRS.

3. The Responsibility to Keep Records

Taxpayers have the responsibility to maintain adequate books and records to fulfill their tax obligations, preserve them during the time they may be subject to IRS inspection, and provide the IRS with access to those books and records when asked so the IRS can examine their tax liabilities to the extent required by law.

4. The Responsibility to Pay Taxes on Time

Taxpayers have the responsibility to pay the full amount of taxes they owe by the due date and to pay any legally correct additional assessments in full. If they cannot pay in full, they have the responsibility to comply with all terms of any full or partial payment plans the IRS agrees to accept.

5. The Responsibility to Be Courteous

Taxpayers have the responsibility to treat IRS personnel politely and with respect.

131 See National Taxpayer Advocate 2012 Annual Report to Congress 521-25.

132 See Legislative Recommendation: *LATE-FILED RETURNS: Clarify the Bankruptcy Law Relating to Obtaining a Discharge*, *infra*. This recommendation also relates to the *right to finality*.

133 The IRS did not include a list of responsibilities when it adopted the Taxpayer Bill of Rights on June 10, 2014. See IRS, Taxpayer Bill of Rights, available at <http://www.irs.gov/Taxpayer-Bill-of-Rights>.