NATIONAL TAXPAYER ADVOCATE

OBJECTIVES REPORT TO CONGRESS

Volume 1

Fiscal Year 2016

www.TaxpayerAdvocate.irs.gov/2016ObjectivesReport

Contents

I. PREFACE: NATIONAL TAXPAYER ADVOCATE'S INTRODUCTORY REMARKS 1

II. REVIEW OF THE 2015 FILING SEASON 8

III. AREAS OF FOCUS 28

1. The IRS Should Provide Victims of Identity Theft with a True Single Point of Contact to Help Them Resolve Their Account Problems and Obtain Their Refunds 28
2. The IRS Agrees It Should Issue Refunds to Victims of Return Preparer Fraud, But It Has Been Slow to Develop Necessary Procedures 34
3. The IRS's Administration of the Affordable Care Act Has Gone Well Overall, But Some Glitches Have Arisen 38
4. The IRS's Implementation of FATCA Has in Some Cases Imposed Unnecessary Burdens and Failed to Protect the Rights of Affected Taxpayers 48
5. IRS Procedures for Levies on Retirement Plan Assets Create Financial Harm and Undermine Taxpayer Rights 53
6. As the IRS Migrates to More Self-Service Tools and Online Services, Low Income and Other Vulnerable Taxpayer Populations May Face Greater Compliance Challenges 59
7. Additional Requirements for Appeals Access and Compressed Case Timelines Impair the Fundamental Rights of Taxpayers 66
8. The IRS Approves Many Applications for Tax-Exempt Status Almost Automatically, Often Based on Insufficient Information 70
9. International Local Taxpayer Advocates Would Provide Valuable Assistance to Taxpayers and Protect Their Rights 77
10. TAS Continues to Work with the IRS to Implement the Taxpayer Bill of Rights into IRS Operations 83
11. The IRS Must Have a Comprehensive Review Process for Guidance and Other Documents to Protect Taxpayer Rights, Improve Customer Service, and Operate More Efficiently 86

IV. EFFORTS TO IMPROVE TAS ADVOCACY AND SERVICE TO TAXPAYERS 88

V. TAS RESEARCH INITIATIVES 92

VI. TAS TECHNOLOGY 98

VII. APPENDICES 106

1. Evolution of the Office of Taxpayer Advocate 106
2. Taxpayer Advocate Service Case Acceptance Criteria 110
3. List of Low Income Taxpayer Clinics 111
4. Taxpayer Advocate Service Performance Measures and Indicators 118
5. Glossary of Acronyms 121

VOLUME TWO: IRS RESPONSES AND NATIONAL TAXPAYER ADVOCATE'S COMMENTS REGARDING MOST SERIOUS PROBLEMS IDENTIFIED IN 2014 ANNUAL REPORT TO CONGRESS

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PREFACE: National Taxpayer Advocate's Introductory Remarks

HONORABLE MEMBERS OF CONGRESS:

The Internal Revenue Code (IRC) requires the National Taxpayer Advocate to submit two annual reports to the House Committee on Ways and Means and the Senate Committee on Finance.[1] The National Taxpayer Advocate is required to submit these reports directly to the Committees without any prior review or comment from the Commissioner of Internal Revenue, the Secretary of the Treasury, the IRS Oversight Board, any other officer or employee of the Department of the Treasury, or the Office of Management and Budget.[2] The first report, submitted mid-year, must identify the objectives of the Office of the Taxpayer Advocate for the fiscal year (FY) beginning in that calendar year. On the pages that follow, we identify our objectives for FY 2016, provide an overview of the recent filing season, and present certain additional information.

FY 2015 has been very challenging for the IRS and incredibly difficult for taxpayers and their representatives, particularly in the area of taxpayer service. There is no doubt that the deficiencies in taxpayer service are substantially attributable to a lack of resources. Handling more than 100 million telephone calls,[3] answering ten million letters,[4] and assisting more than five million taxpayers who visit IRS walk-in sites each year requires considerable staffing.[5] With funding down about 17 percent on an inflation-adjusted basis since FY 2010,[6] and with the IRS having had to implement large portions of the Patient Protection and Affordable Care Act (ACA) and the Foreign Account Tax Compliance Act (FATCA) this year without any supplemental funding, sharp declines in taxpayer service were inevitable. The IRS was forced to make some extraordinarily difficult resource-allocation decisions, and although I disagree with some of those decisions, the general success of the 2015 filing season shows the agency did a good job overall.

Yet it remains the case that millions of taxpayers were unable to reach the IRS by phone;[7] millions did not receive a timely response (if any) to their correspondence;[8] and many more may have had to pay a tax preparer or professional for answers to tax law questions or for assistance they could previously have obtained from the IRS for free. The impact of this increased compliance burden on taxpayers is significant, as is the loss of trust in the tax agency. For a tax system that relies on voluntary self-assessment by its taxpayers, none of this bodes well. In fact, there is a real risk that the inability of taxpayers to obtain assistance from the government, and their consequent frustration, will lead to less voluntary compliance and more enforced compliance.

Over the long term, temporary periods of limited funding can have the salutary effect of causing an organization to rethink its mission and allocate its resources more effectively. The IRS is, in fact, evaluating ways to accomplish its mission more cheaply. But from a taxpayer perspective, I am

1 IRC § 7803(c)(2)(B).
2 IRC § 7803(c)(2)(B)(iii).
3 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (final week of FY 2014).
4 IRS, JOC, *Adjustments Inventory Reports: July-September Fiscal Year Comparison* (FY 2014).
5 IRS, Wage & Investment Division, Business Performance Review 7 (4th Quarter FY 2014, Nov. 6, 2014).
6 National Taxpayer Advocate 2014 Annual Report to Congress 13 (Most Serious Problem: *TAXPAYER SERVICE: Taxpayer Service Has Reached Unacceptably Low Levels and Is Getting Worse, Creating Compliance Barriers and Significant Inconvenience for Millions of Taxpayers*).
7 *Id.* at 17-8.
8 *Id.* at 18-9.

concerned its long-term approach is headed in the wrong direction. First, the IRS continues to view itself as an enforcement agency first and a service agency second. Enforcement is important, of course, but it is a question of emphasis and self-definition. Second, the IRS's vision of the future rests on a mistaken assumption that it can save dollars and maintain voluntary compliance by automating taxpayer service and issue resolution and getting out of the business of dealing with taxpayers directly in person or by phone.

The IRS Guiding Principle Should Be to Meet the Needs of Taxpayers Who Are Willing to Comply with the Tax Laws

What the IRS should do during this period of congressional distrust and resulting inadequate funding is examine every one of its underlying principles. In my view, it should transform itself as a tax agency from one that is designed around nabbing the small percentage of the population that actively evades tax to one that aims first and foremost to meet the needs of the overwhelming majority of taxpayers who are trying to comply with the tax laws. By shifting its focus, the IRS would not give up one whit of its power or any of its tools for fighting tax evasion. Indeed, it is important to the willingly compliant U.S. taxpayers that the IRS take action against those who are breaking the law. But enforcing the law against evaders should not be the organizing principle of the agency, as it is in reality today. Rather, helping taxpayers achieve and maintain voluntary compliance should be the IRS's *raison d'être*.

It should be emphasized that more than 98 percent of all tax revenue collected by the IRS is paid voluntarily and timely. Less than two percent is collected through enforcement action.

It should be emphasized that more than 98 percent of all tax revenue collected by the IRS is paid voluntarily and timely. Less than two percent is collected through enforcement action.[9] Thus, increasing enforced collection would be a hollow victory if voluntary compliance declines because of decreasing taxpayer service and the attendant loss of good will. Moreover, it makes good economic sense to facilitate voluntary compliance because voluntary compliance is far more cost effective than enforced compliance. If the IRS were to collect ten percent less in enforcement revenue, tax revenue would decline by less than $6 billion. If voluntary tax payments were to drop by ten percent, tax revenue would decline by more than $300 billion. And taxpayer trust, once lost, is exceedingly difficult to regain.[10]

Many of our recommendations, in both this report's Areas of Focus and in the 2014 Annual Report to Congress, require the IRS to reconsider its long-held assumptions about what drives taxpayers to comply with the tax laws. When establishing policies and procedures relating to audit, collection, and penalties, IRS employees often do not avail themselves of the knowledge and research that have developed over the last few decades about the interrelationship between just procedures (procedural justice), trust, cooperation, and compliance. As noted above, the IRS continues to view itself, first and foremost, as an enforcement agency, and it thus develops its policies around the relatively small portion of the taxpayer population that is unwilling to comply with the tax laws. This focus has all sorts of consequences for the vast majority of taxpayers who are willing to comply, not the least of which is that they bear an increased burden in navigating processes designed for evaders. That is unwise, counterproductive, and expensive.

9 In FY 2014, the IRS collected total tax revenue of about $3.1 trillion. Of that amount, it collected $57.1 billion through enforcement actions. Government Accountability Office (GAO), GAO-15-173, *Financial Audit: IRS's Fiscal Years 2014 and 2013 Financial Statements* 29 (Nov. 2014), *available at* http://www.gao.gov/assets/670/666863.pdf.

10 *See* National Taxpayer Advocate 2014 Annual Report to Congress 7-8 (Most Serious Problem: *TAXPAYER SERVICE: Taxpayer Service Has Reached Unacceptably Low Levels and Is Getting Worse, Creating Compliance Barriers and Significant Inconvenience for Millions of Taxpayers*).

In preparing to write this preface, I reviewed the 28 reports I have submitted to Congress since 2001, when I first became the National Taxpayer Advocate. I was struck by how many of our common-sense recommendations were rejected by the IRS when first made, only to be adopted years later after much run-around, expense, and increased burden to taxpayers. I was also struck by how many of our recent recommendations the IRS continues to reject. I can only wonder if, five years from now, the IRS will adopt those recommendations. I wish we could avoid the wasted resources of the intervening five years.

Nowhere is this more evident than the IRS's handling of identity theft. TAS conducted a study of a statistically representative sample of IRS-wide identity theft cases and found that IRS processes harm victims of identity theft whose cases are complex (*i.e.*, cases that involve multiple years or multiple issues) by declining to assign one employee to interface with the victim. Without a single employee with whom to work, identity theft victims often have to call the IRS multiple times and talk with multiple employees about different aspects of their case. Equally important, no one employee is held accountable for the resolution of the case. Thus, affected taxpayers often feel like they are victimized a second time by the IRS's processes. Yet the IRS this year is once again declining to adopt what we view as the common-sense solution of allowing an identity theft victim to work with a single IRS employee to resolve his or her case.[11]

The IRS continues to view itself, first and foremost, as an enforcement agency, and it thus develops its policies around the relatively small portion of the taxpayer population that is unwilling to comply with the tax laws. This focus has all sorts of consequences for the vast majority of taxpayers who are willing to comply, not the least of which is that they bear an increased burden in navigating processes designed for evaders. That is unwise, counterproductive, and expensive.

The IRS's Long-Term Vision of Automated Taxpayer Service and Issue Resolution Ignores Taxpayers' Needs and Behavior and Increases Taxpayers' Compliance Costs

In its effort to develop a long-term strategy, the IRS is currently engaged in a servicewide evaluation of where it needs to be in five years – a "Concept of Operations" (CONOPS). The vision, as articulated in a one-page, consultant-developed graphic, envisions replacing traditional IRS employee-to-taxpayer interaction (by phone, in-person, or correspondence) with online services and expanded use of third parties (*e.g.,* software packages, preparers, and tax professionals) to be the taxpayers' interface with the IRS. It essentially eliminates any IRS-taxpayer personal interaction except in the context of enforcement actions. The consequences of this approach are clear. Taxpayers who prefer or need to speak with an IRS employee will be mostly out of luck. Pushing taxpayers to use third parties to obtain assistance the IRS heretofore has provided will increase their compliance costs.

Now, I am not a Luddite when it comes to the digital world. I am enormously proud of the Taxpayer Advocate Service's Tax Toolkit website, which is built to be every taxpayer's first stop to learn about their

11 For a discussion of the current issues involving identity theft, *see* Area of Focus: *The IRS Should Provide Victims of Identity Theft with a True Single Point of Contact to Help Them Resolve Their Account Problems and Obtain Their Refunds, infra.* For the 2014 research study and the IRS's response to TAS's recommendations, *see* National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 43-89 (Research Study: *Identity Theft Case Review Report: A Statistical Analysis of Identity Theft Cases Closed in June 2014*) and National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, *infra* (*Volume 2 – Identity Theft Case Review Report - A Statistical Analysis of Identity Theft Cases Closed in June 2014*).

rights and how to advocate for themselves if they have a tax problem.[12] In fact, since 2008, I have been calling for the IRS to create a taxpayer account that will provide the taxpayer with full information about his or her tax matters, including the ability to download wage statements and other third-party reporting into commercial software.[13] Providing taxpayers (and their representatives) with the ability to transmit documents electronically, download transcripts (but see our discussion in the Filing Season section in this report), check on the status of return and refund processing, check on the status of correspondence and other account transactions, and receive electronic acknowledgements will provide more rapid assistance to taxpayers and eliminate the need for phone calls made by millions of taxpayers each year. Moreover, taxpayers can conduct online transactions at any hour of the day and not be dependent on the IRS's hours of business.

A well-designed taxpayer account can also provide taxpayers with alerts about relevant due dates, recently issued guidance pertaining to the taxpayer's business, and scam warnings. The ability to communicate by email and review one's account also will provide valuable service to U.S. taxpayers living outside the United States. All of these things ease taxpayers' burdens and increase taxpayers' respect for the IRS, which will have a positive effect on taxpayers' willingness to comply.

But it is wishful thinking, if not foolhardy, to expect taxpayers to rely on computer-driven systems for resolution of tax problems that, if not resolved fully, could lead to devastating financial consequences. Taxpayers, and their representatives, need the ability to *talk* with IRS employees, explain their circumstances, and make sure that the IRS understands their position. The IRS should want to *talk* with these taxpayers, because each conversation provides an opportunity for it to understand the taxpayer's facts and circumstances, recognize a situation that presents a different issue, educate the taxpayer about what is required for full compliance, and provide a full resolution to the taxpayer's problem.

This is not only critical for taxpayers, but in many cases, it is cost-effective for the IRS as well. For example, the IRS may plan to assess tax against a taxpayer simply because it hasn't heard and considered the taxpayer's side of the story. A phone call may stave off the issuance of an erroneous notice of deficiency and the consequent litigation and Appeals costs that may arise for the taxpayer and the IRS alike. Moreover, direct engagement helps instill mutual trust and cooperation, which increases taxpayers' willingness to comply.

12 http://www.taxpayeradvocate.irs.gov. *See also Efforts to Improve TAS Advocacy and Service to Taxpayers: TAS Develops Self-Help Options to Assist Taxpayers, infra.*

13 National Taxpayer Advocate 2013 Annual Report to Congress 188-96 (Most Serious Problem: *ONLINE SERVICES: The IRS's Sudden Discontinuance of the Disclosure Authorization and Electronic Account Resolution Applications Left Practitioners Without Adequate Alternatives*); National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 67-96 (Research Study: *Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments*); National Taxpayer Advocate 2012 Annual Report to Congress 180-91 (Most Serious Problem: *The Preservation of Fundamental Taxpayer Rights is Critical as the IRS Develops a Real-Time Tax System*); National Taxpayer Advocate 2012 Annual Report to Congress 251-61 (Most Serious Problem: *The IRS is Striving to Meet Taxpayers' Increasing Demand for Online Services; Yet More Needs to be Done*); National Taxpayer Advocate 2011 Annual Report to Congress 284-95 (Most Serious Problem: *Accelerated Third-Party Information Reporting and Pre-Populated Returns Would Reduce Taxpayer Burden and Benefit Tax Administration But Taxpayer Protections Must Be Addressed*); National Taxpayer Advocate 2009 Annual Report to Congress 85-109 (Most Serious Problem: *The IRS Lacks a Servicewide e-Services Strategy*); National Taxpayer Advocate 2009 Annual Report to Congress 338-45 (Legislative Recommendation: *Direct the Treasury Department to Develop a Plan to Reverse the "Pay Refunds First, Verify Eligibility Later" Approach to Tax Return Processing*); National Taxpayer Advocate 2008 Annual Report to Congress 95-113 (Most Serious Problem: *Taxpayer Service: Bringing Service to the Taxpayer*); National Taxpayer Advocate 2004 Annual Report to Congress 101-2 (Most Serious Problem: *Electronic Return Preparation and Filing*).

But as this report and the IRS's responses to the recommendations we made in our 2014 Annual Report demonstrate, the IRS is relying increasingly on automated processes or remote, narrowly-scoped, and centralized services to provide taxpayer service and conduct enforcement. It refuses to follow congressional directives dating back to 1976 about sending clear and detailed notices to taxpayers explaining math or clerical error adjustments, thereby undermining both the taxpayer's *right to be informed* and the taxpayer's *right to appeal an IRS decision in an independent forum*.[14] It is piloting the use of lower-graded, inadequately trained Automated Collection System employees to issue levies on the corpus of Thrift Savings Plans, diluting its already weak taxpayer protections in this area and not only threatening the retirement security of hundreds of thousands of taxpayers but also undermining the taxpayer's *right to privacy*, which requires the IRS to take collection actions "no more intrusive than necessary."[15] It refuses to hold correspondence examination employees accountable for the decisions they make with respect to taxpayers' audits – now comprising 77 percent of all individual examinations[16] – by not giving the taxpayer the choice to have his or her case worked by one Exam employee and by not requiring Exam employees to provide their names and phone numbers on manually-generated letters, as Congress required in 1998.[17]

The IRS is relying increasingly on automated processes or remote, narrowly-scoped, and centralized services to provide taxpayer service and conduct enforcement... The large number of taxpayers who have limited or no electronic access or skills will not be able to navigate this brave new world; the IRS is largely ignoring this reality, hoping taxpayers will grow out of it in five years' time.

The large number of taxpayers who have limited or no electronic access or skills will not be able to navigate this brave new world; the IRS is largely ignoring this reality, hoping taxpayers will grow out of it in five years' time.[18] What will happen instead is that this vulnerable population will have to rely on unregulated preparers who will have unfettered access to an enormous amount of taxpayer information, increasing the risk of return preparer fraud. Moreover, a recent study found that the *general public* (a.k.a. taxpayers) "still uses nondigital

14 National Taxpayer Advocate 2014 Annual Report to Congress 163-71 (Most Serious Problem: *MATH ERROR NOTICES: The IRS Does Not Clearly Explain Math Error Adjustments, Making It Difficult for Taxpayers to Understand and Exercise Their Rights*); National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, *infra* (Most Serious Problem: *MATH ERROR NOTICES: The IRS Does Not Clearly Explain Math Error Adjustments, Making it Difficult for Taxpayers to Understand and Exercise Their Rights*).

15 See Area of Focus: *IRS Procedures for Levies on Retirement Plan Assets Create Financial Harm and Undermine Taxpayer Rights, infra*.

16 Internal Revenue Service Data Book, 2014 Publication 55B Washington, DC March 2015, Table 9a, *available at* http://www.irs.gov/pub/irs-soi/14databk.pdf. Seventy-six and one-half percent of individual examinations were conducted by correspondence.

17 *See also* National Taxpayer Advocate 2014 Annual Report to Congress 134-44 (Most Serious Problem: *CORRESPONDENCE EXAMINATION: The IRS Has Overlooked the Congressional Mandate to Assign a Specific Employee to Correspondence Examination Cases, Thereby Harming Taxpayers*); National Taxpayer Advocate 2014 Annual Report to Congress 145-53 (Most Serious Problem: *AUDIT NOTICES: The IRS's Failure to Include Employee Contact Information on Audit Notices Impedes Case Resolution and Erodes Employee Accountability*); National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress vol. 2, *infra* (Most Serious Problem: *CORRESPONDENCE EXAMINATION: The IRS Has Overlooked the Congressional Mandate to Assign a Specific Employee to Correspondence Examination Cases, Thereby Harming Taxpayers*) and (Most Serious Problem: *AUDIT NOTICES: The IRS's Failure to Include Employee Contact Information on Audit Notices Impedes Case Resolution and Erodes Employee Accountability*).

18 See Area of Focus: *As the IRS Migrates to More Self-Service Tools and Online Services, Low Income and Other Vulnerable Taxpayer Populations May Face Greater Compliance Challenges, infra. See also* National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 1-26 (Research Study: *Low Income Taxpayer Clinic Program: A Look at Those Eligible to Seek Help from the Clinics*).

channels more than digital ones, doesn't want more digital interactions with Washington, and doesn't trust the government with personal data."[19] Hoping taxpayers will grow out of disinterest in digital government is misguided:

> Agencies that think that Millennials are a standout digital constituency are way off the mark: Online customers ages 18 to 24 are no more likely to use digital channels than the rest of the population, they are far less likely to visit agency websites, and half of Millennials still prefer using nondigital channels.[20]

Why would we create such a future environment, when with some strategic thinking today we could avoid it? The primary reason for this headlong rush into digital/third-party tax administration is budget-driven. The IRS has enormous responsibilities, including its role in administering the ACA and FATCA.[21] These complex new programs are bringing more, not fewer, taxpayers into the tax system. Given this new work, the IRS is looking to replace what it views as archaic methods of dealing with taxpayers – *i.e.*, in-person meetings, assignment of cases to a specific employee, or a geographic-based presence – with what it views as modern methods – *i.e.*, digital services, batch processing, and remote, centralized employees.

The problem with this approach is that both taxpayers and the IRS need person-to-person interaction to successfully resolve most taxpayers' problems in a manner that doesn't create burden for the taxpayers and rework for the IRS. Over the years, TAS has conducted many studies of taxpayer behavior and needs, and we have made recommendations based on the findings of these studies. It is time for the IRS to pay more attention to these studies and apply the findings to its procedures and processes. It is time for the IRS to transform itself into an agency that makes its primary focus its relationship with taxpayers who are willing to comply with the laws. This population includes taxpayers who have made mistakes and aren't currently in compliance, but want to be.

Unless the IRS understands the causes of noncompliance and tailors its policies and procedures to address those underlying causes, it will just be bouncing from one enforcement action to another, doing expensive rework and not increasing voluntary compliance, and it will spend so much money that it won't have much left over for taxpayer services. The IRS can regain taxpayers' trust by learning what taxpayers need, by listening to what taxpayers say, and by starting every interaction with a taxpayer with the assumption that the taxpayer is doing his, her, or its best to comply with the complex, myriad tax laws we've created over the years. The recently adopted Taxpayer Bill of Rights can serve as a roadmap for this transformation.

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19 Rick Parrish, Forrester Research, *Washington Must Work Harder to Spur the Public's Interest in Digital Government: Federal Agencies Are Spending Millions on Digital CX That Customers May Not Want* (Apr. 28, 2015).

20 *Id.* at 9.

21 *See* Areas of Focus: *The IRS's Administration of the Affordable Care Act Has Gone Well Overall, But Some Glitches Have Arisen* and *The IRS's Implementation of FATCA Has in Some Cases Imposed Unnecessary Burdens and Failed to Protect the Rights of Affected Taxpayers, infra*.

This transformation requires a lot of self-reflection by the agency – it can't come from outside. I believe Congress' role here is to conduct the necessary oversight to ensure the IRS is undertaking this transformation – in its policies and procedures, in its taxpayer service initiatives, and in its examination, collection, and penalty policies and procedures. Congress should review the IRS's CONOPS, and the CONOPS should be made available for public review and comment. This is the taxpayers' tax system, after all, and taxpayers have the right to know what the IRS is planning for them. At the risk of sounding like Chicken Little, there is no time to lose. We need to do it now.

Respectfully submitted,

Nina E. Olson
30 June 2015

II. Review of the 2015 Filing Season

The 2015 filing season was akin to a *Tale of Two Cities*. For the majority of taxpayers who filed their returns and did not require IRS assistance, the filing season was generally successful. For the segment of taxpayers who required help from the IRS, the filing season was by far the worst in memory.

The 2015 filing season presented the IRS with extraordinary challenges and considerable risks. The IRS's budget has been declining since fiscal year (FY) 2010 and now stands about 17 percent below its FY 2010 peak in inflation-adjusted terms.[1] At the same time, the IRS this year was charged by law with implementing the most challenging portions of the Patient Protection and Affordable Care Act (ACA)[2] as well as the Foreign Account Tax Compliance Act (FATCA)[3] and "tax extenders" legislation passed last fall.[4]

The IRS received the same appropriation for its Taxpayer Services account in FY 2015 as it had received in FY 2014. However, it did not receive any additional funding to implement the ACA and FATCA. To enable it to implement those laws, the IRS reallocated about $133 million in user fees from Taxpayer Services to its Operations Support account, primarily to complete required systems programming.[5] That decision left less funding for taxpayer services.

Under these difficult circumstances, the IRS accomplished a great deal. It received and processed most tax returns in a timely manner, and it issued timely refunds to most taxpayers who were entitled to them. The following table presents the IRS's overall IRS filing season statistics.

FIGURE 2.1.1, Filing Season Statistics Comparing Weeks Ending April 18, 2014 and April 17, 2015[6]

		2014	2015	% change
Individual Income Tax Returns	Total Receipts	131,170,000	132,268,000	0.8%
	Total Processed	125,604,000	126,121,000	0.4%
e-Filing Receipts	*Self-Prepared*	*45,977,000*	*48,702,000*	*5.9%*
	Tax Professionals	*69,992,000*	*70,064,000*	*0.1%*
	Total e-Filing	115,969,000	118,766,000	2.4%
Web Usage	Visits to IRS.gov	269,138,999	302,576,118	12.4%
Total Refunds	Number	94,809,000	91,818,000	-3.2%
	Amount	$254.7 bil	$248.9 bil	-2.3%
	Average Refund	$2,686	$2,711	0.9%
Direct Deposit Refunds	Number	76,714,000	76,824,000	0.1%
	Amount	$217.7 bil	$222.0 bil	2.0%
	Average Refund	$2,837	$2,890	1.8%

1 In FY 2010, the agency's appropriated budget stood at $12.1 billion. In FY 2015, its budget was set at $10.9 billion, a reduction of about 9.9 percent. Inflation over the same period is estimated at about 9.4 percent. Adjusting for the interactive effects of these cuts and the impact of the federal pay freeze, we estimate the inflation-adjusted reduction in funding has been about 17 percent. For additional detail, *see* National Taxpayer Advocate 2014 Annual Report to Congress 13 n.50.

2 Pub. L. No. 111-148, 124 Stat. 119 (2010).

3 Pub. L. No. 111-147, Title V, Subtitle A, 124 Stat. 71, 97 (2010).

4 Pub. L. No. 113-295, 128 Stat. 4010 (2014).

5 IRS Chief Financial Officer, Corporate Budget.

6 IRS, *Filing Season Statistics for Week Ending April 17, 2015, available at* http://www.irs.gov/uac/Newsroom/Filing-Season-Statistics-for-Week-Ending-April-17-2015.

However, the large segment of taxpayers who needed to interact with the IRS personally did not fare nearly as well. Very simply, these taxpayers did not receive acceptable levels of taxpayer service. The IRS's shortcomings were apparent across the full range of taxpayer services, including telephone service, walk-in assistance, and correspondence. At the same time, taxpayers who were victims of identity theft continued to encounter significant frustration and delay in resolving their problems, and there were several glitches associated with the ACA (although mostly not due to IRS error). After the filing season ended, it was learned that the confidential tax information of more than 100,000 taxpayers had been stolen by cyber-criminals who used the IRS's "Get Transcript" application to obtain it.[7]

The National Taxpayer Advocate is deeply concerned about the magnitude of taxpayer-service shortcomings. While we understand that limited resources have played a significant role, the impact on taxpayers requiring assistance has been profound. The IRS took a big step last year in adopting a Taxpayer Bill of Rights. Among those rights is the *right to quality service*. Whatever the cause, there remains a vast gulf between the goal of providing high-quality taxpayer service and the current state of taxpayer service.

The following discussion describes some of the key challenges that arose during the filing season.

TELEPHONE SERVICE

The IRS's performance in responding to taxpayer telephone calls this year was, as IRS Commissioner Koskinen has acknowledged, "abysmal."[8] During the filing season, the IRS was only able to answer about 37 percent of the calls routed to telephone assistors, and those callers who managed to get through had to wait on hold an average about 23 minutes.[9] (Except where otherwise noted, the telephone and correspondence data cited herein is for the filing season covering the January 1 through April 18 period or the comparable period for prior years.)

The percentage of calls answered by telephone assistors (known as the "Customer Service Representative Level of Service" or "LOS") and the average hold times this filing season constituted by far their worst levels since the IRS adopted its current performance measures in 2001. For comparison, the IRS reached its high-water mark in providing taxpayer service in 2004 when it answered 85 percent of taxpayer calls directed to telephone assistors and hold times averaged three minutes during the filing season.[10] Even during last year's filing season, the IRS answered 71 percent of its calls and hold times averaged about 14 minutes.[11]

To understand the IRS's telephone statistics, a few concepts are important to review. First, the IRS tracks the total number of calls it receives, which is known as the "Enterprise Total." The Enterprise Total includes calls to the "Accounts Management" (AM) telephone lines (which typically account for around 85-90 percent of all "Enterprise Total" calls), calls to the compliance telephone lines, and calls to a few additional low-volume telephone lines.[12] Second, answered calls are split between "Assistor Answered Calls" and calls handled by the IRS's automated processes. Whether a call is routed to automation or to

7 IRS Statement on the "Get Transcript" Application (June 2, 2015), *available at* http://www.irs.gov/uac/Newsroom/IRS-Statement-on-the-Get-Transcript-Application.

8 John A. Koskinen, Commissioner of Internal Revenue, Address at the National Press Club (Mar. 31, 2015).

9 IRS, Joint Operations Center (JOC), *Snapshot Reports: Enterprise Snapshot* (Apr. 18, 2015).

10 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 17, 2004).

11 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 18, 2015).

12 For the Jan. 1-April 18 period, the IRS received 56.2 million calls Enterprise-wide, and of that total, 49.9 million calls were directed to the AM telephone lines (89 percent). Typically, calls to the IRS compliance lines are answered at a somewhat higher level of service and with somewhat shorter hold times than the average call to an AM line. *Id.*

a customer service representative (CSR) depends on the telephone number the taxpayer calls and how the caller responds to the prompts he or she encounters. Third, the official "Level of Service" statistics reflect only calls routed to CSRs on the AM telephone lines.

Between January 1 and April 18, the IRS AM telephone lines received about 50 million taxpayer telephone calls.[13] Of those, about 30 million were routed to automated processes, and about 20 million were routed to telephone assistors.[14] One might assume that calls routed to automation would be answered at a much higher rate than calls routed to telephone assistors, but that is not the case. Of the 49.9 million calls the IRS received on its AM lines, including calls routed to automation, 24.1 million were deemed to be answered. That is less than 50 percent.

The following figure shows the IRS's performance during the 2014 and 2015 filing seasons for the Enterprise Total, the AM total, and many of the filing season-related phone lines that are components of the AM total.

13 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 18, 2015).

14 The standard JOC reports do not list the number of calls gated to CSRs. However, the reports include the number of calls answered by CSRs and the percentage of calls routed to CSRs that were answered. One can compute the approximate number of calls routed to CSRs by dividing the number of calls answered by CSRs (7,386,265) by the percentage of calls routed to CSRs that were answered (37.28 percent).

FIGURE 2.1.2, 2014 & 2015 Filing Season Statistics for Selected Toll-Free Telephone Lines

	2014				2015				Percent Change	
Telephone Line	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	ASA Percentage Change	LOS Percentage Change
Accounts Management (AM) [SUM of 29 Lines]	45,382,567	9,959,828	14.1	70.9%	49,911,868	7,386,265	22.9	37.3%	62%	-47.4%
Tax Law 866-883-0217	1,030,756	740,886	11.9	75.4%	828,303	468,009	13.9	68.9%	17%	-8.6%
Individual Income Tax Services 800-829-1040	7,328,549	1,928,789	15.4	73.0%	9,488,071	1,196,965	22.5	25.7%	46%	-64.8%
Business & Specialty Tax Services Line 800-829-4933	1,504,904	725,485	17.5	70.1%	1,620,409	486,368	26.4	44.4%	51%	-36.7%
Refund Hotline 800-829-1954	18,345,845	105,180	18.4	52.7%	15,932,300	79,882	23.0	25.6%	25%	-51.5%
BMF Customer Response 800-829-0115	776,407	490,920	18.9	73.3%	1,130,378	450,053	25.3	45.9%	34%	-37.4%
Self Employed IMF Customer Response 800-829-8374	1,087,665	373,347	15.0	61.4%	1,403,300	220,540	23.2	26.2%	55%	-57.3%
Wage & Investment IMF Customer Response 800-829-0922	2,188,448	692,424	15.8	59.8%	2,782,645	399,557	22.8	24.5%	44%	-59.0%
Refund Call Back 800-829-0582	1,954,505	556,470	18.9	69.1%	2,920,614	471,840	21.2	35.9%	12%	-48.0%
TAC-CAS 866-855-1778	31	0	0.0	0.0%	17,953	14,399	3.0	82.0%	n/a	n/a
VITA Location 800-906-9887	58,305	48,542	1.2	91.4%	58,880	34,325	5.5	64.3%	358%	-29.7%
Individual Taxpayer Identification Number (ITIN) 800-908-9982	164,951	118,678	4.4	83.1%	185,304	87,857	16.0	53.5%	264%	-35.7%
ARRA CP Notice Response Line 800-908-4184	1,965	849	14.1	69.2%	838	125	21.3	40.1%	51%	-42.1%
Electronic Filing Pin Help 866-704-7388	5,363,642	989,295	9.5	64.0%	5,761,360	610,380	23.7	31.6%	149%	-50.6%
ACA Hotline 800-919-0452	51,618	16,521	8.1	81.0%	566,967	324,850	16.4	67.8%	102%	-16.3%
FTHBC 800-919-0352	16,510	3,635	37.6	60.8%	24,435	7,229	29.6	61.4%	-21%	0.9%
Transcript 800-908-9946	785,623	59,614	17.0	70.6%	627,918	41,342	26.9	53.3%	58%	-24.5%

FIGURE 2.1.2, 2014 & 2015 Filing Season Statistics for Selected Toll-Free Telephone Lines (continued)[15]

	2014				2015				Percent Change	
Telephone Line	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	Dialed Attempts	Assistor Calls Answered	Average Speed of Answer (Minutes)	Level of Service	ASA Percentage Change	LOS Percentage Change
Amended Return Hotline 866-464-2050	231,942	71,682	16.2	73.3%	352,498	148,382	22.1	66.0%	36%	-9.9%
NTA 877-777-4778	246,138	125,706	5.5	71.6%	359,596	102,399	18.8	38.5%	242%	-46.2%
PPS 866-860-4259	561,334	362,365	19.7	75.4%	599,655	229,281	44.8	44.5%	127%	-41.0%
VITA 800-829-8482	6,841	6,527	0.7	97.8%	5,464	4,728	1.6	91.2%	129%	-6.7%
International 8775 (855-790-8775)	214,338	128,758	10.5	71.3%	216,071	99,216	20.3	55.0%	93%	-22.9%
Tax Exempt and Government Entities (TE/GE) 877-829-5500	233,260	143,037	14.2	73.8%	208,596	91,266	30.0	55.7%	111%	-24.5%
Identity Protection Specialized Unit (IPSU) 800-908-4490	890,913	541,389	12.3	82.0%	1,555,860	530,010	25.4	54.1%	107%	-34.0%
Combat Zone 800-908-0368	3,882	3,217	0.4	85.0%	3,017	2,742	0.6	93.8%	50%	10.4%
Forms Order Line 800-829-3676 (800-TAX-FORM)	1,186,061	706,250	4.4	81.3%	2,135,892	824,769	7.2	58.8%	64%	-27.6%
ASK TAS 877-275-8271 (877-ASK-TAS1)	15,649	13,166	1.3	97.0%	36,745	30,988	4.2	92.3%	223%	-4.9%
Installment Agreement/ Balance Due	2,279,620	1,720,485	13.1	75.5%	3,151,030	1,250,973	24.3	39.7%	85%	-47.4%
Taxpayer Protection Program 800-830-5084	232,698	181,766	8.4	81.4%	2,863,809	489,446	27.7	17.0%	230%	-79.1%
Enterprise Total (Includes AM, Compliance, Forms Order Line, ASK TAS and EPSS)	**50,809,530**	**13,076,249**	**13.4**	**71.8%**	**56,195,733**	**10,465,010**	**20.2**	**43.4%**	**51%**	**-39.5%**

15 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 18, 2015) (source of AM and Enterprise Total data); IRS, JOC, *Snapshot Reports: Product Line Detail* (Apr. 18, 2015) (source of all other data except the Taxpayer Protection Program (TPP) line); IRS, JOC, *FY 2015 Weekly TPP Snapshot Report* (Apr. 18, 2015) (source of TPP line data).

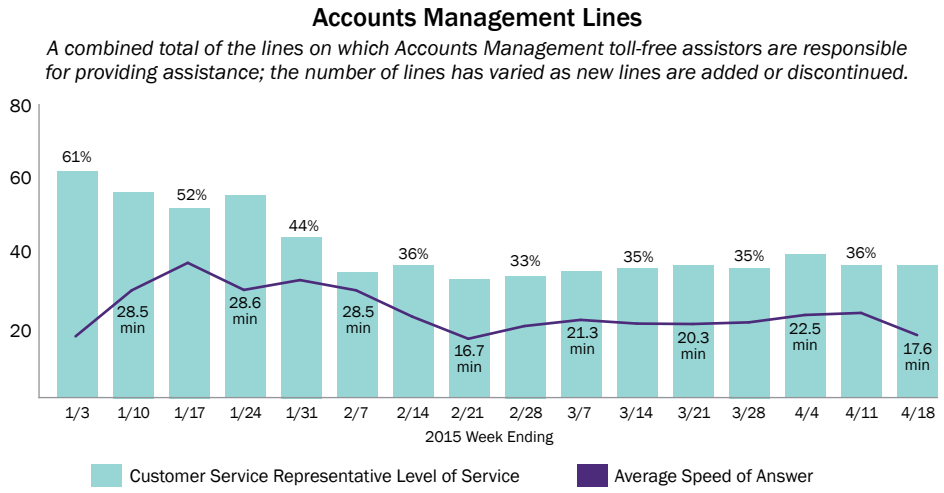
As the above chart shows, the LOS and Average Speed of Answer (hold time) varied, sometimes considerably, among the telephone lines.

The LOS and hold times also varied considerably over the course of the filing season. The following graphs show how the IRS handled key phone lines, on a weekly basis, during the filing season:

Accounts Management Rollup

The official measure of IRS telephone performance is based on calls made to the "Accounts Management" telephone lines. There are 29 lines that are considered "Accounts Management" lines, including all lines shown in the graphs below (except for the Taxpayer Protection Program (TPP) line).[16]

FIGURE 2.1.3[17]



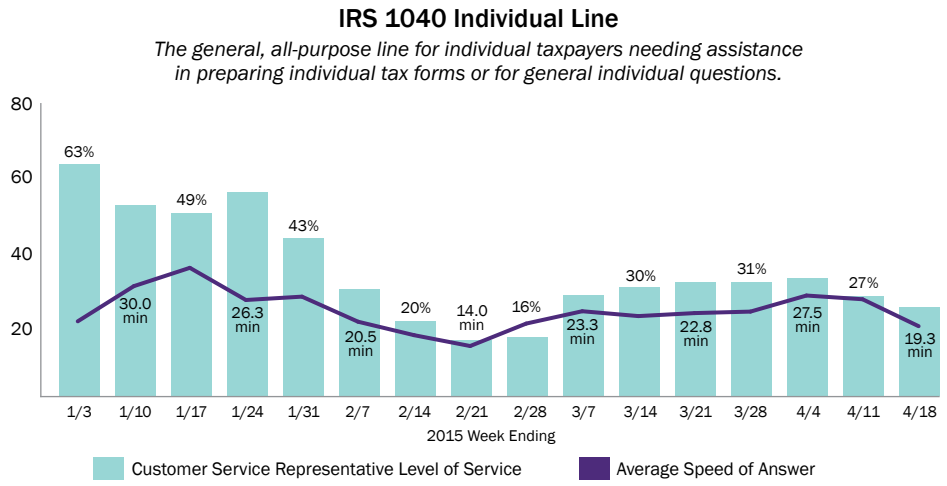
16 IRS, JOC, *Snapshot Reports: Enterprise Snapshot and Product Line Detail* (Apr. 18, 2015). The "Accounts Management" telephone lines were formerly known as "Customer Account Services" telephone lines. The number of lines varies by year as IRS increases or decreases specialty lines for various topics.

17 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (weeks ending Jan. 3, 2015 through Apr. 18, 2015).

Individual Income Tax Services/Form 1040

The "1040" number serves as the general, all-purpose phone line for individual taxpayers seeking assistance in preparing tax forms or answers to general questions.

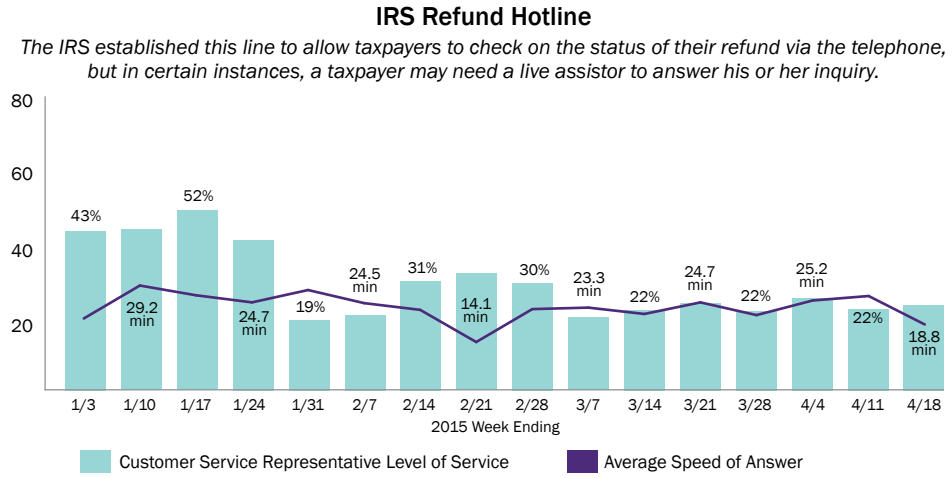
FIGURE 2.1.4[18]



Refund Hotline

The Refund Hotline allows taxpayers to check on the status of their refund by phone. Because the IRS computer systems generally have the most current information, most calls are handled through automation. A relatively small percentage requires the involvement of a telephone assistor.

FIGURE 2.1.5[19]



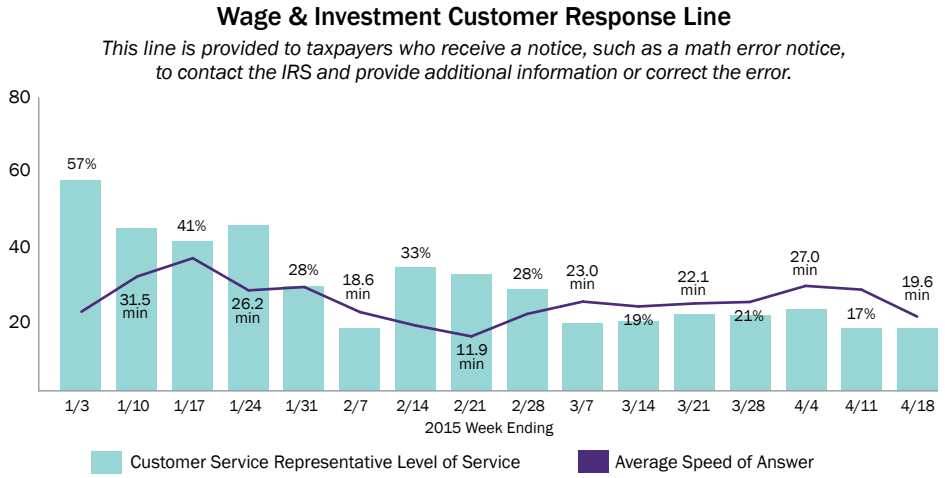
18 IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 3, 2015 through Apr. 18, 2015).

19 *Id.*

Wage & Investment (W&I) Customer Response

The W&I customer response telephone number is provided to taxpayers who receive a notice, such as a math error notice, so they can contact the IRS to provide additional information or correct an error.

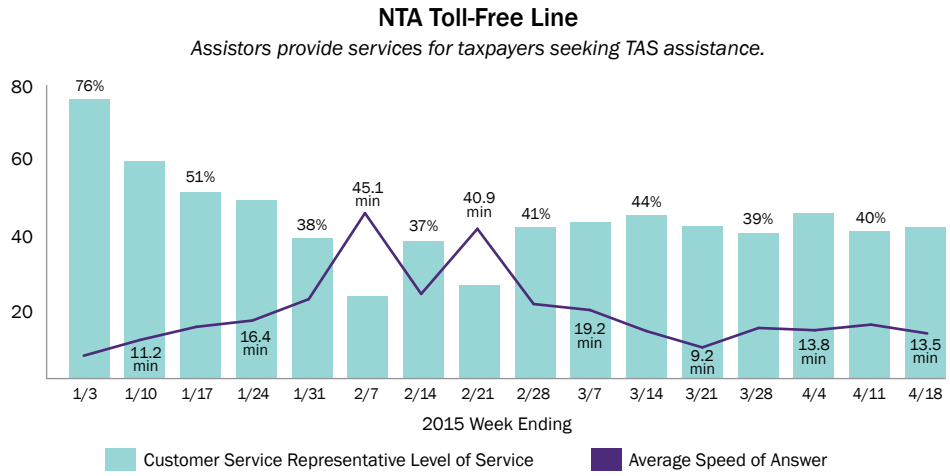
FIGURE 2.1.6[20]



National Taxpayer Advocate (NTA) Toll-Free Hotline

The NTA phone line, staffed by W&I employees, is used by taxpayers who believe they are experiencing financial or systemic burden and seek assistance from TAS. Because TAS is intended to be the IRS's "safety net" for taxpayers, it was particularly frustrating that more than 60 percent of calls could not get through, and those who succeeded had to wait an average of 19 minutes on hold.[21]

FIGURE 2.1.7[22]



20 IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 3, 2015 through Apr. 18, 2015).

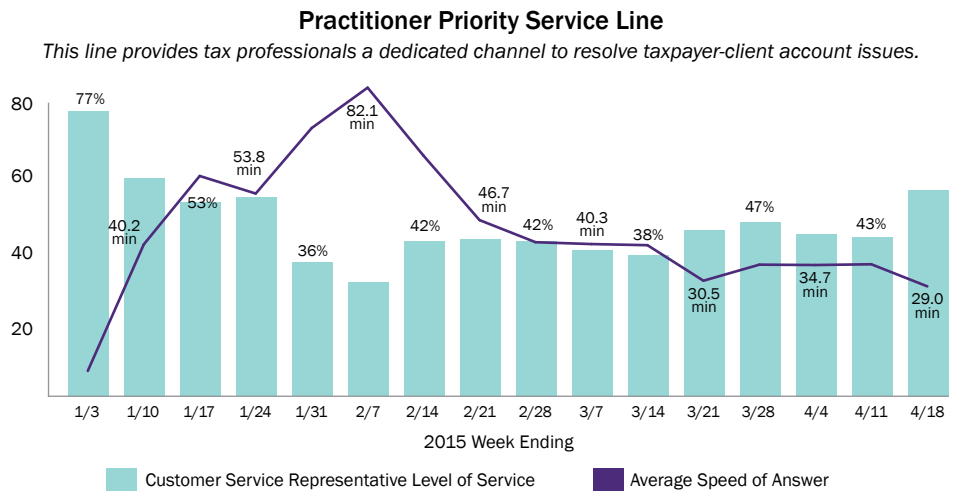
21 IRS, JOC, *Snapshot Reports: Product Line Detail* (Apr. 18, 2015).

22 IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 3, 2015 through Apr. 18, 2015).

Practitioner Priority Service (PPS)

The PPS phone line is used by tax professionals who are trying to reach the IRS to assist their clients. Over the course of the filing season, the IRS answered only 45 percent of practitioner calls on this line, and the hold time averaged 45 minutes.[23] Thus, the use of the term "priority" has understandably evoked a combination of frustration and amusement from tax attorneys, CPAs, and Enrolled Agents, who must decide whether and how much to charge their clients for the time they spend waiting on hold. Of course, the 45-minute hold time represents merely an average. One practitioner told the National Taxpayer Advocate of waiting six hours to reach a telephone assistor. Another practitioner whom the National Taxpayer Advocate knows well forwarded an email from an associate at his law firm reporting on a four-hour and 24-minute telephone call, of which the first four hours and three minutes were spent waiting on hold.

FIGURE 2.1.8[24]



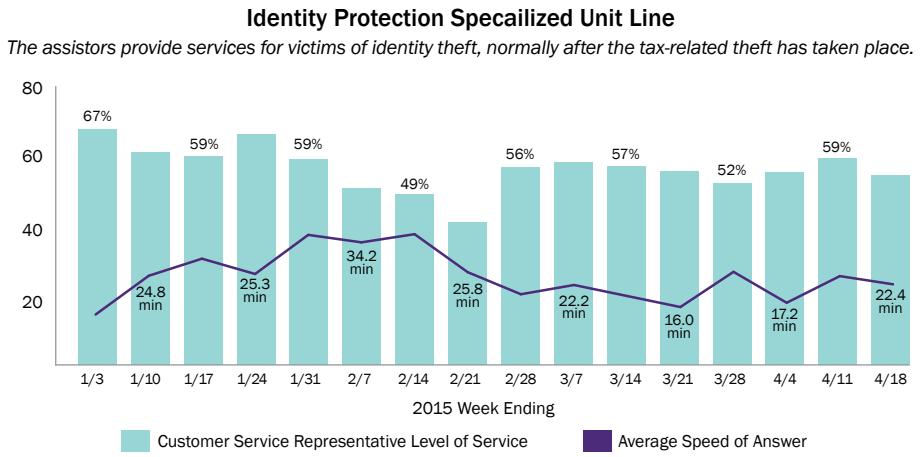
23 IRS, JOC, *Snapshot Reports: Product Line Detail* (Apr. 18, 2015).

24 IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 3, 2015 through Apr. 18, 2015).

Identity Protection Specialized Unit (IPSU)

IPSU assistors provide assistance to victims of tax-related identity theft and refund fraud, generally after the tax-related theft has taken place.

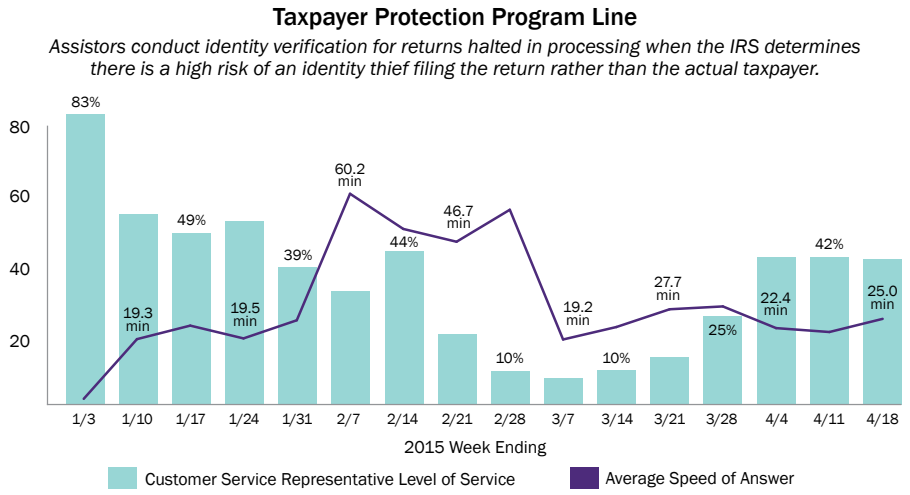
FIGURE 2.1.9[25]



Taxpayer Protection Program

The TPP line is designed to help taxpayers whose returns the IRS has suspended because of suspected but unconfirmed identity theft. When an IRS filter stops a return, the IRS sends the taxpayer a letter asking him or her to either call the TPP phone number or go online to verify his or her identity by answering "out-of-wallet" questions. As shown in this graph and discussed in more detail below, the level of service on the TPP line has been particularly poor.

FIGURE 2.1.10[26]

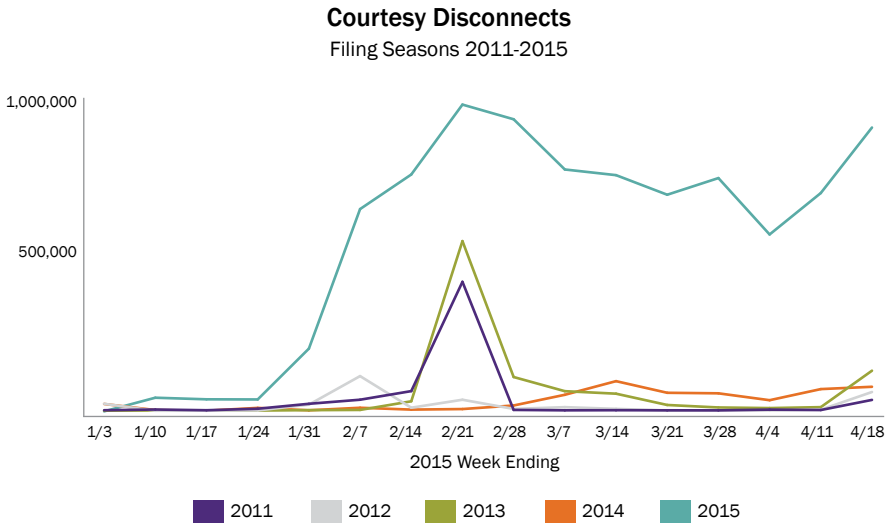


25 IRS, JOC, *Snapshot Reports: Product Line Detail* (weeks ending Jan. 3, 2015 through Apr. 18, 2015).

26 IRS, JOC, *FY 2015 Weekly TPP Snapshot Report* (weeks ending Jan. 3, 2015 through Apr. 18, 2015).

The telephone lines depicted in the above graphs present an important, but limited, perspective on the IRS's overall telephone operations. One basic system limitation results in what in IRS parlance is known as a "courtesy disconnect." When the IRS switchboard is overloaded and cannot handle additional calls, the IRS essentially hangs up on callers. The number of courtesy disconnects skyrocketed this filing season as compared with prior years, rising by more than 1,500 percent from about 544,000 in 2014 to about 8.8 million this year.[27] The following chart shows the number of courtesy disconnects for each of the last five years.

FIGURE 2.1.11[28]



Overall, the sharp decline in the LOS from 2014 to 2015 is attributable to the IRS receiving more calls, answering fewer calls, and spending more time on the average call.

- *Number of Calls Routed to Telephone Assistors Was Up 41 Percent.* In 2014, the IRS received about 14.0 million calls on its AM lines that were routed to CSRs. In 2015, that number rose to about 19.8 million calls.[29]
- *Number of Calls Answered by IRS Telephone Assistors Was Down 26 Percent.* The number of calls answered by telephone assistors declined from about 10.0 million in 2014 to about 7.4 million this year. Viewed differently, if the IRS had received the same number of calls routed to CSRs in 2015 as it had received in 2014, the number of calls it actually answered in 2015 would have produced an LOS of about 53 percent.[30]

27 IRS, JOC, *Custom Report RRC 2015-1623* (including weekly data on the number of courtesy disconnects during the 2014 and 2015 filing seasons).

28 *Id; Custom Reports RRC 1699 & 1700* (including weekly data for the 2011, 2012, and 2013 filing seasons). Graph shows week-ending dates for 2015 for labeling purposes; for prior years, data reflects corresponding week-ending dates.

29 The standard JOC reports do not list the number of calls routed to CSRs. However, the reports include the number of calls answered by CSRs and the percentage of calls routed to CSRs that were answered. One can compute the approximate number of calls routed to CSRs by dividing the number of calls answered by CSRs by the percentage of calls routed to CSRs that were answered.

30 Using the methodology described in the preceding footnote, the IRS received 14,047,712 calls that were routed to CSRs during the 2014 filing season. (That number is very close to the actual number, but is not precise.) IRS CSRs answered 7,386,265 calls during the 2015 filing season. IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (Apr. 18, 2015).

- *Assistor Time Per Call Answered Was Up Ten Percent*. The "Average Handle Time" per call rose from 9.7 minutes in 2014 to 10.7 minutes this year.[31]

TRADEOFF BETWEEN TELEPHONE SERVICE AND CORRESPONDENCE

Since 2008, the IRS has received more than 100 million telephone calls from taxpayers in every year,[32] and it has received an average of more than ten million letters from taxpayers responding to proposed adjustments and other notices (*e.g.*, requesting penalty abatements, responding to math error notices, and making payment arrangements).[33]

There is a large pool of AM employees that the IRS shifts back and forth between answering the phones and responding to taxpayer correspondence. However, the IRS faces a difficult choice in deciding which service to prioritize, and with relatively poor levels of service on both and limited resources, it is not an easy choice. If it assigns more employees to answer taxpayer telephone calls, it will fall further behind in processing taxpayer responses to proposed adjustment notices. If it assigns more employees to process taxpayer responses to proposed adjustment notices, it will answer fewer telephone calls.

At the end of the 2014 filing season, 22.7 percent of taxpayer correspondence had not been processed within normal timeframes and was considered "overage."[34] At the end of the 2015 filing season, the overage percentage was 25.1 percent.[35]

While the decline in processing taxpayer correspondence was much more modest than the decline in telephone performance, the consequences of a failure to process taxpayer responses to proposed increases in tax liability can be more significant. Therefore, the IRS made a decision to minimize increasing correspondence delays.

WALK-IN SERVICE AT TAXPAYER ASSISTANCE CENTERS

Although discussions about taxpayer service tend to focus most heavily on telephone performance, many taxpayers prefer to interact with the IRS by visiting its Taxpayer Assistance Centers (TACs). Beginning in 2014, the IRS narrowed the scope of tax law questions it would answer in the TACs – and on the phones – to "basic" questions.[36] After the filing season, the IRS stopped answering any tax law questions at all, despite the fact that many taxpayers obtain legally authorized extensions of time to file and about 15 million returns generally are submitted later in the year.[37] The IRS continued that policy during the 2015 filing season.

31 IRS, JOC, *Aspect Application Activity, Ad Hoc Reports*, FS 2011-2015.

32 IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (final week of each fiscal year for FY 2008 through FY 2014).

33 IRS, JOC, *Adjustments Inventory Reports: July-September Fiscal Year Comparison* (FY 2008 through FY 2014).

34 IRS, JOC, *Weekly Enterprise Adjustments Inventory Report* (week ending Apr, 19, 2014).

35 IRS, JOC, *Weekly Enterprise Adjustments Inventory Report* (week ending Apr. 18, 2015).

36 IRS, e-News for Tax Professionals – Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013), *available at* http://www.irs.gov/uac/Some-IRS-Assistance-and-Taxpayer-Services-Shift-to-Automated-Resources.

37 *Id.* In both 2013 and 2014, the number of tax returns received after the filing season was about 15 million. *See* IRS 2014 Filing Season Statistics, *available at* http://www.irs.gov/uac/2014-and-Prior-Year-Filing-Season-Statistics (showing 134.3 million returns received by April 25, 2014 and 149.7 million returns received by Dec. 26, 2014, an increase of about 15.4 million; the increase over the same time period in FY 2013 was similar).

Another change was implemented in 2014 and continued this year: The IRS departed from its longstanding practice of preparing tax returns in the TACs for low income, disabled, and elderly taxpayers seeking to comply with their tax obligations.[38]

A third change was continued from last year but marks a departure from earlier years: The TACs were not open on Saturdays or Presidents Day, and they no longer offer extended hours during the filing season. When the TACs' hours of operation are limited to regular business hours, taxpayers who hold "9-to-5" jobs may be unable to utilize them.

As of this writing, we do not have reliable objective data to assess the IRS's performance in meeting taxpayer needs at the TACs. However, it is worth noting that the IRS conducted a significant pilot program at 44 TACs that may help it do a better job of meeting taxpayer needs in the future. Specifically, it allowed taxpayers to schedule appointments in advance. The results of this scheduling approach need to be evaluated fully, but it appears it may have succeeded in two important ways – more upfront issue resolution and shorter wait times.

First, when a taxpayer called to arrange an appointment, IRS schedulers initially tried to assist the taxpayer in resolving his or her problem during the phone call – sometimes by directing him or her to online information he or she did not know about, sometimes by answering a question. Anecdotally, we have been told that many taxpayer problems were resolved by phone, obviating the need for the taxpayer to visit the TAC. If objective data bear that out, this approach will have shown itself to save taxpayers the time of traveling to the TACs and IRS employees the time of conducting a full meeting. Of course, other problems could not be resolved in that way, and the IRS W&I Division reports it scheduled 67,000 appointments at the test locations.[39] We have been advised that the initial phone call scheduling the appointment was also helpful in this situation. IRS assistors were able to identify other issues about which taxpayers were unaware and informed taxpayers what information they should bring to the appointment to resolve their concerns.

Second, initial reports indicate that overall wait times at the locations experimenting with this approach declined.[40]

W&I further reports that initial reaction from taxpayers and employees to the scheduling pilot was favorable, and it will continue to analyze the results to determine the feasibility of expanding it to other locations.[41] The one downside to the pilot – and it is significant – is that the TACs that scheduled appointments substantially stopped assisting taxpayers who came in for help without appointments. The IRS limited taxpayers without an appointment to picking up forms or making payments. Thus, any taxpayer unaware of this change who went to one of the pilot TACs with a basic tax law question but without an appointment was generally turned away.[42]

38 IRS, e-News for Tax Professionals – Issue Number 2013-49, Item 4, *Some IRS Assistance and Taxpayer Services Shift to Automated Resources* (Dec. 20, 2013), *available at* http://www.irs.gov/uac/Some-IRS-Assistance-and-Taxpayer-Services-Shift-to-Automated-Resources.

39 IRS W&I Division, Business Performance Review 20-21 (May 15, 2015).

40 *Id.*

41 *Id.*

42 IRS News Release, IR-2015-30, *IRS Begins Limited Test of Providing Appointments at 10 Walk-In Locations; Goal to Increase Efficiency, Help Taxpayers* (Feb. 18, 2015). The initial test locations available by appointment were: Atlanta, GA (Atlanta-Woodcock); Austin, TX; Birmingham, AL; Chicago, IL (Dearborn); Denver, CO; Fresno, CA; Hartford, CT; Plantation, FL; San Antonio, TX; and Seattle, WA.

Since most TAC offices have been in existence for many years and have never previously required appointments, some taxpayers travel long distances and may take time off from work to get to them. As part of the assessment of the appointments pilot, the IRS should consider ways to meet the needs of taxpayers who visit without appointments in the future.

AVAILABILITY OF TAX FORMS AND PUBLICATIONS

During the 2015 filing season, the IRS continued a recent trend of making it more difficult for taxpayers to obtain paper copies of its forms and publications. The IRS not only printed and distributed fewer forms, instructions, and publications this year, but it also delayed the delivery of those documents to its TACs and its Tax Form Outlet Partners (TFOPs), including libraries and post offices.[43] Forms were not available at these locations until February 28, almost halfway through the filing season.[44] Moreover, the IRS decided not to stock Form 1040EZ, *Income Tax Return for Single and Joint Filers with No Dependents*, in its own walk-in sites.[45] Once a TAC ran out of forms or publications, it could not order more.[46]

In an alert to all employees on February 10, 2015, the IRS acknowledged that these changes have "created questions and concerns from taxpayers."[47] The IRS advised employees not to give out the 1-800 number for ordering tax forms and publications unless the taxpayer affirmatively stated that he or she did not have a computer or Internet access or otherwise pressed the employee about ordering by telephone.[48]

The IRS also ceased widespread distribution of Publication 17, *Your Federal Income Tax for Individuals*, which consolidates information about individual tax issues into one document. The IRS decided taxpayers could obtain Publication 17 content through other publications,[49] thus imposing on taxpayers the burden of locating information dispersed throughout multiple publications and instructions. In subsequent filing seasons, each TFOP will receive one copy of Publication 17; taxpayers will have to pay to make photocopies. The IRS advised its employees that when taxpayers ask about Publication 17, they should not tell the taxpayer about limitations on availability but instead should remind the taxpayer that he or she can access the publication online or through the Government Publishing Office (GPO).[50]

Taxpayers can attempt to purchase Publication 17 for $23 from the GPO, but there is no guarantee of success. When a TAS employee ordered Publication 17 through the GPO, she received a postcard advising her that her order was cancelled and her check would be returned. As best we can tell, the IRS did not order sufficient printed copies of the publication to meet the demand of even those taxpayers willing to pay $23 to help them meet their compliance obligations.

43 IRS, Servicewide Electronic Research Program (SERP) Alert 15A0052, *Forms and Pubs in Taxpayer Assistance Centers* (revised Feb. 10, 2015); IRS, *Talking Points about IRS Forms Availability* (Feb. 4, 2015).

44 IRS, *Talking Points About IRS Forms Availability* (Feb. 4, 2015).

45 IRS, SERP Alert 15A0052, *Forms and Pubs in Taxpayer Assistance Centers* (revised Feb. 10, 2015).

46 IRS Field Assistance function, *FA Service Approach Questions and Answers.*

47 IRS, SERP Alert 15A0052, *Forms and Pubs in Taxpayer Assistance Centers* (revised Feb. 10, 2015).

48 *Id.*

49 *Id.*

50 *Id.*

AFFORDABLE CARE ACT

The most significant new challenge the IRS faced during the 2015 filing season was the processing of tax returns reflecting two central provisions of the Patient Protection and Affordable Care Act[51] – the Premium Tax Credit (PTC)[52] and the Individual Shared Responsibility Payment (ISRP).[53]

Overall, the IRS did a commendable job implementing those ACA provisions, including by developing or updating information technology systems, issuing guidance, and collaborating with other federal agencies. To implement the PTC and ISRP provisions, the IRS received and processed a significant number of new information returns from the health care exchanges.[54]

The level of service on the ACA telephone hotline (800-919-0452) was about 68 percent during the filing season, which far exceeded the 37 percent overall LOS on the AM toll-free lines.[55] As the filing season unfolded, however, we identified several glitches with taxpayer impact. These are summarized below and discussed in more detail in the ACA Area of Focus later in this report:

1. *Erroneous Forms 1095-A.* In February 2015, the Centers for Medicare and Medicaid Services (CMS) announced that about 20 percent – or 800,000 – of the tax filers who had purchased health insurance from the federal Marketplace had been sent Forms 1095-A, *Health Insurance Marketplace Statement*, with errors in the second lowest cost Silver plan information.[56] The Marketplace issued corrected Forms 1095-A, but the mistake caused confusion and concern for many of the recipients of the erroneous forms, particularly those who had already filed their tax returns on the basis of the inaccurate information.
2. *ISRP Overstatements.* During the filing season, an IRS ACA joint implementation team reviewing a small sample of balance due ACA returns found that a significant number had overstated ISRP amounts.[57] In response, W&I Research and Analysis (WIRA) and TAS Research conducted additional research to determine the extent of the ISRP overstatement problem. Overall, more than 300,000 taxpayers overstated their ISRP by about $35 million.[58] Most of these taxpayers did

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

52 The PTC is a refundable tax credit paid either in advance or at return filing to help taxpayers with low to moderate incomes purchase health insurance through the Marketplace. IRC § 36B.

53 IRC § 5000A. Taxpayers filing tax year (TY) 2014 federal income tax returns were required to report that they have "minimum essential coverage" or were exempt from the responsibility to have the required coverage. If the taxpayer did not have coverage and was not exempt, he or she was required to make an individual shared responsibility payment when filing a return.

54 The Health Insurance Marketplace, also called the "Exchange," is a state or federally operated program from which individuals can buy health care coverage. Coverage is available to people who are uninsured or who buy insurance on their own. *See* http://www.irs.gov/uac/Newsroom/The-Health-Insurance-Marketplace (last visited June 30, 2015).

55 As described above, the AM level of service of approximately 37 percent is a combined figure reflecting 29 customer service lines. The higher LOS on the ACA line may be due, at least in part, to the fact that the number of calls to the ACA line was significantly lower than the IRS anticipated. The ACA line received about 567,000 attempted calls, as compared with almost 50 million on the Accounts Management lines overall during the period. IRS, JOC, *Product Detail Report* (week ending Apr. 18, 2015); IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 18, 2015).

56 CMS Blog, *What Consumers Need to Know about Corrected Form 1095-As* (Feb. 20, 2015), *available at* http://blog.cms.gov/2015/02/20/what-consumers-need-to-know-about-corrected-form-1095-as.

57 TAS notes from the Feb. 26, 2015 and Mar. 9, 2015 IRS Collection ACA Joint Implementation Team meetings.

58 WIRA and TAS Research analysis on ISRP Overstatements through April 30, 2015, on file with TAS Research. The IRS and TAS cannot calculate the exact amount of ISRP overpayments until all dependents have filed their TY 2014 tax returns because the amount of the ISRP depends on household income pursuant to IRC § 5000A(c).

not owe an ISRP because they were eligible for an exemption as a result of their low income.[59] The average ISRP overstatement amount was a little over $110 per return.[60]

The National Taxpayer Advocate has recommended that the IRS issue refunds to the affected taxpayers without requiring them to file amended returns; since the majority of taxpayers use paid tax return preparers, they would probably spend more than the roughly $110 average overpayment amount in preparer fees if amended returns are required. As of this writing, the IRS is considering our recommendation but has not made a decision.

3. *Penalty Abatement Relief.* The IRS issued Notice 2015-9, which provided limited penalty relief for taxpayers who had a balance due on their 2014 income tax returns as a result of reconciling advance payments of the premium tax credit (APTC) against the PTC allowed on the tax return. The National Taxpayer Advocate supported the IRS's decision to grant this relief. However, we expressed concern that some taxpayers were receiving penalty relief for late payment under the so-called "first-time penalty abatement" administrative waiver, which is available only once every three years, rather than under the relief provided in the notice.[61] As a consequence, some taxpayers who otherwise would qualify for penalty relief during the succeeding three-year period may not receive it. Our office will investigate this matter to determine the extent to which taxpayers received the inappropriate type of penalty relief and will work with the IRS to reclassify the reason for the penalty abatement, where appropriate.

General ACA Tax Return Data

Eligible individual taxpayers claimed the PTC for the first time on TY 2014 returns filed during the 2015 filing season. The following table provides information regarding the extent to which individual taxpayers claimed the PTC on their TY 2014 returns.

59 Nearly 250,000 of these taxpayers were eligible for an ISRP exemption. These taxpayers paid in over $27 million in ISRP. In addition, more than 50,000 taxpayers paid a total of nearly $8 million because the ISRP amount was miscalculated. These amounts include returns processed by the IRS through the end of Apr. 2015. W&I Research and TAS Research estimates from the Individual Returns Transaction File on the IRS Compliance Data Warehouse. This data is preliminary and is subject to change as the IRS reviews the data, processes additional TY 2014 returns, and conducts compliance activities.

60 This average only includes returns with an ISRP overstatement.

61 First-time abatement applies if the taxpayer does not have a failure to pay, failure to file, or failure to deposit penalty in the three years preceding the assessment year. For more information about the first-time abatement administrative waiver, *see* IRM 20.1.1.3.6.1, *First Time Abate (FTA)* (Aug. 5, 2014).

FIGURE 2.1.12, Reporting of the Premium Tax Credit on Forms 8962 for TY 2014 Returns Through April 30, 2015[62]

Returns Filed with Forms 8962, *Premium Tax Credit (PTC)*	2.6 milion
Total PTC Amount Claimed	$7.7 billion
Average PTC Amount Claimed Per Return	$3,000
Returns Reporting Advanced PTC	2.4 million (93% of returns with Forms 8962)
Total Advanced PTC Reported	$8.7 billion
Prepared Returns Filed with Forms 8962 (Paid or Volunteer)	1.6 million

Individual taxpayers who did not have minimum essential coverage or qualify for an exemption were required to make an ISRP on their TY 2014 returns. The following table provides data on the reporting of ISRPs on TY 2014 returns.

FIGURE 2.1.13, Reporting of the Individual Shared Responsibility Payments on TY 2014 Returns Through April 30, 2015[63]

Returns Claiming Coverage	94 million
Returns with ISRP	6.6 million
Average ISRP per Return Reporting ISRP	$190
Prepared Returns Reporting ISRP (Paid or Volunteer)	4.3 million
Returns Filed with Forms 8965, *Health Coverage Exemptions*	10.7 million
Returns Filed with Forms 8965 Claiming the Household Coverage Exemption (checked yes in Form 8965 Part II 7a or 7b or both)	3.2 million
Returns Filed with Forms 8965 Claiming Coverage Exemption (Part III)	7.5 milion
Prepared Returns Filed with Forms 8965 (Paid or Volunteer)	5.7 million (53% of returns with Form 8965)

62 WIRA, A*CA Fact Sheet 05-21-2015* (returns processed through April 2015). This data is based on returns that had posted as of the end of April 2015 and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2014 returns, and conducts compliance activities. Note that the number of "Returns Reporting Advanced PTC" is a subset of the number of "Returns Filed with Forms 8962, *Premium Tax Credit (PTC)*." All taxpayers claiming the PTC were required to file a Form 8962. Of those taxpayers whose returns were processed through April 30, about 93 percent claimed the Advanced PTC, while about seven percent waited to claim the PTC until they filed their returns. However, not all Advanced PTC recipients have filed returns and reconciled their credit amounts. Therefore, it is difficult to compare the "Total Advanced PTC Reported" (about $8.7 billion) to the "Total PTC Amount Claimed" (about $7.7 billion). The difference of roughly $1 billion is probably attributable, at least in part, to some taxpayers having reported receiving more in Advanced PTC during the year than they ultimately claimed. Of the 2.6 million returns filed with Forms 8962, about 1.6 million returns were prepared by a paid or volunteer preparer, and about one million were deemed self-prepared.

63 *Id.* This data is based on returns that had posted as of the end of April 2015 and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2014 returns, and conducts compliance activities. Note that there were about 6.6 million returns reporting an ISRP. Of those, about 4.3 million were submitted on returns prepared by a paid or volunteer preparer, and about 2.3 million were deemed self-prepared. Taxpayers also filed about 10.7 million returns claiming an exemption from the ISRP using Form 8965, *Health Coverage Exemptions*. Of those, about 53 percent were prepared by a paid or volunteer preparer, and about 47 percent were deemed self-prepared. Taxpayers who report an ISRP may or may not file Form 8965. The roughly 10.7 million returns claiming an exemption on Form 8965 were divided between about 7.5 million claiming a Part III coverage exemption for individuals and about 3.2 million claiming a Part II coverage exemption for households (although some taxpayers claimed an exemption in both Part II and Part III).

IDENTITY THEFT

For much of the past decade, one of the biggest challenges facing taxpayers and the IRS each filing season has been the use of stolen taxpayer identities to commit refund fraud.[64] In these cases, an identity thief committing refund fraud has been able to obtain the name and Social Security number (SSN) of a legitimate taxpayer and has then filed a return in the legitimate taxpayer's name claiming a refund. The IRS uses a series of filters to try to identify potentially fraudulent returns.

If a fraudulent return is not stopped by the filters, the IRS generally pays out the claimed refund to the identify thief and then freezes the return of the legitimate taxpayer when he or she files later in the filing season. The legitimate taxpayer must then prove his or her identity and persuade the IRS that the prior-filed return was fraudulent before the IRS will pay his or her refund claim. If a return is stopped by the filters as potentially fraudulent, the IRS may freeze the account until it receives sufficient documentation to ensure it is paying the refund to the legitimate taxpayer.

The IRS developed the TPP as a way to suspend the processing of certain questionable returns. Taxpayers who are caught up in the TPP filters are notified that there was a problem in processing their return and are instructed to call the IRS or answer a series of "out-of-wallet" questions to self-authenticate online. Until then, the IRS suspends the processing of the return (*i.e.*, the return becomes "unpostable," in IRS parlance).

During the 2015 filing season, the TPP stopped more than twice as many questionable returns as in the prior year. As of April 23, 2015, the TPP stopped 1,558,874 returns as compared with 764,439 at a similar point in 2014, an increase of 104 percent.[65] Yet at least one-third of the returns stopped by the TPP turned out to come from legitimate filers; IRS data shows the false positive rate for the TPP was 34 percent as of June 18, 2015.[66] While we were not able to obtain the false positive rate for the overall TPP program for 2014 to make a direct comparison, we were able to obtain the false positive rate for the portion of TPP returns flagged by the Dependent Database (DDb) filters, which constitutes the largest portion of the TPP inventory. As of June 18, the false positive rate for the DDb filters is 36 percent this year, up from 20 percent in 2014 – an increase of about 80 percent. Thus, the combined effect of stopping twice as many returns and ending up with almost twice as high a false positive rate suggests the IRS may be delaying the issuance of refunds to nearly four times as many legitimate taxpayers as last year.

This high false positive rate can have a significant adverse financial impact on the affected taxpayers. Taxpayers caught up in the TPP filters are entitled to tax refunds. Among all taxpayers receiving refunds this filing season, the average refund amount was just over $2,700.[67] That being an "average," some taxpayers were entitled to less while other taxpayers were entitled to considerably more. Taxpayers affected by identity theft often face considerable delays while the IRS validates their identities.[68] Thus,

64 For additional discussion concerning the IRS's efforts to prevent tax-related identity theft, *see* Area of Focus: *The IRS Should Provide Victims of Identity Theft with a True Single Point of Contact to Help Them Resolve Their Account Problems and Obtain Their Refunds, infra.*

65 IRS Return Integrity & Compliance Services (RICS), *Update of the Taxpayer Protection Program (TPP)* 6 (Apr. 29, 2015); RICS, *Update of the Taxpayer Protection Program (TPP)* 5 (Apr. 30, 2014).

66 *See* IRS, RICS, *Update of the Taxpayer Protection Program (TPP)* 9 (June 24, 2015).

67 IRS, *Filing Season Statistics for Week Ending April 17, 2015, available at* http://www.irs.gov/uac/Newsroom/Filing-Season-Statistics-for-Week-Ending-April-17-2015.

68 *See* National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 52-53 (Research Study: *Identity Theft Case Review Report: A Statistical Analysis of Identity Theft Cases Closed in June 2014*).

the legitimate refund claims of more than 600,000 taxpayers have been blocked and delayed by the TPP filters so far this year.[69]

In addition, taxpayers who were impacted by the TPP have had extreme difficulty reaching a live assistor when they have called the telephone number listed on the notice they received. The LOS on the TPP line during the filing season overall was 17 percent,[70] and during three consecutive weeks in late February and early March, it was below ten percent.[71] It is difficult to overstate the frustration of a taxpayer whose return was suspended and who did not receive an expected refund, but could not reach the IRS on the number he or she was told to call.

It should be emphasized that the taxpayer problems arising from tax-related identity theft are caused in the first instance by criminals – not by the IRS. It should also be acknowledged again that the IRS faces significant resource constraints that are limiting its staffing in all areas. Still, the National Taxpayer Advocate believes the IRS can improve the quality of assistance it provides to victims of tax-related identity theft to help them resolve their account problems and receive their refunds more quickly.

"Get Transcript" Data Breach

In late May, more than a month after the filing season ended, the IRS announced that cybercriminals had been able to access more than 100,000 taxpayer accounts by using its "Get Transcript" application.[72] In so doing, they were able to obtain access to information that typically appears on a tax return, including the names, SSNs, and dates of birth of dependent children. This was an extraordinary data breach that has the potential to undermine taxpayer confidence in the security of the IRS's data systems and has dealt at least a temporary setback to the IRS's efforts to move more services online.

In announcing the data breach, the IRS emphasized that the cybercriminals were not able to break into the IRS's data system and gain unfettered access to taxpayer accounts. Rather, the cybercriminals were able to obtain sufficient information about the roughly 100,000 victims (*e.g.*, the taxpayer's SSN, date of birth, and address) from other sources to pass the authentication screens one account at a time.

That is an important distinction. But it does not give the IRS a pass. Financial institutions and retailers widely recognize that criminals will periodically obtain enough information about individuals to impersonate them and access their accounts. In response, they deploy a variety of security measures to guard against the risk. No single security measure is perfect, and considerable amounts of data have been exposed. But as the custodian of taxpayers' financial and personal information, the IRS bears a special responsibility to protect that information.

The IRS launched "Get Transcript" in early 2014 for a variety of reasons, including to reduce the costs of using employees to respond to transcript requests submitted by phone or on paper. The White House even promoted "Get Transcript" as a vehicle that would give student loan applicants "the ability to view, print, and download their tax transcripts – making it easier for student borrowers to access their own tax

69 *See* IRS, RICS, *Update of the Taxpayer Protection Program (TPP)* 9 (June 24, 2015) (showing that 1,788,856 returns were stopped by the TPP as of June 18 and the TPP had a 33.9 percent false positive rate, which means that more than 606,000 legitimate returns had been stopped as of that date).

70 IRS, JOC, *FY 2015 Weekly TPP Snapshot* (week ending Apr 18, 2015 (showing aggregate LOS for the Jan. 1 through Apr. 18 period)).

71 IRS, JOC, *FY 2015 Weekly TPP Snapshot* (weeks ending Feb. 28, 2015 [9.7 percent], Mar. 7, 2015 [7.6 percent], and Mar. 14, 2015 [9.8 percent]).

72 IRS Statement on the "Get Transcript" Application (May 26, 2015), *available at* http://www.irs.gov/uac/Newsroom/IRS-Statement-on-the-Get-Transcript-Application.

records needed for loan and grant applications."[73] In retrospect, the IRS should assess whether it was so eager to roll out the "Get Transcript" application that it did not adequately consider the full range of security risks and implement sufficient measures to guard against them.

At this point, the IRS is one of the few tax agencies in the world that does not allow taxpayers to interact with it through online accounts. The National Taxpayer Advocate and others have recommended that the IRS accelerate its efforts to allow online access, and the IRS is in the process of doing so. But the "Get Transcript" incident serves as an important reminder that where data security must be balanced against convenience and budget savings, data security must be paramount. While the National Taxpayer Advocate continues to believe the IRS must expand the ability of taxpayers to interact with it digitally, all existing plans must be double-checked and then triple-checked before implementation to ensure that every reasonable data security precaution has been considered.

CONCLUSION

The IRS faced significant challenges this filing season and did a good job processing returns and delivering refunds for the majority of taxpayers who did not require assistance. However, it did a poor job of meeting the needs of taxpayers who required help. To a significant degree, the IRS's shortcomings are budget-driven. When an organization is given more responsibility and its budget is simultaneously reduced by about 17 percent on an inflation-adjusted basis, its performance almost inevitably will suffer. To improve taxpayer service, the IRS will need more resources to answer taxpayer telephone calls, process and respond to taxpayer correspondence, and assist taxpayers who seek assistance in its walk-in sites. At the same time, the IRS can take steps to improve its resource-allocation decisions. The following Areas of Focus outline multiple ways in which the IRS can improve its operations in an effective but cost-conscious manner while at the same time protecting taxpayer rights and treating U.S. taxpayers in the manner they have a right to expect from their government.

73 Fact Sheet: *Education Datapalooza to Promote Innovation in Improving College Access, Affordability, and Completion* (Jan. 2014), *available at* https://www.whitehouse.gov/sites/default/files/docs/datapalooza_fact_sheet.pdf.

Area of Focus #1

The IRS Should Provide Victims of Identity Theft with a True Single Point of Contact to Help Them Resolve Their Account Problems and Obtain Their Refunds

TAXPAYER RIGHTS IMPACTED[1]

- *The right to quality service*
- *The right to a fair and just tax system*

Stolen Identity Cases Continue to Top the List of TAS Case Receipts

In general, tax-related identity theft (IDT) occurs when an individual intentionally uses the personal identifying information of another person to file a false tax return with the intention of obtaining an unauthorized refund.[2] Through improved filters and screening, the IRS has been able to detect and stop more than 3.8 million suspicious tax returns in the 2015 filing season (through May 31).[3] The largest component of these suspended returns is a result of the Taxpayer Protection Program (TPP), which we discussed in detail in the Filing Season Review section of this report, *supra*. With a false positive rate of 34 percent, approximately one out of three returns suspended by the TPP were legitimate returns.[4]

The frustration of taxpayers impacted by the TPP was exacerbated by the extreme difficulty of reaching a live assistor when taxpayers called the phone number they were instructed to dial. The chart below shows the level of service on the TPP phone line during the 2015 filing season; in some of the busiest weeks of the filing season, less than one in ten callers were able to reach an IRS assistor.[5]

1 *See* IRS, Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

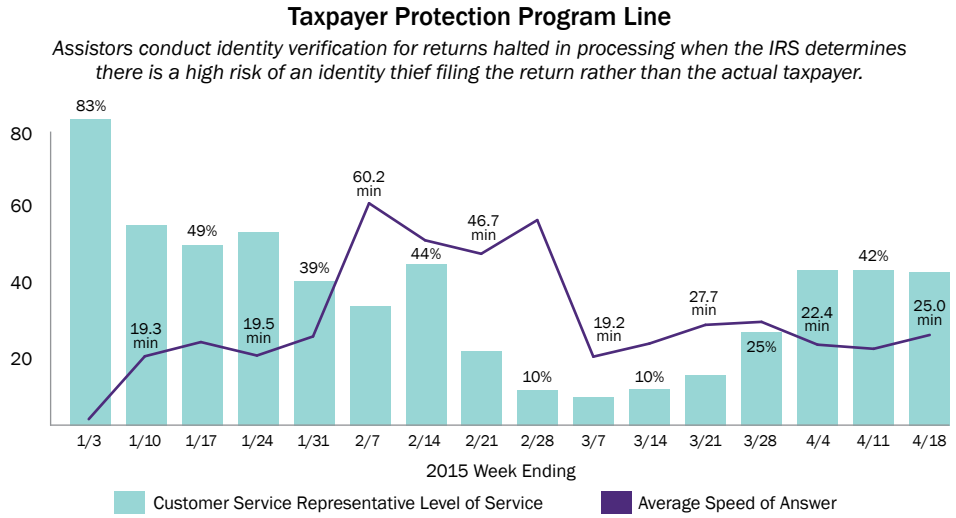
2 *See* IRM 10.5.3.1.2.1(4), *Identity Protection Program Servicewide Identity Theft Guidance* (Dec. 17, 2014).

3 IRS, *Global Identity Theft Report* (May 31, 2015).

4 IRS, *IRS Return Integrity & Compliance Services (RICS), Update of the Taxpayer Protection Program (TPP)* 9 (June 24, 2015).

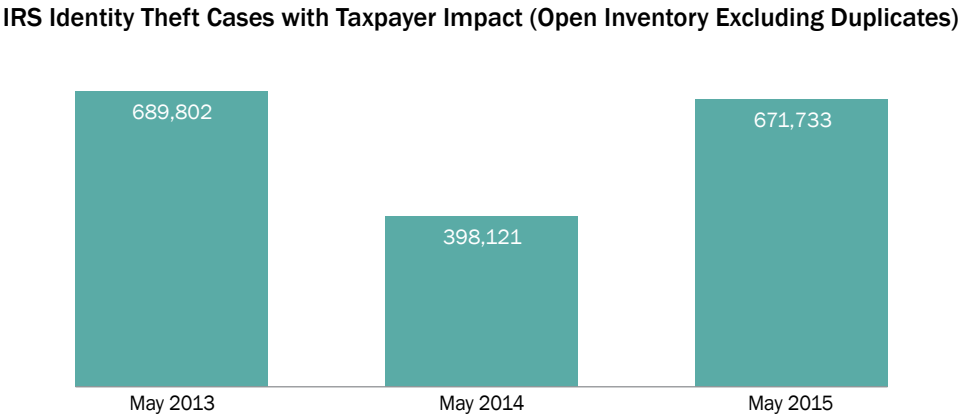
5 The IRS attributes the low level of service (LOS) for the TPP line to a number of factors, including budget challenges that impacted all toll-free lines and multiple weather-related closures in TPP call sites. Additional staff for TPP were trained and added in late March to improve LOS.

FIGURE 3.1.1[6]



Given the false positive rate, it is no wonder the IRS continues to see a significant number of IDT cases. As of the end of May 2015, the IRS had 671,773 IDT cases with taxpayer impact (excluding duplicates) in its open inventory, up 69 percent from 398,121 in May 2014.[7] The rising IDT inventory, reaching 2013 levels, indicates the IRS is losing any gains made by recent process improvements, most likely due to the overreach of the TPP filters and understaffing of the TPP phone lines.[8]

FIGURE 3.1.2[9]



6 IRS, Joint Operations Center, *TPP Snapshot Reports* (Jan.–Apr. 2015).

7 IRS, *Global Identity Theft Report* (May 31, 2015); IRS, *Global Identity Theft Report* (May 31, 2014).

8 IRS, Joint Operations Center, FY 2015 Weekly TPP Snapshot, reports for weeks ending Jan. 3–Apr. 18, 2015; IRS, Return Integrity & Correspondence Services (RICS), *Update of the Taxpayer Protection Program (TPP)* 9 (Apr. 30, 2014); IRS, RICS, *Update of the Taxpayer Protection Program (TPP)* 11 (June 24, 2015).

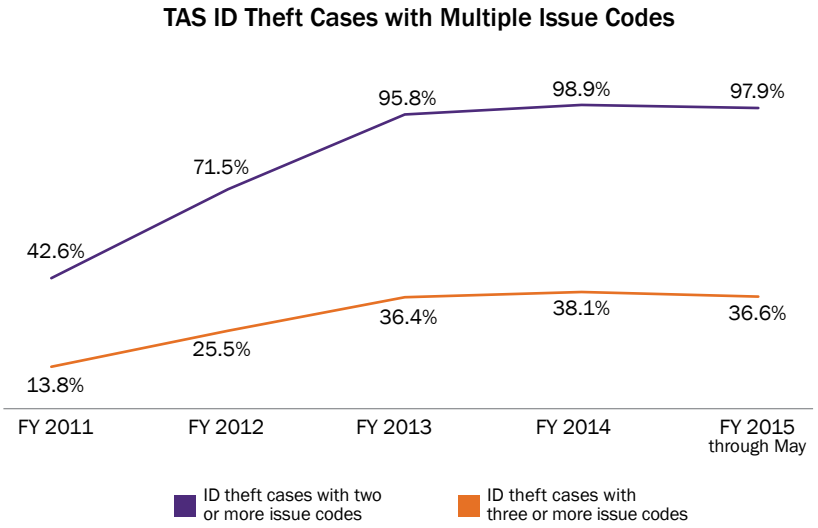
9 IRS, *Global Identity Theft Report* (May 31, 2015); IRS, *Global Identity Theft Report* (May 31, 2014); IRS, *Global Identity Theft Report* (May 31, 2013).

During the first two quarters of fiscal year (FY) 2015, TAS received 23,657 IDT cases (24 percent of all TAS receipts).[10] This represents a 27 percent increase in IDT case receipts from the same period in FY 2014, when such cases accounted for 20 percent of all TAS cases.[11] Stolen identity cases are still by far the most common type of case within TAS, accounting for 91 percent more cases than the second most common issue through the second quarter of FY 2015.[12] As discussed in the Filing Season Review section of this report, nearly half of TAS's IDT cases received this filing season involved an unpostable or reject issue.[13] *TAS has received more IDT cases during the months of February, March, and April 2015 than it received during the same time period in any of the past three years*, which suggests much of the fallout from the high TPP false positive rate and low level of service on the TPP phone lines was borne by TAS.[14]

Identity Theft Cases Are Complex, Often Involving Multiple Issues

Another reason why some IDT cases end up in TAS is their complexity, often requiring actions by employees from different IRS organizations and with different skills. In many instances, TAS Case Advocates must address more than two issues to fully resolve an IDT victim's case,[15] as the chart below illustrates.

FIGURE 3.1.3[16]



However, as complex as these IDT cases have become, Case Advocates have learned to resolve these cases more efficiently. In FY 2015 through May, TAS has taken an average of 66 days to close IDT cases,

10 TAS Business Performance Review (2nd Quarter FY 2015).

11 TAS Business Performance Review (2nd Quarter FY 2014).

12 TAS Business Performance Review (2nd Quarter FY 2015).

13 *See Filing Season Review, supra.*

14 Data provided by TAS Technical Analysis and Guidance (on file with TAS).

15 When TAS opens a case, it assigns a primary issue code based on the most significant issue, policy or process within the IRS that needs to be resolved. When a TAS case has multiple issues to resolve, a secondary issue code will be assigned. *See* IRM 13.1.16.13.1.1, *Taxpayer Issue Code* (Feb. 1, 2011).

16 Data obtained from Taxpayer Advocate Management Information System (TAMIS) (Oct. 1, 2011; Oct. 1, 2012; Oct. 1, 2013; Oct. 1, 2014; June 1, 2015).

compared to 126 days over the same period in FY 2010. TAS achieved a relief rate of 80 percent in IDT cases in FY 2015 (through May), compared to 78 percent for non-IDT TAS cases.[17]

IRC § 7811 authorizes the National Taxpayer Advocate (or her delegate)[18] to issue a Taxpayer Assistance Order (TAO) to require the IRS to cease any action, take any action as permitted by law, or refrain from taking any action, when a taxpayer is suffering (or about to suffer) a significant hardship. In FY 2015 (through May), TAS issued four TAOs on identity theft-related issues. The IRS complied with three of the TAOs, and TAS rescinded one.[19]

IRS Needs a True Sole Point of Contact to Interact with the Taxpayer and Oversee Complex Identity Theft Cases

Identity theft is an invasive crime. Victims of such a traumatic event should not be bounced around from one IRS function to another, recounting their experience time and again to various employees. Thus, it is imperative the IRS offer victims a sole point of contact who will work with various IRS functions behind the scenes and remain the single contact with the victim throughout the case. This recommendation is consistent with our findings in our 2014 IDT case study (published in the National Taxpayer Advocate 2014 Annual Report to Congress volume 2), which showed requiring IDT victims to deal with multiple assistors significantly added to the time it took to fully resolve IDT cases.[20]

In FY 2015, the IRS plans to reorganize its IDT victim assistance units under one "umbrella" within Wage and Investment (W&I). This reorganization provides the IRS a perfect opportunity to set up a sole point of contact system for IDT victims with complex cases. The W&I Commissioner has committed to the National Taxpayer Advocate once the "umbrella" organization is established, she will seriously consider TAS's recommendations in this regard.[21] In its official response to our recommendations in the 2014 Annual Report to Congress, reported in Volume 2 of this report, the IRS states that as part of its IDT victim assistance re-engineering efforts, it will assess the feasibility of the recommendation to assign a sole point of contact.[22] The National Taxpayer Advocate will continue to advocate for this single-contact-employee approach, but she believes it may require congressional action for the IRS to adopt this common sense approach.

> It is imperative the IRS offer victims a sole point of contact who will work with various IRS functions behind the scenes and remain the single contact with the victim throughout the case.

The IRS Needs to Develop a Method to Track and Reduce Identity Theft Servicewide Cycle Time from the Taxpayer's Perspective

While some IRS functions can track the time a case is in their inventory, the IRS still cannot provide a servicewide cycle time measure for resolving identity theft cases. The specialized IDT units generally measure cycle time solely from the date they receive the case; their cycle time measures do not reflect the time

17 Data obtained from TAMIS (June 1, 2010; June 1, 2015).

18 The National Taxpayer Advocate has delegated the authority to issue TAOs to Local Taxpayer Advocates. *See* IRM 1.2.50.2, *Delegation Order 13-1* (Rev. 1) (Mar. 17, 2009).

19 Data obtained from TAMIS (June 1, 2015).

20 National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 52-3.

21 *See* National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 55, for a complete list of recommendations to improve IDT victim assistance.

22 *See* IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in 2014 Annual Report to Congress vol. 2, 84–7, *infra*.

elapsed since the taxpayer filed his or her tax return or all of the interactions the taxpayer had with the IRS before that function received the case. If Accounts Management, for example, claims its cycle time is down to 120 days, all that means is it took 120 days for that particular function to resolve that particular issue. It does not mean the IRS resolved all of the IDT victim's tax issues in 120 days.

To get a better sense of how long the IRS takes to resolve an IDT case, TAS conducted a study published in Volume 2 of the National Taxpayer Advocate's 2014 Annual Report to Congress. In our review of a representative sample of IRS IDT cases closed in June 2014, we found the average cycle time was 179 days.[23] The Treasury Inspector General for Tax Administration (TIGTA) recently released an audit report that corroborated our findings. TIGTA conducted a sample of 100 IDT cases and found that the average cycle time was 278 days, and those that were processed using new procedures were resolved in an average of 174 days.[24]

The IRS maintains that current procedures require its employees to perform a global account review upon IDT case receipt to identify all taxpayer and account issues, and that employees assigned an IDT case are directed to resolve all account issues prior to case closure.[25] Yet in our 2014 case study, we found 22 percent of the IDT cases were closed while there were still one or more unresolved issues, which calls into question the effectiveness of the current global account review procedures. With more than one in five IDT cases closed prematurely, the 179-day IDT case cycle time we reported is most certainly understated.

When taxpayers must wait six months or more for the IRS to resolve their IDT-related tax issues, it can cause a significant hardship, especially for victims awaiting tax refunds. The burden is on the victims to call the IRS multiple times, who must explain the circumstances to a different assistor each time. Moreover, because the IRS waits until the account is fully resolved before issuing an IDT marker, an IDT victim will not receive the benefit of an Identity Protection PIN[26] during this 179-day average cycle time.

In its response to the recommendations from our 2014 IDT case study, the IRS states that TAS's suggestion to more accurately track IDT case cycle time will be assessed in re-engineering efforts slated to begin in October 2015, and that it is committed to exploring feasible options that might improve taxpayer perceptions of the time it takes to receive resolution and the overall taxpayer experience.[27] The National Taxpayer Advocate will continue to vigorously advocate on behalf of taxpayers, and will take the IRS up on its offer to work collaboratively with TAS to develop an IDT cycle time measure that is more transparent and accurately represents the time it takes for the IRS to fully resolve all of the related tax issues for IDT victims.

The IRS Is Exploring Ways to Bolster Cybersecurity and Improve Taxpayer Authentication

On the technology front, two significant challenges for the IRS are to authenticate taxpayer information and to safeguard that information. This challenge is not unique to the IRS, but is faced by organizations

23 National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 53.

24 TIGTA, Ref. No. 2015-40-024, *Victims of Identity Theft Continue to Experience Delays and Errors in Receiving Refunds* 6 (Mar. 20, 2015).

25 *See* IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in 2014 Annual Report to Congress vol. 2, 84–7, *infra*.

26 An Identity Protection PIN is a six-digit code that must be entered on the tax return at time of filing by certain victims of IDT. This Identity Protection PIN protects accounts from being susceptible to further misuse by identity thieves. See *IRM* 10.5.3.2.15, *Identity Protection Personal Identification Number (IP PIN)* (Dec. 17, 2014).

27 *See* IRS Responses and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in 2014 Annual Report to Congress vol. 2, 84–7, *infra*.

with responsibility for collecting and safekeeping sensitive personal information. For example, up to 18 million individuals were impacted when the Office of Personnel Management's database was breached in early June.[28] This data breach occurred on the heels of hackers accessing the IRS's "Get Transcript" web application to obtain sensitive tax information of approximately 104,000 taxpayers.[29]

When taxpayers must wait six months or more for the IRS to resolve their identity theft-related tax issues, it can cause a significant hardship, especially for victims awaiting tax refunds.

No organization can guarantee it will be 100 percent secure – especially if hackers obtained answers to knowledge-based questions from other sources, as they did in the "Get Transcript" incident – but the IRS can and should do more to bolster its cybersecurity and regain the trust of taxpayers. To that end, the IRS has partnered with various agencies and private sector companies to exchange ideas at a security summit organized by the IRS. As a result of these meetings, the IRS may learn of better ways to authenticate taxpayers, which should lead to fewer IDT victims. We applaud the IRS's efforts and look forward to reviewing any proposals that come out of the security summit.

FOCUS FOR FISCAL YEAR 2016

- Continue to work with the IRS on IDT issues, recommending improvements and alternative approaches, with a particular focus on reducing the time it takes to achieve complete and accurate resolution of the case from the victim's perspective;
- Collaborate with W&I as it implements the reorganization of the IDT victim assistance units to ensure their efficacy, and advocate for establishing sole employee contacts for complex identity theft cases;
- Review the global account review process the IRS performs prior to closing IDT cases and make recommendations for improvement;
- Instruct Local Taxpayer Advocates to issue TAOs in appropriate cases to expedite relief to taxpayers when IRS processes are inadequate or too lengthy to assist taxpayers who are suffering from a significant hardship;
- Improve our own case processing procedures by timely alerting Case Advocates of any changes in IRS procedures to avoid delays in correcting the taxpayer's accounts; and
- Elevate emerging IDT schemes and processing issues identified in TAS casework for collaborative solutions with the IRS.

28 Devlin Barrett and Damian Paletta, *Officials Masked Severity of Hack*, Wall St. J., June 24, 2015, *available at* http://www.wsj.com/articles/hack-defined-as-two-distinct-breaches-1435158334.

29 IRS, *IRS Statement on the "Get Transcript" Application, available at* http://www.irs.gov/uac/Newsroom/IRS-Statement-on-the-Get-Transcript-Application (last viewed June 25, 2015); Jared Serbu, *IRS Searches for New Authentication Measures in Wake of Huge Data Breach*, Federal News Radio, June 3, 2015, *available at* http://federalnewsradio.com/technology/2015/06/irs-searches-for-new-authentication-measures-in-wake-of-huge-data-breach/.

Area of Focus #2

The IRS Agrees It Should Issue Refunds to Victims of Return Preparer Fraud, But It Has Been Slow to Develop Necessary Procedures

TAXPAYER RIGHTS IMPACTED[1]

- *The right to pay no more than the correct amount of tax*
- *The right to a fair and just tax system*

Victims of Return Preparer Fraud Are Treated Differently Than Victims of Identity Theft

Many taxpayers enlist the aid of tax return preparers[2] to meet their increasingly complex tax return filing obligations. Unfortunately, a small percentage of these preparers betray their clients' trust by inflating income, deductions, credits, or withholding without the clients' knowledge or consent.[3] They then pocket all or part of the taxpayer's direct deposit refund by diverting all or part of the money to a bank account under the preparer's control.

In situations where the preparer diverted the legitimate portion of the refund to his or her own account, victimized taxpayers have little hope of obtaining their refunds from the preparer, who may have closed up shop. While there is no legal impediment to the IRS issuing refunds to victims of preparer fraud, it has been reluctant to do so. Taxpayers who are trying to comply with the law and have demonstrated they were not complicit in the fraud should receive their full refunds, just as victims of identity theft do.

Return preparer fraud is similar to identity theft in that both crimes delay refunds and cause account problems, but the IRS deals with the victims in substantially different ways. Over the years, the IRS has developed procedures that ultimately undo the harm to victims of identity theft. The IRS can "back out" the return filed by the perpetrator, process the legitimate return, and pay the associated refund claim, if applicable, even if the IRS has already paid that refund out to the identity thief.[4]

In contrast, the IRS still has no procedures that fully unwind the harm suffered by victims of preparer fraud. In June 2012, the IRS issued interim guidance to its employees on how to handle certain preparer fraud cases in the form of Servicewide Electronic Research Program (SERP) Alert 12A0417.[5] However, this guidance was not comprehensive, as it failed to provide relief for a large category of victims. For example, the IRS agreed to remove the fraudulent tax return information from the victim's account and

1 See IRS, *Taxpayer Bill of Rights, available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

2 See Internal Revenue Code (IRC) § 7701(a)(36). Approximately 60 percent of individual taxpayers paid a preparer to file their 2013 tax return. IRS Compliance Data Warehouse, Individual Returns Transaction File, (Tax Year 2013 - returns processed as of the end of April 2015).

3 See National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 22 (*Return Preparer Fraud: A Sad Story*).

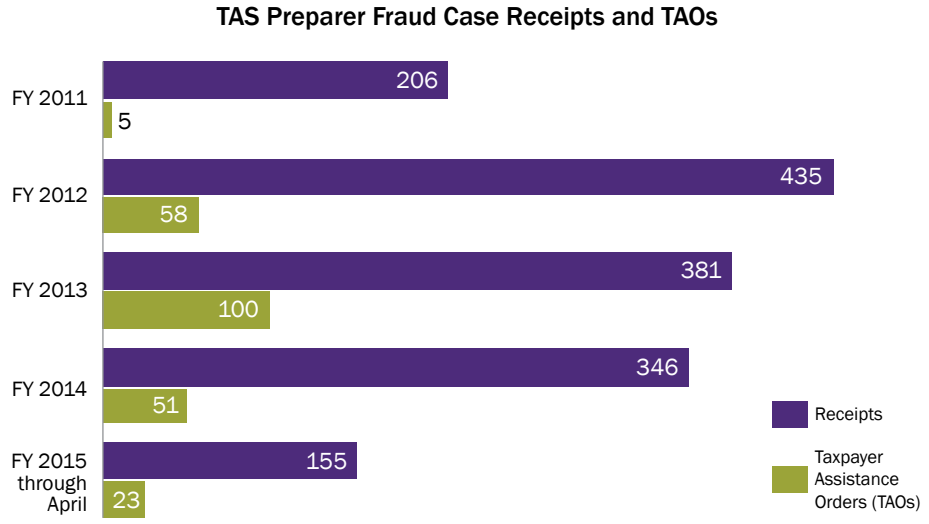
4 *See generally* Internal Revenue Manual (IRM) 21.6.2, *Individual Tax Returns, Adjusting TIN-Related Problems* (Oct. 1, 2013).

5 See SERP Alert 12A0417, *Memphis AM ONLY - Return Preparer Misconduct Interim Guidance* (June 26, 2012). The SERP Alert was incorporated into an interim guidance memorandum, which has been reissued multiple times. *See Interim Guidance on Return Preparer Misconduct (For Memphis Accounts Management ONLY)*, WI-21-0812-02 (Sept. 6, 2012); *Interim Guidance on Return Preparer Misconduct (For Memphis Accounts Management ONLY)*, WI-21-0214-02 (Aug. 5, 2013); *Interim Guidance on Return Preparer Misconduct (For Memphis Accounts Management ONLY)*, WI-21-0814-05 (Aug. 4, 2014). Each interim guidance memorandum indicates that the procedures are interim only until IRM 21.9.3, *Assisting Victims of Return Preparer Fraud*, is published. In accordance with IRM 1.11.10.2.1(3), *Interim Guidance Effective Period* (Apr. 25, 2014), when the interim guidance cannot be incorporated into the IRM before the expiration date on the memorandum, the IRS must reissue the interim guidance. To date, the IRS has not published IRM 21.9.3, and the current interim guidance will expire on August 5, 2015.

process the victim's correct return, but it did not instruct its employees to issue a replacement refund – which, from the taxpayer's perspective, is the most important step.

In fiscal year (FY) 2011, TAS started tracking return preparer fraud cases using a special code. As shown below, TAS has continued to work a substantial number of cases in which taxpayers are harmed by return preparer fraud or misconduct.

FIGURE 3.2.1[6]



As of April 30, 2015, TAS had 308 return preparer fraud cases in inventory.[7] Some of the victims who have come to TAS for help have been waiting for refunds since they filed their 2008 tax returns.[8]

Although IRS Leadership Has Agreed It Would Issue Refunds to Victims of Return Preparer Fraud, the IRS Has Not Developed Any Procedures to Date

While working to help these individual taxpayers, TAS has also pursued this issue from a systemic perspective. Since 2011, the National Taxpayer Advocate has raised and discussed this issue with four

6 Pursuant to IRC § 7811, the National Taxpayer Advocate may issue a Taxpayer Assistance Order ordering the IRS to cease, take, or refrain from taking certain actions as described more fully in the statute. The order may be modified or rescinded only by the Commissioner or Deputy Commissioner or the National Taxpayer Advocate (or her delegate). Data obtained from the Taxpayer Advocate Management Information System (TAMIS) (FY 2011-2013 - Oct. 24, 2013; FY 2014 - May 28, 2015; FY 2015 - May 19, 2015).

7 Data obtained from TAMIS (May 19, 2015). The current inventory of return preparer fraud cases includes unresolved cases received in prior FYs.

8 *See, e.g.,* TAMIS case numbers 4757753, 5269873, and 5361465.

Commissioners (two acting), issued two Taxpayer Advocate Directives (TADs),[9] one Proposed TAD,[10] and covered the subject extensively in her Annual Reports to Congress.[11]

What is frustrating is that return preparer fraud is not a novel issue, as the IRS has known for many years about this problem and its severe impact on victims. Since 2000, the IRS has received four legal opinions from its Office of Chief Counsel that, when read together, permit the IRS to:

- Disregard the altered return filed by the preparer;
- Accept an unaltered return signed by the taxpayer; and
- Issue a refund to the victim even if the IRS had already made a payment to the preparer.[12]

In 2014, the Office of Chief Counsel reaffirmed to the National Taxpayer Advocate and to the IRS Commissioner that the IRS is not prohibited from issuing refunds to victims of preparer fraud.

Taxpayers who are trying to comply with the law and have demonstrated they were not complicit in the fraud should receive their full refunds, just as victims of identity theft do.

The National Taxpayer Advocate has urged the IRS leadership to make these vulnerable taxpayers whole, just as the IRS works to make identity theft victims whole. The 2013 Annual Report to Congress proposed a framework of analysis that takes into account mitigation, restitution, and substantiation the IRS can use in deciding when to issue refunds to purported victims of preparer fraud.[13]

In March 2014, the Commissioner decided the IRS will issue refunds to victims who can show they were not complicit in the preparer's fraud. Under this approach, the victim must provide a copy of an incident report filed with local law enforcement (*i.e.,* a police report) before the IRS issues a replacement refund, to alleviate the IRS's concern about collusion between the preparer and the taxpayer.

It has now been over a year since the Commissioner made this decision and the IRS still has not implemented this policy. On June 15, 2015, the Deputy Commissioner for Services and Enforcement issued a memorandum to the National Taxpayer Advocate stating the Wage and Investment division (W&I) would be sharing draft procedures with TAS within a week. This memo included a decision document outlining the conditions that need to be met for a preparer fraud victim to be eligible for a refund.[14] W&I shared with TAS on June 23, 2015, draft procedures for resolving return preparer misconduct cases. At the time of publication of this report, the National Taxpayer Advocate is conducting a thorough review of these procedures and will provide

9 Pursuant to Delegation Order No. 13-3, the National Taxpayer Advocate has the authority to issue a TAD "to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment[,] or provide an essential service to taxpayers." IRM 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001). *See also* IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

10 *See* IRM 13.2.1.6.1.2, *Proposed TAD* (July 16, 2009).

11 *See, e.g.,* National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 22-34; National Taxpayer Advocate 2013 Annual Report to Congress 94-102; National Taxpayer Advocate 2012 Annual Report to Congress 68-94.

12 Field Service Advice 200038005 (June 6, 2000); IRS Office of Chief Counsel Memorandum, *Horse's Tax Service*, PMTA 2011-13 (May 12, 2003); IRS Office of Chief Counsel Memorandum, *Refunds Improperly Directed to a Preparer,* POSTN-145098-08 (Dec. 17, 2008); IRS Office of Chief Counsel Memorandum, *Tax Return Preparer's Alteration of a Return*, PMTA 2011-20 (June 27, 2011).

13 National Taxpayer Advocate 2013 Annual Report to Congress 100-101.

14 *See* Return Preparer Misconduct Decision Document (updated May 26, 2015). W&I shared with TAS on June 23, 2015, draft internal guidance memorandum containing procedures for resolving return preparer misconduct cases. At the time of publication of this report, National Taxpayer Advocate is conducting a thorough review of these procedures and will provide comments to W&I.

comments to W&I. One point the National Taxpayer Advcoate will emphasize is the need to build into the procedures the ability for IRS employees to exercise discretion, when appropriate, and analyze the particular facts and circumstances of each preparer fraud case, rather than use a "checklist" approach. We have seen too many cases where the facts may not fit squarely into a box, and it would be grossly unfair for the IRS to deny relief to these taxpayers (many who have been waiting patiently for refunds for upwards of three years) because they did not comply with the precise documentation requirements that have yet to be shared with the public (and thus could not have known they would have to supply to substantiate their claims).

Despite continued requests from TAS to be included in the development of these procedures, neither the Deputy Commissioner for Services and Enforcement nor the Commissioner of W&I shared the draft guidance with the National Taxpayer Advocate before issuance. Many of the concerns being identified now by the National Taxpayer Advocate could have been addressed months ago had discussions been held. This decision to withhold communication until the last minute is particularly disturbing given the National Taxpayer Advocate's leadership and advocacy in this area, and the IRS's history in not providing relief for these victims.

FOCUS FOR FISCAL YEAR 2016

- Provide comments to W&I on the draft procedures for processing return preparer misconduct claims submitted by victims of preparer fraud;
- Issue appropriate guidance to TAS employees on how to advocate for victims of return preparer fraud and what documentation should be submitted to the IRS;
- Continue to refer taxpayers to Low Income Taxpayer Clinics to evaluate options to pursue legal action;[15] and
- If necessary, continue to elevate return preparer fraud TAOs to the highest levels of the IRS.

15 In December 2014, the National Taxpayer Advocate personally wrote to each of the taxpayers whose return preparer fraud cases were in TAS's inventory, encouraging them to obtain representation from a Low Income Taxpayer Clinic and to possibly file a refund suit in a United States district court or the United States Court of Federal Claims to pursue the matter further.

Area of Focus #3 The IRS's Administration of the Affordable Care Act Has Gone Well Overall, But Some Glitches Have Arisen

TAXPAYER RIGHTS IMPACTED[1]

- *The right to be informed*
- *The right to quality service*
- *The right to pay no more than the correct amount of tax*
- *The right to finality*

Overall, the IRS has done a commendable job of implementing the first stages of the Patient Protection and Affordable Care Act of 2009 (ACA), including developing or updating information technology systems, issuing guidance, and collaborating with other federal agencies.[2] The IRS's implementation of the law was rigorously tested during this filing season, with the introduction of the Individual Shared Responsibility Payment (ISRP)[3] and the Premium Tax Credit (PTC)[4] on tax year (TY) 2014 federal returns. At the same time, the IRS received and processed a significant number of new information returns from insurers and exchanges.[5] The level of service (LOS) on the ACA telephone hotline (800-919-0452) was about 68 percent during the filing season, which far exceeded the 37 percent overall LOS on the Accounts Management (AM) toll-free lines.[6] The Filing Season Review section of this report provides preliminary high level IRS data related to the PTC, ISRP, and LOS on the ACA telephone hotline during the 2015 Filing Season.[7] However, as the filing season unfolded, we identified the issues detailed below.

1 *See* IRS, Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

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

3 Internal Revenue Code (IRC) § 5000A. Taxpayers filing TY 2014 federal income tax returns were required to report they have "minimum essential coverage" or were exempt from the responsibility to have the required coverage. If the taxpayer did not have coverage and was not exempt, he or she was required to make an ISRP when filing a return.

4 PTC is a refundable tax credit paid either in advance or at return filing to help taxpayers with low to moderate income purchase health insurance through the exchange. IRC § 36B. The amount of the credit paid in advance is based on projected household income and family size for the year of coverage, while the amount a taxpayer is actually eligible for is based on actual household income and family size for the year reflected on the tax return. Taxpayers were required to reconcile the credit amount they received in advance with the PTC to which they were actually entitled.

5 The Health Insurance Marketplace, also called the "Exchange," is a state or federally operated program where individuals can buy health care coverage. Coverage is available to people who are uninsured or who buy insurance on their own. *See* http://www.irs.gov/uac/Newsroom/The-Health-Insurance-Marketplace. IRC § 6055 and the regulations thereunder require every person (*i.e.*, health insurance issuers, self-insuring employers, government agencies, and other providers of health coverage) that provides minimum essential coverage (as defined in section 5000A(f)) to an individual to report to the IRS information about the coverage of each individual covered under the policy. Section 6056 requires annual information reporting by applicable large employers relating to the health insurance that the employer offers (or does not offer) to its full-time employees. Notice 2013-45, 2013–31 I.R.B. 116 (July 29, 2013) provides transition relief by delaying the information reporting required under IRC §§ 6055 and 6056 until 2016 for coverage in 2015, but the IRS has encouraged entities to voluntarily provide information returns for coverage provided in 2014, which was due to be filed and furnished in early 2015.

6 As described above, the AM LOS of approximately 37 percent is a combined figure reflecting 29 customer service lines. The higher LOS on the ACA line may be due, at least in part, to the fact that the number of calls to the ACA line was significantly lower than the IRS anticipated. The ACA line received about 567,000 attempted calls, as compared with almost 50 million on the AM lines overall during the period. IRS, Joint Operations Center (JOC), *Product Detail Report* (week ending Apr. 18, 2015); IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending Apr. 18, 2015).

7 *See Filing Season Review, supra.*

IRS Implementation Efforts Were Tested During Filing Season 2015

Eligible individual taxpayers claimed the PTC for the first time on TY 2014 returns filed during the 2015 filing season. The following figure provides information regarding the extent to which individual taxpayers claimed the PTC on their TY 2014 returns.

FIGURE 3.3.1, Reporting of the Premium Tax Credit on Forms 8962 for TY 2014 Returns Through April 30, 2015[8]

Returns Filed with Forms 8962, *Premium Tax Credit (PTC)*	2.6 milion
Total PTC Amount Claimed	$7.7 billion
Average PTC Amount Claimed Per Return	$3,000
Returns Reporting Advanced PTC	2.4 million (93% of returns with Forms 8962)
Total Advanced PTC Reported	$8.7 billion
Prepared Returns Filed with Forms 8962 (Paid or Volunteer)	1.6 million

Individual taxpayers who did not have minimum essential coverage or qualify for an exemption were required to make an ISRP on their TY 2014 returns. The following table provides data on the reporting of ISRPs on TY 2014 returns.

8 Wage & Investment Research and Analysis (WIRA), *ACA Fact Sheet 5/21/2015* (returns processed through April 2015). This data is based on amounts claimed on returns that had posted as of the end of April 2015 and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2014 returns, and conducts compliance activities. Note that the number of "Returns Reporting Advanced PTC" is a subset of the number of "Returns with Forms 8962, *Premium Tax Credit (PTC)*." All taxpayers claiming the PTC were required to file a Form 8962. Of those taxpayers who have filed thus far, about 93 percent claimed the Advanced PTC (APTC), while about seven percent waited to claim the PTC until they filed their return. However, not all APTC recipients have filed returns and reconciled their credit amount. Therefore, it is difficult to compare the "Total Advanced PTC Reported" (about $8.7 billion) to the "Total PTC Amount Claimed." The difference of roughly $1 billion is probably attributable, at least in part, to some taxpayers having reported receiving more in Advanced PTC during the year than they ultimately claimed. Of the 2.6 million returns filed with Forms 8962, about 1.6 million returns were prepared by a paid or volunteer preparer and about one million were deemed self-prepared.

FIGURE 3.3.2, Reporting of the Individual Shared Responsibility Payments on TY 2014 Returns Through April 30, 2015[9]

Returns Claiming Coverage	94 million
Returns with ISRP	6.6 million
Average ISRP per Return Reporting ISRP	$190
Prepared Returns Reporting ISRP (Paid or Volunteer)	4.3 million
Returns Filed with Forms 8965, *Health Coverage Exemptions*	10.7 million
Returns Filed with Forms 8965 Claiming the Household Coverage Exemption (checked yes in Form 8965 Part II 7a or 7b or both)	3.2 million
Returns Filed with Forms 8965 Claiming Coverage Exemption (Part III)	7.5 milion
Prepared Returns Filed with Forms 8965 (Paid or Volunteer)	5.7 million (53% of returns with Form 8965)

Taxpayers Who Have Not Filed Returns by August Will Have Difficulties Receiving Advanced Premium Tax Credit

The regulations that accompany the ACA include a process for re-enrolling taxpayers in health insurance and redetermining their eligibility for the APTC.[10] As part of that process, in August the IRS will share with the exchanges a list of taxpayers who received the APTC but have not yet filed a tax return with the IRS. For all taxpayers who previously received the APTC and already filed their tax returns by the end of August, the exchanges will automatically re-enroll the taxpayers and recalculate their 2016 APTC amount during the fall of 2015. Taxpayers who failed to file a tax return by the end of August will be re-enrolled in their insurance for 2016; however, they will not receive the APTC.[11] To receive the APTC, taxpayers will have to file their 2014 tax return and then go back to the Marketplace for a redetermination of their eligibility for the APTC. This creates an extra burden on taxpayers to reestablish their eligibility for the advanced credit.

The IRS has begun sending newly-developed Letter 5591 to APTC recipients who have yet to file tax returns or extensions. The letter urges the recipient to file as soon as possible to avoid a gap in receiving 2016 APTC.[12] Unfortunately, TAS was not given the opportunity to review the letter prior to its use. We are concerned that the letter does not adequately warn taxpayers that they need to file returns by the end of August to avoid a cumbersome process to continue receiving APTC. The letter also fails to specifically tell taxpayers that if they do not file and reconcile their APTC, they will have to undergo additional steps to receive the APTC for 2016. Aside from the letter distribution, we will monitor the IRS communications strategy to educate taxpayers to file by the end of August to continue receiving APTC.

9 WIRA, *ACA Fact Sheet 5/21/2015* (returns processed through April 2015). This data is based on amounts claimed on returns that had posted as of the end of April 2015 and is preliminary and subject to change as the IRS reviews the data, processes additional TY 2014 returns, and conducts compliance activities. Note that there were about 6.6 million returns reporting an ISRP. Of those, about 4.3 million were submitted on returns prepared by a paid or volunteer preparer and about 2.3 million were deemed self-prepared. Taxpayers also filed about 10.7 million returns claiming an exemption from the ISRP using Form 8965, *Health Coverage Exemptions*. Of those, about 53 percent were prepared by a paid or volunteer preparer and about 47 percent were deemed self-prepared. Taxpayers who report an ISRP may or may not file Form 8965. The roughly 10.7 million returns claiming an exemption on Form 8965 were divided between about 7.5 million claiming a Part III coverage exemption for individuals and about 3.2 million claiming a Part II coverage exemption for households (although some taxpayers claimed an exemption in both Part II and Part III).

10 45 CFR 155.335, Annual eligibility redetermination; Department of Health and Human Services, *Guidance on Annual Eligibility Redeterminations and Re-enrollments for Marketplace Coverage for 2016* (Apr. 22, 2015) *available at* https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/annual-redeterminations-for-coverage-42215.pdf.

11 *Id.*

12 IRS, ACA Executive Steering Committee Meeting Notes (June 23, 2015).

A Significant Number of Taxpayers Overpaid the Individual Shared Responsibility Payment

As discussed in the Filing Season Review section of this report, WIRA and TAS Research have identified more than 300,000 taxpayers who overpaid their ISRP, totaling about $35 million through April 30, 2015.[13] Most of these taxpayers did not owe an ISRP because they were eligible for an exemption as a result of their low income.[14] The average ISRP overstatement amount was a little over $110 per return.[15] The IRS Office of Chief Counsel has advised the IRS has the legal authority to return the overpaid portions of the ISRP. Therefore, the IRS must make a policy call about what procedures it will require taxpayers to follow to obtain their refunds.[16] We are mindful that the IRS is operating in a low budget environment and has limited resources to develop procedures to return these funds in a proactive manner. As this report goes to print, it is our understanding that the IRS is still considering options, but has indicated that it will likely send soft notices to impacted taxpayers. As the IRS weighs the different options, the National Taxpayer Advocate raises the following concerns:

As discussed in the Filing Season Review section of this report, Wage & Investment Research and Analysis and TAS Research have identified more than 300,000 taxpayers who overpaid their ISRP, totaling about $35 million through April 30, 2015.

- For taxpayers who overpaid ISRP on balance due returns, the IRS should put a collection hold on the associated accounts to enable the IRS to make the appropriate adjustments before taking any improper collection actions; and
- Because the average overpayment was approximately $110, we are concerned many impacted taxpayers will not take the initiative to file a claim for a refund of the excess ISRP because it may not make sense to incur costly tax return preparation fees.17 We believe the IRS should proactively adjust the impacted accounts and return overpayments to the taxpayers, where appropriate, without requiring the taxpayers to request such payment.18 While the IRS could also send out a letter or soft notice to the affected taxpayers and include a partially

13 WIRA and TAS Research analysis on ISRP Overstatements through April 30, 2015, on file with TAS Research. The IRS and TAS cannot calculate the exact amount of ISRP overpayments until all dependents have filed their TY 2014 tax returns because the amount of the ISRP depends on household income pursuant to IRC § 5000A(c).

14 Nearly 250,000 of these taxpayers were eligible for an ISRP exemption. These taxpayers paid in over $27 million in ISRP. In addition, more than 50,000 taxpayers paid a total of nearly $8 million because the ISRP amount was miscalculated. These amounts include returns processed by the IRS through the end of April 2015. WIRA and TAS Research estimates from the Individual Returns Transaction File on the IRS Compliance Data Warehouse. This data is preliminary and is subject to change as the IRS reviews the data, processes additional TY 2014 returns, and conducts compliance activities.

15 This average only includes returns with an ISRP overstatement.

16 Meeting between the Office of Chief Counsel and TAS (June 3, 2015), and e-mail summary provided to TAS from the Office of Chief Counsel (June 19, 2015).

17 WIRA and TAS Research analysis on ISRP Overstatements through April 30, 2015, on file with TAS Research.

18 If possible, the checks should include language to explain what the funds represent. We understand that any letter or language provided to taxpayers, regardless of the explanation contained therein, may increase the call volume for the IRS.

pre-filled response form to allow taxpayers to claim a refund,[19] that process is extremely burdensome for taxpayers and the IRS, particularly when the IRS can make the adjustment on its own without the need for taxpayers to respond. By placing the burden on taxpayers, some taxpayers may not respond and will end up paying more tax than they owe.

Because the average overpayment was approximately $110, we are concerned many impacted taxpayers will not take the initiative to claim a refund of the excess ISRP because it may not make sense to incur costly tax return preparation fees.

TAS Tested Free File Programs to Evaluate ISRP Calculation Accuracy

Based on unusual trends on returns with self-assessed ISRPs,[20] as well as several submissions to the Systemic Advocacy Management System (SAMS) questioning return preparation software accuracy with ACA-related issues,[21] TAS tested the 14 Free File sites accessible through the official IRS website.[22] The IRS website directs taxpayers to use Free File to ensure they are complying with ACA requirements.[23] To determine the experience of taxpayers and find out if the Free File programs accurately calculate the ISRP and determine exemption[24] eligibility, we created the scenarios described below and tested them on each of the 14 Free File sites.

- Scenario 1 ("the under the filing threshold" scenario): Taxpayer 1, single with no dependents, had no health care coverage throughout the entire 2014 TY. He earns $10,000 in wages at his job with no additional income and claims the standard

19 This partially pre-filled response form would constitute an informal claim for refund, if timely signed and returned to the IRS. An "informal claim" is a request for refund submitted by the taxpayer either on a non-standard form (written request) or by some other means as long as the required claim elements are identified. These elements include TY, identification number, refund requested, and reason for the refund. The Supreme Court has embraced this concept. See *United States v. Kales,* 314 U.S. 186 (1941). *See also United States v. Memphis Cotton Oil Co.,* 288 U.S. 62 (1933). For example, a letter from the taxpayer can be an informal claim. IRM 4.90.7.1(4)(b), *Overview* (May 9, 2013). *See also Newton v. United States*, 163 F. Supp. 614 (Ct. Cl. 1958) (written protest as an informal claim). By submitting a timely informal claim for refund, the taxpayer would be protected against the expiration of the refund statute of limitations. IRC § 6511. For example, if the taxpayer does not submit an informal claim for refund but merely calls the IRS and requests the IRS to return the excess ISRP and the refund statute runs before the taxpayer realizes the IRS didn't send the correct amount, the taxpayer has no remedy; the phone call would not be a claim for purposes of IRC § 7422, and thus the taxpayer could not have a U.S. District Court or the U.S. Court of Federal Claims decide the merits of his or her refund claim.

20 The IRS ACA Joint Implementation Team on Collection conducted a preliminary study of 100 cases to determine if the ISRP was being reported and calculated correctly. The team selected cases with self-reported ISRP, but the cases were not selected from a random sample. The analysis was preliminary but found ISRP misreporting trends that warranted additional analysis. The initial review produced concerns about whether the problems resulted from software issues. Approximately 50 percent of returns with all misreported ISRP were prepared by tax return preparers. TAS notes from the February 26, 2015 and March 9, 2015 IRS Collection ACA Joint Implementation Team meetings. Based on these initial findings, TAS decided to test the Free File software programs for problems in reporting and calculating the ISRP.

21 TAS received submissions regarding either return preparers not considering possible ISRP exemptions for the taxpayer or software adding the ISRP when it appears the taxpayer is eligible for a coverage exemption. SAMS submissions 32208, 32583, and 32706.

22 Free File provides taxpayers with free commercial tax return software or fillable form options. For 2015, anyone who had income of $60,000 or less is eligible for the free tax software. For people who made more than $60,000, the Free File Alliance provides Free File Fillable Forms, the electronic version of IRS paper forms. Free File also provides free requests for extensions of time to file, with no income limitations. IRS News Release, *IRS and Free File Alliance Reach New Agreement for Free Tax Software*, IR-2015-52 (Mar. 17, 2015). We decided to test Free File programs for two reasons: (1) the programs are free of charge while performing the tests, and (2) the programs are similar to the related products commercially available through the vendors. See 2015 Free On-Line Electronic Tax Filing Agreement Amendment (Mar. 6, 2015), *available at* http://www.irs.gov/pub/irs-utl/filing_agreement_2015.pdf (last visited June 23, 2015).

23 IRS, *The Health Care Law and Your Taxes*, *available at* http://www.irs.gov/pub/irs-pdf/p5201.pdf (last visited June 23, 2015).

24 For more information about the various coverage exemptions available for 2014, see the chart in the Instructions to Form 8965, *Health Coverage Exemption*s.

deduction. This scenario was designed to determine how easy it is for taxpayers to claim the ISRP exemption for income under the threshold for filing a tax return.25

- *Scenario 2 ("the hardship exemption" scenario):* Taxpayer 2, single with no dependents, earns wages of $36,000 with no additional income and claims the standard deduction. Taxpayer 2 had no health care coverage in TY 2014 and filed for a hardship exemption with the exchange, which is still pending at the time of filing. This scenario was designed to determine the difficulty of reporting an exchange-granted ISRP exemption when the exemption certificate number is still pending.
- *Scenario 3: ("the one spouse with insurance, the other spouse without" scenario):* Taxpayer 3 is married with no dependents and had health care coverage for the entire year, but his spouse had no coverage for the entire year. Their filing status is married filing jointly, with combined wage income of $56,000. They will claim the standard deduction. This scenario was designed to determine if the software clearly explained how to calculate the ISRP when one spouse does not have coverage.

Results of the Free File Testing Produced A Few Concerns

For the most part, our tests of the Free File programs produced positive results. All but one program, discussed in more detail below, calculated the correct ISRP amount due from the taxpayer. In general, most programs were user-friendly and clearly guided the testers to understand how to calculate the ISRP or claim the appropriate exemption. Some interesting findings are:[26]

- *Automatic Exemption with No Explanation.* In four programs, the software automatically and correctly calculated no ISRP due in Scenario 1, but never informed the taxpayer he qualified for the exemption for income under the filing threshold. Thus, an educational component was missing, which might lead to compliance issues in future years, if the taxpayer's income increased.
- *Incorrect ISRP Calculation Because Form 8965 Not Supported.* One program did not seem to support IRS Form 8965, *Health Coverage Exemptions.* The program did not provide the appropriate prompts to take the hardship exemption and incorrectly calculated a $259 ISRP for Scenario 2.
- *Inadequate Guidance.* For Scenario 2, three programs assumed the user already knew about the available exemptions and did not provide sufficient guidance. For example, two programs required the user to locate and complete Form 8965 with minimal guidance to claim the hardship exemption. A third program provided a list of exemptions with no further explanations.

TAS reported detailed findings of the tests to the IRS Affordable Care Act Office as well as to Wage & Investment (W&I) Customer Account Services (CAS) to enable the IRS to discuss the results with the impacted software providers in an effort to correct any problems before the next filing season.[27] It is our understanding that the IRS coordinated with the Free File Alliance to address issues found in our tests. At the time this report went to print, we are pleased to report the software provider associated with the incorrect ISRP calculation above already adjusted the program to avoid similar errors in the future.[28] We intend to follow up to determine if further changes were made by the impacted software providers to provide more necessary guidance to the software users.

25 For a single taxpayer under age 65 at the end of 2014, a return is required if gross income was at least $10,150. IRS Form 1040 Instructions 2014 at 7, Chart A.

26 Detailed observations of the software tests are on file with TAS. Conference call between TAS, ACA Program Office, and W&I CAS to Discuss Free File Test Results (June 18, 2015).

27 *Id.*

28 Email from W&I, CAS to TAS (June 29, 2015).

Taxpayers May Have Received First-Time Penalty Abatement Relief Rather Than Appropriate Penalty Relief Under Notice 2015-9

We applaud the IRS for providing some relief for taxpayers who have balances due on their 2014 returns after reconciling APTC against the PTC allowed on the return. Under Notice 2015-9, the IRS will abate the penalty under IRC § 6651(a)(2) for taxable year 2014 for late payment of a balance due.[29] However, we are concerned some taxpayers may have received penalty relief for late payment under IRC § 6651(a)(2) under the first-time abatement administrative waiver, which is available only once every three years, rather than the relief provided under the Notice.[30] This means some taxpayers who otherwise would qualify for penalty relief during the next three years may not receive it. Our office will investigate this matter to determine the extent to which taxpayers received the inappropriate type of penalty relief, and work with the IRS to reclassify the reason for the penalty abatement.

Lack of Data Caused IRS to Suspend Processing Premium Tax Credit Returns

On February 25, 2015, the IRS alerted employees it needed to match the PTC claimed on returns against third-party data provided by the Department of Health and Human Services. Pending receipt of such data, the IRS suspended the processing of returns it was unable to match. The alert advised employees to tell taxpayers calling about these returns to allow an additional 45 days for processing and review.[31] The IRS updated the alert on March 6, directing employees to tell taxpayers whose refunds have not been issued within 21 days of electronically filing that their returns were under a review that might take an additional 45 days.[32] However, we are concerned the IRS held returns and looked solely to electronic data matching before releasing refunds, ignoring paper documentation that supported the taxpayers' claims, and thereby harming taxpayers.

Exchanges Made Errors on Forms 1095-A, Leading to an IRS Resolution to Reduce Taxpayer Burden

The Centers for Medicare and Medicaid Services (CMS) announced in February 2015, that about 20 percent – or 800,000 – of the tax return filers who purchased health insurance from the federal exchange received Forms 1095-A, *Health Insurance Marketplace Statement,* with errors in the second lowest cost silver plan information. The exchange issued corrected Forms 1095-A. In response, CMS asked taxpayers who (1) received an incorrect Form 1095-A from either the federal or state exchanges and (2) had not yet filed their 2014 tax returns, to wait for corrected forms before filing.[33] Treasury informed taxpayers who had already filed based on the incorrect forms they did not need to file amended returns.[34] Treasury

29 Notice 2015-9, 2015-6 I.R.B. 590 (Feb. 9, 2015).

30 First-time abatement applies if the taxpayer does not have a failure to pay, failure to file, or failure to deposit penalty in the prior three years of the assessment year. For more information on the first-time abatement administrative waiver, see IRM 20.1.1.3.6.1, *First Time Abate (FTA)* (Aug. 5, 2014).

31 IRS, Servicewide Electronic Research Program (SERP) Alert 15A0141, *Returns Reporting a Premium Tax Credit Being Held in Error Resolution System (ERS) Suspense* (Feb. 25, 2015). SAMS Submission 32474 (complaint about delay in processing).

32 SERP Alert 15A0171, *Taxpayer Refund Inquiries with ERS Status Code 249, 349, or 449* (Mar. 6, 2015).

33 CMS, *What Consumers Need to Know About Corrected Form 1095-As* (Feb. 20, 2015) *available at* http://blog.cms.gov/2015/02/20/what-consumers-need-to-know-about-corrected-form-1095-as/.

34 U.S. Department of Treasury, Press Center, *Statement from a Treasury Spokesperson on CMS Announcement Last Week About 1095-A* (Feb. 24, 2015) and *Statement from a Treasury Spokesperson on Forms 1095-A* (Mar. 20, 2015), *available at* http://www.treasury.gov/press-center/press-releases/Pages/jl9981.aspx and http://www.treasury.gov/press-center/press-releases/Pages/jl10005.aspx, respectively.

further stated the IRS would not pursue collection of any additional taxes based on the updated information in the corrected forms.[35]

The IRS later advised employees to extend this relief to all taxpayers who received incorrect Forms 1095-A, not just those who had previously filed.[36] On April 10, 2015, the IRS issued Notice 2015-30, providing penalty relief for incorrect or delayed Forms 1095-A for taxpayers who timely filed their 2014 return.[37] However, we remain concerned about the impact the corrected forms had on taxpayers. For example, some may be eligible for a refund but will not amend their returns because they do not understand the meaning of the corrected Form 1095-A, are afraid of being audited, or cannot afford the additional tax return preparation fees involved in amending the return.

Systemic Advocacy Management System ACA Submissions

TAS has received 69 SAMS submissions with ACA issues through June 12, 2015.[38] TAS created an ACA Rapid Response Team to quickly address any significant ACA issues elevated through SAMS or case receipts. In addition to the issues raised above, we received SAMS submissions on the following issues:

- The Vermont state exchange portal was down for approximately two months during open enrollment and the exchange delayed processing change-in-circumstances submissions;[39]
- Unscrupulous preparers improperly calculated the ISRP and instructed the taxpayers to pay the ISRP amounts directly to the preparers;[40]
- Preparers did not properly claim ISRP exemptions for noncitizen taxpayers;[41]
- The preparer altered the return by incorrectly adding PTC without the taxpayer's knowledge and pocketed the incremental amount;[42]

35 U.S. Department of Treasury, Press Center, *Statement from a Treasury Spokesperson on CMS Announcement Last Week About 1095-A* (Feb. 24, 2015) and *Statement from a Treasury Spokesperson on Forms 1095-A* (Mar. 20, 2015), *available at* http://www.treasury.gov/press-center/press-releases/Pages/jl9981.aspx and http://www.treasury.gov/press-center/press-releases/Pages/jl10005.aspx, respectively. *See also* Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2015-43-043, *Affordable Care Act: Assessment of Internal Revenue Service Preparation for Processing Premium Tax Credit Claims* 12 (May 11, 2015) (TIGTA urges the IRS to develop a tool to enable taxpayers to determine the correct second lowest cost silver plan premium).

36 SERP Alert 15A0147, *Responding to Taxpayer Inquiries about Corrected Forms 1095-A, Health Insurance Marketplace Statements* (Feb. 26, 2015, revised Apr. 6, 2015).

37 Notice 2015-30, 2015-17 I.R.B. 928 (Apr. 27, 2015).

38 SAMS, as of June 12, 2015.

39 The Vermont state exchange was not able to timely process changes in circumstances. Although taxpayers notified the exchange of their change in circumstances in a timely manner, impacted taxpayers had to repay excess advance PTC. The exchange was also not available for a certain period of time during open enrollment. A senator's aide elevated a SAMS recommendation for a new coverage exemption for Vermont residents who were not able to enroll in health care coverage after making attempts during the enrollment period. TAS researched and learned the Vermont Exchange portal was down between September 16 and November 15, 2014. However, residents could still enroll through the phone and paper. SAMS Submissions 32377, 32577, 32647, and 32382.

40 TAS received information from the National Immigration Law Center (*see* http://www.nilc.org/) and Low Income Taxpayer Clinics (*see* IRC § 7526) that some return preparers are having taxpayers who are not lawfully present, and therefore not responsible for the ISRP, pay the ISRP directly to the preparer. The IRS issued a Tax Tip reminding taxpayers to report unscrupulous return preparers. IRS Health Care Tax Tip 2015-17, *Affordable Care Act Consumer Alert: Choose Your Tax Preparer Wisely* (Mar. 13, 2015). The Tax Tip included a link to Form 14157, Complaint: *Tax Return Preparer.* In addition, the TAS Low Income Taxpayer Clinic Program Office Director issued an alert to the clinics on this topic. SAMS Submissions 32658 and 32612.

41 In some instances, return preparers were adding the ISRP on noncitizen returns instead of properly completing Form 8965, *Health Coverage Exemptions,* to claim a coverage exemption. The IRS issued a Tax Tip stating that taxpayers not lawfully present are exempt from the individual shared responsibility provision and do not need to make a payment. IRS Health Care Tax Tip 2015-17, *Affordable Care Act Consumer Alert: Choose Your Tax Preparer Wisely* (March 13, 2015). SAMS Submission 32658.

42 SAMS Submission 32605.

- An IRS programming issue caused taxpayers' refunds to not properly offset ISRP balances, resulting in the issuance of a refund to the taxpayer and a balance due for the taxpayer for the same tax year;[43]
- The final version of IRS Publication 974, *Premium Tax Credit,* was not available until the end of February;[44] and
- An IRS programming issue caused taxpayers' entire refundable credit to incorrectly offset to a smaller ISRP.[45]

TAS ACA Case Receipts

Through May 31, 2015, TAS received 2,577 ACA case receipts, closed 1,658 ACA cases, and provided relief in almost 78 percent of those cases, with resolution taking an average of about 30 days.[46] Overall:

- Almost 84 percent of the taxpayers who came to TAS with ACA problems were experiencing an economic burden;
- In 91 percent of the ACA cases, the taxpayer was experiencing a problem with the PTC;
- About 48 percent of the PTC cases were related to processing the return in the Submission Processing Error Resolution unit;[47] and
- Almost seven percent of the total ACA case receipts involved a problem with the ISRP.[48]

Most of the taxpayers contacted TAS because their returns and refunds were delayed due to problems with:

- Matching third-party data on returns claiming the PTC;
- The return not including a correct Form 8962, *Premium Tax Credit (PTC),* to reconcile the APTC; or
- Systemic issues offsetting the credit to the ISRP balance.

In the PTC cases, the returns were in the Submission Processing Error Resolution/Reject unit waiting for the IRS to request more information from the taxpayer, or waiting for a response where the IRS asked for

43 TAS received two submissions on this IRS programming issue, identified by the IRS in February, 2015. SAMS Submissions 32672 and 32311.

44 While the IRS referred taxpayers to this publication for help preparing Form 8962, *Premium Tax Credit,* the final version of it was not available until February 27, 2015. As an interim measure, the IRS posted draft worksheets on www.irs.gov prior to the availability of the final Publication 974. SAMS Submissions 32296 and 32147.

45 TAS received several SAMS submissions identifying an IRS programming issue in which the entire amount of refundable credit from taxpayers' individual (Masterfile Tax (MFT) 30) account was offset to the ISRP account, even though the ISRP was much less than the refund. In each case, the taxpayers' refunds were delayed as they were scheduled to offset to the ISRP. Programmers were aware of the problem, scheduled a recovery fix, and the issue was resolved in a week. As the IRS worked to fix this issue, some taxpayers experiencing economic hardships faced additional burdens because of delays in receiving refunds. In addition, even after the fix, holds or freezes were placed on some accounts. SAMS Submissions 32746, 32747, 32761, 32766, 32769, 32773, 32758, 32781, and 32782.

46 Data obtained from Business Performance Management System (BPMS) (run date June 1, 2015).

47 Data obtained from the Taxpayer Advocate Management Information System (TAMIS) (June 17, 2015). TAS uses issue code 315 to identify cases in the Submission Processing Error Resolution unit.

48 Data obtained from BPMS (run date June 1, 2015).

the information before the taxpayer came to TAS.[49] If the Submission Processing unit could not resolve the discrepancy, the IRS continued processing the return but froze the refund to determine whether the return met compliance conditions before releasing all or part of the refund.

Taxpayers reporting an ISRP had their refunds put on hold until the IRS completed an additional review. As a protection, the IRS placed a freeze on the refund without offsetting the ISRP amount to the ISRP account.[50] However, after the IRS completed the review and released the refund, one of two systemic problems occurred:

- A credit did not offset to pay the ISRP balance. This caused taxpayer burden by requiring the taxpayer to repay the ISRP originally reported on the return, instead of the IRS taking the ISRP into account when computing the amount of refund; or
- A programming error caused the entire overpayment to offset to the ISRP balance, thereby creating a credit on the ISRP account. The IRS scheduled a period to recover the credit on the affected accounts. However, because of the potential for a duplicate or erroneous refund, the recovery process prevented TAS from issuing a manual refund to taxpayers experiencing an economic burden.

FOCUS FOR FISCAL YEAR 2016

- Train TAS employees on ACA collection activities, the Employer Shared Responsibility Provision, and provide advocacy tips on working ACA cases;
- Continue to participate on the IRS Joint Implementation Teams and the Executive Steering Committee; and
- Identify systemic issues associated with the ACA, elevate issues to the TAS ACA Rapid Response Team, and work with the IRS to resolve them.

49 When discrepancies and calculation errors existed, or if the taxpayer did not attach Form 8962 to the return, the IRS corresponded with the taxpayer using Letter 12C *(Individual Return Incomplete for Processing: Forms 1040, 1040A or 1040EZ)* to obtain information before continuing to process the return.

50 During original processing of the tax return, the IRS assesses the ISRP amount on the new MFT 35 account and systemically offsets it with an equal amount from the refund shown on the MFT 30 account, if any.

Area of Focus #4

The IRS's Implementation of FATCA Has in Some Cases Imposed Unnecessary Burdens and Failed to Protect the Rights of Affected Taxpayers

TAXPAYER RIGHTS IMPACTED[1]

- *The right to pay no more than the correct amount of tax*
- *The right to privacy*
- *The right to a fair and just tax system*

As a response to IRS and congressional concerns that U.S. taxpayers were not fully disclosing the extent of financial assets held abroad, Congress passed the Foreign Account Tax Compliance Act (FATCA) in 2010.[2] Many U.S taxpayers, particularly those living abroad, have incurred increased compliance burdens and costs as a result of FATCA's expanded reporting obligations, most of which repeat existing Report of Foreign Bank and Financial Accounts (FBAR) filing requirements.[3] These hardships include additional tax preparation fees and the unwillingness of some foreign financial institutions to do business with U.S. expatriates.[4]

FATCA places substantial day-to-day compliance burdens and costs of implementation on financial institutions. For example, a broad range of U.S.-source payments to a foreign financial institution (FFI) are subject to a 30 percent withholding tax, unless the FFI agrees to provide comprehensive information regarding accounts of U.S. taxpayers.[5] FATCA further charges withholding agents with the responsibility of determining whether they are obliged to undertake FATCA withholding and implementing it when required.[6]

In turn, FFIs who have reached agreements with the IRS to avoid being subject to systematic withholding must impose withholding on any of their own customers defined as "recalcitrant account holders."[7] Although FFIs have some latitude in identifying recalcitrant account holders, customers are in jeopardy of

1 See IRS, Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

2 Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat 71 (2010) (adding Internal Revenue Code (IRC) §§ 1471-1474; 6038D). "U.S. taxpayer" is not a specifically defined term within the IRC. But, for purposes of this analysis, it roughly equates to the term "specified United States person" as defined in IRC § 1473(3).

3 The Currency and Foreign Transaction Reporting Act of 1970, (commonly known as The Bank Secrecy Act) requires U.S. citizens and residents to report foreign accounts on the FinCEN Report 114, *Report of Foreign Bank and Financial Accounts* ("FBAR"). *See* 31 U.S.C. § 5314(a). National Taxpayer Advocate 2013 Annual Report to Congress 235.

4 Sofia Yan, *Banks Lock out Americans Over New Tax Law,* CNNMoney (Sept. 15, 2013), *available at* http://money.cnn.com/2013/09/15/news/banks-americans-lockout/; Simon Bradley, *U.S. Expats Feel the Burden of FATCA* (May 28, 2013), *available at* http://www.swissinfo.ch/eng/politics/US_expats_feel_the_burden_of_FATCA.html?cid=35932576; Tom Geoghegan, *Why Are Americans Giving up Their Citizenship?,* BBC News Mag. (Sept. 26, 2013), *available at* http://www.bbc.co.uk/news/magazine-24135021; Katie Holliday, *HSBC Cuts Ties with US Clients Ahead of FATCA*, Investment Week (July 21, 2011), *available at* http://www.investmentweek.co.uk/investment-week/news/2095508/hsbc-cuts-ties-clients-ahead-fatca.

5 IRC § 1471(a); IRC § 1473(1). IRC § 1471(d)(1)(B) excepts from the reporting and withholding requirements those accounts that are held by individuals at the same FFI and have an aggregate value of $50,000 or less. Note that an FFI can provide information either as a participating FFI or pursuant to an intergovernmental agreement negotiated between the U.S. and the FFI's home country.

6 IRC §§ 1471-1474; Notice 2013-43, 2013-31 I.R.B. 113.

7 IRC § 1471(b)(1)(D)(i).

facing withholding if they do not provide the FFI with either a Form W-9 to certify they are U.S. persons, or a Form W-8BEN to certify they are foreign persons.[8]

When completing a Form W-9, individuals are generally obligated to provide a Social Security number (SSN).[9] TAS has received reports these SSNs are becoming increasingly difficult to obtain for U.S. persons residing abroad who do not already have them.[10] This difficulty, caused in part by a limited number of locations where required interviews for obtaining an SSN can occur, only enhances the burden of FATCA withholding and increases the challenges to obtaining a credit or refund of the withholding in the future.[11]

As part of the 2013 Annual Report to Congress, the National Taxpayer Advocate expressed concerns over the broad sweep of FATCA and the compliance burdens it imposed on individuals and financial institutions.[12] In identifying this issue as a Most Serious Problem, the National Taxpayer Advocate urged the IRS to:

- Gather only the information it would actually use;
- Learn from its experiences with the Offshore Voluntary Disclosure (OVD) programs to more effectively preserve the due process rights of taxpayers; and
- Burden impacted parties as little as possible, consistent with the congressional mandate of FATCA.[13]

The Consequences of FATCA Continue to Fall Heavily on Honest Taxpayers

In her 2013 report, the National Taxpayer Advocate also observed that based on analysis of the data then available "… to this point, the IRS is imposing additional reporting burdens and increased potential penalties primarily on a category of taxpayers that, under principles of quality tax administration, should be encouraged, rather than penalized."[14] Further review of updated and expanded data from FY 2010 through the present continues to demonstrate the weight of FATCA is being felt not by tax evaders, but by U.S. taxpayers who likely would be compliant regardless. U.S. taxpayers under the FATCA umbrella who must file Form 8938, *Statement of Foreign Financial Assets*, are generally at least as compliant as the overall U.S. taxpayer population. This comparison is shown in the following table:

8 IRS Form W-9, *Request for Taxpayer Identification Number and Certification* (Dec. 2014); IRS Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)* (Feb. 2014).

9 IRC § 6109(a)(1) requires taxpayers to use a taxpayer identifying number on tax returns, statements, or other documents required to be filed, when prescribed by regulations, and the regulations specify that this number must be an SSN unless the individual is ineligible for an SSN or is required to use an employer identification number (Treas. Reg. § 301.6109-1(a)(1)(ii)).

10 Patrick W. Martin, *Urgent Need for U.S. Citizens Residing Outside the U.S. to Be Able to Obtain a Taxpayer Identification Number Other Than a Social Security Number*, State Bar of California, Taxation Section, Discussion Paper, meeting with the National Taxpayer Advocate (May 5, 2015). TAS will further explore the severity of this issue during FY 2016.

11 The Social Security regulations require an in-person interview for all applicants age 12 and older (22 C.F.R. § 422.107). The resulting challenges in obtaining a credit or refund of taxes withheld under FATCA exist equally in the case of taxes withheld under Chapter 3 of the IRC, discussed *infra*.

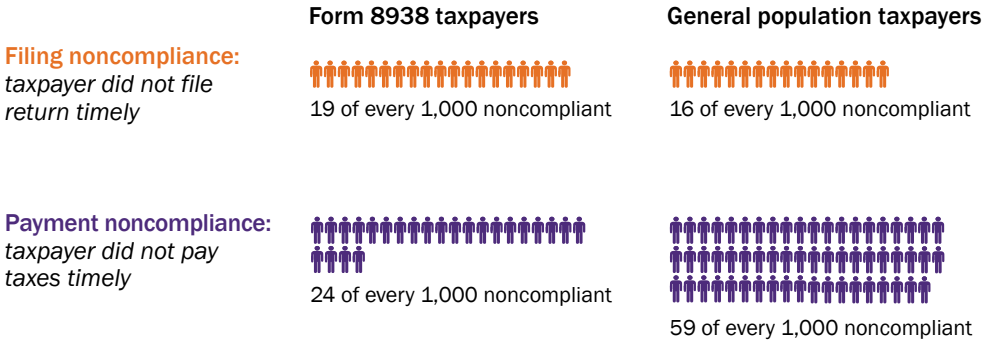
12 *See* National Taxpayer Advocate 2013 Annual Report to Congress 238-248 (Most Serious Problem: *Reporting Requirements: The Foreign Account Tax Compliance Act Has the Potential to be Burdensome, Overly Broad, and Detrimental to Taxpayer Rights*).

13 *Id.*

14 *Id* at 241.

FIGURE 3.4.1[15]

Noncompliance Rates for Form 8938 Filers vs. General Population Taxpayers



Information reporting can be very useful and influence compliant behavior, provided it is narrowly tailored to accomplish a reasonable result. The National Taxpayer Advocate previously has observed that taxpayers' willingness to meet their reporting and filing obligations is driven more by considerations of personal integrity and perceptions of systemic fairness than by economic deterrence and enforcement measures.[16] To this point, the entire population of FATCA filers have not, to TAS's knowledge, shown themselves to be a group in need of special enforcement procedures. Nevertheless, FATCA starts with the unsubstantiated assumption most taxpayers are bad actors and implements a draconian enforcement regime applied to everyone, even to the vast majority of taxpayers who have been, and likely will continue to be, fully compliant.

As a recommendation to help minimize the burden of FATCA compliance for both individual U.S. taxpayers and businesses, the National Taxpayer Advocate proposed the IRS and Treasury adopt a "same-country exception." This regulatory change would exclude from FATCA coverage financial accounts held in the country in which a U.S. taxpayer is a *bona fide* resident. It would mitigate concerns about the collateral consequences of FATCA raised by U.S. non-residents, reduce reporting burdens faced by FFIs, and allow the IRS to focus enforcement efforts on identifying and addressing willful attempts at tax evasion

15 Data drawn from IRS Compliance Data Warehouse, Individual Return Transaction File (IRTF) Entity and Individual Master File Status History Tables (Mar. 26, 2015). This table uses status code 03 data (Tax Delinquency Investigation) to measure filing compliance and status code 22, 24, and 26 data (Tax Delinquent Account) to measure payment compliance. The analysis covers five tax years from 2009 forward. In addition, FATCA filers appear to have a lower level of reporting noncompliance than the general population because FATCA filers have a lower percentage of high-scoring Discriminant Index Function (DIF) returns in comparison to filers overall. Data drawn April 13, 2015 from IRS Compliance Data Warehouse, IRTF Entity table (Processing Year 2013). High-scoring DIF returns were defined as those with a DIF value that exceeded 80 percent of DIF scores in the general population for a particular Total Positive Income (TPI) class. We calculated a cutoff point for DIF scores at the 80th percentile for each TPI class for Processing Year 2013 and calculated the percentage of FATCA filers in each TPI class that exceeded the DIF cutoff point. Only 16.5 percent of FATCA filers exceeded their respective DIF cutoff points, compared to 20 percent for individual filers in the general population. Thus, FATCA filers showed a lower percentage of "high-scoring" DIF returns than the overall population.

16 National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 134.

through foreign accounts.[17] Nevertheless, to this point, the IRS has not been willing to pursue these recommendations proposed by the National Taxpayer Advocate and supported by other stakeholders.[18]

The IRS's Approach to Compliance and Enforcement Is Shifting in Ways That Burden Compliant Non-U.S. Taxpayers

The IRS is developing policies and procedures governing the credit or refund to taxpayers of amounts withheld under FATCA on payments to FFIs or similar institutions (Chapter 4 of the Internal Revenue Code (IRC)). These policies and procedures likewise will apply to amounts withheld on payments of U.S.-source income made directly to non-resident U.S. taxpayers (Chapter 3 of the IRC). As proposed, taxpayers would be entitled to a credit or refund only if they can document that the withholding agent actually deposited the amount withheld with the IRS.[19] Some exceptions to this rule may be available if the amount of the under-deposit of tax is *de minimis*, or if the withholding agent is classified by the IRS as having a demonstrated history of compliance with its deposit requirements. By contrast, the IRS currently accepts creditor-risk in the case of domestic withholding, such as on employment taxes, and taxpayers need only show that the withholding actually occurred to be entitled to a credit or refund from the IRS.[20]

The IRS argues the shift in enforcement burden now proposed in the international context is necessary as a means of preventing fraud. TAS is unaware of any systematic or rigorous analysis documenting this risk. Moreover, withholding agents, even those active in the international context, are primarily domestic and therefore could be compelled by the IRS to remit the withholding payments they have collected, even where non-resident U.S. taxpayers are involved.[21] The IRS has far more effective tools and comprehensive resources at its disposal for this type of enforcement than the individual taxpayers to whom this burden would otherwise be allocated. As a result, the National Taxpayer Advocate believes non-resident U.S. taxpayers must still have the right to demonstrate their eligibility for a credit or refund by establishing, to the satisfaction of the IRS, the withholding actually occurred. In addition, TAS is concerned about the IRS's position it would only consider a Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, filed by the withholding agent as valid documentation for verifying the tax has been withheld, and that there are very few – if any – circumstances where a taxpayer can provide alternative documentation.[22] TAS will continue advocating, both systemically and through its casework, for the

Many U.S taxpayers, particularly those living abroad, have incurred increased compliance burdens and costs as a result of FATCA's expanded reporting obligations, most of which repeat existing FBAR filing requirements.

17 A workable same country exception would require the development of detailed guidance from the IRS, ideally arrived at in consultation with FFIs and other stakeholders. One potential starting point would be to allow an FFI to accept the self-reporting of its account holders to the extent that this reliance is reasonable under the facts and circumstances known to the FFI.

18 As stated by representatives of organizations of U.S. citizens abroad, accounts opened by U.S. citizens in a foreign country of *bona fide* residence are not "offshore" accounts designed for tax avoidance. These *bona fide* residents have a legitimate need for local banking services in their countries of residence. As a result, only accounts in a country other than one's country of residence should be subject to information reporting. TAS meeting with representatives of the Association of Americans Resident Overseas and the Federation of American Women's Clubs Overseas (Mar. 24, 2014 and Feb. 24, 2015); TAS meeting with Democrats Abroad Task Force on FATCA (Mar. 4, 2014 and Mar. 4, 2015).

19 Notice 2015-10, 2015-20 I.R.B. 965. Whether, in the view of the IRS, the documentation requirement can be met only by providing a properly issued Form 1042-S, or can be satisfied by furnishing other types of evidence, remains unclear.

20 *See, e.g.,* IRC § 31(a).

21 Notice 2015-10, 2015-20 I.R.B. 965.

22 TAS and LB&I Executives teleconference (May 27, 2015).

IRS to consider alternative documentation provided by taxpayers on a case-by-case basis. The IRS should not treat FATCA as the occasion for fundamentally shifting the risk attributable to the improper actions of withholding agents to non-resident U.S. taxpayers, who are least well-positioned to address and remedy such problems.[23]

Without persuasive explanation or verifiable justification, the IRS's revised focus under FATCA has transformed Chapter 3 and Chapter 4 tax administration into a system that assumes non-compliance and is dedicated disproportionately to denying unwarranted benefits to the malfeasant few at the cost of the compliant majority who deserve their credits and refunds. In addition to the regulatory changes being contemplated by the IRS, all U.S. taxpayers who file a Form 1040NR requesting a refund of amounts withheld pursuant to FATCA, even those supported by the requisite Form 1042-S, will have the request frozen for up to 168 days, if not longer, while the IRS attempts to match applicable documentation and satisfy itself fraud has not occurred.[24] Thus, thousands of compliant U.S. taxpayers will be denied access to their own funds while the IRS tries to marshal its internal resources and detect a relatively few bad actors. The IRS has made provisions to inform U.S. taxpayers who are experiencing "economic harm" as a result of the refund freeze that they can contact TAS for assistance.[25] Nevertheless, the IRS has not provided TAS with any specific procedures or protocols that can be followed to assist such U.S. taxpayers and release their funds.

FOCUS FOR FISCAL YEAR 2016

- Update and analyze research and stakeholder concerns regarding the impact and effectiveness of FATCA;
- Encourage the development of mechanisms, such as the "same-country exception," to mitigate the unintended negative consequences of FATCA while perpetuating its broader goals;
- Provide recommendations to the IRS and Treasury regarding the policies and procedures that should govern the credits and refunds of amounts withheld under Chapter 3 and Chapter 4;
- Advocate for U.S. taxpayers experiencing significant hardship as a result of systemic Chapter 3 and Chapter 4 refund freezes and issue Taxpayer Assistance Orders (TAOs) as necessary; and
- Work toward the development of a FATCA regime that gathers only the information actually needed by the IRS, burdens impacted parties as little as possible, and preserves the rights espoused by the IRS in the Taxpayer Bill of Rights, including *the right to pay no more than the correct amount of tax* and *the right to privacy.*

23 The burden of the IRS's contemplated approach with respect to Chapter 3 and Chapter 4 would fall particularly hard on non-residents as the IRS has closed its last overseas offices due to budget cuts, making it more difficult for taxpayers not located in the U.S. to resolve their tax issues. David Kocieniewski, *IRS Will Shut Last Overseas Taxpayer-Assistance Centers,* Bloomberg Business (Jan. 14, 2015), *available at* http://www.bloomberg.com/news/articles/2015-01-14/irs-will-shut-last-overseas-taxpayer-assistance-centers.

24 IRM 21.8.1.11.14.2, *FATCA - Programming Beginning January 2015 Affecting Certain Forms 1040NR (TC 810–3 -E Freeze)* (May 1, 2015). *See also* IRS SERP Alert 15A0188 (Mar. 23, 2015). The IRS informed taxpayers that those who requested a refund of tax withheld on a Form 1042-S by filing a Form 1040NR will have to wait up to six months from the original due date of the 1040NR return or the date the 1040NR is filed, whichever is later, to receive any refund due. IRS, *What to Expect for Refunds in 2015, available at* http://www.irs.gov/Refunds/What-to-Expect-for-Refunds-This-Year (last visited on Apr. 1, 2015). Moreover, as the IRS unilaterally established this systemic refund freeze, taxpayers face the risk that the IRS may seek to extend the refund freeze even further.

25 *Id. See also* IRS SERP Alert 15A0188 (Mar. 23, 2015).

Area of Focus #5 IRS Procedures for Levies on Retirement Plan Assets Create Financial Harm and Undermine Taxpayer Rights

TAXPAYER RIGHTS IMPACTED[1]

- *The right to be informed*
- *The right to challenge the IRS's position and be heard*
- *The right to a fair and just tax system*
- *The right to privacy*

The IRS's Authority to Levy Retirement Accounts Must Be Balanced Against the Strong Public Policy to Protect Individuals' Financial Security in Retirement

With rising medical and hospice care costs, many retirees are struggling to cover their basic living expenses. The Employee Benefits Retirement Institute (EBRI) estimates only 56.7 percent to 58.5 percent of Baby Boomers and Gen Xers are sufficiently funded for life after retirement.[2] Social Security benefits account for only about 40 percent of retirees' total income, meaning Americans should be funding other retirement plans (*e.g.,* Individual Retirement Accounts or defined contribution plans such as 401(k) plans) to make up the shortfall.[3]

Understanding the importance of Americans having sufficient retirement savings, Congress has formulated policies to not only provide Social Security income to retirees, but to protect the rights of individuals to pensions and to encourage retirement savings accounts. For example, the Employee Retirement Income Security Act of 1974 (ERISA)[4] was enacted to provide protection for participants in pension and health plans in private industry. To encourage taxpayers to save money for retirement, Congress has provided a myriad of tax-advantaged retirement savings vehicles.[5] One such retirement plan is the Thrift Savings Plan (TSP), which is available to federal employees and operates much like a 401(k) plan available to many employees in the private sector.

Congress has given the IRS broad powers to collect taxes, including the authority to levy on a taxpayer's property and rights to property.[6] This power to levy extends to assets held in retirement accounts, including the TSP. Given the long-term importance of retirement assets to individuals' future welfare, the IRS regards retirement levies as "special cases" that require additional scrutiny and managerial approval.[7] The

1 See IRS, *Taxpayer Bill of Rights, available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

2 Jack VanDerhei, *"Short" Falls: Who's Most Likely to Come up Short in Retirement, and When?*, Employee Benefits Retirement Institute Notes, June 2014, *available at* http://www.ebri.org/pdf/notespdf/EBRI_Notes_06_June-14_ShrtFlls-HSAs.pdf. For purposes of this study, Baby Boomers are defined as the generation born between 1948 to 1964, and Gen Xers are the generation born between 1965 and 1974.

3 See Social Security Administration (SSA), *available at* http://www.ssa.gov/policy/docs/ssb/v65n3/v65n3p1.html (last visited June 30, 2015); SSA, *Retirement Planner: Learn About Social Security Programs, available at* http://www.socialsecurity.gov/planners/retire/r&m6.html (last visited June 30, 2015); Association for the Advancement of Retired Persons, *Affording Retirement: Social Security Alone Isn't Enough, available at* http://www.aarp.org/work/social-security/info-06-2010/ss_isnt_enough.html (last visited June 30, 2015).

4 Pub. L. No. 93–406, 88 Stat. 829 (1974).

5 For information on what constitutes a qualified retirement plan, see Internal Revenue Code (IRC) § 4974(c).

6 See IRC § 6331.

7 Internal Revenue Manual (IRM) 5.11.6.2(3), *Funds in Pensions or Retirement Plans* (Sept. 26, 2014).

IRS has established three required steps before a Revenue Officer can issue a notice of levy on a taxpayer's retirement account:

1. Determine what property (retirement assets and non-retirement assets) is available to collect on the liability;
2. Determine whether the taxpayer's conduct has been flagrant; and
3. Determine whether the taxpayer depends on the money in the retirement account (or will in the near future) for necessary living expenses.[8]

As discussed below, IRS guidance as written is not sufficient to protect taxpayer rights. These concerns have been shared with the IRS. However, over the objection of TAS, the IRS has proposed a pilot within its Automated Collection System (ACS) unit, which could automate much of the decision to levy on a TSP retirement account.[9]

IRS Guidance on What Constitutes "Flagrant" Conduct Is Insufficient to Protect Taxpayers' Rights

Generally, the levy on assets held in a retirement account will only reach the assets over which the taxpayer has a present withdrawal right (*i.e.,* a levy will not attach until the taxpayer has a present right to withdraw funds from the plan).[10] IRM guidance explains a "current levy can reach a taxpayer's vested present rights under a plan, but a levy does not accelerate payment and is only enforceable when the taxpayer is eligible to receive benefits."[11]

IRM procedures that set forth the steps required before IRS can levy a retirement account are not adequately written to provide clear guidance and insufficiently protect taxpayer rights. For example, the IRS must determine if a taxpayer engaged in "flagrant" conduct prior to issuing a levy on a retirement account.[12] The IRM does not define what constitutes flagrant conduct; rather, the IRS must make this determination based on examples in the IRM guidance. IRS employees are instructed to consider extenuating circumstances that mitigate otherwise flagrant behavior and to review each situation on a case-by-case basis, but examples of extenuating circumstances are not included.[13]

One example of flagrant conduct listed in the IRM is the following: "Taxpayers who continue to make voluntary contributions to retirement accounts while asserting an inability to pay an amount that is owed."[14] By statute, federal employees, without their consent, are automatically enrolled to have a certain percentage (typically three percent) of their salary contributed to the TSP.[15] This is done to encourage

8 IRM 5.11.6.2(4)-(7), *Funds in Pensions or Retirement Plans* (Sept. 26, 2014).

9 ACS is a computerized system that maintains balance-due accounts and return delinquency investigations. IRM 5.19.5.2, *What Is ACS?* (Aug. 20, 2013).

10 IRM 5.11.6.2(8), *Funds in Pensions or Retirement Plans* (Sept. 26, 2014).

11 *Id.* For instance, a taxpayer is fully vested in his retirement plan account balance of $10,000, but he is not yet entitled to a withdrawal. In this instance, a levy may attach to the taxpayer's present right to the $10,000, but no money can be collected until the taxpayer has a right to withdraw those funds. Assuming the balance has grown to $30,000 by the time the taxpayer is eligible to withdraw the funds, the IRS will only be able to collect $10,000 because this was the taxpayer's present right at the time of the levy.

12 IRM 5.11.6.2(5), *Funds in Pensions or Retirement Plans* (Sept. 26, 2014). The guidance points out if a taxpayer has not engaged in flagrant conduct, then the retirement account should not be levied. *Id.* Thus, the determination for flagrant conduct is critical in determining to levy a retirement account.

13 *Id.* The IRM guidance does not include any examples of extenuating circumstances.

14 IRM 5.11.6.2(6), *Funds in Pensions or Retirement Plans* (Sept. 26, 2014).

15 *See* Thrift Savings Plan, *Summary of the Thrift Saving Plan* 2, *available at* https://www.tsp.gov/PDF/formspubs/tspbk08.pdf (last visited June 30, 2015).

savings for retirement and to take advantage of employer matching; federal employees must take an affirmative step to stop these automatic contributions.[16] Other employer plans adopt a similar "opt-out" approach to automatically enroll employees.[17] Thus, an employee may have been contributing to a retirement plan via automated payroll deductions for years before incurring an IRS debt and may not be aware the IRS views such contributions to be flagrant conduct.

Nevertheless, the IRM guidance does not require the IRS to educate the taxpayer about the effect of making voluntary contributions or not terminating contributions made through automatic enrollment on the decision to levy a retirement account. Moreover, there is no affirmative requirement that the Revenue Officer ask the taxpayer to stop making contributions prior to levying the retirement account. For the government to encourage retirement contributions but also deem those contributions as flagrant conduct, without notice to the taxpayer, is a Catch-22 for the taxpayer.

For the government to encourage retirement contributions but also deem those contributions as flagrant conduct, without notice to the taxpayer, is a Catch-22 for the taxpayer.

Without clear guidance, an IRS employee's assessment of what constitutes flagrant conduct is subjective and susceptible to personal judgment. This could lead to inconsistent treatment of similarly situated taxpayers, which could erode taxpayers' confidence in a fair tax system and decrease voluntary compliance. Moreover, a taxpayer cannot adequately challenge the decision to levy without a detailed analysis of the basis for levy, a situation which impacts the taxpayer's *right to privacy*, which provides that taxpayers have the right to expect any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary. Finally, without clear guidance, taxpayers do not know what they need to do to comply with tax laws, which diminishes the *right to be informed*.

The final step in deciding whether a levy on retirement assets is appropriate is to determine if the taxpayer depends on the money in the retirement account for necessary living expenses (or will in the near future).[18] To conduct this analysis, employees are instructed to use the standards in IRM 5.15, *Financial Analysis*, to estimate how much can be withdrawn annually from the retirement account while leaving enough for necessary living expenses over the taxpayer's remaining life expectancy.[19]

> **Example:** Assume a taxpayer is 50 years old, expects to retire at age 62, and has a $40,000 tax liability with $54,000 in his TSP account. Further assume the taxpayer will begin receiving $2,000 per month from his federal pension and another $1,200 per month from Social Security at age 62, with a life expectancy of 80. The $54,000 TSP corpus divided by 18 years (the years from the taxpayer's retirement age of 62 to 80) leaves an average of $3,000 per year, or $250 per month. Thus at age 62, the taxpayer expects to have $3,450 of monthly income from all sources ($2,000 pension, $1,200 Social Security, $250 TSP). The IRS estimates the taxpayer will have necessary living expenses of $3,300 per month at retirement. Based on this financial analysis, if the IRS were to levy the entire TSP corpus, the taxpayer's monthly retirement income would be

16 *See* Thrift Savings Plan, *Summary of the Thrift Saving Plan* 2, *available at* https://www.tsp.gov/PDF/formspubs/tspbk08.pdf (last visited June 30, 2015).

17 Automatic enrollment in 401(k) and similar plans was one of the most highly touted changes in the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006).

18 IRM 5.11.6.2(7), *Funds in Pension or Retirement Plans* (Sept. 26, 2014). Employees are instructed not to levy on the retirement account if it is determined the taxpayer depends on the money in the retirement account (or will in the near future).

19 *Id.* When conducting this financial analysis, employees are reminded to consider special circumstances that may be present on a case-by-case review.

> reduced to $3,200, and he could not meet his necessary living expenses of $3,300. An IRS levy should be limited to 60 percent of the TSP corpus, or $32,400, based on the crude estimate that the taxpayer would need to rely on only 40 percent of his TSP corpus to cover necessary living expenses ($100 out of an available $250 per month). However, there are currently no safeguards to prevent the IRS from levying the *entire* TSP corpus, regardless of whether it would leave the taxpayer unable to meet necessary living expenses upon retirement.

The guidelines for completing the financial analysis are woefully insufficient. For example, there is no requirement to document any minimum retirement age for each type of retirement plan the taxpayer is vested in (*e.g.,* Social Security, IRA, 401(k), TSP). A sound analysis would include simulations comparing scenarios where the taxpayer elects to take distributions at the earliest date allowable with scenarios where the taxpayer elects to take distributions at various other dates to determine the optimal age at which the taxpayer should begin taking distributions from various retirement sources. An impartial and equitable investigation into the numerous options available to the taxpayer for future use and distribution of his or her retirement account would demand a level of education and training that is simply not available to ACS employees. This clearly infringes on taxpayers' *right to a fair and just tax system*. Additionally, the financial analysis handbook does not take into account cost of living increases or adjustments for increased expenses due to advanced age, such as rising health care or hospice costs. Finally, there is no provision to ensure that, if the IRS determines a 50-year-old taxpayer does not currently rely on the retirement account (and will not rely on it in the near future), the taxpayer has sufficient opportunity to build the retirement account back up to a level that provides for a stable retirement.

Furthermore, the proposed plan to levy on the corpus of a retirement plan treats taxpayers disparately, depending on whether they participate in a defined benefit plan (where participants receive a known, fixed amount each month) or a defined contribution plan (where retirement distributions are not fixed, but directly related to the amount of available corpus), such as a TSP. According to the EBRI, retirees are four times more likely to have a defined contribution plan (78 percent) as their primary retirement plan than they would a defined benefit plan (21 percent).[20] If a taxpayer is one of the fortunate few to have a defined benefit plan, the IRS will have no corpus to levy upon at the present time; the IRS can only levy the monthly distributions once a taxpayer reaches retirement age, subject to allowances for basic living expenses, which are calculated based on circumstances at that time. In contrast, the IRS will have the present ability to levy on the corpus of defined contribution plans or IRAs. Recall that the financial analysis required is not sophisticated and is based on conjecture, since it requires the IRS to estimate a taxpayer's necessary living expenses years into the future. Constructing an accurate analysis with so many variables requires a level of financial analysis training ACS employees are not provided.

While the existing IRM guidance is deficient, the procedures written for the pilot provide even fewer protections.[21] For instance, the procedures do not mention extenuating circumstances that could mitigate otherwise flagrant behavior. This type of analysis requires thorough training. The National Taxpayer Advocate is concerned ACS employees participating in the TSP pilot will not receive the necessary training to understand the nuances of a taxpayer's situation, and instead, will use a checklist approach. Procedures for the proposed ACS pilot also water down the ability to determine a taxpayer's reliance on retirement

20 Craig Copeland, *Retirement Plan Participation: Survey of Income and Program Participation (SIPP) Data, 2012*, Employee Benefits Retirement Institute Notes, Aug. 2013, *available at* http://www.ebri.org/publications/notes/index.cfm?fa=notesDisp&content_id=5256.

21 IRS, *Draft TSP Levy Pilot ACS Procedures* (June 9, 2015).

funds by instructing ACS employees to simply "document if there is any information that retirement is impending and that the taxpayer will be relying on funds in the TSP for necessary living expenses."[22]

The ACS pilot may also weaken the requirements for documenting the justification for the decision to levy. Under current guidance, the Small Business/Self Employed (SB/SE) Area Director, Field Collection, must approve the notice of levy by signing the form as the Service Representative or by following IRM 5.11.1.3.5 to secure managerial approval.[23] However, any notice of levy that requires the approval of the SB/SE Collection Area Director must include a memorandum explaining the IRS employee's justification for the levy.[24] It is unclear how ACS employees will be able to create the necessary memo for managerial review. In fact, the procedures for the proposed ACS pilot do not reference the required memo but do require a manager's signature.[25] It does not appear the ACS manager will have much information about the taxpayer's financial condition or extenuating circumstances before giving rote approval to a levy that could potentially destroy a taxpayer's retirement income security.

Adoption of the Proposed Pilot Program Would Result in the IRS Treating TSP Participants Disparately from Participants in Other Retirement Plans

As mentioned above, the IRS is in the final stages of approving a pilot program to levy TSP accounts, which ACS employees will administer. More than 115,000 possible TSP account holders (as of the end of 2014) could be impacted if the IRS adopts and expands the pilot program.[26] ACS currently does not levy assets in non-TSP retirement accounts, which means the IRS would be treating one category of retirement plan owners differently from other taxpayers.[27] The IRS has not articulated a reason why it believes levies on federal employees' retirement accounts should receive lesser taxpayer rights protections than levies on non-federal employees' retirement accounts.

Furthermore, the reach of a TSP levy is far more expansive than the levy on a non-TSP retirement account. As discussed above, the levy on a non-TSP retirement account generally only reaches the assets over which the taxpayer has a present withdrawal right. However, recent changes in the TSP regulations allow a TSP levy to reach up to the vested account balance.[28] Thus, the IRS can levy upon the *entire vested balance* of the TSP account, even if the participant has no current right to access the funds.[29] As a result, a levy on a TSP account could be even more damaging to a taxpayer than a levy on a non-TSP retirement plan (*e.g.,* 401(k) plans). This greater risk of harm should cause the IRS to provide more taxpayer rights protections rather than less.

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22 *Id.* ACS employees are instructed to not issue the TSP levy if such documentation is present.

23 IRM 5.11.6.2.1(5), *Thrift Savings Plan* (Dec. 11, 2014). IRM 5.11.1.3.5(2) requires a revenue officer to include certain information in writing when he or she submits a levy for approval. Information includes a summary of information the taxpayer has provided and other collection alternatives considered and rejected.

24 IRM 5.11.1.3.5(6), *Managerial Approval* (Aug. 1, 2014).

25 IRS, *Draft TSP Levy Pilot ACS Procedures* 3 (June 9, 2015).

26 IRS Compliance Data Warehouse, *Accounts Receivable Dollar Inventory for Individuals* (Cycle 201451). Of the 118,507 TSP account holders with delinquent tax accounts, 89,438 had at least one payer Taxpayer Identification Number (TIN) listed on their Form W-2 (box 12) for Tax Year 2013 (61,227 had a single payer TIN). These taxpayers are federal employees, but we have not determined if these employees have TSP accounts. IRS Compliance Data Warehouse, *Accounts Receivable Dollar Inventory for Individuals* and *Information Returns Master File (IRMF) Form W-2 Table.*

27 In an email response to a TAS inquiry, the IRS replied "[w]hile ACS has the authority to issue a levy on retirement accounts, this authority has not been used during the period requested (fiscal years 2014 and 2015)." Email from Senior Advisor to Director, Operations Support, SB/SE (June 23, 2015).

28 5 CFR 1653.35.

29 IRM 5.11.6.2.1(1), *Thrift Savings Plan* (Dec. 11, 2014).

The IRS is administering a legitimate public policy by collecting taxes owed to the federal government, but there must be clear guidance in place to balance the IRS's collection authority against the compelling public policy of encouraging retirement savings and reducing elder poverty, given the harm that can occur with a levied retirement account.

Once the assets in a retirement account are levied upon, they may not be returned in the event of erroneous or wrongful levies.[30] However, as discussed above, the procedures for the TSP levy pilot do not require comparable managerial review of a pre-levy memo prior to approval of the levy.[31] This is just one instance of how a taxpayer in the TSP ACS levy pilot would receive different treatment than a taxpayer working with a Revenue Officer.

ACS employees will not be able to conduct the necessary analysis to make the levy determination because in the ACS unit, cases are assigned to teams, functions, or units rather than individual employees.[32] This is different from the field, where cases are assigned to a specific Revenue Officer. ACS also provides minimal contact with a taxpayer. For instance, ACS uses "predictive dialer" technology, which automatically makes outbound calls to taxpayers or representatives and if contact is made, the call is transferred to a waiting agent.[33] It is unclear to TAS how ACS will ensure necessary contact with the taxpayer. Last, as discussed above, the National Taxpayer Advocate is concerned ACS will not receive sufficient training and have the skills necessary to conduct the detailed financial analysis required to determine whether the taxpayer will be dependent on the funds in retirement.

The IRS is administering a legitimate public policy by collecting taxes owed to the federal government, but there must be clear guidance in place to balance the IRS's collection authority against the compelling public policy of encouraging retirement savings and reducing elder poverty, given the harm that can occur with a levied retirement account. The National Taxpayer Advocate has highlighted several concerns above to show current guidance is not sufficient to protect taxpayer rights. Before the IRS creates a pilot singling out TSP plans, it must develop detailed guidance that provides analysis particular to each taxpayer's facts and circumstances with respect to all proposed levies on retirement accounts. The current IRM procedures and the proposed ACS pilot undermine both taxpayer rights and retirement security policy.

FOCUS FOR FISCAL YEAR 2016

- Continue to work with the IRS to revise IRM guidance to provide a definition of flagrant, require a full financial analysis, and educate taxpayers about this important collection tool;
- Encourage the IRS to track levies on retirement assets and pay particular attention to levies imposed on TSP accounts;
- Continue to push for abandonment of the TSP levy pilot. If the IRS proceeds with the TSP levy pilot, the National Taxpayer Advocate will accept all ACS TSP levy cases as a criteria nine public policy case if they do not otherwise fit TAS case acceptance criteria; and
- Issue guidance to educate TAS employees on how to advocate for taxpayers facing retirement levies, including the issuance of Taxpayer Assistance Orders when necessary.

30 5 CFR 1653.36(g).

31 As mentioned above, IRM 5.11.1.3.5(6) provides that any notice of levy that requires the approval of the SB/SE Collection Area Director must include a memo explaining the information in IRM 5.11.1.3.5(2), which includes the IRS employee's justification for the levy.

32 IRM 5.19.5.3, *Research on ACS* (Jan. 6, 2015).

33 IRM 5.19.5.4.1(1), *Predictive Dialer Procedures* (Feb. 20, 2015). An automated message is left if an answering machine answers, and if there is no answer, the system "updates the account and reschedules the case to the predictive dialer queue for another attempt."

Area of Focus #6

As the IRS Migrates to More Self-Service Tools and Online Services, Low Income and Other Vulnerable Taxpayer Populations May Face Greater Compliance Challenges

TAXPAYER RIGHTS IMPACTED[1]

- *The right to quality service*
- *The right to be informed*
- *The right to pay no more than the correct amount of tax*

The IRS has identified online account access as one of the key capabilities to achieve its compliance vision.[2] The National Taxpayer Advocate has been advocating for years that the IRS develop an online account system for taxpayers.[3] However, to provide taxpayer service in an effective and efficient manner, the IRS needs to understand the service needs of its entire taxpayer base. While in the current budget environment it may be tempting to migrate taxpayer service toward superficially lower-cost self-assistance options, any efforts to significantly reduce personal service options (both face-to-face and telephone) may ultimately impair voluntary compliance and undermine the taxpayers' *right to quality service, right to be informed*, and *right to pay no more than the correct amount of tax*.[4]

Research has shown individuals and businesses prefer multi-channel service delivery for government services. For example, a survey of German taxpayers showed that even those who ordinarily demand online services prefer to interact in person when they need more individualized services.[5] While the delivery of online services may appear cost-effective at first glance, focusing solely on one method of service delivery is short-sighted, because it does not properly address the actual service needs of the entire taxpayer population. Ignoring the service needs of a significant segment of the population will likely impact voluntary compliance and have far more costly downstream consequences for the IRS.

The IRS Cannot Drastically Reduce Both Face-to-Face and Telephone Services As It Focuses on Online Services Because Taxpayers Will Still Continue to Require Personal Services

A recent Forrester Research survey found the public still uses non-digital channels more than digital ones. In fact, survey recipients indicated they do not want more digital interactions with the federal government because they do not trust it with personal data. Based on the survey findings, Forrester concluded federal agencies must act more strategically. They can win trust by perfecting existing digital channels before expanding and explaining the benefits of new channels as they roll out.[6] However, the recent security breaches pertaining to the IRS's "Get Transcript" online application and the Office of Personnel

1 *See* IRS, Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

2 Draft IRS Compliance Concept of Operations (CONOPS) 9-12 (June 25, 2014), on file with TAS.

3 *See, e.g.,* National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 67-96 (Research Study: *Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments*).

4 For a detailed discussion of the Taxpayer Bill of Rights, *see* http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights.

5 Julia Klier, Regina Pfleger, and Lea Thiel, *Just Digital or Multi-Channel? The Preferences of E-Government Service Adoption by Citizens and Business Users*, Association for Information Systems (AIS) Electronic Library, Wirtschaftsinformatik Proceedings 2015 at 190 (2015), *available at* http://aisel.aisnet.org/cgi/viewcontent.cgi?article=1012&context=wi2015.

6 Rick Parrish, Forrester Research, *Washington Must Work Harder to Spur the Public's Interest in Digital Government: Federal Agencies Are Spending Millions on Digital CX That Customers May Not Want* (Apr. 28, 2015).

Management (OPM)'s breach of federal employee records will only serve to undermine taxpayers' trust in communicating with the IRS and government online.[7]

Furthermore, additional research has shown individuals and businesses prefer multi-channel service delivery for government services.[8] Individuals prefer online services for information services, because they can gather and receive information or data without a need for further discussion. However, they prefer to interact in-person when they need more individualized services. This multi-channel preference even exists for younger and well-educated individuals who typically have greater preferences for online services. As for businesses, the medium to large companies prefer online services more than small businesses.[9]

The IRS can partially address the demand for more individualized service by offering personalized digital services, such as live chat. Live chat has been found to successfully meet the needs of those who need immediate answers to simple questions. However, a recent survey found demand for live chat falls short of demand for telephone services when addressing complex financial questions.[10]

The IRS Must Balance the Added Convenience of Expanding Online Services Against the Inherent Security Risks

The IRS is understandably eager to expand its online service offerings to meet the public's demand for more convenient methods of interacting with its tax agency. In today's digital age, taxpayers are accustomed to accessing their account information with retailers and financial service providers via the internet or mobile phone applications. With the IRS interacting with well over 100 million individual taxpayers each year,[11] taxpayers would benefit if the IRS could allow taxpayers to:

- Notify the IRS of a change of address;
- Request copies of current and prior year Forms W-2 and Forms 1099;
- Request copies of prior year returns processed by the IRS;
- View the status of recently filed returns;
- View the current balance due, broken out by taxes, penalties, and interest;
- Make payments on a balance due;
- Make estimated payments; and
- Upload documents in response to IRS requests.

The IRS has made some strides in improving the taxpayers' online experience. For example, the IRS2Go application allows mobile phone users to check their refund status by inputting their Social Security number (SSN), filing status, and refund amount. The IRS's "Get Transcript" web application (now

7 IRS, *IRS Statement on the "Get Transcript" Application* (June 2, 2015); OPM, Announcements, *Information About the Recent Cybersecurity Incidents* (June 23, 2015).

8 As noted above, this was a survey of German taxpayers published in 2015. *See* Julia Klier, Regina Pfleger, and Lea Thiel, *Just Digital or Multi-Channel? The Preferences of E-Government Service Adoption by Citizens and Business Users*, AIS Electronic Library, Wirtschaftsinformatik Proceedings 2015 at 190 (2015), *available at* http://aisel.aisnet.org/cgi/viewcontent.cgi?article=1012&context=wi2015.

9 Julia Klier, Regina Pfleger, and Lea Thiel, *Just Digital or Multi-Channel? The Preferences of E-Government Service Adoption by Citizens and Business Users*, AIS Electronic Library, Wirtschaftsinformatik Proceedings 2015 at 190 (2015).

10 A survey conducted by Software Advice found 74 percent of respondents prefer telephone for complex financial questions. Craig Borowski, *The Impact of Demographics on Live Chat Customer Service*, Software Advice (Jan. 6, 2015).

11 *See* IRS, IR-2015-03, *IRS Starts 2015 Tax Season; Free File Opens Tomorrow, E-File Tuesday; Expanded Online Services Enable People to Learn About New Health Care Provisions* (Jan. 15, 2015), *available at* http://www.irs.gov/uac/Newsroom/IRS-Starts-2015-Tax-Season;-Free-File-Opens-Tomorrow,-EFile-Tuesday.

temporarily suspended until further notice) allowed taxpayers the ability to request transcripts of their prior filed returns, after answering some questions to validate their identity.[12]

However, we must be realistic in assessing the risk involved in expanding online services, given the sensitive nature of the information entrusted with the IRS. Security breaches exposing customer data are a regular occurrence; the recent unauthorized access by cybercriminals of the IRS's "Get Transcript" application and resulting theft of the confidential tax return information of approximately 104,000 taxpayers drives home this point.[13] OPM's recent announcement that its database has been hacked, making vulnerable the personal information of an estimated 18 million current or former federal employees, has further undermined public trust.[14]

In the wake of these recent cybersecurity breaches, the IRS should take time to investigate how much risk the public is willing to bear with respect to their tax information. It is one thing for hackers to access, for example, credit card numbers from a retailer, and it is quite another for them to have unfettered access to a taxpayer's SSN, full name, address, wage information, filing status, and dependents – in other words, everything an identity thief would need to file a falsified return posing as the taxpayer. Taxpayers should understand the IRS has a greater responsibility with respect to cybersecurity than, for example, an airline or even a credit card company.[15] Therefore, the IRS must conduct due diligence to balance security concerns with any purported online benefits, simply because the stakes are so high. It also should not impose a digital strategy on taxpayers that erodes taxpayers' trust for the IRS's own convenience.

However, to provide taxpayer service in an effective and efficient manner, the IRS needs to understand the service needs of its entire taxpayer base.

Comprehensive Studies Demonstrate Low Income and Other Vulnerable Taxpayer Populations Need Person-to-Person Assistance to Comply with Their Federal Tax Obligations

In 2014, TAS, which oversees and administers the Low Income Taxpayer Clinic (LITC) grant program for the IRS,[16] commissioned a survey by Russell Research to better understand the needs and circumstances of taxpayers eligible to use the clinics. The survey found 15 percent of LITC-eligible taxpayers reported receiving notices from the IRS. In response, 55 percent called the IRS, 29 percent replied by letter,

12 IRS, *IRS Statement on the "Get Transcript" Application* (June 2, 2015).

13 *See* http://www.irs.gov/uac/Newsroom/IRS-Statement-on-the-Get-Transcript-Application. *See also* Lisa Rein and Jonnelle Marte, *Hackers Stole Personal Information from 104,000 Taxpayers, IRS Says*, Wash. Post, May 26, 2015.

14 Devlin Barrett and Damian Paletta, *Officials Masked Severity of Hack*, Wall St. J., June 24, 2015, *available at* http://www.wsj.com/articles/hack-defined-as-two-distinct-breaches-1435158334; Ellen Nakashima, *Chinese Breach Data of 4 Million Federal Workers*, Wash. Post, June 4, 2015, *available at* http://www.washingtonpost.com/world/national-security/chinese-hackers-breach-federal-governments-personnel-office/2015/06/04/889c0e52-0af7-11e5-95fd-d580f1c5d44e_story.html.

15 *See* Jonnelle Marte, *A Year of Credit Monitoring Won't Put Risk to Rest*, Wash. Post, May 30, 2015.

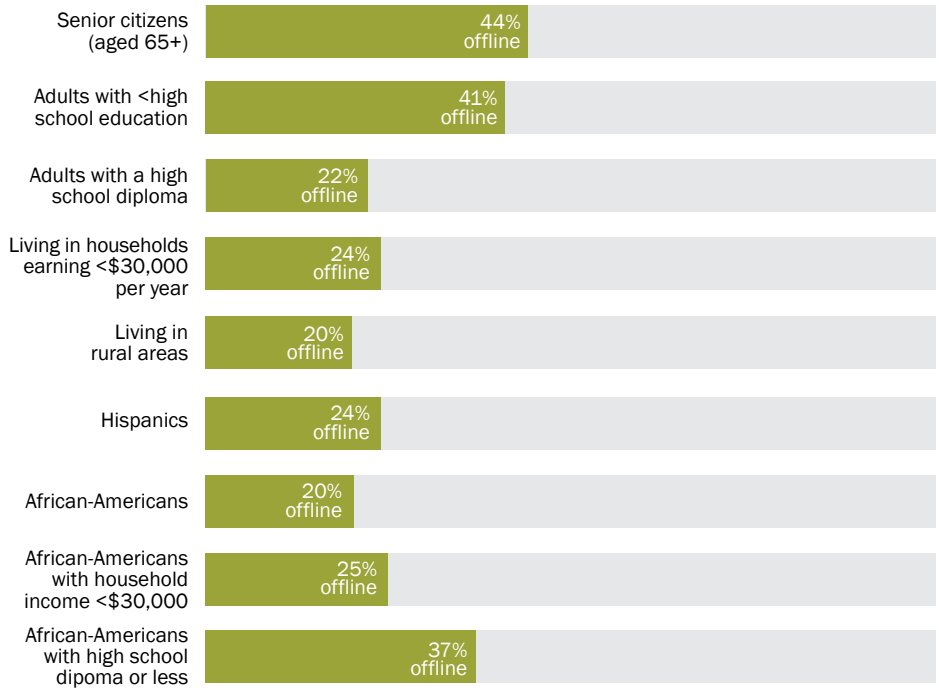
16 The IRS awards matching grants to organizations that provide representation to low income individuals who need help resolving tax problems with the IRS. *See* IRC § 7526. At least 90 percent of the taxpayers represented by an LITC must have incomes that do not exceed 250 percent of the federal poverty level. *See* IRC § 7526(b)(1)(B)(i). The U.S. Department of Health and Human Services publishes yearly poverty guidelines in the Federal Register, which the IRS uses to establish the 250 percent threshold for LITC representation. For the 2015 poverty guidelines, see 80 F.R. 3236-3237 (Jan. 22, 2015).

24 percent contacted their preparers, and nearly 20 percent did nothing (the survey allowed more than one response).[17]

Further, Pew Research Center conducted several surveys to determine the percentage of adult individuals who are offline (not using the internet or email). The following figure shows the categories of individuals found by the surveys to have the highest *offline* rates in 2013.[18]

FIGURE 3.6.1

2013 Pew Research Center Survey Results of Adults Who Are Offline



17 This Random-Digit Dialed (RDD) telephone survey utilized both cell phone numbers and landline numbers to reach participants. This approach was used to make sure all groups of the LITC-eligible taxpayers were represented in the survey. The survey included more than 1,100 individuals and gathered information on eligible taxpayers' awareness and use of LITC services, the types of issues for which they would consider using clinic services, and other items including demographic information. *See* National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 1-26 (Research Study: *Low Income Taxpayer Clinic Program: A Look at Those Eligible to Seek Help from the Clinics*).

18 Pew Research Center's Internet & American Life Project, *Who's Not Online and Why?* (Sept. 2013) (phone survey conducted in 2013); *see also* Pew Research Center, *Older Adults and Technology Use: Adoption Is Increasing, But Many Seniors Remain Isolated from Digital Life* (Apr. 2014) (phone survey conducted in 2013); Pew Research Center's Internet Project July 18 to September 30 Tracking Survey, *African Americans and Technology Use: A Demographic Portrait* (Jan. 2014).

Finally, a 2014 online survey by Forrester Research explored the use of certain devices to conduct various transactions online. While this study was conducted online and thus excluded responses from offline individuals or those with limited online capabilities, it produced some noteworthy findings:[19]

- On average, only 19 percent of adults search for government services and policies with a personal computer or laptop. This rate drops to 11 percent when using personal tablets and to four percent when using a mobile phone;
- With very few exceptions, those in lower income brackets used all devices to conduct online financial transactions less frequently than the national average; and
- On average, 21 percent of adults use their mobile phones to check financial statements. Only 13 percent use their mobile phones to pay bills or transfer money between accounts.

The LITC-eligible taxpayer survey and Pew and Forrester findings support the need for the IRS to design a taxpayer service strategy based on the actual requirements of the taxpayer population rather than focusing on short-term resource savings. The survey findings show a significant portion of taxpayers may not use online or self-assistance services. While online self-help tools may address the needs of many taxpayers in a lower-cost manner, the IRS is harming offline taxpayers when it significantly decreases the face-to-face and person-to-person telephone services.

Questions Remain Concerning the Legal Implications of Self-Correction Authority

According to the IRS draft Compliance CONOPS, online account access would enable taxpayers, preparers, and authorized third parties to securely interact with the IRS to obtain return information, submit payments, and receive status updates. It would also enable them to perform "self-correction" functions such as verifying return changes made by the IRS, updating or amending returns, and providing additional documents.[20] We remain concerned about the scope of this self-correction authority. For example, it is unclear whether the self-corrections could address adjustments made pursuant to the agency's math error authority.[21] Even more disturbing is the Administration's proposed legislation to give the IRS more flexibility to address "correctable errors" (by regulation); this new category of "correctable errors" would give the IRS the authority to make adjustments not covered by existing math error authority.[22] It is unclear if the IRS will give preparers and third parties the authority to address these correctable errors.[23] The National Taxpayer Advocate will seek a Counsel opinion to determine the boundaries and corresponding legal implications of such authority.

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19 Because this survey was conducted online, the reported usage rates may be higher than for the general population. Forrester Research, *North American Consumer Technographics Online Benchmark Survey,* Part 2 (2014), on file with TAS.

20 Draft IRS Compliance CONOPS 3, 19-22 (June 2014), on file with TAS.

21 The IRS is currently authorized to correct mathematical or clerical errors – arithmetic mistakes and the like – and assess any tax increase using summary assessment procedures that do not provide the taxpayer an opportunity to challenge the proposed deficiency in the United States Tax Court before the tax is assessed. *See* IRC §§ 6213(b)(1), (g)(2). Consequently, the use of math error bypasses critical procedural taxpayer rights protections.

22 The proposed correctable error authority would enable the IRS to assess tax without using the deficiency procedures in the following situations: (1) The information provided by the taxpayer does not match the information in government databases; (2) The taxpayer has exceeded the lifetime limit for claiming a deduction or credit; or (3) The taxpayer has failed to include with his or her return documentation required by statute. Department of the Treasury, General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals 245-46 (Feb. 2015), *available at* http://www.treasury.gov/resource-center/tax-policy/Pages/general_explanation.aspx.

23 For more detail on the National Taxpayer Advocate's position on the proposed correctable error legislation, *see The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 34-5 (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate).

We are also concerned about which preparers and third parties will have self-correction authority. As discussed below, there seem to be no current restrictions on access by type of tax practitioner. Therefore, it appears the IRS has no plans to limit the online account access or associated self-correction authority of unregulated preparers who are not subject to IRS oversight pursuant to Circular 230.

Only Circular 230 Preparers Should Have Access to an Online Taxpayer Account System

In the draft CONOPS, the IRS has proposed to provide preparers with access to the taxpayer's online account.[24] Accordingly, the National Taxpayer Advocate has the following concerns related to a preparer's role when accessing a taxpayer's online account:

- How will the taxpayer designate a preparer authorized to gain online account access?;
- How will the taxpayer maintain control over the extent of authority granted to the preparer?;
- Will the IRS safeguard confidential taxpayer return information by implementing strict security requirements on preparer access?;
- What is the scope of the preparer's authority to correct errors through online account access?; and
- How will the IRS ensure that the preparer has not exceeded the authority granted by the taxpayer?

The National Taxpayer Advocate is concerned the IRS will expose taxpayers to potential harm due to incompetence or misconduct if it does not restrict access to those preparers regulated by the IRS under Circular 230.[25] Because we know there are preparers who are committing refund fraud,[26] and we know certain payroll service providers who have access to employer accounts also embezzle funds and change account information to hide this, there is a risk the IRS will create significant compliance problems unless it institutes safeguards.[27]

In addition, the LITC-eligible taxpayer survey findings, discussed above, raise fundamental questions about the appropriateness of relying on preparers (as distinguished from representatives) as intermediaries for the low income population, especially the Spanish speakers in this category, and particularly with respect to the unregulated return preparer population. Pursuant to the survey, a majority of all LITC-eligible taxpayers reported using return preparers, as did approximately 75 percent of Spanish-speaking eligible taxpayers. However, a significant percentage of these preparers did not satisfy the very basic

24 Draft IRS Compliance CONOPS 3, 19-22 (June 2014), on file with TAS.

25 31 C.F.R. Part 10.

26 *See The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 18-20 (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate). *See also* National Taxpayer Advocate 2014 Annual Report to Congress 543-44; National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 71-8; National Taxpayer Advocate 2013 Annual Report to Congress 61-74 (Most Serious Problem: *Regulation of Return Preparers: Taxpayers and Tax Administration Remain Vulnerable to Incompetent and Unscrupulous Return Preparers While the IRS Is Enjoined from Continuing Its Efforts to Effectively Regulate Return Preparers*).

27 *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 20-3 (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate); National Taxpayer Advocate 2014 Annual Report to Congress 218-24 (Most Serious Problem: *Offers in Compromise: The IRS Needs to Do More to Comply with the Law Regarding Victims of Payroll Service Provider Failures*); National Taxpayer Advocate 2012 Annual Report to Congress 426-44 (Most Serious Problem: *Early Intervention, Offers in Compromise, and Proactive Outreach Can Help Victims of Failed Payroll Service Providers and Increase Employment Tax Compliance*); National Taxpayer Advocate 2012 Annual Report to Congress 553-59 (Legislative Recommendation: *Protect Taxpayers and the Public Fisc from Third-Party Misappropriation of Payroll Taxes*); National Taxpayer Advocate 2007 Annual Report to Congress 337-54 (Most Serious Problem: *Third Party Payers*); National Taxpayer Advocate 2007 Annual Report to Congress 538-44 (Legislative Recommendation: *Taxpayer Protection from Third-Party Payer Failures*); National Taxpayer Advocate 2004 Annual Report to Congress 394-99 (Legislative Recommendation: *Protection from Payroll Service Provider Misappropriation*).

statutory requirements under IRC § 6695(a) and (b).[28] Participants reported, for example, the preparer either did not sign the return or did not give the taxpayer a copy more than 15 percent of the time. This percentage rose to more than 30 percent for Spanish-speaking eligible taxpayers.[29] Accordingly, TAS will advocate that only return preparers within the scope of Circular 230 should have access to a taxpayer's online account.[30]

While online self-help tools may address the needs of many taxpayers in a lower-cost manner, the IRS is harming offline taxpayers when it significantly decreases the face-to-face and person-to-person telephone services.

FOCUS FOR FISCAL YEAR 2016

- Continue to advocate for low income taxpayers and other vulnerable populations who have significant offline rates by working with the IRS to ensure it maintains meaningful and high-quality service options for these populations;
- Work with the IRS to ensure it incorporates strict security safeguards on preparer access to taxpayer online accounts;
- Work with the IRS to restrict preparer access to taxpayers' online accounts to those preparers who are regulated by Circular 230; and
- Seek a Counsel opinion to determine the boundaries and corresponding legal implications of the self-correction authority provided to preparers.

28 IRC § 6695(a) imposes a penalty on a tax return preparer for failure to provide a copy of the return to the taxpayer, unless the failure is due to reasonable cause and not to willful neglect. IRC § 6695(b) imposes a penalty on a tax return preparer for failure to sign a return when required by regulation to do so, unless the failure is due to reasonable cause and not to willful neglect.

29 For more information on the LITC-eligible taxpayer study, *see* National Taxpayer Advocate 2014 Annual Report to Congress vol. 2, 1-26 (Research Study: *Low Income Taxpayer Clinic Program: A Look at Those Eligible to Seek Help from the Clinics*).

30 Rev. Proc. 2014-42 provides that preparers who have obtained the voluntary record of completion as part of the Annual Filing Season Program are allowed to represent taxpayers before the IRS during an examination of a tax return or claim for refund they prepared. Unenrolled preparers without the voluntary record of completion will no longer be allowed to engage in limited practice on returns they prepare after December 31, 2015. Further, to receive the record of completion, the preparer must consent to be subject to the duties and restrictions relating to practice before the IRS in subpart B and section 10.51 of Circular 230 for the entire period covered by the record of completion.

Area of Focus #7 Additional Requirements for Appeals Access and Compressed Case Timelines Impair the Fundamental Rights of Taxpayers

TAXPAYER RIGHTS IMPACTED[1]

- *The right to appeal an IRS decision in an independent forum*
- *The right to a fair and just tax system*
- *The right to pay no more than the correct amount of tax*

The IRS Office of Appeals recently implemented the Appeals Judicial Approach and Culture (AJAC) project in hopes of enhancing "internal and external customer perceptions of a fair, impartial, and independent Office of Appeals."[2] AJAC's stated intent is to reinforce Appeals' mission of administrative dispute resolution by clarifying and separating the negotiation and decision-making role of Appeals from the factual investigations and case development allocated to the Examination and Collection functions.[3] For example, under AJAC, whenever taxpayers raise new issues or present additional evidence requiring further investigation, Appeals generally will send cases back to the Compliance function (Compliance) for development and evaluation.[4]

Unfortunately, Compliance has used AJAC to adopt a more stringent policy with respect to Information Document Requests (IDRs) and to close cases and bypass Appeals unless a taxpayer provides all requested documentation or certifies no additional information is available.[5] For example, Letter 5262 was revised, over TAS's objections, to read, "If you don't provide the information requested on the enclosed Form 4564 or contact me to confirm you have no additional information to provide by the response due date listed above, we will close your examination based on the information we have now. If you don't agree, you won't be able to appeal within the IRS before we issue a notice of deficiency."[6]

While the IRS agreed to discontinue the use of this letter after the National Taxpayer Advocate brought it to the attention of senior leadership, the creation of any additional obstacles or absolute prohibitions

1 *See* IRS, Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

2 IRS, Internal Guidance Memo (IGM) AP-08-0714-0005, *Implementation of the Appeals Judicial Approach and Culture (AJAC) Project, Collection – Phase 2* (July 10, 2014).

3 IRS, *Reinforcing Appeals' Philosophy: Appeals Judicial Approach and Culture (AJAC) Talking Points,* July 2, 2014, *available at* http://appeals.web.irs.gov/about/ajac.htm. Appeals states that AJAC is intended to emphasize its "quasi-judicial" nature. According to Black's Law Dictionary, "quasi-judicial" is a term not easily definable, but generally connoting, "of, relating to, or involving an executive or administrative official's adjudicative acts." Black's Law Dictionary (9th ed. 2009). Appeals' use of the term "quasi-judicial" is apparently intended to distinguish factual investigations allocated to the Examination or Collection functions from dispute resolution activities on which Appeals would like to focus.

4 IRM 8.6.1.6.2, *General Guidelines* (Nov. 14, 2013). Compliance will be used hereafter as a collective term to refer to the Examination and Collection functions within the Small Business/Self-Employed Division (SB/SE) and the Wage & Investment Division (W&I). To the extent a portion of the discussion is limited to a particular IRS operating division, that division will be specifically referenced.

5 TAS is primarily aware of this practice arising within the SB/SE Examination function. TAS Elevated Issue Conference with SB/SE (July 30, 2014).

6 Letter 5262, *Examination Report Transmittal - Additional Information Due (Straight Deficiency)* (Aug. 2014); IRM 4.10.8.11, *Eligibility for Appeals Conference and Preliminary Letters (SB/SE Field and Office Examiners only)* (Sept. 12, 2014). Note: The referenced Statutory Notice of Deficiency (SNOD) would allow the taxpayer 90 days to appeal the IRS determination to the U.S. Tax Court.

to an appeal within the IRS under the guise of AJAC has many troubling aspects.[7] As a threshold matter, Compliance should not stand as the gatekeeper to Appeals; Appeals, not Compliance, should determine its own jurisdiction. Compliance cannot be allowed to sit as both judge and jury in deciding whether IRS information requests are reasonable and whether some lesser degree of information or alternative form of substantiation might be sufficient to allow taxpayers to establish their cases, either in whole or in part. Moreover, a telephone call from a taxpayer confirming no additional information is available leaves the IRS identically situated to where it would be if the same taxpayer failed to respond to the IDR at all.[8] Yet the outcomes are fundamentally different: in the first scenario, the taxpayer will be able to exercise his or her right to go to Appeals, while in the second, the same taxpayer will be barred from exercising that right.

When TAS objected to this policy, Compliance initially replied it expected mistakes would be made and the approach was subject to a learning curve, but the policy was consistent with AJAC.[9] Fundamental appeal rights should not be so easily, and possibly inadvertently, forfeited by taxpayers and arbitrarily overridden by the IRS.[10]

Access to Appeals is crucial for several reasons. For example, Appeals considers evidence Compliance generally does not take into account. Among other things, Appeals will accept affidavits and weigh oral testimony. Further, Appeals, unlike Compliance, has the ability to settle cases based on the hazards of litigation.[11] Appeals will also seek to negotiate a case resolution with the taxpayer based on the existing factual record even if those facts are incomplete or not thoroughly documented. This policy, clarified by Appeals as part of AJAC, is contradicted and undercut by the approach Compliance now follows. For many taxpayers, the Compliance policy could prevent their cases from ever even reaching Appeals before the IRS automatically issues a SNOD.[12]

Another important settlement tool possessed by Appeals but not available in Compliance is application of the *Cohan* rule.[13] *Cohan*, which originally developed via judicial case law, allows the fact finder to estimate deductible expenses where the fact of those expenses, although not their amount, can be substantiated.[14] The *Cohan* rule, along with other settlement vehicles employed by Appeals, is an integral aspect

7 This agreement would need to be implemented by a revision to IRM 4.10.8.11, *Eligibility for Appeals Conference and Preliminary Letters (SB/SE Field and Office Examiners only)* (Sept. 12, 2014). In the meantime, SB/SE issued a June 9, 2015 memorandum temporarily suspending the use of Letter 5262, *Examination Report Transmittal - Additional Information Due (Straight Deficiency);* Letter 5261, *Examination Report Transmittal - Additional Information Due (Claims for Refund);* Letter 5441, *Response to Letter 5262 - Straight Deficiency;* and Office of Examination's use of Letter 950, *30 Day Letter - Straight Deficiency.* The memorandum addresses only those cases still open in SB/SE and does not contemplate any relief for taxpayers whose cases were closed using these suspended letters. TAS urges SB/SE to make this suspension permanent, to revise the policies that led to the issuance of these letters, and to work with TAS, Appeals, and others within the IRS to develop relief measures for taxpayers who have been denied access to Appeals through the policies embodied in these letters.

8 In many situations, this failure to respond could be attributable to circumstances beyond taxpayers' control, such as mail failures, health issues, or extended travel. Further, the required affirmation that the requested information does not exist ignores the possibility taxpayers may possess the information but may have objections to the scope, relevance, or legality of some of the information sought by the IDR.

9 TAS Elevated Issue Conference with SB/SE (July 30, 2014).

10 Such cases generally can be returned to Appeals by the U.S. Tax Court after a petition is filed in response to the SNOD. Nevertheless, this indirect approach ignores the unnecessary administrative burdens and overall stress to which taxpayers are subjected and the additional costs incurred by both taxpayers and the government.

11 IRM 8.6.2.5.4.2, *Resolved Based on Hazards of Litigation* (Oct. 18, 2007).

12 IRM 8.6.1.6.2 (2), *General Guidelines* (Nov. 14, 2013).

13 *See Cohan v. Comm'r,* 39 F.2d 540 (2d Cir. 1930).

14 The *Cohan* rule cannot be used in situations where IRC § 274(d) applies. Section 274(d) provides that unless a taxpayer complies with strict substantiation rules, no deductions are allowable for certain travel, entertainment, and other specified expenses.

of the voluntary compliance system and cannot be abridged without impairing the fundamental equity and effectiveness of that system.

Compliance's approach, which is wrong in principle, is made worse in practice by the compressed timelines it needlessly imposes on taxpayers before issuing the SNOD. In the typical SB/SE field examination, taxpayers receive an initial letter that includes an information request. In the event taxpayers do not respond within ten days, they are sent a second letter in the 5262 series demanding all requested information and threatening the loss of appeal rights if they do not provide the information or inform the IRS it is unavailable. If the 15-day period also elapses, or if the IRS is unsatisfied with the taxpayer's response, the SNOD is issued and Appeals is bypassed. As noted above, this practice was recently suspended, but it should be permanently revised so as to avoid confusion in the short run and resumption in the long run.

TAS has received comments from some tax practitioners who believed they were working with Compliance to provide information and resolve a case, only to be surprised by the unexpected arrival of a SNOD, effectively ending all current administrative dialogue with the IRS.[15] In a recent op-ed piece from the *New York Times*, a tax practitioner observed that if the compressed time frames are not adhered to, "the consequences may be dire" and that "I could return home from a vacation or a stay in the hospital to find not only that I am being audited, but that my audit has already been closed and sent to the notice of deficiency unit."[16] Core taxpayer rights, such as *the right to appeal an IRS decision in an independent forum, the right to a fair and just tax system*, and *the right to pay no more than the correct amount of tax,* which recently have been acknowledged and adopted by the IRS, mean little if the IRS implements policies impairing those rights.[17]

In some situations AJAC is being used as an instrument for limiting taxpayers' access to Appeals or coercing them into taking steps not in their best interests.

Further, according to some practitioners, Compliance has been using AJAC as a tool for "bullying" taxpayers in other circumstances.[18] TAS has received some reports that Compliance, under the vague but broad cloak of AJAC, has aggressively been demanding taxpayers sign waivers of the statute of limitations on assessment, extending it for one to two years. These demands have been made even in cases where taxpayers have only sought a slight extension of time from the IRS to provide requested documents and where sufficient time remained under the existing statute of limitations for the case to be transferred to Appeals.[19] The use of procedural leverage by the IRS to intimidate taxpayers, to threaten premature case closures, and to jeopardize taxpayers' access to Appeals is inconsistent with AJAC's avowed purpose.

AJAC has been promoted as having the goal of enhancing "external customer perceptions of a fair, impartial, and independent Office of Appeals."[20] However, in some situations AJAC is being used as an instrument for limiting taxpayers' access to Appeals or coercing them into taking steps not in their best interests.

15 TAS conference call with Low Income Tax Clinics practitioners (Apr. 22, 2015). The information gleaned from this and other similar TAS conference calls is anecdotal and cannot be taken as systemic proof or statistical evidence. Nevertheless, it is consistent with broader impressions formed by TAS from widespread interactions with taxpayers and their representatives.

16 David DuVal, *Beware the I.R.S.'s Speeded-Up Audit,* N.Y. Times, Apr. 29, 2015, *available at* http://www.nytimes.com/2015/04/30/opinion/beware-the-irss-speeded-up-audit.html?emc=eta1&_r=0.

17 *See* IRS, Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

18 TAS conference call with practitioners associated with the American Bar Association Section of Taxation (Mar. 17, 2015).

19 *Id.* Generally, 365 days must be remaining on the statute of limitations for Appeals to accept a proposed deficiency case. IRM 8.21.3.1.1, *New Receipts and Transfers* (Aug. 28, 2014).

20 IRS, IGM AP-08-0714-0004, *Implementation of the Appeals Judicial Approach and Culture (AJAC) Project, Examination and General Matters - Phase 2* (July 2, 2014).

FOCUS FOR FISCAL YEAR 2016

- Provide guidance to TAS employees on how to advocate for taxpayers whenever AJAC is used to impair, rather than perpetuate, taxpayer rights;
- Issue Taxpayer Assistance Orders, where appropriate, to protect taxpayers' right to appeal;
- Educate internal and external stakeholders regarding the impact on taxpayers of AJAC implementation by Compliance and Appeals; and
- Advocate with the IRS to revise AJAC-related policies whenever those policies impose burdens on taxpayers and limit their rights.

Area of Focus #8 The IRS Approves Many Applications for Tax-Exempt Status Almost Automatically, Often Based on Insufficient Information

TAXPAYER RIGHTS IMPACTED[1]

- *The right to be informed*
- *The right to finality*

Taxpayers seeking exempt status as IRC § 501(c)(3) organizations have applied for recognition using IRS Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code,* for over 30 years.[2] Revisions to the form have made it more comprehensive (it is now 12 pages long, not counting required schedules or attachments, compared to nine pages in 1998).[3] Because "[f]or many if not most small [exempt organizations], one or two pages of questions that elicit basic information would suffice," the National Taxpayer Advocate recommended the Tax Exempt and Government Entities division (TE/GE) design a Form 1023-EZ smaller organizations could use.[4] The IRS has now adopted a shorter form, but the form has gone too far in the opposite direction by "eliciting" only a series of check-marks in boxes. As discussed in last year's Objectives Report, in July 2014, the IRS adopted Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, over the objections of the National Taxpayer Advocate and various stakeholder groups.[5] Because Form 1023-EZ does not require applicants to provide supporting documentation or substantiation, but only to attest they qualify for exempt status, the IRS has in effect relinquished its power to educate and regulate taxpayers before it confers exempt status.

TE/GE recognizes its new approach carries compliance risks, which it intends to address by auditing organizations it already recognized as exempt.[6] While audits are certainly a legitimate method of ascertaining whether an organization is or continues to be exempt, the National Taxpayer Advocate believes helping taxpayers meet the requirements for exempt status from inception, prior to granting recognition of exempt status, is the most effective approach for increasing cost effectiveness, reducing taxpayer burden, and enhancing consumer protection.

1 *See* IRS, Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

2 *See, e.g.,* Office of Information and Regulatory Affairs, Office of Management and Budget, Information Collection Request Ref. No. 198104-1545-056, approving a 1981 revision of the form.

3 *See, e.g.,* Jack Siegel, *Re-Engineering Form 1023 to Identify Problem Organizations Before Exemption Is Granted: Watch out for the "Penalties of Perjury" Statement* (Nov. 3, 2004), commending the IRS for "attempting to identify those organizations that are likely to violate the rules governing Section 501(c)(3) organizations before granting tax-exempt status rather than relying on an audit process that is currently underfunded and spotty."

4 National Taxpayer Advocate 2011 Annual Report to Congress 448 (Status Update: *The IRS Makes Reinstatement of an Organization's Exempt Status Following Revocation Unnecessarily Burdensome*). Noting that Form 1023 requires the applicant to "[l]ist the names, titles, and mailing addresses of each of your five highest compensated employees who receive or will receive compensation of more than $50,000 per year," for example, the National Taxpayer Advocate suggested a Form 1023-EZ that simply asks if any employees receive more than $50,000 per year in compensation from the organization. If so, the EO could be required to file the full Form 1023. *Id.,* n. 44.

5 *See* National Taxpayer Advocate Fiscal Year (FY) 2015 Objectives Report to Congress 54-57.

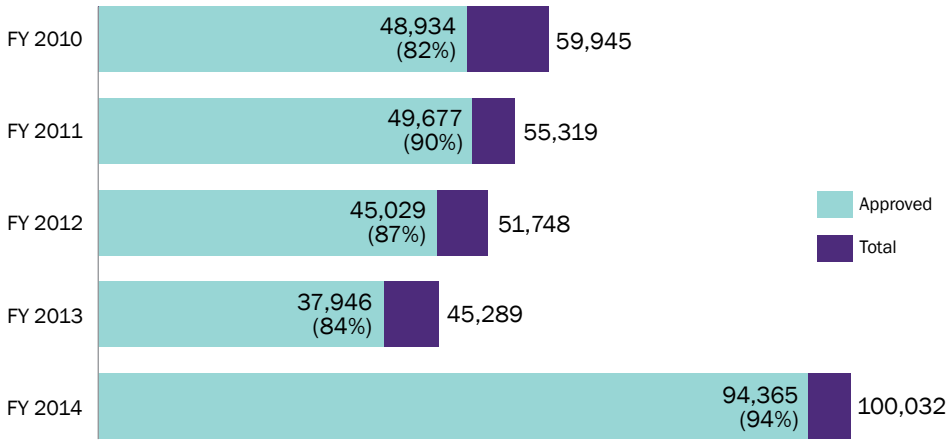
6 *See, e.g.,* TE/GE Business Performance Review (BPR) First Qtr. 2015 Appendix B, TE/GE Risk Register (Feb. 2015) *available at* https://organization.ds.irsnet.gov/sites/tege-cl/Strategic%20Planning/BPRs/FY2015/TEGE%20BPR%201st%20Quarter%20FY%202015.pdf, noting that "[p]erceived inadequate oversight of the tax-exempt sector as we undertake strategic shifts in how we conduct the up-front review of applications for tax-exempt status…" will be mitigated by "[e]xpanded compliance efforts."

In 2014, the Volume of IRS Exempt Status Determinations As Well As the Approval Rate Increased

Figure 3.8.1 shows the number of determinations and approval rates TE/GE's Exempt Organizations (EO) function made each year on applications for exempt status under IRC § 501(c)(3) from FYs 2010 through 2014. Between 82 and 94 percent of IRC § 501(c)(3) applications received approval during this period. From 2010 through 2013, the IRS made determinations for fewer than 60,000 applications each year. The IRS doubled the number of 1023 determinations it made in a year from FY 2013 to 2014.

FIGURE 3.8.1[7]

Determinations of Exempt Status as Section 501(c)(3) Organizations



In January and February of 2014, EO adopted streamlined procedures for processing applications from organizations seeking section 501(c)(3) exemptions.[8] The procedures allowed certain aspects of the application to be "developed through attestation" (*i.e.,* by relying on the applicant's affirmation) rather than on the basis of substantiating documents.[9] In July 2014, the IRS introduced Form 1023-EZ, available to certain organizations with annual gross receipts of $50,000 or less, which consists entirely of attestations. As EO worked through its backlog of cases using these procedures, the number of determinations of exempt status under section 501(c)(3) rose to 100,000 in 2014, and the rate of approval increased to 94 percent.[10]

7 Table 24, *Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section,* IRS Data Books, 2010-2014.

8 *See Proposal to Apply the Concepts from the Streamlined Application Process Pilot to Existing Inventory,* attached to TEGE-07-0215-0005, *Reissued Streamlined Processing Guidelines for All Cases* (Feb. 27, 2015) and TEGE-07-0214-02, *Streamlined Processing Guidelines for All Cases* (Feb. 28, 2014).

9 On Dec. 9, 2013, EO provided TAS with a detailed description of the streamlined process. See SAMS Submission 28975.

10 *See, e.g.,* TE/GE BPR, Fourth Qtr. 2014 at 16-17 (Nov. 2014) *available at* https://organization.ds.irsnet.gov/sites/tege-cl/Strategic%20Planning/BPRs/FY2014/TEGE%20BPR%204th%20Quarter%20FY%202014.pdf, noting, "At the end of FY 2014 [Sept. 30, 2014], we have a total of 22,759 cases in open inventory, which is a 65 percent decrease from the end of FY 2013. We worked each case more efficiently due to the implementation of streamlined processing."

The information on the e-Postcard [Form 990-N] is insufficient to allow a potential donor or researcher to determine whether the organization actually conducts exempt activities. Thus, Form 1023-EZ and Form 990-N, even taken together, provide almost no transparency.

Since the launch of Form 1023-EZ, the approval rate for applications submitted on this form alone has been 95 percent.[11] More than half (51 percent) of all applications for recognition as a section 501(c)(3) organization are now submitted on Form 1023-EZ.[12] The annual reporting requirement of organizations recognized as exempt on the basis of Form 1023-EZ is generally Form 990-N (e-Postcard), an electronic submission that provides only eight pieces of information.[13] The information on the e-Postcard is insufficient to allow a potential donor or researcher to determine whether the organization actually conducts exempt activities. Thus, Form 1023-EZ and Form 990-N, even taken together, provide almost no transparency.

TE/GE's Analysis of a Random Sample of Form 1023-EZ Applicants Demonstrates EO Erroneously Grants Exempt Status

In response to concerns raised by the National Taxpayer Advocate, TE/GE agreed as it introduced Form 1023-EZ, it would require additional documentation from a representative sample of applicants and would review the information before making a determination.[14] The purpose of this pre-determination review would be "[t]o address the concern that information collected would be insufficient to make a correct determination."[15] The method would be "to take a statistical sampling of the [Form 1023-EZ] applications and put them through the more rigorous process, to see if they've answered the questions correctly, or whether they've, in fact, if they'd gone through the 26-page questionnaire [Form 1023], would have been not qualified, whereas that looks like they're qualified."[16] Over the first six months after the release of Form 1023-EZ, TE/GE selected 521 organizations for pre-determination review as part of a representative sample, and by February 2015, had made determinations in 411 cases.[17] As part of the review, EO employees rejected applications from

11 *See* TE/GE BPR Second Qtr 2015 at 5 (May 2015), First Qtr. 2015 at 2 (Feb. 2015), and Fourth Qtr. 2014 at 2 (Nov. 2014), all reporting approval rates of 95 percent for Form 1023-EZ applications.

12 TE/GE BPR Second Qtr. 2015 at 5 (May 2015) *available at* https://organization.ds.irsnet.gov/sites/tege-cl/Strategic%20Planning/BPRs/FY2015/TEGE%20BPR%202nd%20Quarter%20FY%202015.pdf, noting that for the second quarter of FY 2015, Form 1023-EZ applications constituted 51 percent of total applications for recognition as section 501(c)(3) organizations.

13 Form 990-N, which may be filed by organizations with annual gross receipts of normally $50,000 or less, requires the organization's employer identification number (EIN); the tax year; the organization's legal name and mailing address; any other names the organization uses; the name and address of a principal officer; the website address if the organization has one; confirmation the organization's annual gross receipts are $50,000 or less; and if applicable, a statement the organization has terminated or is terminating (going out of business). IRS, *Information Needed to File E-Postcard*, *available at* http://www.irs.gov/Charities-&-Non-Profits/Information-Needed-to-File-e-Postcard. Because an e-Postcard does not contain sufficient data to calculate tax liability or determine tax-exempt status, and does not purport to be a return, "the filing of a complete Form 990 or Form 990–EZ, rather than the submission of an annual electronic notification, is the filing of a return that starts the period of limitations for assessment under section 6501(g)(2)." Treas. Reg. § 1.6033-6(c)(4). *See also* T.D. 9366, 2007-52 I.R.B. 1232, 1233.

14 *See* National Taxpayer Advocate FY 2015 Objectives Report to Congress 56, urging TE/GE to evaluate a representative sample of organizations whose applications had been approved pursuant to EO's streamlined procedures to determine whether those organizations were actually compliant. *See also* Rev. Proc. 2014-40, 2014-30 I.R.B. 229, sec. 5.03, providing that "the Service will select a statistically valid random sample of Forms 1023-EZ for pre-determination reviews."

15 TE/GE, *Form 1023-EZ Six-Month Pulse Check* 6, presented to and discussed with the National Taxpayer Advocate on April 21, 2015.

16 William Hoffman, *An Interview With IRS Commissioner John Koskinen,* 2014 TNT 147-2 (July 29, 2014).

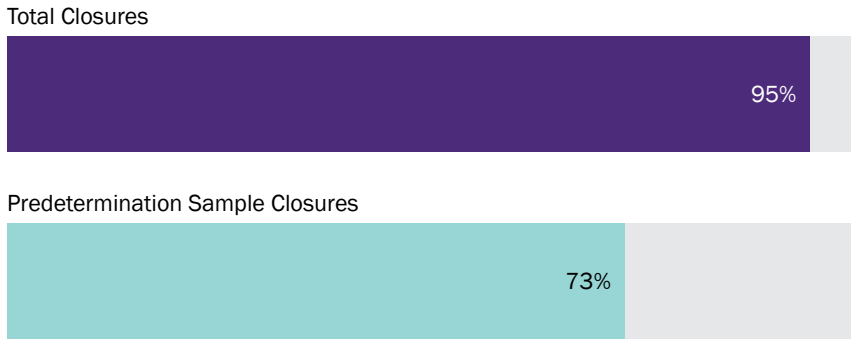
17 TE/GE, *Form 1023-EZ Six-Month Pulse Check* 5, presented to and discussed with the National Taxpayer Advocate on April 21, 2015. Additional organizations are selected for pre-determination review over time and added to the representative sample. By March 31, 2015, the total number of organizations selected for pre-determination review was 844, and while the number of rejected applications was reported, as discussed below, TE/GE was not able to identify the total number of cases for which a determination had been made. TE/GE BPR Second Qtr. 2015 at 34 (May 2015) *available at* https://organization.ds.irsnet.gov/sites/tege-cl/Strategic%20Planning/BPRs/FY2015/TEGE%20BPR%202nd%20Quarter%20FY%202015.pdf.

applicants ineligible to file a Form 1023-EZ and those that had not used a valid EIN in the application.[18] EO agents requested additional information from remaining applicants, to be submitted under penalties of perjury, including "the organizing document with language required to meet the organizational test; a detailed description of past, present, and future activities; revenues and expenses; and a detailed description of any transactions with donors or related entities."[19] If the responses were not forthcoming, EO rejected the applications.[20]

As Figure 3.8.2 shows, out of 411 organizations in the sample for which a determination had been made, 301 were recognized as section 501(c)(3) organizations.[21] This approval rate – 73 percent – is far lower than the 95 percent rate for Form 1023-EZ filers generally.[22] As noted, out of the 521 applications in the sample, 110 had not yet been closed by the time TE/GE reported the partial results of its pre-determination review. Even if EO ultimately approves all remaining sample cases, however, the approval rate would only be 79 percent.[23]

Because Form 1023-EZ does not require applicants to provide supporting documentation or substantiation, but only to attest they qualify for exempt status, the IRS has in effect relinquished its power to educate and regulate taxpayers before it confers exempt status.

FIGURE 3.8.2[24]



18 Of the closed sample cases, 28 percent were ineligible to submit Form 1023-EZ, usually because actual or projected gross receipts exceeded $50,000. TE/GE, *Form 1023-EZ Six-Month Pulse Check* 5, presented to and discussed with the National Taxpayer Advocate on April 21, 2015.

19 TE/GE, *Form 1023-EZ Six-Month Pulse Check* 4, presented to and discussed with the National Taxpayer Advocate on April 21, 2015.

20 Rejected Form 1023-EZ applications are not final determinations for purposes of the declaratory judgment provisions of IRC § 7428. Rev. Proc. 2014-40, sec. 6, 2014-30 I.R.B. 229, 234 (July 21, 2014).

21 TE/GE's pre-determination procedures provide "[a]n organization's application can be approved, rejected, or denied. An organization's application for exempt status is denied if the IRS determines that the organization does not meet the organizational or the operational test." *TE/GE, Form 1023-EZ Six-Month Pulse Check* 2, n. 1, presented to and discussed with the National Taxpayer Advocate on April 21, 2015.

22 Moreover, as Figure 3.8.2 shows, the overall approval rate for Form 1023 applications from FY 2011-2014 ranged from 82 to 94 percent.

23 With the remaining 110 approvals, total approvals would be 411 of 521, or 78.9 percent.

24 Based on data reported in TE/GE, *Form 1023-EZ Six-Month Pulse Check*, Tables 2 and 4, presented to and discussed with the National Taxpayer Advocate on April 21, 2015.

In other words, by adopting Form 1023-EZ, EO approved section 501(c)(3) applications it would have rejected had the applications been subject to the slightest scrutiny. Because the cases selected for pre-determination review were part of a representative sample, the findings of the review can be projected to the entire population of Form 1023-EZ applications.[25] TE/GE reported through the second quarter of FY 2015, it closed 30,601 Form 1023-EZ applications, approving 29,069, or 95 percent, of them.[26] Based on the findings of the pre-determination review showing the approval rate for Form 1023-EZ applications subjected to more scrutiny was only 73 percent, we expect only 22,411 of the 30,601 Form 1023-EZ applications should have been approved. The discrepancy between the number of Form 1023-EZ applications that were approved (29,069) and the expected number that should have been approved (22,411) was 6,658, representing an error rate of more than 21 percent.[27]

As noted above, by March 31, 2015, there were 844 cases in EO's representative sample of organizations selected for pre-determination review.[28] TE/GE was not able to specify the number of reviews that have been completed, but reported EO rejected 150 applications in the sample.[29] Of the 150 applications EO rejected, one of the most frequent reasons for rejection was the applicant was ineligible to file a Form 1023-EZ. The instructions to Form 1023-EZ and the accompanying Eligibility Worksheet identify certain organizations as ineligible to use Form 1023-EZ even though they may qualify for exempt status.[30] These organizations must apply for exempt status using Form 1023 instead. Form 1023-EZ applicants attest they have completed the Eligibility Worksheet and are eligible to submit Form 1023-EZ. Nevertheless, at least 41 percent of the rejected applications were from organizations ineligible to use Form 1023-EZ. The main reasons for their ineligibility were:

- Gross receipts were expected to exceed $50,000 in any of the next three years (21 percent of the rejections were for this reason);
- The application was submitted more than 15 months after automatic revocation by an organization seeking retroactive reinstatement (11 percent of the rejections were for this reason); and
- Annual gross receipts exceeded $50,000 in any of the past three years (nine percent of the rejections were for this reason).[31]

Had additional questions not been asked of these organizations, EO would have granted them exempt status despite the demonstrably incorrect attestations and even though TE/GE has determined that as a rule, applications from organizations in that class should receive greater scrutiny. Consumer and taxpayer protections would have simply been bypassed in these cases, as they presumably were in other applications that did not receive the additional scrutiny.

25 TE/GE's description of its pre-determination review does not include the level of confidence associated with the sample findings or the margin of error, but the number of applications in the sample suggest a level of confidence of 95 percent and a five percent margin of error.

26 TE/GE BPR Second Qtr. 2015 at 34 (May 2015) *available at* https://organization.ds.irsnet.gov/sites/tege-cl/Strategic%20Planning/BPRs/FY2015/TEGE%20BPR%202nd%20Quarter%20FY%202015.pdf.

27 6,658 is 21.8 percent of 30,601.

28 TE/GE BPR Second Qtr. 2015 at 34 (May 2015) *available at* https://organization.ds.irsnet.gov/sites/tege-cl/Strategic%20Planning/BPRs/FY2015/TEGE%20BPR%202nd%20Quarter%20FY%202015.pdf.

29 TE/GE response to TAS information request (June 11, 2015); TE/GE BPR Second Qtr. 2015 at 34-36 (May 2015) *available at* https://organization.ds.irsnet.gov/sites/tege-cl/Strategic%20Planning/BPRs/FY2015/TEGE%20BPR%202nd%20Quarter%20FY%202015.pdf.

30 Eligibility requirements are also set out in Rev. Proc. 2014-40, sec. 2, 2014-30 I.R.B. 229.

31 Some applicants were ineligible for other reasons, but the frequency of rejection for another reason *(e.g.,* because the applicant was a credit counseling organization, or had $250,000 in assets) was usually less than one percent and comprised less than five percent of rejections overall.

Failure to respond to EO's request for further information by the due date represented 41 percent of rejections, or more than 60 organizations. Lack of response from organizations does not inspire confidence they have sufficient infrastructure to operate a tax-exempt organization subsidized by all U.S. taxpayers.[32]

Anecdotal Evidence Supports the Conclusion EO Erroneously Recognizes Organizations as Tax-Exempt

TAS recently selected for review 13 corporations that:

- Obtained recognition as section 501(c)(3) organizations in March 2015 on the basis of a Form 1023-EZ; and
- Are located in states in which corporations' articles of incorporation are available for online inspection free of charge.[33]

The states from which the organizations were selected were Alaska (five organizations), Colorado (four organizations), and Ohio (four organizations). TAS reviewed each organization's articles of incorporation to determine whether they contained an adequate purpose clause and dissolution clause sufficient to meet the organizational test described in the regulations under section 501(c)(3).[34] In some states, sometimes referred to as *cy pres* states, an organization can also meet the dissolution provision requirement if, by operation of state law or court action, its assets would be distributed for one or more exempt purposes, or to the federal government, or to a state or local government, for a public purpose, even though a specific dissolution provision is not contained in its creating document.[35] Ohio is one such state.[36]

TAS found:

- Only three of the 13 organizations met the organizational test for section 501(c)(3) organizations;[37]
- The inadequacy of the purpose clause alone precludes tax-exempt status as a section 501(c)(3) organization in eight cases;
- The lack or inadequacy of a required dissolution clause alone precludes tax-exempt status as a section 501(c)(3) organization in six cases; and

32 To its credit, EO attempted to contact these unresponsive organizations, and the rate of rejections due to unresponsiveness has decreased. From Jan. 24-Mar. 27, 2015, only six applications were rejected on this basis. TE/GE BPR Second Qtr. 2015 at 35-36 (May 2015) *available at* https://organization.ds.irsnet.gov/sites/tege-cl/Strategic%20Planning/BPRs/FY2015/TEGE%20BPR%202nd%20Quarter%20FY%202015.pdf.

33 Many (more than 20), but not all, states make corporations' articles of incorporation viewable online free of charge. EO is investigating whether it could obtain, free of charge, electronic access to all state articles of incorporation. TE/GE BPR, Third Qtr. 2014 at 4 (Aug. 2014) *available at* https://organization.ds.irsnet.gov/sites/tege-cl/Strategic%20Planning/BPRs/FY2014/TEGE%20BPR%203rd%20Quarter%20FY%202014.pdf.

34 The organizing document must limit the purposes of the organizations to one or more exempt purposes; not expressly empower the organization to engage, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes; and must permanently dedicate the organization's assets to section 501(c)(3) purposes on dissolution. Treas. Reg. §§ 1.501(c)(3)-1(b)(1)(i)(a), (b); 1.501(c)(3)-1(b)(4).

35 *See* Treas. Reg. § 1.501(c)(3)-1(b)(4). *Cy pres* is "[t]he equitable doctrine under which a court reforms a written instrument with a gift to charity as closely to the donor's intention as possible, so that the gift does not fail." Black's Law Dictionary (9th ed. 2009).

36 Rev. Proc. 82-2, 1982-1 C.B. 367.

37 TAS did not inquire into the operations of any of the 13 organizations. The three organizations that met the organizational test did not necessarily meet the operational test, also required for tax-exempt status as section 501(c)(3) organizations. *See* Treas. Reg. § 1.501(c)(3)-1(c)(1), providing that "[a]n organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)." If an organization fails either the organizational test or the operational test, it is not exempt. Treas. Reg. § 1.501(c)(3)–1(a)(1).

- In five cases, organizations had neither an adequate purpose clause nor an adequate dissolution clause.

Figure 3.8.3 below summarizes the findings of the review of 13 cases.

TABLE 3.8.3, Findings of the Review of 13 Cases

Finding	Cases
Purpose Clause and Dissolution Clause (if required) Both Sufficient	3
Purpose Clause Sufficient, But Required Dissolution Clause Insufficient	1
Purpose Clause Insufficient, But Dissolution Clause Not Required (or if required, Sufficient)	3 (all in *cy pres* state)
Both Purpose Clause and Dissolution Clause (if required) Insufficient	5
Not Found on State Website	1
Total	**13**

FOCUS FOR FISCAL YEAR 2016

- Analyze the articles of incorporation of a representative sample of corporations that obtained exempt status on the basis of Form 1023-EZ from July 1, 2014, when Form 1023-EZ was introduced, through March 31, 2015. To the extent the analysis demonstrates Form 1023-EZ is an insufficient basis on which to make a determination whether an organization qualifies as a section 501(c)(3) organization, TAS will recommend corrective changes to Form 1023-EZ; and
- Review the procedures TE/GE develops for its post-determination audits of exempt organizations, recommending changes as appropriate, and reviewing the outcome of the audits.

Area of Focus #9 International Local Taxpayer Advocates Would Provide Valuable Assistance to Taxpayers and Protect Their Rights

TAXPAYER RIGHTS IMPACTED[1]

- *The right to be informed*
- *The right to quality service*
- *The right to a fair and just tax system*

The IRS has significantly decreased its overseas taxpayer service presence in recent years, reducing the number of tax attaché posts in foreign cities from 15 to four, while increasing the number of locations and employees devoted to criminal investigations.[2] Despite the growth in the international taxpayer population, the IRS plans to eliminate all IRS tax attaché posts abroad by the end of calendar year 2015, citing the multi-year decrease in funding.[3]

The closing of these offices is part of a broader shift away from providing basic in-person taxpayer service and relieving procedural burdens facing international taxpayers.[4] Given the overwhelming complexity of international tax rules and reporting requirements and the potentially devastating penalties for even inadvertent noncompliance, the IRS's focus on enforcement with inadequate service may lead some voluntarily compliant taxpayers to give up and become noncompliant, and may ultimately increase the international tax gap.[5]

Taxpayers abroad, many of whom may have tried to follow the rules and comply with the tax laws, have little recourse when they face problems. The Internal Revenue Code (IRC) provides for the establishment of the Office of the Taxpayer Advocate, which assists taxpayers in resolving problems with the IRS, identifies areas in which taxpayers have problems in their dealings with the IRS, and proposes administrative and legislative changes to mitigate these problems.[6] When taxpayers abroad face barriers to receiving assistance from TAS, their *right to a fair and just tax system* is impaired. Currently, there are no Local Taxpayer Advocates (LTAs) outside the United States and its territories. The IRC requires the National Taxpayer Advocate to "monitor the coverage and geographic allocation of local offices of taxpayer

1 Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

2 National Taxpayer Advocate 2011 Annual Report to Congress 156, fn. 39. *See also* National Taxpayer Advocate 2009 Annual Report to Congress 134-54. Since the 1980s, the IRS has steadily reduced its civil tax presence overseas to save on security, construction, and maintenance costs. The IRS maintains ten Special Agent attachés in Bogota, Columbia; Mexico City, Mexico; London, England; Frankfurt, Germany; Ottawa, Canada; Hong Kong, China; Bridgetown, Barbados; Beijing, China; Panama City, Panama; and Sydney, Australia. IRS intranet, Criminal Investigations, International Operations, *available at* http://ci.web.irs.gov/sections/operations/international.htm.

3 On November 30, 2014, the IRS closed its Beijing office. Memorandum from Acting Deputy Commissioner, International (LB&I) to LB&I, Commissioner; SB/SE, Commissioner; W&I, Commissioner; Director, IBC; Director, IIC; Director, PGLD; Director Taxpayer Advocate Services; Office of the Chief Technology Officer; Chief Criminal Investigations; Chief Financial Officer (Oct. 16, 2014). The IRS will close tax attaché offices in Frankfurt, Germany; London, UK; and Paris, France, on June 26, 2015, Sept. 19, 2015, and Dec. 26, 2015, respectively. Memorandum from Acting Deputy Commissioner, International (LB&I), *Post Closures of Frankfurt, London and Paris* (Feb. 18, 2015).

4 Since 2009 the IRS has also suspended overseas assistance tours at U.S. embassies because these tours were not cost-effective and "minimal in relation to the number of taxpayers living abroad." During the last overseas assistance tour from February 28 to March 31, 2008, IRS employees provided face-to-face assistance to 2,603 individuals at 21 U.S. embassies, spending approximately four days at each location. In 2007, W&I assisted 2,090 individuals at 25 locations. W&I responses to TAS research request (Oct. 14 and 19, 2009).

5 See Area of Focus: *IRS Implementation of FATCA is Burdensome and Fails to Protect the Rights of Affected Taxpayers, supra.*

6 IRC § 7803(c).

advocates."[7] While the IRC specifically requires the National Taxpayer Advocate to appoint LTAs and make at least one available for each state,[8] it does not include a similar requirement for LTAs outside the country; however, there is no prohibition to establishing such offices. Establishing LTAs abroad would provide international taxpayers with better access to TAS, increase communication, and encourage future compliance. It would also assist TAS in identifying emerging and ongoing systemic issues. As such, TAS will continue to advocate not only for the reopening of the IRS tax attaché offices abroad, but also for an LTA to be co-located at each of these sites.[9]

TAS Serves a Wide Variety of International Taxpayers with Various Issues

In fiscal year (FY) 2014, TAS received approximately 2,330 cases from taxpayers with international addresses[10] from approximately 90 different countries.

Over half of TAS's overseas cases in FY 2014 came from a handful of countries, with the pattern continuing in FY 2015.[11] The data suggest TAS has key opportunities for placing LTAs in countries where large groups of U.S. taxpayers frequently face difficulty in dealing with the IRS. Figure 9.1.1 on the following page illustrates this point.

7 IRC § 7803(c)(2)(C)(i).

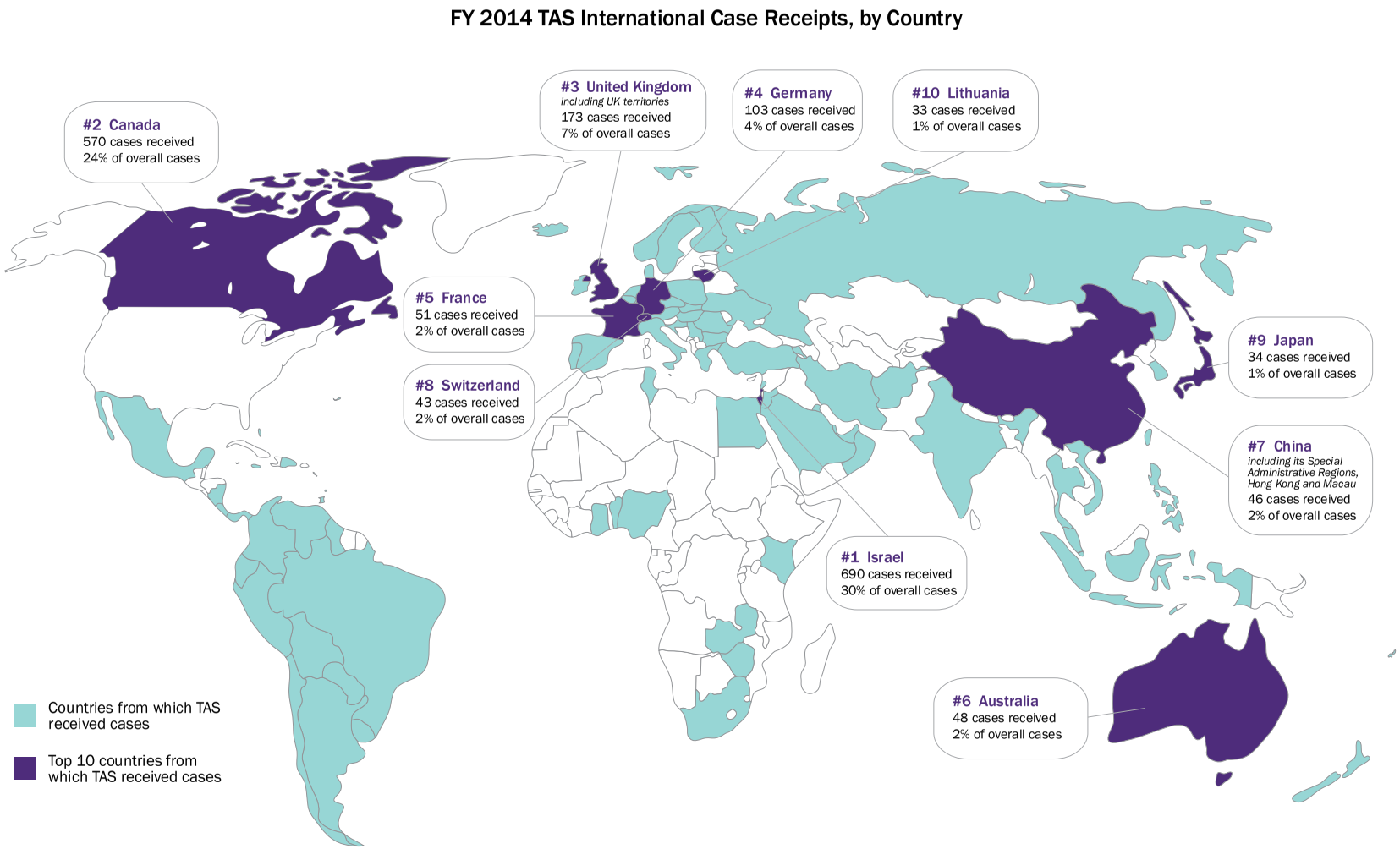
8 IRC § 7803(c)(2)(D)(i)(I).

9 *See Internal Revenue Service FY 2016 Budget Request, Hearing Before the S. Subcomm. on Financial Services and General Government of the S. Comm. on Appropriations,* 114th Cong. (2015) (testimony of Nina E. Olson, National Taxpayer Advocate).

10 Taxpayers with addresses from U.S. territories outside the continental United States are included in this number. Data obtained from the Taxpayer Advocate Management Information System (TAMIS) (Mar. 2015).

11 FY 2015 data runs through February 28, 2015.

FIGURE 9.1.1[12]



12 Countries were determined by the address the taxpayer used in filling out TAS paperwork.

TAS cases from taxpayers abroad included a variety of issues, but the most frequent issues are similar to those experienced by taxpayers in the United States.[13] The top five issues in FY 2014 from taxpayers with international addresses were:

1. Accounts Management Taxpayer Assurance Program – Pre-Refund Wage Verification Holds;[14]
2. Open Audit;
3. Form W-7/Individual Taxpayer Identification Number/Adoption Taxpayer Identification Number;[15]
4. Refund inquiries not included as a separate issue code; and
5. Processing of an original individual or business return.

While these issues are not unique to international taxpayers, their residence overseas may play a significant role in these cases. For example, a taxpayer undergoing an audit could have difficulty proving a deduction if the IRS examiner refused to accept international documentation due to a lack of familiarity with it. Thus, some of these cases may include a uniquely international angle even when they share the same issue category as domestic cases.

Lack of LTAs Abroad May Deter Taxpayers from Contacting TAS

Of the cases received in FY 2014 from taxpayers abroad, roughly 40 percent resulted from the taxpayer or the taxpayer's representative filing Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order)*, or other correspondence. Approximately 27 percent of the cases stemmed from the IRS identifying a case as meeting TAS criteria and referring it to TAS. It is unclear how many more taxpayers might have contacted TAS if they could have done so through an LTA abroad, who would be able to conduct outreach and inform international taxpayers about the availability of TAS assistance. Taxpayers may have been discouraged from contacting TAS due to barriers such as time zone differences, lack of access to toll-free phone lines, and time delays in mailed correspondence. Even a limited TAS presence abroad might aid communication because some phone services offer free calls from one country to another in Europe. Because taxpayers living abroad face such significant barriers in accessing the IRS and TAS and communicating with them in a timely and efficient way, they are not receiving the quality of service they need. Thus, taxpayers' *right to quality service* is being weakened.

TAS Needs a Physical Presence Abroad to Keep Abreast of Systemic Issues Facing International Taxpayers and Provide Relief to These Taxpayers

All taxpayers who are suffering or about to suffer a significant hardship, including those abroad, should be able to get assistance from TAS on individual cases or on systemic issues facing multiple taxpayers. Without international LTA offices, TAS is limited in its ability to identify trends affecting groups of international taxpayers and understand their unique needs and concerns. Although almost half of TAS's

13 Data obtained from TAMIS (Mar. 2015).

14 The Accounts Management Taxpayer Assurance Program was replaced with the Integrity and Verification Operation, which is responsible for pre-refund fraud detection, revenue protection, and associated account resolution activities. *See* IRM 25.25.1.1, *Overview* (Oct. 1, 2014).

15 Form W-7, *Application for IRS Individual Taxpayer Identification Number* (Aug. 2013) is the application for an Individual Taxpayer Identification Number (ITIN), which is required for a person with a tax return filing requirement who is not eligible for a Social Security number. Adoption Taxpayer Identification Numbers (ATINs) are temporary identification numbers assigned by the IRS to children who have been placed by an authorized placement agency in the household of a prospective adoptive parent for legal adoption. These are required to claim certain tax benefits for the child who does not have a Social Security number. *See* IRM 3.13.40.1, *Adoption Taxpayer Identification Number (ATIN) - Overview* (Jan. 1, 2015).

cases from abroad in FY 2014 were opened because the taxpayer experienced a delay of more than 30 days in resolving an account problem, approximately one-third were due to a systemic or procedural failure.[16] This suggests the need for LTA offices to be located strategically outside the United States to gain knowledge and awareness of the problems that groups of taxpayers are facing in different geographic areas and to be able to assist them.

Although domestic TAS offices would work most cases received by LTAs abroad, the LTAs abroad would play a key role in integrating case advocacy and systemic advocacy. A hypothetical example involves a scenario where a large number of residents from one country visit an LTA to seek help with problems involving national identification documents used for an ITIN application. If an LTA were embedded in that country or region, he or she would be in a better position to understand the local issues and advocate for changes to IRS procedures. Another example, which was reported on TAS's Systemic Advocacy Management System (SAMS),[17] involves European taxpayers who frequently use open-source software. These taxpayers cannot electronically file Foreign Bank and Financial Accounts (FBAR) forms because the format is not compatible with their software. An LTA based in Europe who understands the characteristics of the population, such as the use of different software, would be in a better position to identify issues like this upfront and advocate proactively.

> Taxpayers abroad, many of whom may have tried to follow the rules and comply with the tax laws, have little recourse when they face problems.

TAS LTAs Abroad Could Provide Valuable, Targeted Outreach and Communication

In addition to taking in cases, interfacing with taxpayers, and supporting systemic advocacy, LTAs play a vital role in outreach and communication. No matter where they live, taxpayers should be able to find out what they need to do to comply with the tax laws. LTAs educate taxpayers by providing targeted outreach to their communities. As in previous years, in FY 2015, LTAs were tasked with identifying at least one unique or significant issue in their communities, while still understanding and addressing the other community issues, and incorporating it into their outreach.[18]

LTAs also work with local organizations to provide grassroots outreach and communication. The LTA in Philadelphia, Pennsylvania developed a productive partnership with the city's Mexican consulate and a Low Income Taxpayer Clinic that aids farmworkers. During monthly outreach events at the consulate, which provides services to all Mexican citizens in Pennsylvania and New Jersey, the partners offer information about TAS services, identity theft, return preparer fraud, tax credits, ITINs, and other issues. While this partnership was effective in helping a small group of international taxpayers located specifically in two U.S. states, it was limited to taxpayers in that geographic area. If there were LTAs abroad, they could engage in similar partnerships to specifically address the needs of a particular taxpaying population in the country or region where the LTA would be located. TAS would have the opportunity to create similar partnerships abroad with U.S. embassies and other offices that provide services to U.S. taxpayers.

16 Data obtained from TAMIS (Mar. 2015).

17 SAMS is a web-based database of issues and information used by IRS employees and the public to report systemic issues and problems to TAS. For more information, see http://www.irs.gov/sams.

18 *See* TAS FY 2015 Program Letter, Appendix 4.

International LTAs Would Provide Valuable Services with Minimal Staffing

For FYs 2016 and 2017, TAS submitted budget requests to place an international LTA and Intake Advocate, who would provide administrative support, in each of the four international tax attaché offices. While only requiring eight additional staff, these four offices could have a great impact on international taxpayers, with opportunities to:

- Obtain information to correctly file taxes, both in the United States and with foreign taxing agencies;
- Claim appropriate exemptions and deductions;
- Receive answers to taxpayer questions that arise from tax treaties among multiple governments;
- Provide assistance to taxpayers dealing with foreign governments, laws, tax treaties, and income taxes;
- Advocate for taxpayers dealing with the tax laws of foreign governments; and
- Allow for collaboration with other IRS employees as well as the embassy and consulate staff and representatives from foreign taxing agencies.

Under TAS's proposal, international LTAs would collaborate with other IRS employees as well as the embassy and consulate staff and representatives from foreign taxing agencies. The Advocates would provide a voice for taxpayers through advocacy outreach to officials in those agencies where taxpayers currently have no representation.

FOCUS FOR FISCAL YEAR 2016

- Identify a list of the most significant issues facing international taxpayers based on case advocacy and systemic advocacy data, and create targeted outreach materials for these issues;
- Identify ten U.S. embassies abroad in locations where a large number of U.S. taxpayers face problems with the IRS and conduct outreach with these offices by correspondence, sharing international outreach materials and the TAS Tax Toolkit;
- Create a team to research and draft a written report identifying financial, logistical, security-related, and other issues related to establishing LTAs abroad;
- Review case advocacy data and SAMS submissions to identify specific locations abroad where TAS could place LTAs to maximize their effectiveness;
- Continue to monitor systemic issues and identify additional training needs for Case Advocates on international issues; and
- Continue to advocate for reopening the IRS tax attaché offices abroad with the addition of an LTA at each site.

Area of Focus #10 TAS Continues to Work with IRS to Implement the Taxpayer Bill of Rights into IRS Operations

TAXPAYER RIGHTS IMPACTED[1]

- *The right to be informed*
- *The right to a fair and just tax system*

Both the Internal Revenue Code (IRC) and IRS administrative procedures provide taxpayers with many rights when dealing with the IRS. However, taxpayers may not exercise these rights, and IRS employees may not honor them – in both cases because they are unaware of them.[2] The National Taxpayer Advocate has repeatedly recommended that Congress enact a comprehensive Taxpayer Bill of Rights (TBOR) to capture and organize all the rights in the IRC into a single place.[3] Similarly, the National Taxpayer Advocate recommended the IRS adopt a TBOR to serve as an organizing principle for tax administrators, an educational framework for IRS employees, and a tool to empower taxpayers. To its credit, in 2014, the IRS adopted the TBOR that pulls together in one basic statement the principles that underlay the substantive rights scattered throughout the IRC and provided by administrative procedures.

In 2013, when the National Taxpayer Advocate urged the IRS to adopt the TBOR, she wrote a report to the Acting Commissioner, outlining recommendations to increase awareness of taxpayer rights for IRS employees and taxpayers.[4] TAS has acted on a number of the key recommendations in that report to make the TBOR "real." One of these steps was to audit the Internal Revenue Manual (IRM) to find appropriate places to insert taxpayer rights information. The IRM is the "primary, official source of IRS 'instructions to staff' that relate to the administration and operation of the Service."[5] As such, it is a major vehicle for educating IRS employees about:

- The importance of taxpayer rights overall;
- How they apply with respect to specific IRS procedures and actions; and
- When and how to inform taxpayers about their rights.

When these instructions are unclear or incomplete, or do not explain *why* an action is important from a taxpayer rights perspective, employees may misinterpret them, take shortcuts, skip steps, and thus act in ways that undermine taxpayer rights or fail to act in ways that promote taxpayer rights.

1 See IRS, Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

2 For more information regarding awareness of taxpayer rights, see National Taxpayer Advocate, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration* (Nov. 4, 2013), *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Toward-a-More-Perfect-Tax-System-A-Taxpayer-Bill-of-Rights-as-a-Framework-for-Effective-Tax-Administration.pdf.

3 See, *e.g.*, National Taxpayer Advocate 2014 Annual Report to Congress 275-310 (Legislative Recommendation: *Codify the Taxpayer Bill of Rights and Enact Legislation That Provides Specific Taxpayer Protections*).

4 See National Taxpayer Advocate, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration* (Nov. 4, 2013), *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Toward-a-More-Perfect-Tax-System-A-Taxpayer-Bill-of-Rights-as-a-Framework-for-Effective-Tax-Administration.pdf. The National Taxpayer Advocate also issued a report to the Acting Commissioner in August 2013 on ways to increase awareness of taxpayer rights and TAS. *National Taxpayer Advocate's Report in Response to the Acting Commissioner's 30 Day Report: Analysis and Recommendations to Raise Taxpayer and Employee Awareness of the Taxpayer Advocate Service and Taxpayer Rights* (Aug. 19, 2013), *available at* http://www.taxpayeradvocate.irs.gov//userfiles/file/2013FullReport/30-Day-Report.pdf.

5 IRM 1.11.2.2, *IRM Standards* (May 11, 2012).

When [Internal Revenue Manual] instructions are unclear or incomplete, or do not explain *why* an action is important from a taxpayer rights perspective, employees may misinterpret them, take shortcuts, skip steps, and thus act in ways that undermine taxpayer rights or fail to act in ways that promote taxpayer rights.

TAS has made significant progress on its audit. In last year's Objectives Report to Congress, the National Taxpayer Advocate reported that the TBOR IRM review team had identified an initial group of about 570 high-impact subsections in IRM 4, *Examining Process*; IRM 5, *Collecting Process*; and IRM 21, *Customer Account Services*.[6] At the time of last year's report, the team had reviewed about 425 of the approximately 570 high-impact subsections, and developed over 140 recommendations, of which TAS sent 36 to the IRS. TAS has continued its review of the IRM, including sections that come to TAS as part of the normal clearance process, as well as high-impact sections reviewed outside the clearance process.[7] As of March 2015, TAS has sent 87 IRM recommendations related to TBOR, of which the IRS has accepted 50.[8]

Some of TAS's TBOR recommendations would add information to the IRM about the specific rights that apply in a situation. For example, the original text of Accounts Management IRM 21.3.4.12.5.8, *Levy Release: General Information for Field Assistance*, explains:

> Field Assistance does not issue levies. They are normally issued by collection employees after the taxpayer has been given an opportunity to resolve their tax liability but failed to do so. Taxpayers will generally come into the TAC [Taxpayer Assistance Center] once they learn that a Notice of Levy has been issued and are requesting a release.

TAS recommended the IRS add the following sentence to the end of this paragraph, which it has agreed to consider in the next update: "TAC employees should be aware of Collection Appeal rights and be able to provide taxpayers with information regarding these rights, as outlined in Publication 1, *Your Rights as a Taxpayer*." This sentence not only reminds employees about a taxpayer's *right to appeal an IRS decision in an independent forum*, it also reinforces the importance of being able to explain the right to taxpayers who are seeking a levy release.

TAS also recommended an addition to the second paragraph of this IRM section, which originally explained a levy release "is not required for a levy that was issued prior to reaching a resolution with the taxpayer unless it meets one of the criteria for required release located in IRM 5.19.4.4.10, *Levy Release: General Information*." TAS recommended the following note:

> Note: Taxpayers have the right to expect a fair and just tax system which considers facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers also have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial hardship or if an issue has not been resolved through normal IRS procedures in a timely manner.

This addition would reinforce the fundamental principle of a fair and just tax system and explains in plain language what this right means.

6 See National Taxpayer Advocate FY 2015 Objectives Report to Congress 12-21.

7 IRMs require TAS review and clearance when the rights or duties of taxpayers are impacted or taxpayers are affected in some way. For a discussion of the clearance process, *see* IRM 1.11.9.1.1, *IMD Clearance Process* (Dec. 4, 2014).

8 The 87 IRM recommendations include the 36 sent over as of last year's report.

In addition to providing instructions to employees regarding specific rights that apply, some IRM recommendations involved increasing awareness of the TBOR generally. For IRM 22.24.1.1.1, which provides the IRS mission statement in IRM Part 22, *Taxpayer Education Assistance*, the IRS accepted TAS's recommendation to add the following note:

> The IRS formally adopted a Taxpayer Bill of Rights in June 2014, which provides the nation's taxpayers with a better understanding of their rights and helps reinforce the fairness of the tax system. IRS employees must be informed about taxpayer rights and be conscientious in the performance of their duties to honor, respect and effectively communicate those rights which may aid in reducing taxpayer burden. See Publication 1, *Your Rights As A Taxpayer*, for more information.

TAS is updating its own IRM to include TBOR information in IRM 13.1.1, *Taxpayer Advocate Legislative History, Mission, and Guiding Principles*. In addition, TAS has begun the process of drafting a policy statement to be included in IRM Part 1.2, *Servicewide Policies and Authorities*, which would reaffirm the IRS's commitment to the TBOR. TAS communicated its plan regarding the policy statement to the Office of Servicewide Policy, Directives, and Electronic Research (SPDER), which in turn expressed support for adding a TBOR Policy Statement to the IRM.

FOCUS FOR FISCAL YEAR 2016

- Continue reviewing IRM sections and making recommendations for adding taxpayer rights information;
- Provide training to all TAS employees reviewing IRMs on how to incorporate the TBOR into the IRM, and through SPDER, make that training available to all IRS employees who are authors or reviewers of IRMs;
- Update IRM 13.1.1 to include TBOR information; and
- Draft a TBOR Policy Statement and submit it to the IRS to be included in IRM Part 1.2.

Area of Focus #11 The IRS Must Have a Comprehensive Review Process for Guidance and Other Documents to Protect Taxpayer Rights, Improve Customer Service, and Operate More Efficiently

TAXPAYER RIGHTS IMPACTED[1]

- *The right to quality service*
- *The right to be informed*

An often overlooked, but critical, role of TAS is to review IRS guidance, notices, forms, publications, letters, and similar items prior to their release. IRS employees depend on accurate, up-to-date instructions to perform their duties and use the proper procedures. Similarly, taxpayers depend on guidance and publications from the IRS to help them understand their obligations and how to fulfill them. When the IRS updates its guidance or other documents, the authors must seek out and secure input from various reviewers (*e.g.,* TAS and Chief Counsel). This review – known as the Internal Management Documents/Single Point of Contact (IMD/SPOC) process – provides TAS with an opportunity to impact IRS policies prior to implementation, which benefits the IRS and taxpayers since the published instructions and guidance are essential to fulfillment of the taxpayer's *right to be informed*.[2] However, the IRS recently adopted a fragmented clearance approach that limits TAS's ability to provide comments and suggestions, minimize taxpayer burden, and protect taxpayer rights.[3]

To advocate effectively, TAS must have an opportunity to timely review IMDs and other documents. TAS receives letters from the Office of Taxpayer Correspondence (OTC) with as few as five business days to review. When TAS only has the opportunity late in the process to identify changes necessary for the protection of taxpayer rights, document owners have publishing deadlines to meet and are less inclined to discuss changes with TAS. In one instance, TAS input was largely ignored. By working with TAS from the beginning of the review process, IRS could put taxpayers first, improving the efficiency of its reviews, saving resources, and minimizing taxpayer burden.

An example of including TAS proactively involves the Tax Exempt/Government Entities (TE/GE) division, which revised its IRM guidance on how to update taxpayer letters. The guidance initially directed employees to gather suggestions from TAS after the revised letter was ready for publication. TAS recommended TE/GE change its guidance to include TAS earlier in the review process. TE/GE adopted the change and will now include TAS *before* it sends letters to the OTC, which is the last office to handle the document before publication.[4] TAS now has an opportunity to advocate for taxpayers and negotiate any differences of opinion before TE/GE publishes the letters. TAS applauds TE/GE's common sense approach, and encourages other areas of the IRS to adopt these practices.

1 *See* IRS, Taxpayer Bill of Rights, *available at* http://www.irs.gov/Taxpayer-Bill-of-Rights.

2 For a full list of taxpayer rights, *see* http://www.irs.gov/Taxpayer-Bill-of-Rights. Additionally, for a full list and discussion of the ten core taxpayer rights, *see* National Taxpayer Advocate, *Toward a More Perfect Tax System: A Taxpayer Bill of Rights as a Framework for Effective Tax Administration (Recommendations to Raise Taxpayer and Employee Awareness of Taxpayer Rights)* (Nov. 4, 2013), *available at* http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Toward-a-More-Perfect-Tax-System-A-Taxpayer-Bill-of-Rights-as-a-Framework-for-Effective-Tax-Administration.pdf.

3 *See* Internal Revenue Manual (IRM) 1.11.9.7(3), *Guidelines for Reviewers* (Dec. 4, 2014). During the clearance process, the IRS has restricted reviewers' comments. The reviewers are only allowed to comment on content that was revised by the author.

4 *See* TEGE-25-0215-0004 (IGM 25.1) *Interim Guidance for TE/GE Letter and Notice Procedures* (Feb. 27. 2015).

TAS recently raised several concerns on letters Small Business/Self Employed (SB/SE) Examination uses to communicate with taxpayers about the information exchanged during an audit.[5] In particular, TAS was concerned with the 15-day condensed timeframe SB/SE Examination gave some taxpayers to respond to the IRS. Despite acknowledging TAS's concerns, the program owner proceeded with publication and did not make any additional efforts to reconcile TAS's differences. In this case, TAS did not get a chance to review these letters until after SB/SE submitted them to OTC, which called the letters "courtesy copies" and gave TAS five days to respond. After the letters generated public opposition, the IRS agreed to discontinue use of the letters. Had TAS received earlier notification and been granted more time to negotiate and elevate the use of the letters before publication, the IRS could have avoided embarrassment and taxpayers would not have been harmed.

TAS receives letters from the Office of Taxpayer Correspondence with as few as five business days to review... By working with TAS from the beginning of the review process, IRS could put taxpayers first, improving the efficiency of its reviews, saving resources, and minimizing taxpayer burden.

The IRS has recently adopted changes that streamline the IMD review process,[6] but these changes have substantially narrowed the scope of comments Operating Divisions (ODs) will accept during the clearance of their IRMs. Although these changes allow ODs to update their guidance and other documents faster, the new approach makes it more difficult for TAS to advocate for taxpayers and prevent problems arising from inappropriate or unclear guidance.

TAS has since worked collaboratively with the Tax Forms and Publications (TF&P) office to include TAS's suggestions during the update of key publications. We have also worked with the Servicewide Policy Directives and Electronic Research (SPDER) office to create guidance that gives all reviewers a way to send important comments to authors of IRMs. This new guidance recognizes the need to fully vet instructions and processes IRS uses. TAS will continue to advocate the IRS accept comments from internal stakeholders like TAS at the earliest opportunity and make a good faith effort to resolve differences of opinion.[7]

FOCUS FOR FISCAL YEAR 2016

- Collaborate with SPDER on implementing new guidance allowing all reviewers to provide comments to IRM authors;
- Seek out partners willing to revise guidance to include TAS earlier in the review process for letters and notices; and
- Reach out to the TF&P office to identify and implement ways to include TAS in the review process.

5 *See* Letter 5261, *Examination Report Transmittal - Additional Information Due (Claims for Refund)*, and Letter 5262A, *Examination Report Transmittal - Additional Information Due (No Change with Adjustments)*. For further discussion of the National Taxpayer Advocate's concerns, see Area of Focus: *Additional Requirement for Appeal Access and Compressed Case Timelines Impair the Fundamental Rights of Taxpayers, supra.*

6 *See* IRM 1.11.9.7(3), *Guidelines for Reviewers* (Dec. 4, 2014).

7 For information on how to fix this situation, see National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress 97-8 (Area of Focus: *TAS Will Continue Advocating for a Servicewide Clearance Process for Tax Forms, Publications, Letters and Notices*).

IV. Efforts to Improve TAS Advocacy and Service to Taxpayers

As discussed in the preceding sections of this report, taxpayers are increasingly unable to reach the IRS and timely resolve their tax issues.[1] At the same time, TAS case receipts are increasing.[2] In light of this situation, TAS is actively pursuing alternative methods of delivering traditional services to taxpayers. Two such examples are the Centralized Case Intake (CCI) and self-help initiatives, which will especially help taxpayers who qualify for TAS assistance because IRS systems aren't functioning as they should.

TAS EXPANDS CENTRALIZED CASE INTAKE

From fiscal years (FYs) 2010-2013, over 25 percent of TAS cases were referred to TAS by Wage & Investment (W&I) employees who answer calls to the NTA Toll-Free line. These employees identify which calls appear to qualify for TAS assistance and load the case on TAS's case management system, TAMIS. TAS Case Advocates then make an initial contact with the taxpayer within one to five business days, depending on the nature of the case.[3] Referrals from the NTA Toll-Free sites contain very little information about the nature of the significant hardship the taxpayer is experiencing or the type of tax problem. Thus, Case Advocates have very little information about the taxpayer's problem until they speak with the taxpayer.

Over the last 19 months, TAS has conducted CCI, a "proof of concept" that allows taxpayers to speak with a TAS employee much earlier in the case referral process.[4] Specifically, when an NTA Toll-Free assistor identifies a case as qualifying for a TAS referral, he or she transfers the call in real time to a TAS employee. The Intake Advocates educate callers about TAS and their rights as a taxpayer, conduct a thorough review of the taxpayer's account and issues, advise them on steps they can take to prepare for their first call with their Case Advocate, point them to self-help tools when appropriate,[5] and direct them to the correct area if they do not meet TAS acceptance criteria.

In 2015, TAS and W&I expanded the CCI process to all W&I sites and assistors who staff the NTA Toll-Free line and provided extensive training to assistors at these sites.[6] The expansion included transfers of Spanish-speaking callers and extended TAS hours of availability.[7] Between October 1, 2014 through June 30, 2015, the CCI Intake Advocates answered 41,344 calls transferred from the NTA Toll-Free line.[8] From those calls, 33,825 new TAS cases were created.[9] The remaining 7,519 calls (18 percent) identified as meeting TAS criteria were resolved during the CCI intake process without requiring the creation of new TAS cases.[10] Resolving a taxpayer's issue on first contact with TAS conserves resources and reduces

1 *See Filing Season Review, supra*.

2 TAS cases are up 6.3 percent through the end of June compared to the same period in FY 2014. Data obtained from Taxpayer Advocate Management System (TAMIS) (Jun. 29, 2015 report for data through June 27th).

3 IRM 13.1.18.3, *Initial Contact* (Feb. 1, 2011).

4 The six-month pilot began in December 2013 with ten W&I NTA Toll-Free assistors in the Baltimore and Richmond call sites transferring calls.

5 For a discussion of self-help, *see TAS Develops Self-Help Options to Assist Taxpayers, infra.*

6 The new process was expanded to include all 595 W&I NTA Toll-Free assistors in Baltimore, Richmond, Dallas, Puerto Rico, and the Atlanta Campus.

7 The Puerto Rico and Dallas call sites handle Spanish language calls for the NTA Toll-Free line. Under the pilot, Spanish language calls were initially excluded. TAS extended hours to accept transfer of both English and Spanish calls through 7:30 p.m. Central Standard Time.

8 IRS, *Aspect Application Activity Report*, (Oct. 1, 2014-Jun. 30, 2015).

9 TAMIS receipts through June 30, 2015.

10 This reflects calls resolved between October 2014 and June 2015.

burden for taxpayers and TAS. CCI also allows Intake Advocates to fully explore the tax years and issues impacting a taxpayer's case prior to case creation, presenting a more robust and developed case file for Case Advocates as a starting point to resolve the taxpayer's case more efficiently and effectively. CCI is proving to be an improvement for both taxpayers and TAS, and it will continue to be part of TAS's long-term strategy to improve the overall taxpayer experience by advocating for taxpayers at the earliest point of contact with TAS.

Focus for Fiscal Year 2016

- Complete negotiations with the National Treasury Employees Union to officially stand up CCI as its own group within TAS;
- Identify next steps to expand the CCI process to accept transfer calls in real time from assistors staffing other W&I Accounts Management Toll-Free product lines, including the general 800-829-1040 product line;[11]
- Formalize TAS processes and employee guidance for all TAS Intake Advocates (both in CCI and in local and campus TAS offices), including Internal Revenue Manuals (IRMs) and Delegated Authorities; and
- Develop and implement a quality measurement system on the intake process and a customer satisfaction measurement process to measure the effectiveness of CCI.

TAS DEVELOPS SELF-HELP OPTIONS TO ASSIST TAXPAYERS

In January 2015, TAS launched a new version of the Tax Toolkit, www.TaxpayerAdvocate.irs.gov, one of the key pieces of our self-help initiative. The Toolkit redesign better serves the growing population using mobile devices as its primary or only means to access the internet. Through the use of plain language explanations of common tax issues, self-help videos and documents, and estimators, the Toolkit is the "go-to" site to help taxpayers be informed tax consumers in discussing their problems with the IRS, knowing and using their taxpayer rights, or even interacting with their tax preparers or representatives. The Toolkit also serves as a resource for TAS employees – providing a place to send taxpayers for information so they can navigate the IRS and advocate on their own behalf.

The Toolkit suggests common tax issues (*e.g.*, I got a notice from the IRS, I can't pay my taxes) to taxpayers to help them identify their more specific issues (*e.g.*, Audits by Mail, Payment Plans). Then, each issue is broken down into a general explanation, next actions, possible consequences, further resources, connections to Taxpayer Rights, and options for further assistance. In some instances, the taxpayer may be able to solve his or her own problem using the Toolkit. For others, the Toolkit enhances their understanding of their problems so they can more successfully engage when getting help.

Through the use of plain language explanations of common tax issues, self-help videos and documents, and estimators, the Toolkit is the "go-to" site to help taxpayers be informed tax consumers in discussing their problems with the IRS, knowing and using their taxpayer rights, or even interacting with their tax preparers or representatives.

11 As of June 30, 2015: 13.7 percent (23,859) of TAS cases were created from W&I Accounts Management Toll-Free (WATF) lines; 19.5 percent (33,825) of TAS cases were created as a result of calls transferred from W&I on the NTA Toll-Free line; 6.8 percent (11,898) TAS cases were created by W&I NTA Toll-Free assistors prior to full expansion of the CCI process; 4.0 percent (6,994) of TAS cases were created from direct taxpayer calls to the ASK-TAS1 product line.

TAS has identified five collection issues where taxpayers come to TAS but do not necessarily need case assistance – they simply need help navigating the IRS and its processes. TAS developed self-help videos addressing these issues to assist taxpayers in navigating through the collection process. The collection video series includes:

- What To Do If You Owe the IRS and Can't Pay – Overview;[12]
- IRS Collection Alternatives: Installment Agreements;[13]
- IRS Collection Alternatives: Currently Not Collectible Status;[14]
- Tax Refund Issue – If Your Refund is Used to Pay Your Spouse's Debt;[15] and
- Stopped or Delayed Refunds.[16]

As a supplement to the self-help videos, TAS developed companion documents that provide taxpayers with clear step-by-step instructions on resolving their issues. Taxpayers can download the documents or Intake Advocates can provide them via fax or mail during the initial contact.

Many taxpayers need assistance with the Affordable Care Act (ACA). To help taxpayers affected by the ACA, TAS developed and posted three tools to estimate ACA-related credits and payments.[17] The *Premium Tax Credit (PTC) Change Estimator*[18] helps individuals estimate how much the PTC amount may change if their income or family size changes during the year. The *Individual Shared Responsibility Provision (ISRP) – Payment Estimator*[19] helps estimate the amount individual taxpayers may have to pay if they don't have minimum essential coverage or a qualified exemption. The *Small Business Health Care Tax Credit (SBHCTC) Estimator*[20] helps small business owners and tax-exempt organizations estimate the amount of SBHCTC they may receive in any given tax year.

Focus for Fiscal Year 2016

- Identify additional self-help topics and create the corresponding materials and videos; and
- Create a video highlighting what taxpayers need to know about the ACA for the 2016 filing season.

TAS TRAINING INITIATIVES IMPROVE ADVOCACY AND TAXPAYER SERVICE

Providing meaningful training to TAS Case and Systemic Advocacy employees is very challenging because of the sheer diversity of issues about which TAS employees must be knowledgeable. TAS employees face issues relating to the full breadth of tax administration and tax law. Accordingly, TAS FY 2015 training covered a broad array of technical issues.

12 https://www.youtube.com/watch?feature=player_embedded&v=AsOEV0revVE.

13 https://www.youtube.com/watch?feature=player_embedded&v=_xTmF8GNos4.

14 https://www.youtube.com/watch?feature=player_embedded&v=Yxysf1p5Ivo.

15 https://www.youtube.com/watch?feature=player_embedded&v=qhVcm9Phi1c.

16 https://www.youtube.com/watch?feature=player_embedded&v=cyF_mwPTsjY.

17 For further discussion of the ACA, *see* Area of Focus: *Affordable Care Act, supra. See also* National Taxpayer Advocate 2014 Annual Report to Congress 67-78 (Most Serious Problem: *HEALTH CARE IMPLEMENTATION: Implementation of the Affordable Care Act May Unnecessarily Burden Taxpayers*).

18 http://www.taxpayeradvocate.irs.gov/estimator/premiumtaxcreditchange/index.htm.

19 http://www.taxpayeradvocate.irs.gov/estimator/isrp/.

20 http://www.taxpayeradvocate.irs.gov/calculator/SBHCTC.htm.

The largest training effort focused on the ACA because of its complexity and the impact on the filing season. TAS developed and delivered this critical training during a week-long face-to-face course to all TAS employees in advance of the filing season.[21] Prior to delivering this training, TAS ACA subject matter experts attended W&I's ACA "train-the-trainer" sessions held during October and November. TAS used these materials to develop TAS-specific ACA training on the PTC and the ISRP.

Specifically, the training:

- Engaged employees in interactive exercises, including walking through how to fill out forms and calculate credits;
- Provided significant advocacy and Taxpayer Bill of Rights reminders;
- Created a repository for questions and suggestions to be used to modify and update the training materials after the train-the-trainer sessions;
- Made subject matter experts available to the local offices to answer questions during the training; and
- Followed up with virtual sessions on related issues.[22]

TAS not only has the responsibility to educate its own employees about tax laws and procedures, but it must also educate IRS employees about the role of TAS. During FY 2015, TAS created Awareness Training for Large Business and International (LB&I) and Tax Exempt & Government Entity (TE/GE) employees via two video courses delivered by the National Taxpayer Advocate, a Local Taxpayer Advocate, and an Attorney Advisor. The video courses focused on educating IRS functional employees about the history of TAS and explaining the role of TAS in tax administration as it relates to case and systemic advocacy work. Further discussions explained how and why TAS interacts with the specific IRS function that was the audience of the training, including examples of the types of issues about which these IRS employees might interact with TAS.

Training TAS employees to effectively advocate for taxpayers remains a priority. While TAS may not be able to conduct large-scale symposiums as we did in the past, timely face-to-face training is more critical than ever. In FY 2015, TAS adopted a blended approach that encompasses both face-to-face and virtual training. Current training plans include technical face-to-face mini-symposiums and additional virtual courses throughout the year that bring together the technical experts in TAS to enhance their knowledge and skills.

Focus for Fiscal Year 2016

- Continue to deliver training in a blended combination of face-to-face classroom and virtual format;
- Redefine its leadership training programs to ensure a logical sequencing of content based on a leader's background (*e.g.*, new to government, new to TAS, or an internal TAS promotion). TAS will also seek to identify and eliminate any potential gaps between its leadership training programs, along with continuing to identify employees' training needs that affect TAS inventories;
- Take advantage of external training and continuing education opportunities through professional societies, including the American Bar Association and the American Institute of Certified Public Accountants; and
- Continue to develop and deliver advanced training to TAS employees on advocating for taxpayers encountering problems related to the next phase of ACA implementation.

21 The training was also taped and made available to employees unable to attend the live sessions.

22 TAS subsequently delivered virtual training on the new ACA-related tools that Case Advocates would need to research their cases.

V. TAS Research Initiatives

The National Taxpayer Advocate is a strong proponent for the role of theoretical, cognitive, and applied research in effective tax administration. The Office of the Taxpayer Advocate is conducting and also collaborating with the IRS on a number of research initiatives. A primary focus of these efforts is to explore approaches impacting taxpayers' willingness and ability to comply while also minimizing taxpayer burden.

Following is a discussion of the research initiatives TAS is conducting or participating in for the remainder of fiscal year (FY) 2015 and during FY 2016.

Impact of Taxpayer Advocate Service Assistance on Compliance

The IRS's budget has been reduced by about 17 percent in inflation-adjusted terms since FY 2010.[1] These cuts, along with certain IRS resource allocation decisions, have significantly eroded the quality of taxpayer service, resulting in unacceptably low service levels in FY 2015. For example, for the first four months of the 2015 filing season, the level of service (LOS) on the IRS's toll-free customer service lines was 37.3 percent, down from the already low 70.9 percent for the same period in FY 2014. Among taxpayers who got through, hold time was 22.9 minutes.[2]

The measures stakeholders and the IRS often apply to the IRS are exacerbating declining funding, because the measures do not acknowledge the importance of delivering service. Invariably, the focus is on reducing the tax gap through enforcement efforts, or improving efficiency as measured by return on investment (ROI). Because measuring the impact of service on compliance (*i.e.,* the ROI of IRS services) is difficult, the IRS currently does not provide detailed ROI calculations to support taxpayer service funding requests.

The National Taxpayer Advocate believes quality taxpayer service is a fundamental taxpayer right, and Congress should fund taxpayer services at a level that enables the IRS to provide the quality service taxpayers need to comply with their tax obligations.[3] In an attempt to justify taxpayer service investments in the context of its return on investment (ROI), in recent years TAS Research has studied whether taxpayer service, among other factors, impacts taxpayer compliance behavior.[4] The study results show taxpayer attitudes about the IRS, and in particular IRS services, are among the most important factors influencing

1 In FY 2010, the agency's appropriated budget stood at $12.1 billion. In FY 2015, its budget was set at $10.9 billion, a reduction of about 9.9 percent. Inflation over the same period is estimated at about 9.4 percent. Adjusting for the interactive effects of these cuts and the impact of the federal pay freeze, we estimate the inflation-adjusted reduction in funding was about 17 percent.

2 IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* (for Accounts Management lines as of week ending April 18, 2015). *See also* Review of the 2015 Filing Season, *supra*.

3 *See Internal Revenue Oversight: Hearing Before the H. Comm. on Appropriations Sub. Comm. on Financial Services and General Government*, 113th Cong. (2014) (statement of Nina E. Olson, National Taxpayer Advocate). *See also, Progress on the Implementation of the Taxpayer Assistance Blueprint: Five-Year Progress Report: FY 2008-FY 2012* 45-47 (Apr. 22, 2013). Several Appropriations acts in recent years have given the IRS more funding by using a mechanism known as a "program integrity cap adjustment." A determination must be made, however, that the proposed additional expenditures will generate an ROI of greater than 1:1 (*i.e.*, the additional expenditures will increase federal revenue on a net basis).

4 *See* National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 33 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*). *See also* National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 1 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

the compliance behavior of taxpayers with individual business income.[5] In FY 2016, TAS will conduct additional research to explore the impact of service on compliance.

TAS Research will develop a representative sample of taxpayers who sought TAS help with collection and examination related issues in FY 2009. We will measure their subsequent filing, payment, and reporting compliance during the next five years, and compare the resulting compliance rates to those of a control group built from a random sample of taxpayers with the same issues who did not use TAS services. We will use the comparison of the two groups' compliance rates to estimate the value of quality services to future taxpayer compliance. Our target to complete this research is the end of September 2016.

Impact of Audits on Taxpayer Compliance

TAS Research is conducting a multi-year study to identify the major factors that drive taxpayer compliance behavior. Previously, we analyzed the results of a telephone survey, conducted by a vendor, using a representative national sample of taxpayers with sole proprietor income (*i.e.,* Schedule C, *Profit or Loss from Business (Sole Proprietorship)*).[6] One of the significant findings is trust in government, the tax laws, and the IRS is associated with the level of taxpayer compliance. However, TAS found no significant evidence economic deterrence (*i.e.,* the expected likelihood and cost of getting caught cheating) motivates sole proprietor compliance decisions.[7]

The National Taxpayer Advocate believes quality taxpayer service is a fundamental taxpayer right, and Congress should fund taxpayer services at a level that enables the IRS to provide the quality service taxpayers need to comply with their tax obligations.

In the current phase of our study, TAS is exploring whether economic deterrence impacts sole proprietor tax compliance. Specifically, we are evaluating the impact of audits on the subsequent reporting compliance of sole proprietors. The IRS generally conducts audits to detect non-compliance by sole proprietors, since much of their income is not subject to third-party information reporting and cannot be detected by document matching. TAS published preliminary study results in Volume 2

5 *See* National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 41-43 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*). Statistics show underreporting of individual business income represents the largest portion of the tax gap (*i.e.,* taxes not voluntarily and timely paid). Individual business income includes income from sole proprietorships, farms, and pass-through income on Schedule E (Supplemental Income and Loss). Schedule E income includes income from partnerships, S-corporations, rents and royalties, and estates and trusts. *See* IR-2012-4, *IRS Releases New Tax Gap Estimates; Compliance Rates Remain Statistically Unchanged From Previous Study* (Jan. 6, 2012), *available at* http://www.irs.gov/uac/IRS-Releases-New-Tax-Gap-Estimates;-Compliance-Rates-Remain-Statistically-Unchanged-From-Previous-Study.

6 The vendor also administered the survey to a sample of high and low compliance communities. Inclusion of the community sample enabled TAS to better evaluate whether sole proprietor taxpayers' affiliations within their communities appear to influence compliance behavior.

7 *See* National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 33-56 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*). *See also* National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 1-70 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*). Statistics show underreporting of individual business income represents the largest portion of the tax gap (*i.e.,* taxes not voluntarily and timely paid). *See* IR-2012-4, *IRS Releases New Tax Gap Estimates; Compliance Rates Remain Statistically Unchanged From Previous Study* (Jan. 6, 2012), *available at* http://www.irs.gov/uac/IRS-Releases-New-Tax-Gap-Estimates;-Compliance-Rates-Remain-Statistically-Unchanged-From-Previous-Study.

of the National Taxpayer Advocate's 2014 Annual Report to Congress.[8] These results suggest, overall, IRS audits have a modest but short-lived direct deterrent effect.[9]

Throughout 2015, TAS Research will work with independent researchers to further study the impact of audits on taxpayer compliance behavior. We expect to explore:

- Refinement of the control group, *i.e.,* the population of sole proprietor taxpayers with high Discriminant Index Function (DIF) scores who were not audited in 2007, by removing those audited in the years immediately before 2007 (the beginning of the study period) or during the study period;
- Study of whether the classification process that determines the type of audit, *i.e.,* correspondence, office, or field audit, introduced a selection bias we should address with refinements to our analysis of the subsequent reporting compliance behavior of the taxpayers in these audit groups;
- Possible explanations for the significant decline in both the treatment and control groups' DIF scores in the year following the audit;
- A more detailed analysis of the impact of multiple audits that considers both the number and timing of the audits with respect to the audit closed in 2007; and
- Alternative methodologies, such as panel regression, that would enable the addition of control variables (*e.g.,* demographic variables such as type of business, gender and age, prior audit experience) to better isolate and distinguish the impact of the audit from other potential factors.

We anticipate publishing the results of this collaborative effort by the end of 2015. We will also work with these researchers throughout 2015 and 2016 on a new study evaluating the impact of outreach and education on taxpayer compliance behavior (as discussed below).

Impact of Outreach and Education on Tax Compliance

As discussed above, TAS is engaged in a multi-year study of a variety of factors on taxpayer compliance behavior. In the second phase, TAS found compliance norms and trust in government were the principal factors that appear to influence sole proprietor taxpayers' compliance behavior.[10] In the current study, TAS will explore whether outreach and education can favorably influence compliance norms and trust

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

9 Our results show a seven percent improvement in reporting compliance in the year following conclusion of the audit. This initial improvement diminishes in subsequent years, disappearing all together by year five. It should be noted that our study did not explore the indirect "ripple" effect audits have on compliance, *i.e.,* how taxpayers who were not audited are influenced by their awareness of the audits the IRS conducted on other taxpayers. Prior research suggests examinations may have an indirect "ripple" effect on compliance that is greater than the direct revenue produced by examinations, although this probably depends on the quality of the audit as low quality audits might decrease compliance. *See, e.g.,* Alan H. Plumley, *The Determinants of Individual Income Tax Compliance: Estimating The Impacts of Tax Policy, Enforcement, and IRS Responsiveness*, Publication 1916 (Rev. 11-96), Washington, DC, 2 (noting the importance of the "indirect effect," which includes the "ripple effect" of enforcement activities on other taxpayers as well as the "subsequent-year" effect on examined taxpayers). *See also,* Karyl A. Kinsey, *Deterrence and Alienation Effects of IRS Enforcement: An Analysis of Survey Data, WHY PEOPLE PAY TAXES*, 259, 276 (Joel Slemrod ed., 1992); American Bar Association Commission on Taxpayer Compliance, *Report and Recommendations on Taxpayer Compliance*, 41 Tax Law. 329, 364-365 (1988) (suggesting that low quality audits may be as bad or worse for compliance than no audit at all).

10 TAS employed factor analysis and logistic regression to analyze the results of a national survey of taxpayers with sole proprietor income (*i.e.,* Schedule C, *Profit or Loss from Business (Sole Proprietorship)*). *See* National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 33 (Research Study: *Small Business Compliance: Further Analysis of Influential Factors*). *See also* National Taxpayer Advocate 2012 Annual Report to Congress vol. 2, 1 (Research Study: *Factors Influencing Voluntary Compliance by Small Businesses: Preliminary Survey Results*).

in the IRS, resulting in improved taxpayer compliance.[11] In particular, the study will focus on whether taxpayer awareness and education of their right and ability to resolve various issues, and the protections afforded them during that process, can influence their trust in the IRS and their compliance behavior. TAS believes this issue is highly important, since the National Taxpayer Advocated has long urged the IRS to adopt a taxpayer bill of rights, which the IRS has done.[12]

TAS has contracted with independent researchers to help design the study, analyze the results, and produce a final report evaluating the results in detail, discussing the implications for tax administration, and recommending new IRS outreach and education initiatives. We anticipate the study will take two years to complete. In FY 2015, TAS will collaborate with the independent researchers to complete the study design. In FY 2016, TAS will conduct the study and collaborate with the independent researchers to prepare the final report.

TAS is also independently developing a study to evaluate the compliance impact of outreach on potentially noncompliant Earned Income Tax Credit (EITC) taxpayers. In this study, we will identify taxpayers who were not audited in 2015, but who had similar risk scores to taxpayers who were audited.[13] We will then draw two representative samples from this population to create separate control and test groups. Next, we will develop letters highlighting potential noncompliance concerns and send them to the test group of taxpayers at the beginning of the 2016 filing season.

Subsequently, we will estimate the compliance of each of the above groups *(i.e.,* the test group, the control group, and the group composed of taxpayers audited in 2015) using their 2016 dependent database (DDb)[14] risk scores and compare them to estimate the impact of our outreach letters relative to audits and no treatment at all. We anticipate completing this research by the end of December 2016.

Taxpayer Delinquent Account Collectability Curve

TAS Research is quantifying how the aging of a delinquency affects dollars collected on Taxpayer Delinquent Accounts (TDAs). In past Annual Reports to Congress, the National Taxpayer Advocate noted many of the TDAs in the IRS Automated Collection Service (ACS) and the Collection Field function (CFf) have existed for several years. The following statistics highlight the age of the IRS TDA inventory:[15]

- Overall, 53 percent of the IRS Individual Master File (IMF) TDA inventory has been in the function assigned the delinquency for at least ten months (the delinquency may have been in TDA status much longer);

This research [on aging delinquent accounts] is of particular importance in today's tight budgetary environment, since budgetary constraints will make the efficient and effective collection of delinquencies paramount.

11 The phase 2 study found all three components of trust in government studied, *i.e.,* trust in the federal government, the tax laws and the IRS, appear to influence compliance behavior. We are focusing solely on trust in the IRS, since we believe IRS can take actions to directly influence this component.

12 Internal Revenue Service, News Release IR-2014-72, *IRS Adopts "Taxpayer Bill of Rights;" 10 Provisions to be Highlighted on IRS.gov, in Publication 1* (June 10, 2014), *available at* http://www.irs.gov/uac/Newsroom/IRS-Adopts-Taxpayer-Bill-of-Rights;-10-Provisions-to-be-Highlighted-on-IRSgov,-in-Publication-1.

13 The IRS selects EITC returns for audit using a rule-based risk scoring algorithm that analyzes the dependents database (DDb), which contains relationship and residency information on taxpayers' dependents. We will use the DDb scores to identify non-audited taxpayers with high risk scores.

14 IRM 4.19.27.2.3, *Dependent Database* (Mar. 19, 2015).

15 IRS, Collection Activity Report 5000-2, (Oct. 3, 2014).

- Over 70 percent of the IMF TDAs in IRS inventory at the end of 2014 are tax year 2010 and prior liabilities; and
- Over 20 percent of the TDAs have less than four years remaining on the collection statute, meaning the delinquency has existed for over six years.

Throughout 2015, TAS Research will examine the IMF Accounts Receivable Dollar Inventory (ARDI) to determine how dollars collected fluctuate as time elapses. TAS Research plans to explore the dollars collected during the entire ten-year collection statute. We will also differentiate between dollars collected from refund offsets and other subsequent payments. Additional analyses may include differences that exist in collection trends as the underlying nature of the liability varies (*e.g.,* type of income tax liability, Trust Fund Recovery Penalty, liabilities stemming from additional assessments, size of the liability). We may also expand the analysis to Business Master File delinquencies.

This research is of particular importance in today's tight budgetary environment, since budgetary constraints will make the efficient and effective collection of delinquencies paramount. Good information on the time available to effectively collect various delinquencies will assist the IRS in determining what liabilities to collect first and whether it makes sense to defer the collection of smaller, more current liabilities in favor of older, larger ones. Furthermore, this research may yield insights into which delinquencies should be placed in the Collection TDA queue and which should be shelved. We anticipate completing this research by the end of December, 2015.

Service Priorities Project

The National Taxpayer Advocate is concerned the ongoing cuts to the IRS's budget in FYs 2010-2015[16] have resulted in unacceptable taxpayer service. In response to these concerns, TAS and the Wage & Investment (W&I) division are developing a ranking methodology for the major taxpayer service activities offered by W&I. The new methodology will take taxpayer needs and preferences into account while balancing them against the IRS's need to effectively utilize limited resources, enabling the IRS to make resource allocation decisions that will optimize the delivery of taxpayer services given resource constraints.[17] Congress can use the results of this methodology to determine whether it is adequately funding core taxpayer service activities. However, limitations imposed by the lack of available data have delayed implementation.

The project team identified a number of "data gaps" while attempting a trial ranking, using a prototype ranking tool and available data. Recently available tax year 2013 data can fill some of these "data gaps," but other gaps remain. TAS Research and W&I Research have agreed to conduct another trial ranking using the newly available 2013 data. We anticipate completing this ranking in by the end of September, 2015. By the end of 2015, the team will identify all remaining data needs and develop a plan to meet them. Throughout 2016, TAS will implement the plan and collect the data needed to fill the remaining data gaps. To this end, TAS has initiated a procurement to obtain contractor services to develop and administer a telephone-based survey that will expand on the data collected in prior W&I surveys. Our goal is to complete survey administration in the final quarter of FY 2016.

16 In FY 2010, the agency's appropriated budget stood at $12.1 billion. In FY 2015, its budget was set at $10.9 billion, a reduction of about 9.9 percent. Inflation over the same period is estimated at about 9.4 percent. Adjusting for the interactive effects of these cuts and the impact of the federal pay freeze, we estimate the inflation-adjusted reduction in funding was about 17 percent.

17 We use the word "optimize" to mean the ranking methodology will provide the IRS with a rigorous way to select the combination of competing taxpayer service initiatives that maximizes the "value" of service delivery given available resources.

FOCUS FOR FISCAL YEAR 2016

- TAS will analyze data for taxpayers who had examination and collection issues for two groups of taxpayers – those who sought TAS assistance and those who did not. We will assess their filing, payment, and reporting compliance in the subsequent five years to determine if we can estimate the value of quality services on future taxpayer compliance;
- In a continuation of ongoing work, TAS will collaborate with independent researchers on a study evaluating the impact of audits on taxpayer compliance;
- TAS will complete a study on whether taxpayer awareness and education of their rights and ability to resolve various issues can influence their trust in the IRS and their compliance behavior;
- TAS will examine the IMF ARDI to determine how dollars collected fluctuate as time elapses to determine what should be collected first – current, smaller liabilities or older, larger liabilities; and
- TAS Research will continue working with W&I Research to develop a ranking method for the major taxpayer service activities offered by W&I in order to better determine how to allocate limited resources.

VI. TAS Technology

TAS REMAINS STEADFAST IN THE SEARCH FOR FUNDING TO MODERNIZE ANTIQUATED SYSTEMS

Taxpayer Advocate Service Integrated System

In several past Fiscal Year Objectives Reports, TAS has described the integrated application known as the Taxpayer Advocate Service Integrated System (TASIS). TASIS began as a strategic effort to align TAS case management and systemic advocacy operations. TAS fast tracked the concept when it learned its primary case management system, the Taxpayer Advocate Management Information System (TAMIS), a version of the original case management system created in the 1980s for TAS's predecessor (the Problem Resolution Program), was slated for retirement.

TAS capitalized on this retirement as an opportunity to integrate all of its systems and business processes into a single state-of-the-art application. TAS developed over 4,000 business requirements[1] for the case management system aspect of TASIS functionality, including:

- Fully virtual case files, in which all documentation (whether IRS or taxpayer-generated) will be scanned or received digitally into an electronic case file;
- Electronic access to other IRS case management systems, with automatic retrieval of taxpayer information programmed into the system and no further need for TAS employees to obtain and import the information manually;
- Electronic submission and tracking of Operations Assistance Requests (OARs), including receipt, acknowledgement, assignment, and response, in which TAS sends requests, with supporting documentation, to IRS functions to take actions on cases, eliminating delays and time-wasting manual tracking;
- Full access to all virtual case information for purposes of management and quality review, eliminating the delay and cost associated with transporting files;
- Taxpayer ability to submit Form 911, *Request for Taxpayer Advocate Service Assistance*, electronically;
- Taxpayer ability to submit documentation electronically;
- TAS and taxpayer ability to communicate digitally, through email and text messages, including both substantive case information and reminders to help move the case along;
- Taxpayer (and representative) ability to electronically check the status of a case in TAS and see what actions have been taken or are underway; and
- An electronic case assignment system that matches, in real time, the complexity and direct time associated with the case with the skills and available direct time associated with each Case Advocate in any given office, taking into account an employee's unavailability because of annual leave, sick leave, training, or on-the-job instruction, eliminating delays in assignment and minimizing the need to transfer cases.

These are just some of the capabilities contained within the TASIS Business System Requirements Report, which collectively illustrates the TASIS case management component will not just replace TAMIS but will

1 TASIS Business System Requirements Report, October 28, 2011.

significantly increase the productivity of TAS Case Advocates because they will no longer spend their valuable time tracking down paper documents or inputting information into multiple systems.[2] Moreover, taxpayers will be able to communicate efficiently with TAS and electronically send key case information and documents. This functionality will enable our Case Advocates to spend their time advocating for taxpayers, rather than performing manual input and tracking of documents and IRS actions.

The TASIS case management component will not just replace TAMIS but will significantly increase the productivity of TAS Case Advocates because they will no longer spend their valuable time tracking down paper documents or inputting information into multiple systems.

TASIS began the transition from concept to reality in 2014 when an early prototype rolled out for informal testing. Based on those test results, TAS was just months away from deployment of the complete application. In March 2014, however, the IRS Information Technology (IT) division notified TAS executives TASIS would no longer be supported due to budget constraints.

Funding Woes Impact TASIS

The budget for fiscal year (FY) 2015 finds the IRS adjusting to the loss of "critical information technology investments of more than $200 million."[3] As mentioned previously, the reduced budget environment resulted in all IT activity on TASIS coming to a halt in March 2014. To date, the IRS invested approximately $20 million in TASIS Release 1, with about 70 percent of the programming completed.[4] We are ready to begin the final programming as soon as funds are available. It is estimated TASIS requires $12 million to complete Release 1 programming, testing, and launch. Despite the demonstrated savings TASIS would produce and its benefits for all of the IRS, no funds are allocated to TASIS.

At present, TAS is pursuing all available avenues to position the organization to state the best case to reacquire project funding. The National Taxpayer Advocate believes TASIS should be funded and completed even as the IRS pursues the Servicewide Enterprise Case Management (ECM) solution described below. Once operational, IRS can easily modify TASIS for use by the Office of Appeals, the Exempt Organization function, the Office of Professional Responsibility, and the Whistleblower Office, among others. Then, the IRS can fully retire the legacy systems these functions use.

IRS Proposes a Servicewide ECM Solution

Going forward, IRS will move TASIS (though still in a paused state) under the umbrella of a comprehensive IRS project to create a servicewide ECM solution. The term "case management" refers to electronic recordkeeping systems the IRS uses to track information about interactions with respect to taxpayers' tax returns or other tax-related matters. These systems include audit and collection case records for individuals and large, medium, and small businesses; exempt organization determinations; whistleblower claims; automated substitutes for returns; the automated underreporter (AUR) program; criminal investigations; and the TAS case management system.

2 TASIS Business System Requirements Report, Oct. 28, 2011.

3 *Internal Revenue Service Operations and the President's Budget for Fiscal Year 2016, Hearing Before the S. Comm. on Finance,* 114th Cong. 3 (Feb. 3, 2015) (statement of John A. Koskinen, Commissioner, Internal Revenue Service).

4 *Internal Revenue Service FY 2016 Budget Request, Hearing Before S. Subcomm. on Financial Services and S. General Government Comm. on Appropriations,* 114th Cong. 33 (2015) (statement of Nina E. Olson, National Taxpayer Advocate).

ECM offers a future vision for consolidated case management that will address the need to modernize, upgrade, and consolidate multiple aging IRS systems. The IRS now supports up to 150 such systems,[5] few of which communicate with one another and none of which provide an electronic substitute for the paper case file (*i.e.,* there are reams of paper supplementing whatever records included in the electronic system). The IRS's current case management system structure requires employees to:

- Retrieve data from many systems manually;
- Maintain both paper and electronic records;
- Transcribe or otherwise import information from paper and other systems into their own case management systems; and
- Ship, mail, or fax an estimated hundreds of thousands, if not millions, of case management files and supporting documents annually for management approval, quality review, and responses to Appeals and Counsel.

The ECM solution will develop a common infrastructure for multiple projects to share. Implementation of the solution will provide the IRS with a consistently efficient approach to case management across all business units. IT created a cross-IRS development team, excluding TAS participation, to create a demo of the future ECM solution. While the National Taxpayer Advocate agrees the IRS needs a servicewide ECM solution, which now represents TAS on the ECM project, she is concerned about the IRS's failure to leverage the comprehensive work already completed in creating TASIS.

Despite the demonstrated savings TASIS would produce and its benefits for all of the IRS, no funds are allocated to TASIS.

TAS is years ahead in all aspects of creating an integrated case management system. We designed TASIS from the ground up. We asked our employees what frustrated them about current systems and the need for manual entry into multiple systems. Based on those responses, and in consultation with IT professionals and outside contractors, we developed over 4,000 business requirements for our new case management system.[6] The servicewide ECM system can use many of these. Because TAS has a working knowledge of almost all other IRS case management systems, we designed TASIS to serve as the basic system upon which other IRS divisions could add modules and functionality to meet their specific needs. Thus, the time, planning, development, and programming that TAS and IT have invested in TASIS will benefit all of the IRS.

The design and implementation of TASIS are critical not only for TAS but also to the IRS's ability to move forward and begin to harness the savings and burden reduction a sophisticated case management system promises. The National Taxpayer Advocate believes it is a reckless use of taxpayer dollars for the IRS to proceed with a servicewide ECM solution without leveraging the foundational work completed to create TASIS. At present, it is not clear the extent to which TASIS objectives will be included in the ECM plan or how TASIS will impact or align to the ECM solution.

Negative Impact to Taxpayers, Employees, and Partners Is Inevitable

The decade-long effort to integrate TAS and IRS systems into a single application remains suspended. All IRS funds have been directed to other priorities. The end of TASIS equates to an end of a decade of hard work, millions of dollars, and the immeasurable unrealized benefits to employees, taxpayers, and tax practitioners.

5 IRS IT News Article, *Spotlight On! Rapid Delivery: Achieving 14 to 3 Across IT,* Jan. 12, 2015.

6 TASIS Business System Requirements Report, October 28, 2011.

Without TASIS, taxpayers, employees, and practitioners will experience inevitable adverse effects. While technology in the private sector allows users to electronically submit health care reimbursement claims and make all types of appointments online, taxpayers cannot communicate with TAS in the same environment. If TASIS is not fully realized, the IRS and its taxpayer customers will lose:

- Automated work processes;
- Electronic correspondence submissions;
- Automated electronic collaboration to acquire information from IRS systems;
- A secure area for IRS operating divisions to electronically receive and respond to OARs from TAS;
- Automated research capabilities;
- Ability to seek help via the Internet using a secure portal;
- Elimination of manual and redundant steps;
- Direct online and telephonic communication with a TAS Intake Advocate (IA) and the IA's ability to address a taxpayer's issue within the first minutes of contact instead of initiating the current paper referral;
- Automated tools to assist in immediate case assignment;
- Electronic files;
- Physical location transparency; and
- Increased productivity.

Most importantly, the impact will leave employees with far less time to devote to advocating for taxpayers. The effect on resuming and delivering TASIS is still emerging.

TAS Takes the Helm to Facilitate Progress with TASIS

In a 2014 audit report, the Treasury Inspector General for Tax Administration (TIGTA) identified the following areas that need improvements:[7]

- Requirements management practices were not sufficient to develop TASIS;
- Risk management controls were not followed to manage TASIS development risks;
- Critical roles and responsibilities were not established or clearly communicated; and
- System requirements have not yet been sufficiently verified.

Immediately following the report, IT and TAS began collaborating on a plan to remediate those findings. We put a new risk management process in place and efforts in the realm of roles and responsibilities rose to the forefront so all parties were clear on expectations.

Once funding for TASIS halted in March 2014, the National Taxpayer Advocate reallocated TAS funds to address two remaining concerns and made them primary initiatives, which allowed TAS to make the best use of time and resources during this paused state of the project.[8] The first effort was the establishment of

7 TIGTA, Ref. No. 2014-20-071, *Information Technology: Improvements Are Needed to Successfully Plan and Deliver the New Taxpayer Advocate Service Integrated System* (Sept. 2014).

8 2015 Taxpayer Advocate Service Program Letter.

Because TAS has a working knowledge of almost all other IRS case management systems, we designed TASIS to serve as the basic system upon which other IRS divisions could add modules and functionality to meet their specific needs.

a team of experts from TAS, IT, and contractor personnel to produce a pristine set of technical requirements to create a clear mapping of all requested Release 1 system functionality.

This became a paramount necessity when we learned during testing several aspects of functionality missed the mark. The collaborative effort spanned May through November 2014. The team analyzed over 3,500 requirements[9] and pared them down to 1,795 proposed functional and technical requirements for Release 1. The documented set of testable requirements and more than 60 supporting narrative documents wait in storage until the IRS allocates funding to finalize the application.

During this pause in the TASIS project, the National Taxpayer Advocate also directed the development of a Welcome Screen to serve as a single-entry point connecting users to the many systems, applications, communications, and resources used on a daily basis. Originally, the Welcome Screen was a component of TASIS Release 1; TAS independently released it on March 16, 2015, which allows all TAS employees to enter their computer environment daily through the Welcome Screen.

Need for TAMIS Upgrade Is Now More Critical Than Ever

If IT does not fund TASIS in the very near future and fully incorporate it into the ECM solution, TAMIS must be sustained and improved to support current TAS operations and business processes. Taking these actions will result in additional TAMIS funding that is not part of the current budgetary requests. TAS took a preemptive stand and submitted a Unified Work Request (UWR) in 2014 to ask IT for a cost estimate to ensure continuity of operations for TAMIS in the event TASIS is not funded. The IRS has yet to provide an estimate;[10] however, TAS rough estimates indicate this amount will likely be close to the amount needed to complete TASIS Release 1.

Focus for Fiscal Year 2016

- Assume the responsibility, formally owned by IT, to pursue and maneuver through the IRS funding process to reacquire project funding for Release 1 and future releases;
- Resume all stalled project activities up to and through deployment of TASIS in the event IRS approves and allocates funding for the project;
- Partner with ECM to define project goals, build on TASIS lessons learned, and in the process, deliver TASIS as a model for other ECM implementations;
- Incorporate ECM timelines into interim TAS process improvement support planning, with possible modifications needed for legacy case applications;
- Update objectives and requirements to complete the integrated system design. (Beyond Release 1, including Taxpayer Digital Communications as discussed below, automated work assignment, quality review, and support for systemic advocacy processes.);
- Form a team of TAS experts to produce a pristine set of technical requirements and clearly map all requested system functionality beyond Release 1; and
- Work with IT to plan and coordinate the activities to upgrade TAMIS.

9 TAS/IT TASIS Requirements Tiger Team, *Closeout Report,* Nov. 26, 2014.

10 *Internal Revenue Service FY 2016 Budget Request, Hearing Before S. Subcomm. on Financial Services and S. General Government Comm. on Appropriations*, 114th Cong. 33 (2015) (statement of Nina E. Olson, National Taxpayer Advocate).

Sharepoint 2010

Enhancing Business Processes and Fostering Online Collaboration Via SharePoint 2010

In 2009, TAS identified SharePoint 2010 as a tool to:

- Address critical needs in document storage and management;
- Streamline collaboration and approval processes;
- Connect and empower project teams;
- Reduce and control costs; and
- Respond rapidly to business needs.

The IRS began implementing SharePoint 2010 in late 2011. TAS was among the early adopters and has championed the use of SharePoint servicewide. On a daily basis, TAS employees search past advocacy documents, job aids, Annual Reports to Congress, and other materials for specific information. Existing search tools have been ineffective, which often forced the employee to attempt an extremely inefficient manual search. Now, however, TAS is maximizing the capabilities of SharePoint 2010 by using predefined key terms called metadata to locate specific information. When a user adds a document in SharePoint 2010, the system asks him or her to select specific terms to classify the data. This allows the search feature to return all matching content, eliminating the need for a secondary search.

TAS decided SharePoint 2010 could meet critical business needs not being addressed in the early releases of TASIS (discussed above) while simultaneously reducing the future burden on IT. TAS has already implemented several automated workflows that eliminate manual steps in the processes they replaced. These workflows allow users to focus on substantive advocacy, while the system keeps up with the actual process.

In addition to the gains in efficiency, the automation reduces or eliminates human error, increasing the quality of the output. Many current processes support the development of the Annual Report to Congress and the Objectives Report to Congress, semi-automate document reviews and comments, and enhance approval and tracking of IRS-wide collaborative efforts. All of the business processes targeted for replacement rely heavily on document collaboration. Some of these efforts, and the steps automated by SharePoint 2010, are listed below:

- Annual and Objectives Reports to Congress workflows including:
- Topic solicitation and approval;
- Generation, collaboration, review, and approval of topic synopsis, narratives, and executive summary; and
- Research and Information Requesting routing and approval;
- Internal Management Document (IMD) workflow changes to IRM sections, policy statements, forms, etc.;
- Collaborative review (*e.g.,* Annual Report to Congress, Objectives Report to Congress, IMD);
- Consolidated comments (*e.g.,* Annual Report to Congress, Objectives Report to Congress, IMD); and
- Collaborative efforts to identify and track recommendations by cross-functional teams and the IRS Executive Steering Committee.

TAS continues to define, refine, and implement additional automated workflows to further lessen the burden on TAS's employees.

One of the biggest challenges facing TAS, Wage & Investment, Small Business/Self Employed, Large Business & International, and most of the other Business Operating Divisions (BODs) is IT does not consider SharePoint 2010 a mission-critical application. As a result, the SharePoint platform does not automatically receive the funding consideration it should and is not supported the way the IRS supports a tax processing system. Moreover, IT is not required to follow the standard Service Level Agreements. Thus, should the platform go down for an extended time, it could cause a damaging outage for the entire enterprise.

To mitigate the risk associated with the non-mission critical level of support and funding, TAS and other BODs investigated the possibility of migrating to the Department of Treasury's SharePoint environment. This environment is stable, with well-defined processes, higher capacity, and greater numbers of supporting staff than the IRS. The IRS SharePoint Governance Board approved TAS's request to migrate to Treasury. Unfortunately, IT leadership overruled this decision and stopped the migration effort, even though all agencies under the Department of Treasury were mandated via memo from the CIO of Treasury in June, 2011, to utilize the Treasury-administered ECM (SharePoint) environment. The IRS provided approximately $3 million in funding for this shared environment that is going unused in addition to millions more to support its own SharePoint environment.[11]

TAS will continue to leverage the document collaboration and business process automation capabilities of SharePoint 2010 to meet current and future business requirements whenever possible. We are currently working to prioritize additional business process improvements we will implement via SharePoint 2010 later in FYs 2015 and 2016. Some of those targeted process include but are not limited to:

- Automation of workflows for the Annual Report to Congress;
- Automation of workflows for the Objectives Report to Congress;
- Business Performance Review report workflows; and
- Generation and tracking of OARs, Taxpayer Assistance Orders, and Taxpayer Advocate Directives through workflows.

Welcome Screen

TAS successfully launched its new Welcome Screen to all employees on March 16, 2015, taking a significant step in modernizing and simplifying employee technology in a time of budget constraints. The Welcome Screen offers a central communications portal for employees and managers to receive casework guidance, training updates, leadership messages, and other critical information. It provides employees with real-time communications that satisfy the needs of the organization and support business results. TAS can now target these communications to specific segments of employees.

The Welcome Screen further provides quick access to key systems such as TAMIS, SharePoint, and the Systemic Advocacy Management System. Employees can also customize their screens with their own calendars, widgets, pinned links, and other tools. The initial widgets library includes calendars, tasks, bookmarks, calculator, and notes. TAS will continue to release new widgets that support productivity and advocacy. TAS will integrate widgets and the Welcome Screen with TASIS Release 1.

11 ECM, Nov. 13, 2014.

Taxpayer Digital Communications

In an increasingly digital world, a taxpayer's means of providing written information to the IRS are limited to old-fashioned methods such as U.S. mail and faxes. According to a study conducted by the Pew Research Center's Internet and American Life Project, 81 percent of adult Americans use a computer on an occasional basis. Eighty-two percent of the population surveyed reported using the Internet within the last day, with 90 percent of this group doing so from home. Further, approximately 65 percent of the individuals surveyed reported having a smartphone.[12] With such a high percentage of potential users, the IRS needs a way to allow taxpayers to provide electronic documents to the IRS.

Because of TAS's unique one-to-one relationship with its customers, TAS is collaborating with Online Services (OLS) to develop and implement Taxpayer Digital Communication (TDC), a communication method through a secure web-based portal, allowing one-way or two-way communication. Authenticated users will be able to:

- Access the portal from their own computers;
- Receive digital rather than paper notices;
- Interact using secure messaging; and
- Transfer documents to and from TAS.

Future communication channels include live text chat, voice chat, video chat, and screen sharing. TDC also plans to deliver notifications and alerts by SMS text messages, and taxpayers could take many tax-related actions by smartphone.

TDC will enhance communication and information sharing between TAS employees and taxpayers. This will benefit TAS employees by facilitating their work processes, including electronic OARs, and allowing them to advocate more efficiently for taxpayers by reducing taxpayer burden and providing faster relief.

TAS plans to pilot the portal using secure messaging and document transfers to process levy and Earned Income Tax Credit cases in the Cleveland, Dallas, Nashville, and New Orleans TAS offices. OLS is procuring the software to establish the portal.

Focus for Fiscal Year 2016

- Continue to collaborate with OLS to move the TDC project from the development to the pilot phase, projected to begin in the second quarter of FY 2016;
- Verify the pilot design includes TAS system requirements;
- Recommend changes to current TAS policy and procedures for case processing while in pilot status;
- Create a TAS User Guide and develop TAS-specific training, including a course on effective and clear writing;
- Determine metrics for measuring the success of the pilot; and
- Develop a governance process for change requests.

12 Pew Research Center, *The Web at 25 in the U.S.* (Feb. 27, 2014) (conducted January 2013) *available at* http://www.pewinternet.org/2014/02/25/the-web-at-25-in-the-u-s.

VII. Appendices

APPENDIX 1: EVOLUTION OF THE OFFICE OF TAXPAYER ADVOCATE

The Office of the Taxpayer Ombudsman was created by the IRS in 1979 to serve as the primary advocate, within the IRS, for taxpayers. This position was codified in the Taxpayer Bill of Rights (TBOR 1), included in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA).[1]

In TBOR 1, Congress added IRC § 7811, granting the Ombudsman (now the National Taxpayer Advocate) the statutory authority to issue Taxpayer Assistance Orders (TAOs) if, in the determination of the Ombudsman, a taxpayer is suffering or is about to suffer significant hardship because of the way the Internal Revenue laws are being administered by the Secretary.[2] Further, this section directed the Ombudsman and the Assistant Commissioner (Taxpayer Services) to jointly provide an annual report to Congress about the quality of taxpayer services provided by the IRS. This report was delivered directly to the Senate Committee on Finance and the House Committee on Ways and Means.[3]

In 1996, the Taxpayer Bill of Rights 2 (TBOR 2) amended IRC § 7802 (the predecessor to IRC § 7803), replacing the Office of the Taxpayer Ombudsman with the Office of the Taxpayer Advocate.[4] The Joint Committee on Taxation set forth the following reasons for change:

> To date, the Taxpayer Ombudsman has been a career civil servant selected by and serving at the pleasure of the IRS Commissioner. Some may perceive that the Taxpayer Ombudsman is not an independent advocate for taxpayers. In order to ensure that the Taxpayer Ombudsman has the necessary stature within the IRS to represent fully the interests of taxpayers, Congress believed it appropriate to elevate the position to a position comparable to that of the Chief Counsel. In addition, in order to ensure that the Congress is systematically made aware of recurring and unresolved problems and difficulties taxpayers encounter in dealing with the IRS, the Taxpayer Ombudsman should have the authority and responsibility to make independent reports to the Congress in order to advise the tax-writing committees of those areas.[5]

In TBOR 2, Congress not only established the Office of the Taxpayer Advocate, but also described its functions:

- To assist taxpayers in resolving problems with the IRS;
- To identify areas in which taxpayers have problems in dealings with the IRS;
- To the extent possible, propose changes in the administrative practices of the IRS to mitigate those identified problems; and
- To identify potential legislative changes which may be appropriate to mitigate such problems.[6]

Congress did not provide the Taxpayer Advocate with direct line authority over the regional and local Problem Resolution Officers (PROs) who handled cases under the Problem Resolution Program (PRP), the predecessor to the Office of the Taxpayer Advocate. At the time of the enactment of TBOR 2,

1 Pub. L. No. 100-647, Title VI, § 6230, 102 Stat. 3342, 3733 (Nov. 10, 1988).
2 *Id.*
3 *Id.* at 3737.
4 Pub. L. No. 104-168, § 101, 110 Stat. 1452, 1453 (July 30, 1996).
5 J. Comm. on Tax'n, *General Explanation of Tax Legislation Enacted in the 104th Congress,* 20 (1996).
6 Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453 - 54 (July 30, 1996).

Congress believed it sufficient to require that "all PROs should take direction from the Taxpayer Advocate and that they should operate with sufficient independence to assure that taxpayer rights are not being subordinated to pressure from local revenue officers, district directors, etc."[7]

TBOR 2 also replaced the joint Assistant Commissioner/Taxpayer Advocate Report to Congress with two annual reports to Congress issued directly and independently by the Taxpayer Advocate.[8] The first report is to contain the objectives of the Taxpayer Advocate for the fiscal year beginning in that calendar year. This report is to provide full and substantive analysis in addition to statistical information and is due no later than June 30 of each calendar year.

The second report is on the activities of the Taxpayer Advocate during the fiscal year ending during that calendar year. The report must:

- Identify the initiatives the Taxpayer Advocate has taken to improve taxpayer services and IRS responsiveness;
- Contain recommendations received from individuals who have the authority to issue a TAO;
- Describe in detail the progress made in implementing these recommendations;
- Contain a summary of at least 20 of the Most Serious Problems (MSPs) taxpayers have in dealing with the IRS;
- Include recommendations for such administrative and legislative action as may be appropriate to resolve such problems;
- Describe the extent to which regional PROs participate in the selection and evaluation of local PROs; and
- Include other such information as the Taxpayer Advocate may deem advisable.

The stated objective of these two reports is "for Congress to receive an unfiltered and candid report of the problems taxpayers are experiencing and what can be done to address them. The reports by the Taxpayer Advocate are not official legislative recommendations of the Administration; providing official legislative recommendations remains the responsibility of the Department of Treasury."[9]

Finally, TBOR 2 amended IRC § 7811, extending the scope of a TAO, by providing the Taxpayer Advocate with broader authority "to affirmatively take any action as permitted by law with respect to taxpayers who would otherwise suffer a significant hardship as a result of the manner in which the IRS is administering the tax laws."[10] For the first time, the TAO could specify a time period within which the IRS must act on the order. The statute also provided that only the Taxpayer Advocate, the IRS Commissioner, or the Deputy Commissioner could modify or rescind a TAO, and that any official who so modifies or rescinds a TAO must respond in writing to the Taxpayer Advocate with his or her reasons for such action.[11]

7 J. Comm. on Tax'n, *General Explanation of Tax Legislation Enacted in the 104th Congress,* 21 (1996).
8 Pub. L. No. 104-168, § 101(a), 110 Stat. 1452, 1453 - 54 (July 30, 1996).
9 J. Comm. on Tax'n, *General Explanation of Tax Legislation Enacted in the 104th Congress,* 21 (1996).
10 *Id.* at 22.
11 Pub. L. No. 104-168, § 102(b), 110 Stat. 1452, 1456 (July 30, 1996).

In 1997, the National Commission on Restructuring the Internal Revenue Service called the Taxpayer Advocate the "voice of the taxpayer." In its discussion of the Office of the Taxpayer Advocate, the Commission noted:

> Taxpayer Advocates play an important role and are essential for the protection of taxpayer rights and to promote taxpayer confidence in the integrity and accountability of the IRS. To succeed, the Advocate must be viewed, both in perception and reality, as an independent voice for the taxpayer within the IRS. Currently, the national Taxpayer Advocate is not viewed as independent by many in Congress. This view is based in part on the placement of the Advocate within the IRS and the fact that only career employees have been chosen to fill the position.[12]

In response to these concerns, in the IRS Restructuring and Reform Act of 1998 (RRA 98), Congress amended IRC § 7803(c), renaming the Taxpayer Advocate as the National Taxpayer Advocate and mandating that the National Taxpayer Advocate could not be an officer or an employee of the IRS for two years preceding or five years following his or her tenure as the National Taxpayer Advocate (service as an employee of the Office of the Taxpayer Advocate is not considered IRS employment under this provision).[13]

RRA 98 provided for Local Taxpayer Advocates (LTAs) to be located in each state, and mandated a reporting structure for LTAs to report directly to the National Taxpayer Advocate.[14] As indicated in IRC § 7803(c)(4)(B), each LTA must have a phone, fax, electronic communication, and mailing address separate from those of the IRS. The LTA must advise taxpayers at their first meeting of the fact that "the taxpayer advocate offices operate independently of any other Internal Revenue Service office and report directly to Congress through the National Taxpayer Advocate."[15]

Congress also granted the LTAs discretion to not disclose the fact that the taxpayer contacted the Office of the Taxpayer Advocate or any information provided by the taxpayer to that office.[16] The definition of "significant hardship" in IRC § 7811 was expanded in 1998 to include four specific circumstances:

1. An immediate threat of adverse action;
2. A delay of more than 30 days in resolving taxpayer account problems;
3. The incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or
4. Irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted.[17]

The Committee Reports make clear that this list is a non-exclusive list of what constitutes significant hardship.[18]

Prior to 2011,Treasury Regulation § 301.7811-1 had not been updated since it was first published in 1992. Consequently, after Congress expanded the definition of "significant hardship" in the statute in

12 National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS,* 48 (1997).
13 Pub. L. No. 105-206, § 1102, 112 Stat. 685, 699 (July 22, 1998).
14 *Id.* at 701.
15 IRC § 7803(c)(4)(A)(iii).
16 IRC § 7803(c)(4)(A)(iv).
17 IRC § 7811(a)(2).
18 *See, e.g.,* H.R. Conf. Rep. No. 105-599, at 215 (1998).

1998, the definition in the regulation was inconsistent. However, on April 1, 2011, the IRS published in the Federal Register final regulations under IRC § 7811 that contain a definition of significant hardship consistent with existing law and practice.[19]

19 Treas. Reg. § 301.7811-1(a)(4)(ii) (as amended by T.D. 9519, 2011-8 IRB 734).

APPENDIX 2: TAXPAYER ADVOCATE SERVICE CASE ACCEPTANCE CRITERIA

TAS Case Acceptance Criteria

As an independent organization within the IRS, TAS helps taxpayers resolve problems with the IRS and recommends changes to prevent future problems. TAS fulfills its statutory mission by working with taxpayers to resolve problems with the IRS.[1] TAS case acceptance criteria fall into four main categories.

Economic Burden	**Cases involving a financial difficulty to the taxpayer; an IRS action or inaction has caused or will cause negative financial consequences or have a long-term adverse impact on the taxpayer**
Criteria 1	The taxpayer is experiencing economic harm or is about to suffer economic harm.
Criteria 2	The taxpayer is facing an immediate threat of adverse action.
Criteria 3	The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
Criteria 4	The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.
Systemic Burden[2]	**Cases in which an IRS process, system, or procedure has failed to operate as intended, and as a result the IRS has failed to timely respond to or resolve a taxpayer issue**
Criteria 5	The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
Criteria 6	The taxpayer has not received a response or resolution to the problem or inquiry by the date promised.
Criteria 7	A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
Best Interest of the Taxpayer	**TAS acceptance of these cases will help ensure that taxpayers receive fair and equitable treatment and that their rights as taxpayers are protected.[3]**
Criteria 8	The manner in which the tax laws are being administered raises considerations of equity, or have impaired or will impair the taxpayer's rights.
Public Policy	**TAS acceptance of cases under this category will be determined by the National Taxpayer Advocate and will generally be based on a unique set of circumstances warranting assistance to certain taxpayers.[4]**
Criteria 9	The National Taxpayer Advocate determines compelling public policy warrants assistance to an individual or group of taxpayers.

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

2 TAS has changed its case acceptance criteria to generally stop accepting certain systemic burden issues. IRM 13.1.7.3(d), Exceptions to Taxpayer Advocate Service Criteria (Feb. 4, 2015).

3 IRM 13.1.7.2.3, TAS Case Criteria 8, Best Interest of the Taxpayer (Feb. 4, 2015).

4 *See* Interim Guidance Memorandum (IGM) TAS-13-0414-001, *Interim Guidance on Accepting Cases Under TAS Case Criteria 9, Public Policy* (Apr. 2, 2014).

APPENDIX 3: LIST OF LOW INCOME TAXPAYER CLINICS

Low Income Taxpayer Clinics (LITCs) represent low income taxpayers before the IRS and assist taxpayers in audits, appeals, and collection disputes. LITCs can also help taxpayers respond to IRS notices and correct account problems.

If you are a low income taxpayer who needs assistance in resolving a tax dispute with the IRS and you cannot afford representation, or if you speak English as a second language and need help understanding your taxpayer rights and responsibilities, you may qualify for help from an LITC that provides free or low cost assistance. Eligible taxpayers must generally have incomes that do not exceed 250 percent of the Federal poverty guidelines published annually by the Department of Health and Human Services.[1] Income ceilings for 2015 are shown below:

FIGURE VII.1 INCOME CEILING (250% OF POVERTY GUIDELINES)

Size of Family	48 Contiguous States, Puerto Rico, D.C.	Alaska	Hawaii
1	$29,425	$36,800	$33,875
2	$39,825	$49,800	$45,825
3	$50,225	$62,800	$57,775
4	$60,625	$75,800	$69,725
5	$71,025	$88,800	$81,675
6	$81,425	$101,800	$93,625
7	$91,825	$114,800	$105,575
8	$102,225	$127,800	$117,525
For each additional person, add	$10,400	$13,000	$11,950

Although LITCs receive partial funding from the IRS, the clinics, their employees and their volunteers are completely independent of the federal government. Clinics receiving federal funding for the 2015 calendar year are listed below. These clinics are operated by nonprofit organizations or academic institutions.

In lieu of an LITC, low income taxpayers may be able to receive assistance from a referral system operated by a state bar association, a state or local society of accountants or enrolled agents, or another nonprofit tax professional organization.

Contact information for clinics may change, so please check for the most recent information at http://www.taxpayeradvocate.irs.gov/about/litc.

1 Federal Poverty Guidelines, *available at* http://aspe.hhs.gov/poverty/15poverty.cfm.

FIGURE VII.2 LOW INCOME TAXPAYER CLINIC LIST

Type of Clinic: C = Controversy Clinic; E = ESL Clinic; and B = Both Controversy and ESL Clinic

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
AK	Anchorage	Alaska Business Development Center	800-478-3474 907-562-0335	B	Yupik, Cupik, Aleut, Inupiaq, Tlingit/ Haida, Athabaskan
AL	Montgomery	Legal Services Alabama LITC	866-456-4995 334-832-4570	C	Spanish
AR	Little Rock	UALR Bowen School of Law LITC	501-324-9441	B	Spanish
	Springdale	Low Income Taxpayer Clinic at Legal Aid of Arkansas	800-967-9224 479-442-0600	B	Spanish, Marshallese
AZ	Chinle	DNA People's Legal Services LITC	928-674-5242	B	Navajo
	Phoenix	Community Legal Services LITC	800-852-3075 602-258-3434	C	Spanish; Other languages through interpreter services
	Tucson	Taxpayer Clinic of Southern Arizona	520-622-2801	B	Spanish; Other languages through interpreter services
CA	Fresno	Central California Legal Services LITC	800-675-8001 559-570-1200	B	Spanish, Hmong; Other languages through interpreter services
	Los Angeles	KYCC Low Income Taxpayer Clinic	213-232-2700	B	Spanish, Korean
	Northridge	The Bookstein Tax Clinic	818-677-3600	B	Spanish, Farsi
	Orange	Chapman University Tax Law Clinic	714-628-2535	C	Spanish, Vietnamese, Mandarin
	San Diego	Legal Aid Society of San Diego LITC	877-534-2524	C	All languages through interpreter services
	San Diego	University of San Diego LITC	619-260-7470	B	Spanish
	San Francisco	Justice and Diversity Center of the Bar Association of San Francisco	415-782-8978	C	Spanish
	San Francisco	Chinese Newcomers Service Center	415-421-2111	B	Chinese, Cantonese, Mandarin, Toishen
	San Jose	Santa Clara University School of Law LITC	408-288-7030	C	Spanish, Vietnamese, Chinese; Other languages through interpreter services
	San Luis Obispo	Cal Poly Low Income Taxpayer Clinic	877-318-6772 805-756-2951	B	Spanish; Other languages through interpreter services
	Santa Ana	Legal Aid Society of Orange County LITC	800-834-5001 714-571-5200	B	All languages through interpreter services
CO	Denver	University of Denver Graduate Tax Program LITC	303-871-6331	C	Spanish
CT	Hamden	Quinnipiac University School of Law LITC	203-582-3238	C	Spanish
	Hartford	UConn Law School Tax Clinic	860-570-5165	C	Spanish, French, Polish, Chinese (Mandarin), Russian; Other languages through interpreter services
DC	Washington	The Catholic University LITC	202-319-6788	C	All languages through interpreter services
	Washington	The Janet R. Spragens Federal Tax Clinic	202-274-4144	C	All languages through interpreter services
	Washington	University of the District of Columbia David A. Clarke School of Law LITC	202-274-7315	C	All languages identified in DC Language Access Act
DE	Wilmington	Delaware Community Reinvestment Action Council LITC	877-825-0750 302-298-3252	B	Spanish, Hindi

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
FL	Jacksonville	Three Rivers Legal Services LITC	866-256-8091 904-394-7450	C	Spanish, Bosnian
	Miami	Legal Services of Greater Miami Community Tax Clinic	877-715-7464 305-576-0080	B	Spanish, Haitian Creole
	Miami	Sant La LITC	305-573-4871	E	French, Haitian Creole
	Orlando	Community Legal Services of Mid-Florida LITC	866-886-1799 407-841-7777	B	Spanish, Creole, Vietnamese; Other languages through interpreter services
	Plant City	Bay Area Legal Services Inc. LITC	800-625-2257 813-232-1343	B	Spanish, Creole; Other languages through interpreter services
	Plantation	Legal Aid Service of Broward & Collier Counties	954-765-8950 239-775-4555	B	Spanish, Creole
	St. Petersburg	Gulf Coast Legal Services LITC	800-230-5920 727-821-0726	B	Spanish, French, German, Italian, Swahili; Other languages through interpreter services
	Tallahassee	Legal Services of North Florida LITC	850-385-9007	B	Spanish; Other languages through interpreter services
	West Palm Beach	Legal Aid Society of Palm Beach County LITC	800-403-9353 561-655-8944	B	Spanish, Haitian Creole
GA	Atlanta	The Philip C. Cook Low-Income Taxpayer Clinic	404-413-9230	C	Spanish
HI	Honolulu	Legal Aid Society of Hawaii LITC	808-536-4302	B	Chinese, Japanese, Korean, Filipino, Chuukese; Other languages through interpreter services
IA	Des Moines	Drake University Low Income Taxpayer Clinic	515-271-3851 515-271-1851	B	Spanish
	Des Moines	Iowa Legal Aid LITC	800-532-1275 515-243-1193	B	All languages through interpreter services
ID	Boise	University of Idaho College of Law LITC	877-200-4455 208-364-6187	C	None
	Twin Falls	La Posada Tax Clinic	208-735-1189	B	Spanish
IL	Chicago	Center for Economic Progress Tax Clinic	888-827-8511 312-252-0280	B	Spanish, Polish, Chinese
	Chicago	Loyola University Chicago School of Law Federal Income Tax Clinic	312-915-7176	C	None
	Elgin	Administer Justice LITC	877-778-6006 847-844-1100	B	Spanish; Other languages through interpreter services
	Wheaton	Prairie State Legal Services LITC	855-829-7757	C	Spanish; Other languages through interpreter services
IN	Bloomington	Indiana Legal Services LITC	800-822-4774 812-339-7668	C	All languages through interpreter services
	Indianapolis	Neighborhood Christian Legal Clinic	888-243-8808 317-429-4131	B	Spanish, Chinese, French, Russian, Arabic, Burmese, Karen, Hakha Chin
	Valparaiso	Valparaiso University Law Clinic	888-729-1064 219-465-7903	C	Spanish, Chinese, Russian, Polish, Korean
KS	Kansas City	Kansas Legal Services LITC	800-723-6953 913-621-0200	C	Spanish, French, Vietnamese, Polish, Serbian, German; Other languages through interpreter services

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
KY	Louisville	Low Income Taxpayer Clinic at the Legal Aid Society, Inc.	800-292-1862 502-584-1254	C	All languages through interpreter services
	Richmond	Low Income Tax Clinic at AppalReD Legal Aid	800-477-1394 859-624-1394	C	All languages through interpreter services
LA	Baton Rouge	Southern University Law Center LITC	225-771-3333	C	None
	New Orleans	Southeast Louisiana Legal Services LITC	877-521-6242 504-529-1000	C	Spanish, Vietnamese
MA	Boston	Legal Services Center of Harvard Law School LITC	866-738-8081 617-522-3003	C	Spanish
	Boston	Greater Boston Legal Services LITC	800-323-3205 617-371-1234	C	All languages through interpreter services
	Springfield	Springfield Partners LITC	413-263-6500	B	Spanish, Vietnamese
	Waltham	Bentley University Multi-lingual Tax Information Program	800-273-9494 781-891-2083	C	Spanish, Portuguese, Russian, Chinese, Haitian Creole
MD	Baltimore	Maryland Volunteer Lawyers Service LITC	800-510-0050 410-547-6537	C	All languages through interpreter services
	Baltimore	University of Baltimore School of Law LITC	410-837-5706	C	All languages through interpreter services
	Baltimore	University of Maryland Carey School of Law LITC	410-706-3295	C	Spanish
ME	Bangor	Pine Tree Legal Assistance LITC	207-942-8241	B	All languages through interpreter services
MI	Ann Arbor	University of Michigan LITC	734-936-3535	B	All languages through interpreter services
	Detroit	Accounting Aid Society LITC	866-673-0873 313-556-1920	B	Spanish, Arabic
	East Lansing	Alvin L. Storrs Low-Income Taxpayer Clinic	517-336-8088	B	All languages through interpreter services
MN	Minneapolis	Mid-Minnesota Legal Aid Tax Law Project	800-292-4150 612-332-1441	B	Spanish, Somali, Hmong, Russian, Arabic, Oromo, Amharic; Other languages through interpreter services
	Minneapolis	University of Minnesota LITC	612-625-5515	B	Somali, Spanish, Hmong
MO	Kansas City	Legal Aid of Western Missouri LITC	800-990-2907 816-474-6750	C	Spanish; Other languages through interpreter services
	Kansas City	UMKC - Kansas City Tax Clinic	816-235-6201	C	Other languages through interpreter services
	St. Louis	Washington University School of Law LITC	314-935-7238	C	Spanish
MS	Oxford	Mississippi Taxpayer Assistance Project	888-808-8049 662-234-2918	C	All languages through interpreter services
MT	Helena	Montana Legal Services Association LITC	800-666-6899 406-442-9830	C	All languages through interpreter services
NC	Charlotte	Western North Carolina LITC	800-247-1931 704-376-1600	B	Spanish; Other languages through interpreter services
	Durham	North Carolina Central University School of Law LITC	919-530-7166	C	Spanish
NE	Omaha	Legal Aid of Nebraska LITC	877-250-2016 402-348-1060	C	Spanish; Other languages through interpreter services

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
NH	Concord	Legal Advice and Referral Center LITC	800-639-5290 603-224-3333	E	Spanish; Other languages through interpreter services
	Concord	NH Pro Bono Low-Income Taxpayer Project	603-228-6028	C	All languages through interpreter services
NJ	Camden	South Jersey Legal Services LITC	800-496-4570 856-964-2010	C	Spanish; Other languages through interpreter services
	Edison	Legal Services of New Jersey Tax Legal Assistance Project	888-576-5529 732-572-9100	B	Spanish, French Creole, Portuguese, Korean, Hindi, Arabic, French, Italian; Other languages through interpreter services
	Jersey City	Northeast New Jersey Legal Services LITC	201-792-6363	B	Spanish, Korean, Hindi, Urdu, Hebrew; Other languages through interpreter services
	Newark	Rutgers Federal Tax Law Clinic	973-353-1685	C	Spanish
NM	Albuquerque	University of New Mexico School of Law Business and Tax Clinic	505-277-5265	C	Spanish
NV	Las Vegas	Nevada Legal Services LITC	866-432-0404 702-386-0404	B	Spanish, Mandarin; Other languages through interpreter services
NY	Albany	Legal Aid Society of Northeastern New York LITC	800-462-2922 518-462-6765	C	All languages through interpreter services
	Bronx	Legal Services NYC-Bronx LITC	718-928-3700	C	Spanish; Other languages through interpreter services
	Brooklyn	Bedford-Stuyvesant Community Legal Services LITC	718-636-1155	C	Spanish; Other languages through interpreter services
	Brooklyn	Brooklyn Legal Services Corp A LITC	800-696-7778 718-487-2300	C	Spanish, Hebrew, Yiddish; Other languages through interpreter services
	Brooklyn	Brooklyn Low Income Taxpayer Clinic	718-237-5528	B	Spanish, Russian, Haitian Creole, American Sign Language; Other languages through interpreter services
	Buffalo	Erie County Bar Association Volunteers Lawyers Project LITC	800-229-6198 716-847-0662	B	Spanish
	Jamaica	Queens Legal Services LITC	347-592-2200	B	Spanish, Chinese, Korean; Other languages through interpreter services
	New York	Fordham Law School Tax Litigation Clinic	212-636-7353	C	Spanish
	New York	The Legal Aid Society LITC	212-426-3013	C	Spanish, Mandarin Chinese
	Syracuse	Syracuse University College of Law LITC	888-797-5291 315-443-4582	C	Spanish; Other languages through interpreter services

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
OH	Akron	Community Legal Aid Service LITC	800-998-9454	B	Spanish; Other languages through interpreter services
	Cincinnati	Legal Aid of Greater Cincinnati LITC	800-582-2682 513-241-9400	C	Spanish; Other languages through interpreter services
	Cleveland	Friendship Foundation LITC	216-961-6005	E	Vietnamese, Kampuchean (Cambodian), Laotian, Spanish, Arabic, Korean, Chinese
	Cleveland	The Legal Aid Society of Cleveland LITC	888-817-3777 216-687-1900	B	Arabic, French, Mandarin, Russian, Spanish, Swahili, Vietnamese; Other languages through interpreter services
	Columbus	The Low Income Taxpayer Clinic of The Legal Aid Society of Columbus	877-224-8374 614-224-8374	C	All languages through interpreter services
	Columbus	Southeastern Ohio Legal Services LITC	800-859-5888 614-221-7201	C	All languages through interpreter services
	Piketon	Community Action Committee of Pike County LITC	866-820-1185 740-289-2371	C	All languages through interpreter services
	Toledo	Advocates for Basic Legal Equality LITC	800-837-0814 419-255-0814	B	Spanish; Other languages through interpreter services
	Toledo	Legal Aid of Western Ohio LITC	877-894-4599 419-724-0030	C	Spanish; Other languages through interpreter services
OK	Oklahoma City	The LITC at Oklahoma Indian Legal Services	800-658-1497 405-943-6457	B	All languages through interpreter services
OR	Gresham	Catholic Charities El Programa Hispano LITC	503-489-6845	B	All languages through interpreter services
	Portland	Legal Aid Services of Oregon LITC	888-228-6958 503-224-4086	B	Spanish, Mixteco Bajo, Mandarin, Japanese; Other languages through interpreter services
	Portland	Lewis & Clark Low Income Taxpayer Clinic	503-768-6500	C	All languages through interpreter services
PA	Harrisburg	The Low Income Taxpayer Clinic of MidPenn Legal Services	800-326-9177	B	Spanish
	Philadelphia	PLA's Pennsylvania Farmworker Project LITC	888-541-1544 215-981-3800	B	Spanish; Other languages through interpreter services
	Philadelphia	Villanova Federal Tax Clinic	888-829-2546 888-655-4419(s) 610-519-4123	C	Spanish; Other languages through interpreter services
	Pittsburgh	University of Pittsburgh School of Law Taxpayer Clinic	412-648-1300	C	Spanish, French; Other languages through interpreter services
RI	Providence	Rhode Island Legal Services LITC	800-662-5034 401-274-2652	B	Spanish; Other languages through interpreter services
SC	Greenville	South Carolina Legal Services LITC	888-346-5592	B	All languages through interpreter services
SD	Vermillion	University of South Dakota LITC	605-677-5362	C	None
TN	Memphis	Memphis Area Legal Services LITC	901-523-8822	B	Spanish
	Oak Ridge	Legal Aid Society of Middle Tennessee and the Cumberlands' Tennessee Taxpayer Project	866-481-3669 865-483-8454 X240	B	Spanish; Other languages through interpreter services

State	City	Organization	Public Phone Numbers	Type of Clinic	Languages Served in Addition to English
TX	Bryan	Lone Star Legal Aid LITC	800-733-8394 713-652-0077	C	Spanish, Vietnamese; Other languages through interpreter services
	Ft. Worth	Legal Aid of Northwest Texas LITC	800-955-3959 817-336-3943	B	Spanish
	Houston	Houston Volunteer Lawyers LITC	713-228-0735	B	Spanish, Mandarin, Vietnamese; Other languages through interpreter services
	Lubbock	Texas Tech University School of Law LITC	800-420-8037 806-742-4312	C	Spanish
	San Antonio	St. Mary's University of San Antonio LITC	800-267-4848 210-431-5704	B	Spanish; Other languages through interpreter services
	San Antonio	Texas Taxpayer Assistance Project - Texas RioGrande Legal Aid	888-988-9996 210-212-3747	B	Spanish
UT	Provo	LITC - Centro Hispano	801-655-0258	B	Spanish, American Sign Language, Tagalog, Arabic
VA	Fairfax	Legal Services of Northern Virginia LITC	703-778-6800	C	Spanish, Korean
	Lexington	Washington & Lee University School of Law Tax Clinic	540-458-8918	C	All languages through interpreter services
	Richmond	The Community Tax Law Project	800-295-0110 804-358-5855	B	Spanish; Other languages through interpreter services
VT	Burlington	Vermont Low Income Taxpayer Project	800-889-2047 802-863-5620	C	All languages through interpreter services
WA	Seattle	University of Washington Federal Tax Clinic	866-866-0158 206-685-6805	B	Spanish, Russian, Chinese, Korean
	Spokane	Gonzaga University School of Law Federal Tax Clinic	800-793-1722 509-313-5791	C	All languages through interpreter services
WI	Milwaukee	Legal Action of Wisconsin LITC	855-502-2468 414-274-3400	C	All languages through interpreter services
	Milwaukee	Low Income Taxpayer Clinic of the Legal Aid Society of Milwaukee	888-565-8135 414-727-5326	C	Spanish
	Wausau	Wisconsin Judicare Northwoods Tax Project	800-472-1638 715-842-1681	B	Spanish, Hmong
WV	Charleston	Legal Aid of West Virginia LITC	866-255-4370 304-343-4481	C	Spanish; Other languages through interpreter services
WY	Cheyenne	Wyoming Low Income Taxpayer Clinic	866-432-9955	C	Spanish, French
	Jackson	Teton County Low Income Taxpayer Clinic	307-734-0333	E	Spanish

APPENDIX 4: TAS PERFORMANCE MEASURES AND INDICATORS

FIGURE VII.3 RESOLVE TAXPAYER PROBLEMS ACCURATELY AND TIMELY

Measure	Description	FY 2015 Target	FY 2015 Actual March Cumulative
Overall Quality of Closed Cases[1]	Percent of sampled closed cases meeting timeliness, accuracy, technical, and communication measures.	91.0%	90.4%
Case Accuracy	Percent of sampled cases where the taxpayer's problems are resolved completely and correctly throughout all stages of the case, including action planning, TAS involvement, resolution of all issues, addressing of related issues, proper coding, and case factor identification.	88.0%	85.9%
Technical Requirements	Percent of sampled closed cases where all actions taken by TAS and the IRS are worked in accordance with the tax code, IRM, and technical and procedural requirements.	90.5%	88.8%
Recourse or Appeal Rights	Percent of sampled closed cases where recourse, appeal rights, or both (if applicable) were explained if TAS did not provide requested relief.	99.0%	98.8%
Timeliness of Actions	Percent of sampled closed cases with timely actions on initial actions, initial contacts, TAO consideration, documentation, and case closure.	93.0%	92.9%
Communication	Percent of sampled closed cases where TAS effectively communicates information, requests information, provides appropriate apology, explanation, education, and complete (accurate) correspondence.	94.8%	94.4%
OAR Reject Rate	Percent of rejected requests for action to be taken by the IRS.	2.6%	2.6%
Customers Satisfied[2]	Percent of taxpayers who indicate they are very satisfied or somewhat satisfied with the service provided by TAS.	90%	88%
Customers Dissatisfied	Percent of taxpayers who indicate they are somewhat dissatisfied or very dissatisfied with the service provided by TAS.	9%	10%
Solved Taxpayer Problem	Percent of taxpayers who indicate the Taxpayer Advocate employee did his or her best to solve the taxpayer's problems.	90%	89%
Relief Granted[3]	Percent of closed cases in which full or partial relief was provided.	Indicator	78.3%
Number of TAOs Issued	The number of Taxpayer Assistance Orders (TAOs) issued by TAS.	Indicator	141
Median – Closed Case Cycle Time[4]	Median time taken to close TAS cases.	Indicator	58 days
Mean – Closed Case Cycle Time	Mean time taken to close TAS cases.	Indicator	84.2 days
Closed Cases per Case Advocacy FTE	Number of closed cases divided by total Case Advocacy full-time equivalents (FTEs) realized. (This includes all hours reported to the Case Advocacy organization except Field Systemic Advocacy).	140.0	107.7
Closed Cases per Direct FTE	Number of closed cases divided by direct Case Advocate FTEs realized.	349.0	323.5

1 Results for Quality (unweighted) are through February 2015; March results not available at time of this report.

2 Results for Customer Satisfaction are through December 2014; March 2015 results were not available at time of this report.

3 TAS tracks resolution of taxpayer issues through codes entered on TAMIS at the time of closing, and requires case advocates to indicate the type of relief or assistance they provided to the taxpayer. *See* IRM 13.1.21.1.2.1.2, *TAO/Relief Codes* (Feb. 01, 2011). The codes reflect full relief, partial relief, or assistance provided.

4 This indicator does not include the number of days of reopened cases.

FIGURE VII.4 PROTECT TAXPAYER RIGHTS AND REDUCE BURDEN

Measure	Description	FY 2015 Target	FY 2015 Actual March Cumulative
Accuracy of Closed Advocacy Projects	Percent of correct actions overall in accordance with statute and IRM guidance. This includes accurate identification of the systemic issue and proposed remedy.	95.0%	80.2%
Timeliness of Actions on Advocacy Projects	Percent of all projects with timely actions in accordance with IRM guidance, including contacting the submitter within three business days from assignment, issuing an action plan within 30 calendar days, and working the project with no unnecessary delays or periods of inactivity.	87.0%	92.5%
Quality of Communication on Advocacy Projects	Percent of projects where substantive updates were provided to the submitter on the initial contact and subsequent contacts, appropriate coordination, and communication took place with internal and external stakeholders, written communications followed established guidelines, and outreach and education actions were taken when appropriate.	95.0%	76.9%
Overall Quality of Closed Immediate Interventions[5]	Percent of correct actions overall in accordance with statute and IRM guidance. This includes accurate identification of the systemic issue and proposed remedy.	88.0%	NA
Systemic Advocacy Management System (SAMS) Review Process Median Days	The median days to complete the SAMS issue review process.	28	31
Internal SAMS Customer Satisfaction Survey (CSS)[6]	Percent of satisfaction of IRS and TAS employees who submit issues to SAMS during the calendar year.	68%	67%[7]
Internal Management Document (IMD) Recommendations Made to IRS	A count of the IMD recommendations made to the IRS. Policy issues influenced due to TAS's IMD review and feedback.	Indicator	441
IMD Recommendations Accepted by IRS	The percent of TAS's IMD recommendations accepted for implementation by the IRS. Policy issues influenced due to TAS's IMD review and feedback.	Indicator	64%
Advocacy Efforts Resulting in a Recommendation	The percentage of advocacy efforts that result in a recommendation. Advocacy efforts include projects, task forces, and collaborative teams [excludes IMD].	Indicator	57%[8]
Advocacy Effort Recommendations Accepted by IRS	The percentage of TAS advocacy effort recommendations accepted by the IRS.	Indicator	100%[9]

5 NA is shown to indicate there are zero immediate intervention issues to review.

6 SA CSS results based on responses of Somewhat Agree or Strongly Agree with Q8. "Overall, I am satisfied with the SAMS process for elevating issues."

7 Value is rounded to a whole number.

8 Figure based on seven closed advocacy projects. Value is rounded to a whole number.

9 Four advocacy projects resulted in a total of seven recommendations, all of which were accepted.

FIGURE VII.5 SUSTAIN AND SUPPORT A FULLY-ENGAGED AND DIVERSE WORKFORCE

Measure	Description	FY 2015 Target	FY 2015 Actual March Cumulative
Employee Satisfaction[10]	Percent of employees who are satisfied or very satisfied with their jobs.	75%	68%[11]
Employee Participation	Percent of employees who take the employee satisfaction questionnaire.	75%	62%[12]
Continuing Professional Education (CPE) Evaluation	Percent of employees who are satisfied or very satisfied with learning and training provided by TAS.	80%	75%

10 Employee satisfaction and employee participation are from the Federal Employee Viewpoint Survey (FEVS). Results are for 2014.

11 Value is rounded to a whole number.

12 Value is rounded to a whole number.

APPENDIX 5: GLOSSARY OF ACRONYMS

Acronym	Definition
ACA	Affordable Care Act
ACE	Automated Correspondence Exam
ACM	Appeals Case Memorandum
ACS	Automated Collection System
AICPA	American Institute of Certified Public Accountants
AIT	Advocacy Issues Team
AJAC	Appeals Judicial Approach and Culture
AM	Accounts Management
AO	Appeals Officer
ARC	Annual Report to Congress
ARDI	Accounts Receivable Dollar Inventory
ARRA	American Recovery and Reinvestment Act
ASA	Average Speed of Answer
ATIN	Adoption Taxpayer Identification Number
AUR	Automated Underreporter
BFS	Bureau of Fiscal Services
BMF	Business Master File
BOD	Business Operating Division
BPMS	Business Performance Measurement System
BPR	Business Performance Reviews
BUR	Business Underreporter
CA	Case Advocate
CAA	Certified Acceptance Agent
CAP	Congressional Affairs Program
CAS	Customer Account Services
CAS	Case Advocacy Specialist
CAWR	Combined Annual Wage Reporting
CCA	Chief Counsel Advice
CCI	Centralized Case Intake
CDP	Collection Due Process
CDW	Compliance Data Warehouse
CFf	Collection Field function
CFR	Code of Federal Regulations
CIO	Centralized Insolvency Operation
CIP	Compliance Initiative Program
CIS	Correspondence Imaging System
CMO	Compliance Management Operations
CMS	Centers for Medicare
COIC	Centralized Offer in Compromise
CONOPS	Concept of Operations
CP	Computer Paragraph

Acronym	Definition
CPA	Certified Public Accountant
CPE	Continuing Professional Education
CSR	Customer Service Representative
CSS	Customer Satisfaction Survey
CY	Calendar Year
DDb	Dependent Database
DIF	Discriminant Index Function
ECM	Enterprise Case Management
EIN	Employer Identification Number
EITC	Earned Income Tax Credit
EO	Exempt Organizations
EP/EO	Exempt Plan/Exempt Organization
EPSS	Electronic Products and Services Support
ERISA	Employee Retirement Income Security Act of 1974
ERS	Error Resolution System
ESL	English as a Second Language
ETA	Effective Tax Administration
FAQ	Frequently Asked Question
FATCA	Foreign Account Tax Compliance Act
FBAR	Foreign Bank and Financial Accounts
FDs	Functional Divisions
FFI	Foreign Financial Institution
FPLP	Federal Payment Levy Program
FSA	Facilitated Self Assistance
FTE	Full-Time Equivalent
FTHBC	First-Time Homebuyer Credit
FUTA	Federal Unemployment Tax Act
FY	Fiscal Year
GPO	Government Publishing Office (formerly Government Printing Office)
GAO	Government Accountability Office
HHS	Department of Health and Human Services
HR	Human Resources
IA	Intake Advocate
IARs	Independent Administrative Reviewers
IAT	Integrated Automation Technologies
ICM	Intelligent Contact Management
IDR	Information Document Request
IDRM	Information Reporting and Document Matching
IDRS	Integrated Data Retrieval System
IDT	Identity Theft

Acronym	Definition
IGM	Interim Guidance Memoranda
IMD	Internal Management Document
IMF	Individual Master File
IPSU	Identity Protection Specialized Unit
IRB	Internal Revenue Bulletin
IRB	Information Returns Branch
IRC	Internal Revenue Code
IRDM	Information Reporting Document Matching
IRDM-BUR	Information Reporting Document Matching Bureau
IRM	Internal Revenue Manual
IRMF	Information Returns Master File
IRPAC	IRS Practitioner Advisory Council
IRS	Internal Revenue Service
IRSAC	Internal Revenue Service Advisory Council
IRTF	Individual Return Transaction File
IRTF DS	Individual Returns Transaction File Data Store
ISRP	Individual Shared Responsibility Payment
ISRP	Integrated Submission and Remittance Processing
IT	Information Technology
ITAP	Internal Technical Advisor Program
ITIN	Individual Taxpayer Identification Number
ITT	Innovative Training Team
IVO	Integrity & Verification Operations (formerly Accounts Management Taxpayer Assurance Program (AMTAP))
JCT	Joint Committee on Taxation
LB&I	Large Business & International
LIF	Low Income Filer
LITC	Low Income Taxpayer Clinic
LLs	Legislative Liaisons
LOS	Level of Service
LTA	Local Taxpayer Advocate
ME	Math Error
MFT	Masterfile Tax
MOU	Memorandum of Understanding
MSP	Most Serious Problem
N/A	Not Applicable
NFTL	Notice of Federal Tax Lien
NRP	National Research Program
NTA	National Taxpayer Advocate
OAR	Operations Assistance Request
OD	Operating Division

Acronym	Definition
OD/Fs	IRS Operating/Functional Divisions
OIC	Offer in Compromise
OLS	Office of Online Services
OPERA	Office of Program Evaluation & Risk Analysis
ORG	Organization
OS	Offer Specialist
OSP	Office of Servicewide Penalties
OTC	Office of Taxpayer Correspondence
OUO	Official Use Only
OVD	Offshore Voluntary Disclosure
OVDI	Offshore Voluntary Disclosure Initiative
OVDP	Offshore Voluntary Disclosure Program
PIN	Personal Identification Number
PLM	Practitioner Liaison Meeting
POA	Power of Attorney
POC	Point of Contact
PMO	Project Management Office
PP	Planning Period
PPS	Practitioner Priority Service
PRO	Problem Resolution Officer
PRP	Problem Resolution Program
PSP	Payroll Service Provider
PTC	Premium Tax Credit
Pub. L. No.	Public Law Number
Q&A	Question & Answer
RAS	Research, Analysis & Statistics
Rev. Proc.	Revenue Procedure
RDD	Random-Digit Dialing
RICS	Return Integrity and Correspondence Services
RO	Revenue Officer
RRA 98	IRS Restructuring and Reform Act of 1998
RRP	Return Review Program
S. Comm.	Senate Committee
SA	Systemic Advocacy
SAMS	Systemic Advocacy Management System
SBF	Small Business Forum
SBHCTC	Small Business Health Care Tax Credit
SB/SE	Small Business/Self-Employed Division
SCIC	Secondary Issue Code
SERP	Servicewide Electronic Research Program
SL	Stakeholder Liaison
SLCSP	Second Lowest Cost Silver Plan

Acronym	Definition
SMS	System Management Services
SNOD	Statutory Notice of Deficiency
SP	SharePoint
SPDER	Servicewide Policy, Directives, and Electronic Research
SPEC	Stakeholder, Partnerships, Education, and Communication
SPOC	Single Point of Contact
SPP	Services Priority Project
SRP	Shared Responsibility Payment
SSA	Social Security Administration
SSDI	Social Security Disability Insurance
SSN	Social Security Number
TAC	Taxpayer Assistance Center
TAD	Taxpayer Advocate Directive
TAMIS	Taxpayer Advocate Management Information System
TAMRA	Technical and Miscellaneous Revenue Act of 1988
TAO	Taxpayer Assistance Order
TAP	Taxpayer Advocacy Panel
TARD	Taxpayer Advocate Received Date
TAS	Taxpayer Advocate Service
TASIS	Taxpayer Advocate Service Integrated System
TBOR 1	Taxpayer Bill of Rights
TBOR 2	Taxpayer Bill of Rights 2
TCE	Tax Counseling for the Elderly

Acronym	Definition
TD	Treasury Directive
TDA	Taxpayer Delinquent Account
TDC	Taxpayer Digital Communications
TDI	Taxpayer Delinquency Investigation
TE	Tax Examiner
TE/GE	Tax Exempt and Government Entities division
TF&P	Tax Forms and Publications
TFOPs	Tax Forms Outlet Partners
TFRP	Trust Fund Recovery Penalty
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TPNC	Taxpayer Notice Code
TPP	Taxpayer Protection Program
Treas. Reg.	Treasury Regulation
TRIS	Telephone Routing Interactive Services
TSP	Thrift Savings Plan
TY	Tax Year
U.S.	United States
USTC	United States Tax Court
UWR	Unified Work Request
VITA	Volunteer Income Tax Assistance
VSD	Virtual Service Delivery
WATF	Wage & Investment Accounts Management Toll-Free
W&I	Wage & Investment
WIRA	Wage and Investment Research and Analysis

TAXPAYER ADVOCATE SERVICE

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