

# IMPROVING TAX ADMINISTRATION TODAY

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## HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND IRS OVERSIGHT

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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## IMPROVING TAX ADMINISTRATION TODAY

THURSDAY, JULY 26, 2018

U.S. SENATE,  
SUBCOMMITTEE ON TAXATION AND IRS OVERSIGHT,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 10:32 a.m., in room SD-562, Dirksen Senate Office Building, Hon. Rob Portman (chairman of the subcommittee) presiding.

Present: Senators Grassley, Thune, Isakson, Cantwell, Carper, Cardin, Warner, and Whitehouse.

Also present: Republican staff: Robert Cusmano, Tax Counsel for subcommittee chairman Portman. Democratic staff: Jonathan Goldman, Senior Tax Counsel for Ranking Member Warner.

### **OPENING STATEMENT OF HON. ROB PORTMAN, A U.S. SENATOR FROM OHIO, CHAIRMAN, SUBCOMMITTEE ON TAXATION AND IRS OVERSIGHT, COMMITTEE ON FINANCE**

Senator PORTMAN. Thank you all for being here. We are delighted to have the opportunity to talk about IRS reform today. And I know that my ranking member, Senator Warner, has another engagement before long. So we are going to try to go through this quickly. And when it comes time for questions, I am going to defer to him so he gets to ask questions first.

Just to start, this is a really important topic to me, to Senator Warner, to Senator Cardin, and other members—Senator Whitehouse. We know tax policy is important, and we have a historic new tax legislation the IRS is trying to implement.

But perennially, we have these taxpayer service issues and tax administration issues that are going to arise. So this hearing is an opportunity to examine current issues related to tax administration.

Of particular focus—the gavel is being hit right now. Is that loud enough? [Laughter.] Particular focus on customer service and information technology, interaction with practitioners—we have some practitioners here—low-income taxpayers, and tax administration issues related to workers in the high-tech economy we are now in, the gig economy.

Senator Hatch and Ranking Member Wyden gave us an opportunity to hold this hearing. I appreciate that. And again, Ranking Member Warner, I appreciate your being here today.

This is not just important, it is also timely. This week marks 20 years since the last time we went through any major reform at the IRS. And it is time to do it again.

During that time, there was a clear need for IRS reform. IRS calls were being unanswered by the thousands—sound familiar? Calls that were being answered were often incorrect. The agency had spent \$3 billion on IT systems that were not working.

The bottom line: the American public had lost faith in the institution, and we created this commission. I was honored to co-chair that with then-Senator Bob Kerrey. We published a confidential report that became the basis for that legislation 20 years ago.

Senator Cardin, by the way, was an original author of that legislation with me, along with Senator Hatch and Ranking Member Wyden. So there are a lot of members on the committee now who were very involved in that.

Unfortunately in the years since, after some sustained improvement, we have now gotten to the point where we are back to some of these very same issues again. And once again, the agency tasked with helping Americans carry out one of their most basic duties is failing to serve the taxpayers in an effective manner.

So it is an opportunity now to reboot again. Congress, I think, has an interest in doing this. I know Senator Wyden and Chairman Hatch have been involved already in putting forward solutions to some of the things that the IRS is struggling with. And I support those. And I support what the House has done.

But we think there is more to do as well. This is why today I introduce with Senator Cardin the Protecting Taxpayers Act. It is bipartisan legislation to make the IRS more responsive and accountable to taxpayers. We will talk about that a little today. Its goals are to revitalize the organizational structure on the management side to increase taxpayer protections, to improve small business and retirement plan tax administration, better serve low-income tax payers, overhaul the IRS appeals process, and strengthen the IRS IT infrastructure.

All of this is critical to the agency, but I would like to get feedback from you all on a couple of things. First, we completely rethink one of the key provisions of the 1998 reform bill, which was the IRS Oversight Board. And when we originally thought of the idea of this board back in 1998, our intent was to create sort of a board of directors for the IRS that would help guide the direction and the long-term strategy of the agency, provide private-sector expertise, along with experience.

Every administration since then really has not supported the Oversight Board, including the current one. As a result, it has fallen by the wayside. In fact, the Board suspended operations a couple of years ago, and there is, technically, only one member left out of nine. So we want to get this board functioning again, but functioning the way it was originally intended. I think it has a lot to offer in turning the agency around, particularly in areas like customer service, IT modernization, budgeting, and so on.

So that is one thing I want to get your input on. Also, the IRS appeals process—you recall in the 1998 reform bill, we created more than 50 new taxpayer rights, including the right to an independent appeal, and then 3 years later took steps toward codifying some of those in the Taxpayer Bill of Rights, including independent appeal.

But in recent years, these independent appeals have declined as more cases are being sent to Tax Court, amounting to a 70-percent increase since 2000. So that is not what was intended, I do not believe. And further, the IRS continues to issue guidance and procedures that make it harder for all taxpayers to access this appeals process. So we need to talk about that today.

Overall, I think it is clear—and I am sure we will hear as much from the witnesses today—that Congress needs to build on the progress we made way back in 1998 and engage in this new set of reforms to the IRS. I am interested in hearing from my colleagues today on it, and of course the witnesses here before us. I thank you for being here.

I now would like to hear from the ranking member.

[The prepared statement of Senator Portman appears in the appendix.]

**OPENING STATEMENT OF HON. MARK R. WARNER,  
A U.S. SENATOR FROM VIRGINIA**

Senator WARNER. Thank you, Mr. Chairman. And I want to thank you for your long-term interest in this subject. I know you and Senator Cardin have been leaders. I think if we—the witnesses and we on the panel—would look around, I think we all qualify as tax nerds if we are in this room at this moment in time. Senator Thune has always been viewed as that kind of nerd, we know.

But then the notion of tax administration—it does not sound necessarily exciting, but in many ways, this is the front line of how Americans intersect with the Federal Government. And the effectiveness of that intersection, the customer service components, I think, are really important.

Let's face it. Let's acknowledge no one loves paying taxes, but if we can make that payment of taxes more effective, more user-friendly, more fair, I think a process that we all have to take on as obligations as citizens will at least become less painful. And again, I want to commend the chairman and Senator Cardin for having a long, long history in this field.

The two topics that I hope that we can also address are—over the last few years, I have spent a lot of time looking at the changing nature of work. I think we are moving into an environment where your classic W-2 full-time employment, where folks go work for the same firm for 35 years, is a thing of the past. Part of that is driven by economic circumstance, part of that is driven by, frankly, choice amongst many millennials.

We have seen the emergence of a number of new platforms, the so called “gig economy.” How do we monitor that? How do we understand and make a tax system that does not impede individuals who are trying to become more entrepreneurial and actually utilize these services, utilize these platforms? How do we make their tax administration a smoother and easier process?

I believe as well that people on a going forward basis may not have a single income stream, but multiple income streams. They may be an IT consultant starting their own business, driving Uber, and renting out their apartment on Airbnb. Frankly, the tax administration burden in this kind of new economy is enormously challenging.

I have called for two studies, one from the GAO, one from the Treasury Department, to try to look at the size of this workforce. I frankly believe that the recent BLS study that indicated that there was, frankly, not much growth in this field—I will accept that data. I do not think it was fully complete enough, because I just think—I have seen estimates from government and non-government sources that literally show close to a third of the American workforce at this point is at least receiving some of their income from contingent work.

So how we think about tax administration, how we think about even the whole concept of a social contract, I would argue that means we need to move to a portable benefit system. If we are going to move to a portable benefit system, we have to have flexibility on the tax administration side as well.

The other item that I think is an on-going challenge is technology updates. We have all seen the IRS, I think, make good faith efforts. Sometimes those good faith efforts have ended up with perhaps more negative publicity than upgrades. Something is wrong in our overall Federal Government when we spend \$88 billion a year on IT services, and \$75 billion of that \$88 billion is spent on patches and upgrades of legacy systems.

My hope is, as well, we can get into the question of how we could create a technology-enabled modern tax system. And if the Congress has to bite the bullet and say we really need to junk some of our legacy systems and fully upgrade, I think we ought to have that kind of discussion.

Again I want to thank the chairman for hosting this, and again, I am proud to call myself now part of the tax administrative nerd caucus as well. Thank you.

Senator PORTMAN. You have always been a charter member of that caucus, whether you knew it or not. [Laughter.]

[The prepared statement of Senator Warner appears in the appendix.]

Senator PORTMAN. And your points are well-taken. And it just creates more of a challenge for the IRS. How do we deal with—we talked about the gig economy, but also the economy where people are moving around so frequently and have much less likelihood of a single corporate entity that can provide that tax conduit for the IRS.

With this, let us hear from our witnesses. We are going to get right into it.

Ms. Caroline Bruckner is here. She is managing director of the Kogod Tax Policy Center at American University.

Ms. Phyllis Jo Kubey is here. She is a member of the National Association of Enrolled Agents and the IRS Advisory Council.

Ms. Nina Olson, as many of you know, is the National Taxpayer Advocate at the Internal Revenue Service.

Mr. John Sapp is the current Chair of the Electronic Tax Administration Advisory Committee advising the IRS.

And Ms. Rebecca Thompson is the project director of the Taxpayer Opportunity Network within the organization Prosperity Now.

Thank you all for agreeing to testify. We are looking forward to it. In the interest of time, we would ask that you keep your com-



ments to 5 minutes. And you can submit your written comments in their entirety for the record.

Ms. Bruckner, let us start with you.

**STATEMENT OF CAROLINE BRUCKNER, EXECUTIVE-IN-RESIDENCE, ACCOUNTING AND TAXATION; AND MANAGING DIRECTOR, KOGOD TAX POLICY CENTER, KOGOD SCHOOL OF BUSINESS, AMERICAN UNIVERSITY, WASHINGTON, DC**

Ms. BRUCKNER. Good morning, and thank you for the opportunity to testify today.

My name is Caroline Bruckner. I am a tax professor on the faculty at American University's Kogod School of Business. I am also the managing director of the Kogod Tax Policy Center, where we focus our research exclusively on tax and compliance issues specific to small businesses and entrepreneurs.

Since 2015, we have focused on those small business owners who are renting rooms, providing ride-sharing services, running errands, and selling goods and services via business transactions coordinated online and through apps by companies such as Airbnb, Etsy, Uber, Lyft, Rover, and others.

In May 2016, we published our initial research findings in a report titled, "Shortchanged: The Tax Compliance Challenges of Small Business Operators Driving the On-Demand Platform Economy."

A number of our research findings are particularly relevant to today's discussion and are based on a survey we did of the membership of the National Association of the Self-Employed, a population of experienced self-employed taxpayers. We wanted to gauge whether or not they understood what their tax compliance obligations would be, particularly those who were working in the on-demand economy.

Our results were dismal, to say the least. One-third of respondents working for a platform did not know whether or not they were required to file quarterly estimated payments with the IRS with respect to their platform income. Thirty-six percent did not understand what kind of records were needed for tax purposes for business income and expenses generated from working with a share economy partner. Forty-three percent were unaware as to what they would owe in taxes and did not set aside any kind of money. And almost 70 percent of our survey respondents received no tax guidance from the platforms they worked with.

Most notably for today's hearing, and for tax administration purposes, more than 60 percent of the sharing economy operators we surveyed did not receive any Form 1099 on their platform income. And that means that the IRS did not either.

This is because under current law, the form that is used for reporting electronic payments requires that a taxpayer have more than 200 transactions and payments exceeding \$20,000 in order to receive a Form 1099 filing form. However, the reality is that most folks in the sharing economy earn substantially less and they use platforms as a way to earn secondary income.

They cycle in and out of the sharing economy, and on average per month earn between \$533 or \$314 a month. This is typically a source of secondary income and is not their primary source of in-

come. As a result, the reporting loophole that exists between a 1099 miscellaneous \$600 threshold and a 1099-K \$20,000 threshold guarantees that taxpayers working for these platforms are more likely to misreport their income because they are not getting any 1099.

In fact, IRS taxpayer data released last year confirmed the ultimate impact of our research findings that in 2015 the number of filers penalized for underpayment of estimated taxes rose nearly 40 percent from 2010 to 2015, up to 10 million taxpayers. This rise in underpayments corresponds to the rise in the sharing economy over the same period.

However, since we released our groundbreaking findings in “Shortchanged,” there have been a number of changes that have been made in response. In August 2016, the IRS launched the Sharing Economy Tax Center on *IRS.gov*, and the National Taxpayer Advocate has elevated the lack of tax guidance for these taxpayers as one of the Nation’s most serious problems facing taxpayers. And some industry platforms, unprompted and even though not required to, have begun issuing 1099-Ks at \$600 thresholds. In addition, the House Appropriations Committee followed recommendations from my team and included language in the most recent financial services bill mandating the IRS consider this problem and report back to Congress.

However, there is more work that needs to be done. Congress needs to consider immediately aligning the 1099 miscellaneous and the 1099-K reporting thresholds for service providers and sellers earning income from these platforms. By aligning these thresholds—the 1099 miscellaneous threshold has not been updated since it was first instituted in 1954—you are guaranteeing a higher rate of tax compliance. It is just that simple.

The States have already started to experiment with this last year, and in Massachusetts, our informal conversations with 1099 preparers have said that reporting has catapulted over 100 percent in just this most recent tax filing period.

Congress should also update the quarterly estimated payment due dates for the second and third quarter filing deadlines to make those required after the quarter’s end, not in the middle of the second and third quarter so taxpayers do not have to guesstimate when their taxes are due.

Finally, the National Taxpayer Advocate has an excellent suggestion that the IRS develop a publication that online platforms can provide to platform service providers and sellers as part of the onboarding process. These are all common-sense changes that will impact the 2.5 million Americans working for these platforms every month.

And in addition, it is a very real problem that JCT has quantified to be at least a \$3.6-billion problem.

Thank you, and I am happy to answer any questions that you have.

Senator PORTMAN. Thank you, Ms. Bruckner.

[The prepared statement of Ms. Bruckner appears in the appendix.]

Senator PORTMAN. Ms. Kubey?

**STATEMENT OF PHYLLIS JO KUBEY, MEMBER, NATIONAL ASSOCIATION OF ENROLLED AGENTS AND IRS ADVISORY COUNCIL, WASHINGTON, DC**

Ms. KUBEY. Good morning. Thank you, Chairman Portman, Ranking Member Warner, and Senator Cardin, for this opportunity to present the tax professional's perspective on improving tax administration and enabling the Internal Revenue Service to fulfill its mission effectively.

I speak on behalf of the National Association of Enrolled Agents. EAs are tax experts licensed by the Department of Treasury. I might say we are also tax nerds. We are partners who work closely with IRS personnel at all levels of the tax administration system.

In the past decade, we have observed a decline in the level of IRS service. Superior customer service—and tax practitioners are customers too—will improve all IRS functions.

Our written testimony proposes major reforms for oversight, governance, budget, workforce, taxpayer service, technology, and IRS's relationship with tax professionals. An integrated approach will bring real measurable results.

IRS needs direction and resources to recruit high-level executives and staff. IRS must attract, train, and retain staff to administer the tax law while providing an outstanding customer experience. We suggest: (1) grant IRS a reformed, streamlined, critical pay hiring authority stipulating the areas of expertise covered by the program; and (2) create and fund a dedicated training division within the IRS that streamlines the education process and ensures the tax law and administrative policies are taught and supported consistently. As part of this centralized division, research state-of-the-art tax administration techniques at the State, local, and international levels and incorporate what works into IRS training and practice.

IRS training focusing on early, fast, and fair resolution of tax disputes will ease the burden for taxpayers and for the tax professionals who serve them. Enforcement will not suffer, but will be enhanced by an IRS equipped to serve the public. No one is well-served by delayed or protracted tax compliance. When taxpayers have a compliance issue, they deserve to discover and resolve it quickly without the hardship of additional penalties and interest.

We offer several proposed changes in our written testimony, including many offered by the National Taxpayer Advocate.

The elephant in the room, of course, is IRS technology. We live in a world where everything is possible on the smartphone. When we submit authorizations for our clients, we revert to a world of inked signatures and fax machines. Taxpayers expect electronic solutions and the ability to work with us and the IRS remotely and securely. Our ETAAC colleagues, in their recent 2018 report, present extensively on secure technology solutions.

We propose to facilitate earlier and more efficient dispute resolution by: (1) requiring IRS to provide guidance on which private-sector electronic signature options are acceptable for forms 2848 and 8821; and (2) fast-tracking creating tax practitioner online accounts with secure and robust communication capability in both directions.

Correspondence audit should not entail mailing or faxing large quantities of materials, delayed resolutions, and potential increased

penalty and interests. Electronic communication will serve the public, the practitioners, and the Service.

Tax preparers have, over the last years, taken on an adjunct compliance officer role. Various and increasing due diligence requirements are intrusive and frequently unreasonable. In our profession, time and risk are money typically passed to the taxpayer.

These changes will help us help the Service: (1) provide statutory authority to establish minimum standards for unenrolled return preparers. Standards should include a one-time competency exam, require tax compliance background checks, setting and monitoring continuing education requirements, and compliance with strict ethical standards. And (2) create a dedicated executive level practitioner services unit that centralizes and modernizes practitioner service and leverages our reach.

Once again, I thank you for this opportunity, and I look forward to your questions.

[The prepared statement of Ms. Kubey appears in the appendix.]  
Senator PORTMAN. Ms. Olson?

**STATEMENT OF NINA E. OLSON, NATIONAL TAXPAYER  
ADVOCATE, INTERNAL REVENUE SERVICE, WASHINGTON, DC**

Ms. OLSON. Chairman Portman, Ranking Member Warner, and members of the subcommittee, thank you for your interests in examining the operations of the Internal Revenue Service and for inviting me today to discuss improving the agency.

As you know, the IRS Restructuring and Reform Act of 1998 was signed into law 20 years ago this week. At the time, I was director of a low-income taxpayer clinic in Richmond, VA, and I was invited to testify about the experiences of low-income taxpayers at Senate and House hearings.

RRA98 brought about many significant taxpayer protections. Nonetheless, the world of tax administration looks very different today than at the time RRA98 was passed. The IRS desperately needs congressional support and direction to help it do a better job of fulfilling its vital mission. In my written statement, I discuss the core challenges that I believe Congress and the IRS should focus on to improve tax administration. I will quickly highlight the following points.

(1) IRS oversight—RRA98 contained two provisions that I believe were helpful to tax administration and have effectively lapsed: one, the IRS Oversight Board; and second, joint congressional IRS oversight hearings. I encourage you to strengthen the board's appointment process and permanently reinstate the joint hearings.

(2) IT challenges—the IRS's struggles with information technology systems were significant in 1998, and they have only grown worse.

The IRS reportedly has the two oldest databases in the Federal Government, dating to the 1960s, on which it stores taxpayer data. It has more than 60 case management systems that all house different kinds of data, and those systems generally cannot talk to each other. There is no one system or repository of data that contains a 360-degree view of the taxpayer's activity and engagement with the tax system, so often, the left hand does not know what the right hand is doing.

One recurring problem is that the IRS continually receives work that requires it to make significant IT updates in the short-term and limits its ability to pursue its long-term modernization efforts. I believe the IRS needs a separate stream of funding dedicated to long-term improvements, particularly involving its IT systems.

(3) Funding—as the IRS’s workload increased from fiscal year 2010 to 2018, its appropriated budget has been reduced by 9 percent in straight dollar terms and by 20 percent after adjusting for inflation. Because of these reductions, the IRS does not have enough employees to answer the phones, to conduct outreach and education, or to provide basic taxpayer service.

The compliance enforcement side of the house has been cut by even more. The IRS needs adequate funding to do its job effectively.

(4) Performance measures—there is an old adage that you get what you measure. During the 2018 filing season, the IRS’s benchmark level of service was reported to be 80 percent, but that measure only reflected the minority of calls directed to employees. It ignores the majority of calls to its automated response system which the IRS routes taxpayers to without giving taxpayers a choice to speak to a live assister. Overall, IRS employees answered only 29 percent of the telephone calls it received.

(5) Taxpayer service—private industry and experts say the number one driver of customer satisfaction is the first contact resolution rate. Yet the IRS does not measure this rate consistently or across every service channel, and it ignores significant data showing taxpayers prefer multiple channels for different types of interactions.

(6) Use of big data and automation—the IRS regularly uses technology and big data to identify fraud and noncompliance, but it fails to use technology to help taxpayers get to the right answer or prevent or minimize harm to taxpayers. The IRS could use the data it has in-house, for example, to identify taxpayers who are at risk of economic hardship and therefore are highly unlikely to be able to pay their basic living expenses if the IRS collects their back tax debts. This approach could also be applied when selecting cases for referrals to private debt collectors.

(7) Local presence—research has shown personal contacts produce better response resolution and agreement rates than less personal contacts, and also result in better-educated taxpayers. Yet 12 States do not have appeals or settlement officers within their borders, and 14 States do not have employees to conduct outreach and education to small business and self-employed taxpayers. Of the 362 taxpayer assistance centers, 25 are not staffed and 84 have only 1 employee.

Moreover, a trained and professional workforce is paramount. And the IRS spent only \$489 per employee on training in fiscal year 2017, a level that is about one-third of spending 8 years ago.

Thank you for inviting me to participate today. And I would be happy to answer any questions you may have.

[The prepared statement of Ms. Olson appears in the appendix.]  
Senator PORTMAN. Mr. Sapp?

**STATEMENT OF JOHN SAPP, CHAIR, IRS ELECTRONIC TAX  
ADMINISTRATION ADVISORY COMMITTEE, WASHINGTON, DC**

Mr. SAPP. Chairman Portman, Ranking Member Warner, other members of the subcommittee, good afternoon. Thank you for inviting me to testify at this hearing on “Improving Tax Administration Today.”

My name is John Sapp. I am pleased to represent ETAAC, of which I am just finishing my tenure as chair. As you know, ETAAC was created by Congress in 1998. We have a diverse membership of individuals from the State departments of revenue, private industry, tax preparers, payroll companies, and consumer groups such as VITA. We hope to provide to the IRS a diverse perspective on electronic tax administration and its impact on taxpayers.

While we were initially focused on achieving acceptance of electronic filing of tax returns and the impact that that would have, ETAAC’s charter recently was expanded to include a focus on the issue of identity theft, tax refund fraud, and information security, entailing making recommendations on improving the efforts of the Security Summit. The Security Summit has been a tremendous success story of the IRS, where they have led a collaborative effort between the States and the private sector to fight ID theft and tax refund fraud, and to deal with security issues.

As we evaluated electronic tax administration, some high-level issues have become evident. First, the need to supplement traditional IRS service delivery channels, phone or in-person, is obvious. Electronic services online, but increasingly mobile, are expected by both individuals and businesses. But everyone also expects to be able to talk or interact with a real person when that is necessary.

Second, electronic services operate in a high-threat environment. The fight against those bad actors will never end. So, as we close one door on security, criminals look to find another.

Third, in order to be adopted, electronic services must be secure, easy to use, and integrated—we believe—into their existing work flows. A good example of this is electronic filing, which has been integrated into tax software solutions and also leveraged by taxpayers and tax professionals.

Another example of this would be if a taxpayer chooses to file their tax return using an enrolled agent, for example, integrating information and features into that channel, especially about the electronic filing of their tax return. That has worked very well for taxpayers.

And number four, electronic services—we thought about four principles for the taxpayer-facing systems. The first principle would be that electronic services must be secure. And as such, the IRS should have the authority to set and enforce minimum security requirements for the tax system.

In our 2018 report, we identified potential gaps in the application of the FTC safeguards rule. It is the most prevalent security standard for the tax system. It was unclear, actually, if the IRS has the authority to set or enforce those minimum standards for taxpayers, particularly because of the *Loving* case and others which specify limitations on the IRS’s ability to regulate tax preparers.

Second, electronic services must be accessible or useable for taxpayers and tax professionals. So certain segments of the population

today—as I am sure you know—may not be able to validate themselves digitally using the IRS’s secure access channel because they do not have a credit card, or the right home mortgage, or an inability to complete their cell phone validation. Those inefficiencies create a very cumbersome process for taxpayers.

ETAAC’s report also encouraged the IRS to consider options to expand in-person identity-proofing opportunities. The IRS may be able to leverage existing physical locations for this purpose. And I am speaking to authenticating that taxpayers are who they say they are before they interact with the IRS.

They could leverage government agencies with a larger physical presence such as the Social Security Administration, or a more dramatic idea that we thought of was to utilize authorized tax professionals through a trusted third-party methodology similar to the current Certified Acceptance Agent program which is used to validate taxpayers in need of an ITIN, and those who do not have a Social Security number but still have a tax filing obligation.

An obstacle to this interaction may be, as others have mentioned, the filing of powers of attorney on behalf of taxpayers, which now is a manual process and should be electronic. Solving the signature on the 2848 and other forms is a key component of that.

Third, we also support issuance of an identity protection PIN for all taxpayers who would ask for it, and the account lock and unlock features. Our third silo that we think is very important in electronic services is, taxpayers should be able to control their taxpayer account and access to that account.

And finally, we recommend the IRS take a collaborative approach to develop the online and mobile services. The Security Summit and electronic filing successes are great examples of the benefits of that collaborative approach, where ID theft cases have been reduced and adoption of electronic filing has now become the norm.

Thank you again for the opportunity to provide my thoughts. And I would say I would like to answer any questions, but I will be available to answer any questions. [Laughter.]

[The prepared statement of Mr. Sapp appears in the appendix.]  
Senator PORTMAN. Ms. Thompson?

**STATEMENT OF REBECCA THOMPSON, PROJECT DIRECTOR,  
TAXPAYER OPPORTUNITY NETWORK, PROSPERITY NOW,  
WASHINGTON, DC**

Ms. THOMPSON. Chairman Portman, Ranking Member Warner, and members of the subcommittee, thank you for the opportunity to testify before you today on improving tax administration. It is a great privilege and honor to speak with you about the Volunteer Income Tax Assistance or VITA program. I am the project director of Prosperity Now’s Taxpayer Opportunity Network. And in my role, I lead a national network of more than 2,500 stakeholders, including VITA program managers; site coordinators; volunteers; community, corporate, and philanthropic partners; and others. Our network serves as a convening body for them, providing a way for them to connect to one another. We provide tools, resources, information, and capacity building support to strengthen VITA programs, ensure quality return preparation, and help to extend the reach of the VITA program to more low-income Americans.

However, the views I express today are reflective of my own personal experiences as both a VITA volunteer and a program manager. I am proud to stand among the ranks of the 55,000 tax nerds who volunteer and give our time to help low-income Americans.

For the last 2 years, I have served as a VITA volunteer co-site coordinator with the Northern Virginia CASH Campaign in Prince William County. Every Saturday morning throughout the tax season, I rise from my bed—a little bit earlier than I would like to—and make my way down to the Prince William County Ferlazzo Building, joining alongside 10 to 12 other volunteers at my site, 1,200 volunteers across Virginia, and 55,000 VITA volunteers nationwide, to help low-income, hard-working Americans meet their civic obligation by filing a tax return.

I remember the first return I filed, and the first person I helped at the Ferlazzo Building. He was a single father raising three children. He had been unemployed for part of the year and had about three W-2s showing that he was trying to piece together an income to support his family.

He had gone to a paid preparer and gotten an estimate of \$382 to prepare his return. It was a simple return. It only took me about 30 minutes to complete. He was so grateful for the help that I provided for him and the almost \$400 that I had saved him.

The 24 VITA coalitions across the State of Virginia operate at 121 sites, serving over 33,000 customers last year. We gave—as volunteers—more than 60,000 hours in training and tax preparation. And we brought back almost \$35 million in Federal refunds to our State free of charge.

Virginia is special, but it is not unique. The same thing happens in Ohio, and in Delaware, and in Rhode Island, and in Maryland every year by thousands of volunteers who are giving their time.

In addition to preparing and filing returns, many VITA sites connect the families that we serve to public benefits, financial education, and other financial capability services like financial coaching and credit building, providing strength and support to a family's financial future. As volunteers, we endure rigorous training that can sometimes go as long as 24 classroom hours. We pass a certification test every year so that we are well-equipped to translate what can be a daunting and complex tax code for our clients into a meaningful representation of their lives. We follow the IRS-prescribed intake interview and quality review process for every return, which has consistently yielded unparalleled results with accuracy rates above 90 percent for the last several years, and 93 percent for this filing season.

But for all of the great work that we do and all the people whom we serve, two things remain lacking. First, after nearly 50 years in operation, the VITA program has never formally been authorized by Congress. Formal congressional authorization will put the VITA program on sure footing, demonstrating that you recognize the value we bring to the American people we serve, and acknowledging that we should keep up the good work. Second, the VITA program lacks adequate funding. Since its beginning in 2008, VITA grant funding has grown from \$8 million to \$12 million to \$15 million, and I understand it may be slated for \$20 million this year.



As I go about my daily routine, everywhere I look, I see potential VITA clients. They help me get to work on the commuter train. They drive the Metro. They are in the grocery store helping me make purchases for my family every week. When I went on vacation, they were in the hotels. They were in the airports, all around me, helping me to achieve my goals.

Some of them draw Social Security and still work, like the cafeteria worker I helped who works at the cafeteria at my son's school who used her refund to sustain her household over the summer, because she does not work then. There are millions like her and others whom we help every year.

The low-income, elderly, disabled, rural, underserved, limited English-speaking populations could benefit from our services, but we are at capacity and lack current sustainable funding. By making the VITA program permanent with \$30 million in funding, it is the least thing—I think—that we can do for all of them.

Thank you, Chairman Portman and Ranking Member Warner, for providing me with this opportunity, and I am happy to answer any questions you have at this time.

Senator PORTMAN. Thank you, Ms. Thompson.

[The prepared statement of Ms. Thompson appears in the appendix.]

Senator PORTMAN. As you may know, in the legislation we introduced today, we actually authorized VITA for the first time.

Senator Warner has another commitment, so I am going to ask him to start on the questioning. I will postpone mine. And again, I am happy at so many colleagues who came. We come and go in this place because we all have different hearings, so do not take offense.

Senator Warner, I would like you to start with the questioning.

Senator WARNER. Mr. Chairman, thank you for that courtesy. I really do appreciate it. I want to try to get in three questions. So I would ask for relatively rapid responses.

Ms. Bruckner, I want to start with you. As we have looked at the gig economy, as we have looked at these new on-demand type services, in the past there has been a sense that companies' platforms have been unwilling to provide any benefits, perhaps even tax planning benefits, because of the concern about 1099 versus W-2 and labor classification issues.

Have you found in your research that that concern about, perhaps, sliding from independent contractor into traditional employee has restrained the companies and platforms from helping their workers get their tax planning assistance?

Ms. BRUCKNER. Anecdotally, I found that to be true. But after we released "Shortchanged," I had an opportunity to talk to several different platforms, Lyft, in particular, and really convinced them and chatted with them about how the 1099-K filing rules really did a disservice to their service providers. And they took my comments, my research, and internally reviewed it and then made an executive decision that they were going to provide 1099-Ks at the \$600 threshold, rather than the \$20,000 threshold because it was the right thing to do, to give taxpayers the forms that they need.

Senator WARNER. Have you seen the same take-up rate from Uber, Airbnb, TaskRabbit, any of the other platforms?

Ms. BRUCKNER. I have actually had informal conversations at several industry conference events that I speak at and what have you. And it would be—I think the general consensus is, it is not required by law. They say they are consistent with the law, and they are absolutely right. They are acting completely consistently with the law. It is the law that needs to change in order to get these taxpayers the tax forms they need.

Senator WARNER. Well, I would look forward to working with you on changing that. But I also—as somebody who has spent the last couple of years digging in pretty deep into this area—would welcome the opportunity to work with you to see if we could force more of the platforms, or urge more of the platforms to participate, even before we get to the whole question of how we create a new social contract around the portable benefit system.

So I commend your work and look forward to working with you a little more.

Ms. Thompson, Ms. Olson—I know, Ms. Olson, you have also done some of this VITA work in Virginia. And, Ms. Thompson, I appreciate the 121 different sites in Virginia that you are doing. And I saw there was a number, 60,000 hours.

Is there an ability—and I applaud Senator Portman’s legislation that actually authorizes VITA, long overdue. As a budget note as well as tax note, is there an ability to—I am going to give you a formula that for every hour of work, or for every individual helped, we increase tax compliance by “Y.” Is there a formula that you can almost break down to an individual or an hourly basis, either of you?

Ms. OLSON. I do not think I have seen any IRS research on that, but I just made a note about that, to take a look at that myself in my own organization.

If I might make a point about the VITAs, I think going to the sharing economy, few VITAs are able to do Schedule C preparation, simple Schedule C preparation. And so, particularly, if you have people who are workers, you know with W-2s, but then they have small Schedule Cs, that becomes important.

And so the legislation authorizing VITA should clearly say that one of the tasks that they can do is simple Schedule Cs within that income level, or Schedule Fs for that matter. There are many small farmers who are just doing family homestead things.

Senator WARNER. And, Ms. Thompson, do we get that Schedule C and Schedule F training at this point within the VITA program?

Ms. THOMPSON. There is currently limited training for Schedule Cs for VITA programs to be able to provide some limited services for Schedule Cs. But there is additional work that is needed.

With regard to your first question, I do not have an estimate. Like Ms. Olson stated, that is something that we have not looked into. But the number that I do have is, for every Federal dollar that is invested in the VITA program, it costs about \$14.74 per tax return for the Federal Government.

Senator WARNER. I guess what I would hope is, under Senator Portman’s and Senator Cardin’s leadership, if there was a way that we could get that down to, say, for every Federal dollar spent, Federal tax compliance goes up—if we spend “X,” it goes up “Y”—that

would be, I think, a helpful argument to convince our other colleagues.

Mr. Sapp, in the last couple of seconds I have—I would love to see the day where we thought the IRS was ahead of the game on its technology updates. I feel like we are always chasing.

One of the concerns I have—again, just from the banking provision—is, when we have enterprises like Equifax and others where we do not have a customer relationship, yet they have the ability to look at all of our personal information, that increases the ability for tax fraud if there are violations there. Have you thought about what kind of liability regime or other incentives we ought to put in place for those enterprises that have access to our personal financial information?

That will be my last question. I appreciate the courtesy from the chairman.

Mr. SAPP. Senator, I have not actually considered the liability aspects of that. Although I will say that it is a liability for the government, in general, whenever a tax refund is misappropriated and sent to a criminal or to an inappropriate party.

One of the advantages that the IRS has is, they do diversify the entry points to include the in-person and online authentication. But one of the challenges with authentication, obviously, is, we have a very diverse population.

As long as the United States has as diverse a population as we have, the ways that they want to interact with the IRS are going to be diverse. So if you take a third party, such as an Equifax, how an individual may choose to interact with an Equifax, they can choose to go to a different credit reporting agency. The way I report to my bank, I can choose to go to a different bank.

I cannot choose to go to a different IRS. So the challenge with that in the electronic authentication is that it has to be secure, but it also has to be diverse.

Senator WARNER. The comment I would make is, I am not sure you get to choose your credit report.

Mr. SAPP. No, you do not.

Senator WARNER. That is not a relationship we can choose.

Again, I thank the chairman for the courtesy.

Senator PORTMAN. Thank you.

Let me make a couple comments and ask a question. Then we will move on to our others.

Again, I appreciate all my colleagues who came today, and they all have other places to be.

Great testimony. And, Ms. Olson and Ms. Kubey, in your oral testimony and in your written testimony, you both talk about the Oversight Board. As I said earlier, I want to get some input on that today.

So if we could start with, maybe, Ms. Kubey. In your written testimony, you recommend a lot of changes designed to revitalize the IRS Oversight Board, as it is called now. We call it the Management Board in the legislation Senator Cardin and I put forward today to make that distinction, because there is a lot of oversight that might be viewed as overlapping.

You mentioned the Board should have the power to both review and approve all operational plans. The Board currently only has approval power over long-term strategic plans, as you know.

In our legislation, we sought to address this limited approval power by being more explicit in the type of plans that they would be permitted to approve, including the annual performance report, which I think is really important in the plan that is submitted as part of the President's budget request.

Ms. Kubey, what do you think the value is of giving the Board more direct approval power over a wider range of operational and strategic plans?

And then, Ms. Olson, really the same question to you. You were there at the outset as we tried to establish what the priorities were for the Oversight Board.

But, Ms. Kubey, you could respond to that. What is the value of giving the Board more direct approval power over this wider array of operational and strategic plans?

Ms. KUBEY. Well, I echo what you say, that the IRS has plenty of oversight. And I applaud the change of language to a management function.

I see the alignment of the higher-level management function, the operations, and, if you will, rewards for successful outcomes to be highly correlated. And I do not think you would want to have oversight or management functions without having the power to also monitor operational functions, because you could conceivably have one point of view from the top. And then if, operationally, the Service is going off and doing something else, you would never have that level of implementation that you want.

And then the other end of that would be, assuming that we do have sound management, good operational function, and we have high-level executives who are in charge of making those successful outcomes, that they would then be rewarded and the Board would have that opportunity.

Senator PORTMAN. I saw in your written testimony you suggested that the Board be able to approve bonuses, as an example, to high-level executives—

Ms. KUBEY. Correct.

Senator PORTMAN [continuing]. To align those performance measures with the Board's responsibilities.

Ms. Olson?

Ms. OLSON. As you referenced, I have been subject to the oversight of the Board as the Office of the National Taxpayer Advocate. And I found the Board in 2001 to be composed of very engaged individuals with a variety of experiences.

So there was a professor from a law school who was very interested in training and didactic methods and produced the best report that I have seen on IRS training in the 17 years I have been the National Taxpayer Advocate.

There was a representative of small businesses from rural Iowa with agriculture. And he was a very strong advocate of what was the IRS doing about small businesses. And you had people skilled in technology. You had this really good mix of talent.

The battle came with, I believe, the IRS leadership. And Treasury did not support the Board and viewed it as intrusive. And that

battle really came to a head when the Board—a few years in—tried to weigh in on IRS performance measures. And I think that is vital for the Board, if it is a management board with experience and expertise from outside the IRS, to have a voice in those measures and even in approval of those measures.

And the IRS really fought that. And that became really the part of the demise, in my opinion, of the Board. So as I look forward to what it should do—I think looking at performance measures, holding the senior leadership accountable to delivering on those measures, but also, are we measuring the right thing and comparing it to private-sector measures, et cetera?

That is vital for the Board.

Senator PORTMAN. Well, I think those are very helpful points. And you are right.

Initially we talked about expertise, and that is why we had those individuals included, everything from service providers to technology to small business people. You mentioned some of the really dedicated people who were on it.

And then we also wanted experience, just because the IRS sometimes lives in its own bubble, as many Federal agencies and departments might. And so to have that experience to be able to come in and help the IRS be able to do its job better, particularly in the light of the fast-changing economy we have now, as Ms. Bruckner has talked about.

And the final one which was very important was continuity. Accountability, but also continuity, because every Deputy Secretary, every new IRS Commissioner, sometimes a Secretary comes in with a big new reform plan, and sometimes—you mentioned—the right hand does not know what the left hand is doing. Sometimes we do not have that experience and continuity, and that is where we get staggered terms.

So I am not telling you something that you do not know, Ms. Olson, but maybe trying to reiterate that this is an important opportunity for us, I think, with reform to look at the Oversight Board—why it is not working, how it could work better—and to provide what I think is still needed, which is all of those things: critiques, accountability, the experience, and the continuity.

So we will get into this deeper. Our legislation does not go quite as far as some of the suggestions you are making, but it does revitalize the Board.

By the way, I had a conversation with the Deputy Secretary nominee as recently as this morning on this, in a public hearing, and also obviously, we have talked about this a lot with the IRS Commissioner nominee.

With that, I will turn to Senator Cardin.

Senator CARDIN. Well thank you, Mr. Chairman.

I want to thank all of our witnesses, not just for your testimony here today, but for your help in trying to help us improve the administration of the Internal Revenue Code.

I think I want to thank Senator Portman, for 20 years-plus, inviting me to join him on his crusade to reform IRS, inviting me to join the tax nerd caucus. I thank you for that.

It has been a challenge, and it is interesting because—Ms. Olson, we have talked about this—one of the chief problems is resources.

It is hard to get consistent attention by Congress to give the Internal Revenue Service the resources they need.

Historically, it has been the Ways and Means Committee and the Senate Finance Committee that have taken up that cause with the appropriators and OMB to make sure that these funds are available. Now I know this budget year is a little bit better. That is because of a new tax law, not so much of a found religion for giving the IRS the type of resources that they need. So I think part of it is to make sure we have the resources.

I think the chairman and ranking member bringing up the challenges that we have today with the changing of our economy—I think Senator Warner's point there is absolutely on target. We have also the challenges of technology and how we use technology. That is a constant change, and the IRS has never caught up. As many of you pointed out, they are trying to deal with current problems rather than dealing with the underlining capacity to use technology.

Then I would add a third thing. And that is, Congress changed the law. I am saying whether it is good, bad, or indifferent, when you change the law, it is going to add a challenge to the IRS. They are going to have to deal with that as they are dealing with all of these other issues.

So I invite you to—your testimonies cover a lot of the points that are included in Senator Hatch's and Wyden's legislation, in legislation that I have joined Senator Portman on, and in the bills that have come over to us from the House. But I invite you to be more granular. Please take a look at these provisions and give us the input beyond just today's hearing.

I want to talk, first, about training. Thank you for mentioning that. We do try to help with more permanent commitment by IRS to training the personnel to deal with these challenges. But let me ask all of you a question on two points that are in the Portman-Cardin bill that there are different views on. So I would like to get your thoughts.

One is to reinstate the authority of the IRS to regulate paid providers, and the other is to deal with private debt collection. Our legislation takes a similar approach to what the House did in limiting the private debt collectors—not using private debt collectors for those who are of modest income.

If you would care to comment about either one of those two provisions, because, as I said, there have been some different views in Congress on these points.

Ms. Olson, do you want to start?

Ms. OLSON. Well, as you know, we recommended back in 2002 to create some kind of regulatory minimum competency regime around the unenrolled return preparer. I had been one for 16 years, so I knew what I was talking about.

I really think that that is vital to the future of the IRS. We are running so much through the Internal Revenue Code in terms of refundable credits, and they are very complicated provisions. So we have unsophisticated taxpayers going to preparers who do not have any kind of training, have no accountability, will never lose a license, et cetera.

So establishing some minimum competency standards for them and requiring them to come into the IRS and declare themselves is vitally important for identity theft, for refund fraud, for accuracy of returns, et cetera.

On private debt collection, my focus has been that Congress has already spoken about how it wants the IRS to treat taxpayers in the collection context, by saying that if you are levying on someone with an economic hardship, you have to stop levying on that person. An economic hardship is defined as not being able to pay your basic living expenses.

Congress has mandated that the IRS create guidelines for Offers in Compromise. That came into our area in 1998, and those guidelines are based on basic living expenses. So what I have said to the IRS is, try to proactively screen out these taxpayers, not just in private debt collection, but in all your activities, based on all of this data we have in-house, but certainly in private debt collectors. They should not even go over there.

Senator CARDIN. Ms. Thompson, I was just impressed by the training that you have to go through in the VITA program and thinking about those who are subjected to that \$400 fee. And there is really no ability of the IRS today to regulate, although you are very much subject to that training.

Ms. THOMPSON. Absolutely.

Our VITA volunteers go through extensive training. There is an annual certification. We have two opportunities to take the certification test and pass it. After that, we suggest other volunteer opportunities for them. And like I mentioned, they are volunteers.

What I will say is, when I go to get my nails done, my technician has a license. When I take my children to get their hair cut, their barber has a license. That is an interaction between myself and an individual.

But yet paid preparers—and I can tell you that we, as VITA volunteers, overwhelmingly spend a lot of time and energy amending returns and correcting the mistakes and errors of paid preparers. And particularly low-income families are the ones that are subjected to those errors.

So we spend a lot of time correcting the mistakes and helping people to come into compliance for preparers that are not even regulated, even though, for something as simple as a barber or a nail tech, you are.

Senator CARDIN. Thank you. I appreciate it.

Thank you, Mr. Chairman.

Senator PORTMAN. Senator Whitehouse?

Senator WHITEHOUSE. Let me first thank Ms. Thompson for—you make a terrific advocate, just to begin with. And the program is so important. I cannot tell you how many families in Rhode Island depend on VITA and depend on the Earned Income Tax Credit. The whole State's economy is lifted when those returns come in. So I just want to appreciate you.

My question goes, however, more to the end of the income spectrum that you do not represent. Primarily, I think I am probably asking Ms. Bruckner, and Ms. Kubey, and Ms. Olson.

What I am interested in is, if you look at, for instance, the corporate income tax, generally you see corporate income tax revenues

declining steadily as a proportion of our national Federal tax revenues. When I was young, it was about—steadily about 30 percent of Federal tax revenues. Now it is down around 10 percent.

So, as a share of everybody's contribution to funding our government, corporations seem to have managed to evade a lot of their responsibility, and now only provide 10 percent of our revenues.

Relatedly, perhaps, the IRS publishes information on its highest income earners. The highest tranche of income that they report on is the top .001 percent, which amounts to a total of 1,400 individuals who earn, on average—across the 1,400 tax returns—\$152 million in a year.

Most people do not dream of getting \$152 million if they win the lottery. These are people who earn it in a year. And yet, when you look at what the IRS reports about their contribution to revenues, they are paying a 24-percent tax rate.

When you go back to the normal people and look at who pays a 24-percent tax rate, you get to people who are earning \$78,000 a year, so a nurse, an occupational therapist, people like that.

My concern is how much the, essentially, free-riding of big corporations—many of them will pay no taxes at all. And the relative free-riding of these super-high-income taxpayers is a function of the IRS's capability to deal with them.

Obviously, they have the ability as very-high high-income, very wealthy interests, to come to Congress and get favorable tax treatment passed legislatively. And you cannot blame the IRS for that. We are to blame for that.

But to the extent that these people have, or these organizations have, enormous clout to manipulate the IRS, to apply political pressure to the IRS, to simply outgun the IRS, I am interested in the extent to which you think that that latter problem is a factor in the relatively low contributions of these very-high-income entities. I would be happy to take that as a question for the record and let you just write something into us, so you have a chance to reflect on it, and get your thoughts.

One particular sub-aspect of that is the question of false statements. There is a weird wrinkle in IRS false statements in which the Department of Justice will not prosecute a plain vanilla false statement case that relates to tax returns unless the IRS has made a referral, which gives the IRS a chokehold over those false statements.

I am looking separately into how often the IRS actually makes those referrals. I believe with respect to 501(c)(4)s, which are a particularly powerful form of corporation on the political side, the referral number is exactly zero, despite evident discrepancies between what the 501(c)(4)s report to the IRS and what they report to, for instance, the Federal Election Commission.

So that would be a specific place in which I would be interested in your thoughts and whether the IRS as an institution has been cowed, or disabled, or outgunned in its enforcement efforts and what effect that would have on our overall revenues were that not the case.

So again, those are kind of big questions. And I know that my time is expired, but if you would get back to me with a response for the record, that would be very helpful.



And I will let Mr. Sapp and Ms. Thompson be excused from that, because I do not think your taxpayers have that problem, Ms. Thompson. And I do not see this as an electronic or a technical thing, Mr. Sapp.

So, thank you very much, Mr. Chairman.

Senator PORTMAN. Thank you, Senator Whitehouse.

Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman. Thanks for holding this hearing.

I wanted to ask Ms. Thompson about how we continue to do simplification. And the Volunteer Income Tax Assistance, VITA, and Tax Counseling for Elderly, the TCE, are grants to local communities. So that works really well.

I think there are lots of people in our State who have used that, focusing on underserved communities, rural communities where they may not be able to get larger assistance. So during the—I think it was the 2004 tax season, they helped prepare 3.2 million returns. So that is a lot of returns and very helpful.

I wanted to say, though, that I feel like the forms for, particularly these areas where people are looking for education credits and the Earned Income Tax Credit, Child Tax Credit, American Opportunity Tax Credit, all of those things are good for simplicity purposes. Well, let us just say, they should be more simplified.

My colleagues, Senators Brown and Heller, have a bipartisan amendment to increase funding for programs which would help support more simplification on the tax forms. Do you think that is a good idea?

Ms. THOMPSON. The simplification of the tax forms?

Senator CANTWELL. Information to make it easier on these deductions.

Ms. THOMPSON. Absolutely. And thank you for your question, Senator Cantwell.

We have tremendous partners across the country. In particular, I am thinking of partners in Seattle, WA—United Way of King County is one of our largest partners.

One of the things that taxpayers get when they come to VITA sites is education.

Referring back to your question earlier, Senator Cardin, our volunteers go through extensive training and certification to be able to deliver education. Sometimes it comes in the forms of financial education. But at the end of every return, there is a quality review process where the taxpayer actually gets an education about how their life translated into that tax return this year.

Of course, if the forms are simplified and the process is a little bit simpler, yes, it makes it easier for everyone—notwithstanding the 2017 complexity and the prior year complexities, and whatever the complexity looks like in the coming years with the restructuring of the IRS and the tax forms for 2018 and beyond.

Our volunteers stand ready. We are the tax nerds. And we gladly give our time and stand ready to learn and undergo the training that is necessary. I think it is important that they have the training and that information is available timely so that we can get that information, so whatever it is, we are able to communicate that to the low-income, the elderly, disabled, rural, and underserved com-

munities as we have done for almost the last 50 years and that we are able to continue to do so.

Senator CANTWELL. Well, we like nerds where I come from.

But I do think we need to continue to communicate and amplify, think of ways to just generally make the public aware of those deductions. So that is, I think, the key point.

But thank you for those grants to those communities, because we think they are very, very helpful to them.

Thank you, Mr. Chairman.

Mr. SAPP. Senator, if I could—could I just comment on that?

Senator CANTWELL. Yes, go ahead.

Mr. SAPP. Because one of the challenges—and I think my colleague from NAEA brought it up before—is that paid preparers' experience is, they have a due diligence checklist they have to go through with that taxpayer. And a lot of times that can seem antagonistic to the taxpayer and discourage them from claiming some of these refundable credits.

So one of the recommendations, in general, is that the IRS clarify what those due diligence requirements are for the paid preparers. And that would include the VITA folks, as they have to go through some of those due diligence—for example, what is the documentation requirement for a paid preparer to meet those requirements?

It needs to be simplified and educated, both on the paid preparer side and on the consumer side.

Ms. OLSON. And if I might add, my office has made legislative recommendations about how to reform the Earned Income Tax Credit and other family status provisions, because frankly, the IRS struggles with making an incredibly complex law simple and understandable. And any time you deal with family—families are not simple or understandable.

And so we have tried to look at provisions from around the world, as well as IRS data, to come up with ways that you could come up with a few more safe harbors so you would not necessarily have to go through intrusive inquiries. That would require legislation, but I think there are ways to make it a little bit better without increasing errors and things like that.

Senator CANTWELL. I would like to see those recommendations.

Ms. KUBEY. If I may just add one thing, Senator Cantwell.

Preparers—we have all sorts of varying practices. Many of us have walk-in practices. Some of us are taking clients by appointment. So it is sort of all over the map.

Often, we are put in the position with these new due diligence requirements where we are asking questions of clients that we have known from before their children were born, about their children, simply so that we can check all the boxes and say that we have asked the questions that we are required to ask.

I do agree with what Mr. Sapp said. It is tremendously burdensome, and it creates a little bit of anxiety with the taxpayers who are coming to us for help. So I know it is a tricky thing, but if there were some way of balancing the requirement for knowing our taxpayers with some kind of nod to people who have known their clients for 20 years or more, it would be helpful, and I think it would aid efficient tax administration.

Senator CANTWELL. Well, definitely believe that, on this end of the tax code, helping people understand and qualify for these things so that they can make the right decisions is very important.

Thank you, Mr. Chairman.

Senator PORTMAN. Thank you.

Good question. And with regard to the forms and simplification, so much of that does not require legislation. It requires the IRS focusing more on simplification. And I think the Taxpayer Advocate, obviously, has made some recommendations along those lines.

But again, looking to the Board and customer service, which is one of the top priorities, that would seem to me a natural thing that a real Management Board would look at and say, how do we simplify and ensure taxpayers understand this across the board, which I think is always helpful. And Congress has not made it simpler, as Senator Cardin said, because there is now a transition going on for things like closely held corporations trying to figure out how those new tax revisions work, and those regulations are coming up. So there is an opportunity as well.

On electronic filing, let me just make a point. We have talked about a lot of negative aspects of taxpayer service, including your extraordinary comments this morning, Ms. Olson, about the number of phone calls that actually get through. You said really it is only 29 percent of calls received that are answered by an individual—29 percent.

One place where we have made great progress since Senator Cardin came up with this brilliant idea 20 years ago—I will give him credit because he was complaining about having been dragged into this process, which he was.

But seriously, electronic filing has really been successful. I remember at the time, our goal was 80 percent. We got to 80 percent by 2007, probably. And I think we are close to 90 percent now, electronic filing.

That is a huge success because, not only is it helpful to the taxpayer, it is obviously helpful to the system because we found that, when it was done manually, there were so many errors that it ended up with downstream cost to the taxpayer and to the system. And that is far less likely to happen with electronic filing. So that is a good thing.

Mr. Sapp, you talked earlier about some of the difficulties of managing that balance between e-services providing taxpayer ease of access, but also security and authentication in particular.

Recent reports show that only 30 percent of taxpayers who have tried to set up an online account at the IRS website were successful in doing so because of the tough authentication procedure. So I am not sure how that balance is going when only 30 percent of folks are able to set up that online account.

So how can the IRS strike that right balance between customer service and taxpayer protection through security and authentication? And in what ways would the IRS incorporate comments and individual ideas more effectively from stakeholders? How can we get them to work more with the outside stakeholders who are very engaged in electronic means of communicating, either with the IRS or otherwise? How do you feel about adopting uniform standards

on the use of private-sector electronic signature options, as an example? Would that help this problem?

Mr. SAPP. We at ETAAC have evaluated several different options for how the IRS could authenticate people, because that is the big challenge. How do you authenticate someone electronically, as I mentioned before, with a diverse population in the United States, with differing access to Internet, or differing access to phones? It is a very difficult solution to provide.

So 30 percent may not be a bad number for that particular type of authentication. However, we need to get to 100 percent of taxpayers controlling that account and having access to it. So I agree with you that the IRS, 100 percent, has to solve that issue.

One of the things that I would consider is the electronic filing program, the way the IRS has taken that collaborative approach, where they brought in stakeholders from the private sector to help be that front end for the taxpayer. So one of the things that we discussed, and I mentioned it in my testimony, was trying to leverage—for those folks who may not be able to authenticate through standard channels (and not everyone today can authenticate at a particular bank or a particular vendor relationship they might have), they may need to do it in person.

So we did recommend that they consider leveraging tax preparers and consider having those tax preparers go through a vetting process so that they could become trained in how to authenticate a taxpayer, and then allow that taxpayer to leverage that authentication to access their secure services similar to what happens today with that certified Acceptance Agent.

And that in-person—when over half the taxpayers in the United States today are choosing to pay a preparer—that in-person appointment could allow them to authenticate with their tax preparer and then have access to their services that way.

But again, one of the side lights of that is, the IRS should have the ability to regulate preparers to ensure that that interaction is secure with their paid preparer.

Ms. OLSON. Senator Portman, I have traveled around the world meeting with other tax administrations, looking at their online accounts. In the United Kingdom, one way to sign into your taxpayer account is that you are directed to Amazon or your bank, somewhere else where you already have an online account, and you sign on through them, and that message is sent back to HMRC, that you are who you say you are, through their verification process. That seems to work very well, and they have a much higher ability to get their taxpayers into accounts.

Australia has put into effect voice recognition. And it is in its infancy, but I think that is very important. That is very interesting.

GAO just published a report in June that looked at different authentication methods. And some of those methods are discussed there.

The other thing that I have seen—and I just raised this with senior leadership of the IRS—is they have the same level of security if you are trying to get into an account to pull information out as they do sending information in. So taxpayers who just want to send an email with a picture of a document that is necessary in exam, have to be able to, in a pilot, sign into an online account and

go through this high authentication, even though they are not pulling any information or accessing their particular account.

And I have tried to say to the IRS, why don't we think about another level for people just sending us information, rather than that they get into our systems?

Senator PORTMAN. Good points.

I am going to ask Senator Cardin if he has some closing comments or questions, because I know he has another commitment.

Senator CARDIN. Thank you, Mr. Chairman.

Again, I thank all of the witnesses. I think I will ask this for the record.

If you could let us know—I am also ranking member on Small Business. I find that IRS questions are now becoming one of the top questions being asked by small businesses.

In your prepared statements and in your testimony, you have mentioned issues that would help small businesses. I would hope you would identify for me, perhaps the top one, two, or three changes you think in administration that would be the most valuable for the small business community. If you could put a priority on the small business community on those recommendations, I would appreciate it.

Thank you again for your testimony.

Senator PORTMAN. Thank you.

And again, as Senator Cardin is leaving, I thank him for joining me in this effort, but really for 20 years of being part of this enterprise of figuring out how to make taxpayers and the IRS work better together. It is something that most members of Congress do not spend a lot of time on, and yet it is incredibly important to people we represent.

I have so many more questions for you all. But I guess I would like to end with this. We do have a new legislative initiative out there now.

Among other things, Mr. Sapp, it has these uniform standards on the use of private-sector electronic signature options. We want to hear from you on these things to the extent we did not get to those questions today.

So if I could ask you, as a favor, to take a close look at the legislation. Many of you at this table, maybe all of you, gave us input already into the legislation. That is one reason I think it is a pretty good bill, but there are things we heard today that would, I think, improve it further.

And in the case of Ms. Kubey, particularly, some ideas on the Oversight Board, the Management Board as we are calling it—it would be a little different and take it to even more of a management function with accountability, with performance measures, and so on.

And with regard to what people might see as a number of different efforts, let me just say again, what the House did and what the committee did back in 2016, which has been reintroduced, essentially, in the last couple of weeks, I think is entirely complementary with what we are talking about. So these are not competing proposals. Instead, I think these are additive.

And at the end of the day, it may not be as ambitious a project as it was 20 years ago, but frankly it is time, once again, to look

at this broad range of issues in the context of a new economy, as Ms. Bruckner has said and Mr. Sapp has said, in terms of the reality of how people interact, and the reality of how people use platforms. And sometimes, increasingly, the platform is them as independent contractors or sole proprietors.

So we have a number of challenges in front of us. We want to get something done. We are hopeful that we can work with the House and the Senate and have a product by the end of this year. That is urgent by congressional standards. Getting something done that quickly is not easy.

So we really appreciate your coming today, and your continued interaction with us. Robert is here. I know Beth is here, and others of us who have been working on this. So please interact with our staff and with us, and let us be sure that we can get this across the finish line before the end of the year and improve the experience all of our taxpayers have and ensure that the IRS is viewed, again—I said earlier, people had lost faith in the IRS 20 years ago. Many people have lost faith again. And we need to get back to a point where people have more faith and trust in government, in particularly in the agency that collects our taxes.

Thank you all for being here.

[Whereupon, at 11:53 p.m., the hearing was concluded.]

## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF CAROLINE BRUCKNER, EXECUTIVE-IN-RESIDENCE, ACCOUNTING AND TAXATION; AND MANAGING DIRECTOR, KOGOD TAX POLICY CENTER, KOGOD SCHOOL OF BUSINESS, AMERICAN UNIVERSITY

Subcommittee Chair Portman, Ranking Member Warner, members of the U.S. Senate Committee on Finance Subcommittee on Taxation and IRS Oversight (the “Committee”), and staff, thank you for the opportunity to testify today. My name is Caroline Bruckner, and I am a tax professor on the faculty at American University’s Kogod School of Business. I also serve as the managing director of the Kogod Tax Policy Center (KTPC), which conducts non-partisan policy research on tax and compliance issues specific to small businesses and entrepreneurs. We develop and analyze solutions to tax-related problems faced by small businesses.

Prior to joining AU’s faculty, I served on the staff of the U.S. Senate Committee on Small Business and Entrepreneurship, from 2009–2014, ultimately as Chief Counsel. Before public service, I worked in private practice in Washington, DC as a tax attorney with both Paul Hastings and PwC’s Washington National Tax Services.

Since March 2015, I’ve directed the KTPC’s efforts towards developing research on the tax and compliance issues impacting America’s latest iteration of self-employed small business owners who are renting rooms, providing ride-sharing services, running errands, and selling goods to consumers in business transactions coordinated online and through app-based platforms developed by companies such as Airbnb, Etsy, Uber, Lyft, TaskRabbit, Instacart, and others (*i.e.*, the “sharing economy” or the “on-demand platform economy”).<sup>1</sup>

In May 2016, we released groundbreaking research in a report titled “Shortchanged: The Tax Compliance Challenges of Small Business Operators Driving the On-Demand Platform Economy.” Our research included—for the first time—survey data from a range of on-demand platform service providers and sellers that quantified the reality that under current tax rules, most of these taxpayers are not likely to receive any Form 1099 regarding the income they earn through these platforms.<sup>2</sup> One major consequence of this is that millions of these small businesses are working and earning income in ways that are not readily identifiable by existing government research or publicly available taxpayer filing data.<sup>3</sup>

Our research concluded that this growing problem demands Congress’s attention to more fully consider how to fairly and efficiently administer the U.S. tax code with respect to these small business taxpayers, who typically are required to report this

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<sup>1</sup>Kogod Tax Center, letter to U.S. Senate Committee on Finance Bipartisan Business Tax Working Group (April 15, 2015), available at <https://www.finance.senate.gov/legislation/details/business-tax-working-group-submissions>.

<sup>2</sup>Caroline Bruckner, “Shortchanged: The Tax Compliance Challenges of Small Business Operators Driving the On-Demand Platform Economy,” American University Kogod Tax Policy Center (May 2016), available at <https://www.american.edu/kogod/research/upload/short-changed.pdf>.

<sup>3</sup>See, e.g., letter from the U.S. Department of the Treasury to Senator Mark Warner, *Tax Analysts* (October 27, 2015), Doc. 2015–25376. However, there are some official measures of independent contractors and alternative contingent work. See, e.g., the June 2018 U.S. Bureau of Labor Statistics (BLS) release of its 2017 measure of the alternative contingent workforce, available at <https://www.bls.gov/news.release/conemp.nr0.htm>. BLS is scheduled to release 2017 survey data specific to the gig economy on September 30, 2018.

income on a Schedule C or Schedule E and are not subject to withholding on these earnings.<sup>4</sup> A number of findings we review in “Shortchanged” are particularly relevant to today’s discussion, including:<sup>5</sup>

1. Size of the on-demand platform economy: At least 2.5 million Americans are earning income via on-demand platforms every month (this translates to approximately 4.2 percent of adults or more than 10 million from 2012–2015);<sup>6</sup> and
2. Average income of on-demand economy small businesses: Although people do cycle in and out of the on-demand platform economy, during the months in which people are actively using platforms to earn income, their earnings “represented a sizeable but still secondary source of income.” Average monthly income from active participation ranges from \$533 to \$314.<sup>7</sup> Other studies have found that an overwhelming majority—85 percent—of gig workers make less than \$500 per month.<sup>8</sup>

In addition, as part of our research on the tax compliance challenges of these taxpayers, we initiated a survey of members of the National Association of the Self-Employed (NASE). Our survey was designed to gauge existing self-identified self-employed workers’ participation in the on-demand economy (*e.g.*, how many hours worked; how much income earned) as well as respondents’ understanding of their tax filing obligations (*e.g.*, whether respondents kept records for their expenses or received a Form 1099 from their on-demand platform company).<sup>9</sup>

Our survey results revealed that among respondents who had earned income working with an on-demand platform company in 2015, which was approximately 22 percent of all of our respondents:

- Approximately one-third did not know whether they were required to file quarterly estimated payments with the IRS on their on-demand platform income;
- 36 percent did not understand what kind of records were needed for tax purposes for business income and expenses generated from working with a sharing economy partner;

<sup>4</sup>See Annette Nellen, Caroline Bruckner, and Jennifer Brown, “Taxes and the Growing Gig Workforce: What to Know”, *Journal of Taxation*, Vol. 128 No. 6 (June 2018) (summarizing the tax rules specific to on-demand platform economy service providers and sellers). A primary reason for why policymakers, tax and labor experts, and the online platform companies have been slow to tackle the simmering tax and compliance issues underlying this evolving marketplace is the looming question of whether workers who provide services for customers via online platforms are really misclassified employees. Those issues are currently being litigated in courts in a number of jurisdictions across the country. Our view is that because the research to date consistently shows that millions of taxpayers actively participate in the on-demand platform economy as small business owners, addressing the existing tax compliance challenges these taxpayers face is warranted, notwithstanding the outcome of a specific misclassification case applicable to a single online platform company.

<sup>5</sup>In “Shortchanged,” we adopted the on-demand platform economy criteria used in the first major study to track actual income earned using financial transaction data from platforms that: (1) directly connect service providers and sellers with consumers; (2) process payment electronically; (3) allow service providers and sellers to provide goods or services at their discretion; and (4) customers pay for a singular task or good. Bruckner, *supra* at n. 2 at 4.

<sup>6</sup>Diana Farrell and Fiona Greig, *Paychecks, Paydays, and the On-demand Platform Economy: Big Data on Income Volatility*, JP Morgan Chase Institute (February 2016), <https://www.jpmorganchase.com/corporate/institute/document/jpmc-institute-volatility-2-report.pdf>. Other tax preparer industry experts we’ve consulted in our research have gone so far as to note that “their own studies found that 34 percent of the U.S. workforce participates in the gig economy, with this number projected to grow to 43 percent by 2020.” Patrick Gillespie, “Intuit: Gig Economy Is 34 percent of U.S. Workforce,” *CNN Money* (May 24, 2017), available at <https://money.cnn.com/2017/05/24/news/economy/gig-economy-intuit/index.html>.

<sup>7</sup>Farrell, *supra* n. 6.

<sup>8</sup>Abha Bhattarai, “Side hustles are the new norm,” *The Washington Post* (July 3, 2017), available at <https://www.washingtonpost.com/news/business/wp/2017/07/03/side-hustles-are-the-new-norm-heres-how-much-they-really-pay/>.

<sup>9</sup>2016 Kogod Survey of National Association of the Self-Employed Membership (April 2016) (unpublished raw survey data, National Association of the Self-Employed). Our intention in conducting the survey was not to prepare a statistically reliable estimate of the entire American population of the self-employed or freelancers or all workers in the on-demand platform economy. Instead, our objective was to assess whether tax compliance challenges exist—even among a group of taxpayers, who, by their own self-selection as members of NASE, are self-employed small business owners. During March 2016, NASE invited approximately 40,000 members to participate in the survey and received 518 responses.



- 43 percent were unaware as to how much they would owe in taxes and did not set aside money for taxes on that income; and
- Almost half did not know about any tax deductions, expenses, or credits that could be claimed related to their on-demand platform income.

The population we surveyed can be generally considered experienced, self-employed taxpayers when viewed in terms of their NASE membership, and yet their responses indicate a significant lack of understanding and information available regarding self-employed tax filing obligations in addition to undue tax compliance burdens for reporting income earned in the on-demand platform economy.

Moreover, almost 70 percent of survey respondents received no tax guidance from the platform they worked with, and most notably for tax administration purposes, more than 60 percent of the sharing economy operators we surveyed did not receive any Form 1099 on their platform income, and that means the IRS didn't either.

Our survey findings are consistent with current law reporting requirements. In general, a Form 1099-MISC is required on amounts paid by nonemployers to service providers and sellers on amounts of \$600, but, if a payment is made via a credit card or debit card, nonemployers are instructed to use a Form 1099-K.<sup>10</sup> However, in cases where a Form 1099-K is required, a taxpayer must have more than 200 transactions *and* payments exceeding \$20,000 before the Form 1099-K reporting rules are triggered. As a result of the 200 transaction/\$20,000 income thresholds for Form 1099-K filings, the majority of small business on-demand platform operators are not guaranteed to receive a Form 1099-K because, on average, they earn substantially less than \$20,000 per year.<sup>11</sup>

The failure of Congress to require Form 1099 be provided to these small business taxpayers by the platforms they contract with to sell goods and services has significant consequences for taxpayers and the IRS. Taxpayers are more likely to misreport their income and face audit and penalty exposure. According to the IRS's own research, in circumstances where there is no withholding or information reporting, the IRS has documented a 63-percent net misreporting rate.<sup>12</sup>

In fact, IRS taxpayer data released last year confirmed the ultimate impact of our research findings: for 2015, the number of filers penalized for underpaying estimated taxes rose nearly 40 percent between 2010 and 2015—to 10 million from 7.2 million.<sup>13</sup> At the same time, the government, too, is being shortchanged of the tax revenue its owed. In terms of budget consequences, the most recent analysis from GAO of the \$458 billion net tax gap finds that underreporting of business income by sole proprietors “accounted for the largest share of individual income tax underreporting.”<sup>14</sup>

However, in response to the release of “Shortchanged,” significant work has been done by both the IRS and industry stakeholders to help sharing economy operators navigate the complexity of the tax code. For example:

1. In August 2016, the IRS launched the Sharing Economy Tax Center on *IRS.gov* “to help taxpayers involved in the sharing economy quickly locate the resources they need to help them meet their tax obligations;”<sup>15</sup>
2. The National Taxpayer Advocate elevated the lack of tax guidance for sharing economy workers as one of the Nation’s most serious problems facing tax-

<sup>10</sup> Bruckner, *supra* n. 2.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> Internal Revenue Service, “Tax Gap Estimates for Tax Years 2008–2010” (May 2016), available at <https://www.irs.gov/pub/newsroom/tax%20gap%20estimates%20for%202008%20through%202010.pdf>.

<sup>13</sup> Laura Saunders, “Number of Americans Caught Underpaying Their Taxes Surges 40 percent,” *The Wall Street Journal* (August 11, 2017), available at <https://www.wsj.com/articles/the-number-of-americans-caught-underpaying-some-taxes-surges-40-1502443801>. In addition, we consulted tax form preparer industry stakeholders in connection with preparing this testimony who informed us, on a confidential basis, that fewer forms are being reported (reduced by 35 percent from 2016 to 2017) despite growth in the space and that the drop in 1099-Ks correlates to fewer taxpayers reporting sharing economy income.

<sup>14</sup> U.S. Government Accountability Office, “Tax Gap—IRS Needs Specific Goals and Strategies for Improving Compliance,” report to Committee on Finance, U.S. Senate, GAO-18-39 (October 2018), available at <https://www.gao.gov/products/GAO-18-39>.

<sup>15</sup> Press release, IRS, “IRS Launches New Resource Center on *IRS.gov*, Provides Tips for Emerging Business Area” (August 22, 2016), available at <https://www.irs.gov/businesses/small-businesses-self-employed/sharing-economy-tax-center>.

payers on the basis of our survey of NASE members in her most recent annual report to Congress;<sup>16</sup> and

3. Some industry platforms began issuing Form 1099-Ks to sharing economy operators even though not required to under current law.<sup>17</sup>

But there is more work to be done. Congress can't rely on the goodwill of industry stakeholders who are not required by law to provide 1099s or tax guidance to these taxpayers. To facilitate tax administration, compliance and aid these smallest of small business owners, Congress needs to take additional action.

#### 1. ALIGN THE FORM 1099-MISC AND 1099-K REPORTING THRESHOLDS

Congress should move forward with modernizing the information reporting regime by lowering the filing threshold for Form 1099-K to \$1,500 to ensure at the very least taxpayers have the forms they need to file their taxes and claim any deductions or credits they may be entitled to in order to lower their tax liability. At the same time, Congress should update the Form 1099-MISC threshold by raising it from \$600 to \$1,500 to provide some relief for small businesses who are subject to the Form 1099-MISC filing rules. Keep in mind, the Form 1099-MISC filing thresholds have not been fundamentally reviewed or updated since at least 1954.<sup>18</sup> Adjusted for inflation, \$600 in 1954 would be more than \$5,000 in today's dollars.<sup>19</sup>

By creating a uniform reporting standard for filing for Form 1099-MISC and Form 1099-K, Congress is likely to enhance compliance by both taxpayers and reporting entities because more taxpayers will receive Form 1099s, which is abundantly supported by the existing research on tax compliance and information reporting, and will benefit other self-employed small business owners operating outside the sharing economy, but who primarily are paid via credit card transactions. Some States have already moved forward with this approach and aligned the 1099-K and 1099-MISC reporting thresholds at the current 1099-MISC level of \$600 with positive results.<sup>20</sup>

#### 2. UPDATE QUARTERLY ESTIMATED PAYMENT DUE DATES

Under current tax rules, when self-employed taxpayers are expected to owe at least \$1,000 in taxes and aren't subject to withholding, advance payments of estimated tax are due to the IRS throughout the year in the form of quarterly estimated payments.<sup>21</sup> It just doesn't take that much income to trip over these filing requirements. Our survey found that more than one-third of respondents did not know whether they were required to file quarterly estimated payments on the income they earned working with a platform.<sup>22</sup>

<sup>16</sup>Taxpayer Advocate Service, *2017 Annual Report to Congress—Volume 1* (December 2017), available at [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-ARC/ARC17\\_Volume1\\_MSP\\_14\\_SharingEconomy.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-ARC/ARC17_Volume1_MSP_14_SharingEconomy.pdf).

<sup>17</sup>See, e.g., Lyft, "Tax Information for U.S. Drivers," available at <https://help.lyft.com/hc/en-us/articles/115012926967-Tax-information-for-US-drivers>.

<sup>18</sup>See Pub. L. 83-591, which was enacted on August 16, 1954 and which created IRC Section 6041 with the original \$600 threshold.

<sup>19</sup>H.R. 3717 takes the approach of aligning the Form 1099 threshold filing requirements at \$1,500, among other tax changes targeted to small business. Other bills, notably, S. 1549, would align the thresholds at \$1,000. S. 1549 goes further and includes other provisions on misclassification and provides for voluntary withholding agreements to be instituted between platforms and their service providers and sellers. The Joint Committee on Taxation (JCT) provided a score for S. 1549 and estimated that aligning the information reporting thresholds raises approximately \$3.6 billion over a 10-year budget window. JCT, "Estimated Revenue Effects of the Chairman's Mark of the Tax Cuts and Jobs Act," scheduled for markup by the Committee on Finance on November 13, 2017 (JCX-52-17) (November 9, 2017), available at <https://www.jct.gov/publications.html?func=startdown&id=5033>. S. 1549 is laudable because it is an important marker for a larger overdue policy review of our current withholding regime, which Congress needs to comprehensively review and reform.

<sup>20</sup>In 2017 both Vermont and Massachusetts began to require information reporting for income earned by small business on-demand platform operators and paid electronically at the current 1099-MISC threshold of \$600. According to the industry experts we consulted in preparing this testimony, the lower reporting threshold in Massachusetts "catapulted reporting by over 100 percent."

<sup>21</sup>Form 1040, Estimated Tax for Individuals, Internal Revenue Service (July 23, 2018), <https://www.irs.gov/forms-pubs/about-form-1040-es>.

<sup>22</sup>"The Sharing Economy: A Tax Experience for New Entrepreneurs Part I," hearing before the House Committee on Small Business, 113th Congress (2016) (statement of Caroline Bruckner, managing director, Kogod Tax Policy Center), available at [https://smallbusiness.house.gov/uploadedfiles/5-24-16\\_bruckner\\_testimony.pdf](https://smallbusiness.house.gov/uploadedfiles/5-24-16_bruckner_testimony.pdf).

As the National Taxpayer Advocate has repeatedly recommended, anything that can be done “to help taxpayers make their estimated tax payments more easily and lessen the burden of saving to make such payments is likely to increase compliance.”<sup>23</sup> In order to facilitate tax compliance and ease taxpayer burden, Congress should update the filing deadlines for second and third quarter installment payments set forth in IRC section 6654(c) to be due two weeks after a quarter’s end, rather than in the middle of a quarter as is required under current law.

The bipartisan small business tax bill proposed by the House Small Business Committee (H.R. 3717) in this Congress does just that and modernizes the existing filing deadlines to reflect business reality of the second and third quarters’ end. As a result, this change is likely to increase compliance because under current law “taxpayers must remember oddly spaced payment dates . . . [that] do not consistently coincide with calendar quarters, making difficult to calculate net income and confusing to taxpayers.”<sup>24</sup> By simply changing existing due dates to fall after a quarter’s end, Congress can ease the burdensome process of estimating income for purposes of remitting quarterly estimated payments because taxpayers will know how much they earned the preceding quarter rather than requiring taxpayers to make their best guess.

### 3. REQUIRE THE IRS TO DEVELOP AND PUBLISH GUIDANCE FOR ON-DEMAND PLATFORMS TO PROVIDE SERVICE PROVIDERS AND SELLERS AS PART OF THE ON-BOARDING PROCESS

Our survey data of experienced self-employed taxpayers operating in the sharing economy found that there is a significant knowledge gap between what taxpayers understand their tax obligations to be, if any, and what they actually are. From talking to industry stakeholders, we know that many platforms are hesitant to provide tax information to their service providers and sellers due to ongoing concerns and litigation over misclassification issues. To address the knowledge gap, the National Taxpayer Advocate has recommended the IRS develop a checklist for first-time, self-employed on-demand economy workers and sellers. We couldn’t agree more. Time and again we have heard from IRS lawyers and tax preparers that most folks want to do the right thing, but are unfamiliar with the requirements of quarterly estimated payments. By the time taxpayers learn that they have failed to file quarterly estimated payments on this income, many just walk away and fail to file altogether. By developing accessible content that platforms can distribute to service providers and sellers as part of the onboarding process, the IRS can make immediate progress in addressing the knowledge gap even experienced, self-employed small business owners have. This is particularly important for 2018 as many on-demand small business owners will benefit from changes included in 2017’s tax reform bill.

### CONCLUSION

Current tax administration rules are shortchanging the small business taxpayers powering the on-demand platform economy—who in most instances don’t earn enough income to warrant receiving tax reporting forms from the online platforms they work with to file the taxes they owe and claim any offsets or deductions they are entitled to lower their tax bills as well as credit their Social Security accounts for amounts earned.<sup>25</sup>

Taken together with our additional research, our findings suggest that, at best, many small business owners are shortchanged when filing their taxes on their platform income; at worst, they fail to report it altogether. Moreover, a significant percentage of these taxpayers could face potential audit and penalty exposure for failure to comply with filing rules that are triggered by relatively low amounts of earned income. Congress has the tools at its disposal to make significant progress in remedying this growing problem. Thank you for the opportunity to share our research with you today and I welcome your questions regarding the foregoing testimony.

<sup>23</sup>“The Sharing Economy: A Tax Experience for New Entrepreneurs Part II,” hearing before the House Committee on Small Business, 113th Congress (2016) (statement of Nina Olson, IRS National Taxpayer Advocate), available at [https://smallbusiness.house.gov/uploadedfiles/national\\_taxpayer\\_advocate\\_testimony-5-26-2016\\_hearing.pdf](https://smallbusiness.house.gov/uploadedfiles/national_taxpayer_advocate_testimony-5-26-2016_hearing.pdf).

<sup>24</sup>*Id.*

<sup>25</sup>See Bruckner, *supra* n. 2. See also, Caroline Bruckner, Jen Brown, and Thomas Hungerford, *Failure to Contribute: The Consequences of Non- and Underpayment of Self-Employment Taxes of On-Demand Workers on Social Security*, American University Kogod Tax Policy Center (forthcoming October 2018) (draft on file with witness).

PREPARED STATEMENT OF PHYLLIS JO KUBEY, MEMBER, NATIONAL  
ASSOCIATION OF ENROLLED AGENTS AND IRS ADVISORY COUNCIL

**Internal Revenue Service Reform  
Recommendations of the National Association of Enrolled Agents  
July 2018**

The IRS mission is to “provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and applying the law with integrity and fairness to all.”<sup>1</sup>

The National Association of Enrolled Agents (NAEA) represents the interests of over 55,000 enrolled agents (EAs) nationwide. EAs are tax experts, licensed by the Department of Treasury. They must pass a series of federally administered exams covering broad swaths of the Internal Revenue Code. Additionally, EAs are subject to background checks and ongoing continuing education/ethics requirements.

The Internal Revenue Service, for better or worse, touches more U.S. citizens than any other Federal department or agency. It is the face of the Federal Government for most citizens. Increasingly, EAs, who are the front-line representatives of taxpayers at every level of the tax administrative system, are expressing the view that the quality of taxpayer and practitioner service within IRS has deteriorated to an unacceptable level over the last decade.

The data available to the public backs up our members’ assessment. For instance, while the IRS answered 87 percent of taxpayer calls in 2004, in 2016 the agency answered only 53 percent. The erosion in service between 2004 and 2016 is more alarming when we consider the following: the number of taxpayer calls the IRS received increased from 71 million to 104 million, yet the number of calls telephone assistants actually answered declined from 36 million to 26 million.

NAEA takes an expansive view of taxpayer service, which we submit encompasses nearly all of the agency’s external-facing functions. As a result, pre-filing issues (*e.g.*, tax ID numbers, withholding and estimated tax payments, forms and instructions, walk-in service, access to prior year tax information); filing issues (*e.g.*, electronic filing, math error adjustments, ID theft); and post-filing issues (*e.g.*, compliance notices, audits—both office and correspondence—and collections) are included. Too often, policymakers and IRS create a false choice between providing service and assuring compliance. From a taxpayer’s perspective, any interaction with the IRS is essentially compelled.

Policymakers often refer to our tax system as one of voluntary compliance, yet we suggest the term is a misnomer; even “voluntary self-assessment” is a stretch. While many taxpayers file tax returns and respond to IRS inquiries because it’s the right thing to do, our experience tells us taxpayers are more compelled by fear of the consequences. Because taxpayers are fearful, and the agency so powerful, IRS and Congress must ensure the agency remains relentlessly focused on service grounded in fairness, accuracy and timeliness at all points of the tax administration process.

Reform needs to encourage IRS to develop a strategic mission shared by its many stakeholders—employees, congressional overseers, and tax professionals alike. To help sustain this shared mission, Congress must consider governance, management, personnel, and budget. Only in this comprehensive approach do we believe the agency can be successful in its mission, which is to provide top quality service.

To that end, we recommend the following reforms.

IRS OVERSIGHT, GOVERNANCE, AND MANAGEMENT REFORM

The Report of the National Commission on Restructuring the IRS (the Commission) in 1997 highlighted an issue that once again plagues the agency: its inability to set and maintain consistent long-term strategy, develop and execute focused plans for improvement, and ensure its budget, staffing, and technology are aligned with organizational success.<sup>2</sup> The Commission recommended comprehensive changes to IRS oversight and governance. Most have been set aside or ignored over the last 5 to 10 years. NAEA urges Congress to reassess these recommendations and make changes where necessary.

<sup>1</sup> <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority>.

<sup>2</sup> The Report of the National Commission on Restructuring the Internal Revenue Service: Vision for a New IRS, page 1.

- Reduce the IRS Oversight Board size to five private-sector members—representing tax, legal, and business expertise. The members would continue to be appointed by the President to 5-year terms as under current law and not be subject to Senate approval.
- Increase the power of the board to review **and approve** all operational plans of the agencies and any modifications to those plans.
- Require the IRS Commissioner to certify annually to the Board that the IRS DOES NOT use any enforcement or approval criteria based on political, religious, or racial standards.
- Empower the Board to direct TIGTA to investigate systemic issues involving customer service, enforcement resources, and modernization.
- Allow the Board to award top executives bonuses based on specific success criteria established by the Board in consultation with Congress.

#### WORKFORCE REFORM

An organization’s culture produces its results. The wrong culture produces the wrong results, the right culture produces the right results. The power of an organization’s culture is pervasive.

The agency needs to have a dialog centered on its values and its approach to providing service to the public. We believe the IRS’s adopted Taxpayer Bill of Rights is an excellent starting point. We also believe clear and consistent training is an essential element in moving the IRS towards a service orientation.

- Focus on culture and leadership: Create and fund a dedicated training division within the IRS to increase competency and create the appropriate culture.
  - Streamline the IRS education process, ensuring that tax law and administrative policies be taught consistently throughout the country while guaranteeing that experienced personnel will not have to be taken offline to train new employees.
  - Research state-of-the-art tax administration techniques at the State, local, and international levels and incorporate these approaches into education materials and the Internal Revenue Manual.
  - Focus IRS training on early and fair resolution of tax disputes.
- Provide the agency executive level flexibility: grant the IRS a reformed Streamlined Critical Pay Hiring Authority, stipulating the areas of expertise covered by the program.

#### IRS BUDGET REFORM

The agency is handicapped by budgeting that is not only insufficient to meet its large and growing portfolio, but also inefficiently structured. The IRS for years has met the constraints of a shrinking real budget through attrition, yet shrinking through attrition is, to put it kindly, a suboptimal management technique. The Service has not controlled of much of its staffing for years and presently faces demographics that should concern all.<sup>3</sup>

- Re-establish an annual joint congressional hearing, charged with providing a detailed congressional statement on levels of service and compliance, as well as oversight of strategic and business plans, taxpayer service and compliance, technology and modernization, and filing season.
- Authorize the Joint Committee on Taxation, in cooperation with the Congressional Budget Office, to provide an annual report on the Joint Hearing issues and estimates on the funding necessary to carry out these priorities.
- Make IRS user fees appealable to GAO. The agency must be able to provide clear, detailed costing estimates to those who are charged user fees and must not charge user fees for services that largely improve the organization’s own operations.

<sup>3</sup> In 2016, then-Commissioner John Koskinen stated at his annual National Press Club speech (<https://www.irs.gov/newsroom/commissioner-koskinens-speech-to-the-national-press-club-march-24-2016>), “We expect more than 40 percent of the IRS workforce will be able to retire by 2019.” At the other end of the age spectrum, IRS had about 200 employees who were 25 or younger.

- Provide funding necessary to meet mutually agreed upon levels of service and compliance, or in the alternative, explain to the American people why these funding levels were not provided. Special funding attention should be provided to timeliness and efficiency, for instance:
  - Require an IRS decision within 30 days of a taxpayer response to an IRS notice or letter.
  - Provide compliance staff greater authority to settle cases early (IRS should also evaluate settlements based on a singular focus on early and fair resolution of disputes).
- Provide appropriate staffing at the points of significant taxpayer contact (such as all call centers and TAC counters) and training at all levels.
  - Charge the IRS with exploring technology options (*e.g.*, video-conferencing) to improve communications.
  - Provide adequate funding when increasing the agency’s workload (*e.g.*, to implement the recent Tax Cuts and Jobs Act).
    - Taxpayers will need IRS guidance quickly.
    - Front-line employees will need to be retrained in all aspects of the legislation.

#### TAXPAYER SERVICE/DISPUTE RESOLUTION REFORM

Both tax administrators and taxpayers are ill-served by delayed or protracted compliance activity. Taxpayers who are unable to address promptly positions taken on returns run the risk of compiling penalties on similar positions taken on subsequent returns. Further, taxpayers who enter the collection stream late are harder pressed to pay full balances due and the payments often cause greater hardship. IRS Taxpayer Advocate Service is at the forefront of problem resolution within the IRS.

- Provide collection staff wider discretion to reach early agreements on payment plans and training to resolve quickly cases deviating slightly from the financial standards to facilitate payments by taxpayers.
- Require IRS to reevaluate the National Standards for Collection Information Statements, either by adjusting the allowable living expenses for regional or local cost of living variations, or by returning to use of a dollar range, based on gross monthly income.<sup>4</sup>
- Increase the authority of and set higher standards for appeals personnel.
  - While we welcome and applaud IRS for a recent addition of video conferencing as a substitute for some in-person appeals hearings, we suggest additional provisions be implemented.
  - The knowledge, experience, and authority of the appeals personnel should meet a higher standard than the campus appeals technical employees, who may have very little authority and may not grasp the intricacies of cases assigned to them.
- Incorporate a number of taxpayer rights changes from the National Taxpayer Advocate’s 2017 Purple Book<sup>5</sup> recommendations, including:
  - Authorize IRS to work with financial institutions to reverse misdirected deposits.
  - Revise the “Mailbox Rule” to apply to electronically submitted documents and payments in the same manner as it applies to mailed submissions.
  - Amend IRC § 6654(c)(2) to adjust estimated tax payment deadlines to occur quarterly.

<sup>4</sup>As was the case prior to a 2007 IRS decision to apply a single dollar amount for food, clothing, and other items, based on family size alone.

<sup>5</sup>The Purple Book, <https://taxpayeradvocate.irs.gov/reports/2017-annual-report-to-congress/NTA-Purple-Book>, is a summary of 50 legislative recommendations she believes will strengthen taxpayer rights and improve tax administration. Each of these proposals is outlined at length within this document.

- Harmonize reporting requirements for taxpayers subject to both FBAR and FATCA by eliminating duplication and excluding accounts a U.S. person maintains in the country where (s)he is a *bona fide* resident.
- Codify the rule that taxpayers can request equitable relief under IRC § 6015(f) any time before expiration of the period of limitations on collection.
- Authorize IRS to release levies that cause economic hardship for business taxpayers.
- Extend the time limit for taxpayers to sue for damages for improper collection actions.
- Require IRS to waive user fees for taxpayers who enter into low-cost installment agreements and evaluate potential revenue/compliance costs of future user fee increases.
- Hold taxpayers harmless when IRS returns funds levied from a retirement plan or account.
- Continue to limit IRS's use of "math error authority" to clear-cut categories specified by statute.
- Clarify that taxpayers may raise innocent spouse relief as a defense in collection proceedings.
- Require taxpayer consent for IRS counsel/compliance staff to attend appeals conferences.
- Ensure compliance staff clearly understand that bypassing an active POA is a taxpayer rights violation.
  - Congress should reemphasize and reaffirm the consequences of violations of 26 U.S.C. § 7525, to ensure that IRS personnel shall not ignore valid powers of attorney by directly contacting taxpayers by telephone or at their residences or places of business.
- Require IRS exam and collection personnel to offer alternative dispute resolution options.
  - IRS's expansion of Fast Track Settlement earlier this year is a step in the right direction, bringing the opportunity for small business and individual taxpayers to resolve unique examination issues through appeals, allowing for consistency with large and mid-sized businesses.
  - We recommend IRS expand alternative dispute resolutions options to all taxpayers and that exam and collection staff be required to offer these options at the appropriate time.

#### FUTURE STATE

We commend IRS for looking at formulating strategies to meet taxpayers' needs in the future. Technology and preferences are changing rapidly—and the significant perils of identity theft and fraud are, unfortunately, keeping pace. On the one hand, the agency needs support and encouragement as well as resources, while on the other hand agency leaders must remain mindful of taxpayer rights and resist the temptation of one-size-fits-all solutions.

Ultimately, the success of any future vision will be judged by whether it protects the right to a fair and just tax system. Part of any future State must include access to secure online communication for both taxpayers and taxpayers' representatives. To facilitate earlier and more efficient dispute resolutions:

- Congress should require the IRS to provide guidance on which widely used private-sector electronic signature options will be acceptable for Forms 2848 and 8821 used by Circular 230 practitioners.
- The IRS should debut tax practitioner online accounts that include a robust and secure means of communicating with IRS employees. Correspondence audits cannot rely upon taxpayers or their representatives putting stacks of supporting documentation into the mail. Individual online accounts should dis-

play a Publication 1<sup>6</sup> equivalent when taxpayers use account payment options.

#### PRACTITIONER REFORMS

A focus on taxpayer rights is essential to any effort to reform the IRS's culture. The right to representation is one of those rights and we have several recommendations—that would help both tax administrators and taxpayers—to strengthen that right.

In 2017, taxpayers filed 132 million returns electronically and IRS categorized 79 million of those as paid preparer returns.<sup>7</sup> As of March 1, 2018, 728,000 individuals held current PTINs.<sup>8</sup> IRS's website is inarguably one of the most trafficked Federal websites. Yet tax professionals—including some 300,000 enrolled practitioners—lack even an entry point on IRS's landing page, far from an organization dedicated to the proposition that the professional preparer community is part of the solution if the goal is a well-run, efficient IRS. The Service is making efforts, to be sure, yet is missing significant opportunities to assure taxpayers that their preparers are at least minimally competent, and to leverage the tax professional community, well under a million souls who file 60 percent of all electronically filed returns.

- The IRS should create a dedicated, executive-level practitioner services unit that would centralize and modernize its approach to all practitioners. All administration and oversight of third-party stakeholders (*e.g.*, Circular 230 practitioners; unenrolled preparers; tax software providers; e-filing; payroll providers) would be consolidated under the new executive.
- The Office of Professional Responsibility should be empowered to issue cease-and-desist letters to any person or corporation improperly using the EA credential, or using it in a fashion that could reasonably be construed confusing, and granted authority to enforce the letter through the Federal courts.
- Congress should provide IRS with the authority to establish minimum standards for unenrolled tax preparers.<sup>9</sup> Congress should override *Loving*<sup>10</sup> and all subsequent cases relying on its holdings and provide specific authority for the IRS to require all non-credentialed paid tax preparers to meet minimum standards. Such standards should include passing a one-time competency exam administered under the auspices of the Department of Treasury, requiring tax compliance background checks, setting continuing education requirements, and requiring compliance with strict ethical standards.
- Congress should clarify that CPAs, EAs and lawyers regulated under 31 U.S.C. § 330 who prepare a return may provide a statement verifying any element of the return, such as adjusted gross income, for purposes of qualifying for any Federal program or benefit.
- IRS should provide practitioners with a **robust practitioner priority hotline** (or hotlines) with higher-skilled employees who have the experience and training to understand and address more complex technical and procedural issues.
- Under the practitioner services unit, the IRS should assign **customer service representatives** (also known as a single point of contact) to each geographic area to address unusual or complex issues that practitioners were unable to resolve through the priority hotlines.

#### CONCLUSION

In the 20 years since Congress last tackled IRS reform, the environment has changed significantly. Identity theft has become a cottage industry, electronic commerce has become ubiquitous, and the Internet has changed all the rules—and al-

<sup>6</sup>Publication 1, "Your Rights as a Taxpayer," <https://www.irs.gov/pub/irs-pdf/p1.pdf>, explains to a taxpayer his/her rights and the processes for examination, appeal, collection, and refunds.

<sup>7</sup>See IRS website: 2017 Filing Season Statistics, <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-29-2017>, cumulative statistics comparing December 30, 2016 and December 29, 2017.

<sup>8</sup>See IRS website: Number of Individuals With Current Preparer Tax Identification Numbers (PTINs) for 2018, <https://www.irs.gov/tax-professionals/return-preparer-office-federal-tax-return-preparer-statistics>.

<sup>9</sup>The Purple Book, *op. cit.* at recommendation 6.

<sup>10</sup>*Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014), [https://www.cadc.uscourts.gov/internet/opinions.nsf/B63C3129A4FE761985257C7C00539949/\\$file/13-5061-1479431.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/B63C3129A4FE761985257C7C00539949/$file/13-5061-1479431.pdf).



tered all expectations. Yet what hasn't changed is the basics. Taxpayers still have the right to quality service, the right to challenge the IRS's position and be heard, the right to finality, the right to appeal, and the right to representation, to name a few.

The time to address our Nation's tax administration system is now. The reform should encompass Oversight, Governance, Management, Workforce, Budget, Taxpayer Service, Dispute Resolution, Future State, Practitioners, and be grounded in taxpayer rights.

We look forward to working with Congress to reform the Internal Revenue Service. Our staff and members stand ready to assist in considering these important proposals.

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PREPARED STATEMENT OF NINA E. OLSON,  
NATIONAL TAXPAYER ADVOCATE, INTERNAL REVENUE SERVICE

Chairman Portman, Ranking Member Warner, and members of the subcommittee:

Thank you for your interest in examining the operations of the Internal Revenue Service and for inviting me to provide my perspective on the areas of tax administration that I believe require particular focus and improvement.<sup>1</sup>

As you know, the IRS Restructuring and Reform Act of 1998 was signed into law 20 years ago this month.<sup>2</sup> I want to note at the outset that I am particularly grateful for the interest Senators Portman and Cardin have shown in tax administration for at least the past 20 years. Senator Portman became a leading congressional expert in IRS operations when he co-chaired the National Commission on Restructuring the Internal Revenue Service in 1996 and 1997,<sup>3</sup> and Senators Portman and Cardin were the House co-sponsors of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98),<sup>4</sup> which largely implemented the recommendations of the National Commission.

At the time, I was the director of a low-income taxpayer clinic in Richmond, VA, and I was invited to testify about the experiences of low-income taxpayers at Senate and House hearings.<sup>5</sup> I met Senator Portman at that time, and both then and as the National Taxpayer Advocate, I have had the privilege of working with both Senator Portman and Senator Cardin on tax administration issues over the years. With the many changes that have taken place in tax administration, I am delighted that you are again working together to try to improve the tax administration system and protect taxpayer rights. I am also grateful for the interest of Senator Warner in tax administration issues, particularly regarding workers in the gig economy, an area about which I have a great deal of concern.<sup>6</sup>

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

<sup>2</sup>Pub. L. No. 105-206, 112 Stat. 685 (1998).

<sup>3</sup>National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* (June 25, 1997).

<sup>4</sup>Then-Congressmen Portman and Cardin co-sponsored the Internal Revenue Service Restructuring and Reform Act of 1997, H.R. 2292, 105th Cong. (1997), which was subsequently rolled into H.R. 2676, 105th Cong. (1997), and became RRA 98.

<sup>5</sup>IRS Restructuring: Hearings on H.R. 2676 Before the Senate Committee on Finance, 105th Cong. 124-126 (1998) (statement of Nina E. Olson, executive director, Community Tax Law Project); Taxpayer Rights: Hearing on H.R. 2676 Before the House Subcommittee on Oversight of the House Committee on Ways and Means, 105th Cong. 145-154 (1997) (statement of Nina E. Olson, executive director, Community Tax Law Project).

<sup>6</sup>National Taxpayer Advocate 2017 Annual Report to Congress 165-171 (most serious problem: *Sharing Economy: Participants in the Sharing Economy Lack Adequate Guidance From the IRS*); The Sharing Economy: A Taxing Experience for New Entrepreneurs: Hearing Before the House Committee on Small Business, 114th Cong. (2016) (written statement of Nina E. Olson, National Taxpayer Advocate).

RRA 98 brought about many significant taxpayer protections, including strengthening the Office of the Taxpayer Advocate,<sup>7</sup> establishing a matching grant program to fund low-income taxpayer clinics,<sup>8</sup> expanding relief from joint and several liability (commonly known as “innocent spouse” relief),<sup>9</sup> expanding the availability of offers in compromise,<sup>10</sup> and creating collection due process hearings.<sup>11</sup> Notwithstanding these important advances, due to the changes in technology and the changes in the Internal Revenue Code that have taken place over the past 2 decades, the world of tax administration looks very different today than at the time RRA 98 was passed. The IRS desperately needs congressional support and direction to help it do a better job of fulfilling its vital mission.

In that vein, the enactment of the provisions of the Taxpayer Bill of Rights in 2015 was a significant step in the right direction.<sup>12</sup> While there is ongoing debate about whether this provision establishes enforceable taxpayer rights, there is no doubt that it sets out clearly the rights Congress expects the IRS to adhere to and respect in its dealings with taxpayers.

Similarly, the Taxpayer First Act, passed by the House on an extraordinary 414–0 vote in April, contains certain provisions that would significantly benefit taxpayers.<sup>13</sup> The most important may well turn out to be the requirement that the IRS develop and submit to Congress a comprehensive Taxpayer Service strategy within 1 year and certain requirements to improve information technology.<sup>14</sup>

Similarly, a Senate version of the Taxpayer Protection Act, introduced last week by Chairman Hatch and Ranking Member Wyden, would require the IRS to report to the tax-writing committees on proposed closures of IRS Taxpayer Assistance Centers at least 90 days in advance and would make other helpful changes.<sup>15</sup>

In the balance of this statement, I will first describe some of the challenges the IRS and taxpayers are facing, and I will then identify core areas that I believe warrant attention to improve IRS operations.

#### A. THE IRS IS STRUGGLING IN KEY AREAS

The IRS’s struggles with information technology systems were significant in 1998, and they have only grown worse. The IRS reportedly has the two oldest databases in the Federal Government—dating to the 1960s—on which it stores taxpayer data.<sup>16</sup> It has more than 60 case management systems that all house different kinds of data, and those systems generally cannot “talk” to each other. The number of taxpayers filing returns continues to grow, and unfunded legislative mandates have forced the IRS to divert funds from its core functions. In particular, the IRS spent more than \$1 billion to implement the Patient Protection and Affordable Care Act,<sup>17</sup> and nearly \$400 million to implement the Foreign Account Tax Compliance Act.<sup>18</sup>

Thus, while some of the IRS’s struggles can be addressed by better management, much of the IRS’s challenges are attributable to funding cuts. At the same time that

<sup>7</sup> RRA 98 § 1102; Internal Revenue Code (IRC) § 7803(c); IRC § 7811.

<sup>8</sup> RRA 98 § 3601; IRC § 7526. At the time RRA 98 was enacted, there were 14 LITCs in existence, all but one affiliated with law or business schools. IR–1999–63, *IRS Encourages Growth of Low-Income Taxpayer Clinics With \$1.5 Million in Grants* (July 14, 1999). Twenty years later, for the 2018 grant cycle, there are 134 LITCs throughout the Nation. Forty-three are affiliated with academic institutions, 53 are legal aid programs affiliated with the Legal Services Corporation, and 38 are other nonprofit organizations. IRS Publication 4134, *Low-Income Taxpayer Clinic List* and IRS Publication 5066, *LITC Program Report*. For 2018, Congress has appropriated \$12 million for matching grants. Consolidated Appropriations Act, 2018, Pub. L. No. 115–141 (2018). This provision of RRA 98 alone has brought meaning to the *rights to retain representation and to a fair and just tax system* by providing representation before the IRS to taxpayers who otherwise could not afford such help.

<sup>9</sup> RRA 98 § 3201; IRC § 6015.

<sup>10</sup> RRA 98 § 3462; IRC § 7122.

<sup>11</sup> RRA 98 § 3401; IRC §§ 6320 and 6330.

<sup>12</sup> Consolidated Appropriations Act, 2016, Pub. L. No. 114–113, containing Division Q, § 401 (2015) (codified at IRC § 7803(a)(3)).

<sup>13</sup> Taxpayer First Act, H.R. 5444, 115th Cong. (2018).

<sup>14</sup> *Id.* at § 11201 and §§ 18001–18403.

<sup>15</sup> Taxpayer First Act, S. 3246, 115th Cong. § 1004 (2018).

<sup>16</sup> Government Accountability Office (GAO), *Information Technology: Federal Agencies Need to Address Aging Legacy Systems*, GAO–16–468 (2016).

<sup>17</sup> Government Accountability Office, *IRS 2017 BUDGET: IRS Could Improve Presentation of Budget Data in Its Congressional Justification*, GAO–16–695, at 14 (2016).

<sup>18</sup> Treasury Inspector General for Tax Administration, *Despite Spending Nearly \$380 Million, the Internal Revenue Service Is Still Not Prepared to Enforce Compliance With the Foreign Account Tax Compliance Act*, Ref. No. 2018–30–040 (2018).

the IRS's workload was increased between FY 2010 and FY 2018, its appropriated budget has been reduced by 9 percent in straight dollar terms and by 20 percent after accounting for the effects of inflation, as the following chart shows.

**FIGURE 1.1—IRS Budget in Nominal and Inflation-Adjusted Dollars, FYs 2010–2018**<sup>19</sup>  
(in millions)

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

<sup>19</sup> IRS Chief Financial Officer. Fiscal year (FY) 2018 numbers do not include supplemental funding of \$320 million to implement the recent tax reform legislation.

As a result, the IRS has lost funding and lost people across the board, as Figure 1.2 shows.

**FIGURE 1.2—Locations With Specified Employees in the Last Pay Period of the Fiscal Year**<sup>20</sup>

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

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

Because of these reductions, the IRS does not have enough employees to answer the phones, to conduct outreach and education, or to provide basic taxpayer service. The compliance and enforcement side of the house has been cut by even more. Thus, IRS telephone assistors answered only 29 percent of the telephone calls received on

the Accounts Management lines during the recent filing season,<sup>21</sup> the audit rate has dropped to the lowest level in memory (0.6 percent), and collection actions have declined as well.<sup>22</sup> The IRS has even suppressed collection notices because it doesn't have the resources to handle the incoming telephone calls and correspondence prompted by those notices.<sup>23</sup>

B. IRS PERFORMANCE MEASURES ARE MISLEADING AND OFTEN FAIL TO IDENTIFY AREAS OF WEAKNESS

Like many businesses and agencies, the IRS has an extremely lengthy list of performance measures. It seems to measure almost everything. But its measures often are not accurate gauges of program performance. IRS measures tend to affirm that the agency is doing a great job, whereas other measures tell a very different story. Bad measures are not just problematic because they provide the public with a misleading picture. IRS operations are highly technical, and senior managers often rely on the multitude of measures they receive to make program decisions. If they don't understand the nuances of the measures, bad measures can lead to bad decisions.

One example involves the IRS's measures of telephone service. In most years over the past decade, the IRS has received more than 100 million telephone calls.<sup>24</sup> That's a staggering number, and not surprisingly, discussions of the quality of taxpayer service often focus largely on how the IRS handles its phone calls.

During the 2018 the filing season, the IRS's benchmark "level of service" was reported to be 80 percent, which most observers understand to mean that the IRS answered 80 percent of its calls.<sup>25</sup>

Not so. That benchmark measure is a very narrow one and does not reflect the taxpayer experience in two respects. First, the benchmark measure only reflects calls that are directed to the IRS's "Account Management" telephone lines. The IRS received 42.5 million calls during the filing season.<sup>26</sup> Of those, 35.7 million came in on the "Accounts Management" lines and 6.8 million came in on other telephone lines, such as the compliance lines.<sup>27</sup> The benchmark measure does not tell us anything about how the other 6.8 million calls were handled.

Second, callers to the Accounts Management telephone lines are greeted by a phone tree, and based on their responses, callers are directed either to an employee for live assistance or to an automated system. Depending on which buttons a caller pushes, the IRS decides whether to direct the caller to automated offerings. In other words, automation is not a deliberate caller-selected option.

During the 2018 filing season, only 37 percent of taxpayer calls (about 13.0 million) were routed to employees, while 63 percent (about 22.6 million calls) were directed to automation or reflected taxpayer hang-ups.<sup>28</sup> Thus, the benchmark level of service reflects only the minority of calls directed to IRS employees—not the majority of calls directed to automation.

As a result, while the IRS is reporting a benchmark level of service of 80 percent, IRS employees answered only 10.4 million calls on the Accounts Management lines out of 35.7 million calls received.<sup>29</sup> That's 29 percent. If we assume callers generally want to speak to an employee for live assistance, 29 percent is a more accurate reflection of the taxpayer experience than 80 percent. For IRS leaders trying to assess which programs need priority attention, this difference in results is huge.

Another example of a narrow and misleading measure involves customer satisfaction. The IRS conducts surveys to measure customer satisfaction with its toll-free

<sup>21</sup> IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending April 21, 2018).

<sup>22</sup> IRS, Fiscal Year 2017 Enforcement and Service Results 3, 8, [https://www.irs.gov/pub/irs-news/fy\\_2017\\_enforcement\\_and\\_services\\_results\\_final.pdf](https://www.irs.gov/pub/irs-news/fy_2017_enforcement_and_services_results_final.pdf). See also National Taxpayer Advocate 2017 Annual Report to Congress 49–63 (most serious problem: *Audit Rates: The IRS Is Conducting Significant Types and Amounts of Compliance Activities That It Does Not Deem to Be Traditional Audits, Thereby Underreporting the Extent of Its Compliance Activity and Return on Investment and Circumventing Taxpayer Protections*).

<sup>23</sup> IRS, *ACS Optimization/RAAS: ACS LT 16 Notice Redesign Test Pilot Report* 3–4 (September 27, 2017).

<sup>24</sup> IRS JOC, *Snapshot Reports: Enterprise Snapshot, IRS Enterprise Total* (final week of each fiscal year (FY) for FY 2008 through FY 2017) (showing telephone call volumes exceeding 100 million in every year through FY 2016 and 95 million calls in FY 2017).

<sup>25</sup> IRS, JOC, *Snapshot Reports: Enterprise Snapshot* (week ending April 21, 2018).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

telephone service. The survey results show the toll-free customer satisfaction rating is an impressive 90 percent.<sup>30</sup> But the IRS only surveys taxpayers who spoke with an IRS employee and whose call was completed. It does not survey the 71 percent of taxpayers who called the IRS and didn't speak with a telephone assistant. Thus, this result also is misleading and also can lead to poor management decisions.

For a reality check, compare the IRS's own relatively stellar customer service results with the evaluation of external organizations. The President's Management Agenda for 2018 states: "Federal customers . . . deserve a customer experience that compares to—or exceeds—that of leading private sector organizations, yet most Federal services lag behind the private sector."<sup>31</sup> The Agenda identifies several Cross-Agency Priority (CAP) Goals, including CAP Goal 1: Modernize IT to Increase Productivity and Security, and CAP Goal 4: Improving Customer Experience with Federal Services.<sup>32</sup> The Agenda notes that "the 2016 American Consumer [sic] Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector."<sup>33</sup>

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

The American Customer Satisfaction Index ranks the Treasury Department 12 out of 13 Federal Departments and says the Treasury Department's score is effectively an IRS score because "most citizens make use of Treasury services via the [IRS] tax-filing process."<sup>34</sup>

The Forrester Federal Customer Experience Index ranks private sector companies and Federal agencies based on a variety of factors that influence the customer experience on a scale from 0 to 100. The private-sector average score for Customer Experience (CX) is 69, the Federal average score is 59, and the IRS's score is 54 out of 100, which is considered "very poor."<sup>35</sup> This places the IRS twelfth out of 15 rated agencies, behind the U.S. Postal Service, the Department of Veterans Affairs, the U.S. Citizenship and Immigration Services, and the Social Security Administration, among others.<sup>36</sup> In fact, the IRS's Customer Experience score places it on par with airlines and Internet service providers.

There is an old adage that "you get what you measure." The ACSI and Forrester measures are broad measures relied on by OMB, and they show significant weaknesses and opportunities for the IRS to improve. The IRS's narrower measures show the agency is performing well and seemingly does not have significant weaknesses in this area that need to be addressed. As this example illustrates, the IRS would benefit from studying and refining its performance measures to get a better handle on where it needs to focus its efforts.

**Recommendation:** Direct the IRS to consult with Forrester Research, ACSI, and the National Taxpayer Advocate about effective customer service performance measures and to report to the committee on its findings and the performance measures it intends to use going forward.

#### C. THE IRS NEEDS TO BE STRENGTHENED IN 11 CORE AREAS

The following core areas require particular attention to improve IRS operations.

<sup>30</sup> IRS, Fiscal Year 2017 Enforcement and Service Results, [https://www.irs.gov/pub/irs-news/fy\\_2017\\_enforcement\\_and\\_services\\_results\\_final.pdf](https://www.irs.gov/pub/irs-news/fy_2017_enforcement_and_services_results_final.pdf).

<sup>31</sup> President's Management Agenda 7, [https://www.performance.gov/PMA/Presidents\\_Management\\_Agenda.pdf](https://www.performance.gov/PMA/Presidents_Management_Agenda.pdf).

<sup>32</sup> *Id.* at 14 and 28.

<sup>33</sup> *Id.* at 28. The correct name of the index is the American "Customer" Satisfaction Index.

<sup>34</sup> ACSI, Federal Government Report 2017, <http://www.theacsi.org/news-and-resources/customer-satisfaction-reports/reports-2017/acsi-federal-government-report-2017> (last visited July 18, 2018).

<sup>35</sup> Rick Parrish and Margaret Rodriguez, Forrester, *The U.S. Federal Customer Experience Index, 2018: How U.S. Federal Government Agencies Drive Mission Performance With the Quality of Their Experience* 8 (May 31, 2018).

<sup>36</sup> *Id.* at 5.

### 1. Taxpayer Services

Private industry and experts say the #1 driver of customer satisfaction is the First Contact Resolution (FCR) rate.<sup>37</sup> As we discuss in several of my reports to Congress, measures like telephone level of service (LOS) are secondary and can be manipulated to look favorable while not reflecting the customer’s actual experience.<sup>38</sup> Yet the IRS does not measure its FCR rate consistently or across every service channel. The IRS continues to ignore significant data showing taxpayers prefer multiple channels for different types of interactions.

Notably, 41 million U.S. taxpayers do not have broadband access in their homes, with 14 million having no Internet access in their homes at all.<sup>39</sup> Moreover, even sophisticated taxpayers and representatives want to speak with the IRS about tax matters. Thus, the way forward must include an omnichannel approach to customer service that focuses on FCR.<sup>40</sup>

Despite this widely accepted approach, the IRS’s new FY 2018–2022 Strategic Plan touts the savings of digital interactions and introduces a new measure that will determine its “success” at meeting Strategic Goal 1: Empower and Enable All Taxpayers to Meet Their Tax Obligations. Specifically, the Enterprise Self-Assistance Participation Rate “measures the percent of instances where a taxpayer uses one of the IRS’s self-assistance service channels (*i.e.*, automated calls, web services) versus needing support from an IRS employee (*i.e.*, face-to-face, over the phone, via paper correspondence).”<sup>41</sup>

Thus, we have the IRS explicitly stating it will have achieved success if there is less personal interaction with its taxpayers! This measure, in fact, sets up self-assist in opposition to (*i.e.*, “versus”) personal support—sending a clear message to employees and taxpayers alike that omnichannel service is neither a priority nor a strategic goal for the IRS—unlike in the private sector.

**Recommendation:** Direct the IRS to appoint a Chief Customer Experience Officer with cross-agency oversight of customer service strategy, and direct the IRS to develop and submit to Congress a comprehensive customer service strategy that reflects an omnichannel approach, addresses taxpayer needs for personal contact, and adopts First Contact Resolution as a primary performance measure.

### 2. Online Services

The IRS is far behind most Organization of Economic Cooperation and Development (OECD) countries<sup>42</sup> (and many non-OECD countries) in developing an online account. Only about 30 percent of taxpayers who seek to create an online taxpayer account can do so because of stringent authentication requirements.<sup>43</sup> The IRS is right to prioritize data security, but the agency must not neglect the importance of providing improved telephone and in-person services for all taxpayers, including the significant majority who do not have online accounts.

<sup>37</sup> Jeff Rumburg and Eric Zbikowski, MetricNet, *The Five Most Important KPIs for the Call Center* 5 (February 20, 2013).

<sup>38</sup> National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 41–46 (area of focus: *The IRS’s Failure to Create an Omnichannel Service Environment Restricts Taxpayers’ Ability to Get Assistance Using the Communication Channels That Best Meet Their Needs and Preferences*; National Taxpayer Advocate 2017 Annual Report to Congress, vol. 1, 22–35 (most serious problem: *Telephones: The IRS Needs to Modernize the Way It Serves Taxpayers Over the Telephone, Which Should Become an Essential Part of an Omnichannel Customer Service Environment*); National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 229–244 (literature review: *Improving Telephone Service Through Better Quality Measures*).

<sup>39</sup> National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 61–146 (research study: *A Further Exploration of Taxpayers’ Varying Abilities and Attitudes Toward IRS Options for Fulfilling Common Taxpayer Service Needs*).

<sup>40</sup> An omnichannel service environment allows taxpayers to contact the IRS through the channel of their choice and receive a consistently high quality of service. National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 230 (literature review: *Improving Telephone Service Through Better Quality Measures*).

<sup>41</sup> IRS, *Strategic Plan Fiscal Year 2018–2022*, at 12, <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

<sup>42</sup> See <http://www.oecd.org> for a list of member countries.

<sup>43</sup> See National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 10–35 (*Review of the 2018 Filing Season*) and IRS Response and National Taxpayer Advocate’s Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress (*Online Accounts: The IRS’s Focus on Online Service Delivery Does Not Adequately Take Into Account the Widely Divergent Needs and Preferences of the U.S. Taxpayer Population*), [https://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2019-JRC/JRC19\\_Volume2.pdf](https://www.taxpayeradvocate.irs.gov/Media/Default/Documents/2019-JRC/JRC19_Volume2.pdf).

The features of the online account, for those taxpayers able to create one, are, and will continue to be, limited because of profoundly archaic IRS IT architecture and the need to pull information from more than 60 different case management systems.<sup>44</sup> Moreover, the tools that are being tested to email with taxpayers are clunky and burdensome. Of note, the IRS imposes the same stringent security requirements on taxpayers seeking to *send* the IRS information electronically as it imposes on taxpayers seeking to *retrieve* account information electronically.<sup>45</sup> Thus, most taxpayers and representatives end up faxing or using U.S. mail or overnight delivery services to transmit documents—placing the IRS squarely in the 20th century. Finally, rules governing communication with the IRS, such as the “mailbox rule” of Internal Revenue Code (IRC) § 7502, have not been updated for 21st-century tax administration.<sup>46</sup>

**Recommendation:** Amend IRC § 7502, the “mailbox rule,” to reflect the use of digital communication; require the IRS to develop an online strategy that enables taxpayers to *submit* information to the IRS with a lower level of authentication; and provide continued funding for the development of a user-friendly and secure *bilateral* email communication.

### 3. Enterprise Case Management

As noted above, the IRS has more than 60 case management systems, all storing data and records pertaining to different aspects of a taxpayer’s interactions with the IRS. There is no one system or repository of data that contains a 360-degree view of the taxpayer’s activity and engagement with the tax system. As a result, the left hand often doesn’t know what the right hand is doing. For example, telephone and other assistants cannot see what is happening in certain systems and so cannot assist taxpayers with related issues; they must send off a form to the appropriate area to take action, thereby ensuring that the First Contact Resolution rate for these issues is zero!

The IRS is working on development of an “Enterprise Case Management” (ECM) system that promises to bring much of the most important taxpayer data and records into a critical few systems that then can be made available to employees, analysts, and researchers in a permission-based environment.<sup>47</sup> Congress can help ensure the IRS keeps on the right track with the 360-degree taxpayer view design. Without this system, and the improvements to the underlying systems (see below), the IRS cannot provide a robust Online Account and must create manual processes or workarounds for new categories of work (*e.g.*, ACA and FATCA).

Moreover, the current structure creates rework for IRS employees and tremendous burden for taxpayers who must send and resend documentation that is stored on different systems and is not retrievable by the appropriate employees. Without ECM, a complete virtual case file is not achievable.

**Recommendation:** Direct the IRS to submit to Congress a comprehensive plan describing the development of and funding requirements for ECM, and subse-

<sup>44</sup> See *IRS Legacy Information Technology Systems: Hearing Before the Subcommittee on Government Operations of the House Committee on Oversight and Government Reform*, 114th Cong. (2016) (written statement of Terence Milholland, Chief Technology Officer, IRS) (noting there are more than 60 aging IRS case management systems), <https://oversight.house.gov/wp-content/uploads/2016/05/2016-05-25-Milholland-Testimony-IRS.pdf>; TIGTA, Ref. No. 2016–20–094, Annual Assessment of the Internal Revenue Service Information Technology Program 22 (September 2016) (noting the IRS maintains approximately 90 case management systems); email from Director, Enterprise Case Management (ECM) to all designated ECM Business Unit Point of Contacts, which included the TAS Executive Director, Business Modernization (March 11, 2016) (listing 198 case management systems). IRS response to TAS fact check request (December 16, 2016). See also TIGTA, Ref. No. 2014–20–071, “Information Technology: Improvements Are Needed to Successfully Plan and Deliver the New Taxpayer Advocate Service Integrated System” (September 2014); TIGTA, Ref. No. 2014–20–088, “The Information Reporting and Document Matching Case Management System Could Not Be Deployed” (September 2014) (both TIGTA reports note “there are more than 200 case management applications in operation across the IRS enterprise”).

<sup>45</sup> At this writing, the pilot for testing Taxpayer Digital Communication is suspended because IT resources need to be redirected to tax reform implementation.

<sup>46</sup> See National Taxpayer Advocate Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration*, 26–27 (December 2017) (Recommendation #12: *Revise the “Mailbox Rule” to Apply to Electronically Submitted Documents and Payments in the Same Manner as It Applies to Mailed Submissions*).

<sup>47</sup> National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 47–51 (area of focus: *The IRS’s Enterprise Case Management Project Shows Promise, But to Achieve 21st-Century Tax Administration, the IRS Needs an Overarching Information Technology Strategy With Proper Multi-Year Funding*).

quently provide funding based on the IRS achieving milestones that demonstrate progress toward specific goals and stages of implementation.

#### 4. *Underlying Information Technology (IT) Systems*

According to the Government Accountability Office, the IRS has the two oldest databases in the Federal Government—the Individual and Business Master Files.<sup>48</sup> The age of IRS legacy systems causes patches and workarounds that create risks when trying to integrate with more current IT hardware and software (e.g., the April 17th stoppage of the filing and payment system).<sup>49</sup>

It is not clear to what extent Customer Account Data Engine 2 (CADE2) has improved the filing experience, much less reduced employee workarounds. Although CADE2 can post items daily, the underlying systems largely operate on a weekly cycle, leaving the IRS stuck in the 1960s or 1970s with the speed of its returns processing. Again, the utility of modernized ECM and Online Accounts will be limited if the IRS does not bring its underlying systems into the 21st century.

One recurring problem is that the IRS continually receives work that requires it to make significant IT updates in the short term and detracts from its ability to pursue its longer-term modernization efforts. In recent years, as noted above, the IRS implemented two major new programs—the Patient Protection and Affordable Care Act and the Foreign Account Tax Compliance Act. To accomplish this, the IRS effectively placed a moratorium on all Information Technology (IT) projects that were not related to the filing season, the ACA, or FATCA.<sup>50</sup> Only in the last year or so has the IRS begun to look forward with its systems planning and development. But because of the demands of tax reform and the need for the IRS to reprogram its systems to reflect the new Form 1040, it is expected there will be another moratorium on systems and programming revisions unrelated to tax reform/filing season system improvements.

That is no way to run a railroad. I recognize the appropriations process generally provides for 1-year funding, and the subject of multi-year funding is controversial. But a way must be found to provide the IRS with a separate stream of funding dedicated to long-term improvements, particularly involving its IT systems. Absent a dedicated stream of long-term funding, the IRS's IT saga is doomed to continue as the IRS falls further behind the rest of the world with respect to its underlying systems and its customer-facing technology.

**Recommendation:** Direct the IRS to submit a comprehensive information technology strategic plan that lays out how it will replace aged legacy systems, its funding requirements and timetable for such replacement, and realistic milestones, so that Congress can monitor progress toward stated goals; upon receipt and review of said plan, provide IRS with multi-year appropriated funds for this purpose, with each year's appropriation contingent on the IRS achieving stated milestones.

#### 5. *Automation, Artificial Intelligence, and Big Data*

The IRS regularly uses technology and big data to identify fraud and noncompliance, but it fails to use technology to help taxpayers get to the right answer or prevent or minimize harm to taxpayers. This is particularly true when the IRS devises tools and utilizes data or automation to identify compliance issues or automate workflows.

As I have discussed in a recent blog<sup>51</sup> and in several reports to Congress,<sup>52</sup> the IRS could use the data it has in-house to identify taxpayers who are at risk of eco-

<sup>48</sup> See Government Accountability Office (GAO), GAO-16-468, *Information Technology: Federal Agencies Need to Address Aging Legacy Systems* (May 2016) (discussing aging IT systems throughout the government and listing the IRS's Individual Master File (IMF) and Business Master File (BMF) as the two oldest investments or systems at 56 years old each in 2016).

<sup>49</sup> See IR-2018-100 (April 17, 2018).

<sup>50</sup> FY 2016 Treasury Department Budget: Hearing Before the Senate Subcommittee on Financial Services and General Government of the Senate Committee on Appropriations, 114th Cong. (2015) (written statement of John Koskinen, Commissioner, Internal Revenue Service).

<sup>51</sup> Nina Olson, "The National Taxpayer Advocate Responds to Private Debt Collectors' Contentions," *NTA BLOG* (July 18, 2018), [https://taxpayeradvocate.irs.gov/news/nta-blog-the-national-taxpayer-advocate-responds-to-private-debt-collectors-contentions?category=Tax News](https://taxpayeradvocate.irs.gov/news/nta-blog-the-national-taxpayer-advocate-responds-to-private-debt-collectors-contentions?category=Tax%20News).

<sup>52</sup> For further discussion of the National Taxpayer Advocate's concerns about taxpayers entering into payment agreements they cannot afford, see National Taxpayer Fiscal Year 2019 Objectives Report 58-79 (area of focus: *The IRS's Private Debt Collection Program, Which Has Yet to Generate Net Revenues, Continues to Unnecessarily Burden Taxpayers Experiencing Economic Hardship and Produces Installment Agreements With High Default Rates*); National Taxpayer



conomic hardship and therefore are highly unlikely to be able to pay their basic living expenses if the IRS collects their back-tax debts.<sup>53</sup>

The *right to a fair and just tax system* requires the IRS to “consider facts and circumstances that might affect [a taxpayer’s] underlying tax liabilities, ability to pay, or ability to provide information timely.”<sup>54</sup> In the context of tax collection, Congress has enacted several statutes to ensure the IRS refrains from collecting tax when doing so will leave taxpayers unable to pay their basic living expenses. The law requires the IRS to release a levy when it determines the levy “is creating an economic hardship due to the financial condition of the taxpayer.”<sup>55</sup> Similarly, for purposes of determining the adequacy of an offer-in-compromise, the law requires the IRS to “develop and publish schedules of national and local allowances designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses.”<sup>56</sup> The IRS has developed and published these schedules of allowances, and they are known commonly as the Allowable Living Expense (ALE) standards.

The IRS could develop an algorithm that utilizes the ALE standards and taxpayers’ income based on their most current returns or information reporting (IRP) data and other in-house data. Thus, it could automatically screen out from collection activities those taxpayers at risk of economic hardship, in accordance with congressional directive and IRS policy. Further, the IRS could use this algorithm to screen these taxpayers out of the group assigned to Private Collection Agencies (PCAs). IRS data show that after 1 year’s operation, 43 percent of taxpayers who entered into installment agreements with the PCAs had incomes below their ALEs.

The IRS’s continuing refusal to use data in this taxpayer-friendly approach constitutes a serious violation of the taxpayers’ *rights to privacy and to a fair and just tax system*.<sup>57</sup>

**Recommendation:** Require the IRS to develop an algorithm that applies Allowable Living Expense standards to screen out from IRS and PCA collection programs taxpayers who are at risk of economic hardship. Alternatively, apply 250 percent of the Federal poverty level as a proxy for economic hardship.<sup>58</sup>

## 6. Geographic Presence

Activities like outreach and education, congressional and media relations, examinations, and collections in a country as large and diverse as ours require local knowledge and interaction.<sup>59</sup> Yet 12 States do not have Appeals or Settlement Officers within their borders, and 14 States do not have Stakeholder Liaison employees whose job is to conduct education and outreach to Small Business and Self-Employed taxpayers.<sup>60</sup>

Advocate 2017 Annual Report to Congress 10–21 (most serious problem: *Private Debt Collection: The IRS’s Private Debt Collection Program Is Not Generating New Revenues, Appears to Have Been Implemented Inconsistently With the Law, and Burdens Taxpayers Experiencing Economic Hardship*); National Taxpayer Advocate 2016 Annual Report to Congress 230–238 (most serious problem: *Installment Agreements (IAs): The IRS Is Failing to Properly Evaluate Taxpayers’ Living Expenses and Is Placing Taxpayers in IAs They Cannot Afford*).

<sup>53</sup> IRC § 6343(a); IRM 5.15.1, *Financial Analysis Handbook* (November 17, 2014).

<sup>54</sup> See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights contained in the TBOR are now listed in the IRC. See Consolidated Appropriations Act, 2016, Pub. L. No. 114–113, Division Q, § 401 (2015) (codified at IRC § 7803(a)(3)).

<sup>55</sup> IRC § 6343(a)(1)(D).

<sup>56</sup> IRC § 7122(d).

<sup>57</sup> The IRS also places a significant burden on taxpayers because it is not utilizing state-of-the-art techniques to design and adjust its fraud detection filters (consisting of rules and models) to minimize false detections. As a result, for calendar year 2017 (through September), the false detection rate was 62 percent for identity theft (IDT) fraud filters and 66 percent for non-IDT fraud filters. The IRS’s failure to use state-of-the-art modelling and other techniques harms legitimate taxpayers and wastes IRS resources. National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 52–57 (area of focus: *High False Detection Rates Associated With Fraud Detection and Identity Theft Filters Unnecessarily Burden Legitimate Taxpayers*).

<sup>58</sup> The Taxpayer First Act, passed by a vote of 414–0 by the House of Representatives in April 2018, would carve out taxpayers with incomes at or below 250 percent of the Federal poverty level from PCA assignment. Taxpayer First Act, H.R. 5444, 115th Cong. § 305 (2018).

<sup>59</sup> For a detailed discussion of this topic, see National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 245 (literature review: *Fostering Taxpayer Engagement Through Geographic Presence*).

<sup>60</sup> IRS response to TAS information request (October 13, 2017). The geographic outreach data provided in the IRS response to a TAS information request does not include in-person speeches

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Of the 362 Taxpayer Assistance Centers, 25 are not staffed and 84 have only one employee.<sup>61</sup> The number of field employees in exam, collection, appeals, and taxpayer service has shrunk significantly over the years, replaced by large centralized sites of employees who never look a taxpayer in the face. As TAS research studies have shown, personal contacts—while more costly initially—produce better response, resolution, and agreement rates than less personal contacts, and they also result in better educated taxpayers.<sup>62</sup> The private sector, particularly the banking industry, acknowledges the importance of a local presence even as it continues to improve its digital experience. TAS Local Taxpayer Advocates are often the only “face” of the IRS in the community, and because we are an independent voice, we cannot adequately substitute for an IRS presence.

**Recommendation:** Direct the IRS to provide Congress with a plan, including cost and return-on-investment estimates, to staff at least one Appeals Officer and one Settlement Officer, one Small Business outreach and education employee, and one congressional liaison in each State, as well as provide adequate staffing for existing and new TACs and a robust field examination and collection presence.

#### 7. Personnel

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

The IRS could also recruit people who are mid-career and are looking for a more stable work environment for a period of time. I believe people will work for the IRS if the jobs and work are presented in the right light. TAS has had no problem recruiting people from outside the IRS at all levels, and this “fresh blood” has reinvigorated many of our offices. These new recruits can bring energy and help current employees see their jobs in a new light.

**Recommendation:** As part of the personnel plan recommended above, direct the IRS to describe its efforts and plan to recruit and maintain new hires from the private sector, including mid-career professionals.

#### 8. IRS Oversight

RRA 98 contained two provisions that I believe were helpful to tax administration and have effectively lapsed: (i) the IRS Oversight Board and (ii) joint congressional IRS oversight hearings.

RRA 98 created an Oversight Board to improve the management of the IRS.<sup>63</sup> The intent was to establish a board of experienced managers, largely consisting of corporate executives from the private sector, to provide guidance at a high level on IRS strategic plans, operations, personnel, and budget. I began my service as the National Taxpayer Advocate in 2001, and at that time, the Oversight Board was fully staffed and active. I personally believed the Board added significant value. Over time, as you know, Board nominations and confirmations slowed and eventually came to a halt, requiring the Board to suspend its operations. I believe the Board should be reinvigorated. But I think the threshold challenge is creating a mechanism that ensures, or at least substantially increases the likelihood, that Board members will be replaced when their terms end.

RRA 98 also provided that congressional committees with IRS oversight responsibility would hold a joint annual hearing on IRS operations generally or on a particular aspect of IRS operations, such as customer service or IT. Participating committees were the Senate and House tax-writing, appropriations, and government oversight committees. I thought these hearings were very helpful for several reasons. From a congressional perspective, it ensured that committees with different

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given by IRS employees who are not dedicated outreach employees. IRS response to TAS fact check (November 20, 2017).

<sup>61</sup> Email from Wage and Investment, June 25, 2018 (on file with TAS).

<sup>62</sup> See, e.g., National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 15 (research study: *A Comparison of Revenue Officers and Automated Collection System in Addressing Similar Employment Tax Delinquencies*).

<sup>63</sup> See IRC § 7802.

IRS oversight responsibilities would work together, at least once a year, to explore IRS challenges and solutions. In that way, it provided an opportunity for the committees to discuss the challenges and potentially come to a common understanding about how to address them. From an IRS perspective, it gave the agency a chance, in a single hearing, to provide its perspective on its challenges and tell the committees of jurisdiction what they could do to help. And from a taxpayer perspective, I think customer service and taxpayer rights are best protected when the IRS and its congressional overseers are working together and reach common understandings. By its terms, this provision sunset after 5 years. I recommend these hearings be reinstated on a permanent basis.<sup>64</sup>

**Recommendation:** Reinvigorate the IRS Oversight Board by developing a mechanism that ensures continuing appointments and members with the necessary skillsets (*e.g.*, backgrounds in education, information technology, small business experience, large business experience, individual taxpayer representation); and reinstate the joint annual hearing on IRS operations on a permanent basis.

### 9. Gig Economy Tax Compliance

The growth of gig economy platforms has increased compliance challenges for taxpayers and the IRS alike. Gig economy workers are generally treated as independent contractors. As such, neither income taxes nor employment taxes are generally withheld from the payments they receive. Instead, they are expected to pay their taxes in four installments over the course of the year.<sup>65</sup> However, many gig economy workers don't understand they are responsible for making tax payments.

When they prepare their tax returns for the preceding calendar year, they sometimes realize for the first time that they must pay the full amount of tax due for the year—and they may face a penalty for failing to make estimated tax payments as well. Other gig economy workers know about the tax requirements, but they don't manage to save and find themselves in the same position.

The IRS, too, faces compliance challenges. When an employer pays wages to an employee, the employer is required to file a Form W-2 with the IRS. That puts the IRS and the taxpayer on notice that the IRS is aware of the income. Reporting compliance rates in the presence of withholding and information reporting are about 99 percent.<sup>66</sup> In stark contrast, the income earned by independent contractors often is not reported to the IRS. IRS studies consistently show that taxpayers report less than 50 percent of the income they receive when there is no reporting mechanism and that this unreported income accounts for the single largest portion of the tax gap.<sup>67</sup> To the extent that economic activity in the gig economy is expanding, more tax revenue is likely to go uncollected and an uneven playing field is arising, where gig economy workers are sometimes able to evade tax while persons classified as employees are paying their full fare and effectively subsidizing noncompliance.

In my recent Annual Report to Congress, we identified many steps the IRS can take to assist participants in the gig economy comply with their tax obligations. While the IRS has taken steps to address some of these recommendations, it has declined to take others.<sup>68</sup> Policymakers should assess this area with an eye toward simplifying the compliance challenges for both gig economy workers and the IRS. I note that a recent bill proposes to raise the Form 1099-MISC reporting threshold from \$600 to \$1,000, while lowering the Form 1099-K reporting threshold from

<sup>64</sup>For a previous discussion of this recommendation, see National Taxpayer Advocate 2016 Annual Report to Congress 10.

<sup>65</sup>We have recommended that Congress revise the due dates for estimated tax payments so they fall quarterly rather than at 3-month, 2-month, 3-month, and 4-month intervals, as under current law. See National Taxpayer Advocate Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 28 (Recommendation #13: Amend IRC § 6654(c)(2) to Adjust Estimated Tax Payment Deadlines to Occur Quarterly).

<sup>66</sup>See IRS, Tax Gap Estimates for Tax Years 2008–2010 (April 2016), <https://www.irs.gov/pub/newsroom/tax%20gap%20estimates%20for%202008%20through%202010.pdf>.

<sup>67</sup>*Id.*

<sup>68</sup>See National Taxpayer Advocate 2017 Annual Report to Congress 165–171 (most serious problem: *Sharing Economy: Participants in the Sharing Economy Lack Adequate Guidance From the IRS*); National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress, vol. 2, IRS Response and National Taxpayer Advocate's Comments Regarding Most Serious Problems Identified in the 2017 Annual Report to Congress (*Sharing Economy: Participants in the Sharing Economy Lack Adequate Guidance From the IRS*).

\$20,000 to \$1,000.<sup>69</sup> Legislation along these lines would help close the reporting gap and address horizontal equity concerns.

**Recommendation:** Direct the IRS to develop a publication specifically designed for members of the gig economy and an online, user-friendly wizard that walks participants through the various steps and tax requirements; and consider legislation similar to S. 1549 to improve tax compliance.

#### 10. Return Preparer Oversight

At present, anyone may hold himself or herself out as a tax return preparer. No Federal competency standards exist. The GAO and TIGTA, among other organizations, have conducted several studies where their auditors have posed as taxpayers and had returns prepared by non-credentialed preparers (*i.e.*, preparers who are not attorneys, CPAs, or Enrolled Agents). The results have consistently been appalling. I have described the tax return preparation industry as something akin to the “Wild, Wild West.”<sup>70</sup>

The Finance Committee has twice approved bipartisan legislation authorizing preparer oversight under the leadership of Chairman Grassley and Ranking Member Baucus, and on one occasion, the full Senate approved the legislation by unanimous consent.<sup>71</sup>

In 2009, the IRS Commissioner concluded that the IRS had the authority to establish minimum competency standards for tax return preparers without statutory authorization. As a result, the IRS initiated an extensive series of hearings and discussions with stakeholder groups to receive comments and develop a system within which all parties believed they could operate. The IRS began to implement the program in 2011, but it was terminated after a Federal court rejected the IRS’s legal position, concluding the agency did not have the authority to impose preparer standards without statutory authorization.<sup>72</sup>

In my view, the need for preparer standards is just as acute today as it was in 2004 and in 2011. Both as a consumer protection measure and to improve the accuracy of prepared tax returns, I have continued to recommend that Congress authorize the IRS to reinstate the same program that key parties agreed on, and the IRS was implementing, before the court overturned it for lack of authority.

**Recommendation:** Authorize the IRS to reinstate the program to require Federal tax return preparers to register with the IRS and meet minimum competency standards, including initial testing and annual continuing professional education requirements.

#### 11. Employee Training

A trained and professional workforce is paramount if the IRS is to administer the tax laws “with integrity and fairness to all.”<sup>73</sup> In light of congressional concern about the IRS’s inappropriate use of training dollars, Congress and the Treasury Department imposed restraints and oversight procedures for training expenditures. The annual appropriations bills require the IRS to have a video editorial board that approves all videos produced,<sup>74</sup> and the Treasury Department has set dollar limits for training expenditures that can be approved by the IRS Commissioner and heads of agency divisions (\$49,999 and \$19,999, respectively).<sup>75</sup>

These procedures, in combination with reductions to the IRS budget, have resulted in a significant drop in training dollars expended per employee. For example, the IRS spent \$1,450 per employee on training in FY 2009, compared to \$489 per employee in FY 2017, a level that is about one-third of spending 8 years ago.<sup>76</sup>

<sup>69</sup> NEW GIG Act of 2017, S. 1549, 115th Cong. § 2(d)(3) (2017).

<sup>70</sup> For additional background on the GAO and TIGTA studies and the history of this issue, see National Taxpayer Advocate 2017 Purple Book, *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 14–16 (Recommendation #6: *Authorize the IRS to Establish Minimum Competency Standards for Federal Tax Return Preparers*).

<sup>71</sup> See H.R. 1528 (incorporating S. 882), 108th Cong. § 141 (2004) (as approved by the Finance Committee and the full Senate); S. 1321 (incorporating S. 832), 109th Cong. § 203 (2006) (as approved by the Finance Committee).

<sup>72</sup> *Loving v. IRS*, 917 F. Supp. 2d 67 (D.D.C. 2013), *aff’d*, 742 F.3d 1013 (D.C. Cir. 2014).

<sup>73</sup> IRS, *Mission Statement*, <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority> (last visited July 18, 2018).

<sup>74</sup> See, e.g., Consolidated Appropriations Act—2018, Pub. L. No. 115–141 (2018).

<sup>75</sup> Treas. Dir. 12–70 (February 24, 2014).

<sup>76</sup> See National Taxpayer Advocate 2017 Annual Report to Congress 84–92 (most serious problem: *Employee Training: Changes to and Reductions in Employee Training Hinder the IRS’s Ability to Provide Top Quality Service to Taxpayers*).

Training dollars per employee in the Wage and Investment Operating Division were \$87 per employee in FY 2017.<sup>77</sup> Because of budget restrictions, business unit commissioners and heads of office have learned not to request or prioritize significant face-to-face training, which I believe is the most effective way to train employees with customer-facing duties.

Instead, the IRS is making due with inadequate virtual training and is not utilizing the current technology and approaches available to universities and businesses that have mastered the art of distance learning. The IRS also underutilizes external tax professionals as trainers. Taxpayer representatives and academics would welcome the opportunity to interact with IRS technical, service, and compliance employees, and their participation would provide a balanced perspective on tax compliance and taxpayer interaction.

With a tax law as complex as the Internal Revenue Code and with human experiences as varied as they are, it is difficult in the best of times to apply the law accurately and fairly. But reductions in training at the levels experienced at the IRS are having significant impact on taxpayer trust and confidence in the tax system. In fact, the Forrester Customer Experience survey cited above found that *only 13 percent of IRS customers seek its expertise*, which is less than half of the Federal agency average of 32 percent.<sup>78</sup>

**Recommendation:** Direct the IRS to appoint a Chief Training Officer who has significant educational and training experience in academia or the private sector and who will chair the training review board and work with the heads of office to develop a robust training plan, including face-to-face and sophisticated distance learning approaches.

#### D. CONCLUSION

The IRS today faces significant challenges. Due in part to the combination of more work and reduced resources, it has fallen behind significantly on customer service and IT. The Forrester US Federal Customer Experience Index report found that only 24 percent of IRS customers say they speak well of the IRS and only 20 percent of customers say they trust the IRS.<sup>79</sup> That is not a recipe for maintaining or increasing voluntary tax compliance. Because of the critical importance of the tax system, these are serious challenges that must be addressed.

The good news is that I believe that, with congressional support, these challenges can be addressed. In this statement, I have tried to provide my perspective on the biggest challenges the IRS faces and offer recommendations to address them. I look forward to working with you to make the IRS the best agency it can be—an effective tax collector that operates efficiently while providing world-class taxpayer service and respecting taxpayer rights.

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#### PREPARED STATEMENT OF HON. ROB PORTMAN, A U.S. SENATOR FROM OHIO

Good morning; this hearing will come to order. This morning we convene the Senate Finance Subcommittee on Taxation and IRS Oversight to discuss an important topic: “Improving Tax Administration Today.” This hearing presents a great opportunity to examine current issues related to tax administration at the IRS, with a particular focus on customer service, information technology, interaction with practitioners, low-income taxpayers, and tax administration issues related to workers in the gig economy and 1099 filings. Before we begin, I want to thank Chairman Hatch and Ranking Member Wyden for giving us the opportunity to hold this hearing and our subcommittee ranking member Senator Warner for being here with me today.

Improving tax administration at the IRS is not only an important topic, but a timely one. This past weekend was the 20th anniversary of the passage of the IRS Restructuring and Reform Act of 1998, which is the last time Congress enacted a major overhaul of the agency. During the late 90s, there was a clear need for reform at the IRS. Calls with questions for the IRS went unanswered by the thousands, and the calls that were answered were often incorrect. The agency had also spent

<sup>77</sup>*Id.* at 85.

<sup>78</sup>Rick Parrish and Margaret Rodriguez, Forrester, *The U.S. Federal Customer Experience Index, 2018: How U.S. Federal Government Agencies Drive Mission Performance With the Quality of Their Experience* 10–11 (May 31, 2018).

<sup>79</sup>*Id.* at 11.

\$3 billion on IT systems that weren't working. Bottom line: the American public had lost faith in the agency.

In response, Congress put together a commission that I had the honor of co-chairing with then-Senator Bob Kerrey. We published a comprehensive report that became the basis for the legislation 20 years ago. That legislation, which Senator Cardin, Chairman Hatch, and Ranking Member Wyden all took leadership roles on, led to a long period of substantial improvements at the IRS. Unfortunately, in recent years that period of sustained improvement has unraveled as the agency suffers from some of the same issues that plagued it in the mid-1990s. Once again, the agency tasked with helping Americans carry out one of their most basic duties is failing to serve taxpayers in an effective manner.

Because of these issues, I believe there is an opportunity for this Congress to get the IRS back moving in the right direction. Congress should act to meaningfully reform the agency, and I applaud the efforts of Chairman Hatch and Ranking Member Wyden, as well as the House, for the solutions they've offered to advance IRS reform.

I think there is much more to be done, however, which is why today I introduced with Senator Cardin the Protecting Taxpayers Act—bipartisan legislation to make the IRS more responsive and accountable to taxpayers. This legislation aims to reform the agency through six key goals: (1) revitalize the IRS organizational structure and management; (2) increase taxpayer protections and modernize enforcement procedures; (3) improve small business and retirement plan tax administration; (4) better serve low-income taxpayers; (5) overhaul the IRS appeals process; and (6) strengthen the IRS IT infrastructure.

I wanted to highlight a couple of provisions from this bill I feel will be critical to reforming the agency and that I'd love to get feedback on from our witnesses. First, our bill completely rethinks one of the key provisions of the 1998 reform bill—the IRS Oversight Board. When we originally thought of the idea of this board in 1998, our intent was to create a board of directors for the IRS that would help guide the direction of long-term strategy at the agency, provide private-sector experience and expertise, and hold senior management accountable. The Board started off pretty well, but then because of lack of support by really every administration, it has since fallen by the wayside. The Board suspended operations a couple of years ago, and there is technically only one member left out of nine. If we were able to get this board not just functioning again, but functioning in the way we originally intended, I think it has a lot to offer in turning the agency around in areas such as customer service, IT modernization, and budgeting effectively.

I also wanted to mention the reforms we're making to the IRS appeals process. In the 1998 reform bill, we created more than 50 new taxpayer rights, including the right to an independent appeal of an IRS decision. Three years ago, we took those rights a step further by codifying 10 of them in a Taxpayer Bill of Rights, which included that right to an independent appeal. Yet in recent years, access to an independent appeals process has declined as more cases than ever are being sent to Tax Court, amounting to a 70-percent increase since 2000. Further, the IRS continues to issue new guidance and procedures to make it harder for all taxpayers to access the appeals process. The Protecting Taxpayers Act aims to reinforce this taxpayer right through an ambitious set of reforms, ensuring that we resolve as many tax controversies in an equitable manner.

Overall, I think it's clear—and I'm sure we will hear as much from our witnesses today—that Congress needs to build on the progress we made in 1998 and engage in a new set of reforms at the IRS. I am interested to hear from my colleagues and the witnesses here about ways we can improve tax administration at the IRS, and I look forward to working with all of you as we work to make the IRS more responsive and accountable to the American taxpayer.

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PREPARED STATEMENT OF JOHN SAPP, CHAIR,  
IRS ELECTRONIC TAX ADMINISTRATION ADVISORY COMMITTEE

Chairman Portman, Ranking Member Warner, other members of the subcommittee, good afternoon.

Thank you for inviting me to testify at this hearing on "Improving Tax Administration Today."

My name is John Sapp, and I am just finishing my tenure as Chair of the IRS Electronic Tax Administration Advisory Committee (ETAAC).

As you know, ETAAC was created by Congress in the IRS Restructuring and Reform Act of 1998. It has a diverse membership of individuals from the State departments of revenue, private industry, including the payroll community, and consumer groups. This diversity allows the IRS to receive a wide variety of perspectives on electronic tax administration and its impact on taxpayers.

ETAAC's primary focus was initially on researching, analyzing, and advising the IRS on its electronic tax administration strategy and most specifically on achieving the goal of receiving at least 80 percent of major tax return types electronically. ETAAC is pleased to report that it estimates that IRS will achieve its 80-percent goal this filing season for all major return types.<sup>1</sup> More recently, ETAAC's charter was expanded to include a focus on the urgent issue of Identity Theft Tax Refund Fraud (IDTTRF) and information security. This expanded focus reflects the ever-changing threat environment for electronic tax administration.

This year, ETAAC's Annual Report to Congress continued to focus on the work of the IRS Security Summit—an unprecedented collaborative effort lead by IRS to engage State governments and private industry to work together to fight IDTTRF and protect American taxpayers. Although we can never declare final victory over the criminal elements attacking our tax system, the Security Summit has made significant progress in the fight. That progress has been enabled by strong IRS leadership, the support of both the States and private industry and a collaborative mindset of all participants.

I am pleased to represent ETAAC today to provide a perspective on tax administration. After providing some brief context, I will offer my thoughts on the following four principles concerning IRS electronic tax administration illustrated with specific recommendations made by ETAAC in its 2017 and 2018 Reports to Congress:

- Security.
- Accessibility.
- Taxpayer control.
- Collaborative development.

#### ELECTRONIC TAX ADMINISTRATION OPERATES IN A CHALLENGING ENVIRONMENT

Initially, I would like to set context regarding some challenges facing electronic tax administration.

First, the need to supplement traditional IRS service delivery channels (phone, in person, etc.) is obvious. Electronic services—online but increasingly mobile—are an essential element in enhancing IRS's overall service channels. Both consumers and businesses expect to be able to conduct much of their business electronically, but they also expect to be able to talk with someone when necessary.

Second, electronic services operate in a high threat environment. The subcommittee is well aware of the cybersecurity threats facing our Nation. Cybercriminals are well-funded and very capable. They continue to target our tax system to obtain tax refunds fueled by the theft of personal information from a variety of government and private sources, most of which are external to our tax system. This fight will never end—as we close one door, the criminals look to find another. We need to raise our cybersecurity game across the board.

Third, like all consumers, taxpayers have high expectations for electronic services. They expect them to be secure, easy to use and integrated into their existing workflows. In ETAAC members' experience, the adoption rate for isolated or stove-piped solutions is not high—integrated solutions have higher adoption rates over time. A good example of this is electronic filing, which has been integrated into the tax software solutions used by taxpayers and tax professionals.

However, some taxpayer expectations are in tension with one another. For example, secure solutions necessarily require effective identity proofing and authentication—potential users must be able to prove they are who they say they are to gain access to “their” sensitive personal information. Traditional digital identity proofing solutions are typically somewhat tedious multi-step processes. As a result, security

<sup>1</sup>ETAAC takes a broad view of “major” returns, including employment, corporate, partnership, fiduciary, and exempt organization returns. The IRS achieved 80 percent for the 1040 series of returns several years ago.

can be in tension with ease of use and accessibility—a particularly challenging balance to achieve.

Of course, ease of use and accessibility are elements of the overall customer service experience. Taxpayers who find electronic services difficult to use, or who are unable to access such services, understandably will revert to call IRS assistants or visit IRS offices to meet their needs.

#### PRINCIPLES FOR TAXPAYER-FACING SYSTEMS

With this context, I will summarize some specific ETAAC recommendations supporting the key principles for electronic tax administration mentioned above—security, accessibility, taxpayer control and collaborative development.

##### ELECTRONIC SERVICES MUST BE SECURE

Security is a prerequisite for any electronic solution to be adopted, and standards are a foundational element for any secure system. In its 2018 Report, ETAAC identified potential gaps in the security standards covering our individual and business income tax systems. Specifically, the most prevalent security standard currently covering “tax preparers” is limited to those serving consumers—I’m referring to the FTC Safeguards Rule, which was implemented pursuant to the Gramm-Leach-Bliley Act (GLB).

Additionally, it is unclear whether the IRS has the authority to set or enforce minimum security standards for tax preparers, particularly because of the Loving and other cases which specify limitations on IRS’ ability to “regulate” tax preparers.

ETAAC believes our tax system requires a high-level security standard, such as the one articulated in the FTC Safeguards Rule. Further, we believe IRS should have the authority to set and enforce security requirements for our tax system.

##### ELECTRONIC SERVICES MUST BE ACCESSIBLE

As I mentioned above, IRS’s ability to remotely identity proof and authenticate taxpayers in a secure and reliable manner is a key enabler for electronic services. These are the processes by which the IRS collects, validates, and verifies information about a taxpayer to ensure the applicant is who they claim to be to a stated level of assurance. Digital identity management presents a technical challenge because it involves proofing and authenticating individuals over an open network, which presents opportunities for impersonation and attacks leading to fraudulent claims of a subject’s digital identity.

The IRS has several online services with different levels of assurance. Some services provide access to less sensitive information such as refund status whereas others require the highest level of assurance because of the sensitivity of the information, *e.g.*, Get Transcript Online, Get an IP PIN, IRS e-Services and the taxpayer online tax account.

The IRS’s current remote identity proofing solution is the Secure Access identity management platform. Generally, Secure Access requires the taxpayer to successfully complete a process of validating their identity using personal information, an email address, third party public information and a cell phone. The IRS has constantly evolved its current Secure Access identity proofing platform, but it still has its limitations. For example, certain segments of the population may not be able to validate themselves digitally using Secure Access because of an insufficient public record or an inability to complete cell phone validation. While there may be alternative authentication methods provided by the IRS, the inefficiencies they create are cumbersome.

In our experience, the IRS is taking a deliberate, studied approach to identifying and pursuing solutions to this challenge. It is looking for ways to both protect taxpayer data and, simultaneously, enable more taxpayers to identity proof remotely. It is also considering solutions under development in both the governmental and private sectors. Of course, digital identity management is a broader challenge for all of government, not just the IRS.

ETAAC has made two recommendations in this area.

First, the IRS should continue to collaborate with key stakeholders to help IRS identify, test and implement new identity proofing and authentication solutions. This innovation effort should be done in a way that manages risks, but stakeholders should not expect zero defects. Innovation necessarily involves a mix of successes and failures. Small pilots can help to manage these risks.



Second, remote identity proofing solutions have inherent limitations and challenges. We have already mentioned the difficulty of navigating Secure Access to gain access to and use online solutions. For that reason, ETAAC's 2018 Report encouraged IRS to consider options to expand in-person identity proofing opportunities. The IRS may be able to leverage its existing physical locations for this purpose, or those of other government agencies with a larger and more diverse physical presence such as the Social Security Administration.

Additionally, our Report offered another option for the IRS to consider—the creation of a “Trusted Third Party” program to expand the availability of in-person taxpayer identity proofing. To illustrate this approach, we referenced IRS's previously created Certified Acceptance Agent (CAA) Program to improve access to Individual Taxpayer Identification Numbers (ITINs). A CAA is a person or an entity (business or organization) who, pursuant to a written agreement with the IRS, is authorized to assist individuals who do not qualify for a Social Security Number but still need a Taxpayer Identification Number (TIN) to file their taxes. The CAA facilitates the application process by reviewing the necessary documents, authenticating the identity when possible and forwarding the completed forms to the IRS. Applicants to become a CAA must complete a rigorous application process, including submitting an application and finger print cards, as well as completing mandatory training.

Adapting the Certified Acceptance Agent (CAA) Program model to this need may also correspond with taxpayer expectations. Most taxpayers expect their tax professionals or tax service providers (whether paid practitioners, software providers or volunteers in the VITA, TCE or LITC programs) to assist them in engaging with or accessing information from the IRS. Since these third parties are already reviewing physical identification documents in connection with tax preparation or may have other avenues for confirming identity not readily available to the IRS, they represent a possible opportunity to help identity proof taxpayers. ETAAC believes this option is worthy of consideration, likely starting with a small pilot program to test the concept.

An obstacle to this interaction may be the filing of Powers of Attorney on behalf of taxpayers by their tax preparer or representative. ETAAC has recommended (as have others) that the IRS enable the secure online submission of Powers of Attorney (Form 2848), which currently must be mailed or faxed.

Accessibility and ease of use are likewise considerations for IRS electronic services used by tax professionals. Difficulty in using or accessing tax professional services will again, potentially drive them to traditional IRS customer service channels, most particularly telephone assistants or tax professional hotlines.

#### ELECTRONIC SERVICES MUST BE UNDER TAXPAYER CONTROL

Taxpayers must be “in control” of their services. For example, our 2018 Report mentions the benefits of taxpayers having the ability to provide access to their account information to their chosen tax service providers, whether tax professionals or software. However, taxpayers must always have the ability to control any such permissions whether at the time of any initial grant or on an ongoing basis. Additionally, any third parties that might be granted such access must meet some important thresholds such as completing background checks and meeting information security requirements.

On a related note, ETAAC made two recommendations in 2018 associated with taxpayer control. First, we recommended (as have other advisory committees) that the IRS continue to evaluate the concept of “account lock and unlock” feature as described in our Report. Second, we support the idea of expanding eligibility for the Identity Protection Personal Information Number (IP PIN) to all taxpayers, which others have supported including the National Taxpayer Advocate.

#### ELECTRONIC SERVICES SHOULD BE COLLABORATIVELY DEVELOPED

The development of electronic services that consumers will actually use is not as easy as it might seem. As pointed out in our 2018 Report, consumers will often “tell” you that they will use some proposed service that seems beneficial. In fact, that is often not the case.

Instead, as it attempts to develop electronic solutions, it is essential that IRS take advantage of the insights available from a variety of sources and stakeholders including taxpayers, States, tax technology providers, tax professionals, VITA providers and others. Additionally, product research is essential, but not sufficient. We believe the IRS should continue to test “minimum viable services” to see how tax-

payers and tax professionals will actually use any online services, not just how they say they will use them.

For that reason, ETAAC recommended that IRS take a collaborative approach to developing online and mobile services. The Security Summit is a great example of the benefits of a collaborative approach.

#### CONCLUSION

In conclusion, IRS has been an engaged, collaborative and constructive partner in support of ETAAC's work with the Security Summit. ETAAC believes the improvement of tax administration can benefit from a collaborative effort.

Moreover, as we pursue initiatives to improve electronic tax administration, ETAAC encourages all of us to remember the guiding principles of:

- Security.
- Accessibility.
- Taxpayer control.
- Collaborative development.

Thank you again for the opportunity to provide my thoughts today. I am ready to answer any questions to the best of my ability.

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#### PREPARED STATEMENT OF REBECCA THOMPSON, PROJECT DIRECTOR, TAXPAYER OPPORTUNITY NETWORK, PROSPERITY NOW

Chairman Portman, Ranking Member Warner, and members of the subcommittee, thank you for the opportunity to testify before you on "Improving Tax Administration Today." It is a privilege and an honor to speak with you about the Volunteer Income Tax Assistance (VITA) program. For nearly half a century, the IRS has enlisted the support of community partners leveraging the strength, skill, and good will of tens of thousands of volunteers to provide free tax preparation and filing for low-income Americans during the annual tax filing season. VITA volunteers come from all walks of life and endure a rigorous training and certification process to help low-income, elderly, disabled, and limited English-speaking tax filers fulfill their civic obligation by filing an accurate tax return, claim Federal and State credits for which they are eligible, and access other financial capability building services to strengthen their family's household financial well-being at tax time.

In my role as the project director of the Taxpayer Opportunity Network, I lead a national network of more than 2,500 stakeholders, including VITA volunteer program managers, site coordinators, volunteers, community, corporate and philanthropic partners, and others. Our Network serves as a convening body for VITA practitioners and stakeholders, providing a way for them to connect with one another, developing and distributing tools, resources, information and providing capacity-building support to strengthen VITA programs, ensure quality return preparation, and help to extend the reach of the VITA program to more low-income Americans.

For the last 8 years, I have spent nearly every Saturday, and many a weekday from January through April, in a VITA site. I have always enjoyed working in VITA sites, either through my prior roles as a VITA program manager, there to ensure that things run smoothly, or as a volunteer, using a unique skill set that I've acquired to help average, everyday Virginians.

For the last 2 years, since transitioning to my current role at Prosperity Now, and moving to Northern Virginia, I have had the pleasure of serving as a VITA volunteer co-site coordinator and quality reviewer with the Northern Virginia CASH Campaign, at the Employment Resource Center at the Prince William County A.J. Ferlazzo Building in Woodbridge, VA. Every Saturday morning throughout the filing season, I rise from my bed, much earlier than I would like to, and make my way down to the Ferlazzo building, joining about 10–12 other volunteers at my site, over 1,200 volunteers in Virginia, and 55,000 volunteers nationwide, to help low-income, hard-working Americans meet their civic obligation by filing a tax return.

Our site is a small one, only open on Saturdays, serving just over 300 households. On average, our clients earned close to \$25,000 last year. That's not a lot, especially for a family living in Northern Virginia, and I often wonder how they make it. I'm fortunate, that as I take the time to review their tax return with them, we can chat, and I learn how they make it through, and share any information and resources I

can to help them until I see them next year. I can vividly remember the first return I prepared at the Ferlazzo Building tax site. He was a single father, raising three young children. He had been unemployed for part of the year, and in addition to his unemployment statement, he had about three W-2s, where he was trying to piece together enough income to support his family. He had gone to a paid preparer to have his return prepared, but when he was quoted an estimate of \$382 for his preparation and filing, he decided to look for an alternative, and he found us. The return wasn't complex, it only took me about 30 minutes to do, but it saved him almost \$400 and he was very grateful for the assistance.

This year, 315 volunteers at 15 sites in the Northern Virginia CASH Campaign served 4,300 households, with an average Adjusted Gross Income of just over \$25,000. I always knew that northern Virginia was one of the most affluent regions in the country. Volunteering in a VITA site has helped me see the other side of the coin.

During the 2018 filing season, 24 VITA coalitions operating 121 VITA sites across the Commonwealth of Virginia (central Virginia, Tidewater, northern Virginia, Piedmont, and western Virginia) helped over 33,500 individuals and families file their tax return for free. Together we gave more than 60,000 volunteer hours in training and tax preparation in Virginia, bringing back almost \$35 million in Federal refunds, including just under \$12 million in EITC refunds, and saving Virginians over \$6 million in tax preparation fees.

Nationally, more than 4,000 VITA sites helped 1.4 million households by preparing and filing their tax return for free. In addition to preparing and filing tax returns, many VITA sites connect the families we serve to public benefits, financial education and other financial capability services, such as financial coaching and credit building, providing strength and support to a family's financial future.

At their core, VITA volunteers are gifted translators with big hearts. We endure a rigorous training regimen that can in some cases take as much as 24 hours, and pass a certification test annually, so that we are well-equipped to translate what can be a daunting and complex tax code for our clients, into a meaningful representation of the life of the people we serve. We do it through conversational interviewing, using IRS Form 13614-C as a guide, to ensure we deliver high quality, accurate returns for the low-income, underserved, elderly, rural, disabled, and limited English-speaking populations in communities across America. And at the end of each return, there is an extensive quality review process, that involves reviewing the completed tax return with the client to ensure they understand how their life over the previous year has translated into their tax return, along with the acknowledgement that while we have done our part in assisting them, ultimately the responsibility for the information contained in that return lies with them. This process has consistently yielded unparalleled quality results, above 90 percent for the last several years, and 93 percent for the most recent filing season.

Last year, IRS Stakeholder Partnerships Education and Communication (SPEC) organization, which has oversight for the VITA and TCE programs, estimated that over 5.2 million lives were touched by our collective work. That includes all the people (spouses and dependents) who are covered and represented by the 1.4 million tax returns we prepared. For all the great work that we do, and all the people we serve, two things remain lacking. First, after nearly 50 years in operation, the VITA program has never formally been authorized by Congress. Formal congressional authorization will put the VITA program on sure footing, ensuring that you recognize the value we bring to the American people we serve, and acknowledging that we should keep up the good work. Second, the VITA program lacks adequate funding. In December 2007, Congress first appropriated funds to the IRS to establish and administer a 1-year matching grant program in consultation with the Taxpayer Advocate Service. VITA grant funding has grown from \$8 million in 2007, to \$12 million in 2012, to \$15 million in 2015. Still, there are millions of low-income, elderly, disabled, rural, underserved, and limited English-speaking populations who could benefit from our service, but we are constrained by our current funding level in our ability to reach and serve them.

During the last grant cycle, 243 community partners were awarded the VITA grant. Seventy percent (70 percent) of VITA sites are sponsored by organizations that receive grant funding from the IRS while thirty percent (30 percent) are wholly funded and operated by their sponsoring community partners who so greatly believe in the work we do and the impact it has in their communities, that their organizations bear the cost of operating a VITA program with no financial support from the IRS.

For its \$15-million investment in the VITA grant program, Federal funds which must be matched dollar-for-dollar by either cash or in-kind contributions, the cost per return to the Federal Government is \$14.74. Doubling VITA grant funding to \$30 million will help the IRS extend more financial resources to support more community partners, which will in turn increase their ability to devote time to recruiting, training and managing volunteers, to purchase equipment, such as laptops and printers, to pay for Internet service, to develop and to execute creative and innovative strategies to deliver services more effectively, and to market the program to extend their reach and serve more people.

Volunteering in a VITA site helps to keep me grounded. I witness first-hand and come to understand the unique and sometimes complex challenges that low-income Americans face. Volunteering also helps me to see the impact of the work I do during the week, and to get to know the people who are impacted by the time I spend working on projects at my desk, or in meetings. It brings my work to life and helps me see things from the perspectives of the volunteers and clients. I get a “boots-on-the-ground” view that helps me to identify needs, and opportunities for program and process improvements that I take back to my job during the week and apply it in meaningful ways that will ultimately make life a little better, a little easier, and improve the financial well-being of those we serve collectively.

As I go about my daily routine, everywhere I look, I see potential VITA clients. They’re helping me get to work—conductors on the commuter train, driving the Metro. They are in the grocery store, helping me make my weekly purchases of food and household items for my family. When I went on vacation earlier this summer, they were all around me, from the front desk to the cleaning staff at hotels. They were in the airports, working in all different capacities to help me and my family get to and from our destinations. When I go out to eat on occasion, they’re all around me, serving, cooking, and cleaning in the restaurants I visit. They are teaching my children, serving as school support staff, administrators, and janitors. They are seniors drawing Social Security but still working to make ends meet, like the cafeteria worker who feeds my son lunch during the school year. She told me that she was using her refund to cover her household expenses during the summer months because she doesn’t work when school isn’t in session. She had paid almost \$300 over the last several years to have her return prepared. This year she decided that she just couldn’t afford to pay someone to do her taxes. She found out about our service at the county office, where our site is located on Saturdays, when she went there to apply for SNAP benefits. Many folks are unaware of this diamond in the rough that we call VITA. Others swear by it and tell friends and relatives about the great service they found that can save them hundreds of dollars, all while providing information about and access to other resources that can help improve their family’s financial future.

VITA clients, both current and potential, are hard-working, everyday Americans. They give so much, are the very fabric of America, and they serve me and my family every day. Helping them as many of them as we can to fulfill their civic obligation by filing an accurate return, accessing and claiming all the credits and benefits they’re entitled to, and doing it for free, all while connecting them to resources and information that can improve their family’s financial well-being, by making the VITA program permanent, with adequate funding, is the least we can do for them.

Thank you again, Chairman Portman and Ranking Member Warner, for providing me with this opportunity to share information with the subcommittee about the VITA program. I look forward to answering any questions you or the other members may have about it at this time.

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PREPARED STATEMENT OF HON. MARK R. WARNER,  
A U.S. SENATOR FROM VIRGINIA

Thank you, Mr. Chairman. And I’d like to thank you for your long-term interest in this subject. I know you and Senator Cardin have been leaders in this field, as have Chairman Hatch and Ranking Member Wyden.

We know the notion of tax administration doesn’t necessarily sound that exciting, but this is the front line of how Americans intersect with the Federal Government. The effectiveness of that intersection and the customer service at that intersection are very important. Let’s face it, no one loves paying taxes, but if we can make that payment of taxes more efficient, more user-friendly, more fair, I think an obligation that we all have to take on as citizens will at least become less painful.

The title of this hearing is “Improving Tax Administration Today,” but let me raise two issues about the tax administration of tomorrow.

Over the last few years, I have spent a lot of time looking at the changing nature of work. I think we are moving into an environment where classic W-2 full-time employment—where folks go work at the same firm for 35 years—is a thing of the past. Part of that is driven by economic circumstances, part of that is driven by, frankly, the choices of millennials. We have seen the emergence of a number of new platforms, the so called “gig economy.” I believe that people moving forward may not have a single income stream, but multiple income streams. They may be an IT consultant starting their own business, driving for Uber, and renting out their apartment on Airbnb. Frankly, the tax administration burden in this new economy is enormously challenging. We need to have a tax administration system that doesn’t impede on individuals who are trying to become more entrepreneurial and actually utilize these services and platforms, while making tax compliance for them easier.

I have called for two studies, one from the GAO and one from the Treasury Department, to try to look at the size of this workforce and how they interact with the tax system. The recent BLS study indicated that there is not that much growth in this field. I will accept that data, but I don’t think it was complete enough. I have seen estimates from government and non-government sources that literally show close to one third of the American workforce is at least receiving some of its income from contingent work.

So how we think about tax administration, how we think about even the concept of a social contract, I would argue means we need to move to a portable benefits systems. If we move to a portable benefits system, we’ve got to have flexibility on the tax administration side as well.

The other item that I think is an ongoing challenge is IRS technology. We’ve all seen the IRS make good faith efforts to get its technology up to date. Sometimes those good faith efforts have not panned out. But something is wrong with our overall Federal Government when we spend \$90 billion a year on IT, but a huge share is spent on maintaining and trying to upgrade legacy systems. My hope is, as well, we can get into the question of how we could create a technology-enabled modern tax system. If the Congress has to bite the bullet and go all-in to fully upgrade the Federal IT system, then maybe we need to have that kind of discussion.

Again, I want to thank the chairman for having this hearing, and I look forward to hearing from our witnesses today.

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## COMMUNICATIONS

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### STATEMENT SUBMITTED BY JEFFREY M. BLUM

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#### **Introduction**

I have been representing the owners of Country Folk Art Shows, Inc. (“CFAS”), a fully lawful family business, since the summer of 1994. CFAS has been victimized by one of the first and largest improper civil asset forfeitures conducted by IRS agents. Approximately four million dollars has been unlawfully taken and despite repeated court rulings and a review conducted by the Deputy Attorney General (initiated by Attorney General Ashcroft, and conducted by Deputy Attorney General Comey and Associate Deputy Attorney General Catherine O’Neil), all directing the IRS to return the money as tax refunds, the IRS has done nothing but stonewall since first being directed to address refund claims in 2002. The extensive, well-documented tax refund claims have repeatedly been “lost,” and inaction has been justified by saying that mere theft of assets by agents does not justify a tax refund until the Commissioner writes a letter crediting the money as tax payments.

The details of the circumstances surrounding this illegal forfeiture, which include the Sixth Circuit Court of Appeals reasons why the money should be returned as tax refunds, are explained in the statement that I submitted for the record of the whole Finance Committee’s confirmation hearing for Commissioner Designate Charles Rettig that was held on June 28, 2018. I will not repeat them here. This statement will focus on the failure of IRS oversight that we have experienced to date. Specifically, I am sorry to say, direct personal involvement by the National Taxpayer Advocate Nina Olson appears to have been used on two occasions to assist in perpetrating acts of fraud and larceny designed to facilitate the unlawful taking of four million dollars. On both occasions Ms. Olson nullified a large amount of good, careful work by her subordinates, Regional Taxpayer Advocate based in Cincinnati, Joseph W. Budd, in 2006, and District of Columbia Taxpayer Advocate, Glen Thomas this past year.

The illegality of what Ms. Olson appears to have been trying to achieve can be explained quite simply, even though the initial taking occurred in 1992–1993, well before Ms. Olson assumed her current position in 2001. Her wrongful acts have been rooted in a combination of ignorance, arrogance and abuse of bureaucratic authority. In September, 1992 our clients, the owners of Country Folk Art Shows, Inc. (“CFAS owners” or “the taxpayers”) owed an agreed upon amount of \$5.3 million to the IRS and wanted to pay off their debt quickly. At the request of the United States Attorney for the Eastern District of Michigan they agreed to tender slightly over four million dollars in assets in a Consent Judgment of Forfeiture. This unusual method of first installment payment was possible because the owners and the United States agreed that all the income in question had been lawfully derived from the gate receipts of country folk art exhibitions conducted nationally, and the then IRS Assistant Commissioner in Charge of Criminal Investigations had promulgated a policy that forfeiture of lawfully derived assets for “structuring” could only be used to pay down tax liability, not for other purposes such as providing additional bounty for IRS agents and agencies. Because the amount of tax liability had been agreed upon, the only additional allegation involved the amorphous charge of “structuring,” and the CFAS owners had been assured that the Assistant Commissioner’s policy would be followed, the agreement embodied in the Consent Judgment was clear. Their remaining tax liability should have been \$1.3 million, and that appeared to be the case until about three months after the assets had been tendered. Then suddenly

it was raised back up to \$5.3 million based on a claim that every time the owners deposited their regular cash income in the bank, it was a “structured deposit” that could be forfeited over and above any tax liability.

Soon after I was retained we learned that the government had not been using the actual law against structuring a single transaction in currency, 31 U.S.C. § 5324(a)(3), but an imaginary law designed to mimic it. Because the imaginary law had no “single transaction” requirement, it was much broader and made many of the nation’s legitimate cash businesses vulnerable to having years of income forfeited after the fact. The CFAS owners’ currency structuring convictions were swiftly vacated by the original trial judge in 1997, but it took all the way until August 6, 2008 for the United States to concede on the record of the Sixth Circuit Court of Appeals that the forfeiture had not been based on any structured transactions. The only other possible explanation for the tender of four million dollars, apart from it being part of some sort of IRS fraud scheme, was that it was payment of a tax liability. Because the same taxes can only be collected once, not twice, the Court of Appeals pointed to tax refunds under the Internal Revenue Code as the proper means of repayment.

After D.C. Taxpayer Advocate Glen Thomas had worked on this matter for several months earlier this year Nina Olson intervened and announced a new IRS policy, to be applied retroactively to September 1992, that any use of the word “forfeiture” in an agreement to tender assets meant that the IRS was entitled to keep the money over and above payment of any tax liability. In doing so she ignored over a hundred pages of documentation that had been provided to the D.C. Taxpayer Advocate showing that this could not possibly be true. Conversely, if Ms. Olson’s pronouncement is an accurate statement of IRS policy, then it, read in conjunction with the Service’s prior handling of this matter, means that this is a fundamentally lawless agency that cannot be trusted to handle money.

Shortly before Ms. Olson intervened I had prepared a formal Request for a Taxpayer Assistance Order pursuant to 26 U.S.C. § 7811 and 26 CFR 301.7811-1 that was delivered to Mr. Thomas on March 14, 2018. I am now incorporating that formal request into this statement as an appendix to this statement. **I request specifically that Ms. Olson be held accountable and required to meet with a representative of the Finance Committee or this Subcommittee to discuss our Request for a Taxpayer Assistance Order, ideally with me being allowed to participate.** Our request is important even beyond the particular case. It contains within it an exposition of statutory and regulatory authority showing that under the statute and pertinent regulations **this is an instance where issuance of a Taxpayer Assistance Order is mandatory, not discretionary with Ms. Olson.** As such the Country Folk Art Shows matter and the Taxpayer Advocate Service’s handling of the owners’ Request for a Taxpayer Assistance Order provides a useful bellwether to assist the Subcommittee on Oversight in determining whether the Taxpayer Advocate Service under Ms. Olson’s leadership is an agency capable of functioning as intended, or is itself a body offering only the illusion of substantive oversight that needs to be reconstituted in order for statutory purposes to be given effect. Sadly, if this matter is ignored, the United States will continue to suffer two significant losses of legitimacy, one of which Ms. Olson ironically decried in her testimony before the Subcommittee. The IRS will continue its public relations nightmare stemming from its misuse of an imaginary law against “structuring generally,” and Congress, whose approval ratings are currently not the best, will likely be suspected of offering only the illusion of substantive oversight. Those suspicions will likely be highlighted by the Subcommittee having brought in Ms. Olson to provide expert testimony on necessary oversight while refusing to question her about her own most egregious acts.

Respectfully submitted,

Jeffrey M. Blum  
Counsel for the Owners of Country Folk Art Shows

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#### APPENDIX

The attached formal Request for a Taxpayer Assistance Order dated March 14, 2018 (and commencing on the next page) is incorporated into this statement because it is the document, the transmission of which to National Taxpayer Advocate Nina E. Olson provides the crux of the requested oversight.



**Jeffrey M. Blum**

Attorney-at-Law

March 14, 2018

Mr. Glenn Thomas  
D.C. Local Taxpayer Advocate  
Taxpayer Advocate Service

TA:DCLTA, K Suite 1500  
1111 Constitution Ave, NW  
Washington, DC 20224

**DCTA 3 Request for Taxpayer Assistance Order**

By email attachment to  
Glenn.Thomas2@IRS.gov and fax to  
(855) 810-2124

Dear Mr. Thomas:

**PART ONE: REQUEST FOR A TAXPAYER ASSISTANCE ORDER**

This letter outlines the Taxpayer Assistance Order now being requested by our clients, explains why its issuance is explicitly permitted by 26 U.S.C. §811 and the accompanying regulation, 26 CFR 301.7811-1, and documents the fact that it is mandated by jurisdictional determinations already made by the IRS. The letter also argues that the requested Order is either essential, or would at least be very helpful, for bringing the IRS into conformity with the law, and would not be inconsistent with the brief letter previously written by Deputy Commissioner for Services and Enforcement, Kevin M. Brown on January 16, 2007.

*The Requested Order*

**“The Taxpayers, John E. and Virginia Long, and John Keith and Rhonda Blakely, who have been self-employed owners of the small business, Country Folk Art Shows, Inc., have had *bona fide*, properly formalized amended refund claims pending since either March 11, 2002 or April 2, 2002. The refund claims arose when the IRS overlooked its obligation to credit these taxpayers’ voluntarily tendered forfeiture of approximately four million dollars in assets as tax payments and assessed the same taxes, interest and penalties a second time. Despite a July 25, 2005 request from the Deputy Attorney General of the United States that the IRS act on the refund claims, the claims have never been addressed and no Notice of Disallowance has ever been sent.**

**“This failure to act is due largely to the claims remaining with the Criminal Investigations Division (CID) of the IRS nearly the entire time, even though its Chief, Nancy Jardini, and counsel, Edward F. Cronin, have been clear and emphatic in maintaining that IRS Criminal Investigations does not have jurisdiction to address them. In 2003 IRS Attorney Joanne Minsky correctly identified the Small Business/Self Employed Division as the proper entity within the IRS that would have jurisdiction over them. In light of the complexity of background circumstances relating to the claims she suggested that counsel for these taxpayers communicate directly with the then National IRS Counsel for Small Business/Self Employed, Thomas R. Thomas. The current Commissioner for the Small Business/Self Employed Division is Mary Beth Murphy. The taxpayers’ long pending refund claims should be referred to Commissioner Murphy within thirty days for decision with a suggestion that her counsel communicate directly with counsel for the taxpayers in order to make an informed decision about how the claims should be resolved. Such communication with counsel should include assurances that the refund claims are now being addressed in a reasonably expeditious manner.”**

*The Requested Order’s Appropriateness Under 26 U.S.C. §7811 and 26 CFR 301.7811-1*

Under 26 CFR 301.7811-1(a) “the National Taxpayer Advocate (NTA) may issue a Taxpayer Assistance Order (TAO) if, in the determination of the NTA, the taxpayer is suffering or is about to suffer a significant hardship as a result of the manner in which the internal revenue laws are being administered by the Internal Revenue Service (IRS), *including action or inaction on the part of the IRS.*” (Emphasis supplied.) The term “National Taxpayer Advocate” includes any designee of the National Taxpayer Advocate. 26 U.S.C. §7811(f). The terms of a Taxpayer Assistance Order “may require the Secretary within a specified time period-to cease any action, take any action as permitted by law, or refrain from taking any action,” §7811(b),

and any Taxpayer Assistance Order issued by the National Taxpayer Advocate under this section may be modified or rescinded—(1) only by the National Taxpayer Advocate, the Commissioner of Internal Revenue or the Deputy Commissioner of Internal Revenue, and (2) only if a written explanation of the reasons for the modification or rescission is provided to the National Taxpayer Advocate.” § 7811(c). “In cases where any Internal Revenue Service employee is not following applicable published administrative guidance (including the Internal Revenue Manual) [e.g., defying the IRS Litigation Guideline Memorandum directing that ‘structuring’ forfeitures of lawfully derived assets be credited as tax payments; requiring IRS Criminal Investigations to exercise authority only over matters within its jurisdiction], the National Taxpayer Advocate shall construe the factors taken into account in determining whether to issue a Taxpayer Assistance Order in the manner most favorable to the taxpayer.” § 7811(a)(3).

The taxpayers in this case have experienced significant hardship in three respects, including (B) a delay of more than 30 days in resolving taxpayer account problems, (C) the incurring by the taxpayer(s) of significant costs (including fees for professional representation) if relief is not granted, and (D) a foreseeable possibility of irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted. § 301.7811-1(a)(4)(ii). It has now been over 16 years since the refund claims were fully submitted, over 12 years since the Deputy Attorney General requested that they be processed, and over 9 years since all pertinent legal questions have been resolved in a federal court of appeals. *See* part two of this letter, at *infra*. Plainly, these time periods exceed 30 days. During this very prolonged process the United States has forced the taxpayers to incur significant costs, which have included the filing of an additional federal lawsuit, as to which the government’s only response was to contest venue and seek exemption from the court’s requirement that it state a position on the merits. In addition, massive amounts of wasteful legal correspondence have been elicited by a bizarre communications loop whereby all the taxpayers’ counsel’s efforts to communicate with appropriate decision makers have been re-routed to IRS Criminal Investigations, which has responded uniformly that it does not have jurisdiction over the matter. At the insistence of House of Representatives government oversight personnel the acting director of warrants and forfeitures for CID has communicated with the undersigned and expressed sympathy, but refused to play any active, constructive role in getting the refund claims referred to the correct division of the IRS.

The possibility of irreparable harm has arisen from the history of legal rulings in this case coupled with IRS refusal to acknowledge the existence of the rulings pointing to tax refunds as the appropriate vehicle for the Longs and Blakelys to have their overpayment returned to them. Prior to the Sixth Circuit’s published decision in *Blakely v. United States* there had been repeated acknowledgments that they should be getting money back and there were four possible avenues of redress. The Sixth Circuit eliminated three of the four and specified procedures to be followed with the fourth. The three eliminated avenues were (1) having the consent judgment of forfeiture set aside, which was rejected because the existence of tax liability in excess of the judgment at the time of the judgment meant it was a valid consent judgment, (2) suing the government under the Federal Tort Claims Act or some other authorized tort remedy, which was rejected as being precluded by the existence of a valid consent judgment, (3) a petition for remission addressed to the Department of Justice, which was held to be voluntary with DOJ, which declined to grant it but offered to help get the IRS to act on tax refunds, and (4) tax refunds amended and filed in accordance with the Sixth Circuit’s opinion in *Blakely*.

In essence the Court of Appeals ruled, **you may not get A, B, or C, but you are entitled to get D.** Deputy Commissioner Brown’s letter of January 16, 2007, *see* Part Two, *infra*, in essence said **we have read the court’s opinion which says you may not get A, B, or C, and furthermore the National Taxpayer Advocate has now overruled the Sixth Circuit Court of Appeals to say you are not going to get D either.** This is not lawful because the National Taxpayer Advocate does not have the authority to overrule a federal court of appeals. Worse yet, given the other three rulings of the Sixth Circuit, there is the possibility of the clients being deprived of all their assets through such unlawful machinations. This would certainly constitute irreparable harm. The National Taxpayer Advocate could, of course, invite the Longs and Blakelys to file the same lawsuit again, but what would be the value of winning point D again, if the National Taxpayer Advocate could simply ignore and overrule the Court of Appeals, inviting the filing of a third attempt to get the same result?

**PART TWO: WHY THE JANUARY 16, 2007 LETTER OF DEPUTY COMMISSIONER KEVIN M. BROWN HAS BEEN SUPERSEDED BY THE SIXTH CIRCUIT COURT OF APPEALS ORDER OF AUGUST 6, 2008 AND MAY HAVE BEEN INAPPOSITE EVEN WHEN WRITTEN**

You have explained that the January 16, 2007 letter I received from Deputy Commissioner for Services and Enforcement, Kevin M. Brown, needs to be taken seriously regardless of its intellectual merit because of the position he then held within the IRS. The letter made two points that together led to the erroneous conclusion that “there is no further action to be taken by the Internal Revenue Service.” These were (1) “The forfeiture action . . . has been litigated through federal district court and the Court of Appeals and has been decided by them,” and (2) “In addition the Taxpayer Advocate Service advised you in a letter dated September 19, 2006 that Form 843 is not the appropriate course of action for disputing the collection of forfeited assets.”

*“The Forfeiture Action,” Which Was Then an Amalgam of Two Different Cases in the Sixth Circuit Court of Appeals—and Now Includes Three—Had Two Main Holdings, Each of Which Is Important.*

The two original cases, *Blakely v. United States* (“*Blakely*”) and *United States v. Real Property at 6185 Brandywine Drive* (“*Brandywine Drive*”) addressed and resolved two questions. One was whether the Consent Judgment of Forfeiture dated September 22, 1992 would be set aside under Rule 60(b), Fed. R. Civ. Proc., and the other was *if the consent judgment is not set aside, what redress is available to taxpayers if the consent judgment has resulted in double taxation.* *Brandywine Drive* made clear that the consent judgment would not be set aside shortly, while *Blakely* determined that the imprimatur of lawfulness established by the consent judgment would preclude tort claims against the government, such as those of the Federal Tort Claims Act.

However, both before and after *Blakely* and *Brandywine Drive* there have been court decisions involving the Longs and Blakelys that have pointed toward the need to return money to them. After the government pointed toward the Longs’ and Blakelys’ guilty pleas on currency structuring charges to support the assertion that the forfeiture was for “structuring,” not tax collection, the District Court that had sentenced the Longs and Blakelys vacated their currency structuring convictions. Previously the Assistant Commissioner in Charge of IRS Criminal Investigations and the IRS Litigation Guideline Memorandum had made clear that currency structuring forfeitures of lawfully derived assets (which everyone agreed these were) could only be used to pay off tax liability.

Finally, in response to the IRS failure and/or refusal to follow through on the Deputy Attorney General’s request—and especially Division Counsel Cronin’s admonition of February 17, 2006, “if your clients remain unsatisfied with the outcome, they are free to take any additional legal action they deem prudent; until such legal action is pursued by the Longs and Blakelys, the IRS has no further action to take in this matter”—I filed another Rule 60(b) motion largely for the purpose of forcing the government to acknowledge that it had no factual basis for the forfeiture apart from its use as a tax collection measure. This conclusion had already been reached by the Deputy Attorney General and was reflected in Associate Deputy Attorney General Catherine O’Neil letter to IRS Criminal Investigations Chief, Nancy Jardini, on July 25, 2005, which stated:

This office has been mindful of the fact that the factual basis for the forfeiture appears to be closely linked with the facts underlying the \$5.3 million tax liability of the taxpayers. Counsel for the taxpayers has advised us that he filed a refund claim with the Internal Revenue Service pertaining to that tax assessment on or about April 2, 2002. As you and I have discussed, I am writing to suggest that your office undertake its own review of the facts of the pending refund claim and render a decision.

Once the action generated by the renewed Rule 60(b) motion (“*Brandywine Drive II*”) reached the Sixth Circuit it quickly yielded an Order making clear that the government had had no factual basis for the forfeiture other than the Longs’ and Blakelys’ \$5.3 million tax liability. In response to a motion to supplement the record on appeal a panel of three Sixth Circuit judges ruled that Plaintiffs:

. . . now move to supplement the record on appeal by requiring the government to file with the court a list of structured transactions. **No such list was filed in the district court, and that court did not consider a list of structured transactions in ruling on the appellants’ motion to va-**

**cate.** The government opposes the motion to supplement the record. . . . As noted by the court in denying appellants' motion for a limited remand, a list of structured transactions will not assist the court in its consideration of the issue on appeal.

Order of motions panel filed August 6, 2008. (Emphasis supplied.)

The Order, which was rendered nineteen months after Deputy Commissioner Brown's letter of January 16, 2007 and memorializes what is in effect a second consent judgment, makes clear that the factual basis for the forfeiture had never been a list of structured transactions that would make those assets forfeitable independently of their being used to pay off a tax liability. The government again refused to provide any list, thus confirming what Associate Deputy Attorney General O'Neil had told Chief of Criminal Investigations, Nancy Jardini, that the forfeiture had been transacted to pay off most of the \$5.3 million tax liability.

After the August 6, 2008 Order it becomes easy to address Deputy Commissioner Brown's other point about tax refunds not being "the appropriate course of action for disputing the collection of forfeited assets." The answer is that the Longs and Blakelys are not now "disputing the collection of forfeited assets." Rather, the point is that now that everyone has agreed the forfeited assets could lawfully be collected but only for the purpose of paying off tax liability, *the IRS decision to collect the same taxes, interest and penalties a second time several months later—seemingly forgetting that they had already collected them through the Consent Judgment of Forfeiture*—had resulted in double taxation, for which refunds are now owed.<sup>1</sup>

The Taxpayer Assistance Order that is Now Being Sought Asks for Nothing More than IRS Compliance with Jurisdictional Determinations that It Has Already Made.

In response to the July 25, 2005 request of Associate Deputy Attorney General Catherine O'Neil, IRS Criminal Investigations Chief Nancy Jardini ordered a review of the matter. At the conclusion of the review she wrote to me, "we have concluded that the Internal Revenue Service—Criminal Investigations (CI) does not have jurisdiction with regard to these [tax refund] claims." (APX 86). Although technically correct in this, Jardini did not take the next step and pass the refund claims along to the Small Business and Self-Employed Division, which did have jurisdiction over them. Deputy Commissioner Kevin M. Brown oversaw the Criminal Investigations Division and would have been the appropriate Deputy Commissioner to exercise jurisdiction over the refund claims **if the claims had lawfully been within the purview of IRS Criminal Investigations**. However, according to both the chief of CID and several attorneys representing CID, including Division Counsel Edward F. Cronin, Criminal Investigations did not have such jurisdiction—which probably means that any authoritative determination on behalf of the IRS should have been made by the Commissioner of the IRS or the Commissioner/Deputy Commis-

<sup>1</sup>If Deputy Commissioner Brown on January 19, 2007 was trying to argue that tax refund claims are not the appropriate vehicle for remedying double taxation caused by IRS confusion over the factual basis of a forfeiture, then he is wrong in this case for three reasons: (1) *Stare decisis* from the Sixth Circuit Court of Appeals decisions in *Blakely* and *Brandywine II*, (2) the fact that at the time of the transaction, the Longs' and Blakelys' consent to forfeit the assets was elicited by promising them that the assets would be credited as tax payments, and (3) for three different reasons—one in place at the time of the consent judgment of forfeiture, a second made clear by Associate Deputy Attorney General Catherine O'Neil's review, and a third stated outright in an Order from the Sixth Circuit Court of Appeals dated August 6, 2008—the only way that the IRS could lawfully forfeit the assets was as a tax collection measure.

All three of these have been communicated to you previously. Since you have urged me not to repeat myself, I will simply cite you to the pertinent passages, which in turn cite to the primary documents that were sent to you in the same transmission. Nearly all evidence is discussed in Sections I. A, I. B, and II (pages 1–9) of my letter to you dated December 20, 2017 and captioned, "Outline and History of Legal Arguments and Rulings Establishing Taxpayers' Right to Refunds." This should be found in your email of that date with the caption, "DCTA 2." The "APX" citations in that letter refer to the compendium in documents sent to you in five parts, labeled "Part One, Part Two," etc. Most are found in the first three parts. All five parts use the same consecutive numbering.

sioner in charge of the Small Business/Self-Employed Division. The requested Taxpayer Assistance Order seeks to remedy this jurisdictional failing.

Yours truly,  
Jeffrey M. Blum

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#### Statement of Michael G. Bindner

Chairman Portman and Ranking Member Warner, thank you for the opportunity to submit these comments for the record to the Taxation and IRS Oversight Subcommittee. Recent tax legislation has not met the Center's policy goals, nor America's, nor the goals of other advocates with similar proposals, for example the advocates of the FairTax, who were disappointedly silent in the last round of debate. While recent legislation will likely help, radical change is needed to really help the average family.

As you may know, we did raise our voices and will continue to, as the recent law will still have all of the flaws of the prior system as well as the asset inflation that would have made another Great Recession inevitable were not for the new biennial spending targets and appropriations, including much needed help for the IRS. Still, we withdraw none of our proposals. Therefore, as usual, we will preface our comments with our comprehensive four-part approach, which will provide context for our comments.

- A Value-Added Tax (VAT) to fund domestic military spending and domestic discretionary spending with a rate between 10% and 13%, which makes sure very American pays something.
- Personal income surtaxes on joint and widowed filers with net annual incomes of \$100,000 and single filers earning \$50,000 per year to fund net interest payments, debt retirement and overseas and strategic military spending and other international spending, with graduated rates between 5% and 25%.
- Employee contributions to Old-Age and Survivors Insurance (OASI) with a lower income cap, which allows for lower payment levels to wealthier retirees without making bend points more progressive.
- A VAT-like Net Business Receipts Tax (NBRT), which is essentially a subtraction VAT with additional tax expenditures for family support, health care and the private delivery of governmental services, to fund entitlement spending and replace income tax filing for most people (including people who file without paying), the corporate income tax, business tax filing through individual income taxes and the employer contribution to OASI, all payroll taxes for hospital insurance, disability insurance, unemployment insurance and survivors under age 60.

The collection of the Employee Contribution to Social Security will be exactly as it is now. Like proposals for a FairTax, the Value-Added Tax and NBRT/Subtraction VAT will be collected by the states. If the basic structure of reform is adopted in the states, the biggest change will be the need for a common base between federal and state consumption taxes.

Shifting from retail sales taxes and gross receipts taxes to value added taxes and VAT-like net business receipts taxes will change the nature of most state taxation, while enabling ease of collection of taxes on online sales, since taxes would be levied at every stage of the production process. The IRS will assist states in this process, which will likely take the form of some federal-state compact commission to draft and approve the transitional rules.

If a common base agreement can be negotiated for these taxes, state treasurers can collect both their own taxes and the federal taxes, as well as analytical information on tax credit usage, which can then be shared with the U.S. Internal Revenue Service in order to track income accruing to payers of the federal high income surtax, as well as to recipients of the federal child tax credit, which would be paid to employees with wages under the NBRT and then verified by a mailing from both the employer and the Internal Revenue Service, with employees verifying that their em-

ployees paid every dollar to them reported as a credit. There will likely be problems to resolve in our proposed system, where the states collect the Value-Added Tax and the Net Business Receipts Tax and forward the money and records to the Internal Revenue Service. This will not impact most taxpayers, since once they have bought a product, no further action is necessary.

The IRS will likely supplement state-based auditing with reviews of their own, but this is a small price to pay for a reform that will reduce the income tax payment and audit workload by at least 80%. Indeed, income tax simplification (through the elimination of all but a few deductions), will further eliminate the workload generated by remaining income tax payers.

Employees with children will need to annually verify the information provided by employers and, if they received less than was reported to the government, notify the IRS who will send a refund and collect the difference from the employer. This may trigger a dispute, but likely most employers will simply pay if there was an error. Fraud is another matter, which is criminal not a dispute to be settled. Other disputes may involve parents double dipping on two jobs or two earners, but these will likely work out a payment plan or contact their divorce lawyers to negotiate who pays.

Whenever an employee or an heir is paid interest, a dividend, a capital gain or an heir sells an inherited asset, information will be transmitted to the IRS, as well as sales to a qualified Employee Stock Ownership Program (untaxed) and aggregated by Social Security Number. Verification will be accomplished to make sure that tax avoidance does not occur through use of multiple SSNs.

Another option is to charge value-added taxes on any capital gain at sale, with losses taxed at the average VAT payment of the last two sales. In this case, the NBRT of Lawrence B. Lindsey could be used to tax dividends paid and excess salaries paid at a higher rate, this making all income tax collection unnecessary.

If income taxes are retained, individuals making over \$50,000 per year and joint filers making over \$100,000 will have their information stored to compare to tax filings, unless the Congress authorizes an automatic filing system where all income surtax payers will receive notification when all data should have arrived and what their refund or payment will be once they correct the information or certify it is correct already. Banking information should be on file, so authorization for payment, either at once or installments should be easy.

Very little IRS administration will be required to do this. Indeed, data management and mailing could be contracted out. All IRS employees could fit in a bathtub with room for Grover Norquist.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.

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STATEMENT SUBMITTED BY DAVID H. LACY

The so-called Internal Revenue Service does not provide a reasonable SERVICE for the individual tax payer to directly submit electronic tax returns to the IRS as are paper returns. The IRS has enabled private industry to create a monopoly for electronic tax returns rather than provide an invaluable service to the ones that pay the taxes in the first place.

For years, individual tax payers prepared paper tax returns on IRS provided forms without the use of third parties. We, the tax payers, should be provided with the same option to electronically prepare and transmit tax returns to the IRS without the services of a third party. The IRS operates the EFTPS website for taxpayers to make electronic payments to the IRS. Internet passwords and PINs are issued by the IRS to allow secure electronic payments. Surely, if secure electronic payments can be made to the IRS, then the IRS should be able to receive individual electronic tax returns.

The IRS should provide electronic forms that include the math calculations and electronic integration of Schedules (A, B, C, D, etc.) with Form 1040, specifically for individual taxpayers. I used a Lous 1-2-3 spreadsheet of the IRS Form 1040 in the 1980s to prepare my paper tax return. I was able to update the spreadsheet each year based on changes to the IRS tax code.

In recent years, I have been using an Excel spreadsheet available from an Internet website to prepare my tax return. This site provides free Excel formatted forms

(Schedules A, B, C, D, etc.) which are electronically integrated with the IRS Form 1040, providing highly accurate calculations and returns. An Excel file can be configured in a PDF form that could be submitted electronically to the IRS.

However, I must now print the return and mail it to the IRS. What a waste of paper and time! I'm sure there are many more individuals like myself. If one individual can provide this service free, surely the IRS with its vast resources could provide such a service. After all, the IRS is an organization to serve the people. However, it appears that the IRS is more interested in supporting business that sells tax preparation software and preparation services rather than directly supporting the individual tax payer.

Without such, I will continue to file paper returns of the electronic generated returns. As a taxpayer, I am deeply concerned that the IRS is pandering to private industry rather than serving individual taxpayers.

