

FINANCE COMMITTEE QUESTIONS FOR THE RECORD

**United States Senate
Committee on Finance**

**Hearing on the nomination of
Daniel Werfel**

**Responses by Daniel Werfel
February 24, 2023**

FINANCE COMMITTEE QUESTIONS FOR THE RECORD

CHAIRMAN WYDEN

Hearing on the nomination of Danny Werfel, *to be IRS Commissioner*

February 15, 2023

Question 1: Presidential Audit Program

We have heard reports that the IRS didn't begin auditing Trump's tax returns until two years after he became President – and only assigned **one auditor** despite the complexity of the returns. This suggests that the program is broken.

What is your plan to get the Presidential Audit Program functioning properly and restore public confidence?

Answer: In order for the tax system to work, taxpayers must have confidence that all taxpayers, regardless of who they are, pay what they owe and are treated fairly and impartially. I cannot speak to how the Presidential Audit Program is currently working. If confirmed, I would put my time and attention into ensuring this program works as intended.

Question 2: Using Existing IRS info to Catch Tax Cheats

The IRS receives a lot of third-party information reporting that it hasn't been able to use because of a lack of funding. This includes information about pass-through income, capital gains, credit card receipts and foreign assets. The Inflation Reduction Act provided the IRS with more funding.

What will you do to ensure the IRS starts using more of this data to catch wealthy tax cheats?

Answer: It is essential that our tax system operates fairly and right now, there is significant evidence that high earners are paying significantly less than what they owe in taxes. For example, an assessment from the National Bureau of Economic Research indicates that working people pay 99% of the taxes they owe, while 20% of the income from wealthy individuals and large corporations is shielded from IRS view. This outcome degrades public trust in our tax system because honest taxpayers should know that when they file an accurate return with the IRS that all other taxpayers, including the wealthiest Americans, are doing the same. Funding in the IRA will help address this disparity and allow the IRS to focus on the highest-income earners. As you know, I have a long career working in government and in the private sector focused on data-driven solutions, and, if confirmed, I will work to strengthen the manner in which relevant data is utilized to inform the best approach for deploying the IRA funds to improve tax compliance by the wealthy and large corporations, in addition to providing customer service and improving IT.

Question 3: IRS Whistleblower Program

Whistleblowers have delivered a huge return on investment for the agency and can serve as effective partners to help the IRS to unpack sophisticated schemes used by wealthy taxpayers

and large corporations. They have helped the IRS collect over \$6 billion directly from wealthy individuals and businesses caught cheating on their taxes. That's why I am co-sponsoring The IRS Whistleblower Program Improvement Act with Senator Grassley.

Mr. Werfel, will you ensure the IRS Whistleblower Program gets the support it needs?

What steps will you take to ensure claims are considered in a timelier manner and will you commit to reporting to me on the effectiveness of these measures?

Answer: I thank you and Senator Grassley for your bipartisan work over the years on this important issue. It is critical that the IRS's Whistleblower Program be a top priority. To ensure the effectiveness of the current program I will seek to understand the following – (i) what metrics are in place to assess the health of the program (e.g., employee awareness, IRS responsiveness to claims, timing for resolution, etc.); (ii) what is the current performance vs. historical; (iii) how does performance stack up against other similar Federal programs; (iv) what are the current improvement goals; and (v) who is accountable within the IRS for the program. If confirmed, I commit to getting up to speed on these matters and reporting back to you on my assessment and plans going forward.

Question 4: High income Non-filers

My staff received information from the IRS indicating that 195 wealthy tax cheats who hadn't even filed a tax return going back to 2015 owed a whopping \$692 million. These high fliers owed \$1.77 million per person. The IRS said it didn't have the resources to collect these taxes. The IRS now has IRA funding to get a better handle on the matter.

Mr. Werfel: what will you do to ensure my staff gets updates on this important issue, including the enforcement measures that have been taken with respect to the top 300 high-income non-filers for tax years 2015, 2016 and 2017? Will you fully cooperate with information requests on this topic from the Committee?

Answer: It is critical that we demonstrate to the American people how Inflation Reduction Act dollars positively impact our tax system. In addition to improving technology and customer service, the IRS must also build public trust by showing that compliance is not focused only on those who have easier returns to examine. Public trust, transparency, and accountability, and stewardship of taxpayer dollars are important guiding principles for me. If confirmed, I commit to working with the Committee, within the appropriate laws and regulations, to keep you appropriately informed.

United States Senate Committee on Finance

Hearing to Consider the Nomination of the Honorable Daniel I. Werfel, of the District of Columbia, to be Commissioner of Internal Revenue for the term expiring November 12, 2027

February 16, 2023

Questions for the Record for the Honorable Daniel I. Werfel

Senator Crapo

1. I'd like to drill down on a question asked by several of my colleagues with respect to the IRS's recent "level of service" statistics for phone service in the 2023 filing season, to-date.

The National Taxpayer Advocate (NTA) has written and testified to Congress that the level of service statistic is problematic and does not adequately measure whether "the agency is doing a good job communicating with taxpayers over the phone."

As additional evidence, the IRS's stated overall level of service statistic provided to the "eight corners" congressional staff for this filing season reads at over 89 percent as of February 3, 2023, notwithstanding that an IRS employee has only answered 2.8 million of the 7.1 million calls the IRS has received to-date during open hours, i.e., 39.4 percent of calls.

- A. Based upon your experience managing and advising federal agencies, do you agree (or disagree) that the NTA's concerns are valid? If not, why not?
- B. If so, and if confirmed as Commissioner, do you agree to identify a phone service metric that more adequately measures whether the IRS is providing taxpayers the phone service the Taxpayer Bill of Rights demands, and report back to me by Tax Day 2023 as to what this metric is and why it is an improvement over the level of service measure?
- C. Assuming you are confirmed, and once stakeholders have had an opportunity to comment on the metric, do you agree that the IRS will begin reporting this statistic in place of the level of service statistic? If not, why not?

Answer: The National Taxpayer Advocate (NTA) is a critical, independent voice at the IRS, ensuring that every taxpayer is treated fairly and recommending changes to help taxpayers solve problems. Further, taxpayers deserve better customer service from the IRS, and I share your desire to improve IRS service, whether that's online, over the phone, or in person, based on the principle of the right to quality service. I believe the IRS must use data-driven performance metrics and have an evidence-base for making decisions that will help improve customer service. If I understand your question correctly, the NTA has raised a question on whether the current methodology properly assesses the responsiveness and quality of IRS phone service. While I would want to better understand the IRS measurement approach and the NTA concerns before

offering a more complete response to you, I appreciate you raising the issue given the importance of ensuring that measurement methodologies are robust, objective, and statistically sound. If confirmed, I look forward to studying NTA’s concerns, working with them closely to understand every way we can improve and report on customer service, and working with the Committee on the best way for the IRS to measure and report on its progress on level of service.

2. Based upon your comments at the hearing, I understand you profess a strong belief that government must act in a way to bolster the public’s trust – in both process and results – as well as use “best practices” in planning for and implementing changes, particularly ones with complexity, cost, and significant risks.

A. Do you believe it is necessary that all IRS planning, analysis, and study be conducted using best practices, including the selection of experts and identification and preparation of data?

B. Does the use of unqualified or biased experts (including any individual or organization that may stand to benefit from the action) and/or flawed data reduce the prescriptive value of a study?

C. If confirmed as Commissioner, will you commit to only using best practices in planning, analysis, and studies conducted by the IRS?

Answer: Yes, I believe that following best practices are critical to ensuring the success at any organization. Over my career, I have strived to bring a rigorous, analytical approach to decision-making and believe we must ensure the data used to make decisions are of the highest quality. As noted in your question, for evidence to have fidelity, it must be compiled objectively. Based on my experience, you can help ensure objectivity through a variety of steps, including for example, transparency on the methodology and being open to feedback on the methodology through peer review. If confirmed, I intend to bring these principles to my work at the IRS and will be keen to understand where this Committee believes there is a risk of bias or subjectivity in the evidence-base we create to guide decision-making.

3. We understand that you have been wholly uninvolved in the IRS’s planning with respect to spending the \$80 billion in additional funding. From a process management standpoint, this is far from ideal because the plan is likely to be complete before you ever have a chance to provide input on it.

Do you believe it will be necessary for the IRS to provide regular updates to its plan in order to not only capture your insights – now and in the future – but also be transparent and accountable about what is working and what is not? If so, and if confirmed, do you commit to providing these?

Answer: Yes, I believe there should be regular updates and that transparency and accountability will be critical to success. Since I am not currently at the IRS, I do not know

the exact cadence that would work best. However, if confirmed, I will work with IRS and Treasury to ensure the Committee and the American people are updated with appropriate frequency. I look forward to sharing more specifics if I am confirmed.

4. Many small and medium-sized businesses may not file for the R&D tax credit on their original return, but instead file an amended return to claim the credit. The IRS has recently instituted a new policy that requires companies applying for the R&D tax credit on an amended return to provide a detailed discussion of why their company qualifies for the R&D tax credit.

My understanding is that in practice this new policy has placed significant burdens on small and medium business due to the fact that the IRS has not provided adequate, detailed guidance and examples of the information the IRS is looking the taxpayer to provide.

In addition, taxpayers are waiting months and months for an IRS reply to questions regarding the information the IRS is seeking from the taxpayer – because there has not been adequate staffing of this new initiative by the IRS.

The policy – and particularly the IRS administration of this new policy – has undermined the goal of Congress in enacting the R&D tax credit of incentivizing and supporting innovative small and medium sized companies.

A. Based upon your experience, do you believe that requiring ill-defined information relating to a credit will negatively impact either the utilization of the credit and/or tax administration?

B. If confirmed, will you provide me a more detailed response to the issue of how the IRS's requirement is impacting R&D credit claimants and the IRS in writing within 90 days of your being sworn in as Commissioner?

Answer: I believe it's important for the IRS to provide as much clarity as possible when administering the tax code. Where possible, tax administration should be improved to reduce complexity, within legal and regulatory bounds. If confirmed, I would look forward to studying this issue and working to ensure the Committee is best informed about this specific issue of tax administration. I recognize how critical the R&D tax credit has been to members on both sides. It will be a priority to respond to these and other R&D tax credit questions after consulting with those at IRS responsible for these matters, if confirmed.

5. A number of my colleagues and I are concerned about the IRS's processing of employee retention tax credit (ERTC) claims, and hear from both constituents, stakeholders, and even the local taxpayer advocate that IRS delays in processing these vital payments are harming taxpayers (and tax administration). I also have heard that there have been numerous fraudulent ERTC claims, which are clogging the IRS and leading to significant delays for legitimate claimants. If confirmed, will you provide me within 90 days of being sworn in a detailed response regarding the current backlog of ERTC claims, including a concrete description of what you plan to do to resolve these and address issues of fraudulent claims?

Answer: Through this nomination process, I have heard from many Senators about the Employee Retention Tax Credit and the impact of delays on small businesses and nonprofits. I understand the importance of ensuring taxpayers receive the tax benefits they are owed and the frustration that delays can cause. If confirmed, I commit to prioritizing this issue and briefing the Committee on what I learn.

6. I am concerned, as is the NTA, that the IRS will prioritize achieving certain service metrics at the expense of delivering on others, such as prioritizing answering phones but de-prioritizing processing paper returns. If confirmed, do you commit to directing the IRS to use its resources systemically and address all taxpayer service areas with equal importance as opposed to arbitrarily singling out one or the other?

Answer: In any organization, it is imperative to seek success for all core goals. Customer service is one of these goals at the IRS. If confirmed, I commit to studying the IRS's current and future resource allocation and looking for any way to improve customer service whether it be over the phone, in-person, online, or by mail. I am particularly interested in benchmarks from world class customer service organizations from both the private and public sectors. From these benchmarks, we can identify best practices in terms of measurement and performance. I think the American people deserve an IRS that can meet and exceed these benchmarks and, if confirmed, will work tirelessly toward that end.

7. Who do you believe should ultimately be responsible for the IRS's planning for and implementation of its IRA funding (e.g., the IRS Commissioner, the head of the IRS's IRA Implementation Office, Director of IRA Implementation at the Treasury Department, the Treasury Secretary, etc.) and do you believe the IRS must clearly inform the public about where the responsibility lies?

Answer: I do not currently know all the legal and regulatory requirements involved in the Inflation Reduction Act's implementation, but, if confirmed, I would look forward to working within all applicable requirements to ensure all are met. If confirmed, I would work with Congress to ensure all actions taken are transparent, to build trust with Congress and the public. All this being said, if confirmed as IRS Commissioner, I will embrace accountability, transparency, and stewardship of taxpayer dollars for all activities that occur on my watch.

8. If confirmed as Commissioner, how will you act when you are required to make decisions that have policy implications?

Answer: The role of the IRS is principally in administering the tax code, not tax policy-making. As such, if confirmed, if there are matters that involve policy implications, I would work with Congress and Treasury to inform and consult on the ability of the IRS to effectively implement policies, balancing such factors as data security, administrative burden on taxpayers, resource needs, and more. It will be important to me, if confirmed, to have policy-makers informed about IRS implementation actions.

9. Taxpayers and those who work with or around the IRS desperately want a functional and modern IRS.

A. When you consider what the IRS should fund with the relatively meager \$4.7 billion in additional funding for IT modernization that the IRA gave it, what are the characteristics of those systems and technology it should prioritize?

B. Recently, the Government Accountability Office noted that the IRS's modernization efforts have been hampered by competing priorities which are delaying the modernization of critical infrastructure systems and impede the IRS's ability to effectively serve taxpayers. In our conversations, you have mentioned observing similar dynamics at other federal agencies. If confirmed as Commissioner, what areas of technology modernization are you most focused on for improving the way the IRS serves taxpayers?

Answer: Throughout my career, I have worked with many federal agencies to ensure any funding provided by Congress is fully utilized in the most effective way possible. If confirmed, I would look forward to learning more about the IRS's current technology needs and focusing current resources on both areas where core infrastructure can be improved and where technological improvements can result in better customer service.

While I would want to reserve any final conclusions about what the key priorities should be until I have spent time at the IRS understanding the current environment, my current thinking is that the top modernization priorities fall into three buckets:

- **Ensuring the Individual Master File and Business Master File are updated to a modern platform to optimize data security and cyber resiliency, given the sensitivity of data maintained in those systems;**
- **Embedding innovative technology into IRS' service work – whether on the phones or online -- to help significantly increase responsiveness to taxpayers trying to make contact with the IRS; and**
- **Digitizing paper forms into machine readable output upon receipt to manage and get healthy on inventory and help increase overall efficiency of return processing.**

10. You testified repeatedly about upholding the public trust in the IRS, and repudiated things that degrade that trust. Based on your experience and belief, do you believe that the fact that taxpayer information illegally obtained by ProPublica remains in the possession of ProPublica and continues to be used by ProPublica degrades the public's trust in the IRS and the security of information provided to the IRS?

Answer: The safety and security of taxpayer data is of paramount importance to me and the IRS. My understanding is that this matter was immediately referred to the appropriate authorities, including the Treasury Inspector General for Tax Administration (TIGTA), the Department of Justice, and Treasury's Office of Inspector General, each of which

conduct their work independently of the IRS. I cannot speculate about that work, any potential findings, or the timeline. I can commit to you that, if confirmed, I will ensure the IRS continues to prioritize protecting taxpayer information and will take any appropriate action to do so.

11. A particular pain point for tax practitioners are systems whereby bulk filers, including third parties, interact with the Agency.

A. Do you agree a modernized IRS must provide these services – and provide them well?

B. If confirmed, will you commit to reporting back to me with respect to your plan for implementing modern systems that allow for tax practitioners, businesses and bulk filers to interact with the IRS more easily, including (without limitation) a portal for bulk filers to authenticate on a firm-wide basis, interact with the IRS electronically on routine issues such as requesting account holds, uploading correspondence, validating EINs, requesting transcripts, asking for payment frequency or filing frequency verification, and providing payment information to be located/properly applied to the account?

Answer: Yes, if confirmed, I would look forward to learning about this specific issue, where the IRS has current capabilities, and working with you and your staff to improve service, including for practitioners and other bulk filers.

Senator Chuck Grassley
Questions for Daniel Werfel
Nominee, Commissioner Of Internal Revenue Service
2/17/2023

Question 1:

According to the National Taxpayer Advocate, in fiscal year 2021 telephone assistance reached an all-time low of only 11 percent of calls answered by an IRS employee, and this rate only increased to 13 percent in fiscal year 2022. Additionally, millions of pieces of paper taxpayer correspondence including tax returns piled up while the IRS was shuttered in 2020 and the IRS still struggles with a backlog. As of February 4, 2022, the IRS was still processing 2 million 2022 or prior year tax returns and millions of other pieces of taxpayer correspondence.

While the partisan legislation enacted last year provides nearly \$80 billion in additional funding, the smallest share of around \$3 billion is reserved for taxpayer service. Supersizing enforcement with the more than \$45 billion provided would be unfair to taxpayers who have struggled to contact the IRS or whose correspondence is buried in a pile with millions of other taxpayers.

- If confirmed, do you pledge to utilize the more than \$3 billion provided for taxpayer service to resolve the IRS customer service and filing processing backlogs before bringing the enforcement hammer down on taxpayers who may already be trying to comply with their tax obligations?

Answer: Implementation of the laws passed by Congress is a critical responsibility of any federal agency. If confirmed, I look forward to quickly learning what the IRS's plans and resource allocation are and ensuring customer service is a priority. As I discussed in the hearing, I would plan to prioritize improving service and getting back to healthy inventory levels and closing the tax gap where IRS has historically lacked the capacity to unpack complex returns of wealthy and corporate tax evaders.

Critical to this approach is making sure that working families and small businesses see no increase in audit rates relative to historic levels, consistent with Secretary Yellen's pledge. Instead, the entire focus for these taxpayers when it comes to new funds under the Inflation Reduction Act should be on customer service, return processing, and providing them upfront help to file accurate returns and access the credits and deductions for which they may be eligible.

Question 2:

In your written testimony you echo Secretary Yellen's directive asserting that the additional IRS funding "will not increase audit rates, relative to historic levels, for small businesses and households making under \$400,000..." However, a number of open questions remain as to how the IRS will implement this directive, including what measure of income will be used (i.e AGI,

MAGI, taxable income, etc.) and what metrics will be used to determine past and present audit rates.

- Please provide a detailed explanation of how, if confirmed, you intend to implement Secretary's Yellen's directive, including identifying what measure of income and audit metrics will be used to comply with the directive.

Answer: Secretary Yellen and the IRS have committed that the IRA funding will not be used to increase audit rates, relative to historic levels, for households and small businesses making under \$400,000 a year. As I said at the hearing, I will work to meet Secretary Yellen's pledge and ensure that the IRA funding is not used to increase audit scrutiny on middle-income Americans or small businesses. As I have not been involved yet with the planning process for the IRA funding, I do not have specifics on how IRS will implement this directive.

This is an important question, and the Committee and the American people will need to understand how the IRS is upholding Secretary Yellen's commitment. If confirmed, I look forward to ensuring that IRS be clear about implementation of this commitment.

Question 3:

The IRS Funding Accountability Act authored by Senator Thune and I would require the IRS to regularly update Congress on audit rates and other enforcement actions by income group. If confirmed, will you direct the IRS to provide quarterly reports to Congress on audit rates and enforcement actions? Also please indicate if you would be willing to include the following in such reports:

- An analysis identifying historic and current audit rates by income group, including a group reflecting the IRS calculation of taxpayers earning less than \$400,000, beginning in 2018 through the current fiscal year.
- A detailed description of what constitutes an "audit" to the IRS, and whether and how that definition differs from how the National Taxpayer Advocate, the Comptroller General of the United States, or the Treasury Inspector General for Tax Administration defines an audit.
- A categorization of the number of audits for each income group which were, correspondence audits, office audits, field audits, audits under the Tax Compliance Measurement Program, and any other audits.

- A description of all taxpayer compliance actions or initiatives expected to be undertaken using funding provided by the Inflation Reduction Act that do not rise to the level of an audit.

Answer: I believe it's important that the IRS's plans are transparent, updated, and clear to you and the American people. Since I am not currently at the IRS, I do not know the intervals or format that would work best. However, if confirmed, I will work with IRS and Treasury to ensure you and the American people are updated on the progress and would be committed to studying these four recommendations as part of that process.

Question 4:

During your nomination hearing you were asked about providing initial and current annual reports on IRS plans to spend the \$80 billion in additional funding provided by the Inflation Reduction Act. In August of 2022, Secretary Yellen requested that IRS issue an "operational plan" for deploying the \$80 billion.

- What is your understanding of the status of this plan? Will it be released this month in accordance with Secretary Yellen's directive?

Answer: I am not familiar with any aspect or timing of the plan beyond reading public news reports.

Question 5:

According to the Treasury Inspector General for Tax Administration (TIGA), IRS is also developing a more detailed FY 2023 "IRA spend plan." As with the "operational plan", if confirmed, will you commit to publicly releasing this plan?

Answer: I am not familiar with any aspect of this plan. However, transparency will be a critical element of my approach as Commissioner, if confirmed. I look forward to keeping you the public informed on our plans.

Question 6:

During your nomination hearing, Chairman Wyden asked you to commit to provide a prompt response in writing to any questions addressed to you by any Senator of the Committee, and you agreed to that.

On Friday, February 10, 2023, Secretary Yellen finally responded to written questions sent to her after a June 7, 2022, hearing on the President's Fiscal Year 2023 budget request. Aside from not being prompt, the response included the disclaimer that "Secretary Yellen's responses to these

Questions for the Record reflect information available as of the date of receipt of these questions, June 16th, 2022.”

- Do you pledge to respond to all questions and letters promptly and with information that is as current as reasonably available?

Answer: Yes.

- Should you have any difficulty in fully responding to any of my requests or questions, will you work with my staff to reach an acceptable accommodation rather than providing a woefully outdated or incomplete response?

Answer: Yes.

Question 7:

As I mentioned at the hearing, the IRS whistleblower program has helped raise more than \$6 billion, but has the potential to bring in billions more if used effectively. Please address the following questions:

- Do you agree that the IRS Whistleblower Program is an important and underutilized tool in addressing the tax gap and will you work with myself, this Committee, and Congress to improve the ability of the IRS Whistleblower Program to speedily process whistleblower claims?
- Do you agree that for the IRS Whistleblower Program to be effective, the IRS as a whole needs to cultivate and maintain a culture of support for whistleblowers that recognizes and rewards their value? Will you ensure that all components of the IRS, including the Office of Chief Counsel are supporting the work and mission of the IRS Whistleblower Office?
- If confirmed, will you commit to working with the Director of the IRS Whistleblower Office to develop a plan improving the function of the office such that more awards are paid out in less time? Furthermore, will you report back to me within 60 days of your confirmation on the plan's progress?

Answer: I thank you and Chairman Wyden for your bipartisan work over the years on this important issue. It is critical that the IRS's Whistleblower Program be treated with the highest priority. To ensure the effectiveness of the current program I will seek to understand the following – (i) What metrics are in place to assess the health of the program (e.g., employee awareness, IRS responsiveness to claims, timing for resolution, etc.); (ii) What is the current performance vs. historical; (iii) how does performance stack up against other similar Federal programs; (iv) what are the current improvement goals; and (v) who is accountable within the IRS for the program. If confirmed, I commit to getting up to

speed on these matters and reporting back to you on my assessment and plans going forward.

Question 8:

The IRS private debt collection program was established in 2015 on bipartisan basis. Its primary role is pursue tax debts that the IRS would otherwise ignore. The program initially got off to a slow start in part due to resistance from within the IRS. However, in recent years it has proven its ability to returns significant sums to the Treasury. Since 2019, it has collected nearly \$3 billion in net revenue, including over \$1.3 billion in FY 2022 alone.

If confirmed, will you ensure this program continues to be used to its full extent under the law?

Answer: If confirmed, I will work with the IRS to make sure all taxes owed are collected in an efficient and effective manner. I am interested in understanding more about the current status of the private debt collection program and will work with you and your team on how this program can best support the IRS mission.

Question 9:

You have worked at the Boston Consulting Group (BCG) since March 2014. Please address the following questions related to your employment at BCG:

- Since joining BCG has the firm entered into any contracts, or made an effort to enter into any contracts, with the IRS or Treasury Department?
- Are there any existing engagements between the BCG and the IRS or Treasury Department?
- If you have done any work relating to the IRS or Treasury Department for BCG, please describe the goals and results of any projects you worked on.
- What foreign countries did you perform work on behalf of while with BCG?
- Is there any provision in any contract between yourself and the BCG that makes any distinction between you leaving the firm for other private employment, versus you leaving the firm to work for the Federal government in a high-level position?

Answer: As part of this confirmation process, I was eager to make all required disclosures concerning my current employment to ensure there are no conflicts of interest, perceived or otherwise. It is my understanding that I have fully complied with all required disclosures and remain committed to being available to respond to any questions to ensure the Committee has appropriate transparency. Of note, all of my government clients during my time at BCG have been U.S. Federal agencies. As

I mentioned in my due diligence meeting with your staff, earlier in my BCG tenure (i.e., more than 5 years ago), I was asked, on occasion, to provide operational advice to other firm clients, including government clients in the United Kingdom, Australia, Saudi Arabia, and UAE. I spent less than 1% of my time over 9 years on these types of calls. Neither the IRS nor Treasury have been a client of mine during my BCG tenure. In terms of my contractual departure requirements, I have a non-compete clause which would impact my ability to join a competitor consulting firm. However, taking on a government role does not trigger this clause.

Question 10:

In 2013, you served as Acting Commissioner of the IRS just after it came to light that the agency had inappropriately singled out certain social welfare organizations for extra scrutiny. That episode highlighted how important it is for the IRS to avoid even the appearance of political bias if it is to do its job effectively. Unfortunately, that hasn't stopped certain members of Congress from writing the IRS to urge them to investigate certain non-profits that support causes or hold political views opposite their own.

- If confirmed, how would you respond to such requests?
- Do you agree IRS must not allow politically charged comments or letters from members of Congress to influence its enforcement decisions?

Answer: In order for our tax system to work, taxpayers must have confidence that all taxpayers, regardless of who they are, are being treated fairly and impartially. If confirmed, I will make sure that taxpayers—regardless of background and whether they are individuals, small businesses, or non-profits—are being treated fairly and that the tax laws are being applied impartially and equally to all. Your question raises a particularly unique dimension of tax administration – how to address specific requests from Congress that are not broad in scope, but narrow and applicable to compliance or investigation in a given matter. If confirmed, this is an area where I will seek this Committee's advice on the best approach to ensure that the IRS and Congress are working in a manner together that meets the objectives of equity, fairness, and building trust.

Question 11:

At your hearing, I asked about IRS implementation of recommendations by the Treasury Inspector General (TIGTA) pertaining to cloud systems and protecting taxpayer data. One example of the recommendations to which I referred comes from a September 2022 TIGTA report. In that report, TIGTA recommends that the IRS “[e]xpedit[e] full implementation of the cloud security control infrastructure” and in a second recommendation requests the IRS [d]evelop an implementation plan for selected cloud capability gaps.” Concerning the first recommendation, in their response to TIGTA, the IRS notes that through the Internal Revenue Manual (IRM) the “IRS has a robust and comprehensive security control infrastructure documented within IRM 10.8.1 and 10.8.24 for cloud implementations.” TIGTA responds by noting “[t]he IRS’s corrective action does not address the intent of our recommendation.”

- If confirmed will you agree to seriously and systematically address IRS information technology issues by not only addressing recommendations from evaluators such as GAO and TIGTA, but to ensure that IRS systems and taxpayer information are actually secure?

Answer: Data security and protecting taxpayer information is one of the most important responsibilities of the IRS. During my tenure at OMB, I observed cases where Federal agencies came short of meeting an IG or GAO recommendation and always sought to closely review and understand these circumstances. When I left OMB and went to the IRS in 2013, I was very focused on making sure the IRS fully implemented all TIGTA recommendations made during my tenure. If confirmed, I will seriously and systematically consider all TIGTA recommendations.

Senator John Cornyn
Questions for the Record
Danny Werfel, Nominee, IRS Commissioner
February 15, 2023

1. During the COVID-19 pandemic, Congress created the Employee Retention Tax Credit (ERTC) to support employers who kept their employees working. Numerous Texas small businesses have yet to have their ERTC processed. Many of these businesses have been forced to take extraordinary measures to stay afloat, including layoffs and additional loans. For example, one constituent has been waiting for their ERTC since September 2021. This small business utilizes a third-party payer who submits this business's ERTC information to the IRS on quarterly payroll tax returns.

The return filed by the third-party payer shows the aggregate amount of ERTC being claimed by its small business clients, but also includes an attached "schedule" that itemizes the amount of ERTC claimed by each small business. It appears that the IRS may be focusing on the aggregate amount reported rather than using the itemized information to look through each individual ERTC claim to process them faster and get help to small businesses that have been waiting for years in some instances.

If confirmed, will you commit to making the necessary improvements, including using the itemized ERTC claim information, to deliver the credit that these small businesses are owed?

Answer: Through this nomination process, I have heard from many Senators about the Employee Retention Tax Credit and the impact of delays on small businesses and nonprofits. I understand the importance of ensuring taxpayers receive the tax benefits they are owed and the frustration that delays can cause. If confirmed, I commit to prioritizing this issue and briefing you and your staff on what I learn.

2. A number of my constituents help support small businesses by facilitating small business payroll, benefits, human resources, tax administration, and many other tasks, which allows small businesses to focus on their core competency, grow, and create more jobs. Unfortunately, it has come to my attention that bureaucratic impediments have led to extended delays in processing the Employee Retention Tax Credit (ERTC) owed to these small businesses. In addition, I have been informed that the IRS has been asked repeatedly about ways they could help speed up the process for small businesses that utilize these third parties.

I have previously contacted the IRS on behalf of a number of small business constituents (who utilize a third party) about addressing these obstacles but the response from the IRS was unhelpful. If confirmed, will you commit to reviewing and implementing the necessary measures that will help expedite the processing of ERTC claims for small businesses that use third parties to assist with tax administration?

Answer: Please see answer to question above.

3. In October 2022, the Internal Revenue Service released tax gap estimates for tax years 2014 through 2016. The gross tax gap is the difference between what the *IRS believes* is the ‘true’ tax liability for a given period and the amount of tax paid on time by taxpayers. What percentage of the tax gap is not collectible? If you do not have this information, will you commit to providing it to me within 90 days of being sworn in as Commissioner should you be confirmed?

Answer: Closing the tax gap is essential both to protect the government’s bottom line and to ensure the government is funded to provide essential services. If confirmed, I commit to studying the IRS’s tax gap, understanding where there are gaps in both information and collection, and communicating the findings with you and this committee.

4. Please provide a breakdown of the tax gap by income. Specifically, what percentage of the tax gap is attributable to households making less than \$50,000; \$100,000; \$250,000; \$400,000; \$1,000,000 and over \$1,000,000? Please also include a breakdown by income -- for the numbers of taxpayers/households contributing to the tax gap for each group and the dollars for each group. If you are unable to provide this information, will you commit to providing full and complete numbers to me within 90 days of being sworn in as Commissioner should you be confirmed?

Answer: Please see the answer to question 3.

5. Please provide a breakdown of the tax gap attributable to sole proprietorships; pass-through entities; and C Corporations – both in terms of percentage, numbers, and dollars. Please provide these numbers as best as you can now. If you are unable to provide this information, will you commit to providing full and complete numbers to me within 90 days of being sworn in as Commissioner should you be confirmed?

Answer: Please see the answer to question 3.

6. Please provide me the metrics for measuring your performance as Commissioner, should you be confirmed, in addressing the tax gap.

Answer: If confirmed, I hope that my performance would be measured by improved customer service at the IRS -- including getting back to healthy levels on inventory, better phone and in-person service for taxpayers, lawful administration of the tax code, progress in closing the tax gap created by wealthy and corporate evaders, successful deployment of technologies that among other outcomes, strengthens data security, allows for more agility in meeting emerging requirements, embeds innovative solutions in customer service, increased integrity of program and administrative expenditures -- and by open and transparent communications with this Committee and the public. In terms of more specifics on the tax gap, I am looking forward to engaging the team at the IRS to understand current priorities and determining whether updates to those priorities would be appropriate, in line with Secretary Yellen's commitment to not increase audit rates, relative to historical levels, for individuals earning less than

\$400,000 and small businesses. As I mentioned during the hearing, I have an initial hypothesis that one area of priority should be building capacity within the IRS to unpack complex and intricate returns of wealthy taxpayers so we can better assess any balances due that are being uncollected today. Beyond this, I would also seek to prioritize parts of the gap that do the most damage to taxpayer trust, including for example intentional tax evasion among any and all taxpayer groups.

7. During your confirmation hearing, you told the Committee in response to a question: “I typically look to CBO in terms of how they score legislation.”
 - a. Do you think the Congressional Budget Office (CBO) estimate of the revenue generated from the \$80 billion in mandatory spending provided to the IRS by Public Law 117-169 is accurate?
 - b. Yes or no, do you agree with CBO’s projection that some of the increased revenues will be collected from taxpayers with income less than \$400,000?

Answer: I do consider CBO to be an important source for scoring the deficit impact of legislation; however, I am not intimately familiar with all the details of this specific CBO estimate. As I said in my testimony, last year, Secretary Yellen issued a directive that the IRS will not increase audit rates, relative to historic levels, for small businesses and households making under \$400,000 a year, which I am committed to meeting.

8. For every dollar initially assessed against taxpayers, what percentage is collected by the IRS? If you do not know the answer, will you commit to providing this information to me within 90 days of being sworn in as Commissioner should you be confirmed?

Answer: If confirmed, I look forward to studying and understanding this issue, and keeping you and your staff informed.

9. What is the current “no-change” audit rate? Please break it down by type of audit (i.e., mail/correspondence, office, field, National Research Program). If you do not know the answer, will you commit to providing this information to me within 90 days of being sworn in as Commissioner should you be confirmed?

Answer: If confirmed, I look forward to studying and understanding this issue, and keeping you and your staff informed.

10. The centralized partnership audit regime enacted by P.L. 114-74 is designed to streamline IRS enforcement for partnerships subject to its rules, including the largest and most complex partnerships, which may not opt-out of the regime. The Treasury Inspector General for Tax Administration (TIGTA) issued a report in 2022 (Report Number 2022-30-020) on the implementation of the audit regime and found that almost 80 percent of these audits resulted in no change in the amount owed by the taxpayer. Furthermore, the no-change audit rate for the largest and most complex partnerships has increased year-over-year since the new regime has been in place.

TIGTA recommended that the IRS address these high no-change rates by establishing goals and processes to measure expected outcomes from the new regime against observed outcomes, which could help explain what the high no-change rate is telling us. The IRS disagreed with this recommendation.

- a. Do you agree with TIGTA's recommendation?
- b. Do you believe that the no-change audit rates are at an acceptable level?
- c. If not, what strategy do you think should be in place to reduce them?

Answer: Working with TIGTA would be a key priority of mine, if confirmed. I am not intimately familiar with these recommendations, but, if confirmed, I will look forward to studying these recommendations and considering any recommendation to improve customer service and taxpayer experience at the IRS. If confirmed, I will seriously and systematically consider all TIGTA recommendations.

11. The IRS's mission is to "provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all." Unfortunately, the IRS has a long history of struggling to meet its mission.

Twenty-five years ago, in response to IRS wasting billions of dollars on its failed Tax Systems Modernization Program, Congress passed legislation reforming the IRS. It gave the Commissioner additional hiring-and-firing power, redesigned the agency to serve particular categories of taxpayers, created an oversight board, and laid the groundwork for a multi-year budgeting approach to IRS modernization efforts.

Unfortunately, not much has changed over time, and the problems seem to be growing in both scope and severity:

- Ten years ago, we heard about inappropriate IRS targeting of the Tea Party and other conservative organizations who found themselves on so-called "Be-On-the-Lookout" lists and treated them with heightened audit scrutiny.
- Taxpayers have had to suffer through recent filing seasons marred by poor telephone service and slow processing of paper-filed tax returns. In fact, the backlog of original and amended returns and correspondence is still millions of cases deep.
- Americans are also familiar with the massive leak of private taxpayer information to ProPublica, which remains an unsolved mystery to this day.
- We learned last year that confidential data of about 112,000 taxpayers released by the IRS last summer was republished in late November and remained online until early December.
- We know about the agency's failure to provide timely guidance with respect to the federal tax treatment of special state tax refunds and the implementation of the new 1099-K \$600 reporting requirement imposed by the American Rescue Plan. In the words of the National Taxpayer Advocate, "the failure to address issues like these proactively is

harmful to taxpayers, but also creates re-work for the IRS that timely guidance would have avoided.”

- Finally, there is the laundry list of reports released over the past thirty-plus years by the Treasury Inspector General on Tax Administration and the Government Accountability Office on the IRS’ inability to effectively modernize its computers and protect confidential taxpayer information.

Public Law 117-169 rewards the IRS with an additional \$80 billion in automatic funding.

- a. Do you believe that the IRS is currently meeting its stated mission?
- b. Do you believe the IRS has done enough to earn back the trust of the American People and receive a boost of \$80 billion dollars without even a plan in place?

Answer: The IRS needs to transform into a modern 21st-century tax administrator that provides the service taxpayers deserve. As I discussed in the hearing, I believe there are numerous performance gaps in current IRS operations that can be improved. I also believe that resources provided by the IRA present an opportunity to close such gaps. As your question suggests, earning public trust will require a transparent and clear plan and early results that demonstrate resources are, in fact, improving service levels

12. The IRS has recently instituted a new policy that requires taxpayers applying for the R&D tax credit on an amended return to provide a detailed discussion of why their company qualifies for the R&D tax credit. The policy provides that the IRS will review the taxpayer’s submission, and if the taxpayer’s submission is found to be inadequate, for an initial period, the taxpayer has a 45-day period to perfect their claim in response to the IRS’s review.

My understanding is that, in practice, this new policy has placed significant burdens on small and medium businesses because the IRS has not provided adequate, detailed guidance and examples of the information the agency is looking for the taxpayer to provide. Furthermore, when the IRS rejects a filing, they are not providing the taxpayer with detailed taxpayer-specific guidance on what information is needed to satisfy any outstanding concerns.

In many instances, taxpayers are also waiting months and months for a reply from the IRS. This delay can mean that the taxpayer can be barred from applying for the R&D tax credit because the statute of limitations on filing an amended return will have ended – forcing the taxpayer to file in District Court if they wish to preserve their rights to file an amended return.

- a. What are your initial thoughts on this matter?
- b. Is this an acceptable level of taxpayer service?
- c. Should you be confirmed, will you commit to providing a more detailed response to me in writing within 90 days of being sworn in as Commissioner?

Answer: It’s important for the IRS to provide clarity wherever possible in administering the tax code. This is a core component of providing the best customer

service to working families and small businesses. Where there are areas of tax administration that can be improved to reduce complexity, I believe it should be studied and improved upon, if possible, within legal and regulatory bounds. If confirmed, I would look forward to studying this issue and working to ensure you and your staff are best informed about this specific issue of tax administration.

13. In November 2016, the IRS issued Notice 2016-66 listing Micro-captives as a “transaction of interest” to gather facts to determine which are abusive. Since then (over six years later), the IRS has not provided any guidance, but I have been told the IRS treats any Micro-captive subject to the notice as “abusive.” I also have been told that a settlement offer is made to the taxpayer at the inception of an examination on the assumption that all Micro-captives have the same fact pattern and that the Appeals process is unavailable. It appears that there is no, if any, indication that any single taxpayer’s unique facts are given consideration and that the IRS is taking a “one-size-fits-all” approach. This reportedly forces many taxpayers to settle due to the high cost of litigation and effectively eliminates the opportunity to have a hearing in the Independent Office of Appeals. I have also been made aware that in coordinated issue cases the IRS Commissioner seeks to have the same outcome for all taxpayers. I am getting complaints that such an approach has hampered the independence of the Office of Appeals, particularly in other factually intense cases such as valuation cases. And this lack of independence is causing a backlog in the Tax Court.

As you know, the Taxpayer First Act (P.L. 116-25) provides taxpayers with an Appeals hearing on the merits of their case. I have also authored legislation called the Small Business Taxpayer Bill of Rights that, among other things, would improve the Appeals process by:

- requiring taxpayer consent before allowing IRS Counsel or compliance personnel to participate in Appeals Conferences;
 - prohibits the Independent Office of Appeals from raising new issues or theories during a conference with taxpayers and the IRS;
 - making *ex parte* discussions between the Independent Office of Appeals and other IRS employees a fireable offense; and
 - establishing an alternative dispute resolution program that would allow taxpayers to request mediation by an independent, neutral party not employed by the IRS.
- a. What do you think the role of the Independent Office of Appeals should be in resolving disputes between the IRS and taxpayers?
 - b. Do you think a “one-size-fits-all” approach that ignores specific facts and circumstances is an appropriate approach for effective tax administration and IRS examination of taxpayer returns?

Answer: The IRS Independent Office of Appeals is one aspect of the customer service and taxpayer experience at the IRS, with an aim to resolve disputes in a way that is fair. If confirmed, I look forward to engaging with all staff at the IRS to better understand how they work now and ways that the IRS can improve. Also, I would be very

concerned about a “one-size-fits-all” approach in resolving tax issues. Specifically, I would look to the Taxpayer Bill of Rights where taxpayers have the right to be heard in challenging an IRS position and the right to an appeal. I believe a “one size fits all” approach would not be aligned with these rights.

14. During your confirmation hearing, you told the Committee: “Sales taxes are regressive.”

- a. The Tax Cuts & Jobs Act imposed a \$10,000 cap on the State and Local Tax (SALT) Deduction. Do you think eliminating the \$10,000 SALT cap is regressive and would disproportionately benefit high-income taxpayers?
- b. Are you aware that the Joint Committee on Taxation (JCT) has told Congress that almost half of the benefit of eliminating the \$10,000 SALT cap goes to millionaires and billionaires, almost 70 percent of the benefit goes to those making more than \$500,000, and taxpayers making less than \$50,000 will see no tax relief?
- c. Are you aware that the Congressional Research Service (CRS) has written, “The SALT Cap predominantly affects taxpayers with higher incomes...[T]he benefit of SALT deductions in terms of tax savings is also larger for taxpayers with higher incomes...[t]he SALT cap increased the federal tax burden of high-income taxpayers.” (The SALT Cap: Overview & Analysis, R46246, March 2020)?
- d. Do you agree with JCT and CRS? If not, why not?

Answer: In my personal capacity, it’s my understanding that some versions of SALT can be regressive depending on the structure just like many other taxes. When it comes to the sales tax, sales taxes are generally thought to be regressive because they increase tax burden as a percent on low-income taxpayers more than from high-income taxpayer. However, I am not intimately familiar with these analyses. The role of the Commissioner of Internal Revenue is to administer the tax code, which, if confirmed, I would look forward to discussing on matters involving implementation of the tax laws.

15. During your confirmation hearing, you told the Committee: “[I]’m a rule follower. And I would only take actions that are consistent with what the IRS’ authority are under the law.” On December 23, 2022, the IRS announced in Notice 2023-10 a delay in the reporting threshold for third-party settlement organizations that was set to take effect for the current tax filing season. Because of this delay, third-party settlement organizations will not be required to report the tax year 2022 transactions on a Form 1099-K to the IRS as enacted and required by P.L. 117-2. I opposed this intrusive and burdensome proposal and cosponsored the SNOOP Act of 2022, which eliminates this new reporting requirement.

- a. Can you explain what the legal basis is for the delay announced in Notice 2023-10?
- b. Do you think the IRS has the legal authority to make this decision without congressional action? If so, please explain.

Answer: The American Rescue Plan included a provision to require third party settlement organizations to report certain transactions to the IRS. It was set to take

effect this year. It's my understanding the IRS recently announced a one-year delay. I am not familiar with the specifics surrounding this decision and therefore, cannot speak to the legal or regulatory authorities that served as the basis for this delay. If confirmed, I look forward to learning about this issued delay and updating you and your staff.

Senator Menendez
Questions for the Record
Senate Finance Committee
Nomination Hearing of Daniel I. Werfel to be Commissioner of Internal Revenue Service
February 15, 2023

1. What percentage of users attempting to access IRS services are able to successfully complete the ID.me enrollment process without encountering any issues?
2. What percentage of users attempting to access IRS services experience problems with ID.me and what are the main challenges they encounter in using it?
3. What percentage of Black, Hispanic, and Asian-American and Pacific Islander (AAPI) users attempting to access IRS services report having issues using ID.me? Please provide similar statistics by age groups.

Answer: It is essential that our tax system operates fairly and that taxpayer data is secure and protected. I do not have specifics on IRS's decision-making around ID.me or other identity verification/authentication tools nor do I have access to statistics about the program. But I would like for you and the committee to know that protecting taxpayer data and privacy is of utmost importance to me – and to the employees at the IRS. I commit to learning more about this issue, if I am confirmed, and engaging with you and your staff.

Senator John Thune

Question 1

Senator Grassley and I introduced the IRS Funding Accountability Act, which includes the support of every Republican on the Finance Committee. The bill has a common-sense aim: to increase oversight of the \$80 billion in additional IRS funding.

Timely and reliable information from executive branch agencies, such as the IRS, is vital in order for Congress to exercise its Constitutional role of conducting oversight.

In addition to requiring annual spending plans for the \$80 billion in funding, our bill would require the IRS to provide quarterly reports to Congress on the actual expenditure of these funds.

Regardless of the timeframe for enactment of our bill, will you commit to provide Congress quarterly reports on the expenditure of the \$80 billion?

Answer: I believe it's important that the IRS's plans are transparent, updated, and clear to you and the American people. Since I am not currently at the IRS, I do not know the exact cadence that would work best. However, if confirmed, I will work with IRS and Treasury to ensure you and the American people are updated with appropriate frequency. I look forward to sharing more specifics with you on this.

Question 2

The Treasury Inspector General released a report last week that stated, "With the ability to undertake enforcement hiring under the Inflation Reduction Act, the IRS needs a more strategic approach to the allocation of examination resources."

The report found that the IRS does not have a coordinated approach to develop an annual enterprise-wide examination work plan, and TIGTA recommended the IRS establish such an annual plan.

In addition, a separate TIGTA report found that the IRS's "Report to Congress" does not contain specific and measurable performance goals or expected outcomes to measure progress, which could lead to an inefficient use of resources.

In your personal opinion, would the IRS benefit from better developing, articulating, and tracking its performance goals to Congress?

In your personal opinion, would the IRS – and American taxpayers – benefit from knowing how the IRS is developing, articulating, and tracking performance goals related to its recent \$80 billion funding allocation?

Answer: During my tenure at OMB, I observed cases where Federal agencies came short of meeting an IG or GAO recommendation. When I left OMB and went to the IRS in 2013, I was very focused on making sure the IRS fully implemented all TIGTA recommendations made during my tenure. If confirmed, I will seriously and systematically consider all TIGTA recommendations. Of note, I agree with the premise of your questions that there

would be benefit in both tracking performance goals in general and with respect to the IRA.

Question 3

In May of 2018, you contributed to an article published by the Boston Consulting Group that outlines four steps to high-impact strategic planning in government.

When explaining the fourth step of strategic planning, execution, the article reads that leaders “should hold regular evidence-based progress reviews with key managers, including officials who have direct oversight of programs that support each strategic objective.”

The article continues, “The most effective government organizations understand that without accountability and the right incentives, even the best strategic plan will likely never become reality.”

I was encouraged to see this, as the IRS Funding Accountability Act would require the IRS and Treasury Department to make quarterly reports to Congress on how the Inflation Reduction Act’s funds to the IRS are spent, and provide annual reports on key performance goals.

Given your stated support of oversight to enable the most effective government organizations, do you personally believe it is good public policy for the IRS to provide Congress with, at minimum, an annual spending plan, including performance goals and results, of the IRA funds?

Answer: Please see answer to question 1.

Question 4

On August 17, 2022, the New York Times reported that Secretary Yellen directed the IRS to draft within six months a plan for the IRS’s allocation of \$80 billion in funding. The article stated that “The plan must have metrics for its various areas of improvement so that Congress can hold the agency accountable.”

Given that Secretary Yellen made that directive six months ago, when do you expect the plan for the \$80 billion in IRS funding to be shared with Congress?

Have you personally seen the plan, in whole or in part? If so, when was that shared with you?

In order for Congress to hold the IRS accountable to its significant funding allocation, do you think it is reasonable for the IRS to share its plan for the funds to Congress in advance of spending the money (excluding for taxpayers services, which received only 3 percent of the overall funds)?

Are you aware of how much of the \$80 billion in funding has been spent as of February 17, 2023? If so, what is the amount?

Answer: I am not familiar with any aspect, timing, or status of the plan or funds spent beyond reading public news reports. If confirmed, I look forward to working with you and your staff in a transparent way.

Question 5

Given that the aforementioned directive from the Treasury Secretary is non-binding, it would appear the Treasury Department and the IRS can bypass important deadlines – and basic accountability – of the unprecedented \$80 billion funding allocation without recourse.

In order to build trust with taxpayers, do you believe it would be helpful for the IRS to share an annual spending plan, including performance goals and metrics, of how the agency intends to utilize funds allocated from the Inflation Reduction Act? Why or why not?

Answer: Please see answer to question 1.

Question 6

While it is constructive to find bipartisan policies to narrow the tax gap, it is worth noting that the United States has a relatively high and stable voluntary tax compliance rate. According to recent IRS data, about 84 percent of taxes were paid voluntarily and on time. After enforcement efforts and late payments are taken into account, about 86 percent of taxes were paid. Tax compliance levels remain substantially unchanged since at least the 1980s.

In your opinion, do agree that the United States has a relatively high and stable voluntary tax compliance rate?

Do you agree that narrowing the tax gap requires a comprehensive strategy and effective execution from the IRS, appropriate safeguards and accountability to taxpayers, and effective oversight and accountability of the IRS? Why or why not?

Answer: Voluntary tax compliance is the bedrock of the U.S.'s tax collection system. Closing the tax gap is essential both to protect the government's bottom line and to ensure the government is funded to provide essential services. I believe it is essential to strive to improve tax compliance rates, focusing on wealthy and corporate tax evasion. I agree that narrowing the tax gap requires a comprehensive strategy that is presented in an open and transparent way.

As I discussed in the hearing, I believe there are numerous factors that are required to build trust in the effectiveness of our tax system, including for example, equity and fairness in compliance activities, access, data security, and clarity on what is expected. Many of these principles are outlined in the Taxpayer Bill of Rights. If confirmed, I commit to studying the IRS's tax gap, understanding where there are gaps in both information and collection, ensuring that any steps taken advance the principles of the Taxpayer Bill of Rights, and communicating with you and this committee about my findings.

Question 7

As discussed at the Senate Finance Committee hearing, it has been almost two years since the leak or hack of private taxpayer information that ended up in the hands of ProPublica, a left-leaning media outlet. The confidential taxpayer information from that data breach has been subsequently used to push a highly partisan political agenda. Despite public assurances from the

Treasury Department and former IRS officials to keep Congress apprised of the breach, there has been no meaningful follow-up from the Biden administration.

In your personal opinion, how does the lack of accountability in regard to this breach of taxpayer data reflect on the IRS, and what type of impact do you think it has on the public's trust in the agency?

Notwithstanding potential proposals from TIGTA and other government agencies about the leak or hack of private taxpayer data, how would you seek to ensure that confidential taxpayer information from the IRS is not improperly shared again?

Answer: The safety and security of taxpayer data is of paramount importance to me and the IRS. My understanding is that this matter was immediately referred to the appropriate authorities, including the Treasury Inspector General for Tax Administration (TIGTA), the Department of Justice, and Treasury's Office of Inspector General, each of which conduct their work independently of the IRS. I cannot speculate about that work, any potential findings, or the timeline. I can commit to you that, if confirmed, I will ensure the IRS continues to prioritize protecting taxpayer information and will take any appropriate action to do so and will seriously and systematically consider all TIGTA recommendations.

Question 8

Unless IRS technology modernization is defined and measured, it would seem that any modernization effort may prove elusive.

In your opinion, what constitutes IRS "technology modernization" and what areas of technology modernization are you most focused on to improve taxpayer services?

Answer: For too long, the IRS lacked the resources to adequately serve communities and small businesses and has some of the oldest IT systems in government. The IRS needs to modernize its technology and become a 21st-century tax administrator that provides better service for taxpayers.

While I would want to reserve any final conclusions about what the key priorities should be until I have spent time at the IRS understanding the current environment, my current hypothesis is that the top modernization priorities fall into three buckets:

- **Ensuring the Individual Master File and Business Master File are updated to a modern platform to optimize data security and cyber resiliency, given the sensitivity of data maintained in those systems;**
- **Embedding innovative technology in the call center to help significantly increase responsiveness to taxpayers trying to make contact with the IRS; and**
- **Imaging paper forms into machine readable output to manage and eliminate back logs and help increase overall efficiency of return processing.**

Question 9

How do you consider the role of third parties, such as tax preparers and tax software, in the taxpayer experience? What ways, if any, would you seek to improve the working relationship between the IRS and such third parties to enhance the taxpayer experience?

Answer: We can and must look for any strategies or methods to work to make the tax filing process simpler and less burdensome on taxpayers. One area of particular focus should be better understanding the taxpayer experience and how effective different channels are for tax preparation and filing. With information from taxpayers on their experience, and with input from broad array of stakeholders, including preparers themselves, I will be better positioned to answer your question on roles and ways of improving the working relationship. If confirmed, I look forward to looking at all opportunities to enhance the taxpayer experience at the IRS.

United States Senate Committee on Finance
“Hearing to Consider the Nomination of The Honorable Daniel I. Werfel, of the District of Columbia, to be Commissioner of Internal Revenue for the term expiring November 12, 2027”

February 15, 2023

Questions for the Record for Mr. Daniel I. Werfel

Senator Carper

Question 1

I consistently hear from constituents who file paper tax returns about the lengthy and difficult experience they have with the processing of their returns. I have long advocated for the expansion of e-filing, especially through the Free File Program that provides lower- and middle-income taxpayers an option to e-file their returns at no cost. However, the Free File Program has been plagued by low usage rates, which is why I asked the Government Accountability Office (GAO) to study the Free File Program’s overall effectiveness. In its report released last April, the GAO called on the IRS to identify and develop additional options for taxpayers to e-file their tax returns for free. The Inflation Reduction Act also provided \$15 million to the IRS to study the cost and feasibility of creating a direct, e-file program. I look forward to reading the IRS’s report to Congress in May 2023.

If confirmed, how will you prioritize and tackle the challenges with respect to the current state of the Free File Program?

Answer: There’s a recent IRS statistic that it can take an average of 13 hours to file an individual income tax return and hundreds of dollars. That’s unacceptable, in particular for working families and small businesses. It is critical that IRS work on strategies and devote resources to make tax filing easier, simpler, and less burdensome for taxpayers. The IRA calls for the IRS to deliver a study of the feasibility of a direct file system and examination of taxpayer preferences. If confirmed, I look forward to engaging with IRS employees on the development and outcomes of the required study and any next steps it identifies.

Question 2

In the *Consolidated Appropriations Act of 2021*, which was signed into law December 27, 2020 by President Trump, Congress included a slightly amended version of the Carper-Collins *Incentivizing Offshore Wind Power Act*. This provision created a long-term investment tax credit for the offshore wind industry under section 48 of the tax code. This offshore wind investment tax credit is critical to ensure the clean energy of offshore wind – and the manufacturing and construction jobs that go along with the industry – are a reality in this country.

Prior to the passage of the *Consolidated Appropriations Act of 2021*, Senator Collins and I tried for over a decade to provide long-term tax certainty for the offshore wind industry through a stand-alone investment tax credit. So it is to our dismay there remains uncertainty around the implementation of the offshore wind investment tax credit because of delays by the Internal

Revenue Service (IRS). In placing the offshore wind investment tax credit under section 48 of the tax code, it was our intent to allow all the necessary offshore wind assets to qualify for the credit. This includes assets like the subsea cables and voltage transformers that are critical to bringing the offshore wind electricity to the electric grid. The Bluebook released by the Joint Committee on Taxation, JCS-1-22, reaffirmed this Congressional intent. However, to date, the IRS and Treasury have not released guidance clarifying that offshore wind developers can treat assets leading up to, and including, the onshore transformer and project substation as qualifying for purposes of claiming the investment tax credit.

In this country, there is an offshore wind project pipeline of more than 40GW, with projects in various stages of development. We are inching closer to finally having a constructed and operational offshore wind farm in federal waters. Right now, any delays in guidance is punishing the early offshore wind developers, further threatening the momentum of the industry.

If confirmed, will you commit to moving quickly on the backlog of decisions the IRS needs to make to help deploy clean energy, such as decisions involving the investment tax credit for offshore wind?

Answer: The role of the IRS is to administer the tax code efficiently and lawfully. I understand the need for the IRS, in partnership with Treasury, to issue tax regulations in an efficient manner and note your concerns about the impact of delays. If confirmed, I look forward to working with Treasury and the IRS Chief Counsel to understand the regulatory agenda and the ongoing work to administer the tax code in an efficient and fair manner.

United States Senate Committee on Finance
Hearing to Consider the Nomination of Daniel Werfel to be IRS Commissioner
2.17.2023
(All questions are directed to Mr. Werfel)
Senator Tim Scott (R-SC)

Question 1:

On December 15, 2022 Bloomberg Law reported the “confidential data of about 112,000 taxpayers inadvertently published by the IRS over the summer was mistakenly republished in late November and remained online until early December.” After the first disclosure, the Finance Committee was told, in writing, preventive measure would be taken so such a leak would not happen again. Yet, it happened again; a few months later. Ultimately, the Internal Revenue Service blamed a third-party contractor for the second disclosure. As Commissioner, how would you hold accountable those ensuring preventive measures were taken, but where not, and the contractor who leaked taxpayer information the second time? Do you think it would be reasonable to let those taxpayer whose information was disclosed?

Answer: The safety and security of taxpayer data is of paramount importance to me and to the IRS. In order to fulfill its mission, the IRS must safeguard the information of millions of Americans, and, as we all would expect, we see the IRS do this successfully year after year. If confirmed, I would take any unauthorized disclosure of taxpayer data extremely seriously, as I know my predecessors did. And, as has been done in the past, I would ensure that the matter was referred to the appropriate investigative authorities and that any appropriate remedial action was taken upon conclusion of the investigation.

Question 2:

It is my understanding that a lack of IRS guidance concerning WOTC could potentially result in windfall payments to firms that are merely claiming tax credits for employees who happen to meet WOTC criteria. The WOTC program requires an employer to obtain the pre-screening information set forth in Form 8850 "on or before" the job offer date, which helps ensure that an applicant's WOTC eligibility will positively influence an employer's hiring decision. Contrary to this requirement, I understand that some service providers may have set up screening practices that result in screening job applicants for WOTC eligibility after they have already been offered employment. Those providers could take the view that they are not violating the WOTC instructions because “offer of employment” is undefined for WOTC purposes, and thus that “conditional” or “contingent” offers do not trigger the screening requirement prior to becoming a “final” or unqualified offer. What is your timeline to provide clarification and guidance to employers on what constitutes an “offer of employment,” triggering the screening requirement for the purpose of WOTC?

Answer: The role of the IRS is to administer the tax code efficiently and lawfully. I understand the need for the IRS, in partnership with Treasury, to issue tax regulations in an efficient manner. If confirmed, I look forward to working with Treasury and the IRS Chief Counsel to understand the regulatory agenda and to work to administer the tax code in an efficient and fair manner.

Question 3:

IRS employee's performance evaluation includes judging their adherence to diversity, equity, inclusion and accessibility (DEIA) principles. As Commissioner, how will you implement DEIA performance evaluations so that IRS employees are clear as to the objective criteria used to evaluate their DEIA performance? As Commissioner, how will you respond if the developed DEIA criteria conflict with existing equal employment opportunity laws?

Answer: I agree that performance criteria should be clear and consistent with all relevant personnel laws. As I am not currently at the IRS, I am not familiar with the IRS's current performance evaluation principles. However, if confirmed, I look forward to studying the IRS's performance evaluation system and working to ensure the IRS workforce continues to improve.

United States Senate Committee on Finance
Hearing on the nomination of Daniel Werfel for IRS Commissioner
February 15, 2023
Questions for the Record for Danny Werfel

Senator Cardin

Question 1:

The Employee Retention Tax Credit (the ERTC) was created by the CARES Act and was extended by subsequent pandemic relief legislation. The goal of this tax credit was to encourage businesses to keep employees on their payroll. As Chairman of the Senate Small Business Committee, I know that the ERTC was vital in helping small businesses across the country retain their workforce and keep their doors open during the pandemic. This credit has been and continues to be essential for the financial health of many. Unfortunately, I have received significant outreach from constituents that the IRS is taking several months to process these businesses' returns claiming the ERTC, resulting in businesses unable to receive their ERTC in a timely manner.

What can the IRS do to help ease the backlog of ERTC claims and ensure a timely delivery of this credit to businesses depending on the ERTC?

Answer: Through this nomination process, I have heard from many Senators about the Employee Retention Tax Credit and the impact of delays on small businesses and nonprofits. I understand the importance of ensuring taxpayers receive the tax benefits they are owed and the frustration that delays can cause. If confirmed, I commit to prioritizing this issue and briefing you and your staff on what I learn.

Senator Cassidy QFR

Louisiana has many historic districts and buildings that benefit from historic preservation easements. This tool helps protect historic buildings, and transform many iconic structures in a manner that retains historic character. I am an advocate for protecting and expanding the use of historic preservation programs, and advocated for amendments in the last Congress to protect the integrity of the historic preservation easement program.

A non-profit group in my state recently contacted my office asking for my assistance to direct the IRS to remove the haze of confusion that unnecessarily deters would-be donors of historic preservation easements. The conservation easement reforms passed in the 2022 omnibus bill require the IRS to issue Safe Harbors to taxpayers who are attempting to use this program as Congress intended. Safe harbors addressing matters such as extinguishment clauses and proceeds regulations should help to clear the decks of much of the controversy otherwise heading toward Tax Court.

1. If confirmed, can you ensure the IRS will meet the 120-day deadline for issuing the safe harbors required by the conservation easement provisions included in the omnibus?
2. Will you work to have a separate safe harbor issued for historic preservation easements, including provisions that clearly differentiate between historic buildings and green space easement transactions?
3. Will you work with me to ensure that this safe harbor works as intended, and to ensure that taxpayers utilizing historic preservation easements have the full opportunity to cure any alleged deficiencies in deeds or other paperwork to comply with the safe harbor?

Answer: Yes, I commit to doing what is necessary to meet Congressional requirements associated with historic preservation easements. Further, and as I discussed in the hearing, I understand how important certainty and clarity can be for investment in these critical historic preservation programs. In fact, the very first right listed on the Taxpayer Bill of Rights is the right taxpayers have to know what they need to do to comply with the tax laws. A priority of mine, if confirmed, is to further improve clarity across the IRS's work.

If confirmed, I commit to working with Treasury and the IRS Chief Counsel to understand the regulatory agenda, to work to understand where the IRS can efficiently and fairly implement priority regulations, and keep you and your staff updated on this progress.

United States Senate Committee on Finance
Hearing to Consider the Nomination of The Honorable Daniel I. Werfel, of the District of Columbia, to be Commissioner of Internal Revenue for the term expiring November 12, 2027
February 15, 2023

Questions for the Record for the Honorable Daniel I. Werfel

Senator Brown

Historic preservation tax incentives have been used successfully throughout Ohio to rehabilitate historic buildings, increase available housing, and revitalize urban neighborhoods.

If confirmed, will you work with stakeholders to promote the legitimate use of historic preservation easements and protect the integrity of this tax incentive?

Answer: If confirmed, I very much look forward to working with stakeholders to protect the integrity of the tax system and ensure tax programs, like the historic preservation easements, are administered in a fair and efficient manner.

I have heard from small business owners across Ohio who filed for the Employee Retention Tax Credit (ERTC) and have yet to receive their refund. Some have been waiting for more than a year for the funds to which they're entitled. For many of these small businesses, these payments could mean the difference between remaining open and having to lay off employees, cut back hours, or even close their doors permanently.

If confirmed, what steps will you take to address this backlog?

Answer: Through this nomination process, I have heard from many Senators about the Employee Retention Tax Credit and the impact of delays on small businesses and nonprofits. I understand the importance of ensuring taxpayers receive the tax benefits they are owed and the frustration that delays can cause. If confirmed, I commit to prioritizing this issue and briefing you and your staff on what I learn.

Over the past several years, Ohioans have faced long call center wait times and long waits to get their tax returns. It's important that the IRS have the resources and staff to answer calls from Ohioans, ensure timely returns, and crack down on tax cheats. As you know, the Inflation Reduction Act is already helping to improve customer service and help get Ohioans their tax refunds faster. Resources from the IRA will also enable the IRS to replace retiring workers in a timely manner and support its work going after corporations and wealthy individuals that have cheated the system for years, and that too often pay less in taxes than middle class families do.

If confirmed, will you commit to working in partnership with my office and others to ensure timely responses to Ohioans reaching out to the IRS for assistance?

Answer: Yes, improving customer service will be a key priority of mine, if confirmed. Your constituents and the American people have a right to quality service, which I hope to help further at the IRS, if confirmed.

If confirmed, will you commit to supporting the IRS workforce in its mission to provide timely responses and refunds to Americans during and outside of tax season?

Answer: Yes, if confirmed, I am committed to working with the IRS workforce to provide timely responses to American taxpayers. As I mentioned in the hearing, the Taxpayer Bill of Rights is important to me, which includes the right to be informed, the right to quality service, and the right to finality. I hope to help further that work, if confirmed.

Do you share Treasury Secretary Yellen's commitment to not increasing audits on Americans making less than \$400,000, but instead to focus additional resources on going after those individuals and businesses that are purposefully cheating the system?

Answer: As I said in my testimony, last year, Secretary Yellen issued a directive that the IRS will not increase audit rates, relative to historic levels, for small businesses and households making under \$400,000 a year, which I am committed to meeting. If I am fortunate enough to be confirmed, the audit and compliance priorities will be focused on enhancing IRS capabilities to ensure America's highest earners comply with applicable tax laws.

Questions for the Record for the The Honorable Daniel I. Werfel:

Senator Lankford:

Question 1: *Do you agree that it is not the role of the IRS or any other government agency to deny an otherwise available public benefit to an organization on account of its religious status?*

Answer: **In order for our tax system to work, taxpayers must have confidence that all taxpayers, regardless of who they are or what their affiliation is, are treated fairly and impartially. If confirmed, I will make sure that taxpayers—regardless of background and whether they are individuals, small businesses, or non-profits—are being treated fairly and that the tax laws are being applied impartially and equally to all.**

Question 2: *If confirmed, you will oversee the processes and procedures to determine exemption of organizations from federal income tax under IRC Section 501(c)(3). Will you commit that no decisions are based on bias for or against a political or religious viewpoint?*

Answer: **If confirmed, it would be a top priority of mine to ensure the tax laws are administered fairly and impartially. Given the risk that bias has to the integrity of the tax system, if confirmed I will use my authority to ensure that the IRS meets this priority successfully.**

Question 3: *Will you commit to transparency to Congress on the on the process, procedures, reviews, communication, and training regarding determination of tax exempt status for applicant organizations?*

Answer: **Public trust requires transparency, collaboration with oversight entities such as Congress, adherence to the rule of law, and responsible stewardship of taxpayer dollars. Public trust also requires that the government carry out its mission fairly and equitably. If confirmed, these are the principles I will continue to carry forward into this role.**

Question 4: *Is there ever a basis for the IRS to write regulations, issue guidance, or implement in a way that contradicts statute? If applicable, how would you decide that the Congressional intent is different than what was written?*

Answer: **It is the role of the IRS to administer the tax code efficiently, fairly, and fully consistent with law. While I understand that there can often be differing interpretations of the law, if confirmed, I will work with the tax-writing committees, Congress more broadly, and the Treasury Department to administer the tax code consistent with the statutes enacted into law.**

Question 5: *The unauthorized disclosure of returns or return information is a felony under 26 U.S.C. § 7213(a)(1),(2). It is also a felony under federal law to publish returns or return information that were disclosed to the publisher by someone else under 26 U.S.C. § 7213(a)(3).*

If confirmed, how will you enforce federal law and coordinate with the appropriate authorities on those publishing protected, taxpayer information?

Answer: The safety and security of taxpayer data is of paramount importance to me and to the IRS. In order to fulfill its mission, the IRS must safeguard the information of millions of Americans, and, as we all would expect, we see the IRS do this successfully year after year. If confirmed, I would take any unauthorized disclosure of taxpayer data extremely seriously, as I know my predecessors did. And, as has been done in the past, I would ensure that the matter was referred to the appropriate investigative authorities and that any appropriate remedial action was taken upon conclusion of the investigation.

Question 6: A recent GAO report found that 33 percent of the applications, 23 percent of the software instances in use, and 8 percent of the hardware assets are legacy systems. The IRS spends about \$635 million on applications, \$324 million on software, and \$115 million on hardware in FY22 for operations and maintenance. The IRS doesn't specifically track the costs for its legacy systems because of OMB's directive to use the Technology Business Management (TBM) approach to budgeting). A recent GAO report said the IRS documented 21 IT initiatives in its modernization portfolio.

Knowing what you know about the recent failures of IRS technology, what IT modernization initiatives will you prioritize?

Answer: For too long, the IRS lacked the resources to adequately serve communities and small businesses and has some of the oldest IT systems in government. The IRS needs to modernize its technology and become a 21st century tax administrator that provides better service for taxpayers.

While I would want to reserve any final conclusions about what the key priorities should be until I have spent time at the IRS understanding the current environment, my current thinking is that the top modernization priorities fall into three buckets:

- **Ensuring the Individual Master File and Business Master File are updated to a modern platform to optimize data security and cyber resiliency, given the sensitivity of data maintained in those systems;**
- **Embedding innovative technology into IRS' service work – whether on the phones or online -- to help significantly increase responsiveness to taxpayers trying to contact the IRS; and**
- **Digitizing paper forms into machine readable output upon receipt to manage and get healthy on inventory and help increase overall efficiency of return processing**

If confirmed, I look forward to getting up to speed on the current modernization efforts and future plans and engaging with you and your staff on IRS's progress.

Question 7: IMF is the IRS' primary storage hub for individual tax account data. The IRS had said the IMF would not be fully replaced until 2030. The IRS now does not have a completion date. GAO [said](#) IMF is “written in an archaic language requiring specialized skills that are increasingly hard to find.”

How would you handle IMF in the short term and replace it in the long-term?

Answer: As noted in my response to the previous question, I believe modernizing the core tax processing system—including IMF and BMF—should be a priority on IRS’s agenda. By gradually decommissioning our legacy infrastructure, we will also be able to deprecate outdated programming languages, which are inefficient to use and understood by only a small subset of technologists. If confirmed, I will immediately seek to understand the current state of the IMF and BMF, any plans underway for modernization, any previous plans that were paused or suspended so we can learn from past experience, and working to develop a strategy that lays out a clear path forward. As a general rule, I believe we will need to strategically balance the activities required to decommission the legacy systems with the activities required to introduce modernized infrastructure such that we can maintain continuity in tax processing while also preparing IRS’s technology infrastructure for the future.

Sen. Michael Bennet

Question 1

The IRS administers the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC), which currently lift 12 million kids out of poverty. But about one fifth of eligible Americans do not claim the EITC.

There are many reasons for this, including a lack of awareness about the credit, difficulty filing, or confusion over eligibility.

How can the IRS help more eligible families claim the EITC and CTC? Can you commit to setting clear goals for increasing uptake of the EITC and CTC?

Answer: It is essential that all taxpayers know about and receive the credits, deductions, and other tax incentives for which they are eligible – whether that’s certain individual credits like the CTC and EITC or small businesses who applied for the Employee Retention Tax Credit. Over the last few years, the IRS sent millions of Advance CTC payments and Economic Impact Payments, demonstrating their success in reaching many taxpayers who would not otherwise file a tax return or did not know they were eligible for these new credits. However, I know there is more to do in this space as millions of taxpayers fail to claim tax credits and incentives for which they are eligible. If confirmed, I am committed to raising awareness about existing tax benefits and helping taxpayers learn about the tax benefits they are eligible for and understand how to claim them.

Question 2

The IRS estimates that Americans spend on average 13 hours and \$250 fulfilling their legal obligation to file a tax return every year. What will you do as Commissioner to make the filing process easier, and to reduce the cost and burden on Americans for simply complying with the law?

Answer: It is critical that IRS work on strategies and devote resources to make tax filing easier, simpler, and less burdensome for taxpayers. If confirmed, I look forward to engaging with IRS employees on the development and execution of strategies to improve tax administration in a way that improves customer service and helps honest taxpayers more simply comply with their tax obligations. While I would want to reserve any final conclusions about what the key priorities should be until I have spent time at the IRS understanding the current environment, my current hypothesis is that a critical step should be embedding innovative technology in the call center to help significantly increase responsiveness to taxpayers trying to contact the IRS.

Question 3

Treasury and the IRS face an enormous new challenge of implementing the \$270B of clean energy tax credits in the Inflation Reduction Act (IRA). These credits are the driving force

behind the reduction in greenhouse gas emissions in the new law. What can Congress do to ensure the IRS has the capacity to meet its new and urgent responsibilities?

Answer: I understand the significant responsibility the IRS has in implementation of the IRA, and my job as Commissioner would be to ensure that it is implemented in a fair and impartial manner. Households and businesses across the country are eligible for significant benefits pursuant to the IRA, including energy tax credits. As Commissioner, if confirmed, I would work to ensure that taxpayers can understand and access the tax benefits they are eligible for and ensure that the law is implemented and enforced impartially and would look forward to working in partnership with you and the committee on status and progress of these efforts.

United States Senate Committee on Finance

Hearing on “the Nomination of The Honorable Daniel I. Werfel, to be Commissioner of Internal Revenue February 15, 2023

Questions for the Record for Mr. Daniel Werfel

Questions from Senator Daines (MT)

1. My Putting First Responders First Act was signed into law as part of the retirement legislation that we considered in this Committee last Congress. This law will make compensation received by disabled first responders tax exempt even after retirement, and importantly, would end improper audits of disabled first responders that stem from ambiguity around their retirement age. However, the version that was signed into law moved the effective date of the bill to 2026, which was different from the Committee-passed version that had this provision taking effect immediately. The unfortunate consequence of this is that erroneous IRS audits of disabled first responders could continue for the next several years.

If confirmed, will you commit to ending improper audits of disabled first responders? If confirmed, and you believe you need to discuss this with relevant IRS staff, will you commit to getting back to me with an answer within six weeks once confirmed?

Answer: If confirmed, I commit to understanding this issue, looking for ways to ensure customer service, taxpayer experience, and fair administration of the tax code are prioritized. As I discussed in the hearing, I believe equity to be a critical factor in effective implementation of the tax system. In particular, if confirmed, I want to make sure that the IRS meets people where they are and complies with all elements of the Taxpayer Bill of Rights. This will absolutely include disabled first responders who deserve a responsive IRS that meets them where they are to ensure they have the support they need in meeting any tax obligations. Also, I have no knowledge of the status of audits of this group, but, if confirmed, I commit to learning about this issue, benefiting from your insights, and working with you and your staff to keep you updated.

2. In November, then-Ranking Member Brady, sent a letter to then-IRS Commissioner Rettig questioning why the agency sent letters to nine million individuals right before the election alerting them to potential tax benefits.

Given your extensive management experience, do you think it made sense to send out these mailers to potentially ineligible individuals, and add additional work to the IRS’s plate at a time when the agency had 9 million unprocessed 2021 returns and over 18 million tax returns awaiting IRS action?

Answer: It is critical that the IRS get healthy on its inventory so that taxpayers can resolve issues and get refunds more quickly. At this point, I am not familiar with any decision-making around this specific issue or work the IRS has done, but I know the IRS has been working diligently on the inventory and as a part of my commitment to improved customer service, getting healthy on inventory will be one of my priorities if I am confirmed.

3. Given that the IRS is tasked with enforcing tax laws, and has a poor track record of keeping taxpayer information private, do you think it is appropriate that the agency be given even more information and power by virtue of having it prepopulate tax returns?

Answer: The safety and security of taxpayer data is of paramount importance to me and to the IRS. If confirmed, I am committed to making data security a top implementation priority. This would involve:

- **Establishing for the organization that data security is a top priority;**
- **Setting measurable goals with an objective to mitigate any risk of unauthorized disclosure;**
- **Assessing the current capabilities of the process, personnel, and technology to secure data effectively, identifying gaps, and establishing a robust action plan to timely to close;**
- **Establishing a program of continuous improvement so that the organization is routinely assessing its capabilities and risks and making improvements to keep ahead of the risks;**
- **Benchmarking other organizations and sectors for emerging data security solutions and ensuring that all approaches are up to date in terms of maximizing effectiveness;**
- **Ensuring personnel are fully aware of their responsibilities and feel accountable to secure data.**

I believe these steps would establish a critical evidence-base useful in guiding any path forward that changes the manner in which tax returns are prepared.

4. Given recent reports of delays and errors in processing tax returns and issuing refunds, particularly in light of staffing and technology issues, what steps do you plan to take to improve the IRS's ability to process returns and issue refunds in a timely and accurate manner, and how do you plan to address concerns about the agency's customer service and taxpayer support programs?

Answer: Similar to the approach outlined in response to the previous questions, if confirmed, I would intend to assess the baseline performance and establish an action plan to close gaps. Specifically:

- **Establishing for the organization that processing returns to timely issue refunds is a top priority;**
- **Setting measurable goals with an objective to mitigate any risk of delays in refund issuance;**

- **Assessing the current capabilities of the process, personnel, and technology to process returns;**
- **Establishing a program of continuous improvement so that the organization is routinely assessing its capabilities and risks and making improvements to keep ahead of the risks;**
- **Ensuring personnel are fully aware of their responsibilities and feel accountable to improve performance on timely issuance of refunds.**

If confirmed, meeting these steps will likely require both significant technology upgrades and additional human resource capacity in areas such as customer service and processing. If confirmed, I will lead these efforts in close collaboration with this Committee and further public trust with American taxpayers.

5. The IRS has been criticized for its poor customer service, with long wait times and difficulty getting in touch with a representative. How do you plan to address these issues and ensure that taxpayers are able to get the assistance they need in a timely and efficient manner?

Answer: See response to question 4, which outlined a planned approach of assessing a baseline and establishing a plan for improved performance. The efforts to improve processing and timely issue refunds are inter-connected with improved performance of gaining access to IRS for help when needed. While I would want to reserve any final conclusions about what the key priorities should be until I have spent time at the IRS understanding the current environment, my current hypothesis is that a critical step should be embedding innovative technology in the call center to help significantly increase responsiveness to taxpayers trying to contact the IRS.

- a. What specific steps do you plan to take to address concerns about the IRS's use of data analytics and technology, particularly in light of recent reports of potential privacy violations and other abuses of power by the agency?

Answer: The safety and security of taxpayer data is of paramount importance to me and to the future of the IRS. In order to fulfill its mission, the IRS must safeguard the information of millions of Americans. In response to question 3 above, I outline a high-level set of steps to assess the current baseline on data security and privacy. This approach will help assess how and whether data analytics and technology impact privacy and data security issues. If confirmed, I would prioritize this across all workstreams that would come across my desk and work with this Committee to ensure the IRS's activities are transparent.

- b. The IRS has been criticized for its handling of taxpayer information, particularly in light of recent data breaches. How do you plan to ensure that taxpayer data is secure and protected from unauthorized access?

Answer: See response to question 3.

6. The IRS has recently been using advanced algorithms and data analysis tools to monitor and track taxpayer activities. How do you plan to ensure that the IRS remains transparent in its use of these tools and does not infringe on the privacy rights of taxpayers?

Answer: Protecting taxpayer privacy rights is paramount to building and maintaining trust. Since I am not at the IRS, I am not aware of the IRS's current internal tools and processes. However, if confirmed, ensuring transparency and protecting taxpayer information would be a key priority of mine that I am committed to working with you and this Committee on.

7. The IRS has been working to implement a new system for processing tax returns, which has faced delays and technical challenges. How do you plan to ensure that this new system is implemented effectively and efficiently, and that taxpayers are not negatively impacted by any delays or issues?

Answer: If confirmed, I would plan to prioritize customer service and taxpayer initiatives, including doing all we can to tackle customer service issues head-on and ensuring that all taxpayers, including small businesses, receive the best-in-class service they deserve.

8. Can you provide specific examples of how you have worked to reduce waste, fraud, and abuse in government programs in your past roles, and how do you plan to apply these principles to your leadership of the IRS, particularly with regard to tax enforcement and compliance?

Answer: First, during both the Bush and Obama Administrations, I led government-wide efforts to measure and remediate improper payments as well as to reduce waste in federal real estate holdings. During this time, the government made important advances in making improper payment rates public, launching new solutions to root out fraud, and freezing the footprint of Federal real estate.

Second, I was the OMB lead on coordinating and implementing the government-wide reporting and accountability requirements of the American Recovery and Reinvestment Act (ARRA). The launch of Recovery.gov created a new bar in the transparency of Federal spending and the \$787 billion stimulus bill was widely considered to be implemented with historically low levels of payment errors.

Critical to success in these endeavors was ensuring that all stakeholders understood the importance of program integrity and felt accountable for results. I will plan to bring these principles to the IRS, if confirmed.

9. During your confirmation hearing before the Senate Finance Committee on February 16, 2023 you pledged not to expand tax audits on business and households making less than

\$400,000 per year. What authorities will you rely on to ensure the IRS is held accountable to that commitment?

Answer: Secretary Yellen and the IRS have committed that the IRA funding will not be used to increase audit rates, relative to historic levels, for households and small businesses making under \$400,000 a year, which I am committed to upholding. As I have not been involved yet with the planning process, I do not have specifics on how IRS will implement this directive. But if confirmed, I look forward to ensuring that IRA implementation complies with this commitment and will keep this committee informed of these efforts.

10. In a letter to the former Commissioner of the IRS on August 10, 2022, the U.S. Secretary of the Treasury said that audit rates for households earning less than \$400,000 would not rise “relative to recent years.” Can you specify to which years that refers?

Answer: As I said in my testimony, I am committed to meeting Secretary Yellen’s commitment and, if confirmed, look forward to ensuring this directive is followed through on. I do not know the specifics for how the IRS tracks or measures their metrics, but, if confirmed, I look forward to working with you and this Committee in a transparent way.

11. In your report titled, “Charting a Path Forward at the IRS: Initial Assessment and Plan of Action” (6/24/2013), you write, “At this time, while fact gathering is still underway, we have not found evidence of intentional wrongdoing by IRS personnel, or involvement in these matters by anyone outside of the IRS.” Do you still believe there was no intentional wrongdoing by IRS personnel and what are the reasons for your position?

Answer: This report was published 30 days after I arrived at the IRS and the referenced conclusion was based on the available information at the time. Over the next 8 months, I continued to ensure that relevant investigative authorities, including Congress and TIGTA, were provided access to all the discovery requested to draw final conclusions about all matters related to this matter, including the behavior of involved IRS personnel. After my departure, it is my understanding that the Senate Permanent Subcommittee on Investigations and TIGTA, after review of more than 800,000 responsive documents and transcribed interviews of dozens of IRS employees with knowledge or involvement in the matter, both issued final reports. I believe the findings and conclusions of these exhaustive reports and investigations should be the definitive source on whether IRS personnel engaged in intentional wrongdoing in this matter.

12. In March 2021, President Biden signed Executive Order 14019 calling for every federal agency to “promote voter registration and voter participation” and to expand access to “accurate election information.” Should the Internal Revenue Service be involved in promoting voter registration and voter participation and expanding access to accurate

election information? If yes, how would you as Commissioner execute this executive order and what would be an example of what you would do?

Answer: The IRS's primary responsibility is to administer the tax code. I am not intimately familiar with the current rules and regulations regarding this specific matter, but, if confirmed, I look forward to administering the tax code in accordance with all applicable rules and regulations.

13. There has been some discussion of having the IRS prepare returns on behalf of taxpayers by using the information (e.g., wages, investment income) reported to the IRS.

What additional legislative authority would the IRS need to prepare tax returns in this manner? If you believe the IRS does not need additional authority, could you please cite the existing authority that would authorize the IRS to do this?

Answer: I am not intimately familiar with the IRS's current rules, regulations, or authorities regarding this matter. If confirmed, I look forward to working with this Committee to consult on the administrability considerations of any matter.

14. Processing paper returns remains a weakness for the IRS, with a paper return backlog still in the millions. In response to this backlog, Erin Collins, the National Taxpayer Advocate, directed the IRS to implement existing scanning technology, including 2-D barcoding, to expedite processing tax returns filed on paper. Despite this directive, the IRS failed to implement such technology for the 2023 filing season.

If you are confirmed, do you commit to ensuring the IRS implements 2-D barcoding technology for the 2024 tax filing season?

Answer: The National Taxpayer Advocate's recommendations are extremely important to consider. If confirmed, I look forward to working with the National Taxpayer Advocate to improve customer service, taxpayer experience, and implementing policies that can help taxpayers, including the use of scanning technologies to increase IRS' speed and efficiency in processing paper returns and correspondence.

15. An increasing number of constituents across Montana have contacted my office frustrated about their inability to get in-person help at IRS Taxpayer Assistance Centers (TAC) due to inadequate staffing.

If you are confirmed, what immediate steps will you take to ensure all five IRS TAC offices in Montana are fully staffed and operational? Under your leadership, will the IRS place as much emphasis on in-person IRS resources for taxpayers as online/phone resources?

Answer: Working to fully staff Taxpayer Assistance Centers is a priority of Secretary Yellen's and mine, if confirmed. In order for taxpayers get the best customer service possible, we must do all we can to improve service, be it in-person, online, or through the mail.

16. After having spent the past several years at Boston Consulting Group, what three lessons, skills, or perspectives from your time in the private sector do you plan to implement at the IRS if you are confirmed?

Answer: First, my experience has led me to believe that strong and engaged leaders set and communicate clear priorities, proactively align resources to those priorities, and work to remove any barriers to success. Second, I have learned that there will always be stakeholders who stand to benefit from maintaining the status quo. Strong leaders understand the stakeholder map and have a robust strategy to actively engage and communicate across diverse stakeholders to help ensure momentum for change versus the inertia that will set in if you are passive. Third, I believe that innovation means developing, trying, and testing new approaches. Strong leaders set up an environment conducive to innovation by establishing conditions that allow for innovation with strong risk mitigation and accountability protocols in place.

17. In 2013, as acting director of the IRS, you told members of Congress that taxpayers had lost faith in the agency and pledged that you were “committed to restoring that trust.” A decade later, little has changed to positively impact the relationship between the IRS and taxpayers. While no one solution will repair the relationship, the IRS could begin in earnest by listening to taxpayers.

Will you commit to conducting surveys, focus groups, and other efforts to determine how taxpayers themselves would like the agency to improve customer service?

Answer: Directly engaging with taxpayers is essential and will be a priority of mine, if confirmed. From my time in the private sector, I understand there are innovative and robust ways to understand the “customer experience” by gaining insight into their perspective. If confirmed, I look forward to bringing these solutions to the IRS so that we better understand the “taxpayer experience” with the IRS and make changes to continuously improve that experience.

18. The unprecedented influx of appropriations the IRS is receiving under the Inflation Reduction Act has placed heightened levels of congressional scrutiny on the agency.

How do you plan to engage with the Finance Committee, Ways and Means, and Congress to ensure the IRS maintains the highest level of transparency? Will you proactively and openly engage with TIGTA, GAO, and other IRS watchdogs?

Answer: I am committed to productive and consistent engagement with this Committee, Ways and Means, Congress, TIGTA, GAO, and other IRS watchdogs. Public trust requires transparency, collaboration with oversight entities such as Congress, adherence to the rule of law, and responsible stewardship of taxpayer dollars. The oversight work conducted by TIGTA and GAO is invaluable to the proper functioning of the IRS. It is vital that the IRS be responsive to their inquiries and maintain a cooperative relationship that encourages transparency and accountability. If confirmed, I would look forward to continued engagement with all oversight bodies.

19. I was pleased to support the Taxpayer First Act, which became law in July 2019. As you know, section 2201 of the Act requires the IRS to update the system it currently operates that allows financial institutions to request tax transcript data when underwriting a loan. The law requires the IRS to implement an online process that provides transcripts in as near to real time as possible, making the loan process faster and more efficient for consumers and lenders. The process today (called the Income Verification Express Service, “IVES”) relies successfully on lenders to verify the identity of the borrower – something they are already required to do by law.

During the process of implementing the IVES, the IRS collected \$72 million from the lending industry to assist in funding the development of the IVES functionally. It is my understanding the user base of this system has communicated to the IRS that the proposed identity verification process will prevent them from using the system due to the increased friction for their customers. I am concerned the IRS has been resistant to partnering with the IVES user community to find a workable solution.

Are you aware of the IRS’ plans to spend \$72 million collected from the IVES user community on a system that has been called into question for workability?

Will you commit to encouraging the IRS to work with the IVES user community on a workable solution before the change in identification verification is made?

Has Treasury or the IRS conducted any impact analysis on the use of the IVES system if the new identify verification changes are instituted?

Answer: As I am not currently at the IRS, I am not familiar with the IRS’s plans or analyses regarding the IVES program. However, if confirmed, it would be important to me to look forward to engaging all stakeholders as to how the IRS can improve customer service and the taxpayer experience.

United States Senate Committee on Finance

Hearing to Consider the Nomination of the Honorable Daniel I. Werfel, of the District of Columbia, to be Commissioner of Internal Revenue for the term expiring November 12, 2027

February 15, 2023

Questions for the Record for the Honorable Daniel I. Werfel

Senator Young

While the questions below are numerically separated by theme for clarity and convenience, some may include sub-part questions denoted alphabetically. **Please note that individual responses to each sub-question are requested.**

For the purposes of questions that clearly end in “yes or no,” answers other than “yes” or “no” will similarly be deemed unresponsive to such questions.

Question 1

Following the Tea Party targeting scandal at the IRS in 2013, you were appointed to be the Acting IRS Commissioner by President Barack Obama. Now, ten years later, you have been nominated to lead an organization that is once again struggling to maintain taxpayer trust. Between the severe backlog of return processing, millions of unanswered phone calls, and a continued lack of information regarding the unprecedented leak of taxpayer information by ProPublica, it is increasingly challenging for many taxpayers to put their trust in the IRS. This is deeply concerning, as the agency plays a vital role in maintaining important societal structures.

- a) *What lessons did you learn during your time as Acting Commissioner and, if confirmed, how do you plan to apply those lessons to the IRS today?*

Answer: When I was Acting Commissioner, I relied on the lessons I learned as a career civil servant that the government is operating at its best when it is transparent, accountable, and builds trust with the public. For example, a strong public administrator looks for ways to make things transparent to the public. A strong public administrator understands the important role that oversight entities play. A strong public administrator empowers the workforce to be a part of the solution and help chart the path forward and when doing so, helps ensure people at all levels of the organization feel accountable to meet the mission effectively. If confirmed, I will bring those same guiding principles to my work at the IRS.

- b) *Additionally, can you please highlight how you intend to rebuild taxpayer trust and restore the IRS to its goal of “providing America’s taxpayers top quality service” as highlighted in the IRS mission statement?*

Answer: Public trust is essential in the operation of government. The IRS should be clear about which parts of the tax gap it seeks to close and then demonstrate results that are consistent with these priorities. If confirmed, I head into the IRS with a directive from Secretary Yellen to improve customer service and to ensure that new funds appropriated under the IRA do not increase audit rates on individuals and small businesses that earn less than \$400,000 per year. Also consistent with my understanding of Secretary Yellen’s directive, we should increase the IRS’s capacity to address any tax evasion of high-income or corporate taxpayers. If we can make the IRS’s plans clear in meeting this directive and then demonstrate results, I think the IRS will increase public trust.

Question 2

While you have committed to working to institute new technologies at the IRS that will decrease processing time and increase the IRS’s ability to effectively serve taxpayers for the future, in the short-term I continue to hear from many of my constituents who are unable to get in contact with their local Taxpayer Assistance Centers (TACs) to address outstanding issues with their returns in person. While one of the issues is staffing capacity, taxpayers who are interested in a TAC appointment are unable to get through to the nationwide telephone scheduling service to set up that appointment. Therefore, even when the TACs do have capacity, taxpayers are unable to take advantage of that capacity because the only method of setting up those appointments—the nationwide telephone scheduling line—is not properly managed.

- a) *Do you believe it is important in some circumstances that taxpayers have access to in-person IRS services? Why or why not?*

Answer: Yes, in-person IRS service is a critical component in the IRS’s customer service toolkit. I believe that there should be multiple channels for being accessible to taxpayers so the IRS can provide service in the variety of ways that taxpayers need, whether that’s in person, on the phone, or online. If confirmed, meeting taxpayers where they are will be an important part of the daily mission.

- b) *If confirmed, do you commit to investigating this issue further and implementing improvements and/or alternatives to ensure that taxpayers can secure available TAC appointments?*

Answer: Yes, if confirmed, ensuring taxpayers can access Taxpayer Assistance Centers will be a continued priority, one that I understand has been improved upon this filing season.

- c) *Do you believe there are at least some positions at the IRS, such as positions at local Taxpayer Assistance Centers, that require employees to conduct their work in the relevant IRS facility, yes or no?*

Answer: I believe there are many circumstances that require in-person work.

- d) *If you answered “yes,” to part (c) above, do you believe it is important that now, in 2023, employees in those positions return to in-office work?*

Answer: If confirmed, it will be a priority of mine to ensure IRS employees are where they need to be to carry out the IRS’s mission most effectively.

- e) *How do you plan to address situations in which employees whose positions are best performed at an IRS facility resist returning to in-office work?*

Answer: If confirmed, it will be important to work with the IRS workforce in all manners to ensure taxpayers are receiving world class customer service. I understand the work patterns in many industries have shifted in the aftermath of the COVID 19 pandemic. If confirmed, I look forward to engaging the IRS workforce on the steps necessary to position every employee to maximize their success and contributions.

Question 3

On or around April 7, 2022, members of the Senate Finance Committee submitted Questions for the Record (QFRs) to former IRS Commissioner Charles Rettig regarding the IRS’s annual budget hearing. The Committee only received responses to those QFRs from the IRS on or around January 25, 2023, which was over nine months after they were originally submitted and approximately three months *after* Mr. Rettig stepped down from his position as Commissioner. It is unacceptable to wait so long for QFR responses. Members of the Senate Finance Committee cannot properly exercise our oversight function when we are unable to get responses to our questions in a timely fashion. The timing of the responses also begs the question as to who actually drafted them, since they were submitted to the Committee long after the Commissioner—to whom they were addressed—was no longer at the IRS.

- a) *If confirmed, do you commit to returning QFR responses to Senate Finance Committee members within three months of the date of transmission from the Committee, yes or no?*

Answer: Timely communication with and responses to Congress will be a priority of mine.

- b) *If your answer to part (a) above is “no,” please explain why three months is not feasible and please provide a timeframe that you will commit to uphold with respect to QFR responses.*

Question 4

In June 2021, troves of confidential taxpayer information were leaked to the public as part of a ProPublica exposé. Frankly, it is unacceptable that after nearly two years, we are still in the dark

about the source of this leak. Regardless of an individual's income, the IRS has a duty to each and every taxpayer to protect their information.

- a) *If confirmed to this position, do you commit to working with proper investigatory authorities and my House and Senate colleagues to get answers on this concerning breach of taxpayer information?*

Answer: The safety and security of taxpayer data is of paramount importance to me and the IRS. My understanding is that this matter was immediately referred to the appropriate authorities, including the Treasury Inspector General for Tax Administration (TIGTA), the Department of Justice, and Treasury's Office of Inspector General, each of which conduct their work independently of the IRS. I cannot speculate about that work, any potential findings, or the timeline. I can commit to you that, if confirmed, I will ensure the IRS continues to prioritize protecting taxpayer information and will take any appropriate action to do so.

- b) *If confirmed, do you commit to (i) investigating whether high net worth individuals' tax information is set aside in a separate location (whether physically or electronically) from the taxpayer information of the general population and (ii) reporting back to me and the Committee on your findings within four months of confirmation? If the answer is "no," please explain.*

Answer: Working with this Committee and other oversight entities will be an important priority of mine, if confirmed. I commit to learning more about this issue and timely follow-up with you and this Committee, in line with applicable laws and regulations.

Question 5

As you are no doubt aware, there have been instances of IRS employees, even staff in leadership capacities, who have unfairly targeted taxpayers based on their political or religious beliefs.

- a) *As you were appointed to be Acting Commissioner following what is likely the most notorious of these scandals, what are your thoughts on targeting certain individuals based on these factors?*

Answer: In order for our tax system to work, taxpayers must have confidence that all taxpayers, regardless of who they are, are being treated fairly and impartially. If confirmed, I will make sure that taxpayers—regardless of background and whether they are individuals, small businesses, or non-profits—are being treated fairly and that the tax laws are being applied impartially and equally to all.

- b) *What did you do to prevent such discrimination from happening again when you took on the role as Acting IRS Commissioner?*

Answer: While Acting Commissioner, I worked diligently to treat taxpayers fairly and impartially, which included transparency and accountability with this Committee and oversight entities. As soon as I arrived, I began implementing all TIGTA recommendations for improving the tax-exempt functions. I also made public our progress on this implementation. Of note, I very quickly ordered a termination of the so called “be on the lookout” lists where applications for tax exempt status were being set aside based on the name of the organization rather than the substance of the application itself. I also worked diligently to respond to all discovery requests from investigative entities. Ultimately, more than 800,000 pages of documents were provided as well as dozens of interviews from IRS employees. This discovery was the basis for public reports made on the matter by TIGTA and Congressional Committees. A key step taken was my appointment of the IRS first Chief Risk Officer and the launch of an enterprise risk management program. Following my departure, TIGTA issued a report commending the IRS for improvements made to the tax-exempt function. In 2021, the IRS was internationally recognized for its risk management program by the Risk and Insurance Management Society (RIMS).

- c) *If confirmed to this position, what do you plan to do to ensure the IRS always operates on a fair and neutral basis?*

Answer: I can think of no more important factor in building trust than working to ensure fairness and neutrality. There are various levers that can be used to ensure neutrality is maintained, including, for example, employee training, continuous review of policies and practices, and leveraging ongoing input from oversight entities such as TIGTA. Of note, when I was last at the IRS ten years ago, I worked diligently to treat taxpayers fairly and impartially, which included transparency and accountability with this Committee and oversight entities. A key step taken was my appointment of the IRS first Chief Risk Officer and the launch of an enterprise risk management program. In 2021, the IRS was internationally recognized for its risk management program by the Risk and Insurance Management Society (RIMS). If confirmed, I would expect the IRS risk management program will be incredibly important in coordinating reviews, trainings, and activities necessary to reinforce the importance of neutrality, impartiality, and fairness in all IRS activities.

Question 6

As you know, in August 2022, President Biden signed the Inflation Reduction Act into law. Contained in the bill was nearly \$80 billion in increased funding for the IRS over a 10-year period. Of this significant increase, \$45.6 billion was allocated for “enforcement” efforts, a 69%

increase from previous spending projections.¹ I am concerned that there are not sufficient safeguards in place to ensure proper utilization of the funds enacted by the Inflation Reduction Act.

- a) *If confirmed to this position, do you commit to working with Congress and the appropriate oversight agencies to ensure that all the supplemental funding provided by the Inflation Reduction Act is being used to better serve taxpayers?*

Answer: If confirmed, I commit to learning about the IRS’s plans and initiatives to improve customer service and staying in close communication with this Committee about progress.

- b) *If you answered “yes,” to part (a) above, do you agree that your commitment applies to working with and providing updates to both the Senate Finance Committee majority and minority?*

Answer: Yes, the role of the IRS is to be impartial and neutral in administering the code.

Question 7

Although Secretary Yellen stated that “audit rates will not rise relative to recent years for households making under \$400,000 annually” in a letter to former Commissioner Rettig, many of my colleagues and I remain concerned that hard working low- and middle-income families and small businesses will be adversely affected by these increased enforcement efforts.

What actions do you plan to take to ensure that individuals and small businesses making less than \$400,000 annually are not targeted for audits?

Answer: Secretary Yellen and the IRS have committed that the IRA funding will not be used to increase audit rates, relative to historic levels, for households and small businesses making under \$400,000 a year, which I am similarly committed to following through on. As I have not been involved yet with the planning process, I do not have specifics on how IRS will implement this directive. But if confirmed, I look forward to ensuring that IRA implementation complies with this commitment and to keeping this Committee informed of these efforts.

While I would want to reserve any final conclusions about steps I would want to take if confirmed, it would be important to have a clear methodology, ensure there is policy within the IRS regarding the use of resources for compliance activities, and conduct training to ensure ongoing clarity on the directive.

¹ <https://crsreports.congress.gov/product/pdf/IN/IN11977>

Question 8

As demonstrated by the apparent ProPublica leak, there are serious concerns about the IRS's ability to maintain confidentiality regarding private citizens' tax information. Another area of concern is maintaining privacy of persons who choose to donate to nonprofit organizations. The U.S. Supreme Court has recognized donor privacy as protected under the First Amendment, from *NAACP v. Alabama* (1958) to *Americans for Prosperity Foundation v. Bonta* (2021). Donor privacy is essential to philanthropic freedom and allows donors the right to remain anonymous should they wish. Despite this constitutional right, some groups have advocated for mandatory disclosure of donors. I worry that if we acquiesce to such demands, we risk suppressing philanthropy, an important pillar of our society. We should instead focus on preserving and even expanding vital protections for anonymous charitable giving.

If confirmed to this position, do you commit to working with me, my colleagues on this Committee, and stakeholders on preserving donor privacy and ensuring personal donor information does not get disclosed by the IRS? Please answer "yes" or "no." If your answer is "no," please explain.

Answer: The safety and security of taxpayer data is of paramount importance to me and to the mission of the IRS. In order to fulfill its mission, the IRS must safeguard the information of millions of Americans. If confirmed, I would prioritize this across all workstreams that would come across my desk and work with this Committee to ensure the IRS's activities are transparent.

Question 9

A number of Hoosier small- and medium-sized businesses rely on small captive insurance arrangements to insure against risk. They are concerned that the IRS's focus on the industry, which they believe is overly punitive and inaccurately characterizes the nature and purpose of these arrangements, will eliminate the availability of these insurance products and leave them without other viable options.

If confirmed to this position, do you commit to working with small captive insurance companies and related stakeholders to find a mutually-agreeable and fair path forward on this issue? Please answer "yes" or "no." If your answer is "no," please explain.

Answer: Yes, if confirmed, I look forward to working with all stakeholders regarding ways to improve customer service and taxpayer experience. In particular, small businesses are a key constituency I would hope to keep openly engaged with, which I understand is a bipartisan priority of this Committee. I am not aware of the issue, but I will reflect on the commitment I made during the hearing to closely adhere to the taxpayer bill of rights. Taxpayers such as the small- and medium-sized businesses in Indiana have numerous rights that, if confirmed, I will work to uphold, including the right to be informed of what is expected of them, the right to pay no more than the correct amount of tax, and the right to challenge an IRS position and be heard. If confirmed, I look forward to ensuring these rights are adhered to for all taxpayers and will work with you to make sure that is the case for businesses in your state.

United States Senate Committee on Finance
Hearing to Consider the Nomination of The Honorable Daniel I. Werfel, of the District of
Columbia, to be Commissioner of Internal Revenue for the term expiring November 12,
2027

February 16, 2023

Questions for the Record for the Honorable Daniel I. Werfel

Senator Mark Warner

As you know, I am a supporter of remote notarization. In the last Congress I co-sponsored the SECURE Act, which is intended to streamline the use of remote notarization in a variety of contexts. Remote notarization has proven itself as a way to execute important documents in a safe and efficient fashion. During the height of the COVID-19 pandemic, the IRS temporarily allowed certain documents to be executed through remote notarization. The agency has now proposed to make this policy change permanent. Can you commit to moving swiftly to finalize this proposal? And what are your thoughts on the subject more broadly?

Answer: Meeting taxpayers where they are is an important aspect of providing world class customer service and bettering the taxpayer experience. There are many ways in which the IRS may be able to modernize and reflect the needs of taxpayers today. If confirmed, I look forward to learning more about the status of the remote notarization project and working to implement all IRS responsibilities in accordance with all laws and regulations.

United States Senate Committee on Finance
Hearing to “Consider the Nomination of The Honorable Daniel I. Werfel, of the District of
Columbia, to be Commissioner of Internal Revenue for the term expiring November 12,
2027”
February 15, 2023

Questions for the Record for Daniel I. Werfel

Senator Whitehouse

Question 1

In *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the Supreme Court ostensibly reasoned that unlimited outside spending would not distort our politics because the public would be able to see who was behind the spending. Even the *Citizens United* justices recognized that unlimited political spending without transparency would be corrupting. But the Court failed to account for a major way to mask who is spending: 501(c)(4) nonprofits, which can spend up to 50% of their income on political campaign intervention, do not have to disclose their donors. As a result, secret spending from outside groups in our elections has exploded. Since 2010, dark money groups have poured over \$2.6 billion into federal elections. At least \$3 out of every \$10 in outside spending reported to the FEC since *Citizens United* can be traced to dark money groups, according to OpenSecrets.

Has the IRS tracked the amount of political campaign intervention spending through 501(c)(4)s since Citizens United?

Answer: As I am not currently at the IRS, I do not know if or how the IRS tracks this. I know this issue is critical to you and, if confirmed, I am committed to providing you a more comprehensive response to this question as I learn more.

Question 2

Tax-exempt entities under section 501(c)(3) are prohibited from engaging in any political campaign activity. At the same time, 501(c)(3)s are allowed to share employees, office space, resources, board members, and even funding with affiliated 501(c)(4) entities.

How does the IRS ensure that 501(c)(3) funding is not used for impermissible 501(c)(4) political campaign intervention? Has the IRS ever tested whether the corporate veil between a 501c3 and 501c4 is real or a sham?

Answer: As I am not currently at the IRS, I do not know what policies or procedures the IRS has in place for this. I know how important this is to you and, if confirmed, I am committed to providing you a more comprehensive response to this question as I learn more.

Question 3

Networks of entities organized under section 501(c)(4) can make grants to each other to flout the supposed 49.9% political campaign intervention limit for such entities. If a group of associated 501(c)(4)s pass money along to each other (e.g. group A spends half of its budget on political campaign intervention and gives the other half to group B, which does the same for groups C and D), the total political spending of the original donation can reach over 90%.

How does the IRS use information in Schedule I and Schedule R to track grants between groups to ensure compliance with the limit? Has the IRS ever investigated donation cycling among coordinating 501(c)(4)s?

Answer: As I am not currently at the IRS, I do not know what policies or procedures the IRS has in place for this nor do I have knowledge of any ongoing investigations. If confirmed, I am committed to providing you a more comprehensive response to this question once I am able to discuss this matter with those responsible for this at the IRS.

Question 4

It has been over a decade since Congress passed the Foreign Account Tax Compliance Act (FATCA), with bipartisan support, to provide the IRS the information it needs to find hidden income in offshore accounts. However, according to the Treasury Inspector General for Tax Administration “the IRS has taken virtually no compliance actions to meaningfully enforce” it.² According to the IRS Chief Research and Analytics officer in 2021 testimony before the Tax and IRS Oversight Subcommittee, preliminary research found that U.S. households hold as much as \$2 trillion in offshore tax havens – double what prior research had found.³

Before the passage of the Inflation Reduction Act (IRA), Secretary Yellen explained that human resource and information technology limitations caused by resource constraints had hampered the IRS’s ability to make effective use of the information collected under FATCA.

With the help of additional funding under the IRA, will you ensure that FATCA fulfills its promise to crack down on offshore tax evasion? How? What will be the initial steps taken that show this activity has begun?

Answer: The IRA provides the funding to transform the IRS into a 21st century agency with better customer service, updated technology, a high-quality workforce, and resources to go after those who seek to evade their tax obligations. I do not have a specific idea of the IRS’s current enforcement of FATCA, but, if confirmed, I look forward to understanding the work that is underway and working with you and your office on this important enforcement priority.

² TIGTA, Report No. 2018-30-040, Despite Spending \$380 Million, the IRS is Still not Prepared to Enforce Compliance with the Foreign Account Tax Compliance Act (July 2018).

³ *Closing the Tax Gap: Lost Revenue from Noncompliance and the Role of Offshore Tax Evasion, Before the Senate Finance Subcommittee on Taxation and IRS Oversight*, 117th Cong. (2021) (Testimony of Barry Johnson), <https://www.finance.senate.gov/hearings/closing-the-tax-gap-lost-revenue-from-noncompliance-and-the-role-of-offshore-tax-evasion>.

Question 5

Rule-of-law nations find it difficult to track down and seize Putin and his oligarchs' dirty assets, which are carefully hidden using shell companies, tax havens, and other tricks. Unfortunately, some of these assets may be concealed in the United States: while foreign banks report on the offshore accounts of U.S. taxpayers under the Foreign Account Tax Compliance Act (FATCA), U.S. banks do not share information about foreign taxpayers. In the words of one expert on financial crime, this double standard helped lead the U.S. to become "a truly world-class tax haven."⁴

The President's FY23 Budget proposed to share information with foreign partners about foreign accounts held at U.S. financial institutions—known as reciprocal FATCA.

How could this proposal help to track down the dirty assets of Russian oligarchs?

How would this proposal help the IRS crack down on offshore tax evasion? What will you do to make this happen?

Answer: I appreciate your leadership and understand the importance of working internationally to ensure tax compliance goals are met. While I have not closely studied this specific proposal, I commit to studying the issue, if confirmed, and working with you to discuss how the IRS can enforce the relevant tax laws and close the tax gap by improving enforcement, focusing on wealthy and corporate tax evasion.

⁴ Oliver Bullough, "The Great American Tax Haven: Why the Super-Rich Love South Dakota," *The Guardian*, November 14, 2019, <https://www.theguardian.com/world/2019/nov/14/the-great-american-tax-haven-why-the-super-rich-love-south-dakota-trust-laws>

Senator Thom Tillis (R-NC)
Questions for the Record
Senate Finance Committee Hearing – “IRS Werfel Nomination”
Hearing Date: February 15, 2023

QFRs for Mr. Werfel

1. Recently, the Government Accountability Office noted that IRS’s modernization efforts have been hampered by competing priorities which are delaying the modernization of critical infrastructure systems, thus impeding the IRS’s ability to effectively serve taxpayers. While the Inflation Reduction Act included a massive \$80 billion in new funding for the IRS, only a very small percentage is targeted to modernization.
 - a. If confirmed as Commissioner, what areas of technology modernization are you most focused on for improving the way IRS serves taxpayers?

Answer: While I would want to reserve any final conclusions about what the key priorities should be until I have spent time at the IRS understanding the current environment, my current hypothesis is that the top modernization priorities fall into three buckets:

- **Ensuring the Individual Master File and Business Master File are updated to a modern platform to optimize data security and cyber resiliency, given the sensitivity of data maintained in those systems;**
- **Embedding innovative technology in the call center to help significantly increase responsiveness to taxpayers trying to make contact with the IRS; and**
- **Imaging paper forms into machine readable output to manage and eliminate back logs and help increase overall efficiency of return processing.**

If confirmed, I look forward to getting up to speed on the current modernization efforts and future plans and engaging with you and your staff on IRS’s progress.

- b. Would you prioritize creating a system where taxpayers could file their individual tax returns directly with the IRS or would you instead focus on other more pressing areas of need?

Answer: If confirmed, it would be essential to administer the tax laws that are on the books and focus on solutions the IRS can deploy to improve customer service and the taxpayer experience. I will work with you to ensure you have visibility into priority actions on various pressing items, and in particular, planned steps related to the study or implementation of direct file options.

2. As Commissioner, will you focus on administering the tax code in a non-partisan fashion, while relying on Congress - not the IRS - to make policy decisions?

Answer: Yes, if confirmed, it would be my priority to act in accordance with the responsibilities of the IRS Commissioner, which means administering the tax code in a fair, just, and impartial way.

3. Do you believe the IRS should directly prepare tax returns on behalf of American taxpayers, or do you view that as an inherent conflict of interest?

Answer: There's a recent IRS statistic that it can take an average of 13 hours to file an individual income tax return and hundreds of dollars. That's unacceptable, in particular for working families and small businesses. It is critical that the IRS work on strategies to make tax filing easier, simpler, and less burdensome for taxpayers.

The IRA requires the IRS to deliver a study of the feasibility of a direct file system and examination of taxpayer preferences. If confirmed, I look forward to engaging with you on this study and its recommendations.

4. Do you think it is appropriate that the IRS, which is tasked with enforcing tax laws (and can't keep taxpayer information private) be given even more information and power by virtue having it prepopulate tax returns?

Answer: The safety and security of taxpayer data is of paramount importance to me and to the IRS. If confirmed, I am committed to making data security a top implementation priority. This would involve:

- **Establishing for the organization that data security is a top priority;**
- **Setting measurable goals with an objective to mitigate any risk of unauthorized disclosure;**
- **Assessing the current capabilities of the process, personnel, and technology to secure data effectively, identifying gaps, and establishing a robust action plan to timely to close;**
- **Establishing a program of continuous improvement so that the organization is routinely assessing its capabilities and risks and making improvements to keep ahead of the risks;**
- **Benchmarking other organizations and sectors for emerging data security solutions and ensuring that all approaches are up to date in terms of maximizing effectiveness;**
- **Ensuring personnel are fully aware of their responsibilities and feel accountable to secure data.**

I believe these steps would establish a critical evidence-base useful in guiding any path forward that changes the manner in which tax returns are prepared.

United States Senate Committee on Finance
Hearing to “Consider the Nomination of Daniel Werfel to be Commissioner on the Internal Revenue Service”
February 15th, 2023
Questions for the Record for Daniel Werfel

Senator Cortez Masto

Question 1

I was so grateful to work with Senator Cornyn on legislation that was included in the SECURE 2.0 retirement bill we passed last year that allows domestic violence survivors to withdraw penalty-free from their retirement plans. But I think a lot more must be done and I think the IRS can play an important role in supporting survivors and ensuring that their tax benefits aren't mistakenly going to their abusers.

Will you commit to reviewing what IRS can do to help victims by protecting their privacy and improving their ability to access the agency's resources?

Answer: The safety and security of taxpayer data is of paramount importance to me and to the mission of the IRS. In addition, if confirmed, it would be a priority of mine to meet taxpayers where they are and focus on solutions to improve customer service and the taxpayer experience, especially for those who are most vulnerable.

Question 2

According to the 2023 “Purple Book” submitted to Congress by the National Taxpayer Advocate, taxpayers with incomes below \$50,000 had about 90 percent of their audits conducted by physical correspondence, and 40 percent or more did not respond to the IRS. Much of that problem can be attributed to people who have moved and may not have gotten the outreach. I have a lot of concerns about this because that reliance on physical correspondence has a big impact on places where people move around a lot, like my state.

Can you speak to how you view a challenge like this and how to move IRS into a direction where it can better correspond with taxpayers?

Answer: Because I am not at the IRS, I am not familiar with all current rules and regulations regarding the IRS's current correspondence operations. However, if confirmed, I pledge to consider any and all opportunities to better serve taxpayers, be it in-person, online, or over the phone.

Question 3

Right now the labor market is very competitive and all organizations are competing for workers. One challenge the IRS has had in the past is that its hiring process is very long.

Can you speak to any thoughts you have on being a competitive employer and how this process can be streamlined?

Answer: Attracting, recruiting, and retaining a world class customer service workforce will be a top priority of mine, if confirmed. It is a unique opportunity to build the IRS into a world class customer service organization at this time. If confirmed, I look forward to understanding the IRS's current processes in place for building such a world-class workforce and working with you and this Committee to learn of any additional efforts that could help.

Question 4

Given the complexity that comes with filing taxes for many Americans, they often have questions and go to the IRS website for answers. It can be difficult to navigate and I think there can be a lot of improvements in getting the taxpayer the answers they need.

Can you speak to any experience you have in your previous roles in improving transparency and simplifying resources? As well as your thoughts on how IRS might use tools like AI to help answer taxpayer questions?

Answer: Across my career, I have worked on various initiatives to increase transparency. First, during both the Bush and Obama Administrations, I led government-wide efforts to measure and remediate improper payments, including the launch of payment accuracy.gov. Second, I was the OMB lead on coordinating and implementing the government-wide reporting and accountability requirements of the American Recovery and Reinvestment Act (ARRA). The launch of Recovery.gov created a new bar in the transparency of Federal spending. To make this website a reality, I worked with all 50 states to successfully launch FederalReporting.gov.

With respect to AI, I believe there are significant opportunities to benchmark how world class customer service organizations in both the private and public sectors integrate AI into channels such as call centers and digital applications. I believe the IRS should benchmark these solutions and develop a strategy to integrate a new approach to improve taxpayer service.

Question 5

I introduced legislation last year that would help ensure that consumers who win fraud cases are not unfairly taxed on fees awarded to their attorneys. A loophole in the U.S. tax code unfairly penalizes consumers who rightly win their claims of abuse or fraud by allowing wrongdoers to send 1099s for their damages and attorney's fees even though they do not receive those funds.

Are you aware of this issue, and how can we work together to ensure that we are protecting wronged consumers from yet another harm?

Answer: I am not intimately familiar with this issue, but, if confirmed, I would look forward to understanding how the administration of this law works and working with you to provide technical assistance from the IRS on this legislation.

Question 6

Section 13103 of the Inflation Reduction Act (§ 48(e)(1)(A)(i)) provides a bonus investment tax credit for certain renewable energy investments (wind and solar projects less than five megawatts) made in certain low-income communities. Consistent with the law, Treasury was

tasked with releasing this guidance 180 days after IRA enactment. Consistent with the law, preliminary guidance was released on February 13, 2023.

Congress clearly intended for residents in low-income communities to benefit from this program starting this year. Beyond the plain language of the law, which took effect January 1, the then Chairman of the Ways and Means Committee (Chairman Neal) and Congressman Danny Davis inserted statements into the Congressional Record on the day the Inflation Reduction Act passed the House that emphasized this point. And as you may know, I worked tirelessly in the Senate to pass the largest expansion and extension of the solar investment tax credit in history.

I appreciate how busy Treasury is implementing the IRA. However, the guidance for Section 13103 released on February 13 (Notice 2023-17) effectively bars any investment in low-income communities until at least the third quarter of this year. Frankly, I'm concerned this program may not get any project built this year. Obviously, that is counter to the Administration's Justice40 goals and advancing solar access and equity.

I would strongly urge you to consider issuing additional guidance in short order that allows low-income residents and communities to immediately benefit from this program. I understand that there is basic guidance that Treasury can issue now that will unlock investment in low-income communities.

I also understand that Treasury has the authority to revise the guidance and program rules at any time. Why not open the program for 2023 now, while continuing to make improvements to the program for 2024 and beyond?

Answer: As I am not currently at the IRS, I am not familiar with any operational considerations underway at the IRS regarding this tax credit program. However, if confirmed, I will work to understand the IRS's role in this credit's implementation and keep you informed of what I learn.

United States Senate Committee on Finance
Hearing on "Daniel Werfel
Nominee to be the Commissioner of Internal Revenue"
February 15th, 2023

Questions for the Record for Daniel Werfel

Senator Blackburn

Question 1

Late last year, the IRS dealt with yet another leak of sensitive information. This time for over 100,000 taxpayers. To make matters worse, while the sensitive data was reportedly taken offline, the old files were not purged from the system and were back online by December 1st. More concerning, it was not the IRS nor the contractor who caught this mistake but a third-party researcher who alerted the IRS that the files were publicly available.

I think it's safe to say that the IRS has a data security problem. The amount of sensitive information the IRS collects on taxpayers is staggering, and these leaks will not stop until data security is prioritized.

Do you commit to ensuring that third-party IRS contractors adequately protect and handle sensitive taxpayer information?

Answer: Data security and protecting taxpayer information is one of the most important responsibilities of the IRS. If confirmed, I will take this responsibility seriously and work tirelessly with the IRS workforce to advance data security and protect taxpayer information.

Question 2

In your opinion, what does securing data mean to you?

Answer: I believe there are numerous critical components to an effective plan for securing data. First, establishing for the organization that data security is a top priority. Second, setting measurable goals with an objective to mitigate any risk of unauthorized disclosure. Third, assessing the current capabilities of the process, personnel, and technology to secure data effectively, identifying gaps, and establishing a robust action plan to timely close gaps. Fourth, establishing a program of continuous improvement so that the organization is routinely assessing its capabilities and risks and making improvements to keep ahead of the risks. Fifth, benchmarking other organizations and sectors for emerging data security solutions and ensuring that all approaches are up to date in terms of maximizing effectiveness. Sixth, ensuring personnel are fully aware of their responsibilities and feel accountable to secure data. If confirmed, I look forward to ensuring the IRS is taking the above actions given how critical data security is to the mission.

Question 3

Recently, the IRS updated its website with suggested guidance for taxpayers with digital assets. In particular, the IRS suggests that taxpayers who receive mining or staking rewards should be prepared to pay taxes twice -- on initial receipt as they participate in the validation of each block in a blockchain and upon ultimate disposition later of this created property. Such treatment would counter typical treatment for created property under the law, where such property is taxed only on disposition.

The IRS has produced conflicting signals regarding digital assets and how to bring consistent tax clarity to the millions of Americans participating in permissionless blockchain ecosystems. Will you commit to working with my office to fine-tune the IRS's guidance for taxpayers with digital assets?

Answer: I am not intimately familiar with the IRS's current treatment of digital assets since I am not currently at the IRS. However, if confirmed, I look forward to working with you and your office, once I've had the opportunity to understand the IRS's procedures and assess the administrability of the tax laws.

Question 4

Earlier this year, the IRS issued proposed guidance on the Service Industry Tip Compliance Agreement (SITCA) program. This program would create a tip-reporting program between the IRS and service industry employees to improve tip-reporting compliance. SITCA intends to serve as the main tip compliance program for various service industries whose employee earns part of their wage through tips.

Mr. Werfel, do you commit to ensuring that those who make under \$400k are not subject to increased audits due to this program?

Answer: Secretary Yellen and the IRS have committed that the IRA funding will not be used to increase audit rates, relative to historic levels, for households and small businesses making under \$400,000 a year. It's my understanding that the IRA funding is not intended to increase audit scrutiny on low- and middle-income Americans or small businesses. As I have not been involved yet with the planning process for the IRA funding, I do not have specifics on how IRS will implement this directive. But if confirmed, I look forward to ensuring that IRA implementation complies with this commitment.

Question 5

Do you commit to ensuring that the SITCA program does not become mandatory for service industry businesses to participate in?

Answer: Since I am not currently at the IRS, I am not intimately familiar with the specifics of this program. As was noted during the hearing, the SITCA program is a voluntary program. However, if confirmed, I commit to learning more about the program that is underway, studying its impacts, and engaging with stakeholders and Congress on what I learn.

Question 6

Will you commit to not including miners, stakers, and other distributed ledger validators within the broker guidance that is due to be promulgated by the IRS?

Answer: Since I am not currently at the IRS, I am not familiar with the status and development guidance being developed by the IRS. However, if confirmed, I commit to learning more about the IRS and Treasury rulemaking efforts to date, studying its impacts, and engaging with stakeholders and Congress on what I learn.

Question 7

Can you commit to providing clear guidance on digital asset-related issues and making digital asset guidance a priority?

Answer: Clarity is an important component of tax administration, ensuring taxpayers and stakeholders clearly understand their tax obligations. If confirmed, I look forward to working across the IRS, including with the Chief Counsel, and Treasury, to maximize, to the fullest extent possible, clarity in guidance provided in relation to these important issues.

Question 8

There continues to be a significant processing backlog in Tennessee, especially with respect to amended employment tax returns, leaving many small businesses in TN waiting for more than two years for these funds. Currently, at least 20 employers are awaiting over \$4 million in refunds. This backlog is frustrating as Congress intended to quickly support businesses experiencing serious financial hardships during the COVID-19 pandemic. With the additional resources recently provided to the Service, what plans do you have to resolve the backlog? How do you plan to resolve these issues related to aggregate filers?

Answer: It is critical that the IRS get healthy on its inventory so that taxpayers can resolve issues and get refunds more quickly. I am not familiar with any decision-making around this specific issue or work the IRS has done, but I know the IRS has been working diligently on the inventory and as a part of my commitment to improved customer service, getting healthy on inventory will be one of my top priorities if I am confirmed.

**United States Senate Committee on Finance Hearing to Consider the Nomination of The
Honorable Daniel I. Werfel, of the District of Columbia, to be Commissioner of Internal
Revenue for the term expiring November 12, 2027**

February 15, 2023

Questions for the Record for the Honorable Daniel I. Werfel

Senator Warren

Question 1

The Taxpayer Bill of Rights, which you mentioned in your hearing that you read daily, states that taxpayers have “The Right a Fair and Just Tax System.”⁵ Yet years of politically-motivated cuts to the Internal Revenue Service (IRS) budget have led to serious equity and discrimination problems with IRS audits. According to a recent report by the Transaction Records Access Clearinghouse (TRAC), which uses IRS data, millionaires had only a 1.1 percent chance of an audit.⁶ In FY22 the number of millionaires audited was less than half of what it was a decade earlier.⁷ This data suggests the continuation of a long trend of diminishing oversight and enforcement for high net-worth individuals. Meanwhile low-income taxpayers filing for the EITC have over a five times higher chance of being audited than other taxpayers.⁸ Furthermore, recent findings in a study by economists from the Treasury Department and multiple universities determined that the audit rate for black taxpayers is three to five times higher than the rate for other taxpayers.⁹

The Taxpayer Bill of Rights also entitles taxpayers right to “be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes,” as well as the right to “challenge the IRS’s position.”¹⁰ But due to budget cuts, the IRS has increasingly relied on correspondence audits to scrutinize low-income taxpayer returns.¹¹ According to experts, these audit notices and math error notices are hard to understand and cause confusion and frustration for taxpayers.¹² Ninety percent of audits of taxpayers with incomes below \$50,000 are conducted by correspondence, much higher than the rate for those with higher incomes.¹³ The additional funding from the *Inflation Reduction Act* should be used to rectify these and other equity issues at the IRS.

⁵ Internal Revenue Service, “Taxpayer Bill of Rights,” <https://www.irs.gov/taxpayer-bill-of-rights#fair>.

⁶⁶ Transaction Records Access Clearinghouse, “IRS Audits Few Millionaires But Targeted Many Low-Income Families in FY 2022,” January 4, 2023, <https://trac.syr.edu/reports/706/>.

⁷ *Id.*

⁸ Transaction Records Access Clearinghouse, “IRS Continues Targeting Poorest Families for More Tax Audits During FY 2022,” March 29, 2022, <https://trac.syr.edu/tracirs/latest/682/>.

⁹ New York Times, “Black Americans Are Much More Likely to Face Tax Audits, Study Finds,” Jim Tankersley, January 31, 2023, <https://www.nytimes.com/2023/01/31/us/politics/black-americans-irs-tax-audits.html>.

¹⁰ Internal Revenue Service, “Taxpayer Bill of Rights,” <https://www.irs.gov/taxpayer-bill-of-rights#fair>.

¹¹ Bloomberg Tax, “IRS Service Woes Slowing Streamlined Low-Income Taxpayer Audits,” Naomi Jagoda and Richard Tzul, June 21, 2022, <https://news.bloombergtax.com/daily-tax-report/irs-service-woes-slowing-streamlined-low-income-taxpayer-audits>.

¹² *Id.*

¹³ National Taxpayer Advocate, “Annual Report to Congress 2022,” pp. 18-19, <https://www.taxpayeradvocate.irs.gov/reports/2022-annual-report-to-congress/full-report/>

- a) *Under your leadership, will the IRS commit to reversing the long trend of decreasing audit rates for millionaires and to reversing the increasing audit rates for low-income filers such as EITC recipients?*

Answer: It is essential that our tax system operates fairly and right now, there is significant evidence that high earners are paying far less than what they owe in taxes. For example, an assessment from the National Bureau of Economic Research indicates that working people pay 99% of the taxes they owe, while 20% of the income from wealthy individuals and large corporations is shielded from IRS view. This outcome degrades public trust in our tax system because honest taxpayers should know that when they file an accurate return with the IRS that all other taxpayers, including the wealthiest Americans, are doing the same. Funding in the IRA will address this disparity and focus on the highest-income earners. As you know, I have a long career working in government and in the private sector focused on data-driven solutions, and, if confirmed, I will focus my time on ensuring the IRS uses the IRA funds to improve tax compliance among wealthy and corporate tax evaders.

- b) *Following President Biden's first executive order on racial equity, the Treasury Department has recently completed racial equity analysis for tax benefits, but has not done so for tax enforcement. Do you believe that Treasury Department and IRS should extend its work on racial equity to studying and addressing racial inequities in tax enforcement? Why or why not?*

Answer: Fairness is an essential element of tax administration. We have to understand whether the approaches in tax administration have a disparate impact on any population, especially populations that are most vulnerable. If confirmed, I will work with the IRS to talk to those who are familiar with these impacts and report back to this Committee on my findings, as I able to within the bounds of all applicable laws, rules, and regulations.

- c) *With the additional funding from the Inflation Reduction Act, in addition to not raising audit rates on taxpayers making less than \$400,000 will you prioritize improving the correspondence audit process and the math error notice process to ensure clarity, equity, and protection of taxpayer rights?*

Answer: I agree the priorities of clarity, equity, and protection of taxpayer rights are the bedrock of an IRS that builds public trust, which I am committed to prioritizing, if confirmed.

Question 2

The combination of Republican-led IRS budget cuts and lobbying from high net-worth individuals and large corporations has made it more difficult and costly for Americans file their taxes. According to the IRS, the average American spends 13 hours and \$250 every year to file their taxes.¹⁴ But, for tens of millions of Americans this process could take minutes with a truly free and simplified filing program. Yet, the IRS outsourced their Free File program to the tax preparation industry, which serves only 3% of taxpayers when 70% are eligible.¹⁵ It is time for the IRS to reclaim Free File and develop additional options for free online filing—just like the Government Accountability Office has recommended¹⁶ and the American public overwhelmingly supports.¹⁷

At a Senate Finance Committee hearing on June 7, 2022 Secretary Yellen stated, “I absolutely agree with the comments you made about [Free File]. It hasn’t worked. We need to develop a new system. There’s no reason in the world that a modern economy shouldn’t have a system that makes it easy for such a large group of taxpayers to file their returns ... It’s definitely something we should do and when the IRS is adequately resourced, it’s something that will happen.”¹⁸ Subsequently, the IRS received an additional \$80 billion in funding, including significant funding for operations support such as information technology, business systems modernization, and a task force to design an IRS-run free “direct efile” tax return system.

a) *Do you believe that simple free and online filing tools are pivotal to the success of the IRS and will you prioritize working with Secretary Yellen to develop them?*

Answer: There’s a recent IRS statistic that it can take an average of 13 hours to file an individual income tax return and hundreds of dollars. That’s unacceptable, in particular for working families and small businesses. It is critical that IRS work on strategies and devote resources to make tax filing easier, simpler, and less burdensome for taxpayers. The IRA calls for the IRS to deliver a study of the feasibility of a direct file system and examination of taxpayer preferences. If confirmed, I look forward to engaging with IRS employees on the development and outcomes of the required study and any next steps it identifies.

Question 3

According to recent reporting, major tax preparation companies, such as H&R Block, TaxAct, and TaxSlayer have been “secretly transmitting sensitive financial information” of American

¹⁴ Internal Revenue Service, “IRS Tax Year 2022 1040 (and 1040-SR) Instructions,” pp.107, January 20, 2023, <https://www.irs.gov/pub/irs-pdf/i1040gi.pdf#page=107>.

¹⁵ U.S. Government Accountability Office, “IRS Free File Program: IRS Should Develop Additional Options for Taxpayers to File for Free,” April 28, 2022

¹⁶ *Id.*

¹⁷ Data For Progress, “Senator Warren: Filing Taxes Should Be Free, Fast, and Easy,” July 14, 2022, Elizabeth Warren, <https://www.dataforprogress.org/blog/2022/7/13/senator-warren-filing-taxes-should-be-free-fast-and-easy>.

¹⁸ Senate Committee on Finance, “The President’s Fiscal Year 2023 Budget,” June 7, 2022, <https://www.finance.senate.gov/hearings/the-presidents-fiscal-year-2023-budget>.

users to Meta and Google using via widely-used code called the Meta Pixel and Google Analytics.¹⁹ This is not only an appalling breach of trust, but also likely illegal, given strict laws and regulations about taxpayer data privacy. Both software tools are invisible to users but record their browsing history and even information they enter online, transferring them to Meta and Google to enable targeted advertising.²⁰ Reportedly, the data includes names and email addresses, and more sensitive financial information such as income, filing status, refund amounts, health savings account usage, dependents' names and college scholarship amounts.²¹

The Internal Revenue Code clearly states that “returns and return information shall be confidential,” with limited exceptions.²² One of the exceptions is for a taxpayer to designate a third party to receive return information, but those third parties “shall not use the information for any purpose other than the express purpose for which consent was granted and shall not disclose return information to any other person without the express permission of, or request by, the taxpayer.”²³ A tax preparer “who knowingly or recklessly (1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or (2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return” faces civil and criminal liability, including \$1,000 per unauthorized disclosure or actual and punitive damages, and up to one year in prison.²⁴

- a) *Under your leadership will the IRS commit to protecting taxpayers sensitive financial information, including by pursuing enforcement action against large tax preparation companies who break the law?*
- a. *What specific action(s) would you take to protect taxpayers' data?*

Answer: The safety and security of taxpayer data is of paramount importance to me and to the mission of the IRS. In order to fulfill its mission, the IRS must safeguard the information of millions of Americans. If confirmed, I would take any unauthorized disclosure of taxpayer data extremely seriously, as I know my predecessors did. And, as has been done in the past, I would ensure that the matter was referred to the appropriate investigative authorities and that any appropriate remedial action was taken upon conclusion of the investigation.

¹⁹ The Markup, “Tax Filing Websites Have Been Sending Users’ Financial Information to Facebook,” Simon Fondrie-Teitler, Angie Waller, and Colin Lecher, November 22, 2022, <https://themarkup.org/pixel-hunt/2022/11/22/tax-filing-websites-have-been-sending-users-financial-information-tofacebook>.

²⁰ *Id.*

²¹ *Id.*

²² 26 U.S.C. § 6103(a).

²³ 26 U.S.C. § 6103(a).

²⁴ 26 U.S.C. § 7216; 26 U.S.C. § 7431; 26 U.S.C. § 6713.