

**THE 2017 TAX FILING SEASON:  
INTERNAL REVENUE SERVICE OPERATIONS  
AND THE TAXPAYER EXPERIENCE**

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**HEARING**

BEFORE THE

**COMMITTEE ON FINANCE  
UNITED STATES SENATE**

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

APRIL 6, 2017



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**THURSDAY, APRIL 6, 2017**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 9:53 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Present: Senators Grassley, Roberts, Thune, Toomey, Heller, Scott, Cassidy, Wyden, Stabenow, Cantwell, Carper, Cardin, Bennet, Casey, and McCaskill.

Also present: Republican Staff: Mark Prater, Deputy Staff Director and Chief Tax Counsel; and Chris Armstrong, Deputy Oversight Counsel. Democratic Staff: Joshua Sheinkman, Staff Director; Michael Evans, General Counsel; Tiffany Smith, Chief Tax Counsel; Adam Carasso, Senior Tax and Economic Advisor; and Daniel Goshorn, Investigator.

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.  
SENATOR FROM UTAH, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. We will now proceed with our scheduled committee hearing on tax-related matters.

Every year, the committee holds a hearing on the tax filing season. It provides us with a great and relevant opportunity to discuss and examine the operations of the Internal Revenue Service, the agency charged with administering our complicated, convoluted tax code and collecting taxes from workers and employers across the country.

With each passing year, taxpayers face new challenges as they file their tax returns, including but not limited to protecting their private information. Today we will discuss, among other things, the IRS's efforts to address these types of challenges as well as the plans for progress and modernization in the near future.

The Finance Committee has always taken its oversight responsibility with the IRS very seriously and for good reason. The IRS is virtually the only Federal agency that deals with every American citizen, everyone who does business here, every large employer, every mom-and-pop business, and every community organization.

Over recent decades, as our tax code has grown more complex, we have given the IRS more and more to do, including administering social policy and implementing an ever-growing number of

rules, regulations, and notices. And quite frankly, I do not think many people are satisfied with the results.

While I know the people at the agency often point to limited funding, there are other matters that have contributed to the current level of dissatisfaction, including outdated collection practices and bureaucratic wrangling as well as a number of poor management decisions.

This committee has conducted oversight on a number of those poor decisions, including the politicization of tax administration, excessive spending on executive travel, and improper contracting practices.

Congress needs to look closely at the IRS and work to modernize and streamline its operations. This should include changes to the bloated and poorly managed technology used by the agency and the elimination of bureaucratic waste.

Hopefully, during the course of today's hearing, we can get a better sense of the agency's plans to address these and other issues as well as its suggestions for congressional action.

Of course, looming over this conversation is the ongoing and hopefully bipartisan effort to reform our broken tax system. Tax reform, if done right, should simplify the tax code and make the IRS's job much easier and allow the agency to focus on collecting revenue in the fairest and most efficient manner possible.

More importantly, tax reform, if done right, should improve the way taxpayers interact with the IRS, reducing the countless hours and billions of dollars spent every year just to comply with the tax code and file accurate returns.

The IRS is probably the most feared of all government agencies. The IRS wields immense power and authority over the lives of our citizens. And for hardworking taxpayers, direct contact with the IRS is rarely, if ever, desirable.

I think we can take steps to improve this, but it will likely require us to make significant changes to the tax code and to the IRS itself. Hopefully, the leadership at the IRS will be willing partners in this effort.

Toward that end, I appreciate Commissioner Koskinen's willingness to appear today. I look forward to what I hope will be a meaningful and substantive discussion of these important issues. And I personally appreciate the work that he has done over the years. We have a good relationship. He has worked well with me. And I personally want to thank him and tell him I appreciate him and appreciate the service that he has given to this wonderful country.

With that, I will turn it over to Senator Wyden for his opening remarks.

[The prepared statement of Chairman Hatch appears in the appendix.]

**OPENING STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you very much, Mr. Chairman.

I will have a couple of comments about tax reform at the end as well.

Now that Americans are getting into crunch time with tax filing season, I want to begin today's hearing by discussing what usually happens when early April rolls around.

Around this time of year, Presidents usually release their tax returns to the public. It has been a tradition for decades, but apparently that is not going to happen in 2017. It looks like this President will choose to keep hiding his returns and ignoring this very low ethical bar, even though it is clear his blind trust is not blind at all and the separation he promised he would make from his businesses seems to be nonexistent.

Second, around this time of year is when the whole executive branch gets on the same page to pitch its budget proposal to the public and the Congress. Not so this year. With this executive branch, it seems like the one hand often does not know what the other hand is up to.

On the one hand, you have the Treasury Secretary who came before this committee as a nominee and said he was committed to making sure the IRS had the resources to do its job.

Mr. Mnuchin said he wanted to protect taxpayer data, close the tax gap, improve customer service, and he said the big staffing cuts in recent years were, to Mr. Mnuchin, a concern and it would be a "very quick conversation with Donald Trump" to get it fixed. Apparently, that conversation has not happened, or if it did, the message did not get through.

When the public got its first glimpse of the Trump budget, the IRS did not get the investment Secretary Mnuchin talked about when he was here at the committee. For next year, instead it got another \$239 million cut.

What that would mean is that customer service would get worse, more taxpayers would fall victim to hackers and preventable scams, and the good times will roll again while honest taxpayers get fleeced.

This is not an academic debate. Right now the online data retrieval tool that students and families use to fill out their financial aid forms is down because of cybersecurity problems. Hackers were using stolen personal information like names, birth dates, and Social Security numbers to steal taxpayer dollars.

You would think that an administration that talks about running government like a business would want to go out and invest in cybersecurity when it finds a hack. But that is not what is happening here. Instead, the administration is repeating the same old pattern: cut after cut to IRS resources, meaning taxpayer service and data security could get worse and worse.

And I want to close with a couple of comments as it relates to this whole discussion of tax reform that the chairman mentioned.

Usually around this time, taxpayers are collecting all their forms and receipts, they are sitting down to file their taxes, and they are saying, will the Congress ever manage to simplify this mess we call the tax code and help the middle class? And they might even be a little hopeful this year because they have heard the President and members of Congress say tax reform is right at the top of the agenda.

But so far, when you parse the details, it looks like some Republican members of Congress and the administration are locked in

competition to see who can propose the biggest tax cut for the fortunate few.

And for the typical working family, there is not a lot in the Trump plan or the House Better Way blueprint that helps that working-class family get ahead. And in some respects, it really looks like they are getting a tax increase.

So I will close, Mr. Chairman, by way of saying that, to me, right at the heart of bipartisan tax reform is recognizing that we really today have two tax codes.

There is one system for the cop and the nurse, and it is compulsory. Every time they get a paycheck, that tax is taken right out of it. No special deals for them in the Cayman Islands.

Then there is the other system for those who are fortunate, who can hire all the lawyers and accountants and take advantage of these murky kind of rules. In that system, with the right advice from the tax experts, you can sort of pay what you want, when you want to, and sometimes you pay nothing at all.

It is grossly unfair to just sit by when you have these two tax systems in America, one of which is stacked against the working family. That has to be a key part of bipartisan tax reform. And nobody is going to tell me that it is not possible to do it.

In my time on this committee, I have been involved with a number of our thoughtful members from the other side of the aisle. Senator Gregg and I sat next to each other on a sofa every week for 2 years to produce a bipartisan, comprehensive, Federal income tax plan. And Danny Coats, when he was on this committee, did exactly the same thing.

But, Mr. Chairman, what we have to do is get away from this partisan reconciliation-only kind of approach and say from the get-go that Democrats and Republicans, as you and I do so often, should sit down at the outset and try to make sure that we have a system that works for everybody and that the working person gets a fair shake.

And I want to repeat that I think there are a lot of members on our side of the aisle who would like to work in that kind of vein. And I look forward to our discussions.

The CHAIRMAN. Well, thank you, Senator. I appreciate your comments.

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

The CHAIRMAN. Today's witness is the Honorable John Koskinen, the 48th Commissioner of the Internal Revenue Service. Commissioner Koskinen was confirmed to this position in December 2013.

Before coming to the IRS, Commissioner Koskinen served for 4 years as a nonexecutive chairman of Freddie Mac, including a period where he was the acting CEO.

Prior to that, he held various high-profile public-service positions, including president of the U.S. Soccer Foundation, Deputy Mayor of the District of Columbia, and Deputy Director for Management at OMB.

The Commissioner also spent more than 2 decades in the private sector holding various leadership positions at The Palmieri Company, including vice president, CEO, and chairman. This came after his work for several years in various legislative and adminis-



trative offices in Federal and municipal government as well as a number of years practicing law.

Commissioner Koskinen has a law degree from Yale University School of Law and a bachelor's degree from Duke University.

We want to welcome you back to the Finance Committee, Mr. Commissioner. And I want to thank you once again for being here today. And we would like to have you please begin with your opening remarks. And I ask that you limit your opening statement to around 5 minutes if you can.

**STATEMENT OF HON. JOHN KOSKINEN, COMMISSIONER,  
INTERNAL REVENUE SERVICE, WASHINGTON, DC**

Commissioner KOSKINEN. Thank you, Mr. Chairman.

Chairman Hatch, Ranking Member Wyden, members of the committee, thank you for the opportunity to appear before you today. And, Mr. Chairman, I genuinely appreciate your kind and thoughtful words of support.

I am pleased to report that the 2017 filing season has gone well so far. Through March 31st, the IRS has received more than 93 million individual returns on the way to a total of about 152 million. We have issued over 74 million refunds for more than \$213 billion, with an average refund totaling \$2,900.

But the 2017 filing season is notable for a change Congress made in 2015 that took effect this year. It requires the IRS to hold tax returns until February 15th each year if they claim the Earned Income Tax Credit or the Additional Child Tax Credit.

This change has slowed the overall pace of refunds early in the filing season, but that pace accelerated with the release of more than \$50 billion in EITC and ACTC refunds after February 15th.

The new requirement to hold Earned Income Tax Credit and Child Tax Credit returns, and another change enacted by Congress to accelerate the filing date of Forms W-2, together have helped the IRS spot incorrect or fraudulent returns. Receiving W-2s earlier also allows us to release refunds to compliant taxpayers more quickly, avoiding unnecessary delays.

In regard to phone service, I am pleased to report we are again seeing an improved level of service on our toll-free lines, as we did during filing season 2016. Our phone level of service is currently running above 76 percent, and we anticipate the average for the filing season overall will be about 75 percent.

The improvement is the direct result of additional funding granted by the Congress in 2016 to improve service to taxpayers as well as to strengthen cybersecurity and expand our efforts against identity theft. The funding also freed up resources to reduce our correspondence inventory. The inventory totaled more than 850,000 pieces of correspondence at the end of fiscal 2015, and that is now down to 660,000.

We continue to experience strong demand for our online services. Taxpayers have visited our website, *IRS.gov*, more than 320 million times so far this year. The popular Where's My Refund? electronic tracking tool has been used more than 228 million times. Other tools, including Direct Pay, which allows taxpayers to make tax payments online, have been used more than 4.6 million times this year.

A brand-new tool, the Balance Due feature, lets taxpayers view their IRS account balance online, including the amount they owe for tax, penalties, and interest. This online tool has been used about 547,000 times since it was launched in November.

The new Balance Due feature is also important because it represents the first step toward a fully functional IRS online account for taxpayers. We are developing this as part of our efforts to enhance and expand important services for all taxpayers no matter what their circumstances.

Service at our Taxpayer Assistance Centers has also improved this year. In recent years, many assistance centers saw such heavy demand during the filing season that taxpayers were lining up for hours before the centers opened.

In 2015, we tested the idea of letting people make appointments in advance. This worked so well that we extended the appointment process to all of our assistance centers this filing season. As a result, we have no reports of long lines so far anywhere in the United States.

Another important area is the growing problem of stolen identity refund fraud. Over the past few years, we have made steady progress in protecting against this crime, and that progress has accelerated since 2015 thanks to the collaborative efforts of the Security Summit Group.

This strong, unique partnership between the public and private sectors has produced real results. In fact, the number of people who reported to us that they were victims of identity theft declined from 698,000 in calendar year 2015 to 376,000 in 2016, a drop of 46 percent.

Even with this progress, the fraud filters in our systems are still catching a large number of false returns. Last year, our system stopped more than \$6.5 billion in fraudulent refunds on 969,000 returns filed by identity thieves. This shows that identity theft is still a major threat to tax administration, and we need to keep up the fight.

Turning to upcoming legislation, we recognize that the Congress is considering tax reform. The IRS does not take a position on policy questions in tax reform or any other area, but we do have a great interest in working with Congress to make sure whatever policies are adopted are easy for us to administer and easy for taxpayers to understand.

We also hope that Congress will make any tax changes prospective and build in lead time so we can prepare taxpayers and our systems for the changes.

Chairman Hatch, Ranking Member Wyden, and members of the committee, that concludes my introductory statement, and I look forward to your questions.

The CHAIRMAN. Thank you, Commissioner.

[The prepared statement of Commissioner Koskinen appears in the appendix.]

The CHAIRMAN. We appreciate you being here, and we appreciate your comments.

Let me begin the questioning with this question. Last month, the Internal Revenue Service and the Department of Education took down the data retrieval tool for student aid applicants. You took

this action after it became apparent that data thieves may have used previously stolen personal information of taxpayers to access the system and obtain additional sensitive tax information.

Now, I appreciate the confidential briefing the IRS provided to committee staff last week, and I will not go into more details, given the ongoing criminal investigation, but this is not the first time thieves have used stolen information to obtain sensitive taxpayer information and likely will not be the last.

Mr. Koskinen, is it true that the Inspector General warned your agency of this threat last year? And if so, what actions did the IRS take following that warning?

And number two, has the IRS notified each of the tens of thousands of taxpayers affected by this incident? If not, when does it expect to do so?

Commissioner KOSKINEN. After our problem with Get Transcript 2 years ago, I asked the agency to look at every way anyone gets either money or information out of our systems. I thought there might be 30 or 40; it turns out there are over 200 different ways we provide tax data to mortgage companies, finance companies, the Department of Education.

So we have begun an agency-wide process over the last 2 years to look at each of those avenues of approach, see where the risks are, and solve those risks.

One of the things we did a year ago was—it used to be you could file your return by going online and getting what is called an e-File PIN. All you needed was your Social Security number, a name, and an address. But of course, Social Security numbers can be bought online for \$10 by organized criminals.

So last year, we discovered, of course, that in addition to legitimate taxpayers, criminals were filing their fraudulent returns with the use of the e-File PIN. So we shut that down, and that meant that this year any criminal filing of a tax return, a fraudulent one, had to actually have last year's adjusted gross income.

Last summer, again, working with the Inspector General and our criminal investigators, we got some preliminary indications that when mortgage companies, through consolidators, were asking us to confirm income for people applying for a loan or a mortgage, that data was coming through a system that did not necessarily make us comfortable that the consolidators knew their customers.

So last summer, we shut that system down—it is called the Income Verification Express Service system—for 2 weeks while we developed a program with the consolidators, in the short run as well as the long run, to ensure that they know with whom they are dealing before they pass those requests on to us.

As we moved through the early fall, we also focused on the student loan application process at the Department of Education. We had an early indication in September that it was possible, with relatively little stolen information, to pretend you were a student, go online, start to fill out an application, give permission for us to populate that application with tax data, most importantly the adjusted gross income, and then complete the application.

We started working with Education in October, telling them that we were very concerned that that system could be utilized by criminals. But on the other hand, we recognized that 12 to 15 million

applicants also use what we call the Convenience App for populating their application with their own tax return.

So Education—we worked together—developed a long-term solution that will mask that data, but they cannot execute and implement that until next October. So we agreed with them, since we did not have at that time any volume of criminal activity, that rather than shutting it down and add to the burden of people applying for financial aid, we then would monitor that system as we moved through the tax system.

But I told them, as soon as there was any indication of criminal activity, we would have to take that application down. And that occurred as we monitored through into the early part of February, middle of February. It became clear that there was a pattern of activity that I will not go into detail about—we briefed you on that—that was clearly not consistent with people going on to actually apply for student loans.

And as we tracked that pattern down, we discovered that in fact it was clear that some of that activity was legitimate students, some of it was criminals. So we shut the system down and spent the last 3 or 4 weeks working with Education to see, was there any interim solution we could use before they finished their work in October to bring the system back up?

And it turned out there was no way we could satisfy ourselves that opening that avenue again would be free from risk, that criminals would not get in. And our highest priority is to make sure we protect taxpayers and their identity and as well against fraudulent refunds.

So what is going on is, at this point, you can still file a student loan application, you just have to put in the tax information yourself. If you do not have it, you can go online with our new authentication system and get a transcript and get it online, or we will mail to your last address of record the tax information you need.

What you will not be able to do until probably October is go in and have the data automatically populated.

Fortunately, we caught this at the front end. We think that at this time we estimate fewer than 8,000 fraudulent returns were actually filed, processed, and refunds issued. So again, we are at the front end of the problem, but we have been monitoring it.

We have other areas where we are monitoring. We are trying to anticipate where the criminals will attack next.

The CHAIRMAN. Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

We are working very closely, the chairman and I, to get on top of this, because this is not complicated. Cyber-thieves have been ripping off students and parents.

And I heard you give a number that I thought, Commissioner, was for February. Did you go back, you know, earlier? Give us your best estimate of how many taxpayers will end up having their data stolen. Because I think what people want to know is—and you have worked with us, and we appreciate it—is this the tip of the iceberg; is it going to be more?

So go back briefly and then give us your sense overall about how much more is still out there.

Commissioner KOSKINEN. Originally, we were concerned about the filing season, but we have gone back as far as last September and have determined that there are no indications at this point, although we are still looking at it, of any illegal activity in September through December. As you can track the changes, there is a spike in activity that begins in the latter part of January.

As we work through the pool of people in the suspicious area of activity who did not complete their application, it is about 100,000 people. But it is clear some of those are legitimate people who actually just did not complete the application.

But our position has been, as we have been working with Education, we cannot confidently distinguish the smaller part of that pool, or the part of the pool that had their data stolen, from those who may have had their data stolen.

So out of an abundance of caution, we are going to notify all 100,000—35,000 of those letters are already on the way—because we know our filter stopped 52,000 returns out of that 100,000, and of those 52,000 right now, we know 14,000 were identity theft refund, illegal returns, that did not get out the door, but were there.

So we marked all 100,000 accounts, so whenever a return is filed, they will be protected. But while a number of them—again, we do not want to unnecessarily worry people, but we will advise everyone that there is some indication that they may be at risk.

Senator WYDEN. Commissioner, are you confident that the pool of possible students and parents who got ripped off is not greater than 100,000?

Commissioner KOSKINEN. These numbers always have a way of growing. We are actually now starting to look through all of last year, although last year you did not need this information. As I said, if you were a criminal, you could just get an e-File PIN to file.

What is motivating the criminals is, they need adjusted gross income, because that is the key that we have this year for all taxpayers. So the number may grow, although we have continued to look at it and analyze it.

At this point, all of the analytics with the Department of Education show that the pool is about 100,000 people.

Senator WYDEN. If you could continue, Commissioner, as you have, to inform Chairman Hatch and I about it—we are working together on this. We are going to make sure we get to the bottom of it.

Let me ask you about the tax returns, the President's tax returns. As you know, since Watergate, it has been routine for presidential nominees and sitting Presidents to release their returns.

It seems to me public disclosure is all the more important today. We hear stories practically every few hours about conflicts of interest, ties to foreign governments, all of these issues being debated in the press, and leaks hanging over President Trump and his administration.

If IRS agents found ties to Russia in the President's tax returns, would they now be able to share that information with national security agencies?

Commissioner KOSKINEN. I cannot talk about anyone's individual tax situation.

Senator WYDEN. No, this is just a question. Would they be able to?

Commissioner KOSKINEN. As a general matter, tax information and tax audits are highly protected. We think every taxpayer needs to be confident that when they deal with us, they are going to be dealing with us and we are not sharing that information with anyone else.

As a general matter, you know, if we find evidence of criminal activity in an audit, our criminal investigators work with the Department of Justice on that matter.

But for the vast, overwhelming majority of taxpayers, that information about their return, the information about the audit, is highly secretive. And no IRS employee, for instance, can look at anyone's tax return unless they have a good reason to, and we monitor that. The IRS Commissioner cannot look at anybody's return.

So at this point, I think the more important message we have for taxpayers is, if you are dealing with the IRS, we view that information as important to protect, important to keep within the bounds of the activities of the IRS.

Senator WYDEN. I think what we are interested in knowing is just how—because this is a very unique situation. You know, in effect, IRS agents may be looking at information that involves the boss, involves the President.

And I was pondering for a second your comment about the relationship with the Justice Department. So if an agent now found matters that could be criminal on tax returns of the President as it relates to the President and Russia, under current IRS rules and procedures, that information would go to the Justice Department. Is that right? I think that is what you said.

Commissioner KOSKINEN. Senator, as I said, we are not in a position to talk about anybody's situation—

Senator WYDEN. Right.

Commissioner KOSKINEN [continuing]. Or any hypothetical. All I can tell you is, we treat taxpayer data confidentially. We protect it to the maximum extent we can. And every taxpayer gets treated the same.

Senator WYDEN. All right.

Mr. Chairman, can I ask one other question with colleagues' forbearance? Because Chairman Grassley is gone, and it deals with his good work.

The CHAIRMAN. Sure.

Senator WYDEN. Mr. Chairman and colleagues, Senator Grassley and I have introduced legislation to strengthen incentives for whistleblowers under the tax code while also enhancing whistleblower protections.

The chairman cannot be here; obviously he is on the floor.

You cannot endorse legislation obviously, you know, Commissioner. But I would be interested in just one quick question. Do you believe that there is a need for additional whistleblower protections? And set aside the bill Senator Grassley and I have. But just generally, do you believe there is a need for more whistleblower protection?

Commissioner KOSKINEN. I do. As you know, I am a big supporter of the whistleblower program. But I do think that whistle-

blowers ought to be protected against retaliation, whether they are in a private-sector company or in a government agency.

We need to encourage people, if they think there is a problem going on, wherever it is, to be able to raise their hand, make that problem known, without having retaliation against them.

Senator WYDEN. Thank you, Mr. Chairman.

Thank you, colleagues, for the extra time.

The CHAIRMAN. Senator Roberts?

Senator ROBERTS. Thank you, Mr. Chairman.

The former chairman of the committee, my good friend, Max Baucus, said at your confirmation vote, one of the essential tasks you had was to rebuild public trust in the IRS after the political targeting scandal.

I note with interest—well, let me just back up and see if I can make sense out of this. This really gives me no pleasure, and it is with some degree of sadness that I want to ask you this question.

The House Ways and Means Committee chairman Kevin Brady and 14 members of his committee have called for you to step down immediately. I have their letter, and I would like to insert it in the record at this point and ask unanimous consent for that.

The CHAIRMAN. Without objection.

[The letter appears in the appendix on p. 54.]

Senator ROBERTS. Thank you.

This has always been about the First Amendment and protecting those rights and preventing the government from restricting them.

I want to go back to when you first came to my office. I was very pleased to see you. You told me confidently that you would focus on implementing the Affordable Care Act, that you would use your business expertise to make the agency run as smoothly as possible, and that you would keep the IRS free from any political interference.

These are all laudable goals. I was very persuaded that you would run the agency in a businesslike manner. You seemed like you just would be the man for the job.

Again, it gives me no pleasure and it is with sadness that I say, with all due respect, I have been disappointed in your record in the agency.

I am not going to go over all of the things listed in this letter. And I am sure you are familiar with them and would have quite a rebuttal.

But again, this has always been about the First Amendment and protecting those rights. Seven years after the IRS commenced its campaign against conservative groups and close to 4 years after Lois Lerner publicly apologized for what was going on, I do not believe we have meaningfully addressed the issues that political targeting raises, whether they be conservative, liberal, you know, whomever. And I do not think anybody has been held accountable. In fact, in checking, these organizations are still experiencing delays. And I think this is really unacceptable.

Now, the advent of a new administration and new leadership at the Treasury does give us a chance for a clean break. And basically, my question to you is, do you intend to serve out your full term, or will you submit your resignation to Secretary Mnuchin as soon as possible?

Commissioner KOSKINEN. Well, I appreciate the inquiry. I regret that you are disappointed in my performance.

I think the record will demonstrate—and a number of members of the Ways and Means Committee did not sign that letter. But I think our record will demonstrate we have implemented every recommendation by the Inspector General and this committee, including the majority and minority report recommendations, to ensure that a situation that should never have occurred never occurs again.

And the IG has reviewed those activities and verified that we have implemented those rules and those regulations. The IG has reviewed our production of information and documents and found that no one has done anything purposely at any level in the organization to interfere with any congressional investigation.

We have produced over 1,300,000 pages of documents to everyone. There is no indication—the IG has responded to every question about whether anyone has been targeted unfairly for an audit ever since this unfolded. They have looked into over 100 cases and not found a single one.

And in light of that, my concern, as I have made very public, is—my term ends in early November. I have talked with the transition team for the administration, and I have said publicly I think it is important for there to be continuity in leadership for this organization. I have encouraged—

Senator ROBERTS. Have you received anything back from the administration?

Commissioner KOSKINEN. I have not received feedback. My position has been—I have encouraged them to find someone in the next month or two to nominate for this position, because, as you know, the confirmation process, appropriately, for the IRS Commissioner is lengthy, thorough, and detailed. And it is important to have a Commissioner—

Senator ROBERTS. Any confirmation process at this particular time in the United States Senate has proven to be lengthy. I will not go into that right now.

So I take it, I understand that you are doing a very good job of summarizing what you believe that you have accomplished at the agency. I am not going to quarrel with that.

I would just note the letter from the Ways and Means folks. I simply do not agree with your summation in terms of what has been done with regards to the First Amendment rights of many Americans.

So I take it your answer is “no”?

Commissioner KOSKINEN. So I was going to say—let me respond to that. Yes, my plan—I signed up for a term that ends in November. Where I come from, if you sign up for a commitment, you keep that, you complete that commitment.

My concern is, in fact, that there will not be a Commissioner ready to take charge when I leave. And running an organization without a permanent head is not a good idea in the private sector or in the public sector.

So I encourage—again I have talked to Secretary Mnuchin about it. We need to find someone to occupy this space, and it is going to be vacant come November. But in the meantime—



Senator ROBERTS. I appreciate that.

Commissioner KOSKINEN [continuing]. I plan to complete my term.

Senator ROBERTS. I appreciate that.

I am way over time. Thank you.

The CHAIRMAN. Senator Scott?

Senator SCOTT. Thank you, Mr. Chairman.

Commissioner, good to see you again.

Commissioner KOSKINEN. Good to see you.

Senator SCOTT. The Treasury IG for Tax Administration issued a report just last week detailing how IRS criminal investigators mainly pursued law-abiding citizens and businesses when seizing assets in civil forfeiture cases related to anti-structuring rules. The IRS seized more than \$17 million worth of assets from innocent businesses over a 2-year period of time.

The report also found the rights of some individuals and businesses were compromised during the investigations.

Mr. Commissioner, I am pleased that the IRS has undertaken some policy changes to deal with civil asset forfeiture in the alleged structuring cases fiasco. But the management response in the report from the IRS noted that the IRS never violated structuring laws and that the relevant laws do not differentiate between legal or illegal sources.

And since what you have enacted is only a policy change, I believe the legislation Congressman Roskam introduced on the House side and I have introduced with Senator Brown on this side, which would limit the IRS's ability to seize people's money without first charging them with a crime, is absolutely necessary to ensure we do not read about, and our citizens do not undergo, any further nightmare scenarios like these seizures.

Tell me you agree.

Commissioner KOSKINEN. I agree.

Senator SCOTT. This is wonderful. [Laughter.]

The CHAIRMAN. May I interrupt for a second? I am going to have to leave, and Senator Wyden will chair the rest of the hearing.

So I apologize for interrupting you, and you can have some seconds—

Senator SCOTT. No, no, please. When you get such a clear answer, you can take all the time you want to. This is fantastic. [Laughter.]

Commissioner KOSKINEN. First, let me just elaborate a little bit. We changed the policy almost a year and a half ago.

Senator SCOTT. Yes, sir.

Commissioner KOSKINEN. We had since then one seizure, and it has been in a criminal matter. We are mindful of this. It is a policy change that is now fully implemented. But if the legislation were passed to make clear that that policy change is now a legislative change, we would be supportive of that.

Right now, again, the act provides that, if you structure your payments, whether with criminal funds or otherwise, to either avoid taxes or for convenience, it is a violation of the law. And so a legislative change making clear that, unless the funding is from an illegal source, there will not be a seizure, would be fine with us.

Senator SCOTT. Perfect. Thank you, sir.

In 2012, IRS employees spent about 573,319 hours of official work time on union activity. That is about 72,000 days' worth of official work being done by IRS employees not helping U.S. taxpayers.

If you had these hours back, what better service and efficiency could you provide to the millions of Americans currently suffering through long wait times and courtesy disconnects and process delays?

Commissioner KOSKINEN. Clearly, if we had—my position has been for some time, the more resources we have, the better service we will have. And as I noted, those wait times have been cut significantly.

Senator SCOTT. Yes.

Commissioner KOSKINEN. And service is much better.

I would note the 573,000 hours is down by 100,000. We have a program as part of our contract with the union to work together to try to limit official-time hours wherever we can. But official time is provided to employees in the union by statute. We do not have an ability to tell them they cannot do it.

We do have an ability to try to work with them to contain it and to make sure it is used for official purposes. There has never been any investigation showing that the union has misused those times. And the employees under the law have a right to be represented by union representatives. And that is what the official time is used for.

Senator SCOTT. No question that there has not been a suggestion that there has been a violation of law. We are just talking about \$21.6 million, 573,000 hours that could be better used to help taxpayers with their taxes as opposed to union activities. So they could do those activities off the clock, from my perspective.

But thank you very much for your clarity and for being succinct.

Commissioner KOSKINEN. Thank you.

Senator WYDEN [presiding]. Thank you, Senator Scott.

Senator Carper is next.

Senator CARPER. Thanks, Mr. Chairman.

Mr. Commissioner, welcome.

Senator WYDEN. Excuse me, Senator Carper. My apologies.

Senator Thune was next, and you are right after him. Is that okay?

Senator CARPER. I object. [Laughter.]

No. He literally raced down the hall to get ahead of me so he could get seated. That is okay; I will get over it.

Senator THUNE. Just because I know the Senator from Delaware is so fast.

Thank you, Mr. Chairman.

And thank you, Commissioner, for appearing this morning. We appreciate your update and testimony on the IRS's progress with the 2017 filing season.

There are a couple of issues I would just like to ask about with tax reform, of course, on the immediate horizon. I think this is a once-in-a-generation opportunity to simplify the tax code, which is critical to taxpayers, but also ought to help the IRS when it comes to administering the tax law in a more efficient manner.

I hope that during the remainder of your term you will redouble your efforts to help put the IRS back on the right path, especially in terms of improving customer service and preventing tax-related identity theft.

I know that has been touched on already. But, I would say it is probably one of the biggest issues under your jurisdiction that is facing South Dakotans when it comes to their Federal taxes, and that is the problem of tax-related identity theft. It affects not only those who have their identity stolen, but also those who find their refund delayed while the IRS verifies their identity.

So I want to ask if you could talk about the steps, and I know you have probably perhaps touched on this already, that the IRS is taking to improve its defenses and to help taxpayers fight ID theft. Are there any statutory changes that Congress needs to make to help you in those efforts to protect Americans' tax data and minimize the risk of related identity theft?

We have had some reports of people in South Dakota—when they have had an identity theft issue, it is taking up to a year to resolve their cases. So, if you could, please talk about how you might be able to get some of those cases resolved faster.

Commissioner KOSKINEN. Right. Working backwards, we now have that time, on average, down to 103 days, so that we are sensitive to that and are working hard, so we, as a general matter, think we can process faster.

One of the reasons we can process faster, as I noted earlier, is because last year for the first time the number of taxpayers identifying themselves as victims dropped by almost 50 percent. That drop is a result of not only improved filters on our part—and the chairman had asked and we are providing tomorrow more details about our return review program. But we are now able to stop—we have over 200 filters.

But more importantly, or equally importantly, 2 years ago I brought in the CEOs of H&R Block, Intuit, TurboTax, all the software developers and all the State tax commissioners, not to tell them what to do, but to create a partnership where we could, in real time during the tax filing season, share information about suspicious patterns of activity, where we think there are problems.

But also, equally importantly, we could jointly work together to improve the level of security from the time a taxpayer signs on to their software to the time they file with us to the time they file with the States.

And we now have included financial sector participants who in fact can help us, if an illegal refund does get out, to recapture those funds.

And so a big part of the decline in the number of identity theft victims is the result of this public/private partnership. As the number declines, that is why we can deal with those who are actually victims more quickly, because if you cut the number by half, obviously you can actually be more effective.

So for a number of years, we made steady, but very slow progress. I think together with the technology, a lot of off-the-shelf software that we bought, some of it with the money that Congress gave us, I think we are in a much better position with identity theft.

But I have said from the start, we are dealing with organized crime syndicates around the world. And the minute you think you are done is when you have lost, so we will continue to have to upgrade our systems, continue to expand our partnerships with the private sector.

And we are now reaching out to individuals. Individuals have a role to play making sure they protect their data, making sure that they have security on their systems. And it is a joint effort. And I think that is why we have made the progress we have.

Senator THUNE. In addition to the funds that you get appropriated by Congress, the IRS raises about \$800 million a year in user fees and other sources of revenue that you collect.

Could you share with the committee how you allocate those user fees and the extent to which they have been dedicated to customer service for this filing season?

Commissioner KOSKINEN. We file a plan with the Congress every year as to how we are allocating those funds. Historically, we have allocated a significant portion of them to taxpayer service, but we also have significant needs in cybersecurity and information technology, as well as enforcement. So each year, we make a decision as to where the funding is—our funding comes in those buckets—where we need to, in fact, support that funding.

Initially, user fees were meant to allow us to respond to unfunded mandates or other activities coming up during the year. Our hope is, one of these days we would fully fund taxpayer service, information technology, cybersecurity, and operations so that user fees would allow us to respond to changes. Right now, we virtually use all of them filling those gaps.

This year, as I have noted, our level of taxpayer service, partially with user fees, but also with the funding that Congress provided, is over 75 percent, so that it means that we are reaching—our goal would be to be in the low 80s, so it takes a little more funding to do that. But we are at double the rate we were in 2015 when we had just an unacceptable level.

So since then, the combination of user fees and the combination of support from the Congress has allowed us to, on the call centers, be able to raise the level of service. But equally important, it has allowed us in our communications in writing with taxpayers to significantly lower the inventory so that we can actually respond in a more timely way to those letters.

Senator THUNE. Thank you.

Thank you, Mr. Chairman.

Senator WYDEN. Thank you.

The long-waiting Senator Carper.

Senator CARPER. Thank you.

Mr. Commissioner, again, welcome.

My father used to have a saying. He had a lot of sayings. But one of the things he used to say is, “Quitters never win, and winners never quit.” And I would just urge you to stay on the job until your term expires in November.

And I know you have some critics. We all do. And when you take on tough jobs—there are even a few people critical of us. Hard to imagine.

But thank you for all that you do and the leadership that you provide in a very, very difficult job.

One of the things I like to do—used to do it as a Governor, still do it as a Senator—I do customer calls. And I know you come out of the private sector, but I visit businesses in Delaware, large and small, businesses outside of Delaware that have operations in Delaware, large and small, even businesses outside of America that have operations in Delaware, large and small.

And I ask them three questions. How are you doing? I ask them, how are we doing? We, State of Delaware; we, the Federal Government. And then I ask a third question: what could we do to help you?

And you have done a lot in the time that you have been our Commissioner to lead a team to do a better job, even though we have reduced your resources, your funding, I think by about 20 percent in real numbers, since the time that you were confirmed—a reduction of about 20 percent.

We passed changes in the tax code. We do not give you plenty of time to adjust and train your employees to respond to questions and prepare the programs and the paperwork and everything to allow folks to file their taxes. We pass it right before Christmas, right before it is time for people to start preparing to file their taxes.

And we do not make the tax code easier; we make it more complex. And then we say, “Go off and do a good job.” And in spite of all that, I think that the IRS is doing, in a number of respects, in spite of all the hacks and the attacks, the cyberattacks, I think you are doing a better job. And I think it is in no small part because of your leadership.

There are three areas I think where we might be able to help the IRS do an even better job. One is to fund the IRS. We are looking again at another request to reduce funding for the IRS from this administration.

And I understand that for every dollar that we invest in the IRS, not only do we get better service for taxpayers as they prepare their taxes, but we also find that for every dollar we invest, we increase revenues by at least \$4, maybe more. So obviously, there might be something we could do on the budget side here. That is one thing I have heard about.

The issue of paid tax return preparers—you have been asking, the IRS has been asking for years, to make sure that the folks who are actually helping folks prepare tax returns are qualified and competent to do that.

It turns out—this is one of the numbers I saw that said about 60 percent of the tax preparers, they are not CPAs, they are not accountants, but about 60 percent of them help submit tax returns that are erroneous. And you asked us to do something about that. I think we should. I mentioned the funding.

The last thing I want to mention and then just ask you to comment on is streamlined critical pay authority. We had over 1,000, maybe 2,000 vacancies over at the Department of Homeland Security for cyber-warriors. They have the authority to pay them, they have the money to pay them, they are just having a hard time finding them.

And I think one of the things that you all have asked for is streamlined critical pay authority; it has expired a couple of years ago. That would seem to me maybe another area where we could help.

Would you just respond to those three, at least those three, and say are those in the past, are those still needs and requests that you have?

Commissioner KOSKINEN. Well, on funding, we are still, in absolute terms, \$900 million below where we were 7 years ago, even with 10 million more taxpayers and a more complicated code.

Senator CARPER. So down \$900 million compared to how many years ago?

Commissioner KOSKINEN. Well, if we are looking at the 2018 budget, it would be 8 years ago.

Senator CARPER. Okay.

Commissioner KOSKINEN. 2010.

Senator CARPER. And that is out of a budget of about, what, \$12 billion?

Commissioner KOSKINEN. The budget was \$12.3 billion, \$12.2 billion, and now—

Senator CARPER. Yes. So it is close to 10 percent. Okay.

Commissioner KOSKINEN. Yes.

Senator CARPER. Not corrected for inflation—not corrected for inflation.

Commissioner KOSKINEN. Yes. If you take inflation, you are closer to your 20, 23 percent there.

Senator CARPER. Yes, okay.

Commissioner KOSKINEN. So funding is an issue, particularly with regard to just personnel. We are down over 17,000 people. That impacts not only taxpayer service; it impacts enforcement, it impacts IT.

On streamlined critical pay, it was historically used, for the 14 years or so we had it, primarily for technical positions, like cybersecurity. Our chief technology officer, our chief cybersecurity person, our architecture for our IT, were all streamlined critical pay. The last of those people are rolling off.

The most critical thing it does is, it allows us, when we are competing with the private sector and others, when we find someone, we can say, we want to hire you for cybersecurity purposes and we can put you on payroll with streamlined critical pay in about a month.

If we go through the normal process, it is 4 to 6 months. Asking one of these people in high demand to hang around for 4 to 6 months while we process them through the system generally does not work very well. We have great people in the IRS, wonderful people working in IT, but without streamlined critical pay it is a significant challenge for us to upgrade those folks.

Otherwise, as you say, we have paid preparers. As I always say, the saying goes, your barber needs more qualifications to cut your hair than it takes to prepare your tax return. And our proposal is not to regulate preparers or do anything different, it is to require them, in effect, to know something about the tax code if they are going to represent themselves to taxpayers as being competent, and

to have a continuing education requirement, just the way lawyers and CPAs and doctors and others do.

We ran the program for about a year and a half, so everybody could see what it looks like. It is not a threat to regulate; it is really a requirement to have minimum standards of competence. And I think that would be important. It will not drive criminals out of business, but it will give taxpayers some confidence that when they hire a preparer, that person knows something about the tax code.

Senator CARPER. Thank you.

Senator Wyden, you have led the way on this point for years, and I have been your wingman. And I sign up again. Hopefully, it will not be a long mission. We need to get this done. This is crazy. Thank you.

Senator WYDEN. High time, thank you—in a bipartisan way.

Senator Bennet?

In fact, colleagues, if we all go 5 minutes, it would go Bennet, Cassidy, and Cantwell. We will all get 5 in, and we would be able to get it in before the vote.

Senator BENNET. I am going to go 45 minutes. [Laughter.] No, just kidding.

Commissioner KOSKINEN. Well, my answer will be long. [Laughter.] Just kidding.

Senator BENNET. Commissioner, this may be the last time you testify before this committee, and I want to take a second to thank you for your willingness to serve as IRS Commissioner at what has been an enormously difficult time in the country's history, through budget cuts and unfortunate, and I would say sometimes pathetic, actions by some that inappropriately turn the IRS into a political football.

You have taken on the difficult task of leading this agency. You have not been perfect. None of us in public service is perfect. I am sure that you, like me, would have things you would do differently in hindsight.

But the IRS is an easy target in Washington, and you have taken on more incoming than most in your role. So much of what you have endured has not been a reflection on you or your work, but a symptom of this dysfunctional moment in our country's politics.

With that as a backdrop and in this last hearing that you have, I would like to offer you the opportunity to tell anyone who is watching who may not understand, why did you take this job in the first place? What have you achieved in the job?

And roughly 40 months into the experience and far longer than that in your public service, what would you have to say to other Americans who are contemplating public service?

Commissioner KOSKINEN. I took the job. It took me about, as I have said, 15 seconds to agree to do it because I knew, having been around Washington, of the critical role the IRS plays, both in funding the government—we collect \$3.3 trillion a year—but also because we touch virtually every American.

We will get 152 million individual tax returns this year. So to the extent we could make the system work more efficiently, more effectively, we could, in fact, improve that situation for 152 million taxpayers filing.

What have we achieved? We have talked a lot about the gains in identity theft. We have talked about the gains in the ability to access information at the IRS more efficiently and more effectively from the standpoint of taxpayers who more and more deal with their financial institutions online in secure accounts and never call. There is no reason that ultimately we should not be able to provide a totally secure way for taxpayers to deal with us without having to call.

We have managed to get through the last 3½ years with, I think, a reasonable amount of employee morale, even though the agency has been under continued attack. We have a great workforce. And while we have not been able to replace most people leaving, I think we have demonstrated, given resources, as the additional resources in 2016, we can do the job and we can do it well.

And one of the ironies is that—it is not a time for irony these days—but one of the ironies is, while the IRS continues on occasion to be under attack, whenever there is a new idea or a new program, oftentimes people say, let us give it to the IRS because they will get it done. And we appreciate that confidence, and, in fact, we do get it done.

I have told the employees, sometimes we are our own worst enemies because we do so well, even in the face of resource constraints, that people think they can continue to eliminate, to cut the resources and it will not make a difference. And my concern is that it will make a difference at some point in time, both to the effectiveness of the agency, its ability to collect the revenues, and its ability to service taxpayers.

So what I would like taxpayers to know is that we take taxpayer service very seriously. We also take treating every taxpayer the same and fairly very seriously, which is why what has been called the targeting of conservative groups based solely on the basis of their name for further review was unacceptable, should never have happened. I personally apologize to anyone who was stuck in that queue. You should be able to get an answer from the IRS quickly, not have to wait for a year or two or longer to get that answer.

But it is important for people to understand that even with our limited resources, we will still do a million audits this year. And those will be audits of people who are Democrats and Republicans. They are people who go to church, they are people who do not go to church. They will be people who were active in a campaign or not active in a campaign. It does not make any difference to us.

If you get a letter from us, if you get an examination by us, it is because of something in your tax return. And subject to resource constraints, anyone else who had that issue in their tax return would hear from us as well. We are involved in tax administration. There is not a political way to do it. There is not a Republican or a Democratic way to administer the tax code. There is a professional way to do that.

We have a group of employees dedicated to service to taxpayers, to service to the country.

Senator BENNET. Thank you, Commissioner. I thank you for your service. Thank you.

Thank you, Senator.

Senator WYDEN. I thank my colleague.



We now have three Senators here, and the vote is going to start in 10 minutes.

Senator Cassidy?

Senator CASSIDY. Mr. Commissioner, again, thank you for your service.

As you know, one of the things before us right now is the proposals to replace Obamacare, repeal Obamacare, or to repair Obamacare, whatever the semantics are. And one of the criticisms of the approaches that would use an advanceable, refundable tax credit, is that the EITC has a fairly significant overpayment rate.

Now, I guess my issue or my question—and you know, this is a conversation, it is not a “gotcha”—is, what do you think of the IRS’s capability of administering an advanceable, refundable tax credit using as a context both the EITC and the subsidies that were paid out to insurance companies under the Affordable Care Act?

Commissioner KOSKINEN. Well, I would start out by, as I do with tax reform, saying we do not have a policy view about what should happen with health care.

Senator CASSIDY. I understand; I totally get that. I am just talking mechanics.

Commissioner KOSKINEN. Right. So you can blow it up if you would like, and that is fine with us.

Senator CASSIDY. Yes.

Commissioner KOSKINEN. We are concerned, because one of the areas that we have struggled with from the start, for some time, is improper payments in the EITC. Any time you have a tax credit that is refundable, that is, you get it whether you owe taxes or not, it is a magnet, a target for identity thieves, a target for criminals, a target for preparers who are fraudulent, hanging out a sign saying, “Come with me, I will get you a big refund.”

The advance premium tax credit in the present system has not presented that problem because the money does not go to the taxpayer; the money goes to the insurance company.

Senator CASSIDY. So let me interrupt. The proposal that Susan Collins and I have put forward actually would have an account that would be created that could only be used for health care or health insurance.

Commissioner KOSKINEN. Right.

Senator CASSIDY. So that kind of bridges the difference. It does not go to the individual; rather, it is under the individual’s control, but then is subject to IRS regulations vis-à-vis HSA regulations. So, thoughts on that context?

Commissioner KOSKINEN. Anything that causes you to be able to not have the money just disappear into somebody’s bank account is a major, significant advantage in terms of dealing with the risks of improper payments.

Senator CASSIDY. So if I may say then, the concern that EITC is the kind of paradigm through which we should view these advanceable, refundable tax credits, you would say, well, maybe it should be more judged as in the Affordable Care Act subsidy in which it does not go directly to the individual; rather, it is someone who has fiduciary responsibility over it.

Commissioner KOSKINEN. Right. And that is why, as I have said, the policy decisions are your decision.

Senator CASSIDY. I totally get that.

Commissioner KOSKINEN. We are anxious to continue to have discussions about just these kinds of levels of implementation and technical ways—

Senator CASSIDY. So let me ask you something else, because I have limited time, and the chair is kind of rapping me.

Another concern has been—I have a Health Savings Account, or at least I did before Obamacare took it away from me. And that said, I had a card and I would swipe it and it would tell me automatically if it was an allowable expense. Somehow that was there.

It has also been suggested, though, that the Health Savings law and the ability to monitor how the expenditure truly works is lacking.

Do you have a sense of the degree to which these folks who issue these cards—insurance companies issuing cards—and the coordination between that card, what it will pay for and what is considered allowable under the IRS's statute of appropriate care for HSAs, how well that works? Is there fraud there, or do you think it works pretty well?

Commissioner KOSKINEN. Thus far, we have not seen any major indications of—

Senator CASSIDY. So when someone says that they have seen folks go up to the counter at the pharmaceutical store with a bunch of potato chips and swipe their HSA card, is that an urban myth or do you see evidence of that?

Commissioner KOSKINEN. We do not see evidence of that that I know of at this point.

Senator CASSIDY. And do you know if you have audited that? Again, not accusatorily, I am just asking because I have to defend this to others.

Commissioner KOSKINEN. I do not know what our audit history on that is.

Senator CASSIDY. Could you ask? Could you ask your staff to let me know that?

Commissioner KOSKINEN. I would be delighted to do that.

Senator CASSIDY. Yes. And again, this is purely interest.

Now lastly, let me tell you, I have been a victim of identity theft. And so just let me revisit that, because it is rather personal. And I remember the way it happened is that somebody filed on my behalf, somehow they got my Social, but it was pretty evident. You know, I was in the campaign, so either it was my opponent—probably not. [Laughter.]

But it was somebody who could just look at news reports and knew a lot about me and somehow got my Social.

And so I guess when I looked at it though, you could have easily—and when your folks came to talk to me, you could have easily looked at what information the IRS had about me. You know, I had an income stream from my work as a physician, as a teacher I should say, and my income stream from work in the Congress, and you could have coordinated those and seen that the filing was not correct.

And they told me that these databases—yes, it should be done—but the databases did not communicate with each other. And really, what would have been a very simple sort of, this drops out because either historically it does not match or because it does not match from what has been filed currently, did not happen.

I see that your data systems may not come online until 2022. It really seems like Google could have figured that out about me really quickly. You follow what I am saying?

Commissioner KOSKINEN. Yes. We figure that out about you now pretty quickly. We have put in place our return review program that has 200 filters looking for just those anomalies.

Senator CASSIDY. Now, this was a year and a half ago this occurred. So you are saying in a year and a half this has transpired?

Commissioner KOSKINEN. RRP went up on a pilot program last year and was part of the way identity theft victims dropped by 50 percent last year. The filters are even better this year, and, more important, we also have information coming from States and preparers. So we are significantly more capable and aggressive at stopping fraud.

Last year, we stopped a million fraudulent refunds with \$6 billion worth of refunds that never went out.

Senator CASSIDY. Thank you very much.

Senator WYDEN. Great.

Senator Cantwell, then Senator Cardin. And the vote starts in 3 minutes. I am going to stay.

Senator CANTWELL. Thank you, Mr. Chairman.

I was heartened to hear Secretary Mnuchin during his confirmation hearing say that the IRS was understaffed and that we needed to make sure that we moved beyond the punitive budget cuts. So has the IRS been exempted from the President's hiring freeze?

Commissioner KOSKINEN. We have not been.

Senator CANTWELL. Do you know of any steps the Secretary is taking to advocate for the IRS's exemption?

Commissioner KOSKINEN. The Secretary has been very supportive, and his staff is working with us to identify areas where we should be able to make hires in areas that are critical to the operation of the agency. The Treasury and the Secretary have been very supportive.

Senator CANTWELL. So they are pursuing some exemptions?

Commissioner KOSKINEN. They are pursuing. We have given them a list. We have worked on a list. They are working with OMB on a set of exemptions.

Senator CANTWELL. And how is that affecting the agency not having the staff? What would you say the effects of that are?

Commissioner KOSKINEN. Well, as I have said, we are kind of the poster child for a hiring freeze. We have not really hired very many people for the last 6 years, so it is not as if we have a cast of thousands that we could afford to fund. We are talking about a relatively small number of positions that are leadership positions in IT or in critical areas. And those are hampering us a little.

But again, I would stress, the Secretary and the Treasury Department could not be more supportive working through this.

Senator CANTWELL. Well, we definitely want to see those exemptions. And I guess I would be the wingwoman on the wingman

team on this issue of streamlined critical pay authority. Because the notion that you say that the hiring freeze does affect IT and that we then need to find other people, to me this whole issue of cybersecurity and information and securing the IRS database is so important. So I hope that if you need anything from us to help push that awareness or advocacy, please let us know.

Commissioner KOSKINEN. Thank you.

Senator WYDEN. Thank you, Senator Cantwell, for making that point and making it so succinctly.

Senator Cardin, we will wrap up, and we will go vote.

Senator CARDIN. Thank you, Mr. Chairman.

I want to raise the issue of private debt collection. I understand it is the law. And in addition to receiving other information, taxpayers are now receiving a notice that they may be contacted by private debt collectors with all the risk factors that go along with that.

I regret that we are at this point, but I understand the law, and I understand your responsibility is to carry out the law.

My concern is that the last time we tried this, between 2006 and 2009, the Treasury ended up receiving \$63.4 million in revenues, but paying out \$67.8 million, for a net loss of \$4 million.

Can you share with us—and perhaps you will do it for the record with a written response because of the time we do not have today—how you are taking steps to, first, protect the public against the abuses of private debt collectors, and secondly, how you are going to ensure that we are not going to lose money by using private debt collectors?

Commissioner KOSKINEN. On protecting taxpayers, we have had good sessions with the private debt collectors in terms of training. The people understand they have to—

Senator CARDIN. What are the consequences if they do not follow your direction?

Commissioner KOSKINEN. Ultimately, we can terminate the contract if they do not follow the normal structure.

Senator CARDIN. And that is clear in the contract?

Commissioner KOSKINEN. It is, in the contract, but the companies have been very cooperative. The last thing in the world any of them wants is to be—

Senator CARDIN. So when I get a complaint, you will follow up on it? And if it is accurate, you will fire the debt collector?

Commissioner KOSKINEN. Yes, if there is a pattern of activity. Obviously, nobody is perfect.

Senator CARDIN. Well, the pattern—it is hard for me to find a pattern. I get individual complaints.

Commissioner KOSKINEN. And we will collect those and will be delighted to have those.

Senator CARDIN. Thank you. And just make sure that we do not lose money.

Commissioner KOSKINEN. And to make sure we do not lose money—one of the arguments made in the past was that we kind of, to protect taxpayers, overloaded the system with a lot of overhead and activities. And this time around, we do not have the resources to do that. We have streamlined the program.

My commitment has been that we will do everything we can to make sure this program is effective, both in terms of protecting taxpayers, but also collecting revenue. Because if it works, that would be fine, but if it does not work, I do not want anyone saying, well, we actually sandbagged it some way or the other.

So we will monitor carefully the expenditures. We will monitor carefully the resources that are returned to the government, and we think we will have a very good database.

Senator CARDIN. Will you make information available to my office as to how this process is moving forward, including the accountability issues that you have talked about, and how the accounting is being done in a straightforward way to make sure that taxpayers are not subsidizing private debt collectors?

Commissioner KOSKINEN. I would be delighted to do that.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

Senator WYDEN. Thank you, Senator Cardin.

No speeches, Mr. Commissioner, because we have this vote on.

Chairman Hatch wanted me to thank you very much for appearing today. He also wanted to make it clear that we are going to be working with you all on trying to improve the tax system.

And I would ask that members who have written questions submit them by 6 p.m. on Thursday, April 13th.

Those are all comments from Chairman Hatch, who has to be on the floor.

I would just like to add one last thought. And that is, you know, Mr. Commissioner, I think everybody understands that nobody likes the IRS and the IRS will always be a punching bag. And my view is, you have been accessible and you have been honorable in your service, and we will look forward to talking with you further, undoubtedly on a variety of issues.

With that, the Finance Committee is adjourned.

Commissioner KOSKINEN. Thank you.

[Whereupon, at 11:03 a.m., the hearing was adjourned.]



## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF HON. ORRIN G. HATCH,  
A U.S. SENATOR FROM UTAH

WASHINGTON—Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a hearing to examine IRS operations for the 2017 filing season and beyond:

Every year, the committee holds a hearing on the tax filing season. It provides us with a great and relevant opportunity to discuss and examine the operations of the Internal Revenue Service, the agency charged with administering our complicated, convoluted tax code and collecting taxes from workers and employers across the country.

With each passing year, taxpayers face new challenges as they file their taxes, including, but not limited to, protecting their private information. Today we will discuss, among other things, the IRS's efforts to address these types of challenges as well as its plans for progress and modernization in the near future.

The Finance Committee has always taken its oversight responsibility with the IRS very seriously, and for good reason.

The IRS is virtually the only Federal agency that deals with every American citizen, everyone who does business here, every large employer, every mom-and-pop business, and every community organization.

Over recent decades, as our tax code has grown more complex, we have given the IRS more and more to do, including administering social policy and implementing an ever-growing number of rules, regulations, and notices.

And, quite frankly, I don't think many people are satisfied with the results.

While I know the people at the agency often point to limited funding, there are other matters that have contributed to the current level of dissatisfaction, including outdated collection practices and bureaucratic wrangling as well as a number of poor management decisions. This committee has conducted oversight on a number of those poor decisions, including the politicization of tax administration, excessive spending on executive travel, and improper contracting practices.

Congress needs to look closely at the IRS and work to modernize and streamline its operations. This should include changes to the bloated and poorly managed technology used by the agency and the elimination of bureaucratic waste.

Hopefully, during the course of today's hearing, we can get a better sense of the agency's plans to address these and other issues as well as its suggestions for congressional action.

Of course, looming over this conversation is the ongoing—and hopefully bipartisan—effort to reform our broken tax system.

Tax reform, if done right, should simplify the tax code and make the IRS's job much easier and allow the agency to focus on collecting revenue in the fairest and most efficient manner possible.

More importantly, tax reform, if done right, should improve the way taxpayers interact with the IRS, reducing the countless hours and billions of dollars spent every year just to comply with the tax code and file accurate returns.

The IRS is probably the most feared of all government agencies. The IRS wields immense power and authority over the lives of our citizens, and, for hardworking taxpayers, direct contact with the IRS is rarely, if ever, desirable.

I think we can take steps to improve this, but it will likely require us to make significant changes to the tax code and to the IRS itself.

Hopefully, the leadership at the IRS will be willing partners in this effort.

Toward that end, I appreciate Commissioner Koskinen's willingness to appear today. I look forward to what I hope will be a meaningful and substantive discussion of these important issues.

With that, I'll turn it over to Senator Wyden for his opening remarks.

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PREPARED STATEMENT OF HON. JOHN KOSKINEN, COMMISSIONER,  
INTERNAL REVENUE SERVICE

Chairman Hatch, Ranking Member Wyden, and members of the committee, thank you for the opportunity to provide you with an update on the 2017 tax filing season and discuss IRS operations.

I am pleased to report that the 2017 filing season has gone well thus far in terms of tax return processing and the operation of our information technology (IT) systems. In fact, I believe this has been the smoothest filing season since I became Commissioner. As of March 31st, the IRS received more than 93.6 million individual returns, on the way to a total of about 152 million. We have issued over 74.1 million refunds for more than \$213.5 billion, with the average refund totaling approximately \$2,900.

The smooth operation of the filing season is a testament to the hard work and dedication of the IRS workforce. It is important to note that administering the filing season does not happen automatically or by accident, but because thousands of IRS employees spend months planning in advance for the filing season and then administering it effectively.

The 2017 filing season is notable for certain Protecting Americans from Tax Hikes (PATH) Act changes that were enacted in 2015 and took effect this year. One of those provisions requires the IRS to delay the payment of tax refunds until February 15th each year to taxpayers who claim either the Earned Income Tax Credit (EITC) or the Additional Child Tax Credit (ACTC). Although this change slowed the overall pace of refunds at the beginning of the filing season, that pace accelerated once the IRS released approximately \$51 billion in EITC and ACTC refunds after February 15th.

The new requirement to hold EITC and ACTC refunds, and another change enacted by Congress to accelerate the filing date of Form W-2s, have together helped the IRS improve its ability to spot incorrect or fraudulent returns. Receiving W-2s earlier has also assisted in the quicker release of refunds for those returns that appear suspicious but where we are able to verify the taxpayer's identity, which reduces unnecessary delays for compliant taxpayers.

Another PATH Act provision requires Individual Taxpayer Identification Numbers (ITINs) to expire if they were issued before 2013 or if they were not used on a Federal tax return for 3 straight years. This change was also designed to increase the IRS's ability to detect and stop potential tax fraud.

I am pleased to say that the IRS has been able to implement these important revenue-protecting changes while delivering a successful filing season thus far. It is also important to note that Congress set the effective date for these changes about a year after enactment, which gave the IRS sufficient lead time to get our systems ready and also to prepare taxpayers and tax practitioners for the changes. We greatly appreciate this date, as adequate lead time is critical to maintaining the efficiency and seamlessness of our operations.

The lead time also allowed us to work extensively with many partner groups across the country and use various outreach and communications channels—including press releases, social media, speeches and the annual IRS Nationwide Tax Forums—to get the word out so people would understand what the changes would mean for them. This has greatly reduced the need for taxpayers to call or write us with questions.



## TAXPAYER ASSISTANCE EFFORTS

Another critical component of the tax filing season involves the assistance the IRS provides to taxpayers through various channels, to help them fulfill their tax obligations as quickly and easily as possible.

One important area involves digital services. The IRS has been working to improve and expand our online offerings, in response to increasing taxpayer demand. We provide a wealth of tax information on *IRS.gov*, which was visited more than 500 million times during fiscal year (FY) 2016, and more than 320 million times so far in FY 2017. Taxpayers use *IRS.gov* to get forms and publications, find answers to their tax questions, and perform transactions such as paying their tax bill. The most heavily used part of our website is the “Where’s My Refund?” electronic tracking tool, which was used about 300 million times in FY 2016, and more than 228 million times already this filing season.

The IRS understands the need to continually improve the online content we provide to taxpayers. For that reason, over the last few years, we have updated many of the most-often used sections of *IRS.gov* through our Content Upgrade program. Over time, we have also launched a number of digital applications to further increase the security of taxpayers’ confidential tax information and improve taxpayers’ interactions with the IRS. These include:

- Get Transcript, which allows taxpayers to go online, verify their identity with strengthened security, and download a copy of their tax records from prior years. Taxpayers have used this tool 7.4 million times so far in FY 2017;
- Online Payment Agreement, a secure, safe, and easy process which taxpayers can use to set up a payment plan and pay their tax obligations over time. More than 247,000 online agreements have been set up so far in FY 2017; and
- Direct Pay, which provides taxpayers with a secure, free, quick and easy online option for making tax payments. This tool has been used more than 4.6 million times in FY 2017.

Our goal has been to find out how we can enhance and expand important services for all taxpayers, no matter what their circumstances.

In November 2016, we took the first step toward a fully functional IRS online account with the launch of an application on *IRS.gov* that provides information to taxpayers who have straightforward balance inquiries. This new feature allows taxpayers to view their IRS account balance, including the amount they owe for tax, penalties, and interest, in a secure, easy, and convenient way. Since its launch in December, this new tool has been used successfully about 547,000 times.

We recently added another feature that will let taxpayers see recent payments posted to their account. These balance-due and recent-payment features, when paired with existing online payment options, will increase the availability of self-service interactions with the IRS.

These are important steps, and over time, subject to the availability of resources, we will be adding other features to this platform as they are developed and tested with taxpayers and tax professionals. One such service improvement is Taxpayer Digital Communications. This feature, which is now in testing, provides a secure online messaging capability so that taxpayers, their authorized representatives and IRS employees can correspond electronically and resolve issues more quickly than through traditional mail while maintaining security.

As we improve the online experience, we understand the responsibility we have to serve the needs of all taxpayers, whatever their age, income, or preferred method of communication. Although our research tells us that taxpayers increasingly prefer to interact with the IRS through digital channels, we recognize there will always be taxpayers who do not have access to the digital economy, or who simply prefer not to conduct their transactions with the IRS online.

Consequently, the IRS remains committed to providing the services these taxpayers need. In fact, we believe that providing more online services for those who want them will free up valuable resources to allow us to further improve service on our other channels—phone, in person, and correspondence, particularly for those taxpayers with more complex issues.

In regard to phone service, I’m pleased to report that during the 2017 filing season we are again seeing an improved level of service (LOS) on our toll-free lines,

as we did in 2016. These improvements have been the direct result of the funding granted by Congress to improve service to taxpayers, as well as to strengthen cybersecurity and to expand our ability to address identity theft.

Our phone LOS currently is running above 76 percent, and we anticipate that the average for the 2017 filing season as a whole will be about 75 percent. We are still performing research to understand what other factors, aside from resources, may be contributing to this year's sustained high LOS. But we believe a major factor is a relative lack of major tax law changes enacted in 2016, which reduces the number of taxpayers calling with questions. Additionally, as noted above in regard to the PATH Act, the IRS had time to prepare taxpayers for those changes, which we believe also reduced the number of taxpayers needing to contact us this filing season.

Along with improvements in phone service, we have substantially reduced our correspondence inventory. In 2014 and 2015 this inventory grew significantly above normal levels, because our constrained funding forced us to shorten the period of employment for our seasonal employees who help answer taxpayer correspondence. To illustrate, inventory of pending correspondence stood at 900,000 at the end of FY 2014 and 859,000 at the end of FY 2015. By the end of FY 2016 that inventory had declined to 690,000, and now stands at about 660,000.

The IRS has also been successful in providing timely assistance this filing season to taxpayers who visit one of our Taxpayer Assistance Centers (TACs) located around the country. In recent years, TACs in many locations had experienced such heavy demand during the filing season that taxpayers were lining up for hours before the centers opened, just to ensure they would get in the door. To cut down on those long lines, the IRS in 2015 began testing a new way of doing business: letting people make appointments in advance, which is a process that had already been used successfully in other countries.

We found the pilot conducted in 2015 to be so successful that, with some adjustments, we moved to extend the appointment process to all TACs as of this year. I am pleased to report that the appointment process has dramatically cut wait times for taxpayers seeking assistance at TACs, and we have had no reports of long lines so far this filing season.

We have also found that this arrangement provides major advantages to the taxpayer. First, when a person calls for an appointment, we can tell them what documents they need to bring with them, reducing the number of return trips. Second, the IRS employee making the appointment can often help the taxpayer resolve their issue over the phone or refer them to the help they need, eliminating altogether the need to visit a TAC. In fact, we have found that about 50 percent of the taxpayers who call for an appointment resolve their issues during that initial phone contact and do not need to make a personal visit to a TAC.

This fiscal year, through March 11th, more than 1.3 million people have called for an appointment. Of that total, about 741,000 were able to resolve their issue over the phone, meaning there was no need for the time and expense of visiting a TAC. This is an important point, because TAC employees can now spend more time with those who do visit, as they tend to have more complex issues that cannot be resolved over the phone.

In implementing this new arrangement, we realized it would take time for people to adjust, so we have also served 685,000 people who walked in without an appointment so far this fiscal year, bringing the total number served so far in FY 2017 to approximately 2 million. The 685,000 number for walk-ins includes people who visit TACs to pick up a tax form or pay their tax bill. These are transactions for which no appointment is needed.

I would note that the operation of this filing season has been accomplished while using antiquated IT systems, as approximately 60 percent of the agency's hardware and 28 percent of its software are out of date and in need of an upgrade.

Congress enacted a number of provisions over the last several years that came with little or no funding for their implementation. This list includes: the Affordable Care Act (ACA); Foreign Account Tax Compliance Act (FATCA); a new certification program for professional employer organizations; reauthorization of the Health Coverage Tax Credit (HCTC); the registration requirement for newly created 501(c)(4) organizations; the seriously delinquent debt certification program; and the 2015 PATH Act changes noted above.

## SAFEGUARDING IRS SYSTEMS AND TAXPAYER DATA

A critical component of tax administration, both during the filing season and throughout the year, involves safeguarding our systems and protecting taxpayer data, as well as working to thwart stolen identity refund fraud.

The IRS continues to work to protect our main computer systems from cyber-incidents, intrusions and attacks, with our primary focus being on preventing criminals from accessing taxpayer information stored in our databases. These core tax processing systems remain secure, through a combination of cyber-defenses, which currently withstand more than 1 million attempts to maliciously access our systems each day.

The IRS is also continuing its battle against stolen identity refund fraud. Over the last several years we have made steady progress, even within our reduced resources, in protecting against fraudulent refund claims, criminally prosecuting those who engage in this crime, and helping minimize the adverse effect on victims.

That progress has accelerated since 2015, thanks to the collaborative efforts of the Security Summit Group. Over the past 2 years, this strong, unique partnership between the public and private sectors has allowed us to coordinate our efforts on many different levels. As a result, we put in place many new safeguards beginning in the 2016 filing season that produced real results. To illustrate, the number of people who reported to the IRS that they were victims of identity theft declined from 698,700 in calendar year (CY) 2015 to 376,500 in CY 2016—a drop of 46 percent.

Even with this progress, the fraud filters in our processing systems are still catching a large number of false returns, which shows that identity theft continues to be a major threat to tax administration. During FY 2016, our systems stopped more than \$6.5 billion in fraudulent refunds on 969,000 tax returns confirmed to have been filed by identity thieves.

Along with the work being done by the Security Summit Group, another critical factor in our ability to improve efforts against stolen identity refund fraud has been the development and phase-in over the last several years of the Return Review Program (RRP). The RRP delivers an integrated and unified system that enhances IRS capabilities to detect, resolve, and prevent criminal and civil tax non-compliance.

This filing season, through the use of the RRP, we have become even more sophisticated than before in detecting anomalies in both paper and electronic tax returns. This has allowed us to continue strengthening our anti-fraud filters to block false returns before a refund can be issued. This year through March 22, the RRP has selected approximately 631,000 potentially fraudulent tax returns claiming approximately \$4.7 billion in refunds. We have developed RRP to identify all of our fraud cases that were previously identified by our legacy system, the Electronic Fraud Detection System (EFDS).

Despite all the progress we have made, we realize we cannot let up in the fight against identity theft. We are finding that, as the IRS improves monitoring capabilities and shuts off certain avenues of entry, identity thieves look for new ways of getting in. As the IRS enhances return processing filters and catches more fraudulent returns at the time of filing, criminals attempt to become more sophisticated at faking taxpayers' identities so they can evade those filters and successfully obtain fraudulent refunds.

Therefore, the IRS is working not just to react better and faster, but to anticipate the criminals' next moves and stay ahead of them. To fully protect taxpayers and the tax system, the IRS must not only keep pace with, but also get ahead of, criminals and criminal organizations, as they improve their efforts to obtain personal taxpayer information.

In that regard, we continue to be concerned that identity thieves, in their never-ending hunt for taxpayer data, are targeting tax return preparers. For that reason, the Security Summit Group in 2016 began a stronger collaboration with the tax practitioner community. Working with our Summit partners, the IRS has alerted tax practitioners to various identity-theft schemes focused on preparers that have come to light over the past year.

Additionally, the IRS, in conjunction with the States and the tax community, has been conducting a public awareness campaign aimed at return preparers, called "Protect Your Clients, Protect Yourselves." The goal of this campaign is to get the word out to preparers about steps they can take themselves to safeguard taxpayer

data and avoid becoming victims of identity theft. We also continue to educate and share similar information with individual taxpayers through the “Taxes Security Together” campaign, which is now in its second year.

Along with these initiatives, which have been very helpful, we have also undertaken a broader effort to protect the security of data and strengthen authentication standards for programs where we share taxpayer information.

One example of this effort was our decision last year to eliminate the electronic filing Personal Identification Number (PIN) as an option for taxpayers to use to verify their identity when filing their tax return. An electronic tool on *IRS.gov* allowed taxpayers to enter identifying information to receive the e-file PIN. After discovering unauthorized attempts had been made to obtain PINs using data stolen from sources outside the IRS, we halted use of the PIN. Although our analysis of the situation found that no personal taxpayer data was compromised or disclosed by IRS systems, and no fraudulent refunds were issued, we believe it was necessary to discontinue the PIN to protect taxpayers and their data.

Our efforts to strengthen authentication standards also extend to programs where taxpayer data is routinely shared with organizations that use it to verify eligibility for customers who apply for loans. Since last summer, we have been working with banks, mortgage companies and others to ensure they were implementing strong “know your customer” requirements.

Along those lines, in June 2016 the IRS announced new, stronger requirements for participants using the Income Verification Express Service (IVES). The IVES service is used by pre-screened companies who, in turn, are hired by mortgage firms and loan companies that need to verify applicants’ income. Going forward, the IRS will only accept requests for taxpayer data from IVES participants who certify that they are using the new requirements to verify their clients.

We took this step out of an abundance of caution to protect taxpayer information as well as safeguard the vital IVES program. IVES has been a successful program for the government and the private sector since 2006, and participants have a strong track record. While the IRS has concerns about limited areas in the program, these center on suspicious activity and customer validation issues. At issue is whether all IVES participants are always fully validating their clients, a situation we are currently investigating.

Student financial aid is another area where we have concerns about the potential for unauthorized attempts at obtaining taxpayer information. We have been working with the Department of Education to secure the online process through which student financial aid applicants obtain their family’s financial information, which they need in order to complete the Free Application for Federal Student Aid (FAFSA) or apply for an income-driven repayment (IDR) plan for their student loans.

As part of this effort, in early March we disabled our IRS Data Retrieval Tool (DRT) found on the *fafsa.gov* website after we became concerned about the misuse of taxpayer data by criminals masquerading as students. Our IT, cybersecurity and privacy experts spent the next 3 weeks working with their counterparts in the office of Federal Student Aid (FSA) to find a way to secure the data provided to applicants for financial aid.

We recognize the burden on applicants if the convenience of the IRS data retrieval return is not available. However, in the process of considering potential, short-term technical solutions, we realized that none of them could clearly ensure the protection of student loan applicant financial information. Therefore, as we announced last week, we will not be able to activate the DRT until longer-term system upgrades are implemented.

Families can still complete applications for student financial aid by manually providing the requested financial information from copies of their tax returns. And, if necessary, they can obtain a copy of those returns either online through the Get Transcript application, by mail, or from their tax preparer. Although we realize this is less convenient than obtaining the information online, we have a responsibility to ensure all of our online tools, such as the DRT, are fully protected from identity thieves.

#### LOOKING AHEAD

We recognize that Congress is considering possible legislation on tax reform, as well as other tax legislation. As your committee knows, the IRS has a great interest in working with you to make sure that whatever legislation is enacted can be ad-

ministered as efficiently and effectively as possible for taxpayers and the tax system as a whole. To that end, early consideration of the impact of tax law changes on tax administration plays an important role in assisting IRS in achieving this goal.

We also encourage Congress to carefully consider the impact of the timing of tax law changes. It is our experience that implementation is smoother and less costly from both the government's and taxpayers' perspectives if there is sufficient lead time to ensure that the IRS can prepare both taxpayers and our own systems for those changes, as was the case with the PATH Act changes I referenced earlier.

Chairman Hatch, Ranking Member Wyden, and members of the committee, that concludes my statement. I would be happy to take your questions.

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QUESTIONS SUBMITTED FOR THE RECORD TO HON. JOHN KOSKINEN

QUESTION SUBMITTED BY HON. ORRIN G. HATCH

*Question.* Commissioner, an area of critical importance is the fight against identity theft refund fraud. The Tax ISAC that IRS has created (Information Sharing and Analysis Center) is a strategically essential defense for the integrity of the tax system, just as are the ISACs in the Aviation, Financial Services, and Health care sectors. But to be successful and effective, an ISAC is dependent on secure and confidential information sharing by all parties.

What are the obstacles, if any, to IRS being able to be a full participant in its own ISAC? Are any obstacles insurmountable under current law, and, if so, what do we need to do to enable the Tax ISAC to be robust and optimally effective?

Likewise, what if any funding does IRS need to ensure that the ISAC is fully successful in the fight against tax refund cyber-fraud?

*Answer.* We chartered the Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (IDTTRF-ISAC) in December 2016 and began pilot operations at the beginning of this filing season on January 23, 2017. The IDTTRF-ISAC is a natural outgrowth of our Security Summit activities which began in 2015 to look holistically at the tax refund identity theft problem across a return's lifecycle. The purpose of the IDTTRF-ISAC is to share identity theft tax refund fraud data and related analysis with public and private entities in order to detect, prevent, and deter identity theft tax refund fraud. As of late April 2017, the IDTTRF-ISAC has 36 member organizations from State departments of revenue and the tax software and tax preparation industries.

The two primary capabilities we are piloting this year are: (1) sharing of tax ecosystem alerts; and (2) analyzing leads generated by the tax software and tax preparation industry as well as other member data. Tax ecosystem alerts are akin to a neighborhood listserv for the tax ecosystem. Members report any tax ecosystem threats they encounter so that others can protect themselves against the threat. Thus far, threats have included employer W-2 breaches, compromised return preparers, new schemes, and dark web chatter about system vulnerabilities. Allowing one member's detection to be another member's prevention is a powerful paradigm. Already, the IDTTRF-ISAC has received indicators that members are using alerts to identify suspicious returns in their own systems and stop the further processing of returns seeking fraudulent refunds.

With regard to the second capability, namely the analytical function, members submit data to the IDTTRF-ISAC for the purposes of finding anomalies indicative of potentially fraudulent activity. This capability, of course, is dependent on the volume and quality of the data the IDTTRF-ISAC receives. In preparation for filing season 2018, the IDTTRF-ISAC plans several data experiments this summer to help identify data with the greatest predictive capacity. We anticipate the IDTTRF-ISAC will realize fuller capability in the next filing season with its increased number of members and a better understanding of what data is most relevant to identifying and reducing identity theft fraud.

Under the law, we are limited in the ability to share with the IDTTRF-ISAC and certain other external organizations fraudulent or potentially fraudulent data received on a tax return. Section 6103 protects largely all data on a return received by the IRS or gathered by it in connection with the processing of the return, whether the return was filed by the true taxpayer or a fraudulent taxpayer.

We will spend an estimated \$3.9 million in FY 2017 operating the ISAC. In addition, the IRS plans to spend \$4.7 million in FY 2016 expired balances for IDTTRF-ISAC activities in FY 2017, as outlined in the May 2017 letter to the House and Senate Appropriations Committees.

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QUESTIONS SUBMITTED BY HON. RON WYDEN

*Question.* Ever since Watergate, it has been routine for presidential nominees and sitting Presidents to release their tax returns. Public disclosure is all the more important today, when serious questions about conflicts of interest and ties to foreign governments hang over President Trump and his administration.

IRS procedure requires that the IRS audit the individual income tax returns of the President annually, and provides for an expedited audit process. While I understand IRC section 6103 limits your ability to discuss information related to individual taxpayers, I respectfully request you provide answers to the following questions with respect to the underlying IRS policy that requires audit of the tax returns of any President.

How can the IRS guarantee to the American people that the audit of the President's tax returns is independent of political pressure from the White House or other groups?

*Answer.* The IRS follows the laws and policies in effect that ensure examination of a President's tax return is independent of political pressure. Experienced IRS employees, whom we select to conduct sensitive examinations of this type, are subject to Federal Civil Service laws that protect them from being disciplined or terminated without appropriate cause. IRS employees are specifically trained to recognize and report inappropriate interference with an examination to the Office of the Treasury Inspector General for Tax Administration (TIGTA) for investigation.

In addition, the Internal Revenue Manual provides instruction for handling an examination of a President's individual tax return. Furthermore, the examination is subject to mandatory quality review by Examination Technical Services under IRM 4.2.1.11. This review evaluates the examination of the President's tax return against objective criteria and provides an internal system of checks and balances to ensure that the completed audits are technically and procedurally correct.

*Question.* The requirement to audit the President's tax returns is provided under the Internal Revenue Manual (IRM), which is neither statute nor regulation. Given that this mandate exists only under IRS procedure, is it possible for the IRS, Treasury Department, or White House to exempt the President's tax returns from this requirement?

*Answer.* The individual income tax returns for the President and Vice President that are filed while they are in office are subject to mandatory examinations by the Internal Revenue Service as a matter of IRS policy and procedure, and described in the Internal Revenue Manual since at least 1977, now at IRM 4.2.1.11. We have no plans to modify this longstanding policy.

*Question.* IRC section 7217 prohibits the President and employees of the Executive Office of the President from interfering in the audit of any specific taxpayer. An exception to this prohibition applies to cases in which the Secretary of the Treasury intervenes in an audit as a consequence of the implementation of a change in tax policy. As such, can IRS definitively state that any revision to revoke or limit the scope of IRM 4.2.1.11 at the direction of the White House, Treasury Department, or IRS Commissioner is prohibited under IRC section 7217? Please explain your interpretation of this provision.

*Answer.* We have no plans to modify the scope of IRM 4.2.1.11.

*Question.* IRM 4.2.1.11(1) specifically requires audit of the *individual* income tax returns of the President. How does the IRS interpret the term "individual?" Does this include any business tax returns or information returns? Does this include tax returns of partnerships, corporations, or trusts wholly owned by the President? Does this include the tax returns of related parties who are engaged in business with the President, such as the President's adult children? Please describe any limitations IRS faces due to the scope of the mandatory audit.

*Answer.* Individual income tax returns are those filed on the Form 1040 series, which do not include business tax returns or information returns. However, under IRM 4.2.1.11, examiners may review a President's "related returns" in accordance

with procedures that apply to all taxpayers. According to IRM 4.10.5.4, *Related Returns*, returns are related if adjustments made to one return require corresponding adjustments to the other return to ensure consistent treatment, or the returns are for entities over which the taxpayer has control and which can be manipulated to divert funds or camouflage financial transactions. Therefore, returns of businesses a President owns or returns of family members may be included in an examination of the President's individual income tax return if they are related. There are no specific limitations regarding the scope of a mandatory return examination.

*Question.* Are IRS agents qualified to identify ethical conflicts of interest that may arise as part of the audit of the President's tax returns? Would doing so be within the scope of their authority?

Answer. This matter is not within the scope of a return examination.

*Question.* Are IRS agents qualified to identify ties to foreign governments which could undermine the integrity of the United States Government? Would doing so be within the scope of their authority?

Answer. This matter is not within the scope of a return examination.

*Question.* On January 30, 2017, President Trump issued Executive Order (EO) 13771, titled "Reducing Regulation and Controlling Regulatory Costs." The EO requires that "for every one new regulation issued, at least two prior regulations be identified for elimination."

What challenges does the IRS face in determining the types of guidance that are covered by the EO? For example, are Revenue Rulings or Letter Rulings, which some taxpayers may rely on for certainty, covered by the EO?

Answer. Under EO 13771, the Office of Management and Budget (OMB) issues guidance on the implementation of the EO, including what actions are subject to the EO's requirements.

*Question.* Could IRS compliance with the EO impair the ability of taxpayers to properly calculate their Federal tax obligations?

Answer. The Treasury Department and the IRS are working with OMB to comply with the executive order. We do not anticipate that the EO will impair taxpayers' ability to properly calculate their Federal tax obligations.

*Question.* Do you expect that compliance with the EO will require significant IRS resources? If so, could you estimate the resources that will be needed—such as the number of hours IRS employees will spend?

Answer. The Treasury Department and the IRS are working with the Office of Management and Budget (OMB) to determine how the executive order applies to Treasury and the IRS.

*Question.* Could the EO increase the likelihood of a loss of Federal revenue directly, through lacking guidance, or indirectly, through the redirection of IRS employee resources?

Answer. The Treasury Department and the IRS are working with OMB to comply with the executive order. We do not anticipate that the EO will increase the likelihood of a loss of Federal revenue directly or indirectly.

*Question.* Could the EO prevent or slow down the issuance of critical guidance needed to swiftly shut down abusive transactions, like certain inversion transactions or other abusive emerging tax strategies?

Answer. The Treasury Department and the IRS are working with OMB to comply with the executive order. We do not anticipate that the EO will prevent or slow down guidance needed to address abusive transactions.

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QUESTIONS SUBMITTED BY HON. MICHAEL F. BENNET

*Question.* Congress slashed the IRS budget by 16 percent in real terms from 2010 to 2016 with corresponding reductions in its workforce. As you've noted, these cuts also came as the IRS took on increased responsibilities.

You've expressed concerns about this funding squeeze affecting voluntary tax compliance. This is a particular risk given that many of our constituents become frustrated as they are not able to get the help they need from the Service due to unanswered calls or long wait times.

You've noted that even a modest reduction in voluntary compliance could have an effect comparable with the entire amount of revenues collected through enforcement.

Have you seen any early trends in voluntary tax compliance so far this filing season?

Answer. Through the week ending May 12, 2017, we processed 134,127,000 individual income tax returns compared to 134,438,000 from the prior year. However, it is too soon to identify any trends because taxpayers with automatic filing extensions still have until October to file a return. Also, taxpayers without a filing requirement, but who file tax returns for other reasons, may file a return after the April due date. We will continue to monitor return filings throughout the remainder of the year.

*Question.* Given that the President's skinny budget proposes to cut the IRS budget further, what effect would those cuts potentially have on voluntary compliance?

Answer. Effective service and enforcement programs are essential to maintaining and improving voluntary compliance. We will continue to develop our analytic capabilities to improve case selection and management to maximize collections, reduce taxpayer burden, and shorten the enforcement cycle.

*Question.* I know that Congress has reduced the Service's budget and that your team is often just trying to deliver a basic level of service alongside desperately needed modernization with the funding you have.

Setting aside the current politics and funding constraints, what would an ideal system of tax administration and tax enforcement in the United States look like to you and roughly how much do you think it might cost?

Answer. Under an ideal system of tax administration and enforcement, taxpayers and the IRS would be able to interact in the same way that individuals interact with their banks and financial institutions. The IRS plans to provide taxpayers with an account where they, or their authorized representatives, can log in securely, get information about their tax account, and interact with the IRS as needed. The IRS realizes that not all taxpayers are capable of or comfortable with interacting with us online, and for this reason we will maintain the ability for taxpayers to discuss their tax situation with us in person at an IRS assistance center or by telephone through our toll-free taxpayer assistance line. Our goal is to make online systems available for the many taxpayers who want to interact with us this way, freeing up more resource-intensive in-person assistance for those taxpayers who are unable or uncomfortable communicating with us electronically.

The IRS also aims to make IRS interactions with taxpayers about anomalies or potential noncompliance more timely, which means identifying issues earlier, contacting taxpayers sooner, and resolving issues faster. This would be accomplished in part through a more robust anomaly detection capability that leverages available information, historical patterns, service and enforcement results, and established precedents. Once it is determined that taxpayer contact is warranted, taxpayers could be informed, either through their account or other communications and outreach channels, and would be afforded the opportunity to self-correct errors, provide additional information, or explain the anomaly. Self-correction and early opportunities to provide additional information and explain anomalies could help reduce contentious compliance issues in later years.

Here are some of the key building blocks of the improved tax administration and enforcement capabilities.

#### *Virtual Taxpayer Assistance Center*

In the virtual taxpayer assistance center, taxpayers could securely access and control account information. They would be alerted to account updates via this method if they have identified that this is their preferred communication channel. Taxpayers could see return and refund status, payment confirmations, letters mailed, or completed actions, all on one convenient account history page. The virtual taxpayer assistance center would include secure and easy-to-use self-service tools for taxpayers and their representatives, with clear steps to resolve most errors and issues, seek a tax refund, or make an online payment. The need for phone calls and correspondence would be greatly reduced.

#### *Identity Authentication*

The IRS must continue to protect taxpayers' private information and confirm that we are interacting online and on mobile devices with the right person when we implement the IRS Future State. While we have made significant strides, we need to



continue our efforts to expand and evolve our capabilities to authenticate taxpayer identities and secure their data as part of building systems to implement the Future State. Strong systems for identity authentication help to ensure taxpayers have secure access whenever and wherever needed, including when the taxpayer communicates with IRS systems using the virtual taxpayer assistance center.

*Up-Front Issue Identification*

The ability for the IRS to find errors and issues in a tax return within a short time after the taxpayer files that return is central to detecting and resolving discrepancies early and efficiently. This is in contrast to today, when the taxpayer may wait months after filing a return to hear from us. Developing better up-front issue identification capabilities as part of the Future State would help us take immediate actions such as keeping a false refund out of the hands of an identity thief or finding an unclaimed tax credit on the taxpayer's return.

Better access to data sources would also help us detect issues more quickly after a return is filed. Recent legislation requiring employers to file Forms W-2 earlier enables IRS validation of income reporting in filed returns in a more timely manner. The 2018 Budget includes proposals for (1) correction authority for specific errors to help resolve problems if reliable data contradicts information on a tax return; and (2) correction authority when IRS return data shows taxpayer deductions or credits exceed statutory limitations.

*End-to-End Taxpayer Experience*

As part of the Future State, we plan to build the capabilities to ensure that taxpayers experience seamless interactions with us, no matter which of our employees or teams are working with them. An integrated case management capability would also increase IRS efficiencies by allowing us to move information to and among the right workgroups electronically, without delays caused by mailing of case files. For example, this capability would permit multiple expert employees to contribute to complex audits through online sharing of audit materials. It would also allow for a taxpayer's audit case to move from examination to appeals quickly and without the need to transfer voluminous paper files.

*Expanded Data Analytics Capabilities*

Integrating the latest developments in data analytics into IRS systems is an important aspect of the Future State. Incorporating the latest generation of data analytics into IRS systems will enable the IRS to improve tax administration and the taxpayer experience through a "test and learn" process by continuously collecting and evaluating data. Data analytics enables the IRS to use the data feedback loop to improve the efficiency and effectiveness of our interactions. Through analytics, we would get early warning of new tax issues and could help taxpayers to avoid them by both working directly with taxpayers and working with return preparers and tax software providers to establish remedies. Analytics will also make audits faster by reducing taxpayer burden.

*Question.* Are there countries whose public revenue collection agencies deliver an exceptionally high quality of service to their citizens? Are there practices you would borrow from them?

*Answer.* Australia, Belgium, New Zealand, Norway, and many other countries, offer online portals through which their citizens can interact with their tax administrators. These portals offer a variety of online services, including tax and other information, forms and calculators, electronic filing of tax returns, electronic payment options, and secure detailed taxpayer information. These online services are easy and attractive for taxpayers to use, making it easier for them to comply with the law and receive a high standard of service, while the tax administrators benefit from lower costs and greater voluntary compliance. The IRS, through its participation in the Organisation for Economic Co-operation and Development's (OECD) Forum on Tax Administration, is able to learn about the practices in other tax administrations and is working to incorporate similar types of online opportunities as part of our Future State project.

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QUESTIONS SUBMITTED BY HON. MARIA CANTWELL

*Question.* Last year, Congress decided in a bipartisan way to increase funding for the IRS in order to improve customer service, prevent identity theft and improve cybersecurity. I was heartened to hear Secretary Mnuchin say during his confirmation hearings that the IRS was "understaffed" and "under-resourced" and hoped we

could move beyond the era of punitive budget cuts for the IRS and make the Service the most efficient and effective it can be.

I was disappointed along with many of my colleagues by the \$239 million budget cut the President proposed for the IRS, nearly erasing the bipartisan efforts we made last year.

Can you describe how the IRS has spent the additional money Congress appropriated last year for increased cybersecurity? How has the IRS improved its cyber-capability, and how would a cut in funding impact your ability to fight identity theft and protect taxpayers?

Answer. In FY 2016, we spent \$72 million, and plan to spend an additional \$78 million in FY 2017, of the section 113 Administrative Provision on IRS cybersecurity, including labor. The following projects span multiple years and are designed to strengthen IT security controls:

- **Cybersecurity Skills and Workforce**—The IRS successfully recruited high quality candidates to fill IT security roles that were vacant through attrition or newly created to support mandates or initiatives that improve protections for critical infrastructure and taxpayer data. The IRS also invested in enhancing workforce skills through training, accreditations, and certifications.
- **User and Network Security**—The IRS will update its Personal Identity Verification (PIV) enablement solution that controls both physical access to IRS facilities and virtual access to IRS systems. This update requires the IRS to replace its installed network equipment that lacks the necessary software to improve security.
- **Enterprise Operations Infrastructure Security**—The IRS continues to expand its Integrated Enterprise Portal (IEP) environment security protections and tools that detect and remediate attempted external attacks on *IRS.gov* via automated scripts, bots, and suspicious and malicious Internet Protocol addresses.
- **Cyber Strategy and Improvement Plan (CSIP)**—The IRS continues to implement the CSIP issued by OMB to identify and address critical Cybersecurity gaps and emerging priorities. The IRS has launched and continues to strengthen its Security Summit initiative. This initiative allows us to leverage external partnerships with the States and the tax industry to identify safeguards to protect Federal and State tax accounts from identity thieves.
- **Cyber Secure Data Technology**—The IRS is enhancing its infrastructure and tools with modern capabilities to identify, isolate, and respond to current and emerging data security issues. This effort addresses critical needs in the IRS Computer Security Incident Response Center (CSIRC) security zone infrastructure, including bandwidth capacity expansions, required to adequately evaluate content and web traffic.
- **Cyber Analytics and 24x7 Monitoring**—The IRS continues to expand its advanced analytics and 24x7 monitoring capabilities. This will complement the Continuous Diagnostics and Mitigation (CDM) implementation led by the Department of Homeland Security to automate security controls, enhance deficiency management, and standardize risk reporting across Federal agencies.
- **IT Security Audits, Vulnerability Assessments and Remediation**—The IRS used these funds to get contractor services, hardware, and tool enhancements to provide vulnerability assessments via enhanced attack simulations and exercises. These capabilities are essential to identifying weaknesses that we must incorporate into remediation plans across the IT infrastructure ecosystem.

A reduction in cybersecurity funds would severely limit our ability to deliver the multi-year implementation strategy described above to defend against the persistent and organized threat to the security of taxpayer information, their identities, and the tax refunds the IRS processes each filing season. In its FY 2016 report, *Security for Taxpayer Data and IRS Employees*, the Treasury Inspector General for Tax Administration recognized information security as the number one management and performance challenge facing the IRS for the sixth consecutive year.

*Question.* President Trump signed an executive order on January 30th that would require the elimination of two regulations for every one new regulation issued.

The executive order also instructs agency heads that the total incremental cost of all new regulations, including repealed regulations to be finalized in 2017 shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of OMB.

To what extent is the IRS impacted by the Trump “two for one” executive order? What types of notices has the IRS identified that would be impacted by the executive order?

Answer. The Treasury Department and the IRS are working with OMB to determine the scope and effect of the executive order.

*Question.* Has the IRS compiled its list of regulations to be eliminated? What types of tax regulations will be proposed for elimination? Does it include all guidance, notices, and revenue rulings?

Answer. The Treasury Department and the IRS are working with OMB to comply with the executive order. In relation to EO 13789, on July 7, 2017, Treasury and the IRS issued Notice 2017-38, identifying eight regulations as meeting the criteria of EO 13789.

*Question.* To what extent will the “two for one” edict hinder the IRS’s ability to provide appropriate guidance to taxpayers?

Answer. The Treasury Department and the IRS are working with OMB to comply with the executive order. We do not anticipate that the executive order will hinder our ability to provide appropriate guidance to taxpayers. We have been able to publish regulations and issue so-called “sub-regulatory” guidance in the form of revenue procedures and letter rulings, which are helpful to taxpayers interpreting the Internal Revenue Code.

*Question.* Has the Director of OMB provided the IRS with guidance on the implementation of the EO? For example, what are the standards for determining the costs of existing regulations that are considered for elimination? Or, has OMB told the IRS what its total amount of incremental costs is for issuing new regulations will be for 2017?

Answer. The Treasury Department and the IRS are working with OMB to comply with the executive order.

*Question.* I understand that last year, the IRS had informed software providers that tax returns for the 2016 filing season that did not indicate whether or not the taxpayer was complying with the Affordable Care Act’s mandate would be automatically rejected by the Service.

After the President’s executive order on Obamacare was issued on January 20th, the IRS reversed this policy, and will continue the current practice of accepting these “silent” returns.

Does the IRS anticipate this change will lead to fewer people obtaining health insurance coverage or raise the price of health insurance coverage for other people because fewer people will obtain coverage? Was any analysis of the impact of this change on coverage or prices undertaken before this decision was made?

Answer. Consistent with the President’s executive order directing Federal agencies to exercise authority and discretion to reduce burdens under the Affordable Care Act (ACA), we decided to continue to allow electronic and paper returns to be accepted for processing for the 2017 tax filing season in instances where a taxpayer does not indicate whether he or she has health insurance coverage as we had in previous years. However, the ACA is still in force until changed by law, and taxpayers remain required to follow the law and pay what they may owe. The IRS administers the ACA consistent with the statute and the executive order. The IRS does not have the capability of measuring impact on coverage or prices.

*Question.* Is the IRS considering any other regulatory changes regarding enforcement of the individual mandate? Can the administration direct the IRS not to collect this penalty?

Answer. We are not considering any regulatory changes regarding enforcement of the individual mandate at this time.

*Question.* I understand that during the past open enrollment period, the IRS coordinated with the Department of Health and Human Services to inform taxpayers who had not previously obtained insurance what their potential individual responsi-

bility payment could be and encourage them to instead obtain coverage. Do you plan to continue this practice in the upcoming open-enrollment period?

Answer. We understand that the Department of Health and Human Services is developing plans for the next open-enrollment period, and defer to it for information about those plans. The IRS has not made a decision as to whether we will issue notices to uninsured taxpayers.

*Question.* On January 19, 2017, it was reported that the IRS would propose regulations to implement the centralized partnership audit regime that was passed by Congress as a part of the Balanced Budget Act of 2015, and later amended by the PATH Act. However, those proposed rules were never officially published in the Federal Register after President Trump's inauguration.

Why were the proposed rules not published? Have they been delayed or cancelled? What is the current timetable for the issuing of these regulations?

Answer. Proposed regulations to implement the new centralized partnership audit regime were sent to the Federal Register, but were withdrawn prior to publication in the Federal Register in compliance with the White House Chief of Staff's memorandum issued on January 20, 2017. Proposed regulations to implement the centralized partnership audit regime were resubmitted to the Federal Register and published on June 14, 2017.

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QUESTIONS SUBMITTED BY HON. JOHN CORNYN

*Question.* Mr. Commissioner, last month I sent you and Attorney General Sessions a letter about the enforcement of the so-called "Johnson Amendment" and its interaction with both the First Amendment and the Religious Freedom Restoration Act. As you know, the Johnson Amendment prohibits churches and other houses of worship that are deemed as a 501(c)(3) organization, or a non-profit, from engaging in certain campaign activities. My constituents have concerns about the agency's approach on this issue, and I share their concerns. The Johnson Amendment has been a burden for some churches for a number of years—casting a shadow over what can be said in a sermon and other communications that some religious institutions may wish to make to their members about politics or candidates.

In 1993, President Clinton signed into law The Religious Freedom Restoration Act. This statute says that the government shall not substantially burden a person's exercise of religion—even if the burden results from a rule of general applicability. The statute allows a substantial burden of a person's exercise of religion only if the government demonstrates that its action is in furtherance of a compelling government interest and is the least restrictive means of furthering that compelling governmental interest. This requirement applies broadly to all Federal laws—including the Johnson Amendment.

In my letter, I suggested that the IRS and the Department of Justice conduct a thorough review of the interaction between the Johnson Amendment and both the First Amendment and the Religious Restoration Act of 1993. Furthermore, I asked that the IRS and DOJ consider suspending enforcement, including audits and examinations under the Johnson Amendment until a review has been satisfactorily completed.

Some argue that the 1993 Religious Restoration Act allows houses of worship to speak to their members about matters of religious conviction, including political issues or candidates, and the government cannot burden such speech by denying charitable tax status or other penalties. A law review article by Notre Dame Law professor Lloyd Mayer entitled, "Politics at the Pulpit: Tax Benefits, Substantial Burdens, and Institutional Free Exercise" discusses the 1993 Act in context of the Johnson Amendment. The Professor concludes that ". . . the government will have a difficult time demonstrating that they are compelling and that the prohibition as applied to sermons is the least restrictive means for furthering them."

Could you tell me if your agency is conducting a review of the Johnson Amendment and how it interacts with the First Amendment and the Religious Restoration Act of 1993? If so, when do you expect the review will be completed by?

Answer. We appreciate receiving your letter dated March 15, 2017 about the "Johnson Amendment" and its interaction with the First Amendment and the Religious Freedom Restoration Act of 1993 (Pub. L. 103-141). As I explained in my response dated April 11, 2017, we do not take a position on matters of tax policy, and

we defer to the Congress as to whether the Johnson Amendment or other tax laws should be changed. We strictly adhere to the protections that the First Amendment and Federal statutes, including the Internal Revenue Code and the Religious Freedom Restoration Act of 1993, provide to churches, religious organizations, and other taxpayers.

*Question.* What are your thoughts about suspending IRS enforcement activities under the Johnson Amendment until there is a better understanding of the burdens that churches and other houses of worship face?

*Answer.* We have an obligation to administer and enforce the tax law as enacted, with due regard to the Constitution as well as other Federal statutes and guidance. We defer to Congress and the Department of the Treasury to set tax policy.

*Question.* Could you explain to the committee the audit process that churches and other houses of worship go through?

*Answer.* The Exempt Organizations office of our Tax-Exempt/Government Entities Division considers a wide range of compliance issues, including political campaign intervention, before initiating an audit. To initiate a church audit, section 7611 of the Internal Revenue Code imposes a high standard that generally requires an approving IRS official to reasonably believe that the church has not met its tax obligations, such as withholding employment taxes and filing employment tax returns, or has engaged in activities resulting in private inurement or impermissible political campaign activities, such that the organization may not qualify for tax exemption based on a written statement of the facts and circumstances. If the reasonable belief requirement is met, the IRS begins an inquiry by providing a church with written notice explaining its concerns. If the church fails to respond within the required time, or if its response is insufficient to alleviate IRS concerns, the IRS may, generally within 90 days, issue a second notice, informing the church of the need to examine its books and records. After issuing a second notice, but before beginning an examination of its books and records, the church may request a conference with an IRS official to discuss IRS concerns. If at any time during the inquiry process the church supplies information sufficient to alleviate the concerns of the IRS, the matter will be closed without examination of the church's books and records. Generally, examination of a church's books and records must be completed within two years from the date of the second notice from the IRS. For more information about the audit process for churches, please see IRS Publication 1828, *Tax Guide for Churches and Religious Organizations*.

*Question.* Mr. Commissioner, Congress passed the 1998 IRS Restructuring Act in part to curb IRS abuses. This legislation, among other things, requires the IRS to notify the taxpayer before contacting third parties regarding examination or collection activities with respect to the taxpayer. As benign as a third-party contact by the IRS would seem, it carries with it an undeniable stigma. A taxpayer whose employer, friend, or neighbor, learns of an IRS audit or unpaid taxes unquestionably has a changed perception of that individual. Some cases might not impact that relationship or business, but more often than not a taxpayer will suffer irreparable harm.

I have heard from my constituents that the IRS is not meeting its commitment to protect taxpayers' rights regarding third party contacts. I have been told that in practice taxpayers are not being given a substantive opportunity to first provide the information to the IRS and that in many instances the IRS are circumventing these protections. In addition, the National Taxpayer Advocate has found that the IRS's third-party contact procedures do not follow the law and may unnecessarily damage taxpayers' businesses and reputations. The Advocate listed this as one of the most serious problems facing the IRS.

The Advocate found that under current procedures, the IRS issues vague or non-specific Third-Party Contact (TPC) notices and potentially incomplete TPC reports that do not allow taxpayers to be informed about what information the IRS has decided it needs from third parties, whether it has actually contacted third parties, and how to obtain a list of the third party contacts.

I find this disturbing and I trust raises concerns for you as well. It is important that IRS agents are educated on the proper protection of taxpayer rights.

What is the IRS doing to ensure that the protections regarding third-party contacts are fully respected?

*Answer.* The IRS makes every effort to ensure our examination and collection processes, including third-party contacts (TPCs), are conducted fairly and impar-

tially, balancing taxpayer expectations of privacy with the needs of effective tax administration. We are extremely sensitive to taxpayer concerns about reputational harm with respect to their tax matters. As a result, our procedures promote and prioritize open communication with taxpayers to gain their cooperation, encouraging them to voluntarily provide the requested information. When a TPC is necessary, we adhere to the provisions of Internal Revenue Code section 7602(c) and 26 Code of Federal Regulations (CFR) 301.7602-2, requiring us to provide advance notification to the taxpayer, make a record of each third party contacted, and provide a list to the taxpayer of third parties contacted upon request.

The IRS issues several publications to taxpayers, including Publication 1, *Your Rights as a Taxpayer* (Examination and Collection), and Letter 3164, *Third Party Notice* (Collection). Letter 3164 provides advance notice that a TPC might become necessary if the taxpayer does not have the ability to produce books and records as required by law, or if such a contact is required to verify information or document witness testimony.

In an examination, the examiner requests information from the taxpayer using Form 4564, *Information Document Request (IDR)*. Similarly, in the collection process, Form 9297, *Summary of Taxpayer Contact*, is used to request information needed to address collection tax issues. Information taxpayers voluntarily provide usually reduces the need to request information through other means, such as a third-party contact or a summons.

The IRS has additional procedures in place to ensure the protections regarding TPCs are fully respected, including managerial review of TPC cases and internal training.

*Question.* Will you commit to my constituents that the IRS will consult with the Taxpayer Advocate and the Treasury Inspector General for Tax Administration and conduct a review of IRS's practice and guidance, including the Internal Revenue Manual, in this area?

*Answer.* The IRS is committed to the regular review of IRS policy and procedures. Internal Revenue Manual (IRM) 1.11.2, *Internal Management Documents System*, requires program owners to review the IRM at least annually for procedural, operational and editorial changes. Moreover, the IRS is continually looking for ways to improve its processes. As a result of a review of our current TPC practices and guidance, the IRS is updating IRM 25.27.1, *Third Party Contacts—Third Party Contact Program*, and revising TPC notices to instruct employees to inform taxpayers on how to request TPC reports. In addition, we are coordinating with the National Taxpayer Advocate on proposed procedural and policy changes on this issue.

*Question.* What is the IRS doing in response to the Taxpayer Advocate's recommendations?

*Answer.* We are taking the following actions to address concerns in the FY 2015 NTA's *Most Serious Problems Annual Report to Congress*:

- Revising Publication 1, *Your Rights as a Taxpayer*, to include instructions on how to secure TPC listings;
- Updating Collection Letter 3164, *Third Party Notice*, to inform taxpayers of their right to receive post-TPC reports and instructions on how to request TPC reports;
- Updating Internal Revenue Manual (IRM) 25.27 and IRM 4.11.57, to include guidance to IRS employees on a taxpayer's right to receive information regarding TPC reports;
- Including TPC training as part of the Revenue Officers Continuing Professional Education (CPE) training;
- Including TPC training as part of the current Examiner CPE training; and
- Revising Field Examination's Third-Party Contact Procedures Job Aid to better clarify TPC procedures for examiners.

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QUESTIONS SUBMITTED BY HON. CHUCK GRASSLEY

*Question.* Recently, the Treasury Inspector General for Tax Administration (TIGTA) issued a report on the IRS's enforcement of structuring laws through civil asset forfeiture. TIGTA's review of the program, spanning 2012 through 2014,

showed the IRS enforced structuring laws “primarily against legal source funds.” This resulted in hundreds of individuals, many of whom were small business owners, having their bank accounts seized with no evidence of any underlying criminal activity. This included an owner-operator of a small Mexican restaurant in Arnolds Park, Iowa. After public outrage at cases such as this, the IRS announced a policy change that it would only pursue cases in which there was underlying criminal activity, except in exceptional circumstances.

What procedures and protections you have put in place to ensure this new policy is being adhered to?

Answer. Since implementing our new policy in October 2014 (described in IRM 9.7.1.3.1(6)), IRS–CI adopted a number of measures to ensure it is being followed, including the development of standard operating procedures, additional and annual training, and enhanced internal oversight. For example, in June 2016, we implemented standard operating procedures for the Bank Secrecy Act (BSA) violations. The procedures require that the seizure affidavit document meets the probable cause element for evidence of illegal source funds. Moreover, all seizure affidavits must be sworn by an IRS special agent and document the specified unlawful activity underlying the seizure. The special agent in charge must verify that seizures are not conducted independent of an ongoing criminal case. Seizures must generally be tied to an approved subject criminal investigation.

Our Financial Crimes section has quarterly BSA conference calls for field office special agents, task force officers, and their supervisors. In June and August 2016, supervisors, coordinators, and task force officers attended training at the National Criminal Investigation Training Academy, which we expect to repeat annually, including at a meeting scheduled in June and August this year. The BSA enforcement program requires case reviews of open structuring investigations, including a periodic review by the directors of field operations to verify compliance with IRS–CI policies for BSA enforcement. In addition, the Headquarters Review and Program Evaluation staff must review field office BSA enforcement programs.

*Question.* The new policy still allows the IRS to pursue legal source structuring cases in “exceptional circumstances.” Could you help me understand what the IRS would consider an “exceptional circumstance”?

Answer. While we have not specifically defined the term “exceptional circumstance,” we have advised our field offices that we will limit IRS–CI Headquarters approval to the rarest of situations.<sup>1</sup> One such example would be activity that connects the structuring activity to terrorism financing. To date, we have not used the exceptional circumstance exception for seizures.

*Question.* I understand the IRS has notified individuals whose assets were seized after fiscal year 2009 that they may submit a petition seeking return of their funds. Could you provide me with information on how many individuals the IRS has returned funds to, as well as how many have availed themselves of this process?

Answer. For individuals or business entities that received a notice under the petition for remission or mitigation process, our records reflect that 454 individuals and business entities filed petitions. The table below provides information about the disposition of the petitions as of May 3, 2017.

**SUMMARY OF THE IRS PETITION FOR REMISSION PROGRAM  
ON SPECIFIC TITLE 31 STRUCTURING CASES**

	Judicial	Administrative	Total
Notices issued	895	966	1,861
Petitions received	246	208	454
Petitions granted or recommendation to grant made to DOJ	188	174	362 (80%)
Petitions denied or recommendation to deny made to DOJ	58	33	91 (20%)
Petitions withdrawn	0	1	1
Petitions paid (quantity)	7	163	170
Petitions paid (dollar value)	\$442,695.23	\$9,281,238.26	\$9,723,933.49

<sup>1</sup>Memorandum for Special Agents in Charge of Criminal Investigation, October 17, 2014, available at <http://ij.org/wp-content/uploads/2015/07/IJ068495.pdf>.

**SUMMARY OF THE IRS PETITION FOR REMISSION PROGRAM  
ON SPECIFIC TITLE 31 STRUCTURING CASES—Continued**

	Judicial	Administrative	Total
Total approved payments	\$709,239.23	\$10,034,324.33	\$10,743,563.56
Petition payments pending DOJ approval	\$15,790,605.93		

*Question.* During the IRS targeting investigation it became evident that the IRS had some gaps in its policies and procedures to safeguard electronic records, particularly emails. Since 2012, all agencies have been under an Office of Management and Budget (OMB) directive to “manage both permanent and temporary email records in an accessible format” by December 31, 2016. In compliance with this directive, the National Archives recommended all government departments and agencies adopt the “Capstone” approach for electronic management of email records. Has the IRS met its requirements under the OMB directive and fully implemented the “Capstone” approach for managing email records? If not, please explain why and when you expect the IRS to be in compliance.

*Answer.* The IRS takes its obligation to preserve Federal records very seriously. Our efforts ensure records management practices adhere to the National Archives and Records Administration (NARA) and the Office of Management and Budget (OMB) M–12–18, Managing Government Records Directive, requirement.

In response to the OMB directive, we implemented an interim solution to archive email of IRS executives consistent with NARA guidance in October 2014. In 2015, we identified a cloud-based approach to meet the OMB/NARA Capstone requirements and made significant progress to meet the December 31, 2016 deadline. However, a bid protest filed with the Government Accountability Office (GAO) in March 2016, and upheld in June 2016, required us to re-compete the solution to an on-premises based system. The revised approach required new procurement actions and the purchase and installation of hardware and software. Given the timing of the protest, we could not meet the December 2016 deadline. We are on course to implement the enterprise-wide NARA compliant solution for all agency email by the end of fiscal year 2017.

*Question.* Thank you for your call the other day to update me on the IRS’s progress in implementing the Private Debt Collection program. I appreciate your assurances that the IRS is working to make the program a success. One of the challenges facing previous iterations of the program was the limited volume of cases the IRS chose to place with private collection agencies. The success of the program depends on it achieving economies of scale so that efficiencies are realized. I understand the need for a testing period to ensure there aren’t any process problems. However, once this is completed, can you assure me that the IRS is planning to move with deliberate speed to include all eligible accounts in the program so that the billions in revenue the Joint Committee on Taxation estimates the program can collect is realized?

*Answer.* The IRS delivered the first Private Debt Collection accounts to the Private Collection Agencies (PCAs) on April 10, 2017. As noted, the initial volumes were small to ensure there were no process issues. Over the next 6 months, we will increase the volumes with the goal of delivering nearly 140,000 accounts to the PCAs by the end of FY 2017. During this time, the IRS will continually evaluate the inventory delivered to ensure we give the PCAs the right mix and type of inventory. Based on this continuing evaluation, the IRS plans to deliver increased volumes of work through FY 2018, including more complex taxpayer accounts. This approach is designed to ensure that the maximum amount is collected under this program.

*Question.* The Government Accountability Office (GAO) has issued two of three reports regarding the oversight and administration of the Low Income Housing Tax Credit program at my request to find out if it’s being administered as intended. In the July 2015 report, GAO found that the IRS, the Federal agency responsible monitoring and enforcing the program, provides only “minimal” oversight.

Specifically, GAO found that LIHTC is a “peripheral program in IRS in terms of resources and mission.” Additionally, the IRS has only performed 7 audits of HFAs (of 56 total HFAs) between 1986 and 2015. GAO further stated, “As a result of minimal monitoring, IRS does not know the extent of compliance monitoring by HFAs,



which limits its ability to determine if the HFAs appropriately awarded credits to projects.” As such, State entities “increasingly” have missed the deadline to submit their annual report to the IRS and “often submit incomplete or inaccurate forms.”

In the May 2016 report, the GAO concluded that the IRS doesn’t give State and local agencies clear guidance on how to report program noncompliance and doesn’t organize or track information from noncompliance reports. For example, the IRS has inputted less than 2 percent of the information from the LIHTC compliance Form 8823. Thus, there is no way to estimate taxpayer compliance or determine if any tax credits have ever been recaptured. Moreover, the IRS doesn’t participate in the “interagency efforts to modernize, standardize, and improve compliance monitoring of [LIHTC] properties.” GAO has provided a number of recommendations that would improve IRS oversight of the LIHTC program. Has the IRS implemented all of the recommendations? If not, why not.

*Answer.* To date, we have implemented three of the four GAO recommendations regarding Low Income Housing Tax Credits (LIHTCs). We participated in the Housing Finance Agency Portal 2017 Interagency Physical Inspection Alignment Initiative working group and the U.S. Department of Housing and Urban Development (HUD) Real Estate Assessment Center (REAC) team meetings to improve our understanding of the prevalence of noncompliance with LIHTC requirements and to leverage existing resources. We also have participated in bi-weekly REAC meetings throughout each calendar year since 2013 to ensure IRS inclusion in the REAC’s physical inspection alignment initiative.

We participated in the Physical Inspection Alignment Meetings at the National Council of State Housing Agencies Conferences (three per year) to assess the utility of the HUD–REAC database to improve our processes for identifying the most significant noncompliance issues.

Finally, we procured a new server that allows data on credit allocation and certifications to be input, thereby enabling us to better assess basic compliance requirements by using the credit allocation information in our database. This allows the IRS to implement a wide range of improvements to procedures and controls, including improved data entry control and report generating functionality; improved data reliability; and continued enhancements, such as the capability to produce additional reports that will allow management to review accuracy and anomalies more easily.

We continue to work on the remaining recommendation to receive more consistent information on LIHTC noncompliance, including a review of the Form 8823 Audit Technique Guide to determine whether allocating agencies need additional guidance and clarification to understand when to report noncompliance, building disposition or other information on Form 8823.

*Question.* The IRS said an existing database would be converted to improve LIHTC monitoring and evaluation of data agencies submit on Form 8823. Has this been done? If yes, what have been the results of the increased monitoring? If not, when will the conversion be complete?

*Answer.* The existing database has been moved to the new server. We continue to improve the database to allow full capacity to input data and offer a variety of reports that will estimate taxpayer compliance and allow the IRS to determine if any tax credits should be recaptured. These improvements are scheduled to be completed by September 2018.

*Question.* LIHTC is significantly larger than the New Market Tax Credit program in terms of foregone revenue, yet the number of full-time equivalent (FTEs) personnel administering the LIHTC program is about 1/3 that of the New Market Tax Credit program (5.6 to 15). Please explain the disparity in the number of personnel administering these programs. What, if any, steps have been taken to increase the number of FTEs working on LIHTC. If none, please explain why.

*Answer.* A direct comparison of IRS staffing of Low-Income Housing Tax Credits (LIHTCs) and New Markets Tax Credits (NMTCs) is difficult since these two credits differ in terms of their complexity and involve other organizations to assist in their administration. For example, the Internal Revenue Code provides both LIHTCs over a 10-year period and other tax benefits to investors in low income housing. The program is jointly administered by the IRS and State-authorized agencies that determine which proposed housing projects will be eligible to earn credits and how many credits are the maximum that can be earned by the project. These agencies also

monitor properties for compliance with LIHTC requirements and report noncompliance to the IRS.

NMTCs, in comparison, are more complex. NMTCs, which are available over a 7-year period for investments in a qualified Community Development Entity (CDE), often involve multi-tiered, flow-through entity financing structures and large corporate taxpayers that have dozens of NMTC arrangements in place in a tax year. Examination of NMTCs requires IRS examiners with advanced tax knowledge of flow-through entities, particularly partnerships. Although the Community Development Financial Institutions Fund, another office within the Department of the Treasury, jointly administers NMTCs with the IRS, it does not assist the IRS with ensuring tax compliance during the 7-year period like the State agencies who jointly administer LIHTCs. These differences inform the staffing levels for administering each of these credits.

*Question.* The Taxpayer Advocate's most recent report to Congress called into question the adequacy of the IRS's streamlined application for 501(c)(3) status, which it adopted in 2014. According to a 2015 study by the Taxpayer Advocate of organizations approved by the streamlined approach, 37 percent did not meet the organizational test for 501(c)(3) status. If accurate, this raises serious concerns about the ability of donors to rely on IRS determinations when making tax deductible donations. What, if any efforts, is the IRS undertaking to improve the streamlined application process to more accurately weed out non-compliant applicants in the pre-determination process?

*Answer.* Since implementation in 2014, Form 1023-EZ has dramatically reduced taxpayer burden and IRS backlog. To help identify potential compliance issues, the IRS conducts both pre- and post-determination review of Form 1023-EZ submissions. The IRS also continues to consider improvements to Form 1023-EZ based on its own experience and comments received from the public and other stakeholders. For example, in response to one of the recommendations the National Taxpayer Advocate made, the IRS will add to Form 1023-EZ a narrative question on the applicant's exempt mission or activities. The IRS also is considering additional questions that would assist applicants in confirming eligibility to use the form.

*Question.* On June 9, 2016, I wrote a letter to you about my investigation into Mosaic Life-Care, a 501(c)(3) non-profit charitable hospital. I started the investigation because news reports at the time indicated that Mosaic had placed thousands of low-income persons in collection and sued many of them, rather than providing charity care as they are required to do as a charitable hospital. Due to my investigation, Mosaic instituted a debt forgiveness program that resulted in thousands of low-income patients receiving, in total, \$16.9 million dollars in debt forgiveness. As you are aware, I authored nonprofit hospital reforms that were ultimately enacted in 2009. Among these reforms were requirements that nonprofit hospitals establish and make public a financial assistance policy (FAP) and imposing restrictions on certain billing and collection procedures.

In your June 27, 2016 reply, you noted that the IRS reviews 1,000 charitable hospitals annually to determine if any of them are out of compliance with the financial assistance policy requirements. Further, you noted that hospitals identified as potentially non-compliant are assigned to examination. As of June 2016, the IRS had identified 163 hospitals for examination but at the time of your letter the examinations had not yet been completed.

Of the 163 hospitals under examination, how many cases have been closed by the IRS? For those examinations that have concluded, please detail the result of each examination and the corrective action employed by the IRS.

*Answer.* In our June 27, 2016 response, we indicated that 163 hospital organizations had been referred for field examinations for potential violations of various provisions under section 501(r) of the Internal Revenue Code. Out of the 163 hospitals that had been referred, we have closed 55 cases as of March 31, 2017, with the following results for 45 of those cases: (1) 15 cases closed with no changes or adjustments; (2) 4 cases have been assigned to an examiner; and (3) 26 cases closed with a written advisory sent to the taxpayer and no follow-up actions required. To avoid disclosure of specific taxpayer information, we cannot disclose the results for the remaining 10 cases. These results may include an agreement to additional tax and penalties, a change to a related return, or a protest and review by our Office of Appeals.

*Question.* Separate from the 163 hospitals previously identified, has the IRS identified additional charitable hospitals for examination? If so, how many?

Answer. As of April 28, 2017, we identified 436 additional charitable hospitals that have been referred for examination for potential violations of various provisions under section 501(r).

*Question.* I want to bring to your attention reports of poor customer service at a Taxpayer Assistance Center (TAC) in Iowa. I understand as a matter of general policy TAC's no longer operate as walk-in centers, but require taxpayers to schedule appointments. While this general policy has caused confusion for taxpayers and made it more difficult for taxpayers to get assistance at TACs, it is not my primary concern. My concern is TAC's may be abusing this policy to turn away taxpayers in need of assistance. Many have complained of being turned away even though the office was completely empty, other than the 2 IRS employees that worked there. One taxpayer, who in fact had an appointment, was initially told she did not and was only served by the TAC employee after the employee looked through the computer system for 5 to 10 minutes to confirm the appointment.

Is it the IRS's policy to turn away taxpayers that don't have an appointment, even where TAC employees have no other appointments with taxpayers scheduled?

Answer. We are serving all taxpayers that come into a TAC without an appointment if we have the capacity to assist them in between scheduled appointments. We also serve individuals by exception in cases of hardships. For example, for the fiscal year through April 22, 2017, TAC employees served more than 253,000 taxpayers without an appointment. Taxpayers that want to make a payment by check or money order, drop off a current year tax return, and get forms do not need an appointment. However, a taxpayer who wants to visit a TAC to resolve a tax issue should schedule an appointment. With the appointment process, our waiting rooms may not be occupied and it may appear that we are not assisting taxpayers. While our TAC employees are also responsible for administrative items, they spend the majority of their time serving taxpayers during their scheduled appointment or a walk-in customer.

*Question.* In instances where TAC employees are otherwise engaged with appointments, are there procedures to allow taxpayers to schedule a future appointment while at the center?

Answer. If a non-technical employee (greeter) is available, he or she can schedule an appointment for the taxpayer while the taxpayer is in the TAC. However, many of our one and two-person TACs do not have a greeter to provide this service. Therefore, we recommend taxpayers call the toll-free line for an appointment. Another benefit of calling the toll-free line is that the phone assistor may be able to resolve the taxpayer's issue over the phone. For example, in fiscal year 2017 (through April 22, 2017), phone assistors answered more than 2 million calls on the appointment scheduling line, and after speaking with assistors, only 43.7 percent of callers needed to schedule an appointment.

*Question.* What type of review or oversight of TAC offices is performed to ensure TAC employees are fulfilling their mission and offering good customer service?

Answer. To ensure TAC employees are fulfilling their mission and offering good customer service, we have managers on site to review service provided and other mechanisms, such as Field Assistance Contact Recording, which is a system to monitor TAC employee interactions with taxpayers. Managers also monitor their employees' appointment service calendars daily. Currently, with the appointment service, nearly 94 percent of taxpayers are waiting less than 30 minutes for service.

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QUESTIONS SUBMITTED BY HON. JOHNNY ISAKSON

*Question.* I appreciated your quick reply to my December 20, 2016, request to extend by 90 days the deadline for taxpayers to comply with the new reporting requirement in IRS Notice 2016-66, pertaining to micro-captive insurance transactions. As I noted in that letter, I believe it is important for the IRS to have time to consider taxpayer comments carefully and thoroughly before the new reporting requirement takes effect.

Following up on my previous request, I would like to know how the IRS has processed these taxpayer comments, which were due on January 30, 2017, as we approach the taxpayers' new reporting requirement deadline of May 1st.

How many total comments were received?

*Answer.* We received 22 public comments and four congressional inquiries, including your December 20, 2016, letter. In addition to the comments of record, we met with every group that requested a meeting to discuss the application of the notice and hear their concerns.

*Question.* Were there common underlying themes, concerns, or proposed changes recommended by taxpayers who submitted comments on the Notice?

*Answer.* We received several requests for extensions of time for filing required disclosure statements. In response, we issued Notice 2017-08 to provide a 90-day extension, until May 1, 2017, for taxpayers to file the disclosure statements identified in Notice 2016-66.

In general, taxpayers understood and supported the IRS's need to identify and stop abusive micro-captive transactions, but expressed concern that Notice 2016-66 is overbroad and burdensome. Comments also requested that the IRS consider modifying tax forms so that taxpayers may provide and the IRS may review this information in one place, avoiding any potential duplication. Finally, comments requested Notice 2016-66 be modified to exempt those captives that are currently under IRS audit from the disclosure requirements.

*Question.* What process will the IRS use to respond to and, as appropriate, modify the reporting requirements based on legitimate concerns, issues, and proposals submitted by taxpayers?

*Answer.* We continue to review comments from the public about Notice 2016-66. To minimize the effect of additional disclosure requirements, we carefully crafted objective criteria in section 2 of Notice 2016-66 that describe the type of micro-captive transactions that are subject to disclosure. To date, we have not received any comments that identified additional factors or industry standards that would further refine our objective factors. We will also consider the disclosures that we receive in response to the notice in determining whether to modify the reporting requirements to minimize taxpayer burden and limit potential disclosures of transactions that do not have the potential for tax avoidance.

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QUESTIONS SUBMITTED BY HON. CLAIRE MCCASKILL

*Question.* Due to a change in the law, the IRS will soon use private debt collectors to collect old tax debt. Does the IRS have staff who are trained and experienced at collecting taxes owed by ordinary taxpayers, and if so, why do we need to hire outside contractors to do this work?

*Answer.* The Fixing America's Surface Transportation (FAST) Act requires the IRS to hire private debt collectors.

*Question.* In 2015, you established the IRS Security Summit to address the explosion of stolen identity fraud in the online, do-it-yourself tax filings. As a result of that work, the private-sector tax industry, State tax agencies, and the IRS agreed to anti-fraud and security measures aimed at preventing and/or reducing stolen identity return fraud. As the Summit activity completes its second tax season, what measures have you taken to ensure that the anti-fraud and security measures adopted by current members of the Summit are expanded to all electronic tax software providers, including new entrants into the tax preparation market?

*Answer.* As demonstrated by our signed Security Summit Memorandum of Understanding consisting of 41 State departments of revenue, 21 industry partners, and 9 endorsing organizations, we worked with industry and States to establish minimum trusted customer requirements for front-end customer identity authentication using recognized national standards from the National Institute of Standards and Technology (NIST) and the IRS Office of Safeguard. All e-file providers, including those currently in the program and those that are new entrants, must meet these requirements, which we review and strengthen annually. We updated Publication 1345, Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns, and Publication 3112, IRS E-File Application and Participation, to require industry e-file participants to perform due diligence data analysis and report suspicious activity to the IRS. We also updated and expanded the tax return data elements that we provide to software developers to strengthen the authentication protocols to verify that the real taxpayer is filing a tax return.

*Question.* Federal law requires the government to provide a reward or compensation to a whistleblower of a percentage of all collected revenues in a successful prosecution.

ecution, yet, the IRS limits rewards to a percentage of only back taxes collected. Can you explain why IRS policies do not conform to the statute?

Answer. The collected proceeds for purposes of determining a whistleblower award are not limited to back taxes. Section 7623 of States describes “collected proceeds” as including penalties, interest, additions to tax, and additional amounts. Following public notice and comment, the Department of the Treasury and the IRS published final regulations that define “collected proceeds” to include tax, penalties, interest, additions to tax, and certain additional amounts collected. The regulations clarify, however, that collected proceeds are limited to amounts available to the Secretary of the Treasury for payment under the provisions of title 26, United States Code.

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QUESTIONS SUBMITTED BY HON. JOHN THUNE

IDENTITY THEFT

*Question.* One of the biggest issues facing South Dakotans when it comes to their Federal taxes is the problem of tax-related identity theft. This not only affects those who have their identity stolen, but also those who find their refund delayed while the IRS verifies their identity. While your testimony described a number of steps the IRS is taking to improve its defenses and help taxpayers fight ID theft, I have received reports from practitioners in South Dakota that some taxpayers are still waiting to resolve cases from last year and, as a result, still have not received their 2015 refunds. I have also received reports that even after a tax-related identify theft case is resolved, the taxpayer’s future returns are held up and refunds are delayed.

What steps is the IRS taking specifically to resolve identify theft cases faster, especially for taxpayers who are entitled to a refund?

When a taxpayer has been the victim of tax-related identity theft and has been issued a PIN, does the IRS delay processing of returns and refunds in subsequent years when the PIN is included on the return? If so, what purpose does the PIN serve in helping to establish the taxpayer’s identity?

Answer. Refund fraud caused by Identity Theft (IDT) is one of the biggest challenges facing the IRS today, and the harm it inflicts on innocent taxpayers is a problem we take very seriously. To resolve IDT cases faster, we centralized our IDT victim assistance policy, oversight, and campus case work under our new Identity Theft Victim Assistance (IDTVA) organization. Benefits to this centralized approach include managing work using a common inventory system, reducing hand-offs between functions, improved case processing through streamlined, consistent procedures, and improved communication. In addition, we resolve IDT cases faster using our toll-free hotline for IDT victims. All customer service representatives staffing this line are trained IDT specialists who can review the taxpayer’s case file and respond to the IDT victim’s call any time during business hours. For FY 2016, taxpayers who became IDT victims had their situation resolved, on average, in less than 120 days, a significant reduction from a few years ago when cases could take over 300 days to resolve.

The Identity Protection Personal Identification Number (IP PIN) protects taxpayers from subsequent tax-related IDT and will not delay the processing of returns and refunds if the IP PIN is included on the return. The IP PIN authenticates the return received is the taxpayer’s real return. A delay in processing and refunds will occur if the IP PIN is not included on the return since we will have to authenticate the return received is the taxpayer’s real return.

TAXPAYER ASSISTANCE CENTERS

*Question.* In your written testimony, you described at some length the success of the advance-appointment arrangement that the IRS has implemented at Taxpayer Assistance Centers (TACs). In particular, you pointed out that the advance appointments have been successful “because TAC employees can now spend more time with those (taxpayers) who do visit, as they tend to have more complex issue that cannot be resolved over the phone.” Unfortunately, that conclusion is not consistent with reports my office has received from South Dakotans who have visited one of the TACs in South Dakota (in some cases driving more than 100 miles) only to be turned away because they were unaware that an appointment is required. And to add insult to injury, I have received reports that when informed that they need an appointment, constituents have been told that they cannot use their cell phone while at the TAC to make such an appointment.

In general, the IRS has permitted visitors to bring personal cell phones with or without camera capability into TACs and other IRS facilities. However, the use of cell phones with camera capability raises security issues as it relates to the confidentiality and privacy of tax returns and related sensitive information. Therefore, while taxpayers may bring their cellphones into a TAC, the use of the phones inside a TAC is prohibited. Taxpayers may step outside the TAC office in the appropriate areas to call and make appointments.

Is it true that a taxpayer can no longer seek assistance with a tax problem (other than needing a form or to pay a tax bill) at a TAC without an appointment?

Answer. We are serving all taxpayers who come into a TAC without an appointment if we have the capacity to assist them in between scheduled appointments. We also serve individuals by exception in cases of hardships. For example, for the fiscal year through April 22, 2017, TAC employees served more than 253,000 taxpayers without an appointment. However, we recommend taxpayers call the toll-free line for an appointment to ensure they receive service at their requested time. A significant benefit of calling the toll-free line is that the phone assistor may be able to resolve the taxpayer's issue over the phone. For example, in fiscal year 2017 (through April 22, 2017), phone assistants answered more than 2 million calls on the appointment scheduling line, and after speaking with assistants, only 43.7 percent of callers scheduled an appointment.

*Question.* Are taxpayers turned away even if TAC employees do not have scheduled appointments and are available to provide assistance?

Answer. We are serving all taxpayers that come into a TAC without an appointment if we have the capacity to do so in between appointments. Therefore, if employees do not have a scheduled appointment and are available to provide assistance, they will assist walk-in customers during this time.

*Question.* How does the IRS forewarn taxpayers that assistance is "by appointment only" at a TAC and prevent individuals from traveling long distances only to be turned away?

Answer. We have issued several news releases throughout the year informing taxpayers that appointments are required to obtain service at the TAC, which many media outlets have picked up. This information is also available on *IRS.gov* and we placed it on the voicemail for local phone numbers for each TAC. Additionally, signs have been placed at each office location.

#### NEW STATUTORY REFUND DELAY

*Question.* The PATH Act required that the IRS delay refunds until February 15th for returns that claim the Earned Income Tax Credit or the refundable child tax credit in order to reduce fraud and improper payments. Additionally, the PATH Act required employers to file their copies of Forms W-2, W-3 and 1099-MISC for non-employee compensation by January 31st, rather than the end of February (or March if filing electronically) under prior law.

Can you share with the committee any assessments of these new requirements and your efforts to reduce fraud and improper payments with respect to the EITC and refundable child tax credit more broadly?

Answer. The PATH Act requirement that employers submit Forms W-2 to the government earlier than has been required in prior years allowed us, during the refund hold period, to use this earlier Form W-2 information in our Return Review Program (RRP), which identifies suspicious returns, to systemically verify taxpayers' wages and withholding. If the income information was inconsistent with the taxpayer's return, we selected the return for further review. This accelerated filing date of Forms W-2, together with the new requirements to hold EITC and refundable child tax credits, has improved our ability to identify incorrect or fraudulent returns. As a result, we identified 162,000 returns involving \$862.7 million for further review.

We continue to address improper payments through education, outreach, and compliance efforts. For example, we prevent more than \$2 billion in suspicious EITC claims from being paid each year through our fraud and identity theft prevention enforcement programs. We use sophisticated detection models and the early receipt of employer-provided income information in these programs. In addition, we protect between \$3 and \$4 billion in total revenue each year through additional EITC-related taxpayer compliance activities, one of which is our income document matching program. We also address paid preparer error through our EITC return preparer

strategy that protects \$465 million in EITC and Child Tax Credits. We are creating a Refundable Credit Operational Strategy which will document our existing refundable credit efforts and identify potential new activities that could help address improper payments. We continue working with stakeholders to identify new opportunities. For example, we hosted an EITC Summit on June 29 and 30, 2016, to get different perspectives from our stakeholders on improving compliance while fostering participation.

*Question.* How has the earlier availability of Forms W-2, W-3 and 1099-MISC for non-employee compensation enabled the IRS to improve its matching of tax data to reduce fraud and improper payments? Are there any specific results you can share with the committee?

*Answer.* The earlier availability enhances our defenses against identity theft and refund fraud and allows us to determine return consistency with known third-party reporting. As of February 16, 2017, the RRP received data for 220 million W-2 forms, compared to 97 million at that time last year. We held a total of 10.3 million returns for \$51 billion in refunds in accordance with the PATH Act provision to hold returns claiming the EITC or the Additional Child Tax Credit (ACTC) until February 15, 2017. Receiving earlier W-2 data and having additional time during the refund hold period allowed us to select additional returns for closer review that we otherwise would not have selected. As a result, we identified 162,000 returns involving \$862.7 million for further review.

*Question.* Are other statutory changes needed to help the agency stop improper refunds before they go out the door?

*Answer.* While the PATH Act provisions helped us to administer refundable credits, further statutory authority is needed. Currently we lack the statutory authority to address at the time of filing errors due to claims in excess of lifetime limitations and lack of required documents. Instead we must address these errors through the audit process, which is a lengthier process that requires significant resources. For example, without an audit, the IRS cannot address claims for the American Opportunity Tax Credit (AOTC) where a student has been claimed for more than the 4-year limit, has attended an ineligible institution, or did not attend at least half-time. Granting the IRS the authority to correct specific errors at filing, for example allowing the IRS to address claims for AOTC for students attending ineligible institutions or claiming the AOTC for more than 4 years, would increase our ability to address more of the fraud and errors we identify and help decrease improper payments from refundable credits. Taxpayers would still have all of their rights protected since they could disagree with our information, provide additional documentation, and appeal any adverse decision.

Additionally, since paid preparers prepare more than half of the returns that are filed for refundable credits, providing the Treasury Department with authority to regulate all tax return preparers would enable Treasury to require them to meet minimum competency standards through testing and continuing education requirements and would help promote higher quality service, improve voluntary compliance and foster taxpayer confidence in the fairness of the tax system. This will benefit all taxpayers including those claiming refundable credits.

The FY 2018 budget included proposed legislative changes for greater flexibility to address correctable errors and increased oversight of paid preparers.

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#### QUESTIONS SUBMITTED BY HON. MARK R. WARNER

*Question.* In 2015, you announced the Security Summit, a partnership between the IRS, States, and members of the tax filing industry to help address rampant issues with identity theft. What new improvements has the Summit implemented for the 2017 filing season, and what steps is the IRS taking to ensure broad industry participation in the Security Summit?

*Answer.* For the 2017 filing season, the IRS and Summit partners took additional actions to identify and stop fraudulent ID theft returns including the following:

- We updated and expanded authentication data elements transmitted by the tax industry with every tax return. We added 37 new data elements for 2017, providing additional information to strengthen the authentication protocols that verify the real taxpayer filed a tax return.

- The tax industry is sharing with the IRS and States approximately 30 data elements from business tax returns (Forms 1120, U.S. Corporation Income Tax Return; 1065, U.S. Return of Partnership Income; and 1041, U.S. Income Tax Return for Estates and Trusts)—extending more identity theft protections to business filers, as well as individuals.
- More than 20 States are working with the financial services industry to create their own version of a program that allows the industry to flag suspicious refunds and return those funds. Also, private-sector partners are enhancing efforts to identify the “ultimate bank account” to ensure that the refunds go into the true taxpayers’ accounts.
- The Form W–2 Verification Code initiative started by the IRS last year expanded to 50 million forms in 2017 from 2 million in 2016. This initiative requires individuals and tax professionals to enter a verification code when prompted to do so by tax software in order to validate the information on the Form W–2, helping to protect against the filing of false Forms W–2.
- The software industry continues to enhance software password requirements for individuals and tax professional users—providing additional safety prior to filing.
- The Summit team continued outreach campaigns such as “Taxes. Security. Together.” to encourage taxpayers to protect their personal information. The team held a National Tax Security Awareness Week in December that provided daily tax tips/fact sheets to educate taxpayers and tax preparers about security awareness. The team also launched a “Protect Your Clients; Protect Yourself” campaign aimed at increasing security awareness among tax professionals.
- The new Identity Theft Tax Refund Fraud Information Sharing and Analysis Center pilot began on January 23, 2017. This serves as an improved early warning system identifying emerging identity theft schemes and quickly sharing that information among Summit partners so that all participants can enact safeguards.

We are continuing our collaborative efforts with our partners to enhance and expand our anti-fraud and security measures. For example, the Security Summit partnership now consists of 41 State departments of revenue, 21 industry partners, and 9 endorsing organizations. In addition, the National Society of Tax Professionals (NSTP) and National Society of Accountants (NSA) are newly active Summit partners. For returns filed in 2016 (tax year 2015), our Security Summit partners filed 99.6 percent of the total accepted filed returns. The Security Summit’s endorsing agencies represent a wide range of industry participants from software firms, nationally branded tax preparation companies, financial services companies, payroll professionals, and tax practitioners.

This collaboration, and the continued work by IRS employees to improve our filters, resulted in a 46 percent decrease from 2015 to 2016 in the number of taxpayers identifying themselves as victims of identity theft.

*Question.* I remain concerned about the lack of minimum standards for paid return preparers and the identity theft issues that result from unscrupulous preparers. Is the IRS seeing an increase in tax-related identity theft cases or other tax refund issues that can be tracked to these unregulated tax return preparers? How would licensing paid return preparers reduce instances of identity theft?

*Answer.* Tax return preparers have increasingly become targets for identity and data thieves given the vast amount of personal and financial information made available to them by taxpayers. Subjecting tax return preparers to minimum standards gives the IRS more opportunities to provide directed outreach and education to the preparer community about issues such as identity protection and data and system security. Requiring minimum standards for return preparers would also help the IRS with identifying unscrupulous preparers and developing more effective compliance and enforcement strategies.

*Question.* I know that over the last several years, the IRS has been operating under a drastically reduced budget, making it more difficult to both effectively serve taxpayers and modernize your systems to address the challenges of an increasingly digital economy. What are the top IT modernization challenges that you face when not fully funded? How are cybersecurity efforts being hampered by your current budget?



*Answer.* Our top IT challenges are cybersecurity, aged infrastructure, skilled resources and unmet demand. Our cybersecurity threat is ever changing. We are battling sophisticated organized crime syndicates around the world, and the solutions we implemented as little as a year ago are starting to become obsolete, requiring us to come up with new solutions that need additional funding. Further, specialized skills in this area are very hard to obtain and hiring freezes as a result of our budget constraints are making it nearly impossible to hire staff to support all the changes needed; in particular, the safeguarding of our high value assets. To fund these challenges, in 2017, in addition to base resources, we have directed up to \$130 million in reprogramed funds to these critical needs.

Our aged infrastructure not only presents a security risk, but also jeopardizes our ability to deliver the mission effectively and efficiently. Costs are driven up with increased outages, need for expensive manual workarounds, increased support costs, increased dependency on contractors for support, and more. Presently, over 60 percent of our hardware and 30 percent of our software are out of date.

People resources continue to be the biggest obstacle to IT modernization including delaying some modernization projects. Quite simply, there are not enough IRS technologists and subject matter experts to deliver on our modernization plans. Over the last few years, many highly-skilled, brilliant lead technologists on our IT programs have left. With approximately 25 percent of IT employees eligible to retire by the end of FY 2017 and approximately 40 percent by the end of FY 2019, the significance of this challenge cannot be overstated.

*Question.* In the past, I have communicated with the agency regarding the unique challenges that on-demand workers may face when filing their individual income tax returns. Last year, the IRS implemented its Sharing Economy Resource Center. Has the agency received feedback on that Resource Center? Does the agency have further plans to ensure that this population of taxpayers is receiving the appropriate services and guidance to meet their tax filing obligations?

*Answer.* The IRS recognizes the need to provide information and continue to monitor the communication needs related to the sharing economy, both for employees and employers. We launched the Sharing Economy Resource Center on *IRS.gov* in August 2016, and we have received positive comments about the center and our continuing communications efforts from the tax community as well as others involved in the sharing economy. We have been particularly active in this area with our communication products, sharing information through traditional media and social media channels, including Twitter, as well as sharing information with tax professionals and our stakeholder partners. Our communication efforts will continue in this area, and we will continue to look for ways to address additional needs for information on tax issues in the sharing economy. The Treasury Department is unable to provide any specific guidance on an individual's status as an employee or independent contractor because section 530(b) of the Revenue Act of 1978 prohibits formal written guidance on the issue of worker classification.

*Question.* I understand from your testimony that the IRS's Data Retrieval Tool is not expected to be restored for use until October 2017. I appreciate that privacy and data security are paramount, and support your efforts to prioritize these things.

What are the specific additional security measures that you anticipate needing to put in place before you feel confident restoring the tool?

*Answer.* Before restoring the Data Retrieval Tool (DRT), we need to implement a data encryption or a "locked briefcase" solution. This would be the equivalent of handing the taxpayer a locked briefcase that they would be able to hand to the Department of Education, but not have the key to open and look inside. The Department of Education however would be able to open the briefcase, but not display the data to the taxpayer. We will also need to send notice to the taxpayer's address of record whenever they use the DRT indicating that their tax information was accessed in order to confirm that the true taxpayer, and not identity thieves, initiated the transaction.

*Question.* What costs do you anticipate being associated with these efforts?

*Answer.* The development costs for our IT system changes are approximately \$100,000. The IRS is reviewing the longer-term costs of providing notices to the taxpayers and any associated taxpayer support.

*Question.* What do we know now about the extent of hackers' infiltration? What questions remain unanswered?

Answer. We know that access was facilitated by obtaining high quality Personally Identifiable Information (PII) from a non-IRS source. We also know that access was limited to the PII of each individual identity, as there was a one-to-one match on the access. This means the perpetrators were not able to move around the system, and the system was not “hacked” in the technical sense of the word. Rather, an impersonation of the taxpayer occurred.

What remains unanswered is where the impersonator obtained the high quality PII. Both IRS and Treasury Inspector General for Tax Administration criminal investigations are underway and would need to conclude to determine the exact origin of the PII. However, high quality PII is readily available on the “dark web” for fraudulent activity.

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LETTER SUBMITTED BY HON. PAT ROBERTS, A U.S. SENATOR FROM KANSAS

## COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

April 5, 2017

President Donald J. Trump  
The White House  
Washington, DC 20500

Dear Mr. President:

As members of the House Ways and Means Committee, we believe it is imperative that the Internal Revenue Service (IRS) work for the best interest of all taxpayers, and that the taxpayers in turn have confidence in the IRS’s ability to fairly administer the tax code. This trust is at the core of our system of voluntary tax compliance. Trust in the IRS is hitting rock-bottom under IRS Commissioner John Koskinen. Not only was key evidence relevant to this Committee’s investigation destroyed under his watch, but he also misled Congress in the process, intentionally degraded customer service at the agency, and has since lost the trust of the American people. We believe that trust cannot be fully restored under Commissioner Koskinen’s leadership. For this reason, we are writing to request the removal of John Koskinen as Commissioner of the IRS and to request that a new leader be put in place as soon as possible.

In 2011, this Committee began its investigation into the concerns that the IRS was improperly targeting conservative groups who had applied for tax-exempt status. The investigation uncovered that IRS employees had crafted a targeting scheme to single out applicants based on their political beliefs. Based on these findings, in April 2014, the Committee referred then Director of Exempt Organizations, Lois Lerner, to the Department of Justice for criminal prosecution.

Although the targeting scheme took place prior to Commissioner Koskinen’s tenure, his subsequent handling of the investigation was shockingly inept. In February 2014, the IRS discovered that 2 years worth of Ms. Lerner’s emails—thousands of documents vital to the Committee’s investigation—had been destroyed. In April 2014, the IRS informed Treasury and the White House about the lost emails. On May 8, 2014, after years of document requests by the Committee, the IRS agreed to turn over *all* of Ms. Lerner’s emails, despite knowing that it could not follow through with this promise. Weeks after this agreement was made, the IRS revealed that it could not fully comply because some of the emails were determined to be unrecoverable. The agency asserted that due to a computer crash, it lost years of Ms. Lerner’s emails—a loss that the IRS withheld from Congress, for more than 4 months, despite the IRS’s having been aware of it when making the May 2014 agreement. In April of 2014, Commissioner Koskinen had promised during a speech that his goal as IRS Commissioner was to “find problems quickly, fix them promptly, make sure they stay fixed, and be transparent about the entire process.” Despite that promise of transparency, it was not until the IRS informed the Senate Finance Committee of the loss in an unrelated June 2014 letter that the Committee became aware of the loss of thousands of emails central to its investigation. When the IRS “lost” Ms. Lerner’s emails and misled Congress, the agency also lost the trust of Congress and the American people.

In June 2014, the Committee held a hearing with Commissioner Koskinen in order to explore how exactly Ms. Lerner's emails were lost, and why the IRS had not only knowingly withheld that information from Congress, but in fact promised to provide the lost emails. When asked why he had not notified Congress about the email loss at the time it was discovered, Commissioner Koskinen stated that he thought the internal IRS investigation was "important," and that it was "[his] decision" to "complete the investigation" before advising Congress. When questioned about his promise to provide all of Ms. Lerner's emails, despite knowing that it would not be possible, the Commissioner stated that he "knew that, in fact [the IRS] would provide [the Committee] all of the Lois Lerner emails that [the IRS] had." In his testimony, Commissioner Koskinen stated "I don't think an apology is owed." On this, we agree with the Commissioner—the American taxpayers are not only owed a simple apology, they are also owed a fair IRS that works for the people.

In July 2014, the Committee learned that the data lost in the computer crash may have been recoverable, but that the IRS had ignored the advice of outside information technology professionals on how to navigate such a recovery. According to the Treasury Inspector General for Tax Administration, many of the tapes containing backed-up emails were destroyed despite an order in place to preserve them. Following the delayed revelation that years' worth of documents and emails had been destroyed, the Committee sent multiple letters to the Obama Administration requesting information about the destroyed emails. Ultimately, neither Ms. Lerner, nor any IRS official in the Office of Exempt Organizations, was ever held accountable for the targeting of taxpayers based on their political beliefs.

The destructive behavior continued into 2016. As recently as last year, the Committee discovered that the IRS had again destroyed documents subject to a preservation order relevant to an unrelated investigation. This provides further evidence that once again that the IRS, under the leadership of Commissioner Koskinen, refuses to be held accountable to the public. The American people lost confidence in the IRS as a result not only due to the targeting scandal itself, but also as a result of the repeated, gross mishandling of the investigation on the part of Commissioner Koskinen.

In 2015, Commissioner Koskinen informed IRS staff that due to budget cuts, the IRS would have to do "less with less." As a result, customer service for the 2015 filing season was "abysmal" with taxpayers waiting for hours to talk to an IRS employee, or worse being hung up on. The Committee investigated the poor customer service because taxpayer services was level-funded by Congress from 2014 to 2015. The Committee discovered that in fact, the IRS had cut its own taxpayer service budget by diverting funds traditionally allocated to taxpayer services towards other priorities. This contributed significantly to the IRS's inability to provide prompt customer service to taxpayers. Despite significant needs for serving taxpayers, the IRS continued to waste money and prioritized spending in other areas including implementing the Affordable Care Act, paying employees for unofficial union time, and paying bonuses to employees (including those with known misconduct issues). The American people deserve better than a Commissioner who vows to "do less" to serve the taxpayers to whom he is ultimately accountable.

It is the goal of both this Committee and your Administration to reform our outdated tax code. Our primary focus must be making the tax code simpler and fairer while providing exemplary customer service to the American people. As we work to reform the tax code and restructure the IRS, we must ensure that the agency has the tools it needs to accomplish the tasks at hand and to achieve a smooth transition. During this transition, the IRS would benefit immeasurably from new leadership and a fresh start. In order for the IRS to fully reap the benefits of new leadership and regain the trust of the American people, the Committee believes that we must have a new Commissioner appointed as soon as possible.

We look forward to working with your Administration to create a tax code that is fair and an IRS that is service-oriented.

Sincerely,

Kevin Brady  
Chairman

Kristi Noem  
Member of Congress

Kenny Marchant  
Member of Congress

Sam Johnson  
Member of Congress

Peter Roskam  
Member of Congress

George Holding  
Member of Congress

Mike Bishop  
Member of Congress

David Schweikert  
Member of Congress

Jackie Walorski  
Member of Congress

Diane Black  
Member of Congress

Lynn Jenkins  
Member of Congress

Erik Paulsen  
Member of Congress

Tom Rice  
Member of Congress

Jason Smith  
Member of Congress

Devin Nunes  
Member of Congress

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PREPARED STATEMENT OF HON. RON WYDEN,  
A U.S. SENATOR FROM OREGON

Now that Americans are getting into crunch time with tax filing season, I want to begin today's hearing by discussing what usually happens when early April rolls around each year.

Around this time of year, Presidents *usually* release their tax returns to the public. It's been a tradition for decades, but apparently that's not going to happen in 2017. It looks like this President will choose to keep hiding his returns and ignoring this very low ethical bar, even though it's clear his "blind trust" isn't blind at all and the separation he promised he'd make from his businesses seems to be non-existent.

Second, around this time of year is when the whole executive branch gets on the same page to pitch its budget proposal to the public and the Congress. Not so this time. With this executive branch, it seems like one hand often doesn't know what the other is doing.

On one hand, you have the Treasury Secretary, who came before this committee as a nominee and said he was committed to making sure the IRS had the resources it needs to do its job—protecting taxpayer data, closing the tax gap, improving customer service. He said the big staffing cuts in recent years were a concern, and it would be a "very quick conversation with Donald Trump" to get it fixed.

Apparently that conversation hasn't happened, or if it did, the message didn't get through. When the public got its first glimpse of the Trump budget, the IRS didn't get the investment Secretary Mnuchin talked about. For next year it got a \$239 million cut. What that would mean is that customer service would get worse, more taxpayers would fall victim to hackers and preventable scams, and the good times will roll for tax cheats while honest taxpayers get fleeced.

And this isn't just some academic debate. Right now, the online Data Retrieval Tool that students and their families use to fill out financial aid forms is down because of cybersecurity problems. Hackers were using stolen personal info like names, birthdates and Social Security numbers to steal taxpayer dollars.

You'd think that an administration that talks about running government like a business would want to invest in cybersecurity when it discovers a hack. But that's not what's happening in this case. Instead, this administration is repeating the same old pattern: cut after cut after cut to IRS resources, meaning taxpayer service and data security could get worse and worse and worse.

The third example of what usually happens this time of year: right around now, taxpayers are collecting all their forms and receipts and sitting down to file their taxes, and they're wondering if the Congress will ever manage to simplify the tax code in a way that helps middle-class families. And they might even be a little hopeful, because they hear the resident and members of Congress say tax reform is right up at the top of the agenda. But so far, when you parse the details, it looks like some Republican members of Congress and the administration are locked in competition to see who can propose the biggest tax cut for the wealthy. And for a typical working family, there's not much in the Trump plan or the House Better Way blueprint that helps you get ahead, and you might even get hit by a tax increase.

Real tax reform, in my view, starts with the reality that our tax code today is a tale of two systems. There's one compulsory system that applies to the wage earner. Their taxes come straight out of their paychecks. Then there's the other system for the wealthy with impossibly complicated and murky rules. And that system says

that with the right advice, you can pay what you want, when you want to pay it. And sometimes you can pay nothing at all. That grossly unfair system, which is stacked against working families, is what I'll be focused on as this debate goes forward.

With that, I want to thank Commissioner Koskinen for being here today, and I look forward to our discussion.

Thank you, Chairman Hatch.

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## COMMUNICATION

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The American Institute of CPAs (AICPA)<sup>1</sup> applauds the leadership taken by the Committee to address ways to improve the tax filing season, review the complexity faced by taxpayers, and examine how the Internal Revenue Service (IRS or “Service”) can better serve the public. While tax season always causes some level of anxiety for taxpayers, in recent years, the repeated delays in information returns, lack of guidance on emerging issues, and the IRS’s inability to timely respond to written communications have added to the growing trepidation America’s taxpayers have towards the annual filing season.

We hear a resounding echo of confusion from tax practitioners as our members advise clients and continue to work on filing 2016 returns. The issuance of delayed guidance has been a significant factor since it increases compliance uncertainty. For example, on March 30, 2017, the IRS released partial guidance for small business use of the research credit per law changes made in 2015.<sup>2</sup> This guidance affects the 2016 returns of individuals and business entities, some of which were due by March 15, 2017. In addition, the IRS issued Notice 2017-09 on January 4, 2017 to provide guidance on 2015 law changes relevant to information returns starting from 2016, many of which were due by January 31, 2017. As a result, many taxpayers are in a state of confusion regarding not only how to comply with this season’s new rules but also how to proceed with tax planning.

In the interest of good tax policy and effective tax administration,<sup>3</sup> we are submitting feedback and recommendations on IRS taxpayer services, information reporting and Forms 1099, Individual Taxpayer Identification Numbers (ITIN), due diligence requirements, deadlines related to disasters, guidance needed on emerging issues, and other tax filing season concerns, where legislative changes can help improve future filing seasons.

#### **1. IRS Taxpayer Services**

As we approach the 20th anniversary of the Report of the National Commission on Restructuring the IRS<sup>4</sup> (“Restructuring Commission”), we recommend that any effort to modernize the IRS and its technology infrastructure build on the foundation established by the Restructuring Commission. The current degradation of the IRS taxpayer services is unacceptable. The percentage of calls from taxpayers the IRS answered between 2004 and 2016 dropped from 87% to 53%. Comparing 2004 to 2016, the number of calls the IRS received from taxpayers increased from 71 million to 104 million, yet the number of calls answered by telephone assistants declined from 36 million to 26 million.<sup>5</sup>

<sup>1</sup> See AICPA Tax webpage at: <http://www.aicpa.org/InterestAreas/Tax/>.

<sup>2</sup> Notice 2017-23 (March 30, 2017) and IR-2017-70 (March 30, 2017).

<sup>3</sup> AICPA, *Guiding Principles for Good Tax Policy: A Framework for Evaluating Tax Proposals*, 2017; <http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/tax-policy-concept-statement-no-1-global.pdf>.

<sup>4</sup> Report of the National Commission on Restructuring the IRS, “A Vision for a New IRS,” June 25, 1997; <http://www.house.gov/natcommirs/report1.pdf>.

<sup>5</sup> National Taxpayer Advocate, “Annual Report to Congress 2016, Executive Summary: Preface, Special Focus and Highlights,” 2016, page 16; [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16\\_ExecSummary.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16_ExecSummary.pdf).

As tax professionals, we represent one of the IRS's most significant stakeholder groups.<sup>6</sup> As such, we are both poised and committed to being part of the solution for improving IRS taxpayer services. We recently submitted a letter<sup>7</sup> to Senate Finance Committee and House Ways and Means Committee members in collaboration with other professional organizations. Our recommendations include modernizing IRS business practices and technology, re-establishing the annual joint hearing review, and enabling the IRS to utilize the full range of available authorities to hire and compensate qualified and experienced professionals from the private sector to meet its mission. The legislative and executive branches should work together to determine the appropriate level of service and compliance they want the IRS accountable for and then dedicate appropriate resources for the Service to meet those goals. We encourage the IRS to continue its customer satisfaction surveys as a success measure for the agency and also use its traditional account services to provide face-to-face interaction with those taxpayers who cannot afford or do not use online account features.

Additionally, we recommend the IRS create a new dedicated practitioner services unit to rationalize, enhance, and centrally manage the many current, disparate practitioner-impacting programs, processes, and tools. As part of this new practitioner service unit, the IRS should provide practitioners with an online tax professional account with access to all of their clients' information. The IRS should offer robust practitioner priority hotlines with higher-skilled employees that have the experience and training to address complex issues. Furthermore, the IRS should assign customer service representatives (a single point of contact) to geographic areas in order to address challenging issues that practitioners could not resolve through a priority hotline.

## 2. Information Reporting and Forms 1099

Taxpayers and the tax practitioner community are substantially burdened by the growing volume of corrected and delayed information returns. Taxpayers receiving corrected Forms 1099 are obligated to file amended tax returns in order to report the corrected amounts. This process compresses the tax filing season and causes time-consuming and expensive efforts for corrections that often result in insignificant differences. Congress should not require taxpayers that receive corrected information returns to file amended tax returns for relatively minor dollar amounts. A simplified safe harbor would not only reduce burdens on taxpayers and practitioners to repeatedly correct returns, but also reduce the expenditure of IRS resources in processing such returns.

### a. De Minimis Error Safe Harbor for Taxpayers

Under Notice 2017-09, if an inadvertent error is made by the payor (or "issuer") in the preparation of information returns, such that the amount of the error does not exceed \$100 or an error in reporting taxes withheld does not exceed \$25, then the penalties<sup>8</sup> authorized under these sections are waived. However, if the payee (recipient of the incorrect information return) elects a corrected statement but one is not issued, the penalty is not automatically waived.

The election process outlined in the statute and notice will create compliance burdens for information return issuers, some of which are large brokerage firms with thousands of individual recipients. Issuers will need to track whether elections were made to waive the de minimis error safe harbor. Small businesses that issue Forms 1099-MISC will have the administrative burden of using their limited resources to comply with these new rules and track their information return recipients' elections.

*Under the current rules, there is no de minimis safe harbor for recipient taxpayers. If the issuer decides to issue a corrected Form 1099 for an immaterial amount (even if not required), the taxpayer must file an amended tax return. Throughout this filing season, our tax practitioner members continue to receive corrected Forms 1099, including those under the de minimis error safe*

<sup>6</sup>Sixty percent of all e-filed returns in 2016 were prepared by a tax professional, according to the "Filing Season Statistic for Week Ending December 2, 2016"; <https://www.irs.gov/uac/newsroom/filing-season-statistics-for-week-ending-december-second-2016>.

<sup>7</sup>AICPA comment letter, "Ensuring a Modern-Functioning IRS for the 21st Century," dated April 3, 2017; <http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/IRS-Service-Improvement-Practitioner-Report.pdf>.

<sup>8</sup>Under Internal Revenue Code (IRC) sections 6721 and 6722.



harbor threshold. As a result, we have seen no easing of the burdens on taxpayers and their return preparers.

In the interest of effective tax administration, the AICPA proposes a simplified approach for the de minimis error safe harbor rules under sections 6721 and 6722,<sup>9</sup> as follows:

1. If a recipient of information returns notifies the issuer of an error, the issuer has 30 days in which to provide a corrected document to the recipient. If the issuer fails to provide a corrected document, it is subject to the penalties (unless the IRS determines there is other justification for a penalty waiver).<sup>10</sup>
2. Recipients of incorrect information returns have 18 months from the original issuance date to request corrected information returns from the issuer.<sup>11</sup> This timeline protects issuers from incurring penalties many years past their original year of error.
3. Recipients of corrected information returns are allowed a de minimis safe harbor such that small changes do not require the filing of amended Forms 1040, 1041, 1065, 1120-S or 1120. In such cases, the IRS would not issue a matching notice (such as, a CP2000). The section 6721 and 6722 de minimis error dollar amount guidelines are used for these purposes. Thus, if corrected amounts on any information return do not change Adjusted Gross Income (AGI) by more than \$100 or change tax liability by more than \$25, the recipient of the corrected information return would not incur penalties for failure to file an amended tax return.
4. If a corrected information return changes AGI by more than \$100, but less than \$200, the recipient can “true-up” the error on the next year’s tax return.
5. Allow reporting entities (including employers, partnerships, corporations, estates and trusts) to “roll over” small information return errors, contained on Forms 1099 and W-2 and Schedules K-1, in the following year rather than file amended or corrected forms if the corrected amount for a recipient exceeds \$100 but is no more than \$200 in income.

For example, if ordinary dividends of \$200 are reported on a client’s tax return for 2016, the client should not file an amended tax return if the client receives a corrected Form 1099 showing \$210 of dividends. Offering this safe harbor to taxpayers will not only save individuals from costly tax preparation expenses, but will improve efficiency for both tax preparers and the IRS.

**b. Delayed/Late Forms 1099**

An important concern to both taxpayers and tax preparers is the growing number of corrected information returns. Tax filing seasons have become increasingly challenging for practitioners due to the late issuance of corrected Forms 1099-B, *Proceeds from Broker and Barter Exchange Transactions*, and amended Forms 1099-DIV, *Dividends and Distributions*, by brokerage firms.

Generally, issuers must furnish a copy of Form 1099-DIV to taxpayers by January 31, 2017.<sup>12</sup> Many brokerage firms, however, are sending corrected Forms 1099-DIV after the January 31st date with relatively small changes. This late issuance occurs because brokerage firms can amend a Form 1099 at any time.

While we recognize that the brokerage firms face challenges to meet reporting requirements in a timely manner after close of the calendar year, corrected forms create anxiety, confusion, and an increase in tax preparation fees. Taxpayers are willing to file an amended return if necessary, but strongly prefer to file only once. As a result, many taxpayers now tend to wait until they have received their annually-anticipated late corrected Forms 1099 before bringing their tax records to their CPA. Although taxpayers can file an

<sup>9</sup>All references in this letter to the Internal Revenue Code are to the Internal Revenue Code of 1986, as amended.

<sup>10</sup>Issuers could still file corrected information returns addressing de minimis errors.

<sup>11</sup>Section 6722(c)(2)(B) would need to include this time limit.

<sup>12</sup>IRC section 6045(b).

amended Form 1040 after April 15th,<sup>13</sup> clients want to ensure they do not owe any late payment penalty or obtain their refund as soon as possible, thus preferring to complete amended returns as soon as possible. Tax practitioners are suffering a more compressed tax filing season as a result of this increasingly shortened timeline.

We believe our recommendations listed above regarding de minimis errors will also address this common problem of delayed and amended Forms 1099 with de minimis changes.

### 3. Individual Taxpayer Identification Numbers (ITINs)

It is critical for the IRS to effectively administer the ITIN program, including ITIN renewals, without disrupting the tax filings of the individual taxpayers who want to remain compliant with their annual filing obligations. We have submitted comments to the Service<sup>14</sup> on the provisions amended by Pub. L. 114–113, also known as the Protecting Americans from Tax Hikes Act of 2015 (PATH Act),<sup>15</sup> and their implementation by the IRS as outlined in Notice 2016–48.

The PATH Act changes to the ITIN processes require technical corrections for effective tax administration to occur. We suggest that Congress reintroduce and enact the Tax Technical Correction Act of 2016<sup>16</sup> previously introduced on December 6, 2016 in the 114th Congress. Specifically, we support the provision in the bill regarding procedures used by overseas taxpayers to obtain or renew their ITIN. This provision would simplify the application and renewal process for millions of overseas taxpayers who are affected by the changes to the procedures. Under current law, overseas taxpayers can no longer use community-based CAAs to process their ITIN applications. This rule imposes an unduly harsh burden on those taxpayers who are attempting to fulfill their U.S. tax filing obligations. The proposed technical corrections in the Tax Technical Correction Act of 2016 would allow ITIN holders living abroad to use CAAs.

### 4. Due Diligence Requirements

The PATH Act added the Child Tax Credit (CTC) and the American Opportunity Tax Credit (AOTC) to the due diligence requirements of paid preparers that claim these refundable credits. Prior to this new requirement for paid preparers to complete Form 8867, *Paid Preparer's Due Diligence Checklist*, many tax preparers were already subject to due diligence rules with penalty consequences. Congress likely expanded the section 6695(g) penalty to these additional refundable credits due to taxpayer errors in claiming them.

However, this additional checklist is an unnecessary burden to professional preparers who are already subject to multiple levels of due diligence requirements. These existing requirements include the section 6694 preparer penalty regulations, the U.S. Department of the Treasury's ("Treasury") Circular 230 rules, professional association ethical standards, and state licensing board regulations.

The AICPA recommends that Congress modify section 6695(g) by adding an additional sentence as follows:

The Secretary must consider simplified approaches that recognize that taxpayers are responsible for the accuracy of their return and that certain tax return preparers are already subject to additional due diligence requirements.

Most professional preparers properly adhere to the requirements listed in the Form 8867 checklist (even without such a specific checklist) and we question if the additional burden to complete a multi-page check list is a true deterrent for those practi-

<sup>13</sup>See IR–2016–167: "The filing deadline to submit 2016 tax returns is Tuesday, April 18, 2017, rather than the traditional April 15th date"; <https://www.irs.gov/uac/2017-tax-filing-season-begins-jan-23-for-nations-taxpayers-with-tax-returns-due-april-18>.

<sup>14</sup>AICPA comment Letter, "Notice 2016–48, Implementation of PATH Act ITIN Provisions," dated September 27, 2016; <https://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/AICPA-Comment-Letter-Notice-2016-48-Implementation-of-PATH-Act-ITIN-Provisions-9-27-16.pdf>.

<sup>15</sup>Pub. L. 114–113 (December 18, 2015), "Protecting Americans from Tax Hikes Act of 2015," amending sections 6109(i) and 6213(g) regarding ITINs; <https://www.congress.gov/114/plaws/publ113/PLAW-114publ113.pdf>.

<sup>16</sup>S. 3506, "Tax Technical Corrections Act of 2016," <https://www.congress.gov/114/bills/s3506/BILLS-114s3506is.pdf>. Additionally, the AICPA supports technical corrections included in the bill relating to partnership audit rules, which are included in the Bipartisan Budget Act of 2015, to mitigate negative impacts on the IRS and taxpayers. These corrections would improve the IRS's ability to fairly and equitably administer the new partnership audit regime and reduce the administrative burdens on the IRS and taxpayers.

tioners who are failing to fulfill their due diligence requirements. We urge Congress and the IRS to consider whether the information obtained from Form 8867 provides value to warrant the added administrative burdens to both professional tax preparers and the IRS.

#### **5. IRS Deadlines Related to Disasters**

Similar to IRS's authority to postpone certain deadlines in the event of a presidentially declared disaster, Congress should extend that limited authority to state-declared disasters and states of emergency. Currently, the IRS's authority to grant deadline extensions, outlined in section 7508A, is limited to taxpayers affected by federal-declared disasters. State governors will issue official disaster declarations promptly but often, presidential disaster declarations in those same regions are not declared for days, or sometimes weeks after the state declaration. This process delays the IRS's ability to provide federal tax relief to disaster victims. Individuals have the ability to request waivers of penalties on a case-by-case basis; however, this process causes the taxpayer, tax preparer, and the IRS to expend valuable time, effort, and resources which are already in shortage during times of a disaster. Granting the IRS specific authority to quickly postpone certain deadlines in response to state-declared disasters allows the IRS to offer victims the certainty they need as soon as possible.

This past year, multiple states along southeastern United States were affected by Hurricane Matthew, including Florida, Georgia, North and South Carolina, and Virginia. From October 6th through 10th, Matthew traveled north along the southeast coast. A federal state of emergency was declared for Florida on October 6th and later extended to include Georgia and South Carolina. Tax preparers and taxpayers living in the affected regions not only lost access to power and the Internet, but lost tax documents and financial information due to flooding and destruction of both their homes and businesses. On October 13, 2016, the IRS issued IR-2016-132 offering federal tax relief to regions of North Carolina. The relief arrived 2 days before the major October 15th individual extended tax filing dead line—which caused tax practitioners unnecessary stress and burden for the days leading up to the issuance of the relief. Three days *after* the extended filing deadline, on October 18th, the IRS issued relief for Florida and Georgia—which was, unfortunately, too late to make a substantial difference.

More recently, on March 13, 2017, Winter Storm Stella hit the Northeast and Mid-Atlantic U.S. covering many states in multiple feet of snow 2 days before the March 15th business return due date. Before 2:00 p.m. (ET) on the first day of the storm, governors in New York and other states began issuing emergency declarations while the AICPA and state CPA societies along the Northeast received calls from members needing federal filing relief from the IRS. Two days later, at approximately 4:30 p.m. (ET) on the March 15th filing due date, the IRS finally issued IR-2016-61 offering business taxpayers affected by Winter Storm Stella additional time to file. Receiving federal extensions are helpful, but the sooner the IRS can grant this relief, the greater the beneficial impact on victims.

The AICPA has long supported a set of permanent disaster relief tax provisions<sup>17</sup> and we acknowledge both Congress's and the IRS's willingness to help disaster victims. To provide more timely assistance, however, we recommend that Congress allow the IRS to postpone certain deadlines in response to state-declared disasters or state of emergencies.

#### **6. Guidance Needed on Emerging Issues**

Online crowdfunding and the sharing economy are quickly expanding mediums through which individuals obtain funds or seek new sources of income. Individuals may understand the steps through which they can use these new crowd funding and sharing economy opportunities to their advantage. However, many tax preparers and their clients do not have the guidance necessary to accurately comply with the complex, out-of-date, or complete lack of tax rules in these emerging areas.

Lawmakers and tax administrators must regularly review existing laws, against new changes in the ways of living and doing business, to determine whether tax rules and administration procedures need modification and modernization. We urge Congress and the IRS to develop simplified tax rules and related guidance in the emerging sharing economy and crowdfunding areas. Some of the areas in need of

<sup>17</sup> AICPA comment Letter, "Request for Permanent Tax Provisions Related to Disaster Relief," dated November 22, 2013; [https://www.aicpa.org/Advocacy/Tax/Individuals/Downloadable/Documents/11-22-13\\_Permanent\\_Tax\\_Related\\_Disaster\\_Relief\\_Provisions\\_Comment\\_Letter.pdf](https://www.aicpa.org/Advocacy/Tax/Individuals/Downloadable/Documents/11-22-13_Permanent_Tax_Related_Disaster_Relief_Provisions_Comment_Letter.pdf).

modernization include information reporting (such as to avoid reporting excluded income (such as a gift) as income), simplicity in reporting and tracking rental losses from year to year, and simplified approaches for recordkeeping for small businesses. Offering clarity on these issues will allow taxpayers to follow a fair and transparent set of guidelines while the IRS benefits from a more efficient voluntary tax system.

## 7. Other Tax Filing Season Concerns

### a. Tax-Related Identity Theft

The AICPA supports efforts to combat identity theft and tax fraud.<sup>18</sup> The growing amount of fraudulent tax refunds<sup>19</sup> paid and the economic and emotional impact to individual victims of identity theft are unacceptable. Therefore, we recommend a single point of contact for identity theft victims to streamline the process and help identify areas of duplication and causes for delays, and support a criminal penalty form is appropriating taxpayer identity.<sup>20</sup>

We are concerned, however, about certain other measures intended to address identify theft. In recent years, the IRS and some state tax agencies have started requiring additional personal data, such as a driver's license number, for electronic filing. Taxpayers and their return preparers are reluctant to provide additional personal data to online tax software databases and state agencies as this process could increase identity theft risk. Therefore, the AICPA supports consideration of alternatives to reduce the need for submitting personal identification data in the tax compliance process beyond the personal data traditionally requested (TIN, address, employer, etc.). As a suggestion, we ask Congress to require the IRS to provide a report to the congressional tax committees on its operation of the current identity protection personal identification number (IP PIN) system. We believe this report would encourage and support the expansion of the PIN system, which is currently used on a limited basis, to help prevent identity theft.

### b. IRS Private Debt Collection

Taxpayers have growing concerns about the actions of private collection agencies and their legal authority. Due to the proliferation of fraudulent tax return scams, we believe the use of private collection agencies will add security, authentication, verification, and complexity concerns to an already overburdened system. We urge Congress to repeal section 6306(c)(1) as it will likely harm taxpayers and further degrade the trust in our voluntary tax compliance system while increasing the costs of collections.

From 2006 to 2009, the IRS employed private debt collection agencies to assist in locating and contacting taxpayers, and requesting installment agreements for unpaid tax liabilities. However, in 2009, the IRS announced that it would not renew the private collection agencies' contracts because the Service's internal collection activities were more successful and cost-effective. Now that the private debt collection program is reestablished, taxpayers are concerned, or many are unaware, that these collectors do not recognize economic hardships nor do they offer taxpayers the same relief that the IRS is required to provide under statutory law.

Additionally, the IRS does not have the ability to ensure consistent and fair treatment of taxpayers across multiple private collection agencies.

## CONCLUDING REMARKS

The AICPA appreciates this opportunity to submit a statement for the record and we urge this Committee to consider our suggestions as Congress decides how to im-

<sup>18</sup> See AICPA comment letter, "Tax Reform Discussion Draft on Tax Administration," dated January 16, 2014; <http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/AICPA-Comments-on-Discussion-Draft-on-Tax-Administration.pdf>; and AICPA comment letter, "Chairman's Mark of a Bill to Prevent Identity Theft and Tax Refund Fraud," dated September 15, 2015; <https://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2015-09-15-Prevent-ID-Theft-and-Tax-Refund-Fraud-Comment-Letter-FINAL.pdf>.

<sup>19</sup> AICPA comment letter, "Comments on the Identity Theft and Tax Fraud Prevention Act of 2013 and Recommendations on Efforts to Combat Identity Theft," dated June 27, 2013; [http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2013\\_06\\_27\\_Comments\\_on\\_Identity\\_Theft\\_and\\_Tax\\_Fraud.pdf](http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2013_06_27_Comments_on_Identity_Theft_and_Tax_Fraud.pdf). See AICPA testimony to U.S. Senate Committee on Finance hearing on, "Tax Fraud, Tax ID Theft, and Tax Reform: Moving Forward With Solutions," April 16, 2013; [http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2013.04.16\\_Testimony\\_on\\_Tax\\_Fraud\\_Tax\\_ID\\_Theft\\_and\\_Tax\\_Reform.pdf](http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/2013.04.16_Testimony_on_Tax_Fraud_Tax_ID_Theft_and_Tax_Reform.pdf).

<sup>20</sup> An adoption TIN is a temporary identification number for a child in the process of an adoption where the SSN is not obtained or unattainable at that moment.

prove tax compliance and IRS taxpayer services. We look forward to working with the Committee as you continue to address the needs of tax preparers and taxpayers.

The AICPA is the world's largest member association representing the accounting profession with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state, local and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

