



**Statement of
National Treasury Employees Union**

On

**Examining potential reforms to ensure federal employees and contractors
satisfy in good faith their financial obligations, including federal taxes**

Presented to

**House Committee on Oversight and Government Reform
Subcommittee on Government Operations**

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Chairman Meadows, Ranking Member Connolly, and distinguished members of the Subcommittee, I would like to thank you for allowing NTEU to appear before you to discuss tax compliance issues in the federal workforce. I am Maureen Gilman, Legislative and Political Director at NTEU, and am here today on behalf of our National President, Colleen Kelley.

Mr. Chairman, I want to be very clear that NTEU firmly believes that each and every federal employee should pay their taxes in a timely manner. There are currently rules in place that track federal workers' federal tax compliance, and that allow federal employees to be disciplined and even terminated for serious tax delinquency. NTEU believes that termination for tax delinquency can be appropriate in some cases, but we believe that a blanket policy of terminating a worker's employment or preventing a job applicant from obtaining gainful employment without taking into account the reasons for the delinquency and the circumstances surrounding repayment ability is not wise and will likely lead to more revenue going uncollected.

We are also concerned about creating a separate tax administration system for certain individuals, based solely on federal employment, and want to ensure that federal employees are not deprived of the rights afforded to all other taxpayers. We are troubled by proposals that would grant access to individual federal employee's taxpayer information, which under current law, must remain confidential, and cannot be shared with a worker's manager or with other outside entities and individuals.

Processes Already in Place

As stated previously, NTEU firmly believes each and every federal employee should pay their taxes in a timely manner and believes that the federal government already has enhanced processes to ensure compliance by federal employees.

Under 5 C.F.R. 2635.809, agencies can take disciplinary action against employees for failure to satisfy their "just financial obligations," including their obligation to pay Federal, state, and local taxes. These disciplinary actions can range from counseling to removal.

This Office of Government Ethics regulation, part of the government-wide standards of ethical conduct, provides: Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a just financial obligation includes any financial obligation acknowledged by the employee or reduced to judgment by a court. In good faith means an honest intention to fulfill any just financial obligation in a timely manner.

Federal Employee/Retiree Delinquency Initiative (FERDI)

In 1993, the Internal Revenue Service (IRS) initiated the Federal Employee/Retiree Delinquency Initiative (FERDI), to promote federal tax compliance among current and retired federal employees, as well as military personnel and retirees. According to the Internal Revenue Manual, the program incorporates the purpose and intent of Office of Government Ethics regulations 5 CFR 2635.809, discussed previously.

The broad objectives of FERDI are to enhance the federal government's tax administration process by improving the compliance of federal employees and annuitants in regard to their responsibility for filing tax returns and paying taxes, thereby helping to ensure the public's confidence in the tax system. The program combines reaching out to federal agencies to raise their awareness of this issue and prioritizing efforts to reduce unpaid tax cases.

Beginning in 1993, the IRS began periodically matching its records of outstanding taxes and non-filed tax returns against federal personnel records to identify federal workers and annuitants who either had outstanding taxes or had not filed their tax returns. IRS entered into agreements with the Defense Manpower Data Center, which receives personnel data files on many of the government's active and retired civilian and military workers, and the U.S. Postal Service, which maintains and processes similar data for postal workers, to match these personnel records against a data file of outstanding taxes and unfiled tax returns. Most agencies, accounting for over 95 percent of the federal workforce, participate in this matching process.

Agencies that participate in the matching process and agencies where IRS is able to perform a match using W-2 information annually receive a letter from IRS informing them of the number of employees with outstanding taxes or unfiled tax returns. These letters also contain IRS' assessment of the agency's rate of compliance. Because of restrictions imposed by confidentiality laws, these agencies do not receive information on the specific names of individual employees whom IRS has identified as not complying with the nation's tax laws.

The program has been successful in reducing tax delinquency among federal employees and retirees. In 2013, the overall FERDI non-compliance rate was 3.27 percent, translating into a 96.73% tax compliance rate for the federal community. No other individuals, nor set of occupations or groups of retirees are subject to a similar tax oversight initiative.

Federal Payment Levy Program

Mr. Chairman, in addition to laws and regulations in place that allow federal employees to be disciplined for failing to meet their tax obligations, there is also an efficient process currently in place to recover taxes owed. In 1997, Congress included a provision in the Taxpayer Relief Act of 1997 (P.L. 105-34), which became Section 6331 (h) of the Internal Revenue Code, authorizing the establishment of the Federal Payment Levy Program (FPLP), which allows IRS to continuously levy up to 15 percent of certain federal payments made to delinquent taxpayers.

Under FPLP, the IRS sends an electronic file containing tax debt information to the Department of Treasury's Financial Management Service (FMS). The FMS then searches for matches between the names and taxpayer identification numbers (TINs) in its database on pending federal payments and the names and TINs in its database on delinquent tax accounts. If a match is found, the FMS notifies the IRS, which in turn notifies the taxpayer in question of its intent to levy certain federal payments to that individual until the tax debt is paid in full. If 30 days pass with no reply from the taxpayer, the IRS authorizes FMS to levy all eligible federal payments to that individual. The levy remains in effect until the debt is paid in full, or until the taxpayer makes other arrangements with the IRS to pay off the debt.

The list of federal payments that can be levied through the FPLP include: federal employee retirement annuities, federal payments made to a contractor/vendor doing business with the government; federal employee travel advances or reimbursements, certain Social Security benefits, and importantly federal salaries.

Since inception of the FPLP in 2000, the program has brought in over two and a half billion dollars, and in Fiscal Year 2010, collected \$618 million.

Hardship Exemptions

While the levy program has clearly succeeded in collecting tax debt owed by federal employees, it is important to note that federal payments, including salaries, to delinquent employees are exempt from the levy program under certain circumstances. These circumstances include, when a taxpayer is in bankruptcy, when they have applied for relief as an innocent or injured spouse, or the IRS has determined they are in a hardship situation. Therefore, the likely reason any federal employee that owes taxes but is not currently under the FPLP program is that they qualify for one of the hardship exemptions under the program. To terminate these employees without considering their financial situation does not serve any purpose other than to ensure that the government would lose the potential to collect taxes owed when the employee's financial situation improves.

In recent years, the IRS has taken numerous steps to help taxpayers having difficulties meeting their tax obligations because of unemployment of a family member or other financial problems. The steps include additional flexibility on offers in compromise and missed payments, postponement of collection actions and expedited levy releases.

These actions by the IRS are a recognition that in the current economic climate, it is more important than ever that taxpayers experiencing financial hardship be provided with additional flexibilities to help them resolve their financial difficulties and become compliant. As Nina Olson, the National Taxpayer Advocate, has said, when dealing with non-compliant taxpayers, the focus should not just be on getting them compliant for a single year, but on keeping them compliant in the future as well.

Mr. Chairman, like many in the general public, federal employees have been affected by the recent economic downturn through the loss of jobs of family members and the loss of value of their homes, and some from reduced wages owing to unpaid furlough days stemming from sequestration and the 2013 shutdown. Therefore, we believe at a minimum, it is imperative that any legislative proposal provide a hardship exemption, to protect workers who are facing financial hardship from termination. We also believe it is important to provide notice and a grace period for those working earnestly to resolve their debts.

Due Process

Mr. Chairman, some may point to the high rate of tax compliance by IRS employees, and the fact that they can be terminated for various tax infractions under the IRS Restructuring and Reform Act of 1998 (RRA 98) as evidence that mandatory termination for tax violations is an effective policy.

Section 1203 of RRA98 requires the Commissioner of the IRS to terminate an employee for certain specifically enumerated violations committed by the employee in connection with the performance of the employee's official duties. It is worth underscoring that Section 1203 requires that before any action is taken, there must be a final administrative or judicial determination and that the employee's actions were willful.

Mr. Chairman, unlike Section 1203, many past legislative proposals have provided federal workers with minimal due process rights and did not require a similar determination of willfulness. As you know, the U.S. tax code is incredibly complex and people can end up owing additional taxes for many non-nefarious reasons: they took deductions they thought were allowed, but weren't; they got bad advice from an inexperienced or unscrupulous preparer; a joint filer got inaccurate information about a spouse's earnings. If the IRS were to bring a criminal prosecution against an individual, intent would be a required element. We believe that intent should be a consideration when determining whether a federal employee should be terminated due to tax delinquency.

We also believe that ability to pay should be a consideration. If an employee is in such dire financial straits that he or she is not eligible for wage garnishment, it is not disrespect for the government, but lack of wherewithal, that is behind the non-payment. Clearly, firing that individual, who might otherwise get back on track and repay the debt, as well as become a tax compliant, contributing member of society, rather than someone not working and collecting benefits, does not seem to make economic sense.

In addition to the lack of consideration of the circumstances surrounding the federal employee's tax delinquency, we have concerns as to how that delinquency would be established. Under many of the past legislative proposals, a prospective or current federal employee would be prohibited from federal employment based on the mere issuance of a notice of a federal tax lien (NFTL). The IRS files a NFTL to secure the government's interest as a creditor in competition with other creditors in certain situations, such as bankruptcy proceedings or sales of real estate. The federal tax lien is a claim against a taxpayer's property, including property that they acquire after the lien arises. It is not a final determination of liability and should not be the final determination of whether a federal employee or applicant is eligible for federal employment.

Job Applicants

Mr. Chairman, in addition to the serious concerns we have about the adverse impact that changes could have on current federal employees, we also have a number of questions and concerns about how the process for determining the eligibility of an applicant for federal employment with a tax debt would work. In particular, who would be responsible for investigating an applicant's tax situation and making the determination of whether or not they are eligible for federal employment? And would an applicant have the right to respond to any problems that are found? If it is determined that they are not eligible for employment, do they have the right to appeal that decision? And who would be responsible for hearing and deciding such an appeal?

I would note that recent Administration efforts have directed OPM to work with executive departments and agencies to reform and streamline the federal hiring process by reducing the

amount of time it takes to fill vacant positions. The Committee itself has also recognized the need to streamline the processes by which job applicants apply for vacancies and agencies fill them, and has urged agencies to develop plans for reducing the time it takes to hire Federal employees. Requiring federal agencies to review and make determinations of each individual applicant's tax situation would almost certainly extend the hiring process, create additional costs, and threaten to reverse progress made recently in streamlining federal hiring.

Conclusion

Mr. Chairman, as I have said throughout my testimony, I believe that everyone has a responsibility to pay the taxes they owe. And according to IRS data, more than 96 percent of the federal community is meeting their tax responsibilities in a timely manner, a higher rate than the general public. For those who do not, there are currently penalties under the tax code. There are also penalties that agencies can apply when employees are violating ethics rules. But singling out and requiring federal employees that owe back taxes to be fired and creating a huge new program to check the tax status of all federal job applicants, is not the best way to address this problem. Some may owe taxes because of the actions of a spouse, a previous failed business enterprise or financial hardship. Denying them federal employment that they are otherwise qualified for, will certainly be unfair in some situations and in many situations will lead to a higher likelihood that the government will never receive the taxes it is owed. This outcome was confirmed when the Joint Committee on Taxation and the Congressional Budget Office scored one version of legislation on this topic as raising "negligible" revenue, but costing an additional \$1 million in administrative costs in the first year alone.

Thank you. I would be happy to answer any questions.