

Statement of
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Hearing on
Oversight of the Internal Revenue Service

Before the
Subcommittee on Government Operations and the Federal Workforce
And the
Subcommittee on Health Care and Financial Services
Committee on Oversight and Accountability
United States House of Representatives

24 October 2023

Chairpersons Sessions and McClain, Ranking Members Mfume and Porter, and Members of the Subcommittees,

Thank you for holding this hearing today and for inviting written comments on the important topic of IRS. With funding provided by the Inflation Reduction Act, the Internal Revenue Service (IRS) is at an historic juncture, in that this funding can serve as the opportunity to transform the agency into one that equitably administers and enforces our nation's tax laws. Given the enormity of the task, however, Congressional oversight, such as the hearing today, is vitally important to ensure that this transformation is on track. Toward that end, in my statement today I will touch on issues that I believe are central to creating a trusted, responsive, and innovative tax agency: (1) the IRS mission statement; (2) the IRS Oversight Board; (3) a sustainable IRS appropriation; (4) up-front issue resolution with significant taxpayer protections; and (5) revised correspondence examination procedures. The Center for Taxpayer Rights discussed many of these issues in our comments of June 21, 2023, on the IRS Strategic Operating Plan (SOP), a copy of which I attach to this statement.

1. The IRS Mission Statement should be updated to reflect the agency's current dual mission of collecting revenue and delivering benefits.

Unlike most tax systems around the world which tax the individual, the U.S. individual income tax taxes the family unit. This approach necessarily introduces legal and factual complexity into the system. On the other hand, by taxing the family unit/household, the tax system becomes an efficient mechanism for delivering benefits related to families and children. Thus, over the decades, the IRS has been the go-to agency for delivering the Earned Income Tax Credit, one of the largest federal anti-poverty programs for working families; health insurance subsidies for low income families; and education credits. The IRS's herculean efforts in delivering life-saving benefits to individuals during the pandemic clearly demonstrate the extraordinary reach and importance of the IRS's benefit delivery system for the health and welfare of the U.S. economy and families.

Unfortunately, this aspect of the IRS's work is not reflected in its current mission statement. The mission statement drives the agency's vision which in turn drives its goals, strategies, initiatives, hiring, training, and skill development. For the IRS to implement the social benefit delivery aspect of its dual mission, the mission statement should explicitly reflect this second "line of business." This explicit recognition will result in the IRS developing performance measures, job descriptions, and training necessary to successfully deliver on the mission and will increase the transparency of its efforts.

Perhaps the most important aspect of a revised mission statement is that it would signal to US taxpayers – and to its employees -- that the IRS is not just about enforcement and auditing. The explicit recognition of the IRS's important role in ensuring the health and welfare of the US population would help restore trust in the agency, and be a clear message to IRS employees that a key component of their jobs is to assist taxpayers and help them comply with the tax laws so they can not only pay the correct amount of tax but also receive the tax

benefits for which they are eligible. This is an important first step in culture change at the IRS.

The revised mission statement can help address one of the most significant challenges the IRS faces in years to come – the hiring of qualified employees. According to the Treasury Inspector General for Tax Administration (TIGTA), for example, the IRS estimates it will lose 14,500 taxpayer service employees to attrition between Fiscal Years (FYs) 2022 and 2025, even as it tries to increase taxpayer service staffing by 7,104 employees over the same period.¹ How better to attract qualified and professional applicants than by re-stating the agency’s mission to make clear its profound role in contributing to the general welfare of the US population, in very real and concrete terms?

Recommendation: Revise the IRS mission statement to reflect its dual role as revenue collector and benefits administrator, and to explicitly incorporate protection of taxpayer rights.

2. *The IRS Oversight Board should be re-activated and re-invigorated.*

One of the most important and innovative aspects of the Internal Revenue Service Restructuring and Reform Act of 1998 was the establishment of the IRS Oversight Board.² As National Taxpayer Advocate, I welcomed the oversight of this board, which had more immediate access to IRS initiatives and strategic planning than the traditional oversight agencies. The board’s authority to review senior leadership’s performance and IRS strategic plans as they were being developed provided an opportunity for the board to not only ensure the IRS was living up to its goals but also that it was continuing to modernize and innovate. Unfortunately, the Oversight Board fell victim to a lack of organizational and political support.

I believe that the time has come to revitalize and reinstate the Oversight Board. The infusion of IRS funding necessitates greater oversight. Both the Government Accountability Office (GAO) and the TIGTA are actively conducting audits. There is no substitute, however, for a board of independent, external, and expert professionals conducting monthly or quarterly meetings with IRS leadership about their plans in real time and making recommendations about those plans as well as an independent recommendation about the IRS annual appropriation. The Oversight Board’s reports will also provide Congress with invaluable information it can utilize as it exercises its own oversight responsibilities.

Recommendation: Reinvigorate the IRS Oversight Board by developing a mechanism that ensures continuing appointments and adding members with the necessary skillsets (*e.g.*, backgrounds in education, information technology, small business experience, large business experience, individual taxpayer representation).

¹ Treasury Inspector General for Tax Administration, Snapshot: The Internal Revenue Service’s Inflation Reduction Act Spending Through June 30, 2023 (20024-IE-R002), Oct. 10, 2023, at 8.

² IRC § 7802.

3. *Notwithstanding the IRA investment, the baseline IRS appropriation must be sustained to keep up with inflation and support the gains made to taxpayer service delivery.*

At the current level of annual appropriations, IRS service to taxpayers will be abysmal. According to a recent TIGTA report, however, \$3.2 billion of IRA funding is allocated to the taxpayer service budget category and through June 30, 2023, the IRS spent \$561.4 million of that funding, or 17.6 percent of the IRA funding dedicated to taxpayer service in the first of ten years.³ Of the \$561.4 million spent for taxpayer service in the first nine months of Fiscal Year (FY) 2023, \$497 million was spent on labor costs for improving the 2023 filing season.⁴ Further, during FY 2023, TIGTA reports that the IRS transferred \$100 million from the annual enforcement appropriation to taxpayer service, on top of the \$2.8 billion already appropriated for taxpayer service for FY 2023.⁵ The IRA and extra cash infusion into hiring for taxpayer service resulted in significant gains in response rates to the “accounts management” phone lines: an 85 percent “level of service” (LOS) for the 2023 filing season compared to about 15 percent LOS for the 2022 filing season.⁶

While these gains are impressive, the National Taxpayer Advocate reports that because of antiquated phone technology, bulking up staffing for the phones resulted in assistants being idle 34 percent of the time they were assigned to answer the phones.⁷ Since these are the same employees who also handle correspondence and process amended returns, these inventories grew, and resolution time for identity theft cases was over 430 days – longer than a year – as of April 2023.⁸ Thus we see the impact of underfunding technology improvements and the importance of the IRA business modernization funding in being able to effectively utilize the IRS workforce. Yet the FY 2023 annual appropriation zeroed out business system modernization funding. TIGTA has noted that “[w]ithout the restoration in the IRS’s annual appropriation, IRA funding will only cover approximately two-thirds of the IRS’s planned modernization.”⁹

TIGTA also raises the coming challenges for IRS funding. According to TIGTA, the IRS estimated it will need \$818 million more to maintain current operating levels; thus, if the IRS budget remains flat (or reduced), the IRS will have to use IRA funding merely to cover inflation increases.¹⁰ Maintaining the IRS baseline budget at current levels, then, will undermine the transformational purpose of the IRA funding.

³ TIGTA, *supra* note 1 at 6.

⁴ *Id.* at 8.

⁵ *Id.* at 1.

⁶ National Taxpayer Advocate, Fiscal Year 2024 Objectives Report to Congress, iii. As the National Taxpayer Advocate notes, the Level of Service (LOS) measure does not reflect actual taxpayer experience in trying to reach the IRS by phone. First of all, it does not include the calls that the IRS itself routes to automated assistance via its phone tree; and second, it does not include the calls coming to other phone lines, including collection lines. *Id.* at vi.

⁷ *Id.*

⁸ *Id.* at vi.

⁹ TIGTA, *supra* note 1 at 4.

¹⁰ *Id.*

More importantly, if the IRS continues to apply IRA taxpayer service funding to make up for the poor service levels funded by the annual appropriation, it will run out of IRA funding in five – not ten – years. That means that taxpayers will experience a cliff: in one filing season they are able to get through on the phone and have their returns processed relatively quickly, and in the next filing season, we will be back to pandemic levels of assistance, *i.e.*, almost no assistance at all. This path is unsustainable and violates the trust of US taxpayers, who by and large are trying to comply with the tax laws and pay their taxes.

Recommendation: Reinstate the annual appropriation for Business Systems Modernization and fund the annual IRS appropriation for taxpayer service such that the IRS can routinely answer 85 percent of the calls to all of its lines, process and respond to all correspondence within thirty days, process amended returns within sixty days, and resolve identity theft cases within 180 days.

4. *Up-front issue resolution, as described in the SOP, can be a positive benefit, but if not carefully implemented it may violate taxpayer rights and improperly reject legitimate returns.*

Initiative 2.1 of the IRS Strategic Operating Plan envisions a future whereby the IRS informs the taxpayer at the time of filing if there are questionable claims on their returns. This can be a very positive development. For example, advising a taxpayer at time of filing that it appears from Social Security Data that the child claimed on the return is too old for a claim of the Child and Dependent Care credit would allow that taxpayer to correct their return before final filing and thus avoid the uncertainty, anxiety and burden of the math error process. On the other hand, if the taxpayer is eligible for the credit because the child is disabled, a poorly designed up-front system would likely deter the taxpayer from claiming a benefit for which they are eligible. Further, if the IRS uses the e-file process to reject this taxpayer's return, it will be violating the law,¹¹ impairing taxpayer rights, increasing taxpayer burden, and creating downstream work for itself in the form of processing paper returns that previously have been rejected or litigating refund claims. The better system design would be to alert the taxpayer to any issues on the return and provide the taxpayer an option to change the return or to continue with the return as currently configured. In this way the taxpayer retains the ability to electronically file the original return but understands they may need to produce documentation down the line to support their return positions.

- Recommendation: Follow the *Beard v. Commissioner* test and accept e-filed returns, even where an error has been identified. Process and accept duplicate Taxpayer

¹¹ According to *Fowler v. Commissioner*, 155 T.C. No. 7 (2020), a return such as the one described above, constitutes a valid return under *Beard v. Commissioner*, 82 T.C. 766 (1984). *Beard* established a multi-prong test for determining whether a document constitutes a tax return: (1) the document purports to be a return and provides sufficient data with which the IRS can calculate the tax liability; (2) the taxpayer makes an honest and reasonable attempt to meet the requirements of the tax laws; and (3) the taxpayer executes the document under penalties of perjury.

Identification Number (TIN) e-filed returns that meet the *Beard* test as filed. For other e-filed returns, prior to acceptance of a return, alert the taxpayer to any potential errors on the return. Provide the taxpayer with the option to either (a) correct the error per IRS position or (b) file the return as-is with an explanation.

- Recommendation: Where the IRS has identified potential errors on an e-filed return prepared by a for-fee or VITA/TCE preparer, the taxpayer must be directly notified and provide consent for changes other than merely clerical errors such as transposed digits or omission of a required form.

5. *IRA funding creates a unique opportunity to dramatically improve the correspondence examination process, which accounts for the vast majority of audits of individual taxpayers.*

We commend the IRS and Treasury for committing to not increase the number of audits for taxpayers with income below \$400,000, and for the decision to reduce the number of Earned Income Credit audits. But these moves, however commendable, do not address the glaring inequities and deficiencies in the correspondence exam process, which account for between 70 and 80 percent of all audits of individual taxpayers, and over 90 percent of audits for individual taxpayers with total positive income under \$50,000.¹² Under the “corr exam” process, no one employee is assigned to the case; each time the taxpayer calls the IRS about the matters under audit, a different employee answers the call. Unlike office and field audits, with corr exam there is no individual continuity or accountability for the conduct of the audit. And since the audit is conducted via (incomprehensible) correspondence, not only in 10 to 12 percent of these audits is the correspondence returned as undeliverable, but another 41.6 percent of the audits are no-response, and 20.4 percent result in default assessments.¹³ As a result, over 60 percent of corr exam assessments are unconfirmed assessments. That is, the IRS does not actually know if it has achieved the correct result in the audit because it had limited or no engagement with the taxpayer. If this were the result in office or field audits, which generally involve higher income taxpayers, people would be screaming about violation of taxpayer rights.

Fortunately, IRA funding for both enforcement and business systems modernization provides an opportunity for the IRS to radically restructure the correspondence exam process. Specifically, the IRS could incorporate the benefits of office exams into the correspondence exam process by scheduling appointments with taxpayers to meet with an assigned auditor virtually; during that meeting the auditor would review and explain the issues that are under audit and work with the taxpayer to identify documentation that would support the deduction or credit claim. The taxpayer would leave the audit understanding what steps they need to take to successfully resolve the audit; alternatively the taxpayer would understand why the return was incorrect. Further, because one auditor is assigned to the case, and there is direct engagement with the taxpayer, there will be better communication and response rates, leading to greater trust, accountability, and taxpayer and employee satisfaction.

¹² National Taxpayer Advocate, 2021 Annual Report to Congress, 150.

¹³ National Taxpayer Advocate, Fiscal Year 2024 Objectives Report to Congress, at 20.

Recommendation: Conduct correspondence audits as virtual office audits:

- assign one employee to that audit;
- issue an audit notice letter that is tailored and specific to the issue being audited;
- offer a specific date for a virtual audit appointment with the opportunity for the taxpayer to call and reschedule (or do so via smartphone through a QR code provided in the letter);
- conduct the audit via virtual face-to-face technology with camera enabled for document sharing;
- require the auditor to place an outbound call confirming the audit appointment and what elements of the statute the taxpayer needs to prove at the audit; and
- require the auditor to make another outbound or schedule another online meeting prior to issuing the proposed audit report.



CENTER FOR TAXPAYER RIGHTS

21 June 2023

Honorable Janet L. Yellen
Secretary
Department of the Treasury
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Washington DC 20220
correspondence@treasury.gov

Honorable Daniel I. Werfel
Commissioner
Internal Revenue Service
1111 Constitution Ave. NW
Washington DC 20224

By U.S. Mail and email

Re: Internal Revenue Service 2023-2031 Strategic Operating Plan

Dear Secretary Yellen and Commissioner Werfel:

We are writing on behalf of members of the Low Income Taxpayer Clinic (LITC) community to provide our comments and recommendations about the Internal Revenue Service (IRS) 2023 - 2031 Strategic Operating Plan (SOP). The Center for Taxpayer Rights (CTR)¹ hosts a weekly call for Low Income Taxpayer Clinic (LITC) personnel, and during May and June, 2023, we dedicated several of these calls to reviewing the SOP.² We applaud the IRS and the Department of the Treasury for the plan's emphasis on providing US taxpayers with the assistance they need to comply with tax laws and obligations. To assist the IRS in achieving its goals and effectively applying the Inflation Reduction Act funding, we offer the recommendations discussed in detail below and summarized in Appendix A. We welcome the opportunity to discuss these matters with you and your staff.

Threshold Considerations

¹ The [Center for Taxpayer Rights](https://www.taxpayer-rights.org) (CTR) is a §501(c)(3) organization dedicated to the protection of taxpayer rights in the United States and internationally. CTR operates the [LITC Support Center](https://www.taxpayer-rights.org/litc-support-center), which provides technical support and assistance to LITCs and also provides pro bono representation to low income taxpayers through [LITC Connect](https://www.taxpayer-rights.org/litc-connect). CTR was recently awarded supplemental LITC grant funding under IRC § 7526 for 2023.

² Over 40 representatives of Low Income Taxpayer Clinics participated in discussing the SOP and reviewing these comments.

As a threshold matter, we believe that the SOP and its implementation should be grounded in the Taxpayer Bill of Rights (TBOR).³ The TBOR should serve as a framework for the key projects listed under the five main objectives of the plan, including the knowledge, skills, and abilities required of employees to implement the plan's initiatives and the performance measures to gauge the plan's success. Each key project should be analyzed from the perspective of how it furthers the taxpayer protections articulated in the TBOR and provided for in the Internal Revenue Code. Explicitly making the TBOR the organizing principle for implementation of the SOP not only helps the IRS explain its strategy to the taxpaying public but also builds trust with that public and reinforces with IRS employees the critical role taxpayer rights play in increasing and maintaining tax compliance.

We also recommend Treasury and the IRS revise the IRS mission statement to explicitly acknowledge the agency's dual role as a revenue collector and benefits administrator. For it to successfully fulfill the SOP's initiative to "[h]elp taxpayers understand and claim appropriate credits and deductions" (Initiative 1.9) the IRS must develop approaches to the target populations that resemble a benefits administration approach rather than an enforcement agency approach. Acknowledging the dual mission will lead to the development of different and more appropriate performance measures, employee position descriptions and skill requirements, and employee guidance and training.

The IRS's dual mission and service-oriented focus can be furthered by establishing a Family and Worker Benefit Unit (FAWBU) that houses all IRS activities touching this population of taxpayers.⁴ We recommend all benefits-related outreach and education, compliance and audit, and collection initiatives not only be planned by this unit but also conducted by the unit's employees. This approach ensures that IRS staff developing the strategies are well-versed in the benefit population's needs and that IRS taxpayer-facing staff are selected for and trained in the skills best-suited for working with this large and diverse population. The FAWBU strategy office should be staffed with specialists with practical experience as well as relevant education in psychology, social work, anthropology and other aspects of human behavior and society.⁵

³ IRC § 7803(a)(3) requires the Commissioner "ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title, including ..." the ten rights enumerated in subparagraphs (A) through (J).

⁴ For a discussion of the FAWBU, see Nina E. Olson, *Procedurally Taxing: Thinking Out Loud About the Advanced CTC - Part 3: The Family and Worker Benefit Unit* (July 1, 2021) at <https://procedurallytaxing.com/thinking-out-loud-about-the-advanced-child-tax-credit-part-3-the-family-and-worker-benefit-unit/> and Nina E. Olson, *Procedurally Taxing: FAWBU and Dispute Resolution Redux: A 12-Step Program for Culture Change at the IRS* (Oct. 28, 2021) at <https://procedurallytaxing.com/fawbu-and-dispute-resolution-redux-a-12-step-program-for-culture-change-at-the-irs-part-1/>.

⁵ For example, the office could include (1) a specialist who has focused on plain language, concrete and effective communication, and lowering reading barriers; (2) a specialist who can oversee Limited English Proficiency services, e.g., proper use of interpreters, range of languages and dialects; (3) a specialist in trauma and mental health – and ideally another with extensive knowledge about domestic violence and experience working with survivors; (4) a specialist with experience with challenges of living in poverty or just above poverty, e.g., the practical impact of housing instability, the harsh demands of low wage work, combined with being a single parent and the shortage and inadequacy of child care; and (5) a specialist knowledgeable about the range of assistive

The FAWBU can also promote excellent partnerships with groups serving this taxpayer sector, as well as undertake innovative research. We also recommend the IRS establish a FAWBU Federal Advisory Committee, composed of LITC and VITA representatives, as well as representatives of non-tax legal aid programs and other nonprofits that represent or serve the low income population, to formally advise and be consulted by the IRS on its initiatives and approach to this population.

Taxpayer Service [SOP 1.1]

We applaud the IRS's commitment to multichannel taxpayer assistance and equality of access. As the IRS acknowledges, taxpayer needs and preferences may be different depending on the issue the taxpayer is experiencing. For example, while taxpayers may be comfortable initially using the Where's My Refund app to check the status of their refund, as time passes and delays occur, taxpayer anxiety increases. As the SOP notes, anxiety can be lessened through greater transparency and more personalized information about the refund's status, and we commend the IRS for committing to create these robust self-help tools. But at some point the taxpayer will want to speak to a live human being who has the necessary data and training to advise the taxpayer about the refund's status, the actions (if any) required of the taxpayer, and options for assistance.⁶ For example, on Where's my Refund, if the app shows the refund was issued on x date to y account, the app should explicitly state "If not received, click here to initiate a refund trace."

Taxpayer anxiety (and the resulting repeat dialing) can be further reduced by managing taxpayer expectations through providing greater transparency about wait times, processing times, and reasons for unexpected delays. A general dashboard that is updated in real time (not once every three to six months) is helpful and necessary. Toward that end, we recommend the IRS adopt alternate measures of "Level of Service" on the phones that reflect the taxpayer experience. Nothing erodes taxpayer trust more than hearing a LOS figure that the taxpayer knows does not align with their experience.

Similarly, we recommend the IRS conduct detailed analysis of how its phone tree system does or does not meet the needs of the taxpayer public. LITC experience is that the phone tree, through limited or misleading prompts, shunts people to automated lines that do not resolve their issues. For example, taxpayers with math error notices are directed to automated lines when what they need is a live assistor. In some instances, there is no public phone number, for

technology, and its limitations. With this expertise on staff, the FAWBU would ensure IRS initiatives do not create administrative burdens that result in taxpayers either not receiving benefits for which they are eligible or becoming noncompliant for lack of understanding or assistance.

⁶ A "Taxpayer Anxiety Index" analysis is a way to identify when taxpayers stop being comfortable with digital-only tools and need human assistance. This approach can be applied to all IRS workstreams – filing and refunds; examinations; collection – and can assist with workforce staffing and training projections. See National Taxpayer Advocate Fiscal Year 2020 Objectives Report to Congress, p. 6-8 (June 30, 2019).

example with the unit processing Individual Taxpayer Identification Numbers (ITINs). Imagine the taxpayer anxiety when one can't get through to find out what has happened to one's child's original passport, submitted to obtain an ITIN. Designing the phone tree from the taxpayer's perspective, in conjunction with a Taxpayer Anxiety Index analysis, will enable the IRS to make the case for the appropriate staffing necessary to provide the service taxpayers need and deserve.

Digitalization [SOP 1.2]

Digitalization and a robust online taxpayer account promise to give taxpayers far greater control and access to their own account information. On the other hand, authentication measures designed to protect the privacy of that information raise equity issues and can exacerbate the digital divide, resulting in undue administrative burden for vulnerable taxpayers. At present, LITC clients are unable to access payment options via their smart phones. The IRS should work with NIST and articulate the different types of access to information (retrieval vs. submission) so that identity proofing does not permanently lock out a large segment of the taxpayer population. User testing with this population can identify chokepoints in the process that need to be addressed. Further, this user testing must include international and ITIN taxpayers.

The alternative to online accounts is paper – the IRS mailing letters in envelopes marked “IRS” that end up sitting on radiators in apartment building lobbies, available to anyone. With that exposure to privacy risks as the benchmark, we recommend the IRS work with advocates for low income, disabled, and limited English proficiency (LEP) taxpayers to come up with authentication methods that do not lock them out.⁷ We also recommend that the IRS provide greater transparency into the pilots it has underway, *e.g.*, the use of a QR code on correspondence examination notices. Sharing the results of pilots, even midway through, with external experts for the most affected populations, will expand IRS knowledge.

Privacy risks are also implicated in making taxpayer information available to third parties, including preparers who are not otherwise subject to regulation by the IRS (Initiative 1.11). We recommend the IRS limit access to taxpayer data to those tax professionals who are regulated by Circular 230 and those preparers who are participating in the IRS Annual Filing Season Program. Further, because taxpayers must provide consent for the representatives, preparers, and even tax preparation software programs to have access to their account information, the issue surrounding taxpayer and preparer identity authentication and digital consent must be carefully explored. As noted above, too-strict identity authentication means that low income and other vulnerable populations may be blocked from receiving the benefits of this initiative.

⁷ We use the term “limited English proficiency” here to include both “English as a Second Language” or “ESL” (the term used in IRC § 7526, which authorizes federal funding of low income taxpayer clinics) as well as individuals who are not able to fully comprehend or fully communicate in English.

Self-service options, including chatbots, while promising can also lead to incorrect results. As Professors Josh Blank and Leigh Osofsky have noted in their study for the Administrative Conference of the United States (ACUS), simplifying complex rules (or “simplicity”) can harm taxpayers if the system does not elicit sufficient information with which to provide correct answers.⁸ ACUS has adopted recommendations for how federal agencies should utilize automated legal guidance, and we recommend the IRS follow that guidance and design procedures, including robust testing and even review by external advocates, including LITC personnel, to ensure these systems do not provide inaccurate guidance.⁹ Further, where self-service options and chatbots provide such guidance and answers, taxpayers should be able to download a complete transcript of the exchange; where they have acted in reliance of the exchange, we recommend they should not be subject to penalties.

These new or alternate forms of legal guidance also create a risk of a caste system of guidance – that taxpayers with what the IRS deems to be not legally complex issues will receive guidance in an informal format, with no ability to rely on the guidance and no penalty relief, while issues relating to high income/large corporate/partnership taxpayers receive bespoke attention. For example, the final regulation under IRC § 7526, Low Income Taxpayer Clinics, has been through two rounds of Treasury/Chief Counsel/IRS review, and was in final form as of July 2019, yet it has still not been issued because it is deemed low priority. We recommend that the Priority Guidance Plan adopt a more even-handed distribution of issues that are selected for formal guidance. Moreover, we recommend there be greater transparency about the status of projects selected, including to whom the project is assigned.

Up-front Issue Resolution [SOP 2.1]

While we support the concept of early issue resolution, we have a number of concerns we believe must be addressed before this initiative is implemented in order to protect taxpayer rights. Initiative 2.1 of the SOP states “if the return is not corrected, the IRS will follow its normal procedures to reject or accept it. If the return is accepted, the taxpayer will still have opportunities to resolve errors later.” We are concerned that the IRS is prioritizing agency expedience over legal rights and sound public policy.

The current IRS approach to issue resolution in the filing process violates taxpayer rights and increases taxpayer burden, which in the context of low income taxpayers can mean they do not receive the benefits for which they are eligible. For example, the IRS currently rejects e-filed returns where another person has already e-filed and claimed the dependent or the taxpayer. This “race-to-filing” often arises in situations involving domestic abuse, whether the domestic violence survivor is the EITC-eligible taxpayer but the abuser wins the race to e-filing. The IRS rejects the legitimate e-filed EITC claim; the taxpayer then has the choice to e-file and lose the

⁸ For a discussion of the risks and potential mitigation strategies regarding automated legal guidance by federal agencies, see Joshua D. Blank and Leigh Osofsky, *Automated Legal Guidance at Federal Agencies* (May 26, 2022) (report to the Administrative Conference of the United States).

⁹ See <https://www.acus.gov/recommendation/automated-legal-guidance-federal-agencies> (last visited 06/21/23).

benefits for which she is eligible, or file a paper return, with all the attendant delays, including being audited. Only 20 percent of e-filed rejected returns for duplicate Taxpayer Identification Numbers later file on paper.¹⁰

This approach is flawed on many counts, including the fact that under established case law, *Beard v. Commissioner*¹¹ and *Fowler v. Commissioner*,¹² the rejected e-filed return is actually a return. The IRS, then, is improperly rejecting a return instead of accepting it and putting it through its normal refund review processes. Under *Beard*, the IRS should simply accept the e-filed return that has a duplicate claim for a child and use its internal data – including historical data of filing behavior – to determine which return (the first or second filed) poses the greatest compliance risk and should be subject to audit or some other compliance “touch.”

In other contexts when the IRS detects what it believes is an error upon e-filing, a modern tax administration approach that is based on taxpayer rights would treat the return as follows:

- (1) prior to acceptance alert the taxpayer to the potential error;
- (2) provide the taxpayer with the option to either (a) correct the error or (b) file the return with the original information and, at the taxpayer’s option, provide an explanation for why the IRS is not correct; and
- (3) proceed with submission of the return and acceptance by the IRS. The IRS can review the taxpayer’s statement and decide whether the return requires further scrutiny.

The above approach has the benefit of both identifying potential errors up front and educating the taxpayer while providing the taxpayer due process – notification of the potential error and provision of an opportunity to explain why the IRS is wrong – in the context of the filing pipeline. This procedure can be used for minor errors – those typically triggering summary assessments (“math errors”) under IRC § 6213(b) (*e.g.*, transposed digits in a social security number, or the failure to attach a required form) – that can be easily addressed at time of filing. It can also be used in the context of identity theft – where the IRS informs the taxpayer of a missing Form W-2, but the taxpayer can alert the IRS up-front that that Form W-2 is the result of identity theft and should be disregarded.

The other issue raised by up-front issue resolution is who, exactly, receives the notification of the error. We believe that where taxpayers are using a paid return preparer or off-the-shelf tax preparation software, the taxpayer must be the one notified of the certain potential error (*i.e.*, those errors that are not merely clerical such as transposed digits or omission of a form). We

¹⁰ IRS, FOIA response to Justin Schwegel, Gulfcoast Legal Services LITC (March 6, 2023).

¹¹ 82 T.C. 766 (1984). *Beard* established a multi-prong test for determining whether a document constitutes a tax return: (1) the document purports to be a return and provides sufficient data with which the IRS can calculate the tax liability; (2) the taxpayer makes an honest and reasonable attempt to meet the requirements of the tax laws; and (3) the taxpayer executes the document under penalties of perjury.

¹² 155 T.C. No. 7 (2020). For a discussion of the *Fowler* case, see Keith Fogg, *Rejecting Returns That Meet Beard*, *Procedurally Taxing* (Sept. 15, 2020) at <https://procedurallytaxing.com/rejecting-returns-that-meet-beard/>.

suggest that preparers and software be required to input the taxpayer's email address or cellphone number for texts so taxpayers receive notification and can either respond directly or authorize the preparer to make the adjustment/correction. Without this protection, preparers for low income taxpayers will likely simply remove the dependent claim because they want to be paid their fee. This may also increase return preparer fraud.

The final issue relates back to one discussed before – identity proofing in order to access a filing system that identifies these errors up front. Because the information about the error is return information covered by IRC § 6103, the IRS needs to know it is the taxpayer (or the taxpayer's representative) it is communicating with. Depending on the nature of the potential error, the preparer may not be authorized or eligible to receive the information. If identity proofing is too burdensome, a low income taxpayer may not be able to access an online account and will thus face delays in processing the return or have it rejected because of lack of response (which we believe is unlawful under the *Beard* test).

Correspondence Exam and Early/Appropriate Treatments/Tax Certainty (SOP 2.2 and 2.4)

At the outset, the IRS should consider why it is auditing so many EITC returns. In the past, IRS Commissioners have justified this high audit rate by saying the Improper Payments Information Act requires the IRS to conduct these audits. That is not correct. The IPIA requires an agency with improper payments to submit “a report on what actions the agency is taking to reduce the improper payments.” The IRS, then, could address EITC and other refundable credit claims by approaches that do not include an audit. For example, TAS research has shown that a mere letter sent two weeks before the start of the filing season to taxpayers whose prior year EITC return triggered scrutiny but were not audited resulted in positive compliance behavior over the next three years.¹³

The taxpayers we represent and advocate on behalf of are disparately impacted by the IRS correspondence exam procedures. TAS research has shown that taxpayers do not even know they are under examination and, if they do understand they are being audited, they don't understand what information and documentation the IRS requires.¹⁴ The correspondence exam process does not tailor its audit approach and notices to the circumstances of the taxpayer. For example, currently an audit may be focusing on only one aspect of eligibility for a credit; the audit notice, however, states the taxpayer must prove every element. LITCs report that auditors generally disallow all benefits attributable to a child if the taxpayer cannot produce a birth certificate, regardless of what other evidence the taxpayer may provide. These approaches create significant administrative burden for low income taxpayers, which are unsurmountable.

¹³ National Taxpayer Advocate 2019 Annual Report to Congress, Vol. 2, *Study of Subsequent Compliance of Taxpayers Who Received Educational Letters from the National Taxpayer Advocate*, 239-256 (Dec. 31, 2019).

¹⁴ National Taxpayer Advocate 2007 Annual Report to Congress, Vol. 2, *IRS Earned Income Credit Audits – A Challenge to Taxpayers*, 2-24 (Dec. 31, 2007).

Taxpayers would be better served if audits of social benefits delivered through Internal Revenue Code, such as the EITC, are conducted in an inquisitorial manner rather than adversarial one. For example, in determining eligibility for disability, the Social Security Administration can, with the taxpayer's consent, obtain medical information directly from medical providers. The IRS has tested use of an affidavit, [Form 8836](#) and its accompanying Schedule A, *Third Party Affidavit*, that make it easy for the taxpayer to obtain evidence of joint principal residence, and it should incorporate that form into its audit procedures. On the other hand, the IRS's reliance on the Federal Registry for Child Support Orders as (automated) evidence of non-custody is misplaced, since many, if not most, states do not track custody status in the registry.

We recommend that where the IRS believes an audit of a low income taxpayer is necessary, that it conduct the audit as a virtual office audit:

- assign one employee to that audit;
- issue an audit notice letter that is tailored and specific to the issue being audited;
- offer a specific date for a virtual audit appointment with the opportunity for the taxpayer to call and reschedule (or do so via smartphone through a QR code provided in the letter);
- provide a copy of Form 8836 and Schedule A (*Third Party Affidavit*) where residency is at issue;
- require the auditor to place an outbound call confirming the audit appointment and what elements of the statute the taxpayer needs to prove at the audit; and
- require the auditor to make another outbound or schedule another online meeting prior to issuing the proposed audit report.

This approach will ensure that taxpayers have a discussion with the auditor about what documentation they have and what more they need to provide and also educate taxpayers about eligibility requirements so they do not make mistakes in future years.¹⁵

Correspondence exams have the lowest agreement rate and highest default rate of any type of examination; surveys have found taxpayer trust of the IRS is lower after a corr exam than other types of exams.¹⁶ Accordingly, we recommend that the IRS partner with LITCs to provide training of Tax Compliance Officers in how to communicate and work with low income and limited English proficiency (LEP) taxpayers, survivors of domestic violence, persons with disabilities, and similar populations. Gaining an understanding of the taxpayer experience and

¹⁵ For a detailed discussion of these recommendations, see Nina E. Olson, *Procedurally Taxing: How Did We Get Here – Correspondence Exams and the Erosion of Fundamental Taxpayer Rights – Part 1* (March 14, 2022) and Part 2 (March 15, 2022) at <https://procedurallytaxing.com/how-did-we-get-here-correspondence-exams-and-the-erosion-of-fundamental-taxpayer-rights-part-1/> and <https://procedurallytaxing.com/how-did-we-get-here-correspondence-exams-and-the-erosion-of-fundamental-taxpayer-rights-part-2/>.

¹⁶ See National Taxpayer Advocate 2017 Annual Report to Congress, Vol. 2, *Audits, Identity Theft Investigations, and Taxpayer Attitudes: Evidence from a National Survey*, 148-188 (Dec. 31, 2017) and National Taxpayer Advocate 2019 Annual Report to Congress, Vol. 2, *Audit Impact Study: the Specific Deterrence Implications of Increased Reliance on Correspondence Audits*, 258-268 (Dec. 31, 2019).

life circumstances will help the IRS get the right answer in these cases, rather than a default answer because the taxpayer could not navigate IRS processes or did not understand what was expected of them.

We applaud the SOP's emphasis on pre-filing assistance. Toward that end, we recommend the IRS establish a year-round toll-free phone line dedicated to providing assistance with respect to family status benefits administered by the IRS, both in the pre-filing and post-filing context.¹⁷ Taxpayers should be able to call and speak with a specially-trained representative about their eligibility for these benefits. Such assistance goes beyond mere chatbots and guards against "simplicity" risks discussed above. The phone line would also provide excellent data on which areas of the law the IRS needs to conduct better education about. The IRS might also consider offering a pre-filing certification pilot, completely voluntary, in which taxpayers during the second half of the calendar year could demonstrate to the IRS that the child met the tax provision's requirements and thus be pre-cleared for expeditious processing during the filing season.¹⁸ This approach would not take the place of an audit, being completely voluntary, but it would be of great value to separated parents and survivors of domestic violence, who often have their e-filed returns rejected because someone else has won the "race to file" and claimed the child, as discussed above.

We also recommend that the IRS analyze audit reconsideration, Taxpayer Advocate Service, Office of Independent Appeals, and Tax Court cases where these entities reversed IRS auditors initial disallowance of the EITC and other credits. The IRS should use these cases to train its audit selection model; further, the cases will provide a roadmap to auditors for how better to communicate with taxpayers and obtain alternative forms of documentation.

Finally, we recommend the IRS partner with external researchers to conduct a study of alternative approaches to correspondence exams, as discussed below and set forth in Appendix B.

Tax Penalties (SOP 2.2.6)

We understand the drive for the IRS to develop efficient processes for determining the application of penalties and penalty abatement. These procedures, however, can seriously impair taxpayer rights if they are not well designed and have a safety valve for cases that do not fit nicely into the automated approach. Below we discuss two instances where the SOP's goals provide an opportunity to re-examine the IRS's approach to penalty administration.

Reasonable Cause/First Time Abatement Penalty. We commend the IRS for developing the first time penalty abatement procedure (FTA) as a means for the IRS and taxpayers to quickly address taxpayer missteps. However, the automatic FTA abatement as the first recourse can

¹⁷ See National Taxpayer Advocate, 2015 Annual Report to Congress, 240-247 (Dec. 31, 2015).

¹⁸ See Internal Revenue Service, *IRS Earned Income Tax Credit Initiatives: Report on Qualifying Child Residency Certification, Filing Status, and Automated Underreporter Tests* (2008).

actually harm taxpayers because FTA relief is available only once every 3 years.¹⁹ Consider a taxpayer whose situation in year 1 meets the requirements of reasonable cause abatement. Under current policy the IRS never reaches the RCA analysis; instead, it automatically applies FTA. If the taxpayer in year 3 has a different situation which does not meet RCA criteria, FTA is no longer available.

Reasonable cause abatement is a matter of statutory relief, unlike FTA, which is an exercise of administrative discretion. The IRS should restructure its penalty application to reflect the statutory scheme: (1) iteratively train its employees on the case law under reasonable cause abatement so they can override the Reasonable Cause Assistor in appropriate circumstances; (2) convert the Reasonable Cause Assistor to a true Artificial Intelligence program that is trained on reasonable cause case law as well as Appeals, Taxpayer Advocate, and court cases where relief was initially denied by the IRS and ultimately obtained; and (3) develop procedures whereby the IRS can retroactively change the basis for penalty relief from FTA to reasonable cause so FTA is available in a later year.

IRC § 32(k) Two-Year/Ten-Year Ban In past years, the National Taxpayer Advocate's Annual Reports to Congress have demonstrated that the IRS's current policies and procedures regarding the implementation of IRC § 32(k) significantly harms eligible taxpayers and violates taxpayer rights.²⁰ The 32(k) 2-year penalty requires a finding of the taxpayer's "reckless or intentional disregard of rules and regulations." Such intent cannot be imputed under an automated approach or black-and-white rules. The IRS's own data show that 1/3 of the EITC taxpayer population moves in and out of eligibility each year. This creates a steep learning curve for any taxpayer, especially low income and LEP taxpayers. Even where a taxpayer has been audited for the EITC, TAS research has shown that taxpayers do not understand why the credit was disallowed. As discussed above, the IRS approach to correspondence audits is not designed to educate taxpayers about how to avoid problems going forward. To impute such knowledge to a taxpayer who has experienced these flawed audit techniques, with little or no personal interaction, is a fundamental violation of the right to a fair and just tax system. We also believe the current approach to the penalty has a racially disparate impact. We recommend that IRS work with representatives of TAS and the LITC community to revise its procedures with respect to application of the IRC § 32(k) penalty.

Taxpayer-Centric Notices (SOP 2.3)

Coherent, understandable notices are key to effective tax administration. We are very pleased to read that the IRS hopes to substantially increase the number of notices it annually reviews and revises. Making notices and other communications intelligible includes applying plain language standards and ensuring the content provides the necessary information, with key

¹⁹ IRM 20.1.1.3.3.2.1., First Time Abate.

²⁰ See, e.g., National Taxpayer Advocate 2019 Annual Report to Congress, Vol. 2, *Study of Two-Year Bans on the Earned Income Tax Credit, Child Tax Credit, and American Opportunity Tax Credit*, 241-256 (Dec. 31, 2019).

information on the first page, that will encourage the reader to look at additional pages. Past efforts at notice clarification have resulted in the IRS prioritizing enforcement messages over information providing explanations of avenues of relief and taxpayer rights. Important information about access to judicial review, the Taxpayer Advocate Service, and LITCs have been relegated to the second or third pages of notices. Further, as noted earlier, mere simplification (in contrast to plain language standards) may result in incorrect guidance.²¹

The 2018 National Taxpayer Advocate Annual Report to Congress covered IRS Notice Communications extensively, and we recommend the IRS hew closely to those recommendations.²² Further, we recommend that the IRS adopt a rights-based approach to notices, with emphasis on the availability of due process. If the IRS is to fulfill its service-focused mission, its notices need to emphasize the availability of assistance and alternatives. Moreover, we recommend the IRS prioritize the protection of taxpayer rights in selecting which notices to first revise and translate into other languages. Notices relating to math errors, audit adjustments, Collection Due Process, Notices of Deficiency, refund disallowances, and other communications substantially implicating legal and taxpayer rights should be moved to the front of the line for revision. We also recommend the IRS share all proposed notice revisions with the LITC community for review and comment; this can be efficiently accomplished through the establishment of the FAWBU Federal Advisory Committee, discussed above.

Proactive Debt Resolution (SOP 2.5)

We are pleased to see the IRS’s commitment to using “analytics to identify the repayment options best suited to each taxpayer’s circumstances.” Properly implemented, this initiative protects the right to privacy and the right to a fair and just tax system. The right to privacy provides that “any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary....”²³ This balancing of the government’s legitimate interest in collecting the tax due and the taxpayer’s interest in such actions being no more intrusive than necessary is an expression of both due process and equal protection principles and should form the basis of any debt collection strategy.

The balancing test can be operationalized in the following manner:

- Develop Allowable Expense guidelines (ALEs) that are based on a sustainable standard of living reflecting geographic diversity, rather than the Bureau of Labor Statistics’ data, which only reflects what people actually spend, rather than what people need to spend

²¹ Two sites that have some useful plain language guidance are <https://plainlanguagenetwork.org/plain-language/what-is-plain-language/> and https://www.transcend.net/aboutUs/Journey_to_PL.html.

²² The report contains specific recommendations about how to improve Summary Assessment (math error) notices, Collection Due Process notices, and Notices of Deficiency. National Taxpayer Advocate 2018 Annual Report to Congress, 174-222 (Dec. 31, 2018).

²³ IRS, Publication 1, Your Rights as a Taxpayer.

to have a sustainable life.²⁴

- Adopt an Economic Hardship Indicator (EHI), as recommended by the National Taxpayer Advocate.²⁵ By utilizing an algorithm based on most recent return or Information Return data and the IRS's (revised) ALEs, the IRS can place a marker on the taxpayer's account to indicate they are at risk of economic hardship.²⁶ When a taxpayer with the EHI on their account contacts the IRS by phone, the assistor can receive a prompt to ask specific questions so a determination of economic hardship can be made. If as a result of these questions the taxpayer is placed in Currently Not Collectible – Hardship status, the assistor can evaluate whether an offer in compromise might be the appropriate option and direct the taxpayer to more information about the OIC process, as well as make a direct referral to Low Income Taxpayer Clinics, as authorized by IRC § 7526(c)(6). The EHI also has the side benefit of making the IRS recognize and acknowledge that CNC-Hardship is a legitimate collection alternative.
- Replace the current online Installment Agreement (IA) tool and “chatbot” with a true machine-learning algorithm that is trained on data from existing installment agreement, OIC, and other payment cases, including IAs that were defaulted, and cases from the Taxpayer Advocate Service, the Independent Office of Appeals, and the Tax Court in which IRS collection actions were either upheld or reversed. By training the machine on these cases as well as actual taxpayer data and IRS ALEs, the program may be able to identify candidates for various collection alternatives. Instead of forcing taxpayers into steamlined IAs that they cannot afford, which results in high default rates, the algorithm can be trained to identify those cases requiring additional information and even in-person, human assistance. By having the algorithm operate in conjunction with the Economic Hardship Indicator, the online tool can also automatically request additional information about income and special-needs/extraordinary expenses so that a determination can be made of CNC-hardship status (and a recommendation for an OIC). We also recommend the online IA tool be renamed to reflect a more wholistic approach to debt resolution.
- Exercise the Commissioner's discretion to not offset the EITC portion of a taxpayer's refund, unless it will be otherwise offset by the Treasury Offset Program. This approach not only promotes the underlying policy goals of the EITC but also reduces resources

²⁴ National Taxpayer Advocate 2016 Annual Report to Congress, 192-202 (Dec. 31, 2016). See also, National Taxpayer Advocate 2018 Annual Report to Congress, Vol. 2, *A Study of the IRS's Use of the Allowable Expense Standards*, 40-52 (Dec. 31, 2018).

²⁵ See National Taxpayer Advocate 2018 Annual Report to Congress, 228-239 (Dec. 31, 2018) and National Taxpayer Advocate 2020 Annual Report to Congress, Vol. 2, *The IRS Can Systemically Identify Taxpayers At Risk of Economic Hardship and Screen Them Before They Enter Into Installment Agreements They Cannot Afford*, 249-267 (Dec. 31, 2020). See also, Nina E. Olson, Procedurally Taxing: My IRS Wishlist for 2021, Part 2 – The Economic Hardship Indicator (Feb. 1, 2021) at <https://procedurallytaxing.com/my-irs-wishlist-for-2021-part-2-the-economic-hardship-indicator/>

²⁶ Treas. Reg. § 301.6343-1(b)(4).

currently directed to the Offset Bypass Refund process.

- Establish an Economic Hardship Unit that will be the first stop for handling all Offset Bypass Refund (OBR) requests and align the criteria for bypassing refunds with the definition of economic hardship in the regulations and the revised ALEs. Given the timing urgency of OBR requests, there is no need for the Taxpayer Advocate Service to be the first stop in the process. By establishing an IRS unit focused on Economic Hardship, the principles of the balancing test, awareness of taxpayer needs, and the IRS impact on those needs is reinforced. TAS can play a role where the processes are not working as intended.
- Exercise the Commissioner’s discretion in establishing a late payment penalty rate of .25% (as opposed to .50%) while the taxpayer is in CNC-Hardship status. The taxpayer should not be penalized because they do not have the resources to pay for basic living expenses.

Research (SOP 4.8)

We fully applaud the IRS’s commitment to the OMB standard to “annually facilitate engagement of non-IRS researchers in high value research.” As clinicians, we daily see the downstream effects of IRS actions that harm taxpayers and undermine compliance and trust. These observations lead us to make recommendations on how to revise agency approaches to avoid these negative effects. These recommendations deserved to be tested in a rigorous fashion, but the inability to gain access to IRS data and research staff remains an obstacle.

In the 2016 Annual Report to Congress, the National Taxpayer Advocate recommended the IRS establish an outside advisory board to recommend research projects, so that “high value research” was not determined only by IRS insiders, which can result in one-sided, pre-ordained selection of research topics.²⁷ We support that recommendation.

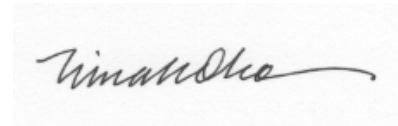
We also strongly recommend the IRS move forward with the research proposal *Improving Revenue Service: Specific Pilot Tests for Improving IRS Correspondence Audits*, prepared by Day Manoli of Georgetown University and Nina Olson of the Center for Taxpayer Rights and attached as Appendix B to these comments. This proposal sets forth ways to test the multiple recommendations we have made for improving correspondence audits. Furthermore, this proposal reflects insights from tax researchers who have been studying audits for many years and from tax practitioners who have years of first-hand experiences of the impacts of correspondence exam procedures on low income taxpayers. We recognize that the IRS has internal efforts underway to improve correspondence audits and that IRS staff are busy. However, we recommend that the IRS proceeds with this proposal because it combines internal

²⁷ National Taxpayer Advocate 2016 Annual Report to Congress, 358-363 (Dec. 31, 2016).

and external expertise, and this combination will maximize the effectiveness of current internal efforts and best position the IRS to achieve the goals laid out in the Strategic Operating Plan.

The Inflation Reduction Act funding provides an unprecedented opportunity for the Internal Revenue Service to achieve its mission of administering the tax laws in a fair and just manner. The LITC members of the CTR LITC Strategy group support the five goals set forth in the Strategic Operating Plan and offer our recommendations in the spirit of collaboration and partnership. We welcome the opportunity to discuss them with you and appropriate Treasury and IRS staff.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nina E. Olson", is centered below the text "Respectfully submitted,". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Nina E. Olson
Executive Director
Center for Taxpayer Rights
On Behalf of Members of the LITC Strategy Group

Cc: Honorable Wally Adeyemo, Deputy Secretary, Department of the Treasury
Honorable Lily Batchelder, Assistant Secretary for Tax Policy, US Department of the Treasury

APPENDIX A:
Summary of Recommendations for Implementation
of the IRS 2023 – 2031 Strategic Operating Plan

Threshold Considerations:

- Revise the IRS mission statement to explicitly acknowledge the agency’s dual role as a revenue collector and benefits administrator.
- Establish a Family and Worker Benefit Unit (FAWBU) housing all service, compliance, and enforcement activities touching the benefits population.
- Establish a FAWBU Federal Advisory Committee including LITC and VITA representatives as well as members from nonprofits serving or advocating on behalf of the low income population.

Taxpayer Service:

- Apply a “Taxpayer Anxiety Index” to all IRS service offerings and channels to identify those points at which a live assistor’s intervention is appropriate and even necessary.
- Develop a comprehensive dashboard that is updated regularly, providing greater transparency about wait times, processing times and reasons for unexpected delays.
- Provide taxpayers with more detailed information about the status and processing stage of their refund claims on “Where’s my refund.”
- Adopt alternate measures of “Level of Service” on the phones that better reflects the taxpayer experience.
- Conduct a detailed analysis of the IRS phone tree system from the perspective of taxpayers’ needs and preferences and in conjunction with the Taxpayer Anxiety Index.

Digitalization:

- Work with NIST to reduce the identity-proofing burden on low income taxpayers and identify the different levels of access to information that may not require the highest and most restrictive authentication.
- Work with advocates for low income, disabled, and ESL taxpayers to develop authentication methods that are accessible and do not exclude these populations from digital tools.
- Limit access to taxpayer data and digital accounts to those tax professionals who are regulated by Circular 230; for tax return preparers who participate in the Annual Filing Season Program, only provide access to that taxpayer information that is necessary to prepare or correct a return. Unregulated return preparers who do not participate in the Annual Filing Season Program should not have any access to taxpayer digital account information.
- Where self-service options and chatbots provide guidance and answers, provide taxpayers with a complete, downloadable transcript of the exchange; and where they have acted in reliance of that exchange, do not apply penalties.

Up-front Issue Resolution:

- Follow the Beard v. Commissioner test and accept e-filed returns, even where an error has been identified. Process and accept duplicate TIN e-filed returns that meet the Beard test as filed. For other e-filed returns, prior to acceptance of a return, alert the taxpayer to any potential errors on the return. Provide the taxpayer with the option to either (a) correct the error per IRS position or (b) file the return as-is with an explanation.
- Where the IRS has identified potential errors on an e-filed return prepared by a for-fee or VITA/TCE preparer, the taxpayer must be directly notified and provide consent for changes other than merely clerical errors such as transposed digits or omission of a required form.

Correspondence Examination:

- Reform the culture of the IRS correspondence exam function, especially with respect to EITC and CTC audits, from that adversarial to inquisitorial and education-oriented.
- Partner with LITCs and other advocates to provide training of Tax Compliance Officers (TCOs) on how to communicate and work with low income and ESL taxpayers, survivors of domestic violence, persons with disabilities, refugee populations, etc.
- Train the audit selection model on audit reconsiderations, TAS, Appeals, and Tax Court cases where IRS auditors' initial disallowance of the family status provisions have been reversed. TCOs should also be trained on these cases.
- Conduct correspondence audits as "virtual office audits" by assigning one employee to each audit, establishing virtual appointments for review of documents, and making outbound calls to ensure the taxpayer understands the issues.
- Make Form 8836, including Schedule A, available to all taxpayers who are being examined to establish principal residency with the child.
- Establish a year-round toll-free phone line dedicated to provide assistance with respect to IRS family status benefits.
- Consider offering a pre-filing certification pilot during the second half of the tax year so taxpayers could demonstrate they meet the eligibility requirements for a given credit.

Tax Penalties:

- Apply reasonable cause analysis before application of the First Time Abatement authority.
- Iteratively train IRS employees on the case law pertaining to reasonable cause abatement so they are able to override the Reasonable Cause Assistor in appropriate situations.
- Convert the Reasonable Cause Assistor from a rule-based system to a machine-learning/AI model and train the algorithm on reasonable cause case law and TAS, Appeals, and court cases where relief initially denied by the IRs was ultimately obtained.
- Develop procedures to retroactively change the basis for penalty relief from First Time Abatement to reasonable cause.
- Work with TAS and the LITC community to revise the IRS procedures with respect to application of the IRC § 32(k) penalty.

Taxpayer-Centric Notices:

- Adopt a rights-based approach to notices, with emphasis on the availability of due process and avenues for assistance.
- Prioritize the protection of taxpayer rights in selecting which notices to first revise and translate into other languages, i.e., notices substantially implicating legal and taxpayer rights should be prioritized.
- Share draft notice revisions that substantially implicate legal and taxpayer rights with the LITC community, either directly or through the FAWBU Federal Advisory Committee.

Proactive Debt Resolution:

- Adopt Allowable Expense guidelines that are based on a sustainable standard of living reflecting diversity and cost-of-living variations between states and cities.
- Adopt the Economic Hardship Indicator (EHI) as recommended by the National Taxpayer Advocate, and use the EHI to prompt specific questions on by IRS phone assistors or via the online installment agreement tool.
- Replace and rename the current online Installment Agreement tool and chatbot with a machine-learning/AI algorithm that is trained on data from existing IAs, OICs and other payment cases, including defaulted IAs and cases where IRS collection actions were either upheld or reversed by TAS, Appeals, or the courts.
- Exercise the Commissioner's discretion not to offset the EITC portion of a taxpayer's refund, unless it will be offset by the Treasury Offset Program.
- Exercise the Commissioner's discretion in applying a lower .25% late payment penalty rate while the taxpayer is in Currently-Not-Collectible (Hardship) status.

Research:

- Establish an outside advisory board to recommend research projects to the IRS.
- Accept the research proposal, *Improving Revenue Service: Specific Pilot Tests for Improving IRS Correspondence Audits*.

APPENDIX B: Research Proposal
Improving Revenue Service:
Specific Pilot Tests for Improving IRS Correspondence Audits

IRS Proposal – June 2023

Day Manoli, Georgetown University
Nina Olson, Center for Taxpayer Rights

I. Summary

Building on [previous work](#) and goals included in the [IRS Strategic Operating Plan](#), this research project will test strategies to improve the IRS' correspondence audit process. The project is motivated by prior research that indicates (1) a significant fraction of correspondence audits result in default outcomes that do not distinguish between taxpayer confusion and confirmed noncompliance, and (2) specific barriers in the correspondence audit process may drive taxpayers to these default outcomes. More specifically, this project will test strategies to reduce and possibly eliminate barriers in the correspondence audit process so that more audited taxpayers complete the process with confirmed, deliberate outcomes instead of default outcomes. These insights will provide valuable evidence to improve IRS operations and taxpayer experiences.

The research project will consider the following specific pilot tests:

- Pilot 1: Plain Language Audit Notifications
- Pilot 2: Understanding Nonresponse and Noncompliance
- Pilot 3: Referrals to LITCs and Virtual Audit Assistance
- Pilot 4: Post-Disallowance Educational Notices
- Pilot 5: Understanding Impacts of Correspondence Audits
- Pilot 6: Investigating Possible At-Filing Filters
- Pilot 7: Developing an Audit Working Group

Each pilot test addresses a distinct barrier in the current correspondence audit process, and more detail on each pilot test is included in Section II. Additionally, each pilot test is independent from the other pilot tests and therefore could be done with or without any of the other pilot tests. For each pilot test, there is an initial developmental phase that will be followed by an experimental phase. The developmental phase will involve background data analytics and creation of novel outreach materials and technologies. The experimental phase will implement a randomized controlled trial to test the effectiveness of the new materials and technologies on reducing default outcomes and increasing deliberate outcomes. The project will aim to complete the developmental phase for each pilot in the first 6 to 12 months (year 1), and then the experimental phase for each pilot would be completed in the next 12 months (year 2).

II. Pilot Tests to Improve Correspondence Audits

Pilot 1: Plain Language Audit Notifications

Key Issue:

Taxpayers do not understand what documentation to provide because they do not understand current audit notices.

Strategy:

To address this barrier, this project will first develop a plain language audit notice and then conduct a randomized controlled trial to test if the simplified, plain language communication reduces nonresponses and default outcomes from audited taxpayers and increases deliberate outcomes.

Many correspondence audits are closed without any responses from taxpayers. These closures results in default disallowances of refundable credits and increases in taxes owed. However, these disallowances may be suboptimal outcomes for taxpayers and the IRS since recent research has highlighted that taxpayers may not understand correspondence audit notices. Specifically, taxpayers may not understand that they are under audit or how to respond to the audit. This project will collaborate with the IRS to design simplified, plain language audit notification letters to improve taxpayer engagement in the correspondence audit process. Furthermore, the project may seek input from focus groups and graphic designers to develop plain language communication.

The effectiveness of the simplified, plain-language audit notification letters will be evaluated using a low-cost randomized controlled trial (RCT). For example, the research would randomly assign some correspondence audits to a treatment group and a control group. The control group could follow the status quo (current) correspondence audit process and receive current notices. The treatment group would receive experimental simplified, plain language audit notification letters. The empirical analysis would test for differences in response rates and audit outcomes (full allowances, partial allowances, or disallowances) across the treatment and control groups and how these differences in response rates vary across various risk scores.

Pilot 2: Understanding Nonresponse and Noncompliance

Key Issue:

Many, if not most, correspondence audits do not yield responses from audited taxpayers. It is essential to know the extent to which nonresponse indicates taxpayer noncompliance versus taxpayers not being aware of being audited or not knowing how to respond.

Strategy:

To gain insights into nonresponse, this project proposes to randomly switch some correspondence audits to field/office audits and some field/office audits to correspondence audits. This will create 4 groups:

1. Taxpayers selected for correspondence audit under current selection criteria
2. Taxpayer who would have been selected for correspondence audit under current selection criteria but were now selected for field/office audits
3. Taxpayers who would have been selected for field/office audits but now receive correspondence audits
4. Taxpayers selected for field/office audits under current selection criteria

The analysis will compare response rates across groups (1) and (2). This comparison will indicate whether in-person field/office audits are more effective at notifying taxpayers that they are under audit and how they should proceed. For example, in-person field/office audits may use strategies to contact taxpayers beyond mailed notices, and this analysis will evaluate the effectiveness of these alternative contact strategies. Relatedly, audited taxpayers may be more responsive to in-person audits than correspondence audits, and the analysis will test this hypothesis. The analysis can examine differences by correspondence audit selection probabilities to understand if in-person field/office audits are similarly effective at increasing responses rates across higher and lower probabilities of correspondence audit selection.

Furthermore, the analysis will compare audit outcomes across groups (1) and (2). This will provide insights into the extent to which nonresponse indicates noncompliance versus inability to respond to correspondence audits. For example, if the field/office audits yield EITC allowances, this would indicate that some marginal nonresponders could have claimed the EITC appropriately. These insights could help guide strategies to reduce nonresponse.

Lastly, comparing response rates and audit outcomes across groups (3) and (4) will provide insights into whether some more costly field/office audits could be handled with less costly correspondence audits. This could provide insights into cost-savings strategies for the IRS.

In addition to (1) through (4) listed above, the project could aim to test “Enhanced communication strategies” such as multiple phone calls from an IRS examiner or LITC staff to taxpayers to clarify notifications and steps toward resolution. The project could also conduct interviews and focus groups with audited individuals to understand taxpayer impressions throughout the audit process.

Overall, this analysis will create a feedback loop between in-person field/office audits and correspondence audits, and this can yield insights to improve both tax enforcement processes.

Pilot 3: Referrals to LITCs and Virtual Audit Assistance

Key Issue:

Taxpayers do not understand where or how to submit documentation because they are not able to access representation to navigate or manage audit communications with the IRS.

Strategy:

To address this barrier, this project will develop plain language to inform audited taxpayers of potential audit assistance from Low Income Taxpayer Clinics (LITCs). Furthermore, the project would work with LITCs to create infrastructure so that audited taxpayers could set up virtual appointments with LITC staff and securely upload necessary documentation. This infrastructure would allow more taxpayers to use LITCs to represent them with the IRS and help them navigate the correspondence audit process. The initial developmental phase would create this infrastructure, and then in the experimental phase of the research, the project would randomly select audited taxpayers to notify them about the LITCs and test if increased access to LITCs decreases default outcomes and increases response rates and possibly allowance rates. This notification about LITCs could be included in existing notices sent to taxpayers, or it could be included in a new notice sent to taxpayers.

Pilot 4: Post-Disallowance Educational Notices

Key Issue:

Audited taxpayers may not understand what they did incorrectly or what they should do to correctly file and claim benefits in the future.

Strategy:

To address this barrier, this project will develop a plain language, educational notice to send to audited taxpayers once their audits have been closed. The project team will collaborate with the IRS to develop plain-language post-audit educational notices. For example, the notices could explain EITC and CTC rules and requirements, explain IRS Form 8862 (Information to Claim Certain Credits After Disallowance), and explain how taxpayers can work with trusted, certified tax preparers.

After development of the educational notice, the project will experimentally test the effectiveness of the educational notice. Using taxpayers whose audits have been closed, the project will randomly select a treatment group and a control group. The control group will continue with current status quo procedures (no post-audit notices), while the treatment group will receive the experimental post-audit educational notices. The analysis will examine impacts of the post-audit communications on compliant tax filing, EITC claiming, and claiming of other tax credits.

Pilot 5: Understanding Impacts of Correspondence Audits

Key Issue:

The correspondence audit process may cause noncompliance and incomplete take-up.

Strategy:

To assess the impacts of the correspondence audit process on audited taxpayers, this project will randomly swap some current correspondence audits out (ie a “hold out” sample) and replace them with some randomly selected returns that would not have been selected. This will create 4 groups:

- A. Taxpayers selected for correspondence audit under current selection criteria
- B. Taxpayer who would have been selected for correspondence audit under current selection criteria but were held out
- C. Taxpayers who would not have been selected for correspondence audit but were randomly swapped in
- D. Taxpayers who would not have been selected for correspondence audit but were randomly not swapped in

To get at causal effects of correspondence audits for the audit population, the project will compare group (A) versus (B) and examine differences in tax outcomes such as responses to audits, disallowances, partial allowances, and full allowances, and tax filing, EITC participation, and earnings in subsequent years. To get at causal effects of correspondence audits for the non-audited population, the project will compare outcomes for group (3) versus (4). Furthermore, the project will analyze impacts of the correspondence audits and nonresponse rates by taxpayer characteristics and audit selection probabilities.

This analysis will provide insight into how correspondence audits are affecting taxpayer experiences and whether correspondence audits are causing noncompliance (for example, not filing and reporting self-employment income in future years) and incomplete take-up of tax benefits.

Pilot 6: Investigating Possible At-Filing Filters

Key Issue:

Use of single-issue correspondence audits could be reduced if additional at-filing filters could be developed.

Strategy:

Many correspondence audits are single-issue audits involving verification of self-employment income or verification of qualifying child eligibility. This project will collaborate with IRS staff to study possible creation of at-filing filters that could reduce the volume of these single-issue correspondence audits. The at-filing filters could prevent potentially noncompliant tax returns from being filed in the first place, so remaining correspondence audits could focus on more complicated multiple-issue audits, and some revenue could be protected by not issuing possibly erroneous refunds and then having to refer post-refund audits to costly collection efforts.

The overall goal of the project is to improve the IRS correspondence audit process. While the proposed strategies have been developed based on recent research, the project will also work closely with IRS collaborators to hear their additional ideas to refine the proposed ideas or design and test new ideas. The project will closely consider taxpayer and examiner experiences with the IRS correspondence audit process, and this could be formalized with taxpayer customer experience surveys and IRS staff surveys.

Pilot 7: Developing an Audit Working Group

Key Issue:

Many tax experts have insights into taxpayer experience and the correspondence audit process, and these insights could inform strategies for improvement.

Strategy:

Tax experts from the IRS, the US Treasury Office of Tax Analysis, academic institutions, and community organizations have an incredible wealth of knowledge on taxpayer experience, tax enforcement, data analysis, and implementation. This project will propose to create an Audit Working Group to have periodic meetings (eg once every 6 months) with a panel of selected experts in tax administration, benefits delivery, and communications, graphics design, and user experience to discuss results from pilot tests, progress on improvements in audit processes, and novel strategies for improving IRS audit processes. This panel will allow many experts to have a coherent collective voice to provide feedback to improve IRS audits rather than having many different one-off contacts with IRS and Treasury staff that can create confusing lines of communications.