

ONGOING MANAGEMENT CHALLENGES AT IRS

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
GOVERNMENT OPERATIONS

AND THE

SUBCOMMITTEE ON HEALTHCARE,
BENEFITS, AND ADMINISTRATIVE RULES

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

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ONGOING MANAGEMENT CHALLENGES AT IRS

Wednesday, October 25, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT OPERATIONS, JOINT
WITH SUBCOMMITTEE ON HEALTHCARE, BENEFITS, AND
ADMINISTRATIVE RULES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:22 p.m., in Room 2154, Rayburn House Office Building, Hon. Jim Jordan [chairman of the Subcommittee on Healthcare, Benefits, and Administrative Rules] presiding.

Present: Representatives Meadows, Jordan, Hice, Sanford, Massie, DeSantis, Grothman, Blum, Connolly, Krishnamoorthi, Maloney, Norton, Kelly, Watson Coleman, and Lawrence.

Mr. JORDAN. The joint subcommittee hearing will come to order. And we'll start by recognizing the chairman of the Government Operations Subcommittee, Mr. Meadows, for his opening statement.

Mr. MEADOWS. Thank you, Mr. Chairman, for continuing your leadership on this particular issue.

As we look at that, many of you, this is not your first rodeo. You've been here before. And, sadly, we're having to still address some of the major concerns that have been raised a number of times. Obviously, we will end up with a new IRS commissioner in the coming days. And as we look at that, it is critically important that we set the stage for making sure that we address these issues. There are issues that TIGTA continues to identify as problem areas.

Most of my concern, I can tell you, are the things that continue to make headlines. You know, why do we go in and we rehire employees when we have specifically in there, do not rehire? You know, the IRS is held to a higher standard primarily because you hold the American taxpayer to a higher standard. If some of the excuses that we use as taxpayers were tried out in an IRS audit, they wouldn't pass the smell test. And I guess what I'm here to say is some of the things that I am still seeing happening within the IRS does not pass the smell test.

Now, I've been one of the few Members of Congress who have had the opportunity to come and meet with some of the IRS employees. And I would be remiss to not acknowledge that the vast majority of them are excellent workers and truly are doing a very, very good job for the American public. However, when we start to see that we've got 213 employees who were fired—who left the IRS

while under investigation for an issue of conduct or performance, that really was—was something that should have been addressed. We've got four of those employees who willfully failed to file even a tax return. Now, I think the message needs to be clear. It's time to clean house. It's time to get it right. We're not going to continue to have hearing after hearing after hearing with no accountability.

Additionally, I'm very concerned with the number of IT recommendations that continue to not be fulfilled. And so I look forward to hearing your testimony. Because as we look at that, IT security at the IRS should be priority number one. And yet what we have found over and over again is, is that we've got legacy systems, we've got out-of-date systems. And everything wants to come running back to the financial concerns. But I've looked at the appropriations. I've looked at the numbers where they are. And there is not a linear correlation between the amount of money that you get funded and addressing those problems.

So what I want to hear today is: How are we going to address the things that TIGTA has brought up? We continue to see some of these mismanagement areas. And, again, if we're not going to do it, I would rather hear under sworn testimony today that we're just not going to do it. I'm tired of excuses. At this point, let's get something on there.

And, again, it's very easy to become critical and have all the IRS employees think that this is about every one of them. I want to be clear. This is not about every one of them. This is about management. This is about the failure to put in safeguards to address things that are important to the American people.

So, Mr. Chairman, I appreciate your leadership, and I yield back.

Mr. JORDAN. I thank the gentleman.

Mr. Krishnamoorthi, the ranking member, is recognized. And we'll recognize Mr. Connolly, when he arrives, as well.

You are recognized for 5 minutes.

Mr. KRISHNAMOORTHI. Thank you, Chairman Jordan, thank you Chairman Meadows and Ranking Member Connolly, for convening today's hearing. And thank you for participating in today's hearing.

A 2013 GAO study found that there were 8,400 people with security clearances who owed a combined total of \$85 million in unpaid Federal taxes. Only half of this group already had a repayment plan with the IRS when their clearance was approved. Over 4,200 of these individuals were eligible for a top secret clearance.

Although it may not be readily apparent, the IRS plays an important role in our national security apparatus. This is why the GAO recommended implementing additional security checks, including rigorous background checks, providing proof of past tax returns, and working more closely with the Internal Revenue Service to weed out potential security vulnerabilities in our government.

As I'm sure everyone here is aware, financial pressure is one of the easiest ways for adversarial intelligence agents to recruit sources who will betray our country. Outstanding debts are an overwhelming counterintelligence vulnerability that make the debt-or liable to pressure, seduction, blackmail, or any of the other tools in a spy's recruitment handbook. In general, substantial financial debts could be used against an individual, particularly—particularly if those debts are owed to foreign entities or individuals.

We must do everything we can to ensure that those entrusted with access to our Nation's secrets are not vulnerable to any sort of blackmail. And we would be abdicating this responsibility if we did not use Congress' power of the purse to ensure that every agency, including the IRS, support our country's counterintelligence operations and has the means necessary to succeed.

Given all the unknowns surrounding the President's tax returns and the overleveraged real estate holdings of his senior staff, we have an obligation to make sure the IRS is able to fully cooperate with the national security and intelligence communities to make sure they are able to assess and respond to counterintelligence vulnerabilities within our own government.

I look forward to further exploring this GAO report and how the IRS works with other agencies to track these vulnerabilities and ensure that they are properly addressed.

Thank you, Mr. Chairman.

Mr. JORDAN. I thank the gentleman.

Today's hearing is entitled, "Ongoing Management Challenges at the Internal Revenue Service." That is a nice way of saying the IRS has been a mess and remains a mess. Rehiring employees who were under investigation, rehiring employees who were engaged in fraud, rehiring employees who were violating 6103, looking at confidential taxpayer information, awarding a contract to Equifax in light of the massive data breach, 143 million Americans' data breached potentially.

And never forget the backdrop. Never forget the backdrop here. Russell George became well known as the inspector of TIGTA back in 2013 when we asked him to look into the fact that we thought maybe the IRS was targeting conservative groups. And, lo and behold, they were. And never forget what happened when the IRS got caught with their hand in the cookie jar targeting conservative groups. They first denied it. Doug Shulman told the Ways and Means Committee way back then, no, it's not going on. Guarantee it's not happening.

Lois Lerner sat in our office, met with oversight staff, said, oh, not happening. Then they did what everyone else does when they get caught doing something wrong: They tried to spin it. Inspector General George remembers this. He was going to release his report on Monday. On the Friday before, Lois Lerner went to a bar association speech here in town—right, Mr. George?

Mr. GEORGE. That's correct.

Mr. JORDAN. —went to a bar association speech here in town and had a friend ask her a question, planted question. And what did she say? She does what everyone else does when they get caught. Said, it wasn't me. Nope, it was those folks in Cincinnati. Remember this? Blame someone else. First you deny it. Then you try to spin it and get in front of the story, which she did. Then you blame someone else, say, oh, rogue agents in Cincinnati. And then when that didn't hold up, they even attacked Mr. George and TIGTA for doing their hard work, for just presenting us the truth. They blamed the messenger. They attacked the messenger.

And, finally, they resorted to the worst of it all, in my judgment: They destroyed the evidence. The IRS 422 backup tapes containing potentially 24,000 emails that could have answered a lot of ques-

tions. After Lois Lerner's hard drive crashed and it came up missing, even though it was under subpoena, even though it was under a preservation order, they destroyed the evidence.

And now here we sit, again, the IRS continues to rehire folks who violate 6103, look at confidential taxpayer information, rehire folks under investigation, rehire folks engaged in fraud, award a no-bid contract to Equifax in light of the fact that 143 million taxpayers' information was breached.

But here's the good news. At least there's one element of good news. The long, sad chapter of John Koskinen as IRS commissioner comes to an end in 2-1/2 weeks, and thank the Lord for that.

So I look forward to our witnesses and what they have to say, and particularly the work that Mr. George and his team have done on a number of issues related to the targeting and the issues that we're also going to be asking questions and discussing today.

Mr. JORDAN. And, with that, since Mr. Connolly is not here, I think we'll swear our witnesses in and proceed with their testimony and get right to questions.

It's my honor to welcome today Mr. Jeffrey Tribiano, deputy commissioner for Operations Support at the IRS; Ms. Gina Garza, the chief information officer at the Internal Revenue Service; and, of course, the Honorable Russell George, Treasury Inspector General for Tax Administration; and Mr. Kutz, the assistant inspector general for Audit at the Treasury Inspector General for Tax Administration.

Welcome to all of you. I know, Mr. George, we appreciate you being here. You and I have talked on the phone, and we appreciate you making the effort to be here today.

The custom of this committee is to swear people in. So if you'll stand up, raise your right hand.

Do you solemnly swear or affirm the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Let the record show each witness answered in the affirmative.

And we will move right down the line there. So, Mr. Tribiano, you are up first. And you know how it works. You got 5 minutes. Fire away.

WITNESS TESTIMONIES

TESTIMONY OF JEFFREY TRIBIANO

Mr. TRIBIANO. Yes, sir. Well, Chairman Jordan, Chairman Meadows, Ranking Member Krishnamoorthi, and members of the subcommittee, my name is Jeffrey Tribiano, and I'm the deputy commissioner of Operations Support at the IRS. Joining me at the witness table is Ms. Gina Garza, the IRS' chief information officer. And we appreciate this opportunity to testify.

Each year, the IRS collects more than \$3 trillion, processes more than 200 million electronic tax returns, and answers more than 60 million calls from taxpayers as part of its mission. These and many other activities are accomplished through detailed planning and coordination across the Service. This includes critical support provided by the IRS' Information Technology organization. In allocating resources for these efforts, our highest priorities are the de-

livery of filing season, implementing congressional mandates, and protecting taxpayer data. At the same time, to the extent resources are available, we continue to invest in modernization of our tax administration systems and applications.

To continue delivering on our priorities and modernization efforts, it is critical that the agency's IT infrastructure components be up to date. We continue to make investments in modernization of critical infrastructure, using managed services and cloud technology to the extent possible. While we have seen some progress over the last year, additional investments are needed. We are concerned that the risk of a catastrophic system failure is increasing as our infrastructure continues to age. Replacing the aging IT infrastructure is a high priority for the IRS, but we are challenged by our budget situation. Our budget is now \$900 million below what it was in 2010, and modernization at a faster pace requires significant additional resources for IT.

We were also asked today to address the sole-source contract award to Equifax in late September after the company announced a major data breach. At the beginning of this year, we recognized the risk of using only one vendor, Equifax, to provide the IRS critical identity verification and validation services. In February 2017, we publicly announced our strategy to issue two competitive solicitations, one for a short-term 12-month single-award vehicle, under GSA schedule, followed by a long-term 5-year, multiple-award vehicle. In July, we awarded a 12-month contract to Experian to provide these services. Equifax then filed a protest to the Government Accountability Office, which had up to a hundred days to render a decision.

The protest triggered an automatic stay of contract performance on the awardee to preserve the status quo until GAO issued its ruling. At this point, overriding the statutory stay was not warranted under the circumstances. Equifax was satisfactorily providing services on the contract. There is no suggestion or evidence of any issues that would have caused the IRS to question Equifax's performance or whether Equifax's continued performance on the contract represented a risk to the government. We filed a motion at that time to dismiss the protest, but GAO denied our motion on August 2nd.

Since the GAO decision was not expected until October 16th, and the contract with Equifax was ending on September 30th, we were facing a lapse in identity verification services. This had the potential to negatively impact up to a million taxpayers. We believed it was critically important to maintain the ability for taxpayers to authenticate their identity to receive certain online services, particularly electronic requests for prior year's tax returns. This was specifically significant for taxpayers preparing to file returns before their extensions ran out on October 16th, and for the taxpayers in the federally declared disaster areas.

Several factors were considered prior to awarding the short-term bridge contract to Equifax on September 29, to include the GAO protest period, the time needed to transition to Experian, and the impact on taxpayers, and the results of our initial onsite security assessment conducted by the IRS team and the TIGTA special agents. However, on October 12, after reviewing new information

on Equifax's situation, we took the precautionary step of temporary suspending the short-term bridge contract with Equifax. Now that GAO has denied the protest, we are moving forward with Experian.

Lastly, we have also been asked to address the procedures for re-hiring former employees. The IRS is committed to properly evaluating prior performance and conduct issues. We have in place procedures, which we continue to refine, to consider prior performance and conduct in the hiring process to the extent permissible by law, and this includes implementing all of TIGTA's recommendations by October 31st of 2017.

This concludes mine and Ms. Garza's opening statement, and we are happy to take your questions.

[Prepared joint statement of Mr. Tribiano and Ms. Garza follows:]

**WRITTEN TESTIMONY OF
JEFFREY J. TRIBIANO
DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT
AND
SILVANA GINA GARZA
CHIEF INFORMATION OFFICER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
SUBCOMMITTEE ON HEALTHCARE, BENEFITS AND ADMINISTRATIVE
RULES AND
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
ON IRS MANAGEMENT CHALLENGES
OCTOBER 25, 2017**

I. INTRODUCTION

Chairmen Jordan and Meadows, Ranking Members Krishnamoorthi and Connolly and members of the Subcommittees, thank you for the opportunity to appear before you today to testify on recent IRS management challenges.

Before discussing the three specific areas we have been asked to address, we wanted to provide the Subcommittees with an overview of the IRS's current approach to managing risks within our operations.

The IRS has been working for several years to ensure risks are managed more effectively throughout the organization. In 2014, we established an agency-wide enterprise risk management program, creating risk management liaisons in each area of our operations, and providing for the regular identification and analysis of risks to be eliminated or managed across the agency.

We are aware that actions the IRS takes have the potential to affect millions of taxpayers. So, for the IRS, a risk management program provides a framework for regularly reviewing existing risks and identifying new ones, so that problems can be dealt with in a timely manner. The goal of our program is to stay ahead of the curve and anticipate risks whenever possible, to identify and fix problems when they arise quickly, and to be transparent about the entire process.

We are working to create a culture where employees are encouraged to think of themselves as risk managers and to report any issues or problems that occur. We are encouraging the further flow of information from front-line employees up through the organization as well as out to the front line from senior managers. As part of this program, each of the IRS business divisions established a Risk Management Process to enable certain issues to be elevated to the executive

leadership for review and discussion. This new and expansive process reduces the risk of overlooking sensitive issues.

II. MODERNIZING IRS INFORMATION TECHNOLOGY SYSTEMS

One issue we have been asked to address is the need to modernize our information technology (IT) systems.

The IRS's Information Technology Division provides critical support to the agency's dual mission of providing taxpayer service and enforcing the tax laws. In allocating resources for these efforts, our highest priorities are delivering the filing season, implementing congressional mandates and ensuring that our computer systems and the taxpayer data they hold remain protected.

At the same time, we continue to invest in modernizing our tax administration applications in several areas, including the Return Review Program, the Customer Account Data Engine (CADE2) and Enterprise Case Management (ECM) – which are discussed in more detail later in this testimony – and Web Apps. This also includes investments in modernizing critical infrastructure such as our Portal Operations and Enterprise Storage Service, both of which take advantage of managed services.

To continue delivering on our priorities and modernization efforts, it is critical that the agency's IT infrastructure components be up-to-date. But while we have consistently delivered successful filing seasons and implemented legislative mandates, the risk posed by our aged infrastructure is threatening this success. Approximately 64 percent of IRS hardware is aged, and 32 percent of supporting software is two or more releases behind the industry standard, with 15 percent more than four releases behind.

While we have taken steps to maintain our most critical systems, the IRS needs to upgrade its IT infrastructure, not only to help ensure reliable and modern taxpayer services, but also to mitigate risks to the system. We are concerned that the potential for a catastrophic system failure is increasing as our infrastructure continues to age. Thus, replacing this aging IT infrastructure is a high priority for the IRS.

The IRS remains very appreciative of Treasury Secretary Mnuchin's support for the IRS to have the appropriate resources available to upgrade our IT systems. In fact, a priority in the President's Fiscal Year (FY) 2018 Budget is helping the IRS improve information services by addressing its aged infrastructure.

The President's budget request includes \$3.9 billion for operations support. Within that total, \$2.07 billion is allocated for information services, which is \$216.1 million, or 11.6 percent, above the FY 2017 enacted level. This funding

will allow the IRS to take the initial steps needed to bring our IT infrastructure up to date.

Taxpayer Services Supported by IT Systems

Delivering the Tax Filing Season

The most visible taxpayer service the IRS provides is the delivery of a smooth, problem-free tax filing season, so that people can file their returns and receive their refunds as quickly and easily as possible. Our IT systems process approximately 150 million individual income tax returns and more than \$300 billion in refunds to individuals each year.

Our ability to effectively manage the IRS's IT systems, despite our aged infrastructure, is evidenced by the fact that the IRS continues to deliver smooth filing seasons, amid steady growth both in the number of returns filed and the percentage of electronically filed returns over the past decade, and a number of complex tax law changes.

Today, nearly 90 percent of individual income tax returns are filed electronically. Return processing has gone smoothly, even in years where passage of tax legislation late in the year has required the IRS to move quickly to update our systems to accommodate tax changes enacted by Congress.

During the filing season and throughout the year, the IRS provides taxpayer services through a variety of delivery channels to help taxpayers file their tax returns accurately and on time. Here too, our IT systems are an essential component of our service efforts. For example, IT supports our call center operation, which is one of the largest in the country, and which answered more than 64 million taxpayer calls in FY 2016, including automated calls and those using a live assistor.

Our IT systems also support our ability to offer online services, which we continue to expand in response to increasing taxpayer demand. We provide a wealth of tax information on our website, IRS.gov, which was visited more than 500 million times during FY 2016, and more than 490 million times in FY 2017. The IRS recently completed a revamp of IRS.gov to make the site more user-friendly and to make it easier for taxpayers to view site content on their mobile devices.

Protecting Taxpayer Data

Providing outstanding taxpayer service also involves ensuring that the information taxpayers provide to the IRS will be kept secure. The IRS continues to work to protect our main computer systems from cyber incidents, intrusions and attacks, with our primary focus being on preventing criminals from accessing

taxpayer information stored in our databases, as well as identifying fraud. Our core tax processing systems remain secure, and currently withstand more than one million attempts to maliciously access them each day.

We realize the solutions we have in place today may be insufficient in the future, as criminal enterprises continue to invest to find ways to try to penetrate our systems. They are persistent and have demonstrated their ability to adapt. Their tactics are ever-changing, and so our protections must keep changing as well. We therefore must continue to invest in cybersecurity and find ways to collaborate across government. The supplemental funds that Congress provided over the last two years helped us make great progress, but continued investments are needed.

Protecting Taxpayers against Identity Theft and Refund Fraud

Along with protecting the taxpayer data we have, the IRS is also focused on protecting taxpayers who may have had their personal information stolen from outside the tax system by identity thieves, who use this information to file false returns and claim fraudulent refunds. In recent years, we have made steady progress in protecting against identity thieves, by employing information technology to assist in fraud detection.

An important advance that has helped us in the fight against identity theft has been the implementation of the Return Review Program (RRP). RRP is an integrated and unified system that enhances our ability to detect and potentially prevent tax non-compliance. During the 2016 filing season, RRP replaced the legacy Electronic Fraud Detection System (EFDS) in the tax system pipeline as the government's primary line of defense against the perpetration of tax-related identity theft, along with other tax fraud and noncompliance associated with individual tax returns. Continued investment in RRP will allow the IRS to address more sophisticated instances of identity theft more quickly and expand RRP's use to business returns.

Over the past two years, our progress against stolen identity refund fraud has accelerated, thanks to implementation of RRP and the collaborative efforts of the Security Summit, a unique partnership launched in March 2015 that includes the IRS, industry leaders and state tax commissioners. Our collaborative efforts have put in place many new safeguards beginning in the 2016 filing season that produced real results.

Since 2015 we have had fewer fraudulent returns entering our systems, fewer bad refunds going out the door, and fewer tax-related identity theft victims than in previous years. To illustrate, the number of people who reported to the IRS that they were victims of identity theft declined from 698,700 in Calendar Year (CY) 2015 to 376,500 in 2016 – a drop of nearly half.

The decline has continued during 2017. In the first eight months of this year, about 189,000 taxpayers reported they were victims of identity theft, which is a drop of about 40 percent from the same period last year. Taken together, the number of taxpayers over the last two years who reported being victims of tax-related identity theft has dropped by nearly two-thirds.

Providing for the Future of Taxpayer Service

In addition to ensuring that the basic taxpayer experience with the IRS is safe, secure and functional, the agency has been working for several years on longer-term improvements to the taxpayer experience and tax administration. In this effort, the IRS relies heavily on our information technology systems to help carry out these improvements.

Our goal is to have a more proactive and interactive relationship with taxpayers and tax professionals by offering them the services, tools and support they want, in ways that are both innovative and secure. We are working to catch up with the kinds of online and virtual interactions people already use in their daily lives to communicate with banks, retailers, medical providers and many others.

A major part of our initiative is developing an online account where taxpayers, or their representatives, can log in securely, get information about their account, and interact with the IRS as needed, including self-correcting some issues.

In December 2016, we took the first step toward this with the launch of an application on IRS.gov that provides information to taxpayers who have straightforward balance inquiries. Since its launch, this new tool has been used by taxpayers more than 1.7 million times. We recently added another feature that lets taxpayers see recent payments posted to their account. These balance-due and recent-payment features, when paired with existing online payment options, have increased the availability of secure, self-service interactions with the IRS through IRS.gov.

These are important steps, and over time, we will be looking to add other features to this platform as they are developed and tested with taxpayers and tax professionals. One of these features which is now in testing is Taxpayer Digital Communications. Taxpayer Digital Communications is intended to provide a secure online messaging capability so that taxpayers, their authorized representatives and IRS employees can correspond electronically and resolve issues more quickly than through traditional mail while maintaining security.

Providing the Taxpayer an Effective Point of Contact

Along the way, the IRS has come to realize that our efforts to move toward the future need to involve more than just online interactions between the IRS and taxpayers and their representatives. Therefore, our efforts to use technology more efficiently has evolved to cover the entire scope of the taxpayer experience,

whether on-line or in person, and poses considerable opportunities for us and for taxpayers.

Our present case management system treats each issue involving a taxpayer as a separate case. And those cases are handled throughout the agency by more than 60 aging case management systems that often don't communicate with each other. So, when taxpayers with more than one pending issue call the IRS, they must be transferred from one area to another to get the assistance they need.

We are in the process of developing an Enterprise Case Management (ECM) system that will modernize, upgrade and consolidate our existing separate case management systems and give authorized IRS employees the ability to see information relevant to the taxpayer's range of issues, including prior communication with the taxpayer.

Another initiative that will help the IRS improve the taxpayer experience is the Event Driven Architecture (EDA) framework, which will allow us to process tax returns in near-real time. Once in place, the EDA framework will allow the IRS to, for example, notify taxpayers of potential errors on a return as soon as it is filed, and let taxpayers quickly correct certain return errors online – a major advance over the current system, in which the IRS corresponds with taxpayers by mail regarding potential problems in their returns.

These and other improvements depend upon our continued development of the Customer Account Data Engine (CADE 2), which is our centralized database for all individual taxpayer accounts and allows an IRS employee who is helping resolve a taxpayer's issue to easily access the taxpayer's information.

When fully implemented, CADE2 will replace the legacy Individual Master File (IMF), which historically has been the primary data source for individual taxpayer accounts. CADE2 is replacing the IMF in three major steps. It is important to note that this is a complex, multistep process – not a single, easily accomplished action. The steps we have undertaken thus far have already provided important improvements to our ability to interact with taxpayers efficiently and effectively.

Challenges to Modernizing IT Systems

In recent years, Congress has tasked the IRS with implementing several legislative requirements. Satisfying these requirements has involved significant IT investments, diverting staff and resources that otherwise could have been used to continue modernizing our major IT systems and aging IT infrastructure.

These legislative requirements include those stemming from: The Affordable Care Act (ACA); the Foreign Account Tax Compliance Act (FATCA); the Achieving a Better Life Experience (ABLE) Act, which includes a new certification requirement for professional employer organizations; reauthorization of the

Health Coverage Tax Credit (HCTC); a private debt-collection program; and a registration requirement for newly created 501(c)(4) organizations.

Changes in tax law also often require significant IT resources to ensure proper implementation, especially when they are made retroactive. Recently, for example, Congress passed tax relief for victims of the hurricanes that struck the U.S. mainland and Puerto Rico. We are still evaluating the time it will take to implement these changes

The IRS also needs to be able to attract individuals from the private sector with highly specialized IT skills and expertise, particularly for our leadership positions in IT. In the past, the IRS successfully recruited such individuals using streamlined critical pay authority that was first enacted in 1998 and subsequently reauthorized by Congress in 2007 and 2013.

In fact, TIGTA has noted the IRS had appropriately used this authority by adequately justifying the positions, demonstrating the need to recruit or retain exceptionally well-qualified individuals, and adhering to pay limitations. This authority expired at the end of FY 2013 and has not yet been renewed.

The loss of streamlined critical pay authority has created major challenges to our ability to retain employees with the necessary high-caliber expertise in IT and other specialized areas. In fact, there are no longer any executives under streamlined critical pay authority at the IRS. The President's FY 2018 Budget proposes reinstating this authority, and we urge Congress to approve this proposal.

III. SHORT-TERM INTERIM CONTRACT WITH EQUIFAX

Another subject the Subcommittees have asked us to address involves a sole source contract awarded to Equifax in late September after the company announced a major data breach.

The IRS had a contract with Equifax to offer credit monitoring services and another separate contract to provide identity authentication services. During 2017 the IRS re-competed the contract for credit monitoring and the contract was awarded to a new vendor effective October 1, 2017. In addition, the IRS re-competed the contract for identity authentication and the contract was awarded to a new vendor in July 2017.

But Equifax protested our decision on the identity authentication services contract to the Government Accountability Office (GAO). This required us to hold the contract with the new vendor in abeyance until the GAO issued its ruling, which it did on October 16. That ruling upheld our decision to award the contract to a different vendor, and we are now transitioning to that new vendor.

While the GAO decision was still pending, we were faced with the possibility of a lapse in service, because the original contract with Equifax expired on September 30. Thus, on September 29, we entered into a short-term interim contract with Equifax. As the incumbent, Equifax was the only vendor that we could contract with to provide identity authentication services to the IRS until the GAO issued its ruling.

We only took this step after reviewing and determining that there was no indication that the limited data shared under the IRS contract had been compromised. We made this decision to maintain our ability to provide certain online services to taxpayers requiring them to authenticate their identity, particularly online requests for a prior year tax return, "tax transcript." We believed it was important to keep these services available to taxpayers, especially those who were preparing to file tax returns before their extensions ran out on October 16.

Meanwhile, the IRS continued its ongoing review of Equifax's systems and security. On October 12, after receiving new information on Equifax's situation, we took the precautionary step of temporarily suspending this short-term contract.

We took steps to understand and evaluate the impact of the Equifax data breach on IRS systems before we made the decision to enter into the interim contract.

Immediately upon hearing of the Equifax data breach on September 7, the Chief Privacy Officer established an Incident Response Team (comprised of personnel from Wage & Investment, Procurement, IT, Cybersecurity, General Counsel, Risk, Research and Analytics, and Online Service's Identity Assurance) to ascertain the extent of the breach and surrounding issues as well as to keep all stakeholders informed. Furthermore, IT collaborated with the Treasury Inspector General for Tax Administration (TIGTA) Criminal Investigations and IRS Criminal Investigations to form a Security Review Team (SRT). The SRT held several conversations with Equifax and conducted an initial on-site inspection at its headquarters, all of which confirmed no IRS data was compromised and the services provided by Equifax under the contract were not affected.

The suggestion has been made that we had the option to ignore the protest and proceed directly with the new vendor. Such action is available to an agency if there are "urgent and compelling circumstances that significantly affect the interests of the United States," or if performance of the contract is in the best interests of the United States. Since there was no indication that any IRS data was accessed during the Equifax breach, and Equifax had been successfully providing the service in the past, we determined this option was not available.

More generally, the IRS has taken significant steps in recent years to strengthen our tax processing systems to further protect against identity theft and refund fraud. These efforts are part of our Security Summit partnership with state tax administrators and the private-sector tax community.

Our work in this area added new protections for tax returns being filed, including greater authentication measures in our processing systems to verify legitimate tax filers and protect against identity thieves submitting fraudulent tax returns. These additional fraud filters and cross-checks make it harder for identity thieves who have only basic taxpayer information to obtain false refunds. We specifically designed these safety measures to protect against many of the recent large-scale data breaches, such as at Equifax, where criminals obtained such basic information as names and Social Security numbers.

IV. PROCEDURES FOR RE-HIRING FORMER IRS EMPLOYEES

Another issue the subcommittees have asked us to address involves the procedures we use to rehire former employees.

The IRS is committed to properly evaluating prior performance and conduct issues. We have in place procedures – which we continue to refine – to consider prior performance and conduct in the hiring process to the extent permissible by law, rule and regulation. The IRS hiring process requires our human capital professionals to fully evaluate conduct issues in accordance with 5 CFR 731.202 and the Office of Personnel Management's Suitability Adjudication Handbook. During the selection process, prior performance issues must also be considered before we make final hiring decisions.

To strengthen this process, we have updated our policies and practices, and are continuing to explore additional methods to ensure that we meet hiring needs while considering all prior performance and conduct issues. This includes taking corrective actions in response to the recommendations made in a TIGTA report issued in July. We are on track to complete those actions by the end of October 2017.

Our updated process will allow us to review and document derogatory performance and conduct information on former IRS employees, regardless of the age of that information. Substantiated derogatory information on former employees will be forwarded to the selecting official before a selection is made. The selecting official will document any decision to rehire former employees with prior conduct or performance issues, and our Human Capital Office will maintain the documentation.

Along with these changes, the IRS has also assembled a team to explore additional steps, such as developing a process that will eliminate former IRS

employees with a documented history of misconduct or performance problems from the hiring process.

It is important to note that most of the rehired employees identified in the TIGTA report were seasonal employees who had been hired to support the 2017 filing season. Because our corrective actions will be completed by the end of October 2017, they will be in place before we begin onboarding new employees for the 2018 filing season. After the 2018 filing season, we will review our hiring to gauge the effectiveness of our policy changes.

Chairmen Jordan and Meadows, Ranking Members Krishnamoorthi and Connolly, and Members of the Subcommittees, this concludes our statement, and we would be happy to take your questions.

Mr. JORDAN. Thank you, Mr. Tribiano.

Ms. Garza, is that accurate? You're good?

Ms. GARZA. [Nonverbal response.]

Mr. JORDAN. Okay. Mr. George, you're up. Thank you.

TESTIMONY OF J. RUSSELL GEORGE

Mr. GEORGE. Thank you, Chairman Jordan, Chairman Meadows, Ranking Member Krishnamoorthi, and members of the subcommittee. I thank you for the opportunity to discuss IRS hiring practices and information technology challenges. As noted earlier, joining me is Greg Kutz, assistant inspector general for Audit.

TIGTA first reported in December of 2014 that the IRS had rehired 824 former employees with substantiated conduct and performance issues. For example, the IRS hired 141 former employees with substantiated tax issues, including five that willfully failed to file their Federal tax returns. Other prior issues for rehired employees included unauthorized access to taxpayer information, leave abuse, falsification of official forms, and misuse of government property.

In response to our 2014 report, the IRS said its current process was more than adequate to mitigate risks to the American taxpayer. In our followup July 2017 report, we found that the IRS continued to rehire former employees with conduct and performance issues. IRS rehired more than 200 former employees who were previously terminated from the IRS who had separated while under investigation for conduct or performance issues. In response to our report, IRS management agreed with the intent of our recommendations and cited plans to update current practices. Bringing in employees with a history of problems increases the internal threat to taxpayer data.

This leads to my second point: Information technology challenges facing the IRS. Recent cyber events show that bad actors are continually seeking ways to exploit IRS systems and access taxpayer information. The recent breach at Equifax could further increase the risk of identity theft. IRS continues to take steps in response to our recommendations, including implementation of two-factor authentication.

The IRS has also faced significant challenges in modernizing its legacy systems and hardware infrastructure. For example, CADE 2, which is the planned replacement of the Individual Master File, has been under development since 2009. The previous CADE initiative dates back to the late 1990s. Currently, there is no planned completion date for CADE 2. The IRS has a large and increasing amount of aged hardware infrastructure, some of which is three to four times older than industry standards. The percentage of aged hardware has steadily increased from 40 percent at the beginning of fiscal year 2013 to 64 percent at the beginning of fiscal year 2017. This increases the security risks to critical taxpayer data the IRS must protect.

The IRS has also been challenged in responding to some high profile requests from Congress, the public, and the courts. The loss or destruction of information resulted from a combination of inadequate systems and policies, along with human error. For example, systems and record retention policies have not ensured that email

records are automatically archived and could be retrieved for as long as needed.

We reported last year that the IRS' previous attempt to implement a new email system was unsuccessful at a cost of at least \$12 million. According to the IRS, its future-state email system was to be implemented by September 30, 2017. Until a solution is effectively implemented, IRS emails will remain difficult to retain or search.

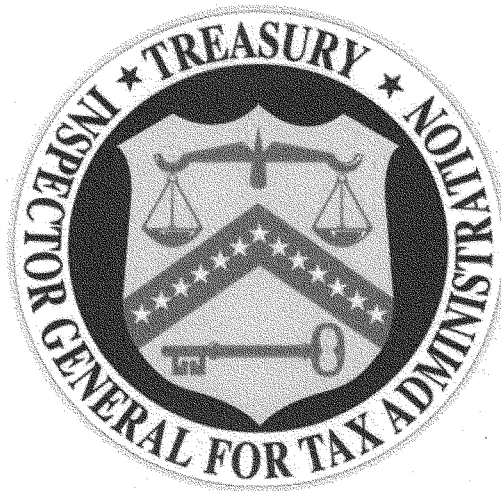
In conclusion, providing increased online access to taxpayers, while protecting their identity and their information from internal and external threats, is a substantial challenge for the IRS. In addition, modernizing systems would result in lower operating costs, increased security of taxpayer data, and improved customer service for taxpayers. TIGTA will continue to prioritize overseeing IRS hiring practices and efforts to address its information technology challenges.

Thank you for the opportunity to share my views.

[Prepared statement of Mr. George follows:]

**JOINT HEARING BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
SUBCOMMITTEE ON HEALTH CARE, BENEFITS
AND ADMINISTRATIVE RULES, AND
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
U.S. HOUSE OF REPRESENTATIVES**

“Ongoing Management Challenges at IRS”



**Testimony of
The Honorable J. Russell George
Treasury Inspector General for Tax Administration**

October 25, 2017

Washington, D.C.

TESTIMONY
OF
THE HONORABLE J. RUSSELL GEORGE
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION
before the
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
SUBCOMMITTEE ON HEALTH CARE, BENEFITS
AND ADMINISTRATIVE RULES, AND
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
U.S. HOUSE OF REPRESENTATIVES

“Ongoing Management Challenges at IRS”
October 25, 2017

Chairman Jordan, Chairman Meadows, Ranking Member Krishnamoorthi, Ranking Member Connolly, and Members of the Subcommittees, thank you for the opportunity to testify on some of the ongoing challenges facing the Internal Revenue Service (IRS). Specifically, my testimony today will focus on the results of our recent audit work related to the IRS’s process of rehiring former employees, the challenges of information security and modernizing information technology infrastructure at the IRS, and the IRS’s use of critical pay authority to hire employees.

The Treasury Inspector General for Tax Administration (TIGTA) was created by Congress in 1998 to ensure integrity in America’s tax system. It provides independent audit and investigative services to improve the economy, efficiency, and effectiveness of IRS operations. TIGTA’s oversight activities are designed to identify high-risk systemic inefficiencies in IRS operations and to investigate exploited weaknesses in tax administration. TIGTA plays the key role of ensuring that the approximately 85,000 IRS employees¹ who collected more than \$3.3 trillion in tax revenue, processed more than 244 million tax returns, and issued more than \$400 billion in tax refunds during Fiscal Year² (FY) 2016,³ have done so in an effective and efficient manner while minimizing the risk of waste, fraud, and abuse.

¹ In FY 2016, the IRS employed, on average, approximately 85,000 people, including more than 16,000 temporary and seasonal staff.

² The Federal Government’s fiscal year begins on October 1 and ends on September 30.

³ IRS, *Management’s Discussion & Analysis, Fiscal Year 2016*.

FOLLOW-UP REVIEW OF THE IRS'S PROCESS TO REHIRE FORMER EMPLOYEES

In December 2014, TIGTA reported that, although the IRS appropriately applied Office of Personnel Management (OPM) suitability standards, 824 (11.5 percent) of 7,168 former IRS employees rehired between January 1, 2010, and September 30, 2013, had prior substantiated conduct or performance issues.⁴ IRS officials stated that prior conduct and performance issues did not play a significant role in deciding which candidates were best qualified for hiring, and TIGTA found nothing in the IRS hiring process beyond the suitability standards where prior conduct and performance issues were being considered. In addition, we reported that the IRS had prior IRS employment information that could help inform its decisions on hiring. However, the IRS was concerned that it might violate existing Federal regulations if it fully considered prior conduct and performance issues.

As a result, we recommended that the IRS Human Capital Officer work with General Legal Services and the OPM to determine whether, and during what part of the hiring process, the IRS could fully consider prior conduct and performance issues. The IRS agreed with this recommendation. In its response, the IRS stated that a review of conduct and performance issues could be accomplished earlier in the process; however, the Department of the Treasury, the OPM, and the IRS believed that it was not feasible to move the review of these issues to earlier in the hiring process. They concluded that this action would greatly increase the cost of hiring, likely increase cycle time beyond the Presidential mandate of 80 calendar days, require additional resources, and not likely yield a reasonable return on investment.

Since the time of our prior report, Congress has enacted the Consolidated Appropriations Act of 2016,⁵ which prohibited the IRS from rehiring former employees without taking their prior conduct into account. In addition, during testimony before the Senate Finance Committee in February 2016, the IRS Commissioner was questioned regarding the IRS's process for rehiring employees previously fired for cause. During this testimony, the Commissioner explained that the employees mentioned in the prior TIGTA report were rehired under old hiring procedures, and would not be rehired under the IRS's updated procedures.

⁴ TIGTA, Ref. No. 2015-10-006, *Additional Consideration of Prior Conduct and Performance Issues Is Needed When Hiring Former Employees* (Dec. 2014).

⁵ Pub. L. No. 114-113, 129 Stat. 2242.

Given the substantial threat of identity theft and the magnitude of sensitive information that the IRS holds, hiring employees of high integrity is essential to maintaining public trust in tax administration and safeguarding taxpayer information. This is especially important in light of recent cyber events against the IRS intended to access tax information for the purposes of identity theft and filing fraudulent tax refunds. The IRS must ensure its systems and data are protected against both external and internal threats.

However, in a follow-up audit, TIGTA found that the IRS has not effectively updated or implemented hiring policies to fully consider past IRS conduct and performance issues prior to making a tentative decision to hire former employees, including those who were terminated or separated during an investigation of a substantiated conduct or performance issue.⁶

From January 1, 2015, through March 31, 2016, the IRS hired nearly 7,500 employees, of which more than 2,000 had been previously employed by the IRS. Although most employees who were rehired did not have prior conduct or performance issues, TIGTA found that more than 200 (approximately 10 percent) of the more than 2,000 rehired IRS employees were previously terminated from the IRS or separated while under investigation for a substantiated conduct or performance issue. More than 150 of these employees (approximately 75 percent) were seasonal. Four of the more than 200 employees had been terminated or resigned for willful failure to properly file their Federal tax returns; four separated while under investigation for unauthorized accesses to taxpayer information; and 86 separated while under investigation for absences and leave, workplace disruption, or failure to follow instructions. Some of these employees held positions with access to sensitive taxpayer information, such as contact representative positions.

Some rehired employees had past performance issues. For example, two rehired employees were previously terminated for failure to maintain a successful level of performance in multiple critical job elements as tax examining technicians. However, both of these employees were rehired as tax examining technicians less than six months later. In addition, 60 of the 824 employees we identified in our prior report as having been rehired with prior substantiated employment issues between January 1, 2010, and September 30, 2013, were rehired again between January 1, 2015, and March 31, 2016. Of these 60 employees, five had additional documented conduct or performance issues substantiated within nine days to 19

⁶ TIGTA, Ref. No. 2017-10-035, *The Internal Revenue Service Continues to Rehire Former Employees With Conduct and Performance Issues* (July 2017).

months after being rehired. Three of the employees had the same issue in their prior employment.

Although the IRS follows specific criteria to disqualify applicants for employment, past IRS employment history is not provided to the selecting official for consideration when making a tentative hiring decision. IRS officials stated that it would be cost prohibitive to review prior issues before a hiring decision and tentative offer has been made. However, the IRS was unable to provide documented support for this position. In addition, TIGTA could not verify that the IRS always considered prior issues because reviews are not always documented. TIGTA also found that 27 former employees failed to disclose a prior termination or conviction on their application as required, but were still rehired by the IRS.

Although the IRS may have had a valid basis to rehire some of the more than 200 former employees with prior conduct or performance issues, TIGTA has serious concerns about the IRS's decision to rehire certain employees, such as those who willfully failed to meet their Federal tax responsibilities.

TIGTA recommended that the IRS Human Capital Officer provide the selecting official with access to records of former employee conduct and performance issues, and require that the basis for rehiring employees with prior employment issues be clearly documented. In their response, IRS management agreed with the intent of the recommendations and plans to update current practices and policies to ensure that data reflecting prior performance and misconduct are utilized in the hiring process.

INFORMATION SECURITY OVER TAXPAYER DATA

The IRS relies extensively on its computer systems to support both its financial and mission-related operations. These computer systems collect and process large amounts of taxpayer data. Recent cyber events against the IRS have illustrated that bad actors are continually seeking new ways to attack and exploit these IRS systems and processes in order to access tax information for the purposes of identity theft and filing fraudulent tax refunds. From the exploitation of IRS's Get Transcript application to that of the Data Retrieval Tool, the IRS has found that with each systemic weakness it closes criminals have discovered another means to access tax information from the IRS. In addition, the recent breach at Equifax that exposed sensitive personal information, including Social Security Numbers (SSN), could increase the risk of identity theft. As the threat landscape continues to evolve, we believe that protecting the confidentiality of taxpayer information will continue to be a top concern for the IRS.

TIGTA has assessed the IRS's electronic authentication platforms and made recommendations to develop a Service-wide strategy that establishes consistent oversight of all authentication needs across the IRS's functions and programs, ensures that the level of authentication risk for all current and future online applications accurately reflects the risk to the IRS and taxpayers should an authentication error occur, and ensures that the authentication processes meet Government Information Security Standards.⁷ The IRS continues to take steps in response to TIGTA's recommendations to provide more secure authentication, including the implementation of two-factor authentication and the strengthening of application and network controls.⁸ However, we remain concerned about the IRS's logging and monitoring capabilities over all connections to IRS online services. TIGTA is currently assessing the IRS's efforts to improve its authentication processes and has identified areas in which the IRS still needs improvement.⁹ Specifically, the IRS has still not fully implemented network monitoring tools designed to improve prevention and detection of automated attacks and is not effectively monitoring audit logs for suspicious activity. Due to the importance of secure authentication of individuals' identities, we are planning to conduct additional reviews in this area.

The risk of unauthorized access to tax accounts will continue to be significant as the IRS proceeds with its Future State initiative,¹⁰ which includes expansion of online tools it makes available to taxpayers. The IRS's goal is to eventually provide taxpayers with dynamic online tax account access that includes viewing their recent payments, making minor changes and adjustments to their tax accounts, and corresponding digitally with the IRS. Increased online access will increase the risk of unauthorized disclosure of tax data. As such, the IRS's processes for authenticating individuals' identities must promote a high level of confidence that tax information and services are provided only to individuals who are entitled to receive them.

⁷ TIGTA, Ref. No. 2016-40-007, *Improved Tax Return Filing and Tax Account Access Authentication Processes and Procedures Are Needed* (Nov. 2015).

⁸ TIGTA, Ref. No. 2016-20-082, *Improvements Are Needed to Strengthen Electronic Authentication Process Controls* (Sept. 2016).

⁹ TIGTA, Audit No. 201720004, *Review of E-Authentication to IRS Online Services*, report planned for December 2017.

¹⁰ Preparing the IRS to adapt to the changing needs of taxpayers is described generally as the IRS Future State initiative. A key part of this effort is for taxpayers to have a more complete online experience for their IRS interactions.

MODERNIZATION EFFORTS TO REPLACE LEGACY SYSTEMS

Successful modernization of IRS systems and the development and implementation of new information technology applications are critical to meeting the IRS's evolving business needs and to enhancing services provided to taxpayers. The IRS's reliance on legacy (*i.e.*, older) systems, aged hardware, and outdated programming languages pose significant risks to the IRS's ability to deliver its mission. Modernizing the IRS's computer systems has been a persistent challenge for several decades and will likely remain a challenge for the foreseeable future.

One of the IRS's top-priority information technology investments is the Customer Account Data Engine 2 (CADE 2). The IRS has been using the Individual Master File (IMF), which uses an outdated assembly language code, for more than 50 years. The IMF is the source for individual taxpayer accounts. Within the IMF, accounts are updated, taxes are assessed, and refunds are generated. Most of the IRS's information systems and processes depend, directly or indirectly, on the IMF.

In 2009, the IRS began developing CADE 2 to address the issues regarding tax processing and to eventually replace the IMF. According to the IRS, CADE 2 is the data-driven foundation for future state-of-the-art individual taxpayer account processing and data-centric technologies designed to improve service to taxpayers, enhance IRS tax administration, and ensure fiscal responsibility.

In September 2013, TIGTA reported that the CADE 2 database could not be used as a trusted source for downstream systems because of the 2.4 million data corrections that had to be applied to the database and the IRS's inability to evaluate 431 CADE 2 database columns of data for accuracy.¹¹ To address these issues, the IRS developed additional tools and implemented a new data validation testing methodology intended to ensure CADE 2's timeliness, accuracy, integrity, validity, reasonableness, completeness, and uniqueness. The IRS requested that TIGTA evaluate the new data validation testing methodology.

In a September 2014 follow-up audit, TIGTA reported that the IRS had appropriately completed its data validation efforts.¹² According to the IRS, the CADE 2 release plan is currently being adjusted to reflect impacts of staffing challenges and

¹¹ TIGTA, Ref. No. 2013-20-125, *Customer Account Data Engine 2 Database Deployment Is Experiencing Delays and Increased Costs* (Sept. 2013).

¹² TIGTA, Ref. No. 2014-20-063, *Customer Account Data Engine 2 Database Validation Is Progressing; However, Data Coverage, Data Defect Reporting, and Documentation Need Improvement* (Sept. 2014).

various possible budget scenarios. The loss of key IMF expertise is causing the reprioritization of CADE 2 goals to focus on IMF reengineering, the suspension of projects, and the potential deferral of planned functionality to be delivered. There are several reasons for the delays in implementing CADE 2, including other organizational priorities such as the annual filing season, other major information technology investments, contracting delays, aging architecture, lack of key subject matter experts on institutionalized processes, and outdated programming languages. There is no scheduled or planned completion date for CADE 2 development.

In FY 2018, TIGTA will be initiating an audit to assess the effect of legacy systems on the IRS's ability to deliver modernized tax administration. TIGTA also plans to conduct an audit to determine the progress made on completing the CADE 2 project, including the IRS's retirement strategy for the IMF and a comparison of estimated costs to actual expenditures.

INFORMATION TECHNOLOGY INITIATIVES TO MODERNIZE THE E-MAIL SYSTEM

In addition to modernization efforts to replace legacy systems, the IRS is developing and implementing new information technology to modernize its operations, applications, and e-mail system to provide more sophisticated tools to taxpayers and IRS employees. TIGTA has identified several areas where the IRS can improve its efforts to upgrade or enhance its information technology systems.

For example, TIGTA has evaluated the IRS's efforts to establish information technology capabilities to manage temporary and permanent e-mail records. TIGTA determined that the IRS purchased subscriptions for an enterprise e-mail system it could not use.¹³ The purchase was made without first determining project infrastructure needs, integration requirements, business requirements, security and portal bandwidth, and whether the subscriptions were technologically feasible on the IRS enterprise. IRS executives made a management decision to consider the enterprise e-mail project an upgrade to existing software instead of a new development project or program. As a result, the IRS did not follow its Enterprise Life Cycle guidance. The IRS authorized the \$12 million purchase of subscriptions over a two-year period; however, the software to be used via the purchased subscriptions was never deployed. The IRS violated Federal Acquisition Regulation requirements by not using full and open competition to purchase the subscriptions.

¹³ TIGTA, Ref. No. 2016-20-080, *Review of the Enterprise E-mail System Acquisition* (Sept. 2016).

In an audit requested by the Chairman of the House Committee on Ways and Means and the Chairman of the Senate Committee on Finance, TIGTA determined that IRS policies are not in compliance with Federal electronic records requirements and regulations.¹⁴ At the time of that report, TIGTA found that the IRS's current e-mail system and record retention policies did not ensure that e-mail records were automatically archived for all employees and could be searched and retrieved for as long as needed. The e-mail system in place at that time required users to take manual actions to archive e-mail and resulted in e-mail records that were stored in multiple locations, such as mailbox folder, Exchange server, network shared drive, hard drive, removable media, or backup tape.

According to the IRS, its Future State e-mail system, which was planned to be implemented by September 30, 2017, was developed to potentially allow records to be available and searchable while automatically applying a retention policy. However, until a solution is effectively implemented, IRS e-mails remain difficult, if not impossible, to retain and search.

TIGTA has also evaluated the readiness of the IRS to establish an upgraded e-mail solution with the information technology capabilities to manage e-mail records in compliance with the directive of the Office of Management and Budget (OMB) and the National Archives and Records Administration (NARA), which requires that agencies eliminate paper records and use electronic recordkeeping to the fullest extent possible.¹⁵ TIGTA found that more effort is needed by the IRS to meet the NARA e-mail management success criteria prior to the deployment of the enterprise e-mail solution. Specifically, TIGTA determined that as of January 31, 2017, 13 of the 32 (41 percent) requirements related to the e-mail management success criteria remained under development. The requirements need to be fully developed and implemented before the IRS can successfully deploy its enterprise e-mail solution. Due to delays in developing and deploying the enterprise e-mail solution, the IRS will most likely not begin receiving any of the expected benefits of Federal records reform until the end of Calendar Year 2017, nearly a year after the initially mandated deployment date.

¹⁴ TIGTA, Ref. No. 2017-10-034, *Electronic Record Retention Policies Do Not Consistently Ensure That Records Are Retained and Produced When Requested* (July 2017).

¹⁵ TIGTA, Ref. No. 2017-20-039, *Additional Efforts Are Needed to Ensure the Enterprise E-Mail Records Management Solution Meets All Requirements Before Deployment* (Aug. 2017).

HARDWARE MODERNIZATION

The IRS has a large and increasing amount of aged hardware, some of which is three to four times older than industry standards. In its FY 2016 President's Budget Request, the IRS noted that its information technology infrastructure poses significant risk of failures, although it is unknown when these failures will occur, how severe they will be, or whether they will have material impacts on tax administration during the filing season.

TIGTA conducted an audit to determine and measure the impact of inefficiencies of the IRS's aged information technology hardware. Specifically, TIGTA analyzed all FY 2016 incident tickets¹⁶ from the Knowledge Incident/Problem Service Asset Management system¹⁷ categorized as either "critical" or "high" for all aged information technology hardware (e.g., desktop and laptop computers, servers, and telephone call routers). The aggregate length of time to resolve these incident tickets was 4,541 hours. Aged information technology hardware still in use could result in excessive system downtime due to hardware failures. As information technology hardware ages, it becomes more difficult to obtain adequate support. Aged hardware failures have a negative impact on IRS employee productivity, the security of taxpayer information, and customer service.

Additionally, TIGTA reported that the IRS has not yet achieved its stated objective of reducing the percentage of its aged information technology hardware to an acceptable level of 20 to 25 percent. In fact, the IRS's percentage of aged information technology hardware has steadily increased from 40 percent at the beginning of FY 2013 to 64 percent at the beginning of FY 2017.¹⁸ Aged information technology hardware, when combined with the fact that components of the infrastructure and systems are interrelated and interdependent, make outages and failures unpredictable and may also introduce security risks to critical taxpayer data that IRS systems must protect.

¹⁶ Incident tickets are created as part of the IRS's Information Technology Incident Management Process that defines the process and procedures for recording, categorizing, prioritizing, investigating, diagnosing, resolving, dispatching, monitoring, and closing out the incidents.

¹⁷ This system maintains the complete inventory of information technology and non-information technology organization assets, computer hardware, and software. It is also the reporting tool for problem management with all IRS-developed applications and shares information with the Enterprise Service Desk.

¹⁸ TIGTA, Ref. No. 2017-20-051, *Sixty-Four Percent of the Internal Revenue Service's Information Technology Hardware Infrastructure Is Beyond Its Useful Life* (Sept. 2017).

IRS USE OF CRITICAL PAY AUTHORITY

Over the course of the last three years, some Federal Government agencies have suffered significant cyber data breaches. Both the OPM and the IRS were included in the list of *Network World's* "Biggest Data Breaches of 2015."¹⁹ Efforts to exploit cyber systems by various means have highlighted the need for agencies to seek the capacity to improve existing systems or build new ones. One element associated with building that capacity is hiring individuals with proven skills, knowledge, and abilities related to systems design and cybersecurity. The same skills are also highly desired in the private sector. Federal agencies generally have fewer hiring compensation flexibilities than the private sector when seeking well-qualified employees.

This issue is not new, and in 1990 the Critical Position Pay Authority (CPPA) was codified in 5 U.S.C. § 5377. This authority allows agencies to seek the approval of the OPM and the OMB to pay annual salaries up to the Executive Schedule Level I of \$207,800 (in 2017) for approved staff members versus \$187,000 for employees of the Senior Executive Service (SES).²⁰

For an employee to receive critical position pay, he or she must be considered well-qualified for the position. In addition, critical pay positions require an extremely high level of expertise in a scientific, technical, professional, or administrative field and must be critical to the successful accomplishment of the agency's mission.

In 1998, Congress provided the IRS its own Streamlined Critical Pay (SCP) authority.²¹ Similar to the CPPA, the IRS would be allowed to pay salaries higher than the limit applied to employees in the SES and those in the Executive Schedule Level I. The SCP authority allowed the IRS to quickly hire and retain employees and compensate these employees up to the salary level of the United States Vice President, which in 2017 is \$240,100. The IRS was limited to a maximum of 40 SCP employees on roll at any one time. Significantly, the IRS was not required to seek approval from the OPM and the OMB to hire and determine the salary for individuals hired for SCP positions. For this reason, the authority was considered streamlined.

¹⁹ Tim Greene, *Year in Review 2015: Biggest data breaches of 2015*, Network World (Dec. 2, 2015, 10:12 AM), <https://www.networkworld.com/article/3011103/security/biggest-data-breaches-of-2015.html>.

²⁰ As of January 2017, for employees of Federal agencies with a certified SES performance appraisal system, the maximum salary is \$187,000.

²¹ IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, 112 Stat. 685.

Congress extended the IRS's SCP authority on two occasions, and it eventually expired on September 30, 2013. On several occasions in 2015 and 2016, the IRS Commissioner remarked about the loss of SCP authority, and in an April 2016 congressional hearing noted the loss "has made it very difficult, if not impossible, to recruit and retain employees with expertise in highly technical areas such as information technology."²² The IRS stated that no individuals remained employed with the IRS under the SCP authority. However, IRS management advised that 7 employees previously hired under SCP are currently employed with the IRS after being selected from competitive job vacancy announcements.

However, TIGTA reported that the IRS has not used the CPPA to hire employees.²³ IRS officials have not pursued use of the CPPA because they believed that the expired SCP authority would be restored. Compared to the SCP, the CPPA process requires additional layers of approval and offers substantially less pay flexibility. The SCP authority was delegated to the IRS Commissioner in 2009 and did not need Department of the Treasury, OPM, and OMB approval. While SCP authority is unavailable, use of the CPPA can provide the IRS an enhanced capability in its recruitment efforts. Specifically, the \$207,800 salary available under the CPPA exceeds the \$187,000 maximum that can be offered to career-level Federal executives.

TIGTA further found that the CPPA is not widely used among other Federal Government agencies. Within the Federal Government, a maximum of 800 employees can receive critical pay at any one time, but per the latest annual report from the OPM, in calendar year 2015 only four individuals were hired as CPPA employees. Our research showed that some of the reasons the CPPA was not widely used include the availability of other agency-specific pay authorities, the lengthy approval process, and cultural issues such as paying individuals more than their manager. In their response to our report, IRS management indicated that they will be seeking approval from the OPM and the OMB to use the CPPA to hire three Information Technology executives in the fields of data management, engineering, and architecture.

We at TIGTA take seriously our mandate to provide independent oversight of the IRS in its administration of our Nation's tax system. As such, we plan to provide continuing audit coverage of the IRS's efforts to operate efficiently and effectively and to

²² *Can the IRS Protect Taxpayers' Personal Information, Hearing Before the House Science, Space and Technology Committee, Subcommittee on Research and Technology, 114th Cong. 22 (2016)* (statement of John Koskinen, IRS Commissioner).

²³ TIGTA, Ref. No. 2017-IE-R007, *The Internal Revenue Service Has Not Used Critical Position Pay Authority to Hire Employees* (July 2017).

investigate any instances of IRS employee misconduct or other threats to tax administration.

Chairman Jordan, Chairman Meadows, Ranking Member Krishnamoorthi, Ranking Member Connolly, and Members of the Subcommittees, thank you for the opportunity to share my views.

Mr. JORDAN. Thank you, Mr. George.

Mr. Kutz?

Mr. KUTZ. [Nonverbal response.]

Mr. JORDAN. You're good? That's what I thought.

The gentleman from Georgia is recognized for 5 minutes.

Mr. HICE. Thank you, very much, Mr. Chairman.

It seems like dealing with the numerous challenges and crises at the IRS is a pretty regular thing around here. We've been through hearing after hearing in this committee. And some issues, such as the technology, rehiring of the employees, these things are ongoing. We talk about them often and rightly so. But sometimes there are new issues, even to the IRS, such as this recent debacle with Equifax, that has a lot of us crawling in our skin.

The common thread in all of these issues, regardless of what they may be, is mismanagement. And it's not a management problem. It is a mismanagement problem that has been taking place for years. And, you know, it filters down from the top to the bottom and infects everywhere it goes. And as the chairman stated a while ago, I join in celebrating the fact that finally Commissioner Koskinen is leaving in a few days, and it is my hope that the tarnished agency that he leaves behind will finally get leadership that can correct the problems of mismanagement that are so abundant. I know there are good people, dedicated people, at the IRS. And I don't intend or mean to throw all of them under the bus, or any of those who are dedicated. But the mismanagement has got to come to a stop.

Now, I mention Equifax. This is certainly a word that, at least now, probably everyone in America is aware of, and with good reason. 143 to 145 million individuals who have had their personal information compromised, where it walked right out the front door of Equifax. And the report was widely reported, as we all know, of what happened.

So, Mr. Tribiano, Ms. Garza, let me just begin with you. The end of September, September 29th, the IRS awarded a bridge contract to Equifax after the data breach occurred. I'm trying to wrap my mind around that. Did the IRS know about the data breach when they made this bridge contract?

Mr. TRIBIANO. Yes, sir.

Mr. HICE. Then why in the world did you make another contract?

Mr. TRIBIANO. We heard about the data breach the same as everybody else, when Equifax announced it. I believe it was on September 7th, in the evening. On September 8th, our chief privacy officer convened our incident response team, which is made up of some of our senior leaderships, which is our CIO, our head of cybersecurity, the head of our business units, our chief contracting officer, and then we asked our TIGTA criminal investigators to join us on that day. And we made a call to Equifax to try to determine what exactly was going on down with Equifax.

Later on in the month of September, we sent that same team, IRS cybersecurity, IRS criminal investigators, and TIGTA criminal investigators, down to Equifax for a 1-day visit to determine what happened, what was breached, how that activity happened, and what the impact was where the IRS did business.

Mr. HICE. Are you getting to my question?

Mr. TRIBIANO. I am, sir. I'm explaining the decisions that were made up to the point where we issued—

Mr. HICE. My question: With 145 million whose personal data was breached, why in the world would you go back and have another contract with them?

Mr. TRIBIANO. Well, because they—at that point in time, the systems that housed where we did business was separate from the systems that were breached. And there was no indication and no security risk for where we did and exchanged information with Equifax.

Mr. HICE. So you're saying that there's no fear for the IRS, with 145 million people whose personal information has been breached, you have no concern whatsoever that that may impact the security of the IRS-type information—

Mr. TRIBIANO. No, sir.

Mr. HICE. —of those individuals?

Mr. TRIBIANO. No, sir, I'm not—I didn't say that. What I was referring to was the information exchange where we exchange information with Equifax for our eAuthentication verification. Part of the process that was—we had gone through also at that point in time was to look at the impact of the breach, of the 143 million, the information—

Mr. HICE. Well, Commissioner Koskinen made it—paraphrasing him, he said: It's no big deal for us to have another contract with Equifax because all these people's IDs have been breached already. So if they come to us, they're still breached.

Mr. TRIBIANO. Sir, I can't answer for Mr. Koskinen. What I can—

Mr. HICE. Well, you can answer for the IRS. This is another example of the mismanagement that is poisoning the entire agency, let alone the citizens of this country.

And, Mr. Chairman, my time is running out. But this is inexcusable. And I yield back.

Mr. JORDAN. I thank the gentleman. And it is inexcusable.

Does the gentleman from Virginia wish to be recognized now? Because we can go down—

Mr. CONNOLLY. I thank the chair. And I note that he noted my absence. But—

Mr. JORDAN. I knew you'd be here, brother.

Mr. CONNOLLY. Struggling a little bit to get here, but happy to be here. And I thank the chair.

Mr. JORDAN. The gentleman is recognized.

Mr. CONNOLLY. And I'm sorry I'm out of turn.

The IRS has suffered severe and repeated budget cuts since 2010. My colleague just talked about dysfunctionality at the IRS as if Congress had nothing to do with it. The current IRS budget is 20 percent less than the fiscal year 2010 funding level when adjusted for inflation. The IRS continues to face additional proposed cuts amid heightened demand for services and additional unfunded mandates. These drastic budget cuts have severely weakened the ability of the IRS to fulfill its mission, to enforce our Nation's tax laws, and have not spared any corner of the agency.

Most significantly, between 2010 and 2016, the IRS lost 13,000 employees. The agency's fiscal 2017 budget noted that every addi-

tional dollar invested in enforcement can produce \$6 in revenue. That's not a bad return on investment, if you had bothered to make it. But, of course, Congress has thought otherwise. And the additional and direct savings from deterring tax evasion can be three times that amount, an 18-to-1 return on investment.

However, between 2010 and 2016, the IRS was forced to reduce its enforcement staff by 11,600 full-time employees. That's a reduction of 23 percent. Even Secretary Mnuchin, at his confirmation hearing, expressed his concern about those staffing levels, saying, and I quote: I am concerned about the staffing at the IRS. That's an important part of fixing the tax gap. And also noting: If we add people, we make money. That's not Obama's Secretary of Treasury. That's Trump's.

IRS employees are not the only ones affected by those budget cuts. The American people have felt it as well through diminished customer service, quality, reliability, and, including, of course, longer call waiting times and delayed tax refunds.

I'm most alarmed with the IRS budget constraints impeding the ability of the agency to update its outdated IT systems, delaying more than \$200 million in investments. IRS has legacy IT systems that date back to the Johnson administration. And a September 2017 report by the Treasury Inspector General for Tax Administration notes that 64 percent of the agency's IT hardware infrastructure is beyond its useful life. I will say, parenthetically, I am informed that the good news might be that the Chinese don't know how to hack into COBOL. It's too old.

So IRS software is also shockingly out of date. Thirty-two percent of supporting software are two or more releases behind the industry standard, and 15 percent more than four releases behind. The legacy systems are a catastrophe waiting to happen, and it's critical they be upgraded in order to adequately protect taxpayer data and provide the modern services that taxpayers deserve.

I understand we're not going to have political agreement in this committee about the role of the IRS and its importance, centrality to a functioning government. But, surely, it seems to me we could agree that modernizing IRS' IT infrastructure is necessary to prevent cyber hacks and will improve customer service, customers who are our constituents.

I know our committee, Mr. Chairman, has led the way on IT modernization throughout the Federal Government. It's time we did the same for the IRS.

I yield back.

Mr. JORDAN. I thank the gentleman.

The gentleman from Illinois is recognized for his 5 minutes of questioning. Then we'll go to the gentleman from South Carolina.

Mr. SANFORD. I thank the gentleman. I guess I'd go to you, Mr. George.

Mr. JORDAN. That's all right.

Mr. SANFORD. I'm sorry?

Mr. JORDAN. That's fine. We'll go that way.

Mr. SANFORD. No, no. Which way?

Mr. JORDAN. I think we should probably go—because Mr. Connolly was doing his opening statement.

Mr. SANFORD. Oh, please.

Mr. JORDAN. So next in line is the ranking member. He's yielding. You can't both yield. He's yielding to you first, so you got to take it, man.

Mr. KRISHNAMOORTHY. Okay.

Mr. JORDAN. Then we'll come to Mr. Sanford.

Mr. KRISHNAMOORTHY. Thank you, Mr. Chairman.

I wanted to focus a little bit more on this security clearance tax issue. And, you know, since 2010, as Ranking Member Connolly indicated, IRS funding has been cut. And, in fact, it's seen its funding cut by 17 percent. And it is performing the lowest levels of individual and business audits in a decade. This is at the same time that the GAO has recommended increased coordination between the IRS and the Director of National Intelligence.

Mr. Tribiano, how have these cuts impacted the IRS' ability to effectively work on security issues and coordinate with other agencies? In its 2013 report, the GAO urged the Director of National Intelligence, the Office of Personnel Management, and the Department of Treasury, to evaluate the feasibility of Federal agencies obtaining data on Federal tax debt when evaluating security clearance applicants and monitoring current security clearance recipients. Could you illuminate this a little bit?

Mr. TRIBIANO. Yes, sir. Yes, sir, I can. Any time there's reduced resources within the IRS, our prioritization is always—is making sure that we can deliver a safe and successful filing season. It's important to us to make sure that we can process the returns, get the refunds out the door, and complete that work. The second prioritization is always whatever legislative mandates that are out there that we have to implement. And third is obviously overriding cybersecurity and protecting the data that we have.

Whatever resources we have after that then go into a prioritization for whatever projects we have to work on. The project that you're referring to, being able to provide data, at least the status, as security agencies are doing suitability assessments on possible government employees, took us awhile to work the funds available to start that process.

Now, I can tell you this. We are ready to provide that service. The—what we do is—we don't provide taxpayer data. What we do is we get the name and the information from the projected candidate, and we tell the suitability agency whether or not there's an outstanding liability, not a liability, or there's an issue that you need to contact us about. But we can't release taxpayer data to them. Because a lot of these agencies don't have the built-in ability to protect taxpayer data. So we—

Mr. KRISHNAMOORTHY. Let me interrupt for a second. I'm going to lose all my time. One quick question, which is, you're also—on those tax returns, you would know whether there's income from foreign sources, right?

Mr. TRIBIANO. Um—

Mr. KRISHNAMOORTHY. If they were disclosed to the IRS?

Mr. TRIBIANO. If it's disclosed to the IRS, we would know that. But that's not part of the suitability—my understanding it's not part of the suitability. Suitability is whether somebody has an outstanding liability to the government that the IRS has on record.

Mr. KRISHNAMOORTHY. And if they asked you to provide information about income owed, or debts owed, to foreign actors, or income received from foreign actors, you'd be able to provide that, right?

Mr. TRIBIANO. We are not ready to provide that. And it's a privacy issue, in a sense, that if we release data like that, there has to be protections in place on where it's going and what's being done with it. We just can't release taxpayer data without having the proper authority to do so. So that's why in our suitability we provide whether or not there's an outstanding liability to the Federal Government that the IRS has on record, and that the suitability professional that's working on security clearances takes that into account on whether or not that person would—you know, the information we provide would create an additional risk in their assessment of that individual's background.

Mr. KRISHNAMOORTHY. Okay. You know, make no mistake, in these situations, the IRS is as valuable an intelligence collecting agency as the FBI, in my opinion. I'm from Chicago, and it wasn't the violence or the speakeasies that brought down Al Capone. It was the IRS that nailed him on tax fraud. I'm very concerned that we're now impeding the ability of the IRS to protect us from threats much greater than bootleggers or gangsters.

You know, Mr. Tribiano, has the IRS been cooperating with Special Prosecutor Mueller's team as he seeks to unwind the extent to which Russia has been interfering in our elections?

Mr. TRIBIANO. Sir, I would have no idea. That's outside of my purview. And even if it was in my purview, I wouldn't be allowed to discuss any ongoing investigations.

Mr. KRISHNAMOORTHY. Are you aware of any political appointee, from any agency, seeking to exert pressure on the IRS to not cooperate with Mueller?

Mr. TRIBIANO. Sir, again, I'm not subject to any of those activities within the IRS. You know, I can tell you the IRS has only two political appointees in our entire 80,000 structure. That's the Commissioner of Internal Revenue and the Chief Counsel. That's it. All other employees within the IRS are Federal employees.

Mr. KRISHNAMOORTHY. I'm just really troubled by some of these answers. I just don't think the IRS is doing enough to assess the financial liabilities of those who, you know, seek security clearances. We've heard repeatedly, repeatedly, about people on SF-86 forms with all kinds of entanglements, financial entanglements, of which the IRS should be aware, if it's not already, and I'm just troubled that this information is not being shared across the government.

Thank you, Mr. Chairman.

Mr. JORDAN. I thank the gentleman.

The gentleman from South Carolina is recognized.

Mr. SANFORD. I thank the gentleman.

It seems to me in the back and forth that the—a fairly central question that's emerged has been: Has the cut in funding in IRS resulted in its inability to do things? And so I guess my question to you, Mr. George, would be this: One could argue, I think fairly reasonable, that, you know, the number of agents would impact audit capacity. I don't know that one could argue as reasonably

that some of the cuts in funding with IRS would affect essential management decisions.

And, fundamentally, when you look at this notion of rehiring folks that have been dismissed for a variety of different reasons, fundamentally, you're looking at a management decision rather than a capacity decision. I think that the cross-tabs are here especially interesting. Because you look, and you all had studied this issue back in 2014, and, at that point, roughly 11 percent of the employees that had been dismissed had been rehired. You studied it again in 2017, and 10 percent of the folks that had been dismissed had been rehired. In fact, with the cut in funding, actually, there had been a 1 percent, or almost a 2 percent, increase in lessening the impact of rehires of mismanaged folks.

So it doesn't seem to me that there's any correlation between amount of money, and, again, one's propensity to go out and rehire somebody that was dismissed. Could you give me a little bit further thinking on that?

Mr. GEORGE. I agree with everything that you stated, Congressman. I guess the only thing that could be said in defense of the IRS' actions is that a lot of the rehires are temporary IRS employees. During the filing season, in order to process the millions of tax returns that come in, they bring in people who have had experience doing that in the past.

Mr. SANFORD. But they've had fundamentally bad experience. They have either done wrong, committed malfeasance, not filled out their own tax returns, a variety of different—or they've been dismissive to a superior, they've been insubordinate. Go down the litany of different possibilities. You fundamentally go back and hire somebody like that to increase, quote, capacity? It seems to me you would diminish capacity.

Mr. GEORGE. And it is bad decision-making on their part. Whether it's 400 or whether it's 1, that rehire should not have occurred. We agree completely. We hope the new commissioner will be more proactive in avoiding this in the future. But we will, I can assure you, sir, be on top of this issue from day one.

Mr. SANFORD. Again, Mr. Tribiano, again, you look again at the cross-tabs and the numbers, you got less money, but actually had fewer faulty management decisions by about 1.7 percent in, again, the difference between 2014 and 2017. Your thoughts on that? I mean, fundamentally, again, it speaks on not to money being the issue, but management being the issue.

Mr. TRIBIANO. Yes, sir. So let me first start by making sure I make it clear. We have an incredibly dedicated and talented workforce. And I want to echo what Mr. Chairman was saying—

Mr. SANFORD. Again, that's just saying what I think has been laid out by a variety of different members. I don't think we're questioning the whole of many people who work there. We're questioning the management process that goes out and rehires folks that have been found not worthy to be in the agency that does have capable people in it.

Mr. TRIBIANO. So let me answer your question.

Mr. SANFORD. Yeah.

Mr. TRIBIANO. Because you're associating that with funding. And there is a funding issue. You know, when—

Mr. SANFORD. Wait, wait, wait. Again, the numbers speak for themselves. You had 1.7 percent less in the way of rehiring folks that had been dismissed after you had less money.

Mr. TRIBIANO. Yes, sir. And I'm trying to get to your answer. There's a lot of factors that go into that. When in 2014 TIGTA laid out the recommendations that they wanted the IRS to follow, they implemented those recommendations. It probably caused some of those numbers to drop down. But some of the issues are related to funding, and I don't want to discount that. And I can get to that in a minute. But I can tell you the fundamental difference now between what TIGTA recommended this go-around and what we are going to do to stop this process from happening and what TIGTA called to light for us, is we do a suitability check. Right? So we go by OPM standards that states clearly if somebody had this disciplinary issue, concern, problem, after X number of years, OPM tells you whether or not they're suitable or not suitable, whether you can take that into consideration or can't take that into consideration.

Mr. SANFORD. Wait. If, based on your own filings, you have the words do not rehire on there, and you still go out and rehire, that doesn't seem to me to fit with anybody's standard of common sense.

Mr. TRIBIANO. If it fits within OPM's guidelines about what's suitable—

Mr. SANFORD. Would you define that as common sense?

Mr. TRIBIANO. No, sir. So let me just—if I can just finish this statement so we're all on the same page.

Mr. Chair, can I have a few minutes or a few extra seconds, please, sir?

Mr. JORDAN. Sure. Sure.

Mr. TRIBIANO. Thank you.

So, Mr. Sanford, so what we're changing in that process is two-fold. One is, we do the suitability check and we find that there's an issue or concern or some type of problem with the employee. We now tag that when we send that to the hiring manager so the hiring manager knows there's a suitability issue with that individual. That's what TIGTA's recommendation was. Because that allows us to still meet the requirements within OPM, but notify the hiring manager that there's an issue. That's number one. Number two—

Mr. SANFORD. Let me just let you finish the thought. But since we've already gone over, this is what makes people crazy. In other words, you have just defined this process as being outside the bounds of common sense, and yet you describe a circuitous process by which, supposedly, it checks somebody's box as being okay. But it doesn't pass the common sense test, which I think is the ultimate test.

Mr. TRIBIANO. What I described is the rules that I have to follow in order to meet OPM's requirements, all right, that I cannot operate or expect my people to operate outside of. But if I could just—

Mr. JORDAN. Mr. Tribiano, the point is, was it reduced resources that caused you to rehire someone you had said don't rehire? Was it reduced resources that led to a decision to give Equifax a no-bid contract 30 days after they said 143 million Americans had their data compromised? That's Mr. Sanford's point. And, frankly, any American who looks at that says there's no way reduced resources

caused the IRS to make those decisions. They just made those decisions.

Mr. TRIBIANO. The reduced resources, it affects every part of the IRS. It's not just our revenue agents or revenue officers. It affects our contracting folks. It affects our HR folks. So the last thing I would just like to say, we are seeking—

Mr. JORDAN. And it affects your ability to read. Do not rehire, and yet you rehired them.

Mr. TRIBIANO. Sir, according to—

Mr. JORDAN. I've got to get to the other side here. Finish your thing, then we will get to—

Mr. TRIBIANO. Thank you. I appreciate some leeway there, Mr. Chair.

The one thing that we are requesting to try to get to your common sense approach is we're working with OPM on getting debarbing authority to where if we can—for those items that reach that level that OPM will approve it, that we can debar those type of fractions from being part of the suitability and remove them from that. But that's the context of what we have to work in on some of those rules that are out there. So that debarbing authority can help prevent some of these activities. And, again, I'm sorry that I ran over.

Mr. JORDAN. Gentleman from Virginia.

Mr. CONNOLLY. Thank you, Mr. Chairman.

I guess I'm not surprised Mr. George would say something like I agree with everything you said, when listening to my friend from South Carolina. My friend from South Carolina has executive experience. So do I. I helped run one of the largest counties in the United States. And I can tell you this. At some point, you do less with less.

The idea that there's no relationship—which I think I heard my colleague say—no relationship between resources and functionality, capacity, whatever, is an absurd proposition, and I don't think any sensible American will buy into it. And so we have a smokescreen going on in terms of the dysfunctionality of IRS and decisions made or not made. But where Americans really care is where they intersect with the IRS.

So, Mr. Tribiano, have the cuts that have ensued since Republicans took over the Congress, coincidentally, in the 2010 elections, have the cuts had a material effect on the quality of services by the IRS?

Mr. TRIBIANO. Yes, sir. I would say any reduction in resources—

Mr. CONNOLLY. No, no, no. I'm asking specifically. I don't want to hear general. That's what Mr. Sanford was talking about. I want to hear specifically. Let's test his theory. Has there been a deterioration in customer service at the IRS in the last 7 years?

Mr. TRIBIANO. Yes, sir.

Mr. CONNOLLY. Why?

Mr. TRIBIANO. Because we don't have the resources to perform all the compliance reviews that we need to have. We're down revenue agents and revenue officers, which means we're doing less compliance across the board in all areas.

Mr. CONNOLLY. So, for example, are there fewer audits of tax returns?

Mr. TRIBIANO. Yes, sir.

Mr. CONNOLLY. Why is that a bad thing? I mean, a lot of Americans might welcome the fact that you can't audit me as easily as you once could.

Mr. TRIBIANO. Well, our tax system is built on voluntary compliance. If people don't feel that there's any repercussions from compliance purposes, then there's a tendency to move to—

Mr. CONNOLLY. Isn't there also an equity issue? So people who are cheating don't get caught because you don't have the resources to do the audit to catch them, while law-abiding citizens are paying their fair share of taxes while someone else is getting away with not doing it.

Mr. TRIBIANO. Yes, sir. We've had few criminal convictions from our criminal investigators. And it's not because there's less criminals out there; it's because we have less resources.

Mr. CONNOLLY. Do you remember what the estimate is every year of taxes owed but not collected? Because this committee's had hearings on that subject.

Mr. TRIBIANO. I don't recall it right now, sir.

Mr. CONNOLLY. Does the figure \$350 billion ring a bell?

Mr. TRIBIANO. That sounds—

Mr. CONNOLLY. Isn't that amazing?

Mr. KUTZ. It's \$450, actually.

Mr. CONNOLLY. I'm sorry. Thank you. 450. So we're testing Mr. Sanford's theory here that resources have no relationship to capacity or functionality. \$450 billion of taxes owed, left on the table every year. Now, I don't know, I'm not that good at math, but times 10, that's \$4.5 trillion. You want a down payment on the debt? There's a good way to start without raising anyone's taxes or without cutting vital investments for the United States.

So what about, Mr. Tribiano, has it had a material effect on customer service? Have waiting times gone up when I call the IRS or do people pick up that phone right away on the first ring and whistle while they work?

Mr. TRIBIANO. Waiting times have gone up. This last filing season, though, we allocated more resources that we had to that. So we did a better job in it. But if you talk to anybody that waits for any amount of time on the phone, it's not good enough.

Mr. CONNOLLY. Now, I talked about legacy systems and the lack of an investment. And, Ms. Garza, certainly pipe in if you'd like. What can go wrong with having legacy systems that are 50 years old and hardware and software that's way beyond the industry average in terms of life span in an agency that keeps data on every American in terms of financial data, paying their taxes?

Ms. GARZA. So the aged infrastructure, the risk, which is one of our biggest risks at the IRS, it creates instability in the systems. So you end up having—

Mr. CONNOLLY. But specifically, Ms. Garza—my time is running out—what's the risk we worry about here? If I got—are these systems capable, all of them, uniformly, of being encrypted? Isn't there a privacy concern for Americans that when you're dealing with aging hardware and software, they're more vulnerable?

Ms. GARZA. It depends on where you're talking. We have a perimeter, a secure boundary around our systems, that is very—what we call a very hard shell that protects the systems that are inside.

Mr. CONNOLLY. Yes. I think OPM thought it had one of those too.

Mr. TRIBIANO, did you want to comment on that before my time ends?

Mr. TRIBIANO. I agree with Ms. Garza. I can just tell you that I worry about system failure during filing season. That's my number one concern, because if we can't process returns, refunds aren't going out the door. And that could have a large effect on this economy and taxpayers. So I worry about that, and I also worry about cyber. And everybody in government should be worrying about cyber. But those are my two biggest.

Mr. CONNOLLY. Thank you. Thank you, Mr. Chairman. And I thank my colleague from South Carolina for being willing to test his theory.

Mr. JORDAN. I thank the gentleman from Virginia. With the committee's indulgence, I'm going to let Mr. Sanford respond just for a few minutes. And if the gentleman needs a few more minutes, I'll do the same, and then we'll get to our other questions.

Mr. SANFORD. I appreciate so much my colleague's lightning fast mind. Certain parts of his body may be not moving as fast as they have in the past, but his mind does certainly not fit into that description. I appreciate his intellect.

And I'd just say two things. One is that hyperbole is often the way of politics. And there's a little bit of hyperbole in what my dear colleague is suggesting. And I even seeded the point, which is to his point, I think that if you look at call times, wait times, audits, there are a number of things that could be legitimately impacted by cuts within the IRS. My point in the rehire question—and that's why I differentiated—was to say that doesn't seem to be the case on the rehire question, given the fact that if you look at the numbers in 2014—or rather—yeah, 2014, you had 11.7 percent, in essence, misfire there, and by 2017, it had gone down to 10.65 percent, a drop of a little over a point, even though there was less money. And there seemed to be reverse correlation there. There could be a variety of different factors that play there. But there seemed to be a difference in the cross-tab.

So I'd say that the money begs otherwise. And I would certainly cede the larger point to my colleague with regard to audit and other.

I would also make this point. This isn't a South Carolina perspective. This is a perspective, and, therefore, I would ask you to take it up with Mr. George, that is held by the inspector general. My numbers are simply coming from them. I'm reading off the numbers that I see from the inspector general, and that's why I think it was so instructive. When I walked through my numbers, he said, I could not agree more.

With that, I'd yield back.

Mr. CONNOLLY. Thank you, Mr. Chairman. And I thank my colleague for his clarification. And I didn't have time to go into the rehire issue, and I take his point. I thought Mr. Tribiano was trying to tell us that there are OPM rules about rehiring that they have to go to first. I don't know that Mr. Tribiano adequately ad-

dressed the chairman's point, and your point, Mr. Sanford, but if there was a note saying don't rehire, does OPM still require you to do that? Because that doesn't make sense to any of us.

Mr. TRIBIANO. What OPM requires, sir, is a suitability. There's lengths of time that, after you exceed that length of time, that violation, issue, whatever you want to call it, is no longer part of the suitability check, even though you have a record that says an individual was AWOL from work—or absent without leave, I'm sorry—from work. After a certain number of years, that is not part of the suitability—

Mr. CONNOLLY. My time is going to run out, but let me ask this. So do we need to change the OPM regs? Because it sounds like they are making you do something you would prefer not to do.

Mr. TRIBIANO. I would leave that up to Congress. I would say it would allow me more flexibility to be able to manage the agency differently. And that is why we are seeking that debarment authority, because that would allow us, then, to block out major infractions and say, look, we can use this debarment authority and meet those commonsense standards that Mr. Sanford was referring to.

Mr. CONNOLLY. I thank the Chair for his consideration.

Mr. JORDAN. The gentlelady from the District is recognized.

Ms. NORTON. Thank you, Mr. Chairman. I think it only fair to Mr. George to lay to rest notions that ran throughout this committee for a long time, the false narrative that the Obama White House had directed the IRS to target conservative groups for political reasons. One of my friends on the other side said it was, quote, basically an attempt to muscle anyone who is their political opponent and to use whatever power they have at their disposal to intimidate people they don't agree with. So there was an accusation that's from the top of the government, from the White House, that there was an attempt to, essentially, commit fraud, frankly, with the IRS.

Now, in 2013, TIGTA—and you know that, of course, is the Treasury Inspector General—conducted an audit of the screening procedures used to process applications for tax exempt status, which is what this was all about. Is that not correct, Mr. George?

Mr. GEORGE. That's correct.

Ms. NORTON. In that audit, that audit—and here I'm quoting from it directly—found ineffective management, allowed inappropriate criteria to be developed, resulted in substantial delays, and allowed unnecessary information requests to be issued.”

As a result of that audit, therefore, Mr. George, there is no evidence of political motivation, is there?

Mr. GEORGE. That is correct. And I've stated that from the outset.

Ms. NORTON. Yes, you did. I just want to lay this on this record, given the hullabaloo that went on for at least 2 years on this question.

And, Mr. George, you found absolutely zero evidence of White House direction. Is that not correct?

Mr. GEORGE. That is correct.

Ms. NORTON. On September 27, 2017, TIGTA released a followup report looking at additional material not included in the 2013 audit. Is that not true, Mr. George?

Mr. GEORGE. We did.

Ms. NORTON. This new report confirms that it was both progressive and conservative groups that received extra scrutiny in the application process and that there was no political targeting, that groups with progressive, with occupy, with green energy in their names were pulled for additional scrutiny. They too were subject to extended delays in the processing of their applications, and they too received unnecessary questions.

Is that not true? That whatever was this faulty management sense applied to groups that consider themselves liberal or conservative and groups that consider themselves the opposite, and that both were victims of this management failure at the IRS. Is that not true?

Mr. GEORGE. Yes. But I need to qualify something. As it relates to progressives, I will agree that what you stated was accurate. As it relates to the other groups, especially the ones that you deemed conservative, we, neither in 2013, nor in 2017, made that decision to determine the political leaning of any group.

Ms. NORTON. I don't understand what you're saying. You understood the political leaning of the left-wing groups but not the right-wing groups?

Mr. GEORGE. Well, only because progressive, and through the work of my chief auditor on that matter, who happens to be Mr. Kutz, who, with your permission, I'd like to defer to—

Ms. NORTON. I'd be pleased to hear from Mr. Kutz.

Mr. GEORGE. —elaborate on that.

Mr. KUTZ. Yeah. Congresswoman, we didn't label anyone anything in either report. But the criteria—

Ms. NORTON. Well, you know, I'm using quotation marks here. I'm not labeling them. I'm using quotation marks on the report: progressive, occupy, green energy.

Mr. KUTZ. Organizations with those terms in them did receive delays similar to the first report and did receive unnecessary questions. It wasn't the same magnitude. But there was some that did. That is a fair statement.

Ms. NORTON. In fact, none of the procedures in place at the time of the inappropriate criteria are still in place at the IRS today. Is that not correct?

Mr. KUTZ. They stopped using the be-on-the-lookout listings in June of 2013.

Ms. NORTON. My only reason for going over this again—and I thank you both for this audit—is that it did not seem conceivable to some of my friends on the other side that there was management disarray, that it had to be political. And I will say when you go so far as to say that the White House itself is directing civil servants to look into groups based on their political background, that is so serious that it needs to be laid to rest right here. And I very much appreciate your coming forward. I very much appreciate the second audit. I very much appreciate that. I believe the work you have done, which is objective, and always has been, as Mr. George has said—and he's been before us at length on this matter, now with you, Mr. Kutz, also involved—I believe we can put this matter to rest, this shameful period in the history of this committee.

And I yield back.

Mr. JORDAN. Mr. Kutz, the 2013 audit that reflected what was going with Tea Party groups had a BOLO list, right?

Mr. KUTZ. That's correct.

Mr. JORDAN. And the BOLO list said this: 912 Tea Party conservatives. Those were the targeted terms. Is that correct?

Mr. KUTZ. Only Tea Party was on a BOLO list, but the other ones, IRS confirmed, were being used to pull cases for that bucket.

Mr. JORDAN. Those groups received extensive scrutiny. They were asked about what they were praying, what kind of prayers were given at those meetings. Isn't that correct?

Mr. KUTZ. There were seven unnecessary questions that we looked at.

Mr. JORDAN. Very, very unnecessary privacy invading kind of questions.

Mr. KUTZ. Right. Ninety-eight organizations in the first report received these unnecessary questions.

Mr. JORDAN. And almost all of those were conservative groups, correct?

Mr. KUTZ. We did not assess that.

Mr. JORDAN. No, they were. I saw the list. They were almost all conservative groups. We've all seen the list. Everyone knows it was conservatives.

The audit that the gentelady's referring to went clear back to 2004, and some of those groups that received extra scrutiny deserved it. ACORN-leaning groups deserved it, right? Wasn't that audit from 2004 to 2013?

Mr. KUTZ. The second audit covered the period 2004 to 2006.

Mr. JORDAN. Yeah. A completely different context.

Mr. KUTZ. Correct.

Mr. JORDAN. Some of those groups probably deserved scrutiny. And just the argument itself, oh, because liberal groups were also targeted, somehow it's okay? Nobody should have been targeted by the IRS. But we know in 2010, 2011, and 2012, the inspector general, the investigation we asked Russell George and you guys to do in 2013 about that, that was totally focused on conservative groups. And now to say, oh, a second audit that went clear back to 2004 somehow justifies that, oh, no, everyone got caught up in this is just complete baloney, and everyone understands that.

Now, to the issue at hand today, four people at the IRS were rehired who had been terminated or resigned. Is that—four people who had had some kind of violation with 6103. Is that right?

Mr. KUTZ. They willfully failed to file their Federal tax returns. That's correct.

Mr. JORDAN. Was there anything relative to looking at information regarding 6103—violating 6103, examining stuff that they shouldn't have been able to look at?

Mr. KUTZ. Yes.

Mr. JORDAN. Wasn't there four employees who had been involved in that?

Mr. KUTZ. Those were additional employees that had unauthorized access to taxpayer records, yes.

Mr. JORDAN. And were those four people who had unauthorized access to taxpayer records, were they terminated or did they resign, or how were they let go from the IRS?

Mr. KUTZ. One of the two, and then they were hired back. They either would have been terminated or they left before they got—you know, in the Federal Government—

Mr. JORDAN. So they were in the process of getting fired—

Mr. KUTZ. Right. That's correct.

Mr. JORDAN. —for fraud for looking at taxpayer information they weren't supposed to look at, right?

Mr. KUTZ. For substantiated unauthorized access to taxpayer records, yes, sir.

Mr. JORDAN. So they were terminated and resigned, and they got rehired?

Mr. KUTZ. Yes.

Mr. JORDAN. Okay. Now, do we know anything about these people, these four people?

Ms. NORTON. Mr. Chairman—

Mr. JORDAN. What division did they work in?

Ms. NORTON. Mr. Chairman, are you using an additional 5 minutes? Because you used it both to try to refute what I said without giving me any ability to respond, and now you've gone on to the second issue. I mean, how is this subcommittee being run, sir?

Mr. JORDAN. No. I have not taken my 5 minutes. I have not—I did my opening statement. I have not taken any 5 minutes of questions.

Ms. NORTON. So you believe you're within 5 minutes in what's happening here now?

Mr. JORDAN. This is my 5 minutes.

Ms. NORMAN. Go ahead, Mr. Chairman.

Mr. JORDAN. The last time I checked, every member was entitled to 5 minutes. I've not had 5 minutes.

Ms. NORTON. Well, then be our guest, sir.

Mr. JORDAN. Well, it's not about being your guest. I happen to get the privilege—

Ms. NORTON. I made an inquiry. You say you're taking 5 minutes you did not have. I was not aware of that. I was not aware of that, that you did not have—

Mr. JORDAN. Well, if we could stop this time now. The way it normally works is I gave Mr. Connolly an opening statement—

Ms. NORTON. I know how it works, sir.

Mr. JORDAN. —Mr. Krishnamoorthi an opening statement, Mr. Meadows an opening statement, I took an opening statement. So we had four opening statements, ranking member and chairman. I have not taken 5 minutes of questioning. And now I'm taking my 5 minutes of questioning, and somehow you say that's wrong? That's how it always works.

Ms. NORTON. Go ahead.

Mr. JORDAN. If you want the chairman of the committee not to have 5 minutes of questioning, then—

Ms. NORTON. I didn't say that, Mr. Chairman, so don't put that in my mouth.

Mr. JORDAN. Well, then why the interruption?

Ms. NORTON. Because I didn't—it seemed to me that you were over your 5 minutes. I did not realize you had not had 5.

Mr. JORDAN. Well, before you talk—

Ms. NORTON. You have spoken often this afternoon, therefore I did not realize you had not had your 5 minutes.

Mr. JORDAN. I've spoken to recognize the gentlelady for D.C.

Ms. NORTON. Well, obviously, I'm not talking about that.

Mr. JORDAN. Okay.

So tell me about these four people. They were terminated and resigned. Do we know what area they worked in?

Mr. KUTZ. Actually, all 213 that were rehired in the second report were in the Wage and Investment Division. And they were positions like data transcribers, contract representatives, tax exam technicians. So even though some were temps, they had access to taxpayer records and sometimes were dealing with taxpayers.

Mr. JORDAN. And what was the timeframe when they were working and got terminated? What timeframe?

Mr. KUTZ. They were rehired between January 2015 and March 2016. They had been terminated before that period.

Mr. JORDAN. And had they worked—the four that I'm concerned about who had access to unauthorized information, who accessed unauthorized information, were they here during the targeting time, during 2010, 2011, 2012, 2013?

Mr. KUTZ. I'd have to get back to you for the record on that.

Mr. JORDAN. Do we know if any of them had contact with Lois Lerner or anything like that?

Mr. KUTZ. We don't know that, no.

Mr. JORDAN. You didn't look at that?

Mr. KUTZ. We did not look at that, no.

Mr. JORDAN. It seems to me that's something we should look at.

Unfortunately, my time is out, even though I lost a minute in a debate about something that shouldn't—we shouldn't have debated, so I'll come back and take a second round.

But we will now go with the gentlelady from Illinois I think is recognized next.

Ms. KELLY. Thank you, Mr. Chair.

Under the IRS Restructuring and Reform Act of 1998, Congress granted IRS the authority to hire a limited number of individuals to staff critical, technical, and professional positions in the agency at salary levels greater than general schedule rates. Congress intended this critical pay authority to help the agency attract highly qualified individuals with advanced technical expertise who might otherwise be unavailable for government service at normal Federal salary levels. The IRS used its authority from Congress to fill a total of 168 positions from 1998 to 2013, many of which were positions in critically important areas such as information technology and cybersecurity.

Mr. Tribiano and Ms. Garza, does critical pay play a role in making Federal Government jobs more appealing to highly qualified technical individuals who might be interested in public service but could be earning a much higher salary in the private sector?

Mr. TRIBIANO. Yes, ma'am, it does. And to emphasize, it's streamline critical pay. And the streamline portion of that is really important, because what that allows us to do is to go out into the

private industry, find somebody that's on the cutting edge of technology, let's just say in cybersecurity, and have them sitting in the chair working for the IRS in a matter of weeks than the months, 4 to 6 months that it could take going through the normal Federal hiring process, and then be able to offer them a salary that maybe it doesn't meet industry standards, but offers them something that makes it worthwhile for them coming onboard.

And that's a key aspect—and I'll let Ms. Garza get into this—it's a key aspect to getting, again, individuals that have a cyber background, architectural background, engineering background, those technical skills. And I can tell you a lot of these private sector individuals would love to come into government if it was easy, right, in that streamline process, add value for the amount of years that that authority was in place for and then go back to the private sector.

Ms. KELLY. Can you tell me how big the gap is between Federal pay and a private sector, just a guesstimate?

Mr. TRIBIANO. Well, I'm a little outdated. I've been in Federal service for a few years now, but when I was in the private sector, it was a—it's a substantial pay reduction to enter Federal service. You—when I came in, I came in for the factor to serve, and that was worth taking less money and less benefits in order—in order to serve.

Ms. KELLY. Oh, I didn't know if you were going to say something.

Mr. TRIBIANO. I was going to yield it to Ms. Garza for any input on the technicality.

Ms. GARZA. So on the tech—on the streamline critical pay, some of the areas that were of great benefit was cybersecurity. We had critical pay, streamline critical pay that we got off the street that was extremely very technical, very good, ran our CSIRC operations, and he's since left the IRS. Also, in our engineering and architecture, we had a very good group of streamline critical pay that really helped shape the direction that we were going from a technical perspective. They've all left the IRS at this point.

Ms. KELLY. In testimony before this committee last year, IRS chief information officer Terence Milholland stated, and I quote: "Making progress at a faster pace on transitioning our legacy systems will require significant sustained additional resources in the IT area."

Would those resources include human resources, such as individuals qualifying for critical pay?

Ms. GARZA. Yes. I think that's probably our biggest risk is the human resources that we have lost over the last several years.

Ms. KELLY. I'm the ranking member on the IT Subcommittee, and my chair, Congressman Will Hurd, has often talked about what can we do to work out something public-private or some kind of system where maybe someone from the private sector is on loan to us, you know, for a little while. What do you guys think should happen or any ideas, besides pay?

Mr. TRIBIANO. The streamline critical pay authority that we had in place that expired that we placed back in our 2018 budget allowed us that capability, allowed us to bring in private sector individuals for shorter periods of time, and then they can go back out

into the private sector. Or in some cases, some of them love Federal service and compete openly for Federal positions.

I think if we continue down that path and concentrate on the streamline portion along with the critical pay, but to me it's both pieces of that, because there is an authority—there's an authority that OPM has out there, and I think TIGTA cited in their report, it's not streamlined, but it does allow critical pay. The issue is, and TIGTA recognizes in their report, although I think there's a few more, out of the 800 positions, at the time TIGTA did their analysis, there was only four of them that were able to get through the process. I think it's a little bit greater than that now. And we initiated that process to try to see what it takes to offer that. But streamline critical pay, again, allows us that authority to get them in the chair quickly and then to be somewhat competitive with salary, but not matching the private sector comparison.

Mr. KUTZ. Yeah. The OPM program is not as attractive either. It only offers \$207,000 of pay versus the streamline critical pay was \$240,000. So there's two ways to deal with this, either give IRS streamline critical pay or strengthen this OPM program that has 800 positions available that only four are being used governmentwide.

Ms. KELLY. I'm out of time, so thank you.

Mr. JORDAN. I thank the gentlelady.

The gentleman from Wisconsin is recognized.

Mr. GROTHMAN. I'll pass for now.

Mr. JORDAN. The gentleman from Iowa is recognized.

Mr. BLUM. Thank you, Mr. Chairman. Thank you to our panel for being here today. I appreciate it very much.

Mr., is it Tribiano?

Mr. TRIBIANO. Yes.

Mr. BLUM. Are you responsible for the hiring and firing decisions in the IRS?

Mr. TRIBIANO. I oversee the human capital function within the IRS.

Mr. BLUM. You oversee.

Mr. TRIBIANO. Yes, sir.

Mr. BLUM. I've learned all kind—I'm from the private—I'm from the private sector. I've learned all kinds of new terms here. You oversee it.

Mr. TRIBIANO. Yes, sir.

Mr. BLUM. So are you responsible for it or not?

Mr. TRIBIANO. I am responsible for the human capital aspect, yes, sir.

Mr. BLUM. The human capital aspect. I was reading your bio here. It said, before joining the USDA, you worked in the private sector—

Mr. TRIBIANO. Yes, sir.

Mr. BLUM. —with multiple high-growth organizations.

Mr. TRIBIANO. Yes, sir.

Mr. BLUM. The question I have for you, one of the many is, in the private sector, would they rehire people the way the IRS does? People that may have been under investigation, people that may have been under investigation for tax fraud, people whose per-

sonnel file said, do not hire? How would the private sector—your experience been, how would they handle that?

Mr. TRIBIANO. They go through a—

Mr. BLUM. Any difference?

Mr. TRIBIANO. Yes, sir, there's a difference. They go through a process. I don't think—in my experience, and again, this is my experience, there's less rules and boundaries that you have to operate in within that. So—

Mr. BLUM. In the private sector?

Mr. TRIBIANO. Yes, sir. In the private sector, there's less boundaries that box you into certain scenarios. So it's a streamline process.

Mr. BLUM. So we have more boundaries, more rules, more regulations than the public sector, safe to say, in hiring and firing, and we get worse results.

Mr. TRIBIANO. I would say—

Mr. BLUM. Not saying the employees are bad, but we're rehiring up to 10 percent of people that have been terminated from the agency prior? Is that true? Is that true?

Mr. Kutz, is that true?

Mr. KUTZ. It's 10 percent of the former IRS employees that were brought back. That's correct.

Mr. BLUM. That—and were they terminated with cause or did—that 10 percent, did they leave on their own accord?

Mr. KUTZ. Well, they either were terminated or they were going to be terminated and left before.

Mr. BLUM. And we—I literally, I'm from the private sector, can't believe this. We're going to hire back 10 percent of people we were going to terminate. Does that strike you as an as incredible? Mr. Kutz.

Mr. KUTZ. Yeah. They didn't have to do it. Okay. And our issue was the selecting officials, the person we think should get the information to make the decision. I don't think it prevents that from happening. There are suitability issues at the end, but I don't think that's our big issue. Our issue is early in the process, we believe a selecting official should have the information to make a decision. That's where the bad decisions are being made. In fact, there's not a decision. You're sitting there with candidates as a selecting official and you don't know the derogatory information that you just described in making your choice.

Mr. BLUM. Does that make sense to you that they don't know that?

Mr. KUTZ. That's why we made the recommendation that they change the process.

Mr. BLUM. Mr. George, TIGTA issued a report this past July, correct, on the problem of IRS rehiring employees previously fired by the agency? This isn't the first time a report like that's been issued. Is that correct?

Mr. GEORGE. That is correct.

Mr. BLUM. That report documented, that you issued, an instance when the IRS rehired somebody who literally on their personal file it said, do not hire this person. Can that possibly be correct?

Mr. GEORGE. That is correct.

Mr. BLUM. I mean, it sounds like not a good situation to me. It doesn't sound like something—private sector is not perfect. It doesn't sound like something that would happen in the private sector.

Did the IRS adopt your recommendations, Mr. George, on this topic?

Mr. GEORGE. They have in the—in principle in the most recent report. Again, we issued a previous report in 2014 on the very same issue. They said they were going to adopt—

Mr. BLUM. They did—I'm sorry, they did in principle, is that what you said?

Mr. GEORGE. In the current one, they're in process of—

Mr. BLUM. They're in the process of adopting them.

Mr. GEORGE. Correct.

Mr. BLUM. And how is that process going? Is there a sense of urgency there?

Mr. TRIBIANO. Yes, sir. We will have that—

Mr. BLUM. As evidenced by what?

Mr. TRIBIANO. As evidence as we are going to have it implemented and running in October when we start our filing season hiring to bring back the part time, as you called them, but we call them seasonal employees. So we took all the TIGTA recommendations that came through and we are implementing them right now and will have them done. We are on target to have them done in October.

Mr. BLUM. You know, I represent the eastern part of Iowa. It's kind of a blue collar district. And I go up there and talk to the factory workers. And I tell them, you know, if you were terminated by this company or going to be terminated, do you think you'd ever get rehired again at the same company? I mean, that would be a laugh line.

Can you see why people out in the real part of this country think what's going on here is nonsensical, why there needs to be change, why we need to drain the swamp? These are the things that I don't even want to repeat, because it's embarrassing. Do you understand that? I mean, do you hear that?

Mr. TRIBIANO. Yes, I—I understand. I understand what this looks like. And we are doing everything possible right now to put those things—to put the recommendations from TIGTA, plus some additional things, like I said, about seeking debarment authority from the OPM to be able to put more controls in place to stop this from happening.

Mr. BLUM. But you said previously more controls and more regulations, I think you said, penned you in. And now you want to put more regulations—

Mr. TRIBIANO. No, sir. These are not controls that come from OPM. I'm referring to internal controls, management controls that we administer at the IRS to be able to stop this type of activity, based on the recommendations from TIGTA, from happening. These are recommendations that TIGTA came forward with that we are adopting and implementing. And I'm stating that we will have that in place in October to be able to monitor, to provide the—what Mr. Kutz talked about, which is giving the hiring manager the suitability and the issues with prior—

Mr. BLUM. This will be in place next month?

Mr. TRIBIANO. This will be in place at the end of October, yes, sir.

Mr. BLUM. Mr. Chairman, can we follow up to make sure this is in place by the end of October? Because these are the very reasons why there's so little confidence in the Federal Government out there in the real world.

So I would say time is of the essence, and I took forward to you doing that.

Mr. TRIBIANO. Yes, sir.

Mr. BLUM. I yield back, Mr. Chairman, the time I do not have.

Mr. JORDAN. I thank the gentleman for his good questions.

The gentelady from New Jersey is recognized.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

A quick yes or no from you, Mr. George and Mr. Kutz, the IRS has a lot of improvements to do. Is it moving in a right direction?

Mr. GEORGE. I would say that, especially in the wake of the 2013 issues and a few of the other ones that occurred after that, that they are taking quite seriously the issues that we have uncovered.

Mrs. WATSON COLEMAN. And would it be very helpful if they had the resources they needed to get to modernize their equipment, their IC equipment, et cetera, would that certainly be of help?

Mr. GEORGE. The IRS, if it had additional resources, could do more.

Mrs. WATSON COLEMAN. Thank you, sir. I am going to take us off into an entirely different, but I think vitally important area here. As the House prepares to vote on a budget resolution this week to begin the process for enacting massive tax cuts, I want to take this opportunity to question the witnesses here today about the proposed drastic changes to our Tax Code.

Since unveiling their tax reform plan last month, Republicans have tried to claim that their proposals to cut taxes for the wealthiest Americans will somehow benefit the hardworking middle class families. But even the Treasury Secretary himself called his party's bluff, stating that it is, quote, "very hard," unquote, not to cut taxes for the rich, and that repealing the estate tax, quote, "disproportionately helps rich people," close quote. In fact, many of the people who stand to gain the most from the Republican tax plan are President Trump and the Cabinet.

Would any one of the witnesses here disagree that repealing the estate tax, which limits the tax breaks granted to the wealthiest .2 percent of Americans, disproportionately helps rich people as the Secretary conceded? That's a yes or no.

Mr. TRIBIANO. No, ma'am. Tax policy is the purview of Treasury and Congress and the administration.

Mrs. WATSON COLEMAN. You don't know the answer to the question?

Mr. TRIBIANO. Ma'am, we are tax administration. Laws get passed and we administer them.

Mrs. WATSON COLEMAN. Thank you. In fact, 11 members of the Trump administration are included in the .2 percent. According to the Center for American Progress, repeal of the estate tax will position heirs to those 11 Cabinet members and the President's family to gain almost \$3.5 billion. Just to put that number into context,

that \$3.5 billion is about one-third of IRS's fiscal 2018 budget. Is that correct? Yes or no.

Mr. TRIBIANO. Yes, ma'am.

Mrs. WATSON COLEMAN. Thank you. That doesn't sound like helping middle class working families and hardworking men and women.

The Republican plan also proposes changes to the tax on the income of passthrough businesses like LLCs, which are not subject to the standard corporate income tax. The Republican plan would cut the top rate on this income from 39.6 percent to 25 percent. This is 10 percentage points lower than the top rate imposed on individuals, and would not benefit the 86 percent of passthrough businesses that already pay a tax rate of 25 percent or lower.

Again, this would profit only millionaires who the Center on Budget and Policy Priorities finds, quote, receive about 80 percent of the tax cuts in 2018. Again, this doesn't sound like helping the middle class or the working class families that make up this middle class, but it does indeed directly help individuals in the Trump administration. The President stands to receive a tax cut of almost \$23 million from this proposal, while senior advisor Jared Kushner, his son-in-law, could receive a cut of \$6 to \$17 million, and Secretary of Education Betsy DeVos, a cut of \$3 to \$5 million. Does that sound like benefiting the middle class or working families to anyone here? I don't think so.

But that isn't all. Republicans want to eliminate the alternative minimum tax under which President Trump was forced to pay \$31 million in taxes he could have otherwise avoided in 2005. Of course, that was well over a decade ago, and we don't know how much this tax has cost the President since giving his refusal to release his tax forms.

Mr. Tribiano, this is something that you can answer, I think, is President Trump under audit by the IRS?

Mr. TRIBIANO. Ma'am, I cannot discuss any audits or anything of that nature. And I actually wouldn't know who's under audit. It's not part of my responsibilities.

Mrs. WATSON COLEMAN. Would you know if he actually paid any taxes?

Mr. TRIBIANO. Ma'am, I would have no idea.

Mrs. WATSON COLEMAN. Is there anything that stops an individual under audit from releasing his tax returns or her tax returns? Would you know the answer to that question?

Mr. TRIBIANO. No, ma'am, I do not know.

Mrs. WATSON COLEMAN. Would anyone know the answer to that question? Is there anything that stops an individual who is being audited from releasing his or her tax returns? Does anyone know the answer to that question?

Mr. GEORGE. My understanding is there is no restriction on—

Mrs. WATSON COLEMAN. I didn't think so.

We already know that the Republican plan will benefit the Cabinet members, but if the President wants anyone to take seriously his claim that their tax plan won't benefit them at the expense of working men and women and their families, then he can prove it just once and for all by showing America the money he has and releasing his own tax forms.

And with that, I yield back. Thank you, Mr. Chairman.

Mr. JORDAN. I thank the lady.

The gentleman from Wisconsin is recognized.

Mr. GROTHMAN. Sure. A couple of questions.

Mr. Tribiano, how many employees in the IRS?

Mr. TRIBIANO. Give or take pending on filing season, close to 80,000 employees.

Mr. GROTHMAN. Eighty thousand, wow. And in every year, in an average year, how many are terminated?

Mr. TRIBIANO. I don't have that number. Sir, I can get that for you, though.

Mr. GROTHMAN. Any of you inspector general guys have a stab at that one?

Mr. GEORGE. Actually no, we don't have that information, sir.

Mr. TRIBIANO. I can get that for you and get back to you.

Mr. GROTHMAN. Why don't you tell me how many were maybe terminated right in between. Is there a probationary period?

Mr. TRIBIANO. Yes, sir. All Federal employees have a probationary period when they enter Federal service of 1 year.

Mr. GROTHMAN. Well, give me two statistics. Give me the number who made it to their probationary period and the number, once you get by the probationary period, who are let go every year. Can you do that?

Mr. TRIBIANO. Yes, sir, I can.

Mr. GROTHMAN. Now we're going to—we got a little explanation for our listeners back home. Could somebody describe the Taxpayer Protection Program? It's supposed to be something designed to strengthen catching suspicious tax return filers. Are you familiar with that program?

Are you guys doing anything—you must be doing—right now we're looking at tax reform, and there are feelings that, particularly on some large refund returns, particularly earned income tax credit returns, that people are lying and getting big refunds. Are you familiar with that problem?

Mr. TRIBIANO. Mr. George?

Mr. GEORGE. We are familiar with that problem and are quite concerned, sir. The instructions for the Earned Income Tax Credit are more than 30 pages, single-spaced, double-sided. It's an extraordinarily difficult credit to implement, both from the perspective of the taxpayer and then from the perspective of the IRS to ensure that the information they're receiving is accurate.

What we're especially concerned about, sir, is many of the instances in which we find that people are inappropriately receiving that credit as a result of returns that have been prepared by professional tax preparers. So people who are supposedly trained and have the expertise to do this are doing so in a way that gives people credit or credits that they're not entitled to.

Mr. GROTHMAN. Is that the fault of the preparer or is that the fault of garbage in, garbage out?

Mr. GEORGE. We have concerns that it's both, sir.

Mr. GROTHMAN. Okay. You said it's an overly complicated credit. And I can't imagine why anybody would pass a law requiring 30 pages of instruction, but apparently people around here did, and

that's one of the problems the IRS has. It is not bad IRS employees, it's bad professional employees. Go ahead.

Mr. TRIBIANO. I'm sorry, sir, but in that arena as well, and I would like to echo what Mr. George said, we can't do the verification upfront. We don't have the authority to do that, so the return gets processed through the system and we have to pick it up under compliance to see if there's an issue. We've been asking for and seeking correctable error authority that would allow us to match up when those returns come in during the processing cycle, match up the data that's on there with some of the Federal Government records and make those corrections while we're processing the return. Because if it goes in, it has to be picked up under compliance in order for us to—

Mr. GROTHMAN. And compliance means—what is that, another word for audit?

Mr. TRIBIANO. I mean, an audit or review. Now, the PATH Act helped a portion of that, and it allows us that capability to try to match stuff up before we release refunds, but correctable error authority will help us go further in that arena.

Mr. GROTHMAN. If you had to guess percentage wise how many of those returns—say not ones where you get a little credit of \$45 bucks or something, but say credit's in excess of \$2,000—what percent do you think are fraudulent or they have errors in them?

Mr. KUTZ. Well, the overall improper payment rate for Earned Income Tax Credit is about 25 percent, but they don't all meet the criteria you just described. There could be some small ones and other types in there. But the overall has been steadily in the mid-20s for over a decade.

Mr. GROTHMAN. If you had any other Federal program and 20 percent of the credits going out the door were wrong, would you continue that program?

Mr. KUTZ. It's not the only one. There's other credits that IRS have very high improper payment rates also.

Mr. GROTHMAN. Which other ones are those?

Mr. KUTZ. The child credit and the education credit both have very high im—

Mr. GROTHMAN. Well, we've got a Ways and Means Committee looking at that. Maybe those are three things we ought take out of there, because we're looking for ways to simplify these returns and get some cuts on the middle class.

So could you give me a little or could you guys forward to me for me to forward to the Ways and Means Committee a little more information on the education credit and how you think people are cheating on that one, the child care credit—child credit or child care credit?

Mr. KUTZ. Yes. The child credit. I don't know the full name of it, but it's a child credit, yes.

Mr. GROTHMAN. Okay, the child credit. And particularly the Earned Income Tax Credit, because there's some people who want to, you know, do a tax reform around here, we might as well make sure we get it done right. We might as well make sure, by the time we're done with this, we don't operate any slipshod program. Thank you very much.

Mr. JORDAN. The gentlelady from Illinois is recognized. I'm sorry. Oh, I'm sorry.

Representative Lawrence, the gentlelady from Michigan is recognized.

Mrs. LAWRENCE. Thank you. I'll charge that to your head, not your heart.

Mr. JORDAN. I apologize.

Mrs. LAWRENCE. Since 2010, the actions of the congressional Republicans have drastically reduced both the IRS budget and your workforce. The IRS has lost over \$1 billion in annual funding and 18,000 employees since 2010. During that the same time, the IRS workforce has steadily increased. Over 10 million more tax returns are filed annually.

This year, IRS is cutting its seasonal workforce during tax filing season by 2,000 people. Is that correct, Mr. Tribiano?

Mr. TRIBIANO. Yes, ma'am. That sounds close to being accurate.

Mrs. LAWRENCE. How does cutting 2,000 workers during your tax season affect the quality of customer service that taxpayers expect when they call the IRS?

Mr. TRIBIANO. Well, it would definitely impact our ability to provide, you know, taxpayer service. This area is a little bit outside of my purview. It really falls in our service and enforcement side, the deputy commissioner that oversees that activity.

Mrs. LAWRENCE. And who on this panel that can tell me how this is going to impact what the taxpayers will receive from the IRS? And then you talk about quality in the error rate and fraud rate. If you're having an increasing number of tax returns with significant budget reductions, who in here is going to tell me that the IRS has any chance of being effective?

Mr. GEORGE. Congressman, they are directing people to their on-line irs.gov website to assist in areas, where in the past people could go to taxpayer assistance centers and/or other IRS-funded entities. In addition, they also refer people to volunteers to help complete their tax filing obligation.

Mrs. LAWRENCE. And that system is fully up and running?

Mr. GEORGE. It has been. Sitting out the volunteer aspect of it and, of course, the website is. But not everyone has access to computers and the internet, and not everyone can get to one of the centers or to one of the locations where the volunteers are. So there's no question a cut in resources, in the terms of human relations and employees, will affect the length of time and the ability of taxpayers to receive assistance.

Mrs. LAWRENCE. How does—does the IRS have anymore plans for staff reduction?

Mr. GEORGE. I'm sorry, I—

Mrs. LAWRENCE. Does the IRS have any further plans to reduce your workforce, pursuant to the President's executive order that directs all agencies to create a workforce reduction plan?

Mr. TRIBIANO. Ma'am, we've been under a workforce reduction plan for the last 5 years, and each year, we steadily lose our total head count. Our—our—we are a people-driven agency. And our funding, the majority of our funding goes to the workers within the IRS. So when we have reduced funds, we hire less in certain areas. And we try to focus the hiring to the greatest need, but we also

have some constraints on our appropriation language. I know that's not this committee, but there's constraints on that that state what type of appropriations could be used for what type of work. And that also causes some imbalances in our workforce, but we've been slowly reducing our size.

Now, I can tell you, ma'am, you mentioned about 18,000 employees, and I think that's right. It's between 16,000 and 18,000, when you count fluctuations and seasonal. I don't think we're ever going to get back to that and I don't know if there's a need to, but there is a need for more work. And we don't have enough staff to be able to adequately service the taxpayers, to have the right compliance levels out there, to generate revenue, and then to support that with our management and administrative interior support that helps support that activity. So I don't think there's anybody within the IRS that says we should go back up to the levels we had. I don't think that's reasonable.

Mrs. LAWRENCE. I have a quick question. So if this new Tax Code is passed, has any of you been at the agency long enough to go through tax change or Tax Code process? Doesn't that include the need for additional staff to implement, train, and to enforce new Tax Codes?

Mr. GEORGE. At the sides, ma'am, not something as comprehensive as being discussed. But to their credit, the IRS has demonstrated an uncanny ability to implement tax law changes, even at the very final portion of the tax—

Mrs. LAWRENCE. So, sir, if I can quote you, you're saying that if the proposed tax change program passed, at your reduction workforce plan, at your reduced—at your reduced level that you are at now, without the manpower to ask individual questions, sending them to a website, you are confident that the IRS will just absorb this and the world will continue, and you will provide the quality expectation that our taxpayers expect?

Mr. JORDAN. The gentleman can respond. Mr. Tribiano.

Mr. TRIBIANO. No, ma'am. I am not—no, I'm not confident. It depends—we haven't seen the language at the IRS, because, again, policy is not what we're about. We're about administration of that policy.

Mr. JORDAN. In—

Mr. TRIBIANO. But if it's complicated, it will definitely have an impact, right, because we have to be able—if we're changing the actual structure of a tax return, that has a big impact on our IT systems. And I can let Ms. Garza talk about that. But there are implications of that. And anything that's retroactive has a big impact on our ability to administer or try to get the systems.

Mr. JORDAN. The gentlelady from New York is recognized.

Mrs. LAWRENCE. I just want to thank the chair. He didn't remember my name, he gave me an extra minute. Thank you.

Mr. JORDAN. Anyone from the great State of Michigan, even though I'm from Ohio, will do that.

The gentlelady from New York is recognized.

Mrs. MALONEY. Thank you so much, Mr. Chairman.

And I'd like to ask Mr. Tribiano, last month, Equifax announced it had suffered one of the largest data breaches in history, compromising the personally identifiable information of more than 145

million Americans. That's almost half the country now has their Social Security number and their date of birth compromised. And while that in itself is troubling, what is perhaps even more troubling is the fact that hackers roamed the Equifax network for more than 2 months without detection. And the company waited weeks, absolutely weeks to alert the FBI after learning about the breach. This is simply unacceptable. I will hope that the chairman of this committee would commit to holding a hearing on this matter.

But today, I want to delve deeper into another fact of the issue: The IRS's contract extension with Equifax while waiting for a ruling on a bid protest. And I'd like to ask you, Mr. Tribiano, is it correct that the IRS extended a current contract with Equifax after the breach was revealed? How much was the bridge contract worth? What was the length of the bridge contract? What services were covered by IRS's contract with Equifax?

Mr. TRIBIANO. Yes, ma'am. Let me start with the bridge contract itself was for three 3-month increments. When the reports came out that it was \$7.3 million, that was for the whole 9 months. The intent of the bridge contract was to be able to cover the time period from the first 3 months, which was worth about \$1.3 million. And the intent of that was to cover the time period between GAO either upholding the protest or not upholding the protest and our ability to get the new vendor online and up and running. So we had to have a bridge between those two contracts.

Mrs. MALONEY. And what services were covered by this contract?

Mr. TRIBIANO. EAuthentication services. This is where a taxpayer would provide certain data that we would verify with Equifax to be able to verify the identify of the taxpayer. I mean, I'm simplifying—

Mrs. MALONEY. Okay. And it's my understanding that after the breach was announced, IRS personnel were sent to Equifax to assess whether IRS data was compromised. And, Ms. Garza, can you describe that assessment and its findings?

Ms. GARZA. Yes. So we reached agreement with Equifax to do a 1-day visit, followed by a 3-day visit, which we did conduct last week. On that first-day visit, the primary objective was to look to see if any IRS data had been compromised and also, working partnering with TIGTA investigations, look at what data had been—

Mrs. MALONEY. Was it compromised?

Ms. GARZA. No. No IRS data had been compromised.

Mrs. MALONEY. Well, that's good to hear. But I'm concerned that, shortly after the breach, IRS entered into a short-term bridge contract with Equifax. Shortly after reports of this sole-source bridge contract, I sent a letter to Chairman Gowdy and Ranking Member Cummings requesting a hearing on this \$7 million no-bid contract.

Ms. Garza, can you elaborate on that contract? And why did IRS enter into it? Despite the rising concerns with the laxity of Equifax and their identity and theft protection to be hired to then verify protection further at the IRS is deeply concerning to me.

Mr. TRIBIANO. Yes. I'll start, if I can.

Mrs. MALONEY. Okay.

Mr. TRIBIANO. And then I'll turn it over to Ms. Garza for some of the technical aspects of that.

So when I originally was discussing this earlier, and I forgot who asked me the question, I was trying to lay out the pattern that happened. So right now, we had a sole-source contract with Equifax as our sole vendor in this arena for a long time. We re-competed that contract, and that's the one that they protested, to bring other—other companies into the fold and have them all for their service as well. Experian met the qualifications from a technical perspective and put in a lower bid than Equifax and they won the contract. So now we have competitiveness. When GAO put the stay out there, and knowing that GAO has up to 100 days to decide on whether or not the protest—

Mrs. MALONEY. Well, my time is almost up, and I sort of know the whole line of circumstances. Can I ask, given the circumstances of the bid protest and the data breach, were there any other options the IRS had, besides extending the contract with Equifax and temporarily discontinuing the services that were being provided to consumers?

Mr. TRIBIANO. Well, ma'am, we could have discontinued the service or we could have provided the bridge contract. What you heard from GAO when they talk about the authority to be able to—a higher authority level that you could override a protest or start the process of implementing something in the middle of a protest, we didn't reach that level to be able to exercise that option.

Mrs. MALONEY. My time has expired. I have further questions and will submit them to the record.

Mr. JORDAN. Or if you want, we can do a few more—

Mr. KUTZ, the 200—was it 213 who were fired and then rehired, 213?

Mr. KUTZ. Correct. Fired or left in lieu of termination.

Mr. JORDAN. Okay. Yeah. When they were rehired, there has to be some kind of interview process, something that goes on. In that interview process, does the IRS say like, oh, I see you were employed at the IRS before and you were let go, do they get into that questioning?

Mr. KUTZ. They may get to it in suitability, but they don't get to it when the selecting official is making the decision to make the offer. That person does not have the derogatory information in front of them, which is our primary concern here.

Mr. JORDAN. But someone at some time knew this person was fired and now they're back in front of me seeking employment at the very agency that fired him?

Mr. KUTZ. Yes. It's in IRS's database called ALERTS. It's right in there.

Mr. JORDAN. Okay. So four people were fired for looking at information, private taxpayer information that they were not entitled to look at, right?

Mr. KUTZ. Correct.

Mr. JORDAN. They were fired for that. They are now back in front of the IRS wanting a job, and someone says—has that information in front of them and says, you were fired for looking at confidential taxpayer information and now you want to come back and work for the Internal Revenue Service. And somehow that gets moved along to the next level, where supposedly they don't have this information. Is that accurate?

Mr. KUTZ. No. I think the bigger issue is they don't have that information. And it's the selecting official who has people who are best qualified, they get into their desk, and that person does not have the information you just described. I think that's what we want to happen here. We want the person making the hiring decision to know the derogatory information.

Mr. JORDAN. But someone in some point in the process did have that information?

Mr. KUTZ. They may have it after the offer's been made. But if it's a suitability issue, as Mr. Tribiano's described, they can forget about it if it's more than 5 years old or 6 years old or there's other circumstances where it doesn't matter. And that's what he's talking about—

Mr. JORDAN. How can it not matter that people were accessing confidential taxpayer information, were fired for it, are now back in front of the IRS asking for a job, and are going to have access to that same kind of confidential taxpayer information?

Mr. KUTZ. Because the OPM process for the suitability forgives certain things after a certain period of time. It's mitigated by time.

Mr. JORDAN. And there's no obligation on the part of the person seeking employment to give that information?

Mr. KUTZ. Well, when it gets to that point, you can't say—you can't reverse it. You could have reversed it earlier in the process, that's why we want it earlier in the process. When the official is making the selection, you can do it then. So they need to do it earlier in the process.

Mr. JORDAN. Absolutely, absolutely crazy.

Ms. GARZA, let's go back to the previous questions. The 145 million, 143 million, that number that Equifax announced, what relationship does that 143 million have to people who file with the IRS, if any? What's the overlap? How does that relate to the Internal Revenue Service?

Ms. GARZA. We don't know what that overlap is. We went in and just looked at what data elements had been compromised.

Mr. JORDAN. I mean, it would have to be substantial, because there are 330 million people in the country. There's probably 150-, 160 million taxpayers, right?

Mr. KUTZ. Of course. There's an assumption that, you know—

Mr. JORDAN. Eventually, every single taxpayer.

Ms. GARZA. A good portion of those are, you know, directly related to taxpayers.

Mr. JORDAN. Yeah. Maybe all of them. It would have to be so.

This is announced, that there's this major breach, 143 million Americans, and 1 month after it's announced, you do this no-bid contract to Equifax. Is that right?

Mr. TRIBIANO. Yes, sir.

Mr. JORDAN. Okay. And, Ms. Garza, you testified before the Ways and Means Oversight Subcommittee that you had no knowledge of the short-term contract prior to it being made public.

Ms. GARZA. What I testified was that I did not know it was signed on the 27th.

Mr. JORDAN. Why would you not know that?

Ms. GARZA. It was not an IT contract. It was actually administered from the IA, identity assurance office.

Mr. JORDAN. Yeah. But you're the chief information officer, right? You're in charge of all this stuff.

Ms. GARZA. The contract was for professional services for credit bureau, and so the folks that were involved in establishing that contract deemed that it did not have to come to my organization for review.

Mr. JORDAN. Any services or equipment that are used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, reception, information again. That's the definition of information officer. I just find that hard to believe you had no idea that this was happening.

Ms. GARZA. It was—I knew that there was a problem with original Equifax and there had been a protest. But I was not involved in any discussions about what was to occur, how we were going to mitigate the situation.

Mr. JORDAN. But you obviously knew there was a contract with Equifax at the time that they announced the breach, that the IRS had a contract with Equifax?

Ms. GARZA. Yes.

Mr. JORDAN. Yeah. And you knew it was up for renewal?

Ms. GARZA. Yes.

Mr. JORDAN. And it gets renewed without your knowledge?

Ms. GARZA. I did not know the specifics. And I was not involved in the conversations that went to making that decision.

Mr. JORDAN. So this is—again, this is what drives Mr. Hice—the first member to question today, this is what drives Americans crazy, we didn't know that we were rehiring people who committed fraud. We didn't know that we had 213 folks who have been terminated who are now back in front of us and we're going to rehire them, and they looked at confidential tax payer information in a way that they weren't supposed to. And we didn't know, even though we had a contract with Equifax, even though we knew it was up for renewal, even though they announced 143 million Americans had their data compromised, we didn't know and I had no part—it's like this pass—this is what drives them crazy.

So again, let's hope it all clears up when Mr. Koskinen is stepping down and we get someone new to run the place.

The gentlelady from D.C. is recognized, if she'd like an additional few minutes.

Ms. NORTON. Thank you.

I wanted to stay to ask a question. And by the way, I'm not sure how the IRS is going to know anything if we keep cutting their budget. But I'm concerned for Federal employees that work at the IRS, because there have been reports of really vitriol well beyond—I think this question is for you, Mr. George, because I think that this was reported to the IG.

It's clear that IRS employees have had increase, in fact, a marked increase in the number of threats. Apparently, there have been 1,556 investigations into possible threats since the beginning of the year. And there have been prosecutions, apparently. I was very concerned that commercial trucks—and I must indicate that these reports say that the Trump Hotel is very close to the IRS, so some of this may be people from God knows where protesting

that or they are protesting the IRS. So it makes this a volatile shop—spot.

The report, and these are news reports, said that commercial trucks, Ubers, and taxis are not being checked by canine and magnetic wands, and that they are parked, allowed to park and idle between the hotel and the IRS building. Employees say that they were particularly concerned, because all of us may have read about this as well, about the arrest in May of a man from Pennsylvania who brought a whole cache of weapons and 90 rounds of ammunition into the Trump Hotel parking lot. So he was somehow caught, I'm gratified to say. He pleaded not guilty, but then he—and, of course, after arrest, pleaded not guilty, but while he was out after that awaiting trial, prosecutors said he posted dangerous antigovernment messages on social media. Now, look, I'm a First Amendment absolutist, but when prosecutors say that there may be a crime here, I do pay attention.

I wonder, before something really serious happens, Mr. George, whether or not there ought not be an investigation of what is a very unusual number of threats against Federal employees who they say make it difficult to do their work. I'm looking to you for advice. Sometimes they don't even know who to complain to, the police or the IG or the FBI. Would an investigation help to put to rest where the problem is and what should be done about it?

Mr. GEORGE. Congresswoman, that's a very important and timely question. And, in fact, we are currently working with the Internal Revenue Service's security division on that very issue. And so I don't know whether we will be able to report publicly, because we don't want to endanger—again, further endanger lives of IRS employees or other Federal workers or private citizens who are there, but we would be happy to brief you and the chairman and the committee on what we find in a nonpublic setting.

Ms. NORTON. That's very engaging—very encouraging, Mr. George. I would take it, though, that after a report—I mean, after an investigation, some kind of report that the public could see would be appropriate. We're not asking for reports of who struck John or what should be done about it, but it would be reassuring, just as I am reassured by knowing you are indeed involved in an investigation, at the end of that investigation, surely there is something that the IG's office could say so that, for example, people would know that various, various steps have been taken, et cetera. Is that not possible?

Mr. GEORGE. I will certainly take that under advisement. And I'm certain there would be a possibility for us to issue a somewhat redacted version that wouldn't endanger security and methods and sources, but nonetheless, inform the public and the IRS employees about what actions have been taken.

Ms. NORTON. Thank you very much, Mr. George. I appreciate that kind of initiative.

Mr. GEORGE. Certainly.

Mr. GROTHMAN. [Presiding.] Thank you very much.

I'll give just one question, maybe you guys aren't qualified to answer, because it's really not along the same vein as the other questions today. But I'll try to ask you, Mr. Tribiano. As you know, we're working on a major tax law change, which may or may not

come to fruition, it probably will, but there are people here who want to make sure it's done by the end of the year and make it retroactive on the 2017 returns. Are you familiar with how the IRS handles tax changes passed in November or December, retroactively?

Mr. TRIBIANO. Sir, I haven't been with the IRS for a major tax change like this. I can tell you, though, talking to my colleagues—and I know Ms. Garza can add some additional comments on this—talking to my colleagues about this, it depends on the complexity of what's in this law or what gets passed. And if it's retroactive, it does cause us concerns because we don't have enough time internally to make the changes to the systems, to educate our phone assistants and the people that would—the influx of people asking the tax questions. Plus, our partners out there, the software companies that produce the software that a lot of Americans use, need time also to be able to build into their software whenever these changes—

Mr. GROTHMAN. Maybe I should ask Ms. Garza. What happens if there's even a minor change in December, because we've done that before, retroactive changes?

Ms. GARZA. So it really depends on the change and what exactly is being changed. One of the things that is probably the most difficult to implement is, if you change what we call the record, core record layout, which is kind of how the return is structured, it has all of the business rules associated, and those are all programmed. So if you're going, you know, from a 2-page 1040 return to a 1-page or a postcard type, that's significant work.

On the other—on going back in time making it retroactive, that is very difficult because we have to go back to our systems. Depending on how the language is, you know, how far back do we have to go and how do we apply that to things that have already occurred?

One of the things that I would suggest is, and I'm sure it's probably already happening, is that we engage with your staffs to figure out what's the best approach that we can use to still get you to where you want to get, but make it in the simplest way.

Mr. GROTHMAN. You're going to have to come up with new instructions for the returns, right?

Ms. GARZA. Yes.

Mr. GROTHMAN. New instructions presumably for the Schedule C, presumably for the Schedule E, and many other schedules, right? How quickly in days do you think you can turn that around? I mean, these are not obscure schedules.

Ms. GARZA. So the development of the schedules actually comes out of our W&I organization, so I don't know how long that would take for them to do. I do think it's an extended period of time.

Mr. GROTHMAN. Why don't you—I'm a little bit afraid they're not doing it. I just hope that you're coordinating with the Ways and Means Committee. Because I used to do taxes and we used to make fun of Congress when they changed things for the prior year. But that's even on minor things where you, you know, can contact the licensed tax preparers. I would—I'll talk to the Ways and Means folks, but they should be, you know, dealing with you guys on a routine basis.

But while we hope—I asked some questions, I hope we get answers in the future. You can tell we're very disappointed with, you know, some of the ways some of your people are hired. I mean, it's to the point of bizarre that you'd rehire somebody who was fired before, particularly—it's obvious it causes just tremendous amount of public lack of confidence in the IRS.

But I would like to thank you all for appearing before us today. The hearing record will remain open for two more weeks for any member to submit a written opening statement or questions for the record.

If there is no further business, I see I'm all alone here, without objection, the subcommittee will stand adjourned.

[Whereupon, at 4:20 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

HOCR Hearing - Ongoing Management Challenges at IRS**Representative Hice**

With the recent Equifax data breach, there is more and more personally identifiable information available for criminals to use when filing fraudulent returns.

1. Can the IRS create a "refund lock" option for taxpayers' Future State personnel accounts? The application could allow taxpayers to permanently apply any refund they might receive toward the following year's tax payment - until they went back and expressly "unlocked" it. This would render their information useless to criminals trying to file fraudulent returns. Taxpayers could theoretically leave their refund locked all year and then if they want their refund at filing season, they simply go back into their accounts and unlock them for a short period of time. Once the refund is in the bank, they relock their accounts.

We are currently exploring options, which would allow taxpayers the ability to lock their personal online accounts, similar to what you describe. The options we are considering, however, are not focused on whether there is a refund. The focus is providing the taxpayer an option to self-initiate an account lock, if the taxpayer is concerned about the potential for tax related identity theft, suspected fraudulent activity, or whether their account will be used to e-file a false return.

One solution we're exploring is an online account lock/unlock feature. This would allow taxpayers to self-initiate a lock of their online account and trigger processes to validate (re-authenticate) their account. This option would prevent additional online transactions and provide self-initiated protections to the online account.

Another solution we're exploring is an at-filing lock/unlock feature. This would allow a taxpayer to initiate a lock to prevent the submission of an electronically filed (e-File) return. In addition, the lock will prevent the electronic acceptance of the return if the taxpayer, spouse or dependents' social security number is presented on an electronically filed return while the lock is in place. The premise is to provide taxpayers control of their account with the IRS and prevent e-filing activity until they are ready to file their return. When the taxpayers are ready to file, they will unlock their accounts and provide return information to electronically file their returns.

Both solutions are in the very early stages of development. We will continue to consider ways to address this issue.

Note that current law allows taxpayers to elect to apply their tax refund to the following tax year's tax liability through the estimated tax process. We monitor these estimated tax payments to identify potential fraudulent activity.

2. Is this a viable idea, and is this something that the IRS is considering?

A refund lock option that would permanently prevent refunds unless the taxpayer unlocks the account is not a solution we are pursuing because:

- Under Internal Revenue Code (IRC) section 6611, we are required to pay interest on overpayments. Under this section, when a taxpayer files a timely, processible return, interest generally accrues on overpayments that are not refunded within the later of 45 days of filing or 45 days from the due date of the return. Therefore, the overpayment may accrue interest depending on when a taxpayer “unlocks” their refund, potentially creating additional cost to the government unless the taxpayer opts for a credit election or the refund is used for a payment offset. Furthermore, statutory changes would be required if this option is intended to apply to any type of tax other than income tax. Under IRC section 6402(b), income tax overpayments can be credited to the subsequent year’s estimated tax payments, but IRC section 6402(a) provides no generalized right for taxpayers to carry overpayments forward against future projected tax liabilities. Under the current statute, an election to credit an overpayment to the subsequent year’s estimated tax must be made every year. No interest is allowable on an overpayment that is credited to a subsequent year’s estimated tax.
- A refund lock that requires taxpayer action to have a refund issued rather than being applied to the following year’s tax liability would likely only help a small segment of taxpayers and would burden a larger segment of taxpayers who rely on actually receiving their refunds every year. For example, taxpayers claiming refundable credits or in lower income brackets are more likely to need refunds at the time of filing and would not choose to freeze or carryover refunds to a future year. Though a refund lock could be helpful to taxpayers who make estimated payments, only about 16 million of 140 million returns filed this year included estimated tax payments.
- A refund lock places additional burden on taxpayers to track their refunds and increases the risk of unclaimed refunds over time.

We believe the solutions we are exploring, described in the response to question one, are better options to protect taxpayers from tax-related refund fraud. We take our responsibility to protect sensitive data seriously and continuously evaluate solutions in a changing environment to ensure the integrity of the tax system. We are committed to doing all that we can to prevent the payment of fraudulent refunds, pursue the perpetrators, and assist the victims.