

STATEMENT OF

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HEARING ON

IRS REFORM:

PERSPECTIVES FROM THE NATIONAL TAXPAYER ADVOCATE

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

MAY 19, 2017

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Chairman Buchanan, Ranking Member Lewis, and Members of the Subcommittee:

Thank you for inviting me to testify today regarding the operations of the Internal Revenue Service and to offer some suggestions to improve the responsiveness of the agency to U.S. taxpayers.¹

In a summary of its blueprint, *A Better Way*, the House Republicans' Tax Reform Task Force describes "A Service First IRS," noting that "[a] simpler, fairer tax code will require a simpler, fairer IRS with one mission: Put the taxpayers first."²

I am delighted this subcommittee is planning to take a hard look at IRS priorities and operations. Between 1988 and 1998, Congress passed three significant pieces of legislation to improve tax administration and strengthen taxpayer rights.³ It has now been nearly two decades since the final of those bills was enacted, and tax administration has changed in many ways. Perhaps the most significant changes are the increasing use of automation by the IRS and the increasing use of the Internet and other digital services by taxpayers. During this time, we have also had a chance to assess the impact of the changes made by the landmark IRS Restructuring and Reform Act of 1998 (RRA 98). Most have stood the test of time well, but some require tweaking.

In my testimony today, I will make the following points:

1. Reforms to IRS operations will be most successful if Congress consults widely on its proposals, engages IRS employees, and provides the IRS with adequate funding.
2. Sound tax administration should be predicated on foundational principles, and the most important principle is respect for taxpayer rights.

¹ The views expressed herein are solely those of the National Taxpayer Advocate. The National Taxpayer Advocate is appointed by the Secretary of the Treasury and reports to the Commissioner of Internal Revenue. However, the National Taxpayer Advocate presents an independent taxpayer perspective that does not necessarily reflect the position of the IRS, the Treasury Department, or the Office of Management and Budget. Congressional testimony requested from the National Taxpayer Advocate is not submitted to the IRS, the Treasury Department, or the Office of Management and Budget for prior approval. However, we are providing courtesy copies of this statement to both the IRS and the Treasury Department.

² House Republicans' Tax Reform Task Force, *A Better Way for Tax Reform*, <http://abetterway.speaker.gov/assets/pdf/ABetterWay-Tax-Snapshot.pdf>.

³ See Technical and Miscellaneous Revenue Act, Pub. L. No. 100-647, § 6226, 102 Stat. 3342, 3730 (1988) (containing the "Omnibus Taxpayer Bill of Rights," also known as TBOR 1); Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996) (also known as TBOR 2); Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 726 (1998) (Title III is known as "Taxpayer Bill of Rights III" or TBOR 3).

3. To become an effective 21st century tax administration, the IRS must place greater emphasis on taxpayer service.
4. The IRS has not implemented, has narrowly interpreted, or has not effectively implemented many taxpayer protections enacted by Congress.
5. RRA 98-style “joint oversight hearings” would give Congress better insight into the IRS’s strategic and operational plans, promote dialogue among Congress, the IRS and interested stakeholders, and help ensure the tax-writing and appropriations committees coordinate their expectations and approaches toward IRS operations.
6. Lastly, I summarize key provisions in the Blueprint and offer some suggestions for the subcommittee to consider as it converts the Blueprint’s concepts into more detailed proposals.

I. General Observations: Reforms to IRS Operations Will Be Most Successful if Congress Consults Widely on Its Proposals, Engages IRS Employees, and Provides the IRS with Adequate Funding.

The Blueprint, by its nature, is a general document. It is not clear yet what specific changes its authors contemplate or how far-reaching the changes may be. As one who participated in the crafting of RRA 98 as an outside practitioner and who witnessed much of its implementation after I became the National Taxpayer Advocate, I offer three threshold observations:

- **Significant Changes Should Be Thoroughly Vetted**. The IRS is a large and complex agency, and as such, well-intentioned proposals can often have unintended consequences. Therefore, it is important to vet significant changes thoroughly before implementing them. Leading up to RRA 98, for example, Congress created an independent commission to review the then-existing practices of the IRS and recommend ways to modernize the agency’s efficiency and productivity while improving taxpayer services.⁴ The commission, led by then-Senator Bob Kerrey and then-Congressman Rob Portman, was bicameral and bipartisan, and it employed significant professional staff. The commission spent a full year studying IRS operations and developing its recommendations. Among other things, the commission interviewed more than 500 individuals, worked closely with the Treasury Department and the IRS to gain a comprehensive understanding of IRS operations, and held 12 days of public hearings.

After the commission completed its work in June 1997, the House Ways and

⁴ Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* (June 25, 1997), <http://www.house.gov/natcommirs/report1.pdf>.

Means and Senate Finance committees held numerous hearings of their own before eventually passing the legislation. I am not advocating for an undertaking of that magnitude. But I do think it's important that the tax-writing committees take the time to talk with Treasury and IRS officials and outside stakeholders and to study IRS operations carefully before enacting legislation that would make major changes to the agency. Such consultations will maximize the chances for success while minimizing the risks of unintended consequences.

- **Employee Morale Affects Performance**. The performance of the IRS as an agency is dependent on the performance of its workforce. The agency's roughly 83,000 employees do everything from interacting personally with taxpayers, to writing tax forms and instructions, to programing computer code.⁵ It is therefore essential that they be engaged and fully committed to their jobs. Because of several well publicized incidents over the last few years, the IRS has been a widely criticized agency, and many IRS employees feel besieged. Morale is low. I am concerned that a congressional review of IRS operations with an eye toward reforming parts of the agency may be interpreted as further disparagement.

In fact, it should not be interpreted in that way. Congress has an essential and constructive role to play in reviewing and updating the laws that enable effective tax administration. That can be good for employees as well as taxpayers. Based on conversations with Chairman Buchanan and the majority and minority staffs, I believe the subcommittee plans to work in a bipartisan manner to improve tax administration. I encourage Members to speak with sensitivity and avoid furthering the perception of many IRS employees that IRS reforms would be a "punishment" of sorts.

- **High Quality Taxpayer Service Cannot Be Achieved Without Adequate Funding**. Each year, the IRS receives more than 100 million telephone calls, roughly five million taxpayer visits in its Taxpayer Assistance Centers (TACs), and some ten million pieces of correspondence from taxpayers responding to proposed tax adjustment notices.⁶ To fulfill the "Service First" objective, the IRS requires sufficient funding to hire and train enough employees to respond to each of these contacts and to modernize its technology systems so that employees

⁵ IRS, *2016 Data Book* at 68 (Table 31). This count includes total full-time, part-time, and seasonal personnel employed by the IRS during FY 2016. The number of full-time-equivalent positions used to conduct IRS operations was approximately 78,000 during FY 2016 and 76,000 as of the end of FY 2016. *Id.* at 67 (Table 30).

⁶ IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot, IRS Enterprise Total* (final week of each fiscal year for FY 2008 through FY 2016) (showing telephone call volumes exceeding 100 million in every year); IRS Wage & Investment Division, Business Performance Review 7 (1st Quarter – FY 2017, Feb. 9, 2017) (showing 5.6 million visits in FY 2015 and 4.5 million visits in FY 2016); IRS, Joint Operations Center, *Adjustments Inventory Reports: July-September Fiscal Year Comparison* (FY 2007 through FY 2016) (showing annual taxpayer correspondence volumes regarding potential adjustments has ranged from a low of 7.3 million letters to a high of 11.8 million letters and has averaged around ten million per year).

have access to complete and accurate information when they are communicating with taxpayers. Since fiscal year (FY) 2010, we estimate the IRS's annual appropriation has been cut by nearly 20 percent on an inflation-adjusted basis.⁷ At the same time, the agency has faced an increasing volume of tax returns, the requirement to implement the Patient Protection and Affordable Care Act,⁸ and a surge in stolen identity refund fraud. High quality taxpayer service cannot be provided on the cheap. If we want the IRS to provide better service, we have to recognize it will require the resources to do so.

For purposes of today's hearing, I will keep my observations and recommendations very general. Since I became the National Taxpayer Advocate in 2001, I have made more than 100 legislative recommendations in my annual reports to Congress, many of which have been introduced in bills sponsored by Members of Congress. Some have been designed to fill gaps in RRA 98 or to update taxpayer protections. I would be happy to discuss some of the specific proposals I believe would improve tax administration in response to your questions today or with the committee's staff in the coming months.

II. Sound Tax Administration Should Be Predicated on Foundational Principles – and the Most Important Principle Is Respect for Taxpayer Rights.

I believe it is important to build organizations based on foundational goals and principles. In the case of a tax collection agency, the overriding foundational goal is to maximize voluntary tax compliance. Voluntary compliance is far preferable to enforced compliance because audits are expensive on a per-return basis and often don't even uncover much of the noncompliance on a tax return.

In working toward the foundational goal of maximizing voluntary tax compliance, I believe the most important foundational principle is respect for taxpayer rights. Taxpayer rights deserve priority emphasis for two reasons. First, it is simply the right thing to do. I think of the requirement to pay taxes as a "social contract" of sorts between the government and its taxpayers. Taxpayers agree to pay a percentage of their annual incomes to the government for the common good, and in exchange, the government agrees to make the process as fair and burden-free as possible.

Second, there is empirical data that suggests building trust with taxpayers – which requires respecting their rights – enhances voluntary compliance. In 2012, my office

⁷ IRS funding is down in dollar terms by 7.5 percent since FY 2010. In FY 2010, the agency's appropriated budget stood at \$12.1 billion. For FY 2016, its budget was \$11.2 billion. Based on the Consumer Price Index measure of inflation, costs have risen by 12 percent over the same period. Bureau of Labor Statistics, *Consumer Price Index – Urban (CPI-U)* (reflecting inflation from March 2010 through March 2017). Thus, the inflation-adjusted reduction is nearly 20 percent. There are multiple measures of inflation, so the use of a different measure may produce slightly different results.

⁸ Pub. L. No. 111-148, 124 Stat. 119 (2010).

conducted a significant research study to try to tease out factors that influence tax compliance (or non-compliance). The study focused on sole proprietors, because IRS “tax gap” studies have shown sole proprietors are responsible for the largest single portion of unreported income. This was the first study that has attempted to link an individual’s responses to survey questions to the IRS’s estimates of the individual’s tax compliance on filed tax returns. The study found that trust played an important role in tax compliance. More specifically, a taxpayer’s self-reported level of trust in government, the tax laws, and the IRS correlated with the taxpayer’s level of tax compliance.⁹ The study suggests that gaining the trust of U.S. taxpayers is not only good government, but it makes for effective tax collection as well.

In 2014, the IRS took a significant step toward acknowledging the value of taxpayer rights. It adopted the Taxpayer Bill of Rights (TBOR) – something I had been recommending since 2007.¹⁰ These rights include (1) the right to be informed; (2) the right to quality service; (3) the right to pay no more than the correct amount of tax; (4) the right to challenge the IRS’s position and be heard; (5) the right to appeal an IRS decision in an independent forum; (6) the right to finality; (7) the right to privacy; (8) the right to confidentiality; (9) the right to retain representation; and (10) the right to a fair and just tax system.¹¹

In 2015, Congress codified these ten rights as part of a provision requiring that the Commissioner ensure IRS employees receive training and act in accord with them.¹² These were very important developments. The challenge now is to ensure the TBOR is not merely aspirational but is incorporated into the very ethos of the IRS – and explicitly into its business practices.

In our Annual Report to Congress, we now publish a Taxpayer Rights Assessment based on performance measures that I believe help show how well the IRS is complying with the TBOR.¹³ These measures are organized under each of the ten TBOR rights. In many cases, the performance measures I identify currently exist, and where they do, we have included data. In other cases, we identify measures we believe the IRS can and should start to track. The intent of this assessment is to give the IRS as well as

⁹ National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2, at 1-70 (Research Study: *Factors Influencing Voluntary Compliance by S Small Businesses: Preliminary Survey Results*).

¹⁰ See National Taxpayer Advocate 2007 Annual Report to Congress 478-489 (Legislative Recommendation: *Taxpayer Bill of Rights and De Minimis “Apology” Payments*); see also National Taxpayer Advocate 2013 Annual Report to Congress 5-19 (Most Serious Problem: *Taxpayer Rights: The IRS Should Adopt a Taxpayer Bill of Rights as a Framework for Effective Tax Administration*).

¹¹ See IRS, *Taxpayer Bill of Rights*, <https://www.irs.gov/taxpayer-bill-of-rights>.

¹² See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, § 401(a), 129 Stat. 2242, 3117 (2015) (codified at IRC § 7803(a)(3)).

¹³ See National Taxpayer Advocate 2016 Annual Report to Congress 42-47 (Taxpayer Rights Assessment: *IRS Performance Measures and Data Relating to Taxpayer Rights*), https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16_Volume1_TaxpayerRightsAssessment.pdf.

Congress and the tax community more information regarding the IRS's performance. Some of the measures can be refined, but ultimately, I believe it would be helpful to incorporate some of these measures into IRS executive and senior manager performance plans so that IRS managers are evaluated, in part, on their efforts to uphold taxpayer rights.

One important point to note is that U.S. taxpayers already have a significant number of statutory protections as a result of legislation enacted by Congress. Initially, I viewed the TBOR primarily as a vehicle for making those rights clearer. As I have watched the rollout of the TBOR and have had an opportunity to reflect on its impact and its role in sound tax administration, however, I have come to believe that the tax system would benefit from placing greater emphasis on the ten TBOR rights and using them as a foundational document for tax administration.

In that regard, a significant limitation of the statutory provision reciting the ten TBOR provisions is that it does not use the term "Taxpayer Bill of Rights" and it does not explicitly state that taxpayers have any of these rights. By its terms, the provision requires only that the Commissioner "ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights."¹⁴ This leaves the practical impact of the provision murky. If a taxpayer were to assert that the IRS had violated one of the TBOR rights, it is open to question whether a court would find the rights are legally cognizable.

I was not a party to the conversations that gave rise to this provision. My guess is the IRS expressed concern that if the law provided that taxpayers possess these rights, it is not clear how courts would interpret them and it could make it harder for the IRS to win cases. If that was an expressed concern, I find it unpersuasive. Courts are regularly called upon to interpret general provisions, and they do so by balancing competing interests. For example, there are many provisions that are phrased in general terms in the Bill of Rights in the U.S. Constitution. Yet the courts have shown they are quite capable of defining the parameters of those rights. The courts have held, for example, that the First Amendment right to free speech does not extend to falsely shouting "fire" in a crowded movie theater, or to spreading knowingly false and defamatory information about another individual, or to publishing obscene material.¹⁵

As with the Bill of Rights, some of the TBOR provisions are more general than others. For example, the courts would initially have to decide how to interpret the "Right to Quality Service" and what a violation of that right would mean. But that does not mean courts are incapable of doing so. A court might rule that the fact a taxpayer had to call

¹⁴ IRC § 7803(a)(3).

¹⁵ See, e.g., *Schenck v. United States*, 249 U.S. 47, 52 (1919) ("The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre"); *Garrison v. Louisiana*, 378 U.S. 64, 75 (1964) ("[T]he knowingly false statement and the false statement made with reckless disregard of the truth do not enjoy constitutional protection"); *Roth v. United States*, 354 U.S. 476 (1957) (concluding that obscene material is not protected by the First Amendment).

the IRS several times and wait for an extended period on hold would not affect the outcome of a case, yet it would consider the “Right to Quality Service” as relevant if a taxpayer can demonstrate that he called and spoke to an IRS employee and the employee put notes in the file promising to take actions that the IRS never ended up taking. As with any new law, there would be an initial period of some uncertainty as courts begin to interpret it. And if the IRS loses a few cases because it has violated the TBOR, the agency would realize immediately that it has to modify its procedures to ensure the violations do not continue.¹⁶ In other words, it would promote accountability. Ultimately, I believe a clear statement that taxpayers have the ten fundamental TBOR rights would provide a stronger foundation for effective tax administration, and I am confident the courts would interpret those rights in a manner that is fair and reasonable. To assist them, the tax-writing committees could provide guidance in the accompanying committee reports.

Accordingly, I recommend that Congress:

- Enact the Taxpayer Bill of Rights as a freestanding provision in the Internal Revenue Code.
- In addition, or in lieu of the above recommendation if Congress decides not to go that far, direct the IRS to incorporate the foundational role of the TBOR into its mission statement and structure its programs around the core principle of respect for taxpayer rights.

III. To Become an Effective 21st Century Tax Administration, the IRS Must Place Greater Emphasis on Taxpayer Service.

As noted above, one of the rights included in the Taxpayer Bill of Rights is “The Right to Quality Service.”¹⁷ This right warrants additional discussion because it is central to taxpayers’ experiences in dealing with the IRS.

I note at the outset that I believe IRS compliance activities, including audits and other authorized compliance measures, are central to effective tax administration. In my view, there is no conflict whatsoever between providing high quality taxpayer service and taking steps to ensure tax compliance, particularly on the part of persons actively

¹⁶ It is also worth noting that the percentage of disputed cases that ends up in the U.S. Tax Court is low. In FY 2016, fewer than two percent of individual taxpayers who received a statutory notice of deficiency or a Collection Due Process notice filed a petition in the Tax Court. IRS, Compliance Data Warehouse, *IRS Notice Delivery System*.

¹⁷ The IRS describes the “Right to Quality Service” as follows: “Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to have a way to file complaints about inadequate service.” For additional detail, see <https://taxpayeradvocate.irs.gov/taxpayer-rights/right-2>.

seeking to evade tax. It is not an “either/or” proposition. Although beyond the scope of my testimony today, I have made many recommendations in the past to improve IRS compliance programs.¹⁸

Last year, the Taxpayer Advocate Service (TAS) and I personally embarked on an extraordinary endeavor to actively engage with the taxpayers we serve. As announced in my 2015 Annual Report to Congress, in which we analyzed the IRS’s “Future State” vision, I traveled the country and held 12 Public Forums on Taxpayer Needs and Preferences.¹⁹ Together with Members of Congress, including Congressmen Roskam, Serrano, Meadows, Renacci, Becerra, and Doggett and Senators Grassley and Cardin, I heard directly from taxpayers and their representatives about the challenges they face in complying with the tax laws and dealing with the IRS.²⁰ TAS also held “Future State” focus groups of tax return preparers and practitioners at the IRS Tax Forums.²¹ And we engaged every TAS office in meetings about the “Future State” because TAS typically assists between 200,000 and 250,000 taxpayers a year in resolving their problems with the IRS, so our employees see first-hand the challenges taxpayers face.²²

We also conducted a nationwide survey of U.S. taxpayers to hear directly what they need in the way of taxpayer service.²³ Finally, my immediate staff identified significant research on topics that have relevance for tax administration, including approaches to voluntary compliance, worldwide taxpayer service, alternative dispute resolution, taxpayer rights, fraud detection, online accounts, and the impact of geographic

¹⁸ See, e.g., National Taxpayer Advocate 2011 Annual Report to Congress, vol. 2, at 63-90 (*An Analysis of the IRS Examination Strategy: Suggestions to Maximize Compliance, Improve Credibility, and Respect Taxpayer Rights*); National Taxpayer Advocate 2010 Annual Report to Congress, vol. 2, at 39-70 (*An Analysis of the IRS Collection Strategy: Suggestions to Increase Revenue, Improve Taxpayer Service, and Further the IRS Mission*).

¹⁹ See National Taxpayer Advocate 2015 Annual Report to Congress xv. National Taxpayer Advocate Public Forums were held in the following locations: Washington, DC (Feb. 23, 2016); Glen Ellyn, IL (Mar. 9, 2016 with Congressman Roskam); Bronx, NY (Mar. 18, 2016 with Congressman Serrano); Hendersonville, NC (Apr. 4, 2016 with Congressman Meadows); Harrisburg, PA (Apr. 8, 2016); Red Oak, IA (May 5, 2016 with Senator Grassley); Baltimore, MD (May 13, 2016 with Senator Cardin); Washington, DC (May 17, 2016); Parma, OH (Aug. 16, 2016 with Congressman Renacci); Portland, OR (Aug. 18, 2016); Los Angeles, CA (Aug. 22, 2016 with Congressman Becerra); and San Antonio, TX (Aug. 30, 2016 with Congressman Doggett).

²⁰ For information about and full transcripts from the National Taxpayer Advocate Public Forums, see <https://taxpayeradvocate.irs.gov/public-forums>.

²¹ TAS Communications and Liaison, *2016 IRS Nationwide Tax Forums TAS Focus Group Report: Preparers’ Thoughts About IRS’s Proposed Future State* (Oct. 2016), https://taxpayeradvocate.irs.gov/Media/Default/Documents/ResearchStudies/2016_TaxForum_FutureState_FocusGroup_Report.pdf.

²² For the results of the discussions with TAS employees, see <https://taxpayeradvocate.irs.gov/public-forums>.

²³ See National Taxpayer Advocate 2016 Annual Report to Congress, vol. 2, at 1-30 (Research Study: *Taxpayers’ Varying Abilities and Attitudes Toward IRS Taxpayer Service: The Effect of IRS Service Delivery Choices on Different Demographic Groups*).

presence and focus. We expanded our searches beyond the tax literature to psychology, behavioral economics, organizational theory, network theory, marketing, and other disciplines. These literature reviews are published in volume 3 of the National Taxpayer Advocate's 2016 Annual Report to Congress.

Last year's "learning tour" culminated in a Special Focus section of my most recent Annual Report to Congress, in which I set forth my observations and recommendations to help the IRS become a taxpayer-centric 21st century tax administration.²⁴ I am submitting the Special Focus section as Exhibit A to this statement. It identified the following areas of tax administration that require particular attention to meet the needs of U.S. taxpayers:

- *IRS Budget and Oversight:* To fairly, effectively, and efficiently administer the tax system, the IRS must receive increased funding, but such funding should be tied to additional congressional oversight of IRS strategic and operational plans.
- *IRS Culture:* To create an environment that encourages taxpayer trust and confidence, the IRS must change its culture from one that is enforcement-oriented to one that is service-oriented.
- *IRS Mission Statement:* To ensure the IRS recruits, hires, and trains employees with the appropriate skill sets, the IRS must revise its mission statement to explicitly acknowledge the IRS's dual mission of collecting revenue and disbursing benefits, as well as the foundational role of the Taxpayer Bill of Rights.
- *Understanding Taxpayer Needs and Preferences:* To ensure that the IRS designs its Current and Future State initiatives based on actual taxpayer needs and preferences, the IRS must actively and directly engage with the taxpayer populations it serves as well as undertake a robust research agenda that furthers an understanding of taxpayer compliance.
- *Grossly Outdated Technology and Infrastructure:* To enable the IRS to meet the major technology improvements required for a 21st century tax administration, even as it fulfills current operational technology demands, the IRS must articulate a clear strategy that will reassure Congress and taxpayers the funding will be well-spent.
- *Office of the Taxpayer Advocate:* To protect taxpayer rights and ensure a fair and just tax system, Congress should take steps to strengthen the Taxpayer Advocate Service.

²⁴ National Taxpayer Advocate 2016 Annual Report to Congress 1-41 (Special Focus: *IRS Future State: The National Taxpayer Advocate's Vision for a Taxpayer-Centric 21 Century Tax Administration*), https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16_Volume1_SpecialFocus.pdf.

One important takeaway that emerged from the Public Forms is the strong preference expressed by many taxpayers and practitioners for the opportunity to speak with an IRS employee directly and for the opportunity to meet with an IRS employee face-to-face for certain kinds of interactions.

Yet these preferences run directly counter to the IRS's continuing efforts to automate more and more of its activities and to make personal interaction less accessible. Part of this trend is attributable to funding limitations in recent years, but much of it began before the funding reductions. In addition, the IRS's priorities make it appear that contrary to taking a "Service First" approach toward tax administration, it often appears to follow an "Enforcement First" approach.

To create an environment that encourages taxpayer trust and confidence, the IRS must change its culture from one that is enforcement-oriented to one that is service-oriented. Of the IRS's current appropriated budget of \$11.2 billion, 43 percent is allocated to enforcement, while only four percent is allocated to taxpayer outreach and education activities.²⁵ In 2014, the IRS ceased all tax return preparation in its Taxpayer Assistance Centers, sharply curtailed the scope of tax-law questions it would answer during the filing season on its telephone lines and in its TACs, and stopped answering any tax-law questions at all after April 15.

The TACs, which were previously known as "walk-in sites," moved to an "appointment-only" system this year. I previously recommended the IRS offer appointments by request as an option. However, the IRS's new policy against accepting walk-in taxpayers has led to considerable taxpayer frustration and a failure to meet taxpayer needs. Many – if not most – taxpayers have no way of knowing the IRS is no longer accepting walk-ins, so some taxpayers travel considerable distances only to be sent home. The IRS cites customer satisfaction surveys to suggest taxpayers are pleased with the appointment-only approach. But these surveys are misleading because they are only administered to taxpayers who have been served. They do not reflect the opinions of taxpayers who are turned away. The IRS has reduced the number of TACs from 401 to 376 since 2011.²⁶ In addition, 22 TACs have no staff, while 95 have only

²⁵ Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, 129 Stat. 2242 (2015); U.S. Department of the Treasury, *Internal Revenue Service FY 2017 Budget-in-Brief 1*, <https://www.irs.gov/pub/newsroom/IRS%20FY%202017%20BIB.pdf> (showing that the Taxpayer Services appropriation (showing that only about \$630 million of the Taxpayer Services account is allocated to "Pre-filing Taxpayer Assistance and Education"). The IRS includes about \$173 million in Taxpayer Advocate Case Processing, which generally does not constitute pre-filing taxpayer assistance or education, in that \$630 million total. After backing out Taxpayer Advocate Case Processing, the Pre-filing Taxpayer Assistance and Education budget is about \$457 million out of total IRS appropriations of about \$11.235 billion, or four percent. Thirty-three percent of the IRS budget is allocated to the Operations Support account, which is used to support program activities, and three percent is allocated for Business Systems Modernization.

²⁶ In 2011, the IRS operated 401 TACs. IRS response to TAS information request (Dec. 23, 2014). As of December 31, 2016, the IRS operated 376 TACs, a reduction of six percent. IRS response to TAS fact check (Dec. 20, 2016).

one employee,²⁷ and the IRS is considering closing a significant number of additional TACs through FY 2018.

Twelve states have no Appeals Officers stationed within their boundaries,²⁸ and 14 states have no IRS liaisons to Small Business and Self-Employed taxpayers.²⁹ In fact, according to IRS data, the agency dedicates only 98 employees to conduct outreach and education to the roughly 62 million Small Business and Self-Employed taxpayers (*i.e.*, taxpayers who are self-employed or own small businesses), and only 376 employees to conduct outreach and education to the nearly 125 million Wage and Investment taxpayers (*i.e.*, taxpayers who are classified as “employees”). Meanwhile, the IRS has over 3,000 revenue officers (who conduct field collection activities) and over 8,800 revenue agents (who conduct field audit activities).³⁰

Figure 1: Locations with Specified Employees in the Last Pay Period of the Fiscal Year

Number of Locations, Employees, or Visitors	2011	2012	2013	2014	2015	2016
IRS Offices (Cities)	541	523	510	499	479	470
Appeals Officers (AOs)	1,129	1,058	958	881	795	739
Revenue Officers (ROs)	4,402	4,035	3,703	3,441	3,191	3,072
Revenue Agents (RAs)	11,959	11,258	10,502	9,776	9,090	8,871
Stakeholder Liaison Outreach Employees	137	123	119	110	105	98
Stakeholder Partnerships, Education and Communication Outreach Employees	522	475	444	405	386	365
Taxpayer Assistance Centers (TACs)	401	401	398	382	378	376
TAC Service Reps	1,639	1,515	1,484	1,520	1,423	1,267

Despite this imbalance, the IRS budget request for FY 2017 sought an increase of 7.2 percent in enforcement funding, as compared with an increase of just 3.1 percent in taxpayer services funding.³¹ This proposal to increase enforcement funding by more than twice the rate of taxpayer services funding was made against a backdrop in which

²⁷ IRS response to TAS fact check (Dec. 20, 2016).

²⁸ The 12 states that lack a permanent Appeals Officer are Alaska, Arkansas, Delaware, Idaho, Kansas, Montana, North Dakota, New Mexico, Rhode Island, South Dakota, Vermont, and Wyoming. There is also no Appeals Office in the territory of Puerto Rico. IRS Office of Appeals response to TAS information request (June 6, 2016).

²⁹ The 14 states are Alaska, Delaware, Hawaii, Kentucky, Mississippi, Montana, North Dakota, Nebraska, New Hampshire, South Dakota, Vermont, West Virginia, Wisconsin, and Wyoming. There is also no liaison in the District of Columbia. IRS response to TAS fact check (Dec. 15, 2016); IRS Human Resources Reporting Center, *Report of Small Business/Self-Employed (SB/SE) Job Series 0526, Stakeholder Liaison Field Employees as of the week ending October 1, 2016* (Dec. 1, 2016).

³⁰ IRS response to TAS fact check (Dec. 16, 2016).

³¹ IRS FY 2017 Budget-in-Brief, at 1, <https://www.irs.gov/pub/newsroom/IRS%20FY%202017%20BIB.pdf>.

the agency has been unable to meet basic taxpayer needs. Among calls routed to its telephone assistors, the IRS was able to answer only 38 percent in FY 2015 and 53 percent in FY 2016, and taxpayers who managed to get through to the IRS were kept on hold for an average of 30 minutes and 18 minutes, respectively, in those years.³²

During the recently concluded 2017 filing season, although the IRS achieved a much higher level of service (LOS) on general assistor calls, it was only able to answer 40 percent of about 2.7 million calls received on its Installment Agreement/Balance Due line.³³ That is down 47 percent from the same period last year. The hold time for taxpayers who actually got through on the line was up even more significantly – from 11 minutes last year to 47 minutes this year.³⁴ *To be clear: The 2.7 million calls to this line during the filing season generally came from taxpayers who owe money to the IRS and are trying to make payment arrangements – precisely the sorts of calls most private businesses are eager to receive and pick up quickly. Yet the IRS did not answer 60 percent of these calls, and it made the other 40 percent of callers wait 47 minutes to get through.*

There is no doubt that funding constraints have contributed to reduced service levels, but the IRS in a variety of ways signals to its employees – and taxpayers – that it disproportionately values enforcement. For example, the IRS every year posts annual “Enforcement and Service Results” on its website.³⁵ This generally consists of about seven pages of enforcement data (including audit rates for individuals and business entities, enforcement dollars assessed, enforcement dollars collected, liens filed, levies issued, and criminal indictments and convictions), with a single page of taxpayer service data tacked on at the end. There is a lot of truth to the well-known adage, “you get what you measure.” The fact that the word “Enforcement” comes first and is much more heavily emphasized makes a statement to the public – and to the IRS’s own employees – about agency priorities.

Congress has previously expressed concern about the IRS’s focus on enforcement at the expense of service. In RRA 98, Congress directed the IRS to “restate its mission to place a greater emphasis on serving the public and meeting taxpayers’ needs.”³⁶ In response, the IRS adopted the following mission statement: “Provide America’s taxpayers top quality service by helping them understand and meet their tax

³² IRS, Joint Operations Center, *Snapshot Reports: Enterprise Snapshot* (week ending Sept. 30, 2016) (showing both FY 2015 and FY 2016 toll-free telephone performance statistics).

³³ See IRS, Joint Operations Center, *Snapshot Reports: Product Line Detail: Installment Agreement/Balance Due* (week ending April 22, 2017).

³⁴ *Id.*

³⁵ IRS, *Fiscal Year 2016 Enforcement and Service Results*, https://www.irs.gov/PUP/newsroom/fy_2016_enforcement_and_service_results.pdf.

³⁶ IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, Title I, § 1002, 112 Stat. 685, 690 (1998).

responsibilities and *by applying the tax law* with integrity and fairness to all.”³⁷ (Emphasis added.) In 2009 – with no public discussion or notice to Congress – the IRS quietly changed its mission statement to read: “Provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and *enforce the tax law* with integrity and fairness to all.”³⁸ (Emphasis added.) This shift in tone and emphasis – from *applying* the law to *enforcing* the law – suggests the IRS leadership disagreed with the Congressional directive and decided to place greater emphasis on “enforcement” in its mission statement.³⁹

As I stated above, it should be emphasized that service and enforcement should not be treated as an “either/or” proposition. The IRS, like any tax administrator, should have one overriding goal – to increase tax compliance, and particularly voluntary tax compliance. That means, for example, that part of every compliance touch should involve talking with the taxpayer and making sure the taxpayer understands what he or she did wrong so he or she is less likely to do it again. Indeed, if the IRS engages with taxpayers in this way, it might even learn where it is wrong itself. Regardless, there is substantial research and documentary evidence that show a service-oriented approach toward tax administration is effective and efficient, and maximizes *long-term* voluntary compliance. Moreover, the TBOR provides U.S. taxpayers with, among other things, the right to *challenge the IRS’s position and be heard*.⁴⁰ The last part of that right is critical. It is not enough simply for taxpayers to be able to object; the IRS must *listen*. This right is fundamental to procedural due process.

All this is not to say that IRS employees don’t care about taxpayer service, nor am I saying the IRS is “just” focused on enforcement. But I do believe that IRS employees and the taxpaying public often see things quite differently. Often, the IRS doesn’t clearly see how it is presenting itself to the public. For example, as part of the process of developing the IRS’s “Future State” vision, each of the four IRS Business Operating Divisions (or BODs) began by developing its own Concept of Operations (CONOPS)

³⁷ IRM 1.1.1.1 (Mar. 1, 2006).

³⁸ IRM 1.1.1.2 (June 2, 2015).

³⁹ I have also recommended a second change to the IRS mission statement. The IRS as structured today is not just a revenue collection agency. It is also a benefits administrator. Congress has given the IRS responsibility for disbursing funds through refundable tax credits like the Earned Income Tax Credit (EITC) and the Additional Child Tax Credit, through non-refundable benefits like the child tax credit and child and dependent care credit, through a host of other permanent provisions in the tax code, and through one-time or limited-time tax benefits like Economic Stimulus Payments and the First-Time Homebuyer Credit. Although many of these benefits are disbursed to different types of taxpayers (both individual and business), there is a lot of attention focused on those paid out to low income taxpayers. I discuss the issue of improper payments later in this statement, but I note here that for the IRS to fulfill its role of benefits administrator properly, it needs to recognize it is dealing with different taxpayer populations, and doing so requires different skill sets and different employee training. Because the mission statement drives strategic plans and organizational goals, I have recommended that the IRS mission statement be modified to recognize the IRS’s dual roles as revenue collector and benefits administrator.

⁴⁰ IRC § 7803(a)(3).

and an accompanying “taxpayer vignette” to illustrate how its vision of the “Future State” will work. Notably, each BOD’s vignette shows the IRS contacting a taxpayer to conduct an audit or otherwise challenge a taxpayer’s return, and in every case, the vignette shows the taxpayer ultimately conceding the IRS is correct and consenting to the IRS’s proposed adjustment. At best, these vignettes reveal a lack of sensitivity as to how external stakeholders (such as taxpayers) will perceive them. At worst, they suggest to the taxpaying public that the IRS believes it is always right and the taxpayer is always wrong.⁴¹

Accordingly, I recommend that the IRS:

- Revise its mission statement to re-emphasize a non-coercive approach to tax administration and explicitly affirm the role of the Taxpayer Bill of Rights as the guiding principle for tax administration.

IV. The IRS Has Not Implemented, Has Narrowly Interpreted, or Has Not Effectively Implemented Many Taxpayer Protections Enacted by Congress.

As noted above, Congress passed several laws between 1988 and 1998 establishing taxpayer protections. TAS has analyzed actions the IRS took in response to these directives, particularly those enacted as part of RRA 98.⁴² TAS found that the IRS did not implement, narrowly interpreted, or did not effectively implement many of them, as summarized in the following list of select provisions.

In some cases, the IRS may have made a reasonable policy call in deciding not to implement a directive or to interpret it as it did. But particularly if Congress decides to implement far-reaching IRS reforms, it is important to understand how the IRS has implemented similar legislation in the past. Although there is significant overlap among the categories, the IRS’s progress can be categorized, as follows:

Directives Not Implemented

- *Provide taxpayers with reasonable advanced notice of contact with third parties and periodic reports.* RRA 98 § 3417 (codified at IRC § 7602(c)) generally requires the IRS to provide “reasonable notice in advance to the taxpayer” before contacting a third party with respect to the determination or collection of a tax

⁴¹ “I find it funny that in both scenarios, there’s more taxes. I think that reflects the idea that this model is about the IRS finding new ways to use technology for their benefit, and not for taxpayer purposes.” Statement of Audience Member, National Taxpayer Advocate Public Forum 39 (Aug. 18, 2016), https://taxpayeradvocate.irs.gov/Media/Default/Documents/PublicForums/PortlandOR_Transcript_081816.pdf. “I’m a CPA, and I’ve been practicing for 35 years... [T]he examples here – both end up resolving in more tax being owed – is like, ‘We were right, you were wrong, pay us the money.’” *Id.* at 55-56.

⁴² RRA 98, Pub. L. No. 105-206, 112 Stat. 685 (1998). In this section, I also discuss one item from the Tax Reform Act of 1976, Pub. L. No. 94-455, § 1206(b), 90 Stat. 1520, 1703 (1976).

liability. It also requires the IRS to “periodically provide to a taxpayer a record of persons [third parties] contacted.” According to the preamble of a regulation promulgated under IRC § 7602(c), contrary to the statutory directive, the IRS will not “periodically” provide the taxpayer a list of its third party contacts.⁴³ In addition, the IRS believes it satisfies the reasonable notice requirement by including boilerplate language in a widely-distributed publication, Publication 1, *Your Rights as a Taxpayer*, which it uses as an all-purpose stuffer.⁴⁴ Publication 1 says, “we sometimes talk with other persons if we need information that you have been unable to provide, or to verify information...”⁴⁵ The IRS does not use a tailored notice that is designed to be effective in obtaining information that would obviate the need to contact third parties. If the notice were designed to be effective, it would inform the taxpayer of the specific information the IRS would seek from third parties in his or her case if not provided by the taxpayer first.

- *Provide Congress with complexity reports.* RRA 98 § 4022(a) requires the IRS Commissioner to report to Congress each year on the sources of complexity in tax administration and on ways to reduce it. The IRS produced two complexity reports, which highlighted issues that Congress ultimately addressed.⁴⁶ However, the IRS has not issued a complexity report since 2002.⁴⁷

Directives Narrowly Interpreted

- *Have employees obtain supervisory approval of penalties.* RRA 98 § 3306(a) (codified at IRC § 6751(b)) generally requires that no accuracy-related penalty can be assessed “unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor...” except for penalties “automatically calculated through electronic means.” The IRS believes the exception for “automatically calculated” penalties is so broad that it covers the negligence penalty when applied by a computer, even though a negligence determination requires more than a mere calculation.⁴⁸ In cases where

⁴³ T.D. 9028, 67 Fed. Reg. 77,419, 77,420 (Dec. 18, 2002) (stating the Treasury Department has “determined that the issuance of periodic reports may result in harm to third parties and, accordingly, has determined that periodic reports should not be issued.”).

⁴⁴ See National Taxpayer Advocate 2015 Annual Report to Congress 123 (Most Serious Problem: *IRS Third Party Contact Procedures Do Not Follow the Law and May Unnecessarily Damage Taxpayers’ Businesses and Reputations*).

⁴⁵ IRS Pub. 1, at 2 (Dec. 2014).

⁴⁶ See National Taxpayer Advocate 2014 Annual Report to Congress 102 (Most Serious Problem: *The IRS Does Not Report on Tax Complexity as Required by Law*). For the two complexity reports, see IRS Pub. 4105, *Report from the Commissioner of the Internal Revenue Service on Tax Law Complexity* (June 5, 2000 and Sept. 20, 2002).

⁴⁷ See National Taxpayer Advocate 2014 Annual Report to Congress 102.

⁴⁸ See National Taxpayer Advocate 2007 Annual Report to Congress 275-286 (Most Serious Problem: *The Accuracy-Related Penalty in the Automated Underreporter Units*); National Taxpayer Advocate 2014

supervisory approval is required, the IRS has argued that the approval can be obtained long after an employee first proposes the assessment, potentially even after the taxpayer petitions the Tax Court to review the penalty.⁴⁹

- *Have employees obtain supervisory approval of Notice of Federal Tax Lien (NFTL) filings.* RRA 98 § 3421 requires the IRS to adopt procedures requiring that an employee's determination to file an NFTL be approved by a supervisor "where appropriate," and under which appropriate disciplinary action would be taken when approval is not obtained. The IRS has rarely deemed it "appropriate" to require such approval because it has made virtually no adjustments to its procedures along these lines.⁵⁰ Instead, the IRS has required employees to obtain managerial approval if they determine *not* to file an NFTL (or defer filing it) in many circumstances.⁵¹ Further, the IRS never established appropriate disciplinary actions for employees who fail to secure a supervisor's approval to file an NFTL when such approval is required (*i.e.*, Revenue Officers below the level of GS-9).⁵²
- *Assign one IRS employee to handle a taxpayer's matter until it is closed.* RRA 98 § 3705(b) requires the IRS "to the extent practicable and if advantageous to the taxpayer" to assign one IRS employee to handle a taxpayer's matter until it is resolved. However, the Correspondence Examination program, through which about three-quarters of individual taxpayer audits are conducted,⁵³ has no way to determine when a taxpayer should have one employee assigned to

Annual Report to Congress 404-10 (Legislative Recommendation: *Amend IRC § 6751(b) to Require IRS Employees to Seek Managerial Approval Before Assessing the Accuracy Related Penalty Attributable to Negligence under IRC § 6662(b)(1)*). See also Service Center Advice 200211040 (Jan. 30, 2002) (explaining how attorneys at the IRS Office of Chief Counsel reached this conclusion).

⁴⁹ See *Graev v. Comm'r*, 147 T.C. No. 16 (2016). The Second Circuit has recently rejected the IRS's narrow view. See *Chai v. Comm'r*, 851 F.3d 190 (2d Cir. 2017) (holding IRC § 6751(b)(1) requires written approval of an IRS employee's initial penalty determination before the IRS issues a notice of deficiency (or files an answer) asserting penalties). In light of the holding in *Chai*, the government filed a motion to vacate the decision in *Graev*, which the Tax Court granted.

⁵⁰ See National Taxpayer Advocate 2014 Annual Report to Congress 225, 226 (Most Serious Problem: *The IRS's Administrative Approval Process for Notices of Federal Tax Lien Circumvents Key Taxpayer Protections in RRA 98*); National Taxpayer Advocate 2014 Annual Report to Congress 396, 400 (Legislative Recommendation: *Require Managerial Approval Prior to Filing a Notice of Federal Tax Lien in Certain Situations*).

⁵¹ See National Taxpayer Advocate 2014 Annual Report to Congress 396, 400.

⁵² *Id.*

⁵³ In FY 2016, the IRS conducted 1,034,955 individual audits. Of that total, 791,233 were conducted by correspondence (76 percent) and 243,722 were field audits (24 percent). IRS, *Fiscal Year 2016 Enforcement and Service Results*,

https://www.irs.gov/PUP/newsroom/fy_2016_enforcement_and_service_results.pdf.

handle the exam.⁵⁴ For example, it does not ask taxpayers if they would like one employee to handle their cases. Rather, IRS systems automatically route a taxpayer's call to the next available examiner — who may not be the one currently working on the case.⁵⁵ This approach is highly inefficient, resulting in multiple callbacks and downstream re-work, and it undermines employee accountability for IRS audits.

- *Allow taxpayers to speak to a live person who can help.* RRA 98 § 3705(d) requires the IRS to make a live person available on helplines in “appropriate circumstances,” and for that person to direct the taxpayer to an employee who can help.⁵⁶ The IRS has repeatedly declined to answer TAS's inquiries about whether it considers the phone lines for local offices (*i.e.*, the lines required by RRA 98 § 3709 to be listed in the phone book)⁵⁷ to be “helplines” for the purpose of this requirement.⁵⁸ A live person does not answer these lines, and callers cannot leave a message.⁵⁹

Directives Not Effectively Implemented

- *Explain the reasons for disallowing taxpayers' refund claims.* RRA 98 § 3505(a) (currently codified at IRC § 6402(l)) requires the IRS to “provide taxpayers with an explanation” of the reason for disallowing their refund claims. TAS pulled a sample of 100 Letters 105C, *Statutory Notice of Claim Disallowance*, and determined that 92 of them did not provide an adequate explanation.⁶⁰

⁵⁴ See National Taxpayer Advocate 2014 Annual Report to Congress 134, (Most Serious Problem: *The IRS Has Overlooked the Congressional Mandate to Assign a Specific Employee to Correspondence Examination Cases, Thereby Harming Taxpayers*).

⁵⁵ Government Accountability Office (GAO), GAO-14-479, *IRS Correspondence Audits: Better Management Could Improve Tax Compliance and Reduce Taxpayer Burden* 9 (June 2014), <http://www.gao.gov/assets/670/663840.pdf>.

⁵⁶ RRA 98 § 3705(d) requires the IRS to “provide, in appropriate circumstances, on telephone helplines of the Internal Revenue Service an option for any taxpayer to talk to an Internal Revenue Service employee during normal business hours. The person shall direct phone questions of the taxpayer to other Internal Revenue Service personnel who can provide assistance to the taxpayer.” Pub. L. No. 105-206, § 3705(d), 112 Stat. 685, 777 (1998).

⁵⁷ RRA 98 § 3709 requires that the IRS “provide that the local telephone numbers and addresses of Internal Revenue Service offices located in any particular area be listed in a telephone book for that area.” Pub. L. No. 105-206, § 3709, 112 Stat. 685, 779 (1998).

⁵⁸ See National Taxpayer Advocate 2014 Annual Report to Congress 123 (Most Serious Problem: *Taxpayers Are Unable to Navigate the IRS and Reach the Right Person to Resolve Their Tax Issues*). See also National Taxpayer Advocate 2008 Annual Report to Congress 114 (Most Serious Problem: *Navigating the IRS*).

⁵⁹ See National Taxpayer Advocate 2014 Annual Report to Congress 123 (Most Serious Problem: *Taxpayers Are Unable to Navigate the IRS and Reach the Right Person to Resolve Their Tax Issues*).

⁶⁰ See National Taxpayer Advocate 2014 Annual Report to Congress 172, 177 (Most Serious Problem: *Refund Disallowance Notices Do Not Provide Adequate Explanations*).

- *Explain alleged math errors on taxpayers' returns.* In 1976, when Congress enacted legislation granting the IRS's request to expand its authority to summarily assess not just math errors, but also clerical errors (e.g., inconsistent entries), it included a key taxpayer protection.⁶¹ The legislation (currently codified at IRC § 6213(b)(1)) requires that each math error notice "set forth the error alleged and an explanation thereof." Legislative history provided examples of the type of explanations it expected the IRS to provide, such as: "You entered six dependents on line x but listed a total of seven dependents on line y. We are using six. If there is one more, please provide corrected information."⁶²

Although four decades have passed since Congress required the IRS to provide an explanation, the IRS's math error notices are still not as clear as the examples Congress provided. A typical math error notice might say:

We refigured your tax on page 2 of your tax return using the tax table, tax rate schedules, or capital gains tax computations. Because of an error on another part of your tax return we were unable to compute your tax on Form 8615, *Tax for Certain Children Who Have Investment Income*.⁶³

Without a clear explanation of the alleged error, it is difficult for taxpayers to determine what, specifically, the IRS is proposing to change on their returns and whether they should accept the adjustment or request a correction.

- *Include employee contact information on manually generated correspondence.* RRA 98 § 3705(a) requires the IRS to include an employee's name, telephone number, and unique employee identifying number in any "manually generated correspondence." However, employees frequently send letters that do not include their contact information, even when they have worked the case or customized the letter for the specific taxpayer.⁶⁴ When the correspondence does

⁶¹ Pub. L. No. 94-455, § 1206(b), 90 Stat. 1520, 1703 (1976).

⁶² See H.R. Rep. No. 94-658, at 291 (1976). See also Joint Committee on Taxation, JCS-33-76, at 371-374, *Assessments in Case of Mathematical or Clerical Errors (sec. 1206 of the Act and sec. 6213 of the Code)* (Dec. 29, 1976).

⁶³ IRM Exhibit 3.12.3-2 (Jan. 1, 2017) (TPNC 220). See also National Taxpayer Advocate 2014 Annual Report to Congress 163, 167 (Most Serious Problem: *The IRS Does Not Clearly Explain Math Error Adjustments, Making It Difficult for Taxpayers to Understand and Exercise Their Rights*). For additional concerns about the IRS's proposal to expand its math error authority, see National Taxpayer Advocate 2015 Annual Report to Congress 329 (Legislative Recommendation: *Authorize the IRS to Summarily Assess Math and "Correctable" Errors Only in Appropriate Circumstances*).

⁶⁴ See National Taxpayer Advocate 2014 Annual Report to Congress 145 (Most Serious Problem: *The IRS's Failure to Include Employee Contact Information on Audit Notices Impedes Case Resolution and Erodes Employee Accountability*). See also National Taxpayer Advocate 2014 Annual Report to Congress (Legislative Recommendation: *Codify § 3705(a)(1) of RRA 98, Define "Manually Generated," and Require Contact Information on Certain Notices in All Cases*).

include a name, it is often so generic as to be meaningless (e.g., Tax Examiner), or is the name of the director of a unit who would not be knowledgeable about the specific case.⁶⁵ Similarly, the phone number often included on the correspondence is the IRS's main toll-free number, rather than the direct number of the employee working the case.⁶⁶ The failure to include the contact information of the person responsible for working the case undermines accountability and de-humanizes tax administration.

- *Include Local Taxpayer Advocate (LTA) contact information on statutory notices of deficiency.* RRA 98 § 1102(b) (codified at IRC § 6212(a)) requires that statutory notices of deficiency include notice of “the taxpayer’s right to contact a local office of the taxpayer advocate and the location and phone number of *the appropriate office.*” (Emphasis added.) The conference report to RRA 98 also contemplated the IRS would “publish the taxpayer’s right to contact the local Taxpayer Advocate on the statutory notice of deficiency.”⁶⁷ However, the IRS buries this information in a stuffer notice that lists contact information for all LTA offices, rather than just the appropriate one.⁶⁸ According to focus group participants, stuffers usually end up in the trash if they are even taken out of the envelope.⁶⁹ The IRS spends about \$47,000 to print these stuffers each year.⁷⁰ Thus, listing the “appropriate office” on the face of the letter would save printing costs and, more importantly, help taxpayers contact TAS for assistance in avoiding unnecessary litigation.
- *Use a balancing test in Collection Due Process (CDP) hearings to ensure collection is no more intrusive than necessary.* When a taxpayer appeals an IRS collection action by timely requesting a CDP hearing, RRA 98 § 3401 (codified in part at IRC § 6330(c)(3)) requires the IRS’s Appeals function to consider “whether any proposed collection action balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection

⁶⁵ See National Taxpayer Advocate 2014 Annual Report to Congress 145 (Most Serious Problem: *The IRS’s Failure to Include Employee Contact Information on Audit Notices Impedes Case Resolution and Erodes Employee Accountability*).

⁶⁶ *Id.*

⁶⁷ H.R. Rep. No. 105-599, at 215 (1998) (Conf. Rep.).

⁶⁸ See IRS Notice 1214, *Helpful Contacts for Your “Notice of Deficiency”* (March 2017). See also National Taxpayer Advocate 2014 Annual Report to Congress 237 (Most Serious Problem: *Statutory Notices of Deficiency Do Not Include Local Taxpayer Advocate Office Contact Information on the Face of the Notice*); National Taxpayer Advocate 2014 Annual Report to Congress (Legislative Recommendation: *Revise IRC § 6212 to Require the IRS to Place Taxpayer Advocate Service Contact Information on the Face of the Statutory Notice of Deficiency and Include Low Income Taxpayer Clinic Information with Notices Impacting that Population*).

⁶⁹ TAS, 2011 IRS Nationwide Tax Forums TAS Focus Group Report: Publication 1 – Taxpayer Rights, 26-27 (2011).

⁷⁰ TAS estimate (Oct. 14, 2016) (based on 3.5 million copies at a cost of \$0.0134 each).

action be *no more intrusive than necessary*.”⁷¹ If properly applied, this balancing test should give taxpayers confidence that the hearing is fair. A TAS review of applicable CDP procedures and case law revealed that the IRS Office of Appeals lacks detailed and specific procedures for how employees should balance these considerations, is not properly considering the legitimate concerns of taxpayers regarding the intrusiveness of the proposed collection action, and is often using *pro forma* statements (without elaboration or proper analysis) that the balancing test has been performed.⁷² Thus, Appeals gives taxpayers the impression that it is simply “rubber stamping” prior determinations made by collection employees or automated systems.⁷³

- *IRS front-line technical experts should advise Congress about the administrability of pending tax legislation.* RRA 98 § 4021 states the tax-writing committees in Congress should hear from “front-line technical experts” at the IRS with respect to the “administrability” of pending amendments to the tax code. When legislation is crafted with smooth tax administration in mind, and is informed by discussions with the front-line employees who may have to explain it to taxpayers, it is likely to be simpler, less burdensome, more taxpayer-focused, and easier to administer. When asked by TAS, however, the IRS could not identify any front-line technical expert(s) who had ever been consulted about the administrability of pending amendments.⁷⁴
- *Reorganize the IRS so that units serve particular groups of taxpayers.* RRA 98 § 1001(a) directed the IRS to establish “organizational units serving particular groups of taxpayers with similar needs.” While the IRS’s units are named after groups of taxpayers (e.g., the Small Business/Self-Employed Division), the IRS is largely organized around IRS-centric processes and functions.⁷⁵ As a result, no unit at the IRS can be held accountable for a particular taxpayer segment’s overall satisfaction with the IRS or voluntary tax compliance.

⁷¹ See also H.R. Rep. No. 105-599, at 263 (1998) (Conf. Rep.); S. Rep. No. 105-174, at 68 (1998) (stating that “a proposed collection action should not be approved solely because the IRS shows that it has followed appropriate procedures.”).

⁷² See National Taxpayer Advocate 2014 Annual Report to Congress 185, 188 (Most Serious Problem: *The IRS Needs Specific Procedures for Performing the Collection Due Process Balancing Test to Enhance Taxpayer Protections*).

⁷³ See, e.g., *Budish v. Comm’r*, T.C. Memo. 2014-239; *Eichler v. Comm’r*, 143 T.C. 30 (2014); *Isley v. Comm’r*, 141 T.C. 349 (2013); *Crosswhite v. Comm’r*, T.C. Memo. 2014-179; *Lofgren Trucking Service, Inc. v. United States*, 508 F. Supp. 2d 734 (D. Minn. 2007).

⁷⁴ See National Taxpayer Advocate 2014 Annual Report to Congress 108 (Most Serious Problem: *The IRS Has No Process to Ensure Front-Line Technical Experts Discuss Legislation with the Tax Writing Committees, as Requested by Congress*).

⁷⁵ See, e.g., National Taxpayer Advocate 2016 Annual Report to Congress (Most Serious Problem: *The IRS’s Functional Structure Is Better at Implementing Procedures than Understanding and Serving Specific Customer Segments, as Contemplated by RRA 98*); National Taxpayer Advocate 2014 Annual Report to Congress 31 (Most Serious Problem: *The Lack of a Cross-Functional Geographic Footprint Impedes the IRS’s Ability to Improve Voluntary Compliance and Effectively Address Noncompliance*).

- *Restate the IRS mission to emphasize service.* RRA 98 § 1002 directed the IRS to “restate its mission to place a greater emphasis on serving the public and meeting taxpayers’ needs.” In 2009, as pointed out above, the IRS added the word “enforce” to its mission, even though enforcement had not even been part of its mission statement before RRA 98.⁷⁶
- *Make appeals officers regularly available in each state.* RRA 98 § 3465(b) requires the IRS Commissioner to “ensure that an appeals officer is regularly available within each State.” However, appeals officers are not regularly available in at least 12 states, and the IRS has been making it more difficult for taxpayers to obtain face-to-face conferences with them.⁷⁷

V. RRA 98-Style “Joint Oversight Hearings” Would Give Congress Better Insight into the IRS’s Strategic and Operational Plans, Promote Dialogue Among Congress, the IRS and Interested Stakeholders, and Help Ensure the Tax-Writing and Appropriations Committees Coordinate Their Expectations and Approaches Toward IRS Operations.

Congress has a significant role to play in ensuring that the IRS has adequate resources to do its job and that it allocates those resources wisely. Appropriate oversight and greater transparency increase taxpayer trust in the tax agency and the tax system. As part of the reorganization mandated by Congress in RRA 98, Congress held joint annual hearings, over five years, to review the IRS strategic plan.⁷⁸ The hearing participants included three members (two from the majority and one from the minority) from each of the congressional committees with jurisdiction over the IRS – Senate Finance, Appropriations, and Governmental Affairs, and House Ways and Means, Appropriations, and Governmental Reform and Oversight. The hearings were to cover the following topics:

1. IRS progress in meeting its objectives under its strategic and business plans;
2. IRS progress in improving taxpayer service and compliance;

⁷⁶ See National Taxpayer Advocate 2016 Annual Report to Congress 15 (Special Focus: *IRS Mission*).

⁷⁷ See National Taxpayer Advocate 2014 Annual Report to Congress 46 (Most Serious Problem: *The IRS Lacks a Permanent Appeals Presence in 12 States and Puerto Rico, Thereby Making It Difficult for Some Taxpayers to Obtain Timely and Equitable Face-to-Face Hearings with an Appeals Officer or Settlement Officer in Each State*); National Taxpayer Advocate 2014 Annual Report to Congress 311 (Legislative Recommendation: *Require that Appeals Have at Least One Appeals Officer and Settlement Officer Located and Permanently Available Within Every State, the District of Columbia, and Puerto Rico*). See also IRM 8.6.1 (Oct. 1, 2016) (noting that a material change adopted with this IRM revision is “to reflect that most conferences in Appeals are conducted by telephone and to make that the default method.”).

⁷⁸ Pub. L. No. 105-206, § 4001 (enacting IRC § 8021(f)) and § 4002 (amending IRC § 8022), 112 Stat. 685, 783-784 (1998).

3. IRS progress on technology modernization; and
4. The annual filing season.⁷⁹

I recommend that Congress reinstitute these joint oversight hearings on a permanent basis. By doing so, Congress would provide the IRS with the opportunity to articulate, with specificity, its need for additional resources and its plans for applying them. By hearing from both the IRS and outside experts – including tax professional organizations, business representatives, Low Income Taxpayer Clinics, and behavioral scientists – Congress will better understand the challenges that both the IRS and taxpayers face. It can then make informed decisions about the level and general application of resources necessary for the IRS to provide U.S. taxpayers with a 21st century tax administration that they can trust and admire.

In addition, joint oversight hearings require the staffs of the oversight committees to work together in planning the hearings and engaging in necessary follow-up actions. That was valuable during the five years after the passage of RRA 98, and it would be extremely helpful again now. I believe it is particularly important for the tax-writing and appropriations committees to work together to establish IRS priorities and ensure the agency is funded consistent with those priorities. For example, taxpayers would not be well served – and the IRS would be placed in an impossible position – if the tax-writing committees mark up legislation to require the IRS to place more emphasis on taxpayer service while the appropriations committees provide disproportionate funding for IRS enforcement activities. Deciding on agency priorities and funding them appropriately would better enable the IRS to comply with Congress's directives.

Accordingly, I recommend that Congress:

- Reinstate the joint review of the IRS strategic plans and budget provided for under IRC §§ 8021(f) and 8022.
- Require the IRS to submit a comprehensive “Future State” plan that describes in detail its vision for a 21st century IRS, including an explanation of how this vision meets the needs and preferences of different U.S. taxpayer segments as well as a description of the challenges and obstacles the IRS faces in achieving this “Future State,” including funding needs.

⁷⁹ H.R. Rep. No. 105-364, at 84-85 (1997). The IRS Restructuring Commission earlier recommended that Congress create a joint committee on IRS administration, which would conduct joint hearings on similar topics. Report of the National Commission on Restructuring the Internal Revenue Service, *A Vision for a New IRS* 11 (June 25, 1997).

VI. General Observations Regarding House Republicans' Blueprint Proposal

The tax reform blueprint released in June 2016, *A Better Way*, includes proposals to reform the IRS in a manner that focuses first and foremost on improved customer service.⁸⁰

The Blueprint identifies four categories of problems at the IRS: (1) poor customer service levels; (2) civil asset forfeiture policies that unnecessarily harm law-abiding citizens; (3) excessive improper payments in certain benefits programs, particularly the Earned Income Tax Credit (EITC); and (4) outdated IT systems. I offer some general observations about each:

- **Customer Service** – In thinking about ways to improve customer service, I encourage the subcommittee to focus not merely on improving the percentage of calls the IRS answers, but also to think about the range of services we want the tax administrator to provide. In my view, the IRS should offer both competent personal service options and a robust and secure online account system. To cite one example, I believe it is a central function of a tax administration agency to help taxpayers understand what the law requires of them. Yet the IRS today answers only “basic” tax-law questions during the filing season, and it does not answer any tax-law questions at all during the other 8½ months of the year.

To me, this is a “poster child” example of where taxpayer service is falling short. Both to reduce taxpayer burden and improve compliance, the IRS should answer most tax-law questions through all of its service-delivery channels – in its Taxpayer Assistance Centers, on its toll-free lines, and by email. It is true, as some have noted, that the IRS should not get to the point of offering “tax planning advice.” But it has a long, long way to go before it gets close to that line. Moreover, instead of centralizing its operations in a small number of campuses and closing TACs, the IRS should maintain a more robust presence in local communities. In these and other ways, the quality of customer service can be dramatically improved.

- **Civil Asset Forfeiture Policies** – I share the concern of many Members that the IRS Criminal Investigation function (CI) should generally pursue only illegal-source structuring violations and should not threaten taxpayers with the possibility of criminal prosecution as a way to get them to agree to accept excessive civil penalties. I am glad the IRS has decided it generally will no longer pursue legal-source structuring cases. However, the practice of holding out the possibility of criminal prosecution to maximize leverage in the civil context

⁸⁰ House Republicans' Tax Reform Task Force, *A Better Way: Our Vision for a Confident America* (June 2016), <http://abetterway.speaker.gov>.

is not limited to structuring cases. In a wide range of Offshore Voluntary Disclosure Program cases, taxpayers felt the penalties were excessive and considered “opting out,” but were too frightened to do so because there was a risk the government could pursue criminal charges. Except in egregious cases, no taxpayer should be placed in a situation where he or she has to make decisions about how to handle an IRS audit under the threat of incarceration.

An additional concern I expressed relates to the application of the Taxpayer Bill of Rights to IRS employees working in CI. CI has taken the position that the TBOR only applies to cases it investigates under the tax code (Title 26 of the U.S. Code) and not to cases it pursues under other titles of the U.S. Code. I disagree. As discussed above, the law requires the Commissioner to “ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights.” CI employees are “IRS employees,” and there is no carve-out in the law either for CI employees or for IRS employees pursuing cases under titles of the U.S. Code other than Title 26. Moreover, it is often impossible at the beginning of a structuring or similar investigation to know whether investigators ultimately will bring charges of unreported income under Title 26. Therefore, I encourage Congress to clarify that all IRS employees must act in accord with taxpayer rights in all facets of their work, except in explicitly-stated extraordinary circumstances.

- **Improper Payments** – The EITC is a program that historically has enjoyed broad bipartisan support, yet the relatively high improper payments rate raises concerns. I offer two observations here. First, for context, my office has computed the total costs of running each of the federal government’s major social benefits programs.⁸¹ For most social benefits programs, the government incurs significant up-front costs to make eligibility determinations before making payments, but having done that, the improper payments rate is low. The EITC is exactly the reverse. Because the government does not require pre-payment eligibility verification for the EITC, up-front costs are not incurred, yet for that reason, the improper payments rate is relatively high. When you look at the combination of up-front administrative costs and improper payments, it turns out the overall costs of the EITC program are in the middle of the pack of social benefits programs.

⁸¹ National Taxpayer Advocate 2016 Annual Report to Congress 325, 354-357 (Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*).

Second, there are important steps Congress can take to lower the improper payments rate. In my 2016 Annual Report to Congress, I presented a detailed proposal to reform the so-called “family status” provisions in the tax code.⁸² I am submitting this proposal as Exhibit B to this statement. Part of my proposal is designed to reduce the EITC improper payments rate. As structured today, a certain amount of EITC is paid solely based on a worker’s wages, and the amount is then increased based on family size. In part, I recommend breaking the EITC into two separate components – a Worker Credit and a Family Credit. For reasons I detail in my report, I believe that approach would both simplify compliance burdens for taxpayers and substantially reduce the improper payments rate. I would be happy to discuss this issue in more detail today or at a future hearing focused specifically on reducing EITC improper payments.

- **Outdated Information Technology (IT) Systems** – There is no doubt that outdated technology systems substantially limit the IRS’s efficiency and make it more difficult for the agency to meet taxpayers’ needs. An adequately funded, staffed, and skilled IT function underpins all core tax administration activities, including taxpayer service, prompt refund issuance, selection and assignment of compliance work, and protection of taxpayers and the public from refund fraud and identity theft. Of particular note, the IRS currently possesses the two oldest information system databases, each nearly six decades old, in the entire federal government.⁸³

The IRS has identified 63 separate case management systems to include in an “enterprise case management” (ECM) project. The age, number, and lack of integration across these systems cause waste and delay, and make it difficult for IRS employees, including TAS employees, to perform their jobs efficiently and provide quality service to taxpayers. This causes frustration for taxpayers and IRS employees alike.

The IRS’s current case management system structure requires employees to retrieve data from many systems manually, which requires maintaining both paper and electronic records. Employees transcribe or otherwise import information from paper and other systems into their own case management systems, and ship, mail, or fax an estimated hundreds of thousands, if not millions, of case management files and supporting documents annually within or between business functions for activities such as case work, quality review, and

⁸² National Taxpayer Advocate 2016 Annual Report to Congress 325-357 (Legislative Recommendation: *Tax Reform: Restructure the Earned Income Tax Credit and Related Family Status Provisions to Improve Compliance and Minimize Taxpayer Burden*), https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16_Volume1_LR_02_TaxReform.pdf.

⁸³ See GAO, GAO-16-468, *Information Technology: Federal Agencies Need to Address Aging Legacy Systems* (May 2016) (discussing aging IT systems throughout the government and listing the IRS’s Individual Master File (IMF) and Business Master File (BMF) as the two oldest investments or systems at 56 years old each).

responses to the Office of Appeals and the Office of Chief Counsel.

To ameliorate these problems, ECM requires a significant investment of both time and money to promote productivity and efficiency gains, and to improve taxpayer service. Indeed, success of the ECM project is critical to establishing online accounts that effectively serve taxpayers and their representatives. I am encouraged by the IRS's most recent approach to ECM, including the addition of new leadership and the search for the appropriate ECM platform. However, I am frustrated that the process has been so drawn out. To improve IRS operations, IT systems are a top priority and will continue to be so for the foreseeable future.

After identifying the above-mentioned problems, the Blueprint proposes to rebuild the IRS by creating three major units focused on the following: (1) families and individuals; (2) businesses; and (3) dispute resolution through an independent "small claims court" that "will allow routine disputes to be resolved more quickly, so that small businesses no longer spend more in legal fees to resolve a dispute with the IRS than the amount of tax that was at stake."⁸⁴

An independent dispute resolution mechanism is central to effective tax administration.⁸⁵ However, I encourage you to proceed with care. In my view, the IRS Office of Appeals was intended to provide exactly that mechanism. Unfortunately, it is falling short. There is a widespread perception that the Office of Appeals is not truly independent. Contributing to that perception, the IRS sometimes includes Appeals' leadership in policy discussions regarding enforcement policies. Moreover, when the IRS publishes its annual Enforcement and Service Results, it breaks down "Enforcement Revenue Collected" into four categories: Collection, Examination, Appeals, and Document Matching. When the IRS itself classifies revenue raised through decisions made by supposedly independent Appeals Officers as "enforcement revenue," it sends an ominous message to taxpayers about independence. For context, the IRS does not classify revenue collected through decisions of the U.S. Tax Court as "enforcement revenue."

For a dispute resolution function to work for taxpayers, it is also important that the procedures be sufficiently flexible so that unsophisticated taxpayers can use them without having to hire representatives. It is also important that taxpayers have the ability to meet with the decision-maker face-to-face. The Office of Appeals' procedures are not perceived as sufficiently user-friendly, and Appeals has been making it

⁸⁴ House Republicans' Tax Reform Task Force, *A Better Way: Our Vision for a Confident America* (June 2016), <http://abetterway.speaker.gov>.

⁸⁵ The U.S. Tax Court does an admirable job of providing a dispute resolution forum for taxpayers – both individuals and small businesses. Moreover, the Tax Court holds its trial sessions at dozens of locations around the country. Thus, unlike when dealing with the Office of Appeals, every taxpayer receives the opportunity for a face-to-face trial in a nearby city. However, there is considerable time and expense involved when litigating cases in court, and it is critical that there be an effective administrative dispute resolution process to minimize the cases that require judicial involvement.

increasingly difficult for taxpayers to obtain face-to-face hearings – in part, as noted above, because the Office of Appeals no longer has any Appeals Officers in 12 states.

The Blueprint suggests it is important for small businesses to have access to an independent dispute resolution function. I agree entirely but also note it is important for individual taxpayers to have similar access. There is much that can be done to make this vision a reality, but I would suggest it may not be necessary to create a new function. By whatever name it is called, the independent dispute resolution function will be fulfilling the role that the Office of Appeals is designed to fulfill today. I see little benefit in creating a second dispute resolution function. In my view, it would be simplest to assess the strengths and weaknesses of the Office of Appeals and make whatever changes are deemed appropriate to strengthen its independence and improve its accessibility.

Lastly, and in general terms, I want to emphasize that I strongly support a “Service First” approach to tax administration. For the reasons I have described, I believe that approach is not only the right approach to take for taxpayers, but it is the best approach for maximizing revenue collection as well.

VII. Conclusion

It has been nearly two decades since Congress last reviewed and updated the laws governing IRS operations. Much has changed during that time, and tax administration would benefit from a fresh review of those laws.

In my view, respect for taxpayer rights should serve as the foundation for effective tax administration. One important taxpayer right is “The Right to Quality Service.” That right requires meeting the needs and preferences of U.S. taxpayers in their attempts to comply with the tax laws. While the use of slogans sometimes oversimplifies complex issues, I generally share the view that the IRS should emphasize “Service First.”

At present, service levels stand at unacceptably low levels. Part of the explanation is lack of adequate funding, but there are many ways in which service levels had been declining before the agency’s funding levels were reduced. To a large degree, this has been and remains a question of agency priorities.

The “Special Focus” section in my 2016 Annual Report to Congress presents my perspective on the steps the IRS should take to become a taxpayer-centric 21st century tax administration. I have tried to summarize some of my concerns and recommendations in this statement.

I would be happy to try to answer any questions you have today, and I would be happy to work with you in the coming months as you develop a more detailed plan to improve the responsiveness of the IRS to address the needs and preferences of U.S. taxpayers.