

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION

THE BUCKEYE INSTITUTE,
Plaintiff,

vs.

INTERNAL REVENUE SERVICE, *et al.*,
Defendants.

Civil Action No. 2:22-cv-04297

Hon. Michael H. Watson,
United States District Judge

Hon. Elizabeth P. Deavers,
United States Magistrate Judge

PLAINTIFF THE BUCKEYE INSTITUTE'S
MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT

MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, Plaintiff The Buckeye Institute respectfully moves for Summary Judgment. As forth more fully in the Memorandum in Support that follows, the material facts are not disputed and The Buckeye Institute is entitled to judgment as a matter of law.

MEMORANDUM IN SUPPORT

INTRODUCTION

Just two years ago, the Supreme Court facially invalidated a California law that required tax-exempt charities to provide confidential information about their donors to the government as a matter of course. *See Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2389 (2021) (“*AFPF*”). Absent “a substantial relation between the disclosure requirement and a sufficiently important governmental interest,” the Supreme Court explained, compelling charitable organizations to disclose the

names of their donors violates the First Amendment right to association. *Id.* at 2383. Indeed, “it is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *Id.* at 2382 (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958)). The Supreme Court thus prevented California from enforcing its across-the-board requirement that every nonprofit organization turn over this sensitive information. *Id.* at 2389.

This case asks the Court to apply *AFPF*’s rule to the IRS’s virtually identical across-the-board requirement that 501(c)(3) organizations disclose their substantial contributors to the federal government. In fact, this case is easier than *AFPF* because—unlike the California Attorney General—the IRS has acknowledged it has no good reason for indiscriminately collecting donor names and addresses for 501(c) organizations other than a 501(c)(3). And the IRS cannot possibly explain why doing so for 501(c)(3)’s is any different.

Because the federal statute requiring 501(c)(3) organizations to disclose their donors is substantively identical to California’s disclosure requirement, Buckeye is entitled to summary judgment and a permanent injunction.

FACTUAL BACKGROUND

The Buckeye Institute

Buckeye, a nonprofit corporation that is tax exempt under § 501(c)(3), seeks to promote limited and effective government and individual freedom through policy research and advocacy. Alt Decl., ¶¶ 2–3. Buckeye often serves as a government

watchdog, litigating against federal, state, and local authorities to defend constitutional rights. *Id.* ¶ 3. Buckeye relies on contributions from those who share its values and wish to advance its mission. *Id.* ¶ 5.

The Regulatory Framework

Each organization exempt from taxation under Section 501(c)(3) must annually disclose to the Treasury Secretary “the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors.” 26 U.S.C. § 6033(b)(5). Substantial contributors are those whose aggregated contributions total more than \$5,000, so long as such amount is more than 2 percent of the total contributions received by the organization in the reported tax year. *Id.* § 507(d)(2)(A). The IRS implements this law by requiring § 501(c)(3) organizations like Buckeye to disclose their “substantial contributors” on Schedule B to Form 990, which they must file annually. *See* Exhibit A, “Schedule of Contributors.”

Schedule B filings are available for public inspection upon request. *See* 26 U.S.C. § 6104(d)(1). But the IRS must protect the confidentiality of donor information by redacting the names and addresses of contributors before producing any Schedule B information to the public. *See id.* § 6104(d)(3)(A). The redaction process is imperfect and “poses a risk of inadvertent of inadvertent disclosure.” *See* Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations, 85 Fed. Reg. 31959, 31963 (May 28, 2020).

The Treasury Department Confirms It Does Not Need Schedule Bs

For almost fifty years, all § 501(c) organizations had to provide donor information when filing their Form 990. Although § 6033(b)(5)'s donor-disclosure requirement only applied to § 501(c)(3) organizations, in 1971 the IRS extended the requirement to all other exempt organizations, such as Section 501(c)(4) social welfare organizations and 501(c)(6) trade associations, by promulgating 26 C.F.R. § 1.6033-2(a)(2)(ii)(F). *See* 85 Fed. Reg. at 31906. Other than the types of organizations included, the 1971 rule's donor-disclosure requirement was substantively identical to that found in Section 6033(b).

The IRS revoked this regulation half a century later. It considered whether the marginal utility from annually collecting private donor information from all 501(c) organizations matched the risk of disclosure of confidential information. The Treasury Department concluded that disclosing substantial contributors on Schedule B was unnecessary to perform its duties in preventing fraud and enforcing the tax code.

On July 16, 2018, the Treasury Department issued Revenue Procedure 2018-38, which revoked the disclosure rule for 501(c) organizations other than those organized under 501(c)(3). *See* Exh. B, Revenue Proc. 2018-38. "The IRS does not need personally identifiable information of donors to be reported on Schedule B of Form 990 or Form 990-EZ in order to carry out its responsibilities." *Id.* at 5. But "[t]he requirement to report [donor identities] increases compliance costs for some private parties, consumes IRS resources in connection with the redaction of such

information, and poses a risk of inadvertent disclosure of information that is not open to public inspection.” *Id.* “Americans,” the Treasury Secretary explained, “shouldn’t be required to send the IRS information that it doesn’t need to effectively enforce our tax laws, and the IRS simply does not need tax returns with donor names and addresses to do its job in this area.” Exh. C, Press Release, *Treasury Department and IRS Announce Significant Reform to Protect Personal Donor Information to Certain Tax-Exempt Organizations* (July 16, 2018) (NYNJ-0000723).¹

In separate July 17, 2018, letters to the Chairman of the House Committee on Oversight and Government Reform and the Chairman of the Senate Committee on Homeland Security and Government Affairs, the then-IRS Commissioner outlined why the agency intended to stop collecting Schedule B information:

First, the IRS does not need personally identifiable information of donors to be reported on Schedule B . . . in order to carry out its responsibilities. . . . Second, reporting donor information needlessly consumes both private and governmental resources. . . . Third, continued collection of personally-identifying donor information poses an unnecessary risk of inadvertent disclosure of sensitive, confidential information.

Exh. D, Letter to Chairman Gowdy at NYNJ-0000571 (July 17, 2018); Exh. E, Letter to Chairman Johnson at NYNJ-0000936 (July 17, 2018). That reasoning matched an August 2018 IRS presentation entitled “Tax Exempt and Government

¹ In 2019, a district court voided Revenue Procedure 2018-38 on procedural, nonsubstantive grounds. *Bullock v. IRS*, 401 F. Supp. 3d 1144, 1159 (D. Mont. 2019). The IRS later published final regulations in May 2020 eliminating the Schedule B donor-disclosure requirement for all Section 501(c) organizations other than those governed by Section 501(c)(3). *See* 85 Fed. Reg. at 31959.

Entities: Disclosure Risk on Form 990, Schedule B and Rev. Proc. 2018-38,” which included a slide stating that the “IRS does not systematically use Schedule B; the lack of a Taxpayer Identification Number makes the data unsuitable for electronic matching.” Exh. F at NYNJ-0000722. The slide further explained that the IRS “doesn’t cross-walk charitable deductions . . . to Schedule B.” *Id.* In other words—the IRS does not use Schedule Bs for any kind of automated fraud detection because it cannot electronically match donor identities on a Schedule B to individual taxpayers.

The IRS confirmed again in 2020 that Schedule Bs do not assist the IRS in administering the tax code. The IRS issued supplementary information to explain its decision removing the disclosure requirement for 501(c)s and addressed whether doing so would make the IRS “not . . . as efficient in enforcing federal tax laws.” 85 Fed. Reg. at 31963. “For the specific purpose of evaluating possible private benefit or inurement or other potential issues relating to qualification for exemption,” the government explained, “the IRS can obtain sufficient information from other elements of the Form 990 or Form 990-EZ and can obtain the names and addresses of substantial contributors along with other information, upon examination, as needed.” *Id.* The IRS stated further that eliminating the requirement that contributors be disclosed on Schedule B reduced the risk of “inadvertent disclosure,” and thus protected against “possible reprisals (such as harassment, threats of violence, or economic retribution).” *Id.* at 31963. As with Revenue Procedure 2018-38, exempt organizations affected by the May 2020 Regulations were still required

to “maintain the names and addresses of their substantial contributors in their books and records . . . in order to permit the IRS to efficiently administer the internal revenue code.” *Id.* at 31966.

The IRS Fails to Keep Taxpayer Information Confidential

The risk that confidential donor information might be released is not hypothetical. The IRS knows of at least 14 unauthorized disclosures of Form 990 information since 2010. *See* Exh. G, IRS Talking Points at 3. In one case, the IRS unlawfully released an organization’s unredacted Schedule B donor list to an individual posing as a journalist.² *See Nat’l Org. for Marriage, Inc. v. United States*, 807 F.3d 592, 594–95 (4th Cir. 2015). The individual sent the information to one of the group’s ideological opponents, which forwarded it to a media outlet—then both published it online. *Id.*

That’s not all. In June 2021, the activist group ProPublica managed to get its hands on a “trove” of taxpayer data held by the IRS, which it then published online. Exh. H, Jesse Eisinger, Jeff Ernsthausen, & Paul Kiel, *The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax*, ProPublica (June 8, 2017), available at <https://perma.cc/Q6GS-YZYR>. The leaked information remains available today. *See id.* (original source visited May 2, 2023). And in September 2022, the IRS disclosed that it mistakenly posted private

² The disclosure is, of course, illegal regardless of the recipient’s profession. But the fact that the recipient claimed to be a journalist indicates that the leaker understood and intended for the confidential information to be broadly published.

information from 990-T forms, affecting more than 120,000 taxpayers. *See* Exh. I, Letter to Chairman Thompson, House Homeland Security Committee from Anna Roth, Acting Assistant Secretary for Management, Treasury Dept., available at <https://perma.cc/J7EY-XYBY>.

These leaks surprise no one, given that a 2014 Inspector General report concluded that “[u]ntil the IRS takes steps to improve its security program deficiencies and fully implement all security program components in compliance with [statutory standards for information security], taxpayer data could be vulnerable to inappropriate and undetected use, modification, or disclosure.” Exh. J, Treasury Inspector General for Tax Administration, *Annual Assessment of the IRS’s Information Technology Program for Fiscal Year 2021* at 11 (December 14, 2021), available at <https://perma.cc/QAZ6-WNH2>.

The Compelled Disclosure Regime Chills Buckeye and Its Supporters

Like most who advocate positions on public policy issues, Buckeye and its supporters prize their First Amendment freedom to associate and assemble. Alt Decl., ¶ 7. Their exercise of these rights to associate with each other in pursuing their mutual social, political, and ideological goals is significantly curtailed because they reasonably fear that they cannot associate privately. *Id.* ¶¶ 7–9. Buckeye’s supporters have made clear they fear retribution from Buckeye’s opponents—be they government or private actors. *Id.* ¶ 8.

Buckeye has experienced firsthand the chilling effect that fear of retaliation has on its supporters’ willingness to associate with it. For example, in 2013, Buckeye

actively and publicly opposed Ohio's expansion of the federal Medicaid program. *Id.*

¶ 10. Shortly after Ohio's General Assembly rejected the Medicaid expansion, the IRS's Cincinnati office informed Buckeye that it would be audited. *Id.* Fearing that the audit was politically motivated retaliation, Buckeye contributors expressed concern that they would be subjected to retaliatory audits if their names appeared on Buckeye's Schedule B or were otherwise disclosed to the IRS. *Id.* ¶ 11. Buckeye supporters cited the then-unfolding story regarding the agency's disparate, adverse treatment of conservative-leaning organizations applying for nonprofit status. *See id.*; Exh. K, S. Rep. No. 114-119 - *The Internal Revenue Service's Processing of 501(c)(3) and 501(c)(4) Applications for Tax-Exempt Status Submitted by "Political Advocacy" Organizations*, pt. 1 at 11 (2015) (excerpt of report attached as exhibit; full report available at <https://perma.cc/NWU8-EZG3>). The controversy directly implicated the IRS's Cincinnati office, which was auditing Buckeye. Alt Decl., ¶¶ 10–11; Exh. L, Gregory Korte, *Cincinnati IRS agents first raised Tea Party issues*, USA Today (June 11, 2013), available at <https://perma.cc/DNK9-NVR6>.

To avoid potential retribution based on their association with Buckeye, some individuals chose to give anonymously, but legally, through donor advised funds, while at least one individual made an anonymous donation via cashier's check, thereby foregoing a donation receipt (as well as the tax deduction for his charitable contribution). Alt Decl., ¶ 11. And some donors reduced their donations to avoid appearing on Buckeye's Schedule B as "substantial contributors." *Id.*

Privacy-conscious contributors have expressed concerns about contributing to Buckeye because they do not trust the IRS to properly protect and not to misuse their data. *See* Alt Decl., ¶ 12. Explaining their reticence, some supporters have pointed to the harassment and abuse of a California initiative’s supporters following the unlawful disclosure of their identities. *Id.* ¶ 13; *see also Nat’l Org. for Marriage*, 807 F.3d at 594–95.

Buckeye’s loss of revenue resulting from donors’ decisions to stop or reduce their giving limits out of fear of retaliation limits its ability to speak about matters of public concern, as well as to associate and assemble with like-minded citizens. *Id.* ¶ 14–15.

ARGUMENT

Congress’s decision to require upfront, indiscriminate collection of donor information for 501(c)(3)’s cannot overcome exacting scrutiny. The IRS has stated—too many times to count—that it does not rely on Schedule Bs to assess taxpayer qualification, investigate and prevent fraud, or otherwise administer and enforce the tax code. That is because the IRS can obtain all the information it needs through targeted requests. It has no need for the “dragnet” collection that Congress mandated. *See AFPP*, 141 S. Ct. at 2387. And enforcing the law creates an “inevitable” chill against exercising the First Amendment right to associate. *Id.* at 2383. The Court should grant summary judgment, declare that § 6033(b)(5) violates the First Amendment, and permanently enjoin the IRS’s upfront collection of donor information.

I. SECTION 6033(B)(5)'S DONOR-DISCLOSURE REQUIREMENT FAILS EXACTING SCRUTINY.

The First Amendment protects Buckeye and its supporters' right to privacy in associating with each other. The Supreme Court has "recognized a First Amendment right to associate for the purpose of speaking, which [it has] termed a 'right to expressive association.'" *Rumsfeld v. Forum for Acad. & Inst'l Rights, Inc.*, 547 U.S. 47, 68 (2006) (citations omitted) ("*FAIR*"). The Constitution protects association because "[t]he right to speak is often exercised most effectively by combining one's voice with the voices of others." *Id.* "[I]mplicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others." *AFPF*, 141 S. Ct. at 2382. "If the government were free to restrict individuals' ability to join together and speak, it could essentially silence views that the First Amendment is intended to protect." *FAIR*, 547 U.S. at 68.

To that end, the right to associate also includes the right to do so privately. A "vital relationship [exists] between freedom to associate and privacy in one's associations." *AFPF*, 141 S. Ct. at 2382 (quoting *NAACP*, 357 U.S. at 462). "[I]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action." *Id.* (quoting *NAACP*, 357 U.S. at 462). Thus, the Supreme Court held just two years ago, laws compelling groups to

disclose the identity of their donors must overcome exacting scrutiny. *Id.* at 2383.³

This standard applies “[r]egardless of the type of association” at issue. *Id.*

Exacting scrutiny is a rigorous standard. “Under that standard, there must be a substantial relation between the disclosure requirement and a sufficiently important governmental interest.” *Id.* (internal quotation marks omitted). And even if the government can identify a substantial relationship between a disclosure regime and an important government interest, “the challenged requirement must be narrowly tailored to the interest it promotes.” *Id.* at 2384.

A. *No substantial relation exists between the upfront collection of Schedule B information and the government’s regulation of 501(c)(3) organizations.*

Upfront disclosure of donor identities on the Schedule B does not further any government interest—important or otherwise. The IRS already acknowledged that this is true for *non*-501(c)(3) organizations. *See* Exh. B at 5; 85 Fed. Reg. at 31963; *see also* Exh. D at NYNJ-0000751 & Exh. E at NYNJ-0000936. In doing so, the IRS categorically rejected the standard justifications for requiring upfront disclosure: “The IRS does not need personally identifiable information of donors to be reported on Schedule B . . . to carry out its responsibilities.” Ex. B at 5. The IRS has further explained that disclosure does not meaningfully assist the IRS in preventing 501(c)

³ In *AFPF*, six justices agreed that disclosure laws must *at least* meet exacting scrutiny “[r]egardless of the type of association” at issue. *Id.* Justice Thomas argued that strict scrutiny—a higher standard—should apply. *Id.* at 2390 (Thomas, J., concurring). And Justices Alito and Gorsuch agreed that because the law at issue in *AFPF* did not meet exacting scrutiny, the Court need not decide whether strict scrutiny should apply. *Id.* at 2392 (Alito, J., concurring).

organizations from impermissibly operating for private benefit or for assessing “other potential issues relating to qualification for [tax] exemption.” 85 Fed. Reg. at 31963. And the IRS has also stated that because “the primary utility of the names and addresses of substantial contributors arises during the examination process,” it can obtain that information as needed with ease. *Id.*

The IRS also rejected the notion that it needs Schedule B information for the initial determination of whether an examination is warranted: “[T]he IRS’s process for selection [for examination] would not be affected by this change.” *Id.* In short, the federal government made clear that it does not need Schedule B information to do its job in enforcing and administering the tax code for all the other kinds of 501(c) organizations for which there is not a disclosure mandate.

The IRS cannot carry its burden of explaining why Schedule Bs are substantially related to an important government interest for 501(c)(3)s when they are all but irrelevant for other 501(c) organizations.

The most significant difference between 501(c)(3) organizations and other nonprofits is that contributions to 501(c)(3)s are tax-deductible, while contributions to other 501(c)s are not. Thus, one could imagine that the IRS might wish to use Schedule Bs to root out unscrupulous taxpayers claiming deductions for fictitious contributions. But Schedule B information does not assist the IRS in doing so. As the agency explained in 2018, the “IRS *does not* systematically use Schedule B” because it lacks the necessary information to conduct electronic matching. Exh. F at NYNJ-0000722 (emphasis added). That is, the IRS has no way to match information

on a Schedule B to specific taxpayers. *Id.* It cannot “cross-walk charitable deductions . . . to Schedule B.” *Id.* The argument that the IRS needs this information upfront, before an examination, for systematic fraud prevention or quality assurance does not reflect reality.

Nor is there any substantial relationship between the collection of Schedule B information and a governmental interest in ensuring that a 501(c)(3) is not used as a shell to conduct for-profit activities. Form 990 requires 501(c)(3) entities to detail the grants and amounts paid, benefits to members, salaries of officers and employees, and as well as fundraising fees. *See, e.g.*, Exh. M, Form 990 Lines 13–17 and Form 990 Part VII. This detailed information required elsewhere on Form 990 may help the government analyze whether a non-profit is being operated as a shell to perform for-profit activities, but the donors’ names and addresses do not.

Likewise, to the extent that the government seeks to prevent self-dealing by 501(c)(3) organizations, Schedule B provides little help. For example, Schedule D already requires a reconciliation of revenue and expenses from an organization’s audited financial statements and its tax return, which paints a clear picture of the money flowing into and out of a 501(c)(3) organization. *See* Exh. N. Similarly, Schedule I requires 501(c)(3) organizations to report grants and other assistance to organizations, governments, and individuals in the United States, including the name and EIN of any such recipient organization as well as the purpose of the grant or other assistance. *See* Exh. O. Schedule J requires a 501(c)(3) organization to report its compensation information for officers, directors, trustees, key employees

and highest compensated employees. *See* Exh. P. The relationship between the collection of this information and the government interest in preventing self-dealing or other misuse of charitable funds is obvious: it shows where the money goes. The donor information on Schedule B adds nothing to that picture.

Worse, the mass collection of this information is not only unrelated to the important government interest that it purports to serve—thus rendering the statute unconstitutional—the IRS has complained in the context of non-501(c)(3) groups that warehousing the information is administratively *inconvenient* because it must redact identifying information before releasing it in response to public requests. Exh. B at 5; 85 Fed. Reg. at 31963. The same inconvenience applies in the 501(c)(3) context.

B. Section 6033(b)(5) is not narrowly tailored.

Even if the IRS could establish a substantial connection between collecting the Schedule B information and a sufficiently important interest, that alone will not justify encroachment on the First Amendment rights of Buckeye and its supporters. *See Davis v. FEC*, 554 U.S. 724, 744 (2008) (citing *Buckley v. Valeo*, 424 U.S. 1, 68, 71 (1976) (per curiam)). “While exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government’s asserted interest.” *AFPF*, 141 S. Ct. at 2383.

In *AFPF*, California argued that it needed donor information to enforce its laws governing charitable organizations—including 501(c)(3)s. California rightly noted

that it had an interest in “protecting the public from fraud” relating to the “misuse, misappropriation, and diversion of charitable assets” as well as preventing “false and misleading charitable solicitations.” *AFPP*, 141 S. Ct. at 2386. But the only relation between those ends and collection of the Schedule B information that California could articulate was that “having th[e] information on hand ma[de] it easier to police misconduct by charities.” *AFPP*, 141 S. Ct. at 2379. The Supreme Court rejected this justification, noting that the state’s Attorney General could obtain any information needed from a specific organization through a subpoena or audit letter. *Id.* at 2386. Although the Court did “not doubt that California has an important interest in preventing wrongdoing by charitable organizations,” there was “a dramatic mismatch” between the up-front collection of donor identities from all 60,000 charities registered to fundraise in the state and that interest. *Id.* at 2385–86. “California is not free to enforce *any* disclosure regime that furthers its interest. It must instead demonstrate its need for universal production in light of any less intrusive alternatives.” *Id.* at 2386.

The IRS’s across-the-board collection and storage of Schedule B donor data likewise far exceeds what might be needed to further an important government interest in enforcing the tax code. Almost 1.5 million tax-exempt organizations filed a Form 990 in fiscal year 2019. Exh. Q, Treasury Inspector General for Tax Administration, *Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations* at 6 (Feb. 17, 2021). While it is not clear how many of those returns included donor information on a Schedule B (because not every 501(c)(3) will

necessarily have substantial contributors), the IRS collects at least as many Schedule Bs from 501(c)(3) organizations as California did in *AFPF*. But the IRS does not use Schedule B information in a systematic way to identify which returns to examine. Exh. F at NYNJ-0000722. The donor information on a Schedule B cannot be “cross-walk[ed]” with information related to individual charitable deductions. *Id.* The same “dramatic mismatch” between the mass collection of information and the way the government uses that information, which caused California’s law to fail narrow tailoring, exists here as well—indeed, it is arguably worse because not every 501(c)(3) that files a Schedule B operates in California, but all such organizations file a Schedule B with the IRS. *See* 141 S. Ct. at 2386.

Any legitimate investigative interest can be served without burdening the First Amendment rights of the more than one million § 501(c)(3) organizations and their supporters. As the Supreme Court reminded California’s Attorney General, *see AFPF*, 141 S. Ct. at 2386–87, the IRS, too, could obtain the same information upon examination as needed instead of collecting up-front the names and addresses of substantial contributors to all Section 501(c)(3) organizations. In fact, that is what the IRS said when it rescinded its regulation for other 501(c)s in 2020. 85 Fed. Reg. at 31963. Because the federal government’s interest in regulating 501(c)(3)s to prevent fraud or misuse of the charitable code is nearly identical to California’s interests, that same dramatic mismatch exists here.

That the IRS is legally required to keep donor identities confidential does not save Section 6033(b)(5)’s poor tailoring. “[D]isclosure requirements can chill

association even if there is no disclosure to the general public.” *AFPF*, 141 S. Ct. at 2388 (cleaned up). And “[w]hile assurances of confidentiality may reduce the burden of disclosure to the [government], they do not eliminate it.” *Id.* That is particularly true here, given the IRS’s difficulty in keeping taxpayer data confidential. *See, e.g.*, Exh. F at NYNJ-0000718; Exh. G. at 3; 85 Fed. Reg. at 31963; *supra* at 6–7.

C. *Section 6033(b)(5)’s donor-disclosure requirement is unconstitutional on its face, and as applied to Buckeye.*

The Supreme Court facially struck down California’s Schedule B demand. *AFPF*, 141 S. Ct. at 2385, 2387–89. This Court should do the same with § 6033(b)(5), as its demand that 501(c)(3) organizations submit Schedule Bs as a matter of course fails exacting scrutiny in every case. As discussed above, there is no “substantial relation between the disclosure requirement and a sufficiently important governmental interest.” *Id.* at 2383 (cleaned up). And the challenged requirement is not narrowly tailored to the interest it allegedly promotes. *Id.* at 2384.

Just like in *AFPF*, these problems exist “across the board.” *Id.* at 2389. The IRS does not systematically use Schedule Bs to prevent or investigate potential fraud or other discrepancies. “That is true in every case.” *Id.* The IRS admits that it can obtain any information on a Schedule B as needed, rather than upfront. “That is true in every case.” *Id.* And any interest the IRS has “in amassing sensitive information for its own convenience is weak.” *Id.* “That is true in every case.” This court should thus find § 6033(b)(5) unconstitutional on its face “because First Amendment freedoms need breathing space to survive.” *Id.*

Yet even if the IRS could point to some permissible scenario for collecting Schedule B data upfront, the statute is unconstitutional as applied to Buckeye. “In an as-applied challenge, the plaintiff contends that application of the statute in the particular context in which he has acted, or in which he proposed to act, would be unconstitutional.” *Ross v. Duggan*, 402 F.3d 575, 582 n.3 (6th Cir. 2004) (quoting *Women’s Med. Pro. Corp. v. Voinovich*, 130 F.3d 187, 193 (6th Cir. 1977)). If the Court rejects Buckeye’s facial challenge, it should consider Buckeye’s “particular context” and invalidate the law as-applied to Buckeye. *Id.*

There is no substantial relation between the statute’s disclosure requirement and any important governmental interest necessary to demand this information of Buckeye, and the IRS has narrower, less-intrusive means of addressing any investigative interests. Moreover, fear of government reprisal or other abuse of donor information has deterred—and continues to deter—individuals who are otherwise inclined to do so from associating with and supporting Buckeye financially, which in turn impairs Buckeye’s ability to speak. Alt Decl., ¶¶ 11–15.

II. THE COURT SHOULD PERMANENTLY ENJOIN THE DONOR-DISCLOSURE REQUIREMENT.

“A party is entitled to a permanent injunction if it can establish that it suffered a constitutional violation and will suffer continuing irreparable injury for which there is no adequate remedy at law.” *Saieg v. City of Dearborn*, 641 F.3d 727, 733 (6th Cir. 2011). The donor-disclosure rule violates Buckeye’s First Amendment right to association for the reasons discussed above. And “[t]he loss of First Amendment freedoms, for even minimal periods of time,’ amounts to irreparable injury.” *Sisters*

for Life, Inc. v. Louisville-Jefferson Cnty., 56 F.4th 400, 408 (6th Cir. 2022) (quoting *Roman Catholic Diocese v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam)). Buckeye is thus entitled to a permanent injunction to prevent further harm to its constitutional rights.

CONCLUSION

The Court should grant Buckeye's motion for summary judgment, enter a judgment declaring that 26 U.S.C. § 6033(b)(5) violates the First Amendment, and permanently enjoin the defendants from collecting the names and addresses of Buckeye's contributors under 26 U.S.C. § 6033(b)(5).

Dated: May 3, 2023.

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DECLARATION OF ROBERT ALT

I, Robert Alt, hereby declare as follow:

1. I am an adult resident of the State of Ohio and the President & CEO of The Buckeye Institute (“Buckeye”), a position I have held since October 2012. I am competent to make this Declaration and do so in support of Buckeye’s Motion for Preliminary Injunction in the above-captioned matter.

2. Founded in 1989, Buckeye is a nonpartisan, nonprofit corporation organized under Ohio law and exempt from federal income taxation under I.R.C. § 501(c)(3). Buckeye maintains its headquarters at 88 East Broad Street, Suite 1300, Columbus, Ohio 43215.

3. Buckeye seeks to promote limited and effective government and individual freedom in Ohio and across the country through policy research and advocacy, often serving as a government watchdog and litigating against federal,

state, and local authorities to defend rights under the Ohio and United States Constitutions.

4. As Buckeye's President, my duties include, but are not limited to, meeting with donors, soliciting donations, reviewing all government filings, and otherwise attending to Buckeye's day-to-day affairs.

5. To further its mission, Buckeye relies on financial and other support from individuals, corporations, and foundations that share its values and wish to advance its mission.

6. Buckeye has filed Schedule Bs with its Form 990's with the IRS as required since its founding. Buckeye's next annual Form 990 and Schedule B, with extension, is due by November 15, 2023.

7. Like most who advocate positions on public policy issues, Buckeye and its supporters prize their First Amendment freedom to speak, associate, and assemble. Their exercise of these rights to pursue mutual social, political, and ideological goals is significantly curtailed if they cannot associate privately, as Buckeye's supporters would risk retribution from some who oppose its mission.

8. Buckeye's supporters have made clear their fear of retribution from Buckeye's opponents, be they government or private actors.

9. Buckeye has experienced firsthand the chilling effect that fear of retaliation has on its supporters' willingness to associate with it.

10. For example, in 2013, Buckeye actively and publicly opposed Ohio's expansion of the federal Medicaid program. Shortly after Ohio's General Assembly

rejected Medicaid expansion in Spring 2013, the IRS's Cincinnati office informed Buckeye in August that it would be audited.

11. Fearing that the audit was politically motivated retaliation, Buckeye contributors expressed concern that if their names appeared on Buckeye's Schedule B or were otherwise disclosed to the IRS, they would similarly be subjected to retaliatory audits. Buckeye supporters cited the then-unfolding story regarding the agency's disparate, adverse treatment of conservative-leaning organizations applying for non-profit status. The IRS's Cincinnati office was directly implicated in the IRS controversy. *See, e.g.,* Exh. L, Gregory Korte, *Cincinnati IRS agents first raised Tea Party issues*, USA Today (June 11, 2013), <https://perma.cc/DNK9-NVR6>. To avoid potential retribution based on their association with Buckeye, some individuals chose to give anonymously, but legally, through donor advised funds, while at least one individual made an anonymous donation via cashier's check, thereby foregoing a donation receipt (as well as the tax deduction for their charitable contribution). Subsequently, some donors reduced their donations to avoid being listed on Buckeye's Schedule B as a "substantial contributor."

12. Privacy-conscious contributors have expressed concerns about contributing to Buckeye because they do not trust the IRS to properly protect and not to misuse their data.

13. Explaining their reticence to contribute to Buckeye or to give at levels that would appear on Buckeye's Schedule B, some supporters have pointed to the

harassment and abuse of a California initiative's supporters after the IRS unlawfully disclosed their identities.

14. Loss of revenue resulting from donors' Schedule B-induced decisions to stop or reduce their giving limits Buckeye's ability to speak about matters of public concern, as well as to associate and assemble with like-minded citizens.

15. Fear of government reprisal or other abuse of donor information has deterred individuals who are otherwise inclined to do so from associating with and supporting Buckeye financially, which in turn impairs Buckeye's ability to speak.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on MAY 2, 2023.



ROBERT ALT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION

THE BUCKEYE INSTITUTE,

Plaintiff,

v.

INTERNAL REVENUE SERVICE, *et al.*

Defendants.

Civil Action No. 2:22-cv-04297

Hon. Michael H. Watson,
United States District Judge

Hon. Elizabeth P. Deavers,
United States Magistrate Judge.

DECLARATION OF DAVID KEATING

I, David Keating, hereby declare as follow:

1. I am an adult resident of the State of Maryland and the President of the Institute for Free Speech.

2. On September 9, 2021, I submitted a request to the Department of Treasury, Internal Revenue Service (“IRS”), under the Freedom of Information Act. I requested internal records that the IRS previously provided to the Attorneys General of New York and New Jersey in late 2018 and 2019 in response to request for records relating to Revenue Procedure 2018-38 or similar records that I described.

3. The IRS provided 4,259 pages of documents in response to my request.

4. Exhibit C is a true and accurate copy of a portion of the documents I received from the IRS, which the IRS labeled NYNJ-0000723–25.

5. Exhibit D is a true and accurate copy of a portion of the documents I received from the IRS, which the IRS labeled NYNJ-0000749–59.

6. Exhibit E is a true and accurate copy of a portion of the documents I received from the IRS, which the IRS labeled NYNJ-0000934–44.

7. Exhibit F is a true and accurate copy of a portion of the documents I received from the IRS, which the IRS labeled NYNJ-0000716–22.

8. Exhibit G is a true and accurate copy of a portion of the documents I received from the IRS.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on May 2, 2023.



Digitally signed by David Keating
DN: cn=David Keating, o=Institute
for Free Speech, ou,
email=dkeating@ifs.org, c=US
Date: 2023.05.02 14:28:56 -04'00'

DAVID KEATING

EXHIBIT A

**Schedule B
(Form 990)**Department of the Treasury
Internal Revenue Service**Schedule of Contributors**Attach to Form 990 or Form 990-PF.
Go to www.irs.gov/Form990 for the latest information.

OMB No. 1545-0047

2022

Name of the organization

Employer identification number

Organization type (check one):**Filers of:****Section:**

Form 990 or 990-EZ

☐ 501(c)() (enter number) organization☐ 4947(a)(1) nonexempt charitable trust **not** treated as a private foundation☐ 527 political organization

Form 990-PF

☐ 501(c)(3) exempt private foundation☐ 4947(a)(1) nonexempt charitable trust treated as a private foundation☐ 501(c)(3) taxable private foundationCheck if your organization is covered by the **General Rule** or a **Special Rule**.**Note:** Only a section 501(c)(7), (8), or (10) organization can check boxes for both the General Rule and a Special Rule. See instructions.**General Rule**

- ☐
- For an organization filing Form 990, 990-EZ, or 990-PF that received, during the year, contributions totaling \$5,000 or more (in money or property) from any one contributor. Complete Parts I and II. See instructions for determining a contributor's total contributions.

Special Rules

- ☐ For an organization described in section 501(c)(3) filing Form 990 or 990-EZ that met the 33 $\frac{1}{3}$ % support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi), that checked Schedule A (Form 990), Part II, line 13, 16a, or 16b, and that received from any one contributor, during the year, total contributions of the greater of **(1)** \$5,000; or **(2)** 2% of the amount on (i) Form 990, Part VIII, line 1h; or (ii) Form 990-EZ, line 1. Complete Parts I and II.
- ☐ For an organization described in section 501(c)(7), (8), or (10) filing Form 990 or 990-EZ that received from any one contributor, during the year, total contributions of more than \$1,000 *exclusively* for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. Complete Parts I (entering "N/A" in column (b) instead of the contributor name and address), II, and III.
- ☐ For an organization described in section 501(c)(7), (8), or (10) filing Form 990 or 990-EZ that received from any one contributor, during the year, contributions *exclusively* for religious, charitable, etc., purposes, but no such contributions totaled more than \$1,000. If this box is checked, enter here the total contributions that were received during the year for an *exclusively* religious, charitable, etc., purpose. Don't complete any of the parts unless the **General Rule** applies to this organization because it received *nonexclusively* religious, charitable, etc., contributions totaling \$5,000 or more during the year \$ _____

Caution: An organization that isn't covered by the General Rule and/or the Special Rules doesn't file Schedule B (Form 990), but it **must** answer "No" on Part IV, line 2, of its Form 990; or check the box on line H of its Form 990-EZ or on its Form 990-PF, Part I, line 2, to certify that it doesn't meet the filing requirements of Schedule B (Form 990).

Name of organization

Employer identification number

Part I **Contributors** (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
-----	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
-----	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization

Employer identification number

Part II **Noncash Property** (see instructions). Use duplicate copies of Part II if additional space is needed.

(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (See instructions.)	(d) Date received
-----	----- ----- ----- -----	\$ -----	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (See instructions.)	(d) Date received
-----	----- ----- ----- -----	\$ -----	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (See instructions.)	(d) Date received
-----	----- ----- ----- -----	\$ -----	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (See instructions.)	(d) Date received
-----	----- ----- ----- -----	\$ -----	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (See instructions.)	(d) Date received
-----	----- ----- ----- -----	\$ -----	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (See instructions.)	(d) Date received
-----	----- ----- ----- -----	\$ -----	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (See instructions.)	(d) Date received
-----	----- ----- ----- -----	\$ -----	-----

Name of organization	Employer identification number
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Part III **Exclusively religious, charitable, etc., contributions to organizations described in section 501(c)(7), (8), or (10) that total more than \$1,000 for the year from any one contributor.** Complete columns (a) through (e) and the following line entry. For organizations completing Part III, enter the total of *exclusively* religious, charitable, etc., contributions of **\$1,000 or less** for the year. (Enter this information once. See instructions.) \$ _____

Use duplicate copies of Part III if additional space is needed.

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held

(e) Transfer of gift

Transferee's name, address, and ZIP + 4

Relationship of transferor to transferee

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held

(e) Transfer of gift

Transferee's name, address, and ZIP + 4

Relationship of transferor to transferee

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held

(e) Transfer of gift

Transferee's name, address, and ZIP + 4

Relationship of transferor to transferee

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held

(e) Transfer of gift

Transferee's name, address, and ZIP + 4

Relationship of transferor to transferee

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Schedule B (Form 990), such as legislation enacted after the schedule and its instructions were published, go to www.irs.gov/Form990.

Note: Terms in **bold** are defined in the *Glossary* of the Instructions for Form 990.

Reminders

Certain tax-exempt organizations are no longer required to report the names and addresses of their contributors on Schedule B (Form 990). However, these organizations must continue to keep this information in their books and records. Organizations described in section 501(c)(3) and section 527 are still required to report the names and addresses of their contributors on Schedule B. See Regulations section 1.6033-2 (T.D. 9898), 2020-25 I.R.B. 935, and *General Rule*, later.

Purpose of Schedule

Schedule B (Form 990) is used to provide information on contributions the organization reported on:

- Form 990, Return of Organization Exempt From Income Tax, Part VIII, *Statement of Revenue*, line 1;
- Form 990-EZ, Short Form Return of Organization Exempt From Income Tax, Part I, line 1; or
- Form 990-PF, Return of Private Foundation, Part I, line 1.

Who Must File

Every organization must complete and attach Schedule B to its Form 990, 990-EZ, or 990-PF, unless it certifies that it doesn't meet the filing requirements of this schedule by:

- Answering "No" on Form 990, Part IV, *Checklist of Required Schedules*, line 2; or
- Checking the box on:
 - Form 990-EZ, line H; or
 - Form 990-PF, Part I, *Analysis of Revenue and Expenses*, line 2.

See the separate instructions for these lines on those forms.

If an organization isn't required to file Form 990, 990-EZ, or 990-PF but chooses to do so, it must file a complete return and provide all of the information requested, including the required schedules.

Accounting Method

When completing Schedule B (Form 990), the organization must use the same accounting method it checked on Form 990, Part XII, *Financial Statements and Reporting*, line 1; Form 990-EZ, line G; or Form 990-PF, line J.

Public Inspection

Note: Don't include social security numbers of contributors as this information may be made public.

- Schedule B is open to public inspection for an organization that files Form 990-PF.
- Schedule B is open to public inspection for a section 527 political organization that files Form 990 or 990-EZ.
- For all other organizations that file Form 990 or 990-EZ, the names and addresses of contributors aren't required to be made available for public inspection. All other information, including the amount of contributions, the description of **noncash contributions**, and any other information, is required to be made available for public inspection unless it clearly identifies the contributor.

If an organization files a copy of Form 990 or 990-EZ, and attachments, with any state, it shouldn't include its Schedule B (Form 990) in the attachments for the state, unless a schedule of contributors is specifically required by the state. States that don't require the information might inadvertently make the schedule available for public inspection along with the rest of the Form 990 or 990-EZ.

See the instructions for Form 990, 990-EZ, or 990-PF for information on telephone assistance and the public inspection rules for these forms and their attachments.

Contributions To Be Included on Part I

A *contributor* (person) includes individuals, fiduciaries, partnerships, corporations, associations, trusts, and exempt organizations. In addition, section 509(a)(2), 170(b)(1)(A)(iv), and 170(b)(1)(A)(vi) organizations must also report **governmental units** as contributors.

Contributions

Contributions reportable on Schedule B (Form 990) are contributions, grants, bequests, devises, and gifts of money or property, whether or not for charitable purposes. For example, political contributions to section 527 political organizations are included. Contributions don't include fees for the performance of services. See the instructions for Form 990, Part VIII, line 1, for more detailed information on contributions.

General Rule

Unless the organization is covered by one of the *Special Rules*, later, it must report in Part I contributions from all persons who contribute \$5,000 or more (in money or other property) during the **tax year**. As described below, certain organizations report only total contribution amounts. Contributions may be made directly or indirectly and may take the form of money, **securities**, or any other type of property.

Include all separate and independent gifts that are \$1,000 or more to determine a contributor's total contribution. Gifts that are less than \$1,000 may be disregarded. Include each contribution reported on Form 990, Part VIII, line 1. For example, if an organization that uses the accrual method of accounting reports a pledge of noncash property in Part VIII, line 1, it must include the value of that contribution in calculating whether the contributor meets the General Rule (or one of the Special Rules, if applicable), even if the organization didn't receive the property during the tax year.

Certain organizations not required to report contributor names and addresses.

Certain organizations are no longer required to report the names and addresses of their contributors on Schedule B. Such organizations are those other than:

- Section 501(c)(3) organizations (including section 4947(a)(1) nonexempt charitable trusts and nonexempt private foundations described in section 6033(d)), or
- Section 527 political organizations. Organizations not required to report the names and addresses should enter "N/A" in Part I, column (b). These organizations must continue to:

- Collect the names and addresses of their contributors,
- Keep this information in their records and books, and
- Make the information available to the IRS upon request.

Section 501(c)(3) organizations (including section 4947(a)(1) nonexempt charitable trusts and nonexempt private foundations described in section 6033(d)), and section 527 political organizations must report the names and addresses of their contributors in Part I, column (b), on Schedule B.

Special Rules

Section 501(c)(3) organizations that file Form 990 or 990-EZ.

For an organization described in section 501(c)(3) that meets the 33 1/3% support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi), and not just the 10% support test (whether or not the organization is otherwise described in section 170(b)(1)(A)), list in Part I only those contributors whose contribution of \$5,000 or more during the tax year is greater than 2% of the amount reported on Form 990, Part VIII, line 1h(A); or Form 990-EZ, line 1. *An organization that claims the benefit of this special rule must either (1) establish on Schedule A (Form 990), Part II, that it met the 33 1/3% support test for the current year or prior year; or (2) check the box on Schedule A (Form 990), Part I, line 7 or 8, and the box on Schedule A, Part II, line 13, as a section 170(b)(1)(A)(vi) organization in its first 5 years.*

Example. A section 501(c)(3) organization, of the type described above, reported \$700,000 in total contributions, gifts, grants, and similar amounts received on Form 990, Part VIII, line 1h. The organization is only required to list in Parts I and II of its Schedule B each person who contributed more than the greater of \$5,000 or 2% of \$700,000 (\$14,000) during the tax year. Thus, a contributor who

gave a total of \$11,000 wouldn't be reported in Parts I and II for this section 501(c)(3) organization. Even though the \$11,000 contribution to the organization was greater than \$5,000, it didn't exceed \$14,000.

Section 501(c)(7), (8), or (10) organizations.

For contributions to these social and recreational clubs, fraternal beneficiary and domestic fraternal societies, orders, or associations that weren't for an exclusively religious, charitable, etc., purpose, list in Part I contributions from each contributor who contributed \$5,000 or more during the tax year, as described under *General Rule*, earlier.

For contributions to a section 501(c)(7), (8), or (10) organization received for use exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals (section 170(c)(4), 2055(a)(3), or 2522(a)(3)), list in Part I contributions from each contributor whose aggregate contributions for an exclusively religious, charitable, etc., purpose were more than \$1,000 during the tax year. To determine the more-than-\$1,000 amount, total all of a contributor's gifts for the tax year (regardless of amount). For a noncash contribution, complete Part II.

All section 501(c)(7), (8), or (10) organizations that listed an exclusively religious, charitable, etc., contribution in Part I or II must also complete Part III to provide further information on such contributions of more than \$1,000 during the tax year and show the total amount received from such contributions that were for \$1,000 or less during the tax year.

All section 501(c)(7), (8), or (10) organizations listing contributions under this special rule should enter "N/A" in Part I, column (b), and should not enter the name and address of any contributor.

However, if a section 501(c)(7), (8), or (10) organization didn't receive total contributions of more than \$1,000 from a single contributor during the tax year for exclusively religious, charitable, etc., purposes and consequently wasn't required to complete Parts I through III with respect to these contributions, it need only check the third *Special Rules* box on the front of Schedule B and enter, in the space provided, the total contributions it received during the tax year for an exclusively religious, charitable, etc., purpose.

Specific Instructions



Don't attach substitutes for Schedule B or attachments to Schedule B with information on contributors. Parts I, II, and III of Schedule B may be duplicated as needed to provide adequate space for listing all contributors. Number each page of each part (for example, Page 2 of 5, Part II).

Part I. In column (a), identify the first contributor listed as No. 1 and the second contributor as No. 2, etc. Number

consecutively. In column (b), section 501(c)(3) organizations (including section 4947(a)(1) nonexempt charitable trusts and section 501(c)(3) nonexempt private foundations) and section 527 organizations enter the contributor's name, address, and ZIP code. Identify a donor as "anonymous" only if the organization doesn't know the donor's identity. Other organizations would enter "N/A" in place of each contributor's name, address, and ZIP code. In column (c), enter the amount of total contributions for the **tax year** for the contributor listed.

In column (d), check the type of contribution. Check all that apply for the contributor listed. If a *cash contribution* came directly from a contributor (other than through payroll deduction), check the "Person" box. A cash contribution includes contributions paid by cash, credit card, check, money order, electronic fund or wire transfer, and other charges against funds on deposit at a financial institution.

If an **employee's** cash contribution was forwarded by an employer (indirect contribution), check the "Payroll" box. If an employer withholds contributions from employees' pay and periodically gives them to the organization, report only the employer's name and address or "N/A," as applicable, and the total amount given unless you know that a particular employee gave enough to be listed separately.

Check the "Noncash" box in column (d) for any contribution of property other than cash during the tax year, and complete Part II of this schedule. For example, if an organization that uses the accrual method of accounting reports a pledge of noncash property on Form 990, Part VIII, line 1g, it must check the "Noncash" box and complete Part II even if the organization didn't receive the property during the tax year.

For a section 527 organization that files a Form 8871, Political Organization Notice of Section 527 Status, the names and addresses of contributors that aren't reported on Form 8872, Political Organization Report of Contributions and Expenditures, don't need to be reported in Part I if the organization paid the amount specified by section 527(j)(1). In this case, enter "Pd. 527(j)(1)" in column (b) instead of a name, address, and ZIP code; but you must enter the amount of contributions in column (c).

Part II. In column (a), show the number that corresponds to the contributor's number in Part I. In column (b), describe the **noncash contribution** received by the organization during the tax year, regardless of the value of that noncash contribution. Note the public inspection rules discussed earlier.

In columns (c) and (d), report property with readily determinable market value (for example, market quotations for securities) by listing its **fair market value (FMV)**. If the organization immediately sells **securities** contributed to the organization (including through a broker or agent), the contribution must still be reported as a gift of property (rather than cash) in the amount of the net

proceeds plus the broker's fees and expenses. See the instructions for Form 990, Part VIII, line 1g, which provide an example to illustrate this point. If the property isn't immediately sold, measure market value of marketable securities registered and listed on a recognized securities exchange by the average of the highest and lowest quoted selling prices (or the average between the bona fide bid and asked prices) on the contribution date. See Regulations section 20.2031-2 to determine the value of contributed stocks and bonds. When FMV can't be readily determined, use an appraised or estimated value. To determine the amount of a noncash contribution subject to an outstanding debt, subtract the debt from the property's FMV. Enter the date the property was received by the organization, but only if the donor has fully given up use and enjoyment of the property at that time.

The organization must report the value of any **qualified conservation contributions** and contributions of **conservation easements** listed in Part II consistently with how it reports revenue from such contributions in its books, records, and financial statements and in Form 990, Part VIII, *Statement of Revenue*.

For more information on noncash contributions, see the instructions for Schedule M (Form 990), Noncash Contributions.

If the organization received a partially completed Form 8283, Noncash Charitable Contributions, from a donor, complete it and return it so the donor can get a charitable contribution deduction. Keep a copy for your records.

Original (first) and successor donee (recipient) organizations must file Form 8282, Donee Information Return, if they sell, exchange, consume, or otherwise dispose of (with or without consideration) charitable deduction property (property other than money or certain publicly traded securities) within 3 years after the date the original donee received the property.

Part III. Section 501(c)(7), (8), or (10) organizations that received contributions for use exclusively for religious, charitable, etc., purposes during the tax year must complete Parts I through III for each person whose gifts totaled more than \$1,000 during the tax year. Show also, in the heading of Part III, the total of gifts to these organizations that were \$1,000 or less for the tax year and were for exclusively religious, charitable, etc., purposes. Complete this information only on the first Part III page if you use duplicate copies of Part III.

If an amount is set aside for an exclusively religious, charitable, etc., purpose, show in column (d) how the amount is held (for example, whether it is commingled with amounts held for other purposes). If the organization transferred the gift to another organization, show the name and address of the transferee organization in column (e) and explain the relationship between the two organizations.

EXHIBIT B

Part III

Administrative, Procedural, and Miscellaneous

[26 CFR 1.6033-2]: Returns by exempt organizations and returns by certain non-exempt organizations
(Also: §§ 6001, 6033, and §1.6001-1)

Rev. Proc. 2018-38

SECTION 1. PURPOSE

This document contains procedures modifying the information to be reported to the IRS by organizations exempt from tax under § 501(a) of the Internal Revenue Code (Code), other than organizations described in § 501(c)(3), that are required to file an annual Form 990 or Form 990-EZ information return. These organizations are no longer required to report the names and addresses of their contributors on the Schedule B of their Forms 990 or 990-EZ. These organizations, however, must continue to collect and keep this information in their books and records and to make it available to the IRS upon request, when needed for tax administration.

SECTION 2. BACKGROUND

Section 6001 of the Code requires any person subject to tax under the Code to keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, the Secretary may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. Specifically for organizations exempt from tax under § 501(a) (tax-exempt organizations), § 1.6001-1(c) provides that such organizations shall keep such permanent books of account or records as are sufficient to show specifically the items of gross income, receipts, and disbursements.

Section 6033(a) requires certain tax-exempt organizations to file annual information returns that include gross income, receipts and disbursements, and such other information required by forms or regulations. The annual information returns required under § 6033 are Forms 990, “Return of Organization Exempt From Income Tax,” 990-EZ, “Short Form Return of Organization Exempt From Income Tax,” 990-PF, “Return of Private Foundation,” and 990-BL, “Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons.” Section 6033(b) provides that tax-exempt organizations described in § 501(c)(3) that are subject to the requirements of § 6033(a) must furnish information annually setting forth certain items including, “the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors.”

Although the statute does not address contributor reporting by tax-exempt organizations other than those described in § 501(c)(3), the implementing regulations under § 6033(a) generally require all types of tax-exempt organizations to report the names and addresses of all persons who contribute \$5,000 or more in a year under § 1.6033-2(a)(2)(ii)(f). Section 1.6033-2(a)(2)(iii)(d) also requires organizations described in § 501(c)(7) (generally, social clubs), (8) (generally, fraternal beneficiary societies), or (10) (generally, domestic fraternal societies) to report the name of each person who contributed more than \$1,000 during the taxable year to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

The regulation that extends contributor reporting requirements to all types of tax-exempt organizations also authorizes the Commissioner to grant relief from those requirements. Specifically, § 1.6033-2(g)(6) authorizes the Commissioner to “relieve any organization or class of organizations (other than an organization described in § 509(a)(3)) from filing, in whole or in part the annual return required by this section where [the Commissioner] determines that such returns are not necessary for the efficient administration of the internal revenue laws.”¹ The Commissioner has exercised this authority in the past through revenue procedures. See, e.g., Rev. Proc. 2011-15, 2011-3 I.R.B. 322, and Rev. Proc. 2003-21, 2003-1 C.B. 448.

¹ Likewise, section 6033(a)(3)(B) provides a discretionary exception from the annual filing requirement under which the Secretary may relieve any organization (other than a supporting organization described in § 509(a)(3)) otherwise required to file an information return from filing such a return if the Secretary determines that the filing is not necessary to the efficient administration of the internal revenue laws.

Under existing rules, the names and addresses of contributors for all types of organizations are reported on Schedule B, "Schedule of Contributors," filed with Forms 990, 990-EZ, and 990-PF, or, with respect to organizations described in § 501(c)(21), in Part IV of Form 990-BL.

In general, under § 6104(b), the Secretary must make the annual returns filed under § 6033 available to the public. However, the Secretary is not authorized to disclose the name or address of any contributor to any tax-exempt organization other than a private foundation (as defined in § 509(a), including trusts described in § 4947(a)(1) that are treated as private foundations) or a § 527 organization. Further, § 301.6104(b)-1(b)(2) provides that even if the names and addresses are not disclosed, the amounts of contributions to an organization shall be made available for public inspection unless the disclosure of such information can reasonably be expected to identify any contributor.

In addition to the required disclosure by the Secretary, § 6104(d) and § 301.6104(d)-1 require certain tax-exempt organizations to provide their annual information returns upon request by a member of the public. Similar to the restrictions on disclosing contributor information placed on the Secretary by § 6104(b), an organization, other than a private foundation or a § 527 organization, is not required to disclose the names and addresses of its contributors under § 6104(d)(3)(A).

SECTION 3. APPLICATION

In exercising his discretion under § 1.6033-2(g)(6), the Commissioner balances the IRS's need for the information against the costs and risks associated with reporting

of the information. The IRS does not need personally identifiable information of donors to be reported on Schedule B of Form 990 or Form 990-EZ in order for it to carry out its responsibilities. The requirement to report such information increases compliance costs for some private parties, consumes IRS resources in connection with the redaction of such information, and poses a risk of inadvertent disclosure of information that is not open to public inspection.

Accordingly, tax-exempt organizations required to file the Form 990 or Form 990-EZ, other than those described in § 501(c)(3), will no longer be required to provide names and addresses of contributors on their Forms 990 or Forms 990-EZ and thus will not be required to complete these portions of their Schedules B (or complete the similar portions of Part IV of the Form 990-BL). Similarly, organizations described in § 501(c)(7), (8), or (10) will no longer be required to provide on Forms 990 or Forms 990-EZ the names and addresses of persons who contributed more than \$1,000 during the taxable year to be used for exclusively charitable purposes. This revenue procedure does not affect the information required to be reported on Forms 990, 990-EZ, or 990-PF by organizations described in § 501(c)(3) (which for purposes of § 6033 include nonexempt charitable trusts described in § 4947(a)(1) and nonexempt private foundations described in § 6033(d)) or political organizations described in § 527.

This revenue procedure does not affect the reporting of contribution information, other than the names and addresses of contributors, required to be reported on Schedule B of Forms 990 and 990-EZ and Part IV of the Form 990-BL. This revenue procedure does not affect the disclosure requirements under § 6104(b) or (d) of any

information reported on the Schedule B of Forms 990 and 990-EZ and Part IV of the Form 990-BL. As a result, this revenue procedure will have no effect on the reporting of Schedule B information that is currently open to public inspection. Organizations relieved of the obligation to report contributors' names and addresses must continue to keep this information in their books and records in order to permit the IRS to efficiently administer the internal revenue laws through examinations of specific taxpayers.

SECTION 4. EFFECTIVE DATE

The revised reporting requirements of this revenue procedure will apply to information returns for taxable years ending on or after December 31, 2018. Thus, the revised reporting requirements generally will apply to returns that become due on or after May 15, 2019.

SECTION 5. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0047. Please refer to the Paperwork Reduction Act statement accompanying Form 990 Instructions, for further information.

An organization is not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents can become material in the administration of any Internal Revenue law.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Jonathan Carter of the Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the office of the Associate Chief Counsel (Tax-Exempt and Government Entities) participated in its development. For further information regarding this revenue procedure contact Jonathan Carter at (202) 317-5800 (not a toll-free call).

EXHIBIT C

PRESS RELEASES

Treasury Department and IRS Announce Significant Reform to Protect Personal Donor Information to Certain Tax-Exempt Organizations



July 16, 2018

Policy Relieves Burdens on Taxpayers While Preserving Transparency

WASHINGTON—The Treasury Department and IRS announced today that the IRS will no longer require certain tax-exempt organizations to file personally-identifiable information about their donors as part of their annual return. The revenue procedure released today does not affect the statutory reporting requirements that apply to tax-exempt groups organized under section 501(c)(3) or section 527, but it relieves other tax-exempt organizations of an unnecessary reporting requirement that was previously added by the IRS.

Nearly fifty years ago, Congress directed the IRS to collect donor information from charities that accept tax-deductible contributions. That statutory requirement applies to the majority of tax-exempt organizations, known as section 501(c)(3) organizations, receiving contributions that can be claimed by donors as charitable deductions. This policy provided the IRS information that could be used to confirm contributions to those organizations.

By regulation, however, the IRS extended the donor reporting requirement to all other tax-exempt organizations—labor unions and volunteer fire departments, issue-advocacy groups and local chambers of commerce, veterans groups and community service clubs. These groups do not generally receive tax deductible contributions, yet they have been required to list the names and addresses of their donors on Schedule B of their annual returns (Form 990).

“Americans shouldn’t be required to send the IRS information that it doesn’t need to effectively enforce our tax laws, and the IRS simply does not need tax returns with donor names and addresses to do its job in this area,” said U.S. Treasury Secretary Steven T. Mnuchin. “It is important to emphasize that this

change will in no way limit transparency. The same information about tax-exempt organizations that was previously available to the public will continue to be available, while private taxpayer information will be better protected. The IRS's new policy for certain tax-exempt organizations will make our tax system simpler and less susceptible to abuse."

Summary of New IRS Policy

- Tax-exempt organizations described by section 501(c), other than section 501(c)(3) organizations, are no longer required to report the names and addresses of their contributors on the Schedule B of their Forms 990 or 990-EZ.
- These organizations must continue to collect and keep this information in their records and make it available to the IRS upon request, when needed for tax administration.
- Form 990 and Schedule B information that was previously open to public inspection will continue to be reported and open to public inspection.
- The Internal Revenue Code expressly governs the tax-return reporting of donor information by charities that primarily receive tax-deductible contributions (under section 501(c)(3)) and political organizations (under section 527). The IRS action today does not affect those organizations.

After careful review, Treasury and the IRS have decided to relieve these tax-exempt organizations (other than organizations described in section 501(c)(3) or section 527) of a requirement that Congress never imposed for several reasons:

- *First, the IRS makes no systematic use of Schedule B with respect to these organizations in administering the tax code.* Donor information for many of these organizations was once relevant to the federal gift tax, but Congress eliminated that need in 2015 by making gifts to many of these tax-exempt organizations tax-free. The IRS has no tax administration need for continuing the routine collection of donor names and addresses as part of an exempt organization's annual tax return. If the information is needed for purposes of an examination, the IRS will be able ask the organization for it directly.
- *Second, the new policy will better protect taxpayers by reducing the risk of inadvertent disclosure or misuse of confidential information*—an especially important safeguard for organizations engaged in free speech and free association protected by the First Amendment. Unfortunately, the IRS has

accidentally released confidential Schedule B information in the past. In addition, conservative tax-exempt groups were disproportionately impacted by improper screening in the previous Administration, including what the Treasury Inspector General for Tax Administration concluded were inappropriate inquiries related to donors. Ending the unnecessary collection of sensitive donor information will reinforce the reforms already implemented by the IRS in the wake of the political targeting scandal and enhance public trust in the agency.

- *Third, the new policy will save both private and government resources.* On the taxpayer side, the previous policy added needless paperwork. On the government side, the IRS has been forced to devote scarce resources to redacting donor names and addresses (as required by federal law) before making Schedule B filings public. Now, the IRS will no longer require personally-identifiable donor information that the IRS does not regularly need and the public does not see. The public information will continue to be available, just as before.

The IRS's new policy will relieve thousands of organizations of an unnecessary regulatory burden, while better protecting sensitive taxpayer information and ensuring appropriate transparency.

The IRS guidance is available [here](#).

EXHIBIT D



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

July 17, 2018

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I write in response to your letter dated June 27, 2018, relating to the annual reporting requirements for tax-exempt organizations.

I am pleased to report that on July 16, 2018 we released the enclosed revenue procedure that relieves many tax-exempt organizations of the obligation to report personally-identifying donor information annually to the IRS, while still ensuring that the IRS has the information it needs to administer the tax laws.¹ For tax-exempt organizations described in section 501(c)(3), the information reporting requirements on Schedule B remain unchanged.

Current rules require reporting to IRS, but limit public disclosure, of donor information.

The requirement for tax-exempt organizations to report information annually to the IRS appears in section 6033 of the Internal Revenue Code. Section 6033(a)(1) generally requires every organization exempt from taxation under section 501(a) to file an annual return, stating specifically the items of gross income, receipts, and disbursements, and "such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe." Currently, that information is reported on Form 990, *Return of Organization Exempt from Income Tax*, although private foundations use Form 990-PF. Smaller organizations may file a simplified form, Form 990-EZ. These annual returns generally are made publicly-available under section 6104.²

Section 6033 was amended in 1969 to require every section 501(c)(3) organization that is required to file an annual information return to furnish "the total contributions and gifts received by it during the year and the names and addresses of all substantial

¹ <https://www.irs.gov/pub/irs-drop/rp-18-38.pdf>

² Section 6104(b).

contributors.”³ At the same time, Congress amended section 6104 to prohibit the disclosure of the names and addresses of contributors to tax-exempt organizations (other than contributors to private foundations).⁴

Congress has never required IRS to collect donor information from tax-exempt organizations, other than those organized under section 501(c)(3). Treasury regulations adopted in 1971 extended the donor reporting requirement to all organizations exempt from tax under section 501(a) by requiring the reporting the names, addresses and amounts contributed of all persons who contributed \$5,000 or more (in money or other property) during the taxable year.⁵ Since 2000, this donor information has been reported on Schedule B, *Schedule of Contributors*, filed with Forms 990, 990-EZ, and 990-PF.⁶ Because section 6104 protects donor privacy, the names and addresses of donors reported on Schedule B (unlike the rest of Form 990) generally must be redacted before it can be publicly released.

The same Treasury regulation that extended donor reporting requirements also authorized the IRS Commissioner to “relieve any organization or class of organizations (other than an organization described in section 509(a)(3))⁷ from filing, in whole or in part the annual return required by this section where he determines that such returns are not necessary for the efficient administration of the internal revenue laws.”⁸ The Commissioner has previously exercised this authority through revenue procedures.⁹

Relief consistent with efficient administration of the tax code.

The IRS has concluded that the reporting of personally-identifying donor information by tax-exempt organizations described in section 501(c) (other than section 501(c)(3)) on annually filed tax returns is not necessary for the efficient administration of the tax code. The IRS will continue to require filing of only non-confidential Schedule B information, including donation amounts. As the revenue procedure reflects, the IRS has reached this conclusion for several reasons.

³ P.L. 91-172.

⁴ Section 6104(b). A 2000 amendment to section 6104 authorized disclosure of names and addresses of contributors to section 527 political organizations. P.L. 106-230.

⁵ Treas. Reg. § 1.6033-2(a)(2)(ii)(f). Additional donor reporting requirements apply to organizations described in § 501(c)(7) (generally, social clubs), (8) (generally, fraternal beneficiary societies), or (10) (generally, domestic fraternal societies) that receive contributions or bequests for purposes described in section 170(c)(4), 2055(a)(3), or 2522(a)(3). See § 1.6033-2(a)(2)(iii)(d).

⁶ Prior to the introduction of Schedule B, filers were instructed to prepare their own schedule to report substantial contributors.

⁷ The parenthetical phrase “(other than an organization described in § 509(a)(3))” was added to the regulation in 2011 to reflect the statutory changes made to section 6033 by the Pension Protection Act of 2006.

⁸ 26 C.F.R. § 1.6033-2(g)(6).

⁹ See, e.g., Rev. Proc. 95-48, 1995 C.B. 418, and Rev. Proc. 2011-15, 2011-1 I.R.B. 322.

First, the IRS does not need personally identifiable information of donors to be reported on Schedule B of Form 990 or Form 990-EZ in order to carry out its responsibilities. Among other possible uses, this information was previously relevant to the administration of the gift tax, but in 2015, Congress amended section 2501(a) to provide that the gift tax does not apply to transfers to tax-exempt organizations described in section 501(c)(4), (5), or (6). Currently, Schedule B information is reviewed by the IRS most commonly during an examination of a particular tax-exempt organization. The IRS retains the ability to request such information from taxpayers in the context of an examination, and organizations are required to maintain those records.

Second, reporting donor information needlessly consumes both private and governmental resources. In addition to compliance costs incurred by tax-exempt organizations, the IRS expends resources in its handling of confidential Schedule B information. Specifically, IRS must devote resources to redacting donor names and addresses (as required by section 6104) before making Schedules B publicly available. Relieving certain filers of the obligation to report donor names and addresses will permit the IRS to make their Schedules B publicly available at a lower cost to the government, with no effect on transparency. The publicly-available portion of Forms 990 will continue to be available, as in the past.

Third, continued collection of personally-identifying donor information poses an unnecessary risk of inadvertent disclosure of sensitive, confidential information. The IRS is aware of fourteen breaches that resulted in the unauthorized disclosure of Form 990 information since 2010. In recent years, the IRS made disclosable information concerning tax-exempt organizations (including annual information returns filed electronically by tax-exempt organizations) publicly available in electronic format.¹⁰ This effort to make Forms 990 filed with the IRS more readily available to the public presents a risk of inadvertent disclosure of information that is not open to public inspection. Ending unnecessary reporting of confidential information will curb the risk of future inadvertent disclosures, without affecting public access to non-confidential information.

The Treasury Department and the IRS have concluded that, for tax-exempt organizations described in section 501(c) (other than section 501(c)(3)), the costs and risks associated with requiring annual reporting on Schedule B of the names and addresses of contributors outweigh any marginal benefit to the IRS. The needs of tax administration can be more efficiently met by instead requiring those tax-exempt organizations to keep records of the names and addresses of contributors and to provide the information to the IRS upon request.

¹⁰ See IR-2016-87, June 16, 2016 (available at <https://www.irs.gov/newsroom/irs-makes-electronically-filed-form-990-data-available-in-new-format>).

I hope this information is helpful. I am sending a similar letter to your colleagues. We look forward to briefing your staff. If you have additional questions please call me, or a member of your staff may contact Leonard Oursler, Director, Legislative Affairs, at 202-317-6985.

Sincerely,

A handwritten signature in dark ink, appearing to read "David J. Kautter", written in a cursive style.

David J. Kautter
Acting Commissioner

Enclosure

Part III

Administrative, Procedural, and Miscellaneous

[26 CFR 1.6033-2]: Returns by exempt organizations and returns by certain non-exempt organizations
(Also: §§ 6001, 6033, and §1.6001-1)

Rev. Proc. 2018-38

SECTION 1. PURPOSE

This document contains procedures modifying the information to be reported to the IRS by organizations exempt from tax under § 501(a) of the Internal Revenue Code (Code), other than organizations described in § 501(c)(3), that are required to file an annual Form 990 or Form 990-EZ information return. These organizations are no longer required to report the names and addresses of their contributors on the Schedule B of their Forms 990 or 990-EZ. These organizations, however, must continue to collect and keep this information in their books and records and to make it available to the IRS upon request, when needed for tax administration.

SECTION 2. BACKGROUND

Section 6001 of the Code requires any person subject to tax under the Code to keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, the Secretary may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. Specifically for organizations exempt from tax under § 501(a) (tax-exempt organizations), § 1.6001-1(c) provides that such organizations shall keep such permanent books of account or records as are sufficient to show specifically the items of gross income, receipts, and disbursements.

Section 6033(a) requires certain tax-exempt organizations to file annual information returns that include gross income, receipts and disbursements, and such other information required by forms or regulations. The annual information returns required under § 6033 are Forms 990, "Return of Organization Exempt From Income Tax," 990-EZ, "Short Form Return of Organization Exempt From Income Tax," 990-PF, "Return of Private Foundation," and 990-BL, "Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons." Section 6033(b) provides that tax-exempt organizations described in § 501(c)(3) that are subject to the requirements of § 6033(a) must furnish information annually setting forth certain items including, "the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors."

Although the statute does not address contributor reporting by tax-exempt organizations other than those described in § 501(c)(3), the implementing regulations under § 6033(a) generally require all types of tax-exempt organizations to report the names and addresses of all persons who contribute \$5,000 or more in a year under § 1.6033-2(a)(2)(ii)(f). Section 1.6033-2(a)(2)(iii)(d) also requires organizations described in § 501(c)(7) (generally, social clubs), (8) (generally, fraternal beneficiary societies), or (10) (generally, domestic fraternal societies) to report the name of each person who contributed more than \$1,000 during the taxable year to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

The regulation that extends contributor reporting requirements to all types of tax-exempt organizations also authorizes the Commissioner to grant relief from those requirements. Specifically, § 1.6033-2(g)(6) authorizes the Commissioner to “relieve any organization or class of organizations (other than an organization described in § 509(a)(3)) from filing, in whole or in part the annual return required by this section where [the Commissioner] determines that such returns are not necessary for the efficient administration of the internal revenue laws.”¹ The Commissioner has exercised this authority in the past through revenue procedures. See, e.g., Rev. Proc. 2011-15, 2011-3 I.R.B. 322, and Rev. Proc. 2003-21, 2003-1 C.B. 448.

Under existing rules, the names and addresses of contributors for all types of

¹ Likewise, section 6033(a)(3)(B) provides a discretionary exception from the annual filing requirement under which the Secretary may relieve any organization (other than a supporting organization described in § 509(a)(3)) otherwise required to file an information return from filing such a return if the Secretary determines that the filing is not necessary to the efficient administration of the internal revenue laws.

organizations are reported on Schedule B, "Schedule of Contributors," filed with Forms 990, 990-EZ, and 990-PF, or, with respect to organizations described in § 501(c)(21), in Part IV of Form 990-BL.

In general, under § 6104(b), the Secretary must make the annual returns filed under § 6033 available to the public. However, the Secretary is not authorized to disclose the name or address of any contributor to any tax-exempt organization other than a private foundation (as defined in § 509(a), including trusts described in § 4947(a)(1) that are treated as private foundations) or a § 527 organization. Further, § 301.6104(b)-1(b)(2) provides that even if the names and addresses are not disclosed, the amounts of contributions to an organization shall be made available for public inspection unless the disclosure of such information can reasonably be expected to identify any contributor.

In addition to the required disclosure by the Secretary, § 6104(d) and § 301.6104(d)-1 require certain tax-exempt organizations to provide their annual information returns upon request by a member of the public. Similar to the restrictions on disclosing contributor information placed on the Secretary by § 6104(b), an organization, other than a private foundation or a § 527 organization, is not required to disclose the names and addresses of its contributors under § 6104(d)(3)(A).

SECTION 3. APPLICATION

In exercising his discretion under § 1.6033-2(g)(6), the Commissioner balances the IRS's need for the information against the costs and risks associated with reporting of the information. The IRS does not need personally identifiable information of donors

to be reported on Schedule B of Form 990 or Form 990-EZ in order for it to carry out its responsibilities. The requirement to report such information increases compliance costs for some private parties, consumes IRS resources in connection with the redaction of such information, and poses a risk of inadvertent disclosure of information that is not open to public inspection.

Accordingly, tax-exempt organizations required to file the Form 990 or Form 990-EZ, other than those described in § 501(c)(3), will no longer be required to provide names and addresses of contributors on their Forms 990 or Forms 990-EZ and thus will not be required to complete these portions of their Schedules B (or complete the similar portions of Part IV of the Form 990-BL). Similarly, organizations described in § 501(c)(7), (8), or (10) will no longer be required to provide on Forms 990 or Forms 990-EZ the names and addresses of persons who contributed more than \$1,000 during the taxable year to be used for exclusively charitable purposes. This revenue procedure does not affect the information required to be reported on Forms 990, 990-EZ, or 990-PF by organizations described in § 501(c)(3) (which for purposes of § 6033 include nonexempt charitable trusts described in § 4947(a)(1) and nonexempt private foundations described in § 6033(d)) or political organizations described in § 527.

This revenue procedure does not affect the reporting of contribution information, other than the names and addresses of contributors, required to be reported on Schedule B of Forms 990 and 990-EZ and Part IV of the Form 990-BL. This revenue procedure does not affect the disclosure requirements under § 6104(b) or (d) of any information reported on the Schedule B of Forms 990 and 990-EZ and Part IV of the

Form 990-BL. As a result, this revenue procedure will have no effect on the reporting of Schedule B information that is currently open to public inspection. Organizations relieved of the obligation to report contributors' names and addresses must continue to keep this information in their books and records in order to permit the IRS to efficiently administer the internal revenue laws through examinations of specific taxpayers.

SECTION 4. EFFECTIVE DATE

The revised reporting requirements of this revenue procedure will apply to information returns for taxable years ending on or after December 31, 2018. Thus, the revised reporting requirements generally will apply to returns that become due on or after May 15, 2019.

SECTION 5. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0047. Please refer to the Paperwork Reduction Act statement accompanying Form 990 Instructions, for further information.

An organization is not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents can become material in the administration of any Internal Revenue law.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Jonathan Carter of the Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the office of the Associate Chief Counsel (Tax-Exempt and Government Entities) participated in its development. For further information regarding this revenue procedure contact Jonathan Carter at (202) 317-5800 (not a toll-free call).

EXHIBIT E



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

July 17, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I write in response to your letter dated May 31, 2018, relating to the annual reporting requirements for tax-exempt organizations.

I am pleased to report that on July 16, 2018 we released the enclosed revenue procedure that relieves many tax-exempt organizations of the obligation to report personally-identifying donor information annually to the IRS, while still ensuring that the IRS has the information it needs to administer the tax laws.¹ For tax-exempt organizations described in section 501(c)(3), the information reporting requirements on Schedule B remain unchanged.

Current rules require reporting to IRS, but limit public disclosure, of donor information.

The requirement for tax-exempt organizations to report information annually to the IRS appears in section 6033 of the Internal Revenue Code. Section 6033(a)(1) generally requires every organization exempt from taxation under section 501(a) to file an annual return, stating specifically the items of gross income, receipts, and disbursements, and "such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe." Currently, that information is reported on Form 990, *Return of Organization Exempt from Income Tax*, although private foundations use Form 990-PF. Smaller organizations may file a simplified form, Form 990-EZ. These annual returns generally are made publicly-available under section 6104.²

¹ <https://www.irs.gov/pub/irs-drop/rp-18-38.pdf>

² Section 6104(b).

Section 6033 was amended in 1969 to require every section 501(c)(3) organization that is required to file an annual information return to furnish "the total contributions and gifts received by it during the year and the names and addresses of all substantial contributors."³ At the same time, Congress amended section 6104 to prohibit the disclosure of the names and addresses of contributors to tax-exempt organizations (other than contributors to private foundations).⁴

Congress has never required IRS to collect donor information from tax-exempt organizations, other than those organized under section 501(c)(3). Treasury regulations adopted in 1971 extended the donor reporting requirement to all organizations exempt from tax under section 501(a) by requiring the reporting the names, addresses and amounts contributed of all persons who contributed \$5,000 or more (in money or other property) during the taxable year.⁵ Since 2000, this donor information has been reported on Schedule B, *Schedule of Contributors*, filed with Forms 990, 990-EZ, and 990-PF.⁶ Because section 6104 protects donor privacy, the names and addresses of donors reported on Schedule B (unlike the rest of Form 990) generally must be redacted before it can be publicly released.

The same Treasury regulation that extended donor reporting requirements also authorized the IRS Commissioner to "relieve any organization or class of organizations (other than an organization described in section 509(a)(3))⁷ from filing, in whole or in part the annual return required by this section where he determines that such returns are not necessary for the efficient administration of the internal revenue laws."⁸ The Commissioner has previously exercised this authority through revenue procedures.⁹

Relief consistent with efficient administration of the tax code.

The IRS has concluded that the reporting of personally-identifying donor information by tax-exempt organizations described in section 501(c) (other than section 501(c)(3)) on annually filed tax returns is not necessary for the efficient administration of the tax code. The IRS will continue to require filing of only non-confidential Schedule B information, including donation amounts. As the revenue procedure reflects, the IRS has reached this conclusion for several reasons.

³ P.L. 91-172.

⁴ Section 6104(b). A 2000 amendment to section 6104 authorized disclosure of names and addresses of contributors to section 527 political organizations. P.L. 106-230.

⁵ Treas. Reg. § 1.6033-2(a)(2)(ii)(f). Additional donor reporting requirements apply to organizations described in § 501(c)(7) (generally, social clubs), (8) (generally, fraternal beneficiary societies), or (10) (generally, domestic fraternal societies) that receive contributions or bequests for purposes described in section 170(c)(4), 2055(a)(3), or 2522(a)(3). See § 1.6033-2(a)(2)(iii)(d).

⁶ Prior to the introduction of Schedule B, filers were instructed to prepare their own schedule to report substantial contributors.

⁷ The parenthetical phrase "(other than an organization described in § 509(a)(3))" was added to the regulation in 2011 to reflect the statutory changes made to section 6033 by the Pension Protection Act of 2006.

⁸ 26 C.F.R. § 1.6033-2(g)(6).

⁹ See, e.g., Rev. Proc. 95-48, 1995 C.B. 418, and Rev. Proc. 2011-15, 2011-1 I.R.B. 322.

First, the IRS does not need personally identifiable information of donors to be reported on Schedule B of Form 990 or Form 990-EZ in order to carry out its responsibilities. Among other possible uses, this information was previously relevant to the administration of the gift tax, but in 2015, Congress amended section 2501(a) to provide that the gift tax does not apply to transfers to tax-exempt organizations described in section 501(c)(4), (5), or (6). Currently, Schedule B information is reviewed by the IRS most commonly during an examination of a particular tax-exempt organization. The IRS retains the ability to request such information from taxpayers in the context of an examination, and organizations are required to maintain those records.

Second, reporting donor information needlessly consumes both private and governmental resources. In addition to compliance costs incurred by tax-exempt organizations, the IRS expends resources in its handling of confidential Schedule B information. Specifically, IRS must devote resources to redacting donor names and addresses (as required by section 6104) before making Schedules B publicly available. Relieving certain filers of the obligation to report donor names and addresses will permit the IRS to make their Schedules B publicly available at a lower cost to the government, with no effect on transparency. The publicly-available portion of Forms 990 will continue to be available, as in the past.

Third, continued collection of personally-identifying donor information poses an unnecessary risk of inadvertent disclosure of sensitive, confidential information. The IRS is aware of fourteen breaches that resulted in the unauthorized disclosure of Form 990 information since 2010. In recent years, the IRS made disclosable information concerning tax-exempt organizations (including annual information returns filed electronically by tax-exempt organizations) publicly available in electronic format.¹⁰ This effort to make Forms 990 filed with the IRS more readily available to the public presents a risk of inadvertent disclosure of information that is not open to public inspection. Ending unnecessary reporting of confidential information will curb the risk of future inadvertent disclosures, without affecting public access to non-confidential information.

The Treasury Department and the IRS have concluded that, for tax-exempt organizations described in section 501(c) (other than section 501(c)(3)), the costs and risks associated with requiring annual reporting on Schedule B of the names and addresses of contributors outweigh any marginal benefit to the IRS. The needs of tax administration can be more efficiently met by instead requiring those tax-exempt organizations to keep records of the names and addresses of contributors and to provide the information to the IRS upon request.

¹⁰ See IR-2016-87, June 16, 2016 (available at <https://www.irs.gov/newsroom/irs-makes-electronically-filed-form-990-data-available-in-new-format>).

I hope this information is helpful. I am sending a similar letter to your colleague. We appreciated the opportunity to brief your staff on June 29, 2018. If you have additional questions please call me, or a member of your staff may contact Leonard Oursler, Director, Legislative Affairs, at 202-317-6985.

Sincerely,

A handwritten signature in dark ink, appearing to read "David J. Kautter", written in a cursive style.

David J. Kautter
Acting Commissioner

Enclosure

Part III

Administrative, Procedural, and Miscellaneous

[26 CFR 1.6033-2]: Returns by exempt organizations and returns by certain non-exempt organizations
(Also: §§ 6001, 6033, and §1.6001-1)

Rev. Proc. 2018-38

SECTION 1. PURPOSE

This document contains procedures modifying the information to be reported to the IRS by organizations exempt from tax under § 501(a) of the Internal Revenue Code (Code), other than organizations described in § 501(c)(3), that are required to file an annual Form 990 or Form 990-EZ information return. These organizations are no longer required to report the names and addresses of their contributors on the Schedule B of their Forms 990 or 990-EZ. These organizations, however, must continue to collect and keep this information in their books and records and to make it available to the IRS upon request, when needed for tax administration.

SECTION 2. BACKGROUND

Section 6001 of the Code requires any person subject to tax under the Code to keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, the Secretary may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. Specifically for organizations exempt from tax under § 501(a) (tax-exempt organizations), § 1.6001-1(c) provides that such organizations shall keep such permanent books of account or records as are sufficient to show specifically the items of gross income, receipts, and disbursements.

Section 6033(a) requires certain tax-exempt organizations to file annual information returns that include gross income, receipts and disbursements, and such other information required by forms or regulations. The annual information returns required under § 6033 are Forms 990, "Return of Organization Exempt From Income Tax," 990-EZ, "Short Form Return of Organization Exempt From Income Tax," 990-PF, "Return of Private Foundation," and 990-BL, "Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons." Section 6033(b) provides that tax-exempt organizations described in § 501(c)(3) that are subject to the requirements of § 6033(a) must furnish information annually setting forth certain items including, "the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors."

Although the statute does not address contributor reporting by tax-exempt organizations other than those described in § 501(c)(3), the implementing regulations under § 6033(a) generally require all types of tax-exempt organizations to report the names and addresses of all persons who contribute \$5,000 or more in a year under § 1.6033-2(a)(2)(ii)(f). Section 1.6033-2(a)(2)(iii)(d) also requires organizations described in § 501(c)(7) (generally, social clubs), (8) (generally, fraternal beneficiary societies), or (10) (generally, domestic fraternal societies) to report the name of each person who contributed more than \$1,000 during the taxable year to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

The regulation that extends contributor reporting requirements to all types of tax-exempt organizations also authorizes the Commissioner to grant relief from those requirements. Specifically, § 1.6033-2(g)(6) authorizes the Commissioner to “relieve any organization or class of organizations (other than an organization described in § 509(a)(3)) from filing, in whole or in part the annual return required by this section where [the Commissioner] determines that such returns are not necessary for the efficient administration of the internal revenue laws.”¹ The Commissioner has exercised this authority in the past through revenue procedures. See, e.g., Rev. Proc. 2011-15, 2011-3 I.R.B. 322, and Rev. Proc. 2003-21, 2003-1 C.B. 448.

Under existing rules, the names and addresses of contributors for all types of

¹ Likewise, section 6033(a)(3)(B) provides a discretionary exception from the annual filing requirement under which the Secretary may relieve any organization (other than a supporting organization described in § 509(a)(3)) otherwise required to file an information return from filing such a return if the Secretary determines that the filing is not necessary to the efficient administration of the internal revenue laws.

organizations are reported on Schedule B, "Schedule of Contributors," filed with Forms 990, 990-EZ, and 990-PF, or, with respect to organizations described in § 501(c)(21), in Part IV of Form 990-BL.

In general, under § 6104(b), the Secretary must make the annual returns filed under § 6033 available to the public. However, the Secretary is not authorized to disclose the name or address of any contributor to any tax-exempt organization other than a private foundation (as defined in § 509(a), including trusts described in § 4947(a)(1) that are treated as private foundations) or a § 527 organization. Further, § 301.6104(b)-1(b)(2) provides that even if the names and addresses are not disclosed, the amounts of contributions to an organization shall be made available for public inspection unless the disclosure of such information can reasonably be expected to identify any contributor.

In addition to the required disclosure by the Secretary, § 6104(d) and § 301.6104(d)-1 require certain tax-exempt organizations to provide their annual information returns upon request by a member of the public. Similar to the restrictions on disclosing contributor information placed on the Secretary by § 6104(b), an organization, other than a private foundation or a § 527 organization, is not required to disclose the names and addresses of its contributors under § 6104(d)(3)(A).

SECTION 3. APPLICATION

In exercising his discretion under § 1.6033-2(g)(6), the Commissioner balances the IRS's need for the information against the costs and risks associated with reporting of the information. The IRS does not need personally identifiable information of donors

to be reported on Schedule B of Form 990 or Form 990-EZ in order for it to carry out its responsibilities. The requirement to report such information increases compliance costs for some private parties, consumes IRS resources in connection with the redaction of such information, and poses a risk of inadvertent disclosure of information that is not open to public inspection.

Accordingly, tax-exempt organizations required to file the Form 990 or Form 990-EZ, other than those described in § 501(c)(3), will no longer be required to provide names and addresses of contributors on their Forms 990 or Forms 990-EZ and thus will not be required to complete these portions of their Schedules B (or complete the similar portions of Part IV of the Form 990-BL). Similarly, organizations described in § 501(c)(7), (8), or (10) will no longer be required to provide on Forms 990 or Forms 990-EZ the names and addresses of persons who contributed more than \$1,000 during the taxable year to be used for exclusively charitable purposes. This revenue procedure does not affect the information required to be reported on Forms 990, 990-EZ, or 990-PF by organizations described in § 501(c)(3) (which for purposes of § 6033 include nonexempt charitable trusts described in § 4947(a)(1) and nonexempt private foundations described in § 6033(d)) or political organizations described in § 527.

This revenue procedure does not affect the reporting of contribution information, other than the names and addresses of contributors, required to be reported on Schedule B of Forms 990 and 990-EZ and Part IV of the Form 990-BL. This revenue procedure does not affect the disclosure requirements under § 6104(b) or (d) of any information reported on the Schedule B of Forms 990 and 990-EZ and Part IV of the

Form 990-BL. As a result, this revenue procedure will have no effect on the reporting of Schedule B information that is currently open to public inspection. Organizations relieved of the obligation to report contributors' names and addresses must continue to keep this information in their books and records in order to permit the IRS to efficiently administer the internal revenue laws through examinations of specific taxpayers.

SECTION 4. EFFECTIVE DATE

The revised reporting requirements of this revenue procedure will apply to information returns for taxable years ending on or after December 31, 2018. Thus, the revised reporting requirements generally will apply to returns that become due on or after May 15, 2019.

SECTION 5. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0047. Please refer to the Paperwork Reduction Act statement accompanying Form 990 Instructions, for further information.

An organization is not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents can become material in the administration of any Internal Revenue law.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Jonathan Carter of the Office of Associate Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the office of the Associate Chief Counsel (Tax-Exempt and Government Entities) participated in its development. For further information regarding this revenue procedure contact Jonathan Carter at (202) 317-5800 (not a toll-free call).

EXHIBIT F



Tax Exempt and Government Entities

Disclosure Risk on Form 990, Schedule B and Rev. Proc. 2018-38

Briefing Document

August 2018



Redaction rules

- Since Tax Reform Act of 1969, Schedule B has identified donors of \geq \$5K.
- Form 990 is subject to public disclosure under IRC § 6104(b), yet IRS must redact at least the donor names and addresses (other than for private foundations (PFs) and § 527 political organizations).
- While IRS has introduced modern tools, redaction is still a page-by-page process under IRM 3.20.12.



Disclosure risk

- Recently, a lapse in redaction occurred where a Schedule B was filed out of sequence (between Schedules M and O).
- In *Nat'l Org'n for Marriage v. U.S.* (4th Cir. 2015) IRS paid damages for inadvertent release of an unredacted Schedule B from the Campus.
- Since 2010, there have been 13 incidents when routine production of DVDs of Form 990 for public customers contained lapses in redaction, a manual process involving millions of pages.



Rev. Proc. 2018-38 (July 16, 2018)

- Treasury and IRS effectively relieved non-charitable exempt organizations (EOs) from reporting names and addresses of substantial contributors (of \geq \$5K).
- The Rev. Proc. 2018-38 indicates that IRC § 6033(b) continues to require charities, including PFs, to report donor identity; similarly, § 527 political organizations are still required to report donor identity.
- Effective for Tax Years ending on or after December 31, 2018, we

(b)(5) – Deliberative Process Privilege



Continuing burden

- Rev. Proc. 2018-38 affects <14K Schedule B filers, mostly § 501(c)(6) trade associations and 501(c)(4) social welfare organizations.
- Yearly, >180K Schedules B are filed by EOs (other than PFs, § 527 and Supporting Organizations (SOs)) mostly § 501(c)(3) charities.
- Consequently, the IRS redaction process remains essentially unchanged along with the disclosure risk.



Prior proposal

- In Rev. Proc. 2014-17, the IRS Priority Guidance Plan (PGP) included an item on the reporting of contributions under IRC § 6033.
- Under IRC § 6033(a)(3)(B), Assoc-CC opined that IRS may

(b)(5) – DPP and AC

- Since a later 2016 Statement of Administration Policy opposed legislation to repeal contributor reporting, (b)(5) – Deliberative Process Privilege

(b)(5) – Deliberative Process Privilege



Compliance utility

- IRS does not systemically use Schedule B; the lack of a Taxpayer Identification Number makes the data unsuitable for electronic matching.
 - SB/SE doesn't cross-walk charitable deductions (which require contemporaneous documentation \geq \$250) to Schedule B.
 - The PATH Act of 2015 relieved donors to certain EOs (§ 501(c)(4), (5) and (6)) of gift tax under IRC § 2501(a)(6).
 - TE/GE uses Form 990, Schedule A, *Public Charity Status and Public Support*, to determine public charity status.
- EOs still have to keep the donor information in books and records, facilitating exam case-by-case.

EXHIBIT G

Quigley John M

From: Leas Matthew F
Sent: Tuesday, July 10, 2018 6:25 AM
To: Burke Anthony
Subject: FW: 990 info
Attachments: Sch B Draft IRS Statement - TEGE 7-9-18.docx

From: Lemons Terry L
Sent: Monday, July 09, 2018 2:46 PM
To: Leas Matthew F ; Eldridge Michelle L ; Patterson Dean J
Subject: Fw: 990 info

Matt - are you -or someone - able to recirculate the text to Janine, Dave and the rest of the group. Also would add Margaret Von Lienen.

No need to include kirsten's message. Just the tracked edit on the statement.

Thanks.

From: Wielobob Kirsten B <Kirsten.B.Wielobob@irs.gov>
Sent: Monday, July 9, 2018 12:55 PM
To: Lemons Terry L
Subject: RE: 990 info

I'm fine with the talking points. Attached is my thought on the press release. Mostly, I suggest we delete the first line ("The IRS has taken steps") bc the way we're doing it (not all 501c + 527) is Secretary-driven.

From: Lemons Terry L
Sent: Friday, July 06, 2018 5:24 PM
To: Kautter David J <David.J.Kautter@irs.gov>; Wielobob Kirsten B <Kirsten.B.Wielobob@irs.gov>; Colbert Amalia C <Amalia.C.Colbert@irs.gov>; Paul William M <William.M.Paul@IRSCOUNSEL.TREAS.GOV>; Judson Victoria A <Victoria.A.Judson@irscounsel.treas.gov>; Cook Janine <Janine.Cook@irscounsel.treas.gov>; Horton David W <David.W.Horton@irs.gov>; Grant Dianne <Dianne.Grant@irs.gov>; Eldridge Michelle L <MICHELLE.L.ELDRIDGE@irs.gov>; Leas Matthew F <Matthew.F.Leas@irs.gov>; Patterson Dean J <Dean.J.Patterson@irs.gov>; Oursler Leonard T <Leonard.T.Oursler@irs.gov>; Klonsky Amy E <Amy.E.Klonsky@irs.gov>
Subject: 990 info

Here's the current version of the 990 Schedule B talking points and press statement. This has been reviewed by Counsel and TE/GE.

We are hearing this may be released on Wednesday. Possible Treasury may have a news release; they haven't shared any text yet.

Thanks.

Draft IRS Statement



(b)(5)

Reactive response:

While permitting modification of rules for tax administration reasons, the tax law specifically provides for section 501(c)(3) and 527 organizations to provide personally-identifying contributor information when filing their tax forms with the IRS.

Schedule B – Talking Points

Change to Schedule B Reporting of Donor Information

- The IRS issued Revenue Procedure 2018-38, to be published in I.R.B. 2018-30 on July 23rd, relieving many exempt organizations of the obligation to report personally-identifying donor information annually to the IRS.
- Organizations – other than those described in Internal Revenue Code sections 501(c)(3) and 527 – are no longer required to provide names and addresses of certain donors (“substantial contributors”) on Schedule B, *Schedule of Contributors*, filed with Form 990 or 990-EZ.
- Organizations must continue to keep this information in their books and records, permitting the IRS to efficiently administer the tax laws through examinations of specific taxpayers when circumstances warrant.
- These changes are effective for tax years ending on or after December 31, 2018; filing instructions will be posted on IRS.gov in the near future.

Legal Background on Donor Reporting

- Section 6033 of the Internal Revenue Code requires every section 501(c)(3) organization, otherwise required to file an annual information return, to furnish “the names and addresses of all substantial contributors.”
- 1971 Treasury regulations extended the donor reporting requirement to all section 501(c) exempt organizations that file Forms 990 and 990-EZ, generally requiring reporting of the names and addresses of all donors of \$5,000 or more during the taxable year.
- This donor information has been reported on Schedule B.
- However, section 6104 prohibits the disclosure by IRS of the names and addresses of donors to tax-exempt organizations, other than donors to private foundations and 527 political organizations.

Rationale for Change to Schedule B Reporting of Donor Information

- The Internal Revenue Code does not require the reporting of donor information by organizations that are exempt under section 501(a), unless they are described in section 501(c)(3).
- The reporting of personally-identifying donor information by section 501(c) organizations (other than section 501(c)(3) organizations) is not necessary for efficient tax administration.
- The IRS does not need personally identifiable information of donors to section 501(c) organizations (other than section 501(c)(3) organizations) to be reported on Schedule B of Form 990 or Form 990-EZ in order for it to carry out its responsibilities.
 - Schedule B information may be used during an examination of a particular organization.
 - The information may be relevant to ongoing qualification for exemption (e.g., private benefit or inurement), liability for chapter 42 excise taxes, and other tax issues.
 - Organizations must maintain, and the IRS may request, such information on examination.

- Reporting donor information consumes private and governmental resources.
 - Filers incur costs and time to comply with reporting requirements.
 - IRS uses resources to redact donor names and addresses before making Schedule B publicly available, so relieving certain filers of the obligation to report this information lowers the cost to the IRS in making Schedules B publicly available.
- Ending reporting of personally-identifying donor information further reduces the risk of inadvertent disclosures.
 - Recent IRS effort to increase public availability of Forms 990, including access to electronically filed returns, presents a slight risk of inadvertent disclosure of confidential information.
 - The IRS is aware of 14 unauthorized disclosures of Form 990 information since 2010.
 - This represents only a fraction of some 200,000 annual returns with Schedule B, but IRS takes seriously its responsibility to protect the confidentiality of all taxpayer information.
- The revenue procedure does not affect the information in Forms 990 and 990-EZ, including Schedule B, that the IRS makes public under Section 6104.

EXHIBIT H

Support fearless, independent journalism. [DONATE](#)

The Secret IRS Files Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax

[Donate](#)**by Jesse Eisinger, Jeff Ernsthausen and Paul Kiel**

June 8, 2021, 5 a.m. EDT

ProPublica has obtained a vast cache of IRS information showing how billionaires like Jeff Bezos, Elon Musk and Warren Buffett pay little in income tax compared to their massive wealth — sometimes, even nothing.

Lisa Larson-Walker/ProPublica. Photos: Elon Musk (Tristar Media/Getty Images), Jeff Bezos (Mandel Ngan/AFP via Getty Images), Michael Bloomberg (Joshua Lott/AFP via Getty Images), Warren Buffett (Taylor Hill/FilmMagic/Getty Images)

ProPublica is a nonprofit newsroom that investigates abuses of power. The Secret IRS Files is an ongoing reporting project. [Sign up to be notified](#) when the next installment publishes.

In 2007, Jeff Bezos, then a multibillionaire and now the world's richest man, did not pay a penny in federal income taxes. He achieved the feat again in 2011. In 2018, Tesla founder Elon Musk, the second-richest person in the world, also paid no federal income taxes.

Michael Bloomberg managed to do the same in recent years. Billionaire investor Carl Icahn did it twice. George Soros paid no federal income tax three years in a row.

ProPublica has obtained a vast trove of Internal Revenue Service data on the tax returns of thousands of the nation's wealthiest people, covering more than 15 years. The data provides an unprecedented look inside the financial lives of America's titans, including Warren Buffett, Bill Gates, Rupert Murdoch and Mark Zuckerberg. It shows not just their income and taxes, but also their investments, stock trades, gambling winnings and even the results of audits.

Taken together, it demolishes the cornerstone myth of the American tax system: that everyone pays their fair share and the richest Americans pay the most. The IRS records show that the wealthiest can — perfectly legally — pay income taxes that are only a tiny fraction of the hundreds of millions, if not billions, their fortunes grow each year.

Many Americans live paycheck to paycheck, amassing little wealth and paying the federal government a percentage of their income that rises if they earn more. In recent years, the median American household earned about \$70,000 annually and paid 14% in federal taxes. The highest income tax rate, 37%, kicked in this year, for couples, on earnings above \$628,300.

The confidential tax records obtained by ProPublica show that the

 **PROPUBLICA**[Donate](#)

America's billionaires avail themselves of tax-avoidance strategies beyond the reach of ordinary people. Their wealth derives from the skyrocketing value of their assets, like stock and property. Those gains are not defined by U.S. laws as taxable income unless and until the billionaires sell.

To capture the financial reality of the richest Americans, ProPublica undertook an analysis that has never been done before. We compared how much in taxes the 25 richest Americans paid each year to how much Forbes estimated their wealth grew in that same time period.

We're going to call this their true tax rate.

The results are stark. According to Forbes, those 25 people saw their worth rise a collective \$401 billion from 2014 to 2018. They paid a total of \$13.6 billion in federal income taxes in those five years, the IRS data shows. That's a staggering sum, but it amounts to a true tax rate of only 3.4%.

It's a completely different picture for middle-class Americans, for example, wage earners in their early 40s who have amassed a typical amount of wealth for people their age. From 2014 to 2018, such households saw their net worth expand by about \$65,000 after taxes on average, mostly due to the rise in value of their homes. But because the vast bulk of their earnings were salaries, their tax bills were almost as much, nearly \$62,000, over that five-year period.

No one among the 25 wealthiest avoided as much tax as Buffett, the grandfatherly centibillionaire. That's perhaps surprising, given his public stance as an advocate of higher taxes for the rich. According to Forbes, his riches rose \$24.3 billion between 2014 and 2018. Over those years, the data shows, Buffett reported paying \$23.7 million in taxes.

That works out to a true tax rate of 0.1%, or less than 10 cents for every \$100 he added to his wealth.

In the coming months, ProPublica will use the IRS data we have obtained to explore in detail how the ultrawealthy avoid taxes, exploit loopholes and escape scrutiny from federal auditors.

Experts have long understood the broad outlines of how little the wealthy are taxed in the United States, and many lay people have long suspected the same thing.

But few specifics about individuals ever emerge in public. Tax information is among the most zealously guarded secrets in the federal government. ProPublica has decided to reveal individual tax information of some of the wealthiest Americans because it is only by seeing specifics that the public can understand the realities of the country's tax system.

Consider Bezos' 2007, one of the years he paid zero in federal income taxes. Amazon's stock more than doubled. Bezos' fortune leapt \$3.8 billion, according to Forbes, whose wealth estimates are widely cited. How did a person enjoying that sort of wealth explosion end up paying no income tax?

In that year, Bezos, who filed his taxes jointly with his then-wife

to offset every penny he earned with losses from side investments and various deductions, like interest expenses on debts and the vague catchall category of “other expenses.”

In 2011, a year in which his wealth held roughly steady at \$18 billion, Bezos filed a tax return reporting he lost money — his income that year was more than offset by investment losses. What’s more, because, according to the tax law, he made so little, he even claimed and received a \$4,000 tax credit for his children.

His tax avoidance is even more striking if you examine 2006 to 2018, a period for which ProPublica has complete data. Bezos’ wealth increased by \$127 billion, according to Forbes, but he reported a total of \$6.5 billion in income. The \$1.4 billion he paid in personal federal taxes is a massive number — yet it amounts to a 1.1% true tax rate on the rise in his fortune.

The revelations provided by the IRS data come at a crucial moment. Wealth inequality has become one of the defining issues of our age. The president and Congress are considering the most ambitious tax increases in decades on those with high incomes. But the American tax conversation has been dominated by debate over incremental changes, such as whether the top tax rate should be 39.6% rather than 37%.

ProPublica’s data shows that while some wealthy Americans, such as hedge fund managers, would pay more taxes under the current Biden administration proposals, the vast majority of the top 25 would see little change.

The tax data was provided to ProPublica after we published [a series of articles scrutinizing the IRS](#). The articles exposed how years of budget cuts have [hobbled the agency’s ability to enforce the law](#) and how the largest corporations and [the rich](#) have benefited from the IRS’ weakness. They also showed how people in poor regions are now [more likely to be audited](#) than those in affluent areas.

ProPublica is not disclosing how it obtained the data, which was given to us in raw form, with no conditions or conclusions. ProPublica reporters spent months processing and analyzing the material to transform it into a usable database.

We then verified the information by comparing elements of it with dozens of already public tax details (in court documents, politicians’ financial disclosures and news stories) as well as by vetting it with individuals whose tax information is contained in the trove. Every person whose tax information is described in this story was asked to comment. Those who responded, including [Buffett](#), [Bloomberg](#) and [Icahn](#), all said they had paid the taxes they owed.

A spokesman for Soros said in a statement: “Between 2016 and 2018 George Soros lost money on his investments, therefore he did not owe federal income taxes in those years. Mr. Soros has long supported higher taxes for wealthy Americans.” Personal and corporate representatives of Bezos declined to receive detailed questions about the matter. ProPublica

to an initial query with a lone punctuation mark: “?” After we sent detailed questions to him, he did not reply.

One of the billionaires mentioned in this article objected, arguing that publishing personal tax information is a violation of privacy. We have concluded that the public interest in knowing this information at this pivotal moment outweighs that legitimate concern.

The consequences of allowing the most prosperous to game the tax system have been profound. Federal budgets, apart from military spending, have been constrained for decades. Roads and bridges have crumbled, social services have withered and the solvency of Social Security and Medicare is perpetually in question.

There is an even more fundamental issue than which programs get funded or not: Taxes are a kind of collective sacrifice. No one loves giving their hard-earned money to the government. But the system works only as long as it’s perceived to be fair.

Our analysis of tax data for the 25 richest Americans quantifies just how unfair the system has become.

By the end of 2018, the 25 were worth \$1.1 trillion.

For comparison, it would take 14.3 million ordinary American wage earners put together to equal that same amount of wealth.

The personal federal tax bill for the top 25 in 2018: \$1.9 billion.

The bill for the wage earners: \$143 billion.

The idea of a regular tax on income, much less on wealth, does not appear in the country’s founding documents. In fact, Article 1 of the U.S. Constitution explicitly prohibits “direct” taxes on citizens under most circumstances. This meant that for decades, the U.S. government mainly funded itself through “indirect” taxes: tariffs and levies on consumer goods like tobacco and alcohol.

With the costs of the Civil War looming, Congress imposed a national income tax in 1861. The wealthy helped force its repeal soon after the war ended. (Their pique could only have been exacerbated by the fact that the law required public disclosure. The annual income of the moguls of the day — \$1.3 million for William Astor; \$576,000 for Cornelius Vanderbilt — was listed in the pages of The New York Times in 1865.)

By the late 19th and early 20th century, wealth inequality was acute and the political climate was changing. The federal government began expanding, creating agencies to protect food, workers and more. It needed funding, but tariffs were pinching regular Americans more than the rich. The Supreme Court had rejected an 1894 law that would have created an income tax. So Congress moved to amend the Constitution. The 16th Amendment was ratified in 1913 and gave the government power “to lay and collect taxes on incomes, from whatever source derived.”

In the early years, the personal income tax worked as Congress intended

any tax. The top 1% paid 80% of the revenue raised, according to historian W. Elliot Brownlee.

But a question remained: What would count as income and what wouldn't? In 1916, a woman named Myrtle Macomber received a dividend for her Standard Oil of California shares. She owed taxes, thanks to the new law. The dividend had not come in cash, however. It came in the form of an additional share for every two shares she already held. She paid the taxes and then brought a court challenge: Yes, she'd gotten a bit richer, but she hadn't received any money. Therefore, she argued, she'd received no "income."

Four years later, the Supreme Court agreed. In *Eisner v. Macomber*, the high court ruled that income derived only from proceeds. A person needed to sell an asset — stock, bond or building — and reap some money before it could be taxed.

Since then, the concept that income comes only from proceeds — when gains are "realized" — has been the bedrock of the U.S. tax system. Wages are taxed. Cash dividends are taxed. Gains from selling assets are taxed. But if a taxpayer hasn't sold anything, there is no income and therefore no tax.

Contemporary critics of Macomber were plentiful and prescient. Cordell Hull, the congressman known as the "father" of the income tax, assailed the decision, according to scholar Marjorie Kornhauser. Hull predicted that tax avoidance would become common. The ruling opened a gaping loophole, Hull warned, allowing industrialists to build a company and borrow against the stock to pay living expenses. Anyone could "live upon the value" of their company stock "without selling it, and of course, without ever paying" tax, he said.

Hull's prediction would reach full flower only decades later, spurred by a series of epochal economic, legal and cultural changes that began to gather momentum in the 1970s. Antitrust enforcers increasingly accepted mergers and stopped trying to break up huge corporations. For their part, companies came to obsess over the value of their stock to the exclusion of nearly everything else. That helped give rise in the last 40 years to a series of corporate monoliths — beginning with Microsoft and Oracle in the 1980s and 1990s and continuing to Amazon, Google, Facebook and Apple today — that often have concentrated ownership, high profit margins and rich share prices. The winner-take-all economy has created modern fortunes that by some measures eclipse those of John D. Rockefeller, J.P. Morgan and Andrew Carnegie.

In the here and now, the ultrawealthy use an array of techniques that aren't available to those of lesser means to get around the tax system.

Certainly, there are illegal tax evaders among them, but it turns out billionaires don't have to evade taxes exotically and illicitly — they can avoid them routinely and legally.

workers earn to be “income,” and employers take taxes directly out of their paychecks.

The Bezoses of the world have no need to be paid a salary. Bezos’ Amazon wages have long been set at the middle-class level of around \$80,000 a year.

For years, there’s been something of a competition among elite founder-CEOs to go even lower. Steve Jobs took \$1 in salary when he returned to Apple in the 1990s. Facebook’s Zuckerberg, Oracle’s Larry Ellison and Google’s Larry Page have all done the same.

Yet this is not the self-effacing gesture it appears to be: Wages are taxed at a high rate. The top 25 wealthiest Americans reported \$158 million in wages in 2018, according to the IRS data. That’s a mere 1.1% of what they listed on their tax forms as their total reported income. The rest mostly came from dividends and the sale of stock, bonds or other investments, which are taxed at lower rates than wages.

As Congressman Hull envisioned long ago, the ultrawealthy typically hold fast to shares in the companies they’ve founded. Many titans of the 21st century sit on mountains of what are known as unrealized gains, the total size of which fluctuates each day as stock prices rise and fall. Of the \$4.25 trillion in wealth held by U.S. billionaires, some \$2.7 trillion is unrealized, according to Emmanuel Saez and Gabriel Zucman, economists at the University of California, Berkeley.

Buffett has famously held onto his stock in the company he founded, Berkshire Hathaway, the conglomerate that owns Geico, Duracell and significant stakes in American Express and Coca-Cola. That has allowed Buffett to largely avoid transforming his wealth into income. From 2015 through 2018, he reported annual income ranging from \$11.6 million to \$25 million. That may seem like a lot, but Buffett ranks as roughly the world’s sixth-richest person — he’s worth \$110 billion as of Forbes’ estimate in May 2021. At least 14,000 U.S. taxpayers in 2015 reported higher income than him, according to IRS data.

There’s also a second strategy Buffett relies on that minimizes income, and therefore, taxes. Berkshire does not pay a dividend, the sum (a piece of the profits, in theory) that many companies pay each quarter to those who own their stock. Buffett has always argued that it is better to use that money to find investments for Berkshire that will further boost the value of shares held by him and other investors. If Berkshire had offered anywhere close to the average dividend in recent years, Buffett would have received over \$1 billion in dividend income and owed hundreds of millions in taxes each year.

Many Silicon Valley and infotech companies have emulated Buffett’s model, eschewing stock dividends, at least for a time. In the 1980s and 1990s, companies like Microsoft and Oracle offered shareholders rocketing growth and profits but did not pay dividends. Google, Facebook, Amazon and Tesla do not pay dividends.

believe that the tax code should be changed substantially,” he wrote, adding that he thought “huge dynastic wealth is not desirable for our society.”

The decision not to have Berkshire pay dividends has been supported by the vast majority of his shareholders. “I can’t think of any large public company with shareholders so united in their reinvestment beliefs,” he wrote. And he pointed out that Berkshire Hathaway pays significant corporate taxes, accounting for 1.5% of total U.S. corporate taxes in 2019 and 2020.

Buffett reiterated that he has begun giving his enormous fortune away and ultimately plans to donate 99.5% of it to charity. “I believe the money will be of more use to society if disbursed philanthropically than if it is used to slightly reduce an ever-increasing U.S. debt,” he wrote.

So how do megabillionaires pay their megabills while opting for \$1 salaries and hanging onto their stock? According to public documents and experts, the answer for some is borrowing money — lots of it.

For regular people, borrowing money is often something done out of necessity, say for a car or a home. But for the ultrawealthy, it can be a way to access billions without producing income, and thus, income tax.

The tax math provides a clear incentive for this. If you own a company and take a huge salary, you’ll pay 37% in income tax on the bulk of it. Sell stock and you’ll pay 20% in capital gains tax — and lose some control over your company. But take out a loan, and these days you’ll pay a single-digit interest rate and no tax; since loans must be paid back, the IRS doesn’t consider them income. Banks typically require collateral, but the wealthy have plenty of that.

The vast majority of the ultrawealthy’s loans do not appear in the tax records obtained by ProPublica since they are generally not disclosed to the IRS. But occasionally, the loans are disclosed in securities filings. In 2014, for example, Oracle revealed that its CEO, Ellison, had a credit line secured by about \$10 billion of his shares.

Last year Tesla reported that Musk had pledged some 92 million shares, which were worth about \$57.7 billion as of May 29, 2021, as collateral for personal loans.

With the exception of one year when he exercised more than a billion dollars in stock options, Musk’s tax bills in no way reflect the fortune he has at his disposal. In 2015, he paid \$68,000 in federal income tax. In 2017, it was \$65,000, and in 2018 he paid no federal income tax. Between 2014 and 2018, he had a true tax rate of 3.27%.

The IRS records provide glimpses of other massive loans. In both 2016 and 2017, investor Carl Icahn, who ranks as the 40th-wealthiest American on the Forbes list, paid no federal income taxes despite reporting a total of \$544 million in adjusted gross income (which the IRS defines as earnings minus items like student loan interest payments or alimony). Icahn had an

secured, at least in part, by Manhattan penthouse apartments and other properties.

Borrowing offers multiple benefits to Icahn: He gets huge tranches of cash to turbocharge his investment returns. Then he gets to deduct the interest from his taxes. In an interview, Icahn explained that he reports the profits and losses of his business empire on his personal taxes.

Icahn acknowledged that he is a “big borrower. I do borrow a lot of money.” Asked if he takes out loans also to lower his tax bill, Icahn said: “No, not at all. My borrowing is to win. I enjoy the competition. I enjoy winning.”

He said adjusted gross income was a misleading figure for him. After taking hundreds of millions in deductions for the interest on his loans, he registered tax losses for both years, he said. “I didn’t make money because, unfortunately for me, my interest was higher than my whole adjusted income.”

Asked whether it was appropriate that he had paid no income tax in certain years, Icahn said he was perplexed by the question. “There’s a reason it’s called income tax,” he said. “The reason is if, if you’re a poor person, a rich person, if you are Apple — if you have no income, you don’t pay taxes.” He added: “Do you think a rich person should pay taxes no matter what? I don’t think it’s germane. How can you ask me that question?”

Skeptics might question our analysis of how little the superrich pay in taxes. For one, they might argue that owners of companies get hit by corporate taxes. They also might counter that some billionaires cannot avoid income — and therefore taxes. And after death, the common understanding goes, there’s a final no-escape clause: the estate tax, which imposes a steep tax rate on sums over \$11.7 million.

ProPublica found that none of these factors alter the fundamental picture.

Take corporate taxes. When companies pay them, economists say, these costs are passed on to the companies’ owners, workers or even consumers. Models differ, but they generally assume big stockholders shoulder the lion’s share.

Corporate taxes, however, have plummeted in recent decades in what has become a golden age of corporate tax avoidance. By sending profits abroad, companies like Google, Facebook, Microsoft and Apple have often paid little or no U.S. corporate tax.

For some of the nation’s wealthiest people, particularly Bezos and Musk, adding corporate taxes to the equation would hardly change anything at all. Other companies like Berkshire Hathaway and Walmart do pay more, which means that for people like Buffett and the Waltons, corporate tax could add significantly to their burden.

It is also true that some billionaires don’t avoid taxes by avoiding incomes. In 2019, nine of the 25 wealthiest Americans reported more than \$500

In such cases, though, the data obtained by ProPublica shows billionaires have a palette of tax-avoidance options to offset their gains using credits, deductions (which can include charitable donations) or losses to lower or even zero out their tax bills. Some own sports teams that offer such lucrative write-offs that owners often end up paying far lower tax rates than their millionaire players. Others own commercial buildings that steadily rise in value but nevertheless can be used to throw off paper losses that offset income.

Michael Bloomberg, the 13th-richest American on the Forbes list, often reports high income because the profits of the private company he controls flow mainly to him.

In 2018, he reported income of \$1.9 billion. When it came to his taxes, Bloomberg managed to slash his bill by using deductions made possible by tax cuts passed during the Trump administration, charitable donations of \$968.3 million and credits for having paid foreign taxes. The end result was that he paid \$70.7 million in income tax on that almost \$2 billion in income. That amounts to just a 3.7% conventional income tax rate. Between 2014 and 2018, Bloomberg had a true tax rate of 1.30%.

In a [statement](#), a spokesman for Bloomberg noted that as a candidate, Bloomberg had advocated for a variety of tax hikes on the wealthy. “Mike Bloomberg pays the maximum tax rate on all federal, state, local and international taxable income as prescribed by law,” the spokesman wrote. And he cited Bloomberg’s philanthropic giving, offering the calculation that “taken together, what Mike gives to charity and pays in taxes amounts to approximately 75% of his annual income.”

The statement also noted: “The release of a private citizen’s tax returns should raise real privacy concerns regardless of political affiliation or views on tax policy. In the United States no private citizen should fear the illegal release of their taxes. We intend to use all legal means at our disposal to determine which individual or government entity leaked these and ensure that they are held responsible.”

Ultimately, after decades of wealth accumulation, the estate tax is supposed to serve as a backstop, allowing authorities an opportunity to finally take a piece of giant fortunes before they pass to a new generation. But in reality, preparing for death is more like the last stage of tax avoidance for the ultrawealthy.

University of Southern California tax law professor Edward McCaffery has summarized the entire arc with the catchphrase “[buy, borrow, die.](#)”

The notion of dying as a tax benefit seems paradoxical. Normally when someone sells an asset, even a minute before they die, they owe 20% capital gains tax. But at death, that changes. Any capital gains till that moment are not taxed. This allows the ultrarich and their heirs to avoid paying billions in taxes. The “step-up in basis” is widely recognized by experts across the political spectrum as a flaw in the code.

Then comes the estate tax, which, at 40%, is among the highest in the

to get a piece of all those unrealized gains and other assets the wealthiest Americans accumulate over their lifetimes.

It's clear, though, from aggregate IRS data, tax research and what little trickles into the public arena about estate planning of the wealthy that they can readily escape turning over almost half of the value of their estates. Many of the richest create foundations for philanthropic giving, which provide large charitable tax deductions during their lifetimes and bypass the estate tax when they die.

Wealth managers offer clients a range of opaque and complicated trusts that allow the wealthiest Americans to give large sums to their heirs without paying estate taxes. The IRS data obtained by ProPublica gives some insight into the ultrawealthy's estate planning, showing hundreds of these trusts.

The result is that large fortunes can pass largely intact from one generation to the next. Of the 25 richest people in America today, about a quarter are heirs: three are Waltons, two are scions of the Mars candy fortune and one is the son of Estée Lauder.

In the past year and a half, hundreds of thousands of Americans have died from COVID-19, while millions were thrown out of work. But one of the bleakest periods in American history turned out to be one of the most lucrative for billionaires. They added \$1.2 trillion to their fortunes from January 2020 to the end of April of this year, according to Forbes.

That windfall is among the many factors that have led the country to an inflection point, one that traces back to a half-century of growing wealth inequality and the financial crisis of 2008, which left many with lasting economic damage. American history is rich with such turns. There have been famous acts of tax resistance, like the Boston Tea Party, countered by less well-known efforts to have the rich pay more.

One such incident, over half a century ago, appeared as if it might spark great change. President Lyndon Johnson's outgoing treasury secretary, Joseph Barr, shocked the nation when he revealed that 155 Americans making over \$200,000 (about \$1.6 million today) had paid no taxes. That group, he told the Senate, included 21 millionaires.

"We face now the possibility of a taxpayer revolt if we do not soon make major reforms in our income taxes," Barr said. Members of Congress received more furious letters about the tax scofflaws that year than they did about the Vietnam War.

Congress did pass some reforms, but the long-term trend was a revolt in the opposite direction, which then accelerated with the election of Ronald Reagan in 1980. Since then, through a combination of political donations, lobbying, charitable giving and even direct bids for political office, the ultrawealthy have helped shape the debate about taxation in their favor.

One apparent exception: Buffett, who broke ranks with his billionaire cohort to call for higher taxes on the rich. In a famous New York Times op-

by a billionaire-friendly Congress. It's time for our government to get serious about shared sacrifice."

Buffett did something in that article that few Americans do: He publicly revealed how much he had paid in personal federal taxes the previous year (\$6.9 million). Separately, Forbes estimated his fortune had risen \$3 billion that year. Using that information, an observer could have calculated his true tax rate; it was 0.2%. But then, as now, the discussion that ensued on taxes was centered on the traditional income tax rate.

In 2011, President Barack Obama proposed legislation, known as the Buffett Rule. It would have raised income tax rates on people reporting over a million dollars a year. It didn't pass. Even if it had, however, the Buffett Rule wouldn't have raised Buffett's taxes significantly. If you can avoid income, you can avoid taxes.

Today, just a few years after Republicans passed a massive tax cut that disproportionately benefited the wealthy, the country may be facing another swing of the pendulum, back toward a popular demand to raise taxes on the wealthy. In the face of growing inequality and with spending ambitions that rival those of Franklin D. Roosevelt or Johnson, the Biden administration has proposed a slate of changes. These include raising the tax rates on people making over \$400,000 and bumping the top income tax rate from 37% to 39.6%, with a top rate for long-term capital gains to match that. The administration also wants to up the corporate tax rate and to increase the IRS' budget.

Some Democrats have gone further, floating ideas that challenge the tax structure as it's existed for the last century. Oregon Sen. Ron Wyden, the chairman of the Senate Finance Committee, has proposed taxing unrealized capital gains, a shot through the heart of Macomber. Sens. Elizabeth Warren and Bernie Sanders have proposed wealth taxes.

Aggressive new laws would likely inspire new, sophisticated avoidance techniques. A few countries, including Switzerland and Spain, have wealth taxes on a small scale. Several, most recently France, have abandoned them as unworkable. Opponents contend that they are complicated to administer, as it is hard to value assets, particularly of private companies and property.

What it would take for a fundamental overhaul of the U.S. tax system is not clear. But the IRS data obtained by ProPublica illuminates that all of these conversations have been taking place in a vacuum. Neither political leaders nor the public have ever had an accurate picture of how comprehensively the wealthiest Americans avoid paying taxes.

Buffett and his fellow billionaires have known this secret for a long time. As Buffett put it in 2011: "There's been class warfare going on for the last 20 years, and my class has won."

Doris Burke, Carson Kessler and Ellis Simani contributed reporting.



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Jean Bezos (Leigh Vogel/Getty Images), Michael Bloomberg (Johannes Eisele/AFP via

Getty Images), Warren Buffett (Jamie McCarthy/Getty Images)

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EXHIBIT I



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

September 2, 2022

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Thompson:

In accordance with the requirements of the Federal Information Security Modernization Act (FISMA) and criteria provided in the Office of Management and Budget (OMB) Guidance, this letter provides notice that the Internal Revenue Service recently identified an inadvertent and now-corrected disclosure of a subset of Forms 990-T. FISMA requires this report to Congress “not later than seven days after the date on which there is reasonable basis to conclude that a major incident has occurred.” The IRS determined on Friday, August 26, that the inadvertent disclosure met this threshold.

This notification follows the IRS discovery that some machine-readable (XML) Form 990-T data made available for bulk download section on the Tax Exempt Organization Search (TEOS) should not have been made public. This section is primarily used by those with the ability to use machine-readable data; other more widely used sections of [TEOS](#) are unaffected.

The IRS took immediate steps to address this issue. The agency removed the errant files from IRS.gov, and the IRS will replace them with updated files in next few weeks. The IRS also will be working with groups that routinely use the files to update remove the erroneous files and replace them with the correct versions as they become available. The IRS will contact all impacted filers in the coming weeks.

Form 990-T is the business tax return used by tax-exempt entities, including tax-exempt organizations, government entities and retirement accounts, to report and pay income tax on income that is generated from certain investments or income unrelated to their exempt purpose. The IRS is required to publicly disclose this information for 501(c)(3) organizations; however, similar information was inadvertently published for a subset of non-501(c)(3)s, which are not subject to public disclosure.

OMB’s Guidance on Federal Information Security and Privacy Management Requirements mandates that agencies define any incident involving more than 100,000 individuals as a major incident. Based on the IRS’s review, the inadvertent disclosure included limited information for approximately 120,000 individuals. However, the data did not include Social Security numbers, individual income information, detailed financial account data, or other sensitive information that could impact a taxpayer’s credit. In some instances, the data did include individual names or business contact information.

The IRS is continuing to review this situation. The Treasury Department has instructed the IRS to conduct a prompt review of its practices to ensure necessary protections are in place to prevent unauthorized data disclosures. In accordance with FISMA guidance, additional details will be forthcoming within 30 days, including summaries of our detection, response and remediation activities.

In addition, I and my IRS colleagues are available to discuss this matter in additional detail. If you have any questions, please call me, or a member of your staff may call the Office of Legislative Affairs at (202) 622-1900.

Sincerely,

A handwritten signature in black ink, appearing to read "Anna Canfield Roth". The signature is fluid and cursive, with the first name "Anna" being the most prominent part.

Anna Canfield Roth
Acting Assistant Secretary for Management

EXHIBIT J

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

December 14, 2021

Report Number: 2022-20-005

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

TIGTACommunications@tigta.treas.gov | www.treasury.gov/tigta

Why TIGTA Did This Audit

This audit was initiated because the IRS Restructuring and Reform Act of 1998 requires TIGTA to annually assess and report on an evaluation of the adequacy and security of IRS information technology. Our overall objective was to assess the adequacy and security of the IRS's information technology.

Impact on Taxpayers

In Fiscal Year 2021, the IRS collected approximately \$4.1 trillion in Federal tax payments, and processed 269 million tax returns and forms. In addition, Federal tax refund and outlay activities by the IRS were approximately \$1.1 trillion. This included approximately \$570 billion in Coronavirus Disease 2019 economic impact payments.

The IRS employs approximately 81,600 people in its Washington, D.C., Headquarters and 501 offices in all 50 States and U.S. territories.

The IRS relies extensively on computerized systems to support its financial and mission-related operations. Weaknesses within the IRS's computer operations could begin to adversely affect its ability to meet its mission of helping taxpayers comply with their tax responsibilities and enforcing the tax laws with integrity and fairness to all.

What TIGTA Found

The IRS continues to make progress in many information technology program areas. A review of systems security at the Information Sharing and Analysis Center found that the IRS and a contractor generally ensured that their actions complied with the law for sharing Federal tax information and included privacy controls to protect taxpayer information. Additional reviews found that most sampled laptops and desktops were sanitized prior to disposal, and most required baseline security controls were implemented for the Get My Payment application.

The Fiscal Year 2021 IRS Federal Information Security Modernization Act Evaluation found that three of the five Cybersecurity Framework function areas were rated as "effective." However, taxpayer data could be vulnerable to inappropriate and undetected use, modification, or disclosure until the IRS takes steps to improve its security program deficiencies and fully implement all security program components in compliance with the requirements.

Problems were also reported in the IRS's handling of the privacy of taxpayer data, access controls, system environment security, information system boundary components, network monitoring and audit logs, disaster recovery, roles and responsibilities, and separation of duties, as well as security policies, procedures, and documentation.

Reviews of systems development and information technology operations found that a roadmap was developed to include a framework to identify, classify, and group systems so that potential encryption solutions could be identified, and that the invoices provided for sampled information technology service contract payments met minimum Federal Acquisition Regulation standards. Reviews also found that the Chief Information Officer's roles and responsibilities are defined, and streamlined critical pay authority activities were compliant with the requirements of the Taxpayer First Act of 2019. Finally, the IRS deployed Release 1 of the Enterprise Case Management solution.

However, the Chief Information Officer is not notified of all significant information technology acquisitions. Problems were also reported with the IRS's information technology acquisitions, asset management, human capital, project management, risk management, implementation of corrective actions, modernizing operations, and the Coronavirus Disease 2019 response.

What TIGTA Recommended

Because this report was an assessment of the adequacy and security of the IRS's information technology based on previous TIGTA and Government Accountability Office reports issued during Fiscal Year 2021, TIGTA did not make any further recommendations.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 14, 2021

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in blue ink, reading "Michael E. McKenney".

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Annual Assessment of the IRS's Information
Technology Program for Fiscal Year 2021 (Audit # 202120002)

This report presents the results of our assessment of the adequacy and security of the Internal Revenue Service's (IRS) information technology. This review is required by the IRS Restructuring and Reform Act of 1998.¹ This audit was included in our Fiscal Year 2021 Annual Audit Plan and addresses the major management and performance challenges of *Responding to the COVID-19 [Coronavirus Disease 2019] Pandemic, Enhancing Security of Taxpayer Data and Protection of IRS Resources, Implementing Tax Law Changes, Modernizing IRS Operations, and Improving Tax Reporting and Payment Compliance*.

Copies of this report are also being sent to the IRS managers affected by the information in the report. If you have any questions, please contact me or Danny R. Verneuille, Assistant Inspector General for Audit (Security and Information Technology Services).

¹ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

Table of Contents

<u>Background</u>	Page 1
---	--------

<u>Results of Review</u>	Page 5
--	--------

<u>Systems Security and Privacy of Taxpayer Data</u>	Page 6
--	--------

<u>Systems Development and Information Technology Operations</u>	Page 40
--	---------

Appendices

<u>Appendix I – Detailed Objective, Scope, and Methodology</u>	Page 73
--	---------

<u>Appendix II – List of Treasury Inspector General for Tax Administration and Government Accountability Office Reports Reviewed</u>	Page 74
--	---------

<u>Appendix III – Glossary of Terms</u>	Page 76
---	---------

<u>Appendix IV – Abbreviations</u>	Page.87
--	---------

Background

The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998¹ requires the Treasury Inspector General for Tax Administration (TIGTA) to annually assess and report on an evaluation of the adequacy and security of the IRS's information technology.² TIGTA's Security and Information Technology Services business unit assesses the information technology of the IRS by evaluating cybersecurity, systems development, and information technology operations. This report provides our assessment for Fiscal Year 2021.

The IRS collects taxes, processes tax returns, and enforces Federal tax laws. In Fiscal Year 2021, the IRS collected approximately \$4.1 trillion in Federal tax payments, and processed 269 million tax returns and forms. In addition, Federal tax refund and outlay activities³ by the IRS were approximately \$1.1 trillion.

The IRS collected approximately \$4.1 trillion in Federal tax payments and paid approximately \$1.1 trillion in refund and outlay activities.

This included approximately \$570 billion in

Coronavirus Disease 2019 (COVID-19) economic impact payments paid under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act);⁴ the Coronavirus Response and Relief Supplemental Appropriations Act of 2021;⁵ and the American Rescue Plan Act of 2021,⁶ which included provisions to help stimulate the economy.

Further, the size and complexity of the IRS add unique operational challenges. The IRS employs approximately 81,600 people in its Washington, D.C., Headquarters and 501 offices in all 50 States and U.S. territories. The IRS relies extensively on computerized systems to support its operations in collecting taxes, processing tax returns, and enforcing Federal tax laws. As such, it is critical that its computer systems are effectively secured to protect sensitive financial and taxpayer data and are operating as intended. In addition, successful modernization of IRS systems, as well as the development and implementation of new technologies, is necessary to meet evolving business needs and to enhance the taxpayer experience.

In Fiscal Year 2021, the IRS's appropriations increased by \$409 million to \$11.9 billion, designated for taxpayer services, enforcement, operations support, and modernization. The Information Technology (IT) organization comprises a significant portion of the IRS's budget and plays a critical role to enable the IRS to carry out its mission and responsibilities. The IRS's Fiscal Year 2021 projected available funds included approximately \$4.5 billion for information technology investments, of which \$1.8 billion was received to fund recent legislative

¹ Pub. L. No. 105-206, 112 Stat. 685.

² See Appendix III for a glossary of terms.

³ Federal tax refund and outlay activities include refunds of tax overpayments, payments for interest, and disbursements for refundable tax credits such as the Earned Income Tax Credit and the Additional Child Tax Credit.

⁴ Pub. L. No. 116-136, 134 Stat. 281.

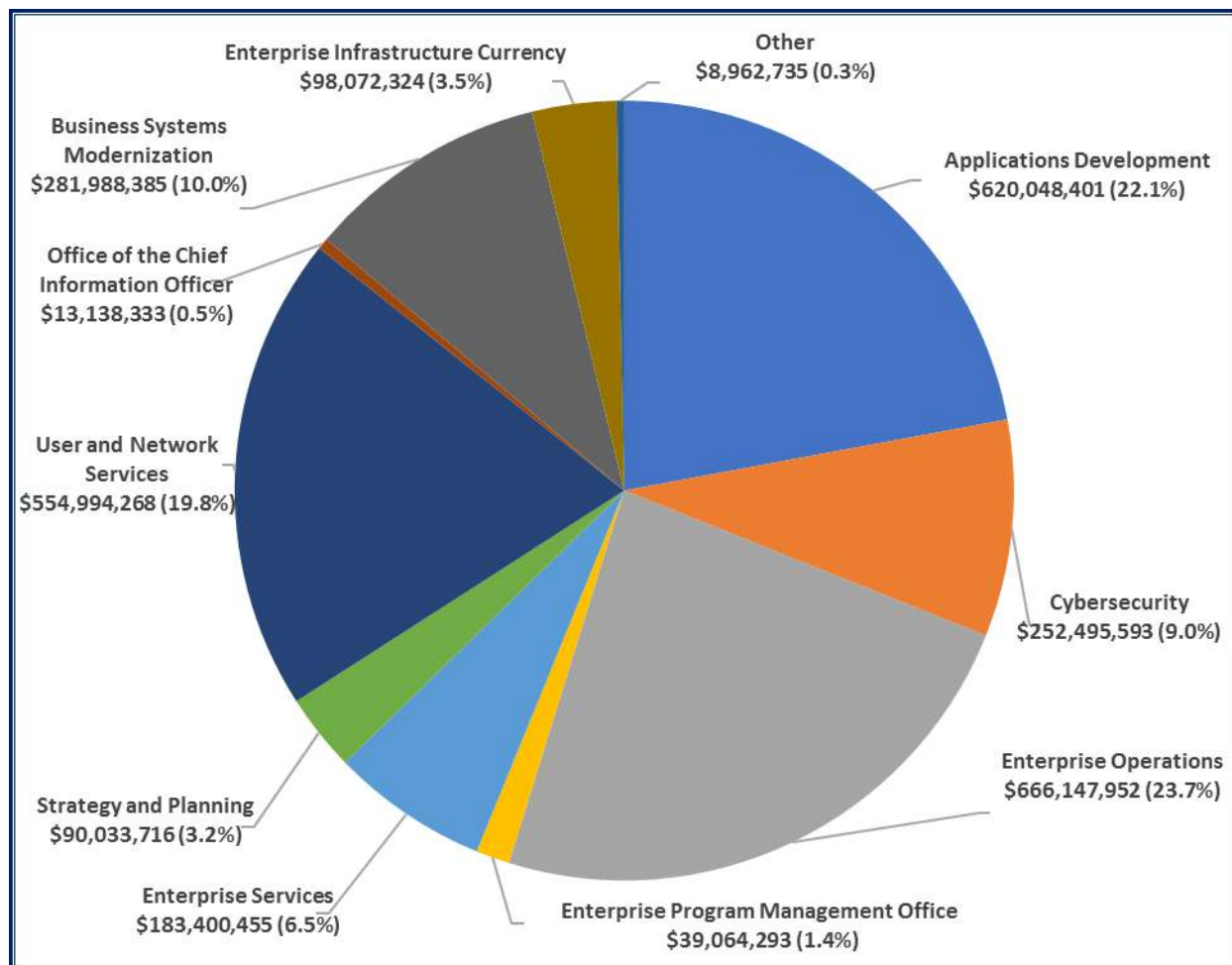
⁵ Pub. L. No. 116-260.

⁶ Pub. L. No. 117-2.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

requirements.⁷ Figure 1 illustrates the IRS's Fiscal Year 2021 information technology projected available funding by IT organization function and major program.

Figure 1: Fiscal Year 2021 Information Technology Projected Available Funding by IT Organization Function and Major Program



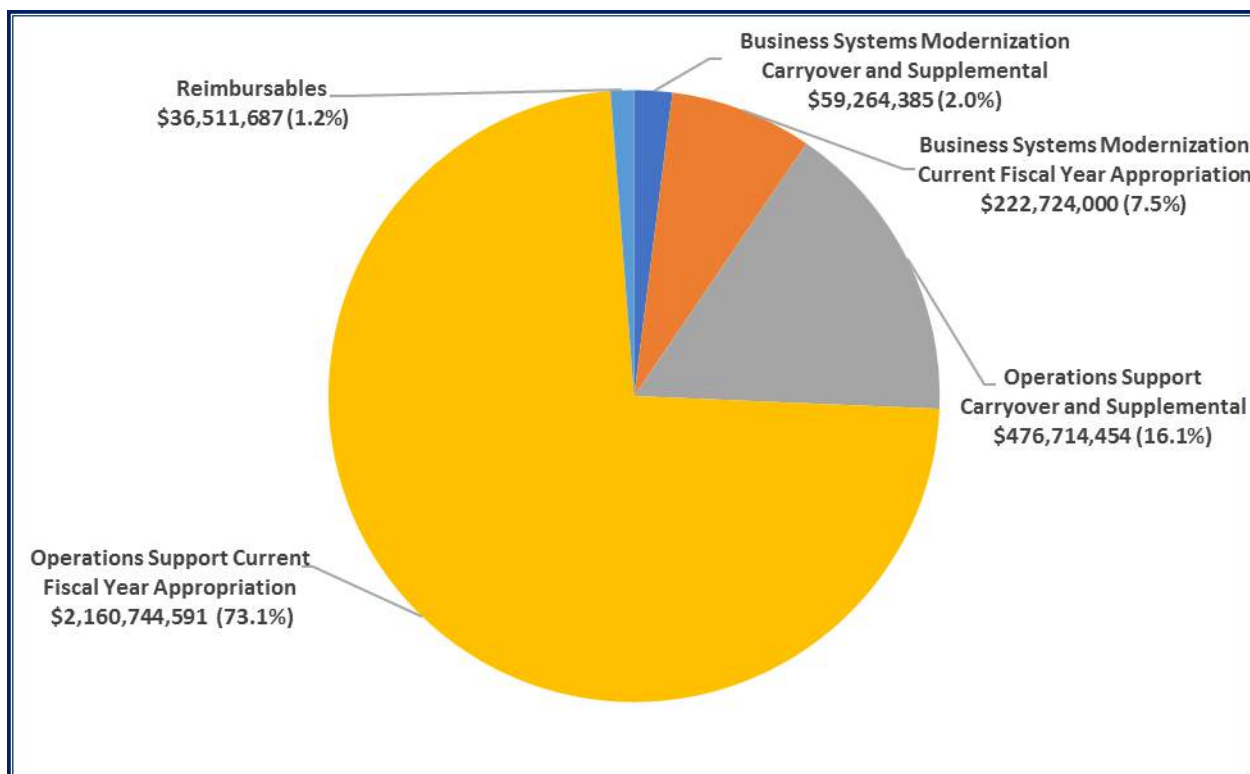
Source: IT organization budget data as of May 2021, based on information provided by the Strategy and Planning function's Office of Financial Management Services. The Other category includes Shared Support and other funds not yet distributed.

⁷ The recent legislative requirements resulted from the American Rescue Plan Act; the CARES Act; the Families First Coronavirus Response Act; the Taxpayer First Act; and annual appropriations. Figure 3 provides further details on the funding for the recent legislative requirements.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Figure 2 shows the IT organization's actual available funding for Fiscal Year 2021 by funding source.

Figure 2: Fiscal Year 2021 Total Actual Available Funding by Funding Source⁸

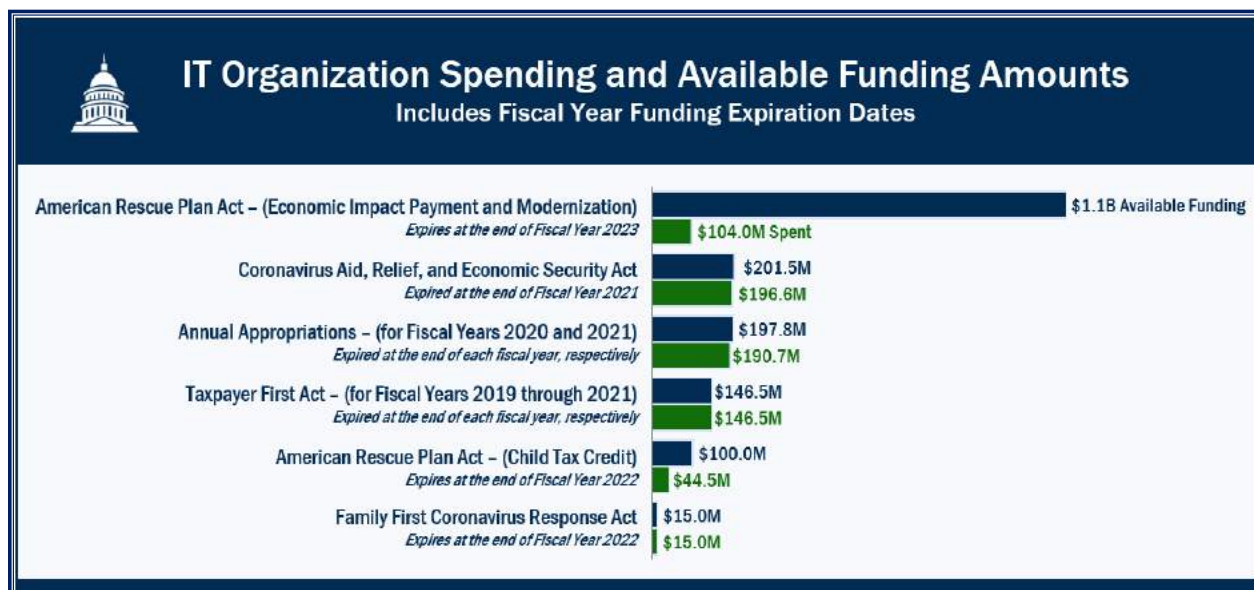


Source: IT organization budget data as of May 2021, based on information provided by the Strategy and Planning function's Office of Financial Management Services.

Figure 3 presents the IT organization's total spending and available funding, as of September 30, 2021, for recent legislative requirements by legislation.

⁸ The percentages do not add up to 100 percent due to rounding. The difference of \$147,612,662 between Figures 1 and 2 is due to projected versus actual available funding.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Figure 3: IT Organization Spending and Available Funding for Recent Legislative Requirements by Legislation (in Descending Available Funding Order)

Source: IT organization budget and expense data as of September 30, 2021, based on information provided by the Office of the Chief Financial Officer's Financial Planning and Analysis office.

Figure 4 illustrates that, as of May 2021, the IRS had a total of 7,011 employees and 6,549 contractors working across eight different IT organization functions – 226 fewer employees and 436 more contractors than in Fiscal Year 2020.

Figure 4: Number of Employees and Contractors by IT Organization Function (in Descending Employee Order)

IT Organization Function/Office	Employees	Contractors
Applications Development	1,919	2,128
Enterprise Operations	1,905	477
User and Network Services	1,392	1,037
Enterprise Services	723	962
Cybersecurity	521	811
Strategy and Planning	311	171
Enterprise Program Management Office	228	948
Office of the Chief Information Officer	12	15
Total	7,011	6,549

Source: IRS Human Resources Reporting Center as of May 2021.

- The **Applications Development function** is responsible for building, unit testing, delivering, and maintaining integrated information applications to support modernized and legacy systems in production.
- The **Enterprise Operations function** facilitates information technology operational activities in the enterprise computing centers, campuses, and call sites.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

- The **User and Network Services function** oversees a portfolio of technology and services that enable communication, collaboration, and business capabilities.
- The **Enterprise Services function** is responsible for strengthening the technology infrastructure across the enterprise by defining the current and target architectures, and developing a transition strategy to move towards the target environment.
- The **Cybersecurity function** ensures compliance with Federal statutory, legislative, and regulatory requirements to assure the confidentiality, integrity, and availability of electronic systems, services, and data.
- The **Strategy and Planning function** collaborates with IT organization leadership to provide policy, direction, and administration of essential programs, including strategy and capital planning; comprehensive and integrated modernization planning; strategic planning and performance measurement; financial management services; vendor and contract management; requirements and demand management; and risk management.
- The **Enterprise Program Management Office** delivers best practices in program management and leads programs to improve business processes and operations as well as the taxpayer experience.
- The **Office of the Chief Information Officer** includes the Chief Information Officer (CIO), two Deputy CIOs, and their employees. The CIO leads the IT organization and advises the IRS Commissioner. The CIO also manages all information system resources and is responsible for delivering and maintaining modernized systems. The Deputy CIO for Operations has oversight responsibility for the IT organization's planning and execution of filing season as well as the day-to-day operations of information systems and services. In addition, the Deputy CIO for Operations is focused on upgrading the IRS's infrastructure and improving service availability. The Deputy CIO for Strategy and Modernization provides executive oversight for large modernization programs in addition to providing guidance on investment planning and strategic decision-making supported by data and analysis.

Results of Review

During this annual review, we summarize information from program efforts in cybersecurity, systems development, and information technology operations. During Fiscal Year 2021, TIGTA audits of the IRS's information technology program addressed the major management and performance challenges of *Responding to the COVID-19 Pandemic*, *Enhancing Security of Taxpayer Data and Protection of IRS Resources*, *Implementing Tax Law Changes*, *Modernizing IRS Operations*, and *Improving Tax Reporting and Payment Compliance*. This report presents a summary of TIGTA and Government Accountability Office (GAO) audit results previously reported for Fiscal Year 2021. It does not reflect any additional audit work or corrective actions that the IRS may have been taken since the initial reporting of the audit results.

Overall, the IRS needs to ensure that it continues to leverage viable technological advances as it modernizes its major business systems and improves its overall operational and security environments. While the IRS continues to make progress in many information technology areas, additional improvements are needed. Otherwise, weaknesses within the IRS's computer

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

operations could begin to adversely affect its ability to meet its mission of helping taxpayers comply with their tax responsibilities and enforcing the tax laws with integrity and fairness to all.

Modernization

The reliance on legacy systems and aged hardware and software, and its use of 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 many years and will likely remain a challenge for the foreseeable future. In response, the IRS developed the *IRS Integrated Modernization Business Plan*.⁹ The plan provides a six-year roadmap for achieving the necessary modernization of IRS systems and taxpayer services in two, three-year phases that began in Fiscal Year 2019. The IRS organized the plan around four "Modernization Pillars" that are critical to its mission and future development: 1) *Taxpayer Experience*, 2) *Core Taxpayer Services and Enforcement*, 3) *Modernized IRS Operations*, and 4) *Cybersecurity and Data Protection*.

In addition, the IRS developed the *American Rescue Plan Modernization*.¹⁰ According to the document, it is a portfolio of initiatives that "will transform foundational IRS technology to allow for future innovation and faster delivery of IT [information technology] capabilities, while making meaningful improvements in taxpayer service and compliance." The *American Rescue Plan Modernization* represents an evolution of the *IRS Integrated Modernization Business Plan* by accelerating existing initiatives identified to begin in Phase 2 of the *IRS Integrated Modernization Business Plan*, as well as introducing new initiatives based on emerging needs and technologies.

The *American Rescue Plan Modernization* was the result of additional funding provided to the IRS when the President signed the American Rescue Plan Act of 2021 into law. The legislation included additional funding of approximately \$1 billion available through September 30, 2023, for the continuation of integrating, modernizing, and securing information systems as well as for the Advance Child Tax Credit and a number of tax-related provisions. The additional funding will help accelerate modernization initiatives and address foundational information technology modernization that had previously been unfunded. The *American Rescue Plan Modernization* is also aligned with strategies resulting from the Taxpayer First Act of 2019 (TFA)¹¹ by continuing to provide the necessary technology foundation to reimagine the taxpayer experience. The TFA amended the Internal Revenue Code of 1986 to modernize and improve the IRS. It includes provisions related to cybersecurity and identity protection, development of information technology, expanded use of electronic systems, *etc.*

Systems Security and Privacy of Taxpayer Data

Federal agencies are dependent on information systems and electronic data to carry out operations and to process, maintain, and report essential information. Virtually all Federal activities are supported by computer systems and electronic data. Agencies would find it difficult, if not impossible, to carry out their missions and account for their resources without

⁹ Dated April 2019.

¹⁰ Dated June 16, 2021.

¹¹ Pub. L. No. 116-25.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

these information technology assets. Therefore, the security of these systems and data is vital to public confidence and the Nation's safety, prosperity, and well-being. Ineffective security controls to protect these systems and data could have a significant effect on a broad array of Government operations and assets.

Without effective security controls, computer systems are vulnerable to human errors or actions committed with malicious intent. People acting with malicious intent can use their access to obtain sensitive information, commit fraud and identity theft, disrupt operations, or launch attacks against other computer systems and networks. These threats to computer systems and related critical infrastructure can come from sources that are internal or external to an organization. Internal threats include equipment failures, human errors, and fraudulent or malicious acts by employees or contractors. External threats include the ever-growing number of cyberattacks that can come from a variety of sources, such as individuals, groups, and countries that wish to do harm to an organization's systems or steal an organization's data.

In the previous 10 years, TIGTA designated *Enhancing Security of Taxpayer Data and Protection of IRS Resources* as the number one major management and performance challenge area, but it was succeeded by *Responding to the COVID-19 Pandemic* in Fiscal Year 2021. The IRS faces the daunting task of securing its computer systems against the growing threat of cyberattacks. In addition to TIGTA's annual Federal Information Security Modernization Act of 2014 (FISMA)¹² report that provides an overall assessment of the information security program, we performed several audits to assess the IRS's efforts to protect its information and taxpayer data. Our audits covered privacy of taxpayer data, access controls, system environment security, information system boundary components, network monitoring and audit logs, disaster recovery, roles and responsibilities, and separation of duties, as well as security policies, procedures, and documentation.

Overall assessment of the information security program

The FISMA requires Federal agencies to develop, document, and implement an agencywide information security program that provides security for the information and information systems that support the operations and assets of the agency, including those provided or managed by contractors. It assigns specific responsibilities to agency heads and Inspectors General in complying with the requirements of FISMA and is supported by the Office of Management and Budget, the Department of Homeland Security, agency security policy, and risk-based standards and guidelines published by the National Institute of Standards and Technology (NIST) related to information security practices.

For example, the FISMA directs Federal agencies to report annually to the Director, Office of Management and Budget; the Comptroller General of the United States; and selected congressional committees on the adequacy and effectiveness of agency information security policies, procedures, and practices, as well as compliance with the FISMA. In addition, FISMA requires agencies to have an annual independent evaluation performed of their information security programs and practices and to report the evaluation results to the Office of Management and Budget. These independent evaluations are to be performed by the agency Inspector General or an independent external auditor as determined by the Inspector General. TIGTA is responsible for oversight of the IRS while the Treasury Office of Inspector General is















¹² Pub. L. No. 113-283.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

responsible for all other Department of the Treasury (hereafter referred to as the Treasury Department) bureaus.

The *Fiscal Year 2021 Inspector General Federal Information Security Modernization Act of 2014 Reporting Metrics* (hereafter referred to as the Inspector General FISMA Reporting Metrics),¹³ developed as a collaborative effort among the Office of Management and Budget, the Department of Homeland Security, and the Council of the Inspectors General on Integrity and Efficiency, align with the five cybersecurity function areas in NIST's *Framework for Improving Critical Infrastructure Cybersecurity* (hereafter referred to as the Cybersecurity Framework).¹⁴ Figure 5 presents the five Cybersecurity Framework function areas and aligns each with the associated security program component(s) or reporting metric domain(s).

Figure 5: Alignment of NIST Cybersecurity Framework Function Areas to the Fiscal Year 2021 Inspector General FISMA Reporting Metric Domains

 IDENTIFY	 PROTECT	 DETECT	 RESPOND	 RECOVER
Develop the organizational understanding to manage cybersecurity risk to systems, assets, and capabilities.	Develop and implement the appropriate safeguards to ensure delivery of critical services.	Develop and implement the appropriate activities to identify the occurrence of a cybersecurity event.	Develop and implement the appropriate activities to take action regarding a detected cybersecurity event.	Develop and implement the appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to a cybersecurity event.
Fiscal Year 2021 Inspector General FISMA Reporting Metric Domains				
 Risk Management  Supply Chain Risk Management	 Configuration Management  Identity and Access Management  Data Protection and Privacy  Security Training	 Information Security Continuous Monitoring	 Incident Response	 Contingency Planning

Source: *Fiscal Year 2021 Inspector General FISMA Reporting Metrics and NIST Cybersecurity Framework.*

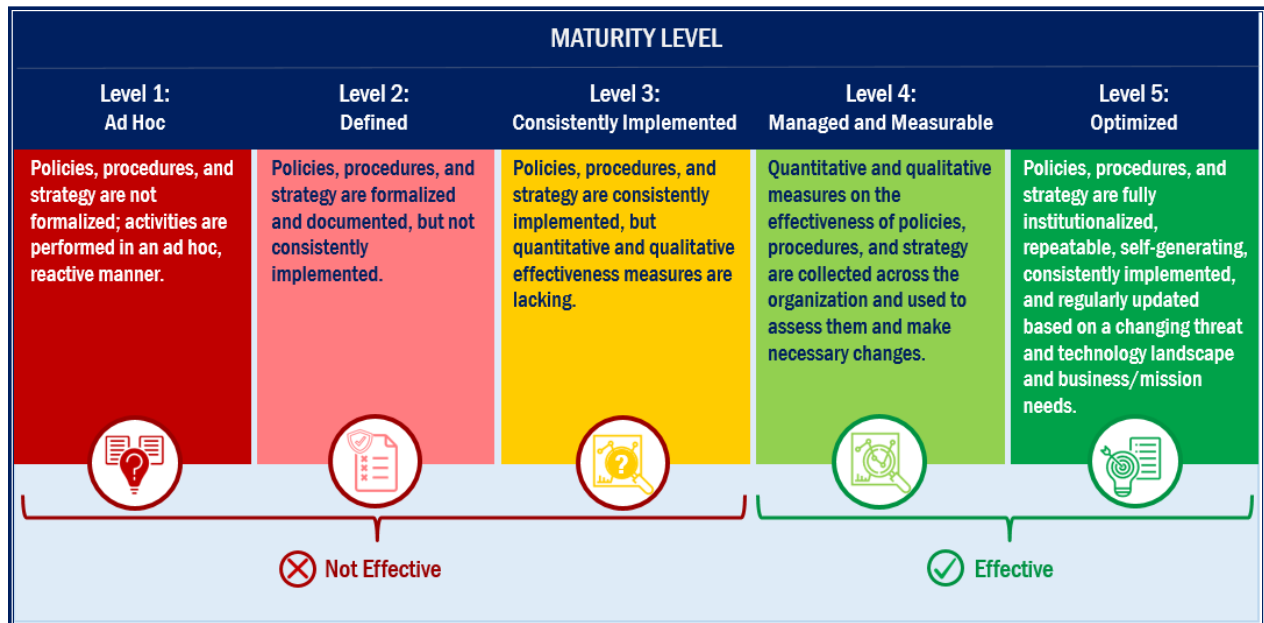
The Inspectors General are required to assess the effectiveness of the information security programs based on a maturity model spectrum in which the reporting metric domains ensure that agencies develop sound policies and procedures and the advanced levels capture the extent that agencies institute those policies and procedures. Maturity levels range from *Ad-Hoc* for not having formalized policies, procedures, and strategies to *Optimized* for fully institutionalizing sound policies, procedures, and strategies across the agency. Figure 6 details the five maturity levels: *Ad-Hoc*, *Defined*, *Consistently Implemented*, *Managed* and *Measurable*, and *Optimized*. The scoring methodology defines "effective" as being at a maturity level 4, *Managed* and *Measurable*, or above.

¹³ Version 1.1, dated May 12, 2021.

¹⁴ Version 1.1, dated April 2018.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Figure 6: Inspector General's Assessment Maturity Levels

















Source: Fiscal Year 2021 Inspector General FISMA Reporting Metrics.

To determine the effectiveness of the cybersecurity program, we evaluated¹⁵ the maturity level of the program metrics as specified in the Inspector General FISMA Reporting Metrics. Along with our review of pertinent documents and discussions with IRS subject matter experts, we based our evaluation on a representative subset of seven information systems and the implementation status of key security controls as well as considered the results of TIGTA and GAO audits. These audits, whose results were applicable to FISMA reporting metrics, were performed, completed, or contained recommendations that were still open during the FISMA evaluation period, July 1, 2020, to June 30, 2021. Figure 7 shows that TIGTA rated three Cybersecurity Framework function areas as "effective" and two as "not effective."

¹⁵ TIGTA, Report No. 2021-20-072, *Fiscal Year 2021 IRS Federal Information Security Modernization Act Evaluation* (Sept. 2021).

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Figure 7: Maturity Levels by Function Areas

Overall Effectiveness of Each Function Area				
 IDENTIFY	 PROTECT	 DETECT	 RESPOND	 RECOVER
Level 2: Defined <i>Not Effective</i>	Level 4: Managed and Measurable <i>Effective</i>	Level 2: Defined <i>Not Effective</i>	Level 4: Managed and Measurable <i>Effective</i>	Level 4: Managed and Measurable <i>Effective</i>
Assessed Maturity Levels for FY 2021 Inspector General FISMA Metric Domains				
 Risk Management	 Configuration Management	 Information Security Continuous Monitoring	 Incident Response	 Contingency Planning
Level 2: Defined	Level 2: Defined	Level 2: Defined	Level 4: Managed and Measurable	Level 4: Managed and Measurable
 Supply Chain Risk Management ¹	 Identity and Access Management			
Level 1: Ad Hoc	Level 3: Consistently Implemented			
	 Data Protection and Privacy			
	Level 4: Managed and Measurable			
	 Security Training			
	Level 4: Managed and Measurable			

¹ The Supply Chain Risk Management metric was not included in the overall rating for the IDENTIFY function rating.

Source: TIGTA evaluation of security program metrics that determined whether Cybersecurity Framework function areas were rated "effective" or "not effective."

The Cybersecurity Framework function areas of PROTECT, RESPOND and RECOVER were rated at a *Managed and Measurable* maturity level

The Inspector General FISMA Reporting Metrics specify that, within the context of the maturity model evaluation process, maturity level 4, *Managed and Measurable*, represents an effective level of security. For the five Cybersecurity Framework function areas, we found that two function areas, RESPOND and RECOVER, and their respective security program components, Incident Response and Contingency Planning, achieved the *Managed and Measurable* maturity level 4 and were deemed as "effective."

The PROTECT function area consists of four security program components: Configuration Management; Identity and Access Management; Data Protection and Privacy; and Security Training. We found that the performance metrics for Data Protection and Privacy, and Security Training achieved a *Managed and Measurable* maturity level 4, and we therefore considered them "effective." However, we determined that the Identity and Access Management, and Configuration Management security program components were at a *Consistently Implemented* maturity level 3 and *Defined* maturity level 2, respectively. As such, we considered these program components "not effective." The overall maturity level for the PROTECT function area is at a *Managed and Measurable* maturity level 4 in accordance with the Inspector General FISMA Reporting Metrics. As a result, we consider the function area "effective."

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

While the PROTECT function area is at an effective level, the following examples are Configuration Management metrics that did not meet the *Managed and Measurable* maturity level 4.

- While the IRS has defined baseline configurations, it has not ensured that its information systems consistently maintain the baseline or component inventories are compliant with IRS policy.
- While the IRS has defined flaw remediation policies, including patching, it has not consistently implemented flaw remediation and patching on a timely basis.

The Cybersecurity Framework function areas of IDENTIFY and DETECT were rated at a *Defined* maturity level

Based on the Inspector General FISMA Reporting Metrics, we found that the IDENTIFY and DETECT function areas and their respective security program components, Risk Management and Information Security Continuous Monitoring, met a *Defined* maturity level 2, which we considered “not effective.” The following examples are metrics that did not meet the *Managed and Measurable* maturity level 4.

- Both the IRS and TIGTA have identified weaknesses in the IRS's ability to maintain a comprehensive and accurate inventory of its information systems. In addition, the IRS's FISMA system inventory and security artifact repository, the Treasury FISMA Inventory Management System, had an inaccurate inventory on cloud systems.
- The IRS has not implemented the Continuous Diagnostics and Mitigation, Phase 1, scanning tool necessary to perform checks for unauthorized hardware components/devices and software and to notify appropriate organizational officials. In addition, the IRS has open plans of action and milestones in a number of systems due to inaccurate hardware/software component inventories.
- The IRS has developed the *Information Security Continuous Monitoring* strategy, but it has not fully developed tools that support an accurate inventory.

Until the IRS takes steps to improve its security program deficiencies and fully implement all security program components in compliance with FISMA requirements, taxpayer data could be vulnerable to inappropriate and undetected use, modification, or disclosure.

Privacy of taxpayer data

The trillions of dollars that flow through the IRS each year make it an attractive target for criminals who want to exploit the tax system in various ways for personal gain. The proliferation of stolen Personally Identifiable Information poses a significant threat to tax administration by making it difficult for the IRS to distinguish legitimate taxpayers from fraudsters. Tax-related scams, and the methods used to perpetrate them, are continually changing and require constant monitoring by the IRS. The IRS's ability to continuously monitor and improve its approach to taxpayer authentication is a critical step in defending the agency against evolving cyberthreats and fraud schemes and in protecting trillions of taxpayer dollars.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

During Fiscal Year 2021, TIGTA performed four audits involving privacy of taxpayer data. We initiated an audit¹⁶ to ***evaluate IRS controls to validate transcript requests and implement TFA sections for the Income Verification Express Service (IVES) Program***. The IVES Program allows third-party participants, such as banks and financial institutions, to submit requests through the Transcript Delivery System, on behalf of clients, to obtain their tax transcripts. The transcripts cannot be obtained unless the third party successfully registers for e-Services and participates in electronic tax return filing or is a participant of the IVES Program. Once accepted, participants can submit an authorization Form 4506-T, *Request for Transcript of Tax Return*, to obtain tax transcripts for their clients. The TFA¹⁷ requires that the IRS modernize the IVES Program and increase taxpayer protections, *e.g.*, develop an automated system to receive third-party income verification forms and comply with applicable security standards and guidelines.

Although the IVES Program can accept a taxpayer's electronic signature, the IRS cannot authenticate that the legitimate taxpayer electronically signed the Form 4506-T. As such, until the IRS deploys its online IVES Program transcript request system, it has no assurance that the legitimate taxpayer authorized release of their tax transcript. In the interim, the IRS relies on its current control that requires participants to undergo an independent audit of their electronic signature process and provide the IVES Program with an audit report by January 31 each year. However, IRS management does not ensure that IVES Program participants undergo the required independent audit. Our discussion with IVES Program management identified that processes have not been established to identify which participants are submitting electronically signed Forms 4506-T. As a result, management does not know which participants are required to provide an independent audit report of their electronic signature process. As of August 14, 2020, the IVES Program had 748 participants, but received an independent audit report from only five participants by January 31, 2020.

To participate in the electronic signature process, IVES Program participants must validate that signers are who they say they are, obtain consent from the signer to receive and sign documents electronically, and ensure that the electronic signature establishes a person's intent to sign the Form 4506-T. After the electronic signature is collected, the document must be made tamper proof to ensure its validity, and an audit log of the electronic signing must be retained by the IVES Program participant for two years.

On February 28, 2020, we issued an e-mail alert recommending that the IVES Program immediately require all participants inform the IRS whether they are submitting electronically signed Forms 4506-T and acknowledge their agreement to provide the independent audit report of their electronic signature process. On March 23, 2020, the IRS notified all IVES Program participants that they must certify whether they are submitting electronically signed transcript requests and, if so, provide the required audit report by April 30, 2020, subsequently postponed until August 7, 2020.

¹⁶ TIGTA, Report No. 2021-45-017, *Additional Security Processes Are Needed to Prevent Unauthorized Release of Tax Information Through the Income Verification Express Service Program* (Feb. 2021).

¹⁷ TFA § 2201, *Disclosure of Taxpayer Information for Third-Party Income Verification*; § 2202, *Limit Redislosures and Uses of Consent-Based Disclosures of Tax Return Information*; § 2302, *Uniform Standards for the Use of Electronic Signatures for Disclosure Authorizations to, and Other Authorizations of, Practitioners*; and § 2304, *Authentication of Users of Electronic Services Accounts*.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

However, as of July 31, 2020, a majority of IVES Program participants did not respond to the IRS's March 23, 2020, mandate. Only 206 IVES Program participants responded to the request to certify whether they are submitting electronically signed Forms 4506-T. In addition, of the 53 participants who responded that they were using electronic signatures, 38 (72 percent) did not provide the required audit report. Only 15 participants submitted an audit report. The IVES Program's notice to participants stated that failure to submit the certification and independent audit report would result in suspension and potential removal from the program. However, as of September 9, 2020, management had not taken these actions.

In addition, independent audit reports submitted by participants did not address the IVES Program's electronic signature requirements. Our review of the 15 audit reports submitted identified that 10 (67 percent) did not address all key electronic signature requirements of the IVES Program. For example: six audit reports did not make Form 4506-T tamper proof to ensure its validity after the electronic signature was obtained; 10 audit reports did not address the requirement to retain all audit logs and transcript requests submitted to the IRS for two years; and two audit reports were not prepared by an independent party.

Also, transcript requests were processed erroneously for taxpayer accounts that contained identity theft markers. We identified 8,754 tax transcripts that the IVES Program improperly issued for 4,726 taxpayers during Processing Year 2019. Internal guidelines state that a transcript should not be provided if the taxpayer's account has an identity theft marker. IVES Program employees use an Integrated Automation Technologies tool to process Forms 4506-T. The tool automates research of the taxpayer's account for which the request was submitted and alerts the employee to reject the request if certain identity theft markers are on the account.

Our analysis of the 8,754 improperly issued transcripts found the following reasons for the errors:

- 5,207 (59 percent) improperly issued transcripts occurred because the Integrated Automation Technologies tool did not identify an identity theft marker on the taxpayer's account for a tax year other than the tax year on the Form 4506-T. This resulted from the Integrated Automation Technologies tool programming not notifying the clerk to reject the transcript request due to the presence of the identity theft marker on another tax year.
- 3,547 (41 percent) improperly issued transcripts occurred because some clerks did not follow procedures to reject requests when the Integrated Automation Technologies tool reported that an identity theft marker is on the taxpayer's account.

On June 10, 2020, we alerted IVES management to our concerns. In response, management noted that they are working with the Identity Protection Office and an Integrated Automation Technologies Team to correct the tool's programming. To address those transcripts improperly issued as a result of clerk error, management issued an alert to all Tax Processing Centers on June 26, 2020, reminding employees that all tax years requested on Form 4506-T must be researched to ensure that requests are rejected when accounts with an identity theft marker are identified.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

In addition, we initiated an audit¹⁸ to ***determine whether policies, procedures, and controls have been effectively implemented to ensure that disclosed return information is protected as required at the Identity Theft Tax Refund Fraud Information Sharing and Analysis Center (ISAC).*** We found that the memorandum of understanding for sharing Federal tax information (FTI) between the IRS and the ISAC complied with TFA § 2003, *Information Sharing and Analysis Center*. The creation of the ISAC was a result of a Security Summit initiative to share refund schemes. According to the IRS, it is a [REDACTED] operated by the [REDACTED] (hereafter referred to as the trusted third party (TTP)) to detect, deter, and prevent tax-related identity theft. The Security Summit is composed of IRS officials with representatives from the State Departments of Revenue, the Chief Executive Officers of leading tax preparation firms, and software developers, as well as payroll and tax financial product processors.

The TFA gave the IRS authority to disclose certain return information for the purposes of cybersecurity and the prevention of identity theft tax refund fraud. It includes provisions that specify the return information that can be disclosed, restrictions on the use of the disclosed information, and data protections and safeguards.¹⁹ Specifically, we identified 26 stipulations in the TFA. In 21 of the stipulations, there were little to no differences between the TFA and the memorandum of understanding. The stipulations included 12 related to specifying the return information that can be disclosed, seven related to restrictions on the use of the disclosed information, and two related to data protections and safeguards. The remaining five stipulations were not included in the memorandum of understanding because they were applicable to only the IRS and not the TTP. These included four relevant to return information that can be disclosed and one to data protection and safeguards.

We also reviewed the memorandum of understanding between the IRS and each of the 14 industry partners permitted to receive FTI for compliance with the law.²⁰ We identified similar compliance with 20 of the 26 stipulations. The remaining six stipulations were not applicable because industry partners included specifying return information that could be disclosed, and the IRS does not disclose return information directly to them. Instead, it is obtained from the TTP.

In addition, privacy controls included conducting an annual contractor site security assessment, having TTP employees take privacy awareness training, and having a privacy notification for users who access FTI on the ISAC Participant Area landing page. We observed the security assessment conducted in February 2020 and noted repeat issues for which we obtained an approved risk-based decision document and a flaw remediation issue for which the IRS provided a valid explanation. We also noted that the Cybersecurity function team's assessment of the privacy awareness training showed that the TTP met the requirement and that the contracting

¹⁸ TIGTA, Report No. 2021-25-025, *Taxpayer First Act: Data Security in the Identity Theft Tax Refund Fraud Information Sharing and Analysis Center* (May 2021).

¹⁹ Specifically, TFA § 2003 provides that the Secretary of the Treasury (hereafter referred to as the Secretary) *may disclose specified return information to designated ISAC Participants to the extent that the Secretary determines such disclosure is in furtherance of effective Federal tax administration relating to the detection or prevention of identity theft tax refund fraud, validation of taxpayer identity, authentication of taxpayer returns, or detection or prevention of cybersecurity threats.*

²⁰ The States are governed under 26 U.S.C. § 6103(d), *Disclosure to State tax officials and State and local law enforcement agencies*, regarding the sharing of FTI and do not require a separate memorandum of understanding.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

officer representative provided written documentation certifying that TTP employees completed the training. Further, the privacy notification included a warning that the system is for authorized use and the consequences, which included disciplinary, civil, and criminal actions, for unauthorized and improper use. The notification also warned that users should have no reasonable expectation of privacy regarding any communication, data transfers, or information stored on the system.

The IRS disclosed specified return information in accordance with the TFA. Our analysis of the April 24, 2020, [REDACTED] identity theft refund fraud file, the June 2020 [REDACTED] confirmed identity theft refund fraud file, and the Calendar Year 2019 [REDACTED] identity theft refund fraud file determined that the data fields shared with the ISAC contained only the specified data elements as outlined in the TFA.

In addition, the TTP securely received and stored FTI and monitored its use. Specifically, the TTP took measures to ensure the separation of FTI and non-FTI. [REDACTED]

[REDACTED]. We verified that the TTP maintains FTI on [REDACTED] by comparing a list of the files that we received from the IRS to the designated ISAC accounts. The stored and transmitted FTI also includes appropriate encryption to protect against unauthorized access and viewing. In addition, the TTP monitors ISAC activities by performing weekly automated and monthly manual reviews to ensure that only authorized users have accessed the ISAC.

Moreover, disclosure and redisclosure of FTI were properly captured and provided to the IRS. Transmitting FTI to the TTP is considered a permitted disclosure. [REDACTED]

[REDACTED] it is considered a redisclosure, which the memorandum of understanding between the IRS and the TTP permits. We also verified that the TTP is providing the IRS with a monthly accounting of the redisclosures. The TTP reported more [REDACTED]

Further, two-factor authentication is used to identify and authenticate individuals who access FTI. Two-factor authentication requires the use of something a user knows, *e.g.*, password, and something a user possesses, *e.g.*, token card, to access the contractor's system. We reviewed the latest updated version of the ISAC System Security Plan and found no security issues with the use of the two-factor authentication. We also confirmed that the TTP is using two-factor authentication when we independently accessed the ISAC portal.

We also initiated an audit²² to ***independently evaluate the performance of private collection agencies***. A direct debit payment option has been implemented for taxpayers working with private collection agencies, but protecting taxpayer information is a concern. In January 2020, members of Congress expressed concerns about the new preauthorized direct debit process being used by the private collection agencies because it requires taxpayers to disclose their bank account information, which is then used by the private collection agencies to draft the

²¹ In [REDACTED] the IRS began sharing FTI with the TTP, one month after signing the memorandum of understanding with the TTP.

²² TIGTA, Report No. 2021-30-010, *Fiscal Year 2021 Biannual Independent Assessment of Private Collection Agency Performance* (Dec. 2020).

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

preauthorized check made payable to the Treasury Department.²³ The concern was related to the potential fraudulent handling of a taxpayer's bank information by the private collection agencies and the fact that the Federal Trade Commission had previously banned telemarketing companies from using this direct debit paper check process.

The IRS responded to congressional concerns stating that it requires the private collection agencies to handle and protect all taxpayer information following the security guidelines detailed in Publication 4812, *Contractor Security & Privacy Controls*.²⁴ The IRS conducts contractor security assessments annually to ensure compliance with these guidelines and could terminate the contract if it finds a private collection agency to be noncompliant. In addition, the IRS stated that its oversight of the Private Debt Collection Program mitigates potential risks to taxpayers and includes measures to prevent potential violations of taxpayer rights or related identity theft. The IRS also stated that it holds the private collection agencies to the same standards as it holds itself, and any willful disclosure of taxpayer information could result in criminal and civil actions against the private collection agency employee.

After the IRS responded to the congressional inquiries, we requested from each private collection agency its process for handling preauthorized direct debit cases to make sure taxpayer information was safely secured during the process. We identified a concern with the controls for handling the verbal consent after a taxpayer acknowledges interest in the preauthorized direct debit. For example, one of the four private collection agencies selected for review discusses bank account information with the taxpayer during the verbal consent stage, stating that an assistor obtains the information and a senior collection specialist or management official verifies that the information is correct and obtains the verbal consent from the taxpayer.

However, Policy and Procedure Guide § 9.1, *Pre-Authorized Direct Debit*,²⁵ does not state that the private collection agencies should discuss or obtain bank account information from the taxpayer during the verbal consent stage, but rather should explain to the taxpayer that they must complete the bank and contact information on the written authorization form, sign, and return it to the private collection agency by mail or fax. The remaining three private collection agencies responded that bank account information is not requested during the verbal consent stage. After a signed preauthorized direct debit form is returned, each of the private collection agencies have designated employees responsible for inputting bank and routing account information. After input of the information, all four of the private collection agencies mask the data, which prohibits employees from accessing the full account information.

Further, we initiated an audit²⁶ to ***assess the effectiveness of the IT organization's hardware asset sanitization process***. The User and Network Services (UNS) function manages the Memphis Sanitization Site (MSS), which is responsible for receiving IRS end-user laptops, desktops, and smartphones for sanitization,²⁷ properly sanitizing them, and transferring them to the Facilities Management and Security Services function for disposal.

²³ January 8, 2020, letter from Senators Elizabeth Warren and Sherrod Brown to IRS Commissioner Charles Rettig.

²⁴ Revised October 2019. The Publication is designed to identify security requirements for contractors and any subcontractors supporting the primary contract.

²⁵ Dated August 30, 2019.

²⁶ TIGTA, Report No. 2021-20-056, *Laptop and Desktop Sanitization Practices Need Improvement* (Sept. 2021).

²⁷ A process that renders access to target data on the hardware asset unrecoverable.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

In January 2016, the Associate CIO, UNS, issued a memorandum that mandated UNS function personnel refrain from sanitizing the data from any hard disk associated with an end-user. This applied to all end-user computers and smartphones, including those belonging to separating employees. In addition, personnel were instructed that hard disks were to remain intact with their respective computers. In July 2019, the Associate CIO, UNS, issued a memorandum lifting the sanitization moratorium, advising UNS function personnel that, effective August 5, 2019, they were to resume information technology equipment wiping and disposal operations. As of October 2020, the MSS had 61,809 unsanitized computers (28,370 laptops and 33,439 desktops) and 7,996 unsanitized smartphones.

The laptops and desktops were sanitized using an unapproved sanitization product. The UNS function was unable to provide sufficient evidence that the sanitization tool being used is properly approved by the Federal Government. The UNS function only provided:

- 1) A statement from the vendor's website that its product conformed to 1995 Department of Defense standards.
- 2) Internal guidance from a decade ago that stated, "The purging process is the removal of sensitive but unclassified data from computer media by using the approved [product name] overwriting process or degaussing the media."
- 3) A screenshot from the IRS's Enterprise Standards Profile mentioning that the sanitization software was an IRS-approved product.

We reviewed the list of sanitization software that the Common Criteria Recognition Arrangement²⁸ has certified using the Common Criteria for Information Technology Security Evaluation.²⁹ The Common Criteria Recognition Arrangement is comprised of 31 government agencies representing their respective member countries, with the Department of Defense representing the United States. While the Common Criteria Recognition Arrangement certified at least four sanitization software products between November 2017 and August 2020, the product that the UNS function is using is not on the list of certified products. Once certified, the products remain on the Certified Products List for five years.

In addition, the IRS has not tested the MSS's sanitization equipment and procedures to verify that the intended sanitization is being achieved, as required. Without using a currently approved sanitization product and annually testing the sanitization equipment and procedures, the risk exists that the sanitization product could fail to remove residual information from laptop and desktop hard disks. If not sanitized properly, release of the hard disks outside of the IRS could lead to unauthorized disclosure of confidential taxpayer information.

Management Action: In June 2021, UNS function management stated that they acquired and are now using a National Security Agency-approved degausser to purge data on hard disks at the MSS for laptops and desktops that will be disposed of outside of the IRS. If calibrated correctly, we believe that the degausser will effectively ensure complete erasure of the hard disks. For the remaining computers that the UNS function expects to reuse within the IRS, UNS function management is working to identify and implement a sanitization software

²⁸ It is composed of each signatory's country representatives, in which member countries recognize the products certified by the arrangement.

²⁹ An international standard (ISO/IEC 15408) for evaluating and certifying information security products.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

solution. The UNS function is also in the process of acquiring a Solid State Drive Disintegrator, which is designed specifically for the destruction of solid state hard drives.

In addition, most sampled laptops and desktops were sanitized. To test the effectiveness of the computer sanitization process, we selected and tested a random statistical sample³⁰ of sanitized laptops and desktops to determine whether residual data remained on the computers' hard disks. Specifically, we randomly selected a statistical interval sample of 87 (2.24 percent) computers from a population of 3,882 computers that the MSS sanitized between January and March 2021. We used sanitization verification software from a different vendor to independently test if the sanitization was effective. Results of our sanitization verification testing include:

- 1 hard disk was not sanitized but encrypted.
- 2 hard disks were missing.
- 6 hard disks had "error accessing drive sectors" messages.
- 78 hard disks were effectively sanitized.

For the one unsanitized computer, we observed that the hard disk was encrypted. If encryption is properly enabled, the risk of inadvertent disclosure of confidential information is significantly reduced even if the hard disk was not sanitized. At our request, the IRS tried to locate the two computers with missing hard disks, but it ultimately was unable to do so. As a result, we were unable to test these two hard disks to determine if they had been sanitized and if the sanitization process was effective. Projecting our sample results to the total population of computers the MSS sanitized between January and March 2021, we estimate that 45 (1.16 percent)³¹ of the 3,882 sanitized computers may not have been properly sanitized. Further, we estimate that 89 (2.30 percent)³² of the 3,882 computers may have been missing hard disks that were not identified in the MSS's hardware asset inventory.

For the remaining six computers with bad sector error messages, we used a different vendor's data recovery software to retest the hard disks for the existence of residual data. Although our additional testing did not identify any residual data, NIST Special Publication 800-88, *Guidelines for Media Sanitization*,³³ states that overwriting cannot be used for media that are damaged or not rewriteable. However, degaussing or destruction are acceptable methods to purge damaged media containing sensitive information.

In addition to testing sanitized computers, we reviewed the process the IRS uses to wipe smartphones. MSS personnel enter an incorrect password several times to initiate the wipe. We

³⁰ Because the population of sanitized devices was constantly changing due to new assets being received and stockpiled assets being sanitized, we used interval attribute sampling, a form of random sampling that allowed for the selection of sample items from the sanitized population of devices as the sanitization occurred during our audit work.

³¹ We selected this sample using a 95 percent confidence interval, 3 percent error rate, and ± 3 percent desired precision factor. When projecting the results of our statistical sample, we are 95 percent confident that the actual total number of unsanitized computers is between two and 239.

³² We selected this sample using a 95 percent confidence interval, 3 percent error rate, and ± 3 percent desired precision factor. When projecting the results of our statistical sample, we are 95 percent confident that the actual total number of missing hard disks is between 12 and 310.

³³ Revision 1, dated December 2014.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

observed this wiping process and also tested a judgmental sample³⁴ of eight smartphones and determined that the MSS had effectively sanitized them. To verify the success of the wipes, we observed that the smartphones booted up to the initial setup screens.

We also found that the process to independently verify the sanitization of laptops and desktops is ineffective. After computers are sanitized, the MSS transfers them to the Facilities Management and Security Services function for disposal. At the time of transfer, MSS and Facilities Management and Security Services function personnel together visually compare the description of the computers listed on the Standard Form 120, *Report of Excess Personal Property*, to the bar codes on the pallets of sanitized laptops and desktops. In addition, MSS personnel complete and sign an *Asset Sanitization Certification Form* to document that the MSS sanitized the computers prior to physical custody of the assets being transferred to the Facilities Management and Security Services function.³⁵

The UNS function's asset sanitization certification process includes procedures for UNS function personnel to document the independent verification that each individual computer was effectively sanitized. While UNS function management stated that an individual conducting the verification process should boot up the computer to a command level prompt to demonstrate that the computer was sanitized, we did not see this procedure documented in the draft *MSS Standard Operating Procedures* or observe it being performed. Further, the UNS function's verification procedures for computers do not include an effective test of each computer using a verification software tool to verify that the sanitization was effective and that residual data cannot be read. NIST Special Publication 800-88 suggests that the verification process should be performed using a different verification software tool, that is, not simply booting up the computer or reusing the original sanitization tool to perform the verification.

UNS function management believed that the MSS met the intent of the sanitization verification guidance through 1) performing the visual inspection of the computers on the sanitized pallets and 2) having a person independent of the sanitization process boot up the computers to a command prompt. However, if the MSS had performed actual verification testing of its sanitized computers using a verification software tool, missing hard disks and hard disks with residual data or bad sector errors would have been identified.³⁶

Because the MSS verification process is ineffective, the UNS function cannot ensure that residual taxpayer data or Personally Identifiable Information does not remain on those items disposed outside of the IRS. If an unauthorized disclosure of tax or Personally Identifiable Information occurred, it could result in substantial harm, embarrassment, and loss of public confidence in the IRS. An unauthorized disclosure could also harm an individual.

³⁴ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

³⁵ The same process occurs for smartphones, but the visual examination compares the description of smartphones listed on the Form MI, *Miscellaneous Disposal*, to the bar codes of the smartphones in the boxes of sanitized smartphones. MSS personnel then complete and sign an *Asset Sanitization Certification Form*.

³⁶ Similar to a sanitized hard disk, bad sector errors can cause computer hard disks to not boot up properly. Without using a verification software tool, sanitized hard disks or ones with bad sector errors potentially containing taxpayer data would be indistinguishable.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Access controls

A basic management objective for any organization is to protect the resources that support its critical operations from unauthorized access. This is accomplished by designing and implementing controls to prevent and limit unauthorized access to programs, data, facilities, and other computing resources. Access controls include both physical and system security access controls, *i.e.*, authentication and identity proofing, access management, and cryptography.

Physical security access controls

Physical security controls are important for protecting computer facilities and resources from espionage, sabotage, damage, and theft. They include, among other things, policies and practices for the use of access cards and locks authorizing individuals' physical access to facilities and resources.

In Fiscal Year 2021, TIGTA performed an audit involving physical security. We initiated this audit³⁷ to ***determine whether Criminal Investigation is implementing effective security controls over digital evidence and the e-Crimes labs***. As part of our review, we tested six physical security and environmental controls, including automated fire suppression systems, stand-alone fire extinguishers, monthly extinguisher inspections, Limited Area designations, electronic cipher locks,³⁸ and cipher lock combination changes, at [REDACTED] e-Crimes labs. In total, we found nine physical security and environmental control weaknesses. Specifically, [REDACTED] sites were not having fire extinguishers inspected on a monthly basis, [REDACTED] sites did not have signs designating them as Limited Areas, [REDACTED] sites were not secured by electronic cipher locks with audit capability, and [REDACTED] sites were not changing the cipher lock combinations. [REDACTED]

System security access controls

System security access controls is a policy that is uniformly enforced across all subjects and objects within the boundary of an information system. The access management process is responsible for allowing users to make use of information technology services, data, or other assets. Access management helps to protect the confidentiality, integrity, and availability of assets by ensuring that only authorized users are able to access or modify them. Access management implements the policies of information security management.

Authentication and identity proofing

Identification is the process of distinguishing one user from others as a prerequisite for granting access to resources in an information system. User identification is important because it is the means by which specific access privileges are assigned and recognized by the computer. However, the confidentiality of a user identification is typically not protected. For this reason, other means of authenticating users using knowledge-based information, *e.g.*, credit or tax return information, are typically implemented. Similarly, identity proofing is the process of verifying that a person who is attempting to interact with an organization, such as a Federal

³⁷ TIGTA, Report No. 2021-20-003, *Security Controls Over Electronic Crimes Labs Need Improvement* (Dec. 2020).

³⁸ A lock, opened with a programmable keypad, used to limit and control access to a highly sensitive area.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

agency or a business, is the individual they claim to be. When remote identity proofing is used, there is no way to confirm an individual's identity through their physical presence. Instead, the individual provides information electronically or performs other electronically verifiable actions that demonstrate their identity. Digital authentication establishes that a subject attempting to access a digital service is in control of one or more valid authenticators, *e.g.*, something an individual possesses and controls, such as a password, that is used to authenticate their identity.

In Fiscal Year 2021, TIGTA and the GAO performed three audits covering authentication and identity proofing. We initiated an audit³⁹ to ***review the effectiveness of IRS systems security and operations related to the CARES Act economic impact payment processing***. Signed into law on March 27, 2020, the CARES Act is one of the largest economic rescue packages in U.S. history and will have a significant impact on the IRS and Federal tax administration.

On April 15, 2020, the IRS launched the Get My Payment application, a web-based tool that provides taxpayers with the ability to check the status of their economic impact payments and submit missing bank information for their accounts. The application is part of the Integrated Customer Communications Environment, which is comprised of numerous web and telephone applications. The functionality of these automated self-service applications supports the IRS mission by providing taxpayers with a variety of services, such as the ability to check tax refund status and establish payment agreements.

The IRS is required to perform a risk assessment on its web-based applications. The Digital Identity Acceptance Statement⁴⁰ must include the assessed and implemented assurance levels, rationale if the implemented assurance levels differ from the assessed assurance levels, comparability demonstration of compensating controls, and rationale if federated entities are not accepted. We reviewed the Digital Identity Acceptance Statement and all related documents for the Get My Payment application and found that the Digital Identity Acceptance Statement met both Federal and agency security requirements for the application. Although the IRS assessed the Get My Payment application's appropriate identity and authenticator assurance levels at Level 2, the IRS implemented the application's assurance levels at the less restrictive Level 1. The NIST defines the components of Level 1 and Level 2 identity assurance and authenticator assurance as follows:

- **Identity Assurance:** For Level 1, there is no requirement to link the applicant to a specific real-life identity. Any attributes provided in conjunction with the authentication process are self-asserted or should be treated as such. For Level 2, evidence supports the real-world existence of the claimed identity and verifies that the applicant is appropriately associated with this real-world identity. Level 2 also introduces the need for either remote or physically present identity proofing.
- **Authenticator Assurance:** For Level 1, it provides some assurance that the claimant controls an authenticator bound to the subscriber's account and requires either single-factor or multifactor authentication using a wide range of available authentication technologies. Successful authentication requires that the claimant prove possession and control of the authenticator through a secure authentication protocol. For Level 2, it

³⁹ TIGTA, Report No. 2021-26-006, *Systems Processing Economic Impact Payments Performed Well and the Get My Payment Application Security Vulnerabilities Are Being Remediated* (Dec. 2020).

⁴⁰ It documents a Federal agency's risk assessment; selected individual assurance levels for identity proofing, authentication, and federation (if applicable); and processes and technologies employed to meet each assurance level.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

provides high confidence that the claimant controls authenticators bound to the subscriber's account and requires proof of possession and control of two distinct authentication factors through secure authentication protocols. Approved cryptographic techniques are required at Level 2 and above.

Although the IRS implemented identity and authenticator assurance levels that were below the assessed level, we found the Digital Identity Acceptance Statement met NIST and agency requirements by including a detailed implementation and rationale, compensating controls and risk mitigation factors, a description of risk acceptance, and a plan of action. Examples of the compensating controls and risk mitigation factors included masking taxpayer bank account information except for the last four digits, limiting the number of daily attempts per Social Security Number, and sending audit records to the Cybersecurity function's Cyber Fraud Analytics and Monitoring team for review and detection of potential fraudulent activity.

IRS officials reported that there were no confirmed cases of fraud in the Get My Payment application associated with users' bank account information. In addition, due to the identification of potential high-risk transactions, the Cyber Fraud Analytics and Monitoring team recommended that 159,739 economic impact payments be transitioned from direct deposit to paper check delivery. By ensuring that the application complies with all applicable NIST and agency security requirements related to digital identity services, the IRS properly implemented compensating controls to mitigate the risks from using inappropriate authentication controls, which could allow unauthorized access and activities, compromised taxpayer records, and lost revenue due to identity theft refund fraud.

We also initiated an audit⁴¹ to ***determine whether the Endpoint Detection and Response (EDR) capability is effective to detect and provide information for the removal of any malicious activity deployed on or originating from endpoint devices, e.g., laptops, desktops, and other applicable devices.*** According to the IRS, it implemented the EDR solution to obtain a more complete picture of security incidents that occur on the IRS network by monitoring and obtaining detailed records of an incident from the affected workstation(s), which allows the IRS to conduct root cause analysis of identified threats. In addition, the Cybersecurity function determined that EDR solutions provide better detection and mitigation around advanced persistent threats through the analysis of indicators of compromise in real time.

However, Homeland Security Presidential Directive-12 credentials have not been implemented for access to the EDR solution. The credentials are required for all system accesses, privileged and nonprivileged. Homeland Security Presidential Directive-12 is designed to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy. Passwords are to be used (temporarily) only when the Public Key Infrastructure-based authentication via the Homeland Security Presidential Directive-12 credential is not capable. Specifically, the Public Key Infrastructure-based authentication via the Homeland Security Presidential Directive-12 credential had not been implemented for the EDR solution. A new release of the EDR solution had been implemented in May 2020, in which efforts toward meeting the directive were being reviewed. [REDACTED]

[REDACTED], which will also meet the requirements of

⁴¹ TIGTA, Report No. 2021-20-065, *The Endpoint Detection and Response Solution Has Been Deployed to Most Workstations and Is Operating As Intended, but Improvements Are Needed* (Sept. 2021).

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

the directive and will hopefully allow for more configuration granularity than what has been tested previously. A Cybersecurity function official stated that they are working toward a solution that they believe should be in place well before the end of Fiscal Year 2021. Until the IRS deploys Homeland Security Presidential Directive-12 credential access to the EDR solution, it cannot take advantage of two-factor authentication and enhanced protection for accessing the EDR solution.

The GAO initiated an audit⁴² to ***evaluate the IRS's internal control over financial reporting and to determine the status of the agency's corrective actions as well as to address recommendations in prior years' reports for which actions were not complete as of September 30, 2019.*** The GAO reported that it found two deficiencies related to authentication and identity proofing. The IRS did not remove certain accounts in accordance with agency policy and did not consistently record the correct access revoke date for certain users to a system environment that processes taxpayer data.

Access management

System access controls is a policy that is uniformly enforced across all subjects and objects within the boundary of an information system. The access management process is responsible for allowing users to make use of information technology services, data, or other assets. Access management helps to protect the confidentiality, integrity, and availability of assets by ensuring that only authorized users are able to access or modify them. Access management implements the policies of information security management.

In Fiscal Year 2021, TIGTA performed three audits on access management. We initiated an audit⁴³ to ***determine the effectiveness of the [REDACTED] Platform's system security and operations.*** The [REDACTED] Platform provides the infrastructure that supports tax administration, including responsibilities associated with key provisions of the Patient Protection and Affordable Care Act legislation.⁴⁴ Operating systems of the [REDACTED] Platform include [REDACTED] and [REDACTED].

Some access controls are in place. We judgmentally sampled 30 servers running the [REDACTED] operating system and reviewed all user account information on each server. We verified that each of the 30 sampled servers had only one account with root-level access. The Internal Revenue Manual states that in the [REDACTED] operating system, the root account shall be implemented and used by the least number of staff possible without degrading system availability. In addition, we determined that of the over one million access log entries generated in January and February 2021, the IRS properly tracked modifications when users executed commands as a root user.

However, the [REDACTED] system recertification process for users and group owners needs improvement. We reviewed the [REDACTED] system reports of all [REDACTED] Platform's groups and found 21 unique groups, managed by 13 owners. [REDACTED]

⁴² GAO, GAO-21-401R, *Management Report: Internal Revenue Service Needs to Improve Financial Reporting and Information System Controls* (May 4, 2021).

⁴³ TIGTA, Report No. 2021-20-063, [REDACTED] *Platform Management Needs Improvement* (Sept. 2021).

⁴⁴ Pub. L. No. 111-148, 124 Stat. 119 (2010).

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

[REDACTED]

We also selected a judgmental sample of 21 users, one user from every group, to evaluate access recertification. We received user recertification reports for all 21 users as of March 2021.

[REDACTED]

In addition, inactive users within the [REDACTED] tool retain privileges. The tool is a commercial off-the-shelf product that the IRS uses as an enterprise-wide solution for password management. We completed a detailed assessment of 272 users with access to the [REDACTED] Platform via the tool. The [REDACTED] tool history report from February 2021 indicated that [REDACTED]. The Internal Revenue Manual states that accounts that are inactive for a period of 60 and 365 days shall be disabled and removed, respectively. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

The IRS lacks a process to review access to the [REDACTED]. As a result, these [REDACTED]

In our audit of the *Criminal Investigation e-Crimes labs*, we found that [REDACTED]

[REDACTED]

In addition, [REDACTED]

[REDACTED]

In our audit of the *EDR solution*, we found that EDR system administrator accounts were not timely disabled due to inactivity. Administrator accounts provide users with the authorization to override, or bypass, certain security restraints, and may include permissions to perform such actions as shutting down systems. In March 2021, [REDACTED]

[REDACTED]

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

[REDACTED] The two accounts should have been disabled from logging in. We believe that poorly managed system administrator accounts leave organizations exposed to security breaches, such as accidental harm and malicious activity.

Also, there was no documented evidence that EDR system default passwords were timely changed. Factory default software configuration for embedded systems, devices, and appliances often include simple, publicly documented passwords. Default passwords for EDR solution appliances may not have been changed before or immediately after the solution was placed into production beginning May 7, 2020. During our review, we found the passwords for nine system administrator local accounts were last changed on December 1, 2020. Further interviews with a Cybersecurity official revealed that the nine local system accounts in question did not have their default password reset by the Cybersecurity EDR team after the installation of the appliances; however, they were disabled from being logged into as suggested by the vendor in June 2019 during the initial configuration set-up and when they had not yet started pulling the event logs into [REDACTED]. However, the official was unable to get the exact date and did not have documentation for when the passwords were disabled. Allowing default passwords and not disabling access to accounts unnecessarily exposes the EDR solution to unauthorized access, which may result in damage or data loss.

Cryptography

Cryptography, *i.e.*, encryption, involves creating written or generated codes that allow information to be kept secret. Cryptography converts data into a format that is unreadable for an unauthorized user, allowing it to be transmitted or stored without unauthorized entities decoding it back into a readable format. The information cannot be read without a key to decrypt it.

In Fiscal Year 2021, TIGTA and the GAO each performed an audit covering cryptography. In our audit of the *CARES Act economic impact payment processing*, our review of the January 2020 scan report for the Get My Payment application found one medium-risk vulnerability due to the use of weak cryptographic ciphers. In addition, in the *Get My Payment Tier 2 Security Assessment Report*,⁴⁵ the Cybersecurity function's Security Risk Management office issued a finding to the Integrated Customer Communications Environment authorizing official stating that the web application scan had identified the use of weak cryptographic ciphers. The use of weak cryptographic ciphers could be exploited by a malicious attacker and potentially compromise the system's confidentiality, integrity, and availability.

Management Action: On June 18, 2020, the Applications Development function opened a plan of action and milestones with a planned completion date of July 1, 2021.

In its audit of the *IRS's internal control over financial reporting*, the GAO reported that it found a discrepancy related to cryptography. The IRS did not enforce cryptographic protocols used for authentication and data integrity in a system environment that processes taxpayer data in accordance with NIST guidance and agency policy.

⁴⁵ Dated June 10, 2020.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

System environment security

Management of the system security environment provides organizations the breadth and depth of security controls necessary to fundamentally strengthen their information systems and the environments in which those systems operate. It also contributes to information systems that are more resilient to cyberattacks and other threats. Security controls include, but are not limited to, system configuration management; system scanning, vulnerability remediation, and patching; information system boundary components; and network monitoring and audit logs.

System configuration management

Configuration management administers security features for all hardware, software, and firmware components of an information system throughout its life cycle. Effective configuration management provides reasonable assurance that systems are operating securely and as intended. It encompasses policies, plans, and procedures that call for proper authorization, testing, approval, and tracking of all configuration changes and for timely software updates to protect against known vulnerabilities. Ineffective configuration management controls increase the risk that unauthorized changes could occur and that systems are not protected against known vulnerabilities.

In Fiscal Year 2021, TIGTA conducted two audits of system configuration management controls. We initiated an audit⁴⁶ to ***determine whether the virtual host infrastructure platform is effectively managed and secured***. We found that configuration management compliance for Windows and Linux servers is not effective. The IRS had implemented a new software configuration management compliance scanning application in April 2020 to replace the prior application, which was outdated. On December 15, 2020, we met with Cybersecurity and Enterprise Operations function officials for a demonstration of the new application. We observed that the new application scanned [REDACTED]

[REDACTED]. In addition, we reviewed monthly configuration management compliance reports of virtual host infrastructure platform servers running on Windows and Linux operating systems from August through November 2020 and [REDACTED]

[REDACTED]. According to Cybersecurity function officials, a server is noncompliant if it has one high-risk issue or the overall compliance score is below 90 percent. [REDACTED]

⁴⁶ TIGTA, Report No. 2021-20-024, *Improvements Are Needed to More [REDACTED] the Virtual Host Infrastructure Platform* (June 2021).

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Figure 8: *****2*****

In addition, ⁴⁷

⁴⁸

In addition,

In our audit of the *Criminal Investigation e-Crimes labs*, we found that

⁴⁷

⁴⁸ In Calendar Year 2013, the Department of Homeland Security established the Continuous Diagnostics and Mitigation Program as an implementation approach for continuously monitoring information systems. The program is designed to facilitate automated security control assessment and continuous monitoring consistent with established guidance by providing a robust, comprehensive set of monitoring tools, a continuous monitoring dashboard, and implementation assistance.

System scanning, vulnerability remediation, and patching

One of the basic tenets of network security is the periodic monitoring and scanning for network vulnerabilities and timely remediation of identified vulnerabilities in order to reduce the exposure of exploitation. The information technology landscape is dynamic and always evolving in order to become more efficient and secure. Hardware and software vendors are constantly identifying errors and glitches within their components and issuing fixes to patch these weaknesses. Users must be diligent to identify weaknesses and take appropriate actions to minimize the chance of these weaknesses being exploited.

In Fiscal Year 2021, TIGTA performed five audits involving system scanning and vulnerability patching of IRS systems. In our audit of the *CARES Act economic impact payment processing*, we found that most required baseline security controls were implemented for the Get My Payment application. Specifically, 470 NIST and agency-specific security controls and control enhancements were applicable to the application. We found that 463 (99 percent) of the 470 security controls and control enhancements were fully implemented.⁴⁹ The remaining seven security controls and control enhancements identified as not implemented contained specific risk areas that need to be addressed.⁵⁰ The IRS documented an active plan of action and milestones for each risk area to reduce these risks, ensure system integrity, and maximize system availability for taxpayers.

While the IRS has successfully deployed the necessary tools and implemented procedures to detect software vulnerabilities for the Get My Payment application, it did not timely remediate critical and high-risk vulnerabilities. Based on our analysis of the May 2020 database vulnerability scan report for the Integrated Customer Communications Environment, which houses the application, we determined that 17 critical (four unique) vulnerabilities and 169 high-risk (five unique) vulnerabilities exceeded the IRS policy of 30 and 90 days for remediation, respectively. Nine (53 percent) of the critical vulnerabilities have existed for more than 180 days, of which four had a first-failed date of October 2, 2018, and 121 (72 percent) of the high-risk vulnerabilities have existed for nearly 590 days, of which 105 had a first-failed date of October 2, 2018. In addition, the IRS completed the required source code security review for the Get My Payment application on April 3, 2020. Our analysis of the source code security review report identified six security vulnerabilities (two medium-risk and four low-risk) related to input validation, injection, cross-site scripting, information leakage through log files, and improper resource shutdown due to using outdated software.

In the *Get My Payment Tier 2 Security Assessment Report*, the Cybersecurity function's Security Risk Management office issued a finding to the Integrated Customer Communications Environment authorizing official stating that the database vulnerability scan reports identified

⁴⁹ The control families associated with the security controls and control enhancements fully implemented include: Access Control; Audit and Accountability; Awareness and Training; Contingency Planning; Identification and Authentication; Incident Response; Maintenance; Media Protection; Personnel Security; Physical and Environmental Protection; Planning; Security Assessment and Authorization; and System and Services Acquisition.

⁵⁰ The control families associated with the security controls and control enhancements not fully implemented include: Configuration Management (3), Risk Assessment (1), System and Communication Protection (1), and System and Information Integrity (2).

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

17 critical and 169 high-risk vulnerabilities. The IRS assessed the likelihood of a threat and the impact of a threat exploiting these vulnerabilities as high and moderate, respectively, and assessed the overall risk level associated with these vulnerabilities as moderate. The Security Risk Management office also stated that medium and low-risk findings were identified in the *Static Source Code Analysis and the Dependency Check Report*.

Failing to timely remediate critical and high-risk vulnerabilities as well as all findings in the *Static Source Code Analysis and the Dependency Check Report* could compromise the security posture of the Get My Payment application's database. This could lead to unauthorized access, increased vulnerability to attacks, unauthorized data sharing, and known weaknesses being exploited by malicious bad actors.

Management Action: On June 18, 2020, the Applications Development function opened two plans of action and milestones with a planned completion date by July 2, 2021.

In our audit of the *Criminal Investigation e-Crimes labs*, we found that [REDACTED]

In our audit of the *virtual host infrastructure platform*, we found that [REDACTED]

[REDACTED]. Specifically, [REDACTED]

[REDACTED]. We initially reviewed vulnerability scan reports from January through May 2020 from the previous enterprise vulnerability scanning tool. During a meeting in September 2020, Enterprise Operations and Cybersecurity function officials confirmed the implementation of a new vulnerability scanning tool in August 2020. In addition, we reviewed monthly scanning reports from the new vulnerability scanning tool from September through November 2020. [REDACTED]

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Figure 9: *****2*****

██████████	██████████	██████████	██████████
██████████ ⁵¹	██████████	██████████	██████████
██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████

In our audit of *protection of disclosed return information at the ISAC*, we found that FTI is transmitted through secure connections, using the ██████████ approved by the NIST, and no known protocol vulnerabilities were identified related to the connections. ██████████

We reviewed for security vulnerabilities on the IRS servers housing FTI prior to transmission.⁵² On August 31, 2020, the IRS switched vulnerability scanning tools from ██████████. The IRS stated that it decided to use the ██████████ vulnerability scanning tool because it was able to increase network coverage, improve reporting times, and reduce the need to perform remote credentialed vulnerability scans by incorporating an agent. In addition, IRS personnel felt that the ██████████ tool was more robust and found it to be more accurate in reporting vulnerability findings. We were unable to verify the differences and effectiveness between the two vulnerability scanning tools. However, both ██████████ and ██████████ scan results throughout the audit continued to show the existence of ██████████.

*****2***** scan results

Our review of the IRS's ██████████ vulnerability scans from March through June 2020 identified ██████████

⁵¹ The May 2020 table entry represents our analysis of 19 weekly vulnerability scan reports from January through May 2020 from the previous vulnerability scanning tool. Some vulnerabilities appeared in more than one file, and we eliminated duplicated entries. We identified a unique set of records and their first and last reported dates so we could calculate the number of days between the two date entries.

⁵² The IRS places FTI in folders on its servers for the TTP and is archived off after 10 days once the TTP picks up the data.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

[REDACTED]

When we shared the analysis results with IRS personnel, they explained that some of the vulnerabilities were a result of the [REDACTED], *i.e.*, software installation was not complete. They stated that the [REDACTED] software was misconfigured for the two backup servers, but the [REDACTED]. However, we also identified vulnerabilities other than the [REDACTED] findings that resided on the servers, such as the [REDACTED]. IRS personnel further stated that they patch monthly and the [REDACTED].

To verify whether the identified vulnerabilities were resolved, we reviewed [REDACTED] scans dated August 17 through 20, 2020, and confirmed that the vulnerabilities attributed to the same [REDACTED] had been corrected for the two production servers. However, we found [REDACTED]

[REDACTED] were the same as the ones we found previously. The remaining [REDACTED] were identified in July 2020 on a [REDACTED].

****2**** scan results

Our review of the IRS's [REDACTED] vulnerability scans from August 17 through September 18, 2020, identified [REDACTED]

Unresolved [REDACTED] that remain on [REDACTED] may unnecessarily expose the server to exploitation and compromise. By focusing remediation efforts on the highest scoring vulnerabilities, the IRS can achieve the greatest possible risk reduction to FTI stored on the servers for transmission to the TTP.

In our audit of the [REDACTED] *Platform*, we found that some servers were not scanned for vulnerabilities. The Enterprise Vulnerability Scanning process includes probes of communication services, operating systems, and applications to identify high-risk system weaknesses that could be exploited to gain unauthorized access to IRS networks and data. We compared the official inventory report dated February 18, 2021, to vulnerability scanning reports and found that [REDACTED].

Without complete scanning of all production servers, the IRS cannot adequately define its current security posture because some critical vulnerabilities may go undetected.

Management Action: The IRS started scanning 36 of the 41 production servers as of July 2021. Three of the unscanned servers are retired and the remaining two are under investigation.

We also found that configuration compliance controls are insufficient. Specifically, production servers are not compliant with configuration requirements, configuration vulnerability age is not tracked, and checklists used in the configuration compliance scanning tool are outdated and differences in requirements are not documented.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021**Production servers are not compliant with configuration requirements**

We met with the Director, Security Operations and Standards, and other Enterprise Operations function officials who provided documentation that stated between April 2020 and April 2021, they remediated approximately 19,000 [REDACTED] vulnerabilities. However, our review of the configuration compliance scanning tool dashboard output determined that

[REDACTED]

[REDACTED]. During the audit, the IRS provided a plan to replace 1,025 [REDACTED] servers and 781 [REDACTED] servers by December 2023. Configuration vulnerabilities that lack remediation can allow an attacker the opportunity to access and control servers.

Configuration vulnerability age is not tracked

The configuration compliance scanning tool report provides limited historical information, such as client last seen dates. Our review of the scan report determined that the IRS does not keep track of when a vulnerability was first seen or remediated. According to the IRS, the client last seen date shows when the configuration compliance scanning tool last scanned the server. The IRS further stated the configuration compliance scanning tool [REDACTED]

Checklists used in the configuration compliance scanning tool are outdated and differences in requirements are not documented

The vendor-provided checklists in use by the configuration scanning tool had undergone adjudication reviews in [REDACTED] for [REDACTED] operating systems in production. However, the adjudicated vendor-provided checklists used in the configuration compliance scanning tool were not from the most current Defense Information Systems Agency security guide and did not align with IRS security requirements checklists. We determined that the vendor-provided [REDACTED] checklist used an outdated security guide released on [REDACTED]

[REDACTED]. We did not identify a Defense Information Systems Agency revision history for the vendor-provided [REDACTED] checklist; however, the IRS stated it is aware of needed improvements. When outdated Security Requirements Checklists are used in the configuration scanning tool, critical vulnerabilities that hackers can exploit may not be timely detected.

We also reviewed the IRS's adjudication of the vendor-provided checklists used in the configuration scanning tool and found that the IRS reviews the vendor-provided checklists and documents deviations from Internal Revenue Manual requirements. However, the review does

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

not document when a check required by the IRS's Security Requirements Checklists are not included in the vendor-provided checklists. The IRS lacks an adjudication process that would ensure that all security requirements are accounted for in the vendor-provided checklists used in the configuration compliance scanning tool. An official stated that the IRS is in the process of updating the vendor checklist adjudication process to account for security requirements that are not included in the vendor-provided checklists. Without ensuring that this process occurs, critical and unique security requirements may not be applied to IRS systems.

In our audit of the [REDACTED] *Platform*, we also found that vulnerability scanning and remediation are insufficient. Specifically, credentialed scans are not performed on all production servers, vulnerabilities are not timely remediated, and vulnerabilities open past remediation time frames are not effectively documented and tracked.

Credentialed scans are not performed on all production servers

We reviewed two vulnerability scan reports from February 2021 and found [REDACTED]

Management Action: The IRS provided evidence that it is currently performing credentialed scans on [REDACTED]

Vulnerabilities are not timely remediated

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

In addition, we identified an instance in which [REDACTED]

Unpatched

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

vulnerabilities allow bad actors to conduct attacks against the [REDACTED] Platform infrastructure. Unpatched vulnerabilities may also provide entry points into a network.

Vulnerabilities open past remediation time frames are not effectively documented and tracked

We judgmentally sampled 12 and 36 servers with [REDACTED]. The IRS did not have a documented plan of action and milestones or risk-based decision to track the remediation of any of the [REDACTED] we sampled. Due to the lack of management oversight, the IRS is not ensuring that unremediated vulnerabilities are being tracked as required. Without tracking vulnerabilities, there is a possibility some vulnerabilities will not be remediated.

Information system boundary components

The information system boundary controls the logical connectivity into and out of a network as well as to and from devices attached to the network. It should accurately reflect and include all components within the authorization boundary of the information system and be at a level of detail necessary for tracking and reporting.

In Fiscal Year 2021, TIGTA performed an audit involving information system boundary components. In our audit of the *CARES Act economic impact payment processing*, we found that there is no information system component inventory for the Get My Payment application. Specifically, our review of the *Get My Payment Continuous Monitoring Assessment Plan*⁵³ and the *Get My Payment Tier 2 Security Assessment Report* determined that the application does not develop, maintain, or update an inventory that is at the required level of granularity and contains all system components of the application. Failing to develop, maintain, or update a complete inventory could result in information system components not being included in vulnerability and compliance scanning as well as the contingency plan being inadequate should it be needed during an event.

Network monitoring and audit logs

Audit and monitoring involves the regular collection, review, and analysis of auditable events for indications of inappropriate or unusual activity. Automated mechanisms may be used to integrate audit monitoring, analysis, and reporting into an overall process for investigation and response to suspicious activities. Audit and monitoring controls can help information systems security professionals routinely assess computer security, recognize an ongoing attack, and perform investigations during and after an attack.

In Fiscal Year 2021, TIGTA performed two audits involving network monitoring and audit logging. In our audit of the *virtual host infrastructure platform*, we found that the IRS does not currently have automated mechanisms to integrate audit logging, monitoring, review, analysis, and reporting for VMware servers in the virtual host infrastructure platform. This status was reflected in the platform's June 2020 System Security Plan, which shows the IRS designated the "Audit Review, Analysis, and Reporting" control as "Not In Place" for VMware virtual host servers.

⁵³ Dated May 21, 2020.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

The IRS created a plan of action and milestones in May 2017 that stated there was no evidence of review and analysis of information system audit records or reporting of findings to IRS officials for VMware servers. However, between August 2017 and April 2019, there were several requests, including management escalations, from the Cybersecurity function to the Virtual Host Infrastructure team asking for milestone updates. As a result of these unanswered requests, the planned completion date for the plan of action and milestones has been delayed, with a new target completion date of June 15, 2021. By not deploying automated monitoring, VMware virtual host server risk assessment and reviews are less timely and the servers are at a higher risk of exploitation from known vulnerabilities. Protecting critical assets and infrastructure helps reduce the risk of internal and external attacks on IRS assets.

In our audit of the *EDR solution*, we found that alert logs generated by the EDR solution are delivered through e-mail messages to the appropriate personnel and are forwarded to the [REDACTED]. Currently, Computer Security Incident Response Center analysts log all alerts issued from the EDR solution. However, prior to December 1, 2020, they did not have documentation to support logging actions. From January 1 through April 30, 2021, there were 735 alerts generated by the EDR solution, and there were 735 line items in the Computer Security Incident Response Center tracking log.

We also found that none of the alerts resulted in an incident and that the EDR solution is effectively generating alerts from the workstations. The alerts are being properly tracked and worked. The alerts were caused by either internal testing, legitimate processes or indicators of the appearance of a possible threat, *e.g.*, Powershell™, or potential credential theft attempts, which the EDR solution incorporates rules to identify as potential for concern. After the Computer Security Incident Response Center analysts conducted their reviews, they decided that none of the alerts qualified to be an incident.

Disaster recovery

Disaster recovery is part of security planning and developed in conjunction with a business continuity plan. Disaster recovery is a set of policies and procedures that focus on protecting an organization from any significant effects in case of a negative event, which may include cyberattacks, natural disasters, or building or device failures. Disaster recovery helps in designing strategies that can restore hardware, applications, and data quickly for business continuity.

In Fiscal Year 2021, TIGTA provided coverage of disaster recovery in two audits. In our audit of the *Criminal Investigation e-Crimes labs*, we found that [REDACTED]

[REDACTED]

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

In our audit of *protection of disclosed return information at the ISAC*, we found that the ISAC alternate processing site does not meet the filing season maximum tolerable downtime.⁵⁴ We reviewed the October 1, 2019, draft plan to determine the resources needed to build an alternate ISAC processing site. According to the plan, the TTP determined that the ISAC classifies as a moderate-impact system based on Federal Information Processing Standards Publication 199, *Standards for Security Categorization of Federal Information and Information Systems*.⁵⁵ The plan also included a detailed cost summary of [REDACTED] of the [REDACTED] as an alternate processing option based on the inventory of current resources required to operate. In response to the need for an alternate processing site identified during a review of the ISAC in February 2020, the TTP developed a strategy and implemented a "no cost" [REDACTED]. The TTP is committed to working with the IRS to incrementally "warm" the site.

However, our review of the current and future alternate processing site choices found that neither meets the maximum tolerable downtime needs for a filing season. The IRS responded that it is continuing ongoing discussions with the TTP, considering the costs and benefits associated with increasing resources and maintenance for a [REDACTED]. The ISAC is an important platform for the IRS and its partners' day-to-day operations to combat identity theft tax refund fraud and gain near-term data on emerging trends, and its continuity of operations is critical to ensure that fraud information is timely shared with its partners. The IRS found that the ISAC directly protected about \$3 million in fraudulent identity theft Federal refunds from being issued during Calendar Year 2018. Its importance will only continue to grow over time.

Roles and responsibilities and separation of duties

As organizations continue to do more with less, the lines of communications, expectations, and alignment on achieving the vision of the organization are critical to its success. Defined roles and responsibilities provide clarity, alignment, and expectations to those executing the work and keeping the organization running. Separation of duties helps to ensure that no single individual has authorization to control all key aspects of a process or computer-related operation. Effective separation of duties also increases the likelihood that errors and wrongful acts will be detected because the activities of one individual or group will serve as a check on the activities of another. Conversely, inadequate separation of duties increases the risk that erroneous or fraudulent transactions could be processed, improper program changes implemented, and computer resources damaged or destroyed.

In Fiscal Year 2021, we performed two audits involving roles and responsibilities and separation of duties. In our audit of the *EDR solution*, we found that not all EDR solution users were added to their assigned Active Directory domain groups. Specifically, we found four (10 percent) of 42 users who were not added to all of their assigned Active Directory domain groups, but were located in only their system administrator or investigator domain groups. There are four roles, *i.e.*, administrator, analyst, senior analyst, and investigator, in each of the three Active Directory domain groups, *i.e.*, production, test, and development, in the EDR management environment. For example, one user was not found in the investigator, production domain group, but was

⁵⁴ ISAC business process owners collaborated on the potential impact of a loss of the process/service and agreed that the maximum tolerable downtime the process owners and users are willing to accept is 72 hours for non-filing season and 24 hours for filing season because filing season is a critical time for the ISAC.

⁵⁵ Dated February 2004.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

approved for that role and group. However, we did not find the user in the Active Directory production domain group. A Cybersecurity official stated that this user is a member of the analyst, production domain group, which has fewer rights than the investigator role.

For proper reporting and auditing moving forward, the IRS stated that the Cybersecurity function's EDR team will work to ensure that the Online 5081 system user assignments map correctly to the associated Active Directory groups for access to the environment for proper continuity. Until the role-mapping is corrected, we caution that if the IRS does not properly manage its role assignments, it will be unable to monitor the system administrator users' activity beyond the administrator and investigator role in the EDR management environment. Accuracy in role assignment management provides an independent check on the accounting for work performed and reduces the risk of inappropriate employee actions.

In our audit of the [REDACTED] *Platform*, we found that the Platform has one user who is both a member and an owner of a group, violating separation of duties. Without an effective review of the owners responsible for administering the group roles, accounts can be improperly managed and may violate separation of duty policies.

Security policies, procedures, and documentation

The documentation of system security is an important element of information management for an organization. A system security policy identifies the rules and procedures that all individuals accessing and using an organization's information technology assets and resources must follow. The goal of security policies is to address security threats and implement strategies to mitigate information technology security vulnerabilities. Policies and procedures are also an essential component of any organization. Policies are important because they address pertinent issues, such as what constitutes acceptable behavior by employees. Procedures, on the other hand, clearly define a sequence of steps to be followed in a consistent manner.

During Fiscal Year 2021, TIGTA performed four audits involving security policies, procedures, and documentation. In our audit of the *IVES Program*, we found that the IRS completed actions to comply with the TFA to establish uniform standards and procedures for the acceptance of taxpayers' electronic signatures when requesting a taxpayer's return or return information. This guidance was published in the Internal Revenue Manual in December 2019 and addresses electronic signatures on forms used to request tax information, including Form 4506-T. However, we also found that internal guidelines were not updated with key IVES Program processes and procedures. This includes the administration of the electronic signature program, including the requirement for participants to submit the annual independent audit report on their electronic signature process, and the procedures IVES Program analysts should take for participants that do not meet the electronic signature requirements or submit the required independent audit report of their electronic signature process. Although IVES Program management stated that the procedures are documented in standard operating procedures, these procedures should be documented in the Internal Revenue Manual, which provides a single, authoritative compilation of the policies and procedures affecting IRS work.

In our audit of *protection of disclosed return information at the ISAC*, we found that while the IRS and the TTP established controls that complied with the TFA to secure FTI, the memorandum of understanding needs updating regarding incident reporting. Specifically, we found that incident reporting was not aligned with internal guidance to include the Computer

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Security Incident Response Center as one of the primary points of contact, and that the incident response tabletop exercise⁵⁶ neither tested nor reported all aspects of responding to an incident.

The Computer Security Incident Response Center serves as the primary coordination point and oversees all incident responses at the IRS. It also serves as the liaison between the IRS and the Treasury Department's Government Security Operations Center for all communications and follow-up activities in response to an activity. The IRS is required to report breaches or incidents, whether confirmed or suspected, to the Government Security Operations Center as quickly as possible after discovery, but no more than one business day.

We reviewed the tabletop exercise that the TTP performed in July 2019 and July 2020. The primary objectives of the exercise were to validate the [REDACTED]

[REDACTED] the incident response handling and reporting procedures; and identify areas of the incident response plan that need to be revised. We confirmed that the TTP reported the security incident to TIGTA, the contracting officer representative, and the Office of Safeguards as part of the simulation activity, but was not reported to the Computer Security Incident Response Center. Because the Computer Security Incident Response Center is the primary IRS function to respond to security incidents and coordinate reactive and preventative actions from incidents across the enterprise, it is imperative that it is aware of all incidents directed at IRS assets, including those at IRS third-party systems to ensure that appropriate actions are taken.

In addition, our review of the tabletop exercise documents determined that they did not support that the TTP generated a simulated report with the required data fields, *e.g.*, the data and potential number of FTI records involved. A TTP official confirmed that they did not test whether the necessary data could be produced as required. The IRS stated that a report can be generated for the Fiscal Year 2021 Incident Response exercise and will be available for review. We requested that the TTP provide a limited report showing FTI filename, date, and file type, *i.e.*, potential or confirmed identity theft tax refund fraud, that ISAC users downloaded during March to July 2020. The TTP provided a report listing the date and file type, but not the filename. The TTP stated that providing the filename would require a manual review of each FTI file and the removal of some identifying information. We believe that using a manual process to identify the filename of the files that the users download could create a delay in reporting this information to the IRS and TIGTA, which could subsequently delay the reporting and investigation into possible unauthorized disclosure incidents.

Our review of the requested information showed that 31 industry partner users downloaded 155 files⁵⁷ from the ISAC. Of the files downloaded, 137 files were the IRS's FTI files consisting of 102 potential and 35 confirmed identity theft tax refund fraud files. The confirmed files contained Personally Identifiable Information. Because the TTP did not provide the filenames that were downloaded, we could not determine whether a [REDACTED] or [REDACTED] identity theft refund fraud file was downloaded. Without the filenames, we could not calculate the precise number of taxpayer records in the files.

⁵⁶ The title of the exercise, *i.e.*, test, is [REDACTED] Incidence Response Test and Exercise, but it is referred to as the tabletop exercise.

⁵⁷ Each file contains more than one taxpayer account.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

In our audit of *protection of disclosed return information at the ISAC*, we also found that the privacy notification was not fully completed for all privacy aspects. The IRS requires system owners to update the Privacy and Civil Liberties Impact Assessment every three years or sooner if there are major changes to the system. The existing ISAC assessment was dated December 18, 2019, and was not updated after Congress' July 2019 approval to permit the sharing of FTI. However, during our audit work, the IRS's Privacy, Governmental Liaison, and Disclosure office and the Wage and Investment Division's Return Integrity and Compliance Services function worked with the TTP to update the Privacy and Civil Liberties Impact Assessment, which was approved on May 12, 2020. Our review of the latest assessment found that the IRS appropriately completed all but two of the 31 questions in the Privacy and Civil Liberties Impact Assessment.

- Question 6.c asked: *Does this system contain sensitive but unclassified information that is not Personally Identifiable Information, it uses, collects, receives, displays, stores, maintains, or disseminates?* The IRS answered "no" for "Proprietary data," which is defined as *Business information that does not belong to the IRS*. We found the ISAC

[REDACTED]

- Question 21 asked: *The following people have access to the system with the specified rights: IRS Employees?* The IRS answered "no." In addition, the table indicating the access levels (read only, read-write, or administrator) for each type of IRS employee, *i.e.*, user, manager, administrator, or system developer, was left blank. We found that IRS employees do have access to the ISAC with various access levels. As of December 2020, 87 IRS employees were users, and 31 had access to FTI, including TIGTA employees (Office of Audit and Office of Investigations) who are provided access to the ISAC as IRS users.

The IRS states on its website that it recognizes the importance of protecting the privacy and civil liberties of taxpayers and uses the Privacy and Civil Liberties Impact Assessment as the vehicle to address privacy and civil liberty issues in a system. The assessment demonstrates that program/project managers, system owners, and developers have consciously incorporated privacy and civil liberty protections throughout the entire system. When the Privacy and Civil Liberties Impact Assessment is inaccurate and incomplete, it weakens the assurances that it was designed to promote.

In our audit of the *Criminal Investigation e-Crimes labs*, we found that

[REDACTED]

In our audit of the *hardware asset sanitization process*, we found that the draft *MSS Standard Operating Procedures* need to be clarified concerning accounting for damaged or missing hard

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

disks. During our review, two sampled computers with missing hard disks were incorrectly stored on a pallet with sanitized devices and incorrectly recorded as accounted for in the MSS's hardware asset inventory. The Internal Revenue Manual states that the IT organization is "responsible for the accounting and recording of IT [information technology] property in the inventory system.... This process supports the integrity of the data by ensuring accurate and complete asset records are maintained." However, the draft *MSS Standard Operating Procedures* state that personnel should remove the computer's damaged hard disk and give it to the tape library at the Enterprise Computing Center – Memphis but does not clearly define under what circumstances to do so, any time frame for doing so, or how to account for the hard disks in the MSS's hardware asset inventory. In addition, these procedures do not explain how to account for computer shells sent to the MSS with missing hard disks. This lack of detailed guidance resulted in the IRS misplacing hard disks most likely containing taxpayer data and errors in the hardware asset inventory records.

Systems Development and Information Technology Operations

In carrying out its responsibilities of administering the tax laws, the IRS relies extensively on information technology investments to support its mission-related operations. The IRS's ability to provide high-quality taxpayer service and maintain the integrity of the tax system requires modern, secure, and nimble operations, as well as a sustained and talented workforce. Many emerging trends offer challenges and opportunities for the IRS, including changes in the taxpaying public and its expectations, technological disruptions, shifts in the workforce, and an increasingly globalized and interconnected world.

TIGTA and the GAO performed several audits that assessed systems development and information technology operations at the IRS. These audits covered information technology acquisitions, asset management, human capital, project management, risk management, implementation of corrective actions, modernizing operations, and COVID-19 response.

Information technology acquisitions

The mission of the Office of the Chief Procurement Officer is to deliver top-quality acquisition services to ensure that the IRS can meet its mission of effective tax administration. Within the Office of the Chief Procurement Officer, the Office of Information Technology Acquisitions is primarily responsible for managing the procurement of information technology products and services, and ensuring that the IRS acquires them for the best value, within budget, and in a timely manner. It is also responsible for ensuring that the information technology acquisition process is managed properly and efficiently, and is conducted with integrity, fairness, and openness. As stewards of taxpayer dollars, the IRS must ensure that it only pays for the procured products or services as authorized and delivered under contract.

During Fiscal Year 2021, TIGTA performed two audits covering information technology acquisitions. We initiated an audit⁵⁸ to ***assess the effectiveness of select post-award activities of information technology service contracts***. We selected and reviewed a stratified statistical sample of 190 payments from a population of 12,109 invoice payments totaling

⁵⁸ TIGTA, Report No. 2021-20-046, *Select Post-Award Financial Management and Documentation Controls for Information Technology Service Contracts Need Improvement* (Aug. 2021).

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

approximately \$2.82 billion, made between October 1, 2018, and June 30, 2020. Some of these invoice payments came from a population of information technology service contracts⁵⁹ in which the material group and Federal supply code combinations were valid⁶⁰ and invalid.⁶¹ We initially selected 96 and 94 payments, respectively, for review. However, upon further review of the expense(s) on each invoice, we determined that six of the valid and 67 of the invalid code combinations were not from one of the 10 information technology service subcategories we selected for review. As a result, our sample was reduced to 90 and 27 invoice payments, respectively. Collectively, we reviewed 117 invoice payments.

All the invoices provided for the 117 sampled information technology service contract payments met minimum Federal Acquisition Regulation⁶² standards, *e.g.*, included information on contract or other authorization number for the services performed, including the order and line item numbers, payment terms. However, we also found invoice payments that could not be fully verified due to insufficient receipt and acceptance documentation.⁶³ Of the documentation provided for our sample, we determined that the invoices were appropriately verified and supported for 44 payments. For 73 invoice payments, we could not make this determination because the IRS was unable to provide all of the necessary supporting documentation requested. Projecting our sample results to the total population of information technology service contracts, we estimate that the IRS may not have properly maintained sufficient receipt and acceptance documentation to support 6,502 invoice payments.⁶⁴

For our analysis, we initially accessed the Folders Management module of the Procurement for Public Sector application to obtain the respective contract, modification(s), and supporting receipt and acceptance documentation to determine whether post-award activities ensured that invoices for information technology service contracts were appropriately verified prior to being paid. However, we were unable to locate any of these documents because they are not organized in a manner that can easily be identified by either using file naming conventions or specific folders as an organizational tool. Consequently, on September 24, 2020, we sent an initial request to the IRS asking for documentation supporting a portion of the sampled invoice payments. From our initial request, the IRS provided some documents for 19 of 46 invoice payments, of which only three payments included receipt and acceptance documentation.

⁵⁹ Our review included the following 10 information technology service subcategories: 1) Acquisition – Tier III Support; 2) Indirect – Category II; 3) Indirect – Category III; 4) Install – Hardware and Software; 5) Install – Other; 6) Install – Tier III; 7) Maintenance – Operations and Automatic Data Processing; 8) Management Consulting; 9) Technical Services – Automatic Data Processing; and 10) Telecommunication.

⁶⁰ Document 12353, *Financial Management* (April 2020), provides a comprehensive list of valid financial codes as well as material group and Federal supply code combinations for use. This document is updated quarterly.

⁶¹ Invalid combinations could include an incorrect material group code, an incorrect Federal supply code, or both. They could also include combinations that were once valid, but are no longer listed in the current Document 12353 and are now considered inactive.

⁶² 48 C.F.R. § 32.905, *Payment Documentation and Process* (Aug. 2018).

⁶³ Receipt and acceptance documentation can include a *COR [Contracting Officer's Representative] and Technical Point of Contact Checklist*, an e-mail, or other documentation acknowledging the service or product provided was received and meets the requirements as specified in the contract.

⁶⁴ Our sample was selected using a 95 percent confidence level, a 5 percent error rate, and ± 5 percent precision factor. When projecting the results of our stratified statistical sample, we are 95 percent confident that the actual total number is between 5,549 and 7,454 invoice payments that were not supported by adequate receipt and acceptance documentation.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

On October 22, 2020, we became concerned with the pace and the limited number of documents the IRS had provided. As a result, we met with Office of Information Technology Acquisitions and IT organization personnel to clarify and explain the specific documents we had requested. We subsequently requested the remaining invoice payment documents on November 2 and 12, 2020, followed by additional meetings to further clarify and explain our documentation requests. Despite these efforts, we continued to experience delays. In total, we gave the IRS more than three months after our initial request to provide the supporting documentation for our sampled invoice payments. Office of Information Technology Acquisitions and IT organization personnel estimated that they spent more than 490 hours trying to locate the requested documentation.

Management Action: Recognizing that insufficient documentation was a concern, Office of the Chief Financial Officer management stated that they implemented a receipt and acceptance Supporting Documentation Upload Tool on February 24, 2021. According to an announcement, the Upload Tool provides an automated upload and transfer of supporting receipt and acceptance documentation with the proper file naming conventions into the appropriate folder in the Folders Management module. Use of the Upload Tool is required for every receipt and acceptance transaction, and the Procurement for Public Sector application will display an error message when supporting documents are not attached. The Upload Tool is expected to improve the timeliness of receipt and acceptance documentation uploads and subsequent searches for supporting documents.

For our analysis of financial management controls over invoice and interest payments, we obtained the IRS's *Fiscal Year 2020 Third Quarter Award Line Item*⁶⁵ table and identified 2,812 contracts containing information technology services. Upon further review, we excluded 709 contracts because the IRS had not made any payments on them as of November 3, 2020, or the Treasury Department was the requestor of the services and outside the scope of this review. We analyzed the remaining 2,103 contracts, totaling a combined award amount of approximately \$5.18 billion.

We determined that contract and modification dollar amounts were not always accurately captured and reported, resulting in the total payment for some contracts exceeding their award amounts. The IRS misreported \$7,469,962 for information technology service contracts from five base awards and 30 modifications in the Federal Procurement Data System, which the Federal Government, *e.g.*, the President, Congress, Federal executive agencies, uses to assess how to most effectively and efficiently expend its resources. In addition, the IRS potentially spent \$893,804 more than the total award amount of approximately \$139.05 million for 11 information technology service contracts due to incorrect information in the Integrated Financial System. As a result, IRS management does not have important information for effective financial management.

In our audit of *select post-award activities of information technology service contracts*, we also determined that late payment interest penalties were not always identified or correctly calculated. For our analysis, we used the 2,103 contracts containing information technology services. We reviewed all the invoices for the contracts that were paid on or before

⁶⁵ An electronic file obtained from the Procurement for Public Sector application that contains 10,718 IRS contracts as of June 30, 2020.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

August 20, 2020,⁶⁶ and the IRS was the requester of the service. Of the 27,075 invoices reviewed, 1,176 invoices totaling approximately \$151.45 million were subject to interest penalties for late payments. We determined that the IRS correctly calculated the late payment interest penalties totaling \$141,443 for 1,008 (85.71 percent) invoices, but also miscalculated or did not identify that late payment interest penalties were due for 168 (14.29 percent) invoices. Specifically, the IRS underpaid late payment interest penalties of \$26,200 for 148 of the 168 invoices⁶⁷ and overpaid late payment interest penalties of \$1,664 for the remaining 20 invoices.

The Office of the Chief Financial Officer's Program and Process Review group has a review process that examines all interest penalties for invoice payments made from the previous business day. A financial management analyst reviews the calculations of the penalty amounts to determine if the Integrated Financial System properly calculated the interest. According to Program and Process Review group personnel, they already identified and took the necessary steps to make supplemental payments for the underpayments in interest penalties totaling \$15,217 for 90 of the 148 invoices we identified. They also offset against a current or future payment or created an account receivable to collect the interest penalty overpayments totaling \$1,610 for 12 of the 20 invoices prior to our review. We randomly selected 24 of these interest penalty miscalculations and were able to verify that the IRS took the necessary steps to correct them as stated. In addition, Program and Process Review group personnel confirmed our results that interest penalties were miscalculated with information obtained from the Integrated Financial System and the Procurement for Public Sector application, and agreed that they had not identified the miscalculations for 58 invoices with interest underpayments totaling \$10,984 and eight invoices with interest overpayments totaling \$53, respectively.

Further, some contracts were not charged to valid expense categories. The IRS charged some contracts to material group and Federal supply code combinations that are invalid as well as combinations that are no longer active when the Office of the Chief Financial Officer updated the codes. As a result, IRS expenses totaling approximately \$726 million reported in the Federal Procurement Data System were miscategorized.

In addition, we initiated an audit⁶⁸ to ***assess the IRS's implementation of the CIO's duties and responsibilities in relation to TFA § 2101, Management of Internal Revenue Service Information Technology***. We found that policies were established regarding the consulting and notification processes as required by the TFA. In July 2020, the Chief of Staff, the Deputy Commissioner for Services and Enforcement, and the Deputy Commissioner for Operations Support issued a memorandum to define the CIO's roles and responsibilities. Specifically, the memorandum addresses the planned IRS coordination efforts to comply with TFA § 2101, including that: 1) the CIO should regularly consult with the Chief Procurement Officer concerning information technology products and services acquired for the IRS and 2) the Chief Procurement Officer should notify the CIO of all significant information technology purchases prior to their acquisition. The memorandum further requires the Chief Procurement Officer to ensure that any procurement requests for information technology products and services reflect

⁶⁶ We used August 20, 2020, for this test rather than the November 3, 2020, date in the previous finding in which total payments exceeded the award amount because the IRS provided two separate financial data updates that were necessary to conduct each test.

⁶⁷ Additional interest does not accrue on interest penalties that are underpaid.

⁶⁸ TIGTA, Report No. 2021-25-058, *Efforts to Implement Taxpayer First Act Section 2101 Have Been Mostly Successful* (Sept. 2021).

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

engagement with the IT organization, and if they do not, the Chief Procurement Officer should cease the procurement activities and inform the requesting business units that they must engage the IT organization. To satisfy the notification requirement of TFA § 2101, the IRS relies on two processes: 1) the *Greater Than \$1 Million Report* and 2) monthly meetings between the Chief Procurement Officer and the CIO in which they discuss significant planned and in-process information technology acquisitions.

However, the CIO is not notified of all significant information technology acquisitions. Initially, the *Greater Than \$1 Million Report* showed only acquisitions for the IT organization and did not include the information technology product and service acquisitions for non-information technology business units, *e.g.*, the Wage and Investment Division, Criminal Investigation. While the report did contain a way to filter the data to include all non-information technology business unit acquisitions, it did not have the ability to identify which acquisitions were for information technology products and services.

In November 2020, the Office of the Chief Procurement Officer modified the *Greater Than \$1 Million Report* to incorporate logic to identify information technology product and service acquisitions initiated by non-information technology business units. To test the accuracy of the report, we analyzed and compared current Procurement for Public Sector application data to the *Fiscal Year 2021 Greater Than \$1 Million Report* as of May 2021. Using some of the more general material group codes that could be applicable to information technology acquisitions, we initially identified 100 potential information technology shopping carts⁶⁹ not on the report. Upon further research and discussions with the IRS, we determined that, in our initial group of 100 acquisitions, there were 25 shopping carts, each in excess of \$1 million⁷⁰ that included information technology products and services. These 25 shopping carts, totaling approximately \$57.8 million, were initiated by non-information technology business units and contained material group codes that were not listed in the selection criteria used to create the *Greater Than \$1 Million Report*.⁷¹

To determine if the IT organization properly approved shopping carts containing significant information technology acquisitions for non-information technology business units, we analyzed the approvals for the 25 shopping carts in the Procurement for Public Sector application that were not identified on the *Fiscal Year 2021 Greater Than \$1 Million Report* as of May 2021. None of these shopping carts for information technology products and services were properly approved by the IT organization.

The second process the IRS relies upon to comply with the notification requirements of TFA § 2101 is the monthly meetings between the Chief Procurement Officer and the CIO to discuss upcoming and in-process information technology acquisitions. The Chief Procurement Officer uses the *Greater Than \$1 Million Report* to communicate and discuss significant information technology acquisitions with the CIO.

⁶⁹ IRS business units use shopping carts in the Procurement for Public Sector application to request external products and services, and to secure the necessary approval and funding for those products and services prior to their acquisition.

⁷⁰ The shopping carts ranged from \$1 million to \$7.5 million.

⁷¹ These material group codes included: 1) 2512 – Management Consulting Services, 2) 2357 – Communications Enforcement, and 3) 252H – Other Indirect Services Non-Federal.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

The *Greater Than \$1 Million Report* and the monthly meetings are the primary tools used to notify the CIO of significant information technology acquisitions. However, by not accounting for all significant information technology shopping carts for non-information technology business units, the usefulness of these tools is limited and compliance with the TFA § 2101 notification requirements cannot be achieved.

Asset management

Asset management controls are key to: 1) timely detecting loss, theft, or misuse of Government property; 2) helping to mitigate unauthorized access to taxpayer or other sensitive information; 3) ensuring accurate financial statement reporting; and 4) helping management make sound operating decisions and manage operations. Asset management includes asset inventory management and information technology architecture.

Asset inventory management

Asset inventory is the way an organization lists and provides details of the assets it owns. Asset inventory management is the means by which an organization monitors its assets, such as physical location, maintenance requirements, depreciation, performance, and eventual disposition of the asset. Implementing robust procedures for managing asset inventory is a critical part of the organization's accounting processes. It also helps to ensure that the organization has a clear understanding of the assets it owns and that the assets are being utilized in the most efficient and cost-effective manner.

In Fiscal Year 2021, TIGTA performed four audits covering the management of hardware inventory. In our audit of the *Criminal Investigation e-Crimes labs*, we found that the hardware inventory of [REDACTED] is inaccurate. We reviewed two hardware inventories [REDACTED] assets dated June 4 and July 6, 2020.⁷² The inventories included information, such as the asset's brand, model, barcode number, serial number, user, location, and last verified date and time. Based on the information to be captured in the inventory, Criminal Investigation should have sufficient information to track and report assets accurately.

During our site visits, we observed [REDACTED]. To assess the accuracy of the June 4, 2020, inventory, we compared each [REDACTED] barcode, location, and user assigned to the hardware inventory. We found that [REDACTED] (86 percent) of the [REDACTED] were accurately accounted for. However, [REDACTED] (14 percent) of the [REDACTED] were missing from the inventory. We requested another inventory dated July 6, 2020, and found no changes from the June 4, 2020, inventory.

At one [REDACTED], we found one [REDACTED] without an IRS barcode number. The CIS e-mailed us the barcode information and we compared the barcode information provided to the inventory dated June 4, 2020, and found that the location and user information did not match the [REDACTED] observed during the site visit. We also tried to verify the [REDACTED] serial number and found no corresponding asset. In addition, the [REDACTED] information provided was not located in the July 6, 2020, inventory. We notified Criminal Investigation personnel and they confirmed that the [REDACTED] from that

⁷² Hardware inventory is maintained in the Knowledge, Incident/Problem, Service Asset Management database, which is the asset management tool used to track information technology and non-information technology equipment.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

specific [REDACTED] was not recorded in the hardware inventory. Inaccurate inventory impedes the ability to timely detect lost or stolen [REDACTED].

In our audit of the *virtual host infrastructure platform*, we found that server inventories [REDACTED]

73

In September 2020, we performed a physical inventory [REDACTED]

Management Action: The Enterprise Messaging and Virtualization Branch team performed the following actions:

- [REDACTED] on August 26 and October 20, 2020, [REDACTED]
- Submitted an initial change request on September 21, 2020, to update the inventory system [REDACTED]
[REDACTED] as a result of the initial change request.

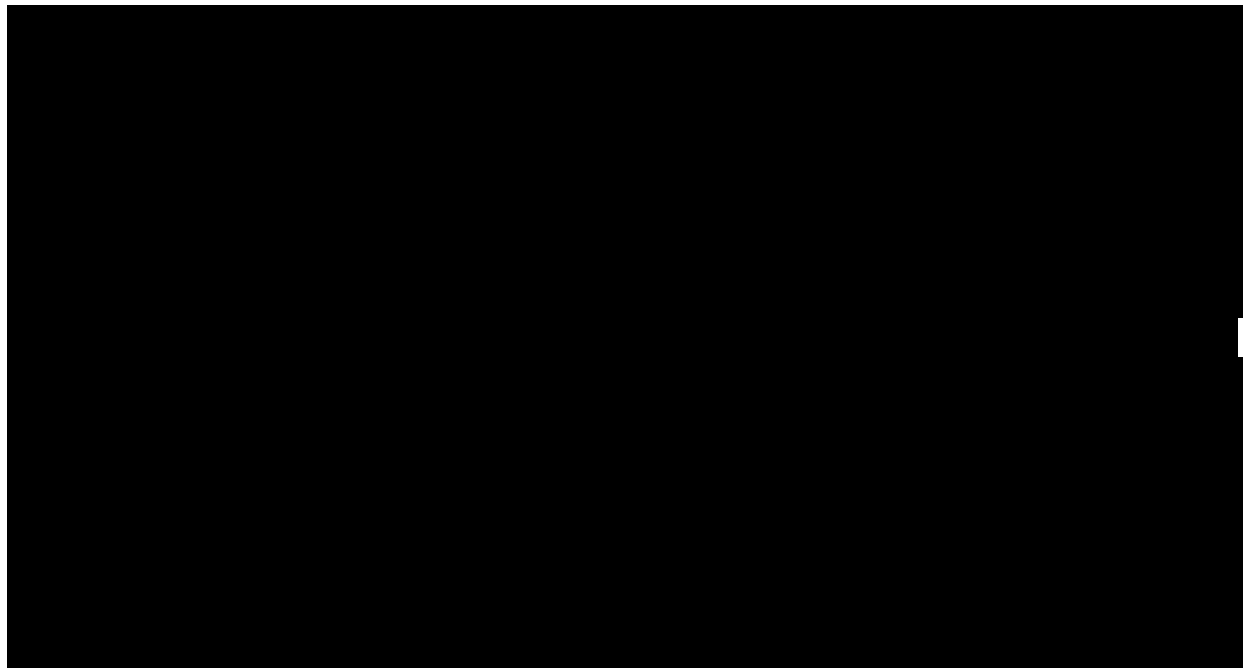
⁷³ Uncertified assets are those that are still uncertified after two or more inventory cycles and any high-risk assets not certified in the current inventory cycle.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

In our audit of the [REDACTED] Platform, we found that the platform inventory reconciliation process needs improvement. We reviewed the inventories from the Information System Contingency Plan, the vulnerability scanning tool, and the configuration compliance scanning tool to reconcile with the official inventory. We also reviewed the most recent annual security control assessment performed from March through April 2020 and found that the IRS failed to reconcile the official inventory to the Information System Contingency Plan inventory. To assess the accuracy and completeness of the [REDACTED] Platform inventory, we reconciled the January and February 2021 official inventory reports to the Information System Contingency Plan reports and identified variances between the inventories. Figure 10 provides the results of our review.

Figure 10:

*****2*****
*****2*****



Source: TIGTA analysis of data from the Information System Contingency Plan and official inventories. ISCP – Information System Contingency Plan.

In addition, we reviewed the February 2021 official inventory and found production servers with the following missing inventory data elements: 1) *Asset Location* field was blank for 286 servers, 2) *Serial Number* field was blank for seven physical servers, and 3) *Building Code* field was blank for two servers. An inaccurate inventory can hinder the agency's ability to manage systems and negatively affects systems that rely on the information within the official inventory, such as configuration and vulnerability scanning tool inventories.

We also found that nine servers in the official inventory are classified as being in production; however, according to the configuration compliance scanning tool, these servers are in the testing or development environments. The IRS stated that the Server Signature File is used to set the *Environment*, the *General Support System*, and the *Project* fields in the official inventory. The IRS stated that this discrepancy is due to an incorrect Server Signature File or the original file data were not populated correctly. Server misclassification can lead to vulnerabilities being excluded from prioritization and remediation efforts.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

In our audit of the *EDR solution*, we found that it was neither fully accounted for nor deployed to all required workstations enterprise-wide. We requested the UNS function provide a list of workstations that were in use enterprise-wide from May 7 through December 31, 2020,⁷⁴ and that the Cybersecurity function provide a list of all workstations with the deployed EDR solution from the same time period. The UNS function also provided the January 31, 2021, status of workstations that were in use as of December 31, 2020, which totaled 111,283 workstations. However, UNS function personnel explained that in use was historically set as a financial qualification to indicate an asset was being used in some capacity by the IRS and not as an indication of it being on the network. In addition, UNS function personnel stated that their list could include duplicates, as some assets were taken in and out of use multiple times.

The Cybersecurity function's list totaled 96,441 workstations with the deployed EDR solution. When we compared the host name of the workstations from both lists, we identified 25,245 workstations that were on the UNS function's list but not on the Cybersecurity function's list. Further review of the data allowed us to remove 16,288 workstations from the list, which comprised of 14,931 workstations that were in stock, 1,329 workstations that were missing, and 28 workstations that were retired. We also removed 1,631 workstations that were duplicates and those that either received the in-depth defense capability⁷⁵ or the EDR solution after our cutoff date, which yielded a difference of 7,326 workstations that potentially did not have the EDR solution.

In April 2021, we provided a list of the 7,326 workstations to the IRS for review. The IRS stated that 10 workstations were not eligible for the EDR solution. A Cybersecurity function official conducted analysis and found that 61 workstations had the EDR solution but not the in-depth defense capability, and 256 workstations had the in-depth defense capability of which 203 had and 53 workstations did not have the EDR solution. For the remaining 6,999 workstations, which had neither the in-depth defense capability nor the EDR solution, Enterprise Services function personnel were unable to provide specific reasons why the EDR solution was not installed and stated it could take a month or more to research because it is a manual process. However, UNS function personnel provided possible explanations for the workstations that were in use but did not have the EDR solution. Possible explanations include the asset in use may have a bad security software agent and therefore, it does not show up on the network; the asset was in use, but an inventory transaction occurred that took the asset off the network, without the inventory transactional update being reported, *etc.*

In addition, we determined in a separate analysis with a Cybersecurity function official's assistance, that there were 144 workstations shown as connected to the network as of April 9, 2021, without the EDR solution. For the 144 workstations, five were not currently eligible for the EDR solution because they were Apple™ devices; three were blacklisted as they were not approved to be on the network; and 33 were found to be in stock but not in use. For the remaining 103 workstations, the IRS confirmed that 38 workstations appeared on the IRS's network between May 21 and June 2, 2021, and did not have the EDR solution deployed. For the remaining 65 workstations, 32 either had both the EDR solution and the in-depth defense capability or only the EDR solution, and 33 were not identified on the network when a

⁷⁴ The UNS function list of workstations is from the Asset Manager module in the Knowledge Incident/Problem Service Asset Management System.

⁷⁵ The official used the workstations that appear online by checking in through the in-depth defense capability to determine whether the workstations did or did not have the EDR solution.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Cybersecurity function official conducted a subsequent analysis, and as such, the current inventory status of those devices is unknown.

In total, we are concerned with the 91 confirmed workstations⁷⁶ without the EDR solution and 7,032 workstations⁷⁷ without a known explanation for why the EDR solution has not been deployed to them. These workstations will require further investigation to determine whether they are valid workstations and should have the solution installed. The unreliability of the status of the workstations impacts the Cybersecurity function's proactive approach of identifying cyberthreats and potential attacks before they occur, so they can be immediately remediated. The Cybersecurity function is making attempts to verify that the installation of the EDR solution is working correctly on each system, although Cybersecurity personnel admitted that challenges exist on how to best obtain missing/misconfigured installations and how to best rectify them as quickly as possible.

By not ensuring that all eligible workstations have the EDR solution installed, the IRS will be unable to monitor and obtain detailed records of incidents on all workstations and conduct root cause analyses of identified threats. These gaps of EDR deployments may also give a false sense of security, possibly missing opportunities to quickly mitigate incoming cyberattacks at the workstation.

Information technology architecture

Information technology architecture is the fundamental underlying design of computer hardware, software, or both. An effective information technology architecture plan improves efficiencies. When the architecture program includes consolidation and centralization of information technology resources, complexity can be reduced and resource use can improve.

In Fiscal Year 2021, TIGTA performed an audit covering information technology architecture. In our audit of the *Criminal Investigation e-Crimes labs*, we found that [REDACTED]

[REDACTED]. To address the workspace requirements, e-Crimes section management proposed a consolidation of the number of e-Crimes labs using the existing regional area infrastructure and leaving two to three labs in each of the eight regions. The e-Crimes section does not have a definitive completion date because it is seeking to reduce the number of lab locations through employee attrition. An e-Crimes official stated that the consolidation would take at least five years to complete. We reviewed the December 2019 proposal for the nationwide reduction and consolidation of e-Crimes labs. The proposal states the desired lab locations for the consolidation and that the unconsolidated labs will be eliminated as opportunities arise.

The e-Crimes section proposal states that the consolidation would reduce overhead costs, such as utilities, equipment, and facility rental fees, but it did not quantify the costs or any potential savings from the consolidation effort. The estimated project costs are \$7 million and the annual rent is \$2.6 million. These estimates projected costs for incorporating locations into existing space acquisitions, but Facilities Management and Security Services organization personnel

⁷⁶ Thirty-eight plus 53 equals 91 confirmed workstations without the EDR solution.

⁷⁷ Thirty-three plus 6,999 equals 7,032 workstations without a known explanation for why the EDR solution is not deployed.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

stated those estimates might increase or decrease once the acquisition is finalized. Further, they had not identified any potential cost savings because it had not fully estimated the costs for all of the physical and environmental requirements for the new e-Crimes labs.

Human capital

Mission-critical skill gaps across the Federal workforce pose a high risk to the Nation because they impede the Government from cost-effectively serving the public and achieving results. Implementing effective information technology workforce planning practices can better position the IRS to address human capital risks. Accordingly, the GAO identified four key information technology workforce planning practices and supporting activities detailed in various laws enacted and guidance issued over the past 20 years that call for agencies to perform workforce planning activities. These key practices include: 1) setting the strategic direction for workforce planning, 2) analyzing the workforce to identify skill gaps, 3) developing strategies to address skill gaps, and 4) monitoring and reporting on progress in addressing skill gaps.

During Fiscal Year 2021, TIGTA performed two audits covering human capital. We initiated an audit⁷⁸ to ***determine whether the IRS's implementation of streamlined critical pay authority in the IT organization conforms to established laws, policies, and regulations.*** The ongoing streamlined critical pay authority activities were compliant with the requirements of TFA § 2103, *Streamlined Critical Pay Authority for Information Technology Positions*, related policies, and regulations. As of February 22, 2021, the IRS had filled seven vacant positions, *e.g.*, Enterprise Operations Associate CIO, Senior Data Architect, and is in the process of filling three more positions, *e.g.*, Chief Technology Officer, Technical Integration Director, under its current authority. Specifically, the IRS Commissioner approved the streamlined critical pay candidate packages for all seven appointees in Calendar Year 2020 and each package contained the required information, *e.g.*, a position description, a resume, an appointment justification (including a rationale for compensation and incentives), and an organizational chart.⁷⁹

The streamlined critical pay position descriptions created (new or updated from existing positions) generally reflected the need for more advanced technical skills and experience. According to the IRS, nine of these positions already existed and required their positions to be updated to reflect new technical skills and skill experience requirements. The remaining position, Senior Data Architect, was newly created to fill an identified organizational need, which required the development of a new position description.

In addition, the four-year appointment terms were clearly stipulated in the Final Offer letters and compensation limits were followed. We reviewed the Final Offer letters for all seven streamlined critical pay appointees and found that each letter stated that the appointment term limits would be no longer than four years. In addition, each appointee's initial annual salary offerings appear to be appropriate, and the total compensation (including salary, plus any recruitment incentive, potential performance bonus, *etc.*) was under the \$253,300 limit for Calendar Year 2020.

⁷⁸ TIGTA, Report No. 2021-25-032, *Streamlined Critical Pay Authority for Information Technology Positions Is Being Successfully Implemented* (May 2021).

⁷⁹ Although the streamlined critical pay candidate packages did not include an organizational chart, each of them included a description of the position's location in the IT organization and to whom they would report.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

None of the seven appointees were previously employed at the IRS, and the preliminary background and tax compliance checks were completed prior to hiring them. We reviewed the resumes and searched the Separated IRS Employee File and did not identify the appointees having any prior IRS employment. We also validated the tax compliance check results by using the Integrated Data Retrieval System to examine the Individual Master File tax module information for Tax Years 2015 through 2019. The overall tax compliance ratings for all seven appointees were accurate at the time the tax compliance results were generated.

In addition, we initiated an audit⁸⁰ to ***evaluate the IRS's efforts to hire and retain skilled IT organization personnel***. We found that hundreds of skilled employees are nearing retirement eligibility. Specifically, we identified 619 employees who are eligible for retirement within the next three years and there are no other employees with these same skill levels in the IT organization. Collectively, the employees account for 13,520 expert-level skills. The Human Capital Office provided a November 2020 report with recommendations to the IT organization for consideration, including focusing on training and the transfer of knowledge, especially in the area of legacy system programming, to mitigate the risk of losing retirement-eligible employees with expert skills.

We also found that skill gap report reviews and mitigation are not required. The Human Capital Office identifies technical skills of IT organization employees by performing skills assessment surveys. The skill gap reports summarize the skills captured in the skills assessment surveys. While the surveys include both mission-critical and nonessential skill questions⁸¹ as defined by each IT organization function, the skill gap reports only include the mission-critical skills from the skills assessment surveys. The IT organization has identified 14 mission-critical skills,⁸² which vary based on the specific needs of each function. Each mission-critical skill is made up of multiple competencies, and each competency is made up of multiple questions. The skill gap reports compare an individual's skill level in a particular area to the industry's standard and identifies strengths as well as deficiencies.

The Human Capital Office shares the skill gap reports with IT organization management, which is accessible by front-line managers. However, the IT organization does not require managers to review all employees' skill gaps in the reports. We judgmentally sampled 12 (33 percent) of 36 managers to evaluate whether the managers review the skill gap reports. Of the 10 responses we received, only two managers said that they track and review all skill gaps related to each employee's job duties, and eight said they did not. In addition, we analyzed the skill gap reports for 335 employees hired during Fiscal Year 2020 to determine whether the IT organization hired qualified individuals to perform their job duties based on mission-critical skills.⁸³ As of August 21, 2020, 281 (84 percent) employees have deficiencies in one or more mission-critical skills, and 54 (16 percent) employees have no deficiencies. Of the 335 employees, 82 (24 percent) have deficiencies in all mission-critical skills for their IT organization functions. If managers do not address skill gaps, their employees may not

⁸⁰ TIGTA, Report No. 2021-20-028, *Opportunities Exist to Improve Hiring and Retaining Employees With Information Technology Expertise* (June 2021).

⁸¹ The term mission-critical skills is interchangeable with technical parts.

⁸² The 14 mission-critical skills are: Acquisition, Architecture, Cybersecurity, Data Analysis, Finance, Information Systems, Policy and Law, Process Improvement, Project Management, Software, Strategic Planning, System Development, Technical Services, and Technical Support. Software is not included in the skill gap reports.

⁸³ We did not validate the accuracy and reliability of the data within the skill gap reports.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

meet job requirements or further develop the skills needed for their positions to enable the IT organization to effectively and efficiently meet its mission.

According to Human Capital Office management, they work with IT organization management to develop skill gap mitigation reports. The reports summarize skill gaps at the function level and outline how the functions need to address their deficiencies, *e.g.*, through training, by level of importance. However, the IT organization does not require all functions to participate in skill gap mitigations. As a result, one of the functions did not participate in the skill gap mitigations and has yet to agree to participate. According to Human Capital Office management, instead of participating in the mitigations, the function identified its own workforce concerns. If there is no requirement for complete mitigation participation across the IT organization, each function may create its own solution, or not have any solution, which would reduce the impact of collaboration efforts between the Human Capital Office and the IT organization.

In addition, Career Connector templates (hereafter referred to as job announcement templates) are detailed and reviewed timely. We selected a judgmental sample of 10 job announcement templates from an inventory of 360 templates in active status as of July 2020 to determine whether the content in the templates is specific enough to ensure that applicants meet the general qualifications. We also evaluated whether the IRS regularly reviews the job announcement templates to account for any changes, such as changes in occupation, to ensure that the templates are still relevant to the IT organization. We reviewed a job announcement template report with an active status of templates between January 2015 and December 2020 (which included eight templates from our judgmental sample). We determined that the templates were sufficiently detailed to target the job skills necessary for the positions and that the Human Capital Office is timely reviewing and updating job announcement templates.

In our audit of *skilled IT organization personnel*, we also found assessments that may assist in hiring qualified employees are not performed. Specifically, we determined that interviews are not conducted. According to IRS management, the IT organization primarily used surge hiring as a strategy along with direct-hire authority⁸⁴ to target filling 2,427 positions from Fiscal Years 2017 through 2019. Human Capital Office management stated that surge hiring was created by the IT organization in Fiscal Year 2017 to fill critical information technology and Cybersecurity function positions as well as to support tax reform legislation.⁸⁵ Surge hiring entails submitting a small number of job announcements for a large number of positions across multiple IT organization functions. The first surge hiring process occurred between December 2016 and January 2017. In March 2018, the IT organization initiated a nearly two-year-long surge hiring process, which included direct-hire authorization to streamline hiring external employees to support changes needed for tax reform legislation. The last stage of the hiring surge began in August 2019 to fill the remaining positions for Fiscal Year 2019. Figure 11 summarizes the timeline of significant IT organization hiring initiatives.

⁸⁴ It allows Federal agencies to fill vacancies in specific occupations, grade levels, and locations when there is a proven critical hiring need or a severe shortage of candidates. It also allows for an abbreviation of the normal hiring process.

⁸⁵ Tax Cuts and Jobs Act of 2017. Pub. L. No. 115-97. Officially known as "*An act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for Fiscal Year 2018.*"

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Figure 11: Timeline of IT Organization Hiring Initiatives

Date	Hiring Process	Targeted Positions to Fill	Purpose
December 2016 – January 2017	Surge	981	Hiring in anticipation of potential freeze on Federal hiring in Fiscal Year 2017.
March 2018 – December 2019	Surge	1,446	Multipurpose, including hiring of critical information technology and Cybersecurity function positions and to support tax reform.
August 2018 – December 2019	Direct Hire	426 (subset of the 1,446)	Support for tax reform.
August 2019 – September 2019	Surge	200 (subset of the 1,446)	Accelerated push to complete the hiring surge before the end of Fiscal Year 2019.

Source: TIGTA analysis of IT organization hiring initiatives.

Human Capital Office management stated that the IT organization did not perform interviews during these hiring surges. The IRS decided to omit interviews in these cases and focus on assessing the written materials submitted by each applicant. The IRS accepted the risk of having limited information to assess applicants to mitigate the risk of having critical positions left vacant. We interviewed six of 11 IT organization managers who were assigned new employees hired in Fiscal Year 2020 who no longer work at the IRS to discuss their experience with the hiring process and whether or not these departed employees were qualified for the positions. Three of the managers stated that the employee was not interviewed, one manager considered a telephone discussion with the employee an interview, and two managers did not know whether an interview was performed. All the managers we interviewed stated that these new employees were qualified for their positions.

Also, the IT organization does not administer pre-employment skills assessments (hereafter referred to as hiring assessments as defined by the IRS) whereby an applicant must demonstrate job qualifications, although the IRS requires hiring assessments for some positions in other business units. These assessments allow for the demonstration of skills and experience based on actual simulations and could help determine job applicant skillsets prior to hiring. Currently, IT organization job applicants respond to multiple choice questions related to their qualifications and experience to help determine their qualifications. Management stated that they do not need to use hiring assessments to verify an applicant's qualifications because the IT organization is meeting its business needs.

The lack of interviews and hiring assessments may have contributed to employees being hired with mission-critical skill gap deficiencies. For example, project management is one of the mission-critical skills identified in all IT organization functions. If the IT organization interviewed applicants and administered hiring assessments, the hiring managers could consider whether an individual has project management skills prior to being hired. While it is unlikely that all skill gap deficiencies can be eliminated, interviews and hiring assessments may allow the IRS the opportunity to hire individuals who possess more of the mission-critical skills required.

Further, the retention strategy focuses on employee engagement. One way to effectively use limited resources is to retain those employees who possess the necessary skills and expertise the agency requires to meet its mission. The IRS implemented a Service-wide engagement strategy,

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

FY [Fiscal Year] 2019-2021 Leadership Engagement Action Plan,⁸⁶ which provides meaningful engagement actions that all business units should accomplish. The plan focuses on the Office of Personnel Management's recommended engagement themes of recognition and empowerment, motivation, diversity and inclusion as well as communication. As a result of the plan, the IT organization developed its *FY [Fiscal Year] 2020 Employee Engagement Action Plan*, which is updated annually based on the Federal Employee Viewpoint Survey results.

The IRS may consider a retention incentive if the unusually high or unique qualifications of the employee or a special need for the employee's services makes it essential to retain the employee, and the employee would be likely to leave the Federal service in the absence of a retention incentive. The IRS has several factors it must consider before authorizing a retention incentive, including special or unique competencies required for the position and the extent to which the employee's departure would affect the IRS's ability to carry out an activity, perform a function, or complete a project that the IRS deems essential to its mission. In the last six years, the IRS approved use of its retention incentive policy for two IT organization employees; the first request was in December 2014, and the second request was in August 2020 (both for a one-year period). We reviewed the retention incentive request forms and verified that the IRS documented the factors it believed warranted the authorization of the retention incentives.

According to Human Capital Office management, the retention incentive policy has not been used frequently in recent years due to budget constraints. A loss of employees with expert-level skills could negatively affect the IT organization's ability to meet its mission. It could lead to insufficient staff to address system security issues and perform necessary system maintenance and upgrades as well as develop modernized tools and systems to enhance tax administration.

Project management

Project management is the discipline of using established principles, procedures, and policies to manage a project from conception through completion. It is the application of knowledge, skills, tools, and techniques to activities to meet the project requirements. It is also the process of defining and achieving goals while optimizing the use of resources, such as people, time, and money during the course of a project.

In Fiscal Year 2021, TIGTA provided coverage of information technology project management in four audits. We initiated an audit⁸⁷ to ***evaluate the implementation of the Data at Rest Encryption (DARE) Program***.⁸⁸ We found that progress has been made to identify and test encryption and key management solutions. The DARE Program developed a roadmap, which is a five-year plan (Fiscal Years 2019 through 2023), for establishing encryption solution standards and an enterprise key management solution. The roadmap included a framework to identify, classify, and group systems so that potential encryption solutions could be identified. We determined that the DARE Program used this framework to identify system attributes, such as platform technology, programming language, and data format, and created natural groupings of systems, called technology clusters. As a result, these technology clusters could be potentially addressed by a single encryption solution.

⁸⁶ Dated October 1, 2018.

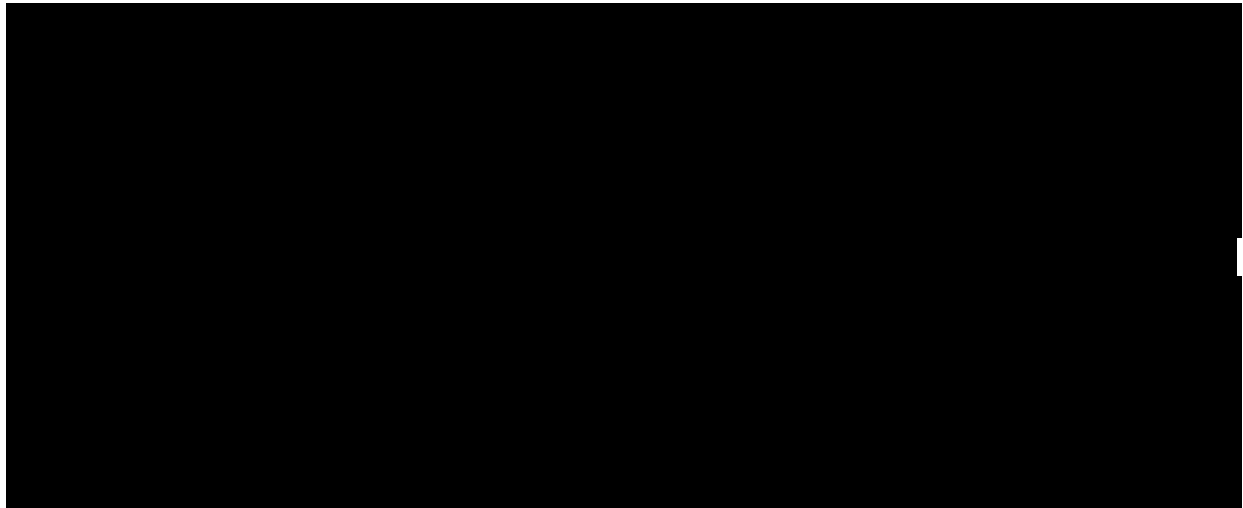
⁸⁷ TIGTA, Report No. 2021-20-066, *The Data at Rest Encryption Program Has Made Progress With Identifying Encryption Solutions, but Project Management Needs Improvement* (Sept. 2021).

⁸⁸ The DARE Program was created to address the need for encryption to protect data across the IRS enterprise.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

The creation of technology clusters enabled identification and categorization of the diverse types of databases/platforms in use across the enterprise. The DARE Program used the technology cluster information to identify potential encryption solutions by performing market research and identifying potential commercially available encryption and key management solutions for each cluster. Figure 12 shows the four primary groupings of systems requiring encryption identified by the DARE Program as well as the identified key management solutions and technology clusters that could utilize similar encryption agents.

Figure 12: DARE Key Management Solutions and Technology Clusters



Source: DARE Strategy Chief Information Officer Brief, dated March 9, 2021. AWS – Amazon Web Services, COTS – Commercial-Off-The-Shelf, EKMF – Enterprise Key Management Foundation, HVA – High Value Asset, IBM – International Business Machines, and KMS – Key Management System.

The DARE Program identified 15 technology clusters and related encryption and key management solutions to select systems for testing. It then conducted an Analysis of Alternatives⁸⁹ to select a key management solution, *i.e.*, the Oracle Transparent Data Encryption solution with integration to the Thales key management system, which was tested during the proof-of-concept process.

In our audit of the **DARE Program**, we also found that encryption plans have been delayed. By the summer of Calendar Year 2020, the DARE Program was in the process of planning for the *IRS Integrated Modernization Business Plan* activity of deploying a DARE Full Operating Capability by September 30, 2021. To meet this commitment, the DARE Program has to deploy an encryption solution and key management solution into production, and then use them to successfully support [REDACTED]. However, in the summer of Calendar Year 2020, the DARE Program was also tasked with a new priority to encrypt data on High Value Assets along with the work already in progress to deploy the DARE Full Operating Capability. The requirement to encrypt High Value Assets came from the Treasury Department as one of its initiatives to focus on cybersecurity across the Department. The IRS has [REDACTED]

⁸⁹ An analytical comparison or evaluation of proposed approaches to meet an objective. The formal or informal process involves identifying key decision factors, such as life cycle operations, support, training, and sustaining costs, risks, effectiveness, and assessing each alternative with respect to these factors.

We identified specific program issues that have affected the DARE Program’s ability to meet its goals. Specifically, the DARE Project did not follow various enterprise life cycle requirements. These include combining milestone exit reviews for multiple phases instead of conducting the reviews separately as required, and not timely updating significant artifacts as required. The enterprise life cycle is used to ensure consistency and compliance with Government and industry best practices by information technology projects. There are various enterprise life cycle paths available for information technology projects, which are to be agreed upon at the start of new projects and documented in a Project Tailoring Plan. Figure 13 shows the descriptions of the phases, along with their related milestone numbers.

Phase Name	Description	Milestone
Vision and Strategy/Enterprise Architecture	High-level direction setting.	Milestone 0
Project Initiation	Define project scope, form project teams, and begin many enterprise life cycle artifacts.	Milestone 1
Domain Architecture	Gather, develop, and approve solution concept, requirements, and architecture.	Milestone 2
Preliminary Design	Development of logical design.	Milestone 3
Detailed Design	Development of physical design.	Milestone 4a
System Development	Coding, integration, testing, and certification of solution/system.	Milestone 4b
System Deployment	Expand availability of solution to all target environments and users.	Milestone 5

The commercial-off-the-shelf path was chosen for the DARE Project. This path provides guidance when pre-packaged, vendor-supplied software is to be used with little or no modification to provide all or part of a solution. While there are multiple sequential phases in this enterprise life cycle path, it is common practice to combine the first two phases (Project Initiation and Domain Architecture) with a single milestone exit for both. In addition, because it is based on using commercial software, both design phases (Preliminary and Detailed Design) typically can be combined with a single milestone exit. However, during the tailoring process, it was agreed that the DARE Program would have a single milestone exit for Milestones 1 through 4a. This has the practical effect of deferring reviews of the milestone exit requirements until the project is at the end of the development phase. This could cause unnecessary delays if there were any adjustments or decisions about the design or scope of the project that needed to be addressed earlier. Subsequent to our discussions with DARE Program management and the Enterprise Life Cycle Office, this approach was revised and an updated Project Tailoring Plan was issued in March 2021 requiring milestone exit reviews at Milestone 1/2 and Milestone 3/4a.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

In addition, significant enterprise life cycle artifacts were not updated as required. For example, the Project Charter, Project Management Plan, and Project Tailoring Plan were not updated to reflect the inclusion of High Value Asset-related work in the project scope. Artifacts are used by a project to document how it plans to meet standards and requirements, and are usually in the form of documents based on pre-established templates. In addition, a revision of the original Project Management Plan did not contain information related to the change in scope. Further, the DARE Business System Report was not completed and approved.⁹⁰

All of these artifacts were prepared in June and July 2020 when the project entered into the enterprise life cycle process. However, they reflect the original project scope prior to High Value Asset encryption-related work being prioritized. These artifacts were still not updated by the end of April 2021. We believe that proceeding to the development phase prior to completing the design or architecture phases could create confusion and uncertainty if the artifacts do not accurately reflect the current project scope, thus reducing their effectiveness and usefulness for project management and resulting in unnecessary delays.

In our audit of the ***DARE Program***, we also identified that development of the Integrated Master Schedule was delayed. It took approximately eight months to create the initial baseline, *i.e.*, approved version. While the schedule was being approved through the governance process, the project used the un-baselined schedule to track and manage program activities. The baseline Integrated Master Schedule is meant to be the starting point from which all project activities are managed.

In June 2020, the IRS entered into the enterprise life cycle process when it started the development of the Integrated Master Schedule based on the scope of the DARE Program at that time. The baseline schedule was not initially approved until February 2021, and the IRS used various ad hoc methods to manage the DARE Program until it was approved. In May 2021, DARE Program management informed us that there were issues with gaps between dependencies and tasks that needed to be addressed, and that the schedule would have to be re-baselined. According to the IRS, the Integrated Master Schedule reviews and revisions were completed in June 2021, and the schedule was formally approved through the governance process on July 29, 2021.

Project management issues contributed to the Integrated Master Schedule delays, including difficulties in obtaining timely, useful feedback from delivery partners as well as having to work with feedback comments based on various versions of the schedule. Based on the extended time taken for this process, we are concerned that the DARE Program has been working on implementing an encryption solution at the same time as developing the related schedule that includes necessary information to effectively manage and measure program progress. Without a baseline Integrated Master Schedule, the DARE Program has no reliable schedule with which to gauge progress or to allocate resources. This increases the difficulty of effectively managing such a large project with multiple interdependencies and could further contribute to delays.

In addition, prior encryption recommendations were not prioritized and could impact the DARE Program's ability to meet deadlines. Prior to March 2021, the priority was to deploy the DARE

⁹⁰ The report serves as the primary reference for all project requirements for the project and is supposed to be completed and approved prior to exiting the Architecture phase (Milestone 2). Subsequent phases, such as Design (Milestones 3/4a), Development (Milestone 4b), and Deployment (Milestone 5), are based on the requirements and scope information in the approved Business System Report.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Full Operating Capability by September 30, 2021. However, in March 2021 the DARE Program was also tasked with additional work unrelated to meeting this priority. Specifically, the decision was made to include addressing prior GAO audit recommendations for encryption of certain systems. Further, Treasury-designated High Value Assets were to be encrypted by [REDACTED].

A GAO report issued in July 2017⁹¹ recommended data on certain systems be encrypted. IRS management neither agreed nor disagreed with the recommendations, but stated they would review each of the recommendations and ensure that corrective actions include sustainable fixes that implement appropriate security controls. The due date for the planned corrective actions was originally May 15, 2020, but was extended to May 15, 2022. According to the IRS, initial DARE planning in Calendar Year 2018 for proof-of-concept testing specifically indicated that the focus should be on the systems mentioned in the GAO report, and one system had proof-of-concept testing in November 2019. However, the work to address the planned corrective actions was not made a priority until March 2021.

Although the IRS prepared a briefing for the GAO about DARE Program progress in March 2020, this briefing did not include information about addressing the GAO recommendations during Calendar Years 2020 or 2021. [REDACTED]

[REDACTED]. However, significant additional work is also needed to ensure that the encryption of the systems in question is accomplished timely. Prior to March 2021, that work was not included as a DARE Program goal or in the Integrated Master Schedule that was in the process of being baselined.

The DARE Program's work on Full Operating Capability and Treasury-designated High Value Assets involves significant planning, testing, and procurement activities in order to meet the associated deadlines. In addition, other activities are in progress concurrently with those efforts, including the creation of an IRS-designated High Value Asset encryption implementation plan and the continuation of testing and development of technology cluster solutions. The DARE Program was aware of the need to address the GAO recommendations as early as Calendar Year 2018, but did not make it a priority until March 2021, when the deadline for closing the corrective actions was approaching. The notional schedule to address the GAO recommendations is very aggressive and could directly impact the DARE Full Operating Capability deployment and High Value Asset encryption plans. Therefore, delays with determining the priority of work related to the GAO recommendations could have significant negative impacts on these efforts.

We also initiated an audit⁹² to ***review the Enterprise Case Management (ECM) Program⁹³ migration efforts***. The ECM Program developed a formal sequencing plan, which provides a documented, repeatable method to select business processes for migration prioritization, through Fiscal Year 2022. The selected processes are intended to balance near-term business

⁹¹ GAO, GAO-17-394SU, *Information Security: Control Deficiencies Continue to Limit IRS's Effectiveness in Protecting Sensitive Financial and Taxpayer Data* (July 26, 2017).

⁹² TIGTA, Report No. 2021-20-059, *Enterprise Case Management Deployed Its Initial Release, but Process Improvements Are Needed for Future Releases* (Sept. 2021).

⁹³ For this report, the ECM Program includes the Enterprise Digitization and Case Management Office, the ECM Initiative, and the IT organization's ECM Program Management Office.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

value, leadership priorities, and long-term scalability, while working to establish operational footprints within IRS organizations.

In September 2020, the ECM Program made its first partial product deployment with Release 1.0 to the Tax-Exempt and Government Entities Division's Exempt Organizations Correspondence Unit and full deployment in December 2020 with Release 1.1. As of April 2021, the ECM Program has deployed two updates providing additional functionality and software patches, and is on schedule to deploy Release 2.0 to the Wage and Investment Division's Grants Management process. The releases and updates spanned the ECM Program's Release 1.0 and 2.0 plans. In April 2021, the Release 3.0 plan received approval and includes 10 areas, *e.g.*, the Human Capital Office's Labor Relations processes, Taxpayer Advocate Service's Grants Management process, for development. In addition, the ECM Program identified six processes, *e.g.*, Taxpayer Advocate Service's Case Advocacy, Wage and Investment Division's Linguistics Policy, Tools, and Services, for migration into the ECM solution. The proposed processes were approved for analysis and exploration and will be worked throughout Fiscal Year 2022 as ECM Program capacity allows.

However, the ECM Program has not finalized its scaled agile framework configuration. The IRS's *Reference Guide: ECM Enterprise Life Cycle/SAFe [Scaled Agile Framework®]*⁹⁴ *Delivery Optimization*⁹⁵ states that ECM Program management obtained approval to move from a waterfall delivery method to the scaled agile framework for software development. The framework provides four configuration options⁹⁶ allowing organizations to adapt the framework to meet their business needs. Each configuration option incorporates parts of seven core competencies required for business agility.

The ECM Program stated that it is implementing a combination of two scaled agile framework configurations, trying to strike a balance between implementing the recommended roles and configurations while minimizing unnecessary overhead. Performing assessments could help determine which of the four framework configuration options to use. Failure to identify and implement the appropriate scaled agile framework elements could result in delays in product delivery and reduced productivity, product quality, and customer satisfaction. In January 2021, an ECM Program team with contractor support began reporting quarterly results on their evaluation of how the program aligns with agile best practices. The quarterly reports, along with internal reviews, are being used to evaluate the current scaled agile framework configuration.

Also, while some best practices are in place, there are areas for improvement. In July 2020, the contractor issued its final report, *Independent Verification and Validation of the ECM Program*, and stated that the ECM Program has yet to finalize a roadmap to achieve its goals between Calendar Years 2020 and 2022. Specifically, the team has not created a roadmap to achieve its goals that can guide prioritization, plan for resourcing, encourage team collaboration, or help with features/functionality to include in Release 1.0 to prevent rework. In addition, the report did not provide an in-depth validation of the ECM Program cost estimates, but stated that costs have historically and on average been approximately 10 percent under budget. The report also stated that the ECM Program has a high-level, independent cost estimate through

⁹⁴ Scaled Agile Framework and SAFe are registered trademarks of Scaled Agile, Inc.

⁹⁵ Dated November 2020.

⁹⁶ The Essential configuration is the simplest version with basic core competencies. The Portfolio configuration incorporates lean portfolio management. The Large Solution configuration includes multiple simultaneous teams for complex solutions. The Full configuration is comprehensive for multiple large, integrated solutions.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Fiscal Year 2024 and expects the ECM Program commercial off-the-shelf platform to be established with all core case management capabilities and data integration enabled.

The contractor also evaluated 10 factors across multiple areas of the ECM Program based on detailed criteria to develop a scorecard. The contractor conducted assessments from April through June 2020 via a series of interviews with all levels of staff, surveys, and a review of documentation. The Independent Verification and Validation report stated that the ECM Program had met or exceeded all relevant best practices in six of the 10 areas examined and met many of the best practices in the remaining categories. The best practices met include a clear articulation of the vision and high-level objectives in program material, *e.g.*, ECM long-term strategy, program charter; development of roles for the in-house management of the overall program and the product expertise from an experienced system integrator; and careful delineation of which aspects of the case management system could be moved into the cloud or remain on premise. In addition, the report specifically identified areas for improvement: program benefits are defined only in broad terms and lack specificity and the ECM Program has yet to implement all necessary characteristics of a high-performing agile program or finalize a roadmap to achieve its goals between Calendar Years 2020 and 2022.

The Independent Verification and Validation report also stated that ECM Program benefits defined in broad terms lack granular, quantified benefits and will make it difficult for leadership to manage continuous implementation of processes over a long period of time, identify tradeoffs in competing priorities, and evaluate success. In addition, the report identified significant needs in the areas of making project benefits and the functionality required to enable them to be more widely understood, prioritizing the most valuable functionality, and quantifying benefit drivers financially or with metrics.

To address the findings from the Independent Verification and Validation report, the ECM Program conducted self-assessments of the best practices identified in the report in January and March 2021 and compared the results to the original independent verification and validation assessment. In the first quarterly report in February 2021, the ECM Program identified improvement in two of the best practice areas. It prioritized establishing a minimum viable product prior to beginning configuration work, identified the project scope for the next 12 months, including Releases 2.0 and 3.0, and started a process to identify outcomes aligned to benefits at the business process level.

In the April 2021 quarterly report, the ECM Program highlighted the addition of a weighted-shortest-job-first score to prioritize work based on business benefits and job size; development of a long-term strategy with objectives, measures, and metrics aligned to each program strategic goal; and development of a decommissioning process that will quantify financial benefits related to system retirement. Gaps that still need to be addressed include quantifying benefits with a return on investment; identifying benefits from new functionality; and aligning the ECM Program life cycle cost estimate to program benefits or metrics.

In our audit of the *ECM Program*, we found that the Program identified lessons learned from the Release 1.0 deployment. Specifically, end users were not fully integrated into the development process. In April 2019, the ECM Program had Tax-Exempt and Government Entities Division end users take part in a Blue-Sky Program⁹⁷ to help determine and prioritize

⁹⁷ A design session held by the ECM Program with Tax-Exempt and Government Entities Division personnel to identify opportunities for improvement in the Correspondence Unit process.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

operational requirements. The end users came away with the expectation that the initial release of the ECM tool would include the ability to access, read, and update datasets. However, that functionality was not included with the December 2020 release, and was partially incorporated into the ECM solution with Release 1.2 in January 2021.

During our interviews with end users, they expressed frustrations with the ECM deployment. These frustrations were due to two primary issues: poor communication regarding changes in expected functionality between the Blue-Sky Program and the release as well as inadequate training. Release 1.1 functionality could not read or edit data as originally expected and the change in functionality was not communicated to end users prior to the release. Despite multiple updates, as of April 2021, the system still requires end users to use workarounds for retrieving and updating data. The workaround requires end users to capture screenshots from the legacy database and record the activity in the ECM tool. The ECM Program identified the potential risks of not providing access to legacy data through the ECM solution as reduced work efficiency, minimal process improvement, and undermining end users' perception of the program.

In response to lessons learned during Release 1.0 and because different teams play lead roles in different stages of the process, the ECM Program created the role of a Customer Journey Advocate. This individual provides hands-on support and guides customers through the process from preparing for migration to the new ECM tool to the decommissioning of legacy systems. The ECM Program has also worked to incorporate the end user earlier in the process. For example, during the ECM Program's implementation of the Expedited Delivery Process, end users were provided a test environment in which they are able to use development versions of the software. The ECM Program found this process so beneficial that it incorporated the process into ECM Release 2.0.

Another lesson learned resulted from the ECM Program identifying significant Section 508 defects when it deployed Release 1.1. Section 508 of the Rehabilitation Act of 1973⁹⁸ requires Federal agencies to make their electronic and information technology accessible to people with disabilities. On December 9, 2020, just prior to deployment of Release 1.1, ECM Program reports identified 153 total internal defects, of which 76 (50 percent) were for Section 508 compliance.⁹⁹ In April 2021, 184 Section 508 compliance internal defects were reported.

The ECM Program stated that IRS development programs traditionally address Section 508 compliance during the testing phase, but it is trying to address compliance earlier in the development process for future releases. The ECM Program identified a lesson learned to allocate sufficient time during program increments to configure, test, and fix defects to avoid a significant number of defects in the backlog going into production. To reach this goal, it is attempting to allocate sufficient resources to complete all defect testing, provide time during program increments for defect remediation, and provide time during the iteration for simultaneous configuration and testing. The ECM Program also implemented additional steps to develop software with Section 508 compliance for Release 2.0. As of February 2021, these

⁹⁸ 29 U.S.C § 794 (d).

⁹⁹ The ECM delivery team can address internal defects by implementing fixes. External defects require the solution provider to release a new version or upgrade of the software to fix the defect. In addition to the internal defects, there were 81 external defects identified in December 2020 and 107 external defects identified in April 2021.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

steps included utilizing Section 508 checklists by developers during development and unit testing, and adding a rule to warn developers if a label is missing on any user interface elements.

In addition, the ECM Program introduced an Accessibility Advocate function. The ECM Program stated that this team will work together with the IT organization's Information Resources Accessibility Program, which provides centralized leadership of Section 508 defect analysis and remediation, expertise in configuration, tailored training, and coordination of user groups. The Accessibility Advocate is expected to assist the Information Resources Accessibility Program in reducing the number of Section 508 defects in future releases; improve the user experience; reduce downtime with resulting increases in productivity; and reduce or avoid settlements, grievances, and lawsuits.

The ECM Program is making progress towards its decommissioning strategy. It has completed an initial inventory of legacy case management systems and tools that includes functional needs, systems dependencies, and other relevant information which will drive prioritization; deep dive discussions; and recommendations for sequencing, migrating, and ultimately decommissioning. In April 2021, the ECM Program completed a *Draft Enterprise Case Management Decommissioning Strategy*¹⁰⁰ to enable and expedite the retirement of legacy case management systems. The strategy lays out a repeatable process for planning and executing decommissioning, while mitigating the risks associated with system shutdowns.

The ECM Program also developed a Decommissioning Prioritization Tool that works to identify early decommissioning opportunities and align them with the sequencing plan. The tool evaluates legacy case management systems data to determine the estimated level of effort to decommission the system and the value it will bring to the IRS. The results are plotted on a graph for a clear visual representation. The input data include several variables that can be adjusted to meet changing priorities. A technical analysis of the results is performed and a Decommissioning Recommendation Package is provided to the sequencing team. A Decommissioning Cost Funding Model, Business Process Heat Map, and Decommissioning Roadmap are all in various stages of development. The ECM Program expects to decommission three components of a major case management system this calendar year.

In our audit of the *IRS's implementation of the CIO's duties and responsibilities*, we found that the IT organization arranged for an independent verification and validation assessment for the Customer Account Data Engine 2 and the ECM implementation plans as required. We reviewed the Independent Verification and Validation reports for the Customer Account Data Engine 2 and the ECM applications and were able to confirm that the IRS engaged a contractor to perform an independent verification and validation of both implementation plans, and that it received the contractor's reports prior to the deadline of July 2020 as established in the TFA. The contractor concluded that, if the IRS uses the opportunities presented in its reports, the IRS would be on track to complete both projects on time and on budget. According to the CIO, the IT organization has presented the independent verification and validation results to the IRS Senior Leadership Team and the Treasury Department.

In our audit of the *IVES Program*, we found that the IRS is in the early stages of developing an online system to replace the current manual IVES Program transcript request process. The system will replace the IRS's current partially automated system, which requires employees to

¹⁰⁰ Dated April 26, 2021.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

manually process transcript requests received from IVES Program participants. Under the current system, clerks in the IVES Program units receive Forms 4506-T on dedicated fax machines, print and batch the forms, and input information from the forms into the Transcript Delivery System. The transcripts are then systemically delivered to IVES Program participants' secure electronic mailboxes. Once implemented, this new system will eliminate the manual processes that require clerks to print and manually input each form in the Transcript Delivery System.

The TFA requires the IRS to modernize its IVES Program for disclosure of taxpayer information for third-party income verification by January 1, 2023, and the IRS expects to meet this deadline. For example, the IRS has developed a high-level solution concept for the new system detailing the business process flow and system requirements. In October 2020, the IRS began the architecture and engineering design phase of its project development cycle and prepared a high-level system development and implementation schedule. However, the cost to develop the online system has not been finalized and a significant shortfall already exists in the estimated user fees to be collected to cover the development costs.

TFA § 2201, authorizes the IRS to charge a separate user fee over a two-year period (Calendar Years 2020 and 2021) to fund the development of the new system. The fee can be charged for any qualified transcript request, *i.e.*, a request used to verify the income or creditworthiness of a taxpayer that is a borrower in the process of a loan application. Once the new system design is finalized, the IRS will produce the final cost estimate. However, without knowing the final cost, the IRS cannot accurately calculate a user fee and must rely on estimates.

To establish the user fee amount, the IRS developed a preliminary cost estimate of \$75.3 million to develop and deploy the new IVES Program system. The IRS also analyzed IVES Program historical transcript request volumes and worked with the IVES Program Participant Working Group to estimate that 12 million Forms 4506-T would be submitted to the IVES Program in Fiscal Year 2020. Based on these estimates, the IRS increased its transcript request fee from \$2 to \$5 starting on March 1, 2020. The fee increase was expected to raise \$36 million in the first year, which is nearly one-half the \$75.3 million estimated cost to develop the new system. However, as of July 31, 2020, the IRS spent more than \$9.3 million developing the new system and collected approximately \$6 million in fees. This amount is well below the estimated fee revenue of \$36 million expected for the first year. The significant shortfall is a direct result of the COVID-19 pandemic. For example, the IVES Program was shut down from March 27 until May 18, 2020, and operated at a reduced capacity until returning to normal operations on July 14, 2020. This disruption significantly reduced transcript request processing volumes and fees collected.

Risk management

Risk management is the process of identifying, monitoring, and mitigating project and program risks. Effective risk management emphasizes the need to integrate risk management into existing business activities of an agency. It can help the IRS, including its IT organization, more securely and effectively administer the Federal tax system by identifying and mitigating emerging risks before they affect performance.

During Fiscal Year 2021, the GAO performed an audit covering risk management. In its audit of the *IRS's internal control over financial reporting*, the GAO identified one deficiency in risk

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

management related to external system risk assessments. The IRS did not conduct an adequate assessment of risks and controls of an external system.

Implementation of corrective actions

Internal controls are a major part of managing an organization and provide reasonable assurance that organizational objectives are being achieved. Internal controls protect assets, detect errors, and prevent fraud. Internal controls help Government program managers achieve desired results through effective stewardship of public resources. Systems of internal control provide reasonable assurance that the following objectives are being met: 1) effectiveness and efficiency of operations, 2) reliability of financial reporting, and 3) compliance with applicable laws and regulations.

In Fiscal Year 2021, TIGTA and the GAO performed four audits with coverage on the status of closed planned corrective actions. In our audit of the *IVES Program*, we found that the IRS implemented planned corrective actions to address our prior recommendations. In March 2018, we reported¹⁰¹ that IVES Program certification requirements are not effective in addressing risks associated with the unauthorized release of tax transcripts to IVES Program clients, and that the IRS does not have processes and procedures to ensure that the legitimate taxpayers signed the Form 4506-T to authorize the release of their tax transcripts. Since our last review, the IRS implemented some security controls to protect taxpayer information from unauthorized disclosure. The IRS:

- Implemented the Secure Access for e-Services, on December 10, 2017, to prevent unauthorized access to taxpayer data. This multifactor authentication process improves security and helps ensure that tax transcripts can only be accessed by authorized IVES Program participants.
- Implemented masking of Personally Identifiable Information from tax transcripts beginning September 23, 2018, to better protect and prevent unauthorized disclosure of taxpayer data. In addition, the IRS created a new customer file number, which is reflected on the redacted transcript that third parties can use as an identifying number instead of the taxpayer's Social Security Number.

In our audit of the *DARE Program*, we found that corrective action to address a previously identified encryption security weakness was not fully implemented. In July 2018, TIGTA reported¹⁰² that end-to-end encryption was not enforced for the transferring of taxpayer data to and from private collection agencies.¹⁰³ Specifically, TIGTA identified that taxpayer information used by the private collection agencies was not encrypted by either the IRS or the private collection agencies prior to being transferred. This information is supplied electronically to the private collection agencies so they can attempt the collection of tax debts and the information

¹⁰¹ TIGTA, Report No. 2018-40-014, *Transcript Delivery System Authentication and Authorization Processes Do Not Adequately Protect Against Unauthorized Release of Tax Information* (Mar. 2018).

¹⁰² TIGTA, Report No. 2018-20-039, *Private Collection Agency Security Over Taxpayer Data Needs Improvement* (July 2018).

¹⁰³ On December 4, 2015, the President signed into law the Fixing America's Surface Transportation Act,¹ which included provisions amending Internal Revenue Code §§ 6306 and 6307 pertaining to the use of qualified tax collection contractors to collect inactive tax receivables. To address this legislative mandate, the IRS established a Private Debt Collection Program and selected four private collection agencies. The IRS enabled these designated contractors to collect outstanding inactive tax receivables on the Government's behalf.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

about the amounts collected is then returned to the IRS. This taxpayer information is considered data at rest prior to being transferred and is required to be encrypted by both the IRS and the private collection agencies. TIGTA recommended that the CIO ensure that the data at rest be encrypted by the IRS and by the private collection agencies. In July 2019, the IRS closed this recommendation as completed.

Prior to closing the recommendation, the IRS verified the taxpayer information was being encrypted through e-mail verification with the private collection agencies. In addition, the IRS verified encryption of the private collection agencies' data through annual testing established by Publication 4812. The publication defines basic security and privacy control requirements and standards required of contractors and its employees when the contract involves access to, development, hosting, or maintaining of sensitive but unclassified information. Based on this testing, the IRS determined that the private collection agencies were encrypting the taxpayer information as required.

In addition, the IRS completed a feasibility study to determine how it could implement DARE for taxpayer information prior to it being transferred to the private collection agencies. This feasibility study concluded that IRS-based options would require further testing to ensure compatibility. It also concluded that access to necessary resources would need to be obtained to develop and implement any strategy for the encryption of taxpayer data prior to being transferred to the private collection agencies. Based on the feasibility study, the IRS conducted a pilot and determined that it was able to encrypt the data in both the development and test environments. Based on the results of the pilot, the IRS indicated it was planning to encrypt the private collection agency information after it had completed encrypting two other systems. The IRS also stated that the encryption of data was resolved; however, we determined that the private collection agency information residing at the IRS had not been encrypted in production. Until DARE is employed for these sensitive data, it will remain at risk of exposure or unauthorized access.

The GAO initiated an audit¹⁰⁴ to ***determine whether the IRS's financial statements are fairly presented and IRS management maintained effective internal control over financial reporting.*** The GAO reported that while the IRS made progress addressing previously reported control deficiencies, it found continuing and newly identified deficiencies that contributed to the significant deficiency in the IRS's internal control over financial reporting systems. Specifically, deficiencies continue to exist concerning 1) unnecessary access rights granted to accounts, 2) inconsistent monitoring of systems and accounts, 3) inadequately enforced encryption to protect systems and data, 4) out-of-date and unsupported hardware and software, and 5) insufficient implementation and enforcement of effective policies and procedures as part of IRS's security management program.

The GAO also reported that the IRS mitigated the potential effect of these continuing and newly identified deficiencies primarily through compensating controls that management has designed to detect potential misstatements on the financial statements. Nevertheless, these application and general control deficiencies increase the risk of unauthorized access to, modification of, or disclosure of sensitive financial and taxpayer data and disruption of critical operations, which are important enough to merit attention. Continued and consistent management commitment and

¹⁰⁴ GAO, GAO-21-162, *Financial Audit: IRS's FY 2020 and FY 2019 Financial Statements* (Nov. 10, 2020). FY = Fiscal Year.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

attention will be essential to addressing existing system deficiencies and continually improving the IRS's financial reporting system controls.

In its audit of the *IRS's internal control over financial reporting*, the GAO followed up on the status of the IRS's corrective actions to address control deficiencies in information system and associated recommendations that remained open as of September 30, 2019. The GAO determined that the IRS had completed corrective actions to close 41 of 132 recommendations from its prior audits related to information systems as of September 30, 2020. Closed corrective actions include: audit and monitoring, authorization, boundary protection, configuration management, cryptography, identification and authentication, security management, and separation of duties. Combined with the GAO's five new recommendations, a total of 96 recommendations addressing control deficiencies in information systems remain open as of September 30, 2020.

Modernizing operations

Successful modernization of systems and the development and implementation of new information technology applications are critical to meeting the IRS's evolving business needs and enhancing services provided to taxpayers. Modernization is necessary to deliver efficient taxpayer services and enforcement with enhanced user experiences.

In Fiscal Year 2021, TIGTA performed two audits covering the modernization of the IRS's operations. In our audit of *private collection agencies*, we found that the IRS implemented programming on January 24, 2020, to systemically exclude accounts of Social Security Disability Insurance recipients from being assigned to a private collection agency, as required starting in January 2021. The IRS informed TIGTA that the new programming reads the annual Social Security Disability Insurance recipient file provided by the Social Security Administration on a weekly basis (annually reported on Form SSA-1099, *Social Security Benefit Statement*). If any Individual Master File taxpayer or their spouse in the IRS's Unpaid Assessments database is receiving Social Security Disability Insurance income, the case is excluded from the Private Debt Collection Program. TIGTA also inquired as to how the IRS would conduct reviews of the inventory to ensure that no Social Security Disability Insurance cases are being assigned to private collection agency inventory. The IRS responded that it created unique reason codes to allow for tracking the recalled or excluded cases and verified that the system is programmed to monitor the private collection agency inventory on a weekly basis using the unique codes to ensure that the Social Security Disability Insurance accounts are not present.

In our audit of the *IRS's implementation of the CIO's duties and responsibilities*, we found that most provisions of TFA § 2101 have been implemented. This includes: 1) the CIO's roles and responsibilities have been defined; 2) the IRS Commissioner appointed a permanent CIO; 3) the CIO oversees the development, implementation, and maintenance of information technology enterprise-wide; and 4) the IT organization developed an *Information Technology Strategic Plan*.¹⁰⁵

TFA § 2101 specifies that the IRS Commissioner and the Secretary of the Treasury will act through the CIO with respect to the development, implementation, and maintenance of the

¹⁰⁵ Dated November 2020.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

IRS's information technology. It also defines the general duties and responsibilities of the CIO, requiring the CIO to:

- 1) Oversee the development, implementation, and maintenance of information technology throughout the IRS, including the Taxpayer Advocate Service, Criminal Investigation, and the Office of Chief Counsel.
- 2) Ensure that the information technology is secure and integrated.
- 3) Maintain operational control over the information technology.
- 4) Act as the principal advocate for the IRS's information technology needs.
- 5) Consult with the Chief Procurement Officer on significant information technology acquired.

Although many of these activities were already under the CIO's purview in one form or another, the IRS has taken some steps to further define and implement the CIO's roles and responsibilities. For example, the memorandum issued defining the CIO's roles and responsibilities states that the CIO is responsible for developing, implementing, and maintaining the IRS's information technology, ensuring that the information technology is secure and integrated, maintaining operational control of all information technology, and being the principal advocate for information technology needs. In addition, the IRS Commissioner appointed a permanent CIO in February 2021.

TFA § 2101 requires the CIO to be responsible for the development, implementation, and maintenance of information technology enterprise-wide. For most business units, the IT organization maintains the operational information technology environment and provides information technology services. According to the CIO, some business units may have contracts for software and other information technology, but the CIO oversees the information technology budgets of these business units. This provides the CIO awareness of the information technology products and services that are acquired.

In addition, the IT organization provides oversight of IRS information technology efforts through several governance boards. The IT organization has governance boards over Associate CIO areas of responsibility, such as UNS, Cybersecurity and Privacy, and Enterprise Services. There are also IRS enterprise governance boards, *e.g.*, Executive Risk Committee, Strategic Development Executive Steering Committee, to which the CIO is either a member or co-chair. Further, there are dedicated program governance boards, *e.g.*, the Web Applications Governance Board and the Financial Services Governance Board. The program governance boards govern selected investments and their systems, programs, and projects to ensure that investment, program, and project objectives are met, risks are managed appropriately, and enterprise expenditures are fiscally sound.

The IT organization is also involved in functional governance boards, such as the Criminal Investigation Governance Board. Criminal Investigation chairs this board, and voting IT organization members include representatives from the Cybersecurity, Enterprise Services, and Applications Development functions. The Criminal Investigation Governance Board reports to the Sustaining Operations Executive Steering Committee, which is co-chaired by the Deputy CIO for Operations.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

While some business units maintain their own information technology staff, in September 2020, the then acting CIO issued a memorandum to all heads of office that describes the process for business units to fill select information technology positions outside of the IT organization. Specifically, the memorandum sets forth policy that work related to the determination of information technology solutions and investments, cybersecurity, and technology products inherently used in the IT organization should not be staffed from within business units, outside of the IT organization. Further, the memorandum established an annual reporting requirement for business units to report their information technology staffing needs, describing their existing, vacant, and any proposed new information technology positions to the IT organization.

However, Criminal Investigation is an exception to the other business units as it operates its own information technology environment as well as maintains its own information technology staff. In Fiscal Year 2016, the Deputy Commissioner for Services and Enforcement and the Deputy Commissioner for Operations Support signed a memorandum of understanding to outline the operation and management of a consolidated information technology environment between Criminal Investigation and the IT organization. The IT organization began to update the memorandum of understanding with Criminal Investigation to reflect the roles and responsibilities outlined in TFA § 2101; however, this effort remains on an "indefinite pause" as IRS leadership considers broader options. The indefinite pause of updating the memorandum of understanding means that the working relationship between the CIO and Criminal Investigation does not reflect TFA requirements.

According to the CIO, the IT organization engages monthly with Criminal Investigation leadership to ensure that Criminal Investigation remains strategically aligned with the IT organization. The CIO maintains oversight of Criminal Investigation's [REDACTED] information technology budget. While the budget does not include the \$15 million that Criminal Investigation received through the Consolidated Appropriations Act of 2020¹⁰⁶ for investigative technology, the IT organization retains oversight of these funds through the Work Request Management System.¹⁰⁷ In addition, the Office of the CIO has approval authority over Criminal Investigation's acquisition of information technology products and services except for information technology acquisitions required for sensitive law enforcement activities related to covert and law enforcement needs that do not affect the IRS network.

The IT organization also developed an *Information Technology Strategic Plan*. According to the CIO, the IRS Commissioner and the Treasury Department have approved the plan. The *Information Technology Strategic Plan* addresses multiple years and contains performance measurements that allow the IRS to assess its progress towards reaching the desired end state as set out in the plan. The plan identifies nine performance measurements. Five measurements are in place and actively tracked with baseline and target performance goals, including reduction of selected legacy code, aged infrastructure, service availability at the appropriate level of redundancy, application at the assessed level of risk or mitigated with compensating controls, and operations and maintenance cost stabilization. In addition, the plan identifies

¹⁰⁶ Pub. L. No. 116-93, 133 Stat. 2317.

¹⁰⁷ The authoritative, centralized database and repository for information technology-related work requests. The system maintains, distributes, and tracks work requests and their associated documentation, attachments, and responses.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

four new performance measurements, including security compliance, workforce mobility, data, and new hire retention.

The *Information Technology Strategic Plan* refers to other companion documents, such as the *Target Enterprise Architecture*, the *Enterprise Technology Blueprint*, the *Annual Key Insights Report*, the *Information Technology Integrated Modernization Business Plan*, and the *Taxpayer Experience Strategy* for further information on how the multiyear plan will be implemented. The *Target Enterprise Architecture* and the *Enterprise Technology Blueprint* discuss the integrated enterprise architecture by taking into consideration the present, short-term, and long-term integrated architecture for the IRS. The *Annual Key Insights Report* considers resources that are required to accomplish the *Information Technology Strategic Plan* by discussing budgets and resources of information technology projects and initiatives for the coming year. The *Information Technology Integrated Modernization Business Plan* and the *Taxpayer Experience Strategy* describe specific projects and when the capabilities will be implemented and delivered.

The *Information Technology Strategic Plan* aligns with the *IRS Strategic Plan*.¹⁰⁸ Specifically, the plan states that it “builds on enterprise-wide strategic goals outlined in the *IRS Strategic Plan* and provides specifics around the mission, vision, and goals set forth for the technology landscape.” The *Information Technology Strategic Plan* takes the overall objectives from the *IRS Strategic Plan* and links them to the information technology environment.

COVID-2019 response

COVID-19 is a virus that causes respiratory illness in people and can spread from person-to-person. The first case of the COVID-19 pandemic in the United States was confirmed on January 21, 2020. On March 13, 2020, the President of the United States officially declared a national emergency due to the outbreak of the COVID-19 pandemic. The pandemic caused by COVID-19 impacted how we live and work across the country, and around the world.

In Fiscal Year 2021, TIGTA and the GAO performed three audits covering the IRS's response to the COVID-19 pandemic. We initiated an audit¹⁰⁹ to ***determine whether the IRS effectively used its telework program to reduce the impact of the COVID-19 pandemic on IRS operations***. Telework is a work flexibility arrangement under which employees perform their duties and responsibilities from an approved worksite other than the location from which employees would otherwise work. A robust telework program and ensuring as many employees as possible are prepared to telework are critical components of a plan to allow employees to work effectively from alternative sites and continue tax administration and mission-critical operations.

The IRS leveraged its telework program to continue operations during the pandemic. On March 27, 2020, the IRS issued an evacuation order directing all employees, except for those individuals performing mission-critical functions that could not be performed remotely, to vacate the work site by March 30 and work from home or an alternate location. The IRS had to respond quickly to safely evacuate employees from IRS facilities and provide nontelework-ready employees with the required information technology equipment needed to effectively work

¹⁰⁸ Dated April 2018.

¹⁰⁹ TIGTA, Report No. 2021-IE-R002, *Interim Report: The IRS Leveraged Its Telework Program to Continue Operations During the COVID-19 Pandemic* (Mar. 2021).

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

from alternate locations. Since the start of the pandemic, the telework program has been critical to maintaining IRS operations during the pandemic.

At the beginning of Fiscal Year 2020, prior to the pandemic, the IRS identified approximately 39,000 employees as telework eligible.¹¹⁰ We analyzed weekly time reports before and after the COVID-19 pandemic began to assess the pandemic's impact on IRS operations.¹¹¹ Between March 14 and 28, 2020, the number of employees who reported any time worked at IRS facilities decreased from approximately 70,700 to 19,400 employees. The number of employees who reported any time to telework increased from approximately 27,500 to 41,000 employees.

Prior to the pandemic, between October 2019 and early March 2020, an average of 26,000 employees teleworked for approximately 22 hours each week.¹¹² By March 21, 2020, more than 36,500 employees teleworked an average of nearly 33 hours per week. After March 21, 2020, the number of teleworkers continued to increase. By September 26, 2020, nearly 60,700 employees teleworked at least some time during the week, a 134 percent increase from the weekly average before the pandemic. These 60,700 employees teleworked an average of 36 hours a week, a 64 percent increase in the weekly average before the pandemic.

A limiting factor to the growth of employee telework participation was the IRS's ability to identify, prioritize, and issue laptop computers and other information technology equipment to employees who previously had not participated in the telework program. The IRS indicated that it converted employees from desktops or shared workstations to individually assigned laptops through a set of information technology initiatives designed to make previously nontelework-ready employees ready to work remotely. Although the IRS was unable to distribute many laptops in March 2020, it had issued more than 12,600 laptops to employees by May 2020. As of October 2020, nearly 18,600 laptops had been distributed. As of September 30, 2020, the IRS indicated that it is continuing to work with the business units to identify additional users who require laptops to be telework enabled; however, it believes it has enough inventory to support additional needs.

Although the IRS issued more than 18,000 laptops to expand its employees' ability to telework, we found other technology-related concerns affected teleworking employees. For example, we conducted a series of site visits at four tax processing sites. Managers in these sites noted several information technology-related concerns affecting teleworking employees including: delays at the helpdesk, issues logging in through the virtual private network, issues with equipment, and issues with the SharePoint sites not working.

We identified several time codes used to capture downtime related to information technology issues. Between late January and April 2020, across the IRS, total downtime hours were typically below 10,000 hours per week. However, between May and September 2020, total information

¹¹⁰ Telework-eligible employees are those employees who are authorized to apply for telework.

¹¹¹ We obtained weekly time reports from the IRS management information system, the Treasury Integrated Management Information System, and its time and attendance reporting system, the Single Entry Time Reporting system. The Treasury Integrated Management Information System is the official automated personnel and payroll system for storing and tracking all employee personnel and payroll data. The Single Entry Time Reporting system is an online payroll system that enables the timely input of time and attendance data to the National Finance Center for the generation of the employee's paycheck every pay period.

¹¹² The October 2019 through March 2020 period excludes the pay period including the Christmas and New Year Federal holidays (pay period 26-2019) because the number of employees reporting time to telework hours is skewed as a result of employees reporting time to holiday and annual leave categories.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

technology downtime increased significantly, ranging from 20,000 to 30,000 hours per week. The total information technology downtime consists of downtime charged by employees during system, computer, and information technology helpdesk downtime.¹¹³ During the pandemic, all three types of downtime increased as the IRS expanded the use of telework.

In our audit of the ***CARES Act economic impact payment processing***, we found that the tax systems involved in delivering the economic impact payments to individuals generally performed well. The CARES Act contains numerous tax-related provisions that include the issuance of recovery rebates of \$1,200 per eligible individual (\$2,400 in the case of eligible individuals filing a joint return) and \$500 for each qualifying child. The IRS began issuing economic impact payments on April 10, 2020, just 14 days after the passage of the CARES Act; at the same time, the IRS was closing its facilities in response to the COVID-19 pandemic. To support these efforts, the IRS completed extensive computer programming and testing that was necessary to begin issuing the economic impact payments. This included developing computer programming requirements to identify eligible individuals and computing their economic impact payment amounts as well as modifying the Individual Master File to capture information related to the issuance of the economic impact payment in each individual's tax account. In total, 16 IRS tax systems were involved in the processing and delivery of the economic impact payments to individual taxpayers.

Of these 16 IRS tax systems, only the Individual Master File experienced a performance problem due to a coding issue in the software developed to process the payments. The IRS fully restored the system within approximately 24 hours and the economic impact payments scheduled to be delivered during the outage were processed the following business day. By quickly restoring the Individual Master File functionality, the IRS was able to continue to timely issue the economic impact payments to individual taxpayers in accordance with the CARES Act.

In addition, the IRS educated taxpayers on the economic impact payments. In order to complete this task, the IRS established a dedicated web page on IRS.gov to provide updated information related to the issuance of economic impact payments, including a continually evolving list of frequently asked questions.

The GAO initiated an audit¹¹⁴ to ***determine selected agencies' initial experiences in providing the information technology needed to support remote access for maximum telework and the extent to which selected agencies followed Federal information security guidance for their information technology systems that provide remote access***. The GAO reported that it found the IRS had information technology in place to support remote access for telework during the COVID-19 pandemic. For example, the IRS used a virtual private network to enable employees to connect remotely to its resources. Although the IRS initially experienced information technology challenges in supporting remote access for maximum telework, it generally overcame them. While the increased number of remote connections brings additional

¹¹³ System downtime includes idle time when enterprise-wide systems/applications are down preventing the accomplishment of work. Computer downtime includes idle time when an employee's individual computer is unavailable due to computer-related issues preventing the accomplishment of work. Information technology helpdesk downtime includes idle time when an employee is waiting for information technology helpdesk assistance, including idle time while the IT organization is resolving the issue.

¹¹⁴ GAO, GAO-21-583, *COVID-19: Selected Agencies Overcame Technology Challenges to Support Telework but Need to Fully Assess Security Controls* (Sept. 30, 2021).

¹¹⁵ The IRS was selected for the Treasury Department.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

cybersecurity risks, the IRS reported that it continued activities intended to help ensure the security of the information and systems. In addition, the GAO reported that the IRS generally followed Federal information security guidance for its information technology that supports remote access for telework, including elements of a telework security policy.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to assess the adequacy and security of the IRS's information technology. This review is required by the IRS Restructuring and Reform Act of 1998. To accomplish our objective, we:

- Obtained information on the IRS's budget and staffing of employees and contractors to provide context on the size of the IT organization.
- Reviewed the Security and Information Technology Services business unit's Systems Security, Systems Development, and Systems Operations Directorates' audit reports issued during Fiscal Year 2021. We also analyzed and prepared summaries of the information technology security, systems development, and operations issues.
- Identified and summarized other relevant TIGTA and external oversight assessments dealing with information technology security, systems development, and operations.
- Assessed the security, systems development, and operations issues and determined which are at high risk for failing to deliver IRS program objectives and protect tax administration data.

Performance of This Review

The compilation of information for this report was performed at various TIGTA offices during the period of April through September 2021. The information presented was derived from TIGTA and GAO reports issued during Fiscal Year 2021 as well as IRS documents related to its information technology plans and issues. TIGTA audits and our analyses were conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Danny R. Verneuille, Assistant Inspector General for Audit (Security and Information Technology Services); Bryce Kisler, Director; Louis Lee, Audit Manager; Natalie Russell, Lead Auditor; and Paula Benjamin-Grant, Auditor.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. This report presents an overall assessment of the IRS's information technology program based on a compilation of the audit results reported during Fiscal Year 2021. Therefore, we did not evaluate internal controls as part of this review.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Appendix II

**List of Treasury Inspector General for Tax Administration
and Government Accountability Office Reports Reviewed**

No.	Report Number	Audit Report Title	Report Issuance Date
1	GAO-21-162	*Financial Audit: IRS's FY 2020 and FY 2019 Financial Statements	November 10, 2020
2	2021-20-003	Security Controls Over Electronic Crimes Labs Need Improvement	December 21, 2020
3	2021-26-006	Systems Processing Economic Impact Payments Performed Well and the Get My Payment Application Security Vulnerabilities Are Being Remediated	December 28, 2020
4	2021-30-010	Fiscal Year 2021 Biannual Independent Assessment of Private Collection Agency Performance	December 28, 2020
5	2021-45-017	Additional Security Processes Are Needed to Prevent Unauthorized Release of Tax Information Through the Income Verification Express Service Program	February 16, 2021
6	2021-IE-R002	Interim Report: The IRS Leveraged Its Telework Program to Continue Operations During the COVID-19 Pandemic	March 23, 2021
7	GAO-21-401R	Management Report: Internal Revenue Service Needs to Improve Financial Reporting and Information System Controls	May 4, 2021
8	2021-25-032	Streamlined Critical Pay Authority for Information Technology Positions Is Being Successfully Implemented	May 27, 2021
9	2021-25-025	Taxpayer First Act: Data Security in the Identity Theft Tax Refund Fraud Information Sharing and Analysis Center	May 28, 2021
10	2021-20-028	Opportunities Exist to Improve Hiring and Retaining Employees With Information Technology Expertise	June 2, 2021
11	2021-20-024	Improvements Are Needed to More [REDACTED] the Virtual Host Infrastructure Platform	June 3, 2021
12	2021-20-046	Select Post-Award Financial Management and Documentation Controls for Information Technology Service Contracts Need Improvement	August 9, 2021
13	2021-20-056	Laptop and Desktop Sanitization Practices Need Improvement	September 20, 2021
14	2021-20-065	The Endpoint Detection and Response Solution Has Been Deployed to Most Workstations and Is Operating As Intended, but Improvements Are Needed	September 27, 2021

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

No.	Report Number	Audit Report Title	Report Issuance Date
15	2021-20-066	The Data at Rest Encryption Program Has Made Progress With Identifying Encryption Solutions, but Project Management Needs Improvement	September 27, 2021
16	2021-20-063	██████████ Platform Management Needs Improvement	September 28, 2021
17	2021-20-072	Fiscal Year 2021 IRS Federal Information Security Modernization Act Evaluation	September 28, 2021
18	2021-25-058	Efforts to Implement Taxpayer First Act Section 2101 Have Been Mostly Successful	September 29, 2021
19	2021-20-059	Enterprise Case Management Deployed Its Initial Release, but Process Improvements Are Needed for Future Releases	September 30, 2021
20	GAO-21-583	Selected Agencies Overcame Technology Challenges to Support Telework but Need to Fully Assess Security Controls	September 30, 2021

* FY = Fiscal Year.

Appendix III

Glossary of Terms

Term	Definition
Active Directory	A Microsoft Corporation software system for administering and securing computer networks. It manages the identities and relationships of computing resources that comprise a network. It also enables administrators to assign enterprise-wide policies, deploys programs to many computers, and applies critical updates to an entire organization simultaneously from a central, organized, accessible database. It simplifies system administration and provides methods to strengthen and consistently secure computer systems.
Adjudication	The formal processes of judgment or ruling that render a final decision.
Agent (in the context of information technology)	A software routine that waits in the background and performs an action when a specified event occurs. For example, an encryption agent would transform information (referred to as plaintext) using an algorithm (called a cipher) to make it unreadable to anyone except those possessing special knowledge, usually referred to as a key.
Agile	Software development methodologies centered around the idea of iterative development, where requirements and solutions evolve through collaboration between self-organizing cross-functional teams.
Application Program Interface	A set of routines, protocols, and tools referred to as "building blocks" used in business application software development.
Artifact	The output of an activity performed in a process/procedure, which is created throughout the life cycle of a project.
Audit Log	A chronological record of system activities. Includes records of system accesses and operations performed in a given period.
Authentication	Verifying the identity of a user, process, or device, often as a prerequisite to allowing access to resources in an information system.
Authenticator	The means used to confirm the identity of a user, processor, or device, <i>e.g.</i> , user password or token.
Authorization	Access privileges granted to a user, program, or process, or the act of granting those privileges.
Authorizing Official	Official with the authority to formally assume responsibility for operating an information system at an acceptable level of risk to agency operations (including mission, functions, image, or reputation), agency assets, or individuals.
Backlog	An ever-evolving list of items relating to needed product functionality or actions, <i>e.g.</i> , bug fix, prioritized by the Product Owner, that conveys to an agile team what functionality is desired to be implemented first.
Base Award	The original written contract prior to any amendments or modifications.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Term	Definition
Baseline	A benchmark that includes project costs, schedule, and scope against which project performance is measured.
Blacklist	List of applications to which users should not have access.
Business Process	A set of structured activities or tasks that, once completed, will accomplish specific organization goals.
Business Process Heat Map	A tool designed to track and visualize the retirement status of systems, see the migration status of individual business processes, and facilitate decommissioning decision-making.
Business Unit	A title for major IRS organizations, such as the IRS Independent Office of Appeals, the Wage and Investment Division, the Office of Professional Responsibility, and the IT organization.
Call Site	Provides telephone assistance for individual and business taxpayers on tax-related issues.
Campus	The data processing arm of the IRS. The campuses process paper and electronic submissions, correct errors, and forward data to the Computing Centers for analysis and posting to taxpayer accounts.
Career Connector	The name of the Treasury-wide automated applicant management system. It posts electronic job lists and allows candidates to submit resumes via the Internet, <i>i.e.</i> , online.
Change Request	The method for requesting approval to change a baselined product or other controlled item.
Cipher	Any cryptographic system in which arbitrary symbols or groups of symbols represent units of plain text, or in which units of plain text are rearranged, or both.
Cloud	The use of computing resources, <i>e.g.</i> , hardware and software, which are delivered as a service over a network (typically the Internet).
Cold Site	A datacenter space without any server-related equipment installed. It provides power, cooling, and/or office space when an event occurs causing significant outage to the main datacenter. It requires extensive support from engineering and information technology personnel to get all necessary servers and equipment migrated and functional.
Computer Investigative Specialist	Supports special agents in collecting and analyzing digital evidence to prosecute criminal cases.
Computer Security Incident Response Center	Part of the IRS IT organization's Cybersecurity function. Its mission is to ensure that the IRS has a team of capable "first responders" who are organized, trained, and equipped to identify and eradicate cyberthreats or cyberattacks. One of its primary duties is to provide 24-hour monitoring and support for IRS operations seven days a week, 365 days a year.
Continuous Diagnostics and Mitigation	Provides tools, integration services, and dashboards to all participating agencies to improve their respective agency security postures to defend against cybersecurity threats and vulnerabilities.

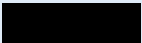

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Term	Definition
Contracting Officer Representative	The principal program representative assigned to Government procurements. The primary role of the contracting officer representative is to provide technical direction, monitor contract performance, and maintain an arm's length relationship with the contractor ensuring that the Government pays only for the services, materials, and travel authorized and delivered under the contract.
Credential	An object or data structure that authoritatively binds an identity – via an identifier or identifiers and (optionally) additional attributes – to at least one authenticator possessed and controlled by a subscriber.
Credentialed Scan	A scan in which the scanning computer has an account on the computer being scanned that allows a scanner to perform a more thorough check for problems that cannot be seen from the network.
Criminal Investigation	An IRS business unit that serves the American public by investigating potential criminal violations of the Internal Revenue Code and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law.
Cross-Site Scripting	A vulnerability that allows attackers to inject malicious code into an otherwise benign website. These scripts acquire the permissions of scripts generated by the target website and can therefore compromise the confidentiality and integrity of data transfers between the website and client.
Customer Account Data Engine 2	Establishes a single database that houses all individual taxpayer accounts, including Individual Master File data, which provides IRS employees the ability to view updated account information online.
Dashboard	A user interface or web page that gives a current summary of key information, usually in graphic, easy-to-read form, relating to progress and performance.
Database	A computer system with a means of storing information in such a way that information can be retrieved.
Decommission	To remove something, <i>e.g.</i> , system, server, from service.
Decommissioning Cost Funding Model	A tool used to determine the ability of the ECM program to "self-fund" or offset the cost of retiring legacy case management systems by comparing operations and maintenance savings realized as a result of past legacy case management system retirements.
Defense Information Systems Agency	An agency that oversees the information technology/technological aspect of organizing, delivering, and managing defense-related information.
Delivery Partners	Organizations or individuals assigned responsibility and accountability for management of an enterprise process.
Domain Group	Used to help control access to shared resources and to delegate specific domain-wide roles.
E-Services	A suite of web-based tools that allows tax professionals and taxpayers to complete certain transactions online with the IRS. These services are available 24 hours a day, seven days a week, via the Internet.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Term	Definition
Enterprise Computing Center	A data center that supports tax processing and information management through a data processing and telecommunications infrastructure.
Enterprise Life Cycle	A framework used by IRS information technology projects to ensure consistency and compliance with Government and industry best practices.
Enterprise Standards Profile	The authoritative repository for IRS-approved products and standards. It allows project owners and other stakeholders to select preapproved technology products and standards. Development teams should determine which standards and approved products apply to their areas of responsibility. Lists in the Enterprise Standards Profile include guidance for usage that should be reviewed for useful, relevant information.
Expedited Delivery Process	A new approach to accelerate process design, elaboration, and platform configuration for business processes that can deliver a prototype within 90 to 120 days.
Exploit	A general term for any method used by hackers to gain unauthorized access to computers, the act itself of a hacking attack, or a hole in a system's security that opens a system to an attack.
Federal Acquisition Regulation	The primary acquisition regulation for use by all Federal executive agencies in their acquisition of supplies and services with appropriated funds.
Federal Employee Viewpoint Survey	An Office of Personnel Management survey that measures employee perceptions of whether, and to what extent, conditions characterizing successful organizations are present in Federal agencies. Survey results provide valuable insight into the challenges organization leaders face in ensuring that the Federal Government has an effective civilian workforce and how well they are responding.
Federal Procurement Data System	Contains contracting data that provide the Federal Government with information to assess where its money is being spent.
Federal Supply Code	A code that corresponds to a material group code and provides a more detailed description of the expense for financial accounting purposes. It is also known as the product service code.
Federal Tax Information	Consists of Federal tax returns and return information (and information derived from it) that is in the agency's possession or control, which is covered by the confidentiality protections of the Internal Revenue Code and subject to the § 6103(p)(4) safeguarding requirements including IRS oversight.
Federation	A collection of realms (domains) that have established trust among themselves. The level of trust may vary, but typically includes authentication and may include authorization.
Filing Season	The period from January through mid-April when most individual income tax returns are filed.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Term	Definition
Firmware Component	The programs and data components of a cryptographic module that are stored in hardware within the cryptographic boundary and cannot be dynamically written or modified during execution.
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
Folders Management Module	A part of the Procurement for Public Sector application that stores contract file documents as the IRS's official system of record.
General Support System	An interconnected set of information resources under the same direct management control that shares common functionality. It normally includes hardware, software, information, data, applications, communications, and people.
High Value Asset	Refers to those assets, systems, facilities, data, and datasets that are of particular interest to potential adversaries. These assets, systems, and datasets may contain sensitive controls, instructions, or data used in critical Federal operations or house unique collections of data (by size or content), making them of particular interest to criminal, politically motivated, or State-sponsored actors for either direct exploitation of the data or to cause a loss of confidence in the Government.
	A  environment intended to meet strategic needs for partnership-driven, secure data analytics at scale. It creates an agile, efficient, and scalable platform for hosting projects, including the ISAC.
Homeland Security Presidential Directive-12 Credential	Directive which mandates a Federal standard to enhance security, increase Government efficiency, reduce identity fraud, and protect personal privacy by establishing a mandatory, Governmentwide standard for secure and reliable forms of identification issued by the Federal Government to its employees and contractors (including contractor employees).
Host	Any hardware device that has the capability of permitting access to a network via a user interface, specialized software, network address, protocol stack, or any other means. Some examples include, but are not limited to, computers, servers, personal electronic devices, and multifunctional devices.
Hot Fix	A single, cumulative package, which includes one or more files, that is used to address a problem in a product.
Hot Site	Mirrors a datacenter infrastructure. The backup site is populated with servers, cooling, power, and office space, if applicable. The most important feature offered from a "hot" site is that the production environment(s) are running concurrently with the main datacenter. This syncing allows for minimal impact and downtime to business operations. In the event of a significant outage event to the main datacenter, the hot site can take the place of the impacted site immediately.
Human Capital Office	Provides strategies and tools for recruiting, hiring, developing, and retaining a highly skilled and high-performing workforce.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Term	Definition
Identity Theft Tax Refund Fraud Information Sharing and Analysis Center Participant Area	An area in the ISAC to access FTI and reports, <i>etc.</i> Access to this area requires the completion of annual ISAC security and rules of behavior training.
Individual Master File	The IRS database that maintains transactions or records of individual tax accounts.
Information Leakage	The intentional or unintentional release of information to an untrusted environment.
Information System Contingency Plan	Management policy and procedures designed to maintain or restore business operations, including computer operations, possibly at an alternate location, in the event of emergencies, system failures, or disasters.
Information Technology	Any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by an agency. The term information technology includes computers, ancillary equipment, software, firmware, services (including support services), and related resources.
Information Technology Organization	The IRS business unit responsible for delivering information technology services and solutions that drive effective tax administration to ensure public confidence.
Infrastructure	The hardware, software, and network resources and services required for the existence, operation, and management of an enterprise information technology environment. It allows an organization to deliver information technology solutions and services to its employees, partners, and customers.
Injection	An attack in which the goal is execution of arbitrary commands on the host operating system via a vulnerable application.
Input Validation	The proper testing of any input supplied by a user or application to prevent improperly formed data from entering an information system.
Integrated Data Retrieval System	IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
Integrated Financial System	Contains the IRS's core financial systems, including expenditure controls, accounts payable, accounts receivable, general ledger, and budget formulation. The system includes a managerial cost accounting capability that enables the IRS to make informed and timely performance-based business and budgetary decisions.
Integrated Master Schedule	Contains a high-level overview of project schedules along with additional program tasks, including high-level start/end dates, project/application milestones, cross-project dependencies, and program milestones.
Internal Revenue Manual	The IRS's primary source of instructions to its employees related to the administration and operation of the IRS. The manual contains the directions employees need to carry out their operational responsibilities.



Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Term	Definition
Kernel	Hardware, firmware, and software elements of a trusted computing base implementing the reference monitor concept.
Key Management Solution	A solution used to manage encryption keys of various activities, including key generation, exchange, distribution, rotation, replacement, storage, access, backup, and destruction. Encryption cannot be deployed without an associated working key management solution, also referred to as a key management system.
Knowledge Incident/Problem Service Asset Management System	An application that maintains the complete IRS inventory of information technology and non-information technology assets, computer hardware, and software. It is also the reporting tool for problem management with all IRS-developed applications.
Landing Page	The section of a website accessed by clicking a hyperlink on another web page, typically the website's home page.
Legacy System	An information system that may be based on outdated technologies but is critical to day-to-day operations. In the context of computing, it refers to outdated computer systems, programming languages, or application software that are used instead of more modern alternatives.
Limited Area	An area in a building where access is limited to authorized personnel only. All who access a Limited Area must have a verified official business need to enter. Limited Area space can be identified by the Chief, Facilities Management and Security Services, Physical Security Section, based on critical assets.
Material Group Code	A code that describes the expense category of a contract for financial accounting purposes.
Mechanism	Logical assembly of components, elements, or parts, and the associated energy and information flows, that enable a machine, process, or system to achieve its intended result.
Middleware	A software that functions at an intermediate layer between applications and the operating system and database management system or between the client and server.
Milestone	A management decision point placed at a natural breakpoint in the life cycle, at the end of the phase, where management determines whether a project can proceed to the next phase.
Mission-Critical Skill	Competencies essential to the operation of an organization.
	A private, independent, not-for-profit organization, chartered to work in the public's interest. has set up the ISACs for the health industry (which, like the IRS, has laws requiring protection of sensitive data) and for the airline industry and has prior technological expertise in building ISACs.


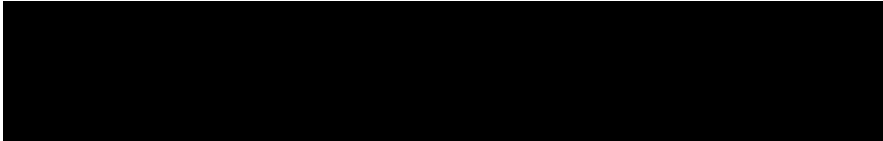
Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Term	Definition
Modification	Any formal change to the terms and conditions of a contract, delivery order, or task order, either within or outside the scope of the original agreement.
National Institute of Standards and Technology	A part of the Department of Commerce that is responsible for developing standards and guidelines to provide adequate information security for all Federal agency operations and assets.
Network	Information system(s) implemented with a collection of interconnected components. Such components may include routers, hubs, cabling, telecommunications controllers, key distribution centers, and technical control devices.
Online 5081	A web-based application that allows users to request access, modify existing accounts, reset passwords, and request deletion of accounts when access is no longer needed to specific systems. The application also allows the IRS to track user access history, generate reports, and document an audit trail of user actions.
Operating System	The software that serves as the user interface and communicates with computer hardware to allocate memory, process tasks, and access disks and peripherals.
Patch	Updates to an operating system, application, or other software issued specifically to correct particular problems with the software.
Personally Identifiable Information	Information that can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, and biometric records, alone or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date of birth, place of birth, and mother's maiden name.
Plan of Action and Milestones	A document that identifies tasks needing to be accomplished. It details resources required to accomplish the elements of the plan, any milestones in meeting the tasks, and scheduled completion dates for the milestones.
Platform	A computer or hardware device, an associated operating system, or a virtual environment on which software can be installed or run.
Portfolio	The combination of all information technology assets, resources, and investments owned or planned by an organization in order to achieve its strategic goals, objectives, and mission.
PowerShell™	A task-based, command-line shell and scripting language built on the .NET that helps system administrators and power users rapidly automate tasks that manage operating systems and processes.
Private Debt Collection Program	A program implemented by the IRS to use private collection agencies to collect taxes on cases involving inactive tax receivables.
Privileged	Accounts with set "access rights" for certain users on a given system. Sometimes referred to as system or network administrative accounts.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Term	Definition
Processing Year	The calendar year in which the tax return or document is processed by the IRS.
Procurement for Public Sector Application	An application used by the IRS to request, fund, and award contracts; execute delivery orders; and verify receipt and acceptance of products and services as well as accrue procurement-related liabilities and process payments.
Production	The location where the real-time staging of programs that run an organization are executed; this includes the personnel, processes, data, hardware, and software needed to perform day-to-day operations.
Program Increment	A length of time, usually eight to 12 weeks comprised of multiple iterations, during which incremental value of working, tested software and systems is delivered.
Public Key Infrastructure	A set of policies, processes, server platforms, software, and workstations used for the purpose of administering certificates and public-private key pairs, including the ability to issue, maintain, and revoke public key certificates.
Release	A specific edition of software that is deployed into production.
Requirement	Describes a condition or capability to which a system must conform, either derived directly from user needs, or stated in a contract, standard, specification, or other formally imposed document. A desired feature, property, or behavior of a system.
Risk Assessment	The process of identifying risks to organizational operations (including mission, functions, image, and reputation), organizational assets, individuals, other organizations, and the Nation resulting from the operation of an information system. Incorporates threat and vulnerability analyses, and considers mitigations provided by security controls planned or in place.
Risk-Based Decision	A decision made when meeting a requirement is technically or operationally not possible or is not cost-effective. It is required for any situation in which the system will be operating outside of IRS information technology security policy or NIST guidelines, whether related to a technical, operational, or management control.
Scaled Agile Framework	A framework for scaling agile development principles across an enterprise, which provides guidance for all the levels of the enterprise engaged in solution development, created and owned by Scaled Agile, Inc.
Section 508	A part of the Rehabilitation Act of 1973, requiring Federal agencies to make their electronic and information technology accessible to people with disabilities.
Sector	The smallest physical storage unit on a hard disk, which is 512 bytes in size.
	
Security Assertion Markup Language	An open standard that simplifies the login experience for users. It allows users to access multiple applications with one set of credentials, usually entered just once.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Term	Definition
Security Assessment Report	Provides a disciplined and structured approach for documenting the findings of the assessor and the recommendations for correcting any identified vulnerabilities in the security controls.
Sensitive But Unclassified	Any information that requires protection due to the risk and magnitude of loss or harm to the IRS or the privacy to which individuals are entitled under the Privacy Act, ¹ which could result from inadvertent or deliberate disclosure, alteration, or destruction.
Sequencing	A process of evaluating scalability, business affect, capabilities, and processes to determine the order for migrating systems.
Service Pack	A software program that corrects known bugs or problems or that adds new features. Typically released when the number of individual patches to the application becomes too large. It is easier to install than groups of patches.
Software Patch	An update to an operating system, application, or other software issued specifically to correct particular problems with the software.
	
Subscriber	A party who has received a credential or authenticator from a credential service provider. If the applicant is successfully proofed, the individual is then termed a subscriber of that credential service provider.
System	A set of interdependent components that perform a specific function and are operational. It may also include software, hardware, and processes.
System Security Plan	A formal document that provides an overview of the security requirements for an information system and describes the security controls in place or planned for meeting those requirements.
Tabletop Exercise	The incidence response tabletop exercise brings members of the incidence response team together to simulate their response to a security and privacy incident scenario(s). It is a cost-effective and efficient way to identify gaps, overlaps, and discrepancies in the incidence response handling capabilities.
Tax Processing Center	The arm of the IRS that processes paper-filed tax returns.
Tax Transcript	Provides financial tax account information, such as payments, penalty assessments, and adjustments made by the taxpayer or the IRS.
Tax Year	The 12-month period for which tax is calculated. For most individual taxpayers, the tax year is synonymous with the calendar year.
Tax-Exempt and Government Entities Division	The IRS established the business unit to improve its ability to meet the special needs of pension plans, exempt organizations, and government entities in complying with the tax laws.


¹ 5 U.S.C. § 552a.

Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021

Term	Definition
Taxpayer Advocate Service	An independent organization within the IRS, led by the National Taxpayer Advocate.
[REDACTED]	[REDACTED]
Transcript Delivery System	Allows external third parties to view and obtain tax transcripts for both individuals and businesses.
[REDACTED]	[REDACTED]
Trojan Horse	A malicious program that pretends to be harmless in order to trick people into downloading it.
Unpaid Assessments	A database that consists of all tax modules that show a debit balance on the Individual Master File, Business Master File, and Automated Non-Master File.
Virtual Private Network	A secure way of connecting to a private local area network at a remote location, using the Internet or any unsecure public network to transport the network data packets privately, using encryption.
Virus	A piece of programming code usually disguised as something else that causes some unexpected and, for the victim, usually undesirable event and is often designed so it is automatically spread to other computers.
Vulnerability Scanning	The process of proactively identifying vulnerabilities of an information system in order to determine if and where a system can be exploited or threatened. Employs software that seeks out security flaws based on a database of known flaws, tests systems for the occurrence of these flaws, and generates a report of the findings that an individual or an enterprise can use to tighten the network's security.
Wage and Investment Division	The IRS business unit that serves taxpayers whose only income is derived from wages and investments.
Warm Site	A datacenter space having some pre-installed server hardware. The difference between a "hot" and a "warm" site is that the "hot" site provides a mirror of the production datacenter and its environment(s), while a "warm" site contains only servers ready for the installation of the production environment(s). A warm site makes sense for an aspect of the business which is not critical, but requires a level of redundancy.
Waterfall	Distinguished by development of a solution with frequent reviews and formal approvals required at multiple points in the life cycle prior to additional work being performed.
Worm	A type of malicious software program whose primary function is to infect other computers while remaining active on infected systems.

Appendix IV

Abbreviations

CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CIO	Chief Information Officer
CIS	Computer Investigative Specialist
COVID-19	Coronavirus Disease 2019
DARE	Data at Rest Encryption
ECM	Enterprise Case Management
EDR	Endpoint Detection and Response
FISMA	Federal Information Security Modernization Act of 2014
FTI	Federal Tax Information
GAO	Government Accountability Office
IRS	Internal Revenue Service
ISAC	Identity Theft Tax Refund Fraud Information Sharing and Analysis Center
IT	Information Technology
IVES	Income Verification Express Service
MSS	Memphis Sanitization Site
NIST	National Institute of Standards and Technology
	
TFA	Taxpayer First Act of 2019
TIGTA	Treasury Inspector General for Tax Administration
TTP	Trusted Third Party
UNS	User and Network Services



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Washington, D.C. 20044-0589

Information you provide is confidential, and you may remain anonymous.

EXHIBIT K

114TH CONGRESS }
1st Session

SENATE

{ REPORT
114-119

THE INTERNAL REVENUE SERVICE'S PROCESSING OF
501(c)(3) AND 501(c)(4) APPLICATIONS FOR TAX-
EXEMPT STATUS SUBMITTED BY "POLITICAL ADVOCACY"
ORGANIZATIONS FROM 2010-2013

COMMITTEE ON FINANCE
UNITED STATES SENATE

BIPARTISAN INVESTIGATIVE REPORT AS
SUBMITTED BY CHAIRMAN HATCH AND
RANKING MEMBER WYDEN

PART 1 OF 4



AUGUST 5, 2015.—Ordered to be printed

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FOREWORD

Since the inception of our Nation, the United States Committee on Finance (Committee) has conducted vigilant oversight of the Executive Branch agencies and departments under its jurisdiction. Given the significance of tax policy and its administration, the Committee has historically focused a large portion of its time and resources overseeing the activities of the Internal Revenue Service (IRS), the Executive Branch agency charged with tax matters. Two years and two months ago, the Committee became aware of allegations regarding the potential targeting by the IRS of certain tax-exempt organizations, based on the names and political views of those organizations. Serious allegations such as these strike at the very heart of the principal that the Nation's tax laws are to be administered fairly and without regard to politics of any kind. Accordingly, these allegations warranted swift Committee response in the form of an investigation—an activity the Committee is uniquely positioned to carry out as a result of its oversight authorities and responsibilities with respect to the IRS.

Despite the partisan political nature of these allegations, the Committee proceeded in true bipartisan spirit and initiated a joint investigation on May 21, 2013, under the direction of former Chairman Baucus and then-Ranking Member Hatch. When Senator Wyden assumed the Chairmanship of the Committee in February 2014, he agreed to continue the bipartisan work begun by Chairman Baucus. This bipartisan cooperation has continued unabated since I became Chairman in January 2015. Accordingly, despite several changes in the chairmanship, the Committee has continued its tradition of a bipartisan investigative effort.

While much has been reported about the alleged political targeting over the last two years, it is important to stress that this Committee has conducted the only bipartisan investigation into the matter. Consequently, this report will perhaps serve as the definitive account of events transpiring at the IRS and the management failures and other causes that were at the root of the IRS's actions. Hopefully, this report will provide a roadmap for how Congress and the public can act to make sure this type of conduct does not happen again.

We want to acknowledge the hard work and countless hours of time spent by Committee staff who conducted over 30 exhaustive interviews, reviewed more than 1.5 million pages of documentation, drafted numerous versions of this report, and performed countless other tasks necessary to bring this investigation to closure. The Committee staff whose diligence and devotion to duty made this investigation and report possible include the following: John Angell,

(III)

IV

Kimberly Brandt, John Carlo, Justin Coon, Michael Evans, Daniel Goshorn, Christopher Law, Jim Lyons, Todd Metcalf, Harrison Moore, Mark Prater and Tiffany Smith.

ORRIN G. HATCH.
RON WYDEN.

CONTENTS

	Page
Bipartisan Investigative Report as Submitted by Chairman Hatch And Ranking Member Wyden	1
Additional Views of Senator Hatch Prepared by Republican Staff	127
Additional Views of Senator Wyden Prepared by Democratic Staff	241
Timeline of Significant Events	284
Appendices	375

114TH CONGRESS } <i>1st Session</i>	SENATE	{ REPORT 114–119
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THE INTERNAL REVENUE SERVICE'S PROCESSING OF
501(c)(3) AND 501(c)(4) APPLICATIONS FOR TAX-EXEMPT
STATUS SUBMITTED BY "POLITICAL ADVOCACY" ORGA-
NIZATIONS FROM 2010–2013

AUGUST 5, 2015.—Ordered to be printed

Mr. HATCH, from the Committee on Finance,
submitted the following

R E P O R T

BIPARTISAN INVESTIGATIVE REPORT AS SUBMITTED BY CHAIRMAN
HATCH AND RANKING MEMBER WYDEN

CONTENTS

	Page
I. EXECUTIVE SUMMARY AND RECOMMENDATIONS	5
II. BACKGROUND ON BIPARTISAN INVESTIGATION BY THE SEN- ATE FINANCE COMMITTEE	11
A. Scope of the Investigation and This Report	11
B. The Committee's Access to Taxpayer Information Protected by Section 6103 of the Internal Revenue Code, and Use of Tax- payer Information in This Report	12
C. Limitation on the Committee's Access to Relevant Information ...	14
1. Summary of Information That Forms a Basis for this Re- port	15
2. The IRS Loss of Data, Failure to Notify Congress in a Timely Manner, and Results of TIGTA Investigation	15
3. Actions Taken by Committee Investigators to Mitigate the Information Gap	28
D. Legal Background of 501(c)(3) and 501(c)(4) Organizations	29
E. Structure of The IRS Exempt Organizations Division and Gen- eral IRS Procedures for Reviewing Applications for Tax-Ex- empt Status	30
III. FINDINGS OF THE SENATE FINANCE COMMITTEE AND SUM- MARY OF SUPPORTING FACTS	34
A. IRS Management Lacked an Appreciation for the Sensitivity and Volatility of Political Advocacy Applications	34

B. IRS Management Allowed Employees to Use Inappropriate Screening Criteria That Focused on Applicants' Names and Policy Positions	37
C. IRS Management Failed to Develop an Effective Plan for Processing Applications for Political Advocacy Groups	39
1. IRS Management Placed Exclusive Reliance on Test Cases for Too Long	39
2. Lois Lerner's July 2011 Solution to Resolve the Political Advocacy Applications was Flawed and Ineffective	40
3. The 2011 Triage of Political Advocacy Applications Was Not Properly Supported by EO Management and Predictably Failed	41
4. Lack of EO Management Oversight of the Political Advocacy Applications Allowed Development of the Guidesheet to Simply Stop in November 2011	42
5. EO Management Allowed the Advocacy Team to Process Political Advocacy Applications Without Proper Training and Support, and Failed to Adequately Manage Its Activities	43
6. Although the "Bucketing" Exercise of 2012 Resolved Many Pending Political Advocacy Applications, the IRS Has Not Yet Issued Determinations for Some Applications	44
D. The IRS Placement of Left-Leaning Applicants on the BOLO List Resulted in Heightened Scrutiny, Delay and Inappropriate and Burdensome Information Requests	44
1. The IRS Instructed Employees to Flag "Progressive," "Emerge," and ACORN Successor Applications at Training Workshops	45
2. The IRS Placed the Terms "Progressive," "ACORN," and "Occupy" on the BOLO List	45
3. IRS Scrutiny of Left-Wing Applicants Resulted in Years-Long Delays and Burdensome Information Requests	45
E. The Culture in EO Contributed to a Lack of Efficiency in its Operations	45
1. EO Management Lacked a Sense of Customer Service	46
2. Remote Management and Workplace Flexibilities Affected the Efficiency of EO Determinations	48
3. Antagonism Existed Between EO Senior Executive Level Management and EO Determinations Managers and EO Line Employees	51
4. The IRS Failed to Ensure That All EO Employees Received Technical Training	52
F. Lois Lerner Oversaw the Handling of Tea Party Applications and Provided Limited Information to Upper-Level Management	53
1. Lois Lerner Was Informed About the Tea Party Applications in April 2010 and Received Updates About Them	53
2. Lois Lerner Failed to Inform IRS Upper Management About the Tea Party Applications	55
3. Lerner Did Not Consult With IRS Chief Counsel William Wilkins About the Tea Party Applications	57
G. Even During the Committee's Investigation, Some IRS Employees Continued to Screen Tea Party Applications Based on the Organization's Names	58

H. For a Three-Year Period, the IRS Did Not Perform Any Audits of Tax-Exempt Organizations That Were Alleged to Have Engaged in Improper Political Campaign Intervention	59
IV. FOLLOWING THE CITIZENS UNITED CASE, THE IRS FACED EXTERNAL PRESSURE TO MONITOR AND CURTAIL POLITICAL SPENDING OF TAX-EXEMPT ORGANIZATIONS	60
A. Employees Throughout the IRS Exempt Organizations Division Were Aware of the Citizens United Decision	60
B. There was Extensive Press Coverage of Political Spending by Tax-Exempt Organizations Following Citizens United	62
C. Many Members of Congress Expressed Their Interest in Political Spending by Tax-Exempt Organizations	63
D. Practitioners and Interest Groups Requested IRS Action on Political Spending by Tax-Exempt Organizations	64
E. In Response to External Scrutiny and Increased Political Spending by Tax-Exempt Organizations, the IRS Tracked Political Spending and Proposed Regulatory Changes	65
V. THE IRS IMPLEMENTED A SPECIAL PROCESS FOR HANDLING CERTAIN TYPES OF APPLICATIONS	67
A. The Touch and Go (TAG) Spreadsheet Was Developed to Assist EO Determination Agents	67
B. The TAG Spreadsheet Evolved Into the Joint TAG/Emerging Issues Spreadsheet	69
C. EO Determinations Agents Were Trained in the Use of the New Spreadsheet at a June/July 2010 CPE Training	70
D. The New Spreadsheet Was Renamed the “BOLO” Spreadsheet ..	71
E. EO Determinations Developed a Process to Update the BOLO Spreadsheet	72
VI. APPLICATIONS SUBMITTED BY TEA PARTY ORGANIZATIONS WERE SYSTEMATICALLY IDENTIFIED, CENTRALIZED AND SUBJECTED TO HEIGHTENED SCRUTINY BY THE IRS	73
A. After the IRS Received and Approved the First Few “Tea Party” Applications, it Prepared Sensitive Case Reports and Added an Entry to the BOLO Spreadsheet	73
1. Tea Party Applications Began to Draw Attention in EO Determinations	73
2. EO Technical Had Early Awareness of the Tea Party Applications	74
3. EO Technical Assumed Responsibility for Working Two Tea Party Applications as “Test Cases”	74
4. EO Technical Prepared the First SCR for the Tea Party Applications	74
5. Placing the Tea Party Applications on the SCRs Caused Delays in Their Processing	75
6. Identification of the Tea Party Applications as an Emerging Issue on the BOLO Spreadsheet Resulted in Centralization and Full Development of those Applications	76
B. EO Determinations Periodically Updated the Emerging Issues Tab of the BOLO Spreadsheet	77
1. Until July 2011, the Emerging Issues Tab of the BOLO Spreadsheet Specifically Referenced the Tea Party Movement	77
2. In July 2011, Lois Lerner Directed that the References to “Tea Party” be Removed From the Emerging Issues Tab of the BOLO Spreadsheet	78

3. Cindy Thomas Removed References to the “Tea Party” From the Emerging Issues Tab of the BOLO Spreadsheet	79
4. After July 11, 2011, Cindy Thomas and John Shafer Made No Changes to the Screening Criteria Used by Screeners to Identify Applications Received from Tea Party Groups ...	79
5. Steve Bowling and Cindy Thomas Changed the BOLO Spreadsheet in January 2012	82
6. Holly Paz and Lois Lerner Were Informed That EO Determinations Revised the July 2011 Emerging Issues Tab	83
7. After Steve Miller Became Aware of the BOLO Criteria, Holly Paz Revised the Process for Making Changes to the BOLO Spreadsheet and a New BOLO Spreadsheet Was Issued	84
VII. THE PROCESSES USED BY THE IRS TO WORK THE TEA PARTY APPLICATIONS WERE INEFFICIENT, CUMBERSOME, INVOLVED MULTIPLE LEVELS OF REVIEW, AND WERE PLAGUED BY DELAY	85
A. The Initial Process Used to Review the Tea Party Applications in 2010 Was Laborious and Time Consuming	85
B. Because of Miscommunications Between EO Determinations Management and Staff, No Tea Party Applications Were Processed by EO Determinations for More than One Year (October 2010 to November 2011)	87
C. Preparation and Review of EO Technical’s “Test Cases” from 2010 to 2012 Added Substantial Delay to the Processing of the Tea Party Applications	89
D. The Initiative to Develop a Guidesheet for EO Determinations Was a Failure That Further Contributed to Processing Delays in 2011 and 2012	92
E. The Initial “Triage” of Tea Party and Other Political Advocacy Cases in 2011 Represented Yet Another Unsuccessful Attempt by EO Technical to Assist EO Determinations	95
F. The Advocacy Team Failed to Approve or Deny any Applications Received From Tea Party or Other Political Advocacy Organizations From its Formation in December 2011 to June 2012	98
G. The Multi-Step Review Procedure Established by EO Technical in 2012 for Political Advocacy Applications Reflected a Lack of Concern by IRS Management for the Need to Process the Applications Expeditiously	101
H. The May 2012 “Bucketing” Initiative Resulted in EO Determinations Issuing the First Approvals of Tea Party and Other Political Advocacy Applications After Nearly Two and a Half Years	103
VIII. THE IRS SELECTED LEFT-LEANING APPLICANTS FOR REVIEW AND SUBJECTED THEM TO HEIGHTENED SCRUTINY AND DELAYS	106
A. EO Determinations Flagged Left-leaning Applicants with the Names “Progressive,” “ACORN,” and “Occupy”	106
1. PowerPoint Presentation Directs Employees to Flag “Progressive” and “Emerge” Applicants	106
2. BOLO Spreadsheets Include the Phrase “Progressive”	107
3. IRS Determinations Manager Instructed Employees to Be Alert for “Emerge” Groups	107
4. Employees Were Instructed to Give “Special Handling” to Groups Related to ACORN	107

5. Groups Using “Occupy” in Their Name Were Flagged Using the BOLO Watch List Tab	109
B. Liberal and Progressive Organizations Experienced Delayed Processing	110
C. Organizations Deemed to be ACORN Successors Experienced Delays	111
D. Inappropriate and Burdensome Information Requests	112
IX. ADDITIONAL FINDINGS NOT RELATED TO THE DETERMINATIONS PROCESS	113
A. The IRS Struggled to Decide How to Review Allegations of Improper Political Campaign Intervention by Tax-Exempt Organizations, Including Tea Party Groups	113
1. General Processes for Audits of Tax-Exempt Organizations ..	113
2. The Changing Process for Handling Allegations of Improper Political Campaign Intervention	115
3. EO Determinations Employees Recommended that the ROO Review the Activities of Some Tea Party Organizations, and a Smaller Number of Progressive Organizations, for Improper Political Campaign Intervention	116
B. The IRS Failed to Produce Responsive Documents to a FOIA Request in 2010 Seeking Information About its Handling of Tea Party Applications	118
C. TIGTA Reviewed Several Allegations of Improper Disclosures of Taxpayer Information by the White House and IRS	121
1. Koch Industries, Inc.	121
2. National Organization for Marriage	122
3. Disclosure of Tax-Exempt Applications to ProPublica	124
4. Republican Governors Public Policy Committee	125
X. CONCLUSION	125

I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

This bipartisan investigation of the Senate Finance Committee examined the Internal Revenue Service’s (IRS) handling of applications for tax-exempt status submitted by political advocacy organizations, following allegations that the IRS discriminated against some of these organizations based on their political views.

Our investigation found that from 2010 to 2013, IRS management was delinquent in its responsibility to provide effective control, guidance, and direction over the processing of applications for tax-exempt status filed by Tea Party and other political advocacy organizations. IRS managers either failed in their responsibility to keep informed about the very existence of the applications, or failed to recognize the sensitivity of these applications. In the case of the former, IRS managers forfeited the opportunity to shape the IRS’s response to the influx of political advocacy applications by simply failing to read reports informing them of the existence of those applications. In the case of the latter, IRS managers did not take appropriate steps to ensure that the applications were processed expeditiously and accurately.

Our investigation focused particularly on the Exempt Organizations (EO) Division of the IRS, which is responsible for administering the tax code provisions related to tax-exempt organizations, including processing and deciding applications submitted by organizations seeking tax-exempt status. Lois Lerner served as the Director of the EO Division from January 2006 to May 2013.

Lerner first became aware that the IRS received applications from Tea Party groups in April or May 2010. For the next two years, Lerner failed to adequately manage the EO employees who processed these applications. Moreover, Lerner failed to inform upper-level IRS management of the serious delays in processing applications for tax-exempt status from Tea Party and other politically sensitive groups. Consequently, it was a year before the IRS Office of Chief Counsel became involved, and nearly two years before Lerner's superiors in the IRS management chain were aware of the gross mismanagement of Tea Party and other sensitive advocacy applications.

While under the leadership of Lois Lerner, the EO Division undertook a number of initiatives aimed at finding a way to process the Tea Party and other political advocacy applications. Each of these initiatives was flawed in design and/or mismanaged. In one example, EO management sanctioned the use of the Be On the Lookout (BOLO) list, which improperly identified the Tea Party and other organizations by name and policy position. The IRS used the BOLO list to subject applications received from Tea Party groups to heightened scrutiny, even when that scrutiny was unwarranted because the applications gave no indication that the organizations would engage in political campaign intervention. Other initiatives to process political advocacy applications sanctioned by EO management were under-planned, under-staffed and under-executed. In each case, these poorly formed initiatives ended in predictable failure and each failure resulted in applicant organizations enduring inexcusably long delays in receiving decisions on their applications. Those delays often proved to be harmful or fatal to the organizations by undermining the very purposes for which they were formed.

The workplace "culture" prevalent in the EO Division was one in which little emphasis was placed on providing good customer service, a fact inconsistent with the IRS's promise to provide "top quality service." Indeed, the EO Division operated without sufficient regard for the consequences of its actions for the applicant organizations. Not only did those organizations have to withstand delays measured in years, but many also were forced to bear a withering barrage of burdensome and inappropriate "development letters" aimed at extracting information the IRS wrongly concluded was necessary to properly process the applications.

Factors further contributing to the dysfunctional "culture" of the EO Division included the office structure of the Determinations Unit that placed managers in offices located in geographic locales far from the employees they supervised, and employees and managers who frequently teleworked, in some cases up to four days a week. The confluence of remote management and a dispersed workforce undoubtedly impaired coordination and communication within the Determinations Unit. Moreover, acrimony typified the relationship between various organizations within the EO Division and served to further embitter the workplace "culture."

In the wake of the *Citizens United* decision in 2010, the IRS received an increasing number of allegations that tax-exempt organizations were engaged in political campaign intervention inconsistent with their exempt status. Recognizing the importance of having a process to evaluate these allegations, IRS management,

including the Commissioner and Acting Commissioner, focused their efforts on devising a workable process that would allow the IRS to evaluate and investigate these allegations. Management's efforts proved fruitless, and as a consequence, the IRS performed no examinations of 501(c)(4) organizations related to political campaign intervention from 2010 until 2014.

The Committee's investigation included a review of more than 1,500,000 pages of documents and interviews of 32 current and former IRS and Treasury employees. Issuance of this report was delayed for more than a year when the IRS belatedly informed the Committee that it had not been able to recover a large number of potentially responsive documents that were lost when Lois Lerner's hard drive crashed in 2011.

At the Committee's request, the Treasury Inspector General for Tax Administration (TIGTA) investigated the circumstances behind the loss of data and other related issues, and was ultimately able to recover 1,330 emails that had not been produced to Congress. TIGTA's findings are described below in Section II(C). Overall, the IRS's less than complete response to these circumstances cast doubt about the thoroughness of their efforts to recover all relevant records related to the investigation, as well as their candor to this and other Congressional committees.

Although it was not possible to completely produce the records that were lost, the Committee exhausted all available measures to mitigate the amount of missing information by collecting additional information from the IRS, other executive agencies, and outside sources. This report accurately summarizes the facts known to the Committee, and we believe that our conclusions are supported by the record.

Committee staff have agreed on numerous bipartisan investigative findings. Some of these findings are highlighted below, along with corresponding recommendations to address the underlying problem. Greater discussion of these and other findings related to the determination process are contained in Section III, and ancillary findings are in Section IX.¹

Finding #1: The IRS's handling of applications from advocacy organizations may affect public confidence in the IRS. To avoid any concerns that may exist that IRS decisions about particular taxpayers are influenced by politics, the following recommendations are made.

Related Recommendation #1: Publish in the instructions to all relevant application forms objective criteria that may trigger additional review of applications for tax-exempt status and the procedures IRS specialists use to process applications involving political campaign activity. Prohibit the IRS from requesting individual donor identities at the application stage, although generalized donor questions should continue to be allowed, as well as requests for representations that, e.g., there will be no private inurement.

¹In addition to the recommendations enumerated below, Committee staff also considered whether the IRS should improve its employee training program and whether it should modify the expedited review process. We have omitted these recommendations because they were included in TIGTA's recent report, Status of Actions Taken to Improve the Processing of Tax-Exempt Applications Involving Political Campaign Intervention, TIGTA Audit Report 2015-10-025 (Mar. 27, 2015) at 2. We encourage the IRS to follow the recommendations outlined in TIGTA's report.

Related Recommendation #2: Revise the Hatch Act to designate all IRS, Treasury and Chief Counsel employees who handle exempt organization matters as “further restricted.” “Further restricted” employees are held to stricter rules than most government employees and are precluded from active participation in political management or partisan campaigns, even while off-duty. By designating those employees as “further restricted,” the public can be assured that any impermissible political activity by an IRS employee that is detected will result in serious penalties, including removal from federal employment.

Related Recommendation #3: Create a position within the Taxpayer Advocate Service dedicated solely to assisting organizations applying for non-profit tax-exempt status.

Finding #2: The IRS systematically screened incoming applications for tax-exempt status from more than 500 organizations and implemented procedures that resulted in lengthy delays. Until early 2012, certain top-level management was unaware that these applications were being processed in this manner. (See Section III(A).)

Related Recommendation #1: The Exempt Organizations division should track the age and cycle time of all of its cases, including those referred to EO Technical, so that it can detect backlogs early in the process and conduct periodic reviews of over-aged cases to identify the cause of the delays. A list of over-aged cases should be sent to the Commissioner of the Internal Revenue Service quarterly.

Related Recommendation #2: The Exempt Organizations division should track requests for guidance or assistance from the EO Technical Unit so that management can assess the timeliness and quality of the guidance and assistance it provides to both Determinations Unit employees and the public.

Related Recommendation #3: The Exempt Organizations division should track requests for guidance or assistance from the Office of Chief Counsel so that management can assess the timeliness and quality of the guidance and assistance it provides to both the Determinations Unit employees and the public. Any requests for guidance or assistance from the Office of Chief Counsel that have not been responded to on a timely basis should be promptly reported to the Commissioner of the Internal Revenue Service.

Finding #3: The IRS took as long as five years to come to a decision on applications for tax-exempts status submitted by Tea Party and other applicants potentially involved in political advocacy. The IRS lacked an adequate sense of customer service and displayed very little concern for resolving these cases. (See Section III(E)(1).)

Related Recommendation #1: The Internal Revenue Manual contains standards for timely processing of cases. Enforce these existing standards and discipline employees who fail to follow them. Managers should also be held accountable if their subordinates fail to follow these standards.

Related Recommendation #2: For all types of tax-exempt applicants, IRS guidelines should direct employees to come to a decision on whether or not it will approve an application for

tax-exempt status within 270 days of when an application is filed.

Finding #4: Important issues were not elevated within the IRS. Some Sensitive Case Reports containing information about Tea Party applications were sent to top IRS managers in 2010, but the managers did not read them. (See Section III(A).)

Related Recommendation: Revise the Sensitive Case Report process or develop a more effective way to elevate important issues within the organization other than the Sensitive Case Reports system. Require the senior recipient of each Sensitive Case Report within the Division (a member of the Senior Executive Service) to memorialize specific actions taken in relation to each issue raised in the report, and require such report to be forwarded to the IRS Commissioner for review.

Finding #5: A contributing factor to the IRS's management problems was the decentralization of its employees, including some who worked from home as often as 4 days per week, and managers who remotely supervised employees 2,000 miles away. (See Section III(E)(2).)

Related Recommendation: Evaluate whether current organizational structures and workplace locations are inhibiting performance. Make appropriate adjustments to improve communication between employees and their managers.

Finding #6: Some managers within the EO Division were not trained in the substantive tax areas that they managed, including one who did not complete any technical training during the 10 years that she served in a managerial EO position. (See Section III(E)(4).)

Related Recommendation: Set minimum training standards for all managers within the EO Division to ensure that they have adequate technical ability to perform their jobs.

Finding #7: The IRS did not perform any audits of groups alleged to have engaged in improper political activity from 2010 through April 2014. During that time, the IRS tried to implement new processes to select cases for examination, but a memo from Judy Kindell, Sharon Light and Tom Miller stated that this approach "arguably [gave] the impression that somehow the political leanings of [the organizations] mentioned were considered in making the ultimate decision." The IRS recently discontinued use of the Dual Track process and now uses generalized procedures when deciding whether to open an examination of an exempt organization's political activities. (See Section IX(A).)

Related Recommendation #1: Review the recently-enacted procedures to determine if: (1) the process enables the IRS to impartially evaluate allegations of impermissible political activity; (2) any of the referrals have resulted in the IRS opening an examination related to political activity, and if so, whether such an examination was warranted; and (3) if necessary, the IRS should make further modifications to ensure that it carries out the enforcement function in a fair and impartial manner.

Related Recommendation #2: The IRS should fully implement all recommendations of the Government Accountability Office in their July 2015 report titled "IRS Examination Selection: Internal Controls for Exempt Organization Selection Should be Strengthened," GAO-15-514.

Related Recommendation #3: No later than July 1, 2017, we request that TIGTA conduct a review of the three points noted above in Recommendation #1 related to the revised EO Exam procedures.

Finding #8: On multiple occasions, the IRS improperly disclosed sensitive taxpayer information when responding to Freedom of Information Act (FOIA) requests. Employees who were responsible for these disclosures received minimal or no discipline. (See Section IX(C).)

Related Recommendation: Require all outgoing FOIA responses to be reviewed by a second employee to ensure that taxpayer information is not improperly disclosed.

Finding #9: In 2010, the IRS received a FOIA request from a freelance journalist seeking information about how the agency was processing requests for tax-exempt status submitted by Tea Party groups. After 7 months, the IRS erroneously informed the journalist that they did not possess any documents that were responsive to her request. (See Section IX(B).)

Related Recommendation #1: Ensure that IRS procedures specify which organizational units within the agency should be searched when the IRS receives an incoming FOIA request on a particular topic. For example, when the IRS receives a FOIA request for records related to tax-exempt applications, the agency should search the records of all components within the Exempt Organizations division.

Related Recommendation #2: To be consistent with the intent of FOIA, employees handling FOIA requests should construe the requests broadly and contact the requestor to clarify the scope of the request whenever necessary. However, the IRS should also take appropriate measures to safeguard taxpayer information and avoid improper disclosure.

Finding #10: The IRS has made Office Communicator Server (OCS) instant messaging software available to its employees. Under the collective bargaining agreement with the National Treasury Employees' Union, the IRS agreed that it would not automatically save messages sent to and from employees. As a result, messages can only be recovered if an employee elected to save them. TIGTA opined that this policy does not necessarily violate federal recordkeeping laws, but noted that "[w]hether OCS is being used according to NARA's guidance depends on how OCS end-users are utilizing the system." (See Section II(C)(2)).

Related Recommendation: The IRS should review how employees use OCS. If the program is not used for IRS business, the agency should evaluate whether it is appropriate and necessary. If OCS is used for official IRS purposes, the IRS should take measures to ensure such use complies with federal recordkeeping laws.

While the above findings and others detailed more fully on the succeeding pages have been jointly agreed to by the Majority and Minority, those Staffs were unable to reach agreement on three areas as set forth below:

- The extent, if any, to which political bias of IRS employees, including Lois Lerner, affected the IRS's processing of applications for tax-exempt status.

- Whether the IRS used improper methods to screen and process applications for tax-exempt status submitted by progressive and left-leaning organizations.
- The involvement, if any, of Treasury Department and White House employees, including President Obama, in directing or approving the actions of the IRS.

The Majority and Minority have rendered their own conclusions on these and other topics which are set forth more fully in the sections of this report entitled Additional Views of Senator Hatch Prepared by Republican Staff and Additional Views of Senator Wyden Prepared by Democratic Staff.

II. BACKGROUND ON BIPARTISAN INVESTIGATION BY THE SENATE FINANCE COMMITTEE

This section describes the scope of the Senate Committee on Finance investigation; the Committee's access to taxpayer information and its use in this report; the Committee's access to information relevant to this investigation; the IRS's loss of records potentially relevant to this investigation; the legal background of tax-exempt organizations involved in the investigation; and, the way that the IRS processed applications for tax-exempt status.

A. SCOPE OF THE INVESTIGATION AND THIS REPORT

The United States Senate Committee on Finance (the Committee) has exclusive legislative jurisdiction and primary oversight authority over the IRS.

On May 10, 2013, Lois Lerner, IRS Director of EO, disclosed at a panel for the Exempt Organizations Committee of the Tax Section of the American Bar Association that IRS employees had selected certain 501(c)(4) tax-exempt applications that contained the words “Tea Party” and “Patriots” for further review simply because the applications had those terms in the title.²

On May 14, 2013, TIGTA released a report finding that the IRS “used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention.”³

At the time of the IRS and TIGTA disclosures that groups with the words “Tea Party,” “9/12” or “Patriot” in the name were selected for additional scrutiny, there was speculation and concern expressed that the singling out of conservative organizations by name may have been a consequence of political bias or motivation on the part of IRS employees. There was further speculation concerning the role of political appointees at the IRS, Treasury Department or the White House in the selection of these conservative organizations for heightened scrutiny.

On May 20, 2013, the Committee sent a detailed letter to the IRS requesting that the IRS answer questions and turn over internal

²American Bar Association, Transcript of The Exempt Organization Tax Review (May 10, 2013) ABA Tax Section's Exempt Organizations Committee Meeting, Vol. 72, No. 2 pp. 126–127.

³TIGTA, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review (May 14, 2013) TIGTA Audit Report #2013–10–053.

EXHIBIT L



WASHINGTON

Federal Bureau of Investigation

Add Topic

Cincinnati IRS agents first raised Tea Party issues

Gregory Korte USA TODAY

Published 6:45 p.m. ET June 11, 2013 | Updated 10:05 p.m. ET June 11, 2013

Key Points

IRS agents in Cincinnati flagged first flagged Tea Party cases in a Feb. 25, 2010 e-mail

Tea party cases were put in "holding pattern" locals consulted with D.C. superiors

Five IRS employees interviewed denied political motives or White House involvement

WASHINGTON — The first time Internal Revenue Service agent Gary Muthert took notice of the Tea Party was when he saw a story about anti-tax protests on CNN, and another agent mentioned he had seen an application for tax-exempt status from a Tea Party group.

"We would review CNN just to see what the news of the day was," Muthert — a Cincinnati-based agent — told congressional investigators in a transcribed interview. "The Tea Party was in D.C. protesting, and that was like, OK, that's unusual to have one of these cases in here."

A local supervisor mentioned the Tea Party case to IRS officials in Washington, and the conversations soon snowballed into what became a systemic practice of targeting the tax-exemption applications of Tea Party groups for additional scrutiny, the transcripts and government documents show. Congress and the FBI are now investigating who ordered that targeting and whether any laws were broken.

E-mails and transcripts reviewed by USA TODAY give one of the most complete accounts to date of how the targeting began in early 2010. The records show that it was low-level employees in Cincinnati -- where all tax-exempt applications are processed -- who first flagged Tea Party cases for review, but they engaged their managers in Washington early on.

House Oversight and Government Reform Committee Chairman Darrell Issa, R-Calif., has said the transcripts show that the scandal involves more than "two rogue agents in Cincinnati" and that low-level IRS employees "were directly being ordered from Washington." But the top

Democrat on the committee, Rep. Elijah Cummings, of Maryland, noted that "none of the five IRS officials who have appeared before the committee has identified any White House involvement."

The Tea Party affair started with a Feb. 25, 2010 e-mail from Cincinnati-based IRS agent Jack Koester to his boss, Screening Group Manager John Shafer. Shafer, in turn, sent it to his superiors, including some Washington staff, elevating it as a "high profile case."

The Cincinnati employees weren't quite sure what the Tea Party was, but they knew it was politically sensitive. "This case will be sent to inventory for further development. Political campaigns on behalf (of) or in opposition to any political candidate do not promote social welfare," Shafer wrote to his bosses. The Tea Party groups were seeking tax exempt status as "social welfare" groups.

A few days later, Shafer came back to Muthert asking him to look up how many Tea Party cases had been received, and how many had already been approved. "He told me that Washington, D.C wanted some cases," Muthert said, according to his transcripts.

Shafer, though, told congressional investigators that he asked for the list on his own -- not on orders from Washington. "No one said to make a search," he said.

"Based on what I saw at the time, this organization is something — I don't know what it is, but it is something that appears to be growing, some type of movement," Muthert said. "So when I was asked to research the Tea Parties, it was like OK, I understand why you would want me to look at these cases and see if there is going to be a million coming in or not."

Muthert began flagging the Tea Party cases as an "emerging issue," meaning that the cases might raise new legal issues that should be looked at by tax law specialists. In effect, that meant that the Tea Party cases were put in a "holding pattern," Muthert said.

Elizabeth Hofacre, the Cincinnati coordinator for emerging issues, put it another way: "These cases were basically in a black hole," she told internal IRS reviewers in 2012.

Hofacre, who had been working on tax-exempt determinations in Cincinnati for 11 years, said the way the IRS handled Tea Party cases was unprecedented. She said she was "micromanaged to death" by an IRS lawyer who worked in Washington. Every piece of correspondence had to be reviewed by Washington. She was asked to fax entire case files to Washington. "I thought it was ridiculous. I mean, I don't understand why they didn't just take the files up (to Washington)," she told the Oversight Committee staffers.

Tea Party groups started to complain, but she was powerless to move the cases, she said.

"It was like working in lost luggage. You are getting it from everywhere.irate taxpayers. It wasn't a good place to be," Hofacre said. She soon asked for a transfer. "This is a really sensitive issue, and ,

I was just concerned to be associated with it because it was a particular political movement," she said.

In July 2010, the IRS developed what was called a BOLO list — for "be on the lookout." It instructed agents to send Hofacre applications from "organizations involved with the Tea Party movement." Investigators have not yet established who created or authorized that list; such lists did not exist before 2010.

She told congressional investigators that she understood the purpose of the list was to target conservative and Republican groups. "A lot of the platforms in the Tea Party are similar to that of Republican groups," she said.

Other political groups did not get handled the same way, Hofacre said. "I did see some with progressive issues. And I sent them back to the specialist and said they needed to develop the case," she said. "I was tasked to do Tea Parties, and I wasn't — I wasn't equipped or set up to do anything else."

That meant that other political groups were approved routinely. A USA TODAY review of tax exemptions granted at the time shows dozens of liberal groups got tax exemptions while Tea Party groups were on hold.

A year later, Exempt Organizations Director Lois Lerner asked for clarification on the criteria being used to identify Tea Party cases. Lerner — the IRS official in Washington responsible for all exempt organizations — has refused to answer questions before the oversight committee, citing her Fifth Amendment right against self-incrimination.

"What criteria are being used to label a case a 'Tea Party case'?" wrote Holly Paz, director of Rulings and Agreements, in a June 2, 2011 e-mail. "We want to think about whether those criteria are resulting in over-inclusion. Lois wants a briefing on these cases."

As a result, Shafer came up with another set of BOLO criteria that IRS officials later admitted were just as problematic. They included groups whose "issues include government spending, government debt and taxes" and groups "critical of how the country is being run."

Shafer denied any political animus in those criteria. A self-described "conservative Republican," he told oversight committee staffers last week that he had no reason to believe the White House was involved in the targeting. "I do not believe that the screening of these cases had anything to do (with it) other than consistency and identifying issues that needed to have further development," he said.

The House oversight committee has now interviewed at least five lower-level IRS employees, and are working their way up to officials in Washington. The 360 pages of transcripts reviewed by USA

TODAY do not answer why higher-ups at the IRS allowed Tea Party cases to sit in limbo for 27 months, until members of Congress started asking questions in 2012.

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EXHIBIT M

Form 990 Department of the Treasury Internal Revenue Service	Return of Organization Exempt From Income Tax Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations) Do not enter social security numbers on this form as it may be made public. Go to www.irs.gov/Form990 for instructions and the latest information.	OMB No. 1545-0047 <div style="font-size: 2em; font-weight: bold; margin: 5px 0;">2022</div> Open to Public Inspection
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A For the 2022 calendar year, or tax year beginning , 2022, and ending , 20													
B Check if applicable: <input type="checkbox"/> Address change <input type="checkbox"/> Name change <input type="checkbox"/> Initial return <input type="checkbox"/> Final return/terminated <input type="checkbox"/> Amended return <input type="checkbox"/> Application pending	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">C Name of organization</td> <td rowspan="3" style="width: 20%; vertical-align: top;"> D Employer identification number E Telephone number G Gross receipts \$ </td> </tr> <tr> <td colspan="2">Doing business as</td> </tr> <tr> <td style="width: 50%;">Number and street (or P.O. box if mail is not delivered to street address)</td> <td style="width: 50%;">Room/suite</td> </tr> <tr> <td colspan="2">City or town, state or province, country, and ZIP or foreign postal code</td> <td rowspan="2" style="vertical-align: top;"> H(a) Is this a group return for subordinates? <input type="checkbox"/> Yes <input type="checkbox"/> No H(b) Are all subordinates included? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach a list. See instructions. H(c) Group exemption number </td> </tr> <tr> <td colspan="2">F Name and address of principal officer:</td> </tr> </table>	C Name of organization		D Employer identification number E Telephone number G Gross receipts \$	Doing business as		Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	City or town, state or province, country, and ZIP or foreign postal code		H(a) Is this a group return for subordinates? <input type="checkbox"/> Yes <input type="checkbox"/> No H(b) Are all subordinates included? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach a list. See instructions. H(c) Group exemption number	F Name and address of principal officer:	
C Name of organization		D Employer identification number E Telephone number G Gross receipts \$											
Doing business as													
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F Name and address of principal officer:													
I Tax-exempt status: <input type="checkbox"/> 501(c)(3) <input type="checkbox"/> 501(c) () (insert no.) <input type="checkbox"/> 4947(a)(1) or <input type="checkbox"/> 527													
J Website:													
K Form of organization: <input type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Association <input type="checkbox"/> Other		L Year of formation:											
		M State of legal domicile:											

Part I Summary				
Activities & Governance	1	Briefly describe the organization's mission or most significant activities: _____		
	2	Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.		
	3	Number of voting members of the governing body (Part VI, line 1a)	3	
	4	Number of independent voting members of the governing body (Part VI, line 1b)	4	
	5	Total number of individuals employed in calendar year 2022 (Part V, line 2a)	5	
	6	Total number of volunteers (estimate if necessary)	6	
	7a	Total unrelated business revenue from Part VIII, column (C), line 12	7a	
b	Net unrelated business taxable income from Form 990-T, Part I, line 11	7b		
Revenue	8	Contributions and grants (Part VIII, line 1h)	Prior Year	Current Year
	9	Program service revenue (Part VIII, line 2g)		
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)		
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)		
	12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)		
Expenses	13	Grants and similar amounts paid (Part IX, column (A), lines 1–3)		
	14	Benefits paid to or for members (Part IX, column (A), line 4)		
	15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)		
	16a	Professional fundraising fees (Part IX, column (A), line 11e)		
	b	Total fundraising expenses (Part IX, column (D), line 25)		
	17	Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)		
	18	Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)		
19	Revenue less expenses. Subtract line 18 from line 12			
Net Assets or Fund Balances	20	Total assets (Part X, line 16)	Beginning of Current Year	End of Year
	21	Total liabilities (Part X, line 26)		
	22	Net assets or fund balances. Subtract line 21 from line 20		

Part II Signature Block					
Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.					
Sign Here	Signature of officer				Date
	Type or print name and title				
Paid Preparer Use Only	Print/Type preparer's name		Preparer's signature	Date	Check <input type="checkbox"/> if self-employed PTIN
	Firm's name			Firm's EIN	
	Firm's address			Phone no.	

May the IRS discuss this return with the preparer shown above? See instructions ☐ Yes ☐ No

Part III Statement of Program Service AccomplishmentsCheck if Schedule O contains a response or note to any line in this Part III ☐**1** Briefly describe the organization's mission:

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? ☐ Yes ☐ No

If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? ☐ Yes ☐ No

If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.**4a** (Code: _____) (Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)

4b (Code: _____) (Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)

4c (Code: _____) (Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)

4d Other program services (Describe on Schedule O.)
(Expenses \$ _____ including grants of \$ _____) (Revenue \$ _____)**4e** Total program service expenses

Part IV Checklist of Required Schedules

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? If "Yes," complete Schedule A	1	
2 Is the organization required to complete Schedule B, Schedule of Contributors? See instructions	2	
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part I	3	
4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? If "Yes," complete Schedule C, Part II	4	
5 Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Rev. Proc. 98-19? If "Yes," complete Schedule C, Part III	5	
6 Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? If "Yes," complete Schedule D, Part I	6	
7 Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? If "Yes," complete Schedule D, Part II	7	
8 Did the organization maintain collections of works of art, historical treasures, or other similar assets? If "Yes," complete Schedule D, Part III	8	
9 Did the organization report an amount in Part X, line 21, for escrow or custodial account liability, serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? If "Yes," complete Schedule D, Part IV	9	
10 Did the organization, directly or through a related organization, hold assets in donor-restricted endowments or in quasi endowments? If "Yes," complete Schedule D, Part V	10	
11 If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X, as applicable.		
a Did the organization report an amount for land, buildings, and equipment in Part X, line 10? If "Yes," complete Schedule D, Part VI	11a	
b Did the organization report an amount for investments—other securities in Part X, line 12, that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VII	11b	
c Did the organization report an amount for investments—program related in Part X, line 13, that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VIII	11c	
d Did the organization report an amount for other assets in Part X, line 15, that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part IX	11d	
e Did the organization report an amount for other liabilities in Part X, line 25? If "Yes," complete Schedule D, Part X	11e	
f Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? If "Yes," complete Schedule D, Part X	11f	
12a Did the organization obtain separate, independent audited financial statements for the tax year? If "Yes," complete Schedule D, Parts XI and XII	12a	
b Was the organization included in consolidated, independent audited financial statements for the tax year? If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional	12b	
13 Is the organization a school described in section 170(b)(1)(A)(ii)? If "Yes," complete Schedule E	13	
14a Did the organization maintain an office, employees, or agents outside of the United States?	14a	
b Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at \$100,000 or more? If "Yes," complete Schedule F, Parts I and IV	14b	
15 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or other assistance to or for any foreign organization? If "Yes," complete Schedule F, Parts II and IV	15	
16 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or other assistance to or for foreign individuals? If "Yes," complete Schedule F, Parts III and IV	16	
17 Did the organization report a total of more than \$15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? If "Yes," complete Schedule G, Part I. See instructions	17	
18 Did the organization report more than \$15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? If "Yes," complete Schedule G, Part II	18	
19 Did the organization report more than \$15,000 of gross income from gaming activities on Part VIII, line 9a? If "Yes," complete Schedule G, Part III	19	
20a Did the organization operate one or more hospital facilities? If "Yes," complete Schedule H	20a	
b If "Yes" to line 20a, did the organization attach a copy of its audited financial statements to this return?	20b	
21 Did the organization report more than \$5,000 of grants or other assistance to any domestic organization or domestic government on Part IX, column (A), line 1? If "Yes," complete Schedule I, Parts I and II	21	

Part IV Checklist of Required Schedules (continued)

	Yes	No
22 Did the organization report more than \$5,000 of grants or other assistance to or for domestic individuals on Part IX, column (A), line 2? If "Yes," complete Schedule I, Parts I and III	22	
23 Did the organization answer "Yes" to Part VII, Section A, line 3, 4, or 5, about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? If "Yes," complete Schedule J	23	
24a Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? If "Yes," answer lines 24b through 24d and complete Schedule K. If "No," go to line 25a	24a	
b Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?	24b	
c Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?	24c	
d Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year?	24d	
25a Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. Did the organization engage in an excess benefit transaction with a disqualified person during the year? If "Yes," complete Schedule L, Part I	25a	
b Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? If "Yes," complete Schedule L, Part I	25b	
26 Did the organization report any amount on Part X, line 5 or 22, for receivables from or payables to any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons? If "Yes," complete Schedule L, Part II	26	
27 Did the organization provide a grant or other assistance to any current or former officer, director, trustee, key employee, creator or founder, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity (including an employee thereof) or family member of any of these persons? If "Yes," complete Schedule L, Part III	27	
28 Was the organization a party to a business transaction with one of the following parties (see the Schedule L, Part IV, instructions for applicable filing thresholds, conditions, and exceptions):		
a A current or former officer, director, trustee, key employee, creator or founder, or substantial contributor? If "Yes," complete Schedule L, Part IV	28a	
b A family member of any individual described in line 28a? If "Yes," complete Schedule L, Part IV	28b	
c A 35% controlled entity of one or more individuals and/or organizations described in line 28a or 28b? If "Yes," complete Schedule L, Part IV	28c	
29 Did the organization receive more than \$25,000 in non-cash contributions? If "Yes," complete Schedule M	29	
30 Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? If "Yes," complete Schedule M	30	
31 Did the organization liquidate, terminate, or dissolve and cease operations? If "Yes," complete Schedule N, Part I	31	
32 Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? If "Yes," complete Schedule N, Part II	32	
33 Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," complete Schedule R, Part I	33	
34 Was the organization related to any tax-exempt or taxable entity? If "Yes," complete Schedule R, Part II, III, or IV, and Part V, line 1	34	
35a Did the organization have a controlled entity within the meaning of section 512(b)(13)?	35a	
b If "Yes" to line 35a, did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? If "Yes," complete Schedule R, Part V, line 2	35b	
36 Section 501(c)(3) organizations. Did the organization make any transfers to an exempt non-charitable related organization? If "Yes," complete Schedule R, Part V, line 2	36	
37 Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? If "Yes," complete Schedule R, Part VI	37	
38 Did the organization complete Schedule O and provide explanations on Schedule O for Part VI, lines 11b and 19? Note: All Form 990 filers are required to complete Schedule O	38	

Part V Statements Regarding Other IRS Filings and Tax ComplianceCheck if Schedule O contains a response or note to any line in this Part V ☐

	Yes	No
1a Enter the number reported in box 3 of Form 1096. Enter -0- if not applicable	1a	
b Enter the number of Forms W-2G included on line 1a. Enter -0- if not applicable	1b	
c Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners?	1c	

Part V Statements Regarding Other IRS Filings and Tax Compliance (continued)		Yes	No
2a	Enter the number of employees reported on Form W-3, Transmittal of Wage and Tax Statements, filed for the calendar year ending with or within the year covered by this return	2a	
b	If at least one is reported on line 2a, did the organization file all required federal employment tax returns?	2b	
3a	Did the organization have unrelated business gross income of \$1,000 or more during the year?	3a	
b	If "Yes," has it filed a Form 990-T for this year? If "No" to line 3b, provide an explanation on Schedule O	3b	
4a	At any time during the calendar year, did the organization have an interest in, or a signature or other authority over, a financial account in a foreign country (such as a bank account, securities account, or other financial account)?	4a	
b	If "Yes," enter the name of the foreign country See instructions for filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).		
5a	Was the organization a party to a prohibited tax shelter transaction at any time during the tax year?	5a	
b	Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction?	5b	
c	If "Yes" to line 5a or 5b, did the organization file Form 8886-T?	5c	
6a	Does the organization have annual gross receipts that are normally greater than \$100,000, and did the organization solicit any contributions that were not tax deductible as charitable contributions?	6a	
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	6b	
7	Organizations that may receive deductible contributions under section 170(c).		
a	Did the organization receive a payment in excess of \$75 made partly as a contribution and partly for goods and services provided to the payor?	7a	
b	If "Yes," did the organization notify the donor of the value of the goods or services provided?	7b	
c	Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it was required to file Form 8282?	7c	
d	If "Yes," indicate the number of Forms 8282 filed during the year	7d	
e	Did the organization receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?	7e	
f	Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract?	7f	
g	If the organization received a contribution of qualified intellectual property, did the organization file Form 8899 as required?	7g	
h	If the organization received a contribution of cars, boats, airplanes, or other vehicles, did the organization file a Form 1098-C?	7h	
8	Sponsoring organizations maintaining donor advised funds. Did a donor advised fund maintained by the sponsoring organization have excess business holdings at any time during the year?	8	
9	Sponsoring organizations maintaining donor advised funds.		
a	Did the sponsoring organization make any taxable distributions under section 4966?	9a	
b	Did the sponsoring organization make a distribution to a donor, donor advisor, or related person?	9b	
10	Section 501(c)(7) organizations. Enter:		
a	Initiation fees and capital contributions included on Part VIII, line 12	10a	
b	Gross receipts, included on Form 990, Part VIII, line 12, for public use of club facilities	10b	
11	Section 501(c)(12) organizations. Enter:		
a	Gross income from members or shareholders	11a	
b	Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.)	11b	
12a	Section 4947(a)(1) non-exempt charitable trusts. Is the organization filing Form 990 in lieu of Form 1041?	12a	
b	If "Yes," enter the amount of tax-exempt interest received or accrued during the year	12b	
13	Section 501(c)(29) qualified nonprofit health insurance issuers.		
a	Is the organization licensed to issue qualified health plans in more than one state? Note: See the instructions for additional information the organization must report on Schedule O.	13a	
b	Enter the amount of reserves the organization is required to maintain by the states in which the organization is licensed to issue qualified health plans	13b	
c	Enter the amount of reserves on hand	13c	
14a	Did the organization receive any payments for indoor tanning services during the tax year?	14a	
b	If "Yes," has it filed a Form 720 to report these payments? If "No," provide an explanation on Schedule O	14b	
15	Is the organization subject to the section 4960 tax on payment(s) of more than \$1,000,000 in remuneration or excess parachute payment(s) during the year? If "Yes," see the instructions and file Form 4720, Schedule N.	15	
16	Is the organization an educational institution subject to the section 4968 excise tax on net investment income? If "Yes," complete Form 4720, Schedule O.	16	
17	Section 501(c)(21) organizations. Did the trust, or any disqualified or other person engage in any activities that would result in the imposition of an excise tax under section 4951, 4952, or 4953? If "Yes," complete Form 6069.	17	

Part VI Governance, Management, and Disclosure. For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes on Schedule O. See instructions. Check if Schedule O contains a response or note to any line in this Part VI ☐

Section A. Governing Body and Management

		Yes	No
1a Enter the number of voting members of the governing body at the end of the tax year	1a		
If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain on Schedule O.			
b Enter the number of voting members included on line 1a, above, who are independent	1b		
2 Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?	2		
3 Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, trustees, or key employees to a management company or other person?	3		
4 Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?	4		
5 Did the organization become aware during the year of a significant diversion of the organization's assets?	5		
6 Did the organization have members or stockholders?	6		
7a Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?	7a		
b Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?	7b		
8 Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:			
a The governing body?	8a		
b Each committee with authority to act on behalf of the governing body?	8b		
9 Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses on Schedule O	9		

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

	Yes	No
10a Did the organization have local chapters, branches, or affiliates?	10a	
b If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?	10b	
11a Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?	11a	
b Describe on Schedule O the process, if any, used by the organization to review this Form 990.		
12a Did the organization have a written conflict of interest policy? If "No," go to line 13	12a	
b Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	12b	
c Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe on Schedule O how this was done	12c	
13 Did the organization have a written whistleblower policy?	13	
14 Did the organization have a written document retention and destruction policy?	14	
15 Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?		
a The organization's CEO, Executive Director, or top management official	15a	
b Other officers or key employees of the organization	15b	
If "Yes" to line 15a or 15b, describe the process on Schedule O. See instructions.		
16a Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?	16a	
b If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?	16b	

Section C. Disclosure

17 List the states with which a copy of this Form 990 is required to be filed

18 Section 6104 requires an organization to make its Forms 1023 (1024 or 1024-A, if applicable), 990, and 990-T (section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.
☐ Own website ☐ Another's website ☐ Upon request ☐ Other (explain on Schedule O)

19 Describe on Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.

20 State the name, address, and telephone number of the person who possesses the organization's books and records.

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent ContractorsCheck if Schedule O contains a response or note to any line in this Part VII ☐**Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees****1a** Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.

- List all of the organization's **current** key employees, if any. See the instructions for definition of "key employee."

- List the organization's five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (box 5 of Form W-2, box 6 of Form 1099-MISC, and/or box 1 of Form 1099-NEC) of more than \$100,000 from the organization and any related organizations.

- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.

- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

See the instructions for the order in which to list the persons above.

☐ Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC/1099-NEC)	(E) Reportable compensation from related organizations (W-2/1099-MISC/1099-NEC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1)										
(2)										
(3)										
(4)										
(5)										
(6)										
(7)										
(8)										
(9)										
(10)										
(11)										
(12)										
(13)										
(14)										

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC/1099-NEC)	(E) Reportable compensation from related organizations (W-2/1099-MISC/1099-NEC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(15)										
(16)										
(17)										
(18)										
(19)										
(20)										
(21)										
(22)										
(23)										
(24)										
(25)										
1b Subtotal										
c Total from continuation sheets to Part VII, Section A										
d Total (add lines 1b and 1c)										

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization

- 3** Did the organization list any **former** officer, director, trustee, key employee, or highest compensated employee on line 1a? *If "Yes," complete Schedule J for such individual*
- 4** For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? *If "Yes," complete Schedule J for such individual*
- 5** Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? *If "Yes," complete Schedule J for such person*

	Yes	No
3		
4		
5		

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 of compensation from the organization

Part VIII Statement of RevenueCheck if Schedule O contains a response or note to any line in this Part VIII ☐

				(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514
Contributions, Gifts, Grants, and Other Similar Amounts	1a	Federated campaigns	1a				
	b	Membership dues	1b				
	c	Fundraising events	1c				
	d	Related organizations	1d				
	e	Government grants (contributions)	1e				
	f	All other contributions, gifts, grants, and similar amounts not included above	1f				
	g	Noncash contributions included in lines 1a-1f	1g	\$			
	h	Total. Add lines 1a-1f					
Program Service Revenue				Business Code			
	2a						
	b						
	c						
	d						
	e						
	f	All other program service revenue					
	g	Total. Add lines 2a-2f					
Other Revenue	3	Investment income (including dividends, interest, and other similar amounts)					
	4	Income from investment of tax-exempt bond proceeds					
	5	Royalties					
	6a	Gross rents	6a	(i) Real	(ii) Personal		
	b	Less: rental expenses	6b				
	c	Rental income or (loss)	6c				
	d	Net rental income or (loss)					
	7a	Gross amount from sales of assets other than inventory	7a	(i) Securities	(ii) Other		
	b	Less: cost or other basis and sales expenses	7b				
	c	Gain or (loss)	7c				
	d	Net gain or (loss)					
	8a	Gross income from fundraising events (not including \$ _____ of contributions reported on line 1c). See Part IV, line 18	8a				
	b	Less: direct expenses	8b				
	c	Net income or (loss) from fundraising events					
	9a	Gross income from gaming activities. See Part IV, line 19	9a				
	b	Less: direct expenses	9b				
	c	Net income or (loss) from gaming activities					
	10a	Gross sales of inventory, less returns and allowances	10a				
	b	Less: cost of goods sold	10b				
	c	Net income or (loss) from sales of inventory					
Miscellaneous Revenue				Business Code			
	11a						
	b						
	c						
	d	All other revenue					
	e	Total. Add lines 11a-11d					
12	Total revenue. See instructions						

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX ☐**Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.**

	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21				
2 Grants and other assistance to domestic individuals. See Part IV, line 22				
3 Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16				
4 Benefits paid to or for members				
5 Compensation of current officers, directors, trustees, and key employees				
6 Compensation not included above to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)				
7 Other salaries and wages				
8 Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions)				
9 Other employee benefits				
10 Payroll taxes				
11 Fees for services (nonemployees):				
a Management				
b Legal				
c Accounting				
d Lobbying				
e Professional fundraising services. See Part IV, line 17				
f Investment management fees				
g Other. (If line 11g amount exceeds 10% of line 25, column (A), amount, list line 11g expenses on Schedule O.)				
12 Advertising and promotion				
13 Office expenses				
14 Information technology				
15 Royalties				
16 Occupancy				
17 Travel				
18 Payments of travel or entertainment expenses for any federal, state, or local public officials				
19 Conferences, conventions, and meetings				
20 Interest				
21 Payments to affiliates				
22 Depreciation, depletion, and amortization				
23 Insurance				
24 Other expenses. Itemize expenses not covered above. (List miscellaneous expenses on line 24e. If line 24e amount exceeds 10% of line 25, column (A), amount, list line 24e expenses on Schedule O.)				
a -----				
b -----				
c -----				
d -----				
e All other expenses -----				
25 Total functional expenses. Add lines 1 through 24e				
26 Joint costs. Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here <input type="checkbox"/> if following SOP 98-2 (ASC 958-720)				

Part X Balance SheetCheck if Schedule O contains a response or note to any line in this Part X ☐

		(A) Beginning of year	(B) End of year
Assets	1 Cash—non-interest-bearing		1
	2 Savings and temporary cash investments		2
	3 Pledges and grants receivable, net		3
	4 Accounts receivable, net		4
	5 Loans and other receivables from any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons		5
	6 Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), and persons described in section 4958(c)(3)(B)		6
	7 Notes and loans receivable, net		7
	8 Inventories for sale or use		8
	9 Prepaid expenses and deferred charges		9
	10a Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D	10a	
	b Less: accumulated depreciation	10b	10c
	11 Investments—publicly traded securities		11
	12 Investments—other securities. See Part IV, line 11		12
	13 Investments—program-related. See Part IV, line 11		13
	14 Intangible assets		14
	15 Other assets. See Part IV, line 11		15
16 Total assets. Add lines 1 through 15 (must equal line 33)		16	
Liabilities	17 Accounts payable and accrued expenses		17
	18 Grants payable		18
	19 Deferred revenue		19
	20 Tax-exempt bond liabilities		20
	21 Escrow or custodial account liability. Complete Part IV of Schedule D		21
	22 Loans and other payables to any current or former officer, director, trustee, key employee, creator or founder, substantial contributor, or 35% controlled entity or family member of any of these persons		22
	23 Secured mortgages and notes payable to unrelated third parties		23
	24 Unsecured notes and loans payable to unrelated third parties		24
	25 Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17–24). Complete Part X of Schedule D		25
	26 Total liabilities. Add lines 17 through 25		26
Net Assets or Fund Balances	Organizations that follow FASB ASC 958, check here <input type="checkbox"/> and complete lines 27, 28, 32, and 33.		
	27 Net assets without donor restrictions		27
	28 Net assets with donor restrictions		28
	Organizations that do not follow FASB ASC 958, check here <input type="checkbox"/> and complete lines 29 through 33.		
	29 Capital stock or trust principal, or current funds		29
	30 Paid-in or capital surplus, or land, building, or equipment fund		30
	31 Retained earnings, endowment, accumulated income, or other funds		31
	32 Total net assets or fund balances		32
33 Total liabilities and net assets/fund balances		33	

Part XI Reconciliation of Net AssetsCheck if Schedule O contains a response or note to any line in this Part XI ☐

1	Total revenue (must equal Part VIII, column (A), line 12)	1	
2	Total expenses (must equal Part IX, column (A), line 25)	2	
3	Revenue less expenses. Subtract line 2 from line 1	3	
4	Net assets or fund balances at beginning of year (must equal Part X, line 32, column (A))	4	
5	Net unrealized gains (losses) on investments	5	
6	Donated services and use of facilities	6	
7	Investment expenses	7	
8	Prior period adjustments	8	
9	Other changes in net assets or fund balances (explain on Schedule O)	9	
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 32, column (B))	10	

Part XII Financial Statements and ReportingCheck if Schedule O contains a response or note to any line in this Part XII ☐

		Yes	No
1	Accounting method used to prepare the Form 990: <input type="checkbox"/> Cash <input type="checkbox"/> Accrual <input type="checkbox"/> Other _____ If the organization changed its method of accounting from a prior year or checked "Other," explain on Schedule O.		
2a	Were the organization's financial statements compiled or reviewed by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both: <input type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis		
b	Were the organization's financial statements audited by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both: <input type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis		
c	If "Yes" to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant? If the organization changed either its oversight process or selection process during the tax year, explain on Schedule O.		
3a	As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Uniform Guidance, 2 C.F.R. Part 200, Subpart F?		
b	If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why on Schedule O and describe any steps taken to undergo such audits		

EXHIBIT N

**SCHEDULE D
(Form 990)**Department of the Treasury
Internal Revenue Service**Supplemental Financial Statements**Complete if the organization answered "Yes" on Form 990,
Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b.
Attach to Form 990.Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2022**Open to Public
Inspection**

Name of the organization

Employer identification number

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts.

Complete if the organization answered "Yes" on Form 990, Part IV, line 6.

	(a) Donor advised funds	(b) Funds and other accounts
1 Total number at end of year		
2 Aggregate value of contributions to (during year)		
3 Aggregate value of grants from (during year)		
4 Aggregate value at end of year		
5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control?		<input type="checkbox"/> Yes <input type="checkbox"/> No
6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds can be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit?		<input type="checkbox"/> Yes <input type="checkbox"/> No

Part II Conservation Easements.

Complete if the organization answered "Yes" on Form 990, Part IV, line 7.

1 Purpose(s) of conservation easements held by the organization (check all that apply). <input type="checkbox"/> Preservation of land for public use (for example, recreation or education) <input type="checkbox"/> Preservation of a historically important land area <input type="checkbox"/> Protection of natural habitat <input type="checkbox"/> Preservation of a certified historic structure <input type="checkbox"/> Preservation of open space	
2 Complete lines 2a through 2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.	
a Total number of conservation easements	2a
b Total acreage restricted by conservation easements	2b
c Number of conservation easements on a certified historic structure included in (a)	2c
d Number of conservation easements included in (c) acquired after July 25, 2006, and not on a historic structure listed in the National Register	2d
3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the tax year	
4 Number of states where property subject to conservation easement is located	
5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6 Staff and volunteer hours devoted to monitoring, inspecting, handling of violations, and enforcing conservation easements during the year	
7 Amount of expenses incurred in monitoring, inspecting, handling of violations, and enforcing conservation easements during the year	
8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
9 In Part XIII, describe how the organization reports conservation easements in its revenue and expense statement and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.	

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.

Complete if the organization answered "Yes" on Form 990, Part IV, line 8.

1a If the organization elected, as permitted under FASB ASC 958, not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide in Part XIII the text of the footnote to its financial statements that describes these items.	
b If the organization elected, as permitted under FASB ASC 958, to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items:	
(i) Revenue included on Form 990, Part VIII, line 1	\$
(ii) Assets included in Form 990, Part X	\$
2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under FASB ASC 958 relating to these items:	
a Revenue included on Form 990, Part VIII, line 1	\$
b Assets included in Form 990, Part X	\$

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets (continued)

3 Using the organization's acquisition, accession, and other records, check any of the following that make significant use of its collection items (check all that apply):

a ☐ Public exhibition

d ☐ Loan or exchange program

b ☐ Scholarly research

e ☐ Other

c ☐ Preservation for future generations

4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIII.

5 During the year, did the organization solicit or receive donations of art, historical treasures, or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection? ☐ Yes ☐ No

Part IV Escrow and Custodial Arrangements.

Complete if the organization answered "Yes" on Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X? ☐ Yes ☐ No

b If "Yes," explain the arrangement in Part XIII and complete the following table:

	Amount
c Beginning balance	1c
d Additions during the year	1d
e Distributions during the year	1e
f Ending balance	1f

2a Did the organization include an amount on Form 990, Part X, line 21, for escrow or custodial account liability? ☐ Yes ☐ No

b If "Yes," explain the arrangement in Part XIII. Check here if the explanation has been provided on Part XIII ☐

Part V Endowment Funds.

Complete if the organization answered "Yes" on Form 990, Part IV, line 10.

	(a) Current year	(b) Prior year	(c) Two years back	(d) Three years back	(e) Four years back
1a Beginning of year balance					
b Contributions					
c Net investment earnings, gains, and losses					
d Grants or scholarships					
e Other expenditures for facilities and programs					
f Administrative expenses					
g End of year balance					

2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:

a Board designated or quasi-endowment

b Permanent endowment

c Term endowment

The percentages on lines 2a, 2b, and 2c should equal 100%.

3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:

(i) Unrelated organizations

(ii) Related organizations

b If "Yes" on line 3a(ii), are the related organizations listed as required on Schedule R?

	Yes	No
3a(i)		
3a(ii)		
3b		

4 Describe in Part XIII the intended uses of the organization's endowment funds.

Part VI Land, Buildings, and Equipment.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11a. See Form 990, Part X, line 10.

Description of property	(a) Cost or other basis (investment)	(b) Cost or other basis (other)	(c) Accumulated depreciation	(d) Book value
1a Land				
b Buildings				
c Leasehold improvements				
d Equipment				
e Other				

Total. Add lines 1a through 1e. (Column (d) must equal Form 990, Part X, column (B), line 10c.)

Part VII Investments—Other Securities.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11b. See Form 990, Part X, line 12.

(a) Description of security or category (including name of security)	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1) Financial derivatives		
(2) Closely held equity interests		
(3) Other _____		
(A) _____		
(B) _____		
(C) _____		
(D) _____		
(E) _____		
(F) _____		
(G) _____		
(H) _____		
Total. (Column (b) must equal Form 990, Part X, col. (B) line 12.) . . .		

Part VIII Investments—Program Related.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11c. See Form 990, Part X, line 13.

(a) Description of investment	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		
(8)		
(9)		
Total. (Column (b) must equal Form 990, Part X, col. (B) line 13.) . . .		

Part IX Other Assets.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11d. See Form 990, Part X, line 15.

(a) Description	(b) Book value
(1)	
(2)	
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	
Total. (Column (b) must equal Form 990, Part X, col. (B) line 15.)	

Part X Other Liabilities.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11e or 11f. See Form 990, Part X, line 25.

1. (a) Description of liability	(b) Book value
(1) Federal income taxes	
(2)	
(3)	
(4)	
(5)	
(6)	
(7)	
(8)	
(9)	
Total. (Column (b) must equal Form 990, Part X, col. (B) line 25.)	

2. Liability for uncertain tax positions. In Part XIII, provide the text of the footnote to the organization's financial statements that reports the organization's liability for uncertain tax positions under FASB ASC 740. Check here if the text of the footnote has been provided in Part XIII ☐

EXHIBIT O

SCHEDULE I
(Form 990)Department of the Treasury
Internal Revenue Service

Name of the organization

**Grants and Other Assistance to Organizations,
Governments, and Individuals in the United States**

Complete if the organization answered "Yes" on Form 990, Part IV, line 21 or 22.

Attach to Form 990.

Go to www.irs.gov/Form990 for the latest information.

OMB No. 1545-0047

2022**Open to Public
Inspection**

Employer identification number

Part I General Information on Grants and Assistance

- 1** Does the organization maintain records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance? ☐ **Yes** ☐ **No**
- 2** Describe in Part IV the organization's procedures for monitoring the use of grant funds in the United States.

Part II Grants and Other Assistance to Domestic Organizations and Domestic Governments. Complete if the organization answered "Yes" on Form 990, Part IV, line 21, for any recipient that received more than \$5,000. Part II can be duplicated if additional space is needed.

1 (a) Name and address of organization or government	(b) EIN	(c) IRC section (if applicable)	(d) Amount of cash grant	(e) Amount of noncash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of noncash assistance	(h) Purpose of grant or assistance
(1)							
(2)							
(3)							
(4)							
(5)							
(6)							
(7)							
(8)							
(9)							
(10)							
(11)							
(12)							

- 2** Enter total number of section 501(c)(3) and government organizations listed in the line 1 table
- 3** Enter total number of other organizations listed in the line 1 table

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Cat. No. 50055P

Schedule I (Form 990) 2022

Part III **Grants and Other Assistance to Domestic Individuals.** Complete if the organization answered "Yes" on Form 990, Part IV, line 22. Part III can be duplicated if additional space is needed.

Part III can be duplicated if additional space is needed.					
(a) Type of grant or assistance	(b) Number of recipients	(c) Amount of cash grant	(d) Amount of noncash assistance	(e) Method of valuation (book, FMV, appraisal, other)	(f) Description of noncash assistance
1					
2					
3					
4					
5					
6					
7					

Part IV **Supplemental Information.** Provide the information required in Part I, line 2; Part III, column (b); and any other additional information.

Section references are to the Internal Revenue Code unless otherwise noted.

General Instructions

Future developments. For the latest information about developments related to Schedule I (Form 990), such as legislation enacted after the schedule was published, go to www.irs.gov/Form990.

Note. Terms in **bold** are defined in the *Glossary* of the Instructions for Form 990.

Purpose of Schedule

Schedule I (Form 990) is used by an organization that files Form 990 to provide information on **grants and other assistance** made by the filing organization during the **tax year to domestic organizations, domestic governments, and domestic individuals**. Report activities conducted by the organization directly. Also, report activities conducted by the organization indirectly through a **disregarded entity** or a **joint venture** treated as a partnership.

Grants and other assistance include awards, prizes, **contributions**, noncash assistance, cash allocations, stipends, scholarships, fellowships, research grants, and similar payments and distributions made by the organization during the tax year. For purposes of Schedule I, grants and other assistance don't include:

- Salaries or other **compensation** to employees, or payments to independent contractors if the primary purpose of such payments is to serve the direct and immediate needs of the organization (such as legal, accounting, or fundraising services).
- The payment of any benefit by a 501(c)(9) voluntary employees' beneficiary association (VEBA) to employees of a sponsoring organization or contributing employer, if such payment is made under the terms of the VEBA trust and in compliance with section 505.
- Grants to affiliates that aren't organized as legal entities separate from the filing organization, or payments made to branch offices, accounts, or employees of the organization located in the **United States**.

A **domestic organization** includes a corporation or partnership created or organized in the United States or under the law of the United States or of any state or possession. A trust is a domestic organization if a court within the United States or a **U.S. possession** is able to exercise primary supervision over the administration of the trust, and one or more U.S. persons (or persons in **U.S. possessions**) have the authority to control all substantial decisions of the trust.

A **domestic government** is a state, a U.S. possession, a political subdivision of a state or U.S. possession, the United States, or the District of Columbia. A grant to a U.S. government agency must be included on this schedule regardless of where the agency is located or operated.

A **domestic individual** is a person, including a foreign citizen, who lives or resides in the United States (or a U.S. possession) and not outside the United States (or a U.S. possession).

Parts II and III of this schedule may be duplicated to list additional grantees (Part II) or types of grants/assistance (Part III) that don't fit on the first page of these parts. Number each page of each part.

Don't report on this schedule foreign grants or assistance, including grants or assistance provided to **domestic organizations, domestic governments, or domestic individuals** for the purpose of providing grants or other assistance to a designated **foreign organization, foreign government, or foreign individual**. Instead, report them on Schedule F (Form 990), Statement of Activities Outside the United States.

Who Must File

An organization that answered "Yes" on Form 990, Part IV, *Checklist of Required Schedules*, line 21 or 22, must complete Part I and either Part II or Part III of this schedule and attach it to Form 990.

If an organization isn't required to file Form 990 but chooses to do so, it must file a complete return and provide all of the information requested, including the required schedules.

Specific Instructions

Part I. General Information on Grants and Assistance

Complete this part if the organization answered "Yes" on Form 990, Part IV, line 21 or 22.

Lines 1 and 2. On line 1, indicate "Yes" or "No" regarding whether the organization maintains records to substantiate amounts, eligibility, and selection criteria used for grants. In general terms, describe how the organization monitors its grants to ensure that such grants are used for proper purposes and aren't otherwise diverted from the intended use. For example, the organization can describe the periodic reports required or field investigations conducted. Use Part IV for the organization's narrative response to line 2.

Part II. Grants and Other Assistance to Domestic Organizations and Domestic Governments

Line 1. Complete line 1 if the organization answered "Yes" on Form 990, Part IV, line 21. A "Yes" response means that the organization reported more than \$5,000 on Form 990, Part IX, line 1, column (A). Enter information only for each recipient **domestic organization or domestic government** that received more than \$5,000 aggregate of grants or assistance from the organization during the tax year.

Enter the details of each organization or entity on a separate line of Part II. If there are more organizations or entities to report in Part II than space available, report the additional organizations or entities on duplicate copies of Part II. Use as many duplicate copies as needed, and number each page. Use Part IV if additional space is needed for descriptions of particular column entries.

Column (a). Enter the full legal name and mailing address of each recipient organization or government entity.

Column (b). Enter the employer identification number (EIN) of the grant recipient.

Column (c). Enter the section of the Internal Revenue Code under which the organization receiving the assistance is tax exempt, if applicable (for example, a school described in section 501(c)(3) or a social club described in section 501(c)(7)). If a recipient is a government entity, enter the name of the government entity. If a recipient is neither a tax-exempt nor a government entity, leave column (c) blank.

Column (d). Enter the total dollar amount of cash grants to each recipient organization or entity for the tax year. Cash grants include grants and allocations paid by cash, check, money order, electronic fund or wire transfer, and other charges against funds on deposit at a financial institution.

Columns (e) and (f). Enter the **fair market value** of noncash property. Describe the method of valuation. Report property with a readily determinable market value (for example, market quotations for **securities**) at its fair market value. For marketable securities registered and listed on a recognized securities exchange, measure market value on the date the property is distributed to the grantee by the average of the highest and lowest quoted selling prices or the average between the bona fide bid and asked prices. When fair market value can't be readily determined, use an appraised or estimated value.

Column (g). For noncash property or assistance, enter a description of the property or assistance. List all that apply. Examples of noncash assistance include medical supplies or equipment, pharmaceuticals, blankets, and books or other educational supplies.

Column (h). Describe the purpose or ultimate use of the grant funds or other assistance. Don't use general terms, such as charitable, educational, religious, or scientific. Use more specific descriptions, such as general support, payments for nursing services, or laboratory construction. Enter the type of assistance, such as medical, dental, or free care for indigent hospital patients. In the case of disaster assistance, include a description of the disaster and the assistance provided (for example, "Food, shelter, and clothing for Organization A's assistance to victims of Colorado wildfires"). Use Part IV if additional space is needed for descriptions.



If the organization checks "Accrual" on Form 990, Part XII, line 1; follows **Financial Accounting Standards Board Accounting Standards Codification (FASB ASC 958)** (formerly "SFAS 116") (see instructions for Form 990, Part IX); and makes a grant during the **tax year** to be paid in future years to a **domestic organization or domestic government**, it should report the grant's present value in Part II, line 1, column (d) or (e), and report any accruals of present value increments in future years.

Line 2. Add the number of recipient organizations listed on Schedule I (Form 990), Part II, line 1, that (a) have been recognized by the Internal Revenue Service as exempt from federal income tax as described in section 501(c)(3); (b) are **churches**, including synagogues, temples, and mosques; (c) are integrated auxiliaries of churches and conventions or association of churches; or (d) are **domestic governments**. Enter the total.

Line 3. Add the number of recipient organizations listed on Schedule I (Form 990), Part II, line 1, that aren't described on line 2. This number should include both organizations that aren't tax exempt and organizations that are tax exempt under section 501(c) but not section 501(c)(3).

Part III. Grants and Other Assistance to Domestic Individuals

Complete Part III if the organization answered "Yes" on Form 990, Part IV, line 22. A "Yes" response means that the organization reported more than \$5,000 on Form 990, Part IX, line 2, column (A).

Enter information for **grants and other assistance** made to or for the benefit of individual recipients. Don't complete Part III for grants or assistance provided to individuals through another organization or entity, unless the grant or assistance is earmarked by the filing organization for the benefit of one or more specific **domestic individuals**. Instead, complete Part II, earlier. For example, report a payment to a **hospital** designated to cover the medical expenses of particular domestic individuals in Part III and report a contribution to a hospital designated to provide some service to the general public or to unspecified domestic charity patients in Part II.

Enter the details of each type of assistance to individuals on a separate line of Part III. If there are more types of assistance than space available, report the types of assistance on duplicate copies of Part III. Use as many duplicate copies as needed, and number each page. Use Part IV if additional space is needed for descriptions of particular column entries.

Column (a). Specify type(s) of assistance provided, or describe the purpose or use of grant funds. Don't use general terms, such as charitable, educational, religious, or scientific. Use more specific descriptions, such as scholarships for students attending a particular school; provision of books or other educational supplies; food, clothing, and shelter for indigents, or direct cash assistance to indigents; etc. In the case of specific disaster assistance, include a description of the type of assistance provided and identify the disaster (for example, "Food, shelter, and clothing for immediate relief for victims of Colorado wildfires").

Column (b). Enter the number of recipients for each type of assistance. If the organization is unable to determine the actual number, provide an estimate of the number. Explain in Part IV how the organization arrived at the estimate.

Column (c). Enter the aggregate dollar amount of cash grants for each type of grant or assistance. Cash grants include grants and allocations paid by cash, check, money order, electronic fund or wire transfer, and other charges against funds on deposit at a financial institution.

Columns (d) and (e). Enter the **fair market value** of noncash property. Describe the method of valuation. Report property with a readily determinable market value (for example, market quotations for **securities**) at

its fair market value. For marketable securities registered and listed on a recognized securities exchange, measure market value by the average of the highest and lowest quoted selling prices or the average between the bona fide bid and asked prices, on the date the property is distributed to the grantee. When fair market value can't be readily determined, use an appraised or estimated value.

Column (f). For noncash grants or assistance, enter descriptions of property. List all that apply. Examples of noncash assistance include medical supplies or equipment, pharmaceuticals, blankets, and books or other educational supplies.



*If the organization checks "Accrual" on Form 990, Part XII, line 1; follows **Financial Accounting Standards Board Accounting Standards***

Codification (FASB ASC 958) (formerly "SFAS 116") (see instructions for Form 990, Part IX); and makes a grant during the **tax year** to be paid in future years to a **domestic individual**, it should report the grant's present value in Part III, column (c) or (d), and report any accruals of present value increments in future years.

Part IV. Supplemental Information

Use Part IV to provide narrative information required in Part I, line 2, regarding monitoring of funds, and in Part III, column (b), regarding how the organization estimated the number of recipients for each type of grant or assistance. Also, use Part IV to provide other narrative explanations and descriptions, as needed. Identify the specific part and line(s) that the response supports. Part IV can be duplicated if more space is needed.

EXHIBIT P

SCHEDULE J
(Form 990)Department of the Treasury
Internal Revenue Service
Name of the organization**Compensation Information**For certain Officers, Directors, Trustees, Key Employees, and Highest
Compensated Employees
Complete if the organization answered "Yes" on Form 990, Part IV, line 23.
Attach to Form 990.
Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2022**Open to Public
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Employer identification number

Part I Questions Regarding Compensation

	Yes	No
1a Check the appropriate box(es) if the organization provided any of the following to or for a person listed on Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items. <input type="checkbox"/> First-class or charter travel <input type="checkbox"/> Housing allowance or residence for personal use <input type="checkbox"/> Travel for companions <input type="checkbox"/> Payments for business use of personal residence <input type="checkbox"/> Tax indemnification and gross-up payments <input type="checkbox"/> Health or social club dues or initiation fees <input type="checkbox"/> Discretionary spending account <input type="checkbox"/> Personal services (such as maid, chauffeur, chef)		
b If any of the boxes on line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain.	1b	
2 Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all directors, trustees, and officers, including the CEO/Executive Director, regarding the items checked on line 1a?	2	
3 Indicate which, if any, of the following the organization used to establish the compensation of the organization's CEO/Executive Director. Check all that apply. Do not check any boxes for methods used by a related organization to establish compensation of the CEO/Executive Director, but explain in Part III. <input type="checkbox"/> Compensation committee <input type="checkbox"/> Written employment contract <input type="checkbox"/> Independent compensation consultant <input type="checkbox"/> Compensation survey or study <input type="checkbox"/> Form 990 of other organizations <input type="checkbox"/> Approval by the board or compensation committee		
4 During the year, did any person listed on Form 990, Part VII, Section A, line 1a, with respect to the filing organization or a related organization:		
a Receive a severance payment or change-of-control payment?	4a	
b Participate in or receive payment from a supplemental nonqualified retirement plan?	4b	
c Participate in or receive payment from an equity-based compensation arrangement? If "Yes" to any of lines 4a–c, list the persons and provide the applicable amounts for each item in Part III.	4c	
Only section 501(c)(3), 501(c)(4), and 501(c)(29) organizations must complete lines 5–9.		
5 For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of:		
a The organization?	5a	
b Any related organization? If "Yes" on line 5a or 5b, describe in Part III.	5b	
6 For persons listed on Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of:		
a The organization?	6a	
b Any related organization? If "Yes" on line 6a or 6b, describe in Part III.	6b	
7 For persons listed on Form 990, Part VII, Section A, line 1a, did the organization provide any nonfixed payments not described on lines 5 and 6? If "Yes," describe in Part III.	7	
8 Were any amounts reported on Form 990, Part VII, paid or accrued pursuant to a contract that was subject to the initial contract exception described in Regulations section 53.4958-4(a)(3)? If "Yes," describe in Part III.	8	
9 If "Yes" on line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53.4958-6(c)?	9	

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported on Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that aren't listed on Form 990, Part VII.

Note: The sum of columns (B)(i)–(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

	(A) Name and Title	(B) Breakdown of W-2 and/or 1099-MISC and/or 1099-NEC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)–(D)	(F) Compensation in column (B) reported as deferred on prior Form 990
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
1		(i)						
		(ii)						
2		(i)						
		(ii)						
3		(i)						
		(ii)						
4		(i)						
		(ii)						
5		(i)						
		(ii)						
6		(i)						
		(ii)						
7		(i)						
		(ii)						
8		(i)						
		(ii)						
9		(i)						
		(ii)						
10		(i)						
		(ii)						
11		(i)						
		(ii)						
12		(i)						
		(ii)						
13		(i)						
		(ii)						
14		(i)						
		(ii)						
15		(i)						
		(ii)						
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Part III **Supplemental Information**

Provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 3, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 7, and 8, and for Part II. Also complete this part for any additional information.

Area with horizontal dashed lines for supplemental information.

EXHIBIT Q

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

February 17, 2021

Report Number: 2021-10-013

Why TIGTA Did This Audit

This audit was initiated at the request of a member of the House Committee on Ways and Means. The overall objective was to review the IRS's policies and audit procedures to identify improper conduct by tax-exempt organizations and determine whether the IRS has sufficient information to combat abuse and enforce Federal tax laws.

Impact on Taxpayers

The Exempt Organizations (EO) function Examinations unit is responsible for oversight of tax-exempt organizations' compliance with tax laws. If the EO Examinations unit does not follow established procedures and effectively identify noncompliance, unscrupulous taxpayers may conduct abusive schemes using tax-exempt organizations for their own financial gain. This could cause taxpayers to question the integrity of all tax-exempt organizations and affect the amount of charitable contributions made to these important entities.

What TIGTA Found

Information reported on tax-exempt organizations' returns does not always indicate noncompliance; therefore, the IRS relies heavily on referrals to identify abusive schemes. However, TIGTA found that although referrals may help detect tax schemes, they do not always lead to productive cases. In addition, the chances of examination for tax-exempt organizations is lower when compared to examination rates of businesses and individuals. For Fiscal Year (FY) 2019, the chance of examination for exempt organizations was one in 742, compared to one in 156 for businesses and one in 226 for individual taxpayers. Further, churches and certain other religious organizations are not required to file annual information returns making it difficult to track the activities of these organizations to identify noncompliance. For FY 2019, the chance of examination for churches was about one in 5,000.

The Compliance Planning and Classification function is responsible for identifying and selecting EO Examination cases with potential noncompliance issues. In FY 2019, 20 percent of tax-exempt organization returns selected for examination were closed without an examination being completed, resulting in an inefficient use of resources. For examinations that are completed, there is currently no formal feedback mechanism in place to track the results of each specific noncompliance issue identified. However, the IRS is implementing a new process to improve issue tracking.

Employees are encouraged to submit ideas for future examinations through an online submission site. During our interviews with EO examiners and managers, TIGTA learned that, with the exception of receiving an acknowledgement notice, employees who make submissions do not receive any kind of feedback or updates on them. This lack of feedback may discourage employees from submitting ideas, potentially resulting in missed opportunities to identify potential noncompliance.

TIGTA reviewed a random sample of 53 of the 3,675 closed EO Examination cases during FY 2019 and determined that examiners generally followed examination procedures. EO examiners and managers stated that the EO function has sufficient information during examinations to detect noncompliance.

What TIGTA Recommended

TIGTA recommended that the Compliance Planning and Classification function provide feedback to examiners who have submitted issues through the online submissions portal. The IRS agreed with the recommendation and plans to develop a process to provide feedback to examiners who have submitted issues through the online submissions portal, without violating internal control separation of duties for examination selection.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

February 17, 2021

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in blue ink, reading "Michael E. McKenney".

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Obstacles Exist in Detecting Noncompliance of
Tax-Exempt Organizations (Audit # 201910021)

The overall objective of this review was to review the Internal Revenue Service's (IRS) policies and audit procedures to identify improper conduct by tax-exempt organizations and determine whether the IRS has sufficient information to combat abuse and enforce Federal tax laws. This review was requested by Representative Brad Schneider, a member of the House Committee on Ways and Means. It is part of our Fiscal Year 2021 Annual Audit Plan, and addresses the major management and performance challenge of *Improving Tax Reporting and Payment Compliance*.

Management's complete response to the draft report is included as Appendix III.

If you have any questions, please contact me or Heather M. Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations).

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

Table of Contents

<u>Background</u>	Page 1
<u>Results of Review</u>	Page 4
<u>The IRS Faces Obstacles in Detecting</u> <u>Noncompliance of Tax-Exempt Organizations</u>	Page 4
<u>Case Identification Can Be Improved</u>	Page 8
<u>Recommendation 1:</u>	Page 10
<u>Examiners Generally Followed Procedures and</u> <u>Obtained Sufficient Information to Detect</u> <u>Noncompliance of Tax-Exempt Organizations</u>	Page 10
 Appendices	
<u>Appendix I – Detailed Objective, Scope, and Methodology</u>	Page 12
<u>Appendix II – Exempt Organizations Examination Process</u>	Page 14
<u>Appendix III – Management’s Response to the Draft Report</u>	Page.15
<u>Appendix IV – Abbreviations</u>	Page.18

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

Background

The Exempt Organizations (EO) function is part of the Internal Revenue Service's (IRS) Tax Exempt and Government Entities (TE/GE) Division. The EO function's mission is to provide EO customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax law with integrity and fairness to all. The EO Examinations unit, within the EO function, has important responsibilities for both the oversight of regulatory compliance with tax-exempt requirements as well as compliance with tax laws. The primary objectives for the examination of an exempt organization are to determine if: (1) the organization is organized and operated in accordance with its exempt purpose; (2) the organization has properly filed all required returns and forms; and (3) the organization or its related entities are liable for other taxes.

Most tax-exempt organizations are required to file an annual Form 990-series information return or notice.¹ According to IRS Statistics of Income Division data, as of Fiscal Year (FY) 2019, the IRS recognized approximately 1.9 million tax-exempt organizations and received in FY 2019 almost 1.6 million tax-exempt return filings.² Representative Brad Schneider, a member of the House Committee on Ways and Means, asked the Treasury Inspector General for Tax Administration (TIGTA) to review the IRS's policies and audit procedures to identify improper conduct by tax-exempt organizations and determine whether the IRS has sufficient information to combat abuse and enforce Federal tax laws. This audit focused on the information available to examiners during an examination of organizations' annual information return filings. We are performing a separate review of the adequacy of information provided by organizations during the process of applying for tax-exempt status.³

EO examination case selection

On May 1, 2017, the TE/GE Division realigned the issue identification, planning, classification, and case delivery processes from five TE/GE functions into the centralized Compliance Planning and Classification (CP&C) function.⁴ TIGTA recently reported that because IRS management did not develop performance metrics to measure progress towards achieving reorganization goals,

¹ Form 990, *Return of Organization Exempt From Income Tax*, Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*, Form 990-PF, *Return of Private Foundation*, Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ*, and Form 990-T, *Exempt Organization Business Income Tax Return*. Not all types of tax-exempt organizations are required to file annual information returns; for example, churches have no filing requirements.

² Includes the Form 990 Series; Form 4720, *Excise Tax Return of Charities and Other Persons*; Form 5227, *Split-Interest Trust Information Return*, and Form 8872, *Political Organization Report of Contributions and Expenditures*. A fiscal year is any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.

³ TIGTA, *2021 Annual Audit Plan - Tax-Exempt Compliance for Organizations That Filed the Streamlined Application for Recognition of Exemption Under Section 501 (c)(3)* (202110017).

⁴ Classification is the process of determining whether a return should be selected for compliance activities, what issues should be the primary focus of the compliance activity, and the type of compliance activity that should be conducted.

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

TE/GE Division leadership cannot determine if the CP&C function improved the effectiveness and efficiency of identifying, planning, classifying, and monitoring examination workload.⁵

The CP&C function is responsible for developing EO Examinations' work plan, identifying returns for examination, and classifying pre-identified examination issues. CP&C sorts EO Examinations' inventory into three categories, referred to as portfolios, based on how they identified the work:

Compliance strategies - Issues of noncompliance approved by TE/GE Division's Compliance Governance Board and collected through employee input.⁶

Data-driven approaches - Enforcement activities resulting from the use of data and queries to select cases based on specified quantitative criteria. The Government Accountability Office recently issued a report on the use of data analytics to identify workload for the EO function.⁷

Referrals, claims, and other casework - Includes (1) examinations resulting from referrals received from internal and external sources that allege possible noncompliance for an entity under the TE/GE Division's jurisdiction, and (2) requests for refunds or credits of amounts already assessed and paid, including tax, penalties, interest, or an adjustment of tax paid or credit not previously reported or allowed.

Figure 1 shows the number of EO examination cases closed within each compliance portfolio for FYs 2018 and 2019.

Figure 1: EO Examination Closures by Compliance Portfolio for FYs 2018 and 2019

Compliance Portfolio	FY 2018	FY 2019
Total⁸	4,891	3,675
Referrals/Claims/Other	2,793	1,672
Data-Driven Approaches	2,086	1,982
Compliance Strategies⁹	12	21

Source: TIGTA analysis of Returns Inventory and Classification System data.

⁵ TIGTA, Ref. No. 2020-10-005, *Consolidation of Examination Case Selection and Assignment in the Tax Exempt and Government Entities Division Created Benefits, but Additional Improvements Are Needed* (December 23, 2020).

⁶ The TE/GE Compliance Governance Board serves as the governing body over the identification, selection, assignment, and allocation of resources for all TE/GE Division compliance and enforcement activities and helps ensure that all compliance strategy proposals are reviewed and discussed prior to any case selection.

⁷ Government Accountability Office, GAO-20-454, *Tax Exempt Organizations – IRS Increasingly Uses Data in Examination Selection, but Could Further Improve Selection Processes* (June 2020).

⁸ A combination of factors contributed to the EO function's reduced examination closures for FY 2019, including delayed delivery of inventory due to case inventory management system problems, the 2018-2019 Federal Government shutdown, and the temporary reassignments of EO examiners to other areas within the EO and CP&C functions.

⁹ The compliance strategies portfolio was created in FY 2018. Each compliance strategy has to be researched, developed, and approved before examinations can be assigned and worked. As a result, the FYs 2018 and 2019 numbers are low; however, EO Examination's FY 2020 Workplan shows a significant increase for this portfolio.

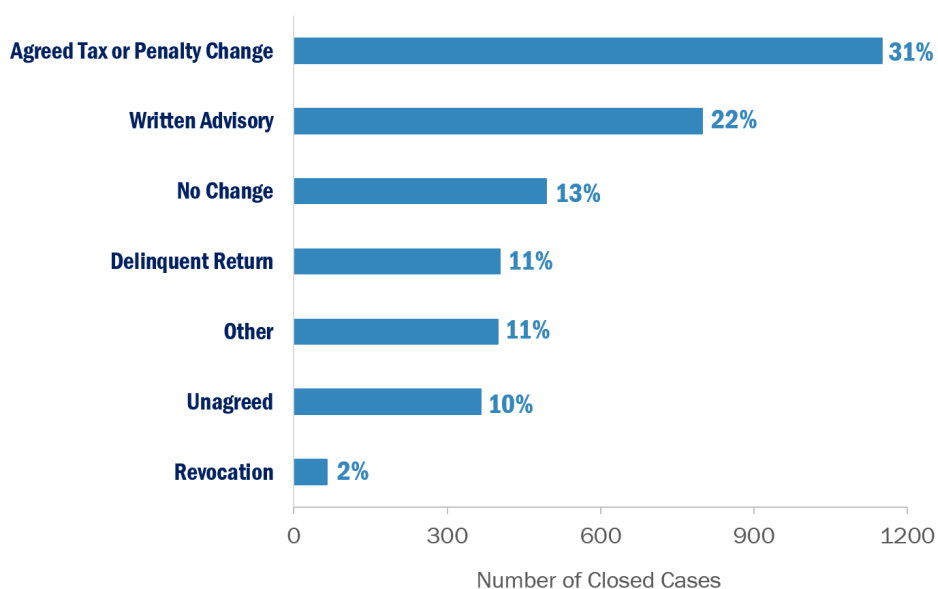
Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

EO examination process

As defined in Section 7602 of the Internal Revenue Code, an examination is a review of a return and supporting books and records. EO may examine a tax-exempt organization to determine the continuing tax-exempt status of an organization and whether the organization paid all appropriate tax liabilities. During the examination, examiners interview taxpayers and request documentation and other information needed to complete the review. Once completed, the examiner discusses the results of the examination with the taxpayer and closes the case.¹⁰

During FY 2019, the EO Examinations unit closed 3,675 examination cases. Figure 2 shows the percentage of EO examination cases closed within each examination outcome category.

Figure 2: Percentage of Fiscal Year 2019 EO Examination Cases Closed by Examination Outcome¹¹



Source: TIGTA analysis of Returns Inventory and Classification System data.

The majority (53 percent) of examinations resulted in an agreed tax or penalty change or a written advisory. About two percent resulted in the revocation of an organization's tax-exempt status.

¹⁰ See Appendix II for a more detailed explanation of the EO examination process.

¹¹ A written advisory is issued to a tax-exempt organization when an exam results in no change to exempt status, but identified some aspect of an organization's activities, which if it continues or grows, may jeopardize the organization's exempt status. The "Other" category includes Regulatory/Revenue Protection when an examination is closed with an agreed claim disallowance, a reduction to a net operating loss that does not affect the tax liability, the closing of a barred statute, or a change to income and/or deduction items reported on the return with no tax adjustment.

Results of Review

The IRS Faces Obstacles in Detecting Noncompliance of Tax-Exempt Organizations

An organization must be organized and operated in a way that meets the requirements of the subsection of Section 501(c) under which it is recognized or claims exempt status. The requirements vary depending on which subsection is applicable (*e.g.*, Section 501(c)(3) charities; Section 501(c)(4) social welfare organizations), and require the application of the relevant law to the facts and circumstances of the particular organization under audit. Moreover, tax abuse continues to occur within the tax-exempt sector because unscrupulous organizations may use elaborate or fraudulent schemes to conceal their illegal activities, making such abuse difficult to identify. The complexity of the tax law, limited examination resources, and a lack of filing requirements for some types of entities make identifying tax abuse by tax-exempt organizations challenging.

The IRS relies heavily on referrals to identify abusive schemes

Identifying noncompliance and performing examinations of tax-exempt organizations requires in-depth training, experience, and knowledge. Tax-exempt organizations encompass a wide range of entities from animal shelters and veterans organizations, to hospitals and colleges, each with unique criteria for tax-exempt approval and continued tax-exempt status. The complexity of the tax law provides unscrupulous entities opportunities to abuse the tax system and commit fraud.

Return information alone does not always identify noncompliance. Information reported on an organization's returns may not have been uncommon, prohibited, or raised concerns of potential noncompliance at the time of filing. For example, in FY 2019, a whistleblower alerted Federal officials about an abusive scheme, referred to as the college admissions scandal, involving a tax-exempt organization. The organization's returns did not include any information considered uncommon or prohibited under tax law. It was the additional information provided by the whistleblower that led to an in-depth review of the tax-exempt organization, and ultimately the uncovering of an abusive scheme that had been going on for years.

In addition, some illicit activities may be easier to identify from the perpetrator's personal or business tax returns and other financial records instead of the return and other records of the tax-exempt organization used in the tax abuse. In other cases, identification of noncompliance could be best identified by simultaneously reviewing documentation from multiple filers; however, the IRS would need a basis to associate seemingly unrelated entities to accomplish this analysis.

Based on interviews with employees and our own research, it does not appear that requiring additional information on returns would make identifying abusive schemes easier. We spoke with EO Examination function directors, managers, and examiners to solicit ideas for information that could be used to identify potential noncompliance. Overall, they did not think additional return information would assist with identifying abusive schemes. Improper activity, such as

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

illicit contributions to an exempt organization, would not be evident based on the returns alone, and would require additional investigation on a case-by-case basis.

In addition, we researched other sources of information that may help uncover unscrupulous taxpayers during examinations. We compared the information reported on Form 990 with the information on Form 1120, *U.S. Corporation Income Tax Return*, and did not identify any information gaps that impaired detection of exempt organization noncompliance. We also researched the filing requirements for exempt organizations in six States and determined that each State has unique filing requirements, which makes it difficult for the IRS to develop a standardized information request for all the States to help identify potential noncompliance.

Referrals may help detect tax schemes, but they do not always lead to productive cases. A referral is a complaint from the public or a Federal or State regulatory agency about potential noncompliance by an exempt organization. Given the challenges of detecting complex tax schemes, TE/GE Division leadership told us they rely on their referral program to identify such behavior. Whistleblowers or other third parties can have insider's knowledge and access to information that would not be available to the IRS.

Although referrals are a valuable source of information, especially for the detection of fraudulent activity, examinations initiated from referrals are more likely to be closed with no changes to the return than those from other sources, such as compliance strategies and data-driven approaches. The IRS considers examined returns with recommended adjustments more productive than examinations that result in no changes. Examinations that result in no change to the organization's tax-exempt status or tax liability cause unnecessary burden on taxpayers and IRS resources. Figure 3 compares the no-change rates for examinations from referrals to examinations from other sources for the past two fiscal years.

Figure 3: Examination Closures and No-Change Rates for Referral and Non-Referral Cases¹²

	Closed Examinations	No Changes	No-Change Rate
FY 2018			
Referrals	962	174	18%
Non-referrals	3,929	592	15%
FY 2019			
Referrals	566	86	15%
Non-referrals	3,109	408	13%

Source: TIGTA analysis of Returns Inventory and Classification System data.

Compared to examinations from other sources, the no-change rate for examinations from referrals was 20 percent higher (3 percentage points) in FY 2018 and 16 percent higher (2 percentage points) in FY 2019. However, although only 20 percent of the FY 2018 examination closures originated from referrals, they resulted in 40 percent of the total revocations of tax-exempt status for that year. For FY 2019, 15 percent of closed examinations were from referrals and accounted for 16 percent of the total revocations that year. These

¹² Closed referral examinations include additional cases closed as a result of a referral, including related return pick-ups and delinquent returns secured.

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

results suggest that even though referrals may help uncover fraudulent activity or result in significant changes, like revocations of tax-exempt status, the IRS should continue balancing examinations initiated from other sources with those originated from referrals.

The IRS conducts comparatively few examinations of exempt organizations

The more examinations that take place, the greater likelihood of detecting noncompliance; however, resources are limited. During FY 2019, there were almost 1.5 million Form 990 series returns and notices filed; however, the EO function examined approximately 2,000 (0.13 percent) Form 990 series returns during the same year.¹³ Put another way, an exempt organization's chance of examination was one in 742. Meanwhile, although still low, the chances of examination for other kinds of entities is materially higher than that of exempt organizations. Figure 4 shows that businesses were almost five times more likely to be examined than exempt organizations and individual taxpayers were more than three times more likely to be examined.

Figure 4: FY 2019 Examination Percentages for Tax-Exempt Organization, Corporation, and Individual Returns

Return Type	Returns Filed	Returns Examined	Percent Examined
990 Series (Tax-Exempt Organization)	1,491,002	2,009	0.13%
1120 Series ¹⁴ (Corporation)	2,101,462	13,472	0.64%
1040 Series ¹⁵ (Individual)	154,094,555	680,543	0.44%

Source: Publication 6292, *Fiscal Year Return Projections for the United States: 2020-2027, Spring 2020*; TIGTA analysis of Returns Inventory and Classification System data; and IRS's *Statistics of Income* data.

In order for the EO Examinations unit's examination rate to be comparable to that of businesses, it would have to complete five times as many examinations as it does now. The unit would have to complete more than three times as many examinations to reach the examination rate of individuals. The relatively low examination rate may embolden unscrupulous



¹³ The 1.5 million is Form 990 series returns only and does not include Forms 4720 or 8872.

¹⁴ Form 1120, *U.S. Corporation Income Tax Return*; Form 1120-C, *U.S. Income Tax Return for Cooperative Associations*; Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*; Form 1120-H, *U.S. Income Tax Return for Homeowners Associations*; Form 1120-L, *U.S. Life Insurance Company Income Tax Return*; 1120-ND, *Return for Nuclear Decommissioning Funds and Certain Related Persons*; Form 1120-PC, *U.S. Property and Casualty Insurance Company Income Tax Return*; Form 1120-REIT, *U.S. Income Tax Return for Real Estate Investment Trusts*; Form 1120-RIC, *U.S. Income Tax Return for Regulated Investment Companies*; and Form 1120-SF, *U.S. Income Tax Return for Settlement Funds*.

¹⁵ Form 1040, *U.S. Individual Income Tax Return*; Form 1040-NR, *U.S. Nonresident Alien Income Tax Return*; Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*; Form 1040-C, *U.S. Departing Alien Income Tax Return*; and Forms 1040-PR and 1040-SS, *U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bona Fide Residents of Puerto Rico)*.

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

organizations to file returns with missing or erroneous information. It also emphasizes why case selection is particularly important for the EO function.

Limited filing requirements and restrictive procedural tax laws for churches and certain other religious organizations create challenges detecting noncompliance

Per current tax law, churches and certain other religious organizations are not required to file applications for exemption or annual information returns to obtain or maintain their tax-exempt status, making it challenging for the IRS to identify potential noncompliance.¹⁶ There are also special rules imposed by Congress limiting the IRS's authority to conduct certain tax inquiries and examinations of churches.

We identified a population of more than 263,000 churches and other religious organizations that IRS systems showed were not required to file tax-exempt annual information returns with the IRS.¹⁷ Of those, 39 (0.01 percent) organizations had 52 returns examined during FY 2019, which is about a one in 5,000 chance of examination. The EO managers and examiners we interviewed stated that they believe churches' exemptions from filing annual information returns hinders detection of potential noncompliance. The IRS instead relies on other types of returns that churches and religious organizations must file, such as employment tax returns, to identify church noncompliance. The IRS may also identify church noncompliance through referrals.

Congress has also imposed special limitations on how and when the IRS may conduct certain tax inquiries and examinations of churches.¹⁸ The IRS may begin a church tax inquiry only if an appropriate high-level Treasury official reasonably believes, on the basis of facts and circumstances recorded in writing, that an organization claiming to be a church, or a convention or association of churches, may not qualify for exemption.¹⁹ If the reasonable belief requirement is met, the IRS must begin an inquiry by providing a church with written notice containing an explanation of its concerns.²⁰ The church is allowed a reasonable period in which to respond by furnishing a written explanation to alleviate the IRS's concerns. If the church fails to respond to the inquiry notice within the required time, or if its response is not sufficient, the IRS may issue a second notice informing the church of the need to examine its books and records. If at any time during the inquiry process the church supplies information sufficient to alleviate the concerns of the IRS, the matter will be closed without examination of the church's books and records. The IRS cannot begin a subsequent inquiry or examination of a church for a five-year period unless

¹⁶ Per Internal Revenue Code Sections 508 and 6033, churches and their integrated auxiliaries, conventions or associations of churches are not required to file applications for exemption or annual information returns to be a tax-exempt organization under section 501(c)(3). There are some religious affiliated organizations, for example religious schools, that are required to file.

¹⁷ This number is an approximation. We did not validate these data due to time constraints. Some of the identified organizations may no longer be active tax-exempt organizations.

¹⁸ Internal Revenue Code § 7611 restricts how the IRS can interact with churches in connection with church tax inquiries and examinations. However, churches may authorize the IRS to consider a claim for refund or request for abatement without following Internal Revenue Code § 7611 procedures by executing a written waiver.

¹⁹ A church tax inquiry is any inquiry to a church (other than an examination) that serves as a basis for determining whether the organization qualifies for tax exemption as a church, or whether it is carrying on an unrelated trade or business or otherwise engaged in activities subject to any Internal Revenue Code tax.

²⁰ The written notice must also contain the general subject matter of the inquiry and a general explanation of the applicable administrative and constitutional provisions with respect to such inquiry (including the right to a conference with the Secretary before any examination).

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

the previous inquiry or examination resulted in a revocation, notice of deficiency, assessment, or a request for a significant change in church operations.²¹

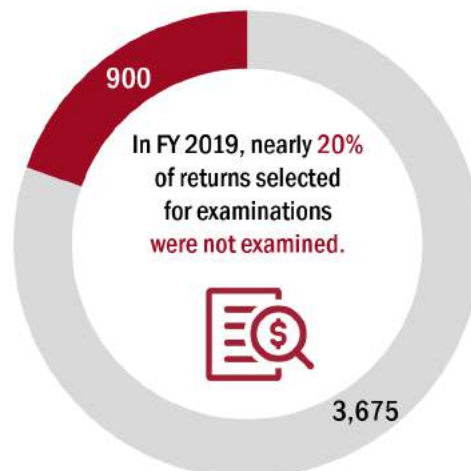
However, without annual returns, there is no way to track the activities of churches and other religious organizations from year to year and there is no return data for the CP&C function to use to identify potential noncompliance. The lack of filing requirements imposed by statute limits the IRS's enforcement capabilities and it could encourage unscrupulous organizations to exploit this information gap.

Case Identification Can Be Improved

The CP&C function is responsible for identifying and selecting EO Examinations cases with potential noncompliance issues. It does this by performing data analytics of filed information returns, developing issue ideas submitted by EO function employees, and approving internal and external referrals for examination. However, many examination cases were unproductive and there are no processes in place to measure the success of case identification or receive feedback on case selection quality from the examiners.

Many selected cases were not productive. Cases identified and selected for examination by the CP&C function that are closed without an examination being completed are referred to as non-examined closures. For example, an examiner may determine that the issues identified by the CP&C function do not have merit or the return is close to its statute of limitations date, so an examination is not warranted.²² The examiner will "survey" the case, which is closing it without completing an examination, after obtaining manager approval. Figure 5 shows the number of non-examined case closures in FY 2019.

**Figure 5: FY 2019 Exempt Organizations
Selected Cases Not Examined**



Source: TIGTA analysis of Returns Inventory and Classification System data.

²¹ Unless such subsequent inquiry or examination is approved in writing by the Secretary or does not involve the same or similar issues involved in the preceding inquiry or examination.

²² A statute of limitation is a time period established by law to review, analyze, and resolve taxpayer and IRS tax-related issues.

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

In FY 2019, the EO Examinations unit did not examine approximately 20 percent of the tax-exempt organization returns selected for examination, resulting in an inefficient use of resources.²³ Examiners and managers spent time reviewing unproductive cases that were surveyed instead of examined. In response to the recent Government Accountability Office report, the IRS agreed to analyze the reasons for non-examined closures and take actions to address them, so we are not making a recommendation for this issue.²⁴

Another measure of productivity is the number of completed examinations that result in no changes. The number of examinations resulting in no changes favorably decreased from 15.7 percent in FY 2018 to 13.4 percent in FY 2019. This change represents a 15 percent improvement. However, there is no way to determine the cause of the improvement without additional issue-specific information. The CP&C function is piloting a process to determine whether the potential examination issues identified actually resulted in changes.

The CP&C function is taking steps to track issue-specific examination results. Currently, there is no formal feedback mechanism in place between the EO Examinations unit and the CP&C function for EO examiners to provide input on the cases identified and selected for examination. EO examiners close cases at the summary level (*e.g.*, "adjustment"), without tracking the results of each specific noncompliance issue identified. As a result, the CP&C function has no way of knowing if the potential issue(s) identified for the examiners resulted in an adjustment or if other issues identified during the examination resulted in the change. For example, if the CP&C function identified a possible employment tax issue, but the examination resulted in a change due to a separate issue (such as Unrelated Business Income), the overall case would be closed as a "change case" but the CP&C function would have no way of knowing that the employment tax issue was not substantiated. This practice could lead to a mistaken belief that the CP&C function's methodology for identifying cases for examination led to a related finding of noncompliance.

However, the TE/GE Division is piloting a data grid, which collects the results of examinations by each potential noncompliance issue reviewed. For every examination, the grid lists each potential noncompliance issue identified by the CP&C function. In addition, examiners can add other issues identified during an examination. When examiners close cases, they indicate on the data grid the results for each identified issue, such as no change or assessment. Using the completed data grid, the CP&C function can now compare examination results with the specific potential noncompliance issues initially identified, and adjust the criteria used to detect potential noncompliance issues as necessary. According to IRS management, the TE/GE Division began implementing the data grid for all assigned inventory in September 2020. Because the IRS is updating its processes to improve issue tracking, we are not making a recommendation.

The CP&C function does not recognize specific employees' contributions to compliance strategies. IRS leadership stated that if examiners have ideas or issues for development to be used in identifying future examinations, they are encouraged to submit them through the

²³ Some of these tax-exempt organizations continued to be examined using a different return filing or subsequent tax period.

²⁴ Government Accountability Office, GAO-20-454, *Tax Exempt Organizations – IRS Increasingly Uses Data in Examination Selection, but Could Further Improve Selection Processes* (June 2020).

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

CP&C's online submission portal.²⁵ Each submission is evaluated and is either rejected, combined with another related submission, or developed into a potential compliance strategy.

In FY 2019, employees submitted 45 EO compliance ideas. During our interviews with EO function examiners and managers, we learned that with the exception of receiving an acknowledgement notice, employees who submit ideas through the online submission portal do not receive any kind of feedback or updates on their submissions. This lack of feedback may discourage employees from submitting ideas, which could potentially result in missed opportunities to identify new compliance strategies with a high potential of identifying noncompliance. For example, one EO Examinations unit group manager stated that without responses [to the submission portal], it leaves a negative feeling with the examiners and takes away from them believing that they are making a difference. Positive reinforcement would encourage employees to submit new ideas and potentially improve future workload selection.

The Director, CP&C, should:

Recommendation 1: Provide feedback to examiners who have submitted issues through the online submissions portal, without violating internal control separation of duties for examination selection.

Management's Response: The IRS agreed with the recommendation and plans to develop a process to provide feedback to examiners who have submitted issues through the online submissions portal, without violating internal control separation of duties for examination selection.

Examiners Generally Followed Procedures and Obtained Sufficient Information to Detect Noncompliance of Tax-Exempt Organizations

We reviewed a random sample of EO examination cases closed during FY 2019 and determined that examiners generally followed examination procedures.²⁶ In addition, per EO function leadership and examiners, the EO function has sufficient information during examinations to detect tax-exempt organization noncompliance once a return is selected for review.

During the course of an examination, examiners have both internal and external information available to them. The initial analysis of a case includes conducting research using various internal IRS sources, such as a taxpayer filing and compliance history database and determination administrative files, if submitted.²⁷ Examiners also have access to external sources such as the Accurint database for public documents, tax law research including the Internal Revenue Code and legal decisions, and Internet websites.²⁸ After examiners conduct the initial research and confirm the existence of the CP&C function's pre-identified issues as well as identify any additional potential issues warranting further review, they create a request letter asking for specific items needed from the tax-exempt organization to complete the examination.

²⁵ The Issue Submission Portal is an online site where employees can submit ideas about an area of potential noncompliance for the development of a compliance strategy.

²⁶ See Appendix I for details on our sampling methodology.

²⁷ When an organization applies for exempt status, the application, related paperwork, and the disposition of the application are retained. This file is referred to as the "determination administrative file."

²⁸ Accurint is a system used to find people and businesses and their assets.

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

If the EO Examinations unit does not follow established procedures and effectively identify noncompliance, unscrupulous taxpayers may conduct abusive schemes using tax-exempt organizations for their own financial gain. This could cause taxpayers to question the integrity of all tax-exempt organizations and affect the amount of charitable contributions made to these important entities.

We selected a random sample of 53 of the 3,675 cases closed in FY 2019 to determine if examiners were following proper examination procedures. We evaluated our case reviews based on procedural requirements, such as verifying required filings were submitted, thoroughly developing identified issues, and obtaining adequate documentation to complete the examination. We identified minor procedural issues, such as managers not documenting their approval of case closures as required and examiners not completing a specific checklist for private foundations.²⁹ However, these issues were not material and had no effect on the identification of improper conduct or noncompliance of the organizations being examined.

²⁹ Form 5774, *Private Foundation Workpapers*, is a form used to organize the examiner's workpapers, provide a summary of the findings, and provide reminders as to procedures to perform or issues to consider.

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations**Appendix I****Detailed Objective, Scope, and Methodology**

Our overall objective was to review the IRS's policies and audit procedures to identify improper conduct by tax-exempt organizations and determine whether the IRS has sufficient information to combat abuse and enforce our Federal tax laws. To accomplish our objective, we:

- Identified the EO Examinations unit's policies, procedures, and practices for performing tax-exempt organization examinations and identified and evaluated the information available within the EO Examinations unit to enforce compliance of tax-exempt organizations.
- Selected a stratified random sample of 79 examined information returns (Forms 990, 990-EZ, and 990-PF) from the 3,675 cases closed in FY 2019 and assessed if employees followed procedures to determine continued eligibility for tax-exempt status.¹ This included reviewing any related issues identified during the examination, such as unrelated business income tax – Form 990-T. For our sample, we used a 90 percent confidence level, ± 10 percent precision rate, an expected error rate of 50 percent, and a minimum overall sample size of 30 cases. Because we did not identify any reportable issues during our review of the sample, we stopped reviewing cases after 53 completed analyses.
- Determined overall EO function examination closures for each of the three examination sources – referrals, compliance strategies, and data-driven models – and determined how feedback is used for case selection.
- Researched other potential sources of information to help identify potential noncompliance.
- Researched the college admissions scandal and determined any actions taken by the IRS to identify future schemes using similar tactics.
- Determined if the IRS has sufficient information to identify potential noncompliance by churches and religious organizations that are not required to file applications for exemption or annual information returns.

Due to the large scope, we limited this audit to information available to examiners during an examination of organizations' annual information return filings. We are performing a separate review of the adequacy of information provided by organizations during the process of applying for tax-exempt status.²

¹ We divided our sample into seven strata based on examination outcomes from Returns Inventory and Classification System data: Strata 1 – No Change, Strata 2 – Revocation, Strata 3 – Delinquent Return, Strata 4 – Written Advisory, Strata 5 – Agreed Tax or Penalty, Strata 6 – Unagreed, Strata 7 – Other.

² TIGTA, *2021 Annual Audit Plan - Tax-Exempt Compliance for Organizations That Filed the Streamlined Application for Recognition of Exemption Under Section 501 (c)(3)* (202110017).

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

Performance of This Review

This review was performed at the IRS National Headquarters in Washington, D.C., and with information obtained from the EO and CP&C function offices during the period December 2019 through September 2020. We also conducted telephone interviews with EO Examinations unit and CP&C function employees in numerous locations. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Heather M. Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations), Carl Aley, Director; Cheryl Medina, Audit Manager; Jennifer Burgess, Lead Auditor; and Donald Martineau, Auditor.

Validity and Reliability of Data From Computer-Based Systems

We performed tests to assess the reliability of data from the Returns Inventory and Classification System. We evaluated the data by (1) performing electronic testing of required data elements, (2) reviewing existing information about the data and the system that produced them, and (3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for purposes of this report.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: EO function's policies, procedures, and practices for performing tax-exempt organization examinations. To assess these controls, we selected and reviewed a statistically valid random sample of EO examination unit case files.

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

Appendix II**Exempt Organizations Examination Process**

The EO Examinations unit uses a case inventory management system to create and control EO examination cases. The Internal Revenue Manual provides guidance to examiners on the required procedures to be completed during examinations. When examiners are assigned cases for review, they first perform an initial analysis to determine the scope of the examination. This includes checking the statute of limitations to verify that there is sufficient time to conduct a quality examination, conducting filing checks to determine whether the taxpayer complies with Federal tax and information return filing requirements, documenting the organizational requirements for exemption for the type of organization being examined, and performing additional internal and external research relevant to the case. It also includes evaluating the issues that have been pre-identified during the return's selection process and reviewing the return for any large, unusual, and questionable items. Every EO Examinations unit case is a focused examination limited to these pre-identified issues and large, unusual, and questionable items, unless a full scope examination is warranted for reasons such as fraud or egregious noncompliance. Examiners may expand or reduce the scope of any examination as deemed appropriate or necessary with their managers' concurrence.

The examiner conducts an interview with the taxpayer, analyzes books and records, and assesses internal controls. The examiner reviews and verifies supporting documentation to develop the potential issues identified, researches the applicable tax law, and determines the compliance of the identified issues. The examiner documents the findings and conclusions in workpapers stored in the case inventory management system. Once the issues are developed, the examiner communicates them to the taxpayer and receives the taxpayer's position on the issues. The examiner will then issue a final report, finalize case file workpapers, and close the case to his or her manager for review.

If an examiner identifies indicators of fraud during an examination, and the group manager and TE/GE Division Fraud Specialist agree that the indicators have fraud potential, the examiner will work with a Fraud Technical Advisor to create an action plan for development of the potential fraud. The examiner will proceed with the plan of action until affirmative acts of fraud are established or a determination is made that fraud is no longer an issue. If fraud is substantiated, the case is either referred to Criminal Investigation or closed by the examiner with civil fraud penalties. If no fraud exists, the examiner closes the case following normal closing procedures.

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

Appendix III

Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

January 26, 2021

MEMORANDUM FOR MICHAEL E. MCKINNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Edward T. Killen *Edward T. Killen*
Acting Commissioner,
Tax-Exempt and Government Entities Division (TE/GE)

SUBJECT: Draft Report – Obstacles Exist in Detecting Noncompliance of
Tax-Exempt Organizations
(Audit # 201910021)

Thank you for the opportunity to review your draft report titled: "Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations." We appreciate your review of this issue and share your concern with ensuring effective identification of noncompliance by tax-exempt organizations. As stated in the report, TE/GE believes its examiners have sufficient information during examinations to detect noncompliance, and we appreciate TIGTA's acknowledgement that examiners generally follow examination procedures.

TE/GE is focused on continuously improving our ability to provide oversight in an environment where, as your report observes, resources available to conduct audits are limited. The creation of the Compliance, Planning & Classification (CP&C) unit in 2017 reflects this effort as a comprehensive approach to identifying, researching, and monitoring compliance risks using data analytics. TIGTA observes that case identification can be improved, and TE/GE continually works to this end. For instance, as described in the report, TE/GE is piloting a data grid to record issue-specific exam results that CP&C can use to compare exam results with identified compliance issues and adjust criteria as necessary.

TIGTA notes abusive or illegal activity may be difficult to detect. This risk is present in the case of any unscrupulous taxpayer that uses elaborate or fraudulent schemes to

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

2

conceal such activity. Accordingly, referrals from internal and external sources are a component of TE/GE's robust compliance portfolio, that are, as TIGTA observes, "a valuable source of information, especially for the detection of fraudulent activity." Consistent with that conclusion, the data reflected in the report notes that while only 20 percent of the FY 2018 examination closures originated from referrals, they resulted in 40 percent of the total revocations of tax-exempt status for that year. TE/GE will continue to strive to balance the use of referrals with other compliance portfolios programs, such as data-driven methods and compliance strategies, to identify abuse and fraud.

TE/GE compliance strategies are a valuable tool to identify and prioritize compliance issues and allocate resources within the TE/GE filing population. Employees submit suggestions for development by CP&C and consideration and approval by the TE/GE Compliance Governance Board through a web-based portal. Submitters receive an acknowledgment thanking them for their submission and confirming that their submission was received and will be evaluated and considered. Current procedures in IRM 4.70.5.2.2.1(8) provide that "typically, no further feedback will be provided to protect work selection processes and procedures." This reflects that one of the goals and positive outcomes of CP&C has been the separation of classification, workload selection, and examination activities (see IRM 4.70.5.1.5(2)), which reduces potential and perceived conflict of interest in the identification and selection of examination workload. However, TE/GE shares TIGTA's goal of encouraging employees to submit potential compliance issues that may improve future workload selection, and so will seek to provide additional feedback to submitters, while taking into account internal controls for separation of duties.

Finally, TIGTA also observes in the report that annual information return filing exceptions and restrictive procedural requirements applicable to churches and certain other religious organizations create challenges in detecting noncompliance among these organizations. TE/GE administers the tax laws in effect, and seeks to promote compliance among all tax-exempt organizations, while appropriately taking into account the statutory filing exceptions in Section 6033 of the Internal Revenue Code (I.R.C.) and special procedural rules in Section 7611 of the I.R.C. put into place by Congress with respect to churches.

We appreciate the opportunity to review and comment on the draft report. Attached is a detailed response to your recommendation. If you have any questions, you or your staff may contact me at (202) 317-6449 or Stephen Martin, Acting Director, Exempt Organizations and Government Entities, at (513) 975-6646.

Attachment

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

Attachment

**Corrective Actions for TIGTA Audit Draft Report –
Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations
(Audit # 201910021)**

RECOMMENDATION 1:

The Director, CP&C, should provide feedback to examiners who have submitted issues through the online submissions portal, without violating internal control separation of duties for examination selection.

CORRECTIVE ACTION:

We will develop a process to provide feedback to examiners who have submitted issues through the online submissions portal, without violating internal control separation of duties for examination selection.

IMPLEMENTATION DATE:

October 31, 2021

RESPONSIBLE OFFICIAL(S):

Director, Compliance, Planning & Classification, TE/GE

CORRECTIVE ACTION MONITORING PLAN:

IRS will monitor this corrective action as part of our internal management system of controls.

Obstacles Exist in Detecting Noncompliance of Tax-Exempt Organizations

Appendix IV

Abbreviations

CP&C	Compliance Planning and Classification
EO	Exempt Organizations
FY	Fiscal Year
IRS	Internal Revenue Service
TE/GE	Tax Exempt and Government Entities
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,
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Or Write:

Treasury Inspector General for Tax Administration

P.O. Box 589

Ben Franklin Station

Washington, D.C. 20044-0589

Information you provide is confidential, and you may remain anonymous.