

WRITTEN STATEMENT OF

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Chairman Issa, Ranking Member Cummings, and distinguished Members of the Committee:

Thank you for inviting me to testify today about the IRS's implementation of the Patient Protection and Affordable Care Act (ACA).¹ This testimony will make the following points:²

1. Since publishing a 2010 study on the challenges posed by the law, the National Taxpayer Advocate has been closely monitoring IRS implementation of the ACA.³
2. The IRS has made significant progress toward ACA implementation.
3. The Taxpayer Advocate Service (TAS) has participated in ACA preparation.
4. There remain significant concerns with respect to ACA implementation.

Two notes of introduction to my testimony:

First: Since I generally report to the House Ways and Means and Senate Finance committees, I would like to briefly explain the statutory authority and role of my office. Congress created the position of the National Taxpayer Advocate and the Office of the Taxpayer Advocate (also known as the Taxpayer Advocate Service, or TAS) to assist taxpayers in resolving their problems with the IRS, to identify problems affecting groups of taxpayers, and to propose administrative and legislative recommendations to mitigate those problems. The National Taxpayer Advocate is appointed by the Secretary of the Treasury and reports directly to the Commissioner of Internal Revenue but is required to provide an independent perspective as the statutory "voice of the taxpayer" both within the IRS and by submitting two reports each year directly to the congressional tax-writing committees.⁴

¹ Pub. L. No. 111-148, 124 Stat. 119 (2010), amended by the Health Care & Educ'n Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

² The views expressed herein are solely those of the National Taxpayer Advocate. The National Taxpayer Advocate is appointed by the Secretary of the Treasury and reports to the Commissioner of Internal Revenue. However, the National Taxpayer Advocate presents an independent taxpayer perspective that does not necessarily reflect the position of the IRS, the Treasury Department, or the Office of Management and Budget. Congressional testimony requested from the National Taxpayer Advocate is not submitted to the IRS, the Treasury Department, or the Office of Management and Budget for prior approval. However, we have provided courtesy copies of this statement to both the IRS and the Treasury Department in advance of this hearing.

³ See National Taxpayer Advocate 2010 Annual Report to Congress, vol. 2, § 2, 14 (Research Study: *The Patient Protection and Affordable Care Act: An Initial Analysis of the Implementation Challenges*).

⁴ See IRC § 7803(c).

By statute, TAS must make available at least one local taxpayer advocate (LTA) in each state. We recently have been assisting nearly 300,000 taxpayers a year with IRS disputes and account problems, including all taxpayer cases referred by congressional offices.⁵ Regarding systemic problems that affect groups of taxpayers, we work within the IRS to resolve problems to the extent possible, and I flag unresolved problems in my annual reports to Congress. We focus on tax administration concerns – not broader tax policy – and my position is nonpartisan.

Second: As a preface to the specific points that follow, I note that Congress in recent years has tasked the IRS with administering a number of social and economic benefit programs that require the IRS to go beyond its main historical role as the nation's tax collector. These programs include the disbursement of Economic Stimulus Payments, three different versions of the First-Time Homebuyer Credit, and the Making Work Pay credit – with precedents that can be traced back to enactment of the Earned Income Tax Credit (EITC) under President Ford in 1975.⁶ Because of the IRS's primary role as an enforcement agency, revenue officers, revenue agents, and other IRS employees are primarily trained in enforcement techniques rather than customer service, not to mention social work. This enforcement-oriented approach has created problems with EITC administration.⁷ To better enable the IRS to fulfill its dual roles of tax collector and benefits administrator, I have recommended in the past that the IRS revise its mission statement to reflect its two distinct roles.⁸ In my view, the IRS's new role in administering large portions of the ACA makes the need for a revised mission statement even more important.⁹

I. Since Publishing a 2010 Study on the Challenges Posed by the Law, the National Taxpayer Advocate Has Been Closely Monitoring IRS Implementation of the ACA.

In 2010, the National Taxpayer Advocate published a study analyzing administrative challenges posed by the four major ACA tax provisions – namely,

⁵ See National Taxpayer Advocate FY 2013 Objectives Report to Congress 68.

⁶ See IRC §§ 32, 36, 36A, 6428.

⁷ See National Taxpayer Advocate 2007 Annual Report to Congress, vol. 2 (Research Study: *The IRS EIC Audit Process – A Challenge for Taxpayers*); National Taxpayer Advocate 2004 Annual Report to Congress, vol. 2 (Research Study: *EITC Audit Reconsideration Study*); National Taxpayer Advocate 2003 Annual Report to Congress 26 (Most Serious Problem: *Earned Income Tax Credit Compliance Strategy*).

⁸ See National Taxpayer Advocate 2010 Annual Report to Congress 15 (Most Serious Problem: *The IRS Mission Statement Does Not Reflect the Agency's Increasing Responsibilities for Administering Social Benefits Programs*).

⁹ See National Taxpayer Advocate 2009 Annual Report to Congress, vol. 2, § 4, 75 (Research Study: *Running Social Programs Through the Tax System*).

the small business health-care tax credit, the premium assistance tax credit, the individual insurance requirement, and the employer requirement. (The first provision went into effect in 2011 while the latter three provisions become effective in 2014.)¹⁰ The 2010 report identified the ACA as a significant new piece of the historically growing portfolio of social provisions administered by the IRS.¹¹ In a recommendation consistent with my earlier suggestion that the IRS adopt a dual mission statement (as discussed above), the report recommended hiring social workers to answer ACA telephone calls. Furthermore, the report anticipated many of the accomplishments as well as ongoing concerns of ACA implementation. Since the 2010 report, my office has monitored ACA preparation closely.

Some of the concerns set forth in the 2010 report have been addressed through development of regulatory and computing infrastructure with related business mechanisms. For example, various regulations now define “household income” and set the parameters of privacy and information sharing.¹² As discussed below, the IRS has prepared a compliance mechanism for uninsured individuals. (In any case, the premium assistance tax credit may act as an incentive for eligible individuals to file tax returns.) These are significant accomplishments as far as they go.

In addition, the 2010 report anticipated several concerns. First, I believe the IRS needs to supplement its core ACA implementation team with inter-divisional staff, including TAS, to make sure the full range of potential taxpayer concerns and problems is considered and addressed. Second, a top priority of this team should be communication and outreach to the many Americans who will now interact with the IRS on health insurance for the first time. In particular, these taxpayers may need education on the method by which the premium assistance tax credit is advanced to insurers and later reconciled with their tax returns. Finally, channels must be open for taxpayer referrals where another agency makes a determination that the IRS must execute, and *vice versa*. I remain confident the IRS can meet these challenges if it continues on its current course and receives adequate resources to meet its statutory duties.

II. The IRS Has Made Significant Progress Toward ACA Implementation.

Since ACA enactment, the IRS has been working through the major challenges, making significant progress. The IRS has published detailed rules and

¹⁰ See IRC §§ 36B, 45R, 4980H, 5000A.

¹¹ See also National Taxpayer Advocate 2011 Annual Report to Congress, vol. 2, § 1, 44 (Research Study: *From Tax Collector to Fiscal Automaton: Demographic History of Federal Income Tax Administration, 1913-2011*) (identifying historical advent of socio-economic provisions).

¹² See Treas. Reg. § 1.36B-1(e), 77 Fed. Reg. 30,377 (May 23, 2012); Prop. Treas. Reg. § 301.6103(l)(21)-1, 77 Fed. Reg. 25,378 (Apr. 30, 2012).

regulations, accelerated the development of information technology (IT), planned a procedure for secure information sharing, and prepared compliance mechanisms. The lead-time provided by the ACA has been very helpful for the IRS, and at this point, it appears the IRS has used the time well.

A. Timely Guidance

Since the 2010 enactment of the ACA, the IRS has produced a significant amount of guidance that will enable taxpayers to plan for ACA implementation. To date, the IRS has published 14 regulations (Treasury Decisions), eight proposed regulations, and seven revenue rulings and procedures.¹³ For example, some of this guidance clarifies the small business health-care tax credit, premium assistance tax credit, and information sharing process.¹⁴ I view the early publication of guidance as very taxpayer-friendly, reflecting the IRS's effort to offer advance guidance on a complex law, well before many provisions even take effect. Simply put, advance guidance enables taxpayers and businesses to plan.

B. Accelerated Development of Information Technology

On an accelerated calendar, the IRS is developing business requirements for computers and other IT, allowing for repeated advance testing of unique ACA systems. Advance testing should enable the IRS to identify and fix problems in time for implementation. After the IT systems are in place, the IRS will be able to shift resources from IT to customer service, where future needs will lie.

C. Planning of Secure Information Sharing

Combining regulatory and IT preparation with process planning, the IRS has outlined ACA information sharing. In general, taxpayers seeking health insurance and a premium assistance tax credit through an Exchange will supply names, Social Security numbers (SSNs), and income data for themselves and their dependents to the Exchange.¹⁵ An electronic model for this application process is the Free Application for Federal Student Aid (FAFSA), where an applicant may retrieve IRS data online for income verification by the Department of Education for college grants and loans.¹⁶ An Exchange will be able to verify data with the Department of Health and Human Services (HHS), which has

¹³ The legal guidance is posted at <http://www.irs.gov/newsroom/article/0,,id=222814,00.html> (last visited July 25, 2012).

¹⁴ See IRS Notice 2010-82, 2010-2 C.B. 857; Treas. Reg. §§ 1.36B-0 ff.; Prop. Treas. Reg. § 301.6103(l)(21)-1.

¹⁵ ACA § 1411(b), 124 Stat. 119, 224 (2010).

¹⁶ See IRS Data Retrieval Tool at <http://www.fafsa.ed.gov/> (last visited July 25, 2012).

authority under the ACA to obtain IRS data and then disclose any inconsistency to the Exchange.¹⁷

HHS or an Exchange may use IRS data only for ACA purposes, subject to rigorous statutory safeguards that require recordkeeping, secure storage, restricted access, reporting on safeguards, and shredding or otherwise destroying data after use.¹⁸ These safeguards already apply to state tax agencies across the country that routinely receive IRS data pursuant to existing law and implementing agreements.¹⁹ Under the ACA, implementation agreements negotiated among the IRS, HHS, and Exchanges will specify that the information is to be used solely for health insurance-related purposes and include safeguard requirements for information sharing. Through experience, planning, IT programming, and regulatory rulemaking, the IRS has prepared for secure information sharing.²⁰

D. Preparation of Compliance Mechanisms

Generally, the ACA requires uninsured individuals to obtain health coverage or pay a prescribed amount that the IRS may collect by offsetting a tax refund.²¹ Applicable individuals shall include this amount on their federal income tax return.²² At the same time, the IRS will receive information reports from every health insurance issuer, self-insured health plan, government-sponsored health insurance program, and other entity that provides minimum essential coverage identifying each insured individual.²³ By the process of elimination, the IRS should be able to identify uninsured individuals who do not show the prescribed amounts on their returns. Categorized as an “assessable penalty” under the tax

¹⁷ See IRC § 6103(l)(21).

¹⁸ See IRC § 6103(p)(4).

¹⁹ See IRC § 6103(d).

²⁰ Another privacy issue would be that under the ACA employer requirement, an applicable large employer may be liable for an assessable payment for failure to offer health coverage if an employee instead receives a premium assistance tax credit. See IRC § 4980H(a). Consequently, it is possible that a large employer may wish to ascertain the employee’s eligibility for the credit. In this case, the large employer may obtain the employee’s name and income threshold but not taxpayer return information. See ACA § 1411(f)(2)(B), 124 Stat. 119, 229 (2010).

²¹ See IRC § 5000A.

²² See IRC § 5000A(b).

²³ See IRC § 6055(a). Among other information, the “annual returns” shall report “the dates each individual was covered under minimum essential coverage during the calendar year.” Notice 2012-32, 2012-20 I.R.B. 910.

law, this amount, capped by the average annual premium for qualifying private health insurance, is subject to refund offset.²⁴

About three-fourths of individual income tax returns claim refunds, averaging about \$3,000.²⁵ Consequently, it is likely that sufficient funds will be available for offset. Both offset and comparison of taxpayer returns with information reports are largely automated processes. While not dispositive, third-party information reports are a helpful indicator that will enable the IRS to operate a suitable compliance mechanism.²⁶

III. The Taxpayer Advocate Service Has Participated in ACA Preparation.

Even as the IRS has planned for the ACA, TAS has made its own preparations. Employees throughout TAS, most of whom serve taxpayers directly, have taken ACA training focused on issues most likely to come before Local Taxpayer Advocate (LTA) offices. With taxpayer service in mind, TAS has programmed an online tool to help small businesses estimate the amount of their health-care tax credit. To monitor overall IRS progress, TAS representatives have attended regular ACA briefings. TAS attorneys and other staff have reviewed and commented on drafts of ACA rules and regulations produced by the IRS. In conjunction with market research on taxpayer needs, TAS has collected data on health coverage. TAS plans more training before key provisions of the ACA take effect.

A. TAS Employees Have Taken ACA Training.

Since ACA enactment, TAS has developed written and video training materials on provisions likely to affect taxpayers who seek assistance from LTA offices. These materials present the four major ACA tax provisions, that is, the premium assistance tax credit, individual insurance requirement, and employer requirement, as well as the small business health-care tax credit, which received more in-depth discussion because of its early effective date, supplemented by an

²⁴ See IRC § 5000A(c), (g). For single individuals in 2016, the Congressional Budget Office has projected the relevant premium at \$4,500-\$5,000. See Cong. Res. Serv., *Individual Mandate & Related Info. Requirements Under ACA*, R41331 (July 2, 2012) 10.

²⁵ National Taxpayer Advocate FY 2012 Objectives Report to Congress 2. For CY 2010 and 2011, 77 and 75 percent of all individual returns claimed refunds averaging \$3,003 and \$2,913, respectively. IRS, *2011 and Prior Year, Filing Season Statistics, Cumulative Through the Weeks Ending 12/31/10 and 12/31/11* (Jan. 9, 2012), <http://www.irs.gov/newsroom/article/0,,id=252176,00.html>. Taxpayers who filed on or before Feb. 26, 2010, and Feb. 25, 2011, claimed refunds at an even higher rate – 85 and 87 percent, averaging even higher – \$3,149 and \$3,129, respectively. IRS, *2011 and Prior Year Filing Season Statistics, Cumulative Through the Weeks Ending 2/26/10 and 2/25/11* (Jan. 9, 2012), <http://www.irs.gov/newsroom/article/0,,id=237562,00.html>.

²⁶ See *Portillo v. Comm’r*, 932 F.2d 1128, 1134 (5th Cir. 1991) (holding that the IRS “had some duty to investigate” the accuracy of an information return), *rev’g in part* T.C. Memo. 1990-68.

overview of other ACA tax provisions.²⁷ Employees throughout TAS have been required to review these training materials over the past couple of years.

The training prepares TAS employees to contribute to ACA operations in three ways: (1) outreach and education; (2) resolution of taxpayer problems; and (3) ongoing systemic advocacy. As the 2014 implementation date nears, TAS will train employees on case-specific guidance. As part of a communications strategy discussed below, LTAs will share with taxpayers and stakeholder groups information about how to avoid problems. Finally, upon ACA implementation, TAS will resolve taxpayer cases, identify systemic problems, and advocate for improvements. These activities are consistent with the approach TAS takes to any major legislative change.

B. TAS Has Programmed a Small Business Health-Care Tax Credit Estimator.

The ACA contains an incentive for small businesses to offer health insurance in the form of a tax credit proportionate to premiums paid.²⁸ As is always the case with tax credits, the amount is realized upon filing the return after the close of the taxable year. Consequently, the incentive effect may be limited if the business cannot predict the amount. With customer service in mind, a TAS employee programmed an online tool to estimate the credit based on input about the business, insurance plan, and employees. The Estimator is intended to be educational, leading the business to complete the requisite IRS form or consult a tax professional to obtain the actual credit.²⁹ Before posting on the Web, the Estimator is in the final stages of review by ACA experts from the IRS core implementation team working closely with TAS staff, in an excellent example of collaboration between the IRS and TAS.

C. TAS Employees Have Attended Briefings and Reviewed Rulemakings.

As the IRS has been designing the IT and regulatory infrastructure for ACA implementation, TAS officials and employees have attended regular briefings to maintain a current view of activity and offer insight from the perspective of taxpayer rights and taxpayer needs. In addition, TAS attorneys and other staff have reviewed and commented on drafts of the rules and regulations described above. These contributions are consistent with the oversight and advocacy role of TAS within the IRS.

²⁷ See National Taxpayer Advocate FY 2012 Objectives Report to Congress 21; National Taxpayer Advocate 2010 Annual Report to Congress, vol. 2, § 2, 21 (Research Study: *The Patient Protection and Affordable Care Act: An Initial Analysis of the Implementation Challenges*); ACA § 1421(f) (containing 2011 effective date for small business credit).

²⁸ See IRC § 45R.

²⁹ See Form 8941, *Credit for Small Employer Health Insurance Premiums*.

D. TAS Has Surveyed Taxpayer Needs.

To identify and understand the underserved taxpayer population, TAS developed a survey in consultation with a market research firm, which administered the survey earlier this year. Among demographic and other characteristics of the population, the survey inquired whether respondents have health coverage and, if so, where they obtained it. For business owners, the survey asked whether they are offering health coverage to their employees. The answers will come in the context of attributes such as age, income, family size, use of tax return preparers, attitudes about the IRS, awareness of TAS services, and Internet usage. Analysis of the results will continue until the end of the year.

Additionally, TAS is consulting with the research firm on a survey targeting Spanish-speaking U.S. residents not polled by the earlier survey. As with the survey described above, this survey will contain questions about health coverage in the context of demographic and other characteristics. This companion survey will extend our knowledge of underserved taxpayers to this important segment of the population. Survey administration and data development will be completed next year. Results from both surveys will enable TAS to prepare a communications and outreach strategy based on the health-care and tax needs of the underserved population.

IV. Significant Concerns Remain with Respect to ACA Implementation.

While TAS and the IRS as a whole have prepared extensively, I remain concerned that the upcoming months of ACA implementation will require even more intensive activity. Starting immediately, the IRS should include TAS representatives on ACA teams. Likewise, the IRS and sister agencies now need to formulate a communications strategy in anticipation of public questions. In particular, taxpayers require education about the need to update information relating to eligibility for the premium assistance tax credit. Similarly, the IRS, Exchanges, and other agencies that share responsibility for the administration of ACA provisions need to open channels for inter-agency referral of customer issues. Among these issues may be identity (ID) theft, which continues to plague the tax system, where it will have ramifications for ACA income verification. Additionally, small businesses need guidance on complex provisions targeted at them. And as always, the IRS needs adequate resources to administer the tax code Congress has written. With the requisite actions and resources, I believe the IRS can address the potential sticking points associated with ACA implementation.

A. The IRS Should Include TAS Staff on Implementation Teams.

As discussed above, Congress created the position of the National Taxpayer Advocate and the Office of the Taxpayer Advocate to serve as the “voice of the

taxpayer” within the IRS.³⁰ Based on congressional hearings and other input, members of the tax-writing committees were concerned that because IRS employees often possess an enforcement mentality, the National Taxpayer Advocate was needed to ensure that IRS planning and policy give adequate weight to protecting taxpayer rights and minimizing taxpayer burden. Within the IRS, TAS representatives participate as full members on many cross-functional teams, but the IRS to date has declined to include TAS representatives on ACA implementation teams, preferring to provide us with periodic updates. This approach made sense in the initial planning stages. However, as the final stages of ACA implementation approach, the IRS must give greater priority to clear and effective communication with taxpayers, businesses, and the Exchanges, and it must ensure that taxpayers who actually or seemingly run afoul of ACA requirements or IRS filters are treated fairly and in a prompt manner. TAS’s job is to identify potential glitches and recommend solutions, and I am concerned that if the IRS excludes the “voice of the taxpayer” from full participation in the implementation of the ACA, the risk of taxpayer and employer harm will be needlessly high.

B. Planning of Public Communication Is Too Slow.

The National Taxpayer Advocate is disappointed that IRS and inter-agency planning of an ACA public communications strategy is proceeding slowly as deadlines approach. By March 1, 2013, all employers across the country must notify their employees of a right to purchase health insurance – with a potential government subsidy – at an Exchange, in turn scheduled to open October 1, 2013.³¹ Even though this notice is not a tax requirement, it may prompt taxpayers to flood IRS call centers with inquiries because the subsidy takes the form of a tax credit. None of the responsible agencies should wait in planning how to help taxpayers, who will be bombarded by information, to make sense of the new provisions. Moreover, the tax profession has decades of relevant experience in communicating with a low income population in the case of the EITC.³² In short, the IRS, including TAS, should join now with other responsible agencies, as well as community organizations that have relevant experience, to develop and deploy a targeted communications strategy.³³

³⁰ See Rep’t of the Comm. on Restructuring the IRS: *A Vision for a New IRS* 48 (June 25, 1997).

³¹ See Fair Labor Standards Act of 1938, § 18B, as added by ACA § 1512, 124 Stat. 119, 252 (2010). See also 45 C.F.R. § 155.410, 77 Fed. Reg. 18,462 (Mar. 27, 2012).

³² See Written Statement of Nina E. Olson, National Taxpayer Advocate, *Hearing on Improper Payments in the Administration of Refundable Tax Credits*, Before the Subcomm. on Oversight, Comm. on Ways & Means, U.S. House of Reps. (May 25, 2011) 8 (describing IRS partnerships with organizations that serve the low income community to educate taxpayers about the EITC).

³³ Furthermore, the EITC model raises the issue of institutional processes in administering a subsidy through the tax system. In the case of the EITC, the use of a tax credit eliminates a traditional welfare application process. By contrast, the ACA introduces an Exchange application process for the premium assistance tax credit. These contrasting designs warrant further study

C. Taxpayers Require Education on the Need to Update Information.

Certain ACA provisions have tax consequences that require taxpayers to understand their role goes beyond traditional return-filing at year-end. In particular, taxpayers at certain income levels may qualify for a premium assistance tax credit advanced by the government to their insurer.³⁴ If their income at year-end turns out to be more than anticipated, the credit may be less than the amount advanced, and the IRS may recover the excess as a tax, below a ceiling for low income taxpayers.³⁵ To avoid receiving an excess, taxpayers may need to update information if their income or other relevant circumstances change.³⁶ Because an application may base income on the last tax return (*i.e.*, the one filed in the current year relating to the year that just ended), a couple of years' worth of life changes could transpire by the time of reconciliation between the advance and ultimate credit amounts. In effect, the premium assistance tax credit requires not only an initial application and a year-end tax return but ongoing updates on major life changes throughout the year. Because this updating role will be new, education of taxpayers is necessary to avoid unexpected tax consequences. The importance and manner of providing updates should be part of the communications strategy discussed above.

D. The ACA Will Require a Significant Level of Inter-Agency Referrals.

For the premium assistance tax credit and individual insurance requirements, the IRS shares responsibility for taxpayer service with HHS and the Exchanges, requiring inter-agency coordination and mutual referral of customers. For an application, the taxpayer may retrieve IRS data for income verification at the Exchange. If the data are inaccurate, the taxpayer may present updated documentation or other rectifying evidence to the IRS, as may be the case in a routine tax audit. It is unclear whether the Exchange would adhere to the same evidentiary standards.³⁷ Consider the following illustration.

regarding implications for tax simplification and overall burden reduction. *See generally* National Taxpayer Advocate 2010 Annual Report to Congress, vol. 2, § 6, 116 (Research Study: *Evaluate the Administration of Tax Expenditures*) (distinguishing between mechanical and discretionary tax subsidies).

³⁴ See IRC § 36B.

³⁵ See IRC § 36B(f). "[S]ection 36B(f)(2)(B) places a graduated set of caps on the additional tax liability for taxpayers with household income under 400 percent of the FPL [Federal Poverty Level]. The repayment limitation amounts range from \$600 to \$2,500 (one-half that amount for single taxpayers) depending on FPL, and are adjusted to reflect changes in the cost of living beginning in 2015." 76 *Fed. Reg.* 50,933-934 (Aug. 17, 2011).

³⁶ See 45 C.F.R. § 155.330 (Eligibility redetermination during a benefit year), 77 *Fed. Reg.* 18,458 (Mar. 27, 2012).

³⁷ HHS has stated that "we intend to propose the details of the individual eligibility appeals processes, including standards for the Federal appeals process, in future rulemaking." 77 *Fed. Reg.* 18,384 (Mar. 27, 2012).

Example: A taxpayer inadvertently enters an erroneous Taxpayer Identification Number (TIN) for a dependent on a tax return. After filing, the IRS reduces the taxpayer's refund, sending a "summary assessment" notice denying tax benefits with respect to the dependent. In response, the taxpayer forwards the correct TIN to the IRS, which then restores the benefits. This process can take several months.³⁸

Now that health coverage as well as tax consequences may flow from a correction like this one, the IRS has an even greater incentive to improve issue-resolution processes. It may very well be that effective implementation of ACA provisions will improve certain aspects of traditional tax administration.

As discussed above, the IRS ultimately will adjust a credit amount based on year-end income, which may have changed since the taxpayer applied to the Exchange. To avoid unexpected tax consequences, the IRS may need to alert taxpayers of the ongoing need to update their information at the Exchange.

An uninsured individual may be subject to collection of a prescribed amount by the IRS except, *inter alia*, in case of hardship.³⁹ In pertinent part, the ACA defines a hardship as incapability of obtaining coverage as determined by HHS upon application by the individual.⁴⁰ In attempting to collect from an individual who complains of hardship, the IRS may need to make a referral to HHS.

In other words, taxpayers may ricochet between the IRS, HHS, and Exchanges. To answer resulting calls, telephone representatives of the IRS, including TAS, will have to: (1) listen to the taxpayer long enough to identify the agency responsible for the problem and (2) maintain a complete "rolodex" of contacts to make the right referral. In short, inter-agency coordination is essential, especially for individuals in vulnerable circumstances. Because of TAS's role and experience with such individuals, the IRS can better address this concern by including representatives of the National Taxpayer Advocate as members of the inter-agency teams, as recommended above.

E. Identity Theft Poses a Serious Concern.

As the National Taxpayer Advocate previously has stated, ID theft continues to plague taxpayers, with more than half a million cases in the IRS, and will have

³⁸ See National Taxpayer Advocate 2011 Annual Report to Congress, vol. 2, § 4, 113, 138 (Research Study: *Math Errors Committed on Individual Tax Returns: A Review of Math Errors Issued for Claimed Dependents*).

³⁹ See IRC § 5000A(e). Other exceptions include those taxpayers with incomes below the filing threshold.

⁴⁰ See IRC § 5000A(e)(5).

ramifications for the ACA.⁴¹ In general, tax-related identity theft occurs when a thief intentionally uses another individual's SSN on a false tax return claiming an unauthorized refund.⁴² If the IRS screens out that return due to suspected fraud, the IRS will freeze the account under the victim's SSN pending resolution, in a potentially lengthy process.⁴³ Meanwhile, if the victim attempts to retrieve IRS data for an Exchange application, his or her account will be frozen. The Exchange may need to refer the victim to the IRS to resolve the ID theft while supplying instructions on alternative ways to prove income level, *i.e.* an inter-agency referral as discussed above.

F. Small Businesses Need Further Guidance.

As previously noted, the ACA contains an incentive for small businesses to offer health insurance in the form of a tax credit proportionate to premiums paid.⁴⁴ Yet a decision to offer health insurance entails technical questions. For example, must the insurance plan comply with an ACA prohibition on discriminating in favor of highly-compensated individuals?⁴⁵ Questions like these relate back to the IRS's rulemaking efforts as well as the overall public communication strategy.

G. The IRS Needs Adequate Resources.

The National Taxpayer Advocate does not take a position on policy issues, and therefore offers no opinion about the wisdom of the ACA. With or without the ACA, however, it is essential for the taxpaying public that the IRS be adequately funded to administer whatever Congress directs it by statute to do. The National Taxpayer Advocate's 2011 Annual Report to Congress identified the combination of the expanding IRS workload and its shrinking resources as the most serious

⁴¹ Through the end of June 2012, there were 504,019 open identity theft cases across multiple operating divisions.

⁴² See Written Statement of Nina E. Olson, National Taxpayer Advocate, *Hearing on Identity Theft and Income Tax Preparation Fraud*, Before the Subcomm. on Crime, Terrorism & Homeland Security, Comm. on the Judiciary, U.S. House of Reps. (June 28, 2012) 5 (describing tax refund-related ID theft); see also IRM 10.5.3.2, *Identity Protection Program Servicewide Identity Theft Guidance* (July 9, 2012).

⁴³ See National Taxpayer Advocate 2011 Annual Report to Congress 58 (Most Serious Problem: *Tax-Related Identity Theft Continues to Impose Significant Burdens on Taxpayers and the IRS*).

⁴⁴ See IRC § 45R.

⁴⁵ See Notice 2011-1, 2011-2 I.R.B. 259 (affording transition relief from compliance with prohibition on discrimination pending publication of regulatory guidance). Additional questions would be the applicability of a pre-existing IRC § 4980D(d) exception for small business, and the scope of the requirement for a statement of a grandfathered plan exempt from major ACA provisions. See Treas. Reg. § 54.9815-1251T(a)(2)(i), 75 *Fed. Reg.* 34,538 (June 17, 2010) ("To maintain status as a grandfathered health plan, a plan or health insurance coverage must include a statement, in any plan materials provided to a participant or beneficiary describing the benefits provided under the plan or health insurance coverage, that the plan or coverage believes it is a grandfathered health plan within the meaning of section 1251 of the Patient Protection and Affordable Care Act and must provide contact information for questions and complaints.")

problem facing U.S. taxpayers.⁴⁶ Because of this imbalance between responsibilities and resources, the IRS is now unable to answer roughly one-third of the tens of millions of calls it receives from taxpayers each year, or to process timely about half the correspondence it receives from taxpayers in response to tax adjustment notices.⁴⁷ Similarly, the IRS cannot detect and address noncompliance as well as it should. Furthermore, the IRS is now unable to maximize the collection of revenue due under the tax laws enacted by Congress, thus contributing to the budget deficit – despite the fact that the IRS brings in \$200 in revenue for every dollar it receives in appropriated funds and despite widespread acknowledgement that the IRS would bring in substantially more than \$1 for each additional dollar it receives.⁴⁸ I am particularly concerned that taxpayer service suffers the most when IRS funding is inadequate, and I therefore encourage the Committee to ensure that U.S. individuals and businesses trying to pay their taxes are not shortchanged.

V. Conclusion

The National Taxpayer Advocate continues to monitor ACA implementation by the IRS. In general, I believe the IRS has done a good job of preparing, but some challenges remain. In particular, the IRS has made significant progress on rulemaking, IT, and related business mechanisms. At the same time, TAS has trained employees and otherwise participated in ACA preparation. Now the IRS should join with TAS, other responsible agencies, and stakeholder organizations to take on the final challenges of ACA implementation, remaining vigilant to unanticipated problems.

⁴⁶ National Taxpayer Advocate 2011 Annual Report to Congress 3 (Most Serious Problem: *The IRS Is Not Adequately Funded to Serve Taxpayers and Collect Taxes*).

⁴⁷ IRS Jt. Operations Ctr., *Snapshot Reports: Enterprise Snapshot* (FY 2012, through July 14, 2012); IRS Jt. Operations Ctr., *Weekly Enterprise Adjustments Inventory Rep't* (week ending July 21, 2012).

⁴⁸ In FY 2011, IRS collected about \$2.42 trillion on a budget of about \$12.1 billion. See Dep't of the Treas., FY 2013 *Budget in Brief* (showing FY 2011 enacted levels); Gov't Accountability Office, *Financial Audit: IRS's Fiscal Years 2011 and 2010 Financial Statements*, GAO-12-165 (Nov. 2011) 63 (showing FY 2011 tax revenue).