

**AREA OF
FOCUS #4****As the IRS Develops an Online Account System, It Risks Imposing Undue Burden on Taxpayers Who Require More Personalized Services****TAXPAYER RIGHTS IMPACTED¹**

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Confidentiality*

The National Taxpayer Advocate has proposed for years that the IRS develop an online account system for taxpayers.² An online account system will benefit those taxpayers who are able to access the system and navigate through various transactions. However, in developing an online account system, the IRS should not ignore the needs of taxpayers who either have no access to the online services or choose not to use an online account system for various reasons. As it develops this initiative, the Commissioner has stated that “the IRS ... has no plans to walk away from providing the assistance over the phone or in person and, in fact, we are working hard to free up resources in those areas so it is easier for people to get access to them and get the help they want.”³ Yet, as the IRS hinges the agency’s future state vision on the development of an online account, it has not conducted sufficient research into taxpayer and practitioner service needs, especially with regard to access and preference for online services. Without this crucial research, it could build something few people actually want or use. Meanwhile, believing the online account is meeting taxpayer needs, the IRS may reduce the non-digital taxpayer service channels to the point that there will be completely inadequate taxpayer service options available.

As pointed out by Professor Leslie Book at the first public forum hosted by National Taxpayer Advocate Nina E. Olson:

[A] fundamental starting point in thinking about service is that the IRS needs to know whom it is serving and the characteristics and challenges associated with a particular group of taxpayer or parties it is regulating. ... An agency fixated on efficiency and delivering services at lowest possible short term costs without knowing the impact and burdens of its actions may find itself pushing more serious problems down the road while at the same time jeopardizing taxpayer rights.⁴

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 See, e.g., National Taxpayer Advocate 2013 Annual Report to Congress vol. 2, 67-96 (Research Study: *Fundamental Changes to Return Filing and Processing Will Assist Taxpayers in Return Preparation and Decrease Improper Payments*).

3 National Taxpayer Advocate Public Forum 12 (Feb. 23, 2016).

4 Oral Statement of Professor Leslie Book, Villanova University Charles Widger School of Law, National Taxpayer Advocate Public Forum 27 (Feb. 23, 2016).

Accordingly, while it may be tempting to move taxpayer service toward superficially lower-cost self-assistance options, any efforts to significantly reduce personal service options may ultimately impair voluntary compliance and undermine taxpayers' *right to quality service, right to be informed, and right to pay no more than the correct amount of tax.*⁵

The IRS Has Not Provided Sufficient Details of the Online Account Program's Planned Capabilities and Rollout Timeline

A key initiative to attain the IRS's envisioned Future State is the development of a taxpayer online account. According to the IRS, the online account would enable taxpayers and authorized third-parties to "securely obtain taxpayer information, make payments, resolve compliance issues, share documentation, and self-correct issues in an individualized, online account."⁶

To illustrate how taxpayers will interact with the IRS through the online account system, the IRS has posted on its webpage titled "Future State and IRS Activities" a "possible option for individual taxpayers," hereinafter referred to as the "individual taxpayer vignette."⁷ The individual taxpayer vignette is summarized below:

Jane, a low income taxpayer, just rejoined the workforce as a teacher. Upon learning about the IRS online account program from her friend, Jane establishes an account. She prepares her own return by downloading her tax information from the IRS directly into a commercial tax preparation software program. After filing, Jane receives a digital notification from the IRS confirming receipt. She receives a subsequent digital notification from the IRS stating that she might not qualify for the EITC because the IRS has no record that her 19 year-old son is a full time student. The notification asks Jane to validate the information and make any necessary corrections. After confirming that she does not qualify for the EITC because her son does not take enough courses, she "updates and resubmits her return instantly." To pay the amount of taxes she owes as a result of the correction, she applies for an installment agreement online and subsequently monitors the balance online as she makes payments.

This vignette does not portray an accurate picture of how a significant percentage of individual taxpayers will be able to interact with the IRS in the future. While the IRS's general descriptions of the future online account program are helpful, the IRS needs to be much more specific about the planned capabilities of the program. For example, it is unclear whether the program will provide images of filed tax documents and correspondence or just cryptic transcript codes. How many tax years will the account include at any given time? Which IRS data collection systems will feed information into the program? Which languages will be available? The IRS has also not provided a road map detailing the timeline for the availability of each capability in the future.

The IRS Should Not Significantly Reduce Both Face-to-Face and Telephone Services As It Focuses on Online Services Because Taxpayers Will Still Continue to Require Personal Services

To our knowledge, the IRS has not conducted adequate research into taxpayer and practitioner use and preferences for the online account program capabilities. Since February 2016, the National Taxpayer Advocate has held various Public Forums throughout the country during which this topic was covered at

⁵ See TBOR, www.TaxpayerAdvocate.irs.gov/taxpayer-rights.

⁶ IRS, *Draft IRS Future State: Overview, The Path Traveled and the Road Ahead* 11 (Feb. 2016). https://www.irs.gov/PUP/newsroom/IRS%20Future%20State%20Journey_R.pdf (last visited June 6, 2016).

⁷ <https://www.irs.gov/pub/newsroom/irs-individual-vignette-version-a.pdf> (last visited June 6, 2016).

length.⁸ Later this year, TAS will conduct a national survey of a representative sample of U.S. taxpayers to determine their taxpayer service needs. However, the IRS should commit to performing its own detailed research as well as utilizing TAS and other third-party research in this area.

Existing third-party research indicates that a significant percentage of the taxpayer population will not use the taxpayer accounts in the way envisioned by the Future State initiative. The National Taxpayer Advocate's 2015 Annual Report cites various studies showing the digital divide in this country and the preference for multiple service delivery channels.⁹

In a 2015 nationwide survey of American adults, Pew Research Center found that home broadband adoption has plateaued. Approximately 67 percent of adults had broadband at home in 2015, as compared to approximately 70 percent in 2013. This leveling off of broadband use has taken place at the same time there has been an increase in "smartphone-only" adults. In fact, smartphone adoption has reached a similar rate as broadband. Specifically, 68 percent of American adults own a smartphone and 13 percent are "smartphone-only." The most significant rates of increase in the smartphone-only populations can be found among African Americans, individuals with household income at or below \$75,000, adults living in rural areas, parents, and those with a high school degree or less.¹⁰

The approximately 33 percent of adults without home broadband access are at a major disadvantage when it comes to various complex tasks, such as accessing government services, getting health information, and applying for jobs.¹¹ In fact, many without broadband access have to reroute their lives in order to get to a library, school, or coffee shop to access the internet. This presents cybersecurity challenges to those who have to access confidential information off public computers or networks in public locations, potentially carrying documents with confidential information.¹² Accordingly, taxpayers attempting to access the online account program in such public locations are not only inconvenienced, but are at a greater risk for identity theft.

In addition, research commissioned by the Federal Reserve found that even tech-savvy mobile phone users prefer multiple service channels. Over the past several years, the Federal Reserve has surveyed banking preferences among mobile phone users. According to the most recent report, more mobile phone users who have a bank account reported visiting a branch than using any other channel in the

8 For written statements and transcripts of these Public Forums, see <http://www.taxpayeradvocate.irs.gov/public-forums> (last visited June 15, 2016).

9 National Taxpayer Advocate 2015 Annual Report to Congress 56-63 (Most Serious Problem: *Taxpayer Access to Online Account System: As the IRS Develops an Online Account System, It May Do Less to Address the Service Needs of Taxpayers Who Wish to Speak With an IRS Employee Due to Preference or Lack of Internet Access or Who Have Issues That Are Not Conducive to Resolution Online*).

10 John B. Horrigan and Maeve Duggan, Pew Research Center, *Home Broadband 2015* 2–9 (Dec. 21, 2015).

11 John B. Horrigan and Maeve Duggan, Pew Research Center, *Home Broadband 2015* 6 (Dec. 21, 2015); Written Statement of Aaron Smith, Pew Research Center, National Taxpayer Advocate Public Forum 154 (Feb. 23, 2016). National Taxpayer Advocate Public Forum 154 (Feb. 23, 2016).

12 National Taxpayer Advocate Public Forum 176 (Feb. 23, 2016). In fact, at a National Taxpayer Advocate Public Forum, a panelist from Pew Research Center noted that 27 percent of Americans have used a computer or wi-fi at a public library in the last year.

last 12 months. The chart below illustrates the use of the various service channels among mobile phone users within the previous 12 months (for years 2012 through 2015):

FIGURE 3.4.1, Use of Bank Service Channels Among Mobile Phone Users Within Previous 12-Month Period (2012–2015)¹³

Service Channel	2012	2013	2014	2015
Branch	85%	82%	87%	83%
ATM	74%	75%	75%	82%
Online Banking	67%	72%	74%	82%
Mobile Banking	26%	30%	35%	53%
Telephone	34%	33%	33%	29%

These results only highlight that the provision of online services should supplement rather than replace more personalized services. In fact, at the National Taxpayer Advocate February 23, 2016 Public Forum, a panelist from the Federal Reserve noted that 80 percent of banking consumers surveyed in 2015 use four or five of the service channels available and only two percent used only one or two channels.¹⁴

An online account program is extremely useful for those with access and for those who can navigate complex transactions with minimal personalized assistance. To meet taxpayer and representative needs, the online account must be more than just a digitalized version of the guidance and correspondence already in existence in paper form. Moreover, unless the IRS improves its current quality of taxpayer assistance and correspondence, the text and explanations contained within the digital account will be no less confusing than what taxpayers currently receive. Many taxpayers will require additional personalized assistance and reassurance to understand how the rules and procedures apply to their particular facts and circumstance. At the National Taxpayer Advocate February 23, 2016 Public Forum, a panelist from Pew Research Center stated that “people are happy to do online and chats or things like that to a certain level of complexity. But once things get very complicated, once things start impacting their money or their retirement, get a little more sort of at a high level they want to be able to speak to an actual person and sort all that out.”¹⁵ In addition, at that same Public Forum, a panelist from the Internal Revenue Service Advisory Committee (IRSAC) stated:

Digital tools and electronic communications which are fully accessible to unrepresented taxpayers are also critically important but we cannot overestimate the need for face-to-face, voice-to-voice communications and interactions will not disappear regardless of the depth, breadth and quality of digital tools deployed by the IRS....Whether working with taxpayers or with their representatives, the range of necessary explanations, guidance and problem resolution will always require knowledgeable assisters who can advise on the best solutions to a vast array of issues particularly in the post-filing environment.¹⁶

13 Although more respondents report visiting a branch in the past 12 months, other channels may have been used more frequently during that same period. “Among those who had used each of the channels in the past month, the median number of uses in the past month was five for each of the online and mobile channels, three for ATM, and two for each of the branch and telephone channels.” Board of Governors of the Federal Reserve, *Consumer and Mobile Financial Services 2016* 14 (Mar. 2016); Board of Governors of the Federal Reserve, *Consumer and Mobile Financial Services 2015* 9 (Mar. 2015).

14 Oral Statement of Arturo Gonzales, Federal Reserve, National Taxpayer Advocate Public Forum 171 (Feb. 23, 2016).

15 Oral Statement of Aaron Smith, Pew Research Center, National Taxpayer Advocate Public Forum 171 (Feb. 23, 2016).

16 Oral statement of Jennifer MacMillan, IRSAC, National Taxpayer Advocate Public Forum 66 (Feb. 23, 2016).

Another recent survey illustrates that not all tech-savvy individuals prefer online services for certain complex transactions. For example, in an online survey commissioned by NerdWallet and conducted by Harris Poll, millennials (survey respondents in the 18 to 34 year-old age group) reported a higher rate of mailing paper tax returns than respondents in older age groups (17 percent rate among millennials versus 8 percent among respondents aged 35 and older).¹⁷ Therefore, the younger tech-savvy generation may have the ability to access available online services, but they are also wise about when it is appropriate to solve problems through technology and when it is inappropriate.

In a 2015 survey conducted by Forrester Research, respondents indicated a slightly higher level of satisfaction in their interactions with various federal government administrations in person, compared to their digital interactions through mobile applications, federal websites and email.¹⁸ More importantly, the survey found that only 39 percent of respondents believe that the federal government should focus on offering more digital services.¹⁹

The impact of shifting services online without providing alternatives for those without broadband or internet access is not isolated to tax administration, other government services, or commercial banking. For example, a recent *New York Times* article described the plight of low income schoolchildren attempting to complete their homework as the school district increasingly assigns more assignments requiring internet access. According to the article, seven in ten teachers now assign homework that requires internet access even though one-third of schoolchildren in the country have no home access. These children are forced to complete their homework in school buses, fast food restaurants, and libraries with free wi-fi.²⁰

Finally, it is not surprising that taxpayers continue to demand more personalized services considering the complexity of the tax law. For those taxpayers comfortable using self-service options online, they must still struggle with understanding the substance of the tax law and how it applies to their unique circumstances. While the IRS official website is helpful and extensive, it currently has approximately 155,000 pages which can be overwhelming to taxpayers unfamiliar with the tax law.²¹ Moreover, the website is not currently easy to navigate when using a mobile device, which could be a serious access issue for the increasing taxpayer population using smartphones.²²

Accordingly, in order to assist taxpayers in complying with the tax laws, it is incumbent upon the IRS to understand the needs of the taxpayer base and provide services to the taxpayers in the way they want to be served. As a panelist representing the Electronic Tax Administration Advisory Committee (ETAAC) stated at the February 23, 2016 Public Forum: “[W]hether it is online, phone, chat, taxpayer assistance

17 *Millennials Fear Filing Taxes More Than Most Americans*, NerdWallet Survey Finds, NerdWallet (Feb. 17, 2016), <https://www.nerdwallet.com/blog/taxes/millennials-fear-filing-taxes/> (last visited June 6, 2016).

18 Rick Parrish, Forrester Research, *The Public Is Still Skeptical of Federal Digital Customer Experience 2* (Feb. 18, 2016). This report is based on Forrester’s North American Consumer Technographics® Healthcare And Government Survey, 2015. Specifically, respondents had a 72 percent satisfaction rate for in person interaction in the past 12 months with such administrations as the U.S. Post Offices, Social Security Administration locations, and Veterans Affairs regional benefits offices. The satisfaction rates were 70 percent for federal mobile applications and 69 percent for federal websites or email.

19 Rick Parrish, Forrester Research, *The Public Is Still Skeptical of Federal Digital Customer Experience 4-5* (Feb. 18, 2016).

20 Cecilia King, *Bridging a Digital Divide That Leaves Schoolchildren Behind*, N.Y. TIMES, Feb. 22, 2016. Oral statement of Prof. Leslie Book, Villanova University Charles Widger School of Law, National Taxpayer Advocate Public Forum 30–31 (Feb. 23, 2016).

21 IRS Online Services, *IRS.gov and Taxonomy: Improving Content Structure and Organization 2* (May 11, 2016).

22 Aaron Smith, Pew Research Center, *U.S. Smartphone Use in 2015 1* (Apr. 1, 2015).

center, VITA site, or through a tax professional, the IRS should provide all of these options to meet the variety of taxpayer preferences.”²³

The IRS Must Balance the Added Convenience of Expanding Online Services Against the Inherent Security Risks

For the online account to be effective, taxpayers need to feel confident that their data is protected. In a recent Forrester Research survey, approximately 32 percent of respondents agreed with the statement “I am confident that the federal government keeps secure any personal information it has on its citizens.”²⁴ The recent cybersecurity breaches pertaining to the IRS’s Identity Protection Personal Identification Number (IP PIN) program, the “Get Transcript” online application, and the Office of Personnel Management’s breach of federal employee records may undermine taxpayers’ trust in communicating with the IRS and government online.²⁵

To meet taxpayer and representative needs, the online account must be more than just a digitalized version of the guidance and correspondence already in existence in paper form. Moreover, unless the IRS improves its current quality of taxpayer assistance and correspondence, the text and explanations contained within the digital account will be no less confusing than what taxpayers currently receive.

To gain taxpayers’ confidence, the IRS needs to have tighter security protocols.²⁶ For those taxpayers willing to trust the IRS’s online services, the IRS should investigate the impact that stricter authentication measures will have on taxpayers’ ability to gain access to the system. Most taxpayers are fully aware that IRS systems contain extremely confidential tax return information and may be willing to tolerate extra security measures. We believe that state of the art and secure authentication measures are absolutely crucial for the online account system. However, the IRS needs to be realistic and acknowledge that such strict measures will serve as a barrier to entry for a significant percentage of taxpayers, and not just those taxpayers we traditionally associate with internet access issues.

A concrete example of strict e-authorization procedures acting as a barrier to entry was seen in the recent launch of the multi-factor authentication procedures to gain access to the online “Get Transcript Online” program.²⁷ This program is a prototype for the online account program, which the IRS plans to initially house the Get Transcript Online, IP PIN, and Online Installment Agreement applications.²⁸ In order to

23 Oral statement of Jim Buttanow, National Taxpayer Advocate Public Forum 81 (Feb. 23, 2016).

24 Rick Parrish, Forrester Research, *The Public Is Still Skeptical of Federal Digital Customer Experience* 6 (Feb. 18, 2016).

25 IRS, Statement on IP PINs (Mar. 8, 2016); IRS, *IRS Statement on the “Get Transcript” Application* (June 2, 2015); OPM, Announcements, *Information About the Recent Cybersecurity Incidents* (June 23, 2015).

26 In a report issued in November 2015, the Treasury Inspector General for Tax Administration (TIGTA) found that the IRS had not yet established a Service-wide approach to manage authentication needs. As a result, the IRS had inconsistent levels of authentication for various online services. In addition, the report found that the IRS authentication processes and procedures for “Get Transcript” and the IP PIN application do not comply with Office of Management and Budget (OMB) standards to conduct a risk assessment for authentication error or the U.S. Department of Commerce National Institute of Standards and Technology (NIST) Special Publication 800-63 requirements for authentication processes. TIGTA, Ref. No. 2016-40-007, *Improved Tax Return Filing and Tax Account Access Authentication Processes and Procedures Are Needed* (Nov. 2015); *The 2016 Tax Filing Season: Hearing Before the H. Comm. on Ways and Means, Subcomm. on Oversight*, 114th Cong. 10-13 (2016) (statement of Timothy P. Caymus, Deputy Inspector General for Investigations, TIGTA).

27 IRS, *IRS Launches More Rigorous e-Authentication Process and Get Transcript Online*, IR-2016-85 (June 7, 2016).

28 Luca Gattoni-Celli, *Olson Details IRS Online Account Requirements, Remains Skeptical*, TAX NOTES TODAY, May 18, 2016.

gain access to Get Transcript Online, taxpayers need to pass a multi-factor e-authentication by providing the following information:²⁹

- 1. Identity proofing authentication:** Provide a social security number, name, birthdate, mailing address, and filing status from the most recent tax return;
- 2. Financial verification authentication:** Provide an account number from one of the following:
 - Credit card (not debit card),
 - Automobile loan, mortgage,
 - Principal home mortgage, or
 - Home equity line of credit; and
- 3. Phone verification authentication:** Provide U.S.-based telephone number for text-enabled mobile phone that is on a contract plan (not a “pay-as-you-go” or prepaid plan) with the billing address matching the taxpayer’s mailing address.

From the outset, it was clear that international taxpayers cannot gain access to the online program due to the mobile phone requirements. Furthermore, taxpayers who do not have a credit card and do not own either a home or automobile are by default excluded from the program. Thus, a significant portion of taxpayers renting apartments in big cities where residents rely on mass transit cannot gain access. Finally, the phone requirements exclude those taxpayers who do not have a contract mobile phone plan or whose mailing address does not match the billing address. Therefore, anybody on a family mobile phone plan who does not live in the same household as the contract holder is also excluded. Without even testing the program, it is clear that a significant portion of the taxpayer population will, by definition, not pass e-authentication to gain access.

As expected, when the IRS launched the Get Transcript Online program on June 6, 2016, it experienced an overall pass rate of approximately 30 percent.³⁰ While the strict authentication measures are important to safeguard taxpayer data, the numbers show that the online account cannot be the main channel to provide services. Approximately 30 percent of those taxpayers interested in using the channel can access the service. How is this the vision of the future if so few can access the account?

Further, while TAS firmly believes that a high level of security is necessary for the many online services expected to be included in the online account program, it is unclear why the online installment agreement application needs such strict authentication procedures. It is unlikely that identity thieves or hackers will attempt to gain access to a system to make payments to the IRS. By placing this service on

29 IRS, *How to Register for Get Transcript Online Using New Authentication Process*, FS 2016-20 (June 2016); IRS, *Welcome to Get Transcript*, <https://www.irs.gov/individuals/get-transcript-beta> (last visited May 27, 2016); IRS, *Get Transcript FAQs*, <https://www.irs.gov/individuals/get-transcript-faqs> (last visited May 27, 2016). The IRS verifies the financial account and mobile phone information with Equifax.

30 Luca Gattoni-Celli, *IRS to Promote Sharing Economy Tax Awareness, Koskinen Says*, TAX NOTES, June 9, 2016; Email Briefing on Secure Access Authentication, Weekly Status Report June 6 to 10, 2016 from IRS Identity Assurance (June 10, 2016); IRS, *Get Transcript Soft Launch: Monitoring and Metrics Briefing* (May 25, 2016). In an IRS briefing after the first week of completely launching the program, without providing the specific overall pass rate, the IRS stated that the pass rates “continue to be in the consistent range.” The overall pass rate was 29.4 percent during its soft launch at the end of May. In addition, during the soft launch, pass rates for each individual level of verification were 86 percent for the identity proofing component of the authentication, 63 percent for financial verification, and 70 percent for phone verification. The pass rates for each individual level of authentication are higher than the overall pass rate because users could pass one level of authentication and then fail the next level of authentication, incur a technological difficulty, or choose to abandon. Email briefing on Secure Access Soft Launch from IRS Identity Assurance (May 26, 2016).

the online account, the IRS has reduced access to this service for the large percentage of taxpayers who cannot get past the IRS multifactor authentication procedures.

Questions Remain Concerning the Legal Implications of Self-Correction Authority

The National Taxpayer Advocate remains concerned about the scope of the self-correction authority set forth in the Future State initiative. It is the National Taxpayer Advocate's understanding that the self-correction capability would enable taxpayers, preparers, and authorized third-parties to perform such functions as verifying return changes made by the IRS, updating or amending returns, and providing additional documents.³¹ It is unclear whether the self-corrections could address adjustments made pursuant to the agency's math error authority or whether they will extend beyond math error so that they constitute an abbreviated audit. The answer to this question impacts the taxpayers' rights to appeal and challenge the adjustment in the U.S. Tax Court.³²

In addition, once the taxpayer or representative addresses the proposed adjustment through self-correction, it is unclear what these corrections will constitute. If the taxpayer corrects the return, will the correction constitute an amended return or is the return still an original return that the IRS has not yet completely processed? All of these possible options have legal consequences to the taxpayer and all have potential negative impacts on taxpayer rights. It is essential that the IRS explores these issues early in the planning process so that the taxpayer's *right to challenge the IRS's position and be heard*, and the taxpayer's *right to appeal an IRS decision in an independent forum* are not undermined.

Finally, self-correction raises the issue of the application of the mailbox rule to documents submitted electronically by taxpayers or their representatives. Briefly, the statutory mailbox rule set forth in IRC § 7502 provides that, if the requirements set forth in the section are met, a document or payment is deemed to be filed or paid on the date of the postmark stamped on the envelope. The provision applies to documents sent by U.S. postal mail, private delivery services, and electronic filing through an electronic return transmitter.³³ If the IRS wants people to do things in an electronic environment, then it needs to deal with this rule as it applies in the digital age. Based on discussions with IRS Office of Chief Counsel, it is TAS's understanding that the IRS's position for digital transmissions of documents, such as through fax and email, do not invoke the mailbox rule. Therefore, the date the taxpayer sends it is irrelevant, even with a proof of transmittal. The IRS will only look to the date the IRS actually receives it. The rationale behind this decision is that people can modify the dates on fax machines and computers.³⁴ Therefore, if people want to invoke the mailbox rule for time-sensitive documents or payments, they must use registered mail or one of the designated private delivery services. In fact, without an electronic version of the mailbox rule, practitioners might hesitate to send any time-sensitive documents or payments electronically for fear of committing malpractice. Using a digital method could compromise taxpayer rights and protections. Therefore, it is essential for the IRS to address this issue if it is building its Future State model under the assumption that taxpayers and their representatives will interact digitally.

31 Draft IRS Compliance Concept of Operations (CONOPS) 3, 19-22 (June 8, 2014) (on file with the National Taxpayer Advocate).

32 See IRC §§ 6213(b)(1),(g)(2).

33 IRC § 7502(c).

34 Meeting with IRS Office of Chief Counsel on Mailbox Rule (Feb. 8, 2016).

The IRS Should Restrict Preparer Access to the Online Account

The IRS currently plans to enable the taxpayer to maintain control over who can gain access to the online account.³⁵ Part of the Future State vision provides the taxpayer's representative access to the online account. Through the National Taxpayer Advocate's Public Forums, TAS has learned that most practitioners believe practitioner access to the taxpayer's account is beneficial to the taxpayer and the practitioners. Practitioners welcome access to the online account, because it will likely reduce the need to endure long wait times on the phone to merely determine the status of the taxpayer's account or deal with cookie cutter transactions. They look forward to confirming that adjustments were made to the taxpayer's accounts, and submitting documents, including Form 2848, *Power of Attorney and Declaration of Representative*, with almost instantaneous alignment to the taxpayer's account.³⁶ However, they have still indicated that the account will not completely eliminate the need to call the IRS to discuss complex substantive issues.³⁷

While preparers will clearly benefit from some access to the account, the IRS does not have any plans currently in development to restrict preparer access by type of preparer. We are concerned that the IRS will expose taxpayers to potential harm due to preparer incompetence or misconduct if it does not restrict access to only those preparers subject to IRS oversight pursuant to Circular 230.³⁸ The IRS has the ability to monitor and enforce this requirement because it has preparer tax identification numbers (PTINs) for these individuals. If the IRS does not limit online account access to only preparers subject to Circular 230 oversight, it could harm taxpayers and, consequently, increase compliance issues.

Although the vast majority of return preparers are conscientious and ethical, the IRS has ample evidence and experience to show that there are some return preparers who are committing refund fraud³⁹ or are negligent, and that certain payroll service providers who have access to employer accounts also embezzle funds and cover their tracks by changing account information.⁴⁰ Without any restrictions on type of preparer, there is a greater chance that vulnerable taxpayers could be harmed by preparers who prey upon the elderly, low income, and taxpayers with disabilities. If the preparer either fraudulently or negligently prepares an inaccurate return, the IRS may have just given the preparer the ability to cover his or her tracks. Uncredentialed preparers could gain access, interact with the IRS on the taxpayer's behalf, and potentially address notices, proposed adjustments, or even proposed correctable errors without the taxpayer's consent or knowledge.⁴¹ It is also possible that the taxpayer will not become aware

35 IRS, *Compliance Capabilities Initiative: Draft Blueprint for the Vision* 19 (June 19, 2014); IRS, *IRS Enterprise Concept of Operations (CONOPS): Taxpayer Advocate Service Briefing* 5, 10-2 (July 28, 2015) (on file with the National Taxpayer Advocate).

36 See, e.g., Oral statement of Jennifer MacMillan, IRSAC, National Taxpayer Advocate Public Forum 103 (Feb. 23, 2016).

37 See, e.g., National Taxpayer Advocate Public Forum 62, 90 (Feb. 23, 2016).

38 For a detailed discussion of this proposal, see National Taxpayer Advocate 2015 Annual Report to Congress 64–71 (Most Serious Problem: *Preparer Access to Online Accounts: Granting Uncredentialed Preparers Access to an Online Taxpayer Account System Could Create Security Risks and Harm Taxpayers*). Preparers subject to IRS oversight under Circular 230 include attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents. In addition, pursuant to Revenue Procedure 2014-42, preparers who have obtained the voluntary Annual Filing Season Program (AFSP) Record of Completion can represent taxpayers before the IRS during an examination of a tax return or claim for refund they prepared and signed after December 31, 2016. 31 U.S.C. § 10.3; Rev. Proc. 2014-42, § 4.05(2)(a), I.R.B. 2014-29 (July 14, 2014).

39 *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 18-20 (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate).

40 *Id.*

41 For more detail on the National Taxpayer Advocate's position on the proposed correctable error legislation, see *The National Taxpayer Advocate's 2014 Annual Report to Congress: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Government Operations*, 114th Cong. 34-35 (2015) (written testimony of Nina E. Olson, National Taxpayer Advocate).

of the problem for a long time. Moreover, the preparer's actions could severely prejudice the taxpayer's procedural rights. For example, if the preparer accepts math error adjustments without the taxpayer's knowledge, the taxpayer may lose the right to contest the change in the U.S. Tax Court.⁴²

In order to prevent harm to vulnerable taxpayers, it is important that the IRS design the online account system with safeguards to prevent unauthorized access or actions on the system. In addition, registered tax return preparers are limited in their ability to practice before the IRS.⁴³ Therefore, if the IRS gave blanket access to all preparers, it would have to continually track preparer credentials and carefully restrict access to certain types of transactions.⁴⁴ More importantly, the IRS should enable the taxpayer to maintain strict and detailed control over preparer authorizations. The IRS should bring IRS Form 2848, *Power of Attorney and Declaration of Representative*, into the 21st century by building the online account system to provide specific checkboxes addressing authorizations for each type of action a preparer could take on behalf of the taxpayer on the online account system. The IRS should also develop and implement procedures to track preparer access and restrict unauthorized activities. Upon validating the preparer's PTIN information, if the system determines the preparer is not subject to Circular 230 oversight and did not take part in the voluntary Annual Filing Season Program (AFSP), then it could automatically block certain authorization checkboxes. In addition, because the taxpayer may be held responsible for the preparer's actions on the system, whether authorized or not, it is crucial that the taxpayer is aware of *all* the actions taken by the preparer on the taxpayer's online account. Therefore, whenever a preparer takes an action on the online account system, such as change of address, agreement to an addition of tax, and submitting documents, the system should send an acknowledgement of action to the taxpayer and copy the preparer, in a manner specified by the taxpayer, such as by email or text. If a preparer has taken an unauthorized action, the IRS should develop procedures to enable the taxpayer to undo any unauthorized transactions conducted by the preparer.

42 IRC § 6213(b)(1); IRM 21.5.4.1, *General Math Error Procedures Overview* (Oct. 1, 2015).

43 Registered tax return preparers must have a record of completion pursuant to the voluntary annual filing season program to represent taxpayers in Examination matters before the IRS beginning in calendar year 2017. Rev. Proc. 2014-42, § 4.05(2)(a), I.R.B. 2014-29 (July 14, 2014). Registered tax return preparers have always been restricted in their ability to represent taxpayers before Collection, Appeals, and Counsel. 31 U.S.C. § 10.3.

44 Oral statement of Jennifer MacMillan, IRSAC, National Taxpayer Advocate Public Forum 101 (Feb. 23, 2016).

FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Hold National Taxpayer Advocate Public Forums around the country and solicit suggestions from diverse taxpayer populations regarding IRS service delivery preferences;
- Advocate for low income taxpayers and other vulnerable populations who have significant offline rates, as well as for other taxpayers who need or prefer personal interaction, by working with the IRS to ensure it maintains meaningful and high-quality service options for these populations;
- Work with the IRS to ensure it incorporates strict security safeguards on preparer access to taxpayer online accounts;
- Work with the IRS to restrict preparer access to taxpayers' online accounts to those preparers who are regulated by Circular 230;
- Seek a Counsel opinion to determine the boundaries and corresponding legal implications of the self-correction authority provided to preparers; and
- Advocate for expansion of the mailbox rule under IRC § 7502 to apply to the digital environment.