

Testimony

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TAX ADMINISTRATION

IRS Inspection Service and
Taxpayer Advocate Roles
for Ensuring That
Taxpayers Are Treated
Properly

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Administration Issues, General Government Division



Tax Administration: IRS Inspection Service and Taxpayer Advocate Roles for Ensuring That Taxpayers Are Treated Properly

Chairman Roth, Senator Moynihan, and Members of the Committee:

We are pleased to be here today to assist the Committee in its ongoing oversight of the Internal Revenue Service (IRS). As you requested, my statement today addresses four issues related to allegations of taxpayer abuse and employee misconduct. They are

- the adequacy of IRS controls over the treatment of taxpayers,
- the responsibilities of the Offices of the Chief Inspector (IRS Inspection) and the Treasury Office of Inspector General (Treasury OIG) in investigating allegations of taxpayer abuse and employee misconduct,
- the organizational placement of IRS Inspection, and
- the role of the Taxpayer Advocate in handling taxpayer complaints.

The statement is based on our past report on IRS' efforts to improve controls for ensuring that taxpayers are treated properly¹ and preliminary information from work we have just started to assess the effectiveness of the Taxpayer Advocate.

In summary, my statement makes the following points:

- In spite of IRS management's heightened awareness of the importance of treating taxpayers properly, we remain unable to reach a conclusion as to the adequacy of IRS' controls to ensure fair treatment. This is because IRS and other federal information systems that collect information related to taxpayer cases do not capture the necessary management information to identify instances of abuse that have been reported and actions taken to address them and to prevent recurrence of those problems.
- Treasury OIG and IRS Inspection have separate and shared responsibilities for investigating allegations of employee misconduct and taxpayer abuse. IRS Inspection has primary responsibility for investigating and auditing IRS employees, programs, and internal controls. Treasury OIG is responsible for the oversight of IRS Inspection investigations and audits and may perform selective investigations and audits at IRS.

The two offices share some responsibilities as reflected in a 1994 IRS Commissioner-Treasury OIG Memorandum of Understanding. This involves investigating allegations of waste, fraud, and abuse by IRS employees. The investigations covered under this Memorandum encompass a wide range of misconduct allegations including taxpayer

¹See *Tax Administration: IRS Is Improving Its Controls for Ensuring That Taxpayers Are Treated Properly* (GAO/GGD-96-176, Aug. 30, 1996).

**Statement
Tax Administration: IRS Inspection Service
and Taxpayer Advocate Roles for Ensuring
That Taxpayers Are Treated Properly**

abuse. IRS Inspection is responsible for investigating allegations against IRS employees who are GS-14s and below and who do not work in Inspection. Treasury OIG Officials advised us that employees at this level are the ones most likely to have direct interaction with taxpayers and are most likely to be subject to allegations involving taxpayer abuse. Treasury OIG is responsible for investigating allegations against senior level IRS officials and IRS Inspection employees.

In the 1996 report on controls to ensure the proper treatment of taxpayers that we prepared at your request, Mr. Chairman, we noted that officials from both organizations thought that the arrangement was working well. However, more recent information indicates there may now be some concerns among those officials, particularly regarding timely referrals of allegations by both offices.

- In the Committee's September 1997 hearings, questions were raised about the independence of IRS Inspection. Subsequently, suggestions have been made to remove IRS Inspection from IRS and place it in Treasury OIG. We have historically supported a strong statutory Treasury OIG. We also believe that the IRS Commissioner needs an internal capability to review the effectiveness of IRS programs. Regardless of where IRS Inspection is placed organizationally, within IRS or Treasury OIG, mechanisms need to be in place to ensure its accountability and its ability to focus on its mission independent from undue pressures or influence. The Inspectors General Act² as amended in 1988, provides guidance on the authorities, qualifications, safeguards, resources, and reporting requirements needed to ensure independent investigation and audit capabilities.
- In 1979, the Taxpayer Ombudsman was established administratively within IRS to advocate for taxpayers and assume authority for IRS' Problem Resolution Program. In 1988, this position was codified in the Taxpayer Bill of Rights 1.³ In 1996, the Taxpayer Bill of Rights 2⁴ replaced the Ombudsman with the Taxpayer Advocate and expanded the responsibilities of the new Office of the Taxpayer Advocate. The Advocate was charged under the legislation with helping taxpayers resolve their problems with IRS and with identifying and resolving systemic problems. It is now nearly 20 years after the creation of the first executive-level position in IRS to advocate for taxpayers, and questions about the effectiveness of the advocacy continue to be asked. These questions

²Public Law 100-504 Oct. 18, 1988.

³Public Law 100-647, Nov. 10, 1988.

⁴Public Law 104-168, July 30, 1996.

involve the Advocate's (1) organizational independence within IRS; (2) adequacy of resource commitments to achieve its mission; and (3) ability to identify and correct problems with IRS processes and systems that adversely affect taxpayers.

Adequacy of IRS' Controls to Ensure Fair Treatment of Taxpayers Cannot Be Determined

The new IRS Commissioner and IRS management have expressed a commitment to ensure that taxpayers are treated properly. Even so, problems with current management information systems make it impossible to determine the extent to which allegations of taxpayer abuse and other taxpayer complaints have been reported, or the extent to which actions have been taken to address the complaints and prevent recurrence of systemic problems. That is because, as we reported to you in 1996, information systems currently maintained by IRS, Treasury OIG, and the Department of Justice do not capture the necessary management information. These systems were designed as case tracking and resource management systems intended to serve the management information needs of particular functions, such as IRS Inspection's Internal Security Division. None of these systems include specific data elements for "taxpayer abuse"; instead, they contain data elements that encompass broad categories of misconduct, taxpayer problems, and legal and administrative actions.

Information contained in these systems relating to allegations and investigations of taxpayer abuse and other taxpayer complaints is not easily distinguishable from information on allegations and investigations that do not involve taxpayers. Consequently, as currently designed, the information systems cannot be used individually or collectively to account for IRS' handling of instances of alleged taxpayer abuse.

Information Systems Related to Taxpayer Abuse Allegations

Officials of several organizations indicated to us that several information systems might include information related to taxpayer abuse allegations—five maintained by IRS, one by Treasury OIG, and two by Justice. (See attachment for a description of these systems.)

The officials familiar with these systems stated that the systems do not include a specific data element for taxpayer abuse that could be used to easily distinguish abuse allegations from others not involving taxpayers. For example, officials from the Executive Office for the U.S. Attorneys stated that the public corruption and tort categories of their Case Management System may include instances of taxpayer abuse. But, they

**Statement
Tax Administration: IRS Inspection Service
and Taxpayer Advocate Roles for Ensuring
That Taxpayers Are Treated Properly**

also said the system could not be used to identify such instances without a review of specific case files.

**Systems Do Not Have
Common Data Elements or
Unique Identifiers**

From our review of data from these systems for our 1996 report, we concluded that none of them, either individually or collectively, have common or comparable data elements that can be used to identify the number or outcomes of taxpayer abuse allegations or related investigations and actions. Rather, each system was developed to provide information for a particular organizational function, usually for case tracking, inventory, or other managerial purposes relative to the mission of that particular function. While each system has data elements that could reflect how some taxpayers have been treated, the data elements vary and in certain cases may relate to the same allegation and same IRS employee. Without common or comparable data elements and unique allegation and employee identifiers, these systems do not collect information in a consistent manner that could be used to accurately account for all allegations of taxpayer abuse.

**IRS Has Adopted a
Definition for “Taxpayer
Complaints”**

As we also reported in our 1996 report, IRS has not historically had a definition of taxpayer abuse. In response to the report, IRS adopted a definition for taxpayer complaints that included the following elements: (1) allegations of IRS employees’ violating laws, regulations, or the IRS Code of Conduct; (2) overzealous, overly aggressive, or otherwise improper behavior of IRS employees in discharging their official duties; and (3) breakdowns in IRS systems or processes that frustrate taxpayers’ ability to resolve issues through normal channels.

Also in response to the report, IRS established a Customer Feedback System in October 1997, which IRS managers are to use to report allegations of improper employee behavior toward taxpayers. IRS used this system to support its first required annual reporting to Congress on taxpayers’ complaints through December 31, 1997. IRS officials acknowledged, however, that there were changes needed to ensure the accuracy and consistency of the reported data.

Treasury OIG and IRS Inspection Roles for Investigating Taxpayer Abuse Allegations

The 1988 amendments to the Inspectors General Act, which created the Treasury OIG, did not consolidate IRS Inspection into the Treasury OIG, but authorized the Treasury OIG to perform oversight of IRS Inspection and conduct audits and investigations of the IRS as appropriate. The act also provided the Treasury OIG with access to taxpayer data under the provisions of Section 6103 of the Internal Revenue Code as needed to conduct its work, with some recording and reporting requirements for such access.

Treasury OIG's Responsibilities

Currently, Treasury OIG is responsible for investigating allegations of misconduct, waste, fraud, and abuse involving senior IRS officials, GS-15s and above, as well as IRS Inspection employees. Treasury OIG also has oversight responsibility for the overall operations of IRS Inspection. Since November 1994, Treasury OIG has had increased flexibility for referring allegations involving GS-15s to IRS for investigation or administrative action. The need to make more referrals of GS-15 level cases was due to resource constraints and an increased emphasis by Treasury OIG on investigations involving criminal misconduct and procurement fraud across all Treasury bureaus.

In fiscal year 1996, Treasury OIG conducted 43 investigations—14 percent of the 306 allegations it received—many of which implicated senior IRS officials. Treasury OIG officials said that these investigations rarely involved allegations of taxpayer abuse because senior IRS officials and IRS Inspection employees usually do not interact directly with taxpayers.

IRS Inspection's Responsibilities

The IRS Chief Inspector, who reports directly to the IRS Commissioner, is responsible for conducting IRS investigations and internal audits done by IRS Inspection, as well as for coordinating IRS Inspection activities with Treasury OIG. IRS Inspection is to work closely with Treasury OIG in planning and performing its duties. IRS Inspection is also to provide information on its activities and results, as well as constraints or limitations placed on its activities, to Treasury OIG for incorporation into Treasury OIG's Semiannual Report to Congress. Disputes that the IRS Chief Inspector may have with the IRS Commissioner are to be resolved through Treasury OIG and the Secretary of the Treasury, to whom the Treasury OIG reports.

Reporting Responsibilities for Treasury Law Enforcement Bureaus

In September 1992, Treasury OIG issued Treasury Directive 40-01, which summarizes the authority vested in Treasury OIG and the reporting responsibilities of various Treasury bureaus. Treasury law enforcement bureaus, including IRS, are to (1) provide a monthly report to Treasury OIG concerning significant internal investigative and audit activities; (2) notify Treasury OIG immediately upon receiving allegations involving senior IRS officials, internal affairs employees, or IRS Inspection employees; and (3) submit written responses to Treasury OIG detailing actions taken or planned in response to Treasury OIG investigative reports and Treasury OIG referrals for agency management action.

Under procedures established in a Memorandum of Understanding between Treasury OIG and IRS Commissioner in November 1994, the requirement for immediate referrals to Treasury OIG of all misconduct allegations covered in the Directive was reiterated and supplemented. Treasury OIG has the discretion to refer any allegation to IRS for appropriate action, that is, either investigation by IRS Inspection or administrative action by IRS management. If IRS officials believe that an allegation referred by Treasury OIG warrants Treasury OIG attention, they may refer the case back to Treasury OIG, requesting that Treasury OIG conduct an investigation.

How Treasury OIG Handles Allegations Against IRS Employees

During our review for the 1996 report, Treasury OIG officials advised us that under the original 1992 Directive, they generally handled most allegations implicating Senior Executive Service (SES) and IRS Inspection employees, while reserving the right of first refusal on GS-15 employees. Under the procedures adopted in 1994, which were driven in part by resource constraints and Treasury OIG's need to do more criminal misconduct and procurement fraud investigations across all Treasury bureaus, Treasury OIG officials stated they have generally referred allegations involving GS-15s and below to IRS for investigation or management action. The same is true for allegations against any employees, including those in the SES, involving administrative matters and allegations dealing primarily with disputes of tax law interpretation.

Treasury OIG officials said that a determination is made by Treasury OIG after a preliminary review of the merits of the allegation as to whether it should investigate, refer to IRS to either investigate or take administrative action, or take no action at all. In fiscal year 1996, Treasury OIG received 306 allegations, many of which involved senior IRS officials. After a preliminary review, Treasury OIG decided no action was warranted on 40

**Statement
Tax Administration: IRS Inspection Service
and Taxpayer Advocate Roles for Ensuring
That Taxpayers Are Treated Properly**

of the allegations; referred 214 to IRS—either for investigation or administrative action; investigated 43; and closed 9 others for various administrative reasons.

Treasury OIG officials stated that, based on their investigative experience, most allegations of wrongdoing by IRS staff that involve taxpayers do not involve senior-level IRS officials or IRS Inspection employees. Rather, these allegations typically involve IRS Examination and Collection employees who most often interact directly with taxpayers.

**How Treasury OIG
Assesses IRS' Action in
Response to Investigations
or Referrals**

Treasury OIG officials are to assess the adequacy of IRS' actions in response to Treasury OIG investigations and referrals as follows: (1) IRS is required to make written responses on actions taken within 90 days and 120 days, respectively, on Treasury OIG investigative reports of completed investigations and Treasury OIG referrals for investigations or management action; (2) Treasury OIG investigators are to assess the adequacy of IRS' responses before closing the Treasury OIG case; and (3) Treasury OIG's Office of Oversight is to assess the overall effectiveness of IRS Inspection capabilities and systems through periodic operational reviews.

In addition to assessing IRS' responses to Treasury OIG investigations and referrals, each quarter, the Treasury Inspector General, Deputy Inspector General, and Assistant Inspector General for Investigations are to brief the IRS Commissioner, IRS Deputy Commissioner, and Chief Inspector on the status of allegations involving senior IRS officials, including those being investigated by Treasury OIG and those awaiting IRS action.

In our 1996 report, we noted that officials from both agencies agreed that the arrangement was working well to ensure that allegations involving senior IRS officials and IRS Inspection employees were being handled properly. Even so, Treasury OIG officials expressed some concern with the amount of time IRS typically took to respond to Treasury OIG investigations and referrals. IRS officials acknowledged that responses were not always made within Treasury OIG time frames because, among other reasons, determinations about taking disciplinary actions and imposing such actions may have taken a considerable amount of time. Also, the IRS officials said some cases had to be returned for additional development by Treasury OIG, which may have prolonged the time for completion. The IRS officials, however, also suggested that actions on Treasury OIG referrals were closely monitored, as evidenced by the

**Statement
Tax Administration: IRS Inspection Service
and Taxpayer Advocate Roles for Ensuring
That Taxpayers Are Treated Properly**

referrals inclusion in discussions during quarterly Inspector General briefings with the IRS Commissioner.

Since 1996, there has been some indication of problems between the two offices. Specifically, in its most recent Semiannual Report to Congress, Treasury OIG concluded, after reviewing IRS' compliance with Treasury Directive 40-01, that "both IRS and Treasury OIG need to make improvements, particularly in the area of timely, prompt referrals." It is not clear what steps Treasury OIG officials plan to take to resolve the problems.

**Organizational
Placement of IRS
Inspection Remains
Subject of Debate**

At the Committee's September 1997 IRS oversight hearings, some IRS employees raised concerns about the effectiveness of IRS Inspection and its independence from undue pressures and influence from IRS management. Since that time, debate has continued on the issue of where IRS Inspection would be optimally placed organizationally to provide assurance that taxpayers are treated properly. This is not a new issue. During the debate preceding the passage of the 1988 amendments to the Inspectors General Act that established the Treasury OIG and left IRS Inspection intact, as well as on several other occasions since, concerns have been raised about the desirability of having a separate IRS Inspection Service.

Historically, we have supported a strong statutory Treasury OIG, believing that such an office could provide independent oversight of the Department, including IRS. That is, reviews of IRS addressed to the Secretary of the Treasury, rather than the IRS Commissioner, should improve executive branch oversight of tax administration in general and provide greater assurance that taxpayers are treated properly, fairly, and courteously. We have also noted that under the statute, Treasury OIG is authorized to enhance the protection of taxpayer rights by conducting periodic independent reviews of IRS dealings with taxpayers and IRS procedures affecting taxpayers.

We have also recognized that, to meet his managerial responsibilities, the IRS Commissioner needs an internal capability to review the effectiveness of IRS programs. IRS Inspection has provided Commissioners with investigative and audit capabilities to evaluate IRS programs since 1952. IRS Inspection currently has roughly 1,200 authorized staff in its budget who are split about equally between its two divisions, Internal Security and Internal Audit.

**Statement
Tax Administration: IRS Inspection Service
and Taxpayer Advocate Roles for Ensuring
That Taxpayers Are Treated Properly**

The Treasury OIG, on the other hand, has fewer than 300 authorized staff to provide oversight of IRS Inspection activities as well as to carry out similar investigations and audits for Treasury and its 10 other very diverse bureaus. IRS officials have been concerned that if IRS Inspection is transferred to the Treasury OIG, the transferred resources will be used to investigate or audit other Treasury bureaus to the detriment of critical IRS oversight.

The Inspectors General Act provides guidance on the authorities, qualifications, safeguards, resources, and reporting requirements needed to ensure independent investigative and audit capabilities. No matter where IRS Inspection is placed organizationally, certain mechanisms need to be in place to ensure that it is held accountable and can achieve its mission without undue pressures or influence. For example, a key component of accountability and protection against undue pressures or influence is reporting of investigative and audit activities and findings to both those responsible for agency management and oversight.

Taxpayer Advocate's Ability to Bring About Change Remains an Open Question

Another IRS organization responsible for protecting the rights of taxpayers is the Taxpayer Advocate. The position was originally codified in the Taxpayer Bill of Rights 1 as the Taxpayer Ombudsman, although IRS has had the underlying Problem Resolution Program (PRP) in place since 1979.

In the Taxpayer Bill of Rights 2, the Taxpayer Advocate and the Office of the Taxpayer Advocate replaced the Taxpayer Ombudsman position and the headquarters PRP staff. The authorities and responsibilities of this new office were expanded, for example, to address taxpayer cases involving IRS enforcement actions and refunds. The most significant change may have been to emphasize that the Advocate and those assigned to the Advocate's Office are expected to view issues from the taxpayers' perspective and find ways to alleviate individual taxpayer concerns as well as systemic problems.

The Advocate reported that it resolved 237,103 cases in fiscal year 1997. Its reported activities included establishing cases to resolve taxpayer concerns, providing relief to taxpayers with hardships, resolving cases in a proper and timely manner, and analyzing and addressing factors contributing to systemic problems. The report also discussed activities and initiatives and proposed solutions for systemic problems.

**Statement
Tax Administration: IRS Inspection Service
and Taxpayer Advocate Roles for Ensuring
That Taxpayers Are Treated Properly**

Even with the enhanced legislative authorities and numerous activities and initiatives, questions about the effectiveness of the Taxpayer Advocate persist. The questions relate to the Advocate's (1) organizational independence within IRS; (2) resource commitments to achieve its mission; and (3) ability to identify and correct systemic problems adversely affecting taxpayers. We have recently initiated a study of the Advocate's Office to address these questions about the Advocate's effectiveness.

The first question centers on the Advocate's organizational placement at headquarters and field offices. The Taxpayer Advocate reports to the IRS Commissioner. Taxpayer Advocates in the field report to the IRS Regional Commissioner, District Director, or Service Center Director in their particular geographic area. Thus, these field advocate officials report to the IRS executives who are responsible for the operations that may have frustrated taxpayers and created the Advocate's caseloads.

The second question involves the manner in which the Advocate's Office is staffed and funded. For fiscal year 1998, the Advocate's Office was authorized 442 positions to handle problem resolution duties. These authorized Advocate Office staff must rely on assistance from more than 1,000 other field employees, on a full-time or part-time basis, to carry-out these duties. These 1,000 employees are funded by their functional office, such as Collection or Customer Service. While working PRP cases, these employees receive program direction and guidance from the Advocate's Office. They are administratively responsible to their Regional Commissioners, District Directors, or Service Center Directors—again, the same managers responsible for the operations that may have frustrated taxpayers.

The third question was debated during oversight hearings last year regarding the Advocate's ability to identify and correct IRS systems or processes that have frustrated taxpayers. The question historically has been the amount of attention afforded the analysis of problem resolution cases to identify systemic issues in light of the Advocate's workload and available staff. The more recent question, however, has been the ability of the Advocate's Office to bring about needed administrative or legislative changes to address systemic problems.

Questions about organizational placement, dedicated staffing, and ability to change IRS processes and systems all must be answered in assessing whether the Advocate's environment is free of undue pressures that may

**Statement
Tax Administration: IRS Inspection Service
and Taxpayer Advocate Roles for Ensuring
That Taxpayers Are Treated Properly**

detract from its ability to focus on its overall mission. Our recently initiated study is designed to provide such an assessment of the Advocate's effectiveness.

Summary

In summary, Mr. Chairman, we are unable to determine whether existing IRS controls are adequate to ensure that allegations of employee misconduct and taxpayer abuse are identified, investigated, and prevented from recurring, because existing systems do not capture this information. Both Treasury OIG and IRS Inspection have responsibility for investigating allegations of misconduct. We supported the 1988 amendments to the Inspectors General Act that established an independent Treasury OIG, and recognized the IRS Commissioner's need for an internal capability to evaluate IRS programs. The Inspectors General Act provides guidance on the authorities, qualifications, safeguards, resources, and reporting requirements needed to ensure independent investigative and audit capabilities.

Questions also remain unanswered about the effectiveness of the Taxpayer Advocate in representing taxpayers. Regardless of where IRS Inspection and the Advocate sit organizationally, to protect taxpayers they must be able to discharge their responsibilities free of undue pressures or influence and be held accountable for achieving their respective missions.

Thank you, Mr. Chairman. This concludes my prepared statement. I will be happy to respond to any questions you or other Members of the Committee may have.

Information Systems Related to Taxpayer Abuse Allegations

Two of the IRS systems—Inspection’s Internal Security Management Information System (ISMIS) and Human Resources’ Automated Labor and Employee Relations Tracking System (ALERTS)—are designed to capture information on cases involving employee misconduct, which may also involve taxpayer abuse. ISMIS is designed to determine the status and outcome of Internal Security investigations of alleged employee misconduct; ALERTS is designed to track disciplinary actions taken against employees. While ISMIS and ALERTS both track aspects of alleged employee misconduct, these systems do not share common data elements or otherwise capture information in a consistent manner.

IRS also has three systems that include information on concerns raised by taxpayers. These systems include two maintained by the Office of Legislative Affairs—the Congressional Correspondence Tracking System and the IRS Commissioner’s Mail Tracking System—as well as the Taxpayer Advocate’s system known as the Problem Resolution Office Management Information System (PROMIS). The two Legislative Affairs systems are designed to track taxpayer inquiries, including those made through congressional offices, to ensure that responses are provided by appropriate IRS officials. PROMIS is to track similar inquiries to ensure that taxpayers’ problems are resolved and to determine whether the problems are recurring in nature.

Treasury OIG has an information system known as the Treasury OIG Office of Investigations Management Information System. It is designed to track the status and outcomes of Treasury OIG investigations as well as the status and outcomes of actions taken by IRS in response to Treasury OIG investigations and referrals.

Justice has two information systems that include data that may be related to taxpayer abuse allegations and investigations. The Executive Office for the U.S. Attorneys maintains a Centralized Caseload System that is designed to consolidate the status and results of civil and criminal prosecutions conducted by U.S. Attorneys throughout the country. Cases involving criminal misconduct by IRS employees are to be referred to and may be prosecuted by the U.S. Attorney in the particular jurisdiction in which the alleged misconduct occurred.

The Tax Division of Justice also maintains a Case Management System that is designed for case tracking, time reporting, and statistical analysis of litigation cases the Division conducts. Lawsuits against either IRS or IRS employees are litigated by the Tax Division, with representation provided

**Appendix I
Information Systems Related to Taxpayer
Abuse Allegations**

to IRS employees if the Tax Division determines that the actions taken by the employees were within the scope of employment.

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