

Making Taxpayer Rights Real: Overcoming Challenges to Integrate Taxpayer Rights into a Tax Agency's Operations

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Introduction

In 2014, the Internal Revenue Service (IRS) adopted the Taxpayer Bill of Rights (TBOR), embracing a set of fundamental principles that should guide all policies, practices, and procedures. Leading up to the IRS's adoption of the TBOR, taxpayers' awareness of their rights was significantly lacking. A 2012 survey conducted for the Taxpayer Advocate Service¹ (TAS) found fewer than half of U.S. taxpayers believed they have rights before the IRS, and only 11% said they knew what those rights were.²

Although the Internal Revenue Code (Code or IRC) has for many years included specific provisions that ensure a fair and just tax system and protect all taxpayers from potential IRS abuse, it was not until late 2015 that Congress added a list of organizing principles to formally acknowledge the fundamental taxpayer rights from which these specific statutory rights derive.³ Congress amended IRC § 7803(a) to create a new requirement for the Commissioner of the IRS to ensure that IRS employees are familiar with and act in accord with taxpayer rights provided by other sections of the Code.⁴ The Code now provides that these rights include: 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 position of the Internal Revenue Service and be heard, the

¹The Taxpayer Advocate Service is an independent organization within the IRS that helps individual and business taxpayers resolve problems that have not been resolved through normal IRS channels and addresses large-scale, systemic issues that affect groups of taxpayers.

²Forrester Research Inc., IRS TAS proprietary questions in North American Technographics Omnibus Mail Survey, Q2/Q3 2012 20 (Sept. 2012) (unpublished survey) (on file with The Tax Lawyer).

³Although prior to 2015, Congress had passed multiple pieces of legislation with "Taxpayer Bill of Rights" in the title, and these laws created specific rights in certain instances, none of them provided a thematic, principles-based list of overarching taxpayer rights. *See* Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 6226, 102 Stat. 3342, 3730 (containing the "Omnibus Taxpayer Bill of Rights," also known as TBOR 1); Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452 (1996) (also known as TBOR 2); Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685, 726 (Title III is known as "Taxpayer Bill of Rights III" or TBOR 3).

⁴Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 401, 129 Stat. 2242 (2015).

right to appeal a decision of the Internal Revenue Service in an independent forum, the right to finality, the right to privacy, the right to confidentiality, the right to retain representation, and the right to a fair and just tax system.⁵

The IRS's adoption of the TBOR was a laudable step in the IRS's efforts to regain the public's trust and confidence in the fairness of the tax system. Furthermore, Congress's decision to insert the TBOR into the Code reflects a desire to make taxpayer rights a foundational part of our tax system, giving the TBOR the force of the law. Although both of these actions hold great promise for taxpayers, the success of the TBOR depends largely on how the IRS carries it out. The TBOR will only be effective if its principles are incorporated in the thousands of daily actions and interactions undertaken by IRS employees and if there are actionable remedies for seeking redress when rights are violated.

Leading up to the adoption of the TBOR, the IRS had come under intense scrutiny, which continues today, as a result of allegations that it used inappropriate criteria to screen applications for tax-exempt status.⁶ In response to these allegations, the Principal Deputy Commissioner of the IRS issued a report that reviewed the allegations and outlined actions the IRS planned to take to fix the underlying problems.⁷ Among other items, the report asked the National Taxpayer Advocate to raise awareness of taxpayer rights, including updating IRS Publication 1, *Your Rights as a Taxpayer*.⁸ In response, the National Taxpayer Advocate issued a report advocating for a TBOR to serve as a framework for tax administration.⁹ The report provided recommendations to raise taxpayer and employee awareness of taxpayer rights, and outlined specific action items for TAS and recommendations for the IRS Commissioner, thus setting forth a roadmap for integrating taxpayer rights into every aspect of tax administration. Following the IRS's adoption of the TBOR, TAS initiated a number of actions to make taxpayer rights "real"

⁵I.R.C. § 7803(a)(3).

⁶See TREASURY INSPECTOR GEN. FOR TAX ADMIN., INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW, REF. NO. 2013-10-053 (2013).

⁷See DANIEL WERFEL, IRS PRINCIPAL DEPUTY COMM'R, CHARTING A PATH FORWARD AT THE IRS: INITIAL ASSESSMENT AND PLAN OF ACTION (June 24, 2013), available at <https://www.irs.gov/pub/newsroom/Initial%20Assessment%20and%20Plan%20of%20Action.pdf>.

⁸See INTERNAL REVENUE SERVICE, YOUR RIGHTS AS A TAXPAYER, PUBLICATION 1, CATALOG NO. 64731W (Dec. 2014), available at <https://www.irs.gov/uac/About-Publication-1> [hereinafter *Publication 1*]. This publication is provided to taxpayers in a number of circumstances, such as when an initial contact during an examination is made by mail and when a revenue officer contacts a taxpayer regarding a proposed seizure action. See, e.g., I.R.M. 4.10.2.7.4.2, *Contacting the Taxpayer by Letter* (Apr. 2, 2010); I.R.M. 5.10.1.7.2, *Personal Contact to Advise the Taxpayer of Proposed Seizure Action* (Aug. 4, 2014), available at https://www.irs.gov/irm/part5/irm_05-010-001.html#d0e1088.

⁹See NAT'L TAXPAYER ADVOCATE, TOWARD A MORE PERFECT TAX SYSTEM: A TAXPAYER BILL OF RIGHTS AS A FRAMEWORK FOR EFFECTIVE TAX ADMINISTRATION; RECOMMENDATIONS TO RAISE TAXPAYER AND EMPLOYEE AWARENESS OF TAXPAYER RIGHTS (2013), available at www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Toward-a-More-Perfect-Tax-System-A-Taxpayer-Bill-of-Rights-as-a-Framework-for-Effective-Tax-Administration.pdf.

by educating taxpayers, incorporating taxpayer rights into employee training and guidance, and integrating taxpayer rights into the measures the IRS uses to gauge performance and success. Throughout this process, there have been multiple challenges.

The first challenge is taxpayer education. Taxpayers must be aware that they have rights and know what they are. Taxpayers also need a basic understanding of what the rights mean and when they apply. Further, the rights must be operationalized in a way that taxpayers will exercise them freely when they apply. The second challenge is educating employees about taxpayer rights, which requires incorporating taxpayer rights into employee training and guidance, and driving employees to apply the rights when making decisions. Finally, in order to determine success in operationalizing taxpayer rights, a tax agency must measure whether taxpayer knowledge is increasing. In order to hold itself accountable for supporting taxpayer rights, a tax agency must fully incorporate taxpayer rights into its own measures.

I. Creating Awareness, Educating Taxpayers, and Encouraging the Exercise of Rights

A. Creating General Taxpayer Awareness About Their Rights

Taxpayer awareness and education is first and foremost in operationalizing taxpayer rights. If taxpayers do not know about their rights, they may not exercise them nor will they hold a tax agency accountable for failing to honor them. With a tax code as complex as that of the United States, and with specific taxpayer rights scattered within its nearly four million words, it is virtually impossible to educate taxpayers on all of their rights that occur in specific situations.¹⁰ In specific instances, the Code requires notifying taxpayers of certain rights. For example, IRC § 6213(a) requires the IRS to provide a notice of deficiency informing the taxpayer that he or she has 90 days (150 days if the notice is addressed to a person outside of the United States) to petition the U.S. Tax Court. As required by IRC § 7522(a), this notice shall provide the basis for and the amount of tax, interest, and penalties due. IRC § 6330 requires the IRS to notify taxpayers at least 30 days before a levy; this notice of intent to levy must include the amount of unpaid tax, the taxpayer's right to request a hearing, the IRS's proposed action, the IRC provisions relating to levy, the procedures applicable to the levy, the administrative appeals available to the taxpayer, and the alternatives available to prevent the levy.¹¹

In other instances, however, there is no statutory requirement to notify taxpayers of their rights. For example, the Code provides for Low Income Taxpayer Clinics (LITCs), which represent low income taxpayers in

¹⁰See 2012 NAT'L TAXPAYER ADVOCATE ANN. REP., INTRODUCTION: MOST SERIOUS PROBLEMS ENCOUNTERED BY TAXPAYERS 6, available at <http://www.taxpayeradvocate.irs.gov/2012-Annual-Report/FY-2012-Annual-Report-To-Congress-Full-Report.html>.

¹¹I.R.C. § 6330(a)(3).

controversies with the IRS and do not charge more than a nominal fee for their services;¹² but, there is no requirement for the IRS to notify taxpayers that they may be represented by an LITC nor to provide a list of LITCs in the taxpayer's geographic area.

The challenge then is how to communicate the TBOR to taxpayers so that even if taxpayers cannot know all of their rights and when they apply, they at least have a framework that helps them recognize their fundamental rights, even if they need more detail in specific circumstances. The TBOR does precisely this. By communicating the basic principles, it spurs taxpayers to seek more information when they need it. The TBOR serves as a jumping off point for taxpayers to then dig deeper by asking an IRS employee questions or researching their rights through additional sources such as the TAS website or IRS publications. Accordingly, if a taxpayer knows he has the *right to retain representation*, he or she might research the possibility of being represented by an LITC, even if he does not know the exact eligibility requirements outlined in the Code.

1. *Using Publication 1 to Inform U.S. Taxpayers*

When the IRS adopted the TBOR, it incorporated the statement of the ten core rights into its primary taxpayer publication, Publication 1, *Your Rights as a Taxpayer*.¹³ The revised Publication 1 provides a plain language description for each of the ten rights, and is available in English, Spanish, Chinese, Korean, Russian, and Vietnamese. For example, the *right to quality service*¹⁴ provides general guidelines as to what taxpayers can expect when dealing with the IRS—prompt, courteous, and professional assistance. It does not provide a timeline for “prompt,” as that varies in different situations, but it informs taxpayers that timeliness is an element of this right. Furthermore, this description sets forth a general policy of the IRS that allows taxpayers to speak with a supervisor if they believe they are receiving inadequate service.

Without these explanations, taxpayers may perceive the core rights as being more inclusive than they are; for example, taxpayers could mistakenly believe the *right to quality service* requires an employee to meet with the taxpayer face-to-face at any time. Alternatively, with no explanations, taxpayers may see the titles of the rights by themselves as wholly symbolic and thus without practical application.

The explanations in Publication 1 are also useful to taxpayers because the IRS itself has approved the explanations, and so it can be persuasive for taxpayers to cite the IRS's words. For example, if a taxpayer provides additional documentation to prove income during an examination and does not receive a response, he or she can cite the plain language description of the *right to*

¹² See I.R.C. § 7526.

¹³ See *Publication 1*, *supra* note 8.

¹⁴ Throughout this paper, references to the fundamental rights are italicized to indicate when a right is one of the ten fundamental rights formally adopted in the TBOR.



IRS

Your Rights as a Taxpayer

Publication 1

This publication explains your rights as a taxpayer and the processes for examination, appeal, collection, and refunds. Also available in Spanish.

The Taxpayer Bill of Rights

1. The Right to Be Informed
Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service
Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More than the Correct Amount of Tax
Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard
Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum
Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

6. The Right to Finality
Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

7. The Right to Privacy
Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality
Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Retain Representation
Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System
Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Publication 1 (Rev. 12-2014) Catalog Number 64731W Department of the Treasury Internal Revenue Service www.irs.gov

Figure 1. Publication 1, *Your Rights as a Taxpayer*

challenge the IRS's position and be heard, stating the taxpayer has a right “to receive a response if the IRS does not agree with their position.” Although this language does not have the power of law, as the Code only includes the titles of each of the fundamental rights, it is beneficial for taxpayers to cite the IRS's own language in holding it to certain standards.

The IRS uses Publication 1 to comply with the Omnibus Taxpayer Bill of Rights (TBOR 1), which is a subtitle within the Technical and Miscellaneous Revenue Act of 1998 requiring the IRS to prepare a statement of taxpayer rights and IRS obligations and distribute it to taxpayers when contacting

them regarding the determination of tax or collection of tax.¹⁵ The IRS also uses Publication 1 to meet other statutory requirements, such as those requiring advance notice of potential third party contacts¹⁶ and notice of the right to request relief from joint and several liability.¹⁷ In some cases, the IRS is not statutorily required to provide Publication 1, but it has chosen to do so as a matter of policy. For example, examiners provide Publication 1 to taxpayers along with other publications to notify them of their appeal rights.¹⁸

During fiscal year 2015, the IRS printed approximately 31.6 million copies of Publication 1 to be distributed to taxpayers. However, taxpayers do not always read correspondence from the IRS and sometimes fail to even open the envelope. Furthermore, some taxpayers do not receive Publication 1 at all. Following the public outcry regarding the IRS's handling of applications for tax-exempt status, the IRS Principal Deputy Commissioner found applicants for tax-exempt status never received Publication 1 because the Code only requires the IRS to provide it to taxpayers when they are contacted about an audit or the collection of tax.¹⁹

2. *Using Alternative Forms of Communication to Create Awareness*

During focus groups of tax practitioners conducted by TAS in 2011, one of the most frequent comments was that taxpayers did not read Publication 1.²⁰ Thus, there must be other avenues for informing taxpayers. A statistically representative nationwide sample of 8,911 United States taxpayers in 2012 found taxpayers preferred a variety of channels to be educated about their rights.

¹⁵Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, § 6227, 102 Stat. 3342, 3730-31.

¹⁶I.R.C. § 7602(c) requires the IRS to provide reasonable notice to the taxpayer in advance before contacting "any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer." See, e.g., I.R.M. 5.1.10.2, *Pre-Contact* (June 7, 2013) (providing notice of potential third party contacts in field collection cases); I.R.M. 4.12.1.5.6.1, *Third-Party Contacts* (Oct. 5, 2010) (providing notice of potential third party contacts in nonfiler examination cases).

¹⁷See I.R.M. 25.15.1.9, *Notification Requirement* (Feb. 26, 2013), available at https://www.irs.gov/irm/part25/irm_25-015-001.html#d0e752. The Internal Revenue Service Restructuring and Reform Act of 1998 required the IRS to "establish procedures to clearly alert married taxpayers of their joint and several liabilities on all appropriate publications and instructions." Pub. L. No. 105-206, § 3501(a), 112 Stat. 685, 770.

¹⁸See I.R.M. 4.10.1.6.3, *Notification of Appeal Rights* (May 14, 1999), available at https://www.irs.gov/irm/part4/irm_04-010-001.html#d0e275.

¹⁹See WERFEL, *supra* note 7. The Technical and Miscellaneous Revenue Act of 1988 requires the IRS to provide taxpayers with a statement of their rights during an audit when the IRS contacts the taxpayer regarding the determination or collection of tax. Pub. L. No. 100-647, § 6227, 102 Stat. 3342, 3731 (1988).

²⁰See Taxpayer Advocate Serv., 2011 IRS Nationwide Tax Forums TAS Focus Group Report: Publication 1- Taxpayer Rights (Oct. 2011) (unpublished focus group summary) (on file with The Tax Lawyer).

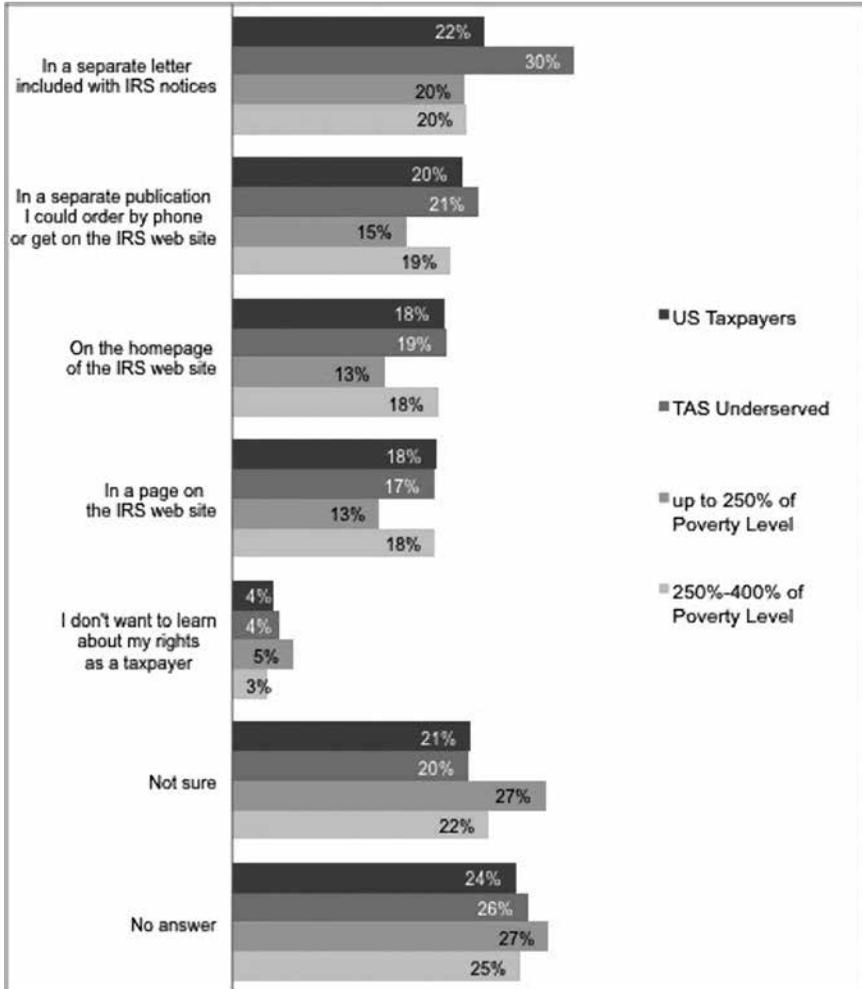


Figure 2. Survey Question: “How would you like to learn about your rights?”²¹

Clearly, relying solely on a printed publication does not meet the needs of all taxpayers. Following the adoption of the TBOR, TAS worked with the IRS during fiscal years 2014 and 2015 to place almost 50 “callouts” on the top pages of IRS.gov, which are prominent graphics that provide links to the main IRS TBOR page. Another accomplishment was creating a permanent homepage for taxpayer rights, which lists the rights and provides links to the

²¹ See NAT'L TAXPAYER ADVOCATE, *supra* note 9.

plain language descriptions used in Publication 1, as well as Fact Sheets on each right, discussed below.²² TAS also created a video that informs taxpayers about their fundamental rights, provides examples of what the rights mean for taxpayers, and encourages taxpayers to exercise those rights.²³

Furthermore, TAS worked with the IRS to revise the instructions to its main series of individual income tax returns, known as the Form 1040 series. This is especially important because when asked during focus groups whether they thought Publication 1 was provided at the correct time, many practitioners commented that the IRS only provided it once the taxpayer already had a problem with the IRS and it should be provided before this point.²⁴ Informing taxpayers of their rights before they file is key because taxpayers' problems may begin as soon as or even before they file a return, as in the case of a taxpayer who cannot understand filing instructions or who faces an unreasonably long refund delay.

Because taxpayers may be overwhelmed by a large amount of information at once, releasing smaller amounts over time can keep taxpayers interested and engaged. TAS worked with the IRS on a series of weekly TBOR Fact Sheets, released over the 2015 filing season. These Facts Sheets were posted on the IRS.gov website, linked to on TAS's TBOR webpage, promoted via social media, and posted on the IRS's internal website for employees. Each Fact Sheet focused on a fundamental right and provided plain language examples of how the right applies and links to other resources. For example, the *Right to be Informed* Fact Sheet explained "Certain notices must include the amount (if any) of the tax, interest, and certain penalties you owe and must explain why you owe these amounts," and also included a link to the page "Understanding Your Notice or Letter" on IRS.gov²⁵ By using the fundamental rights to breakout and organize the information about specific taxpayer rights and related resources, these messages made the information accessible to taxpayers without a preexisting knowledge of, or background in, taxpayer rights or tax administration.

Although these actions have boosted awareness, there are still challenges. Because taxpayers do not always enter the IRS website through the main homepage, and may view a specific page as a search engine result, the IRS needs to provide additional taxpayer rights information throughout the IRS.gov website. As of October 2015, the IRS.gov website has approximately 82,000 website pages.²⁶ Thus, future IRS communications plans need to develop a

²² See *Taxpayer Bill of Rights*, INTERNAL REVENUE SERVICE, last updated Feb. 23, 2016, <http://www.irs.gov/Taxpayer-Bill-of-Rights>.

²³ The video is available at *id*.

²⁴ See Taxpayer Advocate Service, *supra* note 20.

²⁵ INTERNAL REVENUE SERV., TAXPAYER BILL OF RIGHTS: #1, THE RIGHT TO BE INFORMED, FS 2015-3 (Jan. 2015), available at <https://www.irs.gov/uac/Newsroom/Taxpayer-Bill-of-Rights-Number-1-The-Right-to-Be-Informed>.

²⁶ This data was provided to TAS by the IRS Office of Online Services using data provided by Accenture on October 9, 2015.

methodology for identifying pages that are most likely to be entrance points into IRS.gov and pages where including taxpayer rights information is most crucial based upon the rights that arise and the consequences for not exercising them at a particular stage or in reference to a particular issue.

3. *Working with the Private Sector to Utilize Tax Preparation Software and Tax Return Preparers*

Another challenge is providing the information before taxpayers file. Not all taxpayers read the instructions to Form 1040. With the increasing number of taxpayers using either software or a preparer to file their returns, there are opportunities for partnering with the private sector to communicate taxpayer rights information. The IRS could provide standard language to software developers to insert into their programs.

Over half of taxpayers used paid preparers to prepare their federal tax returns for tax year 2013.²⁷ A 2014 survey of Hispanic U.S. taxpayers, which make up a sizable portion of the U.S. population,²⁸ found that 76% used a paid preparer to prepare their prior year return.²⁹ Although all persons preparing a federal tax return for compensation must register for a Preparer Tax Identification Number (PTIN), the PTIN information webpage on IRS.gov is devoid of any taxpayer rights information.³⁰ The IRS misses out on a major opportunity by not communicating taxpayer rights information to preparers and providing basic resources that preparers could print and display in their offices or distribute to taxpayers. Similar to the taxpayer rights information provided in the Form 1040 Instructions, the Instructions for Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal*, could remind preparers about the importance of taxpayers rights, explain what their role is in supporting taxpayer rights, and provide resources to which they can refer taxpayers who have questions.

²⁷ As of week 47 of 2015, 57.5% of tax year 2013 tax returns were completed by a paid preparer. Internal Revenue Service, Individual Returns Transaction File for Tax Year 2013 (cycle 201547).

²⁸ See Jens Manuel Krogstad & Mark Hugo Lopez, *Hispanic population reaches record 55 million, but growth has cooled*, PEW RES. CTR., June 25, 2015, <http://www.pewresearch.org/fact-tank/2015/06/25/u-s-hispanic-population-growth-surge-cools/>.

²⁹ Forrester Research Inc., A custom IRS TAS Hispanic Survey, Q4 2014 (unpublished survey) (on file with The Tax Lawyer).

³⁰ See *PTIN Requirements for Tax Return Preparers*, INTERNAL REVENUE SERVICE, last updated Jan. 1, 2016, <https://www.irs.gov/Tax-Professionals/PTIN-Requirements-for-Tax-Return-Preparers>.

Although the IRS was enjoined from enforcing mandatory testing and continuing education requirements for unregulated paid preparers,³¹ there are still opportunities for incorporating taxpayer rights information into the education requirements for the Annual Filing Season Program, a voluntary continuing education program for unregulated return preparers.³² Currently, this program requires 18 hours of continuing education, including a six hour Annual Federal Tax Refresher course that covers filing season issues and tax law updates, ten hours of other federal tax law topics, and two hours of ethics. The IRS could further require an hour long standalone taxpayer rights course. With recent cuts to taxpayer service, taxpayers are more likely to have to rely on paid preparers.³³ Although they may be beneficial to taxpayers in helping them meet their filing requirements, paid preparers may also shield taxpayers from communications with the IRS. Thus, it is incumbent on the IRS to provide taxpayer rights information through preparers as well as directly to taxpayers.

In regards to educating taxpayers after filing or when they experience a problem, TAS has been successful in working with the IRS to provide information to taxpayers in person. TAS created a bilingual poster version of Publication 1 to be displayed in IRS Taxpayer Assistance Centers (locations where taxpayers can walk-in to receive assistance in person), local TAS offices, and all other offices where taxpayers come in for appointments, including Examination, Appeals, and Collection Offices. To ensure taxpayer rights information is shared with low income taxpayers, many of whom may rely on an LITC for their interaction with the IRS, TAS also made the bilingual poster available to LITC offices. Working with preparers to display similar posters or distribute resources would help close the gap for those taxpayers who continue to rely on their preparers to handle their IRS issues after they file.

³¹Loving v. Commissioner, 742 F.3d 1013 (D.C. Cir. 2014) (upholding the D.C. District Court's decision to enjoin the IRS from enforcing mandatory testing and continuing education for tax return preparers); see 2013 NAT'L TAXPAYER ADVOCATE ANN. REP. MOST SERIOUS PROBLEM: REGULATION OF RETURN PREPARERS: TAXPAYERS AND TAX ADMINISTRATION REMAIN VULNERABLE TO INCOMPETENT AND UNSCRUPULOUS RETURN PREPARERS WHILE THE IRS IS ENJOINED FROM CONTINUING ITS EFFORTS TO EFFECTIVELY REGULATE RETURN PREPARERS 61-74, available at <http://www.taxpayeradvocate.irs.gov/2013-Annual-Report/full-2013-annual-report-to-congress.html>.

³²See *Annual Filing Season Program*, INTERNAL REVENUE SERVICE, last updated Oct. 30, 2015, <https://www.irs.gov/Tax-Professionals/Annual-Filing-Season-Program>.

³³See 2014 NAT'L TAXPAYER ADVOCATE ANN. REP. MOST SERIOUS PROBLEM: TAXPAYER SERVICE: TAXPAYER SERVICE HAS REACHED UNACCEPTABLY LOW LEVELS AND IS GETTING WORSE, CREATING COMPLIANCE BARRIERS AND SIGNIFICANT INCONVENIENCE FOR MILLIONS OF TAXPAYERS 3-25 ("The net effect of withdrawing this assistance is that many taxpayers will not receive the help they need and many others will have to pay for a previously free service, often consulting "tax preparers" who generally are unregulated and do not have to meet even minimum competency requirements."), available at <http://www.taxpayeradvocate.irs.gov/2014-Annual-Report/full-2014-annual-report-to-congress/>.

B. *Helping Taxpayers Understand Their Specific Rights, When They Arise, and Where to Find More Information*

Once taxpayers understand a set of fundamental principles, the challenge is how to tie the principles to statutory provisions so taxpayers can learn the specific rules. While the general plain language descriptions are helpful, they do not notify taxpayers when rights emerge and when they do not apply. Taxpayers may know they have a *right to quality service*, but they may not know that the Code prohibits the IRS from communicating with the taxpayer regarding collection at inconvenient times, which is generally before 8 a.m. and after 9 p.m.³⁴ Taxpayers may know as part of the *right to finality*, the IRS has a certain period of time in which it must assess the tax, but they may not realize the IRS can assess the tax at any time if a return has never been filed³⁵ or if the return is considered fraudulent with the intent to evade tax.³⁶ To help taxpayers use the TBOR as a starting point to guide them to the specific statutory rights, TAS created a “crosswalk” on its website that links the specific statutory provisions which underlie the TBOR with the fundamental principles. The crosswalk includes a plain language description of the statutory provisions and links to other resources where taxpayers can find more information. For example, the crosswalk includes relevant IRS publications as well as links to the U.S. Tax Court’s website, where applicable.³⁷ The crosswalk is also useful in outlining what remedies taxpayers may have under the law. Creating the crosswalk helped TAS identify what rights do not have sufficient, actionable remedies, which in turn has led to the development of specific legislation and administrative recommendations.

To further assist taxpayers in learning the specific situations when their rights apply, TAS incorporated the fundamental rights into a portion of its website, called the Tax Toolkit, which is the go-to website for taxpayers who have been contacted by or have disputes with the IRS. So, when a taxpayer has an issue, such as identity theft, and turns to the Tax Toolkit to learn what to do and what his or her resources are, the Toolkit also links the taxpayer to the fundamental rights that apply in the case of identity theft—the *right to be informed*, and the *right to pay no more than the correct amount of tax*.

C. *Facilitating Taxpayers in Exercising their Rights*

While taxpayer education is undeniably important in operationalizing taxpayer rights, taxpayer education may only take taxpayers so far if they are unable to exercise their rights or can only do so at an inconvenience due to

³⁴I.R.C. § 6304(a).

³⁵I.R.C. § 6501(b)(3).

³⁶§ 6501(c)(1).

³⁷See e.g., *The Right to Appeal an IRS Decision in an Independent Forum*, INTERNAL REVENUE SERVICE, last accessed Oct. 23, 2015, <http://www.taxpayeradvocate.irs.gov/taxpayer-rights/right-5>.

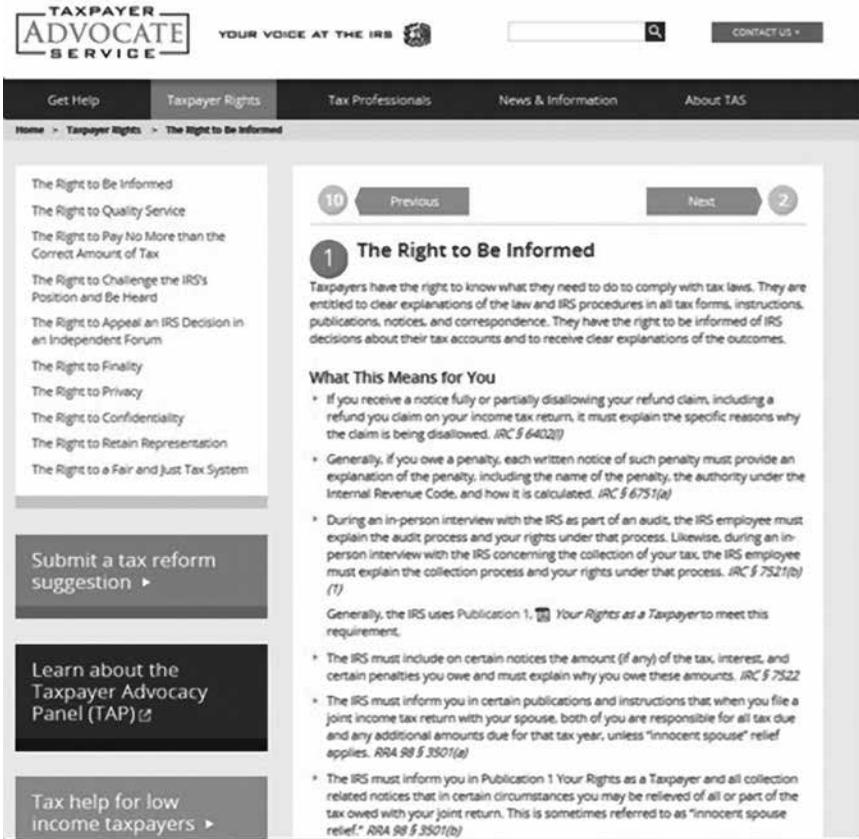


Figure 3. Screenshot of the Right to Be Informed TAS's Crosswalk

roadblocks set up by the tax agency. Knowledge and awareness of rights will only take taxpayers so far if they are unable to act upon those rights.

1. *Providing Access to the Tax Agency*

The National Taxpayer Advocate's 2014 Annual Report to Congress examined situations where the IRS was not following Congress's intent in carrying out a number of statutory mandates, and in failing to do so, was making it difficult for taxpayers to exercise their rights. One topic covered in multiple articles was access to the IRS. In many situations, a prerequisite for exercising one's rights is being able to contact the tax agency and communicate with an employee either over the telephone or through correspondence, part of a taxpayer's *right to quality service*.

In the United States, the IRS and Congress share responsibility for making the *right to quality service* "real." The IRS is responsible for answering the telephone when taxpayers call and responding to taxpayer letters, but it is also incumbent upon Congress to fund the IRS so that it has the resources to

provide these services.³⁸ In the United States, more than 100 million taxpayers try to reach the IRS by telephone every year.³⁹ However, during fiscal year 2015, taxpayers calling the IRS's toll-free telephone assistance lines were only successful in reaching an employee 38.1% of the time after waiting on hold for an average of about 30.5 minutes.⁴⁰ During the 2015 filing season, 8.8 million taxpayers received what is known as a "courtesy disconnect," where the IRS essentially hangs up on the caller without answering because the IRS switchboard cannot handle additional calls.⁴¹ The IRS has also experienced difficulty in responding to taxpayer correspondence. United States taxpayers send more than ten million letters to the IRS each year responding to proposed adjustments or other IRS notices.⁴² At the end of the 2015 filing season, over a quarter of all taxpayer correspondence had not been processed within normal timeframes and was considered "overage."⁴³

Beyond the ability to merely speak with someone or receive a response, taxpayers also must have the ability to navigate the tax agency to find and reach the correct employee in order to exercise their rights. In order for taxpayers to exercise their *right to quality service* and speak to a supervisor about inadequate service, they must have a way to reach the supervisor. In order for taxpayers to ask questions about documentation the IRS has deemed inadequate during a correspondence examination, part of a taxpayer's *right to challenge the IRS and be heard*, they must be able to speak with an employee who is knowledgeable about their cases.

However, as explained in the National Taxpayer Advocate's report, taxpayers are often unable to accomplish these tasks that enable them to exercise their rights. Taxpayers calling the IRS, unless calling one of a few select phone lines (such as the refund hotline), must navigate an extended phone tree, go through a number of prompts, and if the taxpayer is successful in reaching an employee, often that employee has no knowledge of the taxpayer's case or expertise in the specific issue.⁴⁴ Reaching a supervisor of a specific employee may prove even more difficult as the IRS has no public directory of the heads of departments and offices within the IRS. In the case of the examination, a taxpayer is unable to exercise his or her *right to challenge the IRS's position and be heard* because the IRS has overlooked its statutory mandate to

³⁸ For a detailed discussion of the IRS's decline in taxpayer service and concurrent increase in workload, see NAT'L TAXPAYER ADVOCATE, *supra* note 33, at 3-25 (Most Serious Problem: Taxpayer Service: Taxpayer Service Has Reached Unacceptably Low Levels and Is Getting Worse, Creating Compliance Barriers and Significant Inconvenience for Millions of Taxpayers).

³⁹ NAT'L TAXPAYER ADVOCATE, *supra* note 33, at 3.

⁴⁰ See INTERNAL REVENUE SERV., WAGE AND INVESTMENT, ACCOUNTS MANAGEMENT (AM), ENTERPRISE SNAPSHOT, WEEK ENDING, SEPTEMBER 30, 2015 (Oct. 6, 2015).

⁴¹ 2016 NAT'L TAXPAYER ADVOCATE OBJECTIVES REPORT TO CONGRESS, REVIEW OF THE 2015 FILING SEASON 18, *available at* <http://www.taxpayeradvocate.irs.gov/reports/fy-2016-objectives-report-to-congress/full-report>.

⁴² 2016 NAT'L TAXPAYER ADVOCATE, *supra* note 41, at 19.

⁴³ 2016 NAT'L TAXPAYER ADVOCATE, *supra* note 41, at 19.

⁴⁴ See 2014 NAT'L TAXPAYER ADVOCATE, *supra* note 33, 123-33.

assign a single employee to correspondence examination cases and has failed to meaningfully implement the requirement to provide an employee's contact information on examination notices.⁴⁵ Without access to a knowledgeable employee assigned to the taxpayer's case, the taxpayer cannot meaningfully challenge the IRS. Furthermore, when the IRS takes actions that impair taxpayer rights, such as not considering documentation in an examination, the taxpayer may not be able to seek redress administratively if he or she cannot locate the correct office to complain or to request an appeal.

2. Providing Taxpayers with the Information Needed to Make Informed Decisions

The IRS also creates barriers by failing to provide taxpayers with the information needed to make decisions about whether to exercise other rights, such as the *right to appeal an IRS decision in an independent forum*, the *right to retain representation*, and the *right to a fair and just tax system*. Although the Code requires the IRS to provide the specific reasons when it disallows a claim for refund, TAS found the IRS fails to provide clearly written explanations of the specific reasons for the disallowance so that the taxpayer can make an informed decision about whether or not he or she believes the claim should have been disallowed, whether the taxpayer should pursue a challenge to the disallowance, and whether the taxpayer might need or desire representation to do so.⁴⁶

Similarly, in cases where the IRS is authorized to sidestep normal deficiency procedures and make a summary assessment of additional tax due resulting from a mathematical or clerical error on a return, the Code requires the IRS to identify the error and provide a description of it.⁴⁷ This explanation is important because a taxpayer only has 60 days from the date of the notice to request abatement of the math error assessment.⁴⁸ Following a timely abatement request, the IRS must abate the assessment and if it chooses to reassess,

⁴⁵IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, §§ 3705(b), 3705(a), 112 Stat. 685, 777. See NAT'L TAXPAYER ADVOCATE, *supra* note 33, at 133-44 (Most Serious Problem: Correspondence Examination: The IRS Has Overlooked the Congressional Mandate to Assign a Specific Employee to Correspondence Examination Cases, Thereby Harming Taxpayers), 145-53 (Most Serious Problem: Audit Notices: The IRS's Failure to Include Employee Contact Information on Audit Notices Impedes Case Resolution and Erodes Employee Accountability).

⁴⁶I.R.C. § 6402(l). See NAT'L TAXPAYER ADVOCATE, *supra* note 33, at vol. 1, 172-84 (Most Serious Problem: Notices: Refund Disallowance Notices Do Not Provide Adequate Explanations) ("TAS pulled a sample of 100 Statutory Notices of Claim Disallowance and determined that 92 of them did not provide adequate explanations to satisfy the statutory requirement. Specifically, 30 letters included language that was not clear and written in plain language, 58 did not sufficiently explain the specific reasons for the disallowance, and 65 did not provide the taxpayer with the information needed to respond to the IRS.").

⁴⁷I.R.C. § 6213(b)(1).

⁴⁸§ 6213(b)(2)(A).

it must follow regular deficiency procedures,⁴⁹ which provide the right to challenge the proposed assessment in the U.S. Tax Court.⁵⁰ However, taxpayers might not request abatement, losing their opportunity to exercise their *right to challenge the IRS's position and be heard*, and subsequently, their *right to Appeal an IRS decision in an independent forum*, because the IRS uses vague and unclear explanations on math error notices, such that the taxpayer cannot understand what the error is.⁵¹

3. *Ensuring Taxpayers Understand the Consequences of Waiving their Rights and Do Not Feel Coerced into Doing So*

Related to the *right to be informed*, the IRS sometimes even asks taxpayers to waive their rights, without clearly explaining what they are giving up. By not informing taxpayers of the consequences of giving up their rights, these waivers are the antithesis of facilitating the exercise of taxpayer rights—they are actively encouraging taxpayers to relinquish their rights without understanding the effects. For example, if the IRS disallows any portion of a claim for refund or credit of an overpayment, IRC § 6532(a) requires it to mail to the taxpayer, by certified or registered mail, a notice of claim disallowance in order to commence the two-year statute of limitations on filing suit to challenge the disallowance in a United States District Court or the Court of Federal Claims. However, taxpayers can waive the right to receive the notice of claim disallowance, which begins the running of the statutory period of limitation when the waiver is filed.⁵² By regulation, the waiver form must include: “the type of tax and the taxable period covered by the taxpayer’s claim for refund,” “the amount of the claim,” “the amount of the claim disallowed,” and “a statement that the taxpayer agrees the filing of the waiver will commence the running” of the two-year statute of limitations to file suit.⁵³

However, the letter used by examination to accompany this waiver form does not explain the significance of waiving the statutory notice, nor does it even imply the taxpayer has a choice if he or she agrees with examination’s adjustment. The letter states, “If you agree with our findings, please sign, date, and return: [check box] Form 2297, Waiver of Statutory Notification of Claim Disallowance.”⁵⁴ The letter accompanying the waiver form does not explain to the taxpayer that he or she can choose not to sign the waiver, nor does it explain the two-year period to file suit in a United States District Court or the Court of Federal Claims. Beyond misleading the taxpayer about whether he or she must sign the waiver, this infringement of the *right to be informed* may lead to a taxpayer missing the opportunity to exercise his or her

⁴⁹ § 6213(b)(2)(A).

⁵⁰ § 6213(a).

⁵¹ See 2014 NAT’L TAXPAYER ADVOCATE, *supra* note 33, 163-71.

⁵² I.R.C. § 6532(a)(3).

⁵³ Reg. § 301.6532-1(c)(1)-(4).

⁵⁴ Internal Revenue Serv., Letter 569(SC), Catalog No. 40246K (Aug. 2009) (unpublished form letter) (on file with The Tax Lawyer).

right to appeal an IRS decision in an independent forum due to not timely filing a suit to challenge the disallowance in court.

Another example of the IRS asking taxpayers to waive their rights involves taxpayers requesting installment agreements, where they may pay their tax liability in installments, or offers in compromise (OICs), where part of a taxpayer's liability is compromised.⁵⁵ The Code prohibits the IRS from levying a taxpayer during the period that an installment agreement or OIC is pending, during the 30 days after an installment agreement or OIC is rejected, and if the rejection is timely appealed, during the period the appeal is pending.⁵⁶ However, taxpayers may waive the prohibition on levies while an installment agreement or OIC is pending, which creates the risk that the IRS will require taxpayers to waive the prohibition in order to enter into an installment agreement or OIC.⁵⁷ In situations such as this, taxpayers may feel coerced into giving up their rights because if they do not, they may sacrifice further rights, such as the opportunity to request an installment agreement or OIC (and to have that request meaningfully considered by the IRS). The use of waivers that either obscure the consequences of giving up one's rights or fail to present taxpayers with a real choice as to whether to waive their rights undermines the positive effects of taxpayer education and awareness of their rights.

4. Actions a Tax Agency can Take to Better Facilitate Taxpayers in Exercising Their Rights

Although TAS and the IRS have been successful in creating awareness of taxpayer rights, facilitating taxpayers in exercising those rights remains an area ripe for improvement. Fortunately, there are real solutions the IRS can make at an operational level to better assist taxpayers in putting their rights into practice. First and foremost, there needs to be a better way for taxpayers to navigate the agency. Contacting the IRS is a prerequisite to exercising many rights. One solution is to make available to taxpayers a directory of the different offices within the IRS, so if a taxpayer is experiencing an issue, he or she could reach out to a manager in the appropriate office.⁵⁸ Another option is to establish a telephone system similar to a 311 system, where an operator

⁵⁵ See I.R.C. §§ 6159, 7122.

⁵⁶ I.R.C. § 6331(k). For installment agreements, there are further prohibitions on levying during the period an installment agreement is in effect and if the agreement is terminated, during the 30 days following the termination, as well as while an appeal of the termination is pending. § 6331(k)(2).

⁵⁷ I.R.C. § 6331(k)(3)(A) states that rules similar to I.R.C. § 6331(i)(3) and (4) shall apply for the purpose of I.R.C. § 6331(k). I.R.C. § 6331(i), which prohibits the IRS from levying while proceedings are pending for the refund of divisible tax, does not apply if a taxpayer files a written notice to waive the levy prohibition. § 6331(i)(3)(A)(i). For a detailed discussion of the risks of the IRS requiring taxpayers to waive the levy prohibition as a condition precedent to the IRS's consideration of an installment agreement or OIC, see 2008 NAT'L TAXPAYER ADVOCATE ANN. REP. LEGISLATIVE RECOMMENDATION: WAIVER OF LEVY PROHIBITION UNDER INTERNAL REVENUE CODE SECTION 6331(k) 446-48.

⁵⁸ 2014 NAT'L TAXPAYER ADVOCATE, *supra* note 33.

would transfer each taxpayer to the specific office within the IRS that handles his or her issue or specific case.⁵⁹

As explained above, a second prerequisite to exercising taxpayer rights is being informed such that a taxpayer can make an educated decision about what action to take. In the United States, taxpayers are fortunate enough to have statutory requirements, referenced above, that require some correspondence to include certain items or explanations. However, much of the current correspondence only meets the bare minimum requirements. To truly further taxpayers' ability to exercise their rights, a tax agency should conduct a thorough review of all correspondence that gives rise to specific taxpayer rights, whether it is the right to an administrative appeal or the right to request a payment plan.

Nearly all taxpayer correspondence could benefit from a review to analyze whether it is written in plain language or includes proper detail. However, focusing solely on correspondence that gives rise to specific rights or outlines limitations (especially time limitations) for exercising those rights could have a significant impact on the number of taxpayers who exercise their rights. Such a review should focus specifically on information taxpayers would need to know to make an informed decision and what steps they would need to take. For example, TAS's review of refund disallowance notices resulted in recommendations to require the notices to include the amount of the claim that was disallowed, and for claims disallowed due to the expiration of the refund statute of limitations, "the date the return was deemed filed, how the IRS calculated that date, and the date the claim was due."⁶⁰ Furthermore, any notices advising taxpayers of the opportunity to challenge a decision in court should include where to find more information about filing suit, including the court's website.⁶¹

II. Educating Employees and Encouraging Them to Incorporate Taxpayer Rights into Decision-Making

The second major challenge in operationalizing taxpayer rights is educating employees and prompting them to consider taxpayer rights when they make decisions, whether in a specific taxpayer's case or in the broader context of agency policy or procedures.

A. *Providing Employees with a Broad Overarching Education About Taxpayer Rights*

With an agency as large and complex as the IRS, employees tend to gain expertise in their specific areas of daily operation. For example, there are

⁵⁹ 2014 NAT'L TAXPAYER ADVOCATE, *supra* note 33.

⁶⁰ 2014 NAT'L TAXPAYER ADVOCATE, *supra* note 33.

⁶¹ For an excellent example of a letter incorporating information about how to file suit in court, see Internal Revenue Serv., Requesting Spouse Final Determination Letter on Partially Allowed Inn. Sp. Claims, Letter 5087C (May 2009) (unpublished form letter) (on file with The Tax Lawyer).

employees who specialize in Offers in Compromise and those who specialize in property appraisal and liquidation.⁶² Even employees who cover a broader range of issues may be unfamiliar with other stages in the process of a taxpayer's interaction with the IRS. A collection employee may become so focused on collecting the liability that he or she does not address other issues, such as if the taxpayer believes he or she does not owe the liability. The collection employee may not inform the taxpayer that he or she could request an Offer in Compromise based on Doubt as to Liability, or that he or she may be eligible for an administrative process known as Audit Reconsideration, where the IRS reevaluates a prior audit based upon new information submitted by the taxpayer.⁶³ The challenge is to provide all employees with a basic understanding of the entire tax filing and controversy process and a taxpayer's rights that arise at different points.

In the United States, efforts to improve employee training on taxpayer rights have met resistance, based on the presumptions that the few mentions of taxpayer rights in employee training are adequate and that employees do not need to understand the broader context of the rights.⁶⁴ In 2013, TAS reviewed IRS training to gauge how well the training educated employees about taxpayer rights.⁶⁵ TAS found the training varied greatly, with some initial training providing only minimal instruction on taxpayer rights, with a few exceptions, such as the training for new Revenue Officers that included two hours of lessons focusing on all areas of taxpayer rights that relate to Collection.⁶⁶

Much of the training reviewed by TAS only included a token mention of one or two taxpayer rights topics, which were extremely specific to a single task. For example, the Examination Toll-Free Telephone Assistor training only covered a handful of taxpayer rights topics, such as taxpayer authentication and power of attorney.⁶⁷ Although protecting a taxpayer's *right to confidentiality* is important, there are additional rights that taxpayers may not know about, and may not learn about, if they speak with a customer service representative who lacks knowledge of the taxpayer's rights and how actions at a

⁶²An Offer in Compromise Specialist is a Revenue Officer appointed to investigate offers. I.R.M. Ex. 5.8.1-1, *Common Abbreviations Used in the IRM* (Mar. 16, 2010), available at https://www.irs.gov/irm/part5/irm_05-008-001.html#d0e1022. The primary function of the Property Appraisal and Liquidation Specialist is "to sell property that has been seized by revenue officers, redeemed for the government, acquired for payment of taxes, or acquired by order of a court." I.R.M. 1.4.53.6.5, *Property Appraisal and Liquidation Specialty Groups (PALS)* (Aug. 20, 2010).

⁶³See Reg. § 301.7122-1(b)(1); I.R.M. 4.13.1.2, *Definition of an Audit Reconsideration* (Oct. 1, 2006).

⁶⁴See 2015 NAT'L TAXPAYER ADVOCATE, FY 2015 OBJECTIVES REPORT TO CONGRESS AREAS OF FOCUS 20-21.

⁶⁵See 2013 NAT'L TAXPAYER ADVOCATE, *supra* note 31, at 51-60.

⁶⁶2013 NAT'L TAXPAYER ADVOCATE, *supra* note 31, at 54.

⁶⁷Training 12256-102 Exam Toll-Free Telephone Assistor Training Guide (Student Guide) (Rev. June 2013).

particular stage may lead to exercising or relinquishing those rights. Although the telephone scripts for the Examination Toll-Free Assistors did allude to the *right to appeal* by mentioning Tax Court deadlines, the scripts provided no explanations of what it means for a taxpayer to miss the Tax Court deadline. Employees may not realize that the U.S. Tax Court is the only judicial forum for a taxpayer to challenge a liability prior to paying the tax, and if the taxpayer does not timely file a petition, the taxpayer loses this right.⁶⁸

For employees to assist taxpayers in exercising their rights, they need to have an understanding of how their day-to-day tasks and interactions with taxpayers fit in to the broader picture and support fundamental rights. The IRS should review and revise all initial training to include a comprehensive lesson on all of the taxpayer rights that apply during specific stages of the a taxpayer's dealings with the IRS. Furthermore, all employees should be provided with a stand-alone course that covers taxpayer rights that adhere throughout the tax filing and controversy process, focusing on how actions at different stages affect a taxpayer's ability to exercise specific rights during other stages.

To achieve this, TAS provides mandatory, comprehensive taxpayer rights training for all its employees, not limited to new hires or those who interact directly with taxpayers. This comprehensive training, called the Roadmap to a Tax Controversy, has three stages. The first is required for all TAS employees and provides a high-level overview, taught by the National Taxpayer Advocate, of the legal issues related to return filing, examinations, collections, appeals, and judicial review. The first stage includes three one-hour videos, a course book, and a facilitator guide. It also includes three roadmaps, which provide employees with a visual diagram of three processes:

- Pre-Litigation and Administrative Procedures;
- Litigation and Assessment;
- Collection.

These roadmaps are available as posters for all IRS employees and are provided to LITCs.⁶⁹ The training is effective because employees gain an understanding of the entire tax controversy process and learn how the particular stage at which they come into contact with the taxpayer fits in to the big picture. As an example, Collection employees could learn about the stages of an examination and what rights arise with the issuance of a statutory notice of

⁶⁸ See I.R.C. § 6213.

⁶⁹ See Internal Revenue Serv., Roadmap to a Tax Controversy: Pre-Litigation Administrative Procedures, Publication 5122-A, Catalog No. 65537S (Sept. 2013) (unpublished flowchart) (on file with The Tax Lawyer); Internal Revenue Serv., Roadmap to a Tax Controversy Litigation and Assessment, Publication 5122, Catalog No. 65536H (Sept. 2013) (unpublished flowchart) (on file with The Tax Lawyer); Internal Revenue Serv., Roadmap to a Tax Controversy: Collection, Publication 5122-B, Catalog No. 65538D (Sept. 2013) (unpublished flowchart) (on file with The Tax Lawyer).

deficiency.⁷⁰ Employees processing taxpayer responses to math error notices could learn about the taxpayer's opportunities (or lack thereof) for challenging the liability later in the process if he or she does not timely respond to the math error notice.⁷¹ By understanding what rights a taxpayer has already had, which rights currently apply, and which rights a taxpayer may surrender in the future, the employee is in a better position to inform the taxpayer and safeguard critical rights.

B. *Continuing Education and Reminders About Taxpayer Rights*

Without continuing education on taxpayer rights, employees are likely to find themselves out of the practice of viewing their tasks through the framework of fundamental taxpayer rights. The same principle discussed above regarding not overwhelming taxpayers with too much information also applies to employees. Similar to the Fact Sheets prepared for the public, the IRS Small Business and Self-Employed Operating Division prepared a series six biweekly messages during the 2015 filing season that each focused on one or two of the fundamental rights and explained how the actions employees take on a daily basis support these rights. These messages were useful because even if employees have a big picture view of what taxpayer rights are, they may fail to connect those rights to their daily work, which can become so repetitive and mundane that employees may overlook some tasks if they do not understand the consequences to the taxpayer.

To remind employees about the TBOR, TAS worked with the IRS to distribute TBOR posters to be placed in all employee areas. TAS also developed a "TBOR IQ Test," which is a multiple choice test available on the IRS's internal website for employees to refresh their memory about the fundamental TBOR rights and test their knowledge of what they mean.

While periodic messaging is beneficial, it is not a substitute for including taxpayer rights information in annual training courses or training on new and emerging topics. In 2013, TAS reviewed IRS training and found it to be inadequate in its coverage of taxpayer rights. For example, the fiscal year 2013 Continuing Practical Education for Revenue Agents had six required and ten optional courses that focused primarily on technical topics, with no mention of taxpayer rights in the descriptions.⁷² Taxpayer rights information must be included in technical topics training because as technical procedures and even the tax law changes over time, employees need to understand how new processes and procedures affect taxpayer rights.

In 2014, TAS put together training on the Affordable Care Act, which provides a model for how to interweave taxpayer rights information into

⁷⁰ See I.R.C. § 6212.

⁷¹ Math Error authority allows the IRS to sidestep normal deficiency procedures and make a summary assessment of additional tax due resulting from a mathematical or clerical error on a return. I.R.C. § 6213(b)(1).

⁷² See 2013 NAT'L TAXPAYER ADVOCATE, *supra* note 31, at 54.

technical training. One example from this training involves taxpayers who are victims of domestic violence. Here, the training advised employees to work with domestic violence victims to gather the necessary documentation to prove eligibility for the Premium Tax Credit (PTC), even though the taxpayer's filing status was married filing separately.⁷³ It also provided examples of alternative documentation that could be used, such as oral testimony or statements from doctors or social workers. The training cited the *right to a fair and just tax system* and the *right to pay no more than the correct amount of tax*, explaining "In this instance, the taxpayer's specific circumstances may make them eligible to receive the PTC even though they filed married filing separately."⁷⁴

Employees would also benefit from stand-alone training that provides guidance for how to think about and apply taxpayer rights to daily work. TAS produced a two-hour video for all of its employees in 2015 that highlights some of the key statutory rights that are relevant to TAS's work and provided guidance for how to incorporate the TBOR into employees' work, such as making recommendations to change internal guidance or working on advocacy projects to change IRS procedures. The training also included three case examples, prompting employees to discuss the TBOR rights implicated, including infringements of those rights, and how to apply the rights in formulating actions to advocate for the taxpayer.

C. *Incorporating Taxpayer Rights Information in Employee Guidance*

Employee education occurs not only in traditional training, but also through internal guidance. The Internal Revenue Manual (IRM) is the "primary, official compilation of 'instructions to staff' that relate to the administration and operation of the IRS."⁷⁵ Because employees rely on the IRM for day-to-day instructions for how to do their jobs, the IRM can be an even more effective tool than traditional training for encouraging employees to take actions to protect and promote taxpayer rights. Unfortunately, when the instructions are contradictory, unclear, or do not explain why an employee should take or refrain from taking a specific action, employees may act in a way that infringes upon taxpayers' rights, despite best efforts to follow current guidance.

⁷³ See I.R.C. § 36B(c)(1)(C), which requires that a married couple must file a joint return to be eligible for the PTC. See Notice 2014-23, 2014-16 I.R.B. 942 (allowing married victims of domestic abuse who are unable to file joint returns to meet the joint filing requirement of I.R.C. § 36B(c)(1)(C) if they meet certain conditions).

⁷⁴ TAXPAYER ADVOCATE SERV., AFFORDABLE CARE ACT (ACA) TAX LAW STUDENT GUIDE, 59054-102 (Nov. 2014).

⁷⁵ I.R.M. 1.11.2.2, *IRM Standards* (Sept. 21, 2015), available at https://www.irs.gov/irm/part1/irm_01-011-002.html#d0e309.

1. *Explaining Why an Employee Should Take an Action and How It Relates to Taxpayer Rights*

Even where IRM instructions specifically direct employees to take actions to protect taxpayer rights, without an explanation of why the employee should take the action and how it relates to taxpayer rights, employees may neglect to take the action or cut corners. Furthermore, in some instances, the IRM obscures taxpayer rights information so that employees may fail to notice it. One example of successfully incorporating taxpayer rights into everyday guidance is a new IRM section on “Pre-levy Considerations.” In 2009, the U.S. Tax Court issued a significant decision for taxpayer rights, holding that if during a Collection Due Process hearing, a taxpayer establishes that a proposed levy will cause economic hardship, the IRS cannot issue the levy, even if the taxpayer has past due, unfiled returns.⁷⁶ After this decision, the IRS proposed a new IRM provision on “Pre-levy Considerations,” which listed factors employees should consider when deciding whether to levy, such as the taxpayer’s responsiveness or compliance history. The only mention of economic hardship was in a bullet point, among other factors listed, which read “Anything that is known about the taxpayer’s financial condition including economic hardship and if the revenue officer has received sufficient information and verified that the levy would cause an economic hardship, the levy should not be issued.” The proposed IRM did not explain the reason why a revenue officer should not levy, and the statutory prohibition against levying when there is economic hardship was buried within a bullet point list of factors to merely consider.

TAS worked with the IRS to revise this proposed IRM section, which has become a model for other internal guidance incorporating taxpayer rights information.⁷⁷ The first sentence in the revised IRM section states “Taxpayers have the right to a fair and just tax system. That is, taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. (Taxpayer Bill of Rights #10.)”⁷⁸ The IRM then says “Accordingly, levy determinations are made on a case-by-case basis and Revenue Officers must exercise good judgment in making the determination to levy.”⁷⁹ This background is useful to educate employees about how separately considering the facts of each levy determination supports a taxpayer’s *right to a fair and just tax system*.

Instead of embedding the levy prohibition in a bullet, the revised IRM includes a separate indented note that says:

⁷⁶ *Vinatieri v. Commissioner*, 133 T.C. 392 (2009).

⁷⁷ See I.R.M. 5.11.1.3.1, *Pre-levy Considerations* (Aug. 1, 2014), available at https://www.irs.gov/irm/part5/irm_05-011-001.html#d0e161.

⁷⁸ *Id.*

⁷⁹ *Id.*

Note: When determining whether the financial information available is sufficient to establish an economic hardship each levy should be considered independently. In general, it will be necessary for the taxpayer to provide information for this determination to be made. However, if the Revenue Officer can verify from the information available that the levy will cause an economic hardship, the levy will not be issued, because if there is economic hardship, the levy must be released under IRC § 6343(a)(1)(D).⁸⁰

This revised provision highlights the prohibition on levying when there is economic hardship and provides a reason for why employees should not levy under these circumstances. Because *the law* requires the levy to be immediately released, it is irrational for the IRS to levy on a taxpayer whom it knows is experiencing economic hardship.

Finally, the IRM section ends with an additional note:

Note: There is no requirement that taxpayers experiencing economic hardship be in filing or payment compliance before a levy is released. *Vinatieri v. Comm’r*, 133 T.C. 392 (2009). Thus, when the Service determines that the levy will create an economic hardship, do not issue the levy as a means to secure other compliance, e.g., missing tax returns.⁸¹

This note is crucial because it advises employees that they are not to put a condition (*i.e.*, filing outstanding returns) on the decision not to levy if there is an economic hardship. Similar to the note above, it provides the legal reason, citing case law, and helps employees understand why they are not to use levies to secure past returns in this case.

2. *Overcoming the Problem of Employees Interpreting Guidance Too Narrowly*

This pre-levy example also presents a solution to the challenge of employees taking a narrow interpretation of IRM sections. In working with the IRS to resolve taxpayer issues, TAS has witnessed countless cases where an IRS employee refuses to go beyond the literal text of the IRM section. If an IRM section provides a list of factors, and there is an item not included, an employee may refuse to consider it even if the list is not intended to be all-inclusive. This practice may not be the result of an employee simply trying to shirk doing the actual work, but at times could be driven by a fear that going beyond the exact words on the page could result in an error, which might negatively impact the employee’s performance appraisal. Although it is helpful to provide as much detail as possible, spelling out every fact pattern or scenario would make the IRM prohibitively long.

Turning back to the pre-levy example, there are countless potential fact patterns where some of the factors listed would weigh against a taxpayer. For example, perhaps a taxpayer did not return phone calls or otherwise

⁸⁰ *Id.*

⁸¹ *Id.*

correspond with Collection, meaning the “taxpayer’s responsiveness to attempts at contact and collection” would be a negative factor for the taxpayer.⁸² However, perhaps the taxpayer was being treated for a serious medical condition and was unable to provide the financial information requested. The challenge here is how to help the Collection employee come to the right decision about whether to levy where the taxpayer’s situation is not explicitly covered in the IRM.

This is where using the TBOR to frame taxpayer rights is extremely effective. In the updated Pre-Levy Considerations IRM, TAS inserted the *right to a fair and just tax system* and its description at the very beginning of the IRM section, which states that taxpayers can expect the IRS to consider their underlying facts and circumstances regarding a taxpayer’s ability to provide information timely. In this example, an employee could keep this principle in mind while reading the IRM section and come to the conclusion that even though the IRM lists the taxpayer’s responsiveness as a factor to consider, it would be unfair to this taxpayer to not consider his medical condition when looking at whether he was responsive to Collection. By encouraging employees to use the fundamental principles and descriptions as guideposts, the IRM can lead employees to protect taxpayer rights, even if the IRM does not reference the specific facts of a case.

3. *Dealing with a Lengthy and Complex Compilation of Internal Guidance*

Another example of effectively incorporating taxpayer rights into internal guidance involves a situation where taxpayers can waive their rights. As discussed above, it is incumbent on the IRS to fully inform taxpayers in any situation where a taxpayer may unknowingly give up rights. Furthermore, employees should understand the consequences to the taxpayer. A waiver may be convenient for the IRS, but the impact to the taxpayer could be devastating. In 2013, the National Taxpayer Advocate raised concerns about the IRS’s practice of requiring taxpayers to waive their Collection Due Processing (CDP) hearing rights by withdrawing their CDP requests if they reached an agreement with the IRS prior to the conclusion of the CDP hearing.⁸³ Although the taxpayer may be satisfied with the agreement regarding the proposed collection action, by giving up his or her CDP rights, the taxpayer loses the opportunity for an independent Appeals Officer to verify that the IRS has followed the law and procedures, and that the collection action “balances the need for the efficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary.”⁸⁴ This loss is especially harmful because now the taxpayer has also given up

⁸² *Id.*

⁸³ See 2013 NAT’L TAXPAYER ADVOCATE, *supra* note 31, at 158.

⁸⁴ I.R.C. § 6330(c)(3).

the opportunity for a future Appeals determination that is subject to judicial review.⁸⁵

Despite the IRS stating to TAS that withdrawing a CDP request is not required when a taxpayer reaches an agreement with Collection,⁸⁶ the IRM states: "If a resolution is reached, such as a full pay, CNC [Currently not Collectible] determination or an IA [Installment Agreement] and it involves modules in Appeals, the RO [Revenue Officer] should solicit a withdrawal of the hearing request."⁸⁷ The IRM goes on to provide instructions for closing the case and the only allusion to a taxpayer's right to refuse to withdraw the request is a sentence that says "If a resolution is reached but the taxpayer does not withdraw, notify Appeals of the resolution reached."⁸⁸ This IRM section is completely devoid of information regarding what taxpayer rights apply in this situation, how a taxpayer is impacted if those rights are relinquished, and what the employee can do to protect taxpayer rights.

Another IRM section, which covers the same topic, provides a better example of how to incorporate taxpayer rights into guidance. This IRM states:

A taxpayer that reaches a satisfactory resolution with Collection after filing a request for a CDP hearing can withdraw the request for a CDP hearing. When resolution is reached, explain to the taxpayer the option to withdraw the request for a CDP hearing and the effect of doing so, i.e., the taxpayer will lose CDP rights with respect to the CDP tax periods and proposed collection action, including the right to judicial review. The decision to withdraw belongs to the taxpayer. A taxpayer can also withdraw the request for hearing with Appeals.⁸⁹

This section encourages the employee to walk the taxpayer through the decision to give up his or her rights. It also educates the employee about some of the consequences by explaining what the taxpayer is giving up, the *right to appeal an IRS decision in an independent forum*. The IRM reinforces the taxpayer's right to make the decision as to whether to give up this right, as opposed to instructing the employee to solicit it from the taxpayer.

While the above examples illustrate some success in incorporating taxpayer rights information into the IRM, there are multiple barriers to doing so on a wide scale, and thus making taxpayer rights a part of daily operations. One barrier is the sheer size and complexity of the IRM, which results in specific situations being covered in multiple sections. The two IRM sections on withdrawing a CDP request are instructive. They are completely contradictory in their approach and even in their instruction for what action employees should

⁸⁵ See § 6330(d)(1).

⁸⁶ 2013 NAT'L TAXPAYER ADVOCATE, *supra* note 31, at 158. The regulations provide that withdrawal is allowed but not required when a taxpayer reaches an agreement with Collection after filing a CDP request. Reg. § 301.6330-1(c)(2), A-C9.

⁸⁷ I.R.M. 5.1.9.3.5, *Collection Action during the Period of the CDP or EH* (Feb. 7, 2014).

⁸⁸ *Id.*

⁸⁹ I.R.M. 5.1.9.3.3.1, *Processing Withdrawal of Request for CDP Hearing* (Nov. 12, 2014), available at https://www.irs.gov/irm/part5/irm_05-001-009.html#d0e168.

take. Any benefit from the IRM section advising employees to inform taxpayers of their rights could be nullified if an employee first reads the contradictory IRM section. Unfortunately, when the IRM is revised, it is often done in a piecemeal way, with only specific subsections being reviewed for clearance at a time. Possible solutions are to either submit changes to an IRM section outside of the normal clearance process,⁹⁰ or to flag the related IRM section so that when it does come up for review, the changes can be made. Both of these solutions have their drawbacks. The IRS has resisted TAS's attempts to make changes to IRMs outside the clearance process in the past, and some IRMs are only rarely updated.⁹¹ Furthermore, because of the complexity of the IRM, reviewers may not even be aware of contradictory IRM sections.

When the National Taxpayer Advocate convened a team in 2013 to undertake a comprehensive audit of all non-administrative IRM provisions sections to add taxpayer rights information, the team developed a methodology for prioritizing IRM sections. It used the following factors to determine "high impact" sections:

- The number of taxpayers likely to be impacted by the process discussed in the subsection;
- The vulnerability of the particular taxpayer population impacted by the subsection;
- The length of time since the IRS last revised the IRM subsection;
- Whether the taxpayer would have limited time or options to appeal a decision made under the subsection; and
- The need to educate taxpayers about their rights at the earliest point in their interaction with the IRS.⁹²

Although prioritizing "high impact" sections allows an agency to focus on the most crucial internal guidance, it does not resolve the problem of procedures being covered in multiple sections with inconsistent and even contradictory guidance. IRM authors need better training regarding inserting taxpayer rights information into their IRM sections so that over time, fewer and fewer

⁹⁰The clearance process involves an IRM author preparing a draft IRM, identifying IRS reviewers and submitting the draft for review, considering the reviewer's comments, obtaining approval to publish, and submitting for a final review by an IRM coordinator. See I.R.M. 1.11.9.1.1, *IMD Clearance Process* (Dec. 4, 2014), available at https://www.irs.gov/irm/part1/irm_01-011-009.html#d0e220.

⁹¹In 2014, TAS reviewed IRMs published through May 28, 2014 and found that of the 460 IRM sections in Part 4, *Examining Process*, only 19% had been issued since the end of May 2013 and more than 50 were over ten years old. NAT'L TAXPAYER ADVOCATE OBJECTIVES REP. TO CONGRESS IRS FUNDING GAP CREATES SEVERE RISK TO THE DELIVERY OF THE TAXPAYER ADVOCATE SERVICE INTEGRATED SYSTEM, 94. Some of TAS's own IRM sections are also more than ten years old. See, e.g., I.R.M 13.5.1, *TAS Balanced Measure System* (Oct. 1, 2001), available at https://www.irs.gov/irm/part13/irm_13-005-001.html.

⁹²See 2015 NAT'L TAXPAYER ADVOCATE, *supra* note 91, at 18.

sections will require updates. Furthermore, authors drafting updates should be advised to consider corresponding IRM sections that cover the same topic or procedure, or which are cross-referenced within an IRM. This could lead to updating multiple sections at once to provide consistent taxpayer rights information. TAS developed a one-hour video training that walks employees through examples of how to incorporate taxpayer rights into employee guidance and intends to make this training available to other IRS employees, which could have significant positive impact on future employee guidance.

III. Conclusion

Although adopting a TBOR is a great step forward for a tax agency to instill confidence in taxpayers and build their trust in the fairness of the tax system, success is contingent upon fully operationalizing taxpayer rights. This requires an agency to create taxpayer awareness, help taxpayers understand what the rights mean and when they apply, and assist them in exercising their rights, being especially careful to inform taxpayers when they may unknowingly give up their rights. Employee education and awareness is equally important. If employees are going to take actions to protect taxpayer rights, they must understand how those actions support taxpayer rights and be able to use the TBOR as a framework to assist them in making decisions.

As the IRS initiates more actions to incorporate taxpayer rights into daily operations, it will be necessary for the IRS to measure its effectiveness. TAS is planning to conduct follow-up surveys of U.S. taxpayers in the coming years to determine whether the TBOR and the IRS's actions to support the TBOR have had an effect on taxpayers' awareness and understanding of their rights, as well as their confidence in the tax system. Measuring how easily taxpayers exercised their rights is always going to present issues. There is no way to know whether a taxpayer failed to complain because he received exemplary service or because he was unable to identify and reach an employee's manager. Likewise, if a taxpayer fails to petition the U.S. Tax Court to challenge a CDP determination, it could be for any number of reasons, such as the taxpayer changed his mind, the taxpayer found litigation prohibitively expensive, or the taxpayer could not understand the letter explaining his right to challenge the determination in court. Fortunately, measuring employees' actions to protect and promote taxpayer rights may provide insight into whether taxpayers receive sufficient information to make decisions about exercising their rights. Measuring employee actions may also shed light on whether taxpayers are given opportunities to exercise their rights or seek redress when those rights are not honored. TAS is currently revising its own case quality attributes to tie its measures to the specific taxpayer rights that they support and is considering a separate case quality metric based only on measures that are closely tied to taxpayer rights.

By incorporating taxpayer rights into its own measures and reporting on its progress, the IRS can ensure efforts to operationalize taxpayer rights are effective, lending true meaning to the Taxpayer Bill of Rights.