INTERNAL REVENUE SERVICE

ADVISORY COUNCIL (IRSAC)

PUBLIC MEETING

Wednesday, November 20, 2019

9:14 a.m.

Internal Revenue Service Headquarters

1111 Constitution Avenue, NW

7th Floor Auditorium

Washington, DC 20224

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PARTICIPANTS

IRSAC MEMBERS IN ATTENDANCE:

MICHAEL ENGLE, IRSAC Co-Chair

KATHY HETTICK, IRSAC Co-Chair

JOEL LEVENSON, IRSAC Co-Chair

DIANA ERBSEN, Subgroup Chair, LB&I

JAMES PAILLE, Subgroup Chair, SB/SE

JEAN SWIFT, Subgroup Chair, TE/GE

PHYLLIS JO KUBEY, Subgroup Chair, W&I

LISA ALLEN, TE/GE Subgroup

MARTIN BENTSEN, LB&I Subgroup

TENESHA CARTER, W&I Subgroup

RANDALL CATHELL, LB&I Subgroup

BEN DENEKA, W&I Subgroup

ALAN ELLENBY, SB/SE Subgroup

SHARYN FISK, W&I Subgroup

DANA FLYNN, LB&I Subgroup

APRIL GOFF, TE/GE Subgroup

ANTONIO GONZALEZ, W&I Subgroup

SHELDON KAY, LB&I Subgroup

MAS KUWANA, SB/SE Subgroup

CAROL LEW, TE/GE Subgroup
EMILY LINDSAY, SB/SE Subgroup
RYAN LOVIN, LB&I Subgroup
CHARLES “SANDY” MACFARLANE, LB&I Subgroup
FRED MURRAY, LB&I Subgroup
CHARLES READ, SB/SE Subgroup
MARTIN RULE, W&I Subgroup
JEFFREY SCHNEIDER, W&I Subgroup
CLARK SELLS, SB/SE Subgroup
PATRICIA THOMPSON, SB/SE Subgroup
DANIEL WELYTOK, TE/GE Subgroup
MARY JO WERNER, W&I Subgroup
CHARLES YOVINO, TE/GE Subgroup

IRS ATTENDEES:

CHARLES RETTIG, Commissioner of Internal Revenue
SUNITA LOUGH, Deputy Commissioner, Services and Enforcement
TERRY LEMONS, Chief, Communications & Liaison
DOUG O’DONNELL, Commissioner, LB&I
ERIC HYLTON, Commissioner, SB/SE
TAMMY RIPPERDA, Commissioner, TE/GE
KEN CORBIN, Commissioner, W&I

NIKOLE FLAX, Deputy Commissioner, LB&I
DARREN GUILLOT, Deputy Commissioner, Collection and Operations Support, SB/SE
DE LON HARRIS, Deputy Commissioner, Examination, SB/SE
EDWARD KILLEN, Deputy Commissioner, TE/GE
DAVID ALITO, Deputy Commissioner, W&I
MEL HARDY, Director, National Public Liaison
JOHN LIPOLD, IRSAC Designated Federal Official and Branch Chief, National Public Liaison
LARRY MOSBLECH, National Public Liaison
TINA BRISCOE, National Public Liaison
ANNA BROWN, National Public Liaison
MARIA JARAMILLO, National Public Liaison
CAROLYN SANDERS-WALSH, National Public Liaison
ROSE SMITH, National Public Liaison
BRIAN WARD, National Public Liaison
SHAWN HOOKS, LB&I
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JOHNNIE BEALE, W&I
TAMIKIO BOHLER, W&I
LYNNE CAMILLO, Office of Chief Counsel

ANDREW HOLUBECK, Office of Chief Counsel

PUBLIC ATTENDEES:

JULIE ANDERSON, GAO

COURTNEY BROOKS, NFIB

WILLIAM DUNN, American Payroll Association

KARLA GALVAN, Tango Health

DARRELL GRANAHAN, Thomson Reuters

WILLIAM HOFFMAN, Tax Notes Today

TAYLOR HOWARD, Davis and Harmon, LLP

ALICE JACOBSOHN, American Payroll Association

CHARLES JEANE, SBA

SALMAN KHOJA, Tango Health

ANDREW LOBEL, GAO

JESSE MITCHELL, GAO

ALAN OTA, MLex

ANDY PHILLIPS, H&R Block

GENE SALO, Thomson Reuters

WADE SWIFT

CURTIS TATUM, American Payroll Association

BRIAN TUMULTY, The Bond Buyer

WADE TURNER, GAO

DAVID VEN DEN BERG, MLex US Tax Watch

DENNIS ZUEHLKE, Ascensus

P R O C E E D I N G S

(9:14 a.m.)

Welcome

MR. HARDY: So good morning, everyone. How is everybody doing? Welcome, welcome. My name is Mel Hardy. I am the Director of the National Public Liaison Office. And I want to welcome each and every one of you to the 2019 IRSAC Public Meeting.

Before I introduce our three co-chairs, I just want to say that this group is very special, primarily because this is the inaugural group of IRSAC that actually is the combination of the former IRSAC, IRPAC, and the ACT. As many of you know, Treasury asked us actually to get rid one of our advisory groups. We came up with a proposal to Treasury to not get rid of them, but to combine them into this august body, and we're very proud that we did that.

And I think, Ben, it was at the meeting in the fall that we discovered that we were actually ahead of the curve because Treasury came back and was actually cutting some more advisory groups. So we got under the wire, and I'm happy for that.

But beyond that, I also want to say that this group came together under the leadership of our three co-chairs. I was very transparent with these individuals whenever we had to come together and really figure out how to make this group work. So I want to commend and introduce, of course, Joel, Kathy, and Mike, who are our co-chairs. We will not have that cadence going forward, but I want to really thank them. And please put your hands together and congratulate them --

(Applause.)

MR. HARDY: -- for a job well done leading this group for the first year. And I think we're off to a great start. Later, of course, we will announce our new chair and vice chair, and I will be very happy to mention their names later.

Point of order for our meeting before we begin. I'd like to acknowledge John Lipold, who is my branch chief. John is the IRSAC Designated Federal Officer, and he is sitting right up front.

(Applause.)

MR. HARDY: We are waiting for Terry Lemons, the Chief of Communications & Liaison; and Commissioner Rettig, who is our distinguished guest, to come. But before they come, I would like to extend an opportunity for Joel, Kathy, and Mike to make comments to the group and to the audience.

MR. ENGLE: So I guess first I would like to thank everybody for being here today. Obviously, it was a really big team effort to really come together, as Mel said, bringing IRSAC, IRPAC, and ACT together for the first year and operating together as a team. It was a huge, huge commitment. We got off to a little slow start with the shutdown. We missed our first January working session because of that shutdown, but, again, the effort and the teamwork to really get caught back up, get our topics put together, and really work as a team and push forward, everybody did such a great job in turning in the report together. Obviously, I think it shows when you look at our -- the documentation, 200 pages of information. So timing and teamwork was super important.

MS. HETTICK: Good morning, everyone. And I do also want to thank the IRSAC team. We just had outstanding members. And it wasn't easy. We were coming together from different areas, and some of us that have been serving for a couple of years have been serving in a different way. And so, as Mike said, it was challenging, but very, very rewarding to come together these last couple days with this very, very great report. And we really -- the way that the structure of the IRSAC, the new IRSAC, was set up was with the BODs, with the operating divisions, and we feel like it was a very successful year with the IRS and working in that way with those subgroups.

And we do feel like there was a lot of real-time advising, which was awesome. Things were happening and there was a lot of communication going on, a lot of feedback, a lot of review of current processes and procedures. So we feel like it was a really successful year. But I again want to just thank the IRSAC members for their patience and perseverance and having to let go of some things and come together in a new way. It really -- it really was a successful year.

And I certainly want to thank the NPL leadership that were very transparent and very up front, particularly working with the co-chairs. And then my co-chair buddies, Joel and Mike, were awesome. And the three of us, you know, we had never worked together, and so we came together and I really do appreciate you guys as well. So thank you again to the IRSAC team.

MR. LEVENSON: I agree. I think you're going to hear thanks a lot. You know, just sitting in front of you is just 200 pages of light bedtime reading material that we all -- we pulled through directly here despite the many obstacles that were put in front of us and many excuses not to produce this report, but we did, and that's a testament to all of your hard work throughout the year.

So thank you; thank you, Mel; thank you, John; thank you, Anna; for everything you've done for us and helped us all a lot.

MR. HARDY: So we are awaiting the arrival of the Commissioner. I will take the opportunity to also acknowledge my team, the staff, all did an excellent job led by my branch chief, John Lipold. And I definitely want to give a special shout-out and acknowledgement to Anna Brown.

(Applause.)

MR. HARDY: She did a phenomenal job. This was a heavy lift, and we really appreciate all that you've done.

Since we have just a few moments, I would like to recognize some of our distinguished IRS executives that are here. First, Sunita Lough, who is our Deputy Commissioner.

Sunita.

(Applause.)

MR. HARDY: And sitting next to her is Doug O'Donnell, who many of you know, is Commissioner of LB&I.

(Applause.)

MR. HARDY: Very charming dynamic duo in the row behind them is Commissioner and Deputy Commissioner of Wage & Investment, Ken Corbin and Dave Alito.

(Applause.)

MR. HARDY: Sitting directly behind Doug is his right-hand, and probably left-hand as well, Deputy Commissioner of LB&I, Nikole Flax.

(Applause.)

MR. HARDY: And we also are graced with the new TE/GE Commissioner and Deputy Commissioner, Tammy Ripperda and Ed Killen.

(Applause.)

(Pause.)

MR. LEVENSON: So if it's just a testament to how important I think the Service to use IRSAC and the relationship that we have amongst each other, every one of these Deputy Commissioners has attended I think at least one of our meetings this year, which we all value your time. So thank you, thank you, all, for attending and putting forth your time and effort into advising us as to what your needs are and adjusting what our needs are from industry as well. So we just want to thank you as well from IRSAC. That should get a round of applause.

(Applause.)

(Pause.)

MR. LEMONS: Thanks for joining us today, everybody. I'm Terry Lemons, Chief of Communications & Liaison. And we're excited to receive IRSAC's report this year. But without further ado, I would like to introduce IRS Commissioner Chuck Rettig to make a few remarks.

Opening Remarks

MR. RETTIG: Hi. It's a pleasure to be here. And I actually thought we were on -- I actually thought we were early, and then I come in and everybody is here.

But in any event, you know, very proud to be here. I think, as most of you know, I participated in the IRSAC before, and it was one of the best experiences that I've had, certainly when I was on the outside of this building. I really appreciate the effort of everybody involved. And I also understand it's sort of the "planes, trains, and automobiles" type of a situation where a lot of people don't really understand you -- you volunteer and you think, "Well, I'll do this," and then when you're waiting at the airport or you're waiting at the airport in the snow -- we actually just got back yesterday, it was from Minnesota, and it was supposed to be an overnight trip, and the over/under around here was whether I was going to be there one night or 3 weeks, depending upon the weather. So we're headed out this afternoon to another state for supposedly another overnight, so we'll see how that goes.

But for those of you on IRSAC, I really do appreciate, you know, the effort, the care, the drive that it takes to make it a successful venture. And so that's not only speaking for me, but that's speaking for certainly all the different business divisions, you know, operating divisions. And every employee here, you're a significant part of what we're trying to do in terms of community outreach, outreach to practitioners, outreach to unrepresented taxpayers.

I think you've all heard me say certainly more than a few times during my 1-year term so far, my focus and emphasis on underserved, lower income, English as a second language or limited English proficiency, we have a significant responsibility, and when I say "we," it's not just the IRS, and we're continually saying the IRS doesn't belong to anybody, it belongs to everybody. So practitioners, taxpayers, unrepresented taxpayers, every person in the country, every person outside of the country who might have a tie here, what we're trying to do at the Internal Revenue Service is very important.

And, obviously, most of you probably know now where I'm headed, which is the Taxpayer First Act. Those of you who are rotating off of IRSAC will have a significant amount of more free time to help us in terms of the Taxpayer First Act, in terms of interacting in the communities where they're active, whether that's a professional community or the geographic community that you live.

We want to get the Taxpayer First Act right. We want to do what we can to enhance the Internal Revenue Service for everyone, so that runs from the people outside of the country, the people inside the country, the diverse communities that we interact with and have a lot of respect for.

Lower income taxpayers struggle. Everybody can give back to a low-income taxpayer clinic either by effort, by time, or, you know, you can make a financial contribution, pick one. It's significant. They're a big part of tax administration in this country.

And the last pitch I'll make is military VITA. The VITA program is very important to us. And as part of the VITA program, military VITA, at least the ABA Tax Section, I think the Georgia Bar, and various others, are running "Adopt-a-Base" programs. So those of you who are rotating off who have a military base nearby could look into the "Adopt-a-Base" program. Also, there are 78 high schools in the country that have VITA programs. You can -- if your local high school has one, you can participate. If they don't have one, you could be a champion and actually create one with them. Ken Corbin and David Alito will help you work on the structure for that. But VITA programs are very important, obviously, in terms of giving back to the community, but they're also important in maybe sparking an interest for the participants, for example, in a high school, high school students, to get an interest in something like, you know, tax accounting. Whether they end up at the Internal Revenue Service or otherwise, although we are hiring, people need to have a basic understanding of what this is about, what the tax system is about and sort of where we're headed.

So if you're rotating off, you're not going to be away from us for long, you'll hear from us. You know, it's kind of like when you graduate college, and all of a sudden they really appreciate it, and you get these little envelopes, you know. This is a different version of that. We're not asking for financial contributions, but you're interested enough in tax administration in this country that you participated in IRSAC, and you gave a lot of your own time, and we appreciate that. Don't give up. Tax is a profession. Professionals give back to the profession. And you can really make a positive difference for a lot of people.

So with that, I'll turn it over. But I do really appreciate. And it's not just me. You know, I have the good fortune of having the title "Commissioner," and that gives me the opportunity to speak on behalf of everybody in the organization, and everybody in the organization appreciates your efforts.

Report Overview

MR. LEVENSON: So at this time, I think we'll -- as co-chairs, we'll present a number of general topics. We'll turn it over to our subgroup chairs as well just to present kind of the highlights of our report to you, Commissioner.

First and foremost -- and I'm going to start off by preaching to the choir here -- we recommend that the Service be adequately funded in order to efficiently and effectively administer its mission. Our report highlights that there's a correlation between sufficient funding and voluntary tax compliance. For this and many other reasons, we recommend that the Service receive the resources necessary in order to fulfill its mission and your vision of the future state of the IRS.

Do you have anything to say to that?

(Laughter.)

MR. RETTIG: We are very supportive. And, you know, I have said from day one, and I think I probably said when I was on the outside -- let me say what I said on the outside, so it's not necessarily linked in the terms of the Commissioner, but I was on the outside for 36 years as a private tax practitioner, and I saw Commissioners say, "We will do more with less," and then I saw Commissioners say, "We will do less with less," and what we've been saying is, "We want to do more." And so if provided with resources, we will make very good use of those resources. We welcome whatever oversight somebody might want to have with respect to our funding and operations.

And, you know, a successful United States depends upon a successful Internal Revenue Service. About 96 percent of gross revenue in this country goes through the Internal Revenue Service. Last year, it was $3.56 trillion. This country has the ability to do a lot of good for a lot of people, both inside the country and outside the country. And if provided with the resources and whatever resources we're provided, we will do our absolute best, and with more resources, we'll do more of our absolute best.

UNIDENTIFIED MALE SPEAKER: We completely agree.

MR. LEVENSON: Our second issue we would like to highlight is we worked pretty hard with the Service and recommend a penalty process where taxpayers are informed of their rights while going through the penalty process. There should be efficiencies gained where taxpayers informed of their rights to the penalty process, inefficiencies for the Service, and processing penalties, perhaps leading to a waiver when applicable.

And our last point that we would recommend before moving on to my colleagues, IRSAC is grateful for all the guidance issued related to the Tax Cuts and Jobs Act. That was a small bill that passed in pretty speedy time.

MR. RETTIG: Yeah, welcome aboard, by the way.

(Laughter.)

MR. LEVENSON: Speaking of trains.

The implementation of such a large bill in such a short amount of time, obviously all taxpayers were affected, and the timeframe to comply was pretty short. We learned -- or we recommend that the Service work with industry to continue to publish much-needed guidance in all areas related to the Tax Cuts and Jobs Act.

MR. RETTIG: A lot of people I respected -- I came on board because I respected the people who work for the Internal Revenue Service, and that was my primary driver, and to see if I could have an opportunity to make things better for taxpayers and others. My respect for the people inside the Internal Revenue Service and Treasury grew significantly when I saw the efforts that they underwent with respect to, specifically, guidance: issuing guidance, timely guidance, and clear guidance and outreach to communities. And a tremendous amount of people worked through the holiday seasons, you know, birthdays, family events, and whatnot, and we're not done. And like I said about the people getting off of IRSAC, you're not done. Guidance -- I think in this country guidance not only with respect to the TCJA, but as an ongoing project, we need to have clear timely guidance that's meaningful, and I think if you look at some of it, you'll see that they broke it out into tranches in order to get some information out earlier rather than wait until an entire guidance project would go through the appropriate clearances. What the Treasury and IRS could get out, they got out as timely as they could. Guidance is another area where people on the outside can be a significant help and can outreach into your professional communities and your geographic communities to give us an assist. So we're all in on that.

MR. LEVENSON: That's clear. So we commend the work of the TRIO. And if you look at the reform website that's laid out on IRS.gov, you can see the emphasis on publishing guidance, and we appreciate that.

MS. HETTICK: All right. Next is Issue 5, but before I cover that issue, I do want to quote you, and it is in the public report, when you were at our meeting, you came to our IRSAC meeting, last November, and I've heard you say it throughout the summer, too, but your quote was, "If it's out there, take a swing at it." And we really did appreciate that because we really felt like every issue we looked at, we were taking a swing at it, whether it was a direct recommendation or just advocating for a certain issue, we certainly appreciate the big-picture attitude that you have.

MR. RETTIG: Collectively, we, the IRS, Treasury, taxpayers, taxpayer representatives want to get this right, and collectively we have the responsibility to get it right.

MS. HETTICK: Thanks. So Issue 5 is the recommendation that the Commissioner continues to advocate in favor of maintaining the attorney positions in OPR, and that would be the GS-905 series. We understand that that decision is made by the Treasury Department and that in the past there have been exceptions to that, and that process has discontinued. But the IRSAC does believe that the role of the attorney, the GS-905 attorney, is really critical to the role of OPR, and with the independence and with the fairness to the taxpayers as well. So our recommendation is that you continue to advocate for that, for that position.

MR. RETTIG: And Chief Counsel Mike Desmond is on the road. We spend a lot of time out in communities.

He has his eyes on that issue.

MS. HETTICK: Great. And we did also review and support the ABA tax section, of course, also drafted some correspondence and letter for that.

And then Issue 6, Free File, I'm just going to briefly mention Free File. That -- we did an extensive report in our 2018 IRSAC report, and we reviewed our recommendations again in 2019 with this bigger, larger team. And we are still advocating for the recommendations that we made that have not been fully implemented or perhaps partially implemented. There is an update in the report. There's kind of an update to those recommendations and what has been implemented. Of course, this issue is getting a lot of coverage, but the IRSAC does believe that it is a viable program. It is serving, while just a small percentage, it is serving taxpayers, and we believe with the continued change and oversight, that it could continue and even grow in its success. So we just ask that the recommendations be reviewed again and where they can be implemented in a more full capacity, that would be what we would be recommending.

So I think that's Issue 6. So thank you.

MR. ENGLE: Thank you.

MS. HETTICK: And we'll invite Ben up to do the general report issue on e-signatures.

MR. DENEKA: Good morning, everyone. My name is Ben Deneka. I'm a second year IRSAC member on the Wage & Investment Subgroup. Last year, I was on Digital Services. And so I'll be reading a report on electronic signatures. But before I get into it, I actually want to ask the Commissioner a pop quiz. I'm sorry you didn't know this was coming, but --

MR. RETTIG: 63. Yesterday was my birthday.

(Laughter.)

MR. DENEKA: It's okay. It's a law-related question, so I think you'll be able to do it.

MR. RETTIG: Can I phone a friend?

MR. DENEKA: I know you said Mike Desmond was on the road, but that's okay, we have him on the phone if you need to phone a friend.

(Laughter.)

MR. DENEKA: Yes, he is billing me while he's on hold.

The question is, Why are signatures on contracts important?

MR. RETTIG: Obviously, it's to acknowledge that the individual has the knowledge of what's in the return and they're held for what's -- in terms of the tax return, held to what's there and penalties of perjury request.

MR. DENEKA: All right. Somebody is keeping up with their CLE while they serve the people.

MR. RETTIG: I read everything.

MR. DENEKA: So the signatures help bind the agreement to the parties. And so for an electronic signature, that facilitates that in a digital environment. And so next I'll be discussing our Customer Experience/Service Delivery Plan recommendations, which covers IRS's plan to expand the availability of digital service options. And an electronic signature is a foundational component of that plan because taxpayers who want to act with the Service digitally tend to want the option to remain in that digital interaction without needing to print, sign, and mail or fax something. And the fact is we live in an age where e-signatures, especially for financial based transactions, are expected. And so we offer these recommendations to help IRS provide a better customer experience.

And our recommendation is centered around three areas to accelerate the use of electronic signatures in tax administration.

First, we recommend IRS think holistically, develop a plan that is comprehensive, that works for taxpayers, third parties, and IRS employees. And in the spirit of your strategic goal, to collaborate proactively to improve tax administration, we encourage you to gather feedback from subject matter experts and your end users to guide your policy decisions.

And that policy will have broad impacts. We actually received a written comment on e-signatures from the National Association of Professional Employer Organizations detailing the burden that wet signature requirements place on their ability to serve small to mid-size businesses. So I would encourage everyone to go out and read that as well. It was enlightening to learn the impacts that it has in another area of taxes.

Our second recommendation is to leverage opportunities across the tax ecosystem. IRS's current plan is to publish a policy that enables IRS to build its own e-signature solution. We recommend the policy be written to authorize not only technical solutions developed by IRS, but also those developed externally, for example, by electronic signature developers. This will provide more options for taxpayers, as service providers incorporate electronic signatures in high-volume transactions while shouldering the economic burden of user interface development that complies with policy. And that's an ongoing benefit to the IRS because the policy will have to adapt over time to combat the ever-evolving threats of stolen identity, refund fraud, and account takeovers.

Our third recommendation, and last recommendation, is to expand the list of forms able to be signed electronically, specifically third-party authorization forms, certification of taxpayer identification numbers, and e-file authorization forms for any returns. Authorizing the use of electronic signatures on these key forms could help IRS transition towards a comprehensive policy, meet legislative requirements under the Taxpayer First Act, and provide a sustainable framework through which to serve taxpayers for years to come. With a comprehensive framework, IRS can accelerate the use of electronic signatures and facilitate customer service through more channels, thus, furthering taxpayers' ability to understand and meet their tax responsibilities.

I'd like to thank our partners at the IRS, specifically in the Privacy Governmental Liaison Disclosure office, for their time, service, and dedication to accelerating the use of electronic signatures in tax administration.

Thank you. And I will yield the floor back to the co-chairs.

MR. RETTIG: Thank you. I'd like to make a comment that we definitely appreciate your report and what you said. The IRS does not operate in a vacuum. The IRS operates in the United States of America and externally outside the United States of America. We interact with everybody. And so our external interactions, you mentioned ID theft, but the Security Summit is I think a tremendous public-private partnership that brought about a real change in ID theft and brought the numbers down significantly. I think last year was about 160,000 from about 800,000 a few years before, but it's still 160,000.

If you follow the travels of some of the IRS leadership around the country, you might see that maybe they are perhaps meeting with people who are on the outside who are instrumental on things like evolving technologies and where the world is headed and where the world is going to be in 2030, 2040, 2050. We have -- we launched our Modernization Plan in April of this year to bring us into the more current environment, subject to budget considerations. It's a 6-year plan where we'll -- two 3-year phases where we'll spend up to about $2.7 billion. That's instrumental in getting to where you want to be.

I also believe that, as I've asked retiring IRSAC members to participate, I think that good corporate citizens in this company -- in this country should consider giving back, participate with us in these endeavors. I think that coming from California, I know a lot of big, powerful technology companies that exist out there, and I would challenge whether they would be as big, powerful, creative, helpful if they were created in a different country. And so we're looking for everyone to give back, not just individual practitioners, but I think that good corporate citizenship, particularly in the technology fields, they should help us understand where they expect technology to be 20 years from now and help us go off in the right direction on things like e-signatures and otherwise. So very appreciative of your efforts.

MR. DENEKA: Absolutely. I couldn't agree more.

MS. HETTICK: So next we'll hear from Ben. And we've moved off of the general report, and Ben is going to present his issue for the W&I Subgroup.

MR. DENEKA: Thank you.

As Kathy said, this is for the W&I Subgroup, and so inspired by W&I's leadership, who tends to tell stories before -- at the start of speeches, I've got a story for you. So I tried a new chicken sandwich that had been sold out for weeks. It was delicious, like objectively better than the chicken sandwich that I get from the normal place that I go for chicken sandwiches, but let me make a disclaimer. This is a "me" opinion. This is me as a private citizen and may not reflect the views of the IRSAC as a whole.

(Laughter.)

MR. DENEKA: So it was delicious, but I may not go back again because it was just more trouble than it was worth. I had to wait in line for -- not a very long line -- for 30 minutes, and by the time I got to the front, the cashier was clearly not very happy about how in demand his services were over this global phenomenon, a chicken sandwich, but he rang me up, and 20 minutes later when I reminded him that I had bought a sandwich, he reluctantly gave it to me. And it was delicious.

And so not long after, I went to the place I normally go for chicken sandwiches, and it was a Saturday, and the line was out the door, and this place is known for having employees that go above and beyond, and in this particular location, there was an employee fixing a customer's flat tire in the parking lot. And before the flat tire was even changed, I was up at the cashier, and she was so pleasant and so happy to take my order and so happy to hand me a chicken sandwich moments later. And, of course, I said thank you as many times as I could during this interaction because I like it when they say, "It's my pleasure." And I ate my sandwich, and it's fine. It's not as good as the other one, but I'm probably going to go back to this place because the experience was just so good.

So I head to my car. I say thank you to the employee that fixed my tire. And he says, "It's my pleasure."

(Laughter.)

MR. DENEKA: And I tell you this story not to draw direct parallels here, but really just to highlight the point that service is a baseline these days. Now people expect a great experience. So when W&I sought to help fulfill IRS's mission to provide America's taxpayers top quality service, and when they were directed by the Presidential Management Agenda and the Taxpayer First Act to develop a plan for customer service, they went above and beyond and developed a vision for the customer experience and a service delivery plan to implement that experience. It's called the Customer Experience/Service Delivery Plan, and they asked the IRSAC to review it and make recommendations. And rather than go into each recommendation, I'm just going to touch on the three key areas where we identified opportunities for improvement.

The first is to develop a holistic customer experience vision. To develop a vision of what top quality service looks like, it's important to think critically about the journeys for each of the customer segments. The journey for an individual taxpayer looks different from a business taxpayer, and those differences offer different opportunities to make that experience delightful. IRS had already started down this path, but there were opportunities to incorporate other journeys, like business taxpayers.

The second area of opportunity that we identified was about IRS's ability to provide indirect service to their customers. And these journeys, they include not only direct interactions with IRS, but also indirect interactions through third parties, like practitioners, and these third parties help taxpayers understand and meet their tax responsibilities, and they're able to do it on a one-to-many ratio. A single practitioner may serve hundreds of taxpayers; a firm, thousands; and a software provider, millions. So by enabling them to better provide customer service, the IRS can expand available options for taxpayers, reduce unnecessary contacts, and make more efficient use of their taxpayer service resources.

I'll give you two examples of how this would look. In the second issue of our W&I Subgroup report, we address a pilot IRS is conducting where they warn taxpayers before they end up in compliance treatment streams that they may have underreported W-2 income on their return. That early warning could be transmitted digitally back through the software preparer, who could help the taxpayer resolve the issue.

As a second example, and the W&I Subgroup's third issue, we recommend the IRS enable electronic filing of amended returns. This would close a big customer service gap for the 3.5 million taxpayers who currently print and mail amended Federal tax returns.

Our third and last area of opportunity was to embrace collaboration throughout the process of developing the plan, and we've seen IRS take this one to heart already. We recommend that they follow the lead of their product development teams in IRS who have adopted agile development methods where you interact with your stakeholders early and often and iterate your plan as you go. For a Customer Experience/Service Delivery plan so heavy on digital service options to augment traditional channels, this will be imperative.

To close, again I would like to thank our friends at the IRS, especially those in the W&I Customer Experience team, whose tireless effort and dedication led to the development of a plan that started in a great place and is headed in an even better direction.

Thank you.

MS. HETTICK: Thank you, Ben.

(Applause.)

MR. RETTIG: If I could comment, we really look at things through the eyes of the taxpayer. Certainly, that started October 1, 2018. It's embedded in every employee in this organization. And the difference in my mindset between service and experience can be identified fairly clearly when I talk about the integrated business modernization plan.

So if we upgrade our systems and we become, you know, currently, technology-efficient, as is the rest of the world, which a lot of taxpayers expect -- you know, evolving technologies have increased anticipations and expectations of the people that we interact with, but, similarly, there are tens of millions of people in this country that either don't have access to broadband, don't speak English, aren't comfortable online and prefer -- you know, people still buy paper newspapers, people still want to go to the post office and see their envelope dropped in the mail as opposed to hitting a button and wondering whether something went, and so we need to be respectful to those communities as well.

And the difference between -- in my mind, between service and experience is if we were to spend $2.7 billion and modernize our systems, but you don't speak English and you don't have broadband access, we did not change any service to you, but we could rally around and say, "Look at the service that we're providing to the rest," and so the experience that we're operating under is the experience of every person that we interact with, it's taxpayers, it's large corporate taxpayers, individual taxpayers, individual taxpayers in the communities that are just going to be unrepresented or they're remote. So we don't have a Taxpayer Assistance Center in their community, we've got to get to them for the in-person interactions as well as practitioners.

We've heard the call for practitioner, the vision, and things like that. Having been a practitioners for 36 years, my line of sight is out there, but it's not just me. This is every person in the organization. And also we interact with a lot of state governments, and we interact with foreign governments, and so enhancing the experience of everybody who interacts with us from whatever capacity they're coming to is where our vision is. And I do appreciate the comments that you made and would hope that you would stay engaged with us.

MR. PAILLE: All right. I'm Jim Paille. I am chair of SB/SE Subgroup. I start off wanting to say I like chicken, but it's no In-and-Out.

(Laughter.)

MR. RETTIG: You're killing me. If you mention the Dodgers, I'm going home.

(Laughter.)

MR. PAILLE: Yeah, I'm old, though. The Brooklyn Dodgers?

MR. RETTIG: Yeah, that's right.

MR. PAILLE: I want to thank the IRS personnel that assisted SB/SE and the eight projects we'll be reporting on today. A special thanks to Carolyn Sanders Walsh for everything she did, kept me in line, kept me sane. I really appreciate all the work she did.

If you recall last year in IRPAC, I was to present the 2019 W-4. One week before the IRPAC public meeting, it got pulled. So as Kathy says, we swing for the fence. I'm going to present the 2020 W-4. I hadn't heard it's been pulled yet, so --

MR. RETTIG: Oh, I have an announcement.

(Laughter.)

MR. LEVENSON: You haven't checked Twitter yet, have you?

MR. PAILLE: Thank you, everybody.

(Laughter.)

MR. PAILLE: Okay. So we're all aware that the 2020 W-4 is a step in a new direction. New employees paid as of January 1, 2020, and anyone that wants to make a W-4 change as of January 1, 2020, must use a new form. The changes will be a surprise to most all employees. Employers in the past have been instructed not to assist employees in completing the W-4. The complexities of the new W-4 will add additional pressure on employers to take a more active part in the taxpayer education process.

The new estimator is a vast improvement over the previous calculator and is quite user-friendly. However, it does require the user to have a computer access, a recent paystub, and encouraged to have the last year's 1040 available. I'm not sure that's going to happen on the first day of employment. It also provides a good summary at the end to help complete the Form W-4.

However, allowing employers -- employees to use pre-2020 W-4s indefinitely causes employers and software vendors to make substantial changes to their system to allow both versions to appear and maintain these options for an unknown period of time.

The IRSAC has the following recommendations.

The IRSAC recommends the Internal Revenue Service update the withholding estimator to account for the 2020 Form W-4 and W-4P changes as soon as possible.

Two, the IRSAC recommends the Internal Revenue Service further clarify the rules and procedures for Federal income tax withholding in 2020 and require employees to submit a new 2020 W-4 by October 1, 2020, as was done back in 1986.

The IRSAC recommends the Internal Revenue Service further clarify the withholding at a higher rate checkbox in step 2 and provide examples of the higher amounts of withholding, which is done in Publication 15-T, which is 28 pages long.

The IRSAC further recommends that the Internal Revenue Service state that employees could check single status, even when married, to have additional withholding, as was allowed in prior years.

Number 4, the IRSAC recommends the Internal Revenue Service provide guidance to employers that do not receive a 2020 Form W-4 for new employees after January 1, 2020, or they receive an invalid Form W-4 or W-4P. Now, that has been accomplished. Just a little while ago, regulations came out addressing that, and employers are to put "Single with no adjustments." That does present a different problem with prior W-4s from pre-2020. So, further, the IRSAC recommends the Internal Revenue Service provide consistent guidelines for employers to follow for invalid Form W-4s for years prior to 2020, which was always "Single 0," which technically doesn't exist anymore.

Number 5, the IRSAC recommends the estimator should produce a prefilled W-4 the taxpayer could print, sign, and submit to the employer. Further, the estimator needs a disclaimer at the end that says if the taxpayer is using the estimator during the year, the taxpayer is encouraged to redo the estimator at the beginning of the next year to accurately compute withholdings. Without that, they could be under- or overwithheld.

Finally, the IRSAC further recommends that the Internal Revenue Service encourage employers to distribute the 2020 instructions for Form W-4 to all employees or provide the link to the document's location on the IRS website to the employee.

And that's my report.

MS. HETTICK: Thank you, Jim.

(Applause.)

MS. LEW: I'm Carol Lew. I'm a tax attorney. I also like chicken. And I also specialize in tax-advantaged bonds. The IRS asked IRSAC to make suggestions about a self-correction program for tax-advantaged bonds. And improving a self-correction program is on the 2019-20 Priority Guidance Plan.

Tax-advantaged bonds are a vital tool for state and local government and Indian Tribal governments, and the third-party bondholder generally receives tax-free interest. While those types of bonds are issued by both large and small governmental entities, many issuers are small with limited resources. During the last 5 years, over 80 percent of tax-exempt governmental bonds are $10 million or less, generally issued by small issuers. The bonds are subject to tax restrictions for long periods of time, which may be 30 years or more. The liability to a bondholder generally is large if a mistake occurs. And despite good intentions, mistakes sometimes happen because of staff turnover, misunderstandings, or complexity.

The current self-correction program is the VCAP program, which requires an issuer submission for a Voluntary Closing Agreement. And while this is a helpful and appropriate program for certain factual circumstances, the process is time-consuming.

In the last 5 years, over 49 percent of cases took over 6 months to resolve, and over 75 percent of cases took 90 days or more. During that period, issuers are subject to disclosure responsibilities to the marketplace as to material events. They may be needing to attempt to access the market to refinance debt. In addition, the calculation for remediation under the existing program is complicated regarding a complex formula with present valuing of taxpayer exposure and interest.

The current VCAP program is expensive for state and local government. Issuers can expend $20 to $60,000 or more in attorneys' fees. And there's uncertainty on the remediation amount when you file that can potentially discourage usage. The remediation presently involves a large upfront payment typically, and redemption, and may not be flexible enough. Other methods may be helpful.

Consistent with the goals of the Taxpayer First Act of relieving burden, a reasonable and efficient self-correction program will actually encourage compliance. IRSAC, therefore, makes the following recommendations.

We recommend that a three-tier program be established similar to the Employee Plan Program. IRSAC recommends that Level 1 involve simply filing a notice with the IRS and taking a remediation.

Level 2 might involve a streamlined submission of no more than 2 pages to the IRS, taking a specified remedial action, and receiving a normally automatic confirmation from the IRS that the matter is corrected. We recommend that the confirmation normally be automatic without a review, but that it take no longer than 2 weeks if possible.

Level 3 would involve a negotiated closing agreement that is binding, similar to the existing program. We recommend that it be established by revenue procedure that is periodically updated. We also recommend that the remediation be flexible, similar to the change in use provisions that allow alternatives to upfront cash payments and redemption in appropriate circumstances, such as, perhaps, investing in tax-exempt obligations of unexpended proceeds or allocating proceeds to alternative costs. We suggest that the remediation be simple to encourage usage, and not involve complex calculations, and that it should be scaled to encourage early identification.

Lastly, we recommend that electronic submissions and responses be utilized to encourage efficiency.

I would also like to thank the IRS personnel that tirelessly helped with this project, particularly Bob Griffo and others within the IRS.

Thank you.

(Applause.)

MR. MACFARLANE: My name is Sandy Macfarlane. I head up the tax department at Chevron Corporation, a fellow Californian in here. So I am a member of the LB&I Subgroup. We've had a really good group this year led by Diana Erbsen. And I think what's made it so successful is the great dialogue and engagement that we've had from Doug O'Donnell and Nikole Flax and the others in the LB&I community. And I think we've been able to work together and come up with some recommendations that hopefully will be helpful.

We share a couple of things in common with the LB&I people at the IRS. One is the interest in keeping the government going. We sort of fell down on that in January a little bit, but we're back at it now, and hopefully we'll continue. The other is an interest in sound tax administration. And one of the things that's been important in doing that is spending time on things that matter.

One of the concerns that continually is raised is the limited resources of the IRS. The tax community, the taxpayers, also do not have unlimited resources. And so what we've tried to do is work on things that would enable us to focus on the things that really make a difference to sound tax administration and not spend time on things that really are not that important.

So there were three recommendations that came out of our group. One is a series of recommendations having to do with tax reporting. The other two have to do specifically with the issue of, How do we save time of the IRS and time of the taxpayers and still have a sound tax administration?

The one that I wanted to highlight today is a recommendation that we have made to use work that's been done by others outside of the IRS and the taxpayer. And if things have been sort of signed off by others, whether they be external auditors or whether they be other governmental bodies, then it seems like we're not using efficient use of our time if we redo that work.

So there are four areas that we identified where this may be a helpful opportunity. I would say that there is a model for this already. There are a couple of directives that have been issued by LB&I: one having to do with the treatment of costs that are eligible for the R&D credit; the other is the calculation of reserves for purposes of calculating the cost depletion. So we would see an opportunity to expand that in some other areas.

The first has to do with treatment of de minimis expenses. This is a question of, can you avoid capitalizing assets if they are truly small? There is a $5,000-per-item limit in the regulations, but there is also an opportunity to agree with the Service on a higher threshold if that's appropriate. What we would recommend is that the Service issue a directive saying that if it's been determined to be de minimis for purposes of financial accounting in an applicable financial statement, that it would also be so for income tax purposes. This gives us the opportunity, as taxpayers, to go ahead and follow the book treatment, and tax would just follow, and we could do that on a prospective basis and not have to keep two sets of books there.

The second item that we have has to do with foreign tax credits. We, each cycle, have extensive gathering and documentation of foreign tax credits, which we present receipts and so forth to our audit team. Those are also reviewed by the outside auditor, and, you know, they have to do testing to make sure that the accruals are appropriate, and we think that that ought to be able to be relied on without having to do all the work of pulling the paper and having everybody tick and tie all that stuff.

The third item has to do with solar investment tax credits. You have to establish the costs associated with the facilities. And there are some exam teams that have been working with a report issued by the Lawrence Berkeley Labs, which gives sort of cost data for these types of facilities, and it's a much more efficient way to deal with this than doing sampling and checking the documentation on all these various facilities. So we think that that's an opportunity to do that more broadly and use it throughout the country and enable people to claim credits based on this information.

The last one has to do with banks. Banks and other financial institutions are subject to Federal regulation by a number of agencies. One of the rules that they are subject to is a rule called Regulation W. Regulation W is essentially an analog to Section 482, the transfer pricing rules in the Internal Revenue Code. And if the financial auditors have determined that you are dealing at arm's length for purposes of the financial accounting for banks, it seems like that's an opportunity to avoid a second examination on the part of the IRS. We think if we collectively do these things, it could save a lot of time for the IRS, it could save a lot of time for the taxpayer. There may be other opportunities. These are the ones we've identified at this point, but I think this path provides a lot of promise for people.

So thank you.

MS. HETTICK: Thank you, Sandy.

(Applause.)

MR. RETTIG: We are very supportive of streamlining efforts, not only from the perspective of resources used by the Internal Revenue Service, but resources used by people on the outside. We have a mission, we have a duty, we have a responsibility, and part of that responsibility is to look into areas of possible noncompliance, but it's equally important that we don't spend time and spend other people's time looking into areas where they are compliant or where there is something else that would help us support the fact that they're compliant either on a particular issue or just types of issues or types of taxpayers and whatnot.

And I know very well that LB&I has a variety of programs designed to streamline certain processes that otherwise probably go several lifetimes to get through an issue if we were to take a different audit perspective, and so we very much appreciate that effort. And I kind of come back to wrapping things in terms of the experience of the people who are interacting, so it's not just taxpayers because somebody might not actually be a taxpayer but might be seeking guidance from us. So that's why we talk in terms of interactions rather than taxpayers.

On the outside, I didn't have a lot of clients who consider themselves or desire to be a customer of the Internal Revenue Service, so we're looking for certain other -- I'm personally looking for certain other terms of people who really want to get it right, they respect their responsibilities to the country, they understand their filing and reporting obligations, but they may need some help in understanding those obligations.

You know, you've heard me, you'll continue to hear me, mention issues with respect to unrepresented taxpayers, lower income taxpayers, and folks who can get along just fine in this country without speaking English. I have a high degree of respect for people who come to this country from another country and do their best to make it.

And I think most people are aware that my in-laws ultimately made it to this country and do not speak English. They live in a community where people don't speak English, and I'm highly respectful of the fact -- I couldn't envision myself doing the reverse of that, going to another country thinking that I'm going to be a productive member of their society without the ability to speak the language of whatever country that might be, but I think one of the things that makes this country great is the way that we do embrace people who come from other countries, and we embrace -- when I use the word "people," it's not just individuals, but it's people who have creative ideas and they form a company and, you know, we invite them in to use the benefit of being present in the United States.

You know, the rule of law here is pretty clear, and so if you do something, you understand how you'll be able to get it rectified or not as opposed to being in another country where maybe it's a public question. So I'm all for making the experience of everybody who interacts with us as best as it can be. And I'm very proud of the people that I have the good fortune to work with. I come into the office every day, we have a lot of meetings, as you can imagine, but our meetings are streamlined, too. You know, we don't meet with everybody who remotely in the organization might be touching an issue, we meet with people who are heavily engaged in the issue because they've been smaller meetings rather than larger meetings and detailed meetings rather than nondetailed meetings, and unfiltered information. And so that's sort of the go-forward, for those of you who might be wondering, by the Internal Revenue Service.

I'll just lastly say, if people are wondering what the experience is like to be on the outside for 36 years and walk in the door October 1, 2018, and how people in the Internal Revenue Service interact with you, from day one, I had another family, and I was embraced right from the beginning. I had tremendous amount of effort and personal time by a lot of people in the Internal Revenue Service who wanted to explain maybe how certain things got to where they got to, but a complete open mindset when I would inquire as to, "Well, why do we do it that way?" I was not unmindful, being on the outside, of certain things, but the people here and the strength of this organization is the people who work for the organization, and, you know, it's just there is no question about that. And so supporting the people here who are trying to support the people who interact with us I think is really what I would ask the practitioner community to embrace. Help our people make it better. Help the system get better. You know, you can do it through organizations like IRSAC or other professional organizations, and you can do it individually. The Taxpayer First Act has a website, which is on IRS.gov, and it has an email address, TFAO@irs.gov, and whatever the idea is, it doesn't have to be something in terms of, you know, corporate America, if you woke up at 3:00 in the morning and you think, "You know, I wonder why the government doesn't do this in terms of processing a return or outreach or ideas like having a mobile TAC or having virtual interactions and things like that," these ideas come from people. And so we're one of the largest Federal agencies, but we are trying to get away from a perception that we are an institutional agency, and we want people to understand that we're an agency run by people, and it's people who care, and we interact with more Americans than any other institution on the planet, whether they're public or private. That's important. So the IRS, getting it right is important, and it should be important to everybody to want to help us.

So with that, I'm turning it over to Mel. When I grow up, I want to be Mel.

(Laughter.)

MR. RETTIG: Mel is among the people who have tolerated me for a year, but help me considerably. Thanks.

MR. HARDY: Thank you, Commissioner.

Presentation of Certificates to Departing IRSAC Members

MR. HARDY: We are now going to recognize, Commissioner, the individuals who are rolling off the IRSAC. You will make your way once I call your name up to the stage. The Commissioner will be standing here. You'll get a lovely picture taken by Brian.

MR. RETTIG: It's the best we can do today.

(Laughter.)

MR. HARDY: And at the conclusion of that, we will then take a break. When I call your name, please come to the stage.

So the first person rolling off is Ben Deneka.

(Laughter.)

MR. HARDY: I only did that because Doug said I needed to up my joke game.

(Laughter.)

MR. HARDY: Our first person is Lisa Allen.

(Applause.)

MR. HARDY: Our next person is Tenesha Carter.

(Applause.)

MR. HARDY: Next is Randall Cathell.

(Applause.)

MR. HARDY: Next is Alan Ellenby.

(Applause.)

MR. RETTIG: My joke, you asked us all to make a contribution. It seems to me I'm making a contribution out of every paycheck. You might want to check those numbers.

(Laughter.)

MR. RETTIG: I'm not saying I know anything.

(Laughter.)

MR. HARDY: Next is Sharyn Fisk.

(Applause.)

MS. FISK: Back again.

MR. HARDY: Next is Dana Flynn.

(Applause.)

MR. HARDY: Next is Kathy Hettick.

(Applause.)

MR. HARDY: Next is Sheldon Kay, better known as "Shelly."

(Applause.)

MR. HARDY: Next is Joel Levenson.

(Applause.)

MR. HARDY: Next is Ryan Lovin.

(Applause.)

MR. HARDY: Next is Clark Sells.

(Applause.)

MR. HARDY: And last, but definitely not least, the man who loves chicken, James Paille.

(Applause.)

MR. HARDY: And now a break until 10:45. Thank you.

(Break.)

MR. HARDY: Ladies and gentlemen, if we could come to order, please, so we can stay on time. Please take your seats.

Go ahead, Joel.

Small Business/Self-Employed Subgroup Report

MR. LEVENSON: All right, now that we are back in order, I'm going to turn the floor over to Jim, chair of the Small Business/Self-Employed Subgroup.

MR. PAILLE: Burgers for everybody?

UNIDENTIFIED MALE SPEAKER: I want chicken.

MR. PAILLE: If you want chicken, it's out that door. If you want vegan, take a burger out. Put it on mine because that gives me a double.

So I want to thank the members of SB/SE. We did start late, but we started really hard. We actually met a few times before we were allowed to, we found out afterwards, and we worked on eight projects.

MR. LEVENSON: That's in the transcript permanently.

(Laughter.)

MR. PAILLE: So without further ado, I'd like to start out with Pat talking about 199A. Now, she is very expert on this topic. So we're going to turn it over to her, and she's going to give us a report.

MS. THOMPSON: Good morning, everybody. I am Pat Thompson, a member of the Small Business/Self-Employed group. And I also want to thank the IRS representatives of our group that really helped out with this topic.

So my topic is the qualified small business income tax deduction, better known as 199A, that came through the Tax Cuts and Jobs Act in 2017. And it's effective for tax years after 12/31/17 and runs through December 31 of 2025. The Small Business/Self-Employed Division did ask us for feedback on the guidance that had been issued so far and if there was additional guidance that could be provided that would be very helpful to members.

The IRS should be commended for all of the guidance that they did issue, especially for the final regulations, the proposed regulation, the notice, and a Rev. Proc. that they issued during the government shutdown with a short amount of staff.

So we are making six recommendations. And the first one is to provide guidance early so that taxpayers and the tax practitioners have enough time in order to see how the provision is going to apply to them, and if it is going to apply. And in addition to that recommendation, we're requesting additional guidance on particular topics, most of which are revolving around rental real estate enterprise activities. So those recommendations would be whether or not the deduction applies to triple net lease arrangements with multiple properties. It's very clear that if it is one triple net lease, it's clearly out, from what we can tell, but if you have multiples, how does that play in?

We know that there is information reporting or 1099s that have to be issued for anyone who is in a trade or business, and so now that we have these rental real estate activities that may be treated as a trade or business under 199A either because they are under the Safe Harbor or because they're self-rental, and we want clarification as to whether they now have the information reporting requirement.

We would like to have clarification on how the self-employment tax, again, applies to these rental real estate activities that are treated as trade or businesses under 199A. Clarification on where to report the rental activity. We know typically if it's a trade or business, it goes on Schedule C, but most rental activities are on Schedule E, and so there has been a lot of discussion in tax practitioners as to whether it's on Schedule C, is it E? and along with that, ties in the self-employment tax.

Our second recommendation is to expand the education and outreach to the community to include social media, podcasts, webinars, and also YouTube videos. There were some that were issued during 2018 and 2019 that have been very helpful, and we would like to see those expanded.

The third recommendation is to have a dedicated webpage on just the 199A. Right now, you can find the information on various pages on the website. If you do have it all in one place, practitioners and taxpayers will be able to have easy access to it, and it will also allow for the IRS to make changes very easily all in one place rather than in multiples.

The fourth recommendation is to include a high-level discussion of the 199A in Publication 535, which is the 2019 business expenses, and that will refer over to the Forms 8995 and 8995-A, which now talk about the qualified business income deduction. And, again, it's a method of streamlining and having everything in one place.

The fifth recommendation is to create tools to help taxpayers actually apply those provisions, and the tools could be either flowcharts or they could be worksheets, and within the recommendations, we did make some suggestions there.

And then, finally, to train the telephone assisters on 199A. And if not all of the individuals can be trained on this particular aspect, then train a small group of individuals to be experts in it so that if somebody does call in with a question, they can be referred over or transferred over to the small group who will be very knowledgeable on the topic.

So that's our recommendations under 199A.

And the next person is going to be Emily.

(Applause.)

MR. LINDSAY: Thank you, Pat. My name is Emily Lindsay, and I have the pleasure today of sharing information with you on three of the issues that were discussed in our group.

The first issue deals with the sharing economy and its impact on the tax gap. The sharing gig, or on-demand economy, is an increasingly important segment in our economy with millions of workers participating. It's estimated that hundreds of billions of dollars earned in the sharing economy may be under- or not reported, a very significant impact on the tax gap.

Under Code Section 6050W, third-party settlement organizations, or TPSOs, file an annual information return to report payments made in settlement of reportable payment transactions. The gross amount to a participating payee, here a service provider, is reported on Form 1099-K if annual payments exceed $20,000 and the total number of transactions with that service provider exceeds 200 in a year.

The reporting threshold, as you know, for Form

1099-MISC is 600 a year, and there is no reporting threshold for Form W-2. Use of Form 1099-K for reporting by TPSOs to sharing economy service providers contributes to the tax gap in a significant way because no information return is provided if payments to the service provider are less than $200,000 and fewer than 200 transactions during the year.

The IRSAC has five recommendations in this area. First, the IRSAC recommends that IRS continue its efforts to educate participants in the sharing economy -- that is, payors, service providers, and tax professionals -- about their tax responsibilities and focus efforts to improve tax compliance related to under- and non-reporting. The IRS should work to redesign and keep fresh its newly created IRS.gov Sharing Economy Tax Center.

Third, Treasury regulations under 6050W define gross amount to be reported on Form 1099-K as the total without regard to any adjustments. The IRS should provide a way to exclude from the reportable amount items such as credits, fees, discounts, returns, allowances, refunded amounts, and taxes collected on the transaction. The current full gross amount is not meaningful, and it's not easy to use from a reconciliation point of view.

Fourth, the IRS should review the definition of TPSO to possibly reduce the types of participants in the sharing economy whose income is reportable on Form 1099-K and, instead, would allow reporting on some other information return, for example, Form 1099-MISC.

In this vein, we have our last recommendation in this area. The IRS should review how the tiebreaker rule is employed when determining when the regulations under Section 6041 or 6041A apply rather than when Section 6050W should be applied. This would likely provide a means to reduce the level of under- and non-reporting by sharing economy workers.

Our next issue is somewhat related to small businesses by focusing on the educational videos that IRS has been putting out. The IRS requested the IRSAC's feedback on its tax programs called "Small Business Taxes: The Virtual Workshop."

The IRSAC commends the IRS for working on this on educating small businesses and providing this material despite the fact that there was a lack of budget for this area. The IRSAC recommends that the video training programs be revised and updated and agrees with the IRS's new approach to keeping the videos evergreen and at keeping costs down.

The IRSAC recommends that segments such as reporting cash income, bartering, 199A, be added as components to the repertoire of online videos. Stressing the need to report all income, as well as the benefits associated with income reporting, for example, the 199A passthrough deductions, increased Social Security benefits, earned income tax credit, and increased access to financial credit, these will all help encourage, we hope, small businesses to report income and help close the tax gap.

The IRSAC recommends that the IRS look at some of the low-cost tools that are available in the market for its in-house production of educational tax videos. The IRS should consider different alternatives for keeping its videos ever green, and should keep videos to a length of no more than 2 minutes.

Programs should be done in a more readable format, perhaps along with the slides that were used to create the videos. The text should be kept as short as possible. And we like the idea of providing reference material links in a convenient written form. The reference material could also be provided in the video itself, a link to a document that the viewer could then download.

The ability to add content as new tax topics arise should also be kept top of mind.

And, lastly, we mentioned in our report various tools that are available in-house for the IRS where the IRS could easily obtain these resources.

Our last issue that I am going to bring up today deals with employer reporting on Form 945, the "Annual Return of Withheld Federal Income Tax." There is frequently a lack of consistency of Employer Identification Number, or EIN, on Forms 945, 945-A, and the related information returns. This inconsistency makes reconciliation of payee-level data to the annual return difficult and very much complicates the IRS's compliance efforts.

The IRSAC understands that the topic of backup withholding also appears to be very misunderstood and confusing to taxpayers. Several recent government reports have highlighted these compliance issues. The Small Business/Self-Employed Division of the Internal Revenue Service requested the IRSAC's feedback on this area. Form 945, "Annual Return of Withheld Federal Income Tax," is used to report a variety of Federal income tax withholdings from non-payroll payments such as pensions, annuities, IRAs, military retirement, gambling winnings, and payments subject to backup withholdings. Recipients of these types of payments receive a wide variety of information returns showing income and any Federal income tax withheld. These include Form 1099-R, 1099-MISC, and Form W-2G. The IRS faces difficulty when attempting to reconcile the data imported on Form 945 to these various payee information returns. IRSAC supports the change to require that both the information returns issued by the payor to the recipients, as well as the data reported on Form 945, use the same EIN.

So we've got five quick recommendations in this area. First, the IRSAC recommends that IRS make the needed changes to forms, publications, and instructions to require EIN reporting consistency by tax year 2021 or sooner if practical. The IRS should fully implement its communication plan on EIN compliance requirements. This would also serve to alert payors to make any needed system or process changes.

Number three, the IRS should continue focusing on training and education on backup withholding requirements. And we've also discussed with the Service the idea of exploring adding a Schedule R for Form 945 and 945-A to enable reporting of organizational structures, as we think this might serve as an aid in compliance efforts.

And, last, we believe that the IRS should issue a letter to the taxpayer when an EIN inconsistency is identified to inform and educate the taxpayer for 1 or 2 years prior to issuing any penalty for noncompliance.

So that is the summary of the three items that I am happy to report out on today. And next I'm going to ask Alan to come forward and give us some insights on issues related to tax compliance and the ACA.

(Applause.)

MR. ELLENBY: Thank you, Emily.

I am Alan Ellenby, and for the past 5 years, my practice has concentrated on working with large employers dealing with the compliance obligations that the ACA imposed on them in light of the employer mandate reporting obligations, et cetera. We have recommendations this year on both the reporting side as well as the administration of the Employer-Shared Responsibility Payment System.

And so without further ado, I would like to thank Dan Lauer and Phil Lindenmuth, who worked with our group, not only this past year, but over the years, and hearing our suggestions and working with us on these issues.

The first recommendation is that the IRS really consider suspending the requirement to furnish Forms 1095-B and 1095-C to taxpayers with the Individual Shared Responsibility Payment penalty dropping to zero this year. They really provide limited probative value, and the cost of printing and furnishing far outweighs the benefits to the recipients of receiving those.

However, in the absence of a complete suspension of the furnishing requirement, we would request that the IRS consider extending the furnishing deadline for 30 days, as it has for each of the last -- since the ACA reporting rules have been in place. Given the nature of the data, it's very difficult to get accurate information on a form by the January 31 deadline. I understand that's a statutory deadline, but extending the deadline does reduce the number of revisions and corrections that reporters would have to make on those forms.

Similarly, the IRSAC recommends that the IRS suspend the filing requirement for the Form 1094-B and 1095-B. Again, that only reports enrollment in coverage of medical plans, and, again, very limited probative value for the IRS.

Finally, we do recommend that the IRS consider extending the good faith efforts penalty relief for inaccuracies for another year. Again, it is challenging to get the information regarding medical coverage accurately on forms.

Moving to the Employer Shared Responsibility provisions, we do have a couple of recommendations that we think would ease the administration of that program. The first is that we recommend that the IRS try to find a way to utilize the name and phone number of the contact person on the Form 1094-C when dealing with employer-shared responsibility payments. Currently, letters go out to the address on the business master file, which often goes to the tax department, but it's the benefits administrators in an employer that really deal with these requirements, would have to review the data and challenge any potential assessments, and those letters get lost in translation because it goes to the tax department where people don't know what it is.

Finally, included in those potential assessment letters, there's a listing Form 14765 of the Premium Tax Credit recipients at an employer. Currently, that goes out in paper form. While for some smaller employers, we've seen one person on the list, but we've dealt with employers that have received 14765s that are 100 pages long, you know, in excess of 1,000 employees. So our recommendation is to try to find a way to create an electronic version of that form that the IRS could provide to the taxpayer, and the taxpayer could send back to the IRS. We believe that would aid the review on the employer side and the administration aspects on the IRS side.

And with that, I'll turn the floor over to my colleague Clark.

(Applause.)

MR. SELLS: Hi, good morning. I have a few short comments related to the SB/SE's recommendations surrounding the development of a draft 1099-NEC, or 1099 Non-Employee Compensation.

The PATH Act of 2015 required that non-employee compensation be reported to the IRS by January 31 each year. This was done in the name of stolen identity refund fraud in an effort to close the tax gap. All other payment amounts that were reported on Form 1099-MISC were not due to the IRS until February 28 if by paper, or March 31 if filed electronically.

Having these different due dates caused challenges for employers, third-party reporting entities, and the IRS alike. So the IRS, in turn, released a draft version of a new tax form called the 1099-NEC to more easily comply with this law. We call this a new form, but digging back in through the archives throughout this year, we discovered that the IRS actually did publish this form in the late '70s and retired it in 1983 as the 1099-MISC became available.

So over the course of the year, the IRSAC SB/SE Subgroup is very appreciative to have had the opportunity to collaborate with the IRS on the development of this new form. Through the collaboration, we feel like the IRS has made improvements to the draft revisions that will eliminate reporting -- information reporting confusion on behalf of payors and taxpayers alike. An example of such improvement is the removal of the proposed Box 2 on the 1099-NEC. That was for payor-made direct sales of $5,000 or more of consumer products to a buyer for the purposes of resale. That change happened between the July 24 draft of the form and the October 15 draft of the form. Removing this box off of the 1099-NEC and allowing it to reside individually on the 1099-MISC will eliminate differing interpretations of how these transaction types should be reported. So it's very much the opinion of the IRSAC SB/SE subcommittee that making this change is commendable as we proceed into taking this form to a final draft.

With that being said, we do have several recommendations that we feel can improve the form in between now and when the form becomes final for use in tax year 2020.

Number one would be the clarification to the reference on the Box 1 instruction as it relates to cash from the sales of fish. We believe that this transaction better aligns with the existing Box 5 on 1099-MISC.

Number two, the removal or clarification of the instruction on Box 14 of the 1099-MISC for non-qualified deferred compensation. The instruction for this box indicates that this amount should also be included on Box 1 of the 1099-NEC as non-employee compensation. The reporting of the same transaction in multiple form types could be viewed as double reporting, and we believe that industry could have differing interpretations of this instruction.

Lastly, we recommend that the IRS make updates to the reporting adjacent forms and publications that will integrate with this new information reporting vehicle, which include Form 1096 for the annual summary and transmittal of U.S. information returns, Publication 2108A for online taxpayer identification number matching, Publication 6961 for calendar year-end projections and withholding documents, and Publication 1220 for the electronic filing specification.

Thank you.

(Applause.)

MR. READ: Clark neglected to introduce me, but I'm Charles Read. I'm a CPA and U.S. tax court practitioner out of Dallas. I'm reporting on on-demand payroll. There's a growing trend for on-demand payroll driven by the gig economy, driven by some employees, driven by software companies that want to increase their sales and offerings, and driven by financial companies which are looking to make additional revenue through loan payments and so on.

There is no fixed model for on-demand payroll at this point in time; it's all over the map. There are various states working on regulating it, California being primary at the moment. If these practices become embedded, it's going to be difficult to set up a regulatory framework to handle on-demand payroll.

After discussions with the IRS, the IRSAC was asked to prepare questions that need to be considered in the creation of a regulatory environment for on-demand payroll. Accordingly, we've included a list of 18 questions in the report. They basically deal with when it is payroll as opposed to a loan, how it is to be taxed, when it is to be taxed, when it's constructive receipt. The most extreme example of that would be if an employer sets up a truly on-demand payroll where the employee can take it whenever he wants, and he leaves it sitting for 2 years. When is it taxed both to the employer and to the employee?

Also, how the regulatory framework will affect other things, such as daily tip-out for tipped employees; where will that go?

So the recommendation is very simple. The IRSAC recommends that the IRS pursue the creation of guidance for on-demand payroll working with other stakeholders, such as Social Security Administration, Department of Labor, Consumer Financial Protection Bureau, and possibly other various states as quickly as possible and to address those issues and the questions outlined above.

Thank you.

Jim, I'll throw it back to you.

(Applause.)

MR. PAILLE: Comments? Questions?

MR. HYLTON: Sure. Thank you very much. Kind of looking at the time here, I think I've got 1 minute to comment.

(Laughter.)

MR. HYLTON: I'm Eric Hylton, SB/SE Commissioner. De Lon Harris is to my left, SB/SE Deputy Commissioner for Exams, and Darren Guillot is our Deputy

Commissioner for Collection and Operations Support.

So, first and foremost, we appreciate the opportunity and the recommendations that you brought forth. And we appreciate your hard work. I mean, from the standpoint that looking at these recommendations, you can see and you become acutely aware of many of the challenges that we have for SB/SE as far as the Service as a whole. It's been 75 days for us in, and as new leaders, and so we truly appreciate these recommendations because it aligns very much with our focus areas and where we want to go, and so these are some things that we definitely will think about and incorporate.

As far as trying to look at some of the recommendations from this previous year, though, De Lon and I had an opportunity to go yesterday and to look at taxpayer digital communications, and that is definitely something which is a priority for us kind of moving forward. It's something that we are looking at and tweaking and thinking of, how do we develop even a stronger strategy kind of moving forward? But I think from talking about tax, our Service representatives, they definitely see a significant improvement as far as customer service as it relates to that. So I know that was one of the recommendations from the previous year as well as thinking about virtual currency. I think everyone is aware of the guidance that has come out as it relates to virtual currency, so there are things that we are moving forward on.

I think lastly there was something regarding the small business virtual workshop. So I know in March we started looking at that. And then in April we started establishing a more cross-functional team associated with that, those workshops. So I think we'll have some recommendations as far as improvements and updating that in early 2020.

So that's where I will stop, but I will see whether De Lon or Darren have any additional comments as well.

MR. HARRIS: Yeah, sure. Thanks, Eric, and thanks, everybody.

This has been, you know, as our first time, as Eric said, within the first 75 days, I think this has been a great opportunity. I think what I heard throughout the recommendations was a lot about communication and how the IRS should be communicating with the taxpayers and representatives on the outside. And, you know, since we came in 75 days ago, that communications piece has been really at the top of the list, and what we have told our leadership is that every time we are making a change or working on improvements, we should always be thinking about, How do we communicate this to the outside? And some of the ideas that I heard today is right on point with what we were thinking, you know, going beyond just an initial press release, talking about YouTube videos, you know, Twitter, all of those things that a lot of people use.

I kind of chuckled at the YouTube video of no longer than 2 minutes, and I can certainly appreciate, you know, trying to get to the point, you know, for that section of folks out there that are looking for not a long dissertation or something in writing, but something on how to do it.

We had a town hall yesterday with the employees in the Philadelphia campus that work with both Collection and Exam in SB/SE, and they came up with some really out-of-the-box ideas that we had not even thought of, of how we could better communicate, things that we are doing within the IRS, and changes that are being made that we plan to come back and work on and incorporate throughout the year.

So I'll stop there. We really appreciate this.

MR. GUILLOT: Sure, just briefly. You will probably hear, if you haven't already heard, that what we're telling our employees in the Small Business Division is that they should take enforcement every time it's appropriate, and that the last part of that sentence is extremely important, "every time it's appropriate," which means enforcement is a last resort, it's never a first resort. And so it begins with communication, as De Lon and Eric and you all have been pointing out to us, communication and the right to be informed are in the Taxpayer Bill of Rights, the very first one, the most important one. You should haven't to read a notice or a letter from the IRS, a sentence in that notice or letter twice to understand what it means, or three times, and you still don't understand it potentially.

So we've been working already and we'll continue to work on notices and letters looking at it from the standpoint of simplification, salience, and reduced cognitive load, some fancy terms our scientists internally have been throwing at us, that basically mean when you look at this, do we focus you in the right area with bolded print? Avoid using jargon. Use bullets so that we make it simple for you to know what we expect you to do. So we're there and we're going to continue to be in that area.

MR. HYLTON: Thank you very much.

(Applause.)

MR. LEVENSON: Next up we have the Wage & Investment Subgroup.

MR. HARDY: Now coming to the stage is Ken Corbin and Dave Alito.

(Applause.)

Wage & Investment Subgroup Report

MS. KUBEY: Hi. I'm Phyllis Jo Kubey, chair of the Wage & Investment Subgroup. And I'm sorry to say

I have nothing to offer about chicken sandwiches. But if you want to know about vegan or vegetarian options, see me after the meeting. Thank you.

So good morning, everybody. The Wage & Investment Subgroup, we had a great year this year, and we worked through a wide range of issues. We went through things having to do with more global development, delivery of customer service, touching all taxpayer profiles, tax professionals, IRS volunteer initiatives. And then we also worked with some more specific efforts to help early filers with early intervention and to promote and enhance electronic filing in some different mediums.

All of these issues share common themes of improving taxpayer and tax professional experience with more efficient use of IRS resources and reducing taxpayer burden, moving the IRS taxpayers and tax professionals away from paper and toward easier and more efficient digital services, leveraging power of external stakeholders to enhance service delivery, and balancing security with accessibility.

We extend special thanks to our liaisons, Maria

Jaramillo, Johnnie Beale, and Cindy Jones, who worked tirelessly with us through the year. And also all of our IRS collaborators and subject matter experts, which are truly too numerous to name.

Finally, I am pleased to recognize my colleagues in crime: Tenesha Carter, Ben Deneka, Sharyn Fisk, Antonio Gonzalez, Martin Rule, Jeffrey Schneider, and Mary Jo Werner. We had a great, great team this year, and I just thank everybody so much.

Ben Deneka is not going to re-present issue one, but, Ken and David, if you have comments, we'll be happy to field those during the comment period.

Antonio Gonzalez will present Issue 2, the test to expand systemic verification to improve voluntary compliance. Martin Rule will follow with our electronic filing of Form 1040X. Sharyn Fisk will be next on Issue 4, improve marketing and promotion and participation of VITA TCE programs and other services. And then, finally, I will present Issue 5, IRS 1040-NR and 1040-NREZ.

Take it away, Antonio.

MR. GONZALEZ: Good morning. I really like the quote Kathy said earlier, if it's out there, take a swing at it. And I find that the topic that I'm going to discuss now, which is the test to expand systemic verification to improve voluntary compliance for income reporting, which is a soft letter, is clearly a very important application of that philosophy.

In 2018, there were 1.6 million tax returns that had unreported or underreported W-2 wages, which equated to about $18.6 billion. Since the IRS now has access to information from Social Security so much earlier, given improved data-sharing capabilities and legislation that allowed this to happen, the idea came up that it would be nice to have a letter. And so in 2019, they started sending the letter letting taxpayers know that they may have underreported their W-2 income, and it also lists all the employers that potentially have provided information to the IRS so that they can take one of three options: one, amend their tax return; two, contact the employers and find out why there is a discrepancy; or, three, complete an identity theft affidavit. The objective is completely voluntary compliance. More than acting as a revenue generator, the idea of the new soft letter is to provide proactive customer service that's friendly and decreases the potential for other costly enforcement actions. Right?

As IRSAC, we encourage the IRS effort to promote voluntary compliance and agree that the test has great value and should be expanded to include a larger pool in 2020. Upon review, our recommendations really revolved around two main concepts.

First, just mentioned in the previous topic, make sure the letter is clear, concise, taxpayer-friendly, and understandable to the majority of taxpayers, so that you get the desired response. To that effect, we've suggested some text edits that were previously provided, reviewed, and some of them actually made it onto the letter already in their last version, which is excellent.

We also recommended the letter have a more modern look and other prototypes that we've seen have bullet points, fonts, they have icons that people are familiar with. If we could add that to this form, I think that would be valuable.

And the second series of recommendations, which Ben touched on, involved encouraging other avenues for reporting so that not just the taxpayer, but also the customer experience/service delivery elements are added into. Specifically, we talk about the taxpayer online account -- you're already within secure access, you can actually provide that letter; the new Tax Pro account that's currently in the works as part of the correspondence; and assuming it's legally feasible, the third-party designee indicated on the original tax return as a potential interested party as well. The idea is that the more interested parties know about the discrepancy, the more likely there is to be a good response.

As a subgroup, we would like to thank Commissioner Corbin, the W&I subject matters, in particular, the Business Performance Lab, for their work on the soft letter, this year, and for reaching out to IRSAC for ideas and suggestions on improving the letter.

We're thoroughly impressed with the open communication and the dynamic approach that allowed us to discuss recommendations that were implemented and included, as I mentioned, in that last round of letters. It's not often that IRSAC has such an opportunity to see these immediate results and the proof of what we do collectively. And so thank you very much.

The next topic, Martin Rule will discuss electronic filing of the Form 1040X.

Thank you very much.

(Applause.)

MR. RULE: Thank you, Antonio.

My name is Martin Rule, and I am going to be talking about the e-file for the amended individual income tax return. And when we think about the report being over 200 pages, I think it's very important that we take a look to see how some of these recommendations tie together.

Before I get into the details of the 1040X, which would be the amended individual income tax return, I just want to briefly mention the discussion on customer experience with Ben and then also the discussion with Antonio on the soft letters and the enforcement, and tie that into our recommendation related to the 1040X electronic filing.

So based on IRS statistics between 2016 and 2018, taxpayers filed approximately 3.4 to 3.9 million 1040X forms. All of these forms were done via hard copy. There is not the ability to file these returns electronically. Now, when you think about that, consider that 90 percent of all individual income tax returns are filed electronically, demonstrating that taxpayers and tax professionals prefer this type of filing method.

When -- in Publication 6292, the IRS believes that the projections for the 1040X filing will exceed 3 million each year from tax years 2017 through 2024, when you consider the IRS efforts to identify underreported income, also their emphasis on identifying dispositions of currencies, like Bitcoin, that certainly is an indication that there might be 3 million returns as being underestimated. In other words, there might be a need for increased use of 1040X.

In addition, with the IRS emphasis on enhancing taxpayers' experience, it would be very helpful for taxpayers to have the ability to file the amended returns electronically. Based on the IRS website, it describes the application of "Where is my amended return?" and explaining the process as being -- taking up to 3 weeks to post that the IRS has received the return, and then taking up to 16 weeks for that return to be processed. Certainly, the electronic filing can expedite that process and help both taxpayers and tax professionals meet this compliance requirement.

The IRS recognizes that manually processing tax returns as well as checks and accepting payments is far more expensive than using an electronic method to process those returns and collecting those payments. When an individual files a hard copy 1040X, it is not intuitive as to how to make payments to the IRS electronically. Certainly, the taxpayers have the ability to make that payment, but they would have to be familiar with the EFTPS process, how they would set up an account, and make that payment.

Now, with regard to making payment, there is an electronic option; however, when the 1040X is filed, there is no option to receive a direct deposit in the event there is an adjustment in the tax due and a refund due to the taxpayer.

The IRSAC recommends that in order to more immediately implement the 1040X e-filing is to use the 1040 e-file format and provide a checkbox to identify a filing as an amended return. IRSAC also recommends that the IRS make this a high priority. And the IRSAC committee recognizes some of the following benefits with implementation of e-file for Form 1040X, and that is reduction of costs, improved accuracy of filing for both the taxpayers as well as the Internal Revenue Service, reduced time from submission until file processing and resolution, allow enhanced security screening, enable immediate validation for taxpayers and tax professionals to confirm that the return was filed and accepted, and then, lastly, to reduce phone and other written inquiries from taxpayers and tax professionals regarding the status of the filing.

In addition, it would be very helpful for the IRS to develop some conformity with many states that mandate electronic filing for amended individual income tax returns.

So, in summary, the IRSAC recommendations are for the IRS to consider using the 1040 format for electronic filing of Forms 1040X by adding a checkbox as an amended return, to implement amended e-file process as quickly as possible, use PIN authentication for 1040X e-file, implement an interim method if there is a delay in implementation of e-files, such as uploading digital documents to the Internal Revenue Service by tax practitioners, and then also to encourage taxpayers, when they file their amended returns, to use electronic means for payment and also to implement a methodology for taxpayers to request refunds as direct deposit.

That concludes my portion of the report. And I'd like to welcome Sharyn Fisk, who will speak on some of the taxpayer assistance programs.

Thank you.

(Applause.)

MS. FISK: Good afternoon. So I'll be presenting on the promotion of SPEC and the marketing, branding, and participation of the VITA and TCE programs.

Tenesha Carter and I wrote on this issue because it's with respect to programs that are near and dear to our heart and are a great benefit to our taxpayers.

The Stakeholder Partnership Education and Communication, SPEC -- which is a de minimis acronym that I don't think does justice to what this group does -- is the community outreach and education function of the IRS's Wage & Investment Division. This community outreach includes the Volunteer Income Tax Assistance, VITA, and the Tax Counseling for the Elderly, TCE, programs. Although these vehicles -- although these programs are vehicles for IRS community involvement and services, they are not well known, nor is SPEC well known, both publicly nor inside the IRS.

Last filing season, 3.4 million returns were filed by 82,000 VITA volunteers. SPEC seeks to continue to grow this vital community service.

The IRSAC has been asked for recommendations to promote SPEC, promote the VITA program to the public and other community service agencies, and strengthen the association between the VITA name and its free tax preparation services for eligible taxpayers, and to promote and grow the VITA program itself.

The recommendations the IRSAC has provided with respect to SPEC promotion is to create a dedicated webpage for SPEC providing information regarding its purpose, goals, services, and personnel information contacts so that people can reach out to them, and include on this website the highlights that SPEC's beneficial services provide and promote the fact that the IRS does good; contact other Federal agencies that follow SPEC's antipoverty goals, to prevent -- to promote SPEC's programs and open avenues for referrals between agencies; communicate SPEC's goals to other IRS divisions.

With respect to the VITA program, we're recommending marketing, to work with an advertising firm to brand, promote, and market that program. We are recommending changing the taxpayer-facing side of VITA. While the volunteers know what VITA is, in and of itself, the name "VITA" does not connote free tax return preparation. Launch social media ads directed towards potential VITA-eligible taxpayers. Promote

VITA as a trusted and reliable program with an excellent accuracy rate. It was 98 percent for this filing season, and that's fantastic.

Engage payroll providers in providing information regarding the VITA program on W-2s or 1099s when such income reported on those forms might be of an amount that would allow a taxpayer to be eligible for a VITA program. Create general marketing materials and sharing marketing files that the community partners can download, and provide these marketing materials in various languages for the ESL taxpayers. We also suggested making some changes in addition to IRS webpages.

With respect to the IRS's free tax return preparation for qualified taxpayers’ webpage, make it a bit more prominent and informative, to include explaining the VITA's mission, type of taxpayers it helps through its programs, how taxpayers can benefit from this program, and the training the VITA volunteers do to become certified.

Emphasize the longevity and past successes of the program, and explicitly highlight the number of taxpayers served and the accuracy rate of VITA-filed returns and the savings to taxpayers. To alleviate any taxpayers' concerns, emphasize that the individual VITA sites are not staffed by IRS personnel, nor do VITA volunteers share any information with the IRS other than the return.

Include a link to this webpage on the IRS's main webpage to make it more visible to taxpayers, as is done for the Free File program. Add a standalone “Free Tax Return Preparation” button on the main IRS webpage. And update the existing "File Your Taxes for Free" button to encompass not only the Free File program, but also VITA and TCE.

We are suggesting an additional webpage, one that's separate for the VITA community partners that would have information regarding grants, downloading marketing materials, providing a simple scheduling app, a form for sharing promotional and marketing ideas, and testimonials from those community partners regarding VITA and the benefits to the community.

We are also suggesting a taxpayer assistance webpage that would highlight all of the programs that the IRS has for taxpayers to assist them. Those programs are not only meeting their filing obligations, such as VITA and TCE and Free File, but also the programs the IRS has to assist taxpayers with disputes, reference sites to the Low-Income Tax Clinic programs, penalty relief, first-time abatement waivers, reasonable cost defenses, and assistance with collection matters, so again referrals out to the installment plans and Offers in Compromise. So basically a one-site taxpayer area that they can go to for help.

We are recommending to continue to develop the partnerships, coalitions, and increase volunteers to grow the VITA program through increased sites and services. Through that, we suggest modifying the VITA site annual survey to include questions on the successes and failures each site might have incurred throughout that filing season, and to provide an opportunity for recommendations on the survey. Coordinate between the IRS's LITC program and the VITA program out in the field. There is a lot of cross-reference between these two programs and referring clients.

Mine existing data to determine the best target community partner recruit efforts. Create a digital badge that volunteers could display on professional sites, such as LinkedIn. And produce a model tax curriculum as a resource for educators seeking to teach students about tax reporting and also seeking to develop a VITA program on that campus.

And that concludes our recommendations. And I'll hand it over to Phyllis for 1040-NR.

MS. KUBEY: Thank you, Sharyn.

(Applause.)

MS. KUBEY: Well, I don't think there has ever been a time that I've heard Commissioner Rettig speak when he has not expressed the importance of serving people with limited English proficiency and people who are basically guests in this country. And the 1040-NR is very much tied into that theme. And I'd like to address here some of the recommendations that we have.

We were asked initially whether we thought that Form 1040-NR should be changed to align with the new, say, quote, postcard 1040, and it was a very interesting evolution in our thinking because initially I think we all thought, you know, there is just no way this is going to work, it's just too different, there is so much additional and very particular information on the 1040-NR; but as we worked through this with our IRS collaborators, we realized that if we don't align Form 1040-NR with the 1040, we are really not serving this community of nonresident alien taxpayers sufficiently. And one of the things that we really want to do is drive more people to e-file Form 1040-NR.

Now, 1040-NR was kind of late to the party in terms of being accepted in the modern e-file system, but we have had e-file available for a couple of years now, and what we see when we look at the statistics is that, you know, there's a low percentage of taxpayers and tax professionals who are e-filing Form 1040-NR, so we want to make it easier for people to do that. Some of the data entry for Form 1040-NR can be daunting. If you have a taxpayer with a zillion forms, 1042-S, which is the nonresident equivalent of the W-2, there's a lot of extra data that needs to be entered in. So it can be daunting.

I also think, quite frankly, that we're creatures of habit, and professionals who have been dealing with 1040-NR forms forever and have been filing them on paper are kind of apt to keep doing the same old thing. So we've got to shake things up a bit and try to get people involved in e-filing.

The 1040-NR, it does serve a population of nonresidents who do not meet the tests to file as U.S. tax residents, and that's a distinction that's huge because if you are a tax resident for U.S. tax purposes, you are taxed on the worldwide income, whereas if you are a tax nonresident, you are only responsible for reporting your U.S. source income. So one of the big hurdles in the 1040-NR world is how to figure out whether you're actually eligible to use the form, and then once you figure that out, there are all sorts of other things that you have to figure out. Is my income effectively connected or non-effectively connected?

So, you know, there's a lot of complexity, and it's complex for me. You know, I think of the

1040-NR, it's kind of like your first kiss, you never forget your first one, and I swear to God, I have not forgotten my first 1040-NR. So it's complicated even for tax professionals. And I can't imagine what it would be like for someone who was new to the system, new to the country, had their first U.S. source income, and really wanted to comply with the tax laws, but it's so hard to figure it out, and then so hard to file.

So we came up with eight recommendations that we'd like to make around 1040-NR and 1040-EZ. First, to encourage higher utilization of e-file through taxpayer and practitioner outreach. We need to leverage that one-to-many ratio, and, you know, if we can get one tax professional to change their practice and e-file 1040-NR, that's going to amplify the efforts to get more e-filing.

We need to engage the software industry to offer more options for 1040-NR filing. A lot of the individual programs do not offer it, and I think by aligning the 1040-NR with the 1040, that will solve a lot of the difficulties, because, you know, it's not a high number of taxpayers who file Form 1040-NR, so that's another compliance story, but we'll get to that another time.

Incorporating Form 1040-NR into the base 1040 perhaps through the inclusion of a checkbox so that we have software specifications that are more nimble and more easily updated and will align with the 1040 so that when the 1040 changes, we'll have automatic changes to the 1040-NR.

And we did eventually decide that we would recommend eliminating Form 1040NR-EZ. 1040NR-EZ has never been eligible for e-filing, and, of course, if you are using software, the data entry will be similar whether we are doing EZ or NR. And similar to what we've done, what the IRS has done, with the 1040, eliminating Form 1040-A and 1040-EZ, we recommend the same for the 1040-NR series.

We recommend coordinating VITA programs with communities and institutions that would serve nonresident aliens: new member cities, community centers, things like that. We also urge the IRS to consider developing an interactive tax assistant that would help nonresidents figure out which form they had to file and determine their correct status.

And, lastly, promote the availability of Form 1040-NR filing, go through the VITA programs, and, where appropriate, through Free File.

And that concludes my report. Thank you.

Ken and David?

MR. CORBIN: All right. Let me check and make sure it's still morning before I say good morning to you all.

So, Ben, I had to think about it between the chicken sandwich story. And so I agree with your determination about that. And In-and-Out Burger, I'm a fan of that as well, but I also spent some time in Texas, so I would have to add Whataburger to the list. Are there Whataburger fans? Whataburger fans? All right, now we're talking. If you haven't had a Whataburger, and you get to the Midwest or that area, it's worth the experience, stop and take time to do it.

Again, it's a pleasure to be with you all this morning. I'm glad to have this opportunity to speak with you and the IRSAC membership regarding all the work you've accomplished this past year to support the IRS, and specifically the Wage & Investment Division.

I'd especially like to recognize the W&I Subgroup chair, Phyllis Jo Kubey, and the great leadership she has provided throughout this year as the subgroup chair, as well as recognize and thank two of our departing IRSAC W&I Subgroup members, Tenesha Carter and Sharyn Fisk.

I have to tell you, I was listening to the report-out on the VITA program, and I heard and felt that passion about the VITA program and getting people to volunteer in the communities where they live. That just gives me such great energy when I'm able to hear that from people who feel passionate not only about just tax administration, but working in the communities and protecting the underserved and doing that. So I want to thank you both. I know you're leaving here, but I expect to see you in our VITA sites and out there in the community helping the community with tax return preparations. So thank you very much for your service.

During this calendar year in 2019, the IRSAC worked on a number of issues. We talked about the Customer Experience and Service Delivery Plan. And one of the things that I would encourage everyone who I can speak to, who can hear me, who's in this room, and has an opportunity, the Commissioner talked about the Taxpayer First Act, and that is an opportunity for us, as taxpayers, it is an opportunity for us, as citizens, to have a thought and a voice in reshaping how the IRS is working on it.

And I would encourage you to use the TFAO@irs.gov email box to send in recommendations, but I also would say if there are things about the IRS -- service, things that you like, components of it that work well for you -- talk about those as well. Amp up those things that you think this is really something good that's happening. Like the VITA program’s 82,000 volunteers, that's a lot of volunteers to coordinate throughout the country; and then David and I had the pleasure of having about 36,000 employees. So you can imagine that sometimes our head is spinning. But VITA is such a tremendously great program. And we are taking an emphasis on working better with our high schools. You know, when I go out, I talk about growing up, coming here in America, and being in high school, and getting a comic book in high school. I know comic books, okay, you all have to figure out what a comic book is, but there used to be a comic book on tax preparation. Doug is sitting there saying, "Really?"

(Laughter.)

MR. CORBIN: But we used to do a better job of educating young people about taxes as they grow up. We heard about the W-4 earlier, and really the W-4 is any citizen's true first interaction with taxes. It's that first W-4 that you fill out. So when you think about customer experience and service delivery, it really is about designing and coming up with ideas that will make us better, and we can be better, and we can always continue to improve. I don't think the Taxpayer First Act will stop us from that evolution, I think it just opens the door for our voice to be heard in a different way, and I just encourage you all to participate in on that.

When W&I stood up almost 20 years ago, we talked about our role was to make taxes easier. Now, with this opportunity with Customer Experience/Service Delivery and the Taxpayer First Act, we're trying to think of, "How do we make the experience easier?" because it broadens just the filing of the return, it's in all interactions that you may have with the Federal Government and with tax administration. So we really want to focus on, "How do we make the experience easier for taxpayers?"

In addition to working with the IRSAC on the four issues that we talked about, we appreciate the additional work related to recommendations provided in areas of IRS 1040X electronic filing. We really, really like that and support that. E-signature, and, of course, the follow-up on Free File because it is about finding opportunities and, again, making the experience easier for taxpayers who are eligible for those services, to be able to find them, have access to them, be knowledgeable about them, and then take advantage of those services. So we fully support that.

Between all of your efforts dedicated to these seven issues, we have some 50-plus recommendations to evaluate for possible implementation. We certainly do appreciate the extensive professional discussions, perspectives, and open exchange of ideas during this year. You know, going back and talking about the systemic verification, one of the things I really, really like about our interaction this year with the IRSAC was the ability to make the change then, not to wait for a report to come out and we evaluate, but to be more collaborative and be involved in the development process. I really think that is the future of tax administration. I think it is the right place for our agency to be in. And the IRSAC was a model in leading that, particularly with this particular area, so I appreciate that and really look forward to us doing more of that in the future.

Over the next couple of months, we'll be extensively reviewing the recommendations you put forth and we'll provide our responses and updates through our established channels. And, as always, you all have given us some very thoughtful recommendations in each of these areas to consider as we continue to work together to improve both overall taxpayer experience and the taxpayer service that we provide.

So, David, do you have anything to mention?

MR. ALITO: Sure. I also want to just thank everyone, not only the subgroup for Wage, but just for everybody's passion and dedication in working towards this. All of you have important roles outside of the IRSAC, and that you take the time to volunteer your time and involvement to not only help our agency to put a better foot forward and connect taxpayers with services that help them, which, of course, impacts millions of taxpayers that interact with us; so it's just commendable for the time that you spend.

Probably most importantly, when Ken and I talk about different recommendations and look at the report, we really value that you provide recommendations. You're in our space, which is good. And by that, I mean we look at the things that come through on technology, what could we do for 1040X or verification, online third-party information? All important in all areas that we continue to build in with you, but you also understand that sometimes we have to live by budget challenges and things that are outside of our control.

So we appreciate just the wonderful balance that's always in the report when you look at the recommendations and we talk about changing a letter or changing how we give instructions in a form, looking at our website, things that we can implement more quickly that also have big impacts. So we appreciate that wide spectrum of different recommendations and things that you bring that sometimes we don't always seek because sometimes we're too close to it, something as simple as we talked about looking at, well, why is it named "VITA"? Just because you have for 50 years. Is there a better name? Does the taxpayer out there think, "Oh, where can I go for a VITA site?" Well, probably not, but when you bring that up, it helps color our thinking in a different direction of things that, you're right, we've had these things in place for a long time. Where do we look at it? And, you know, you quite clearly hear the passion towards that program from not only the

Commissioner, but other folks in the room. And just simply to me, the best thing I could say is it changes lives, not only for the taxpayers that take advantage of it, changes their life immensely, but everybody who has volunteered and become a part of that program has also contributed and sees a life change.

So absolutely appreciate all the recommendations in the report. We look forward to -- we're sorry to see two of the folks leave off of our subgroup, but we look forward to new folks coming on, and just our continued work with you, and absolutely appreciate all the thought that went into this report.

MR. HARDY: Ken and David, before you leave, I just realized, I want to do a little program change here because, first of all, NPL and definitely all the members of IRSAC really appreciate the fact that the leaders of the organizations come out and you give your time. You're very busy, and I just realize that you gentlemen will probably have to scoot off back to Atlanta or some other meetings. And so I realize that our LB&I folks in leadership and TE/GE leadership and W&I are still here, so I would just like to quickly announce who the new leadership for the IRSAC in 2020 would be for your benefit.

So for our chair, it will be Diana Erbsen.

(Applause.)

MR. HARDY: Our vice chair will be Ben Deneka.

(Applause.)

MR. HARDY: Our LB&I Subgroup chair will be Sandy Macfarlane.

(Applause.)

MR. HARDY: Our SB/SE Subgroup chair will be Patricia Thompson.

(Applause.)

MR. HARDY: Our TE/GE Subgroup chair will be Michael Engle.

(Applause.)

MR. HARDY: And last, but certainly not least, our W&I Subgroup chair, straight from Juilliard, Phyllis Jo Kubey.

(Applause.)

MR. HARDY: Thank you for indulging us with that.

We will now transition into our next presentation.

Tax Exempt & Government Entities Subgroup Report

MR. LEVENSON: So with that, the TE/GE Subgroup.

All right, Jean, presenting the issues from Tax Exempt & Government Entities Subgroup, a group that's near and dear to my heart.

Jean.

MS. SWIFT: Good morning, everyone. I think you can tell by many of the presentations just the spirit of cooperation that we've received from the IRS and from all of the leadership, and I can't reiterate enough how grateful we are. When we come here as members of IRSAC, we feel as though we're invited guests, and we've been so warmly received, and it really means a great deal to us, so thank you.

The Tax Exempt & Government Entities, otherwise known as TE/GE Subgroup, is a diverse group of eight members who have worked collaboratively on a broad range of issues, including employee plans, exempt organizations, Indian Tribal governments, state and local governmental entities, and tax-exempt bonds. The subgroup members include attorneys, CPAs, and financial and benefits advisors, and also myself, who is actually a Tribal Indian leader. So that's a unique experience for me, not really having a whole lot of taxation behind my belt, but just understanding a lot about Indian Country and tax issues, it's been a real pleasure for me to serve here.

The TE/GE Subgroup is grateful for the cooperation, again, that we have received from the members of the TE/GE Division of the IRS in producing our report. Especially, I would like to acknowledge Lou Leslie, Rich Crom, and Bob Griffo.

Our report addresses three topics. Number one is the suggestions for changing the IRS advisory opinion process to increase transparency and improve operational compliance for preapproved retirement plans. Another topic was suggestions to assist in improving the accuracy and information of Form 990 series filings. And also a third is the suggestions for self-remediation with respect to tax-advantaged bonds that would make correction more cost effective, less complex, and promote voluntary compliance.

Consistent with the intent of the Taxpayer First

Act and strong support for the integrated business modernization plan, which we can't emphasize enough, we really do support that -- our subjects address common goals, which is especially to relieve the taxpayer burden in the IRS of both taxpayers and the IRS while facilitating effective tax administration.

Our first topic will be covered by Carol Lew.

MS. LEW: Thank you. This topic was covered earlier, but I am going to get into a few more of the details with respect to the recommendations.

So on the current 2019-20 Priority Guidance Plan is a burden reduction provision for improving the self-correction program for tax-advantaged bonds. This is important to be able to correct violations while bonds are outstanding for many years, and the liability in this area for a particular bondholder or an issuer could become quite large and substantial.

The current VCAP program for tax-advantaged bonds involves a negotiated process that's time-consuming, but results in a binding closing agreement. It's quite appropriate and very helpful in individual cases, but in the spirit of trying to improve the program, IRSAC has the following suggestions because it is important for issuers and will relieve burden to, in appropriate circumstances, allow for self-correction of violations in a timely process that doesn't burden issuer, bondholder, or taxpayer resources or the IRS to the same degree.

So consistent with the goals of the Taxpayer First Act of relieving burden, IRSAC has recommended, consistent with the employee plan area, a three-tiered program. And issuers could, under this recommendation, always utilize the third tier, which does result in a binding closing agreement. This is the negotiated process, but the first two are potential options. The IRS would provide, in a revenue procedure, which particular types of violations would potentially go in the first or the second or third tier.

So with respect to the first tier, the suggestion would be that it would be very simple. One would remediate by simply filing a notice and taking a specified remedial action, which would result in a correction of the violation.

The second tier would involve a streamlined submission process that would be normally very short, perhaps two pages, that would be filed, and then an automatic confirmation letter, which would perhaps simply state that if the issuer had taken the following remediated actions, that the violation would be corrected if the requirements are met.

It's recommended that within this second tier, that the confirmation letter be normally automatic, but that the IRS would have, in appropriate circumstances, the option to do a review, which we suggest would be without layers of review by a TEB tax law specialist, which normally would occur no more than 2 weeks. And then the third level would be the negotiated closing agreement process, which is similar to what we have now, which would result in a binding closing agreement.

We recommend that the program be established by a revenue procedure that's periodically updated, and that the required remediation be flexible. Right now, for VCAP, normally remediation is making a usually quite substantial upfront cash payment and redemption, which may be difficult, particularly for small governmental issuers, although appropriate in certain circumstances. But we recommend that more flexible methods perhaps in this context be adopted, such as for certain violations, investment, and tax-exempt obligations by effectively taking bonds off the market or perhaps allocating proceeds to alternative costs.

We recommend that anything that's adopted for remediation be simple, very simple and reasonable formulas that are scaled, and that the submissions and confirmations be electronic.

Thank you.

(Applause.)

MS. SWIFT: Dan Welytok will present our next topic.

MR. WELYTOK: Thank you. These materials are found in your public report at page 143, and I encourage you, if you have any interest, to take a look at the detailed executive report. It's very exciting, what we're talking about, e-mandate filing for the 990 forms as well as the accuracy of these forms and how to improve them.

IRSAC has studied the Taxpayer First Act of 2019 mandate for exempt organizations to file returns electronically and has suggestions to assist in implementing the mandate and improving the accuracy of the information on the 990 series filing. Most exempt organizations are required to file an annual return, with certain exceptions: churches, religious organizations, and smaller entities. The accuracy of these returns is critical because they provide a means to the public to evaluate the organization and assist donors in determining whether to make a contribution. The 990 series contains the forms for exemption organizations, most of which are available to file electronically except for Form 990-T, which is the form used to report unrelated business income.

If a 990 form is not filed for 3 consecutive years, the exempt organization has its tax exemption revoked automatically.

Let's talk a little bit about the Taxpayer First Act mandate. The act amends the code to require a mandate to file mandatory exempt filing for exempt organizations for taxable years beginning after

July 1, 2019. However, the act permits the Secretary of Treasury to provide transitional relief for small organizations and any organization required to file Form 990-T by delaying the application of the mandatory e-filing for 2 years.

Previously, the advisory committee on Tax Exempt and Government Entities recommended requiring e-filing for the 990 series. This is sort of the dog chasing the bus and catches it. Now what? The issue becomes, What can you do and how can you improve it? Well, we have recommendations.

With respect to accuracy, we've reviewed IRS data for the last 5 years to identify common errors on the 990 series forms which result in rejected returns. The most common errors include mismatching of names, wrong type of organization, incorrect EINs, and missing schedules. The data shows that electronically filed returns have a much lower rejection rate than paper-filed returns, a low of 5 percent for e-filed returns up to a high of 33-percent rejection rate for paper returns.

So we have the following six recommendations to facilitate the accuracy of the 990 series and to ensure a smooth transition.

First, request the Secretary to delay the effective date of mandatory e-filing for exempt organizations, as provided under the act, for the 2-year period.

Second, waive penalties for late filing of electronic 990 series forms for at least 2 taxable years after the ultimate implementation date, and do not count improper filings related to the new electronic filing mandate for purposes of the 3-year failure to file automatic revocation during that same 2-year extension period.

Three, take steps to prevent common filing errors through the 990 series instructions and request that software developers consider including diagnostics or flags to address these areas.

Four, encourage software providers to develop e-forms that assist users in completing returns accurately and consider providing the 990 series e-forms directly to the extent not provided by the private market, especially with respect to Form 990-T.

Five, publicize the change to the mandatory e-filing by sending mailings to previous 990 series filers informing them of the change in addition to announcing the change on the IRS website and other obvious avenues.

And, six, allocate existing resources and funding to fully implement the act, including mailings and other public education on e-filing mandates.

Thank you. And Charles is up.

(Applause.)

MR. YOVINO: Hi. I'm Charlie Yovino, and I'm here to present on an employee plan issue. And I just want to kind of take this back a step and make it a little bit real for everybody. How many people here are in a qualified retirement plan or a retirement plan, an IRA, something like that?

(Show of hands.)

MR. YOVINO: It should be everybody's hands just about. So it's a very real topic, predominates the economy in the U.S. Large portions of the stock exchange, Nasdaq, and the New York Stock Exchange actually are owned by retirement plans. About one-third of the assets in those areas are held by retirement plans, so it's a very big economic issue overall.

The topic that I'll be discussing is changing the IRS advisory opinion for approving retirement plan documents to increase transparency for the employer and improve operational compliance for employers adopting preapproved retirement plans.

Now, the IRS -- just as a little bit of background, the IRS has an amazingly successful program whereby they review and approve plan documents, inform. They sit down, they review them, if there are any issues with the document, they notify the individual or the group that submitted it, they make changes, and the plan basically gets approved. So you have a situation overall where you have almost 100-percent form compliance. It's an amazing situation. I don't think there's another area that the IRS oversees where you have that level of quality and compliance. It's astounding.

The preapproved plans that are predominantly used that are reviewed by the IRS, these are predominantly used by smaller employers. So there are preapproved plans, which kind of have a menu, you can kind of pick options, and then there are individually designed plans that larger companies generally use. So the preapproved plans are used by smaller employers, and out of the approximately 1 million plans that are out there, about 70 percent of the plans use preapproved plans. Small employers, very high volume that happen to be out there.

So you take this area of near perfection and then you inform where the documents are amazing, and then you move over to operational compliance, and you have a very different scenario and a very different picture.

There, there are very frequent problems, a lot of issues. The IRS has a great program where companies can come in and request relief and avoid what's often called the nuclear option or the plans are disqualified, and there are very onerous tax consequences.

You go from a situation where there are almost no form compliance features to a situation where there are common operational failures. Some examples of that are the employer who adopts one of these preapproved plans may not be aware of all of their responsibilities, so they don't perform certain functions, they don't send proper data, things like that, that creates a compliance issue. The administrators, the companies that sponsor these plans, sometimes they'll have systems or systemic type issues that will create an error when they're processing the plans, the payments, things like that. So you have issues that arise over there also. Trying to fix these issues can be very time-consuming, very expensive, for both the employer, and it takes up a lot of time on the IRS side also.

To address the operational noncompliance problems, we have two very broad-based recommendations. The first is that the advisory opinion process be modified so that the preapproved plan providers are required to disclose the control environment maintained by the administrator related to plan compliance areas and also provide a summary of the roles and responsibilities of the employer and the administrator related to compliance.

The disclosure does two things. First, it makes clear what responsibilities are owned by the employer versus the administrator. So the division of responsibility becomes black and white. Very often employers adopt these and they kind of think they can wipe their hands, and it's owned completely by the administrator. That's very infrequently the case.

The second recommendation, or the second area, is it lets the employer know if the administrator has controls or processes and procedures in place to help reduce the risk of noncompliance. And we're suggesting this be done through the use of a short, clear, and a consistent table that shows the control level across about 10 different compliance areas. This simple consistent table basically would be used by all preapproved plan providers, and it's very, very key. It will let employers basically see what areas of responsibility they have with the vendor and what areas the vendor will end up handling. It will also let employers compare administrators so they will be able to see which ones have more controls or a better control environment in the areas that they're handling. So it provides transparency and accountability across these different areas.

The second set of recommendations that we have kind of support the objectives that we're talking about here already, and we have two sub-recommendations related to these. The first is that the IRS collect and aggregate self-reported data relating to known or suspected operational compliance problems for preapproved plans that are disclosed or identified in the Employee Plans Compliance Resolution System or under plan audits. By collecting and aggregating this data, the IRS will be able to identify systemic issues that are out there with preapproved plans. This will give the IRS and the preapproved plan provider the ability to prevent operational defects or to identify them earlier. So rather than waiting sometimes years after a problem occurs, then having to fix it, and in qualified plans, then you have to attribute earnings to the participants, it lets you identify the issues on a more systemic basic and get ahead of those errors where they were occurring more frequently.

The second sub-recommendation is that the IRS create a liaison role to communicate potential systemic operational defects with the preapproved plan provider and coordinate with them on how the potential defects will be addressed. This may include the addition of controls or other actions that will address the defect. The goal is to allow for a dedicated point of contact that will expedite communication and correction so that the agent will be able to have a direct line of contact with the plan administrator and these issues will be correct on an almost proactive basis.

And those are our recommendations. And I think from that, we're handing it over to the next team.

Thank you.

(Applause.)

MS. SWIFT: Thank you, Charlie.

I just want to acknowledge two of our outgoing members, Lisa Allen and Joel Levenson. They're a part of our subgroup, and we just appreciate your contributions. So thank you both.

(Applause.)

MS. SWIFT: We would like to give the Commissioner a chance to respond to our recommendations.

MS. RIPPERDA: Wonderful. Thank you, Jean, and thank you, everyone, for coming today and sharing recommendations from the TE/GE Subgroup. I feel like I have to somewhat introduce myself and the Deputy Commissioner, Edward Killen, because we are new to the TE/GE arena, although I have worked with many of you, as has Edward, on other occasions and under other titles, if you will. But I came back to the TE/GE Division just this past September, and very excited to be here. And Edward joined me just about a month ago. So we are certainly fresh and new and very excited to be back into this arena of TE/GE.

You know, Jean mentioned the diversity of the programs across TE/GE, and that's what makes this area I think the most fascinating and exciting to work in as well as being able to work with those of you that are here today looking into these issues in more depth. And many of you, and, in fact, each of you, I think that shared recommendations made mention of the breadth of coverage that the TE/GE Division does have. Whether it be from exempt organizations to employee plans to government entities and tax-exempt bonds, it's a plethora of stuff out there that really impacts the daily lives of all of us.

That's why I really appreciated Charles having us raise our hands as to who was actually involved in a retirement plan. You know, we all are, right? We all also interact probably on a daily basis with an exempt organization as well as see the impact in our communities of tax-exempt bonds and our government entities that oversee our communities. So we're out there. We're in your communities with you in trying to administer the tax law as best as possible.

So I want to thank you for the diversity of the subgroup, of the TE/GE Subgroup, and the knowledge and advice that you bring to the IRSAC and for your service and volunteering your time and sharing with us your insights and your wisdom with respect to how we can improve the tax administration across this very diverse group of entities and organizations.

You know, coming back to TE/GE, as well as Edward coming into TE/GE fairly new from the operations support side of the house, we have really recognized both the diversity of what we oversee, but also we recognize and we take very seriously that the entities that enjoy the tax-exempt status that they do and tax-exempt government entities, is truly a privilege. It is a privilege to be tax-exempt in a society and in our tax system that relies on voluntary compliance and, to a great degree, self-assessment of that tax, right? So with that, that privilege, we seriously feel that there is a great deal of responsibility that comes with that, with the representatives of those organizations as well as with those organizations that will run those activities.

You know, along with that privilege and the responsibility that comes with it, we, too, have the responsibility of oversight to make sure that people are following the rules, to make sure that the organizations are formed and operated accurately in accordance with those rules. And we are excited to be in that arena and excited to work with you in helping our taxpayers and our organizations fulfill their responsibilities.

You know, we have been concentrating this year coming into TE/GE to put taxpayers first in order to help with that oversight and our responsibility of oversight with those organizations, you know, not just in TE/GE, not just the TE/GE organization, but all of the activities that surround the entity operations.

We're looking to put taxpayers first by really seeing those operations from the taxpayers' perspectives from those organizations that operate in that space. You know, some of the challenges that they have in complying with the law, some of the challenges that they have in serving the communities and participants that they serve. You know, we're looking at those operations as being that critical thread in the fabric of our society and how important that is that those activities, you know, impact a lot of people and entities beyond the operations of the entity that is either tax-exempt or holding your retirement, your retirement funds.

So we're also looking at improving compliance, and we're focusing that area in helping to do just that, to improve compliance on behalf of those folks who are out there trying to get it right. We deal with thousands of organizations and entities every day that are really just trying to get it right. So we're focusing on ways to assist with that and to help them get it right and to recognize the challenges that they have and try to improve their voluntary compliance, which will have that ripple effect or that multiplier effect and improve compliance across the board.

We're also, of course, in addition to the education and assistance that we provide and want to provide more of in that space, we're also taking a very hard look at strategic enforcement because, as I said, we take very seriously the privilege of tax exemption, and, therefore, we feel that, you know, the responsibility of maintaining a tax exemption, whether it be tax-exempt bond issuance or overseeing and controlling the assets of American retirees, we take that very seriously in that if we can't root out those that are intentionally not following the rules, then that threatens the integrity of the entire tax system, and particularly that privilege that we hold so dear and that we take so seriously.

So, finally, in the modernization area, because we're also looking to modernize, and many of the comments that were in the report do turn to modernization and to digitization and electronic filing and the like, which is all very important goals that the IRS is working toward every day, particularly in the tax-exempt and government entities arena because we're still a very paper-heavy tiger, right? I mean, if you go into any of our processing centers, we still have a lot of paper sitting around, and a lot of TE/GE entities still file on paper. You know, Dan mentioned the filing rates and the e-filing rates versus the paper filing rates. We still have a great deal of paper filings even in the exempt organization arena, and certainly even in the employee plans arena and the tax-exempt bonds. These are very heavy legal areas, and there's a lot of legal papers and documents that keep all of you in business -- right? -- and pay your mortgage. So, I mean, we do have a lot of paper in this space, but we're trying our best to try to reduce some of that paper in the filing of the tax forms that are needed to report on the operations and activities of the TE/GE communities.

So, really, your recommendations across all of those diverse areas really hit the mark on all three areas of focus. I mean, whether it be the EP recommendations of improving our monitoring as well as gathering more data so that we can assist the employers in operating their plans and administering their plans or the EO and the mandates for the tax filings, we are definitely making a lot of progress in that space. We are kind of ahead of the implementation plan on that and we are certainly considering the transition, you know, the transition of the time for executing that mandate as well as any transitional relief on penalties that we can provide, which somewhat unusually has been provided to us statutorily. I mean, the statute itself in the Taxpayer First Act allows us to kind of delay implementation as well as provide for some transitional relief. So we are definitely taking a hard look at that as to how we can best administer and implement that part of the Taxpayer First Act.

And then, finally, with respect to tax-exempt bonds, which, you know, I will sit here and admit to you that I didn't even know what a tax-exempt bond was in August of this year, but I am learning very quickly as to what goes into those tax-exempt bond issuances and the importance, again, of those self-correction capabilities and voluntary correction capabilities that we would like to see expanded throughout all of our programs in TE/GE.

So with that, I would like to again echo my colleagues as well as echo my initial remarks of thanking all of you for your service, for your volunteer service, on the committee because it does take a lot of your time, I know, to work through these issues and work with us and our team to get to some really good solid recommendations.

But I also thank you for your professional representation of the sector and of the entities and organizations that operate in this sector because without you, it would be left to us to assist, and, you know, we just -- we kind of multiply our resources by having you on our team with that to move things forward and to administer the tax law the most efficiently and effectively as we possibly can.

So, Edward, would you like to add anything?

MR. KILLEN: Sure.

Good afternoon, everyone. Just a couple of comments just to really echo what Tammy said. Federal advisory committees serve a valuable role, and you all are the embodiment of that in providing a very valuable service, not just to IRS, but the tax administrators and ultimately to the tax administration and to our taxpayers. So, again, thank you for your time and your effort.

You know, you think about tax-exempt bonds, exempt organizations, employee plans, we're talking about trillions of dollars in assets that are collectively represented within those categories. And so there are obviously very complex issues that surround that. So looking to you all to be able to help sort of crowdsource solutions and opportunities designed to address some of the challenges that exist in that space I think will absolutely be vital to ourselves. So I will just again add my thanks and appreciation for the work and the sincere thought that went into the various recommendations, and we will look at those very seriously.

So thank you very much.

(Applause.)

MR. LEVENSON: With that, our next subgroup is Large Business & International.

Large Business & International Subgroup Report

MS. ERBSEN: So actually before anyone even sits down, I'm going to start because I know we're under time pressure. So I also want to reiterate my thanks to everybody in leadership of the IRSAC on the whole, leadership of NPL, leadership of the IRS, everybody on the committee. Fortunately, we had not planned for Sandy to repeat his portion, but hopefully everybody will read the entire report and certainly the entire LB&I portion to the extent that you are interested. We have worked really hard on the recommendations.

So we're going to have two speakers. First, Shelly Kay, who is known to many of you, who will address our recommendation as far as extending some elements of the CAP program. And Martin Bentsen will address some of the information reporting recommendations. And also I'm going to thank the departing members and all the members of the subgroup for your hard work.

Thank you.

Large Business & International Subgroup Report

MR. KAY: Thanks, Diana. Well, this issue kind of follows up on the issue that Sandy talked about before where we're trying to focus upon ways to utilize the limited resources of both LB&I and the taxpayers. But I was always taught that you have to set your expectations first so that both you and the audience understand where you're going. And so I just want everybody to know that our recommendations are going to come somewhere between your first kiss and eating a chicken sandwich, somewhere between there these recommendations should fit. And I'm going to leave it at that. You have all your pictorials you need.

(Laughter.)

MR. KAY: The CAP program was a pilot program that the Service started in 2005, being permanent 6 years later, and it had a lot of laudatory goals, I mean, great, great goals. I mean, for a taxpayer to be able to file their return and know with certainty by the time they file it that their tax provision is accurate, it gives them certainty for their financial statements. Its goal was to be able to reduce the cycle time, you know, from several years to several months. It was better utilization of the limited resources for the Service, providing more certainty to both the taxpayer and the government for issues that are coming up, you know, that could be applicable to other taxpayers: really, really good goals. And the way that the program worked is that before you filed a return, you pretty much tell the IRS what's happening, they look at it, and conduct their audit, and end up with either a closing agreement or a resolution agreement.

But in practice, it really hasn't quite turned out the way that everybody had hoped for, because coming to that kind of closure for an entire return, it's very difficult for the Service to kind of drop everything else that they're doing for not just this taxpayer, but for all of their LB&I taxpayers, and try to come to some focus on this particular taxpayer.

For taxpayers, it hasn't really worked because we only have about 161 total taxpayers in all of the stages combined of the CAP program now. So it hasn't been utilized as much as everybody had initially probably hoped for.

And there are a lot of reasons back and forth as to why it may or may not have worked, but what we are recommending -- and I think this kind of ties into some of the initial thoughts that the LB&I was having -- is that if you have taxpayers that are large enough and they have certified audits by independent accountants, that the IRS allow them to file a form or forms that provide for an issue-specific CAP program where the taxpayer will provide all of the facts that are relevant and give the IRS the opportunity to do one of a couple things, you know. The IRS can either say, "We agree with that, the way you presented it. And thank you for all the facts. And we agree with that issue." They could say, "Thank you for submitting it. We don't agree with your issue at all." Third, "Thank you for submitting that, but we need more information to try to get it." Or they have limited resources, and hopefully they'll be hiring now, but they still are always going to have limited resources, can say, "Look, based upon our resources, this is not an issue we're going to look at this year. We may look at it next year. We may not look at it next year. But we can just tell you this year we're not going to look at it," and that will help the Service make sure -- you know, allocate their limited resources. It will let the corporate taxpayers be able to release that portion of their reserve, have a more definite tax provision in their financials, in much less time. We suggested 90 days here. That was a number picked out of the air. They have 3 weeks was our first thought, but we figured that wouldn't go over well. But, I mean, this way, it's kind of a win-win because, you know -- and it really has to be on a form because otherwise the Service won't know what they're getting before they get it. So that's that recommendation.

See, luckily, I'm from Chicago, so I'm going to catch us up because I talk fast.

Martin Bentsen is going to follow up on the next one.

MS. ERBSEN: And while he is coming up, I just want to acknowledge that Martin stepped in at the last minute for Alexandra Cruz. She had a family emergency, so she's in our thoughts.

MR. BENTSEN: Since everyone has been talking about chicken, and Thanksgiving is coming up with turkey, I thought I would just share with you my "fowl" enterprises of yesterday. My wife gave me this duck, and I walked around Washington holding it and taking pictures in front of different monuments. I have no idea why, but she gave it to me and said, "Please do that." I don't know if it's for the grandchildren or whatever, but I did it. So that's my "fowl" joke for the day.

(Laughter.)

MR. BENTSEN: Okay. So as 2019 is coming to a close, so, too, is the inaugural year of IRSAC expanding to encompass the Information Reporting

Program Advisory Committee, IRPAC, which I was a member of last year. We'd like to take this opportunity first just to thank the IRS for its ongoing support of information reporting issues being discussed and integrated into IRSAC. It's very important for us.

Prior to reviewing some of the group's information reporting recommendations, we also would like to thank the IRS in general for providing finalized guidance regarding the repeal of IRC Section 958(b)4 as part of the Tax Cuts and Jobs Act, which unintentionally created an issue regarding downward attribution related to controlled foreign corporations.

Okay. So as there are a number of recommendations in the report, for the sake of time, we will only highlight a few. We will talk about three recommendations at this point in time relating to information reporting.

Our first recommendation relates to the proposed regulations addressing the withholding of tax and information reporting with respect to interest in partnerships engaged in the conduct of a U.S. trade or business. As currently drafted, the proposed regulations require qualified intermediaries involved in publicly traded partnership dispositions to assume primary withholding responsibility. Non-U.S. institutions have the ability to enter into an agreement with the IRS to act as a qualified intermediary, a qualified intermediary agreement, for U.S.-source income purposes. Some benefits of being a QI include pooled reporting, and they also include the choice of using documentary or IRS forms when preparing an account.

IRSAC believes that QIs to act as primary withholding agents will be detrimental to non-primary withholding agents. In essence, the regs are now saying that if you are engaged in a disposition of public trade or partnership, you have to be a primary withholding QI, even if you are not a primary withholding QI. Non-primary withholding QIs pass information upstream normally to withholding agents while primary QIs do not have to do that. Non-primary QIs would be required now to segregate and build necessary systems, procedures, and controls for withholding not currently in place.

For those non-primary withholding QIs unable to structure or restructure their operations, it would mean the elimination of PTP dispositions and transactions as a transaction option. Basically, if you cannot, as a non-primary QI, change to being a primary withholding QI, you can no longer engage in transactions for publicly traded partnerships for your accounts.

Either restructuring or elimination would have a significant impact on nonprimary QIs and their clients. IRSAC recommends that the IRS consider allowing both primary and non-primary withholding QIs for purposes of addressing responsibilities for PTP disposition transactions.

Additionally, since the IRS has indicated that it will be amending QI agreement in coordination with implementing proposed regulations, IRSAC recommends Section 1446(a) and 1446(f) income be treated similarly to other U.S. source income under the QI agreements that are out there, which are structured for which QIs may choose to assume withholding responsibility as a primary QI or choose not to assume such withholding responsibility as a QI.

The current U.S. source income that is being treated for NRA purposes, the QIs can choose to withhold or not withhold. We want the same treatment now for 1446 (f) income, which relates to the disposition of partnerships.

The next issue pertains to QI pooled reporting for direct accountholders. Again, pooled reporting is one of the benefits of the QI agreement that I mentioned previously. Currently, within the QI agreement, an accountholder of a QI may request a specific Form 1042-S in the account holders name. In order for the QI to provide the accountholder with the payee-specific Form 1042-S, the QI must amend the pooled Form 1042-S. And what that means is if you are filing a pooled form, you haven't identified all of the underlying beneficial withholders. But any one of those foreign underlying beneficial withholders may come to you and say, "I want my own 1042-S." So not only does the QI have to issue a 1042-S, they have to reissue what they did for the entire pool, the remainder of the pool.

Okay. So currently accountholders are able to request separate payee-specific 1042-Ss from the QI at any time, potentially causing operational and internal reconciliation issues for QIs, resulting from the lack of a specific time limit for the accountholder to make the request. In essence, there is no statute of limitations, shall we say.

In order to alleviate this issue, IRSAC recommends that a deadline be set for accountholders to make the request for a payee-specific Form 1042-S to the QI. Specifically, it recommends that August 1 of the following calendar year from the Forms 1042-S filed March 15 be set as the deadline. In other words, that means that the 18 months from March 15 of 2018 would be August of 2020. So you have that 18-month timeframe. You go out a year plus 6 months from the filing date. IRSAC also recommends if the form is not filed on March 15, that whenever that form is filed, you start your 18-month count from the filing of the form.

Finally, our last recommendation today relates to increasing avenues of communication with non-U.S. users of both the FATCA FFI registration and QI application and account management systems, the portals that they use. In the last 18 months, the IRS provided in-person presentations in cities in Europe and Asia on the qualified intermediary, withholding foreign trusts, and withholding foreign partnership certification and periodic review process, which were well received by non-U.S. participants. In fact, these in-person presentations had a very positive impact on the industry and gave those outside the United States the opportunity to ask questions directly to the IRS.

IRSAC commends the IRS, we really do -- and in some of the meetings, we spoke highly about this -- we commend the IRS for these efforts to engage with non-U.S. participants, and we recommend the coordination of future online and in-person presentations for non-U.S. users regarding the IRS, FATCA, and QI portals.

An online forum or in-person presentation that allows for discussion between the IRS and a large group of non-U.S. industry participants would force a more comfortable communications forum by showing that the IRS is open to questions and discussions.

So in closing, we would once again like to thank the IRS, the numerous individuals who worked with LB&I Subgroup committee this past year, and answering questions and advising on numerous information reporting issues. We look forward to the continuing partnership and ongoing dialogue between the IRS and IRSAC in addressing information reporting issues that we believe will be beneficial to both the IRS and taxpayers alike.

Thank you.

(Applause.)

MR. O'DONNELL: Okay. Thank you, Martin.

Diana, I want to thank you for your leadership of the subgroup this year. I'm happy to see that Sandy is going to be stepping in your shoes next year. And you've also done well with us because you've gotten elevated to the chair of IRSAC, so congratulations there.

MS. ERBSEN: You have done well by me.

MR. O'DONNELL: Very well. Thank you.

Yeah, just a few words about the work. A lot of really open communications, a lot of dialogue, a lot of trust. I feel like the suggestions that came forward are ones that we can really work with, and very happy to have them from the group and to be able to endorse our work.

A few words about each one. The discussion around CAP and using this issue-specific approach is something we've been trying to understand how we can go about doing so. We're going to continue to work to see what we can do with that, so thank you for that.

Safe harbors, which Sandy talked about in the opening, we didn't get much at this point, which is fine, but we think there's a lot we can do there to improve the way that our examiners do approach audits, and we think we're going to some more up there, so appreciate that.

The suggestion on the downward attribution in Section 958(b)(4), which was just talked about, we took the input that came from the advisory committee subgroup to us and went to Treasury and to Associate

Chief Counsel, International, and shared the views that were coming in then to try to influence where the guidance went. It was largely consistent with what they were hearing otherwise, so we were able to sort of say that we helped, but it was moving in that direction anyway. But it was good to be able to confirm it. We couldn't tell them what we were doing, but it was nice to be able to do something live because we really never can do that.

MS. ERBSEN: Thank you. We appreciate that.

MR. O'DONNELL: And then finally on the reporting on FATCA and the qualified intermediaries, there is a lot of work we need to do there. I'm very familiar with the legal framework and the sort of intergovernmental agreements we have, the outreach efforts we have. We are working on a webinar currently to try to do something much more broad to get to more financial institutions and representatives around the world. So you will be hearing more about that from us in the coming months.

Yeah, I'm going to give Nikole the opportunity to say a few words if she wants to.

Do you want to?

MS. FLAX: No. We're running out of time, and I think everyone covered everything that needs to be said.

MR. O'DONNELL: Okay. So thank you all very much. Really appreciate the input from our team especially, but from the entire group. I learned a lot today about what's going on more broadly. I really appreciate that.

Safe travels to all of you. Happy Thanksgiving. Take good care. I look forward to the next time I get to see you. I'm done.

(Applause.)

Closing Remarks

MR. HARDY: I know we are getting close to time, and I'm coming down because I want this to be personal, and I’m going to ask Terry to come up as well. I want to thank each and every one of you for what you did this year. This was a heavy lift for us, consolidating three different groups, being transparent with these leaders. Please put your hands together again. I know I --

(Applause.)

MR. HARDY: -- jumped in right away, and they jumped in. And then we had a little thing called a shutdown for 35 days. That put a wrinkle in it. But, really, all of you came together, worked hard, and today was evident of that. You can see that the Commissioner was engaged and really read the report and liked it.

But in closing, for those of you who are rolling off, you know personally I'm going to miss you, but the great thing about this new IRSAC is that we're going to continuously get real talent to come in and provide the agency with the type of comments that we need to move forward. So thank you, thank you, thank you.

Terry?

MR. LEMONS: I know this has been a lengthy day. I do want to take a moment and note this year's IRSAC is unlike any other in the long history of this organization. And about 2 years ago, we got wind that the administration wanted to consolidate advisory groups, and the members of ACT, IRPAC, and IRSAC came together and figured out a way to consolidate these three advisory groups into one. And this was the first year for this combined group, and I know a lot of people have said thank you today on various things, but we really do appreciate at the IRS all the work you all have done to pull these three groups together, take all those issues and things, and come together with a consolidated team. And I really want to thank Mike, Kathy, and Joel for their work last year and this year getting through it.

This group really makes a difference for tax administration, and this was not easy to pull off this year. And from my standpoint, looking at what you've delivered and all, it's really an amazing accomplishment. On behalf of the IRS leadership team, you had most of our senior executives. From Services and Enforcements, Sunita Lough, our Deputy Commissioner, was here as well. We didn't have a chance to introduce her. But on behalf of all of them, we really appreciate all your work this year. This was a special report from a special team.

Thank you.

(Applause.)

MR. LEVENSON: So I guess this is goodbye. And the word "thank you" has been thrown around so much today. Thank you to everybody on the committee. Thank you to everybody from the Service. And I'd be in trouble if I didn't say, I'm from UCF, but, "Go Knights," and just like everybody else in this room, let's charge on.

Thank you.

MS. HETTICK: Yeah. And I just will reiterate the thanks and the opportunity to work with each and every one of you. When I first came on to IRSAC, I went back and reported in to my office. I just have a small practice with four employees, and I'm like, wow, all these people are so smart. It's been just a fascinating experience working with all of you and developing new friendships and new knowledge. And so I just really wanted personally to thank each one of you and really appreciate the opportunity that I was given to serve, and thank you to the leadership for believing in us and who we are and carrying forward.

MR. ENGLE: Thank you, again. It was a team effort and it looks like we did a wonderful job pulling everybody together.

MR. LEVENSON: And just because we are rolling off, don't be shy. Reach out to us if there is anything. I'll try to do a better job with my little jokes. So if there's anything we can do in next year's IRSAC, just to help out.

MR. HARDY: So with that, this concludes the 2019 IRSAC public meeting.

When you are leaving, please wait for an IRS escort to escort you out of the building. Again, thank you for all that you do. Happy Thanksgiving. Take care.

(Applause.)

(Whereupon, at 1:00 p.m., the meeting was adjourned.)

REPORTER'S CERTIFICATE

This is to certify that the attached proceedings Before:

INTERNAL REVENUE SERVICE

In the Matter of:

Internal Revenue Service Advisory Council (IRSAC)

Where held as herein appears and that this is the original transcript thereof for the file of the Agency, Department, Commission, Board, Administrative Law Judge or the Institute.

Further, I am neither related to or counsel for any of the party of the above proceeding.

Nathanael Riveness
Official Reporter

Date: November 20, 2019

Approved: Mike Engl

Michael Engle, IRSAC Co-Chair

Dated: 1/28/20

REPORTER'S CERTIFICATE

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INTERNAL REVENUE SERVICE

In the Matter of:

Internal Revenue Service Advisory Council (IRSAC)

Where held as herein appears and that this is the original transcript thereof for the file of the Agency, Department, Commission, Board, Administrative Law Judge or the Institute.

Further, I am neither related to or counsel for any of the party of the above proceeding.

Nathanael Riveness
Official Reporter

Date: November 20, 2019

Approved: ______________________
Kathy Hettick, IRSAC Co-Chair

Dated: 1-29-2020

REPORTER'S CERTIFICATE

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INTERNAL REVENUE SERVICE

In the Matter of:

Internal Revenue Service Advisory Council (IRSAC)

Where held as herein appears and that this is the original transcript thereof for the file of the Agency, Department, Commission, Board, Administrative Law Judge or the Institute.

Further, I am neither related to or counsel for any of the party of the above proceeding.

Nathanael Riveness
Official Reporter

Date: November 20, 2019

Approved: ______________________
Joel Levenson, IRSAC Co-Chair

Dated: 1-6-2020

Another **Inspector General report of tiny big-business settlements, Taxpayer Advocate wasteful-audit concerns, and the President's fairness order demand IRS Appeals transparency**

Dear Internal Revenue Service Advisory Council:

As a fellow member of the taxpaying public – and speaking only for myself – I again ask you to join me in urging the IRS to regularly lay out how its Independent Office of Appeals settles audits. (Last year, I focused on a 2016 report from the Treasury Inspector General for Tax Administration, the government's main IRS watchdog, about pennies-on-the-dollar results on Service's most important international tax issue, and on its 2017 report about Appeals' reasoning often not adding up.)[i]

This May, TIGTA revealed "Few Accuracy-Related Penalties Are Proposed in Large Business Examinations, and They Are Generally Not Sustained on Appeal."[ii] How few? 6% of recent years' large business exams, versus 25% of small business exams. And how generally are they not sustained? Taxpayers took most of the large-business penalties up to Appeals, which had written off $765 million of the $773 million – 99 percent! – in the cases it had finished. An "accuracy-related" penalty generally would apply to a tax understatement that is large or due to a listed problem issue, at the rate of 20 to 40 percent of the incremental tax. And it generally has a built-in "reasonable cause" exception which the report says taxpayers can and do ask Exam itself to apply. So a much smaller number post-Appeals doesn't just reflect that a good-faith mistake can warrant a break, but indicates a troubling disconnect between how the IRS announces our tax rules work and how insiders might work the rules.

This summer, Taxpayer Advocate, another "independent" office in the IRS, followed up on its recommendation to track and report Appeals trends in order to spare taxpayers from ineffectual audits by observing that this could also identify issues needing clearer rules.[iii] If a problem's worth writing up and fighting, isn't it worth a notice to nip in the bud? The bureau wouldn't bite: "*the resulting adjustments or outcomes are uniquely drawn from the facts and circumstances....therefore, tracking the results in the aggregate would not be informative*." But that's the point of statistics! Congress already directs the the IRS to publish statistics about "*any...facts deemed...valuable*" to "*the operations of the internal revenue laws*", and compile statistics to help the Advocate find, prioritize and solve difficulties facing taxpayers *and* the Service.[iv] And the IRS combines data analysis with employee suggestions to develop issue campaigns.[v] In other words, numbers also need classification, clarification and analysis.

And just this October, the President himself ordered agencies to "act fairly and transparently with respect to all affected parties...in civil enforcement or adjudication," and give "public notice of… the legal standards applicable."[vi] While there's an exception about "settlement negotiations," it's only to the party's right to be heard – already happening in the negotiations themselves – not to publicity of the standards.[vii] Mr. Trump specifically called out inapplicable penalty demands.[viii] And fairness to small business, which is no small issue for the IRS: the Financial Times reported that more than a third of cross-border "investments" by their multinational competitors are just tax dodging.[ix] Seems to me that for an agency to regularly concede much of what it demands up front shades, or could even practically supersede, the public statute, regulation and case law. The practice and guidelines should be disclosed.[x]

This would support Appeals' mission to resolve tax controversies without litigation fairly, consistency, efficiently, and with integrity.[xi] Rigorous public reasoning, confirmation-hearing scrutiny, and accountability for those who install the judges help courts balance rather than erode the rest our government. The IRS knows how to delete identifying and sensitive details before publicly releasing material.[xii] And owning up to challenges respects "customers" as citizens, not chumps.[xiii]

Respectfully submitted,
/s/ Anand Desai
November 18, 2019

i "Citizen Comment: Keep the Lid Off IRS Settlement Practices," Anand Desai, emailed to the IRS Office of National Public Liaison on November 8, 2018 for IRSAC's November 15, 2018 public meeting.
The reports are "Barriers Exist to Properly Evaluating Transfer Pricing Issues," available through https://www.treasury.gov/tigta/press/press_tigta-2016-32.htm, and
"Better Documentation is Needed to Support Office of Appeals' Decisions on International Cases, available through https://www.treasury.gov/tigta/auditreports/2017reports/201710068_oa_highlights.html.

ii Available through https://www.treasury.gov/tigta/auditreports/2019reports/201930036_oa_highlights.html.

iii National Taxpayer Advocate Objectives Report to Congress for Fiscal Year 2020, Volume 2, pp. 56–61, available through https://taxpayeradvocate.irs.gov/ObjectivesReport2020.
Taxpayer Advocate has also recommended more disclosure of internal legal analysis, which could shed light on debatable issues let go earlier in the tax-administration process. "TAS Will Continue to Advocate for Counsel to Disclose Emailed Advice", NTA FY2020 Objectives Report, Volume 1, pp. 68 – 71, available at https://taxpayeradvocate.irs.gov/Media/Default/Documents/2020-JRC/JRC20_Volume1_AOF_04.pdf.

iv I.R.C. (26 U.S.C.) §§ 6108 and 7803(c)(2)(B)(ii).

v Large Business and International Compliance Campaigns, https://www.irs.gov/businesses/large-business-and-international-compliance-campaigns.

vi Executive Order 13892, Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication, October 9, 2019, available at https://www.federalregister.gov/documents/2019/10/15/2019-22624/promoting-the-rule-of-law-through-transparency-and-fairness-in-civil-administrative-enforcement-and

vii Sec. 6(b) of E.O. 13892.

viii White House Law & Justice Fact Sheet, "President Donald J. Trump Is Combating Bureaucratic Abuse and Holding Federal Agencies Accountable", October 9, 2019, available at https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-combating-bureaucratic-abuse-holding-federal-agencies-accountable/.

ix Id.; "More than third of foreign investment is multinationals dodging tax," Martin Sandbu, Financial Times, September 8, 2019, available at https://www.ft.com/content/37aa9d06-d0c8-11e9-99a4-b5ded7a7fe3f, and citing "The Rise of Phantom Investments," International Monetary Fund, available at https://www.imf.org/external/pubs/ft/fandd/2019/09/the-rise-of-phantom-FDI-in-tax-havens-damgaard.htm,

x TIGTA's 2017 report found Appeals made efforts to resolve cases with similar issues at similar rates, but did not explain their other differences. And the IRS has disclosed some "Appeals Settlement Guidelines" at https://www.irs.gov/appeals/appeals-settlement-guidelines-asg . But whether the list is exhaustive is not clear, and seeming operative details are redacted from the individual documents. I don't understand why those would need to be secret if they can't be nefariously prearranged – and in any event the former IRS managers and Appeals staff Googlably seeking tax clients must have a feel for them.

xi I.R.C. § 7803(e).

xii I.R.C. § 6110.

xiii Compare "The twin goals of enforcing the tax laws evenhandedly and enforcing them with due regard for exigent circumstances are central to building and maintaining taxpayer trust . Yes, taxpayers want to know the IRS is going after people who are parking income and assets offshore and evading tax . That instills trust because taxpayers who are paying their taxes won't feel like chumps for complying with the law." NTA FY2020 Objectives Report, Volume 1, p. 8, citing Erich Kirchler who is a professor of economic psychology at the University of Vienna.

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November 19, 2019

Delivered via email to PublicLiaison@irs.gov

Internal Revenue Service
Attn: Anna Brown
Office of National Public Liaison
CL:NPL, Room 7559
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Accelerating the Use of E-Signatures in Federal Tax Administration

Dear Mrs. Brown:

On behalf of the National Association of Professional Employer Organizations (NAPEO), we appreciate the opportunity to provide written comments in connection with the Internal Revenue Service Advisory Council's (IRSAC) meeting scheduled for November 20, 2019. We are writing because we understand that the IRSAC is expected to discuss "[a]ccelerating the use of e-Signatures in Federal Tax Administration."[1]

NAPEO is the largest trade association for professional employer organizations (PEOs), which provide comprehensive HR solutions for small and mid-sized businesses. Payroll, benefits, HR, tax administration, and regulatory compliance assistance are some of the many services PEOs provide to growing businesses across the country. NAPEO represents approximately 300 PEO member companies that provide services to over 175,000 businesses employing more than 3.7 million workers nationwide.

As described below, the inability to submit e-signatures on Form 8973 (Certified Professional Employer Organization / Customer Reporting Agreement) has resulted in significant administrative burdens and expenses for PEOs that have been "certified" by the Internal Revenue Service (IRS), as well as for the thousands of small and mid-sized businesses those PEOs serve. As the IRSAC considers the topic of e-signatures, we thought it might be helpful to describe for the group this one example of how the lack of an IRS-approved e-signature process produces unnecessary challenges for taxpayers and tax administration more broadly. In this regard, we

[1] 84 Fed. Reg. 57,809 (Oct. 28, 2019).

encourage the IRSAC to urge the IRS to accelerate its acceptance of e-signatures, including especially with respect to Form 8973.

Background on the PEO Certification Program and Form 8973

In 2014, Congress added sections 3511 and 7705 to the Internal Revenue Code (Code), thus directing the IRS to create a voluntary certification program for PEOs in accordance with the parameters outlined in the new statutory provisions. PEOs that apply for and become certified must agree to meet several requirements that non-certified PEOs are not subject to, including obtaining a surety bond, providing audited financial statements to the IRS, and undergoing extensive background checks of certain key individuals. Certified PEOs or "CPEOs" must also report more detailed information to the IRS than non-certified PEOs, and they are required to file that information electronically. In exchange for becoming certified, a CPEO and its clients receive certainty regarding the application of and liability for federal employment taxes, among other benefits.

Code section 3511(g) directs the Secretary to develop rules and procedures necessary or appropriate to ensure CPEOs' compliance with the certification program, including "notification…of the commencement or termination of a service contract described in section 7705(e)(2) between [the CPEO] and a customer." In response, the IRS created Form 8973, which CPEOs must submit whenever a customer begins or terminates a service contract with the CPEO.[2] However, Form 8973 does more than simply require the CPEO to inform the IRS when a service contract begins or ends – the IRS also made the decision to require the reporting of additional information regarding the nature of the relationship between the CPEO and its customer, and the IRS further requires that *both* the CPEO and the customer sign Form 8973 when it is used to report the commencement of the contract.[3]

Adding even more administrative complexity and burden, the IRS requires newly certified CPEOs to submit Form 8973 with respect to the commencement of any service contracts with existing customers. As noted below, this means for some CPEOs the need to collect thousands of signatures on a Form 8973 in a relatively short time frame from small businesses that, in some cases, have little to no incentive to respond timely (or at all) to the CPEO.

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[2] For purposes of Form 8973, the IRS has defined a service contract as both a "CPEO contract" described under section 7705(e)(2) and a contract described under Treasury regulation section 31.3504-2(b)(2) (i.e., a service contract generally means a contract that meets the hallmarks of a PEO service relationship as opposed to providing, for example, only limited administrative support services to a client).

[3] We note that NAPEO believes it is clear that Code section 3511(g), which gives the IRS the authority to impose appropriate rules, regulations, and procedures *on CPEOs*, does not authorize imposing the Form 8973 customer signature burden on the many thousands of CPEO customers. NAPEO has discussed its view on this matter with representatives from the Treasury Department and IRS as well as in multiple comment letters regarding the development of the CPEO program. Nevertheless, as long as customer signatures continue to be required on Form 8973, NAPEO welcomes efforts to reduce and streamline the administrative burdens that the form has created, including especially any efforts by the IRS to allow the use of e-signatures on the form.

Form 8973 Wet Ink Signature Requirement

The IRS states in an FAQ on its website that Form 8973 must be "signed in ink" by both the CPEO and the customer. A customer may, however, sign the form in ink and then scan or fax the signed form to the CPEO for the CPEO to print, sign, and mail to the IRS. Despite repeated requests from NAPEO for the IRS to allow the use of e-signatures on Form 8973, the IRS has declined, explaining in part that the IRS is currently reviewing its policy regarding e-signatures on an agency-wide basis. This "wet ink" signature requirement is decades out of touch with common business practice and serves no useful purpose.

Consequences of Form 8973's Wet Signature Requirement

Requiring CPEOs and their customers to sign Form 8973 in ink, without an option to submit an e-signature, serves no meaningful compliance purpose; creates myriad challenges for CPEOs and CPEO customers; and thwarts the scope and success of the CPEO program that Congress created to improve tax compliance. We address these issues below.

- ***Implications for CPEOs.*** Large CPEOs can have thousands of small business customers located across the country. Even when a CPEO is able to hand Form 8973 to a customer or prospect in person, the customer/prospect often wants additional time to review and sign the form, which makes sense because the customer/prospect may have never reviewed or signed a Form 8973 before. That in turn forces the CPEO to rely on the person to sign the form at a later time and return it to the CPEO by mail or fax. CPEOs have been expending significant resources in following up with customers in this regard, especially due to the general requirement to file Form 8973 within 30 days of the service contract's commencement. If the IRS permitted e-signatures on Form 8973, the process for obtaining the customer's signature could be streamlined and incorporated into the process the CPEO uses with respect to other documents requiring a signature (and with respect to which the CPEO is already collecting e-signatures in many cases).

  In addition, as noted above, when a PEO first becomes certified, the IRS generally requires newly certified CPEOs to submit Form 8973 with respect to each of its *existing customers* within six months of the date of its notice of certification from the IRS. This requirement only exacerbates the challenges described above, especially for large CPEOs. Further adding to the challenge is the fact that some CPEO customers – depending on the specific type of service contract they have with the CPEO – do not even receive any benefit from the CPEO's certified status and thus they have little incentive to return a signed Form 8973 to the CPEO, let alone by the IRS's deadline.

  The IRS's requirement that CPEOs submit completed Forms 8973, including the customer signature, is not without consequence. In the event that a customer fails to sign Form 8973, the IRS requires the CPEO to take additional, onerous administrative steps, including potentially filing amended employment tax returns to the IRS. But a much more severe consequence is described in another IRS FAQ, which warns that "the IRS will suspend and revoke the CPEO's certification if the IRS determines that the prevalence or number of unsigned Forms 8973 submitted by the CPEO reaches a frequency or level of significance that poses a material risk to the IRS's collection of federal employment taxes." This threat of suspension and revocation is a source of serious concern for CPEOs, particularly because obtaining the customer's signature on Form 8973 is largely outside of the CPEO's ultimate control.

- ***Implications for CPEO Customers.*** Customers share many of the same administrative burdens and added expenses that CPEOs face in having to provide a wet signature on Form 8973. However, there is an additional consequence for certain customers who fail to send a wet signature on Form 8973 to the CPEO by the required deadline. For those customers that entered into a service contract meeting the requirements for the customer to obtain the additional liability protection that is one of the hallmarks of the CPEO program, the IRS has determined that *such protections will not apply if the customer fails to provide a wet signature on Form 8973 by the applicable deadline*. In this regard, inadvertent failures by the customer to sign Form 8973 due in part to the separate wet signature process could be reduced if the CPEO were instead allowed to build in a process for obtaining e-signatures.

- ***Implications for the CPEO Program.*** We understand from the IRS that a customer signature requirement was included on Form 8973 because the IRS seeks to ensure that a CPEO customer has knowledge of the type of relationship that it is entering into with the CPEO. In this regard, NAPEO believes that allowing for e-signatures on Form 8973 will, by increasing the percentage of customers that ultimately sign Form 8973, help meet the stated objective of the IRS. In addition, e-signatures would help simplify the administration of the program by the IRS because the percentage of complete and timely Forms 8973 (i.e., including a customer signature) would be expected to increase, and the need to administer the special processes for those cases where a customer refuses or neglects to sign the form would be expected to decrease.[4]

- ***Implications for Tax Administration Generally.*** As briefly discussed above, CPEOs are required to report substantially more information to the IRS than their non-certified counterparts (and to do so electronically). The additional information provided by CPEOs enhances the ability of the IRS to administer the employment tax laws and collect federal employment taxes. Further, the additional underwriting and review performed by surety companies on CPEOs assists the IRS in evaluating the continued worthiness of a PEO for certification. And if a CPEO fails to pay employment taxes when due, the IRS may have the opportunity to recover some of those payments through the surety bond.

  For these and other reasons, NAPEO strongly believes that tax administration in general is well-served by the CPEO program, and that encouraging more PEOs to seek certification would benefit the tax system in general. In this regard, NAPEO is aware that many PEOs have been deterred from applying for IRS certification due to the additional requirements they would become subject to, not least of which is the requirement to obtain wet signatures from customers on Form 8973. We believe that

[4] This assumes that Form 8973 continues to require a customer signature. We note that NAPEO believes that the IRS objectives could be achieved through means that do not require a customer signature at all.

> allowing the use of e-signatures would encourage more PEOs to apply for certification, and that would in turn benefit tax administration more broadly for the reasons discussed above.

Requiring Wet Ink Signatures on Form 8973 Serves No Meaningful Tax Compliance Purpose

Due to the challenges and implications described above relating to the IRS's requirement for wet signatures on Form 8973, NAPEO has made several requests for the IRS to permit e-signatures on Form 8973 in particular. Our requests have generally included the following discussion and rationale, which we reproduce here in case it is helpful for the IRSAC:[5]

> In 2000, Congress passed the E-SIGN Act, which makes electronic signatures as enforceable and valid as their handwritten counterparts. We understand that the IRS has generally been cautious in authorizing the use of electronic signatures on specific documents or forms because the reduced administrative burden must be balanced against the risk of disavowal by the signer.
>
> However, in the instant case, the risk of disavowal by the customer/client with respect to the Form 8973 acknowledgement would have no legal consequences. The Form 8973 customer/client signature does not affect the legal status of any [service contract]. The customer/client signature merely acknowledges that the customer/client information provided on Form 8973 is true and correct to the best of the customer's or client's knowledge and belief. The customer/client signature does not affect the treatment of the underlying CPEO-customer or CPEO-client relationship.
>
> A customer that entered into a CPEO contract would have no reason to disavow that it was the signer of Form 8973 and, even if it did, the only consequence would be that the customer would lose the favorable treatment afforded under Code § 3511. If, on the other hand, a client that is subject to a § 31.3504-2(b)(2) service agreement attempted to disavow the signature on Form 8973, that would not change the client's legal position and liability in any way since § 31.3504-2(b)(2) deals exclusively with the liability of the PEO.
>
> Moreover, in the case of Form 8973, there is an additional and critical safeguard. The Form 8973 still would require a signature by the CPEO under penalty of perjury acknowledging that, to the best of the CPEO's knowledge, Form 8973 is "true, correct, and complete." This declaration obviously includes an acknowledgement by the CPEO signer (under penalty of perjury) that the CPEO has no reason to believe that the customer's or client's electronic signature is invalid.

[5] Note to the IRSAC: This particular excerpt was included in NAPEO's March 21, 2019 comment letter to the IRS, which was submitted in connection with the impending finalization of the Treasury regulations for the CPEO program.

The IRS can derive further assurances from the CPEO's accompanying filing of the Consent to Disclosure of Tax Information.[6] If a CPEO were, for some reason, attempting to evade its responsibilities to use its best efforts to obtain valid customer/client signatures, that fraudulent course of action would not be any easier with electronic signatures. Moreover, any CPEO acting upon electronic customer/client signatures that it knows are invalid would not only be subjecting itself to penalty of perjury, but it would be misreporting employment taxes each quarter and, thus, subjecting itself to penalties and the potential loss of its certified status. Those activities would eventually be easily identified through the authorized disclosure of tax information to the customer/client.

* * * * *

We thank the IRSAC for its consideration of our comments as it discusses the accelerated use of e-signatures in federal tax administration. Should the IRSAC have any interest in discussing this issue with NAPEO, please contact either of us or Thom Stohler, Vice President of Federal Government Affairs, NAPEO, at tstohler@napeo.org.

Sincerely,

Randolf H. Hardock

Courtney A. Zinter

Davis & Harman LLP
(on behalf of NAPEO)

[6] Note to the IRSAC: The CPEO Consent to Disclosure of Tax Information is contained on page three of Form 8973 and is generally separate from the rest of the form.