

**Congress of the United States**  
**Washington, DC 20515**

October 19, 2016

The Honorable John Koskinen  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Dear Commissioner Koskinen:

The Senate Finance Committee and House Ways and Means Committee have long been concerned about the Internal Revenue Service's failure to properly preserve its electronic records and implement systems to search for and produce records in response to litigation and congressional requests. On October 13, 2016, the Treasury Inspector General for Tax Administration (TIGTA) reported that not only has the IRS failed to implement a modernized email system, it also wasted \$12 million on subscriptions to a new email system that it ultimately never used because the system did not meet the IRS's own security requirements.<sup>1</sup> Moreover, TIGTA found that the IRS may have violated its own contracting procedures and federal contracting law requirements because it failed to conduct a full and open competition for the contract.<sup>2</sup> We write to request the IRS Chief Information Officer (CIO) brief the committees on these inexcusable failures.

The Office of Management and Budget (OMB) has recognized that federal email systems must be modernized in order to properly preserve federal records and ensure accountability to the American taxpayer. On August 24, 2012, OMB issued a directive to all federal agencies requiring them to "manage all email records in an electronic format" in a system "that supports records management and litigation requirements . . . including the capability to identify, retrieve, and retain the records for as long as they are needed" by December 31, 2016.<sup>3</sup> Two years later, the IRS "made a management decision to consider the enterprise e-mail project an upgrade to existing software and not a new development project or program," —and therefore did not open the contract to competition as required by the Internal Revenue Manual.<sup>4</sup> Moreover, according to TIGTA, the IRS did not perform "the required and necessary cost analysis, security assessments, and requirements analysis to implement the software products prior to the

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<sup>1</sup> Treasury Inspector General for Tax Administration, Review of the Enterprise E-mail System Acquisition, Ref. No. 2016-20-080, Sept. 30, 2016 (hereinafter TIGTA Report), *available at* <https://www.treasury.gov/tigta/auditreports/2016reports/201620080fr.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> Off. of Mgmt. & Budget, Mem. M-12-18, Managing Government Records Directive (Aug. 24, 2012).

<sup>4</sup> TIGTA Report, *supra* note 1, at 3–4.

purchase of the subscriptions.”<sup>5</sup> Because of these failures, “the IRS wasted \$12 million on subscriptions and renewal fees for software that was never deployed.”<sup>6</sup>

Furthermore, it appears the IRS may have broken federal appropriations law in the course of purchasing the subscriptions. An annual appropriation generally may only be used to meet a bona fide need arising in the fiscal year for which the money was appropriated.<sup>7</sup> TIGTA found that the IRS “may have violated the *bona fide* needs rule when it purchased the subscriptions in Fiscal Years 2014 and 2015 by using Fiscal Years 2014 and 2015 appropriations and not deploying the software subscriptions in those years.”<sup>8</sup>

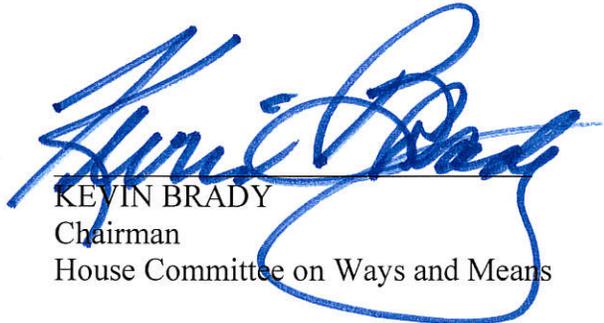
As a result of the IRS’s carelessness, the Service will not meet OMB’s December 31, 2016, deadline to modernize its email system, wasting millions of taxpayer dollars and further delaying full IRS transparency and accountability. To help the committees better understand the IRS’s plans to comply with OMB’s directive and to mitigate the delays and costs created by the decision to shortcut its own standard contracting procedures, the Committees request that the IRS CIO, Gina Garza, brief the staff of both Committees no later than November 2, 2016.

Thank you for your assistance with this request.

Sincerely,



ORRIN G. HATCH  
Chairman  
Senate Committee on Finance



KEVIN BRADY  
Chairman  
House Committee on Ways and Means



PETER J. ROSKAM  
Chairman  
House Committee on Ways and Means  
Oversight Subcommittee

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<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.*

<sup>7</sup> 31 U.S.C. § 1502(a); GAO, GAO-04-261SP (3d ed.), *Principles of Federal Appropriations Law*, Ch. 5 (Jan. 2004).

<sup>8</sup> TIGTA Report, *supra* note 1, at 5.