

**HEARING BEFORE THE
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT
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**“IRS REFORM: THE TAXPAYER
EXPERIENCE”**



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**WRITTEN
TESTIMONY OF
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BEFORE THE
HOUSE WAYS AND MEANS COMMITTEE
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Chairman Buchanan, Ranking Member Lewis, and Members of the Subcommittee, thank you for the opportunity to testify and discuss Internal Revenue Service (IRS) reform and the taxpayer experience.

I. Low Income Taxpayer Clinics

A. History

Tax Clinics have been committed to working with the IRS and low income taxpayers for over 40 years. The first tax clinic began at Hofstra University School of Law in 1974¹. Throughout the 1980s and 1990s, sixteen tax clinics began to surface at academic institutions and legal service organizations throughout the country². Prior to the enactment of the Revenue Reform Act of 1998, Congress learned more about the importance of the work of these initial clinics through hearings like this one and the testimony of Janet Spragens³ and Nina Olsen⁴. The clinics were providing representation to low income taxpayers who had a controversy with the IRS, in addition to advocating for the resolution of systemic issues affecting all taxpayers. In order to expand the work of this collective group, funding was needed and ultimately granted through the implementation of Internal Revenue Code Section 7526. This legislation

¹ T. Keith Fogg, History of Low-Income Taxpayer Clinics, 5 (Villanova University Charles Widger School of Law, Working Paper Series, 2013).
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2142144.

² *Id.*

³ Janet Spragens was the founding director of the American University Federal Tax Clinic in Washington, DC. The clinic is now named the Janet R. Spragens Federal Tax Clinic in her memory.

⁴ Nina Olsen was the founding director of The Community Tax Law Project in Richmond, Virginia. In 2001, she was appointed to the position of National Taxpayer Advocate.

provided for funding of up to \$100,000 per year for “qualified Low Income Taxpayer Clinics,”⁵ birthing the Low Income Taxpayer Clinic (LITC) Program, which has grown to 134 clinics in 48 states and has changed the lives of millions of taxpayers.

The Philip C. Cook Low-Income Taxpayer Clinic at Georgia State University College of Law was founded by Ronald W. Blasi in 1992 and provides controversy representation and educational resources to low income taxpayers in the state of Georgia.

B. Mission

The mission is three-fold: representation, education, and advocacy.

Representation is the cornerstone of the LITC program. LITCs provide direct controversy representation to low income taxpayers. They assist taxpayers with interpreting notices, as well as navigating audits, examinations, and matters before the United States Tax Court. In doing so, LITCs ensure taxpayers pay no more than the correct amount of tax, which is a guarantee promised to taxpayers under the IRS’s Taxpayer Bill of Rights⁶. These rights have also been codified in Internal Revenue Code Section 7803⁷. Where factual and legal issues have been resolved and a taxpayer is unable to pay the tax due, clinics work with the taxpayer and the IRS to arrive at terms that satisfy the interests of both parties under the IRS Fresh Start program⁸, while making sure low income taxpayers are not financially crippled by tax liabilities they cannot ever hope to repay. In addition, LITCs assist taxpayers with lien and levy issues that affect their wages,

⁵ 26 USC 7526(c)(2)

⁶ The Taxpayer Bill of Rights outlines 10 fundamental rights taxpayers. Taxpayers should be aware of these rights when working with IRS functions. The rights are as followed: To be informed, to quality service, to pay no more than the correct amount of tax, to challenge the IRS’s position and be heard, to appeal an IRS decision in an independent forum, to finality, to privacy, to confidentiality, to retain representation, and to a fair and just tax system.

⁷ See 26 USC 7803(a)(3).

⁸ The IRS Fresh Start program, initiated in 2012, was designed to help taxpayers pay their liabilities and avoid getting federal tax liens. The program increased the amount of tax owed before the IRS would file a tax lien, extended the number of months a taxpayer could request an installment agreement (payment plan), and made the terms for accepting an offer in compromise more flexible. Specifically, the offer in compromise program allows taxpayers to settle their tax debt for less than they actually owe. Often times these liabilities cannot be repaid because the taxpayer has suffered negative events relating to their health or employment, and settling the tax liabilities for an amount that they can reasonably repay helps bring them back into compliance. This also makes it easier for them to find employment and gain access to credit, which hopefully makes them less reliant on government social programs in the future.

deposit accounts and Social Security benefits, obtain frozen refunds, and claim innocent spouse relief.⁹ Many LITC clients receive the Earned Income Tax Credit (EITC), the most effective federal anti-poverty program in the United States, so clinics do a great deal of work with the IRS's Examination and Appeals divisions to ensure that taxpayers are able to receive it. Since 2007, our clients at the Philip C. Cook Low-Income Taxpayer Clinic at Georgia State University College of Law have had approximately \$20,272,000 at issue in controversies with the IRS. As a result of our clinic's efforts, those amounts were reduced to \$1,898,172. This saved low income taxpayers \$18,373,828. Since 2013, this has equated to \$229,768 in actual money refunded to taxpayers. Since 2002, our clinic has represented 422 taxpayers and consulted with an additional 120. Of the \$9,703,865 proposed in deficiencies by the IRS, our efforts helped to reduce this amount by \$7,829,322, or by 81 percent. Our clinic, like many others, participates in the United States Tax Court Calendar Call program where we help taxpayers with cases before the Court and consult with pro se litigants to provide legal advice before trial.

LITCs also have a vested interest in preventing future controversies from occurring. To that end, they spend time in the community educating taxpayers on their rights and responsibilities under the Internal Revenue Code. LITCs tailor their education and outreach plans to the specific needs of those they serve, and have conducted sessions on how to properly claim the EITC and other child related benefits. They also partner with other organizations, like the Volunteer Income Tax Assistance (VITA)¹⁰ program, providing tax law training to ensure volunteers acquire the knowledge necessary to pass their certification exam. Once certified, volunteers prepare tax returns for low to moderate income taxpayers at no cost. During 2015, LITCs have conducted more than 3,000 educational sessions¹¹.

When LITCs come across systemic issues that impede a taxpayer's ability to

⁹ Innocent spouse relief is a way for spouses and former spouses who filed joint income tax returns to seek relief from a tax liability. When spouses file joint tax returns, both become jointly and severally liable for the full tax due. Innocent spouse relief is granted in favor of a taxpayer who shows that only their spouse or former spouse should be held responsible for the tax. This typically happens where the taxpayer provides documentation to prove the spouse or former spouse failed to report income, reported income improperly or claimed improper deductions and credits without his knowledge.

¹⁰ VITA and the LITC programs work together to provide low income taxpayers with a continuum of service. VITA completes current, and to a lesser extent, some past year returns. LITC assists taxpayers with controversies that arise from previous tax years. With the help of these programs, taxpayers can meet their filing requirements and work with a qualified representative to resolve any issues that may result from the return.

¹¹ Low Income Taxpayer Clinic Program Report (January 2017).

receive fair and just resolutions for their issues, they work with the IRS to improve processes for all taxpayers. These issues can be substantive in nature. One example occurred when an LITC noticed that when taxpayers won judgments from their state and their pro bono attorneys recovered attorney's fees, the state was treating the attorney's fees as income to the taxpayer even though the taxpayer had no obligation to pay fees¹². The LITC applied for a Private Letter Ruling from the IRS, and the IRS gave the directive that the payment of attorney's fee were not taxable income to a client when he did not have an obligation to pay. The issues can also be more procedural in nature, such as how to correctly process a power of attorney. In these instances, the goal is to improve the system of tax administration for many taxpayers versus simply resolving an issue for one client.

The Philip C. Cook Low-Income Taxpayer Clinic and other LITCs accomplish this through the hard work of students, attorneys, accountants and volunteers who put in countless hours to ensure taxpayers receive quality representation, excellent service, and the best possible outcomes given the facts and circumstances of their cases. We also pride ourselves in providing an intimate training ground for future lawyers, which allows them to begin the process of developing effective lawyering skills essential for the profession. The American Bar Association (ABA) has approved the role LITCs provide in training law, business, and accounting students to provide more affordable tax controversy representation¹³. The representation's value is not simply to low income taxpayers, but to middle income taxpayers when the students graduate with the skills to provide this representation at a more affordable cost. This is particularly important in a time where legal employers are demanding more "practice-ready" law school graduates, the ABA is mandating more experiential education, and there are issues with access to justice.

II. LITC Clients And How They Interact With The IRS

The charge to LITCs has been clear. The objective is to assist low income taxpayers primarily in the controversy process. The premise is that the system of tax administration works best when individuals have access to representation, and access to representation should not be predicated solely on one's ability to pay an attorney or accountant. Ninety percent of our clients have income that falls below 250 percent of the federal poverty guidelines set by the United States Department of Health and Human Services each year¹⁴. For the 2017 calendar

¹² Low Income Taxpayer Clinic Program Report (January 2017).

¹³ American Bar Association, Report on the Future of Legal Services in the United States

(www.americanbar.org/content/dam/aba/images/abanews/2016FLSReport_FNL_WEB.pdf).

¹⁴ 26 USC 7526(b)(1)(B); LITCs are permitted to take up to 10% of their cases outside of the income eligibility limits. These cases typically are accepted where there is a strong case for providing pro bono representation and the case would

year, this equates to an individual earning less than \$30,150 and a family of four earning less than \$61,500. Many LITC clients are struggling to make ends meet and take care of their families with the income from low wage employment, Social Security benefits, unemployment, and the charity and generosity of family, friends, religious and sectarian non-profit organizations. In other cases, LITC clients are taxpayers who planned well and made fiscally sound financial decisions; however, they fell on hard times after losing a job or sustaining a life changing injury or sickness. LITC clients range from students, retirees, and disabled individuals, to veterans and other hard working taxpayers. Along with the challenges of poverty, lower literacy rates, physical and mental disabilities and little to no financial resources or tangible assets to leverage, everyday life can be extremely difficult. A great deal of their resources are spent on necessary living expenses like food and shelter; smart phones, Internet and the flexibility to leave work and wait on hold for hours to speak with a representative are luxuries they simply cannot afford. This makes it essential for the IRS to take an omni-channel approach¹⁵ to continue providing avenues and opportunities for taxpayers to engage with the IRS online, over the phone, in person, and through the use of qualified representatives.

III. Progress

The IRS has made strides in improving its online accessibility. The newly redesigned website has a much sleeker layout, is easier to navigate, and is mobile friendly. For those taxpayers with access to the Internet and smart phones, this provides an excellent vehicle for obtaining information about various tax related topics and accessing IRS forms. The IRS has also made efforts to create online accounts, which allow taxpayers to access their balance, transcripts for the most recent years, and make payments^{16,17}. While these steps are helpful in allowing the IRS to provide service in light of its increasingly shrinking budget, it has some negative impacts on low-income taxpayers.

Improvements have also been made around the verification of income for purposes of claiming the Earned Income Tax Credit (EITC). This anti-poverty

provide educational value for the students. We will not accept a case from a client who could afford private representation from the practicing bar.

¹⁵ Omni-channel approach is a sales term. It refers to a situation where there are various channels or touch points that provide users with seamless experiences across platforms.

¹⁶ View Your Account Information, <https://www.irs.gov/payments/view-your-tax-account> (last visited on December 6, 2017).

¹⁷ Due to the Equifax breach, the online account capabilities have been limited. "At this time, new user registration is only available for Online Payment Agreement, e-Postcard, and FATCA Qualified Intermediary System. New users cannot register to access Get Transcript, View Your Account, Identity Protection PIN (IP PIN), or Secure Messaging. Returning users may still log in to all applications. We apologize for the inconvenience."

initiative rewards low to moderate income individuals and families who are able to work and earn income in the form of a refundable tax credit. Where a taxpayer can satisfy the requirements for the credit, it can yield sizable refunds useful in bridging the income gap throughout the year. Due to the high potential for refunds, there is a great deal of abuse involving this credit. To curtail some of this abuse and ensure taxpayers are properly claiming the credit, Congress mandated in the PATH Act that the IRS must delay the release of refunds that involve the credit so they can verify the taxpayer's income. While delaying refunds can have adverse financial implications on low income taxpayers, verifying income upfront has provided benefits in the areas of identity theft and refund fraud.

IV. Issues Encountered By Low Income Taxpayers When Engaging With The IRS

The primary ways for engaging with the IRS are online, by phone, and in person at Taxpayer Assistance Centers. Each of these touch points has advantages and disadvantages. Low income taxpayers also have access to representation services from LITCs; however, the program has limitations, too.

The online services are available anytime, so taxpayers are not restricted by their work schedules or the IRS's hours of operation. As long as the taxpayer has access to the Internet, he can utilize the website and online account at a time and in a place that is most convenient for him. The disadvantage to this medium is that the taxpayer must have access to Internet or a smart phone, and many of our clients simply do not.

Taxpayers have the option of contacting the IRS via phone. This allows them to speak directly to a representative about their tax account, and in some cases discuss how issues arise, make payment arrangements, and request transcripts be mailed to their home. This option works well once taxpayers are on the phone with the representative. The issue, however, is actually getting a representative on the phone. During the 2017 filing season, an IRS representative answered only 40 percent of the phone calls made into the "Installment Agreement/Balance Due" line. Wait times averaged 47 minutes, and in our experience in the LITCs, it has been longer¹⁸. For taxpayers who may rely on being able to take care of personal calls during their lunch breaks or who have other restrictions that will not allow them to sit on the phone for hours to talk to a representative, this poses a serious issue.

Face-to-face service is available for taxpayers at Taxpayer Assistance Centers (TACs)¹⁹. The IRS has 376 TACs, and there is at least one located in each state.

¹⁸ National Taxpayer Advocate Objectives Report To Congress, Fiscal Year 2018, Volume 1.

¹⁹ Contact Your Local IRS Office, <https://www.irs.gov/help/contact-your-local-irs-office> (last visited December 7, 2017).

This provides taxpayers with an opportunity to meet with a representative in person to discuss their tax related issues. Taxpayers can also make payments or payment arrangements, request the assistance of the Taxpayer Advocate Service, pick up IRS forms and publications, and receive multilingual assistance in over 150 languages. Prior to 2016, the TACs were walk-in sites. Taxpayers could simply visit a center at their convenience and wait to speak with a representative; however, TACs now operate by appointment. Taxpayer must call the site to make an appointment in advance. The phone lines are open during certain hours. If a taxpayer misses that appointment or needs to reschedule, he must call back and make another appointment. In addition, those taxpayers who go to the TACs and are willing to wait are turned away without being assisted. While some taxpayers can get their questions answered and accomplish the same results over the phone, others may need immediate assistance for urgent matters where they are unable to make an appointment. Other taxpayers may be in such financial difficulty that they may not even have access to a phone. The inability to visit a site without an appointment to discuss tax related matters could adversely affect taxpayers who may otherwise be able to resolve their issues.

LITCs provide a vehicle for obtaining low to no cost representation. This representation equalizes the playing field for low income taxpayers by allowing them to seek the representation of attorneys, accountants, and enrolled agents regardless of their ability to pay. Qualified organizations are able to apply for the LITC grant, receive up to \$100,000 annually, and can use those funds to hire staff, rent space, and buy supplies essential in providing this service. While the number of LITC sites has increased significantly since 1998, so has the need for their assistance. The National Taxpayer Advocate has identified several underserved areas, one of which is Georgia. While existing LITCs in these underserved areas may have the capacity to take on more clients or set up other satellite locations, additional funding is needed to assist in those efforts. Because of the statutory cap of \$100,000, the needs of many other taxpayers are going unmet.

V. Opportunities For Reform

Accessibility is key for low income taxpayers. They need the ability to contact and engage with the IRS online, over the phone, in person, and through the use of qualified representatives. When considering reform, it is important to make improvements to each of the customer facing channels as well as the availability for representation.

Online services are helpful for taxpayers. Additional funding should be made available to improve online technology and the ability for taxpayers to communicate and transmit documents to the Service. Currently, taxpayers primarily provide documentation in response to IRS requests via mail or fax. Documentation sent by mail is sometimes lost in transit, potentially allowing sensitive information such as social security numbers to be compromised.

Faxing information can become expensive, as most companies charge a per page fee to send faxes and to scan. As technology improves, taxpayers should be permitted to transmit the requested information to the IRS electronically. This will be helpful for some taxpayers, but cannot be the primary touch point because the Internet, scanners and smart phones are not available to everyone.

Funding should also be increased to hire additional representatives to answer phone calls and staff new and existing TACs. These two mediums provide taxpayers with direct ways to contact IRS representatives. Both allow them to ask questions about tax issues, receive information about their specific tax account, and make payment arrangements. Since 2011, the IRS has reduced the number of TACs from 401 to 376. Twenty-two of those sites do not have actual staff at the location, and 95 TACs have only one person staffing the center²⁰. For taxpayers not in a city with a TAC, the phone is their lifeline to the Service. Since there are only 376 TACs, this leaves quite a few areas underserved and groups of taxpayers who have no choice but to call the IRS. For those cities with TACs, additional representatives would ensure more taxpayers are serviced. In addition, the TACs should begin accepting walk-in taxpayers again.

LITCs are instrumental in helping taxpayers navigate these avenues and the tax administration system. While Congress has continued to increase the overall funding available to the LTC program, it has not revisited the statutory cap, which dictates how much funding any one organization can receive. Many organizations, such as Georgia State University, have the capacity and interest in serving more taxpayers in other parts of the state. For 26 years the Philip C. Cook Low Income Taxpayer Clinic at Georgia State University has serviced the state of Georgia. The majority of our clients are in the Atlanta metropolitan area; however, we could provide satellite campuses in other parts of the state. We simply need additional funding to equip those locations with attorneys, accountants, or enrolled agents. We currently receive the statutory cap of \$100,000; however, if this amount were increased, this funding could be possible not only for Georgia but other underserved areas in the country.

VI. Conclusion

Chairman Buchanan, Ranking Member Lewis, and Members of the Subcommittee that concludes my statement. It is important to recognize the needs of low income taxpayers when considering IRS reform. Thank you for the opportunity to share my views. I would be happy to answer any questions.

²⁰ National Taxpayer Advocate 2016 Annual Report To Congress, Special Focus (IRS Future State: The National Taxpayer Advocate's Vision For a Taxpayer-Centric 21st Century Tax Administration).