

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

November 1, 2022

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Commissioner Rettig,

I write to request information regarding the Internal Revenue Service's (IRS) recent decision to wait until mid-October to mail millions of letters to individuals, encouraging them to file for tax credits¹ for which they may not be eligible.²

The suspicious timing of these letters right before an election appears political. The extension of time to file seems to contradict typical IRS procedures and is likely to have serious consequences for millions of Americans still waiting for tax refunds. With over 9 million unprocessed 2021 tax returns and over 18 million tax returns awaiting IRS action, soliciting more tax filings and delaying the agency's end of year work will likely have a serious negative impact on basic tax administration. Additionally, the Committee received outreach indicating that there are concerns related to the reliability of the data and systems that the IRS has and will rely upon in processing these filings. I have four specific concerns about this effort:

1. The unusual deadline extension into mid-November will likely lead to a negative impact on the IRS's end of year work that it has so vehemently protected in the past.
2. This decision seems unnecessary for the population it claims to be trying to help.
3. The IRS sent letters to millions of people, many of whom won't be eligible.
4. This decision could lead to fraud and increased improper payments for refundable tax credits already plagued by high improper payment rates.

1. The Unusual Timing of the IRS' Decision to Send 9 Million Letters

The timing of the decision to send these letters appears to be very unusual. Following the deadline for taxpayers who requested an extension, which this year was October 17, 2022, the IRS must complete a significant amount of work to close out the current tax filing season and

¹ The 9 million letters focus on those who may qualify for the Child Tax Credit (CTC), Recovery Rebate Credit (RRC) (also known as stimulus payments), or the Earned Income Tax Credit (EITC).

² Internal Revenue Service, *IRS sending letters to over 9 million potentially eligible families who did not claim stimulus payments, EITC, Child Tax Credit and other benefits; Free File to stay open until Nov. 17* (Oct. 13, 2022), <https://www.irs.gov/newsroom/irs-sending-letters-to-over-9-million-potentially-eligible-families-who-did-not-claim-stimulus-payments-eitc-child-tax-credit-and-other-benefits-free-file-to-stay-open-until-nov-17> (emphasis added).

prepare for next year's filing season. That workload is even larger this year because the IRS still has a backlog of over 18 million pending tax returns that require IRS action. The decision to extend this deadline now is even more perplexing given that the agency refused numerous calls to extend a September 30, 2022, deadline by which taxpayers could file a late tax return without penalty.³ Moreover, extending this deadline and delaying the agency's end of year work by a month is likely to have a significant negative impact on taxpayers, especially those who are still waiting for tax refunds from returns filed months ago.

The IRS claims that these letters are like letters sent about economic impact payments in 2020;⁴ however, there are major differences between the two sets of letters. First, the 2020 letters were sent in mid-September to remind people about the mid-October deadline and did not include a deadline extension. Second, the 2020 letters only referenced the economic impact payments and not the CTC or the EITC. Additionally, the late timing of these letters comes long after a U.S. Government Accountability Office (GAO) report issued on June 29, 2022, which made detailed recommendations about how the IRS could improve outreach.⁵ Thus, it is puzzling that the IRS waited four months—close to the original deadline by which individuals needed to claim these credits—to conduct additional outreach.

2. Were These 9 Million Letters Necessary?

These letters and the related one-month extension appear unnecessary given the substantial outreach the IRS has already done and the ability of taxpayers to file a prior year tax return well into the future. Regarding the outreach already conducted - the IRS' website on the "2021 Child Tax Credit and Advance Child Tax Credit Payments: Resources and Guidance" lists 46 press releases on the topic between 2021 and 2022.⁶ Additionally, even without the extension, taxpayers are already able to file a prior year tax return. IRS describes this process on its RRC website.⁷

Given that individuals already had all of 2022 to claim these credits and will be able to file a prior year return next year, the decision to send these letters in mid-October and extend the filing period by a month appears to be unnecessary. As millions of Americans continue to wait for their tax returns to be processed, the decision to potentially compromise overall tax administration for an unnecessary one-month deadline extension is extremely troubling.

³ *Id.*

⁴ Internal Revenue Service, *IRS sending letters to over 9 million potentially eligible families who did not claim stimulus payments, EITC, Child Tax Credit and other benefits; Free File to stay open until Nov. 17* (Oct. 13, 2022), <https://www.irs.gov/newsroom/irs-sending-letters-to-over-9-million-potentially-eligible-families-who-did-not-claim-stimulus-payments-eitc-child-tax-credit-and-other-benefits-free-file-to-stay-open-until-nov-17>.

⁵ U.S. Government Accountability Office, *Stimulus Checks: Direct Payments to Individuals during the COVID-19 Pandemic* (GAO-22-106044) (June 29, 2022), <https://www.gao.gov/products/gao-22-106044>.

⁶ Internal Revenue Service, *2021 Child Tax Credit and Advance Child Tax Credit Payments Resources and Guidance*, <https://www.irs.gov/newsroom/2021-child-tax-credit-and-advance-child-tax-credit-payments-resources-and-guidance> (last visited Oct. 21, 2022).

⁷ Internal Revenue Service, *Recovery Rebate Credit*, <https://www.irs.gov/newsroom/recovery-rebate-credit> (last visited Oct. 21, 2022).

3. Are All 9 Million People Receiving the Letters Eligible for These Credits?

I recognize how valuable these tax credits are for those who qualify and encourage individuals who meet the requisite eligibility requirements to claim these tax credits in the normal course of the tax filing season. But it appears that the IRS itself is not confident that all 9 million people receiving these letters are eligible or qualify for these tax credits. Specifically, the day the IRS announced they were sending these letters Commissioner Rettig was quoted saying “[t]he IRS wants to remind *potentially* eligible people, especially families, that they *may* qualify for these valuable tax credits.”⁸

This doubt over whether the 9 million individuals receiving these letters are eligible or qualify for these credits raises many legitimate oversight questions, including how these individuals were identified, whether the agency confirmed they are eligible to receive these credits, and how the agency plans to ensure that fraud does not result from ineligible individuals attempting to receive these credits.

4. Concerns About the Potential for Fraud

The IRS has not had the best track record when it comes to preventing improper payments and fraud. Ways and Means Committee Republicans have repeatedly expressed concerns over the improper payment rate for refundable tax credits and the Treasury Inspector General for Tax Administration (TIGTA) has reported on the high improper payment rate.⁹ For example, the EITC improper payment rate in Fiscal Year (FY) 2021 was 28 percent (\$19 billion) and the Advanced Child Tax Credit improper payment rate was 13 percent (\$5.2 billion).¹⁰ Mass solicitation of additional credit claims to large numbers of people who may not even qualify raises serious concerns about the potential for additional fraud and improper payments. Additionally, the Committee has received communications that call the reliability and validity of the data that would be used to evaluate these filings into question.

Given the serious concerns about the agency’s decision to send these letters, and the potential negative impact of the deadline extension, please answer the following questions and provide the requested documents by November 15, 2022:

⁸ Internal Revenue Service, *IRS sending letters to over 9 million potentially eligible families who did not claim stimulus payments, EITC, Child Tax Credit and other benefits; Free File to stay open until Nov. 17* (Oct. 13, 2022), <https://www.irs.gov/newsroom/irs-sending-letters-to-over-9-million-potentially-eligible-families-who-did-not-claim-stimulus-payments-eitc-child-tax-credit-and-other-benefits-free-file-to-stay-open-until-nov-17> (emphasis added).

⁹ Treasury Inspector Gen. for Tax Admin., *Without Expanded Error Correction Authority, Billions of Dollars in Potentially Erroneous Earned Income Tax Credit Claims Will Continue to Go Unaddressed Each Year*, Ref. No. 2016-40-036, <https://www.treasury.gov/tigta/auditreports/2016reports/201640036fr.pdf>; see also Treasury Inspector Gen. for Tax Admin., *Improper Payment Reporting Has Improved; However, There Have Been No Significant Reductions to the Billions of Dollars of Improper Payments*, Ref. No. 2020-40-025, <https://www.treasury.gov/tigta/auditreports/2020reports/202040025fr.pdf>.

¹⁰ Treasury Inspector Gen. for Tax Admin., *Programs Susceptible to Improper Payments Are Not Adequately Assessed and Reported*, Report No. 2022-40-037 (May 6, 2022), <https://www.treasury.gov/tigta/auditreports/2022reports/202240037fr.pdf>.

1. Why did the IRS elect to send the letters in October—the same month as the original deadline to claim the credits—as opposed to weeks or months ago?
2. Is it typical for the IRS to extend how much time individuals have to claim a credit beyond mid-October? If so, please provide examples when this occurred and how long each extension lasted.
3. Please provide all communications¹¹ between IRS officials and Treasury Department officials regarding the decision to send this set of 9 million letters and the decision to extend the deadline for filing a return to claim these credits.
4. Does IRS conduct extensive work at the end of each calendar year to complete a tax filing season and prepare for a new filing season? Please describe in detail the work the agency must do between mid-October and the end of the calendar year.
5. What role did Treasury Department officials play in the decision to send these 9 million letters and extend the typical deadline for filing a return to claim these credits?
6. Did any IRS employee express concerns about the plan to send the letters and keep IRS systems open until November 17? If so, please describe those concerns in detail and to whom they were expressed.
7. Did industry stakeholders express any concerns about the plan to send the letters and keep IRS systems open until November 17? If so, please describe those concerns in detail and to whom they were expressed.
8. How did the IRS determine who would be included in the universe of individuals that should receive the letters?
9. Does IRS believe that each letter recipient is eligible for a credit? Why or why not?
10. What processes does the IRS have in place to prevent incorrect or fraudulent claims that may come in from individuals who receive these letters, apply for credits, but are not actually eligible to receive a credit?
11. Have any IRS employees raised concerns about the systems or data that will be used to process these filings? If yes, please describe those concerns in detail.
12. Please provide all communications between IRS official and Treasury Department officials regarding concerns about the impact of extending the deadline for filing a return

¹¹ The term “communications” in this letter should be interpreted broadly to include any form of communications and any attachments to those communications.

to claim the credits on the potential for increased improper payments, increased fraud, and/or on the IRS's end of year work.

13. What impact will another month of tax return filings have on the existing backlog of unprocessed tax returns and tax returns in suspension?
14. Please quantify how many additional days Americans will have to wait to receive tax refunds that are currently stuck in the backlog due to this deadline extension.
15. Please provide all communications between the IRS or Treasury and members of the Free File Alliance regarding any issue discussed in this letter.

In addition to providing these documents, we request that the IRS take all appropriate measures to collect and preserve all documents, communications, and other records that are relevant to the decision to send letter to over 9 million potentially eligible families and extend the deadline for filing a return to claim the credits.

Please provide a response to our questions and provide the requested documents and confirm that you have taken actions to preserve documents related to this matter by November 15, 2022. If you have any questions or wish to discuss the request, please contact Sean Clerget or Brittany Havens of the Ways and Means Committee staff at (202) 225-4021.

Sincerely,

A handwritten signature in black ink that reads "KEVIN BRADY". The signature is stylized with a large, sweeping initial "K" and "B".

Kevin Brady
Republican Leader
Committee on Ways and Means