

Congress of the United States
U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS
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March 6, 2023

The Honorable Douglas O'Donnell
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Acting Commissioner O'Donnell

During debate of the Inflation Reduction Act (IRA), Democrats slipped a provision into the law that gives \$15 million to the Internal Revenue Service (IRS) to report on the cost of the agency developing and running a free direct e-file tax return system.¹ This has been a long-time priority of Senator Bernie Sanders, Senator Elizabeth Warren, and Representative Alexandria Ocasio-Cortez, who have been focused on giving the IRS control over both the filing and auditing of tax returns. The legislation requires the report to include the opinions of an “independent third party on the overall feasibility, approach, schedule, cost, organization design, and Internal Revenue Service capacity to deliver such a direct efile tax return system.”² Putting aside for the moment general concerns over designating the IRS as both tax collector and tax preparer, I write to you today regarding my concerns about the Biden Administration’s selection of New America and Professor Ariel Jurow-Kleiman to serve as the independent third parties referred to in § 10301(1)(B) of the IRA. I have serious doubts about the independence of these selections as they suggest the outcome of the study has been predetermined.

Taxpayers have numerous options for preparing and filing their federal income taxes, including many free options. Taxpayers may prepare and file their own tax returns, use one of many tax preparation software companies, rely on a tax return preparer, or rely on a public-private partnership between the IRS and the tax preparer industry called the IRS “Free File Program.” The Free File Program provides two ways through which taxpayers can prepare and file their federal income taxes online for free if their adjusted gross income is \$73,000 or less³:

¹ The Inflation Reduction Act of 2022, § 10301(1)(B), Pub. L. 117-168.

² *Id.*

³ Internal Revenue Service, IRS Free File: Do your Taxes for Free, <https://www.irs.gov/filing/free-file-do-your-federal-taxes-for-free>.

1. There is guided tax preparation, which “provides free online tax preparation and filing at an IRS partner site.”⁴ The private partners in this program, which include well-known tax preparation companies, deliver this service at no cost to qualifying taxpayers.⁵
2. There are free file fillable forms which are electronic federal tax forms, equivalent to a paper 1040 form.”⁶ This option is best suited for those who know how to prepare their own tax return using form instructions and IRS publications if needed.

In addition to the Free File Program, many tax preparation companies provide free services to eligible taxpayers and millions of taxpayers have taken advantage of those offerings in recent years.

Despite the explicit language of the IRA provision requiring an independent assessment,⁷ the Biden Administration announced that the IRS selected New America to develop the report on the potential government-run, direct efile system.⁸ A New America spokesperson said that “the agency selected New America, a strictly non-partisan, non-profit think tank dedicated to public problem solving with expertise in technological change, the tax code, and the taxpayer experience of everyday Americans.”⁹ The IRS characterized New America the same way in a statement provided to Ways and Means Committee staff.

The characterization of New America as a strictly non-partisan, non-profit is surprising since the organization is known to be a left-leaning think tank. Specifically, some of the non-profit’s top officials include alumni from the Obama Administration, a former aide to Secretary Hillary Clinton, and other top officials of the organization are tied to left-leaning mainstream and openly left-wing media outlets.¹⁰ In March 2021, New America employees wrote favorably about Senator Warren’s Tax Simplification Act, which would set up a free filing system at the IRS.¹¹ Specifically, New America wrote “the government. . . can and should build this tool in the coming years.”¹²

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ “[T]he opinions of an *independent third-party* on the overall feasibility, approach, schedule, cost, organizational design, and Internal Revenue Service capacity to deliver such a direct efile tax return system.” The Inflation Reduction Act of 2022, § 10301(1)(B), Pub. L. 117-168.

⁸ Tobias Burns, *IRS to release report on free online tax-filing system in May*, THE HILL (Feb. 8, 2023), <https://thehill.com/finance/3849684-irs-to-release-report-on-free-online-tax-filing-system-in-may/>.

⁹ John Hewitt Jones, *IRS working with nonprofit New America to deliver online direct file tax system study*, FEDSCOOP (Feb. 9, 2023), <https://fedscoop.com/irs-working-with-nonprofit-new-america-on-online-direct-file-tax-system-study/>.

¹⁰ New America (New America Foundation), Influence Watch, <https://www.influencewatch.org/non-profit/new-america-foundation/>.

¹¹ New America, *Create a Modern, Government-Run Tax Filing Option, Starting with “The Portal,”* <https://www.newamerica.org/new-practice-lab/reports/the-irs-as-a-benefits-administrator/2-create-a-modern-government-run-tax-filing-option-starting-with-the-portal> (last accessed Feb. 16, 2023).

¹² *Id.*

In addition, the agency announced that “Ariel Jurow-Kleiman, a tax attorney and law professor at Loyola Law School, will be working with New America to give third-party analysis of the report” and “make sure it is in line with the existing U.S. tax law.”¹³ While Professor Jurow-Kleiman certainly has tax expertise, this selection by the Biden Administration is equally confusing. Her recent work indicates a clear preference for an expansive government-run system which does not comport with the idea that she would be able to provide an unbiased, independent analysis.¹⁴ Specifically, a recent paper she co-authored discusses the relevant provision of the IRA and explores “how burdensome the tax filing process is to ordinary taxpayers.”¹⁵ The paper addresses the question of a government-run efile program, and states the following:

Speaking directly to the question of a government-run e-file program: The IRS should adopt the most expansive version of the program, one that includes the maximum amount of taxpayer information and requires the least amount of taxpayer input for each individual taxpayer. A partially populated government return would still require a significant investment of resources by the IRS, while also still requiring taxpayers to spend a fair amount of time inputting information. The resulting social welfare improvement will be comparatively small. Instead, the IRS will get more bang for its buck by providing taxpayers a fully prepared tax return.¹⁶

Given this work, it is clear Professor Jurow-Kleiman has already developed an opinion regarding the very things on which she is being tasked to evaluate – on an allegedly impartial basis. It is unrealistic to think that someone who already believes there should be an expansive government-run program can independently evaluate the “overall feasibility, approach, schedule, cost, organizational design, and Internal Revenue Service capacity to deliver such a direct efile tax return system.”¹⁷

Plain and simple – New America and Professor Jurow-Kleiman are neither objective nor independent third parties. They bring radically biased points of view that will undoubtedly shade any evaluation of the issues they are tasked to evaluate. The Administration’s choice of New America and Professor Jurow-Kleiman not only ignores the law by failing to select an independent third party to conduct this study, but it is also illustrative of the fact that at a minimum, the perception is that the Administration has already predetermined that a government-directed efile system should exist regardless of what might be found in a truly non-partisan, independent, third-party review of the feasibility, the cost to develop and operate such a system, the IRS capacity to run such a system, or taxpayer opinions on the matter.

This was completely avoidable, especially since there are other organizations that are truly unbiased, independent third-party entities who could serve the very purpose outlined in

¹³ Tobias Burns, *IRS to release report on free online tax-filing system in May*, THE HILL (Feb. 8, 2023), <https://thehill.com/finance/3849684-irs-to-release-report-on-free-online-tax-filing-system-in-may/>.

¹⁴ Jonathan H. Choi and Ariel Jurow Kleiman, *Subjective Costs of Tax Compliance* (Feb. 1, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4345082.

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 7.

¹⁷ The Inflation Reduction Act of 2022, § 10301(1)(B), Pub. L. 117-168.


Section 10301(1)(B). The IRS has worked with many qualified organizations, such as the MITRE Corporation and others, that could have done this work in a nonpartisan manner.

I am very concerned that the Administration ignored the letter of the law by choosing a biased think tank and a biased individual instead of a truly unbiased, independent third party. Therefore, we request that you produce the following documents regarding the agency's selection of New America and Professor Jurow-Kleiman.


1. All documents and communications relating to how the agency has spent, or plans to spend, the \$15 million provided through Section 10301(1)(B) of the IRA. This request includes, but is not limited to, documents relating to each individual and/or entity that has received funding, how much funding each received, and what each is being asked to do with that funding.
2. All documents and communications relating to how New America and Profess Jurow-Kleiman were selected to carry out the requirements detailed in Section 10301(1)(B), including whether there was an open bid process or a competitive process of any kind.
3. All documents and communications relating to the following:
 - a. Discussions between and among employees of the United States Department of the Treasury and employees of the IRS regarding the selection of an "independent third party" in connection with Section 10301(1)(B) of the IRA.
 - b. Whether the Treasury Department or the IRS sought out specific entities or individuals to serve as an "independent third party" in connection with Section 10301(1)(B) of the IRA.
 - c. The criteria against which the groups and individuals were evaluated.
 - d. Any groups or individuals who were considered by the Administration but not selected; and
 - e. Who in the Administration was part of the selection process.
4. All documents and communications relating to Professor Jurow-Kleiman's opinions about an IRS direct efile tax return system.
5. All documents and communications relating to Professor Jurow-Kleiman's qualifications and ability to be an "independent third party."
6. All documents and communications relating to any organization paid or consulted on any aspect of the agency's work related to Section 10301(1)(B) of the IRA, including but not limited to Code for America.

Thank you for your attention to this request. Please produce documents responsive to this request by March 20, 2023. If you have any questions or wish to discuss the request, please contact Sean Clerget of the Ways and Means Committee staff.

Sincerely,



Jason Smith
Chairman
Committee on Ways and Means



David Schweikert
Chairman
Committee on Ways and Means,
Subcommittee on Oversight