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## House taxwriting subcommittee split over implications of GAO report on IRS audit activity

The Democratic and Republican leaders of the House Ways and Means Oversight Subcommittee were at odds this week over how to interpret a just-released report from the Government Accountability Office (GAO) suggesting that the Internal Revenue Service audits lower-income taxpayers—particularly those claiming the earned income tax credit (EITC)—at higher rates than certain segments of upper-income taxpayers.

Speaking at a May 18 hearing on “taxpayer fairness across the IRS” Chairman Bill Pascrell, D-N.J., argued that congressionally mandated cuts to the agency’s budget over the last decade have led the Service to focus on audits of lower-income individuals “because it is quicker and less expensive,” resulting in what he called a “two-tiered tax system” that disproportionately benefits the wealthy. Ranking member Tom Rice, R-S.C., countered that any disparity in audit rates reflects “underlying problem[s]” with the EITC that Congress needs to address and that “the most significant unfairness facing American taxpayers right now is the lack of customer service at the IRS.”

The GAO report, which was prepared at the behest of subcommittee Democrats and released on May 17, finds, among other things, that “[i]n recent years, IRS audited taxpayers with incomes below $25,000 and those with incomes of $500,000 or more at higher-than-average rates. But audit rates have dropped for all income levels—with audit rates decreasing the most for taxpayers with incomes of $200,000 or more.” The report also noted that “while the IRS generally audited higher-income taxpayers at higher rates compared to lower-income taxpayers,” the audit rate for EITC claimants “was higher than average.”
**URL:** https://www.gao.gov/products/gao-22-104960

**EITC issues**

Chairman Pascrell—who, in his opening statement, called the report’s findings “an outrage”—asked witness James McTigue, the director of strategic issues at the GAO, to explain the Service’s approach to audits of lower-income taxpayers generally and EITC claimants in particular.

McTigue replied that although the Service attempts to “balance audit rates across income levels,” the EITC is “plagued” by a high improper payment rate—roughly 25 percent, resulting in $19 billion in improper payments based on the most recently available data—and that audits are the sole enforcement tool the agency has to remedy that problem.

McTigue also noted that roughly 50 percent of EITC claimants use paid tax return preparers who, in some cases, may be providing misleading advice to taxpayers about their eligibility for the credit. Congress could address that issue, he said, by passing legislation to give the IRS the authority to regulate paid return preparers.

Ranking member Rice argued that the EITC issues identified in the report are not new and are the result of administrative problems with the credit itself. He agreed with McTigue that the IRS should have authority to regulate paid return preparers and called for passage of the Taxpayer Protection and Preparer Proficiency Act (H.R. 4184), a measure he introduced with Ways and Means Committee Democrat Jimmy Panetta of California that would authorize the Treasury Department to, among other things, establish minimum competency standards for paid preparers and impose sanctions for incompetence and disreputable behavior.
**URL:** https://www.congress.gov/bill/117th-congress/house-bill/4184/text?q=%7B

Rice also contended that the problem of improper payments could be reduced if taxpayers were required to provide additional information—aside from a Form W-2—to prove that they are eligible for the credit. He told McTigue that the IRS should develop recommendations for additional verification requirements for taxpayers claiming the EITC.

**Commissioner Rettig would like a word:** It’s worth noting that IRS Commissioner Charles Rettig took issue with the GAO’s findings during a separate hearing—also on May 18—held by the House Appropriations Financial Services and General Government Subcommittee to examine that agency’s fiscal year 2023 budget request.

When asked about the report by Democratic Rep. Mark Pocan of Wisconsin, Rettig replied: “I would appreciate the opportunity to meet with you . . . to go through what’s wrong with the figures that came out.” The commissioner did not elaborate on his specific concerns with the data, however.

During an Oversight Subcommittee hearing on March 17, Rettig similarly pushed back when asked about another report—from Syracuse University—that suggested the Service is disproportionately focusing its audit resources on lower-income taxpayers. He argued that IRS data books provide a more realistic picture of the Service’s audit activities. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 9, Mar. 18, 2022.)
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220318_1.html

Rettig also reminded lawmakers on both panels that the IRS is required under the Improper Payments Elimination and Recovery Act (IPERA) to audit a percentage of returns claiming the EITC to determine improper payment rates. He told House appropriators that the agency has been “trying to get the improper payment rates associated with EITCs out of IPERA since long before I came on board.”

**Audits of upper-income taxpayers**

Several Oversight Subcommittee members raised issues at this week’s hearing regarding the IRS’s audits of wealthier taxpayers. The GAO’s James McTigue explained that these audits generally are more time- and resource-intensive for the Service because these taxpayers often engage in complex financial transactions and have nonwage income that is not subject to strict information reporting requirements.

**Audit ROI:** Subcommittee Democrats Steven Horsford of Nevada and Stacey Plaskett of the US Virgin Islands contended that wealthier taxpayers account for a greater share of underreported income—and underpaid taxes—and that the IRS would achieve a greater return on investment by focusing its audit efforts on this sector rather than on lower-income individuals.

McTigue explained in an exchange with Horsford that the GAO told the IRS in 2013 that it could increase revenue collections by shifting more of its resources to “higher-productive audits,” and recommended that the IRS make audit decisions by weighing “total direct income” against the cost of conducting the audit. According to McTigue, the IRS has since developed a model for this practice and has recently begun to implement it—a development he called “a step in the right direction.”

McTigue also noted that based on the IRS’s most recent published estimates of the “tax gap”—the difference between the amount of tax owed to the government and the amount actually paid on a timely basis—some $245 billion in tax underpayments is attributable to individuals, and that about $110 billion of that amount is Schedule C income. He added that it would be “beneficial” for the IRS to direct its audit resources toward those returns.

The most recent published estimate of the tax gap covers the years 2011 through 2013. IRS Commissioner Rettig recently told the Senate Finance Committee that an updated estimate—covering the period from 2014 through 2016, with projections for 2019—will be released this summer. (For prior coverage, see *Tax News &*

*Views*, Vol. 23, No. 14, Apr. 8, 2022.) Rettig stood by that pledge during his appearance this week before the House Appropriations Financial Services and General Government Subcommittee.
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220408_1.html

**Attrition concerns:** Democratic taxwriter Judy Chu of California noted that, according to the GAO report, 15 percent of the Service's current audit personnel is scheduled to retire over the next three years. She asked McTigue about the likely impact of an influx of new, relatively inexperienced auditors on the Service's efforts to beef up audit activity in the high-wealth, high-income sector.

McTigue emphasized that these audits require a higher level of skill because of the complexity of the returns involved. Developing the proficiency to become a seasoned tax auditor can require up to a year of formal training plus four to five years of on-the-job training, he said.

McTigue added that the Service faces a separate retention issue as mid-career experienced auditors leave the agency for the private sector.

For his part, IRS Commissioner Rettig relayed similar concerns to House appropriators at their May 18 hearing, noting that the Service currently has 6,500 experienced agents to examine some 4 million complex business and individual returns—a dynamic that he has previously said leaves the IRS "outgunned." The anticipated attrition among audit personnel will make this problem even worse, he stated.

**Pandemic processing backlog**

Oversight Subcommittee Chairman Pascrell asked witness Kenneth Corbin, the IRS's chief taxpayer experience officer and commissioner of the Wage and Investment Division, about the agency's progress in clearing the pandemic-related backlog of unprocessed returns from tax years 2020 and 2021.

Corbin replied that the Service began calendar year 2022 with 8.2 million unprocessed paper returns in inventory and has reduced that amount to 1.7 million as of May 6. He noted that the agency is continuing to redeploy existing personnel to "surge teams" that are tasked with processing returns as well as handling correspondence and other account management issues, and that the goal remains to bring the Service back to pre-pandemic status by the end of this calendar year. (Commissioner Rettig also has stated in recent weeks that the inventory of unprocessed returns would be restored to "healthy" levels by the end of calendar year 2022, and he told House appropriators at their May 18 hearing that the IRS remains on track to meet that deadline.)

Ranking member Rice asked about the status of an IRS campaign to hire an initial tranche of 5,000 workers this year to address unprocessed returns and other taxpayer correspondence—an effort that was bolstered by a provision in the recently enacted budget agreement for fiscal year 2022 that gave the IRS direct-hire authority, which allows the agency to onboard new hires in just 30 to 45 days (compared to the six to eight months under normal government hiring procedures).

Corbin replied that the Service has had "some success" in filling customer service positions but has found it more difficult in a "very competitive" employment market to fill lower-level job openings.

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP

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## Look for Finance mark-up of retirement security legislation in June, Cardin says

Senate taxwriters hope to mark up another round of retirement security legislation in June, after Congress returns from its Memorial Day recess, Finance Committee Democrat Ben Cardin, D-Md., told reporters this week.

The legislation would build on 2019's Setting Every Community Up for Retirement Enhancement (SECURE) Act, a bipartisan measure that was enacted into law as part of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94).
**URL:** https://www.congress.gov/116/plaws/publ94/PLAW-116publ94.pdf

Finance Committee Chairman Ron Wyden, D-Ore., stated last month that members of the panel have been "sifting through" various proposals to include in what is known informally as the SECURE 2.0 bill and that a mark-up schedule will be dictated by when there is consensus on which provisions should be make the cut.

The panel currently has a number of bipartisan proposals to draw on in crafting a legislative package. Thus far in the 117th Congress, Wyden has released the Encouraging Americans to Save Act (S. 2452); Ben Cardin and taxwriter Rob Portman, R-Ohio, have reintroduced their Retirement Security and Savings Act (S. 1770); and taxwriters Charles Grassley, R-Iowa, Maggie Hassan, D-N.H., and James Lankford, R-Okla., have introduced their Improving Access to Retirement Savings Act (S. 1703).
**URL:** https://www.congress.gov/bill/117th-congress/senate-bill/2452/text?q=%7B
**URL:** https://www.congress.gov/bill/117th-congress/senate-bill/1770/text?q=%7B
**URL:** https://www.congress.gov/bill/117th-congress/senate-bill/1703/text?q=%7B

Across the Rotunda, the House approved its own version of a SECURE 2.0 bill—the Securing a Strong Retirement Act of 2022 (H.R. 2954), sponsored by Ways and Means Committee Chairman Richard Neal, D-Mass., and ranking member Kevin Brady, R-Texas—on March 29 by a vote of 414-5. That measure includes an array of provisions aimed at making it easier for businesses to offer tax-qualified retirement savings plans to their employees and for individuals to participate in retirement plans and grow their tax-preferred savings. The cost of those incentives would be offset by provisions to expand "Roth" treatment of certain retirement accounts and retirement account contributions. (For prior coverage, see *Tax News & Views*, Vol. 23, No. 13, Apr. 1, 2022.)
**URL:** https://www.congress.gov/bill/117th-congress/house-bill/2954/text
**URL:** https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220401_1.html

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP