



January 30, 2024

The Honorable Janet Yellen
Secretary
Department of Treasury
1500 Pennsylvania Ave. NW
Washington, D.C. 20220

Dear Secretary Yellen:

We write to you in opposition to the unnecessary and unconstitutional efforts to empower the Internal Revenue Service (IRS) with the expansive authority to prepare and file tax returns for all taxpayers. Congress has never granted the Department of the Treasury authority to create a Direct File program. And for good reason: the American taxpayers do not want to invite the proverbial fox into the hen house. A Direct File program will also have negative consequences for low-income filers and devastate small businesses.

The United States Constitution vests the power to make laws and appropriate funds with Congress. Administrative agencies, meanwhile, “are creatures of statute” and thus “possess only the authority that Congress has provided.” *Nat’l Fed’n of Indep. Bus. v. DOL, OSHA*, 142 S. Ct. 661, 665 (2022). Allowing the Treasury Department to set up an IRS-run Direct File Pilot Program is a clear attempt by the Biden administration to circumvent these constitutional limitations. Congress has neither passed legislation granting this authority to Treasury nor allocated any additional funds for this program.

From the start, this process has been plagued by repeated missteps and misrepresentations that now demand oversight. In 2022, Congress passed the *Inflation Reduction Act*, which allocated \$15 million to commission a study from an “independent third party” to report on “the overall feasibility, approach, schedule, cost, organization, and design” of an IRS-run tax preparation system (“Direct File”). But contrary to that congressional mandate, the IRS chose New America—a liberal think tank—to complete the study even though the organization had extensively supported an IRS-run Direct File system in the past.¹

¹ See H. COMM. ON WAYS & MEANS, *Smith, Schweikert Call Out Biden Administration for Cooking the Books on IRS E-File Study* (March 4, 2023), <https://waysandmeans.house.gov/smith-schweikert-call-out-biden-administration-for-cooking-the-books-on-irs-e-file-study/>.

DEPARTMENT OF JUSTICE

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IRS Commissioner Daniel Werfel testified before the Senate Finance Committee in April 2023 that he “[didn’t] want to weigh in on the debate [on Direct File]. I want you [Congress], and the Treasury Department, and the President, to decide.”² These assurances proved hollow just one month later when Treasury announced the results of its so-called “independent feasibility study.” In that announcement the Department also said it would immediately begin building a Direct File pilot program that would launch in time for the 2024 tax season.³ Yet Congress only appropriated \$15 million for a feasibility study—it did not vote on or appropriate any funds to construct this pilot program. Considering the pilot program was announced simultaneously with the results of the study, these funds were potentially misappropriated or misused in pursuit of a policy priority violating Congressional intent and a plain reading of the law.

Unsurprisingly, New America’s feasibility study was deeply flawed. Truly independent sources found that there were problems with both the study itself and an IRS-run Direct File system broadly. The Treasury Inspector General for Tax Administration (TIGTA), an independent watchdog, concluded that the IRS may have overstated taxpayer interest in the agency-run e-filing system.⁴ The IRS claimed that Direct File would only cost taxpayers \$78 million, but TIGTA concluded that these “direct file cost estimates could not be substantiated” because of questions surrounding how many taxpayers would use Direct File and how the IRS estimated costs associated with customer support and product development. In contrast, an earlier estimate from Govini estimated the costs for a potential IRS-run free filing system would be comparable to the costs of Healthcare.gov—a boondoggle that cost more than \$21.2 billion in its first 11 years.⁵ Govini also noted the federal government’s “troubled track record” when it comes to “delivering high quality, secure customer-facing technology solutions,”⁶ which would put the privacy of millions of taxpayers at risk.

The federal tax system needs reform to better serve the public. But this pilot program doesn’t address any of those needs. MITRE conducted a survey in early 2023

² *The President’s Fiscal Year 2024 IRS Budget and the IRS’s 2023 Filing Season: Hearing Before the S. Finance Comm.*, 118th Cong. (April 19, 2023), 2:34:00, at <https://www.finance.senate.gov/hearings/the-presidents-fiscal-year-2024-irs-budget-and-the-irss-2023-filing-season>.

³ David Lawder, *US IRS to Launch Free Tax E-File Pilot Program in 2024*, REUTERS (May 16, 2023), <https://www.reuters.com/world/us/irs-launch-free-us-direct-tax-filing-pilot-program-2024-2023-05-16/>.

⁴ TREASURY INSPECTOR GEN. FOR TAX ADMIN., REP. NO. 2024-408-002, INFLATION REDUCTION ACT: ASSESSMENT OF A FREE AND ELECTRONIC DIRECT FILING TAX RETURN SYSTEM (Oct. 2, 2023), <https://www.tigta.gov/sites/default/files/reports/2023-10/2024408002fr.pdf>.

⁵ Govini, *Affordable Care Act Marketplace*, at 1 (2021), <https://govini.com/wp-content/uploads/2022/02/Govini-ACA-Marketplace.pdf>.

⁶ *Id.*

gauging taxpayer interest in an IRS-run Direct File program.⁷ Only 37 percent of filers with simple returns would use an IRS-run system. A scant 29 percent of taxpayers would use this system if it did not also prepare state and local returns. And since taxpayers in participating states will have to use separate platforms to file their state and federal taxes, Direct File doesn't address the actual needs of American taxpayers.

Moreover, there's an obvious conflict of interest when the IRS acts as tax preparer, filer, and auditor—a conflict destined to impact vulnerable and low-income taxpayers the most. Research from Syracuse University found that the IRS was five times more likely to audit low-income households earning less than \$25,000 a year.⁸ Recipients of the Earned Income Tax Credit (ETIC) are also twice as likely to be audited than taxpayers earning \$500,000.⁹

According to public reports, the Direct File pilot program will be limited to these same taxpayers, supporting only limited deductions and credits such as EITC.¹⁰ We urge the IRS to identify and address the root causes of the agency's historic discrimination against low-income taxpayers before launching a system purportedly designed to assist these very same individuals. This is especially important because an IRS-run Direct File program may leave taxpayers with the mistaken impression that the IRS is an independent and disinterested party.

The American public is rightly skeptical of the IRS given its terrible record. The IRS is infamous for its consistently poor customer service. In 2021, the IRS answered just 2 percent of the calls to its official help line.¹¹ The next year, the IRS had a backlog of 21.3 million returns.¹² If the IRS is already unable to answer the most routine calls from American taxpayers, Direct File will only exacerbate the agency's failures. And when the IRS cannot answer routine inquiries from American taxpayers about Direct File, fraudsters will be all too eager to fill that void.

⁷ Editorial, *Cooking the IRS Study Books*, WALL ST. J. (April 26, 2023), <https://www.wsj.com/articles/irs-study-taxes-progressives-new-america-elizabeth-warren-caecc62d>.

⁸ TRAC, *IRS Audits Poorest Families at Five Times the Rate for Everyone Else* (March 8, 2022), <https://trac.syr.edu/tracirs/latest/679/>.

⁹ Paul Kiel & Jesse Eisinger, *Who's More Likely to Be Audited: A Person Making \$20,000 – or \$400,000?* PROPUBLICA (Dec. 12, 2018), <https://www.propublica.org/article/earned-income-tax-credit-irs-audit-working-poor>.

¹⁰ See IRS DIRECT FILE UPDATE (“Eligibility to participate in the pilot will be limited to filers with relatively simple tax returns reporting only certain types of income and claiming limited credits and deductions.”)

¹¹ Michelle Singletary, *If You Call the IRS, There's Only a 1-in-50 Chance You'll Reach a Human Being*, WASH. POST (April 23, 2021), <https://www.washingtonpost.com/business/2021/04/23/irs-1040-hotline/>.

¹² Irina Ivanova, *Taxpayers Face “Unprecedented” Delays Getting Their Refunds, IRS Watchdog Says*, CBS NEWS (June 22, 2022), <https://www.cbsnews.com/news/tax-refund-delays-irs-national-taxpayer-advocate-unprecedented/>.

And even if the agency manages to hire the tens of thousands of IRS agents it supposedly needs to “improve tax enforcement and customer service,”¹³ those agents won’t provide the same service and advocacy for the American taxpayer as the thousands of small business tax professionals who are already serving their communities around the nation. Given the IRS’s existing pattern of discrimination against individuals with lower incomes, it’s much more likely that those agents will harass vulnerable and well-meaning taxpayers.

A decade ago, the IRS under President Obama and then-Vice President Biden targeted nonprofit organizations based on their political leanings.¹⁴ In May 2023 (just 24 hours before it announced this pilot program), the IRS admitted that it has historically audited Black taxpayers at much higher rates than other taxpayers.¹⁵ Why would any American trust the IRS to not abuse its power?

Every year, tens of millions of taxpayers file their taxes for free with help from existing programs or online software. Additionally, millions of Americans work with small businesses in our states to file their taxes at an affordable cost, including both independent tax preparation services and local accountants. They choose to do so because they want an advocate in their corner who will represent their interests against the IRS bureaucracy. The Direct File program needlessly threatens the livelihood of thousands of these small businesses tax preparers. And this new system is likely to fail the very people it’s intended to help.

Treasury’s attempt to establish an IRS-run Direct File system side-steps Congress’ constitutional authority and the will of the American people by unilaterally establishing a new government program and further empowering an IRS that has repeatedly targeted some of the most vulnerable taxpayers. We urge the Department to end the IRS-run Direct File pilot program. The agency should take no further steps on the program until it completes a truly independent feasibility study as directed by Congress.

Sincerely,



Austin Knudsen
ATTORNEY GENERAL OF MONTANA

¹³ David Lawder, *U.S. IRS to Hire Nearly 20,000 Staff Over Two Years with \$80 Billion in New Funds*, REUTERS (April 10, 2023), <https://www.reuters.com/world/us/us-irs-hire-30000-staff-over-two-years-it-deploys-80-bln-new-funding-2023-04-06/>.

¹⁴ See *Justice Department Settles with conservative groups over IRS scrutiny*, REUTERS (Oct. 26, 2017), <https://www.reuters.com/article/idUSKBN1CV1TX/>

¹⁵ Shawna Mizelle, *IRS Chief Acknowledges Black Taxpayers Face Higher Probability of Being Audited*, CNN (May 17, 2023), <https://www.cnn.com/2023/05/17/politics/irs-black-taxpayers-audit-disparities/index.html>.



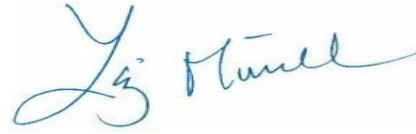
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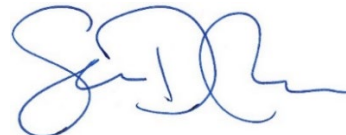
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