

April 13, 2023

The Honorable Daniel I. Werfel
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, DC 20224

The Honorable Janet Yellen
Secretary of the Treasury
U.S Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Commissioner Werfel and Secretary Yellen:

I write to you regarding my ongoing concerns about racial inequities in tax enforcement. A new paper published earlier this year by Stanford's Institute for Economic Policy Research (IEPR) found that the Internal Revenue Service (IRS) audits Black taxpayers at 2.9 to 4.7 times the rate of non-Black taxpayers.¹ Unfortunately, this analysis is just the latest in a long line of research raising concerns that IRS audit selection processes are disproportionately impacting low-income Black Americans.

I appreciate President Biden's administration-wide commitment to promoting racial equity and to enhancing equity in tax policy and tax enforcement specifically,² and I urge you to follow through on these commitments by analyzing and addressing racial inequities in tax enforcement.

In January 2023, researchers from Stanford University and the U.S. Treasury Department (Treasury) published a new working paper that found, despite race-blind audit selection, the IRS audits Black taxpayers at 2.9 to 4.7 times the rate of non-Black taxpayers.³ Overall, 14 percent of the disparity is caused by the disproportionate Earned Income Tax Credit (EITC) auditing rate: the fact that EITC recipients are disproportionately Black, and the IRS disproportionately audits EITC recipients. But the vast majority – nearly 80 percent – of this racial disparity is driven by inequity in audit rates *among* taxpayers who claim EITC.⁴ In other words, the largest component

¹ Stanford University Institute for Economic Policy Research, "Measuring and Mitigating Racial Disparities in Tax Audits," Hadi Elzayn et al., January 2023, p. 1, <https://siepr.stanford.edu/publications/measuring-and-mitigating-racial-disparities-tax-audits>.

² The White House, "Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," press release, February 16, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>; The White House, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," press release, January 20, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

³ Stanford University Institute for Economic Policy Research, "Measuring and Mitigating Racial Disparities in Tax Audits," Hadi Elzayn et al., January 2023, p. 1, <https://siepr.stanford.edu/publications/measuring-and-mitigating-racial-disparities-tax-audits>.

⁴ *Id.*, p. 4.

of the racial disparity in audits is caused by the fact that the IRS is disproportionately likely to audit Black EITC recipients; for example, unmarried Black men with children that claim EITC care being audited at over twice the rate of their non-Black counterparts.⁵ Moreover, the researchers found that “the disparity cannot be fully explained by racial differences in income, family size, or household structure,” or “even by accounting for group-level differences in tax under-reporting.”⁶ Indeed, as commentary on the paper from the New York University (NYU) Tax Law Center explains, “The researchers sorted tax filers into ten equally sized groups based on the dollars of under-reported tax ultimately identified during audits, and they found that within each group, Black tax filers were more likely to be selected for audits than non-Black tax filers.”⁷

The same report suggests this disparity may be due to IRS audit selection computer algorithms (or assigned scores). The full details of these algorithms are kept private in order to stop tax evaders from taking advantage of them, but the working paper suggests that audit algorithms prioritize the existence of under-reporting and specific overpayment of refundable tax credits, which disproportionately affect Black tax filers and exacerbate racial disparities.⁸

The IEPR working paper, while providing new insights and clarity, is just the latest in a line of research raising concerns about racial inequities in tax enforcement. In 2019, former IRS Economist Kim Bloomquist found that the IRS purposefully ignoring geographic location in audit case selection does not “balance coverage across the country” and instead leads to regional bias, particularly because of a focus on EITC claimant risk, which in turn has resulted in disproportionately targeting poor Black communities in the South.⁹ Additionally, a 2022 NYU Law Review article highlights that the IRS being race-blind has not resulted in racially neutral outcomes, and instead has exacerbated racial disparities in tax administration.¹⁰ I previously raised these findings with former IRS Commissioner Charles Rettig, and was frustrated to have my concerns dismissed.¹¹ This latest working paper should put to bed any question about the existence of a problem with racial inequities in audits.

IRS and Treasury must conduct internal examinations of these racial disparities. The IRS’s mission is to ensure tax compliance, and enforce the tax laws “with integrity and fairness to all”¹² – and the inability to obtain data that would allow the agency to track and identify racial or

⁵ *Id.*

⁶ *Id.*

⁷ New York University Tax Law Center, “New Evidence on Racial Disparities in IRS Audit Selection Calls for Immediate Action,” Kathleen Bryant and Chye-Ching Huang, March 2, 2023, p. 2, https://www.law.nyu.edu/sites/default/files/New%20Evidence%20on%20Racial%20Disparities%20in%20IRS%20Audit%20Selection%20Calls%20for%20Immediate%20Action_0.pdf.

⁸ *Id.*, p. 11.

⁹ Tax Notes, “Regional Bias in IRS Audit Selection,” Kim M. Bloomquist, March 4, 2019, <https://www.taxnotes.com/tax-notes-today-federal/audits/regional-bias-irs-audit-selection/2019/03/19/2957w>; The Atlantic, “The IRS Is Targeting the Poorest Americans,” Dorothy A. Brown, July 27, 2021, <https://www.theatlantic.com/ideas/archive/2021/07/how-race-plays-tax-policing/619570/>; ProPublica, “Where in The U.S. Are You Most Likely to Be Audited by the IRS?” Paul Kiel and Hannah Fresques, April 1, 2019, <https://projects.propublica.org/graphics/eitc-audit>.

¹⁰ New York University Law Review, “Colorblind Tax Enforcement,” Jeremy Bearer-Friend, April 2022, <https://www.nyulawreview.org/issues/volume-97-number-1/colorblind-tax-enforcement/>.

¹¹ Senate Committee on Finance, “The IRS’s Fiscal Year 2022 Budget,” June 8, 2021, <https://www.finance.senate.gov/imo/media/doc/50980.pdf>.

ethnic discrepancy data prevents it from fulfilling that mission. I appreciate the commitment that Commissioner Werfel made during his Senate confirmation hearing to report to Congress within 60 days on why there is racial discrimination in auditing, and what will be done to correct it.¹³ This action would be consistent with President Biden’s Executive Orders to advance racial equity and support for underserved communities through the federal government, including by “gather[ing] the data necessary to inform that effort.”¹⁴ It also would align with IRS funding and transformation goals, and the Taxpayer Bill of Rights.¹⁵

The IRS has not and does not collect information on race and ethnicity. Neither IRS Form 1040, the Statistics of Income Division IRS Data Book, the Joint Committee on Taxation’s Bluebook, nor the Treasury Office of Tax Analysis’s Tax Expenditure Budget provide specific information on taxes paid based on race and ethnicity.¹⁶ In contrast, many other federal agencies collect such data, in part due to the 1977 Office of Management and Budget (OMB) directive to standardize this information across the federal government.¹⁷ Clearly, race-blind tax data has not led to race-blind tax enforcement outcomes.¹⁸ The IRS should collect racial data in a way that protects taxpayers and allows the IRS to guard against racial bias.

Indeed, the Treasury Department recently completed a racial equity analysis for tax benefits using imputation methods.¹⁹ This study found that white families disproportionately benefit from preferential rates in capital gains and dividends, deductions for pass-through income, and the home mortgage interest deduction. It also found that Black and Hispanic families disproportionately benefit from the EITC, and Hispanic families disproportionately benefit from the Premium Tax Credit and Child Tax Credit.

¹² Internal Revenue Service, “Internal Revenue Manuals,” Part 1.1.1.2 (07-29-2019) https://www.irs.gov/irm/part1/irm_01-001-001#:~:text=The%20IRS%20mission%3A,IRS%20should%20perform%20that%20role.

¹³ Senate Finance Committee, Responses to Questions for the Record from Daniel Werfel, February 24, 2023, p. 72, <https://www.finance.senate.gov/imo/media/doc/Daniel%20Werfel%20Senate%20Finance%20Committee%20QFR's%20-%20February%2024,%202023.pdf>.

¹⁴ The White House, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” press release, February 16, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>; The White House, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” press release, January 20, 2021 <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

¹⁵ Internal Revenue Service, “New IRS Strategic Plan: Agency issues five-year plan with goal to help taxpayers,” press release, July 20, 2022, <https://www.irs.gov/newsroom/new-irs-strategic-plan-agency-issues-five-year-plan-with-goal-to-help-taxpayers>; Internal Revenue Service, “Taxpayer Bill of Rights,” <https://www.irs.gov/taxpayer-bill-of-rights>.

¹⁶ Tax Law Review, “Should the IRS Know Your Race? The Challenge of Colorblind Tax Data,” Jeremy Bearer-Friend, August 24, 2018, pp. 3-4, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3231315.

¹⁷ Management and Budget Office, Federal Register Notice “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,” October 30, 1977, <https://www.federalregister.gov/documents/2016/09/30/2016-23672/standards-for-maintaining-collecting-and-presenting-federal-data-on-race-and-ethnicity>.

¹⁸ Tax Law Review, “Should the IRS Know Your Race? The Challenge of Colorblind Tax Data,” Jeremy Bearer-Friend, August 24, 2018, pp. 37-38, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3231315.

¹⁹ Department of Treasury, “Disparities in the Benefits of Tax Expenditures by Race and Ethnicity,” Lily Batchelder and Greg Leiserson, January 20, 2023, <https://home.treasury.gov/news/featured-stories/disparities-in-the-benefits-of-tax-expenditures-by-race-and-ethnicity>.

I urge both the Treasury Department and IRS to examine and take concrete steps to address racial inequities in tax benefits *and* enforcement. This effort to examine and increase equity in enforcement should include audit selection, as well as other areas such as seizure of assets, length of time refunds are held, tax relief including the innocent spouse relief program, collection due process hearings, civil penalty assessments, criminal referrals, and tax court litigation outcomes.²⁰ More broadly, you can and should study the racial equity implications of IRS budgeting, benefits, and enforcement priorities, and use that analysis to inform future decision-making. I look forward to reviewing your report and engaging with you further on these issues.

Sincerely,



Elizabeth Warren
United States Senator

²⁰ Taxpayer Advocate Service, “Roadmap,” <https://www.taxpayeradvocate.irs.gov/get-help/roadmap/>.