

United States Senate

WASHINGTON, DC 20510-6200

July 31, 2024

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

Dear Commissioner Werfel,

We write with serious concerns regarding your agency's recent unilateral and unauthorized action to create a permanent Internal Revenue Service (IRS) Direct File tax preparation program. Despite numerous problems and objections from members of Congress, the IRS announced the launch of its permanent Direct File program on May 30, 2024.

This program was not authorized by Congress and is a massive and ill-advised expansion of the power of the IRS. The recent ruling of the Supreme Court of the United States (SCOTUS) in *Loper Bright Enterprises v. Raimondo* calls into question administrative actions that go beyond the clear intent of Congress.

The IRS was not authorized to launch a new tax preparation program, despite legislation to do so having been previously introduced. It was given the narrow authority and funds to study the feasibility of a Direct File program. Public Law 117-169, which was jammed through Congress on a partisan basis, gave the IRS \$15 million to conduct an unbiased study that would examine the feasibility, taxpayer interest, and cost of a Direct File tax return system. Instead, the IRS hired a partisan think tank and professor, who were already on record as being supportive of a Direct File program.

Immediately following the completion of the study, the IRS moved forward with a Direct File "pilot" program to prepare tax returns for the 2024 filing season. Now, in the face of widespread concerns and criticism, the IRS has decided to make this temporary and experimental program into a permanent government tax preparation scheme. The American people do not want an all-encompassing IRS acting simultaneously as the tax collector, tax auditor, tax enforcer, and tax preparer.

Serious legal questions exist about the IRS Direct File launch. Many of these issues have been raised in congressional letters, statements, and inquiries. Notably, the Attorneys General from 13 states raised their concerns about the Direct File program in a letter to the administration saying, "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, as elected lawmakers, share the same view.

On top of these serious legal concerns, we also have policy and implementation concerns about Direct File. For example, despite rhetoric from the agency and proponents of Direct File, as well as a sustained media and outreach campaign, the initial pilot program fell short of its target metrics. Less than 140,000 taxpayers utilized the program, far short of the expected 300,000 participants – and even further short of the potential user pool. Of the estimated 19 million eligible tax filers from 12 selected states, only 0.7% of taxpayers utilized the program.

Additionally, the IRS Direct File program is not adequately equipped to support tax returns for the tens of millions of Americans who have anything other than extremely basic returns. For example, Direct File excluded many categories of taxpayers, such as those who own their own businesses, collect income from property and investment, or work as independent contractors, such as ride-share drivers and delivery workers.

Further, Direct File is not fully integrated with state-level tax filings, forcing taxpayers to file state and local taxes with other providers (or by paper). This resulted in Direct File participants having to spend more time and additional resources to complete their tax filing this season. Under an expanded and permanent program, this particular issue would be exacerbated. This is one reason why 21 state financial officers, representing 18 different states, penned a letter to the IRS and Department of Treasury pushing back on the Direct File program. They wrote, “We urge you to terminate Direct File following the current pilot program, as Direct File will create challenges for taxpayers and state treasurers and the costs of Direct File far outweigh any potential benefits it may confer to taxpayers. Regrettably, Direct File is a solution in search of a problem.”

There are also questions and concerns regarding the actual cost, and cost estimates, of the program. The Treasury Inspector General for Tax Administration (TIGTA), in an assessment of the IRS Direct File pilot program said, “...when we asked the IRS for documentation supporting how it arrived at these various cost estimates, it could not provide us with any. As such, we could not evaluate if the IRS’s cost estimates were reasonable.” The Government Accountability Office (GAO) agreed with TIGTA’s assessment. The GAO concluded the pilot was not capturing information that would improve the IRS’ cost/benefit analyses of Direct File.

The IRS, by its own estimate, believes the Direct File program could cost in excess of \$249 million annually. This is in contrast with various successful free filing options offered or supported by the private sector which impose no cost on taxpayers. Other government websites and platforms of similar magnitude and complexity have cost taxpayers billions of dollars, such as the Obamacare enrollment system which was subject to numerous failures and crashes. As the IRS seeks to expand the Direct File program and displace free private sector options, we believe the costs associated with the program would skyrocket.

Taxpayers already have access to numerous free tax-filing options and dozens of national non-profit entities offer tax preparation services at no cost. More than 30 million taxpayers annually utilize these services, which are far more effective. The IRS does not have unlimited resources

and should focus on improving information technology systems, data privacy, and long-standing customer service issues. It should not be focused on unilaterally expanding its own power, without congressional approval, through a permanent government tax preparation scheme that is unnecessary, problematic, costly, and illegitimate.

We request written responses to the following questions no later than 5:00 p.m. on Wednesday, August 14, 2024:

1. What is the specific statutory basis for the IRS launching and maintaining a permanent Direct File program?
 - a. How does this cited authority demonstrate Congress' clear intent that the IRS permanently undertake such a program?
 - b. How does the IRS respond to the claim that the recent ruling from SCOTUS (*Loper Bright Enterprises v. Raimondo*) reaches situations of administrative overreach, like the unilateral creation of a Direct File program?
2. What funds does the IRS believe Congress specifically appropriated for the purpose of launching and maintaining a Direct File tax system?
3. Did the IRS reallocate or otherwise redirect funds obligated to or originally anticipated to be spent on other programs and initiatives, like Taxpayer Services, to pay for the creation of the pilot and permanent Direct File programs?
 - a. If so, please provide information detailing how much funding and which accounts the money was shifted from, as well as which accounts money will be shifted from in the future.
4. Does the IRS believe that any of its current or anticipated future employees will be hired into, reassigned, or otherwise redirected to support the Direct File program?
 - a. If so, please provide information detailing the IRS' estimates for the next five fiscal years of the number of such employees, the sectors from which they are moving, and the reasons for (or causal factors contributing to) the employee joining the Direct File program.
5. The IRS claims the Direct File pilot program was a success despite TIGTA's report from June 25, 2024, which found that the IRS met only three of seven of its self-identified key requirements for Phase A of the Direct File pilot program. GAO also found that the pilot would not collect data to adequately inform cost/benefit analyses of the IRS running a Direct File program. How could the IRS claim its program launch was a success when it fell short on key metrics and requirements, or that its reviews of the merits of the initiative are reasonable when both government oversight agencies tasked with reviewing the IRS have flagged them as fundamentally flawed?

6. What is the IRS doing to address concerns raised by 21 state financial officers who believe taxpayers might be harmed from the impact the Direct File program will have on state and local tax filing?
 - a. How will the IRS address the scope of the Direct File program to interact properly with the state and local tax filing process across numerous tax jurisdictions?

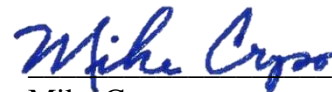
7. The IRS has repeatedly sidestepped concerns about the inherent conflicts of interest in operating a Direct File program, many of which have been previously raised with you publicly (including in unanswered questions for the record to you from your last hearing with the Senate Finance Committee) and privately. To hone a few of these:
 - a. How will the IRS act with respect to taxpayers whose Direct File-prepared returns are subject to audit or judicial review?
 - b. For example, what position will the IRS take when a taxpayer asserts that he or she was reasonably relying upon the advice provided by Direct File (or an IRS employee or contractor supporting Direct File)?
 - c. How will expanding Direct File to include additional taxpayers (and tax filing situations) change the IRS' actions with respect to the taxpayers described in (a), if at all?

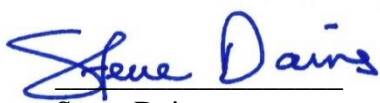
8. Does the IRS have plans to expand the scope of its Direct File program for taxpayers filing returns for pass-through business income or corporate income?
 - a. Have there been any discussions about expanding the scope of the Direct File program to business tax filing?
 - b. How will the IRS account for taxpayers who may have investment income?

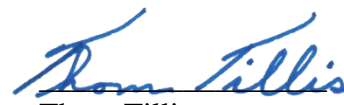
Thank you in advance for your attention to this matter and your prompt response to our questions.

Sincerely,


John Barrasso, M.D.
United States Senator


Mike Crapo
United States Senator


Steve Daines
United States Senator

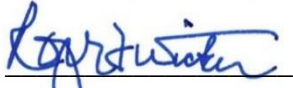

Thom Tillis
United States Senator



John Cornyn
United States Senator



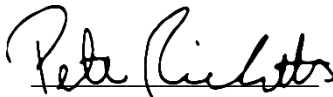
James E. Risch
United States Senator



Roger F. Wicker
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Marsha Blackburn
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Pete Ricketts
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Deb Fischer
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James Lankford
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John Thune
United States Senator



Mike Braun
United States Senator



M. Michael Rounds
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Shelley Moore Capito
United States Senator



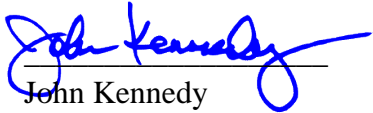
Kevin Cramer
United States Senator



Katie Boyd Britt
United States Senator



Marco Rubio
United States Senator



John Kennedy
United States Senator