

September 26, 2018

The Honorable Lynn Jenkins  
Chairman  
U.S. House Committee on Ways and Means,  
Subcommittee on Oversight  
1102 Longworth House Office Building  
Washington, DC 20515

The Honorable John Lewis  
Ranking Member  
U.S. House Committee on Ways and Means,  
Subcommittee on Oversight  
1102 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Jenkins and Ranking Member Lewis:

The Electronic Privacy Information Center (EPIC) writes to you today to ensure that the Internal Revenue Service (IRS) takes adequate steps to protect taxpayers' most sensitive information from inadvertent disclosure or theft.<sup>1</sup> EPIC has testified in Congress about the need to increase privacy safeguards to prevent the misuse and theft of Social Security Numbers (SSN) and other identifying information,<sup>2</sup> and maintains an extensive archive online about potential harms stemming from misuse or wrongful disclosure of SSNs.<sup>3</sup>

Nearly seventeen percent of all identity-theft complaints to the Federal Trade Commission in 2017 stemmed from instances of tax fraud.<sup>4</sup> The IRS contributed considerably to this number: identity thieves using the online IRS Data Retrieval Tool stole the personal information of up to

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<sup>1</sup> *Hearing on the Internal Revenue Service's Taxpayer Online Authentication Efforts*, U.S. House Comm. on Ways and Means (Sept. 26, 2018), <https://waysandmeans.house.gov/event/hearing-on-the-internal-revenue-services-taxpayer-online-authentication-efforts>.

<sup>2</sup> *Hearing on Securing Americans' Identities: The Future of the Social Security Number Before the Subcomm. on Soc. Sec. of the H. Comm. on Ways and Means*, 115th Cong. (2018) (statement of EPIC Consumer Privacy Fellow Sam Lester), <https://epic.org/testimony/congress/EPIC-Testimony-HW&M-SS-Subcomm-5-17-18.pdf>; Statement of EPIC to Reps. Johnson, Larson, Hurd, and Kelly (May 22, 2017), <https://epic.org/testimony/congress/EPIC-HCOGR-SSN-May2017.pdf>.

<sup>3</sup> EPIC, *Social Security Numbers*, <https://epic.org/privacy/ssn>.

<sup>4</sup> Fed. Trade Comm'n, *Consumer Sentinel Network Data Book 2017: Identity Theft Reports by Type* (2018), <https://www.ftc.gov/policy/reports/policy-reports/commission-staff-reports/consumer-sentinel-network-data-book-2017/id-theft-reports-by-type>.

100,000 taxpayers.<sup>5</sup> This IRS tool was deployed on federal student-loan websites,<sup>6</sup> leaving students exposed to this fraud. The IRS estimated that this lapse ultimately cost over \$30 million in fraudulent tax returns.<sup>7</sup> EPIC has repeatedly highlighted the unique risks students face to their privacy,<sup>8</sup> and we encourage the Subcommittee to investigate this immense data breach.

The inability of the IRS to protect sensitive taxpayer information is pervasive throughout the agency. Besides allowing thousands of taxpayer records to improperly become public, the IRS repeatedly left identified network vulnerabilities unpatched,<sup>9</sup> failed to encrypt transfers of sensitive taxpayer data to third parties,<sup>10</sup> and did not follow its own data security and privacy procedures.<sup>11</sup> The IRS Inspector General recently concluded that “IRS policies are not in compliance with Federal electronic records requirements.”<sup>12</sup>

This cannot continue to be the state of affairs. As the Subcommittee examines IRS record-keeping practices, it must ensure that the IRS provides sufficient oversight of its employees and contractors—especially those in possession of sensitive taxpayer information. The Subcommittee should ask the IRS why it has not addressed these, and other identified issues, and should also press the IRS to ensure that online authentication systems are routinely tested to ensure they are secure against cyber attacks.<sup>13</sup>

Any changes to IRS systems should further account for the need to limit the use of the SSN as a ubiquitous identifier, a goal the IRS itself has acknowledged.<sup>14</sup> Reducing the use of SSNs will provide additional security and privacy to taxpayers, and help the IRS to protect sensitive information. We urge the committee to question the IRS about its intentions on this transition.

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<sup>5</sup> U.S. Dep’t Treasury Inspector Gen. for Tax Admin., *Annual Assessment of the Internal Revenue Service Information Technology Program* 24 (2017), <https://www.treasury.gov/tigta/auditreports/2017reports/201720089fr.pdf> [hereinafter *2017 OIG Report*].

<sup>6</sup> *Id.*

<sup>7</sup> Dave Rickard, *The Cost of 2017 Data Breaches*, CSO (Jan. 17, 2018), <https://www.csoonline.com/article/3249088/data-breach/the-cost-of-2017-data-breaches.html>.

<sup>8</sup> EPIC, *EPIC Student Privacy Project*, <https://epic.org/privacy/student>.

<sup>9</sup> U.S. Dep’t Treasury Inspector Gen. for Tax Admin., *Controls Continue to Need Improvement to Ensure That All Planned Corrective Actions for Security Weaknesses Are Fully Implemented and Documented* (2018), <https://www.oversight.gov/sites/default/files/oig-reports/201820066fr.pdf>.

<sup>10</sup> *2017 OIG Report*, *supra* note 5, at 27-28.

<sup>11</sup> Derek B. Johnson, *Audit Finds Another Cyber Headache for IRS*, FCW (June 25, 2018), <https://fcw.com/articles/2018/06/25/irs-transcript-breach-fallout.aspx>; *see also* U.S. Dep’t Treasury Inspector Gen. for Tax Admin., *The Cybersecurity Data Warehouse Needs Improved Security Controls* (2018), <https://www.treasury.gov/tigta/auditreports/2018reports/201820030fr.pdf>.

<sup>12</sup> *Id.* at 31.

<sup>13</sup> *See, e.g.*, FedRAMP, *Penetration Testing for All FedRAMP Moderate and High Systems* (May 3, 2018), <https://www.fedramp.gov/penetration-testing-for-all-fedramp-moderate-and-high-systems>.

<sup>14</sup> Use of Truncated Taxpayer Identification Numbers on Forms W-2, 82 Fed. Reg. 43,920 (proposed Sept. 20, 2017), <https://www.federalregister.gov/documents/2017/09/20/2017-19910/use-of-truncated-taxpayer-identification-numbers-on-forms-w-2-wage-and-tax-statement-furnished-to>. EPIC supported this proposal, and filed comments with the IRS. Electronic Privacy Information Center, Comment on Request for Public Comment on Use of Truncated Taxpayer Identification Numbers on Forms W-2 (Dec. 18, 2017), <https://epic.org/apa/comments/EPIC-IRS-SSN-Dec2017.pdf/EPIC-IRS-SSN-Dec2017.pdf>.

Thank you for your attention to these critical issues. EPIC looks forward to working with the Subcommittee to ensure that taxpayers are protected online. We ask that this letter be entered in the hearing record.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg  
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald  
EPIC Policy Director

/s/ Jeff Gary

Jeff Gary  
EPIC Legislative Fellow