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COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

May 26, 2017

The Honorable Steven Mnuchin
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Mnuchin:

The Committee on Homeland Security and Governmental Affairs has conducted extensive oversight on the damage caused by our unsecure borders.¹ Thankfully, we now have an Administration committed to securing our borders. Under the Obama Administration, however, the Internal Revenue Service (IRS) continued to provide a significant incentive for illegal immigration by failing to prevent the issuance of billions of dollars in fraudulent overpayments of the Additional Child Tax Credit (ACTC) to illegal aliens.² Despite the Administration's prioritization of border security and calls from Republicans, Democrats, and an independent inspector general for the IRS to correct this problem,³ the Committee learned in recent testimony that the IRS, under Commissioner John Koskinen, allows these fraudulent overpayments to persist.⁴ I am writing to respectfully ask that the Treasury Department review the IRS's refusal to prevent fraudulent overpayments of the ACTC to illegal aliens.

¹ Majority Staff Report: The State of America's Border Security, S. Comm. on Homeland Sec. & Governmental Affairs, 114th Cong. (Nov. 2015); see e.g., *Improving Border Security: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2017); *The Effects of Border Insecurity and Lax Immigration Enforcement on American Communities: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2017); *Securing the Border: Understanding Threats and Strategies for Maritime Border: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015); *Securing the Border: Fencing, Infrastructure, and Technology Force Multipliers: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. (2015).

² See Treasury Inspector General for Tax Administration, 2011-41-061, Individuals Who Are Not Authorized to Work in the United States Were Paid \$4.2 billion in Refundable Credits (July 7, 2011); Treasury Inspector General for Tax Administration, 2012-42-081, Substantial Changes are Needed to the Individual Taxpayer Identification Number Program to Detect Fraudulent Applications (July 16, 2012); see also Lisa Rein, *Undocumented Workers Got Billions from IRS in Tax Credits, Audit Finds*, THE WASHINGTON POST (Sept. 2, 2011).

³ See S. 53, 114th Cong. (2015); H.R. 1333, 114th Cong. (2015); H.R. 1249, 114th Cong. (2015); Letter from The Honorable Claire McCaskill, U.S. Senator, to The Honorable Douglas Shulman, Commissioner, Internal Revenue Service (Sept. 7, 2011); Treasury Inspector General for Tax Administration, 2011-41-061, Individuals Who Are Not Authorized to Work in the United States Were Paid \$4.2 billion in Refundable Credits.

⁴ *Duplication, Waste, and Fraud in Federal Programs: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2017) (statement of J. Russell George, Inspector General, Treasury Inspector General for Tax Administration at 11). [Hereinafter Duplication Hearing].

According to the Treasury Inspector General for Tax Administration (TIGTA), the IRS issues billions of dollars in ACTC overpayments, including vast amounts to illegal aliens, every year.⁵ The fraud inherent in the ACTC program is not new. In March 2009, TIGTA identified a trend of ACTC claimants using an Individual Taxpayer Identification Number (ITIN) rather than an SSN.⁶ In 2011 and 2012, TIGTA found that the IRS had failed to halt payments to questionable ITIN filers or verify eligibility, likely leading to significant fraud.⁷ TIGTA found that the program was “so deficient that there is no assurance that ITINs are not being assigned to individuals submitting questionable applications.”⁸

Illegal aliens are likely to file an ITIN because ITINs are issued without regard to immigration status.⁹ Although federal law makes illegal aliens ineligible for any public benefit,¹⁰ the IRS’s refusal to require SSNs for the ACTC allows illegal aliens to receive fraudulent ACTC payments. TIGTA Inspector General J. Russell George has urged the IRS to require an SSN from filers claiming the ACTC, stating that “the IG’s office believe[s] that Federal law does require [the] same [SSN] restriction” as is required of the Earned Income Tax Credit.¹¹ This safeguard ought to be necessary because ITIN filers are claiming ACTC refunds on 72 percent of their filings.¹² By contrast, filers with SSNs only claim the ACTC on 14 percent of their filings.¹³ The IRS, however, appears to refuse to implement such a change.

In addition to requiring an SSN, the IRS must also crack down on fraudulent payments to individuals who use stolen SSNs. One of my constituents, Robert Guenterberg, became a victim of identity theft when his SSN was stolen by two illegal aliens in Chicago. They used his SSN to buy homes and open lines of credit. The IRS knew that thieves were using Guenterberg’s SSN illegally, but the IRS never informed him of the crime. This failure allowed the fraud to continue for several years, and to potentially incentivize additional illegal behavior. According to TIGTA,

⁵ Treasury Inspector General for Tax Administration, 2017-04-030, Revised Refundable Credit Risk Assessments Still Do Not Provide an Accurate Measure of the Risk of Improper Payments, at 4 (Apr. 28, 2017); *see also* Treasury Inspector General for Tax Administration, 2011-41-061, Individuals Who Are Not Authorized to Work in the United States Were Paid \$4.2 billion in Refundable Credits (July 7, 2011).

⁶ Duplication Hearing (statement of J. Russell George, Inspector General, Treasury Inspector General for Tax Administration at 11).

⁷ Treasury Inspector General for Tax Administration, 2011-41-061, Individuals Who Are Not Authorized to Work in the United States Were Paid \$4.2 billion in Refundable Credits (July 7, 2011); Treasury Inspector General for Tax Administration, 2012-42-081, Substantial Changes are Needed to the Individual Taxpayer Identification Number Program to Detect Fraudulent Applications (July 16, 2012).

⁸ Treasury Inspector General for Tax Administration, 2012-42-081, Substantial Changes are Needed to the Individual Taxpayer Identification Number Program to Detect Fraudulent Applications at 6.

⁹ *See* Treasury Inspector General for Tax Administration, 2011-41-061, Individuals Who Are Not Authorized to Work in the United States Were Paid \$4.2 billion in Refundable Credits at 1.

¹⁰ 8 U.S.C. § 1611(a) (emphasis added); 8 U.S.C. § 1611(c)(1)(B). Current law provides some exceptions to this rule; however, those exceptions primarily provide individuals living or working in the United States legally with the opportunity to apply for these benefits.

¹¹ Duplication Hearing (testimony of J. Russell George, Inspector General, Treasury Inspector General for Tax Administration).

¹² Treasury Inspector General for Tax Administration, 2011-41-061, Individuals Who Are Not Authorized to Work in the United States Were Paid \$4.2 billion in Refundable Credits at 7 (July 7, 2011).

¹³ *Id.*

during a four year period the IRS identified, but failed to notify, “almost 1.1 million taxpayers who were victims of employment-related identity theft.”¹⁴

The IRS’s refusal to correct the ACTC vulnerabilities potentially costs taxpayers billions of dollars in fraud each year. In 2001, individuals filing using an ITIN claimed \$62 million in ACTC refunds.¹⁵ By 2005, that number had increased to \$924 million.¹⁶ In 2008, ACTC refunds to ITIN filers totaled \$2.1 billion, while in 2010 the number doubled to \$4.2 billion.¹⁷ As of 2015, TIGTA determined that the IRS issued \$3.4 billion to ITIN filers.¹⁸ A TIGTA analysis in 2011 determined that “approximately 238,000 ITIN filers submitted more than 608,000 tax returns for multiple years at the same time and claimed just more than . . . \$1 billion.”¹⁹ Of those, almost 9,000 filers sought ACTCs of \$10,000 or more by filing tax returns for multiple years.²⁰

During a recent Committee hearing, Inspector General George testified that the IRS does not sufficiently identify potentially fraudulent behavior and fails to adequately address the fraud with existing authorities.²¹ One method to quickly reduce fraudulent ACTC payments is to require an SSN. The Treasury Department ought to review the IRS’s refusal and consider requiring that any filer claiming the ACTC in the next tax season prove their identity using an SSN. The IRS’s failure to remedy this vulnerability on its own accord not only continues to cost taxpayers billions of dollars every year, but also provides an incentive for illegal immigration into the country.

To assist the Committee in examining this matter, I ask that you please ask your staff to arrange a briefing for Committee staff about ACTC fraud. In particular, I ask that the Department’s Office of Tax Policy staff be prepared with the following information:

1. Whether the Treasury Department has identified the ACTC program as vulnerable for fraud and overpayments;
2. Whether the Treasury Department believes the existing legal authority is sufficient to disallow the use of ITINs for the ACTC;
3. Whether the IRS’s refusal to require an SSN for filers claiming the ACTC is consistent with the Department’s tax policy objectives; and

¹⁴ Treasury Inspector General for Tax Administration, 2016-40-065, Processes are not Sufficient to Assist Victims of Employment-Related Identity Theft at 5 (Aug. 10, 2016).

¹⁵ Treasury Inspector General for Tax Administration, 2011-41-061, Individuals Who Are Not Authorized to Work in the United States Were Paid \$4.2 billion in Refundable Credits at 4.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Duplication Hearing (statement of J. Russell George, Inspector General, Treasury Inspector General for Tax Administration at 11).

¹⁹ *Id.*

²⁰ Treasury Inspector General for Tax Administration, 2011-41-061, Individuals Who Are Not Authorized to Work in the United States Were Paid \$4.2 billion in Refundable Credits at 5.

²¹ Duplication Hearing.

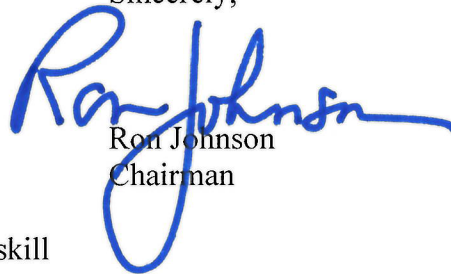
4. Whether the Treasury Department believes the IRS is appropriately notifying victims of fraud or identity theft.

Please provide this briefing as soon as possible but no later than 5:00 p.m. on June 9, 2017.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”²² Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine “the efficiency and economy of operation of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs.”²³

If you have any questions about this request, please ask your staff to contact Michael Lueptow of the Committee staff at (202) 224-4751. Thank you for your attention to this matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security

²² S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

²³ S. Res. 62 § 12, 115th Cong. (2017).