

RE: FREE FILE FIRST PROVISIONS IN THE TAXPAYER FIRST ACT OF 2019 (H.R. 1957)

June 3, 2019

The Honorable Charles Grassley
Chairman, Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Richard Neal
Chairman, House Ways & Means Committee
1102 Longworth HOB
Washington, D.C. 20515

The Honorable John Lewis
Chairman, Oversight Subcommittee
1102 Longworth HOB
Washington, D.C. 20515

The Honorable Ron Wyden
Ranking Member, Senate Finance Committee
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Kevin Brady
Ranking Member,
House Ways & Means Committee
1139 Longworth HOB
Washington, D.C. 20515

The Honorable Mike Kelly
Ranking Member, Oversight Subcommittee
1139 Longworth HOB
Washington, D.C. 20515

Dear Chairmen Grassley, Neal and Lewis and Ranking Members Wyden, Brady and Kelly:

We write to urge Congress not to codify the Internal Revenue Service's Free File program ("Free File") **as part of the Taxpayer First Act of 2019 (H.R. 1957)**. Tax filing is a civic obligation and should not be a financial burden for low- and moderate-income taxpayers.

We have long-standing, serious concerns about Free File.¹ And we have been increasingly alarmed by recent reports that tax preparation companies that participate in Free File have intentionally steered eligible consumers away from their free tax filing product and toward their often-expensive paid products. Accordingly, we urge you to ensure that pending tax administration legislation does not lock the IRS into the existing Free File arrangement or prevent it from pursuing options that could provide low- and moderate-income taxpayers with better free tax preparation and filing services and alternatives, including return-free filing.

The problems with Free File have been well documented. Last year, a special report in *Tax Notes* highlighted a variety of problems with Free File that result in a "failed program that, as currently conceived, inflicts substantial harm on taxpayers and tax administration."² The National Taxpayer Advocate Nina Olson has identified Free File as one of the IRS's most serious problems due to its failure to serve taxpayers' needs, in particular low-income, elderly, and English as a Second Language (ESL)

¹ Many of us have expressed these concerns in previous correspondence opposing prior versions of this legislation. See, e.g., Letter opposing S.3246, available at <https://www.nclc.org/images/pdf/taxes/letter-s-3246-taxpayer-first.pdf>.

² Dennis J. Ventry, Jr., "The Failed Free File Program Should be Reformed, Not Codified," *Tax Notes*, July 16, 2018, <https://www.taxnotes.com/tax-notes/return-preparation/failed-free-file-program-should-be-reformed-not-codified/2018/07/16/286zq#sec-2-1>. The problems included that at least one company participating in Free File requires taxpayers to agree to forced arbitration, that the current program appears to bar the IRS from notifying taxpayers of free tax preparation software and e-filing provided by states, and that Free File companies leverage the program to upsell paid products and services.

taxpayers.³ In recent weeks, *ProPublica* reported that TurboTax used “deceptive design and misleading advertising to trick lower-income Americans into paying to file their taxes, even though they are eligible to do it for free.”⁴ TurboTax and H&R Block reportedly even took steps to hide their Free File products from Google and other search engines. These kinds of tactics may help explain why, although more than 70 percent of tax filers meet the income eligibility criteria for Free File, less than 3 percent actually use it, with the numbers declining in recent years.

These recent reports warrant further inquiry from Congress into whether the companies in the Free File Alliance are actually offering a free and accessible service to low- and moderate-income taxpayers as promised. We believe such scrutiny will reveal that rather than serving taxpayers’ needs as intended, Free File often operates as a means for the private, for-profit tax preparation industry to gain direct access to consumers and their protected tax information for purposes of marketing and upselling expensive products and services.

If you nevertheless codify the Free File program, we urge you to amend the provision first and foremost to clarify that nothing in the legislation would restrict the IRS from developing or providing its own free tax preparation and filing services or software, and that nothing would prevent the IRS from withdrawing from the Free File Alliance for any reason.

Furthermore, we urge you to provide additional safeguards and transparency for taxpayers, including but not limited to:

- Requiring Free File Alliance companies to screen customers for eligibility for the company’s Free File product and prominently notify eligible customers that they can obtain free federal tax preparation services through their Free File product – as well as notifying customers of any free services offered by state or local governments;
- Requiring an annual audit of the Free File program to review compliance with the governing agreement;
- Requiring annual disclosures by Free File companies of the revenue received from taxpayers who are eligible for the Free File program;
- Directing the IRS to ensure that taxpayers can determine eligibility for specific Free File products—and free products offered by state and local governments—up front on the IRS website, and requiring Free File companies to condition eligibility only on factors (such as amount of income, age, and military service) that the taxpayers can determine before starting to calculate their tax liability;

³ Taxpayer Advocate Service, 2018 Annual Report to Congress, Vol. 1, at 65-78, https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume1_MSP_04_FREEFILE.pdf; NTA Blog, “The Free File Program Is Failing to Achieve Its Objectives and Should be Substantially Improved or Eliminated,” March 15, 2019, https://taxpayeradvocate.irs.gov/Free_File_Program_Is_Failing_to_Achieve_Objectives.

⁴ Justin Elliott, “TurboTax Deliberately Hid Its Free File Page From Search Engines,” *ProPublica*, April 26, 2019, <https://www.propublica.org/article/turbotax-deliberately-hides-its-free-file-page-from-search-engines>; see also Justin Elliott and Lucas Waldron, Here’s How TurboTax Just Tricked You Into Paying to File Your Taxes, *ProPublica*, April 22, 2019, <https://www.propublica.org/article/turbotax-just-tricked-you-into-paying-to-file-your-taxes>; Justin Elliott and Paul Kiel, “TurboTax and H&R Block Saw Free Tax Filing as a Threat – and Guttled It,” *ProPublica*, May 2, 2019, <https://www.propublica.org/article/intuit-turbotax-h-r-block-guttled-free-tax-filing-internal-memo>.

- Prohibiting the Free File companies from taking actions to limit public awareness of the Free File products, such as manipulating search engine results;
- Prohibiting the Free File companies from using the term “Free File” on their paid websites except where linking to their actual Free File website; and
- Confirming that the IRS continues to have the authority to develop a pilot program to provide data access and government-assisted returns for taxpayers who request them.

Thank you for your attention to this important issue.

Sincerely,

Organizations

African American Health Alliance
 American Federation of Government Employees (AFGE)
 Americans for Democratic Action (ADA)
 Americans for Financial Reform
 Americans for Tax Fairness
 California Reinvestment Coalition
 Catholic Charities of the Diocese of Houma Thibodaux
 Center for American Progress
 Center for Law and Social Policy (CLASP)
 Center on Budget and Policy Priorities
 Coalition on Human Needs
 Community Action of Southern IN
 Community Change Action
 Consumer Action
 Gary Community Investments Company
 Institute on Taxation and Economic Policy
 Just Harvest: A Center for Action Against Hunger
 MomsRising
 National Association of Consumer Advocates
 National Consumer Law Center, on behalf of its low-income clients
 National LGBTQ Task Force Action Fund
 NETWORK Lobby for Catholic Social Justice
 Patriotic Millionaires
 People for the American Way
 Prince George’s CASH Campaign
 Progressive Change Campaign Committee
 Public Citizen
 RootsAction.org
 Tax March
 U.S. PIRG
 UConn Law Tax Clinic
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