

## No surprises as Senate taxwriters vet Werfel for IRS commissioner role

Democrats and Republicans on the Senate Finance Committee stuck to familiar talking points regarding the new mandatory funding for the Internal Revenue Service authorized under the Inflation Reduction Act and voiced longstanding concerns about issues such as audit rates, taxpayer service, and data security during a hearing on February 15 to consider President Biden's nomination of Daniel Werfel to be the next IRS commissioner. And even though Republicans were particularly skeptical about what they characterized as the administration's plans for a "supersized IRS," they didn't aim any direct criticism at Werfel himself.

Werfel, as expected, offered policy views aligning with those of the administration, but he also sought to reassure taxwriters that he is "a rule follower" who "would only take actions that are consistent with what the IRS authorities are under the law," and that he is committed to winning the trust of Congress and the public.

### Enforcement funding and audit rates

The Inflation Reduction Act of 2022 (P.L. 117-169), which was enacted last August, authorizes roughly \$80 billion in new mandatory funding for the IRS over 10 years, with the bulk of that amount allocated to increased enforcement efforts. Treasury Secretary Janet Yellen last summer directed the IRS to produce a plan for administering the funds by February 17. (It was unclear at press time whether the report has been delivered to Treasury, and the department has not announced whether it intends to make the report public.)

**URL:** <https://www.congress.gov/117/plaws/publ169/PLAW-117publ169.pdf>

The White House and congressional Democrats have argued that the bump in enforcement funding will enable the agency to invest in customer service and technology upgrades and deploy highly specialized audit teams focused on top-tier corporations, large partnerships, and ultrawealthy individuals to help reduce the "tax gap"—that is, the difference between the dollar amount of taxes legally owed to the federal government and the amount actually paid and collected on a timely basis. Republicans, meanwhile, have countered that an increased enforcement budget will embolden the IRS to increase audit activity directed toward small businesses and middle-class taxpayers.

**Democrats bash 'two-tiered tax system':** At the hearing, Finance Committee Chairman Ron Wyden, D-Ore., asked Werfel about what he called the current "two-tiered tax system" resulting from an "imbalance" in audit rates of less affluent taxpayers compared to wealthy individuals and large businesses. Specifically, Wyden noted that an individual taxpayer claiming the earned income tax credit is eight times more likely to be subject to an audit than a large partnership.

Werfel replied that he agreed, based on his current understanding, that audit rates appear to be out of balance and that the issue requires attention.

"I'm not at the IRS, but if there is an imbalance that is concerning, especially if there is a disparate impact on poor people. If poor people are more likely to be audited than wealthy, that is something that I think potentially degrades public trust that needs to be addressed in the tax system," Werfel said.

Werfel told Wyden that if confirmed he would work with IRS leadership on a “transparent” strategy for rebalancing audit rates. He also emphasized that Treasury Secretary Yellen has directed the agency to ensure that none of the new enforcement funds authorized under the Inflation Reduction Act are used to increase audit rates—relative to their historical levels—on taxpayers with incomes below \$400,000. (Werfel likewise pledged in his opening statement that under his watch “audit and compliance priorities will be focused on enhancing IRS capabilities to ensure America’s highest earners comply with applicable tax laws.”)

Wyden, citing prior testimony from former IRS Commissioner Charles Rettig, commented that the current estimates of the tax gap likely do not account for foregone revenue from certain highly complex transactions involving multinational corporations, flowthrough entities, foreign activity, and digital assets. Rettig estimated that the actual gap could be as high as \$1 trillion when taking these types of transactions into account. (For prior coverage, see *Tax News & Views*, Vol. 22, No. 20, Apr. 16, 2021, and *Tax News & Views*, Vol. 23, No. 9, Mar. 18, 2022.)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210416\\_3.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2021/TNV/210416_3.html)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220318\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2022/TNV/220318_1.html)

Wyden asked Werfel what he would do as commissioner to ensure that tax gap estimates are accurate and what strategies he would put in place to close the gap.

Werfel responded that the IRS needs to improve its ability “to unpack complex and intricate returns,” although he was skeptical that such a goal could be accomplished solely by providing additional training for the current workforce.

“I think we [also] want to hire and bring in experts—maybe some of the same individuals that earlier in their careers prepared these very intricate returns and are ready to come back and potentially serve their country,” Werfel said. Doing that, he explained, will allow the IRS to “collect more revenue from high-income taxpayers and large corporations [and] also understand how to better measure [potential revenue loss] so that going forward the tax gap assessment is more clear.”

In a subsequent exchange with Finance Committee member Elizabeth Warren, D-Mass., Werfel stated that legislation recently approved in the House to rescind the portion of Inflation Reduction Act funding allocated to enforcement efforts would, if enacted into law, hinder the IRS’s ability to “unpack” complex tax transactions and would encourage noncompliance on the part of large businesses and wealthy individuals. (For prior coverage of the House-passed measure, the Family and Small Business Taxpayer Protection Act, see *Tax News & Views*, Vol. 24, No. 2, Jan. 13, 2023.)

[URL: https://docs.house.gov/billsthisweek/20230102/BILLS-118HRPIH-IRS-repeal.pdf](https://docs.house.gov/billsthisweek/20230102/BILLS-118HRPIH-IRS-repeal.pdf)

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230113\\_1.html](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230113_1.html)

Werfel also agreed with Warren—and the Congressional Budget Office—that the increased enforcement funding ultimately will reduce the federal deficit by allowing the IRS to capture revenue from these kinds of transactions that otherwise would be lost to the government. (The CBO estimated last September that the IRS funding provisions would raise some \$180 billion between 2022 and 2031.)

[URL: https://www.cbo.gov/system/files/2022-09/PL117-169\\_9-7-22.pdf](https://www.cbo.gov/system/files/2022-09/PL117-169_9-7-22.pdf)

**Republicans decry over-emphasis on enforcement:** For his part, Finance Committee ranking member Mike Crapo, R-Idaho, contended in his opening statement at the hearing that the new mandatory IRS funding is unfairly skewed to enforcement efforts at the expense of taxpayer service and that the \$80 billion investment could end up as another example of wasteful government spending.

“The fact that nearly 60 percent of the funding will go toward hiring enforcement personnel—more than 14 times the funding set aside for serving taxpayers—is a particular concern,” Crapo said. “Unease about super-sized IRS enforcement hiring has nothing to do with supporting evasion by ‘wealthy tax cheats,’ but comes from a fear that the IRS will waste untold taxpayer dollars chasing speculative or marginal revenue recoveries, while hardworking Americans and small businesses end up in a dragnet.”

In an exchange with Werfel, Crapo questioned claims by the administration and Democrats that the new enforcement funds would indeed be targeted exclusively at “super-rich tax cheats,” noting that the provision as enacted in the Inflation Reduction Act contains no specific restrictions on how those amounts may be used. He also noted that he recently introduced legislation co-sponsored by all of his GOP colleagues on the Finance Committee that would provide that “none of the funds” enacted under the Inflation Reduction Act “may be used to audit taxpayers with incomes below \$400,000.” (The identical measure was introduced in the 117th Congress.)

**URL:** [https://www.finance.senate.gov/imo/media/doc/400k\\_reintroduction.pdf](https://www.finance.senate.gov/imo/media/doc/400k_reintroduction.pdf)

Crapo, who contended that the Treasury Department’s directive about audit priorities leaves a certain amount of “wiggle room” for the IRS, asked Werfel directly if he was committed to not using “super-sized enforcement money” to audit “people who make less than \$400,000 per year.”

“I am committed to Secretary Yellen’s directive on how audits should move forward under the Inflation Reduction Act and look forward to working with you, and you holding me accountable for that,” Werfel replied.

Werfel agreed with Crapo that the IRS’s plans for implementing the Inflation Reduction Act funding should be released to Congress and the public. In subsequent exchanges with Finance Committee Republicans Charles Grassley of Idaho and John Thune of South Dakota, Werfel also agreed that the IRS should provide annual updates on how those funds are being spent. (Grassley and Thune are co-sponsors of legislation that, among other things, would require the IRS to deliver a yearly report on its Inflation Reduction Act-related spending. A House companion measure is sponsored by taxwriter Mike Kelly, R-Pa.)

**URL:** [https://www.thune.senate.gov/public/\\_cache/files/eec0e5d1-eb28-4894-bdb4-819bfe0e52db/52444548FC77D320894D54C96C107A43.irs-funding-accountability-act-final.pdf](https://www.thune.senate.gov/public/_cache/files/eec0e5d1-eb28-4894-bdb4-819bfe0e52db/52444548FC77D320894D54C96C107A43.irs-funding-accountability-act-final.pdf)

## **Data security and other technology issues**

Lawmakers in both parties expressed concerns about data security at the IRS, especially in the wake of an incident in 2021 in which protected taxpayer information associated with several prominent individuals appeared in *Pro Publica*. Republicans on the panel were particularly frustrated that the agency apparently has not yet determined whether that incident was the result of an internal leak or a data breach.

In separate exchanges with Sen. Grassley and Finance Committee Democrat Mark Warner of Virginia, Werfel confirmed that data security would be a “top priority” for him as commissioner and that he would work with leadership at the agency to address vulnerabilities in the IRS’s information systems that have been identified by the Government Accountability Office and the Treasury Inspector General for Tax Administration.

Werfel told Warner that it is essential for the IRS to develop new information systems that incorporate advanced data protection technologies rather than attempt to “bolt” data protection technology onto legacy systems.

Responding to a question from Louisiana Republican taxwriter Bill Cassidy, Werfel said he would “absolutely” consider moving IRS data technology onto a cloud-based system, similar to what is currently being done at the Department of Defense. Werfel agreed with Cassidy that such a move could enhance data security and be more cost-efficient.

Werfel also agreed with Chairman Wyden and Democratic taxwriters Maria Cantwell of Washington and Robert Menendez of New Jersey that the IRS must adopt new scanning technologies that will enable it to process paper-filed tax returns more efficiently. In an exchange with Wyden, Werfel commented that there are technologies available that have the potential to rapidly scan paper returns into a machine-readable format. Moving to scanning, as opposed to manually transcribing paper returns, would allow the IRS to significantly reduce the current backlog of unprocessed paper returns that resulted from COVID-related closures of IRS facilities in 2020, he said.

### **Taxpayer service**

Werfel agreed with the bipartisan consensus on the panel that the IRS needs to improve its taxpayer service operations—particularly in the area of telephone assistance.

Several GOP taxwriters lamented that the Inflation Reduction Act allocated only \$3 billion for taxpayer services, but Werfel stated in response to questions from Sen. Grassley that he was committed to implementing the law in a way that would provide “maximum impact in improving the taxpayer experience.” He also promised Wyoming Republican John Barrasso that he would be “transparent” about how those funds are spent.

Werfel told Democratic taxwriters Tom Carper of Delaware and Catherine Cortez Masto of Nevada that he envisions a multi-tiered approach to making the IRS more customer-friendly that would include adding new personnel, implementing new technologies for call centers, and incorporating new technologies into the agency’s website, particularly for taxpayers who want to interact on smartphones. He commented to Cortez Masto that the IRS should develop and deploy specific improvements after it hears from taxpayers about what they want and expect in their interactions with the agency.

## A quick decision likely

Finance Committee Chairman Ron Wyden told reporters after the hearing that the panel is likely to vote on Werfel's nomination the week of February 27, when the Senate returns from a week-long President's Day recess. Observers expect a favorable outcome: indeed, two Republican taxwriters—Thom Tillis of North Carolina and Todd Young of Indiana—stated this week that they intend to cast “yes” votes. Assuming Werfel gets a thumbs-up from the Finance Committee, his nomination will be sent to the full Senate for a final confirmation vote.

— Michael DeHoff  
Tax Policy Group  
Deloitte Tax LLP

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

### About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte's approximately 415,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com).