

**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.<sup>1</sup> 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."<sup>2</sup> 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)

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<sup>1</sup> 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>.

<sup>2</sup> 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.<sup>3</sup> 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.”<sup>4</sup> 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;

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<sup>3</sup> 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](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](https://taxpayeradvocate.irs.gov/Free_File_Program_Is_Failing_to_Achieve_Objectives).

<sup>4</sup> 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  
 UnidosUS  
 UNITE HERE  
 Voices for Progress  
 Woodstock Institute

Tax Professors and Tax Policy Experts (institutional affiliation listed for identification purposes only)

1. Alice G. Abreu, James E. Beasley Professor of Law, Temple University Beasley School of Law
2. Ellen P. Aprill, Professor of Law and John E. Anderson Chair in Tax Law, Loyola Law School
3. Reuven Avi-Yonah, Irwin I. Cohn Professor of Law, University of Michigan Law School
4. Joseph Bankman, Ralph M. Parsons Professor of Law and Business, Stanford Law School
5. Jordan Barry, Professor of Law and Director of Center for Corporate and Securities Law and Co-Director of Tax Programs, University of San Diego School of Law
6. Lily Batchelder, Frederick I. and Grace Stokes Professor of Law, NYU School of Law
7. Jeremy Bearer-Friend, Acting Assistant Professor of Tax Law, NYU School of Law
8. Jared Bernstein, Senior Fellow, Center on Budget and Policy Priorities
9. Joshua Blank, Professor of Law, University of California, Irvine School of Law
10. Leslie Book, Professor of Law, Villanova University Charles Widger School of Law
11. John R. Brooks, Professor of Law, Georgetown University Law Center
12. Fred B. Brown, Professor of Law, University of Baltimore School of Law
13. Karen Brown, Theodore Rinehart Professor of Business Law, George Washington University Law School
14. Samuel D. Brunson, Georgia Reithal Professor of Law, Loyola University Chicago School of Law
15. Neil H. Buchanan, Professor of Law and James J. Freeland Eminent Scholar Chair in Taxation, University of Florida Levin College of Law
16. Len Burman, Institute Fellow, Urban Institute, and Paul Volcker Chair in Behavioral Economics and Professor of Public Administration and International Affairs, Maxwell School, Syracuse University
17. William H. Byrnes, Executive Professor of Law and Associate Dean for Special Projects, Texas A&M University School of Law
18. Kimberly Clausing, Thormund A. Miller and Walter Mintz Professor of Economics, Reed College
19. Danshera Cords, Professor of Law, Albany Law School
20. Tessa R. Davis, Professor of Law, University of South Carolina School of Law
21. Steven Dean, Professor of Tax Law, NYU School of Law
22. Lilian V. Faulhaber, Professor of Law, Georgetown University Law Center
23. J. Clifton Fleming, Ernest L. Wilkinson Chair and Professor of Law, J. Reuben Clark Law School Brigham Young University
24. Jason Furman, Professor of the Practice of Economic Policy, Harvard Kennedy School
25. William G. Gale, Arjay and Frances Fearing Miller Chair in Federal Economic Policy, Brookings Institution
26. Deborah A. Geier, Professor of Law, Cleveland-Marshall College of Law, Cleveland State University
27. Ari Glogower, Assistant Professor of Law, Ohio State University Moritz College of Law
28. Jacob Goldin, Assistant Professor of Law, Stanford Law School
29. Itai Grinberg, Professor of Law, Georgetown University Law Center
30. Victoria J. Haneman, Associate Professor of Law, Creighton University School of Law
31. David Hasen, Professor of Law, University of Florida Levin College of Law
32. Andrew Hayashi, Professor of Law, University of Virginia School of Law
33. Daniel Hemel, Assistant Professor of Law, University of Chicago Law School
34. Hayes R. Holderness, Assistant Professor, University of Richmond School of Law
35. Calvin H. Johnson, John T. Kipp Chair in Corporate and Business Law, University of Texas
36. Steve Johnson, Dunbar Family Professor, Florida State University College of Law
37. Damon Jones, Associate Professor, University of Chicago, Harris School of Public Policy
38. David Kamin, Professor of Law, NYU School of Law
39. Mitchell Kane, Gerald L. Wallace Professor of Taxation, NYU School of Law

40. Young Ran (Christine) Kim, Associate Professor of Law, University of Utah S.J. Quinney College of Law
41. Ariel Jurow Kleiman, Assistant Professor of Law, University of San Diego School of Law
42. Edward Kleinbard, Robert C. Packard Trustee Chair in Law, University of Southern California Gould School of Law
43. Rebecca Kysar, Professor of Law, Fordham University School of Law
44. Don Leatherman, W. Allen Separk Distinguished Professor of Law, University of Tennessee College of Law
45. Leandra Lederman, William W. Oliver Professor of Tax Law & Director of the Tax Program, Indiana University Maurer School of Law
46. Francine J. Lipman, William S. Boyd Professor of Law, University of Nevada, Las Vegas
47. Zachary Liscow, Associate Professor of Law, Yale Law School
48. Lawrence Lokken, Hugh Culverhouse Eminent Scholar in Taxation Professor Emeritus, University of Florida College of Law
49. Elaine Maag, Principal Research Associate, Urban Institute
50. Roberta Mann, Mr. and Mrs. L. L. Stewart Professor of Business Law, University of Oregon School of Law
51. Omri Marian, Professor of Law, University of California, Irvine School of Law
52. Ruth Mason, Class of 1957 Research Professor of Law, University of Virginia School of Law
53. Goldburn P. Maynard Jr., Assistant Professor of Law, University of Louisville Brandeis School of Law
54. Orly Mazur, Assistant Professor of Law, SMU Dedman School of Law
55. Nicholas A. Mirkay, Professor of Law, University of Hawai'i at Mānoa William S. Richardson School of Law
56. Amy Monahan, Associate Dean for Research & Planning, University of Minnesota Law School
57. Susie Morse, Angus G. Wynne, Sr. Professor of Civil Jurisprudence, University of Texas School of Law
58. Michael Mulroney, Professor Emeritus, Villanova University Charles Widger School of Law
59. Jason Oh, Professor of Law, UCLA School of Law
60. Henry Ordower, Professor of Law, Saint Louis University School of Law
61. Katherine Pratt, Professor of Law, Loyola Law School, Los Angeles
62. Thomas A. Robinson, Professor of Law, University of Miami School of Law
63. Kerry Ryan, Associate Professor, Saint Louis University School of Law
64. Emily Satterthwaite, Assistant Professor at the Faculty of Law, University of Toronto Faculty of Law
65. Erin Adele Scharff, Associate Professor of Law, Arizona State University Sandra Day O'Connor College of Law
66. Daniel Shaviro, Wayne Perry Professor of Taxation, NYU School of Law
67. Gladriel Shobe, Associate Professor of Law, Brigham Young University Law School
68. Reed Shuldiner, Alvin L. Snowiss Professor of Law; Co-Director, Center for Tax Law and Policy, University of Pennsylvania Law School
69. Caleb Smith, Visiting Associate Clinical Professor, University of Minnesota Law School
70. Jay Soled, Professor and Director of Master of Accountancy in Taxation, Rutgers Business School
71. Christine Speidel, Assistant Professor and Director, Federal Tax Clinic, Villanova University Charles Widger School of Law
72. Norman Stein, Professor of Law, Drexel University Kline School of Law
73. Kathleen DeLaney Thomas, Assistant Professor of Law, UNC School of Law
74. Dennis Ventry, Professor of Law, UC Davis School of Law
75. Manoj Viswanathan, Associate Professor of Law, UC Hastings College of the Law
76. Michael J. Waggoner, Associate Professor of Law, Law School, University of Colorado, Boulder