

# Congress of the United States

Washington, DC 20515

October 8, 2024

The Honorable Janet Yellen  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Daniel Werfel  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Dear Secretary Yellen and Commissioner Werfel:

We write to urge you to ensure that identification requirements imposed on taxpayers using Direct File are consistent with the requirements for those using commercial tax preparation providers and other tax filing options, with an appropriate balance between usability and security. We strongly support your recent announcement that the Internal Revenue Service (IRS) is expanding Direct File and extending it as a permanent program. Direct File is the first free, public, electronic federal tax filing tool in U.S. history, allowing taxpayers the option to file easily, for free, directly with the Internal Revenue Service (IRS). The 2024 Direct File pilot was a clear and resounding success, and we look forward to seeing additional improvements that make Direct File still more helpful to taxpayers.

Direct File received rave reviews in its first year and we expect it to improve from here. In the pilot, which went live on the IRS's website in stages during the 2024 tax filing season, taxpayers used Direct File to claim over \$90 million in tax refunds and save \$5.6 million in estimated filing fees. Ninety percent of surveyed users rated their experience positively and 86 percent said their experience with the tool increased their trust in the IRS.<sup>1</sup> Last week, the IRS announced that it will expand to serve 24 states and over 30 million taxpayers in total.<sup>2</sup> We appreciate your commitment to “expand the reach and tax scope of Direct File to provide an option for working- and middle-class taxpayers nationwide.”<sup>3</sup>

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<sup>1</sup> Internal Revenue Service, “Direct File pilot officially closes after more than 140,000 taxpayers successfully use direct e-filing system in 12 states, including integration with 4 state tax systems”, press release, April 26, 2024, <https://www.irs.gov/newsroom/direct-file-pilot-officially-closes-after-more-than-140000-taxpayers-successfully-use-direct-e-filing-system-in-12-states-including-integration-with-4-state-tax-systems>.

<sup>2</sup> Internal Revenue Service, “IRS Direct File set to expand availability in a dozen new states and cover wider range of tax situations for the 2025 tax filing season”, press release, October 3, 2024, <https://www.irs.gov/newsroom/irs-direct-file-set-to-expand-availability-in-a-dozen-new-states-and-cover-wider-range-of-tax-situations-for-the-2025-tax-filing-season>.

But in spite of the clear benefits to taxpayers, Direct File has operated at a significant disadvantage, because IRS leadership insisted that this free government service meet strict identity verification requirements that do not apply to commercial tax preparation services like TurboTax or H&R Block, as well as to paper tax returns sent in by mail. When Direct File launched, the IRS explained its decision to require taxpayers to submit to identity verification performed by the company ID.me by noting that it is “the only credential service provider currently available to the IRS that meets the identity assurance level 2 standard for identity verification and sign-in services.”<sup>4</sup> Identity Assurance Level (IAL) 2 is the middle of three “levels” of the National Institute of Standards and Technology (NIST) identity verification standards. IAL 2 requires remote or physical verification of identity, in which an applicant’s face is compared to a government ID, which can be performed using facial recognition software or by a human.<sup>5</sup> Earlier this year, the General Services Administration announced that their Login.gov service will be compliant with existing IAL2 standards in the coming months.<sup>6</sup> Private tax preparation companies are not assessed against IAL standards but basically operate at a level 1 basis, as users simply assert their identity.<sup>7</sup>

While we applaud the IRS’ goal of protecting taxpayers from identity theft, it makes no sense to only require heightened identity verification for taxpayers using the free Direct File service, while allowing identity thieves to continue to exploit the comparatively lax security of commercial tax prep services.

Moreover, the IRS’s use of ID.me for Direct File raises concerns about accessibility and privacy. In 2022, the IRS announced its intention to transition away from using ID.me and use Login.gov at some future date, after bipartisan concerns were raised about ID.me’s use of facial recognition technology as part of the verification process when users first sign up for an account.<sup>8</sup> The facial recognition technology used by ID.me has been demonstrated to be less accurate when dealing with vulnerable groups, including individuals of color, and has been linked to wrongful arrests of black men.<sup>9</sup> Direct File is poised to be especially critical for those taxpayers who face barriers to

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<sup>3</sup> U.S. Department of the Treasury, “U.S. Department of the Treasury, IRS Announce Direct File as Permanent Free Tax Filing Option, All 50 States and D.C. Invited to Join in Filing Season 2025”, press release, May 30, 2024, <https://home.treasury.gov/news/press-releases/jy2385>.

<sup>4</sup> NextGov, “IRS direct file participants will have to use ID.me for identity verification”, Natalie Alms, December 20, 2023, <https://www.nextgov.com/digital-government/2023/12/irs-direct-file-participants-will-have-use-idme-identity-verification/392921/>.

<sup>5</sup> National Institute of Standards and Technology, Special Publication 800-63 Revision 3, <https://pages.nist.gov/800-63-3/sp800-63-3.html>.

<sup>6</sup> U.S. General Services Administration, “General Services Administration’s Login.gov pilots enhanced identity verification, expands in-person proofing, updates pricing model”, press release, April 11, 2024, <https://www.gsa.gov/about-us/newsroom/news-releases/general-services-administrations-loggingov-pilot-04112024>.

<sup>7</sup> TurboTax Help, “Why are you asking for my driver’s license or state ID?”, [https://ttlc.intuit.com/turbotax-support/en-us/help-article/tax-return/asking-driver-license-state-id/L4uzTnMDr\\_US\\_en\\_US#:~:text=by%20TurboTax%E2%80%A2%20Updated%207,required%20to%20file%20your%20taxes](https://ttlc.intuit.com/turbotax-support/en-us/help-article/tax-return/asking-driver-license-state-id/L4uzTnMDr_US_en_US#:~:text=by%20TurboTax%E2%80%A2%20Updated%207,required%20to%20file%20your%20taxes).

<sup>8</sup> The New York Times, “I.R.S. to End Use of Facial Recognition for Identity Verification”, Alan Rappeport and Kashmir Hill, February 7, 2022, <https://www.nytimes.com/2022/02/07/us/politics/irs-idme-facial-recognition.html>; Federal News Network, “IRS plans pivot to Login.gov, lets users create online accounts without facial recognition”, Jory Heckman, February 21, 2022, <https://federalnewsnetwork.com/agency-oversight/2022/02/irs-plans-pivot-to-login-gov-lets-users-create-online-accounts-without-facial-recognition/>.

<sup>9</sup> CNN, “House lawmakers voice ‘serious concerns’ about facial recognition used by contractor ID.me”, Rachel Metz, April 14, 2022, <https://www.cnn.com/2022/04/14/tech/idme-facial-recognition-house-lawmakers/index.html>.

filing, including lack of access to modern computing equipment and fast internet connections, resulting in tax benefits like the Child Tax Credit and Earned Income Tax Credit being left on the table for taxpayers who cannot use facial recognition software or video chat.<sup>10</sup> Requiring them to use ID.me is creating yet another needless barrier to exactly these taxpayers who need Direct File most to claim tax benefits, as it has been with other government benefits.<sup>11</sup>

The IRS' decision to outsource identity verification to ID.me also raises serious privacy concerns. Tax prep companies have egregiously misused private taxpayer information that is in their possession, and Direct File was created in part to ensure taxpayers have an option to *not* give their money and personal information to private companies when filing their taxes. But by contracting with ID.me, taxpayers concerned about their privacy are required to hand over personal data to yet another private company. While ID.me also offers a “trusted referee” alternative to facial recognition, we are concerned about the level of support for this option and long wait times to access it making it a poor choice for taxpayers.<sup>12</sup>

The initial evidence indicates that the IRS' decision to require taxpayers using Direct File to submit to identity verification created serious access barriers.<sup>13</sup> Only 62% of taxpayers that finished the tool's eligibility checker created or signed into an account. “If I was in the product [team's] shoes at the IRS,” said an expert who fielded a feasibility analysis of a government-backed tool in 2023, “that's the kind of thing I'd want to say, ‘Hold on. What's going on there? What is it about the ID.me experience that we lost more people in that step?’”<sup>14</sup>

The IRS' current approach to security does not make sense. If the threat posed by identity thieves and fraudsters is severe enough to warrant requiring taxpayers to submit to identity verification before submitting their tax returns, then the IRS should require such security protections, across the board, regardless of whether taxpayers use Direct File, commercial services like TurboTax and H&R Block, or print out their tax returns and send them in by mail. Alternatively, if the threat posed by identity thieves is not serious enough for the IRS to require commercial tax prep companies to implement burdensome identity verification, then taxpayers using Direct File should not be required to do so either.

The launch of Direct File was a huge success, and going forward, we look forward to it serving more taxpayers with more features, which is precisely why it is important to understand the impact of the identity verification process on taxpayers. Many taxpayers seek a free, secure, and direct way to file their taxes – including those who cannot afford to pay the \$150 that Americans spend on average on commercial tax filing options and those who do not want to share their

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<sup>10</sup> Economic Security Project, “The Impact of Direct File By The Numbers”, Gabriel Zucker and Bharat Ramamurti, March 11, 2024, <https://economicsecurityproject.org/resource/direct-file-report/>.

<sup>11</sup> NextGov, “Some states may be barring the door to unemployment benefits,” Natalie Alms, April 12, 2023, <https://www.nextgov.com/digital-government/2023/04/some-states-may-be-barring-door-unemployment-benefits/384993/>.

<sup>12</sup> Electronic Privacy Information Center, “Report: ID.me Lied to the IRS About Wait Times for Its Identity Verification Service,” November 21, 2022, <https://epic.org/report-id-me-lied-to-the-irs-about-wait-times-for-its-identity-verification-service/>.

<sup>13</sup> NextGov, “What it will take to make Direct File permanent,” Natalie Alms, June 12, 2024, <https://www.nextgov.com/digital-government/2024/06/what-it-will-take-make-direct-file-permanent/397331/>.


<sup>14</sup> *Id.*

personal information with tax prep companies. They should not be forced to jump through extra, onerous, hoops that private tax prep companies are not required to meet. We appreciate your attention to this important matter and ask that you also provide answers to the following questions by no later than October 21, 2024. We also ask that you provide our staff with a briefing on IRS's progress on this matter within the next month:

1. The second public draft of NIST 800-63-4 says that “risk assessments and identity solutions must be continuously improved” (800-63, 3.5) and “[A] primary purpose of continuous improvement is to improve equity and accessibility outcomes for different user populations” (800-63, 3.5.3). Aside from the 2023 After Action Report, has Treasury or the IRS assessed the impact of ID.me on taxpayers' access to Direct File, including how many taxpayers did not get through the process during the identity verification stage?
  - a. If so, what did these assessments reveal?
  - b. How is the IRS addressing any barriers that were identified?
  - c. What benchmarks or metrics is the IRS using in its ongoing evaluation of the impact of identity proofing on Direct File?
2. What alternatives to ID.me are under consideration for use in Direct File for Tax Year 2024?
  - a. If so, how is the IRS identifying and assessing these alternatives?
  - b. If Login.gov's IAL2 functionality is certified this year, as planned, will the IRS add Login.gov as an additional verification pathway for Direct File? If not, why not?
  - c. How is the IRS preparing to conduct the necessary security audits and procurement processes in time for Tax Year 2024 given ongoing work on Login.gov and NIST rule 800-63-4?
3. If the draft NIST 800-63-4 revision were finalized without significant changes:
  - a. Would the IRS reevaluate Direct File's IAL classification level based on the new guidance?
  - b. Will the IRS require its credential service provider (e.g., ID.me and/or Login.gov) to offer the additional proofing options outlined in the guidance, including, for example, IAL2 proofing via sending a mailed code to a known physical address?
  - c. What steps will the IRS take to ensure that its credential service provider offers sufficient redress for applicants under 800-63-4, Section 3.6?
4. The second public draft of NIST 800-63-4 emphasizes the importance of usability, writing that “Performing a usability evaluation on the enrollment and identity proofing process is critical. It is important to conduct a usability evaluation with representative users, realistic goals and tasks, and appropriate contexts of use.” (800-63A, 3.8).
  - a. Has the IRS performed such a usability evaluation of ID.me?
  - b. If not, when and how will such an evaluation be performed, should the second public draft of 800-63-4 become final?
5. The second public draft of NIST 800-63-4 emphasizes the importance of ensuring equity in the identity proofing process and taking seriously “the risks associated with inequitable access, treatment, or outcomes for individuals using its identity services” (800-63A, 9).
  - a. If the draft revision is finalized without significant changes, what steps will the IRS take to comply with this guidance?

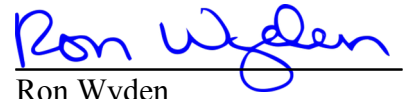
6. Given that private tax preparation companies are providing tax filing services with similar risk profiles as Direct File, should private tax preparation companies be subject to the same IAL standards as Direct File?
  - a. If not, why not?

Sincerely,



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Elizabeth Warren  
United States Senator



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Ron Wyden  
United States Senator  
Chairman, Committee on  
Finance



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Katie Porter  
Member of Congress