

The IRS Agents Who Brought Down Al Capone Were Agents Armed with Calculators

How IRS Commissioner Werfel's Planned Use of Nearly \$80 Billion Will Be Used to Crack Down on Tax Non-Compliance By Wealthy Individuals, Large Corporations and Partnerships

By SANDRA R. BROWN and PHILIPP BEHRENDT

On April 4, 2023, during his ceremonial swearing-in as the 50th IRS Commissioner, Danny Werfel, announced that the IRS's strategic operating plan for the nearly \$80 billion in funding, under the Inflation Reduction Act (IRA), would be issued later that week, stating there would be "real world improvements for every taxpayer, every tax professional, and every IRS employee." That day, Janet Yellen, the Secretary of Treasury, gave clear marching orders to Commissioner Werfel, stating that he will be focused on "dramatically improving taxpayer service and ensuring that large corporations and the wealthy pay the taxes they owe."

On April 6, 2023, Commissioner Werfel, true to his word, unveiled the IRS's plan for the \$80 billion funding boost. Given that \$45.6 billion, more than 50% of that \$80 billion, was earmarked by Congress, under the IRA, for enforcement, it should be no surprise that the IRS's stated enforcement plans are focused on cracking down on those who it perceives are not complying with the tax laws. Which is exactly what we heard from Commissioner Werfel:

It makes sense to focus our initial Inflation Reduction Act implementation efforts exclusively on increasing our capacity to assess compliance of high-income and high-wealth individuals, complex partnerships and large corporations.

To be clear, the overwhelming majority of this enforcement will not come from a cadre of armed IRS criminal agents targeting Americans. Rather, the enforcement will come from IRS agents "armed only with calculators and their skills to help us address compliance issues," Werfel said.ⁱ

Strategic Operating Plan

With most things, the devil is in the details. So here are some of those details.

The comprehensive 150-pages Strategic Operating Planⁱⁱ outlines the agency's ambitious roadmap for a transformational change, with five overarching objectives, 42 key initiatives, 192 key projects, and more than 200 milestones that will fundamentally reshape the IRS's operations.

The plan spells out that resources allocated in the short and long term will be focused on taxpayer compliance with two paths: taxpayer services (the carrot) and taxpayer enforcement (the stick).ⁱⁱⁱ

Regarding taxpayer services, the IRS intends to make it easier for taxpayer to comply and to monitor compliance. The IRS is strengthening their customer service activities, through eliminating lengthy phone wait times, increasing the capacity of in-person taxpayer assistance centers across the country, and introducing new digital tools for taxpayers to engage with the agency online. At the same time, the agency will modernize its outdated systems in the core operations of the IRS to ensure that the agency has the most up-to-date and robust security and technology to protect taxpayer data.

To address taxpayer enforcement, which said another way, to address taxpayer's non-compliance, the agency wants to increase the capacity to handle complex tax filings of high-income taxpayers, large corporations, and complex partnerships. There is a widening gap between the number of experienced

compliance personnel available to audit high-income, high-wealth tax filings (approximately 2,600 employees) and the significant number of high income and high wealth taxpayers, including over 30,000 individuals earning more than \$10 million annually, 60,000 large corporations, and 300,000 large partnerships and S corps and the IRS will try to even the playing field.

The agency plans to incorporate advanced data and analytics to identify high-priority segments for compliance cases and select enforcement actions that are expected to be the most effective. To address the historical lows in coverage rates for complex filings and high dollar noncompliance, the plan looks to enhance the resources and expertise for enforcement and increase the capacity to better address noncompliance among complex filers with high-dollar cases.^{iv}

A bit more about those enforcement plans for noncompliant taxpayers.

Enforcement Initiatives

While the IRS's plan is still only at the 30,000-foot level, it demonstrates the IRS has set its sights on a bold and ambitious plan that will have enforcement as a key component. The clear message is that the hunt for wealthy tax evaders is getting underway and that the IRS's focus will come from all fronts, including increased civil audits and more criminal investigations. There are seven concrete initiatives to achieve this goal, each containing multiple key projects:^v

- **Employ centralized, analytics-driven, risk-based methods to aid in the selection of compliance cases:** The IRS will use improved analytics to aid in the selection of cases predicted to be at risk of noncompliance, choosing enforcement treatments that maximize opportunities to improve and sustain taxpayer compliance while ensuring fairness in selection;
- **Expand enforcement for large corporations:** The IRS will increase enforcement activities to help ensure tax compliance of large corporate taxpayers;
- **Expand enforcement for large partnerships:** The IRS will increase enforcement activities to help ensure tax compliance of large partnerships;
- **Expand enforcement for high-income and high-wealth individuals:** The IRS will increase enforcement activities to help ensure tax compliance of high-income and high-wealth individuals;
- **Expand enforcement in areas where audit coverage has declined to levels that erode voluntary compliance:** The IRS will increase enforcement activities in other key areas where audit coverage has declined while complying with Treasury's directive not to increase audit rates relative to historical levels for small businesses and households earning \$400,000 per year or less;
- **Pursue appropriate enforcement for complex, high-risk and emerging issues:** The IRS will enhance detection of noncompliance and increase enforcement activities for complex, high-risk, and novel emerging issues, including digital assets, listed transactions and certain international issues; and
- **Promote fairness in enforcement activities:** The IRS will help promote fairness for all taxpayers by addressing noncompliance appropriately in a balanced manner.

The plan also outlines improving tax compliance and administration through the use of data and analytics. These components include using data to inform decision-making, expanding data-driven resource allocation, developing advanced analytics techniques, improving the ability to receive and use data from foreign jurisdictions, and supplying linked data to agents. By utilizing these components, the agency aims

to optimize operations for both taxpayers and employees, improve voluntary compliance, and address noncompliance by identifying and allocating resources to those most likely to owe large amounts of taxes.

Clearly, a focus on the non-compliant wealthy is a big part of the plans to spend the \$45.6 billion allocated for enforcement out of the \$80 billion of overall funding under the IRA.

Timeframe

So, what is the projected timeframe for the IRS to implement these changes?

The strategic plan is set to bring significant changes and improvements to the operations of the enforcement agency, with the first wave of specialists set to be hired and onboarded in 2023 to focus on four target groups: large corporations, partnerships, high-net individuals, and key segments where the audit rate has declined. In 2024, several initiatives will be implemented, including an enterprise review of the current organizational structure, a centralized compliance planning and strategy function, and a workforce re-skilling program to address complex and emerging issues. Additionally, statistical data will be improved to support equity analyses developed in partnership with other federal agencies while safeguarding individual privacy.

By 2025, a pilot program for large corporate and partnership enforcement will be launched. The agency will continuously develop and implement appropriate reforms to enforcement practices to improve fairness and equity. In 2026, the agency will select taxpayer compliance cases using new analytics systems and refined risk-based case selection and routing. Finally, ongoing workforce hiring and onboarding will help ensure fair enforcement, including hires in the Independent Office of Appeals and the Office of Chief Counsel.

Conclusion

The agency's transformation should be a game changer. However, the IRS's stated goal of providing world-class service and reducing the deficit by hundreds of billions by ensuring that those who do not pay taxes owed will be held accountable will not be easy and will take time- but taxpayers will eventually feel the transformation –for some a better and more user-friendly IRS and for some the tax collector's wrath like that felt by none other than the infamous Al Capone. While many are aware that Eliot Ness and IRS criminal agents led to the downfall of Al Capone on tax evasion charges, most do not know that the first witness for the government at Capone's trial was Charles W. Arndt, a tax collector for the United States. Arndt testified as to Capone's failure to file any tax return for 5 years, despite being worth at least \$30 million.^{vi} No doubt the \$30 million was determined using a 1930s style calculator and the moral to the story is that an IRS agent armed with a calculator can be more problematic to a non-compliant taxpayer than IRS agent with a gun. In fact, if you believe the story of Al Capone and the Untouchables, Al Capone had a pretty good defense to machine guns and may never have seen the inside of a federal prison without an IRS agent armed with a calculator.

While the IRS works to implement their strategic plan, there's still time to get on the right side of the law. As Commissioner Werfel said: "We have years of work ahead of us, where we will be 100% focused on building capacity for higher income individuals and corporations." Thus, wealthier taxpayers are well-advised to take the necessary steps now to ensure compliance with tax laws.

ⁱ <https://www.govexec.com/management/2023/04/new-irs-chief-growing-workforce-will-transform-agency-armed-only-their-calculators/384806/>

ⁱⁱ See <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

ⁱⁱⁱ See <https://www.irs.gov/newsroom/irs-unveils-strategic-operating-plan-ambitious-effort-details-a-decade-of-change>.

^{iv} *Id.*, p. 63.

^v *Id.* p. 63, 64.

^{vi} <http://law2.umkc.edu/faculty/projects/ftrials/capone/caponeaccount.html>