

*PSI Staff Memorandum*

**To:** Senate Committee on Homeland Security and Governmental Affairs  
**From:** Staff of the Permanent Subcommittee on Investigations  
**Date:** June 9, 2020  
**Re:** IRS Oversight of the Free File program

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**Introduction**

Subcommittee staff initiated a review of the Free File program, which provides free online tax preparation and filing services to U.S. taxpayers, in June 2019. The Subcommittee sought to understand the history of the Free File program, the coordination between the Free File Alliance and its membership of tax preparation software companies, oversight of the Free File program by the Internal Revenue Service (“IRS”), and allegations in 2019 that certain Free File Alliance members used coding to hide their Free File websites from online search engines. This memorandum provides: (1) a brief overview of the history of the Free File program; (2) a summary of IRS oversight of the Free File program during the last decade; (3) a discussion of the importance of online search engine results in helping taxpayers choose a tax preparation software; (4) a discussion of the IRS marketing strategy for the Free File program; and (5) an analysis of recent changes made by the IRS to strengthen the Free File program.

**Background**

The Internal Revenue Service has worked for decades to encourage and incentivize paperless filing of federal tax returns. The effort began in 1998 when Congress directed the IRS to work with the tax preparation industry to ensure at least 80 percent of all federal tax returns were filed electronically by 2007.<sup>1</sup> In 2002, the IRS entered into the Free Online Electronic Tax Filing Agreement with several electronic tax preparation companies known collectively as the Free File Alliance (“FFA”).<sup>2</sup> Under this agreement, FFA members committed to offering free online tax preparation and filing services—generally known as Free File—to 60 percent of taxpayers while retaining the ability to establish qualifications for their individual offerings.<sup>3</sup> In exchange, the IRS agreed not to compete with the FFA in providing free, online tax preparation and filing services to taxpayers.<sup>4</sup> The IRS and the FFA also agreed to coordinate with each other for the marketing of these free offerings to “provide uniformity and maximize public awareness.”<sup>5</sup>

The IRS and the FFA have repeatedly extended the term of the original agreement. A 2005 extension, for example, expanded the scope of coverage for the Free File program to 70

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<sup>1</sup> The IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-286, 112 Stat. 685 (1998) (codified at 26 U.S.C. § 6011 note. (2017)).

<sup>2</sup> IRS’ Intent to Enter into an Agreement with Free File Alliance, 67 Fed. Reg. 67247 (Nov. 4, 2002). The FFA received 501(c)(3) tax-exempt organization status as Free File, Inc. in 2012. IRS, U.S. DEP’T OF THE TREASURY, FREE ONLINE ELECTRONIC TAX FILING AGREEMENT (2014-2015), *available at* <https://www.irs.gov/pub/irs-utl/2014-2015-free-file-online-electronic-filing-agreement-amendment.pdf>.

<sup>3</sup> IRS’ Intent to Enter into an Agreement with Free File Alliance, 67 Fed. Reg. 67247 (Nov. 4, 2002).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

percent of taxpayers.<sup>6</sup> IRS and the FFA also developed a Memorandum of Understanding (“MOU”) in 2005 to identify the service standards for Free File members and the procedures for resolving disputes.<sup>7</sup> The MOU has been updated several times, with the most recent version running through October 31, 2021.<sup>8</sup>

The IRS performs an analysis each year to determine an income threshold for the Free File program that will allow 70 percent of taxpayers to file their taxes using a Free File product.<sup>9</sup> A taxpayer currently qualifies to use Free File software if their income is \$69,000 or less.<sup>10</sup> The IRS provides a webpage that allows a user with an income in this range to select a Free File product through its “Free File Online Lookup Tool.”<sup>11</sup> As the name implies, Free File products may not impose any costs on qualified users.<sup>12</sup>

Most taxpayers find their preferred tax preparation product through online searches using an online search engine.<sup>13</sup> In May 2019, a series of news articles alleged that certain FFA members actively steered customers from Free File offerings into paid products.<sup>14</sup> According to these reports, the tax preparation companies H&R Block and Intuit deliberately hid their Free File offerings from online search engine results.<sup>15</sup> These articles and others also noted the similarity between the prior names of certain Free File products and the names FFA members used at the time for certain commercial products that could charge fees for some users.<sup>16</sup> In response, the IRS announced a review of the allegations surrounding the Free File program and

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<sup>6</sup> IRS, U.S. DEP’T OF THE TREASURY, FREE ONLINE ELECTRONIC TAX FILING AGREEMENT (2005), *available at* <https://www.irs.gov/pub/irs-utl/2005-free-online-electronic-tax-filing-agreement.pdf>.

<sup>7</sup> IRS, U.S. DEP’T OF THE TREASURY, FIRST MEMORANDUM OF UNDERSTANDING ON SERVICE STANDARDS AND DISPUTES BETWEEN THE INTERNAL REVENUE SERVICE AND FREE FILE ALLIANCE, LLC (2006), *available at* <https://www.irs.gov/pub/irs-utl/2006-first-ff-mou.pdf>.

<sup>8</sup> IRS, U.S. DEP’T OF THE TREASURY EIGHTH MEMORANDUM OF UNDERSTANDING ON SERVICE STANDARDS AND DISPUTES BETWEEN THE INTERNAL REVENUE SERVICE AND FREE FILE, INCORPORATED (2018), *available at* <https://www.irs.gov/pub/irs-utl/Eight%20Free%20File%20MOU.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> IRS, U.S. DEP’T OF THE TREASURY, ABOUT THE IRS FREE FILE PROGRAM, *available at* <https://www.irs.gov/e-file-providers/about-the-irs-free-file-program>.

<sup>11</sup> IRS, U.S. DEP’T OF THE TREASURY, FREE FILE: DO YOUR FEDERAL TAXES FOR FREE, *available at* <https://www.irs.gov/filing/free-file-do-your-federal-taxes-for-free>.

<sup>12</sup> *Id.*

<sup>13</sup> *Free File Program Assessment Final Report* 42–44, MITRE (Oct. 3, 2019), *available at* [https://www.irs.gov/pub/newsroom/01\\_free-file-program-assessment-100319.pdf](https://www.irs.gov/pub/newsroom/01_free-file-program-assessment-100319.pdf).

<sup>14</sup> Justin Elliott & Paul Kiel, *TurboTax and H&R Block Saw Free Tax Filing as a Threat – and Guttled It*, PROPUBLICA (May 2, 2019), *available at* <https://www.propublica.org/article/intuit-turbotax-h-r-block-guttled-free-tax-filing-internal-memo>; Justin Elliott, *Senior IRS Leaders Launch Review of Agency’s Partnership with TurboTax and H&R Block*, PROPUBLICA (May 6, 2019), *available at* <https://www.propublica.org/article/senior-irs-leaders-launch-review-of-partnership-with-turbotax-and-h-r-block>.

<sup>15</sup> Justin Elliott & Paul Kiel, *TurboTax and H&R Block Saw Free Tax Filing as a Threat – and Guttled It*, PROPUBLICA (May 2, 2019), *available at* <https://www.propublica.org/article/intuit-turbotax-h-r-block-guttled-free-tax-filing-internal-memo>

<sup>16</sup> *Id.* See also Tik Root, *Why are Millions Paying Online Tax Preparation Fees When they Don’t Need to?*, PROPUBLICA (June 18, 2018), *available at* <https://www.propublica.org/article/free-file-online-tax-preparation-fees-intuit-turbotax-h-r-block>.

pledged to ensure the integrity of the program.<sup>17</sup> The IRS tasked the MITRE Corporation (“MITRE”) with conducting an independent and objective assessment of the Free File program, and the IRS released MITRE’s report in October 2019.<sup>18</sup> The Treasury Inspector General for Tax Administration (“TIGTA”) also conducted an audit of the Free File program and released its report in February 2020.<sup>19</sup>

In December 2019, the IRS and the FFA agreed to an addendum to the MOU that prohibits any practice that would exclude Free File websites from organic search results and standardizes the naming of Free File offerings to “IRS Free File program delivered by (Member company name or product name).”<sup>20</sup>

## Findings

Subcommittee staff received briefings from the IRS, the Government Accountability Office, TIGTA, MITRE, the FFA, and the tax preparation companies H&R Block, Intuit, TaxHawk, Drake Software (“Drake”), and TaxSlayer. Based on these briefings and a review of information provided to the Subcommittee, Subcommittee staff has made the following findings:

- 1) Until recently, the IRS conducted little oversight of the Free File program.
- 2) Three different independent entities have reviewed the Free File program since 2018 and provided recommendations for improvement, but the program continues to struggle to serve eligible taxpayers.
- 3) For the first 15 years of the Free File program, the IRS declined to take a position on whether FFA companies should index Free File websites to appear in online search engines, nor did FFA companies seek guidance from the IRS on whether their indexing practices complied with the MOU. As a result, participating FFA companies took different approaches in deciding whether to code their Free File program websites to appear in organic search engine results, or to have users access the Free File program only through the IRS website. Five companies (H&R Block, Intuit, TaxHawk, Drake, and TaxSlayer) coded their Free File websites in a way that prevented a search engine from including the websites in organic search results (or “non-indexed”). In doing so, all five companies believed they were complying with the MOU that governs the Free File program. The IRS and FFA companies executed

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<sup>17</sup> Justin Elliott, *Senior IRS Leaders Launch Review of Agency’s Partnership with TurboTax and H&R Block*, ProPublica (May 6, 2019), available at <https://www.propublica.org/article/senior-irs-leaders-launch-review-of-partnership-with-turbotax-and-h-r-block>.

<sup>18</sup> *Free File Program Assessment Final Report* iii, MITRE (Oct. 3, 2019), available at [https://www.irs.gov/pub/newsroom/01\\_free-file-program-assessment-100319.pdf](https://www.irs.gov/pub/newsroom/01_free-file-program-assessment-100319.pdf).

<sup>19</sup> TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, U.S. DEP’T OF THE TREASURY, 2020-40-009, COMPLEXITY AND INSUFFICIENT OVERSIGHT OF THE FREE FILE PROGRAM RESULT IN LOW TAXPAYER PARTICIPATION (2020).

<sup>20</sup> IRS, U.S. DEP’T OF THE TREASURY, ADDENDUM TO THE EIGHTH MEMORANDUM OF UNDERSTANDING ON SERVICE STANDARDS AND DISPUTES BETWEEN THE INTERNAL REVENUE SERVICE AND FREE FILE, INCORPORATED (2019), available at <https://www.irs.gov/pub/irs-utl/FFI%20Signed%20MOU%20Addendum%2012-26-19.pdf>.

an addendum to the MOU in December 2019 that clarified Free File websites should be indexed.

- 4) Three companies (TaxHawk, Drake, and TaxSlayer) non-indexed their Free File websites from the start of their participation in the Free File program. H&R Block non-indexed its Free File website in 2018 in response to a technical issue after determining the MOU did not require the website be indexed. In 2018, Intuit changed the name of its Free File program in an attempt to avoid consumer confusion and non-indexed the landing page of its renamed Free File offering.
- 5) According to an analysis performed by MITRE, approximately 85 percent of the visits made to FFA member web sites and IRS.gov from Google, the most popular online search engine, were made through links included in advertisements placed by FFA members to promote commercial products that may charge fees. Only a fraction of total visits – approximately 56,000 out of 12 million – went directly from Google to the website for an FFA member’s Free File product.
- 6) A lack of investment in marketing by the IRS likely led to a lack of consumer awareness that hampered participation in the Free File program.

Despite these challenges, the Free File program continues to provide a valuable service for millions of Americans. To support Free File, the IRS should increase its oversight of FFA members and dedicate funding—including increased funding from Congress, if necessary—to market the Free File program. The IRS should ensure FFA members comply with new guidance that attempts to avoid similarities between Free File branding and branding for commercial tax preparation products that could confuse taxpayers. The sections below provide a summary of actions by Subcommittee staff to date, as well as disclosures from relevant government agencies and FFA members.

## **I. UNTIL RECENTLY, THE IRS CONDUCTED LITTLE OVERSIGHT OF THE FREE FILE PROGRAM**

### **A. The Internal Revenue Service**

The IRS is the nation’s tax collection agency and administers the Internal Revenue Code.<sup>21</sup> The IRS consists of several principle offices and four primary divisions: Wage and Investment, Large Business and International, Small Business/Self-Employed, and Tax Exempt and Government Entities.<sup>22</sup> The Wage and Investment Division processes electronic and paper tax returns, reviews taxpayer withholdings, handles taxpayer inquiries, and oversees programs such as the Free File program.<sup>23</sup> For the past four years, the Division has dedicated three full-

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<sup>21</sup> IRS, U.S. DEP’T OF THE TREASURY, ABOUT IRS, *available at* <https://www.irs.gov/about-irs>.

<sup>22</sup> IRS, U.S. DEP’T OF THE TREASURY, AT-A-GLANCE: IRS DIVISIONS AND PRINCIPAL OFFICES, *available at* <https://www.irs.gov/about-irs/at-a-glance-irs-divisions-and-principal-offices>.

<sup>23</sup> Briefing with IRS (June 27, 2019).

time employees to the Free File program.<sup>24</sup> In 2018, over 100 million taxpayers met the eligibility criteria for the Free File program.<sup>25</sup>

The IRS collaborates closely with the FFA to achieve the goals of the Free File program.<sup>26</sup> For example, the IRS conducts formal tests in the beginning and the middle of the tax season to ensure that FFA members are in compliance with the Free File operating agreement and the MOU.<sup>27</sup> According to the IRS, violations are “usually a result of a programming glitch where there was a misunderstanding of the agreement’s requirements.”<sup>28</sup> If the IRS concludes that a member has willfully violated program requirements or has not adequately corrected an issue, the IRS will consider removing the member from the Free File program.<sup>29</sup> As of the date of this memorandum, the IRS has never removed a member of the Free File program.<sup>30</sup>

FFA executives told Subcommittee staff that they “on occasion” receive an allegation that a company is not in compliance with some aspect of the program.<sup>31</sup> If the FFA believes some aspect of a member company’s program needs to be changed, the FFA will immediately bring that issue to the company’s attention and require the company to address it.<sup>32</sup> The FFA later clarified that most of these issues are minor and that member companies have addressed the issues and corrected their websites.<sup>33</sup> Since the formation of the Free File program, the FFA has engaged two former government officials to serve as an auditor to review the compliance of member companies.<sup>34</sup> The auditor works directly with the IRS to ensure compliance with the MOU and is in frequent contact with IRS staff during the annual review period.<sup>35</sup>

FFA executives told Subcommittee staff they “discover more program violations than the IRS and believe [the FFA] is tougher on their members than the IRS.”<sup>36</sup> They added that members do “a lot of self-policing” and report violations by other members.<sup>37</sup>

## **B. The IRS Advisory Council’s 2018 Annual Report’s Free File Findings**

The IRS Advisory Council (“IRSAC”) serves as an advisory body to the IRS Commissioner.<sup>38</sup> The IRSAC “include[s] representation from the taxpaying public, the tax

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<sup>24</sup> *Id.*

<sup>25</sup> *Free File Program Assessment Final Report* ix, MITRE (Oct. 3, 2019), available at [https://www.irs.gov/pub/newsroom/01\\_free-file-program-assessment-100319.pdf](https://www.irs.gov/pub/newsroom/01_free-file-program-assessment-100319.pdf).

<sup>26</sup> Briefing with IRS (June 27, 2019).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Briefing with Free File Alliance (July 18, 2019).

<sup>32</sup> *Id.*

<sup>33</sup> Email from Free File Alliance to Subcommittee Staff (May 21, 2020).

<sup>34</sup> Briefing with Free File Alliance (July 18, 2019); Email from Free File Alliance to Subcommittee Staff (May 21, 2020).

<sup>35</sup> Briefing with Free File Alliance (July 18, 2019).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> INTERNAL REVENUE SERVICE ADVISORY COUNCIL PUBLIC REPORT 5 PUBLICATION 5316 (REV. 11-2018).

professional community, small and large businesses, academia, and the payroll community.”<sup>39</sup> Working with IRS leadership, the IRSAC reviews IRS practices and procedures and makes recommendations on both existing and emerging tax administration issues.<sup>40</sup> The IRSAC releases an annual report that summarizes its work for the calendar year and presents recommendations to the Commissioner and other IRS leaders.<sup>41</sup>

In 2018, the IRS asked the IRSAC to provide feedback on the Free File program.<sup>42</sup> Specifically, the IRS requested a determination as to whether the program had served its purpose and completed its mission, and recommendations for improvements.<sup>43</sup> The IRSAC concluded that:

[T]he IRS does not provide adequate oversight of the Free File program....The IRS’s deficient oversight and performance standards for the Free File program put vulnerable taxpayers at risk, and make it difficult to ensure that FFA members are upholding their obligation to provide tax preparation and e-filing services ‘to economically disadvantaged and underserved populations at no cost to the individual or the government.’...In negotiating a new MOU with the FFA, the IRSAC recommends that the IRS insist upon more robust protection and oversight components to ensure a fair and transparent program that meets its objectives, which we believe need to be clarified.<sup>44</sup>

### **C. The Treasury Inspector General for Tax Administration’s Oversight of Free File**

TIGTA conducts audits, investigations, and inspection and evaluation services that promote integrity, economy, and efficiency in the administration of the U.S. tax system.<sup>45</sup> In 2007, TIGTA conducted a review of the effectiveness of the Free File program and released an audit report.<sup>46</sup> The audit report found that the IRS could improve its efforts to evaluate, promote, and administer the Free File program.<sup>47</sup> TIGTA made five recommendations, including that the IRS develop a comprehensive plan to evaluate and promote the Free File program and expand program marketing.<sup>48</sup>

TIGTA’s next review of the Free File program began after the public reports discussed above, and TIGTA released an audit report in February 2020.<sup>49</sup> Auditors found that complexity, confusion, and a lack of taxpayer awareness about the Free File program led to reduced levels of

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<sup>39</sup> *Id.* at 6.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 14.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, U.S. DEP’T OF THE TREASURY, ABOUT TIGTA, available at <https://www.treasury.gov/tigta/about.shtml>.

<sup>46</sup> TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, U.S. DEP’T OF THE TREASURY, 2007-40-105, ADDITIONAL ACTION IS NEEDED TO EXPAND THE USE AND IMPROVE THE ADMINISTRATION OF THE FREE FILE PROGRAM (2007).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 3.

<sup>49</sup> Briefing with TIGTA (June 11, 2019).

eligible taxpayer participation in the program.<sup>50</sup> TIGTA estimated that more than 14 million taxpayers who met the Free File program criteria and used FFA member software to e-file their 2018 federal tax return may have paid a fee to e-file their return.<sup>51</sup> TIGTA also made nine recommendations in its report, including that the IRS develop a comprehensive outreach and advertising plan to inform eligible taxpayers about the Free File program.<sup>52</sup> Additionally, TIGTA recommended that IRS management update its testing review guide to ensure adherence to the MOU by FFA members.<sup>53</sup>

## **II. FIVE COMPANIES TOOK STEPS TO PREVENT THEIR FREE FILE WEBSITES FROM APPEARING IN ORGANIC SEARCH RESULTS**

A year after tasking the IRSAC with an evaluation of the Free File program, the IRS announced another review of the Free File program after reports of efforts by FFA members to steer customers toward paid products.<sup>54</sup> The agency engaged MITRE to conduct an independent and objective assessment of Free File and make recommendations for improvements to the program and its governing MOU.<sup>55</sup> The IRS chose MITRE because the company operates the IRS's federally funded research and development center.<sup>56</sup>

MITRE's assessment of the Free File program consisted of four different analyses, reviews, and tests.<sup>57</sup> For example, MITRE conducted interviews with representatives from each FFA member organization, performed a web forensics analysis of FFA member websites, conducted an expert review of the IRS Free File portal, and performed a legal analysis of the MOU's terms and conditions.<sup>58</sup> MITRE announced findings and conclusions in three areas, including: 1) the objectives of the Free File program; 2) public awareness of the Free File program; and 3) the use of search exclusion techniques among FFA members.<sup>59</sup>

In its 2019 report, MITRE determined that there are three primary ways to arrive at the IRS Free File website.<sup>60</sup> Individuals can conduct a search through an online search platform, click on a link emailed to them by an FFA member whose Free File product they used before, or type an FFA member company's Free File website address directly into their browser.<sup>61</sup> Organic searches conducted through search platforms—uninfluenced by ads placed by tax software

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<sup>50</sup> TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, U.S. DEP'T OF THE TREASURY, 2020-40-009, COMPLEXITY AND INSUFFICIENT OVERSIGHT OF THE FREE FILE PROGRAM RESULT IN LOW TAXPAYER PARTICIPATION 4 (2020).

<sup>51</sup> *Id.* at 5.

<sup>52</sup> *Id.* at 10.

<sup>53</sup> *Id.* at 15.

<sup>54</sup> Justin Elliott, *Senior IRS Leaders Launch Review of Agency's Partnership with TurboTax and H&R Block*, ProPublica (May 6, 2019), available at <https://www.propublica.org/article/senior-irs-leaders-launch-review-of-partnership-with-turbotax-and-h-r-block>.

<sup>55</sup> *Free File Program Assessment Final Report* iii, MITRE (Oct. 3, 2019), available at [https://www.irs.gov/pub/newsroom/01\\_free-file-program-assessment-100319.pdf](https://www.irs.gov/pub/newsroom/01_free-file-program-assessment-100319.pdf).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at iii–v.

<sup>58</sup> *Id.* at iv–v.

<sup>59</sup> *Id.* at xvi–xxii.

<sup>60</sup> *Id.* at 42.

<sup>61</sup> *Id.*

companies—accounted for 55 percent of traffic to the IRS Free File website.<sup>62</sup> The most common keywords used in organic search results were “free tax filing.”<sup>63</sup>

MITRE estimated that over 12 million visits were made to FFA member websites and IRS.gov through search results found on Google.<sup>64</sup> Approximately 85 percent of these visits came through paid advertising links placed on Google by FFA member companies to promote their commercial products.<sup>65</sup> The other 15 percent, which amounted to approximately 1.9 million visits, came through links found in organic search results.<sup>66</sup> Of these 1.9 million visits from Google, only 56,000 went to an FFA member’s Free File website.<sup>67</sup>

MITRE also performed an analysis to determine if any FFA member websites used coding to influence search engine routing.<sup>68</sup> For a search engine to include a website in its search results, the website must be a part of the index of that search engine.<sup>69</sup> An index is a collection of all content available on a search engine. For example, Google’s index contains hundreds of billions of pages and “is like the index in the back of a book.”<sup>70</sup> Google uses a tool to crawl the internet and identify sites to add to its index. Google does not require any affirmative submission from a company for its website to appear in the Google index.<sup>71</sup>

While website owners can send their websites to Google to index, according to Google, the “vast majority of sites listed in our results aren’t manually submitted for inclusion, but found and added automatically when we crawl the web.”<sup>72</sup> A website owner may choose to prevent search engines from indexing their website, which has the effect of excluding the website from appearing in organic search results from that engine. As discussed below, this process—referred to as “non-indexing” or “de-indexing”—requires the website creator to include specific coding in the website to signal to the search engine not to index the website as it crawls the internet for

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 43.

<sup>64</sup> *Id.* Google is widely recognized as the most popular search engine in the world, and the company maintained over 75 percent of the market share for search engines in Fiscal Year 2019. Desktop Search Engine Market Share United States of America, Oct 2018 – Sept 2019, *available at* <https://gs.statcounter.com/search-engine-market-share/desktop/united-states-of-america/#monthly-201810-201909>.

<sup>65</sup> *Free File Program Assessment Final Report* 43, MITRE (Oct. 3, 2019), *available at* [https://www.irs.gov/pub/newsroom/01\\_free-file-program-assessment-100319.pdf](https://www.irs.gov/pub/newsroom/01_free-file-program-assessment-100319.pdf).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 44.

<sup>68</sup> *Id.* at iv.

<sup>69</sup> Search Engine Optimization (SEO) Starter Guide, GOOGLE, *available at* <https://support.google.com/webmasters/answer/7451184?hl=en>; Search Engine Optimization, Webmaster Help & How-To, BING, *available at* <https://www.bing.com/webmaster/help/webmaster-guidelines-30fba23a>.

<sup>70</sup> How Search Organizes Information, GOOGLE, *available at* <https://www.google.com/search/howsearchworks/crawling-indexing>.

<sup>71</sup> Search Engine Optimization (SEO) Starter Guide, GOOGLE, *available at* <https://support.google.com/webmasters/answer/7451184?hl=en>; Search Engine Optimization, Webmaster Help & How-To.

<sup>72</sup> *Id.*



websites to include in its organic search results.<sup>73</sup> A website creator may choose to non-index a webpage for a number of reasons, including to influence how an individual arrives at a website.<sup>74</sup>

MITRE found that five of the twelve FFA members non-indexed their Free File websites, which prevented the websites from appearing in organic search results.<sup>75</sup> MITRE questioned all five companies about their efforts to influence search engine results.<sup>76</sup> Most FFA members stated that they believed this practice complied with the terms of the MOU and the understanding that Free File users should arrive at the individual FFA Free File websites from the IRS Free File page.<sup>77</sup> Following public reporting on this issue, two companies reversed their indexing practices to avoid creating the “perception that they were doing something wrong.”<sup>78</sup> MITRE declined to take a position on the practice.<sup>79</sup> As noted below, the IRS also declined to take an official, public position on the practice of indexing until the release of the addendum in December 2019.

In a briefing with Subcommittee staff, IRS Wage and Investment Division officials stated that they were not aware of which companies engaged in this practice.<sup>80</sup> MITRE executives were also present for the briefing and stated that this question was now “moot.”<sup>81</sup> MITRE added that the companies believed they were acting in compliance with the MOU when they engaged in this practice.<sup>82</sup> The Subcommittee later obtained the names of the companies from TIGTA.<sup>83</sup>

TIGTA also reviewed the coding in the twelve Free File websites operated by FFA members and linked from IRS.gov to determine if members had taken measures to non-index the Free File websites to exclude them from search engine results in 2019.<sup>84</sup> TIGTA obtained historic copies of websites for five of the twelve FFA members and found coding in each page that non-indexed the websites and prevented search engines from displaying them in search results.<sup>85</sup> TIGTA informed Subcommittee staff that the five companies were H&R Block, Intuit (TurboTax), TaxHawk (FreeTaxUSA), Drake (1040.com), and TaxSlayer.<sup>86</sup> TIGTA subsequently shared its findings with the IRS and the IRS stated that it did not believe that coding to non-index the Free File websites violated any provisions in the MOU.<sup>87</sup> TIGTA

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<sup>73</sup> *Free File Program Assessment Final Report D-1-D-2*, MITRE (Oct. 3, 2019), available at [https://www.irs.gov/pub/newsroom/01\\_free-file-program-assessment-100319.pdf](https://www.irs.gov/pub/newsroom/01_free-file-program-assessment-100319.pdf).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 45.

<sup>76</sup> *Id.* at 46.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at vi.

<sup>80</sup> Briefing with IRS (Jan. 16, 2020).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Email from TIGTA to Subcommittee staff (Feb. 12, 2020).

<sup>84</sup> TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, U.S. DEP’T OF THE TREASURY, 2020-40-009, COMPLEXITY AND INSUFFICIENT OVERSIGHT OF THE FREE FILE PROGRAM RESULT IN LOW TAXPAYER PARTICIPATION 9–10 (2020).

<sup>85</sup> *Id.* at 10.

<sup>86</sup> Email from TIGTA to Subcommittee staff (Feb. 12, 2020).

<sup>87</sup> Briefing with TIGTA (Feb. 4, 2020).

agreed that there was no explicit prohibition on this practice in the MOU, but stated it was against the spirit of the Free File program.<sup>88</sup>

Representatives from the FFA and each of the five companies briefed Subcommittee staff about these coding practices. Findings from those briefings are summarized below.

### **A. The Free File Alliance**

FFA executives told Subcommittee staff that there is no provision in the Free File operating agreement that controls the commercial advertising of program members and, in fact, discussions with FFA members regarding commercial advertising would not be productive.<sup>89</sup> The FFA also later pointed to language in the December 2019 MOU addendum that expressly grants FFA members the right to continue marketing their commercial products in the same way as businesses not participating in the Free File program.<sup>90</sup> FFA executives also told Subcommittee staff that they met with IRS officials as part of MITRE's review of the Free File program.<sup>91</sup> According to these executives, the IRS stated that FFA members had not breached the MOU by non-indexing their Free File websites from online search engines.<sup>92</sup> As described below, FFA members also believed that Free File users should arrive at their Free File websites through the main IRS Free File website or by clicking links in emails FFA members send to previous Free File users.<sup>93</sup>

### **B. H&R Block**

H&R Block offers in-person and online tax preparation services.<sup>94</sup> In 2019, the company prepared 23 million tax returns worldwide, including 1 in 7 U.S. tax returns and more than 8 million returns through digital products.<sup>95</sup> As an FFA member, the company generally offers H&R Block Free File to individuals who have an adjusted gross income under \$69,000 and meet certain additional requirements.<sup>96</sup> H&R Block also offers its own free commercial product named H&R Block Free Online.<sup>97</sup> While this product is also free, it differs from Free File because a user can choose to upgrade and pay fees for certain services.

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<sup>88</sup> *Id.*

<sup>89</sup> Briefing with Free File Alliance (July 18, 2019).

<sup>90</sup> Email from Free File Alliance to Subcommittee Staff (May 21, 2020); *See* IRS, U.S. DEP'T OF THE TREASURY, ADDENDUM TO THE EIGHTH MEMORANDUM OF UNDERSTANDING ON SERVICE STANDARDS AND DISPUTES BETWEEN THE INTERNAL REVENUE SERVICE AND FREE FILE, INCORPORATED (2019), *available at* <https://www.irs.gov/pub/irs-ut/FFI%20Signed%20MOU%20Addendum%2012-26-19.pdf> (stating that this right is “[c]onsistent with the obligations set forth in all prior Free File memorandums of understanding and the IRS Agreement”).

<sup>91</sup> Briefing with Free File Alliance (July 18, 2019).

<sup>92</sup> *Id.*

<sup>93</sup> In explaining this belief, the FFA noted that IRS had stated publicly that Free File was “accessible only through IRS.gov.” Email from Free File Alliance to Subcommittee Staff (May 21, 2020); *See* IRS, U.S. DEP'T OF THE TREASURY, IRS FREE FILE OPENS TODAY IN ADVANCE OF TAX SEASON, *available at* <https://www.irs.gov/newsroom/irs-free-file-opens-today-in-advance-of-tax-season>.

<sup>94</sup> H&R Block Company Information, *available at* <https://www.hrblock.com/corporate/our-company>.

<sup>95</sup> H&R Block Fact Sheet, *available at* <https://www.hrblock.com/corporate/pdfs/hrb-factsheet.pdf>.

<sup>96</sup> IRS Free File Program Delivered by H&R Block, *available at* [https://www.hrblock.com/ffa/?otpPartnerID=180&campaignID=pw\\_mcm\\_180\\_0001](https://www.hrblock.com/ffa/?otpPartnerID=180&campaignID=pw_mcm_180_0001).

<sup>97</sup> *Available at* <https://www.hrblock.com>.

According to H&R Block executives, the company's Free File product website was indexed and appeared in organic search results for "some period of time" during its participation in the Free File program.<sup>98</sup> The company also stated that the existing MOU was silent as to whether its Free File website should be indexed and that the IRS had indicated that users should enter the Free File program through the IRS Free File site.<sup>99</sup>

The company non-indexed its Free File product website from search engine indexes in 2018 because of a technical issue with the site.<sup>100</sup> The decision stemmed from a third-party vendor informing H&R Block that individuals clicking on the page that previously appeared in search indexes had a poor user experience.<sup>101</sup> Specifically, users who arrived at H&R Block's Free File landing page when clicking a search engine result could not exit the page because it would continuously reload and keep them on the Free File page, even if the user sought to view the company's commercial offerings.<sup>102</sup> An H&R Block employee contacted a supervisor and the supervisor determined that the Free File page did not need to be indexed.<sup>103</sup> H&R Block non-indexed the page a few days later.<sup>104</sup> H&R Block executives stated that senior management of H&R Block had no involvement in or awareness of this decision.<sup>105</sup> Subcommittee staff asked H&R Block executives to provide a basis for the decision that the Free File page did not need to be indexed.<sup>106</sup> H&R Block executives responded that it is not unusual to have websites that are not indexed, and that there was nothing nefarious about the company's decision to non-index H&R Block's Free File product website.<sup>107</sup>

H&R Block decided to reverse course and index its Free File website after the public reaction to media reports on the indexing issues.<sup>108</sup> One H&R Block executive, however, expressed to Subcommittee staff that based upon IRS instructions, customers should enter the Free File program through the IRS Free File website link, state tax return websites, and the reminder email that H&R Block sends to previous Free File users.<sup>109</sup> In August 2019, prior to the release of an addendum to the MOU in December 2019, executives from the company told Subcommittee staff that the language of the MOU did not expressly require or prohibit the indexing of Free File program websites.<sup>110</sup>

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<sup>98</sup> Briefing with H&R Block (Aug. 14, 2019); Email from H&R Block to Subcommittee Staff (May 22, 2020).

<sup>99</sup> *Id.*

<sup>100</sup> Briefing with H&R Block (Aug. 14, 2019)

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

### C. Intuit (TurboTax)

Intuit makes several financial and accounting products, including the online tax software TurboTax.<sup>111</sup> As an FFA member, the company offers the TurboTax Free File program to individuals who meet annual eligibility requirements, which change each year and appear on the TurboTax Free File website at the beginning of the tax season.<sup>112</sup> Intuit also offers a similar commercial product named TurboTax Free Edition, which allows users with simple tax returns to file for free; users can also elect to upgrade and pay for additional services, unlike with the Free File product.<sup>113</sup>

Intuit executives told Subcommittee staff that the company changed the name of its Free File offering in October 2018 from TurboTax Freedom Edition to TurboTax Free File Program.<sup>114</sup> Public criticism in 2018 had suggested that the similarity between Freedom Edition and Free Edition (the company's commercial free product that charges fees for some services) confused taxpayers.<sup>115</sup> Intuit understood critics to have alleged that the name "Freedom Edition" did not sufficiently convey that the product was free.<sup>116</sup> As a result, the company changed the name of its Free File product."<sup>117</sup> Executives told the Subcommittee that the change aligned Intuit's Free File product with the names of other Free File products offered by FFA members and received approval from the IRS prior to the 2019 tax filing season.<sup>118</sup>

In connection with this name change, Intuit non-indexed the landing page of its Free File offering.<sup>119</sup> According to company executives, Intuit was concerned that the similar names for "Free Edition," its free commercial offering, and "Free File Program" could confuse online search algorithms and potentially result in two similarly named TurboTax free sites listed next to each other in organic search results.<sup>120</sup> (The website for Freedom Edition, the previous version of Intuit's Free File product, had been a part of search engine indexes since 2013.)<sup>121</sup> Intuit executives noted, however, that the company published other webpages that linked to its Free File offering and were part of search indexes.<sup>122</sup> After additional public reporting in 2019, Intuit reversed course and removed the non-indexing language from its Free File Program website code.<sup>123</sup>

Intuit executives told the Subcommittee that they are unable to control organic search results and did not know how the landing pages for TurboTax Free File Program or TurboTax

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<sup>111</sup> About Intuit, available at <https://www.intuit.com/company>.

<sup>112</sup> IRS Free File Program Delivered by TurboTax, available at <https://freefile.intuit.com/>.

<sup>113</sup> Available at <https://turbotax.intuit.com/personal-taxes/online/free-edition.jsp>.

<sup>114</sup> Briefing with Intuit (July 31, 2019).

<sup>115</sup> *Id.* See also Tik Root, *Why are Millions Paying Online Tax Preparation Fees When they Don't Need to?*, PROPUBLICA (June 18, 2018), available at <https://www.propublica.org/article/free-file-online-tax-preparation-fees-intuit-turbotax-h-r-block>.

<sup>116</sup> Email from Intuit to Subcommittee Staff (May 21, 2019).

<sup>117</sup> *Id.*

<sup>118</sup> Briefing with Intuit (July 31, 2019).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

Free Edition would appear in organic search results.<sup>124</sup> Intuit believed it was “doing the right thing” and that non-indexing the old version of its Free File website was consistent with industry practice.<sup>125</sup> One Intuit executive offered that it was “outrageous that journalists had claimed Intuit’s decision to non-index Freedom Edition was a sinister backroom decision to prevent people from filing with Free File.”<sup>126</sup> Intuit executives explained that they believed they had done “more than anyone” to promote Free File—including paying for advertising—and that those efforts were entirely voluntary under the program’s rules.<sup>127</sup> Intuit executives stressed that the efforts the company took to compensate for lost traffic from non-indexing its Free File Program landing page resulted in a “small increase” in people finding Intuit’s Free File product through online search and using it to file for free, as compared to the previous year.<sup>128</sup>

#### **D. TaxHawk (FreeTaxUSA)**

TaxHawk is an online tax preparation company, founded in 2001, that offers do-it-yourself resources for filing taxes electronically with the IRS.<sup>129</sup> The company is a founding member and continuous participant of the FFA.<sup>130</sup> TaxHawk offers its Free File product at FreeTaxUSA.com/freefile and through a link on the IRS.gov website that resolves to this address.<sup>131</sup> TaxHawk also provides commercial offerings through three websites: TaxHawk.com, FreeTaxUSA.com, and Express1040.com.<sup>132</sup> All of the commercial offerings provide preparation and e-filing of the federal tax return for free, regardless of complexity.<sup>133</sup>

A TaxHawk executive told Subcommittee staff that IRS.gov is the place to start using a Free File product.<sup>134</sup> As a result, the company has always non-indexed its Free File website since 2001.<sup>135</sup> TaxHawk did not discuss the topic of indexing with the IRS until public reporting on this issue in 2019, and the IRS never told TaxHawk that non-indexing was wrong.<sup>136</sup> Following direction from the IRS in 2019, the company has removed the non-indexing coding and included its Free File site on search engine indexes to comply with the newest terms of the MOU.<sup>137</sup>

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> About TaxHawk, *available at* <https://www.taxhawk.com/about.jsp>; Briefing with TaxHawk (Mar. 12, 2020).

<sup>130</sup> About TaxHawk, *available at* <https://www.taxhawk.com/about.jsp>.

<sup>131</sup> IRS Free File Program delivered by FreeTaxUSA, *available at* <https://www.freetaxusa.com/freefile/>.

<sup>132</sup> *Available at* <https://www.taxhawk.com/software.jsp>.

<sup>133</sup> Email from TaxHawk to Subcommittee Staff (May 19, 2020).

<sup>134</sup> Briefing with TaxHawk (Mar. 12, 2020).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

## **E. Drake (1040.com)**

Drake provides professional tax preparation software, and processes more than 16 million federal returns each year.<sup>138</sup> Drake also offers a do-it-yourself website, 1040.com, for individuals seeking to file their tax returns electronically without the assistance of a professional.<sup>139</sup> Drake joined the Free File program in 2011 and offered its Free File product on 1040.com until the company voluntarily left the program in 2019.<sup>140</sup>

A Drake executive told Subcommittee staff that the company's developers studied the terms of the MOU prior to making a decision about indexing and concluded that customers should only begin their experience at IRS.gov.<sup>141</sup> The company also believed that this approach could best avoid a situation in which Free File users interacted with Drake commercial products, which contained product offers and fees that the Free File program prohibited.<sup>142</sup> As a result, Drake decided to non-index its Free File website from the start of its participation in the Free File program in 2011.<sup>143</sup>

Drake executives were unaware of any issues related to indexing for search engine results until public reporting in 2019.<sup>144</sup> Following this reporting, the company consulted the IRS to understand whether it was doing something wrong.<sup>145</sup> Drake executives stated the IRS did not provide a direct answer to the company, but the agency instead pointed to public statements regarding the intention that users would only start their Free File experience at IRS.gov.<sup>146</sup> A Drake executive explained that the company made a business decision to exit the Free File program in early 2019, before the increased public scrutiny of the program, but did not formally leave until later in the year.<sup>147</sup>

## **F. TaxSlayer**

TaxSlayer is a cloud-based tax preparation software that provides resources for filing federal and state taxes electronically with the IRS.<sup>148</sup> The company developed its own tax preparation software in the late 1980s and entered the do-it-yourself tax return market in the late 1990s.<sup>149</sup> TaxSlayer is a founding member of the FFA and has been a continuous participant in the Free File program since 2002.<sup>150</sup> TaxSlayer also offers a free commercial product named

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<sup>138</sup> About Drake Software, *available at* <https://www.drakesoftware.com/about-us/about-drake>; Briefing with Drake Software (Mar. 4, 2020).

<sup>139</sup> Briefing with Drake Software (Mar. 4, 2020); About Us, *available at* <https://www.1040.com/about-us>.

<sup>140</sup> Briefing with Drake Software (Mar. 4, 2020).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Email from Drake Software to Subcommittee Staff (May 18, 2020).

<sup>148</sup> About TaxSlayer, *available at* <https://www.taxslayer.com/taxslayer-history?rdr=/mediaroom/companyinfo>.

<sup>149</sup> Briefing with TaxSlayer (Mar. 9, 2020).

<sup>150</sup> *Id.* See IRS Free File Program delivered by TaxSlayer, *available at* <https://www.taxslayer.com/americanpledge/?source=TSUSATY2019>

TaxSlayer Simply Free that allows users to file a simple tax return for free.<sup>151</sup> TaxSlayer Simply Free users also have the option to upgrade and pay fees for additional features, content, and services.<sup>152</sup>

A TaxSlayer executive explained to Subcommittee staff that the company has always believed that entrance to the Free File program should begin at the IRS website.<sup>153</sup> In their view, this approach provides “clarity and confidence” to users by showing them all Free File offerings and allowing them to choose.<sup>154</sup> In an effort to ensure that users adhere to this process, TaxSlayer provides a link back to IRS.gov if a user arrives at its Free File website through search engine results.<sup>155</sup>

TaxSlayer has always non-indexed its Free File website since the beginning of its participation in the Free File program in 2002.<sup>156</sup> The company believed that this approach is consistent with the intent of the language of the MOU.<sup>157</sup> A TaxSlayer executive stated that TaxSlayer did not discuss indexing with the IRS at any point prior to 2019, although the company has since removed the non-indexing code based on changes to the MOU.<sup>158</sup>

### **III. THE FREE FILE PROGRAM SUFFERS FROM A LACK OF INVESTMENT IN MARKETING BY THE IRS**

The Subcommittee learned that the IRS does not presently maintain a budget for marketing the Free File program, nor has Congress specifically appropriated funds for this purpose.<sup>159</sup> IRS officials could not recall the last time the agency had a marketing budget, but they estimated it had been approximately six years.<sup>160</sup> FFA executives similarly stated that the IRS had not maintained a marketing budget for the Free File program “for about a decade,” and that the government has the responsibility to direct people to the program.<sup>161</sup> Subcommittee staff asked whether the lack of budget for Free File marketing was the result of an internal IRS decision or a decrease in congressional funding.<sup>162</sup> IRS officials stated, “It may have been an IRS budget decision as part of the broader reduction in spending the agency received over the last several years.”<sup>163</sup> As a result, the IRS usually only conducts a “media blitz” to promote the availability of the Free File program.<sup>164</sup> MITRE explained that because the IRS does not have a

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<sup>151</sup> Available at <https://www.taxslayer.com/products/taxslayer-free-tax-filing>.

<sup>152</sup> *Id.*

<sup>153</sup> Briefing with TaxSlayer (Mar. 9, 2020).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> Briefing with IRS (June 27, 2019).

<sup>160</sup> *Id.*

<sup>161</sup> Briefing with Free File Alliance (July 18, 2019).

<sup>162</sup> Briefing with IRS (June 27, 2019).

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

marketing budget for the Free File program, the Wage and Investment Division issues press releases before and during tax filing season and promotes links to the IRS.gov website.<sup>165</sup>

The MITRE report, however, stated that while the Free File program is a “long-standing public-private partnership,” it suffered from a lack of awareness by both the public and the tax software industry.<sup>166</sup> MITRE noted that by including Free File in a broader, annual marketing campaign, the IRS might not necessarily reach the actual Free File-eligible population.<sup>167</sup> MITRE recommended that the IRS determine the level of awareness of the Free File program, which it last analyzed in 2011, before pursuing congressional funding.<sup>168</sup>

TIGTA’s audit concluded that the IRS had not allocated any funds to promote the Free File program since Fiscal Year 2014.<sup>169</sup> The IRS previously had a marketing contract from Fiscal Year 2009 to Fiscal Year 2014, which allocated between \$750,000 and \$1.5 million per year for Free File marketing.<sup>170</sup> This funding supported newspaper, radio, and local television advertisements about the program.<sup>171</sup> TIGTA told Subcommittee staff that they found no evidence to suggest the IRS lacked authority to spend funds to promote Free File after Fiscal Year 2014.<sup>172</sup> Instead, the IRS sought to “save money and be more efficient.”<sup>173</sup>

H&R Block executives stated that the MOU sets forth the obligation of the IRS to promote the Free File program and that the company does not believe it should be marketing the program “in any manner;” therefore, it does not engage in any efforts to market the Free File program.<sup>174</sup> Per the requirements of the MOU, H&R Block sends one reminder email to individuals who used the company’s Free File product the prior year.<sup>175</sup> The company has also referenced its Free File offering in press releases, which lists the various ways taxpayers may file taxes free of charge.<sup>176</sup>

Intuit executives detailed the ways in which they market their Free File offering.<sup>177</sup> In 2019, Intuit increased its advertising spending for online search platforms by 80 percent.<sup>178</sup> Intuit also increased its support for Tax Time Allies, a nonprofit organization that focuses on online advertisement of the Free File program, to \$1.5 million.<sup>179</sup> Additionally, Intuit sends six

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<sup>165</sup> *Free File Program Assessment Final Report* 53, MITRE (Oct. 3, 2019), available at [https://www.irs.gov/pub/newsroom/01\\_free-file-program-assessment-100319.pdf](https://www.irs.gov/pub/newsroom/01_free-file-program-assessment-100319.pdf).

<sup>166</sup> *Id.* at 82.

<sup>167</sup> *Id.* at 53.

<sup>168</sup> *Id.*

<sup>169</sup> TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, U.S. DEP’T OF THE TREASURY, 2020-40-009, COMPLEXITY AND INSUFFICIENT OVERSIGHT OF THE FREE FILE PROGRAM RESULT IN LOW TAXPAYER PARTICIPATION 9 (2020).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> Briefing with TIGTA (Feb. 4, 2020).

<sup>173</sup> *Id.*

<sup>174</sup> Briefing with H&R Block (Aug. 14, 2019).

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Briefing with Intuit (July 31, 2019).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*



to eight reminder emails each year to previous users of the company's Free File offering, which the company noted is more than the single email required by the MOU.<sup>180</sup>

A TaxHawk executive stated he believed the IRS lacked funding for marketing the Free File program and instead does "some marketing that is low-cost or no-cost."<sup>181</sup>

A Drake executive declined to comment on the state of the IRS budget but noted that a marketing campaign would help the IRS increase awareness of the Free File program.<sup>182</sup>

A TaxSlayer executive stated that awareness is key to the growth of the Free File program.<sup>183</sup> The company sends a reminder email to prior users of its Free File product, participates in Tax Time Allies awareness events when invited, and also alerts prior Free File users who attempt to use one of its commercial products that they could be eligible for Free File.<sup>184</sup> A company executive explained that TaxSlayer could not speak as to why the IRS does not perform marketing.<sup>185</sup>

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On December 26, 2019, the IRS and the FFA agreed to an addendum to the MOU that established "clearly defined rules for online search practices."<sup>186</sup> The addendum prohibits FFA members from engaging in any practice that would exclude their Free File landing pages from organic search results.<sup>187</sup> IRS officials told Subcommittee staff that they have begun conducting organic searches to determine whether any FFA members have violated the addendum.<sup>188</sup> An FFA executive told the Subcommittee that this change was not the result of a discussion between the IRS and the FFA. Instead, the IRS imposed this change because "they believed this was a better policy."<sup>189</sup> The addendum also requires each FFA member to standardize the naming of its Free File offering and use the following convention: IRS Free File program delivered by (Member company or product name).<sup>190</sup> In addition, the addendum requires that the FFA's auditor conduct a review of member websites before and during the middle of the tax filing season and provide aggregate findings to the IRS; the FFA must also provide written notification that all member companies are in compliance.<sup>191</sup>

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<sup>180</sup> *Id.*

<sup>181</sup> Briefing with TaxHawk (Mar. 12, 2020).

<sup>182</sup> Briefing with Drake (Mar. 5, 2020).

<sup>183</sup> Briefing with TaxSlayer (Mar. 9, 2020).

<sup>184</sup> *Id.*; Email from Intuit to Subcommittee Staff (May 21, 2020).

<sup>185</sup> Briefing with TaxSlayer (Mar. 9, 2020).

<sup>186</sup> IRS, U.S. DEP'T OF THE TREASURY, ADDENDUM TO THE EIGHTH MEMORANDUM OF UNDERSTANDING ON SERVICE STANDARDS AND DISPUTES BETWEEN THE INTERNAL REVENUE SERVICE AND FREE FILE, INCORPORATED (2019), available at <https://www.irs.gov/pub/irs-utl/FFI%20Signed%20MOU%20Addendum%2012-26-19.pdf>.

<sup>187</sup> *Id.*

<sup>188</sup> Briefing with IRS (Jan. 16, 2020).

<sup>189</sup> Briefing with TaxHawk (Mar. 12, 2020).

<sup>190</sup> IRS, U.S. DEP'T OF THE TREASURY, ADDENDUM TO THE EIGHTH MEMORANDUM OF UNDERSTANDING ON SERVICE STANDARDS AND DISPUTES BETWEEN THE INTERNAL REVENUE SERVICE AND FREE FILE, INCORPORATED (2019), available at <https://www.irs.gov/pub/irs-utl/FFI%20Signed%20MOU%20Addendum%2012-26-19.pdf>.

<sup>191</sup> *Id.*

All parties the Subcommittee interviewed expressed the view that Free File users should begin their experience at the Free File website on IRS.gov. Many of these parties further noted that millions of Americans are unaware of the Free File program and, by extension, the official Free File website. Even with dedicated funding, a return to previous marketing efforts, and increased IRS oversight of the Free File program, millions of Americans will likely continue to use search engines when choosing an online tax preparation software. As MITRE found during its review, for example, one search engine alone generated over 12 million visits to FFA member websites and IRS.gov.<sup>192</sup> The IRS should ensure that FFA members have implemented the suggested program name change to avoid similarities between Free File branding and branding for commercial tax preparation products that could confuse taxpayers. To ensure the effectiveness of the Free File program as taxpayer habits change, Congress, the IRS, and the FFA should work together to maximize opportunities for Americans to find and use free tax filing services.

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<sup>192</sup> *Free File Program Assessment Final Report* 43, MITRE (Oct. 3, 2019), available at [https://www.irs.gov/pub/newsroom/01\\_free-file-program-assessment-100319.pdf](https://www.irs.gov/pub/newsroom/01_free-file-program-assessment-100319.pdf).