

United States Senate Committee on Finance
Hearing to Consider the Nomination of David Johnson to be Inspector General for Tax Administration, Department of the Treasury
November 14, 2024

Questions for the Record for David Johnson

Senator Barrasso

Question 1

President Biden nominated you to be the Inspector General for Tax Administration on July 23, 2024. If confirmed, you will now be serving under President-Elect Trump.

How does the change of Administration impact your work to provide independent oversight?

Answer: Under the Inspector General Act of 1978, as amended, Inspectors General are non-partisan and independent. They are intended to serve under any Administration and most serve under multiple Administrations. My work would not be impacted by a change of Administration. If confirmed, I will fulfill my statutory duties to combat fraud, waste, and abuse at the IRS and provide objective oversight of the agency's operations.

Question 2

You have served for many years as the Assistant Inspector General for Investigations at the U.S. Department of Veterans Affairs Office of Inspector General. You will now be tasked with overseeing matters of the Internal Revenue Service (IRS), the IRS Oversight Board, and the IRS Office of Chief Counsel.

Given your oversight responsibilities will focus on an entirely different set of issues, will you be able to effectively and thoroughly understand the matters of the IRS and ensure proper oversight of the nation's tax system?

Answer: I am a career Senior Executive in the OIG community and have substantial management, law enforcement, financial, and legal experience. I currently serve as the head of the Veterans Affairs (VA) Office of Inspectors General (OIG)'s Office of Investigations, which conducts investigative oversight of the second-largest federal agency. I supervise over 270 employees assigned to offices nationwide, including four career Senior Executives. I previously served for more than a decade as a federal prosecutor, both as an Assistant Chief in the Fraud Section of the DOJ's Criminal Division, as well as an Assistant United States Attorney and Health Care Fraud Coordinator at the U.S. Attorney's Office for the District of Columbia. I also served as an Assistant Chief Litigation Counsel at the Securities and Exchange Commission (SEC). In these capacities, I handled matters involving complex financial issues, including accounting and tax issues. Finally, I was an adjunct law professor at Georgetown University Law Center, where I co-taught a course on Complex Securities Investigations. I respectfully submit that I am well-prepared to lead TIGTA if I am confirmed and look forward to the opportunity to

lead this important oversight agency to ensure that the administration of our country's tax laws is economical, efficient, and effective.

Question 3

Previous reports by Treasury Inspector General for Tax Administration (TIGTA) highlighted the issues with the IRS using antiquated processes and systems.

Would you continue to review the processes and systems being used by the IRS?

Answer: Yes.

Are you committed to identifying ways the IRS can save taxpayers money while improving taxpayer services in a more efficient and effective manner?

Answer: Yes.

Question 4

The IRS has suffered from numerous instances of unauthorized disclosures of taxpayer data. One instance even involved an IRS contractor stealing and leaking President Trump's tax return information to the public.

Do you commit to conducting independent oversight to ensure that the IRS properly secures data and prevents future leaks of confidential taxpayer information?

Answer: Yes. As a former federal prosecutor and current federal law enforcement official, I share your concern about the unlawful disclosure of taxpayer information. The IRS has a solemn duty to protect taxpayer information and, if confirmed, I will prioritize the protection of taxpayer information through audits, inspections, and investigations to prevent and deter future leaks.

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Senator Crapo

Question 1

How do you distinguish between agency employees and contractors who blow the whistle on waste, fraud, and abuse in government operations and those who have a disagreement because of a shift in policy?

Answer: Whistleblowers play an important role in combating fraud, waste, and abuse at government agencies, as agency employees and contractors often are in the best position to detect wrongdoing in the agency's operations. I strongly support the rights of whistleblowers and believe that OIGs must be diligent in evaluating whistleblower complaints to determine whether they contain an allegation appropriate for OIG review. If confirmed, I will distinguish allegations of fraud, waste, and abuse from disagreements in policy by assessing whether a complaint alleges a violation of law; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. I will follow my authorizing legislation in the Inspector General Act of 1978, as amended.

Question 2

Based on your professional experience, can you discuss past examples of how you have distinguished between the two aforementioned groups?

Answer: As a former federal prosecutor, former SEC enforcement attorney, and current federal law enforcement official at the VA OIG, I have a proven track record demonstrating my ability to distinguish between violations of statutes, regulations, and rules and discretionary policy decisions. In those roles, I have supervised and led numerous cases that required the application of this standard, all of which involved violations of law as opposed to shifts in policy.

Question 3

Last year, a former IRS contractor, Charles Littlejohn, pled guilty to the unauthorized disclosure of tax return information. Littlejohn was later sentenced to five years in prison. As you are aware, TIGTA investigated the case.

On behalf of all taxpayers, I greatly appreciate TIGTA's work on the case. However, I remain deeply concerned that an IRS contractor stole private taxpayer information and disclosed that information to news outlets in order to advance an ideological agenda on tax policy. More fundamentally, I remain concerned that the unauthorized theft and disclosure of tax return information served as a significant breach of trust between Americans and their government.

In the event there is another unauthorized theft and disclosure of tax return information, if confirmed, will you commit to providing the necessary oversight and accountability of the IRS?

Answer: I share your view on the importance of protecting taxpayer information from unauthorized theft and disclosure. Protecting taxpayer information is one of the IRS's most solemn responsibilities. At the VA OIG, I have experience overseeing the investigation and referral to the Department of Justice (DOJ) of cases involving the unauthorized access of veteran health information, which is similarly protected by statute.

If confirmed, I commit to providing the necessary oversight and accountability of the IRS on this critical issue. I also commit to providing timely and accurate information to Congress, consistent with applicable law, to allow Congress to fulfill its own oversight function.

Question 4

Will you commit to providing the Senate Finance Committee with timely and thorough oversight updates as permitted by law, subject to all statutory legal requirements?

Answer: Yes.

Question 5

Americans have a right to know that the personal information they provide the IRS remains confidential and will not be used against them to advance political agendas. Do you agree?

Answer: Yes.

Question 6

In your personal opinion, how does the breach of private taxpayer information impact the public's trust in the IRS?

Answer: The IRS has a duty to protect taxpayer information from theft and unauthorized disclosure. Taxpayers rely on the IRS to maintain the confidentiality of their sensitive financial and personal information and any breach negatively impacts the public's trust in the IRS and faith in government. I believe that TIGTA plays an important role in ensuring that the IRS is taking all appropriate measures to protect taxpayer information, by identifying any deficiencies, making recommendations for improvement, and holding wrongdoers accountable.

Question 7

If confirmed, how would you seek to ensure that TIGTA brings to justice individuals who illegally disclose taxpayer information?

Answer: As a former federal prosecutor and current federal law enforcement official who oversees cases involving violations of privacy laws at VA, I possess a strong background and skill set that will assist me in holding accountable any individual who unlawfully discloses

taxpayer information. If confirmed, I will ensure that TIGTA's Office of Investigations has clear direction and all necessary resources to enforce taxpayers' right to confidentiality and hold wrongdoers accountable. Indeed, at the VA OIG, I have experience overseeing the investigation and referral to DOJ of cases involving the unauthorized access of veteran health information, which is similarly protected by statute.

Question 8

Beyond the information provided in the court-file documents, Congress and the public have not been provided specific information on this episode, including any complete "post-mortem" of it. While some information is important to keep internal, the lack of transparency for Congress and the public is concerning.

If confirmed, will you commit TIGTA to providing such a report to me, whether subject to disclosure restrictions or not?

Answer: I deeply respect the important oversight role of Congress and recognize that Congress requires timely information from OIGs in order to conduct its legislative work. I also share your view that OIGs should promote transparency whenever possible, subject to laws requiring confidentiality. If confirmed, I will prioritize this issue and work with you and your staff to address your request, including by providing a report or briefing to ensure your concerns are being appropriately addressed.

Question 9

Like many of my Senate Republican colleagues, I have serious concerns regarding the IRS's unilateral and unauthorized action to create a permanent IRS Direct File tax preparation program. Despite numerous problems with the program and objections from Congress, the IRS announced earlier this year the launch of its permanent Direct File program. This program was not authorized by Congress and is a massive and ill-advised expansion of power of the agency. On top of the serious legal concerns with the program, TIGTA recently found that Direct File pacts with states left taxpayer data insecure. As a result, taxpayers' personal information could be at risk, thereby placing their confidential information vulnerable to loss or theft.

If confirmed, how would you inspect the serious legal, data privacy, and security concerns with the Direct File program? Please be specific.

Answer: I appreciate that this is an important issue for Congress. If confirmed, I commit to looking into this issue once at TIGTA. Because I am not currently at TIGTA, I am not in a position to provide specific details about any prospective review until I am fully briefed, but I commit to engaging with you and your staff during the process, if confirmed.

Question 10

As I previously mentioned, I have concerns about the quality of information that is provided to Congress and the public from the IRS. In some cases, it is not what Congress is asking for, and

in other cases it appears to be framed or otherwise constrained in a way that supports specific policy outcomes (e.g., increasing the IRS' funding). TIGTA has the capacity to provide an independent check on this by utilizing its own calculations and data, and/or requiring the IRS to calculate and track data in the way it requests. For example, TIGTA currently calculates different phone service delivery metrics than the IRS otherwise publicly reports.

If confirmed, what will you do to ensure that TIGTA's data is calculated, tracked, and reported without varnish or bias, and without undue reliance on the IRS?

Answer: The Inspector General Act of 1978 established OIGs as independent and objective units within an agency. This was done to allow Congress and the agency head to receive unbiased assessments and feedback about agency programs and operations by a unit that is not involved in the creation or implementation of those programs and operations. The Inspector General Act also grants the OIG access to agency records so that the OIG can conduct its own fact-finding based on source documents without having to rely on the agency's interpretation. If confirmed, my goal will be to provide accurate information to Congress, the agency head, and the public in a form that is easily digestible and clarifies any discrepancies between agency and OIG metrics in reports.

Question 11

For example, if the IRS were to argue that it could not provide you certain information, would you accept that response or require them to provide the information you have asked for?

Answer: As authorized by the Inspector General Act of 1978, if confirmed, I would require timely access to all relevant records relating to the IRS programs and operations under review.

Question 12

While it is important for Inspector Generals to be independent from their parent agency's leaders, Congress is a key stakeholder of the results of Inspector General reviews through committee oversight.

How would you ensure Congress stays informed about ongoing TIGTA investigations?

Answer: Congress has an important oversight role over the IRS and one of TIGTA's duties under the Inspector General Act of 1978, as amended, is to keep Congress fully and currently informed concerning fraud and other serious problems at the agency. The Inspector General Act also prohibits the disclosure of information otherwise prohibited from disclosure by law. With respect to criminal investigations, a number of federal laws, including the Inspector General Act's authorization of law enforcement authority for OIGs, limit what can be disclosed about an active investigation. If confirmed, however, I commit to providing as much information as permissible to Congress so that Congress is equipped to exercise its own oversight and legislative functions concerning the IRS.

Question 13

Please discuss your interactions with authorizing and appropriations committees in your position at the Department of Veterans of Affairs.

Answer: The VA OIG engages with Members of Congress and their staff on a regular basis and is by far the most active OIG in terms of testimony before Congress. Although I have not had the opportunity to testify on behalf of the VA OIG in my role as the head of the OIG's Office of Investigations, I have participated in briefings with Congressional staff about investigative processes and closed matters.

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Senator Grassley

Question 1

On March 11, 2024, I wrote to 76 Inspectors General requesting they review their parent agency's nondisclosure policies to ensure compliance with whistleblower laws.

On July 18, 2024, the TIGTA OIG responded saying:

“We found that the IRS didn't include this anti-gag provision in its Nondisclosure Agreements, policies, and forms.”

The TIGTA OIG said it anticipated releasing a final report in October with their recommendations for the IRS to correct these serious problems. Here we're in November and it's yet to issue the report.

Mr. Johnson, if confirmed, do you commit to completing the review and releasing a final report and recommendations? Do you also commit to ensuring nondisclosure policies include the legally required anti-gag provision?

Answer: I strongly support the rights of whistleblowers and the laws intended to protect them. If confirmed, I commit to reviewing all pending matters at TIGTA and ensuring that this report is finalized and released in a timely fashion. I also commit to taking all appropriate actions to ensure that the IRS complies with all laws, including legally required anti-gag provisions.

Question 2

On November 5, 2024, I wrote to 76 Inspectors General requesting data and information about how much taxpayer money has been spent to settle sexual harassment claims. As government watchdogs, Inspectors General should be setting the example for transparency.

Mr. Johnson, my staff sent you my letter to the VA Inspector General. In your position, are you aware of taxpayer money being used to settle sexual harassment claims? How much has been spent in the last four years? Lastly, if confirmed, do you commit to answering the same letter I sent to the TIGTA Inspector General's office?

Answer: I did not receive your letter in my official position at the VA OIG. However, I am unaware of any taxpayer money being used in this way at the VA OIG. If confirmed, I commit to

following up with you and your staff once at TIGTA and answering the same letter. I share your view that Inspectors General should be a model of transparency and accountability.

Question 3

Mr. Johnson, if confirmed you will lead an office charged with oversight of all IRS operations. The tax code is very complex which can result in taxpayers and small business owners unwittingly finding themselves on the wrong side of law. Oversight of the IRS is vital to ensure it enforces tax laws fairly while respecting taxpayer rights. While you have many years of experience working in an Inspector General's office and as an Assistant U.S. Attorney, you do not have any tax expertise in your background.

Do you see a lack of a technical expertise in tax law as an impediment to your ability to succeed as the Inspector General for Tax Administration? What steps are you taking to ensure you will be ready to take on this new role from day one?

Answer: I am a career Senior Executive in the OIG community and have substantial management, law enforcement, financial, and legal experience. I currently serve as the head of the VA OIG's Office of Investigations, which conducts investigative oversight of the second-largest federal agency. I supervise over 270 employees assigned to offices nationwide, including four career Senior Executives. I previously served for more than a decade as a federal prosecutor, both as an Assistant Chief in the Fraud Section of the DOJ's Criminal Division, as well as an Assistant United States Attorney and Health Care Fraud Coordinator at the U.S. Attorney's Office for the District of Columbia. I also served as an Assistant Chief Litigation Counsel at the SEC. In these capacities, I handled matters involving complex financial issues, including accounting and tax issues. Since being nominated to be the Inspector General for Tax Administration, I have been reviewing publicly available information about the IRS's and TIGTA's work and have been talking with professionals in the tax industry to be ready take on this role from day one, if confirmed. I respectfully submit that I am well-prepared to lead TIGTA if I am confirmed and look forward to the opportunity to lead this important oversight agency to ensure that the administration of our country's tax laws is economical, efficient, and effective.

Question 4

Recently there have been instances where confidential taxpayer information was illegally made available to the public for what appear to be political reasons. A former contractor was recently sentenced to prison for leaking tax information of many individuals, including President Trump's tax returns.

If confirmed, will you make the protection of confidential taxpayer information a priority and report to congress on any violation of taxpayer information without any political bias?

Answer: Yes. As a former federal prosecutor and current federal law enforcement official, I share your concern about the unlawful disclosure of taxpayer information. The IRS has a solemn duty to protect taxpayer information and, if confirmed, I will prioritize any breach of taxpayer

confidentiality to hold wrongdoers accountable under the law. If confirmed, I commit that all of my work will be apolitical and unbiased.

Question 5

Created by the IRS Restructuring and Reform Act of 1998, TIGTA was lead by J. Russell George for nearly 20 years.

If confirmed, what priorities will you bring to TIGTA and what goals do you currently have? How will you step into the shoes of Mr. George, who had a long and distinguished career heading TIGTA?

Answer: Although I am not currently at TIGTA, based on publicly available information, I am aware of a number of management challenges facing the IRS that warrant continued oversight by TIGTA and which I would likely focus on immediately, if confirmed. These challenges include the protection of taxpayer information, IT modernization, customer service, and how the IRS is spending IRA funds. If confirmed, my overall goal will be to provide Congress, the Treasury Secretary, and the IRS Commissioner with timely and accurate information and recommendations to improve the IRS's operations for the benefit of all Americans. I will ensure that TIGTA's work is focused on the most impactful issues at the IRS and that reports issued by TIGTA are unbiased, relevant, and reliable. I also will work closely with Congress to support Congress's oversight and legislative functions relating to the IRS.