



By Fed Ex and Email

November 13, 2017

U.S. Department of the Treasury
Chief Information Office
Information Quality Program/IM
1750 Pennsylvania Ave, NW
11th Floor Washington, DC 20220

Re: *Request for Correction Under the Information Quality Act*

To whom it may concern:

On behalf of Democracy Forward Foundation ("DF"), I respectfully submit this Request for Correction pursuant to the Information Quality Act ("IQA") to the Department of the Treasury ("Department" or "Treasury") to retract and correct misleading and unreliable information issued by the Department as part of the current public policy discussion on tax reform. The information in question is directly contrary to data previously disseminated by the Department and to quality financial, economic, and statistical data.

The IQA, found at Section 515 of Public Law 106-554, and its implementing guidelines require that information disseminated to the public by federal agencies, including Treasury, be accurate, reliable, and unbiased.¹ As described below, the Department's statements in support of the "Unified Framework for Fixing Our Broken Tax Code" ("Unified Framework"), unveiled on

¹ Consolidated Appropriations Act, 2001, Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153 & 154, 44 U.S.C. § 3516, note (West); Office of Mgmt. & Budget, Exec. Office of the President, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002) ("OMB Guidelines"), <https://www.gpo.gov/fdsys/pkg/FR-2002-02-22/pdf/R2-59.pdf>; U.S. Dep't of Treasury, *Information Quality Guidelines: Process* (2011), <https://www.treasury.gov/about/organizational-structure/offices/Mgt/Pages/infoprocess.aspx>; U.S. Dep't of Treasury, *Procedures for Implementation of the Information Quality Law* (2011) ("Departmental Offices Guidelines"), <https://www.treasury.gov/about/organizational-structure/offices/Mgt/Pages/infoqual-do.aspx>.



September 27, 2017 by the Treasury, the White House, and Congressional Republicans, have violated these requirements. This letter addresses two such statements.

First, the Department asserted that the average American household would benefit by “\$4,000–9,000 once the tax plan is fully, obviously, operational” (“\$4,000–9,000 Figure”). The Department offers no support for this figure. Additionally, common sense does not square with the \$4,000–9,000 Figure, even at the low end of the estimate. As explained by one preeminent economist and former Chair of the Council of Economic Advisors, for the Unified Framework to result in a \$4,000–9,000 income rise in an economy with 125 million households, the total number of households would need to benefit by \$550 billion to \$1.1 trillion, which is more than two to five times the amount of the contemplated tax cut.

Second, the Department asserted that “more than 70 percent of the corporate tax burden falls on American workers” (“70 Percent Figure”). Yet, longstanding Department analysis by career economists contradicts this statement, estimating instead that the burden is less than 20 percent. Analysis by other federal entities also contradicts the 70 Percent Figure. Equally troubling, the Department removed the originating study on the issue from its website.

The Department’s dissemination of both the \$4,000–9,000 Figure and 70 Percent Figure in violation of the IQA misinforms the public and manipulates the consideration of tax reform. Accordingly, I request that the Department retract and correct the \$4,000–9,000 and 70 Percent Figures within 60 days.

As explained in more detail below, DF has a significant interest in using accurate, reliable, and unbiased data and information regarding tax reform to educate the public about this pressing policy issue of national concern.

I. The Department Should Retract and Correct the \$4,000–9,000 and 70 Percent Figures.

A. The Department’s assertion that cutting the corporate tax rate would benefit the average American household by \$4,000–9,000 lacks justification and conflicts with common sense.

Tax reform is a core public policy area. A central issue in the current consideration of tax reform is whom would benefit from the corporate tax cut, which is a major feature of the



package of reforms being pursued by the White House and Republican members of Congress.² On October 18, 2017, the Department's Assistant Secretary for Public Affairs, Tony Sayegh Jr., claimed in a Fox News Channel interview that a reduction in the corporate tax would benefit the average American household by "\$4,000–9,000 once the tax plan is fully, obviously, operational."³

Neither Assistant Secretary Sayegh nor the Department credibly support or explain this claim.⁴ They simply insist that the \$4,000–9,000 Figure is the "obvious[]"⁵ outcome of the Unified Framework, though the Framework is only a "template" with "additional reforms" and details to come.⁶ Former Chair of the Council of Economic Advisors Jason Furman pointed out the basic, common-sense error with even the lower bound estimate: "if all 125 million households got a [\$4,000–9,000] raise like that, it would amount to an annual increase in total wages of between \$550 billion and \$1.1 trillion. That's between 275% and 550% of the total cost of the \$200 billion corporate tax cut—implying a supply-side effect that's more than a little far-fetched."⁷

² U.S. Dep't of Treasury, *Unified Framework for Fixing Our Broken Tax Code* (2017), <https://www.treasury.gov/press-center/press-releases/Documents/Tax-Framework.pdf>.

³ @AmericaNewsroom, Twitter (Oct. 18, 2017, 1:23 PM), <https://twitter.com/americanewsroom/status/920701913615781890>.

⁴ On some occasions, the Department gestures at a report by the Council on Economic Advisors (CEA) to justify the \$4,000–9,000 Figure. See, e.g., Stephen T. Mnuchin, *Tax Reform Will Boost Workers and Business*, Phila. Inquirer (Oct. 18, 2017, 5:00 AM) (citing Council of Econ. Advisors, *Corporate Tax Reform and Wages: Theory and Evidence* (2017), <https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/Tax%20Reform%20and%20Wages.pdf>), <http://www.philly.com/philly/opinion/commentary/mnuchin-tax-reform-individual-corporate-rates-economy-20171018.html>. However, even an author cited in the CEA report objects to its analysis. Mihir A. Desai, whose research the CEA favorably cites, distanced himself and his co-authors from the CEA's findings, tweeting that the analysis in the report has "little relation" to his cited work. @desaimihira, Twitter (Oct. 17, 2017, 11:12 AM), <https://twitter.com/desaimihira/status/920306523804524544>.

⁵ @AmericaNewsroom, *supra* note 3.

⁶ See U.S. Dep't of Treasury, *Unified Framework*, *supra* note 2, at 3.

⁷ Jason Furman, *No, the GOP Tax Plan Won't Give You a \$9,000 Raise*, Wall Street J. (Oct. 22, 2017, 4:01 PM), <https://www.wsj.com/articles/no-the-gop-tax-plan-wont-give-you-a-9-000-raise-1508702509>.



B. The 70 Percent Figure Directly Conflicts with Multiple Prior Statements by The Department and Other Budget and Tax Entities.

On October 18, 2017, in a *Philadelphia Inquirer* article, Secretary Mnuchin touted this tax reform plan as one under which “[i]ndividual and business tax reform will give U.S. workers the long [] overdue pay raise they deserve.”⁸ Secretary Mnuchin then asserted that “[e]conomists have found that more than 70 percent of the corporate tax burden falls on American workers.”⁹

The 70 Percent Figure, however, conflicts with data and analysis by Treasury’s career economists and tax experts, including as recently as January 2017. A 2012 study, “Distributing the Corporate Income Tax: Revised U.S. Treasury Methodology,” (“2012 Study”) by the Office of Tax Analysis (OTA), the Department’s in-house tax economics think tank,¹⁰ found that “82 percent of the corporate income tax burden is borne by [...] capital income and 18 percent is borne by labor [income].”¹¹ OTA subsequently published the paper in a respected, peer-reviewed tax journal.¹² This same information also appeared in Treasury’s 2015 “Distributional Analysis of the Tax System,” a foundational analysis of tax burdens that shows how “proposed changes in tax law affect the distribution of after-tax income across families” and “provide[s] policy makers with guidance on the fairness of the current or proposed federal tax burden.”¹³ Treasury again

⁸ Mnuchin, *supra* note 4.

⁹ *Id.*

¹⁰ Among other functions, the Office of Tax Analysis “analyzes the effects of the existing tax law and alternative tax programs and prepares a variety of background papers, position papers, policy memoranda, and analytical reports on economic aspects of domestic and international tax policy.” U.S. Dep’t of Treasury, *Resource Center* (Mar. 16, 2017, 4:08 PM), <https://www.treasury.gov/resource-center/tax-policy/Pages/Tax-Analysis-and-Research.aspx>.

¹¹ Julie-Anne Cronin et al., U.S. Dep’t of Treasury Office of Tax Analysis, *Distributing the Corporate Income Tax: Revised U.S. Treasury Methodology* (Technical Paper No. 5, 2012) (“Cronin Study”), <https://www.wsj.com/public/resources/documents/May2012corptaxpaper.pdf>.

¹² Julie-Anne Cronin et al., *Distributing the Corporate Income Tax: Revised U.S. Treasury Methodology*, 66 (1) Nat’l Tax J. 239 (2013), <https://www.ntanet.org/NTJ/66/1/ntj-v66n01p239-62-distributing-corporate-income-tax.pdf>.

¹³ U.S. Dep’t of Treasury, *Treasury’s Distribution Methodology and Results 1* (2015) (“Because labor income bears a small fraction (19 percent) of the burden of the corporate income tax ... the top 10 percent of families [who receive 78 percent of total positive capital income and whose income is 32 percent positive capital income] bears 72.5 percent of the burden of the corporate income tax.”), <https://www.treasury.gov/resource-center/tax-policy/tax-analysis/Documents/Summary-of-Treasury-Distribution-Analysis.pdf>.



relied on this data and analysis in a January 2017 report, “The Case for Responsible Business Tax Reform: A Report by the U.S Department of the Treasury’s Office of Tax Policy.”¹⁴

The 70 Percent Figure not only conflicts with prior statements by Treasury; it is also at odds with analysis by other federal entities. As noted above, Treasury’s 2012 initial analysis was published in a peer-reviewed academic journal. Treasury’s original analysis is also aligned with research by the Congressional Budget Office¹⁵ and the Joint Committee on Taxation,¹⁶ both bipartisan government entities charged with developing metrics to score changes in the tax code.

The Department, moreover, sought to conceal the initial 2012 Study. The Department removed the 2012 Study from its website, which contains OTA working papers dating back to 1974.¹⁷ When asked about the erasure, the Department justified its actions by calling the report a “dated staff analysis”¹⁸ that was—in Secretary Mnuchin’s own words—“completely inconsistent”¹⁹ with Treasury’s newly-adopted position on the corporate tax burden. As of this

¹⁴ U.S. Dep’t of Treasury Office of Tax Policy, *The Case for Responsible Business Tax Reform* (2017) (citing Cronin Study), <https://www.treasury.gov/resource-center/tax-policy/Documents/Report-Responsible-Business-Tax-Reform-2017.pdf>.

¹⁵ See Cong. Budget Office, *The Distribution of Household Income and Federal Taxes, 2008 and 2009* (2012), <https://www.cbo.gov/publication/43373> (“CBO has reevaluated the research on that topic, and in this report it allocates 75 percent of the federal corporate income tax to capital income and 25 percent to labor income.”); see also Jennifer C. Gravelle, *Corporate Tax Incidence: A Review of Empirical Estimates and Analysis*, Cong. Budget Office (2011), <https://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/122xx/doc12239/06-14-2011-corporatetaxincidence.pdf>.

¹⁶ See Joint Comm. on Taxation, *Modeling the Distribution of Taxes on Business Income* (2013) (“[T]he Joint Committee staff follows the middle range of the current economic literature by assuming that 25 percent of corporate income taxes are borne by domestic labor and 75 percent are borne by owners of domestic capital.”), <https://www.jct.gov/publications.html?func=startdown&id=4528>.

¹⁷ See Richard Rubin, *Treasury Removes Paper at Odds with Mnuchin’s Take on Corporate-Tax Cut’s Winners*, Wall Street J. (Sept. 28, 2017 6:41 PM), <https://www.wsj.com/articles/treasury-removes-paper-at-odds-with-mnuchins-take-on-corporate-tax-cuts-winners-1506638463>.

¹⁸ Catherine Rampell, *The Report Trump Officials Don’t Want You To See*, Wash. Post (Oct. 2, 2017), https://www.washingtonpost.com/opinions/the-report-trump-officials-dont-want-you-to-see/2017/10/02/f6c77a6c-a7ab-11e7-850e-2bdd1236be5d_story.html?utm_term=.bddd40535552.

¹⁹ Alan Rappeport, *Mnuchin Talks Taxes and That Vanishing Treasury Study*, N.Y. Times (Oct. 31, 2017) (“To the extent that there was something that was completely inconsistent with what we’re publishing



writing, the 2015 and 2017 reports containing this “inconsistent” data remain on Treasury’s website. Despite being pressed by multiple media outlets, the Department continues to promote the 70 Percent Figure.²⁰

II. Both The \$4,000–9,000 and 70 Percent Figures Violate the IQA and its Implementing Guidelines.

The IQA directs the Office of Management and Budget (“OMB”) to issue guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”²¹ Federal agencies, in turn, must issue their own guidelines, likewise “ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency” and establishing “administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines.”²² Pursuant to these directives, OMB as well as Treasury, and certain Bureaus within Treasury, promulgated guidelines establishing information quality standards and providing a means for parties to seek redress for information that does not conform to these standards (together “Treasury’s guidelines”).²³ Thus, under the OMB and pertinent agency guidelines, the touchstone for the IQA is that (1) information (2) disseminated by an agency (3) be of requisite quality.

now, we thought it made sense to take down.”),

<https://www.nytimes.com/2017/10/31/us/politics/mnuchin-taxes-treasury.html>.

²⁰ Secretary Mnuchin believes that “most economists” support the 70 Percent Figure. *See, e.g.*, Interview by Chris Wallace with Stephen Mnuchin, Secretary of the Treasury, Washington, DC (Sept. 3, 2017), <http://www.foxnews.com/transcript/2017/09/03/sec-mnuchin-talks-cutting-off-north-korea-economically.html>. But the non-partisan Center on Budget and Policy Priorities reviewed the positions of respected tax policy institutions and found that only one, “an outlier from the mainstream consensus,” supports the figure. Chye-Ching Huang & Brandon Debot, *Corporate Tax Cuts Skew to Shareholders and CEOs, Not Workers as Administration Claims*, Ctr. On Budget & Pol’y Priorities (Aug. 16, 2017), https://www.cbpp.org/research/federal-tax/corporate-tax-cuts-skew-to-shareholders-and-ceos-not-workers-as-administration#_ftnref13.

²¹ Consolidated Appropriations Act, *supra* note 1, § 515(a).

²² *Id.* § 515(b); *see also Prime Time Int’l Co. v. Vilsack*, 599 F.3d 678, 684–86 (D.C. Cir. 2010) (describing statutory and administrative scheme for IQA).

²³ *See* U.S. Dep’t of Treasury, *Information Quality Guidelines*, *supra* note 1 (“Using the administrative mechanism, affected persons can seek, and obtain where appropriate, timely correction of information



Both the \$4,000–9,000 and 70 Percent Figures are covered information. Treasury’s guidelines define “information” as “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms,” including information the “agency disseminates from a web page,” but excluding information where “the agency’s presentation makes it clear that what is being offered is someone’s opinion rather than fact or the agency’s views.”²⁴ The Assistant Secretary for Public Affairs cited the \$4,000–9,000 Figure while giving a television interview, a covered “audiovisual form[.]”²⁵ Secretary Mnuchin, in his capacity as “the 77th Secretary of the Treasury,” asserted the 70 Percent Figure in a *Philadelphia Inquirer* article describing the Administration’s tax reform proposals.²⁶

Treasury disseminated both figures. Treasury’s guidelines define “dissemination” to include “agency initiated or sponsored distribution of information to the public,” including “where the agency directs a third party to distribute information or the agency has the authority to review and approve the information before release.”²⁷ Treasury developed the \$4,000–9,000

that does not comply with OMB, Treasury or Bureau guidelines.”); U.S. Dep’t of Treasury, *Procedures for Implementation*, *supra* note 1. DF notes that it brings this Request for Correction under the OMB, Treasury and Departmental Offices Guidelines. If another set of Bureau-specific Guidelines governs statements from the Office of the Secretary or Office of Public Affairs, DF respectfully requests that this letter also be construed as a Request for Correction under those Guidelines.

²⁴ U.S. Dep’t of Treasury, *Information Quality Guidelines: Appendix A – Definitions* (2010), https://www.treasury.gov/about/organizational-structure/offices/Mgt/Pages/infoapp_A.aspx (“Treasury Guideline Definitions”); *see also* OMB Guidelines at 8460.

²⁵ *See @AmericaNewsroom*, *supra* note 3; U.S. Dep’t of Treasury, *Information Quality Guidelines*, *supra* note 1 (“The guidelines apply to information disseminated to the public in any medium including [...] audiovisual forms.”).

²⁶ *See Mnuchin*, *supra* note 8.

²⁷ Treasury Guideline Definitions; U.S. Dep’t of Treasury, *Information Quality Guidelines: Scope* (2010) (“The guidelines also apply to Bureau or Departmental Offices sponsored distribution of information - where the agency directs a third party to distribute information or the agency has the authority to review and approve the information before release.”), <https://www.treasury.gov/about/organizational-structure/offices/Mgt/Pages/infoscope.aspx>; U.S. Dep’t of Treasury, *Procedures for Implementation*, *supra* note 1 (“The guidelines also apply to Bureau or Departmental Offices sponsored distribution of information - where the agency directs a third party to distribute information or the agency has the authority to review and approve the information before release.”); *see also* OMB Guidelines at 8454 (“‘agency * * * SPONSORED distribution of information to the public’ refers to situations where an



Figure as part of its presentation for interviews. Similarly, Treasury employees prepared the 70 Percent Figure as part of Secretary Mnuchin's article and distributed it to the public in a wide-circulation newspaper. High-level department staff "ha[d] the authority to review and approve the [\$4,000–9,000 and 70 Percent Figures] before release" to the *Philadelphia Inquirer* for publication and the television reporter for broadcast.²⁸

Neither figure satisfies the IQA's quality requirement. Treasury guidelines require that the Department adhere to the IQA's standards for "quality," which encompasses the concepts of "utility, objectivity, and integrity."²⁹ The first two standards—utility and objectivity—are relevant to this Request to Correct. The utility standard ensures the "usefulness of the information to its intended users, including the public."³⁰ The objectivity standard requires that information be "accurate, reliable, and unbiased";³¹ "presented in an accurate, clear, complete, and unbiased manner";³² and "have full, accurate, [and] transparent documentation."³³ Additionally, the guidelines require that "influential scientific, financial, or statistical information"—that is, data that has a "clear and substantial impact on important public policies or important private sector decisions"—meet an even stricter standard of quality.³⁴ Data that is influential must exhibit a "high degree of transparency" and "the accuracy of this information is significant due to the critical nature of the[] decisions" that can be impacted by it.³⁵

The \$4,000–9,000 and 70 Percent Figures are influential financial and statistical data. Information regarding the effect of the corporate income tax on various income brackets is crucial to the public policy debate unfolding on reforms to the tax code. Further, voters rely on

agency has directed a third-party to disseminate information, or where the agency has the authority to review and approve the information before release.").

²⁸ *Id.*

²⁹ Treasury Guideline Definitions; *see also* OMB Guidelines at 8459 ("usefulness of the information to the intended users").

³⁰ Treasury Guideline Definitions; OMB Guidelines at 8453.

³¹ Treasury Guideline Definitions; OMB Guidelines at 8459.

³² Treasury Guideline Definitions; OMB Guidelines at 8453.

³³ Treasury Guideline Definitions; OMB Guidelines at 8459.

³⁴ OMB Guidelines at 8460; Treasury Guideline Definitions.

³⁵ U.S. Dep't of Treasury, *Information Quality Guidelines* (2010),

<https://www.treasury.gov/about/organizational-structure/offices/Mgt/Pages/infoguide.aspx>; *see also* OMB Guidelines at 8455 ("[I]nfluential information [...] can be expected to have major effects on public policy.").



information such as the Department's \$4,000–9,000 and 70 Percent Figures to understand otherwise highly technical tax proposals and to give feedback to their elected representatives regarding tax reform.

The Department fails to meet the higher standard for influential information. Indeed, by Secretary Mnuchin's own account, the 70 Percent Figure is "completely inconsistent" with multiple previous statements by Treasury as well as the analysis of multiple tax experts, clearly calling into question both its reliability and its credibility.³⁶

Likewise, Treasury has failed to ensure a high degree of transparency or reliability for both the \$4,000–9,000 and 70 Percent Figures. The inputs for the \$4,000–9,000 Figure are a mystery. This precise figure is based only on an admitted "template" with "additional reforms" and details to come.³⁷ Further, the Department continues to promote inconsistent information about the incidence of the corporate rate: the longstanding analysis by career economists still found on the Department's website and Secretary Mnuchin's recent 70 Percent Figure. Additionally, the Department has gone so far as to remove the contradictory 2012 Study from its website and has not sufficiently explained any of the changed assumptions and analysis underlying the 70 Percent Figure. This lack of transparency both suppresses objective data prepared by career economists and injects confusion into the tax reform debate. In both cases, when the Department fails to provide transparent analysis, taxpayers are unable to fully understand the Department's position.

Even if they are not deemed influential, the \$4,000–9,000 and 70 Percent Figures still fail to meet the baseline standard for objectivity and utility under the guidelines. Because of the flaws described above, neither figure is useful to the public in evaluating tax reform and thus violates the "utility" standard. The figures are likewise devoid of the requisite "objectivity," given their respective conflicts with common sense and existing Treasury statements, as well as the lack of transparency regarding their provenance.

In sum, the \$4,000–9,000 and 70 Percent Figures are agency-disseminated information that fail the quality standards set forth in the IQA and its implementing guidelines.

³⁶ Rappeport, *supra* note 19.

³⁷ U.S. Dep't of Treasury, *Unified Framework*, *supra* note 2, at 3.



III. Democracy Forward Foundation is an affected person.

Democracy Forward Foundation is an affected person entitled to seek correction of disseminated information that fails to meet the IQA's quality standards. The guidelines define "affected person" as one whom "may benefit or be harmed by the disseminated information," including one who "use[s] information."³⁸ DF "uses" the information at issue within the meaning of the guidelines. DF is a non-partisan, non-profit organization that scrutinizes Executive Branch activity across policy areas, challenges unlawful actions through litigation, and educates the public about improper government activity. Thus, DF is committed to ensuring that the government disseminates accurate and reliable information pertaining to policy issues, and, in this regard, has focused its efforts on ensuring that the government is transparent in the current public policy debate over tax reform.³⁹ The organization therefore has a significant interest in seeing that the government relies on accurate and reliable data in its communications with the public concerning tax reform and "uses" information such as the statistics at issue in furtherance of this interest. A retraction and correction of the misleading \$4,000–9,000 and 70 Percent Figures would "benefit" DF by advancing its mission to provide greater transparency in the tax reform debate and to educate and assist the public in its evaluation of tax reform proposals.

IV. Conclusion and Relief Requested.

Given the importance and immediacy of an improved public dialogue about tax reform, and the misinformation being disseminated by Treasury as part of that debate, Democracy Forward requests that the Department retract and correct the \$4,000–9,000 and 70 Percent Figures within 60 days.

Sincerely,

A handwritten signature in blue ink, appearing to read "Anne Harkavy".

Anne Harkavy
Executive Director, Democracy Forward Foundation

³⁸ Treasury Guideline Definitions.

³⁹ Democracy Forward Found., *Demanding the Administration Reveal Who Participated in Secret Meetings to Craft Tax Proposal* (Oct. 31, 2017), <https://democracyforward.org/work/democracy-forward-foundation-v-treasury/>.