

# United States Senate

WASHINGTON, DC 20510

August 15, 2024

The Honorable Daniel I. Werfel  
Commissioner  
Internal Revenue Service  
U.S. Department of Treasury  
1111 Constitution Avenue, NW  
Washington, DC 200224

Dear Commissioner Werfel,

We write to you today regarding Employee Retention Credit (ERC) claims awaiting adjudication with the Internal Revenue Service (IRS). Our offices regularly hear from small businesses, non-profits, colleges, and other taxpayers across Virginia who have faced negative financial impacts while awaiting updates regarding their claims. We appreciate the recent announcement that IRS is moving forward in processing some pending claims, although many of our constituents are still awaiting clarity on the timing of their individual claim.

In her midyear report to Congress dated June 26, 2024, National Taxpayer Advocate Erin M. Collins reported that the backlog of ERC claims awaiting adjudication had grown to about 1.4 million total claims. We understand that this backlog exists in large part due to the moratorium put into place on September 14, 2023, which halted the processing of new ERC claims and substantially slowed the processing of previously filed claims due to concern about claim validity.

On June 20, 2024, IRS announced the end of their detailed review of over 1 million ERC claims and confirmed that a significant portion were improperly filed. The Service stated it would begin to deny high-risk claims while “judiciously processing” claims found with low levels of risk, projecting that some payments would go out later this summer. On August 8, 2024, the IRS provided further details about the first groups to be processed, including 28,000 claims showing a high level of risk that have been denied, in addition to 50,000 low-risk claims that will start being processed in the coming weeks. The announcement further stated that another “large block” of low-risk claims would be processed in the fall.

While we applaud the work IRS has done since June 20<sup>th</sup> to root out improper claims and identify valid claims, we continue to hear from an increasing number of Virginians frustrated by the lack of clarity on when their individual claims will be adjudicated.

As you know, businesses and other organizations need answers about their ERC claims to determine whether to undertake investments in operations, workforce, and capital projects. Unfortunately, many of our constituents are telling us they cannot make informed decisions because they have no knowledge as to when and if their claims will be processed. Many Virginia organizations with ERC claims have been waiting a year or more with no response whatsoever from the agency. Despite our best efforts to advocate on behalf of these constituents, engagement

from our offices have similarly yielded little to no clarity on when claims will be processed. Simply put, this is unacceptable.

With these concerns in mind, we respectfully ask that you address the following:

1. The IRS' June 20<sup>th</sup> announcement indicated that over 1 million ERC claims have been categorized into three designated categories: 10%-20% are "Highest-risk" 60%-70% are "Unacceptable risk", and 10%-20% are "low risk". On August 8<sup>th</sup>, IRS announced that 28,000 high-risk claims received disallowance letters, "thousands" of unacceptable-risk claims are under audit, and 50,000 low-risk claims are being processed and should receive payment soon. This still leaves hundreds of thousands of claims the IRS has yet to act on. What is the timeline for the remaining applicants? When will all pending claims have received an initial response, whether it be approval, denial, or request for further information?
2. How will filers not part of either initial group be made aware that their claims will take longer?
3. How were the 50,000 claims IRS has said will soon receive payment identified? Was any consideration given to the financial situation of the taxpayers in that block? Now that processing of valid claims is beginning to ramp up, will there be a pathway for taxpayers reporting with documented financial hardship to have their claims adjudicated more quickly?
4. We have made numerous inquiries on behalf of Virginians and receive new requests frequently. How does the agency intend to partner with our offices to ensure that these inquiries are reviewed and addressed in a timely manner?

We appreciate the work that you and IRS staff are doing to carefully review the claims and determine whether they meet Congress's eligibility requirements. Safeguarding taxpayer funds is an important function of the agency, and the ERC program is among the most complex ever administered. However, Virginia small businesses and nonprofits simply cannot afford to wait indefinitely. The longer these claims languish, the greater the chance our constituents have to lay off workers or slow operations, hurting Virginia's economy. We look forward to working with you to find an appropriate balance between offering transparency to taxpayers while ensuring that each return receives an appropriate review and is adjudicated accordingly.

Sincerely,



Mark R. Warner  
United States Senator



Tim Kaine  
United States Senator