MSP #1

PRIVATE DEBT COLLECTION: The IRS's Private Debt Collection Program Is Not Generating Net Revenues, Appears to Have Been Implemented Inconsistently with the Law, and Burdens Taxpayers Experiencing Economic Hardship

RESPONSIBLE OFFICIAL

Mary Beth Murphy, Commissioner, Small Business/Self-Employed Division

TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Finality*
- *The Right to Privacy*
- *The Right to Confidentiality*
- *The Right to a Fair and Just Tax System*

DEFINITION OF PROBLEM

In 2015, Congress enacted legislation requiring the IRS to enter into "qualified tax collection contracts" for the collection of "inactive tax receivables."[2] The National Taxpayer Advocate cautioned that the initiative as it was being implemented appeared inconsistent with the law and would disproportionately burden taxpayers experiencing economic hardship.[3]

The IRS assigned the first tax debts to private collection agencies (PCAs) in April 2017.[4] According to the IRS, for fiscal year (FY) 2017:

- The IRS received $6.7 million of payments from taxpayers whose debts were assigned to PCAs; and

1 *See* Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). *See* Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 Fixing America's Surface Transportation Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733-36 (2015) (FAST Act), (adding subsections (c) and (h) to IRC § 6306).

3 *See* National Taxpayer Advocate 2016 Annual Report to Congress 172-191 (Most Serious Problem: *The IRS Is Implementing a PDC Program in a Manner That Is Arguably Inconsistent With the Law and That Unnecessarily Burdens Taxpayers, Especially Those Experiencing Economic Hardship*).

4 IRS News Release IR-2017-74, *Private Collection of Some Overdue Federal Taxes Starts in April; Those Affected Will Hear First From IRS; IRS Will Still Handle Most Tax Debts* (Apr. 4, 2017), https://www.irs.gov/newsroom/private-collection-of-some-overdue-federal-taxes-starts-in-april-those-affected-will-hear-first-from-irs-irs-will-still-handle-most-tax-debts.

- The total cost of the PDC program was $20 million, three times the amount collected.[5]

Thus, the initiative is not raising net revenue. Moreover, the IRS letter advising taxpayers that their account is being assigned to a PCA is generating 40 percent as many dollars for the public fisc as collection activity by PCAs does.[6] At the same time, the IRS pays commissions to PCAs on payments from taxpayers that are attributable to IRS, rather than PCA, action.[7]

The recent returns of approximately 4,100 taxpayers who made payments to the IRS after their debts were assigned to PCAs show:

- Median income was about $41,000;
- Over 1,100 taxpayers, or 28 percent, had incomes below $20,000; and
- 44 percent had incomes below 250 percent of the federal poverty level.[8]

Among these 4,100 taxpayers were those who receive Social Security Disability Insurance (SSDI) benefits, even though the IRS agreed to exclude the debts of SSDI recipients from assignment to PCAs.[9]

Approximately 1,700 taxpayers entered into installment agreements while their debts were assigned to PCAs, made payments on which the PCAs were paid commissions, and have filed recent returns.[10] According to these taxpayers' returns, 45 percent had income that was less than their allowable living expenses (ALE).[11] Thus, these taxpayers could not afford the payments due under the installment agreements organized by the PCAs. The IRS refuses to allow TAS to participate in its procedures for monitoring calls between taxpayers and PCAs, which could provide insight into why so many of these vulnerable taxpayers are entering into installment agreements they cannot afford.

ANALYSIS OF PROBLEM

Background

In 2016, the IRS entered into contracts with four PCAs that allow the PCAs to contact taxpayers, solicit payment of past-due taxes, offer payment arrangements that may, with IRS approval, extend to

---

5 IRS, *Private Debt Collection (PDC) Program Scorecard for Fiscal Year (FY) 2017*, reporting operational data through Sept. 14, 2017 and IRS costs through Sept. 30, 2017.

6 As discussed below, the IRS paid commissions to private collection agencies (PCAs) at the rate of 20 percent of the amount of payments taxpayers made, and is authorized to keep for itself an additional 25 percent. Thus, up to 45 percent of the receipts attributable to PCA activity was paid in commissions or may be retained by the IRS, rather than being paid to the Treasury.

7 IRS response to TAS information request (Nov. 21, 2017), discussed below.

8 Individual Returns Transaction File (IRTF), Information Returns Master File (IRMF), Compliance Data Warehouse (CDW), data current through Sept. 28, 2017, showing there were 4,141 taxpayers who made payments while their debts were assigned to a PCA and who filed a return for tax year 2014 or later. Their income characteristics are discussed in more detail below.

9 IRTF, IRMF, CDW, data current through Sept. 28, 2017.

10 *Id.* There were 1,676 taxpayers who entered into an installment agreement after their debts were assigned to a PCA, made a payment, and filed a recent return. As discussed below, some of these taxpayers entered into an installment agreement by contacting the IRS directly, rather than working with the PCA.

11 *Id.*

seven years, and receive a commission of up to 25 percent of the amount collected.[12] The IRS is also authorized to retain for itself an additional amount up to 25 percent of the amount collected.[13] The IRS is required to assign to PCAs tax debts that the IRS includes in "potentially collectible inventory" (PCI), a term not defined in the statute or in Treasury regulations.[14]

The PDC Program Thus Far Is Not Producing Net Revenue

The IRS periodically summarizes PDC program performance in program "scorecards."[15] The FY 2017 Scorecard shows:

- The IRS had assigned about $920 million of inactive tax receivables to PCAs;[16]
- About $7 million, or less than one percent of the dollars assigned for collection, had been collected;[17] and
- The total program cost was about $20 million, consisting of about $1 million in commissions paid to PCAs and $19 million of other PDC program costs.[18]

Thus, it does not appear that PCAs are particularly effective in collecting the debts assigned to them. In any event, the cost of the PDC program thus far exceeds the revenue it generates. It appears that a little over half of the total program costs incurred in FYs 2016 and 2017 combined were one-time startup costs, as opposed to continuing costs of oversight and assignment.[19] The IRS is in the process of developing a model for projecting program revenues and costs.[20]

The IRS Pays Commissions to PCAs for Work Done by the IRS, Which May Be Inconsistent With IRC § 6306

The National Taxpayer Advocate has previously expressed concern that PCAs may receive commissions on payments taxpayers make in response to the IRS's letter advising them their debts were assigned to

---

12 IRC § 6306(c) requires the IRS to enter into "qualified collection contracts" with respect to "inactive tax receivables." However, a "qualified collection contract," as defined in IRC § 6303(b)(1), would allow PCAs to offer installment agreements for "a period not to exceed 5 years." Thus, the National Taxpayer Advocate is not persuaded that the IRS's contracts with PCAs meet the statutory definition of "qualified collection contracts." *See* National Taxpayer Advocate 2016 Annual Report to Congress 172, 179 (Most Serious Problem: *The IRS Is Implementing a PDC Program in a Manner That Is Arguably Inconsistent With the Law and That Unnecessarily Burdens Taxpayers, Especially Those Experiencing Economic Hardship*). IRC § 6306(e) authorizes the IRS to pay commissions pursuant to a "qualified collection contract." The National Taxpayer Advocate does not find any statutory authority for paying commissions to PCAs with respect to installment agreements of more than five years' duration.

13 IRC § 6306(e).

14 IRC § 6306(c) generally requires the IRS to assign to PCAs all "inactive tax receivables," defined as any "tax receivable" that meets any one of three criteria. A "tax receivable" for purposes of the statute is an account the IRS includes in "potentially collectible inventory" (PCI).

15 The PDC Program Scorecard for Fiscal Year 2017 reports operational data through Sept. 14, 2017 and IRS costs through Sept. 30, 2017.

16 *Id.*, showing $919,593,380 of tax receivables were assigned.

17 *Id.*, showing $6,698,661 were collected.

18 *Id.*, showing commissions were paid of $1,068,944. Under the IRS's contract with the PCAs, commissions are generally payable with respect to payments taxpayers make beginning after ten days from the assignment of the debt to the PCA. Other PDC program costs were $18,967,203.

19 IRS response to TAS information request (Dec. 19, 2017), providing combined costs for FYs 2016 and 2017, showing total costs of $35,321,078, of which $18,818,397 (53 percent) are one-time costs and $16,502,681 (47 percent) are recurring costs.

20 SB/SE response to TAS information request (Nov. 21, 2017).

The IRS is aware that it is paying commissions to Private Collection Agencies (PCAs) with respect to work done by the IRS, but has no plans to change its procedures to attempt to identify payments that were clearly not attributable to PCA action.

a PCA, rather than due to any action on the part of the PCA.[21] As the PDC program has unfolded, inappropriate commission payments have emerged in another context, as an example illustrates:

- On April 10, a taxpayer's debt was assigned to a PCA;
- On May 24, the taxpayer contacted the IRS and the IRS assisted the taxpayer in entering into an installment agreement. This caused the case to be recalled from the PCA, but the recall was not recorded in IRS databases until June 19; and
- In the meantime, on June 5, the taxpayer made a payment pursuant to the installment agreement the IRS had organized. The IRS paid the PCA a commission on that payment. [22]

The IRS is aware that it is paying commissions to PCAs with respect to work done by the IRS, but has no plans to change its procedures to attempt to identify payments that were clearly not attributable to PCA action.[23] The IRS's position is that its contract with the PCAs requires this outcome.[24] However, this practice appears inconsistent with IRC § 6306(e), which authorizes commissions on amounts collected "under any qualified tax collection contract." According to IRC § 6306(d), a tax debt that is subject to a pending or active installment agreement "shall not be eligible for collection pursuant to a qualified tax collection contract." Thus, from the moment an installment agreement is pending as a result of the taxpayer requesting an installment agreement directly from the IRS, the debt is not eligible for collection pursuant to a qualified tax collection contract, and commissions to PCAs are not authorized on ensuing payments.[25]

The IRS Ten-Day "Pre-PDC Assignment" Letter Generates 40 Percent As Much for the Treasury As PCA Activity Does

Taxpayers whose accounts were assigned to PCAs made payments totaling $6.7 million.[26] About $1.2 million of these payments were not commissionable because they were made within ten days after the IRS notified the taxpayers that their debts were being assigned to a PCA, but before the taxpayers had

21 *See* National Taxpayer Advocate 2016 Annual Report to Congress 172, 190-191 (Most Serious Problem: *The IRS Is Implementing a PDC Program in a Manner That Is Arguably Inconsistent With the Law and That Unnecessarily Burdens Taxpayers, Especially Those Experiencing Economic Hardship*).

22 IRS response to TAS information request (Nov. 21, 2017).

23 *Id.*

24 IRS response to TAS information request (Dec. 19, 2017). Section 2.3 of the IRS's contract with the PCAs specifies, with exceptions not relevant here, that commissions are payable on any payment received 11 days or more after the date the account is transferred to a PCA and up to ten calendar days after the account is returned to the IRS.

25 IRS employees are required to record a pending installment agreement within 24 hours after contact with a taxpayer. IRM 5.14.1.3, *Identifying Pending, Approved and Rejected Installment Agreement Proposals on IDRS* (Jan. 1, 2016).

26 IRS, *PDC Program Scorecard for Fiscal Year 2017*, showing total payments of $6,698,661.

any contact with a PCA.[27] Thus, about 18 percent of the payments were generated in response to the IRS letter and without any action on the private collector's part.

The IRS received about $5.4 million of payments that were subject to commissions.[28] The IRS actually paid commissions of $1.1 million, a rate of 20 percent.[29] The IRS is also authorized to retain for itself 25 percent of the amount collected by PCAs.[30] Thus, up to 45 percent of the $5.4 million of commissionable payments, or about $2.4 million, will be diverted from the public fisc.[31] The remaining $3 million is the minimum amount that would be paid to the Treasury. As noted above, the IRS's letter brought in $1.2 million, which is 40 percent as much as the amount PCA activity contributes to the public fisc.[32] The National Taxpayer Advocate is not surprised that a simple letter from the IRS can induce compliance.[33] The IRS might obtain even better results (in terms of adding to public coffers and increasing compliance) by sending periodic letters to taxpayers monthly throughout the year reminding them of their tax debt rather than only sending the annual reminder required by statute.[34]

The PDC Program Burdens Taxpayers Who Are Likely Experiencing Economic Hardship

Of the 4,905 taxpayers who made payments after their debts were assigned to PCAs, 4,141 had filed recent returns as of September 28, 2017.[35]

The returns filed by the 4,141 taxpayers show:

- Overall median income of $40,955;
- 28 percent, or 1,170, had annual income of less than $20,000;

27 IRS, *PDC Program Scorecard for Fiscal Year 2017,* showing the IRS received $1,187,238 in payments that are not subject to commissions to PCAs. PCAs conduct operations in compliance with the most current version of the Private Collection Agency Policy and Procedures Guide (PPG). References to the PPG are to the Sept. 29, 2017 version. PPG section 5.3, *Initial Contact Letters*, provides that PCAs are permitted to send their first contact letter to taxpayers ten days after the IRS sends its initial contact letter. PPG section 6.3, *Telephone Contact with Taxpayers*, provides that PCAs may telephone taxpayers five days after sending their first contact letter.

28 *Id.*, showing the IRS received $5,363,918 in payments subject to commissions (and showing the IRS received $147,505 in payments that are not categorized as either commissionable or non-commissionable).

29 *Id.*, showing the IRS actually paid commissions of $1,068,944. Under IRC § 6306(e)(1), the IRS is authorized to pay commissions to PCAs of up to 25 percent.

30 IRC § 6306(e)(2).

31 Of the $5,363,918 collected, 45 percent is $2,413,763. The remaining 55 percent is $2,950,155.

32 The amount of non-commissionable payments, $1,187,238, is equal to 40 percent of $2,950,155, the minimum amount payable to the Treasury.

33 *See* National Taxpayer Advocate 2016 Annual Report to Congress, vol. 2, 31, 42 (Research Study: *Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Sent an Educational Letter from the National Taxpayer Advocate*). *See also* Research Study: *Second Study of Subsequent Filing Behavior of Taxpayers Who Claimed Earned Income Tax Credits (EITC) Apparently in Error and Were Sent an Educational Letter from the National Taxpayer Advocate*, vol. 2, *supra*, describing situations in which a targeted, educational letter may deter noncompliance.

34 IRC § 7524 provides "[n]ot less often than annually, the Secretary shall send a written notice to each taxpayer who has a tax delinquent account of the amount of the tax delinquency as of the date of the notice." The IRS meets this requirement by sending taxpayers with delinquent accounts Notice CP-71, *Reminder Notice*, once a year.

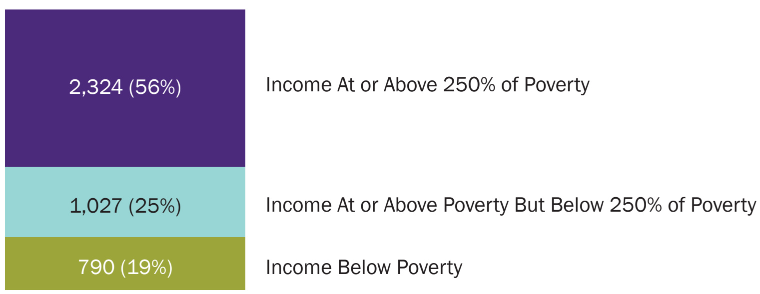
35 Accounts Receivable Dollar Inventory (ARDI), IRTF, IRMF, CDW, data current through Sept. 28, 2017. TAS Research identified 4,905 taxpayers who made commissionable payments to the IRS (generally, payments taxpayers make more than ten days after their accounts are assigned to a PCA) 4,141 of whom filed a return for tax year 2014 or later. As discussed below, the income characteristics of taxpayers who did not file returns may differ from those who filed returns.

- 19 percent, or 790, had incomes below the federal poverty level; median income for these taxpayers was $6,386;[36]
- 25 percent, or 1,027, had incomes at or above the federal poverty level but below 250 percent of the federal poverty level; median income for these taxpayers was $23,096; and
- Five percent, or 205, received Social Security retirement or disability income; median income for these taxpayers was $14,365.[37]

Figure 1.1.1 below shows the proportion of the 4,141 taxpayers whose incomes were below the federal poverty level, the proportion whose incomes were at or above the federal poverty level but less than 250 percent of the federal poverty level, and the proportion whose incomes were 250 percent or more of the federal poverty level.

FIGURE 1.1.1[38]

Taxpayers Who Made Payments After Their Debts Were Assigned to a Private Collection Agency, by Income Level



Recent returns of taxpayers who made payments after their debts were assigned to Private Collection Agencies show: Overall median income of $40,955; 28 percent had annual income of less than $20,000; 19 percent had incomes below the federal poverty level; and 25 percent had incomes at or above the federal poverty level but below 250 percent of the federal poverty level.

36 U.S. Dept. of Health and Human Resources, *Poverty Guidelines* (Jan. 31, 2017), https://aspe.hhs.gov/poverty-guidelines, showing that the poverty level for a single person in 2017 was $12,060. Thus, 250 percent of the 2017 federal poverty level for a single person was $30,150.

37 IRTF, IRMF, CDW, data current through Sept. 28, 2017. As discussed below, for purposes of administering the IRS's automatic levy program, the Federal Payment Levy Program (FPLP), the IRS adopted 250 percent of the federal poverty level as a measure that serves as a proxy for economic hardship.

38 The figure represents the income shown on the recent returns of 4,141 taxpayers who made payments to the IRS after their debts were assigned to private collection agencies, compared to the federal poverty level for the taxpayer's household size.

As Figure 1.1.1 above demonstrates, slightly less than half of the taxpayers (44 percent) have incomes that indicate they are at risk of economic hardship.

Of the 4,141 taxpayers described above who made payments after their debts were assigned to a PCA:

- 1,676 taxpayers, or 40 percent, agreed to installment agreements.[39] Almost half of these taxpayers, 46 percent, had incomes below 250 percent of the federal poverty level;
- 2,465 taxpayers, or 60 percent, made payments that were not pursuant to an installment agreement — their payments may have been "voluntary payments" solicited by the PCA, discussed below. Of these taxpayers, 43 percent had incomes below 250 percent of the federal poverty level.

The income characteristics of the 4,141 taxpayers, according to whether their payments were made pursuant to an installment agreement, are summarized in Figure 1.1.2 below:

FIGURE 1.1.2, Income Shown on Recent Returns Filed by 4,141 Taxpayers Who Made Payments After Their Debts Were Assigned to PCAs, Compared to the Federal Poverty Level and Dollars Collected

Income Group	Number (and percent) of Taxpayers with No Installment Agreement	Number (and percent) of Taxpayers with an Installment Agreement	Total	Dollars Collected (and percent)
Below Federal Poverty Level	477 (19 percent)	313 (19 percent)	790	$ 863,731 (14 percent)
At or Above Federal Poverty Level but Below 250 Percent of Federal Poverty Level	577 (23 percent)	450 (27 percent)	1,027	$ 1,303,384 (20 percent)
Subtotal, below 250 percent Federal Poverty Level	1,054 (43 percent)	763 (46 percent)	1,817	$ 2,167,114 (34 percent)
At or Above 250 Percent Federal Poverty Level	1,411 (57 percent)	913 (54 percent)	2,324	$ 4,215,883 (66 percent)
Overall	**2,465**	**1,676**	**4,141**	**$6,382,998**

As Figure 1.1.2 above shows, 14 percent of the dollars collected from these 4,141 taxpayers came from taxpayers whose incomes are below the federal poverty level.

As Figure 1.1.2 above also shows, of the 4,141 taxpayers, 1,817 (44 percent) had incomes below 250 percent of the federal poverty. Of these 1,817 taxpayers, 169 were recipients of Social Security

39 Of these 1,676 taxpayers, 67 entered into their installment agreement by contacting the IRS directly rather than through the PCA. As noted above, whether the installment agreement is organized by a PCA or by the IRS does not affect the extent to which PCAs receive commissions on payments taxpayers make pursuant to installment agreements.

retirement (SSA) or disability (SSDI) benefits.[40] Their incomes, and the amount collected from them, is shown in Figure 1.1.3 below.[41]

FIGURE 1.1.3, Taxpayers Who Paid After Their Debts Were Assigned to PCAs and Filed Recent Returns Showing Income Less Than 250 Percent of the Federal Poverty Level for Their Household Size

	Income Below the Federal Poverty Level			Income At or Above Federal Poverty Level and Below 250% of the Federal Poverty Level			
	Number of Taxpayers	Median Income ($)	Amount Collected ($)	Number of Taxpayers	Median Income ($)	Amount Collected ($)	Total
SSA Recipients	70	4,730	46,415	50	19,542	60,335	120
SSDI Recipients	26	3,436	33,721	23	24,999	16,302	49
Total	**96**	**4,201**	**80,136**	**73**	**20,003**	**76,637**	**169**

Taxpayers' SSDI payments or Supplemental Security Income (SSI) payments are not subject to levies pursuant to the Federal Payment Levy Program (FPLP).[42] At the National Taxpayer Advocate's urging, the Commissioner of Internal Revenue agreed that the debts of SSDI and SSI recipients would not be assigned to PCAs.[43] However, as shown above, TAS identified SSDI recipients among those whose debts were assigned to PCAs. When TAS asked the IRS to describe the obstacles that prevent it from honoring its commitment to exclude these taxpayers' debts from assignment to PCAs, the IRS specified that "the unpaid assessment file" system it uses to identify potential new inventory for PDC "is not able to distinguish the type of retirement or government payment."[44] The IRS requested the Social Security Administration to identify or verify accounts of taxpayers who receive SSDI or SSI, which would enable the IRS to systemically exclude these taxpayers' debts from assignment to PCAs. The Social Security Administration denied the request, and the IRS is considering whether and how to request the Social Security Administration to reconsider its position.[45]

The IRS could identify SSDI recipients without assistance from the Social Security Administration and it is unclear why the IRS has not done so. Information about Social Security Administration benefits and the nature of those benefits (retirement or disability) is included in the Information Returns Master

40 IRMF, a database stored in the CDW, currently contains third-party information documents through tax year 2016. It includes information from Form SSA-1099, on which Social Security benefits, including Social Security Disability Income (SSDI) (but not Supplemental Security Income (SSI), discussed below) is reported.

41 Additional income characteristics of the 1,676 taxpayers who entered into installment agreements is discussed below. For more detail about taxpayers who entered into installment agreements while their debts were assigned to a PCA, including those who did not file recent returns, *see* Research Study: *Study of Financial Circumstances of Taxpayers Who Entered Into Installment Agreements and Made Payments While Their Debts Were Assigned to Private Collection Agencies*, vol. 2, *infra*.

42 IRM 5.19.9.3.1(7)(f), *What is FPLP?* (Oct. 20, 2016).

43 National Taxpayer Advocate 2016 Annual Report to Congress 172, 186 (Most Serious Problem: *The IRS Is Implementing a PDC Program in a Manner That Is Arguably Inconsistent With the Law and That Unnecessarily Burdens Taxpayers, Especially Those Experiencing Economic Hardship*).

44 IRS response to TAS information request (Oct. 06, 2017).

45 Letter from Stephen Evangelista, Social Security Administration Associate Commissioner, Office of Data Exchange and Policy Publications to Bill Banowski, IRS, Collection Planning & Enforcement Analysis (June 7, 2017), citing the IRS's request that the Social Security Administration share information regarding SSI recipients. The Small Business/Self-Employed Division (SB/SE), in its response to agenda items for a Nov. 9, 2017 meeting with TAS, reiterated that it had requested assistance in identifying both SSDI and SSI recipients.

File (IRMF), a database the IRS uses for other programs.[46] Instead, the IRS intends to first exhaust its efforts with the Social Security Administration before adopting an alternative method of systemically identifying SSDI and SSI recipients.[47] Until the IRS actually honors its commitment to exclude these taxpayers' debts from assignment to PCAs these vulnerable taxpayers will be solicited to make payments they may not be able to afford.

The IRS generally does not subject SSA retirement income to FPLP levies when the recipient's income is less than 250 percent of the federal poverty level, a measure that serves as a proxy for economic hardship.[48] Thus, the 120 taxpayers who received SSA retirement income, shown in Figure 1.1.3 above, would generally not be subject to FPLP levies. However, as noted, the analysis above encompasses only taxpayers who filed recent returns. To overcome this limitation, we estimated the incomes of taxpayers using a method similar to that adopted for the FPLP low income filter.[49] We identified 161 SSA retirement income recipients who would generally not be subject to FPLP levies, but who made commissionable payments while their debts were assigned to a PCA.

The IRS has in the past suggested that these taxpayers, although earning relatively small amounts, may have substantial assets with which to pay their tax debt.[50] We are unable to find any indication that this concern is justified. On the contrary, for the 120 SSA retirement income recipients whose incomes were less than 250 percent of the federal poverty level, who made payments after their debts were assigned to a PCA, and filed returns:

- Median income was $9,472;
- They received on average $35 in interest;
- They received on average $13 in dividends;
- They received on average $2,176 of other retirement income, such as pensions;
- None realized any capital gains, other than from the sale of stock; and
- They realized on average $18 from the sale of stock.[51]

---

46 The IRMF contains third-party information documents used, for example, by the IRS's Automated Underreporter matching program. Because the data on IRMF is generally at least a year old, relying on IRMF may mean, for example, that the debt of a taxpayer who received SSDI in 2016 would be excluded from assignment to a PCA although that taxpayer no longer received SSDI in 2017. The National Taxpayer Advocate believes this risk is outweighed by the harm to SSDI recipients whose debts are assigned to PCAs. Moreover, as discussed below, the IRS uses older data (such as a taxpayer's return from a previous return) to determine whether a taxpayer's account should be excluded from FPLP levies. *See* IRM 5.19.9.3.2.3 (2) *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016), noting "If the taxpayer has filed an income tax return for one of the last three years and has no outstanding return delinquencies following the last return filed they will be processed through the LIF [low income filter]."

47 SB/SE response to agenda items for Nov. 9, 2017 meeting between TAS and SB/SE.

48 IRM 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016), which also describes conditions under which taxpayers can be excluded from the LIF. For a description of the TAS model to estimate the income and expenses of taxpayers whose federal payments had been subject to FPLP levies, which led to the adoption of the 250 percent proxy for economic hardship, see National Taxpayer Advocate 2008 Annual Report to Congress vol. 2, 48 (Research Study: *Building a Better Filter: Protecting Lower Income Social Security Recipients from the Federal Payment Levy Program*).

49 See IRM 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016). We estimated income using a subset of the most common income sources but did not apply the exclusion conditions.

50 *See* National Taxpayer Advocate 2016 Annual Report to Congress 172, 187 (Most Serious Problem: *The IRS Is Implementing a PDC Program in a Manner That Is Arguably Inconsistent With the Law and That Unnecessarily Burdens Taxpayers, Especially Those Experiencing Economic Hardship*).

51 IRTF, IRMF, CDW, data current through Sept. 28, 2017.

Recent returns of taxpayers who entered into installment agreements while their debts were assigned to PCAs show: Median income of $38,021; 28 percent have incomes of less than $20,000; and Allowable Living Expenses exceeded total positive income for 45 percent of taxpayers.

These 120 taxpayers received in the aggregate $269,028 in income from assets.[52]

The IRS Recalls Debts From PCAs, and PCAs Are Required to Return Cases to the IRS, But the Reasons for Recalls and Returns Are Unclear

As of September 14, 2017, the IRS had recalled the debts of more than 3,800 taxpayers.[53] Of these recalled cases, about 700 were recalled because one of the statutory conditions prohibiting assignment of the debt applied (*e.g.*, the taxpayer was in an active installment agreement).[54] An additional 85 cases were recalled because the taxpayer's account was in Currently Not Collectible (CNC) hardship status.[55] For about 3,000, cases, however, the reason given for recall is "other."[56] The IRS expects to be able to provide a complete breakdown of the "other" category beginning in January 2018.[57]

In FY 2017, PCAs returned to the IRS the debts of about 1,500 taxpayers.[58] PCAs are required to return to the IRS as "unable to collect" those cases in which "the taxpayer indicates that payment of the balance due immediately or through a payment arrangement would leave him or her unable to pay necessary living expenses or a medical hardship is reported."[59] PCAs are also required to return cases to the IRS after requesting a single "voluntary payment," *i.e.*, a payment that does not fully pay the liability and is not made pursuant to an installment agreement.[60] These two conditions requiring return of a case are related, however. While PCAs are not permitted to request a voluntary payment "when the taxpayer expresses they are unable to pay," PCAs *are* permitted to request a voluntary payment when the taxpayer cannot pay the liability immediately or pursuant to an installment agreement, which itself suggests that the taxpayer is experiencing economic hardship.[61] PCAs are required to report the reasons for returning

52 *Id.*

53 IRS response to TAS information request (Oct. 06, 2017), indicating that the IRS had recalled the debts of 3,781 taxpayers as of Sept. 14, 2017.

54 *Id.*, indicating that 693 cases were recalled because a statutory exception applied.

55 *Id.* These accounts were designated as in currently not collectible (CNC) hardship status after assignment. IRS response to TAS information request (Dec. 19, 2017).

56 IRS response to TAS information request (Oct. 06, 2017), indicating that 3,003 cases had been recalled for the reason of "other."

57 IRS response to TAS information request (Dec. 19, 2017), clarifying that "the ability to detail the recall reasons in the 'other' category will be available for recalls beginning January 2018 and forward. The IRS won't have the ability to provide detail for any periods prior to January 2018."

58 IRS, *PDC Program Scorecard for Fiscal Year 2017*, showing the PCAs had returned debts of 1,538 taxpayers.

59 PPG section 12.3, *PCA Unable to Collect*.

60 PPG section 10.2.1, providing: "If the taxpayer cannot full pay, within 120 days or with a payment arrangement, the PCA will make one attempt to verbally secure a voluntary payment" and directing PCAs: "After making the one attempt to secure a voluntary payment, the PCA will hold the account 10 business days from the date the voluntary payment was request [sic] and initiate the return of the account back to the IRS."

61 PPG section 10.2 provides "When the taxpayer cannot full pay the tax debt within the Collection Statute Expiration Date (CSED) or 7 years, whichever less [sic], the PCA will attempt to secure a voluntary payment." PPG section 10.2.1, *Voluntary Payments*, provides that voluntary payments are not to be solicited "when the taxpayer expresses they are unable to pay."

cases to the IRS.[62] However, as the IRS has explained "[t]he voluntary payment information that we have received to date is inconsistent and we are in the process of refining the criteria for reporting the data. The PDC Project Office is working on a mechanism to capture the number of accounts with voluntary payments and the total voluntary payment dollars collected, verified by the IRS."[63]

With Unacceptable Frequency, Taxpayers Whose Debts Are Assigned to PCAs Are Placed in Installment Agreements They Cannot Afford

There were 2,102 taxpayers who entered into installment agreements and made commissionable payments while their debts were assigned to PCAs. Of these, 1,676 filed recent returns.[64] The recent returns of the 1,676 taxpayers who entered into installment agreements and made a payment while their debts were assigned to PCAs show:

- Median income of $38,021;
- 473 taxpayers, or 28 percent, have incomes of less than $20,000; and
- ALEs exceeded total positive income for 755, or 45 percent of taxpayers.[65]

Even when their debts are not assigned to PCAs, taxpayers agree to installment agreement payments they cannot afford.[66] Insight into why taxpayers whose debts were assigned to PCAs enter into installment agreements they cannot afford, apparently at a higher rate, has been hindered by the IRS's refusal to allow TAS to listen to calls between PCA employees and taxpayers.[67]

CONCLUSION

IRC § 6306(c) requires the IRS to outsource some tax debt. However, the PDC program as implemented has not generated net revenues and results in the IRS improperly paying commissions to PCAs for work they did not perform. In the meantime, the most vulnerable taxpayers are making payments and entering into installment agreements they cannot afford according to the IRS's own measures. The IRS should honor its commitment to taxpayers and do more to ensure that its PDC program operates in accordance with the law and respects taxpayers' rights.

62 PPG section 17.1, *Production Management Reports*, section 17.3.2, *Return Tracking Report.*

63 IRS response to TAS information request (Oct. 06, 2017).

64 The income characteristics of all 2,102 taxpayers who entered into installment agreements, including the 426 who did not file returns, are described in Research Study: *Study of Financial Circumstances of Taxpayers Who Entered Into Installment Agreements and Made Payments While Their Debts Were Assigned to Private Collection Agencies*, vol. 2, *infra*.

65 IRTF, IRMF, CDW, data current through Sept. 28, 2017. The IRS publishes ALE standards, which determine how much money taxpayers need for basic living expenses. *See* IRS, *Collection Financial Standards*, https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards. We calculated the total monthly ALE for each taxpayer by summing the monthly national standards for housing, health, and transportation costs based on the zip code, primary and secondary taxpayer age, and total number of exemptions shown on each taxpayer's most recently filed return. The annual ALE total for a given taxpayer was computed by multiplying the monthly ALE total by twelve. A taxpayer was designated as below ALE when his or her income from that taxpayer's most recently filed return was lower than that taxpayer's annual ALE total.

66 *See* National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 53 ,60, (Research Study: *The Importance of Financial Analysis in Installment Agreements (IAs) in Minimizing Defaults and Preventing Future Payment Noncompliance*), reporting that nearly 40 percent of individual taxpayers entering into installment agreements in 2014 had incomes below their allowable living expenses.

67 TAS received 38 PDC cases during FY 2017. In 30 cases, the taxpayer asked for assistance in stopping contact from PCAs.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Do not pay commissions on payments taxpayers make that are the result of interaction with the IRS, rather than with PCAs.
2. Provide that the IRS will receive a credit for any improperly paid commissions, such as where a taxpayer enters into an installment agreement directly with the IRS and makes a payment before the recall of the cases is reflected on IRS databases.
3. Without waiting for collaboration from the Social Security Administration, use available IRS data to exclude the debts of SSDI recipients from assignment to PCAs.
4. Adopt a definition of "potentially collectible inventory" that does not include debts of Social Security retirement recipients whose incomes are less than 250 percent of the federal poverty level.
5. Require PCA employees to actively inquire, when speaking with taxpayers, whether a proposed payment arrangement will leave the taxpayer unable to pay reasonable basic living expenses, and to return such cases to the IRS.
6. Develop procedures for including a TAS representative in the process of monitoring or reviewing phone calls between taxpayers and PCAs.
7. Develop procedures for sending letters to taxpayers soliciting payment of their past due taxes more frequently than annually.