

**MSP
#19****PRIVATE DEBT COLLECTION: The IRS's Expanding Private Debt Collection Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship While Inactive Private Collection Agency Inventory Accumulates****RESPONSIBLE OFFICIAL**

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TAXPAYER RIGHTS IMPACTED¹

- *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

The IRS implemented its current Private Debt Collection (PDC) initiative in April 2017.² As of September 13, 2018, about \$5.7 billion in debts of more than 600,000 taxpayers were in the hands of private collection agencies (PCAs).³ The IRS initially assigned cases in which the taxpayer did not dispute liability for the debt. However, 2018 assignments included tax assessments, such as those based on substitutes for return, which have high tax abatement rates.

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC). See IRC § 7803(a)(3).

2 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>.

3 Private Debt Collection (PDC) Program Scorecard for fiscal year (FY) 2018 showing that 621,321 taxpayers' accounts with a dollar value of \$5,115,996,181 were in Private Collection Agency (PCA) open inventory.

PDC program revenues have surpassed program costs, but this surplus has been achieved, to a significant extent, by collecting from financially vulnerable taxpayers. According to IRS databases that contain information from tax returns filed by taxpayers and reports of income filed by third parties:

- 40 percent of taxpayers who entered into installment agreements (IAs) while their debts were assigned to PCAs had incomes at or below their allowable living expenses (ALEs), meaning they agreed to pay tax arrears while they could not pay for their basic living expenses;⁴
- 44 percent of taxpayers who made commissionable payments while their debts were assigned to PCAs had incomes at or below 250 percent of the federal poverty level (FPL);⁵
- 37 percent of taxpayers who entered into IAs while their debts were assigned to PCAs defaulted, a frequency that rises to 44 percent when defaulted IAs that PCAs do not report to the IRS as required are taken into account;⁶ and
- 34 percent of the amount paid that was attributable to PCA activity was made by taxpayers whose incomes were at or below their ALEs.⁷

The PDC program is not generating the revenues Congress expected, and only about a third of revenues attributable to PCA activity in FY 2018 made their way to, and remained in, the government's General Fund.⁸ Moreover, IRS collection activity with respect to taxpayers whose debts were assigned to PCAs actually generated more dollars for the public fisc in FY 2018 than did PCA activity.⁹

At the end of FY 2018, PCAs' inventories included over 400,000 cases in which there was no payment by the taxpayer and no agreement to pay, even though the case had been assigned for at least 90 days.¹⁰ In fact, these cases had been in PCA inventory for 244 days on average.¹¹ Retaining cases without resolving taxpayers' liabilities allows PCAs to receive commissions on any payments taxpayers happen to make in the future in the absence of any recent PCA collection activity. Had these cases remained

4 This figure reflects allowance of vehicle ownership and operating expenses in calculating allowable living expenses (ALEs). As discussed below, if vehicle ownership expenses are not allowed, 33 percent of taxpayers who entered into installment agreements (IAs) while their debts were assigned to PCAs had incomes at or below their ALEs. For a further discussion of ALEs, see vol. 2, *A Study of the IRS's Use of the Allowable Living Expense Standards*, *infra*.

5 The measure of 250 percent of the federal poverty level is used in tax administration in several contexts. Congress adopted the measure to identify taxpayers who qualify for assistance from low income taxpayer clinics (LITCs) because they cannot afford representation in IRS disputes and are therefore vulnerable to overreaching. See IRC § 7526. The Bipartisan Budget Act of 2018 adopts the measure to determine whether to excuse taxpayers from paying user fees to enter into installment agreements. See Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 41105, 132 Stat. 64, 157 (Feb. 9, 2018). The IRS uses the measure as a proxy to identify certain retirement income recipients who are likely to be in economic hardship in order to exclude them from its automatic levy program, the Federal Payment Levy Program. See IRM 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016).

6 Accounts Receivable Dollar Inventory (ARDI), Individual Returns Transaction File (IRTF), Information Returns Master File (IRMF), Compliance Data Warehouse (CDW), reflecting data from inception of the PDC program through FY 2018, discussed below.

7 ARDI, IRTF, IRMF, CDW, reflecting activity on tax modules (the IRS's record of a specific tax liability for a specific tax period), from program inception through FY 2018, discussed below.

8 Congressional Budget Office (CBO) projections; IRS Quarterly Update to Congress, *Private Debt Collection (PDC) Program 1*, for FY 2018, discussed below. According to the Bureau of the Fiscal Service (BFS), "[a]s 'America's Checkbook,' the General Fund of the Government consists of assets and liabilities used to finance the daily and long-term operations of the U.S. Government as a whole. It also includes accounts used in management of the budget of the U.S. Government." BFS, *The General Fund*, <https://fiscal.treasury.gov/general-fund/> (last visited Dec. 18, 2018). Of the \$75.3 million in revenues attributable to PCA activity, a net amount of \$25.8 million, or 34 percent, was generated for the General Fund.

9 As discussed below, in FY 2018 the IRS collected \$37.4 million from taxpayers whose debts were assigned to PCAs, while PCA activity generated a net amount of \$25.8 million for the General Fund.

10 ARDI, IRTF, IRMF, CDW data, showing 408,087 of these cases as of Sept. 30, 2018.

11 *Id.*, reflecting activity since the inception of the PDC program in April 2017 through FY 2018.

in the IRS queue and not assigned to PCAs, the public fisc would be credited with the full amount of collected funds.

ANALYSIS OF PROBLEM

Background

IRC § 6306 was amended in 2015 to require the IRS to enter into “qualified tax collection contracts” for the collection of “inactive tax receivables.”¹² The Congressional Budget Office (CBO) estimated that from FYs 2016-2025, the new PDC program would raise \$4.8 billion in revenues and require \$2.4 billion in spending.¹³ CBO projected that for FY 2017, the PDC program would generate \$374 million in revenues, and for FY 2018 would generate \$470 million in revenues.¹⁴

Prior to the launch of the PDC initiative, the National Taxpayer Advocate voiced her concern that the program as implemented would create or exacerbate taxpayers’ economic hardship.¹⁵ By the IRS’s own estimate, under the proposed legislation that required the IRS to outsource certain tax debts to PCAs, about 79 percent of the taxpayers whose debts would be eligible for assignment to PCAs had incomes below 250 percent of the federal poverty level.¹⁶

On April 23, 2018, about a year after the IRS began assigning tax debts to PCAs, the National Taxpayer Advocate issued a Taxpayer Advocate Directive (TAD) ordering the IRS to exclude from assignment to PCAs the debts of taxpayers whose incomes are below 250 percent of the FPL. The IRS appealed the TAD on May 14, 2018, and the Deputy Commissioner for Services and Enforcement rescinded the TAD on June 20, 2018.¹⁷

In the meantime, the IRS continued to assign tax debts to PCAs. By September 13, 2018, over \$5.7 billion in debts owed by over 730,000 taxpayers had been assigned to PCAs.¹⁸ About \$5 billion in debts owed by more than 600,000 taxpayers was still in PCA inventory on that date.¹⁹ For FY 2018,

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

13 Letter from Keith Hall, CBO Director, to Rep. Bill Shuster, Chairman, Comm. on Transportation and Infrastructure, Table 2 (Dec. 2, 2015).

14 *Id.*, projecting that the PDC program would generate \$374 million in revenues and \$187 million in outlays for FY 2017 and \$470 million in revenues and \$235 million in outlays for FY 2018. The projected outlays appear to include amounts retained under IRC § 6306(e), discussed below, equal to 50 percent of revenues attributable to PCA activity.

15 See National Taxpayer Advocate 2016 Annual Report to Congress 172 (Most Serious Problem: Private Debt Collection (PDC): *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*).

16 See Letter from Nina Olson, National Taxpayer Advocate, to Sen. Ron Wyden, Chairman, Comm. on Finance; Sen. Orrin G. Hatch, Ranking Member, Comm. on Finance; Rep. Dave Camp, Chairman, Comm. on Ways and Means; Rep. Sander Levin, Ranking Member, Comm. on Ways and Means; Rep. Charles W. Boustany, Jr., Chairman, Subcomm. on Oversight, Comm. on Ways and Means; Rep. John Lewis, Ranking Member, Subcomm. on Oversight, Comm. on Ways and Means (May 13, 2014).

17 The Taxpayer Advocate Directive (TAD), the IRS’s appeal, and the memorandum rescinding the TAD were published in the National Taxpayer Advocate Fiscal Year (FY) 2019 Objectives Report to Congress 68-79.

18 PDC Program Scorecard for FY 2018, showing that since the program’s inception, \$5,707,490,970 of debt of 730,015 taxpayers were assigned to PCAs.

19 *Id.*, showing that 621,321 taxpayers’ accounts with a dollar value of \$5,115,996,181 were in PCA open inventory.

PCA activity generated \$75.3 million of revenue, which is about 16 percent of the \$470 million CBO projection for FY 2018.²⁰

IRS Activity Generated More For the Public Fisc Than PCA Activity Did

As noted, in FY 2018, taxpayers made \$75.3 million in payments as a result of PCA activity.²¹ However, of this \$75.3 million:

- The IRS retained 25 percent, \$18.8 million, as authorized by IRC § 6306(e)(1), to pay for the costs of services performed by PCAs, including commissions;²² and
- The IRS retained an additional 25 percent, \$18.8 million, as authorized by IRC § 6306(e)(2) “to fund the special compliance personnel program account under section 6307.”²³

After subtracting the amounts retained pursuant to IRC § 6306(e), \$37.7 million was paid to the General Fund.²⁴ From the General Fund, an additional \$11.9 million of PDC program costs were paid.²⁵ Thus, of the \$75.3 million attributable to PCA activity in FY 2018, a net amount of \$25.8 million — or 34 percent — was generated for the General Fund.²⁶ Figure 1.19.1 shows the disposition of funds collected from taxpayers as a result of PCA activity.

20 IRS Quarterly Update to Congress, *Private Debt Collection (PDC) Program 1*, for FY 2018, discussed below. Because the PDC program was not launched until April of 2017, it may be appropriate to compare the FY 2018 program performance with CBO’s FY 2017 projections. The \$75.3 million in revenues for FY 2018 generated by PCA activity is 20 percent of the \$374 million CBO revenue projection for FY 2017. In its Quarterly Update to Congress, the IRS reported PDC program revenues of \$82.1 million, which includes, in addition to \$75.3 million in revenues attributable to PCA activity, \$6.8 million of payments received within ten days of assignment of the account to a PCA. These payments are not subject to commissions because they are deemed not attributable to PCA activity. Even including the \$6.8 million in program revenues, the program appears to have fallen short of expectations: \$82.1 million is 17 percent of CBO’s projected FY 2018 revenues and 22 percent of projected FY 2017 revenues.

21 *Id.*, showing taxpayers made \$75,372,679 in commissionable payments (*i.e.*, amounts received more than ten days after the IRS notified taxpayers their debts had been assigned to PCAs. These payments are deemed attributable to PCA activity and are thus subject to commissions).

22 IRC § 6306(e)(1) authorizes the IRS to retain and use “an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract.” Pursuant to this provision, the IRS retained \$18,843,170 for its Cost of Services Fund. The IRS paid commissions to PCAs from this fund. IRS Quarterly Update to Congress, *Private Debt Collection (PDC) Program 7*, for FY 2018.

23 Pursuant to IRC § 6306(e)(2), the IRS retained \$18,843,170 for a Special Compliance Personnel Program (SCPP) fund. IRS Quarterly Update to Congress, *Private Debt Collection (PDC) Program 7*, for FY 2018. IRC § 6307(a) requires the IRS to use amounts retained under IRC § 6306(e)(2) to hire, train, and employ special compliance personnel, defined in IRC § 6307(d)(1) as “field function collection officers or in a similar position, or employed to collect taxes using the automated collection system or an equivalent replacement system.”

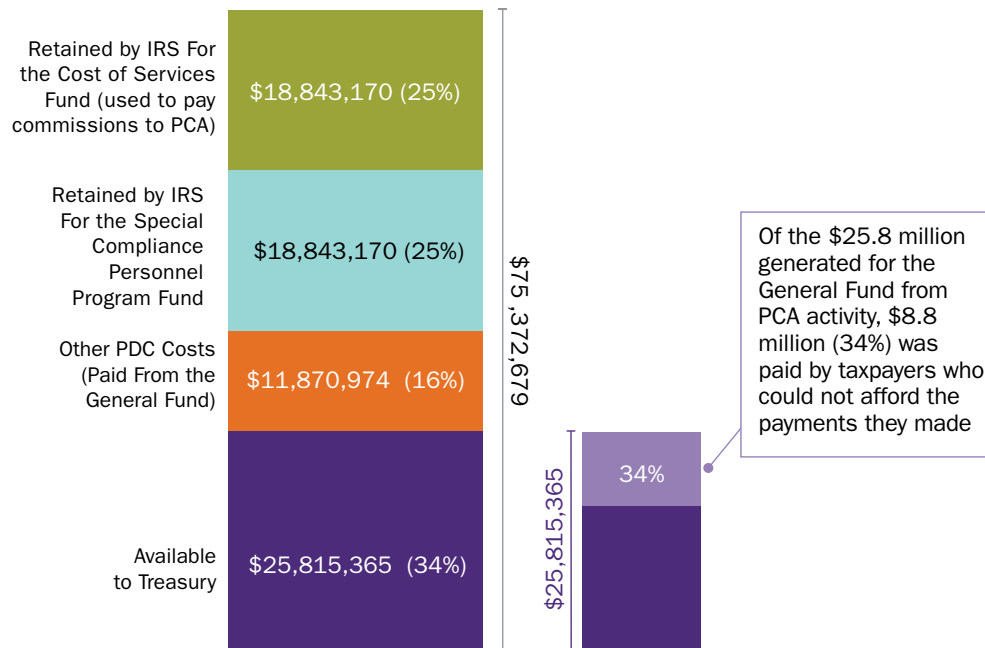
24 IRS response to fact check (Dec. 17, 2018), noting that “[c]ommissionable payments are distributed as follows: 25% (\$19 million) is retained in the Cost of Services fund to pay commissions, 25% (\$19 million) is retained in the SCPP fund to pay for contract administration and SCP [this acronym is undefined] program costs, and 50% goes to the General Fund (\$37 million).” Without rounding, commissionable payments of \$75,372,679 less \$18,843,170 for each special fund authorized by IRC § 6306(e) is \$37,686,339.

25 PDC program costs paid from the General Fund were \$11,870,974. IRS response to TAS fact check (Dec. 17, 2018); IRS Quarterly Update to Congress, *Private Debt Collection (PDC) Program 1*, for FY 2018.

26 Without rounding, \$37,686,339 less \$11,870,974 is \$25,815,365.

FIGURE 1.19.1

**Disposition of \$75 Million of Commissionable Payments Made in FY 2018
by Taxpayers Whose Debts Were Assigned to Private Collection Agencies**



As discussed in greater detail below, 34 percent of total payments attributable to PCA activity are made by taxpayers whose incomes are at or below their ALEs. Thus, of the \$25.8 million that was ultimately available to the Treasury as a result of PCA activity, \$8.8 million was paid by taxpayers who could not afford the payments they made.²⁷

Moreover, some taxpayers whose debts were assigned to PCAs made payments that were attributable to IRS, rather than PCA, activity:

- The IRS's initial contact letter advising taxpayers their debt was being assigned to a PCA generated \$6.8 million;²⁸
- Through levies on payments these taxpayers were entitled to receive from federal, state, or local governments, the IRS collected an additional \$16.4 million;²⁹

27 Without rounding, 34 percent of \$25,815,365 is \$8,777,224. As discussed below, if vehicle ownership expenses are not allowed in calculating ALEs, 30 percent of total payments attributable to PCA activity are made by taxpayers whose incomes are at or below their ALEs.

28 IRS Quarterly Update to Congress, *Private Debt Collection (PDC) Program 1*, for FY 2018, showing non-commissionable payments (i.e., those received within ten days after the IRS notifies taxpayers their debts have been assigned to a PCA) of \$6,820,047.

29 ARDI, IRTF, IRMF, CDW data, reflecting activity for FY 2018, showing the IRS collected \$16,400,771 through levies, including pursuant to the State Income Tax Levy Program (SITLP); Municipal Tax Levy Program (MTLP); Alaska Permanent Fund Dividend Levy Program (AKPFD); and the Federal Payment Levy Program (FPLP). These cases were recalled by the IRS from PCA inventory; IRC § 6306(d)(4) provides that a tax receivable may not be assigned to a PCA if it is "currently under examination, litigation, criminal investigation, or levy."

- The IRS collected \$14.2 million by offsetting these taxpayers' federal tax refunds against their outstanding tax liabilities.³⁰

This total of \$37.4 million is not subject to commissions or retention by the IRS under IRC § 6306(e).³¹ Thus, IRS activity actually generated 1.4 times more dollars for the public fisc than PCA activity did.³²

PCAs do not appear to be particularly effective in generating payments, especially in view of the burden the PDC program places on taxpayers, discussed below. Only a little more than one percent of the dollar value of the debt assigned to PCAs since inception of the program has been collected.³³ By comparison, the Automated Collection System (ACS), the IRS function that issues collection notices and receives calls from taxpayers with delinquent tax liabilities, collects seven percent of the dollar value of tax liabilities assigned to it.³⁴ Taxpayers whose cases are assigned to PCAs enter into IAs six percent of the time.³⁵ In contrast, the ACS function places taxpayers into IAs about ten percent of the time.³⁶

Congress Required the IRS to Develop Allowable Living Expense Standards to Prevent Taxpayers From Being Required to Make Payments They Cannot Afford

The IRS evaluates taxpayers' abilities to pay their tax liabilities by comparing their incomes to their ALEs, a practice that has been in place for decades.³⁷ The ALE standards determine how much money taxpayers need for basic living expenses such as housing and utilities, food, transportation, and health care, based on family size and where they live.³⁸ The amount by which a taxpayer's income exceeds his or her ALEs is the starting point for determining the extent to which a taxpayer can afford to pay the debt immediately in full, or over time in installments. If the ALE standards exceed the taxpayer's income, the taxpayer is unable to pay his or her necessary living expenses. Thus, the taxpayer may

30 Refund offsets do not cause a recall of a case from PCA inventory. In FY 2018, the IRS offset \$14,197,449 of refunds claimed by taxpayers whose debts were assigned to PCAs. ARDI, IRTF, IRMF, CDW.

31 The sum of the non-commissionable payments of \$6,820,047, levied amounts of \$16,400,771, and refund offsets of \$14,197,449 is \$37,418,267.

32 Without rounding, \$37,418,267 million in collections that resulted from IRS activity is 1.4 times greater than the \$25,815,365 generated for the General Fund by PCA activity.

33 PDC Program Scorecard for FY 2018. Since inception of the program, the amount of commissionable payments was \$80,736,597, which is 1.4 percent of the dollar value of the amounts assigned, \$5,707,490,970.

34 IRS, Collection Activity Report NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Sept. 30, 2018) (showing \$47,125,583,881 assigned for collection and \$3,455,267,613 collected, a rate of 7.33 percent).

35 As discussed below, 43,579 of the 730,015 taxpayers whose debts were assigned to PCAs entered into IAs, a rate of six percent.

36 IRS, Collection Activity Report NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Sept. 30, 2018); IRS, Collection Activity Report NO-5000-6, *Installment Agreement Cumulative Report* (Sept. 30, 2018) (showing 4,670,873 individual taxpayers' accounts in Automated Collection Systems (ACS) inventory at the beginning of FY 2018, and an additional 3,197,173 individual taxpayers' accounts assigned to ACS during FY 2018, for total available inventory of 7,868,046 individual taxpayer accounts. Of these, 780,809 taxpayers entered into IAs, a rate of 9.9 percent).

37 See, e.g., IRM 105.1.3, *Collecting Contact Handbook* (Sept. 25, 1996), <http://core.publish.no.irs.gov/irm/p05/pdf/30353i96.pdf>; IRM 57(10)(10).1(4), *Determination of Adequate Offer* (Sept. 22, 1994), cross referencing IRM 5323 on IAs, <http://core.publish.no.irs.gov/irm/p05/pdf/35490e98.pdf>.

38 See IRS, Collection Financial Standards, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>. The ALEs are guidelines that "establish the minimum a taxpayer and family needs to live." The IRS may allow additional amounts for basic living expenses if the taxpayer substantiates the need to deviate from the standards. IRM 5.15.1.8 (6), *Financial Analysis Handbook, Allowable Expense Overview* (Aug. 29, 2018). Allowable expenses include transportation expenses, which may consist of vehicle ownership expenses (loan or lease payments) and operating expenses (maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking, and tolls). Unless otherwise indicated, in calculating taxpayers' ALEs, we allowed vehicle operating expenses (two allowances in the case of joint filers and one allowance for all other taxpayers), and all taxpayers were allowed one vehicle ownership expense.

qualify for collection alternatives such as an offer in compromise (OIC)³⁹ or to have the account designated as Currently Not Collectible (CNC) - Hardship.⁴⁰

In 1998, Congress amended IRC § 7122, *requiring* the IRS to develop guidelines to determine when an OIC is adequate and should be accepted to resolve a dispute.⁴¹ Specifically, the IRS was required to develop ALEs “designed to provide that taxpayers entering into a compromise have an adequate means to provide for basic living expenses.”⁴² Essentially, Congress codified in IRC § 7122 the existing IRS practice of taking into account taxpayers’ ALEs in determining the extent to which they can pay, and in considering collection alternatives.

The IRS is not required to consider taxpayers’ ALEs, however, in evaluating proposed “streamlined” IAs (*i.e.*, IAs to repay a tax liability of a specified maximum amount within a specified number of months).⁴³ Taxpayers need not submit financial analysis to qualify for streamlined IAs, and may enter into streamlined IAs online, without interacting with an IRS employee. Nonetheless, taxpayers who seek to resolve their tax liabilities with the IRS have the option of providing financial information that can serve as the basis for collection alternatives, an option particularly relevant to taxpayers whose incomes are exceeded by their ALEs.

In the PDC Initiative as Implemented, the Allowable Living Expenses Guidelines Are Ignored

In contrast, PCAs can *only* propose that the taxpayer fully pay the liability within 120 days, or, alternatively, enter into a streamlined IA, which currently refers to an IA to repay a tax liability of up

39 See IRC § 7122, described below.

40 See IRM 5.16.1.2, *Currently Not Collectible* (Sept. 18, 2018); IRM 5.16.1.2.9, *Hardship* (Sept. 18, 2018), noting that “hardship exists if a taxpayer is unable to pay reasonable basic living expenses.”

41 IRS Restructuring and Reform Act of 1998 (RRA 98), Pub. L. No. 105-206, § 3462, 112 Stat. 685, 764 (July 22, 1998), adding subsection (c) (which is now subsection (d)) to IRC § 7122.

42 IRC § 7122(d)(2)(A). However, the ALE standards are not to be used “to the extent such use would result in the taxpayer not having adequate means to provide for basic living expenses.” IRC § 7122(d)(2)(B).

43 Streamlined IAs have been available for many years. See, e.g., 1999 TNT 111-26, *Memo on Streamlined Installment Agreements Released* (June 10, 1999) publishing a Mar. 31, 1998, memorandum from the Assistant Commissioner (Collection) that provided for streamlined IAs where the liability did not exceed \$15,000 (an increase over the previous amount of \$10,000); and 1999 TNT 111-24, *Memo on Streamlined Installment Agreements Released* (June 10, 1999) publishing a Mar. 29, 1999 memorandum from the Director, Office of Collection, Service Center and Appraisal Services that increased the maximum amount of liability for streamlined IAs to \$25,000 and increased the maximum duration of streamlined IAs from 36 months to 60 months.

to \$100,000 within six or seven years (and within the period of limitations on collection).⁴⁴ PCAs do not have the statutory authority to offer any collection alternatives, and in the PDC program as implemented, they do not gather financial information from taxpayers that the IRS could analyze, despite their statutory authorization to gather financial information.⁴⁵ Thus, while a taxpayer's debt is assigned to a PCA, the guidelines that Congress required the IRS to develop for analyzing taxpayers' ability to pay and evaluating collection alternatives will never apply. The National Taxpayer Advocate does not believe this outcome is necessary or appropriate, especially in view of the effect the current PDC initiative has on taxpayers, discussed below. The IRS should ensure that taxpayers whose incomes are at or below their ALEs have direct, unimpeded access to IRS collection alternatives by not assigning their debts to PCAs.⁴⁶

Taxpayers Are Often Entitled to Relief That PCAs Cannot Provide

In the prior iteration of the IRS's PDC initiative, PCAs could refer cases to a Referral Unit consisting of IRS employees.⁴⁷ The current PDC initiative does not include a Referral Unit, but some taxpayers whose debts were assigned to PCAs sought assistance from TAS. The disposition of TAS cases provides useful perspective. In FY 2018, TAS closed 157 cases involving taxpayers whose debts had been assigned to PCAs. Some taxpayers became unresponsive after their cases were opened. However, TAS succeeded in reducing or completely eliminating the balance due through penalty abatements, identity theft procedures, credit transfers, amended returns, or other adjustments 22 percent of the time. The taxpayers' accounts were placed in CNC Hardship status another 24 percent of the time.⁴⁸ Figure 1.19.2 shows the disposition of the 157 TAS cases.

44 Under IRC § 6502, the IRS must generally collect tax within ten years after assessment. See IRM 5.14.5.2, *Streamlined Installment Agreements* (Dec. 23, 2015), providing that streamlined IAs may be approved for taxpayers where the aggregate unpaid balance of assessments is \$50,000 or less and can be paid within 72 months and within the period of limitations on collection. Taxpayers who owe between \$50,000 and \$100,000 may qualify for a streamlined IA payable over 84 months. See IRS, *Streamlined Processing of Installment Agreements*, <https://www.irs.gov/businesses/small-businesses-self-employed/streamlined-processing-of-installment-agreements>. It appears that the duration of IAs offered by PCAs do not always conform to these IRS guidelines. As the Treasury Inspector General for Tax Administration (TIGTA) has noted, “[w]hile it is true that 84 months is the maximum payment arrangement for both IRS and PCA payment plans, the qualifications for obtaining such an agreement are different in that taxpayers who owe less than \$50,000 may not obtain an 84-month installment agreement from the IRS. However, there is no such restriction for PCA payment arrangements.” See TIGTA, Ref. No. 2019-30-018, *Fiscal Year 2019 Biannual Independent Assessment of Private Collection Agency Performance* 26 (Dec. 31, 2019). IRC § 6306(b) authorizes PCAs to offer IAs of a duration not to exceed five years. As discussed below, the PDC program as implemented authorizes PCAs to offer taxpayers IAs of six or seven years if the IRS approves the IA, an outcome the National Taxpayer Advocate views as an “end run” around the statute. See National Taxpayer Advocate 2016 Annual Report to Congress 172 (Most Serious Problem: *Private Debt Collection (PDC): 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*). TIGTA shares that concern and other concerns expressed by the National Taxpayer Advocate. See TIGTA, Ref. No. 2018-30-052, *Private Debt Collection Was Implemented Despite Resource Challenges; However, Internal Support and Taxpayer Protections Are Limited* (Sept. 10, 2018).

45 IRC § 6303(b) defines a “qualified tax collection contract” as a contract pursuant to which PCAs “obtain financial information specified by the Secretary with respect to such taxpayer,” among other things. PCAs conduct operations according to provisions in the PCA Policies and Procedures Guide (PPG), which does not contemplate the collection of financial information from taxpayers. (References to the PPG are to the Sept. 30, 2018 version unless otherwise noted.)

46 For a legislative recommendation that the debts of taxpayers whose incomes are less than their ALEs should not be assigned to PCAs, see National Taxpayer Advocate 2019 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration: Amend IRC § 6306(d) to Exclude the Debts of Taxpayers Whose Incomes Are Less Than Their Allowable Living Expenses From Assignment to Private Collection Agencies or, If That Is Not Feasible, Exclude the Debts of Taxpayers Whose Incomes Are Less Than 250 Percent of the Federal Poverty Level*, *infra*.

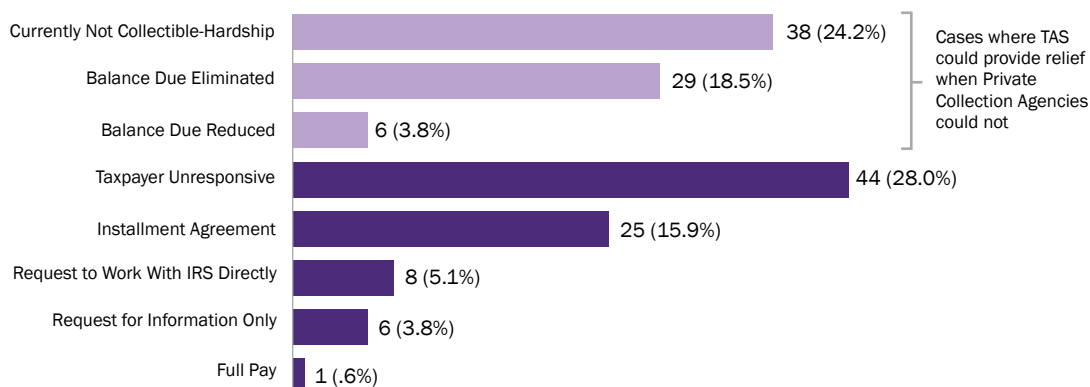
47 See PPG (July 1, 2008 version). The previous PDC initiative was in place from Sept. of 2006 until Mar. of 2009, when the IRS discontinued the program. See *IRS Conducts Extensive Review, Decides Not to Renew Private Debt Collection Contracts, IRS Employees More Flexible, More Cost Efficient* (Mar. 5, 2009), <https://www.irs.gov/newsroom/irs-conducts-extensive-review-decides-not-to-renew-private-debt-collection-contracts>.

48 Data obtained from Taxpayer Advocate Management Information System (TAMIS).

Of taxpayers who entered into installment agreements while their debts were assigned to private collection agencies, 40 percent had incomes at or below their allowable living expenses, meaning they agreed to pay the IRS when they were unable to pay their basic living expenses.

FIGURE 1.19.2

Disposition of TAS Private Debt Collection Cases, FY 2018



PCA Installment Agreements, Often With Taxpayers Whose Allowable Living Expenses Exceed Their Incomes, Have High Default Rates

Taxpayers who enter into IAs outside the PDC program default on their IAs, streamlined or not, at an overall rate of around 14 percent.⁴⁹ Overall, taxpayers who enter into *streamlined* IAs while their accounts are assigned to the IRS’s ACS function default around 19 percent of the time.⁵⁰ Figure 1.19.3 shows the relationship of income to ALEs of taxpayers who entered into IAs while their debts were

49 IRS, Collection Activity Report, *IA Default Report FY 2018 For 12 Month Period Ending Cycle: 201839*, showing a 14.09 percent overall IA default rate and a 14.32 overall default rate for streamlined IAs.

50 *Id.* According to the IRS, “PCAs offer payment arrangements to taxpayers in a manner consistent with IRS installment agreement procedures for similarly situated taxpayers who call the IRS.”

assigned to PCAs and the rate at which they defaulted on their IAs.⁵¹ For purposes of the comparison, income was the amount shown on the taxpayers' 2017 return, or, if no return was filed, the sum of third-party reports of the taxpayer's income for 2017. If no return was filed and there were no third-party reports of income, the taxpayer's income was assumed to be zero. In some cases, taxpayers made no payments on their IAs, yet remain in PCA inventory, a phenomenon discussed below.

FIGURE 1.19.3, Relationship of Income to Allowable Living Expenses of 43,579 Taxpayers Who Entered Into Streamlined Installment Agreements While Their Debts Were Assigned to PCAs and Default Rates⁵²

Income Compared to ALEs	Number of Taxpayers	Percent of Taxpayers	Number of Taxpayers Who Defaulted	Percent of Taxpayers Who Defaulted
Taxpayers With Income At or Below Their ALEs	17,596	40%	6,440	37%
Taxpayers With Income Above Their ALEs	25,983	60%	9,613	37%
Total	43,579	100%	16,053	37%

As Figure 1.19.3 shows, of taxpayers who entered into IAs while their debts were assigned to PCAs, 40 percent had incomes at or below their ALEs, meaning they agreed to pay the IRS when they were unable to pay their basic living expenses.⁵³ Whether or not taxpayers' ALEs exceeded their incomes, the default rate was the same. The difference between these two groups is that according to IRS standards, taxpayers in the former category (those whose ALEs exceed their incomes) agreed to make payments they could not afford.

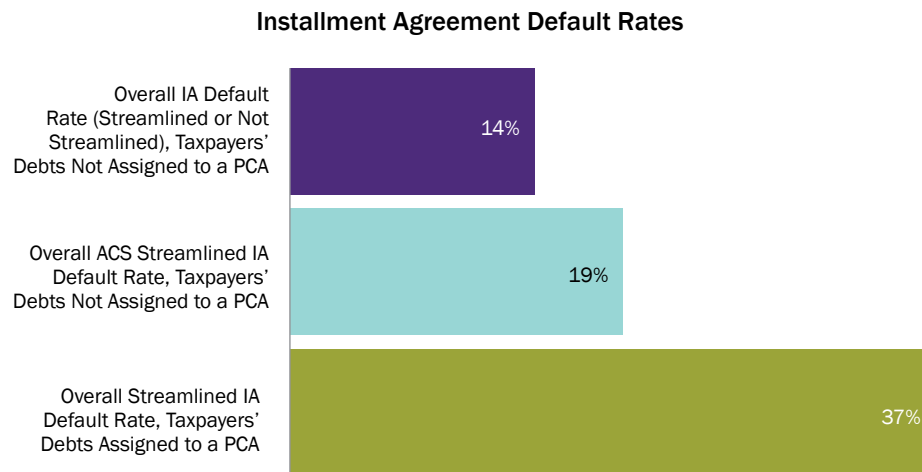
51 ARDI, IRTF, IRMF, CDW data, reflecting activity since the inception of the PDC program in April of 2017 through FY 2018. We identified IAs by searching for modules with a Transaction Code (TC) 971 and Action Code (AC) 63. We identified defaults as IA taxpayers posting a TC 971 AC 163 on any module that entered IA status and that was not fully resolved. The IRS recommended identifying IAs by further restricting the search to taxpayers whose accounts not only bear the TC 971 AC 63, but also have a value in the "Miscellaneous" field of 1, 2, 3, or 4 (corresponding to one of the PCAs). IRS response to fact check (Dec. 17, 2018). When we adopt the IRS's methodology for identifying IAs, we find 7,961 fewer taxpayers who entered into IAs while their debts were assigned to PCAs, 41 percent of whom had incomes at or below their ALEs, and an overall default rate of 23 percent. The difference of 7,961 IAs could represent taxpayers whose debts were assigned to a PCA, but who then entered into an IA with the IRS instead. Because removing these 7,961 IAs reduces the default rate from 37 percent to 23 percent, the question arises whether PCAs always treat IAs as defaulted when appropriate, a concern supported by other data in this report such as the length of time cases remain in PCA inventory with no payment, discussed below. Moreover, when a taxpayer enters into an IA with the IRS, IRS procedures require it to recall the case from the PCA, and the IRS only recalled 4,801 cases due to "Active IA" (leaving 3,160 of the 7,961 cases unaccounted for). The IRS appears to record at least some of these recalled cases as defaulted IAs, while at the same time recording the status of the case as the taxpayer having an IA with the IRS. However, we cannot definitively explain the discrepancy the different methods create. We note that the IRS and TIGTA have encountered similar difficulties in determining the default rate of PCA IAs, but TIGTA found that the overall default rate was 53 percent, which is even higher than the default rate we report here. See TIGTA, Ref. No. 2019-30-018, *Fiscal Year 2019 Biannual Independent Assessment of Private Collection Agency Performance* 4 (Dec. 31, 2018).

52 The values in Figure 1.19.3 reflect the calculation of allowable transportation expenses, described above, in which taxpayers are allowed vehicle ownership and operating expenses. If vehicle ownership expenses are not allowed, and two allowances for vehicle operating expenses are included where the taxpayers filed a joint return and one operating allowance is included for all other taxpayers, then 14,582 taxpayers (33 percent) had incomes at or below their ALEs and 28,997 taxpayers (67 percent) had incomes above their ALEs.

53 Of the 17,596 taxpayers with incomes at or below their ALEs, 3,552 were assumed to have no income because for tax year 2017 they did not file a return and there were no third-party reports of income for them. It is possible that some of these taxpayers may have had unreported income.

Figure 1.19.4 shows overall IA default rates of taxpayers whose debts were not assigned to PCAs, the overall ACS IA default rate for streamlined IAs, and the overall default rate for taxpayers who entered into streamlined IAs while their debts were assigned to PCAs.

FIGURE 1.19.4



Taxpayers, Including Disabled Taxpayers, Make Commissionable Payments They Cannot Afford

Not only do taxpayers whose debts are assigned to PCAs agree to make payments they cannot afford, some taxpayers actually make payments even though their ALEs exceed their incomes. Figure 1.19.5 shows the proportion of commissionable payments overall made by taxpayers according to the relationship between their incomes and their ALEs.

FIGURE 1.19.5, Commissionable Payments Taxpayers Made While Their Debts Were Assigned to PCAs⁵⁴

Income Compared to ALEs	Commissionable Payments	Percent
Taxpayers With Income At or Below Their Allowable Living Expenses	\$29,196,941	34%
Taxpayers With Income Above Their Allowable Living Expenses	\$56,019,574	66%
Total	\$85,216,515	100%

54 ARDI, IRTF, IRMF, CDW, reflecting activity on tax modules with an unreversed TC 971 with an AC 054 from program inception through FY 2018. The total amount of commissionable payments (\$85,216,515) shown on these IRS databases differs from the amount reported in the IRS Quarterly Update to Congress, *Private Debt Collection (PDC) Program 1*, for FY 2018 (\$80,736,597), which was prepared using the Custodial Detail Database (CDDb), part of the Financial Management Information System (FMIS). When vehicle ownership expenses are not allowed, then \$25,503,439, or 30 percent was paid by taxpayers whose incomes were at or below their ALEs and \$59,713,076, or 70 percent, was paid by taxpayers whose incomes were above their ALEs.

Thus, a third of the dollars that were collected as a result of PCA activity were collected from taxpayers who could not afford the payments they made.

As discussed above, the National Taxpayer Advocate ordered the IRS to exclude from assignment to PCAs the debts of taxpayers whose incomes are below 250 percent of the FPL.⁵⁵ As Figure 1.19.6 demonstrates, of taxpayers who *made commissionable payments* while their debts were assigned to PCAs, 24 percent had incomes *at or below the federal poverty level*. An additional 20 percent had incomes above the federal poverty level to 250 percent of the FPL.⁵⁶

FIGURE 1.19.6, Relationship of Income to the Federal Poverty Level of 45,371 Taxpayers Who Made Payments While Their Debts Were Assigned to PCAs and Median Amount Paid⁵⁷

Income Compared to Poverty Level	Number Of Taxpayers	Percent of Taxpayers	Median Amount Paid	Average Income	Median Income
Income At or Below Federal Poverty Level	10,891	24%	\$671	\$3,619	\$890
Income Above Federal Poverty Level up to 250% of Federal Poverty Level	9,119	20%	\$515	\$24,465	\$23,104
Income Above 250% of Federal Poverty Level	25,361	56%	\$780	\$118,640	\$66,351
Total	45,371	100%			

The failure to exclude these low income taxpayers inflicts real harm on vulnerable people.

The 45,371 taxpayers who made payments while their debts were assigned to PCAs shown in Figure 1.19.6 includes 1,031 taxpayers who were Social Security Disability Insurance (SSDI) recipients in 2017.⁵⁸ According to the Social Security Administration (SSA):

- SSDI recipients generally could not earn over \$1,180 per month in 2018 without losing their benefits;⁵⁹ and
- In 2018, the average monthly amount of disability paid was \$1,197.⁶⁰

55 The federal poverty level is based on family size and varies from year to year. The federal poverty level for a single person was \$12,060 in 2017. U.S. Dept. of Health and Human Resources, Poverty Guidelines (2017), <https://aspe.hhs.gov/2017-poverty-guidelines>. 250 percent of \$12,060 is \$30,150.

56 ARDI, IRTF, IRMF, CDW, reflecting activity since the inception of the PDC program in April 2017 through FY 2018.

57 Of the 10,891 taxpayers with incomes at or below the federal poverty level 4,057 were assumed to have no income because for tax year 2017 they did not file a return and there were no third-party reports of income for them. It is possible that some of these taxpayers may have had unreported income.

58 The IRS agreed to exclude from assignment to PCAs the debts of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) recipients. National Taxpayer Advocate 2017 Annual Report to Congress 10, 17 (Most Serious Problem: *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*). The IRS has not honored that commitment. If a taxpayer discloses to a PCA that he or she receives SSDI or SSI benefits, the PCA is required to return the case to the IRS. Payments of SSDI benefits (but not SSI benefits) are reported to the IRS on Form SSA-1099.

59 SSA, *Working While Disabled: How We Can Help* 3 (2018), noting "After your trial work period, you have 36 months during which you can work and still receive benefits for any month your earnings aren't 'substantial.' In 2018, we consider earnings over \$1,180 (\$1,970 if you're blind) to be substantial."

60 SSA, *The Facts about Social Security's Disability Program* 1 (2018).

Thus, a taxpayer receiving income of \$1,180 per month (the maximum amount allowed) and the average amount of disability paid in 2018 would earn \$28,524. IRS records show that for the 1,031 taxpayers who received SSDI:

- Median income was \$20,312;
- Average income was \$35,290;⁶¹
- The average amount they paid was \$1,556; and
- The median amount they paid was \$453.⁶²

As discussed above, the IRS has refused to exclude from assignment to PCAs the debts of taxpayers whose incomes are below 250 percent of the federal poverty level, citing lack of statutory authority to do so.⁶³ The National Taxpayer Advocate continues to believe the IRS has the discretion, under IRC § 6306, to exclude these taxpayers' accounts from referral to PCAs.⁶⁴ In addition, the National Taxpayer Advocate believes that in light of Congress's direction that the IRS develop ALE standards, the IRS is authorized to exclude from assignment to PCAs the debts of taxpayers whose incomes are at or below their ALEs.

PCAs May be Improperly Retaining Some Cases, and Procedures Should be Modified to Expand the Types of Cases PCAs Must Return to the IRS to Prevent PCAs From Creating Queues of Inactive Cases

PCAs are required to return cases to the IRS in a variety of situations and to compile reports that categorize the reason for the returns.⁶⁵ In FY 2018, through September 13, 2018, PCAs returned 15,796 cases.⁶⁶ Currently, the IRS does not appear to know the number of returns in each category, except for cases returned because the taxpayer stated he or she received Supplemental Security Income (SSI) *or* SSDI benefits (5,046 cases); or the taxpayer submitted a written request that the PCA cease contacting the taxpayer (2,845 cases).⁶⁷

61 Income includes the spouse's income, where the taxpayer filed a joint return, although the spouse may not have been an SSDI recipient.

62 ARDI, IRTF, IRMF, CDW, reflecting activity since the inception of the PDC program in April 2017 through FY 2018.

63 See June 20, 2018, Memorandum from Deputy Director for Services and Enforcement, rescinding the National Taxpayer Advocate's April 23, 2018 Taxpayer Advocate Directive, published in the National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress 75. As discussed above, the IRS has not felt similarly constrained by the temporal limit of IRC § 6303(b), which allows PCAs to offer IAs "for a period not to exceed 5 years," or by the definition in IRC § 6303(b) which defines a "qualified tax collection contract" as a contract pursuant to which PCAs "obtain financial information specified by the Secretary with respect to such taxpayer," among other things.

64 A recent proposal in Congress would exclude taxpayers having "substantially all" of their incomes comprised of SSDI or SSI from having their debts assigned to a PCA. The proposal would also exclude taxpayers whose incomes are at or below 200 percent of the federal poverty level from having their debts assigned to a PCA. See Taxpayer First Act of 2018, H.R. 7227, 115th Cong. § 1205 (2018).

65 Included among the categories of reasons for returning a case are: the taxpayer indicated he or she would send a one-time voluntary payment; the taxpayer indicated he or she is unable to pay; and the taxpayer informs the PCA that he or she is a recipient of SSI/SSDI benefits. PPG § 17.1.3, *Return Tracking Report*. Where the only liability is for the individual shared responsibility (ISRP) and the taxpayer disagrees with the assessment, PCAs are directed to return the case to the IRS, but there is not a separate return category for this type of case. IRS response to TAS information request (Aug. 14, 2018). None of the 3,243 taxpayers whose ISRP debts were assigned to PCAs by FY 2018 were liable solely for the ISRP. Defaulted IA are returned to the IRS but not separately identified or tracked. IRS response to TAS information request (Apr. 10, 2018).

66 PDC Program Scorecard from program for FY 2018 through Sept. 13, 2018.

67 In response to TAS's request for reports from the PCAs that show a breakdown of the reasons the PCAs returned accounts to the IRS, the IRS responded that "RAAS [IRS Research, Applied Analytics, and Statistics] is in the process of analyzing the returned accounts data and it will be another few months before we can provide any accurate and meaningful report on this data." IRS response to TAS information request (Oct. 31, 2018).

PCAs May Be Impermissibly Retaining Cases After Soliciting More Than One Voluntary Payment

One area that raises the concern that PCAs may be improperly retaining accounts is where there appear to be “voluntary payments.” Voluntary payments are payments that do not fully pay the liability and are not made pursuant to an IA. PCAs are permitted to solicit only *one* voluntary payment, and only from a taxpayer who “can make payments, but will not full pay within the Collection Statute Expiration Date (CSED) or seven years, whichever is less.”⁶⁸ After soliciting a voluntary payment, PCAs must return the case to the IRS.⁶⁹

In response to TAS’s inquiry about its oversight in this area, the IRS responded:

Although it is not uncommon for taxpayers to make payments on their accounts without a formal agreement, we asked the PCAs to review these accounts and provide their findings. The PCAs on a regular basis will identify these accounts and include them in their dialing campaigns to attempt to establish payment arrangements.⁷⁰

Thus, it remains unclear from the IRS’s response whether the IRS has developed an adequate mechanism for distinguishing cases in which PCAs solicited more than one voluntary payment from cases in which taxpayers make these payments without any solicitation from the PCAs. Allowing PCAs to secure “voluntary” payments that do not resolve the liability (while interest continues to accrue on the unpaid liability) circumvents the statutory protections of an IA (such as protection against levy) and violates taxpayers’ *right to finality*.

At the end of FY 2018, PCA inventory included the debts of 4,753 taxpayers who had made two or more commissionable payments, yet had not entered into an IA and had not paid their debts in full.⁷¹ This suggests that even if they can afford to make payments, the limited payment alternatives PCAs can offer do not meet their needs. These taxpayers’ debts had been in PCA inventory for 204 days on average.⁷²

PCAs Appear to be Retaining Cases With Defaulted Installment Agreements Without Informing the IRS as Required

An area that raises concern about the IRS’s policy of allowing PCAs to retain inventory involves defaulted IAs. When a taxpayer misses three IA payments within a rolling 12-month period, the PCA is required to terminate the IA and inform the IRS that the IA has been terminated.⁷³ The PCA is not required to return the account to the IRS, however, unless it contacts the taxpayer and the taxpayer states that he or she is unable to restructure the IA to pay the total liability in full within the seven years (or the period of limitations on collection, if earlier).⁷⁴

At the end of FY 2018, PCA inventory included the debts of 3,222 taxpayers who had entered into IAs while their debts were assigned to PCAs and had made *no* payment for more than 120 days after

68 PPG § 10, *Payment Options*.

69 PPG § 10.2.1, *Voluntary Payments*.

70 IRS response to TAS information request (Aug. 14, 2018).

71 ARDI, IRTF, IRMF, CDW, reflecting activity since the inception of the PDC program in April 2017 through FY 2018.

72 *Id.*

73 PPG § 11.5.2, *Missed Payments & Restructuring or Terminating Payment Arrangements*.

74 For example, the PPG § 11.5.2, *Missed Payments & Restructuring or Terminating Payment Arrangements* notes: “Reminder: When unable to contact, three missed payments does not require the PCA to return the account to the IRS. All attempts to contact the taxpayer or representative must be documented.”

entering into the IA, yet IRS records did not reflect termination of the IA. These 3,222 cases had been in PCA inventory for 272 days on average.⁷⁵ Thus, the PCAs do not appear to be providing the required notification to the IRS that these taxpayers missed more than three IA payments in a 12-month period. Moreover, this fact pattern suggests that the taxpayers are interested in resolving their liabilities, but the payment terms they agreed to, or the PCAs can offer, are inadequate to permit them to do so.

As discussed above and shown in Figure 1.19.3, at the end of FY 2018, there were 43,579 taxpayers who had entered into IAs while their debts were assigned to PCAs, of whom 16,053 are shown on IRS records as having defaulted. If the 3,222 taxpayers who entered into IAs and made no payments for more than 120 days are treated as defaulted IAs, the total number of defaulted would be 19,275, which is 44 percent of 43,579. Thus, the 37 percent overall default rate for IA that taxpayers entered into while their debts were assigned to PCAs rises to 44 percent when defaulted IAs that PCAs do not report to the IRS as required are taken into account.

PCAs also appear to be retaining inventory when there is no payment and no IA, even though the cases had been assigned for at least 90 days.⁷⁶ At the end of FY 2018, there were 402,387 of these cases, and they had been in PCA inventory for 244 days on average.⁷⁷

Figure 1.19.7 shows the number of taxpayers whose debts remain in PCA inventory without being resolved.

FIGURE 1.19.7, Number of Taxpayers Whose Debts Are in PCA Inventory And Are Not Being Resolved

	Number of Taxpayers	Average Number of Days Elapsed After Assignment	Median Number of Days Elapsed After Assignment
Two or More Commissionable Payments and No IA or Full Payment	4,753	204	146
IA and No Payment For More Than 120 Days (Excluding Defaults, Recalled Cases, and Returned Cases)	3,222	272	279
No IA or Payment For More Than Three Months After Assignment (Excluding Recalled Cases and Returned Cases)	402,387	244	195
Total	410,362	244	195

75 CDW data, reflecting activity since the inception of the PDC program in April 2017 through FY 2018.

76 The IRS does not require PCAs to return these cases to the IRS, directing only that “The PCA must return an account to the IRS anytime the PCA is unable to collect and has exhausted all reasonable collection efforts.” PPG § 12.3, *Unable to Collect*.

77 CDW data, reflecting activity since the inception of the PDC program in April 2017 through FY 2018.

Allowing PCAs to retain inactive cases defeats the purpose of the PDC program because even where the PCA succeeds in contacting the taxpayer, the liability is not being resolved. Moreover, assignments that effectively become permanent allow PCAs to collect commissions, no matter how much time elapses:

- Between the date the debt was assigned to the PCA and the date the taxpayer makes a payment; and
- Between the date of any PCA activity and the date a taxpayer makes a payment.

The IRS Now Assigns to PCAs More Complex Cases and Those With Increased Risk That the Liability May Not Be Owed

The IRS has assigned to PCAs the liabilities of about 400,000 taxpayers who did not dispute their liability for any year assigned to a PCA.⁷⁸ In FY 2018, this category of cases included, for the first time, liability for the individual shared responsibility payment (ISRP).⁷⁹

As part of “Release 2” of the program, the IRS also assigned cases in which the only tax liability was assessed:

- Based on substitutes for returns;⁸⁰
- Pursuant to the Automated Underreporter (AUR) computer matching system; or
- When the taxpayer did not respond, or stopped responding, to IRS inquiries pursuant to an audit.

By the end of FY 2018, over 150,000 of these cases had been assigned.⁸¹ These cases implicate significant taxpayer rights, particularly the *right to pay no more than the correct amount of tax*, and are subject to additional protections and procedures. For example, taxpayers may seek audit reconsideration with respect to these assessments.⁸² If the IRS refuses, after reconsideration, to abate an assessment, taxpayers are entitled to an appeals conference with the IRS Office of Appeals.⁸³ Moreover, these types of cases have an increased risk that all or part of the liability may not be owed, so that abatement would be appropriate, including penalty abatement.⁸⁴ The IRS instructs PCA employees to refer taxpayers who

78 ARDI, IRTF, IRMF, CDW data, reflecting activity since the inception of the PDC program in April 2017 through FY 2018, showing assignment of 412,535 of these cases. See PPG § 12.22, *Compliance Assessments*, noting that “[i]n the first release of inventory, the IRS provided PCAs with tax accounts where the taxpayer reported and calculated the assessable tax.”

79 As noted above, all the taxpayers who were assessed liability for ISRP also had assessments from another source.

80 If the taxpayer failed to file a timely return, the IRS may make a return, referred to as a substitute for return (SFR), as authorized by IRC § 6020(b), based on information reported to the IRS. The SFR may reflect income reported by third parties, but allows only the standard deduction, one exemption (for returns filed prior to tax year 2018), and a filing status of single or married filing separately. See IRM 4.12.1.25.3, *Itemized Personal Deductions* (Oct. 5, 2010); IRM 4.12.1.24.12, *Married Filing Joint Election for Nonfiler cases* (Oct. 5, 2010). See also *Allowable Expenses in an SFR*, <http://mysbse.web.irs.gov/reflibrary/kts/supparticles/14979.aspx>.

81 ARDI, IRTF, IRMF, CDW data, reflecting activity since the inception of the PDC program in April 2017 through FY 2018, showing assignment of 38,352 SFR-only assessments; 63,989 Automated Underreporter-only assessments; and 51,701 audit default-only assessments, for a total of 154,042 cases.

82 See, e.g., IRM 4.13.1.2, *Definition of an Audit Reconsideration* (Dec. 16, 2015).

83 See IRM 5.1.15.4.6.4, *Appeal Rights on Reconsiderations* (Apr. 16, 2010).

84 See, e.g., National Taxpayer Advocate 2004 Annual Report to Congress, vol. 2 1, (Research Study: *EITC Audit Reconsideration Study*), demonstrating that 43 percent of taxpayers who sought reconsideration of audits that disallowed the EITC in whole or in part received additional EITC as a result of the audit reconsideration. See also National Taxpayer Advocate 2012 Annual Report to Congress, vol. 2 74, (Research Study: *Study of Tax Court Cases In Which the IRS Conceded the Taxpayer was Entitled to Earned Income Tax Credit (EITC)*) discussing a TAS study of a random sample of cases in which the IRS denied a claim for EITC but conceded the issue after the taxpayer petitioned the Tax Court for review.

dispute these assessments to the IRS, but the PCAs are not required to return the cases to the IRS.⁸⁵ In contrast, the prior iteration of the IRS's PDC initiative required PCAs to refer cases in which taxpayers disputed their liability to the Referral Unit, which would attempt to resolve the dispute within 30 days.⁸⁶

Release 2 cases also include those in which the taxpayer did not file a return which, according to IRS records, was required to be filed (referred to as a delinquent return). PCAs are instructed that taxpayers must file delinquent returns with the IRS as a condition to entering into an IA. However, IRS records indicating a return was required are not always accurate. For example, in FY 2014, 21 percent of the accounts the IRS identified as delinquent were not actually those of nonfilers (*i.e.*, a return had actually been filed) or there was little or no tax due.⁸⁷ If a taxpayer states the return was filed, the PCA is to monitor the case for 30 days to give a recently-filed return time to post, or, if the return hasn't appeared in IRS records after ten weeks, the PCA is to advise the taxpayer to re-submit the return.⁸⁸ There are no procedures directing PCAs how to handle cases in which the taxpayer asserts he or she was not required to file a return. In any event, once an IA has been created, the failure to file a required return does not cause the IA to terminate.⁸⁹

The IRS held a PDC Engagement Conference on February 14-15, 2018, to train PCA employees how to handle Release 2 cases.⁹⁰ By then, TAS had published data showing that a significant portion of taxpayers whose debts were assigned to PCAs could not afford the payments they made.⁹¹ The training provided to PCAs did not include information about ALEs, even though that instruction might have lessened the impact the PDC program has on taxpayers who appear to be experiencing economic hardship.⁹² This omission demonstrates the IRS does not take seriously the harm imposed on vulnerable taxpayers.

CONCLUSION

With unacceptable frequency, the IRS PDC initiative as implemented continues to burden taxpayers who, according to IRS standards, cannot afford to pay for their basic living expenses. There are insufficient safeguards to prevent taxpayers' debts from remaining with PCAs indefinitely, even where PCA activity does not result in payments by taxpayers. Increasingly, the PCA inventory is simply substituting for the IRS inventory queue, with PCAs receiving commissions on payments that are not attributable to PCA activity.

85 PPG § 12.22, *Compliance Assessments*.

86 PPG § 12.15, *Taxpayer Disputes* (July 1, 2008 version).

87 See National Taxpayer Advocate 2014 Annual Report to Congress 197, 202 (Most Serious Problem: *Federal Payment Levy Program: Despite Some Planned Improvements, Taxpayers Experiencing Economic Hardship Continue to Be Harmed by the Federal Payment Levy Program*).

88 PPG § 11.1, *Delinquent Returns*.

89 *Id.*, noting that “[a] delinquent return indicator received after the account is in a payment arrangement status, as indicated by TRCAT 080, does not create a default or termination of the arrangement.”

90 IRS responses to TAS information request (Aug. 14 and Oct. 10, 2018).

91 National Taxpayer Advocate 2017 Annual Report to Congress 10, 11 (Most Serious Problem: *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*, reporting that 44 percent of taxpayers who made payments while their debts were assigned to PCAs had incomes below 250 percent of the federal poverty level, and vol. 2 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*, reporting that of taxpayers who entered into an IA and made commissionable payments while their debts were assigned to a PCA, 46 percent had incomes less than their ALEs.).

92 IRS response to TAS information request, providing the training materials (Oct. 10, 2018).

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Exclude from assignment to PCAs the debts of taxpayers whose incomes are at or below their allowable living expenses.
2. Work with the Social Security Administration to identify recipients of Social Security Disability Insurance and Supplemental Security Income and exclude those taxpayers' debts from assignment to PCAs.
3. Revise PDC procedures to require IRS review of all PCA cases in which the taxpayer made more than one payment that did not fully pay the liability and was not made pursuant to an IA, to determine whether the PCA requested more than one payment from a taxpayer who can make payments, but cannot fully pay the liability within the Collection Statute Expiration Date (CSED) and if so:
 - a. Recall the case from the PCA;
 - b. Impose a penalty on the PCA for requesting more than one such payment without returning the case to the IRS; and
 - c. Assign an IRS employee to work the case.
4. Revise PDC procedures to:
 - a. Require PCAs to return to the IRS cases in which the taxpayer entered into an installment agreement but made no payments for 120 days thereafter; and
 - b. Assign an IRS employee to work the case.
5. Revise PDC procedures to require PCAs to return to the IRS cases in which the taxpayer did not enter into an IA and did not make any payments within six months of assignment to the PCA.