

**Area of  
Focus #5****The IRS's Private Debt Collection Program, Which Has Yet to Generate Net Revenues, Continues to Unnecessarily Burden Taxpayers Experiencing Economic Hardship and Produces Installment Agreements With High Default Rates****TAXPAYER RIGHTS IMPACTED<sup>1</sup>**

- *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*

**DISCUSSION**

The IRS implemented the current Private Debt Collection (PDC) initiative more than a year ago.<sup>2</sup> When the program had been in place for about six months, IRS data showed that of taxpayers who made payments while their debts were assigned to private collection agencies (PCAs):

- 44 percent had incomes below 250 percent of the federal poverty level, a measure the IRS sometimes uses as a proxy for economic hardship;<sup>3</sup> and
- 45 percent who entered into an installment agreement (IA) had incomes less than their allowable living expenses (ALEs), meaning they did not have enough income to pay for their basic living expenses.<sup>4</sup>

- 1 See Taxpayer Bill of Rights (TBOR), [www.TaxpayerAdvocate.irs.gov/taxpayer-rights](http://www.TaxpayerAdvocate.irs.gov/taxpayer-rights). The rights 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 The Fixing America's Surface Transportation (FAST) 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) requires the IRS to enter into qualified tax collection contracts for the collection of "inactive tax receivables." The IRS began assigning tax debts to private collection agencies (PCAs) in April 2017. 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 National Taxpayer Advocate 2017 Annual Report to Congress 10, 11 (Most Serious Problem: *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*), describing data current through Sept. 28, 2017. See the discussion of 250 percent as a measure of economic hardship below.
- 4 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 2, 7-8 (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*). The allowable living expense (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. See IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> (last visited June 5, 2018).

The measure of 250 percent of the federal poverty level is important. The IRS uses it to identify taxpayers who are likely to be in economic hardship.<sup>5</sup> Congress adopted the measure to identify taxpayers who cannot afford representation in IRS disputes and are therefore vulnerable to overreaching.<sup>6</sup> Recent legislation adopts the measure to excuse some taxpayers from paying user fees to enter into IAs.<sup>7</sup> Still more recently, on April 18, 2018, the U.S. House of Representatives, in a bipartisan vote, passed the Taxpayer First Act, H.R. 5444, which excludes taxpayers whose incomes are less than 250 percent of the federal poverty level from referral to a PCA.<sup>8</sup> With the clear bipartisan support of at least one House of Congress, the IRS could exercise its discretion to exclude taxpayers whose incomes are less than 250 percent of the federal poverty level from the PDC program and focus the program on those who can afford to pay, instead of people who, by the IRS's own definition, cannot afford to pay.

The PDC program continues to burden taxpayers who are likely in economic hardship. As of the second quarter of fiscal year (FY) 2018 (through March 29, 2018), IRS data shows that of taxpayers who made payments while their debts were assigned to PCAs:

- 46 percent had incomes below 250 percent of the federal poverty level;<sup>9</sup> and
- 43 percent who entered into an IA had incomes less than their ALEs.<sup>10</sup>

The PDC program appears to result in IAs with high default rates. The overall default rate for IAs that taxpayers enter into when their debts are assigned to PCAs is 28 percent.<sup>11</sup> The overall default rate on IAs that taxpayers enter into outside the PDC program (*i.e.*, when their debts are not assigned to PCAs) is 16 percent.<sup>12</sup>

5 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. The Social Security Administration (SSA) retirement income of taxpayers with incomes less than 250 percent of the federal poverty level is not subject to FPLP levies. See Internal Revenue Manual (IRM) 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016). See also U.S. Dept. of Health and Human Resources, *Poverty Guidelines* (Jan. 31, 2017), <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references> (last visited June 5, 2018), showing that the poverty level for a single person in 2017 was \$12,060 and \$12,140 in 2018.

6 To assist taxpayers with incomes below 250 percent of the federal poverty level, Congress enacted IRC § 7526 to authorize funding for the Low Income Taxpayer Clinic (LITC) grant program. LITCs represent low income taxpayers in controversies with the IRS and conduct education and outreach to taxpayers who speak English as a second language.

7 Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 41105, 132 Stat. 64, 157 (Feb. 9, 2018).

8 Taxpayer First Act, H.R. 5444, § 305, 115th Cong. (April. 17, 2018). This bipartisan bill passed with a recorded vote of 414-0. See H.R. 5444: Taxpayer First Act, <https://www.govtrack.us/congress/votes/115-2018/h146> (last visited June 5, 2018).

9 Compliance Data Warehouse (CDW) data as of Mar. 29, 2018. We used data from two sources to determine taxpayers' income: the income shown on the taxpayer's most recently filed 2016-2017 individual federal income tax return; and, if the taxpayer did not file a 2016 or 2017 return, the taxpayer's income from the Information Returns Master File (IRMF) wage and Form 1099 income (for example, SSA, miscellaneous, interest, dividend, Individual Retirement Account (IRA), and pension income) for 2017.

10 See IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards> (last visited June 5, 2018), using ALEs for 2017. As discussed below, 20,862 taxpayers made payments while their debts were assigned to PCAs. Of these taxpayers, 9,819 entered into an IA; the incomes of 4,236, or 43 percent, were less than their ALEs.

11 CDW data as of Mar. 29, 2018, discussed below.

12 IRS, Collection Activity Report, *Installment Agreement (IA) Default Report FY 2017 For 12 Month Period Ending Cycle: 201739*, discussed below.

According to the IRS, the PDC program generated net revenue in FY 2018 but has yet to break even.<sup>13</sup> About two percent of the dollars assigned for collection have been collected thus far.<sup>14</sup> To date, the IRS has assigned the debts of 304,444 taxpayers to PCAs.<sup>15</sup> The IRS plans to assign between 700,000 to 800,000 debts to PCAs in calendar year 2018 but does not yet have projections of PDC program revenues and costs.<sup>16</sup>

### The PDC Program Continues to Burden Taxpayers Who Are Likely Experiencing Economic Hardship

Figure 3.5.1 summarizes the incomes of taxpayers who made commissionable payments while their debts were assigned to a PCA since the program's inception.<sup>17</sup>

**FIGURE 3.5.1, Income of 20,862 Taxpayers Who Made Payments While Their Debts Were Assigned to PCAs, Compared to the Federal Poverty Level and Dollars Collected, Program Inception April 10, 2017 Through March 29, 2018**

	Total Number of Taxpayers Who Made Payments	Percent of Taxpayers Who Made Payments	Dollars Collected	Percent of Dollars Collected
<i>Below Federal Poverty Level</i>	5,221	25%	\$ 7,153,897	17%
<i>At or Above Federal Poverty Level and Below 250 Percent of Federal Poverty Level</i>	4,356	21%	\$ 5,840,930	14%
<b>Subtotal, Below 250 Percent Federal Poverty Level</b>	<b>9,577</b>	<b>46%</b>	<b>\$ 12,994,827</b>	<b>31%</b>
<i>At or Above 250 Percent Federal Poverty Level</i>	11,285	54%	\$ 29,424,310	69%
<b>Overall</b>	<b>20,862</b>	<b>100%</b>	<b>\$ 42,419,137</b>	<b>100%</b>

As Figure 3.5.1 demonstrates, almost a third of the PDC program dollars collected were from taxpayers with incomes less than 250 percent of the federal poverty level. *The median income of the 5,221 taxpayers whose incomes were below the federal poverty level was \$1,457.* The median income of the 4,356 taxpayers whose incomes were at or above the federal poverty level and less than 250 percent of the federal poverty level was \$23,340.

13 Private Debt Collection (PDC) Program Scorecard from program for fiscal year (FY) 2018 through Mar. 15, 2018, showing total revenues/collection of \$28,861,647 and total costs of \$10,262,248 for FY 2018, and showing total revenue/collections of \$35,443,592 and total costs of \$45,583,324 from the start of the program through Mar. 15, 2018.

14 PDC Program Scorecard from program for FY 18 through Mar. 15, 2018, showing \$1,434,052,408 of receivables were assigned in FY 18 (of which two percent were collected), and \$2,353,645,787 were assigned from the start of the program through Mar. 15, 2018 (of which 1.5 percent were collected).

15 PDC Program Scorecard from program for the start of the program through Mar. 15, 2018.

16 IRS response to TAS information request (Apr. 10, 2018).

17 Under IRC § 6306(e)(1), the IRS is authorized to pay commissions to PCAs of up to 25 percent of the amount collected. Generally, payments taxpayers make more than ten days after their accounts are assigned to a PCA are commissionable.

### Taxpayers Who Enter Into Installment Agreements While Their Debts Are Assigned to PCAs Default More Frequently Than Other Taxpayers With Installment Agreements

TAS identified 18,738 taxpayers who entered into IAs while their debts were assigned to PCAs. PCAs can only offer taxpayers “streamlined” IAs, which do not require financial information from the taxpayer. Streamlined IAs are available to taxpayers who owe no more than \$50,000 and can satisfy the liability within six years (and within the statutory period for collecting taxes) and to taxpayers who owe between \$50,001 and \$100,000 and can satisfy the liability within seven years (and within the statutory period for collection).<sup>18</sup>

Whether or not their debts are assigned to a PCA, taxpayers enter into IAs, including streamlined IAs, and sometimes default on the agreement. For example, a 2016 TAS research study found that 25 percent of taxpayers who owed more than \$1,000 and entered into streamlined IAs with the IRS in 2014 had defaulted by September 2016.<sup>19</sup> Some of these taxpayers entered into streamlined IAs even though their incomes were less than their allowable living expenses; they defaulted 26 percent of the time.<sup>20</sup> For FY 2017, according to the IRS, the overall IA default rate for streamlined IAs was 16 percent.<sup>21</sup> The streamlined IA default rate for individual taxpayers whose accounts were assigned to the IRS’s Automated Collection System was 21 percent.<sup>22</sup>

18 See *Streamlined Processing of Installment Agreements*, <https://www.irs.gov/businesses/small-businesses-self-employed/streamlined-processing-of-installment-agreements> (last visited June 5, 2018).

19 National Taxpayer Advocate 2016 Annual Report to Congress vol. 2, 61 (Research Study: *The Importance of Financial Analysis in Installment Agreements (IAs) in Minimizing Defaults and Preventing Future Payment Noncompliance*), showing that of 2,534,055 taxpayers who entered into a streamlined IA in 2014, 632,729, or 25 percent, defaulted by Sept. 2016.

20 *Id.*, showing that of 879,384 taxpayers whose incomes were less than their ALEs and who entered into a streamlined IA in 2014, 229,758, or 26 percent, defaulted by Sept. 2016.

21 IRS, Collection Activity Report, *IA Default Report FY 2017 For 12 Month Period Ending Cycle: 201739*. The default rate for streamlined IAs varied depending on the IRS function with responsibility for the account when the taxpayer entered into the streamlined IA. For example, Field Collection streamlined IAs had a default rate of 23 percent, while Exam streamlined IAs had a default rate of 13 percent.

22 Automated Collection System (ACS) is the IRS function that receives calls from taxpayers with delinquent tax liabilities. See IRM 5.19.5.1, *Program Scope and Objectives* (Mar. 9, 2018). IRS, Collection Activity Report, *IA Default Report FY 2017 For 12 Month Period Ending Cycle: 201739*.

Figure 3.5.2 shows taxpayers' income levels and the default rate for IAs they entered into and defaulted on between April 10, 2017 and March 29, 2018, while their debts were assigned to a PCA.

**FIGURE 3.5.2, Relationship of Income to the Federal Poverty Level and to Allowable Living Expenses of 18,738 Taxpayers Who Entered Into Installment Agreements While Their Debts Were Assigned to PCAs, and Default Rates, Program Inception April 10, 2017 Through March 29, 2018<sup>23</sup>**

Income Compared to Poverty Level	Number of Taxpayers	Percent of Taxpayers	Number of Taxpayers With Income Less Than Allowable Living Expenses	Percent of Taxpayers With Income Less Than Allowable Living Expenses	Default Rate
<b>Income Below the Federal Poverty Level</b>	4,567	24%	4,567	100%	28%
<b>Income at or Above the Federal Poverty Level and Below 250 Percent of the Federal Poverty Level</b>	4,417	24%	3,515	80%	28%
<b>Income at or Above 250 Percent of the Federal Poverty Level</b>	9,754	52%	328	3%	28%
<b>Total</b>	<b>18,738</b>	<b>100%</b>	<b>8,410</b>	<b>45%</b>	<b>28%</b>

As Figure 3.5.2 shows, taxpayers whose incomes were below the federal poverty level defaulted on their IAs more than a quarter of the time, *even though their ALEs exceeded their incomes 100 percent of the time*. Taxpayers whose incomes were at or above the federal poverty level and below 250 percent of the federal poverty level also defaulted on their IAs more than a quarter of the time, *even though their ALEs exceeded their incomes 80 percent of the time*. Taxpayers with incomes above 250 percent of the federal poverty level were unlikely to have ALEs in excess of their incomes, but they still defaulted at the same rate as taxpayers in the other two income groups. The PDC initiative as implemented does not involve any financial analysis and thus does not take into account *any* of these taxpayers' specific facts and circumstances. For lower income taxpayers, the consequence is that they are *not* paying for things they need. They are not meeting their basic living expenses.

### The IRS Has Not Honored Its Commitment to Exclude the Debts of Some Vulnerable Taxpayers From Assignment to PCAs

At the urging of the National Taxpayer Advocate, the IRS agreed to exclude from assignment to PCAs the debts of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) recipients and requested assistance from the Social Security Administration (SSA) in identifying affected taxpayers.<sup>24</sup> SSA declined, and the IRS has not taken additional steps to explore alternatives for

<sup>23</sup> Defaulted IAs were identified in the CDW as IA cases with a subsequent TC 971 AC 163 and a balance due for at least one tax year that was covered by the IA.

<sup>24</sup> 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*).

excluding the debts of SSI/SSDI recipients from assignment to PCAs.<sup>25</sup> As a result, the debts of 12,107 SSDI recipients were assigned to PCAs in FY 2018 (Oct. 1, 2017 through Mar. 29, 2018). Further, 322 SSDI recipients whose incomes were less than 250 percent of the federal poverty level *made payments* in FY 2018 while their debts were assigned:

- 128 had incomes below the federal poverty level. These taxpayers' median income was \$7,344, yet they paid \$1,083 on average; and
- 194 had incomes at or above the federal poverty level and below 250 percent of the federal poverty level. These taxpayers' median income was \$19,385, yet they paid \$640 on average.

In its response to the National Taxpayer Advocate's 2017 Annual Report to Congress recommendations, the IRS referenced its "manual process that requires the PCA to stop collection efforts and return an account to the IRS when the taxpayer states they receive SSDI or SSI."<sup>26</sup> As discussed below, this "manual process" does not appear effective. Moreover, it is the opposite of a big data approach in which the government is expected to use data it has to avoid burdening taxpayers. The IRS has simply decided that it is too difficult to extract and use its data; it has instead shifted the burden onto disabled and elderly taxpayers.

### Private Collection Agencies May Not Be Returning Cases to the IRS As Required

PCAs are required to report the reasons for returning a case to the IRS.<sup>27</sup> Four situations in which a PCA is required to return a case suggest the taxpayer is in economic hardship:

- Where the taxpayer states he or she is a recipient of SSDI or SSI;<sup>28</sup>
- Where the PCA is unable to collect because 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;"<sup>29</sup>
- Where the PCA has requested a "voluntary payment," *i.e.*, a payment that does not fully pay the liability and is not made pursuant to an installment agreement.<sup>30</sup> A request for a voluntary payment is permitted only where the taxpayer cannot pay the liability immediately or pursuant to an installment agreement, and is not allowed where the taxpayer "expresses they are unable to pay;" and

25 IRS response to TAS information request (Apr. 10, 2018). The IRS's IRMF, a database stored in the CDW, includes information from Form SSA-1099, on which Social Security benefits, including Social Security Disability Insurance income (SSDI) (but not Supplemental Security Income (SSI), discussed below) is reported.

26 IRS response to Recommendation 1-3, National Taxpayer Advocate 2017 Annual Report to Congress (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*) reported in National Taxpayer Advocate Fiscal Year 2019 Objectives Report to Congress vol. 2.

27 PCAs conduct operations according to provisions in the PCA Policies and Procedures Guide (PPG). References to the PPG are to the Apr. 4, 2018 version. PPG § 17.1, *Production Management Reports*, § 17.3.1, *Return Tracking Report*.

28 PPG § 14.2, *Return of Account by PCA*. The IRS has not honored its commitment to exclude the debts of SSDI and SSI recipients from assignment to PCAs.

29 PPG § 12.3, *PCA Unable to Collect*.

30 PPG § 10.2.1, *Voluntary Payments*. If the taxpayer makes the voluntary payment, the PCA returns the account to the IRS, indicating "Voluntary Payment" as the reason for the return. If the taxpayer does not make the requested voluntary payment, the PCA indicates the reason for the return as "Unable to Collect."

- Where the taxpayer entered into a payment arrangement, but missed more than three monthly payments in a rolling 12-month period (or missed any payments during a disaster or emergency) “and is unable to restructure and unable to make voluntary payments.”<sup>31</sup>

According to PCA reports, in FY 2018 through March 15, 2018, PCAs returned 2,663 cases to the IRS because the taxpayer was an SSDI or SSI recipient.<sup>32</sup> As noted above, the debts of 12,107 SSDI taxpayers alone were assigned to PCAs in about the same period (FY 2018 through March 29, 2018). Thus, the approach the IRS has adopted, of placing the onus on the taxpayer to volunteer the information that he or she is a recipient of SSDI or SSI, does not appear to effectively prevent PCAs from seeking to collect from these taxpayers. The IRS is unable to identify from PCA reports the number of cases that were returned for any of the other reasons listed above.<sup>33</sup>

### The IRS Plans to Enlarge the PDC Initiative

In selecting cases to assign to PCAs, the IRS segments its inventory of “inactive tax receivables” according to how the liability was assessed (*e.g.*, an agreed assessment; “combo cases,” discussed below; or AUR cases, discussed below).<sup>34</sup> The IRS then randomly selects PDC cases according to characteristics of the account such as the inventory segment it belongs to and the amount owed.<sup>35</sup>

In February 2018, the IRS began implementing Release 2 of the PDC initiative, which entails assigning to PCAs “unagreed compliance assessments.” “Unagreed compliance assessments” are liabilities that arose pursuant to:

- the Automated Underreporter (AUR) computer system;<sup>36</sup>

31 PPG § 11.5.2, *Missed Payments*. The IRS does not track the number of PCA IAs that have been restructured. When PCAs do return cases to the IRS because of missed payments, the return is reported as “unable to collect;” *i.e.*, these defaulted IAs are not separately identified or tracked as a reason for returning a case. IRS response to TAS information request (Apr. 10, 2018).

32 IRS response to TAS information request (Apr. 10, 2018).

33 The IRS also does not know how often cases are returned because the PCA is unable to locate or unable to contact the taxpayer. IRS response to TAS information request (Apr. 10, 2018), citing “inconsistency in the PCA’s interpretation of the return criteria” and noting that “[t]he PDC Project Office is working to analyze the data provided for other returns. Over the next several months, the team will continue to work closely with RAAS [IRS Research, Applied Analytics, and Statistics] and conduct focused reviews to identify the discrepancies and provide the PCAs with clarifying guidelines on reporting the reasons for returning cases to the IRS.” In the meantime, there is a wide variation in the rate at which PCAs return accounts to the IRS. PDC Program Scorecard from program for FY 2018 through Mar. 15, 2018, showing the cumulative number of returned cases ranged from 983 to 2,174, depending on the PCA.

34 IRC § 6306(c)(2)(A) provides that “[t]he term ‘inactive tax receivable’ means any tax receivable if (i) at any time after assessment, the Internal Revenue Service removes such receivable from the active inventory for lack of resources or inability to locate the taxpayer, (ii) more than 1/3 of the period of the applicable statute of limitation has lapsed and such receivable has not been assigned for collection to any employee of the Internal Revenue Service, or (iii) in the case of a receivable which has been assigned for collection, more than 365 days have passed without interaction with the taxpayer or a third party for purposes of furthering the collection of such receivable.”

35 IRS response to TAS information request (Apr. 10, 2018).

36 The Automated Underreporter (AUR) is an automated program that identifies discrepancies between the amounts that taxpayers reported on their returns and what payors reported via Form W-2, Form 1099, and other information returns. IRM 4.19.3.2(3)-(8), *Overview of IMF Automated Underreporter* (Aug. 26, 2016). For a full discussion of this type of “unreal audit” see National Taxpayer Advocate 2017 Annual Report to Congress 49 (Most Serious Problem: *Audit Rates: The IRS Is Conducting Significant Types and Amounts of Compliance Activities That It Does Not Deem to Be Traditional Audits, Thereby Underreporting the Extent of Its Compliance Activity and Return on Investment, and Circumventing Taxpayer Protections*).

- a substitute for return;<sup>37</sup> or
- an audit that resulted in a default assessment.<sup>38</sup>

In general, PCAs are instructed to advise taxpayers with “compliance assessments” who dispute their liability to file an original return, contact AUR (the PCA is to provide the AUR contact number) or contact IRS Exam (at the number “shown on the Exam unit’s most recent correspondence”).<sup>39</sup> The PCA is directed to place a 60-day hold on collection activity if the taxpayer states he or she needs time to gather tax information to determine what type of action to pursue.

Release 2 also includes cases in which there is an unfiled return (referred to as “combo cases”), cases in which there is a liability for the individual shared responsibility payment, and trust fund recovery penalty cases.<sup>40</sup> Release 3 includes preparing to hire special compliance personnel.<sup>41</sup> Business debts are included in Release 4, which is scheduled to be implemented in February 2019.<sup>42</sup>

### Additional Concerns

The IRS has refused to allow TAS representatives to participate in monitoring calls between PCAs and taxpayers, despite congressional interest in this issue.<sup>43</sup> Thus, we are not able to provide insight into why taxpayers agree to make payments they cannot afford.

An issue that has caused confusion among taxpayers and their representatives stems from the fact that tax transcripts show whether a debt has been designated as Currently Not Collectible (CNC), but not the reason for the designation.<sup>44</sup> Consequently, taxpayers and their representatives have mistakenly believed a debt was designated as CNC due to the taxpayer’s economic hardship, and thus should not have been assigned to a PCA when the debt was designated as CNC for another reason (such as

37 A substitute for return (SFR) is a return prepared for a taxpayer by the IRS when it has no record of receiving a return and has not been able to obtain one from someone whom the IRS expected to file. IRC § 6020(b) allows the IRS to prepare a return on behalf of the taxpayer based on available information. The taxpayer may reduce the SFR liability by filing an original return that reflects allowable deductions and credits about which the IRS had no information at the time the SFR was prepared.

38 IRS response to TAS information request (Apr. 10, 2018).

39 PPG § 12.22, *Compliance Assessments*.

40 IRS response to TAS information request (Apr. 10, 2018). Where the only liability is for the individual shared responsibility payment, and the taxpayer disagrees with the assessment, PCAs are directed to return the case to the IRS. PPG § 12.23, *Shared Responsibility Payment (SRP)*.

41 IRS response to TAS information request (Apr. 10, 2018). IRC § 6306(e)(2) requires the IRS to use funds it retains from PCA collections to fund a “special compliance personnel program account” under IRC § 6307. IRC § 6307(d)(1) defines “special compliance personnel” as “individuals employed by the Internal Revenue Service 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.”

42 In assigning various types of inventory, the IRS will also consider factors such as the available inventory, IT readiness, IRS resource impacts, and PCA readiness in terms of training. IRS response to TAS information request (Apr. 10, 2018).

43 In a congressional hearing earlier this year, a Member of Congress asked Secretary of the Treasury Steven Mnuchin why the IRS is not allowing TAS representatives to monitor calls placed by PCAs to taxpayers. Secretary Mnuchin committed to follow up with the IRS to see why the IRS was not allowing TAS to participate in the monitoring. See *Hearing on the President’s Fiscal Year 2019 Budget Proposal With U.S. Secretary of the Treasury Steven Mnuchin: Hearing Before the H. Comm. on Ways & Means*, 115th Cong. (2018).

44 The IRS may designate an account as Currently Not Collectible (CNC) - Hardship where “collection of the liability would create a hardship for taxpayers by leaving them unable to meet necessary living expenses.” Other reasons for designating a debt as CNC include where the IRS was unable to locate the taxpayer, expiration of the period of limitations on collection, or death of the taxpayer with no collection potential from the decedent’s estate. See IRM 5.16.1.2, *Currently Not Collectible Procedures* (Jan. 1, 2016).



because the IRS was unable to locate or unable to contact the taxpayer).<sup>45</sup> Providing the reason for the CNC designation on tax transcripts would assist taxpayers and practitioners in the context of the PDC program and in other contexts as well.<sup>46</sup>

Recent developments may affect how the IRS administers the PDC program. The Taxpayer First Act, H.R. 5444, excludes taxpayers whose incomes are less than 250 percent of the federal poverty level from referral to a PCA.<sup>47</sup> The National Taxpayer Advocate has been working to achieve the same result. On April 23, 2018, the National Taxpayer Advocate issued a Taxpayer Advocate Directive (TAD) to the Commissioner, Small Business/Self-Employed Division (SB/SE), ordering the IRS not to assign to PCAs the debt of any taxpayer whose income was less than 250 percent of the federal poverty level.<sup>48</sup> On May 14, 2018, the SB/SE Commissioner appealed the TAD to the Deputy Director for Services and Enforcement. The National Taxpayer Advocate was not provided a copy of the appeal at that time and thus did not have the opportunity to review the appeal and potentially modify the TAD before June 20, 2018, when the Deputy Director for Services and Enforcement rescinded the TAD. The National Taxpayer Advocate became aware of the appeal on June 20, 2018 and obtained a copy of it. On June 22, 2018, the National Taxpayer Advocate advised the Deputy Director for Services and Enforcement that she would review the SB/SE Commissioner's appeal and would likely issue another TAD proposing an alternative means of better balancing the IRS's legal obligation to operate the PDC program with longstanding statutory provisions Congress adopted to prevent the IRS from taking collection action against taxpayers in economic hardship. Appendix A includes the original TAD, the appeal, the response from the Deputy Commissioner for Services and Enforcement, and the National Taxpayer Advocate's June 22, 2018 memo.

## FOCUS FOR FISCAL YEAR 2019

In fiscal year 2019, TAS will:

- Ascertain the extent to which taxpayers enter into IAs with a duration of more than five years while their debts are assigned to PCAs, and the default rates for these IAs;
- Evaluate the accuracy of the underlying assessment in cases assigned to PCAs as part of Release 2 and the outcomes of IAs organized by PCAs as part of Release 2;
- Investigate whether PCAs return cases to the IRS where the only liability is for the individual shared responsibility payment and the taxpayer disagrees with the assessment;
- Continue to seek inclusion of TAS employees in the IRS's process for listening to calls between PCAs and taxpayers;

45 TAS Information Gathering Project 36766.

46 For example, the IRS generally does not impose levies where the taxpayer's account is in CNC-Hardship status. See IRM 5.11.1.3.1, *Pre-Levy Considerations* (Nov. 9, 2017). Under IRC § 6343 (a)(1)(D), a levy is required to be released when the IRS determines the levy is creating an economic hardship, i.e., the levy will cause the individual to be unable to pay his or her reasonable necessary living expenses.

47 Taxpayer First Act, H.R. 5444, § 305, 115th Cong. (Apr. 17, 2018).

48 Pursuant to Delegation Order No. 13-3, the National Taxpayer Advocate has the authority to issue a TAD "to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers." Internal Revenue Manual (IRM) 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001). See also IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

- Continue to work with the IRS to adjust the information shown on tax transcripts to indicate whether a tax liability was placed in Currently Not Collectible status due to the taxpayer's economic hardship; and
- Seek direct communication with the Commissioner, Social Security Administration, to explore how the debts of SSDI and SSI recipients can be shared with the IRS so they can be excluded from assignment to PCAs.

## APPENDIX A



YOUR VOICE AT THE IRS



THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE

April 23, 2018

Response Due: June 25, 2018

Completed By: July 25, 2018

MEMORANDUM FOR MARY BETH MURPHY  
COMMISSIONER,  
SMALL BUSINESS/SELF-EMPLOYED DIVISION

FROM:

Nina E. Olson

National Taxpayer Advocate

SUBJECT:

Taxpayer Advocate Directive **2018-1**, *Do Not Assign to Private Collection Agencies the Debts of Taxpayers Whose Incomes Are Less Than 250 Percent of the Federal Poverty Level*

**TAXPAYER ADVOCATE DIRECTIVE**

Delegation Order No. 13-3 grants the National Taxpayer Advocate the authority to issue a Taxpayer Advocate Directive (TAD). A TAD may be issued to (1) mandate administrative or procedural changes to improve the operation of a functional process, or (2) grant relief to groups of taxpayers (or all taxpayers) when its implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers.<sup>1</sup>

Internal Revenue Manual (IRM) 13.2.1.6.1 (July 16, 2009) provides that in advance of issuing a TAD, the National Taxpayer Advocate attempts to work with and communicate with the owners of the process in order to correct the problem. I included the issue of the IRS's implementation of the private debt collection (PDC) initiative as a Most

<sup>1</sup> Pursuant to Delegation Order No. 13-3, the National Taxpayer Advocate has the authority to issue a TAD "to mandate administrative or procedural changes to improve the operation of a functional process or to grant relief to groups of taxpayers (or all taxpayers) when implementation will protect the rights of taxpayers, prevent undue burden, ensure equitable treatment, or provide an essential service to taxpayers." Internal Revenue Manual (IRM) 1.2.50.4, Delegation Order 13-3 (formerly DO-250, Rev. 1), *Authority to Issue Taxpayer Advocate Directives* (Jan. 17, 2001). See also IRM 13.2.1.6, *Taxpayer Advocate Directives* (July 16, 2009).

Serious Problem in my two most recent Annual Reports to Congress, and supported my position with this year's TAS research study.<sup>2</sup> I also met with you and Commissioner Koskinen on at least two occasions to discuss my concerns. These reports and our meetings serve as a formal memorandum issued to the responsible operating area within the meaning of IRM 13.2.1.6.1.2 (July 16, 2009). Therefore, all procedural requirements for issuing this TAD have been satisfied.<sup>3</sup>

The PDC initiative as it is currently being administered affects the most vulnerable taxpayers whom the IRS would most likely not collect from because they cannot meet their basic living expenses. Thus, I now direct you to take the following actions with respect to the PDC initiative:

Do not assign to private collection agencies the debt of any taxpayer whose income was less than 250 percent of the federal poverty level, as shown on the taxpayer's most recent return filed in the last three years, or if no return was filed in the last three years, as shown on the Information Returns Master File (IRMF) wage and Form 1099 income for the most recent year data is available.

Please provide a written response to this TAD on or before **June 25, 2018**, or elevate this TAD to the Deputy Commissioner for Services and Enforcement within ten (10) calendar days of the date on this TAD.<sup>4</sup> If you are complying with this TAD, the actions above must be completed no later than **July 25, 2018**.

## I. Issues

In 2015, Congress enacted legislation requiring the IRS to enter into "qualified tax collection contracts" for the collection of "inactive tax receivables," a term defined by the statute.<sup>5</sup> The statute also defines "tax receivables" as accounts the IRS includes in "potentially collectible inventory."<sup>6</sup> The term "potentially collectible inventory" is not defined in the statute or Treasury regulations, allowing the IRS the flexibility to define it in a way that does not unnecessarily burden taxpayers who are likely experiencing economic hardship.

The IRS, for purposes of administering the Federal Payment Levy Program (FPLP), adopted 250 percent of the federal poverty level as a measure that serves as a proxy

<sup>2</sup> 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*); National Taxpayer Advocate 2017 Annual Report to Congress 10-21 (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*); vol. 2, 1-11 (Research Study: *Study of Taxpayers Who Entered into Installment Agreements and Made Payments While Their Debts Were Assigned to a Private Collection Agency*, attached).

<sup>3</sup> IRM 13.2.1.6.2(1), *TAD Appeal Process* (July 16, 2009).

<sup>4</sup> See IRM 13.2.1.6.2(1)(a), *TAD Appeal Process* (July 16, 2009).

<sup>5</sup> IRC § 6306(c), added by the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733-36 (2015) (FAST Act).

<sup>6</sup> IRC § 6306(c).

for economic hardship. The IRS applies a low income filter to identify and exclude these taxpayers' federal payments, such as Social Security Administration (SSA) retirement income, from FPLP levies.<sup>7</sup> Congress recently adopted the measure of 250 percent of the federal poverty level in recent legislation that excuses some taxpayers from paying user fees to enter into installment agreements.<sup>8</sup>

Still more recently, on April 18, 2018, the U.S. House of Representatives passed the Taxpayer First Act, H.R. 5444, which excludes taxpayers whose incomes are less than 250 percent of the federal poverty level from referral to a PCA.<sup>9</sup> This bipartisan bill passed with a recorded vote of 414-0.<sup>10</sup> The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) determined the bill would have minimal revenue effect.<sup>11</sup> Given the harm the PDC program imposes on low income taxpayers, as my reports have demonstrated, the IRS does not need to await Senate action to do the right thing to protect these vulnerable taxpayers.

## II. Procedural History

I have voiced concerns about the implementation of the current PDC initiative since 2016, specifically its impact on taxpayers who are likely experiencing economic hardship.<sup>12</sup> In December of 2016, the IRS Commissioner determined that some planned procedures, such as assigning the debts of Social Security Disability Insurance (SSDI) recipients to private collection agencies (PCAs), would not be implemented.<sup>13</sup> However, the IRS declined to exercise the discretion I believe it has under the law to define "potentially collectible inventory" to exclude the debts of other vulnerable taxpayers from assignment.

<sup>7</sup> See IRM 5.19.9.3.2.3, *Low Income Filter (LIF) Exclusion* (Oct. 20, 2016). 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*).

<sup>8</sup> Bipartisan Budget Act of 2018, Pub. L. No. 115-123, § 41105, 132 Stat. 64, 157 (Feb. 9, 2018).

<sup>9</sup> Taxpayer First Act, H.R. 5444 § 305, 115th Cong. (April. 17, 2018).

<sup>10</sup> See H.R. 5444: Taxpayer First Act, <https://www.govtrack.us/congress/votes/115-2018/h146>.

<sup>11</sup> Congressional Budget Office Cost Estimate, Taxpayer First Act, H.R. 5444 (Apr. 16, 2018), <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr5444.pdf>, reporting that "[t]he staff of the Joint Committee on Taxation (JCT) estimates that enacting the bill would reduce revenues by \$102 million over the 2019-2028 period, and CBO estimates that enacting H.R. 5444 would decrease direct spending by \$51 million over the same period. On net, H.R. 5444 would increase deficits by \$52 million over the period" and noting that "CBO and JCT estimate that enacting H.R. 5444 would not increase net direct spending or significantly affect on-budget deficits in any of the four consecutive 10-year periods beginning in 2029."

<sup>12</sup> 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*).

<sup>13</sup> The IRS has not honored its commitment to exclude SSDI recipients' debts from assignment to PCAs.

I discussed my concerns in the 2016 Annual Report to Congress and in the National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress.<sup>14</sup> As discussed below, data about how the PDC program is affecting taxpayers shows that my concerns about how the program would affect taxpayers who are likely in economic hardship were well founded. The program as currently administered affects the most vulnerable taxpayers, some of whom have incomes below the federal poverty level. The IRS would most likely not collect from these low income taxpayers because they cannot meet their basic living expenses.

### III. Analysis

As discussed above, the IRS does not generally impose FPLP levies on SSA retirement recipients whose incomes are less than 250 percent of the federal poverty level. However, the IRS assigned some of these taxpayers' debts to PCAs. Some SSA retirement recipients with incomes less than the federal poverty level actually made payments while their debts were assigned, in some cases pursuant to IAs. Of those who made payments:<sup>15</sup>

- More than half had incomes *below the federal poverty level*:<sup>16</sup>
  - These taxpayers' median income was \$4,730;<sup>17</sup> and
  - The incomes of those who entered into IAs were less than their allowable living expenses (ALEs) 100 percent of the time.<sup>18</sup>

<sup>14</sup> 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*); National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 29-35 (Area of Focus: *The Design of the IRS's Private Debt Collection (PDC) Program Will Disproportionately Burden Taxpayers in Economic Hardship and Impose Unnecessary Costs on the Public Fisc*), attached.

<sup>15</sup> The payments were subject to commissions payable to PCAs. Under IRC § 6306(e)(1), the IRS is authorized to pay commissions to PCAs of up to 25 percent of the amount collected.

<sup>16</sup> 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*), describing data current through Sept. 28, 2017.

<sup>17</sup> *Id.*

<sup>18</sup> National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2, 2, 9 (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*), describing data current through Sept. 28, 2017. The allowable living expense (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. See IRM 5.15.1.7(2), *Financial Analysis Handbook, Allowable Expense Overview* (Oct. 2, 2012); IRS, *Collection Financial Standards*, <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

- 42 percent had incomes at or above the federal poverty level and below 250 percent of the federal poverty level:<sup>19</sup>
  - These taxpayers' median income was \$19,542;<sup>20</sup> and
  - The incomes of those who entered into IAs were less than their ALEs 100 percent of the time.<sup>21</sup>

In addition to showing how the PDC program burdens SSA retirement income recipients, IRS data demonstrates the burden to taxpayers with incomes less than 250 percent of the federal poverty level *in general*. Overall, of taxpayers who made payments while their debts were assigned to PCAs:

- 19 percent had incomes *below the federal poverty level*;<sup>22</sup>
  - These taxpayers' median income was \$6,386;<sup>23</sup> and
  - The incomes of those who entered into IAs were less than their allowable living expenses (ALEs) 100 percent of the time.<sup>24</sup>
- 25 percent had incomes at or above the federal poverty level and below 250 percent of the federal poverty level:<sup>25</sup>
  - These taxpayers' median income was \$23,096;<sup>26</sup> and
  - The incomes of those who entered into IAs were less than their ALEs 84 percent of the time.<sup>27</sup>

<sup>19</sup> 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*), describing data current through Sept. 28, 2017.

<sup>20</sup> *Id.*

<sup>21</sup> Individual Returns Transaction File (IRTF), Information Returns Master File (IRMF), Compliance Data Warehouse (CDW), data current through Sept. 28, 2017.

<sup>22</sup> National Taxpayer Advocate 2017 Annual Report to Congress 10, 15 (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*), describing data current through Sept. 28, 2017.

<sup>23</sup> *Id.* at 14.

<sup>24</sup> National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2, 2, 9 (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*), describing data current through Sept. 28, 2017.

<sup>25</sup> National Taxpayer Advocate 2017 Annual Report to Congress 10, 15 (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*), describing data current through Sept. 28, 2017.

<sup>26</sup> *Id.*

<sup>27</sup> National Taxpayer Advocate 2017 Annual Report to Congress, vol. 2, 2, 8 (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*), describing data current through Sept. 28, 2017.

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The PDC program was intended to assist the IRS in collecting debts from taxpayers who could afford to pay but the IRS was not able to address because of resource constraints. It was not intended to collect payments from taxpayers who, under the IRS's own ALE guidelines, cannot afford to pay the tax without rendering themselves and their families unable to pay their basic living expenses. Thus, based on IRS data about how the PDC program is operating, I believe the debts of *all* taxpayers whose incomes are less than 250 percent of the federal poverty level should be excluded from assignment to PCAs.

#### IV. Requested Actions

Because the IRS has refused to revise its procedures, I am issuing this TAD to protect the rights of taxpayers and prevent undue burden. In light of the significant harm taxpayers are suffering as a result of the IRS's failure to act, I direct you to take the following actions:

Do not assign to private collection agencies the debt of any taxpayer whose income was less than 250 percent of the federal poverty level, as shown on the taxpayer's most recent return filed in the last three years, or if no return was filed in the last three years, as shown on the Information Returns Master File (IRMF) wage and Form 1099 income for the most recent year data is available.

Please provide a written response to this TAD on or before **June 25, 2018**, or elevate this TAD to the Deputy Commissioner for Services and Enforcement within ten (10) calendar days of the date on this TAD. If you are complying with this TAD, the actions above must be completed no later than **July 25, 2018**. Please send any response or questions to me, with a copy to TAS Attorney Advisor Jill MacNabb.

#### Attachments

1. 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*).
2. National Taxpayer Advocate Fiscal Year 2018 Objectives Report to Congress 29- 35 (Area of Focus: *The Design of the IRS's Private Debt Collection (PDC) Program Will Disproportionately Burden Taxpayers in Economic Hardship and Impose Unnecessary Costs on the Public Fisc*).
3. National Taxpayer Advocate 2017 Annual Report to Congress 10-21 (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*).
4. National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, 1-11 (Research Study: *Study of Taxpayers Who Entered Into*



7

*Installment Agreements and Made Payments While Their Debts  
Were Assigned to a Private Collection Agency).*

cc: David J. Kautter, Acting Commissioner of Internal Revenue  
Kirsten Wielobob, Deputy Commissioner, Services and  
Enforcement



COMMISSIONER  
SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

MAY 14 2018

MEMORANDUM FOR KIRSTEN B. WIELOBOB  
DEPUTY COMMISSIONER, SERVICES AND ENFORCEMENT

FROM: Mary Beth Murphy *Mary Beth Murphy*  
Commissioner, Small Business/Self Employed

SUBJECT: Taxpayer Advocate Directive 2018-1, Do Not Assign to Private  
Collection Agencies the Debts of Taxpayers Whose Incomes  
are Less Than 250 Percent of the Federal Poverty Level

In accordance with IRM 13.2.1.6.2 (TAD Appeal Process), I appeal the above referenced Taxpayer Advocate Directive (TAD) dated April 23, 2018. The TAD directed the Commissioner, Small Business/Self Employed Division to take the following action:

Do not assign to collection agencies the debt of any taxpayer whose income was less than 250 percent of the federal poverty level, as shown on the taxpayer's most recent filed return in the last three years, or if no return was filed in the last three years, as shown on the Information Returns Master File (IRMF) wage and Form 1099 income for the most recent year data is available.

In short, I disagree with this directive and appeal the action. The directive to exclude cases is not authorized in the Internal Revenue Code (IRC). Congress defined the debts that must be collected under qualified tax collection contracts in IRC § 6306(c) and those that may not be collected under such contracts in IRC § 6306(d). The law does not exclude taxpayers whose income is below 250 percent of the federal poverty level. The IRS does not have the legal authority to expand on or change the law. Therefore, the IRS cannot implement this exclusion as it is outlined in the directive.

However, the specific issues raised in the TAD are addressed as follows:

**Redefining the term "potentially collectible inventory" is inconsistent with established IRS collection practices which Congress understood**

We agree that the term, "potentially collectible inventory", is not defined in the statute or Treasury regulations. However, the IRS defines it as the inventory of accounts to which Collection could apply resources; it does not include accounts in payment arrangement

status or determined to be uncollectible by the IRS. Use of this term within IRS was known to Congress when drafting the Private Debt Collection (PDC) statute. Altering the IRS definition for the purpose of implementing this directive would be inconsistent with established IRS collection practices which Congress understood.

**Reliance on 250 percent of the federal poverty level as a measure in unrelated programs, statutes, and draft legislation, does not support using that standard to exclude cases from PDC**

The IRS does use 250 percent of the federal poverty level as a measure of “low-income” so as to exclude taxpayer cases from the Federal Payment Levy Program (FPLP). Cases excluded from the FPLP are still subject to collection activity through other workstreams.

Similarly, there is no relationship between the recent statutory waiver of installment agreement user fees and the PDC program. To the contrary, excluding low-income taxpayers from the fee (under some circumstances) supports that Congress still expects such taxpayers to enter into installment agreements.

Finally, the recent proposed legislation for a similar exclusion from PDC in Taxpayer First Act, H.R. 5444, does not alter the IRS’s collection practices under current law.

**Taxpayers with incomes below 250 percent of the federal poverty level are not excluded from the IRS collection system and often make arrangements to pay in full**

PCAs offer payment arrangements to taxpayers in a manner consistent with IRS installment agreement procedures. A taxpayer’s proposal to pay is accepted without requesting financial information if the case meets certain criteria. However, if a taxpayer reports an inability to pay in full or through a payment arrangement, procedures are in place for the PCA to return the account to the IRS. Additionally, if a taxpayer assigned to a PCA indicates full payment or a payment arrangement would leave them in a hardship situation, the agency is required to return the account to the IRS.

Based on the reasons set forth above, I appeal the action outlined in the TAD. I respectfully request you rescind this TAD in accordance with the authority vested in delegation order 13-3.

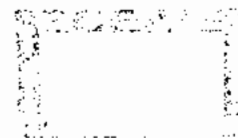
Thank you for your consideration.



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

June 20, 2018



MEMORANDUM FOR NINA E. OLSON  
NATIONAL TAXPAYER ADVOCATE

FROM: Kirsten Wielobob *Kirsten Wielobob*  
Deputy Commissioner for Services and Enforcement

SUBJECT: Taxpayer Advocate Directive 2018-1, Do Not Assign to  
Private Collection Agencies the Debts of Taxpayers Whose  
Incomes are Less Than 250 Percent of the Federal Poverty  
Level

On May 14, 2018, the Commissioner, Small Business/Self Employed Division (SB/SE) appealed TAD 2018-1 to me, consistent with IRM Section 13.2.1.6.2(1). The TAD directed the Commissioner, SB/SE to take the following action:

Do not assign to collection agencies the debt of any taxpayer whose income was less than 250 percent of the federal poverty level, as shown on the taxpayer's most recent filed return in the last three years, or if no return was filed in the last three years, as shown on the Information Returns Master File (IRMF) wage and Form 1099 income for the most recent year data is available.

Under Delegation Order 13-3, I am rescinding the TAD for the reasons described in the Commissioner, SB/SE's May 14, 2018, appeal.

The law is specific about the categories of tax receivables that should be excluded from referral to private collection agencies. See IRC § 6306(d). Neither the statute nor the Conference Report accompanying its enactment includes the exclusion requested in the TAD. See H.R. Rept. No. 114-357, at 532-536 (2015).

The TAD suggests that IRS rely on the bill passed by the U.S. House of Representatives that contains the 250 percent income exclusion. While the bill demonstrates the intent of the House, it does not alter enacted law. Enforcing the language of a bill would upend the legislative process and would create significant uncertainty about IRS' enforcement of enacted laws. See, e.g., Pub. L. No. 111-148, 124 Stat. 119 (2010).

cc: Mary Beth Murphy, Commissioner, Small Business/Self Employed Division



THE OFFICE OF THE TAXPAYER ADVOCATE OPERATES INDEPENDENTLY OF ANY OTHER IRS OFFICE AND REPORTS DIRECTLY TO CONGRESS THROUGH THE NATIONAL TAXPAYER ADVOCATE.

June 22, 2018

MEMORANDUM FOR KIRSTEN WIELOBOB  
DEPUTY COMMISSIONER FOR SERVICES  
AND ENFORCEMENT

FROM: Nina E. Olson   
National Taxpayer Advocate

SUBJECT: Taxpayer Advocate Directive 2018-1, Do Not Assign to  
Private Collection Agencies the Debts of Taxpayers Whose  
Incomes Are Less Than 250 Percent of the Federal Poverty  
Level

On April 23, 2018, I issued a Taxpayer Advocate Directive (TAD) to the Commissioner, Small Business Self Employed Division (SB/SE), directing the IRS not to assign to PCAs the debt of any taxpayer whose income is less than 250 percent of the federal poverty level. On May 14, 2018, the SB/SE Commissioner appealed the TAD to you. The memorandum appealing the TAD does not indicate that any other person was intended to receive a copy of the appeal, and I was not provided a copy of the appeal at that time.

On June 20, 2018, you rescinded the appealed TAD “for the reasons described in the Commissioner, SB/SE’s May 14, 2018 appeal.” I became aware that the SB/SE Commissioner had appealed the TAO for the first time when I read your June 20, 2018 memo. Therefore, I did not have an opportunity to review the SB/SE Commissioner’s response, consider her concerns, and potentially modify my recommendation prior to your response. I did not have an opportunity, as I ordinarily do, to submit a memo to you responding to the SB/SE Commissioner’s concerns.

On June 21, I obtained a copy of the SB/SE Commissioner’s appeal, which I will now review. I will likely issue another TAD proposing an alternative means of addressing this problem, in light of evidence about how the program continues to harm taxpayers. As I noted in my 2017 Annual Report to Congress, in roughly the first six months of the PDC program (April 10-September 28, 2017), the recent returns of 4,141 taxpayers who

made payments while their debts were assigned to private collection agencies (PCAs) showed:

- 19 percent had incomes *below the federal poverty level*;
- 28 percent had incomes below \$20,000; and
- 45 percent who entered into installment agreements (IAs) had incomes less than their allowable living expenses (ALEs)

As I am reporting in my FY 2019 Objectives Report, from the program's inception on April 10, 2017 through March 29, 2018, of the 18,738 taxpayers who entered into IAs while their debts were assigned to PCAs:

- 24 percent had incomes *below the federal poverty level*;
- 43 percent had incomes less than their ALEs.

The overall default rate for IAs that taxpayers enter into when their debts are assigned to PCAs is 28 percent. The overall default rate on IAs that taxpayers enter into outside the PDC program (*i.e.*, when their debts are not assigned to PCAs) is 16 percent.

I believe our shared goal is to balance the IRS legal obligation to operate the PDC program with longstanding statutory provisions Congress adopted to prevent the IRS from taking collection action against taxpayers in economic hardship. Based on the data above, it is clear that the IRS has not yet achieved the appropriate balance. I will continue to explore solutions that would achieve a better balance.

cc: David Kautter, Acting Commissioner, Internal Revenue  
Mary Beth Murphy, Commissioner, Small Business Self Employed Division