

National Taxpayer Advocate

Annual Report to Congress

*2010 Annual Report to Congress*

**AN ANALYSIS OF THE IRS  
COLLECTION STRATEGY:**

**SUGGESTIONS TO INCREASE REVENUE,  
IMPROVE TAXPAYER SERVICE,  
AND FURTHER THE IRS MISSION**

An Analysis of the IRS Collection Strategy: Suggestions to Increase Revenue, Improve Taxpayer Service, and Further the IRS Mission

## An Analysis of the IRS Collection Strategy: Suggestions to Increase Revenue, Improve Taxpayer Service, and Further the IRS Mission<sup>1</sup>

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## EXECUTIVE SUMMARY

In the 2004 Annual Report to Congress, the National Taxpayer Advocate discussed concerns with the IRS “Collection Strategy,” and questioned the effectiveness of a “one-size-fits-all” approach to servicing accounts of taxpayers with collection-related tax problems.<sup>2</sup> The IRS’s “assembly-line” approach to processing collection accounts has remained essentially unchanged for over 25 years, even while the Collection operation has regularly received substantial criticism from key stakeholders, including highly significant congressional and judicial actions needed to ensure fair and equitable treatment of taxpayers with collection problems.

Program results indicate the IRS collection strategy could be more effective in recovering delinquent revenue and reducing the IRS’s inventory of unpaid assessments:

- The inventory of unpaid assessments has grown from approximately \$270 billion in FY 2006 to \$359 billion in FY 2010 – an increase of 33 percent.<sup>3</sup>
- Dollars reported as “currently not collectible” (CNC) increased from \$16.2 billion in FY 2006 to \$28.9 billion in FY 2010 – an increase of 78 percent.<sup>4</sup>
- The number of taxpayer accounts reported as CNC increased by 73 percent – from 751,012 in FY 2006 to approximately 1.3 million in FY 2010.<sup>5</sup>
- The dollar value of Taxpayer Delinquent Accounts (TDAs) assigned to the Collection Queue at the end of FY 2010 was approximately \$46.2 billion – a 70 percent increase from 2006.<sup>6</sup>
- In FY 2010, the dollars reported as CNC by the Collection Field function (Cff) were approximately 320 percent of the combined total of dollars collected on open Cff TDAs and installment agreements generated by the Cff.<sup>7</sup>

These problems were evident well before the recent downturn in the nation’s economy, and have worsened in spite of the 20 percent increase in the IRS’s enforcement budget since 2006.<sup>8</sup>

The IRS relies heavily on the bulk processing of correspondence and systemically generated enforcement actions to manage its considerable workload of collection accounts.

<sup>2</sup> National Taxpayer Advocate 2004 Annual Report to Congress 226-245.

<sup>3</sup> IRS, *Collection Process Study, Executive Summary 2* (Sept. 30, 2010). The data for the balance of unpaid assessments at the conclusions of fiscal year (FY 2010) was provided by SB/SE in an e-mail message dated Dec. 14, 2010.

<sup>4</sup> IRS, Collection Activity Reports, NO-5000-149, *Recap of Accounts Currently Not Collectible Report* (Oct. 2010).

<sup>5</sup> *Id.*

<sup>6</sup> IRS, Collection Activity Reports NO-5000-2, *Taxpayer Delinquent Account Reports* (Oct. 2010). The Collection Queue is an inventory of TDA accounts that are active, but unassigned to the ACS or Cff functions. See IRM 5.1.20.2 (May 27, 2008).

<sup>7</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010); IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Cumulative Report* (Oct. 2010).

<sup>8</sup> U.S. Department of the Treasury, *Budget in Brief, Internal Revenue Service*, available at [www.treasury.gov/about/budget-performance/budget-in-brief/Documents/IRS](http://www.treasury.gov/about/budget-performance/budget-in-brief/Documents/IRS). The IRS’s appropriations for “Enforcement – Exam and Collections” for FY 2006 and FY 2010 were approximately \$3.9 billion and \$4.7 billion respectively.

While enforcement tools such as liens and levies are appropriate and necessary to address situations involving taxpayers who refuse to comply with the tax laws, these tools are not well suited to be the foundation of the IRS's contact strategy. More emphasis on prompt, personal contacts, coupled with a goal of providing "one-stop service" could actually result in a more effective use of the IRS's collection resources.

In general, the IRS collection strategy reacts in far too many situations as if delinquent taxpayers have made a conscious decision to not comply with their tax obligations, using the "full force of the law" to correct problems in a manner that may be premature in many cases. The IRS must adjust this mindset and achieve a better balance in the use of enforcement actions with other collection tools, including payment alternatives such as reasonable installment agreements (IAs) and offers in compromise (OICs). Collection treatments should be tailored to the needs of each taxpayer, with the purpose of not only addressing the delinquencies at hand, but also promoting future compliance.

The purpose of this analysis is to examine the actual performance of the IRS collection process, *i.e.*, the "collection strategy," over the past five years, identify trends that reflect results produced by the design of this process, and provide comments regarding the degree to which the IRS collection strategy is actually fulfilling its mission. This study indicates that a more effective IRS collection strategy must include greater emphasis on providing *timely attention* to collection problems as they arise, actually *talking to taxpayers* about their tax problems, and *assisting* taxpayers to regain a "fully compliant" status with *collection treatments that are flexible, considerate, and effective*.

At the conclusion of this analysis, the National Taxpayer Advocate offers the following recommendations for actions the IRS can take to improve its collection strategy:

1. Develop an improved working model of the "will pay," "can't pay," and "won't pay" distinctions in determining the most appropriate collection treatments for taxpayers with collection problems.
2. Provide timely interventions for emerging collection problems.
3. Use more timely *personal contacts* to help taxpayers fully resolve their collection problems.
4. Deliver collection inventory to organizational segments trained and empowered to provide "one-stop service," based on the specialized needs of the taxpayer segment in question.
5. Use all available collection tools, including the full range of collection payment alternatives, *e.g.*, offers in compromise and reasonable installment agreements.
6. Reevaluate the requirements for managerial review of IRS liens and levies.
7. Eliminate the Collection Queue.
8. Measure and evaluate the effectiveness of collection tools and treatments in meeting taxpayer needs and promoting future compliance.

## INTRODUCTION

### **The IRS collection process serves a visible and critical role in tax administration.**

The IRS is authorized by Congress to administer and supervise the execution and application of the nation’s tax laws, as detailed in the Internal Revenue Code (IRC).<sup>9</sup> One key element in the administration of these tax laws is the IRS collection process. As a matter of policy, the IRS Internal Revenue Manual (IRM) emphasizes that, “A tax system based on voluntary assessment would not be viable without enforcement programs to ensure compliance. Accordingly, the Service is responsible for taking all appropriate actions provided by law to compel noncompliant taxpayers to file their returns and pay their taxes.”<sup>10</sup> The collection process has been designed and implemented as the framework within which the IRS addresses the responsibility to secure delinquent revenue, correct individual incidences of noncompliance, and promote the concept of voluntary compliance within the general population of taxpayers.

The IRC equips the IRS with a variety of powerful collection tools to accomplish these objectives, including the ability to file notices of federal tax lien (NFTL), seize and sell property, and serve levies attaching to financial accounts, wages, and other sources of income. Unlike other creditors, the IRS can initiate these enforcement actions without first going to court to reduce the liabilities to judgments.<sup>11</sup> The IRS is not reticent to use these tools, even during times of significant economic turmoil. In fiscal year (FY) 2010, the IRS filed approximately 1.1 million NFTLs (14 percent more than the previous year) and issued over 3.6 million levies.<sup>12</sup> For millions of taxpayers, the Collection operation is “the face and the voice of the IRS.”

### **Stakeholders have been critical of the IRS’s longstanding enforcement-oriented approach to collection.**

#### *Congress and the courts have acted to ensure fair and equitable treatment of taxpayers with IRS collection problems.*

However, with great powers also come great responsibilities. Over the years, and on several occasions, Congress and the federal courts have determined that IRS collection practices did not align with the law, violated taxpayer rights, or did not reflect the intent of the law to provide fair and equitable treatment for all taxpayers. The following are particularly noteworthy events that resulted in significant adjustments to IRS collection practices:

- **G.M. Leasing Corp. v. United States (1977)** – The U. S. Supreme Court decision in this case held that the warrantless entry by the IRS onto private property for the purpose of seizing property to satisfy a tax liability may violate the Fourth Amendment to the

<sup>9</sup> IRC §§ 7801 and 7803.

<sup>10</sup> IRM 1.2.14.1.1 (Aug. 18, 1994).

<sup>11</sup> See, e.g., IRC § 6331.

<sup>12</sup> IRS, Collection Activity Report, NO-5000-23, *Collection Workload Indicators* (Oct. 2010). See also Status Update: *The IRS Has Been Slow to Address the Adverse Impact of Its Lien Filing Policies on Taxpayers and Future Tax Compliance*, *supra*.

Constitution.<sup>13</sup> This decision prompted the IRS to make significant procedural changes in collection practices involving the seizure of assets, particularly those involving businesses.

- **Taxpayer Bill of Rights (1988 & 1996)** – This legislation provided for numerous significant adjustments to IRS collection policies and procedures, including expanded notice requirements prior to initiation of collection enforcement actions, increased use of installment agreements (IA), new review and approval requirements for seizures involving principal residences, new criteria for situations mandating the release of levies, and new criteria authorizing the withdrawal of NFTLs.<sup>14</sup>
- **The IRS Restructuring and Reform Act of 1998 (RRA 98)** – This legislation established the Collection Due Process (CDP) appeal option (including judicial review) for taxpayers subject to IRS lien and levy actions, guaranteed IAs in certain situations, provided the basis for expanded use of offers in compromise (OIC), and emphasized that seizures of personal residences and businesses should only be taken after other collection options have been exhausted.<sup>15</sup>
- **American Jobs Creation Act of 2004** – This act included a section that provided the IRS legal authority to enter into an IA that may result in less than full payment of the delinquent tax debt of the taxpayer, *i.e.*, a partial payment installment agreement (PPIA).<sup>16</sup>
- **Vinatieri v. Commissioner (2009)** – The United States Tax Court determined that IRS collection practices violated IRC § 6343 by proposing to proceed with a levy against a taxpayer who was experiencing an economic hardship, because of delinquent tax returns that remained due from the taxpayer.<sup>17</sup>

While these events span several decades, they were generally prompted by:

- 1) Inadequate taxpayer service for collection-related problems;
- 2) Excessive use of “heavy-handed” enforcement; and
- 3) Lack of flexibility in the use of collection payment options, *e.g.*, the IA and OIC.

***The National Taxpayer Advocate has consistently expressed concerns that the IRS collection strategy does not reflect the full scope of the IRS mission.***

The mission of the IRS is to, “Provide America’s taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with

<sup>13</sup> 429 U.S. 338 (1977). See also IRM 5.17.3.5.1 (Dec. 7, 2007).

<sup>14</sup> The Taxpayer Bill of Rights 1 (TBOR 1) was included in the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647 (1988); Taxpayer Bill of Rights 2 (TBOR 2), Pub. L. 104-168 (1996).

<sup>15</sup> Pub. L. 105-206, 112 Stat. 685 (1998).

<sup>16</sup> Pub. L. No. 108-357, § 843 (2004).

<sup>17</sup> 133 T.C. No. 16 (2009), 2009 WL 4980692 (U.S. Tax Ct. Dec. 21, 2009).

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*integrity and fairness to all.*<sup>18</sup> Further, according to IRS policy, all decisions made within the collection process must be guided by the following “collecting principles.”<sup>19</sup>

- **Service and Assistance** – All taxpayers are entitled to courteous, responsive, and effective service and assistance in all their dealings with the Service.
- **Taxpayer Rights** – We will observe taxpayers’ rights, including their rights to privacy and to fair and courteous treatment.
- **Compliance** – The public trust requires us to ensure that all taxpayers promptly file their returns and pay the proper amount of tax, regardless of the amount owed.
- **Case Resolution** – While we will actively assist taxpayers to comply, we will also take appropriate enforcement actions when warranted to resolve the delinquency. To resolve a case, *good judgment* (emphasis added) is needed to make sound decisions on the appropriate action needed.

In the 2004 Annual Report to Congress, the National Taxpayer Advocate discussed concerns with the IRS “Collection Strategy,” and identified problems with the traditional collection process that have contributed to less than satisfactory results in the areas of taxpayer service and compliance.<sup>20</sup> The report noted that “the IRS has failed to develop an effective, comprehensive and consistent collection strategy to counter the two most serious threats to our tax administration system: the ever widening tax gap, and the decline in tax compliance.” The report further states that while the IRS’s approach to collection strategy over the years has been marked by dramatic shifts in emphasis, “These shifts have not sought to harmonize effective collection strategies used in the private sector with strategies designed to address the causes of noncompliance.”

The report suggested that a service-oriented, taxpayer-focused collecting process that emphasizes timely personal contacts, and provides treatments based on an understanding of the taxpayer’s needs, would be more effective in realizing the IRS mission than one based on a regimented generation of collection-oriented activities without regard to outcomes. The report also urged the IRS to use a research-based approach to provide data-driven explanations of why delinquent taxpayers do not comply, identify the collection “touches” that are most effective in resolving collection problems, and provide the IRS with information that supports efforts to reduce the opportunities for payment noncompliance.<sup>21</sup>

Since 2004, the National Taxpayer Advocate has frequently identified the IRS Collection process as a significant contributing factor to the most serious problems facing America’s

<sup>18</sup> IRM 1.1.1.1 (Mar. 1, 2006).

<sup>19</sup> IRM 1.2.14.1.2 (Feb. 17, 2000). The current IRS mission statement was developed after the implementation of RRA 98, and designed to represent an increased emphasis on taxpayer service, and the important role the IRS plays in assisting taxpayers to meet their voluntary compliance obligations. The “collecting principles” were subsequently tailored to complement the new mission statement, and provide more clarity for the manner in which the collection process supports the IRS in meeting these goals.

<sup>20</sup> National Taxpayer Advocate 2004 Annual Report to Congress 226-245.

<sup>21</sup> *Id.*



taxpayers, and on numerous occasions has identified aspects of the process that do not reflect the values presented in its “collecting principles.”<sup>22</sup> The IRS has generally responded to these concerns, as well as those of other key stakeholders, by making relatively minor adjustments to Collection’s policies and procedures, *i.e.*, “tweaking the system.” However, the basic collection strategy used by the IRS has not significantly changed.

## DISCUSSION

### The IRS collection strategy could be more effective in recovering delinquent revenue and reducing the IRS’s inventory of unpaid assessments.

An objective analysis of IRS program data raises serious questions about the effectiveness of the traditional IRS collection strategy. Consider the following facts that have emerged over the past five fiscal years (2006 thru 2010):

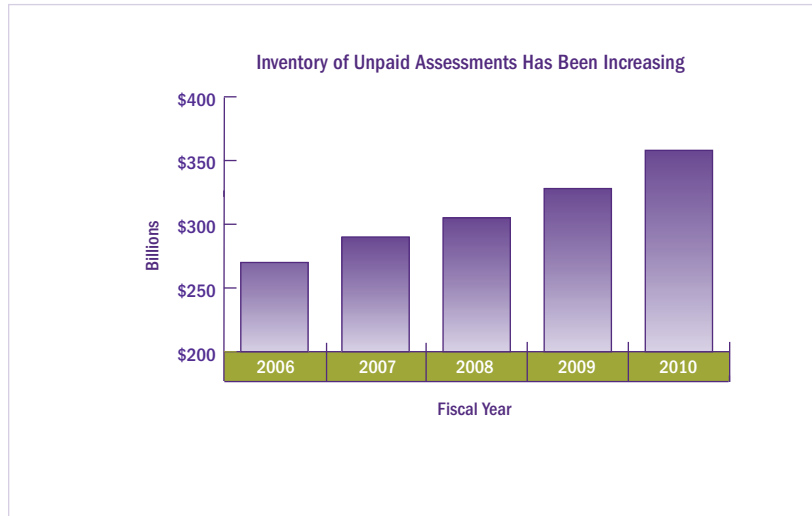
- The inventory of unpaid assessments has grown from approximately \$270 billion in FY 2006 to \$359 billion in FY 2010 – an increase of 33 percent.<sup>23</sup>

<sup>22</sup> See National Taxpayer Advocate 2005 Annual Report to Congress 123-135 (Most Serious Problem: *Levies on Social Security Payments*); National Taxpayer Advocate 2005 Annual Report to Congress 209-221 (Most Serious Problem: *Automated Collection System Levy Releases*); National Taxpayer Advocate 2005 Annual Report to Congress 270-291 (Most Serious Problem: *Allowable Expense Standards for Collection Decisions*); National Taxpayer Advocate 2005 Annual Report to Congress 345-356 (Most Serious Problem: *Limitations of Collection Account Databases*); National Taxpayer Advocate 2005 Annual Report to Congress 447-463 (Key Legislative Recommendation: *Restructuring and Reform of Collection Due Process Provisions*); National Taxpayer Advocate 2005 Annual Report to Congress 466-467 (Additional Legislative Recommendation: *Social Security Levies*); National Taxpayer Advocate 2006 Annual Report to Congress 62-82 (Most Serious Problem: *Early Intervention in IRS Collection Cases*); National Taxpayer Advocate 2006 Annual Report to Congress 83-109 (Most Serious Problem: *IRS Collection Payment Alternatives*); National Taxpayer Advocate 2006 Annual Report to Congress 110-129 (Most Serious Problem: *Levies*); National Taxpayer Advocate 2006 Annual Report to Congress 130-140 (Most Serious Problem: *Centralized Lien Procedures*); National Taxpayer Advocate 2006 Annual Report to Congress 141-156 (Most Serious Problem: *Collection Issues of Low Income Taxpayers*); National Taxpayer Advocate 2006 Annual Report to Congress 157-171 (Most Serious Problem: *Excess Collections*); National Taxpayer Advocate 2006 Annual Report to Congress 507-519 (Key Legislative Recommendation: *Improve Offer in Compromise Program Accessibility*); National Taxpayer Advocate 2006 Annual Report to Congress 520-526 (Key Legislative Recommendation: *Elimination of Lengthy Collection Statute of Limitation Extensions*); National Taxpayer Advocate 2006 Annual Report to Congress 527-530 (Key Legislative Recommendation: *Levies on Fixed and Determinable Assets*); National Taxpayer Advocate 2006 Annual Report to Congress 551-552 (Additional Legislative Recommendation: *Collection Due Process*); National Taxpayer Advocate 2007 Annual Report to Congress 324-336 (Most Serious Problem: *FPLP Levies on Social Security Payments*); National Taxpayer Advocate 2007 Annual Report to Congress 374-387 (Most Serious Problem: *Offer in Compromise*); National Taxpayer Advocate 2007 Annual Report to Congress 388-394 (Most Serious Problem: *Inadequate Training and Communication Regarding Effective Tax Administration Offers*); National Taxpayer Advocate 2007 Annual Report to Congress 395-410 (Most Serious Problem: *Assessment and Processing of the Trust Fund Recovery Penalty*); National Taxpayer Advocate 2008 Annual Report to Congress (Status Update: *IRS Collection Strategy*); National Taxpayer Advocate 2007 Annual Report to Congress 549-550 (Additional Legislative Recommendation: *Allow Taxpayers to Raise Relief Under Internal Revenue Code Sections 6015 and 66 as a Defense in Collection Actions*); National Taxpayer Advocate 2008 Annual Report to Congress 15-38 (Most Serious Problem: *The IRS Needs to More Fully Consider the Impact of Collection Enforcement Actions on Taxpayers Experiencing Economic Difficulties*); National Taxpayer Advocate 2008 Annual Report to Congress 158-175 (Most Serious Problem: *Customer Service Within Compliance*); National Taxpayer Advocate 2008 Annual Report to Congress 193-212 (Most Serious Problem: *Customer Service Issues in the IRS’s Automated Collection System*); National Taxpayer Advocate 2009 Annual Report to Congress 17-40 (Most Serious Problem: *One-Size-Fits-All Lien Filing Policies Circumvent the Spirit of the Law, Fail to Promote Future Tax Compliance, and Unnecessarily Harm Taxpayers*); National Taxpayer Advocate 2009 Annual Report to Congress 196-216 (Most Serious Problem: *The Steady Decline of the IRS Offer in Compromise Program Is Leading to Lost Opportunities for Taxpayers and the IRS Alike*); National Taxpayer Advocate 2009 Annual Report to Congress 357-364 (Key Legislative Recommendation: *Strengthen Taxpayer Protections in the Filing and Reporting of Federal Tax Liens*); National Taxpayer Advocate 2009 Annual Report to Congress, vol. 2, 1-18 (Research Study: *The IRS’s Use of Notices of Federal Tax Lien*).

<sup>23</sup> IRS, *Collection Process Study, Executive Summary 2* (Sept. 30, 2010). The data for the balance of unpaid assessments at the conclusions of FY 2010 was provided by SB/SE in an e-mail message dated Dec. 14, 2010.

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**FIGURE 2.3.1, Growth in Unpaid Assessments, FY 2006-2010**



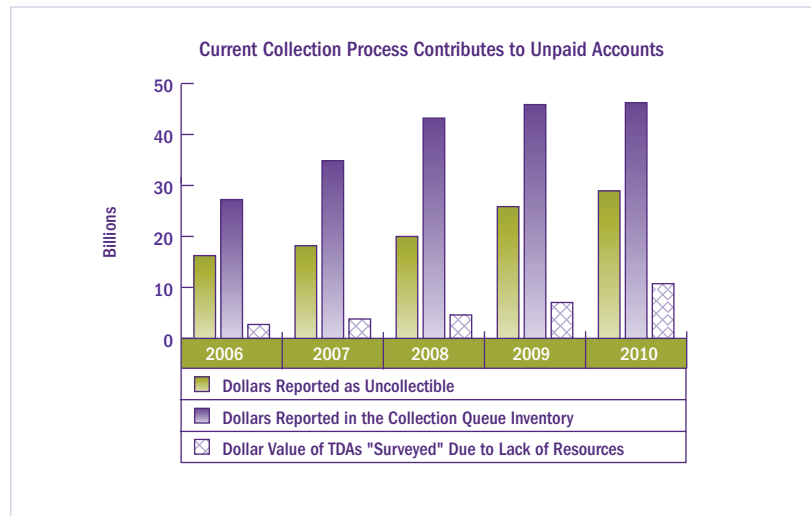
- Dollars reported as “currently not collectible” increased from \$16.2 billion in FY 2006 to \$28.9 billion in FY 2010 – an increase of 78 percent.<sup>24</sup>
- The number of taxpayer accounts reported as CNC increased by 73 percent – from 751,012 in FY 2006 to approximately 1.3 million in FY 2010.<sup>25</sup>
- The amount of TDA dollars reported as “surveyed” by the IRS almost tripled during this period – from approximately \$2.7 billion to \$10.7 billion.<sup>26</sup>
- The dollar value of TDA accounts assigned to the Collection Queue at the conclusion of FY 2010 was approximately \$46.2 billion – a 70 percent increase from 2006.<sup>27</sup>

<sup>24</sup> IRS, Collection Activity Reports, NO-5000-149, *Recap of Accounts Currently Not Collectible Report* (Oct. 2010).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* Accounts reported as CNC – “surveyed” represent situations where the IRS has chosen not to pursue collection, even though the collection statute remains open. Usually, these decisions are driven by the availability of IRS collection resources.

<sup>27</sup> IRS, Collection Activity Reports NO-5000-2, *Taxpayer Delinquent Account Reports* (Oct. 2010). The Collection Queue is an inventory of TDA accounts that are active, but unassigned to the ACS or Cff functions. See IRM 5.1.20.2 (May 27, 2008).

**FIGURE 2.3.2, Unresolved Collection Accounts, FY 2006 – FY 2010**

It is significant that the negative trends in these indicators increased each year during this period, and cannot be attributed solely to the recent downturn in the economy.<sup>28</sup> It should also be noted that the IRS budget appropriations for “enforcement programs” (which include the Collection operation) increased by 20 percent from FY 2006 to FY 2010.<sup>29</sup>

**Despite unfavorable performance trends, as well as concerns raised by key stakeholders, the IRS collection process has remained essentially unchanged for decades.**

As outlined in the *IRS Collection Strategy* in the 2004 Annual Report to Congress, the basic three-stage collection process employed by the IRS today has been in place for decades.<sup>30</sup> The process begins with a series of written notices sent to taxpayers over a period of several months, *i.e.*, the “notice stream,” followed by assignment to the Automated Collection System (ACS), where the IRS attempts to establish contact with taxpayers telephonically – usually prompted by systemically-generated letters and levies. Cases that are not resolved in the notice stream or the ACS are ultimately assigned to the Collection Field function. Despite the substantial criticism the IRS’s collection practices have received over the years, this basic model continues to provide the framework for the majority of IRS collection actions.

The IRS’s steadfast reluctance to materially change this approach appears to involve a key operating assumption that taxpayers who do not come forward and correct their tax delinquencies during the notice process are, essentially, “won’t pay” taxpayers, *i.e.*, those

<sup>28</sup> National Bureau of Economic Research, *U.S. Business Cycle Expansions and Contractions*, [www.nber.org/cycles/cyclesmain.html](http://www.nber.org/cycles/cyclesmain.html). The recent recession began in December 2007; however, most indicators of its impact did not surface until mid to late 2008. The effect of the recession on IRS collection inventories was not clearly evident until 2009, the year most tax returns for tax year 2008 became due.

<sup>29</sup> U.S. Department of the Treasury, *Budget in Brief, Internal Revenue Service*, [www.treasury.gov/about/budget-performance/budget-in-brief/Documents/IRS](http://www.treasury.gov/about/budget-performance/budget-in-brief/Documents/IRS). The IRS’s appropriations for “Enforcement – Exam and Collections” for FY 2006 and FY 2010 were approximately \$3.9 billion and \$4.7 billion respectively.

<sup>30</sup> National Taxpayer Advocate 2004 Annual Report to Congress 226-245.

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who deliberately choose not to comply with the tax laws.<sup>31</sup> In these cases, the IRS collecting process operates as though timely personal contacts, discussions of available payment alternatives, and even the matter of sending correspondence to a correct address are pointless, when the taxpayers are intentionally trying to avoid the tax collector. Consequently, only IRS enforcement actions, *e.g.*, levies and liens, will likely get the taxpayer's attention in an effective manner, and these actions are only accomplished through the ACS and the Cff. Therefore, the framework for treatments of collection cases not resolved through collection notices, which are classified as TDAs, places heavy emphasis on these enforcement actions. In recent years, the IRS responses to concerns raised in the Annual Reports to Congress confirm this mindset about the basic nature of taxpayers who incur tax debts.<sup>32</sup>

*IRS collection notices are effective in resolving many low-dollar accounts, i.e. the "low-hanging fruit."*

The initial phase of the IRS collecting process is commonly known as the "notice stream." Generally, all "balance due" collection accounts receive the initial notice required by law to formally notify the taxpayer of the unpaid tax debt. If the matter is not resolved with the first notice, the taxpayer may receive one to three additional collection notices, depending on the characteristics of the case. For example, most cases involving individual income taxes reported on Form 1040, *U.S. Individual Income Tax Return*, usually receive up to three collection notices; however, delinquencies involving employment taxes reported on Form 941, *Employer's Quarterly Federal Tax Return*, will usually receive no more than two. The "notice stream" phase of the collecting process can take approximately five months to complete.<sup>33</sup>

The "notice stream" helps the IRS to resolve many collection accounts and collect a substantial amount of revenue. In FY 2010, the IRS collected approximately \$28.4 billion through the notice stream, representing approximately 64 percent of the total yield on collection accounts.<sup>34</sup> Approximately 6.9 million collection notice accounts were full paid during this stage of the process.<sup>35</sup> The IRS expends a relatively small portion of its collection resources

<sup>31</sup> IRM 5.10.1.6 (July 3, 2009). This section details the factors that characterize a "won't pay" taxpayer.

<sup>32</sup> National Taxpayer Advocate 2004 Annual Report to Congress 243 (Most Serious Problem: *IRS Collection Strategy*). The IRS response to this report included the following:

Once an assessment is made, the IRS attempts to collect the amount due in the most efficient manner. The IRS contacts taxpayers through notices and phone calls before utilizing enforcement treatments. If the taxpayer chooses not to interact with IRS, enforcement may be pursued. Given certain legal notification requirements, coupled with limited IRS collection resources, it is not economically feasible to attempt face-to-face contact as an early treatment. Although early personal contact would be ideal for identifying the reasons for the delinquency at hand and going beyond that to foster future compliance, we must use our limited resources to address the most egregious cases, which are usually those who do not respond to the early phone calls.

See also, IRS, *Future Field Collection Design* (Nov. 10, 2005). This study emphasized the observation that "Cff personnel, and particularly ROs (Revenue Officers), recognize their role as the IRS's "final stop" for collecting delinquent taxes and tax returns and take pride in their enforcement role."

<sup>33</sup> IRS, *Taxpayer Communications Taskgroup (TACT): Collection Team VSM Decision* (July 8, 2009).

<sup>34</sup> IRS, *Delinquent Accounts Receivable Yield Report, Fiscal Year Comparison Cum Thru FY 2010 September*; IRS, *Collection Activity Report, NO-5000-6, Installment Agreement Cumulative Report* (Oct. 2010); IRS, *Collection Activity Report, NO-5000-242, Taxpayer Delinquent Account Cumulative Report, Part 2 - Accounts Receivable Notices* (Oct. 2010). In FY 2010, the IRS collected approximately \$18 billion on the initial collection notice, \$5.7 billion on the second thru final notices, and \$4.7 billion from installment agreements issued by Accounts Management (AM) and Compliance Services Collection Operations (CSCO), totaling \$28.4 billion. Total collection yield for FY 2010 was reported to be approximately \$44.1 billion. Payments related to a notice account that were included in IAs established through the ACS or Cff operations were not included in this total.

<sup>35</sup> IRS, *Collection Activity Report, NO-5000-242, Taxpayer Delinquent Account Cumulative Report, Part 2 - Accounts Receivable Notices* (Oct. 2010).

in the notice stream: consequently, this initial phase of the collecting process is considered highly efficient.<sup>36</sup>

However, a closer analysis of the notice stream results indicates that notices may be most effective with taxpayers who owe relatively small amounts. Although the IRS collects substantial amounts of delinquent revenue in this phase of the collecting process, the payments are typically small, *e.g.*, the average of all payments received from individual taxpayers (Individual Master File or IMF) in response to a notice in FY 2010 was \$519.<sup>37</sup> IRS data also indicate that IAs issued on notice accounts tend to provide payment solutions primarily in situations with small balances due.<sup>38</sup> The data reveal that in FY 2010, 77 percent of the dollar value of the IMF first notices issued was not collected in the notice stream, and approximately 3.8 million IMF delinquencies ultimately progressed to the next phase of the collection process as TDAs.<sup>39</sup> Intuitively, these results make sense. Taxpayers who are simply “late payers” or those who are a “little behind” in their financial obligations can resolve relatively small tax debts within a few months of filing their returns, and promptly respond to an IRS collection notice. However, many of those with more serious financial problems may not be able to do so. The IRS does little to proactively reach out to these taxpayers and attempt to resolve their tax debt problems at this early stage of the delinquencies.

***More proactive attention to taxpayer needs could yield significantly greater results in the collection notice stream.***

In general, IRS collection notices are not presented in a manner that *encourages* taxpayers who do not have the means to full pay to come forward, discuss their financial difficulties with the IRS, and explore payment options. The installment agreement option is only briefly addressed in the IRS collection notices, and other alternatives such as the OIC or partial payment installment agreement are not mentioned at all.<sup>40</sup> Surprisingly few business taxpayers are successful in securing IAs through the notice stream.<sup>41</sup> The majority of collection notice-related calls are routed through the Accounts Management (AM)

<sup>36</sup> IRS, *Improving the Collection Process* (May 2010). In FY 2009, the IRS spent approximately 22 percent of its dedicated Collection staff resources on notice-related work, and approximately 65 percent of Collection revenue was generated through the notice stream.

<sup>37</sup> IRS, Collection Activity Report, NO-5000-8, *IMF Collection Yield Report FY 2010*. The IRS received approximately \$9.3 billion from individual taxpayers (IMF) through 17,849,975 payment transactions. A recent IRS study concluded that the median amount of an IMF account resolved in the notice stream was \$650, while the median amount for unresolved modules was over \$3,000. IRS, *TACT: Collection Team VSM Decision 4* (July 8, 2009).

<sup>38</sup> IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Cumulative Report* (Oct. 2010). In FY 10, the average tax balance due for IAs established by AM and CSCO was approximately \$3,910.

<sup>39</sup> IRS, Collection Activity Report, NO-5000-242, *Taxpayer Delinquent Account Cumulative Report, Part 2 – Accounts Receivable Notices* (Oct. 2010).

<sup>40</sup> See IRS collection notices CP 501 and CP 504.

<sup>41</sup> IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Cumulative Report* (Oct. 2010). In FY 2010, the AM Toll-Free and CSCO operations issued only 36,951 IAs on Business Master File (BMF) accounts, although approximately 8.5 million BMF collection notices were issued during the FY. This figure represents 1.6 percent of the total IAs issued by these operations, which have primary responsibility to service collection notices.

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operation, which does not offer specialized handling of collection calls.<sup>42</sup> As a result, the IRS employee who answers the taxpayer's call may not know how to determine if a taxpayer is eligible for an IA or an offer that requires an analysis of the taxpayer's financial situation. Outbound call attempts on accounts in the notice stream are rare.<sup>43</sup> Customer satisfaction ratings from taxpayers regarding the IRS collection notice process are relatively low, particularly concerning the ability to contact the IRS by phone at this point in the process, as well as reported difficulties with resolving problems through the IRS written correspondence process.<sup>44</sup>

**The Automated Collection System emphasizes the use of automated enforcement actions as the foundation of its strategy to contact delinquent taxpayers.**

The ACS, a group of automated telephone call centers, was fully implemented by the IRS in 1984.<sup>45</sup> As stated above, most collection accounts not resolved in the notice stream are classified as TDAs and assigned initially to the ACS for resolution. Designed to serve as a call center for IRS collection accounts, the ACS quickly adopted an inbound call posture, relying primarily on the mass issuance of systemically generated levies to drive taxpayers into paying their tax debts or contacting the IRS to arrange for resolution of their accounts. Historically, the ACS has been perceived by the IRS as a highly efficient and effective component of the collection process.

In FY 2010, the ACS received approximately 3.7 million taxpayer cases, and issued over 2.9 million levies.<sup>46</sup> The use of the systemically generated levy has been the primary ACS contact strategy almost from its inception, and in recent years, from FYs 2006 through 2010, the ACS has averaged approximately 3.4 million levies per year.<sup>47</sup> For 2008 through 2010, while the global recession was taking hold, the ratio of levies to taxpayer case receipts

<sup>42</sup> IRS, *Collection Process Study, Appendix F 4* (Sept. 30, 2010). In general, IRS collection notices provide a telephone number for taxpayers to use to respond. These numbers are handled by the Accounts Management operations, which can answer questions regarding the taxpayers' accounts, and provide limited collection payment options, such as payoff amounts, short-term extensions of time to pay, and streamlined installment agreements. Collection cases with balances due that exceed AM's authorities, or involve issues that require detailed analysis of the taxpayers' financial statements, are usually assigned to the ACS for resolution.

<sup>43</sup> IRS, *Collection Process Study, Final Report 20* (Sept. 30, 2010). In a comparison with best practices employed by private sector collection operations, this study noted that in the first six months of a delinquency, a debtor typically receives about 400 telephone calls from a typical bank. While the National Taxpayer Advocate is not suggesting the IRS should call taxpayers at this frequency, she notes that outbound call attempts are not designed into the IRS collection process until the account reaches TDA status.

<sup>44</sup> IRS, Customer Satisfaction Survey, CSCO Small Business/Self-Employed Division (SB/SE) National Report (Oct. 2010). See also IRS, Customer Satisfaction Survey, CSCO Wage and Investment (W&I) Division National Report (Dec. 2010). The average overall customer satisfaction ratings were 3.88 for W&I and 3.32 for SB/SE (on a scale of 1 to 5). These surveys identified "length of time to get through by phone," "length of time to resolve issue," and "correspondence from CSCO addressing all issues" as improvement priorities for taxpayers responding to IRS collection notices. Reports involving small businesses and self-employed taxpayers reflected higher levels of dissatisfaction than those obtained from wage earners.

<sup>45</sup> IRS, IRS Historical Studies, *IRS Historical Fact Book: A Chronology* (1993).

<sup>46</sup> IRS, Collection Activity Reports NO-5000-2, *Taxpayer Delinquent Account Reports* (Oct. 2010); NO-5000-23, *Collection Workload Indicators* (Oct. 2010).

<sup>47</sup> IRS, Collection Activity Report NO-5000-23, *Collection Workload Indicators* (Oct. 2010).



in ACS was 86 percent.<sup>48</sup> In practice, the matter of levy issuance is “job one” in the ACS, leaving little room for alternative forms of contact or treatment.<sup>49</sup>

The IRS now generates a majority of its liens through the ACS.<sup>50</sup> The number of liens issued by ACS has increased by approximately *97 percent* from fiscal years 2006 to 2010.<sup>51</sup> Most ACS liens are issued systemically, *i.e.*, the lien-filing determinations are driven by IRS “business rules” and procedural requirements, with little or no employee involvement or judgment in the decision-making process.<sup>52</sup> The ACS frequently issues liens in situations where no personal contact has been made with the taxpayers. The IRS’s procedural guidance acknowledges, “We make many of our lien determinations without successfully contacting the taxpayer.”<sup>53</sup> In these situations, the ACS generates liens with no review of the taxpayers’ financial circumstances. The ACS does not determine the impact of the liens on the affected taxpayers, or whether they own any assets requiring a lien to protect the government’s interests.

*The ACS’s strategic emphasis on levies and liens has not been as successful as the IRS would like to believe.*

While on the surface, systemically generated levies appear highly efficient, a close analysis of IRS data raises legitimate questions about the effectiveness and efficiency of the results obtained by the wholesale use of levies. A recent IRS study estimated that levies issued by the ACS lead to full payment or IAs in approximately 24 to 34 percent of the cases in which they are issued.<sup>54</sup> In other words, it appears that the emphasis on ACS levies does not yield productive dispositions of TDAs in at least two-thirds of the cases in which they are employed.<sup>55</sup> Further, IRS data indicate that revenue receipts directly related to individual

<sup>48</sup> IRS, Collection Activity Report NO-5000-2, *Taxpayer Delinquent Account Reports* (Oct. 2010); IRS, Collection Activity Report NO-5000-23, *Collection Workload Indicators* (Oct. 2010).

<sup>49</sup> IRS, *Collection Process Study 98* (Sept. 30, 2010). The current ACS staff spends approximately 70 percent of its time taking inbound calls, so outbound contact attempts are often de-prioritized. Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2010-30-046, *More Management Information Is Needed to Improve Oversight of Automated Collection System Outbound Calls 6* (Apr. 28, 2010). TIGTA reports that only two to three percent of ACS direct time is spent making outbound calls.

<sup>50</sup> IRS, Collection Activity Report NO-5000-23, *Collection Workload Indicators* (Oct. 2010). In FY 2010, the IRS issued 1,096,376 NFTLs. Of these, 51 percent (554,331) were issued by ACS.

<sup>51</sup> IRS, Collection Activity Report NO-5000-23, *Collection Workload Indicators* (Oct. 2010). In FY 2006, 280,925 notices of federal tax lien were issued by ACS. In fiscal year 2010, ACS issued 554,331 liens.

<sup>52</sup> IRM 5.19.4.5.2 (Aug. 4, 2009). This IRM section details the situations where liens are required to be filed. In most instances, the key driver of the lien determination is the dollar amount of the taxpayer’s aggregate assessed balance of the taxpayer’s tax debt. See National Taxpayer Advocate 2009 Annual Report to Congress 17-40 (Most Serious Problem: *One-Size-Fits-All Lien Filing Policies Circumvent the Spirit of the Law, Fail to Promote Future Tax Compliance, and Unnecessarily Harm Taxpayers*), 357-364 (Key Legislative Recommendation: *Strengthen Taxpayer Protection in the Filing and Reporting of Federal Tax Liens*) for additional discussion of these issues. See also Status Update: *The IRS Has Been Slow to Address the Adverse Impact of Its Lien Filing Policies on Taxpayers and Future Tax Compliance*, *supra*.

<sup>53</sup> IRM 5.19.4.6.4 (Mar. 8, 2010).

<sup>54</sup> IRS, *IRS Collection Process Study Final Report 96-98* (Sept. 30, 2010). Per the CPS study report, taxpayers typically respond to ACS levies in approximately 40 percent of the levies issued. The IRS estimates that “60-85 percent” of these levy responses result in either full paid accounts or installment agreements.

<sup>55</sup> While the ACS has the ability to report TDA accounts as uncollectible due to economic hardship, these determinations are not made frequently. In FY 2010, less than four percent of the TDAs processed through the ACS were reported as CNC with hardship-related closing codes. IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

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levies are not particularly substantial. Although the IRS has averaged 3.4 million levies per year since FY 2006, the *average* dollar yield from this activity has been only \$636 per levy.<sup>56</sup> The low yield suggests that many levies are unproductive, *i.e.*, the taxpayers no longer maintain relationships with the employers or financial institutions on which the levies were served. The low yield also indicates that levy action alone will not resolve most TDA accounts, without further contact with the taxpayers. Yet, the emphasis on levies and levy-related actions remains the primary driver of ACS activity. Essentially, the ACS phase of the collecting process relies on a more forceful use of automation to resolve collection accounts that represent “lower-hanging fruit” at the conclusion of the notice process – with very little effort devoted to more proactive, but less-severe contact attempts.

*More emphasis on personal contacts by the ACS could eliminate substantial amounts of “re-work” – improving service to taxpayers and reducing demands on collection resources.*

In situations where systemically generated levies fail to collect delinquent taxes, or do not generate taxpayer contacts that lead to case resolutions, very little additional time and effort are expended in the ACS segment of the collecting process.<sup>57</sup> Consequently, only a relatively small portion of the TDA dollar inventory processed through the ACS is actually collected – in FY 2010, while the ACS collected approximately \$3.2 billion and established IAs on another \$7.4 billion of delinquent accounts, \$24.5 billion in TDAs passed on to the Collection Queue and Field inventories.<sup>58</sup> Additionally, approximately \$3.7 billion was reported as uncollectible – with \$655 million of the CNC amount representing cases that were “surveyed.”<sup>59</sup>

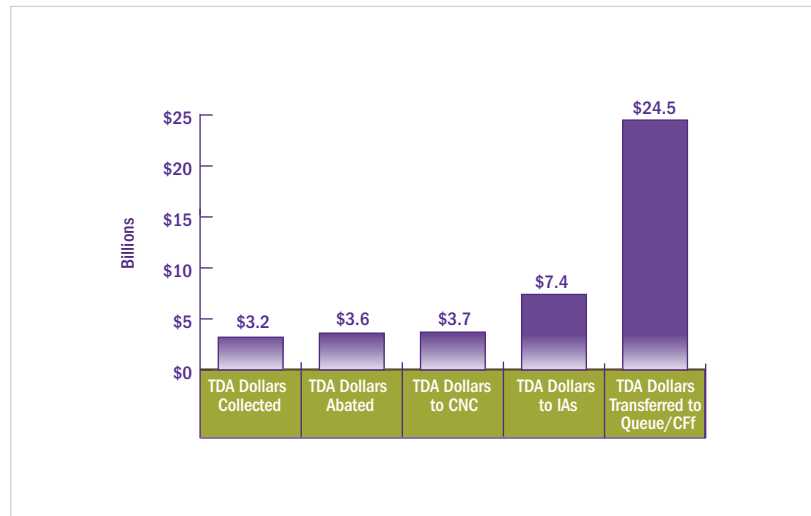
<sup>56</sup> IRS, Collection Activity Report NO-5000-23, *Collection Workload Indicators* (Oct. 2010). IRS, Collection Activity Report, NO-5000-7, *BMF Collection Yield Report* (Oct. 2010); IRS, Collection Activity Report, NO-5000-8, *IMF Collection Yield Report* (Oct. 2010).

<sup>57</sup> TIGTA, Ref. No. 2010-30-046, *More Management Information Is Needed to Improve Oversight of Automated Collection System Outbound Calls* (Apr. 28, 2010). In making outbound calls to taxpayers, the ACS operations use predictive dialers. This TIGTA audit reported that there is insufficient management information available about whether the IRS’s use of predictive dialers is effective in contacting taxpayers with delinquent accounts. However, the report notes that only two to three percent of ACS direct time is devoted to outbound calls on collection cases.

<sup>58</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

<sup>59</sup> *Id.*



**FIGURE 2.3.3, Disposition of TDA Dollars in ACS – FY 2010**

The lack of emphasis on personal contacts (including outbound calls) in the IRS collecting process generates a substantial amount of unnecessary re-working of accounts, and considerable waste of collection resources. In FY 2010, approximately 40 percent of “new” TDAs assigned to the ACS involved accounts reissued from the Collection Queue or installment agreement accounts that had been “defaulted” and reactivated as TDAs.<sup>60</sup> Specifically, in FY 2010, approximately 1.7 million TDAs issued to ACS were reactivated IA accounts, which the IRS considered in default.<sup>61</sup> In addition, approximately 1.4 million TDAs were issued to the ACS from the Queue inventory, usually because of new delinquent modules generated by the taxpayers.<sup>62</sup> Neither of these conditions is flagged as a situation that warrants or could benefit from a personal contact. In the case of defaulted IAs, the use of follow-up telephone contacts would allow the IRS to more efficiently use the information it has already obtained from the taxpayer to establish the original agreements. However, the IRS rarely utilizes personal contacts in the process of “defaulting” IAs.<sup>63</sup>

**The Collection Field function represents a significant “bottleneck” in the IRS collecting process, which contributes to lengthy delays in case processing and large backlogs of unassigned cases.**

In theory, cases assigned to the CFf are high-risk, complex collection accounts that require revenue officer involvement for resolution. Some cases may bypass the ACS process, but in practice, the vast majority of CFf assignments involve taxpayer accounts that have previously been through the notice stream and ACS.<sup>64</sup> As a result, cases assigned to the CFf

<sup>60</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> See IRM 5.19.1.5.5, *Installment Agreements* (Dec. 4, 2009) for more details on the procedures the IRS uses to default installment agreements.

<sup>64</sup> IRM 5.1.20.2.3, *Collection Inventory Management – Rules* (May 27, 2008).

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usually involve delinquencies that letters and systemically generated enforcement actions have failed to resolve. Because the IRS collecting process produces many such cases, the Cff has become a classic “bottleneck,” *i.e.*, the function receives many more cases than it can expeditiously handle with its available resources. This condition fosters substantial backlogs and the aging of collection accounts.

By design, the backlog of Cff inventory is assigned to an inventory known as the Collection Queue. In theory, the assignment of a case to the Queue is a temporary condition; cases reside in the Queue until Cff resources are available to work them. At the conclusion of FY 2010, approximately 3.3 million TDAs were assigned to the Queue inventory, representing \$46.2 billion in delinquent tax debts.<sup>65</sup> From 2006 through 2010, the Queue TDA inventory has grown by 36 percent, and the dollar value of accounts assigned to the Queue has increased by 70 percent.<sup>66</sup> In practice, the Queue is not a “temporary” backlog; rather, the backlog has become an institutionalized segment of the IRS collecting process.

An unfortunate by-product of this condition is the aging of accounts assigned to the Cff – before they are ever brought to the attention of an RO. The IRS collection strategy places very little importance on the impact of aging on the ability to collect delinquent accounts receivable. However, even studies conducted by the IRS recognize the “collectibility curve” that becomes apparent as delinquent accounts age. This “curve” indicates that after three years of becoming overdue, these accounts produce minimal collections.<sup>67</sup> Further, an analysis by the Chief Financial Officer of the IRS revealed that 83 percent of IRS collections occur within *two years* of assessment.<sup>68</sup> Yet IRS data reveal that at the end of FY 2010, *80 percent of the inventory of all open TDA accounts represented delinquencies involving tax years 2007 and prior*, and 56 percent had assessment dates over two years old.<sup>69</sup>

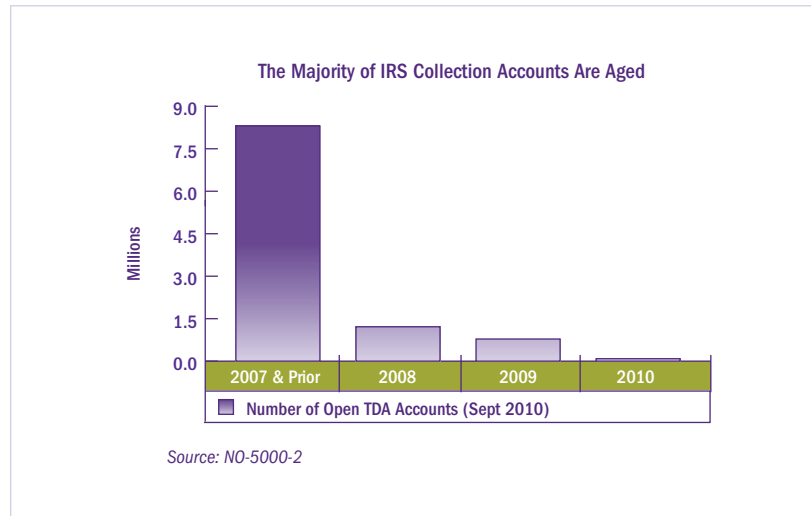
<sup>65</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

<sup>66</sup> *Id.*

<sup>67</sup> IRS, *TACT: Collection Team VSM Decision Paper I* (July 8, 2009).

<sup>68</sup> IRS, *Improving the Collection Process* (May 5, 2010).

<sup>69</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

**FIGURE 2.3.4, Age of IRS Collection Accounts**

IRS program measures that track the performance of the collection processes do not place much emphasis on the actual age of the accounts receivable. Instead, IRS collection measures tend to emphasize “cycle times,” *i.e.*, how quickly collection accounts are moved through the various stages of the collecting process.<sup>70</sup> However, the results of this approach should be a matter of concern for the IRS. In FY 2010, the CFF collected just over \$3.1 billion in TDA accounts, which was approximately seven percent of the TDA dollars assigned to the CFF that year.<sup>71</sup> On the other hand, the CFF reported approximately \$14.1 billion in TDAs as uncollectible.<sup>72</sup> These results, combined with the high volumes of delinquent tax dollars in the Collection Queue and CNC inventories, indicate the traditional use of the CFF is neither efficient nor effective.

*Both the IRS and its stakeholders have recognized the need to reevaluate the role of the CFF.*

The collection results described above have influenced some within the IRS to raise questions about the value of the CFF within the overall collecting process. A recent IRS study concluded the IRS needs to identify “specific cases that require Revenue Officer (RO) skills,” and “determine the optimal size of the CFF to resolve cases requiring RO action.”<sup>73</sup> The study does not, however, provide much insight into the type of assignments best suited for ROs, other than an underlying assumption that RO work is “complex.” Traditionally, the IRS views case complexity as a condition determined by the types of case actions that *may*

<sup>70</sup> For an in-depth discussion of IRS performance measures, see Most Serious Problem: *IRS Performance Measures Provide Incentives That May Undermine the IRS Mission*, *supra*.

<sup>71</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

<sup>72</sup> *Id.* See also IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Cumulative Report* (Oct. 2010). In FY 2010, the dollars reported as CNC by the CFF were approximately 320 percent of the combined total of dollars collected on open CFF TDAs and IAs generated by the CFF.

<sup>73</sup> IRS, *Collection Process Study Final Report* (Sept. 30, 2010).

be needed that require the RO skill set, *e.g.*, seizures, suit recommendations, and trust fund recovery penalties (TFRP).

A key component of RRA 98 was a requirement for the IRS to revise its organizational structure into units serving particular groups of taxpayers with similar needs.<sup>74</sup> In considering the potential value of the Cff, a more useful approach may be to focus on the needs and characteristics of “particular groups of taxpayers” who could benefit greatly from face-to-face contacts with skilled collectors, specifically trained to address their problems in the manner envisioned in RRA 98. Particularly in addressing problems involving small businesses, the local perspective enables ROs to accurately evaluate the true cause of the tax problems and determine the proper cures, which in turn may make a significant difference in the taxpayer’s long-term compliance. The current state of the Cff illustrates the negative outcomes associated with viewing all taxpayers with tax delinquencies as one “Collection” inventory, as opposed to diverse groups of taxpayers, with very differing needs, who are experiencing collection-related problems.

*The Cff’s renewed focus on enforcement at the expense of taxpayer service is not particularly effective in collecting delinquencies, especially for many small businesses.*

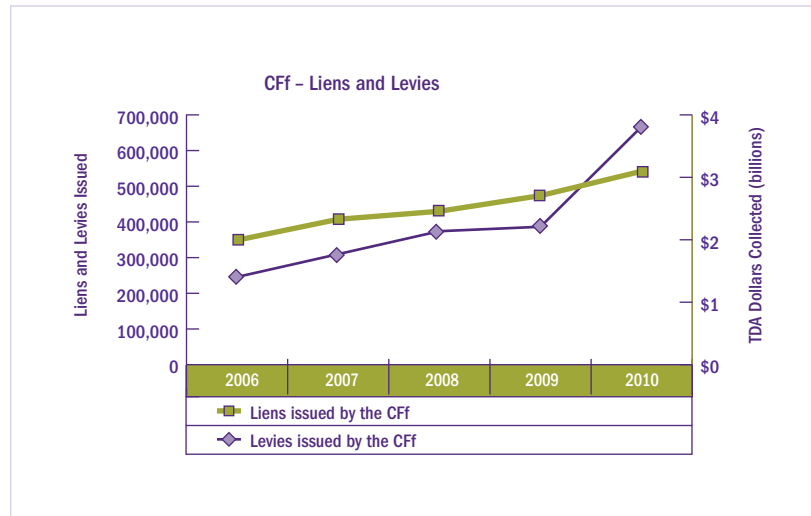
Focus group participants have indicated that the main reason small business taxpayers do not pay their payroll taxes is because “they do not see the immediate consequences of noncompliance.”<sup>75</sup> The participants also stated the IRS “is not very flexible in working with taxpayers to become compliant,” and needs to show more leniency and flexibility in working with taxpayers. Unfortunately, the IRS approach to educating taxpayers of the “consequences of noncompliance,” especially in recent years, has been through enforcement actions, with particular emphasis on levies, liens, and the Trust Fund Recovery Penalty (TFRP).<sup>76</sup> Moreover, from FYs 2006 to 2010, the Cff’s issuance of NFTLs increased by 55 percent, and levy issuances rose 172 percent.<sup>77</sup>

<sup>74</sup> Pub L. No. 105-206, 112 Stat. 685 (1998). For more information on the background of RRA 98, see Most Serious Problem: *The Wage and Investment Division Is Tasked with Supporting Multiple Agency-Wide Operations, Impeding its Ability to Serve its Core Base of Individual Taxpayers Effectively*, *supra*.

<sup>75</sup> IRS, SB/SE Research, *Your Clients and the Economy – How Can the IRS Help* 4 (Jan. 2010).

<sup>76</sup> IRM 5.7.3.1, *Introduction (to TFRP)* (Nov. 12, 2010). IRC § 6672 authorizes the IRS to impose a penalty against any person required to collect, account for, and pay over taxes held in trust who willfully fails to perform any of these activities. The penalty is equal to the total amount of tax evaded, not collected, or not accounted for and paid over.

<sup>77</sup> IRS, Collection Activity Report NO-5000-23, *Collection Workload Indicators* (Oct. 2010). In FY 2006, the IRS Cff issued 245,757 levies and 348,888 NFTLs. These numbers have increased each year through FY 2010, when 542,045 NFTLs were filed and 667,322 levies were issued by the Cff.

**FIGURE 2.3.5, Cff Lien And Levy Increases, FY 2006 - FY 2010**

Additionally, TFRP assessments issued as TDA accounts increased by 52 percent during this five-year period.<sup>78</sup> In fact, the Cff has recently reemphasized the use of liens and TFRPs as “two core and extremely important Collection basics . . . at the foundation of (the Cff) work.”<sup>79</sup> The basis for this emphasis is the perception that the number of small business taxpayers who repeatedly accrue tax delinquencies is a major compliance problem and one of the most significant issues facing the IRS.<sup>80</sup> IRS policy makes little distinction between “repeaters” who are chronically delinquent, *i.e.*, truly “won’t pay” taxpayers, and those that have multiple delinquent tax periods related to one episode of financial difficulty. Moreover, the IRS considers many business taxpayers as “repeaters” despite delays that are virtually built into the processing of BMF accounts, and the role IRS inaction plays in facilitating ongoing delinquencies. The impact of the NFTL can be devastating to businesses that rely on credit to fund operations. Yet, IRS policy promotes filing NFTLs as early as possible in the collecting process, even when the IRS has had no personal contact with the taxpayers.<sup>81</sup>

While the TFRP can be a useful tool in certain situations, the increased emphasis to routinely make TFRP determinations early in the Cff process is a classic example of “too little, too late.” The TFRP does not appear to be efficient or effective as a routine treatment for employment tax deficiencies. From FY 2006 to FY 2010, the dollar value of new TFRP TDAs has increased by 30 percent, but dollars collected (including refund offsets) on TFRP

<sup>78</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

<sup>79</sup> IRS, SB/SE Director of Collection, *Focusing on the Basics*, <http://SB/SE.web.irs.gov/c12/sl/ivt/csk/Collection/0358/transcript.htm>.

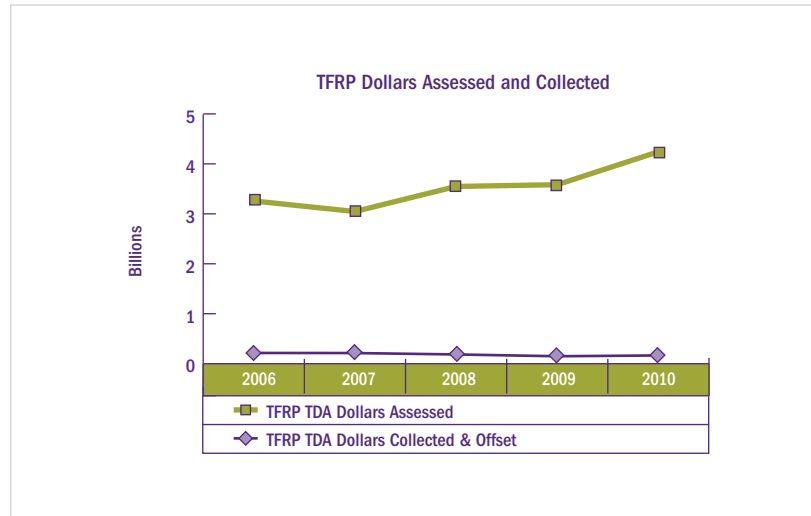
<sup>80</sup> *Id.*

<sup>81</sup> IRM 5.12.2.4 (Oct. 30, 2009). The lien determination is due ten days from the initial attempted contact or initial actual contact date, whichever date is earlier.

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TDAAs have *declined by 23 percent*.<sup>82</sup> Routinely, the IRS collects very few of the dollars assessed through TFRPs.<sup>83</sup>

**FIGURE 2.3.6, Trust Fund Recovery Penalties, FY 2006 – FY 2010**



The CFF is uniquely positioned to provide local service and attention to small business taxpayers. The IRS invests approximately 50 percent of its Collection staffing resources into the CFF.<sup>84</sup> By placing more emphasis on service, personal communication, and treatments designed to actually help small business taxpayers comply with the tax laws while contributing to the nation’s economy, the IRS could use these resources much more effectively.

**Providing timely assistance to taxpayers with emerging collection problems could increase revenue, customer satisfaction and prevent escalating compliance problems.**

The current collecting process may be efficient in resolving collection problems of taxpayers who are willing to do the right thing with minimal prompting (*e.g.*, notices), or those able to respond to routine IRS enforcement actions in a positive manner (*e.g.*, ACS levies). However, the IRS’s aversion to personal contact establishes an environment that may act as a barrier for others to contact the IRS and work out reasonable arrangements to resolve their tax debts.

While the IRS generally assumes taxpayers who do not, or cannot, resolve their problems with the IRS during the notice stream are “won’t pay” problem cases, the IRS collection strategy does not acknowledge that many delinquent taxpayers do not respond to notices

<sup>82</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010). Excluding refund offsets, dollars collected on TFRP TDAs have declined by 45 percent from FY 2006 to FY 2010.

<sup>83</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

<sup>84</sup> IRS, *Improving the Collection Process* (May 2010).

because they may be paralyzed by fear and uncertainty. A focus group conducted with tax professionals by the IRS in 2009 recognized that many delinquent taxpayers experiencing financial difficulties are greatly influenced by “fear and panic” regarding their situations, and “are scared of the IRS and do not know how to resolve the issues.”<sup>85</sup> Further, in a situation where the collection notice contributed to the “fear and panic,” the impact of a systemically generated levy or lien may be devastating to the taxpayer who is unable to full pay, and cannot see the proverbial light at the end of the tunnel.<sup>86</sup>

Without a meaningful personal contact, the delinquent taxpayer may continue to fall further behind on tax obligations. A TAS research study completed in 2009 concluded that taxpayers who were placed in the Queue continued to accrue additional tax liabilities at very high rates.<sup>87</sup> Yet, the current collection process will likely not provide a personal contact until the debtor’s situation has become much more difficult to resolve. For the taxpayer, this situation can mean failure of a business, bankruptcy, and a huge tax problem that seems impossible to fix. For the IRS, this scenario frequently means uncollectible debts and an escalating inventory of unpaid assessments. This situation demonstrates that an inflexible, enforcement-oriented IRS is something to avoid.

When a recent focus group was asked to identify actions the IRS could take to help small business taxpayers, the number one strategy recommended by participants was “the need for the IRS to react faster.”<sup>88</sup> Participants stated, “The main problem is that many taxpayers are buried too deep by the time the IRS gets involved.”<sup>89</sup> Unfortunately, “reacting faster” from the taxpayer’s perspective is not a key component of the IRS collection strategy. The collecting process places very little emphasis on pre-delinquency education and intervention. The use of Federal Tax Deposit (FTD) Alerts and other field contacts on relatively small balance-due employment tax accounts is rare.<sup>90</sup> In FY 2010, BMF case assignments averaged 2.3 TDAs per taxpayer in ACS, 4.4 TDAs per taxpayer in the Queue, and 5.6 TDAs per taxpayer for the Cff.<sup>91</sup> Considering that most of these cases would involve at least one additional module in notice status, along with unpaid FTDs in the current quarter, it appears that the typical BMF case that the IRS believes warrants a field contact has already accumulated two years of employment tax delinquencies before a face-to-face contact is

<sup>85</sup> IRS, SB/SE Research, *Your Clients and the Economy – How Can the IRS Help* 4 (Jan. 2010).

<sup>86</sup> ACS customer satisfaction surveys routinely identify the “tone of IRS notice, bill, or letter” as an area of significant dissatisfaction with the ACS process, and a key improvement opportunity. IRS, Customer Satisfaction Survey, *Automated Collection System (ACS) SB/SE and W&I National Reports* (Aug. 2010).

<sup>87</sup> National Taxpayer Advocate 2009 Annual Report to Congress, vol. 2, 28 (*Subsequent Compliance Behavior of Delinquent Taxpayers: A Compliance Challenge Facing the IRS*). This study found that of taxpayers who incurred an initial delinquency in 2002, and were subsequently placed in the Collection Queue, 76 percent had at least one subsequent payment delinquency or unfiled return, and 46 percent had at least three such delinquencies.

<sup>88</sup> IRS, SB/SE Research, *Your Clients and the Economy – How Can the IRS Help* 4 (Jan. 2010).

<sup>89</sup> *Id.*

<sup>90</sup> IRM 5.7.1.1 (July 18, 2008). The FTD Alert process identifies, at an early stage (*i.e.*, before the return is due), taxpayers who have fallen behind in their deposits. FTD Alerts determine an employer’s compliance with employment tax deposit requirements for the quarter of Alert issuance, and for subsequent quarters until the taxpayer is brought into full compliance.

<sup>91</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

even attempted.<sup>92</sup> At this time, unfortunately, many of these small business taxpayers are “buried too deep.”

**The IRS has recently completed a study of the collection process to identify improvement opportunities.**

In March 2010, the IRS initiated the Collection Process Study (CPS), an intense, high-level “brainstorming” project to identify improvement opportunities for the treatment of taxpayers with collection problems. The CPS produced 53 recommendations designed to address every stage of the Collection process, from pre-delinquency through collection notice and TDA processing. Due to the nature of the initiative, the CPS recommendations are generally broad in scope, and provide little in implementation detail, although most are supported by data analysis.

With meaningful implementation, several of the CPS recommendations could have a positive impact on the IRS collection process:

- Increased emphasis on *pre-delinquency* and *early intervention* to address collection-related problems before they become unmanageable, *e.g.*, more emphasis on underutilized programs like Withholding Compliance and FTD Alerts.
- Initiating open discussions and increasing the availability of *payment alternatives* much earlier in the collecting process, *e.g.*, more emphasis on the availability of installment agreements in the collection notice process, and more “self-correction” options available on the IRS website.
- Significant improvements in IRS *collection financial analysis* techniques, *e.g.*, factors considered in determining reasonable collection potential (RCP) and allowable living expenses (ALE).
- More flexibility in the use of *lien withdrawals*, which may provide incentives for taxpayers to correct delinquency problems and remain in compliance.
- Increased availability of payment alternatives, such as *OICs* and *Partial Payment Installment Agreements*, as case resolutions for taxpayers who would otherwise be “can’t pay” situations.
- Creation of a *National Research Program for Collection* to provide an ongoing analysis of downstream benefits and costs of various collection treatments, as well as the impact of these treatments on future compliance.

Over the past five years, the National Taxpayer Advocate has supported these concepts on many occasions, and made recommendations through the Annual Reports to Congress that align with those made by the CPS.

<sup>92</sup> Of the BMF Trust Fund notices that were not resolved in the notice stream during FY 2010, approximately 23 percent were “closed” as “deferred” accounts, *i.e.*, due to the relatively small dollar amounts of the delinquencies, the IRS systemically determined to not pursue the delinquencies as TDAs. IRS, Collection Activity Report, NO-5000-242, *Taxpayer Delinquent Account Cumulative Report, Part 2 – Accounts Receivable Notices* (Oct. 2010).



Other CPS recommendations, however, appear to increase emphasis on problematic elements of the Collection operation that are already embedded in the current strategy:

- Increased use of and reliance on *systemically generated levies* as the primary tool to establish taxpayer contacts.
- Continued use of *Notices of Federal Tax Lien*, many systemically generated, without consideration of the facts and circumstances of individual cases.
- Routing more cases through an already heavily burdened *Automated Collection System*, thereby increasing the reliance on systemically generated levies as the “IRS calling card.”
- Increased emphasis on improving *ACS “efficiency,”* e.g., reductions in ACS call-handling times, and more focus on systemic levies rather than outbound calls.

The CPS report provides no reason to believe these recommendations will deliver new or better results than the IRS is already producing on Collection accounts, *i.e.*, “more of the same.” These recommendations can be “implemented” with very little actual change, but require the investment of even more Collection resources into the existing processes, thereby reducing the ability to devote sufficient resources to what we believe are the more beneficial CPS change recommendations.

***A proposal to centralize the IRS Collection operation could prevent meaningful changes.***

The IRS’s recent announcement of the formation of a new office responsible for service-wide collection strategy, policy, and governance raises certain concerns. Although such an office might be helpful in facilitating meaningful changes to the IRS Collection Strategy, placing that office within the SB/SE operating division vitiates RRA 98’s mandate that each organizational unit focus on the particular needs of its taxpayer base. Imposing an SB/SE approach to setting collection policy on the W&I taxpayer base may prove to be ineffective, and could turn W&I collection employees into mere functionaries. This move will separate policy decisions impacting W&I taxpayers from the knowledge base of those within the W&I organization who understand the needs of those taxpayers. However, these concerns could be mitigated, and the effectiveness of the new policy office enhanced, by having it report directly to the Deputy Commissioner, Services and Enforcement.

In addition to the new policy office, the CPS also recommended that the IRS “establish a unified Collection organization to provide “one collection voice” governing policies and procedures applied to the handling of cases involving taxpayers with collection problems. The National Taxpayer Advocate firmly believes this recommendation contradicts the intent, if not the letter, of Section 1001 of RRA 98, which required the IRS to revise its structure into “organizational units serving particular groups of taxpayers with similar needs.”<sup>93</sup> The recommendations made by the CPS will result in an organization that closely resembles

<sup>93</sup> Pub. L. No. 105-206, § 1001(a), 112 Stat. 685 (1998) (codified at IRC § 7801(note)).

the pre-RRA 98 IRS, *i.e.* functionally based units of operation, focused on “Compliance” and “Customer Service.”

The IRS will not resolve its significant collection-related problems by taking a major step backward. In fact, many of the problems identified and addressed in the CPS reflect similar conditions that created the need for the RRA 98 legislation. The IRS has continued to view and treat taxpayers with tax delinquency problems as a “particular group of taxpayers with similar needs,” *i.e.*, “Collection types.” In reality, the issues leading to tax delinquencies for wage earners can be very different from those affecting self-employed taxpayers, larger corporations, or non-profit organizations. The treatments required to best resolve these problems also differ. The proposal to establish a “unified collection organization” will not improve the operation of the IRS, nor the service provided to U.S. taxpayers. On the contrary, another reorganization of Collection could divert attention from actually correcting the significant problems in the handling of cases.

**The current economic climate makes a change in the IRS collection philosophy more urgent.**

While economists may debate the technical issue of when the recent economic recession ended, it remains a fact that in the year 2010, millions of American taxpayers continued to struggle to make financial ends meet:

- As of November 2010, the nation’s unemployment rate was 9.8 percent, representing 15.1 million Americans.<sup>94</sup>
- Another nine million Americans were reported as being employed part-time for economic reasons, *e.g.*, employment hours were cut, or they were unable to find a full-time job.<sup>95</sup>
- As of June 2010, approximately 14 percent of home mortgages in the United States (or one in every seven loans) were either in foreclosure, or delinquent on scheduled payments.<sup>96</sup> Foreclosure activity increased in 75 percent of the nation’s top metro areas, and nationwide 1.65 million properties received foreclosure filings in the first half of 2010.<sup>97</sup>
- According to experts in the real estate industry, as of June 2010, approximately 21.5 percent of all single-family homes with mortgages had negative equity, *i.e.*, the estimated market values of the homes were less than the amounts owed on the mortgages.<sup>98</sup> However, in some parts of the country, this condition was much more prevalent, *e.g.*, Phoenix, Arizona (67 percent); Riverside, California (49 percent); and Miami, Florida (44 percent).<sup>99</sup>

<sup>94</sup> Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey* (Dec. 3, 2010), available at [www.bls.gov/cps](http://www.bls.gov/cps).

<sup>95</sup> *Id.*

<sup>96</sup> Mortgage Bankers Association, [www.mortgagebankers.org](http://www.mortgagebankers.org) (Oct. 12, 2010).

<sup>97</sup> Realty Trac, [www.realtytrac.com](http://www.realtytrac.com) (July 14, 2010, and July 29, 2010).

<sup>98</sup> Zillow.com, *Real Estate Market Reports*, <http://zillow.mediaroom.com/index.php?s=169> (Oct. 12, 2010).

<sup>99</sup> *Id.*

- Bankruptcy filings rose 20 percent in the 12-month period ending June 30, 2010 – approximately 1.6 million cases.<sup>100</sup> The number of businesses filing for bankruptcy protection during this period was 250 percent higher than for the same period in 2007, while non-business filings increased by 208 percent.<sup>101</sup>
- According to the United States Census Bureau, 43.6 million people lived in poverty at the end of calendar year 2009, representing 14.3 percent of the population (or one of every seven Americans). This was the third consecutive annual increase in the number of people in poverty, and the 2009 figure is the largest in the 51 years for which poverty estimates have been published.<sup>102</sup>

For many, the hard economic realities of the recent recession appear to be far from over. For some, the struggle to deal with loss of employment, reductions in income, the loss (or potential loss) of a home, and the sudden evaporation of savings accounts could lead to the additional burdens of unexpected, and unintended, tax problems. The IRS has publicly communicated intentions to take a more helpful, flexible approach to work with taxpayers affected by the downturn.<sup>103</sup> However, there has been little noticeable change in the IRS collection strategy, the treatments provided to taxpayers with collection-related problems, or the reported outcomes of collection cases to support these good intentions.

Of even greater concern, however, is the probability that the IRS has yet to see the full impact of the recession on its inventory of collection accounts. For most individual taxpayers with income tax debts related to a Form 1040 for tax year 2009, accounts not resolved in the collection notice process have only become TDAs in the fourth quarter of FY 2010. Most of the tax problems stemming from financial difficulties taxpayers have encountered in 2010 have yet to be identified. It is quite likely that the IRS has only just begun to scratch the surface of a substantial volume of collection cases related to the recent economic recession.

None of the problems covered in this discussion of the IRS's collection strategy were created by the recession. The National Taxpayer Advocate identified many of the concerns addressed in this report, as well as the negative trends in the IRS performance results, in the 2004 to 2006 Annual Reports to Congress – well before the downturn in the economy. However, unless the IRS makes meaningful changes to its collection strategy in the very near future, it is likely that these problems will become much more apparent, and will harm a much greater number of taxpayers.

<sup>100</sup> Department of Justice, United States Trustee Program, *Bankruptcy Filings Up 20 Percent in June*, available at [www.justice.gov/ust](http://www.justice.gov/ust) (Aug. 17, 2010).

<sup>101</sup> *Id.*

<sup>102</sup> United States Census Bureau at [www.census.gov/hhes/www/poverty/poverty.html](http://www.census.gov/hhes/www/poverty/poverty.html) (Oct. 12, 2010).

<sup>103</sup> IRS, IR 2009-2, *IRS Begins Tax Season 2009 with Steps to Help Financially Distressed Taxpayers; Promotes Credits, e-File Options* (Jan. 6, 2009).

## CONCLUSION

Once again, the IRS appears to be at a crossroads in making decisions that will drive the manner in which the U.S. government interacts with American taxpayers who have developed collection problems. However, significant improvements in performance can only evolve through meaningful changes to a collecting process that has proven to be extremely resistant to such change. Enduring change will require a shift in the manner in which the IRS perceives taxpayers involved in the collecting process, *i.e.*, reevaluating the “won’t pay,” “will pay,” and “can’t pay” distinctions, and implementing a new model for service delivery and tax compliance.

In this year’s Annual Report to Congress, the National Taxpayer Advocate discusses an alternative tax compliance model based on understanding the needs of differing taxpayer segments. In this model, the tax administrator evaluates factors such as the reasons for noncompliance, along with the current level of cooperation from the taxpayer, in determining the proper response, or treatment.<sup>104</sup> Compliance treatments will then vary, based on the needs and characteristics of each taxpayer. For taxpayers who are willing and trying to comply, the tax administrator will emphasize education, self-correction, and assistance. In cases where the taxpayers have decided not to comply, treatments employing the “full force of the law” may be necessary.

The National Taxpayer Advocate acknowledges that some taxpayers have opted not to comply with the tax laws. In those situations, the use of collection enforcement tools, such as liens, levies and seizures is not only appropriate, but necessary to ensure that those taxpayers are not permitted to intentionally avoid paying their tax debts. The integrity of our tax system is based upon all taxpayers contributing their fair share toward payment of the nation’s expenses.

In general, the IRS collection strategy reacts in far too many situations as if delinquent taxpayers have made a conscious decision to not comply with their tax obligations, using the “full force of the law” to correct problems in a manner that may be premature, unnecessary, and even counter-productive in many cases. The IRS needs to adjust this mindset and achieve a better balance in the use of enforcement actions with other collection tools, including payment alternatives such as reasonable installment agreements and offers in compromise. It is imperative – now, more than ever – that the IRS proactively models within its Collection operations the principles embedded in the IRS Mission Statement. A more effective IRS collection strategy must include greater emphasis on providing *timely attention* to collection problems as they arise, actually *talking to taxpayers* about their tax problems, and *assisting* taxpayers to regain a “fully compliant” status with *collection treatments that are flexible, considerate, and effective*.

<sup>104</sup> For an additional discussion of this topic, see *Researching the Causes of Noncompliance: An Overview of Upcoming Studies*, *supra*.

## RECOMMENDATIONS

### 1. Develop an improved working model of the “will pay,” “can’t pay,” and “won’t pay” distinctions in determining the most appropriate collection treatments for taxpayers with collection problems.

Meaningful changes in the IRS collection strategy will require fundamental adjustments to the manner in which the IRS views taxpayers with collection-related problems. The “enforcement” mindset that assumes those taxpayers who do not fully resolve their problems during the collection notice process are intentionally avoiding the IRS, *i.e.*, “won’t pay,” needs to be replaced with a more service-oriented model that assumes the majority of these taxpayers are in financial trouble, and need *assistance* from the IRS to fully comply with their tax obligations. This type of culture change will require the review and revision of IRS collection training materials, policies, and procedures. It will require frequent and consistent messages from IRS leaders, and careful *follow-up* to ensure that a *service-based* compliance culture is driving decisions regarding the treatment of American taxpayers with IRS collection problems.

### 2. Provide timely interventions for emerging collection problems.

The IRS must recognize that the true age of a delinquent collection account relates to the due date of the tax return, and revise the methods used to prioritize and assign collection cases to fully account for the impact of elapsed time on collectibility and taxpayer burden. Delays built into the current IRS collection strategy all too frequently evolve into “lose-lose” situations. Top priority should be placed on initiating *personal* contacts on *current, self-reported accounts, i.e.*, tax delinquencies on recent tax periods involving taxpayers who have not resolved their tax debts through the collection notice process. Additionally, more emphasis on pre-delinquency interventions, *e.g.*, FTD Alerts, and more proactive outreach in the collection notice process could yield significantly improved results, while preventing collection accounts from reaching TDA status.

### 3. Use more timely *personal contacts* to help taxpayers fully resolve their collection problems.

In particular, collection cases that have not self-corrected during the notice process are indications of taxpayers dealing with financial distress, which warrant personal contacts to ensure the collection-related tax problems are *fully* resolved. The degree to which the IRS provides service consistent with the collecting principle that calls for “courteous, responsive and effective service and assistance” is most evident in the manner in which the IRS communicates with taxpayers whose accounts have become TDAs. Systemically generated levies and liens do not appear to be effective “conversation starters” for many of these taxpayers. The high volumes of reworked and unresolved accounts that are produced by the current collection strategy are strong indicators that more emphasis on personal contacts, made early in the delinquency cycle, is a key component to long-term improvements in service, business results, and compliance.

**4. Deliver collection inventory to organizational segments trained and empowered to provide “one-stop service,” based on the specialized needs of the taxpayer segment in question.**

Abandon the “assembly-line” collecting process in favor of one that provides collection treatments that are based on an understanding of the differing needs of “particular groups of taxpayers,” as envisioned in RRA 98. The operational “hand-offs” embedded in the current IRS collection strategy are inefficient and frequently ineffective. TDA accounts should only be assigned to organizational units that can fully address the differing needs and characteristics of the taxpayers involved. These units should be empowered to provide the full range of services and case actions needed to resolve the cases assigned to them.

**5. Use all available collection tools, including the full range of collection payment alternatives, e.g., offers in compromise and reasonable installment agreements.**

At the conclusion of FY 2010, the IRS reported approximately 1.3 million taxpayer accounts as uncollectible, and the dollar value of the CNC inventory was about \$66 billion.<sup>105</sup> Approximately 3.3 million TDA accounts remained assigned to the Collection Queue, which had a dollar value of about \$46 billion.<sup>106</sup> Approximately 80 percent of the inventory of open TDAs involved tax periods from the years 2007 and prior.<sup>107</sup> Yet, in the midst of one of the greatest economic downturns in American history, the IRS only accepted 13,866 offers in compromise and issued 40,461 partial payment installment agreements.<sup>108</sup> Including notice accounts and TDAs, only approximately 95,000 IAs were issued on BMF accounts, generally involving small business taxpayers.<sup>109</sup> Less than four percent of the TDAs handled by ACS were reported as uncollectible due to economic hardship.<sup>110</sup>

The IRS must recognize that liens and levies are not the only tools available to resolve collection accounts. While the more forceful enforcement tools may be necessary to address true “won’t pay” situations, IRS collection program results clearly indicate these actions aren’t the solutions for the majority of collection accounts. The IRS should take a much more *reasonable* and *proactive* approach to the use of collection payment alternatives, such as OICs and PPIAs, as important components of its collection strategy.

<sup>105</sup> IRS, Collection Activity Reports, NO-5000-149, *Recap of Accounts Currently Not Collectible Report* (Oct. 2010).

<sup>106</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

<sup>107</sup> *Id.*

<sup>108</sup> IRS, Collection Activity Report, NO-5000-6, *Installment Agreement Cumulative Report* (Oct. 2010).

<sup>109</sup> *Id.*

<sup>110</sup> IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

**6. Reevaluate requirements for managerial review of IRS liens and levies.**

Section 3421 of RRA 98 directed the IRS to implement procedures under which determinations to file liens and levies would require supervisory approval “where appropriate.” In hindsight, the IRS response to this directive was more “reaction” than “reflection.” As a result, the impact of this legislative directive was negligible – the IRS determined that managerial review requirements in most situations involving liens and levies were already “appropriate.”

In recent years, the IRS has ramped up the use of liens and levies to pre-RRA 98 levels, with the majority of these actions issued without human judgment, *i.e.*, systemically generated. The business results stemming from this strategy have been questionable, at best. However, the National Taxpayer Advocate has consistently cautioned the IRS to be more concerned with the negative, unintended consequences these actions can have on the affected taxpayers.<sup>111</sup> The intent of the RRA 98 directive is as valid in 2010 as it was in 1998. The IRS should revisit its policy in this area, and take appropriate steps to ensure that IRS enforcement actions are only employed in situations where they are warranted and necessary.

**7. Eliminate the Collection Queue.**

The existence of the Collection Queue has created a “numbing effect” by masking the ineffectiveness of the current IRS collection strategy. Rather than serving as a temporary stop on the “assembly line” for cases requiring assignment to the CFf, the Queue has become an institutionalized repository for cases the IRS collecting process has failed to resolve. Further, the use of the Queue appears to have heavily contributed to the indifference of the IRS to the aging of collection accounts, and the negative outcomes the delays in case processing have for taxpayers and the IRS’s business results.

The IRS perceives the use of the Queue as a necessity to manage its excessively large collection workload. However, the existence of the Queue mitigates the need for the IRS to routinely evaluate and address the *manner in which it manages* its workload. Elimination of the Queue would force the IRS to place much more emphasis on timely, effective contacts on self-reported tax delinquencies, design treatments that emphasize “one-stop service” in most collection contacts, and use so-called compliance assessments, *e.g.*, the TFRP much more judiciously.

**8. Measure and evaluate the effectiveness of collection tools and treatments in meeting taxpayer needs and promoting future compliance.**

The IRS must be more concerned and aware of the impact of its collection treatments on *taxpayer compliance*. The objective of the IRS to help taxpayers understand and

<sup>111</sup> See Status Update: *The IRS Has Been Slow to Address the Adverse Impact of its Lien Filing Policies On Taxpayers and Future Tax Compliance*, *supra*; National Taxpayer Advocate 2009 Annual Report to Congress 17-40 (Most Serious Problem: *One-Size-Fits-All Lien Filing Policies Circumvent the Spirit of the Law, Fail to Promote Future Tax Compliance, and Unnecessarily Harm Taxpayers*).



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meet their tax responsibilities extends beyond collecting the tax bill at hand.<sup>112</sup> The manner in which the IRS engages the taxpayer in the collection of the tax debt should promote future voluntary compliance.

Further, the IRS needs to develop a deeper understanding of the various factors that can lead to the noncompliant behavior that produced the delinquent collection cases, and use this information in determining treatment options that help prevent problems from repeating in the future. IRS enforcement actions certainly provide an element of “deterrence” for those situations where a taxpayer has chosen, or is considering, non-compliance with the law. However, the deterrence model is too narrow to address the issues contributing to the noncompliant behavior of many of the “can’t pay now” taxpayers in the inventory of IRS collection cases.<sup>113</sup>

The IRS has done very little research into the impact of various collection treatments on future compliance, and does not include any measures of future compliance in its Business Performance Reviews or other highly visible reports. The IRS should conduct additional studies to identify opportunities to expedite personal contacts on collection cases, where it is evident such actions are needed for mutually successful resolutions. Are there common characteristics for taxpayers who do not self-correct during the collection notice process? Are collection and compliance issues in cases involving small business taxpayers and non-profit organizations being handled effectively? Does the “assembly-line” process even make sense for addressing taxpayers who have had prior delinquencies assigned to ACS or the Collection Field operation? Does the IRS have an accurate method to identify chronic delinquents, and intervene accordingly? The IRS needs to ask and answer such questions to ensure that collection treatments and resources are used in the most efficient and effective manner. This information is critical to support meaningful changes to the IRS collection strategy.

<sup>112</sup> In FY 2009, dollars collected on open TDAs accounted for only 0.3 percent of total IRS revenue receipts. IRS, 2009 Data Book; IRS, Collection Activity Report, NO-5000-2, *Taxpayer Delinquent Account Cumulative Report* (Oct. 2010).

<sup>113</sup> For further discussion on this topic, see *Researching the Causes of Noncompliance: An Overview of Upcoming Studies, infra*.