

## COLLECTION: IRS Collection Policies and Procedures Negatively Impact Low-Income Taxpayers

### WHY THIS IS A SERIOUS PROBLEM FOR TAXPAYERS

Many taxpayers have difficulty paying their tax liabilities. Low-income taxpayers in particular struggle to balance paying their tax debts with paying their basic living expenses. The IRS offers collection alternatives for financially struggling taxpayers, but the alternatives are underutilized. Some taxpayers seeking installment agreements (IAs) do not receive the relief from user fees Congress intended because IRS procedures for identifying low-income taxpayers are flawed. Requests for offers in compromise (OICs) have declined in seven of the past eight years. Currently not collectible (CNC)-Hardship status and offset bypass refund (OBR) relief are unnecessarily difficult to obtain. The IRS continues to issue automated collection notices despite backlogs in processing taxpayer correspondence and amended returns, and some taxpayers are surprised to learn they cannot dispute the merits of their underlying liabilities at a collection due process (CDP) hearing because IRS collection notices do not adequately explain their rights.

### EXPLANATION OF THE PROBLEM

#### Taxpayers Continue to Experience Premature Assessments and Collection Action as a Result of Backlogs

The impacts of COVID-19 and reduced staffing on processing amended returns and correspondence have caused long delays in responding to taxpayers, but the IRS's computer system continues to move forward and either initiates or continues with collection notices and activity. The IRS should postpone and hold all automatic collection notices and actions of liens and levies until it has completed its backlog of unprocessed mail and responded to taxpayers' correspondence. If requested by a specific taxpayer, the Collection Division should provide a six-month hold on collection matters while correspondence, amended returns, or other requests are pending. Preventing collection actions on premature assessments is critical to avoid taxpayer burden and harm, as well as to protect the taxpayer's *rights to quality service* and *a fair and just tax system*.

#### Collection Notices Do Not Explain Taxpayers Rights

Taxpayers may request a CDP hearing to challenge enforced collection action, but the IRS does not adequately inform taxpayers that they will not be permitted to challenge their liability in a CDP hearing if they received a notice of deficiency or otherwise had an opportunity to dispute the liability.

#### The Low-Income Indicator Does Not Work as It Should, Causing Taxpayers to Pay Incorrect Installment Agreement User Fees

Congress and the IRS have taken measures to assist low-income taxpayers in managing their tax debt. One important development has been a low-income indicator (LII) that the IRS places on the accounts of taxpayers who, according to its records, meet the definition of low-income. The IRS uses the LII to determine whether taxpayers are eligible for a reduced or waived IA user fee. However, the LII does not accurately identify low-income taxpayers, which causes taxpayers to pay incorrect IA user fees. Taxpayers who are correctly identified as low-income do not receive fee reimbursements that the law requires. The IA user fees are lower for taxpayers who can make automatic payments through their bank accounts, known as direct debit IAs (DDIAs), an option that is not available to an unbanked taxpayer.

## Collection Relief Is Underutilized

CNC-Hardship designations are difficult to obtain, requests for OICs declined in seven of the past eight years, and OBRs involve such short timeframes that many taxpayers are not able to receive them.

### ANALYSIS

The National Taxpayer Advocate has long advocated that taxpayers who owe a tax debt should be responsible for that debt but not at the expense of suffering economic hardship.<sup>1</sup> This mirrors the approach taken by Congress. Congress granted broad levy authority to the IRS under IRC § 6331 but also recognized the need to balance this power with the needs of taxpayers facing economic hardship. For example, Congress exempted certain property from levy, including clothes and schoolbooks, tools of a trade, and unemployment benefits.<sup>2</sup> If a levy is creating an economic hardship, the IRS must release the levy under IRC § 6343(a)(1)(D).<sup>3</sup> “Economic hardship” is present when a levy “will cause an individual taxpayer to be unable to pay his or her reasonable basic living expenses.”<sup>4</sup>

The IRS uses the Federal Poverty Level guidelines to determine whether a taxpayer qualifies for certain protections. For example, some “low-income” taxpayers with adjusted gross incomes (AGIs) of 250 percent or less of the Federal Poverty Level qualify to pay a reduced IA user fee.<sup>5</sup> For the 48 contiguous states, the 2021 Federal Poverty Level for a one-person household is \$12,880, and for a family of four it is \$26,500. In the same year, 250 percent of the poverty level for a one-person household is \$32,200, and for a family of four it is \$66,250.<sup>6</sup>

Being low-income often means a person is less likely to have access to quality broadband internet.<sup>7</sup> He or she is less likely to have access to reliable childcare and stable housing.<sup>8</sup> Low-income taxpayers are less likely to have legal representation during an audit.<sup>9</sup> They are less likely to have a bank account.<sup>10</sup> These and other conditions impact a low-income taxpayer’s ability to navigate the IRS collection process or recover from the shock of an unexpected collection action.

To its credit, the IRS has recognized the need to alleviate the burden on taxpayers struggling to balance paying their tax debt with paying their basic living expenses, particularly in response to the COVID-19 pandemic.<sup>11</sup> The IRS identified low-income taxpayers as a “traditionally underserved” community and plans to “identify best practices and customize [its] approach to meet the specific needs of each underserved segment and provide personalized education and outreach through the service channels and in the languages preferred by these taxpayers.”<sup>12</sup> Meanwhile, some processes intended to help low-income taxpayers do not work as they should. The IRS and Congress can do more to accommodate the needs of low-income taxpayers in collection actions.

## Processing Delays and Correspondence Backlogs Result in Premature Collection Action

The impacts of COVID-19 and reduced staffing on processing amended returns and correspondence have caused long delays in responding to taxpayers. For example, if the IRS asserted a late filing penalty and the taxpayer responded with proof of mailing or a reasonable cause defense, the taxpayer may still be waiting to hear from the IRS many months later. Even though the IRS has not caught up on processing paper returns and correspondence, the IRS’s computer system continues to move forward and either initiates or continues with collection notices and activity. The National Taxpayer Advocate requests the IRS defer all collection activity until 45 days after the IRS addresses the merit of the taxpayer’s request or response to an adjustment, an assessment, or proposed liability. In other words, as the impacts of COVID-19 and reduced staffing continue to delay processing of paper correspondence, the IRS should hold all automatic collection notices and suspend collection actions, such as filing Notices of Federal Tax Liens (NFTLs) and issuing levies, until the IRS has completed its backlog of unprocessed mail and responded to taxpayers’ correspondence. In addition, if requested by a specific taxpayer, the Collection Division should provide longer holds on collection actions

while the correspondence, amended return, or other requests are pending. IRS guidance permits employees to stop sending collection notices to taxpayers for a specified number of weeks.<sup>13</sup> This prevents the IRS from proceeding with collection action. For example, if an employee requests additional information from the taxpayer by telephone, the employee will suppress collection notices to give the taxpayer time to respond. Suppressing collection notices generally lasts for nine weeks at the most.<sup>14</sup> This hold period on collection notices or enforcement is inadequate based upon the extended processing delays experienced by taxpayers. The National Taxpayer Advocate requests the IRS use a six-month hold absent serious compliance risk.

### ***Taxpayers Who Petitioned the Tax Court Experienced Premature Assessments and Collection Action***

As the IRS processed the backlog of mail held during the pandemic, it issued a high volume of notices of deficiency to taxpayers. The notices of deficiency provided taxpayers the ability to contest the tax adjustments to the U.S. Tax Court. When a taxpayer timely files a petition with the U.S. Tax Court, the IRS is prohibited from finalizing the assessment until the Tax Court decision has become final.<sup>15</sup> Corresponding with this high volume of notices was an increase in the number of petitions filed with the U.S. Tax Court.<sup>16</sup> The surge in petitions resulted in processing delays and backlogs for the Tax Court, as it could not timely process the drastic increase and was unable to serve timely notice of the filings to the IRS.

Without notice of the filing of the petition, the IRS's automated systems continued to finalize assessments and pursued collection actions against many taxpayers where assessment and collection should have been suspended pending litigation in the U.S. Tax Court. Consequently, taxpayers have been unnecessarily dealing with collection issues.

Collaborative efforts between the IRS, the IRS Office of Chief Counsel, TAS, the Tax Court, and practitioners resulted in a plan of action to reverse the premature assessments and to prevent continued premature assessments going forward – at least until the Tax Court's backlog is resolved. The Tax Court agreed to electronically provide the IRS with the limited data needed to identify petitioned cases quickly and systemically to prevent and reverse premature assessments. Resolving premature assessments prevents premature collection actions downstream. We encourage the continuation of this process into the future as a proactive measure to prevent future premature assessments, which was an issue before the pandemic. If this procedure were made permanent, premature assessments could be a thing of the past.

### ***Premature Assessments Existed Before the COVID-19 Pandemic***

IRC § 6213 prevents the IRS from making an assessment within 90 days of it mailing a notice of deficiency (150 days if the taxpayer is out of the country). IRC § 6503(a)(1) suspends the assessment statute for the period of time the IRS is prohibited from making an assessment (90 or 150 days) plus 60 days. The 60-day period is an additional period that “is allowed by law to process the assessment plus any time remaining on the assessment statute at the time the notice of deficiency was issued.”<sup>17</sup>

Pursuant to its procedures (other than those that apply to cases in Appeals, discussed below), the IRS suspends the assessment period for 105 days (165 for taxpayers outside the United States) after the mailing of the notice of deficiency. The suspension period is the sum of 90 days (or 150 days if the taxpayer is outside the United States) plus an additional 15 days to determine if the taxpayer has filed a petition.<sup>18</sup> The 105 days may be insufficient, however, if the taxpayer filed a Tax Court petition near the 90- or 150-day deadline and the Court's service on the IRS Office of Chief Counsel is delayed by more than 15 days.

The IRS benefits from a 60-day addition to its assessment statute to complete assessment processing. Extending the suspense period by an additional 15 days beyond the existing 15-day suspense period still affords the IRS a minimum of 30 days, plus any time remaining on the period of limitations for assessment, in which to make its default assessments.<sup>19</sup> While we recognize this additional 15-day extension may prove

challenging for some field cases that must be shipped to an IRS campus for assessment processing, extending the suspense period should present minimal or no difficulty for cases already at the campus – where premature assessments most often occur. Under normal IRS processing procedures, assessments are usually made with at least one year or more on the assessment statute.

TAS reviewed the premature assessments that occurred during the first four months of fiscal year (FY) 2021, comparing this data to the same time period in FY 2020.<sup>20</sup> The data showed that 95 percent of the premature assessments identified in FY 2020 occurred in the campus, and 82 percent of the premature assessments in FY 2021 were also the result of campus assessments. Our analysis revealed that it took an average of 25.5 days from the date of petition for cases to appear on a docket list in FY 2020. This average doubled to 53 days in FY 2021 during the same period. Increasing the suspense period from 15 to 30 days in its internal procedures would have prevented 90 percent of the premature assessments identified in FY 2020.

To avoid burdening taxpayers with potential premature assessments, the National Taxpayer Advocate recommends the IRS change its internal procedures to wait for 120 days (rather than 105 days) after it issues a notice of deficiency before assessing additional tax. Our recommendation is consistent with Appeals' 30-day suspension period for cases in which Appeals issues the notice of deficiency.<sup>21</sup> Preventing premature assessments is critical and is needed to avoid taxpayer burden and harm, as well as to protect the taxpayer's *rights to quality service and a fair and just tax system.*

### **IRS Notices Do Not Adequately Inform Taxpayers They Will Not Be Able to Dispute the Underlying Liability in a Collection Due Process Proceeding**

Under IRC §§ 6320 and 6330, taxpayers may request an independent review of an NFTL filed by the IRS or of a proposed levy action.<sup>22</sup> The purpose of these CDP rights is to give taxpayers adequate notice of IRS collection activity and a meaningful hearing after the IRS files an NFTL and before the IRS deprives them of property by levy action. In a CDP hearing, a taxpayer may raise a variety of issues, such as collection alternatives or spousal defenses, but may only dispute the underlying liability if the taxpayer did not actually receive a notice of deficiency or *did not otherwise have an opportunity to dispute such liability.*<sup>23</sup> The opportunity to dispute a tax liability includes the opportunity to challenge the liability in an administrative hearing before the IRS Independent Office of Appeals or in a judicial proceeding.<sup>24</sup>

At the conclusion of a CDP hearing, the taxpayer, within 30 days of the Settlement Officer's determination, may petition the Tax Court for review of the determination.<sup>25</sup> If the taxpayer's underlying liability was not at issue in the CDP hearing, the taxpayer cannot dispute the underlying liability in the Tax Court proceedings.<sup>26</sup>

For example, the IRS systemically assesses certain types of penalties, for which it is not required to issue a notice of deficiency, and initiates the collection process. As of 2018, the IRS was sending a version of Notice CP 15, Notice of Penalty Charge, informing the taxpayer of a penalty assessment under IRC § 6038 but making only a passing reference to the right to seek a conference with IRS Appeals. Page two of Notice CP 15, toward the end of the page, advises: "If you wish to appeal this penalty, send the IRS at the address shown on page 1 of this notice a written request to appeal within 30 days from the date of this notice. Your request should include any explanation and documents that will support your position. Your explanation should reflect all facts that you contend are reasonable cause for not asserting this penalty."

The IRS's position is that correspondence that advises taxpayers of their right to seek a conference with IRS Appeals constitutes an "opportunity to dispute such liability," even when the taxpayer does not respond to the notice or have an Appeals conference, and courts have agreed with the IRS.<sup>27</sup> Taxpayers who later request a CDP hearing are surprised to learn they cannot dispute the merits of the assessment and that an Appeals conference, briefly noted on page two of Notice CP 15, was their only opportunity to dispute the underlying liability in a prepayment forum before the IRS can proceed with enforced collection. The notice fails to

provide taxpayers with an explanation of the consequences of not filing a protest upon receipt of Notice CP 15. The few sentences in the IRS collection notice on page two do not provide sufficient information for taxpayers to understand their rights and the serious consequences of not filing a protest with the early collection notice.

The National Taxpayer Advocate recommends that the IRS revise Notice CP 15 and any other notices that in its view constitute “an opportunity to dispute such liability” to include complete information about taxpayers’ rights to seek an administrative appeal, that the notice constitutes “an opportunity to dispute” the liability, and that the taxpayer cannot dispute the merits of the underlying liability at a future CDP hearing or with the U.S. Tax Court.<sup>28</sup>

### **The IRS Does Not Accurately Identify Low-Income Taxpayers on Its Systems, Resulting in Incorrect Installment Agreement User Fees and Failures to Reimburse User Fees as the Law Requires**

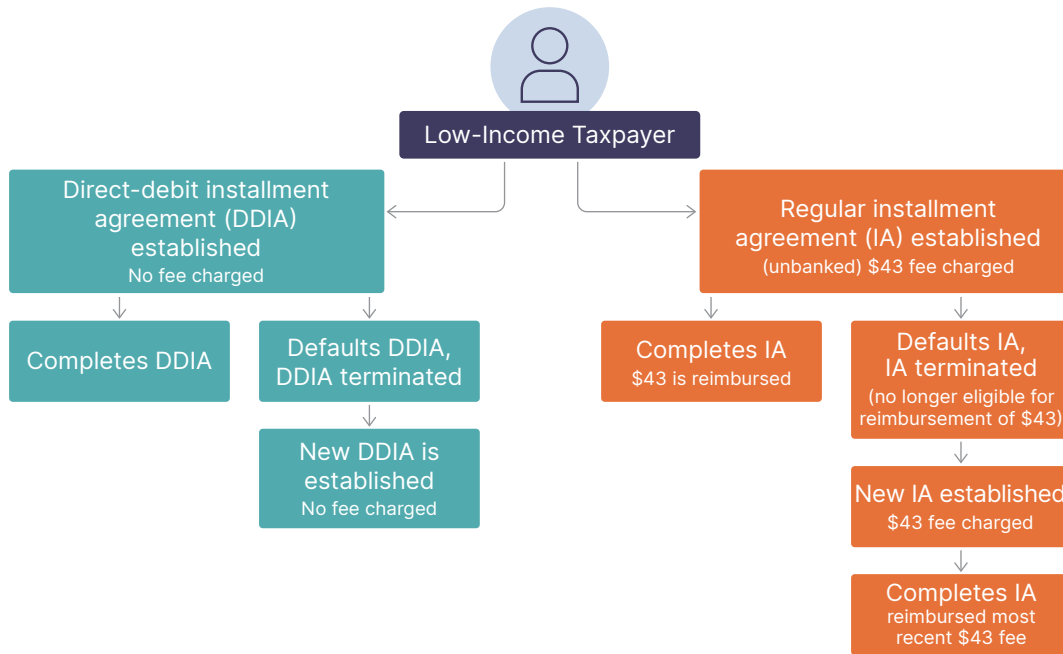
IAs are an important tool because they allow taxpayers to pay their tax debts in increments.<sup>29</sup> During this period, the IRS will not generally levy a taxpayer’s property or rights to property (*e.g.*, bank accounts or wages) to collect back taxes while taxpayers continue to make monthly payments.<sup>30</sup> The IRS may file NFTLs and offset refunds, however.<sup>31</sup>

**As the impacts of COVID-19 and reduced staffing continue to delay processing of paper correspondence, the IRS should hold all automatic collection notices and suspend collection actions, such as filing Notices of Federal Tax Liens and issuing levies, until the IRS has completed its backlog of unprocessed mail and responded to taxpayers’ correspondence.**

Taxpayers are often surprised to learn there is a user fee for a long-term IA, meaning an IA with a duration of more than six months.<sup>32</sup> The fee varies and may be reimbursable depending on whether the agreement is a DDIA, whether the IA is being reinstated after a default, and whether the taxpayer is low-income.<sup>33</sup> Low-income taxpayers for this purpose are those whose incomes do not exceed 250 percent of the Federal Poverty Level.<sup>34</sup> The IRS uses the LII to designate the accounts of taxpayers it has identified as low-income. The IA user fee is waived for low-income taxpayers with a DDIA and is \$43 for low-income taxpayers with a non-DDIA.<sup>35</sup> Figure 2.10.1 shows the IA user fees that apply to low-income taxpayers who, after speaking with an IRS employee, enter into long-term IAs.

FIGURE 2.10.1

## Installment Agreement User Fees Applicable to Low-Income Taxpayers



In comparison, for taxpayers who are not low-income, the IA user fee is \$107 for a DDIA and \$225 for a non-DDIA.<sup>36</sup> Thus, being recognized as low-income may make the difference between being able to enter into an IA or not.

The IRS process of identifying low-income taxpayers and placing the LII indicator on their accounts is not working as it should. TAS estimates that there are nearly nine million taxpayers who should have the LII on their account but do not, and more than one million taxpayers who have the LII on their account but should not.<sup>37</sup> To the extent these taxpayers entered into an IA, some paid a higher user fee than required or were treated as ineligible for reimbursement of IA user fees as the law requires, while others paid a lower user fee than required and were treated as eligible for reimbursement of a fee when they were not.

Even where the LII is on the account, the process does not always work as it should. For example, in FYs 2019 and 2020, nearly 74,000 taxpayers with an LII on their accounts entered into a non-DDIA. IRS records showed they were unbanked, the taxpayers paid their user fees, and they successfully completed their IAs.<sup>38</sup> Under the law, and according to IRS procedures, the IRS should reimburse their user fees.<sup>39</sup> None of these taxpayers received reimbursement of their user fees.<sup>40</sup>

Low-income taxpayers without the LII on their account can complete Form 13844, Application for Reduced User Fee for Installment Agreement. However, if the most recent tax return does not reflect a level of income that would qualify the taxpayer for the LII, the IRS will deny the request even though the taxpayer's situation may have changed since the taxpayer last filed a return.<sup>41</sup> In the context of OICs, the IRS has adopted procedures that allow it to consider changes in taxpayers' circumstances when considering whether the taxpayer qualifies for a fee waiver.<sup>42</sup> The National Taxpayer Advocate recommends that the IRS adopt the same procedures in the context of IA user fees.

Additionally, to lessen the disparity in the user fees between taxpayers with a bank account and those without, and to encourage more taxpayers to shift to an online resolution of their liabilities, the National Taxpayer



Advocate recommends that Congress amend IRC § 6159 to require the IRS to waive user fees for taxpayers who enter into DDIA's or who have income equal to or less than 250 percent of the Federal Poverty Level.

### **The IRS Should Spread the Installment Agreement User Fees Over the Life of the Installment Agreement**

Taxpayers have multiple options to pay an installment agreement. They can choose to make automatic payments through their bank accounts, known as DDIA's; they can authorize their employer to send monthly payments; they can pay monthly through the IRS website; they may pay with credit cards; or they can agree to send a check or money order monthly (non-DDIA's).<sup>43</sup> The IRS advises taxpayers the first installment must cover the user fee, even if their agreed-upon payment is less than the user fee. This is particularly difficult for taxpayers whose income only marginally covers their expenses and whose IA's might therefore collapse.

Whether or not Congress amends IRC § 6159 to simply waive IA user fees for all DDIA's, the National Taxpayer Advocate recommends the IRS spread the user fee over the life of the IA and include it in the agreed-upon payment amount for all taxpayers regardless of their choice of payment.

### **Currently Not Collectible Status Is Unnecessarily Difficult to Obtain, and Offers in Compromise and Offset Bypass Refunds Are Underutilized**

#### ***Taxpayers Must Call the IRS to Receive Currently Not Collectible Status***

CNC status due to hardship may be a good option for a low-income taxpayer who either needs some breathing room to recover from a one-time financial shock or who does not foresee a positive change in financial circumstances. Under its procedures, the IRS may designate a taxpayer's account as CNC status due to hardship when the IRS determines that a taxpayer cannot pay reasonable basic living expenses.<sup>44</sup> However, a taxpayer cannot request CNC consideration without first working with an IRS employee, and if the taxpayer is not already working with an IRS employee (for example, as part of a CDP case), it may be difficult to get the needed guidance or assistance.<sup>45</sup> With its low level of telephone service, the IRS must provide taxpayers with other options to seek collection alternatives.

Practitioners report that in their view, taxpayers "must be practically destitute to be granted a CNC."<sup>46</sup> CNC status causes the IRS to pause collection action, including levies, but does not stop the offset of future refunds or the filing of an NFTL.<sup>47</sup> Generally, the IRS requires financial information prior to putting a taxpayer's account in CNC-Hardship status, but there are exceptions.<sup>48</sup> The IRS systemically follows up on CNC-Hardship cases to determine whether there has been an increase in the taxpayer's income sufficient to remove the CNC designation.<sup>49</sup>

The IRS should create and adopt procedures for processing a form, like the form used to request an IA, that taxpayers could use to request CNC-Hardship status. This form would allow taxpayers with internet access to submit an online request for CNC-Hardship consideration based on their last filed return or on updated financial information, thus simplifying the request process for taxpayers and reducing the burden on IRS employees.<sup>50</sup>

#### ***Requests for Offers in Compromise Declined in Seven of the Past Eight Years***

An OIC allows taxpayers to settle their tax debt for less than the full amount owed.<sup>51</sup> An OIC based on doubt as to collectibility may be available after the IRS conducts a financial analysis and determines that the taxpayer's offer reflects his or her "reasonable collection potential."<sup>52</sup> A significant portion of taxpayers who request OICs are low-income. As of the end of 2020, almost 45 percent of taxpayers submitting an OIC in FY 2019 had an LII associated with their accounts, and 40 percent had that indicator on their accounts in FY 2020.<sup>53</sup> OICs positively affect a taxpayer's future compliance. A 2017 study by TAS Research found that individual taxpayers with accepted OICs were more likely (58 percent compared to 42 percent) to timely

file their subsequent income tax returns for the next five years when compared to taxpayers whose OICs the IRS did not accept.<sup>54</sup> For the first five years after the OIC, individual taxpayers with accepted OICs were also much more likely to pay their subsequent income taxes than taxpayers whose OICs the IRS did not accept (72 percent compared to 52 percent).<sup>55</sup> FY 2020 marked the seventh consecutive year of decline in OIC submissions, yet the IRS does not identify and measure factors that may drive OIC receipts.<sup>56</sup> The IRS recently unveiled a new how-to video series to educate taxpayers about OICs and help them avoid potential scams.<sup>57</sup> The National Taxpayer Advocate applauds this initiative.

To support its efforts to better serve underserved communities, TAS recommends that the IRS analyze the information on submitted OICs so it can develop more nuanced outreach to encourage low-income taxpayers to consider an OIC if appropriate. For instance, perhaps a taxpayer experiencing sustained unemployment is more likely to file a successful OIC.

The National Taxpayer Advocate also appreciates the recent changes the IRS made to the OIC program.<sup>58</sup> Effective November 1, 2021, the IRS will no longer offset, or recoup, refunds for the calendar year in which the IRS accepted the OIC, *i.e.*, the IRS will no longer apply that refund to the outstanding tax liability for the year(s) included in the OIC agreement. For example, assume the IRS accepts a taxpayer's OIC to settle liabilities for tax years (TYs) 2017 and 2018 on December 15, 2021. Under the new guidance, the IRS will no longer offset the refund on the taxpayer's TY 2021 return and apply it as a payment to the TYs 2017 and 2018 liabilities subject to the OIC agreement. For many taxpayers, this one change could be the difference of even considering applying for an OIC.

Another IRS development that TAS believes will increase OICs is a temporary change the IRS adopted on September 30, 2021, which allows processing of OICs when the IRS has not yet processed a required return, if the taxpayer sends a copy of the return.<sup>59</sup> TAS recommends that the IRS continue this practice while the COVID-19 processing challenges linger and until the IRS returns to a normal level of inventory backlog.

***The Offset Bypass Refund Is a Powerful Tool for Low-Income Taxpayers But Is Underutilized***

The IRS has the authority to offset a taxpayer's refund and apply it to a federal tax liability, but it is not required to do so.<sup>60</sup> The IRS can bypass the offset and issue a refund to taxpayers who are experiencing a financial hardship, a refund known as an Offset Bypass Refund (OBR).<sup>61</sup>

The OBR is especially important for low-income taxpayers who count on refundable credits to help them get through the year. TAS data shows that nearly 65 percent of the OBRs the IRS issued in FY 2021 included the Earned Income Tax Credit (EITC) or Additional Child Tax Credit (ACTC), for about \$1.4 million in relief. As shown in Figure 2.10.2, data going back to 2017 shows the value of OBRs in remediating a hardship.<sup>62</sup>

**FIGURE 2.10.2, Offset Bypass Refunds, FYs 2017–2021**

FY	Number of OBRs	Amount of OBRs	Number With EITC or ACTC	Amount of ACTC	Amount of EITC
2017	1,050	\$2,788,685	654	\$516,341	\$1,779,474
2018	1,037	\$2,999,220	664	\$579,144	\$1,817,649
2019	745	\$2,298,465	492	\$585,319	\$1,438,669
2020	710	\$2,358,518	518	\$730,305	\$1,641,672
2021	511	\$1,854,337	331	\$476,312	\$904,196



Generally, an OBR is only available before the IRS applies the current refund to a prior tax liability and where the taxpayer establishes economic hardship (for example, the individual needs to pay a utility bill to avoid disconnection). Once the taxpayer establishes the amount of the hardship, the IRS will only bypass enough of the offset to alleviate the hardship amount. For example, if a taxpayer has a refund of \$4,000 and outstanding tax liabilities of more than the \$4,000, but establishes a hardship of \$1,000, the IRS will issue a \$1,000 refund to the taxpayer and offset the balance, \$3,000, to the tax liability.

With the short timeframe involved in OBRs – filing a return, contacting the IRS, and establishing the extent of the hardship before the IRS applies the refund to a prior tax liability – many taxpayers are not able to receive an OBR prior to their refund being offset by filing their return. The National Taxpayer Advocate recommends that the IRS establish and publicize a designated unit to receive and process OBRs. Upon a request by a taxpayer, the IRS could utilize a freeze code holding up any payment of a refund or offset to a prior tax liability that would provide the taxpayer and the IRS time to document the hardship before any offset takes place.

The OBR procedure is not a well-known option, and there is a very limited time in which taxpayers can request the OBR and establish their hardship amount. In Publication 594, The IRS Collection Process, the IRS explains the IRS's authority to offset a refund to a tax liability but not the taxpayer's ability to request an OBR.<sup>63</sup> The IRS has no form taxpayers can use to request an OBR, and a search of the IRS's website does not reveal any direct references to either "OBR" or "offset bypass." While the Internal Revenue Manual (IRM) guides its employees on processing OBRs, most taxpayers are unlikely to stumble across the benefits or requirements of the OBR program, and if they call the IRS, as noted above, the IRS may not answer their call. Assistance may be available from TAS, however.

The National Taxpayer Advocate recommends the IRS make OBRs systemically available to taxpayers whose refunds include allowable EITC claims, to the extent the allowable EITC exceeds the current year's tax liability.<sup>64</sup> Programming its system to issue refunds for this amount systemically will reduce the need to request and manually process OBRs and provide these taxpayers the benefits Congress intended by providing financial support for taxpayers needing financial assistance to support their families.

The IRS can better get the message out by leveraging relationships it has with the public through Stakeholder Partnerships, Education, and Communication (SPEC).<sup>65</sup> Volunteers who prepare tax returns through Volunteer Income Tax Assistance and Tax Counseling for the Elderly sites could share information on OBRs at the time of return preparation or submission.

In addition, to better accomplish Congress's intent of giving taxpayers the financial support EITC provides, the National Taxpayer Advocate recommends that Congress amend IRC § 6402(a) to prohibit offset of the portion of the refund associated with EITC to prior year tax liabilities.

## CONCLUSION AND RECOMMENDATIONS

Congress and the IRS acknowledge that low-income taxpayers struggle to balance paying their tax liabilities with paying their basic living expenses. Particularly as part of its response to the COVID-19 pandemic, the IRS provided relief from collection action that burdens low-income taxpayers. The National Taxpayer Advocate applauds those efforts and more recent steps the IRS has taken to make OICs more attractive. But Congress and the IRS can do more.

## Preliminary Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that the IRS:

1. Defer collection activity until 45 days after the IRS addresses the merits of a taxpayer's request or response to an adjustment, an assessment, or proposed liability.
2. If requested, provide a six-month hold on collection matters while the taxpayer's correspondence, amended return, or other request is pending.
3. Wait for 120 days (rather than 105 days) after issuing a notice of deficiency before assessing additional tax (*i.e.*, amend the IRM to extend the suspension period from 15 days to 30 days).
4. Revise Notice CP 15 and any other correspondence to taxpayers that in the IRS's view constitutes "an opportunity to dispute such liability" for purposes of IRC § 6330(c)(2)(B) to include detailed information about taxpayers' rights and consequences of an administrative appeal, to explain that the notice constitutes their only "opportunity to dispute" the liability, and to explain that the taxpayer will not be permitted to dispute the merits of the liability at a future CDP hearing or before the U.S. Tax Court.
5. Change IAs to incorporate user fees into the agreed-upon payments over the life of the agreement rather than requiring taxpayers to pay the user fee in the first month.
6. Allow taxpayers to request CNC-Hardship consideration either online or by submitting a standardized form.
7. Analyze information from submitted OICs and develop a more nuanced outreach to encourage low-income taxpayers to consider OICs when appropriate.
8. Continue the practice of processing OICs when the IRS has not yet processed a required return when the taxpayer sends a copy of the return while the COVID-19 processing challenges linger and until the IRS returns to a normal level of inventory backlog.
9. Allow IRS employees to freeze refunds while a taxpayer's request for an OBR is under consideration.
10. Make OBRs systemically available to taxpayers to the extent their allowable EITC claims exceed the current year's tax liability where the taxpayer has only federal tax liabilities.

## Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6159 to require the IRS to waive user fees for taxpayers who enter into DDIA's or who have an AGI equal to or less than 250 percent of the Federal Poverty Level.
2. Amend IRC § 6402(a) to prohibit offset of the EITC portion of a tax refund.
3. Amend IRC § 6330 to provide that "an opportunity to dispute" an underlying liability means an opportunity to dispute such liability in a prepayment judicial forum.
4. Amend IRC § 6212 to provide that the assessment of foreign information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D is subject to deficiency procedures.

## RESPONSIBLE OFFICIALS

Kenneth Corbin, Commissioner, Wage and Investment Division, and Chief Taxpayer Experience Officer  
Darren Guillot, Commissioner, Collection and Operations Support, Small Business/Self-Employed Division

**IRS COMMENTS**

The IRS is aware of the many challenges that low-income taxpayers face and is committed to providing appropriate relief and assistance to aid these taxpayers in balancing the ability to pay their living expenses and their tax liabilities. The unprecedented challenges of the COVID-19 pandemic have had lasting effects on the IRS collection process that we are continuing to mitigate through adjusted policies and procedures. We have taken extraordinary steps to protect the rights of, and reduce the burden on, all taxpayers. We will continue to adapt to meet the needs of taxpayers while effectively and fairly administering the tax laws.

We appreciate the National Taxpayer Advocate's (NTA's) recognition of the initiatives, including the Offer in Compromise policy to not offset refunds after the offer acceptance date, that we have implemented to improve the experience of underserved taxpayers and our continued actions to educate the taxpayers of available collection alternatives. The IRS offers a wide range of alternatives for taxpayers who may be facing difficult financial circumstances, including short and long-term payment plans, temporary suspensions of collection activity, and offers in compromise. Training and procedural guidelines in the Internal Revenue Manual (IRM) provide employees information on how to determine a taxpayer's ability to pay, enabling appropriate decision making to resolve cases. The IRS continues to be committed to identifying best practices and customizing our approach to meet the specific needs of each underserved segment of the population and provide personalized education and outreach through the service channels and in the languages preferred by these taxpayers.

The long-term effect of the pandemic has created unavoidable delays responding to some taxpayer correspondence being addressed within the campus operations. We understand the concern for potential premature collection actions due to these delays. Our collection processes require certain letters and notices to be promptly sent to taxpayers within statutory timeframes. Delaying all collection notices as the NTA suggests would have the effect of delaying notification to taxpayers who do not have claims or correspondence pending, potentially delaying their efforts to resolve their liabilities. However, we genuinely regret any taxpayers are having these experiences and we are balancing the need to issue collection notices and other compliance correspondence with the possibility that we have not yet processed a payment or account adjustment. Our collection processes generally provide taxpayers multiple opportunities, including the collection due process, to raise issues or concerns to the collection or appeals functions prior to enforcement. Taxpayers who believe that a notice they receive is incorrect should follow the notice's guidance on how to request help from the IRS and we will work with the taxpayer to address their concerns prior to enforcement.

We have worked in recent years to improve our collection notices, to make them easier to understand. In addition to revised text, a number of notices now include "quick response" (QR) codes which can be scanned with a cell phone to direct the taxpayer to information and resources on IRS.gov having to do with payment options, taxpayer rights and other topics.

The IRS recognizes and understands the potential issues that can arise due to premature assessments that could occur because of the backlog in the Tax Court, which has been compounded by the pandemic. In response, the Tax Court, in collaboration with the IRS and the NTA, has created an interim solution to electronically provide the IRS with the data necessary to identify petitioned cases quickly and systemically to prevent and reverse premature assessments. In addition, the IRS has created an email box to address premature assessments on an individual basis. The IRS has published articles addressing the availability of this mailbox and its requirements.

We share the NTA's commitment to providing low-income taxpayers with access to suitable collection alternatives. We are willing to work with the Taxpayer Advocate Service (TAS) office on proposals to make user fees less burdensome for low-income taxpayers, where doing so would be feasible. We have worked to improve the awareness of underserved taxpayer populations with regard to the options available to help them to meet their tax obligations. We have implemented programming to correct the systemic Low-Income Indicator (LII) determination on taxpayer accounts, and we are currently working to identify the scope and financial impact to taxpayers who did not have the LII on their accounts to initiate required corrective actions.

The IRS recognizes the positive impact Offset Bypass Refunds (OBRs) can have for taxpayers suffering immediate and specific financial hardships. In December 2021, the Director of Collection published an article, *How IRS Collection is Helping Taxpayers During the Pandemic*,<sup>66</sup> highlighting the availability and process for requesting an OBR to increase awareness for affected taxpayers.

We are continually striving to improve our collection practices to protect taxpayer rights and effectively administer the tax laws. As new opportunities arise to improve services to taxpayers, we will educate the taxpayers of the different options available to assist them in paying their tax liabilities.

## TAXPAYER ADVOCATE SERVICE COMMENTS

The National Taxpayer Advocate agrees that the IRS offers a wide range of alternatives for taxpayers who may be facing difficult financial circumstances, including short- and long-term payment plans, temporary suspensions of collection activity, and OICs. However, these alternatives are not as widely used as they could be, due to, among other things, the flawed LII indicator, the requirement of upfront payment of IA fees, and the need to speak with an IRS employee to obtain CNC-Hardship status. The reasons for the declining numbers of submitted OICs in seven of the last eight years are unknown, and we encourage the IRS to investigate why this is happening.

Because the IRS is declining to suppress collection notices as the National Taxpayer Advocate is recommending, it is unclear how the IRS is "balancing the need to issue collection notices and other compliance correspondence with the possibility that we have not yet processed a payment or account adjustment." In the meantime, the IRS's advice that "taxpayers who believe that a notice they receive is incorrect should follow the notice's guidance on how to request help from the IRS and we will work with the taxpayer to address their concerns prior to enforcement" may be generally sound but feels almost taunting when calls to the IRS reached an all-time high and the Level of Service on IRS phone lines fell to an all-time low.<sup>67</sup> Possibly the IRS could establish another option of communication for taxpayers requesting a stay on collection to prevent these situations. The National Taxpayer Advocate welcomes future discussions to eliminate undue burdens on taxpayers.

The National Taxpayer Advocate appreciates the IRS's willingness to work with TAS on proposals to make user fees less burdensome for low-income taxpayers, where doing so would be feasible. We look forward to the IRS's responses to our specific recommendations, including those relating to user fees and collection notices.

## RECOMMENDATIONS

### Administrative Recommendations to the IRS

The National Taxpayer Advocate recommends that IRS:

1. Defer collection activity until 45 days after the IRS addresses the merits of a taxpayer's request or response to an adjustment, an assessment, or proposed liability.
2. If requested, provide a six-month hold on collection matters while the taxpayer's correspondence, amended return, or other request is pending.
3. Wait for 120 days (rather than 105 days) after issuing a notice of deficiency before assessing additional tax (*i.e.*, amend the IRM to extend the suspension period from 15 days to 30 days).
4. Revise Notice CP 15 and any other correspondence to taxpayers that in the IRS's view constitutes "an opportunity to dispute such liability" for purposes of IRC § 6330(c)(2)(B) to include detailed information about taxpayers' rights and consequences of an administrative appeal, to explain that the notice constitutes their only "opportunity to dispute" the liability, and to explain that the taxpayer will not be permitted to dispute the merits of the liability at a future CDP hearing or before the U.S. Tax Court.
5. Adopt procedures that allow the IRS to consider changes in taxpayers' circumstances when determining the applicable IA user fee, similar to procedures in place for considering whether a taxpayer qualifies for an OIC fee waiver.
6. Change IAs to incorporate user fees into the agreed-upon payments over the life of the agreement rather than requiring taxpayers to pay the user fee in the first month.
7. Allow taxpayers to request CNC-Hardship consideration either online or by submitting a standardized form.
8. Analyze information from submitted OICs and develop a more nuanced outreach to encourage low-income taxpayers to consider OICs when appropriate.
9. Continue the practice of processing OICs when the IRS has not yet processed a required return when the taxpayer sends a copy of the return while the COVID-19 processing challenges linger and until the IRS returns to a normal level of inventory backlog.
10. Allow IRS employees to freeze refunds while a taxpayer's request for an OBR is under consideration.
11. Make OBRs systemically available to taxpayers to the extent their allowable EITC claims exceed the current year's tax liability where the taxpayer has only federal tax liabilities.

### Legislative Recommendations to Congress

The National Taxpayer Advocate recommends that Congress:

1. Amend IRC § 6159 to require the IRS to waive user fees for taxpayers who enter into DDIAAs or who have an AGI equal to or less than 250 percent of the Federal Poverty Level.
2. Amend IRC § 6402(a) to prohibit offset of the EITC portion of a tax refund.
3. Amend IRC § 6330 to provide that "an opportunity to dispute" an underlying liability means an opportunity to dispute such liability in a prepayment judicial forum.
4. Amend IRC § 6212 to provide that the assessment of foreign information reporting penalties under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D is subject to deficiency procedures.

## Endnotes

- 1 For an example of TAS advocacy related to collection practices and low-income taxpayers, see National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).
- 2 For a complete list of property exempt from levy, see IRC § 6334(a).
- 3 See also Treas. Reg. §§ 301.6320-1(e)(3) Q&A-E1, 301.6330-1(e)(3) Q&A-E1, which require the IRS to consider whether the continued existence of a filed Notice of Federal Tax Lien (NFTL) or a proposed levy balances the need for efficient collection of the tax with legitimate concerns of the taxpayer that the collection action be no more intrusive than necessary.
- 4 Treas. Reg. § 301.6343-1(b)(4).
- 5 See IRC § 6159(f)(2).
- 6 See U.S. Dept. of Health and Human Services, *Poverty Guidelines* (Jan. 13, 2021), <http://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.
- 7 Only 57 percent of Americans earning less than \$30,000 per year report having broadband internet access at home compared to 93 percent earning \$100,000 or more per year. Emily Vogels, *Digital Divide Persists Even as Americans With Lower Incomes Make Gains in Tech Adoption*, PEW RESEARCH CENTER (June 22, 2021), <https://www.pewresearch.org/fact-tank/2021/06/22/digital-divide-persists-even-as-americans-with-lower-incomes-make-gains-in-tech-adoption/>.
- 8 Douglas Rice, et al., *Child Care and Housing: Big Expenses With Too Little Help Available*, CENTER ON BUDGET AND POLICY PRIORITIES (Apr. 26, 2019), <https://www.cbpp.org/research/housing/child-care-and-housing-big-expenses-with-too-little-help-available>.
- 9 See Most Serious Problem: *Correspondence Audits: Low-Income Taxpayers Encounter Communication Barriers That Hinder Audit Resolution, Leading to Increased Burdens and Downstream Consequences for Taxpayers, IRS, TAS, and the Tax Court*, *supra*.
- 10 Federal Deposit Insurance Corporation, *How America Banks: Household Use of Banking and Financial Services 2019 FDIC Survey* 13, Table 3.1 (Oct. 2020), <https://www.fdic.gov/analysis/household-survey/2019report.pdf> (showing that in 2019, 23.3 percent of households with incomes of less than \$15,000 were unbanked, compared to 10.4 percent of households with incomes between \$15,000 and \$30,000; 4.6 percent for households with incomes between \$30,000 and \$50,000; 1.7 percent for households with incomes between \$50,000 and \$75,000; and 0.6 percent for households with incomes of at least \$75,000).
- 11 The People First Initiative put a halt to most collection action between April 1, 2020, and July 15, 2020. By June 2021, the IRS resumed many collection practices, but systemic and automated lien and levy programs remained paused. Taxpayers who failed to respond to previous follow-up letters regarding a tax liability were subject to levies or NFTL filings beginning August 15, 2021. IRS, *IRS Operations During COVID-19: Mission-critical Functions Continue*, <https://www.irs.gov/newsroom/irs-operations-during-covid-19-mission-critical-functions-continue> (last visited July 3, 2021).
- 12 IRS, *Taxpayer First Act Report to Congress* 63 (Jan. 2021).
- 13 See Internal Revenue Manual (IRM) 21.5.2.4.8.2, *Suppressing Balance Due Notices* (Oct. 4, 2021).
- 14 See IRM 21.5.2.4.8.2(1)(d), *Suppressing Balance Due Notices* (Oct. 4, 2021).
- 15 IRC § 6213(a).
- 16 See *Most Litigated Issues, Tax Litigation Overview*, *infra*.
- 17 IRM Exhibit 4.8.9-3, *Assessment Statutes: Agreed Case Without Form 872-A Consent, Agreed Case With Form 872-A Consent, Defaulted 90 Day Letter Without Form 872-A Consent, Defaulted 90 Day Letter With Form 872-A Consent* (June 19, 2015).
- 18 IRM 4.8.9.20, *Notice of Deficiency Suspense Files* (July 9, 2013).
- 19 See IRC §§ 6501 and 6503 for the period of limitation on assessment and suspension of the period.
- 20 Memorandum from the National Taxpayer Advocate to Deputy Comm'r, Small Business/Self-Employed (SB/SE) Examination; Deputy Comm'r, SB/SE Collection and Operations Support; Comm'r, Wage and Investment (W&I); and Deputy Comm'r, W&I (July 13, 2021).
- 21 IRM 8.20.6.8, *Introduction to Appeals-Issued Statutory Notice of Deficiency (SND)* (Sept. 10, 2018). This IRM section was “updated to clarify the suspense period includes the number of days during which the taxpayer may file a petition with the United States Tax Court (USTC) plus an additional 30 days to allow for mailing of the petition, assignment of a docket number, and inclusion on the Electronic Docket Listing (EDL). A Note has been added to strengthen the guidance and avoid premature default action.”
- 22 IRC §§ 6320(b), 6330(b), enacted as part of the IRS Restructuring and Reform Act of 1998, Pub. L. No. 105-206, § 3401, 112 Stat. 685, 746.
- 23 IRC §§ 6320(c), 6330(c)(2)(B) (emphasis added).
- 24 Treas. Reg. §§ 301.6320-1(e)(3), Q&A-E2; 301.6330-1(e)(3)Q&A-E2.
- 25 IRC §§ 6230(c), 6330(d).
- 26 Treas. Reg. § 301.6330-1(f)(2), Q&A (F)(3).
- 27 See, e.g., Treas. Reg. 301.6320-1(e)(4), Example 3 (relating to the trust fund recovery penalty (TFRP) under IRC § 6672). The IRS sends Letter 1153, Proposed Trust Fund Recovery Penalty Notification, to inform taxpayers it is asserting the TFRP, and courts have held Letter 1153 is an “opportunity to dispute such liability.” *Bletsas v. Comm’r*, T.C. Memo. 2018-128, *aff’d* 784 F. App’x 835 (2d Cir. 2019); *Smith v. Comm’r*, T.C. Memo. 2015-60; *Thompson v. Comm’r*, T.C. Memo. 2012-87.
- 28 See National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 35 (Amend IRC § 6330 to Provide That “an Opportunity to Dispute” an Underlying Liability Means an Opportunity to Dispute Such Liability in a Prepayment Judicial Forum); National Taxpayer Advocate 2022 Purple Book: *Compilation of Legislative Recommendations to Strengthen Taxpayer Rights and Improve Tax Administration* 33 (Amend IRC § 6212 to Provide That the Assessment of Foreign Information Reporting Penalties Under IRC §§ 6038, 6038A, 6038B, 6038C, and 6038D Is Subject to Deficiency Procedures).
- 29 IRC § 6159.
- 30 Treas. Reg. § 301.6159-1(f)(1).
- 31 IRM 5.14.1.4.3, *Notice of Federal Tax Lien and Installment Agreements* (Sept. 22, 2021); IRM 5.14.1.2 (11) *Installment Agreements and Taxpayer Rights* (Sept. 22, 2021).
- 32 Meeting Between National Public Liaison Participants and TAS on the topic of Collection Issues Facing Low-Income Taxpayers and Barriers Low-Income Taxpayers Face During the Examination Process (Nov. 9, 2021). The IRS extended the period for long-term IAS from four months to six months. William Hoffman, *IRS May Already Have Spent Much of Its Proposed Budget Increase*, TAX NOTES TODAY (Nov. 19, 2021).
- 33 See IRM 5.19.1.6.4.6, *IA Payment Methods and User Fees (UF) Overview* (Nov. 18, 2021).
- 34 See IRC § 6159(f)(2).



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- 35 Under IRC § 6159(f)(2)(A), the IA user fee is waived for low-income taxpayers who enter into a DDIA, and if a low-income taxpayer is unable to enter into a DDIA (perhaps because the taxpayer does not have a bank account), the IRS must reimburse the taxpayer for any fee the taxpayer paid upon completion of the IA. Treas. Reg. § 300.1 caps the IA user fee for low-income taxpayers at \$43.
- 36 See IRM 5.19.1.6.4.6, IA Payment Methods and User Fees (UF) Overview (Nov. 18, 2021) for an overview of fees that apply depending on the type of IA.
- 37 Individual Master File (IMF), Individual Return Transaction File (IRTF) on IRS Compliance Data Warehouse (CDW) through Oct. 28, 2021, based on returns filed in 2019 or 2020, excluding returns filed on the IRS Non-Filer Sign-Up Tool to claim economic impact payments and including the returns of taxpayers whose AGI was reduced to exclude unemployment compensation as provided by Section 9042 of the American Rescue Plan Act of 2021. The total number of incorrect LIIs constitutes about six percent of all accounts with an LII (9,990,985 out of 178,691,827). To its credit, the IRS adjusted the LII programming after TAS pointed out that there appeared to be a problem with the process. Although the current levels are unacceptably high, TAS estimated that at one time there were about 15 million taxpayers who should have had the LII on their account but did not, and nearly six million taxpayers who had the LII on their account but should not. The LII correctly identifies a significant number of taxpayers who are eligible for reduced or waived IA user fees. As of Nov. 28, 2021, 255,005 taxpayers in inventory with an active IA had a waived fee, and 273,138 had a reduced fee based on low-income qualification. Collection Activity Report 5000-5 Part 2 Stratifications Fee Data (Nov. 28, 2021).
- 38 There were 51,121 of these taxpayers in FY 2019 and 22,759 in FY 2020.
- 39 IRC § 6159(f)(2)(A), IRS Program Requirements Package 460-002, rev'd Mar. 2, 2021.
- 40 IMF on IRS CDW through Oct. 28, 2021. New programming to implement the reimbursement process is scheduled for deployment in Jan. 2022. IRS response to TAS fact check, citing Uniform Work Request 243223 (Dec. 13, 2021).
- 41 In some cases, the IRS approves the request for a reduced user fee but does not inform the taxpayer until after the IRS required the taxpayer to pay the unreduced fee.
- 42 See IRM 5.19.7.2.1.1(3), OIC Application Fee (July 9, 2020) (explaining that a taxpayer whose gross monthly income multiplied by 12 months falls at or below 250 percent of the Federal Poverty Level does not need to pay an OIC user fee). See also IRM 5.8.2.4.1(3), Determining Processability (Sept. 22, 2020) (explaining the taxpayer may qualify for an OIC fee waiver under two different methods: AGI or under monthly income and household size).
- 43 IRS, Letter 2273C, Installment Agreement Accepted: Terms Explained. See IRM 5.19.1.6.4.6, IA Payment Methods and User Fees (UF) Overview (Nov. 18, 2021).
- 44 IRM 5.16.1.2.9, Hardship (Apr. 13, 2021).
- 45 The consolidated Automated Collection System phone lines, used to answer taxpayer calls about collection actions, had a Level of Service (LOS) of 38 percent in FY 2021, but even in FY 2019, the last pre-pandemic year, the LOS was only 34 percent. See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, supra.
- 46 Meeting Between National Public Liaison Participants and TAS on the topic of Collection Issues Facing Low-Income Taxpayers and Barriers Low-Income Taxpayers Face During the Examination Process (Nov. 9, 2021).
- 47 IRC § 6343(e) requires release of a levy on salary or wages payable to or received by a taxpayer upon agreement with the taxpayer that the tax is CNC. IRS Letter 4223, Case Closed – Currently Not Collectible, for example, advises taxpayers the IRS may offset their refunds or file an NFTL even if they are in CNC status.
- 48 IRM 5.16.1.2.9, Hardship (Apr. 13, 2021). Exceptions include when the aggregate amount is below a certain threshold and the taxpayer has a terminal illness; has excessive medical bills; is incarcerated; has Social Security, welfare, or unemployment as the only source of income; or is unemployed with no source of income. IRM 5.16.1.2.9(6), Hardship (Apr. 13, 2021).
- 49 IRM 5.16.1.6, Mandatory Follow-Up (Apr. 13, 2021).
- 50 As the Internal Revenue Service Advisory Council notes, “the IRS must move away from paper filings and communications – the vulnerabilities of our tax system to paper filings have been highlighted by the pandemic. The cause of future system disruptions may differ, but disruptions will occur.” Internal Revenue Service Advisory Council Public Report 14 (Nov. 2021).
- 51 IRC § 7122.
- 52 See IRM 5.8.1.1.2, Authority (Apr. 20, 2021), describing the grounds for compromising a liability: doubt as to collectibility; doubt as to liability; or promotion of effective tax administration. Reasonable collection potential is the amount that can reasonably be collected from the taxpayer after considering the amount of the taxpayer’s assets, income, and expenses. IRM Exhibit 5.8.1-1, Common Abbreviations Used in IRM 5.8.1 (Apr. 20, 2021).
- 53 IRS, CDW, IMF Entity Table as of cycle 53, 2020.
- 54 National Taxpayer Advocate 2017 Annual Report to Congress vol. 2, at 61 (*A Study of the IRS Offer in Compromise Program*).
- 55 *Id.* at 43. For a research study related to business taxpayers using the OIC program showing even better results, see National Taxpayer Advocate 2018 Annual Report to Congress vol. 2, at 132-156 (*A Study of the IRS Offer in Compromise Program for Business Taxpayers*). Taxpayers who request OICs agree to “comply with all provisions of the internal revenue laws, including requirements to timely file tax returns and timely pay taxes for the five year period beginning with the date of acceptance of this offer and ending through the fifth year, including any extensions to file and pay.” IRS, Form 656, Offer in Compromise 6 (Apr. 2021).
- 56 IRS, CAR 5000-108, Monthly Report of Offer in Compromise Activity (Sept. 29, 2008; Oct. 6, 2009; Oct. 4, 2010; Oct. 3, 2011; Oct. 3, 2012; Sept. 30, 2013; Sept. 29, 2014; Oct. 5, 2015; Oct. 3, 2016; Oct. 2, 2017; Oct. 1, 2018; Sept. 30, 2019; and Sept. 28, 2020). See also National Taxpayer Advocate Fiscal Year 2022 Objectives Report to Congress 41 (Systemic Advocacy Objective: *Increase Taxpayer Participation in the Offer in Compromise Program*). There was an increase in OIC submissions of about ten percent in FY 2021 compared to FY 2020, but the number of submissions in FY 2021 was still lower than the number of submissions in FY 2019.
- 57 IRS, CAR 5000-108, Monthly Report of Offer in Compromise Activity (Oct. 4, 2021).
- 58 IRS, IR-2021-229, IRS Offers How-To Videos to Help Taxpayers Apply for Offers in Compromise and Avoid Scams, <https://www.irsvideos.gov/OIC> (Nov. 17, 2021).
- 59 IRS, SBSE-05-1021-0063 (Oct. 28, 2021); Erin M. Collins, IRS Initiates New Favorable Offer in Compromise Policies, NATIONAL TAXPAYER ADVOCATE BLOG (Nov. 15, 2021).
- 60 IRS, SBSE-05-0621-0029 (June 1, 2021) and SBSE-05-0921-0052 (Sept. 30, 2021).
- 61 IRC § 6402(a). However, the IRS must offset refunds when the taxpayer has any other federal debt or state tax liability.
- 62 IRC § 6402(c)-(f). The IRS has no discretion to determine whether an offset to a past-due child support or other federal agency non-tax debt under the Treasury Offset Program should occur. IRM 21.4.6.5.11.1, Offset Bypass Refund (Nov. 8, 2017).

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- 61 IRM 21.4.6.5.11.1, Offset Bypass Refund (Nov. 8, 2017). As noted above, the IRS's new policy to not offset refunds to pay tax liabilities following the IRS's acceptance of an OIC and to consider OBRs during the pendency of an OIC is encouraging. IRS, SBSE-05-1021-0063 (Oct. 28, 2021), Erin M. Collins, IRS Initiates New Favorable Offer in Compromise Policies, NATIONAL TAXPAYER ADVOCATE BLOG (Nov. 15, 2021).
- 62 IRS, IMF, IRTF, excluding OBRs in excess of \$25,000.
- 63 IRS, Pub. 594, The IRS Collection Process (July 2018).
- 64 For additional arguments for systemic OBRs, see American Bar Association Tax Section, Letter to Commissioner Charles P. Rettig, Comments Regarding Review of Regulatory and Other Relief to Support Taxpayers During COVID-19 Pandemic (Jan. 15, 2021).
- 65 IRS, Pub. 5090, SPEC Marketing Product for Educational Institutions, Educational Institutions Making a Difference (Aug. 2013).
- 66 IRS, How IRS Collection Is Helping Taxpayers During the Pandemic, <https://www.irs.gov/about-irs/how-irs-collection-is-helping-taxpayers-during-the-pandemic>.
- 67 See Most Serious Problem: *Telephone and In-Person Service: Taxpayers Face Significant Challenges Reaching IRS Representatives Due to Longstanding Deficiencies and Pandemic Complications*, *supra*.