

Area of
Focus #2

The IRS Plan for Implementing the Private Debt Collection Program Includes Practices That Will Harm Taxpayers and Tax Administration

TAXPAYER RIGHTS IMPACTED¹

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

Background

In 2005, when the IRS prepared to launch a program allowing private collection agencies (PCAs) to collect delinquent tax debt, the National Taxpayer Advocate identified the initiative as a serious threat to taxpayer rights, questioned the program's revenue projections, and in 2006 called for repeal of the legislative provisions that authorized it.² As we predicted, the private debt collection (PDC) program did not meet IRS expectations or those of Congress, and the IRS discontinued the program in 2009.³ Despite the proven inefficiencies of the prior PDC program, Congress enacted legislation in 2015 that requires the IRS to assign certain delinquent taxpayer accounts to PCAs.⁴

The PDC program raises serious concerns about how the accounts of taxpayers who are experiencing economic hardship will be handled. Under statutory and administrative rules, the IRS itself generally must refrain from seeking to collect money from taxpayers who are experiencing economic hardship. Yet the new law does not explicitly require, or even allow, the IRS to withhold economic hardship cases from assignment to PCAs. Thus, PCAs may end up pursuing taxpayers in financial hardship for tax debts the IRS itself could not collect.⁵

- 1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR that was adopted by the IRS are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).
- 2 See National Taxpayer Advocate 2005 Annual Report to Congress 76-93 (Most Serious Problem: *Training of Private Debt Collection Employees*); National Taxpayer Advocate 2006 Annual Report to Congress 34-61, 458-462 (Most Serious Problem: *True Costs and Benefits of Private Debt Collection and Legislative Recommendation: Repeal Private Debt Collection Provisions*).
- 3 See National Taxpayer Advocate 2008 Annual Report to Congress 328-336 (Status Update: *The IRS's Private Debt Collection Initiative is Failing in Most Respects*); National Taxpayer Advocate 2007 Annual Report to Congress 411-431 (Status Update: *Private Debt Collection*); IR-2009-19, *IRS Employees More Flexible, More Cost Efficient* (Mar. 5, 2009); The Omnibus Appropriations Act of 2009, Pub. L. No. 111-8, Div. D, Title I, § 106, 123 Stat. 524, 636 (providing that none of the funds made available in the Act could be used to fund or administer IRC § 6306 debt collection activities by PCAs).
- 4 Fixing America's Surface Transportation Act, Pub. L. No. 114-94, Div. C, Title XXXII, § 32102, 129 Stat. 1312, 1733-36 (2015) (FAST Act).
- 5 IRC § 6306(c) generally requires the IRS to assign to PCAs all "inactive tax receivables" (except those specifically excluded in subsection (d)). A "tax receivable" is defined as "any outstanding assessment which the [IRS] includes in potentially collectible inventory." The statute provides no definition of "potentially collectible inventory."

From discussions with the IRS PDC Program Office and IRS Chief Counsel for Procedure & Administration, it is our understanding that accounts in Currently Not Collectible (CNC) hardship status are not “tax receivables” within the meaning of IRC § 6306(c)(2)(B), are therefore not required to be assigned to PCAs, and will not be assigned. However, there are populations who also meet all the requirements for CNC hardship status because they are experiencing economic hardship, but whose accounts do not have that designation. To the extent the accounts of taxpayers in economic hardship are assigned to PCAs, the new PDC program will disproportionately affect this vulnerable taxpayer population.⁶

Taxpayers in Economic Hardship Require Assistance and Debt Resolution Tools That PCAs Cannot Provide

Congress and the IRS have long recognized that specific procedures are required to work with and manage the accounts of taxpayers who are in economic hardship. For example:

- The IRS is statutorily required to release a levy where it has determined the levy is creating an economic hardship due to the financial condition of the taxpayer;⁷
- The IRS has authority to enter into offers in compromise (OICs) based on doubt as to collectability;⁸ and
- The IRS designates some taxpayers’ accounts as CNC and removes them from active collection inventory when it determines the taxpayer is in economic hardship.⁹

PCAs, in contrast, have no authority to enter into OICs or designate accounts as CNC hardship status, and as discussed below, have no incentive to return the accounts of taxpayers in economic hardship to the IRS, where they can obtain relief.

Another example of how the accounts of taxpayers in economic hardship are handled concerns the Federal Payment Levy Program (FPLP). The IRS presumes recipients of Social Security (*i.e.*, Old Age, Survivors, and Disability Insurance (OASDI) benefits) or Railroad Retirement Board (RRB) benefits whose incomes are less than 250 percent of the FPL are in economic hardship, and excludes their accounts from this automatic levy program.¹⁰ The IRS adopted the 250 percent measure after TAS developed a model to estimate the income and expenses of taxpayers whose Social Security income had been subject to FPLP

⁶ For example, as the National Taxpayer Advocate noted, “[a]fter analyzing Collection data for FY 2013, the IRS found that 79 percent of the cases that fall into the “inactive tax receivables” category involve taxpayers with incomes below this low income threshold [*i.e.*, 250 percent of the federal poverty level (FPL)].” Letter from Nina E. Olson, National Taxpayer Advocate, to Sen. Ron Wyden, Chairman, Committee on Finance; Sen. Orrin G. Hatch, Ranking Member, Committee on Finance; Rep. Dave Camp, Chairman, Committee on Ways and Means; Rep. Sander Levin, Ranking Member, Committee on Ways and Means; Rep. Charles W. Boustany, Jr., Chairman, Subcommittee on Oversight, Committee on Ways and Means; Rep. John Lewis, Ranking Member, Subcommittee on Oversight, Committee on Ways and Means 8 (May 13, 2014).

⁷ IRC § 6343(a)(1)(D).

⁸ See IRC § 7122; Treas. § Reg. 301.7122-1(b)(2), authorizing compromises where there is doubt as to collectability, which “exists in any case where the taxpayer’s assets and income are less than the full amount of the liability.”

⁹ See Internal Revenue Manual (IRM) 5.16.1.1, *Currently Not Collectible Overview* (Aug. 25, 2014); IRM 5.16.1.2.9, *Hardship* (Aug. 25, 2014). IRM 5.15.1.16, *Making the Collection Decision* (Nov. 17, 2014), (including among acceptable collection decisions the designation of accounts as CNC due to economic hardship).

¹⁰ IRC § 6331(h)(2) gives the IRS the authority to issue a continuous levy on a variety of federal sources of income, including Social Security and RRB benefits. The IRS carries out automatic levies on these sources pursuant to the FPLP. IRM 5.11.7.2.1(2), *Levy Authority and Background* (Aug. 28, 2012). IRM 5.11.7.2.2.3, *Low Income Filter (LIF) Exclusion* (Aug. 28, 2012) describes exclusions from the program for recipients of Social Security and RRB benefits. Whether or not taxpayers’ accounts are excluded from FPLP levies, other income they receive, or assets they own, may be subject to non-FPLP levies. The IRS, at the urging of the National Taxpayer Advocate, revised the IRM to require revenue officers to consider whether a taxpayer is in economic hardship before imposing a levy. IRM 5.11.1.3.1, *Pre-Levy Considerations* (Aug. 1, 2014).

levies.¹¹ The study showed that a significant number of taxpayers were subject to a levy on their Social Security income even though they could not afford the levy.¹²

Also troubling was the finding that a significant portion of taxpayers paid, or attempted to pay, their tax liability even though they could not afford to do so. The study also found that more than one-quarter of FPLP taxpayers who had incomes at or below the poverty level also:

- Paid their tax liability;
- Entered into an installment agreement with the IRS; or
- Were subject to an ongoing FPLP levy.¹³

The IRS accepted the results of the TAS study, but because the algorithm TAS used in its study to determine economic hardship could not readily be automated, the IRS asked TAS to identify a more administrable measure, such as a minimum dollar amount of income, or income as a percentage of the FPL, as a proxy for economic hardship. By October 6, 2009, the Deputy Commissioner for Services and Enforcement, the Commissioner of the Wage and Investment Division, and the National Taxpayer Advocate had collectively determined that that proxy would be 250 percent of the FPL.¹⁴ Thus, FPLP levies will generally not reach federal payments to taxpayers whose incomes are below this threshold.¹⁵

More recently, the Commissioner of Internal Revenue, at the urging of the National Taxpayer Advocate, agreed to exclude from the FPLP program accounts of taxpayers receiving Social Security Disability Income (SSDI).¹⁶ Taxpayers receiving SSDI by definition generally cannot earn over \$1,130 per month without having their SSDI payments reduced.¹⁷

Accounts that qualify for exclusion from FPLP levies may nevertheless be “inactive tax receivables” required to be assigned to PCAs. This outcome is particularly inappropriate for disabled taxpayers who receive SSDI. As noted above, in order to receive SSDI in 2016, a recipient’s monthly income cannot exceed \$1,130 (\$1,820 if he or she is blind).¹⁸ Considering that the 2016 FPL for a single person was \$11,880, or \$990 per month, a taxpayer must essentially have earnings *below 114 percent of the FPL* as a precondition to receiving SSDI payments.¹⁹ At a minimum, the IRS should use its discretion to

11 National Taxpayer Advocate 2008 Annual Report to Congress vol. 2, 48 (Research Study: *Building a Better Filter: Protecting Lower Income Social Security Recipients from the Federal Payment Levy Program*).

12 *Id.* at 57.

13 *Id.* at 49, 57.

14 Notes of Oct. 6, 2009 meeting, on file with National Taxpayer Advocate.

15 The filter does not protect all low income taxpayers, however, such as those with unfiled returns. See IRM 5.11.7.2.2.3, *Low Income Filter (LIF) Exclusion* (Aug. 28, 2012).

16 IRS response to Recommendation 19-2, National Taxpayer Advocate 2014 Annual Report to Congress (Most Serious Problem: *Federal Payment Levy Program: Despite Some Planned Improvements, Taxpayers Experiencing Economic Hardship Continue to Be Harmed by the Federal Payment Levy Program*) reported in National Taxpayer Advocate Fiscal Year 2016 Objectives Report to Congress, vol. 2, 70 (June 30, 2015).

17 See Social Security Administration (SSA), *Update 2016*, <https://www.ssa.gov/pubs/EN-05-10003.pdf>.

18 *Id.*

19 U.S. Dept. of Health and Human Resources, *Poverty Guidelines* (2016), <https://aspe.hhs.gov/poverty-guidelines>. The amount of disability benefits the taxpayer can receive depends on a number of factors, including his or her earnings history. A monthly payment of \$1,130 is 114 percent of the \$990 FPL.

categorize these accounts as a low priority for assignment.²⁰ The IRS should also explore whether they do not meet the statutory definition of “potentially collectible inventory” and thus are not required to be assigned to PCAs.

Yet another example of how the accounts of taxpayers in economic hardship are handled concerns elderly, blind, or disabled persons who receive public assistance in the form of Supplemental Security Income (SSI) and taxpayers who receive state or local government public assistance or welfare programs based on a needs or income test. In order to receive SSI in 2016, a person with income and assets (if any) cannot have:

- Earned income of more than \$1,551 per month (\$2,285 for a couple);
- Unearned income of more than \$753 per month of unearned income (\$1,120 for a couple); and
- Assets worth more than \$2,000 (\$3,000 for a couple).²¹

The highest federal SSI payment in 2016 is \$733 per month (\$1,100 for a couple).²² These taxpayers’ public assistance income is statutorily exempt from levy.²³ It is inappropriate to assign these taxpayers’ accounts to PCAs.

The IRS Has Not Required PCAs to Be Transparent About Their Procedures

In the 2006 PDC program, the IRS appeared to retain meaningful oversight of PCAs’ interactions with taxpayers on the telephone because PCAs were required to submit their telephone scripts for IRS approval.²⁴ However, PCAs were very reluctant to share their operational plans, which included telephone calling scripts, with the National Taxpayer Advocate.²⁵ They claimed their procedures were “proprietary information,” and the IRS did not challenge that designation.²⁶ The National Taxpayer Advocate was thereby impeded from effectively protecting taxpayers’ rights. When the scripts were finally made available, it became apparent that the PCAs used tactics inconsistent with IRS collection practices.²⁷ Despite urging from TAS, neither the contract the IRS now intends to use nor the PCA Policy and Procedures

20 Counsel Memorandum POSTS-137847-15, *New IRC 6306(c): IRS Discretion to Prioritize Cases For Immediate Assignment* 2–3 (Mar. 18, 2016), <https://www.irs.gov/pub/irao/pmta-2016-02.pdf>. The IRS would presumably have discretion to prioritize in the same manner accounts that would have been excluded from the FPLP program but for e.g., unfiled returns. It is our understanding that accounts actually subject to FPLP levies will not be assigned to PCAs because they are “currently under examination, litigation, criminal investigation, or levy” as described in IRC § 6306(d)(4), and thus not eligible for assignment to PCAs.

21 SSA, *Social Security, A Guide to Supplemental Security Income (SSI) for Groups and Organizations* 11, 12, 16 (2016), <https://www.ssa.gov/pubs/EN-05-11015.pdf>.

22 *Id.* at 7. As the guide notes, some states provide supplemental benefits and “[i]f Social Security runs the state’s supplemental payment, one check is paid to the beneficiary each month that combines the federal and state SSI benefits. States may change the payment amounts based on where, and with whom, people live. Also, some states might not count other income.”

23 IRC § 6334(a)(11).

24 Section 6.3.9, *Telephone Scripts*, PCA Policies and Procedures Guide (2008 version), provided in part: “All scripts used by the PCAs for telephone calls must be approved by the IRS prior to making any phone contacts.”

25 National Taxpayer Advocate 2007 Annual Report to Congress 411, 418 (Status Update: *Private Debt Collection*).

26 *Id.*

27 Letter from Nina E. Olson, National Taxpayer Advocate, to Sen. Ron Wyden, Chairman, Committee on Finance; Sen. Orrin G. Hatch, Ranking Member, Committee on Finance; Rep. Dave Camp, Chairman, Committee on Ways and Means; Rep. Sander Levin, Ranking Member, Committee on Ways and Means; Rep. Charles W. Boustany, Jr., Chairman, Subcommittee on Oversight, Committee on Ways and Means; Rep. John Lewis, Ranking Member, Subcommittee on Oversight, Committee on Ways and Means 10–11 (May 13, 2014).

Guide that implements the contract made needed changes. The IRS retained the same (ineffective) provision requiring IRS approval of “scripts used by the PCAs for telephone calls.”²⁸

The IRS Proposes to Pay Commissions to PCAs on Taxpayer Remittances Prompted by IRS Action Rather Than PCA Action

Under the current PDC program, the IRS proposes to compensate PCAs for taxpayer payments when the PCA has not taken any action, but rather the payment was triggered by an IRS action. The current PCA Policy and Procedures Guide, like the one used in the previous PDC program, directs the PCA to “mail an IRS approved initial contact letter to the taxpayer(s) and POA [power of attorney] no sooner than the 11th calendar day after the PCA receives the case.”²⁹ The current PCA contract, like the one used in the previous PDC program, specifies that PCAs may receive commissions on taxpayer payments received 11 days or more after the assignment of the account to the PCA.³⁰ These arrangements overlook the fact that before the PCA sends its initial contact letter, the IRS notifies the taxpayer that it assigned the account to a PCA, and this letter from the IRS may also result in payments by taxpayers.

Example: Assume the IRS assigns an account to a PCA on Day 1 and mails the letter notifying the taxpayer of the assignment on Day 2, which the taxpayer receives on Day 6. Even if the taxpayer takes only until Day 8 to review the letter, locate old records, and decide how to proceed, and on Day 9 sends payment to the IRS by certified mail, the payment would arrive at the IRS around Day 12. The PCA will receive a commission on that payment even though it played no part in collecting the tax.

In fact, the IRS routinely allows 15 days from the due date for a response for mailing and processing time.³¹ If the IRS allowed time for mailing and handling taxpayers’ responses to its initial contact letter before assigning the case, it would retain more dollars for the public fisc and not be found to pay commissions on payments the PCAs have done nothing to collect.

A related concern is that the IRS may assign cases to PCAs even though taxpayers are trying to resolve the liability with the IRS. This is demonstrated by the fact that during the first month of the 2006 PCA initiative, the IRS received about \$600,000, presumably in response to the letter it sent to the taxpayer, rather than any action on the part of the PCA.³²

TAS recommended that the IRS, in its first contact letter, notify taxpayers of its *intention* to assign accounts to PCAs (rather than announcing that it had already done so) and wait at least 14 days after sending the letter before actually transferring the account to the PCA. This would more reasonably identify

28 Section 6.3.9, *Telephone Reviews*, PCA Policies and Procedures Guide; Section 18.1 requires PCAs to record all conversations with taxpayers and to allow the IRS to listen to “live” or recorded calls. The IRS has agreed to allow TAS access to these calls. However, without the underlying instructions or scripts, it may be more difficult to identify inappropriate call tactics and gauge whether they are widespread.

29 Section 5.3, *Initial Contact Letters*, PCA Policy and Procedures Guide.

30 Section 4.1 of the current PCA contract provides that “[t]he Contractor shall receive commission on any payment received 11 calendar days or more after the date the account is transferred to the Contractor.”

31 See, e.g., IRM 5.1.1.3.2, *Required Notices* (Aug. 1, 2014), instructing “[t]he taxpayer has 30 days in which to request a CDP hearing. Allow 15 days after the 30 day period for receipt of a timely mailed request for CDP hearing.”

32 IRS, *Filing and Payment Compliance Briefing Document* 23 (Nov. 1, 2006). Of the \$1.1 million of revenue collected on accounts after assignment to PCAs from September 8–22, 2006, commissions were payable on only \$500,000. Through June of FY 2007, nearly a quarter of the revenue collected on accounts after assignment to PCAs was not commissionable. IRS, *Filing and Payment Compliance Advisory Council Briefing Document* 5 (Aug. 1, 2007).

payments that are made as a result of the IRS letter and not PCA action, and would prevent unnecessary transfers of cases to PCAs.

The Training and Guidance the IRS Proposes to Provide to PCAs Is Insufficient

The current PCA Policy and Procedures Guide contemplates the possibility that some taxpayers may be unable to pay their liabilities because they are facing financial hardship and allows, but does not require, PCAs to return those accounts to the IRS. Thus, although an account designated as CNC hardship would not be assigned to PCAs, once an account is assigned, there is no mechanism to ensure it will be properly managed to reflect a change in the taxpayer's circumstances. A PCA may continue to extract payments from a taxpayer who is in economic hardship rather than return the account to the IRS, where it can be designated as CNC hardship. Thus, similarly-situated taxpayers may be treated differently depending on when their economic hardship arises. Those "fortunate" enough to have been determined to be in economic hardship by the IRS will not be forced to deal with PCAs. Those whose economic hardship arises after assignment of their account may never be free of the PCA.

Moreover, the PCA Policy and Procedures Guide does not specify what, if any, additional information a PCA employee should consider before designating an account "unable to pay."³³ Different PCAs may interpret the "unable to pay" provisions as requiring varying forms of documentation, also resulting in inconsistent treatment of similarly-situated taxpayers. Because of these inconsistencies, TAS suggested the IRS require PCAs to instruct taxpayers who indicate they cannot pay to complete IRS Form 433-F, *Collection Information Statement*, and submit it to the IRS. The IRS could then review the taxpayer's economic situation and assist the taxpayer with collection alternatives, as appropriate. The IRS rejected TAS's suggestion for a reason that raises yet another concern — the IRS does not intend to work accounts PCAs return to it, but rather to restore them to inactive inventory.

The most significant change in the current PDC initiative is the lack of a "Referral Unit," which existed in the 2006 PDC program.³⁴ Referral Unit employees, who essentially had the same authorities as Automated Collection System (ACS) employees, worked cases returned to the IRS by the PCAs. At the conclusion of the prior initiative, PCA cases were recalled by the IRS. IRS employees who worked those cases collected more dollars than had the PCAs. PCA employees collected 5.4 percent of the dollars available for collection, while IRS employees collected 9.2 percent of the dollars available for collection — nearly double.³⁵ In fact, the comparison understates the extent to which IRS employees are more effective in working cases, because the IRS only worked cases on which PCAs failed to collect. Thus, the PCAs had an opportunity to close the easy cases, and by the time the IRS received the cases, the debts were older.³⁶

In the absence of a Referral Unit, accounts the PCAs return to the IRS will not be placed in active inventory. As the National Taxpayer Advocate has noted:

Once the IRS selects a case for collection action, IRS Collection policy has generally been to work the case to completion. If the IRS did not work cases to completion, more taxpayers

33 However, the PCA Policy and Procedures Guide, Section 6.3.6, *Telephone Contacts*, instructs PCA employees they may tell the taxpayer that the PCA will "provide financial information it obtains from the taxpayer to the IRS."

34 For a complete description of the structure of the 2006 PDC initiative, see National Taxpayer Advocate 2005 Annual Report to Congress 76, 79 (Most Serious Problem: *Training of Private Debt Collection Employees*).

35 See National Taxpayer Advocate 2013 Annual Report to Congress, vol. 2, 97, 106 (Research Study: *The IRS Private Debt Collection Program: A Comparison of Private Sector and IRS Collections While Working the Private Collection Agency Inventory*).

36 *Id.* at 101.

would choose to ignore IRS Collection attempts, hoping that the IRS would eventually give up. The impression that collection cases will be worked to completion will be undermined if the IRS assigns a case to a PCA and then shelves the case if the PCA is unsuccessful in collecting the debt, potentially contributing to a perception that ignoring tax collection may be a successful strategy.³⁷

The IRS also does not intend to provide any training to PCA employees on basic issues such as:

- IRS audit and collection procedures;
- The effect of IRS collection action taken after the account has been assigned to a PCA;³⁸
- The role of IRS Appeals;³⁹
- The meaning of CNC status and how it is determined; or
- Collection alternatives such as OIC and partial payment installment agreements.

TAS has undertaken to provide this training, together with training on TAS procedures, as part of its training on the Taxpayer Bill of Rights.

Additional concerns about how the IRS is implementing the PDC program, and the latitude of PCAs to collect debts, may arise as the effect of other legislation or judicial decisions becomes clear. In 2015, for example, Congress passed the Bipartisan Budget Act that gives the Federal Communications Commission (FCC) the authority to limit the number and duration of calls private debt collectors may make to a cellphone to collect a federal debt.⁴⁰

Many of the concerns discussed above were articulated during the Bronx, New York, National Taxpayer Advocate Public Forum during an exchange between the National Taxpayer Advocate, Congressman José E. Serrano,⁴¹ Mr. Erik Schryver,⁴² and Mr. Elliot Quinones:⁴³

CONGRESSMAN SERRANO: I have a question for you.

MS. OLSON: Okay.

CONGRESSMAN SERRANO: My question is: The IRS was recently required to start hiring private debt collectors despite significant evidence that they cost more than they bring in...

37 National Taxpayer Advocate 2008 Annual Report to Congress 328, 331 (Status Update: *The IRS's Private Debt Collection Initiative is Failing in Most Respects*).

38 Although the IRS ceases most collection action once it assigns an account to a PCA, it continues to offset taxpayers' refunds, and some automated levy programs continue, such as the State Income Tax Levy Program and the Municipal Tax Levy Program.

39 Taxpayers may request assistance from the IRS Office of Appeals while the case is with private collectors, for example to challenge an automatic levy.

40 Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301(a)(2)(C), 129 Stat. 584, 588 (the Budget Act), (amending 47 U.S.C. § 227(b)(1)(A), part of The Telephone Consumer Protection Act, which generally requires a caller to obtain the prior express consent of the called party when making any non-emergency call using an automatic telephone dialing system or an artificial or prerecorded voice (sometimes collectively referred to as "robocalls") to a wireless telephone number. As amended, the FCC is authorized to "restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States.").

41 Member, U.S. House of Representatives.

42 Senior Staff Attorney, Legal Services NYC and Qualifying Tax Expert, Bronx Low Income Taxpayer Clinic.

43 Founder, Elliot Quinones and Associates, Bronx, NY.

[O]ne of the fears I have, and my question is, what do you have in place or what do we have in place to monitor this? One of the fears I have is that when you have a government employee going out to do his or her job, it is up to the supervisor to find out if that person is doing a good job... But when you have somebody who, basically, is going to make money based on how many people they get, I wonder what style they are going to use when they knock on the door and [the] fear factor involved in “If you don’t talk to me now, you are going to go to jail” and so on. There are so many people in our community that think they are a step away from jail by just talking to a government person. So, how would you monitor this in the future?

MS. OLSON: Well, we are working on this right now and this is the third time that the IRS has been told or tried private debt collectors and the first two times, in my opinion, were dismal failures just from a business case, that didn’t bring in the money that we wanted [them] to and [as it] turned out they weren’t any better and, in fact, the IRS was better at collecting the money from the taxpayers and was, in fact, able to talk with the taxpayers about issues other than just how much money can you pay. I mean that’s sort of the point about having the tax agency and what all this is about, is that really the job of the tax agency is to increase voluntary compliance, that we want people to comply with the law voluntarily. So, as you are trying to collect the back taxes that are owed, the primary worry should be, “[I]s the person paying [her] current taxes?” What are they doing to be in compliance going forward so we can stop the hemorrhaging and then we will figure out the problem behind it. The private debt collectors aren’t interested in any of that. They have no authority about that. So, they are not going to educate taxpayers about the tax laws, about [where] they made a mistake, what they can do going forward. They are not going to be able to help taxpayers get offers in compromise or more complicated, more favorable terms of installment agreements. And, so, there is just pressure to get as much money up front from the taxpayer.

Private debt collectors have the highest number of complaints to the Federal Trade Commission [FTC] [of any] industry whatsoever.

CONGRESSMAN SERRANO: Really?

MS. OLSON: Yes... they have one of the highest turn-over rates, the employees in that industry, of any industry operating in the United States. So people are just constantly in and out as opposed to IRS employees who have years of working with taxpayers and understanding their life circumstances. And, I’m very critical of the IRS collection function. I have real concerns about maybe they are not doing it as well as I want them to but they are light years ahead of the private debt collectors. So, we are looking at it and the IRS is trying to build up some rules but I will say this, however, the way the legislation is written, the IRS doesn’t have a lot of discretion of the cases that are going out. So, many cases are going to be assigned to the private debt collectors this time.

I’ll tell you one little story. When we did it the second time around a few years ago we sent out — the IRS sent out a letter and it said, “In ten days, taxpayer, we are going to turn your case over to a private debt collector.” We got so much money in that ten day period from taxpayers. They called us up. So, they basically let us do anything but “Don’t send us to a private debt collector.”

MR. SCHRYVER: Also, we already have this wave of crooks impersonating IRS collectors and collecting fake or non-existent debts.

MS. OLSON: Right.

MR. SCHRYVER: I don't know how anyone could tell the difference between these guys and a private debt collector.

MS. OLSON: Well, that's the other thing, people may refuse. You will either get people agreeing to pay more than they can afford just like they do with the scammers. You know, they just give in or you will have people not talking to the private debt collectors because they have been told the IRS doesn't call out, these are scammers. So, when the private debt collector calls out the taxpayers are just not going to pick up the phone.

MR. QUINONES: I think it's an abusive practice because a private debt collector has no incentive to help you. That's basic. His only concern is to generate a revenue for his firm or for himself.

CONGRESSMAN SERRANO: Which is my fear from the beginning.⁴⁴

Conduct by PCAs generates more complaints to the FTC than any other industry.⁴⁵ Moreover, according to the FTC, consumer complaints about abusive debt collectors have more than doubled over the past seven years.⁴⁶

FOCUS FOR FISCAL YEAR 2017

In Fiscal Year 2017, TAS will continue to:

- Advocate for a definition of “potentially collectible inventory” that excludes the accounts of taxpayers who have been excluded from FPLP levies because their incomes are less than 250 percent of the FPL or receive SSDI or SSI benefits;
- Meet with IRS managers responsible for implementing the current PDC program and advocate for taxpayers where it appears proposed procedures may adversely affect them;
- Advocate that the IRS require PCAs to disclose their operational plans, scripts and training materials; adjust the response time for the initial contact letter from the IRS to taxpayers so that PCAs are compensated for taxpayer payments that were prompted by PCA action, but not for payments received before the PCAs took action; and work to completion cases that are returned by PCAs to the IRS or recalled from PCAs by the IRS;
- Seek Chief Counsel advice on the extent to which the FCC's proposed rule limiting calls to debtors' cellphones to three times per month applies to the IRS or to PCAs as they collect tax debt; and if the FCC's proposed rule does not apply to the IRS or to PCAs, the extent to which the IRS may prohibit PCAs from using automated or pre-recorded voices when contacting taxpayers; and
- Review PCA authorities and procedures to ensure that the IRS does not use PCAs to take collection actions that the IRS itself is prohibited from taking under taxpayer rights protections enacted by Congress.

44 National Taxpayer Advocate Public Forum (Mar. 18, 2016), Question and Answer Session, pages 58-89.

45 According to the FTC, only identity theft complaints, which do not involve a specific industry against which a complaint can be lodged, exceed the number of consumer complaints about abusive debt collectors. Colleen Tressler, FTC Consumer Information: *The FTC's New Hall of Shame — Banned Debt Collectors* (Feb. 2, 2015), <https://www.consumer.ftc.gov/blog/ftcs-new-hall-shame-banned-debt-collectors>.

46 *Id.*