*TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION*

# *Private Debt Collection Was Implemented Despite Resource Challenges; However, Internal Support and Taxpayer Protections Are Limited*

**September 5, 2018**

**Reference Number: 2018-30-052**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

**Redaction Legend**:
7 = Information Reflecting the Bureau's Decisionmaking Process

.

*Phone Number / 202-622-6500*
*E-mail Address / TIGTACommunications@tigta.treas.gov*
*Website / http://www.treasury.gov/tigta*

**To report fraud, waste, or abuse, call our toll-free hotline at:**

1-800-366-4484

**By Web:**

***www.treasury.gov/tigta/***

**Or Write:**

Treasury Inspector General for Tax Administration
P.O. Box 589
Ben Franklin Station
Washington, D.C. 20044-0589

Information you provide is confidential and you may remain anonymous.

**PRIVATE DEBT COLLECTION WAS IMPLEMENTED DESPITE RESOURCE CHALLENGES; HOWEVER, INTERNAL SUPPORT AND TAXPAYER PROTECTIONS ARE LIMITED**

# Highlights

**Final Report issued on September 5, 2018**

Highlights of Reference Number: 2018-30-052 to the Commissioner of Internal Revenue.

## IMPACT ON TAXPAYERS

The 2015 Fixing America's Surface Transportation (FAST) Act required the IRS to begin using private collection agencies (PCA) to collect inactive tax receivables. The PCAs may contact taxpayers to collect delinquent taxes.

## WHY TIGTA DID THE AUDIT

The Joint Committee on Taxation estimated that private tax debt collection (PDC) would yield approximately $2.4 billion in additional revenue through Fiscal Year 2025. Two prior IRS attempts at using the PCAs did not succeed. This audit was initiated to evaluate the IRS's planning and implementation of the PDC program as well as initial program results.

## WHAT TIGTA FOUND

The IRS deployed the PDC program on time and met many key program milestones. IRS personnel developed policies and procedures for the PCAs, as well as program metrics to gauge performance of the PCAs.

As of May 31, 2018, total program revenue ($56.62 million) was approximately $1.3 million more than costs ($55.33 million). However, as of June 2018, the four PCAs collected just 1 percent of the $4.1 billion assigned. A study commissioned by the collection industry trade association showed the national collection average for Calendar Year 2016 was 9.9 percent. A possible cause of the low collection yield is the age of the cases being assigned. TIGTA determined the average age of cases assigned to the PCAs was 3.97 years. Such aged accounts are generally thought to be nearly uncollectible. Also, some IRS policies may be harmful to taxpayers, such as:

- A complaint process that is dependent on private debt collectors reporting on themselves.
- The absence of a significant coordinating function, *i.e.*, a referral unit, to ensure that only appropriate cases are sent to the PCAs.
- A PDC program communication strategy that conflicted and contradicted other IRS communications regarding tax scams.
- Authentication procedures that needlessly expose taxpayers to risk.

Other IRS policies may present risks to tax compliance, such as:

- Some taxpayers who can pay only a portion of what they owe will be ignored by the IRS.
- There are no consequences for taxpayers who appear to have willfully failed to pay.
- The PCAs are being left to address subsequent noncompliance, and 73 percent of taxpayers whose accounts were assigned to the PCAs had not filed a 2016 tax return.
- Some payment terms do not comply with the letter of the law.
- Inventory assignment practices do not fully consider case characteristics, such as taxpayers' income. For example, 54 percent of taxpayer accounts assigned to a PCA had low-income indicators on their accounts.
- The IRS and the PCAs do not share taxpayer contact information.

## WHAT TIGTA RECOMMENDED

TIGTA made several recommendations to improve program efficiency and protection of taxpayer rights. Although the IRS took some corrective actions during the audit, IRS management disagreed with most of the recommendations. TIGTA believes the IRS's lack of responsive actions will lead to increased taxpayer burden and negatively affect taxpayer service, rights, and program revenue.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 5, 2018

**MEMORANDUM FOR** COMMISSIONER OF INTERNAL REVENUE

**FROM:** Michael E. McKenney
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Private Debt Collection Was Implemented Despite Resource Challenges; However, Internal Support and Taxpayer Protections Are Limited (Audit # 201630029)

This report presents the results of our review to evaluate the Internal Revenue Service's planning and implementation of the Private Debt Collection program. This audit is included in our Fiscal Year 2018 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives.

Management's complete response to the draft report is included as Appendix V. The Office of Audit's response to management's comments is included as Appendix VI.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

# *Table of Contents*

**Background** ..... Page 1

**Results of Review** ..... Page 7

**Program Collections Are Higher Than Costs** ..... Page 7

**Recommendation 1**: ..... Page 14

**Certain Private Debt Collection Program Policies May Harm Taxpayers** ..... Page 14

**Recommendations 2 through 3**: ..... Page 23

**Recommendations 4 through 5**: ..... Page 24

**Recommendation 6**: ..... Page 25

**Some Private Debt Collection Policies May Harm Program Effectiveness and Tax Compliance** ..... Page 26

**Recommendation 7:** ..... Page 36

**Recommendations 8 through 10**: ..... Page 37

**Recommendation 11**: ..... Page 38

**Recommendations 12 and 13**: ..... Page 39

**Private Collection Agencies Are Performing Well Based on Internal Revenue Service Established Performance Measures** ..... Page 40

**Appendices**

**Appendix I – Detailed Objective, Scope, and Methodology** ..... Page 43

**Appendix II – Major Contributors to This Report** ..... Page 46

**Appendix III – Report Distribution List** ..... Page 47

**Appendix IV – **********7********** ..... Page 48

**Appendix V – Management's Response to the Draft Report** ..... Page 53

**Appendix VI – Office of Audit Comments on Management's Response** Page 65

# *Abbreviations*

| | |
|---|---|
| ACS | Automated Collection System |
| CSED | Collection Statute Expiration Date |
| FAST | Fixing America's Surface Transportation |
| FTC | Federal Trade Commission |
| FY | Fiscal Year |
| GAO | Government Accountability Office |
| I.R.C. | Internal Revenue Code |
| IRM | Internal Revenue Manual |
| IRS | Internal Revenue Service |
| OI | Office of Investigations |
| PCA | Private Collection Agency |
| PDC | Private Debt Collection |
| SSN | Social Security Number |
| TAN | Taxpayer Authentication Number |
| TCPA | Telephone Consumer Protection Act |
| TIGTA | Treasury Inspector General for Tax Administration |
| U.S.C. | United States Code |

## Background

On December 4, 2015, the President signed into law the Fixing America's Surface Transportation (FAST) Act.[1] The FAST Act included a provision requiring the Internal Revenue Service (IRS) to use private debt collection (PDC) agencies to collect taxes on cases involving inactive tax receivables. The Act defines inactive tax receivables as:

***The FAST Act included a provision requiring the IRS to use PDC agencies to collect taxes on cases involving inactive tax receivables.***

- Removed from active inventory for lack of resources or inability to locate the taxpayer.
- Not assigned to an IRS employee for collection and more than one-third of the applicable statute of limitation has lapsed.
- Assigned for collection, but more than 365 days have passed without interaction with the taxpayer or a third party for purposes of furthering the collection.

The Act also specifies certain IRS debts that are not eligible to be placed with private agencies, including debts:[2]

- Subject to a pending or active offer-in-compromise or installment agreement.
- Classified as an innocent spouse case.
- Involving a taxpayer who is: a) deceased, b) under the age of 18, c) in a designated combat zone, or d) a victim of tax-related identity theft.
- Currently under examination, litigation, criminal investigation, or levy.
- Currently subject to a proper exercise of a right of appeal under this title.

Additionally, taxpayers residing in presidentially declared disaster areas are also afforded special protections from private debt collectors.[3]

The Joint Committee on Taxation estimated that the Act's PDC authorization would yield approximately $2.4 billion in additional revenue through Fiscal Year (FY) 2025.[4] Following Congress's direction, the IRS began implementing the initiative to use private debt collectors to

[1] Pub. L. No. 114-94.
[2] Internal Revenue Code (I.R.C.) § 6306(d).
[3] I.R.C. § 6306(i).
[4] Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.

collect delinquent tax debts in 2016 and began assigning taxpayer accounts in April of 2017 (this latest PDC is referred to as the 2017 initiative to distinguish it from previous laws and related initiatives to use private debt collectors that were later abandoned).

## The IRS's prior experience with PDC

The IRS had prior experiences with PDC. In 1995, Congress authorized the appropriation of funds to allow private debt collectors to collect delinquent accounts.[5] Congress authorized $13 million to devote towards the program; however, structural difficulties hampered the program's effectiveness.[6] The 1996 pilot program resulted in a $17 million net loss to the Government and was canceled after 12 months.

In 2004, the IRS was granted statutory authority to use private collection agencies (PCA) to collect delinquent taxes (hereafter referred to as the 2006 initiative).[7] Under the 2004 law, use of private debt collectors to collect delinquent taxes was discretionary on the part of the IRS and was not mandatory as it is under the 2017 initiative. The IRS began building the infrastructure for the 2006 initiative in 2005 and began sending accounts to three private debt collectors in the fall of 2006. The following are some important aspects of the 2006 initiative:

- To gauge the conduct of PCA employees, the IRS conducted customer satisfaction surveys of taxpayers contacted by the PCAs.[8]
- To assess whether tax collection was more effective by Government or private contractors, the IRS continued collection on accounts that were returned as uncollectible by the PCAs.[9]
- To ensure accountability for taxpayer complaints, a taxpayer complaint panel was established with diverse backgrounds, including a representative from the Taxpayer Advocate Service.
- To ensure that inappropriate cases referred to the PCAs could be pulled back from them and to ensure appropriate routing of cases, the IRS established a PCA Referral Unit.

[5] Treasury, Postal Service, and General Government Appropriations Act 1996, Pub. L. No. 104-52, 109 Stat. 468.
[6] For example, private debt collectors were paid from the appropriated funds and did not have authority to retain a percentage of the collected amounts, and if the appropriated amounts were not spent entirely in the fiscal year, the funding could no longer be used. IRS Technical Assistance Memorandum, TAM CC-TAM-PMTA-00066 (1996).
[7] The American Jobs Creation Act of 2004, Pub. L. No. 108-357, § 881(a), 118 Stat. 1418 (2004).
[8] *The Internal Revenue Service's Use of Private Debt Collection Companies to Collect Federal Income Taxes, Hearing Before the House Committee on Ways and Means*, (May 23, 2007), (statement of Kevin Brown, Acting Commissioner).
[9] *The Internal Revenue Service's Use of Private Debt Collection Companies to Collect Federal Income Taxes, Hearing Before the House Committee on Ways and Means*, (May 23, 2007), (statement of Kevin Brown, Acting Commissioner).

The 2006 initiative collected $98.2 million from delinquent accounts that were considered low yield and generally not worked by the IRS and cost the IRS $102.6 million. After paying $16.5 million in commissions and closeout costs to the PCAs, $81.7 million was identified as revenue, of which $18.3 million was retained by the IRS and approximately $63.4 million went to the U.S. Department of the Treasury. According to data provided by IRS management, the operating costs of the 2006 initiative were $47.2 million, consisting of:

- IRS internal program costs of $30.7 million.
- Commissions paid to the PCAs of $16.5 million.

In addition to the operating costs, the program spent $55.4 million in start-up costs, for total costs of $102.6 million, a net loss of approximately $20.9 million.

As of May 2007 when Congress held a hearing, eight months into the 2006 initiative, revenues were approximately $20 million; meanwhile, startup costs were estimated to reach $71 million by the end of the fiscal year.[10] The view that the use of private debt collectors was not cost effective was the basis for the termination of the 2006 initiative. Two studies (one study by the IRS in 2009 and one by the National Taxpayer Advocate in 2013) concluded that the IRS is generally more effective at collecting a given delinquent account than private debt collectors.[11] The IRS 2009 Cost Effectiveness Study generally compared similar types of accounts, with the PCAs assigned to collect on approximately 2,133 delinquent account modules totaling approximately $12 million and the IRS's Automated Collection System (ACS) assigned to collect on approximately 1,341 account modules totaling approximately $7 million. In an effort to make the comparison a fairer representation, the ACS was not permitted to use its levy and lien enforcement tools. The IRS's ACS collected approximately $775,000 from the 1,341 accounts with approximately $7 million in balances due at a cost of approximately $54,000. The PCAs collected approximately $440,000 from the 2,133 accounts with approximately $12 million in balances due.[12] This study was the basis of the IRS's March 2009 decision to terminate the 2006 initiative. However, in 2010, the Government Accountability Office (GAO) expressed concerns about the IRS's cost-effectiveness study. In the GAO's view, the IRS study of the PDC program "was not soundly designed" to provide primary support for the decision about whether to use private debt collectors.[13]

---

[10] *The Internal Revenue Service's Use of Private Debt Collection Companies to Collect Federal Income Taxes, Hearing Before the House Committee on Ways and Means*, (May 23, 2007), (statement of Kevin Brown, Acting Commissioner).

[11] National Taxpayer Advocate, 2013 Annual Report to Congress Volume Two. The study by the National Taxpayer Advocate also demonstrated that the IRS collected more money from accounts returned by PCAs as uncollectible than the PCAs collected throughout the entire initiative.

[12] Internal Revenue Service, *IRS Private Debt Collection Cost Effectiveness Study* (March 2009).

[13] The GAO also determined that the study results "may be over/understated because the sample was not generalizable to the program as a whole." GAO, GAO-10-963, *Tax Debt Collection: IRS Could Improve Future Studies by Establishing Appropriate Guidance* (Sept. 2010).

In 2013, the National Taxpayer Advocate's office conducted a study of amounts collected by the PCAs in the 2006 initiative compared with amounts collected from accounts returned by the PCAs as uncollectible. As part of the 2006 initiative, the IRS attempted additional collection action on accounts returned by the PCAs. This study compared what the IRS collected in cases that were returned by the PCAs as uncollectible with the total amounts collected by all PCAs during the initiative. In this comparison, the IRS was at a significant disadvantage because it was working cases that the PCAs had already determined were uncollectible. In total, over the course of the two-year study, the PCAs collected approximately $86 million, whereas the IRS collected approximately $139 million on accounts that the PCAs returned to the IRS as uncollectible.[14]

Although past efforts at using private debt collectors may have been inefficient, the IRS has millions of tax delinquent accounts in its collection queue that go unworked and more than a million more that it shelves or "writes off" each year because it is unable to work all delinquent accounts. For example, in 2012, when the IRS budget was approximately $12 billion, it still shelved approximately 1 million taxpayer delinquent account modules, involving approximately $5.9 billion.

## A less secure tax administration environment

As of 2006, when the last PDC was initiated, identity theft and IRS impersonation schemes were not the substantial problems for tax administration that they are today. Identity theft cases involving tax administration issues grew exponentially in years after the 2006 initiative. For example, taxpayers affected by identity theft grew from 270,518 in 2010 to 2,416,773 in 2013.[15] Additionally, IRS impersonation schemes have affected many taxpayers in recent years. More than 10,000 individuals in the United States have reported to the Treasury Inspector General for Tax Administration (TIGTA) that they fell victim to this scam paying more than $54 million to IRS impersonators, and more than 1.8 million people have reported that they received threatening telephone calls from persons impersonating IRS employees and demanding payments.[16] The 2017 PDC program initiative has been introduced into a less secure tax administration environment.

---

[14] National Taxpayer Advocate, *2013 Annual Report to Congress Volume 2 Tax Research and Related Studies* p.101 (Dec. 31 2013).

[15] IRS Identity Protection Incident Tracking Statistics Reports, see discussion in Treasury Inspector General for Tax Administration (TIGTA), Ref. No. 2015-40-024, *Victims of Identity Theft Continue to Experience Delays and Errors in Receiving Refunds* (Mar. 2015). The number of taxpayers affected by identity theft has decreased more recently with 1,693,919 taxpayers affected in 2016, which the IRS attributes to improved efforts. IRS Identity Protection Incident Tracking Statistics Reports, see discussion in TIGTA, Ref. No. 2017-30-073, *Declining Resources Have Contributed to Unfavorable Trends in Several Key Criminal Investigation Business Results* (Sept. 2017).

[16] *Special Committee on Aging, Hearing Before the Senate* (February 1, 2017), (statement of Timothy P. Camus, Deputy Inspector General for Investigations, TIGTA).

In 2007, a significant concern of members of Congress was the approach by PCA employees who would begin telephone conversations with taxpayers by attempting to authenticate the taxpayers by requesting the taxpayers' Social Security Numbers (SSN).[17] Because collectors by law could not divulge taxpayer information to anyone other than the taxpayers, it was necessary for them to first authenticate taxpayers using their SSNs; however, it is common knowledge and the recommended advice of security experts that people should not divulge their SSNs or other personal information over the telephone.[18] As part of the enabling legislation for the 2017 initiative, Congress excluded accounts of victims of tax-related identity theft from being assigned to the PCAs.[19]

Although the use of private debt collectors is currently required under the law, Congress has required information from the Department of the Treasury to determine whether the IRS can manage the use of private debt collectors in a cost efficient and effective manner that does not harm taxpayers or injure tax administration. Under the 2017 initiative, Congress requires an annual report with information that addresses the effectiveness of the program; the first of such reports was submitted by the IRS on December 31, 2017.[20] The law also requires an independent report with respect to contractor performance; the first of such reports is to be submitted to Congress in December 2018. In discussions with officials in the Department of the Treasury, it was determined that TIGTA would perform the biannual performance review. TIGTA included the biannual report in its FY 2018 Annual Audit Plan and informed IRS officials of its intent to perform this work.[21] However, the IRS entered into a $1.17 million contract with a contractor to

---

[17] As Congressman Richard Neal (Democrat-Massachusetts) noted during questioning of a witness at the May 2007 hearing, "I have a document from the Social Security government web site that warns us that we should not divulge this number to private businesses unless we understand what law requires us to give it to them, because as the Social Security Administration states here, and I quote, "Only the IRS can request this for the purpose of tax returns."' *The Internal Revenue Service's Use of Private Debt Collection Companies to Collect Federal Income Taxes, Hearing Before the House Committee on Ways and Means*, (May 23, 2007), (statement of Kevin Brown, Acting Commissioner).

[18] *Identity Theft and Tax Fraud, Hearing Before the House Committee on Ways and Means, and Subcommittees on Social Security and Oversight* (May 8, 2012), (statement of Patrick P. O'Carroll, Jr, Inspector General, Social Security Administration),

> *We urge everyone to keep Social Security cards in a secure place, shred personal documents, and be aware of phishing schemes,* ***because no reputable financial institution or company will ask for personal information like an SSN via the phone or the Internet****. It is also important to protect personal computers with a firewall and updated antivirus protection.* [emphasis added]

[19] I.R.C. § 6306(d)(3)(D).

[20] I.R.C. § 6306(j)(1)(A-E).

[21] TIGTA also testified to Congress on this topic. *Treasury Budget, Hearing Before the Senate Appropriations Comm., Financial Services and General Government S. Comm.*, 114th Cong. (Mar. 8, 2016) (statement of J. Russell George, Inspector General, TIGTA); and *Tax Filing Season 2017, Hearing Before the House Ways and Means Comm., S. Comm. on Oversight*, 115th Cong. (Apr. 26, 2017) (statement of Michael E. McKenney, Deputy Inspector General for Audit, TIGTA).

perform the work. The IRS has paid the contractor $452,706 as of February 2018 for work that TIGTA was committed to perform.

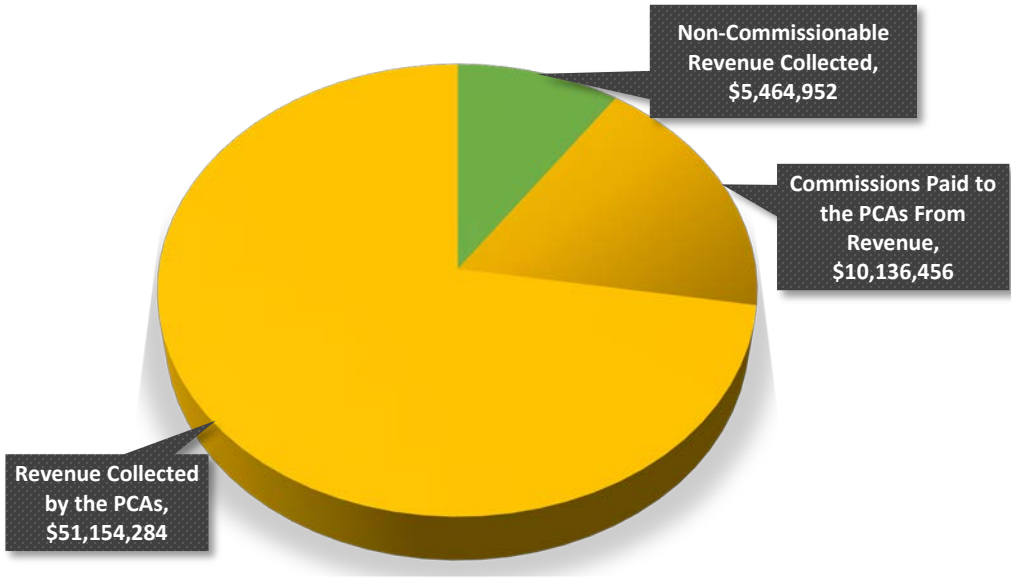
This review was performed with information obtained from the PDC Program Office within IRS Headquarters located in Washington, D.C., during the period April 2016 through May 2018. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

# Results of Review

## Program Collections Are Higher Than Costs

In April 2017, the IRS started delivering inventory to the PCAs, and by June 14, 2018, it had assigned a total of 502,893 taxpayer accounts to four PCAs. These taxpayers owed a combined $4.1 billion. Of this, $56.6 million has been collected on these accounts, which is approximately 1 percent of the total.[22] Figure 1 shows the breakdown of the total revenue collected.

**Figure 1: Breakdown of PDC Program Collections as of June 14, 2018**




*Source: TIGTA analysis of the June 2018 PDC Scorecard.*

[22] Taxpayers may enter into payment arrangements for which monthly payments are made over a prescribed period of time. Revenues shown include only the payments that have actually been made and received by the IRS. During FY 2018, the PCAs had secured 14,572 payment arrangements for the repayment of approximately $95.2 million, as of June 14, 2018.

A study commissioned by the collection industry trade association showed the national debt collection average for Calendar Year 2016 was 9.9 percent.[23] The 1 percent collection rate for IRS accounts may not reflect underperformance on the part of the PCAs. The law requires the IRS to use the PCAs for "inactive receivables." These tend to be older cases. A principle in debt collection known as the "Collectability Curve" theorizes that the older a debt becomes the harder it is to collect to the point that a debt is nearly uncollectible beyond three years.[24] TIGTA analyzed the average age of accounts being assigned to the PCAs and determined they were an average of 3.97 years old. Figure 2 reflects our analysis of the age of accounts assigned to the PCAs.

***Figure 2: Age of Modules Assigned to the PCAs***

| Age of Module | Number of Modules | | | | |
|---|---|---|---|---|---|
| | **PCA 1** | **PCA 2** | **PCA 3** | **PCA 4** | **Grand Total** |
| Less Than 1 Year | 4,769 | 4,623 | 4,668 | 4,752 | 18,812 |
| 1-up to 2 Years | 14,017 | 13,931 | 13,995 | 13,984 | 55,927 |
| 2-up to 3 Years | 26,498 | 26,159 | 26,503 | 26,249 | 105,409 |
| 3-up to 4 Years | 26,959 | 26,443 | 26,685 | 26,997 | 107,084 |
| 4-up to 5 Years | 15,678 | 15,739 | 15,733 | 16,101 | 63,251 |
| 5-up to 6 Years | 11,482 | 11,212 | 11,654 | 11,669 | 46,017 |
| 6-up to 7 Years | 8,663 | 8,579 | 8,555 | 8,629 | 34,426 |
| 7+ Years | 13,224 | 12,789 | 12,908 | 12,963 | 51,884 |
| **Total** | **121,290** | **119,475** | **120,701** | **121,344** | **482,810** |

*Source: TIGTA analysis of the Taxpayer Service Returns Processing Category Tax Module Database as of cycle 201750.*

[23] *The Impact of Third-Party Debt Collection on the U.S. National and State Economies in 2016*, Ernst & Young p. 4 (Nov. 2017). The study results do not mean to imply that the PCAs should be collecting 9.9 percent because collection rates vary depending on the age and nature of the debt; however, our research did not identify collection rates as low as 1 percent.

[24] National Taxpayer Advocate, *IRS Collectability Curve*, (June 2015); TIGTA, Ref. No. 2011-30-112, *Reducing the Processing Time Between Balance Due Notices Could Increase Collections* pp.10-11 (Sept. 2011).

Although the IRS is required to use the PCAs for cases that are older than three years, the law does not prohibit the IRS from assigning newer cases as well.[25] If the IRS can identify newer cases of the type that it would not likely work, it could assign those cases to the PCAs sooner and increase the collection rate. Increasing the number of newer cases provided to the PCAs may assist in collecting more revenue.

After a taxpayer account is assigned to a PCA, the contractor must wait 10 days before making contact. During this 10-day period, the taxpayer may settle their account directly with the IRS, and any revenue collected during this period is non-commissionable to the PCA. Since the PDC program began, $5.5 million (10 percent) of the $56.6 million was deemed non-commissionable to the PCAs, part of which was collected during this 10-day waiting period.[26] The PCAs received a commission of approximately $10.1 million (20 percent) of the remaining $51.2 million that was later collected.[27] In total, as of June 14, 2018, PDC program revenue was $56.6 million, and $51.2 million (90 percent) of this amount was directly attributed to the PCAs.

## *Ten years later, the IRS spent significantly less on PDC implementation*

As noted in the Background section, eight months into the 2006 initiative, revenues were approximately $20 million; meanwhile, startup costs were estimated to reach $71 million by the end of the fiscal year. Startup costs are nonrecurring and include things like the administrative costs associated with obtaining vendor bids and awarding the contracts. Operational costs are recurring, and include such things as contractor oversight and inventory assignment costs. Differentiating between startup and operational costs is important because it helps managers forecast whether a program is generating sufficient revenue to cover its costs in the long term. However, the IRS did not differentiate between startup and operational costs for the PDC program. Instead, it combined all costs by fiscal year, which makes it more difficult to predict the future costs of the program.

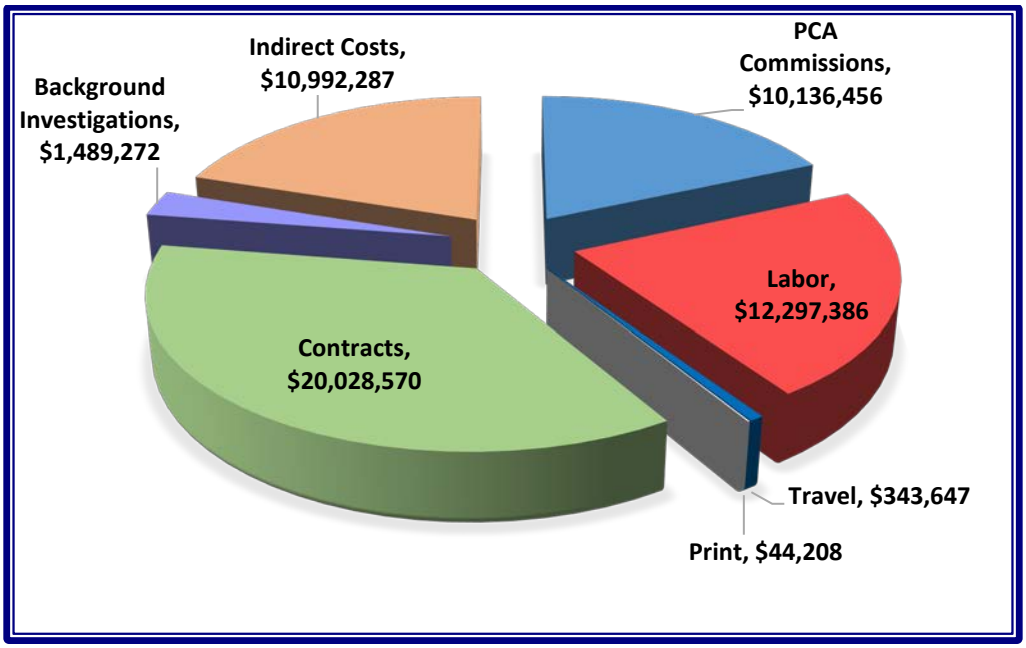
Since its inception through May 31, 2018, the IRS has spent $55.3 million on the PDC program, including $15.3 million during FY 2016, $20 million during FY 2017, and $20 million during FY 2018. Figure 3 shows the breakout of PDC program costs through May 31, 2018.

[25] I.R.C. § 6306(c) requires the IRS to use the PCAs for three types of inactive receivables: "(i) at any time after assessment, the Internal Revenue Service removes such receivable from the active inventory for lack of resources or inability to locate the taxpayer, (ii) more than ⅓ of the period of the applicable statute of limitation has lapsed and such receivable has not been assigned for collection to any employee of the Internal Revenue Service, or (iii) in the case of a receivable which has been assigned for collection, more than 365 days have passed without interaction with the taxpayer or a third party for purposes of furthering the collection of such receivable."

[26] Percentage does not calculate due to rounding.

[27] Commissions for taxpayers on payment plans are paid when each payment is made and received by the IRS. Commissions are not paid on any amount collected from IRS refund offsets.

***Figure 3: Breakout of PDC Program Costs Through May 31, 2018*** [28]



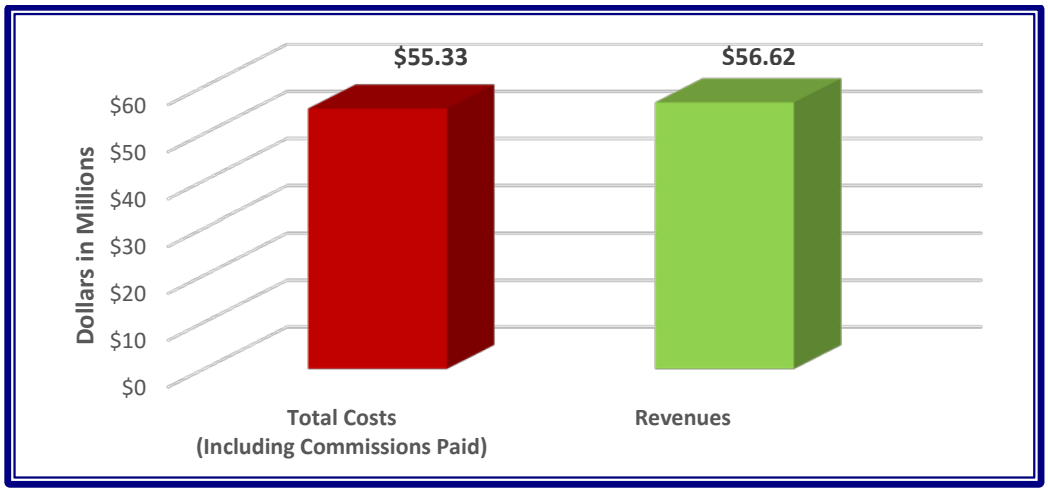

*Source: TIGTA analysis of the IRS's June 2018 PDC Scorecard.*

The IRS did not break out startup and operational costs; however, some of these expenditures are likely nonrecurring. For example, information technology costs dropped 23 percent from $8.9 million during FY 2016 (prior to assigning any inventory) to $6.8 million during FY 2017.[29] Other program costs will be reoccurring. For example, background investigations for PCA employees were $1.5 million. In addition, the IRS has assigned 39.45 full-time equivalent employees to the PDC program on a permanent basis.[30]

As of May 31, 2018, program revenue was higher than costs. Figure 4 compares program costs and revenue.

[28] PCA commissions are as of June 14, 2018.
[29] Numbers do not calculate due to rounding. Total information technology expenses include $2 million in information technology labor, which is not separately broken out in Figure 3.
[30] A measure of labor hours in which one full-time equivalent is equal to eight hours multiplied by the number of compensable days in a particular fiscal year. For FY 2017, one full-time equivalent was equal to 2,080 staff hours. For FY 2018, one full-time equivalent is equal to 2,080 staff hours.

**Figure 4: PDC Program Total Costs and Revenue**




*Source: TIGTA analysis of the June 2018 PDC Scorecard and PDC Service-wide Summary.*

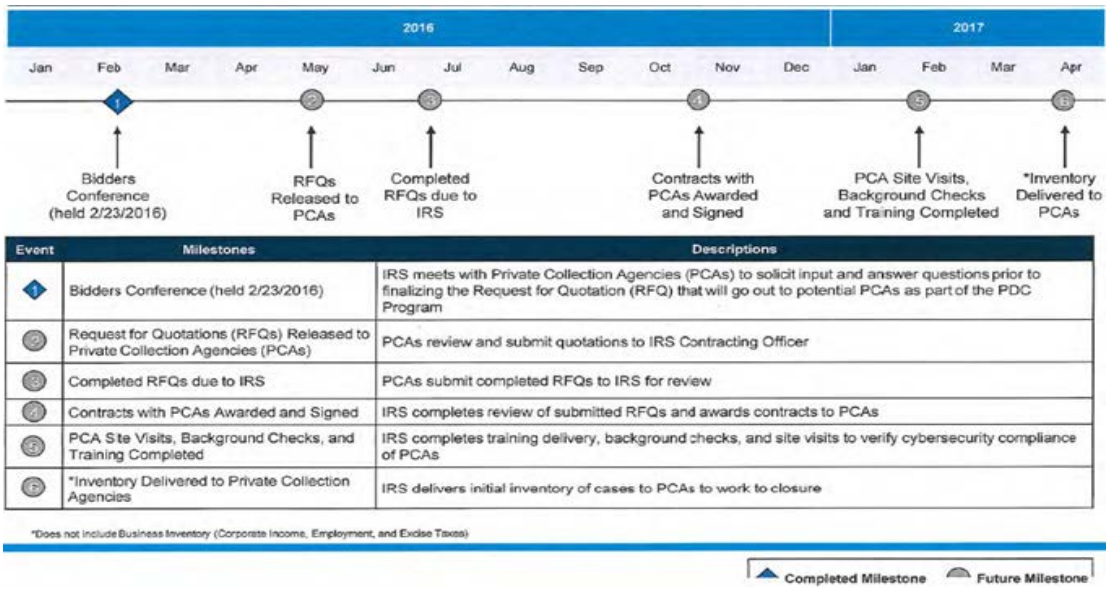
As of May 31, 2018, total program revenue ($56.62 million) was approximately $1.3 million more than costs ($55.33 million). As will be described in more detail later in this report, the IRS's explanations for allocating fewer resources to this initiative than the 2006 initiative were the reductions in IRS funding since 2013, as well as concerns that adding resources to the initiative would affect the return on investment of the initiative.

## PDC program management met many project milestones

Planning and oversight are necessary for the successful implementation of a new program. The IRS established a PDC Governance Board to manage the overall execution of the PDC program. In addition, it staffed an Executive Leadership Team and an Integrated Project Team to monitor the execution of the Enterprise Integration Program Plan and to manage the Enterprise Integration Risk.[31] As part of its efforts to roll out the current PDC program, the IRS established key tasks and milestone dates to be met for an effective implementation. These tasks included Requests for Quotations, contract awards, PCA site visits, and inventory delivery. Figure 5 shows the key milestones for program implementation.

[31] The Enterprise Integration Program Plan is an outline of key PDC program implementation activities. It includes milestones and a summary of task details that have been completed as of a certain date. Enterprise Integration Risk is a term that encompasses potential threats that are inherent to the implementation of the PDC program. It includes risks associated with: IRS compliance with applicable laws, management and reporting of finances, PCA interactions with taxpayers, safeguarding taxpayer information, PDC program supporting infrastructure and technology, PDC program funding and resources needed, and the achievement of business objectives.

***Figure 5: Key Milestones for PDC Program Implementation***




| Event | Milestones | Descriptions |
|---|---|---|
| 1 | Bidders Conference (held 2/23/2016) | IRS meets with Private Collection Agencies (PCAs) to solicit input and answer questions prior to finalizing the Request for Quotation (RFQ) that will go out to potential PCAs as part of the PDC Program |
| 2 | Request for Quotations (RFQs) Released to Private Collection Agencies (PCAs) | PCAs review and submit quotations to IRS Contracting Officer |
| 3 | Completed RFQs due to IRS | PCAs submit completed RFQs to IRS for review |
| 4 | Contracts with PCAs Awarded and Signed | IRS completes review of submitted RFQs and awards contracts to PCAs |
| 5 | PCA Site Visits, Background Checks, and Training Completed | IRS completes training delivery, background checks, and site visits to verify cybersecurity compliance of PCAs |
| 6 | *Inventory Delivered to Private Collection Agencies | IRS delivers initial inventory of cases to PCAs to work to closure |

*Does not include Business Inventory (Corporate Income, Employment, and Excise Taxes)

*Source: IRS response to Senate Finance Committee timeline request, March 2016.*

During implementation, the IRS met many key milestone dates. For example, the Request for Quotations was released to the PCAs on April 25, 2016, and was completed and returned to the IRS by May 13, 2016.

On September 26, 2016, the IRS awarded contracts to four PCAs:[32]

- CBE Group
- ConServe
- Performant
- Pioneer

The IRS worked directly with these PCAs to develop policies and procedures to be used by each vendor, and the IRS continues to work with each PCA to communicate results and monitor progress. Although all PCAs are required to abide by IRS rules, each PCA is responsible for implementation of the rules, with the IRS's approval. The PCAs are also subject to numerous laws, including the:

- Fair Debt Collection Practices Act.[33]

[32] The FAST Act required the IRS to give priority to contractors listed on the schedule required under section 3711(g) of Title 31, United States Code (U.S.C.) (see I.R.C. § 6306(h)). The four vendors were the only vendors on the schedule.
[33] 15 U.S.C. §1692 – 1692p.

- Telephone Consumer Protection Act (TCPA).[34]
- Taxpayer Bill of Rights.[35]
- Internal Revenue Code (I.R.C.) § 6306.
- I.R.C. § 6103.[36]

Each of the four PCAs prepared and provided a *Contractor Operational Plan*, which describes how each of the PCAs comply with the law and carry out the collection process for the implementation of the IRS PDC program. Each plan provides for the use of subcontractors to carry out activities that will not be carried out by the contractor itself. In each case, the plan identifies the subcontractors and outlines the duties the subcontractors will carry out as required by the *Performance Work Statement*. These subcontractors number as many as 17 and are designated to carry out activities ranging from janitorial services to skip-tracing and taxpayer letter distribution. The provisions of the law authorizing the use of private debt collectors precludes use of subcontractors for certain tasks, such as drafting correspondence to taxpayers.

The IRS deployed the PDC program on time. The IRS established the PDC Data Transfer Component and conducted security reviews at the PCA sites.[37]

While the IRS was able to implement the PDC initiative despite resource challenges, we identified significant areas of concern. We found that some IRS policies may be harmful to taxpayers while other policies may jeopardize tax compliance.[38]

During the audit, we formally alerted IRS management of our concerns and offered recommended actions for correction.[39] We also requested information directly from private debt collectors. For some issues, the IRS took corrective action. For example, as initially constructed, IRS PDC program policies and procedures would not allow taxpayers to allocate payments to specific delinquencies. In general, if a taxpayer owes taxes for more than one tax period, the IRS applies any tax payments first to interest and penalties and to the oldest liability until it is paid off. This is done to reduce the risk that the IRS will lose the ability to collect on the oldest liability because of the Collection Statute Expiration Date (CSED). However, taxpayers have the option to tell the IRS how they want their payments to be allocated to their

[34] 47 U.S.C. § 227, which among other limitations, precludes use of automatic predictive dialer systems from making calls to cellular phones. There is an exception for debts of the Government § 227(b)(1)(A); however, Federal Communications Commission rules allow only three such calls from a predictive dialer to a cellular phone per month. 31 FCC Rcd. 9074, 31 F.C.C.R. 9074, 65 Communications Reg. (P&F) 438 (August 2016).
[35] I.R.C. § 7803(a)(3).
[36] Like the IRS, the PCAs are required to safeguard sensitive taxpayer information. Treasury Regulation section 301.6103(n) places certain requirements on the disclosures of tax returns and return information to contractors; no re-disclosures by the contractor are allowed without prior written approval from the IRS.
[37] This audit did not review the security surrounding the systems used in the PDC program.
[38] Data security is currently being addressed as part of another TIGTA audit (Audit Number 201720010).
[39] Alerts were issued in September 2016, February 2017, and November 2017.

liabilities, *e.g.*, to principal as opposed to interest and penalties or to a specific year's tax liability. As the policies and procedures were initially constructed, taxpayers would not have that right. After discussions with TIGTA, the IRS agreed to allow taxpayers in the PDC initiative the right to allocate payments. However, for other issues the IRS declined to take corrective action.

## Recommendation

**Recommendation 1:** The Commissioner, Small Business Self-Employed Division, should increase the percentage of newer inventory in the mix of cases assigned to the PCAs by identifying low-priority new balance due accounts for assignment that would not likely be worked by IRS employees.

> **Management's Response:** IRS management disagreed with this recommendation. The IRS stated that Congress specifically defined the "inactive tax receivables" that must be collected under qualified tax collection contracts in I.R.C. § 6306(c) as including older inventory. The IRS has business rules that identify low-priority new balance due accounts, which are already included in the mix of cases assigned to the PCAs. The IRS business rules for shelving low-priority inventory are periodically evaluated and updated based on changing resources and policies within Field Collection and the ACS.
>
> **Office of Audit Comment:** The FAST Act clearly allows the IRS to make a determination as to what constitutes inactive inventory. The first permissible type of case for PCA assignment is *any* tax receivable if "at any time after assessment, the Internal Revenue Service removes such receivable from the active inventory for lack of resources or inability to locate the taxpayer."[40] Congress has authorized the IRS to make resource-based determinations in defining what constitutes inactive inventory. The law does not prohibit the IRS from assigning more current accounts. The IRS has the capability to identify more current accounts that will likely never be worked and assign those accounts to the PCAs before they become aged, increasing the likelihood of collection. The average cases that the IRS is assigning to the PCAs are statistically uncollectible due to the age of the account, *i.e.*, four years. Watching cases as they age to become statistically uncollectible before assigning to the PCAs does not reflect good business acumen.

## Certain Private Debt Collection Program Policies May Harm Taxpayers

The IRS is responsible for overseeing private debt collectors and ensuring that taxpayer rights are protected. Taxpayers whose accounts have been assigned to the PCAs have the same rights and expectations as taxpayers whose accounts continue to be worked by the IRS. Although the

[40] I.R.C. § 6306(c)(2)(A)(i).

IRS has worked with the PCAs and stakeholders to ensure that many taxpayer rights are protected, we identified some problems with program policies and procedures that could ultimately harm taxpayers. Specifically, we found:

- A complaint process that is dependent on private debt collectors reporting on themselves.
- The absence of a significant coordinating function, *i.e.*, a referral unit, to ensure that only appropriate cases are sent to the PCAs and appropriate actions are taken by the PCAs.
- A PDC program communication strategy that conflicted and contradicted other IRS communications regarding the tax scam environment.
- Authentication procedures that needlessly expose taxpayers to risk.

## Procedures involving taxpayer complaints against the PCAs need to be strengthened

The debt collection industry is the Federal Trade Commission's (FTC) most complained about industry in the United States. In 2016 alone, there were 859,090 complaints filed with the FTC with respect to debt collection practices—28 percent of all complaints the FTC received. Imposter scams and identity theft make up the next two categories, for an additional 26 percent of all complaints.

While taxpayers can complain to the FTC about private debt collectors, the IRS does not have a mechanism established for complaints to be lodged directly with the IRS. The IRS's policies and procedures guide requires the private debt collectors to self-report complaints to TIGTA's Office of Investigations (OI), which reviews complaints and reports back to the IRS's contracting officer. However, the IRS does not maintain a dedicated telephone line or other method to capture complaints about the PCAs. Although the IRS provides a telephone number to taxpayers whose accounts are assigned to the PCAs, the telephone number simply contains the following automated message directing taxpayers to call the PCA:

> *If you have received a CP 40 letter from the Internal Revenue Service, your account was assigned to a Private Debt Collection agency. This notice includes your assigned debt collector's name and phone number. You can also find out information about the Private Debt Collection program on the Internal Revenue Service website, www.IRS.gov, by typing "private debt collection" into the search box. If you have spoken with your assigned collection agency and feel you are being scammed or have a reason to believe you are being threatened, please call 1-800-366-4484 to contact the Treasury Inspector General for Tax Administration Office of Investigations.*

Through September 30, 2017, about 9,500 individuals sought help from the IRS regarding the PDC program and received the automated message. Although the message refers taxpayers to the IRS's website, as late as November 2017, the IRS website contained information pertaining to the 2006 PDC initiative. We brought this issue to management's attention, and this

information has since been removed. TIGTA recommended that the IRS assist taxpayers who called either to complain about the PCAs or to authenticate the legitimacy of the PCAs. The IRS disagreed with this recommendation even though it conceded that the cost of allowing taxpayers to call into the regular IRS toll-free telephone number would be minimal given the high volume of calls the IRS regularly receives from taxpayers and the relatively small number of calls that would be received from taxpayers whose accounts were assigned to the PCAs.

As of January 11, 2018, 50 complaints related to the 2017 PDC initiative have been received by TIGTA's OI. Some facts about the complaint log include:[41]

- Of the 50, one company self-reported 22 (44 percent) complaints, while another PCA self-reported only three (6 percent) complaints.
- The highest category of any type of complaint (14) was made by PCA employees complaining about the taxpayers they called who were alleged to have made physical, bomb, or other similar threats. IRS procedures require PCA employees to report these types of threats.
- The next highest category of any single type of complaint (12) involved inadvertent disclosures of taxpayer information in violation of I.R.C. § 6103 either because someone other than the taxpayer pretended to be the taxpayer or because the PCA employee inadvertently provided the information to a person other than the taxpayer.

Internal control standards require that agencies establish control activities that ensure that management's directives are enforced and carried out.[42] The oversight body's and management's directives, attitudes, and behaviors reflect the integrity and ethical values expected throughout the entity and reinforce the commitment to doing what is right, not just maintaining a minimum level of performance necessary to comply with applicable laws and regulations. Standards and proper oversight ensure that these priorities are understood by all stakeholders, such as regulators, employees, and the general public.

As part of the 2006 initiative, an IRS Referral Unit was responsible for responding to inquiries from taxpayers, contractors, and IRS staff and handling taxpayer complaints. Complaints were assigned a type code, based on the severity of the allegations. For example, rude behavior was a Type One complaint, intimidation was a Type Two complaint, and a violation of the Fair Debt Collection Practices Act was a Type Three complaint.

In the 2006 initiative, PDC program management identified the need to provide assistance and consistency to the validation process and established a PDC Complaint Panel to perform that role. The group consisted of PDC program managers, Small Business/Self-Employed Division

[41] Note the numbers do not add up to 50, as this list does not describe every complaint.
[42] GAO, GAO-14 -704G, *Standards for Internal Controls in the Federal Government* (Sept. 2014).

program managers, contract specialists, and a Taxpayer Advocate Service representative. The Panel was responsible for:

- Ensuring the consistency of adjudication of complaints against the PCAs.
- Reviewing Type One complaints for trends.
- Reviewing Type Two and Type Three complaints for validation purposes.

The IRS's current PDC program does not have a referral unit or a complaint panel. Instead, the PCAs are instructed to forward all complaints to TIGTA's OI. The PDC program management team confirmed that they are deferring to TIGTA's OI complaint investigation and would be relying on it to establish the criteria for a "valid" complaint. The OI is a law enforcement function, and while it can establish facts through interviews and other investigative techniques, it cannot make decisions for the IRS about what actions to take in light of the established facts.

**Results of TIGTA's OI reviews illustrate the need for a complaint panel**

As previously described, there are a number of benefits to a complaint panel. These benefits include IRS leadership: being made aware of the types of issues taxpayers are complaining about; taking consistent action on similar types of complaints, rather than leaving decisions up to four different contracting officers; and ensuring that the PCAs are reporting complaints based on the same set of standards. The business of debt collections involves call campaigns once a viable telephone number is thought to be found for a given taxpayer. The PCAs earn a commission on what is collected so they are incentivized to maximize telephone contacts.

TIGTA's OI had completed its review for 46 of the 50 cases that had been referred to it as of January 11, 2018. Of these 46 cases, 13 were sent back to the IRS for administrative action. Nine of these cases involved improper disclosure of taxpayer information to unauthorized persons by PCA employees. A complaint panel could track and monitor these events across the PDC program and ensure that appropriate corrective actions are taken. TIGTA's OI also recommended the formation of an IRS complaint panel.

A complaint panel made up of a cross-functional group of IRS managers would also ensure that the persons in charge of reviewing complaints against the PCAs are not the same people who are responsible for the success or failure of the PDC initiative. To date, 22 (44 percent) of the 50 complaints have been self-referred by one of the four PCAs, which may indicate that the PCAs are self-reporting complaints based on different standards. A complaint panel could also help ensure consistency in how complaints are self-reported. However, the IRS has no plans to reinstate the complaint panel and will leave it to contracting officers and those in charge of the PDC program's success or failure to ultimately decide what, if anything, to do about complaints. IRS procedures also require that complaints be reported to the Contracting Officer Representative and TIGTA's OI, not to telephone assisters.

## *Absence of a referral unit harms taxpayers and program results*

In the 2006 initiative, the Referral Unit had a multitude of functions including delivering the appropriate cases to the PCAs, coordinating taxpayer complaints, and recalling cases that were inappropriate to be with the PCAs, *e.g.*, taxpayers in disaster areas, members of the military serving in combat zones. In the following section, which addresses how the PDC program could be more effective, we also discuss how a referral unit can be used to collect funds that the PCAs are unable to collect through the use of tools (such as partial pay installment agreements and offers in compromise) that the PCAs do not have the authority to use.

### Taxpayers in disaster areas illustrate the need for a referral unit

The law requiring the IRS to use private debt collectors establishes certain protections for taxpayers, including those in designated Federally declared disaster areas, which include allowing taxpayers to have their accounts returned to the IRS upon the request of the taxpayer.[43] IRS guidance goes further by prohibiting the assignment of accounts belonging to taxpayers in Federally declared disaster areas. The guidance provides that the IRS will not assign an account that has the designation of a taxpayer in a Federally declared disaster area to a PCA. The account designation for such a status is an "–O freeze," and these indicators are typically automatically populated on taxpayers' accounts by zip code.

Multiple weather-related disaster events occurred in August and September of 2017 resulting in multiple Federally declared disasters.[44] However, contrary to the guidance, the IRS assigned at least 2,467 cases to the PCAs that already had the –O freeze designation. Additionally, IRS system limitations cause a delay from the time a disaster is declared and the time that IRS data systems reflect the –O freeze. Even more time elapses as IRS data are transferred to the systems of the PCAs that are then supposed to place a collection "hold" on the account. In other words, despite the disaster declaration to affected taxpayers, the PCAs continue collecting until the hold is placed on the account. In response to a TIGTA request of the PCAs, the PCAs indicated that $753,460 was collected after the pertinent disaster declaration. The breakdown of amounts collected by the PCAs on taxpayers in disaster zones after the date of declaration (and while the declaration was still in effect) is as follows:

- PCA 1: $380,385.
- PCA 2: $243,384.
- PCA 3: $72,236.
- PCA 4: $57,455.

[43] I.R.C. § 6306(i).
[44] The disaster declarations were as follows: Hurricane Harvey on August 25, 2017; Hurricane Irma on September 10, 2017; and Hurricane Maria on September 20, 2017.

The disparity in collections between PCAs 1 and 2 and the other two PCAs may suggest a systemic problem with following procedures in place to protect taxpayers in disaster areas, and the IRS should further investigate the actions taken on these accounts. An IRS operational review of one PCA reflected that in three out of seven –O freeze accounts, collection letters were sent to taxpayers after the case was placed in "hold" status.

While IRS guidance contemplates resuming collections after the expiration of the disaster declaration period, the guidance cautions:

> *At the end of the compliance suspension period, taxpayer contacts within the designated disaster area must be made with caution and extreme sensitivity to the taxpayer's personal circumstances. Stress and fatigue are factors needing consideration, even in instances where taxpayers did not experience any personal, monetary, or physical damage from the disaster. Begin with an assessment of the impact of the disaster on the taxpayer. This should provide an opportunity to defer action, as needed, for a reasonable period of time* ***or to return the account to the IRS***. [emphasis added]

When we recommended to the IRS to recall the accounts of taxpayers in disaster zones, the IRS rejected the recommendation stating it would have no mechanism to then later return those accounts to the PCAs after the suspension period. The IRS also stated that the law allows taxpayers to request the return of a case to the IRS and does not require the IRS to automatically pull these cases back. While this is accurate, the IRS's own policies also preclude assignment of accounts belonging to taxpayers in disaster areas. However, the IRS assigned thousands of such cases to the PCAs that began collecting on them until such time that the -O freeze appeared on the taxpayers' accounts. The IRS also stated that the disaster declaration period ended on January 31, 2018, when collections resumed. However, the Federal Emergency Management Agency indicates rebuilding the communities affected by these disaster events will take years.[45]

Assuming that returning some cases to the PCAs is appropriate, a referral unit would allow the IRS to recall cases systemically and then return cases, as appropriate, to the PCAs after the expiration of the freeze on compliance activities. The IRS is reluctant to staff a referral unit because the associated costs will make the initiative less profitable. However, the absence of a referral unit ensures that the IRS will continue assigning accounts of taxpayers in disaster areas to the PCAs, and they will continue to collect from taxpayers in disaster areas, at least until the -O freeze appears on the accounts.

In addition to taxpayers residing in disaster areas, there are other situations that warrant the return of cases to the IRS, including bankruptcy, identity theft, and innocent spouse claims. Rather than leaving the appropriate treatment of these taxpayers to the PCAs, an IRS referral unit would ensure that the PCAs are collecting only on appropriate cases.

[45] Federal Emergency Management Agency, News Release, October 19, 2017.

### The PDC program communication strategy contradicted previous IRS communications regarding the tax scam environment

Concerns about identity theft and impersonation scams may be the most significant threat to the success of the PDC program. The operation of the PDC program in this environment likely means that taxpayers will be highly skeptical upon contact by legitimate PCAs, and that scammers will likely attempt to exploit the PDC program by impersonating both IRS and PCA employees.

Since the IRS's last effort to use PCAs to collect delinquent taxes in 2006, there have been a number of negative developments which will likely make taxpayers more skeptical when approached by legitimate PCAs. Since 2006, incidences of tax-related identity theft have plagued both taxpayers and the IRS. Every year hundreds of thousands of taxpayers are the victims of tax-related identity theft. In 2015, the IRS *Get Transcript* system was compromised and an estimated 700,000 taxpayers had their information compromised. Additionally, beginning in 2013, scams involving individuals impersonating IRS collection personnel in telephone calls to taxpayers (and more recently via e-mail) have developed into the largest scam in the IRS's history with millions of taxpayers contacted, thousands of victims, and tens of millions of dollars defrauded.

Since October 2013, there have been more than 1.8 million telephone scam complaints, and about 10,000 victims have paid a combined total of more than $54 million. In addition, in March 2016, the IRS warned about the scams, which have increased by 400 percent since the beginning of 2016. TIGTA's OI has made progress combatting and prosecuting this criminal activity, resulting in a decrease of complaints; however, scam activity is still ongoing.

PCA contacts by telephone call will likely cause confusion to the general public because, in part, the IRS messaging has been mixed. For example, as recently as 2016, the language on IRS.gov stated, "the IRS will never call you to demand payment." IRS operational reviews of the PCAs have included focus groups with employees who have reported that taxpayers frequently say "the IRS never calls" and "this is a scam."

Tax scammers may have already used the PDC program as a ruse to confuse taxpayers into thinking that they are dealing with a legitimate IRS contractor. A more comprehensive communication campaign that explains the IRS's PDC program could help mitigate the risk that taxpayers will refuse to engage with legitimate PCAs or fall victim to criminals impersonating the PCAs or the IRS.[46] The IRS.gov website provides some useful information about the program, but the IRS could use the Internet and social media more effectively. For example, the IRS.gov website previously referenced a YouTube.com public service announcement that was not actually on YouTube.com. Additionally, as mentioned previously,

[46] TIGTA reported this issue to the IRS in an Alert dated February 2017. IRS officials partially agreed with our recommendations at the time of issuance.

as late as November 2017, the IRS website contained information pertaining to the 2006 PDC initiative until we brought it to management's attention and it was removed.

## Authentication procedures expose taxpayers to some risk

The IRS website provides the following reassuring language with respect to its PDC initiative:

> *The IRS will do everything it can to help taxpayers avoid confusion and understand their rights and tax responsibilities, particularly in light of continual phone scams where callers impersonate IRS agents and request immediate payment.*

We do not think the IRS met this standard in several respects. Current authentication procedures may be placing taxpayers at risk of having their identities stolen or becoming a victim of the tax scam environment. The IRS established authentication procedures to provide taxpayers the assurance that they were dealing with a legitimate PCA. However, the allowance for an alternate method of authentication by the PCA may put taxpayers at risk.

When the IRS identifies cases for transfer to a PCA, letters are sent to affected taxpayers that advise them that their accounts are being transferred to a PCA. Subsequently, the PCA sends the taxpayer a second correspondence, referred to as the Initial Contact Letter, which advises the taxpayer that the account has been transferred to a specific PCA (one of the four vendors) for resolution.

The IRS has created guidance on what information the PCAs need to verify in order to authenticate a taxpayer's identity. Specifically, the IRS requires that the PCAs verify four items:

- Name.
- Taxpayer Authentication Number (TAN).
- Complete Address (including zip code).
- Date of Birth.

The TAN is provided to the taxpayer in the IRS's Initial Contact Letter (CP 40) informing the taxpayer that the account is being assigned, and again when the PCA sends the taxpayer its Initial Contact Letter. The TAN's purpose is to allow "two-party authentication" so that both the PCA and taxpayer can authenticate each other. When the PCA employee speaks to the taxpayer, the taxpayer will be asked to provide the first five digits of the TAN. The PCA employee then provides the taxpayer with the last five digits of the TAN. This process also helps to assure the taxpayer that the caller is a legitimate contractor authorized by the IRS.

However, in cases for which the taxpayer does not know the TAN, the IRS has established an additional authentication probe that the PCAs can use to verify a taxpayer's identity. For these cases, the taxpayer verifies the name, complete address of record (city, State, and zip code), and date of birth, and the taxpayer agrees to continue authentication. The current guidance then allows the PCAs to:

- Use the taxpayer's SSN similarly as the TAN, by asking the taxpayer to provide the first five digits of the SSN, and allowing the PCA employee to provide the taxpayer's last four digits.
- Offer to resend the PCA Initial Contact Letter that contains the TAN and suspend further discussion for five calendar days to allow time for the taxpayer to receive the PCA Initial Contact Letter.

Allowing the PCAs to request taxpayers' SSNs when the TAN is not available increases the risk of fraud and may undermine the integrity of the PDC program. Additionally, the IRS will be unable to warn taxpayers that the PCAs will never ask them for their SSNs for authentication purposes or that the PCAs must always authenticate their identity using a TAN. Tax scammers could exploit this process in an effort to steal the taxpayer's identity. Second, taxpayers may be more inclined to discontinue the call because requesting sensitive information is common in a scam. Such practices could undermine the taxpayers' faith in the legitimacy of the PCA and ultimately hinder the collection of taxpayer debts.

Rather than circumventing the TAN process, the PCAs should be required to resend to the taxpayer the Initial Contact Letter containing the TAN and then complete the taxpayer authentication steps after the letter is received in the mail by the taxpayer. When a taxpayer does not have the TAN, the conversation with the PCA employee should terminate.

Additionally, to protect the integrity of the two-party authentication process, we recommended that IRS telephone assistors be available to confirm the authenticity of the TAN (as well as the assignment of the delinquent account to the PCA) if taxpayers ask the IRS to do so. The IRS evaluated the effect of taxpayers calling the IRS about the PCAs and determined the effect would be minimal in light of the millions of telephone calls the IRS receives versus the relatively few cases assigned to the PCAs. However, the IRS decided not to instruct telephone assistors to provide information to taxpayers about the PDC initiative and did not provide IRS contact information to the public (other than the prerecorded message that we previously noted). The IRS decided that if taxpayers call the IRS to obtain or validate their assigned TAN, IRS call assistors would not be required to provide taxpayers the TAN or other information regarding the PDC initiative.[47]

[47] TIGTA reported this to the IRS in an Alert issued in February 2017. IRS officials partially agreed with our recommendations at the time of issuance.

## Recommendations

The Commissioner, Small Business Self-Employed Division, should:

**Recommendation 2:** Establish a complaint panel made up of a cross-functional group of IRS managers to ensure that complaints are acted upon and that systemic problems with the program are identified and addressed.

> ***Management's Response:*** IRS management disagreed with this recommendation. The IRS stated that TIGTA's OI designed the current complaint process. TIGTA's OI triages all PDC complaints and determines if the complaint will be accepted for further evaluation. The current process ensures that substantiated complaints are acted upon and that systemic problems are identified and addressed.
>
> ***Office of Audit Comment:*** TIGTA's OI also recommends the creation of a complaint panel. TIGTA's OI is a law enforcement function, and while it can establish facts through interviews and other investigative techniques, it cannot make decisions for the IRS about what actions to take in light of the established facts. For that, an internal process, such as a complaint panel, is needed. The cost of having representatives from IRS management assess complaints and Fair Debt Collection Practices Act violations would likely be minimal and would reflect a more balanced approach to the administration of this program.

***Recommendation 3:*** Establish a referral unit to ensure that cases inappropriate for the PCAs can be identified and recalled from them.

> ***Management's Response:*** IRS management disagreed with the recommendation. The IRS stated that the automated systems and inventory delivery teams already ensure the appropriate assignment and recall of cases. The PDC inventory management system receives weekly updates from the Master File and recalls accounts systemically when case conditions warrant such recall.
>
> ***Office of Audit Comment:*** IRS management's response does not take into consideration the need to balance cost considerations with the need to protect taxpayer rights. The systemic case selection and delivery process did not prevent the assignment of 2,467 accounts belonging to taxpayers residing in Federally declared disaster areas. As we discovered at the conclusion of this audit, 92 percent of PCA payment agreements longer than 60 months had incorrect payment terms. We have also identified problems with agreements less than 60 months. If taxpayers honored the terms in these agreements, some would be too long causing the taxpayer to pay more than they owe, and some would be too short and not pay off the debt. This presents a serious taxpayer rights issue. The IRS's strategy of "minimal intervention" may have prevented the issue from being identified and corrected earlier.

**Recommendation 4:** Revise the communication plan to use social media, including YouTube, to develop explanatory information about the IRS's PDC program, including information about the Taxpayer Bill of Rights.

> ***Management's Response:*** IRS management agreed with this recommendation. However, IRS management stated the report contains an inaccurate statement that the YouTube video is not actually on YouTube.
>
> ***Office of Audit Comment:*** During the audit, TIGTA reported to the IRS that its video link was not operational, and we brought this issue to the attention of IRS management at that time. Management subsequently took corrective action.

***Recommendation 5:*** Work with the Wage and Investment Division, if necessary, to provide taxpayers with a telephone number to call so they can talk with an IRS employee to validate the particular PCA to which their account has been assigned, obtain their TAN, or make a complaint about their PCA.

> ***Management's Response:*** IRS management disagreed with this recommendation. The IRS stated that it has established the PDC designated toll-free line and procedures to protect taxpayers from potential scams, verify the legitimacy of the PCAs, connect taxpayers directly to their assigned PCA, and allow taxpayers to report complaints. IRS Notice CP 40 and Publication 4518, *What You Can Expect When the IRS Assigns Your Account to a Private Collection Agency*, also contain this information. Additionally, taxpayers can validate the PCA by visiting IRS.gov and using online services to request a transcript to verify assignment to a PCA. Sufficient methods are in place to provide taxpayers the means to validate their assigned PCA, obtain their TAN, or make a compliant, without expending additional IRS resources.
>
> ***Office of Audit Comment:*** The IRS's designated toll-free line is an automated message telling taxpayers who to call to complain about the PCAs or ask clarifying questions to contact the PCA instead. As we have previously discussed, the IRS's focus on not expending resources to provide basic taxpayer service can harm taxpayers. All taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service. An automated message is not quality service, if it is service at all. Taxpayers with accounts assigned to the PCAs face other barriers to this right as well. For example, taxpayers who have a dispute with the PCA about the amount owed (such as a claim that they made a payment) must provide support. To obtain support, such as payments made, taxpayers must often communicate with the IRS. However, the IRS's automated message redirects taxpayers whose accounts have been assigned to the PCAs back to the PCA when they attempt to contact the IRS. This situation is clearly untenable.

**Recommendation 6:** Revise guidance to 1) prohibit the PCAs from requesting taxpayer SSNs as alternate means of authentication and 2) require the PCAs to discontinue telephone calls when taxpayers do not have their TAN and reissue the Initial Contact Letter to provide the TAN.

> ***Management's Response:*** IRS management disagreed with both prohibiting the PCAs from authenticating taxpayers by using SSNs and discontinuing telephone calls when taxpayers do not have their TAN for the following reasons:
>
> 1) Using the SSN to authenticate is standard practice throughout the IRS. The PCAs use the SSN to authenticate only when the taxpayer misplaced the TAN. The PCA does not request the full SSN, but instead conducts two-party verification of the SSN by providing the first five digits and the taxpayer provides the last four digits of the SSN.
>
> 2) Discontinuing a call with an engaged taxpayer is not good business practice when using the SSN is a viable alternate means of authentication. The PCAs do not discontinue the telephone call, but offer to resend the letter and the TAN or conduct two-party verification with the SSN. It is the taxpayer's choice to either conduct two-party verification of their SSN and continue discussion or discontinue the call and wait to receive the reissued PCA Initial Contact Letter.
>
> ***Office of Audit Comment:*** The purpose of the TAN was both to protect the integrity of the PDC program and to protect taxpayers from unscrupulous individuals who might employ the PDC program as part of the ongoing unprecedented IRS impersonation scams. Each taxpayer with an account assigned to a PCA has a unique TAN. While SSNs are unique to taxpayers also, many SSNs have been compromised. By using the TAN, the PCAs and taxpayers engage in two-party authentication in which each party knows the authenticity of the other. From the many calls TIGTA has listened to, PCA employees are asking about the TAN but most end up using the SSN to authenticate the taxpayer.
>
> The Inspector General for the Social Security Administration has testified,[48]
>
>> *We urge everyone to keep Social Security cards in a secure place, shred personal documents, and be aware of phishing schemes, because no reputable financial institution or company will ask for personal information like an SSN via the phone or the Internet. It is also important to protect personal computers with a firewall and updated antivirus protection.*

[48] *Identity Theft and Tax Fraud, Hearing Before the House Committee on Ways and Means, and Subcommittees on Social Security and Oversight* (May 8, 2012), (statement of Patrick P. O'Carroll, Jr, Inspector General, Social Security Administration).

## Some Private Debt Collection Policies May Harm Program Effectiveness and Tax Compliance

The IRS has long-established principles that have been fundamental to its approach to collecting delinquent taxes. Some of these principles are in the law and others are in IRS procedures. For example, continued tax compliance as a condition to entering into an installment agreement or offer in compromise with the IRS is in both the law and IRS procedure. A taxpayer is guaranteed an installment agreement under the law if the tax debt is less than $10,000 and the taxpayer has otherwise remained in filing and payment compliance.[49] Subsequent noncompliance, such as the failure to file a tax return when another tax liability is due, will result in a termination of the agreement and possible resumption of enforcement action. Additionally, some IRS procedures allocate enforcement action depending on the willfulness of the taxpayer's noncompliance. For example, some IRS policy approaches are dependent on whether the taxpayer "will pay," "can't pay," or "won't pay" with stronger enforcement actions being more advisable against willful noncompliance and inadvisable against those who will comply or those who cannot comply due to economic circumstances.[50] In other words, a taxpayer's attempts at coming into compliance or not coming into compliance affect the manner in which the IRS pursues the debt. IRS Collection function personnel are also trained to identify the cause of a taxpayer's noncompliance and identify appropriate cures.[51] For example, if taxpayers have insufficient withholding from pay, they are advised how to file the requisite forms with their employer to increase withholding so there is not a balance due at the end of the year.

The PCAs do not have the legal authority to levy property, file liens, or enter into offers in compromise. The PCAs can locate taxpayers, demand full payment, offer a payment plan for a term no longer than five years to fully resolve the debt, and collect certain financial information.[52] The IRS could have attempted to more fully integrate the use of the PCAs into its traditional collection approach by using the PCAs for outbound calls and case resolution for taxpayers in the "will pay" category and routing "won't pay" taxpayers back to the IRS for the application of traditional enforcement tools, where appropriate. However, the IRS has indicated a preference to have as little to do with taxpayer accounts as possible once they are assigned to the PCAs. IRS PDC program policies and procedures could have also addressed the importance of curing noncompliance. Specifically, we found that with respect to the IRS's PDC program policies:

- Some taxpayers who can pay only a portion of what they owe will be ignored by the IRS, while others will still be pursued by the PCAs for the full amount.

[49] I.R.C. § 6159(c).
[50] Internal Revenue Manual (IRM) 5.10.1.3 (May 20, 2016).
[51] IRM 5.19.1.4.4.3 (Sept. 29, 2014).
[52] I.R.C. § 6306(b).

- There are no consequences for taxpayers who appear to have willfully failed to pay.
- The PCAs are being left to address subsequent noncompliance.
- Some payment terms do not comply with the letter of the law.
- Inventory assignment practices do not fully consider case characteristics.
- The IRS and the PCAs do not share taxpayer contact information.

## *The IRS will not work any cases that are returned from the PCAs*

IRS policy is to not commit further resources to any cases returned by the PCAs. This is so even though, in the 2006 initiative, the IRS collected more on cases returned by the PCAs as uncollectible than all of the revenue brought in by the PCAs.[53] Accounts may be returned for different reasons, including that the taxpayer is unable to pay some or all of the tax. The IRS communicated two rationales for the decision. First, IRS Collection function officials indicated that these accounts were not previously being worked by the IRS and would not have been worked but for their assignment to the PCAs. IRS officials believe that the selection for assignment of these cases for the PCAs should not alter that practice. Second, throughout the audit, the IRS expressed concerns about adding costs to the initiative that might have the effect of undermining it. Understandably, the IRS believes it has been given a mandate to ensure that its PDC program brings in more revenue using the PCAs than it costs to run the program. However, there is strong rationale to work some of the cases returned by the PCAs.

### IRS PDC program policies ignore some taxpayers who want to pay some of what they owe

By law, if taxpayers cannot fully pay their delinquent tax debt, private debt collectors can place them only into payment arrangements that do not exceed five years and must result in a full paid debt.[54] Many of the taxpayers who do not pay their tax bills are low-income taxpayers. Approximately 54 percent of taxpayers assigned to the PCAs have low-income indicators on their accounts. Through interaction with the PCAs, we have seen evidence of taxpayers who demonstrate that they can pay some but not all of their tax debt in the period remaining before the expiration of the collection statute of limitations. Generally, the IRS has 10 years to collect on a delinquent tax debt, and the date on which the collection statute of limitations expires is known as the CSED.[55]

If a taxpayer cannot fully pay the debt within the CSED through a payment plan with the PCA and the taxpayer wants to pay less than the total amount due, the IRS's PDC program policies and procedures require the PCAs to refer the taxpayer to IRS.gov for the taxpayer to try to obtain an alternative collection resolution like an offer in compromise. Although taxpayers might also

[53] National Taxpayer Advocate, 2013 Annual Report to Congress Volume Two.
[54] I.R.C. § 6306(b)(1)(B).
[55] I.R.C. § 6502(a). Within the IRS, CSED is pronounced as "*see-said.*"

qualify for a partial pay installment agreement, IRS policies and procedures do not require the PCAs to inform taxpayers of this option. If the taxpayer indicates an intention to obtain an offer in compromise, the PCA is required to place a "hold" on the account for 60 days. If the taxpayer obtains an arrangement from the IRS to pay less than what is due, the case will be recalled from the PCA. If the taxpayer does not obtain the agreement within 60 days, the PCA can resume collection activities for the full amount.

If the PCAs have *exhausted* all *reasonable* efforts to collect the debt, the account must be returned to the IRS. The PCAs are also required to designate accounts as "unable to pay" if payments toward the liability would render the taxpayer unable to meet basic living expenses. Before returning the account, the PCA can seek one voluntary payment from the taxpayer from which the PCA will receive a commission. As of December 14, 2017, of the 241,155 accounts assigned to the PCAs, 4,006 (2 percent) were returned to the IRS. Of those, approximately 1,631(41 percent) were returned because the PCAs were unable to collect any amount due, 1,013 (25 percent) were returned because the taxpayers directed the PCAs to cease contact, and 1,080 (27 percent) were returned because the taxpayers' received Social Security disability income. In one of the operational reviews conducted by the IRS, the PCA was limiting payment arrangements to 54 months. The IRS observed that the PCA had a relatively high number of accounts that were returned to the IRS as unable to collect and suggested that the PCA offer payment arrangements for up to 84 months in order to return fewer cases.

Because the decision about whether all *reasonable* efforts at collection have been *exhausted* involves subjectivity, there is significant inconsistency among the PCAs as to when the taxpayers' financial situation warrants the return of the account to the IRS. For example, as of December 14, 2017, one PCA was responsible for 39.4 percent of the accounts returned as unable to collect, a second PCA was responsible for 38.6 percent, a third PCA was responsible for 19.5 percent, and the fourth PCA was responsible for only 2.5 percent. All the PCAs receive approximately the same number of cases and same case types; therefore, it is likely the PCAs are returning cases as unable to collect based on different standards. The PCAs earn commissions only if revenue is collected on the account. Because the PCAs are not required to return a case after a specified time period, there may not be an incentive to return the case even if a partial pay installment agreement or offer in compromise would be the best arrangement to resolve the debt.

Taxpayers who offer to pay some but not all of their tax liability will have to contact the IRS on their own. If the taxpayer does not qualify or does not navigate the process correctly, the account will be retained by the PCA for continued calls to the taxpayer even though it has already been demonstrated that the PCA was unable to collect all that is due. In either case, the IRS is not capitalizing on the taxpayers' desire to pay some of what they owe. Taxpayers who can pay some of what is due but not all of what is due should be referred to an IRS referral unit for placement in a partial pay installment agreement or an offer in compromise.

**IRS PDC program policies ignore some taxpayers who refuse to pay**

It is a crime to willfully fail to pay taxes that are due and owed to the Federal Government.[56] The IRS has significant civil tools, *e.g.*, levying accounts or seizing assets, and criminal enforcement tools to address willful noncompliance with the law. Like IRS Collection and Examination function employees, PCA employees will encounter taxpayers who can pay but refuse to pay the taxes they owe. Their ability to pay may be evident by their income or assets. Their willful refusal to pay may be evident from comments made to PCA employees. There should be consequences for taxpayers who demonstrate willful noncompliance to pay their taxes. However, these taxpayers are not held accountable because the IRS refuses to work any cases that are returned from the PCAs.

The IRS maintains the position that if it were not for the PDC initiative, it would not have been working these cases; therefore, it will not take further action on these cases when they are returned from the PCAs. The IRS may be unable to work all of its inventory, but when it chooses inventory to work (even inventory assigned to the PCAs), it should ensure the right outcomes in those cases. When the Government encounters willful noncompliance but does nothing to address the taxpayer's conduct, it runs the risk of emboldening future willful noncompliance by that taxpayer and other taxpayers as well. The PCAs should have a mechanism to flag and return accounts in which willful noncompliance is identified so the IRS can take appropriate action.

## *The PCAs are being left to address other taxpayer noncompliance*

As previously described, the law and IRS procedures require that taxpayers stay in filing and payment compliance to remain in a collection payment arrangement, such as an installment agreement or an offer in compromise. Taxpayers who are in noncompliance do not qualify for a payment arrangement, and taxpayers who fail to remain in compliance with their tax obligations are subject to systemic default and would then have to contact the IRS and work to have any payment arrangements reinstated. IRS PDC program policies and procedures require the PCAs to secure all delinquent returns as a precondition to placing a taxpayer into an agreement but do not require a default on the payment arrangement for subsequent noncompliance. Once a taxpayer's account is assigned to a PCA, all future noncompliance issues will also become the purview and responsibility of that PCA.

**Taxpayer burden and risks to compliance are a byproduct of the delinquent tax return policy**

The law generally requires that taxpayers be otherwise in compliance, including the filing of delinquent tax returns, as a precondition to enter into a guaranteed installment agreement.[57] Accordingly, IRS procedures for the PDC program require the PCAs to ensure that all delinquent

[56] I.R.C. § 7202.
[57] I.R.C. § 6159(c)(2).

returns are filed before taxpayers are placed in a payment arrangement. However, not all taxpayers with a balance due have a filing requirement for every year. Determining whether there is a filing requirement for a given year is an inherently Governmental function which the PCAs cannot perform.[58] In the 2006 initiative, the IRS made the determination as to whether a taxpayer with a delinquent return had a filing requirement; however, because there is no referral unit or other staff to perform that function in the 2017 initiative, the PCAs will seek *all* delinquent returns as a precondition for placing taxpayers in a payment arrangement. This will create a burden for taxpayers who do not have a filing requirement. Many taxpayers whose accounts have been assigned to the PCAs could be affected. Specifically, of the 242,822 taxpayer accounts assigned to collectors, 177,199 (73 percent) had not filed a 2016 tax return.[59]

However, for delinquent returns after a taxpayer has been placed in a payment plan, PCA employees are instructed only to inform the taxpayer to file the delinquent return directly with the IRS and pay any outstanding tax due with the return. IRS management stated that it would be the responsibility of the PCA to contact the taxpayer and attempt to bring them into compliance if the taxpayer fails to file a future tax, and not to simply refer the noncompliant taxpayer back to the IRS. However, there is little incentive for the PCAs to be concerned about addressing subsequent noncompliance of taxpayers as long as taxpayers are making a payment on their existing payment arrangements and the PCAs are earning a commission. In fact, there is some benefit to the PCAs if taxpayers continue to experience subsequent noncompliance because the PCAs will earn commissions from future balances due which will be rolled up into existing payment arrangements.

**Effect of missed payments and subsequent balances dues**

IRS PDC program policies and procedures allow for an unlimited restructuring of payment arrangements if the PCA thinks it can still collect all of the tax within the CSED. IRS operational reviews reflect that one of the PCAs refers to missed payments as "broken promises." There is no incentive for a PCA to default an agreement and return an account to the IRS due to missed payments or subsequent noncompliance if there is any chance of additional payments on the accounts that might result in full payment of the tax within the CSED. In discussions with IRS management, they indicated that the PCAs would include a new delinquent balance due module into the existing installment agreement and update the payment terms and schedule. However, the PCA Policy and Procedures Guide did not initially include any policies or procedures which reflected this strategy.[60]

We are concerned that the PCAs are being left to handle all of the subsequent noncompliance of taxpayers whose accounts they have been assigned. The law permits the assignment of inactive

[58] In the 2006 initiative, the IRS acknowledged that determining whether there is a filing requirement for a given taxpayer is an inherently Governmental function that can be performed only by the IRS. National Taxpayer Advocate, 2006 Annual Report to Congress p. 55.
[59] Source: TIGTA analysis of the Taxpayer Service Returns Processing Category Database as of cycle 201750.
[60] This procedure was added in the October 28, 2016, version of the PCA Policy and Procedures Guide.

tax receivables to the PCAs.[61] IRS PDC program policies and procedures appear to have assigned *taxpayers* to the PCAs so that future noncompliance becomes a problem for the PCAs to solve. In fact, throughout this audit, IRS personnel have described the assignment of "entities" to PCAs as opposed to accounts.

### *The IRS proposed payment terms that were not available to other taxpayers and are inconsistent with the law*

The law allows the IRS to enter into "qualified tax collection contract[s]."[62] A qualified collection contract is for the services of any person to:

- Locate and contact taxpayers.
- Request full payment from taxpayers of amounts due.
- If the taxpayer cannot pay in full, to offer the taxpayer an installment agreement providing for full payment of the amount due during a period not to exceed five years.
- Obtain financial information from the taxpayer.[63]

The PCAs may retain commissions of up to 25 percent on qualified collection contracts. At the time I.R.C. § 6306 was introduced in 2004, the five-year period set forth in the I.R.C. corresponded to the duration of an installment agreement granted under the IRS streamlined acceptance criteria. However, since that time, the IRS's policy on streamlined installment agreements has changed. Certain taxpayers may now qualify for an installment agreement not to exceed seven years.

Prior to case assignment, PCAs representatives informed TIGTA that they could pursue payment arrangements throughout the entire life of the collection statute of limitations, *i.e.*, generally 10 years from the date of the assessment. In a policy paper described by the IRS as a "whitepaper," the IRS acknowledged the strict five-year limit to payment arrangements but proposed a "workaround" in part because longer payment arrangements would be favorable to taxpayers. The IRS reasoned:

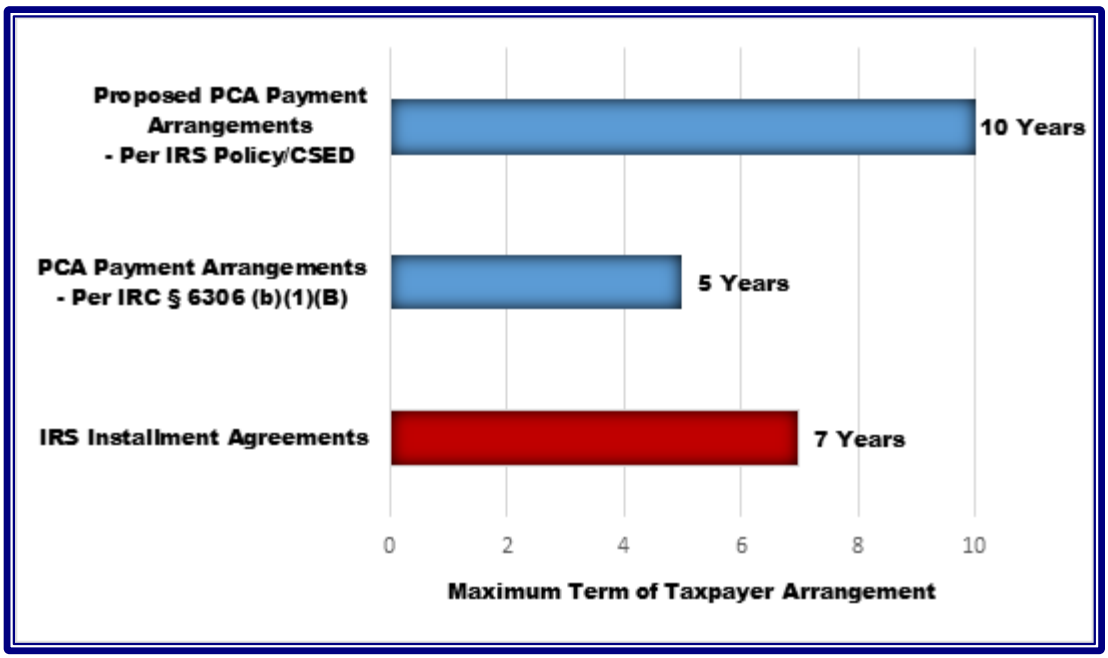
> **********7**********
> **********7**********
> **********7**********
> **********7**********
> **********7**********.
>
> **********7**********
> **********7**********

[61] FAST Act (Pub. L. No. 114-94).
[62] I.R.C. § 6306(a).
[63] I.R.C. § 6306(b)(1)(A)-(C).

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7********.

IRS management decided to accommodate the PCAs by establishing procedures whereby the PCAs would request approval from the IRS to place taxpayers in payment arrangements for longer than five years. Because the IRS is technically approving the agreement, the IRS reasons it does not run afoul of the limit on the PCAs placing taxpayers in agreements no longer than five years. However, under the law, the PCAs are entitled to commissions only on qualified collection contracts, and contracts in excess of five years are not qualified collection contracts. Nonetheless, the IRS is allowing commissions on agreements in excess of five years. The IRS's "white paper" suggests that there is no real harm from allowing payment arrangements with the PCAs to be extended to the 10-year life of the CSED. However, it was unclear whether the proposed policy provided for consistent taxpayer treatment. Figure 6 shows a comparison of the maximum payment terms available for the IRS and those that had been proposed for the PCAs.

**Figure 6: Maximum Terms of IRS and Proposed PCA Payment Arrangements**[64]




*Source: TIGTA analysis of IRS and proposed PCA payment arrangement terms.*

In addition to the IRS's workaround of the law, IRS PDC program policies and procedures would have created a disparity in which taxpayers working with a PCA received preferential treatment compared with taxpayers working with the IRS, because they would have the option to establish an installment agreement over the remaining life of the delinquency (to the CSED date) which is generally not permitted for taxpayers working with the IRS. On the other hand, taxpayers working with the PCAs will end up in longer payment arrangements than the law allows which may result in more interest and penalties being paid by those taxpayers. Moreover, paying commissions on contracts that are not qualified collection contracts is problematic.

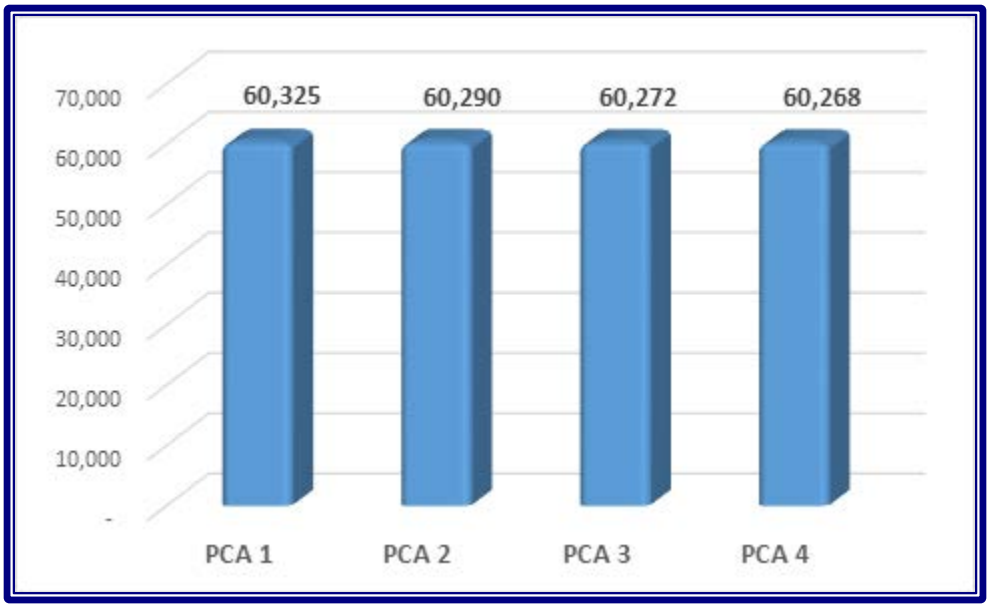
**Management Action.** After we brought this issue to management's attention and prior to assigning cases to the PCAs, IRS management stated that it revised procedures to limit PDC payment arrangement terms to be consistent with taxpayers who work with the IRS (up to seven years or 84 months). However, this policy change did not resolve the noncompliance with I.R.C. § 6306 (b)(1)(B), which limits PDC payment arrangements to five years.

[64] Taxpayers must meet certain balance due conditions to qualify for IRS installment agreements lasting seven years.

## Once inventory is identified, inventory assignment practices do not consider case characteristics

The inventory management process is critical to the success of the PDC program. The IRS met its program milestone of starting inventory delivery in April 2017. The PCAs began receiving cases the week of April 10, 2017, at the rate of 100 cases each, which steadily increased to thousands per week the following months. As of December 14, 2017, 241,155 cases had been assigned to the PCAs. Figure 7 shows that the total number of cases assigned to each of the four PCAs has been about the same.

**Figure 7: Number of Cases Assigned to Each PCA as of December 14, 2017**




*Source: TIGTA analysis of the December PDC Scorecard.*

The IRS randomly selects which cases are assigned to the PCAs by using the last two digits of the taxpayers' SSNs. This selection methodology is different from the one used to identify cases for the IRS's inventory, which uses complex computer data analytics to risk and score cases for assignment. Using data analytics to select cases for assignment to the PCAs could help identify the cases in which revenue will most likely be collected. Factors like the following may affect collectability:

- Dollar value of liability.
- Number of outstanding tax modules.
- Age of the case.
- Taxpayer financial position.
- Available taxpayer contact information.

For example, prioritizing high-dollar liability cases may produce a greater return on investment than cases with low balances because the PCAs may be able to collect more revenue for the same amount of work. In addition, it may be beneficial to take into account the taxpayer's financial position when assigning inventory. It may be more productive to assign cases in which the taxpayers' income suggests that the taxpayers have the ability to pay, as low-income taxpayers may be unable to afford to pay off their liabilities. However, 54 percent of the taxpayers assigned to the PCAs have low-income indicators on their accounts. These cases are less likely to be productive because the taxpayers may not have the means to satisfy their accounts. Random selection does not consider these factors when identifying cases for assignment.

**Management Action:** After we brought this issue to management's attention, they stated that they revised procedures to select cases based on case type and balance due amounts proportional to overall available inventory. However, this policy change did not result in prioritizing cases based on case characteristics such as high-dollar liabilities or taxpayers' income.

## *The IRS and the PCAs do not share some taxpayer information*

### The IRS is not sharing telephone numbers with the PCAs

In the 2006 initiative, the GAO recommended that the IRS share taxpayer contact information with the PCAs. The then Acting IRS Commissioner testified that the reason the telephone numbers were not shared is that they were assumed to be too old.[65] The telephone numbers that taxpayers place on tax returns is the telephone number that they have requested the IRS to use. Yet, when attempts were finally made to call the taxpayer about a delinquent debt, the IRS used a private collector that called whatever telephone number it could locate from an assortment of third-party information sources. In the 2017 PDC initiative, the IRS is again not providing taxpayer telephone numbers to the PCAs.

The IRS should at least endeavor to provide that information to the PCAs at the outset if it is available. The IRS has stated that the taxpayer's information drops off of the Taxpayer Information File when the collection matter is shelved or closed "unable to locate." The IRS stated that telephone numbers are no longer available for most of these taxpayers. However, by analyzing the IRS's ACS Closed Entity file, we located telephone numbers for approximately 113,883 (47 percent) of the 242,822 taxpayers with accounts assigned to the PCAs.

### The IRS is not requiring the PCAs to provide updated information

Many cases assigned to the PCAs involve taxpayers for which the IRS was unable to locate or contact. The IRS sometimes has difficulty reaching taxpayers because there may be inaccurate or outdated taxpayer contact information in its computer systems. As a result, the PCAs must perform extensive research and may use tools and resources not available to the IRS to identify

[65] *The Internal Revenue Service's Use of Private Debt Collection Companies to Collect Federal Income Taxes, Hearing Before the House Committee on Ways and Means*, (May 23, 2007), (statement of Kevin Brown, Acting Commissioner).

the most current contact information, such as addresses and telephone numbers, for these taxpayers.

Although the PCAs are identifying new information that may help collection efforts, that information is typically retained by the PCAs and not shared with the IRS. The IRS's systems are updated with new contact information only if it involves new payment arrangements established by the PCAs, or if the PCAs determine a taxpayer is deceased and produces the proof of death certificate. No other taxpayer information is shared with the IRS. The IRS has made no attempt to obtain this information from the contractors, even though such information could be useful if the taxpayer has future compliance issues unrelated to the delinquency that is being worked by the PCA. For example, the IRS did not include the sharing of contact information as a requirement in the PCA contracts. However, officials from one PCA stated that including such information in the weekly data file exchanges would be simple, and they would be willing to share this information with the IRS if it asked for it.

## Recommendations

The Commissioner, Small Business/Self-Employed Division, should:

**Recommendation 7:** Use IRS resources, *e.g.*, referral unit, to work accounts that the PCAs return with an indicator that taxpayers can pay some but not all tax due so that taxpayers can be placed in partial pay installment agreements or offers in compromise.

> ***Management's Response:*** IRS management disagreed with this recommendation. The IRS stated that under 6306(b), the PCAs were contracted to attempt collection on inactive tax receivables with respect to which the IRS has been unable to locate or contact the taxpayer or does not have the resources to work. The IRS working these cases, to the exclusion of higher priority work, is an inefficient use of IRS resources. If the taxpayer chooses to work with the IRS, they can contact the ACS or submit an offer in compromise.
>
> ***Office of Audit Comment:*** It is antithetical to debt collection to inform taxpayers who can pay some of what they owe but not everything that the Government is not interested in receiving payment amounts that the taxpayer can afford. In the 2006 initiative, the IRS collected more from returned cases ($139.4 million) than all of the revenue collected by the PCAs ($86.2 million). In its response to Recommendation 6, IRS management stated that discontinuing communication with an engaged taxpayer is not a good business practice. Taxpayers who have demonstrated a willingness to pay some, but not all tax due, are engaged taxpayers. However, the PCAs cannot establish payment arrangements for these taxpayers; only the IRS may assist them.

**Recommendation 8:** Use IRS resources to allow the PCAs to refer instances of willful noncompliance for further enforcement action.

> ***Management's Response:*** IRS management disagreed with this recommendation. The IRS stated that under 6306(b), the PCAs were contracted to attempt collection on inactive tax receivables with respect to which the IRS has been unable to locate or contact the taxpayer or does not have the resources to work. Compliance considerations are part of the current case selection criteria. The IRS will work returned accounts and address willful noncompliance for further enforcement action when business rules indicated a high enough priority.
>
> ***Office of Audit Comment:*** The IRS has enforcement tools such as levies that are not available to the PCAs. TIGTA believes that once identified, delinquent taxpayers who have an ability to pay but willfully refuse to do so should be held accountable.

***Recommendation 9:*** Establish a maximum period upon which an account can be assigned to the PCAs so that taxpayers are not effectively assigned on a permanent basis to the PCAs for their tax compliance-related issues.

> ***Management's Response:*** IRS management partially agreed with the recommendation. The IRS stated that it will consider an appropriate amount of time that accounts should be assigned. The IRS is learning about the PCAs' collection methods and how long it takes them to collect on various segments of work. Testing of more complex cases is ongoing. In addition, business accounts will be assigned in March 2019, which will provide more data. The IRS will continue to review program data and work with the PCAs to determine if establishing criteria to retain a case is more effective than applying an artificial time period.
>
> ***Office of Audit Comment:*** Management's planned corrective action meets the intent of the recommendation.

***Recommendation 10:*** Use IRS resources to research accounts assigned to the PCAs with unfiled returns to determine whether a filing requirement appears to exist.

> ***Management's Response:*** IRS management disagreed with the recommendation. The report states that the PCAs have a requirement to request all unfiled returns before establishing a payment arrangement. In fact, the PCAs are required to request delinquent returns that have been systemically identified, not all unfiled returns. The IRS systemically determines when a filing requirement exists and provides the delinquent return information to the PCA. The PCA is then required to request the delinquent return be filed before setting up a payment arrangement. The PCAs have the required information to perform work under the contract and use of IRS resources for this function is unnecessary.

***Office of Audit Comment:*** Before taxpayers working with the IRS are permitted to enter into installment agreements, the taxpayer must be in tax compliance, *i.e.*, all tax returns required to be filed must be filed and all required tax deposits must be current.[66] In contrast, taxpayers working with the PCAs will only be asked about unfiled returns if the IRS has systemically established a Tax Delinquent Investigation on the taxpayer's account. However, the existence of a Tax Delinquent Investigation is not determinative if the taxpayer has a filing requirement. The PCAs do not have the capability to determine the filing requirements of taxpayers, and therefore, there is a need for the IRS to provide this information to the PCAs to assist with addressing noncompliance.

**Recommendation 11:** Limit PCA installment agreements to five years unless Congress amends the law allowing for longer installment agreements.

***Management's Response:*** IRS management disagreed with the recommendation. The IRS stated that the PCAs may offer payment arrangements that full pay within five years or the CSED, whichever is earlier. Payment arrangements that will full pay the liability between 61 and 84 months require IRS approval. Once the IRS approves the terms, the PCA can offer the payment arrangement and monitor for payment. The IRS provided TIGTA feedback on the draft report and also provided the current revision of the PCA Policy and Procedures Guide; however, TIGTA has not removed the incorrect statements regarding the terms and prerequisites of a PCA payment arrangement. The report should state that the terms must full pay with in the CSED or 84 months, whichever is less.

***Office of Audit Comment:*** During the conduct of this audit, through review of IRS policies and procedures, and meeting with the PCAs, TIGTA learned that the PCAs were permitted to establish payment agreements for the life of CSED, *i.e.*, generally 10 years. This information is contained within some of the approved PCA scripts. TIGTA reported this issue to IRS management via a TIGTA Office of Audit Alert in which TIGTA stated the concern that it was unfair for taxpayers working with the PCAs to have more advantageous repayment terms than taxpayers working with the IRS. At that time, the IRS disagreed with taking corrective action. However, without informing TIGTA at that time, the IRS subsequently changed its policy to set a maximum repayment plan of 84 months (which is still longer than the law allows). Our report acknowledges that IRS management had since made a policy change under the heading "Management Action," within that section of the report. When TIGTA reported on the issue, the IRS referred to the information as a "misrepresentation" and "incorrect statement." Additionally, I.R.C. § 6306(b)(1)(B) allows the PCAs to establish payment arrangements, "providing for full payment of such amount *during a period not to exceed 5 years.*" [emphasis

[66] IRM 5.14.1.4.2 (July 16, 2018).

added] The IRS believes it has found a way around the limitations of the law. However, the IRS should be enforcing the law, not circumventing the law's limitations.

**Recommendation 12:** When selecting cases to assign to the PCAs, consider prioritizing based on characteristics such as the dollar amount, the number of modules, and whether taxpayer contact information is available.

***Management's Response:*** IRS management disagreed with the recommendation. The IRS stated that case selection is based on case type and the balance due amounts proportionate to the overall inventory available for assignment. An additional information technology investment cost would be required to build analytical models to prioritize the inventory based on collectability. This is not cost effective because the legislation requires the IRS to assign all the "inactive" cases, not just those with a higher likelihood for collection.

***Office of Audit Comment:*** When TIGTA met with IRS officials to determine how cases were to be assigned, we were given an extensive presentation by IRS Collection function and Information Technology organization personnel and told case assignment would be random by the last two digits of the taxpayer's SSN, and TIGTA has supporting documentation to this effect. In its official response, the IRS stated that this is not the case. The revised explanation provided in management's response is preferable to random selection by SSN; however, because it disregards case characteristics, it does not maximize collection potential and may increase taxpayer burden. As we reported, 54 percent of the taxpayers with accounts assigned to the PCAs have a low-income indicator and more than 70 percent did not file a tax return for 2016.

***Recommendation 13:*** Test methodologies to provide taxpayer telephone numbers to the PCAs and require the PCAs to provide updated taxpayer contact information to the IRS.

***Management's Response:*** IRS management partially agreed with the recommendation. The IRS stated that it has been providing telephone numbers to the PCAs since March 2018. Management disagreed with requiring the PCAs to provide updated information to the IRS because it would need to build the capability to incorporate the information. The IRS determined it would not be cost effective to build the capability because it does not intend to work these cases. In addition, a PCA obtaining a new address for a taxpayer would not trigger any requirement for the IRS to change the address of record.

***Office of Audit Comment:*** As described in the report, when TIGTA initially recommended that the IRS provide the PCAs with telephone numbers, the IRS declined, stating that telephone numbers dropped off taxpayer accounts for aged accounts. When TIGTA identified a significant percentage of telephone numbers for these taxpayers from the taxpayer accounts, the IRS agreed to provide telephone numbers to the PCAs. With respect to updating taxpayer account information, this is an additional instance in which

the IRS's decision not to use a referral unit negatively affects tax administration, because such a unit could update taxpayer accounts. Taxpayer contact information is important not just for resolution of the existing balance due but also for future interaction with the taxpayer.

## Private Collection Agencies Are Performing Well Based on Internal Revenue Service Established Performance Measures

Performance measurement involves the ongoing monitoring and reporting of program effectiveness and the progress made towards achieving established goals and objectives. The law requires the IRS to provide information with respect to the performance of the program and the respective PCAs, such as:

- Total number and amount of tax receivables provided to each contractor.
- Total amount collected.
- Effect of the PDC program on total number of unpaid assessments.
- Fees retained by the IRS and a description of the use of such funds.[67]

To monitor program performance, IRS management has established a performance measurement system. In the PDC program, performance metrics are an important tool to assess program success and will help the IRS make key program decisions. Comprehensive and balanced performance measures will also help IRS management identify any unfavorable PCA results and trends. Accordingly, the IRS also tracks:

- Quality.
- Customer satisfaction.

**Quality**

The IRS has implemented its own quality assessment program of the PCAs, and the PCAs are also required to maintain an internal quality assessment program. The IRS uses 19 quality attributes, including:[68]

- Customer accuracy.[69]
- Right party contact determination.

[67] I.R.C. § 6306(j).
[68] The other 11 quality attributes are: right party contact authentication, disclosure, authorized third-party contacts, payment procedures, payment arrangement information, telephone planning/system management, compliance accuracy, right party talk-off, timeliness (two separate attributes), and appropriate case closure.
[69] This attribute assesses whether the taxpayers' issues are addressed in the contact.

- PCA identity disclosure.
- Cellular phone disclosure.[70]
- Fair Debt Collection Practices Act disclosure or "mini Miranda."[71]
- Taxpayer/IRS rights disclosure.
- Professional communication.
- Appropriate documentation of account.

These quality attributes largely mirror the attributes that the IRS uses to assess its own customer service representatives and fall under the five "buckets" of customer accuracy, professionalism, timeliness, regulatory accuracy, and procedural accuracy. The combined initial quality scores of the PCAs have been high through September 2017, as follows:[72]

- Customer Accuracy: 99.7 percent.
- Professionalism: 99.9 percent.
- Timeliness: 99.8 percent.
- Regulatory Accuracy: 98.5 percent.
- Procedural Accuracy: 97.2 percent.

This quality metric also focuses mainly on the telephone call with the taxpayer and not the handling of the case itself. For example, these rates do not reflect the significant problem we identified at the close of this audit with 92 percent of payment agreements in excess of 60 months, which contain incorrect terms. This issue will be addressed in a future audit.

**Customer satisfaction**

The IRS uses a vendor to offer taxpayers a customer satisfaction survey as a means to assess customer satisfaction. Although other questions are asked, overall scores are based on the question:

- Everything considered, please rate your overall satisfaction with the service you received during the call today.

Through September 2017, the customer satisfaction rates for the PCAs were:

---

[70] This disclosure alerts the taxpayer that if the telephone being used is cellular, the information discussed may not be secure.
[71] The Fair Debt Collection Practices Act (15 U.S.C. 1692e (11)) requires a disclosure to be given to debtors so that the communication is for the purpose of collecting a debt and that any information obtained will be used for that purpose.
[72] The scores have been rounded to the nearest tenth of a percent.

- PCA 1: 95 percent.
- PCA 2: 90 percent.
- PCA 3: 95 percent.
- PCA 4: 91 percent.

These are positive results; however, we note that the survey is only administered on calls that last at least 10 minutes and to taxpayers who are still on the line at the conclusion of the PCA employee's attempt at collection. These may tend to be the most satisfied customers.

**Operational reviews**

In addition, the IRS also performs quarterly operational reviews of each PCA. These reviews evaluate PCA operations to determine how well the PCA is complying with IRS guidance and to assess overall PCA performance. To achieve these objectives, the IRS conducts specific tests on-site. For example, a small sample of letters are reviewed to ensure that correct information is going to the appropriate taxpayers. In addition, the IRS listens to a small sample of telephone calls (10 calls) to determine whether the PCA employees are following procedures and whether any taxpayer information is inappropriately disclosed. These reviews can be effective at identifying systemic issues with PCA performance. There may be other business performance metrics that the IRS should track, such as the number of incorrect telephone numbers identified, *i.e.*, "wrong numbers," which could lead to burdening individuals who do not have delinquent IRS debts. The TCPA prohibits the use of an automatic dialer to call cellular phones. While the TCPA exempts collectors of Government debt from use of an automatic dialer to call cellular phones, Federal Communications Commission rules still limit such calls. The PCAs have been able to avoid violation of the TCPA by interjecting some level of human involvement into the dialing process while the call is being made. The IRS has asserted that no automatic dialers are dialing taxpayers' cellular phones in violation of the TCPA. TIGTA will assess these and other measures in its biannual performance report due by December 31, 2018.[73]

[73] For example, in Case 1: 17-cv-00417-JJM-LDA, which was pending before a U.S. District Court, a complainant alleged violations of the Fair Debt Collections Practices Act and the TCPA. The complaint alleged that even though it was clear that the telephone number belonged to the plaintiff's 10-year old daughter, the PCA calls continued until the plaintiff told the PCA employee that the telephone number was incorrect.

**Appendix I**

# *Detailed Objective, Scope, and Methodology*

The overall objective of this review was to evaluate the IRS's planning and implementation of the PDC program. To accomplish our objective, we:

I. Reviewed the IRS's plans and implementation schedules for the PDC program.

A. Interviewed PDC management to determine plans and implementation schedules for the PDC program and reviewed procedures to determine if they were sufficiently documented.

B. Evaluated the cost, revenue, and case volume projection goals of the PDC program and determined if the IRS's plan was sufficient to achieve the goals. We reviewed what, if any, procedures were in place to continuously monitor case volumes to ensure that the IRS had a sufficient volume of cases to meet its original distribution plan.

C. Assessed whether the IRS timely achieved the milestones established to implement the PDC program.

D. Evaluated the IRS's taxpayer notification letter and related IRS publications to determine if they adequately informed the taxpayer and/or taxpayer representatives of the PDC program. We also assessed the steps taken by the IRS to mitigate the risk of PCA employees contacting taxpayers via telephone in this 'tax scam' environment.

E. Assessed how well the IRS organized the PDC program and the adequacy of its staffing.

F. Assessed the effectiveness of the plans to oversee the performance of the PCAs which included evaluating the program's performance metrics, including Quality Assurance program and customer satisfaction.

G. Reviewed IRS notes from any Management Issues Meetings held with the PCAs.

H. Determined whether the IRS implementation plans for the PDC program complied with the provisions of the FAST Act.[1]

I. Evaluated the proposed controls to ensure that taxpayer rights were protected, including the recently enacted Taxpayer Bill of Rights.[2]

[1] Pub. L. No. 114-94.
[2] I.R.C. § 7803(a)(3).

1. Determined if and how contractor employees were trained on the applicable laws and regulations and if the contractors certified in writing that the required training had been provided.
2. Determined if the IRS had developed an effective program to handle taxpayer complaints.

II. Assessed the adequacy of the Statement of Work requirements established for the PCAs.

A. Determined whether the Statements of Work addressed: taxpayer authentication, requests for installment agreements, time limits for the PCAs to work cases, referring cases back to the IRS, taxpayers' requests to opt out of the program, the frequency and timing of PCA employees' calls to taxpayers, limits on the disclosure of Federal tax information, method of transferring cases between the PCAs and the IRS, case management systems established by the PCAs, limits of PCA employees' access to taxpayer information, review of training materials used by the PCAs, and scripts to be used by PCA employees.

B. Determined whether the Statement of Work addressed and adhered to standards and laws involving data security and taxpayer rights.

III. Assessed IRS plans for case identification, selection, and delivery.

A. Reviewed the IRS PDC program inventory selection criteria and evaluated the process used to determine what cases met the criteria for transfer to the PCAs.

B. Reviewed cases identified as available for assignment to the PCAs to determine if IRS case selection complies with the criteria stated in the FAST Act. This included researching ACS, Integrated Collection System, and Master File data to check collection status, the CSED, and prior IRS/taxpayer interaction.[3]

C. Analyzed information from the IRS to approximate the universe and age of cases meeting the selection criteria.

D. Validated the reliability of these data by comparing it to the information available through research of the Integrated Data Retrieval System.[4]

[3] The ACS is a telephone contact system through which telephone assistors collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices. The Integrated Collection System is an information management system designed to improve revenue collections by providing revenue officers access to the most current taxpayer information, while in the field, using laptop computers for quicker case resolution and improved customer service. The Master File is the IRS database that stores various types of taxpayer account information. This database includes individual, business, and employee plans and exempt organizations data.
[4] The Integrated Data Retrieval System is IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.

E. Evaluated the method of case delivery between the IRS and the PCAs. We also evaluated the methods established for updating taxpayer accounts with results of the PCAs' collection activity, *e.g.*, how will adjustments to taxpayers' Master File accounts be made.

IV. Assessed the adequacy of the policy decisionmaking process pertaining to the PDC program.

A. Reviewed notes from PDC program meetings to identify policy decisions made affecting the PDC program.

B. Assessed the adequacy of the documentation supporting each policy decision, *i.e.*, risk analysis.

C. Determined whether the IRS addressed lessons learned from prior PDC programs.

## ***Internal controls methodology***

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: plans and implementation schedules; the adequacy of the Statement of Work requirements; plans for case identification, selection, and delivery; and the adequacy of the policy decisionmaking. We evaluated these controls by interviewing IRS management and the private debt collectors, reviewing guidance documents and regulations, and assessing the implementation process from planning to case delivery.

**Appendix II**

## *Major Contributors to This Report*

Matthew Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Carl Aley, Director
Timothy Greiner, Audit Manager
Richard Viscusi, Audit Manager
George Hartman, Acting Audit Manager
Michele Strong, Acting Audit Manager
Bridgid Burkert, Lead Auditor
Charles Steven Nall, Lead Auditor
Brian Foltz, Auditor
Jon-Michael Socaris, Auditor

**Appendix III**

# *Report Distribution List*

Deputy Commissioner for Services and Enforcement
Director, Office of Audit Coordination

## Appendix IV

**********7**********[1]

**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********.

*****7****

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********.

**********7**********.
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

[1] TIGTA did not make any changes to this document; it is shown verbatim.

**********7**********
**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

***7***

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

**********7**********
**********7**********
****7****.

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********.

**********7**********
**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

**********7**********

**********7**********
**********7**********
**********7**********
**********7**********

**********7**********
**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********

**********7**********
*****7*****.[2]

**********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********.

**********7**********
**********7**********
**********7**********

**********7**********

[2] **********7**********
**********7**********
**********7**********
**********7**********
**********7**********
**********7**********.

## Appendix V

# *Management's Response to the Draft Report*

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

COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

July 26, 2018

MEMORANDUM FOR MICHAEL E. McKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

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

SUBJECT: Draft Audit Report –Private Debt Collection was Implemented Despite Resource Challenges; However, Internal Support and Taxpayer Protections Are Limited (Audit # 201630029)

Thank you for another opportunity to review and comment on the subject draft audit report. We reviewed three draft reports, provided suggested edits, complied with requests for information, and had several meetings to discuss the content of your audit reports. We acknowledge that some edits were made, however, there are several other critical content suggestions and corrections that you did not incorporate in this Report.

We disagree with several of the findings and analysis contained in the audit report. We are committed to running the private debt collection program as intended by Congress. We are working to run the program in an efficient and effective manner that respects taxpayer rights while remaining focused on collecting past-due tax debts. We have learned a lot from previous private collection efforts, and our current program reflects this. We will continue to closely monitor the program and make adjustments as needed.

The report introduces each section by outlining the failures of a prior debt collection effort in 2006, yet several of the recommendations suggest we implement components of that failed program. Since the Fixing America's Surface Transportation (FAST) Act was signed into law, P.L. 114-94, the Service, including the Deputy Commissioner, Services & Enforcement, and Commissioner, made a conscious decision to adopt a different business model, work within a smaller footprint, and replace costly past practices with systemic processes to more efficiently implement the law. Your recommendations include staffing a referral unit and utilizing a complaint panel, which in the current iteration have been replaced with more efficient processes.

The law requires the IRS to assign private collection agencies (PCAs) certain accounts which are categorized as "inactive". These inactive accounts are low priority cases that would not be worked by IRS employees—or have already been worked to the extent deemed necessary—per IRS business rules. Your recommendation to have an IRS

referral unit work these "inactive" accounts is inconsistent not only with these business rules, but also with the statutory structure. The intent of the law is to effect collection, not to expend more IRS resources on low priority accounts that both the IRS and the PCAs have already been unsuccessful in collecting. Redirecting inactive cases that the PCAs have already attempted collection on would increase the cost of the Private Debt Collection (PDC) program, create a loss in revenue, and would not be an effective or prudent use of compliance resources.

For example, if referral units were staffed with 44 collection employees as in the 2006 pilot program, it would cost the IRS over $3.5 million annually. This would reduce the number of Automated Collection System (ACS) employees available to work active collection accounts, and in turn reduce the opportunity for revenue collected by approximately $65 million.[1] Thus, we project your recommendation to staff referral units to work "inactive" accounts could cost the IRS over $68 million. The current iteration of PDC is very different from the prior pilot program, which ultimately failed, and the IRS will not implement components that are cost prohibitive and require the IRS to work accounts it would not normally work.

Current PDC procedures were designed to effect collection with minimal IRS intervention. For example, the systemic case selection and delivery processes eliminate the need for a referral unit to ensure only those cases outlined in the law are assigned or recalled. Additional staff is not required to manually manage these processes. The current IRS staff also provides the necessary oversight to ensure appropriate actions are taken by the PCAs and that sensitive taxpayer data is safeguarded and taxpayer rights are protected. This is documented in the PDC Scorecards we provided. As of June 14, 2018, the PCAs have an accuracy rate of 99.5 percent, as measured by the IRS, and an overall customer satisfaction rate of 93.5 percent, per the independent Customer Satisfaction Survey.

Your report states that commissions are being paid on collection contracts that are not authorized by law. Your citation to informal advice from Counsel as support for this proposition is misplaced. The IRS worked with the Office of Chief Counsel to achieve a structure and process that fully complies with the statute, and pays commissions in a manner that is consistent with the law and contractual obligations. Despite the fact that we provided you with both IRS and PCA procedural guidance, you misrepresented the terms of a qualified collection contract and imply that taxpayers working with PCAs are treated differently than taxpayers working directly with the IRS. In fact, procedures mirror IRS procedures for similarly situated taxpayers and commissions are paid legally. The terms of an agreement to pay are the lesser of 84 months or the Collection Statute Expiration Date (CSED), not 10 years as the report states.

[1] This figure was calculated using the ACS Collection Cost Ratio (CCR) in the *CFO Office of Cost Accounting Cost-Based Performance Measures FY 2012-2017.*

With regard to complaints, your report includes an attempt to make comparisons of the current program to the private collection industry as a whole and the number of Federal Trade Commission (FTC) complaints and identity theft and imposter scams. There is no direct correlation between the number of complaints to the FTC and the current iteration of the IRS PDC program to support the recommendation to have a complaint panel. The current complaint process was developed by TIGTA-Office of Investigations (TIGTA-OI), in which they objectively and independently investigate all PDC related complaints. The resulting report of investigation is then referred to the IRS for review and action, if warranted. IRS leadership reviews and approves the complaint response and recommendation for administrative action. Through June 2018, TIGTA-OI received 179 complaints and there were no actionable complaints against the PCAs.

Despite providing feedback to draft reports and sharing current revisions of the PCA Policy and Procedures Guide (PPG), your report inaccurately presents outdated procedures. The report references procedures from revisions of the PPG that were in development and prior to the delivery of any inventory to the PCAs. The report implies that PCAs collect income or asset information from taxpayers, which is not correct. The PCA will accept a taxpayer's proposal for an installment agreement without income or asset information, as the IRS does with similarly situated taxpayers. The report incorrectly states that PCAs retain an account when the taxpayer demonstrates an inability to pay. When the taxpayer is assessed an inability to pay, the PCA will in fact return the account to the IRS.

The last two digits of the taxpayer's Social Security Number are not used to randomly select cases for assignment. This statement is inaccurate and bears no relevance to the report. Although we provided revisions of the PCA Policy and Procedures Guide, the report continues to incorrectly reference that the IRS developed procedures in reaction to a high number of returns of inventory from the PCA due to the PCA not being able to collect. In fact, the procedures to return accounts were developed prior to the implementation of program. The report fails to correctly depict the current PDC program that began in April 2017.

Of your thirteen recommendations, we agree with communicating messages about the PDC program to the public, not assigning cases permanently to a private collection agency, and providing telephone numbers to the private collection agencies. We disagree with your recommendations that require the utilization of IRS resources to establish a complaint panel, establish a referral unit to assign and recall cases, refer instances non-compliance for further enforcement action, further research filing requirements prior to the assignment of cases, set up partial pay installment agreements, and make determinations on offers in compromise.

Attached is a detailed response outlining our positions and corrective actions to address your recommendations. If you have any questions, please contact me or Paul Mamo, Director, Collection Operations, Small Business/Self-Employed Division.

Attachment

Attachment

The Commissioner, Small Business Self-Employed Division should:

**RECOMMENDATION 1:**
Increase the percentage of newer inventory in the mix of cases assigned to the PCAs by identifying low priority new balance due accounts for assignment that would not likely be worked by IRS employees.

**CORRECTIVE ACTION:**
We disagree with the recommendation to increase the percentage of newer inventory in the mix of cases assigned to PCAs. Congress specifically defined the "inactive tax receivables" that must be collected under qualified tax collection contracts in IRC § 6306(c) as including older inventory. More specifically, the statutory definition includes accounts with respect to which:

- The Service is not actively collecting for lack of resources or an inability to locate the taxpayer,
- More than 1/3 of the applicable statute of limitation has lapsed and has not been assigned for collection to any employee of the IRS, or
- More than 365 days have passed without interaction with the taxpayer or a third party for purposes of furthering collection

The IRS has business rules that identify "low priority new balance due accounts". These accounts are already included in the mix of cases assigned to PCAs. The IRS business rules for shelving inventory (low priority work) are periodically evaluated and updated based on changing resources/policies within Field Collection and the Automated Collection System.

**IMPLEMENTATION DATE:**
N/A

**RESPONSIBLE OFFICIAL(S):**
N/A

**CORRECTIVE ACTION MONITORING PLAN:**
N/A

**RECOMMENDATION 2:**
Establish a complaint panel made up of a cross-functional group of IRS managers to ensure that complaints are acted upon and that systemic problems with the program are identified and addressed.

**CORRECTIVE ACTION:**
We disagree with the recommendation to establish a complaint panel. The current complaint process was designed by TIGTA-OI. TIGTA-OI triages all PDC complaints

and determines if the complaint will be accepted for further evaluation. The current process ensures substantiated complaints are acted upon and that systemic problems are identified and addressed.

**IMPLEMENTATION DATE:**
N/A

**RESPONSIBLE OFFICIAL(S):**
N/A

**CORRECTIVE ACTION MONITORING PLAN:**
N/A

**RECOMMENDATION 3:**
Establish a referral unit to ensure that cases inappropriate for the PCAs can be identified and recalled from them.

**CORRECTIVE ACTION:**
We disagree with the recommendation to establish a referral unit to ensure the identification and recall of inappropriate case assignments. The automated systems and the Collection Inventory Delivery and Selection (CIDS) team already ensure the appropriate assignment and recall of cases. The PDC inventory management system (Unpaid Assessments) receives weekly updates from Masterfile and recalls accounts systemically when case conditions warrant such recall from the PCA. For example, if a taxpayer files bankruptcy and Masterfile is updated with this condition, the weekly update sent to the PCAs would recall the account due to the bankruptcy status.

**IMPLEMENTATION DATE:**
N/A

**RESPONSIBLE OFFICIAL(S):**
N/A

**CORRECTIVE ACTION MONITORING PLAN:**
N/A

**RECOMMENDATION 4:**
Revise the communication plan to utilize social media, including YouTube, to develop explanatory information about the IRS's PDC program, including information about the Taxpayer Bill of Rights.

**CORRECTIVE ACTION:**
We agree with the recommendation and will explore additional means of communicating PDC messaging to the public and revise the plan as needed. Although we agree with the recommendation, the report contains an inaccurate statement that the YouTube

video is not actually on YouTube. The IRS provided information on how to locate the video on YouTube.

**IMPLEMENTATION DATE:**
September 15, 2018

**RESPONSIBLE OFFICIAL:**
Director, Headquarters Collection, Small Business/Self-Employed Division (SB/SE)

**CORRECTIVE ACTION MONITORING PLAN:**
IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 5:**
Work with the Wage and Investment Division, if necessary, to provide taxpayers with a telephone number to call so they can talk with an IRS employee to validate the particular PCA to which their account has been assigned, obtain their TAN, or make a complaint about their PCA.

**CORRECTIVE ACTION:**
We disagree with the recommendation. The IRS established the PDC designated toll-free line and procedures to protect taxpayers from potential scams, verify the legitimacy of PCAs, connect taxpayers directly to their assigned PCA, and allow taxpayers to report complaints. The IRS Notice CP 40 and Publication 4518 also contain this information. Additionally, taxpayers can validate the PCA by visiting irs.gov and utilizing online services to request a transcript to verify assignment to a PCA. Sufficient methods are in place to provide taxpayers the means to validate their assigned PCA, obtain their Taxpayer Authorization Number (TAN), or make a complaint, without expending additional IRS resources.

**IMPLEMENTATION DATE:**
N/A

**RESPONSIBLE OFFICIAL(S):**
N/A

**CORRECTIVE ACTION MONITORING PLAN:**
N/A

**RECOMMENDATION 6:**
Revise guidance to (1) prohibit the PCAs from requesting taxpayer SSNs as alternate means of authentication and (2) require the PCAs to discontinue telephone calls when taxpayers do not have their TAN and reissue the Initial Contact Letter to provide the TAN.

**CORRECTIVE ACTION:**

(1) We disagree with the recommendation. The use of the SSN to authenticate is standard practice throughout the IRS. In the PDC program, the SSN is permitted for authentication only where the taxpayer has misplaced the unique Taxpayer Authentication Number (TAN) the IRS assigned for use in lieu of the SSN. The PCA will not request the SSN in full. The PCA conducts two-party verification of the SSN by providing the first 5 digits and the taxpayer provides the last 4 digits of the SSN.

(2) We disagree with the recommendation. Discontinuing a call with an engaged taxpayer is not good business practice when utilizing the SSN is a viable alternate means of authentication and is standard practice throughout the IRS. The PCA will not discontinue the phone call, but instead give the taxpayer an option. If the taxpayer does not have the TAN, the PCA will offer to resend the letter and TAN or, in certain situations, conduct two-party verification with the SSN. The PCA will not request the SSN in full. It is the taxpayer's choice to either conduct two-party verification of their SSN and continue discussion with the PCA or discontinue the call and wait to receive the reissued PCA Initial Contact Letter.

**IMPLEMENTATION DATE:**
N/A

**RESPONSIBLE OFFICIAL(S):**
N/A

**CORRECTIVE ACTION MONITORING PLAN:**
N/A

**RECOMMENDATION 7:**
Utilize IRS resources, *e.g.*, referral unit, to work accounts that the PCAs return with an indicator that taxpayers can pay some but not all tax due so that taxpayers can be placed in partial pay installment agreements or offers in compromise.

**CORRECTIVE ACTION:**
We disagree with the recommendation to utilize IRS resources to work accounts that PCAs return. Under 6306(b), the PCAs were contracted to attempt collection on inactive tax receivables with respect to which the IRS has been unable to locate or contact the taxpayer or does not have the resources to work. The IRS working these cases, to the exclusion of higher priority work, is an inefficient use of IRS resources. If the taxpayer chooses to work with the IRS, they can contact ACS or submit an offer in compromise.

**IMPLEMENTATION DATE:**
N/A

**RESPONSIBLE OFFICIAL(S):**
N/A

**CORRECTIVE ACTION MONITORING PLAN:**
N/A

**RECOMMENDATION 8:**
Utilize IRS resources to allow the PCAs to refer instances of willful noncompliance for further enforcement action.

**CORRECTIVE ACTION:**
We disagree with the recommendation. Under 6306(b), the PCAs were contracted to attempt collection on inactive tax receivables with respect to which the IRS has been unable to locate or contact the taxpayer or does not have the resources to work. Compliance considerations are part of the current case selection criteria. The IRS will work returned accounts and address willful noncompliance for further enforcement action when business rules indicate a high enough priority.

**IMPLEMENTATION DATE:**
N/A

**RESPONSIBLE OFFICIAL(S):**
N/A

**CORRECTIVE ACTION MONITORING PLAN:**
N/A

**RECOMMENDATION 9:**
Establish a maximum period upon which an account can be assigned to the PCAs so that taxpayers are not effectively assigned on a permanent basis to the PCAs for their tax compliance related issues.

**CORRECTIVE ACTION:**
We partially agree with the recommendation. While we agree with considering an appropriate amount of time, the IRS is also learning about the PCAs' collection methods and how long it takes for the PCAs to collect on various segments of work with varying degrees of complexity. Testing of more complex cases is ongoing. In addition, business accounts will be assigned to PCAs in March 2019, which will provide more information and data on PCA collection methods for the IRS to review. We will continue to review program data and work with PCAs to determine if establishing criteria to retain a case is more effective than applying an artificial time period.

**IMPLEMENTATION DATE:**
September 15, 2019

**RESPONSIBLE OFFICIAL:**
Acting Director, Headquarters Collection, Private Debt Collection, Small Business/Self-Employed Division (SB/SE)

**CORRECTIVE ACTION MONITORING PLAN:**
IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 10:**
Utilize IRS resources to research accounts assigned to the PCAs with unfiled returns to determine whether a filing requirement appears to exist.

**CORRECTIVE ACTION:**
We disagree with the recommendation. The report states the PCAs have a requirement to request all unfiled returns before establishing a payment arrangement. In fact, the PCAs are required to request delinquent returns that have been systemically identified, not all unfiled returns. The IRS systemically determines when a filing requirement exists and provides the delinquent return information to the PCA. The PCA is then required to request the delinquent return to be filed before setting up a payment arrangement. The PCAs have the required information to perform work under the contract. Use of IRS resources for this function is unnecessary.

**IMPLEMENTATION DATE:**
N/A

**RESPONSIBLE OFFICIAL(S):**
N/A

**CORRECTIVE ACTION MONITORING PLAN:**
N/A

**RECOMMENDATION 11:**
Limit PCA installment agreements to five years unless Congress amends the law allowing for longer installment agreements.

**CORRECTIVE ACTION:**
We disagree with the recommendation. The PCAs may offer payment arrangements that full pay within 5 years or the CSED, whichever is earlier. Payment arrangements that will full pay the liability between 61-84 months require IRS approval. Once the IRS approves the terms, the PCA can offer the payment arrangement and monitor for payment. The IRS provided TIGTA feedback on the draft reports and also provided the current revision of the PCA Policy and Procedures Guide; however, TIGTA has not removed the incorrect statements regarding the terms and prerequisites of a PCA payment arrangement. The report should state that the terms must full pay within the CSED or 84 months, whichever is less.

**IMPLEMENTATION DATE:**
N/A

**RESPONSIBLE OFFICIAL(S):**

N/A

**CORRECTIVE ACTION MONITORING PLAN:**
N/A.

**RECOMMENDATION 12:**
When selecting cases to assign to PCAs, consider prioritizing based on characteristics such as the dollar amount, the number of modules, and whether taxpayer contact information is available.

**CORRECTIVE ACTION:**
We disagree with this recommendation. We currently select cases based on the case type and the balance due amounts proportionate to the overall inventory available for assignment. An additional IT investment cost would be required to build analytical models to prioritize the inventory based on potential collectability. This is not cost effective, since the legislation requires the IRS to assign all the "inactive" cases, not just those with a higher likelihood for collection.

**IMPLEMENTATION DATE:**
N/A

**RESPONSIBLE OFFICIAL(S):**
N/A

**CORRECTIVE ACTION MONITORING PLAN:**
N/A

**RECOMMENDATION 13:**
Test methodologies for providing taxpayer telephone numbers to the PCAs and require the PCAs to provide updated taxpayer contact information to the IRS.

**CORRECTIVE ACTION:**
We partially agree with this recommendation, and have been providing telephone numbers to PCAs since March 2018. However, we disagree with the recommendation to require the PCA provide updated information to the IRS. If the PCA were to provide updated taxpayer contact information, the IRS would have to build the capability to incorporate the information. The IRS determined it would not be cost effective to build the capability since we are not intending to work these cases. In addition, per Treas. Reg. 301.6212-2 and Rev. Proc. 2010-16, a PCA getting a new address from a taxpayer in the course of contacting the taxpayer to collect tax debt would not trigger any requirement for the Service to change the address of record. Notification to the PCA is not sufficient because clear, concise notification must be addressed to certain, specified Service addresses, submitted via irs.gov, or orally provided to an IRS employee with access to the Service Master File.

8

**IMPLEMENTATION DATE:**
Completed

**RESPONSIBLE OFFICIAL:**
Acting Director, Headquarters Collection, Private Debt Collection, Small Business/Self-Employed Division (SB/SE)

**CORRECTIVE ACTION MONITORING PLAN:**
IRS will monitor this corrective action as part of our internal management system of controls.

## Appendix VI

# *Office of Audit Comments on Management's Response*

IRS management's response included some general comments and assertions about the PDC program and this audit that we believe warrant additional comment. We have included portions of management's response and our related comments below.

**Management's Response:** *The report introduces each section by outlining the failures of a prior debt collection effort in 2006, yet several of the recommendations suggest we implement components of that failed program.*

> **Office of Audit Comment:** The IRS's task was to efficiently and effectively implement the PDC program following a balanced approach that protects taxpayers and puts the program on a path to generate net revenue after a reasonable time frame given the inevitable start-up costs and ongoing support costs. The IRS is required to follow a balanced measures approach taking into consideration business results, customer satisfaction, and employee satisfaction in the performance management of everything it does.[1] The IRS must also provide taxpayer rights in all of its operations, including the rights to quality service, confidentiality, and privacy.[2] It makes logical sense for the IRS to try to identify why the 2006 PDC program was not successful and make appropriate changes for the 2016 initiative on both the expense and the revenue side of the ledger; however, disregarding practices simply because they were a part of the 2006 PDC program is problematic. Internal support adds costs, but it also adds protections for taxpayers and for the integrity of the program. The IRS did not fully consider the impact on taxpayers in its approach to have minimal intervention after it assigns cases to the PCAs. Internal support that makes sure only the appropriate cases are subject to collection is an important taxpayer protection, as is support that evaluates complaints and Fair Debt Collection Practices Act[3] violations. Throughout this audit, IRS management expressed concerns about the costs of adding personnel to the initiative even in cases when the costs were minimal. The IRS did not always strike an appropriate balance of all measures in the implementation of this program. The complaint panel, access to IRS toll-free telephone customer service representatives, and the referral unit were examples

[1] IRM 1.4.1.9.1 (Jan. 20, 2012); and IRM 1.4.50.5 *The Internal Revenue Service's Use of Private Debt Collection Companies to Collect Federal Income Taxes, Hearing Before the House Committee on Ways and Means*, (May 23, 2007), (statement of Kevin Brown, Acting Commissioner in which the Acting Commissioner discussed balanced measures and taxpayer rights in the context of the 2006 PCA program).
[2] I.R.C. § 7803(a)(3).
[3] 15 U.S.C. §1692 – 1692p.

of costs that the IRS did not want to absorb, even when some of the costs would have been minimal. Our report demonstrates that there were negative consequences for some taxpayers as a result of those decisions, and those consequences will be ongoing if the IRS does not add appropriate internal support to the program.

**Management's Response:** *Since the Fixing America's Surface Transportation (FAST) Act was signed into law, P.L. 114-94, the Service, including the Deputy Commissioner, Services & Enforcement, and Commissioner, made a conscious decision to adopt a different business model, work within a smaller footprint, and replace costly past practices with systemic processes to more efficiently implement the law. Your recommendations include staffing a referral unit and utilizing a complaint panel, which in the current iteration have been replaced with more efficient processes.*

**Office of Audit Comment:** Focusing only on cost reductions in hopes of improving the prospects for success of the program deprives taxpayers of necessary service. We disagree that IRS decisions have resulted in more efficient and effective processes across the PDC program. For example, using an automated telephone message for taxpayers who call the IRS to complain about the PCAs or ask for information about the program instead of allowing taxpayers to talk to IRS telephone assisters is less costly, but it is certainly not an efficient or effective way to deliver taxpayer service. IRS management acknowledged the costs would be minimal given the high volume of calls the IRS regularly receives from taxpayers and the relatively small number of calls that would be received from taxpayers whose accounts were assigned to the PCAs. It may also be less costly to rely on IRS contracting officers to assess taxpayer complaints and Fair Debt Collection Practice Act violations and how to handle them, but it is not likely more effective than having a complaint panel made up of a balanced group of IRS management. Likewise, relying on the PCAs to stop collection efforts on taxpayers in disaster areas might be less costly than using IRS personnel to pull such cases back; however, the process that the IRS put in place results in continued collection efforts on these taxpayers.

**Management's Response:** *For example, if referral units were staffed with 44 collection employees as in the 2006 pilot program, it would cost the IRS over $3.5 million annually. This would reduce the number of Automated Collection System (ACS) employees available to work active collection accounts, and in turn reduce the opportunity for revenue collected by approximately $65 million. Thus, we project your recommendation to staff referral units to work "inactive" accounts could cost the IRS over $68 million.*

**Office of Audit Comment:** The IRS's estimate assumes that the referral unit would not collect anything. In the 2006 initiative, the IRS collected more in cases returned from the PCAs ($139 million) than the PCAs collected in the entire initiative ($86.2 million), more than twice what the IRS estimates the referral units would cost (including the opportunity cost). Furthermore, if the IRS provided the PCAs cases that were collectible, the

program would bring in more revenue. If the PCAs collected at the national average of 9.9 percent, revenues would be approximately $404.8 million as opposed to the $56.6 million collected. The IRS's focus on the cost side of the equation again seems problematic. TIGTA did not recommend a specific staffing level or attempt to determine how many resources would be needed for a referral unit because the number of required employees would be dependent on inventory assignment criteria and employee responsibilities, which are decisions that management would need to make. For example, in addition to working the recalled accounts of taxpayers who are willfully noncompliant, referral unit employees would be responsible for ensuring that inappropriate accounts, such as those belonging to taxpayers who live in a Federally declared disaster area, are not assigned to private collectors.

**Management's Response:** *The current IRS staff also provides the necessary oversight to ensure appropriate actions are taken by the PCAs and that sensitive taxpayer data is safeguarded and taxpayer rights are protected. This is documented in the PDC Scorecards we provided. As of June 14, 2018, the PCAs have an accuracy rate of 99.5 percent, as measured by the IRS, and an overall customer satisfaction rate of 93.5 percent, per the independent Customer Satisfaction Survey.*

**Office of Audit Comment:** The PCAs are performing well on IRS-established metrics. However, the IRS-established metrics have limitations and do not cover all aspects of performance. For example, customer satisfaction surveys are only offered to taxpayers who are on the telephone with collectors for more than 10 minutes. Taxpayers on the telephone for that length of time may be more likely working out a payment plan and predisposed to respond to the survey positively, as opposed to taxpayers who terminate the call for one reason or another. In a separate audit, TIGTA identified 14 potential violations of the Fair Debt Collection Practices Act committed by PCA employees. The IRS was unaware of these violations. Additionally, as previously mentioned, the PCAs miscalculated the number of payments (months) needed to pay off the liability for 92 percent of the arrangements with terms between 61 and 84 months. We have identified the same problem in agreements for less than 60 months. "Minimal intervention" with the PCAs makes it harder for the IRS to identify problems and correct them.

**Management's Response:** Y*our report states that the commissions are being paid on collection contracts that are not authorized by law. Your citation to informal advice from Counsel as support for this proposition is misplaced. The IRS worked with the Office of Chief Counsel to achieve a structure and process that fully complies with the statute, and pays commissions in a manner that is consistent with the law and contractual obligations.*

**Office of Audit Comment:** I.R.C. Section (§) 6306 (b)(1)(B) allows the PCAs to establish payment arrangements, "providing for full payment of such amount *during a period not to exceed 5 years*." [emphasis added] However, the IRS is allowing the PCAs to establish payment arrangements up to 84 months (seven years), and commissions are

paid throughout the life of the arrangement. The IRS believes it came up with a plausible "workaround" to get around the five-year limitation in the law. The IRS should be working to enforce the law rather than work around it.

**Management's Response:** *Despite the fact that we provided you with both IRS and PCA procedural guidance, you misrepresented the terms of a qualified collection contract and imply that taxpayers working with PCAs are treated differently than taxpayers working directly with the IRS. In fact, procedures mirror IRS procedures for similarly situated taxpayers and commissions are paid legally. The terms of an agreement to pay are the lesser of 84 months or the Collection Statute Expiration Date (CSED), not 10 years as the report states.*

**Office of Audit Comment:** In responding to audits, the IRS generally acknowledges when TIGTA has made a recommendation for a change in policy and the IRS agrees or disagrees with the proposed recommendation. When the IRS agrees, it informs TIGTA of changes so that we can include the information in our report. However, during this this audit, in numerous instances the IRS disagreed with the recommendation then later IRS management would implement the change without informing TIGTA. When TIGTA reported on the issue, the IRS referred to the information as a "misrepresentation." In the closeout to this audit, TIGTA informed IRS management that it was very concerned that what the IRS management called "misrepresentations" were in fact instances in which the IRS implemented recommendations (which it had previously disagreed with) without timely informing TIGTA.

Additionally, the policy change did not resolve the noncompliance with I.R.C. § 6306 (b)(1)(B), which limits PDC payment arrangements to five years.

**Management's Response:** *The report implies that PCAs collect income or asset information from taxpayers, which is not correct. The PCA will accept a taxpayer's proposal for an installment agreement without income or asset information, as the IRS does with similarly situated taxpayers. The report incorrectly states that PCAs retain an account when the taxpayer demonstrates an inability to pay. When the taxpayer is assessed an inability to pay, the PCA will in fact return the account to the IRS.*

**Office of Audit Comment:** Management's statement is incorrect and is not consistent with the program's practices. Management's statement also stands in stark contrast to the response when call scripts of one of the PCAs were released publicly reflecting that its collectors were encouraged to ask taxpayers whether they could borrow money from family, friends, 401(k) accounts, and other sources. The IRS was publicly supportive of the PCA's approach. Moreover, the IRS reassured the PCA when the issue became a matter of public knowledge, as follows:

> *The IRS encourages people to look into options for paying their tax debt, including things such as installment agreements. How they pay is a personal choice. Giving taxpayers ideas of possible borrowing sources to pay their tax*

> *liability is consistent with fair debt collection practices as well as IRS practice. For example, the IRS allows payment by credit cards and lets taxpayers know that it may be more economical to borrow money to pay their taxes rather than to enter into an installment agreement. We encourage people to look into their options, understand the implications and make the best choice for their personal situation.*

The purpose of our reporting this issue is that indicators of willful noncompliance (such as comments made by the taxpayer) might be observed by a PCA. Our report does not suggest the PCAs are collecting detailed financial information for payment arrangements. It is implausible that private collectors talking with taxpayers about their ability to pay would not elicit information about what they are earning. The Policy and Procedures Guide establishes that if the taxpayer indicates an intention to obtain an offer in compromise, the PCA is required to place a "hold" on the account for 60 days. If the taxpayer obtains an arrangement from the IRS to pay less than what is due, the case will be recalled from the PCA. However, if the taxpayer does not obtain the agreement within 60 days, the PCA can resume collection activities for the full amount, *i.e.*, the PCA retains the account. As we noted in the report, IRS operational reviews also identified an instance when a PCA was returning too many cases due to inability to pay, and the IRS's proposed solution was to extend the payment plan so that fewer cases would be returned.