

United States Senate

WASHINGTON, DC 20510

January 8, 2020

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Rettig:

We write to express alarm that the Internal Revenue Service (IRS) is introducing an outdated, non-secure payment option to its already flawed private debt collection (PDC) program, which wastes government money and puts vulnerable taxpayers at risk. Historically, the IRS has done its own debt collections, but the *Fixing America's Surface Transportation (FAST) Act*, passed by Congress in December 2015, required the use of outside debt collectors, and the agency began referring some taxpayers who were behind on their taxes to private debt collectors in April 2017. In October 2019, the IRS, in a new twist on the program, announced it would allow Private Collection Agencies (PCAs) to collect taxpayer debt through a “preauthorized direct debit payment option,” which allows private debt collectors to collect sensitive personal banking information from taxpayers and withdraw money directly from their accounts.¹ This is a dangerous practice that has been abused by debt collectors to rip off consumers—and is outlawed in some cases by the Federal Trade Commission (FTC).²

We have already called for your agency to end the private debt collection program, which is an ineffective giveaway to private companies that balances its budget on the backs of low-income taxpayers. Given the ongoing failure of this program, it is inexplicable that the IRS would introduce even more predatory practices. We are seeking information about why your agency is giving private debt collection companies permission to target taxpayers' bank accounts in new and dangerous ways.

The FAST Act of 2015 forced the IRS to “enter into one or more qualified tax collection contracts for the collection of all outstanding inactive tax receivables.”³ In April 2017, the IRS began collecting tax debts through four private debt collection companies: CBE Group, Conserve, Performant, and Pioneer.⁴

¹ Internal Revenue Service, “New Payment Option Available to Taxpayers in Private Debt Collection Program,” press release, October 8, 2019, <https://www.irs.gov/newsroom/new-payment-option-available-to-taxpayers-in-private-debt-collection-program>.

² Federal Trade Commission, “New Limits on Telemarketers,” blog post, June 27, 2016, <https://www.consumer.ftc.gov/blog/2016/06/new-limits-telemarketers>.

³ 26 U.S.C. 6306.

⁴ Internal Revenue Service, “Private Collection of Some Overdue Federal Taxes Starts in April; Those Affected Will Hear First From IRS; IRS Will Still Handle Most Tax Debts,” press release, April 17, 2017,

The program has been problematic from the start. Congressional oversight work soon after the program started revealed that private debt collectors appeared to be pressuring taxpayers into risky financial transactions, and violating the Fair Debt Collection Practices Act and provisions of the Internal Revenue Code.⁵ The program's profitability comes from targeting vulnerable Americans: in 2018, more than one-third of money generated for the IRS General Fund by private debt collectors was from taxpayers whose incomes are less than their necessary expenses.⁶ Despite evidence that allowing aggressive collection of back taxes puts low-income Americans at risk, the IRS rescinded a directive to exclude taxpayers with incomes below 250% of the Federal Poverty Line from having their debt assigned to private debt collectors.⁷

The PDC program has been an abject failure—which is why we and Senator Ben Cardin introduced legislation in 2018 to repeal the IRS' authority to collect unpaid taxes through private debt collectors.⁸

The IRS has taken a different approach. Instead of trying to fix the problems with private debt collectors, the IRS is adding another layer of risk for taxpayers by allowing private debt collectors to collect taxpayers' bank account and routing numbers so that they can automatically debit a taxpayer's account.⁹ On October 8, 2019, the IRS announced:

A new payment option has been added to the private debt collection program ... Taxpayers now can choose the convenient option of a preauthorized direct debit to make one payment or a series of payments toward their federal tax debt. With direct debit, the taxpayer will give their written permission to the private collection agency (PCA) to authorize a payment on the taxpayer's behalf to the U.S. Department of the Treasury. This enables the taxpayer to ... schedule multiple payments.¹⁰

This kind of arrangement offers inadequate protections for consumers. In fact, the FTC made the use of these preauthorized direct debits illegal for telemarketers because the payment method is “exploited by con artists and scammers”¹¹ and “[b]asic protections ... available to

<https://www.irs.gov/newsroom/private-collection-of-some-overdue-federal-taxes-starts-in-april-those-affected-will-hear-first-from-irs-irs-will-still-handle-most-tax-debts>.

⁵ Letter from Senators Elizabeth Warren, Jeff Merkley, Sherrod Brown, and Benjamin L. Cardin to Jeff Mersmann, President, Pioneer Credit Recovery and John Remondi, President and CEO, Navient, June 23, 2017, https://static01.nyt.com/packages/pdf/business/20170623_IRS/LettertoPioneerCredit.pdf.

⁶ National Taxpayer Advocate, “Annual Report to Congress 2018 Volume One: Most Serious Problems, Recommendations to Congress, and Most Litigated Issues,” 2018, pp. 281, https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume1_MostSeriousProblems.pdf.

⁷ *Id.*, pp. 279.

⁸ A Bill to Amend the Internal Revenue Code of 1986 to Repeal the Internal Revenue Service's Private Debt Collection Program, S. 2425, <https://www.congress.gov/bill/115th-congress/senate-bill/2425/>.

⁹ Internal Revenue Service, “New Payment Option Available to Taxpayers in Private Debt Collection Program,” press release, October 8, 2019, <https://www.irs.gov/newsroom/new-payment-option-available-to-taxpayers-in-private-debt-collection-program>.

¹⁰ *Id.*

¹¹ Federal Trade Commission, “FTC Alerts Telemarketers that TSR Prohibits Certain Payment Methods; Warns Consumers that Use of the Payment Methods Is Illegal,” press release, June 27, 2016, <https://www.ftc.gov/news-events/press-releases/2016/06/ftc-alerts-telemarketers-tsr-prohibits-certain-payment-methods>.

consumers in credit card transactions and [Automated Clearing House] transactions ... are not necessarily available in remotely created check transactions.”¹² Two dozen state Attorney Generals supported the 2015 FTC ban on this payment method because of “the difficulty, if not impossibility, of tracking remotely created checks” and “the hurdles that consumers often encounter in trying to obtain a recredit to their bank account when—if at all—they discover an unauthorized debit.”¹³

The IRS is calling this new payment method “convenient”—but in reality it is risky and unnecessary.¹⁴ According to the Consumer Federation of America, “consumer groups have long advocated for remotely created checks to be banned as an outdated payment system used to evade consumer protection laws.”¹⁵ The National Consumer Law Center said this payment option “is stripping away protections that had been built into the initial [program] agreement.”¹⁶ Taxpayers already have multiple options to pay their taxes: through the IRS website, the IRS2GO phone app, IRS PayNearMe locations, and check or money order.¹⁷ Taxpayers should not have to risk their financial security in order to pay their tax debts.

The decision by the IRS to allow debt collectors to use preauthorized direct debits adds an unnecessary risk for low-income taxpayers to an already failing program. Then-National Taxpayer Advocate Nina Olsen wrote in 2018:

My own experience in representing low income taxpayers and common sense make clear that ... most taxpayers who are contacted by a debt collection agency feel pressured into making payments and do not feel they can say no to the ‘variety of manageable and purely voluntary payment plans’ with which they are presented.¹⁸

One private debt collector, CBE Group, made an average of more than 106 calls per taxpayer account—creating a high-pressure situation for low-income taxpayers to agree to make

¹² Federal Trade Commission, Federal Register Final Rule, “Telemarketing Sales Rule,” December 14, 2015, pp. 77533, https://www.ftc.gov/system/files/documents/federal_register_notices/2015/12/151214tsr_fn.pdf.

¹³ Letter from the Offices of Attorney General of the States of Arizona, Arkansas, Delaware, Hawaii, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nevada, New Hampshire, New Mexico, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, and Washington, and the District of Columbia, to the Federal Trade Commission, “Re: Telemarketing Sales Rule, 16 CFR Part 10, Project No. R411001,” public comment, August 8, 2013,

https://www.ftc.gov/sites/default/files/documents/public_comments/2013/08/00035-86301.pdf.

¹⁴ Internal Revenue Service, “New Payment Option Available to Taxpayers in Private Debt Collection Program,” press release, October 8, 2019, <https://www.irs.gov/newsroom/new-payment-option-available-to-taxpayers-in-private-debt-collection-program>.

¹⁵ Tax Notes, “New Tax Debt Payment Option Prompts Consumer Rights Queries,” William Hoffman, October 21, 2019, <https://www.taxnotes.com/tax-notes-federal/tax-system-administration/new-tax-debt-payment-option-prompts-consumer-rights-queries/2019/10/21/2b19b>.

¹⁶ *Id.*

¹⁷ Treasury Inspector General for Tax Administration, “Fiscal Year 2019 Biannual Independent Assessment of Private Collection Agency Performance,” December 31, 2018, pp. 30, <https://www.treasury.gov/tigta/auditreports/2019reports/201930018fr.pdf>.

¹⁸ Taxpayer Advocate Service, “NTA Blog: The National Taxpayer Advocate Responds to Private Debt Collectors’ Contentions,” blog post, July 18, 2018, <https://taxpayeradvocate.irs.gov/news/nta-blog-the-national-taxpayer-advocate-responds-to-private-debt-collectors-contentions>.

payments.¹⁹ The IRS has also allowed at least one private debt collector to use a phone script that encourages taxpayers to undertake risky financial practices to make payments.²⁰ Now, the pressure felt by these taxpayers could compel them to agree to have their bank accounts directly debited by a private company.

The changes to the program may also subject taxpayers to increased risk of identity theft. In 2018, the Treasury Inspector General for Tax Administration (TIGTA) found two private debt collectors had dozens of critical and high-risk vulnerabilities on their servers.²¹ Even though the IRS's contracts with private debt collectors require that serious vulnerabilities like those identified by TIGTA be remediated within 30 calendar days, investigators found that one private debt collector had 260 workstations with critical and high-risk vulnerabilities that were not remediated in the required time period.²² TIGTA also found that "known exploits exist for a large number of these vulnerabilities, which could lead to the exposure of Personally Identifiable Information," similar to the Equifax data breach.²³ In fact, this week in a new report, the Acting National Taxpayer Advocate warned:

As the public becomes aware that PCAs are offering a direct debit payment option for outstanding tax liabilities, PCA impersonators may exploit this option as a way to secure taxpayers' personal bank information to use for malicious purposes. This is a significant departure from how the IRS administered this PDC program up until this point and the prior program. Previously, the IRS was always able to tell taxpayers that PCAs would never ask for their personal financial information to coordinate a payment to the IRS on an outstanding tax liability. Now this message is more convoluted, making it increasingly difficult for taxpayers to distinguish between a legitimate PCA employee attempting to collect on an outstanding tax liability and an imposter trying to secure personal financial information.²⁴

The private debt collection program is an abject failure that should be eliminated—and allowing private debt collectors to use preauthorized direct debit payments makes it even worse. In order to better understand your plans to protect taxpayers and hold private debt collectors accountable for their failures, we ask that you provide answers to the following questions no later than January 22, 2020:

1. Who at the IRS decided that preauthorized direct debit should be introduced as a new payment method for the PDC program?

¹⁹ Treasury Inspector General for Tax Administration, "Fiscal Year 2019 Biannual Independent Assessment of Private Collection Agency Performance," December 31, 2018, pp. 6, <https://www.treasury.gov/tigta/auditreports/2019reports/201930018fr.pdf>.

²⁰ *Id.*, pp. 21.

²¹ Treasury Inspector General for Tax Administration, "Private Collection Agency Security Over Taxpayer Data Needs Improvement," July 30, 2018, pp. 7, <https://www.treasury.gov/tigta/auditreports/2019reports/201930018fr.pdf>.

²² *Id.*

²³ *Id.*

²⁴ National Taxpayer Advocate, "Annual Report to Congress 2019 Volume One: Most Serious Problems, Recommendations to Congress, and Most Litigated Issues," January 8, 2020, pp. 101, https://taxpayeradvocate.irs.gov/Media/Default/Documents/2019-ARC/ARC19_Volume1.pdf.

- a. When was this decision made?
 - b. Who approved the decision?
 - c. What data or evidence did the IRS use to make the decision?
 - d. Did the IRS consult any external security experts regarding the risk of preauthorized direct debit? Which experts, and when were they consulted?
 - e. Did the IRS consult with the Federal Trade Commission or Consumer Financial Protection Bureau before initiating the program?
2. On the IRS website page “Pay Taxes by Electronic Funds Withdrawal,” the IRS informs taxpayers: “In the event Treasury causes an incorrect amount of funds to be withdrawn from a bank account, Treasury will return any improperly transferred funds.”²⁵
 - a. If a private debt collector causes an incorrect amount of funds to be withdrawn from a taxpayer account, are taxpayers guaranteed this same return of improperly transferred funds?
3. Does the introduction of a preauthorized direct debit payment method require Information Technology (IT) programming resources? If so, what are those resources, and where is the IRS drawing the funding from?
4. Preauthorized direct debit payments lack the anti-fraud protections that are included in many other payment methods such as credit card and Automated Clearing House.
 - a. Does the IRS require private debt collectors to include any anti-fraud protections in their payment processes?
 - b. How does the IRS handle complaints from taxpayers who believe the private debt collectors have withdrawn the wrong amount from their accounts?
 - c. How will the IRS audit the private debt collectors to ensure compliance with appropriate rules and guidelines for preauthorized direct debit payments?
5. What additional security protocols is the IRS undertaking to ensure this new payment method does not put taxpayer financial account information at risk?
 - a. What additional security measures is the IRS requiring of private debt collectors?
 - b. What are the consequences of private debt collectors not following those protocols?
 - c. If private debt collectors are hacked or inadvertently reveal taxpayer financial account information, who is responsible for mitigating the potential damage and compensating taxpayers for potential damage?
 - d. What recourse exists for taxpayers who have their Personally Identifiable Information stolen or revealed by private debt collectors?

²⁵ Internal Revenue Service, “Pay Taxes by Electronic Funds Withdrawal,” <https://www.irs.gov/payments/pay-taxes-by-electronic-funds-withdrawal>.

6. Prior to introducing this new payment method, did the IRS resolve all outstanding IT security concerns raised by TIGTA and the Taxpayer Advocate Service?
 - a. If not, which concerns remain unresolved, and what is your timeline for addressing them?
 - b. Will you ensure all security concerns are resolved before any private debt collector begins collecting financial account information from taxpayers?

7. FTC telemarketing rules bar certain types of preauthorized payments. An IRS representative told Tax Notes that the agency has consulted with its Office of Chief Counsel about the FTC telemarketing ruling “and does not believe it applies” to the IRS Private Debt Collection Program, and that “the direct debit payment option being offered by these private collection agencies is similar to IRS practices and payment practices used by these same companies to collect debts for other federal agencies.”²⁶
 - a. What IRS practices are you referring to? Please clarify whether those practices include a private company authorizing taxpayer payments.
 - b. What other payment practices used by private debt collectors are you referring to?
 - c. Has the IRS obtained an opinion on this matter from the FTC? If so, what did it say?

8. Please provide a copy of all new and revised scripts for all four private debt collectors that reference the preauthorized direct debit payment method or involve collecting taxpayer account information for a preauthorized direct debit payment.

9. At your confirmation hearing in June 2018, you told the Senate Finance Committee you would commit to a full review of the PDC program, including its collection methods.²⁷
 - a. Have you completed that review? Please provide a copy of the full report of the review.
 - b. If not, when do you plan to undertake that review?

10. At your confirmation hearing in June 2018, you told the Senate Finance Committee you would work to ensure that extremely vulnerable taxpayers are not being targeted by private debt collectors.²⁸


²⁶ Tax Notes, “IRS Defends New Debit Option for Tax Debt,” William Hoffman, October 21, 2019, <https://www.taxnotes.com/tax-notes-federal/tax-system-administration/irs-defends-new-debit-option-tax-debt/2019/10/21/2b11c>.

²⁷ Senate Committee on Finance, “Hearing to Consider the Nomination of Charles P. Rettig, of California, to be Commissioner of Internal Revenue for the Term Expiring November 12, 2022,” June 28 2018, <https://www.finance.senate.gov/hearings/hearing-to-consider-the-nomination-of-charles-p-rettig-of-california-to-be-commissioner-of-internal-revenue-for-the-term-expiring-november-12-2022>.


²⁸ *Id.*

- a. What have you done, since being confirmed, to ensure extremely vulnerable taxpayers are not being targeted by private debt collectors?
- b. How did you develop these strategies or actions?
- c. What outcomes have resulted from each strategy or action?
- d. Who has been responsible for carrying out these strategies or actions?

Sincerely,



Elizabeth Warren
United States Senator



Sherrod Brown
United States Senator