

# Congress of the United States

Washington, DC 20510

January 24, 2020

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

Dear Commissioner Rettig:

We write to request information about the IRS's plans to implement provisions of the *Taxpayer First Act of 2019*, which requires the agency to exclude recipients of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) and taxpayers experiencing economic hardship from your flawed Private Debt Collection (PDC) program. Beginning on January 1, 2021, the IRS is required to cease referring taxpayers' accounts to private debt collectors if the taxpayer receives the majority of their income from SSI or SSDI, or has an adjusted gross income (AGI) less than 200% of the federal poverty level.<sup>1</sup> Because the IRS has refused to implement National Taxpayer Advocate recommendations dating from 2016 to take these steps, we write to ensure that your agency is preparing to fully implement the new requirements of the *Taxpayer First Act*.

The IRS previously refused to preemptively exclude SSDI recipients from having their debt assigned to private debt collectors, and told the National Taxpayer Advocate in 2019 that the agency had "no plans to develop a systemic method to program the exclusion of SSDI recipients that is not required in the law and would require resources for IT programming."<sup>2</sup> The IRS also rescinded a directive from the National Taxpayer Advocate to exclude taxpayers with incomes below 250% of the federal poverty level from having their debt assigned to private debt collectors.<sup>3</sup>

The *Taxpayer First Act* requires common sense protections in the PDC program to protect vulnerable populations from these and other overly aggressive IRS collections that the agency has long resisted.<sup>4</sup> As Congressman John Lewis, the sponsor of the *Taxpayer First Act*,

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<sup>1</sup> 26 U.S.C. 6306.

<sup>2</sup> National Taxpayer Advocate, "Objectives Report to Congress, Volume Two," 2019, pp. 5, [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2019-JRC/JRC19\\_Volume2.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2019-JRC/JRC19_Volume2.pdf).

<sup>3</sup> National Taxpayer Advocate, "Annual Report to Congress 2018, Volume One," 2018, pp. 279, [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18\\_Volume1\\_MostSeriousProblems.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume1_MostSeriousProblems.pdf).

<sup>4</sup> National Taxpayer Advocate, "Annual Report to Congress 2016, Volume One," 2016, pp. 186-187, [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16\\_Volume1.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2016-ARC/ARC16_Volume1.pdf); National Taxpayer Advocate, "Annual Report to Congress 2017, Volume One," 2017, pp. 17-18, [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-ARC/ARC17\\_Volume1.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2017-ARC/ARC17_Volume1.pdf); National Taxpayer

stated on the House floor, these provisions will “prevent private debt collectors from excessively targeting low-income taxpayers” and, as a result, “will ease the burden on those who are already struggling to keep a roof over their head and food on the table.”<sup>5</sup>

In order to comply with the statute, it is critical that the IRS accurately identify the taxpayers whose accounts can no longer legally be referred to private debt collectors. To begin doing this, the IRS should put in place appropriate screening mechanisms to ensure that taxpayers who rely on SSI and SSDI are excluded from the PDC program. There are already similar processes in place in the Federal Payment Levy Program, and we urge the IRS to work expeditiously to ensure a proper screening mechanism is instituted for the PDC program.<sup>6</sup>

The IRS must also use appropriate measures of economic hardship in fulfilling its mandate to exclude taxpayers whose income is 200% or less of the federal poverty line. Practices previously used by the agency to do this have been inadequate. According to the National Taxpayer Advocate’s recent report to Congress, “The IRS’s calculation always used the most recent return on file to determine a taxpayer’s AGI, and never consulted more recent third-party income data, even if the return was filed several years ago.”<sup>7</sup> That meant, for example, that if a taxpayer retired and did not file tax returns for the next ten years because they did not have income, the IRS’s method assumed the taxpayer was still working and generated inaccurate information. We are concerned that the IRS will continue to use this flawed approach to identify taxpayers experiencing economic hardship, resulting in hundreds of thousands of low-income taxpayers having their accounts unlawfully sent to private debt collectors.

Fortunately, the Taxpayer Advocate Service has already developed a more accurate and practical method for determining economic hardship. In determining how many taxpayers are eligible for diversion from the PDC program, the Taxpayer Advocate Service either looked at the taxpayer’s most recent return if it was filed in the last two years, or “third-party income information reported to the IRS to determine a taxpayer’s gross income.”<sup>8</sup> Using this more accurate information, the Taxpayer Advocate Service identified 379,000 taxpayers who likely have an AGI at or below 200% of the federal poverty level who would have had their accounts inappropriately assigned to a private debt collector under the current IRS calculation.

The IRS should adopt the more rigorous method developed and used by the Taxpayer Advocate Service to ensure the agency is not putting vulnerable taxpayers at increased risk—and violating the *Taxpayer First Act*.

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Advocate, “Annual Report to Congress 2018, Volume One,” 2018, pp. 288 & 355, [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18\\_Volume1.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2018-ARC/ARC18_Volume1.pdf); National Taxpayer Advocate, “Annual Report to Congress 2019, Volume One,” 2019, pp. 98-101, [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2019-ARC/ARC19\\_Volume1.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2019-ARC/ARC19_Volume1.pdf).

<sup>5</sup> Congressional Record—House, “Taxpayer First Act of 2018,” December 20, 2018, pp. H10414, <https://www.congress.gov/115/crec/2018/12/20/CREC-2018-12-20-pt1-PgH10402.pdf>.

<sup>6</sup> U.S. Social Security Administration, “Program Operations Manual System: GN 02410.305 Federal Payment Levy Program (FPLP),” <https://secure.ssa.gov/apps10/poms.nsf/lrx/0202410305>.

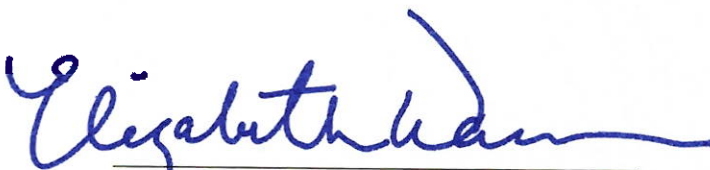
<sup>7</sup> National Taxpayer Advocate, “Annual Report to Congress 2019, Volume One,” 2019, pp. 99, [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2019-ARC/ARC19\\_Volume1.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2019-ARC/ARC19_Volume1.pdf).

<sup>8</sup> *Id.*

In order to better understand how you are planning to implement these important protections for low-income taxpayers in the *Taxpayer First Act*, we ask that you provide answers to the following questions no later than February 7, 2020:


1. How does the IRS intend to determine a taxpayer's adjusted gross income for the purposes of implementing this provision of the *Taxpayer First Act*?
  - a. How is the IRS planning to test this method?
2. How does the IRS intend to ensure that SSI and SSDI recipients are excluded from the PDC program?
  - a. How is the IRS planning to test this method?
3. How is the IRS planning to work with the Taxpayer Advocate Service to prepare for implementation of these provisions of the *Taxpayer First Act*?
  - a. Specifically, how is the IRS planning to implement the recommendations of the National Taxpayer Advocate?
4. The National Taxpayer Advocate reported to Congress this month that "it is prudent to cease assignment of these cases immediately and recall these cases that have already been assigned to [Private Collection Agency] inventory."<sup>9</sup>
  - a. When will the IRS cease assignment of cases to private debt collectors that are no longer eligible for collection under the program?
  - b. Will the IRS recall cases that are no longer eligible for collection? If so, how will the agency implement this recall, and how will taxpayers be informed of the recall?<sup>10</sup>
5. Will the agency require private debt collectors to cease collection efforts if these collectors learn that taxpayers that have been assigned to them are no longer eligible for collection under the program?
6. How will the agency hold debt collectors accountable in the event they are attempting to collect debt from taxpayers that are ineligible for collection?

Sincerely,



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Elizabeth Warren  
United States Senator



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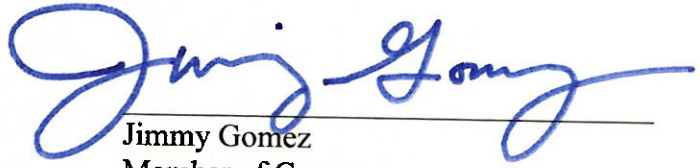
Sherrod Brown  
United States Senator

<sup>9</sup> National Taxpayer Advocate, "Annual Report to Congress 2019, Volume One," 2019, pp. 99, [https://taxpayeradvocate.irs.gov/Media/Default/Documents/2019-ARC/ARC19\\_Volume1.pdf](https://taxpayeradvocate.irs.gov/Media/Default/Documents/2019-ARC/ARC19_Volume1.pdf).

<sup>10</sup> *Id.*, pp. 98.



Benjamin L. Cardin  
United States Senator



Jimmy Gomez  
Member of Congress

**cc:** Congressman John Lewis, Chairman, U.S. House Ways and Means Oversight Subcommittee