**Area of Focus #3**

## TAS Will Continue to Advocate for the IRS to Proactively Identify, Educate, and Assist Taxpayers at Risk of Economic Hardship Throughout the Collection Process

### TAXPAYER RIGHTS IMPACTED[1]

- *The Right to Be Informed*
- *The Right to Quality Service*
- *The Right to Pay No More Than the Correct Amount of Tax*
- *The Right to Finality*
- *The Right to a Fair and Just Tax System*

### DISCUSSION

Congress has repeatedly directed the IRS to protect taxpayers who are experiencing economic hardship from any additional economic harm due to tax collection.[2] The National Taxpayer Advocate remains concerned that the IRS does not *proactively* identify taxpayers at risk of economic hardship at the beginning of the collection process, despite having the ability to do so.[3] Furthermore, the IRS routinely applies collection treatments that do not require any financial analysis, including placing taxpayers into streamlined Installment Agreements (IAs).[4] Because the IRS typically does not place a marker on the accounts of taxpayers who seem at particular risk for economic hardship, and because taxpayers are often unaware the IRS must halt collection action if it causes economic hardship, vulnerable taxpayers may face potentially harmful collection action, such as an IRS levy or a lien filing, or enter into a streamlined IA they cannot afford and may later default on.[5]

---

1   *See* Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights.  The rights contained in the TBOR are also codified in the Internal Revenue Code (IRC).  *See* IRC § 7803(a)(3).

2   *See, e.g.*, IRC § 6343(a)(1)(D) (requiring the IRS to release a levy if the IRS determines that "such levy is creating an economic hardship due to the financial condition of the taxpayer"); IRC §§ 6320(c), 6330(c)(2)(A)(ii) (permitting a taxpayer, in a collection due process hearing, to raise the inability to pay due to hardship as a "challenge to the appropriateness of collection action"); IRC § 7122(d) (requiring the IRS to develop allowable living expense (ALE) guidelines to determine when an offer in compromise (OIC) is adequate and should be accepted to resolve a dispute).

3   Taxpayers who meet the definition of economic hardship are those "unable to pay his or her reasonable basic living expenses."  *See* IRC § 6343; Treas. Reg. § 301.6343-1; Internal Revenue Manual (IRM) 5.8.11.2.1, *Economic Hardship* (Aug. 5, 2015).

4   IRC § 6159; IRM 5.14.1.1.1, *Streamlined Installment Agreements (IAs)* (Dec. 23, 2015).  In theory, a streamlined IA may help taxpayers by avoiding the burden of providing financial information.  However, by avoiding the financial analysis this tool actually harms taxpayers who would otherwise not be able to afford an IA and would be better off with a different collection alternative.

5   The IRS has internal data available to provide an initial indicator of whether a taxpayer may be at risk of economic hardship, but uses this information in very limited circumstances.  For instance, the Low Income Indicator (LII) is used to determine whether taxpayers entering into an IA are eligible for a reduced or waived user fee.  An income-based LII is placed on accounts that are at or below 250 percent of the federal poverty level depending on household size and state of residence. The LII is placed on the IRS's Individual Master File (IMF) system, and is determined by reviewing the taxpayer's income and exemptions on the taxpayer's most recent tax return and comparing them with the poverty level charts created by the Department of Health and Human Services (HHS).  IRM 5.14.1.2, *Installment Agreements and Taxpayer Rights* (July 16, 2018); *see also* IRS response to TAS information request (Sept. 14, 2018) (on file with TAS).

The IRS does not flag cases for potential economic hardship even when Inventory Delivery System (IDS) scoring shows the cases are not likely to produce payments, including the shelved cases that the IRS sets aside.[6]

In fiscal year (FY) 2018, the IRS agreed to nearly 2.9 million installment agreements. Over 72 percent (2,079,743) of these agreements were streamlined IAs, not requiring financial analysis or the use of Allowable Living Expense (ALE) standards.[7] Over the past six years, nearly 4.3 million IAs have been arranged for cases assigned to the IRS's Automated Collection System (ACS) and about 84 percent of those IAs were streamlined.[8] Furthermore, as we reported in the 2018 Annual Report to Congress, about 40 percent of taxpayers who entered into a streamlined IA in ACS in FY 2018 had incomes at or below their ALEs.[9] While the overall default rate for ACS streamlined IAs in FY 2018 was 19 percent,[10] the default rate for streamlined IAs of taxpayers whose income did not exceed their ALEs, was 39 percent.[11] These taxpayers agreed to pay their tax debts while, even by the IRS's own standards, they could not pay for their basic living expenses. These taxpayers may default on their IAs or continue to make payments but be unable to meet what the IRS has determined are basic living expenses.[12] Furthermore, 40 percent of taxpayers who entered into IAs while their debts were assigned to private collection agencies (PCAs) had incomes at or below their ALEs.[13] Thirty-seven percent of taxpayers who entered into IAs while their debts were assigned to PCAs defaulted, a frequency that rises to 44 percent when the defaulted IAs that PCAs do not report to the IRS as required are taken into account.

The IRS does not consider ALE guidelines in deciding which collection cases to work, although research by TAS shows that in a sample comprising a large segment of ACS casework being transferred to the

---

6   The IRS uses the Inventory Delivery System (IDS) to evaluate a collection case and determine where it should be worked using decision analytics and risked-based collection criteria. IRM 5.1.20, *Collection Inventory* (Nov. 2, 2016).

7   IRM 5.14.5.1, *Overview* (May 23, 2014). Streamlined Criteria have two tiers, up to $25,000, and $25,001–$50,000. In-Business Trust Fund Express IAs can be secured without securing financial information on business accounts up to $25,000. For more information on streamlined IAs in particular, see IRM 5.14.5.2, *Streamlined Installment Agreements* (Dec. 23, 2015). The number of streamlined IAs reported above includes guaranteed IAs available to taxpayers under IRC § 6159(c), which also do not require financial analysis. IRS, Collection Activity Report (CAR) NO-5000-6 (Oct. 1, 2018).

8   There are instances where IAs may be arranged by other Collection units than the Automated Collection System (ACS). In Fiscal Year (FY) 2018, streamlined IAs made up about 72 percent of total IAs. IRS, CAR NO-5000-6 (Oct. 1, 2018).

9   IRC § 7122(d). If the allowable living expense (ALE) standards exceed the taxpayer's income, the taxpayer is unable to pay his or her necessary living expenses. IRS, *Collection Financial Standards,* https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards (last visited Jun. 18, 2019). *See also* IRS, CAR, *IA Default Report,* FY 2018.

10  IRS, CAR, *IA Default Report*, FY 2018.

11  IRS, CAR, *IA Default Report*, FY 2018, for the default rate information for streamlined IAs, and TAS Research analysis of the ACS and IA accounts, FY 2018, for results on percentage of streamlined IAs whose income did not exceed their ALEs who defaulted.

12  For more information, see National Taxpayer Advocate 2018 Annual Report to Congress 255-265 (Most Serious Problem: *IRS's Automated Collection System (ACS): ACS Lacks A Taxpayer-Centered Approach, Resulting in A Challenging Taxpayer Experience and Generating Less Than Optimal Collection Outcomes for the IRS*).

13  This figure reflects allowance of vehicle ownership and operating expenses in calculating ALEs. If vehicle ownership expenses are not allowed, 33 percent of taxpayers who entered into IAs while their debts were assigned to private collection agencies (PCAs) had incomes at or below their ALEs. For a further discussion of ALEs, see 2018 National Taxpayer Advocate Annual Report to Congress vol. 2 39-52 (Research Study: *A Study of the IRS's Use of the Allowable Living Expense Standards*).

Collection queue, about 93 percent of payments received by the IRS came from taxpayers with income exceeding their calculated ALEs or who have assets that can be detected through systemic means.[14]

TAS's research shows that an algorithm using internal data about a taxpayer's income and assets, and comparing that information to ALEs, can be a reliable way to predict taxpayers at risk of economic hardship. TAS evaluated a sample of 278 cases in which a taxpayer's account was closed by ACS or the Field with an IA in FY 2018, all cases in which the IRS obtained financial information from the taxpayer which showed ability to pay, and analyzed whether filtering those cases based on systemic information about a taxpayer's income and ALEs would arrive at the same result.[15] Only 14 cases, or five percent of the sample group, showed no ability to pay by the algorithm—meaning that TAS's algorithm arrived at the same result as the IRS employee in 95 percent of the cases. In five of the 14 cases where TAS's algorithm indicated the taxpayer had no ability to pay, the IRS employee initiated a back-up currently not collectible (CNC) determination in case the IA defaulted.

In addition to inflicting financial harm on the affected taxpayers, the IRS wastes resources by pursuing these cases because it has to reverse collection actions in some cases and it has to deal with defaulted installment agreements in others. Pursuing these taxpayers also contravenes the intent of Congress, which is to avoid creating or exacerbating a financial hardship.[16]

The IRS's failure to proactively identify and flag taxpayers at risk of economic hardship throughout the collection process, and in turn, to consider the facts and circumstances that might affect the taxpayers' ability to pay, and respond to them appropriately, violates taxpayers' *right to be informed*, *right to quality service*, *right to a fair and just tax system*, *right to pay no more than the correct amount of tax*, and *right to finality*.[17]

The National Taxpayer Advocate has repeatedly expressed her concerns about the IRS's failure to protect taxpayers who experience economic hardship or who cannot pay their basic living expenses

---

14   *See* National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 157-192 (Research Study: *Further Analyses of "Federal Tax Liens and Letters: Effectiveness of the Notice of Federal Tax Liens (NFTL) and Alternative IRS Letters on Individual Tax Debt Resolution"*). The National Taxpayer Advocate persuaded the IRS to conduct a study to determine if the NFTL or one of three alternative collection letters were more effective in reducing the balances owed by taxpayers. The IRS selected a random sample of about 13,000 taxpayers within ACS who generally owed between $10,000 and $25,000 whose liabilities were being transferred to the collection queue. TAS Research's analysis of these cases showed that taxpayers with income exceeding their calculated ALEs or who have systemically detected assets account for about 93 percent of the payments made over two years regardless of the treatment type.

15   *See* National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*). TAS excluded two cases from the sample because we could not find additional information on the two cases because of an error in the data collection instrument. TAS Research estimated the income for taxpayers in these cases using the Total Positive Income (TPI) reported on the taxpayer's FY 2017 tax return. To evaluate taxpayers that may not have filed a prior-year return, TAS also considered information from third party Information Reporting Program (IRP) documents, including Forms 1099-INT (interest), 1099-DIV (dividends), 1099-R (retirement income), 1099-B (stocks and bonds), 1099-MISC, SSA-1099, and W-2. To incorporate assets, TAS Research looked at Form 1098 (mortgage interest), and real estate tax or mortgage interest paid on Schedule A. TAS calculated the ALEs for each case by using the National Standards (with household size determined based on the number of exemptions claimed on the return), Local Standards (determined by the zip code on the return), Vehicle Ownership Expense, and Out of Pocket Healthcare Expenses (determined by the taxpayer's age). If the taxpayer did not file a return in a previous year, TAS allocated the lower amount.

16   *See* IRC § 6343(a)(1)(D). Amendments to IRC § 6343 in 1988 set out conditions under which the IRS is *required* to release a levy, including when "the Secretary has determined that such levy is creating an economic hardship due to the financial condition of the taxpayer." *See* Omnibus Taxpayer Bill of Rights, Pub. L. No. 100-647, § 6236(f), 102 Stat. 3342, 3740 (1988), also known as Taxpayer Bill of Rights 1 (TBOR 1), enacting IRC § 6343(a)(1)(D).

17   There are several provisions of the IRC that protect taxpayers experiencing economic hardship from IRS collection actions. *See, e.g.*, IRC § 6343(a)(1)(D); IRC §§ 6320(c), 6330(c)(2)(A)(ii); IRC § 7122(d).

from harmful collection action.[18]  In January 2011, on the recommendation of the National Taxpayer Advocate, the IRS first began applying a low income filter (LIF) to the Federal Payment Levy Program (FPLP) to flag and screen out taxpayers whose incomes were below 250 percent of the federal poverty level (FPL).[19]  The purpose of this filter was to protect low income taxpayers from economic hardship arising from levies on their Social Security old age or disability benefits, or Railroad Retirement Board benefits.  The filter was implemented after TAS research showed that the FPLP often levied on taxpayers who were experiencing economic hardship.[20]

The National Taxpayer Advocate continues to be concerned, and in discussions with senior IRS leadership, has issued a two-part recommendation to the IRS.  The first recommendation is a first step: to adopt an algorithm to identify taxpayers who may face economic hardship.  Then, going beyond that step, the second part of the recommendation is to expand the use of the algorithm.  The National Taxpayer Advocate offers suggestions on how the algorithm could potentially be used once adopted.

### TAS Will Continue to Urge the IRS to Adopt an Algorithm Similar to the TAS Algorithm

Recently, TAS developed an automated algorithm that can identify taxpayers who are at risk of economic hardship by flagging those with incomes below their ALEs, with a high degree of accuracy.[21]  The TAS algorithm uses information that the IRS already has and could enable the IRS to automatically flag taxpayers at risk of economic harm.[22]

---

18   *See, e.g.,* Nina E. Olson, NTA Bₗₒg, *The IRS Is Not Doing Enough to Protect Taxpayers Facing Economic Hardship* https://taxpayeradvocate.irs.gov/news/nta-blog-the-irs-is-not-doing-enough-to-protect-taxpayers-facing-economic-hardship?category=TaxNews (May 24, 2019); *Tax Filing Season: Hearing Before the H. Subcomm. on Oversight of the H. Comm. on Ways and Means*, 115th Cong. (Mar. 7, 2019) (statement of Nina E. Olson, National Taxpayer Advocate); National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*); National Taxpayer Advocate 2019 Purple Book 50-51 (*Direct the IRS to Study the Feasibility of Using an Automated Formula to Identify Taxpayers at Risk of Economic Hardship*); National Taxpayer Advocate 2016 Annual Report to Congress 192-202 (Most Serious Problem: *Allowable Living Expense (ALE) Standard: The IRS's Development and Use of ALEs Does Not Adequately Ensure Taxpayers Can Maintain a Basic Standard of Living for the Health and Welfare of Their Households While Complying With Their Tax Obligations*); National Taxpayer Advocate 2013 Annual Report to Congress 84-93 (Most Serious Problem: *Hardship Levies: Four Years After the Tax Court's Holding in Vinatieri V. Commissioner, the IRS Continues to Levy on Taxpayers it Acknowledges are in Economic Hardship and then Fails to Release the Levies*).

19   *See* National Taxpayer Advocate 2013 Annual Report to Congress 84-93 (Most Serious Problem: *Hardship Levies: Four Years After the Tax Court's Holding in Vinatieri V. Commissioner, the IRS Continues to Levy on Taxpayers it Acknowledges are in Economic Hardship and then Fails to Release the Levies*).  *See also* National Taxpayer Advocate 2008 Annual Report to Congress vol. 2 46-72 (Research Study: *Building a Better Filter: Protecting Lower Income Social Security Recipients from the Federal Payment Levy Program*).

20   National Taxpayer Advocate 2008 Annual Report to Congress vol. 2 46-72 (Research Study: *Building a Better Filter: Protecting Lower Income Social Security Recipients from the Federal Payment Levy Program*).

21   *See* National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).

22   For a detailed explanation of the TAS algorithm, see National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 39-52 (Research Study: *A Study of the IRS's Use of the Allowable Living Expense Standards*).  The IRS has expressed concern regarding the ALE determination methodology and how to address income when no income tax return is found.  However, the results of TAS's research highlight the need for the IRS to study the feasibility of using internal data further and in which situations the algorithm could be beneficial.  In some instances where no income tax return is found, the IRS should consider other data about taxpayers such as third-party reporting information.

The National Taxpayer Advocate has recommended the IRS utilize the data it already has access to and adopt a formula similar to the TAS algorithm.[23]  The IRS has repeatedly declined to adopt our recommendations.[24]

Most recently, the IRS responded to our recommendations in the National Taxpayer Advocate's 2018 Annual Report to Congress by saying:  "The IRS cannot reliably determine economic hardship based solely on information available in IRS and third-party databases, which is often incomplete."[25]  It is true the IRS cannot conclusively reach a determination about whether a taxpayer faces economic hardship based on its internal data alone.  But that is not what we are recommending.  Rather, we are recommending that the IRS systemically place a marker on the accounts of all taxpayers whom its filter identifies as having incomes below their ALEs and no detectable assets.  The marker would signal that a taxpayer is *at risk* of economic hardship and therefore that additional information should be requested.  Specifically, the marker would alert IRS assistors speaking with taxpayers over the phone that they should verify the taxpayer's ability to pay before placing them in streamlined IAs.  The IRS could program their systems so that when an assistor keys in the Social Security number of a taxpayer with an economic hardship risk indicator, a screen is generated with the income information, projected family size, and appropriate ALEs.  Then the assistor could engage with the taxpayer and request certain high-level information to verify the accuracy of its internal information.  Under this approach, the IRS would be using data to proactively protect financially struggling taxpayers from further financial harm.  Similarly, the indicator could be used as a warning to taxpayers who are attempting to enter into streamlined IAs online about other collection alternatives if they are able to substantiate financial hardship.

The IRS further states in its response that "[a]ny attempt to proactively identify taxpayers likely to be in economic hardship based on an incomplete set of facts would lead to flawed results."[26]  We disagree and believe this further misses the point of the recommendation.  We believe an indicator would serve as a starting point to engage taxpayers and verify the financial status of taxpayers who may face economic hardship.  The indicator would not constitute a final determination of the taxpayers' financial status or ability to pay.

Many anxious or intimidated taxpayers seeking to resolve their liabilities as quickly as possible are unaware the IRS is required to halt collection actions if they are in economic hardship.  As a result, they often agree to make tax payments they cannot afford.  When a taxpayer calls the IRS stating that he or she cannot pay the tax due, the IRS collection employee generally can verify some or all of the financial information provided by the taxpayer.  However, IRS guidance in Internal Revenue Manual (IRM) 5.14.1.2 instructs Collection employees to first seek to obtain full payment and, only if that is not possible, to offer a streamlined IA under IRM 5.14.5.2.[27]

---

23   For these specific recommendations, see TAS Recommendations #15-1 to #15-5 in the National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*).

24   *See, e.g.*, IRS responses to the National Taxpayer Advocate 2018 Annual Report to Congress 228-239 (Most Serious Problem: *Economic Hardship: The IRS Does Not Proactively Use Internal Data to Identify Taxpayers at Risk of Economic Hardship Throughout the Collection Process*), incorporated in National Taxpayer Advocate Fiscal Year 2020 Objectives Report vol. 2, www.TaxpayerAdvocate.irs.gov/ObjectivesReport2020, *available July 2019*.

25   *Id.*

26   *Id.*

27   *See* IRM 5.14.1.2, *Installment Agreements and Taxpayer Rights* (July 16, 2018); s*ee also* 5.14.5.2, *Streamlined Installment Agreements* (Dec. 23, 2015).

In a time of limited resources, focusing on more productive cases rather than IAs likely to default or to produce no payment could help the IRS avoid unnecessary rework, including time and resources to obtain an updated financial statement, to reroute the case, or even to make a Notice of Federal Tax Lien determination on additional periods. At a minimum, the IRS should carefully study how the automated use of internal data can better protect financially vulnerable taxpayers from economic harm and improve the efficiency of collection, and it should conduct a pilot to test the use of an algorithm, similar to what TAS has developed.

### TAS Will Urge the IRS to Use the Algorithm to Prioritize Cases and Filter Out Taxpayers Facing Economic Harm

As explained above, our recommendation is a two-part recommendation. After adoption of the algorithm identifying taxpayers who may face economic hardship, the second part of the recommendation focuses on potential uses for the algorithm.

With this algorithm, the IRS could take many proactive actions to prioritize cases, including filtering out taxpayers facing economic hardship from automated collection treatments. There are a lot of potential uses for this indicator. For example, the IRS could use this indicator to identify and educate these taxpayers by sending them notices about collection alternatives and creating account markers that telephone assistors could see when responding to taxpayers' calls, and that taxpayers could see when seeking to enter into online IAs to call their attention to the possibility they may qualify for collection alternatives.

Since the IRS generally has internal data about a taxpayer's income and assets from the prior year tax return and receives third-party information, the IRS can plug the data into an algorithm and apply the results to the accounts of all taxpayers who owe back taxes. By doing so, it can flag the accounts of all taxpayers whom the screen identifies as having incomes below their ALEs and no detectable assets. This indicator could be used to notify taxpayers who are attempting to enter into streamlined IAs online that they may qualify for alternative collection options like currently not collectible-hardship status or an offer in compromise (OIC).

The IRS could use the algorithm to apply a marker during case scoring and route the case to the appropriate group that would properly assist and engage those taxpayers who are at risk of economic hardship. For example, flagging potential economic hardship cases during IDS scoring and before routing the cases to be worked would allow the IRS to better use resources in later stages of the collection process and prevent economic harm to taxpayers who are at risk of economic hardship. In fact, the IRS could program its systems so that when an assistor keys in the Social Security number of a taxpayer with an economic hardship risk indicator, a screen is generated with the income information, projected family size, and appropriate ALEs. This way, the assistor can simply run through some high-level information to verify its accuracy. This indicator would prompt the IRS employee to ask questions to assess the taxpayer's ability to pay and identify more appropriate collection alternatives.

The use of this algorithm could also assist the IRS in screening out these taxpayers from automated collection treatments such as the Federal Payment Levy Program, referral to PCAs, and passport certification, unless the IRS makes a direct personal contact with the taxpayer and determines the taxpayer does not qualify.[28] Finally, the algorithm could be used for the IRS's systemic follow-up review

---

28  *See Taxpayer First Act of 2019, H.R. 3151, 115th Cong. (2019) (enacted). The Taxpayer First Act of 2019 screens out from Private Debt Collection taxpayers whose AGI is 200 percent of the FPL, which is close to our recommendation regarding ALEs and 250 percent of the FPL.*

of currently not collectible-hardship cases to determine whether the taxpayer's financial situation has changed or remained the same.[29]

While we are mindful of the IRS's concern for resources, the IRS has never quantified the amount of employee time expended upon undoing the downstream effects of unnecessary and unwarranted collection actions. We believe there would be significant resource savings for the IRS if the IRS used this indicator to prioritize the cases that were most likely to have collection potential and applied its resources to that population. After creating this indicator, if the IRS wanted to attempt some collection against taxpayers with this indicator, then it should first attempt to engage the taxpayers and verify their financial information. Otherwise, the IRS should not place these taxpayers into the Federal Payment Levy Program, the PDC program, or even impose automated levies, because such actions would repeat the very pattern we have empirically shown over and over to occur, as referenced above, that 40 percent of the taxpayers assigned to the PDC program, who make payments under certain installment agreements have income below their ALEs. Therefore, when the IRS makes attempts to engage these taxpayers via telephone or through tailored mailings to verify their financial information, the IRS will save resources later by not having to undo a lot of IAs due to defaults.

### *TAS Will Pursue Helping the IRS Create Educational Economic Hardship Notices*

The IRS could further use the algorithm to educate taxpayers who are at risk of economic hardship by sending them notices that explain their rights, options, and obligations.[30] These notices may also direct affected taxpayers to a dedicated phone line.

### *TAS Will Continue to Research This Issue*

In previous responses to our recommendation that the IRS proactively use data to exclude taxpayers experiencing economic hardship, the IRS has said it is too difficult to create an algorithm because the relevant data is stored in different systems. In order to address the IRS's objections, the TAS Research function analyzed the financial circumstances of taxpayers assigned to ACS over the last five years. TAS Research then applied three multiples of federal poverty levels to that same population base to determine whether a percentage of federal poverty level (computed on adjusted gross income (AGI)) would be a reasonable proxy for ALE.[31] Approximately ten percent of this population could not be analyzed because taxpayers had not filed recent tax returns and therefore we could not determine their AGI.

---

29  IRM 5.16.1.6, *Mandatory Follow-Up* (Dec. 8, 2014) (describing the two-year review process for currently not collectible (CNC) cases).

30  TAS's research shows that targeted contact with taxpayers can help them understand their obligations and avoid future mistakes. *See* National Taxpayer Advocate 2018 Annual Report to Congress vol. 2 193-210 (Literature Review: *Improving Notices Using Psychological, Cognitive, and Behavioral Science Insights*); *see also* IRS, *Behavioral Insights Toolkit* 13, 27 (2017).

31  We used adjusted gross income (AGI) to be consistent with the language in the Taxpayer First Act. *See* Taxpayer First Act of 2019, H.R. 3151, 115th Cong. (2019) (enacted).

**FIGURE 4.3.1, Comparison of Ability to Pay by Indicated Percent of Federal Poverty Level (Computed on Adjusted Gross Income) to Ability to Pay as Determined by an Analysis of Total Positive Income to ALE (FYs 2013–2018)[32]**

| 100% of Federal Poverty | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2013 | | 2014 | | 2015 | | 2016 | | 2017 | | 2018 | |
| | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay |
| ALE Classification, Cannot Pay | 30.46% | 69.54% | 27.46% | 72.54% | 28.23% | 71.77% | 28.67% | 71.33% | 26.35% | 73.65% | 27.53% | 72.47% |
| ALE Classification, Can Pay | 0.06% | 99.94% | 0.07% | 99.93% | 0.07% | 99.93% | 0.07% | 99.93% | 0.06% | 99.94% | 0.06% | 99.94% |

| 200% of Federal Poverty | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2013 | | 2014 | | 2015 | | 2016 | | 2017 | | 2018 | |
| | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay |
| ALE Classification, Cannot Pay | 72.58% | 27.42% | 69.18% | 30.82% | 69.93% | 30.07% | 71.70% | 28.30% | 68.09% | 31.91% | 68.69% | 31.31% |
| ALE Classification, Can Pay | 2.21% | 97.79% | 95.04% | 4.96% | 1.92% | 98.08% | 1.75% | 98.24% | 0.16% | 99.84% | 1.31% | 98.69% |

| 250% of Federal Poverty | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2013 | | 2014 | | 2015 | | 2016 | | 2017 | | 2018 | |
| | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay | Cannot Pay | Can Pay |
| ALE Classification, Cannot Pay | 86.26% | 13.74% | 84.19% | 15.81% | 85.25% | 14.75% | 87.20% | 12.80% | 84.83% | 15.17% | 85.02% | 14.98% |
| ALE Classification, Can Pay | 4.92% | 95.08% | 4.70% | 95.30% | 5.14% | 94.86% | 3.91% | 96.09% | 3.47% | 96.53% | 3.06% | 96.94% |

32   Figure 4.3.1 is sourced from the Individual Accounts Receivable Dollar Inventory, the Individual Returns Transaction File and the IMF as of Cycle 13, 2019.  The data was extracted in May 2019.  Single = 1 vehicle allowance; married filing jointly = 2 vehicle allowances.

Figure 4.3.1 shows during FY 2018, 85 percent of taxpayers who fell under the 250 percent federal poverty level threshold, which is one indicator used to identify taxpayers who are at risk of economic hardship, and under the ALE classification could not likely pay their tax liability. During FY 2018, 69 percent of taxpayers who fell under the 200 percent federal poverty level threshold and under the ALE classification could not pay their tax liability. During FY 2018, 28 percent of taxpayers who fell under the 100 percent federal poverty level threshold and under the ALE classification could not pay their tax liability. These figures show that many taxpayers likely need other collection alternatives and could benefit from the IRS adoption of an economic hardship filter to proactively flag cases in collection.

Figure 4.3.1 shows that over five years, the 250 percent of the FPL threshold consistently excluded about 85 percent of taxpayers that the ALE analysis predicted could not pay IRS debts without incurring economic hardship. Furthermore, 250 percent FPL had the lowest percentage of taxpayers where ALE analysis said they could not pay but the FPL analysis predicted they could. Not surprisingly, 250 percent FPL also has the highest percentage of taxpayers who the ALE analysis shows could pay but the FPL analysis says could not pay. Because the harm of collecting tax from someone experiencing economic hardship is so great (*i.e.,* the taxpayer cannot pay his or her basic living expenses), we recommend that the IRS err on the side of caution and adopt 250 percent FPL as the proxy for ALEs. For the three percent of taxpayers who are screened out by the 250 percent FPL, where the ALE analysis indicates an ability to pay, the IRS can attempt to engage the taxpayers, verify their financial information, and educate them about payment options.

We believe that ALEs are the best threshold for the IRS to use because they represent what amount of money the IRS determined is necessary for a taxpayer and his or her family to meet all necessary living expenses. Anything above this amount will be considered in calculating the taxpayer's ability to pay the tax liability. ALEs now play a large role in many types of collection cases. However, if the IRS needs to use a proxy for ALEs, 250 percent of the federal poverty level represents an appropriate measure because that is the level Congress chose for access to Low Income Taxpayer Clinics (*i.e.,* clinics that assist vulnerable taxpayers otherwise unable to afford representation to navigate the collection process).[33] Congress has also expressed interest in a 200 percent of the FPL threshold in the context of protecting taxpayers from PCAs.[34]

## CONCLUSION

The IRS's unwillingness to try to identify taxpayers with incomes below the ALEs not only burdens financially struggling taxpayers but wastes IRS resources and creates rework for IRS and Taxpayer Advocate Service employees. It is past time for the IRS to become proactive in this area and use its data to protect vulnerable taxpayers, rather than solely to harm them.

The National Taxpayer Advocate will continue to urge the IRS to adopt our two-step approach. First, to use existing data to create an automated algorithm to identify vulnerable taxpayers, and second, to use this algorithm to shield vulnerable taxpayers from potentially harmful collection actions that are taken without financial analysis. Adopting such an approach would allow the IRS to create special markers proactively identifying cases to allow for further engagement with the taxpayers to verify financial

---

33   *See* IRC § 7526(b)(1)(B).

34   *See* Taxpayer First Act of 2019, H.R. 3151, 115th Cong. (2019) (enacted). *See also* Bloomberg Law: Daily Tax Report, *Truce on IRS Debt Collection Program Wrapped Into Bipartisan Bill (2)* https://news.bloombergtax.com/daily-tax-report/truce-on-irs-debt-collection-program-wrapped-into-bipartisan-bill-2 (Mar. 28, 2019).

information.  It would also allow the IRS to further engage with and educate those taxpayers who are at risk of economic hardship about available options and collection alternatives.

Because the IRS does not have the resources to speak with all taxpayers, this indicator could help avoid situations where the IRS would just issue a levy and hope the taxpayer would then, after the fact, reach out to the IRS to explain their situation.  These proactive steps by the IRS to identify, engage, and educate taxpayers who may potentially face economic hardship would improve tax administration and strengthen public confidence in the fairness of the tax system.

## FOCUS FOR FISCAL YEAR 2020

In fiscal year 2020, TAS will:

- Continue advocating for the IRS to develop and utilize an algorithm to proactively identify taxpayers at risk of economic hardship throughout the collection process;

- Offer assistance to the IRS on how to best utilize the algorithm once it is adopted, including the creation of a filter to automatically screen out taxpayers at risk of economic hardship from potentially collectible inventory;

- Provide suggestions to the IRS on how to educate those taxpayers at risk of economic hardship, including the issuance of educational notices, on collection alternatives and additional assistance available;

- Continue to advocate that the IRS create a new phone line dedicated to responding to taxpayers at risk of economic hardship and help these taxpayers determine the most appropriate collection alternative, including OICs, and educate taxpayers on additional assistance available, including TAS and Low Income Taxpayer Clinics; and

- Continue to research this issue to find feasible solutions to improve voluntary compliance and provide more effective tax administration.