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Grassley Takes Issue With Taxpayer Advocate's Dismissal of Private Debt Collection Program

WASHINGTON – Sen. Chuck Grassley, ranking member of the Committee on Finance, today took issue with the national taxpayer advocate's dismissal of the IRS' new private debt collection program. In a letter, Grassley outlined his concerns that the national taxpayer advocate called for repeal of the program before it has had an adequate chance to work and emphasized significant, built-in safeguards of taxpayer rights at Congress' direction.

The text of his letter follows.

February 2, 2007

Ms. Nina E. Olson
National Taxpayer Advocate
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Ms. Olson:

I am writing to you regarding your 2006 Annual Report to Congress. I have long been a champion of taxpayer rights as well as the Taxpayer Advocate's office and its important work. I have read your report closely in the past and have acted on some of your recommendations – such as last year when you highlighted that IRS mismanagement had led to over 1.6 million taxpayers having their refunds held without notice. Senator Baucus and I took prompt action that led to the IRS making significant reforms in this program.

It is with that as background that I come to this year's report and have serious concerns about your office's analysis of the costs and benefits of private debt collection (PDC) and your ultimate

recommendation to repeal the IRS's authority to use private collection agencies (PCAs) – contrary to the recommendation of the IRS Oversight Board that recently provided qualified support for the PDC initiative. I am deeply troubled by what appears to be a preconceived conclusion that is not supported by facts.

The PDC initiative was enacted as part of the American Jobs Creation Act of 2004 to help reduce the immense inventory of uncollectible cases and, at the same time, allow the IRS to better focus its existing resources on more difficult cases. I think we would both agree that taxpayers who are delinquent in paying their taxes should be held accountable. Your 2006 Annual Report to Congress reveals numerous problems with IRS collections and levies – these of course being the consequence of the actions (or inactions) of IRS employees, not the PCAs. The tax debt collection arena, with approximately \$120 billion of uncollected taxes due and owing, is an area begging for improvement. The use of PCAs is an active, immediate and proven step towards increasing the number of closed collection cases. In fact, it is my understanding the performance of the PCAs to date has been better than the IRS's planning assumptions.

While it is understandable for privacy and collection impropriety to be an immediate concern, the PDC program has been designed to address these concerns and safeguard taxpayers' rights. In fact, the safeguards for taxpayers' rights were put in place by Senator Baucus and me when this legislation was first put forward.

The PCAs are bound by the Fair Debt Collection Practices Act, the Privacy Act, and the Fair Credit Reporting Act. The IRS Restructuring and Reform Act of 1998, which limits overzealous collection tactics by IRS collection agents, also applies to the PCAs. The three PCAs that are currently contracting with the IRS were chosen to participate in the program following a rigorous selection process and have been put under the microscope from the outset. They have been subject to audits by the Treasury Inspector General for Tax Administration (TIGTA) and the Government Accountability Office (GAO) and have been subject to continual oversight by the IRS including the IRS Oversight Board and the Taxpayer Advocate's office. In addition, staff of the Senate Finance Committee has conducted on-site reviews of PCAs and was impressed by the professionalism and commitment to taxpayers' rights demonstrated by the PCA employees. The staff believes the PDC program is equal or better than many IRS programs.

This belief is consistent with the IRS' own internal studies which indicate that service levels to taxpayers assigned to PCAs will meet or exceed the standards set for IRS customer service and quality. The IRS comments regarding service to taxpayers provide that "PCA quality, measured the same way as IRS quality, has ranged from 97 to 100 percent across various quality dimensions. This compares favorably with the ACS average range of 89.5 to 99.5 percent along the same dimensions for FY 2006." In other words, PCA quality was better than that of the IRS' own Automated Collection System (ACS). Your analysis fails to mention or refute these statistics – but instead raises an unsubstantiated concern that the PDC initiative could harm the IRS' "world-class customer service."

While I believe that there have been improvements at the IRS in customer service and taxpayer rights – improvements that I've championed – I have never heard anyone describe IRS as having world-

class customer service. In fact, the IRS Oversight Board in its 2006 annual report states: “Although the service it [IRS] now offers is a vast improvement over the days when taxpayers were met with millions of busy signals, IRS customer service does not match what modern financial services institutions can provide their customers.” Please reconcile your comments of world-class service with the IRS’ internal studies indicating that PCA quality exceeded IRS’ ACS quality and with the statements of the IRS Oversight Board. Finally, given that the Taxpayer Advocate’s office was created partially in response to concerns about IRS customer service, please inform me of what is the appropriate work force now for the Taxpayer Advocate’s office so that we can ensure proper allocation of resources at the IRS.

I also find that your argument regarding the cost of the PDC initiative is flawed. It is frankly outrageous to argue that because of all of the oversight, monitoring and careful attention to the PDC program – which has been demanded by Congress, the Administration, interested parties and your own office – this now should weigh against the PDC initiative – an initiative that is in its initial stage and has high start up costs that will diminish over time. Detractors cannot have it both ways saying there should be significant oversight of this new program and then be shocked by the resources being devoted to such oversight. In this regard, I would be interested to learn from you whether the 65 IRS employees that you cite in your report as working on the PDC program normally spend their entire work day on the program and, if not, what percentage of their day is spent working on the program. In other words, how many IRS full-time equivalents (FTEs) are devoted to this program? Your report gives the strong impression it is 65 FTEs, yet it is my understanding that may not be the case given that the IRS cites 31 FTEs on p. 57 of the report translating to 65 IRS employees. Do you think that the sentence in your report on p. 461: “At this point the initiative, the private collectors are using 75 collection representatives and the IRS is using 65 employees to monitor them.” provides a full and accurate picture to the Congress when the 65 employees are actually 31 FTEs? I am concerned that your report lets a good line trump honest analysis.

I very much doubt that any government program could be found free of any imperfections after such close scrutiny. However, even with the close examination of the PDC program, the IRS reports that there have been no instances of fraud or misuse of taxpayer information. The track record of PDC certainly compares favorably to several programs administered and run by IRS management and employees – such as the recent freezing of 1.6 million refunds without notice by the IRS discussed earlier.

I am also troubled that in a report to Congress, your discussion of the PDC initiative repeatedly cites as a principal argument the fact that Office of Management and Budget (OMB) guidance wasn’t followed regarding private contracting. It was Congress that made the decision to authorize and direct the IRS to go forward with the PDC initiative. In doing so, we carefully considered the nature of the collection activity, the impact on the IRS, and the costs and benefits of the PDC initiative. We also carefully considered the fact that the IRS repeatedly has said that the cases worked under the PDC initiative would not be worked by IRS employees regardless of an increase in funding. As such, your criticism that the PDC initiative did not allow for the development of a true cost-benefit comparison and your implication that Congress should be bound by OMB guidance and IRS certifications of commercial functions is unwarranted and unappreciated. Then, despite this implication, the top legislative recommendation in your report is for Congress to disregard OMB in

terms of the IRS budget and budget process. It is inconsistent to make as an argument against the PDC initiative that Congress should be bound by OMB but in the same report state that Congress should disregard OMB.

Your other main argument (in addition to resources and OMB guidance both discussed above) is that the PDC initiative is going to harm tax compliance. Again, though, you provide no substantive support for this claim. The reality is that private debt collection is very much a part of the national landscape. Americans are, unfortunately, all too familiar with private debt collectors. You have the Department of Education and over forty states that engage private debt collectors as well as an enormous number of businesses. I am not aware of any studies or analysis that the use of PCAs by state tax agencies affects state tax compliance. It is the success of these programs that convinced many Senators, particularly those who were former Governors and had first-hand experience, to support the PDC program. Also, even with PDCs being used by the private sector and the Department of Education, Americans get and use new credit every day, and they still are applying and receiving student loans. I am concerned that the report's argument in this area is inappropriately based on speculation and not fact.

Finally, you fail to note in your discussion of inconsistent treatment of taxpayers, that the real difference in treatment is between the strong majority of taxpayers who voluntarily pay their taxes and the small number who are failing to even pay tax that they are due and owing. Reaching out to those who aren't paying their taxes with the PDC initiative is bringing consistency in the area that matters to taxpayers and Congress – that the other guy is going to pay the taxes he owes as well. To state that there is inconsistent treatment with serious ramifications because there are not identical scripts for dealing with individuals who owe tax is unconvincing and is not given any support in your report.

I urge you to be more open-minded with respect to the PDC program. This program is helping taxpayers get back into compliance, is providing better quality service than that of the IRS, and is collecting millions of dollars of revenue on cases that would otherwise lie dormant until enough interest and penalties have accrued for a case to be assigned for IRS collection activities. In addition to the questions I have raised above, I have the following questions regarding your analysis of the costs and benefits of the PDC program.

1. In your report, you state that one of the contractors was using a collection script that used “psychological tricks during the conversation to get the taxpayers to commit to a payment.” Please provide me with a copy of the script highlighting the exact wording that is of concern. Was the script in question reviewed by your office or other IRS personnel prior to use by the PCA? How does this wording compare with that used by IRS collection personnel and the other two PCAs? How does it compare with scripts used by PCAs of state and other federal agencies? Are scripts used by PCAs of other federal agencies publicly available? Did you seek comment from the PCA regarding these scripts?

2. You recommend that in its second Request for Quotations (RFQ) process, the IRS should require that Fair Debt Collection Practice Act warnings be given at the beginning of each contact and should prohibit the use of trickery or device. However, as discussed above, PCAs are already subject to the

provisions of the Fair Debt Collection Practice Act. Section 807 of this Act (15 U.S.C. §1692(e)) expressly prohibits a debt collector from using any false, deceptive, or misleading representation or means in connection with the collection of any debt. As a result, wouldn't you agree that the current PCAs and any future PCAs selected through the second RFQ process are already subject to a prohibition against using trickery or device? Do you believe that the "psychological tricks" you cite violate the Fair Debt Collections Practice Act? If so, please provide a legal analysis supporting this position.

3. With respect to your argument that the PDC initiative is going to harm tax compliance, please provide all analysis that you have made or received on this matter. Please also provide an analysis of what you think is the impact on tax administration from the fact that a large number of taxpayers that have tax due and owing, particularly small amounts, are not contacted by the IRS.

4. Your report also states that IRS's collection authority and its deterrent effect is diluted by the use of PCAs that are also calling about past-due credit card accounts and medical bills. This conclusion seems contrary to the premise behind the PDC program. The PDC program allows IRS to collect funds due on smaller cases, brings taxpayers into compliance with their tax obligations and allows IRS collection agents to focus their efforts on the complex cases that better match their skill level and enforcement powers. Wouldn't the additional collection activity by PCAs on cases that would otherwise not have been subject to collection activity serve to strengthen IRS collection authority, not diminish it? Please explain your conclusion on this.

5. You use testimony from Treasury officials to support your claim that the IRS can collect the money more efficiently. Please provide me your own independent detailed analysis of the IRS numbers that you believe justify the claim that with \$296 million in new collection hires, the IRS could collect an additional \$9.5 billion annually. How long would it take before this \$9.5 billion annually goal was reached? Would this collection activity be based on high dollar cases or the low dollar cases that the PCAs are currently working? Given the current budget climate, please inform me where you suggest the IRS budget can be reduced to provide this additional \$296 million in funding.

6. Please also provide any comparable cost data that you reviewed for the dozens of states that have used PCAs for years to collect tax debts as well as cost data for the Department of Education PDC program.

7. In a separate topic of the most serious problems encountered by taxpayers, your report states that "[t]he lack of early, meaningful interventions by the IRS on delinquent tax accounts contributes to long-term financial problems for many taxpayers and costs the government billions of dollars in revenue." This issue is a result of current IRS practices which prioritize collection cases based on the amount of debt that is owed. Doesn't the use of PCAs as a supplement to the current IRS collection activities help to alleviate this problem? If a PCA's contact with a taxpayer results in bringing that taxpayer into compliance with his or her tax debt, isn't this beneficial for both the taxpayer and the federal government in terms of long-term compliance and taxpayer confidence in the fairness of the tax collection system?

8. Lastly, do the initial contact letters of all three current PCAs instruct taxpayers how to opt out of the PCA program? Do the PCAs inform taxpayers of their option to receive assistance from the Taxpayer Advocate's Office?

I would appreciate your providing me with a response by February 28, 2007.

Cordially yours,

Charles E. Grassley
Ranking Member

cc: Chairman Baucus
Senator Bond
Commissioner Everson