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October 16, 2006

Hon. Mark W. Everson
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Comments in Response to Notice 2006-68 Regarding Definition of "Low-Income" and Waiver Authority Under Section 7122 (c)(2)(C)

Dear Commissioner Everson:

Enclosed are comments in Response to Notice 2006-68 Regarding Definition of "Low-Income" and Waiver Authority Under Section 7122 (c)(2)(C). These comments represent the views of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or the House of Delegates of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

Sincerely,

Susan P. Serota
Chair, Section of Taxation

Enclosure

cc: Donald L. Korb, Chief Counsel, Internal Revenue Service
Eric Solomon, Acting Deputy Assistant Secretary (Tax Policy), Treasury Department
Michael J. Desmond, Tax Legislative Counsel, Treasury Department
William F. Conroy, Office of Associate Chief Counsel (Procedure & Administration), Internal Revenue Service

COMMENTS IN RESPONSE TO NOTICE 2006-68 REGARDING DEFINITION OF "LOW-INCOME" AND WAIVER AUTHORITY UNDER SECTION 7122(c)(2)(C)

These comments ("Comments") are submitted on behalf of the Section of Taxation of the American Bar Association ("Tax Section") and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Leslie M. Book and Joseph Barry Schimmel of the Tax Section's Low Income Taxpayers Committee. Substantive contributions were made by Katherine E. David, Diana Leyden, and William P. Nelson of the Low Income Taxpayers Committee and by Carol M. Luttati of the Committee on Administrative Practice. The Comments were reviewed by Elizabeth J. Atkinson, Chair of the Low Income Taxpayers Committee, Thomas J. Callahan, Chair of the Tax Section's Committee on Administrative Practice, Robert E. McKenzie of the Tax Section's Committee on Government Submissions, Sharon Stern Gerstman, Council Director for the Low Income Taxpayers Committee, and Charles A. Pulaski, Jr., Council Director for the Committee on Administrative Practice.

Although some of the members of the Tax Section who participated in preparing these comments have clients who would be affected by the federal tax principles addressed by these comments or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these comments.

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Date: October 16, 2006

EXECUTIVE SUMMARY

These Comments are submitted in response to the request for comments by the Internal Revenue Service ("Service") in Notice 2006-68, dated July 11, 2006 (the "Notice"), regarding changes to the offer in compromise program (the "OIC Program") enacted as part of the Tax Increase Prevention and Reconciliation Act of 2005 (Pub. L. No. 109-222) ("TIPRA").[1] These Comments specifically address the Service's request for comments regarding the definition of "low-income."[2] The Tax Section intends to submit additional comments regarding issues addressed in the Notice.[3]

Section 7122 of the Code[4] authorizes the Secretary of the Treasury to compromise tax liabilities for an amount that is less than the full amount owed. TIPRA amended section 7122 to require the submission of partial payments with offers in compromise. With respect to lump-sum offers in compromise,[5] TIPRA requires the taxpayer to submit with the application a partial payment of 20% of the offer amount.[6] For periodic payment offers, the taxpayer is required to submit the first installment payment with the application, and thereafter to comply with the taxpayer's proposed payment schedule while the Service is considering the offer.[7]

TIPRA authorizes the Secretary of the Treasury to issue regulations waiving the partial payment requirements for low-income taxpayers (the "low-income waiver") and for offers relating only to issues of liability.[8]

The Notice provides interim guidance on the application of certain of TIPRA's provisions to the OIC Program, including interim criteria for the application of the low-income waiver.[9] The Notice defines low-income by reference to poverty levels,[10] and requests comments regarding the definition of low-income for purposes of the low-income waiver.[11]

Since the imposition of user fees, participation in the OIC Program has declined significantly. As discussed below, a report by the National Taxpayer Advocate ("NTA") and recent studies by the Government Accountability Office and the Treasury Inspector General for Tax Administration all suggest that the imposition of user fees may be contributing to the decline in participation in the OIC Program. The Service has not measured the accessibility of the OIC Program, or evaluated the effect of the user fee on accessibility or on frivolous filings. As the TIPRA partial payment requirements may also affect participation in the OIC Program, we recommend that the Service systematically measure accessibility to the OIC Program, including the possible effect of the TIPRA partial payment requirements. We further recommend that the Service measure the incidence of frivolous offer filings, and evaluate the relationship between accessibility and frivolous filings. We recommend that these evaluations be made publicly available.

In light of the Service's expressed willingness to consider modifications to the low-income waiver, the significant decrease in OIC Program participation following the imposition of user fees, and the potential

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[1] Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. No. 109-222, § 509 (May 17, 2006).
[2] Notice 2006-68 (July 11, 2006), sec. 5.02.
[3] *Id*., sec. 5.01.
[4] References herein to the "Code" refer to the Internal Revenue Code of 1986, as amended. Unless otherwise stated, references herein to "sections" are to sections of the Code.
[5] Defined as any offer of payment made in five or fewer installments. Section 7122(c)(1)(a)(ii). Unless otherwise stated herein, references to section 7122 are to the provision as amended by TIPRA.
[6] Section 7122(c)(1)(A)(i).
[7] Section 7122(c)(1)(B).
[8] Section 7122(c)(1)(C).
[9] Notice 2006-68, sec. 4.
[10] *Id*., sec. 4.02.
[11] *Id*., sec. 5.02.

for TIPRA's new partial-pay requirements to exacerbate the decline in OIC Program participation, we recommend that the Service promptly issue further guidance regarding the waiver of payments under section 7122(c)(2)(C). Specifically, we recommend that the Service:

- Define low-income by reference to income at or below 250% of poverty levels based on guidelines established by the U.S. Department of Health and Human Services.
- Retain discretion to waive the user fee and partial payment requirements in other circumstances if taxpayers can demonstrate that payment of the user fee or satisfaction of the partial payment requirements will cause an economic hardship or will result in material taxpayer costs.

COMMENTS

Section 7122 authorizes the Secretary of the Treasury to compromise tax liabilities for an amount that is less than the full amount owed. Policy Statement P-5-100[12] (the "Policy Statement") provides in part, "[the] Service will accept an offer in compromise when it is unlikely that the tax liability can be collected in full and the amount offered reasonably reflects collection potential."[13] The Policy Statement recognizes that an offer in compromise is a legitimate alternative to placing the case in currently not collectible status or to entering into a protracted installment agreement because "the goal is to achieve collection of what is potentially collectible at the earliest possible time and at the least cost to the Government."[14] Moreover, the Policy Statement provides that acceptance of an adequate offer can create for the taxpayer a "fresh start toward compliance with all future filing and payment requirements."[15]

TIPRA amended section 7122 of the Code to require the submission of partial payments with offers in compromise, effective for offers made on or after July 16, 2006. With respect to lump-sum offers in compromise, TIPRA requires the taxpayer to submit with the application a partial payment of 20% of the offer amount.[16] For periodic payment offers, the taxpayer is required to submit the first installment payment with the application, and thereafter to comply with the taxpayer's proposed payment schedule while the Service is considering the offer.[17]

TIPRA authorizes the Secretary of the Treasury to issue regulations waiving the partial payment requirements for low-income taxpayers (the "low-income waiver") and for offers relating only to issues of liability.[18]

The Notice provides interim guidance on the application of certain of TIPRA's provisions to the OIC Program. In addition to providing general guidance, the Notice provides interim criteria for the application of the low-income waiver.[19] Regulations finalized in 2003[20] require the taxpayer to pay a $150 user fee for processing an offer in compromise, subject to exceptions for certain low-income taxpayers and for offers based solely on doubt as to liability.[21] Consistent with these regulations,[22] the Notice defines low-income by reference to poverty levels.[23]

The Notice requests comments regarding the definition of low-income for purposes of the low-income waiver.[24] The Notice acknowledges that commentators have previously raised concerns about the definition of low-income in the context of the user fee regulations and states that the Treasury Department and the Service are considering modifications to the low-income exception to the user fee.[25] The Notice states that Treasury and the Service anticipate that any modification to the low-income exception from the user fee will be reflected in guidance issued under section 7122(c)(2)(C).[26]

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[12] IRM § 1.2.1.5.18 (rev. 01-30-1992). References in the footnotes to the "IRM" are to the Internal Revenue Manual.
[13] *Id.*, ¶ 1.
[14] *Id.*
[15] *Id.*
[16] Section 7122(c)(1)(A).
[17] Section 7122(c)(1)(B).
[18] Section 7122(c)(1)(C).
[19] Notice 2006-68, *supra* note 2, sec. 4.
[20] T.D. 9086 (08/18/2003).
[21] Treas. Reg. § 300.3.
[22] Treas. Reg. § 300.3(b)(1)(ii).
[23] Notice 2006-68, sec. 4.02.
[24] *Id.*, sec. 5.02.
[25] *Id.*
[26] *Id.*

Section 7122(c)(2)(C) provides that the Service may issue regulations waiving any partial payment "in a manner consistent with the practices established in accordance with the requirements under subsection [7122](d)(3)." Section 7122(d)(3)(A) provides that the Service "shall not reject an offer in compromise from a low-income taxpayer solely on the basis of the amount of the offer." Section 7122(d)(3)(B) provides that the Service shall not reject an offer submitted on the basis of doubt as to liability if the Service cannot locate the taxpayer's return or return information. Section 7122(d)(3)(C) provides that the Service may return an offer that does not meet the partial payment requirements.

The legislative history of TIPRA indicates that under section 7122(c)(2)(C), the Service may exempt from the partial payment requirements offers from "certain low-income taxpayers and offers based on doubt as to liability."[27] The Notice provides that the Treasury Department and the Service intend to issue regulations that will waive the partial payment requirements in these two situations.[28] Pending the issuance of regulations, partial payments will not be required if an offer is submitted by a low-income taxpayer[29] or is submitted solely on the basis of doubt as to liability.[30] The Notice defines a low-income taxpayer as an individual whose income falls at or below poverty levels based on guidelines established by the U.S Department of Health and Human Services.[31] This definition of low-income taxpayer is the same as that adopted in the user fee regulations.[32]

Effect of the User Fee on OIC Program Participation

The OIC Program is an important aspect of tax administration. It can benefit taxpayers, who may wish to return to compliance, and the IRS, which faces billions of dollars in uncollected tax and hundreds of thousands of taxpayers with delinquent accounts. The imposition of TIPRA's partial payment requirements, without appropriate waivers for taxpayers likely to face significant impediments in raising those up-front amounts, is likely to deter the submission of offers from taxpayers who in good faith wish to resolve their tax liabilities and return to compliance. In light of the IRS's stated willingness to revisit the exceptions to the imposition of the user fee and partial payment requirements, we believe that the IRS should promptly issue guidance so that taxpayers with limited means do not face barriers to OIC Program participation that may prove insurmountable.

In recent years there has been a significant decrease in participation in the OIC Program, especially among lower income taxpayers. In a recent study (the "GAO Study"), the Government Accountability Office reports that during fiscal years 2000 through 2005, the OIC Program decreased in size, according to measures such as numbers of offers received by the Service, the number of offers accepted and the dollar amount accepted in compromises.[33] It is not clear what has caused this decrease, although likely factors include the Service's imposition of a $150 user fee and its narrow interpretation of which taxpayers are considered "low income" for purposes of the low-income taxpayer exception to the user fee. When the user fee was first proposed, a number of groups and individuals commented that the Service's plan to define "low income" with reference to only 100% of federal poverty guidelines, rather than 250% of poverty guidelines, was likely to have a chilling effect on the submission of good faith offers and to have only negligible effect on the submission of frivolous offers.[34]

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[27] See H.R. Conf. Rep. No. 109-455, 109th Cong., 2d Sess. at 232 (2006) available at http://waysandmeans.house.gov/media/pdf/109cong/hr4297/explanation.pdf.

[28] Notice 2006-68, *supra* note 2, sec. 4.01.

[29] *Id*. sec. 4.02.

[30] *Id*. sec. 4.03.

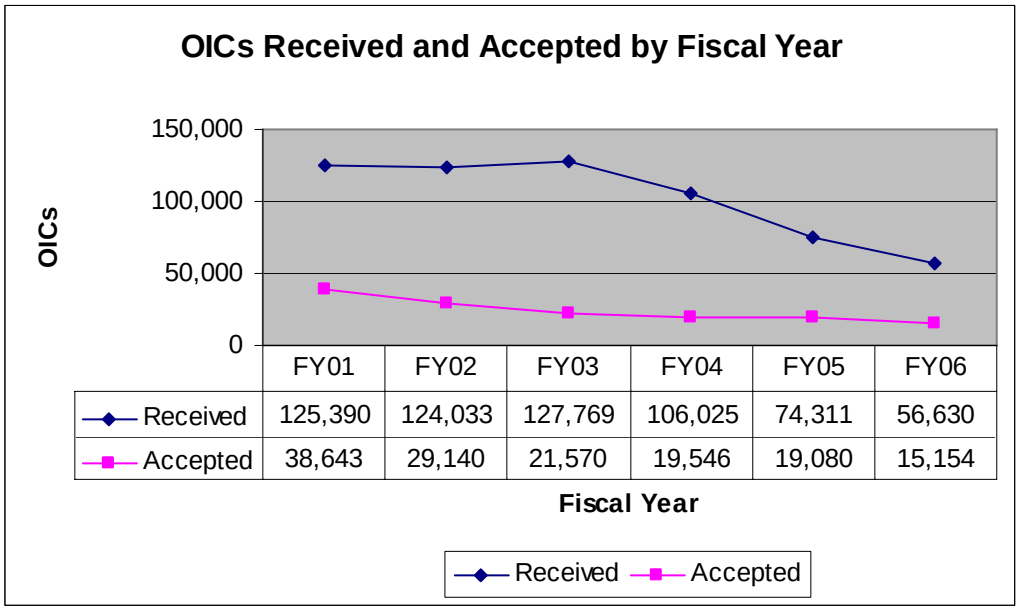
[31] *Id*. sec. 4.02.

[32] See Treas. Reg. § 300.3(b)(1)(ii).

[33] U.S. GOVERNMENT ACCOUNTABILITY OFFICE, IRS OFFERS IN COMPROMISE, GAO-06-525 (Apr. 20, 2006) at 11-12, available at http://www.gao.gov/htext/d06525.html. See Appendix A.

[34] E.g., American Bar Association, see *ABA Members Suggest Waiving Proposed OIC User Fees for Low Wage Earners*, 98 Tax Notes 1078 (Feb. 17, 2003); National Society of Accountants, see *NSA Won't Support User Fee for OIC Program*, 98 Tax Notes 1205 (Feb. 24, 2003); Theodore M. McGinn, Chicago Bar Association, see

Recent data also suggest that the OIC Program may be becoming less accessible to lower income taxpayers. For example, the Treasury Inspector General for Tax Administration ("TIGTA") reports that 68,449 offers in compromise were submitted during the pre-user fee period of November 1, 2002, through June 30, 2003. In contrast, only 49,267 offers in compromise were submitted during the post-user fee period of November 1, 2003, through June 30, 2004.[35] This trend has continued. The NTA's 2007 Objectives Report to Congress ("NTA Report") indicates that for the first seven months of fiscal year 2006, new OIC receipts have declined 27% relative to same period of fiscal year 2005.[36] The following table from the NTA Report indicates that this decline continues a trend that began in 2003.



	FY01	FY02	FY03	FY04	FY05	FY06
Received	125,390	124,033	127,769	106,025	74,311	56,630
Accepted	38,643	29,140	21,570	19,546	19,080	15,154

Source: NTA 2007 Objectives Report to Congress[37]

The following table indicates that the decline in submissions as seen in the table above is most pronounced among taxpayers whose incomes are at or near poverty guidelines as established by the Department of Health and Human Services ("HHS").

Chicago Bar Association Opposes OIC User Fees, 98 Tax Notes 1205 (Feb. 24, 2003); Joseph Schimmel, see *Attorney Challenges Definition of "Low-Income Taxpayer" for Proposed OIC Regs*, 98 Tax Notes 333 (Jan. 20, 2003).

[35] TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION, 2005-30-096, THE IMPLEMENTATION OF THE OIC APPLICATION FEE REDUCE THE VOLUME OF OFFERS FILED BY TAXPAYERS AT ALL INCOME LEVELS (June 2005) at 2 ("TIGTA User Fee Study"), available at http://www.treasury.gov/tigta/auditreports/2005reports/200530096fr.pdf.

[36] National Taxpayer Advocate, *2007 Objectives Report to Congress* 21, available at http://www.irs.gov/pub/irs-utl/nta_fy07_final_objectives_report_071206.pdf.

[37] *Id.*

OICs Filed by Income Level

Income Level	Pre-OIC Application Fee Cases: 11/01/02 – 06/30/03	Post-OIC Application Fee Cases: 11/01/03 – 06/30/04	Percentage Decline
< $10,000	8,476	6,792	20%
≥ $10,000 and < $20,000	8,612	6,136	29%
≥ $20,000 and < $30,000	9,398	6,437	32%
≥ $30,000 and < $40,000	8,566	5,753	33%
≥ $40,000 and < $50,000	7,042	4,838	31%
≥ $50,000 and < $70,000	8,867	6,348	28%
≥ $70,000 and < $100,000	5,771	4,327	25%
≥ $100,000 and < $200,000	3,913	2,984	24%
≥ $200,000	988	770	22%
Total	**61,633**	**44,385**	**28%**

Source: TIGTA Analysis of the Individual Master File (IMF) Returns Transaction File[38]

The table indicates an overall decline of 28 percent of submissions, but the percentage decrease is greater among lower-income taxpayers.[39] While the TIGTA data does not indicate the decline among taxpayers and families whose incomes lie in the range of 100 to 250 percent of HHS poverty guidelines, in the experiences of some of the low-income taxpayer clinics the inability to come up with the required user fee has discouraged the submission of offers by taxpayers who might appropriately benefit from the OIC Program.

Potential Effect of Partial Payment Requirements on OIC Program Participation

While the reasons for the adoption of the partial payment requirements are not entirely clear, it appears that, as with the user fee rule, one reason was to discourage frivolous offers.[40] In fact, the result of TIPRA might be to encourage unrealistically low offers from taxpayers who are unable to make the up-front 20 percent partial payment, rather than to discourage the submission of frivolous offers.[41]

We believe that the submission of offers that fall below the amount of a taxpayer's reasonable collection potential or that are intended to delay or hinder collection is indeed a serious problem. However, we are also concerned that the combination of the user fee and partial payment requirements will constitute significant impediments for lower-income taxpayers wishing to submit good-faith offers while only marginally discouraging frivolous or inappropriate offers. The TIGTA User Fee Study reports

[38] TIGTA User Fee Study, *supra*, at 3.

[39] The effect has been greater among taxpayers below HHS poverty guidelines, suggesting the difficulty of establishing entitlement to the exception among the very poorest and often unrepresented taxpayers. *Id*.

[40] See Staff of the Joint Committee on Taxation, *Options to Improve Tax Compliance and Reform Tax Expenditures*, JCS-02-05, at 12 (Jan. 27, 2005) ("while many taxpayers make an offer in good faith, some are abusing the offer process by concealing information from the government and by making low-ball offers").

[41] See NEW YORK STATE BAR ASSOC., OFFER IN COMPROMISE LEGISLATION IN HIGHWAY BILL (H.R.3) 5 (July 13, 2005) (noting that taxpayers may submit unrealistic offers to minimize up-front payments).

that the Service has failed to evaluate whether the user fee has reduced frivolous offer filings.[42] The GAO Study reports that the Service also does not measure accessibility to the OIC Program, and does not know whether declines in participation are attributable to real or perceived barriers, nor whether the Service's efforts to reduce inappropriate offers have reduced accessibility of eligible taxpayers.[43] We recommend that the Service systematically measure accessibility to the OIC Program, including the possible effect of the TIPRA partial payment requirements. We further recommend that the Service measure the incidence of frivolous offer filings, and evaluate the relationship between accessibility and frivolous filings. We recommend that these evaluations be made publicly available.

Waiver of Partial Payment Requirements

As mentioned above, section 7122(c)(2)(C) authorizes the Service to issue regulations waiving the up-front or installment payments in a manner consistent with section 7122(d)(3). Section 7122(d)(3)(A) prohibits the Service from rejecting an offer from a low-income taxpayer solely on the basis of the amount offered. However, applicable regulations extend this prohibition to all offers, irrespective of the submitting taxpayer's income level. [44] Income levels alone do not adequately take into account the possibility that taxpayers may be saddled with necessary expenses, such as medical costs, that would be allowable in reducing reasonable collection potential regardless of income level. Accordingly, the regulations require the Service to look at the taxpayer's facts and circumstances in evaluating an offer rather than only applying the exception to low-income taxpayers.

While section 7122(d)(3)(A) literally applies to the rejection of an offer, the cross reference to section 7122(d)(3) in section 7122(c)(2)(C) reflects Congressional concern that the OIC Program should not be closed to those who are unable to afford the partial payment or who would encounter significant hardship or challenges in obtaining the cash necessary for the partial payment. In other words, section 7122(c)(2)(C) implicitly recognizes that income level and doubt as to liability should not be the sole bases for waiver of the partial payment requirements. The legislative history also suggests that the Service may permit the processing of offers that do not satisfy the partial payment requirements.[45] However, the Notice does not indicate any intention of processing such offers.

A taxpayer who submits an offer based on doubt as to collectibility must make a minimum offer that reflects (i) the taxpayer's net realizable equity in assets, and (ii) a multiple of the excess of future income over necessary expenses.[46] To fund an offer, a taxpayer is expected to access both liquid and illiquid assets, including equity in assets such as automobiles and other items essential for the taxpayer's health, welfare, and production of income.[47] In many instances, a taxpayer is unable to obtain initial or additional loans secured by such assets. Likewise, in the experience of some low-income taxpayer clinics, a taxpayer may have few (if any) liquid assets that are not used on an ongoing basis to fund necessary expenses, such as medical care, transportation, and housing. The cash used by a taxpayer to fund an offer can come from many sources, including borrowings secured by a principal residence, gifts or loans from friends or family members, or distributions from qualified retirement plans. However, even for a taxpayer having assets such as qualified retirement plans or principal residences, monetizing those assets may produce significant burdens. These burdens include the penalties for early withdrawals from qualified plans,[48] and

[42] TIGTA User Fee Study, *supra*, at 3.
[43] GAO Study, *supra* note 33, at 23.
[44] Treas. Reg. § 301.7122-1(f)(3).
[45] Compare H.R. 4297 (Senate amendment), § 423(b) ("(C) any offer-in-compromise which does not meet the [partial payment requirements] *shall* be returned to the taxpayer as unprocessable") with Section 7122(d)(3)(C) ("(C) any offer-in-compromise which does not meet the [partial payment requirements] *may* be returned to the taxpayer as unprocessable") (emphasis added).
[46] Treas. Reg. § 301.7122-1(b)(2) and IRM § 5.8.4.4 (rev. 09-1-2005).
[47] For a discussion of the components of collectibility and reasonable collection potential, see IRM § 5.8.4.4.1 (rev. 09-1-2005).
[48] Section 72(t)(1). "If any taxpayer receives any amount from a qualified retirement plan (as defined in section

borrowing costs. As such, taxpayers of limited means will be reluctant to incur those burdens in order to make an offer that the Service may reject.

The decline in participation in the OIC Program following the implementation of the $150 user fee suggests that the partial payment requirements will further undermine the accessibility of the OIC Program to those taxpayers least able to make the partial payments. Accordingly, we recommend that the user fee regulations and partial payment regulations exempt taxpayers who are most likely to be discouraged from submitting good faith offers, including any taxpayer whose income is less than 250% of HHS poverty guidelines, or who can demonstrate that the partial payment requirements and/or user fees will constitute an undue hardship or will result in substantial taxpayer costs rendering the taxpayer unable to satisfy necessary household expenses.

Income Less than 250% of HHS Poverty Guidelines

We recommend that the Service define low-income as household income at or below 250% of HHS poverty levels based on guidelines established by HHS. We need not repeat the Tax Section's previous comments recommending that the Service adopt 250% of HHS poverty guidelines as the basis for defining the low-income exception to the user fee rule.[49] Those comments reflected a practical concern that the user fee would deter many taxpayers from submitting good-faith offers because $150 would be a significant amount of money for taxpayers at or below 250% of poverty levels.[50] In the experience of many low-income taxpayer clinics, the user fee does discourage offers from taxpayers whose income is between 100% and 250% of poverty levels. These taxpayers are often forced to choose between satisfying necessary expenses like medical care, transportation or housing costs, or paying the user fee.

Consider the following two examples, which demonstrate how shockingly low the HHS poverty guidelines are set. The first example is a single taxpayer who works 40 hours per week for 52 weeks and earns the minimum wage of $5.15 per hour. This taxpayer's total annual income of $10,712 is so low that, even without a qualifying child, he or she is eligible for the earned income credit.[51] Yet, under the Notice, this taxpayer is subject to the user fee and partial payment requirements. The second example is a senior citizen who lives alone and receives $834 in monthly Social Security benefits. Under the Notice, this taxpayer is also required to pay the user fee and required partial payment, and yet the user fee alone represents 18% of the monthly benefits.

Discretion to Waive the Payment Requirements in Other Situations

We believe that defining low-income by reference to 250% of HHS poverty guidelines will provide significant relief; however, tying relief from these payment requirements solely to the amount of income may not adequately remove the barriers to the OIC Program.

A taxpayer may be able to demonstrate that the user fee or partial payment requirements would constitute an economic hardship within the meaning of Treas. Reg. § 301.6343-1(b)(4). This may occur if the taxpayer's allowable expenses exceed his or her income, even if that income exceeds 250% of HHS poverty guidelines. To address this possibility, we recommend that the Service retain the discretion to waive these requirements where they would constitute an economic hardship (particularly in cases involving significant medical costs).

4974(c)), the taxpayer's tax under [chapter 1 of the Code] for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of such amount which is includible in gross income."

[49] See American Bar Association, *Proposed Regulations Amending 26 C.F.R. 300 To Provide for an Offer-to-Compromise User Fee* (February 4, 2003), available at http://www.abanet.org/tax/pubpolicy/2003/030204lit.pdf.

[50] *Id*. As many commentators mentioned at the time, Congress recognized this practical concern in 1998 by authorizing low income taxpayer clinics, and effectively defining low-income as income under 250% of HHS poverty guidelines. Section 7526(b)(1)(B)(i). These clinics created needed opportunities for low-income taxpayers to receive free or low cost legal representation in tax controversies, including collection matters (e.g., offers).

[51] Section 32.

Similarly, a taxpayer's reasonable collection potential may be solely attributable to assets that can be used to satisfy the user fee or partial payment requirements only at a substantial cost. Such assets include interests in qualified retirement plans (which may be subject to the 10% additional tax on early distributions[52]), as well as illiquid assets such as the taxpayer's primary residence and automobiles (which cannot be partially liquidated). [53] Faced with the prospect of incurring certain costs to fund an uncertain offer, our experience is that taxpayers will opt to not participate in the OIC Program, to the taxpayer's and ultimately the government's detriment. To address this possibility, we recommend that the Service retain the discretion to waive these requirements where they will result in substantial cost rendering the taxpayer unable to satisfy necessary household expenses.

[52] Section 72(t)(1).
[53] We would, however, expect taxpayers in such situation to pay the applicable user fee.

APPENDIX A

Table 1: OIC Program Statistics, Fiscal Years 2000-2005

Fiscal Year	2000	2001	2002	2003	2004	2005
Offers received	109,818	118,893	122,405	126,466	103,106	73,301
Offers accepted	31,609	37,071	27,692	18,340	14,636	14,526
End of year inventory	88,982	92,324	68,187	54,326	35,882	18,500
Amount of delinquent tax liability (in billions)	$2.43	$2.45	$2.25	$1.32	$1.32	$1.49
Amount accepted offers (in billions)	$0.28	$0.31	$0.27	$0.19	$0.19	$0.24
Amount of tax liabilities written off as a result of OIC (in billions)	$2.15	$2.14	$1.98	$1.13	$1.13	$1.25
Percentage of total tax liability accepted in compromise	12	13	12	14	15	16

Source: GAO Study: Analysis of Service's AOIC database.