

June 23, 2017

Jeff Mersmann
President
Pioneer Credit Recovery
P.O. Box 100
Arcade, NY 14009

John Remondi
President and CEO
Navient
P.O. Box 9640
Wilkes-Barre, PA 18773-9640

Dear Mr. Mersmann and Mr. Remondi,

We are writing in regard to your debt collection contract with the Internal Revenue Service and the call scripts your employees use when they call taxpayers.¹ Our staff reviewed the call scripts, and based on this review, we are concerned that Pioneer may be (1) failing to adequately protect taxpayers from criminals posing as IRS agents; (2) pressuring taxpayers into risky financial transactions; (3) violating the Fair Debt Collection Practices Act (FDCPA) and provisions of the Internal Revenue Code; and (4) violating IRS guidelines and provisions of Pioneer's IRS contract. We urge you to remedy these matters and to end potential taxpayer abuse immediately.

Background

In December 2015, Congress, via the FAST Act, directed the IRS to hire private debt collectors for some of its uncollected tax receivables.² In September 2016, IRS selected four private contractors: Pioneer (a Navient subsidiary), CBE Group, Conserve, and Performant, to collect these tax debts.³ In April 2017, the IRS began assigning accounts to Pioneer.

The IRS Taxpayer Advocate has previously estimated that 79% of accounts now eligible to be sent to private debt collectors are taxpayers who earn less than 250% of the federal

¹ Contract No. GS23F0217K, Sept. 23, 2016.

² Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94 § 32102.

³ IRS, "New Private Debt Collection Program to Begin Next Spring; IRS to Contract with Four Agencies; Taxpayer Rights Protected," press release, September 26, 2016, <https://www.irs.gov/uac/newsroom/new-private-debt-collection-program-to-begin-next-spring-irs-to-contract-with-four-agencies-taxpayer-rights-protected>

poverty-level.⁴ The IRS Taxpayer Advocate has also estimated that, of the eligible accounts for private debt collection who filed a previous return, 38% earned less than \$20,000 a year.⁵ We were concerned about the risks to taxpayers from private debt collection companies generally, and particularly concerned about Pioneer's contract because of the abuse of federal student loan borrowers by its parent company, Navient, through its Education Department student loan servicing contracts.⁶ To investigate this matter, we obtained the call scripts used by Pioneer and other private debt collectors contracting with the IRS. These scripts, which are publicly available under the Freedom of Information Act, are used by the debt servicing companies to provide step-by-step guidance to their employees on what to say to and how to handle questions, concerns, and issues raised by individuals who they reach on the phone.⁷

Findings

Each of the call scripts reviewed by my office raises concerns about compliance with the FDCPA, and we plan to refer these scripts to the Federal Trade Commission for an independent review of their compliance with FDCPA, and Pioneer's call scripts are particularly troubling.⁸ The remainder of this letter provides additional detail on my concerns.

a. Pioneer fails to adequately protect taxpayers from criminals posing as IRS agents

The Deputy Inspector General for Audit has identified the need to protect taxpayers from scammers as a priority and has testified before Congress about "how the widespread IRS impersonation scam might impact the Private Debt Collection program."⁹ Any private debt collection program for uncollected tax receivables must therefore ensure that taxpayers are able to verify that a debt collector is a legitimate IRS contractor and not a scammer impersonating the IRS. The IRS is aware of this risk and has attempted to protect taxpayers by establishing an authentication procedure using unique identifiers. Before being contacted by a debt collector over the phone, taxpayers are mailed a unique identifier that will allow them to verify that the debt collector is contacting them for a legitimate reason and is authorized to collect this debt under contract with the IRS. A debt collector cannot proceed unless the taxpayer has verified their possession of this unique identification code.

⁴ Office of the Taxpayer Advocate Letter to Chairman Ron Wyden, May 13, 2014, p. 8, http://taxpayeradvocate.irs.gov/Media/Default/Documents/NTA_PDC_letter.pdf (79% figure).

⁵ Office of the Taxpayer Advocate 2016 Annual Report to Congress, Vol. 1, p. 183n.53, <https://assets.documentcloud.org/documents/3523096/TAS-2016-Report-to-Congress-Private-Debt.pdf> (38% figure).

⁶ For CFPB lawsuit against Navient, see http://files.consumerfinance.gov/f/documents/201701_cfpb_Navient-Pioneer-Credit-Recovery-complaint.pdf. For a description of Pioneer being fired by ED, see <https://www.insidehighered.com/news/2015/03/02/us-ends-contract-5-debt-collectors-citing-misrepresentations-borrowers>.

⁷ Federal records, including Pioneer's call scripts submitted to IRS for review, are available to the public under 5 USC 552.

⁸ Pioneer call scripts have each been marked as "pending," include a time stamp of either 2/14/2017 or 3/2/2017, and appear to have been previously revised by the IRS with an October 2016 origination date.

⁹ Testimony of Michael E. McKenney, Deputy Inspector General for Audit, Treasury Inspector General for Tax Administration, before the U.S. House of Representatives Committee on Ways and Means, Subcommittee on Oversight, April 26, 2017. Available at: https://www.treasury.gov/tigta/congress/congress_04262017_2.pdf

One way to protect taxpayers from IRS impersonators is to ensure adequate time for a taxpayer to verify the identity of a debt collector and – if needed – receive a new copy of the unique authentication number by mail if the original notice has been discarded or was not received. Because scammers will not provide taxpayers with reasonable timelines, this is also one way taxpayers can distinguish between scammers and IRS contractors. Other contractors used by IRS adhere to this practice, discontinuing contact and placing an account on hold for a 60 day period “if the taxpayer indicates that there is doubt as to the liability” or waiting for the taxpayer to call them back if the collector needs to resend the authentication letter.¹⁰

But Pioneer does not adhere to this practice. In cases where taxpayers have not received the initial contact letter from Pioneer, the call script directs Pioneer employees to “update the account, request a certified letter, and suspend the collection activities” only “for 5 calendar days” to allow the taxpayer to receive the letter.¹¹ This brief five-day period would allow Pioneer to call taxpayers twice in the same week, even if the taxpayer has not been able to authenticate the caller.

Pioneer’s failure to allow taxpayers adequate time to receive authentication materials by mail may prevent taxpayers from distinguishing IRS impersonators from Pioneer’s own debt collectors.

b. Pioneer pushes taxpayers into products that could risk their home and retirement security

Pioneer is unique among IRS contractors in pressuring taxpayers to use financial products that could dramatically increase expenses, or cause them to lose their homes or give up their retirement security.

Pioneer’s “Initial Demand” script advises its agents to “Give the Taxpayer ideas on where/how to borrow” to pay their debts. As “Money Sources,” Pioneer suggests that agents list traditional sources such as banks, stocks, and CDs when indicating to taxpayers how they might resolve the debt. But Pioneer’s script also includes three options that are extraordinarily dangerous for taxpayers’ financial security: “Credit Card,” “2nd Mortgage,” and “Borrow against 401K.”¹² Similarly, the Pioneer “Resolution Script” advises Pioneer employees to “suggest that liquidating assets or borrowing money may be advantageous,” and also suggests a second mortgage or 401K loan.¹³ No other debt collector makes these demands.

c. Pioneer’s call scripts may violate the Fair Debt Collection Practices Act and provisions of the Internal Revenue Code

Pioneer’s call scripts contain several instances of troubling language that may violate legislative provisions designed to protect taxpayers or debtors.

¹⁰ Performant IRS Response Script, p. 12 (quote); Conserve Initial Contact with Taxpayer, p. 2 (callback).

¹¹ Pioneer Collections Authentication Script, p. 2.

¹² Pioneer Initial Demand Script, p. 4.

¹³ Pioneer Resolution Talk-offs, p. 1.

The FDCPA bans false or misleading statements or threats that constitute harassment and abuse.¹⁴ But there appears to be an implied threat in Pioneer’s “Resolution Talk-Offs,” in violation of the FDCPA. The script for the debt collector states, “If unable to come to a resolution, we advise the taxpayer we will notate the account and advise our client that they do not want to voluntarily satisfy their obligation.”¹⁵ By using the term “voluntarily satisfy their obligation,” this call script implies that the debt collector will subsequently have means to seize payment *involuntarily*. Implying the ability to involuntarily seize assets is prohibited under the FDCPA as a “threat to take any action that cannot legally be taken or that is not intended to be taken” since Pioneer does not in fact have the authority to involuntarily collect this debt.¹⁶ Intimidating language about “notat[ing] the account... that they do not want to voluntarily satisfy their obligation” should not be included in the call script.

The Internal Revenue Code also sets limits on the activities of private debt collectors like Pioneer. The Code states that private collection agencies are “to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 5 years.”¹⁷ Yet, in what appears to be a clear violation of this provision in the Internal Revenue Code, Pioneer’s call scripts ask for payment agreements up to seven years.¹⁸ In addition, Pioneer’s “Resolution Talk-Offs” document states that “extra payments or higher payments can be accepted at any time.”¹⁹ In fact, these “extra payments” are not allowed under section §6306(b)(1)(B) of the Code, which allows collectors to ask only for a payment in full, or an installment agreement providing for full payment over a maximum period of five years.²⁰

d. Apparent violations of Pioneer’s IRS contract and IRS policies

The potential violations of the FDCPA and the Internal Revenue Code described above are a breach of contract. Pioneer’s contract with IRS states that “failure to comply with applicable laws and regulations shall be considered a breach of contract.”²¹

Furthermore, Pioneer’s contract with IRS requires the collector to “inform taxpayers of their right to obtain assistance from the [Taxpayer Advocate Service].”²² But there is no evidence in the Pioneer call scripts – which contain numerous disclosures and examples of legal requirements – that the collector intends to provide this information to taxpayers. In fact, there do not appear to be any references to the Taxpayer Advocate in Pioneer’s initial demand script, the authentication script, or the resolution talk-offs. By contrast, Performant, another private collector hired by the IRS, includes explicit instructions on how a taxpayer may contact the Taxpayer Advocate.²³

¹⁴ 15 USC § 1692d-1692e.

¹⁵ Pioneer Resolution Talk-Offs, p.4.

¹⁶ 15 USC § 1692e.

¹⁷ 26 USC § 6306(b)(1)(B).

¹⁸ Pioneer Resolution Talk-Offs, p.2.

¹⁹ Pioneer Resolution Talk-Offs, p.1.

²⁰ 26 USC § 6306(b)(1)(B).

²¹ Contract No. GS23F0217K, Sept. 23, 2016, p.13.

²² Contract No. GS23F0217K, Sept. 23, 2016, p.15.

²³ Performant IRS Responses, p. 25.

The IRS contract with Pioneer also provides that Pioneer must “[i]mmediately refer any case... where the taxpayer describes a significant hardship” back to the IRS.²⁴ Significant hardship is defined as “irreparable injury to, or long-term adverse impact on, the taxpayer.”²⁵ This policy is in place because IRS has a variety of tools available for negotiating the terms of a tax debt – while allowing taxpayers to meet basic living expenses – that private debt collector do not have the authority to pursue.²⁶ But the Pioneer call scripts reviewed by my office do not include instructions for actions the debt collection will take when a taxpayer states an inability to pay due to inability to meet basic living expenses or irreparable harm.

Other IRS debt collectors take a different approach than Pioneer. For example, Performant has guidance for its collectors on financial hardship and an “Unable to Pay” script. According to their script, “If the taxpayer indicates that payment of the balance due immediately or through a payment arrangement would leave him or her unable to pay necessary living expense or a medical hardship is reported,” the collector is directed to return the account to the IRS.²⁷

Conclusion

When Congress required the IRS to hire private debt collectors to collect certain tax debts, it did so under strict provisions to ensure that taxpayers were not put at risk during the collection process, but it appears that Pioneer is not adhering to these protections. The company scripts indicate that taxpayers are not adequately protected when they speak to Pioneer agents, and the company appears to be violating key provisions of federal law, its IRS contract, and IRS policy. These failures are not acceptable.

We therefore ask that you:

- (1) Modify all scripts so they comply with the law, your contract, and IRS policy.
- (2) Review all previous taxpayer interactions and retroactively address problems caused by the faulty scripts.
- (3) Send all revised and final call scripts to our staff and brief our staff on these matters within two weeks.

Please send these materials to Beth Pearson, beth_pearson@warren.senate.gov. We look forward to hearing from you.


²⁴ Contract No. GS23F0217K, Sept. 23, 2016, p.15.

²⁵ 26 USC § 7811(a)(2).

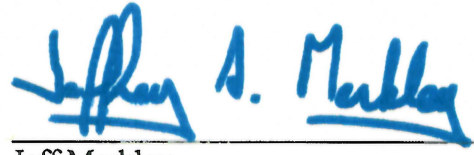
²⁶ IRS, “The IRS Collection Process,” Publication 594, <https://www.irs.gov/pub/irs-pdf/p594.pdf>.

²⁷ Performant IRS Responses, p. 27.


Sincerely,




Elizabeth Warren
United States Senator



Jeff Merkley
United States Senator



Sherrod Brown
United States Senator



Benjamin L. Cardin
United States Senator

Cc: The Honorable John Koskinen, IRS Commissioner

J. Russell George, Treasury Inspector General for Tax Administration