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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9894]

RIN 1545-BN38

User Fees for Offers in Compromise

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains the final regulations that provide user fees for offers in compromise. The final regulations affect taxpayers who wish to pay their Federal tax liabilities through offers in compromise.

DATES: Effective date: These regulations are effective on April 27, 2020.

Applicability date: These regulations apply to offers in compromise submitted on or after April 27, 2020.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jordan L. Thomas at (202) 317-5437; concerning cost methodology, Michael Weber, at (202) 803-9738 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the User Fee Regulations under 26 CFR part 300 regarding user fees charged for processing offers in compromise submitted in

accordance with section 7122 of the Internal Revenue Code (Code) and §301.7122-1 of the Procedure and Administration Regulations.

I. Authority to Charge User Fees

The Independent Offices Appropriations Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes Federal agencies, including the IRS, to prescribe regulations establishing user fees for services provided by the agency. Regulations prescribing user fees are subject to the policies of the President, which are currently set forth in the Office of Management and Budget Circular A-25 (OMB Circular), 58 FR 38142 (July 15, 1993). The OMB Circular allows agencies to impose user fees for services that confer a special benefit to identifiable recipients beyond those accruing to the general public. The agency must calculate the full cost of providing those benefits, and, in general, the amount of a user fee should recover the full cost of providing the service, unless the Office of Management and Budget (OMB) grants an exception under the OMB Circular.

II. Notice of Proposed Rulemaking

On October 13, 2016, the Treasury Department and the IRS published in the **Federal Register** (81 FR 70654) a notice of proposed rulemaking (REG-108934-16) relating to the user fees charged for processing offers in compromise under section 7122 and §301.7122-1. The notice of proposed rulemaking proposed to increase the fee under 26 CFR 300.3 for processing an offer in compromise from \$186 to \$300, effective for offers in compromise submitted on or after February 27, 2017. Under the notice of proposed rulemaking, offers based on doubt as to liability and offers from low-income taxpayers, as defined in §300.3(b)(1)(ii), would continue to be excepted from a

user fee. As explained in the notice of proposed rulemaking, the proposed user fee (even after the increase) was substantially less than the full cost to the IRS of providing this service and the OMB has granted an exception to the full-cost requirement.

III. The Taxpayer First Act

Section 1102 of the Taxpayer First Act, Pub. L. No. 116-25, 133 Stat. 981, 986 (2019), which was enacted on July 1, 2019, added paragraph (3) to section 7122(c). Section 7122(c)(3) exempts certain low-income taxpayers from payment of the offer in compromise user fee otherwise required in connection with the submission of an offer in compromise. These low-income taxpayers are individuals with adjusted gross income, as determined for the most recent taxable year for which such information is available, which does not exceed 250 percent of the applicable poverty level (as determined by the Secretary of the Treasury or his delegate). Section 1102(b) of the Taxpayer First Act provides that section 7122(c)(3) “shall apply to offers-in-compromise submitted after the date of the enactment of this Act,” that is, offers in compromise submitted after July 1, 2019.

Summary of Comments and Explanation of Revisions

I. Overview

In response to the notice of proposed rulemaking, four comments were received. One comment requested a public hearing, which was held on December 16, 2016. At the hearing, the Treasury Department and the IRS received testimony from two speakers from one organization who shared the allotted speaking time.

After careful consideration of the comments and hearing testimony, the Treasury Department and the IRS have made some modifications to the proposed regulations, including nonsubstantive editorial changes to the text of §300.3(b)(2)(ii).

Specifically, in response to the comments and testimony received, the final regulations provide a more limited increase of the user fee under §300.3 for processing an offer in compromise from \$186 to \$205, a 10 percent increase. This more limited increase is effective for offers in compromise submitted on or after April 27, 2020. The \$205 user fee remains substantially less than the full cost to the IRS of providing this service. As required by the IOAA and the OMB Circular, the IRS will continue to biennially review the user fee, and the Treasury Department and the IRS will adjust and increase the fee as appropriate.

The final regulations also continue to except offers based on doubt as to liability from a user fee, and expand the definition of low-income taxpayer consistent with section 7122(c)(3) to help reduce the burden on taxpayers.

This Treasury Decision adopts the proposed regulations, as modified.

II. First Comment

The first comment suggested that the user fee for processing an offer in compromise should either remain at \$186 or be lowered. In support of this recommendation, the comment stated that “[t]he service that the IRS provides does not make a large enough financial dent to justify hurting those who need this service with larger fees.” As noted more fully in the notice of proposed rulemaking, the full cost to the IRS for an offer in compromise in 2016 was \$2,450. As required by the IOAA and the OMB Circular, the IRS recently completed its 2019 biennial review of the offer in

compromise program and determined that the full cost of an offer in compromise was \$2,374.

When an offer in compromise is accepted, the user fee is either applied against the amount to be paid under the offer or refunded to the taxpayer if the taxpayer requests a refund pursuant to §300.3(b)(2). Therefore, except for the timing of the payment, a taxpayer that can afford to pay the fee who has an accepted offer in compromise under effective tax administration pursuant to §301.7122-1(b)(3), or doubt as to collectibility with a determination that collection of an amount greater than the amount offered would create economic hardship within the meaning of §301.6343-1, is no worse off having paid the user fee because the amount of the user fee reduces the amount of the offer accepted to compromise the taxpayer's existing tax obligation owed to the IRS or is refunded to the taxpayer. In other cases, a taxpayer with an accepted offer in compromise is no worse off having paid the user fee because the fees paid to request an offer in compromise are generally applied to offset existing tax obligations so no amounts are kept in excess of amounts owed to the IRS. Under the OMB Circular, the user fee for a special benefit generally should recoup the full cost to the government for providing that special benefit. As explained in the notice of proposed rulemaking, an agency should set the user fee at an amount that recovers the full cost of providing the service unless the agency requests, and the OMB grants, an exception to the full cost requirement. The IRS has requested, and the OMB has granted, an exception to the full cost requirement for low-income taxpayers and offers based on doubt as to liability from the user fee because the Commissioner of Internal Revenue has determined that there is a compelling tax administration reason for doing so. The increased user fee for

offers in compromise balances the need to recover more of the costs with the goal of encouraging offers in compromise.

III. Second Comment

The second comment had seven main concerns and additional concerns with respect to each of these main concerns.

A. Justification for Charging Fee

The second comment's first main concern was that offers in compromise should not be subject to fees because in the commenter's opinion the IRS generally does not charge for fundamental government services that primarily benefit the general public. The comment stated that the offer in compromise program provides at least an incidental benefit to taxpayers seeking offers in compromise; however, the offer in compromise program is a fundamental government service that primarily and independently benefits the government and the public fisc. The comment suggested that because the IRS is prohibited from taking collection action against a taxpayer when an offer is pending, for 30 days after an offer has been rejected, and for the duration of time that a taxpayer appeals a rejected offer, these were not discretionary activities that the IRS could choose to discontinue. Rather, the comment asserted that these are fundamental government services available to all taxpayers, not just those taxpayers choosing to conduct a particular business. The comment suggested that these purported fundamental services independently benefit all taxpayers rather than providing special benefits to special interests. The comment stated that it was not clear the OMB Circular authorized the IRS to charge a fee for processing offers in compromise as any specific beneficiary of an offer in compromise is arguably obscured

by the fact that the IRS and the public fisc are the primary and direct beneficiaries of the offer in compromise program. The comment noted that any benefit accruing to the taxpayer seeking an offer in compromise was designed as an incentive to encourage tax debtors to seek an offer in compromise, which is a benefit to the government. The comment identified entering into a closing agreement, visiting a taxpayer assistance center, calling the IRS, using the electronic payment or filing systems, receiving a communication, making quarterly payments or deposits, processing a Form 2848, or using the “where’s my refund” website as services the IRS provides without charging a user fee. The comment concluded that charging a user fee for processing an offer in compromise appears inconsistent and arbitrary when compared to the previously identified services provided without a user fee.

As described in the preamble to the proposed regulations, the offer in compromise program confers a special benefit on identifiable recipients beyond those accruing to the general public. A taxpayer with an accepted offer in compromise receives the special benefit of resolving his or her tax liabilities for a compromised amount, provided the taxpayer complies with the terms of the offer, and the benefit of paying the compromised amount over a period not to exceed 24 months. The comment addresses this specific benefit as incidental, however, it is the core benefit of an offer in compromise. The comment was accurate in stating that section 6331(k)(1) of the Code generally prohibits the IRS from levying to collect taxes while a request to enter into an offer in compromise is pending, for 30 days after a rejection, and, if a timely appeal of a rejection is filed, for the duration of the appeal. However, while the IRS is required by statute to cease levying to collect taxes during this period, the IRS may still charge a fee

for providing that service. In fact, under the OMB Circular, there are several examples of special benefits (e.g., passport, visa, patent) for which the issuing agency may charge a fee even though the agency is required to issue such benefit if the individual meets certain statutory or regulatory requirements. Because of these special benefits, the IOAA and the OMB Circular authorize the IRS to charge a user fee for the offer in compromise that reflects the full cost of providing the service of the offer in compromise program to the taxpayer. This special benefit does not accrue to the general public because taxpayers are otherwise obligated to pay the entire amount of outstanding taxes immediately when due and are otherwise subject to all authorized IRS collection actions.

Even if it is argued that the government derives some general benefit from collecting outstanding tax liabilities, it is still appropriate under the OMB Circular to charge a user fee for processing an offer in compromise because offers in compromise provide “specific services to specific individuals.” Seafarers Int'l Union of N. Am. v. U.S. Coast Guard, 81 F.3d 179, 183 (D.C. Cir. 1996). The specific individual is the identifiable taxpayer who requests an offer in compromise and receives the specific benefits previously described and more fully described in the notice of proposed rulemaking. The benefit to the government of collecting on outstanding tax liabilities is a benefit that accrues to the public generally and does not diminish the special benefit provided to the specific, identifiable taxpayer requesting an offer in compromise. As noted in the notice of proposed rulemaking, the IOAA permits the IRS to charge a user fee for providing a “service or thing of value.” 31 U.S.C. 9701(b). A government activity constitutes a “service or thing of value” when it provides “special benefits to an

identifiable recipient beyond those that accrue to the general public.” See OMB Circular section 6(a)(1). Among other things, a “special benefit” exists when a government service is performed at the request of a taxpayer and is beyond the services regularly received by other members of the same group or the general public. See OMB Circular section 6(a)(1)(c). In connection with an offer in compromise, the special benefit is only provided in response to a request by a taxpayer for the consideration of an offer in compromise.

By the very nature of government action, the general public will almost always experience some benefit from an activity that is subject to a user fee. See, e.g., Seafarers, 81 F.3d at 184-85 (D.C. Cir. 1996). However, as long as the activity confers a specific benefit upon an identifiable beneficiary, it is permissible for the agency to charge the beneficiary a fee even though the public will also experience an incidental benefit. See Engine Mfrs. Ass’n v. EPA, 20 F.3d 1177, 1180 (D.C. Cir. 1994) (“If the agency does confer a specific benefit upon an identifiable beneficiary . . . then it is of no moment that the service may incidentally confer a benefit upon the general public as well.”) citing Nat’l Cable Television Ass’n v. FCC, 554 F.2d 1094, at 1103 (D.C. Cir. 1976). Furthermore, the benefit to the public fisc of collecting outstanding taxes is not an additional benefit to the government because the IRS would collect those amounts through other means absent the offer in compromise. Even so, an agency is still entitled to charge for services that assist a person in complying with his or her statutory duties. See Elec. Indus Ass’n v. FCC, 554 F.2d 1109, 1115 (D.C. Cir. 1976).

For purposes of these regulations, the IRS has considered comments relating to the offer in compromise user fees and comments relating to other services for which no

fee is charged are outside the scope of this rulemaking. With respect to offer in compromise user fees, the IRS has charged fees since 2003 in accordance with the OMB Circular that requires full cost unless an exception is granted. The OMB Circular requires the IRS to review the user fees it charges for special services biennially to ensure that the fees are adjusted for cost. See OMB Circular section 8(e). As explained in detail in the notice of proposed rulemaking, the reduced offer in compromise user fee is consistent with these requirements.

B. Justification for Increasing Fee

The second comment's second main concern was that Congress's decision to impose "constraints on IRS resources" is an inadequate justification for increasing the offer in compromise fee.

Section 6(a)(2)(a) of the OMB Circular provides that user fees will be sufficient to recover the full cost to the government of providing the service except as provided in section 6(c) of the OMB Circular. The exceptions in section 6(c)(2) of the OMB Circular provide that agency heads may recommend to the OMB that exceptions to the full cost requirement be made when either (1) the cost of collecting the user fee would represent an unduly large part of the fee or (2) any other condition exists that, in the opinion of the agency head, justifies an exception. The cost of collecting the proposed user fees for offers in compromise will not represent an unduly large part of the fee for the activity because the IRS returns offers in compromise submitted without a user fee without consideration. See Internal Revenue Manual (IRM) 5.8.2 and 5.8.3.

The OMB Circular requires the IRS to review the user fees it charges for special services biennially to ensure that the fees are adjusted to reflect the full cost to the IRS.

As discussed in the notice of proposed rulemaking, the IRS completed its 2015 biennial review of the offer in compromise program and determined that the full cost to the IRS of providing the special service of an offer in compromise was \$2,450. As required by the IOAA and the OMB Circular, the IRS recently completed its 2019 biennial review of the offer in compromise program and determined that the full cost of an offer in compromise was \$2,374. As noted above, section 6(a)(2)(a) of the OMB Circular requires that user fees recover the full cost to the government of providing the service and nothing in the OMB Circular mandates agency heads to seek an exception to the full cost requirement. Nonetheless, the Commissioner of Internal Revenue determined that there is a compelling tax administration reason for seeking an exception to the full cost requirement and made the decision to seek such an exception from the OMB. The OMB granted the exception. After consideration of the comments received, the Treasury Department and the IRS determined the proposed fee should be lowered to \$205, which is substantially less than the full cost incurred by the IRS to provide this special benefit to taxpayers seeking it. The \$205 user fee balances the need to recover more of the costs with the goal of encouraging offers in compromise. Furthermore, the IRS has continued to request, and the OMB has continued to grant, an exception to the full cost requirement for offers in compromise submitted by low-income taxpayers and offers in compromise based on doubt as to liability.

C. Public Policy Goal of Fee

The second comment's third main concern was that public policy weighs in favor of eliminating the offer in compromise fee. The comment stated that section 7803(a)(3) provides that the Commissioner of Internal Revenue shall execute his duties in accord

with taxpayer rights and shall ensure that all employees are familiar with and act in accord with taxpayer rights, including the right to privacy, which includes the right to expect that enforcement “will be no more intrusive than necessary.” The comment stated that the user fee was inconsistent with the right to privacy because charging an increased user fee would dissuade taxpayers from seeking offers in compromise, thus triggering enforcement action that would otherwise be unnecessary. The comment stated that increasing the fee creates an obstacle for many taxpayers who would otherwise consider an offer in compromise to resolve their tax liability, and the IRS would thereby undermine public policy goals expressed by Congress.

The comment’s reliance on section 7803(a)(3) is misplaced because the amount of the offer in compromise user fee is governed by section 7122 and the IOAA. The IOAA states that the services provided by an agency should be self-sustaining to the extent possible. 31 U.S.C. 9701(a).

D. Revenue Impact of Charging a Fee

The second comment’s fourth main concern was that the offer in compromise fee was likely to cost more, in terms of lost tax revenue and increased enforcement costs, than it will generate in user fees. The comment claimed that the proposed user fee increase was likely to dissuade taxpayers in every income category from submitting offers in compromise. The comment cites to the Treasury Department’s General Explanations of the Administration’s Fiscal Year 2017 Revenue Proposals, which included a proposal to repeal the section 7122(c)(1) requirement for a down payment to accompany submitted offers in compromise, for its conclusion that eliminating such a

requirement would raise revenue by improving access to the offer in compromise program.

The prior Administration's legislative proposal, which was not adopted, addressed the statutory requirement for a down payment to accompany submitted offers in compromise. The down payment requirement is a separate issue, mandated by section 7122(c)(1). Section 7122(c)(1) does not address user fees, but instead requires submissions of offers in compromise to be accompanied by down payments, which is unrelated to the determination of the appropriate user fee to charge for the offer in compromise program. By statute, each service or thing of value provided by an agency to a person is to be self-sustaining to the extent possible. 31 U.S.C. 9701(a). The user fee associated with the service must be fair and based on the costs to the government, the value of the service to the recipient, and public policy or interest served. 31 U.S.C. 9701(b). The updated user fee balances the need for the service to be self-sustaining with the goal of encouraging offers in compromise.

E. Conflict of Interest

The second comment's fifth main concern was that the offer in compromise fee is an accounting "device" that the IRS is pursuing due to a conflict of interest. The comment stated that an offer in compromise fee will reduce tax revenue by converting what would otherwise be tax collections that benefit the public fisc into user fee collections that only benefit the IRS. According to the comment, the conversion occurs because the offer in compromise user fee reduces funds that the taxpayer can use to settle the liability and the amount that the IRS will accept as a compromise. The comment alleged that the IRS pursues this accounting "device" because of a claimed

conflict of interest, which is claimed to be the IRS's authority to retain certain user fee collections.

As noted above, the full cost to the IRS for an offer in compromise was \$2,374. The IRS, however, is increasing the user fee for providing this special benefit from \$186 to \$205. When considering whether the taxpayer has offered an acceptable amount for an offer in compromise, the IRS reduces the taxpayer's reasonable collection potential (RCP) by the amount of the user fee paid because those funds are no longer part of the taxpayer's assets. When an offer in compromise is accepted under effective tax administration pursuant to §301.7122-1(b)(3), or doubt as to collectibility with a determination that collection of an amount greater than the amount offered would create economic hardship within the meaning of §301.6343-1, the user fee is either applied against the amount to be paid under the offer or refunded to the taxpayer if the taxpayer requests a refund pursuant to §300.3(b)(2). In other cases, a taxpayer with an accepted offer in compromise is no worse off having paid the user fee because the fees paid to request an offer in compromise are generally applied to offset existing tax obligations so no amounts are kept in excess of amounts owed to the IRS. Thus, the taxpayer receives the benefit of the specific services provided by the IRS in processing the offer in compromise and a reduction in the taxpayer's tax liability. A taxpayer paying \$205 for a special service the provision of which costs the IRS more than \$205 creates no conflict of interest for the IRS.

F. Cost Benefit Analysis

The second comment's sixth main concern was that to help mitigate the IRS's conflict of interest, the IRS should conduct a cost benefit analysis before moving

forward with an increase to the offer in compromise user fee as the IRS has agreed to do for future user fee proposals and that may also be required by Executive Order 13563. The comment asked the IRS to mitigate its conflict of interest by quantifying and considering the following factors before adopting or increasing any offer in compromise user fee: (1) indirect costs that are likely to result from the proposed user fee(s), (2) effect of user fees on taxpayer rights or burdens, (3) any resulting reductions in voluntary compliance, or (4) any impairment of the IRS mission. The comment stated that even though the IRS agreed to update the Internal Revenue Manual to require IRS business units to consider these factors, because the offer in compromise fee increase was proposed before that agreement was made, the IRS should not move forward with these regulations before it conducts this analysis and discloses it to the public.

As discussed in the notice of proposed rulemaking and the Special Analyses in the Treasury Decision, certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Further, the notice of proposed rulemaking contained detailed accounting of the costs of the offer in compromise program. As discussed more fully in the previous response to the comment's second main concern and in the notice of proposed rulemaking, the OMB Circular requires the IRS to review the user fees it charges for special services biennially to ensure that the fees are adjusted for cost. As noted more fully in the notice of proposed rulemaking, the IRS determined after its 2015 biennial review that the full cost to the IRS for providing the special service of an offer in compromise was \$2,450. The Commissioner of Internal Revenue then determined that there is a compelling tax administration reason for seeking an exception to the full cost

requirement from the OMB and sought such an exception from the OMB, which the OMB granted. After completing its 2019 biennial review, the IRS determined that the full cost to the IRS for providing the special service of an offer in compromise was \$2,374. The \$205 fee balances the need to recover more of the costs with the goal of encouraging offers in compromise. Furthermore, the IRS has continued to request, and the OMB has continued to grant, an exception to the full cost requirement for offers in compromise submitted by low-income taxpayers and offers in compromise based on doubt as to liability. In deciding to seek the exception to the full cost requirement for all taxpayers, low-income taxpayers, and taxpayers seeking an offer in compromise based on doubt as to liability, the Commissioner of Internal Revenue considered the four factors identified in the comment: the indirect costs that are likely to result from the proposed fee(s); the effect of fees on taxpayer rights or burden; any resulting reductions in voluntary compliance; and any impairment of the IRS mission, and carefully weighed them against the goal of recovering costs. Rather than charging the full cost, the Commissioner of Internal Revenue sought and received an exception from the OMB to charge all taxpayers a user fee of \$300, and low-income taxpayers and taxpayers seeking offers in compromise based on doubt as to liability a user fee of \$0. These fee amounts are substantially less than the full cost to the IRS of providing this service. The Treasury Department and the IRS have now determined that the user fee should only be increased to \$205. The further lowering of the user fee from \$300 to \$205 and the exceptions to the fee strike a balance between the goal of recovering costs and the concerns identified in the factors in the IRM regarding the impact of the offer in compromise program.

G. Taxpayer Burden

The second comment's seventh main concern was that if the IRS charges a user fee for processing an offer in compromise, it should minimize the burden for taxpayers. The comment suggested this be done by collecting the user fee from the amount paid on the offer in compromise, such as is done with the collection of the installment agreement user fee.

As discussed earlier, the IRS already collects the offer in compromise user fee in a taxpayer-friendly manner in that the taxpayer's RCP is reduced by the amount of the user fee and the user fee is generally directly offset against the taxpayer's outstanding tax liability. The taxpayer thus receives a double benefit of the user fee amount.

IV. Third Comment

The third comment in response to the notice of proposed rulemaking acknowledged and agreed with the IRS's findings regarding costs per offer and the need to raise the user fee to \$300 based on those findings. However, the third comment had two main concerns and suggestions. The comment's first main concern was regarding taxpayers who fall outside the parameters of the low-income threshold of 250 percent of the poverty guidelines, as established and updated annually by the Department of Health and Human Services (HHS). According to the comment, taxpayers whose income falls between 250 percent and 400 percent of the HHS poverty guidelines will be most negatively affected by the user fee increase. The comment stated that taxpayers between 250 percent and 400 percent of the HHS poverty guidelines face similar hardships as those whose incomes fall at or below 250 percent of the HHS poverty guidelines. The comment suggested that the IRS maintain the

current \$186 user fee for taxpayers whose income falls between 250 percent and 400 percent of the HHS poverty guidelines, noting that such taxpayers qualify for premium tax credits on the Health Insurance Marketplace.

Requesting an exception to the full cost requirement of the OMB Circular is within the discretion of the agency head and must be approved by the OMB. The Commissioner of Internal Revenue requested and the OMB approved excepting from the user fee taxpayers whose income falls at or below the dollar criteria established by the poverty guidelines as established and updated annually by HHS. The regulations maintain this exception as a floor. As a policy decision, the IRS has not charged the offer in compromise user fee if the taxpayer's income falls at or below 250 percent of the HHS poverty guidelines. This policy balances the need to recover more of the costs with the goal of encouraging offers in compromise. Creating an additional exception for taxpayers whose income falls between 250 percent and 400 percent of the HHS poverty guidelines would not properly address the need to recover more of the costs for processing offers in compromise.

The comment's second main concern was regarding taxpayers whose RCP is less than the user fee. The comment explained that the RCP equals the total of the future income potential plus the equity in all assets and that future income is excess income over allowable expenses times a multiplier. The comment suggested waiving the user fee in its entirety for taxpayers whose RCP is less than the user fee. The comment then set out the following example, based on a real case, and on which the two speakers elaborated at the public hearing: A taxpayer with an RCP of \$9 submitted an offer in compromise and checked the low-income taxpayer certification box. The

taxpayer's income stemmed from a seasonal job and monthly disability payments from the Department of Veterans Affairs, as exigent circumstances prevented him from maintaining a steady job. When the offer was submitted, the taxpayer's income was higher than in previous months when he was not working the seasonal job, but the taxpayer's annual average income fell below 250 percent of the HHS poverty guidelines. The taxpayer's offer was accepted for processing but the IRS required the payment of the user fee. After obtaining outside assistance, the taxpayer was able to demonstrate that the taxpayer qualified for the low-income exception and the offer was accepted without requiring the payment of a user fee.

Pursuant to the written procedures in IRM 5.8.4.7, the IRS should determine whether the taxpayer qualifies for the low-income exception to the user fee by reviewing the household income at the time the offer was submitted as compared to the household income at the time the offer is processed and using the lower of the two. If the taxpayer's household income was below 250 percent of the HHS poverty guidelines when the offer was processed, then the IRS should not have required a user fee. To the extent the taxpayer had difficulty demonstrating to the IRS offer examiner that the taxpayer qualified for low-income status, that difficulty is independent of the amount of the user fee. If the taxpayer had not requested low-income taxpayer status and paid the user fee at the time of submission, the IRS would have reduced the taxpayer's RCP by the amount of the user fee paid because those funds are no longer part of the taxpayer's assets. Taxpayers may request a refund of the user fee pursuant to §300.3(b)(2) in two situations: (1) if the offer is accepted to promote effective tax administration pursuant to §301.7122-1(b)(3), and (2) if the offer is accepted based on

doubt as to collectibility and the IRS determines that collecting an amount greater than the amount offered would create economic hardship within the meaning of §301.6343-1. This current system balances the need to collect a fee with the need to accommodate taxpayers who may have exigent circumstances.

V. Fourth Comment

The fourth comment stated that the increased user fee is too onerous and will result in the IRS collecting less on past due liabilities than it could otherwise collect. According to the comment, recent statistics show that 47 percent of Americans cannot come up with \$400 to cover an unexpected emergency. The comment, however, does not cite to the source of these statistics. The comment states that taxpayers who cannot afford the increased user fee will enter into currently not collectible (CNC) status. The comment states then that the increased user fee will result in the IRS collecting less revenue.

Offers in compromise are a collection alternative for taxpayers who are unable to pay their tax liability in full. As discussed above, the IRS has options for those taxpayers who, in addition to being unable to pay their tax liability in full, would struggle to pay the user fee for the offer in compromise. For low-income taxpayers, the IRS waives the user fee in its entirety. For taxpayers who do not qualify as low-income taxpayers but for whom the user fee would cause them an economic hardship, the IRS refunds the user fee. The comment states that CNC status is available for certain taxpayers. However, it is not the case that the availability of CNC status as an option to some taxpayers will necessarily cause the IRS to collect less revenue. The comment

does not take into account that taxpayers who are eligible for CNC status may also be eligible for a refund of the user fee or waiver of the fee because of their income level.

VI. Final Regulations

As noted previously, in response to the comments and testimony received, the final regulations provide a more limited increase of the user fee and an expanded definition of low-income taxpayer to help reduce the burden on taxpayers.

The Treasury Department and the IRS have now determined that the user fee should only be increased to \$205, a 10 percent increase. Additionally, pursuant to the Taxpayer First Act, the final regulations incorporate the definition of low-income taxpayer provided in section 7122(c)(3), thereby providing an additional means of receiving the low-income taxpayer waiver. Section 7122(c)(3) excepts low-income taxpayers from any user fee otherwise required in connection with the submission of an offer in compromise and defines a low-income taxpayer as an individual with an adjusted gross income, as determined for the most recent taxable year for which such information is available, which does not exceed 250 percent of the applicable poverty guidelines. Thus, the final regulations provide that low-income taxpayers, as defined in section 7122(c)(3), are also exempt from payment of the offer in compromise user fee with respect to offers submitted after July 1, 2019.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. These regulations do not have a significant effect on the economy as the fees paid to request an offer in compromise are generally applied to offset existing tax obligations so no amounts are kept in excess of amounts owed to the IRS. In addition, the IRS

estimates that approximately 31 percent of the offer in compromise cases closed annually are from low-income taxpayers and taxpayers making offers in compromise based on doubt as to liability. As taxpayers making these offers in compromise are not charged a fee, there is no effect on the economy. Therefore, a regulatory impact assessment is not required.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the information that follows. There is no significant economic impact from these regulations on any small entity required to pay a fee prescribed by these regulations to request an offer in compromise because generally the fee is applied to offset an existing tax obligation that the small entity owes the IRS. As such, the fee does not represent a payment of any amount greater than what a small entity already owes the IRS. In addition, as small entities making offers in compromise based on doubt as to liability will continue not to be charged a fee, these small entities will not be impacted economically by these regulations. Further, the economic impact of these regulations will not be on a substantial number of small entities because few small entities submit offers in compromise. In FY 2017, the IRS received a total of 52,016 processable offers, of which 3,851, or 7.4 percent, were from taxpayers with a business liability. In FY 2018, the IRS received 49,901 processable offers, of which 3,325 or 6.6 percent were from taxpayers with a business liability. Taxpayers with a business liability include all businesses, thus the number of businesses that could be classified as small businesses would be even less significant than the 7.4 percent and 6.6 percent requesting offers in

compromise in FY 2017 and FY 2018, respectively. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Drafting Information

The principal author of these regulations is Jordan L. Thomas of the Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300--USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.3 is amended by revising paragraphs (b)(1) and (d) to read as follows:

§300.3 Offer to compromise fee.

* * * * *

(b)* * *

(1) The fee for processing an offer to compromise submitted before April 27, 2020, is \$186. The fee for processing an offer to compromise submitted on or after April 27, 2020, is \$205. No fee will be charged if an offer is--

(i) Based solely on doubt as to liability as defined in §301.7122-1(b)(1) of this chapter;

(ii) Made by a low-income taxpayer, that is, an individual whose income falls at or below the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511) or such other measure that is adopted by the Secretary; or

(iii) Made by a low-income taxpayer, as described in section 7122(c)(3) of the Internal Revenue Code, and submitted after July 1, 2019.

* * * * *

(d) Applicability date. This section is applicable beginning April 27, 2020.

Sonita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: February 24, 2020.

David J Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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