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Guess Who Just Defriended IRS Amnesty?

The IRS has a tough job to do. One watchdog that helps it improve is the [National Taxpayer Advocate](#) (NTA), Nina Olson. Each year she releases a report to Congress identifying problems in administering our tax system that need fixing. Her [2012 report](#) criticizes the Offshore Voluntary Disclosure Program (OVDP), the partial amnesty deal that is an outgrowth of the IRS crackdown on offshore tax evasion.



Put simply, the IRS program is too much stick and not enough carrot, the report claims. See [IRS Offers Carrot And Stick For Offshore Disclosures](#). The IRS isn't doing enough to encourage voluntary compliance and is unfairly penalizing taxpayers who have a "reasonable cause" defense, it states. The current program involves taxes, penalties and interest, including a 27.5% penalty on the highest aggregate account balance. See [New IRS Offshore Amnesty Announced: Third Time's A Charm](#).

Although the IRS's 2009 and 2011 programs were similar, the 2012 program allows opting out. [FAQ 51.1](#) (of the 2012 OVDP) allows taxpayers with reasonable cause for filing flubs to enter the OVDP but then opt out to hopefully pay smaller penalties. The [NTA's criticisms](#) of the IRS includes:

Opting Out. Opting out takes time. Taxpayers who opt out are subject to extended delays compared to other voluntary disclosure participants, the report states. The average time to resolve an OVDP submissions within the program was 300 days, compared to 550 days for opting out. That can mean higher professional fees even if the case involves small amounts—the average was only \$15,000.

Education? The report says the IRS isn't doing enough to educate U.S. citizens abroad about FBAR filing obligations. Seminars would help. Sending a "where's your FBAR?" letter to anyone who filed in a prior year would help too. An FBAR Compliance Initiative Program to educate people would help. Even "soft notices" to encourage self-corrections would help. After all, the report claims, not **every** notice has to be a penalty.

Canadian RRSPs. People with Canadian retirement accounts (registered retirement savings plans or RRSPs) face special burdens. Under [Revenue Procedure 2002-23](#), a taxpayer must elect to exclude undistributed income from an RRSP by attaching it to a timely-filed U.S. income tax return. But many fail to do it and often that means having to go to the time and expense of obtaining an [IRS private letter ruling](#).

Under the 2012 OVDP, [FAQ 54](#), an extension of time is available. The NTA suggested that the IRS clarify how beneficiaries of Canadian retirement plans can file late or amended returns electing to exclude undistributed income from those plans. Formal guidance to clarify the rules and cut people some slack would help.

It must be hard for the IRS to take some of the criticism it receives, and some criticisms of the IRS are simply unjustified. Usually, though, the National Taxpayer Advocate is perceptive, fair and practical about tax administration. I'll bet both the IRS and Congress are listening.

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