

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2020 Statutory Review of Potential Fair Tax Collection Practices Violations

September 3, 2020

Reference Number: 2020-30-053

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HIGHLIGHTS: Fiscal Year 2020 Statutory Review of Potential Fair Tax Collection Practices Violations



Final Audit Report issued on September 3, 2020
Reference Number 2020-30-053

Why TIGTA Did This Audit

The overall objective of this review was to obtain information on any reported violations of the Fair Tax Collection Practices (FTCP) (Internal Revenue Code Section 6304) by IRS employees and on any reported or potential violations of the Fair Debt Collection Practices Act (FDCPA) (15 U.S. Code Sections 1692–1692p) by private collection agency employees, including any related administrative or civil actions resulting from those violations, for collection cases closed during Fiscal Year 2019.

This information will be used to comply with the IRS Restructuring and Reform Act of 1998 requirement that TIGTA include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP.

Impact on Taxpayers

The abuse and harassment of taxpayers by IRS and private collection agency employees while attempting to collect taxes harms taxpayers and can have a negative impact on voluntary compliance. It is important that taxpayers receive fair and balanced treatment from IRS and private collection agency employees when they attempt to collect taxes.

What TIGTA Found

TIGTA identified three potential FTCP violations closed in Fiscal Year 2019 that resulted in administrative actions for IRS collection employees. These violations included contacting taxpayers directly without the required consent of the taxpayer's power of attorney and using harassing or abusive language with taxpayers or their representatives during collection-related activities. Specifically,

- One revenue officer contacted a taxpayer directly without the required consent of the taxpayer's power of attorney and received written counseling.
- One collection contact representative used profane language with a taxpayer's representative and received a written reprimand.
- One collection contact representative used harassing or abusive language with four taxpayers and received a written reprimand.

In addition, TIGTA identified 67 employee misconduct cases that were not resolved within the IRS's stated goal of 180 days. This was a decrease of two cases (3 percent) compared to the 69 cases TIGTA identified as not closed timely in Fiscal Year 2018. The IRS issued an information notice in March 2020 that provides new guidance for employees to follow when unusual delays occur during case processing.

Separate from the review of IRS FTCP violations, TIGTA identified 51 potential FDCPA violations and six potential FTCP violations by private collection agency employees.

There were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation.

What TIGTA Recommended

TIGTA recommended that the Director, Headquarters Collection, Small Business/Self-Employed Division, review the private collection agency monthly corrective action reports to identify trends in FDCPA/FTCP violations and provide feedback to the private collection agencies on areas that could be improved.

In their response, IRS management agreed with the recommendation and plans to update the *Private Debt Collections Operations Guide* to identify trends in potential violations and provide feedback to the private collection agencies as necessary.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 3, 2020

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2020 Statutory Review of Potential
Fair Tax Collection Practices Violations (Audit # 202030018)

This report presents the results of our review to obtain information on any reported violations of the Fair Tax Collection Practices by Internal Revenue Service employees and on any reported potential violations of the Fair Debt Collection Practices Act by private collection agency employees, including any related administrative or civil actions resulting from violations for collection cases closed during Fiscal Year 2019. This review is part of our Fiscal Year 2020 Annual Audit Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights*.

Management's complete response to the draft report is included as Appendix VI.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendation. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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Background

The Fair Debt Collection Practices Act (FDCPA), as originally enacted, included provisions that prohibit various collection abuses and harassment in the private sector.¹ However, the restrictions did not apply to the Federal Government until passage of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998.² Congress believed that it was appropriate to require the IRS to comply with certain portions of the FDCPA and be at least as considerate to taxpayers as private creditors are required to be with their customers. The IRS Restructuring and Reform Act of 1998 Section (§) 3466 requires the IRS to follow provisions, known as Fair Tax Collection Practices (FTCP), similar to those in the FDCPA.³

IRS and private collection agency employees are required to follow Fair Tax Collection Practices, similar to those in the Fair Debt Collection Practices Act.

IRS employees who violate any FTCP provision are subject to disciplinary actions. Violations and related disciplinary actions are tracked on the IRS Human Capital Officer's Automated Labor and Employee Relations Tracking System (ALERTS). In addition, the Federal Government may be subject to claims for damages under Internal Revenue Code (I.R.C.) § 7433, *Civil Damages for Certain Unauthorized Collection Actions*, if the FTCP violations are substantiated. Taxpayer civil actions are tracked on the Office of Chief Counsel's Counsel Automated System Environment.

On December 4, 2015, the Fixing America's Surface Transportation Act was signed into law.⁴ Section 32102 of the Act includes a provision that requires the IRS to use private collection agencies (PCA) to collect on cases involving inactive tax receivables. Any contract between the IRS and a private collector must prohibit the collector from committing any act or omission that IRS employees are prohibited from committing in the performance of similar duties.⁵ These prohibitions include communicating at inconvenient times and places, contacting represented taxpayers (with certain exceptions), calling the taxpayer at work if the collector knows the taxpayer's employer prohibits such calls, and various other types of harassment and abuse. In addition, the law provides that the provisions of the FDCPA shall apply to any qualified tax collection contract.⁶ If the PCA violates the FDCPA, the law insulates the U.S. Government from liability and allows the suit to be brought only against the private collector.⁷ The IRS began assigning cases to four private collectors in April 2017.

The IRS Restructuring and Reform Act of 1998 § 1102(d)(1)(G) requires the Treasury Inspector General for Tax Administration (TIGTA) to include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations listed in I.R.C. § 6304.⁸ The Semiannual Report must provide a summary of such actions and include any

¹ 15 U.S.C. §§ 1601 note, 1692–1692p.

² Pub. L. No. 105-206, 112 Stat. 685.

³ See Appendix V for a detailed description of FTCP provisions.

⁴ Pub. L. No. 114-94, 129 Stat. 1312 (2015).

⁵ I.R.C. § 6306(b)(2).

⁶ I.R.C. § 6306(g).

⁷ I.R.C. §§ 7433(b)(1), (4), 6306(f).

⁸ Pub. L. No. 105-206, 112 Stat. 685, 702-703 (2015); I.R.C. § 6304.



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judgments or awards granted to taxpayers. TIGTA is required to report as violations the actions taken by IRS employees who were involved in a collection activity and who received a disciplinary action that is considered an administrative action. The law does not provide a definition of administrative action; however, for this review, we used the IRS's definition, which is: action that ranges from a letter of admonishment to removal.⁹ Information from this report will be used to meet the requirements of the IRS Restructuring and Reform Act of 1998 § 1102(d)(1)(G).

Results of Review

Fair Tax Collection Practices Violations Were Accurately Reported and Investigated, but Some Misconduct Cases Were Not Closed Within the Stated Goal

TIGTA identified and reviewed 23 instances of alleged FTCP violations from the ALERTS database that the IRS investigated and made determinations on in Fiscal Year (FY) 2019.¹⁰ The IRS did not complete a review on one additional FTCP allegation because the IRS employee left IRS employment during the investigation. The IRS substantiated that three of the 23 instances were FTCP violations that resulted in administrative actions for IRS collection employees performing collection activities. The IRS concluded that 20 of the alleged FTCP violations could not be substantiated.

The three substantiated FTCP violations involved one revenue officer and two collection contact representatives, with violations against five taxpayers and one taxpayer representative. To address the FTCP violations, the IRS took the following administrative actions:

- The revenue officer contacted a taxpayer directly without the required consent of the taxpayer's power of attorney (POA) and received written counseling. The case was investigated by TIGTA's Office of Investigations after a complaint by a taxpayer's representative that the employee directly contacted his client although a Form 2848, *Power of Attorney*, was filed by the taxpayer. The employee admitted to the special agent that she did not follow IRS guidelines but stated she was unaware of the policy related to contacting the taxpayer directly when the taxpayer has a representative. Management determined this was the employee's first offense but agreed the behavior violated IRS rules and regulations. Management determined that the employee should receive a counseling letter. The IRS's penalty guide shows punishment for first offense of failure to observe written regulations, orders, rules, or IRS procedures ranges from written reprimand to five-day suspension.
- One collection contact representative used profane language with a taxpayer's representative and received a written reprimand. The case was self-reported by the

⁹ A letter of admonishment is a disciplinary action that involves the manager holding a discussion with the employee to advise the employee that he or she has engaged in misconduct and that the misconduct should not be repeated. The manager confirms the discussion with a written summary in a letter.

¹⁰ Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.



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employee after a telephone call in which the employee used profane language with a taxpayer's representative. The taxpayer's representative contacted the IRS because he had not received a return call from a manager within 24 hours. The representative and employee had several exchanges during the call about why the manager had not returned the representative's call. At the end of call, the employee used profane language and the representative heard him. Management agreed the behavior was discourteous and used the penalty guide to determine the punishment for the violation ranged from reprimand to 14-day suspension. Since it was the employee's first offense, management decided to issue the employee a written reprimand.

- One collection contact representative used harassing and abusive language when communicating with four taxpayers and received a reprimand. The case was originally investigated by TIGTA's Office of Investigations after two taxpayers or their representative complained about the employee's rude behavior during discussions about their cases. The employee was interviewed by a special agent and agreed her behavior was rude and discourteous during the discussions. During the processing of the complaints, IRS management received additional complaints about the employee's rude and unprofessional behavior with two other taxpayers in collection matters. The harassing behavior happened within a six-month period. Management determined that the behavior was rude, discourteous, and unprofessional and used the penalty guide to determine the punishment for the violation ranged from reprimand to 14-day suspension. Management recommended a 10-day suspension to address the employee's behavior. While the misconduct case was working through the IRS's internal process, the employee requested and received reasonable accommodation to participate in anger management training. During the appeal process, the employee and union representatives showed evidence the employee received two outstanding annual performance evaluations after the incidents. The employee appealed the suspension and the case was resolved with the employee receiving a written reprimand for rude and unprofessional behavior in collection matters.

The disciplinary actions received by all three employees were consistent with the range of penalties set forth in the IRS Manager's Guide to Penalty Determination.¹¹ The abuse and harassment of taxpayers by IRS employees while attempting to collect taxes reflects poorly on the IRS and can have a negative impact on voluntary compliance. It is important that taxpayers receive fair and balanced treatment from IRS employees when they attempt to collect taxes.

In seven of the 20 cases for which the IRS did not substantiate the alleged FTCP violations, some disciplinary actions were taken after reviewing the complaints. To address the actions by the collection employees, the IRS issued five cautionary letters, proposed suspension of one employee, and removed one employee. Some examples of the issues addressed included wearing an unauthorized badge, taking actions without required management approval, and interacting with taxpayers, their representative, or coworkers in a rude and unprofessional manner.

Additionally, in August 2020, TIGTA's mandatory report on direct contact with taxpayers identified three potential violations of the FDCPA by Small Business/Self-Employed (SB/SE)

¹¹ The range of penalties is to serve as a guide only and is not a rigid standard. Deviations from the guide are permissible, and greater or lesser penalties than suggested may be imposed. IRS management determines the appropriate penalty for infractions as individual circumstances warrant, considering mitigating and aggravating factors as well as agencywide penalties for comparable fact patterns.



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Division Field Collection employees.¹² During the review, TIGTA analyzed a download from the Integrated Collection System of all open and archived cases with action dates between July 1, 2018, and June 30, 2019. TIGTA found three cases in which revenue officers improperly contacted the taxpayers directly when there was a valid POA on file or a Form 2848 was sent directly to SB/SE Division Field Collection.¹³ The revenue officers attempted to contact the taxpayers directly by telephone or in person during field calls instead of contacting the authorized representative. In these three cases, the revenue officers also did not document that the POA was notified of such a bypass.¹⁴ If the right to representation is not respected, taxpayers can be negatively affected in the outcome of cases and could result in taxpayers not making informed decisions. TIGTA recommended the Director, Field Collection, ensure that respective group managers appropriately report the cases TIGTA identified to the local labor relations specialist.

In March 2020, the Acting Associate Director, Labor Relations/Employee Relations Field Operations, issued *Information Notice: Documenting Fair Tax Collection Practices Cases in the Automated Labor and Employee Relations Tracking System*. The notice identifies the new *FTCP Validation Report* that is available to assist section chiefs with completing required monthly reviews of all closed FTCP cases. The creation of the new report adds to the actions Labor Relations management has taken in response to a recommendation made by TIGTA to the Human Capital Officer in its FY 2018 report.¹⁵ TIGTA recommended that the Labor Relations office be required to review and ensure that IRS management follows the *IRS Manager's Guide to Penalty Determinations* when making recommendations for administrative action against IRS employees for all closed FTCP cases. Continuing to improve procedures for accurately addressing alleged FTCP and FDCPA violations helps the IRS ensure that similar disciplinary actions are taken consistently in violations of taxpayer rights in collection matters.

Misconduct cases were not resolved within the IRS's stated goal of 180 calendar days

During our review of potential FTCP violations, we also identified 67 employee misconduct cases that were not resolved within the IRS's stated goal of 180 days in FY 2019.¹⁶ This was a decrease of two cases (3 percent) compared to the 69 cases we identified as not closed timely in FY 2018.

The Internal Revenue Manual (IRM) notes that the IRS should close a case on the ALERTS within 10 calendar days of the employee's receipt of a decision letter (event) and that investigation cases should be resolved within the IRS's stated goal of 180 calendar days of being received in Labor Relations.¹⁷ The 67 cases were closed between three and 781 days late. The Labor Relations Workforce Relations Division is responsible for ensuring that Labor Relations case management progresses in a timely manner to achieve the goal of closing cases as quickly as possible, with a maximum of 180 calendar days to close absent extenuating circumstances.¹⁸

¹² TIGTA, Ref. No. 2020-30-046, *Fiscal Year 2020 Statutory Review of Restrictions on Directly Contacting Taxpayers* p. 5 (Aug. 2020).

¹³ I.R.C. § 6304(a)(2), 15 U.S.C. § 1692c(a)(2).

¹⁴ Two of the three cases involved potential FDCPA violations that occurred during FY 2019.

¹⁵ TIGTA, Ref. No. 2018-30-079, *The Internal Revenue Service and Private Debt Collectors Took Some Action for 16 Potential Violations of Fair Tax Collection Practices During Fiscal Year 2017* p. 5 (Sept. 2018).

¹⁶ We identified this issue while validating the FY 2019 ALERTS data used in this audit.

¹⁷ IRM 6.751.1-4 (Nov. 4, 2008) and IRM 6.751.1-9 (Nov. 4, 2008); The Human Capital Office's Labor Relations/Employee Relations staff is responsible for opening and closing cases on the ALERTS. Actions can include, but are not limited to, settlements, decision letters, and management recommendations.

¹⁸ IRM 6.751.1.8(2)d (Nov. 4, 2008).



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In its response to this issue, the IRS stated that there is no specific reference to extenuating circumstances with regard to the 180 days in the IRM because this service level is simply a stated goal of the agency. The IRS also provided a list of some reasons why the 67 cases may have taken longer to process, such as:

- Dates on the results of investigation documents are weeks or months before the Labor Relations office actually receives the case. Also, the received date compared to the entered date from the case downloads are sometimes months apart.
- Delays in oral replies such as National Treasury Employees Union or management cancelling and rescheduling, thus creating more time to process tracking system requests.
- Acting manager positions in some business units keep rotating managers in and out, creating the need to restart, sometimes from the beginning, with a case.
- Subjects of the cases are out on extended leave and the case is suspended.
- Loss of the Labor Relations staff and increased workload due to not being able to fill positions.

It is imperative that cases are closed or resolved timely and closing information is input timely and correctly because data on misconduct cases are used for reports provided to a number of other offices and, at times, are the basis for information provided to Congress on legislation affecting the IRS. In addition, if cases are not resolved in a timely manner, there is the potential that employees with an open misconduct case will potentially continue to violate taxpayer rights through various means, including potential FTCP violations. Finally, the *Standards for Internal Control in the Federal Government* requires that transactions be promptly recorded to maintain their relevance and value to management in controlling operations and making decisions.¹⁹

In last year's review, we identified 69 misconduct cases that were not closed within the IRS's stated goal during FY 2018, which represented an increase of 64 cases (1,280 percent) over the prior year. We recommended that the IRS revise the IRM to include examples of appropriate extenuating circumstances that labor relations specialists should document in employee misconduct cases when they are not closed within the IRS's goal of 180 days.²⁰ The IRS disagreed with this recommendation; however, in March 2020, in the same notice described previously (*Documenting Fair Tax Collection Practices Cases in the Automated Labor and Employee Relations Tracking System*), the IRS provided updated guidance on timeliness of case processing. The memo stated that some of the most common examples of unusual delays include oral reply scheduling, delays in securing recommendations, delays with management process/changes in management, and delays after getting recommendations to send Alternative Discipline notices or proposal/decision letters. These examples are similar to the issues identified in cases closed in FYs 2018 and 2019. The information memo directed employees who encounter inordinate delays after taking follow-up actions to elevate through the proper management chain to get cases resolved more expeditiously. Based on the recent procedural changes made by the IRS in FY 2020, we are not making any recommendations at this time. However, we will analyze the impact of the IRS's procedural changes during our FY 2021 review.

¹⁹ Government Accountability Office, GAO-14-704G, *Standards for Internal Control in the Federal Government* (Sept. 2014).

²⁰ TIGTA, Ref. No. 2019-30-073, *Fiscal Year 2019 Statutory Review of Potential Fair Tax Collection Practices Violations* p. 4-5 (Sept. 2019).



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Potential FTCP violations from TIGTA's Office of Investigations were tracked

Recommendations from TIGTA's FY 2016 review resulted in the IRS implementing a new computer SharePoint site to control complaints from TIGTA's Office of Investigations before they are added to the ALERTS.²¹ During FY 2019, TIGTA's Office of Investigations referred 15 investigations to the IRS. Thirteen of the 15 investigations were entered into the ALERTS, reviewed by the IRS to determine if there were violations of the FTCP, and closed by TIGTA's Office of Investigations in FY 2019.²² The other two cases were entered into the ALERTS database in FY 2019 but were not closed on the ALERTS until FY 2020. These two cases will be reviewed during our FY 2021 review of FTCP violations for FY 2020 cases.

Some Private Collection Agency Employees Potentially Violated the Law When Contacting Taxpayers

The PCAs are required to perform quality assurance reviews by sampling telephone calls and other case actions for each employee using the quality attributes in the *PCA Policy and Procedures Guide*. They are also required to submit the results to the IRS each month in the *Quality Review Report*. The PCAs must also report complaints and threats to TIGTA's Office of Investigations, which in turn will report potential FDCPA violations to the IRS. Some of the PCAs utilize analytical tools, such as speech analytics, which enable them to identify problematic interactions with taxpayers that might rise to the level of potential FDCPA violations. When potential violations are identified, the PCAs use corrective action reports to document potential FDCPA violations and disciplinary actions that were taken against employees.

We reviewed monthly *Quality Review Reports*, corrective action reports, and TIGTA's Office of Investigations' complaint logs and identified the following 51 potential FDCPA violations and six potential FTCP violations by PCA employees:²³

- 24 potential FDCPA violations occurred when employees failed to notify the taxpayer that they were attempting to collect a debt.²⁴ The employees received disciplinary actions ranging from coaching to final written warning.
- 16 potential FDCPA violations occurred when a PCA employee disclosed to a third party that the taxpayer owed a debt.²⁵ The employees received disciplinary actions ranging from coaching to recommendation of final written warning.

²¹ TIGTA, Ref. No. 2016-10-068, *Programming Changes Would Allow More Accurate Tracking of Fair Tax Collection Practices Violations* pp. 4-5 (Sept. 2016).

²² A complaint is any allegation of criminal or administrative misconduct, mismanagement, or other impropriety within TIGTA's oversight purview of Federal tax administration, including allegations of misconduct by IRS employees, the IRS Office of Chief Counsel, the IRS Oversight Board, or TIGTA.

²³ During FY 2019, the IRS employed approximately 9,300 collection employees, while the PCAs had approximately 480 employees working IRS cases. However, the PCAs use analytical software to identify possible violations systemically. The IRS does not have these tools, so detection is much more difficult.

²⁴ 15 U.S.C. § 1692e(11).

²⁵ I.R.C. § 6103(a) 15 U.S.C. § 1692b(2).



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- 10 potential FDCPA violations occurred when employees called taxpayers before 8:00 a.m. or after 9:00 p.m. local time to collect a debt.²⁶ The employees received disciplinary actions ranging from coaching to verbal warning.
- 1 potential FDCPA violation occurred when the employee contacted the taxpayer before the PCA mailed its initial contact letter notifying the taxpayer of the debt owed.²⁷ The employee received a written warning.
- 6 potential FTCP violations involved direct contact with taxpayers who had authorized representatives.²⁸ The employees received disciplinary actions ranging from coaching to verbal warning.

The PCAs each have their own personnel policies for determining discipline for employees who commit a potential FDCPA violation. Based on our review of PCA personnel policies, a disciplinary action stays in an employee's file anywhere from 90 to 180 days, and if enough disciplinary actions are accrued in that rolling time frame, the employee can be terminated. However, an employee can also be terminated after one violation if it is determined to be egregious in nature. These disciplinary actions were consistent with each of the PCA's policies in determining discipline.

Compared to last year's review, potential FDCPA violations increased from nine to 51 (467 percent) and potential FTCP violations increased from one to six (500 percent). This may be because all four of the PCAs hired new assistors, effectively increasing the number of assistors who worked IRS case inventory in FY 2019 by 150 percent. The new assistors were hired because the number of cases sent to the PCAs increased by 150 percent in FY 2019 from 4,000 per week to 10,000 per week.

The PCAs are also required to make all telephone recordings available to the IRS for quality review. We reviewed a random sample of 80 telephone calls and did not identify any additional potential FDCPA violations.

It is important for the PCAs to identify potential violations of the law and consistently disclose them to the IRS. All of the PCAs have quality review processes that can potentially identify problematic interactions with taxpayers. In our FY 2018 review, we recommended that the IRS require the PCAs to submit their corrective action reports that identify potential FTCP or FDCPA violations and their penalty guides to the IRS.²⁹ In response, the IRS updated the *PCA Policy and Procedures Guide* on May 24, 2019, to require the PCAs to submit a monthly corrective action report and their penalty guides. The corrective action reports should identify willful FDCPA and FTCP violations and the administrative action taken for each willful violation per the individual PCA's penalty guide. During discussions with the PCAs, representatives explained that they started providing the corrective action reports to the IRS in June 2019. Although IRS management is receiving and reviewing the monthly corrective action reports for accuracy, the reports could also be used to identify trends and provide feedback to the PCAs that could help to limit potential violations.

²⁶ I.R.C. § 6306(g).

²⁷ 15 U.S.C. § 1692g(a).

²⁸ I.R.C. § 6304(a)(2), 15 U.S.C. § 1692c(a)(2).

²⁹ TIGTA, Ref. No. 2018-30-079, *The Internal Revenue Service and Private Debt Collectors Took Some Actions for 16 Potential Violations of Fair Tax Collection Practices During Fiscal Year 2017* p. 7 (Sept. 2018).



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Recommendation 1: The Director, Headquarters Collection, Small Business/Self-Employed Division, should review the PCA monthly corrective action reports to identify trends in FDCPA/FTCP violations and provide feedback to the PCAs on areas that could be improved.

Management's Response: The IRS agreed with the recommendation and will update the *Private Debt Collections Operations Guide* to identify trends in potential violations and provide feedback to the PCAs as necessary.

No Fair Tax Collection Practices Civil Actions Resulted in Monetary Settlements to Taxpayers

I.R.C. § 7433 provides that a taxpayer may bring a civil action for damages against the Federal Government if an officer or employee of the IRS recklessly or intentionally, or by reason of negligence, disregards any provision of the I.R.C. or related regulation in connection with the collection of Federal tax.³⁰ There were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation in FY 2019.

³⁰ I.R.C. § 7433.



Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to obtain information on any reported violations of the FTCP by IRS employees and on any reported or potential violations of the FDCPA by PCA employees, including any related administrative or civil actions resulting from those violations, for collection cases closed during FY 2019. To accomplish this objective, we:

- Obtained data for all cases posting to the ALERTS during FY 2019 and performed tests to determine whether the data were reasonable. For example, tests determined that date fields contained dates, blank fields were explainable, fields contained only applicable data required for that field, and gaps in the sequential order of case numbers were explainable. The data were determined to be reliable for our purposes.
- Performed queries of the ALERTS for FTCP issue codes to identify cases that were closed during FY 2019 and determined whether any cases resulted in administrative action. We verified that the employee was performing specific collection-related activities and the affected party was a taxpayer or taxpayer representative.
- Performed queries of the ALERTS for the FTCP to determine if cases were closed within 180 calendar days of being entered into the ALERTS.
- Identified any cases coded as potential FTCP violations on the Criminal Results Management System and determined if those cases were coded correctly on the ALERTS.¹
- Identified the number of FTCP violations resulting in IRS civil actions (judgments or awards granted) by requesting a computer extract from the Office of Chief Counsel's Counsel Automated System Environment database of any Subcategory 6304 (established to track FTCP violations) cases closed during FY 2018. We did not conduct validation tests of this system.
- Identified potential FTCP and FDCPA violations by PCA employees using call logs and corrective action reports. We obtained call logs from the four PCAs and sampled 20 calls from each PCA to determine if any of the calls potentially violated the FDCPA.

Performance of This Review

This review was performed with information obtained from the offices of the IRS Human Capital Officer and Chief Counsel in the IRS Headquarters in Washington, D.C., and private collector Performant Recovery of Livermore, California, and information requested from all four private collectors during the period December 2019 through June 2020. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit

¹ The Criminal Results Management System provides TIGTA with the ability to manage and account for the complaints received, investigations initiated, and leads developed from law enforcement initiatives.



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objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Phyllis Heald London, Director; Richard Viscusi, Audit Manager; and Gwendolyn Green, Lead Auditor.

Validity and Reliability of Data From Computer-Based Systems

We performed tests to assess the reliability of data obtained from the ALERTS database provided to us by the TIGTA Data Service team for this review. The team has provided extracts from ALERTS database in the past for this mandatory review. We evaluated the data by running queries on the population to ensure that the data met our criteria and no information was missing or incomplete. We determined that the data were sufficiently reliable and could be used to meet the objective of this audit.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the guidance used to code and work potential FTCP violation cases, FTCP provisions used to identify potential violations, and the ALERTS audit control log to substantiate the removal of cases from the database. We evaluated these controls by interviewing management, performing queries of ALERTS data, and comparing Criminal Results Management System cases with FTCP-related violation codes to the issue codes assigned for cases received in the ALERTS. Additionally, for the four PCAs, we determined that the following internal controls were relevant to our audit objective: the guidance used to audit the collectors' telephone calls to ensure the identification of potential FDCPA violations, the procedures for reporting potential FDCPA violations, and the actions taken for potential violations. We evaluated these controls by interviewing management, listening to a sample of 20 calls for each PCA, and reviewing corrective actions and monthly *Quality Review Reports*.



Appendix II

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective action will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Reliability of Information – Potential; 67 cases (see Page 2).

Methodology Used to Measure the Reported Benefit:

We identified 67 employee misconduct cases that were not resolved within the IRS's stated goal of 180 days in FY 2019. The IRM states that the IRS should close a case on the ALERTS within 10 calendar days of the employee's receipt of a decision letter (event) and that investigation cases should be resolved within the IRS's stated goal of 180 calendar days of being received in Labor Relations. The 67 cases were closed between three and 781 days late.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 51 cases (see Recommendation 1).

Methodology Used to Measure the Reported Benefit:

We reviewed PCA monthly *Performance Management Reports*, corrective action reports, communications with the PCAs, and TIGTA's Office of Investigations' complaint logs and identified 51 potential FDCPA violations by PCA employees that affected taxpayer rights and entitlements.

- 24 potential FDCPA violations occurred when employees failed to notify the taxpayer that they were attempting to collect a debt. The employees received disciplinary actions ranging from coaching to final written warning.
- 16 potential FDCPA violations occurred when a PCA employee disclosed to a third party that the taxpayer owed a debt. The employees received disciplinary actions ranging from coaching to recommendation of final written warning.
- 10 potential FDCPA violations occurred when employees called taxpayers before 8:00 a.m. or after 9:00 p.m. local time to collect a debt. The employees received disciplinary actions ranging from coaching to verbal warning.
- 1 potential FDCPA violation occurred when the employee contacted the taxpayer before the PCA mailed its initial contact letter notifying the taxpayer of the debt owed. The employee received a written warning.



Fiscal Year 2020 Statutory Review of Potential Fair Tax Collection Practices Violations

Type and Value of Outcome Measure:

- Taxpayer Burden – Potential; six cases (see Recommendation 1).

Methodology Used to Measure the Reported Benefit:

We reviewed PCA monthly *Performance Management Reports*, corrective action reports, and TIGTA's Office of Investigations' complaint logs and identified six potential FTCP violations by PCA employees that affected taxpayer burden.

- Six potential FTCP violations involved direct contact with taxpayers who had authorized representatives. The employees received disciplinary actions ranging from coaching to verbal warning.



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Appendix III

Fair Tax Collection Practices Provisions

To ensure equitable treatment of debt collectors in the public and private sectors, the IRS Restructuring and Reform Act of 1998 requires the IRS to comply with certain provisions of the FDCPA. Specifically, the IRS may not communicate with taxpayers in connection with the collection of any unpaid tax:

- At unusual or inconvenient times.
- If the IRS knows that the taxpayer has obtained representation from a person authorized to practice before the IRS and the IRS knows or can easily obtain the representative's name and address.
- At the taxpayer's place of employment if the IRS knows or has reason to know that such communication is prohibited.

In addition, the IRS may not harass, oppress, or abuse any person in connection with any tax collection activity or engage in any activity that would naturally lead to harassment, oppression, or abuse. Such conduct specifically includes, but is not limited to:

- Use or threat of violence or harm.
- Use of obscene or profane language.
- Causing a telephone to ring continuously with harassing intent.
- Placement of telephone calls without meaningful disclosure of the caller's identity.



**Fiscal Year 2020 Statutory Review of Potential
Fair Tax Collection Practices Violations**

Appendix IV

Fair Tax Collection Practices Violation Issue Codes

| Issue Code | Description |
|------------|---|
| 141 | CONTACT TAXPAYER UNUSUAL TIME/PLACE – Valid only for collection employees. Contacting a taxpayer before 8:00 a.m. or after 9:00 p.m., or at an unusual location or time, or at a location known or which should be known to be inconvenient to the taxpayer. |
| 142 | CONTACT TAXPAYER WITHOUT REPRESENTATIVE – Valid only for collection employees. Contacting a taxpayer directly without the consent of the taxpayer’s power of attorney. |
| 143 | CONTACT AT TAXPAYER EMPLOYMENT; WHEN PROHIBITED – Valid only for collection employees. Contacting a taxpayer at their place of employment when it is known or should be known that the taxpayer’s employer prohibits the taxpayer from receiving such communication. |
| 144 | TAXPAYER HARASSMENT IN A TAX COLLECTION MATTER – Valid only for collection employees. Any allegation of taxpayer harassment should be reviewed along with I.R.C. § 6304 because the provision is intended to be applied in a general manner when evaluating the alleged employee misconduct. Conduct that is intended to harass a taxpayer, or conduct that uses or threatens to use violence or harm, is an absolute violation of the I.R.C. |
| 145 | TAXPAYER ABUSE IN A TAX COLLECTION MATTER – Valid only for collection employees. Any allegation of taxpayer abuse should be reviewed along with I.R.C. § 6304 because the provision is intended to be applied in a general manner when evaluating the alleged employee misconduct. The use of obscene or profane language towards a taxpayer is an absolute violation of the I.R.C. |
| 146 | CONTINUOUS TELEPHONE/HARRASSMENT – Valid only for collection employees. Causing a taxpayer’s telephone to ring continuously with harassing intent. |
| 147 | TELEPHONE CALL WITHOUT IDENTIFICATION DISCLOSURE – Valid only for collection employees. Contacting a taxpayer by telephone without providing a meaningful disclosure of the IRS employee’s identity. |

Source: IRS ALERTS User Manual (January 2020).



Appendix V

Fair Debt Collection Practices Act Provisions

The FDCPA is the main Federal law that governs debt collection practices. The FDCPA prohibits debt collection companies from using abusive, unfair, or deceptive practices to collect debts. Provisions of the FDCPA that debt collection companies must follow include:¹

- **1692c: Communication in connection with debt collection**
 - **(a)** Communication with the consumer generally without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—
 - 1) **(1)** at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;
 - 2) **(2)** if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer.
 - **(b)** Communication with third parties except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.
- **1692e: False or misleading representations**
 - A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
 - **(11)** The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

¹ The provisions in this appendix only represent sections of 15 U.S.C. § 1692–1692p violated by the four PCAs in FY 2018.



Fiscal Year 2020 Statutory Review of Potential Fair Tax Collection Practices Violations

- **1692g: Validation of debts with debt collection**
 - **(a)** Notice of debt; contents within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing.
 - **(1)** the amount of the debt;
 - **(2)** the name of the creditor to whom the debt is owed;
 - **(3)** a statement that unless the consumer, with thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
 - **(4)** a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
 - **(5)** a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.



Fiscal Year 2020 Statutory Review of Potential Fair Tax Collection Practices Violations

Appendix VI

Management's Response to the Draft Report



HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 18, 2020

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Robin D. Bailey Jr. Kevin Q. McIver Digitally signed by Kevin Q. McIver
Date: 2020.08.18 13:42:03 -0400
IRS Human Capital Officer /For

SUBJECT: Draft Audit Report – Fiscal Year (FY) 2020 Statutory Review of
Potential Fair Tax Collection Practices (FTCP) Violations
(Audit #202030018)

Thank you for the opportunity to review the draft audit report, FY 2020 Statutory Review of Potential FTCP Violations, Audit #202030018, dated July 20, 2020. We are fully committed to the fair treatment of taxpayers by the IRS and private collection agency (PCA) employees while attempting to collect taxes. We are further committed to ensuring that alleged violations of FTCP are properly coded and documented on our Automated Labor and Employee Relations Tracking System.

We agree with the report's findings and recommendation and concur with the stated Outcome Measures as reflected in the draft report. We are pleased that TIGTA found FTCP violations were accurately reported and investigated.

Attached is a detailed response outlining the corrective action that the Director, Headquarters Collection, Small Business/Self-Employed Division, will take to address your recommendation.

If you have questions, please contact me at 202-317-3174, or a member of your staff may contact Julia Caldwell, Director, Workforce Relations Division, at 202-317-6289.

Attachment



Fiscal Year 2020 Statutory Review of Potential Fair Tax Collection Practices Violations

Attachment

RECOMMENDATION 1:

The Director, Headquarters Collection, Small Business/Self-Employed (SB/SE) Division, should review the private collection agency (PCA) monthly corrective action reports to identify trends in the Fair Debt Collection Practices Act (FDCPA)/Fair Tax Collection Practices (FTCP) violations and provide feedback to the PCAs on areas that could be improved.

CORRECTIVE ACTION:

We agree with this recommendation and will update the Private Debt Collection Operations Guide to identify trends in potential violations and provide feedback to the PCAs as necessary.

IMPLEMENTATION DATE:

PROPOSED: June 15, 2021

RESPONSIBLE OFFICIAL(S):

Director, Headquarters Collection, SB/SE Division

CORRECTIVE ACTION MONITORING PLAN:

We will enter accepted Corrective Actions into the Joint Audit Management Enterprise System (JAMES), monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872, Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM.



Fiscal Year 2020 Statutory Review of Potential Fair Tax Collection Practices Violations

Appendix VII

Abbreviations

| | |
|--------|--|
| ALERTS | Automated Labor and Employee Relations Tracking System |
| FDCPA | Fair Debt Collection Practices Act |
| FTCP | Fair Tax Collection Practices |
| FY | Fiscal Year |
| I.R.C. | Internal Revenue Code |
| IRM | Internal Revenue Manual |
| IRS | Internal Revenue Service |
| PCA | Private Collection Agency |
| POA | Power of Attorney |
| SB/SE | Small Business/Self-Employed |
| TIGTA | Treasury Inspector General for Tax Administration |