



*The Internal Revenue Service and Private  
Debt Collectors Took Some Action for  
16 Potential Violations of Fair Tax Collection  
Practices During Fiscal Year 2017*

**September 25, 2018**

**Reference Number: 2018-30-079**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



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## HIGHLIGHTS

### THE INTERNAL REVENUE SERVICE AND PRIVATE DEBT COLLECTORS TOOK SOME ACTION FOR 16 POTENTIAL VIOLATIONS OF FAIR TAX COLLECTION PRACTICES DURING FISCAL YEAR 2017

## Highlights

**Final Report issued on  
September 25, 2018**

Highlights of Reference Number: 2018-30-079  
to the Commissioner of Internal Revenue.

### IMPACT ON TAXPAYERS

The abuse and harassment of taxpayers by IRS and private collection agency (PCA) 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 PCA employees when they attempt to collect taxes.

### WHY TIGTA DID THE AUDIT

The overall objective of this review was to obtain information on any reported violations of 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 Practice Act (FDCPA) (15 United States Code Sections 1601 note, 1692-1692p (2010)) by PCA employees, including any related administrative or civil actions resulting from those violations, for collection cases closed during Fiscal Year 2017. This information will be used to comply with the IRS Restructuring and Reform Act of 1998 requirement that TIGTA includes in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP violations.

### WHAT TIGTA FOUND

TIGTA identified two FTCP violations closed in Fiscal Year 2017 that resulted in administrative actions for IRS collection employees. One violation involved contacting taxpayers directly without the required consent of the taxpayer's

power of attorney, and the other violation involved alleged harassment or abuse of a taxpayer by filing a Notice of Federal Tax Lien without providing the taxpayer notice.

In addition, TIGTA identified one case that IRS management incorrectly processed as an FTCP violation. After bringing the issue to the IRS's attention, officials corrected the case to reflect that the allegation was unsubstantiated.

Separate from our review of IRS FTCP violations, TIGTA identified six potential FTCP and eight potential FDCPA violations by PCA employees. The PCAs reported only two of the 14 potential violations to the IRS. IRS management took no action on the two cases to ensure that the PCAs took all appropriate steps to discipline the employee and reduce the risk that violations will continue.

Finally, 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 Human Capital Officer require the Labor Relations function 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. In addition, the Commissioner, Small Business/Self-Employed Division, should ensure that the PCAs provide corrective action reports to the IRS, review the reports to identify potential FDCPA and other potential violations of the law, and ensure that the PCAs remove employees from the IRS account for any intentional violations.

In their response, IRS management agreed with the recommendations and plans to take corrective actions.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 25, 2018

**MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE**

**FROM:** Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – The Internal Revenue Service and Private Debt Collectors Took Some Action for 16 Potential Violations of Fair Tax Collection Practices During Fiscal Year 2017 (Audit # 201830026)

This report presents the results of our review to obtain information on any reported violations of Fair Tax Collection Practices<sup>1</sup> by Internal Revenue Service employees and on any reported or potential violations of the Fair Debt Collection Practices Act<sup>2</sup> by private collection agency employees, including any related administrative and civil actions resulting from those violations, for collection cases closed during Fiscal Year 2017.<sup>3</sup> This review is included in our Fiscal Year 2018 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayers Rights.

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

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. 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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<sup>1</sup> Internal Revenue Code § 6304.

<sup>2</sup> 15 United States Code §§ 1601 note, 1692-1692p (2010).

<sup>3</sup> A fiscal year is 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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## *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
LR	Labor Relations
PCA	Private Collection Agency
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code



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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.<sup>1</sup>

However, the restrictions did not apply to the Federal Government until passage of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998.<sup>2</sup> 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. 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.<sup>3</sup>

***IRS and private collection  
agency employees are  
required to follow FTCP,  
similar to those in the FDCPA.***

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 26 United States Code (U.S.C.) § 7433, *Civil Damages for Certain Unauthorized Collection Actions*, if 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.<sup>4</sup> Section 32102 of the Act includes a provision that requires the IRS to use private collection agencies (PCA) to collect 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.<sup>5</sup> 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.<sup>6</sup> If the PCA violates the FDCPA, the law insulates the U.S. Government

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<sup>1</sup> 15 United States Code §§ 1601 note, 1692-1692p (2010).

<sup>2</sup> Pub. L. No. 105-206, 112 Stat. 685.

<sup>3</sup> See Appendix V for a detailed description of FTCP provisions.

<sup>4</sup> Pub. L. No. 114-94, 129 Stat. 1312.

<sup>5</sup> Internal Revenue Code (I.R.C.) § 6306(b)(2).

<sup>6</sup> I.R.C. § 6306(g).



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from liability and allows the suit to be brought only against the private collector.<sup>7</sup> The IRS began assigning cases to four private collectors in April 2017.

The IRS Restructuring and Reform Act of 1998 § 1102(d)(1)(G)<sup>8</sup> 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 Internal Revenue Code (I.R.C.) § 6304.<sup>9</sup> The Semiannual Report must provide a summary of such actions and include any 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 includes action that ranges from a letter of admonishment to removal.<sup>10</sup> Information from this report will be used to meet the requirements of IRS Restructuring and Reform Act of 1998 § 1102(d)(1)(G).

This review was performed with information obtained from the offices of the IRS Human Capital Officer and Chief Counsel at the IRS Headquarters in Washington, D.C.; private collectors Performant Recovery of Livermore, Livermore, California; CBE Group of Cedar Falls, Iowa; Conserve of Fairport, New York; and Pioneer of Horseheads, New York, during the period April through June 2018. 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 objective. This audit did not address potential IRS employee violations not reported to the IRS or TIGTA. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

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<sup>7</sup> I.R.C. § 7433A(b)(1), (4) and I.R.C. § 6306(f).

<sup>8</sup> Pub. L. No. 105-206, 112 Stat. 702-703.

<sup>9</sup> I.R.C. § 6304.

<sup>10</sup> 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.





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## *Results of Review*

### **Fair Tax Collection Practices Were Not Accurately Reported, and Administrative Actions Did Not Always Follow Guidelines**

TIGTA identified two cases closed by the IRS as FTCP violations in Fiscal Year (FY) 2017 that resulted in administrative actions for IRS collection employees performing collection activities.<sup>11</sup> One revenue officer harassed or abused a taxpayer, which included violating the taxpayer's rights by filing a Notice of Federal Tax Lien without providing the notice required by law.<sup>12</sup> One contact representative contacted the taxpayer directly without the required consent of the taxpayer's power of attorney. Administrative actions were taken by the IRS to address these violations. The revenue officer was to be terminated but resigned in lieu of termination. The disciplinary action the revenue officer received was consistent with the range of penalties set forth in the *IRS Manager's Guide to Penalty Determinations*. The contact representative was issued a *Closed Without Action Letter*. The action taken against the contact representative was not consistent with the *IRS Manager's Guide to Penalty Determinations*, which recommends admonishment for a first-time FTCP offense.

The abuse and harassment of taxpayers by IRS employees while attempting to collect taxes harms taxpayers, 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.

IRS officials stated that the *IRS Manager's Guide to Penalty Determinations* is used to identify common infractions and a range of penalties to enforce. However, the guide states that the range of penalties is not intended to be a rigid standard, but is only a "guide," and management has the delegated authority to take whatever action they deem appropriate outside of the penalty range listed in the guide. Management has the ability to determine the penalty for infractions as individual circumstances warrant. This raises the importance of ensuring that penalties are enforced consistently to employees for any given offense.

The Labor Relations (LR) function Workforce Relations Division is responsible for ensuring that proposed disciplinary actions are consistent with similar disciplinary actions taken for similar offenses.<sup>13</sup> Once management has determined administrative action is appropriate, the LR function specialist assigned the case should conduct appropriate research to ensure that the

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<sup>11</sup> A fiscal year is 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.

<sup>12</sup> I.R.C. § 6320(a)(1).

<sup>13</sup> Internal Revenue Manual 6.751.1.8(2)b, *Human Capital Office Responsibilities* (Nov. 4, 2008).



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recommended course of action is consistent with the *IRS Manager's Guide to Penalty Determinations*, past practice, and current case law.<sup>14</sup> If the recommendation made by management is inconsistent with similar cases identified via ALERTS research or existing case law, the specialist or his or her supervisor should share the results and discuss options with the employee's manager.<sup>15</sup> However, LR function officials stated that they do not review all cases for consistency with the *IRS Manager's Guide to Penalty Determinations*. For this case, there was no review or documentation describing why the action taken against the contact representative was not consistent with the Guide.

We also identified one case that IRS management incorrectly processed as an FTCP violation. The employee was accused of contacting a taxpayer who was represented, even though the representative was not authorized to receive communications. A LR function specialist did not review this case, and the employee in question was given oral counseling even though there was no violation. After bringing this issue to the IRS's attention, officials corrected the case to reflect that the allegation was unsubstantiated.

### **Misconduct cases were not timely closed**

Separate from our review of FTCP violations, we identified five collection employee misconduct cases that were not closed timely on the ALERTS.<sup>16</sup> The Internal Revenue Manual (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 closed on the ALERTS within 180 calendar days of being received in the LR function.<sup>17</sup> The cases were closed between 17 and 403 calendar days late:

- One case was closed after 197 calendar days (17 calendar days late) because the case had been suspended for 169 calendar days.
- One case was closed after 198 calendar days (18 calendar days late) because TIGTA's Office of Investigations' report took four months to complete, and the LR function took an additional two months to refer the case to customer management.
- One case was closed after 284 calendar days (104 calendar days late) because, in part, the IRS business unit took eight months to submit a recommendation to the LR function.
- One case was closed after 398 calendar days (218 calendar days late) because, in part, the IRS business unit took five months to submit a recommendation to the LR function.

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<sup>14</sup> IRM 6.752.2.12(1), *Research Tools and Consultations* (Oct. 15, 2010).

<sup>15</sup> IRM 6.752.2.12(3), *Research Tools and Consultations* (Oct. 15, 2010).

<sup>16</sup> We identified this issue while validating the FY 2017 ALERTS data used in this audit.

<sup>17</sup> IRM 6.751.1-4 and IRM 6.751.1-9 (Nov. 4, 2008). The Human Capital Office, LR function, Employee Relations staff is responsible for opening and closing cases on the ALERTS. Events can include, but are not limited to, settlements, decision letters, and management recommendations, *etc.*



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- One case was closed after 583 calendar days (403 calendar days late) because the employee in question was out sick and unable to be present for any due process hearings.

It is imperative that case closing information is input timely and correctly, as 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, the *Standards for Internal Control in the Federal Government*<sup>18</sup> requires that transactions be promptly recorded to maintain their relevance and value to management in controlling operations and making decisions.

### **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.<sup>19</sup> During FY 2017, TIGTA's Office of Investigations referred five complaints to the IRS, and all five were entered into the ALERTS and reviewed to determine if they were violations of the FTCP.<sup>20</sup>

### **Recommendation**

**Recommendation 1:** The Human Capital Officer should require the LR function 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.

**Management's Response:** The IRS agreed with this recommendation and will advise its Field Labor Relations Section Chiefs to identify and review all closed FTCP cases each month.

### **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*. Results of these reviews should be submitted to the IRS each month in the *Performance Management Report*. The PCAs must also report complaints and threats to

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<sup>18</sup> Government Accountability Office, GAO-14-704G, *Standards for Internal Control in the Federal Government* (Sept. 2014).

<sup>19</sup> TIGTA, Ref. No. 2016-10-068, *Programming Changes Would Allow More Accurate Tracking of Fair Tax Collection Practices Violations* (Sept. 2016).

<sup>20</sup> 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.



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TIGTA's Office of Investigations, which in turn will report potential FDCPA violations to the IRS. Some of the PCAs have sophisticated 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. However, the IRS does not require the PCAs to provide this information to the IRS.

We reviewed PCA monthly quality reports, corrective action reports, and TIGTA's Office of Investigations' complaint logs and identified the following eight potential FDCPA and six potential FTCP violations by PCA employees:<sup>21</sup>

- Eight potential violations involved direct contact with a taxpayer who had an authorized representative.<sup>22</sup> Six employees received a verbal warning and two received a written warning.
- Two potential violations occurred when employees failed to notify the taxpayer that they were attempting to collect a debt.<sup>23</sup> Both cases were deemed inadvertent in nature and resulted in retraining for the employees.
- Two potential violations occurred when an employee disclosed to a third party that the taxpayer owed a debt.<sup>24</sup> One employee received a verbal warning, and the other received a written warning.
- One potential violation involved employees misrepresenting themselves by saying they worked for the IRS.<sup>25</sup> The employee received a verbal warning.
- One potential violation occurred when a PCA employee disclosed the name of the PCA employer to a third party.<sup>26</sup> The employee received a 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. Section 4.4 of the Task Order with the PCAs requires that employees be

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<sup>21</sup> During FY 2017, the IRS employed approximately 9,900 collection employees, while the PCAs had 114 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.

<sup>22</sup> I.R.C. § 6304(a)(2) and 15 U.S.C. § 1692c(a)(2) (2010).

<sup>23</sup> 15 U.S.C. § 1692e(11) (2010).

<sup>24</sup> I.R.C. § 6103(a) and 15 U.S.C. § 1692b(2) (2010).

<sup>25</sup> I.R.C. § 6304(b)(4) and 15 U.S.C. § 1692e(1) (2010).

<sup>26</sup> 15 U.S.C. § 1692b(1) (2010).



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removed from the IRS's account for intentional violations of the FDCPA; however, that language is not included in the IRS's *PCA Policy and Procedures Guide*. Disciplinary actions can also lead to lowered quality scores, which could affect whether an employee would qualify for a bonus. These disciplinary actions were consistent with each of the PCA's policies in determining discipline.

The PCAs are also required to record all telephone calls and make the recordings available to the IRS for quality review. We reviewed a random sample of 60 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 which can potentially identify problematic interactions with taxpayers. However, the IRS does not require the PCAs to perform analytics to self-identify potential FDCPA violations and does not require the PCAs to provide IRS management with information regarding self-identified potential FDCPA violations. Consequently, two PCAs do not use any analytics to identify potential FDCPA violations, while the other two PCAs use detailed analytical tools to identify mistreatment of taxpayers. The two PCAs that use these analytical tools should be commended for working towards continuously improving their customer service and their protection of taxpayers. The two PCAs that do not use analytics to identify problematic interactions with taxpayers rely on listening to a small number of telephone calls per month per employee. As a result, only two of the 14 potential violations were reported to the IRS, and those potential violations were not specifically identified as involving the FDCPA or FTCP. The IRS took no action on the two cases that were reported on the *Performance Management Report*. If the IRS is not advised of the PCAs' potential violations of the law when collecting taxpayers' debts or if it takes no action when informed, the IRS does not ensure that the PCAs are taking all appropriate steps to discipline their employees and reduce the risk that potential violations will continue.

### ***Recommendations***

The Commissioner, Small Business/Self-Employed Division, should:

**Recommendation 2:** Ensure that the *Performance Management Report* is reviewed to identify potential FDCPA and other violations of the law. As well, require the PCAs to submit their corrective action reports and penalty guides. The corrective action reports will identify willful FDCPA and FTCP violations, and the administrative action taken for each willful violation, per the individual PCA penalty guide.

**Management's Response:** The IRS agreed with this recommendation and will update its procedures in the *Private Debt Collections Operations Guide* to state that the Private Debt Collections Operations Team will perform a monthly review of the PCAs' *Performance Management Report* to identify potential FDCPA and other violations of



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the law. Additionally, the IRS will update the *PCA Policy and Procedures Guide* Policy to require the PCAs to submit a monthly corrective action report and their penalty guides.

**Recommendation 3:** Ensure that the PCAs' administrative actions are commensurate with the willful violation, per the individual PCA penalty guide.

**Management's Response:** The IRS agreed with this recommendation and will develop review criteria and procedures to establish consistency and ensure that the PCAs' administrative actions are commensurate with the willful violation.

**Recommendation 4:** Revise the *PCA Policy and Procedures Guide* to include the language from Section 4.4 of the Task Order and ensure that the PCAs remove employees from working IRS accounts for any intentional violations.

**Management's Response:** The IRS agreed with this recommendation and will revise the *PCA Policy and Procedures Guide* to include criteria for removal or termination of a PCA employee for committing a validated statutory violation.

**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. There were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation in FY 2017.





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## **Appendix I**

### *Detailed Objective, Scope, and Methodology*

The overall objective of this review was to obtain information on any reported violations of the FTCP<sup>1</sup> by IRS employees and on any reported or potential violations of the FDCPA<sup>2</sup> by PCA employees, including any related administrative or civil actions resulting from those violations, for collection cases closed during FY 2017.<sup>3</sup> To accomplish this objective, we:

- I. Identified the number of reported FTCP violations resulting in administrative actions for cases closed during FY 2017.
  - A. Obtained data for all cases posting to the ALERTS during FY 2017 and performed tests to determine whether the data were reasonable. For example, tests determined 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.
  - B. Performed queries of the ALERTS for FTCP issue codes to identify cases that were closed during FY 2017 and determined whether any cases resulted in administrative action. We verified the employee was performing specific collection-related activities and the affected party was a taxpayer or taxpayer representative.
  - C. Performed queries of the ALERTS to identify potentially miscoded FTCP violation cases that were closed during FY 2017 in which the affected party was a taxpayer or taxpayer representative and the case involved the employee performing collection-related activities.
  - D. 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.<sup>4</sup>
  - E. Performed queries of the ALERTS for the FTCP to determine if cases were closed within 180 calendar days of being entered into the ALERTS.
- II. 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

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<sup>1</sup> I.R.C. § 6304.

<sup>2</sup> 15 U.S.C. §§ 1601 note, 1692-1692p (2010).

<sup>3</sup> 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.

<sup>4</sup> 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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Counsel Automated System Environment database of any Subcategory 6304 (established to track FTCP violations) cases closed during FY 2017. We did not conduct validation tests of this system.

- III. Identified potential FTCP and FDCPA violations by PCA employees.
- A. Obtained call logs from the four PCAs and sampled 15 calls from each PCA to determine if any of the calls potentially violated the FDCPA.
  - B. Reviewed the PCA monthly *Performance Management Reports* and corrective action reports to determine if the four PCAs had identified potential FDCPA violations.
  - C. Reviewed TIGTA's Office of Investigations' complaint log to determine if complaints made by taxpayers or self-reported by the PCAs constituted a potential violation of the FDCPA.

**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. Pertaining to the IRS, we determined 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 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 15 calls for each PCA, and reviewing corrective action and monthly quality reports.





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## **Appendix II**

### *Major Contributors to This Report*

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)  
Carl L. Aley, Director  
Richard Viscusi, Audit Manager  
Jon-Michael Socaris, Lead Auditor



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**Appendix III**

*Report Distribution List*

Deputy Commissioner for Operations Support  
Deputy Commissioner for Services and Enforcement  
Director, Collection, Small Business/Self-Employed Division  
Director, Office of Legislative Affairs  
Director, Office of Audit Coordination



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## **Appendix IV**

### *Outcome Measures*

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

#### **Type and Value of Outcome Measure:**

- Taxpayer Rights and Entitlements – Actual; two cases (see page 3).

#### **Methodology Used to Measure the Reported Benefit:**

Our review of FTCP violations on the IRS Human Capital Officer's ALERTS that were closed in FY 2017 identified two FTCP violations.<sup>1</sup> One revenue officer harassed or abused a taxpayer, which included violating the taxpayer's rights by filing a Federal Tax Lien without providing the taxpayer notice.<sup>2</sup> Also, one contact representative contacted the taxpayer directly without the required consent of the taxpayer's power of attorney.

#### **Type and Value of Outcome Measure:**

- Reliability of Information – Actual; one case (see page 3).

#### **Methodology Used to Measure the Reported Benefit:**

Our review of FTCP violations on the IRS Human Capital Officer's ALERTS that were closed in FY 2017 identified one recorded FTCP violation that should not have been determined to be a violation and closed as unsubstantiated.

#### **Type and Value of Outcome Measure:**

- Reliability of Information – Potential; five cases (see page 3).

#### **Methodology Used to Measure the Reported Benefit:**

Separate from our review of FTCP violations, we identified five collection employee misconduct cases that were not closed timely on the ALERTS. 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

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<sup>1</sup> A fiscal year is 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.

<sup>2</sup> I.R.C. § 6320(a)(1).



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(event), and that investigation cases should be closed on the ALERTS within 180 calendar days of being received in the LR function.<sup>3</sup> The cases were closed between 17 and 403 calendar days late.

- One case was closed after 197 calendar days (17 calendar days late) because the case had been suspended for 169 days.
- One case was closed after 198 calendar days (18 calendar days late) because TIGTA's Office of Investigations' report took four months to complete, and the LR function took an additional two months to refer the case to customer management.
- One case was closed after 284 calendar days (104 calendar days late) because, in part, the IRS business unit took eight months to submit a recommendation to the LR function.
- One case was closed after 398 calendar days (218 calendar days late) because, in part, the IRS business unit took five months to submit a recommendation to the LR function.
- One case was closed after 583 calendar days (403 calendar days late) because the employee in question was out sick and was unable to be present for any due process hearings.

### **Type and Value of Outcome Measure:**

- Taxpayer Rights and Entitlements – Potential; three cases (see page 5).

### **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 three potential FDCPA violations by PCA employees that affected taxpayer rights and entitlements.<sup>4</sup>

- Two potential violations occurred when employees failed to notify the taxpayer that they were attempting to collect a debt. Both cases were deemed inadvertent in nature and resulted in retraining for the employees.
- One potential violation involved an employee misrepresenting his/herself by saying he/she worked for the IRS. The employee received a verbal warning.

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<sup>3</sup> IRM 6.751.1-4 and IRM 6.751.1-9 (Nov. 4, 2008). The Human Capital Office, LR function, Employee Relations staff is responsible for opening and closing cases on the ALERTS. Events can include, but are not limited to, settlements, decision letters, and management recommendations, *etc.*

<sup>4</sup> 15 U.S.C. §§ 1601 note, 1692-1692p (2010).



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**Type and Value of Outcome Measure:**

- Taxpayer Burden – Potential; eight cases (see page 5).

**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 and two potential FDCPA violations by PCA employees that affected taxpayer burden.

- Eight potential violations involved direct contact with a taxpayer who had an authorized representative. Six employees received a verbal warning, and two employees received a written warning.

**Type and Value of Outcome Measure:**

- Taxpayer Privacy and Security – Potential; three cases (see page 5).

**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 three potential FDCPA violations by PCA employees that affected taxpayer privacy and security.

- Two potential violations occurred when an employee disclosed to a third party that the taxpayer owed a debt. One employee received a verbal warning, and the other received a written warning.
- One potential violation occurred when a PCA employee disclosed the name of the PCA employer to a third party. The employee received a verbal warning.



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## **Appendix V**

### *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<sup>1</sup> requires the IRS to comply with certain provisions of the FDCPA.<sup>2</sup> 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.

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<sup>1</sup> Pub. L. No. 105-206, 112 Stat. 685.

<sup>2</sup> 15 U.S.C. §§ 1601 note, 1692-1692p (2010).



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**Appendix VI**

*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 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. Section (§) 6304 because the provision is intended to be applied in a general manner when evaluating the alleged employee misconduct. Conduct which is intended to harass a taxpayer, or conduct which 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 (December 2016).



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## **Appendix VII**

### *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:<sup>1</sup>

- **1692b: Acquisition of location information**
  - Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—
    - (1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer.
    - (2) not state that such consumer owes any debt.
- **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—
    - (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.
- **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:
    - (1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

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<sup>1</sup> The provisions in this appendix only represent sections of 15 U.S.C. § 1692-1692p (2010) violated by the four PCAs in FY17.





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- (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.



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**Appendix VIII**

*Management's Response to the Draft Report*



HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

September 10, 2018

MEMORANDUM FOR MICHAEL E. McKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

Katherine M. Coffman  
IRS Human Capital Officer

SUBJECT:

Draft Audit Report – The Internal Revenue Service and Private  
Debt Collectors Took Some Action for 16 Violations of Fair Tax  
Collection Practices During Fiscal Year 2017  
(Audit # 201830026)

Thank you for the opportunity to review the Draft Audit Report – The Internal Revenue Service and Private Debt Collectors Took Some Action for 16 Violations for Fair Tax Collection Practices During Fiscal Year 2017 (Audit #201830026) (Report). We take seriously our responsibility to ensure taxpayers receive fair and balanced treatment under the law in the collection of taxes by IRS and Private Collection Agencies' (PCAs) employees.

To promote effective and consistent discipline in cases where we find there is a violation of the Fair Tax Collection Practices Act, we advise our management to utilize the Manager's Guide to Penalty Determinations (Guide) when they are considering administrative action against IRS employees. In addition, we conduct monthly reviews of closed cases. Going forward, we will implement a process to ensure management followed the Guide when making recommendations in closed Fair Tax Collection Practices (FTCP) cases where violations are identified.

The report highlights 16 potential violations, 14 of which were by employees of the PCAs. It is important to note that all the 14 potential violations identified were self-reported by the PCAs, who began corrective actions prior to the start of the subject audit. This demonstrates that the PCAs take their obligations seriously and that their compliance programs are working as intended.

We also note that the PCAs continue to disagree with the findings on 11 of the 14 potential violations and have submitted documentation in support of their positions. Nonetheless, we acknowledge that eight of the 14 potential violations were related to Power of Attorney (POA) issues. We will take this as an opportunity to review our PCA Policies and Procedures Guide (PPG) and make revisions as needed to clarify POA



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requirements in a continued effort to reduce the likelihood of these types of violations in the future. In addition, we will require PCAs to submit monthly Corrective Action Reports (CAR) to ensure that potential violations are reported and administrative actions are taken in accordance with the PCA Penalty guidelines.

We appreciate your commendation of the two PCAs who currently utilize a speech analysis review software tool to identify potential violations. However, it should be noted that this is only one of the many types of analytical tools used by the PCAs to identify such potential violations. All PCAs use some type of review analysis protocol to ensure compliance with Fair Debt Collection Practices Act (FDCPA).

Attached is a detailed response outlining the respective corrective actions the Human Capital Office and Small Business/Self-Employed Division will take to address your recommendations. If you have any questions, please contact me, or a member of your staff may contact Julia Caldwell, Director, Workforce Relations Division, at 202-317-6289 or [Julia.W.Caldwell@irs.gov](mailto:Julia.W.Caldwell@irs.gov).

Attachment



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Attachment

**RECOMMENDATION 1:**

The Human Capital Officer should require the LR function 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.

**CORRECTIVE ACTION:**

We agree with this recommendation and will advise our Field Labor Relations Section Chiefs to identify and review all closed FTCP cases each month.

**IMPLEMENTATION DATE:**

October 15, 2018

**RESPONSIBLE OFFICIAL(S):**

Director, Workforce Relations Division (WRD), IRS Human Capital Officer (HCO)

**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 2:**

The Commissioner, Small Business/Self-Employed Division should ensure that the Performance Management Report is reviewed to identify potential FDCPA and other violations of the law, as well as require the PCAs to submit their corrective action reports and penalty guides. The corrective action reports will identify willful FDCPA and FTCP violations, and the administrative action taken for each willful violation, per the individual PCA penalty guide.

**CORRECTIVE ACTION:**

We agree with this recommendation. We will update our procedures in the Private Debt Collections Operations Guide (POG) to state that the PDC Operations Team will perform a monthly review of the PCA's Performance Management Report to identify potential FDCPA and other violations of law. In addition, we will update the PPG to require the PCA's to submit a monthly CAR and their penalty guides. The CAR will identify willful FDCPA violations and the administrative action taken for each willful violation, per the individual PCA penalty guide.

**IMPLEMENTATION DATE:**

June 15, 2019

**RESPONSIBLE OFFICIAL(S):**

Director, Headquarters Collection, Small Business/Self-Employed Division (SB/SE)



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**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 3:**

The Commissioner, Small Business/Self-Employed Division should ensure the PCAs administrative actions are commensurate with the willful violation, per the individual PCA penalty guide.

**CORRECTIVE ACTION:**

We agree with this recommendation. We will develop review criteria and procedures to establish consistency and ensure PCAs' administrative actions are commensurate with the willful violation.

**IMPLEMENTATION DATE:**

June 15, 2019

**RESPONSIBLE OFFICIAL(S):**

Director, Headquarters Collection, Small Business/Self-Employed Division (SB/SE)

**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 4:**

The Commissioner, Small Business/Self-Employed Division should revise the PCA Policy and Procedures Guide to include the language from section 4.4 of the task order, and ensure PCAs remove employees from working IRS accounts for any intentional violations.

**CORRECTIVE ACTION:**

We agree with this recommendation. We will revise the PPG to include criteria for removal or termination of a PCA employee for committing a validated statutory violation as is detailed in section 4.4.10 of the task order.

**IMPLEMENTATION DATE:**

January 15, 2019

**RESPONSIBLE OFFICIAL(S):**

Director, Headquarters Collection, Small Business/Self-Employed Division (SB/SE)

**CORRECTIVE ACTION MONITORING PLAN:**

IRS will monitor this corrective action as part of our internal management system of controls.