



*Fiscal Year 2019 Statutory Review of
Potential Fair Tax Collection Practices
Violations*

September 26, 2019

Reference Number: 2019-30-073

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

FISCAL YEAR 2019 STATUTORY REVIEW OF POTENTIAL FAIR TAX COLLECTION PRACTICES VIOLATIONS

Highlights

**Final Report Issued on
September 26, 2019**

Highlights of Reference Number: 2019-30-073
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 private collection agency 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 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 2018. 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 violations.

WHAT TIGTA FOUND

TIGTA identified seven collection cases closed on the Automated Labor and Employee Relations Tracking System (ALERTS) database in Fiscal Year 2018 that were incorrectly coded as non-FTCP violations by labor relations specialists. Each of the seven cases was miscoded due to user error and should have

been coded as having a potential FTCP violation.

In addition, TIGTA identified 69 employee misconduct cases that were not resolved within the IRS's stated goal of 180 days. This was an increase of 64 cases (1,280 percent) compared to the five cases TIGTA identified as not closed timely in Fiscal Year 2017. In none of the 69 cases was there any mention of extenuating circumstances that would have explained the delays.

Separate from the review of IRS FTCP violations, TIGTA identified one potential FTCP violation and 235 potential FDCPA violations by private collection agency employees. A computer programming error caused 226 of the potential FDCPA violations.

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 IRS Human Capital Officer: 1) revise Chapter 5 of the ALERTS manual to provide more guidance to labor relations specialists on examples and types of employee misconduct cases that may fall under FTCP Issue Codes 144 (*Taxpayer Harassment in a Tax Collection Matter*) and 145 (*Taxpayer Abuse in a Tax Collection Matter*); 2) review the seven miscoded cases to ensure that a proper investigation of the FTCP violations are conducted and the correct issue codes are applied; and 3) revise and include a new section in Internal Revenue Manual 6.751.1 to include examples of appropriate extenuating circumstances employees should document when cases will not be closed within the IRS's goal of 180 days.

In response to the report, IRS officials agreed with two recommendations and disagreed with one recommendation. The IRS plans to take corrective action on the two recommendations and plans to take an alternative corrective action for the recommendation with which it disagreed.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 26, 2019

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2019 Statutory Review of Potential
Fair Tax Collection Practices Violations (Audit # 201930004)

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 or potential violations of the Fair Debt Collection Practices Act by private collection agency employees, including any related administrative or civil actions resulting from those violations, for collection cases closed during Fiscal Year 2018. This audit is included in our Fiscal Year 2019 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

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

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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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
TIGTA	Treasury Inspector General for Tax Administration



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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. 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

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).



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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 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).

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 debt collectors: CBE Group in Waterloo, Iowa; Conserve in Fairport, New York; Pioneer in Horseheads, New York; and information requested from all four private collectors, during the period February through July 2019. 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.

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.

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.



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Results of Review

Fair Tax Collection Practices Violations Were Generally Accurately Reported and Investigated, but Some Were Miscoded

TIGTA identified and reviewed 15 instances of alleged FTCP violations from the ALERTS database that the IRS investigated and made determinations on in Fiscal Year (FY)¹⁰ 2018 as well as two other FTCP alleged violations on which the IRS did not complete investigations because the IRS employees in question had left the IRS's employment. The 17 alleged violations involved 15 employee cases. The IRS concluded that none of the 15 alleged FTCP violations could be substantiated.

However, in one case, a revenue officer appeared to have intentionally deprived the taxpayer of several legal and procedural protections. First, the revenue officer rejected the taxpayer's installment agreement request without giving it adequate consideration and failed to input the request onto the IRS's data system, the Integrated Data Retrieval System,¹¹ as is required by IRS procedure.¹² Second, the revenue officer failed to forward the taxpayer's installment agreement to an independent administrative reviewer for review of the decision to reject the installment agreement as is required by law.¹³ Lastly, the revenue officer failed to issue an installment agreement denial letter to provide the taxpayer with his or her appeal rights as is required by law.¹⁴ The revenue officer's actions could reasonably be deemed to have been intentional and not the product of an innocent mistake.¹⁵ The revenue officer had no prior disciplinary actions and thus received written counseling.

We also identified and reviewed seven collection cases closed on the ALERTS database in FY 2018 that were incorrectly coded as non-FTCP violations by labor relations specialists. These cases each had one of the following non-FTCP violation issue codes:

- Issue Code 058 (Unprofessional Conduct).
- Issue Code 013 (Position/Authority Misuse – Not I.R.C. § 1203).

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.

¹¹ IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.

¹² Internal Revenue Manual (IRM) 5.14.1.3 (July 16, 2018).

¹³ I.R.C. § 7122(e)(1).

¹⁴ I.R.C. § 7122(e)(2).

¹⁵ I.R.C. § 7433 allows taxpayers a cause of action for reckless, negligent, or intentional violations of Title 26.



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- Issue Code 115 (I.R. C. § 1203(b)(6)): I.R.C./IRM/REG Violation/Retaliation).
[IRM is the Internal Revenue Manual]

The servicing labor relations specialist is responsible for adding the correct violation codes into the ALERTS. The specialist can add the code at the time he or she is entering the case or at any time while the case is in process if new issues arise or are discovered. The case can also be updated after it is closed to add an additional issue code.

Chapter 5 of the ALERTS manual provides a list of issue codes with issue code descriptions that labor relations specialists choose from for each misconduct case. The incorrect coding for the seven cases we identified may be caused by the lack of specific examples for the “mistreatment of taxpayers” issue in the FTCP issue code descriptions. For example, the non-FTCP issue code description for Issue Code 158, used for some of the seven cases we reviewed, states “On-duty behavior that is rude, discourteous, or unprofessional. This does not include violations of the FTCP Act (mistreatment of taxpayers during a collection activity – see Issue Codes 141 to 147).” However, the issue code descriptions for FTCP Issue Code 144 (6304: Taxpayer Harassment in a Tax Collection Matter) and FTCP Issue Code 145 (6304: Taxpayer Abuse in a Tax Collection Matter) fail to include guidance on specific types or examples of harassment or abuse of taxpayers during a collection activity.

IRS management acknowledged that each of the seven cases was miscoded due to user error and should have been coded as having a potential FTCP violation. They also stated that any determination that a violation actually occurred would be the responsibility of the employee’s functional management chain based on the entire record and evidence available. Since these seven cases were incorrectly coded, they should be reviewed to determine whether an FTCP violation occurred, and the appropriate codes should be added to the ALERTS to reflect the agency’s determination.

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. It is also imperative that Labor Relations and Employee Relations Field Operations staff, Workforce Relations Division, provide technical and procedural advice and guidance to management in all disciplinary matters, including TIGTA reports of investigation; ensure that Labor Relations case documentation is complete; and make timely updates to management information systems, such as the ALERTS.¹⁶

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

Separate from our review of FTCP violations and potentially miscoded cases, we identified 69 employee misconduct cases that were not resolved within the IRS’s stated goal of 180 days in

¹⁶ IRM 6.751.1.8(2)a (Nov. 4, 2008) and IRM 6.751.1.8(2)3 (Nov. 4 2008).



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FY 2018.¹⁷ This was an increase of 64 cases (1,280 percent) compared to the five cases we identified as not closed timely in FY 2017.

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.¹⁸ The 69 cases were closed between seven and 491 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.¹⁹ For each of the 69 cases, there was no mention of any extenuating circumstances.

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 69 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*

¹⁷ We identified this issue while validating the FY 2018 ALERTS data used in this audit.

¹⁸ IRM 6.751.1-4 (Nov. 4, 2008) and IRM 6.751.1-9 (Nov. 4, 2008); The Human Capital Office, 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.

¹⁹ IRM 6.751.1.8(2)d (Nov. 4, 2008).



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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.²⁰

Potential FTCP violations from TIGTA 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 the TIGTA Office of Investigations before they are added to the ALERTS.²¹ During FY 2018, the TIGTA Office of Investigations referred eight investigations to the IRS. Six of the eight investigations were entered into the ALERTS, reviewed by the IRS to determine if there were violations of the FTCP, and closed in FY 2018.²² The other two cases were entered into the ALERTS database in FY 2018 but were not closed on the ALERTS until FY 2019. These cases will be reviewed during FY 2020's review of FTCP violations for FY 2019 to make sure that the IRS reviewed the cases and the proper FTCP determinations were made.

Recommendations

The IRS Human Capital Officer should:

Recommendation 1: Revise Chapter 5 of the ALERTS manual to provide more guidance to labor relations specialists on specific examples and types of employee misconduct cases that may fall under FTCP Issue Codes 144 to 145.

Management's Response: The IRS agreed with this recommendation. The IRS will revise the ALERTS manual to provide clarifying information to field Labor Relations and Employee Relations staff concerning Issue Codes 144 and 145. Additionally, a separate guidance document will be issued to the field Labor Relations and Employee Relations staff to ensure a more thorough knowledge and awareness of the FTCP provisions and related requirements.

Recommendation 2: Review the seven miscoded cases to ensure that a proper investigation of the FTCP violation is conducted and the correct issue code is applied. In addition, work with the TIGTA Office of Investigations to make sure investigation cases are properly coded.

Management's Response: The IRS agreed with this recommendation. The IRS will ensure that each case is reviewed to determine whether management would have sustained an FTCP violation had it been considered as such. The appropriate issue code

²⁰ Government Accountability Office, GAO-14-704G, *Standards for Internal Control in the Federal Government* (Sept. 2014).

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



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will be added to the case and designated as Substantiated (Y) or Not Substantiated (N) based on management's findings. The IRS will also reach out to TIGTA's Office of Investigations to share the audit results concerning the two cases received from it without the applicable FTCP violation code. The IRS will ask it to ensure that its investigative staff are reminded of the importance of accurately identifying violation codes when forwarding Reports of Investigation.

Recommendation 3: Revise and include a new section in IRM 6.751.1 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.

Management's Response: The IRS disagreed with this recommendation. Although IRS management did not agree to include examples of extenuating circumstances in the IRM at this time, they will include guidance and reminders in the ALERTS manual as discussed in Recommendation 1.

Office of Audit Comment: TIGTA considered the planned alternative corrective action and concluded that it is not directly responsive to our recommendation. The IRM sets forth the policies, procedures, instructions, guidelines, and delegations of authority that control the operation and administration of the IRS. Extenuating circumstances are discussed numerous times in IRM 6.751.1, so adding a list would improve guidance to employees. Finally, providing a list of extenuating circumstances in the IRM would show the IRS's willingness to improve and increase accountability to external stakeholders when cases do not meet the goal of being closed within 180 days.

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 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. However, in FY 2018 the PCAs were not required to provide this information to the IRS.



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We reviewed monthly *Performance Management Reports*, corrective action reports, and TIGTA's Office of Investigations' complaint logs and identified the following nine potential FDCPA violations and one potential FTCP violation by PCA employees:²³

- Four potential FDCPA violations occurred when employees failed to notify the taxpayer that they were attempting to collect a debt.²⁴ One case resulted in retraining, two cases resulted in verbal warnings, and one case resulted in a written warning to the employees.
- Two potential FDCPA violations involved employees misrepresenting themselves by saying they worked for the IRS.²⁵ One employee received verbal coaching and the other received retraining.
- Two potential FDCPA violations involved harassment of taxpayers by allowing the telephone to ring too many times.²⁶ The employees received retraining.
- One potential FDCPA violation occurred when a PCA employee disclosed the name of the PCA employer to a third party.²⁷ The employee received verbal coaching.
- One potential FTCP violation involved direct contact with a taxpayer who had an authorized representative.²⁸ The employee received retraining.

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.

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. Last year, we identified 14 potential violations of the FDCPA or FTCP during our review of the relevant documents. We recommended that the IRS

²³ During FY 2018, the IRS employed approximately 9,300 collection employees, while the PCAs had 191 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. § 6304(b)(4), 15 U.S.C. § 1692e(1).

²⁶ 15 U.S.C. § 1692d(5).

²⁷ 15 U.S.C. § 1692b(1).

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



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review the *Performance Management Report* 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 to the IRS.²⁹ In response, the IRS updated procedures in the *Private Debt Collections Operations Guide* to state that the Private Debt Collection team will perform a monthly review of the PCAs' *Performance Management Reports* to identify potential FDCPA and other violations of law. Additionally, the IRS updated the 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. Based on the recent procedural changes made by the IRS in FY 2019, we are not making any recommendations at this time. However, we will analyze the impact of the IRS's corrective actions during our FY 2020 review.

Computer Programming Errors Led to Potential Violations of the Fair Debt Collection Practices Act

In December 2018, TIGTA reported on computer programming errors that led to 226 potential violations of the FDCPA.³⁰ 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.³¹ 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.³² 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.³³

The CBE Group's telephone systems are designed to prevent telephone calls during times that are prohibited by the FDCPA. Computers are programmed so that outbound telephones are dialed only between the standard hours of 8:00 a.m. and 9:00 p.m. local time, with some variances for State laws, such as shorter hours on Sunday. Computer programming also controls whether to leave voice messages on answering machines, depending on State laws. This programming is hard coded, and there is no screen or profile to show telephone assistants the local calling hours.

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* (Sept. 2018).

³⁰ TIGTA, Ref. No. 2019-30-018, *Fiscal Year 2019 Biannual Independent Assessment of Private Collection Agency Performance* (Dec. 2018).

³¹ I.R.C. § 6306(b)(2).

³² I.R.C. § 6306(g).

³³ I.R.C. §§ 7433A(b)(1), § 6306(f).



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In response to its interpretation of a court decision, the CBE Group made a programming change intended to prohibit voice messages for telephone calls made to Alabama, Florida, and Georgia. However, the change overrode existing programming that restricted calls to the standard hours. As a result, over a four-day period in October 2017, 226 telephone calls were made between the local hours of 9:00 p.m. and 10:00 p.m. before the error was discovered and corrected. No contact was made during any of the calls, as all of them went unanswered or the CBE Group's debt collector ended the call when it went to the taxpayer's voicemail or answering machine. However, these calls were potential violations of the FDCPA because they occurred outside the local hours of 8:00 a.m. and 9:00 p.m.

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.³⁴ There were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation in FY 2018.

³⁴ I.R.C. § 7433.



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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 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 2018.¹ To accomplish this objective, we:

- I. Identified the number of reported FTCP violations resulting in administrative actions for cases closed during FY 2018.
 - A. Obtained data for all cases posting to the ALERTS during FY 2018 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.
 - B. Performed queries of the ALERTS for FTCP issue codes to identify cases that were closed during FY 2018 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.
 - C. Performed queries of the ALERTS to identify potentially miscoded FTCP violation cases that were closed during FY 2018 for which the affected party was a taxpayer or taxpayer representative and the case involved an 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.²
 - E. Performed queries of the ALERTS for the FTCP and potentially miscoded FTCP codes 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

¹ I.R.C. § 6304. 15 U.S.C. §§ 1601 note, 1692–1692p. 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.

² 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 2018. 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 20 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 the TIGTA 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 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 *Performance Management Reports*.



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Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Phyllis Heald London, Director
Richard Viscusi, Audit Manager
Jon-Michael Socaris, Lead Auditor
Gwendolyn Green, Senior Auditor



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Appendix III

Report Distribution List

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



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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:

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

Methodology Used to Measure the Reported Benefit:

We identified and reviewed seven collection cases closed on the ALERTS database in FY¹ 2018 that were incorrectly coded as non-FTCP violations by labor relations specialists.

Type and Value of Outcome Measure:

- Reliability of Information – Potential; 69 cases (see page 3).

Methodology Used to Measure the Reported Benefit:

We identified 69 employee misconduct cases that were not resolved within the IRS's stated goal of 180 days in FY 2018. The Internal Revenue Manual 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 69 cases were closed between seven and 491 days late.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Actual; eight cases (page 7).

Methodology Used to Measure the Reported Benefit:

We reviewed PCA monthly *Performance Management Reports*, corrective action reports, communications with PCAs, and TIGTA Office of Investigations complaint logs and identified

¹ 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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eight potential FDCPA violations by PCA employees that affected taxpayer rights and entitlements.²

- Four potential FDCPA violations occurred when employees failed to notify the taxpayer that they were attempting to collect a debt.³ One case resulted in retraining, two cases resulted in verbal warnings, and one case resulted in a written warning to the employees.
- Two potential FDCPA violations involved employees misrepresenting themselves by saying they worked for the IRS.⁴ One employee received verbal coaching and the other received retraining.
- Two potential FDCPA violations involved harassment of taxpayers by allowing the telephone to ring too many times.⁵ The employees received retraining.

Type and Value of Outcome Measure:

- Taxpayer Burden – Actual; one case (see page 7).

Methodology Used to Measure the Reported Benefit:

We reviewed PCA monthly *Performance Management Reports*, corrective action reports, and TIGTA Office of Investigations complaint logs and identified one potential FTCP violation by a PCA employee that affected taxpayer burden. The potential FTCP violation involved direct contact with a taxpayer who had an authorized representative.⁶ The employee received retraining.

Type and Value of Outcome Measure:

- Taxpayer Privacy and Security – Actual; one case (see page 7).

Methodology Used to Measure the Reported Benefit:

We reviewed PCA monthly *Performance Management Reports*, corrective action reports, and TIGTA Office of Investigations complaint logs and identified one potential FDCPA violation by a PCA employee that affected taxpayer privacy and security. The potential FDCPA violation occurred when a PCA employee disclosed the name of the PCA employer to a third party.⁷ The employee received verbal coaching.

² 15 U.S.C. §§ 1601 note, 1692–1692p.

³ 15 U.S.C. § 1692e(11).

⁴ I.R.C. § 6304(b)(4), 15 U.S.C. § 1692e(1).

⁵ 15 U.S.C. § 1692d(5).

⁶ I.R.C. § 6304(a)(2), 15 U.S.C. § 1692c(a)(2).

⁷ 15 U.S.C. § 1692b(1).



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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 requires the IRS to comply with certain provisions of the FDCPA.¹ 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.

¹ Pub. L. No. 105-206, 112 Stat. 685. 15 U.S.C. §§ 1601 note, 1692–1692p.



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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 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 (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:¹

- **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.
- **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) 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) 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.
- **1692d: Harassment or abuse**
 - A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.

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



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Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.
- **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.
 - (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

SEP 09 2019

MEMORANDUM FOR Michael E. McKenney
Deputy Assistant Inspector General for Audit

FROM: Robin D. Bailey Jr. 
IRS Human Capital Officer

SUBJECT: Draft Audit Report – *Fiscal Year 2019 Statutory Review of
Potential Fair Tax Collection Practices Violations* (Audit
#201930004)

Thank you for the opportunity to review the draft report – *Fiscal Year 2019 Statutory Review of Potential Fair Tax Collection Practices (FTCP) Violations* (Audit #201930004). We are committed to the fair treatment of taxpayers by the IRS and private collection agency employees while attempting to collect taxes. We are further committed to ensuring that alleged violations of the FTCP are properly coded and documented on our Automated Labor and Employee Relations Tracking System (ALERTS).

We agree with Recommendations 1 and 2 of the draft report. However, we do not agree with Recommendation 3, as this action is not the most effective method to address timely resolution of misconduct allegations. We will provide additional training and include how to properly document case delays in the guidance document to field labor relations employees. Accordingly, these actions will ensure that our field Labor Relations Specialists properly document all cases, and especially those which exceed our internal target of 180 days to resolve. We concur with the stated Outcome Measures as reflected in the draft report.

Attached is a detailed response outlining the corrective actions that the Human Capital Office will take to address your recommendations. If you have any questions, please contact me at 202-317-7600, or a member of your staff may contact Julia Caldwell, Director, Workforce Relations Division at 202-317-6289.

Attachment



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Attachment

RECOMMENDATION 1:

Revise Chapter 5 of the ALERTS Manual to provide more guidance to Labor Relations Specialists on specific examples and types of employee misconduct cases that may fall under FTCP Issue Codes 144 to 145.

CORRECTIVE ACTIONS:

We agree with this recommendation and will revise the ALERTS User Guide to provide clarifying information to field Labor and Employee Relations staff concerning Issue Codes 144 and 145. Additionally, a separate guidance document will be issued to the field Labor and Employee Relations staff to ensure a more thorough knowledge and awareness of the Fair Tax Collection Practices statute and related requirements.

IMPLEMENTATION DATE:

April 15, 2020

RESPONSIBLE OFFICIAL(S):

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

CORRECTIVE ACTION(S) 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*.

RECOMMENDATION 2:

Review the seven miscoded cases to ensure a proper investigation of the FTCP violation is conducted and the correct issue code is applied. In addition, work with the TIGTA Office of Investigations to make sure investigation cases are properly coded.

CORRECTIVE ACTIONS:

We agree with this recommendation and will ensure each case is reviewed to determine whether management would have sustained an FTCP violation had it been considered as such. The appropriate Issue Code will be added to the case and designated as Substantiated (Y) or Not Substantiated (N) based on management's findings.

We will also reach out to TIGTA's Office of Investigations to share the audit results concerning the two cases received from them without the applicable FTCP violation code. We will ask them to ensure that their Investigative staff are reminded of the importance of accurately identifying violation codes when forwarding Reports of Investigation.



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IMPLEMENTATION DATE:

January 15, 2020

RESPONSIBLE OFFICIAL(S):

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

CORRECTIVE ACTION(S) MONITORING PLAN:

We will enter accepted Corrective Actions into 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.*

RECOMMENDATION 3:

Revise and include a new section in IRM 6.751.1 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.

CORRECTIVE ACTIONS:

We do not agree with Recommendation 3. The agency is aware that in recent years the number of cases exceeding our internal target of 180 days to process has risen for a variety of reasons, most notably being a lack of staffing resources to handle case inventory. The documentation of case files (electronic or paper) does not directly impact the timely processing of cases and we believe there are more effective ways to address this issue. Within ALERTS we already have Event Codes, such as "Reason for Delay" (RSNDELY) which allow for free-flowing text so Labor Relations Specialists can properly document all case activity, including those matters contributing to delays in resolution.

Although we do not agree to include examples of extenuating circumstances in the IRM at this time, we will include guidance and reminders in the above referenced guidance document under Recommendation 1. There can be numerous reasons for delays in case processing and citing individual examples in the IRM isn't the most effective way to highlight the importance of documenting the ALERTS record. This guidance will remind Labor Relations Specialists to utilize existing Event Codes within ALERTS to properly document all cases, but especially those which exceed 180 days to resolve.

IMPLEMENTATION DATE:

April 15, 2020

RESPONSIBLE OFFICIAL(S):

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

CORRECTIVE ACTION(S) MONITORING PLAN:

We will enter accepted Corrective Actions into JAMES, monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with



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Form 13872 Planned Corrective Action (PCA) Status Update for
TIGTA/GAO/MW/SD/TAS/REM.