

# TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



## **Fiscal Year 2021 Statutory Review of Potential Fair Tax Collection Practices Violations**

September 22, 2021

Report Number: 2021-30-068

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 .

# HIGHLIGHTS: Fiscal Year 2021 Statutory Review of Potential Fair Tax Collection Practices Violations

Final Audit Report issued on September 22, 2021

Report Number 2021-30-068

## Why TIGTA Did This Audit

The objective of this review was to obtain information on any violations of the Fair Tax Collection Practices (FTCP) (Internal Revenue Code (I.R.C.) § 6304) by IRS employees and on any reported or potential violations of the Fair Debt Collection Practices Act (FDCPA) (15 U.S. Code §§ 1692–1692p) by private collection agency (PCA) employees, including any related administrative or civil actions resulting from those violations for collection cases closed during Fiscal Year 2020.

This information will be used to comply with the IRS Restructuring and Reform Act of 1998 requirement in I.R.C. § 7803(d)(1)(G) that TIGTA include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to FTCP.

## Impact on Taxpayers

The abuse and harassment of taxpayers by IRS and PCA employees while attempting to collect taxes harm 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.

## What TIGTA Found

TIGTA's review of 20 employee misconduct cases coded as potential FTCP violations and closed on the Automated Labor and Employee Relations Tracking System database in Fiscal Year 2020 identified an unsubstantiated FTCP violation involving a revenue officer who directly contacted a taxpayer without the required consent of the taxpayer's power of attorney. Upon further review, IRS Office of Chief Counsel agreed that the taxpayer's rights were violated and the violation should have been substantiated.

TIGTA's review of three of the 20 FTCP-coded violations that were substantiated found that the administrative actions to penalize employees were lower than the recommended levels. In one case, TIGTA disagreed with the IRS's explanation for the lower penalty given. The IRS stated that it was not able to take disciplinary action against the employee because oral counseling, a nondisciplinary action, had already been given. While managers are generally instructed to wait until after completion of the investigation to address disciplinary action, there is no written policy. This practice allowed the employee to avoid formal punishment for violating I.R.C. § 6304.

TIGTA's review of 151 Small Business/Self-Employed Division employee misconduct cases closed on the Automated Labor and Employee Relations Tracking System database in Fiscal Year 2020 and not coded as FTCP potential violations identified two collection cases that should have been coded as FTCP violations by labor relations specialists.

Separate from the review of IRS FTCP violations, TIGTA identified 39 potential FDCPA violations and 10 potential FTCP violations by PCA employees. The IRS revised the PCA corrective action report in December 2020 to include uniform descriptions of potential violations in order to assist the Private Debt Collection Office in analyzing the reports. The IRS plans to inform the PCAs of the trend analysis emanating from the individual potential corrective action reports, discussing its feedback on the potential violations with all PCAs during regular biweekly calls.

## What TIGTA Recommended

TIGTA recommended that the IRS: 1) update the Internal Revenue Manual to establish reasonable time frames for Collection function employees to follow in deciding when to bypass a taxpayer's power of attorney, 2) review the miscoded cases to ensure that a proper analysis of the FTCP violation is conducted and the correct issue code is applied, and 3) create a written policy concerning the administration of additional disciplinary action when warranted by the results of the case investigation.

The IRS agreed with the second recommendation but disagreed with the first and third recommendations.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

## U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

September 22, 2021

**MEMORANDUM FOR:** COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in blue ink that reads "Michael E. McKenney".

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

**SUBJECT:** Final Audit Report – Fiscal Year 2021 Statutory Review of Potential Fair Tax Collection Practices Violations (Audit # 202130008)

This report presents the results of our review to obtain information on any reported violations of the Fair Tax Collection Practices (FTCP) by Internal Revenue Service employees and any reported potential violations of the Fair Debt Collection Practices Act by private collection agency employees including any related administrative or civil actions resulting from violations for collection cases closed in Fiscal Year 2020. In addition, we reviewed potential violations of the FTCP and the Fair Debt Collection Practices Act by employees of private collection agencies. This review is part of our Fiscal Year 2021 Annual Audit Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights*.

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

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).

## Table of Contents

<b><u>Background</u></b> .....	Page 1
<b><u>Results of Review</u></b> .....	Page 2
<u>Fair Tax Collection Practices Violations Were Generally     Accurately Reported, but Some Were Miscoded</u> .....	Page 2
<u>Recommendation 1:</u> .....	Page 5
<u>Recommendation 2:</u> .....	Page 6
<u>Administrative Actions Did Not Always Follow Guidelines</u> .....	Page 6
<u>Recommendation 3:</u> .....	Page 11
<u>Some Private Collection Agency Employees Potentially     Violated the Law When Contacting Taxpayers</u> .....	Page 11
<u>No Fair Tax Collection Practices Civil Actions Resulted in     Monetary Settlements to Taxpayers</u> .....	Page 13
<b>Appendices</b>	
<u>Appendix I – Detailed Objective, Scope, and Methodology</u> .....	Page 14
<u>Appendix II – Outcome Measures</u> .....	Page 16
<u>Appendix III – Fair Tax Collection Practices Provisions</u> .....	Page 18
<u>Appendix IV – Fair Tax Collection Practices Violation Issue Codes</u> .....	Page 19
<u>Appendix V – Selection of Non–Fair Tax Collection Practices     Violation Issue Codes</u> .....	Page 20
<u>Appendix VI – Fair Debt Collection Practices Act Provisions</u> .....	Page 21
<u>Appendix VII – Management’s Response to the Draft Report</u> .....	Page 22
<u>Appendix VIII – Abbreviations</u> .....	Page 26

## 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 § 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 the 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 Internal Revenue Code (I.R.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 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.<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 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.

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.<sup>8</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

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<sup>1</sup> 15 U.S.C. §§ 1601 note, 1692–1692p.

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

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

<sup>4</sup> Pub. L. No. 114-94, 129 Stat. 1312 (2015).

<sup>5</sup> I.R.C. § 6306(b)(2).

<sup>6</sup> 15 U.S.C. § 1692c(a)(1); I.R.C. § 6304(a).

<sup>7</sup> I.R.C. §§ 7433A(b)(1).

<sup>8</sup> Pub. L. No. 105-206, 112 Stat. 685, 702-703 (1998); I.R.C. § 6304.

**Fiscal Year 2021 Statutory Review of Potential  
Fair Tax Collection Practices Violations**

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.<sup>9</sup> Information from this report will be used to meet the requirements of IRS Restructuring and Reform Act of 1998 § 1102(d)(1)(G).

## Results of Review

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

TIGTA reviewed all 20 employee misconduct cases (containing 21 issues) coded as FTCP violations (three substantiated issues and 18 unsubstantiated issues) and 151 Small Business/Self-Employed Division employee misconduct cases (containing 167 issues) coded as non-FTCP violations that were closed on the ALERTS database in Fiscal Year (FY) 2020.<sup>10</sup> There are a total of seven issue codes the IRS uses for FTCP employee violations, numbered from 141 to 147.<sup>11</sup> For the non-FTCP cases, we identified the cases by using 11 issue codes with descriptions that could potentially relate to violations of taxpayers’ FTCP rights and four job series codes of employees who could potentially work collection cases and then limited the population to cases related to employees in the Small Business/Self-Employed Division.<sup>12</sup> Figures 1 and 2 show the number of FTCP and non-FTCP issues we reviewed by issue code and description.

**Figure 1: Number of FTCP Violation Issues by Issue Code**

Issue Code	Issue Description	Number of Issues
142	I.R.C. § 6304: Directly Contacting a Represented Taxpayer Without the Representative’s Consent	6
143	I.R.C. § 6304: Contacting Taxpayer at Their Place of Employment	1
144	I.R.C. § 6304: Taxpayer Harassment in a Tax Collection Matter	8
145	I.R.C. § 6304: Taxpayer Abuse in a Tax Collection Matter	6
	<b>Total</b>	<b>21<sup>13</sup></b>

*Source: TIGTA analysis of ALERTS data for cases closed in FY 2020 provided by the IRS.*

<sup>9</sup> A letter of admonishment is a disciplinary action that involves the manager holding a discussion with the employee to advise the employee that they have engaged in misconduct and that the misconduct should not be repeated. The manager confirms the discussion with a written summary in a letter.

<sup>10</sup> A case contains one or more issues.

<sup>11</sup> See Appendix IV for more details on FTCP issue codes.

<sup>12</sup> See Appendix V for more details on issue codes we selected.

<sup>13</sup> The total number of issues does not reconcile with the number of cases we reviewed because it is possible for a case to include more than one issue code.

**Fiscal Year 2021 Statutory Review of Potential  
Fair Tax Collection Practices Violations**

**Figure 2: Number of Non-FTCP Issues by Issue Code**

Issue Code	Issue Description	Number of Issues
058	Unprofessional Conduct	103
020	Fighting, Assault, or Threats – Not § 1203 of the IRS Restructuring and Reform Act of 1998	25
013	Misuse of Public Office or Authority – Not § 1203 of the IRS Restructuring and Reform Act of 1998	16
115	§ 1203(b)(6): Violation of the I.R.C., Internal Revenue Manual (IRM), or Treasury Regulations for the Purpose of Retaliation <sup>14</sup>	12
953	Personnel/Labor Relations Issue	9
119	§ 1203(b)(10): Threat of Audit for the Purpose of Extracting Personal Gain or Benefit <sup>15</sup>	1
954	Taxpayer Personal/Business Tax Issues	1
<b>Total</b>		<b>167<sup>16</sup></b>

*Source: TIGTA analysis of ALERTS data for cases closed in FY 2020 provided by the IRS.*

Our review of the 21 FTCP violations identified that one of the 18 unsubstantiated violations should have been substantiated. In addition, our review of the 167 issues coded as non-FTCP violations identified two cases that should have been coded as FTCP violations.

**A revenue officer improperly bypassed the taxpayer’s authorized representative, but the violation was not substantiated**

Our review of the 21 issues coded as FTCP violations in the ALERTS database in FY 2020 identified one case in which we disagree with the IRS’s determination that the FTCP violation was not substantiated. In this case, a taxpayer’s enrolled agent reported that a revenue officer violated her client’s right to representation by contacting the taxpayer and discussing their tax issues in detail with him even though the revenue officer was aware that the taxpayer had an active power of attorney (POA) agreement in place. [REDACTED]

TIGTA investigators interviewed both the taxpayer and the revenue officer. The taxpayer claimed that, during the conversation, the revenue officer stated the telephone call was for “information purposes only” but attempted to renegotiate the terms of the taxpayer’s installment agreement with the IRS. The taxpayer also claims that they informed the revenue officer that they were represented at least twice during the conversation. The employee explained that they called the taxpayer to confirm that the POA agreement was still valid and

<sup>14</sup> Pub. L. No. 105-206, 112 Stat. 721.

<sup>15</sup> Pub. L. No. 105-206, 112 Stat. 721.

<sup>16</sup> The total number of issues does not reconcile with the number of cases we reviewed because it is possible for a case to include more than one issue code.

stated that, if the taxpayer had stated that they did not want to speak to her or had referred her to the POA, she would have ended the telephone call.

The FTCP detailed in I.R.C. § 6304(a)(2) prohibits the IRS from communicating with a taxpayer in connection with the collection of any unpaid tax if they know that the taxpayer is represented by a valid POA without the prior consent of the taxpayer unless the representative fails to respond within a reasonable period of time to a communication. The IRM explains that it may be necessary to bypass the authorized representative when the authorized representative has unreasonably delayed or hindered collection by repeatedly failing to return telephone calls or respond to written correspondence.<sup>17</sup> It includes a reminder that I.R.C. § 6304 precludes the IRS from communicating with a represented taxpayer in connection with the collection of any unpaid tax unless the taxpayer or taxpayer's authorized representative has given prior consent to that communication. However, it goes on to state that the IRS may work directly with a taxpayer who has an authorized representative to resolve an issue on the taxpayer's account if all of the following three conditions are met:

1. The taxpayer initiates the contact to resolve the issue on the account.
2. The taxpayer expresses a specific desire to resolve the issue without the involvement of the authorized representative after the IRS employee has advised the taxpayer of the current authorized representation.
3. The taxpayer's desire to have the IRS work directly with the taxpayer instead of the authorized representative is properly documented in the case file.

If it is necessary to bypass the POA and the three conditions listed previously are not met, the IRM details the two-part process that must be followed. The first part is a warning letter and the second part is the actual bypass, and all steps must be documented in the case history.

We believe that the revenue officer violated the taxpayer's rights by improperly bypassing the enrolled agent. Based on the information discussed previously, we asked the IRS to explain why the FTCP violation was not substantiated. [REDACTED]

[REDACTED] These facts at least suggest that the communication resulted in an FTCP violation because of the likelihood that the discussion touched on collection issues as well as the timing between the contact with the enrolled agent and the discussion with the taxpayer.

### **Some non-FTCP-coded employee misconduct cases were FTCP violations**

In our review of the 167 issues coded as non-FTCP violations, we identified and reviewed two collection cases closed on the ALERTS database in FY 2020 that were potentially coded incorrectly as non-FTCP violations by labor relations specialists. Both of these cases had the non-FTCP violation issue code 058 (Unprofessional Conduct). Specifically,

- A revenue officer was accused of being extremely rude to taxpayers who were advised to submit their complaints to TIGTA. This included screaming at the taxpayers and hanging up on them. The revenue officer was also alleged to have met with represented taxpayers without their POA. To address this violation, the IRS terminated the employee.

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<sup>17</sup> IRM 5.1.23.6 (Dec. 26, 2019).

## Fiscal Year 2021 Statutory Review of Potential Fair Tax Collection Practices Violations

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Based on the abusive behavior detailed in the case, we believe that this violation is miscoded. Initially, the IRS agreed with our position, but upon further review, it changed its position; however, it did not provide additional details to support its position.

- A Campus Collection contact representative was accused of discourteous behavior during a telephone call. Specifically, the employee made a statement to a taxpayer's POA that we believe was intended to demean, humiliate, or insult the caller. Based on their initial review of the case, management proposed removal; however, following the National Treasury Employees Union's reply and additional review of the recorded call, they recommended a five-day suspension. Ultimately, the case was closed when the employee resigned. We asked the IRS to consider our position that the case is potentially miscoded. In its response, the IRS stated, "the issue does not rise to the level of a potential FTCP violation. Merely taking offense to an interaction with an employee is not enough to constitute a violation of section 6304." Based on the nature of the employee's statement, we believe that this violation is miscoded.

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 they enter 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. In January 2020, the IRS revised this chapter to explain that the two areas in which there may be a greater level of confusion or subjectivity are allegations of harassment or abuse of the taxpayer. It goes on to explain that any complaints received concerning allegations of harassment or abuse should contain either Issue Code 144 (harassment) or 145 (abuse) as potential FTCP violations when documenting the record in the ALERTS. Regardless of the merits of the case, the fact that a taxpayer or their representative is alleging harassment or abuse makes the issue at least a potential violation of the FTCP. The incorrect coding for the two cases we identified may be caused by the fact that both cases were created in the ALERTS database prior to the January 2020 revisions.

**Recommendation 1:** The Director, Collection, Small Business/Self-Employed Division, should update the IRM to establish reasonable time frames for Collection function employees to follow in deciding when to bypass a taxpayer's POA.

**Management's Response:** The IRS disagreed with this recommendation. In their response, management cited IRM sections that provide specific instructions to employees on prohibiting direct contact with a taxpayer who appointed an authorized representative to collect a tax debt, including how to proceed when a taxpayer's authorized representative fails to respond to a collection employee in a reasonable period of time, and procedures for considering bypass of the taxpayer's representative. The response further states that the first prong of the process provides a reasonable time frame for bypass, requiring the collection employee's manager to send the representative a letter warning of potential bypass, providing the representative an additional 15 to 30 days to provide the requested documents or information. The second prong of the process requires the collection employee's second-level supervisor to issue a letter to the representative advising of the bypass.

**Office of Audit Comment:** This recommendation is meant to address the undefined terms that we believe is the root cause of the FTCP violation on not waiting a reasonable period before bypassing the POA. In the opinion previously discussed in this report, Counsel states “The statute does not define what is “reasonable” and case law is sparse on this issue...” [REDACTED]

[REDACTED] Similarly, the IRM’s POA bypass procedures do not define the phrase “unreasonable delay.”

**Recommendation 2:** The IRS Human Capital Officer should review the miscoded cases to ensure that a proper analysis of the FTCP violation is conducted and the correct issue code is applied.

**Management’s Response:** The IRS agreed with this recommendation, stating it will review the miscoded cases identified by TIGTA with the appropriate management officials to determine and apply the proper issue code(s).

## **Administrative Actions Did Not Always Follow Guidelines**

For the 21 instances of alleged FTCP violations from the ALERTS database that the IRS investigated and made determinations on in FY 2020, the IRS substantiated that three of the 21 instances were FTCP violations that resulted in administrative actions for IRS Collection function employees performing collection activities. The IRS concluded that 18 of the alleged FTCP violations could not be substantiated. Our review of the proposed penalties for these cases showed that penalties for three unsubstantiated cases were not at the recommended levels.

### **Proposed penalties for substantiated FTCP violations were below the recommended minimum**

The three substantiated FTCP violations involved one revenue officer and two collection customer service representatives. To address the FTCP violations, the IRS took the following administrative actions:

- The revenue officer contacted a taxpayer directly without the required consent of the taxpayer’s enrolled agent and received an admonishment. The case was investigated by TIGTA’s Office of Investigations after a complaint by a taxpayer’s representative that the employee directly contacted his client. During the interview with TIGTA, the employee explained that the violation was inadvertent and a legitimate misunderstanding. The investigators found the employee to be remorseful and credible. Management determined this was the employee’s first offense but agreed the behavior violated IRS rules and regulations and decided that the employee should receive an admonishment. The IRS’s penalty guide shows punishment for the first offense of negligence or carelessness in carrying out duties ranges from written reprimand to a 14-day suspension. However, based on the employee’s years of service and work record, management deemed the lesser penalty appropriate.

**Fiscal Year 2021 Statutory Review of Potential  
Fair Tax Collection Practices Violations**

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- While the customer service representative was reviewing a taxpayer's account, the employee used profane language and disconnected the call. The IRS penalty guide shows punishment for the first offense of making remarks or gestures to the public that a reasonable person would consider being rude, abusive, or discourteous ranges from a written reprimand to a 14-day suspension. In the report of investigation, management stated that they had already orally counseled the employee, which is considered a nondisciplinary action. As a result, additional disciplinary action could not be taken. Generally, managers are instructed to wait for the investigation results before addressing the situation with the employee in order to avoid this type of situation. However, the IRS explained that this is based on common practice rather than a formal written policy.
- While on a call with a taxpayer's representative, one customer service representative used profane language during a disagreement. Management was unable to obtain a recording of the telephone call; however, they reviewed the taxpayer complaint investigation and concluded that the employee was rude and discourteous. This was the employee's first offense, and according to the penalty guide, the penalty for discourtesy or unprofessional behavior ranges from a written reprimand to a 14-day suspension. Management recommended oral counseling, which is below the penalty range, because the employee was out on leave. Management wrote the counseling memorandum and mailed it to the employee via certified and regular mail.

Although the IRS substantiated these three cases as FTCP violations, the disciplinary actions received by all three employees were below the range of penalties set forth in Document 11500, *IRS Manager's Guide to Penalty Determination*. The range of penalties is to serve as a guide only and is not a rigid standard. Deviations from the guide are permissible, and greater or lesser penalties than suggested may be imposed. IRS management determines the appropriate penalty for infractions as individual circumstances warrant, considering mitigating and aggravating factors as well as agencywide penalties for comparable fact patterns. In the first and third cases discussed previously, management properly considered mitigating factors when recommending reduced penalties. However, management improperly delivered a nondisciplinary action to the contact representative in the second case before completing the investigation. This allowed the employee to avoid formal punishment for violating I.R.C. § 6304. The abuse and harassment of taxpayers by IRS employees while attempting to collect taxes reflects poorly on the IRS and can have a negative impact on voluntary compliance. It is important that taxpayers receive fair and balanced treatment from IRS employees when they attempt to collect taxes.

In addition, for three of the 18 cases in which the IRS did not substantiate the alleged FTCP violation, IRS officials took action against the employees after reviewing the allegations. TIGTA reviewed these three cases to determine whether the actions were appropriate.

- A taxpayer's POA accused a revenue officer of being aggressive and out of control. IRS management reviewed surveillance video footage and found no evidence supporting this claim but felt that the incident could possibly be misconstrued as giving an appearance of behavior unbecoming. As a result, management determined that, while the FTCP violation could not be substantiated, it was appropriate to issue a Closed Without Action letter including a cautionary statement to remind the employee to be cognizant of conducting themselves in a manner that avoids even the appearance of behavior unbecoming an IRS employee.

- The president of a company filed a complaint that he was improperly contacted directly by a revenue officer, as was the owner of the company, despite having a POA on file. The investigation determined that the taxpayer did not have a POA on file for all tax accounts assigned to the revenue officer, so the direct contact was appropriate. Furthermore, during their interview with the TIGTA investigator, the revenue officer explained that the owner of the company stated that the POA was no longer representing them. As a result, management determined that the FTCP could not be substantiated but decided that written counseling was appropriate for failing to follow written procedures by not documenting case history appropriately and securing revocation of the POA.
- An enrolled agent filed a complaint accusing a revenue officer of aggressively pursuing collection while under “The People First Initiative” Coronavirus Disease 2019 (COVID-19) Collection Moratorium. The enrolled agent further stated that the employee refused to provide the collection expiration date prior to demanding updated financial information and then refused to allow the taxpayer to withdraw an installment agreement request. Management reviewed the case and determined that the employee did not take any unreasonable collection actions, but the management official issued a letter of admonishment to address the employee’s demonstration of unprofessional conduct. The suggested penalty for a first offense of making remarks or gestures to the public that a reasonable person would consider being rude, abusive, or discourteous is a written reprimand to a 14-day suspension. Because the employee had no prior discipline, management concluded that admonishment was an appropriate disciplinary action even though it is below the minimum punishment recommended by the penalty guide.

TIGTA asked the IRS why the FTCP violation was not substantiated in the third case because the employee received disciplinary action for the way they treated the taxpayer. The IRS responded that management believed that they did not have proof the employee harassed the taxpayer while actively working a collection matter. However, they did believe he was rude due to the multiple complaints they have received about him.

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

During our review of the 20 employee misconduct cases coded as FTCP violations and 151 cases coded as non-FTCP violations, we identified 25 cases (containing 28 issues) that were not resolved within the IRS’s stated goal of 180 calendar days in FY 2020.<sup>18</sup> Figure 3 shows the number of untimely issues by issue code.

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<sup>18</sup> We identified this issue while validating the FY 2020 ALERTS data used in this audit.

**Fiscal Year 2021 Statutory Review of Potential  
Fair Tax Collection Practices Violations**

**Figure 3: Number of Issues Not Resolved Within 180 Calendar Days by Issue Code**

Issue Code	Issue Description	Number of Issues
058	Unprofessional Conduct	13
020	Fighting, Assault, or Threats – Not § 1203 of the IRS Restructuring and Reform Act of 1998	5
013	Misuse of Public Office or Authority – Not § 1203 of the IRS Restructuring and Reform Act of 1998	2
119	1203(b)(10): Threat of Audit for the Purpose of Extracting Personal Gain or Benefit	1
115	1203(b)(6): Violation of the I.R.C., the IRM, or Treasury Regulations for the Purpose of Retaliation	1
142	§ 6304 (FTCP): Directly Contacting a Represented Taxpayer Without the Representative's Consent	1
145	§ 6304 (FTCP): Taxpayer Abuse in a Tax Collection Matter	3
144	§ 6304 (FTCP): Taxpayer Harassment in a Tax Collection Matter	2
<b>Total</b>		<b>28<sup>19</sup></b>

*Source: TIGTA analysis of ALERTS data for cases closed in FY 2020 provided by the IRS.*

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.<sup>20</sup> The 25 cases were closed between 12 and 320 calendar 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.<sup>21</sup> For each of the 25 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 calendar days in the IRM because this service level is simply a stated goal of the agency. The IRS provided a list of some reasons why the 25 cases may have taken longer to process, such as:

- Due to attrition, labor relations specialists were assigned a voluminous inventory of cases, which prevented them from forwarding the cases to management in a timely manner.
- Case processing procedures were hindered due to Labor Relations staff awaiting documentation from external parties.

<sup>19</sup> The total number of issues does not reconcile with the number of cases we reviewed because it is possible for a case to include more than one issue code. The total includes six FTCP issues and 22 non-FTCP issues.

<sup>20</sup> IRM Exhibit 6.751.1-4 (Nov. 4, 2008) and IRM Exhibit 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.

<sup>21</sup> IRM 6.751.1.8(2)d (Nov. 4, 2008).

## Fiscal Year 2021 Statutory Review of Potential Fair Tax Collection Practices Violations

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- Issuance of moratorium guidance.
- COVID-19 and Weather and Safety policies.
- Assimilation of new employees and management of poor performers contributed to over-aged cases.

The IRS Human Capital Office explained that the reasons previously discussed were all contributing factors that led to the Labor Relations staff's inability to meet the case closure goal. In addition, the Labor/Employee Relations and Negotiations Division's Compliance and Accountability function is in the process of assessing the quality and conducting a root cause analysis to identify challenges and opportunities to improve the quality and timeliness of the Labor/Employee Relations and Negotiations Division's work product.

It is imperative that cases are closed or resolved timely and closing information is input timely and correctly because data on misconduct cases are used for reports provided to a number of other offices and, at times, are the basis for information provided to Congress on legislation affecting the IRS. In addition, if cases are not resolved in a timely manner, there is the potential that employees with an open misconduct case will potentially continue to violate taxpayer rights through various means, including potential FTCP violations. Finally, the *Standards for Internal Control in the Federal Government* requires that transactions be promptly recorded to maintain their relevance and value to management in controlling operations and making decisions.<sup>22</sup>

**Management Action:** In March 2020, to address timeliness of case processing of cases, the Acting Associate Director, Labor Relations/Employee Relations Field Operations, issued *Information Notice: Documenting Fair Tax Collection Practices Cases in the Automated Labor and Employee Relations Tracking System*. The memorandum stated that some of the most common examples of unusual delays include oral reply scheduling, delays in securing recommendations, delays with management processes or change in management, and delays after getting recommendations to send Alternative Discipline notices or proposal/decision letters. The information memorandum directed employees who encounter inordinate delays after taking follow-up actions to elevate through the proper management chain to get cases resolved more expeditiously. During our analysis of the impact of the IRS's procedural change during FY 2020, we found that most cases were experiencing delays before the issuance of the memorandum in March 2020. The impact of the procedural changes may be seen during our FY 2022 review of FY 2021 activity that will include misconduct cases that were closed within the IRS's stated goal.

Additionally, TIGTA is currently conducting a review on whether the IRS has sufficient policies and procedures to address employee conduct.<sup>23</sup> The review will determine whether actions taken in response to employee conduct cases are timely, reasonable, and adequately documented. During our FY 2022 mandatory review, we will analyze the impact of the actions taken by management to timely process potential FTCP violations as a result of procedural changes outlined in the information memorandum and to address recommendations in TIGTA's misconduct review.

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<sup>22</sup> Government Accountability Office, GAO-14-704G, *Standards for Internal Control in the Federal Government* (Sept. 2014).

<sup>23</sup> TIGTA, Audit No. 2020-10-024, *Review of IRS Employee Misconduct Penalties*.

**Recommendation 3:** The IRS Human Capital Officer should consider a written policy concerning the administration of additional disciplinary action when warranted by the results of the case investigation.

**Management's Response:** The IRS disagreed with this recommendation. In their response, management cited IRM sections that provide specific instructions on the concepts of discipline and administrative/disciplinary issues. Management also stated that the right to discipline is reserved to management under 5 U.S. Code § 7106(a)(2)(A) and that management makes the final decision on whether the employee will receive a nondisciplinary or disciplinary action. The response further states that once a conduct case is closed with management's final disposition, it is considered adjudicated by management, after management has considered the case facts on its own merits, with due consideration to the supporting evidence as well as an analysis of the Douglas Factors.

**Office of Audit Comment:** As we explain in the report, managers are instructed to wait for the investigation results before addressing the situation with the employee in order to avoid the appearance of punishing an employee twice for the same offense. In this case, the manager orally counseled the employee prior to the conclusion of the investigation that determined the employee violated the taxpayer's rights and the law. In the investigation case notes, the oral counseling is used as the basis for stating that "additional discipline cannot be taken." That explanation, combined with the responses received during the audit, indicate that that even though 5 U.S. Code 7106(a)(2)(A) gives management the right to discipline, multiple levels of IRS management believe that, once any action has been taken, no further disciplinary action is permitted even if the offense warrants it. We believe that a written policy would make it clear that, if action has been taken prior to the closure of a conduct case, additional disciplinary actions are permitted if warranted.

### **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 *PCA Quality Review Report*. The PCAs must also report incidents 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 or FTCP violations and disciplinary actions that were taken against employees.

We reviewed monthly *PCA Quality Review Reports*, corrective action reports, and TIGTA's Office of Investigations' complaint logs from FY 2020 and identified the following 39 potential FDCPA violations and 10 potential FTCP violation by 49 PCA employees:

## Fiscal Year 2021 Statutory Review of Potential Fair Tax Collection Practices Violations

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- 7 potential FDCPA violations occurred when employees failed to notify the taxpayer that they were attempting to collect a debt.<sup>24</sup> The employees received disciplinary actions ranging from coaching to written warning.
- 16 potential FDCPA violations occurred when PCA employees disclosed to a third party that the taxpayer owed a debt.<sup>25</sup> The employees received disciplinary actions ranging from retraining to written warning.
- 16 potential FDCPA violations occurred when employees called taxpayers before 8:00 a.m. or after 9:00 p.m. local time to collect a debt.<sup>26</sup> The employees received disciplinary actions ranging from coaching to verbal warning.
- 10 potential FTCP violations involved direct contact with a taxpayer who had an authorized representative.<sup>27</sup> The employees received disciplinary actions ranging from coaching to verbal warning.

The PCAs each have their own personnel policies to determine 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 calendar days, and if enough disciplinary actions accrue 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 to determine discipline.

Compared to last year's review, FDCPA and FTCP violations decreased 14 percent, from 57 to 49 violations. The decrease may be due to the IRS suspending new case inventories to the PCAs between March 30 through August 23, 2020, and outbound calls by the PCAs to taxpayers due to the COVID-19 pandemic.

The PCAs are also required to make all telephone recordings available to the IRS for quality review. We reviewed a judgmental sample of 20 telephone calls each from the four PCAs that were conducted during FY 2020 and did not identify any additional potential FDCPA violations.<sup>28</sup>

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 57 potential violations of the FDCPA or FTCP during our review of the relevant documents. We recommended that the IRS review the PCA monthly corrective action reports to identify trends in FDCPA/FTCP violations and provide feedback to the PCAs on areas that could be improved.<sup>29</sup> The corrective action reports should identify potential willful and nonwillful FDCPA and FTCP violations and the administrative actions taken for each willful violation per the individual PCA's penalty guide.

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<sup>24</sup> 15 U.S.C. § 1692e(11).

<sup>25</sup> 15 U.S.C. § 1692c(b).

<sup>26</sup> I.R.C. § 1692c(a) (1).

<sup>27</sup> I.R.C. § 6304(a) (2), 15 U.S.C. § 1692c (a) (2).

<sup>28</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

<sup>29</sup> TIGTA, Report No. 2020-30-053, *Fiscal Year 2020 Statutory Review of Potential Fair Tax Collection Practices Violations* p. 8 (Sept. 2020).

**Management Action:** In response to our recommendation last year, the IRS updated the Policy and Procedures Guide in August 2020 to include procedures for reconciling and analyzing the corrective action reports to identify trends and inconsistencies and provide feedback to the PCA as appropriate. The IRS also revised the corrective action report in December 2020 to include uniform descriptions of potential violations in order to assist the Private Debt Collection Office in analyzing the reports. The IRS's Private Debt Collection Office also plans to inform the PCAs of the trend analysis emanating from the individual potential corrective action reports, discussing its feedback on the potential violations with all of the PCAs during regular biweekly calls. Based on the recent procedural changes made by the IRS in FY 2020, we are not making any recommendations at this time. However, we will analyze the impact of the IRS's corrective actions during our FY 2022 mandatory review.

### **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.<sup>30</sup> There were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation in FY 2020.

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<sup>30</sup> I.R.C. § 7433.

## Appendix I

### Detailed Objective, Scope, and Methodology

The overall objective of this review was to obtain information on any reported violations of the FTCP by IRS employees and on any reported or potential violations of the FDCPA by PCA employees, including any related administrative or civil actions resulting from those violations, for collection cases closed during FY 2020. To accomplish this objective, we:

- Performed queries of the ALERTS for FTCP issue codes to identify cases that were closed during FY 2020 and to determine whether any cases resulted in administrative action. We verified that the employee was performing specific collection-related activities and the affected party was a taxpayer or taxpayer representative.
- Performed queries of the ALERTS for non-FTCP issues codes to identify Small Business/Self-Employed Division cases that were closed during FY 2020 to determine whether any of the cases were miscoded and were potential FTCP violations. Selected 11 non-FTCP issue codes with descriptions that could potentially relate to violations of taxpayers' FTCP rights and four job series codes (0526 – Tax Technician, 0592 – Tax Examining Technician, 0962 – Contact Representative, and 1169 – Revenue Officer) that could potentially work within the Collection functions, along with records for which the job series code was blank.<sup>1</sup>
- We reviewed these cases to determine if the employee was performing specific collection-related activities and the affected party was a taxpayer or taxpayer representative.
- Performed queries of the ALERTS for the FTCP to determine if cases were closed within 180 calendar days of being entered into the ALERTS.
- Identified any cases coded as potential FTCP violations on the Criminal Results Management System and determined if those cases were coded correctly on the ALERTS.<sup>2</sup>
- Identified the number of FTCP violations resulting in IRS civil actions (judgments or awards granted) by requesting a computer extract from the Office of Chief Counsel's Counsel Automated System Environment database of any Subcategory 6304 (established to track FTCP violations) cases closed during FY 2020. We did not conduct validation tests of this system.
- Identified potential FTCP and FDCPA violations by PCA employees using call logs and corrective action reports. We obtained the FY 2020 call logs from the four PCAs and selected a judgmental sample of 20 calls from each of the PCAs to determine if any of the calls potentially violated the FDCPA.

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<sup>1</sup> See Appendix V for a detailed list of the 11 issue codes selected.

<sup>2</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.

## **Performance of This Review**

This review was performed with information obtained from the offices of the IRS Human Capital Officer and Office of Chief Counsel in the IRS Headquarters in Washington, D.C., and with information requested from all four PCAs during the period December 2020 through July 2021. 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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

## **Validity and Reliability of Data From Computer-Based Systems**

We obtained data for all cases posting to the ALERTS database during FY 2020 (provided to us by the TIGTA Data Service team for this review) and performed tests to assess the reliability of the data. The team has provided extracts from the ALERTS database in the past for this mandatory review. We evaluated the data by running queries on the population to ensure that the data met our criteria and no information was missing or incomplete. For example, we 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. We determined that the data were sufficiently reliable and could be used to meet the objective of this audit.

## **Internal Controls Methodology**

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

## Outcome Measures

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

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

- Taxpayer Rights and Entitlements – Potential; one case (see Recommendation 1).

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

We identified and reviewed one collection case closed on the ALERTS database as an unsubstantiated FTCP violation in FY 2020 that should have been substantiated.

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

- Reliability of Information – Potential; two cases (see Recommendation 2).

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

We identified and reviewed two collection cases closed on the ALERTS database in FY 2020 that were incorrectly coded as non-FTCP violations by labor relations specialists.

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

- Reliability of Information – Potential; 25 cases (see Management Action, page 10).

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

We identified 25 employee misconduct cases that were not resolved within the IRS's stated goal of 180 calendar days in FY 2020. The IRM states that the IRS should close a case on the ALERTS within 10 calendar days of the employee's receipt of a decision letter (event) and that investigation cases should be resolved within the IRS's stated goal of 180 calendar days of being received in Labor Relations. The 25 cases were closed between 12 and 320 calendar days late.

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

- Taxpayer Rights and Entitlements – Potential; 39 violations (see Management Action, page 13).

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

We reviewed PCA monthly *Quality Review Reports*, corrective action reports, communications with the PCAs, and TIGTA's Office of Investigations' complaint logs and identified 39 potential FDCPA violations by PCA employees that affected taxpayer rights and entitlements.

**Fiscal Year 2021 Statutory Review of Potential  
Fair Tax Collection Practices Violations**

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- 7 potential FDCPA violations occurred when employees failed to notify the taxpayer that they were attempting to collect a debt. The employees received disciplinary actions ranging from coaching to written warning.
- 16 potential FDCPA violations occurred when PCA employees disclosed to a third party that the taxpayer owed a debt. The employees received disciplinary actions ranging from retraining to written warning.
- 16 potential FDCPA violations occurred when employees called taxpayers before 8:00 a.m. or after 9:00 p.m. local time to collect a debt. The employees received disciplinary actions ranging from coaching to verbal warning.

**Type and Value of Outcome Measure:**

- Reduction of Burden on Taxpayers – Potential; 10 violations (see Management Action, page 13).

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

We reviewed PCA monthly *Quality Review Reports*, corrective action reports, and TIGTA's Office of Investigations' complaint logs and identified 10 potential FTCP violations by PCA employees that affected taxpayer burden. All 10 taxpayer cases had potential FTCP violations involving direct contact with a taxpayer who had an authorized representative. The employees received disciplinary actions ranging from coaching to verbal warning.

## Appendix III

### Fair Tax Collection Practices Provisions

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

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

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

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

## Appendix IV

### Fair Tax Collection Practices Violation Issue Codes

Issue Code	Description
<b>141</b>	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.
<b>142</b>	CONTACT TAXPAYER WITHOUT REPRESENTATIVE – Valid only for collection employees. Contacting a taxpayer directly without the consent of the taxpayer’s power of attorney.
<b>143</b>	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.
<b>144</b>	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.
<b>145</b>	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.
<b>146</b>	CONTINUOUS TELEPHONE/HARRASSMENT – Valid only for collection employees. Causing a taxpayer’s telephone to ring continuously with harassing intent.
<b>147</b>	TELEPHONE CALL WITHOUT IDENTIFICATION DISCLOSURE – Valid only for collection employees. Contacting a taxpayer by telephone without providing a meaningful disclosure of the IRS employee’s identity.

*Source: IRS ALERTS User Manual (January 2020).*

## Appendix V

### Selection of Non-Fair Tax Collection Practices Violation Issue Codes

Issue Code	Description
013	POSITION/AUTHORITY MISUSE – NOT 1203 – Misusing one’s public office or authority. These situations can involve on-duty conduct related to official matters. These situations can also involve the misuse of Government-issued credentials and employee identification badges to obtain some form of personal gain or benefit.
020	FIGHTING, ASSAULTS & THREATS – NOT 1203 – Employee altercations that occur during official duty hours.
058	UNPROFESSIONAL CONDUCT – On-duty behavior that is rude, discourteous, or unprofessional. This does not include violations of the Fair Tax Collection Practices Act.
090	RUDE/DISOURTEOUS CONDUCT – This code has been deactivated but can still be used in a query. Issue code 058 is recommended for the keywords “rude” and “discourteous.”
114	1203(b)(5): CONVICTION-ASSAULT/BATT – Assault or battery on a taxpayer, taxpayer representative, or other employee of the IRS, if there is a criminal conviction or final court judgment in a civil case.
115	1203(b)(6): I.R.C./IRM/REGULATION VIOLATION-RETALIATION – Violations of the I.R.C. of 1986, Department of the Treasury regulations, or policies of the IRS (including the IRM) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the IRS.
119	1203(b)(10): THREAT OF AUDIT/PERSONAL – Threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.
699	OTHER – Valid only for IRS Criminal Investigation employees – Used to identify matters that currently are not defined ( <i>e.g.</i> , no driver’s license or not meeting minimum qualification standards).
953	PERSONNEL/LABOR RELATIONS ISSUE – This is used for the TIGTA interface only and cannot stand alone on a case. Another relevant issue code will be required before a case can be closed.
954	TAXPAYER (PERSONAL) BUSINESS TAX ISSUES – This is used for the TIGTA interface only and cannot stand alone on a case. Another relevant issue code will be required before a case can be closed.
999	NOT OTHERWISE CODED – Used to identify any matter that has not been defined by the other issue codes available. SPECIAL NOTE: The use of this issue code requires a more detailed explanation in the Facts and Analysis Section of ALERTS.

Source: IRS ALERTS User Manual (January 2020).

## 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>

- **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.
  - **(b)** Communication with third parties except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.
- **1692e: False or misleading representations**
  - A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
    - **(11)** The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

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<sup>1</sup> The provisions in this appendix only represent sections of 15 U.S.C. § 1692–1692p violated by the four PCAs in FY 2020.

Management's Response to the Draft Report



HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

September 9, 2021

MEMORANDUM FOR MICHAEL E. McKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Robin D. Bailey Jr. Digitally signed by Robin D. Bailey Jr.  
Date: 2021.09.09 16:39:43 -0400  
IRS Human Capital Officer

SUBJECT: Draft Audit Report – Fiscal Year 2021 Statutory Review of  
Potential Fair Tax Collection Practices Violations  
(Audit #202130008)

Thank you for the opportunity to review the Fiscal Year (FY) 2021 Statutory Review of Potential Fair Tax Collection Practices (FTCP) Violations (Audit #202130008) draft report. The Internal Revenue Service (IRS) is fully committed to the fair treatment of taxpayers and private collection agency employees while attempting to collect taxes. The IRS is further committed to ensuring alleged violations of FTCP are properly coded and documented within the Automated Labor and Employee Relations Tracking System. Employees are required to comply with FTCP provisions of the IRS Restructuring and Reform Act of 1998 in every contact. In FY2020, Treasury Inspector General for Tax Administration (TIGTA) identified six cases of substantiated FTCP violations, four of which the IRS agrees are substantiated. The IRS complied with the FTCP in more than 99% of contacts with taxpayers, which is an outstanding record of compliance.

Although the report identified 48 overaged cases closed in 2020, this was a decrease of 19 cases (28%) compared to the 67 cases identified in the FY2020 FTCP Audit. The IRS strives to close cases timely, as indicated in the Internal Revenue Manual (IRM), and to ensure TIGTA Reports of Investigation are processed within 180 days from the date a case is received in Labor Relations (LR). Some reasons why cases are overaged and took longer than 180 days can be attributed to attrition within LR Field Operations, delays in receipt of documentation from external parties, and the issuance of moratorium guidance in FY2020 during the pandemic.

As noted in the 2021 report, in 2020, the IRS implemented a corrective action to address a previous recommendation. The Policy and Procedure guide for private debt collection agencies was updated to include procedures for reconciling and analyzing the private debt collection agencies' monthly corrective action reports. The updates also identified trends and inconsistencies. Utilizing the analysis conducted, the IRS provided feedback to the private debt collection agencies on violations, as appropriate. As a

**Fiscal Year 2021 Statutory Review of Potential  
Fair Tax Collection Practices Violations**

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result, in FY2020, the number of Fair Debt Collection Practices Act and FTCP violations committed by private debt collection agency employees decreased by 14%.

The IRS concurs with the stated Outcome Measures and agrees with Recommendation 2. However, the IRS disagrees with Recommendation 1, to update the IRM to establish reasonable timeframes for Collection employees to follow when deciding when to bypass a taxpayer's Power of Attorney. Per IRM 5.1.23.6.1(5), By-Pass Warning Procedures, the collection employee's manager is required to send the representative a letter warning of potential by-pass, providing the representative an additional 15 to 30 days to provide the requested documents or information before by-pass. In addition, the IRS disagrees with Recommendation 3, which states the IRS Human Capital Office (HCO) should consider a written policy concerning the administration of additional disciplinary action when warranted by the result of the case investigation. Per IRM 6.751.1.13, Administrative/Disciplinary Issues, the right to discipline is reserved to management under 5 USC 7106(a)(2)(A), and management makes the final decision on whether the employee will receive a non-disciplinary or disciplinary action. Once a conduct case is closed with management's final disposition, it is considered adjudicated by management.

Attached is a detailed response outlining the corrective actions the IRS Human Capital Officer will take to address the recommendations. If you have any questions, please contact me at 202-317-3174, or a member of your staff may contact Christina Ballance, Acting Director, Labor/Employee Relations and Negotiations, at 202-317-3931.

Attachment

**Fiscal Year 2021 Statutory Review of Potential  
Fair Tax Collection Practices Violations**

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Attachment

**RECOMMENDATION 1:**

The Director, Collection Policy, Small Business/Self-Employed Division, should update the IRM to establish reasonable timeframes for Collection employees to follow when deciding when to bypass a taxpayer's POA.

**CORRECTIVE ACTION:**

The IRS disagrees as current guidance provides reasonable timeframes for by-pass. The Internal Revenue Manual (IRM) provides specific instructions to employees prohibiting direct contact with a taxpayer who appointed an authorized representative to collect a tax debt, see IRM 5.1.10.6.1. When a taxpayer's authorized representative fails to respond to a collection employee in a reasonable period of time, IRM 5.1.10.6.1 allows the employee to consider by-passing the representative. The employee is referred to IRM 5.1.23 when considering by-pass, which sets forth a two-part process prior to by-passing a taxpayer's representative. The first prong of the process provides a reasonable timeframe for by-pass, requiring the collection employee's manager to send the representative a letter warning of potential by-pass, providing the representative an additional 15 to 30 days to provide the requested documents or information. The second prong of the process requires the collection employee's second-level supervisor to issue a letter to the representative advising of the by-pass.

**IMPLEMENTATION DATE:**

Not Applicable.

**RESPONSIBLE OFFICIAL:**

Not Applicable.

**RECOMMENDATION 2:**

The IRS Human Capital Officer should review the miscoded cases to ensure a proper analysis of the FTCP violation is conducted and the correct issue code is applied.

**CORRECTIVE ACTION:**

The IRS agrees with this recommendation and will review the miscoded cases identified in the TIGTA Audit Report with the appropriate management officials to determine and apply the proper issue code(s).

**IMPLEMENTATION DATE:**

December 15, 2021.

**RESPONSIBLE OFFICIAL:**

Director, Labor/Employee Relations and Negotiations (LERN).

**Fiscal Year 2021 Statutory Review of Potential  
Fair Tax Collection Practices Violations**

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**RECOMMENDATION 3:**

The IRS Human Capital Officer should consider a written policy concerning the administration of additional disciplinary action when warranted by the results of case investigations.

**CORRECTIVE ACTION:**

The IRS disagrees with the consideration of a written policy concerning administration of additional disciplinary action when warranted by the results of the case investigation. IRM 6.851.1, Discipline and Disciplinary Actions: Policies, Responsibility, Authorities and Guidance, provides specific instructions regarding the Concepts of Discipline. Further, IRM 6.751.1.13, Administrative/Disciplinary Issues, states the right to discipline is reserved to management under 5 USC 7106(a)(2)(A), and management makes the final decision on whether the employee will receive a non-disciplinary or disciplinary action. Once a conduct case is closed with management's final disposition, it is considered adjudicated by management, after management has considered the case facts on its own merits, with due consideration to the supporting evidence, as well as an analysis of the Douglas Factors.

**IMPLEMENTATION DATE:**

Not Applicable.

**RESPONSIBLE OFFICIAL:**

Not Applicable.

## Appendix VIII

### Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
COVID-19	Coronavirus Disease 2019
FDCPA	Fair Debt Collection Practices Act
FTCP	Fair Tax Collection Practices
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
PCA	Private Collection Agency
POA	Power of Attorney
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,  
call our toll-free hotline at:**

(800) 366-4484

**By Web:**

[www.treasury.gov/tigta/](http://www.treasury.gov/tigta/)

**Or Write:**

Treasury Inspector General for Tax Administration

P.O. Box 589

Ben Franklin Station

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Information you provide is confidential, and you may remain anonymous.