TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Fiscal Year 2023 Statutory Review of Potential Fair Tax Collection Practices Violations

September 25, 2023

Report Number: 2023-30-060

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Why TIGTA Did This Audit

The objective of this review was to determine whether the IRS is complying with the provisions of Internal Revenue Code § 6304 to identify, investigate, and report on potential violations of the Fair Tax Collection Practices (FTCP) by IRS employees and potential violations of the Fair Debt Collection Practices Act (FDCPA) by private collection agency (PCA) employees, including any related administrative or civil actions resulting from those violations.

This information will be used to comply with the IRS Restructuring and Reform Act of 1998 § 1102(d)(1)(G) requirement that TIGTA include in one of its Semiannual Reports to Congress information regarding administrative or civil actions related to the FTCP.

Impact on Tax Administration

The abuse and harassment of taxpayers by IRS and PCA employees while attempting to collect taxes can harm taxpayers and 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. IRS employees who violate any FTCP provision are subject to disciplinary actions. In addition, the Federal Government may be subject to claims for damages if FTCP violations are substantiated. Finally, 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.

What TIGTA Found

TIGTA's review of 14 employee misconduct cases coded as potential FTCP violations and closed on the Automated Labor and Employee Relations Tracking System (ALERTS) database in Fiscal Year (FY) 2022 identified [redacted] However, after TIGTA requested information [redacted] the IRS [redacted]

TIGTA reviewed 89 Small Business/Self-Employed Division employee misconduct cases closed on the ALERTS database in FY 2022 and not coded as FTCP potential violations. TIGTA did not identify any cases closed on the ALERTS database in FY 2022 that were potentially coded incorrectly as non-FTCP violations.

Separate from the review of IRS FTCP violations, TIGTA identified seven potential FDCPA violations and eight potential violations of both the FTCP and the FDCPA by PCA employees. The disciplinary actions taken by the PCAs on the 15 incidents in FY 2022 were found to be consistent with their discipline policies.

In its *Fiscal Year 2023 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers*, TIGTA identified 48 potential FTCP violations when reviewing the FY 2022 Embedded Quality Review System Organization Cumulative Review Feedback Report for Field Collection. All 48 potential violations should have been reported on ALERTS using FTCP issue code 142. In this audit, TIGTA reviewed the ALERTS database for the potential violations and found that none of the 48 potential violations from the EQRS database were in the ALERTS database.

What TIGTA Recommended

TIGTA recommended that the IRS should review the PCA monthly Corrective Action Reports to ensure that PCAs properly discipline employees for violating the FTCP or the FDCPA. IRS management agreed with TIGTA's recommendation and will continue to use the current process to review potential FTCP or FDCPA violations and corrective actions against the individual PCA penalty guides for appropriateness of disciplinary actions. This process was implemented in August 2020 and includes a monthly review of the Corrective Action Reports compared to the PCA Penalty guides to ensure that consistent corrective actions are taken.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20024

September 25, 2023

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Heather Hill

FROM: Heather M. Hill
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2023 Statutory Review of Potential Fair Tax Collection Practices Violations (Audit # 202330005)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) is complying with the provisions of Internal Revenue Code § 6304 to identify, investigate, and report on potential Fair Tax Collection Practices violations by IRS employees and potential violations of the Fair Debt Collection Practices Act [15 United States Code §§ 1601 note, 1692-1692p (2010)] by private collection agency employees, including any related administrative or civil actions resulting from those violations. This review is part of our Fiscal Year 2023 Annual Audit Plan and addresses the major management and performance challenge of *Increasing Domestic and International Tax Compliance and Enforcement*.

Management's complete response to the draft report is included as Appendix VI. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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Background

The Fair Debt Collection Practices Act (FDCPA), as originally enacted, included provisions that prohibited 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 § 3466 requires the IRS to follow provisions, known as Fair Tax Collection Practices (FTCP), similar to those in the FDCPA.[3]

IRS employees who violate any FTCP provision are subject to disciplinary actions. Violations and related disciplinary actions are tracked on the IRS Human Capital Office'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 IRS 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 this act includes a provision that requires the IRS to use private collection agencies (PCA) to collect on cases involving certain inactive tax receivables. Any contract between the IRS and a private collector must prohibit the collector from committing any act or omission that IRS employees are prohibited from committing in the performance of similar duties.[5] These prohibitions include communicating at inconvenient times and places, contacting represented taxpayers (with certain exceptions), calling the taxpayer at work if the collector knows the taxpayer's employer prohibits such calls, and various other types of harassment and abuse. In addition, the law provides that the provisions of the FDCPA shall apply to any qualified tax collection contract.[6] If the PCA violates the FDCPA, the law insulates the U.S. Government from liability and allows the suit to be brought only against the private collector.[7] As of September 23, 2021, the IRS had contracts with three PCAs to collect outstanding tax debts not being actively worked by the IRS.[8] The abuse and harassment of taxpayers by IRS and

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

[1] 15 U.S.C. §§ 1601 note, 1692–1692p (2018).

[2] Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2, 5, 16, 19, 22, 23, 26, 31, 38, and 49 U.S.C.).

[3] See Appendix II for a detailed description of FTCP provisions.

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

[5] I.R.C. § 6306(b)(2).

[6] I.R.C. § 6306(g).

[7] I.R.C. § 7433A(b)(1).

[8] PCAs will work on accounts where taxpayers owe money, but the IRS is not actively working them. Several factors contribute to the IRS assigning these accounts to PCAs, including older, overdue tax accounts or lack of resources preventing the IRS from working the cases.

PCA employees while attempting to collect taxes can harm taxpayers and 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.

I.R.C. § 7803(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. 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 I.R.C. § 7803(d)(1)(G).

Results of Review

Generally, Potential Fair Tax Collection Practices Violations Were Accurately Coded in the IRS's Employee Relations Database

TIGTA reviewed all 14 employee misconduct cases (containing 14 issues) coded as potential FTCP violations [redacted] and 89 Small Business/Self-Employed (SB/SE) Division Collection function employee misconduct cases (containing 99 issues) coded as non-FTCP violations that were closed on the ALERTS database in Fiscal Year (FY) 2022.[10]

[redacted] as FTCP violations, but four were determined to be unprofessional conduct (ALERTS code 058), and [redacted] No action was taken against the employees in the other seven unsubstantiated cases.

There are a total of seven ALERTS issue codes the IRS uses for potential FTCP employee violations, numbered from 141 to 147.[11] For the non-FTCP cases, we identified the cases 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

[9] 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.

[10] A case contains one or more issues. Also, Chapter 5 of the ALERTS manual defines a substantiated issue as proven by facts or evidence to be a true act of misconduct. An unsubstantiated case would be proven by facts or evidence not to be a true act of misconduct. Issues that cannot be proven by evidence are considered unresolved.

[11] See Appendix III for more details on FTCP violation issue codes.

then limited the population to cases related to employees in the SB/SE Division Collection function.[12] Figures 1 and 2 show the number of potential FTCP and non-FTCP issues we reviewed by issue code and description.

Figure 1: Number of Potential 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	[redacted]
144	I.R.C. § 6304: Taxpayer Harassment in a Tax Collection Matter	5
145	I.R.C. § 6304: Taxpayer Abuse in a Tax Collection Matter	6[13]
146	I.R.C. § 6304: Continuous Taxpayer Harassment	[redacted]
	Total	**14**

Source: TIGTA analysis of ALERTS data for cases closed in FY 2022 provided by the IRS.

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

Issue Code	Issue Description	Number of Issues
013	Misuse of Public Office or Authority – Not § 1203 of the IRS Restructuring and Reform Act of 1998	9
020	Fighting, Assault, or Threats – Not § 1203 of the IRS Restructuring and Reform Act of 1998	10
058	Unprofessional Conduct	61
115	§ 1203(b)(6): Violation of the I.R.C., Internal Revenue Manual (IRM), or Treasury Regulations for the Purpose of Retaliation[14]	3
953	Personnel/Labor Relations Issue	15
954	Taxpayer Personal/Business Tax Issues	[redacted]
	Total	**99**[15]

Source: TIGTA analysis of ALERTS data for cases closed in FY 2022 provided by the IRS.

Our review of the 14 potential FTCP violations (from 14 misconduct conduct cases) did not identify any cases that were incorrectly coded as FTCP violations. In addition, our review of the

[12] See Appendix IV for more details on issue codes we selected.

[13] [redacted]

[14] Pub. L. No. 105-206, 112 Stat. 721.

[15] 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.

99 non-FTCP issues (from 89 misconduct cases) also did not identify any cases that should have been coded as FTCP violations.

[redacted] coded with an incorrect FTCP issue code

In our review of the 14 issues coded as potential FTCP violations in the ALERTS database in FY 2022, [redacted] However, after TIGTA requested information [redacted] the IRS [redacted] However, the IRS should ensure that future potential FTCP violations are properly coded.

We agreed with the IRS's determination that [redacted].[16] [redacted]

Non-FTCP–coded employee misconduct cases were not potential FTCP violations

In our review of the 89 employee misconduct cases involving 99 issues coded as non-FTCP violations, we did not identify any cases closed on the ALERTS database in FY 2022 that were potentially coded incorrectly as non-FTCP violations by labor relations specialists.

In our FY 2022 FTCP review, TIGTA identified some FY 2021 ALERTS cases that were potentially coded incorrectly as non-FTCP violations by labor relations specialists and recommended that the IRS Human Capital Officer review the miscoded cases to ensure that a proper analysis of the FTCP violation was conducted and the correct issue code applied.[17] The IRS agreed with the recommendation, stating it would review the miscoded cases identified by TIGTA with the appropriate management officials to determine and apply the proper issue code(s). By November 2022, IRS management completed its corrective action to accurately classify the cases identified during last year's statutory audit.

Administrative Actions Did Not Always Follow Guidelines

Our review of the 14 employee misconduct cases coded as potential FTCP violations and 89 cases coded as non-FTCP violations for adherence to timeliness guidelines identified 12 cases involving 13 issues that were not resolved within the IRS's goal of 180 calendar days in FY 2022. Figure 3 shows the number of untimely cases by issue code.

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[16] I.R.C. § 6304(b)(2).

[17] TIGTA, Report No. 2022-30-056, *Fiscal Year 2022 Statutory Review of Potential Fair Tax Collection Practices Violations* p. 6 (Sept. 2022).

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

Issue Code	Issue Description	Number of Issues
013	Misuse of Public Office or Authority – Not § 1203 of the IRS Restructuring and Reform Act of 1998	[redacted]
058	Unprofessional Conduct	7
115	§ 1203(b)(6): Violation of the I.R.C., Internal Revenue Manual (IRM), or Treasury Regulations for the Purpose of Retaliation[18]	[redacted]
145	§ 6304 (FTCP): Taxpayer Abuse in a Tax Collection Matter	[redacted]
953	Personnel/Labor Relations Issue	3
	Total	**13**[19]

Source: TIGTA analysis of ALERTS data for cases closed in FY 2022 provided by the IRS.

The IRM suggests that the IRS should close a case in ALERTS within 10 calendar days of the employee's receipt of a decision letter (event) and that cases be resolved within the IRS's stated goal of 180 calendar days after being received in Labor Relations, absent extenuating circumstances.[20] The 12 cases were closed between one and 523 calendar days late. The Labor/Employee Relations and Negotiations function 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, closing within a maximum of 180 calendar days, absent extenuating circumstances.[21]

IRS management provided a list of some extenuating circumstances to explain why these 12 cases may have taken longer to process, such as:

- The Coronavirus Disease 2019 shutdown when there was a moratorium on working conduct cases.
- Case reassignment due to staff changes.
- Potential UNAX cases take longer to process due to the complexity of the case and the large volume of evidence to process.
- Potential Section 1203 cases take longer to process due to the complexity of the case and the large volume of evidence to process.
- Investigating multiple issues within a single case.
- Large case inventories.

[18] Pub. L. No. 105-206, 112 Stat. 721.

[19] 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.

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

[21] IRM 6.751.1.8(2)d (Nov. 4, 2008).

- Staff shortages.

It is important that cases are closed or resolved timely, and that 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 continue to violate taxpayer rights through various means, including potential FTCP violations. Finally, the Government Accountability Office's *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.[22]

In December 2021, TIGTA issued a report that found employee misconduct was not always addressed timely.[23] The report recommended that the IRS explore options and collaborate with the appropriate stakeholders to automate employee misconduct case processes, including elevation to higher level supervisors when appropriate, and upon implementation, train Labor/Employee Relations and Negotiations employees to use the system features to improve case timeliness. IRS management agreed with the recommendation, stating that they would meet and collaborate with the appropriate stakeholders on employee misconduct case process automation options. The recommendation was closed in March 2023 with the IRS establishing a new review process and providing training to the appropriate employees. Since the recommendation closure occurred after the time frame of our review (ending June 30, 2022), any improvements in the process would not be reflected in the data reviewed for this audit. We will analyze the impact of the actions taken by management to timely process employee misconduct cases during next year's mandatory review. Therefore, we are not making a recommendation at this time.

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

PCAs are required to perform quality assurance reviews by sampling telephone calls and other case actions for each call representative using the quality attributes in the *PCA Policy and Procedures Guide*. Results of these reviews must be submitted to the IRS each month in the *PCA Quality Review Report*. PCAs must also report incidents and threats to TIGTA's Office of Investigations, which in turn must report potential FDCPA violations to the IRS. When potential violations are identified, PCAs use corrective action reports to document potential FDCPA or FTCP violations and disciplinary actions that were taken against employees.

We reviewed the *PCA Corrective Action Reports* for the three PCAs. Our review identified 15 total potential violations by PCA employees: seven potential FDCPA violations and eight potential violations of both the FTCP and the FDCPA. PCA employees received disciplinary actions ranging from coaching or retraining to a written warning. Specifically:

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

[23] TIGTA, Report No. 2022-10-011, *Procedures to Address Employee Misconduct Were Followed, but Resolution Time and Quality Review Need Improvement* pp. 4 and 6 (Dec. 2021).

- [redacted]
- Six potential FTCP and FDCPA violations occurred when an employee bypassed the taxpayer's authorized representative and communicated with the taxpayer instead. The employee received various disciplinary action including coaching, retraining, and verbal warnings.
- Five potential FDCPA violations occurred when employees communicated with an unauthorized third party. The employees received various disciplinary actions including coaching, retraining, and a written warning.
- [redacted]
- [redacted][24] [redacted]

All PCAs have quality review processes that can potentially identify problematic interactions with taxpayers. Each PCA has its own personnel policies to determine discipline for employees who commit a potential FDCPA violation. Disciplinary actions depend on the level of violation and may include remedial training, initial warning, written warning, final warning, suspension, or termination. Some PCA personnel policies also reference a rolling time frame wherein the employee can be terminated if enough disciplinary actions accrue. However, an employee can also be terminated after one violation if it is determined to be egregious in nature. As shown previously, some of the discipline actions imposed by PCAs varied for similar violations. Although the disciplinary actions we reviewed were within the scope of each of the PCAs' discipline policies, it is important for PCAs to promptly identify potential violations of the FTCP and the FDCPA and consistently disclose them to the IRS.

Recommendation 1: The Director, Headquarters Collection, SB/SE Division, should review the PCA monthly Corrective Action Reports to ensure that PCAs properly discipline employees for violating the FTCP or FDCPA.

> **Management's Response:** IRS management agreed with this recommendation. The IRS will continue to use its current process to review potential FTCP or FDCPA violations and corrective actions against the individual PCA penalty guides for appropriateness of disciplinary actions. This process was implemented in August 2020 and includes a

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[24] The mini-Miranda warning is a statement of rights that debt collectors are legally required to use when contacting an individual to collect a debt. See Appendix V for more details on FDCPA § 1692(e) regarding false or misleading representations.

monthly review of the Corrective Action Reports compared to PCA Penalty guides to ensure that consistent corrective actions are taken.

Some Fair Tax Collection Practices Violations Are Not Being Reported

During TIGTA's FY 2023 mandatory audit of the IRS's direct contact with taxpayers, we obtained and reviewed the FY 2022 Embedded Quality Review System (EQRS) Organization Cumulative Review Feedback Report for Field Collection.[25] EQRS is an online quality review database designed to assist managers in tracking employee performance. This report contained almost 11,800 cases and identified 138 cases in which the quality element "right to representation not observed" was reported as a potential direct contact violation. After reviewing the 138 cases, TIGTA found 48 potential FTCP violations and recommended the IRS report these potential violations for proper evaluation and investigation as appropriate.[26]

The IRM requires the reporting of potential I.R.C. § 6304 FTCP violations to a labor relations specialist by the close of the next business day.[27] This includes potential violations identified during a case review, like EQRS reviews. Labor Relations should track these instances on ALERTS using specific issue codes to ensure that the collected data are complete and accurate.[28] The 48 potential violations should have been reported on ALERTS using issue code 142/6304 (*Contacting a taxpayer directly without the consent of the taxpayer's power of attorney*). We reviewed the ALERTS database for the potential violations and found that none of the 48 potential violations from the EQRS database were in the ALERTS database. As a result of not reporting the potential FTCP violations identified during EQRS reviews on ALERTS, potential misconduct by IRS employees may not have been properly investigated and submitted for disciplinary actions as appropriate. TIGTA's FY 2023 audit of the IRS's compliance with the restrictions on directly contacting represented taxpayers recommended that the IRS establish controls to ensure that all potential FTCP violations identified in case reviews, including EQRS reviews, are properly reported for evaluation or investigation, as appropriate.[29]

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

[25] TIGTA, Report No. 2023-30-051, *Fiscal Year 2023 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers* (Aug. 2023).

[26] TIGTA originally identified 51 potential FTCP violations. The IRS agreed to review 10 percent of the cases and found that 40 percent were actual violations. This brought the count of potential FTCP violations to 48, of which 46 have not been reviewed to determine if the cases were actual FTCP violations.

[27] IRM 1.4.50.3.2.3(1), Resource Guide for Managers, Collection Group Manager, Territory Manager and Area Director Operational Aid, (Sept. 12, 2014).

[28] IRM 1.4.51.3.2.3(2) Resource Guide for Managers, Collection Group Manager, Territory Manager and Area Director Operational Aid, (Sept 12, 2014).

[29] TIGTA, Report No. 2023-30-051, *Fiscal Year 2023 Statutory Review of Restrictions on Directly Contacting Represented Taxpayers* (Aug. 2023).

collection of Federal tax. There were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation in FY 2022.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS is complying with the provisions of I.R.C. § 6304 to identify, investigate, and report on potential FTCP violations by IRS employees and potential violations of the FDCPA by PCA employees, including any related administrative or civil actions resulting from those violations. To accomplish our objective, we:

- Obtained data for all cases posting to the ALERTS database from October 1, 2021, to June 30, 2022.
- Performed queries of ALERTS data for FTCP issue codes to identify cases that were closed from October 1, 2021, to June 30, 2022, 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. We also determined whether the corrective actions taken against the employee were within the recommended penalty levels.
- Performed queries of ALERTS for non-FTCP issue codes to identify SB/SE Division cases that were closed from October 1, 2021, to June 30, 2022, to determine whether any of the cases were miscoded and were potential FTCP violations. We 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 Examiner, 0962 – Collection Representative, and 1169 – Revenue Officer) that could potentially work within the Collection functions, along with records for which the job series code was blank.
- Performed queries of ALERTS for the FTCP issue codes to determine if cases were closed within 180 calendar days of being entered into ALERTS.
- Identified any cases coded as potential FTCP violations on the Criminal Results Management System and determined if those cases were coded correctly on ALERTS.
- 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 from October 1, 2021, to June 30, 2022. We did not conduct validation tests of this system.
- Reviewed PCA FY 2022 Quality Review Reports and Corrective Action Reports for the three PCAs.
- Reviewed PCA employee disciplinary action policies for the three PCAs.

Performance of This Review

This review was performed with information obtained from the offices of the IRS Human Capital Officer and Chief Counsel in the IRS Headquarters in Washington, D.C., and information requested from all three private collectors during the period October 2022 through July 2023. 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); Robert Jenness, Director; John Park, Audit Manager; Robert Steele, Lead Auditor; and Ali Vaezazizi, Auditor.

Validity and Reliability of Data From Computer-Based Systems

We obtained data for all cases posting to the ALERTS database from October 1, 2021, to June 30, 2022 (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 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 ALERTS. Additionally, for the three PCAs, we determined that the following internal controls were relevant to our audit objective: the procedures for reporting potential FDCPA violations, and the actions taken for potential violations. We evaluated these controls by reviewing PCA FY 2022 Corrective Actions Reports.

Appendix II

Fair Tax Collection Practices Provisions

To ensure equitable treatment of debt collectors in the public and private sectors, IRS Restructuring and Reform Act of 1998 § 3466 requires the IRS to comply with certain provisions of the FDCPA, known as the FTCP.[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] I.R.C. § 6304.

Appendix III

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 (February 2020).

Appendix IV

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/DISCOURTEOUS 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 (*e.g.*, 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 (February 2020).

Appendix V

Fair Debt Collection Practices Act Provisions

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

- **1692c: Communication in connection with debt collection**
  - **(a)** Communication with the consumer generally without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

    (1) 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.
  - **(c)** Ceasing communication – If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except –

    (1) to advise the consumer that the debt collector's further efforts are being terminated;

    (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

[1] The provisions in this appendix only represent sections of 15 U.S.C. § 1692–1692p violated by the three PCAs in FY 2022.

(3) where applicable, to notify the consumer that the debt collector or creditor intends invoke a specified remedy.

- **(d)** "Consumer" defined: For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

- **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.

Appendix VI

Management's Response to the Draft Report

HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

8/28/23

MEMORANDUM FOR HEATHER M. HILL
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Traci M. DiMartini Traci M. DiMartini Digitally signed by Traci M. DiMartini Date: 2023.08.28 14:49:18 -04'00'
IRS Human Capital Officer

SUBJECT: Draft Audit Report – Fiscal Year 2023 Statutory Review of Potential Fair Tax Collection Practices Violations (Audit # 202330005)

Thank you for the opportunity to review the Fiscal Year 2023 Statutory Review of Potential Fair Tax Collection Practices Violations (Audit # 202330005).

The IRS is fully committed to the fair treatment of taxpayers by both IRS and private collection agency (PCA) employees while attempting to collect taxes, in compliance with the provisions of Internal Revenue Code § 6304 to identify, investigate, and report potential violations of the Fair Tax Collection Practices (FTCP) by IRS employees and potential violations of the Fair Debt Collection Practices Act (FDCPA) [15 United States Code §§ 1601 note, 1692-1692p (2010)] by private collection agency employees, including any related administrative or civil actions resulting from those violations.

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 (ALERTS). Employees are required to comply with FTCP provisions of the IRS Restructuring and Reform Act of 1998 in every taxpayer contact.

The IRS is pleased that the Treasury Inspector General for Tax Administration (TIGTA) acknowledged that in 14 potential FTCP violations reviewed, TIGTA only found one case that was coded incorrectly. As noted in TIGTA's report, the IRS made the correction to reflect the correct FTCP issue code. Of the 99 non-FTCP issues, TIGTA did not identify any cases that were coded incorrectly. Moreover, TIGTA's report found that in cases of potential violations by PCA employees, the PCAs took appropriate disciplinary action.

In its review of potential FDCPA/FTCP violations, the IRS compiles a PCA Corrective Action Report, which is sent to the private debt collection program office monthly. Following the process in the Private Debt Collection Operations Guide, the IRS ensures each month that potential violations and corrective actions are reviewed and compared to the individual PCA penalty guides for appropriateness of disciplinary actions. The IRS remains committed to reviewing the PCA monthly Corrective Action Reports to ensure that PCAs properly discipline employees for violating the FTCP or FDCPA.

The IRS concurs that continuing to review the PCA monthly reports will ensure that PCA employees are appropriately disciplined when they violate the FTCP or FDCPA. The IRS agree with the recommendation in the report.

Attached is a detailed response outlining the corrective action(s) that the Human Capital Office will take to address your recommendations. If you have questions, please contact me at (202) 317-3174, or a member of your staff may contact Geralda Larkins, acting Director, Labor/Employee Relations and Negotiations, at 954-849-1436.

Attachment

Attachment

RECOMMENDATION 1:

The Director, Collection, SB/SE Division, should review the PCA monthly Corrective Action Reports to ensure that PCAs properly discipline employees for violating the FTCP or FDCPA.

CORRECTIVE ACTIONS:

Agree.

We will continue to use our current process to review potential FTCP or FDCPA violations and corrective actions against the individual PCA penalty guides for appropriateness of disciplinary actions. This process was implemented in August 2020 and includes a monthly review of the Corrective Action Reports compared to the PCA Penalty guides to ensure consistent corrective actions are taken.

IMPLEMENTATION DATE:

This process has been implemented since August 2020.

RESPONSIBLE OFFICIAL(S):

Director, Collection, Small Business/Self-Employed

CORRECTIVE ACTION(S) MONITORING PLAN:

N/A

Appendix VII

Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
EQRS	Embedded Quality Review 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
SB/SE	Small Business/Self-Employed
TIGTA	Treasury Inspector General for Tax Administration

To report fraud, waste, or abuse,
contact our hotline on the web at www.tigta.gov or via e-mail at oi.govreports@tigta.treas.gov.

To make suggestions to improve IRS policies, processes, or systems affecting taxpayers, contact us at www.tigta.gov/form/suggestions.

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