TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Fiscal Year 2024 Statutory Review of Potential Fair Tax Collection Practices Violations

September 20, 2024

Report Number: 2024-300-059

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HIGHLIGHTS: Fiscal Year 2024 Statutory Review of Potential Fair Tax Collection Practices Violations

Final Audit Report issued on September 20, 2024 **Report Number 2024-300-059**

Why TIGTA Did This Audit

The objective of this audit 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. Taxpayers should receive fair treatment from IRS and PCA employees attempting to collect taxes. IRS employees who violate FTCP provisions are subject to disciplinary actions, and the Federal Government may be subject to claims for damages in substantiated FTCP violations.

Contracts between the IRS and a private debt 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 the Automated Labor and Employee Relations Tracking System (ALERTS) employee misconduct cases from July 1, 2022, through June 30, 2023, found the 16 cases coded as potential FTCP violations were correctly coded. However, TIGTA's review of employee misconduct cases that were not coded as potential FTCP violations determined that 23 of the 123 cases included taxpayer complaints of harassment, abuse, and unprofessionalism and should have been documented in ALERTS as potential FTCP violations.

TIGTA identified 26 cases of potential FDCPA violations and seven cases of potential violations of the FTCP and the FDCPA by PCA employees. The disciplinary actions taken by the PCAs on the 33 cases from July 1, 2022, through June 30, 2023, were consistent with their policies.

Our review of the PCAs' incident logs from July 1, 2022, through June 30, 2023, found inconsistencies among the PCAs reporting potential FDCPA § 805(b) third-party disclosure violations. For example, two PCAs had potential disclosure violations in their incident reports that were not reported on their monthly Corrective Action Reports based on guidance from the IRS.

TIGTA found 107 Field Collection and five Campus Collection potential FTCP violations in the Embedded Quality Review System case narratives that were not reported in the ALERTS database. All 112 potential violations should have been reported in ALERTS using FTCP issue code 142, *Internal Revenue Code (I.R.C.) § 6304: Contacting Taxpayer without Authorized Representative's Consent*.

Finally, there were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation from July 1, 2022, through June 30, 2023.

What TIGTA Recommended

TIGTA made five recommendations for the IRS to: (1) review the 23 miscoded ALERTS cases for correct issue codes; (2) strengthen controls to ensure that potential FTCP violations are consistently identified in ALERTS; (3) strengthen controls to ensure that all potential FDCPA § 805(b) third-party disclosure violations are reported on the PCA Corrective Action Reports; (4) report potential FTCP violations TIGTA identified in our Embedded Quality Review System review to a Labor Relations specialist for investigation; and (5) ensure that all Collection job aids include instructions to report FTCP violations.

IRS management agreed with TIGTA's recommendations and stated it reviewed the FTCP cases identified and assigned FTCP issue codes where applicable. The IRS plans to update the FTCP Desk guide, the PCA Policies and Procedures, and the Field Collection job aid. Lastly, the IRS plans to report the potential FTCP violations identified in the Embedded Quality Review System to a Labor Relations Specialist for review.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20024

September 20, 2024

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

FROM: Danny R. Verneuille
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2024 Statutory Review of Potential Fair Tax Collection Practices Violations (Audit No.: 2024300005)

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 by private collection agency employees, including any related administrative or civil actions resulting from those violations. This review is part of our Fiscal Year 2024 Annual Audit Plan and addresses the major management and performance challenge of *Taxpayer Service*.

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

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Appendices

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 were required to be with their customers. Section 3466 of the IRS Restructuring and Reform Act of 1998 requires the IRS to follow provisions, known as Fair Tax Collection Practices (FTCP), like 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 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 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.

[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.

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

Potential Fair Tax Collection Practices Violations Are Not Consistently Coded in the IRS's Employee Relations Database

There were 16 employee misconduct cases (containing 17 issues) coded as potential FTCP violations throughout the IRS, as well as 123 misconduct cases with other issue codes potentially related to FTCP violations for the Small Business/Self-Employed (SB/SE) Division Collection function closed on the ALERTS database from July 1, 2022, through June 30, 2023. We determined that some cases were unsubstantiated as FTCP violations, but the IRS investigated and substantiated the cases under other non-FTCP issue codes. In addition, seven cases had FTCP codes added after the cases were closed because of internal quality reviews. Lastly, employee misconduct cases, including taxpayer complaints of harassment and abuse, were not identified as potential FTCP violations.

Three unsubstantiated FTCP cases were substantiated under other issue codes

There are seven issue codes the IRS uses when considering potential FTCP employee violations. Appendix III provides a list and description of the seven issue codes. Figure 1 shows the number of potential FTCP issues we reviewed by issue code and the description for the 16 misconduct cases (17 issues).

[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.

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

Issue Code	Issue Description	Number of Issues
[redacted]	[redacted]	[redacted]
144	I.R.C. § 6304: Taxpayer Harassment in a Tax Collection Matter	13
145	I.R.C. § 6304: Taxpayer Abuse in a Tax Collection Matter	3
	Total	**17**

Source: TIGTA analysis of ALERTS data for cases closed from July 1, 2022, through June 30, 2023, provided by the IRS.

We did not identify any cases that were incorrectly coded as FTCP violations. However, the IRS confirmed that while all 16 cases were unsubstantiated as FTCP violations, three of the 16 cases were investigated by management and substantiated under other issue codes:[10]

- [redacted]
- [redacted]
- [redacted]

Seven cases had FTCP issue codes added after the case was closed

Seven of the 16 cases coded as potential FTCP violations were initially coded as non-FTCP issues, but FTCP Issue Code 144 was added to ALERTS after the cases were closed. All seven cases were initially opened with Issue Code 058, *Unprofessional Conduct*. [redacted][11] These cases were closed from February and May 2023, but the FTCP issue codes for all the cases were added in November 2023. All seven cases were unsubstantiated as FTCP violations. The missing FTCP issue codes were identified during a management review held in November 2023. IRS management agreed that the FTCP codes were added after the cases closed.

[10] See Appendix IV for a description of the non-FTCP issue codes the IRS selected to substantiate these cases.

[11] See Appendix IV for a description of the non-FTCP issue codes the IRS selected to initially open the cases.

Some employee misconduct cases, including taxpayer complaints of harassment and abuse, were not identified as potential FTCP violations

TIGTA reviewed employee misconduct cases that were not coded as potential FTCP violations to determine if potential FTCP violations had occurred. Twenty-three of the 123 employee misconduct cases (involving 129 potential issues) coded with non-FTCP violations should have been documented in ALERTS as potential FTCP violations by Labor Relations specialists. Of the 23 cases, we identified:

- 20 cases in which a taxpayer or taxpayer's representative made a complaint alleging misconduct by a collection employee. The complaints included allegations of various misconduct including harassment, threats, abuse, and unprofessional behavior.

[redacted]

- [redacted]

We identified these 123 cases (involving 129 potential issues) by searching for 11 issue codes with descriptions that could potentially be FTCP violations, and seven job series codes of employees who could potentially work collection cases. We limited the population to employees in the SB/SE Division Collection function. Figure 2 shows the number of potential non-FTCP issues we reviewed by issue code and description.

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	11
020	Fighting, Assault, or Threats – Not § 1203 of the IRS Restructuring and Reform Act of 1998	17
058	Unprofessional Conduct	84
115	§ 1203(b)(6): Violation of the I.R.C., Internal Revenue Manual (IRM), or Treasury Regulations for the Purpose of Retaliation	3
[redacted]	[redacted]	[redacted]
953	Personnel/Labor Relations Issue	10
999	Not Otherwise Coded	3
	Total	**129**

Source: TIGTA analysis of ALERTS data for cases closed from July 1, 2022, through June 30, 2023, provided by the IRS.

The IRS agreed that 11 of the 23 cases were miscoded and should have included a potential FTCP issue code. The IRS disagreed with 12 cases on the basis that the complaint did not include allegations of harassment and abuse. Instead, these allegations were documented as rude and unprofessional misconduct. However, we found similar allegations of rude and unprofessional misconduct coded as FTCP violations in ALERTS and consider these cases potential FTCP violations. [redacted] It is important that the IRS correctly and consistently code potential FTCP cases in ALERTS so that an appropriate analysis may be conducted. Properly coded issues aid in determining final, consistent actions on cases and could affect the outcome of future misconduct cases.

According to IRS internal guidance, any complaint received concerning allegations of harassment or abuse in a collection matter, regardless of the merits of the case, is at least a potential FTCP violation.[12] The appropriate FTCP issue codes should be documented in ALERTS. The *FTCP Standard Processing Guide for Labor Relations Specialists* (FTCP Processing Guide) instructs the specialist to analyze FTCP thresholds and potential issue codes when a case is received.[13] The FTCP Processing Guide states that any taxpayer complaint about the IRS that involves a collection activity is a "potential" FTCP violation and a FTCP issue code must be entered into ALERTS.

We asked for clarification on policies for applying potential FTCP issue codes. IRS officials explained that before a discussion with management is held, cases are first reviewed and analyzed by a Labor Relations specialist who enters preliminary issue codes. When analyzing whether the FTCP issue code is applicable, management must first determine the threshold issue of the conduct in question, with respect to harassment, abuse, and relation to collection activity. During our review of the misconduct cases, we requested case files to determine if appropriate issue codes were applied. [redacted]

The IRS Human Capital Officer should:

Recommendation 1: Review the 23 miscoded cases with management to ensure that a proper analysis of the potential FTCP violation is conducted and the correct issue code is applied.

> **Management's Response:** IRS management agreed with this recommendation. The IRS Labor/Employee Relations and Negotiations function completed the review of the FTCP cases identified during this audit and assigned FTCP issue codes where applicable.

Recommendation 2: Strengthen controls to ensure that all potential FTCP violations are consistently identified when entering cases into ALERTS.

> **Management's Response:** IRS management agreed with this recommendation and plans to update the existing FTCP Desk Guide to strengthen controls to ensure that all FTCP violations are consistently identified when entering cases into ALERTS.

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[12] IRS, *FTCP Desk Guide* (June 2023); IRS, *ALERTS User Guide*, Ch. 5 (Feb. 2020).

[13] IRS, *FTCP Standard Processing Guide for Labor Relations Specialists* (2023).

One Administrative Action Did Not Follow Timeliness Guidelines

[redacted] The IRM requires that cases be resolved within 180 calendar days after being received in Labor Relations, absent extenuating circumstances, and be closed in ALERTS within 10 calendar days of the employee's receipt of a decision letter (event).[14] The Labor/Employee Relations and Negotiations function is responsible for ensuring that cases progress in a timely manner and meet timeliness goals.

[redacted]

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

We reviewed the *PCA Corrective Action Reports* for the three PCAs. Our review identified 33 cases of potential violations by PCA employees: 26 cases of potential FDCPA violations and seven cases of potential violations of both the FTCP and the FDCPA. PCA employees received disciplinary actions ranging from warnings and training to termination. Specifically:

- 24 cases of potential FDCPA violations occurred when employees communicated with an unauthorized third party. The employees received disciplinary actions including retraining and verbal warnings.
- [redacted].[15] [redacted]
- 6 cases of potential FTCP and FDCPA violations occurred when an employee bypassed the taxpayer's authorized representative and communicated with the taxpayer instead. The employees received disciplinary actions including training and verbal warnings.
- [redacted]

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*. When potential violations are identified, PCAs use Corrective Action Reports (CAR) to document potential FDCPA or FTCP violations and the disciplinary actions taken against employees.

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[14] IRM Exhibit 6.751.1-4 (Nov. 4, 2008) and IRM Exhibit 6.751.1-9 (Nov. 4, 2008).

[15] [redacted]

Each PCA has its own personnel policies to determine discipline for employees who commit a 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. The disciplinary actions in the 33 cases were consistent with each of the PCA's disciplinary policies. It is important for PCAs to identify potential violations of the law and consistently disclose them to the IRS. All PCAs have quality review processes that can potentially identify concerning interactions with taxpayers.

Inconsistencies Exist Among Private Collection Agencies Reporting Third-Party Disclosure Violations

We reviewed the PCA incident logs for July 1, 2022, through June 30, 2023, for any potential FTCP or FDCPA violations that were not reported on the PCAs' monthly CAR.[16] [redacted] Specifically:

- [redacted]

- [redacted]

[redacted] We asked the IRS if all inadvertent disclosures should be reported as potential FDCPA violations on the PCA CAR reports. They explained that some inadvertent unauthorized disclosures, such as authentication defects and misrepresentation of identity or authority, would not be considered potential FDCPA violations by the PCA. [redacted]

Recommendation 3: The Director, Collection, SB/SE Division, should clarify guidance to ensure that all potential FDCPA § 805(b) third-party disclosure violations are reported on the PCA CARs.

> **Management's Response:** IRS management agreed with this recommendation. The IRS plans to add guidance to the Policy and Procedures Guide to specify that only Individual Master File accounts should be included on the CARs.

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[16] The PCA must maintain a PCA Incident Report of all incidents including non-substantive and minor incidents, detailing any PCA corrective action or administrative actions taken. Incidents can include an allegation of rude or unprofessional behavior, intimidation, harassment; or a statutory violation of laws and regulations and may be identified through any form of communication including in-person or by telephone, mail, e-mail, fax, and Internet.

Potential Fair Tax Collection Practices Violations Noted in Quality Reviews Are Not Being Reported

Our analysis of potential FTCP violations in the case narratives of the Embedded Quality Review System (EQRS) for Field Collection and Campus Collection identified 112 potential FTCP violations that were not reported in the ALERTS database.

The EQRS is an online quality review database used by front line managers. The system is designed to assist managers in tracking employee performance, identifying training needs, and planning workload distribution. The EQRS database can generate an Organizational Cumulative Report for any organizational segment down to team level, depending on the user's permissions.[17]

We reviewed EQRS Organization Cumulative Review Feedback Reports for both Field and Campus Collection for July 1, 2022, through June 30, 2023. The Field Collection report contained nearly 10,700 cases, and for 162 cases, the quality element "Right to representation not observed" (Attribute 607) was reported as a potential exception.[18] The Campus Collection report had 270 cases in which the quality element (Attribute 013) "Verify power of attorney/third-party designee" was reported as a potential exception.

Taxpayers have a right to representation in matters before the IRS. I.R.C. § 6304(a)(2) provides that IRS employees may not communicate with taxpayers, without taxpayer consent or a court order, when they know that the taxpayer has obtained an authorized representative to handle the collection matter.

We reviewed the attribute narrative report for the 162 Field Collection cases. We found that in eight of the 162 cases, the reviewer noted an exception for the "right to representation not observed" quality attribute but did not include a narrative explaining the specific nature of the violation.[19] For these eight cases, we reviewed the case summary narratives [redacted] We were unable to determine the cause of the violations in the remaining [redacted] cases due to the lack of a narrative. For the remaining 154 cases, we determined that 106 were potential FTCP violations.

We also reviewed the attribute narrative report for the 270 Campus Collection cases and found five potential FTCP violations. Most of the exceptions pertained to not verifying the Social Security Number or date of birth of the Power of Attorney/third-party designee.

Figure 3 summarizes the potential FTCP violations we found in EQRS narratives.

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[17] IRM 21.10.1.7.12.1(5) (Aug. 17, 2023). The report displays information for the time frame selected as well as the percentage of times each attribute was met. There are several filters that can be selected to refine the report output to more specific information.

[18] IRM 1.4.20.20.1.1 (2) (May 2, 2023). Managers are required to document reviews of at least five cases processed by each employee every quarter.

[19] Not all Embedded Quality job aids require reviewers to include a narrative on potential violations.

Figure 3: Analysis of Potential I.R.C. § 6304(a)(2) Violations Communicating With a Represented Taxpayer

Description of Exception	Total
Field Collection (Attribute 607)	107
Campus Collection (Attribute 013)	5
Total Exceptions	112[20]

Source: TIGTA analysis of EQRS narratives for Attribute 607 and Attribute 013 exceptions from July 1, 2022, through June 30, 2023, provided by the IRS.

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.[21] This includes potential violations identified during a case review, such as an EQRS review. Labor Relations should track these instances on ALERTS using specific issue codes to ensure that the collected data are complete and accurate.[22] The IRS reported three of the potential violations in ALERTS using Issue Code 142, *I.R.C. § 6304: Contacting Taxpayer without Authorized Representative's Consent*. The remaining 109 potential violations were not reported in ALERTS.

Managers are instructed to follow the attribute rating guidance in the *EQ [Embedded Quality] Job Aid* for the particular collection program area reviewed in the EQRS.[23] Each Specialized Product Review Group has its own job aid.[24] We reviewed these job aids and found that many included a statement under Attribute 607 reminding managers that they must include a narrative detailing the circumstances and cause of the potential I.R.C. § 6304 Fair Tax Collection Practice violation when an exception to the "Right to representation not observed" quality attribute is found. Exceptions to this quality attribute require reporting of the potential violation to a local Labor Relations specialist per IRM 1.4.51.3.2.3. However, this requirement was not clearly identified in the *Field Compliance/Field Collection Job Aid* as the document includes a link to "IRM References and Examples" that directs the reviewer to FTCP information, but the link is not related to the exception for "right to representation not observed." The requirement was also not included in any of the Campus Collection jobs aids.

In March 2024, the IRS updated the Campus Collection job aids to include Attribute 226 "Comply with Taxpayer Rights," which instructs the reviewer to include a narrative detailing the circumstances and the cause of the potential FTCP violation. However, it does not include instructions to report the violation to a local Labor Relations specialist.

The IRS agreed with 58 of the 107 Field Collection and all five of the Campus Collection violations we identified as potential I.R.C. § 6304 FTCP violations. The IRS disagreed with the remaining 49 violations, primarily stating that the narrative suggested that contact with the taxpayer was only attempted or that there was not enough information to determine if contact

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[20] Fourteen of the 112 exceptions were previously reported in TIGTA, Report No. 2023-30-060, *Fiscal Year 2023 Statutory Review of Potential Fair Tax Collection Practices Violations* (Sept. 2023).

[21] IRM 1.4.50.3.2.3 (1), *Fair Tax Collection Practices* (Feb. 12, 2020).

[22] IRM 1.4.51.3.2.3 (2), *Fair Tax Collection Practices* (Feb. 12, 2020).

[23] IRM 5.13.1.10, *Embedded Quality Review System* (Feb. 18, 2020).

[24] A "product line" is a major grouping of similar work that is reportable and is measured in the Business Performance Review System. A "Specialized Product Review Group" is a subset of a product line that has a separate sample.

was made with the taxpayer. The lack of reporting potential I.R.C. § 6304 violations in the ALERTS database demonstrates significant gaps in the reporting of potential employee misconduct and appropriate disciplinary actions regarding these potential violations.

The Director, Field Collection, SB/SE Division, should:

Recommendation 4: Report the potential I.R.C. § 6304 FTCP violations we identified in our EQRS reviews to a Labor Relations specialist for investigation.

> **Management's Response:** IRS management agreed with this recommendation. The Director, Field Collection, plans to report the identified potential IRC § 6304 FTCP violations to Labor Relations in accordance with guidance in IRM 1.4.50.3.2.3.

Recommendation 5: Ensure that all Collection job aids include instructions to report potential FTCP violations to a Labor Relations specialist per IRM 1.4.50.3.2.3.

> **Management's Response:** IRS management agreed with this recommendation. The IRS plans to add a note to the Field Collection quality job aid to include a reference to IRM 1.4.50.3.2.3.

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

There were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation from July 1, 2022, through June 30, 2023. 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.

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:

- Performed queries of ALERTS data for FTCP issue codes to identify cases that were closed from July 1, 2022, through June 30, 2023, and determined whether any cases resulted in administrative action and whether those actions were within the recommended penalty actions.
- Performed queries of ALERTS data for non-FTCP issue codes to identify SB/SE Division cases that were closed from July 1, 2022, through June 30, 2023, to determine whether any of the cases should have been coded as potential FTCP violations. We selected 11 non-FTCP issue codes with descriptions that could potentially relate to violations of taxpayers' FTCP rights and seven job series codes.
- Queried the ALERTS data for FTCP and potential FTCP cases to determine if cases were closed within 180 calendar days of being entered into the ALERTS.
- Reviewed the PCA Quality Review Reports, CARs, and Incident Logs for the three PCAs for July 1, 2022, through June 30, 2023.
- Reviewed the EQRS Organization Cumulative Review Feedback Reports for both Field and Campus Collection for July 1, 2022, through June 30, 2023, to determine if any FTCP violations should have been entered into ALERTS. We reviewed the report narratives for Field Collection exceptions to attribute 607 – "right to representation not observed" and Campus Collection exceptions to attribute 013 – "verify power of attorney/third-party designee."
- 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 July 1, 2022, through June 30, 2023. We did not conduct validation tests of this system.

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 located in the IRS Headquarters in Washington, D.C., and information requested from all three PCAs during the period September 2023 through June 2024. 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 Phyllis Heald London, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations); Frank O'Connor, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations); Robert Jenness, Director; John Park, Audit Manager; Jennifer Ragsdale, Lead Auditor, and Ali Vaezazizi, Auditor.

Data Validation Methodology

We obtained data for all cases posting to the ALERTS database from July 1, 2022, through June 30, 2023 (provided to us by the TIGTA Data Services team for this review) and performed tests to assess the reliability of the data. This 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 verified ALERTS cases were not missing employee Social Security Numbers, issue codes, or disposition codes. We also scanned the case numbers to verify chronological order with no obvious gaps in sequencing. We determined that the data were sufficiently reliable for purposes of this report.

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 and policies used to code and work potential FTCP violation cases, the FTCP provisions used to identify potential violations, and the guidance for reporting FTCP violations discovered in EQRS reviews. We evaluated these controls by performing queries on ALERTS data, reviewing employee misconduct case files, and reviewing EQRS case narratives. Additionally, for the three PCAs, we determined the following internal controls were relevant to our audit objective: the procedures for reporting potential FDCPA violations and the actions taken for the potential violations. We evaluated these controls by reviewing the PCAs' CARs and Incident Logs.

Appendix II

Fair Tax Collection Practices Provisions

To ensure equitable treatment by debt collectors in the public and private sectors, the 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 in collection matters. 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 in collection matters. Contacting a taxpayer directly without the consent of the taxpayer's power of attorney.
143	CONTACT AT TAXPAYER EMPLOYMENT; WHEN PROHIBITED – Valid only in collection matters. 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 in collection matters. 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 in collection matters. 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 in collection matters. Causing a taxpayer's telephone to ring continuously with harassing intent.
147	TELEPHONE CALL WITHOUT IDENTIFICATION DISCLOSURE – Valid only in collection matters. 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
003**	FAILURE TO FOLLOW INSTR/DIRECTIVES – Situations in which instructions or directives were not followed.
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.
044**	RETALIATION – NOT 1203 – Used by the Union as a basis to file a grievance or an Unfair Labor Practice charge. This issue is not applicable in conduct matters.
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.
103**	FAILURE TO FOLLOW ESTABLISHED/WRITTEN PROCEDURES
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.
120**	1203(b)(3): CIVIL RIGHTS/CONST VIOLATION – Violation of the civil rights of a taxpayer, taxpayer representative, or other employee of the IRS (any right under the U.S. Constitution, or any civil right established under Titles VI or VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, the Age Discrimination Act of 1975, section 501 or 504 of the Rehabilitation Act of 1973, and Title I of the Americans with Disabilities Act of 1990). SPECIAL Note: Only the Commissioner has the delegated authority to mitigate a removal if this issue is supported by preponderant evidence.
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) and Issue Code Database. * These 11 codes were used in our review of non-FTCP codes that could potentially relate to violations of taxpayers' FTCP rights.*
*** These four codes were identified during our review of cases the IRS coded as potential FTCP violations. The IRS either selected these codes in addition to the FTCP issue code or the IRS selected the code to substantiate the case.*

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 from July 1, 2022, through June 30, 2023.

(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.

- **1692d: Harassment of abuse**
  - A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

  (1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

- **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

September 5, 2024

MEMORANDUM FOR DANNY R. VERNEUILLE
ACTING DEPUTY IINSPECTOR GENERAL FOR AUDIT

FROM: Traci M. DiMartini
IRS Human Capital Officer

Traci M. DiMartini

Digitally signed by Traci M. DiMartini
Date: 2024.09.05 08:13:45 -04'00'

SUBJECT: Draft Audit Report – TIGTA Audit 2024300005 Fiscal Year 2024 Statutory Review of Potential Fair Tax Collection Practices Violations

Thank you for the opportunity to review Fiscal Year 2024 Statutory Review of Potential Fair Tax Collection Practices Violation (Audit # 2024300005).

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 (IRC) §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 PCA employees, including any related administrative or civil actions resulting from those violations. Employees are required to comply with FTCP provisions of the IRS Restructuring and Reform Act of 1998 in every taxpayer contact.

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). As the Treasury Inspector General for Tax Administration (TIGTA) acknowledges in this draft report, all 16 misconduct cases identified in this audit were correctly coded in ALERTS and none were substantiated as FTCP violations. The Human Capital Office (HCO), Labor Employee Relations and Negotiations (LERN) division has established FTCP case processing guidelines which require Labor Relations Specialists to consult with Small Business/Self Employed (SB/SE) Division Collection managers to ensure cases are properly coded, investigated, and adjudicated. LERN managers also conduct monthly reviews of all FTCP cases to ensure compliance.

The IRS would like to thank TIGTA for acknowledging that of the 26 identified cases of potential FDCPA violations and seven cases of potential violations of the FTCP and FDCPA, each of the total 33 disciplinary actions taken by the PCAs were consistent with

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policies. Furthermore, there were no civil actions resulting in monetary awards for damages to taxpayers because of an FTCP violation in the review period.

During this audit, TIGTA provided HCO with a list of 23 misconduct cases that were identified as miscoded in ALERTS. The HCO LERN staff reviewed the 23 misconduct cases in consultation with SBSE Collections management. Of the 23 cases, 11 were miscoded and immediately updated with the correct issue code in ALERTS. It is important to note that based on the evidence, management determined none of these cases would have been substantiated as FTCP violations. The remaining 12 cases were not miscoded because management determined these cases did not include taxpayer abuse, taxpayer harassment, and/or tax collection activity.

Consistent with Internal Revenue Manual 1.4.50.3.2.3, management is not required to refer a taxpayer complaint of harassment or abuse where they have determined the employee's conduct is not a potential violation of IRC §6304, Fair tax collection practices. For example, a complaint regarding normal case processing (i.e., an employee's warning of consequences intended to advise of possible enforcement actions if the representative is unresponsive to the Revenue Officer's request) is not considered harassing behavior and therefore not required to be reported to Labor Relations.

To strengthen internal controls, the IRS agrees with TIGTA's recommendation and will update its existing FTCP desk guide to ensure that all FTCP violations are consistently identified when entering cases into ALERTS.

The TIGTA also identified inconsistencies with the reporting of FDCPA §805(b) third-party disclosure violations. The TIGTA requested the IRS review the reporting of third-party disclosure violations to determine if taxpayer rights were violated. The IRS reviewed the PCA Corrective Action Reports (CARs) and determined these accounts were appropriately reported through the incident process. Additionally, the IRS noted a variance amongst how the PCAs report business accounts on the CAR.

The IRS concurs that clarifying guidance on reporting potential FDCPA §805(b) third-party disclosure violations is necessary and will ensure consistent reporting on the PCA CARs, as TIGTA recommended.

Attached is a detailed response outlining the corrective actions the IRS HCO will initiate in response to your recommendations. If you have any questions, please contact me at traci.m.dimartini@irs.gov, or a member of your staff may contact Geralda Larkins, Director, Labor/Employee Relations and Negotiations, at geralda.larkins@irs.gov.

Attachment

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RECOMMENDATION 1:
The IRS Chief Human Capital Officer should review the 23 miscoded cases with management to ensure that a proper analysis of the potential FTCP violation is conducted and the correct issue code is applied.

CORRECTIVE ACTIONS:
Agree

As of July 12, 2024, the ILERN completed the review of the FTCP cases identified during this audit and assigned FTCP issue codes where applicable.

IMPLEMENTATION DATE:

July 15, 2024

RESPONSIBLE OFFICIAL(S):

NA

CORRECTIVE ACTION(S) MONITORING PLAN:

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

RECOMMENDATION 2:
The IRS Chief Human Capital Officer should strengthen controls to ensure that all potential FTCP violations are consistently identified when entering cases into ALERTS.

CORRECTIVE ACTIONS:

Agree.

LERN will update the existing FTCP Desk Guide to strengthen controls to ensure all FTCP violations are consistently identified when entering cases into ALERTS.

IMPLEMENTATION DATE:

February 15, 2025

RESPONSIBLE OFFICIAL(S):

Director, Labor / Employee Relations and Negotiations

CORRECTIVE ACTION(S) MONITORING PLAN:

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

RECOMMENDATION 3:
The Director, Collection, SB/SE Division, should clarify guidance to ensure that all potential FDCPA § 805(b) third-party disclosure violations are reported on the PCA CARs.

CORRECTIVE ACTIONS:

Agree.

To promote consistency among the Private Collection Agencies and since the FDCPA only governs consumer debts as defined in §1006.2(e), we will add guidance to the Policy and Procedures Guide to specify that only individual master file (IMF) accounts should be included on the Collection Action Reports (CARs).

IMPLEMENTATION DATE:

January 15, 2025

RESPONSIBLE OFFICIAL(S):

Director, Collection, SB/SE Division

CORRECTIVE ACTION(S) MONITORING PLAN:

We will upload the updated Policy and Procedures Guide into the Joint Audit Management Enterprise System, along with Form 13872, Planned Corrective Action Status Update, by January 15, 2025.

RECOMMENDATION 4:
The Director, Field Collection, SB/SE Division, should report the potential I.R.C. § 6304 FTCP violations we identified in our EQRS reviews to a Labor Relations specialist for investigation.

CORRECTIVE ACTIONS:

Agree.

The Director, Field Collection, will report the identified potential IRC § 6304 FTCP violations to Labor Relations in accordance with guidance in IRM 1.4.50.3.2.3.

IMPLEMENTATION DATE:

February 15, 2025

RESPONSIBLE OFFICIAL(S):

Director, SB/SE, Field Collection

CORRECTIVE ACTION(S) MONITORING PLAN:

We will review the cases identified in TIGTA's review and report potential violations of IRC 6304(a)(2) to Labor Relations as appropriate.

RECOMMENDATION 5:
The Director, Field Collection, SB/SE Division, should ensure that all Collection job aids include instructions to report potential FTCP violations to a Labor Relations specialist per IRM 1.4.50.3.2.3.

CORRECTIVE ACTIONS:

Agree.

A note will be added to the Field Collection quality job aid to include a reference to IRM 1.4.50.3.2.3.

IMPLEMENTATION DATE:

January 15, 2025

RESPONSIBLE OFFICIAL(S):

Director, Quality & Technical Support

CORRECTIVE ACTION(S) MONITORING PLAN:

We will upload the updated job aid into the Joint Audit Management Enterprise System, along with Form 13872, Planned Corrective Action Status Update, by January 15, 2025, to monitor this corrective action as part of our internal management system of controls.

Appendix VII

Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
CAR	Corrective Action Report
EQRS	Embedded Quality Review System
FDCPA	Fair Debt Collection Practices Act
FTCP	Fair Tax Collection Practices
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.