Federal Communications Commission
Office of Legislative Affairs
Washington, D.C. 20554

Office of the Director

November 8, 2016

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Enclosed please find responses to Questions for the Record ("QFRs") submitted by Representative Bill Johnson for Chairman Tom Wheeler regarding Chairman Wheeler's appearance before the Subcommittee on Communications and Technology on July 12, 2016 at the hearing entitled "Oversight of the Federal Communications Commission." A certain number of these QFRs requested documents that are nonpublic and sensitive. Consistent with the guidance provided by staff of the Committee on Energy and Commerce ("Committee"), those documents that are nonpublic and sensitive will be provided to the Committee under a separate cover.

If you have further questions, please contact me at [redacted]

Sincerely,

[redacted]

Sean Conway,
Deputy Director

cc: Anna Eshoo, Ranking Member, Subcommittee on Communications and Technology

Enclosures

The Honorable Bill Johnson - Questions for the Record

1. At the hearing, I asked several questions about how the FCC has responded to audit findings of the Inspector General. The FCC used to report publicly on its progress fixing problems identified by the Inspector General and other auditors, like the Government Accountability Office (GAO). Unfortunately, the FCC cut these public disclosures. Please provide the number of recommendations from the Inspector General, the IG's outside auditors, and the GAO, and describe what the FCC is doing to address these recommendations. In addition, please provide a list of every open audit recommendation and the FCC's anticipated date for fixing the problem.

Response: According to our Office of Managing Director (OMD), the Commission's records show that over 70 percent of the audit recommendations remaining on the incomplete list actually have been completed. Items remain listed as "open" until the auditors respond back to the FCC that an item is closed. Our staff follows OMB's guidance, Circular A-50, for audit follow-up as well as the FCC's audit follow-up guidance, FCC Directive 1013.3, to remediate the findings and recommendations. We track the estimated closure dates for findings and monitor the work performed to ensure a timely resolution of audit findings.

- The total number of recommendations from the Inspector General (OIG), the OIG's outside auditors and GAO is 33; the FCC has provided documentation to the OIG for closure of 26 of these recommendations, which leaves 7 outstanding.
- The total number of OIG outside auditors' recommendations is 140; the FCC has provided documentation to the OIG for closure of 95 of these recommendations, which leaves 45 outstanding.
- The total GAO recommendations is 76; the FCC has provided documentation to the GAO for closure of 55 of these recommendations, which leaves 21 outstanding.

The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

2. **You recently submitted the FCC's Management Report on Inspector General and Other Audit Reports to the Committee. The report discloses that in March of last year the IG issued a report on the FCC's management of civil monetary penalties. I think the IG testified back in 2014 that he was going to do this and that the report found that the FCC had not collected all of the penalties and fines it could have. Is it correct that of the IG's 13 recommendations, 10 remain open? When do you expect the remaining recommendations to be closed out?**

Response: The Office of Managing Director has informed me that we have performed the recommended corrective action on all 13 outstanding recommendations. Although we have submitted information to the OIG to close all 13 of the outstanding recommendations, we are waiting for a response from the auditors on 8 of the 13 outstanding recommendations. Since this process depends on factors outside our staff's control, we cannot provide you with potential closure dates. The other 5 recommendations have been closed by the OIG.

3. **At the hearing, I asked several questions about how the FCC has responded to audit findings of the Inspector General. The FCC stopped reporting publicly on its progress fixing problems identified by the Inspector General, the Government Accountability Office (GAO), and others in 2009. As a result, the public has no idea if the FCC is taking timely action to address problems found by its Inspector General and others. Some information is available separately from the GAO, which reports that the FCC has failed to address more than 50 GAO audit recommendations. For example, the GAO reports that the FCC has failed to implement corrective action for six of the seven GAO audit recommendations arising from a report criticizing the FCC for wasting $10 million on information technology (IT) security enhancements. See INFORMATION SECURITY: FEDERAL COMMUNICATIONS COMMISSION NEEDS TO STRENGTHEN CONTROLS OVER ENHANCED SECURED NETWORK PROJECT (Feb. 1, 2013). With this background in mind, please respond to the following questions and requests for information:**
    a. **Please provide a list of each open audit finding or recommendation from the Inspector General, the GAO, or any other auditor, as well as the date of each finding/recommendation, the FCC's planned corrective action, the FCC senior executive tasked with leading the FCC's response, and the FCC's internal deadline for implementing the fix.**
    b. **For every open audit finding/recommendation from the FCC IG, the GAO, or any other auditor, please explain why the FCC has not implemented corrective action and what you will do to ensure the FCC takes corrective action within the next sixty days.**
    c. **Please explain whether you are committed to addressing the problems identified by the IG, the GAO, and others, and if so, what you are doing to ensure these past audit findings and recommendations are addressed.**

Response: The answers provided to Question 1 above demonstrate that the Commission has already addressed 70 percent of the "open" auditor recommendations. We are working to resolve the remaining recommendations. The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

    d. **Please explain what steps you will take to increase transparency over the FCC's process of addressing recommendations of the Inspector General, the GAO, and other auditors.**

Response: The FCC adheres to mandates concerning reporting this information in its annual performance report. I also have been advised that staff followed OMB's Circular A-136 for post-FY 2008 Performance Reporting in Section II.3 and that there is no prescribed format for the annual performance report.

I understand that the primary requirement for these reports is that agencies report on how they performed against the performance targets that were set by the agency in the Annual Performance Plan included in their performance budget submitted for the current fiscal year. Accordingly, we are in compliance with the report requirement.

Although I was not involved in any decisions to alter the publication process in FY 2009, I asked the Office of Managing Director to determine what the records show concerning this matter. According to the staff and the records, in FY 2009, the FCC moved from using the annual Performance and Accountability Report (PAR) format to the bifurcated approach of having an Agency Financial Report (AFR) and separate Annual Performance Report (APR). While the FCC did not include the same specific chart and information about audit findings from the FY 2008 PAR in the FY 2009 APR, the FCC did continue to report a wide variety of performance information about the FCC's operations in the FY 2009 APR.

4. **On June 16, 2016, you responded to questions for the record that I submitted after the March 2016 hearing. Unfortunately, some of your responses were incomplete. For example, you reported on the FCC's spending on travel for FY 2011 through FY 2016, but you did not include the FCC's travel spending using auctions money or the overall total. Please provide corrected travel spending figures that shows the total FCC spending on travel by source of funding. In addition, for FY 2011 through FY 2016, please provide the total number of trips FCC personnel took for each fiscal year.**

<u>Response</u>: The Commission staff reviewed our records and developed the following chart to assist you in understanding our funding levels for travel (dollars are in millions). During FY 2013, sequestration took effect, and therefore travel spending that year was reduced.

Fiscal Years*	**S&E Reg. Fee**	**Auctions Program**	**Reimbursables**	**Total Dollars**	**Total Number of Trips**
FY 2011	$1.4	$0.2	$0.01	**$1.6**	1,572
FY 2012	$1.7	$0.3	$0.11	**$2.1**	1,617
FY 2013	$0.8	$0.2	$0.07	**$1.1**	995
FY 2014	$1.4	$0.2	$0.02	**$1.6**	1,043
FY 2015	$1.6	$0.4	$0.16	**$2.2**	1,360
FY 2016	$1.0	$0.1	$0.00	**$1.1**	1,019
Total	**$7.9**	**$1.4**	**$0.37**	**$9.7**	**7,606**

*As of 9/1/16

5. In your June 16, 2016 response on FCC travel spending, you stated that "[t]here is no rapid rate of growth, only an aberration in spending levels due to [sequestration]." However, a review of the FCC's travel spending suggests that this conclusion—which was based on incomplete information—may be incorrect. A quick review of FCC travel spending shows that your planned FY 2016 travel spending is 22% higher than the FY 2012 spending level and may be the most the FCC has ever spent on travel. It appears that the FCC plans to spend more on travel than it did during the DTV Transition. Please detail the FCC's travel plans for FY 2016 and FY 2017, including who will travel, where these officials will travel, and the purpose of the travel.

Response: As discussed in my answer to Question 4, the FY 2012 actual expenditures for travel were $2.1 million and the actual expenditures for travel for FY 2016 as of September 1, 2016 are $1.1 million. The Commission at this time does not have an approved detailed travel plan for FY 2017 individual staff, nor would it be appropriate to provide future detailed travel itineraries of federal employees for any public record.

Also, travel plans will be dependent upon our final appropriations and specific management needs for that period. Allocations often are higher than actual amounts spent, in order to provide some flexibility throughout the year for emergency or unexpected contingency situations.

The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover. We have made an itemized listing of staff travel for all travel approved for staff during FY 2016 available to Energy and Commerce Committee staff.

6. **In your June 16, 2016 response, you provided spending details for travel for the offices of the FCC Chairman and Commissioners. A review of the FCC's budget documents for FY 2017 shows that you plan to increase travel spending this year (FY 2016) for your office and those of the other commissioners by approximately $110,000 to $320,291. This is roughly 54% over the $207,960 you reported spending on travel for these offices in FY 2015. Please explain why your office and those of the other FCC commissioners require so much additional travel funding for this year. Please provide the planned trips these offices will take during FY 2016 and the purpose of these trips.**

Response: The table below shows the Chairman's and the Commissioners' actual travel expenditures for FY 2015 and budget allocations for FY 2015 through FY 2017. The FY 2015 actual expenditures of $207,960 are less than the FY 2015 allocations of $320,291 because each Office spent less than allocated.

The FY 2017 tentative allocation is in line with the FY 2015 allocation but is slightly more due to an inflationary adjustment of 1.3 percent. We cannot finalize levels for FY 2017 prior to receiving our appropriation for the next fiscal year.

The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

Chairman/ Commissioners	FY 2015 Actuals	FY 2015 Allocation	FY 2016 Allocation	FY 2017 Allocation
Chairman Wheeler	$48,387	$85,583	$85,583	$86,695
Commissioner Clyburn	$48,189	$58,677	$58,677	$59,440
Commissioner Rosenworcel	$40,592	$58,677	$58,677	$59,440
Commissioner Pai	$36,028	$58,677	$58,677	$59,440
Commissioner O'Rielly	$34,764	$58,677	$58,677	$59,440
Totals	**$207,960**	**$320,291**	**$320,291**	**$324,455**

7. Please explain how the FCC's travel spending is consistent with President Obama's Executive Order 13589 Promoting Efficient Spending. Please identify the senior official tasked with developing efficient spending plans on travel, pursuant to Section 3 of Executive Order 13589. Please provide copies of all recommendations, policies, and directives this FCC senior official has developed to "reduce costs" and ensure efficient spending on travel.

Response: The Commission's travel spending is well within the guidelines established in President Obama's Executive Order 13589, Promoting Efficient Spending. Based on the Office of Management and Budget (OMB) Memorandum, M-12-12, *Promoting Efficient Spending to Support Agency Operations*, the Commission's Office of Managing Director worked with OMB to establish an OMB approved cap for travel expenditures. Since the establishment of that travel cap, the Commission's travel expenditures have not exceeded the OMB approved cap.

The Chief Financial Officer (CFO) is the senior official responsible for developing efficient spending plans on travel by working with each Bureau and Office Chief and their staffs. The CFO reports to the Managing Director, who reports to the Chief of Staff and me.

The Commission's Financial Operations Group develops an annual travel budget that falls under the OMB approved cap and puts controls in place to prevent over-spending. In addition, the Financial Operations group monitors travel expenditures throughout the fiscal year to prevent any over-spending of the OMB approved cap.

I am satisfied that the CFO performed this task appropriately. He worked with each Bureau and Office to implement an efficient and effective spending plan for travel. Given our staff has never exceeded our travel budget and is more likely to be well below the level authorized at the end of the fiscal year, I have not seen any reason to encourage further austerity measures. The FCC's staff has behaved responsibly with regard to agency travel.

The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

8. **According to the General Services Administration (GSA), the FCC did not submit its report for Premium Class Travel to the GSA for FY 2015. Please provide the total number of premium class trips that FCC officials took during FY 2013, FY 2014, FY 2015, and in FY 2016, and please describe the destination and purpose of each trip. In addition, please explain what the FCC will do to ensure that it submits Premium Class Travel reports to the GSA in the future.**

Response: The Commission's records show a small number of these trips, averaging about 4 per year, in the Premium Class Travel category. Our records show that during FY 2016, we had only 3 such trips. Our travel and costs are well within established guidelines and consistent with the oversight directives of the Appropriations Committee.

The Commission did not report these 4 trips in FY 2015. The Office of Managing Director has implemented additional measures to ensure that this does not happen again, and that the required information is reported.

Below is a chart created by our staff detailing the Premium Class Travel trips for the period specified:

FY 2013	
Total Number of Trips	4
Destination	**Purpose of Trip**
Brussels, Belgium	Consultations
Brussels, Belgium	Consultations
Dubai, United Arab Emirates	Various Meetings
Rio De Janeiro, Brazil	FutureCom/South American Bilats

FY 2014	
Total Number of Trips	No data to report

FY 2015	
Total Number of Trips	4
Destination	**Purpose of Trip**
Minneapolis, MN	Keynote Address at NATOA Conference
Las Vegas, NV	CTIA Keynote
Geneva, Switzerland	Arab Spectrum Mgt. Group (ASMG) & MENA Spectrum Mgt. Conference
Busan, South Korea	ITU Plenipotentiary Conference

FY 2016	
Total Number of Trips	3
Destination	**Purpose of Trip**
Geneva, Switzerland	WRC-15 Conference
London, England	BEREC
Barcelona, Spain	GSM World Congress 2016

9. **In your June 16, 2016, response to my questions from March, you provided a summary explanation for how the auctions program accounts for $59 million in auctions funding to the Office of Managing Director, but you did not provide the requested detail that conforms with the crosswalk for the Spectrum Auctions Program. Please detail for the Subcommittee how the auctions program would account for such a large portion of OMD's cost in FY 2017.**

Response: OMD oversees IT, and the auctions process is very IT-intensive. In addition, auctions must account for its share of administrative costs yearly—including rent, salaries, and other operations. Our staff has prepared the chart below to answer this question, providing a breakdown of OMD's FY 2017 auction funding (dollars in millions). Our specific expenditures are detailed in the Commission's annual Auctions Expenditures Report and we provide a presentation yearly for the Appropriations Committee.

Components of the Office of Managing Director	Amount
Information Technology	$46.2
Administrative Operations	$8.4
Financial Operations	$3.9
Human Resource Management	$0.3
All Others	$0.2

10. In your June 16, 2016, response to my questions from March about the FCC's auctions expense report, you provided a high-level summary of the statutory reporting requirements, but you did not provide copies of past reports. Please provide for the record copies of the FCC's auctions expense reports for 2013, 2014, and 2015.

Response: We have always submitted this material to our authorizing and appropriating committees—including the Energy and Commerce Committee—in a timely manner, as required by law. My understanding is that statutes require reporting of this nature to the authorizing committee to ensure that committee members have ready access to the material from the committee's files. In addition, OMD has posted summaries of its recent FCC's Auction Expenditures report to its website on the Strategic Plans and Budget page. The summaries for FY 2014 and FY 2015 are available here: https://www.fcc.gov/about/strategic-plans-budget. The FCC's Annual Budget Estimates to Congress also provide budget information and crosswalks for public review.

The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

11. **You testified that you had no idea if the fine that the Commission assessed against an offshore manufacturer of jamming equipment would ever be responded to, let alone paid.**
    a. **Under the "information flow" proposal in the set-top box NPRM, third party device makers would have access to information protected under Section 631. Even NTIA agrees that the NPRM' s proposal to rely on self-certification of privacy does not provide an adequate level of protection for consumers or answer critical questions, such as who will ensure compliance and how will consumers be assured that they will retain their existing consumer remedies for infringements of privacy.**
    b. **Given your uncertainty about whether the FCC has effective enforcement power over offshore manufacturers, isn't it also true that the NPRM provides no assurance of enforceable protections for private information put into the hands of third party device manufacturers, leaving consumers without any meaningful remedy?**
    c. **Under the "information flow" proposal in the set-top box NPRM, how would the FCC (or FTC) determine what data a third party is collecting, how it is using the data, or whether it is unlawfully sharing it with other parties?**
    d. **The HTML5 apps-based approach offered by independent programmers and MVPDs would provide full Title VI consumer privacy and still promote retail competition. Isn't it is time to set aside the approach proposed in the NPRM and follow the HTML5 apps-based proposal as the basis for resolving the set-top box docket?**

<u>Response</u>: The FCC has a long history of protecting the privacy of consumers of communications services. The NPRM sought comment on how best to ensure that the privacy protections that exist today will also apply in a competitive market. The NPRM also sought comment on appropriate enforcement mechanisms.

Based on the rich record we developed in response to the NPRM, including input from the Federal Trade Commission, the Order on circulation would employ an apps-based approach that would preserve the privacy protections that exist today no matter what device is used. This apps-based approach incorporates a number of important features of the HTML5 apps-based approach with respect to protecting the privacy of pay-TV consumers.

12. You told us in April of last year that the FCC was "moving ahead without legislation" to create a better, more transparent, more effective FCC, and that you believed the Commission should be given the chance to "continue to do its job, including the job of bettering how it conducts the business of the people." You committed to setting up a task force with one representative from each Commissioner's office. It's been over a year since this commitment was made -what results can you report? Are you taking these efforts seriously? I'm inclined to believe that the Commission has been given a chance to do its job, and it has not lived up to that promise.

Response: We have worked hard to ensure that the Commission has transparent and effective processes. Almost all reform recommendations from the 2013 Reform Report have been implemented or are in the process of implementation. As you noted, we formed a task force to consider additional proposals, including those relating to the processes by which the Commission considers items. Some process improvements have been made. In other cases, changes were suggested to processes that were developed through a consensus of the Commissioners. Extensive discussions within the task force have occurred, but have not resulted in a consensus view as to additional changes that should be made.

13. The FCC has lowered its total number of employees, but the FCC's budget reports show perpetually increasing personnel expenses. ***Part of the reason appears to be high FCC salaries.*** **According to the Office of Personnel Management (OPM),** ***a record high number of FCC employees receive salaries of more than $160,000/year.*** **As of March 2016, over 33% of FCC employees receive salaries at this high level. This appears to be a significant increase from just last year, when only 3.1% of FCC employees received annual salaries in excess of $160,000/year. OPM also reports that nearly 80% of FCC employees receive salaries of $100,000/year or greater. Please explain why FCC employees require such high salaries. Please explain what controls the FCC has implemented during your chairmanship to ensure that it does not inflate the grades of FCC personnel.**

Response: The 2016 government-wide pay adjustment raised salaries above a $160,000 threshold (previously limited below $160,000 in 2015). We follow Office of Personnel Management (OPM) regulations with regard to salaries, ranks, and grades. OPM audits human resources operations on a recurring basis.

The Commission has a small workforce, mostly onsite in Washington D.C., with many staff exceeding the average of other agencies for years worked in government. The Commission requires highly skilled professionals—engineers, attorneys, and economists—as well as trained para-professionals to support our work. The FCC also has an ongoing need for higher-graded professional staff with valuable expertise and we have been using technology to reduce the need for lower-graded administrative positions.

We expect that through attrition and retirements, as well as future hiring, we may see some shifts in the Commission's workforce. For instance, we have strategic human capital initiatives in place to increase entry level hiring for cyber and attorney talent, such as the Scholarship for Service and our Honors Attorney program.

14. According to the Internal Revenue Service, 65 FCC employees owed more than $3 million in back taxes as of 2014, which is the most recent reporting year. Although your predecessor Chairman Genachowski promised to fix this problem of FCC employees failing to pay their taxes, he did not and *the FCC tax deadbeat problem has grown — almost tripling since 2012*. Please provide updated numbers (i.e., FCC employees and amount of back taxes owed) for 2015 and for 2016 to date. In addition, please explain why the FCC tax deadbeat problem grew worse after you assumed the chairmanship in2014. Please explain what disciplinary action the FCC has taken against FCC employees who have failed to pay their taxes. Please explain what the FCC is going to do to address this issue and ensure its employees pay their taxes.

Response: The FCC does not duplicate tax collection or related tax data compilation activities legally performed under the auspices of the U.S. Department of Treasury's Internal Revenue Service (IRS). We provide the same withholding, tax information, and assistance provided by any responsible employer through our Office of Human Resources and employee assistance programs. We also remind our employees yearly that they have a legal and ethical obligation as federal employees to file their tax returns and pay any personal tax debts. We also keep apprised of important activities related to the IRS' efforts, especially where it affects our employees.

In September 2015, the Treasury Inspector General for Tax Administration released a report that found the IRS Federal Employee/Retiree Delinquency Initiative (FERDI) was generally successful at collecting delinquent taxes from current and retired federal employees, but made some recommendations for improvement. See Attachment A. According to that report, the IRS identified 304,665 federal employees and retirees who owed about $3.54 billion in unpaid taxes at the end of fiscal year FY 2014—but noted that most FERDI cases were later closed as fully paid or satisfied with an installment agreement. I have confidence that any FCC employee on their delinquency list will be handled appropriately as part of this process.

As for the increase in FCC employee delinquencies between 2011 and 2014, I have reviewed the most recently released FERDI report of employee/retiree delinquencies dated September 30, 2014, which was compiled less than a year after I became Chairman. We strive to cooperate with other agencies as they carry out their individual mandates. The 2014 Report (prior to FERDI collection efforts) shows the Commission as having a total of 3.76 percent of its 1728 employees, or 65 persons owing $3,020,922. We have reviewed prior year FERDI Reports and found that over the past 10 years, our numbers have generally fluctuated between 50-65 employees or anywhere from a 2.74 percent delinquency rate to the current level. Sometimes the number of employees is lower while the amount owed is higher, and vice versa.

We also contacted the IRS to inquire about the availability of updated employee information and data. We were informed that the initial level of FCC employee delinquencies tabulated for FY 2015 was 68, although no other data was provided. The IRS is better equipped to report to you on this matter, including successful collections by agency, and/or to provide additional data for the past 2 fiscal years. We lack the tax data to provide you with an accurate list of updated numbers or current collection efforts. The delinquent employees listed would have been subject to the

FERDI collection operations detailed in the 2015 IRS IG Report. The IRS should likewise be able to assist you in determining if they were able to make successful collections during those prior years and compare final collection efforts between individual years. The post-collection process probably provides a more accurate picture of ongoing debt issues.

It is important to note that when examined in comparison to other agencies, the Commission has always been in the middle range for delinquencies, with some agencies having noncompliance or delinquency rates up to 5 percentage points higher than the FCC. For instance, in the most recently released FERDI Report, the U.S. Senate had a rate similar to ours at 3.49 percent, while the U.S. House of Representatives had a combined staff debt of $6,714,852, or 5.04 percent of its employees listed as delinquent.

The FERDI program has been successful in following up with noncompliant employees. We will continue to remind employees of their obligations and assist our employees with any information necessary to comply with the law. We also stand ready to review any employee conduct reported to us by another agency.

15. The FCC Inspector General continues to report to Congress on the misconduct of FCC employees. In his most recent report, the FCC IG found "employee violations of multiple ethical and administrative rules" arising from inappropriate use of computers, such as viewing pornography, operating an outside business, and other types of fraud. The IG reports that it referred criminal action to the Internal Revenue Service (IRS), but the IRS declined to proceed. Please explain whether the FCC took disciplinary action against these employees and, if any of these employees are still working at the FCC, please explain why. Please explain whether the employees the IG found engaging in misconduct were repeat offenders in any way. Please explain whether the FCC IG made any criminal or civil referrals to the Department of Justice (DOJ) for these matters, and if so, explain whether DOJ is pursuing action.

Response: I consider any violation to be a serious matter, and we routinely work to educate our employees concerning their legal, ethical and administrative obligations.

Although the vast majority of our employees follow our government-wide ethics and administrative rules, there are some cases where we have determined that an individual employee has been engaged in misconduct. In such instances, we follow the required legal and administrative process related to adverse actions against employees.

With regard to the specific OIG cases you cited, these matters are currently pending within our review process. None of the employees reported by the IG had been subject to prior disciplinary or adverse action. The OIG referred 3 cases to the IRS criminal division, and the IRS investigation revealed a fourth employee involved in similar misconduct that OIG then investigated. The IRS, in conjunction with the Department of Justice, declined to prosecute, but made no findings as to the substantive merits of the OIG findings.

Our goal is to avoid misconduct through education and training. We provide ethics training in compliance with the Office of Government Ethics.

16. Numerous FCC IG reports have identified misconduct of FCC employees. Please explain whether any FCC employees found by the IG to have engaged in misconduct received salaries of more than $150,000. Please provide a chart detailing the salary levels of the employees the IG found to engage in misconduct, including time and attendance fraud, operating outside business during official hours, viewing pornography, and other such misconduct described by the IG in his semi-annual reports. Please explain whether any of these employees received any pay raise or salary increase after the IG uncovered their misconduct. If any of these employees continue to work at the FCC, please explain why.

Response: If an employee is sanctioned for misconduct but permitted to return to duty, that employee qualifies for the same pay raises as other employees. There is no mechanism in place to prevent the employees from receiving the government-wide annual pay adjustment. One employee found by the IG to have engaged in misconduct has received a salary of more than $150,000. There has been 1 employee found by the IG to have engaged in misconduct who received a pay raise that was based on tenure and performance.

Generally, Federal personnel rules provide a range of sanctions for employees short of termination. Our policies are consistent with government-wide approaches to handling employee misconduct, which are dependent upon the type, level, frequency, and harm caused by the offense, as well as the employee's record.

Employee	Annual Salary Level
FCC employee A	$141,555
FCC employee B	$160,300
FCC employee C	$119,794
FCC employee D	$53,215

17. **Please explain what the FCC has done to deter and prevent employee misconduct since you've assumed the chairmanship. Please provide copies of all directives, memoranda, instructions, or other guidance that your office has issued to ensure that the American public can have confidence in the workforce of the FCC. Please explain the reasons for any breakdown of an FCC policy, directive, or memoranda that resulted in employee misconduct found by the IG.**

Response: The FCC has policies in place that identify employee responsibilities for acceptable behavior and deter employee misconduct. In addition, employees are reminded of their responsibilities when logging into their workstations and when certifying timecards. Moreover, all employees must take and complete an online course in cybersecurity that reviews proper computer use. The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

The FCC follows the Office of Government Ethics (OGE) government-wide regulations regarding mandatory ethics training, 5 C.F.R. §§ 2638.704 and 705. Section 704 requires that we provide annual verbal ethics training to senior Commission officials who are filers of the Public Financial Disclosure Report, OGE 278e. Section 705 requires that we provide verbal ethics training once every 3 years to filers of the Confidential Financial Disclosure Report, OGE 450, which at our agency currently consists of all employees in Grades 13 through 15 who are not required to file the OGE 278e.

Our practice for many years has been to provide several live training sessions in the Commission Meeting Room. For those employees unable to attend the live sessions, we make a recording available. We are currently in the process of providing annual training to our OGE 278e filers; next year we will be training OGE 450 filers as well, pursuant to the 3-year cycle adopted by OGE. In addition, we also use our email system to provide less formal written training, information, and guidance throughout the year to all FCC employees on ethics topics that are of immediate interest.

Under the Commission's implementation of these rules, all SES employees currently must recertify their ethics training yearly, while employees Grades 13 through 15 must complete an ethics course every 3 years.

We continue to work with the IG and utilize FCC resources to ensure that appropriate steps are taken to address employee misconduct. I do not believe that misconduct is based on our failure to properly advise our employees, but rather by rare instances of individuals who fail to follow our rules and guidance or to avail themselves to appropriate training or assistance from our ethics specialists in the Office of General Counsel.

18. In my QFRs following the March 22, 2016 Oversight Hearing I requested certain information related to the Chief of the Enforcement Bureau's trip to the Super Bowl. I have been informed that while the FCC has produced the expense report related to the trip, the Bureau Chief's time and attendance report for the pay period during which the trip occurred has not been produced. Explain why the report has not been produced. Provide a copy of the report.

Response: The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

19. I understand that the FCC released several important peer reviews in the Business Data Services proceeding on June 28th -the same day that comments were due in the docket. I've heard that these peer reviews raise questions about the work that an outside economist hired by the FCC did, and that the FCC's outside economist revised his initial work based on the peer reviews.

a. The FCC received these peer reviews in April, but didn't release them until the end of June. Why the delay?

Response: Consistent with the OMB Peer Review Guidelines, on April 14, the Commission engaged 2 academic economists to peer review the Rysman Paper, receiving peer review reports on April 26 and April 28. Professor Rysman and FCC staff needed time to review these materials and prepare responses addressing the issues raised. On June 28, FCC staff released all these peer review materials—the peer review charge memos, peer review reports, revised Rysman Paper, and Responses—to coincide with the comment deadlines to allow parties sufficient time to address the peer reviews by the July 26 reply comment deadline (which was subsequently extended to August 9).

b. Why did the FCC choose not to release the peer reviews when it released the Further Notice on May 2nd? The peer reviews were submitted in April, so the FCC could have released them, but chose not to. Can you explain why the FCC didn't release the peer reviews with the Further Notice?

Response: The FCC did not release the peer reviews with the Further Notice because, consistent with OMB Peer Review Guidelines, it needed time to review the materials and prepare responses addressing the issues raised.

20. The FCC entered into a no-bid contract with an economist for about $150,000. The only FCC explanation for this noncompetitive contract is that there is "only one source." To help us review the propriety of the FCC's actions, please respond to the following questions and requests for information:

a. Please explain how the FCC chose Mr. Rysman as an outside expert suitable for writing a study on the market for special access services (also referred to as "business data services").

<u>Response</u>: Dr. Rysman was selected for this procurement based on his availability, knowledge, skills, and abilities, as well as a determination that he did not have any organizational conflicts of interest (OCIs). Dr. Rysman was also selected for the reason that he was likely to have the skills necessary to develop and defend a sufficiently robust white paper.

The FCC applied the following criteria to select an expert suitable for this study: (1) a background in the applied econometrics of market power analysis; (2) substantial knowledge of business data services (BDS); (3) availability and no conflicts of interest; and (4) a likelihood of producing a detailed white paper that would provide the Commission with helpful and defensible information for decision-making.

Our procurement specialists determined during market research that no otherwise available and qualified candidate had substantial knowledge of BDS. Our procurement specialists further determined that Dr. Rysman's overall academic background and substantial telecommunications experience could substitute for specific BDS experience.

The contract was awarded using simplified acquisition procedures under the test program for commercial items. Accordingly, it was subject to competition exemption rules suited to that approach employing the maximum practicable competition standard. *See* 48 C.F.R. §§ 13.104, 13.106-1, 13.501(a)(1). As suggested above and below, the agency settled on Dr. Rysman after substantial canvassing and determining no otherwise available and qualified expert had substantial knowledge of BDS, and after considering his availability, knowledge, skills, abilities, and absence of OCIs. The agency was also mindful of the potential need to consult the contractor in the event of litigation and discussed with the contractor the potential for his consultancy in reasonably foreseeable litigation. *Cf.* 48 C.F.R. § 6.302-3(a)(2)(iii),(b)(3).

b. What papers or studies has Mr. Rysman conducted into Business Data Services/special access services? What qualifications did Mr. Rysman have to conduct this study under a sole source contract?

<u>Response</u>: Dr. Rysman's research and experience focuses on Industrial Organization (IO) and competition within a variety of industries, including telecommunications. He also teaches IO, econometrics, antitrust, and regulation. A subset of Dr. Rysman's work and publications can be found at the following links: http://www.nber.org/authors_papers/marc_rysman and http://sites.bu.edu/mrysman/research/.

c. What review did the FCC conduct to determine Mr. Rysman had no conflicts of interest concerning his study into the market for

Business Data Services/special access service?

Response: With regard to Organizational Conflicts of Interest (OCI), Dr. Rysman was asked a series of OCI questions, including the following:

> (1) Did he have a consulting arrangement with a firm that consulted for any of the parties participating in the proceeding (essentially all of the firms in the BDS industry)?
> (2) Did he have a direct arrangement to do consulting with any of the parties participating in the proceeding?
> (3) Did he have a relative who was employed with any of the parties?

This review showed that Dr. Rysman did not have any disqualifying factors. In addition, Dr. Rysman, in signing the contract, warranted that, unless previously disclosed or disclosed under the Organizational Conflicts of Interest or Notice of Potential Organizational Conflict of Interest clauses of the contract, there were no relevant facts or circumstances known to him that pose or likely would pose an organizational conflict of interest with respect to performance of the contract. He also committed to various obligations regarding identification, reporting, and avoidance or mitigation of any personal conflicts of interest in performance of the work in accordance with the Personal Conflicts of Interest clause of the contract.

d. Please provide the contract between the FCC and its outside economist, Mr. Rysman.

Response: The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

e. Please provide the 'justification and approval" used to justify the sole source non-competitive contract that the FCC entered into with Mr. Rysman.

Response: The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

f. Please provide any other contracts that the FCC has entered into with outside economists since FY 2014, including any non-competitive contracts and the "justification and approval" for using a non-competitive contract in these cases.

Response: The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

The Honorable Bill Johnson - Request for the Record

1. **One of the things that we focused on is the uncertainty that results from poor processes. On May 4, 2016, an opinion and order was released by the Enforcement Bureau in a complaint proceeding - EarthLink v. SBC. The complaint was filed with the FCC on May 13, 2004. It took the FCC almost 12 years to resolve the complaint. Explain the delay is addressing this complaint.**

Response: The time period for resolution that you cited here for *EarthLink v. SBC* was complicated by a range of factors leading to delay, including the need to refresh the record. The complainant initially filed in 2004 concerning cross-subsidization of dial-up Internet services and briefed the Commission in early 2005. Commission staff drafted an order almost immediately, but coordination with other Bureaus and Offices took longer than usual given the economic complexities of the underlying issues.

Despite both parties being active in other Commission proceedings, the parties did not file in the complaint proceeding again until prompted to do so by the Enforcement Bureau approximately 8 years later. The Enforcement Bureau proactively reached out to EarthLink in March 2013 to ask whether it was still interested in pursuing the case, but EarthLink did not respond.

In early 2014, as part of the backlog reduction initiative, Bureau staff reached out again to EarthLink to determine whether it retained an interest in the case. EarthLink responded affirmatively and the Bureau sought participation by the parties in a mediation process.

In April 2015, EarthLink filed a letter with the Commission demanding a ruling in the case. The Enforcement Bureau subsequently drafted and issued a final order.

2. **Chairman Wheeler, you recently submitted the FCC's management report on Inspector General and other audit reports to the committee. The report discloses that in March of last year the IG issued a report on the FCC's management of civil monetary penalties. I think the IG testified back in 2014 that he was going to do this and that the report found that the FCC had not collected all the penalties and fines that it could have.**
    a. **You reported to this committee that of the IG's 13 recommendations, ten remain open. When will the remaining recommendations be closed out?**

Response: The FCC has performed the recommended corrective action on all 13 outstanding recommendations. The FCC has submitted information to the OIG to close all 13 of the outstanding recommendations. The FCC is waiting for a response from the auditors on 8 of the 13 outstanding recommendations; the other 5 recommendations have been closed by the OIG.

    b. **Provide a copy of the IG's audit report.**

Response: The document(s) requested contains nonpublic Commission information. The Commission has provided the document(s) to the Committee under separate cover.

Attachment A

Most Federal Employee/Retiree Delinquency Initiative Cases Are Resolved With the Collection of Revenue; However, Some Program Improvements Can Be Made

June 29, 2015

Reference Number: 2015-30-051

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

Phone Number / 202-622-6500
E-mail Address / TIGTACommunications@tigta.treas.gov
Website / http://www.treasury.gov/tigta

HIGHLIGHTS

MOST FEDERAL EMPLOYEE/RETIREE DELINQUENCY INITIATIVE CASES ARE RESOLVED WITH THE COLLECTION OF REVENUE; HOWEVER, SOME PROGRAM IMPROVEMENTS CAN BE MADE

Highlights

Final Report issued on June 29, 2015

Highlights of Reference Number: 2015-30-051 to the Internal Revenue Service Commissioner for the Small Business/Self-Employed Division.

IMPACT ON TAXPAYERS

Like all taxpayers, Federal employees and retirees have a legal obligation to pay their taxes. However, Federal employees and retirees are held to a higher ethical standard for a number of reasons, including that they draw their compensation and funds from Federal taxes. In Fiscal Year 1993, the IRS developed the Federal Employee/Retiree Delinquency Initiative (FERDI) program to promote Federal tax compliance among current and retired Federal civilian and military employees as well as military reservists.

WHY TIGTA DID THE AUDIT

The IRS identified 304,665 Federal employees and retirees who owed approximately $3.54 billion in unpaid taxes at the end of Fiscal Year 2014. This audit was initiated to determine whether the IRS has adequate controls and procedures in place to properly identify and resolve tax compliance issues among Federal employees and retirees.

WHAT TIGTA FOUND

Generally, the IRS is successful at collecting revenue by closing most FERDI cases as fully paid or with an installment agreement.

TIGTA identified two ways in which the FERDI program can be improved. The first involves the Federal Payment Levy Program (FPLP), one of the key collection tools used for the FERDI program, which allows the IRS to levy up to 15 percent of certain Federal payments, including wages, to delinquent taxpayers. Federal payments for certain Federal employees are excluded from the FPLP due to legal or policy constraints, *e.g.*, bankruptcy or military service men and women in combat zones, but the IRS excludes certain other Federal payments from the FPLP without a legal or articulated policy basis. TIGTA forecasts that expanding the FPLP to include more Federal payments could potentially increase revenue by approximately $18.3 million over the next five years.

The second improvement opportunity involves the IRS's policy to handle many FERDI cases manually. Besides the FPLP, FERDI cases bypass the IRS's other Automated Collection System (ACS) tools that can systemically identify taxpayer assets for levy in favor of manual handling. Moving FERDI cases to the ACS's systemic levy process if the FPLP levy attempts fail or if the FPLP levy will not fully pay the amount owed could result in potential benefits such as faster case resolutions and smaller manual inventory sizes.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS continue identifying and expanding the use of the FPLP to other Federal payments, including military retirement payments, and consider applying ACS systemic levies to FERDI taxpayers.

In their response to the report, IRS officials agreed with the recommendation to expand the use of the FPLP to other Federal payments and plan to work with the appropriate agencies to make the necessary programming changes to include military retirement payments.

IRS officials disagreed with the recommendation to apply ACS systemic levies to FERDI taxpayers because they believe that the majority of manually worked FERDI cases will be included in the FPLP after the programming changes.

TIGTA believes that the IRS could further reduce ACS manual inventory by moving FERDI cases to the ACS systemic levy process when FPLP levies do not fully resolve the delinquency.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

June 29, 2015

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED DIVISION

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Most Federal Employee/Retiree Delinquency Initiative Cases Are Resolved With the Collection of Revenue; However, Some Program Improvements Can Be Made (Audit # 201330013)

This report presents the results of our review to determine whether the Internal Revenue Service has adequate controls and procedures in place to properly identify and resolve tax compliance issues of Federal employees and retirees. This audit is included in our Fiscal Year 2015 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives.

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

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

Table of Contents

Abbreviations

ACS	Automated Collection System
BFS	Bureau of the Fiscal Service
FERDI	Federal Employee/Retiree Delinquency Initiative
FPLP	Federal Payment Levy Program
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
TDA	Taxpayer Delinquent Account
TIGTA	Treasury Inspector General for Tax Administration

Background

In Fiscal Year (FY) 1993, the Internal Revenue Service (IRS) developed the Federal Employee/Retiree Delinquency Initiative (FERDI) program to promote Federal tax compliance among current and retired Federal civilian and military employees as well as military reservists.[1] The FERDI program addresses the responsibility of Federal employees to "satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State or local taxes that are imposed by law."[2] The FERDI program applies to all delinquent taxpayers currently receiving a salary or annuity pension from the Federal Government. Federal employees or retirees include the following:

The FERDI program applies to all delinquent taxpayers currently receiving a salary or annuity pension from the Federal Government.

- Civilian employees, including those of the U.S. Postal Service.
- Civil Service or Federal Employee Retirement System retirees.
- Active duty military personnel.
- Military retirees.
- National Guard/Reservists.

FERDI cases are primarily worked through the Automated Collection System (ACS) FERDI operation, which is centralized in the IRS Wage and Investment Division's Jacksonville, Florida, ACS call site.[3] There are 167 employees at the call site dedicated to working FERDI cases. ACS Collection representatives work the majority of FERDI cases; however, cases meeting certain criteria are assigned to Field Collection (the Field) to be worked by revenue officers. For example, FERDI cases with aggregate balances equal to or exceeding $1 million and IRS employee cases with delinquent returns or balance due modules are assigned to the Field. IRS Collection Activity Reports showed that at the end of FY 2014, there were 104,047 FERDI taxpayers with 238,294 taxpayer delinquent accounts (TDA) in ACS inventory and 1,055 FERDI taxpayers with 4,662 TDAs in the Field inventory. In addition, there were 59,165 FERDI taxpayers with 119,061 taxpayer delinquency investigations in ACS inventory and 153 FERDI taxpayers with 353 taxpayer delinquency investigations in the Field inventory at the end of FY 2014.

[1] See Appendix VII for a glossary of terms.
[2] Office of Government Ethics, Code of Federal Regulations, Title 5, Chapter XVI , Subchapter B, Part 2635, subpart H, Section 2635.809.
[3] Pursuant to the IRS realignment, the Wage and Investment Division's ACS function moved to the Small Business/Self-Employed Division on October 19, 2014.

One of the key collection tools used for the FERDI program is the Federal Payment Levy Program (FPLP).[4] The IRS operates the FPLP with the Bureau of the Fiscal Service (BFS) as a systemic means for the IRS to collect delinquent taxes by levying Federal payments. Examples of Federal payments that are subject to the FPLP include Federal employee retirement annuities administered through the Office of Personnel Management, Federal employee travel payments (both advances and reimbursements), and Federal civilian employee salaries administered by the main Federal salary-paying agencies.[5] Appendix V shows a list of Federal payments that are subject to the FPLP along with the dates these payments became available to be levied by the program.

To levy a delinquent taxpayer's Federal payments, the IRS systemically transmits account data to the BFS, which compares the taxpayer's identification number with eligible Federal agency payment records. If the BFS identifies a delinquent taxpayer who is scheduled to receive a Federal payment, a match is systemically posted on the IRS system. Once a match is posted, the IRS system automatically determines if a notice of intent to levy has previously been issued. If it has not been issued, the system prepares and sends a notice of intent to levy to the taxpayer.[6] Taxpayers have a minimum of 30 days to respond to the notice, during which time they may consider several alternatives available to them, such as requesting their account to be closed as currently not collectible due to financial hardship or applying for an installment agreement. If taxpayers do not respond to the IRS or take one of the collection options within the notification period, the IRS will systemically transmit a request to the BFS for a continuous FPLP levy of up to 15 percent of the taxpayer's Federal payments.

This review was performed at the IRS ACS call site in Jacksonville, Florida, in the Wage and Investment Division's Campus Compliance Services function during the period July 2013 through January 2015. 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. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

---

[4] Internal Revenue Code (I.R.C.) Section (§) 6331(h)(2)(A) authorizes the IRS to levy up to 15 percent of certain Federal payments due to taxpayers.
[5] The main Federal salary-paying agencies are the U.S. Department of Agriculture's National Finance Center, Department of the Interior's Interior Business Center, U.S. Postal Service, General Services Administration, and Defense Finance and Accounting Service.
[6] I.R.C. § 6331(d) requires the IRS to notify the taxpayer of its intent to levy. Additionally, pursuant to I.R.C. § 6330, on the first notice of intent to levy on an account, taxpayers are entitled to a Collection Due Process hearing wherein they can raise numerous issues including whether the underlying liability is owed or whether the debt can be satisfied through a collection alternative. Taxpayers notified of an impending FPLP levy have typically already received several previous balance due notices as part of the IRS's standard notification process.

Results of Review

In general, Federal employees and retirees have fewer instances of tax delinquency than the general population of taxpayers. From FYs 2010 through 2014, on average 3.1 percent of Federal employees and retirees were delinquent on taxes as compared to 8.4 percent of the general population of taxpayers.[7] When Federal employees and retirees do become delinquent with their tax obligations, the IRS uses a variety of collection tools at its disposal, including the FPLP, to work and resolve cases. Collection Activity Report data show that the IRS resolved most FERDI cases as fully paid or with an installment agreement.

Most Federal Employee/Retiree Delinquency Initiative Cases Were Closed As Fully Paid or With an Installment Agreement

The overall goal of the FERDI program is to reduce FERDI tax delinquency through outreach, education, and collection policy and procedures specific to the FERDI population. IRS management sets ACS TDA case closure targets each year to measure the effectiveness of the FERDI program. To help determine closure targets and make strategic decisions to improve the FERDI program, management reviews FERDI and Collection Activity Reports to compare statistics such as dollars collected and the number of dispositions on a monthly basis and agency compliance rates on an annual basis. For example, if a certain agency's compliance rates have decreased, the IRS may reach out to that agency to provide education to agency employees on the importance and ethical obligation of filing and paying Federal taxes. In addition, there are critical business measures at the Jacksonville ACS site level for telephone calls, *e.g.*, timeliness, inventory (time between activity on the case, aging measures), and quality of work. Although the site measures are not specific to the FERDI program, FERDI cases are a large portion of the ACS work in the Jacksonville site.

Generally, the IRS identifies delinquent Federal employee and retiree taxpayers on an annual basis.[8] As of the end of FY 2014, the IRS identified 304,665 delinquent Federal employees and

[7] For these purposes, the IRS calculates the delinquency rate by determining the number of delinquent taxpayers (taxpayers with balance due accounts or delinquent return accounts or both) divided by the total number of taxpayers, as of a specific time. Consequently, taxpayers who had a balance due account but resolved it through a collection alternative such as an installment agreement would not be considered "delinquent." It is not clear whether the FERDI program is the reason that Federal employees and retirees incur fewer delinquent accounts than the general population. IRS policy is to prioritize FERDI accounts above non-FERDI collection accounts by working all FERDI cases. General population cases may not be worked due to limited resources.

[8] In addition to the comprehensive annual match, the IRS performs a limited monthly match of delinquent taxpayer accounts in notice status to identify additional FERDI employees. Also, IRS employees can manually identify taxpayers as FERDI when assisting taxpayers or working collection cases.

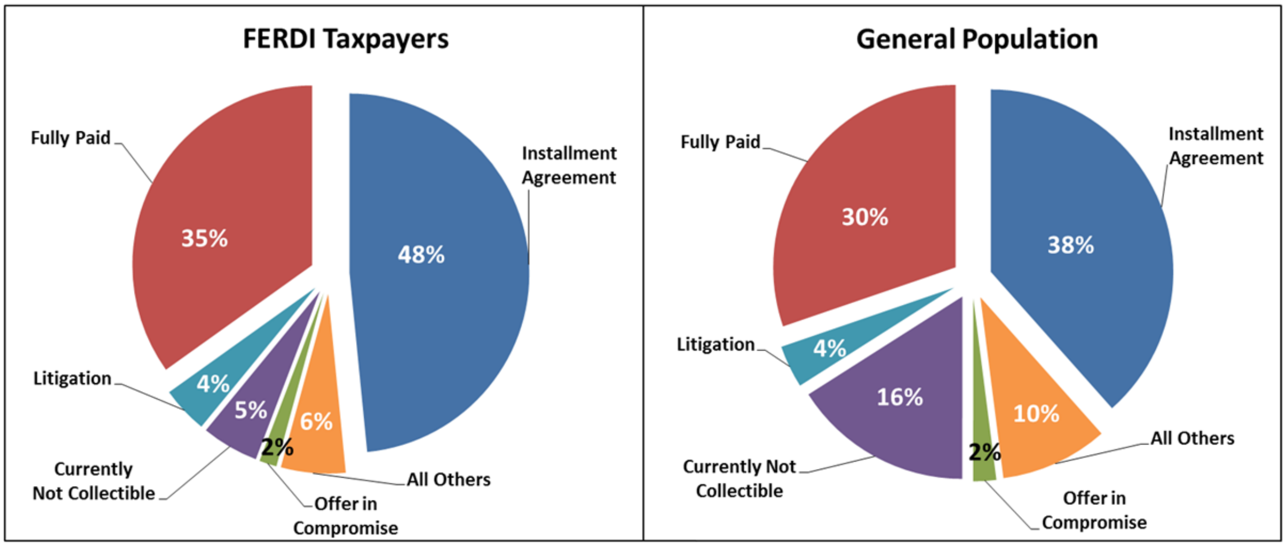
retirees who owed approximately $3.54 billion in unpaid taxes.[9] The amount of unpaid taxes increased by approximately $119 million (3 percent) from $3.42 billion at the end of FY 2010. In addition, the number of delinquent Federal employees and retirees increased by approximately 25,284 (14 percent) from 279,381 at the end of FY 2010. Data also showed that there were another 228,114 Federal employees and retirees paying their delinquent tax debts through installment agreements at the end of FY 2014. These taxpayers owed an additional $1.88 billion in outstanding tax liabilities at that time.

Analysis of IRS report data shows that Federal employee and retiree delinquency rates were fairly low over the five-year period from FYs 2010 through 2014, averaging 3.1 percent. IRS management informed us that consistently low delinquency rates of Federal employees and retirees might be attributed to the IRS providing information to assist Federal agencies through their outreach activities such as delinquency rate information, demographic data, and other materials to aid agencies in focusing their compliance message to the workforce. Furthermore, in some Federal agencies, Federal tax compliance is a condition of employment.[10] In addition, because Federal employees receive Federal payments, the IRS has an easily identifiable levy source. Moreover, as is described in more detail below, IRS policy prohibits sending FERDI accounts to the IRS's Collection Queue, where accounts might not be pursued due to lack of resources.

IRS data show that FERDI cases worked by IRS employees resulted in a significant percentage of closures that involved the collection of revenue, such as fully paid and installment agreements. Figure 1 compares TDA closure types for Federal employees and retirees with the general population of taxpayers in FY 2014 for the ACS.

[9] FERDI data identified at the end of FY 2014 were reported by the IRS in March 2015.
[10] For example, this is a condition for the IRS and some other Department of the Treasury employees.

Figure 1: Comparison of FY 2014 ACS FERDI and General Population TDA Closures



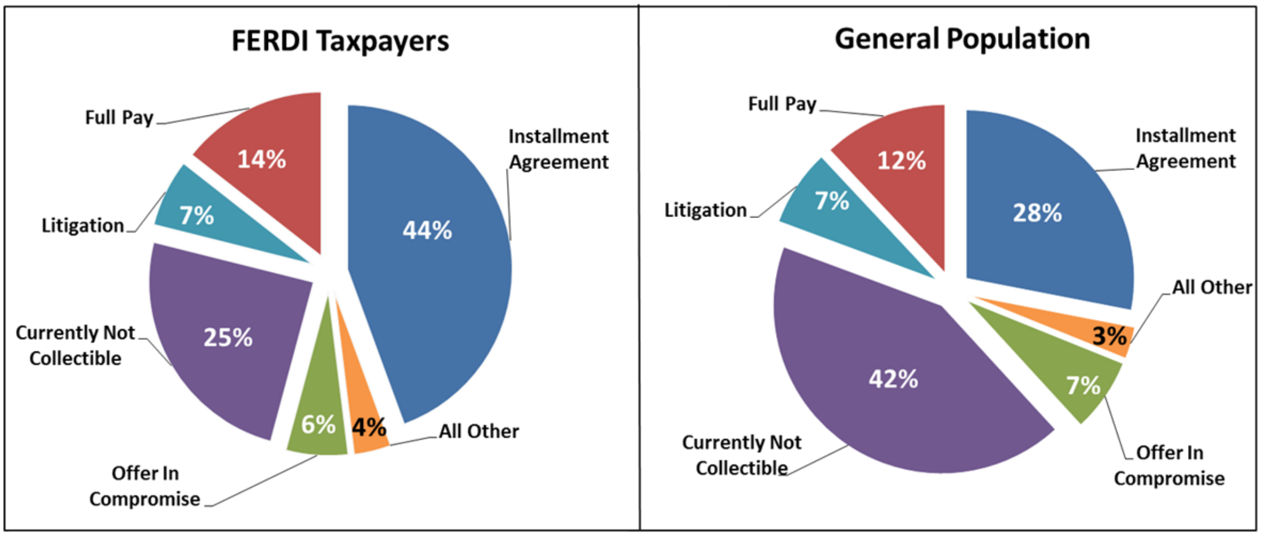
Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of FERDI data from the Collection Activity Reports for FY 2014.

The ACS closed 83 percent of TDA cases involving Federal employees and retirees with an installment agreement or as fully paid, compared with 69 percent[11] for all other (general population) TDA cases. In addition, the ACS closed just 5 percent of FERDI TDAs as currently not collectible, compared with 16 percent for all other TDAs.

Similar to the ACS, Figure 2 shows that the Field also closed a higher percentage of FERDI TDA cases as fully paid or with an installment agreement.

[11] Rounding indicates a total of 68 percent; however, the actual numbers are 30.26 percent for fully paid and 38.44 percent for installment agreement, for a total of 68.7 percent.

Figure 2: Comparison of FY 2014 Field Collection FERDI and General Population TDA Closure Types[12]



Source: TIGTA analysis of FERDI Data from the Collection Activity Reports for FY 2014.

During FY 2014, the Field closed approximately 59 percent[13] of FERDI cases with an installment agreement or as fully paid, compared with 40 percent for all other (general population) TDAs. In addition, the Field closed 25 percent of FERDI cases as currently not collectible, compared with 42 percent for all other TDAs.

Unlike general population cases, the ACS or the Field must work all FERDI cases, and they should never be sent to the Collection Queue, where they may not be worked due to limited resources.[14] In addition, while levies for delinquent general population individuals may only be issued on up to two sources simultaneously,[15] it is possible for FERDI taxpayers to have multiple levies. However, the decision to use multiple levies for FERDI cases is determined on a case-by-case basis and is dependent upon the circumstances of the case and the taxpayer.

In addition, the IRS collects revenue from delinquent FERDI accounts through the FPLP. From FY 2010 through FY 2014, the IRS collected an average of approximately $121.7 million each year by systemically levying against delinquent Federal employees and retirees through the FPLP. Taxpayers who are subject to continuous levy payments such as the FPLP often choose to

[12] Percentages do not equal 100 percent due to rounding.
[13] Rounding indicates a total of 58 percent; however, the actual numbers are 14.43 percent for fully paid and 44.4 percent for installment agreement, for a total of 58.83 percent.
[14] Internal Revenue Manual (IRM) 5.19.18.4 (July 8, 2013). The Collection Queue is an automated holding file for unassigned inventory of delinquent cases for which Collection employees are unable to be immediately assigned for contact due to limited resources.
[15] Two levy sources, one wage and one nonwage source or two nonwage sources, can be levied on individual taxpayers with outstanding liabilities of $2,500 or more.

instead initiate an installment agreement or alternate payment options, which can lead to more TDAs closed with installment agreements and as fully paid by the ACS and the Field.

IRS FERDI program management has recognized the importance of working FERDI accounts and has taken steps to expand the use of collection tools related to the program. For example, program management has made efforts to add new Federal agencies to participate in the FPLP. However, IRS executive management has not implemented recommendations to expand the use of the FPLP to include some additional Federal payments, such as military retirement payments. Additionally, expanding the use of traditional ACS systemic levies to delinquent Federal employees and retirees could reduce the size of the ACS manual inventory and make the IRS collection efforts more efficient.

Expanding Systemic Levies for Federal Employee/Retiree Delinquency Initiative Taxpayers Could Increase Revenue and Ease the Automated Collection System Manual Workload

The IRS currently excludes certain taxpayers and some types of Federal payments from the FPLP. In addition, FERDI taxpayers are not subject to the same systemic ACS levies as delinquent general population taxpayers. With its reduced budget, it is even more important for the IRS to maximize the use of its automated systems whenever possible because manual processes can prove to be inefficient. The inclusion of more types of Federal payments and FERDI taxpayers in these areas could improve compliance rates as well as reduce the manual ACS workload for collection representatives.

The FPLP does not include all Federal payments

Over the past four fiscal years, the IRS collected an annual average of approximately $121.7 million by systemically levying against delinquent Federal employees and retirees through the FPLP. The FPLP has been expanding since the program was first implemented in July 2000. For example, the program has expanded to include more Federal payments, such as certain Social Security benefits and certain Federal salaries.

However, certain taxpayers and some types of Federal payments are specifically excluded from the FPLP. Some exclusions are due to tax law or because Federal salary payments are not processed through main Federal salary-paying agencies. Other exclusions are due to IRS policy.

Tax law excludes a number of types of Federal payments and taxpayers from the FPLP and other levy actions including, but not limited to, taxpayers in:[16]

[16] See Appendix VI for a complete list of FPLP exclusions.

- Bankruptcy.[17]
- Combat zones.[18]
- Litigation or appeals.[19]
- Installment agreement arrangements.[20]
- Financial hardship such that taxpayers cannot meet basic reasonable living expenses.[21]

Exclusions by law are usually to prevent a violation of taxpayer rights or to reduce taxpayer burden.

In addition, some Federal salary payments are excluded from the FPLP because they are not processed through the main Federal salary-paying agencies. Neither the IRS nor the BFS could provide a complete list of Federal agencies with salary payments not eligible for the FPLP.

IRS management informed us that they continue to work with the BFS to expand and include more Federal agencies in the FPLP. For example, salary payments to U.S. Court System employees were added to the FPLP in FY 2014. The BFS is currently working with payment sources for some of the other agencies excluded from the FPLP in an attempt to add their Federal payments in the future.

IRS policy also excludes certain Federal payments and taxpayers from the FPLP, such as:

- Active duty military wages.[22]
- Military retirement income.[23]
- Taxpayers who are deceased.[24]
- Low-income taxpayers.[25]

---

[17] 11 U.S.C. § 362 provides for an automatic stay of collection activity against those who petition for bankruptcy protection.
[18] I.R.C. § 7508.
[19] For example, collection actions including levies are suspended while a taxpayer is pursuing a Collection Due Process hearing under either I.R.C. § 6320 or I.R.C. § 6330, and the suspension continues if the taxpayer elects judicial review from the Collection Due Process hearing.
[20] I.R.C. § 6343(a)(1)(C).
[21] I.R.C. § 6343(a)(1)(D); and Treasury Regulation § 301.6343-1(b)(4).
[22] IRM 5.19.18.5 (July 8, 2013).
[23] IRM 5.19.18.5 (July 8, 2013).
[24] IRM 5.19.9-3 (June 23, 2014).
[25] As a result of the advocacy of the National Taxpayer Advocate, the IRS adopted a low-income filter, which excludes taxpayers receiving Social Security Administration or Railroad Retirement Board benefits, at 250 percent of the poverty level. IRM 5.19.9.3.2.3 (June 23, 2014); also see the National Taxpayer Advocate 2014 Annual Report to Congress.

Military retirees represented 30 percent (91,677 taxpayers) of the delinquent FERDI taxpayers at the end of FY 2014 but owed 44 percent ($1.57 billion) of delinquent FERDI taxes. The IRS's policy does not explain the reason for excluding military retirement pay from the FPLP. Current IRS management is not aware of the original reasoning for the military retirement payment exclusion from the FPLP. Since all FERDI cases are ultimately required to be worked, excluding military retirement payments from the FPLP could actually result in more extensive levies on the assets of retired military personnel. For example, when a FERDI case is not subject to the FPLP, it is assigned to either an ACS employee or a revenue officer to be manually resolved, usually after a 16-week waiting period while the FPLP attempts to levy the taxpayer's Federal payments. Unlike FPLP levies, manual levies issued on payments to retired military personnel are not subject to the 15 percent maximum levy amount. In addition, other assets, such as bank accounts, may also be levied and are also not subject to the FPLP's 15 percent statutory limitation. Other Federal employees who are subject to the FPLP would not be subject to other such levies if the FPLP payments will resolve their tax obligations.[26]

Including military retirement payments in the FPLP would also have other benefits. For example, there could be reductions in penalty and interest assessments on these taxpayers' accounts during the 16-week waiting period before the cases are assigned to employees to be worked manually. In addition, the number of cases that ACS employees must work manually would be reduced, making the process more efficient and less costly. Also, including these payments in the FPLP could potentially raise the compliance rate for FERDI taxpayers and bring in more revenue.

The National Taxpayer Advocate has expressed concerns regarding levying against military retirees who could possibly be receiving disability payments. Therefore, in FY 2015, FERDI program management plans to propose that IRS leadership expand the FPLP to include military retirement payments with two caveats: 1) exclude all military retiree disability payments and 2) utilize the low-income filter to eliminate military retirees whose income may be below 250 percent of the poverty guidelines.[27]

---

[26] Federal employees and retirees who are subject to a levy by the FPLP may also be subject to a manual levy if the tax debt will not be paid in full by the Collection Statute Expiration Date.

[27] The low-income filter is currently in place for taxpayers receiving Social Security Administration or Railroad Retirement Board benefits who are subject to an FPLP levy.

We analyzed the portion of the Tax Year 2013 military retiree population with incomes above 250 percent of the Department of Health and Human Services poverty guidelines. If included in the FPLP at the end of FY 2013,[28] 32,064 FERDI military retirees over this threshold could have been subject to FPLP levies on their military retirement payments.[29] These taxpayers owed approximately $426.3 million (30 percent) of the $1.4 billion owed by retired military members. Based on the average military pension, the actual amount owed by these taxpayers at the end of FY 2013, and the amount the IRS collected from these taxpayers in FY 2014, we estimate that inclusion of military retirement payments in the FPLP during FY 2014 could have potentially increased revenue by approximately $3.7 million.[30]

Federal employees and retirees are not subject to systemic ACS levies

FERDI taxpayers are subject to systemic FPLP levy attempts on eligible Federal payment sources after cases enter the ACS. However, delinquent Federal employees and retirees are not subject to systemic levy attempts by the ACS on other asset sources, which is a process used for the general population of taxpayers. Instead, the IRS elects to work these cases manually, which could take longer and be more costly than systemic levies. Moving FERDI cases to the ACS systemic levy process after the FPLP levy attempts fail or if the FPLP levy will not fully pay the amount the taxpayer owes could result in potential benefits such as faster case resolutions and smaller manual inventory sizes.

Levy attempts on other asset sources for FERDI taxpayers normally only occur when the case is manually worked by an ACS collection representative. However, it takes a minimum of 16 weeks from the time a FERDI case enters the ACS until it transfers into manual inventory to await assignment to an employee. At that point, it could take additional time to be assigned to a collection representative and begin to be worked. FERDI cases that do not have eligible Federal payment sources or have an FPLP levy that will not fully pay the tax liability by the Collection Statute Expiration Date could be moved into an ACS systemic levy process prior to moving to manual inventory. Systemic levy attempts on other assets could motivate the taxpayer to resolve the debt before they are personally contacted by an ACS employee.

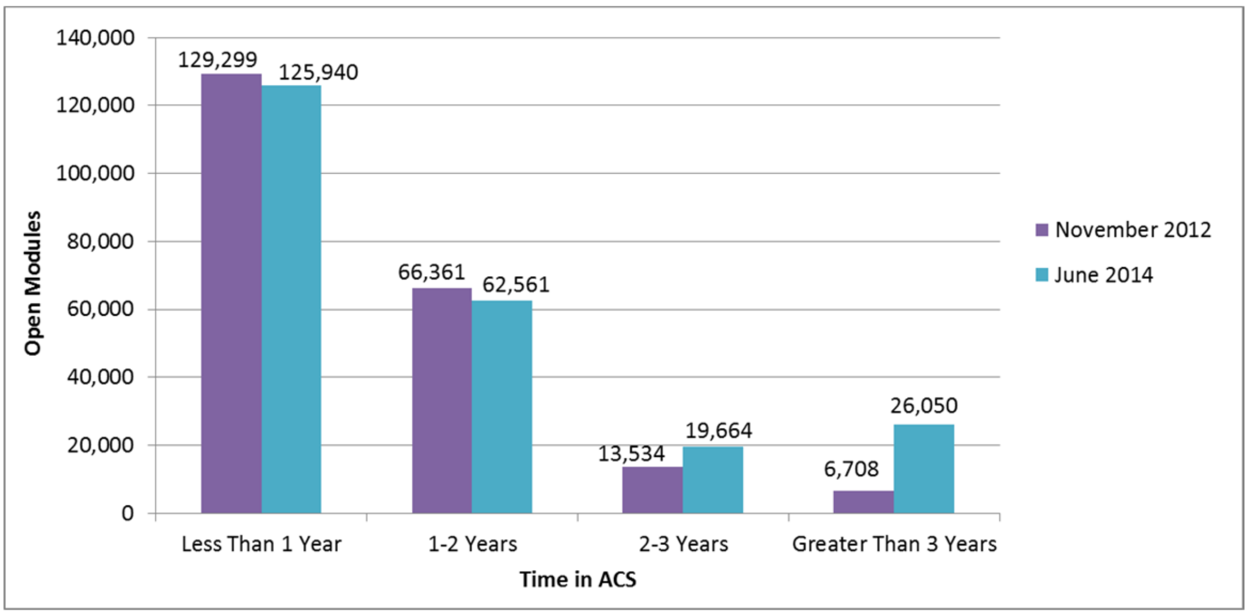
Additionally, inclusion of FERDI taxpayers in an ACS systemic levy process could be more efficient when FERDI manual case inventory cannot be worked on a regular basis. For example, ACS employees typically work FERDI inventory manually for one full day every three weeks and on an ad hoc basis as time allows. However, from January 2013 to June 2014, all ACS sites

[28] For this calculation, we used FY 2013 FERDI data because FY 2014 data were not available at the time of our analysis.
[29] FERDI taxpayers with balance due assessments are subject to FPLP levies regardless of whether they filed a Tax Year 2013 tax return. We did not include FERDI military retirees who had not filed a return because we could not determine if their financial condition was below 250 percent of the poverty guidelines. In addition, we could not exclude FERDI military retirees who could have received disability payments in FY 2013 because the IRS was unable to provide us with this information.
[30] See Appendix IV for details on this estimate.

eliminated scheduled manual collection inventory workdays, including priority FERDI inventory. IRS management made this decision to free up resources to address the IRS's growing inventory of identity theft cases. As a result, manual inventory was worked only occasionally, when telephone traffic was slow and outside of peak hours, causing FERDI cases in the ACS to become older.

Figure 3 shows how the ACS TDA modules of FERDI taxpayers aged from November 2012 (before the manual collection inventory workdays were eliminated) to June 2014.

Figure 3: Comparison of TDA Ages in the ACS for Federal Employee and Retiree Taxpayers



Source: TIGTA analysis of ACS TDA open FERDI inventory.

Overall, FERDI inventory was getting older when the IRS was not regularly working manual inventory. Although the total number of open FERDI TDAs in the ACS increased by 8 percent over the 18-month period, the number of TDAs that had been open in the ACS for two to three years increased by 45 percent, and cases older than three years increased by 288 percent.[31] It is a widely accepted principle in the collection industry that as debts age, they become increasingly more difficult to collect. Since manual ACS cases were worked less frequently over the 18-month period, manual collection actions (such as liens and levies) were not taken for many FERDI delinquencies. If an ACS systemic levy process had been used during this period, further collection actions and possible case resolutions for aging FERDI cases could have

[31] Some of these aging TDAs (approximately 10 percent) are potentially due to continuous FPLP levies in the FERDI ACS inventory. The TDAs being paid by an FPLP levy stay open (age) in the ACS until fully paid or other payment arrangements are made by the taxpayer.

occurred more quickly, using minimal IRS resources, even when the IRS was not regularly working manual ACS inventory.

IRS management informed us that they did not consider using the ACS systemic levy process when developing the ACS inventory processes for FERDI cases. The FERDI inventory processes were based on January 2008 study recommendations that sought to streamline FERDI case processing through full utilization of the FPLP. One of the goals of the study was to reduce manual processing of FERDI inventory, thus saving resources that could be redirected to ACS work that was not suited for systemic processing. At that time, management anticipated that the active duty and retired military populations would have their payments included in the FPLP, thus minimizing the number of FERDI accounts requiring manual processing.

Recommendations

The Director, Collection, Small Business/Self-Employed Division, should:

Recommendation 1: Continue identifying and expanding the use of the FPLP to other Federal payments, including military retirement payments.

> ***Management's Response:*** The IRS agreed with this recommendation. The IRS will ask the Defense Finance and Accounting Service and the BFS to make the programming changes necessary to expand the FPLP to include military retirement payments.

Recommendation 2: Consider applying the same ACS systemic levy process used for the general population to delinquent FERDI taxpayers after the FPLP levy has been attempted.

> ***Management's Response:*** The IRS disagreed with this recommendation. The majority of manually processed ACS FERDI cases involve taxpayers who are receiving military retirement payments. Because these taxpayers will be included in the FPLP after programming changes, the IRS does not believe processing delinquent FERDI taxpayers through the ACS systemically will be an effective use of limited resources.
>
> ***Office of Audit Comment:*** While we agree that the steps the IRS plans to take will reduce manual ACS inventory, we believe it could be further reduced by moving FERDI cases to the ACS systemic levy process after the FPLP levy attempts fail or if the FPLP levy will not fully pay the amount the taxpayer owes.

Revenue Officers Did Not Always Follow Collection Procedures When Working Federal Employee/Retiree Delinquency Initiative Cases

TIGTA reviewed a stratified random sample of 102 FERDI cases worked by revenue officers between July 1, 2012, and June 30, 2013.[32] IRS general collection procedures for Field cases provide a list of specific actions that must be taken and deadlines that must be met when revenue officers are working cases, such as making initial contact, making lien determinations, and taking follow-up actions.[33] We identified 23 (23 percent) cases for which revenue officers did not follow general collection procedures.

However, results also showed that revenue officers often properly followed Field general collection procedures. For example, revenue officers properly:

- Documented the cause and cure of the delinquency in the case history.
- Requested immediate full/partial payment of all delinquent accounts and filing of all delinquent returns when initial taxpayer contact was made.
- Documented the proper components in the case history when a delinquent return was secured.
- Documented plans on how to resolve the case if it was not resolved during initial contact.
- Issued a notice of intent to levy at least 30 days prior to issuing a levy.

IRS management agreed that employees were not always following established collection procedures when working these FERDI Field cases. Management took corrective action as appropriate. The types of errors identified during this review were similar to those found in a prior TIGTA report.[34] Because the cases in our sample were worked before management took corrective actions on the prior report's recommendations, we are not making any new recommendations.

---

[32] See Appendix I for more information on our sampling plan.
[33] These Field collection procedures apply to all Field cases, not just FERDI taxpayer cases.
[34] TIGTA, Ref. No. 2013-30-043, *Oversight of Revenue Officer Case Actions Can Be Improved* (May 2013).

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS has adequate controls and procedures in place to properly identify and resolve tax compliance issues among Federal employees and retirees. To accomplish our objective, we:

I. Identified IRS procedures and guidelines for promoting tax compliance among Federal employees and retirees.

A. Researched and reviewed applicable IRM[1] sections, internal guidance, and management directives regarding FERDI casework.

B. Conducted a site visit to the Wage and Investment Division's ACS site in Jacksonville, Florida, and discussed FERDI casework and applicable internal controls with collection management and employees.

C. Determined the process for the ACS and the Field to obtain, control, and work FERDI inventory.

D. Compared and contrasted how FERDI cases are worked as compared to how general population taxpayer cases are worked.

E. Assessed how IRS management evaluates program results related to FERDI casework.

II. Analyzed collection data related to the ACS and the Field FERDI program for trends and indicators from FYs 2010 through 2014 on how well the program is resolving tax compliance issues with Federal employees and retirees.

A. Analyzed the IRS Collection Activity Reports to obtain the number of FERDI cases and associated delinquent tax liabilities and the number of closed FERDI cases and associated disposition types.

B. Analyzed the IRS Civilian/Military/Detail Report as of the end of FY 2010 through FY 2014 to identify delinquent Federal employee trends such as numbers of delinquent taxpayers and dollars owed. We obtained general population compliance rates from data provided by the IRS.

C. Identified returns pertaining to military retirees who made sufficient income through military retirement payments to fit the criteria for FPLP levies if the IRS changed its

[1] See Appendix VII for a glossary of terms.

practice of not levying military retirement pay by performing the following calculations:

1. Obtained the population of 93,540 military retiree taxpayers identified as FERDI taxpayers by the IRS at the end of FY 2013.
2. Identified that 48,339 of those taxpayers had filed a Tax Year 2013 return as of October 15, 2014, and matched those records to the TIGTA Data Center Warehouse to obtain the adjusted gross income and number of exemptions claimed for each taxpayer.
3. Eliminated 59 taxpayers who claimed an exemption amount of zero, resulting in a final population of 48,280 military retiree FERDI taxpayers.[2]
4. Calculated the number of taxpayers who were below 250 percent of the poverty guideline using the adjusted gross income and number of exemptions for each taxpayer.[3] We identified 32,064 taxpayers.[4]
5. Calculated the maximum amount that could have been collected from each of the 32,064 taxpayers through the FPLP in FY 2014.
6. Identified all subsequent payments the IRS received during FY 2014 that posted to the corresponding taxpayers' modules. We calculated the difference between the amount that could have been collected through the FPLP and the amount the IRS actually collected through subsequent payments.

D. Requested (from the IRS and the BFS) a list of agencies excluded from the FPLP.

E. Obtained FERDI FPLP levy payment data from the IRS and determined the number of payments received from FY 2010 through FY 2014, including the dollar amount of each FY 2014 payment. We calculated the percentage of FPLP dollars collected in FY 2014 compared to the amount owed by these taxpayers at the end of FY 2013.[5]

---

[2] We were unable to determine the size of the household for taxpayers who claimed zero exemptions and had to eliminate them.
[3] This data analysis was based on the Department of Health and Human Services poverty guidelines for the 48 contiguous states; Hawaii and Alaska have different poverty guidelines that were not taken into consideration.
[4] Some of these FERDI military retirees could have received disability payments and would have been excluded from the FPLP based on the IRS proposal to exclude them. Additionally, some of these taxpayers could have had manual levies on their military retirement payments in FY 2014. However, given that we eliminated those taxpayers who did not file Tax Year 2013 tax returns (almost 50 percent), we believe this estimate remains conservative.
[5] This calculation did not include FPLP collections for newly designated FERDI taxpayers in FY 2014, FERDI taxpayers who did not have outstanding debts at the end of FY 2013 but became delinquent in FY 2014, or FERDI taxpayers who were in installment agreement arrangements at the end of FY 2013 and either defaulted or incurred new debts in FY 2014.

III. Determined if FERDI case inventory was properly worked and procedures were being followed.

A. Obtained the population of FERDI taxpayers cases with TDAs assigned to the Field and closed between July 1, 2012, and June 30, 2013, from the TIGTA Data Center Warehouse.[6]

1. Selected a statistically valid sample of 102 closed FERDI cases from a population of 3,656 FERDI taxpayers for review. We used stratified random sampling to categorize cases by currently not collectible and other (non–currently not collectible) closures and by aggregate TDA balances due. We discussed the sampling methodology with our contract statistician, who provided our stratified sampling plan. We replaced seven sample cases because they were closed before a revenue officer took any collection actions; therefore, a total of 109 cases were selected for review.

2. Conducted a case review to ensure that IRM procedures were effectively applied for each sample Field case.

B. Validated a random sample of 25 cases from the population obtained in Step III.A. by comparing data to the Integrated Data Retrieval System to ensure accuracy. We determined that the data were sufficiently reliable.

C. Discussed case review exception cases with IRS management for concurrence.

IV. Evaluated the impact of management's decision to eliminate the ACS scheduled inventory workdays. We analyzed the ACS FERDI open TDA case inventory to determine if any trends existed.

A. Obtained the population of open ACS FERDI TDA cases as of November 2012 and as of June 2014 from the TIGTA Data Center Warehouse.

B. Validated a random sample of 25 cases from each population by comparing specific data to the Integrated Data Retrieval System to ensure accuracy. We determined that the data were sufficiently reliable.

C. Compared both populations to identify any trends, such as the aging of cases in the ACS.

[6] We used this time period because the ACS stopped working scheduled inventory workdays in January 2013 and we wanted to make sure we included cases closed before and after that date. Cases are usually assigned to the ACS prior to being assigned to the Field.

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: IRM policies and procedures for the FERDI program, FPLP procedures related to the FERDI program, ACS programming controls related to the FERDI program, and ACS and Field general collection procedures. We evaluated these controls by interviewing management and reviewing samples of FERDI cases worked by both the ACS and the Field.

Appendix II

Major Contributors to This Report

Nancy Nakamura, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Matthew Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Bryce Kisler, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Carl Aley, Director
Phyllis Heald London, Audit Manager
Rebecca Arendosh, Lead Auditor
Nicole DeBernardi, Lead Auditor
Mike Della Ripa, Senior Auditor
Bridgid Shannon, Senior Auditor
Matthew Schimmel, Senior Audit Evaluator
Marcus Sloan, Auditor
Autumn Gill, Audit Evaluator

Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Services and Enforcement SE
Deputy Commissioner, Small Business/Self-Employed Division SE:S
Director, Collection, Small Business/Self-Employed Division SE:S:C
Director, Collection Inventory Delivery, Small Business/Self-Employed Division SE:S:C:CID
Director, Headquarters Collection, Small Business/Self-Employed Division SE:S:C:HQ
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Commissioner, Small Business/Self-Employed Division SE:S

Appendix IV

Outcome Measure

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

Type and Value of Outcome Measure:

- Increased Revenue – Potential; $18,323,510 forecast for a five-year period by expanding the use of the FPLP to more Federal payments (see page 7).

Methodology Used to Measure the Reported Benefit:

Military retirement payments are not excluded from the FPLP by Federal law, but the IRS does not currently include them in the program. To identify returns pertaining to military retirees who made sufficient income through military retirement payments to fit the criteria for FPLP levies if the IRS changed this practice, we performed the following calculations.

From a population of 93,540 military retiree taxpayers identified as FERDI taxpayers by the IRS at the end of FY 2013, we identified 48,339 who had filed a Tax Year 2013 return as of October 15, 2014.[1] We then eliminated 59 taxpayers from the population who claimed an exemption amount of zero,[2] resulting in a population of 48,280 military retiree FERDI taxpayers. Using the Tax Year 2013 adjusted gross income and number of exemptions claimed for each taxpayer, we calculated the number of taxpayer returns that were below 250 percent of the Department of Health and Human Services Calendar Year 2014 poverty guidelines. While 15,968 FERDI military retiree returns had reported income below 250 percent of the poverty guidelines, we identified 32,312 FERDI military retiree returns with reported income above 250 percent of the poverty guidelines (who therefore made sufficient income to be subject to levy).

We then determined that the 32,312 military retiree returns belonged to 32,064 unique military retiree taxpayers. If included in the FPLP, 32,064 FERDI military retirees identified at the end

[1] FERDI taxpayers with balance due assessments are subject to FPLP levies regardless of whether they filed a Tax Year 2013 tax return. We did not include taxpayers who had not filed a return because we could not determine if their financial condition was below 250 percent of the poverty guidelines. In addition, we could not exclude FERDI military retirees who could have received disability payments in FY 2013 because the IRS was unable to provide us with this information.

[2] We were unable to determine the size of the household for taxpayers who claimed zero exemptions and had to eliminate them.

of FY 2013 could have been subject to FPLP levies on their military retirement payments in FY 2014.[3] These taxpayers owed a total of $426,273,864 as of the end of FY 2013. The average military retirement pay for delinquent retirees was $21,395 in FY 2013. We multiplied this average by 15 percent (the amount that can be levied through the FPLP) to determine the maximum amount that could have been collected from each of these taxpayers by the FPLP in FY 2014 ($3,209). We compared this amount to each taxpayer's total outstanding balance due as of the end of FY 2013. We totaled the amount that could have been collected from each taxpayer using the smaller of either $3,209 or the taxpayer's total balance due, for a total of $53,242,197. We calculated the difference between the total amount the IRS actually collected from each of the taxpayers in FY 2014 ($49,577,495)[4] and the amount that could have been collected from each taxpayer if included in the FPLP ($53,242,197). We then totaled the differences between the amount actually collected and the amount that could have been collected from the FPLP in order to determine if there would be an increase or a decrease in revenue. As a result, we estimate that inclusion of military retirement payments in the FPLP in FY 2014 could have potentially added $3,664,702 to the amount collected. We multiplied the one-year projection ($3,664,702) by five to obtain a five-year forecast[5] of $18,323,510.

[3] Some of these FERDI military retirees could have received disability payments and would have been excluded from the FPLP based on the IRS proposal to exclude them. Additionally, some of these taxpayers could have had manual levies on their military retirement payments in FY 2014. However, given that we eliminated those taxpayers who did not file Tax Year 2013 tax returns (almost 50 percent), we believe this estimate remains conservative. See footnote 1 of Appendix IV for more details.
[4] This amount was calculated by identifying the subsequent payments that posted to the corresponding taxpayers' modules during FY 2014. It does not take into account any payment reversals.
[5] The five-year forecast is based on multiplying the base year by five and assumes that economic conditions and tax laws do not change, as well as other considerations such as the number of FERDI military retirees, the number of FERDI military retirees with disability payments, and the amount of tax liability FERDI military retirees owed over the next five-year period.

Appendix V

Federal Payments Subject to the Federal Payment Levy Program

Type of Federal Payment	Date Included in the FPLP
Civil Service Annuities	July 2000
Employee Travel Payments	May 2001
Contractor/Vendor Payments	November 2005
Contractor/Vendor Payments (U.S. Postal Service)	June 2009
Employee Salary	January 2002
Social Security Administration Title II	February 2002
Centers for Medicare and Medicaid Services Medicare Provider/Supplier Payments	October 2008
Railroad Retirement Board Benefit Payments	July 2011

Source: IRS IRM Exhibit 5.19.9-1 (Oct. 1, 2010).

Appendix VI

Federal Payment Levy Program Exclusion Criteria

When one or more of the following conditions exists in any tax module of a taxpayer, the taxpayer will be either systemically reversed out of, or not selected for, the FPLP.[1]

Military deferment or combat zone
Active criminal investigation
Offer in compromise pending or approved
Duplicate return freeze
Currently not collectible – unable to pay
Currently not collectible – deceased
Deceased taxpayer
Pending installment agreement prior to an FPLP levy only
Current or approved installment agreement
Collateral agreement pending or approved
Open disaster zone case
Bankruptcy/litigation
Collection Due Process on filed lien or intent to levy with Appeals Office
Taxpayer claim or adjustment to return pending
Taxpayer is a Federal Government agency
Taxpayer killed or taken hostage in terrorist action
Collection Due Process request (levy or lien) not yet assigned to Appeals

Source: IRS IRM Exhibit 5.19.9-3 (Oct. 1, 2010).

[1] In addition, military pay and military retirement pay are excluded from the FPLP, but other Federal income sources for those taxpayers are included.

When one or more of the following conditions exists in any tax module of a taxpayer, *that tax module* will either be systemically reversed out of, or not selected for, the FPLP.

Modules within three months of the Collection Statute Expiration Date for which there is no FPLP levy or if the FPLP levy exists on Office of Personnel Management or Social Security Administration payments
Modules within one month of the Collection Statute Expiration Date for which an FPLP levy exists on any Federal payment source except an Office of Personnel Management or Social Security Administration payments
Blocked from the FPLP
Innocent spouse module
Injured spouse module
Taxpayer files Collection Due Process request (levies or liens) and is not yet assigned to Appeals
Amended return claim pending
Limited Liability Company Disregarded Entity – Employment tax periods prior to January 2009 will not be selected into or will be reversed out of the FPLP

Source: IRS IRM Exhibit 5.19.9-3 (Oct. 1, 2010).

The following *entity or module* will be systemically blocked from the FPLP but may be manually unblocked to be included into the FPLP:

Taxpayer is a State, local, or Indian tribal government entity
Certain modules in certain ACS inventories are subsequently systemically unblocked

Source: IRS IRM Exhibit 5.19.9-3 (Oct. 1, 2010).

Appendix VII

Glossary of Terms

Term	Definition
Adjusted Gross Income	As defined by Section 62 of the I.R.C., in the case of an individual, means gross income minus deductions allowed by this chapter.
Automated Collection System	A telephone contact system that maintains taxpayer's balance due accounts and return delinquency investigations through which telephone assistors collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices.
Balance Due Module	Occurs when the taxpayer has an outstanding (unpaid) liability for taxes, penalties, or interest.
Bankruptcy	A legal proceeding administered by the U.S. bankruptcy courts and governed by Title 11 of the United States Code, commonly referred to as the Bankruptcy Code. The Bankruptcy Code establishes the law under which bankruptcy proceedings are commenced, administered, and closed.
Collection Activity Reports	A group of reports providing management information to Field and Headquarters Collection officials. The reports reflect activity associated with TDA and TDA issuances and installment agreements, including issuances, dispositions, and inventories as well as Collection-related payments.
Collection Queue	An automated holding file for unassigned inventory of delinquent cases for which employees are unable to be immediately assigned for contact due to limited resources.
Collection Statute Expiration Date	The expiration of the time period established by law to collect taxes. It is normally 10 years from the date of the tax assessment.
Currently Not Collectible	Tax accounts are reported as currently uncollectible when the taxpayer has no income or assets, which are, by law, typically subject to levy. Accounts can be declared currently not collectible for numerous reasons including bankruptcy, hardship, unable to locate or contact the taxpayer, and decedent taxpayer.

Data Center Warehouse	An online database maintained by TIGTA. The Data Center Warehouse pulls data from IRS system resources, such as IRS Collection files and IRS Examination files, for TIGTA access.
Delinquent	A tax account for which part or the entire amount owed to the IRS is overdue. These amounts can represent quarterly taxes such as employment taxes or annual taxes for unemployment taxes that are due once per year.
Department of Health and Human Services – Poverty Guidelines	A simplified version of the Federal poverty thresholds used for administrative purposes—for instance, determining financial eligibility for certain Federal programs.
Federal Employee/Retiree Delinquency Initiative	Program that promotes Federal tax compliance among current and retired Federal employees. FERDI taxpayers are identified by matching delinquent taxpayer records against personnel records maintained by the U.S. Office of Personnel Management, the Department of Defense, and the U.S. Postal Service.
Federal Payment Levy Program	The FPLP is an automated levy program the IRS has implemented with the Department of the Treasury's Financial Management Service [now the BFS]. As Federal employees or retirees, FERDI taxpayers receive Federal payments that are subject to a 15 percent continuous levy through the FPLP.
Field Collection (Field)	The unit in the Area Offices consisting of revenue officers who handle personal contacts with taxpayers to collect delinquent accounts or secure unfiled returns.
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
Installment Agreement	Arrangement in which a taxpayer agrees to pay his or her tax liability over time in smaller, more manageable payments.
Integrated Data Retrieval System	An IRS computer system capable of retrieving or updating stored information. It works in conjunction with a taxpayer's account records.
Internal Revenue Manual	The operations manual for employees of the IRS, it contains the policies, procedures, instructions, guidelines, and delegations of authority that direct the operation for all divisions and functions of the IRS. Topics include tax administration, personnel, and office management.
Levy	A method used by the IRS to collect outstanding taxes from sources such as bank accounts and wages.

Lien	An encumbrance on property or rights to property as security for outstanding taxes.
Module	Refers to one specific tax return filed by the taxpayer for one specific tax period (year or quarter) and type of tax.
National Taxpayer Advocate	An independent organization within the IRS to help taxpayers resolve problems with the IRS and recommend changes that will prevent the problems.
Notice Co	mputer-generated messages resulting from an analysis of the taxpayer's account on the Master File. These include notices of assessments of tax, adjustments, balances due, or overpayments that are refunded to taxpayers.
Revenue Officer	Employees in the Field who attempt to contact taxpayers and resolve collection matters that have not been resolved through notices sent by the IRS campuses or the ACS.
Small Business/Self-Employed Division	The IRS organization that services self-employed taxpayers and small businesses by educating and informing them of their tax obligations, developing educational products and services, and helping them understand and comply with applicable tax laws.
Tax Year	The 12-month period for which tax is calculated. For most individual taxpayers, the tax year is synonymous with the calendar year.
Taxpayer Delinquency Investigation	An unfiled tax return(s) for a taxpayer. One taxpayer delinquency investigation is issued for each delinquent tax period of a taxpayer.
Taxpayer Delinquent Account	A balance due account of a taxpayer. A separate TDA exists for each delinquent tax period of a taxpayer.

Appendix VIII

Management's Response to the Draft Report

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

COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

JUN 01 2015

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Karen Schiller
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Most Federal Employee/Retiree Delinquency Initiative Cases Are Resolved with the Collection of Revenue; However, Some Program Improvements Can Be Made (Audit #201330013)

Thank you for the opportunity to review the subject draft report which evaluated whether the IRS has adequate controls and procedures in place to properly identify and resolve balance due delinquency accounts among federal employees and retirees. The IRS developed the Federal Employee/Retiree Delinquency Initiative (FERDI) program in 1993 to promote federal tax compliance among current and retired federal employees. The program incorporates the purpose and intent of Office of Government Ethics regulations that address the responsibility of federal employees to "satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as federal, state or local taxes that are imposed by law".

As you noted in your report, federal employees and retirees have fewer instances of tax delinquency than the general population of taxpayers. You reported that, on average, from FY 2010 – 2014, 3.1 percent of federal employees and retirees were delinquent on taxes as compared to 8.4 percent of the general population of taxpayers. However, when federal employees and retirees are delinquent with their tax obligations, we use a variety of collection tools to work and resolve cases. Many of these cases are closed fully paid.

Notwithstanding the success of the FERDI program, we are working with the National Taxpayer Advocate, the Bureau of Fiscal Service and other internal and external stakeholders to improve the FERDI program and protect taxpayer rights. For example, we automated our FERDI processing, making the process more efficient and effective. We have looked, and will continue to look, at other federal payments that we may be able to include in the Federal Payment Levy Program (FPLP). And, as discussed in the attachment, we agree with your recommendation and will expand FPLP to include military retirement payments.

We agree with your computation of the measurable benefit. However, the benefit is dependent on when Defense Finance and Accounting Service and Bureau of Fiscal Services can implement the requested programming changes to expand FPLP to include military retirement payments. Until we know when these programming changes can be implemented, we do not know whether this benefit will be achieved.

Attached is a detailed response with our corrective actions to your recommendations. If you have any questions, please contact me, or a member of your staff may contact Scott Prentky, Director, Collection, at (954) 423-7318.

Attachment

Attachment

RECOMMENDATION 1:
The Director, Collection, Small Business/Self-Employed Division should continue identifying and expanding the use of the FPLP to other Federal payments, including military retirement payments.

CORRECTIVE ACTION:
We will ask the Defense Finance and Accounting Service and Bureau of Fiscal Services to make the programming changes necessary to expand FPLP to include military retirement payments.

IMPLEMENTATION DATE:
January 15, 2016

RESPONSIBLE OFFICIAL:
Director, Collection Inventory Delivery and Selection, Small Business/Self-Employed Division

CORRECTIVE ACTION MONITORING PLAN:
IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 2:
The Director, Collection, Small Business/Self-Employed Division, should consider applying the same Automated Collection System (ACS) systemic levy process used for the general population to delinquent FERDI taxpayers after the FPLP levy has been attempted.

CORRECTIVE ACTION:
The majority of the delinquent FERDI taxpayers who are subject to manual ACS levy processing are taxpayers who are receiving military retirement payments and are not subject to FPLP. Because we are expanding FPLP to include military retirement payments, processing delinquent FERDI taxpayers through ACS systemically will not be an effective use of our limited resources.

IMPLEMENTATION DATE:
N/A

RESPONSIBLE OFFICIAL:
N/A

CORRECTIVE ACTION MONITORING PLAN:
N/A