

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

September 14, 2023

Report Number: 2023-30-058

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

HIGHLIGHTS: Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

Final Audit Report issued on September 14, 2023

Report Number 2023-30-058

Why TIGTA Did This Audit

TIGTA is required under Internal Revenue Code § 7803(d)(1)(A)(i) to annually determine whether the IRS complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in Section 1204 of the IRS Restructuring and Reform Act of 1998 (RRA 98).

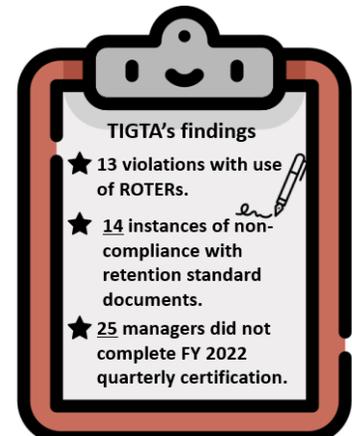
Impact on Tax Administration

RRA 98 § 1204(a) requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results (ROTERTs) or base employee successes on meeting ROTER goals or quotas. A tax enforcement result is the outcome produced by an IRS employee's exercise of judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws. The IRS defines ROTERTs as data, statistics, compilations of information, or other numerical or quantitative recording of the tax enforcement result reached in one or more cases. RRA 98 § 1204(c) requires each appropriate supervisor of Section 1204(a) enforcement employees to perform a quarterly self-certification of whether ROTERTs, production quotas, or goals were used in a prohibited manner. Additionally, RRA 98 § 1204(b) requires all IRS employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The use of ROTERTs to manage IRS employees is unlawful and may create the misperception that safeguarding taxpayer rights is secondary to IRS enforcement results.

What TIGTA Found

TIGTA found instances of noncompliance with RRA 98 § 1204 requirements. TIGTA identified instances of noncompliance with each of the following subsections of the law:

- Section 1204(a) – TIGTA identified 13 violations associated with the use of ROTERTs during the review of employees' performance evaluations. The IRS also self-reported two violations of § 1204(a) noncompliance in Fiscal Year (FY) 2022.
- Section 1204(b) – TIGTA identified 14 instances of noncompliance in which IRS management failed to either maintain the retention standard documentation or ensure that it was appropriately signed.
- Section 1204(c) – TIGTA identified 25 managers who did not complete the FY 2022 quarterly certification.



In addition, TIGTA identified four self-assessments containing high-risk terms and phrases. Further, in FY 2022, 52 Section 1204 employees failed to complete the Section 1204 training.

What TIGTA Recommended

TIGTA made six recommendations in the report. Among these, TIGTA recommended that the IRS discuss the violations and noncompliance identified by TIGTA with the responsible managers and employees to ensure that they understand the guidelines related to RRA 98 § 1204. In addition, TIGTA recommended that the IRS establish a system to remind managers to ensure that the retention standards are signed and ensure that the Quarterly Certification Memorandum of Record is submitted to the IRS Commissioner in accordance with RRA 98 § 1204(c).

IRS management fully or partially agreed with five of the six recommendations and plans to take corrective actions. However, the Acting Commissioner, LB&I Division, departed from long-standing IRS interpretation by suggesting that, despite the existence of enforcement statistics in seven final appraisals, there was no evidence that the employees were actually evaluated based on the enforcement statistics. TIGTA believes that the use of an enforcement statistic in an appraisal for performance purposes is sufficient proof that the statistic was impermissibly considered as part of the employee's evaluation.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20024

September 14, 2023

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Heather Hill

FROM: Heather M. Hill
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit # 202330007)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in the Restructuring and Reform Act of 1998 (RRA 98) § 1204. The Treasury Inspector General for Tax Administration is required under Internal Revenue Code § 7803(d)(1)(A)(i) to annually evaluate the IRS's compliance with the provisions of RRA 98 § 1204. RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results or base employee successes on meeting goals or quotas for record of tax enforcement results. This review is part of our Fiscal Year 2023 Annual Audit Plan and addresses the major management and performance challenge of *Increasing Domestic and International Tax Compliance and Enforcement*.

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

If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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Background

Our system of taxation is dependent on taxpayers' belief that the tax laws apply to everyone and that the Internal Revenue Service (IRS) respects and protects their rights under the law. The IRS Restructuring and Reform Act of 1998 (RRA 98) was signed into law on July 22, 1998, to ensure that this standard is upheld.¹ RRA 98 § 1204 was written to ensure that IRS employee decisions on taxpayer cases are based on the facts and circumstances of their situation and not indicative of the IRS trying to meet any statistical goal. Sections 1204(a) and (c) pertain to employees who exercise judgement in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or an employee who provides direction or guidance for field programs involving Section 1204 work activities.² Section 1204(b) applies to all IRS employees, not just employees who exercise judgment on enforcement of the tax laws. Figure 1 provides details of RRA 98 §§ 1204(a), (b), and (c).

Figure 1: RRA 98 § 1204



Source: RRA 98 § 1204.

A Section 1204(a) manager is any manager who has a Section 1204(a) employee fall within their reporting structure.³ Section 1204(a) employees exercise judgment in their work to make decisions on whether or how the IRS should pursue enforcement of the tax law, as well as determining the taxpayer's tax liability or ability to pay. Examples of judgments include, but are not limited to:

- Determinations to conduct a seizure.
- Determinations to file a lien.
- Decisions to disallow an unsupported itemized deduction.

A tax enforcement result is the outcome produced by an IRS employee's exercise of judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws. Examples of outcomes of employees' work that are considered tax enforcement results are:

¹ Pub. L. No. 105-206, 112 Stat. 685.

² When the IRS uses the term "Section 1204" they are referring to the obligations relating to employees engaging in enforcement activities under RRA 98 §§ 1204(a) and (c).

³ This includes front-line managers, senior managers, and senior leaders.

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- Taxes assessed.
- Fraud referral.
- Taxes collected.
- Abatement case closure.
- Prosecution.

Records of tax enforcement results (ROTERTs) measure the outcome of the tax enforcement result reached in one or more cases. The IRS defines ROTERTs as data, statistics, compilations of information, or other numerical or quantitative recording of the tax enforcement result reached in one or more cases. Examples of ROTERTs include the amount of dollars collected or assessed, the number of fraud referrals made, and the number of seizures conducted.

RRA 98 § 1204(a)

RRA 98 § 1204(a) restricts the use of enforcement statistics and prohibits the IRS from using any ROTERT to evaluate employees, or to impose or suggest enforcement-related production quotas or goals. For example, a manager may not suggest an enforcement-related production quota or goal to a Section 1204(a) employee because that is considered Section 1204(a) noncompliance and an example of an outcome and not a process. A ROTERT does not include evaluating an individual case to determine if an



employee exercised appropriate judgment in pursuing enforcement of the tax laws. Examples of what is allowable in the evaluation of a Section 1204 employee are:

- Leadership can set quality and quantity goals, but only evaluate employees on critical job elements, not on achieving a numerical goal.
- A phrase that refers to a tax enforcement result that focuses on the process rather than the outcome is acceptable.
 - Examples: process to determine penalty, process to identify fraud, process to prepare and issue summons, or process to determine whether a preparer referral is appropriate.

The use of ROTERTs to manage IRS employees violates RRA 98 and may create the misperception that safeguarding taxpayer rights is secondary to IRS enforcement results.

RRA 98 § 1204(b)

RRA 98 § 1204(b) requires all IRS employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The IRS refers to this standard as the retention standard. This provision of the law was enacted to provide assurance that employee performance is focused on providing quality service to taxpayers instead of achieving enforcement results. Figure 2 provides a contrast of what is and is not fair and equitable treatment of taxpayers by employees.

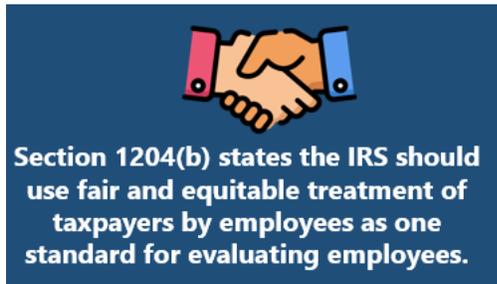


Figure 2: Behaviors That Illustrate When Employees Treat Taxpayers Fairly and Equitably

Fair and Equitable	Not Fair and Equitable
<input checked="" type="checkbox"/> Respond to taxpayers in a timely manner.	<input checked="" type="checkbox"/> Does not respond to taxpayers in a timely manner.
<input checked="" type="checkbox"/> Responds verbally or in writing with an appropriate tone, courtesy, and respect, and states facts accurately.	<input checked="" type="checkbox"/> Responds verbally or in writing with a tone or wording which is discriminatory, intimidating, and/or misrepresents facts.
<input checked="" type="checkbox"/> Advise taxpayers of full personal impact, such as interest and penalty accumulation, when the taxpayer advises they cannot pay their liability in full.	<input checked="" type="checkbox"/> Does not advise taxpayer of all options and factors that affect their liability and ability to pay.
<input checked="" type="checkbox"/> Discuss specific taxpayer cases with other employees/managers on a need-to-know basis.	<input checked="" type="checkbox"/> Shares interesting facts about a specific taxpayer case with other employees.

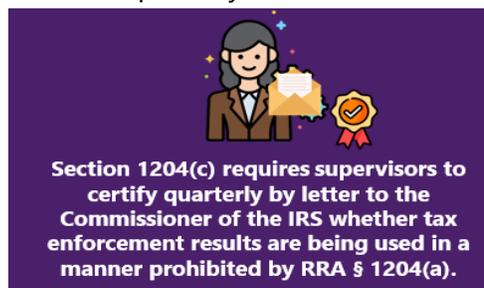
Source: IRS Fiscal Year (FY) 2021 RRA 98 § 1204 Mandatory Briefing.⁴

Section 1204(b) requires that managers talk to their employees about the standard for the fair and equitable treatment of taxpayers at the beginning of their performance rating period. Managers are also required to consider this standard on the employee's annual appraisal. Ultimately, the standard requires employees to administer the tax laws fairly and equitably; protect all taxpayers' rights; and treat each taxpayer ethically with honesty, integrity, and respect.

⁴ See Appendix II for a glossary of terms.

RRA 98 § 1204(c)

RRA 98 § 1204(c) requires each appropriate supervisor to perform a quarterly self-certification. In the self-certification, the appropriate supervisor attests to whether ROTERs, production quotas, or goals were used in a prohibited manner. The IRS defines an appropriate supervisor as the highest-ranking executive in a distinct organizational unit who supervises directly or indirectly one or more Section 1204(a) enforcement employees. Current IRS procedures require each level of management, beginning with first-line managers of Section 1204(a) employees, to self-certify that they have not used ROTERs in a manner prohibited by RRA 98 § 1204(a). In FY 2021, the IRS required all Section 1204(a) managers to begin using the automated Integrated Talent Management System (ITMS) to complete the quarterly certification process. Section 1204 Program Managers and Program Coordinators in each business organization are available to provide guidance to managers regarding Section 1204 issues, including the certification process.⁵



Internal Revenue Code § 7803(d)(1)(A)(i) requires the Treasury Inspector General for Tax Administration (TIGTA) to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 § 1204.⁶ TIGTA has previously performed 24 annual reviews to meet this requirement.

Figure 3 identifies the number of potential ROTERs violations identified during reviews of the IRS's compliance during FYs 2019 through 2021.

⁵ Offices subject to our Section 1204(c) review are IRS functional offices and operating divisions of the Office of the Chief, Independent Office of Appeals; the Office of the Chief, Criminal Investigation; the Large Business and International Division; the Small Business/Self-Employed Division; the Office of the National Taxpayer Advocate; the Tax Exempt and Government Entities Division; and the Wage and Investment Division, which are responsible for implementing the Section 1204 Program within their respective areas.

⁶ Internal Revenue Code § 7803(d)(1)(A)(i) states that TIGTA shall include in one of the semiannual reports under Section 5 of the Inspector General Act of 1978, an evaluation of the compliance of the IRS with restrictions under Section 1204 of the RRA 98 on the use of enforcement statistics to evaluate IRS employees.

**Figure 3: Number of Section 1204 Violations Identified in
FYs 2019 Through 2021**

Type of Violations	FY		
	2019	2020	2021
Section 1204(a) - ROTERs	0 ⁷	4	12
Section 1204(b) - Retention Standard	86	6	12
Section 1204(c) - Quarterly Certification	1	N/A ⁸	N/A ⁹
Totals	87	10	24

Source: Analysis of data from TIGTA reports for FYs 2020 through 2022 (data for FYs 2019 through 2021).

TIGTA identified no instances of Section 1204(a) violations in FY 2019; however, in FYs 2020 and 2021 there were four and 12 instances, respectively, in which a ROTER was used to evaluate an employee. TIGTA reported Section 1204(b) noncompliance in 86 instances for FY 2019, six instances for FY 2020, and 12 instances in FY 2021, where IRS management failed to either maintain the Section 1204(b) retention standard documentation or ensure that it was appropriately signed by both manager and employee as an acknowledgement that the fair and equitable treatment of taxpayers' retention standard had been furnished and discussed.

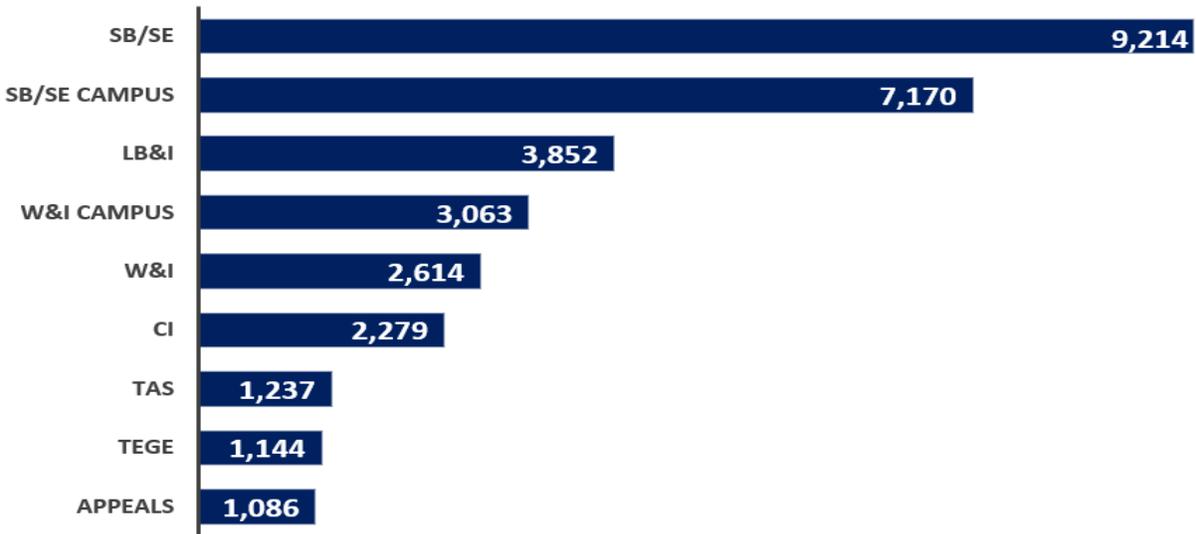
As of September 30, 2022, there was a population of 31,659 IRS personnel who were subject to Section 1204(a) requirements, of which 27,790 were employees and 3,869 were managers. Section 1204(a) managers either supervised a Section 1204(a) employee or provided guidance or direction for enforcement-related activities. Figure 4 shows how Section 1204(a) employees and managers are dispersed across various business organizations within the IRS as of September 30, 2022.

⁷ TIGTA did not identify any violations as part of our review of sampled employees and managers, however, the Small Business/Self-Employed Division identified and reported one ROTER violation as part of their first quarter FY 2019 Section 1204 certification process.

⁸ Due to the Coronavirus Disease 2019 pandemic, the Section 1204(c) quarterly certifications for the second and third quarters of FY 2020 were not completed until December 2020; therefore, the prior audit, TIGTA, Report No. 2021-30-052, *Fiscal Year 2021 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcements Results* (Aug. 2021), could not review the certifications.

⁹ The IRS's new automated certification process had several inconsistencies in FY 2021, such as mixing naming conventions and missing data; therefore, TIGTA was unable to review the FY 2021 quarterly certifications.

**Figure 4: Number of Section 1204(a) Personnel
by Business Organization (as of September 30, 2022)**



Source: TIGTA analysis of data from the IRS's HR Connect Section 1204(a) employee list. Business Organizations: Appeals, CI = Criminal Investigations, LB&I = Large Business and International Division, SB/SE = Small Business/Self-Employed Division, TAS = Taxpayer Advocate Service, TE/GE = Tax Exempt and Government Entities Division, and W&I = Wage and Investment Division.

Results of Review

The IRS is not permitted to use ROTERs, or enforcement-related production goals or quotas, to evaluate employees. To conduct a more thorough review, we selected two business organizations within the IRS. We focused our coverage on Criminal Investigations (CI) and the Large Business and International (LB&I) Division to determine whether violations or noncompliance occurred with Sections 1204(a) and (b). However, we reviewed all the IRS's main business organizations subject to Section 1204 requirements to determine if noncompliance occurred under Section 1204(c).

CI's mission is to serve the American public by investigating potential criminal violations of the Internal Revenue Code and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law. The mission of the LB&I Division is to be responsible for tax administration activities for domestic and foreign businesses with a United States tax reporting requirement and assets equal to or exceeding \$10 million, as well as the High Wealth and International Individual Compliance programs.

During FY 2022, CI and the LB&I Division were generally in compliance with RRA 98 §§ 1204(a) and (b); however, we did find a limited number of violations. In addition, we identified issues with the IRS's overall quarterly certification process under Section 1204(c). The following issues were identified during our review:

Section 1204(a) – 13 violations associated with the use of ROTERs during our review of employees' performance evaluations. The IRS also self-reported two violations of Section 1204(a) noncompliance in FY 2022.

Section 1204(b) – 14 instances of noncompliance in which IRS management failed to either maintain the retention standard documentation or ensure that it was appropriately signed.

Section 1204(c) – 25 managers did not complete the FY 2022 quarterly certification.

Criminal Investigations and the Large Business and International Division Violated RRA 98 § 1204(a) in 13 Instances

We identified a total of 13 violations of RRA 98 § 1204(a) by CI and the LB&I Division during FY 2022. These violations consisted of:

- CI violations:
 - Six violations associated with six non-supervisory employee’s performance evaluations that used ROTERS.
- LB&I Division violations:
 - Four violations associated with two supervisory employee’s performance evaluations that used ROTERS.
 - Three violations associated with three employee’s performance evaluations that used ROTERS.

In addition, the IRS self-reported two instances of Section 1204(a) noncompliance in FY 2022 during its quarterly certification process. To evaluate the IRS’s compliance with RRA 98 § 1204(a), we reviewed internal procedures, guidance, and prior violations for common language, terms, or phrases that have been or may be associated with ROTERS. We used computer software to analyze the information in 5,725 CI and LB&I Division Section 1204(a) employee and manager electronic performance evaluation files for use of these high-risk terms and phrases.¹⁰ Our analysis identified 550 uses of these high-risk terms and phrases, associated with 391 unique performance evaluation documents.¹¹ We manually reviewed the terms and phrases within each evaluation document for context and use. The following is an example of a Section 1204(a) violation that we found in the performance evaluation file of a revenue agent:



While the use of quantity measures for evaluating supervisory employees is allowable, their inclusion increases the risk that an evaluating supervisor may also include a tax enforcement result in a subordinate’s evaluation, resulting in a violation of Section 1204(a). In our FY 2021 report, the IRS agreed with TIGTA’s recommendation and revised the Form 12450, *IRS*

¹⁰ We noted key terms and phrases based on those terms or phrases provided as examples in the Internal Revenue Manual (IRM) as well as violations noted in prior audits. These terms and phrases included reference to various tax enforcement terms, *e.g.*, lien, levy, seizure, fraud referral. We also included reference to a number before the term or phrase as part of our criteria, as enforcement *results* are likely to be quantified. We obtained 29,024 electronic performance file evaluations associated with these Section 1204(a) employees and managers from the Department of the Treasury, which owns the HR Connect application that houses the IRS’s performance evaluation files.

¹¹ Of the 550 uses of high-risk terms and phrases represented, CI had 151 and the LB&I Division had 399. Of the 391 unique performance evaluation documents, CI had 109, and the LB&I Division had 282.

¹² Revenue agents conduct independent taxpayer examinations and related investigations to identify issues to be pursued based on large, unusual, or questionable items which produce significant tax or compliance effect.

Performance Management System Manager Performance Agreement, to include a warning about evaluating managers on the use of quantity measures and their potential relationship to tax enforcement results. On July 11, 2022, the IRS implemented the corrective action to update the Form 12450 to include a pop-up warning that the use of quantity measures for evaluations could result in violation of Section 1204(a).

A few self-assessments included ROTERs

Our review of the 391 performance evaluation documents from CI and the LB&I Division that were flagged for containing high-risk terms and phrases identified four instances in the LB&I Division in which a self-assessment was submitted with one or more ROTERs. While not a violation of Section 1204(a), the Internal Revenue Manual (IRM) 1.5.2.11.2 prohibits the use of ROTERs in self-assessments. If a self-assessment is submitted with ROTERs, procedures indicate that it should be returned to the employee for removal of the ROTERs.¹³

Recommendation 1: The Chief, CI, and the Acting Commissioner, LB&I Division, should ensure that the 13 Section 1204(a) violations identified by TIGTA are discussed with the responsible managers to ensure that the managers understand the guidelines related to the use of ROTERs.

Management's Response: The Chief, CI, agreed with the six instances associated with Section 1204(a) violations and will ensure the managers understand the guidelines related to the use of ROTERs. However, the Acting Commissioner, LB&I Division, disagreed with the seven instances associated with the use of ROTERs, stating that the numbers were not tax enforcement results and did not result in a Section 1204(a) violation. The Acting Commissioner, LB&I Division, stated that there was no indication that these employees were rated on the amount of the adjustment, encouraged to use a production quota or goal, or evaluated on any other tax enforcement result. Although IRS management does not recognize these seven instances as Section 1204(a) violations, they state that IRS policy recognizes that the use of numbers is often not essential to a performance evaluation narrative and can be misinterpreted as a prohibited tax enforcement result and will consider actions to discourage the use of unnecessary numbers in employee evaluations.

Office of Audit Comment: The Acting Commissioner, LB&I Division, has departed from the IRS's long-standing interpretation that an enforcement statistic in a final appraisal is an impermissible ROTER. An enforcement statistic in an employee appraisal is sufficient proof that the statistic was impermissibly considered as part of the employee's evaluation. The LB&I Division's new approach will only encourage further use of ROTERs and we strongly encourage the LB&I Acting Commissioner to reconsider this interpretation.

Recommendation 2: The Acting Commissioner, LB&I Division, should ensure that the four instances of noncompliance identified in this report associated with the prohibition on including ROTERs in a self-assessment are discussed with the responsible employees and their managers so they understand that ROTERs should not be used in self-assessments.

Management's Response: The Acting Commissioner, LB&I Division, disagreed with the four instances of noncompliance associated with the use of ROTERs in self-assessments,

¹³ IRM 1.5.2.11.2 (Feb. 5, 2015).

stating that there was no indication that these employees were rated on the amount of the adjustment, encouraged to use a production quota or goal, or evaluated on any other tax enforcement result.

Office of Audit Comment: In disagreeing with the recommendations, the Acting Commissioner, LB&I Division, has departed from compliance with IRM 1.5.2.11.2, which requires that the self-assessments be returned to employees to remove the ROTERs. In disagreeing with this recommendation, the LB&I Division may be tacitly encouraging the use of ROTERs going forward.

Criminal Investigations and the Large Business and International Division Had 14 Instances of Noncompliance With Retention Standard Documents

As noted previously, RRA 98 § 1204(b) requires all IRS employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The standard applies to all IRS executives, managers, and employees. The IRM requires both the receipt and acknowledgment of the retention standard and the performance rating to be filed in the employee performance file and retained for four years.¹⁴ Compliance with RRA 98 § 1204(b) is two-fold:

- The receipt and acknowledgment of the retention standard. Within the first 30 days of each performance period, managers must provide the appropriate receipt of the retention standard form to their employees.¹⁵ The manager must sign and date the appropriate form indicating the sharing of the retention standard with their employee, and, in turn, the employee must acknowledge receipt of the retention standard by signing and dating the form.
- The annual performance reporting rating related to the retention standard. At the end of the performance period, the employee must be evaluated on the retention standard using the appropriate appraisal form.

Although Section 1204(b) applies to all IRS employees, we only reviewed CI and LB&I employees who are subject to Section 1204(a) requirements. As of September 30, 2022, the IRS had 31,659 personnel with an HR Connect indicator specifying they were a Section 1204(a) employee or manager and 6,131 of those were employees and managers from the CI and LB&I Division.¹⁶ We selected a random sample of 142 performance files to test for compliance with retention standards from the CI and LB&I Division population of 6,131 Section 1204(a) employees and

¹⁴ IRM 1.5.3.8(1) (Feb. 5, 2015).

¹⁵ The appropriate documents for the receipt of the retention standard are Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*; Form 12450-A, *Manager Performance Agreement*; Form 12450-B, *Management Official Performance Agreement*; Form 12450-D, *Management/Program Analyst Performance Agreement (For Positions Designated as Confidential Only)*; or Form TDF 35-07, *Executive Performance Agreement*.

¹⁶ The IRS provided the population of 31,659 Section 1204(a) employees and managers that had a Section 1204 HR Connect indicator as of September 30, 2022. According to the IRS, the HR Connect indicator is a one-day snapshot and not a relational database that would be updated systemically. This means designations today may be different than last week, and the IRS lacks the ability to go back in time to identify a Section 1204(a) population from a prior date and verify whether previous designations were historically accurate.

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managers (2,279 from CI and 3,852 from the LB&I Division).¹⁷ CI and LB&I Division management were unable to either provide evidence and documentation of the retention standard or the manager or employee did not sign the acknowledgement for the Retention Standard for 14 of the 142 sampled individuals. Specifically, we identified the following 14 instances of noncompliance with RRA 98 § 1204(b) for CI and the LB&I Division during FY 2022:

- CI noncompliance:
 - Three instances where CI management was unable to provide retention standard documentation, or the documents were missing from the employee performance files.
 - One instance where the manager did not sign the acknowledgement for the retention standard.
- LB&I Division noncompliance:
 - Five instances where LB&I Division management was unable to provide retention standard documentation, or the documents were missing from the employee performance files.
 - Five instances where the manager or employee did not sign the acknowledgement for the retention standard. In addition, TIGTA noted in four of the five instances where the employee and/or the manager signed the acknowledgement after TIGTA requested the sample performance files to test the compliance with the retention standards.

The IRS's internal guidelines require the documentation of the receipt and acknowledgment of the retention standard to be completed, signed, and dated by both the manager and employee and retained in the employee performance files.¹⁸ Based on our sample results from a population of 6,131 Section 1204(a) employees and managers from CI and the LB&I Division, we project there were 345 individuals (CI = 129 and LB&I Division = 216) who had a missing retention standard document in their employee performance files and 259 individuals (CI = 43 and LB&I Division = 216) who did not sign the retention standard document acknowledging the retention standard.¹⁹



¹⁷ The 142 electronic performance files were associated with Section 1204(a) employees from CI (53) and the LB&I Division (89). Our sample was selected using a 90 percent confidence interval, 1.81 percent error rate, and ±3 percent precision factor.

¹⁸ IRM 1.5.3.3(5) (May 19, 2017).

¹⁹ For the missing retention standard forms, the point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 151 to 540 individuals who had missing retention standard documents in their employee performance files. For the missing signatures on the retention standard forms, the point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 91 and 428 individuals who did not sign the retention standard document acknowledging the retention standard.

Documentation continues to indicate that employees are still not acknowledging retention standards at the beginning of the rating period

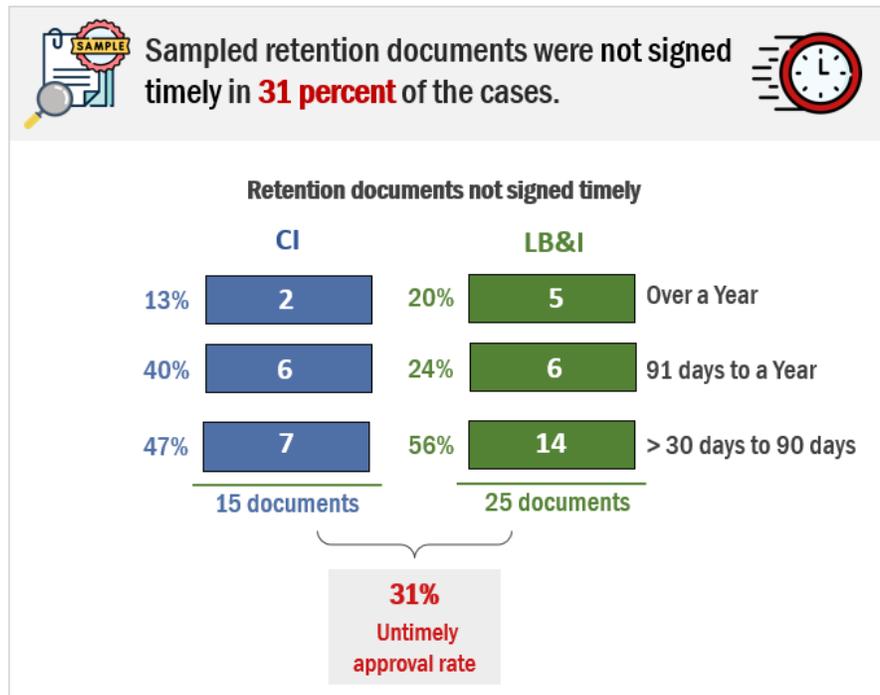
TIGTA has historically reported on the timeliness associated with retention standard documents. Although timeliness and documentation noncompliance are not specifically addressed in Section 1204(b), the law requires the IRS to use the fair and equitable treatment of taxpayers as one of the standards for evaluating employee performance. For the IRS to evaluate its employees, Title 5 of the Code of Federal Regulations § 430.206 requires that an appraisal program be established that designates “an official appraisal period for which a performance plan shall be prepared, during which performance shall be monitored, and for which a rating of record shall be prepared.”

The Code of Federal Regulations also requires that performance plans be provided to employees at the beginning of each appraisal period and that each performance plan includes all elements that are to be used in developing a summary rating, *i.e.*, an evaluation. In addition, the IRM states that employees must acknowledge receipt of the retention standard each year within 30 days from the beginning of the rating period, even if their performance standards have not changed from the prior year.²⁰ The importance of the manager timely informing and obtaining the acknowledgement from the employee within 30 days of the beginning of the rating period provides assurance that the retention standards have been discussed and agreed upon by both parties and that the employee is knowledgeable in providing fair and equitable treatment of taxpayers.

We were able to review the timeliness of only 128 retention standard documents from the sample of 142 documents we requested from CI and the LB&I Division, due to eight missing documents and six unsigned documents. We determined that 88 (69 percent) retention standard documents were signed timely, and 40 (31 percent) retention standard documents were not signed timely. Of the 40 retention standard documents that were not signed timely, 15 were from CI and 25 were from the LB&I Division. Figure 5 provides a breakout of the 40 retention standard documents that were signed more than 30 days after the rating period began.

²⁰ IRM 1.5.3.3(5) (May 19, 2017).

Figure 5: Aging of the 40 Retention Standard Documents Not Signed Timely



Source: Forms 6774, Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard, and Forms 12450 with rating periods ending in FY 2022.

As noted previously, the failure to have all performance plans and agreements signed in a timely manner does not constitute a statutory violation of Section 1204. However, the failure of managers and employees to timely acknowledge their responsibility to treat taxpayers fairly and equitably is problematic. There are significant benefits to establishing controls that require retention standards be acknowledged at the beginning of the rating period because they afford management the opportunity to advise employees of their requirement to administer the tax laws fairly and equitably; protect taxpayer rights; and treat each taxpayer ethically with honesty, integrity, and respect.

The Chief, CI, and the Acting Commissioner, LB&I Division, should:

Recommendation 3: Ensure the 14 instances of RRA 98 § 1204(b) noncompliance are discussed with the responsible managers to ensure that they understand the retention standard documentation.

Management’s Response: IRS management agreed with the 14 instances of Section 1204(b) noncompliance. The Chief, CI, will discuss the four instances and the Acting Commissioner, LB&I Division, will discuss the 10 instances of noncompliance with the responsible managers to ensure that they understand the retention standard documentation.

Recommendation 4: Establish a system to remind managers to ensure that the retention standards are signed timely.

Management's Response: IRS management partially agreed with this recommendation. The Chief, CI, agreed with the recommendation; however, the Acting Commissioner, LB&I Division, will consider whether to establish a system to remind managers to ensure retention standards are signed timely.

Office of Audit Comment: It is encouraging that the Acting Commissioner, LB&I Division, will consider the recommendation; however, given that the Section 1204(b) standard requires that IRS employees agree to treat taxpayers fairly and equitably, we encourage the Acting Commissioner, LB&I Division, to adopt the recommendation.

Fiscal Year 2022 Quarterly Certifications Associated With Section 1204(c) Were Not Always Timely Completed

We reviewed each of the four quarters in FY 2022 to identify if managers completed the quarterly certification. Our analysis identified a total population of 16,012 unique certifications for all four quarters. Of those quarterly certifications, we identified 15,243 quarterly certifications were timely certified, 577 were not timely certified, and 192 quarterly certifications were not completed. Of the 192 certifications not completed, 25 did not have a reasonable explanation for not being completed.²¹

In FY 2020, the IRS began moving away from a paper certification process to an automated system using the ITMS. The IRS piloted the new certification process in FY 2020 and in FY 2021 required all Section 1204(a) managers to use the ITMS to complete the quarterly certification process. Due to inconsistencies found in the FY 2021 ITMS certification data, TIGTA was unable to report on the certifications in our FY 2022 review.²²

Each quarter, the Human Capital Office (HCO) creates a Section 1204 HR Connect Manager Report that lists managers with a Section 1204 indicator from HR Connect. The HCO provides this report to each of the business unit program managers to reconcile the business unit's managers on the list. The program manager of each business unit disseminates the report to the primary operating unit Section 1204 coordinators via e-mail with instructions to add and remove managers, including acting managers. Once completed, the report is returned to the business unit program manager who submits the report back to the HCO. The HCO then uses that list to assign the quarterly certifications in the ITMS to the Section 1204(a) managers.

Prior to each quarter, a Leader's Alert is issued to all Section 1204(a) managers informing them of when the quarterly certification is available and when it must be completed.²³ The business units have up to 45 days after the quarter has ended to timely complete and report their

²¹ The 167 remaining certifications that were not completed had a reasonable explanation such as manager retired, resigned, or was on extended leave.

²² TIGTA, Report No. 2022-30-067, *Fiscal Year 2022 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcements Results* (Sept. 2022).

²³ A Leaders' Alert is an at-a-glance electronic newsletter emailed every Tuesday for IRS executives, managers, and management officials.

quarterly certifications. After the end of the 45-day period, the HCO provides the business units' Section 1204 program managers with a weekly report containing a list of complete and incomplete self-certifications to be reconciled. One week later, the HCO issues a second weekly report to the business program managers that reflects the updated certifications taken by the managers for each business unit.

Of the 577 certifications that were not timely signed, 65 were signed after the Quarterly Certification Memorandum of Record was signed. Therefore, IRS management was provided inaccurate information on the number of Section 1204(a) managers that certified regarding potential use of ROTERs.

RRA 98 § 1204(c) requires Section 1204(a) supervisors to quarterly certify by letter to the IRS Commissioner whether ROTERs and/or production quotas or goals were used in a prohibited manner. IRM 1.5.3.4.1 states that Section 1204 quarterly self-certifications are based on the fiscal year. Quarterly submissions are due to the HCO from the business units 45 calendar days after the end of the quarter and the Quarterly Certification Memorandum of Record must be reviewed and signed no later than 15 days after the quarterly certification due date.

As of February 2022, the HCO's Director, Policy and Audit Division, has been delegated authority to sign this memorandum. The memorandum is posted to the IRS Source webpage and the IRS's SharePoint site.²⁴ However, there is no indication that the memorandum is submitted to the IRS Commissioner. The IRS stated that the memorandum has not been provided to the IRS Commissioner since at least FY 2010.

When quarterly self-certifications are not completed, there is the risk that business unit managers using ROTERs in a manner prohibited by Section 1204(a) are not reported. In addition, if the IRS Commissioner is not notified of the IRS's compliance with RRA 98 § 1204(a), the IRS may be in violation of Section 1204(c).

The Deputy Commissioner for Operations Support should:

Recommendation 5: Ensure that the 25 instances of RRA 98 § 1204(c) noncompliance are discussed with the responsible managers to ensure that they understand the requirements of the Section 1204 certification process.

Management's Response: IRS management agreed with this recommendation. The HCO's Director, Policy and Audit Division, will review the 25 instances identified and determine if subsequent reporting is needed and/or completed. For FY 2024, the HCO has implemented an additional control where the business units will provide HCO with the reason that any manager did not complete the certification process to eliminate future questions.

Office of Audit Comment: We appreciate that the IRS will review the 25 instances of Section 1204(c) noncompliance and determine if additional reporting is needed. However, we also encourage the IRS to speak with the managers involved to ensure they understand the requirements of the Section 1204 certification process. The additional control that will be implemented in FY 2024 will help ensure that IRS management is aware of those managers who did not

²⁴ IRM 1.5.3.4.8 (Oct. 17, 2022).

certify and why. These controls promote public confidence that the American tax system maintains an environment of fair and equitable treatment of taxpayers and should be followed to the letter of the law. TIGTA will review this additional control in our FY 2024 review.

Recommendation 6: Ensure that the Quarterly Certification Memorandum of Record is submitted to the IRS Commissioner in accordance with RRA 98 § 1204(c).

Management's Response: IRS management agreed with this recommendation. The HCO will provide the Quarterly Certification Memorandum of Record to the IRS Commissioner using the Chief of Staff mailbox with a copy to the Deputy Commissioners, and the heads of the seven Section 1204 business units.

The Accuracy of Section 1204 Employee Designations Is Improving

We identified only five employees for which the HR Connect Section 1204 indicator was incorrect, which indicates a steady improvement in the IRS's designation of Section 1204(a) employees. The Section 1204(a) designation is not a blanket designation across the IRS. The designation is limited to any employee or manager of an employee (all levels of management) who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws, or an employee whose duties involve providing direction or guidance for field programs involving Section 1204 work activities, including IRM guidance. During the year, these erroneous designations can affect the ability to timely deliver training and certifications.

Inaccurate designations also bring into question the accuracy of managers' quarterly validation that their employees are covered by Section 1204(a). The IRS currently uses a multi-step approach to assist Section 1204(a) managers who need to designate themselves and their employees as Section 1204(a). This process requires all Section 1204(a) managers to use an HR Connect indicator to designate their employees and themselves as Section 1204(a) employees and to validate this designation as part of the Section 1204(c) quarterly self-certification process.²⁵

In our FY 2021 report, the IRS agreed with TIGTA's recommendation to establish a control for Section 1204(a) managers to review and update their own and their employees' HR Connect profile as part of the Quarterly Certification process. The IRS also agreed to send out annual reminders to all employees to review their Section 1204 designation in HR Connect. The IRS indicated that the corrective action for this recommendation was implemented on August 10, 2022. As a corrective action, the IRS stated that it would issue the FY 2023 annual reminder in the IRS Leaders' Alert on January 17, 2023, and in the Headline News on January 18, 2023, for Section 1204(a) employees and managers to update their Section 1204 designation in HR Connect. However, this annual reminder was never published in the Leaders' Alert or the Headline News in January 2023. After we brought this to the attention of IRS management, the annual reminder was published in the Leaders' Alert on April 18, 2023, and in

²⁵ The HR Connect indicator was set up to manage the Section 1204(a) population more efficiently, reduce managerial burden in the Section 1204 self-certification process, and improve the accuracy of reporting. It also supports the annual TIGTA audit and independent reviews completed by the IRS.

the Headline News on April 19, 2023. The HCO program manager explained that the annual reminders were scheduled to post in the IRS Leaders' Alert and Headline News in January, but the responsible individual transitioned to a new area. The HCO program manager assured TIGTA that action is being taken to have the notices posted to the IRS Leaders' Alert and Headline News in future years.

Section 1204(a) Employees Did Not Always Complete the Annual RRA 98 Mandatory Briefing

All Section 1204(a) personnel are required to complete the RRA 98 § 1204 self-study briefing annually. We reviewed a December 7, 2022, training status report of 31,304 employees assigned the RRA 98 § 1204 mandatory briefing to determine if they completed the FY 2022 training by September 30, 2022.²⁶ TIGTA identified 388 employees who were assigned Section 1204 mandatory training but did not complete the FY 2022 training. Of the 388 employees who were assigned and did not complete the training, 336 had valid explanations for not completing, which included retirement, resignation, suspension, termination, leave of absence, or the employee was incorrectly identified as a Section 1204(a) employee. Therefore, 52 Section 1204(a) employees did not have a valid explanation for why they did not complete the training.

Under IRM 1.5.3.8, the HCO provides the mandatory RRA 98 § 1204 training for managers and employees annually through the ITMS based on the employees' HR Connect Section 1204 status. The training is scheduled and assigned to the ITMS learning plans of Section 1204(a) managers and employees. In addition, the HCO sends out an alert to all Section 1204(a) employees and managers on an annual basis, notifying them of the mandatory briefing and when it will be available in the ITMS.

In our FY 2022 review, TIGTA identified 10 employees who did not have a valid reason for not completing the assigned training. This fiscal year's review found 52 Section 1204(a) employees who did not have a valid reason for not completing the mandatory training. The mandatory RRA 98 § 1204 training is designed to ensure employees are aware of the Section 1204 requirements. If the training is not taken, employees may be unaware of the requirements and result in potential ROTERs.

²⁶ The IRS provided the listing of employees assigned the 1204(a) mandatory briefing. According to the IRS, the HR Connect indicator is a one-day snapshot and not a relational database that would be updated systemically. This means designations today may be different than last week, and the IRS lacks the ability to go back in time to identify a Section 1204(a) population from a prior date and verify whether previous designations were historically accurate.

Standard Operating Procedures and Prior Recommendations Have Been Updated and Finalized

The HCO's internal procedures have been forthcoming since an interim guidance memorandum was issued October 1, 2017, when ownership of the program transitioned from the Chief Financial Officer office to the HCO. The HCO program manager stated that the delays in finalizing the internal procedures were due to additional updates related to internal control improvements and program process updates, along with the time required for the IRM approval process.

In July 2022, the HCO provided a draft of the IRMs that were expected to be in effect by August 2022. The draft IRMs reflect the change in ownership from the Chief Financial Officer office to the HCO, the IRS's new certification process through the ITMS, and the HCO's independent review process. As of April 19, 2023, the HCO has taken corrective action on all eight recommendations made in the FY 2021 report.²⁷ As of May 26, 2023, the HCO has taken corrective action on the recommendations that were agreed and partially agreed to in the FY 2022 report.²⁸

²⁷ TIGTA, Report No. 2021-30-052, *Fiscal Year 2021 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Aug. 2021).

²⁸ TIGTA, Report No. 2022-30-067, *Fiscal Year 2022 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Sept. 2022). Of the three recommendations made in the FY 2022 report, the IRS agreed, partially agreed, and disagreed, respectively.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in RRA 98 § 1204. To accomplish our objective, we:

- Determined if the IRS complied with the provisions of RRA 98 § 1204(a) when evaluating the performance of Section 1204 employees. We used computer software to analyze information in 5,725 CI and LB&I Division Section 1204 employee and manager electronic performance evaluation files for use of high-risk terms and phrases.
- Determined if the IRS complied with the provisions of RRA 98 § 1204(b) when evaluating the performance of Section 1204 employees. From the 6,131 CI and LB&I Division Section 1204 employees and managers identified as of September 30, 2022, with an HR Connect indicator, we selected a random sample of 142 performance files from CI (53) and the LB&I Division (89) to test compliance with retention standards. Our sample was selected using a 90 percent confidence interval, 1.81 percent error rate, and ± 3 percent precision factor.
- Determined if the Section 1204 managers complied with RRA 98 § 1204(c) by certifying whether ROTERs were used in a manner prohibited by subsection (a). We identified a total population of 16,851 certifications for all four quarters.
- Determined whether the mandatory RRA 98 § 1204 training for managers and employees adequately addressed the use of ROTERs and/or the retention standards and whether all Section 1204 managers and employees completed the training for FY 2022.

Performance of This Review

This review was performed with information obtained from Appeals; HCO; CI; Taxpayer Advocate Service; the LB&I Division; the Small Business/Self-Employed Division; the Tax Exempt and Government Entities Division; and the Wage and Investment Division during the period December 2022 through May 2023. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Robert Jenness, Audit Director; Michele Jahn, Audit Manager; Ken Henderson, Lead Auditor; Jonathan Lee, Auditor; and Lance Welling, Data Analytics Specialist (Data Analytics).

Validity and Reliability of Data From Computer-Based Systems

We obtained the FY 2022 Section 1204 employee and manager list from the IRS Human Capital Officer that originated from the Department of Treasury HR Connect system. We used this list

to develop our stratified sampling plan. Our sampling plan was developed in consultation with our contracted statistician. We also obtained the population of evaluations completed in FY 2022 from the Department of the Treasury HR Connect system. To determine the reliability of our datasets, we reviewed the Section 1204 population data for duplicates and identified any missing information and compared the data to the Discovery Directory, as well as the Treasury ITMS. We also reviewed existing information about the data, the system that produced them, and interviewed agency officials within the IRS and the Department of the Treasury knowledgeable about the data. These tests determined that the data were sufficiently reliable and could be used to meet the objective of this audit.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the guidelines and rules related to using ROTERs in a way to improperly influence the handling of taxpayer cases and retention standard guidance. We evaluated these controls by reviewing available midyear and annual performance reviews, employee self-assessments, quarterly self-certifications, and a stratified sample of retention standard documentation to determine whether the IRS complied with restrictions on the use of enforcement statistics when evaluating its employees.

Management's Response to the Draft Report



HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

September 6, 2023

MEMORANDUM FOR HEATHER M. HILL
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Traci M. DiMartini Traci M. DiMartini
IRS Human Capital Officer DiMartini

Digitally signed by Traci M. DiMartini
Date: 2023.09.05 17:27:18 -04'00'

SUBJECT: Draft Audit Report – Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit # 202330007)

Thank you for the opportunity to review and comment on the draft report entitled, Fiscal Year 2023 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit# 202330007). We appreciate your acknowledgement that the IRS recognizes its responsibility to protect taxpayer rights. With an IRS workforce of nearly 32,000 people subject to The Reform and Restructuring Act of 1998 (RRA 98), most IRS managers do not use Records of Tax Enforcement Results (ROTERRs), and/or production goals or quotas to evaluate employees.

We are dedicated to improving compliance in all Section 1204 components and in pursuit of improved analytics, reporting, and overall program performance. To ensure awareness among IRS managers and employees, we conduct mandatory Section 1204 training for managers and employees every year, share updates through the *IRS Leaders Alert* publication emailed to all IRS managers, and provide direct support and guidance to managers through a network of local program contacts. We look for opportunities to improve the program by utilizing new technology. For example, several years ago we introduced a new, more efficient Section 1204 quarterly electronic certification process, moving away from the old paper process. Although compliance with Section 1204 is very high, we continually work toward reducing violations to the lowest possible numbers.

In general, we agree with the report language and the audit findings regarding Section 1204 violations and instances of noncompliance, all of which will be discussed with responsible managers and employees to reinforce the law and IRS policies.

**Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines
Restricting the Use of Records of Tax Enforcement Results**

In keeping with the recommendations addressed to the Deputy Commissioner for Operations Support, the Chief, Criminal Investigations and the Commissioner, Large Business and International, attached is a detailed response outlining the corrective actions that the IRS will take to address your recommendations. If you have any questions, please contact me at (202) 317-3174 or a member of your staff may contact Scott Delaney, Director, Policy & Audits at (202) 317-5520.

Attachment

**Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines
Restricting the Use of Records of Tax Enforcement Results**

Attachment

RECOMMENDATION 1:

The Chief, CI, and the Commissioner, LB&I Division, should ensure that the 13 Section ensure that the managers understand the guidelines related to the use of ROTERs.

CORRECTIVE ACTION 1:

The Chief, CI will discuss the ROTERs found with the six managers associated with the six 1204(a) violations to ensure the managers understand the guidelines related to the use of ROTERs. This will be completed within 180 days of receiving TIGTA's final report.

IMPLEMENTATION DATE:

March 15, 2024

RESPONSIBLE OFFICIAL:

Chief, CI

CORRECTIVE ACTION(S) MONITORING PLAN:

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

CORRECTIVE ACTION 2:

Based on a review by Chief Counsel, General Legal Services, LB&I does not agree to seven of the Section 1204 (a) violations. Although TIGTA identified seven instances where numbers were used in the narrative of the performance evaluations, these numbers were not tax enforcement results and did not result in Section 1204 (a) violations. Instead, the numbers included in the employee evaluations merely gave additional detail or background to the narrative. There was no indication that these employees were rated on the amount of an adjustment, encouraged to use a production quota or goal, or evaluated on any other tax enforcement result. While these were not tax enforcement results, the IRS recognizes that the use of numbers is often not essential to a performance evaluation narrative and can be misinterpreted as a prohibited tax enforcement result. Accordingly, the LB&I Division will consider actions to discourage the use of unnecessary numbers in employee evaluations.

IMPLEMENTATION DATE:

N/A

RESPONSIBLE OFFICIAL:

N/A

**Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines
Restricting the Use of Records of Tax Enforcement Results**

CORRECTIVE ACTION(S) MONITORING PLAN:

N/A

RECOMMENDATION 2:

The Commissioner, LB&I Division, should ensure that the four instances of noncompliance identified in this report associated with the prohibition on including ROTERs in a self-assessment are discussed with the responsible employees and their managers so they understand that ROTERs should not be used in self-assessments.

CORRECTIVE ACTION:

Based on our discussions with Counsel and for reasons discussed above, LB&I Division disagrees with the four instances of noncompliance identified by TIGTA.

IMPLEMENTATION:

N/A

RESPONSIBLE OFFICIAL:

N/A

CORRECTIVE ACTION(S) MONITORING PLAN:

N/A

RECOMMENDATION 3:

The Chief, CI, and the Commissioner, LB&I Division should ensure the 14 instances of RRA 98 § 1204(b) noncompliance are discussed with the responsible managers to ensure that they understand the retention standard documentation.

CORRECTIVE ACTION 1:

The Chief, CI will discuss the four instances of 1204(b) noncompliance with the responsible managers to ensure they understand the retention standard documentation. This will be completed within 180 days of receiving TIGTA's final report.

IMPLEMENTATION DATE:

March 15, 2024

RESPONSIBLE OFFICIAL:

Chief, CI

**Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines
Restricting the Use of Records of Tax Enforcement Results**

CORRECTIVE ACTION(S) MONITORING PLAN:

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

CORRECTIVE ACTION 2:

The LB&I Division agrees with this recommendation and will ensure that the 10 instances of RRA 98 § 1204(b) noncompliance are discussed with the responsible managers to ensure that they understand the retention standard documentation.

IMPLEMENTATION DATE:

April 15, 2024

RESPONSIBLE OFFICIAL:

LB&I Director, Technology and Program Solutions

CORRECTIVE ACTION(S) MONITORING PLAN:

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

RECOMMENDATION 4:

The Chief, CI, and the Commissioner, LB&I Division, should establish a system to remind managers to ensure that the retention standards are signed timely.

CORRECTIVE ACTION 1:

The Chief, CI will establish a system to remind managers to ensure retention standards are signed timely.

IMPLEMENTATION DATE:

November 15, 2024

RESPONSIBLE OFFICIAL:

Chief, CI

CORRECTIVE ACTION(S) MONITORING PLAN:

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

CORRECTIVE ACTION 2:

The LB&I Division agrees with this recommendation and will consider the development of a system to address this issue.

**Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines
Restricting the Use of Records of Tax Enforcement Results**

IMPLEMENTATION DATE:

April 15, 2024

RESPONSIBLE OFFICIAL:

LB&I Director, Technology and Program Solutions

CORRECTIVE ACTION(S) MONITORING PLAN:

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

RECOMMENDATION 5:

The Deputy Commissioner for Operations Support should ensure that the 25 instances of RRA 98 § 1204(c) noncompliance are discussed with the responsible managers to ensure that they understand the requirements of the Section 1204 certification process.

CORRECTIVE ACTION:

The IRS Human Capital Office agrees with this recommendation. There are only three circumstances where a manager can provide a “cumulative” response, which means they report a potential ROTERS violation at a later time than the quarter in which the event occurred. They are: 1) if the manager of record is not present during the certification timeframe; 2) if the acting manager completes the certification but misses a potential 1204 event; or 3) any 1204-required manager identifies a potential ROTERS violation at a later time. In these instances, the manager reports the potential ROTERS violation in the next certification cycle. HCO will review the 25 instances identified by TIGTA and determine if subsequent reporting is needed and/or has been completed. For FY24, HCO has implemented an additional control whereby the business units provide HCO with the reason that any manager did not complete the certification process to eliminate future questions.

IMPLEMENTATION DATE:

February 15, 2024

RESPONSIBLE OFFICIAL:

Director, Policy and Audits

CORRECTIVE ACTION(S) MONITORING PLAN:

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

**Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines
Restricting the Use of Records of Tax Enforcement Results**

RECOMMENDATION 6:

The Deputy Commissioner for Operations Support should ensure that the Quarterly Certification Memorandum of Record is submitted to the IRS Commissioner in accordance with RRA 98 § 1204(c).

CORRECTIVE ACTION:

The IRS agrees to this recommendation. The Human Capital Officer will provide the Quarterly certification memorandum to the Commissioner using the Chief of Staff mailbox with a copy to the Deputy Commissioners, and heads of the seven Section 1204 business units.

IMPLEMENTATION DATE:

April 19, 2024

RESPONSIBLE OFFICIAL:

Director, Policy & Audits

CORRECTIVE ACTION(S) MONITORING PLAN:

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

Appendix III

Glossary of Terms

Term	Definition
Discovery Directory	A computer system available to IRS personnel that provides information on IRS employees including their names, job title, job location, and management level.
Employee Performance File	A system consisting of all performance records maintained on an employee.
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.
Headline News	E-newsletter for IRS employees.
HR Connect	A human resource system owned and operated by the U.S. Department of the Treasury.
Integrated Talent Management System	One system which consolidates several human resource systems and includes four primary human resource management modules: Learning, Performance Management, Succession Planning, and Workforce Planning.
Internal Revenue Manual	The primary official source of instructions to staff related to the organization, administration, and operation of the IRS.
Leaders' Alerts	E-newsletter for IRS executives, managers, and management officials.

Abbreviations

CI	Criminal Investigations
FY	Fiscal Year
HCO	Human Capital Office
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
ITMS	Integrated Talent Management System
LB&I	Large Business and International
ROTERR	Record of Tax Enforcement Result
RRA 98	Restructuring Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration



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

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

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