TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Compliance With the Standard for the Fair and Equitable Treatment of Taxpayers Could Be Improved

July 24, 2025

Report Number: 2025-300-032

TIGTACommunications@tigta.treas.gov | www.tigta.gov

HIGHLIGHTS: Compliance With the Standard for the Fair and Equitable Treatment of Taxpayers Could Be Improved

Final Audit Report issued on July 24, 2025 **Report Number 2025-300-032**

Why TIGTA Did This Audit

This audit was initiated to determine whether the IRS is complying with IRS Restructuring and Reform Act of 1998 (RRA 98) Section 1204(b) retention standard. The retention standard requires the IRS to "use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance."

IRS employees who do not meet the retention standard are ineligible for a performance award, within-grade increase, career ladder promotion, competition for promotion, or satisfactory completion of a probationary period, and the employees may be removed from their position or the IRS.

Impact on Tax Administration

The fair and equitable treatment of taxpayers by IRS employees is necessary to prevent harm to taxpayers and to prevent negative impacts on voluntary compliance.

What TIGTA Found

While the law requires all IRS employees to be subject to the fair and equitable treatment of taxpayers' retention standard, we identified 10,892 employees who were rated as "Not Applicable" in an apparent violation of the retention standard. However, in our assessment, the IRS incorrectly believed that the retention standard was not applicable to some employees depending on their duties. Current IRS internal guidance incorrectly allows managers to rate employees as "Not Applicable" (based on whether the employee's duties had a potential impact on taxpayer issues or outcomes during the appraisal period), even though this rating is not specifically authorized by Section 1204(b) or the relevant Treasury Regulations.

We also identified 65 IRS employees who received a "Not Met" rating for the Section 1204(b) retention standard for fair and equitable treatment of taxpayers in Fiscal Year 2022. Of the 65 IRS employees, 6 employees either successfully completed their probationary period or received a performance award and a promotion. This was despite the IRS's guidance requiring an overall summary rating of "Unacceptable" when the retention standard is determined to be "Not Met." We identified 3 employees who later separated from the IRS; however, at least 62 of these employees were not separated from service even though they received the "Not Met" rating for the retention standard and received an overall rating of "Unacceptable."

In addition, we determined that the training materials used to educate IRS employees on the retention standard could be improved. These materials do not currently provide examples of noncompliant behavior nor do they address the consequences of failing to meet the retention standard.

What TIGTA Recommended

We recommended that the IRS: (1) review and reinforce policies to ensure that employees who do not meet the retention standard are not given a performance award, within-grade increase, career ladder promotion, competition for promotion, or satisfactory completion of a probationary period; (2) reevaluate the use of the "Not Applicable" rating for the retention standard to ensure that all IRS employees are evaluated on whether they provided fair and equitable treatment to taxpayers in accordance with Section 1204(b); and (3) ensure that the retention standard training materials include examples of noncompliant behavior and explicitly state the consequences of receiving a "Not Met" rating. The IRS agreed with all three recommendations. However, the IRS's interpretation of 1204(b) is that the "Not Applicable" rating can be used for employees that do not interact with taxpayers. We disagree with their interpretation. The law does not state there must be taxpayer interaction. Every IRS employee has some impact on taxpayers, regardless of interaction, and should be rated as such.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20024

July 24, 2025

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

FROM: Diana M. Tengesdal
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Compliance With the Standard for the Fair and Equitable Treatment of Taxpayers Could Be Improved
(Audit No.: 2024300015)

This report presents the results of our review to determine whether the Internal Revenue Service is complying with the retention standard of the IRS Restructuring and Reform Act of 1998 Section 1204(b). This review is part of our Fiscal Year 2025 Annual Audit Plan and addresses the major management and performance challenge of *Taxpayer Rights*.

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

The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) Section 1204(b) requires the IRS to "use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance" (retention standard).[1] In June 1999, the National Treasury Employees Union and the IRS signed a Memorandum of Understanding establishing this as a retention standard. The standard is included in the performance documents for all IRS executives, managers, and other employees. The retention standard is acknowledged at the beginning of the performance period and is evaluated the same as a Critical Job Element, except that retention standard ratings are limited to "Met," "Not Met," or "Not Applicable."[2] As we discuss further below, neither Section 1204(b) nor the Treasury Regulations specifically authorize a "Not Applicable" rating since it applies to all IRS employees.

Managers determine employee compliance by reviewing case files or IRS systems, monitoring telephone calls, and reviewing feedback received from taxpayers and other outside sources. Ratings of "Met" and "Not Applicable" have no effect on an employee's summary rating, ranking in merit promotion actions, release/recall scores, or entitlement to performance awards.[3] The following are examples of performance that meet the retention standard:

- Responds to taxpayers in a timely manner.
- Discusses specific taxpayer cases with other employees on a need-to-know basis only.
- Responds verbally or in writing with appropriate tone, courtesy, and respect, and states facts accurately.
- Advises taxpayers of full personal impact, such as interest and penalty accumulation, when the taxpayer advises they cannot pay their liability in full.
- Identifies self by providing name and badge number, as required.
- Identifies taxpayers whose circumstances and/or account history meet Taxpayer Advocate case criteria.
- Advises taxpayers and their representatives of appeal rights and actions necessary to pursue and protect their rights.
- Takes or recommends appropriate actions in a timely fashion to resolve taxpayer filing and payment delinquencies, addressing all issues with the taxpayer to ensure compliance.
- Identifies when action is required by another function to resolve the taxpayer's issue/inquiry and makes that transfer or contact in a timely manner.

Managers are required to prepare a narrative justification only for ratings of "Not Met." Infrequent lapses of IRS standards with respect to the treatment of taxpayers that are

[1] Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2, 5, 16, 19, 22, 23, 26, 31, 38, and 49 U.S.C.). Pub. L. No. 105-206, 112 Stat 722.

[2] Critical Job Elements are the critical actions, objectives, and results that the IRS expects its employees to accomplish during an appraisal year.

[3] See Appendix II for a glossary of terms.

inadvertent or unavoidable, *e.g.*, not providing timely and professional customer service, should not result in a "Not Met" rating on the retention standard. Instead, they should be addressed in a discussion between the manager and employee to reinforce the importance of the standard and explore ways to prevent recurrence. The following are examples of performance that would result in an IRS employee receiving a "Not Met" retention standard rating:

- Fails to respond in a timely manner to taxpayers.
- Discusses specific taxpayer information with others who do not have an official "need-to-know."
- Responds verbally or in writing to taxpayers or their representatives with a tone or wording that is discriminatory, discourteous, disrespectful, intimidating, and/or misstates the facts.
- Does not follow procedures when responding to installment agreement requests from taxpayers and their representatives.
- Does not convey personal impact information to the taxpayer, such as penalty and interest accumulation, when the taxpayer's circumstances and/or account history meets Taxpayer Advocate case criteria.
- Takes improper actions that place the taxpayer in a hardship condition.
- Does not apply appeal rights or advise taxpayers and their representatives of those rights.
- Does not take or recommend appropriate actions to resolve taxpayer filing and payment delinquencies, consistently takes/recommends those actions in an untimely fashion, or fails to address all issues with the taxpayer to ensure that they remain compliant.

If an employee receives a "Not Met" rating for the retention standard, after the manager considers all relevant facts and circumstances, it will result in an "Unacceptable" overall rating. An "Unacceptable" overall rating makes the employee ineligible for a performance award, within-grade increase (WIGI), career ladder promotion, competition for promotion, or satisfactory completion of a probationary period, and may result in the employee's removal from their position or the IRS. An "Unacceptable" overall rating will also adversely affect an employee's retention standing in the event of a reduction in force.[4]

Employees who fail to meet performance standards should be counseled as early as possible in the appraisal period. Supervisors must notify employees in writing that their performance is unacceptable, what is required for the employee to perform at an acceptable rating level, and the amount of time that the employee must demonstrate acceptable performance. For the time period covered by this audit, employees were granted a minimum of 60 days to raise their performance to an acceptable level.[5] If an employee's performance does not improve to an

[4] For managers and management officials, a "Not Met" rating for the retention standard for the fair and equitable treatment of taxpayers will result in a "Not Met" summary evaluation rating. A "Not Met" summary evaluation rating makes the manager ineligible for a performance award, WIGI, career ladder promotion, competition for promotion, or satisfactory completion of a probationary period, and may result in the manager's removal from the position or the IRS. A "Not Met" overall rating will also adversely affect a manager's retention standing in a reduction in force.

[5] Under new OPM Guidance titled *Performance Management for Federal Employees*, dated June 17, 2025 (revised July 17, 2025) an employee is now limited to 30 days to raise their performance.

acceptable level, an adverse action may result (*e.g.*, reduction in grade, reassignment, or removal). If the employee demonstrates acceptable performance during the opportunity period, the rating official retains the notice of unacceptable performance in the Employee Performance Folder for one year from the date the opportunity period became effective.

We examined all performance reviews for managers, management officials, confidential management/program analysts, and employees who did not meet the retention standard with an annual appraisal period ending date in Fiscal Year (FY) 2022 (October 1, 2021, through September 30, 2022). In addition, in September 2023, we reported 14 instances in which IRS management failed to either maintain the retention standard documentation or ensure that it was appropriately signed.[6] We recommended and IRS management agreed to discuss the noncompliance with the responsible managers to ensure they understood the retention standard documentation.

Results of Review

We identified significant noncompliance with the Section 1204(b) retention standard for treating taxpayers fairly and equitably in that 10,892 employees were rated as "Not Applicable" with respect to the standard. This "Not Applicable" rating was generally due to the IRS's misunderstanding as to whether Section 1204(b) applies to all IRS employees or just those employees with duties that have a potential impact on taxpayer issues or outcomes during the appraisal period. We also identified 65 employees who received a "Not Met" rating, of whom: 6 successfully completed their probationary period, received performance awards, or received promotions; 3 departed the IRS, and 62 who received a "Not Met" rating on the retention standard were given an overall "Unacceptable" rating but were still retained by the IRS. In addition, IRS management failed to properly rate one employee as not meeting the retention standard, and two employees were incorrectly rated as "Not Applicable" for the retention standard despite their impact on taxpayer issues or outcomes. Finally, the training materials used to educate IRS employees on the retention standard could be improved. The training materials reviewed by TIGTA frequently did not provide examples of noncompliant behavior nor addressed the consequences of failing to meet the retention standard.

Procedures Were Not Followed for Employees Receiving a "Not Met" Rating

Despite receiving a "Not Met" rating for the retention standard, six employees still fully completed their probationary period, including one that received a career ladder promotion and a performance award, although the employee was ineligible for a performance award.

All IRS employees must be rated each year on whether they met the retention standard. The possible three retention standard ratings are "Met," "Not Met," or "Not Applicable." The IRS provided a list of 89 employees who received a rating of "Not Met" for the retention standard on their performance reviews in the annual appraisal period ending in FY 2022 (October 1, 2021, through September 30, 2022). The IRS determined that 24 of the 89 employees were given a

[6] TIGTA, Report No. 2023-30-058, *Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results*, p. 10 (September 2023).

"Not Met" rating in error (such as an accidental clicking of the "Not Met" option), therefore 65 employees did not meet the retention standard. We requested a list of any personnel actions such as a separation from employment, performance award, career ladder promotion, or satisfactory completion of a probationary period that the 65 employees might have received after being rated as "Not Met" and found:

- Five employees completed their probationary period.
- One employee received both a performance award and a career ladder promotion.

In the following years, three of the six employees separated from the IRS and the remaining three employees met the retention standard during their subsequent performance evaluation. IRS management provided various possible explanations, including management error, for the satisfactory probationary period determinations and the award and career ladder promotion, and noted that one employee had subsequently been terminated and records were no longer available to determine an underlying cause of the error. Additionally, at least 62 of the 65 employees who received a "Not Met" on the retention standard were not separated from the IRS even though they received an overall rating of "Unacceptable."

Recommendation 1: The IRS Human Capital Officer should review and reinforce policies to ensure that employees who do not meet the retention standard are not given a performance award, WIGI, career ladder promotion, competition for promotion, or satisfactory completion of a probationary period.

> **Management's Response:** IRS management agreed with this recommendation. The IRS Human Capital Officer will reinforce existing policies in annual Performance Management Policy trainings and quarterly Section 1204(b) communications to managers.

One employee should have received a rating of "Not Met"

We examined data from the Automated Labor and Employee Relations Tracking System (ALERTS), Criminal Results Management System (CRIMES), and Embedded Quality Review System (EQRS) for November 1, 2020, through September 30, 2022, to determine if employees should have been given a rating of "Not Met" for the retention standard because of misconduct but were instead given a different rating. We did not identify any employees who should have received a "Not Met" rating from our examination of ALERTS and CRIMES data. However, in our review of EQRS data, we found one employee who should have been rated as "Not Met." The employee in question disclosed tax information on three separate occasions to an unauthorized individual who did not have a Form 2848, *Power of Attorney and Declaration of Representative*, on file.

The IRS agreed that the employee should have received a rating of "Not Met," but would have been provided an opportunity for improvement. The employee did not receive an award, WIGI, career ladder promotion, competition for promotion, or complete a probationary period during the years we reviewed. The employee was terminated for an unrelated matter in November 2022.

Some Employees Are Not Being Evaluated on Whether They Provide Fair and Equitable Treatment to Taxpayers

We identified 10,892 employees who were rated as "Not Applicable" for the retention standard and appear to have not been properly evaluated on whether they provided fair and equitable treatment to taxpayers in violation of Section 1204(b). Additionally, in 2 of the 39 performance appraisals in our judgmental sample, the employees were rated "Not Applicable" for the retention standard despite having documented impact on taxpayer issues or outcomes.[7]

As previously stated, the IRS is required to use the fair and equitable treatment of taxpayers as a performance standard for evaluating employees. The Treasury Regulations section implementing Section 1204(b) states: "In addition to all other criteria required to be used in the evaluation of employee performance, *all employees of the IRS* will be evaluated on whether they provided fair and equitable treatment to taxpayers" (emphasis added).[8] However, in our assessment, the IRS incorrectly believed that the retention standard was not applicable to some employees depending on their duties. Current IRS internal guidance allows supervisors to evaluate the retention standard as "Met," "Not Met," or "Not Applicable" based on whether the employee performed duties with an impact on taxpayer issues. As previously noted, the June 1999 Memorandum of Understanding between the IRS and the National Treasury Employees Union allowed the three ratings for the retention standard for employees represented by the union. Under this approach, an employee is generally rated as "Not Applicable" if their position does not have an impact on taxpayer issues or outcomes. However, the "Not Applicable" rating is not specifically authorized or mentioned in Section 1204(b) or the relevant Treasury Regulations. Further, IRS Office of Chief Counsel provided an opinion in October 2011 stating that the fair and equitable treatment standard of Section 1204(b) applies to all IRS employees.

We believe the IRS's system of determining when to apply Section 1204(b) is flawed under the law because all employees should be assessed on the standard. However, even using the IRS's test for application of Section 1204(b), *i.e.*, whether the employee's duties had a potential impact on taxpayer issues or outcomes during the appraisal period, we found errors in how Section 1204(b) was applied. The IRS provided the number of employees by job series rated "Not Applicable" to the retention standard. This included a total of 10,892 employees in 87 different job series. This represented approximately 14 percent of the 79,070 full-time equivalent positions in FY 2022. The job series category with the most employees rated as "Not Applicable" was job series 2210 (Information Technology Management) with 4,564 (42 percent) of the 10,892 employees rated as "Not Applicable."

We selected a judgmental sample of six job series where we believe the employee could perform duties with potential impact on taxpayer issues or outcomes to determine if any of the employees performed such duties. The six job series were:

- 0318 (Secretary), with 63 employees rated as "Not Applicable" (0.6 percent of total).

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[7] A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. Appendix I provides additional information on the sample methodology.

[8] Treas. Regs. § 801.3(b).

- 0512 (Internal Revenue Agent), with 83 employees rated as "Not Applicable" (0.8 percent of total).
- 0592 (Tax Examining), with 217 employees rated as "Not Applicable" (2 percent of total).
- 1035 (Public Affairs), with 43 employees rated as "Not Applicable" (0.4 percent of total).
- 1169 (Internal Revenue Officer), with 73 employees rated as "Not Applicable" (0.7 percent of total).
- 1811 (Criminal Investigation), with 26 employees rated as "Not Applicable" (0.2 percent of total).

For each of the 6 job series, we selected a judgmental sample of at least 5 performance appraisals to review (39 total performance appraisals). We identified two appraisals for job series 0592 (Tax Examining) in which we believe the employees should not have been rated "Not Applicable," even using the IRS's test for the application of Section 1204(b), because they interact with the public.

- One appraisal stated: "When [Employee's Name] has phone interactions with external customers, [they] use the proper language and can provide the appropriate answers to [their] caller's questions."
- Another appraisal stated: "[They] demonstrate skills in meeting and dealing with all individuals-taxpayers, unit members, managers, and system analyst in all situations."

IRS management agreed with our conclusions and stated that the two employees should have been rated as having met the retention standard. IRS management stated that the cause was due to management oversight and corrections were made in the personnel system in June 2024.

IRS management stated that each of the business units identify which employees get a Section 1204 indicator in the personnel system based on the work that they do. The Section 1204 indicator designates an employee, or first-line manager of an employee, who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction or guidance for Section 1204 program activities. These employees are subject to RRA 98 Section 1204(a) that restricts the use of enforcement statistics and prohibits the IRS from using any records of tax enforcement results to evaluate employees, or to impose or suggest production quotas or goals. The IRS further stated that employees marked as Section 1204 employees in the personnel system are considered as Section 1204 employees for both Sections 1204(a) and 1204(b). This implies that employees not marked as Section 1204 in the personnel system automatically get a rating of "Not Applicable." IRS management subsequently stated that the personnel system is not the sole determining factor for the retention standard, but rather managers make the determination based on an employee's actual job duties. However, the law and regulations clearly state that in addition to all other criteria required to be used in the evaluation of employee performance, all employees of the IRS will be evaluated on whether they provided fair and equitable treatment to taxpayers.[9]

If IRS management considers the retention standard to apply only to employees marked with the Section 1204 indicator in the personnel system, there may be employees who are not being properly evaluated on their performance. As a result, employees may not be given accurate

[9] Treas. Reg. § 801.3(b).

performance feedback, and instances of employee performance not meeting the retention standard may not be identified. The IRS should strictly follow Section 1204(b) and apply the standard to all IRS employees using either a "Met" or "Not Met" standard.

Recommendation 2: The IRS Human Capital Officer should reevaluate the use of the "Not Applicable" rating for the retention standard in consultation with IRS Office of Chief Counsel to ensure that all IRS employees are evaluated on whether they provided fair and equitable treatment to taxpayers in accordance with Section 1204(b).

Management's Response: IRS management agreed with this recommendation. The IRS Human Capital Officer also consulted with IRS Chief Counsel on whether the "Not Applicable" is an appropriate rating for the retention standard and confirmed that while the IRS evaluates all employees under the Retention Standard (as required by 26 CFR § 801.3(b)), the outcome of the evaluation will not always be "Met" or "Not Met," as some employees' positions do not involve interaction with taxpayers and therefore the "Not Applicable" assessment is legally appropriate.

Office of Audit Comment: We disagree with the IRS's interpretation of how Section 1204(b) should be applied. The standard is not whether employees interact with taxpayers. The law states, "the Internal Revenue Service shall use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance." The law does not state the employee is only rated on that standard if there is direct contact or interaction with taxpayers. For example, an employee's job responsibility may involve writing sections of the Internal Revenue Manual or other guidance impacting taxpayers, and although that employee may not have direct contact or interactions with taxpayers, the work has an important impact on taxpayers. We believe the work of every IRS employee has some impact on taxpayers; therefore, every employee should either be rated as "Met" or "Not Met."

Retention Standard Training Materials Could Be Improved

The IRS's employee training for compliance with the retention standard could be improved to provide employees with examples of noncompliant behavior and clarify the consequences for failing to meet the standard. Employees are required to take one course each year on the topic of Performance Management. The annual Performance Management course includes a brief portion on Section 1204, with limited training on the retention standard. The other portions of the training include sections on employees' and supervisors' roles and responsibilities; basic information about Form 6850, *Performance Appraisal and Retention Standard Rating*, and Form 12450, *IRS Performance Management System - Executive Performance Agreement;* the Performance Management Cycle; performance monitoring; mid-year reviews; self-assessments; and ratings.[10] The training provides the following three examples of behavior that complies with the retention standard, but no examples of noncompliant behavior:

- Administer the tax laws fairly and equitably.

[10] In FY 2024, Form 6850 was replaced by separate forms for bargaining unit and non-bargaining unit employees, and Form 12450 was replaced by separate forms for managers, management officials, and management/program analysts.

- Protect taxpayers' rights.
- Treat each taxpayer ethically with honesty, integrity, and respect.

The IRS's Section 1204 intranet site also has a series of informational videos, but only one video for the retention standard, which is less than two minutes in length. The video states very basic information about the retention standard, including that all IRS employees are required to be evaluated according to the standard, and that it is a manager's responsibility to rate their employees according to the retention standard. The video description also provides links to Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard;* Form 6850; and Form 12450 as well as to the Internal Revenue Manual.[11] The video does not provide any examples of behaviors that meet or fail to meet the retention standard. Neither the Performance Management course nor the intranet video on the retention standard describes the consequences of failing to meet the retention standard, such as making the employee ineligible for a performance award, WIGI, career ladder promotion, competition for promotion, satisfactory completion of a probationary period, or the employee's removal from their position or the IRS.

IRS management provided a document titled "Section 1204 – Mandatory Briefing," which was not included on the Section 1204 intranet site. The Section 1204 briefing document included examples of noncompliant behavior such as:

- Does not respond in a timely manner to taxpayers.
- Responds verbally or in writing with a tone or wording which is discriminatory, discourteous, disrespectful, intimidating, and/or misrepresents facts.
- Does not advise the taxpayer of all options and factors that affect their liability and ability to pay.
- Shares interesting facts about a specific taxpayer case with other employees.

IRS management also provided a presentation that included additional information about Section 1204. The notes portion of the presentation, which is not easily visible, included consequences of failing to meet the retention standard, such as making the employee ineligible for a performance award, WIGI, and career ladder promotions.

Without Section 1204 training materials easily accessible on the Section 1204 intranet, employees may receive incomplete or inconsistent information and not understand performance expectations. Managers and supervisors may also find it more difficult to provide effective coaching if they cannot reference uniform materials during performance discussions.

Recommendation 3: The IRS Human Capital Officer should ensure that the retention standard training materials include examples of noncompliant behavior and explicitly state the consequences of receiving a "Not Met" rating. Additionally, ensure that the retention standard training materials are included on the Section 1204 training intranet site.

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[11] Internal Revenue Manual 6.430.2, *Performance Management Program for Evaluating Bargaining Unit and Non Bargaining Unit Employees Assigned to Critical Job Elements (CJEs)* (October 5, 2017); and Internal Revenue Manual 6.430.3, *Performance Management Program for Evaluating Managers, Management Officials, and Confidential Management/Program Analysts* (December 8, 2017).

Management's Response: IRS management agreed with this recommendation. The IRS Human Capital Officer has updated both the FY 2025 annual Section 1204 Mandatory Briefing and the annual Performance Management Briefing with examples of meeting the requirement for compliant behavior, and the consequences of receiving a "Not Met" rating is addressed in the annual Performance Management Mandatory Briefing.

Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to determine whether the IRS is complying with the retention standard of RRA 98 Section 1204(b). To accomplish our objective, we:

- Obtained performance reviews for IRS employees who did not meet the retention standard during the annual appraisal period ending date occurring in FY 2022 (October 1, 2021, through September 30, 2022).
- Obtained data for all cases posting to the ALERTS database from November 1, 2020, to September 30, 2022.
- Obtained CRIMES and EQRS data from November 1, 2020, to September 30, 2022.
- Performed queries of the performance reviews for the annual appraisal period ending date occurring in FY 2022 (October 1, 2021, through September 30, 2022) and determined if any IRS employees received performance awards, WIGIs, career ladder promotions, competitions for promotion, or satisfactory completion of a probationary period.
- Performed queries of ALERTS, CRIMES and EQRS data from November 1, 2020, to September 30, 2022, to determine whether there were potential Section 1204(b) violations that were not captured in the performance reviews.
- From the population of 10,892 IRS employees who were rated as "Not Applicable" for the retention standard, identified six job series (0318 – Secretary, 0512 – Internal Revenue Agent, 0592 – Tax Examining, 1035 – Public Affairs, 1169 – Internal Revenue Officer, and 1811 – Criminal Investigation) that appear to have potential impact on taxpayer issues or outcomes. From the population of 505 employees in the 6 identified job series, we selected a judgmental sample of 39 performance appraisals to determine whether the employees were properly evaluated.[1] For each job series, we selected a judgmental sample of between 5 and 9 performance appraisals to review based on the size of each job series population (total of 39 performance appraisals).

Performance of This Review

This review was performed with information obtained from the office of the IRS Human Capital Officer in the IRS Headquarters in Washington, D.C., during the period November 2023, through December 2024. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

[1] A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

Data Validation Methodology

We obtained data for all cases posting to the ALERTS, CRIMES, and EQRS databases from November 1, 2020, to September 30, 2022, and performed tests to assess the reliability of the data. We evaluated the data by running queries on the population to ensure that the data met our criteria and no information was missing or incomplete. For example, we determined that date fields contained dates, blank fields were explainable, fields contained only applicable data required for that field, and gaps in the sequential order of case numbers were explainable. We determined that the data were sufficiently reliable and could be used to meet the objective of this audit.

Internal Controls Methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal control was relevant to our audit objective: the guidance used to determine potential retention standard violations. We evaluated this control by performing queries of ALERTS, CRIMES, and EQRS data and comparing the results to the retention standard information obtained from IRS employee performance reviews.

Appendix II

Management's Response to the Draft Report

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

HUMAN CAPITAL OFFICE

Jun 30, 2025

MEMORANDUM FOR DIANA M. TENGESDAL
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: David Traynor
Acting IRS Human Capital Officer

David P. Traynor

Digitally signed by David P. Traynor
Date: 2025.06.30 08:18:26 -05'00'

SUBJECT: Draft Audit Report – Compliance with the Standards for the Fair and Equitable Treatment of Taxpayers (Audit #2024300015)

Thank you for the opportunity to review the draft audit report, Compliance with the Standards for the Fair and Equitable Treatment of Taxpayers Could Be Improved (Audit #2024300015). The IRS is committed to ensuring compliance with the Restructuring and Reform Act of 1998 (RRA 98) Section 1204(b) which requires the IRS to "use the fair and equitable treatment of taxpayers by employees" as one of the standards for evaluating employee performance.

In accordance with Internal Revenue Manual 6.430.2.2.1, Retention Standard for the Fair and Equitable Treatment of Taxpayers, this requirement has been incorporated into a Retention Standard for the fair and equitable treatment of taxpayers that is the same for all employees. Consistent with existing policies, supervisors discuss with the employee behaviors that allow the employee to meet the Retention Standard, as well as, circumstances that may result in a determination that the employee does not meet the Retention Standard, and the potential impact of not meeting the Retention Standard. The supervisor must determine whether the employee performed duties with potential impact on taxpayer issues or outcomes during the appraisal period. If the employee has performed such duties, the supervisor must determine whether the Retention Standard has been "Met" or "Not Met." If the employee has not performed such duties the supervisor must check "Not Applicable" for the Retention Standard. The IRS Office of Chief Counsel also confirmed that while the IRS evaluates all employees under the Retention Standard (as required by 26 CFR § 801.3(b)), the outcome of the evaluation will not always be "Met" or "Not Met," as some employees' positions do not involve interaction with taxpayers.

In summary, we found no evidence of widespread misunderstanding, misapplication, or violations of the Retention Standard for the fair and equitable treatment of taxpayers by supervisors. For employees rated "Not Met", supervisors must provide assistance to employees and ensure employees understand the implications of failing to improve. Accordingly, we agree with TIGTA's recommendations to reinforce our performance management policies and update annual training materials to include examples of noncompliant behavior and consequences of receiving a "Not Met" rating.

Attached is a detailed response outlining the corrective action(s) the Acting IRS Human Capital Officer will take to address TIGTA's recommendations. If you have questions, please contact me at David.P.Traynor@irs.gov, or a member of your staff may contact Paul Phillips, Acting Director, Labor/Employee Relations and Negotiations, at Paul.M.Phillips@irs.gov.

Attachment

Attachment

RECOMMENDATION 1:

The IRS Human Capital Officer should review and reinforce policies to ensure that employees who do not meet the retention standard, are not given a performance award, WIGI, career ladder promotion, competition for promotion, or satisfactory completion of a probationary period.

CORRECTIVE ACTIONS:

Agree.

The IRS Human Capital Officer will reinforce existing policies in annual Performance Management Policy trainings and quarterly Section 1204(b) communications to managers.

IMPLEMENTATION DATE:

January 15, 2026

RESPONSIBLE OFFICIAL(S):

Director, Labor/Employee Relations Negotiations

CORRECTIVE ACTION(S) MONITORING PLAN:

We will monitor this corrective action as part of our internal management control system.

RECOMMENDATION 2:

The IRS Human Capital Officer should reevaluate the use of the “Not Applicable” rating for the retention standard in consultation with IRS Office of Chief Counsel to ensure that all IRS employees are evaluated on whether they provided fair and equitable treatment to taxpayers in accordance with Section 1204(b).

CORRECTIVE ACTIONS:

Agree.

The IRS Human Capital Officer consulted with IRS Chief Counsel on whether the “Not Applicable” is an appropriate rating for the retention standard and confirmed that while the IRS evaluates all employees under the Retention Standard (as required by 26 CFR § 801.3(b)), the outcome of the evaluation will not always be “Met” or “Not met,” as some employees' positions do not involve interaction with taxpayers and therefore the "Not Applicable" assessment is legally appropriate.

IMPLEMENTATION DATE:

May 21, 2025

RESPONSIBLE OFFICIAL(S):

Director, Labor/Employee Relations Negotiations

CORRECTIVE ACTION(S) MONITORING PLAN:

N/A

RECOMMENDATION 3:

The IRS Human Capital Officer should ensure that the retention standard training materials include examples of noncompliant behavior and explicitly state the consequences of receiving a "Not Met" rating. Additionally, ensure that the retention standard training materials are included on the Section 1204 training intranet site.

CORRECTIVE ACTIONS:

Agree.

The IRS Human Capital Officer has updated both the FY 2025 annual Section 1204 Mandatory Briefing and the annual Performance Management Briefing with examples of meeting the requirement for compliant behavior, and the consequences of receiving a "Not Met" rating is addressed in the annual Performance Management Mandatory Briefing.

IMPLEMENTATION DATE:

February 14, 2025

RESPONSIBLE OFFICIAL(S):

Director, Labor/Employee Relations Negotiations

CORRECTIVE ACTION(S) MONITORING PLAN:

N/A

Appendix III

Glossary of Terms

Term	Definition
Automated Labor and Employee Relations Tracking System	An application used to track labor/employee relations case data. It was developed to ensure consistency in tracking labor and employee relations disciplinary actions.
Career Ladder Promotion	When an employee enters at a grade level below the full performance level for their position through open competition and then advances noncompetitively based on demonstrated work performance.
Competition for Promotion	A competitive process open to all applicants and may consist of a written test, an evaluation of the individual's education and experience, and an evaluation of other attributes necessary for successful performance of the position to be filled.
Confidential management/program analyst	Designated as a confidential employee. A confidential employee is defined by 5 U.S.C. § 7103(a)(13) as "an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations."
Criminal Results Management System	A management information system that provides TIGTA Office of Investigations the ability to manage and account for complaints received, including congressional inquiries, investigations initiated, and leads developed from local investigative initiatives and national investigative initiatives.
Embedded Quality Review System	A system designed to assist managers in assessing employee performance, identifying opportunities to build employee skills, enhancing employee strengths, and developing employee quality improvement strategies.
Performance Award	A lump-sum cash or time-off award given to employees based on ratings of record of Fully Successful or higher.
Probationary Period	A one-year period (three-year period for Criminal Investigation, General Schedule 1811 series) applicable to new appointments to competitive service positions and initial appointments to supervisory or managerial positions that management uses to assess an employee's performance and conduct for continued employment in the federal government.
Promotion	A change of an employee while continuously employed from one General Schedule grade to a higher grade.

Term	Definition
Within-Grade Increase	Also known as step increases, WIGIs are periodic increases in a General Schedule employee's basic pay from one step of the grade of their position to the next higher step of that grade.

Appendix IV

Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
CRIMES	Criminal Results Management System
EQRS	Embedded Quality Review System
FY	Fiscal Year
IRS	Internal Revenue Service
RRA 98	Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration
WIGI	Within-Grade Increase

To report fraud, waste, or abuse, contact our hotline on the web at https://www.tigta.gov/reportcrime-misconduct.

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.