



*Fiscal Year 2015 Statutory Audit of
Compliance With Legal Guidelines
Restricting the Use of Records of
Tax Enforcement Results*

September 16, 2015

Reference Number: 2015-30-083

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.

Redaction Legend:

1 = Tax Return/Return Information

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HIGHLIGHTS

FISCAL YEAR 2015 STATUTORY AUDIT OF COMPLIANCE WITH LEGAL GUIDELINES RESTRICTING THE USE OF RECORDS OF TAX ENFORCEMENT RESULTS

Highlights

**Final Report issued on
September 16x, 2015**

Highlights of Reference Number: 2015-30-083
to the Internal Revenue Service Deputy
Commissioner for Operations Support.

IMPACT ON TAXPAYERS

The IRS Restructuring and Reform Act of 1998 (RRA 98) requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results (ROTTER) or base employee successes on meeting ROTER goals or quotas. Use of ROTERs may create the misperception that safeguarding taxpayer rights is secondary to IRS enforcement results.

WHY TIGTA DID THE AUDIT

TIGTA is required under Internal Revenue Code Section 7803(d)(1) to annually determine whether the IRS complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in RRA 98 Section 1204. Our review determined whether the IRS complied with:

- Section 1204(a), which prohibits the IRS from using any ROTERs to evaluate employees or to impose or suggest production quotas or goals.
- Section 1204(b), which requires that employees be evaluated using the fair and equitable treatment of taxpayers as a performance standard.
- Section 1204(c), which requires each appropriate supervisor to self-certify quarterly whether ROTERs were used in a prohibitive manner.

WHAT TIGTA FOUND

There were instances of noncompliance with RRA 98 Section 1204 requirements. TIGTA identified instances of noncompliance with each subsection of the law:

- Section 1204(a) – four potential violations.
- Section 1204(b) – 26 instances of documentation noncompliance.
- Section 1204(c) – 28 instances of noncompliance.

In addition, TIGTA identified three IRS policy violations. In these instances, managers did not identify employee self-assessments containing ROTER information and return them to be corrected as required.

TIGTA also noted that 33 managers were missing from the Fiscal Year 2014 Section 1204 manager listing and eight employees/managers did not complete the mandatory Section 1204 training. The IRS is in the process of updating the mandatory training and has plans for employees and managers to take the mandatory training no later than September 2015.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Section 1204 noncompliance and IRS policy violations identified in this report be discussed with the responsible managers and employees. TIGTA also recommended that Section 1204 managers and employees be properly identified as such within the IRS human resources system and that the mandatory Section 1204 training is assigned and completed.

The IRS agreed with all four recommendations and has taken or plans to take corrective actions. However, the IRS did not agree with one of the four Section 1204(a) potential violations, as well as 10 of the 26 instances of Section 1204(b) documentation noncompliance.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 16, 2015

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2015 Statutory Audit of Compliance
With Legal Guidelines Restricting the Use of Records of Tax
Enforcement Results (Audit # 201530005)

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 IRS Restructuring and Reform Act of 1998 (RRA 98) Section (§) 1204.¹ The Treasury Inspector General for Tax Administration is required under Internal Revenue Code § 7803(d)(1) to annually evaluate the IRS's compliance with the provisions of RRA 98 §1204. The RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results (ROTTER) or base employee successes on meeting goals or quotas for ROTERs.² This review is included in our Fiscal Year 2015 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

Management's complete response to the draft report is included as Appendix VI. Copies of this report are also being sent to the IRS managers affected by the report recommendations.

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

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

² An enforcement (Section 1204) employee is an employee or any 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/guidance for RRA 98 Section 1204 program activities.



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Abbreviations

IRM	Internal Revenue Manual
IRS	Internal Revenue Service
ROTER	Record of Tax Enforcement Results
RRA 98	Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration



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Background

On July 22, 1998, the President signed the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98) into law.¹ RRA 98 Section (§) 1204 restricts the use of enforcement statistics. Specifically, RRA 98 § 1204(a) restricts the use of enforcement statistics and prohibits the IRS from using any record of tax enforcement results (ROTTER) to evaluate employees or to impose or suggest production quotas or goals.

The IRS defines ROTERs as data, statistics, compilations of information, or other numerical or quantitative recording of the tax enforcement results reached in one or more cases. Examples of ROTERs include the amount of dollars collected or assessed, the number of fraud referrals made, the number of seizures conducted, *etc.* A ROTER does not include evaluating an individual case to determine if an employee exercised appropriate judgment in pursuing enforcement of the tax laws.

RRA 98 § 1204(b) requires 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. The retention 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. 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.

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 enforcement employees.² Current IRS procedures require each level of management, beginning with first-line managers of Section 1204 employees, to self-certify that they have not used ROTERs in a manner prohibited by RRA 98 § 1204(a). The appropriate supervisor then prepares a consolidated office certification covering the entire organizational unit.

IRS functional offices and operating divisions, including Appeals; Criminal Investigation; the Large Business and International, the Small Business/Self-Employed, the Tax Exempt and Government Entities, and the Wage and Investment Divisions; and the Taxpayer Advocate

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

² An enforcement (Section 1204) employee is an employee or any 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/guidance for Section 1204 program activities.

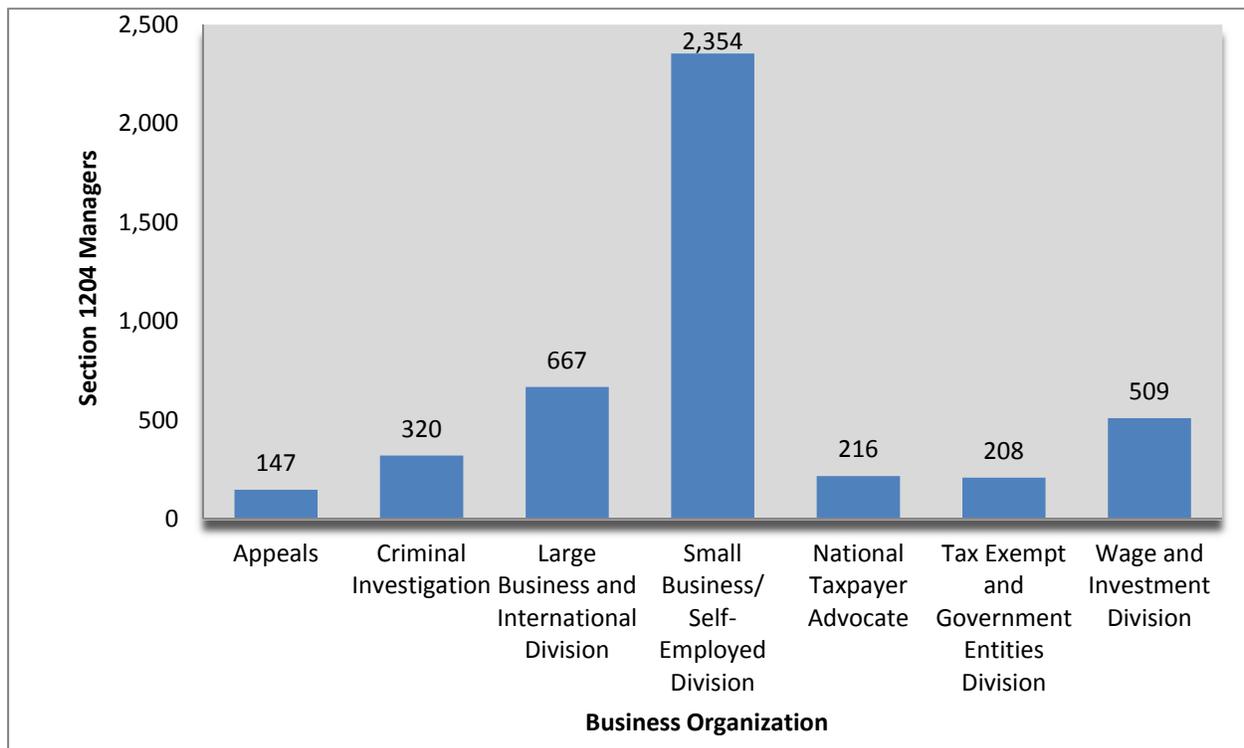


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Service are responsible for implementing the Section 1204 Program within their respective organization. Section 1204 program managers and program coordinators in each business organization are available to provide guidance to managers regarding Section 1204 issues, including the self-certification process.

As of September 30, 2014, there were 4,421 Section 1204 managers on the HR Connect manager listing provided by the IRS.³ Section 1204 managers have either supervised a Section 1204 employee or provided guidance or direction for Section 1204 activities. Figure 1 shows how Section 1204 managers are dispersed across the various business organizations within the IRS.

**Figure 1: Number of Section 1204 Managers by Business Organization
(as of September 30, 2014)**



Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of data from the IRS's HR Connect Section 1204 manager listing.

Internal Revenue Code § 7803(d)(1) requires TIGTA to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 § 1204. TIGTA has previously performed 16 annual reviews to meet this requirement. Appendix IV lists the prior audit reports.

³ See Appendix V for a glossary of terms.



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This review was performed at the IRS Headquarters; the Office of the Chief Financial Officer; the Office of the Chief, Appeals; the Office of the Chief, Criminal Investigation; the Office of the National Taxpayer Advocate; the Large Business and International Division; and the Tax Exempt and Government Entities Division in Washington, D.C.; the Small Business/Self-Employed Division in New Carrollton, Maryland; and the Wage and Investment Division in Atlanta, Georgia, during the period December 2014 through June 2015. On-site reviews were performed at the IRS field offices in San Francisco, California; New York, New York; Cincinnati, Ohio; Memphis, Tennessee; and Houston, Texas. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

There Were Some Instances of Noncompliance With Section 1204 of the Restructuring and Reform Act of 1998

The IRS is generally ensuring that its managers do not use ROTERs and/or production goals or quotas to evaluate employees. However, the IRS was not in full compliance with RRA 98 § 1204 during Fiscal Year 2014, and some IRS business units need to be more diligent. The following issues were identified:

- **Section 1204(a) – four potential violations** in which four managers used one or more ROTERs to evaluate employees and/or suggest production quotas or goals.
- **Section 1204(b) – 26 instances of documentation noncompliance** in which 16 IRS managers did not maintain proper retention standard documentation that showed they evaluated their employees using the fair and equitable treatment of taxpayers as a performance standard.
- **Section 1204(c) – 28 instances of noncompliance** in which IRS managers did not certify in writing to the IRS Commissioner or provide documentation as to whether ROTERs and/or production quotas or goals were used in a prohibited manner.

To evaluate the IRS's compliance with the Section 1204 provisions, we selected a judgmental sample of 35 first-line managers and 104 employees at five sites.⁴ The sites selected had at least six business organizations with Section 1204 first-line managers. We selected seven managers along with three of each manager's employees at the five sites and reviewed their performance evaluation documents.⁵ In addition, we reviewed performance documents for five second-line managers, one from each site. As a result, 144 employees/managers were selected to determine the IRS's compliance with RRA 98 § 1204 provisions.

⁴ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

⁵ One manager had only two Section 1204 employees.



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The IRS was not in full compliance with the use of ROTER procedures

In Fiscal Year 2014, the IRS did not achieve full compliance with RRA 98 § 1204(a). We found four potential ROTER violations in employee or manager performance documents or operational reviews obtained from Criminal Investigation and the Taxpayer Advocate Service. Specifically, the ROTERs were found in an annual appraisal, a midyear appraisal, or an operational review.⁶

To evaluate the IRS's compliance with RRA 98 § 1204(a), we reviewed Fiscal Year 2014 performance documents, including available midyear and annual performance reviews, employee self-assessments, workload reviews, case reviews, and award documentation for the 144 employees and managers selected as well as group meeting minutes and operational reviews. We reviewed these documents to determine whether ROTERs were used when evaluating the employees' performance and/or to impose or suggest quotas or goals for such employees.

Based on the results of our review, IRS managers are, in most cases, not using ROTERs and/or production quotas or goals to evaluate employees. However, to ensure the fair and equitable treatment of taxpayers, some IRS business units need to be more diligent to ensure that ROTERs are not used to evaluate employees and/or suggest production quotas or goals. Use of ROTERs may create the misperception that safeguarding taxpayer rights is secondary to IRS enforcement results. After discussion with IRS management, they stated that they will submit these findings to IRS Chief Counsel for review and, if they agree that these are potential violations, they will discuss the audit results with the managers and remind them of the guidelines.

In addition, we identified that three of the 44 self-assessments prepared by IRS employees from Criminal Investigation and the Tax Exempt and Government Entities Division contained ROTERs.⁷ We did not consider these three instances to be potential RRA 98 § 1204(a) violations because the ROTER was from the employees' self-assessment or workload review. However, according to the Internal Revenue Manual (IRM), it is IRS policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments.⁸ If a self-assessment is submitted with a ROTER, it is incumbent upon the manager to return it to the employee for removal of the ROTER. In these cases, the managers did not follow proper procedures by returning the self-assessments to the employees. As such, the employees may be unaware of the IRS's policy that prohibits the use of ROTERs.

⁶ We received all 144 requested annual appraisals for review. For 80 of the 144 requested midyear appraisals, the responsible managers did not conduct mid-year evaluations of these employees, which resulted in no midyear appraisal for us to review. Of the 35 first-line and five second-line managers sampled, 11 managers did not receive an operational review.

⁷ For 104 of the 144 annual self-assessments requested, the employee or manager did not complete one.

⁸ IRM 1.5.2.11.2 (3) (January 14, 2015).



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Documentation that IRS managers are meeting the requirements of the retention standard needs improvement

To evaluate the IRS's compliance with RRA 98 § 1204(b), we requested the appropriate Fiscal Year 2014 retention standard documents applicable to the 144 selected employees and managers. The IRS did not achieve full compliance with the documentation requirements for the retention standard as related to RRA 98 § 1204(b) in Fiscal Year 2014 for Appeals; Criminal Investigation; the Large Business and International, the Tax Exempt and Government Entities, and the Wage and Investment Divisions; and the Taxpayer Advocate Service. Specifically, for the 104 employees (excluding the managers), we determined that:

- 10 Employee Performance Files included Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*; however, the form was signed after the review period ended.
- Four Employee Performance Files included Form 6774; however, the acknowledgement section (receipt of the Critical Job Elements, including the Fair and Equitable Treatment of Taxpayers Retention Standard) within the form was not appropriately signed and/or dated by all parties.
- One Employee Performance File was missing Form 6774.

For the 40 managers, we found that:

- Six managers' Employee Performance Files included Form 12450-A, *Manager Performance Agreement*; however, the final Summary Evaluation Rating was not appropriately signed and/or dated by all parties.
- Five managers' Employee Performance Files included Form 12450-A; however, the acknowledgment section (receipt of the Critical Job Elements, including the Fair and Equitable Treatment of Taxpayers Retention Standard) within the form was not appropriately signed by all parties.

RRA 98 § 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The standard applies to all executives, managers, and employees. Compliance with RRA 98 § 1204(b) is twofold, the receipt and acknowledgment of the retention standard and the annual performance rating related to the retention standard. At the beginning of each performance period, managers must provide the appropriate receipt of the retention standard form to their employees.⁹ The manager must sign and date the appropriate form indicating the sharing of the retention standard with his or her employee and, in turn, the

⁹ The appropriate documents for the receipt of the retention standard are Form 6774, Form 12450-A, Form 12450-B, *Management Official Performance Agreement*, Form 12450-D, *Management/Program Analyst Performance Agreement (For Positions Designated as Confidential Only)*, or Form TD F 35-07, *Executive Performance Agreement*.



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employee must acknowledge receipt of the retention standard by signing and dating the form. At the end of the performance period, the employee must be evaluated on the retention standard using the appropriate appraisal form.¹⁰

The IRM states that RRA 98 § 1204(b) noncompliance occurs when:

- Documentation (either acknowledgment or rating) is not contained in the Employee Performance File and/or does not exist for the fiscal year of audit.
- Documentation (either acknowledgment or rating) does not contain all signatures and dates (employee, manager, and next-level manager).
- The retention standard rating is unchecked in the annual performance document.¹¹

Further, the IRM also states that both the receipt and acknowledgment of the retention standard and the performance ratings should be filed in the Employee Performance File and retained for four years.¹²

IRS management disagrees with the 10 instances of Section 1204(b) documentation noncompliance identified in this report in which the employee and manager signed Form 6774 after the rating period ended. When we discussed these issues of RRA 98 § 1204(b) documentation noncompliance with IRS first-line managers, some managers indicated that these were caused by an unintentional oversight when a new employee transferred into their group or stated that timeliness was not a Section 1204 requirement.

While 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. However, in order for the IRS to evaluate its employees, 5 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; each performance plan needs to include all elements that are to be used in developing a summary rating (*i.e.*, an evaluation). In addition, the IRS’s own IRM states that at the beginning of the rating period, employees must acknowledge receipt of the retention standard each year even if their performance standards have not changed from the prior year.¹³

¹⁰ The appropriate appraisal forms are Form 6850-BU, *Bargaining Unit Performance Appraisal and Recognition Request*, Form 6850-NBU, *Non-Bargaining Unit Performance Appraisal*, Form 12450-A, Form 12450-B, Form 12450-D, or Form TD F 35-07.

¹¹ IRM 1.5.3.7.5 (1), (2) (February 5, 2015).

¹² IRM 1.5.3.12 (1) (February 5, 2015).

¹³ IRM 1.5.3.7(5) (February 4, 2015).



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Without complete and proper documentation, we were unable to determine if some IRS employees were informed at the beginning of their performance rating period that the fair and equitable treatment of taxpayers was a performance requirement. If the employees are not informed of this performance requirement at the beginning of their performance rating period (or for at least a 90-day period during which they are being evaluated), IRS management would not be able to evaluate these Section 1204 employees on the Fair and Equitable Treatment of Taxpayers Retention Standard and potentially would not be in compliance with the law.

For the 11 instances of noncompliance that we found on the manager's Form 12450-A, the IRS explained that these forms were signed and/or approved by a proxy, who is any individual given authority to sign on behalf of a manager, within HR Connect. When Form 12450-A is signed and/or approved by a proxy on behalf of the next-level manager, HR Connect does not allow the proxy's signature to be displayed on the printed form. This is a security measure to ensure that the responsible manager signs (manually or digitally) Form 12450-A, which would then be retained in the official Employee Performance File. When we reviewed the official Employee Performance File, these forms were not all signed.

The IRS uses the discussion and acknowledgement of the retention standard and subsequent performance evaluations to ensure that all Section 1204 employees meet the provisions of the standard and provide fair and equitable treatment to taxpayers. If managers are not adequately documenting these discussions with their employees, it is difficult to determine whether employees were aware of and/or actually received information on the retention standard. If managers fail to properly share the retention standard information with their employees, it can affect their employees' interactions with taxpayers as well as their understanding of the importance of safeguarding taxpayer rights.

While first-line managers are completing their quarterly self-certifications, some signatures are incorrect or missing

We found that the IRS did not achieve full compliance in 28 quarterly self-certifications from the Small Business/Self-Employed and the Tax Exempt and Government Entities Divisions, and the Taxpayer Advocate Service. These forms were not signed and/or dated by the next-level manager, or the forms were signed by the manager and/or next-level manager using the standard employee identifier.¹⁴ To evaluate the IRS's compliance with Section 1204(c), we requested all four quarterly self-certifications for the sampled 35 first-line managers and five second-line managers.¹⁵ RRA 98 § 1204(c) requires Section 1204 supervisors to quarterly certify in writing to the IRS Commissioner whether ROTERs and/or production quotas or goals were used in a

¹⁴ The standard employee identifier is the five-digit code that uniquely ties employees to their data without using their Social Security Number.

¹⁵ If the first-line managers' four quarterly self-certifications were not signed and dated by the second-line manager, we requested that the first-line manager obtain copies from the second-line managers' files to ensure that the second-line manager signed and dated the quarterly certifications.



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prohibited manner. Therefore, managers who evaluate Section 1204 employees are required to certify each quarter in writing that they did not:

- Use ROTERs to evaluate employees and/or impose or suggest production quotas or goals for employees in any performance evaluations, including appraisals, awards, or promotion justifications written or reviewed by the manager.
- Verbally communicate to employees that ROTERs affected their evaluations.
- Verbally or in writing use ROTERs to impose or suggest production quotas or goals for employees or for work unit activities (*e.g.*, through program guidance or business and program reviews).

Per the IRM, the business organization and function Section 1204 program managers and their respective Section 1204 program coordinators are available to provide guidance to managers regarding Section 1204 issues, including the certification process.¹⁶ The IRM also states that a standard employee identifier as a digital signature is not acceptable for quarterly Section 1204 self-certifications.¹⁷ Digital signatures must contain the manager's name.

We reviewed a total of 160 quarterly self-certifications from managers and next-level managers. Of the 160 self-certifications reviewed, we found that:

- 20 self-certifications contained a standard employee identifier in the digital signature.
- Eight self-certifications were not properly signed and/or dated by the next-level manager.¹⁸

For the self-certifications that were not properly signed and/or dated by the next-level manager, first-line managers told us that the forms were in fact signed by the next-level manager. However, they informed us that either they could not locate a copy with the signature or that the forms were not properly dated due to an oversight. For the self-certifications that were signed using the standard employee identifier, managers told us that they were previously uninformed about the requirement that digital signatures must contain the manager's name rather than standard employee identifier number.

Through the quarterly self-certification process, managers are reminded of their responsibilities under RRA 98 § 1204 to not evaluate their employees on the basis of ROTERs and/or production quotas or goals. The quarterly self-certification process helps to ensure that managers are aware of the IRS's commitment to administer the tax laws fairly and to protect the rights of taxpayers.

¹⁶ IRM 1.5.3.8 (10) (February 5, 2015).

¹⁷ IRM 1.5.3.8.8 (2) (February 5, 2015).

¹⁸ Four of these self-certifications contained a standard employee identifier in the digital signature and were not dated and four were neither signed nor dated by the next-level manager.



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Recommendations

Recommendation 1: The Chief, Criminal Investigation, and the National Taxpayer Advocate, should ensure that the potential RRA 98 § 1204(a) violations identified in this report are discussed with the responsible managers to ensure that the managers understand the guidelines related to the use of ROTERs.

Management's Response: The IRS agreed with this recommendation, with the exception of the specific case with which IRS Counsel disagreed. The Chief Financial Officer confirmed discussions were held with the responsible managers of the named business units that had Section 1204(a) violations identified in this report, which also included a review of guidelines on the use of ROTERs.

Office of Audit Comment: While the IRS disagreed with our conclusion regarding the one case mentioned above, we believe that this case should be classified as a potential Section 1204(a) violation. The IRS claims that the employee was being reviewed on her speed, clarity, and effectiveness in the Written Communication Critical Job Element. However, we believe that mentioning additional enforcement efforts gives the impression to the employee that enforcement results were a factor in the rating. The employee's communications could have been evaluated without mentioning the enforcement results.

Recommendation 2: The Chief, Criminal Investigation, and the Commissioner, Tax Exempt and Government Entities Division, should ensure that the noncompliance identified in this report related to the prohibition on including ROTERs in employee self-assessments is discussed with the responsible employees and their managers so that they understand the IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERs in self-assessments.

Management's Response: The IRS agreed with this recommendation. The Chief Financial Officer confirmed with the named business units that the Section 1204 instances of noncompliance, with the exception of the specific cases in which IRS Counsel disagreed, were discussed with the responsible employees and their managers regarding the IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments.

Office of Audit Comment: The IRS disagreed with one of the three instances in which we determined that a ROTER was used in an employee's self-assessment. In this instance, the employee acknowledges that his diligent work resulted in a large sum of money being held for seizure. Although we do not consider this a potential section 1204(a) violation because it was included in a self-assessment, we believe that this is still an inappropriate use of a ROTER statistic. If a self-assessment is submitted with a ROTER, IRS policy requires that the manager should return it to the employee for removal. In this case, the manager did not return the self-assessment to the employee.



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As a result, the employee may be unaware of the IRS's policy that prohibits the use of ROTERs in self-assessments.

Recommendation 3: The Deputy Commissioner for Operations Support should ensure that RRA § 1204(b) noncompliance with documentation requirements and RRA § 1204(c) noncompliance identified in this report are discussed with the responsible managers to ensure that they understand the retention standard documentation and quarterly self-certification requirements.

Management's Response: The IRS agreed with this recommendation. The Chief Financial Officer confirmed with the Chief, Appeals; the Chief, Criminal Investigation; the National Taxpayer Advocate; and the Commissioners for the Large Business and International, the Small Business/Self-Employed, the Tax Exempt and Government Entities, and the Wage and Investment Divisions, that the IRS policy on Section 1204(b) and (c) noncompliance regarding the retention standard and quarterly self-certification requirements identified in this report were discussed with the responsible managers with the exception of findings in the audit report related to timeliness of the retention standard.

Office of Audit Comment: The IRS disagreed with 10 of the instances we identified of documentation noncompliance with Section 1204(b) on the basis that timeliness is not a Section 1204 requirement according to the IRM. However, we did not use the IRM to conclude that these 10 cases were instances of noncompliance. The *Code of Federal Regulations*¹⁹ states that performance plans shall be provided to employees at the beginning of each appraisal period, normally within 30 days. This ensures that employees are aware of management's expectations and that they know what they will be evaluated on during the appraisal period. We do not believe that this requirement was met if employees are not informed of the performance criteria at the beginning of their performance period. Moreover, these were not instances that were just a matter of timing of when employees were informed of the evaluation criteria during their performance period. We only counted instances of noncompliance for cases in which employees were informed of their Section 1204(b) requirements after their rating period had ended.

Some Managers Did Not Properly Designate Their Employees or Themselves As Section 1204 Employees Within HR Connect, Which Caused Some Employees to Miss Mandatory Section 1204 Training

Beginning January 2013, all Section 1204 managers were required to use a new HR Connect indicator to designate their employees and themselves as Section 1204 employees. Managers were to validate the accuracy of this indicator at the end of each quarter. The HR Connect indicator was set up to:

¹⁹ Planning Performance, 5 C.F.R. § 430.206



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- Manage the Section 1204 population more efficiently.
- Reduce managerial burden in the Section 1204 self-certification process.
- Improve the accuracy of reporting, which also helps support the annual TIGTA audit and independent reviews done by the Office of the Chief Financial Officer.

In addition, the IRS began using the HR Connect Section 1204 indicator to identify employees who were required to attend *The Mandatory Briefing for Section 1204 Employees and Managers* training. However, we determined that some managers did not designate their employees or themselves as Section 1204 employees within HR Connect, which affected the accuracy of the Fiscal Year 2014 Section 1204 manager listing created by the Office of the Chief Financial Officer as well as the assignment of the mandatory ROTERs training. Specifically, we determined that:

- 33 Section 1204 managers were missing from the Fiscal Year 2014 Section 1204 manager listing.
- Eight of the 144 employees in our sample did not complete the mandatory Section 1204 training in Fiscal Year 2014.

The Section 1204 manager listing did not capture all Section 1204 management personnel

The Section 1204 manager listing is used to identify managers who are required to comply with RRA 98 § 1204. However, we identified that several Section 1204 managers were missing from the Fiscal Year 2014 manager listing that was provided to us by the IRS. When we compared the Fiscal Year 2014 list to the Fiscal Year 2013 list obtained during last year's review, we initially identified that 769 managers were missing. We then used the IRS's Discovery Directory to determine the current employment status of each of the 769 managers and whether they may have been in a Section 1204 manager position during Fiscal Year 2014. In so doing, we determined that 736 managers were either no longer designated as Section 1204 managers or were no longer working for the IRS. However, we identified 33 managers who should have been on the Fiscal Year 2014 Section 1204 manager listing but were not. When we provided this information to IRS management, it was determined that some of these managers did not properly designate themselves in HR Connect as Section 1204 managers as of the end of Fiscal Year 2014.

In our Fiscal Year 2014 report, we reported that there were 466 Section 1204 managers who should have been on the Fiscal Year 2013 manager listing but were not.²⁰ This was due to formatting problems with the Fiscal Year 2013 manager listing. We recommended that the IRS include a separate indicator on the HR Connect report to distinguish a Section 1204 manager

²⁰ TIGTA, Ref. No. 2014-30-055, *Fiscal Year 2014 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Sept. 2014).



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from a Section 1204 employee. The IRS agreed and added this indicator as of June 2014. We also recommended that managers review their subordinate employees' HR Connect profiles as part of their quarterly self-certification process to ensure that all Section 1204 employees are appropriately identified.

After further discussions with IRS management during our current review, we were informed that the IRS sends quarterly reminders to managers to properly designate themselves within HR Connect. While improvements have been made to the identification of Section 1204 managers, it is important that the IRS continue to ensure that managers properly designate themselves within HR Connect. Managers who are not properly classified are at risk for not completing required mandatory training or not having the potential to be selected for the annual TIGTA audit and independent reviews done by the Office of the Chief Financial Officer.

Some employees did not complete the mandatory Section 1204 training

We determined that eight of the 144 employees/managers in our sample did not complete the mandatory Section 1204 training during Fiscal Year 2014. The new Section 1204 training became available to employees in the IRS's Enterprise Learning Management System on July 15, 2013, and it is required that all Section 1204 personnel complete the training course biennially. The IRS assigned the training to all IRS staff designated as Section 1204 employees on HR Connect. We requested the training records for the 144 employees/managers in our sample to determine whether the Section 2014 mandatory training was completed by the end of Fiscal Year 2014.

While we found most employees completed the training in August or September 2013, we were not provided with training certificates for seven employees and one second-line manager to show that the biennial training was completed. To verify if the employees/manager were properly designated, we reviewed the Section 1204 employee and manager listings provided by the IRS as of September 30, 2014. We found that three of the seven employees and the one second-line manager were not properly designated as a Section 1204 employee/manager.

For four employees, we were provided with training certificates which showed that three employees completed the training in January 2015 and one employee completed the training in June 2015. We were also provided the Fiscal Year 2011 completion certificates for the prior mandatory Section 1204 training for two of the employees, but not their Fiscal Year 2014 certificates. We were not provided with a training certificate for one employee. For the second-line manager, he explained that he recently became a designated Section 1204 manager (as of September 2014); however, the second-line manager still did not complete the training as of February 2015.²¹ If managers fail to designate themselves and/or their employees

²¹ The mandatory briefing is required to be completed within 90 days by newly designated Section 1204 employees. Although this time period would have extended into the next fiscal year, we followed up to determine if the 90-day requirement was met, as the training should have been completed by December 2014.



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as Section 1204 staff within HR Connect, the mandatory Section 1204 training will not be assigned to the employees' Enterprise Learning Management System learning plan.

In our Fiscal Year 2014 report, we reported that HR Connect limitations caused some employees to be missing from the Section 1204 employee and manager listings, resulting in them missing mandatory training. We recommended that managers review their employees' profiles on a quarterly basis to ensure proper Section 1204 designation in HR Connect. The IRS agreed and updated the IRM in February 2015.²²

If all employees and managers are not receiving the mandatory training at the appropriate time, taxpayers' rights might not be protected, resulting in unfair treatment by the IRS. A lapse in training could also have a potentially negative effect on taxpayer rights if IRS personnel lack a clear understanding of how they should and should not use enforcement statistics.

Recommendation

Recommendation 4: The Deputy Commissioner for Operations Support should ensure that the managers identified in this report are notified to properly designate their employees and/or themselves as Section 1204 employees within HR Connect and ensure that the mandatory Section 1204 training is assigned and completed within 90 days.

Management's Response: The IRS agreed with this recommendation. In February 2015, the Chief Financial Officer updated IRM 1.5.3, *Manager's Self-Certification and the Independent Review Process*, to instruct Section 1204 managers to review and update their and/or their employees' HR Connect profiles as part of the Quarterly Certification process. In addition, Quarterly Certification instructions direct managers to review the HR Connect status as part of the review process. Annual mandatory briefings include Section 1204 training, which has been assigned to all designated Section 1204 employees and managers on July 15, 2015, and must be completed within 90 days. To address new hires, each quarter the Chief Financial Officer provides the Human Capital Office a file to assign training to new employees. IRM 1.5.3.13(6) states that the Chief Financial Officer provides HR Connect reports quarterly to the Leadership, Education, and Delivery Services that contain the entire Section 1204 population identified through the HR Connect Section 1204 indicator. These reports are used by Enterprise Learning Management System staff to automatically assign mandatory Section 1204 training to new hires through their learning plans.

²² IRM 1.5.3.8.7.1(2)(d) (February 5, 2015).



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Managers and Employees Could Benefit From a Better Understanding of Record of Tax Enforcement Results Statistics

We interviewed a judgmental sample of 80 Section 1204 employees and 37 Section 1204 managers to determine if they had: (1) a clear understanding of what a ROTER is and (2) any knowledge of the retention standard as it relates to Section 1204.²³ We determined that while:

- Most managers claimed to have a clear understanding of ROTERs, 13 could not provide an accurate example of a ROTER statistic, 12 provided both accurate and inaccurate examples of ROTER statistics, and one was not familiar with ROTERs.
- Many employees claimed some degree of understanding of ROTERs, 14 could not provide an accurate example of a ROTER statistic, 25 employees provided both accurate and inaccurate examples of ROTER statistics, and 18 employees claimed no understanding of ROTER statistics.
- Most managers claimed to understand the retention standard, five could not accurately define what the retention standard is, and two claimed no understanding of the retention standard.
- Many employees claimed to be familiar with the retention standard, 10 could not accurately define what the retention standard is, and 24 claimed no understanding of the retention standard.

When we asked managers to provide an example of a ROTER, many managers gave incorrect examples of ROTER statistics, such as case closures and hours worked on a case. These are examples of outcome-neutral measures. Managers may use these examples to evaluate performance or to establish performance goals and objectives. If a manager misunderstands a ROTER statistic, it limits the manager's ability to fully evaluate employees or to set expectations. A clear understanding of ROTERs is critical for managers to ensure that they are not violating RRA 98 § 1204(a), are able to accurately document their own compliance through the self-certification process, and are able to assist their employees in understanding the requirements of the law.

When we asked the employees about the retention standard and referred to it just as "the retention standard" or "Section 1204(b)," employees either said they did not know what this was or they mistakenly believed that this referred to the amount of time documents need to be retained. When we explained that the retention standard relates to the Fair and Equitable Treatment of Taxpayers Standard, employees then used the key words from the title and said that it refers to treating taxpayers fairly and equally. Lastly, many employees could not recall

²³ We interviewed 80 of the 104 employees, 33 of the 35 first-line managers, and four of the five second-line managers selected for this review.



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whether they had training on ROTERs, but when we mentioned that this training is a mandatory briefing, they concluded that the training was completed.

The IRS provided a mandatory self-study training briefing in July 2013 that was taken by designated Section 1204 employees and managers through the Enterprise Learning Management System. The training took approximately 20 minutes to complete and:

- Defined a Section 1204 employee or manager.
- Identified key components of Section 1204.
- Defined and provided examples of tax enforcement results; ROTERs; imposing/suggesting production quotas or goals; quantity measures; quality measures; and the Fair and Equitable Treatment of Taxpayers Retention Standard.
- Described the process for management's quarterly self-certification of compliance with Section 1204.
- Explained that annual reviews are conducted by the Office of the Chief Financial Officer and TIGTA to assess Section 1204 compliance.

We believe that managers and employees would benefit greatly from an increased knowledge of ROTERs. While many managers and employees took the mandatory training, continued emphasis would allow managers and employees to be more knowledgeable on RRA 98 §1204. In our Fiscal Year 2014 report, we recommended that the mandatory training be provided annually instead of biennially. The IRS agreed and is in the process of updating the mandatory training as of May 2015. It has plans for employees and managers to take the mandatory training no later than September 2015.



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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 § 1204.¹ To accomplish the objective, we:

- I. Determined if the IRS complied with the provisions of RRA 98 §§ 1204(a) and (b) when evaluating Section 1204 employees' performance.
 - A. Selected a judgmental sample of enforcement employees/managers for review.²
 1. Selected San Francisco, California; New York, New York; Cincinnati, Ohio; Memphis, Tennessee; and Houston, Texas, as the audit sites and obtained a list of Section 1204 managers by operating division/function from the national Section 1204 program manager. We determined the distribution of the employees to be sampled in accordance with the sampling plan. The site visits were completed from January through February 2015.
 2. Identified the population of potential first-line managers for each operating division/function by obtaining the Section 1204 manager listing and researching the Discovery Directory.³
 3. Judgmentally selected 35 first-line managers from the population identified in Step I.A.2. according to the sampling plan. We judgmentally selected three employees from each manager to review their performance evaluation documents.⁴
 - B. Obtained and reviewed the performance evaluation documents (*e.g.*, midyear reviews, annual performance reviews, and award documents) for each selected employee and first-line manager. In addition, we reviewed self-assessments, case reviews, and workload reviews for the selected employees as well as group meeting minutes and operational reviews for the managers.
 1. Contacted the selected first-line managers to obtain performance evaluation documentation, case reviews, and workload reviews for the three employees assigned to them. When a selected manager was unavailable during the scheduled

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

² A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

³ See Appendix V for a glossary of terms.

⁴ One manager had only two Section 1204 employees.



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- visit, we made a substitution or had the manager assign a designee to provide the requested files.
2. Reviewed the employee performance evaluation documentation, case reviews, and workload reviews to determine whether ROTERs, production goals, or quotas were inappropriately used in the evaluation process and whether employees were evaluated appropriately on the fair and equitable treatment of taxpayers. We also verified whether Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*, was signed and in the Employee Performance File for the rating period under review.
- C. Interviewed the employee's manager and determined the potential cause when a potential exception case was identified.
 - D. Requested and reviewed the training records for the 104 employees and 35 managers selected for review.
 - E. Discussed the identified exceptions with the national Section 1204 program coordinator and the appropriate operating division/function program coordinator for agreement to the facts and to identify the causes for the potential violations.
 - F. Selected a judgmental sample of five second-line managers from those who oversee the managers selected in our judgmental sample of 35 above. We reviewed performance evaluation documentation (e.g., midyear reviews, annual performance reviews, and award documents) for the first-line managers under their control to identify any inappropriate use of ROTERs.
 - G. Verified that Section 1204 Managers were correctly classified by matching the Fiscal Year 2014 Section 1204 manager listing to the Fiscal Year 2013 Section 1204 manager listing obtained during our Fiscal Year 2014 review audit to identify any managerial changes between the two years. For any managers who were removed from the current listing, we used the Discovery Directory to determine their current employment/management designation.
- II. Determined if the sampled first-line managers complied with RRA 98 § 1204(c) by certifying whether or not ROTERs were used in a manner prohibited by subsection (a).
- A. Obtained the four quarterly Fiscal Year 2014 self-certification documents from the selected first-line managers at each audit site.
 1. Reviewed the self-certification documents submitted by the first-line managers to establish whether they were completed timely and signed appropriately.
 2. Determined if any ROTERs and/or production goals and quotas were reported by the first-line managers on their self-certifications.



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3. Requested that the first-line managers also obtain copies of the quarterly self-certifications from the second-line manager's files to verify receipt of the certification and to also establish whether they were completed timely and signed appropriately by the second-line manager.
- B. Contacted the second-line manager for any first-line manager certifications that could not be located.
1. From the second-line manager, attempted to obtain evidence that the certification was filed (*i.e.*, copy of certification).
 2. If the first-line manager's certification could not be located, discussed the reason it could not be located with the first- and second-line manager.
 3. If the copy from the second-line manager's certification could not be located, discussed the reasons it could not be located with the second-line manager and the appropriate Section 1204 program coordinator (for each operating division/function).
- C. Discussed any self-certification exception cases with the national Section 1204 program manager and the appropriate Section 1204 program coordinator (for each operating division/function), obtained agreement, and further explored the cause for the potential violation.
- III. Determined the effectiveness of the mandatory RRA 98 § 1204 training for managers and employees.
- A. Reviewed documentation and determined how and when the Section 1204 training was implemented.
 - B. Reviewed the content of the mandatory Section 1204 training.
 - C. Requested and reviewed documentation to ensure that the Section 1204 training was completed by all Section 1204 employees selected for review.
 - D. Interviewed a judgmental sample of 80 employees, 33 first-line managers, and four second-line managers to determine whether they understood what ROTERs were and could provide an example of a ROTER, and whether the employees understood the retention standard.

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



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to using ROTERs in a way as to improperly influence the handling of taxpayer cases and retention standard guidance. We evaluated these controls and reviewed judgmental samples of performance documents, including available midyear and annual performance reviews, employee self-assessments, workload reviews, case reviews, and award documentation and signed quarterly self-certifications, to determine whether the IRS complied with restrictions on the use of enforcement statistics when evaluating its employees.

Data validation methodology

We obtained the Fiscal Year 2014 fourth quarter Section 1204 manager listing from the IRS's Office of the Chief Financial Officer. We used this listing to develop our judgmental sampling plan. To determine the reliability of the data, we reviewed the data for duplicates and to identify any missing information. We then compared the data to the Discovery Directory. The Discovery Directory provides information on IRS employees including their name, job title, job location, and management level. We used this information to verify the accuracy of the data provided by the IRS by matching the information to the Fiscal Year 2014 fourth quarter Section 1204 manager listing. These tests determined that the data were sufficiently reliable and could be used to meet the objective of this audit.



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Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Bryce Kisler, Director
Christina M. Dreyer, Audit Manager
Victor Taylor, Lead Auditor
Nancy VanHouten, Senior Evaluator
John Onyeaku, Auditor



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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Chief, Appeals AP
Chief, Criminal Investigation SE:CI
Chief Financial Officer OS:CFO
National Taxpayer Advocate TA
Commissioner, Large Business and International Division SE:LB
Commissioner, Small Business/Self-Employed Division SE:S
Commissioner, Tax Exempt and Government Entities Division SE:T
Commissioner, Wage and Investment Division SE:W
Director, Communications, Liaison and Disclosure, Small Business/Self-Employed Division
SE:S:CSO
Director, Strategy and Finance, Wage and Investment Division SE:W:S
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Audit Coordination OS:PPAC:AC
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaisons:
 Chief, Appeals AP
 Chief, Criminal Investigation SE:CI
 Chief Financial Officer OS:CFO
 National Taxpayer Advocate TA
 Commissioner, Large Business and International Division SE:LB
 Commissioner, Small Business/Self-Employed Division SE:S
 Commissioner, Tax Exempt and Government Entities Division SE:T
 Commissioner, Wage and Investment Division SE:W



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Appendix IV

*Previous Audit Reports Related
to This Statutory Review*

TIGTA, Ref. No. 2014-30-055, *Fiscal Year 2014 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Sept. 2014).

TIGTA, Ref. No. 2013-30-073, *Fiscal Year 2013 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Aug. 2013).

TIGTA, Ref. No. 2012-30-090, *Fiscal Year 2012 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Aug. 2012).

TIGTA, Ref. No. 2011-30-069, *Fiscal Year 2011 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (July 2011).

TIGTA, Ref. No. 2010-30-076, *Fiscal Year 2010 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (July 2010).

TIGTA, Ref. No. 2009-30-091, *Fiscal Year 2009 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (June 2009).

TIGTA, Ref. No. 2008-40-108, *Fiscal Year 2008 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Apr. 2008).

TIGTA, Ref. No. 2007-40-055, *Fiscal Year 2007 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Mar. 2007).

TIGTA, Ref. No. 2006-40-095, *Fiscal Year 2006 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (June 2006).

TIGTA, Ref. No. 2005-40-157, *Fiscal Year 2005 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Sept. 2005).

TIGTA, Ref. No. 2004-40-066, *Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Mar. 2004).

TIGTA, Ref. No. 2003-40-090, *Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Mar. 2003).

TIGTA, Ref. No. 2002-40-163, *Compliance With Regulations Restricting the Use of Records of Tax Enforcement Results Shows Improvement* (Sept. 2002).

TIGTA, Ref. No. 2001-10-178, *Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved* (Sept. 2001).



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TIGTA, Ref. No. 2000-10-118, *Further Improvements Are Needed in Processes That Control and Report Misuse of Enforcement Statistics* (Sept. 2000).

TIGTA, Ref. No. 1999-10-073, *The Internal Revenue Service Should Continue Its Efforts to Achieve Full Compliance With Restrictions on the Use of Enforcement Statistics* (Sept. 1999).



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Appendix V

Glossary of Terms

Term	Definition
Discovery Directory	A computer system available to IRS personnel that provides information on IRS employees including their name, job title, job location, and management level.
Employee Performance File	A system consisting of all performance ratings and other performance records maintained on an employee.
Enterprise Learning Management System	An IRS automated training system that allows the employee and manager to be directly engaged in planning, communicating, and coordinating training and development activities online.
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.
HR Connect	A human resource system, owned and operated by the U.S. Department of the Treasury.
Internal Revenue Manual	The primary official source of instructions to staff relating to the organization, administration, and operation of the IRS.



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Appendix VI

Management's Response to the Draft Report

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

CHIEF FINANCIAL OFFICER

August 20, 2015

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Robin L. Canady /s/ Robin L. Canady
Chief Financial Officer

SUBJECT: Draft Audit Report - Fiscal Year 2015 Statutory Audit of
Compliance with Legal Guidelines Restricting the Use of
Tax Enforcement Results (Audit# 201530005)

We have reviewed the draft report entitled, "Fiscal Year 2015 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Tax Enforcement Results" (Audit# 201530005). We appreciate your acknowledgement that the IRS is generally ensuring that its managers do not use Records of Tax Enforcement Results (ROTERRs) and/or production goals or quotas to evaluate employees, and that the IRS recognizes its responsibility to protect the rights of taxpayers.

In general, we agree with the report language and the audit findings pertaining to Section 1204 violations, instances of noncompliance, and Internal Revenue Manual (IRM) policy violations, which all have been discussed with the responsible managers and employees.

We agree to the report recommendations with the following exceptions:

- Based on a review by our General Legal Services (GLS) division, we do not agree with one of the identified Section 1204(a) violations for Criminal Investigation (CI) cited in the audit report. Section 1204 prevents an employee of the IRS from using records of tax enforcement results to evaluate another employee or to impose or suggest production quotas or goals. *****1*****.
Even if the ****1**** mentioned in the excerpt were to be considered a ROTER, we do not believe it was used in violation of Section 1204 nor 26 C.F.R. Part 801. The cited violation supports the CJE of Written Communications by commending the employee for the speed, clarity, and effectiveness of their written communication, rather than for the end result of the ****1****.



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2

- Based on IRM policy guidance, we do not agree with 10 of the identified Section 1204(b) instances of non-compliance cited in the audit report. The requirement to share the performance plan at the beginning of the performance period is found in IRM 6.430, Performance Management. This policy is reinforced in guidance in Leaders' Alerts articles, training and job aids. According to IRM 1.5.3.8.6(8), timeliness of acknowledgement (sharing) and evaluation (rating) for the performance standard is not a Section 1204 requirement. This means that retention standard acknowledgement and evaluation documents signed 30 days after the beginning of the performance period and 30 days after the end of the performance period are not counted as Section 1204(b) instances of non-compliance for self-certification reporting.

Our completed corrective actions to the recommendations are discussed in the attachment.

If you have any questions, please contact John Pekarik, Associate CFO, Corporate Planning and Internal Control, at (202) 803-9151.

Attachment



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Attachment

RECOMMENDATION 1

The Chief, Criminal Investigation, and the National Taxpayer Advocate, should ensure that the potential RRA 98 § 1204(a) violations identified in this report are discussed with the responsible managers to ensure that the managers understand the guidelines related to the use of ROTERs.

CORRECTIVE ACTION

The IRS agrees with this recommendation, with the exception of the specific case with which the IRS Counsel disagrees. The CFO confirmed discussions were held with the responsible managers of the named business units that had Section 1204(a) violations identified in this report, which also included review of guidelines on the use of ROTERs.

IMPLEMENTATION DATE

August 7, 2015 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 2

The Chief, Criminal Investigation, and the Commissioner, Tax Exempt and Government Entities Division, should ensure that the noncompliance identified in this report related to the prohibition on including ROTERs in employee self-assessments is discussed with the responsible employees and their managers so that they understand the IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO confirmed with the named business units that the Section 1204 instances of non-compliance, with the exception of specific cases in which the IRS Counsel disagrees, were discussed with the responsible employees and their managers regarding IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments.

IMPLEMENTATION DATE

August 7, 2015 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer



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Attachment

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 3

The Deputy Commissioner for Operations Support should ensure that RRA § 1204(b) noncompliance with documentation requirements and RRA § 1204(c) noncompliance identified in this report are discussed with the responsible managers to ensure that they understand the retention standard documentation and quarterly self-certification requirements.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO confirmed with the Chief, Appeals; the Chief, Criminal Investigation; the National Taxpayer Advocate; and the Commissioners for the Large Business and International, Small Business/Self-Employed, Tax Exempt and Government Entities, and Wage and Investment Divisions, that the IRS policy on 1204(b) and (c) noncompliance regarding the retention standard and quarterly self-certification requirements identified in this report were discussed with the responsible managers with the exception of findings in the audit report related to timeliness of the retention standard.

IMPLEMENTATION DATE

August 7, 2015 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 4

The Deputy Commissioner for Operations Support should ensure that the managers identified in this report are notified to properly designate their employees and/or themselves as Section 1204 employees within HR Connect and ensure that the mandatory Section 1204 training is assigned and completed within 90 days.

CORRECTIVE ACTION

The IRS agrees with this recommendation. In February 2015, the CFO updated IRM 1.5.3, Manager's Self-Certification and the Independent Review Process, to instruct Section 1204 managers to review and update their and/or employees' HR Connect profiles as part of the Quarterly Certification process. In addition, Quarterly Certification instructions direct managers to review HR Connect status as part of the review process.



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Attachment

Annual mandatory briefings include Section 1204 training, which has been assigned to all designated Section 1204 employees and managers on July 15, 2015 and must be completed within 90 days. To address new hires, CFO provides Human Capital Office (HCO) a file quarterly to assign training to new employees. IRM 1.5.3.13(6) states: The CFO provides HR Connect reports quarterly to Leadership, Education, and Delivery Services (LEADS) that contain the entire Section 1204 population identified through the HR Connect Section 1204 indicator. These reports are used by Enterprise Learning Management System (ELMS) staff to automatically assign mandatory Section 1204 training to new hires through their learning plans.

IMPLEMENTATION DATE

July 15, 2015 (Completed)

CORRECTIVE ACTION MONITORING PLAN

N/A