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*TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION*

*Office of Inspections and Evaluations*



*The Internal Revenue Service Adhered to the  
Required Bargaining Process and Federal  
Guidance in the Payment of  
Fiscal Year 2013 Performance Awards*

**January 21, 2015**

**Reference Number: 2015-IE-R003**

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.

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*Phone Number* | 202-622-6500

*E-mail Address* | [TIGTACommunications@tigta.treas.gov](mailto:TIGTACommunications@tigta.treas.gov)

*Website* | <http://www.treasury.gov/tigta>



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

January 21, 2015

**MEMORANDUM FOR INTERNAL REVENUE SERVICE HUMAN CAPITAL OFFICER**

**FROM:**   
Gregory D. Kutz  
Acting Deputy Inspector General for Inspections and Evaluations

**SUBJECT:** Final Inspection Report – The Internal Revenue Service Adhered to the Required Bargaining Process and Federal Guidance in the Payment of Fiscal Year 2013 Performance Awards (# IE-14-005)

This report presents the results of our inspection to determine if the Internal Revenue Service (IRS) met performance award reductions required by relevant Federal guidance and the process it followed to achieve the reductions.

*Synopsis*

The *2012 National Agreement II*<sup>1</sup> lays out the process by which the IRS is contractually obligated to engage the National Treasury Employees Union<sup>2</sup> (NTEU) in bargaining to negotiate the implementation and impact of the IRS's proposed change to bargaining unit performance awards. The Treasury Inspector General for Tax Administration found that the IRS adhered to the process stipulated in the *2012 National Agreement II* as well as relevant Federal awards guidance when negotiating these changes. Such adherence resulted in a negotiated settlement agreement between the IRS and the NTEU with the payout of performance awards to bargaining unit employees reduced to 1 percent of their aggregate salaries.

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<sup>1</sup> The National Agreement is the contract between the IRS and the NTEU, which was signed on June 14, 2012, and implemented on October 1, 2012. NTEU, *2012 National Agreement II*, <http://www.nteu.org/Documents/IRSContract.pdf> (last visited Aug. 21, 2014).

<sup>2</sup> The NTEU is the union representing IRS bargaining unit employees.



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*Response*

IRS management agreed with the facts presented in the report. Management's complete response to the memorandum is included in Appendix VI.

Please contact me if you have questions, or Kevin P. Riley, Director, Office of Inspections and Evaluations.



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## *Abbreviations*

FLRA	Federal Labor Relations Authority
FSIP	Federal Service Impasses Panel
FY	Fiscal Year
IRS	Internal Revenue Service
NTEU	National Treasury Employees Union
OMB	Office of Management and Budget
OPM	Office of Personnel Management



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## *Background*

As part of ongoing Federal budget constraints, the Office of Personnel Management (OPM) and the Office of Management and Budget (OMB) have repeatedly issued guidance to Federal agencies (including the Internal Revenue Service (IRS)) to reduce performance awards<sup>1</sup> given to their employees. Beginning in June 2011, the OPM issued guidance<sup>2</sup> for all executive agencies to reduce non-Senior Executive Service awards to no more than 1 percent of aggregate salaries for Fiscal Year (FY)<sup>3</sup> 2012.

The *2012 National Agreement II*<sup>4</sup> (hereafter referred to as the National Agreement) outlines the IRS's plan to provide performance awards to those employees represented by the National Treasury Employees Union<sup>5</sup> (NTEU), known as bargaining unit employees.<sup>6</sup> The National Agreement establishes an awards program through which bargaining unit employees are granted awards such as performance awards, within applicable budget limitations, totaling 1.75 percent of aggregate bargaining unit salaries. However, the IRS can change the awards program funding level, but it is contractually obligated to give the NTEU 60 days' notice of its intent to do so and to engage in bargaining regarding the proposed change.

In July 2011, the IRS provided the NTEU with a 60-day notice of its intent to reduce the bargaining unit awards budget to 1 percent of aggregate salaries. However, no changes to the FY 2011 percentages were made because OPM's guidance was issued late in the fiscal year. By June 2011, the IRS had paid the majority of the non-bargaining unit<sup>7</sup> awards at 1.75 percent of aggregate salaries. The IRS therefore concluded that it would be unfair to the bargaining unit employees, who had not yet received their awards, to reduce the awards prior to the end of FY 2011.

Non-bargaining unit reductions did occur in FY 2012 with non-bargaining unit employees receiving 1 percent of their aggregate salaries for awards. The IRS and the NTEU engaged in bargaining and in June 2012 settled multiple national grievances, which included a resolution of

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<sup>1</sup> Performance awards are monetary and/or time-off awards granted by the IRS on the basis of merit, earned as a result of an employee's annual performance rating.

<sup>2</sup> CPM 2011-10, *Guidance on Awards for Fiscal Years 2011 and 2012* (June 20, 2011).

<sup>3</sup> A fiscal year is 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.

<sup>4</sup> The National Agreement is the contract between the IRS and the NTEU, which was signed on June 14, 2012, and implemented on October 1, 2012. NTEU, *2012 National Agreement II*, <http://www.nteu.org/Documents/IRSContract.pdf> (last visited Aug. 21, 2014).

<sup>5</sup> The NTEU is the union representing IRS bargaining unit employees.

<sup>6</sup> As of November 2013, bargaining unit employees represented 79 percent (74,809 of 94,217) of all IRS employees.

<sup>7</sup> Non-bargaining unit employees are those IRS employees who are not covered by the National Agreement.



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the FY 2012 bargaining unit performance awards issue. The IRS agreed to withdraw the July 2011 60-day notice and permit the expenditure of the full awards budget for FY 2012 for bargaining unit employees at 1.75 percent of aggregate salaries.

This review was performed at the IRS National Headquarters in Washington, D.C., in the Human Capital Office, during the period February through August 2014. We conducted this inspection in accordance with the Council of the Inspectors General for Integrity and Efficiency Quality Standards for Inspections. Detailed information on our 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*

### ***The Internal Revenue Service Followed the Required Bargaining Process and Federal Guidance for Fiscal Year 2013 Performance Awards***

The National Agreement lays out the process by which the IRS is contractually obligated to engage the NTEU in bargaining to negotiate the implementation and impact of the IRS's proposed change to bargaining unit performance awards funding. We found that the IRS adhered to the process stipulated in the National Agreement as well as Federal awards guidance. This resulted in a negotiated settlement agreement between the IRS and the NTEU with the payout of awards to bargaining unit employees at a reduced percentage of the aggregate salaries.

#### ***The IRS has contractual bargaining obligations when reducing performance awards***

Article 18 of the National Agreement establishes an awards program that gives bargaining unit employees various types of awards, including performance awards, within applicable budget limitations, totaling 1.75 percent of aggregate bargaining unit employee salaries. Articles 18 and 47 of the National Agreement lay out the process by which the IRS is contractually obligated to engage the NTEU in bargaining over proposed changes to bargaining unit employee performance awards. While the IRS retains the right to change the performance awards program funding level, it is contractually obligated to give the NTEU 60 days' notice of its intent to do so.

Upon such notice, either party may engage in bargaining to negotiate the implementation and impact of the IRS's proposed change. Until bargaining is complete, the IRS must maintain the status quo with respect to the awards program. The National Agreement lays out the following steps as part of the bargaining process:

1. The IRS briefs the NTEU on its proposed changes.
2. The NTEU submits its own proposal(s) to the IRS shortly thereafter.
3. The IRS and the NTEU hold telephonic discussion sessions, and later face-to-face bargaining if necessary, to see if the parties can reach an agreement.
4. If an impasse remains following the last bargaining session, the IRS and the NTEU will employ a neutral third party (referred to as a Factfinder) to resolve any impasses.



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If either party is dissatisfied with the Factfinder’s recommendation, they may go to the Federal Service Impasses Panel<sup>8</sup> (FSIP) for a resolution.

**The IRS adhered to its bargaining requirements and Federal awards guidance**

We found that the IRS adhered to the process stipulated in the National Agreement as well as applicable Federal guidance. Figure 1 provides an overview of the required steps in the bargaining process and the actions that the IRS took to meet these requirements.

**Figure 1: IRS Bargaining Requirements and Actions**

Steps in the Bargaining Process	IRS Actions
1. The IRS provides the NTEU with 60 days’ notice of its intent to change funding for the awards program.	<i>March 2013</i> – The IRS provides the NTEU with a 60-day notice of its intent to reduce the bargaining unit performance awards.
2. The IRS briefs the NTEU on its proposed changes.	<i>May 2013</i> – The IRS provides a formal briefing to the NTEU on the proposed changes to bargaining unit performance awards.
3. The NTEU submits proposal(s) to the IRS.	<i>No IRS action required.</i>
4. The IRS and the NTEU hold telephonic discussion sessions, and later face-to-face bargaining if necessary, to see if the parties can reach an agreement.	<i>May 2013</i> – The IRS repeatedly proposed dates in June for the face-to-face bargaining over the proposed changes. The NTEU did not respond to the proposed dates for face-to-face bargaining. <sup>9</sup>
5. If an impasse remains, the IRS and the NTEU employ a Factfinder to resolve any impasses.	<i>July-August 2013</i> – The IRS and the NTEU meet with a Factfinder to resolve the performance awards issue. The Factfinder issues recommendations in August in favor of the IRS’s position.
6. If either party is dissatisfied with the Factfinder’s recommendation, they may go to the FSIP for a resolution.	<i>August 2013</i> – The NTEU appeals the Factfinder’s decision to the FSIP.

*Source: Treasury Inspector General for Tax Administration generated table based on IRS interviews and Articles 18 and 47 of the National Agreement.*

<sup>8</sup> The FSIP resolves impasses between Federal agencies and unions representing Federal employees arising from negotiations over conditions of employment under the Federal Service Labor-Management Relations Statute and the Federal Employees Flexible and Compressed Work Schedules Act. The panel consists of seven Presidential appointees who serve on a part-time basis, one of whom serves as Chair.

<sup>9</sup> There was, however, an attempt between the IRS and the NTEU to resolve this issue as part of larger sequestration bargaining, although these attempts were not successful.



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In February 2013, the OMB issued guidance to Federal agencies not to issue discretionary monetary awards while sequestration<sup>10</sup> was in place, unless such awards were legally required.<sup>11</sup> As a result, in March 2013, the IRS provided the NTEU with a 60-day notice of its intent to reduce the bargaining unit performance awards. The NTEU responded notifying the IRS of its intent to engage in bargaining over the proposed change. In early May 2013, the IRS provided a formal briefing to the NTEU over the proposed changes to bargaining unit performance awards. Also that month, on at least two occasions, the IRS proposed dates in June for the required face-to-face bargaining over the proposed changes. During the month of May, the NTEU did not submit bargaining proposals, missing the contractual deadline, and did not respond to proposed dates for face-to-face bargaining. There was however an attempt between the IRS and the NTEU to resolve this issue as part of larger sequestration bargaining; although, these attempts were not successful.

Therefore, in late July and August 2013, the IRS and the NTEU moved to the next phase of bargaining stipulated in the National Agreement, a face-to-face meeting with the Factfinder for mediation. This process concluded on August 21, 2013, when the Factfinder issued recommendations adopting the IRS's position on the payment of bargaining unit performance awards. A week later, the NTEU filed a national grievance on bargaining unit performance awards while on the same day appealing the Factfinder's recommendation to the FSIP. The FSIP declined jurisdiction over this matter because of the existing national grievance.

In August, prior to the release of the Factfinder's recommendations, the NTEU also filed an unfair labor practice complaint with the Federal Labor Relations Authority (FLRA)<sup>12</sup> asserting that as part of the sequestration and furlough negotiations in the summer of 2013, it had reached an agreement with the IRS to proceed with five furlough days in exchange for a payout of \$70 million in bargaining unit employee performance awards for FY 2013.<sup>13</sup> The NTEU alleged that the IRS had engaged in "bad faith bargaining," which violated the Federal Service Labor-Management Relations Statute.<sup>14</sup> The NTEU asked that the IRS execute the agreement and pay \$70 million in bargaining unit employee performance awards for FY 2013.<sup>15</sup>

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<sup>10</sup> Sequestration is a process of automatic, largely across-the-board spending reductions to meet or enforce certain budget policy goals.

<sup>11</sup> M-13-05, *Agency Responsibilities for Implementation of Potential Joint Committee Sequestration* (Feb. 27, 2013).

<sup>12</sup> The FLRA is an independent Federal agency that administers the labor-management relations program for 2.1 million non-Postal Federal employees. The FLRA is charged with providing leadership in establishing policies and guidance related to Federal sector labor-management relations and with resolving disputes under, and ensuring compliance with, the Federal Service Labor-Management Relations Statute.

<sup>13</sup> The IRS scheduled five furlough days but was later able to cancel two furlough days, resulting in IRS employees being furloughed for three days.

<sup>14</sup> Civil Service Reform Act of 1978 § 701, 5 U.S.C. §§ 7116(a)(1) and (5), 7114(b)(5).

<sup>15</sup> This unfair labor practice complaint was later rejected by the FLRA in February 2014. The FLRA found no concrete evidence to suggest a binding agreement existed between the IRS and the NTEU and therefore concluded that the IRS did not commit an unfair labor practice.



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While the IRS and the NTEU continued to work through the national grievance over performance awards, in November 2013, the OMB and the OPM issued new guidance<sup>16</sup> superseding OMB's existing guidance to eliminate awards. This new guidance stated that agencies must limit award spending to no more than 1 percent of total aggregate salaries for non-Senior Executive Service awards plus individual contribution awards for all employees. These award spending targets apply for awards *paid* during FY 2014. Because any payment of FY 2013 performance awards at the time of the November 2013 guidance or after would be paid in FY 2014, OMB and OPM's new guidance allowed the IRS to pay both bargaining and non-bargaining unit employee performance awards, as long as they did not exceed 1 percent of aggregate salaries. A full timeline of events can be found in Appendix IV.

**While not eliminating performance awards, the IRS reduced awards below contractual levels**

In September 2013, the IRS announced that it would not pay performance awards. However, later in 2013, the Principal Deputy Commissioner and Deputy Commissioner for Services and Enforcement<sup>17</sup> asked his staff to look into the possibility of paying performance awards. During the Principal Deputy Commissioner's time at the IRS, he created and used an "integrated team" of IRS Senior Executive Service members to assist him in his decisionmaking process as he addressed the larger issues facing the IRS, such as the payment of FY 2013 performance awards. This team did not exist before the Principal Deputy Commissioner and was not continued after his departure in December 2013.

If the IRS had lost its case, it may have been required to pay \$76 million in FY 2013 bargaining unit performance awards, interest, attorney fees, and FY 2014 performance awards in FY 2014. IRS officials stated that they could not afford to pay two sets of performance awards in a single fiscal year. Given this potential scenario, the IRS believed that it was in its best interest to mitigate its financial risk by agreeing to a settlement with the NTEU totaling \$43.5 million. The IRS was still in the process of evaluating its options when Mr. John Koskinen became the IRS Commissioner in December 2013. Commissioner Koskinen ultimately made the decision to pay out the performance awards in January 2014 (see Appendix V for the Commissioner's subsequent testimony on the decision to pay the awards).

At the end of the bargaining process, on January 30, 2014, the IRS and the NTEU executed a settlement agreement to pay FY 2013 bargaining unit awards at 1 percent of the aggregate FY 2013 salaries, totaling approximately \$43.5 million. In February 2014,

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<sup>16</sup> M-14-02, *Guidance on Awards for Fiscal Year 2014* (November 1, 2013).

<sup>17</sup> According to the Vacancies Reform Act, Senate-confirmed offices such as the IRS Commissioner can be held by an "acting" official for up to 210 days until a presidential nominee is selected. On June 10, 2013, the IRS Commissioner position had been vacant for 210 days and could no longer be held by an individual in an "acting" capacity. As a result, the Treasury Secretary changed the title of the Acting Commissioner to Principal Deputy Commissioner and Deputy Commissioner for Services and Enforcement to allow the Acting Commissioner to continue to lead the IRS until a nomination was made.



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Commissioner Koskinen also announced that non-bargaining unit employees would receive FY 2013 awards at approximately 1 percent of aggregate salaries.

We found that the IRS adhered to the process stipulated in the National Agreement as well as relevant Federal awards guidance when negotiating changes to the FY 2013 bargaining unit performance awards.



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## Appendix I

### *Detailed Objective, Scope, and Methodology*

The objective of this review was to determine if the IRS met performance award reductions required by relevant Federal guidance and the process it followed to achieve these reductions. To accomplish this objective, we:

- I. Identified and reviewed relevant guidance issued by Federal entities.
  - A. Reviewed the National Agreement<sup>1</sup> and its amendments between the IRS and the NTEU.<sup>2</sup>
  - B. Identified and reviewed relevant guidance issued by the OMB, the OPM, the President, or other Federal entities pertaining to the payment of Federal employee performance awards.
- II. Determined if IRS employee performance awards were paid in accordance with relevant Federal guidance related to awards paid during FYs 2012 and 2013.<sup>3</sup>
  - A. Obtained the total dollar amount of performance awards by bargaining unit employees<sup>4</sup> and non-bargaining unit employees<sup>5</sup> for FYs 2012 and 2013.
  - B. Compared the amounts paid with the stipulations in the National Agreement and established Federal guidance to determine if the IRS adhered to both.
- III. Determined the basis for decisions to pay performance awards related to FYs 2012 and 2013.
  - A. Determined the effect of previous decisions related to performance awards for FYs 2011 and 2012 on decisions and negotiations for performance awards related to FY 2013.
  - B. Documented the timing and basis for decisions made related to performance awards for non-Senior Executive Service employees in FYs 2012 and 2013.

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<sup>1</sup> The National Agreement is the contract between the IRS and the NTEU, which was signed on June 14, 2012, and implemented on October 1, 2012. NTEU, *2012 National Agreement II*, <http://www.nteu.org/Documents/IRSContract.pdf> (last visited Aug. 21, 2014).

<sup>2</sup> The NTEU is the union representing IRS bargaining unit employees.

<sup>3</sup> A fiscal year is 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.

<sup>4</sup> As of November 2013, bargaining unit employees represented 79 percent (74,809 of 94,217) of all IRS employees.

<sup>5</sup> Non-bargaining unit employees are those IRS employees who are not covered by the National Agreement.



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**Appendix II**

*Major Contributors to This Report*

R. David Holmgren, Deputy Inspector General for Inspections and Evaluations  
Kevin P. Riley, Director, Inspections & Evaluations  
Lindsay Steward, Program Analyst



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**Appendix III**

*Report Distribution List*

Commissioner C  
Office of the Commissioner – Attn: Chief of Staff C  
Deputy Commissioner for Operations Support OS  
Deputy Human Capital Officer OS:HC  
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National Taxpayer Advocate TA  
Director, Office of Legislative Affairs CL:LA  
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Audit Liaison: Human Capital Officer OS:HC



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**Appendix IV**

*Internal Revenue Service  
Performance Awards Timeline*

Other Events	Awards Events
<b>FY 2011<sup>1</sup></b>	
<p><b>June 10, 2011</b> – The OPM issues guidance<sup>2</sup> for all executive agencies to reduce non-Senior Executive Service performance awards to no more than 1 percent of aggregate salaries in FY 2012, with progress towards these levels in FY 2011.</p>	
	<p><b>July 2011</b> – The IRS provides 60-day notice to the NTEU<sup>3</sup> of its intent to reduce the bargaining unit<sup>4</sup> performance awards budget in accordance with OPM's June 2011 guidance.</p>
<b>FY 2012</b>	
	<p><b>October 31, 2011</b> – The IRS Human Capital Officer issues a memorandum informing employees that the IRS and the NTEU are engaged in bargaining, but no reduction in bargaining unit performance awards will take place until the conclusion of negotiations. The IRS also announces that funding for non-bargaining unit<sup>5</sup> performance awards with effective dates in FY 2012 is limited to 1 percent of aggregate salaries.</p>

<sup>1</sup> A fiscal year is 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.

<sup>2</sup> CPM 2011-10, *Guidance on Awards for Fiscal Years 2011 and 2012* (June 20, 2011).

<sup>3</sup> The NTEU is the union representing IRS bargaining unit employees.

<sup>4</sup> As of November 2013, bargaining unit employees represented 79 percent (74,809 of 94,217) of all IRS employees.

<sup>5</sup> Non-bargaining unit employees are those IRS employees who are not covered by the National Agreement.



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Other Events	Awards Events
	<b>June 14, 2012</b> – The IRS and the NTEU settle several national grievances, which include an agreement to withdraw the July 2011 60-day notice and to permit the expenditure of the full performance awards budget for FY 2012.
<b>June 14, 2012</b> – The current National Agreement <sup>6</sup> is signed.	
<b>FY 2013</b>	
<b>October 1, 2012</b> – The National Agreement is implemented.	
<b>November 9, 2012</b> – Mr. Douglas Shulman steps down as IRS Commissioner.	
<b>November 10, 2012</b> – Mr. Steven Miller becomes acting IRS Commissioner.	
<b>February 27, 2013</b> – The OMB issues M-13-05, <sup>7</sup> directing Federal agencies not to issue discretionary monetary awards while sequestration is in place, unless such awards are legally required.	
<b>March 1, 2013</b> – President Obama signs a sequestration order for FY 2013 canceling \$85 billion in budgetary resources across the Federal Government for the remainder of FY 2013. As a result of the order and an additional 2 percent rescission, the IRS’s operating budget is reduced by \$618.8 million.	

<sup>6</sup> The National Agreement is the contract between the IRS and the NTEU, which was signed on June 14, 2012, and implemented on October 1, 2012. NTEU, *2012 National Agreement II*, <http://www.nteu.org/Documents/IRSContract.pdf> (last visited Aug. 21, 2014).

<sup>7</sup> M-13-05, *Agency Responsibilities for Implementation of Potential Joint Committee Sequestration* (Feb. 27, 2013).



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Other Events	Awards Events
	<b>March 25, 2013</b> – The IRS Human Capital Officer issues a memorandum to IRS employees announcing the suspension of all non-bargaining unit awards and the IRS’s notification to the NTEU of its intent to discontinue funding bargaining unit performance awards for the remainder of FY 2013.
	<b>March 25, 2013</b> – The IRS provides notice to the NTEU of its intent to reduce the bargaining unit awards budget for FY 2013 from 1.75 percent of total annual bargaining unit salary to zero percent.
	<b>March 26, 2013</b> – The NTEU provides e-mail notice to the IRS of its intent to negotiate the change to the bargaining unit awards.
	<b>April 3, 2013</b> – The NTEU provides e-mail notice to the IRS of its intent to submit bargaining proposals over the proposed change to the bargaining unit awards.
<b>April 4, 2013</b> – The OMB issues further guidance <sup>8</sup> reiterating previous guidance that awards should not be paid from sequestered accounts unless agency counsel determines the awards are legally required.	
	<b>May – July 2013</b> – The topic of bargaining unit performance awards is discussed as a part of sequestration bargaining.
	<b>May 3, 2013</b> – The IRS provides a formal briefing to the NTEU over the proposed changes to the bargaining unit awards.
	<b>May 20, 2013</b> – May 20 is the contractual deadline for the NTEU to submit bargaining proposals over the changes to bargaining unit awards. No proposals are

<sup>8</sup> M-13-11, *Ongoing Implementation of the Joint Committee Sequestration* (April 4, 2013).



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Other Events	Awards Events
	submitted by this date by the NTEU.
<b>May 21, 2013</b> – Mr. Steven Miller resigns as acting IRS Commissioner.	
<b>May 22, 2013</b> – President Obama appoints Mr. Daniel Werfel as acting IRS Commissioner, effective this date.	
	<b>May 24, 2013</b> – The 60-day advance notice period required by Article 18 of the National Agreement for any changes to bargaining unit performance awards expires.
	<b>May 29, 2013</b> – The IRS again provides the NTEU with proposed June dates for face-to-face bargaining over the changes to bargaining unit awards. No response is received from the NTEU. <sup>9</sup>
	<b>July 9, 2013</b> – The acting IRS Commissioner notifies IRS employees that the IRS does not have the funds to pay awards and that the IRS and the NTEU have failed to execute an agreement.
	<b>July 24, 2013</b> – The IRS meets with the NTEU and the Factfinder for face-to-face mediation and fact finding.
	<b>July 29, 2013</b> – The IRS telephonically meets with the NTEU and the Factfinder.
	<b>August 1, 2013</b> – The IRS meets with the NTEU and the Factfinder for face-to-face mediation and fact finding.
	<b>August 9, 2013</b> – The NTEU files an unfair labor practice complaint with the FLRA asserting that the

<sup>9</sup> As of June 17, 2014, the date this information was provided by the IRS.



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Other Events	Awards Events
	parties had reached an agreement regarding the payment of bargaining unit awards in the summer of 2013.
	<b>August 21, 2013</b> – The Factfinder issues recommendations adopting the majority of the IRS’s positions.
	<b>August 28, 2013</b> – The NTEU files a national grievance regarding bargaining unit performance awards.
	<b>August 28, 2013</b> – The NTEU appeals the Factfinder’s recommendation to the FSIP. <sup>10</sup>
	<b>September 17, 2013</b> – The IRS announced that bargaining unit awards will not be paid for FY 2013.
<b>November 1, 2013</b> – The OMB issues M-14-02, <sup>11</sup> which provides guidance for awards in FY 2014. The memo states that agencies must limit award spending to no more than 1 percent of total aggregate salaries for non-Senior Executive Service performance awards plus individual contribution awards (e.g., special act, or spot) for all employees. These award-spending targets apply for awards <i>paid</i> during FY 2014.	
<b>December 23, 2013</b> – Mr. John Koskinen is sworn in as the new IRS Commissioner.	
<b>December 31, 2013</b> – Mr. Daniel Werfel departs the IRS.	

<sup>10</sup> The FSIP resolves impasses between Federal agencies and unions representing Federal employees arising from negotiations over conditions of employment under the Federal Service Labor-Management Relations Statute and the Federal Employees Flexible and Compressed Work Schedules Act. The panel consists of seven Presidential appointees who serve on a part-time basis, one of whom serves as Chair.

<sup>11</sup> M-14-02, *Guidance on Awards for Fiscal Year 2014* (November 1, 2013).



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Payment of Fiscal Year 2013 Performance Awards*

Other Events	Awards Events
	<b>January 30, 2014</b> – The IRS and the NTEU execute a settlement agreement to pay FY 2013 bargaining unit performance awards at 1 percent of aggregate bargaining unit salaries, totaling approximately \$43.5 million.
	<b>February 3, 2014</b> – The IRS Commissioner announces the settlement agreement between the IRS and the NTEU. He also announces that non-bargaining unit employees will receive performance awards totaling approximately 1 percent of their aggregate salaries.
	<b>February 28, 2014</b> – FLRA responds to the NTEU’s unfair labor practice charge against the IRS, declining to find that the IRS committed an unfair labor practice by failing to execute the June 2013 agreement.
	<b>March 2014</b> – Per the IRS-NTEU settlement agreement, the IRS begins to process and pay bargaining unit performance awards for employees who requested time-off awards (instead of monetary performance awards).
	<b>March 19, 2014</b> – The IRS provides the NTEU with performance awards data in compliance with the National Agreement.
	<b>March 26, 2014</b> – The NTEU files a national grievance regarding the FY 2013 Performance Awards Program alleging that the IRS failed to fund FY 2013 bargaining unit performance awards at 1 percent of total annual bargaining unit salaries and, instead, paid approximately \$40.8 million in violation of the awards settlement agreement. Further, that the IRS failed to honor bargaining unit employee elections for time-off awards in lieu of cash awards, also in violation of the awards settlement agreement and the National Agreement. <sup>12</sup>

<sup>12</sup> This national grievance has been resolved and withdrawn by the NTEU with the execution of the FY 2014 and FY 2015 Awards Settlement Agreement in November 2014.



*The Internal Revenue Service Adhered to the  
Required Bargaining Process and Federal Guidance in the  
Payment of Fiscal Year 2013 Performance Awards*

Other Events	Awards Events
	<b>April 3, 2014 (approximately)</b> – The IRS pays the bargaining unit monetary performance awards.



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*The Internal Revenue Service Adhered to the  
Required Bargaining Process and Federal Guidance in the  
Payment of Fiscal Year 2013 Performance Awards*

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## **Appendix V**

*Excerpt From the Written Testimony of Internal  
Revenue Service Commissioner John A. Koskinen  
Before the House Oversight and Government Reform  
Committee on Internal Revenue Service Operations  
March 26, 2014*

In regard to our workforce, I strongly believe that the success of the IRS depends on the experience, skills, and enthusiasm of our employees, and it is important for us to make the most of this very valuable resource. The recent visits I have made to various IRS offices and the meetings I have had with employees reinforce my long-held belief that the people in an organization who know the most about what is going on are the frontline employees. I intend to listen to our employees and make sure they understand that we appreciate their dedication and look forward to benefiting from their insights and suggestions. I have told our employees that I will do everything possible to ensure that they have the leadership, systems, and training to support them in their work and allow them to reach their full potential to best serve taxpayers.

In that regard, I was pleased that we were able to reach an agreement recently with the National Treasury Employees Union involving FY 2013 performance awards for Bargaining Unit (BU) employees. As a result of sequester, the IRS initially had made the tough decision to eliminate performance awards for FY 2013. However, because of negotiations with the NTEU that were already underway when I came on board in December, the IRS eventually agreed to make performance award payouts for FY 2013 of about 1 percent of the BU employee salary base, which is less than the 1.75 percent provided to these employees in previous years. This agreement with NTEU settles a national grievance and unfair labor practice.

Based on historic experience, we expect that about two-thirds of our employees will receive an award for FY 2013, and that the average amount paid to each employee will be approximately \$1,200. As a result of this agreement, BU employees will for the first time be on the same schedule as everyone else at the IRS, so that payouts will be made early in the fiscal year for work performed the previous year.

After spending time with many employees in various IRS offices over the last several weeks, I am convinced that this money is best spent on our employees. I firmly believe that this investment in our employees will directly benefit taxpayers and the tax system.



*The Internal Revenue Service Adhered to the  
Required Bargaining Process and Federal Guidance in the  
Payment of Fiscal Year 2013 Performance Awards*

**Appendix VI**

*Management's Response to the Draft Report*



HUMAN CAPITAL OFFICE

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

October, 14<sup>th</sup> 2014

MEMORANDUM FOR R. DAVID HOLMGREN  
DEPUTY INSPECTOR GENERAL FOR INSPECTION AND  
EVALUATIONS

FROM: Daniel T. Riordan *JTRiordan*  
IRS Human Capital Officer

SUBJECT: Draft Audit Report – The Internal Revenue Service Adhered to  
The Required Bargaining Process and Federal Guidance in the Payment  
of Fiscal Year 2013 Performance. (Audit # IE-14-005)

Thank you for the opportunity to respond to the subject draft audit report.

We agree with the facts in the draft report and acknowledge you did not offer any formal recommendations. Further, we appreciate your recognition that the IRS followed the required bargaining process and federal guidance for Fiscal Year 2013 performance awards.

If you have any questions, please contact me at (202) 317-7600, or a member of your staff may contact Debra Popoli, Director, Worklife, Benefits, and Engagement Division at (202) 317-5382.