



*Fiscal Year 2017 Statutory Audit of
Compliance With Legal Guidelines
Restricting the Use of Records of
Tax Enforcement Results*

September 5, 2017

Reference Number: 2017-30-071

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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HIGHLIGHTS

FISCAL YEAR 2017 STATUTORY AUDIT OF COMPLIANCE WITH LEGAL GUIDELINES RESTRICTING THE USE OF RECORDS OF TAX ENFORCEMENT RESULTS

Highlights

Final Report issued on September 5, 2017

Highlights of Reference Number: 2017-30-071 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 ROTTER goals or quotas. Use of ROTTERs 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.

WHAT TIGTA FOUND

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

- Section 1204(a) – five potential violations in which an IRS manager used a ROTTER to evaluate an employee and/or suggest a production quota or goal.
- Section 1204(b) – eight instances of noncompliance in which six IRS managers either failed to maintain the retention standard documentation or ensure that it was appropriately signed and/or dated.

- Section 1204(c) – 12 instances of noncompliance in which seven IRS managers did not properly certify in writing to the IRS Commissioner or provide documentation as to whether ROTTERs and/or production quotas or goals were used in a prohibited manner.

TIGTA also identified four Code of Federal Regulations § 430.206 policy violations in which pertinent documents pertaining to Section 1204(b) were not signed and/or dated within the rating period and five Internal Revenue Manual policy violations in which Section 1204 managers' and employees' self-assessments contained at least one ROTTER and were not returned to the employee for the removal of the ROTTER.

TIGTA also noted that 11 managers were missing from the Fiscal Year 2016 Section 1204 employee and manager listing and that a total of 231 employees and managers did not timely complete the mandatory Section 1204 training.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS ensure that: potential RRA 98 Section 1204(a), (b), and (c) violations, documentation requirements, and noncompliance related to self-assessments identified in this report are discussed with the responsible managers and employees; managers identified in this report are notified to properly designate their employees and/or themselves as Section 1204 personnel; and the mandatory Section 1204 briefing includes examples of tax enforcement results or prohibited data directly on the slides.

In response to the report, the IRS agreed with all seven recommendations; however, management did not address part of recommendation six to ensure that the managers identified in this report are notified to properly designate their employees and/or themselves as Section 1204 personnel within HR Connect.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 5, 2017

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2017 Statutory Audit of Compliance
With Legal Guidelines Restricting the Use of Records of Tax
Enforcement Results (Audit # 201730007)

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 2017 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer 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.

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 § 1204 program activities.



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Abbreviations

IRM	Internal Revenue Manual
IRS	Internal Revenue Service
ROTERR	Record of Tax Enforcement Results
RRA 98	Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector 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 based on a review of the employee's work on that individual case.

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 Section 1204 executive in an operating/functional division who directly or indirectly supervises 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 National Taxpayer Advocate are responsible for implementing the Section 1204 program within their respective

¹ Pub. L. No. 105-206, 112 Stat. 685.

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 whose duties involve providing direction/guidance for programs involving Section 1204 work activities.

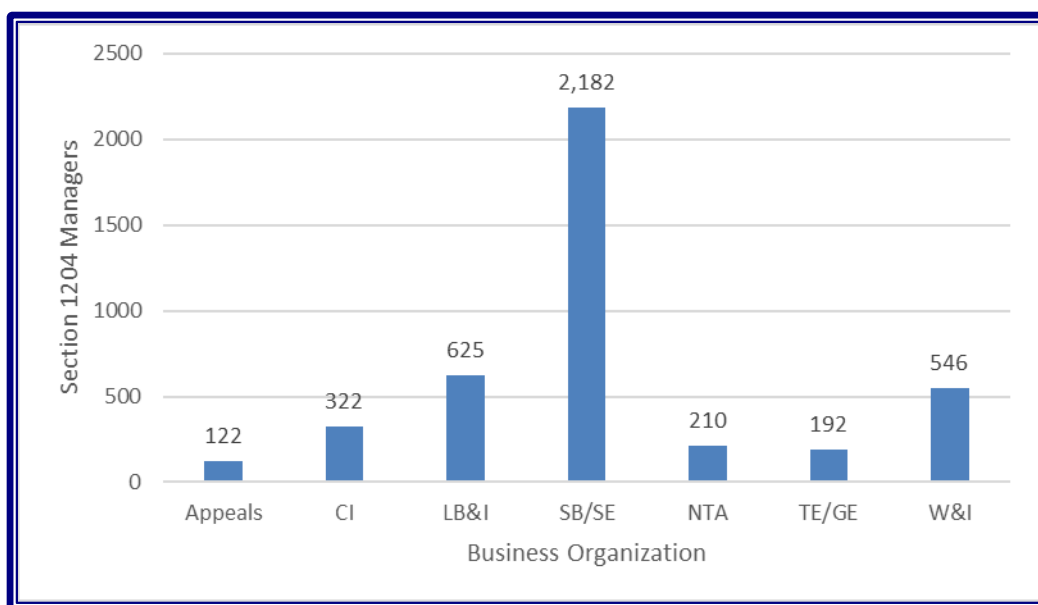


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organization. Section 1204 program managers and program coordinators in each business organization are available to provide guidance to managers regarding Section 1204 issues, including the self-certification process.

As of September 30, 2016, there were 4,199 Section 1204 managers on the employee and manager listing provided by the IRS. 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, 2016)**



Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of data from the IRS's HR Connect³ Section 1204 manager listing.

* CI = Criminal Investigation, LB&I = Large Business and International Division, NTA = National Taxpayer Advocate, SB/SE = Small Business/Self-Employed Division, TE/GE = Tax Exempt and Government Entities Division, W&I = Wage and Investment Division.

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 18 annual reviews to meet this requirement. Appendix IV lists the six most recent audit reports related to this statutory review.

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

³ See Appendix V for a glossary of terms.



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the National Taxpayer Advocate; the Large Business and International Division; the Small Business/Self-Employed Division; and the Tax Exempt and Government Entities Division in Washington, D.C.; and the Wage and Investment Division in Atlanta, Georgia, from January through July 2017. On-site reviews were also performed at the IRS field offices in Santa Ana, California, and Albuquerque, New Mexico. 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 IRS Restructuring and Reform Act of 1998

The IRS is not permitted to 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 2016. The following issues were identified:

- **Section 1204(a) – 5 potential violations** in which an IRS manager used a ROTER to evaluate an employee and/or suggest a production quota or goal.
- **Section 1204(b) – 8 instances of noncompliance** in which six IRS managers either failed to maintain the retention standard documentation or ensure that it was appropriately signed and/or dated.
- **Section 1204(c) – 12 instances of noncompliance** in which seven IRS managers did not properly 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 105 employees.⁴ The managers were selected from locations that have not been previously reviewed by the IRS or by TIGTA during any of the prior annual reviews of Section 1204 compliance.⁵ We selected five managers along with three of each manager's employees from each of the seven business units and reviewed their performance evaluation documents. In all, we selected 140 employees/managers to determine the IRS's compliance with RRA 98 § 1204 provisions.

The IRS was generally in compliance with the prohibition on the use of ROTERs

In Fiscal Year 2016, the IRS was generally in compliance with RRA 98 § 1204(a). However, we found five potential ROTER violations in manager performance documents obtained from the Small Business/Self-Employed Division and the National Taxpayer Advocate. Specifically, ROTERs were found in appraisal documents.

To evaluate the IRS's compliance with RRA 98 § 1204(a), we reviewed Fiscal Year 2016 performance documents, including available midyear and annual performance reviews, employee

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

⁵ Locations were not reviewed by the IRS between Fiscal Years 2010 and 2016 or by TIGTA between Fiscal Years 1999 and 2016.



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self-assessments, workload reviews, case reviews, and award documentation for the 140 employees and managers selected, as well as group meeting minutes. 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, the IRS needs to remain 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.

In addition, we identified five instances in which Section 1204 manager and employee self-assessments contained at least one ROTER from the Large Business and International Division, the National Taxpayer Advocate, and the Small Business/Self-Employed Division. We did not consider this to be a potential RRA 98 § 1204(a) violation because the ROTERs were from the Section 1204 managers' and employees' self-assessments. 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.⁶ 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 second-line managers did not follow proper procedures by returning the self-assessment to the first-line manager for correction, and the first-line managers did not follow proper procedures by returning the self-assessment to the employee for correction. As such, the first-line managers and employees may be unaware of the IRS's policy that prohibits the use of ROTERs in self-assessments.

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 2016 retention standard documents applicable to the 140 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 2016 for the Appeals and the National Taxpayer Advocate. Specifically, for the 105 employees (excluding the managers), we determined that:

- Three Employee Performance Files were missing Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*.
- Two Employee Performance Files included Form 6774; however, the acknowledgement section (receipt of the Critical Job Elements, including the Fair and Equitable Treatment

⁶ IRM 1.5.2.11.2 (3) (May 10, 2012).



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of Taxpayers Retention Standard) within the form was not appropriately signed and/or dated by all parties.

- One Employee Performance File included Form 6850-BU, *Bargaining Unit Performance Appraisal and Recognition Election*; however, the certification of rating section (including the Fair and Equitable Treatment of Taxpayers Retention Standard Rating) was not appropriately signed and/or dated by all parties.

For the 35 managers, we found that:

- Two managers' Employee Performance Files included Form 12450-A, *Manager Performance Agreement*; 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 IRS Section 1204 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.⁷ 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 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.⁸

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.⁹

⁷ 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*.

⁸ The appropriate appraisal forms are Form 6850-BU; Form 6850-NBU, *Non-Bargaining Unit Performance Appraisal*; Form 12450-A; Form 12450-B; Form 12450-D; or Form TD F 35-07.

⁹ IRM 1.5.3.7.5(1) and (2) (Feb. 5, 2015).



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Further, the IRM requires both the receipt and acknowledgment of the retention standard and the performance ratings to be filed in the Employee Performance File and retained for four years.¹⁰

In addition, we identified four Code of Federal Regulations § 430.206 policy violations regarding Section 1204 (b) from the Large Business and International, Small Business/Self-Employed, Tax Exempt and Government Entities Divisions and the National Taxpayer Advocate. In one instance, pertinent documents pertaining to Section 1204(b) were not signed and/or dated until the last month of the rating period,¹¹ and in three instances, the document was signed and dated after the review period ended. Specifically, we found:

- Two 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 signed after the review period ended.
- One Employee Performance File included Form 6850-BU; however, the certification of rating section (including the Fair and Equitable Treatment of Taxpayers Retention Standard Rating) was signed 145 calendar days after the end of the review period.
- One 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 signed until the last month of the review period.

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 and that each performance plan includes all elements that are to be used in developing a summary rating, *i.e.*, an evaluation. In addition, the 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.¹²

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

¹⁰ IRM 1.5.3.7(9) (Feb. 5, 2015).

¹¹ The minimum period of time for which an employee covered by a performance plan can receive a summary rating. For the majority of the IRS’s workforce, except for executives, this period is 60 calendar days.

¹² IRM 1.5.3.7(5) (Feb. 5, 2015).



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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 60-calendar-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.

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 12 quarterly self-certifications from Criminal Investigation, the Large Business and International Division, the Tax Exempt and Government Entities Division, and the National Taxpayer Advocate. These forms were not signed and/or dated by the next-level manager, were incorrectly signed by the manager and/or next-level manager before the end of the quarter, or were not provided.¹³ To evaluate the IRS's compliance with Section 1204(c), we requested all four quarterly self-certifications for the sampled 35 first-line managers. 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 prohibited manner. Therefore, managers who evaluate Section 1204 employees are required to certify each quarter in writing that they did not:

- Use ROTERs in any written performance evaluations prepared or reviewed, including appraisals, awards, or promotion justifications.
- Use ROTERs to impose or suggest production quotas or goals with respect to field activities, *e.g.*, through program guidance or business and program reviews.
- Communicate to employees, either verbally or in writing, that ROTERs affected their evaluations or were used to set individual/group production goals or quotas.

¹³ The standard employee identifier is the five-digit code that uniquely ties employees to their data without using their Social Security Number. The IRS stated that each five-character alphanumeric code is only used once and remains unique to the individual to whom it is assigned throughout that individual's lifetime, even after they are no longer employed with the IRS.



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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.¹⁴ The IRM also states that a standard employee identifier, such as a digital signature, is not acceptable for quarterly Section 1204 self-certifications because digital signatures generally do not contain the manager's name.¹⁵ On February 9, 2016, after conducting research on the use of standard employee identifiers, the IRS issued interim guidance that approved the use of standard employee identifiers as a digital signature on the quarterly certification. Accordingly, the name of the manager will no longer be required as long as the signer can be uniquely identified as the individual certifying the document.

We reviewed a total of 140 quarterly self-certifications from managers. Of these, we found:

- 10 self-certifications were not properly signed and/or dated by the next-level manager.
- 2 self-certifications were signed and dated before the quarter ended by either the manager and/or second-line manager.

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.

Recommendations

Recommendation 1: The Commissioner, Small Business/Self-Employed Division, 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: Management agreed with this recommendation and has already completed their corrective action. Specifically, the Section 1204(a) violations identified in this report were discussed with the responsible managers so that the managers understand IRS's guidelines on the use of ROTERs.

Recommendation 2: The Commissioner, Large Business and International Division; the National Taxpayer Advocate; and the Commissioner, Small Business/Self-Employed Division, should ensure that the noncompliance identified in this report related to the prohibition on including ROTERs in an employee's self-assessment is discussed with the responsible employees and their managers so that they understand the IRS's policy that ROTERs should not be used in self-assessments.

¹⁴ IRM 1.5.3.8(10) (Feb. 5, 2015).

¹⁵ IRM 1.5.3.8.8(2) (June 6, 2012).



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Management's Response: Management agreed with this recommendation and has already completed their corrective action. Specifically, the instances of Section 1204 noncompliance was discussed with the responsible employees and their managers so that they understand the IRS's policy that ROTERs should not be used in their self-assessments.

Recommendation 3: The Chief, Appeals, and the National Taxpayer Advocate should ensure that the RRA 98 § 1204(b) instances of noncompliance are discussed with the responsible managers to ensure that they understand the retention standard documentation.

Management's Response: Management agreed with this recommendation and has already completed their corrective action. Specifically, the instance of Section 1204(b) noncompliance regarding the IRS's policy on the retention standard identified in this report was discussed with the responsible managers.

Recommendation 4: The Commissioners, Large Business and International, Small Business/Self-Employed, and Tax Exempt and Government Entities Divisions, and the National Taxpayer Advocate should ensure that responsible managers understand the Code of Federal Regulations § 430.206 policy violations.

Management's Response: Management partially agreed with this recommendation. Management understands the IRS's policy on the requirement that employees receive their performance plans on a timely basis and that the employees receive a final rating within 30 days of the end of their performance period. However, management does not agree that the timeliness of receipt/acknowledgement and evaluation of the performance standard is specific to the Section 1204 requirement, as stated in the IRM.

Office of Audit Comment: The IRS's 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. This requirement ensures that the employee is aware of the standards on which he/she will be evaluated. Code of Federal Regulations § 430.206 requires that an appraisal program be established that designates "an official appraisal period for which a performance plan shall be prepared, during which performance shall be monitored, and for which a rating of record shall be prepared." The Code of Federal Regulations also requires that performance plans be provided to employees at the beginning of each appraisal period and that each performance plan includes all elements that are to be used in developing a summary rating, *i.e.*, an evaluation. The IRM states that the minimum period of time for which an employee covered by a performance plan can receive a summary rating is 60 calendar days.

While these are not cited as Section 1204(b) violations, we found instances of noncompliance pertaining to the Section 1204(b) retention standard documents under the Code of Federal Regulations that were not signed and/or dated until the last month of the



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rating period or were signed and dated after the review period ended. The Section 1204 employees in these four instances received the retention standards with less than 60 calendar days remaining in their rating periods. Accordingly, these Section 1204 employees did not have the minimum period of time to be covered by a performance plan in order to be evaluated on their compliance with the retention standard. As a result, their managers were not able to evaluate these Section 1204 employees on the Fair and Equitable Treatment of Taxpayers Retention Standard.

Recommendation 5: The Chief, Criminal Investigation; the Commissioners, Large Business and International Division and Tax Exempt and Government Entities Division; and the National Advocate should ensure that responsible managers understand the quarterly certification requirements.

Management's Response: Management agreed with this recommendation and has already completed their corrective action. Specifically, the instances of Section 1204 (c) noncompliance regarding the IRS's policy on the quarterly self-certification requirements identified in this report were discussed with the responsible managers.

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:

- 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 complete *The RRA 98 Mandatory Section 1204 Briefing*. However, we determined that some managers did not properly designate their employees or themselves as Section 1204 employees within HR Connect, which affected the accuracy of the Fiscal Year 2016 Section 1204 employee and 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:

- 11 Section 1204 managers were missing from the Fiscal Year 2016 Section 1204 employee and manager listing.



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- 53 Section 1204 employees and managers were assigned the mandatory Section 1204 training during Fiscal Year 2016 and failed to complete it or provide an acceptable reason for not having completed it.
- 75 Section 1204 employees and managers were never assigned the mandatory Section 1204 training in Fiscal Year 2016 and failed to complete it as a result.

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

The Section 1204 employee and manager listing is used to identify managers who are required to comply with RRA 98 § 1204. However, we identified a few Section 1204 managers missing from the Fiscal Year 2016 employee and manager listing that the IRS provided to us. When we first compared the Fiscal Year 2016 list to the Fiscal Year 2015 list obtained during last year's review, we initially identified that 417 managers were missing. We then used the IRS's Discovery Directory to determine the current employment status of each of the 417 managers and whether they may have been in a Section 1204 manager position during Fiscal Year 2016. In so doing, we determined that 357 managers were either no longer designated as Section 1204 managers or no longer working for the IRS. However, we identified 61 managers who should have been on the Fiscal Year 2016 Section 1204 employee and manager listing but were not. One of these managers failed to correctly classify himself or herself as a Section 1204 employee in the prior fiscal year as well. When we provided this information to IRS management, it was determined that 50 of these managers were either no longer Section 1204 managers or no longer working for the IRS. As a result, we identified 11 Section 1204 managers who did not properly designate themselves within HR Connect as Section 1204 managers as of the end of Fiscal Year 2016.

After discussions with IRS management during our Fiscal Year 2015 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 of 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.

Almost all employees completed the mandatory Section 1204 training in Fiscal Year 2016

The new Section 1204 training became available to employees in the IRS's Enterprise Learning Management System in July 2016, and it requires that all Section 1204 personnel complete the course annually. As part of our testing, we requested a report containing the training status of employees who were assigned the Section 1204 mandatory training to determine whether it was completed by the end of Fiscal Year 2016. We found that 99 percent of employees completed



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the training in July, August, or September 2016. However, there was no completion date for 176 Section 1204 employees and managers, suggesting that the training was not completed timely. When we asked IRS management to explain why these 176 Section 1204 employees and managers did not complete the required Fiscal Year 2016 training, they provided the following information for 123 of them.

- 97 employees and managers were on extended leave, *e.g.*, sick leave, leave without pay, maternity leave, during Fiscal Year 2016.
- 25 of the employees and managers are no longer employed with the IRS.
- 1 employee had completed the training using hardcopy PowerPoint slides.

We also reconciled the training status report against the Section 1204 manager and employee listing provided to us to identify personnel who may not have been assigned the required training. We identified 1,277 Section 1204 employees and managers who did not appear on the aforementioned training report. When we asked IRS management to explain why these 1,277 Section 1204 employees had never been assigned the Fiscal Year 2016 training and whether they had actually completed it, they state the following for 1,172 Section 1204 employees:

- 1,010 employees and/or managers had actually completed the training during Fiscal Year 2016 and may have been left off the training status report due to seasonal employment.
- 62 employees and/or managers went on extended leave during Fiscal Year 2016.
- 89 employees and/or managers left the IRS during Fiscal Year 2016.
- 11 employees and/or managers were incorrectly designated as Section 1204 employees.

In addition, there were 30 employees for whom we were unable to make a determination based on the IRS responses provided to us. After evaluating IRS considerations provided above as well as other information provided by the IRS, we determined that only 231¹⁶ of 35,393 Section 1204 designated employees and managers did not complete the mandatory Section 1204 training during Fiscal Year 2016. This reflects a completion rate greater than 99 percent. However, if all Section 1204 employees and managers are not annually receiving the mandatory training, taxpayer rights may not be protected, resulting in unfair treatment by the IRS. A lapse in

¹⁶ This represents the number of Section 1204 employees who failed to complete the mandatory Section 1204 training during Fiscal Year 2016. It was calculated as the sum of the 75 Section 1204 employees and managers who were never assigned the mandatory training, the 53 Section 1204 employees and managers who were assigned the training and failed to complete it, the 30 employees and managers who failed to complete the training and for whom no determination could be made, the 62 employees and managers who went on extended leave during Fiscal Year 2016, and the 11 employees who were incorrectly designated as Section 1204 personnel.



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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 6: 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 personnel within HR Connect and ensure that the mandatory Section 1204 training is assigned and completed within 90 calendar days.

Management's Response: Management agreed with this recommendation and already has completed their corrective action. Specifically, IRM 1.5.3, Manager's Self-Certification and the Independent Review Process, instructs Section 1204 managers to review and update their own and/or their 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. Annual mandatory briefings include Section 1204 training, which was assigned to all designated Section 1204 employees and managers on July 10, 2017, and must be completed within 90 days. To address new hires efficiently, the Human Capital Office provides Leadership, Education, and Delivery Services' weekly reports to assign mandatory Section 1204 training automatically to new employees' learning plans.

Office of Audit Comment: Management did not address the part of our recommendation to ensure that the managers identified in this report are notified to properly designate their employees and/or themselves as Section 1204 personnel within HR Connect. In their response, management stated that the IRM instructs Section 1204 managers to review and update their own and their employees' HR Connect profiles. However, that policy was in effect at the time the managers identified in this report failed to designate their employees and/or themselves as Section 1204 personnel for Fiscal Year 2016.¹⁷ As such, we still believe it to be beneficial to ensure that these specific managers comply with this policy and properly designate their employees and/or themselves as Section 1204 personnel going forward.

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

We interviewed a judgmental sample of 42 Section 1204 managers and 16 Section 1204 employees to determine if they had: 1) a clear understanding of a ROTER statistic and 2) any

¹⁷ IRM 1.5.3.8(12) (Feb. 5, 2015).



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knowledge of the Fair and Equitable Treatment of Taxpayers Retention Standard as it relates to Section 1204.¹⁸ We determined that:

- All managers stated that they had a clear understanding of ROTERs, three managers could not provide an accurate example of a ROTER statistic, and 10 managers provided both accurate and inaccurate examples of ROTER statistics.
- Many employees stated that they had some degree of understanding of ROTERs, three employees could not provide an accurate example of a ROTER statistic, and one employee provided both accurate and inaccurate examples of ROTER statistics.
- Most managers stated that they understood the retention standard, 13 managers could not accurately define what the retention standard is, and 14 managers provided both accurate and inaccurate definitions of the retention standard, while one manager claimed that the retention standard did not apply.
- Many employees stated that they were familiar with the retention standard, 10 employees could not accurately define what the retention standard is, six employees provided both accurate and inaccurate definitions of the retention standard, and four employees claimed no understanding of the retention standard.
- Most of the managers stated that they have discussed the retention standard with their employees, 14 managers discussed and explained the standard with their employees, six managers told their employees to treat the taxpayer fairly, and two managers told their employees not to use ROTERs.

When we asked the sampled managers to provide an example of a ROTER, some managers gave incorrect examples of ROTER statistics, such as case closures. This is an example of an outcome-neutral measure. Managers may use this type of example 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 meaningful 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.

The IRM states that the retention standard is used to make certain that all employees make a good-faith effort in the fair and equitable treatment of taxpayers. The manager must coach an employee on how to prevent an occurrence of unacceptable customer treatment and the importance of adhering to the Fair and Equitable Treatment of Taxpayers Retention Standard.¹⁹

¹⁸ We interviewed 16 Section 1204 employees, 35 Section 1204 first-line managers, and seven Section 1204 second-line managers.

¹⁹ IRM 1.5.3.7.2(1) (Feb. 5, 2015).



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Further, the IRM states that an employee's receipt and acknowledgement of the Fair and Equitable Treatment of Taxpayers Retention Standard means that the manager has discussed the retention standard, including:

- Behaviors that allow the employee to meet the retention standard.
- Circumstances that may result in a determination that the employee does not meet the retention standard.
- Potential impact of not meeting the retention standard.²⁰

Additionally, the IRS provided a mandatory self-study training briefing in July 2016 that was to be taken by all designated Section 1204 employees and managers through the Enterprise Learning Management System. The training took approximately 30 minutes to complete and:

- Defined a Section 1204 employee or manager.
- Identified key components of Section 1204.
- Provided instructions and examples on designating Section 1204 employees and managers within HR Connect as part of the Section 1204 quarterly certification process.
- Discussed tax enforcement results, ROTERs, imposing/suggesting production quotas or goals, quantity measures, quality measures, receipt and acknowledgement of the Fair and Equitable Treatment of Taxpayers Retention Standard, and evaluating retention standard performance.
- Described the process for management's quarterly self-certification of compliance with Section 1204, including processes involving Section 1204 new hires and new Section 1204 managers.
- Explained that annual reviews are conducted by the Office of the Chief Financial Officer and TIGTA to assess Section 1204 compliance and provided a list of Section 1204 documents that are reviewed.

We reviewed the mandatory Section 1204 briefing assigned to Section 1204 managers and employees in July 2016 and noted that key information is only available to employees and managers as links to the pertinent IRM sections within the training module and not on the slides themselves. For example, the following items are available via these links:

- Specific examples of tax enforcement results (*e.g.*, dollars collected, number of prosecutions, liens filed) or prohibited data, statistics, compilations of information, or other numerical or quantitative measures which may be considered ROTER violations if used improperly.

²⁰ IRM 1.5.3.7.2(2) (Feb. 5, 2015).



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- Reference that managers cannot use a tax enforcement result from one case to evaluate an employee or suggest production goals or quotas, *e.g.*, praising an employee for submitting a fraud referral.
- Specific examples of quantity and quality measures that are permissible within the scope of a performance appraisal, *e.g.*, cases started, cases closed, cycle time, overage cases.

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. We believe that managers and employees would benefit greatly from an increased knowledge of ROTERs. We also believe that expanding the training to include more information about the nature of ROTERs would be beneficial to IRS employees. While almost all Section 1204 employees and managers took the mandatory training, continued emphasis would allow managers and employees to be more knowledgeable on RRA 98 § 1204.

Recommendation

Recommendation 7: The Deputy Commissioner for Operations Support should ensure that IRS efforts to achieve full compliance with RRA 98 § 1204 procedures are strengthened by expanding management's emphasis on employee behaviors that meet the Fair and Equitable Treatment of Taxpayers Retention Standard and by expanding the mandatory Section 1204 briefing to include examples of tax enforcement results or prohibited data, statistics, compilations of information, or other numerical or quantitative measures that would and would not constitute a ROTER violation within the context of a performance appraisal directly on the slides.

Management's Response: Management agreed with this recommendation and has already completed their corrective action. Specifically, the Office of the Chief Financial Officer updated its Quarterly Certification instructions, Section 1204 quarterly certification forms, and IRM 1.5.3 directing managers to review the status of retention standard behavior discussions for employees with rating periods beginning in the current quarter as part of the review process. Management will also assess whether to update the Section 1204 mandatory briefing in Fiscal Year 2018 (the Fiscal Year 2017 Section 1204 mandatory briefing had already been deployed before the issuance of this recommendation).



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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 our objective, we:

- I. Determined whether 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. Obtained the Fiscal Year³ 2016 Section 1204 employee and manager listing from the Office of the Chief Financial Officer's Section 1204 Program Manager and the Fiscal Year 2015 Section 1204 employee and manager listing provided by the IRS during TIGTA's Fiscal Year 2016 review.
 2. Selected Santa Ana, California, and Albuquerque, New Mexico, as audit sites for interviews according to the sampling plan.
 3. Identified the population of potential first-line managers and their employees for each operating division/function by using the Section 1204 employee and manager listings obtained in Step I.A.1 and by researching the Discovery Directory.
 4. From the population determined in Step I.A.3, judgmentally selected five first-line managers from each of the two cities selected in Step I.A.2 and 30 first-line managers from 25 other cities.
 5. Identified a list of potential employees who are in the groups of the first-line managers selected in Step I.A.4 by using the Section 1204 employee and manager population obtained in Step I.A.3 and researching the Discovery Directory.
 6. Judgmentally selected three employees from each first-line manager using the employee listing prepared in Step I.A.5.

¹ Pub. L. No. 105-206, 112 Stat. 685.

² A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. We selected judgmental sampling method throughout the audit in order to judgmentally sample managers and employees who were in the same group on both listings and who were located in cities that had not been previously reviewed by TIGTA or the IRS.

³ See Appendix V for a glossary of terms.



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- B. Electronically 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.
 - 1. Contacted the Office of the Chief Financial Officer's Section 1204 Program Manager and the appropriate operating division/function Section 1204 program coordinator to obtain performance evaluation documentation, case reviews, and workload reviews for the 105 employees and 35 first-line managers selected for review.
 - 2. Obtained and 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. Discussed the identified exceptions with the national Section 1204 Program Coordinator and the appropriate operating division/function Section 1204 program coordinator for agreement to the facts and to identify the causes for the potential violations.
 - D. Verified that Section 1204 managers were correctly classified within HR Connect by matching the Fiscal Year 2016 Section 1204 employee and manager listing to the Fiscal Year 2015 Section 1204 employee and manager listing to identify any managerial changes between the two years. For any managers who were removed from the Fiscal Year 2016 listing, we used the Discovery Directory to determine their current employment/management designation.
- II. Determined whether the judgmentally sampled first-line managers and second-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 2016 self-certification documents from the selected first-line managers.
 - 1. Reviewed the self-certification documents submitted by the managers to establish whether they were completed timely and signed appropriately.
 - B. Discussed any self-certification exception cases with the national Section 1204 Program Manager and the appropriate operating division/function Section 1204



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- program coordinator, 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 a list of all Section 1204 employees and managers who were assigned the Section 1204 training in Fiscal Year 2016 to ensure that all Section 1204 employees and managers completed the mandatory training.
 - D. Interviewed a judgmental sample of 16 Section 1204 employees, 35 Section 1204 first-line managers, and seven Section 1204 second-line managers to determine whether they understood what ROTERs were and could provide an example as well as whether the employees understood the retention standard and whether the retention standard was discussed with employees during the rating period.

Data validation methodology

We obtained the Fiscal Year 2016 fourth quarter Section 1204 employee and manager listing from the Office of the Chief Financial Officer and the Fiscal Year 2015 fourth quarter Section 1204 employee and manager listing provided by the IRS during TIGTA's Fiscal Year 2016 review. We used these listings 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. These tests determined that the data were sufficiently reliable and could be used to meet the objective of this audit.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: the guidelines and rules related to using ROTERs in a way as to improperly influence the handling of taxpayer cases and retention standard guidance. We evaluated these controls by reviewing judgmental samples of performance documents, including available midyear and annual performance reviews, employee self-assessments, workload reviews, case reviews, 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.



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Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Christina M. Dreyer, Director
Timothy F. Greiner, Audit Manager
Reatsamay Ly, Lead Auditor
Shalin Basnayake, Senior Auditor



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Appendix III

Report Distribution List

Commissioner
Office of the Commissioner – Attn: Chief of Staff
Chief, Appeals
Chief, Criminal Investigation
Chief Financial Officer
National Taxpayer Advocate
Commissioner, Large Business and International Division
Commissioner, Small Business/Self-Employed Division
Commissioner, Tax Exempt and Government Entities Division
Commissioner, Wage and Investment Division
Director, Office of Audit Coordination



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Appendix IV

*Recent Audit Reports Related
to This Statutory Review¹*

TIGTA, Ref. No. 2016-30-088, *Fiscal Year 2016 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Sept. 2016).

TIGTA, Ref. No. 2015-30-083, *Fiscal Year 2015 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Sept. 2015).

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).

¹ This list provides the six most recent of the 18 previous reports issued by TIGTA.



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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 related to the organization, administration, and operation of the IRS.



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Appendix VI

Management's Response to the Draft Report



CHIEF FINANCIAL OFFICER

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

August 17, 2017

MEMORANDUM FOR MATTHEW A. WEIR
ASSISTANT INSPECTOR GENERAL FOR AUDIT
(COMPLIANCE AND ENFORCEMENT OPERATIONS)

FROM:

Ursula S. Gillis *Ursula S. Gillis*
Chief Financial Officer

SUBJECT:

Draft Audit Report – Fiscal Year 2017 Statutory Audit of
Compliance with Legal Guidelines Restricting the Use of Tax
Enforcement Results (Audit # 201730007)

Thank you for the opportunity to review the draft report entitled, *Fiscal Year 2017 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Tax Enforcement Results (Audit # 201730007)*. We appreciate you acknowledging that the IRS ensures that its managers generally do not use Records of Tax Enforcement Results (ROTERTs) and/or production goals or quotas to evaluate employees, and that the IRS recognizes its responsibility to protect taxpayer rights.

We agree with most of the report recommendations, but disagree with some of the Section 1204(b) policy violations cited in the audit report. IRM 6.430, *Performance Management*, requires managers to share performance plans with employees at the beginning of performance periods. This policy is reinforced in Leaders' Alerts articles, training, and job aids. However, IRM 1.5.3.4.6(8) states "[t]imeliness of receipt and acknowledgement (sharing) and evaluation (rating) for the performance standard is not a Section 1204 requirement," so retention standard acknowledgements and evaluation documents signed more than 30 days after the beginning or end of the performance period are not Section 1204(b) instances of non-compliance.

We discuss our completed and proposed corrective actions to your recommendations 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 Commissioner, Small Business/Self-Employed Division 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. The CFO confirmed that the named business units discussed the Section 1204(a) violations identified in this report, including a review of guidelines on the use of ROTERs, with the responsible managers.

IMPLEMENTATION DATE

August 4, 2017 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 2

The Commissioner, Large Business and International Division, the National Taxpayer Advocate and the Commissioner, Small Business/Self-Employed Division should ensure that the noncompliance identified in this report related to the prohibition on including ROTERs in an employee's self-assessment is discussed with the responsible employees and their managers so that they understand the IRS's policy that ROTERs should not be used in self-assessments.

CORRECTIVE ACTION

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

IMPLEMENTATION DATE

August 4, 2017 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A



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RECOMMENDATION 3

The Chief, Appeals and the National Taxpayer Advocate should ensure that the RRA 98 § 1204(b) instances of noncompliance are discussed with the responsible managers to ensure that they understand the retention standard documentation.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO confirmed that the named business units discussed the IRS policy on 1204(b) noncompliance regarding the retention standard requirements identified in this report with the responsible managers.

IMPLEMENTATION DATE

August 4, 2017 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 4

The Commissioners, Large Business and International, Small Business/Self-Employed, Tax Exempt and Government Entities Divisions and the National Taxpayer Advocate should ensure that responsible managers understand the Code of Federal Regulations § 430.206 policy violations.

CORRECTIVE ACTION

The IRS partially agrees with this recommendation. The IRS's policy is to ensure that employees receive their performance plans timely, and that they receive a final rating within 30 days of the end of their performance period. This is consistent with the requirements of 5 CFR §430.206. However, neither the law nor any regulations establish timeliness of receipt/acknowledgement (sharing) and evaluation (rating) for the performance standard as a specific Section 1204 requirement. IRM 1.5.3.4.6(8) describes IRS's policy, and similarly states that timeliness is not an indicator of Section 1204 non-compliance. Therefore, retention standard acknowledgement and evaluation documents signed 30 days after the beginning of the performance period and/or 30 days after the end of the performance period are not counted as Section 1204(b) instances of non-compliance for self-certification reporting.

IMPLEMENTATION DATE

August 4, 2017 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A



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RECOMMENDATION 5

The Chief, Criminal Investigation; the Commissioners, Large Business and International Division and Tax Exempt and Government Entities; and the National Advocate should ensure that responsible managers understand the quarterly certification requirements.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO confirmed that the named business units discussed the 1204(c) instances of noncompliance regarding the quarterly self-certification identified in this report with the responsible managers.

IMPLEMENTATION DATE

August 4, 2017 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 6

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 personnel within HR Connect and ensure that the mandatory Section 1204 training is assigned and completed within 90 calendar days.

CORRECTIVE ACTION

The IRS agrees with this recommendation. IRM 1.5.3, *Manager's Self-Certification and the Independent Review Process*, instructs Section 1204 managers to review and update their own and/or their 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. Annual mandatory briefings include Section 1204 training, which was assigned to all designated Section 1204 employees and managers on July 10, 2017, and must be completed within ninety days. To address new hires efficiently, the Human Capital Office (HCO) provides Leadership, Education, and Delivery Services' weekly reports to assign mandatory Section 1204 training automatically to new employees' learning plans.

IMPLEMENTATION DATE

July 10, 2017 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A



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RECOMMENDATION 7

The Deputy Commissioner for Operations Support should ensure that IRS efforts to achieve full compliance with RRA 98 § 1204 procedures are strengthened by expanding management's emphasis on employee behaviors that meet the Fair and Equitable Treatment of Taxpayers Retention Standard, and by expanding the mandatory Section 1204 briefing to include examples of tax enforcement results or prohibited data, statistics, compilations of information, or other numerical or quantitative measures that would and would not constitute a ROTER violation within the context of a performance appraisal directly on the slides.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO updated its Quarterly Certification instructions, Section 1204 quarterly certification forms, and IRM 1.5.3, directing managers to review the status of Retention Standard behavior discussions for employees with rating periods beginning in the current quarter as part of the review process. HCO also sends to managers a quarterly Leaders' Alert reminder of the Retention Standard behavior discussion requirement referenced in IRM 1.5.3.

The IRS will assess whether to update its Section 1204 mandatory briefing in FY 2018. The IRS deployed its FY 2017 Section 1204 mandatory briefing before TIGTA issued its draft report containing this recommendation.

IMPLEMENTATION DATE

July 16, 2018

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A