TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Fiscal Year 2022 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

September 27, 2022

Report Number: 2022-30-067

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HIGHLIGHTS: Fiscal Year 2022 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

Final Audit Report issued on September 27, 2022 **Report Number 2022-30-067**

Why TIGTA Did This Audit

TIGTA is required under Internal Revenue Code § 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 Section 1204 of the IRS Restructuring and Reform Act of 1998 (RRA 98).

Impact on Tax Administration

Section 1204(a) of RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results (ROTER) or base employee successes on meeting ROTER goals or quotas. Use of ROTERs to manage IRS employees is unlawful and may create the misperception that safeguarding taxpayer rights is secondary to IRS enforcement results. Section 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. Managers are required to talk to their employees about the standard for the fair and equitable treatment of taxpayers at the beginning of their performance rating period.

What TIGTA Found

TIGTA identified the following instances of noncompliance with subsections of RRA 98 Section 1204:

- Section 1204(a) – 12 instances in which a ROTER was used to evaluate an employee. One additional violation was self-reported by the IRS as a result of its quarterly certification process.
- Section 1204(b) – 12 instances in which IRS management failed to either maintain the retention standard documentation (*i.e.*, performance standard to ensure fair and equitable treatment of taxpayers) or ensure that it was appropriately signed and dated. The Internal Revenue Manual requires both the receipt and acknowledgment of the retention standard, as well as the performance rating, be filed in the employee performance file and retained for four years.

In addition, TIGTA identified four instances in which employees completed self-assessments with respect to their performance that contained ROTERs. While not a violation of Section 1204(a), IRS policy prohibits the use of ROTERs in employee self-assessments.

IRS employees are designated as Section 1204 employees when their work exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws. TIGTA identified 15 employees who were incorrectly designated as Section 1204 in Fiscal Year 2020 and five employees who should have been designated as Section 1204 in Fiscal Year 2021.

All Section 1204 employees are required to complete a Section 1204 training annually. In Fiscal Year 2021, 10 employees failed to complete the training.

What TIGTA Recommended

TIGTA made three recommendations to mitigate the issues identified during our audit and to improve management of the program. These included ensuring that: 1) the 12 Section 1204(a) violations identified are discussed with the responsible managers to ensure that the managers understand the guidelines related to the use of ROTERs; 2) the four self-assessments that contained high-risk terms and phrases are discussed with the responsible employees and their managers so they understand IRS policy that ROTERs should not be used in self-assessments; and 3) the 12 instances of noncompliance with RRA 98 § 1204(b) are discussed with the responsible managers to ensure that they understand the requirement for retention standard documentation.

IRS management partially agreed with the first recommendation, disagreeing with seven of the 12 Section 1204(a) violations. TIGTA maintains that all instances are violations. IRS management agreed with the second recommendation and disagreed with the third.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20024

September 27, 2022

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Heather Hill

FROM: Heather M. Hill
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2022 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit # 202230007)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in the Restructuring and Reform Act of 1998 (RRA 98) § 1204.[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. RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results or base employee successes on meeting goals or quotas for record of tax enforcement results. This review is part of our Fiscal Year 2022 Annual Audit Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights.*

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

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.

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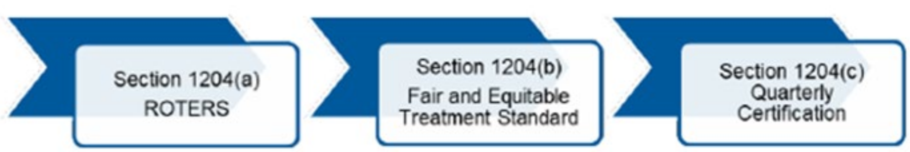
Background

Our system of taxation is dependent on taxpayers' belief that the tax laws they follow apply to everyone and that the Internal Revenue Service (IRS) respects and protects their rights under the law. The IRS Restructuring and Reform Act of 1998 (RRA 98) was signed into law on July 22, 1998, to ensure that this standard is upheld.[1] RRA 98 § 1204(a), (b), and (c) pertain to employees who exercise judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or an employee who provides direction or guidance for field programs involving Section 1204 work activities.

A Section 1204 manager is any manager who has a Section 1204 employee within their reporting structure. Section 1204 was written to ensure that IRS employee decisions on taxpayer cases and calls are based on the facts and circumstances of their situation and not indicative of the IRS trying to meet any statistical goal. Figure 1 provides a basis for the evaluation of Section 1204 employees.

Figure 1: Basis for Evaluation of Section 1204 IRS Employees

Law		
Section 1204(a)	Records of Tax Enforcement Results	The Internal Revenue Service shall not use records of tax enforcement results-- to evaluate employees; or to impose or suggest production quotas or goals with respect to such employees.
Section 1204(b)	Fair and Equitable Treatment Standard	The Internal Revenue Service shall use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance.
Section 1204(c)	Quarterly Certification	Each appropriate supervisor shall certify quarterly by letter to the Commissioner of Internal Revenue whether or not tax enforcement results are being used in a manner prohibited by subsection (a).



Source: IRS Fiscal Year (FY) 2020 RRA 98 Section 1204 Mandatory Briefing.[2]

Section 1204 employees exercise judgment in tax enforcement-related work. This means they make decisions on whether or how the IRS should pursue enforcement of the tax law, as well as determining the taxpayer's tax liability or ability to pay. Examples of tax enforcement-related work include, but are not limited to:

- Determinations to conduct a seizure.

[1] Pub. L. No. 105-206, 112 Stat. 685.

[2] See Appendix IV for a glossary of terms.

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

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

- Taxes assessed.
- Fraud referrals.
- Taxes collected.
- Abatement case closures.
- Prosecutions.

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

RRA 98 § 1204(a)

RRA 98 § 1204(a) restricts the use of enforcement statistics and prohibits the IRS from using any ROTER to evaluate employees or to impose or suggest production quotas or goals. For example, a manager may not suggest a production quota or goal to a Section 1204 employee because that would be a Section 1204(a) noncompliance and an example of an outcome, not a process. A ROTER does not include evaluating an individual case to determine if an employee exercised appropriate judgment in pursuing enforcement of the tax laws. Examples of what is allowable in the evaluation of a Section 1204 employee include:

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

Title 26 of the Code of Federal Regulations, Part 801 (Regulation 801), was revised to allow imposing or suggesting quantity goals for organizational units. The revision authorized using quantity measures to evaluate the performance of supervisory employees, non-Section 1204 employees, and organizational units. However, the inclusion of tax enforcement results with the quantity measure would create a violation of Section 1204(a).

RRA 98 § 1204(b)

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. This provision of the law was enacted to provide assurance that employee performance is focused on providing quality service to taxpayers instead of achieving enforcement results. Figure 2 provides a contrast between what is and is not fair and equitable treatment of taxpayers by Section 1204 employees.

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

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

Source: IRS FY 2020 RRA 98 Section 1204 Mandatory Briefing.

Section 1204 requires that managers talk to their employees about the standard for fair and equitable treatment of taxpayers at the beginning of their performance rating period. Managers are also required to consider this standard on the employee's annual appraisal.

Ultimately, the standard requires employees to administer the tax laws fairly and equitably; protect all taxpayers' rights; and treat each taxpayer with honesty, integrity, and respect.

RRA 98 § 1204(c)

RRA 98 § 1204(c) requires each "appropriate supervisor" to perform four quarterly self-certifications each year to attest to whether ROTERs, production quotas, or goals were used in a prohibited manner. The IRS defines an appropriate supervisor as the highest ranking executive in a distinct organizational unit who supervises directly or indirectly one or more Section 1204 enforcement employees. 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 Section 1204 program managers and program coordinators in each business organization are available to provide guidance to managers regarding Section 1204 issues, including the certification process.

Internal Revenue Code § 7803(d)(1) requires the Treasury Inspector General for Tax Administration (TIGTA) to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 § 1204. TIGTA has previously performed

23 annual reviews to meet this requirement.[3] Figure 3 identifies the number of potential ROTER violations identified during reviews of the IRS's compliance during FYs 2018 through 2020.

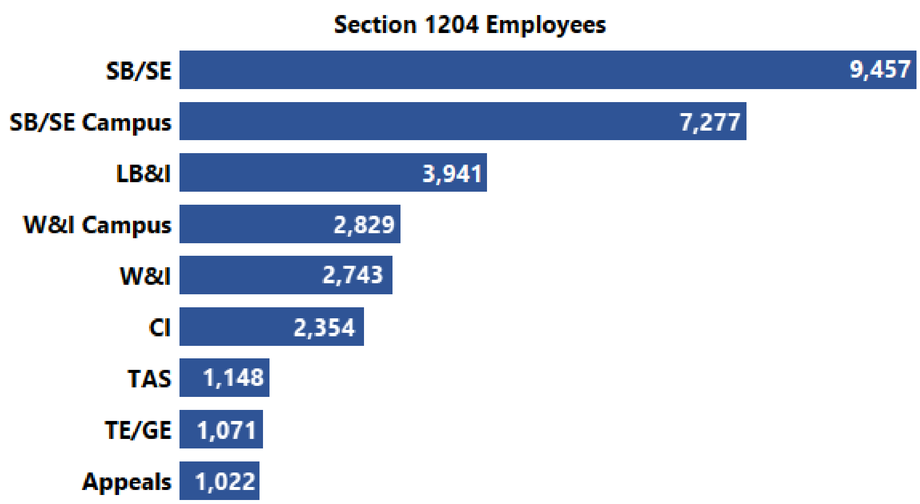
Figure 3: Number of Section 1204 Violations Found in Prior TIGTA Reviews for FYs 2018 Through 2020

Type of Violation	FY 2018	FY 2019	FY 2020
Section 1204(a) – ROTERs	0	0	4
Section 1204(b) – Retention Standard	27	86	6
Section 1204(c) – Quarterly Certification	32	1	N/A[4]
Totals	59	87	10

Source: Analysis of data from TIGTA reports for FYs 2018 through 2020.

As of September 30, 2021, there was a population of 31,842 Section 1204 individuals, of which 28,004 were Section 1204 employees and 3,838 were Section 1204 managers. Section 1204 managers either supervised a Section 1204 employee or provided guidance or direction for Section 1204 activities. Figure 4 shows how Section 1204 employees were dispersed across various business organizations within the IRS as of September 30, 2021.

Figure 4: Number of Section 1204 Employees by Business Organization (as of September 30, 2021)



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

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[3] See Appendix II for a list of recent audit reports related to this statutory review.

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

Results of Review

The IRS was not in full compliance with RRA 98 §§ 1204(a), (b), and (c) during FY 2021.[5] The following issues were identified during our review:

Section 1204(a) – 12 violations associated with the use of ROTERs during our review of employees' performance evaluations. The IRS also self-reported one instance of Section 1204(a) noncompliance in FY 2021, during its quarterly certification process.

Section 1204(b) – 12 instances of noncompliance in which IRS management failed to either maintain the retention standard documentation or ensure that it was appropriately signed.

Section 1204(c) – The FY 2021 quarterly certification data provided by the IRS showed several inconsistencies, such as mixed naming conventions, missing data, and certifications not being completed timely.

In 12 Instances, the IRS Violated RRA 98 Section 1204(a)

We identified 12 violations of RRA 98 § 1204(a) during FY 2021. These violations consisted of:

- Four violations associated with the use of ROTERs during our review of supervisory employees' performance evaluations.
- Eight violations associated with the use of ROTERs during our review of non-supervisory employees' performance evaluations.

In addition, the IRS self-reported one additional instance of Section 1204(a) noncompliance during its quarterly certification process. To evaluate the IRS's compliance with RRA 98 § 1204(a), we reviewed internal procedures, guidance, and prior violations for common language, terms, or phrases which have been or may be associated with ROTERs. We used computer software to analyze information in 32,300 Section 1204 employee and manager electronic performance evaluation files for use of these high-risk terms and phrases.[6] Our analysis identified 5,929 uses of these high-risk terms and phrases, associated with 4,013 unique performance evaluation documents. We manually reviewed the terms and phrases within each evaluation document for context and use. Below is an example of a Section 1204(a) violation that we found in performance evaluation files of a revenue agent:[7]

[redacted]

[5] Pub. L. No. 105-206, 112 Stat. 685.

[6] We noted key terms and phrases based on those terms or phrases provided as examples in the Internal Revenue Manual as well as violations noted in prior audits. These terms and phrases included reference to various tax enforcement terms, *e.g.*, lien, levy, seizure, fraud referral, *etc.* We also included reference to a number before the term or phrase as part of our criteria, as enforcement results are likely to be quantified. We obtained 32,300 electronic performance file evaluations associated with these Section 1204 employees and managers from the Department of the Treasury, which owns the HR Connect application that houses the IRS's performance evaluation files.

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

While the use of quantity measures for evaluating supervisory employees is allowable, their inclusion increases the risk that an evaluating supervisor may also include a tax enforcement result, resulting in a violation of Section 1204(a). In response to our FY 2021 report, the IRS agreed with TIGTA's recommendation to revise the Form 12450, *IRS Performance Management System Manager Performance Agreement*, to include a warning when evaluating managers on the use of quantity measures and their potential relationship to tax enforcement results. The IRS implemented the update for this recommendation on July 11, 2022 (after the period covered by our review).

Four employee self-assessments included ROTERS

Our review of the 4,013 performance evaluation documents flagged for containing high-risk terms and phrases identified four instances in which employees used ROTERs in self-assessments. While not a violation of Section 1204(a), the Internal Revenue Manual (IRM) 1.5.2.11.2 prohibits the use of ROTERs in self-assessments. If a self-assessment is submitted with ROTERs, procedures indicate that it should be returned to the employee for removal of the ROTERs.[8]

The Deputy Commissioner for Operations Support should:

Recommendation 1: Ensure that the 12 RRA 98 § 1204(a) violations identified by TIGTA are discussed with the responsible managers to ensure that the managers understand the guidelines related to the use of ROTERs.

> **Management's Response:** IRS management partially agreed with this recommendation. IRS management agreed with five of the 12 Section 1204(a) violations identified based on the IRS's Office of Chief Counsel, General Legal Services review and will discuss the noncompliance with the five responsible managers and employees to reinforce the law and IRS policies. IRS management disagreed with the remaining seven Section 1204(a) violations identified.
>
> > **Office of Audit Comment:** We maintain our position that the seven violations the IRS disagreed with should be classified as Section 1204(a) violations. These instances contained references from which a reasonable person would infer that the manager is evaluating an employee more favorably by including a tax enforcement result or suggesting a production goal or quota to be achieved in the employee's evaluation, and the IRS should discuss the noncompliance with the seven responsible managers and employees to reinforce the law and IRS policies.

Recommendation 2: Ensure that the four self-assessments that contained high-risk terms and phrases are discussed with the responsible employees and their managers so they understand IRS policy that these terms should not be used in self-assessments.

> **Management's Response:** IRS management agreed with this recommendation and will discuss the instances of Section 1204 noncompliance with the responsible employees and their managers regarding IRS policy that employees should not use ROTERs in their self-assessments.

[8] IRM 1.5.2.11.2 (May 5, 2012).

The IRS Continues to Be Noncompliant With Retention Standard Documents

As noted previously, 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. A "retention standard" refers to the level of performance necessary to be retained in a job. The IRM requires both the receipt and acknowledgment of the retention standard, as well as the performance rating, be filed in the employee performance file and retained for four years.[9] Compliance with RRA 98 § 1204(b) is twofold:

- The receipt and acknowledgment of the retention standard. The manager must sign and date the appropriate form indicating the sharing of the retention standard with their employee and, in turn, the employee must acknowledge receipt of the retention standard by signing and dating the form. According to the IRM, managers must provide the appropriate receipt of the retention standard form to their employees within the first 30 days of each performance period.[10]
- The annual performance reporting rating related to the retention standard. At the end of the performance period, the employee must be evaluated on the retention standard using the appropriate appraisal form.

As of September 30, 2021, the IRS had 31,842 personnel with an HR Connect indicator specifying they were a Section 1204 employee or manager.[11] Of the 31,842 employees and managers, we selected a random sample of 151 performance files to test the compliance with retention standards.[12] For 12 of the 151 sampled individuals, IRS management was unable to either provide documentation of the retention standard or the manager or employee did not sign the acknowledgement for the retention standard. Specifically, in five instances, the IRS was unable to provide retention standard documentation or the documents were missing from the employee performance files. In seven instances, either the manager or employee did not sign the acknowledgement for the retention standard. Based on our sample results, from a population of 31,842 Section 1204 employees and managers, we project there were 1,081 individuals who had a missing retention standard document in their employee performance files and 1,492 individuals who did not sign the retention standard document acknowledging the retention standard.[13]

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[9] IRM 1.5.3.3(9) (May 19, 2017).

[10] The appropriate documents for the receipt of the retention standard are Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*; Form 12450-A, *Manager Performance Agreement*; Form 12450-B, *Management Official Performance Agreement*; Form 12450-D, *Management/Program Analyst Performance Agreement (For Positions Designated as Confidential Only)*; or Form TDF 35-07, *Executive Performance Agreement*. IRM 6.430.3.3.1 (Oct. 28, 2011).

[11] The IRS provided the population of 31,842 Section 1204 employees and managers who had a 1204 HR Connect indicator as of September 30, 2021. According to the IRS, the HR Connect indicator is a one-day snapshot and not a relational database that would be updated systemically. This means designations today may be different than last week, and the IRS lacks the ability to go back in time to identify a Section 1204 population from a prior date and verify whether previous designations were historically accurate.

[12] The 151 electronic performance files were associated with 151 Section 1204 employees. Our sample was selected using a 90 percent confidence interval, 1.86 percent error rate, and ±3 percent precision factor.

[13] For the missing retention standard forms, the point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 359 and 1,804 individuals who

The IRS's internal guidelines require the documentation of the receipt and acknowledgment of the retention standard to be completed, signed, dated by both manager and employee, and retained in the employee performance files.[14] However, the IRS was operating under an evacuation order at the beginning of FY 2021 due to the Coronavirus Disease 2019 pandemic. During this time, IRS employees and managers were working in a remote environment. This initially caused a delay for IRS personnel in receiving some of the necessary documents for review. The IRS began transitioning employees back into the office in April 2022, starting with executives, managers, and supervisors. As of June 25, 2022, the IRS completed the transition to return to the office and resumed normal operations.

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

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

The Code of Federal Regulations also requires that performance plans be provided to employees at the beginning of each appraisal period, and that each performance plan include all elements that are to be used in developing a summary rating, *i.e.*, an evaluation. In addition, the IRS's own IRM states that employees must acknowledge receipt of the retention standard each year at the beginning of the rating period, even if their performance standards have not changed from the prior year. This must occur within 30 days from the beginning of the rating period.[15]

From the sample of 151 retention standard documents requested, we were only able to review 139 documents for timeliness due to five documents reported as missing and seven documents not signed. We identified 81 retention standard documents that were signed timely and 58 retention standard documents that were not signed timely. Figure 5 shows the aging breakdown of the 58 retention standard documents that were signed more than 30 days after the rating period began.

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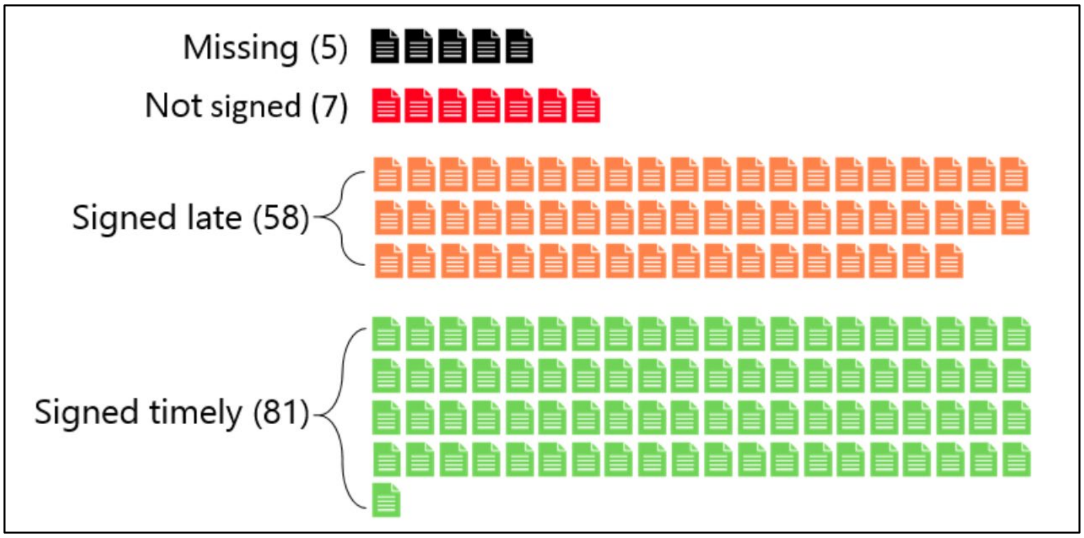
had missing retention standard documents in their employee performance files. For the missing signatures on the retention standard forms, the point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the point estimate is between 605 and 2,380 individuals who did not sign the retention standard document acknowledging the retention standard.

[14] IRM 1.5.3.3.4(3) (May 19, 2017).

[15] IRM 1.5.3.3(5) (May 19, 2017).

Figure 5: Summary of the 151 Retention Standard Documents



Source: Forms 6774/12450 with rating periods ending in FY 2021.

In FY 2019, the IRS began posting a Leader's Alert annually to remind managers to discuss and sign the retention standard documents within 30 days of the rating period.[16] As noted previously, the failure to have all performance plans and agreements signed in a timely manner does not constitute a statutory violation of Section 1204. However, TIGTA continues to believe that there are significant benefits to establishing controls that require retention standards be acknowledged at the beginning of the rating period as they afford management the opportunity to advise employees of their requirement to administer the tax laws fairly and equitably; protect taxpayer rights; and treat each taxpayer with honesty, integrity, and respect.

The Deputy Commissioner for Operations Support should:

Recommendation 3: Ensure that the 12 RRA 98 § 1204(b) instances of noncompliance are discussed with the responsible managers to ensure that they understand the requirement for retention standard documentation.

> **Management's Response:** IRS management disagreed with this recommendation. The IRS stated that TIGTA identified 58 retention standard documents that were not signed timely. IRS management stated that these retention standard documents are officially stored in the employee's performance folder, the IRS was operating under an evacuation order, and the documents provided to TIGTA were not from the official Employee Performance File.
>
> > **Office of Audit Comment:** Our recommendation addressed the 12 instances where the retention standard document was either missing entirely or the retention standard document was not signed. It did not address the 58 retention standard documents that were signed, but not signed timely. IRS management stated that the IRS was operating under an evacuation order and the documents provided to TIGTA were not from the official Employee Performance File. However, the IRS began transitioning employees back into the office in

[16] A Leader's Alert is an at-a-glance electronic newsletter for IRS executives, managers, and management officials.

April 2022, starting with executives, managers, and supervisors. As of June 25, 2022, the IRS completed the return to the office transition and resumed normal operations. TIGTA made several requests to IRS management for the missing forms, including a request after management returned to the office and another request after normal operations resumed and still did not receive the documentation. We maintain that the 12 instances of Section 1204(b) noncompliance be discussed with the responsible managers to ensure that they understand the requirement for documentation of the retention standard.

Fiscal Year 2021 Quarterly Certifications Associated With Section 1204(c) Are Not Reliable Due to Data Inconsistencies

RRA 98 § 1204(c) requires Section 1204 supervisors to quarterly certify to the IRS Commissioner whether ROTERs and/or production quotas or goals were used in a prohibited manner. In FY 2020, the IRS moved away from a hard copy paper certification process to an automated system using the Integrated Talent Management System (ITMS). The IRS piloted the new certification process in FY 2020, and in FY 2021 required all Section 1204 managers to use the ITMS to complete the quarterly certification process. Prior to each quarter, a Leader's Alert is issued to all Section 1204 managers informing them of when the quarterly certification is available and when it must be completed.

The FY 2021 quarterly certification data provided by the IRS showed the following inconsistencies:

- Mixed naming conventions for the different quarterly certifications, *i.e.*, 32370Q1, 3237Q1FY21. This made it difficult to determine which year the certification was for.
- Substantial amounts of time between the Initial Access Date and the Completion Date preventing determination of which quarter the certification belongs, *i.e.*, an Initial Access Date of December 3, 2020, but a completion date of April 30, 2021.
- Missing data for the fourth quarter of FY 2021.
- A number of instances in which the manager did not certify all four quarters. In accordance with internal procedures, the Section 1204 manager must complete the quarterly certifications in the ITMS within 45 days after the end of each quarter. We found several instances in which the quarterly certifications were completed beyond the 45-day period after the end of the quarter.

The IRS stated that it was still correcting the issues found in the new system in FY 2021 and that a majority of our concerns were corrected at the start of FY 2022. We are not making a recommendation related to data reliability inconsistencies at this time; however, we will verify the accuracy of the new certification process in our FY 2023 review and ensure that it is capturing the certification data correctly.

The Accuracy of Section 1204 Employee Designations Is Improving, but More Can Be Done

Our review of the IRS's list of Section 1204 managers and employees for FY 2021 identified 106 managers and management officials who had been designated as Section 1204 in FY 2020, but not designated as Section 1204 in FY 2021. To identify these managers and management officials, we used the FY 2020 Section 1204 population provided as part of TIGTA's previous audit and compared this to the population provided for FY 2021. After accounting for employees who no longer worked for the IRS, moved to a non-Section 1204 position, and a manager who no longer had Section 1204 employees, TIGTA identified 15 employees who were incorrectly designated as Section 1204 in FY 2020 and five employees who should have been designated as Section 1204 in FY 2021.

For the 15 employees incorrectly designated as Section 1204 employees in FY 2020, the IRS indicated that the Section 1204 indicator was corrected in HR Connect in FY 2021. For the five employees who should have been designated as a Section 1204 employee in FY 2021, the IRS stated that it is in the process of updating the Section 1204 indicator for those employees in HR Connect.

The Section 1204 designation is not a blanket designation across the IRS. The designation is limited to any employee or manager of an employee (all levels of management) who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws, or an employee whose duties involve providing direction or guidance for field programs involving Section 1204 work activities, including IRM guidance. During the year, these erroneous designations can affect the ability to deliver training timely.

Inaccurate designations also bring into question the accuracy of managers' quarterly validation that their employees are covered by Section 1204. The IRS currently uses a multistep approach to assist Section 1204 managers who need to designate themselves and their employees as Section 1204. This process requires all Section 1204 managers to use an HR Connect indicator to designate their employees and themselves as Section 1204 employees, and to validate this designation as part of the Section 1204(c) quarterly self-certification process.[17] In response to our FY 2021 report, the IRS agreed with TIGTA's recommendation to establish a control for Section 1204 managers to review and update their own and/or their employees HR Connect profile as part of the quarterly certification process and to also send out annual reminders to all employees to review their Section 1204 designation in HR Connect. The IRS is expected to have implemented the updates for this recommendation by August 15, 2022.

Although There Has Been Improvement, Section 1204 Employees Do Not Always Complete the Mandatory Training

All Section 1204 personnel are required to complete a Section 1204 self-study training briefing annually. We reviewed a training status report as of December 7, 2021, for employees assigned the Section 1204 mandatory training to determine if they completed the training during

[17] 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, and improve the accuracy of reporting, which also helps support the annual TIGTA audit and independent reviews completed by the IRS.

FY 2021. The training was to be completed by November 30, 2021. In FY 2020, TIGTA identified 395 employees who did not complete the assigned Section 1204 training. In FY 2021, TIGTA identified 316 employees who did not complete the assigned training, resulting in a 20 percent decrease from FY 2020. We asked the IRS for explanations of why the employees did not complete the assigned training and were given reasons for a majority of the employees, *i.e.*, retired, resigned, on extended leave, or indefinite suspension. We did not independently verify the accuracy of these explanations. Of the 316 employees who did not complete the assigned training, the IRS did not have a valid explanation for why the training was not completed by 10 employees.

In last year's report, we noted that the ITMS may or may not provide sufficient reminders to employees about completing the annual mandatory training because employees have the flexibility to turn notifications on and off, and also to edit their frequency. To supplement these features, in FY 2021, the IRS began periodically informing its Section 1204 employees of the mandatory training through its IRS Source home page. Because the IRS began informing its Section 1204 employees through its IRS Source home page in FY 2021, we are not making a recommendation and will assess for any improvements in our FY 2023 review.

Although there has been a decrease in the number of Section 1204 employees not completing the mandatory training, the IRS needs to ensure that managers are held accountable for ensuring that all Section 1204 personnel complete the mandatory training each fiscal year.

Internal Revenue Manual Updates Continue to Be Delayed

Internal procedures have not been updated as required by an interim guidance memorandum issued October 1, 2017, when ownership of the Section 1204 program transitioned from the Chief Financial Officer's (CFO) office to the Human Capital Officer's (HCO) office. During the transition, ownership of IRM sections related to the Section 1204 program was moved to the HCO, and the sections should have been updated by October 1, 2018. The former Section 1204 HCO Program Manager who oversaw the transition of the Section 1204 program from the CFO to the HCO stated that the deadline was not met due to competing priorities to modernize the Section1204(c) certification process and to host training sessions for their Section 1204 managers.

On December 23, 2020, the IRS issued another memorandum that referenced the change in ownership from the CFO in FY 2018 and the continued need for the HCO to update the IRM. These changes were expected to be completed by December 23, 2021, but the completion date was subsequently extended to March 15, 2022. Since March 15, 2022, the HCO has once again extended the completion date to August 15, 2022. The current HCO Program Manager explained that the reason for the delay is due to additional updates related to internal control improvements and program process updates, along with time for the IRS's IRM approval process.

We reviewed a draft of the IRMs that are expected to be in effect by August 2022. The drafts contain the change in ownership from the CFO to the HCO, the IRS's new certification process through the ITMS, and the HCO's independent review process.[18] Because the delayed IRM changes are expected to take effect soon, we are not making a recommendation; however, the

[18] Draft IRMs 1.5.2 and 1.5.3 (expected approval date Aug. 15, 2022).

continued delays in revising the IRM put the IRS at risk of lacking internal controls that could prevent its processes from operating efficiently and effectively.

Appendix I

Detailed Objective, Scope, and Methodology

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

- Determined if the IRS complied with the provisions of RRA 98 § 1204(a) when evaluating Section 1204 employees' performance. We used computer software to analyze information in 32,300 Section 1204 employee and manager electronic performance evaluation files for use of high-risk terms and phrases.[1]
- Determined if the IRS complied with the provisions of RRA 98 § 1204(b) when evaluating Section 1204 employees' performance.[2] From the 31,842 Section 1204 employee and manager electronic performance evaluation files, we selected a random sample of 151 performance files to test compliance with the retention standard.[3]
- Determined if Section 1204 managers complied with RRA 98 § 1204(c) by certifying by letter whether or not ROTERs were used in a manner prohibited by subsection (a).
- Determined whether the mandatory RRA 98 § 1204 training for managers and employees adequately addresses the use of ROTERs and/or the retention standards, whether all Section 1204 managers and employees completed the training for FY 2021, and whether the employees had a general understanding of these requirements.

Performance of This Review

This review was performed with information obtained from the Office of the Chief, Appeals; the Office of the IRS HCO; the Office of the Chief, Criminal Investigation; the Office of the National Taxpayer Advocate; the Large Business and International Division; the Small Business/Self-Employed Division; the Tax Exempt and Government Entities Division; and the Wage and Investment Division from December 2021 through May 2022. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Robert Jenness, Director; Michele Jahn, Audit

[1] We obtained 32,300 electronic performance file evaluations associated with these Section 1204 employees and managers from the Department of the Treasury, which owns the HR Connect application that houses the IRS's performance evaluation files. Of the 32,300 files, 4,013 files were recognized by SAS Contextual Analysis as having a high-risk term or phrase.

[2] The IRS provided the population of 31,842 Section 1204 employees and managers as of September 30, 2021.

[3] Our sample was selected using a 90 percent confidence interval, 5 percent error rate, and ±3 percent precision factor.

Manager; Ken Henderson, Lead Auditor; Jonathan Lee, Senior Auditor; Charles Gambino, Auditor; and Jonathan Elder, Data Analytics Manager (Data Analytics).

Validity and Reliability of Data From Computer-Based Systems

We obtained the FY 2021 Section 1204 employee and manager list from the IRS HCO. We used this list to develop our stratified sampling plan. Our sampling plan was developed in consultation with our statistician. We also obtained the population of evaluations completed in FY 2021 from the Department of the Treasury. To determine the reliability of our datasets, we reviewed the data for duplicates, identified any missing information, and compared the data to the Discovery Directory. We also reviewed existing information about the data and the system that produced them, and interviewed agency officials within the IRS and the Department of the Treasury knowledgeable about the data. These tests determined that the data were sufficiently reliable and could be used to meet the objective of this audit.

Internal Controls Methodology

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

Appendix II

Recent Audit Reports Related to This Statutory Review

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

TIGTA, Report No. 2020-30-059, *Fiscal Year 2020 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcements Results* (Sept. 2020).

TIGTA, Report No. 2019-30-056, *Fiscal Year 2019 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcements Results* (Sept. 2019).

TIGTA, Report No. 2018-30-055, *Fiscal Year 2018 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcements Results* (Aug. 2018).

TIGTA, Report. No. 2017-30-071, *Fiscal Year 2017 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Sept. 2017).

TIGTA, Report. 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).

Appendix III

Management's Response to the Draft Report

HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

9/12/22

MEMORANDUM FOR HEATHER M. HILL
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Kevin Q. McIver Kevin Q. McIver Digitally signed by Kevin Q. McIver Date: 2022.09.12 12:55:18 -04'00'
IRS Human Capital Officer

SUBJECT: Draft Audit Report – Fiscal Year 2022 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

Thank you for the opportunity to review and comment to the draft report entitled, Fiscal Year 2022 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit# 202230007). We appreciate your acknowledgement that the IRS recognizes its responsibility to protect taxpayer rights. With an IRS workforce of nearly 32,000 people subject to Section 1204 and the Reform and Restructuring Act of 1998 (RRA 98), most IRS managers do not use Records of Tax Enforcement Results (ROTERs), and/or production goals or quotas to evaluate employees.

We take our oversight role seriously and are gratified to note that the number of findings for the Fiscal Year (FY) 2021 program year reduced from the previous report, despite the dual challenges of operating within an unprecedented COVID-19 pandemic environment while under an evacuation order that forced the IRS to work in a remote environment.

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

We agree with the recommendations in this report with the following exceptions:

- Based on a review by Chief Counsel, General Legal Services, we do not agree to seven of the Section 1204 (a) violations.
- Based on IRM policy guidance, we do not agree with the Section 1204 (b) instances of non-compliance cited in the audit report. The requirement to share the performance plan at the beginning of the performance period is found in IRM 6.430 Performance Management. This policy is reinforced in guidance provided in Leader's Alert articles, training and job aids. According to IRM 1.5.3.8.6 (8), Counting and Addressing Non-Compliance with the Retention Standard, timeliness of acknowledging (sharing) and evaluation (rating) for the performance standard is not a Section 1204 requirement. This means that retention standard acknowledgement and evaluation documents signed 30 days after the beginning

of the performance period, and 30 days after the end of the performance periodare not counted as Section 1204 (b) instances of non-compliance.

Attached is a detailed response outlining the corrective actions that the Human Capital Office will take to address your recommendations. If you have any questions, please contact me at (202) 317-3174 or a member of your staff may contact Dr. Sheila Wright, Director, Office of Human Resources Strategy at (202) 317-6498.

Attachment

Attachment

Recommendation 1:

Ensure that the 12 Section 1204(a) violations identified by TIGTA are discussed with the responsible managers to ensure that the managers understand the guidelines related to the use of ROTERs.

Corrective Action:

The IRS partially agrees with this recommendation for five findings based on the Chief Counsel, General Legal Services review results.

Implementation Date:

May 31, 2023

Responsible Official:

IRS Human Capital Officer

Recommendation 2:

Ensure that the four self-assessments that contained high-risk terms and phrases are discussed with the responsible employees and their managers so they understand IRS policy that these terms should not be used in self-assessments.

Corrective Action:

The IRS agrees with this recommendation and will ensure that the Section 1204 instances of non-compliance will be discussed with the responsible employees and their managers regarding IRS policy that bargaining units and non-bargaining unit employees should not use ROTERs in their self-assessments.

Implementation Date:

May 31, 2023

Responsible Official:

IRS Human Capital Officer

Recommendation 3:

Ensure that the 12 RRA 98 § 1204(b) instances of noncompliance are discussed with the responsible managers to ensure that they understand the requirement for retention standard documentation.

Corrective Action:

The IRS disagrees with this recommendation. TIGTA identified 58 retention standard documents that were not signed timely, that is greater than 30 days after the rating period began. These documents primarily consisted of Forms 6774 which are officially stored in the employee's performance folder. The IRS was operating under an evacuation order and the documents provided to TIGTA were not from the official Employee Performance File. Additionally, while Section 1204 requires the fair and equitable treatment of taxpayers (FETT) retention standard, it does not require the 30-day receipt and acknowledgement.IRS performance management guidance establishes the 30-day requirement and issued Leader's Alert pertaining to the requirement.

Implementation Date:

N/A

Responsible Official:

IRS Human Capital Officer

Appendix IV

Glossary of Terms

Term	Definition
Discovery Directory	A computer system available to IRS personnel that provides information on IRS employees including their names, job title, job location, and management level.
Employee Performance File	A system consisting of all performance records maintained on an employee.
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.
Integrated Talent Management System	One system which consolidates several human resource systems and includes four primary human resource management modules: Learning, Performance Management, Succession Planning, and Workforce Planning.
Internal Revenue Manual	The primary official source of instructions to staff related to the organization, administration, and operation of the IRS.

Appendix V

Abbreviations

CFO	Chief Financial Officer
FY	Fiscal Year
HCO	Human Capital Office
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
ITMS	Integrated Talent Management System
ROTER	Record of Tax Enforcement Results
RRA 98	Restructuring and Reform Act of 1998
TIGTA	Treasury Inspector General for Tax Administration

To report fraud, waste, or abuse,
call our toll-free hotline at:

(800) 366-4484

By Web:

www.treasury.gov/tigta/

Or Write:

Treasury Inspector General for Tax Administration

P.O. Box 589

Ben Franklin Station

Washington, D.C. 20044-0589

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