

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2025 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

September 22, 2025

Report Number: 2025-300-044

HIGHLIGHTS: Fiscal Year 2025 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

Final Audit Report issued on September 22, 2025

Report Number 2025-300-044

Why TIGTA Did This Audit

We are 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

RRA 98 § 1204(a) 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. 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. The IRS defines ROTTERs as data, statistics, compilations of information, or other numerical or quantitative recording of the tax enforcement result reached in one or more cases.

Additionally, RRA 98 § 1204(b) requires all IRS employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard and RRA 98 § 1204(c) requires each appropriate supervisor to perform a quarterly self-certification of whether ROTTERs, production quotas, or goals were used in a prohibited manner. The use of ROTTERs to manage IRS employees is unlawful and may create the misperception that safeguarding taxpayer rights is secondary to IRS enforcement results.

What TIGTA Found

We did not identify any violations of RRA 98 § 1204(a) relating to the use of ROTTERs during our review of employees' performance evaluations. However, we found instances of noncompliance with two subsections of the RRA 98 § 1204 requirements. RRA 98 § 1204(b) requires that all IRS employees be held to the fair and equitable treatment of taxpayers, known as the retention standard, while § 1204(c) requires supervisors to perform a quarterly self-certification by letter to the Commissioner of the IRS on whether tax enforcement results are being used in a prohibited manner under RRA 98 § 1204(a). The violations of these provisions we found in this review are as follows:

RRA 98 § 1204	Violations or Instances of Noncompliance
RRA 98 § 1204(b) – Retention Standard	29
RRA 98 § 1204(c) – Quarterly Certifications	21

- RRA 98 § 1204(b) – 29 instances of noncompliance in different IRS business units in which IRS management failed to either maintain the retention standard documentation or ensure that it was appropriately signed. Additionally, six employees were rated as "Not Applicable" and appear to have not been properly evaluated on whether they provided fair and equitable treatment to taxpayers, as required.
- RRA 98 § 1204(c) – 21 instances where 17 managers did not complete at least one Fiscal Year 2024 quarterly certification in multiple IRS business units.

In addition, we identified six Section 1204 employees that failed to complete the Section 1204 briefing in Fiscal Year 2024.

What TIGTA Recommended

We made five recommendations in this report, including that the IRS discuss the noncompliance issues we identified with responsible managers to ensure that they understand the guidelines related to RRA 98 § 1204 and also revise the quarterly self-certification questions to clarify the language.

IRS management fully or partially agreed with four of the five recommendations; however, the IRS disagreed on the interpretation of how Section 1204(b) should be applied. We believe the work of every IRS employee has some impact on taxpayers; therefore, every employee should either be rated as "Met" or "Not Met." The IRS also disagreed with the 21 instances of RRA 98 § 1204(c), stating it has policies that allow certification in a subsequent quarter. We believe completing the certification beyond the quarter fails to follow the law and IRS's commitment to protecting the rights of taxpayers.



**TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION**

U.S. DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20024

September 22, 2025

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

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

SUBJECT: Final Audit Report – Fiscal Year 2025 Statutory Audit of Compliance
With Legal Guidelines Restricting the Use of Records of Tax Enforcement
Results (Audit No.: 2025300007)

This report presents the results of our review of whether the Internal Revenue Service (IRS) complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in the 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. RRA 98 § 1204 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 2025 Annual Audit Plan and addresses the major management and performance challenge of *Tax Compliance and Enforcement*.

Management's complete response to the draft report is included as Appendix II. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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

Table of Contents

<u>Background</u>	Page 1
<u>Results of Review</u>	Page 5
<u>No IRS Restructuring and Reform Act of 1998 Section 1204(a) Violations Were Identified</u>	Page 6
<u>Noncompliance With the Retention Standard Remains a Concern</u>	Page 6
<u>Recommendations 1 and 2:</u>	Page 9
<u>Recommendation 3:</u>	Page 10
<u>Fiscal Year 2024 Quarterly Certifications Associated With the IRS Restructuring and Reform Act of 1998 Section 1204(c) Were Generally Completed As Required</u>	Page 10
<u>Recommendation 4:</u>	Page 11
<u>Recommendation 5:</u>	Page 12
<u>The IRS Made Progress With Its Annual IRS Restructuring and Reform Act of 1998 Section 1204 Mandatory Briefing Requirements</u>	Page 12
 Appendices	
<u>Appendix I – Detailed Objective, Scope, and Methodology</u>	Page 13
<u>Appendix II – Management’s Response to the Draft Report</u>	Page 15
<u>Appendix III – Glossary of Terms</u>	Page 20
<u>Appendix IV – Abbreviations</u>	Page 21

Background

Our tax system depends on taxpayers' belief that the tax laws 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 in July 1998 to ensure that this standard is upheld.¹ RRA 98 Section (§) 1204 was written to ensure that IRS employee decisions on taxpayer cases are based on the facts and circumstances of their situation rather than the IRS trying to meet any statistical goal. RRA 98 §§ 1204(a) and (c) pertain to employees who exercise judgement in recommending or determining whether or how the IRS should pursue tax law enforcement or an employee who provides direction or guidance for field programs involving Section 1204 work activities.² RRA 98 § 1204(b) generally applies to all IRS employees and requires them to be evaluated using a standard of "fair and equitable treatment of taxpayers." Figure 1 provides the topics of RRA 98 §§ 1204(a), (b), and (c).

Figure 1: RRA 98 § 1204



Source: RRA 98 § 1204.

A Section 1204 manager is any manager who has a Section 1204 employee within their reporting structure. Section 1204 employees exercise judgment in their work to make decisions about 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 judgments include, but are not limited to:

- Determinations to conduct a seizure.
- 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 employee's work that are considered tax enforcement results are:

- Taxes assessed.
- Taxes collected.

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

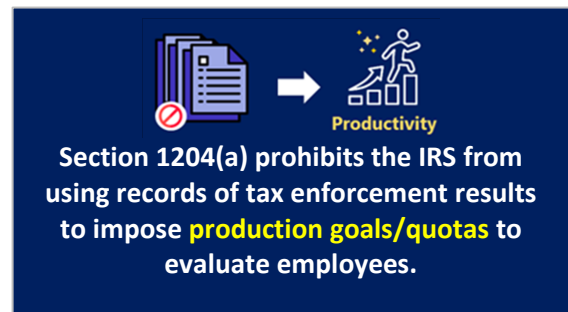
² When the IRS uses the term "Section 1204," it is referring to the obligations relating to employees engaging in enforcement activities under RRA 98 §§ 1204(a) and (c).

- Fraud referrals.
- Abatement case closures.
- Prosecutions.

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

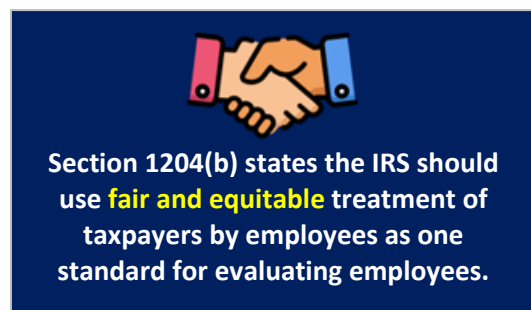
RRA 98 § 1204(a) – Records of Tax Enforcement Results

RRA 98 § 1204(a) restricts the use of enforcement statistics and prohibits the IRS from using any ROTTER to evaluate employees, or to impose or suggest enforcement-related production quotas or goals. For example, if a manager suggests an enforcement-related production quota or goal to a Section 1204 employee, then that would be considered an RRA 98 § 1204(a) violation. A ROTTER does not include evaluating an individual case to determine whether an employee exercised appropriate judgment in pursuing enforcement of the tax laws. A phrase referring to a tax enforcement result that focuses on the process rather than the outcome is acceptable in the evaluation of a Section 1204 employee.



The use of ROTTERs to manage IRS employees violates RRA 98 and may create the misperception that safeguarding taxpayer rights is secondary to IRS enforcement results.

RRA 98 § 1204(b) – Fair and Equitable Treatment Standard



RRA 98 § 1204(b) requires all IRS 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 because employees cannot retain their employment with the IRS if they do not treat taxpayers fairly and equitably. The retention standard for the fair and equitable treatment of taxpayers appears in all IRS employees' performance plans. Figure 2 provides a contrast of

what is and is not fair and equitable treatment of taxpayers by employees.

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

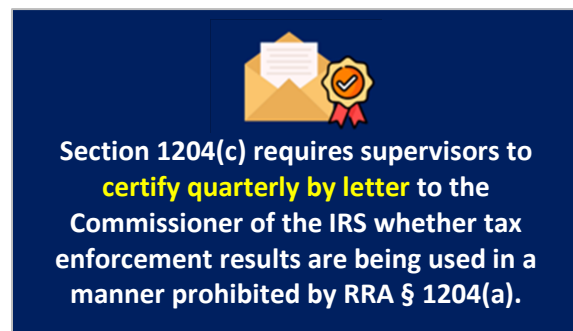
Fair and Equitable	Not Fair and Equitable
<input checked="" type="checkbox"/> Responds to taxpayers in a timely manner.	<input checked="" type="checkbox"/> Does not respond to taxpayers in a timely manner.
<input checked="" type="checkbox"/> Responds verbally or in writing with an appropriate tone, courtesy, and respect, and states facts accurately.	<input checked="" type="checkbox"/> Responds verbally or in writing with a tone or wording which is discriminatory, intimidating, and/or misrepresents facts.
<input checked="" type="checkbox"/> Advises taxpayers of full personal impact, such as interest and penalty accumulation, when the taxpayer advises they cannot pay their liability in full.	<input checked="" type="checkbox"/> Does not advise taxpayer of all options and factors that affect their liability and ability to pay.
<input checked="" type="checkbox"/> Discusses specific taxpayer cases with other employees/managers on a need-to-know basis.	<input checked="" type="checkbox"/> Shares interesting facts about a specific taxpayer's case with other employees.

Source: IRS Fiscal Year 2024 RRA 98 § 1204 Mandatory Briefing.

RRA 98 §1204(b) requires that managers talk to their employees about the standard for the fair and equitable treatment of taxpayers at the beginning of their performance rating period and the employee and manager are required to acknowledge the retention standard by signing the applicable form (hereafter referred to as the retention standard documentation) at the beginning of the performance period.³ Managers are then required to evaluate this standard the same as a Critical Job Element, except that retention standard ratings are limited to "Met," "Not Met," or "Not Applicable" 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 ethically with honesty, integrity, and respect.

RRA 98 § 1204(c) – Quarterly Certification

RRA 98 § 1204(c) requires each appropriate supervisor to perform a quarterly self-certification (hereafter referred to as certification) by letter to the Commissioner of the IRS on whether tax enforcement results are being used in a prohibited manner under RRA 98 § 1204(a). In the certification, the appropriate supervisor attests to whether ROTERs, production quotas, or goals were used in a prohibited manner. The IRS defines an appropriate supervisor as the highest-ranking executive in a distinct organizational unit who supervises directly or indirectly one or more Section 1204(a) enforcement employee(s). Current IRS procedures require each level of management, beginning with first line managers of



³ 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*; Form 12450-D *Management/Program Analyst Performance Agreement*; or SES Performance Management System, *Executive Performance Agreement*.

Section 1204 employees, to self-certify that they have not used ROTERs in a manner prohibited by RRA 98 § 1204(a). Section 1204 program managers and program coordinators in each business organization are available to provide guidance to managers regarding RRA 98 § 1204 issues, including the certification process.⁴

Internal Revenue Code § 7803(d)(1) requires the Treasury Inspector General for Tax Administration to determine annually whether the IRS complies with restrictions on the use of enforcement statistics under RRA 98 § 1204.⁵ We have performed 26 annual reviews to meet this requirement.

Figure 3 identifies the number of ROTER violations we identified in IRS compliance reviews during Fiscal Years (FY) 2021 through 2023.

Figure 3: Number of Section 1204 Violations or Instances of Noncompliance Identified in FYs 2021 Through 2023

RRA 98 § 1204	Violations or Instances of Noncompliance		
	FY 2021	FY 2022	FY 2023
RRA 98 § 1204(a) – ROTERs violations	12	13	7
RRA 98 § 1204(b) - Retention Standard noncompliance	12	14	30
RRA 98 § 1204(c) - Quarterly Certification noncompliance	N/A ⁶	25	28
Totals	24	52	65

Source: Analysis of data from audit reports for FYs 2022 through 2024 (data for FYs 2021 through 2023).

As of September 2024, there were 37,062 IRS employees subject to RRA 98 § 1204(a) requirements, of which 32,685 were non-supervisory employees and 4,377 were managers. Section 1204 managers either supervise a Section 1204 employee or provide guidance or direction on enforcement-related activities. We analyzed data from the IRS's HR Connect Section 1204 employee listing from the Independent Office of Appeals (hereafter referred to as Appeals), Criminal Investigation (CI), Large Business and International Division (LB&I), Taxpayer

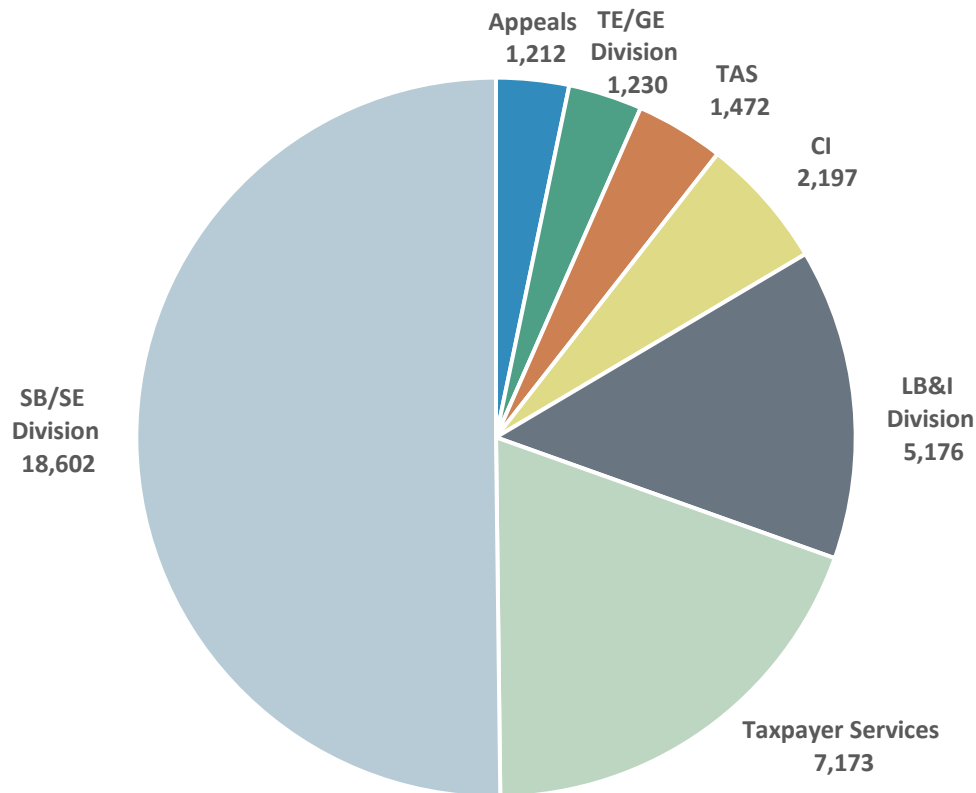
⁴ Offices subject to our Section 1204 review are IRS functional offices and operating divisions of the Independent Office of Appeals; the Office of the Chief, Criminal Investigation; the Large Business and International Division; the Small Business/Self-Employed Division; the Office of the National Taxpayer Advocate; the Tax Exempt & Government Entities Division; and Taxpayer Services (formerly the Wage and Investment Division), which are responsible for implementing the Section 1204 Program within their respective areas.

⁵ Internal Revenue Code § 7803(d)(1) states that TIGTA shall include in one of the semiannual reports under Section 5 of the Inspector General Act of 1978, an evaluation of the IRS's compliance with restrictions under Section 1204 of RRA 98 on the use of enforcement statistics to evaluate IRS employees.

⁶ In FY 2021, the IRS began using a new automated certification process that had several inconsistencies, including mixed naming conventions and missing data; therefore, we were unable to review the FY 2021 quarterly certifications. TIGTA, Report No. 2022-30-067, [Fiscal Year 2022 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results](#) (September 2022).

Advocate Service (TAS), Small Business/Self-Employed Division (SB/SE), Tax Exempt & Government Entities Division (TE/GE), and Taxpayer Services Division.⁷ Figure 4 shows Section 1204 non-supervisory employees and managers by business unit.

**Figure 4: Number of Section 1204 Personnel by
Business Unit (as of September 30, 2024)**



Source: Analysis of data from the IRS's HR Connect Section 1204 employee list.

Results of Review

During FY 2024, there were no Section 1204(a) violations identified regarding the use of ROTERs in employee and manager performance evaluations for Appeals, TAS, and the TE/GE Division. However, we identified violations with RRA 98 §§ 1204(b), and (c), as follows:

Section 1204(b) – 29 instances of noncompliance in which IRS management failed to either maintain the retention standard documentation or ensure that it was appropriately signed in Appeals, TAS, and the TE/GE Division.

Section 1204(c) – 21 instances where 17 managers did not complete at least 1 FY 2024 quarterly certification in multiple IRS business units.

⁷ See Appendix II for glossary of terms.

No IRS Restructuring and Reform Act of 1998 Section 1204(a) Violations Were Identified

We analyzed the information in 3,598 electronic performance evaluation files of Section 1204 non-supervisory employees and managers in Appeals, TAS, and the TE/GE Division for high-risk terms and phrases.⁸ Our analysis identified 766 uses of high-risk terms and phrases, associated with 441 unique performance evaluation documents.⁹ We manually reviewed the terms and phrases within each evaluation document and did not identify any ROTER violations.

Noncompliance With the Retention Standard Remains a Concern

As noted previously, RRA 98 § 1204(b) requires all IRS employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard (also known as the retention standard), not just those subject to Section 1204(a) requirements. The Internal Revenue Manual (IRM) mandates that both the receipt and acknowledgment of the retention standard, along with the performance rating, be documented in the employee's performance file and retained for four years. Compliance with RRA 98 § 1204(b) is two-fold:

- The receipt and acknowledgment of the retention standard. Within the first 30 days of each performance period, managers must provide the appropriate retention standard form to their employees. 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 also signing and dating the form.
- The annual performance 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.

We reviewed all employees, not just those that are subject to RRA 98 § 1204(a), in Appeals, TAS, and the TE/GE Division. We reviewed a random sample of 142 performance files from a population of 4,799 managers and non-supervisory employees and found 29 (20 percent) instances of noncompliance with RRA 98 § 1204(b) during FY 2024.¹⁰ Figure 5 provides the results of our review.

⁸ 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 references to various tax enforcement terms, *e.g.*, lien, levy, seizure, fraud referral. We also included references to a number before the term or phrase as part of our criteria, as enforcement results are likely to be quantified.

⁹ Of the 766 (441 unique appraisals) uses of high-risk terms and phrases, Appeals had 375 (217 unique appraisals), TAS had 249 (146 unique appraisals), and the TE/GE Division had 142 (78 unique appraisals).

¹⁰ The 142 electronic performance files were associated with employees from Appeals (45), TAS (52), and the TE/GE Division (45). Our sample was selected using a 90 percent confidence interval, 5 percent error rate, and ± 3 percent precision factor.

Figure 5: 29 Instances of RRA 98 § 1204(b) Noncompliance

Retention Standard Document:	Appeals	TAS	TE/GE Division	Totals
Missing	5	12	1	18
Not Signed	4	5	2	11
Totals	9	17	3	29

Source: Analysis of Forms 6774 and 12450 with rating periods ending in FY 2024.

The IRS's internal guidelines require employees to acknowledge receipt of their retention standard each year, even if their performance standards have not changed from the prior year. Based on our sample results from a population of 4,799 employees and managers from the Appeals, TAS, and the TE/GE Division, we project there were 607 individuals who had a missing retention standard document in their employee performance files, and 371 individuals who did not sign the retention standard document acknowledging the retention standard.¹¹

Documentation indicates that employees are still not acknowledging retention standards at the beginning of the rating period

We have historically reported on the timeliness associated with retention standard documents. Although timeliness and documentation of noncompliance are not specifically addressed in RRA 98 § 1204(b), the law requires IRS management to use the fair and equitable treatment of taxpayers as one of the standards for evaluating employee performance. For the purposes of employee evaluation, Title 5 of the Code of Federal Regulations § 430.206 requires an appraisal program designating "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."

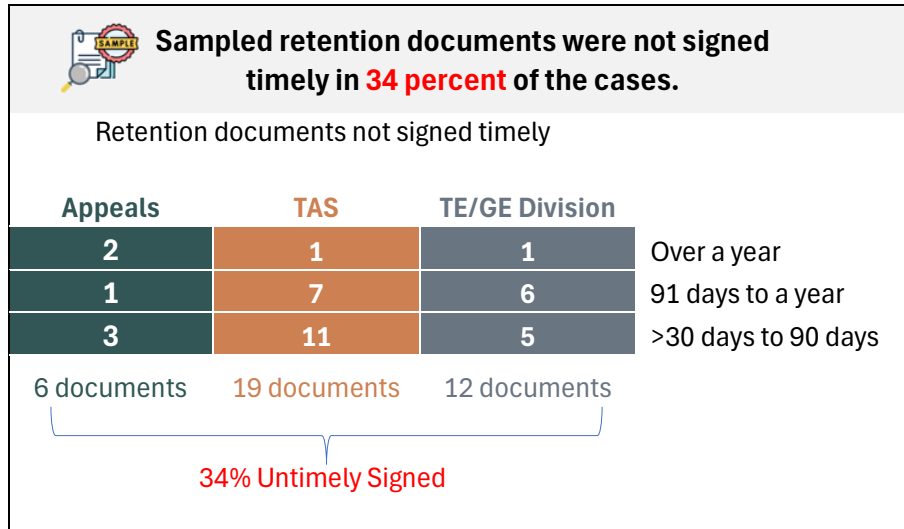
The Code of Federal Regulations also requires that performance plans be provided to employees at the beginning of each appraisal period, and that each performance plan includes all elements used in developing a summary rating, *i.e.*, an evaluation. In addition, the IRM states that employees must acknowledge receipt of the retention standard each year within 30 days from the beginning of the rating period, even if their performance standards have not changed from the prior year. The importance of the manager timely informing and obtaining acknowledgement from the employee provides assurance that: 1) the retention standards have been discussed and agreed upon by both parties, and 2) the employee is knowledgeable in providing fair and equitable treatment to taxpayers.

We assessed the timeliness of only 109 of the 142 retention standard documents because 18 documents could not be located and 11 documents were unsigned. Additionally, there were four documents that were either signed prior to the rating period or not dated.

¹¹ When projecting the results of our statistical sample for the missing retention standard forms, we are 90 percent confident that the actual total amount is between 401 and 874. When projecting the results of our statistical sample for the missing signatures on the retention standard forms, we are 90 percent confident that the actual total amount is between 211 and 600.

We identified 72 (66 percent) retention standard documents that were signed timely, and 37 (34 percent) retention standard documents that were not signed timely. Figure 6 provides the results of our review.

Figure 6: Aging of the 37 Retention Standard Documents Not Signed Timely



Source: Analysis of Forms 6774 and 12450 with rating periods ending in FY 2024.

As noted previously, the failure to have all performance plans and agreements signed in a timely manner does not constitute a statutory violation of RRA 98 § 1204(b). However, the failure of managers and their employees to timely acknowledge their responsibility to treat taxpayers fairly and equitably is a concern and not in compliance with established IRS policies. Acknowledgment of the retention standard at the beginning of the rating period ensures that employees are aware of the standard that taxpayers must be treated in a fair and equitable manner. Furthermore, IRS policies require supervisors to meet with employees within 30 days of the beginning of the appraisal period to ensure an understanding of job expectations.

The IRS considered the retention standard as “Not Applicable” for six employees

We identified 6 (4 percent) employees, from our sample of 142 from Appeals and the TE/GE Division for whom the retention standard was rated as “Not Applicable” and appear to have not been properly evaluated on whether they provided fair and equitable treatment to taxpayers, as required by Section 1204(b).¹²

As previously stated, the IRS is required to use the fair and equitable treatment of taxpayers as a performance standard for evaluating employees. The Treasury Regulations section implementing RRA 98 § 1204(b) states: “In addition to all other criteria required to be used in the evaluation of employee performance, all employees of the IRS will be evaluated on whether they provided fair and equitable treatment to taxpayers.”¹³ In general, all IRS employees and managers are evaluated according to the critical elements and standards, or other performance

¹² Of the six employees, four are from Appeals and two are from the TE/GE Division.

¹³ Treas. Reg. § 801.3(b).

criteria established for their positions. In addition, all employees and managers must be evaluated on their ability to provide fair and equitable treatment to taxpayers.

In July 2025, we reported that some employees were not being evaluated on whether they provide fair and equitable treatment to taxpayers.¹⁴ We recommended, and the IRS agreed to reevaluate the use of the “Not Applicable” rating for the retention standard in consultation with the IRS Office of Chief Counsel to ensure that all IRS employees are evaluated in accordance with the Section 1204(b) standard. In addition, we found that the IRS’s system of determining when to apply RRA 98 § 1204(b) is flawed under the law because all employees should be assessed on the standard. Current IRS internal guidance allows supervisors to evaluate the retention standard as “Met,” “Not Met,” or “Not Applicable” based on whether the employee performed duties with an impact on taxpayer issues. A June 1999 Memorandum of Understanding between the IRS and the National Treasury Employees Union allowed the three ratings for the retention standard for employees represented by the union. Under this approach, an employee is generally rated as “Not Applicable” if their position does not have an impact on taxpayer issues or outcomes. However, the “Not Applicable” rating is not specifically authorized or mentioned in Section 1204(b) or the relevant Treasury Regulations. Further, the IRS Office of Chief Counsel provided an opinion in October 2011 stating that the fair and equitable treatment standard of Section 1204(b) applies to all IRS employees.

Ensuring that employees are aware of the retention standard, timely acknowledge the retention standard, and are properly evaluated on that standard ensures that the IRS administers the tax laws fairly and equitably, protects taxpayer rights, and treats each taxpayer ethically with honesty, integrity, and respect.

Recommendation 1: The Chief, Appeals, the National Taxpayer Advocate, and the Commissioner, TE/GE Division, should discuss the 29 instances of noncompliance with RRA 98 § 1204(b) due to missing or unsigned documents with the responsible managers to ensure that they understand the retention standard documentation requirements.

Management’s Response: The IRS agreed with this recommendation and will discuss the 29 instances of noncompliance with the responsible managers to ensure that they understand the retention standard documentation requirements.

Recommendation 2: The Chief, Appeals, the National Taxpayer Advocate, and the Commissioner, TE/GE Division, should discuss the 37 instances where the retention standard was not acknowledged timely with the responsible managers, so employees are aware of the standard to treat taxpayers fairly and equitably.

Management’s Response: The IRS agreed with this recommendation and will discuss the 37 instances of noncompliance with the responsible managers. In addition, the Office of Appeals will provide additional guidance and training to all of their managers to ensure compliance and an understanding of their responsibilities and timely acknowledgment of the retention standard.

¹⁴ TIGTA, Report No. 2025-300-032, [Compliance With the Standard for the Fair and Equitable Treatment of Taxpayers Could be Improved](#) (July 2025).

Recommendation 3: The Chief, Appeals and the Commissioner, TE/GE Division, should discuss the six instances of the “Not Applicable” retention standard ratings with the responsible managers so they understand that all employees should be rated on the retention standard.

Management’s Response: TE/GE Division agrees in part. For one instance identified, TE/GE agreed that an employee was rated incorrectly and should have been rated as having met the standard and disagreed with the other instance. Appeals disagreed on all four instances noting that while all employees must be rated against the retention standard, regardless of if a 1204 employee or not (as required by 26 CFR § 801.3(b)), if an employee has not performed duties with potential impact on taxpayer issues or outcomes during the appraisal period, then “Not Applicable” is the appropriate selection.

Office of Audit Comment: We disagree with the IRS’s interpretation of how Section 1204(b) should be applied. The standard is not whether employees interact with taxpayers. The law states, “the Internal Revenue Service shall use the fair and equitable treatment of taxpayers by employees as one of the standards for evaluating employee performance.” The law does not state the employee is only rated on the standard if there is direct contact or interaction with taxpayers. For example, a management and program analyst responsible for modernizing systems and processes to improve taxpayer experience and organizational efficiency may not have direct contact with taxpayers; however, the work the employee performs has an important impact on taxpayers. We believe the work of every IRS employee has some impact on taxpayers; therefore, every employee should either be rated as “Met” or “Not Met.”

Fiscal Year 2024 Quarterly Certifications Associated With the IRS Restructuring and Reform Act of 1998 Section 1204(c) Were Generally Completed as Required

To determine RRA 98 § 1204(c) compliance, we reviewed all IRS main business units subject to RRA 98 § 1204(a) requirements. We reviewed 18,040 certifications (5,847 unique managers) spanning all 4 quarters of FY 2024 to determine whether Section 1204 managers had fulfilled their quarterly certification requirement to ensure that ROTERs, production quotas, or goals were not used in a prohibited manner. We found:

- 17,884 quarterly certifications were completed.
- 21 quarterly certifications (17 unique managers) were not completed within the required timeframe and did not have a reasonable explanation.
- 135 quarterly certifications were not completed within the required timeframe, but had a reasonable explanation such as managers were assigned in error to certify, another Section 1204 manager was identified, or there were technical issues with the Integrated Talent Management (ITM) system.

RRA 98 § 1204(c) requires Section 1204(a) supervisors to quarterly certify by letter to the Commissioner of the IRS whether ROTERs, production quotas, or goals were used in a prohibited manner. The IRM states that Section 1204 quarterly certifications are based on the fiscal year. Quarterly submissions are due from the business units to the Human Capital Office

(HCO) 45 calendar days after the end of the quarter, and the Quarterly Certification Memorandum of Record must be submitted for internal review and routed to the Commissioner of the IRS no later than 15 days after the quarterly certification due date.

In addition to reviewing whether the certification was completed, we also reviewed the responses to the Section 1204 Quarterly Electronic Certification questions for all four quarters. The questions the managers are asked during the certification are:

1. I certify to the Commissioner of Internal Revenue that I did not use records of tax enforcement results (as defined in Section 801.6) to evaluate my employee or to impose or suggest production quotas or goals this quarter.
2. While carrying out my due diligence to complete this certification, I identified what may be the inappropriate use of records of tax enforcement results. I notified my Section 1204 Program Manager of my report.

If a Section 1204 manager selects "Disagree" for the first question or selects "Yes" for the second question, the manager is stating that an unlawful ROTER was used or identified and therefore is required to report the violation within a separate system.

We identified 874 responses that warranted additional reporting on potential ROTER violations in the IRS's system. We determined that only 6 of the 874 responses were associated with a report. There were no associated reports for the remaining 868 responses. The IRS explained that 746 (86 percent) of the 868 responders answered incorrectly due to confusion with the questions and that managers did not intend to indicate that ROTERs were used to evaluate employees. The other 122 responses were attributed to other reasons, such as technical issues with the ITM system or assigned in error. Due to the large number of responses indicating confusion with the questions, we believe the self-certification questions should be revised to make it clear what the managers are certifying.

When quarterly certifications are not completed or completed improperly, there is an increased risk that ROTERs used in a manner prohibited under RRA 98 § 1204(a) are not reported. In addition, if the Commissioner of the IRS is not accurately notified of the IRS's noncompliance with RRA 98 § 1204(a) each quarter, the IRS may be in violation of RRA 98 § 1204(c).

Recommendation 4: The Chiefs, Appeals, CI, and Taxpayer Services; the National Taxpayer Advocate; and the Commissioners, LB&I and SB/SE Divisions should discuss the 21 instances of RRA 98 § 1204(c) noncompliance with the responsible managers to ensure that they understand the requirements of the Section 1204 certification process.

Management's Response: The IRS disagrees with this recommendation. The IRS states there are policies in place for missed certifications that allow the certification in a subsequent quarter. In addition, review of the identified cases and ascertaining the facts to determine whether § 1204(c) noncompliance occurred required conversations to be held with the affected managers. The LB&I and SB/SE Divisions also believed they provided reasonable explanations before the draft report was issued. The Chief of Appeals believed four of the instances were inaccurate because the respective managers were on leave at the time of certification and appropriately completed the certification process in the subsequent quarter per IRS policy.

Office of Audit Comment: While IRS provides guidance for missed certificates to be completed in the subsequent or next quarter, completing the certification beyond the quarter fails to follow the law. The IRS must certify quarterly to the Commissioner and having certifications completed more than a quarter later is a concern. After reviewing the IRS responses gathered over multiple requests, the explanations provided were untimely and inconsistent with prior responses. Further, through the quarterly self-certification process, management at every level is reminded of their commitment to administer the tax laws fairly and to protect the rights of taxpayers.

Recommendation 5: The Human Capital Officer should revise the quarterly self-certification questions to clarify the language used for the responses to increase the accuracy of the certification results and potential ROTERs reported.

Management's Response: The IRS agreed with this recommendation and will revise the quarterly self-certification questions.

The IRS Made Progress With Its Annual IRS Restructuring and Reform Act of 1998 Section 1204 Mandatory Briefing Requirements

For the FY 2024 period, 36,451 of the 36,880 employees timely completed the assigned self-study briefing (hereafter referred to as a mandatory briefing) within the 90-day required time frame. Conversely, 124 completed the mandatory briefing after 90 days and 305 employees did not complete it all. Of the 305 employees who did not complete the mandatory briefing by December 31, 2024, 299 had valid explanations, which included retirement, termination, leave of absence, briefing assigned in error, or an incorrect Section 1204 employee designation. The remaining 6 Section 1204 employees did not have a valid explanation for not completing the mandatory briefing, which is an improvement from our last 2 audits. In our FYs 2023 and 2024 reviews, we identified 52 and 34 employees, respectively, who did not have a valid reason for not completing the assigned briefing.¹⁵

All Section 1204 personnel are required to complete the RRA 98 § 1204 mandatory briefing annually. According to the IRM, the HCO is responsible for providing the mandatory briefing to managers and employees. In September 2024, we recommended, and the IRS agreed to manually perform an annual reconciliation of IRS employees with a Section 1204 indicator to those assigned the Section 1204 mandatory briefing. The IRS stated it is developing a systemic process which will be implemented by September 2026.

The mandatory RRA 98 § 1204 briefing is designed to ensure that employees are aware of the Section 1204 requirements. If the briefing is not taken, employees may be unaware of the requirements of RRA 98 § 1204, resulting in an increased risk of ROTER violations.

¹⁵ TIGTA, Report No. 2023-30-058, [Fiscal Year 2023 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results](#) (September 2023). TIGTA, Report No. 2024-300-061, [Fiscal Year 2024 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results](#) (September 2024).

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 the performance of Section 1204 employees. We used computer software to analyze information in 3,598 electronic performance evaluation files of Section 1204 employees and managers in the Appeals, TAS, and the TE/GE Divisions for the use of high-risk terms and phrases.
- Determined if the IRS complied with the provisions of RRA 98 § 1204(b) when evaluating the performance of Section 1204 and non-Section 1204 employees. The Appeals, TAS, and the TE/GE Divisions had a population of 4,799 employees (1,511 from Appeals, 1,753 from TAS, and 1,535 individuals from the TE/GE Division, respectively). Based on consultation with our statistician, we selected a stratified random sample of 142 performance files from the population of employees in Appeals (sample size = 45), TAS (sample size = 52), and the TE/GE Division (sample size = 45) to test compliance with retention standards. Our sample was selected using a 90 percent confidence interval, 5 percent error rate, and ± 3 percent precision factor.
- Determined if the Section 1204 managers complied with RRA 98 § 1204(c) by certifying whether ROTERs were used in a manner prohibited by subsection (a). We identified a total population of 18,040 certifications for all four FY 2024 quarters.
- Determined whether the mandatory RRA 98 § 1204 briefing for managers and employees adequately addressed the use of ROTERs and/or the retention standards and whether all Section 1204 managers and employees completed the briefing for FY 2024

Performance of This Review

This review was performed with information obtained from the Taxpayer Services Division headquarters in Atlanta, Georgia, and the Appeals, HCO, CI, TAS, the LB&I Division, the SB/SE Division, and the TE/GE Division, all headquartered in Washington, D.C., from November 2024 through June 2025. 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.

Data Validation Methodology

We obtained the FY 2024 Section 1204 employee and manager list, as well as the FY 2024 non-Section 1204 lists for Appeals, TAS, and the TE/GE Division from the IRS Human Capital Officer. We used these lists to develop our stratified sampling plan. Our sampling plan was developed in consultation with our contracted statistician. We also obtained the population of

evaluations completed in FY 2024 from the Department of the Treasury HR Connect system. To determine the reliability of our datasets, we reviewed the Section 1204 population data for duplicates and any missing information and compared the data to the Discovery Directory, as well as the Department of the Treasury's ITM system. 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 in a way as 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.

Management's Response to the Draft Report



HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 25, 2025

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

FROM: David P. Traynor
Acting IRS Human Capital Officer

David P. Traynor

Digitally signed by David P. Traynor
Date: 2025.08.25 14:26:32 -0500

SUBJECT: Draft Audit Report – TIGTA Audit 2025300007 Fiscal Year 2025
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 on the draft report, Fiscal Year 2025 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (ROTERTs), Audit #202530007. In general, we agree with the report language and most of the audit findings.

In accordance with Internal Revenue Manual (IRM) 1.5.2, Managing Statistics in a Balanced Measurement System, Uses of Section 1204 Statistics, the IRS regulations on the use of statistics are designed to make sure that ROTERs are not used to improperly influence the handling of taxpayer cases.

The IRS is dedicated to improving all Section 1204 components including analysis, reporting, program performance and legislative compliance. We continually monitor the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA '98) compliance through:

- (1) The Independent Review, where we assess performance documents for ROTERs terms during the current fiscal year. This enables the IRS to proactively identify and correct prohibited ROTERs language within performance documents in advance of the annual TIGTA audit.
- (2) The Section 1204 Quarterly Certification, where managers certify that they completed an assessment of performance documents to verify that prohibited language is not being used, especially the ones that give the appearance of statistical goals or measures. The IRS has a very high quarterly certification completion rate (over 99% each quarter of Fiscal Year 2024).
- (3) Annual mandatory briefings to include Section 1204 Mandatory Briefing for those managers and employees identified as Section 1204 employees (Section 1204 indicator in HR Connect) and performance management training for all employees that includes Section 1204 requirements.
- (4) Special publications addressed to the Section 1204 audience to enforce compliance/adherence to RRA '98, specifically to address the certification to the IRS Commissioner.
- (5) Section 1204 Source page which includes IRM references, alerts, contact information, and other instructional/informational resources.

Although Section 1204 compliance is very high, we continually work towards reducing the number of violations and instances of noncompliance. The IRS's detailed response to TIGTA's recommendations is attached. If you have questions, please contact me at David.P.Traynor@irs.gov, or Paul Phillips, Acting Director, Labor/Employee Relations and Negotiations, at Paul.M.Phillips@irs.gov.

Attachment

Attachment

RECOMMENDATION 1:

The Chief, Appeals, the National Taxpayer Advocate, and the Commissioner, TE/GE Division, should discuss the 29 instances of noncompliance with RRA 98 § 1204(b) due to missing or unsigned documents with the responsible managers to ensure that they understand the retention standard documentation requirements.

CORRECTIVE ACTION:

The Tax Exempt & Government Entities (TE/GE) and the National Taxpayer Advocate (TAS) agree. We will discuss the identified §1204 violations with the responsible managers. The Chief of Appeals agrees with this recommendation and will ensure the nine instances of RRA 98 §1204(b) non-compliance are addressed with the respective managers to ensure they understand the retention standard documentation requirements.

IMPLEMENTATION DATE: March 15, 2026

RESPONSIBLE OFFICIALS: Director, Shared Services, TE/GE; Deputy Executive Director Case Advocacy, Intake and Technical Support, TAS; Director, Operations Support, Independent Office of Appeals

CORRECTIVE ACTION MONITORING PLAN: The IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 2:

The Chief, Appeals, the National Taxpayer Advocate, and the Commissioner, TE/GE Division, should discuss the 37 instances where the retention standard was not acknowledged timely with the responsible managers, so employees are aware of the standard to treat taxpayers fairly and equitably.

CORRECTIVE ACTION: The TE/GE and TAS agree. We will discuss the identified instances of non-compliance with the responsible managers. The Chief of Appeals agrees with this recommendation and will ensure the six instances of untimely acknowledgement of the retention standard are addressed with the respective managers. In addition, the Independent Office of Appeals will provide additional guidance and training to all managers to ensure compliance and understanding of their responsibilities and the timely acknowledgment of the retention standard.

IMPLEMENTATION DATE: March 15, 2026

RESPONSIBLE OFFICIALS: Director, Shared Services, TE/GE; Deputy Executive Director Case Advocacy, Intake and Technical Support, TAS; Director, Operations Support, Independent Office of Appeals

CORRECTIVE ACTION MONITORING PLAN: The IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 3:

The Chief, Appeals and the Commissioner, TE/GE Division, should discuss the six instances of the “Not Applicable” retention standard ratings with the responsible managers so they understand that all employees should be rated on the retention standard.

CORRECTIVE ACTION: The TE/GE agrees, in part. In one of the two instances identified, the employee was rated incorrectly and should have been rated as having met the standard. In the other instance identified for TE/GE, they disagree. The Chief of Appeals disagrees with this recommendation in all four identified instances. While all employees must be rated against the retention standard, regardless of if a 1204 employee or not, if an employee has not performed duties with potential impact on taxpayer issues or outcomes during the appraisal period, then Not Applicable is the appropriate selection. The employees did not perform duties involving taxpayer action during the appraisal period so the assessment of the Fair and Equitable Treatment of Taxpayers standard for this employee appropriately resulted in “Not Applicable.” The IRS Human Capital Officer also consulted with IRS Chief Counsel on whether the “Not Applicable” is an appropriate rating for the retention standard and confirmed that while the IRS evaluates all employees under the Retention Standard (as required by 26 CFR § 801.3(b)), the outcome of the evaluation will not always be “Met” or “Not Met,” as some employees’ positions do not involve interaction with taxpayers and therefore the “Not Applicable” assessment is legally appropriate.

IMPLEMENTATION DATE: March 15, 2026

RESPONSIBLE OFFICIAL: Director, Exempt Organizations, Rulings and Agreements, TE/GE; Director, Operations Support, Independent Office of Appeals

CORRECTIVE ACTION MONITORING PLAN: The IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 4:

The Chiefs, Appeals, CI, and Taxpayer Services; the National Taxpayer Advocate; and the Commissioners, LB&I and SB/SE Divisions should discuss the 21 instances of RRA 98 § 1204(c) noncompliance with the responsible managers to ensure that they understand the requirements of the Section 1204 certification process.

CORRECTIVE ACTION:

The IRS disagrees additional corrective action is required. There are policies currently in place for missed certifications. In addition, review of the identified cases and

ascertaining the facts to determine whether §1204(c) noncompliance occurred required conversations to be held with the affected managers.

The Small Business/Self-Employed (SB/SE) Division and the Large Business and International (LB&I) Division concur with the IRS statement. They further disagree with this recommendation because both SB/SE and LB&I provided reasonable explanations to TIGTA before the final draft report was issued.

The TAS office believes the policies in place address missed certifications however, they will hold additional conversations with responsible managers to help reinforce the right message.

The Chief of Appeals disagrees with this recommendation. The four identified instances of RRA 98 §1204(c) non-compliance are inaccurate because the respective managers were on leave at the time of the referenced certification and, consistent with IRS policy, appropriately completed the certification process in the subsequent quarter.

IMPLEMENTATION DATE: Not applicable for all business units except TAS; TAS will implement by March 15, 2026

RESPONSIBLE OFFICIAL(S): Deputy Executive Director Case Advocacy, Intake and Technical Support, TAS

CORRECTIVE ACTION(S) MONITORING PLAN: The IRS will monitor this corrective action as part of our internal management system of controls.

RECOMMENDATION 5:

The Chief Human Capital Officer should revise the quarterly self-certification questions to clarify the language used for the responses to increase the accuracy of the certification results and potential ROTERs reported.

CORRECTIVE ACTION:

The IRS agrees with this recommendation. The HCO will revise the quarterly self-certification question(s). The certification is completed in Integrated Talent Management which is a Department of Treasury-owned system.

IMPLEMENTATION DATE:
September 15, 2026

RESPONSIBLE OFFICIAL:
Director, Labor / Employee Relations Negotiations

CORRECTIVE ACTION(S) MONITORING PLAN: The IRS will monitor this corrective action as part of our internal management system of controls.

Appendix III

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 records maintained on an employee.
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	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 IV

Abbreviations

CI	Criminal Investigation
FY	Fiscal Year
HCO	Human Capital Office
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
ITM	Integrated Talent Management
LB&I	Large Business & International Division
ROTER	Record of Tax Enforcement Result
RRA 98	IRS Restructuring and Reform Act of 1998
SB/SE	Small Business/Self-Employed Division
TAS	Taxpayer Advocate Service
TE/GE	Tax Exempt & Government Entities Division
TIGTA	Treasury Inspector General for Tax Administration



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

**To make suggestions to improve IRS policies, processes, or systems
affecting taxpayers, contact us at www.tigta.gov/form/suggestions.**

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