



*Fiscal Year 2016 Statutory Audit of
Compliance With Legal Guidelines
Restricting the Use of Records of
Tax Enforcement Results*

September 19, 2016

Reference Number: 2016-30-088

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Phone Number / 202-622-6500

E-mail Address / TIGTACommunications@tigta.treas.gov

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



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HIGHLIGHTS

FISCAL YEAR 2016 STATUTORY AUDIT OF COMPLIANCE WITH LEGAL GUIDELINES RESTRICTING THE USE OF RECORDS OF TAX ENFORCEMENT RESULTS

Highlights

**Final Report issued on
September 19, 2016**

Highlights of Reference Number: 2016-30-088
to the Internal Revenue Service Deputy
Commissioner for Operations Support.

IMPACT ON TAXPAYERS

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

WHY TIGTA DID THE AUDIT

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

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

WHAT TIGTA FOUND

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

- Section 1204(a) – one potential violation.
- Section 1204(b) – 25 instances of documentation noncompliance.
- Section 1204(c) – 23 instances of noncompliance.

In addition, TIGTA identified one IRS policy violation. In this instance, the second-line manager did not identify that the first-line manager's self-assessment contained ROTER information, which should have been returned for correction.

TIGTA also noted that eight managers were missing from the Fiscal Year 2015 Section 1204 employee and manager listing, and a total of 80 employees and managers did not timely complete the mandatory Section 1204 training.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Section 1204 noncompliance and IRS policy violations identified in this report be discussed with the responsible managers and employees. TIGTA also recommended that Section 1204 managers and employees be properly identified as such within the IRS's human resources system and that the mandatory Section 1204 training is assigned and completed. Additionally, TIGTA recommended that IRS efforts to achieve full compliance with RRA 98 Section 1204 procedures be strengthened by expanding management's emphasis on employee behaviors that meet the Fair and Equitable Treatment of Taxpayers Retention Standard.

In response to the report, the IRS agreed with four of the five recommendations; however, the IRS still completed corrective actions pertaining to all five recommendations.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 19, 2016

MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

FROM:

Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – Fiscal Year 2016 Statutory Audit of Compliance
With Legal Guidelines Restricting the Use of Records of Tax
Enforcement Results (Audit # 201630007)

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 IRS Restructuring and Reform Act of 1998 (RRA 98) Section (§) 1204.¹ The Treasury Inspector General for Tax Administration is required under Internal Revenue Code § 7803(d)(1) to annually evaluate the IRS's compliance with the provisions of RRA 98 § 1204. The RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results (ROTTER) or base employee successes on meeting goals or quotas for ROTERs.² This review is included in our Fiscal Year 2016 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

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

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

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

² An enforcement (Section 1204) employee is an employee or any manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for RRA 98 § 1204 program activities.



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Abbreviations

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



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Background

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

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

RRA 98 § 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The IRS refers to this standard as the retention standard. The retention standard requires employees to administer the tax laws fairly and equitably, protect all taxpayers' rights, and treat each taxpayer ethically with honesty, integrity, and respect. This provision of the law was enacted to provide assurance that employee performance is focused on providing quality service to taxpayers instead of achieving enforcement results.

RRA 98 § 1204(c) requires each appropriate supervisor to perform a quarterly self-certification. In the self-certification, the appropriate supervisor attests to whether ROTERs, production quotas, or goals were used in a prohibited manner. The IRS defines an appropriate supervisor as the Section 1204 executive in an operating/functional division that directly or indirectly supervises one or more Section 1204 enforcement employees.² Current IRS procedures require each level of management, beginning with first-line managers of Section 1204 employees, to self-certify that they have not used ROTERs in a manner prohibited by RRA 98 § 1204(a). The appropriate supervisor then prepares a consolidated office certification covering the entire organizational unit.

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

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

² An enforcement (Section 1204) employee is an employee or any first-line manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or whose duties involve providing direction/guidance for programs involving Section 1204 work activities.

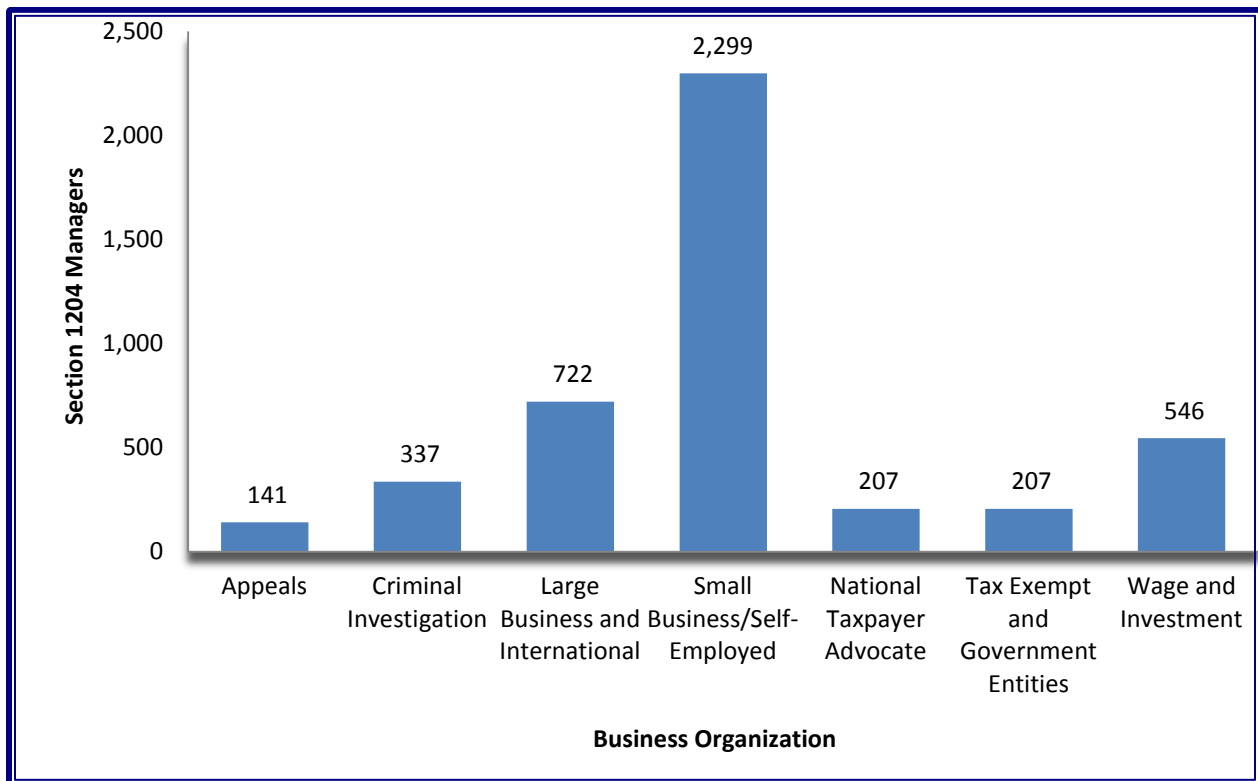


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Advocate are responsible for implementing the Section 1204 program within their respective organization. Section 1204 program managers and program coordinators in each business organization are available to provide guidance to managers regarding Section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

As of September 30, 2015, there were 4,459 Section 1204 managers on the employee and manager listing provided by the IRS. Section 1204 managers have either supervised a Section 1204 employee or provided guidance or direction for Section 1204 activities. Figure 1 shows how Section 1204 managers are dispersed across the various business organizations within the IRS.

**Figure 1: Number of Section 1204 Managers
by Business Organization (as of September 30, 2015)**



Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of data from the IRS's Fiscal Year 2015 Section 1204 employee and manager listing.³

Internal Revenue Code § 7803(d)(1) requires TIGTA to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 § 1204. TIGTA

³ See Appendix V for a glossary of terms.



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has previously performed 17 annual reviews to meet this requirement. Appendix IV lists the five most recent audit reports related to this statutory review.

This review was performed at the IRS Headquarters; the Office of the Chief Financial Officer; the Office of the Chief, Appeals; the Office of the Chief, Criminal Investigation; the Office of the National Taxpayer Advocate; the Large Business and International Division; the Small Business/Self-Employed Division; and the Tax Exempt and Government Entities Division in Washington, D.C.; and the Wage and Investment Division in Atlanta, Georgia, from December 2015 through July 2016. On-site reviews were also performed at the IRS field offices in Louisville, Kentucky, and Charlotte, North Carolina.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.



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Results of Review

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

The IRS is generally ensuring that its managers do not use ROTERs and/or production goals or quotas to evaluate employees. However, the IRS was not in full compliance with RRA 98 § 1204 during Fiscal Year 2015, and some IRS business units need to be more diligent. The following issues were identified:

- **Section 1204(a) – one potential violation** in which an IRS manager used a ROTER to evaluate an employee and/or suggest a production quota or goal.
- **Section 1204(b) – 25 instances of documentation noncompliance** in which 19 IRS managers did not maintain proper retention standard documentation that showed they evaluated their employees using the fair and equitable treatment of taxpayers as a performance standard.
- **Section 1204(c) – 23 instances of noncompliance** in which seven IRS managers did not properly certify in writing to the IRS Commissioner or provide documentation as to whether ROTERs and/or production quotas or goals were used in a prohibited manner.

To evaluate the IRS's compliance with the Section 1204 provisions, we selected a judgmental sample of 35 first-line managers and 105 employees.⁴ The managers were selected from locations that have not been previously reviewed by the IRS or by TIGTA during any of the prior annual reviews of Section 1204 compliance.⁵ We selected five managers along with three of each manager's employees from each of the seven business units, and reviewed their performance evaluation documents. In addition, we reviewed performance documents for a judgmental sample of seven second-line managers, one from each business unit. In all, we selected 147 employees/managers to determine the IRS's compliance with RRA 98 § 1204 provisions.

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

⁵ Locations were not reviewed by the IRS between Fiscal Years 2010 and 2015 or by TIGTA between Fiscal Years 1999 and 2015. Two of the 35 managers selected were located at sites that have been previously reviewed by TIGTA and/or the IRS, but their employees were located at sites that have not been reviewed.



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

In Fiscal Year 2015, the IRS was generally in compliance with RRA 98 § 1204(a). However, we found one potential ROTER violation in a manager performance document obtained from Criminal Investigation. Specifically, the ROTER was found in a midyear appraisal.

To evaluate the IRS's compliance with RRA 98 § 1204(a), we reviewed Fiscal Year 2015 performance documents, including available midyear and annual performance reviews, employee self-assessments, workload reviews, case reviews, and award documentation for the 147 employees and managers selected, as well as group meeting minutes.⁶ We reviewed these documents to determine whether ROTERS were used when evaluating the employees' performance and/or to impose or suggest quotas or goals for such employees.

Based on the results of our review, IRS managers are, in most cases, not using ROTERS and/or production quotas or goals to evaluate employees. However, to ensure the fair and equitable treatment of taxpayers, the IRS needs to remain diligent to ensure that ROTERS are not used to evaluate employees and/or suggest production quotas or goals. Use of ROTERS may create the misperception that safeguarding taxpayer rights is secondary to IRS enforcement results.

In addition, we identified one instance in which a Criminal Investigation first-line manager's self-assessment contained more than one ROTER.⁷ We did not consider this to be a potential RRA 98 § 1204(a) violation because the ROTERS were from the manager's self-assessment. However, according to the Internal Revenue Manual (IRM), it is IRS policy that bargaining unit and non-bargaining unit employees should not use ROTERS in their self-assessments.⁸ If a self-assessment is submitted with a ROTER, it is incumbent upon the manager to return it to the employee for removal of the ROTER. In this case, the second-line manager did not follow proper procedures by returning the self-assessment to the first-line manager for correction. As such, the first-line manager may be unaware of the IRS's policy that prohibits the use of ROTERS in self-assessments.

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

To evaluate the IRS's compliance with RRA 98 § 1204(b), we requested the appropriate Fiscal Year 2015 retention standard documents applicable to the 147 selected employees and managers. The IRS did not achieve full compliance with the documentation requirements for the retention standard as related to RRA 98 § 1204(b) in Fiscal Year 2015 for Appeals; Criminal

⁶ We received all 147 requested annual appraisal documents, but four of them did not contain a narrative for us to review. In four of the 147 requested midyear appraisals, the responsible managers did not conduct midyear evaluations of these employees, which resulted in no midyear appraisal for us to review. Of the 35 first-line and seven second-line managers sampled, five managers did not receive a performance appraisal.

⁷ For 55 of the 147 employees and managers, one or more self-assessments were prepared during the period reviewed.

⁸ IRM 1.5.2.11.2 (3) (May 10, 2012).



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Investigation; the Large Business and International, the Small Business/Self-Employed, the Tax Exempt and Government Entities, and the Wage and Investment Divisions; and the National Taxpayer Advocate. Specifically, for the 105 employees (excluding the managers), we determined that:

- Six Employee Performance Files included Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*; however, the acknowledgement section (receipt of the Critical Job Elements, including the Fair and Equitable Treatment of Taxpayers Retention Standard) within the form was not appropriately signed and/or dated by all parties.
- Three Employee Performance Files included Form 6850-BU, *Bargaining Unit Performance Appraisal and Recognition Election*; however, the certification of rating section (including the Fair and Equitable Treatment of Taxpayers Retention Standard Rating) within the form was not appropriately signed and/or dated by all parties.
- Two Employee Performance Files included Form 6774; however, the acknowledgement section (receipt of the Critical Job Elements, including the Fair and Equitable Treatment of Taxpayers Retention Standard) within the form was signed after the review period ended.
- Two Employee Performance Files were missing Form 6774.

For the 42 managers, we found that:

- Seven managers' Employee Performance Files included Form 12450-A, *Manager Performance Agreement*; however, the acknowledgment section (receipt of the Critical Job Elements, including the Fair and Equitable Treatment of Taxpayers Retention Standard) within the form was not appropriately signed by all parties.
- Four managers' Employee Performance Files included Form 12450-A; however, the final Summary Evaluation Rating was not appropriately signed and/or dated by all parties.
- One manager's Employee Performance File included Form 12450-A; however, the acknowledgment section (receipt of the Critical Job Elements, including the Fair and Equitable Treatment of Taxpayers Retention Standard) within the form was not signed until the last month of the review period.

RRA 98 § 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The standard applies to all IRS Section 1204 executives, managers, and employees. Compliance with RRA 98 § 1204(b) is twofold, the receipt and acknowledgment of the retention standard and the annual performance rating related to the retention standard. At the beginning of each performance period, managers must provide the



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appropriate receipt of the retention standard form to their employees.⁹ The manager must sign and date the appropriate form indicating the sharing of the retention standard with his or her employee and, in turn, the employee must acknowledge receipt of the retention standard by signing and dating the form. At the end of the performance period, the employee must be evaluated on the retention standard using the appropriate appraisal form.¹⁰

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

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

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

We discussed with managers the two instances of Section 1204(b) documentation noncompliance identified in this report in which the employee and/or manager signed Form 6774 after the rating period ended and the one instance in which the acknowledgement section of Form 12450-A was signed in the last month of the rating period with IRS first-line managers. Some managers indicated that these were caused by incorrect dates on the forms or stated that the incorrect form was filed and was replaced with the correct form at the end of the rating period.

While timeliness and documentation noncompliance are not specifically addressed in Section 1204(b), the law requires the IRS to use the fair and equitable treatment of taxpayers as one of the standards for evaluating employee performance. However, in order for the IRS to evaluate its employees, 5 Code of Federal Regulations § 430.206 requires that an appraisal program be established that designates “an official appraisal period for which a performance plan shall be prepared, during which performance shall be monitored, and for which a rating of record shall be prepared.” The Code of Federal Regulations also requires that performance plans be provided to employees at the beginning of each appraisal period; each performance plan needs to include all elements that are to be used in developing a summary rating (*i.e.*, an evaluation). In addition, the IRS’s own IRM states that at the beginning of the rating period, employees must

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

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

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

¹² IRM 1.5.3.7(9) (February 5, 2015).



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acknowledge receipt of the retention standard each year even if their performance standards have not changed from the prior year.¹³

Without complete and proper documentation, we were unable to determine if some IRS employees were informed at the beginning of their performance rating period that the fair and equitable treatment of taxpayers was a performance requirement. If the employees are not informed of this performance requirement at the beginning of their performance rating period (or for at least a 60-day period during which they are being evaluated), IRS management would not be able to evaluate these Section 1204 employees on the Fair and Equitable Treatment of Taxpayers Retention Standard and potentially would not be in compliance with the law.

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

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

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

We found that the IRS did not achieve full compliance in 23 quarterly self-certifications from the National Taxpayer Advocate and the Tax Exempt and Government Entities Division. These forms were not signed and/or dated by the next-level manager, were incorrectly signed by the manager and/or next-level manager using the standard employee identifier, or were not provided.¹⁴ To evaluate the IRS's compliance with Section 1204(c), we requested all four

¹³ IRM 1.5.3.7(5) (February 5, 2015).

¹⁴ The standard employee identifier is the five-digit code that uniquely ties employees to their data without using their Social Security Number. The IRS advised us that each five character alphanumeric code is only used once and remains unique to the individual to whom it is assigned throughout that individual's lifetime, even after they are no longer employed with the IRS.



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quarterly self-certifications for the sampled 35 first-line managers and seven second-line managers.¹⁵ RRA 98 § 1204(c) requires Section 1204 supervisors to quarterly certify in writing to the IRS Commissioner whether ROTERs and/or production quotas or goals were used in a prohibited manner. Therefore, managers who evaluate Section 1204 employees are required to certify each quarter in writing that they did not:

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

Per the IRM, the business organization and function Section 1204 program managers and their respective Section 1204 program coordinators are available to provide guidance to managers regarding Section 1204 issues, including the certification process.¹⁶ The IRM also states that a standard employee identifier, such as a digital signature, is not acceptable for quarterly Section 1204 self-certifications because digital signatures generally do not contain the manager's name.¹⁷ On February 9, 2016, after conducting research on the use of standard employee identifiers, the IRS issued interim guidance that approved the use of standard employee identifiers as a digital signature on the quarterly certification. Accordingly, the name of the manager will no longer be required as long as the signer can be uniquely identified as the individual certifying the document.

We reviewed a total of 167 quarterly self-certifications from managers and next-level managers. Of the 167 self-certifications reviewed, we found:

- 12 self-certifications incorrectly contained only a standard employee identifier in the digital signature.¹⁸
- 10 self-certifications were not properly signed and/or dated by the next-level manager.¹⁹
- One self-certification was not provided by the manager or next-level manager.

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

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

¹⁷ IRM 1.5.3.8.8(2) (June 6, 2012).

¹⁸ The scope of our current review covers Fiscal Year 2015. However, based on the interim guidance issued on February 9, 2016, these 12 self-certifications would not be considered exceptions had they occurred during Fiscal Year 2016.

¹⁹ One of these self-certifications contained a standard employee identifier in the digital signature and was neither signed nor dated by the next-level manager.



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For four of the 10 self-certifications that were not properly signed and/or dated by the next-level manager, a second-line manager told us that the forms were held by the administrative assistant and never sent to the next-level manager for signature. Additionally, for the remaining six self-certifications, the first-line managers had not received a response from the next-level manager with a reason for the missing signature.

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

Recommendations

The Chief, Criminal Investigation, should ensure that:

Recommendation 1: The potential RRA 98 § 1204(a) violation identified in this report is discussed with the responsible manager to ensure that the manager understands the guidelines related to the use of ROTERs.

Management's Response: Management disagreed with this recommendation based on a determination by its General Legal Services division that a Section 1204(a) violation did not occur. Despite their disagreement, management held a discussion with the responsible manager which included a review of the guidelines related to the use of ROTERs.

Office of Audit Comment: We still believe that this case should be classified as a potential Section 1204(a) violation. The case contains references to the prosecution rate of a group managed by a particular employee and suggests that the prosecution rate be improved. The IRS advised us that the employee was being reviewed on the appropriate use of IRS resources. However, we believe that referring to the group prosecution rate and suggesting that it be improved can be perceived by the employee that the end result of the employee's enforcement work was more important than the efforts taken on a particular case.

Recommendation 2: The noncompliance identified in this report related to the prohibition on including ROTERs in an employee's self-assessment is discussed with the responsible employee and their manager so that they understand the IRS's policy that ROTERs should not be used in self-assessments.

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



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The Deputy Commissioner for Operations Support should ensure that:

Recommendation 3: The RRA 98 § 1204(b) noncompliance with documentation requirements and RRA 98 § 1204(c) noncompliance identified in this report are discussed with the responsible managers to ensure that they understand the retention standard documentation and quarterly self-certification requirements.

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

Office of Audit Comment: In their response, IRS management disagreed with two of the Section 1204(b) findings in this report on the basis that timeliness is not a Section 1204 requirement according to the IRM. However, we did not use the IRM to conclude that these two cases were instances of documentation noncompliance. The 5 Code of Federal Regulations § 430.206 states that performance plans shall be provided to employees at the beginning of each appraisal period, normally within 30 days. This ensures that employees are aware of management's expectations and that they know what they will be evaluated on during the appraisal period. We do not believe the requirements of the Code of Federal Regulations are met if employees are not informed of the performance criteria at the beginning of their performance period. However, for this review, we did not consider whether employees were informed of the evaluation criteria at the beginning of their performance period to be exceptions. We counted only instances of noncompliance for cases in which employees were informed of their Section 1204(b) requirements after their rating period had ended.

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

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

- Manage the Section 1204 population more efficiently.
- Reduce managerial burden in the Section 1204 self-certification process.



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- Improve the accuracy of reporting, which also helps support the annual TIGTA audit and independent reviews done by the Office of the Chief Financial Officer.

In addition, the IRS began using the HR Connect Section 1204 indicator to identify employees who were required to complete *The RRA 98 Mandatory Section 1204 Briefing*. However, we determined that some managers did not properly designate their employees or themselves as Section 1204 employees within HR Connect, which affected the accuracy of the Fiscal Year 2015 Section 1204 employee and manager listing created by the Office of the Chief Financial Officer, as well as the assignment of the mandatory ROTERs training. Specifically, we determined that:

- Eight Section 1204 managers were missing from the Fiscal Year 2015 Section 1204 employee and manager listing.
- 80 Section 1204 employees and managers did not complete the mandatory Section 1204 training for Fiscal Year 2015.

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

The Section 1204 employee and manager listing is used to identify managers who are required to comply with RRA 98 § 1204. However, we identified that several Section 1204 managers were missing from the Fiscal Year 2015 employee and manager listing that was provided to us by the IRS. When we first compared the Fiscal Year 2015 list to the Fiscal Year 2014 list obtained during last year's review, we initially identified that 301 managers were missing. We then used the IRS's Discovery Directory to determine the current employment status of each of the 301 managers and whether they may have been in a Section 1204 manager position during Fiscal Year 2015. In so doing, we determined that 293 managers were either no longer designated as Section 1204 managers or no longer working for the IRS. However, we identified eight managers who should have been on the Fiscal Year 2015 Section 1204 employee and manager listing but were not. When we provided this information to IRS management, it was determined that some of these managers did not properly designate themselves within HR Connect as Section 1204 managers as of the end of Fiscal Year 2015.

After further discussions with IRS management during our Fiscal Year 2015 review, we were informed that the IRS sends quarterly reminders to managers to properly designate themselves within HR Connect. While improvements have been made to the identification of Section 1204 managers, it is important that the IRS continue to ensure that managers properly designate themselves within HR Connect. Managers who are not properly classified are at risk for not completing required mandatory training or not having the potential to be selected for the annual TIGTA audit and independent reviews done by the Office of the Chief Financial Officer.



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**Most employees completed the mandatory Section 1204 training in
Fiscal Year 2015**

We determined that only 80 of 35,587 Section 1204 employees and managers in a report provided by the IRS did not complete the mandatory Section 1204 training that was assigned to them during Fiscal Year 2015. The new Section 1204 training became available to employees in the IRS's Enterprise Learning Management System on July 13, 2015, and it required that all Section 1204 personnel complete the training course annually. The IRS assigned the training to all IRS staff designated as Section 1204 employees or managers within HR Connect. We requested a report containing the Section 1204 training status of all Section 1204 designated employees and managers to determine whether the Section 2014 mandatory training was completed by the end of Fiscal Year 2015. The completion rate for the Section 1204 mandatory training was 99 percent in Fiscal Year 2015.

While we found most employees completed the training in July, August, or September 2015, there was no completion date for a total of 80 Section 1204 employees and managers to show that the annual training was timely completed. When we asked IRS management to explain why these 80 Section 1204 employees and managers did not complete the required Fiscal Year 2015 training, they provided the following information for 59 of them.

- 31 of the employees and managers were on extended leave (*e.g.*, sick leave, leave without pay, maternity leave) during Fiscal Year 2015.
- 15 of the employees and managers did not complete the training due to an oversight.
- Nine of the employees and managers are no longer employed with the IRS.
- Four of the employees and managers are no longer Section 1204 employees.²⁰

To verify whether the Section 1204 employees and managers were properly designated within HR Connect, we reviewed the Fiscal Years 2014 and 2015 Section 1204 employee and manager listings provided by the IRS. We determined that 22 of the 80 employees and managers were not properly designated as a Section 1204 employee or manager within HR Connect. If managers fail to properly designate themselves and/or their employees as Section 1204 personnel within HR Connect, the mandatory Section 1204 training will not be assigned in the Enterprise Learning Management System learning plan.

If all Section 1204 employees and managers are not annually receiving the mandatory training, taxpayer rights may not be protected, resulting in unfair treatment by the IRS. A lapse in training could also have a potentially negative effect on taxpayer rights if IRS personnel lack a clear understanding of how they should and should not use enforcement statistics.

²⁰ According to the IRS, the remaining 21 Section 1204 employees and managers have since completed this required training.



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Recommendation

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

Management's Response: Management agreed with this recommendation and has already completed their corrective action. Specifically, annual mandatory briefings include Section 1204 training, which was assigned to all designated Section 1204 employees and managers on July 11, 2016, and must be completed within 90 days. To ensure Section 1204 training is efficiently assigned to new hires, on March 15, 2016, the Human Capital Office began providing a quarterly new hire report file to its Leadership, Education, and Delivery Services staff so they can automatically assign mandatory Section 1204 training to new hires through their online Enterprise Learning Management System learning plans.

Office of Audit Comment: Management did not address part of our recommendation to ensure that the managers identified in this report are notified to properly designate their employees and/or themselves as Section 1204 personnel within HR Connect. In their response, management stated that the IRM instructs Section 1204 managers to review and update their own and their employees' HR Connect profiles.²¹ We still believe it to be beneficial to ensure that these specific managers comply with this policy and properly designate their employees and/or themselves as Section 1204 personnel.

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

We interviewed a judgmental sample of 41 Section 1204 employees and 42 Section 1204 managers to determine if they had: (1) a clear understanding of a ROTER statistic and (2) any knowledge of the Fair and Equitable Treatment of Taxpayers Retention Standard as it relates to Section 1204.²² We determined that while:

- Most managers claimed to have a clear understanding of ROTERs, six managers could not provide an accurate example of a ROTER statistic, and nine managers provided both accurate and inaccurate examples of ROTER statistics.
- Many employees claimed some degree of understanding of ROTERs, seven employees could not provide an accurate example of a ROTER statistic, 11 employees provided both

²¹ IRM 1.5.3.8(12) (February 5, 2015).

²² We interviewed 41 Section 1204 employees, 35 Section 1204 first-line managers, and seven Section 1204 second-line managers.



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accurate and inaccurate examples of ROTER statistics, and one employee claimed no understanding of ROTER statistics.

- Most managers claimed to understand the retention standard, five managers could not accurately define what the retention standard is, and two managers provided both accurate and inaccurate definitions of the retention standard.
- Many employees claimed to be familiar with the retention standard, eight employees could not accurately define what the retention standard is, three employees provided both accurate and inaccurate definitions of the retention standard, and two employees claimed no understanding of the retention standard.

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

When we asked the sampled Section 1204 employees and managers we interviewed about the retention standard and referred to it just as "the retention standard" or "Section 1204(b)," some of them did not know what this was. When we defined the retention standard as the fair and equitable treatment of taxpayers, only then did they use the key words from the title and said that the retention standard refers to treating taxpayers fairly and equally.

When we also asked the sampled Section 1204 employees we interviewed if their managers discussed the Fair and Equitable Treatment of Taxpayers Retention Standard during their rating period, many of them mentioned that their managers provided Form 6774, asked them if they had any questions, and then had them sign it without any discussion. Many of the sampled Section 1204 managers we interviewed had a similar response when asked if they discussed the retention standard with their employees.

The IRM states that the retention standard is used to make certain that all employees make a good-faith effort in the fair and equitable treatment of taxpayers. The manager must coach an employee on how to prevent an occurrence of unacceptable customer treatment and the importance of adhering to the Fair and Equitable Treatment of Taxpayers Retention Standard.²³

²³ IRM 1.5.3.7.2(1) (February 5, 2015).



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

- Behaviors that allow the employee to meet the retention standard.
- Circumstances that may result in a determination that the employee does not meet the retention standard.
- Potential impact of not meeting the retention standard.²⁴

Additionally, the IRS provided a mandatory self-study training briefing in July 2015 that was to be taken by all designated Section 1204 employees and managers through the Enterprise Learning Management System. The training took approximately 30 minutes to complete and:

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

If managers fail to properly share the retention standard information with their employees, it can affect their employees' interactions with taxpayers as well as their understanding of the importance of safeguarding taxpayer rights. We believe that managers and employees would benefit greatly from an increased knowledge of ROTERs. While almost all Section 1204 employees and managers took the mandatory training, continued emphasis would allow managers and employees to be more knowledgeable on RRA 98 § 1204. Additionally, we noticed that during our interviews managers and employees that mentioned group meetings as an additional learning source for Section 1204 related topics seemed to have a better understanding of RRA 98 § 1204 than those that did not mention group meetings.

²⁴ IRM 1.5.3.7.2(2) (February 5, 2015).



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Recommendation

Recommendation 5: The Deputy Commissioner for Operations Support should ensure that IRS efforts to achieve full compliance with RRA 98 § 1204 procedures are strengthened by expanding management's emphasis on employee behaviors that meet the Fair and Equitable Treatment of Taxpayers Retention Standard.

Management's Response: Management agreed with this recommendation and has already completed their corrective action. Specifically, the Chief Financial Officer updated the Quarterly Certification instructions to direct managers to review the status of Retention Standard behavior discussions for employees with rating periods beginning in the current quarter as part of the review process. In addition, the Chief Financial Officer recommended expanding the Fiscal Year 2017 Federal Managers Financial Integrity Act Section 1204 questions to include certification of retention standard behavior discussions.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in RRA 98 § 1204.¹ To accomplish our objective, we:

- I. Determined whether the IRS complied with the provisions of RRA 98 §§ 1204(a) and (b) when evaluating Section 1204 employees' performance.
 - A. Selected a judgmental sample of enforcement employees/managers for review.²
 1. Obtained the Fiscal Year 2015 Section 1204 employee and manager listing from the Office of the Chief Financial Officer's Section 1204 program manager and the Fiscal Year 2014 Section 1204 employee and manager listing provided by the IRS during TIGTA's Fiscal Year 2015 review.³ We determined the distribution of the employees to be judgmentally sampled to include managers and employees that were in the same group on both listings and that were located in cities that had not been previously reviewed by TIGTA or the IRS.
 2. Selected Louisville, Kentucky, and Charlotte, North Carolina, as audit sites for interviews according to the sampling plan.
 3. Identified the population of potential first-line managers and their employees for each operating division/function by using the Section 1204 employee and manager listings obtained in Step I.A.1. and by researching the Discovery Directory.
 4. From the population determined in Step I.A.3., judgmentally selected seven first-line managers from each of the two cities selected in Step I.A.2., and 21 first-line managers from 21 other cities according to the sampling plan.
 5. Identified a list of potential employees that are in the groups of the first-line managers selected in Step I.A.4. by using the Section 1204 employee and manager population obtained in Step I.A.3. and researching the Discovery Directory.

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

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

³ See Appendix V for a glossary of terms.



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6. Judgmentally selected three employees from each first-line manager, using the employee listing prepared in Step I.A.5.
- B. Electronically obtained and reviewed the performance evaluation documents (e.g., midyear reviews, annual performance reviews, and award documents) for each selected employee and first-line manager. In addition, we reviewed self-assessments, case reviews, and workload reviews for the selected employees as well as group meeting minutes.
1. Contacted the Office of the Chief Financial Officer's Section 1204 program manager and the appropriate operating division/function Section 1204 program coordinator to obtain performance evaluation documentation, case reviews, and workload reviews for the 105 employees and 35 first-line managers selected for review.
 2. Obtained and reviewed the employee performance evaluation documentation, case reviews, and workload reviews to determine whether ROTERs, production goals, or quotas were inappropriately used in the evaluation process and whether employees were evaluated appropriately on the fair and equitable treatment of taxpayers. We also verified whether Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*, was signed and in the Employee Performance File for the rating period under review.
- C. Interviewed the employee's manager and determined the potential cause when a potential exception case was identified.
- D. Requested and reviewed the training records for the 105 employees and 35 first-line managers selected for review.
- E. Discussed the identified exceptions with the national Section 1204 program coordinator and the appropriate operating division/function Section 1204 program coordinator for agreement to the facts and to identify the causes for the potential violations.
- F. Selected a judgmental sample of seven second-line managers from those who oversee the 35 first-line managers selected in our judgmental sample in Step I.A.4. We reviewed performance evaluation documentation (e.g., midyear reviews, annual performance reviews, and award documents) for the second-line managers to identify any inappropriate use of ROTERs.
- G. Verified that Section 1204 managers were correctly classified within HR Connect by matching the Fiscal Year 2015 Section 1204 employee and manager listing to the Fiscal Year 2014 Section 1204 employee and manager listing to identify any managerial changes between the two years. For any managers who were removed



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- from the current listing, we used the Discovery Directory to determine their current employment/management designation.
- II. Determined whether the judgmentally sampled first-line managers and second-line managers complied with RRA 98 § 1204(c) by certifying whether or not ROTERs were used in a manner prohibited by subsection (a).
- A. Obtained the four quarterly Fiscal Year 2015 self-certification documents from the selected first-line managers and second-line managers.
1. Reviewed the self-certification documents submitted by the managers to establish whether they were completed timely and signed appropriately.
 2. Determined if any ROTERs and/or production goals and quotas were reported by the managers on their self-certifications.
- B. Discussed any self-certification exception cases with the national Section 1204 program manager and the appropriate operating division/function Section 1204 program coordinator, obtained agreement, and further explored the cause for the potential violation.
- III. Determined the effectiveness of the mandatory RRA 98 § 1204 training for managers and employees.
- A. Reviewed documentation and determined how and when the Section 1204 training was implemented.
- B. Reviewed the content of the mandatory Section 1204 training.
- C. Requested and reviewed a list of all Section 1204 employees and managers who were assigned the Section 1204 training in Fiscal Year 2015.
- D. Interviewed a judgmental sample of 41 Section 1204 employees, 35 Section 1204 first-line managers, and seven Section 1204 second-line managers to determine whether they understood what ROTERs were and could provide an example of a ROTER, as well as whether the employees understood the retention standard, and whether the retention standard was discussed with employees during the rating period.

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



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

Data validation methodology

We obtained the Fiscal Year 2015 fourth quarter Section 1204 employee and manager listing from the Office of the Chief Financial Officer and the Fiscal Year 2014 fourth quarter Section 1204 employee and manager listing provided by the IRS during TIGTA's Fiscal Year 2015 review. We used these listings to develop our judgmental sampling plan. To determine the reliability of the data, we reviewed the data for duplicates and to identify any missing information. We then compared the data to the Discovery Directory. We used this information to verify the accuracy of the data provided by the IRS by matching the information to the Fiscal Year 2015 fourth quarter Section 1204 employee and manager listing. These tests determined that the data were sufficiently reliable and could be used to meet the objective of this audit.



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Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Bryce Kisler, Director
Christina M. Dreyer, Audit Manager
Timothy F. Greiner, Audit Manager
Kevin Nielsen, Lead Auditor



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Appendix III

Report Distribution List

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



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Appendix IV

*Recent Audit Reports Related
to This Statutory Review¹*

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

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

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

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

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

¹ This list provides the five most recent of the 17 previous reports issued by TIGTA.



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Appendix V

Glossary of Terms

Term	Definition
Discovery Directory	A computer system available to IRS personnel that provides information on IRS employees including their name, job title, job location, and management level.
Employee Performance File	A system consisting of all performance ratings and other performance records maintained on an employee.
Enterprise Learning Management System	An IRS automated training system that allows the employee and manager to be directly engaged in planning, communicating, and coordinating training and development activities online.
Fiscal Year	Any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
HR Connect	A human resource system, owned and operated by the U.S. Department of the Treasury.
Internal Revenue Manual	The primary official source of instructions to staff relating to the organization, administration, and operation of the IRS.



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Appendix VI

Management's Response to the Draft Report



CHIEF FINANCIAL OFFICER

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

September 8, 2016

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

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

SUBJECT: Draft Audit Report – Fiscal Year 2016 Statutory Audit of
Compliance with Legal Guidelines Restricting the Use of Tax
Enforcement Results (Audit # 201630007)

Thank you for the opportunity to review the draft report entitled, "*Fiscal Year 2016 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Tax Enforcement Results*" (Audit # 201630007). We appreciate your acknowledgement that the IRS is generally ensuring that its managers do not use Records of Tax Enforcement Results (ROTERRs) and/or production goals or quotas to evaluate employees, and that the IRS recognizes its responsibility to protect the rights of taxpayers.

We agree with the report language, and the audit findings have been discussed with the responsible managers and employees pertaining to the Section 1204 violation, instances of noncompliance and the Internal Revenue Manual (IRM) policy violation.

In general, we agree to the report recommendations with the following exceptions:

- Based on a review by our General Legal Services (GLS) division, we do not agree with the one identified Section 1204(a) violation cited in the audit report. IRM 1.5.5.3, Use of Records of Tax Enforcement Results in Evaluations, includes "number of prosecution recommendations" and "prosecution referral rate" on the list of ROTERRs, but "prosecution rate" was removed from the ROTERRs list when IRM 1.5.5.3 was revised in 2002. Therefore, the evaluation does not contain ROTERRs. The focus of the statement is on the appropriate use of IRS resources as referenced in IRM 1.5.2.13.1, Permitted Use of Quality Measures.
- Based on IRM policy guidance, we do not agree with two of the identified Section 1204(b) instances of non-compliance cited in the audit report. The requirement to share the performance plan at the beginning of the performance period is found in IRM 6.430, Performance Management. This policy is reinforced in guidance



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provided in Leaders' Alerts 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 acknowledgement (sharing) and evaluation (rating) for the performance standard is not a Section 1204 requirement. This means that retention standard acknowledgement and evaluation documents signed 30 days after the beginning of the performance period and 30 days after the end of the performance period are not counted as Section 1204(b) instances of non-compliance for self-certification reporting.

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

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

Attachment



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Attachment

RECOMMENDATION 1

The Chief, Criminal Investigation, should ensure that the potential RRA 98 § 1204(a) violation identified in this report is discussed with the responsible manager to ensure that the manager understands the guidelines related to the use of ROTERS.

CORRECTIVE ACTION

The IRS disagrees with this recommendation based on a determination by its General Legal Services division that a Section 1204(a) violation did not occur. However, the CFO confirmed a discussion was held with the responsible manager of the Criminal Investigation unit that had the Section 1204(a) violation identified in this report, which also included review of guidelines on the use of ROTERS.

IMPLEMENTATION DATE

August 4, 2016 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 2

The Chief, Criminal Investigation, should ensure that the noncompliance identified in this report related to the prohibition on including ROTERS in an employee's self-assessment is discussed with the responsible employee and their manager so that they understand the IRS's policy that ROTERS should not be used in self-assessments.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO confirmed with the Criminal Investigation unit that the Section 1204 instance of non-compliance was discussed with the responsible employee and his/her manager regarding IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERS in their self-assessments.

IMPLEMENTATION DATE

August 4, 2016 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A



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RECOMMENDATION 3

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

CORRECTIVE ACTION

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

IMPLEMENTATION DATE

August 25, 2016 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 4

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

CORRECTIVE ACTION

The IRS agrees with this recommendation. IRM 1.5.3, Manager's Self-Certification and the Independent Review Process, instructs Section 1204 managers to review and update their own and their employees' HR Connect profiles as part of the Quarterly Certification process. In addition, Quarterly Certification instructions direct managers to review HR Connect status as part of the review process. Annual mandatory briefings include Section 1204 training, which was assigned to all designated Section 1204 employees and managers on July 11, 2016, and must be completed within 90 days. To ensure Section 1204 training is efficiently assigned to new hires, on March 15, 2016, the Human Capital Office (HCO) began providing a quarterly new hire report file to its



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Leadership, Education, and Delivery Services (LEADS) Enterprise Learning Management System (ELMS) staff so they can automatically assign mandatory Section 1204 training to new hires through their online ELMS learning plans.

IMPLEMENTATION DATE

July 11, 2016 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A

RECOMMENDATION 5

The Deputy Commissioner for Operations Support should ensure that IRS efforts to achieve full compliance with RRA 98 Section 1204 procedures are strengthened by expanding management's emphasis on employee behaviors that meet the Fair and Equitable Treatment of Taxpayers Retention Standard.

CORRECTIVE ACTION

The IRS agrees with this recommendation. The CFO updated its Quarterly Certification instructions to direct managers to review the status of Retention Standard behavior discussions for employees with rating periods beginning in the current quarter as part of the review process. Also, a quarterly Leaders' Alert is sent to managers reminding them of the Retention Standard behavior discussion requirement as referenced in IRM 1.5.3.7.2 and IRM 1.5.3.7.3. In addition, the CFO recommended expanding the FY 2017 Federal Managers Financial Integrity Act (FMFIA) Section 1204 questions to include certification of retention standard behavior discussions.

IMPLEMENTATION DATE

July 18, 2016 (Completed)

RESPONSIBLE OFFICIAL

Chief Financial Officer

CORRECTIVE ACTION MONITORING PLAN

N/A