TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Fiscal Year 2018 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

August 24, 2018

Reference Number: 2018-30-055

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FISCAL YEAR 2018 STATUTORY AUDIT OF COMPLIANCE WITH LEGAL GUIDELINES RESTRICTING THE USE OF RECORDS OF TAX ENFORCEMENT RESULTS

Highlights

Final Report issued August 24, 2018

Highlights of Reference Number: 2018-30-055 to the Commissioner of Internal Revenue.

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 (ROTER) 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.

WHAT TIGTA FOUND

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

- Section 1204(a) – one potential violation in which an IRS manager used a ROTER to suggest a production quota or goal.
- Section 1204(b) – 13 instances in which 11 IRS managers failed to either maintain the retention standard documentation or ensure that it was appropriately signed and dated.
- Section 1204(c) – three instances in which three IRS managers did not properly certify in writing to the IRS Commissioner whether ROTERs and/or production quotas or goals were used in a prohibited manner.

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

Also, 10 managers were missing from the Fiscal Year 2017 Section 1204 employee and manager list, and a total of 464 employees and managers did not timely complete the mandatory Section 1204 training.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS ensure that potential RRA 98 Sections 1204(a), (b), and (c) violations, documentation requirements, and noncompliance related to self-assessments identified in this report are discussed with the responsible managers and employees; managers identified in this report are notified to properly designate their employees and/or themselves as Section 1204 personnel; and an outreach strategy is implemented to ensure that employees and managers understand all responsibilities related to Section 1204. The strategy should include communications providing practical examples of the potential misuse of ROTERS based on self-reported violations, IRS Human Capital Office independent reviews, and prior TIGTA audits.

The IRS agreed with five of the seven recommendations. The IRS plans to confirm with the named business units that ROTERs should not be used in self-assessments, the IRS policy on Section 1204(b) noncompliance, and Section 1204(c) instances of noncompliance; ensure that the managers identified in this report are notified to properly designate their employees and/or themselves as Section 1204 personnel; and develop and implement a comprehensive communication and outreach strategy related to Section 1204.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 24, 2018

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2018 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit # 201830008)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in IRS Restructuring and Reform Act of 1998 (RRA 98) Section 1204.[1] The Treasury Inspector General for Tax Administration is required under Internal Revenue Code Section 7803(d)(1) to annually evaluate the IRS's compliance with the provisions of RRA 98 Section 1204. RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results (ROTER) or base employee successes on meeting goals or quotas for ROTERs.[2] This review is included in our Fiscal Year 2018 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

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

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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[1] Pub. L. No. 105-206, 112 Stat. 685.
[2] An enforcement (Section 1204) employee is an employee or any manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or who provides direction/guidance for RRA 98 Section 1204 program activities.

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Abbreviations

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

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 to evaluate employees or to impose or suggest production quotas or goals. Specifically, RRA 98 § 1204(a) restricts the use of enforcement statistics and prohibits the IRS from using any record of tax enforcement results (ROTER) to evaluate employees or to impose or suggest production quotas or goals, or base employee successes on meeting ROTER goals or quotas.

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

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

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

IRS functional offices and operating divisions, including Appeals; Criminal Investigation; the Large Business and International, the Small Business/Self-Employed, the Tax Exempt and

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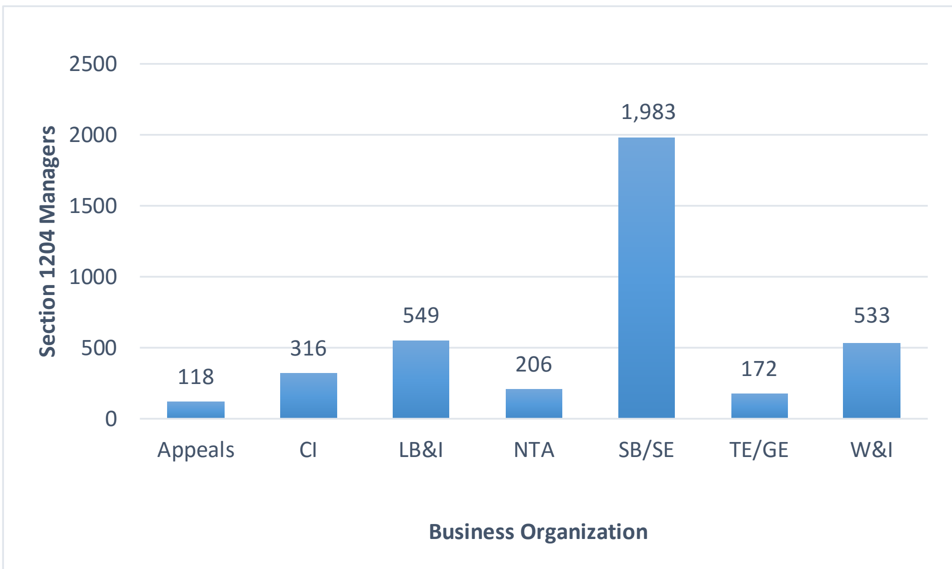
[1] Pub. L. No. 105-206, 112 Stat. 685.
[2] An enforcement (Section 1204) employee is an employee or any first-line manager of an employee who exercises judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws or whose duties involve providing direction/guidance for programs involving Section 1204 work activities.

Government Entities, and the Wage and Investment Divisions; and the National Taxpayer 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, 2017, there were 3,877 Section 1204 managers on the employee and manager list 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, 2017)[3]



Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of data from the IRS's HR Connect[4] Section 1204 manager list.

Internal Revenue Code § 7803(d)(1) requires TIGTA to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 § 1204. TIGTA has previously performed 19 annual reviews to meet this requirement. Appendix IV lists the six most recent audit reports related to this statutory review.

This review was performed at the IRS Headquarters; the Office of the Chief, Appeals; the office of the IRS Human Capital Officer; the Office of the Chief, Criminal Investigation; the Office of

[3] CI = Criminal Investigation, LB&I = Large Business and International Division, NTA = National Taxpayer Advocate, SB/SE = Small Business/Self-Employed Division, TE/GE = Tax Exempt and Government Entities Division, W&I = Wage and Investment Division.
[4] See Appendix V for a glossary of terms.

the National Taxpayer Advocate; the Large Business and International Division; the Small Business/Self-Employed Division; the Tax Exempt and Government Entities Division; and the Wage and Investment Division from January through June 2018.[5] Telephone interviews were also performed across many IRS field offices based on a stratified sample of employees and managers. 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.

[5] The Wage and Investment Division is located in Atlanta, Georgia. All other division Headquarters are located in Washington, D.C. In Fiscal Year 2018, ownership of the Section 1204 program was transferred from the Office of the Chief Financial Officer to the IRS Human Capital Officer.

Results of Review

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

The IRS is not permitted to use ROTERs or production goals or quotas to evaluate employees. However, the IRS was not in full compliance with RRA 98 § 1204 during Fiscal Year 2017. The following issues were identified:

- **Section 1204(a) – one potential violation** in which an IRS manager used a ROTER to suggest a production quota or goal.
- **Section 1204(b) – 13 instances of noncompliance** in which 11 IRS managers failed to either maintain the retention standard documentation or ensure that it was appropriately signed and dated.
- **Section 1204(c) – three instances of noncompliance** in which three IRS managers did not properly certify in writing to the IRS Commissioner 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 stratified random sample of 40 managers and 112 employees from all employees and managers.[6] In all, we selected 152 employees/managers to determine the IRS's compliance with RRA 98 § 1204 provisions.

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

In Fiscal Year 2017, the IRS was generally in compliance with RRA 98 § 1204(a). However, we found one potential ROTER violation in a manager operational review obtained from the Tax Exempt and Government Entities Division.

To evaluate the IRS's compliance with RRA 98 § 1204(a), we reviewed Fiscal Year 2017 performance documents, including available midyear and annual performance reviews, employee self-assessments, workload reviews, case reviews, and award documentation for the 152 employees and managers selected, as well as group meeting minutes. We reviewed these documents to determine whether ROTERs were used when evaluating the employees' performance or to impose or suggest quotas or goals for such employees.

[6] Stratified random samples mean dividing the population into two or more segments (strata) and taking a simple random sample from each stratum.

Based on the results of our review, IRS managers are, in most cases, not using ROTERs 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 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 four instances in which Section 1204 manager and employee self-assessments contained at least one ROTER from Criminal Investigation and the Wage and Investment Division. We did not consider this to be a potential RRA 98 § 1204(a) violation because the ROTERs were from the Section 1204 managers' and employees' self-assessments. However, according to the Internal Revenue Manual (IRM), it is IRS policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments.[7] While including ROTERs in self-assessments does not violate IRS RRA 98 Section 1204, it is a Section 1204(a) violation if a ranking official or panel uses the information in the ranking process or if a supervisor uses the information when evaluating employees' performance.

If a self-assessment is submitted with a ROTER, it is incumbent upon the manager to return it to the employee for removal of the ROTER. In these cases, the second-line managers did not follow proper procedures by returning the self-assessment to the first-line manager for correction, and the first-line managers did not follow proper procedures by returning the self-assessment to the employee for correction. As such, the first-line managers and employees may be unaware of the IRS's policy that prohibits the use of ROTERs in self-assessments.

We also contacted TIGTA's Office of Investigations and found one complaint by an employee regarding the use of ROTERs during Fiscal Year 2017. The complaint was referred to the IRS for a management inquiry. The results of the ROTER inquiry are pending.

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 2017 retention standard documents applicable to the 112 selected employees and 40 selected managers. We found no violations for the 40 managers. However, 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 2017 for Criminal Investigation, the Large Business and International Division, the National Taxpayer Advocate, the Small Business/Self-Employed Division, and the Wage and Investment Division. Specifically we determined that:

- Four Employee Performance Files included Form 6850-BU, *Bargaining Unit Performance Appraisal and Recognition Election*; however, the certification of rating

[7] IRM 1.5.2.11.2 (3) & (5) (May 10, 2012).

section (including the Fair and Equitable Treatment of Taxpayers Retention Standard Rating) was not appropriately signed and dated by all parties.

- Four Employee Performance Files included Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*, that did not match the evaluation period.
- Three Employee Performance Files included Form 6774; however, the acknowledgement section (receipt of the Critical Job Elements, including the Fair and Equitable Treatment of Taxpayers Retention Standard) within the form was not appropriately signed and dated by all parties.
- Two Employee Performance Files were missing Form 6774.

RRA 98 § 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The standard applies to all IRS Section 1204 executives, managers, and employees. Compliance with RRA 98 § 1204(b) is twofold—the receipt and acknowledgment of the retention standard and the annual performance rating related to the retention standard. At the beginning of each performance period, managers must provide the appropriate receipt of the retention standard form to their employees.[8] 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.[9]

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.[10]

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.[11]

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[8] The appropriate documents for the receipt of the retention standard are Form 6774; Form 12450-A, *Manager Performance Agreement*; Form 12450-B, *Management Official Performance Agreement*; Form 12450-D, *Management/Program Analyst Performance Agreement (For Positions Designated as Confidential Only)*; or Form TD F 35-07, *Executive Performance Agreement*.
[9] 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.
[10] IRM 1.5.3.3.5(1) and (2) (Feb. 5, 2015).
[11] IRM 1.5.3.8(1) (Feb. 5, 2015).

In addition, we identified seven Code of Federal Regulations § 430.206 policy violations regarding Section 1204(b) from Appeals, the National Taxpayer Advocate, the Small Business/Self-Employed Division, and the Tax Exempt and Government Entities Division. In one instance, pertinent documents pertaining to Section 1204(b) were not signed and dated until the last month of the rating period,[12] and in six instances, the document was signed and dated after the rating period ended. Specifically, we found:

- Six 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 rating period ended.
- One Employee Performance File included Form 6774; however, the acknowledgement section (receipt of the Critical Job Elements, including the Fair and Equitable Treatment of Taxpayers Retention Standard) within the form was not signed until the last month of the 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, and that each performance plan includes all elements that are to be used in developing a summary rating, *i.e.*, an evaluation. In addition, the IRS's own IRM states that at the beginning of the rating period, employees must acknowledge receipt of the retention standard each year even if their performance standards have not changed from the prior year.[13]

Figure 2 is a hypothetical example of a Section 1204 employee acknowledging and signing Form 6774 after the end of his or her rating period in relation to the previously referenced timeliness policies.

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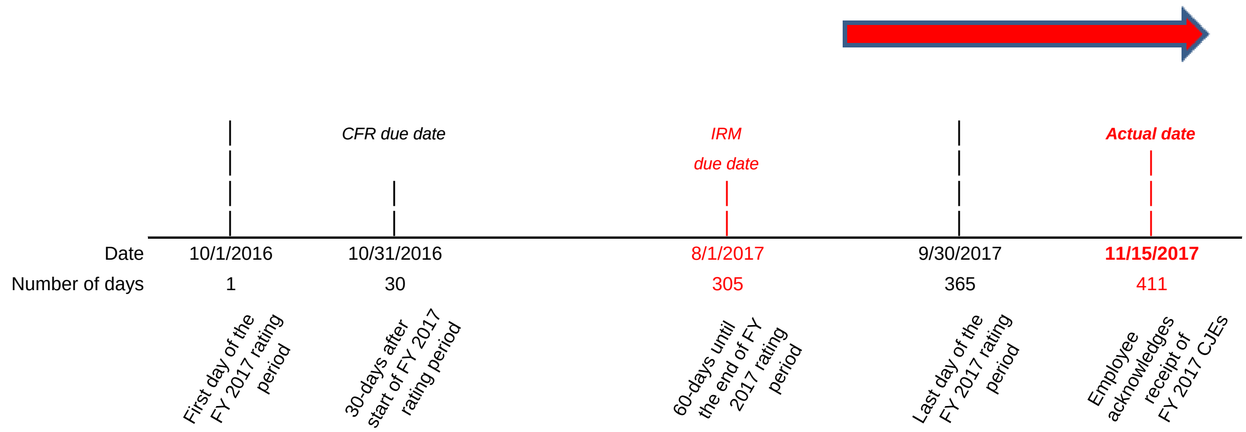
[12] The minimum period of time for which an employee covered by a performance plan can receive a summary rating. For the majority of the IRS's workforce, except for executives, this period is 60 calendar days.
[13] IRM 1.5.3.3(5) (May 19, 2017).

Figure 2: Form 6774 Acknowledged and Signed After the Rating Period Ended



Source: TIGTA analysis of Code of Federal Regulations and IRS IRM procedures. OPM = Office of Personnel Management. CFR = Code of Federal Regulations, FY = Fiscal Year, CJE = Critical Job Elements.

As illustrated in Figure 2, Form 6774 was not signed or acknowledged within 30 days after the beginning of the rating period, nor 60 days before the rating period ended. In this illustration, the Section 1204 employee signed Form 6774 46 days after the rating period it pertained to ended. If employees are not informed of this performance requirement at the beginning of their performance rating period (or for at least a 60-calendar-day period during which they are being evaluated), IRS management would be unable to evaluate these Section 1204 employees on the Fair and Equitable Treatment of Taxpayers Retention Standard and potentially would be in noncompliance with the law. 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.

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.

In our review of performance documents, we also found one employee with "Not Met" checked for not meeting the retention standard. The IRM requires a narrative statement for employees with "Not Met" checked. We reviewed the narrative for the one employee identified and did not find any specific language for the employee not meeting the retention standard.

A few signatures are incorrect or missing from first-line manager quarterly self-certifications

The IRS did not achieve full compliance in three quarterly self-certifications from Criminal Investigation, the National Taxpayer Advocate, and the Tax Exempt and Government Entities Division. These forms were not signed and dated by the next-level manager and were incorrectly signed by the manager and/or next-level manager before the end of the quarter.[14] To evaluate the IRS's compliance with Section 1204(c), we requested all four quarterly self-certifications for the sampled 40 managers. RRA 98 § 1204(c) requires Section 1204 supervisors to quarterly certify in writing to the IRS Commissioner whether ROTERs and/or production quotas or goals were used in a prohibited manner. Therefore, managers who evaluate Section 1204 employees are required to certify each quarter in writing that they did not:

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

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.[15]

We reviewed the quarterly self-certifications that we obtained from the managers in our sample. Of these, we found:

- Two self-certifications were signed and dated before the quarter ended by either the manager and/or second-line manager.
- One self-certification was not properly signed and dated by the next-level manager.

The consolidated quarterly self-certification process was effective at identifying Section 1204(a) self-reported ROTER violations and 1204(b) retention standard occurrences of noncompliance

Through the quarterly self-certification process, managers are reminded of their responsibilities under RRA 98 § 1204 to not evaluate their employees on ROTERs or production quotas or goals.

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[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 stated that each five-character alphanumeric code is used only once and remains unique to the individual to whom it is assigned throughout that individual's lifetime, even after they are no longer employed by the IRS.
[15] IRM 1.5.3.2.2(2) (May 19, 2017).

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. In our review of the self-certifications obtained from the managers in our sample, we found the following self-reported ROTER violations and 1204(b) retention standard occurrences of noncompliance:

- One quarterly self-certification from the Small Business/Self-Employed Division reported three Section 1204(a) ROTER violations.
- Six quarterly self-certifications from the Small Business/Self-Employed Division reported 25 Section 1204(b) Retention Standard occurrences of noncompliance.
- One quarterly self-certification from the Tax Exempt and Government Entities Division reported 21 Section 1204(b) Retention Standard occurrences of noncompliance.

In addition, as part of our review of the self-certification process, we also requested the quarterly consolidated certifications for each business operating division for Fiscal Year 2017 and determined that the self-reported information in the previous bullets was also included in the IRS consolidated summary of violations and occurrences of noncompliance, shown in Figure 3.

Figure 3: Fiscal Year 2017 Consolidated Summary of Violations and Occurrences of Noncompliance

Business Operating Division	Section 1204(a) ROTER Violations	Section 1204(b) Retention Standard
Office of the Commissioner	0	0
Appeals	0	3
Criminal Investigation	1	10
Large Business and International	0	0
National Taxpayer Advocate	3	6
Small Business/Self-Employed	3	28
Tax Exempt and Government Entities	0	51
Wage and Investment[16]	165	3
Totals	**172**	**101**

Source: TIGTA analysis of the quarterly consolidated certifications for each business operating division for Fiscal Year 2017.

[16] The Wage and Investment Division's 165 self-reported Section 1204(a) ROTER violations included one for the second quarter ending March 31, 2017, and 164 for the fourth quarter ending September 30, 2017.

As shown in Figure 3, the Wage and Investment Division self-reported 165 Section 1204(a) ROTER violations for Fiscal Year 2017 including 164 during the fourth quarter. We were advised that the fourth quarter violations occurred when three managers suggested production quotas and expected outcomes of case closures during monthly performance meetings with employees. These violations were self-reported and corrective actions completed indicating that the quarterly self-certification process is effective.

Recommendations

Recommendation 1: The Commissioner, Tax Exempt and Government Entities Division, 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.

> ***Management's Response:*** The IRS disagreed with this recommendation. While the IRS agreed that the operational review contained a ROTER, because the ROTER does not appear to impose or suggest a production quota or goal, it does not believe that the operational review violates Section 1204. In its response, the IRS stated that ROTER information may be disseminated to managers if it relates to the performance of units within their area of responsibility in accordance with IRM 1.5.2.11.1(2)(b).
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> ***Office of Audit Comment:*** Under IRM 1.5.2.11(1)(n), "no change rate" is a ROTER. The potential RRA 98 § 1204(a) violation identified in this report compares the area's no change rate to the national average. We contend that the language used here appears to suggest that the national average should be a goal or quota.

Recommendation 2: The Chief, Criminal Investigation, and the Commissioner, Wage and Investment Division, should ensure that the noncompliance identified in this report related to the prohibition on including ROTERs in an employee's self-assessment is discussed with the responsible employees and their managers so that they understand the IRS's policy that ROTERs should not be used in self-assessments.

> ***Management's Response:*** The IRS agreed with this recommendation. The IRS Human Capital Officer has confirmed with the named business units that the Section 1204 instances of noncompliance were discussed with the responsible employees and their managers regarding the IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments.

Recommendation 3: The Chief, Criminal Investigation; the Commissioner, Large Business and International Division; the National Taxpayer Advocate; the Commissioner, Small Business/Self-Employed Division; and the Commissioner, Wage and Investment Division, should ensure that the RRA 98 § 1204(b) instances of noncompliance are discussed with the responsible managers to ensure that they understand the retention standard documentation.

Management's Response: The IRS agreed with this recommendation. The IRS Human Capital Officer has confirmed with the named business units that the IRS policy on Section 1204(b) noncompliance regarding the retention standard requirements identified in this report were discussed with the responsible managers.

Recommendation 4: The Chief, Appeals; the National Taxpayer Advocate; the Commissioner, Small Business/Self-Employed Division; and the Commissioner, Tax Exempt and Government Entities Division, should ensure that responsible managers understand Code of Federal Regulations § 430.206 policy violations.

Management's Response: The IRS disagreed with this recommendation. In its response, the IRS stated that IRM 1.5.3.4.6(8) provides that timeliness of receipt/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 noncompliance for self-certification reporting.

Office of Audit Comment: A violation of 5 Code of Federal Regulations § 430.206 procedurally impedes the IRS's ability to comply with Section 1204(b) and Treasury Regulation Section 801. The congressional intent was to provide assurance that employee performance standards are focused on providing quality service to taxpayers instead of achieving enforcement results. In order for the IRS to evaluate its employees in the proper manner, the employee needs to know what he or she is being evaluated on, and the manager needs to provide documentation to the employee regarding the standards for the appraisal.

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

Management's Response: The IRS agreed with this recommendation. The IRS Human Capital Officer has confirmed with the named business units that the Section 1204(c) instances of noncompliance regarding the quarterly self-certification identified in this report were discussed with the responsible managers.

With Some Exceptions, the IRS Generally Ensures That Employees Complete Mandatory Training and Designate Themselves As Section 1204 Employees Within HR Connect

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

- Manage the Section 1204 population more efficiently.
- Reduce managerial burden in the Section 1204 self-certification process.
- Improve the accuracy of reporting, which also helps support the annual TIGTA audit and independent reviews completed by the IRS.[17]

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 themselves as Section 1204 employees within HR Connect, which affected the accuracy of the Fiscal Year 2017 Section 1204 employee and manager list created by the IRS as well as the assignment of the mandatory ROTERs training. Specifically, we determined that:

- 10 Section 1204 managers were missing from the Fiscal Year 2017 Section 1204 employee and manager list.
- 67 Section 1204 employees and managers were assigned the mandatory Section 1204 training during Fiscal Year 2017 and failed to complete it or complete it timely and did not provide an acceptable reason.
- 397 Section 1204 employees and managers were never assigned the mandatory Section 1204 training in Fiscal Year 2017 and failed to complete it or complete it timely and did not provide an acceptable reason.

[17] In Fiscal Year 2018, ownership of the Section 1204 program was transferred from the Office of the Chief Financial Officer to the IRS Human Capital Officer.

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

The Section 1204 employee and manager list is used to identify managers who are required to comply with RRA 98 § 1204. However, we identified a few Section 1204 managers missing from the Fiscal Year 2017 employee and manager list that the IRS provided to us. When we first compared the Fiscal Year 2017 list to the Fiscal Year 2016 list obtained during last year's review, we initially identified that 421 managers were missing. We then used the IRS's Discovery Directory to determine the current employment status of each of the 421 managers and whether they may have been in a Section 1204 manager position during Fiscal Year 2017. In so doing, we determined that 378 managers were either no longer designated as Section 1204 managers or no longer working for the IRS. However, we identified 43 potential managers who should have been on the Fiscal Year 2017 Section 1204 employee and manager list but were not, and two additional managers failed to correctly classify themselves as a Section 1204 employee in the prior fiscal year as well. When we provided this information to IRS management, they determined that 35 of these managers were either no longer Section 1204 managers or no longer worked for the IRS. As a result, we identified 10 Section 1204 managers who did not properly designate themselves within HR Connect as Section 1204 managers as of the end of Fiscal Year 2017.

After discussions with IRS management during our Fiscal Year 2015 review,[18] we were informed that the IRS sends quarterly reminders to managers to properly designate themselves within HR Connect. This is also part of the quarterly self-certification process in which the Section 1204 program managers issue reminders to perfect the Section 1204 Indicator on HR Connect. While improvements have been made to the identification of Section 1204 managers, it is important that the IRS continue to ensure that managers properly designate themselves within HR Connect. Managers who are not properly classified are at risk of not completing required mandatory training or not having the potential to be selected for the annual TIGTA audit and independent reviews done by the IRS.

Nearly all employees completed the mandatory Section 1204 training in Fiscal Year 2017

The new Section 1204 training became available to employees in the IRS's Enterprise Learning Management System in July 2017, and all Section 1204 personnel are required to complete the course annually. As part of our testing, we requested a report containing the training status of employees who were assigned the Section 1204 mandatory training to determine whether it was completed by the end of Fiscal Year 2017. We found that 98.6 percent of employees completed the training in July, August, or September 2017. However, there was no completion date for 141 Section 1204 employees and managers, suggesting that the training was not completed

[18] 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).

timely. When we asked IRS management to explain why these 141 Section 1204 employees and managers did not complete the required Fiscal Year 2017 training, they provided the following information for 74 of them:

- 35 employees and managers were on extended leave, *e.g.*, sick leave, leave without pay, maternity leave, during Fiscal Year 2017.
- 16 employees completed the training on the first workday of Fiscal Year 2018.
- 9 employees completed the training late due to hurricanes.
- 5 of the employees and managers are no longer employed with the IRS.
- 3 employees are no longer Section 1204 employees.
- 3 employees completed training during Fiscal Year 2017.
- 3 new hires were assigned training after Fiscal Year 2017 and completed the training after Fiscal Year 2017.

We also reconciled the training status report against the Section 1204 manager and employee list provided to us to identify personnel who may not have been assigned the required training. We identified 1,177 Section 1204 employees and managers who did not appear on the aforementioned training report. When we asked IRS management to explain why these 1,177 Section 1204 employees had never been assigned the Fiscal Year 2017 training and whether they had actually completed it, they stated the following for 780 Section 1204 employees:

- 315 employees and/or managers had actually completed the training during Fiscal Year 2017.
- 225 employees and/or managers went on extended leave during Fiscal Year 2017.
- 177 employees and/or managers left the IRS during Fiscal Year 2017.
- 56 employees and/or managers were incorrectly designated as Section 1204 employees.
- 7 employees were affected by hurricanes and completed training after Fiscal Year 2017 or retired.

In addition, there were 24 Section 1204 employees or managers for whom we were unable to make a determination based on the IRS's responses provided to us. After evaluating IRS considerations previously discussed as well as other information provided by the IRS, we determined that only 464 of 34,295 Section 1204 designated employees and managers did not complete the mandatory Section 1204 training during Fiscal Year 2017.[19] This reflects a 98.6 percent completion rate.

Recommendation

Recommendation 6: The Deputy Commissioner for Operations Support should ensure that the managers identified in this report are notified to properly designate their employees and/or themselves as Section 1204 personnel within HR Connect and ensure that the mandatory Section 1204 training is assigned and completed within 90 calendar days.

> **Management's Response:** The IRS agreed with this recommendation. In its response, the IRS cited that IRM 1.5.3, *Manager's Self-Certification and the Independent Review Process*, instructs Section 1204 managers to review and update their own and/or 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 that has been assigned to all designated Section 1204 employees and managers on July 9, 2018, and must be completed within 90 days. To efficiently address new hires, the Human Capital Office provides Leadership, Education, and Delivery Services weekly feeds to automatically assign mandatory Section 1204 training to new employees through their learning plans.

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

We interviewed all 40 Section 1204 managers included in the sample and a random sample of 40 Section 1204 employees from the stratified sample of 112 employees 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.[20] We determined that:

- Of the 40 managers, 39 stated that they had a clear understanding of ROTERs; however, three managers could not provide an accurate example of a ROTER statistic, and eight managers provided both accurate and inaccurate examples of ROTER statistics.

[19] This represents the number of Section 1204 employees who failed to complete the mandatory Section 1204 training during Fiscal Year 2017. It was calculated as the sum of the 373 Section 1204 employees and managers never assigned training ((1,177 - 780 (excused) – 24 (no response)), 24 Section 1204 employees and managers never assigned training with no response, and 67 Section 1204 employees and managers who were assigned the mandatory training and failed to complete it. Because the percentage of employees who did not provide an acceptable reason was less than 2 percent, we did not conduct further work to identify why they did not provide an acceptable reason.
[20] We interviewed 40 Section 1204 employees and 40 Section 1204 managers.

- Many employees stated that they had some degree of understanding of ROTERs; however, six employees could not provide an accurate example of a ROTER statistic, and two employees provided both accurate and inaccurate examples of ROTER statistics.
- All managers stated that they understood the retention standard; however, eight managers could not accurately define what the retention standard is, and seven managers provided incomplete definitions of the retention standard.
- Many employees stated that they were familiar with the retention standard; however, five employees claimed no understanding of the retention standard, and two employees could not accurately define the retention standard.
- Most of the managers stated that they have discussed the retention standard with their employees; 35 managers discussed and explained the standard with their employees, 12 managers told their employees to treat the taxpayer fairly or emphasized taxpayer rights, and 10 managers mentioned using the IRM or IRM examples to explain the retention standards.

If a manager misunderstands a ROTER statistic, it limits the manager's ability to fully evaluate employees or to set meaningful expectations. A clear understanding of ROTERs is critical for managers to ensure that they are not violating RRA 98 § 1204(a), are able to accurately document their own compliance through the self-certification process, and are able to assist their employees in understanding the requirements of the law.

The IRM states that the retention standard is used to make certain that all employees make a good-faith effort in the fair and equitable treatment of taxpayers. The manager must coach an employee on how to prevent an occurrence of unacceptable customer treatment and the importance of adhering to the Fair and Equitable Treatment of Taxpayers Retention Standard.[21]

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.[22]

[21] IRM 1.5.3.3.2(1) (Feb. 5, 2015).
[22] IRM 1.5.3.3.2(2) (Feb. 5, 2015).

Additionally, the IRS provided a mandatory self-study training briefing in July 2017 that was to be taken by all designated Section 1204 employees and managers through the Enterprise Learning Management System. The training took approximately 30 minutes to complete and:

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

We reviewed the mandatory Section 1204 briefing assigned to Section 1204 managers and employees in July 2017 and noted that key information is available only to employees and managers as links to the pertinent IRM sections within the training module and not on the slides themselves. For example, the following items are available via these links:

- Specific examples of tax enforcement results, *e.g.*, dollars collected, number of prosecutions, liens filed, or prohibited data, statistics, compilations of information, or other numerical or quantitative measures which may be considered ROTER violations if used improperly.
- Reference that managers cannot use a tax enforcement result from one case to evaluate an employee or suggest production goals or quotas, *e.g.*, praising an employee for submitting a fraud referral.
- Specific examples of quantity and quality measures that are permissible within the scope of a performance appraisal, *e.g.*, cases started, cases closed, cycle time, over-age cases.

If managers fail to properly share the retention standard information with their employees, it can affect their employees' interactions with taxpayers as well as their understanding of the importance of safeguarding taxpayer rights. We believe that managers and employees would benefit greatly from an increased knowledge of ROTERs. We also believe that expanding the training to include more information about the nature of ROTERs would be beneficial to IRS employees. While almost all Section 1204 employees and managers took the mandatory training, continued emphasis would allow managers and employees to be more knowledgeable on RRA 98 § 1204.

Recommendation

Recommendation 7: The Deputy Commissioner for Operations Support should implement an outreach strategy to ensure that employees and managers understand all responsibilities related to Section 1204. The strategy should include communications providing practical examples of the potential misuse of ROTERS based on self-reported violations, IRS Human Capital Office independent reviews, and prior TIGTA audits.

> ***Management's Response:*** The IRS agreed with this recommendation. The IRS Human Capital Officer will lead an effort to develop and implement a comprehensive communication and outreach strategy that incorporates a variety of vehicles and practical examples of the potential misuse of ROTERS to ensure that employees and managers understand all responsibilities related to Section 1204.

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 Section (§) 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 stratified sample of 112 employees and 40 managers for review. We used random sampling to give every Section 1204 manager and employee an equal chance of being selected for review.

      1. Obtained a list of Section 1204 employees and managers as of September 30, 2017. We isolated the employees and managers on the list and sorted the employees and managers by operating division.

      2. Using stratified sampling, randomly selected employee and manager samples from each of the seven operating divisions: Appeals, Criminal Investigation, Large Business and International Division, Tax Exempt and Government Entities Division, Small Business/Self-Employed Division, Wage and Investment Division, and the National Taxpayer Advocate.

   B. Obtained electronically, for each employee and manager selected for review, the evaluation documents prepared by the manager, *i.e.*, performance evaluation documents: midyear performance reviews, annual performance reviews, and award documents, and discussed with the selected employees. We also reviewed self-assessments, case reviews, group meeting notes, and workload reviews for the selected employees.

      1. Created a check sheet with a list of documents to request from the Section 1204 managers for each employee who was selected in Step I.A.1. We requested that each manager provide the appropriate evaluation documents from HR Connect[2] and/or scanned documents from the Employee Personal Folder, according to the check sheet.

      2. Obtained and reviewed the employee performance evaluation documentation and workload reviews to determine whether ROTERs, production goals, or quotas

[1] Pub. L. No. 105-206, 112 Stat. 685.
[2] See Appendix V for a glossary of terms.

were inappropriately used in the evaluation process and whether employees were evaluated appropriately on the fair and equitable treatment of taxpayers. We verified that the Receipt of Critical Job Elements and Retention Standard were signed within the first 30 days of the employees' rating period. We documented the results using an audit check sheet to identify the employees reviewed, documents examined, and any exceptions identified.

C. Reviewed the training records for the employees/managers selected for review who have ROTERs in their evaluations or self-assessments. We obtained evidence that the mandatory yearly training was completed.

D. Discussed any exceptions identified with the IRS Human Capital Officer Section 1204 program manager and the appropriate operating division/function program coordinator for agreement and explored the potential root cause for the violation(s).

E. Contacted TIGTA's Office of Investigations and determined if there were any complaints or investigations filed during Fiscal Year 2017 related to ROTERS.

F. Queried the Automated Labor and Employee Relations Tracking System data maintained at TIGTA's Data Center Warehouse and analyzed it to determine if any employee administrative cases in Fiscal Year 2017 included possible ROTER violations.

G. Verified the Section 1204 managers' classification by matching the list of Section 1204 managers obtained in Step I.A.1. to the list of Section 1204 managers obtained during our Fiscal Year 2016 review to identify any managerial changes between the two years. For any managers removed from the current list, we used the Discovery Directory to determine their employment designation.

H. Contacted the IRS Government Accountability Office/TIGTA liaison and identified and evaluated all Government Accountability Office planned, ongoing, and recently completed audit coverage related to IRS ROTERs.

II. Determined if the sampled managers complied with RRA 98 § 1204(c) by certifying by letter whether or not ROTERs were used in a manner prohibited by subsection (a).

A. Obtained, electronically, the self-certifications for all four quarters during Fiscal Year 2017 from the managers selected for review.

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 self-reported by the managers on their quarterly certifications.

B. Contacted the second-line manager for any manager certifications that could not be located.

   1. Obtained evidence that the certification was filed, *i.e.*, copy of certification, from the second-line manager.

   2. Discussed the justification with the manager and second-line manager for managers' certifications that were not located.

   3. Determined the respective appropriate supervisor for the operating division/function, for any of the manager self-certifications that identified a prohibited use of ROTERs, and obtained the appropriate supervisor's certification. We also determined whether the identified prohibited use of ROTERs was reported by the appropriate supervisor and was included in the memorandum to the IRS Commissioner.

C. Discussed any self-certification exception cases with IRS Human Capital Officer Section 1204 program manager and the appropriate Section 1204 program coordinator (for each operating division/function), obtained agreement, and explored further the potential cause for the violation.

III. Determined whether the mandatory RRA 98 § 1204 training for managers and employees adequately addressed the use of ROTERs and/or the retention standards and whether the employees had a general understanding of these requirements.

A. Interviewed IRS management to obtain documentation for the Section 1204 training provided to employees and obtained their feedback on whether perceptions about the use of (or emphasis on) enforcement statistics or ROTERs have changed.

B. Reviewed documentation to determine how and when the Section 1204 training was implemented.

C. Compared the Section 1204 training documents received from the IRS Human Capital Officer Section 1204 program manager to the Section 1204 training documents available on the IRS's Enterprise Learning Management System to determine if the documents matched what were being issued to the Section 1204 managers and employees.

D. Reviewed all Section 1204 training materials for the tone of the message delivered.

E. Requested a list of all Section 1204 employees and managers who completed the Section 1204 training.

F. Reviewed all documentation that the Section 1204 training was completed by all Section 1204 employees and managers and determined if this is the same course as provided by the IRS Human Capital Officer Section 1204 program manager and/or available on the Enterprise Learning Management System.

G. Interviewed all 40 sampled managers and a judgmental sample of 40 employees from the stratified samples in Step I.A.1. to obtain their feedback on whether perceptions about the use of (or emphasis on) enforcement statistics or ROTERs have changed, as well as their knowledge of the retention standard.[3] Employees were interviewed via teleconference. From the 112 randomly selected employees, we judgmentally sampled 40 employees based on business organization and time zone to accommodate audit team members on both coasts.

Data validation methodology

We obtained the Fiscal Year 2017 fourth quarter Section 1204 employee and manager list from the Office of the Chief Financial Officer.[4] We used this list to develop our stratified sampling plan. Our sampling plan was developed in consultation with our statistician. To determine the reliability of the data, we reviewed the data for duplicates and identified any missing information. We then compared the data to the Discovery Directory. These tests determined that the data were sufficiently reliable and could be used to meet the objective of this audit.

Internal controls methodology

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

[3] A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.
[4] Section 1204 manager list generated from the HR Connect system. In Fiscal Year 2018, ownership of the Section 1204 program was transferred from the Office of the Chief Financial Officer to the IRS Human Capital Officer.

Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Christina M. Dreyer, Director
Timothy F. Greiner, Audit Manager
Lee Hoyt, Lead Auditor
Jesse Fenton, Auditor

Appendix III

Report Distribution List

Deputy Commissioner for Operations Support
Chief, Appeals
Chief, Criminal Investigation
IRS Human Capital 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

Appendix IV

Recent Audit Reports Related to This Statutory Review[1]

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

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

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

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

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

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

[1] This list provides the six most recent reports issued by TIGTA.

Appendix V

Glossary of Terms

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

Appendix VI

Management's Response to the Draft Report

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

HUMAN CAPITAL OFFICE

AUG 0 8 2018

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Katherine M. Coffman K. M. Coffman
IRS Human Capital Officer

SUBJECT: Draft Audit Report - Fiscal Year 2018 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Tax Enforcement Results (Audit# 201830008)

Thank you for the opportunity to review the draft report entitled, Fiscal Year 2018 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Tax Enforcement Results (Audit# 201830008). We appreciate your acknowledgment that the IRS ensures that its managers generally do not use Records of Tax Enforcement Results (ROTERs) and/or production goals or quotas to evaluate employees, and that the IRS recognizes its responsibility to protect taxpayer rights.

In general, we agree with the report language and the audit findings pertaining to Section 1204 violations, instances of noncompliance, and Internal Revenue Manual (IRM) policy violations, which all have been discussed with the responsible managers and employees to reinforce responsibilities related to the law and IRS policies.

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

- Based on a review by Chief Counsel, General Legal Services (GLS), we do not agree with the Section 1204(a) violation that appears in an operational review. We agree that the operational review contains a ROTER, however, because the ROTER does not appear to impose or suggest a production quota or goal, we do not believe that the operational review violates Section 1204 under the requirements of the law and the regulations implementing Section 1204 found at 26 C.F.R. §801 et seq. ROTER information may be disseminated to managers if it relates to the performance of units within their area of responsibility. This includes forecasting, financial planning, resource management, and the formulation of case selection criteria. IRM 1.5.2.11.1(2)(b). Managing Statistics in a Balanced Measurement System, Uses of Section 1204 Statistics

2

- Based on IRM policy guidance, we do not agree with seven 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 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.

Attached is a detailed response outlining the corrective actions that the Human Capital Office will take to address your recommendations. If you have any questions, please contact me at 202-317-7600, or a member of your staff may contact Pablo Melendez, Acting Director, Risk, Engagement, Finance, Strategy and Systems, at 202-317-4397.

Attachment

Attachment

RECOMMENDATION 1
The Commissioner, Tax Exempt and Government Entities Division, should ensure that the potential RRA 98 Section 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
None. The IRS does not agree with this recommendation. We agree that the operational review contains a ROTER, however, because the ROTER does not appear to impose or suggest a production quota or goal, we do not believe that the operational review violates Section 1204. ROTER information may be disseminated to managers if it relates to the performance of units within their area of responsibility. IRM 1.5.2.11.1(2)(b).

IMPLEMENTATION DATE
N/A

RESPONSIBLE OFFICIAL
IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN
N/A

RECOMMENDATION 2
The Chief, Criminal Investigation, and the Commissioner, Wage and Investment Division, should ensure that the noncompliance identified in this report related to the prohibition on including ROTERs in an employee's self-assessment is discussed with the responsible employees and their managers so that they understand the IRS's policy that ROTERs should not be used in self-assessments.

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

IMPLEMENTATION DATE
August 3, 2018 (Completed)

RESPONSIBLE OFFICIAL
IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN
NA

RECOMMENDATION 3
The Chief, Criminal Investigation; the Commissioner, Large Business and International Division; the National Taxpayer Advocate; the Commissioner, Small Business/Self-Employed Division; and the Commissioner, Wage and Investment Division, should ensure that the RRA 98 § 1204(b) instances of noncompliance are discussed with the responsible managers to ensure that they understand the retention standard documentation.

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

IMPLEMENTATION DATE
August 3, 2018 (Completed)

RESPONSIBLE OFFICIAL
IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN
N/A

RECOMMENDATION 4
The Chief, Appeals; the National Taxpayer Advocate; the Commissioner, Small Business/Self-Employed Division; and the Commissioner, Tax Exempt and Government Entities Division, should ensure that responsible managers understand the Code of Federal Regulations § 430.206 policy violations.

CORRECTIVE ACTION
None. The IRS disagrees with this recommendation. According to IRM 1.5.3.4.6(8), timeliness of receipt/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.

IMPLEMENTATION DATE
N/A
RESPONSIBLE OFFICIAL
IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN
N/A

RECOMMENDATION 5
The Chief, Criminal Investigation; the National Taxpayer Advocate; and the Commissioner, Tax Exempt and Government Entities Division, should ensure that responsible managers understand the quarterly certification requirements.

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

IMPLEMENTATION DATE
August 3, 2018 (Completed)

RESPONSIBLE OFFICIAL
IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN
N/A

RECOMMENDATION 6
The Deputy Commissioner for Operations Support should ensure that the managers identified in this report are notified to properly designate their employees and/or themselves as Section 1204 personnel within HR Connect and ensure that the mandatory Section 1204 training is assigned and completed within 90 calendar days.

CORRECTIVE ACTION
The IRS agrees with this recommendation. IRM 1.5.3, Manager's Self-Certification and the Independent Review Process, instructs Section 1204 managers to review and update their and/or 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 that has been assigned to all designated Section 1204 employees and managers on July 9, 2018, and must be completed within 90 days. To

efficiently address new hires, the Human Capital Office (HCO) provides Leadership, Education, and Delivery Services (LEADS) weekly feeds to automatically assign mandatory Section 1204 training to new employees through their learning plans.

IMPLEMENTATION DATE
July 09, 2018 (Completed)

RESPONSIBLE OFFICIAL
IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN
N/A

RECOMMENDATION 7
The Deputy Commissioner for Operations Support IRS should implement an outreach strategy to ensure employees and managers understand all responsibilities related to Section 1204. The strategy should include communications providing practical examples of the potential misuse of ROTERS based on self-reported violations, IRS Human Capital Office independent reviews and prior TIGTA audits.

CORRECTIVE ACTION
The IRS agrees with this recommendation. The IRS HCO will lead an effort to develop and implement a comprehensive communication and outreach strategy that incorporate a variety of vehicles and practical examples of the potential misuse of ROTERS to ensure employees and managers understand all responsibilities related to Section 1204.

IMPLEMENTATION DATE
July 15, 2019

RESPONSIBLE OFFICIAL
IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN
Communication and Outreach Plan developed - September 15, 2018
Identified activities implemented - July 15, 2019