



*Fiscal Year 2013 Statutory Audit of  
Compliance With Legal Guidelines  
Restricting the Use of Records  
of Tax Enforcement Results*

**August 15, 2013**

**Reference Number: 2013-30-073**

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

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## HIGHLIGHTS

### FISCAL YEAR 2013 STATUTORY AUDIT OF COMPLIANCE WITH LEGAL GUIDELINES RESTRICTING THE USE OF RECORDS OF TAX ENFORCEMENT RESULTS

## Highlights

Final Report issued on August 15, 2013

Highlights of Reference Number: 2013-30-073 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 and quotas. Based on the results of our sample, TIGTA believes the IRS's efforts to enforce the employee evaluation requirements under RRA 98 Section 1204 are generally effective and are helping to protect the rights of taxpayers.

### WHY TIGTA DID THE AUDIT

TIGTA is required under Internal Revenue Code Section 7803(d)(1)(2000) to annually evaluate whether the IRS complies with restrictions on the use of enforcement statistics under RRA 98 Section 1204. Our review determined whether the IRS complied with:

- Section 1204(a), which prohibits the IRS from using any ROTER 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

The IRS did not achieve full compliance with RRA 98 Section 1204 requirements. TIGTA identified instances of noncompliance with each subsection of the law:

- Section 1204(a) – eight violations.
- Section 1204(b) – 15 instances of documentation noncompliance.
- Section 1204(c) – one instance of noncompliance.

TIGTA also identified five IRS policy violations. In these five instances, managers did not reject employee self-assessments containing ROTER information.

The IRS is taking a proactive approach to Section 1204 training and has received approval to conduct the mandatory training in the form of a briefing every two years. However, once the mandatory biannual briefing period is over, the training is not scheduled to be given in the interim to any newly hired Section 1204 employee or manager. To address our concerns regarding Section 1204 new hires, IRS management stated that they plan to provide training each quarter for any recently hired Section 1204 employees and managers, instead of having them wait until the next biannual briefing.

### WHAT TIGTA RECOMMENDED

TIGTA made four recommendations, including that the Section 1204 noncompliance and IRS policy violations identified in this report be discussed with the responsible managers and employees.

The IRS agreed to address noncompliance on three of the eight Section 1204(a) violations but did not agree with five of the eight Section 1204(a) violations. However, IRS documents included, for example, references to indictments, convictions, prosecution rates, or monies protected or recovered. Inferences could be made suggesting a production goal or quota and there was “soft language or phrases” that were suggestive of ROTERs.

The IRS has taken or plans to take corrective actions on the remaining recommendations.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

August 15, 2013

**MEMORANDUM FOR DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT**

**FROM:** Michael E. McKenney  
Acting Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Fiscal Year 2013 Statutory Audit of Compliance  
With Legal Guidelines Restricting the Use of Records of Tax Enforcement  
Results (Audit # 201330005)

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.<sup>1</sup> The Treasury Inspector General for Tax Administration is required under Internal Revenue Code Section 7803(d)(1)(2000) to annually evaluate the IRS's compliance with the provisions of RRA 98 Section 1204. The RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees<sup>2</sup> using any record of tax enforcement results (ROTTER) or base employee successes on meeting goals and quotas for ROTERs. This review is part of our Fiscal Year 2013 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 V.

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 Augusta R. Cook, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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<sup>1</sup> 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.).

<sup>2</sup> 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*

IRS	Internal Revenue Service
ROTER	Record of Tax Enforcement Result
RRA 98	Restructuring and Reform Act of 1998



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## *Background*

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

The IRS defines ROTERs as data, statistics, compilations of information, or other numerical or quantitative recordings 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, and the number of seizures conducted. A ROTER does not include evaluating an individual case to determine if an employee exercised appropriate judgment in pursuing enforcement of the tax laws.

***RRA 98 Section 1204(a)  
prohibits the IRS from using  
ROTTERs to evaluate employees  
or to impose or suggest quotas  
or goals for such employees.***

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

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<sup>1</sup> 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.).

<sup>2</sup> 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.

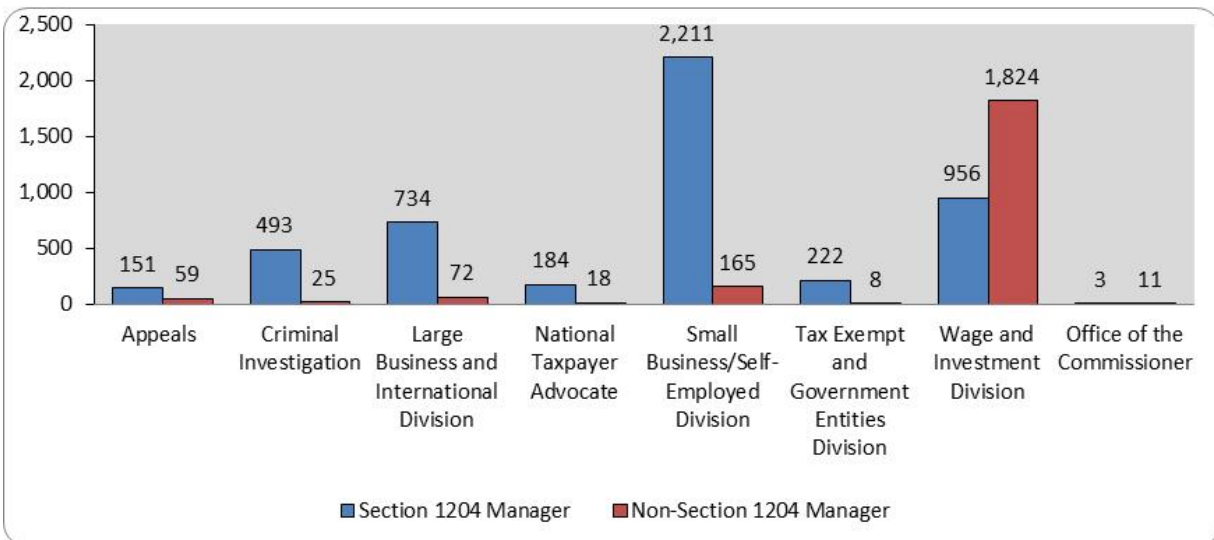


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The IRS functional offices and divisions, including the Office of Appeals; Criminal Investigation; the Large Business and International Division; the Small Business/Self-Employed Division; the Office of the National Taxpayer Advocate; the Tax Exempt and Government Entities Division; and the Wage and Investment Division are responsible for RRA 98 Section 1204 program implementation within their respective areas. Section 1204 program managers and coordinators in each business organization are available to provide guidance to managers regarding Section 1204 issues, including the certification process.

Figure 1 depicts the number of Section 1204 and Non-Section 1204 managers in the subject business organizations as of September 30, 2012. Section 1204 managers either supervised a Section 1204 employee or provided guidance or direction for Section 1204 activities.

**Figure 1: Number of Section 1204 and Non-Section 1204 Managers  
by Business Organization (as of September 30, 2012)**



*Source: Treasury Inspector General for Tax Administration audit analysis of data from the IRS's Corporate Planning and Internal Control database.*

Internal Revenue Code Section 7803(d)(1)(2000) requires the Treasury Inspector General for Tax Administration to determine annually whether the IRS is in compliance with restrictions on the use of enforcement statistics under RRA 98 Section 1204. We have previously performed 14 annual reviews to meet this requirement. Appendix IV lists the prior audit reports.

This review was performed at the IRS Headquarters in Washington, D.C.; in 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; the Tax Exempt and Government Entities Division; and the Wage and Investment Division during the period October 2012 through March 2013.



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On-site reviews were performed at the IRS field offices in Los Angeles, California; Miami, Florida; Nashville, Tennessee; Ogden, Utah; and Washington, D.C. 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*

### ***The Internal Revenue Service Is Not in Full Compliance With Section 1204 of the Restructuring and Reform Act of 1998***

The IRS's efforts to ensure that managers are not using ROTERs and/or production goals or quotas to evaluate employees are generally effective. However, some IRS business units need to be more diligent. In Fiscal Year 2012, the IRS was not in full compliance with RRA 98 Section 1204. The following issues were identified:

- **Section 1204(a) – 8 violations** where IRS managers used ROTERs to evaluate employees.
- **Section 1204(b) – 15 instances of documentation noncompliance** where IRS managers did not maintain proper retention standard documentation to evaluate their employees using the fair and equitable treatment of taxpayers as a performance standard.
- **Section 1204(c) – 1 instance of noncompliance** where an IRS manager did not 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 judgmental sample<sup>3</sup> of 35 first-line managers and 105 employees in five sites. The sites selected had at least four business organizations with Section 1204 first-line managers. We selected seven managers and three of the manager's employees at each site and reviewed their performance evaluation documents. In addition, we reviewed performance documents for five second-line managers, one from each site. As a result, 145 employees were selected to determine the IRS's compliance with RRA 98 Section 1204 provisions.

#### ***The IRS was not in full compliance with the use of ROTER procedures***

In Fiscal Year 2012, the IRS did not achieve full compliance with RRA 98 Section 1204(a). We found eight violations in employee or manager performance-related documents and group meeting minutes reviewed from Criminal Investigation and the Taxpayer Advocate Service. Specifically, the ROTERs were found in:

- Five of 145 annual appraisals reviewed.

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<sup>3</sup> A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.



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- Two of 135 midyear appraisals reviewed.<sup>4</sup>
- One of the 356 group meeting minutes reviewed.

To evaluate the IRS's compliance with Section 1204(a), we evaluated Fiscal Year 2012 performance-related documents, including midyear and annual performance reviews, employee self-assessments, workload reviews, and award documentation for the 145 employees, as well as any group meeting minutes<sup>5</sup> to determine whether ROTERs were used when evaluating the employees' performance and/or to impose or suggest quotas or goals for such employees. RRA 98 Section 1204(a) prohibits the IRS from using ROTERs to evaluate employees, or to impose or suggest quotas or goals for such employees.

Based on the results of our review, the IRS's efforts to ensure that managers are not using ROTERs and/or production quotas or goals to evaluate employees are generally effective. However, to ensure the fair and equitable treatment of taxpayers, some IRS business units need to be more diligent to ensure that ROTERs are not used to evaluate employees and/or suggest production quotas or goals. After discussions with management from both business units, they agreed that additional training and a reminder of the guidelines are needed.

In addition, we also identified five of 90 self-assessments prepared by IRS employees<sup>6</sup> from the Criminal Investigation and the Taxpayer Advocate Service that contained ROTERs. We did not consider these to be an actual violation because ROTERs in an employee's self-assessment do not violate Section 1204(a). However, according to the Internal Revenue Manual,<sup>7</sup> it is the IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments. If a self-assessment is submitted with a ROTER, the manager is to return it to the employee for removal of the ROTER. In these five cases, the managers did not follow proper procedures and, as a result, the employees may have remained unaware of the issue.

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

The IRS did not achieve full compliance with the retention standard as related to RRA 98 Section 1204(b) in Fiscal Year 2012. Specifically, we determined that:

- Seven employee personnel files were missing Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*.

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<sup>4</sup> For 10 of the 145 requested midyear appraisals, the responsible managers did not conduct midyear evaluations of these employees, which resulted in no midyear appraisal for us to review.

<sup>5</sup> Of the 35 first-line managers sampled, two managers did not maintain any group meeting minutes. Of the 33 remaining managers, the number of group meeting minutes per manager varied from two to 44.

<sup>6</sup> Bargaining unit employees are not required to complete self-assessments.

<sup>7</sup> Internal Revenue Manual 1.5.2.6.2(3) (May 10, 2012).



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- Six Employee Personnel Files included Form 6774. However, the form was not appropriately signed by all parties. Figure 2 presents an example of Form 6774, Parts III and IV.
- Two manager personnel files included Form 12450-A, *Manager Performance Agreement*, or Form 12450-B, *Management Official Performance Agreement*; however, the forms were not appropriately signed by all parties.

**Figure 2: Form 6774, Parts III and IV**

<b>Part III - Acknowledgement of Receipt</b>			
This is to acknowledge that the Fair and Equitable Treatment of Taxpayers Retention Standard and CJEs have been furnished, and discussed to include examples of behaviors that will allow the employee to meet the Fair and Equitable Treatment of Taxpayers Retention Standard; circumstances that may result in a determination that the employee does not meet the Fair and Equitable Treatment of Taxpayers Retention Standard, and the potential impact of not meeting the Fair and Equitable Treatment of Taxpayers Retention Standard. <b>Note:</b> For employees covered by the National Agreement only: If the CJEs have not changed, the supervisor need not meet with a journey level and above employee, but will communicate the CJEs remain the same for that rating period, and obtain the employee's signature.			
Employee initial/Signature		Date	
Supervisor signature ( <i>I certify that Records of Tax Enforcement Results (ROTERTs) will not be used to evaluate this employee.</i> )		Date	
<b>Part IV - Recertification for Receipt of CJEs and Fair and Equitable Treatment of Taxpayers Retention Standard</b>			
The supervisor signature acknowledges the information provided in Parts I and II have been reviewed for accuracy, and the requirement in Part III has been discussed for the stated rating period.			
The employee's initials/signature acknowledges Part III has been completed, as applicable, for the rating period stated below.			
1a. Recertification for the rating period	2a. Recertification for the rating period		
From:                      To:	From:                      To:		
1b. Supervisor signature ( <i>I certify that ROTERTs will not be used to evaluate this employee.</i> )	Date	2b. Supervisor signature ( <i>I certify that ROTERTs will not be used to evaluate this employee.</i> )	Date
1c. Employee initial/signature	Date	2c. Employee initial/signature	Date

Part III is where the employees acknowledge that the retention standard has been discussed with them and the manager certifies that they will not use ROTERTs to evaluate the employee. Part IV can be used to recertify the form during the following two rating periods.

Source: Form 6774 (Rev. 12-2008).

To evaluate the IRS’s compliance with Sections 1204(b), we requested the Fiscal Year 2012 appropriate retention standard document applicable for the 145 selected employees. RRA 98 Section 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The standard applies to all executives, managers, and employees. On June 16, 1999, the IRS established a retention standard method to ensure that employee performance is focused on providing quality service to taxpayers instead of on achieving enforcement results.

Compliance with Section 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 retention standard



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form to their employees.<sup>8</sup> 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.<sup>9</sup> The Internal Revenue Manual<sup>10</sup> states that Section 1204(b) noncompliance occurs when:

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

When we discussed the issues of potential Section 1204(b) noncompliance with IRS management, they stated it appears that the managers need to be reminded of the documentation procedures related to the retention standard. Discussion and acknowledgement of the retention standard and subsequent performance evaluations are used to ensure that all Section 1204 employees meet the provisions of the retention 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 if employees were aware of and/or actually provided information on the retention standard. If managers fail to properly share the retention standard information with their employees, it can affect employees' interactions with taxpayers and their understanding of the importance of safeguarding taxpayer rights.

**First-line managers properly completed their quarterly self-certifications**

With the exception of one quarterly self-certification, the IRS adequately complied with RRA 98 Section 1204(c). To evaluate the IRS's compliance with Section 1204(c), we requested the Fiscal Year 2012 second and fourth quarter self-certifications for 35 first-line managers.<sup>11</sup> RRA 98 Section 1204(c) requires appropriate supervisors to certify quarterly, 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:

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<sup>8</sup> The appropriate documents for the receipt of the retention standard are Form 6774, Form 12450-A, Form 12450-B, Form 12450-D, *Management/Program Analyst Performance Agreement*, or Form TD F 35-07, *Executive Performance Agreement*.

<sup>9</sup> The appropriate appraisal forms are Form 6850-BU, *Bargaining Unit Performance Appraisal and Recognition Request*, Form 6850-NBU, *Non-Bargaining Unit Performance Appraisal*, Form 12450-A, Form 12450-B, Form 12450-D, or Form TDF 35-07.

<sup>10</sup> Internal Revenue Manual 1.5.3.6.4(1) (June 6, 2012).

<sup>11</sup> The appropriate quarterly self-certification forms are Form 1204-M, *Manager's Quarterly Self-Certification – No Violations*, or Form 1204-MV, *Manager's Quarterly Self-Certification – With Violations*.



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- Use ROTERs to evaluate employees and/or to impose or suggest production quotas or goals for employees in any performance evaluations, including appraisals, awards, or promotion justifications, written or reviewed by the manager.
- Verbally communicate to employees that ROTERs affected their evaluations.
- Verbally or in writing use ROTERs to impose or suggest production quotas or goals for employees or for work unit activities (e.g., through program guidance or business and program reviews).

Per the Internal Revenue Manual,<sup>12</sup> the business organization and function Section 1204 program managers and their respective Section 1204 coordinators should monitor the quarterly certification process throughout their organizations/functions.

After discussions with IRS management, we determined that there was an acting manager during the second quarter of Fiscal Year 2012 who was unaware of the self-certification requirements. Per the Internal Revenue Manual,<sup>13</sup> an acting manager (in the position more than 30 days at the end of a quarter) will self-certify for the office and must be included on the list of Section 1204 managers.

Through the quarterly certification process, managers are reminded of their responsibilities under RRA 98 Section 1204 to not evaluate their employees on the basis of ROTERs and/or production quotas or goals. The quarterly 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. If managers are not complying with the self-certification requirement, it could indicate that they are not complying with the underlying requirements of the law.

## ***Recommendations***

**Recommendation 1:** The Chief, Criminal Investigation, and the National Taxpayer Advocate should ensure that the Section 1204(a) violations identified in this report are discussed with the responsible managers to ensure that the managers understand the guidelines related to the use of ROTERs.

**Management's Response:** IRS management partially agreed with this recommendation. They agreed with three of the eight Section 1204(a) violations identified in this report. These three were discussed with the responsible managers to ensure that they understand the guidelines related to the use of ROTERs.

**Office of Audit Comment:** IRS management disagreed with five of the eight Section 1204(a) violations identified in this report. The five Section 1204(a) violations in which the IRS did not agree consist of one employee midyear progress review, three

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<sup>12</sup> Internal Revenue Manual 1.5.3.7(10) (June 6, 2012).

<sup>13</sup> Internal Revenue Manual 1.5.3.7.2(3) (June 6, 2012).





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employee evaluations, and a verbal recognition made at a group meeting. The IRS stated that (1) the midyear progress review does not include data, statistics, or numerical information regarding tax enforcement results, (2) the three evaluations referenced did not involve tax investigations, and (3) the fifth did not include a tax enforcement result.

We disagree with the IRS. The documents included, for example, references to indictments, convictions, prosecution rates, or monies protected or recovered. Inferences could be made suggesting a production goal or quota and there was “soft language or phrases” that were suggestive of ROTERs. Section 1204(a) states that the IRS shall not use records of tax enforcement results to impose or suggest production quotas or goals with respect to such employees. The Internal Revenue Manual also states that in addition to the prohibition against using hard numbers on a collective basis, managers are prohibited from using “soft language or phrases” that are suggestive of ROTERs.

**Recommendation 2:** The Chief, Appeals; the Commissioners for the Large Business and International, Tax Exempt and Government Entities, and Wage and Investment Divisions; and the National Taxpayer Advocate should ensure that the Section 1204(b) noncompliance with documentation requirements and the Section 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:** IRS management agreed with this recommendation. The Chief Financial Officer confirmed with the affected business units that the Section 1204(b) noncompliance with documentation requirements and the Section 1204(c) noncompliance identified in this report were discussed with the responsible managers to ensure that they understand the retention standard documentation and quarterly self-certification requirements.

**Recommendation 3:** The Chief, Criminal Investigation, and the National Taxpayer Advocate should ensure that the IRS noncompliance identified in this report relating to the prohibition on including ROTERs in employee self-assessments is discussed with the responsible managers and employees so that they understand the IRS’s policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments.

**Management’s Response:** IRS management agreed with this recommendation. The Chief Financial Officer has confirmed that the policy violations resulting from employees including ROTERs in their self-assessments have been discussed with the appropriate managers and their employees.



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## ***Due to Scheduling Intervals, Section 1204 Training May Not Be Given Timely to New Section 1204 Employees and Managers***

We interviewed a judgmental sample of 20 Section 1204 employees to determine if they had: (1) a clear understanding of what a ROTER is; (2) any knowledge of the retention standard; and (3) any training related to either topic. We determined that:

- 10 employees stated they did not have a clear understanding of ROTERs.
- Seven employees were not sure if they had received training related to ROTERs.
- Five were not sure if they had received training related to the retention standard.
- Four employees did not have a clear understanding of the term retention standard.

The IRS conducted mandatory RRA Section 1204 training, which was staggered to accommodate the operating and functional divisions' workloads from March 1 through September 30, 2011. The training was required to ensure that Section 1204 employees and managers understand:

- The rules for appropriately using statistics in setting goals and measuring performance.
- The requirements for sharing and evaluating the Fair and Equitable Treatment of Taxpayers Retention Standard.
- The process for quarterly self-certification of compliance with Section 1204 requirements.
- That annual program reviews are conducted by the Office of the Chief Financial Officer and the Treasury Inspector General for Tax Administration to assess Section 1204 compliance.

This self-study training course was taken individually by employees and managers through the Enterprise Learning Management System<sup>14</sup> and took approximately 30 minutes to complete. According to IRS management, the training was to be conducted every three years and who took the training was manually controlled by the Office of the Chief Financial Officer. IRS management also stated that the lack of employee understanding could be due to the large number of reorganizations among business units in the last couple of years and that they may have missed some employees by using a manual process to control who took the training.

The Office of the Chief Financial Officer is taking a proactive approach to the Section 1204 training and has received approval to conduct the mandatory training in the form of a briefing every two years. The training will no longer be manually controlled by the Office, but will

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<sup>14</sup> The Enterprise Learning Management System is an application that provides training, administration, and training resource management.



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automatically be administered to all Section 1204 employees and managers at the time the briefing is given. The first briefing is scheduled to be delivered on or about July 1, 2013. IRS management stated that the mandatory briefing will give them more control to ensure that all Section 1204 employees at the time of the briefing receive it.

However, once the mandatory biannual briefing period is over, this training is not scheduled to be given in the interim to any newly hired Section 1204 employee or manager. As a result, there is a possibility that not all Section 1204 employees and managers will receive the training in a timely manner or at all. The IRS has a responsibility to ensure that its managers and employees are timely trained on Section 1204. When we discussed our concern regarding the Section 1204 new hires with IRS management, an official from the Office of the Chief Financial Officer stated that the Section 1204 training will be provided each quarter for any recently hired Section 1204 employees and managers, instead of having them wait until the next scheduled biannual briefing. We have reviewed this training and believe it will be valuable for all Section 1204 employees and managers at the time of the training; however, the IRS needs to ensure that all new Section 1204 employees and managers will timely receive the training as planned.

### ***Recommendation***

**Recommendation 4:** The Deputy Commissioner for Operations Support should ensure that Section 1204 training is timely disseminated to all new Section 1204 employees and managers hired between the scheduled mandatory biannual briefings.

**Management's Response:** IRS management agreed with this recommendation. The Chief Financial Officer will update the Section 1204 training guidance to require training be provided each quarter for any Section 1204 employees and managers hired between the scheduled mandatory biannual briefings. The business units will be required to provide the Chief Financial Officer quarterly updates of the Section 1204 training completed by new hires.





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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 Section 1204.<sup>1</sup> To accomplish the objective, we:

- I. Determined if the IRS complied with the provisions of RRA 98 Section 1204(a) and (b) when evaluating Section 1204 employees' performance.
  - A. Selected a judgmental sample<sup>2</sup> of 145 enforcement employees/managers for review.
    1. Selected Los Angeles, California; Miami, Florida; Nashville, Tennessee; Ogden, Utah; and Washington, D.C., as the audit sites and obtained a list of Section 1204 managers by operating division/function from the national Section 1204 program coordinator. We determined the distribution of the employees who were sampled in accordance with the sampling plan. The site visits were completed during the months of January through March 2013.
    2. Identified a list of potential first-line managers for each operating division/function that was reviewed using the Section 1204 manager list and the Discovery Directory.
    3. Selected the first-line managers using the manager list prepared in Step I.A.2, according to the sampling plan. We judgmentally selected three employees from each manager and reviewed their performance evaluation documents.
  - B. Obtained and reviewed the performance evaluation documents (*i.e.*, midyear and annual performance reviews and award documents) for each selected employee and first-line manager. Also, we reviewed workload reviews for the selected employees.
    1. Contacted the selected first-line managers, judgmentally selected three employees, and reviewed their performance evaluation documents. When a selected manager was unavailable during the scheduled visit, we made a substitution.
    2. Obtained and reviewed the employee performance evaluation documentation and workload reviews and determined whether ROTERs, production goals, or quotas were inappropriately used in the evaluation process and whether employees were

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<sup>1</sup> 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.).

<sup>2</sup> A judgmental sample is a nonstatistical sample, the results of which cannot be used to project to the population.



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- evaluated appropriately on the fair and equitable treatment of taxpayers. We verified Form 6774, *Receipt of Critical Job Elements and Fair and Equitable Treatment of Taxpayers Retention Standard*, was signed and in the Employee Personnel 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, while performing the file reviews covered in Step I.B.2.
  - D. Discussed the identified exceptions with the national Section 1204 program coordinator and the appropriate operating division/function coordinator for agreement and explored the potential root cause for the violations.
  - E. Selected a judgmental sample of five second-line managers. We reviewed their performance evaluation documentation (*i.e.*, midyear and annual performance reviews and award documents) for the inappropriate use of ROTERs. We focused on second-level managers of the first-line managers selected in Step I.A.
- II. Determined if the sampled first-line managers complied with RRA 98 Section 1204(c) by certifying by letter whether ROTERs were used in a manner prohibited by subsection (a).
- A. Obtained the Fiscal Year 2012 second and fourth quarter self-certification documents from the selected first-line managers at each audit site.
    - 1. Reviewed the self-certification documents submitted by the first-line managers and established whether they were completed timely and signed appropriately.
    - 2. Determined if any ROTERs and/or production goals and quotas were reported by the first-line managers on their self-certifications.
  - B. Contacted the second-line manager for any first-line manager certifications that could not be located.
    - 1. From the second-line manager, attempted to obtain evidence that the certification was filed (*i.e.*, a copy of the certification).
    - 2. If the first-line manager's certification could not be located, discussed the reason it could not be located with the first and second-line manager.
  - C. Discussed any self-certification exception cases with the national Section 1204 program coordinator and the appropriate Section 1204 program coordinator (for each operating division/function), obtained agreement, and further explored the potential cause for the violation.
- III. Determined the effectiveness of the mandatory RRA 98 Section 1204 training for managers and employees.



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- A. Reviewed documentation and determined how and when the Section 1204 training was implemented.
- B. Reviewed all Section 1204 training materials for effectiveness of message.
- C. Interviewed a judgmental sample of 20 employees and obtained their feedback on whether perceptions about the use of (or emphasis on) enforcement statistics or ROTERs have changed.

**Data validation methodology**

We obtained the Fiscal Year 2012 Fourth Quarter Corporate Planning and Internal Control database lists of Section 1204 managers from the IRS's Office of the Chief Financial Officer. We used these lists to develop our judgmental sampling plan. To determine the reliability of the data, we reviewed the data for duplicates and missing information. We then compared the data to the Enterprise Directory Services, which serves as the principal integrator of Identity Management information for the IRS. The Discovery Directory contains information about managers, employees, and locations. We used this information to verify the accuracy of the data provided by the IRS by matching the information to the Fiscal Year 2012 Fourth Quarter list. 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 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 and reviewed judgmental samples of performance appraisals and signed self-certifications to determine whether the IRS complied with restrictions on the use of enforcement statistics when evaluating its employees.



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**Appendix II**

*Major Contributors to This Report*

Augusta R. Cook, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations)

Bryce Kisler, Director

Christina Dreyer, Audit Manager

Michele Jahn, Lead Auditor

Carol Gerkens, Senior Auditor

Kevin Nielsen, Auditor



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**Appendix III**

*Report Distribution List*

Principal Deputy Commissioner  
Office of the Commissioner – Attn: Chief of Staff C  
Office of the Deputy Commissioner for Services and Enforcement SE  
Commissioner, Large Business and International Division SE:LB  
Commissioner, Small Business/Self-Employed Division SE:S  
Commissioner, Tax Exempt and Government Entities Division SE:T  
Commissioner, Wage and Investment Division SE:W  
Chief, Appeals AP  
Chief, Criminal Investigation SE:CI  
Chief Financial Officer OS:CFO  
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division  
SE:S:CSO  
Director, Strategy and Finance, Wage and Investment Division SE:W:S  
Chief, Program Evaluation and Improvement, Wage and Investment Division SE:W:SF:PEI  
Chief Counsel CC  
National Taxpayer Advocate TA  
Director, Office of Legislative Affairs CL:LA  
Director, Office of Program Evaluation and Risk Analysis RAS:O  
Office of Internal Control OS:CFO:CPIC:IC  
Audit Liaisons:  
    Commissioner, Large Business and International Division SE:LB  
    Commissioner, Small Business/Self-Employed Division SE:S  
    Commissioner, Tax Exempt and Government Entities Division SE:T  
    Commissioner, Wage and Investment Division SE:W  
    Chief, Appeals AP:TP:SS  
    Chief, Criminal Investigation SE:CI  
    Chief Financial Officer OS:CFO  
    National Taxpayer Advocate TA



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## Appendix IV

### *Prior Audit Reports*

The Treasury Inspector General for Tax Administration has previously performed 14 audits in this subject area. The audit reports are:

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).

TIGTA, Ref. No. 2010-30-076, *Fiscal Year 2010 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (July 2010).

TIGTA, Ref. No. 2009-30-091, *Fiscal Year 2009 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (June 2009).

TIGTA, Ref. No. 2008-40-108, *Fiscal Year 2008 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (April 2008).

TIGTA, Ref. No. 2007-40-055, *Fiscal Year 2007 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (March 2007).

TIGTA, Ref. No. 2006-40-095, *Fiscal Year 2006 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (June 2006).

TIGTA, Ref. No. 2005-40-157, *Fiscal Year 2005 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (Sept. 2005).

TIGTA, Ref. No. 2004-40-066, *Fiscal Year 2004 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (March 2004).

TIGTA, Ref. No. 2003-40-090, *Fiscal Year 2003 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results* (March 2003).

TIGTA, Ref. No. 2002-40-163, *Compliance With Regulations Restricting the Use of Records of Tax Enforcement Results Shows Improvement* (Sept. 2002).

TIGTA, Ref. No. 2001-10-178, *Compliance With the Internal Revenue Service Restructuring and Reform Act of 1998 Section 1204 Has Not Yet Been Achieved* (Sept. 2001).

TIGTA, Ref. No. 2000-10-118, *Further Improvements Are Needed in Processes That Control and Report Misuse of Enforcement Statistics* (Sept. 2000).

TIGTA, Ref. No. 1999-10-073, *The Internal Revenue Service Should Continue Its Efforts to Achieve Full Compliance with Restrictions on the Use of Enforcement Statistics* (Sept. 1999).



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**Appendix V**


*Management's Response to the Draft Report*



CHIEF FINANCIAL OFFICER

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

July 18, 2013

MEMORANDUM FOR MICHAEL E. MCKENNEY  
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT  
FROM:   
Pamela J. LaRue  
Chief Financial Officer  
SUBJECT: Draft Audit Report – Fiscal Year 2013 Statutory Audit of  
Compliance with Legal Guidelines Restricting the Use of  
Records of Tax Enforcement Results (Audit # 201330005)

Thank you for the opportunity to review and respond to the draft audit report titled, "Fiscal Year 2013 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Records of Tax Enforcement Results." We are pleased with your acknowledgement that the IRS's efforts to enforce the employee evaluation requirements under the IRS Restructuring and Reform Act of 1998 Section 1204 are generally effective and are helping to protect the rights of taxpayers.

The IRS agrees with three of the eight alleged Section 1204(a) violations identified in the report. Section 1204(a) prohibits the IRS from using tax enforcement results to evaluate employees or to impose or suggest production quotas or goals for employees. The five alleged violations with which we do not agree consist of one employee mid-year progress review, three employee evaluations, and a verbal recognition made at a group meeting. The mid-year progress review violation cited in the report did not include data, statistics, or numerical information regarding tax enforcement results, and therefore is not a violation of Section 1204(a). The three evaluation references cited as violations did not involve Title 26 tax investigations and, as a result, do not represent violations of Section 1204(a). The fifth alleged violation involved verbal recognition made at a group meeting. That recognition did not include a tax enforcement result and is therefore not a violation of Section 1204(a).

We agree with the report recommendations that Section 1204 noncompliance and IRS policy violations should be discussed with the responsible managers and employees and have already taken the necessary steps to accomplish that. We also agree that



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Section 1204 training should be timely disseminated to all new Section 1204 employees and managers hired between the scheduled mandatory bi-annual briefings. Our completed and proposed corrective actions to these recommendations are discussed in the attachment.

If you have any questions, please contact Peter Rose, Associate Chief Financial Officer, Corporate Planning and Internal Control, at (202) 435-6422.

Attachment





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Attachment

**RECOMMENDATION 1**

The Chief, Criminal Investigation, and the National Taxpayer Advocate should ensure that the Section 1204(a) violations identified in this report are discussed with the responsible managers to ensure that the managers understand the guidelines related to the use of ROTERs.

**CORRECTIVE ACTION**

The IRS partially agrees with this recommendation. The CFO confirmed with the specific business unit that the three Section 1204(a) violations identified in this report, which IRS Counsel agrees are 1204(a) violations, were discussed with the responsible managers to ensure that they understand the guidelines related to the use of ROTERs.

**IMPLEMENTATION DATE**

July 12, 2013 (Completed)

**RESPONSIBLE OFFICIAL**

Chief Financial Officer

**CORRECTIVE ACTION MONITORING PLAN**

N/A

**RECOMMENDATION 2**

The Chief, Appeals; the Commissioners for the Large Business and International, Tax Exempt and Government Entities, and Wage and Investment Divisions; and the National Taxpayer Advocate should ensure that the Section 1204(b) noncompliance with documentation requirements and the Section 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 affected business units that the Section 1204(b) noncompliance with documentation requirements and the Section 1204(c) noncompliance identified in this report were discussed with the responsible managers to ensure that they understand the retention standard documentation and quarterly self-certification requirements.

**IMPLEMENTATION DATE**

July 12, 2013 (Completed)

**RESPONSIBLE OFFICIAL**

Chief Financial Officer



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**CORRECTIVE ACTION MONITORING PLAN**

N/A

**RECOMMENDATION 3**

The Chief, Criminal Investigation, and the National Taxpayer Advocate should ensure that the IRS noncompliance identified in this report relating to the prohibition on including ROTERs in employee self-assessments is discussed with the responsible managers and employees so that they understand the IRS's policy that bargaining unit and non-bargaining unit employees should not use ROTERs in their self-assessments.

**CORRECTIVE ACTION**

The IRS agrees with this recommendation. The CFO has confirmed that the policy violations resulting from employees including ROTERs in their self-assessments have been discussed with the appropriate managers and their employees.

**IMPLEMENTATION DATE**

July 12, 2013 (Completed)

**RESPONSIBLE OFFICIAL**

Chief Financial Officer

**CORRECTIVE ACTION MONITORING PLAN**

N/A

**RECOMMENDATION 4**

The Deputy Commissioner for Operations Support should ensure that Section 1204 training is timely disseminated to all new Section 1204 employees and managers hired between the scheduled mandatory bi-annual briefings.

**CORRECTIVE ACTION**

The IRS agrees with this recommendation. The CFO will update its Section 1204 training guidance to require training be provided each quarter for any Section 1204 employees and managers hired between the scheduled mandatory bi-annual briefings. The business units will be required to provide the CFO quarterly updates of 1204 training completed by new hires.

**IMPLEMENTATION DATE**

December 31, 2013

**RESPONSIBLE OFFICIAL**

Chief Financial Officer

**CORRECTIVE ACTION MONITORING PLAN**

N/A