TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Fiscal Year 2021 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

August 26, 2021

Report Number: 2021-30-052

HIGHLIGHTS: Fiscal Year 2021 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results

Final Audit Report issued on August 26, 2021 **Report Number 2021-30-052**

Why TIGTA Did This Audit

TIGTA is required under Internal Revenue Code § 7803(d)(1) to annually determine whether the IRS complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in Section 1204 of the IRS Restructuring and Reform Act of 1998 (RRA 98).

Impact on Taxpayers

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

What TIGTA Found

TIGTA identified instances of noncompliance with RRA 98 § 1204 requirements related to each of the following subsections of the law:

- Section 1204(a) – Four instances in which a ROTER was used to evaluate an employee.
- Section 1204(b) – Six instances in which IRS management failed to either maintain the retention standard documentation or ensure that it was appropriately signed.
- Section 1204(c) – The IRS also self-reported one instance of Section 1204(a) noncompliance and 14 instances of Section 1204(b) noncompliance.

TIGTA also determined that the accuracy of Section 1204 employee designations can be improved. For Fiscal Year 2020, 272 individuals were erroneously designated as Section 1204. In addition, Section 1204 parts of the Internal Revenue Manual have not been updated with changes because Section 1204 program ownership transitioned from the Chief Financial Officer to the Human Capital Office in October 2017. Also, in Fiscal Year 2020, 395 Section 1204 employees failed to complete the Section 1204 training.

What TIGTA Recommended

TIGTA made eight recommendations to mitigate the issues identified during our audit and to improve management of the program. These included ensuring that statute violations and instances of noncompliance are discussed with the responsible employees and/or managers, applicable performance documents are updated to include a warning on using quantity measures when evaluating managers, and a control is established for all employees and managers to validate their Section 1204 designation.

IRS management agreed with all eight recommendations and will discuss statute violations and instances of noncompliance with responsible employees and managers; determine a course of action to revise Form 12450 to include a warning on the use of quantity measures when evaluating managers; consider establishing a control that instructs Section 1204 managers to update their own and/or their employees HR Connect profile; and establish an annual reminder to all employees and management to review their Section 1204 designation. IRS management also agreed to ensure that internal procedures are documented, established, and implemented. Finally, IRS management verified that the Integrated Talent Management System issued training reminders to Section 1204 employees and managers.

TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

August 26, 2021

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2021 Statutory Audit of Compliance With Legal Guidelines Restricting the Use of Records of Tax Enforcement Results (Audit # 202130007)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) complied with restrictions on the use of enforcement statistics to evaluate employees as set forth in the Restructuring and Reform Act of 1998 (RRA 98) § 1204. The Treasury Inspector General for Tax Administration is required under Internal Revenue Code § 7803(d)(1) to annually evaluate the IRS's compliance with the provisions of RRA 98 § 1204. RRA 98 requires the IRS to ensure that managers do not evaluate enforcement employees using any record of tax enforcement results or base employee successes on meeting goals or quotas for record of tax enforcement results. This review is part of our Fiscal Year 2021 Annual Audit Plan and addresses the major management and performance challenge of *Protecting Taxpayer Rights.*

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

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

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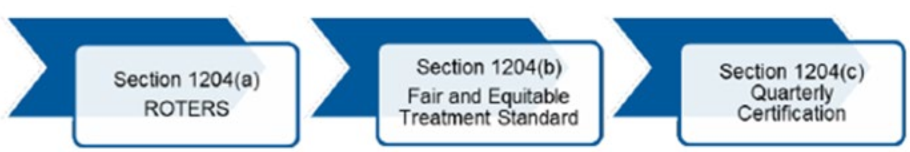
Background

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

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

Figure 1: Basis for Evaluation of Section 1204 IRS Employees

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



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

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

- Determinations to conduct a seizure.
- Determinations to file a lien.

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

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

- Decisions to disallow an unsupported itemized deduction.

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

- Taxes assessed.
- Fraud referral.
- Taxes collected.
- Abatement case closure.
- Prosecution.

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

RRA 98 § 1204(a)

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

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

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

RRA 98 § 1204(b)

RRA 98 § 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The IRS refers to this standard as the retention standard. This provision of the law was enacted to provide assurance that employee performance is focused on providing quality service to taxpayers instead of achieving enforcement results.

Figure 2 provides a contrast of what is and is not fair and equitable treatment of taxpayers by Section 1204 employees.

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

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

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

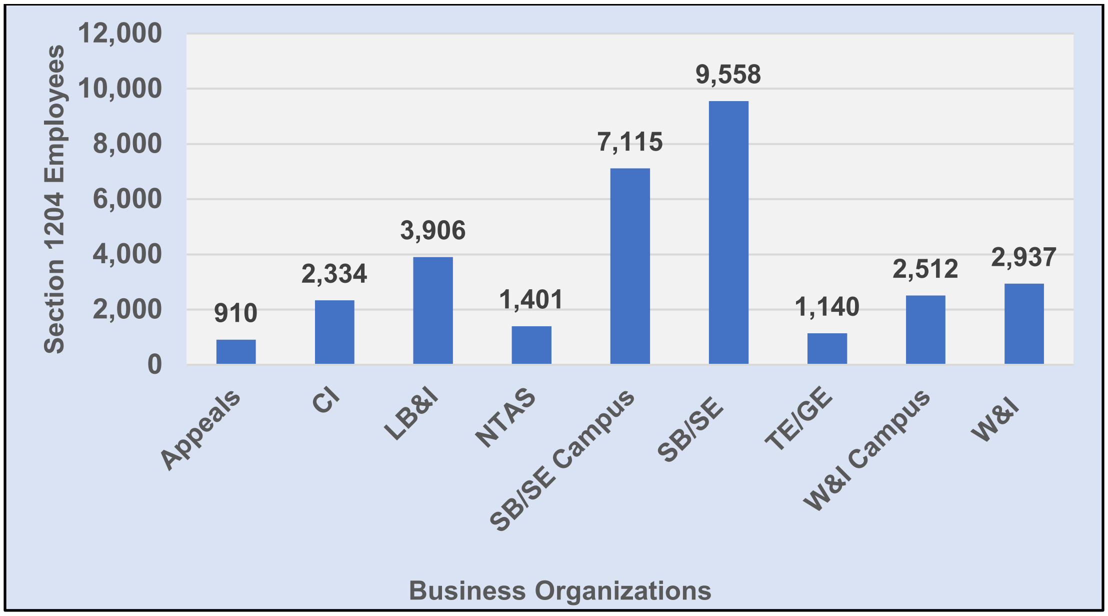
Section 1204 requires that managers talk to their employees about the standard for the Fair and Equitable Treatment of Taxpayers at the beginning of their performance-rating period. Managers are also required to consider meeting this standard on the employee's annual appraisal. Ultimately, the standard requires employees to administer the tax laws fairly and equitably; protect all taxpayers' rights; and treat each taxpayer ethically with honesty, integrity, and respect.

RRA 98 § 1204(c)

RRA 98 § 1204(c) requires each appropriate supervisor to annually perform four quarterly self-certifications. 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 highest ranking executive in a distinct organizational unit who supervises directly or indirectly one or more Section 1204 enforcement employees. Current IRS procedures require each level of management, beginning with first-line managers of Section 1204 employees, to self-certify that they have not used ROTERs in a manner prohibited by RRA 98 § 1204(a). The appropriate supervisor then prepares a consolidated office certification covering the entire organizational unit. The Section 1204 program managers and program coordinators in each business organization are available to provide guidance to managers regarding Section 1204 issues, including the certification process.

As of October 1, 2020, there was a population of 31,814 Section 1204 individuals, of which 27,223 were Section 1204 employees and 4,591 were Section 1204 managers. Figure 3 shows how Section 1204 employees were dispersed across various business organizations within the IRS as of September 30, 2020.

Figure 3: Number of Section 1204 Employees by Business Organization (as of September 30, 2020)



Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of data from the IRS's HR Connect Section 1204 employee list. Business Organizations: CI = Criminal Investigation, LB&I = Large Business and International Division, NTAS = National Taxpayer Advocate Service, SB/SE = Small Business/Self-Employed Division, TE/GE = Tax Exempt and Government Entities Division, and W&I = Wage and Investment Division.[3]

Section 1204 managers have either supervised a Section 1204 employee or provided guidance or direction for Section 1204 activities.

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 22 annual reviews to meet this requirement.[4] Figure 4 identifies the number of potential ROTER violations identified during reviews of the IRS's compliance during FYs 2017 through 2019.

Figure 4: Number of Section 1204 Violations Found in Prior TIGTA Reviews for FYs 2017 Through 2019

Type of Violation	FY 2017	FY 2018	FY 2019
Section 1204(a) – ROTERs	1	0	0
Section 1204(b) – Retention Standard	13	27	86
Section 1204(c) – Quarterly Certification	3	32	1
Totals	**17**	**59**	**87**

Source: Analysis of data from TIGTA reports for FYs 2017 through 2019.

[3] During our initial review of the Section 1204 population, we also received one record from Facilities Management and Security Services.

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

Results of Review

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 FY 2020. The following issues were identified during our review:

Section 1204(a) – Four violations associated with the use of ROTERs during our review of employees' performance evaluations.

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

Section 1204(c) – The IRS also self-reported one instance of Section 1204(a) noncompliance and 14 instances of Section 1204(b) noncompliance in FY 2020.

In Several Instances, the Internal Revenue Service Violated Section 1204(a) of the Restructuring and Reform Act of 1998

We identified five violations of RRA 98 § 1204(a) during FY 2020. These violations consisted of:

- Three violations associated with the use of ROTERs during our review of supervisory employees' performance evaluations.
- One violation associated with the use of ROTERs during our review of non-supervisory employee performance evaluations.
- One violation was self-identified during the IRS's quarterly certification process.[5] The violation occurred in an employee's midyear narrative that included inappropriate language related to fraud referrals.

To evaluate the IRS's compliance with RRA 98 § 1204(a), we reviewed internal procedures, guidance, and prior violations for common language, terms, or phrases which have been or may be associated with ROTERs. We used computer software to analyze the information in 31,238 Section 1204 employee and manager electronic performance evaluation files for use of these high-risk terms and phrases.[6] Our analysis identified 528 uses of these high-risk terms and phrases, associated with 812 performance evaluation documents. We manually reviewed the terms and phrases within each evaluation document for context and use. Below is an example of a Section 1204(a) violation that we found in performance evaluation files of a revenue agent:[7]

You successfully obtain agreed adjustments in excess of 50 million Dollars.

[5] As noted in the background, this reflects one self-identified instance from the four quarterly certifications performed by managers during FY 2020 of the entire 31,814 Section 1204 population.

[6] We noted key terms and phrases based on those terms or phrases provided as examples in the Internal Revenue Manual as well as violations noted in prior audits. These terms and phrases included reference to various tax enforcement terms (*e.g.*, lien, levy, seizure, fraud referral, *etc.*). We also included reference to a number before the term or phrase as part of our criteria, as enforcement *results* are likely to be quantified.

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

While the use of quantity measures for evaluating supervisory employees is allowable, their inclusion increases the risk that an evaluating supervisor may also include a tax enforcement result, resulting in a violation of Section 1204(a). Editing the Form 12450, *IRS Performance Management System Manager Performance Agreement*, to include a warning on the use of quantity measures and their potential relationship to tax enforcement results may provide a reminder to be aware of how these two things are used in evaluations. Without additional controls or reminders, supervisory employees may continue to be evaluated using ROTERs, which increases the risk that the handling of taxpayers' cases may be improperly influenced.

Several self-assessments included ROTERS

Our review of the 812 performance evaluation documents flagged containing high-risk terms and phrases identified five instances in which supervisory employees used ROTERs in self-assessments. While not a violation of Section 1204(a), the inclusion of ROTERs in self-assessments is in conflict with the IRS's internal procedures. Specifically, Internal Revenue Manual (IRM) 1.5.2.11.2 prohibits the use of ROTERs in self-assessments. If a self-assessment is submitted with ROTERs, procedures indicate that it should be returned to the employee for removal of the ROTERs.[8]

Our identification of these exceptions within supervisory employees' performance documents indicates that the IRS's Human Capital Office (HCO) can do more to help clarify the use and non-use of language as part of the IRS's performance management processes.

Retention standard documents were generally completed

As noted previously, RRA 98 § 1204(b) requires employees to be evaluated using the fair and equitable treatment of taxpayers as a performance standard. The standard applies to all IRS Section 1204 executives, managers, and employees. 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.[9] Compliance with RRA 98 § 1204(b) is twofold:

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

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[8] IRM 1.5.2.11.2 (Feb. 5, 2015).

[9] IRM 1.5.3.8(1) (Feb. 5, 2015).

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

From the 31,238 Section 1204 employee and manager electronic performance evaluation files, we selected a random sample of 148 performance files to test compliance with the retention standard.[11] IRS management was unable to either maintain the retention standard documentation or provide evidence and documentation of the retention standard for 24 of the 148 sampled individuals. In 18 of the 24 instances, the IRS indicated that the documents were maintained in employee performance files in their respective offices; however, the COVID-19 pandemic prevented it from providing this support. In six instances, the IRS was unable to provide support that the retention standards were signed.

In addition, the IRS self-identified 14 instances of Section 1204(b) noncompliance during its quarterly certification process. The IRS stated the 14 instances of Section 1204(b) noncompliance resulted from managers either not obtaining receipt and acknowledgement of the retention standard from the employee or not signing acknowledgement for the retention standard. The corrective actions include: 1) obtaining employee signatures for receipt and acknowledgement of the retention standard or 2) the manager signing acknowledgement of the retention standard.

The IRS's internal guidelines require both the documentation of the receipt and acknowledgment of the retention standard or the annual performance rating to be completed, signed, dated, and retained in the employee performance files.

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

TIGTA has historically reported on the timeliness associated with retention standard documents. Although timeliness and documentation noncompliance are not specifically addressed in Section 1204(b), the law requires the IRS to use the fair and equitable treatment of taxpayers as one of the standards for evaluating employee performance. In order for the IRS to evaluate its employees, 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." Our review identified 34 retention standard documents signed more than 30 days after the rating period began, 14 of which were signed 90 or more days after the rating period. Of these 14, six were signed one year or more after the rating period.

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.[12]

As noted previously, the failure to have all performance plans and agreements signed in a timely manner does not constitute a statutory violation of Section 1204. However, TIGTA continues to believe that there are significant benefits to establishing controls that require retention standards be acknowledged at the beginning of the rating period as they afford management

[11] The 148 electronic performance files were associated with 148 Section 1204 employees. Our sample was selected using a 90 percent confidence interval, 5 percent error rate, and ±3 percent precision factor.

[12] IRM 1.5.3.4(1) (May 19, 2017).

the opportunity to advise employees of their requirement to administer the tax laws fairly and equitably; protect taxpayer rights; and treat each taxpayer ethically with honesty, integrity, and respect.

Quarterly certifications associated with Section 1204(c) were delayed due to the COVID-19 pandemic

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. As noted previously, the IRS self-reported that there was one instance of Section 1204(a) noncompliance and 14 instances of Section 1204(b) noncompliance in FY 2020. Due to the COVID-19 pandemic, the Section 1204(c) quarterly certifications for the 2nd quarter and 3rd quarter of FY 2020 were not completed until December 2020. *Leaders' Alerts* were issued that placed the required completion of these certifications on hold.[13] These managerial certifications as well as the 4th quarter certifications were consolidated for each business unit in November 2020.

RRA 98 § 1204(c) self-certification requires that the appropriate supervisor attests to whether ROTERs or production quotas or goals were used in a prohibited manner.[14] 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.

The Deputy Commissioner for Operations Support should:

Recommendation 1: Ensure that the four Section 1204(a) violations identified by TIGTA are discussed with the responsible manager to ensure that the manager understands the guidelines related to the use of ROTERs.

> **Management's Response:** The IRS agreed with this recommendation. IRS management agreed to discuss the Section 1204(a) violations with responsible managers so that they understand the IRS's guidelines on the use of ROTERs.

Recommendation 2: Ensure that the instances of noncompliance identified within this report, associated with the prohibition on including ROTERs in a self-assessment, are discussed with the responsible employees and their managers so they understand IRS policy that ROTERs should not be used in self-assessments.

> **Management's Response:** The IRS agreed with this recommendation. IRS management agreed to discuss the instances of Section 1204 noncompliance with responsible employees and their managers so that they understand the IRS's policy that ROTERs should not be used in self-assessments.

[13] The *Leaders' Alert* is a weekly e-newsletter for IRS executives, managers, and management officials.

[14] 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.

Recommendation 3: Consider updating the Form 12450 to include a warning when evaluating managers on the use of quantity measures and their potential relationship to tax enforcement results.

> **Management's Response:** The IRS agreed with this recommendation. IRS management stated that they will determine a course of action to revise the Form 12450 to include a warning on the use of quantity measures when evaluating managers.

Recommendation 4: Ensure that 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. IRS management stated that they will discuss the Section 1204(b) instances of noncompliance with the responsible managers to ensure that they understand the retention standard documentation.

The Accuracy of Section 1204 Employee Designations Can Be Improved

Our review of the IRS's list of Section 1204 managers and employees for FY 2020 identified 108 managers and management officials who had been designated as Section 1204 in FY 2019, but not designated as Section 1204 in FY 2020. To identify these managers and management officials, we used the FY 2019 Section 1204 population provided as part of TIGTA's previous audit and compared this to the population provided for FY 2020. After we accounted for employees who no longer worked for the IRS, we determined that 37 employees were incorrectly designated as Section 1204 in FY 2019, and 16 employees were incorrectly designated in FY 2020.

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

IRS personnel indicated during interviews that managers might not update Section 1204 designations of employees when they transfer to non-Section 1204 positions. We found former Section 1204 employees remained designated as a Section 1204 employee despite leaving that position several years ago.

Inaccurate designations also bring into question the accuracy of managers' quarterly validation that their employees are Section 1204. The IRS currently uses a multistep approach to assist Section 1204 managers who need to designate themselves and their employees as Section 1204. This process requires all Section 1204 managers to use an HR Connect indicator to designate their employees and themselves as Section 1204 employees and to validate this designation as part of the Section 1204(c) quarterly self-certification process.[15]

Of the 37 employees incorrectly designated from FY 2019, 15 were correct in FY 2020, which we attribute to IRS controls identifying these errors.[16] The IRS stated that the Section 1204 population is dynamic and changes throughout the year as individuals move throughout the IRS, which may explain some of the discrepancy between FY 2019 and FY 2020. According to the IRS, the HR Connect indicator is a one-day snapshot and not a relational database that would be updated systemically. This means designations today may be different than last week, and the IRS lacks the ability to go back in time to identify a Section 1204 population from a prior date and verify whether previous designations were historically accurate.

Certain positions are generally not engaged in making judgments to enforce tax laws

Our review of the FY 2020 population of individuals with Section 1204 designations identified 272 individuals who were erroneously designated as Section 1204 during FY 2020. Specifically, we reviewed position descriptions for position titles that would not appear to be actively engaged in exercising judgment in recommending or determining whether or how the IRS should pursue enforcement of the tax laws, or providing direction or guidance for field programs involving Section 1204 work activities. For example, we reviewed position descriptions for positions such as secretary, administrative assistant, writer-editor, executive assistant, computer assistant, clerk, budget analyst, staff assistant, human resources specialist, court witness coordinator, and training coordinator.

IRS procedures detail that an individual's work performed, and not the employee's title, location, or operating/functional division, identifies whether an employee should be considered a Section 1204 employee. As noted previously, we acknowledge that employees may transfer or move positions during the year, which could impact their designations. Also, an employee may stay in the same position, but their work activity may change, which could require an update to their designation. Furthermore, Operations Support organizations, managers, and employees are not subject to the RRA 98 § 1204 law given the nature of the work.[17]

TIGTA's reviews continue to identify that the IRS's designation of Section 1204 staff could be improved, and while certain controls may provide Section 1204 managers an opportunity to correct employee designations, non-Section 1204 managers do not complete quarterly certifications and are at a disadvantage in being reminded to confirm the accuracy of their employees' designations.

Additional controls should be established to validate and perfect the Section 1204 population of employees at key times during the year. While Section 1204 managers are reminded to review their employees' designations, there is no reminder for non-Section 1204 managers. An annual

[15] The HR Connect indicator was set up to: manage the Section 1204 population more efficiently, reduce managerial burden in the Section 1204 self-certification process, and improve the accuracy of reporting, which also helps support the annual TIGTA audit and independent reviews completed by the IRS.

[16] The HCO states its internal controls are an ongoing process. It monitors and reviews the population as part of the procedures for the: Independent Review (annual), Quarterly Certification, Mandatory Briefing (annual), and this TIGTA mandatory annual audit.

[17] The following organizations within Operations Support had employees with Section 1204 indicators: the Chief Financial Officer; Equity Diversity and Inclusion; Facilities Management and Security Services; the HCO; Information Technology; and Privacy, Government Liaison, and Disclosure.

reminder to all IRS employees may help to limit the number of non-Section 1204 employees who are designated erroneously.

The Deputy Commissioner for Operations Support should:

Recommendation 5: Establish a control to ensure that employees' Section 1204 designation is validated in HR Connect during employee transfers between positions or functions.

> **Management's Response:** The IRS agreed with this recommendation. IRS management will consider establishing a control in line with IRM 1.5.3, *Manager's Self-Certification and Independent Review Process*, that instructs Section 1204 managers to review and update their own and/or their employees HR Connect profile as part of the Quarterly Certification process.

Recommendation 6: Consider establishing an annual reminder to all employees and management to review their Section 1204 designation in HR Connect.

> **Management's Response:** The IRS agreed with this recommendation. IRS management will consider establishing an annual reminder to all employees and management to review their Section 1204 designation in HR Connect.

Changes to Section 1204 Program Procedures Have Not Been Updated

Internal procedures have not been updated as required by an interim guidance memorandum issued October 1, 2017, when the Section 1204 program transitioned ownership from the Chief Financial Officer (CFO) to the HCO. During the transition, ownership of IRM sections related to the Section 1204 program was assigned to the HCO, and it was supposed to update these IRM sections by October 1, 2018. When asked why these updates were not completed, the former Section 1204 HCO Program Manager who oversaw the transition of the 1204 program from the CFO to the HCO stated that they did not carry out the Standard Operating Procedure for a peer review in either FY 2019 or FY 2020 due to competing priorities to modernize the Section 1204(c) certification process and host training sessions for Section 1204 managers.

During October 2020, the program transitioned within the HCO to its fifth program manager since FY 2010. Continued change and instability with regards to leadership within the program could be a contributing factor to the IRS's failure to implement consistent controls and ensure that increased risks, such as erroneous designations discussed previously, are identified and mitigated.

On December 23, 2020, after our discussions with the current Section 1204 Program Manager, the IRS issued another memorandum that referenced the change in ownership from the CFO in FY 2018 and the continued need for the HCO to update the IRM. These changes should be reflected by December 23, 2021, four years after the HCO assumed responsibility for the program and three years after these changes were initially due.

The Deputy Commissioner for Operations Support should:

Recommendation 7: Ensure that internal procedures and controls are documented, established, and implemented as soon as possible and no later than the currently established due date of December 23, 2021.

> **Management's Response:** The IRS agreed with this recommendation. IRS management stated that they will ensure that internal procedures are documented, established, and implemented.

Section 1204 Training Was Not Always Completed Timely

All Section 1204 personnel are required to complete a Section 1204 self-study training briefing annually. Our review of the annual training materials and interviews with employees indicated that the annual briefing adequately addressed the policy and procedures associated with the use of ROTERs and the IRS's retention standards. However, we reviewed a training status report of employees assigned the Section 1204 mandatory training to ensure that they completed the training during FY 2020 and determined that 395 employees did not complete the assigned Section 1204 training.[18] This is approximately 15 percent fewer than the reported 466 employees who did not complete the training in FY 2018. Although the number of employees who did not complete training has not changed drastically, there does appear to be continued weakness in this area.[19]

Since July 2013, the Enterprise Learning Management System delivered the mandatory RRA 98 § 1204 training for managers and employees. The Section 1204 training was automatically loaded onto employees' learning accounts every fiscal year. However, before the FY 2019 Section 1204 training was loaded, the IRS switched training platform, from the Enterprise Learning Management System to the Integrated Talent Management System. The Enterprise Learning Management System systemically e-mailed reminders to employees after the training was loaded. The Integrated Talent Management System does also, but gives employees the flexibility to turn notifications (reminders) off and reduce the frequency of the notifications. All Section 1204 personnel are required to complete the course every fiscal year. Given these Integrated Talent Management System flexibilities, we believe many of the 395 employees did not complete the training because they relied on the e-mail reminders and notifications.

The Deputy Commissioner for Operations Support should:

Recommendation 8: Ensure that Section 1204 employees receive reminders of their annual requirement to complete Section 1204 training after the training course is loaded on the Integrated Talent Management System.

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[18] The 395 employees who did not complete training in FY 2020 represent approximately 1 percent of the Section 1204 employees in FY 2020.

[19] The training records for FY 2019 were corrupted and affected our ability to verify that employees completed mandatory Section 1204 training.

Management's Response: The IRS agreed with this recommendation. IRS management verified that for FY 2021, the Integrated Talent Management System issued e-mail reminders 14 days before the due date and every seven days afterwards.

Appendix I

Detailed Objective, Scope, and Methodology

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

- Determined if the IRS complied with the provisions of RRA 98 §§ 1204(a) and (b) when evaluating Section 1204 employees' performance.[1] From the 31,238 Section 1204 employee and manager electronic performance evaluation files, we selected a random sample of 148 performance files to test compliance with the retention standard.[2]
- Determined if Section 1204 managers complied with RRA 98 § 1204(c) by certifying by letter whether or not ROTERs were used in a manner prohibited by subsection (a).
- Determined whether the mandatory RRA 98 § 1204 training for managers and employees adequately addresses the use of ROTERs and/or the retention standards, whether all Section 1204 managers and employees completed the training for FY 2020, and whether the employees had a general understanding of these requirements.

Performance of This Review

This review was performed with information obtained from the Office of the Chief, Appeals; the Office of the IRS Human Capital Officer; the Office of the Chief, Criminal Investigation; the Office of the National Taxpayer Advocate; the Large Business and International Division; the Small Business/Self-Employed Division; the Tax Exempt and Government Entities Division; and the Wage and Investment Division from December 2020 through May 2021.[3] 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.

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[1] The IRS provided the population of 31,814 Section 1204 employees and managers as of September 30, 2020. We obtained 31,242 electronic performance file evaluations associated with these Section 1204 employees and managers from the Department of the Treasury, which owns the HR Connect application that houses the IRS's performance evaluation files. Of the 31,242 files, 31,238 files were recognized by SAS Contextual Analysis. Four files were deemed unreadable during the processing stage, likely due to situations in which portable document format files did not have text recognition enabled. SAS Contextual Analysis cannot process these types of files. The audit team determined that the number is immaterial. In regards to possible discrepancy in counts versus records received, the Department of the Treasury explained that it could be attributed to employees who did not have a finalized annual appraisal for FY 2020 or did not have an e-performance document available to send to us.

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

[3] The Wage and Investment Division and Small Business/Self-Employed Division Headquarters are located in Atlanta, Georgia, and Lanham, Maryland, respectively. All other division Headquarters are located in Washington, D.C.

Major contributors to the report were Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations); Linna Hung, Director; Timothy Greiner, Acting Director; Curtis Kirschner, Audit Manager; Charles Nall, Lead Auditor; Daniel O'Keefe, Senior Auditor; Robert Steele, Senior Auditor; Charles Gambino, Auditor; and Alberto Garza, Information Technology Specialist (Data Analytics).

Validity and Reliability of Data From Computer-Based Systems

We obtained the FY 2020 Section 1204 employee and manager list from the IRS HCO. We used this list to develop our stratified sampling plan. Our sampling plan was developed in consultation with our statistician. We also obtained the population of evaluations completed in FY 2020 from the Department of the Treasury. To determine the reliability of our datasets, we reviewed the data for duplicates, identified any missing information, and compared the data to the Discovery Directory. We also reviewed existing information about the data and the system that produced them, and interviewed agency officials within the IRS and the Department of the Treasury knowledgeable about the data. These tests determined that the data were sufficiently reliable and could be used to meet the objective of this audit.

Internal Controls Methodology

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

Appendix II

Recent Audit Reports Related to This Statutory Review

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

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

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

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

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

TIGTA, Report. 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).

Appendix III

Management's Response to the Draft Report

HUMAN CAPITAL OFFICE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 9, 2021

MEMORANDUM FOR Michael E. McKenney
Deputy Inspector General for Audit

FROM: Robin D. Bailey Jr. Robin D. Bailey Jr. Digitally signed by Robin D. Bailey Jr. Date: 2021.08.09 14:12:37 -04'00'
IRS Human Capital Officer

SUBJECT: Draft Audit Report - Fiscal Year 2021 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Tax Enforcement Results (Audit# 202130007)

Thank you for the opportunity to review and comment to the draft report entitled, *Fiscal Year 2021 Statutory Audit of Compliance with Legal Guidelines Restricting the Use of Tax Enforcement Results (Audit# 202130007)*. We appreciate your acknowledgement based on your review results, that the IRS recognizes its responsibility to protect taxpayer rights, and that the vast majority of IRS managers do not use Records of Tax Enforcement Results (ROTERS), and/or production goals or quotas to evaluate employees. We take our oversight role seriously and will aggressively work this area until no IRS manager is using ROTERS, production goals or quotas to evaluate Section 1204 employees.

Despite the COVID-19 pandemic challenges that required significant operational changes in Fiscal Years 2020 and 2021, we would like to highlight the dual accomplishments of implementing a new electronic quarterly certification process that both eliminates the use of eight electronic forms and facilitates better record-keeping through a cleaner, and more direct certification using the Integrated Talent Management (ITM) system. Additionally, we improved the annual mandatory Section 1204 training, which is referenced in the draft report as Figure 1: Basis for Evaluation of Section 1204 IRS Employees, and Figure 2: Behaviors That illustrate When Employees Treat Taxpayers Fair and Equitably.

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

2

Attached is a detailed response outlining the corrective actions that the Human Capital Office will take to address your recommendations. If you have any questions, please contact me at (202) 317-3174, or a member of your staff may contact Carrolyn J. Bostick, Director, Office of Policy and Compliance at (202) 317-3914.

Attachment

Attachment

RECOMMENDATION 1:
Ensure that the four 1204(a) violations identified by TIGTA are discussed with the responsible manager to ensure that the manager understands the guidelines related to the use of ROTERs.

CORRECTIVE ACTION:
The IRS agrees with this recommendation and the Section 1204(a) violations will be discussed with the responsible managers so that they understand IRS's guidelines on the use of ROTERs and report findings appropriately on the next quarterly certification.

IMPLEMENTATION DATE: December 15, 2021

RESPONSIBLE OFFICIAL: IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN:
We will enter accepted Corrective Actions into the JAMES, monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872 Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 2:
Ensure that the instances of noncompliance identified within this report, associated with the prohibition on including ROTERs in a self-assessment, are discussed with the responsible employees and their manager so they understand IRS policy that ROTERs should not be used in self-assessments.

CORRECTIVE ACTIONS:
The IRS agrees with this recommendation and will discuss the instances of Section 1204 noncompliance with the responsible employees and their managers so that they understand the IRS's policy that ROTERs should not be used in their self-assessments.

IMPLEMENTATION DATE: December 15, 2021

RESPONSIBLE OFFICIAL: IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN:
We will enter accepted Corrective Actions into the JAMES, monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872 Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 3:
Consider updating the Form 12450 to include a warning when evaluating managers on the use of quantity measures and their potential relationship to tax enforcement results.

CORRECTIVE ACTIONS:
The IRS will determine a course of action to revise the Form 12450 to include a warning when evaluating managers on the use of quantity measures and their potential relationship to tax enforcement results.

IMPLEMENTATION DATE: December 15, 2021

RESPONSIBLE OFFICIAL: IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN:
We will enter accepted Corrective Actions into the JAMES, monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872 Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 4:
Ensure that RRA 98 § 1204(b) instances of noncompliance are discussed with the responsible managers to ensure that they understand the retention standard documentation.

CORRECTIVE ACTIONS:
The IRS agrees with this recommendation and will discuss the Section 1204(b) instances of noncompliance with the responsible managers to ensure that they understand the retention standard documentation.

IMPLEMENTATION DATE: December 15, 2021

RESPONSIBLE OFFICIAL: IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN:
We will enter accepted Corrective Actions into the JAMES, monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872 Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 5:
Establish a control to ensure that employees' Section 1204 designation is validated in HR Connect during employee transfers between positions or functions.

CORRECTIVE ACTIONS:
The IRS agrees with this recommendation and will consider establishing a control in line with IRM 1.5.3, Manager's Self-Certification and the Independent Review Process, that instructs Section 1204 managers to review and update their own and/or their employees HR Connect profile as part of the Quarterly Certification process.

IMPLEMENTATION DATE: December 15, 2021

RESPONSIBLE OFFICIAL: IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN:
We will enter accepted Corrective Actions into the JAMES, monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872 Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 6:
Consider establishing an annual reminder to all employees and management to review their Section 1204 designation in HR Connect.

CORRECTIVE ACTIONS:
The IRS agrees with this recommendation and will consider establishing an annual reminder to all employees and management to review their Section 1204 designation in HR Connect.

IMPLEMENTATION DATE: December 15, 2021

RESPONSIBLE OFFICIAL: IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN:
We will enter accepted Corrective Actions into the JAMES, monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872 Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 7:
Ensure that internal procedures and controls are documented, established, and implemented as soon as possible and no later than the currently established due date of December 23, 2021.

CORRECTIVE ACTIONS:
The IRS agrees with this recommendation and HCO will ensure that internal procedures are documented, established, and implemented.

IMPLEMENTATION DATE: March 15, 2022

RESPONSIBLE OFFICIAL: IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN:
We will enter accepted Corrective Actions into the JAMES, monitor progress towards completion on a monthly basis, and upload supporting documentation into JAMES with Form 13872 Planned Corrective Action (PCA) Status Update for TIGTA/GAO/MW/SD/TAS/REM.

RECOMMENDATION 8:
Ensure that Section 1204 employees receive a reminder of their annual requirement to complete Section 1204 training after the training course is loaded on the Integrated Talent Management System.

CORRECTIVE ACTIONS:
The IRS agrees with this recommendation and for FY 2021, verified that the Integrated Talent Management System issues email reminders 14 days before the due date and every 7 days afterwards to complete the annual mandatory Section 1204 briefing.

IMPLEMENTATION DATE: N/A

RESPONSIBLE OFFICIAL: IRS Human Capital Officer

CORRECTIVE ACTION MONITORING PLAN: N/A

Appendix IV

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.
Integrated Talent Management System	One system which consolidates several human resource systems and includes four primary human resource management modules: Learning, Performance Management, Succession Planning, and Workforce Planning.
Internal Revenue Manual	The primary official source of instructions to staff related to the organization, administration, and operation of the IRS.

Appendix V

Abbreviations

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

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

(800) 366-4484

By Web:

www.treasury.gov/tigta/

Or Write:

Treasury Inspector General for Tax Administration

P.O. Box 589

Ben Franklin Station

Washington, D.C. 20044-0589

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