

# TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



## Oversight of Reported Sexual Harassment Allegations Needs Improvement

March 29, 2021

Report Number: 2021-IE-R001

## Why TIGTA Did This Review

Sexual harassment is unwelcome and unwanted sexual advances, requests for sexual favors and other verbal, visual, or physical conduct of a sexual nature that creates an intimidating, hostile, or offensive work environment or which affects the employee's employment status. This project was initiated to review the IRS's tracking of reported sexual harassment allegations, the investigation or inquiry into the alleged harassment, and the discipline of IRS employees in substantiated allegations.

## Impact on Taxpayers

Sexual harassment is a form of discrimination that violates Federal law when:

- 1) submission to the harassment is required (explicitly or implicitly) as a condition of employment;
- 2) submission or rejection affects the employee's treatment by the harasser; or
- 3) the harassment unreasonably interferes with the employee's work performance or creates an intimidating, hostile, or offensive work environment.

Research suggests that sexual harassment can negatively influence an individual's well-being and work performance and can create harmful, long-term effects to overall mental and physical health. Federal agencies have a responsibility to prevent and eliminate all forms of sexual harassment in the workplace.

## What TIGTA Found

Sexual harassment allegations are not being reported to the IRS's Anti-Harassment Program, despite Equal Employment Opportunity Commission (EEOC) guidance that all harassment allegations should be addressed in a centralized location. According to the EEOC, at a minimum, all harassment allegations (sexual and non-sexual) must be reported to the Anti-Harassment Program. However, TIGTA found that sexual harassment allegations are addressed outside of this process. Although the EEOC requires agencies to have systems that accurately collect, monitor, and analyze all reported harassment allegations, the IRS does not have a system to track all sexual harassment allegations. Without such a system, the IRS cannot ensure that investigations into all allegations are timely completed and resolved.

As part of this review, nearly 26,000 IRS employees responded to a TIGTA survey related to perceptions of sexual harassment at the IRS. Approximately 7 percent of survey respondents believe that sexual harassment occurs at the IRS frequently, and another 45 percent believe that it occurs sometimes. When offered multiple options for reporting sexual harassment, survey respondents most frequently indicated that they would report the harassment to IRS management.

TIGTA reviewed the case files of a judgmental sample of 54 sexual harassment allegations and found that there is no consistency or standardized approach to document management investigations or the investigations' overall findings, conclusions, and recommendations. For 13 allegations (24 percent), TIGTA could not find documentation to support that management conducted an investigation or if any corrective action was taken.

TIGTA also found that documentation in case files supporting disciplinary action against employees could be improved. In certain cases reviewed, management did not identify allegations as potential sexual harassment when selecting offenses to charge the employee with during the disciplinary adjudication process. More than one-half of the penalties imposed on employees deviated from the recommendations in the IRS Penalty Guide.

## What TIGTA Recommended

TIGTA made a number of recommendations, including that the IRS revise its policy to ensure that all sexual harassment allegations are reported to the Anti-Harassment Program and develop a system that centrally tracks all allegations of sexual harassment. TIGTA also recommended that the IRS develop guidance on how to properly conduct and document management inquiries and implement procedures for ensuring that management adequately documents the selection of offenses and penalties when misconduct is substantiated. During this review, TIGTA met with IRS officials and discussed our preliminary findings, and the IRS began taking corrective actions. IRS management agreed with all of our recommendations.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

**U.S. DEPARTMENT OF THE TREASURY**

**WASHINGTON, D.C. 20220**

March 29, 2021

**MEMORANDUM FOR:** DEPUTY COMMISSIONER FOR OPERATIONS SUPPORT

**FROM:**

Heather M. Hill   
Acting Deputy Inspector General for Inspections and Evaluations

**SUBJECT:**

Final Evaluation Report – Oversight of Reported Sexual Harassment  
Allegations Needs Improvement (IE-18-008)

This report presents the results of our evaluation of the Internal Revenue Service's (IRS) tracking of reported sexual harassment allegations, the investigation or inquiry into the alleged harassment, and the discipline of IRS employees in substantiated allegations. This evaluation was part of our Fiscal Year 2020 Program Plan and addresses the major management and performance challenge of *Achieving Operational Efficiencies*.

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

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions about this report, you may contact me or Alberto Garza, Acting Director, Inspections and Evaluations.

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## **Background**

In 1980, the Equal Employment Opportunity Commission (EEOC) issued guidelines declaring sexual harassment a violation of Title VII of the Civil Rights Act of 1964.<sup>1</sup> Sexual harassment is unwelcome and unwanted sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature that creates an intimidating, hostile, or offensive work environment or that affects the employee's employment status. Generally, sexual harassment falls into one of three categories: sexual coercion, unwanted sexual attention, and gender harassment.<sup>2</sup>

Sexual coercion – pressure or force to engage in sexual behavior. Examples include offers for preferential treatment in the workplace in exchange for sexual favors, pressure for dates, stalking, and sexual assault or attempted sexual assault.

Unwanted sexual attention – unwelcome behaviors of a sexual nature that are directed towards a person. This includes unwelcome invasion of personal space, unwelcome communications of a sexual nature (*e.g.*, e-mails, telephone calls, and text messages), and unwelcome sexually suggestive looks or gestures.

Gender Harassment – unwelcome behaviors that disparage or objectify others based on their sex. It includes sexually crude terminology and sexist comments (*e.g.*, telling anti-female jokes or making comments that women do not belong in management).

Sexual harassment is a form of discrimination. It violates Federal law when: 1) submission to the harassment is required (explicitly or implicitly) as a condition of employment; 2) submission or rejection affects the employee's treatment by the harasser; or 3) the harassment unreasonably interferes with the employee's work performance or creates an intimidating, hostile, or offensive work environment.<sup>3</sup> The law holds employers responsible when employees are sexually harassed. However, employers are typically not liable for sexual harassment if they can show that they tried to stop the harassment. Research suggests that sexual harassment can negatively influence an individual's well-being and work performance and can create harmful, long-term effects to overall mental and physical health. Federal agencies have a responsibility to prevent and eliminate all forms of sexual harassment in the workplace.

### **Prevalence of Sexual Harassment in the Federal Government**

The Merit Systems Protection Board (MSPB) has collected data on sexual harassment in the Federal workplace since 1981. The MSPB conducted the most recent Governmentwide survey in 2016. The survey covered a range of 12 sexual harassment behaviors that provided respondents with concrete examples of behaviors that are potentially indicative of sexual harassment.<sup>4</sup> The vast majority of Federal employees surveyed agreed that these 12 behaviors constitute sexual harassment.

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<sup>1</sup> United States Equal Employment Opportunity Commission, Notice N-915-050, *Policy Guidance on Current Issues of Sexual Harassment* (Mar. 19, 1990).

<sup>2</sup> Definitions from the U.S. Merit Systems Protection Board.

<sup>3</sup> Part 1604 – *Guidelines on Discrimination Because of Sex* (29 C.F.R. § 1604.11 (2011)).

<sup>4</sup> See Figure 1 for a list of the 12 types of behaviors. The determination of whether a particular behavior constitutes sexual harassment within the meaning of Title VII depends upon the circumstances and the context.

The MSPB survey also asked respondents about the prevalence of sexual harassment in the workplace. According to the survey results, approximately one (14 percent) in seven Federal employees experienced at least one of the 12 sexual harassment behaviors in the workplace during the previous two years. Internal Revenue Service (IRS) employees reported experiencing sexual harassment in the workplace at rates generally similar to the rest of the Federal workforce. Figure 1 provides the summarized results of the 12 behaviors measured in the MSPB survey.

**Figure 1: Percentage of Employees Experiencing Sexual Harassment  
Comparison: IRS and Governmentwide**

Type of Sexual Harassment	IRS	Governmentwide
<b>Any Type of Sexual Harassment</b>	<b>15%</b>	<b>14%</b>
<b>Gender Harassment</b>	<b>9%</b>	<b>10%</b>
Exposure to sexually-oriented conversations	7%	7%
Unwelcome sexual teasing, jokes, comments, or questions	4%	6%
Derogatory or unprofessional terms related to sex or gender	4%	5%
Exposure to sexually-oriented materials	2%	3%
<b>Unwanted Sexual Attention</b>	<b>9%</b>	<b>9%</b>
Unwelcome invasion of personal space	7%	7%
Unwelcome sexually suggestive looks or gestures	5%	5%
Unwelcome communications of a sexual nature	4%	3%
<b>Sexual Coercion Harassment</b>	<b>5%</b>	<b>3%</b>
Pressure for dates	2%	2%
Stalking (intrusion into personal life)	3%	2%
Offer of preferential treatment for sexual favors ( <i>quid pro quo</i> )	1%	1%
Pressure for sexual favors	1%	1%
Sexual assault or attempted sexual assault	0.4%	0.4%

*Source: U.S. MSPB, 2016 Merit Principles Survey.*

Although recent media attention has resulted in more open discussions about sexual harassment in the workplace, according to the EEOC, three out of four individuals who experience harassment never report the harassing conduct. The EEOC also emphasizes that employees who experience harassment fail to report the harassment because they fear disbelief of their claim, inaction, blame, or retaliation.

**Addressing Sexual Harassment Allegations: Equal Employment Opportunity (EEO) Complaint Process and the Anti-Harassment Program**

In 2003, the EEOC issued guidance to Federal agencies for establishing EEO programs.<sup>5</sup> An EEO program should have both an EEO Complaint process and an Anti-Harassment Program. The EEO Complaint process and the Anti-Harassment Program are integral components to addressing harassment allegations, but each serves a separate purpose as mandated by the EEOC. As such, sexual harassment allegations can include one or both of these components depending on the situation of the alleged victim. At a minimum, however, all allegations of harassment must be reported to the Anti-Harassment Program.

<sup>5</sup> EEOC, *Management Directive 715* (EEO MD-715), *Federal responsibilities under Section 717 of Title VII and Section 501 of the Rehabilitation Act* (Oct. 1, 2003).

## Oversight of Reported Sexual Harassment Allegations Needs Improvement

Although EEO offices in many Federal agencies are often responsible for establishing anti-harassment policies, the EEO Complaint process and the Anti-Harassment Program exist for different purposes. The EEO Complaint process, which is employee driven (*i.e.*, by the alleged victim), is designed to make individuals whole by providing restitution to the employee. An EEO complaint may result in both a monetary and/or nonmonetary remedy, such as the restoration of leave or relocation at the employee's request. However, the EEO Complaint process is not designed to discipline the alleged harasser, as this is management's responsibility.<sup>6</sup> A manager or coworker may refer an allegation to the EEO office, but it is up to the alleged victim to decide if they want to move forward with the EEO Complaint process.

In contrast to the EEO Complaint process, the Anti-Harassment Program, which is management driven, is intended to take immediate and appropriate corrective action to eliminate harassing conduct, regardless of whether the conduct violated the law, and to end harassing conduct before it becomes severe or pervasive. The Anti-Harassment Program should focus solely on taking whatever action is necessary to promptly bring the harassment to an end or to prevent it from occurring. Depending on the severity of the conduct and surrounding circumstances, the corrective action may be as simple as speaking with an employee about their behavior or as severe as termination of employment. According to the EEOC, at a minimum, all harassment allegations (sexual and non-sexual) must be reported to the Anti-Harassment Program. However, not every harassment allegation will have an EEO complaint associated with it because the employee may elect not to proceed with an EEO complaint. In other words, the universe of EEO complaints is a subset of all allegations reported to the Anti-Harassment Program.

As shown in Figure 2, the EEO Complaint process and Anti-Harassment Program serve two distinct purposes and have different requirements. However, both processes can occur simultaneously if a victim seeks to pursue both options.

**Figure 2: EEO Complaint Process and Anti-Harassment Program**



Source: TIGTA Analysis based on IRS Documents.

<sup>6</sup> While the EEO process is not primarily designed to discipline alleged harassers, EEOC often recommends that agencies consider disciplining supervisors who have been found to engage in unlawful harassment.

As the EEO Complaint process and Anti-Harassment Program have different objectives, the outcome of one process has no bearing on the other. For example, if an EEO complaint results in a cash award to the alleged victim in a sexual harassment allegation, this does not mean that sexual harassment is necessarily substantiated under the Anti-Harassment Program nor would it guarantee that the alleged harasser would be disciplined. Regardless, all harassment allegations (sexual and non-sexual) must be reported to the Anti-Harassment Program.

### **Reporting Sexual Harassment Allegations at the IRS**

The IRS Office of Equity, Diversity, and Inclusion is responsible for administering the agency's EEO Program Office. Within the Office of Equity, Diversity, and Inclusion, the Anti-Harassment Section is responsible for handling the Anti-Harassment Program and the Civil Rights Section handles the EEO Complaint process.

Any IRS employee who believes they have been subjected to, or witnessed, sexual harassment may report the allegation in a number of ways. These options include reporting the allegation to the following:

- An immediate supervisor or higher level management official;
- The EEO Program Office;<sup>7</sup>
- The IRS Employee Resource Center;
- The IRS Sexual Harassment Hotline;
- An IRS Union Representative; or
- The Treasury Inspector General for Tax Administration (TIGTA) Office of Investigations (OI).

Regardless of the initial reporting method, the IRS's Anti-Harassment Policy requires management (*i.e.*, an immediate supervisor or higher level management official) to report all sexual harassment allegations to the EEO Program Office within one business day.<sup>8</sup> If the allegation involves a tangible employment action (*e.g.*, a significant change in employment status, such as hiring, firing, or failing to promote) or unwanted physical contact of a sexual nature, the allegation should be referred to TIGTA OI for a potential criminal investigation. If the case does not result in a criminal case, TIGTA OI completes a report of investigation and returns it to the IRS for potential administrative adjudication.

For all reported allegations of sexual and non-sexual harassment, the IRS's Anti-Harassment Policy requires management to conduct an investigation (*i.e.*, management inquiry) to determine the frequency and severity of the alleged harassing conduct and whether any immediate corrective action is required to protect the alleged victim from further harassment or inappropriate conduct. When disciplinary actions are required, IRS management determines the appropriate penalty, considering any mitigating and aggravating factors as well as agencywide penalties for comparable previous offenses. According to IRS policy, management should

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<sup>7</sup> For the purpose of this report, EEO Program Office refers to IRS's Office of Equity, Diversity, and Inclusion.

<sup>8</sup> The IRS's Anti-Harassment Policy was revised in February 2020 during the course of our review. The 2015 version was the applicable policy in place for the reported allegations that TIGTA reviewed for this report.

thoroughly document the rationale for each penalty decision made and consult with the Labor and Employee Relations function (hereafter referred to as Labor Relations) as appropriate.<sup>9</sup>

### **The IRS Restructuring and Reform Act of 1998 Considerations**

Section (§) 1203 of the IRS Restructuring and Reform Act of 1998<sup>10</sup> requires mandatory termination of IRS employees who commit specific acts or omissions. Because sexual harassment is a violation of Title VII of the Civil Rights Act of 1964, a substantiated sexual harassment allegation is a violation of § 1203(b)(3). Only the Commissioner of Internal Revenue can mitigate the Act's mandatory termination provision. For a sexual harassment allegation to violate § 1203, the IRS must determine during the disciplinary process whether the employee violated an individual's civil rights. For example, for a violation to have occurred, some degree of intent must be present.<sup>11</sup> In general, the IRS makes this determination through a consultation between management and Labor Relations. If the IRS determines that the conduct does not meet the requirements of § 1203, then alternative offenses should be considered using normal disciplinary procedures.

### **IRS Employee Sexual Harassment Survey Administered by TIGTA**

As part of this review, TIGTA conducted a survey of approximately 76,000 IRS employees to obtain an understanding of perceptions of sexual harassment at the IRS.<sup>12</sup> Employees were asked 19 questions about their personal experiences and observations of sexual harassment at the IRS.<sup>13</sup> Nearly 26,000 employees responded to the survey (34 percent response rate). See Appendix II for a comprehensive summary of the survey results.

### **Scope of Our Review**

The purpose of this evaluation was to review the IRS's tracking of reported sexual harassment allegations, the investigation or inquiry into the alleged harassment, and the discipline of IRS employees in substantiated allegations. Although TIGTA OI may be involved in investigating sexual harassment allegations at the IRS, we did not evaluate the timeliness or appropriateness of its actions. We also did not evaluate sexual harassment allegations within the IRS Office of Chief Counsel as this function is a separate entity and follows different processes. We may consider the IRS Office of Chief Counsel for a separate, subsequent review. For additional information about the objective, scope, and methodology of this review, see Appendix I.

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<sup>9</sup> Labor Relations is the IRS office responsible for advising and supporting managers on employee conduct and performance matters, with the exception of such matters committed by employees of the Office of Chief Counsel.

<sup>10</sup> Pub. L. No. 105-206, 112 Stat. 685.

<sup>11</sup> IRS, Document 11043, *RRR 98 § 1203 All Employee Guide* (Rev. Sept. 2007), Catalog Number 27823R.

<sup>12</sup> All IRS employees with a valid IRS.gov e-mail address were provided with an opportunity to complete the survey.

<sup>13</sup> Although 19 questions were asked, additional follow-up subquestions were asked for specific details relating to responses of experiencing or witnessing sexual harassment and reasons for reporting or not reporting the behavior.

## Results of Review

### The IRS Does Not Address Sexual Harassment Allegations in Accordance With Equal Employment Opportunity Commission Guidance

The IRS does not report sexual harassment allegations to the agency's Anti-Harassment Program as required by the EEOC. Instead, sexual harassment allegations are reported to the IRS's Civil Rights function, which is primarily responsible for administering the EEO Complaint process, regardless of whether the alleging victims have expressed interest in filing an EEO complaint. Consequently, sexual harassment allegations do not receive the same oversight as allegations handled by the Anti-Harassment Program. This presents a risk because the IRS cannot formally monitor these allegations, including proving that immediate action was taken to stop the harassing behavior, and cannot identify with any degree of certainty the complete population of all reported sexual harassment allegations. Moreover, we found that management inquiries are not consistently well documented because sexual harassment allegations are not addressed through the IRS's Anti-Harassment Program.

We met with officials at the EEOC to obtain information on the requirements of an effective Anti-Harassment Program. According to EEOC officials and guidance, all allegations of harassment, regardless of basis or protected class, should be reported to the agency's Anti-Harassment Program to ensure that a management inquiry is conducted promptly.<sup>14</sup> In addition, Federal agency EEO programs should have a process outside of the EEO Complaint process to address all forms of harassment. An effective anti-harassment process is designed to prevent and correct harassment before it rises to the level of unlawful harassment. However, at the IRS, allegations of sexual harassment are not reported to its Anti-Harassment Program, even if the alleged victim does not file an EEO complaint. Conversely, allegations involving non-sexual harassment (*e.g.*, bullying, cyber harassment, and racial harassment) are processed through the Anti-Harassment Program.

Due to this difference, sexual harassment allegations at the IRS are not monitored in the same manner as other types of harassment allegations. When addressing sexual harassment allegations, EEO counselors meet with the alleged victim and inform them of their rights and available remedies, which include the option to file an EEO complaint. In addition, EEO counselors prepare intake forms to document the allegation and inform management of their requirement to conduct an inquiry. However, EEO counselors do not collect or review documentation to ensure that the inquiry was conducted in accordance with IRS and EEO policies, such as meeting timeliness requirements. Moreover, EEO counselors do not evaluate the inquiry report for completeness or quality to ensure that the final corrective or disciplinary action was taken.

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<sup>14</sup> In October 2017, the EEOC revised the instructions for MD-715, which includes self-assessment questions for a model EEO program in Part G of the MD-715 report. Part G, Section C.2.a, establishes basic requirements for the implementation of Anti-Harassment Programs. In particular, question C.2.a.3 requires Federal agencies to provide separate processes for addressing EEO complaints under 29 C.F.R. Part 1614 and harassment complaints pursuant to *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). That means employees and applicants can file a complaint in both processes at the same time, and agencies must simultaneously implement both processes.

Non-sexual harassment allegations are more thoroughly tracked and monitored. For example, anti-harassment specialists notify the business unit, brief management on allegations, and identify the official responsible for conducting the management inquiry. Specialists provide instructions on how to conduct an inquiry into the allegations. Specialists also review the draft inquiry and identify any potential areas that may need clarification before the final document is submitted to the official responsible for making determinations.

In October 2019, the Department of the Treasury's Office of Civil Rights and Diversity identified a number of similar concerns surrounding the IRS's Anti-Harassment Program. For example, the Department of the Treasury found that the IRS anti-harassment coordinator is not involved in all allegations of sexual harassment and recommended that the IRS incorporate how to handle these allegations into its Anti-Harassment Policy and Procedures.

IRS officials stated that, when the Anti-Harassment Program was created in 2016, a decision was made to continue processing sexual harassment allegations through the EEO Complaint process. As a result, if a sexual harassment allegation is received by the Anti-Harassment Program, it is automatically forwarded to counselors in the EEO Complaint process for resolution. IRS officials stated that, at that time, there might have been a belief that sexual harassment allegations required specialized knowledge and that processing should remain within the EEO Complaint function.

A recent report by the U.S. Commission on Civil Rights outlines the importance of Federal Anti-Harassment Programs.<sup>15</sup> The report states that Anti-Harassment Programs established within Federal agencies are intended to take "immediate and appropriate corrective action, including the use of disciplinary actions, to eliminate harassing conduct regardless of whether the conduct violated the law." The IRS should process sexual harassment cases in the same manner as other types of harassment in order to ensure that the agency can prevent all types of harassing conduct before it becomes severe or pervasive.

### **Limited tracking of sexual harassment allegations poses a risk**

The IRS does not systematically collect, monitor, or analyze data for all reported sexual harassment allegations despite EEOC requirements. According to the EEOC, to assist with oversight, agencies should use a centralized system for tracking and monitoring all inquiries or allegations of harassment. EEOC guidance advises agencies to institute specific guidelines for monitoring allegations and inquiries to allow for the early identification and effective resolution of conflict situations that could otherwise escalate if left unchecked. At the IRS, when a sexual harassment allegation does not result in an EEO complaint, only limited information about the allegation is available.<sup>16</sup> The IRS has no ability to query this information or to formally monitor alleged harassers associated with multiple sexual harassment allegations.

According to Department of the Treasury policy, all bureaus are required to capture the specific nature of the incident, date and place of the incident, and names of parties involved as well as

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<sup>15</sup> U.S. Commission on Civil Rights, Briefing Report, *Federal #MeToo: Examining Sexual Harassment in Government Workplaces* (April 2020).

<sup>16</sup> EEO counselors prepare a separate intake form with additional details about the reported allegation of sexual harassment that is maintained offline. TIGTA's review found this separate intake form of limited value for monitoring alleged harassers associated with multiple allegations as counselors are specifically directed to never enter the names of the parties involved in the allegation.

the pertinent facts for all allegations of harassment (sexual and non-sexual).<sup>17</sup> However, the IRS does not require documentation of the names of the parties involved in sexual harassment allegations. We reviewed available documentation and determined that in many cases we could not identify the alleged harasser. In some instances, we could not identify the alleged victim, even when the victim did not wish to remain anonymous. We found it difficult in other cases to determine whether the employee name provided was that of the victim or of a manager reporting the incident on behalf of an employee.

Further, the IRS cannot identify with any degree of certainty the complete population of all reported allegations of sexual harassment. IRS officials stated that the only way to identify a sexual harassment allegation that did not become an EEO complaint is to query the subject field of the EEO Complaint database for the term "RAOSH" (Reported Allegation of Sexual Harassment). If the subject field does not contain "RAOSH" or if the subject field is blank, an allegation may not be readily identifiable. For example, when we requested that IRS officials search the subject field for "Sexual Harassment" and "ROASH" (a misspelled version of RAOSH), they identified additional allegations of sexual harassment. More recently, the IRS began tracking sexual harassment allegations using a spreadsheet; however, this method did not contain information such as names and pertinent facts. While changes have been made to the process, allegations must still be manually tracked, making it difficult to identify every reported sexual harassment allegation uploaded into the electronic database used for EEO complaints.

Moreover, the system used to capture information about sexual harassment allegations does not have the capability to formally collect, record, or cross-reference key information typically collected during the course of other types of harassment inquiries (*e.g.*, management inquiry documentation, disciplinary actions taken, the identity of the alleged harasser). Without such a system, the IRS cannot ensure that investigations into all allegations are timely completed and resolved. Figure 3 provides an overview depicting the differences between how sexual and non-sexual harassment allegations are tracked and processed.

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<sup>17</sup> Human Capital Issuance System, Chapter 900-008, Transmittal Number TN-08-005, *Procedures for Addressing Allegations of Discriminatory Harassment*, U.S. Department of the Treasury (June 10, 2008), superseded by Civil Rights and Diversity Issuance System, CRD-009, *Procedures for Addressing Allegations of Discriminatory Harassment*, U.S. Department of the Treasury (June 28, 2019).

**Figure 3: Overview of Processing Reported Sexual Harassment and Non-Sexual Harassment Allegations at the IRS**

Allegation Component	Sexual Harassment Allegation	Non-Sexual Harassment Allegation
Details of allegation are uploaded and saved in a system of records	✓	✓
Details of allegation can be queried from a system of records	✗	✓
Required management inquiries are tracked and centralized	✗	✓
Review of management inquiries is completed to ensure consistency	✗	✓
Documentation of EEO complaint is retained and tracked	✓	✓
Alleged harasser name is documented as a data field	✗	✓
Disciplinary actions of harasser are documented and tracked	✗	✓

Source: TIGTA analysis of IRS systems.

We reviewed information collected on sexual harassment allegations for Fiscal Years (FY) 2014 through 2018 and found that the information captured is limited and, in many instances, incomplete or missing. For example, we could not determine with certainty when alleged events occurred or when management became aware of allegations. Timeliness in handling sexual harassment allegations is critical. According to IRS policy, managers should inform EEO officials within one day of the allegation. Timely notification could help protect the alleged victim from future harassment and may limit the potential for agency liability. The manner in which sexual harassment allegations are tracked does not allow the IRS to systemically capture timeliness measures. The Department of the Treasury’s internal review in October 2019 also noted concerns with the IRS not initiating inquiries timely and capturing key milestones.

In June 2020, we briefed IRS officials on our preliminary findings and determined that corrective actions were taken to address our concerns. For example, the IRS began centrally addressing and tracking all allegations of harassment (sexual and non-sexual) and merging tracking systems. This system will track allegations received, disposition of the case, alleged harasser’s identity, and management officials involved. A full-time Prevention of Sexual Harassment Coordinator has been designated to help ensure that allegations are documented and reported in accordance with EEOC guidance and to assist management in completing inquiries into sexual harassment allegations.

The Deputy Commissioner for Operations Support should:

**Recommendation 1:** Address all sexual harassment allegations through the Anti-Harassment Program in accordance with EEOC guidance and ensure that all allegations of sexual harassment are centrally tracked.

**Management's Response:** The IRS agreed with this recommendation and has moved the Prevention of Sexual Harassment Program under the Anti-Harassment Program Office. The IRS also plans to apply the same procedures and tools to process and track all allegations of harassment (sexual and non-sexual).

**Recommendation 2:** Provide guidance to management that encourages timely reporting of sexual harassment allegations.

**Management's Response:** The IRS agreed with this recommendation and has established the same processing time frames for all allegations of harassment (sexual and non-sexual). The IRS also revised the IRS Anti-Harassment Policy, requiring managers to report all allegations of harassment, including sexual harassment, to the Anti-Harassment Program Office within one business day of learning of the allegation of harassment.

### **Some management inquiries are not well documented because sexual harassment allegations are not addressed through the Anti-Harassment Program**

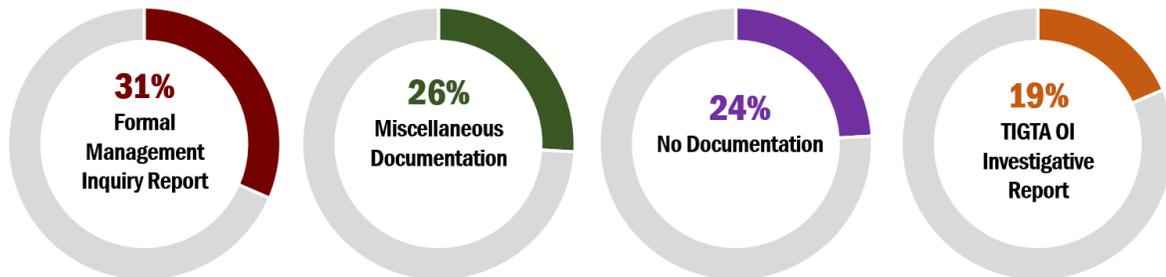
We reviewed the case files of a judgmental sample of 54 sexual harassment allegations and found that there is no consistency or standardized approach to documenting the management inquiry or the overall findings, conclusions, and recommendations. According to the IRS Anti-Harassment Policy, managers who become aware of harassment, including sexual harassment, are required to conduct an investigation and document their actions and findings. However, the policy does not detail what management should do with the completed inquiry, and there is no central repository to store the inquiry documentation as there is for non-sexual harassment allegations. As such, case files were inconsistently documented and not centrally stored, which poses significant risks.

For 13 (24 percent) of the 54 allegations, we could not find documentation to support that management conducted an investigation or if any corrective action was required. This does not necessarily mean that management failed to take some form of corrective action. However, lack of documentation means that we are unable to confirm what actions, if any, were taken.

For the remaining 41 allegations, we reviewed the files to determine whether the reporting, investigation, and disciplinary actions were evident from the case files. The allegations we reviewed ranged from rumors, stalking, and inappropriate comments to groping, demands for sexual favors, and unwanted exposure. However, the variation in content and structure of the files made it difficult in some cases to determine what actions, if any, management took to address the allegation or if the allegation was substantiated. Some files provided by management contained only a limited number of documents, such as e-mails, cease and desist memorandums, or management directives provided to the alleged victim and harasser(s). In general, there was no formal report that addressed management's actions from the initial report of alleged harassment through the resolution process. For example, to understand how management addressed an allegation, we had to manually search for information from a variety

of sources including EEO case files, disciplinary files on the alleged harasser captured in the Labor Relations disciplinary database, and any documents provided by management from their investigation. As shown in Figure 4, we observed a range of documentation.

**Figure 4: Management Inquiry Documentation Identified During TIGTA's Case Review**



*Source: TIGTA analysis based on review of 54 sexual harassment case files.*

For 10 (19 percent) of the 54 allegations, we found only a TIGTA OI investigative report. IRS management can use TIGTA OI investigations as a basis for taking disciplinary actions against alleged harassers. However, IRS management is responsible for addressing the allegation and retains sole authority to take administrative disciplinary actions against alleged harassers. Moreover, EEOC officials indicated that management should still take immediate and appropriate corrective action and document all actions to meet the agency's obligations under the Anti-Harassment Program.

We believe that the inconsistent approach to these inquiries may be because the IRS's EEO Program Office does not apply its Anti-Harassment Policies to sexual harassment allegations. For example, when an employee alleges non-sexual harassment, the manager must submit a draft copy of the management inquiry report to the Anti-Harassment Program, which reviews the draft report and determines if any clarification or further action is necessary. This results in greater consistency in the documentation and some assurance that management addresses the allegation. Final reports are stored in the Anti-Harassment Program database should a future EEO complaint or allegation arise. However, if an allegation relates to sexual harassment, the EEO counselor does not review management's inquiry report or retain a copy for future reference and takes the manager's word that an investigation was conducted.

We briefed IRS officials on our preliminary findings, and the IRS has started taking corrective actions. For example, the IRS plans to implement additional training for managers that will help them identify and address sexual harassment. Management inquiries are now being tracked, and a review of management's documentation is conducted to ensure that the inquiry was completed. In the event that management does not complete an inquiry, the Prevention of Sexual Harassment Coordinator is responsible for ensuring that it is completed. The IRS anticipates that most of these changes will be implemented in FY 2021.

The Deputy Commissioner for Operations Support should:

**Recommendation 3:** Develop guidance for managers that provides details on how to properly conduct and document a management inquiry for investigating sexual harassment allegations.

**Management's Response:** The IRS agreed with this recommendation and has updated guidance to assist managers when conducting management inquiries of sexual harassment allegations and created an updated inquiry summary template. The Anti-Harassment Program will provide general guidance to management officials conducting the inquiry and provide references to the available guidance.

**Recommendation 4:** Consider incorporating requirements to supplement the IRS Anti-Harassment Policy that encourages the review and centralization of all management inquiries performed for investigation of sexual harassment allegations.

**Management's Response:** The IRS agreed with this recommendation and has moved the Prevention of Sexual Harassment Program under the Anti-Harassment Program. Language has been incorporated in the updated policy requiring all agency officials to report sexual harassment allegations to the Anti-Harassment Program. The IRS also updated policies to begin centralizing documentation associated with all inquiries in the Anti-Harassment Program database.

### **Management Could Take Additional Action to Encourage a Workplace Free From Sexual Harassment**

Our review of disciplinary files associated with potential sexual harassment and sexual misconduct allegations found that management rarely identified the offenses as sexual harassment when determining discipline for employees. In addition, management did not always document that § 1203 consultations were conducted when disciplining employees. We believe that the lack of clarity in the IRS Manager's Guide to Penalty Determinations (hereafter referred to as the IRS Penalty Guide) creates challenges when ensuring that disciplinary actions taken for substantiated allegations are consistently administered, resulting in minimal to no disciplinary actions taken for most sexual harassment allegations.<sup>18</sup> For more than one-half of the substantiated cases of misconduct we reviewed, the penalties administered deviated from the IRS Penalty Guide.

Further, our review of employee disciplinary files found that supporting documentation to justify the disciplinary action taken against the employee could be improved. Generally, we could not identify support for management's decision to deviate from the recommendations provided in the IRS Penalty Guide or documentation comparing similar fact patterns to previous substantiated misconduct. As such, there is no assurance that the IRS took consistent disciplinary actions appropriate to address the sexual harassment.

We surveyed approximately 76,000 IRS employees and found approximately 7 percent of the nearly 26,000 survey respondents believe that sexual harassment occurs at the IRS frequently and another 45 percent believe that it occurs sometimes. Some employees expressed that they were hesitant to report the behavior because they felt management did not take the allegations

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<sup>18</sup> Document 11500, *IRS Manager's Guide to Penalty Determinations* (Rev. Aug. 2012).

seriously. Other respondents cited management indifference and fear of retaliation as reasons they did not report sexual harassment. The results of our survey reveal a potential barrier to the IRS's goal to provide a workplace free from sexual harassment.

We also reviewed sexual harassment policies and procedures and found that some documents were outdated or no longer applicable. Outdated policies and procedures can contribute to confusion for managers or employees when addressing sexual harassment allegations. In addition, we identified three different sexual harassment reporting hotline numbers when reviewing IRS intranet, documents, and policies. Also, there was no option to speak with a live operator when dialing any of the hotline numbers. Outdated policies and inaccurate information may result in an employee being uncertain of to whom to report an allegation or what recourse is available to prevent or stop ongoing, unwanted sexual harassment.

### **Substantiated allegations are not always identified as potential sexual harassment or § 1203 violations**

Our review of a sample of 20 substantiated disciplinary files found that management did not always identify allegations as potential sexual harassment when selecting offenses to charge the employee with during the disciplinary adjudication process.<sup>19</sup> For example, in 18 (90 percent) of the 20 allegations, IRS management and Labor Relations did not correctly identify and code cases as potential sexual harassment in the Labor Relations disciplinary database.<sup>20</sup> The IRS agreed that 17 of the allegations were incorrectly coded. In general, when a case of potential misconduct enters the adjudication process, specialists work with the managers to identify potential offenses listed in the IRS Penalty Guide and their corresponding issue codes in the Labor Relations disciplinary database. From there, the manager will determine if the misconduct meets the key penalty factors listed in the IRS Penalty Guide.

We also found that management did not always identify and process sexual harassment allegations as potential § 1203 violations. Management considered § 1203 provisions in only four of the nine case files for which the § 1203 issue code was present. According to IRS guidance, once the IRS becomes aware of an allegation involving potential harassment, a number of additional actions are required to determine if the case violates § 1203. For example, the specialist must prepare a § 1203 Employee Conduct Case Transmittal memorandum. This document provides additional guidance to management, such as scheduling a fact-finding interview and developing questions to determine an employee's intent surrounding the misconduct.<sup>21</sup> In general, management and Labor Relations conducted a § 1203 consultation with officials from the EEO Program Office or a Labor Relations § 1203 specialist to determine if the case met the elements of a civil rights violation. However, we believe the remaining 11 of

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<sup>19</sup> We reviewed 20 substantiated disciplinary files; 10 disciplinary files were related to the 54 EEO complaints discussed previously, and 10 disciplinary files were reviewed by conducting a search of substantiated conduct in the Labor Relations disciplinary database using the sexual harassment and sexual misconduct issue codes.

<sup>20</sup> Management does not have to substantiate an offense to add the appropriate issue code to the case file and Labor Relations disciplinary database.

<sup>21</sup> According to the IRS Penalty Guide, intent is a key penalty factor in determining whether the misconduct rose to a § 1203 violation. The IRS defines intent as "The employee's conduct must violate clearly established constitutional rights, of which a reasonable person would be aware. The employee's conduct must be motivated by discrimination (*i.e.*, treating employees, taxpayers, or taxpayer representatives differently on the basis of race, sex, color, religion, national origin, age, reprisal, or disability as defined in the civil rights statutes.)"

## Oversight of Reported Sexual Harassment Allegations Needs Improvement

20 cases also had facts and circumstances that indicated potential sexual harassment and should have also gone through the required consultation process.

Allegations may not have been identified as potential sexual harassment or received a § 1203 determination because the IRS Penalty Guide does not provide clear guidance to managers and specialists regarding sexual harassment. When reviewing the IRS Penalty Guide, we found it difficult to distinguish the differences between a § 1203 violation, sexual harassment, and sexual misconduct. IRS guidance specifically urges caution when selecting an offense because certain offenses might place an additional burden on the agency to prove. For example, the IRS guidance recommends unprofessional behavior or conduct unbecoming of an IRS employee as an alternative offense to sexual harassment but does not suggest sexual misconduct as a potential alternative.<sup>22</sup> Figure 5 presents some of the applicable offense codes used to discipline employees for allegations of sexual harassment.

**Figure 5: Excerpts From the IRS Manager’s Guide to Penalty Determinations**

Form of Harassment/ Misconduct	Type of Offense	Potential Penalty for Each Offense		
		First Offense	Second Offense	Third Offense
Constitutional Violation	Any violation of the US Constitution or certain civil rights as defined under Section 1203(b)(3) of the RRA of 1998	 Removal		
Sexual Harassment	Unwelcome sexual advance, request for sexual favors, and other verbal or physical conduct	 Removal		
Sexual Misconduct	Actual or attempted sexual assault -or- Sexual-related misconduct involving a subordinate not rising to a level defined as sexual harassment	 Removal		
	Sexual-related misconduct not involving a subordinate	 1 to 14-Day Suspension	 15 to 30-Day Suspension	 Removal
Discourtesy or Unprofessional Behavior	Rude, abusive, discourteous remarks or gestures	 Admonishment to  1-Day Suspension	 2 to 14-Day Suspension	 15-Day Suspension to  Removal
Conduct Unbecoming of an IRS Employee	Improper conduct detracted from employee’s character OR harmed the public image of the IRS	 Admonishment to  Written Reprimand	 Written Reprimand to  14-Day Suspension	 15-Day Suspension to  Removal

Source: IRS Manager’s Guide to Penalty Determinations. RRA = Restructuring and Reform Act.

<sup>22</sup> IRM 6.752.1.12, Framing and Charges Evidence (11/28/2008).

The IRS Penalty Guide describes a § 1203 violation as an offense that violates any civil right established under Title VII of the Civil Rights Act of 1964. Depending on the facts and circumstances, sexual harassment can violate Title VII of the Civil Rights Act of 1964. However, the IRS Penalty Guide defines sexual harassment in a separate offense code as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature specifically listing tangible employment benefits (*i.e.*, quid pro quo), a hostile work environment, or unwanted physical contact as key penalty factors to consider. Further, the sexual misconduct offense code is defined as sexually related misconduct that does not rise to the level of sexual harassment and provides examples such as deliberate or repeated offensive conduct, comments, gestures, or physical contact of a sexual nature. In addition, this offense code includes actual or attempted sexual assault. However, the recommended penalties for these various offenses vary significantly. For example, sexual misconduct has a more severe recommended penalty than offenses associated with either unprofessional behavior or conduct. Confusion over which offense(s) are appropriate to assign to any given case may result in inconsistent discipline across the IRS.

When we asked IRS officials to explain the difference between a § 1203 violation, sexual harassment, and sexual misconduct, we were told that there should be no distinction between the § 1203 violation and the sexual harassment offense codes. A sexual misconduct offense generally meant that the behavior, although inappropriate, was consensual rather than discriminatory in nature. However, the IRS Penalty Guide also mentions actual or attempted sexual assault, a nonconsensual act, under the sexual misconduct offense. IRS officials agreed that the definition and process was unclear and needed to be revisited. Apart from the definitions, there is little additional guidance provided in the IRS Penalty Guide explaining the elements of each offense or examples for managers and specialists to reference.

**Recommendation 5:** The Deputy Commissioner for Operations Support should update guidance to ensure that management consistently administers appropriate offenses and penalties when misconduct is substantiated.

**Management's Response:** The IRS agreed with this recommendation. The Human Capital Officer's Director of Labor/Employee Relations & Negotiations Division will collaborate with the Office of Equity, Diversity, and Inclusion to update procedures and guidance regarding sexual harassment and the Anti-Harassment Program.

### Disciplinary action documentation could be improved

Our review of a sample of 20 substantiated disciplinary files determined that, in 11 instances (55 percent), the IRS did not impose a disciplinary action that was consistent with the IRS Penalty Guide's recommendations.<sup>23</sup> Although deviations from the IRS Penalty Guide are permissible and greater or lesser penalties than suggested may be imposed, management should always thoroughly document the rationale for each penalty decision made. We believe that management could have more thoroughly documented their decisions. As such, there is no

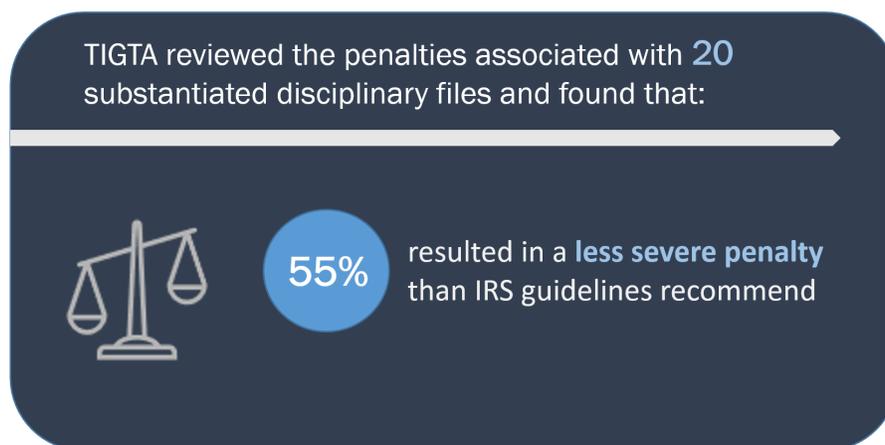
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<sup>23</sup> We reviewed substantiated disciplinary files for FYs 2017 through 2019. Included in the allegations is one where the employee resigned prior to being disciplined. We considered this allegation as substantiated based on our review of the case files even though the Labor Relations system that tracks disciplinary actions identified these allegations as unresolved because the employee left the agency before discipline could be administered.

assurance that the IRS took consistent disciplinary actions appropriate to address sexual harassment.

Figure 6 presents the overall results of penalty deviations from the recommendations of the IRS Penalty Guide for which the penalty was less severe than the guide's recommendation. Specifically, our review determined that, in 11 instances (55 percent), the IRS imposed a disciplinary action that was less severe than the IRS Penalty Guide's recommendation. Appendix III provides a listing of all sexual harassment allegations we reviewed and the corresponding penalty imposed on the employee.

**Figure 6: Deviations From Recommended Penalties on Substantiated Disciplinary Files**



*Source: TIGTA analysis of IRS Labor Relations files and IRS Penalty Guide.*

When determining the severity of disciplinary action, IRS guidance requires the manager to conduct an analysis of relevant factors, known as the Douglas Factors.<sup>24</sup> Ultimately, management is responsible for determining the appropriate disciplinary action. The purpose of the IRS Penalty Guide is to ensure a consistent approach to disciplining employees and determining the appropriate offense.

In analyzing the Douglas Factors, managers should compare penalties imposed on employees in similar circumstances as well as review any prior disciplinary actions taken against the employee, among other considerations. However, we determined that managers often did not document consideration of whether the proposed discipline was consistent with the discipline imposed upon other employees for the same or similar offenses. In general, the Labor Relations specialists will provide a list of substantiated allegations from previous cases with similar offenses if requested by the manager. In addition, in all disciplinary cases, IRS policy requires management to complete a Douglas Factors analysis outlining aggravating and mitigating circumstances to support management's penalty rationale.

Overall, we generally could not identify support, including documentation in the case file or in the Labor Relations disciplinary database, outlining all the relevant Douglas Factors as either aggravating, mitigating, or not applicable and a description of management's conclusion. For example, in 17 case files, the Douglas Factors analysis was either incomplete or not documented.

<sup>24</sup> In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), the MSPB established criteria (*i.e.*, the Douglas Factors) that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct.

In addition, we generally did not find support that management considered similar penalties imposed on previous employees when making the penalty determination.

Although the IRS requires management to consider the Douglas Factors in all potential disciplinary cases, the requirement to document the analysis is inconsistent. For example, when considering a suspension, IRS guidance only recommends, but does not require, the official to prepare a written document addressing each of the individual factors. IRS officials stated that, if the employee is a bargaining unit employee, the Douglas Factors should be listed in the decision letter; however, this is not required for non-bargaining unit employees. Furthermore, the Labor Relations disciplinary database has specific fields that document both the facts of the case and management's analysis. As the Douglas factors are critical to management's overall penalty rationale, we believe this information should be fully documented in the Labor Relations disciplinary database regardless of the ultimate penalty decision so specialists in the future can compare the circumstances of the case more thoroughly. According to IRS guidance, information contained in the Labor Relations disciplinary database can be viewed by authorized users to compare case dispositions for consistency and other agency reporting purposes. Care should be taken to ensure that detailed and meaningful information is provided on each case. In 15 (75 percent) of 20 disciplinary files reviewed, the IRS agreed that certain documentation was lacking. For example, in some cases, the IRS agreed that the Labor Relations disciplinary database lacked important information in the facts and analysis sections and lacked an overall penalty rationale or documentation supporting a Douglas Factors analysis was incomplete. Consequently, without documenting all of the facts and circumstances surrounding the case, it may be difficult to ensure that future disciplinary actions are consistently applied.

Once a determination is made about a disciplinary action, the case record is updated and a disciplinary letter is drafted documenting the substantiated misconduct. In 11 (55 percent) of 20 cases, we found discrepancies between the disciplinary letters issued to employees and the associated record in the Labor Relations disciplinary database. For example:

- For six allegations, the electronic case record did not match the substantiated charge in the decision letter;
- For three allegations, we were unable to determine what the ultimate substantiated charge was because the allegation resulted in a "Closed Without Action" status even though the electronic case record had a substantiated disciplinary code; and
- For two allegations, sexual harassment was substantiated in the electronic case record but different offense charge codes were listed in the decision letter.

Figure 7 provides examples of some of these discrepancies.

**Figure 7: Case Studies of Allegations Substantiated As Sexual Harassment But Charged With a Different Offense**

**Case Study 1:** An employee admitted to physically grabbing a woman’s chest in an inappropriate and unwelcome sexual manner. The Labor Relations disciplinary database had a code of “Sexual Harassment – Not 1203” while the decision letter had a code of “Unprofessional Conduct.” The employee was disciplined based on Unprofessional Conduct. The Unprofessional Conduct definition in the Penalty Guide lists only “remarks or gestures” but does not list physical touching.

**Case Study 2:** An employee stated there were multiple unwanted verbal comments of a sexual nature and physical touching of a sexual nature made by another employee. The Labor Relations disciplinary database had a code of “Sexual Harassment–Not 1203” while the decision letter had a code of “Sexual Misconduct.” The employee was disciplined based on Sexual Misconduct.

*Source: TIGTA analysis based on review of a sample of 20 substantiated disciplinary case files.*

IRS officials stated that the official disciplinary charges are based on the documentation written within the decision letter and not necessarily those identified in the electronic case record. Therefore, in the interest of consistency, transparency, and data reliability, it is critical that the electronic case records are updated to accurately reflect disciplinary decisions.

**Recommendation 6:** The Deputy Commissioner for Operations Support should implement procedures to ensure that management adequately documents the reasons and circumstances for selecting the appropriate offenses and penalties suggested in the IRS Penalty Guide to ensure consistency. In addition, ensure that the Labor Relations electronic case record is updated to accurately reflect final disciplinary decisions.

**Management’s Response:** The IRS agreed with this recommendation and will implement procedures and guidance on documenting sexual harassment and other related misconduct. The IRS also plans to provide training to Labor Relations specialists to guide management in selecting and documenting the appropriate charge and penalty and reemphasizing these requirements during internal training to all Labor Relations specialists.

### **IRS employees who responded to our survey believe that sexual harassment occurs at the agency but do not report the allegations**

Approximately 7 percent of survey respondents believe that sexual harassment occurs at the IRS frequently, and another 45 percent believe that it occurs sometimes. More than 80 percent of respondents indicated that, if they needed to report sexual harassment, they would know whom to contact. When offered multiple options for reporting sexual harassment, survey respondents most frequently indicated that they would report the harassment to IRS management.

Over **half** of employees responding to the survey believe sexual harassment occurs frequently or sometimes

**52%**



## Oversight of Reported Sexual Harassment Allegations Needs Improvement

Approximately 13 percent of survey respondents indicated that they personally experienced some form of harassment, while 15 percent indicated that they observed some form of harassment at the IRS. Most of these respondents, however, indicated that they did not report the sexual harassment. As shown in Figure 8, more than 70 percent of respondents that either experienced or observed sexual harassment did not report the allegation.

**Figure 8: Most Sexual Harassment Goes Unreported<sup>25</sup>**



Source: TIGTA analysis of IRS sexual harassment survey data.

One of the most common reasons why employees who responded to the survey did not report an incident was because they believe management does not take sexual harassment allegations seriously. Another common reason employees who responded to the survey do not report sexual harassment is because they are afraid of potential retaliation. In fact, survey data shows that many employees who did report alleged sexual harassment felt that doing so negatively impacted their job. According to our survey, 42 percent of employees who experienced sexual harassment felt that reporting it negatively impacted their job, and 28 percent of employees who observed sexual harassment felt that reporting it negatively impacted their job (see Figure 9).

<sup>25</sup> The total number who reported experiencing some form of sexual harassment was 3,481 respondents. The total number who reported observing some form of sexual harassment was 3,777 respondents. For reasons why these behaviors were not reported, respondents could select multiple answers.

**Figure 9: Reporting Sexual Harassment Negatively Impacted Employees' Jobs**



Source: TIGTA analysis of IRS sexual harassment survey data.

Also, a Department of the Treasury internal review in October 2019 held focus groups and one-on-one interviews with IRS employees and found that many employees believed they could not file a complaint without fear of reprisal.<sup>26</sup> Employee statements included belief that employees who file EEO complaints are retaliated against with more challenging work or they are ostracized.

Employees may be discouraged from reporting sexual harassment allegations for a variety of reasons. However, many of the most common reasons cited – management indifference and fear of retaliation – reveal a potential barrier to the IRS’s goal to provide a workplace free from sexual harassment. It is critical that IRS management receive sufficient resources and guidance to encourage a consistent approach to investigating, documenting, and reporting sexual harassment allegations. The Department of the Treasury considers its managers and supervisors to be the most valuable resource to prevent and deter sexual harassment. Therefore, management has an obligation to investigate all instances of potential sexual harassment. Individuals who commit sexual harassment are likely to repeat the conduct until they are exposed or disciplined. Therefore, it is critical that IRS management know how to address sexual harassment allegations appropriately.

### **Some sexual harassment guidance and procedures need to be updated**

We reviewed sexual harassment policies, procedures, and guidelines and found that some documents were outdated or no longer applicable. For example, some reference guides previously available to employees and managers had not been replaced with updated revisions. Information contained in the documents and contacts were no longer valid or had web links that were not functional. Ensuring that guidance is current is a core management responsibility.<sup>27</sup> However, during our discussions with IRS EEO Program officials, they were not aware that these outdated policies remained visible on the IRS intranet and explained this could have been due to program changes and inadequate staffing.

<sup>26</sup> Department of the Treasury, Office of Civil Rights and Diversity, *IRS FY 2019 EEO, Diversity and Inclusion, and Civil Rights Programs Audit Report* (Oct. 30, 2019).

<sup>27</sup> IRM 1.11.2.1.3, *Responsibilities* (Jan. 1, 2017).

Further, we researched the IRS employee intranet site and found three separate sexual harassment hotline numbers. We placed calls to these three numbers to determine what an IRS employee reporting sexual harassment would experience. One telephone number was disconnected. When we called the other two telephone numbers, we received a prerecorded message that asked us to leave a name and contact information and stated the call would be returned within one business day. During the course of our review, we verified that the disconnected number was obsolete, and the IRS has since updated guidance to reflect the two working hotline numbers.

IRS officials explained that monitoring the sexual harassment hotline is a collateral duty. When we called the hotline, we found that the system is designed to send the caller directly to voicemail. An EEO Program Office employee is responsible for contacting the caller within one business day. However, the IRS does not maintain a log of calls, so we could not verify whether this policy was being followed.

We also found that there is limited guidance for addressing sexual harassment allegations on the IRS's intranet site. We searched the site using the term "sexual" and the only nonobsolete guidance we found was the *Reported Allegation of Sexual Harassment* form. We identified 30 other resources that appeared to be available to employees and managers, but the IRS considers them obsolete. While there may be other toolkits and guidance available elsewhere, the IRS's Anti-Harassment Policy does not prominently reference this information or explicitly point a manager to the function that maintains the documents.

Although the IRS's EEO Program Office has the primary responsibility for maintaining sexual harassment policies, appropriate steps have not been taken to ensure that information is readily available to employees who may experience sexual harassment. Outdated policies and inaccurate information may result in an employee being uncertain about to whom to report an allegation or what recourse is available to prevent or stop ongoing, unwanted sexual harassment. In fact, the October 2019 Department of the Treasury review of the IRS's EEO Program found concerns surrounding overall employee awareness of sexual harassment policies and the Anti-Harassment Program in general. During their focus groups and one-on-one interview sessions, Department of the Treasury officials found that many employees were unaware that the Anti-Harassment Program was separate from the EEO Complaint process and confused it with Prevention of Sexual Harassment training. Employees told Department of the Treasury officials that they had not received any training on the Anti-Harassment Program or EEO Complaint process.

In June 2020, we briefed IRS officials on our preliminary findings and determined that some corrective actions were taken to address our concerns. For example, the IRS is in the process of conducting outreach, training, and education; developing a revised IRS Anti-Harassment Program toolkit with sexual harassment scenarios; and revising the management inquiry report template to ensure that it is consistent with the formatting of reports of non-sexual harassment. In addition, the IRS has communicated new guidance to managers internally.

## Oversight of Reported Sexual Harassment Allegations Needs Improvement

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**Recommendation 7:** Deputy Commissioner for Operations Support should review all relevant policies and procedures and ensure that guidance on how to address sexual harassment allegations is available to all employees.

**Management's Response:** The IRS agreed with this recommendation and plans on developing and implementing a strategy to ensure that all relevant policies, procedures, and guidance on how to address sexual harassment allegations are current and available to all employees.

## Appendix I

### Detailed Objective, Scope, and Methodology

The overall objective of this evaluation was to review the IRS's tracking of reported sexual harassment allegations, the investigation or inquiry into the alleged harassment, and the discipline of IRS employees in substantiated allegations. To accomplish this objective, we:

- Reviewed prior TIGTA, Government Accountability Office, and Federal oversight organization reports on sexual harassment and employee misconduct.
- Researched relevant statutes, regulations, the Internal Revenue Manual, and IRS procedures and guidance.
- Interviewed IRS management to determine how complaints of sexual harassment are received and processed and how disciplinary actions are administered.
- Obtained and reviewed for timeliness all Contact Intake Forms for reported allegations of sexual harassment for FYs 2014 through 2018 maintained by the IRS EEO Program Office.
- Obtained all formal and informal EEO complaints of sexual harassment for FYs 2014 through FY 2018 to determine what tracking methods were used, how files were maintained, and what investigations were made into each sexual harassment allegation.
- Obtained and reviewed available management inquiry documentation and corresponding Labor Relations disciplinary case files for a judgmental sample of 54 sexual harassment allegations that contained EEO activity for FYs 2014 through 2018. We used a judgmental sampling method because we did not plan to project the results across the entire population.<sup>1</sup>
- Obtained and reviewed an extract of the Labor Relations disciplinary database case files for all sexual harassment allegations that were coded as "sexual harassment" or "sexual misconduct" for FY 2017 through April 2019.
- Surveyed IRS employees (approximately 76,000) who had an IRS e-mail address in May 2019 to obtain information on employee experience, perception, and reporting of sexual harassment.

### **Performance of This Review**

This review was performed at the IRS's Office of Equity, Diversity, and Inclusion in Dallas, Texas, in the Office of Internal and External Civil Rights during the period of September 2018 through February 2020.

We conducted this evaluation in accordance with the Council of the Inspectors General for Integrity and Efficiency Quality Standards for Inspection and Evaluation. Major contributors to the report were Heather M. Hill (Acting Deputy Inspector General for Inspections and Evaluations), Alberto Garza (Acting Director), Frank J. O'Connor (Supervisory Evaluator),

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<sup>1</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

Roy E. Thompson (Lead Auditor), Earl C. Burney (Senior Evaluator), Matthew J. Schimmel (Senior Evaluator), Oliver E. Einstein (Auditor), and Eleina M. Monroe (Evaluator).

### **Validity and Reliability of Data From Computer-Based Systems**

We performed tests to assess the reliability of data obtained from the Labor Relations disciplinary database, the Anti-Harassment Program database, and an IRS human resources database containing IRS e-mail addresses, and evaluated the data for reliability and reasonableness. Based on our assessment, we believe that the data used in our review were reliable for purposes of this report. We also assessed the reliability of data obtained from the EEO Complaints database and determined it is reliable for the purposes of selecting a judgmental sample of allegations. However, as previously noted, we have concerns with the limited amount of information tracked on sexual harassment allegations.

## Appendix II

### Results of Sexual Harassment Survey

Between May 29, 2019, and June 5, 2019, TIGTA e-mailed a sexual harassment survey to 76,253 IRS employees. The survey recipients, whose e-mail addresses were downloaded from an IRS human resources database, included permanent and seasonal employees as well as some contractors. We also sent reminder e-mails that encouraged employees to participate. The survey closed on June 21, 2019. We received 25,921 responses to the survey, a response rate of 34 percent. During the survey, we offered assistance through a dedicated telephone number and e-mail address for employees who experienced technical difficulties or had questions about the survey or its content.

TIGTA used Survey Manager, an application used by the IRS for internal use, to design and administer the survey. Although the survey was designed to require a response to every question, we did not receive the expected total number of responses for most for the survey questions. However, this condition was limited to only a small number of omissions, so it did not significantly affect the results. Figure 10 lists the survey questions provided to employees and the associated responses.

**Figure 10: Sexual Harassment Survey Questions and Responses**

Q1: What is your employment type?		
Answer choices	Responses	
Permanent	89.4%	
Seasonal	10.5%	
Contractor	0.1%	
	Answered	25,919
	Skipped	2

Q2: What gender do you most closely identify with?		
Answer choices	Responses	
Female	61.7%	
Male	35.9%	
Prefer not to answer	2.2%	
Other	0.2%	
	Answered	25,919
	Skipped	2

## Results of Sexual Harassment Survey (Continued)

Q3: For which function do you work?	
Answer choices	Responses
Appeals	2.2%
Criminal Investigations	4.7%
Human Capital	2.6%
Large Business & International	8.6%
Office of Information Technology	9.0%
Small Business / Self-Employed	28.5%
Taxpayer Advocate Service	2.6%
Wage & Investment	30.9%
Other	10.3%
I do not know	0.7%
	Answered 25,921

Q4: Where do you work? (Respondents could select all that applied)	
Answer choices	Responses
at a Campus	40.6%
at a Call Site	10.9%
Other office	51.2%
I do not know	0.6%
	Answered 25,917
	Skipped 4

Q5: How long have you been employed by the IRS?	
Answer choices	Responses
Less than 2 years	7.8%
More than 2 years	91.4%
Prefer not to answer	0.8%
	Answered 25,919
	Skipped 2

## Results of Sexual Harassment Survey (Continued)

Q6: Within the last 2 years, I have completed sexual harassment training at the IRS.		
Answer	Responses	
Yes	76.3%	
No	11.2%	
I do not know	12.4%	
	Answered	25,918
	Skipped	3

Q7: If I needed to report sexual harassment, I would know whom to contact.		
Answer	Responses	
Yes	82.8%	
No	17.2%	
	Answered	25,917
	Skipped	4

Q8: I believe sexual harassment occurs at the IRS:		
Answer	Responses	
Frequently	6.7%	
Sometimes	44.8%	
I do not know	43.8%	
Never	4.8%	
	Answered	25,916
	Skipped	5

Q9: I would most likely report sexual harassment to:		
Answer	Responses	
National Treasury Employees Union	5.3%	
IRS Sexual Harassment Hotline	18.6%	
Treasury Inspector General for Tax Administration	13.1%	
IRS Management	46.4%	
Office of Equity, Diversity, and Inclusion	7.8%	
Equal Employment Opportunity Counselor	9.0%	
	Answered	25,911
	Skipped	10

## Results of Sexual Harassment Survey (Continued)

Q10: Within the last 5 years while working at the IRS, have you personally experienced gender-based harassment?	
Answer	Responses
Yes	8.6%
No	86.7%
Unsure	3.4%
Prefer not to answer	1.3%
	Answered 25,917
	Skipped 4

Q11: Within the last 5 years while working at the IRS, have you personally experienced unwanted sexual attention?	
Answer	Responses
Yes	8.7%
No	88.2%
Unsure	1.8%
Prefer not to answer	1.3%
	Answered 25,917
	Skipped 4

Q12: Within the last 5 years while working at the IRS, have you personally experienced sexual coercion?	
Answer	Responses
Yes	1.5%
No	96.8%
Unsure	0.9%
Prefer not to answer	0.8%
	Answered 25,916
	Skipped 5

## Results of Sexual Harassment Survey (Continued)

Q13: If you <b>personally experienced</b> any of the behaviors, did you report it?		
Answer	Responses	Adjusted Responses*
Yes	3.7%	27.5%
No	9.7%	72.5%
N/A (did not experience any of the behaviors)	86.6%	
	Answered	25,915
	Skipped	6
*Note: Adjusted Responses represent percentage of survey respondents who acknowledged personally experiencing sexual harassment behaviors. N/A responses were excluded.		

Q13-1: I believe reporting behaviors I personally experienced had a negative impact on my job.*	
Answer	Responses
Yes	42.2%
No	42.9%
I do not know	14.8%
	Answered 927
	Skipped 32
*Note: Only respondents who answered "Yes" to Q13 received this question.	

Q13-2: Please indicate the reason(s) why you did not report the behavior. (Respondents could select all that applied)*	
Answer	Responses
I did not feel comfortable with whom would be the one to investigate	14.9%
I believe someone else reported the behavior	2.9%
I was afraid of retaliation	30.8%
The behavior took place off-duty	3.6%
I was unfamiliar with the process for reporting the behavior	13.8%
I do not believe management takes sexual harassment allegations seriously	19.6%
I believed management was already aware	14.1%
I was afraid reporting it would result in unwanted public attention	21.6%
I did not feel the behavior was serious enough to warrant reporting	39.5%
I did not think the behavior was considered sexual harassment	8.8%
I spoke to the employee directly and told them to stop	25.4%
I did not want to get a co-worker in trouble	16.5%
I did not think anyone would believe me	12.3%
I was encouraged not to report it	2.1%
Other	8.6%
Prefer not to answer	5.6%
	Answered 2,442
	Skipped 80
*Note: Only respondents who answered "No" to Q13 received this question.	

## Results of Sexual Harassment Survey (Continued)

Q14: When did the incident(s) you personally experienced occur? (Respondents could select all that applied)		
Answer	Responses	Adjusted Responses*
While teleworking	0.5%	3.2%
While off duty	1.3%	8.8%
While at an IRS office	12.3%	83.2%
While on official travel	0.7%	4.8%
N/A (did not experience any of the behaviors)	86.8%	
	Answered	25,909
	Skipped	12

*\*Note: Adjusted Responses represent percentage of survey respondents who acknowledged personally experiencing sexual harassment behaviors. N/A responses were excluded.*

Q15: Within the last 5 years while working at the IRS, have you observed gender-based harassment?		
Answer	Responses	
Yes	11.0%	
No	81.8%	
Unsure	5.9%	
Prefer not to answer	1.3%	
	Answered	25,914
	Skipped	7

Q16: Within the last 5 years while working at the IRS, have you observed unwanted sexual attention?		
Answer	Responses	
Yes	9.9%	
No	84.0%	
Unsure	4.9%	
Prefer not to answer	1.2%	
	Answered	25,916
	Skipped	5

Q17: Within the last 5 years while working at the IRS, have you observed sexual coercion?		
Answer	Responses	
Yes	2.4%	
No	93.4%	
Unsure	3.3%	
Prefer not to answer	0.9%	
	Answered	25,917
	Skipped	4

## Results of Sexual Harassment Survey (Continued)

Q18: If you <b>observed</b> any of the behaviors, did you report it?		
Answer	Responses	Adjusted Responses*
Yes	3.5%	23.7%
No	11.1%	76.3%
N/A (did not observe any of the behaviors)	85.4%	
	Answered	25,914
	Skipped	5

*\*Note: Adjusted Responses represent percentage of survey respondents who acknowledged observing sexual harassment behaviors. N/A responses were excluded.*

Q18-1: I believe reporting behaviors I observed had a negative impact on my job.*	
Answer	Responses
Yes	27.7%
No	58.4%
I do not know	13.8%
	Answered 869
	Skipped 27

*\*Note: Only respondents who answered "Yes" to Q18 received this question.*

Q18-2: Please indicate the reason(s) why you did not report the behavior (Respondents could select all that applied)*	
Answer	Responses
I did not feel comfortable with whom would be the one to investigate	12.6%
I believe someone else reported the behavior	16.8%
I was afraid of retaliation	23.7%
The behavior took place off-duty	2.7%
I was unfamiliar with the process for reporting the behavior	11.7%
I do not believe management takes sexual harassment allegations seriously	17.7%
I believed management was already aware	22.4%
I was afraid reporting it would result in unwanted public attention	13.8%
I did not feel the behavior was serious enough to warrant reporting	23.4%
I did not think the behavior was considered sexual harassment	8.3%
I spoke to the employee directly and told them to stop	8.6%
I did not want to get a co-worker in trouble	10.3%
I did not think anyone would believe me	7.9%
I was encouraged not to report it	3.9%
Other	14.3%
Prefer not to answer	9.3%
	Answered 2,792
	Skipped 89

*\*Note: Only respondents who answered "No" to Q18 received this question.*

## Results of Sexual Harassment Survey (Continued)

Q19: When did the incident(s) you observed occur? (Respondents could select all that applied)		
Answer	Responses	Adjusted Responses*
While teleworking	0.3%	1.7%
While off duty	1.1%	6.9%
While at an IRS office	13.7%	87.4%
While on official travel	0.6%	4.0%
N/A (did not observe any of the behaviors)	85.5%	
	Answered	25,909
	Skipped	12
<p><i>*Note: Adjusted Responses represent percentage of survey respondents who acknowledged observing sexual harassment behaviors. N/A responses were excluded.</i></p>		

## Appendix III

### Penalty Determinations in Substantiated Labor Relations Disciplinary Database Files Associated With Sexual Harassment Allegations

The following table provides a list of the 20 sexual harassment allegations we reviewed. A description of each offense is provided, along with how the offense was categorized by IRS management (*i.e.*, sexual harassment, sexual misconduct, or unprofessional conduct). We compared the potential penalty for each offense outlined in the IRS Penalty Guide to the penalty that was imposed on the employee, and determined that the majority of substantiated cases resulted in a penalty that was less severe than what is recommended by IRS guidelines, a number of which resulted in no disciplinary action.

Description of Allegation	Offense as Categorized in Labor Relations Disciplinary Database	Potential Penalty for Offense	Final Penalty Imposed on Employee
<b>Eleven Cases Resulted in a <span style="color: red;">Less Severe Penalty</span> Than IRS Guidelines Recommend</b>			
Comments and physical touching of a sexual nature.	Sexual Harassment	Removal	2-day Suspension
Physical touching of a sexual nature.	Sexual Harassment	Removal	Admonishment
Inappropriate and unwelcome comments of a sexual nature.	Sexual Misconduct	Removal (3rd Offense)	20-day Suspension
Unwanted sexual advances and touching by a manager toward a subordinate.	Sexual Misconduct (Subordinate)	Removal	1-day Suspension
Inappropriate and unwelcome comments of a sexual nature.	Sexual Misconduct <sup>2</sup>	15-day to 30-day Suspension (2nd Offense)	Alternative Discipline
Inappropriate physical contact.	Sexual Misconduct (Non-Subordinate)	1-day to 14-day Suspension	No Discipline
Inappropriate and unwelcome comments of a sexual nature.	Sexual Misconduct (Non-Subordinate)	1-day to 14-day Suspension	No Discipline
Inappropriate jokes and leering of a suggestive and sexual manner.	Unprofessional Conduct	Admonishment to 1-day Suspension	No Discipline
Inappropriate and unwelcome comments of a sexual nature including telephone calls.	Unprofessional Conduct	Admonishment to 1-day Suspension	No Discipline
Inappropriate and unwelcome comments of a sexual nature and unwanted touching.	Unprofessional Conduct	Admonishment to 1-day Suspension	No Discipline
Inappropriate and unwelcome comments of a sexual nature.	Unprofessional Conduct	Admonishment to 1-day Suspension	No Discipline

<sup>2</sup> This allegation also had a substantiated "Unprofessional Conduct" offense.

## Oversight of Reported Sexual Harassment Allegations Needs Improvement

Description of Allegation	Offense as Categorized in Labor Relations Disciplinary Database	Potential Penalty for Offense	Final Penalty Imposed on Employee
<b>Eight Cases Resulted in a Penalty Consistent With IRS Guidelines</b>			
Vulgar and inappropriate behavior with a subordinate.	Sexual Misconduct (Subordinate)	Removal	Removal
Unwanted and inappropriate conduct of a sexual nature.	Sexual Misconduct	15-day to 30-day Suspension (2nd Offense)	15-day Suspension
Sexually suggestive messages and pictures sent to multiple IRS employees.	Sexual Misconduct	30-day Suspension to Removal (2nd Offense) <sup>3</sup>	Removal
Explicit comments and proposals for dates sent through a computer system.	Sexual Misconduct (Non-Subordinate)	1-day to 14-day Suspension	3-day Suspension
Inappropriate picture and comments of a sexual nature.	Sexual Misconduct (Non-Subordinate)	1-day to 14-day Suspension	3-day Suspension
Pressure for sexual favors and unwelcome communication of a sexual nature.	Misuse/Abuse of Position	Reprimand to 14-day Suspension	14-day Suspension
Unwanted physical touching.	Unprofessional Conduct	Admonishment to 1-day Suspension	Reprimand
Ongoing requests for dates, as well as employee retaliation.	Unprofessional Conduct <sup>4</sup>	Admonishment to 1-day Suspension	14-day Suspension
<b>One Employee Retired Prior to Final Disposition of Case</b>			
Unwanted exposure.	Sexual Misconduct (Non-Subordinate)	Removal	Retired Prior to Discipline

Source: TIGTA analysis of disciplinary case files provided by the IRS Labor Relations function.

<sup>3</sup> This allegation also had a substantiated "Internet Misuse" offense.

<sup>4</sup> This allegation also had a substantiated "Misuse of Position" offense.

Management's Response to the Draft Report



DEPUTY COMMISSIONER

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

February 18, 2021

MEMORANDUM FOR HEATHER M. HILL  
ACTING DEPUTY INSPECTOR GENERAL FOR INSPECTIONS  
AND EVALUATIONS

FROM: Jeffrey J. Tribiano, Deputy Commissioner of Operations Support

SUBJECT: Draft Audit Report – Oversight of Reported Sexual Harassment Allegations Needs Improvement (#E-18-008)

Digitally signed by Jeffrey J. Tribiano  
Date: 2021.02.18 15:09:27 -0500

Thank you for the opportunity to review TIGTA's draft evaluation report titled "Oversight of Reported Sexual Harassment Allegations Needs Improvement" (#E-18-008). The evaluation focused on how the IRS tracks and reports on sexual harassment allegations and the requirement to centrally manage sexual harassment cases under the Anti-Harassment Program. The report also identified additional areas where the IRS can further support a workplace free from harassment.

IRS takes the prevention of sexual harassment seriously and has a zero tolerance policy as demonstrated by mandatory annual Prevention of Sexual Harassment training for employees and managers, the IRS Sexual Harassment Hotline for reporting allegations, and the mandatory review of all substantiated claims to promptly determine and implement disciplinary action. The IRS is serious about providing a positive work environment free from all types of harassment.

The draft evaluation report found that, during the reviewed period, the IRS did not have a system to track all sexual harassment allegations; that there was no consistency or standardized approach to document management investigations, or the investigations' overall findings, conclusions and recommendations; and that improvements were needed with regard to documentation in casefiles supporting disciplinary action against employees. The IRS appreciates the identification of these areas where we can improve and agrees with the recommended actions to be taken based on the report's findings. Several recommendations included actions which were substantively similar to actions already taken and/or planned to be taken by IRS, thereby reinforcing the IRS's belief that such actions meet the Equal Employment Opportunity Commission guidance and standards for addressing allegations of workplace harassment.

## Oversight of Reported Sexual Harassment Allegations Needs Improvement

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Thank you for assisting the IRS with this evaluation of the Service's oversight of sexual harassment allegations and the anti-harassment program, and for furthering the IRS's efforts to support a workplace free from discrimination and harassment. Attached is our response to your recommendations.

If you have any questions, you may contact me at 202-317-3950, or a member of your staff may contact Valerie A. Gunter, Chief Diversity Officer, at 202-317-6148 or [Valerie.A.Gunter@irs.gov](mailto:Valerie.A.Gunter@irs.gov).

Attachment

Attachment

**RECOMMENDATION 1**

Address all sexual harassment allegations through the Anti-Harassment Program in accordance with EEOC guidance and ensure that all allegations of sexual harassment are centrally tracked.

**CORRECTIVE ACTION**

The IRS agrees with this recommendation. The IRS moved the Prevention of Sexual Harassment (POSH) Program under the Anti-Harassment Program Office. We will now apply the same procedures and tools used to process and track allegations of non-sexual harassment to processing and tracking allegations of sexual harassment.

**IMPLEMENTATION DATE**

September 27, 2020

**RESPONSIBLE OFFICIAL**

Chief Diversity Officer

**RECOMMENDATION 2**

Provide guidance to management that encourages timely reporting of sexual harassment allegations.

**CORRECTIVE ACTION**

The IRS agrees with this recommendation. With the transfer of the POSH Program under the Anti-Harassment Program Office, the same processing timeframes that existed for allegations of non-sexual harassment are now applied to the timeframes for allegations of sexual harassment. The revised IRS Anti-Harassment Policy requires managers to report all allegations of harassment, including sexual harassment, to the Anti-Harassment Program office within one business day of learning of the allegation of harassment.

**IMPLEMENTATION DATE**

February 19, 2021

**RESPONSIBLE OFFICIAL**

Chief Diversity Officer

**RECOMMENDATION 3**

Develop guidance for managers that provides details on how to properly conduct and document a management inquiry for investigating sexual harassment allegations.

**CORRECTIVE ACTION**

The IRS agrees with this recommendation. Updated guidance was created and posted to the IRS iManage Intranet site to assist managers with conducting management inquiries of sexual harassment allegations, including an updated inquiry summary template. At the beginning of the management inquiry process, the Anti-Harassment Program provides general guidance to the management official conducting the inquiry, including reference to the available materials in iManage.

**IMPLEMENTATION DATE**

September 21, 2020

**RESPONSIBLE OFFICIAL**

Chief Diversity Officer

**RECOMMENDATION 4**

Consider incorporating requirements to supplement the IRS Anti-Harassment Policy that encourages the review and centralization of all management inquiries for investigation of sexual harassment allegations.

**CORRECTIVE ACTION**

The IRS agrees with this recommendation. The Prevention of Sexual Harassment Program has now been consolidated under the Anti-Harassment program. Language has been incorporated in the updated policy requiring all agency officials to report sexual harassment allegations to the Anti-Harassment Program Office. Likewise, the documentation associated with all inquiries is centralized in the Anti-Harassment tracking database.

**IMPLEMENTATION DATE**

September 27, 2020

**RESPONSIBLE OFFICIAL**

Chief Diversity Officer

**RECOMMENDATION 5**

Update guidance to ensure that management consistently administers appropriate offenses and penalties when misconduct is substantiated.

**CORRECTIVE ACTION**

The IRS agrees with this recommendation. The Human Capital Officer's Director of Labor/Employee Relations & Negotiations division will collaborate with the Equity, Diversity and Inclusion Office to update procedures and guidance regarding sexual harassment and the anti-harassment program.

**IMPLEMENTATION DATE**

December 15, 2021

**RESPONSIBLE OFFICIAL**

Director, Labor/Employee Relations & Negotiations Division, Human Capital Office

**RECOMMENDATION 6**

Implement procedures to ensure that management adequately documents the reasons and circumstances for selecting the appropriate offenses and penalties suggested in the IRS Manager's Guide to Penalty Determinations to ensure consistency, and ensure that the Labor Relations electronic case record is updated to accurately reflect final disciplinary decisions.

**CORRECTIVE ACTION**

The IRS agrees with this recommendation and will implement procedures and guidance on documenting sexual harassment and other related misconduct. We will also provide training for our Labor Relations Specialists (LRS) to guide management in selecting and documenting the appropriate charge and penalty. In addition, we will reemphasize these requirements during internal training to all LRS.

**IMPLEMENTATION DATE**

December 15, 2021

**RESPONSIBLE OFFICIAL**

Director, Labor/Employee Relations & Negotiations Division, Human Capital Office

**RECOMMENDATION 7**

Review all relevant policies and procedures and ensure that guidance on how to address sexual harassment allegations is available to all employees.

**CORRECTIVE ACTION**

The IRS agrees with this recommendation. IRS will develop and implement a strategy to ensure all relevant policies, procedures and guidance on how to address sexual harassment allegations are current and available to all employees.

**IMPLEMENTATION DATE**

September 30, 2022

**RESPONSIBLE OFFICIAL**

Chief Diversity Officer

## Appendix V

### Abbreviations

EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FY	Fiscal Year
IRS	Internal Revenue Service
MSPB	Merit Systems Protection Board
OI	Office of Investigations
RAOSH	Reported Allegation of Sexual Harassment
TIGTA	Treasury Inspector General for Tax Administration



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P.O. Box 589

Ben Franklin Station

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