

GAO

Report to the Chairman and Ranking
Minority Member, Committee on
Finance, U.S. Senate

February 2003

**TAX
ADMINISTRATION**

**IRS and TIGTA Should
Evaluate Their
Processing of
Employee Misconduct
under Section 1203**





TAX ADMINISTRATION

IRS and TIGTA Should Evaluate Their Processing of Employee Misconduct under Section 1203

Highlights of [GAO-03-394](#), a report to the Chairman and Ranking Minority Member, Committee on Finance, U. S. Senate

Why GAO Did This Study

Section 1203 of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 outlines conditions for firing IRS employees for any of 10 acts of misconduct covering taxpayer and employee rights and tax return filing requirements. Both IRS and the Treasury Inspector General for Tax Administration (TIGTA) have responsibilities related to section 1203. Because of concerns that section 1203 may have a chilling effect on IRS enforcement staff's productivity, GAO (1) determined the number of section 1203 allegations, (2) surveyed IRS employee perceptions about section 1203, and (3) identified problems IRS and TIGTA face in processing section 1203 cases and the extent to which they have addressed them.

What GAO Recommends

GAO recommends that IRS and TIGTA coordinate on an approach for evaluating the section 1203 process to include results-oriented goals for processing section 1203 cases, performance measures that assess progress towards these goals, and means to collect and analyze related performance data.

In commenting on a draft of this report, IRS agreed with GAO's recommendation that a coordinated evaluation of the section 1203 process is desirable and TIGTA neither agreed nor disagreed. However, both raised a similar concern about the independence of each agency.

www.gao.gov/cgi-bin/getrpt?GAO-03-394.

To view the full report, including the scope and methodology, click on the link above. For more information, contact Jim White at (202) 512-9110 or whitej@gao.gov.

What GAO Found

IRS data show that of the 3,970 section 1203 allegations IRS received from July 1998 through September 2002, IRS or TIGTA completed investigations on 3,512 allegations and substantiated 419 as violations, resulting in 71 employees being fired for section 1203 misconduct. Employee misconduct related to the two section 1203 provisions on whether employees filed their tax returns on time and accurately stated their tax liability (as opposed to the eight taxpayer and employee rights provisions) accounted for almost all of the violations and firings.

Most of the IRS frontline enforcement employees who responded to GAO's survey said that they understood, but feared, section 1203. They also reported that, because of section 1203, their work takes longer and the likelihood of their taking an enforcement action, such as recommending a seizure, has decreased. However, employees also were more likely to say that other factors, such as IRS's reorganization, have had a greater impact on their ability to do their job than to say that section 1203 had a greater impact.

IRS and TIGTA have taken steps intended to correct known problems in their processing of section 1203 employee misconduct cases—such as lengthy investigations and conflicts of interest during investigations—that may have negatively affected frontline employees' morale and productivity. However, the extent to which these steps have succeeded is unknown because IRS and TIGTA do not have a coordinated approach for evaluating how effectively they process section 1203 cases. Such an approach would include results-oriented goals, balanced performance measures to mark progress towards these goals, and means to collect performance data.

Extent to Which IRS Employees Said They Feared Section 1203

	Very fearful	Somewhat fearful	A little/not at all fearful
Being fired for a section 1203 complaint (n=350)	33%	25%	40%
Being investigated for a section 1203 complaint (n=350)	32%	35%	32%
Being the subject of a section 1203 complaint (n=350)	27%	39%	33%
Percent of IRS staff			

Source: GAO.

Note: Percentages may not add to 100 percent because of rounding and a few "did not know or had no basis to judge" responses.

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Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
BEPR	Board of Employee Professional Responsibility
CCPAG	Commissioner's Complaint Processing and Analysis Group
EEO	Equal Employment Opportunity
ETC	Employee Tax Compliance
IRS	Internal Revenue Service
SB/SE	Small Business and Self-Employed Operating Division
TIGTA	Treasury Inspector General for Tax Administration

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United States General Accounting Office
Washington, DC 20548

February 14, 2003

The Honorable Charles E. Grassley
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Finance
United States Senate

On July 22, 1998, the Congress enacted the Internal Revenue Service Restructuring and Reform Act¹ (Restructuring Act) to balance the Internal Revenue Service's (IRS) responsibility to collect taxes with its responsibility to protect the rights of taxpayers and serve the public. One provision of the Restructuring Act, section 1203, defines 10 specific acts or omissions for which an IRS employee may be fired during the performance of official duties. Such acts or omissions include harassing a taxpayer, taxpayer representative, or other IRS employee, or IRS employees not complying with their tax obligations; they are investigated on the basis of allegations made by taxpayers (or taxpayer representatives) or IRS employees. Both IRS and the Treasury Inspector General for Tax Administration (TIGTA) have responsibilities for receiving and investigating such allegations under section 1203 while IRS has the responsibility for adjudicating violations of section 1203.

The IRS Commissioner and others have asserted that section 1203 has had a negative impact on IRS employees' morale and effectiveness. In particular, they have indicated that section 1203 has had a "chilling effect" on IRS frontline enforcement employees who are afraid to take certain appropriate enforcement actions, contributing to recent declines in IRS's enforcement activities. In addition, IRS officials acknowledge that aspects of the process for receiving, investigating, and adjudicating section 1203 allegations (which we refer to as the "section 1203 process"), such as long case processing times, may have contributed to employees' fears.

In light of the assertions about possible chilling effects, you asked us to assess the implementation of section 1203. Specifically, as agreed with your offices, our objectives were to (1) determine the number, type, and

¹P.L. 105-206.

disposition of section 1203 allegations; (2) determine IRS frontline enforcement employees' perceptions of how section 1203 has affected their interactions with taxpayers; and (3) identify what problems, if any, IRS and TIGTA have encountered in processing section 1203 cases and the extent to which they have addressed them. We did not attempt to measure the effectiveness of section 1203, or whether its perceived impacts were beneficial or harmful. (See our scope and methodology section for details on our approach.)

To determine the number, type, and disposition of section 1203 allegations, we analyzed IRS data for July 1998 (when section 1203 took effect) through September 2002. To determine IRS frontline enforcement employees' perceptions of section 1203, we surveyed a random sample of audit and collection employees—revenue agents, revenue officers, tax auditors, and tax compliance officers. To identify any problems in the section 1203 process and the extent to which they have been addressed, we reviewed the policies and procedures for processing section 1203 cases and interviewed responsible officials from IRS and TIGTA.

Results in Brief

IRS data show that of the 3,970 section 1203 allegations received from July 1998 through September 2002, IRS or TIGTA had finished investigating 3,512 allegations and substantiated 419 as violations.² Of these 419 violations³, 71 resulted in firings³ and the rest resulted in a mitigated penalty, the employee leaving IRS, or another disposition (see app. II). Employee misconduct related to the two tax compliance provisions of section 1203—late filing of federal tax returns and understatement of federal tax liability by IRS employees—accounted for about 93 percent of the 419 violations and 87 percent of the 71 firings.

On the basis of our survey results, the majority of frontline enforcement employees said that they have a clear understanding of the types of misconduct under section 1203 but that they had fears associated with section 1203, such as being fired.⁴ They also cited section 1203 as one of

²According to IRS, an allegation is considered “substantiated” if the investigation develops information sufficient to support the allegation, thereby resulting in a violation.

³According to IRS, the firing and mitigated penalty data presented throughout this report do not include the results of any third party appeals.

⁴The sampling errors (confidence limits) for all survey percentages do not exceed plus or minus 10 percentage points, unless otherwise shown as footnotes to the report text.

several factors affecting their work. Specifically, over three-quarters of the frontline enforcement employees said that the time to do their jobs had increased, and nearly two-thirds of those who collect tax debts said that the likelihood of recommending a seizure of a taxpayer's assets had decreased. Further, many frontline enforcement employees believe that other factors such as IRS's reorganization and tax law changes have had a greater impact on their ability to do their jobs than section 1203.

IRS and TIGTA have taken steps intended to correct known problems—such as lengthy investigations and conflicts of interest during investigations—that may have reduced the effectiveness of the section 1203 process as well as the morale and productivity of enforcement employees. However, the extent to which these steps have succeeded is unknown because IRS and TIGTA have not coordinated on an approach for evaluating the section 1203 process on the basis of consistent types of results-oriented goals, measures, and performance data. For example, IRS has not developed results-oriented timeliness goals or measures or tracked the length of time to handle its parts of the section 1203 process. Until IRS and TIGTA develop a coordinated approach to ensure consistent and valid evaluation, IRS and TIGTA cannot determine the effectiveness of the entire section 1203 process or any changes to it.

We are recommending that IRS and TIGTA coordinate on an approach for evaluating the section 1203 process based on results-oriented goals, measures, and related performance data. In commenting on a draft of this report, IRS generally agreed with our recommendation and TIGTA neither agreed nor disagreed. However, both IRS and Treasury raised a similar concern about the independence of each agency. (See agency comments and our evaluation and apps. VI and VII.)

Background

As part of the Restructuring Act, the Congress enacted section 1203, which provides for the firing of IRS employees who have been proven to commit any of 10 acts or omissions in the performance of their official duties, unless a mitigated penalty is appropriate. These 10 acts or omissions, which are shown below, can be divided into 2 that relate to IRS employees' tax compliance in filing tax returns and reporting tax liability, and 8 that relate to employee and taxpayer rights. Specifically, these acts or omissions are

(1) willful failure to obtain the required approval signatures on documents authorizing a seizure of a taxpayer's home, personal belongings, or business assets;

-
- (2) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;
- (3) violating the rights protected under the Constitution or the civil rights established under six specifically identified laws with respect to a taxpayer, taxpayer representative, or other employee of the IRS;⁵
- (4) falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;
- (5) assault or battery of a taxpayer, taxpayer representative, or employee of the IRS, but only if there is a criminal conviction, or a final judgment by a court in a civil case, with respect to the assault or battery;
- (6) violating the Internal Revenue Code, Department of Treasury regulations, or policies of the IRS (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the IRS;
- (7) willful misuse of the provisions of section 6103⁶ of the Internal Revenue Code for the purpose of concealing information from a congressional inquiry;
- (8) willful failure to file any return of tax required under the Internal Revenue Code on or before the date prescribed therefore (including any extensions), unless such failure is due to reasonable cause and not to willful neglect;
- (9) willful understatement of federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect; and
- (10) threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.

⁵These laws are: (1) Title VI or VII of the Civil Rights Act of 1964; (2) Title IX of the Education Amendments of 1972; (3) the Age Discrimination in Employment Act of 1967; (4) the Age Discrimination Act of 1975; (5) Section 501 or 504 of the Rehabilitation Act of 1973; or (6) Title I of the Americans with Disabilities Act of 1990. IRS Reform Act section 1203(b)(3)(B).

⁶Section 6103 of the Internal Revenue Code governs the protection of tax data, which are confidential, from unauthorized disclosure and use.

The Restructuring Act provided the Commissioner with sole discretion, which he cannot delegate, to determine whether to take a personnel action other than firing an employee (i.e., mitigation) for a section 1203 violation. Such determination may not be appealed in any administrative or judicial proceeding.

The process for receiving, investigating, and adjudicating section 1203 allegations involves TIGTA and IRS. Under the section 1203 process, revised in March 2002, TIGTA has primary responsibility for receiving and investigating the allegations, except for those that IRS receives and investigates. For example, IRS's Employee Tax Compliance (ETC) unit, using a computer match, has primary responsibility for identifying and investigating employee tax compliance issues.⁷ Also, IRS's Office of Equal Employment Opportunity (EEO) is to analyze EEO settlement agreements, findings of discrimination, and taxpayer complaints of discrimination to identify whether a potential section 1203 civil rights violation exists.⁸ IRS is responsible for adjudicating all section 1203 allegations that are substantiated as violations.

Generally, each allegation of a potential section 1203 violation must be initially evaluated to determine whether it merits a full investigation. Then, if an investigation of an allegation uncovers sufficient facts to substantiate it (i.e., support a section 1203 violation), the employee is to be issued a letter notifying him or her of the proposed firing from IRS. The employee has a right to respond to the letter. Afterwards, if the deciding official determines that the evidence sustains the alleged violation, a board established by the IRS Commissioner must review the case to determine whether a penalty less than firing is appropriate. If the board does not find mitigation to be appropriate, the case is not submitted to the IRS Commissioner and the employee is fired. If the board recommends mitigation, the Commissioner must consider it. If the Commissioner mitigates the penalty, other disciplinary actions, such as counseling,

⁷The ETC unit is to refer employee tax issues that it cannot resolve to IRS management for additional fact-finding. TIGTA may investigate employee tax compliance allegations that are identified independent of the ETC unit.

⁸The Discrimination Complaint Review Unit is to assess EEO settlement agreements and discrimination findings to determine potential section 1203 misconduct. The External Civil Rights Unit is to investigate complaints from taxpayers or taxpayer representatives about being excluded from, denied the benefits of, or subjected to discrimination in an IRS program or activity. TIGTA may also investigate civil rights allegations involving some types of sexual harassment.

admonishment, reprimand, or suspension may be applied. Details on the process are provided in appendix V.

According to IRS senior management, the misconduct addressed in section 1203 has always been regarded as serious and subjected to disciplinary action. Prior to the enactment of section 1203, the general rules for imposing discipline required a deciding official to consider a wide range of factors in arriving at the appropriate disciplinary action.⁹ Enactment of section 1203 eliminated the variation in penalty for substantiated misconduct, requiring the employee to be fired unless the Commissioner mitigates that penalty.

The IRS Commissioner has expressed concerns over the appropriateness of the mandatory firing penalty, especially when an IRS employee had already paid his or her tax liability or when the allegation involves just IRS employees. To address the concerns, IRS, through the Department of the Treasury, is seeking legislation to amend section 1203 by eliminating this penalty for (1) the late filing of tax returns for which a refund is due and (2) action by IRS employees that violate another employee's rights. In addition, IRS requested that the Commissioner be able to use a range of penalties aside from firing employees, for the types of misconduct under section 1203. Further, because of the associated seriousness and sensitivity over privacy issues, IRS also asked that the unauthorized inspection of returns or return information be added to the list of violations under section 1203.

Scope and Methodology

To determine the number, type, and disposition of section 1203 allegations, we analyzed data from IRS's Automated Labor and Employee Relations Tracking System (ALERTS) database as of September 30, 2002. The data included all section 1203 cases that had originated in IRS, as well as some cases that originated in TIGTA and were either investigated or referred to IRS for investigation or adjudication.¹⁰ On the basis of IRS information on its quality control checks of the data, the use of the data, and our review of the database, we determined that the data were

⁹Factors included the nature, notoriety, and seriousness of the offense; the employee's work record; and the impact of the offense on confidence in the employees' ability to perform their duties.

¹⁰According to IRS and TIGTA officials, only a small percentage of TIGTA cases are not included in IRS's database.

sufficiently reliable to determine the number, type, and disposition of section 1203 allegations.

To determine IRS employees' perceptions of how section 1203 has affected their interactions with taxpayers, we surveyed a stratified random sample of IRS frontline enforcement employees nationwide. Those audit or collection employees included revenue agents, revenue officers, tax compliance officers, and tax auditors from IRS's Small Business and Self-Employed Division (SB/SE).¹¹ We asked questions about their understanding and perceptions of section 1203 and its impacts on their jobs. We sent the survey to 455 eligible frontline enforcement employees,¹² of which 350 responded via regular mail, fax, or the Internet between July and September 2002, for a response rate of 77 percent. We also did a content analysis of written comments volunteered by 208 respondents to arrive at a limited number of content categories. A copy of the survey instrument and a summary of the content categories are included in appendixes III and IV.

To identify what problems, if any, IRS and TIGTA have encountered in processing section 1203 cases and the extent to which they have addressed them, we reviewed IRS's and TIGTA's policies and procedures for receiving, investigating, and adjudicating section 1203 allegations. We also interviewed IRS and TIGTA officials who are responsible for the section 1203 process. In addition, we reviewed a study done by IRS, TIGTA, and a private consulting firm to streamline the section 1203 process, and discussed the study with their officials. To understand the process and gauge the length of time that section 1203 cases take to process, we reviewed 92 of the 100 most recently closed cases as of August 30, 2002, according to IRS's ALERTS database; in 5 cases, the files could not be located for employees who retired or otherwise left IRS and 3 cases were duplicates. We recorded dates and decisions for various stages of the process.

¹¹As one of four operating divisions, SB/SE was established in October 2000 to serve the needs of self-employed individuals as well as businesses with assets of up to \$10 million or less.

¹²As discussed in appendix I, we dropped 45 survey respondents from our initial sample of 500 because those employees reported that they did not have regular contact with taxpayers.

We did not attempt to measure the effectiveness of section 1203 and whether its impacts on IRS employees were positive or negative. Appendix I contains more detailed information on our survey design and administration and case file review approaches. We conducted our review in Washington, D.C., from November 2001 to December 2002 in accordance with generally accepted government auditing standards.

Few Section 1203 Allegations Were Substantiated and Resulted in an Employee's Firing, Except for Those Involving Compliance with Federal Tax Laws

IRS data show that, with the exception of employees' tax compliance provisions, few of the 3,970 section 1203 allegations received between July 1998 and September 2002 were substantiated as violations of section 1203 and resulted in an employee's firing. Table 1 shows what happened to the 3,970 allegations in terms of completed investigations, substantiated allegations, and firings.¹³

¹³For context, IRS's frontline enforcement employees interacted with tens of millions of individual taxpayers from 1998 to 2002, and some portion (which is not known) of the 3,970 allegations were made by IRS employees rather than taxpayers.

Table 1: Summary of Section 1203 Allegations Received, Investigated, and Substantiated and of Employee Firings, July 1998 through September 2002

Type of section 1203 misconduct	Section 1203 allegations			IRS employee firings
	Received	Completed investigations	Substantiated	
Taxpayer and employee rights				
Seizure without approval	16	13	0	0
False statement under oath	22	21	1	0
Civil rights/constitutional rights	291	262	1	0
Falsifying or destroying documents	81	66	10	3
Assault or battery	10	8	1	1
Retaliation or harassment	1,729	1,680	6	1
Misuse of section 6103 to conceal information	5	3	0	0
Threat to audit for personal gain	88	77	12	4
Subtotal	2,242	2,130	31	9
Compliance with federal tax laws				
Failure to timely file federal tax return	1,042	914	345	55
Understatement of federal tax liability	686	468	43	7
Subtotal	1,728	1,382	388	62
Total	3,970^a	3,512^b	419	71

Source: GAO analysis of IRS data.

^aIn addition, IRS forwarded 1,196 taxpayer allegations of section 1203 misconduct to its Frivolous Return Program. Further, IRS's Discrimination Complaint Review Unit received 1,003 EEO settlements and/or findings of discrimination involving civil rights or constitutional issues.

^bAt the time of our review, another 351 allegations were in the process of being investigated, while 107 allegations were not investigated due to such reasons as the employee resigning or retiring.

Table 1 shows that IRS or TIGTA had finished investigating 3,512 allegations and substantiated 419 as violations, for which IRS fired 71 employees. Of the other 348 violations, IRS's Commissioner mitigated the penalty for 166; the employees resigned or retired for 117; the employees were fired on other grounds or during their probationary period for 33; and IRS had not finalized the decision for another 32. Appendix II shows the dispositions of all 419 violations by type of section 1203 misconduct and the grade level of the 71 fired employees.

Table 1 also shows that most of the violations and related firings involved the two tax compliance provisions of section 1203. The failure to file tax returns on time and the understatement of federal tax liability accounted for 388 of the 419 violations (93 percent) and 62 of the 71 firings (87 percent). The rest of the violations and related firings involved the remaining 8 provisions, which deal with employee and taxpayer rights. IRS

officials said that the bulk of the violations and firings involved the two tax compliance provisions of section 1203 because IRS has a systemic computerized process to identify and evaluate potential employee tax compliance issues. Further, according to officials, these issues generally are more factually based and involve clearer indicators of misconduct.

To understand why 3,093 investigated allegations were not substantiated, we analyzed IRS data and talked with IRS officials. As shown in appendix II, 800 of these investigated allegations were not substantiated as section 1203 violations but were substantiated as misconduct violations unrelated to section 1203. Of those remaining, 1,549 involved allegations of retaliation and harassment of a taxpayer, taxpayer representative, or IRS employee. Although IRS had not done a systematic analysis, IRS officials offered possible reasons why these investigated allegations could not be substantiated as section 1203 violations. These officials said that many were not credible. For example, the officials cited cases in which a taxpayer representative routinely lodged allegations whenever enforcement employees contacted clients. Another cited example was when taxpayers' allegations had more to do with their protests about having to meet their tax obligations.

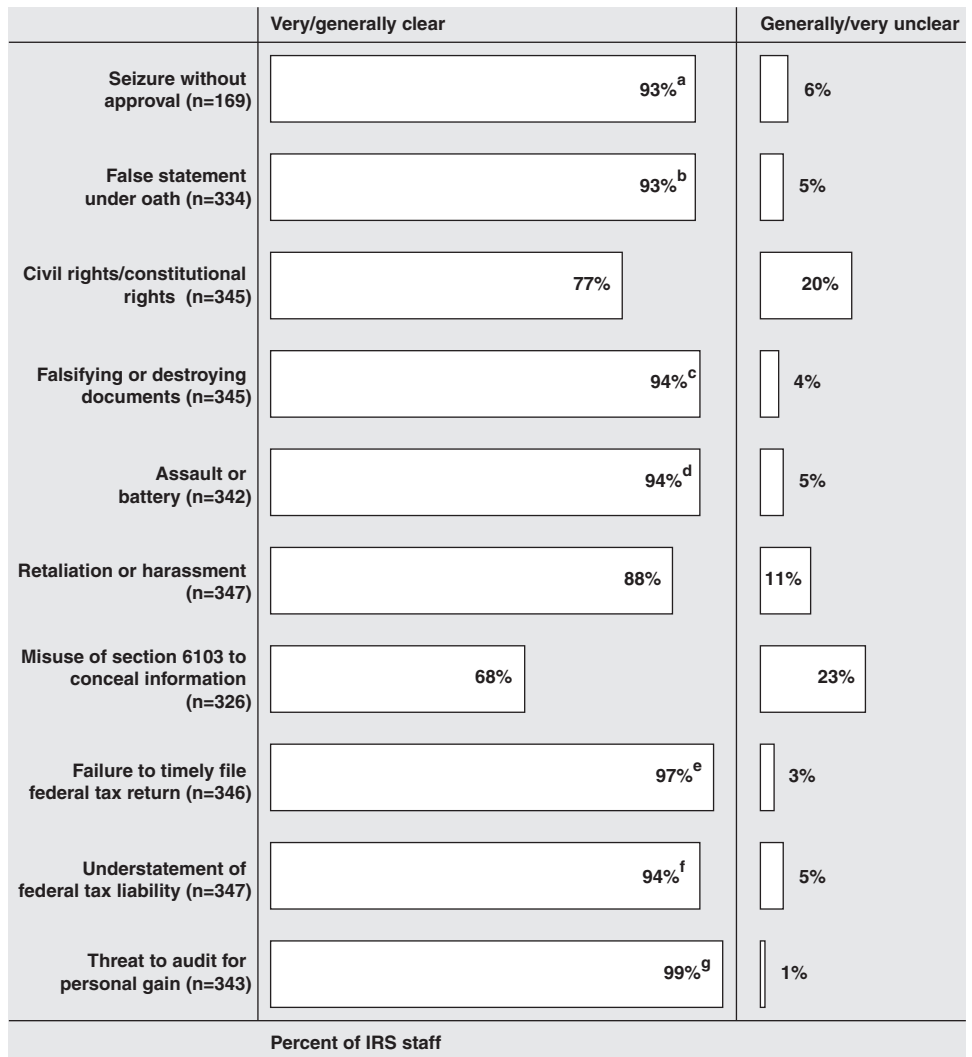
Most Employees Believed That They Understood but Feared Section 1203, and That It Was One of Several Factors Affecting Their Work

Our survey indicated that most frontline enforcement employees understood but feared section 1203, and that, because of section 1203, their work takes longer and the likelihood of their recommending a seizure decreased. Otherwise, employees' reported views were not as strong on the impacts of section 1203 on other audit or collection activities. At the same time, many employees said that, other factors, such as IRS's reorganization, have had a greater impact on their ability to do their jobs than section 1203.

Most Frontline Enforcement Employees Said They Understand the Types of Section 1203 Misconduct

The overwhelming majority of frontline enforcement employees reported that they understood the types of misconduct covered by section 1203. Figure 1 shows that for 9 of the 10 provisions, at least three-quarters of the employees said they had a very or generally clear understanding of misconduct under section 1203. For the provision on the misuse of section 6103 to conceal information from a congressional inquiry—about 68 percent of the employees said they had a very or generally clear understanding of misconduct covered by section 1203.

Figure 1: Employees Said They Had a Clear Understanding of the Types of Misconduct under Section 1203



Source: GAO.

^aThe 95-percent confidence interval is 73 percent to 100 percent.

^bThe 95-percent confidence interval is 80 percent to 99 percent.

^cThe 95-percent confidence interval is 81 percent to 99 percent.

^dThe 95-percent confidence interval is 82 percent to 99 percent.

^eThe 95-percent confidence interval is 81 percent to 100 percent.

^fThe 95-percent confidence interval is 81 percent to 99 percent.

^gThe 95-percent confidence interval is 73 percent to 100 percent.

Note: Percentages may not add to 100 percent because of rounding and a few “did not know” responses.

In addition, an estimated 48 percent of the employees said that IRS had provided, to a very great or great extent, clear examples of what constitutes harassment or retaliation under section 1203. Only about 7 percent said that IRS provided such examples to little or no extent.¹⁴

Most Frontline Enforcement Employees Reported Fears Associated with Section 1203

The majority of employees reported fears associated with section 1203. As shown in figure 2, at least two-thirds reported that they were somewhat or very fearful of having a taxpayer file an allegation and being investigated. Almost as many said they were somewhat or very fearful of being fired.¹⁵

Figure 2: Extent to Which Employees Said They Were Fearful of Section 1203

	Very fearful	Somewhat fearful	A little/not at all fearful
Being fired for a section 1203 complaint (n=350)	33%	25%	40%
Being investigated for a section 1203 complaint (n=350)	32%	35%	32%
Being the subject of a section 1203 complaint (n=350)	27%	39%	33%
Percent of IRS staff			

Source: GAO.

Note: Percentages may not add to 100 percent because of rounding and a few “did not know or had no basis to judge” responses.

Written comments, while not representative of all respondents, provide some insights on employees’ fears. For example, several employees described fears of being falsely accused by a taxpayer while others noted a fear of being investigated for making an honest mistake. A number of employees expressed more general fears of section 1203. For example, one employee wrote, “I acknowledge that my fears may be irrational, and I would hope that the system would work as it is designed. I could envision a complaint (unfounded, I would hope) being filed, and the resulting anxiety would be overwhelming.”

¹⁴See appendix III for more detailed survey results.

¹⁵See appendix III for more detailed survey results.

Further, the survey revealed that most frontline enforcement employees had little or no confidence in the disciplinary process for section 1203. For example, an estimated 50 percent of the employees said they are not at all confident and 18 percent reported that they had little confidence that they will not be disciplined for making an honest mistake.¹⁶

IRS officials said that they believe the fear and distrust of section 1203 is pervasive among all types of frontline enforcement employees. However, they indicated that those most affected and concerned are revenue officers who have face-to-face contacts with delinquent taxpayers.¹⁷

Many Frontline Enforcement Employees Reported That Section 1203 Contributes to Work Taking Longer and a Decline in Seizure Activity

Many frontline enforcement employees perceived that section 1203 contributed to work taking longer and to a decline in seizure activity. Otherwise, employees reported views that were not as strong on the impacts of section 1203 on other frontline enforcement activities, such as those associated with audits or collections.

Such perceptions are important because IRS management believes that declines in enforcement activities since 1998 resulted, in part, from employees' reluctance to use enforcement tools due to section 1203 fears.¹⁸ Our survey results on employees' perceptions of changes in job behavior are broadly correlated with actual declines in enforcement activities, such as seizures. However, this broad correlation should be interpreted with caution because employee perceptions do not necessarily demonstrate causation and section 1203 is unlikely to be the only reason for the decline in enforcement activity. Further, any changes in enforcement activity could be positive or negative, depending on whether the activity was merited.

¹⁶Another estimated 27 percent of the employees said they are somewhat or very confident that they would not be disciplined for making an honest mistake.

¹⁷As noted in appendix I, because our sample was designed to produce precise estimates for a nationwide sample of enforcement employees, we did not do any analyses by type of employee.

¹⁸For example, between fiscal years 1998 and 2001, the number of levies and seizures decreased 73 percent and 90 percent, respectively. Over the same time, the rate at which IRS audited individual tax returns declined from 0.99 percent to 0.58 percent.

One job behavior that employees reported being affected by section 1203 was the time spent to do their work. An estimated 80 percent of frontline enforcement employees said that work took longer as a result of section 1203.¹⁹ Some written comments helped to illustrate why employees believed their work takes longer. For example, one employee wrote, “[I am] more cautious [and allow] more time to avoid harassment allegations.” Another said, “the greatest impact [of section 1203] has been on the amount of time necessary to work a case—ensuring that taxpayer rights are made clear and protected through every step.”

In addition, many employees responsible for collections, such as issuing seizures, liens, and levies,²⁰ said that section 1203 has affected how they do their jobs. As figure 3 shows, an estimated 67 percent of the collection employees said that the likelihood of their recommending a seizure of taxpayer assets to satisfy a tax debt had decreased (including somewhat or greatly); reported views were not as strong on the likelihood of recommending a levy or lien decreasing.²¹

¹⁹See appendix III for more detailed survey results.

²⁰Under the Internal Revenue Code, “levy” is the seizure of taxpayer assets, including bank accounts, wages, and other property possessed by third parties, such as banks or employers. A “lien” is a legal claim attached to property to secure payment of a debt.

²¹See appendix III for more detailed survey results.

Figure 3: How Collection Employees Said Section 1203 Affected the Likelihood of Their Recommending a Seizure, Lien, or Levy

	Greatly/somewhat increased	Had no effect	Greatly/somewhat decreased
Likelihood of recommending a seizure (n=106)	16%	14%	67% ^a
Likelihood of recommending a lien (n=118)	20%	38%	39%
Likelihood of recommending a levy (n=111)	22%	34%	41% ^b
Percent of IRS staff			

Source: GAO.

^aThe 95-percent confidence interval is 55 percent to 78 percent.

^bThe 95-percent confidence interval is 31 percent to 52 percent.

Note: Percentages may not add to 100 percent because of rounding and a few “did not know” responses.

The written comments helped to illustrate why collection employees said they were less likely to take collection actions. Several employees indicated that they second-guess their decisions as a result of section 1203. One employee wrote, “[Section 1203] has forced me to doubt my own judgment on enforcement matters, especially . . . where some issues are vague and the collection officer has to use his or her judgment.” Another employee noted, “[Section] 1203 has made me hesitant to take any action and has slowed work progress since each and every action has the potential to create a section 1203 violation. There is so much information that we are responsible to know and any act, willful or not, can result in a disciplinary action.”

Employees reported views that were not as strong on the impacts of section 1203 on other frontline enforcement activities. For example, figure 4 shows that except for one action—contacting a third party—roughly half or more than half of the employees reported that section 1203 had no impact on the likelihood of their taking actions that can be associated with audits such as requesting, reviewing, or questioning documents submitted by taxpayers.²²

²²Collection employees also might take some of these actions when trying to collect unpaid taxes.

Figure 4: How Employees Reported Section 1203 Affected the Likelihood of Taking Other Actions Associated with Audit and Collection

	Greatly/somewhat increased	Had no effect	Greatly/somewhat decreased
Likelihood of requesting documents from a taxpayer (n=344)	25%	58%	15%
Likelihood of reviewing supporting tax documentation (n=344)	23%	66%	8%
Likelihood of questioning supporting tax documentation (n=341)	25%	54%	19%
Likelihood of contacting a third party (n=340)	35%	19%	45%
Likelihood of recommending, assessing, or collecting a taxpayer's liability (n=310)	19%	56%	24%
Likelihood of resolving disputed issues with a taxpayer (n=343)	31%	46%	21%
Likelihood of referring cases to other areas of IRS or TIGTA (n=342)	19%	54%	20%
Percent of IRS staff			

Source: GAO.

Note: Percentages may not add to 100 percent because of rounding and a few "did not know" responses.

Many Employees Said That IRS's Reorganization and Tax Law Changes Have Had a Greater Impact on Their Ability to do Their Jobs Than Section 1203

Many IRS frontline enforcement employees also reported that IRS's reorganization and tax law changes have had a greater impact on their ability to do their jobs than section 1203.²³ As shown in figure 5, a higher percentage of employees reported that IRS's reorganization and tax law

²³Since the Restructuring Act, IRS has been in the midst of a major reorganization, and complex tax laws have been changing annually. For information see, U.S. General Accounting Office, *IRS Restructuring Act: Implementation Under Way but Agency Modernization Important to Success*, GAO/T-GGD-00-53 (Washington, D.C.: Feb. 2, 2000) and *Tax Administration: IRS's Implementation of the Restructuring Act's Taxpayer Protection and Rights Provision*, GAO/GGD-00-85 (Washington, D.C.: Apr. 28, 2000).

changes have had a greater impact rather than a lesser impact on their ability to do their jobs compared to section 1203.²⁴

Figure 5: IRS Employee Views on the Impacts of Various Factors on Their Ability to Do Their Jobs Compared to Section 1203

	Much/somewhat greater	About the same impact	Much/somewhat less
Ongoing tax law changes (n=350)	43%	20%	35%
Complex tax law changes (n=348)	42%	23%	30%
IRS's reorganization changes (n=348)	52%	19%	23%
Percent of IRS staff			

Source: GAO.

Note: Percentages may not add to 100 percent because of rounding and a few “did not know or had no basis to judge” responses.

Some written comments indicated employee’s perceptions on how the other factors had an effect on their ability to do their jobs. For example, one employee wrote, “The restructuring has created areas where there is no accountability. Frontline employees have nowhere to go when not receiving services, as the person providing the service is in a different division” Another wrote, “The ongoing complex tax law changes in conjunction with the threat of losing your job (under section 1203) if you don’t correctly implement all of the changes is what greatly impacts our ability to do the job.”

IRS officials indicated that the impacts of section 1203 on employees cannot be isolated from those of such factors as IRS’s reorganization and tax law changes because they are interrelated. For example, the officials said that section 1203 itself is part of the reorganization and is a tax law change that some view as complex.

²⁴See appendix III for more detailed survey results.

Most Frontline Enforcement Employees Said Section 1203 Has Had Some Impact in Promoting Employee Accountability and Respect for Taxpayer Rights

As figure 6 shows, we estimate that at least 60 percent of the enforcement employees perceived section 1203 as promoting some degree of employee accountability and respect for taxpayer rights. We also estimate that about 30 percent of the employees perceived section 1203 as doing little or nothing to promote accountability or respect for taxpayer rights.²⁵

Figure 6: Extent to Which IRS Employees Said Section 1203 Promotes Employee Accountability and Respect for Taxpayer Rights

	Great/very great	Moderate/some	Little or no
Promotes employee accountability (n=343)	24%	36%	38%
Promotes respect for taxpayer rights (n=346)	27%	40%	30%
Percent of IRS staff			

Source: GAO.

Note: Percentages may not add to 100 percent because of rounding and a few “did not know or had no basis to judge” responses.

Some written comments indicated ways that employees perceived section 1203 as promoting employee accountability and respect for taxpayer rights. One employee wrote, “These changes were needed and . . . it has been a change for the better and hopefully has increased our trust and faith in the general public, our clients, the taxpayers.” Another employee noted, “Section 1203 make[s] IRS employees accountable and promotes respect for taxpayers”

In other written comments, however, some employees offered their perceptions of how section 1203 did little or nothing to promote employee accountability or to promote taxpayer rights. For example, one employee wrote, “Employees who safeguard taxpayers’ rights are those who would have anyway—section 1203 did not affect that.” Another noted, “We have . . . always been aware of and made every effort to respect the taxpayer’s rights. [Section] 1203 does not enhance taxpayer’s rights or . . . efforts to ensure those rights are honored.”

²⁵See appendix III for more detailed survey results.

IRS and TIGTA Have Taken Steps Intended to Improve the Section 1203 Process, but Extent of Progress is Unknown

IRS and TIGTA have taken steps intended to correct known problems, such as lengthy investigations and conflicts of interest during investigations, that may have reduced the effectiveness of the section 1203 process as well as the morale and productivity of enforcement employees. However, the extent to which these steps have succeeded is unknown because IRS and TIGTA have not coordinated on an approach for evaluating the section 1203 process on the basis of consistent types of results-oriented goals, measures, and performance data. Until IRS and TIGTA develop a coordinated approach to ensure consistent and valid evaluation, they cannot determine the effectiveness of the entire section 1203 process or any changes to it.

IRS and TIGTA Made Changes to Address Problems with the Section 1203 Process

IRS and TIGTA made changes to address problems with the process for receiving, investigating, and adjudicating section 1203 allegations. IRS initially identified some of these problems through a limited review to check employee concerns that section 1203 cases were not being resolved in a timely manner. The review revealed that, on average, IRS investigations took over 200 days and TIGTA investigations took over 300 days.²⁶ In October 2001, IRS and TIGTA initiated a more comprehensive study to assess the causes of lengthy processing times and identify other problems associated with the process for receiving, investigating, and adjudicating section 1203 cases. A team of IRS, TIGTA, and private consulting firm officials did the study, which resulted in recommendations to reengineer the process to improve performance. The team issued a final report in January 2002.²⁷

The team identified several problems with the section 1203 process, such as cases changing hands frequently within and between IRS and TIGTA and use of multiple and inconsistent procedures for processing section 1203 allegations. The team developed recommendations to correct the problems and improve the section 1203 process.²⁸ On the basis of the recommendations, IRS implemented some changes in March 2002.²⁹

²⁶IRS's limited review involved 35 cases.

²⁷Booz-Allen & Hamilton, Inc., *Section 1203 Complaint Process Reengineering*; December 21, 2001. Addendum to Final Report, *Section 1203 Complaint Process Reengineering*; January 22, 2002.

²⁸The study did not examine the section 1203 process for allegations involving the tax compliance provisions of section 1203.

²⁹We did not assess the new process since it took effect during the course of our work.

Table 2 lists the problems identified by the team,³⁰ its recommended actions, and actions taken.

Table 2: Summary of Problems Identified, Actions Recommended, and Actions Taken to Improve the Section 1203 Process

Problems identified	Actions recommended	Actions taken
Section 1203 cases changed hands frequently within IRS and TIGTA, which added to long case processing times.	Establish a Board of Employee Professional Responsibility (BEPR) to streamline the section 1203 process and to (1) oversee the section 1203 process; (2) receive and review all allegations for investigative merit; and (3) issue clearance letters to inform employees on decisions about the allegations through the Commissioner's Complaint Processing and Analysis Group (CCPAG). ^a	BEPR was established and (1) is not responsible for overseeing the section 1203 process; (2) TIGTA is to receive most allegations and determine their investigative merit, while BEPR is to determine the investigative merit of allegations referred to it by TIGTA; and (3) CCPAG is to issue clearance letters to IRS employees.
Multiple, inconsistent procedures for section 1203 cases, as reflected in a section 1203 handbook.	No specific recommendation was made.	Actions taken to streamline the process were viewed as ways to address multiple, inconsistent procedures.
IRS and TIGTA lacked a centralized database for section 1203 case information.	Develop a centralized database of information on section 1203 that will interface with TIGTA's system.	Rather than developing a central database, a system to share section 1203 data between IRS and TIGTA is being developed.
IRS managers investigated employees for section 1203 misconduct, creating conflicts of interest, and lacked skills to do investigations.	TIGTA should be responsible for investigating section 1203 allegations.	TIGTA is responsible for conducting most investigations. ^b

Source: GAO review of Booz-Allen study.

^aTo better respond to employee and taxpayer complaints, the IRS Commissioner established CCPAG. In October 1999, CCPAG began controlling section 1203 complaints referred from TIGTA.

^bAccording to IRS officials, IRS managers still do some section 1203 investigations, such as tax compliance-related allegations.

Although many of the team's recommendations were implemented, some were not implemented or were modified. IRS and TIGTA officials said that modifications resulted because both agencies agreed, after the recommendations were developed, that TIGTA would be more involved in screening and investigating most allegations.

³⁰We are reporting on problems that the team identified and for which recommendations were made by the team or actions were taken by IRS to address the problems. Other problems included IRS managers lacking skill to perform adjudications and inadequate training for managers and employees on section 1203.

For example, IRS modified the recommendation to create a BEPR³¹ that would receive section 1203 allegations, determine their investigative merit, and oversee the section 1203 process. IRS had created BEPR to handle these duties because IRS and TIGTA had not agreed on the extent of TIGTA's involvement. By the time that the new process was implemented, IRS and TIGTA had agreed that TIGTA would handle allegations for section 1203, with some exceptions.³² As a result, BEPR's responsibility was limited to determining the merit of only those allegations forwarded to it by TIGTA and did not include oversight of the whole section 1203 process. IRS officials said that having two independent agencies responsible for different parts of the section 1203 process complicates having one agency responsible for overseeing the other agency.

Rather than creating a centralized database, IRS and TIGTA officials described plans to modify an existing database to allow certain section 1203 data to be downloaded and shared between IRS and TIGTA. To do this, IRS has hired a contractor to develop such integrated data sharing. IRS officials said they plan to begin testing and implementing this new system sometime in 2003. Both IRS and TIGTA officials said that creating a centralized database for section 1203 cases would not be efficient or practical since both agencies use their respective databases to track various types of employee misconduct cases—not just those relating to section 1203. In addition, TIGTA officials said that sharing one database could compromise the integrity of TIGTA's investigations, given the sensitivity of certain case information.

IRS officials said that the study did not make specific recommendations to address the multiple, inconsistent procedures. These officials said that they believe that the attempts to streamline the process will help to address these problems. For example, the new process clarifies that TIGTA is to be responsible for receiving and investigating most section 1203 allegations. IRS reflected the new process in a revised section 1203 handbook that eliminated some criteria on making various decisions (e.g., mitigation). IRS officials said that they did not retain these criteria because all IRS employees did not need such details. They indicated that they plan

³¹As we discuss in greater detail in appendix V, BEPR is comprised of IRS SB/SE and other officials.

³²Exceptions include some employee tax compliance and civil rights allegations, since other units within IRS have primary responsibility for investigating these types of allegations.

to begin developing customized guidelines during early 2003 for targeted audiences, such as labor relation specialists.

IRS and TIGTA Have Not Coordinated on an Approach for Evaluating Whether the New Section 1203 Process Corrected the Problems and Operated Effectively

IRS and TIGTA have not coordinated on an approach for evaluating the section 1203 process on the basis of consistent types of results-oriented goals, measures, and performance data. Until IRS and TIGTA develop a coordinated approach to ensure consistent and valid evaluation, IRS and TIGTA cannot determine the effectiveness of the entire section 1203 process or any changes to it, such as those made in March 2002.

We have issued a number of reports³³ on the value added to agency operations by using results-oriented goals and balanced measures to guide and evaluate performance, avoid focusing on one aspect of performance at the expense of others, and ensure that any changes to a program or process are having the desired results rather than unintended consequences.³⁴ These reports also have discussed the value of planning evaluations of performance of a program or process early so that arrangements can be made to ensure collection of the needed data.

IRS and TIGTA have not developed agreed-upon goals or measures for evaluating the effectiveness of the section 1203 process or means for collecting related performance data. For example, IRS has not established goals or measures for timely adjudication of section 1203 cases and does not collect information on the amount of time to adjudicate cases. To obtain a current view on section 1203 case processing time, we analyzed 92 of the 100 most recently closed cases in IRS's database by the end of

³³See our work on IRS's performance goals and measures, such as U.S. General Accounting Office, *Tax Administration: IRS's Innocent Spouse Program Performance Improved; Balanced Performance Measures Needed*, [GAO-02-558](#) (Washington, D.C.: Apr. 24, 2002); *Tax Administration: IRS Should Evaluate the Changes to its Offers in Compromise Program*, [GAO-02-311](#) (Washington, D.C.: Mar. 15, 2002); and *Political Organizations: Data Disclosure and IRS' Oversight of Organization Should Be Improved*, [GAO-02-444](#), (Washington D.C. July 17, 2002).

³⁴Three balanced measures—customer service, employee satisfaction, and business results—are to be considered when establishing goals and evaluating performance. For the section 1203 process, the measures could balance service provided to those making allegations, the satisfaction of IRS employees involved, and results such as the timeliness and quality of the process.

August 2002.³⁵ Our analysis showed that the median number of days involved in the process was 186 days and that 80 percent of the cases ranged between 78 days and 774 days.

IRS officials said that they do not have a formal system for evaluating the section 1203 process—including goals and measures—because IRS does not have such a system for any of its employee disciplinary processes. TIGTA officials indicated that TIGTA has a strategic goal of 120 days to investigate and refer all administrative cases to IRS and a 365-day goal for all criminal cases. Although such goals can apply to section 1203 investigations, TIGTA officials said that they have not evaluated whether its section 1203 investigations have met these goals.

Without such performance indicators, IRS and TIGTA cannot determine whether the new process corrected the known problems and improved the section 1203 process as intended—that is, to reduce the number of handoffs, shorten the processing time, and eliminate conflicts of interest. Further, IRS and TIGTA cannot determine how effectively they process section 1203 allegations or whether future changes to the section 1203 process will be needed.

During December 2002, IRS officials told us they plan to develop goals and measures for evaluating all IRS disciplinary processes, including section 1203. Although they could not provide documentation on how this evaluation system would work, they said they plan to implement the evaluation system during fiscal year 2003. On the basis of informal tracking, they said that they believe that the new section 1203 process has expedited the determination of investigative merit and adjudication of violations. They acknowledged the value of having objective data on section 1203 and believed that this informal tracking system can be used to help develop appropriate goals and measures for the formal evaluation system.

³⁵As discussed in appendix I, we focused on the last 100 cases closed rather than those started after March 2002 and closed by August 2002 because most of the investigations under the old process took well beyond 6 months to close. We were unable to use 8 cases because of files that were a duplicate or that could not be located. Further, 19 case files did not include enough information on time spent. Our analysis of the remaining 73 cases showed that section 1203 case processing times ranged from 22 days to 1155 days. Also, 59 of the cases opened before and 14 opened after March 1, 2002—the date that the new section 1203 process took effect.

Conclusions

The Congress included section 1203 in the Restructuring Act, in part, to minimize certain types of IRS employee misconduct in dealing with taxpayers. On the basis of our survey results, most IRS enforcement employees do perceive that section 1203 has affected their behavior, such as taking longer to work audit or collection cases and having some reluctance to take enforcement actions. The survey results by themselves, however, do not provide a basis for conclusions about whether section 1203 has worked or should be changed. On the one hand, their perceptions about longer case times and a reluctance to take action are consistent with the fear of section 1203 felt by many enforcement employees. On the other hand, any increase in the amount of time to work cases also could result from other impacts of section 1203 seen by employees, such as promoting increased employee accountability and respect for taxpayer rights. Moreover, policymakers might be willing to accept longer case times and some fear of taking enforcement actions when merited if the tradeoff is greater respect for taxpayer rights.

One influence on how enforcement employees perceive section 1203 is the IRS and TIGTA process for handling section 1203 allegations. However, our survey found widespread distrust of the process. Further, IRS and TIGTA recognized that problems with the section 1203 process were affecting employee morale and productivity. Consequently, they implemented a new process in March of 2002. Evaluation of the new process is important because of the potential impact on IRS employees and ultimately taxpayers. While too few section 1203 cases have been closed under the new process for an evaluation to date, IRS and TIGTA have not developed an evaluation approach. Any evaluation of effectiveness would have to be based on results-oriented goals and related performance measures. Developing an approach now would help ensure timely collection of the needed data.

Recommendations

We recommend that the Acting Commissioner of Internal Revenue and the Acting Treasury Inspector General for Tax Administration coordinate on an approach for evaluating the section 1203 process. In developing this approach, IRS and TIGTA also should develop (1) results-oriented goals for processing section 1203 cases, (2) performance measures that are balanced and can be used to assess progress towards those goals, and (3) methods for collecting and analyzing performance data related to the goals and measures.

Agency Comments and our Evaluation

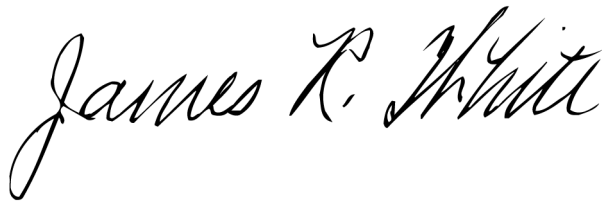
On February 6, 2003, the Acting Commissioner of the Internal Revenue and the Acting Treasury Inspector General for Tax Administration each provided written comments on a draft of this report. (See appendix VI and appendix VII, respectively.) In general, IRS agreed with our recommendation that a coordinated evaluation of the section 1203 process is desirable, and TIGTA neither agreed nor disagreed with our recommendation. However, both agencies raised a similar concern about the independence of each agency. Specifically, IRS said that TIGTA's independent role makes it inappropriate for IRS to oversee TIGTA's performance. TIGTA pointed to legislative challenges in implementing our recommendation because Restructuring Act amendments to the Inspector General Act of 1978 created TIGTA as an independent agency with autonomy from IRS.

We recognize that IRS and TIGTA are independent agencies. As noted in our report, this independence is why IRS and TIGTA need to coordinate on the evaluation. In this sense, coordination does not mean that either agency evaluate, oversee, or direct the other agency. Rather, coordination means that IRS and TIGTA officials communicate on how each agency will develop goals, measures, and methods for collecting related data to better ensure that the entire section 1203 process is evaluated, using consistent and valid goals and measures.

We do not believe that such coordination would jeopardize the independence of TIGTA from IRS, particularly when IRS and TIGTA already have been working together on managing and improving the section 1203 process, as discussed in TIGTA's as well as IRS's comments. We view our recommendation on developing a coordinated approach as part of that continued communication. We made minor wording changes to our recommendation in order to clarify the need for a coordinated evaluation approach.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this report. At that time, we will send copies to the Secretary of the Treasury; the Acting Treasury Inspector General for Tax Administration; the Acting Commissioner of Internal Revenue; and the Director of Office of Management and Budget. We will make copies available to others on request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you have any questions, please contact me or Tom Short on (202) 512-9110. Key contributors to this report are acknowledged in appendix VIII.

A handwritten signature in black ink that reads "James R. White". The signature is written in a cursive style with a large, prominent initial "J".

James R. White
Director, Strategic Issues

Appendix I: Survey and Case File Review Methodologies

This appendix discusses the methodology we used to survey the Internal Revenue Service (IRS) employees on how section 1203 affected their interactions with taxpayers. We also discuss our methodology for a review of IRS case files to determine how long section 1203 cases were taking to process.

Survey Methodology

To determine IRS frontline enforcement employees' perceptions of how section 1203 has affected their interactions with taxpayers, we surveyed a random sample of IRS frontline enforcement employees in the Small Business/Self Employed Operating Division (SB/SE) who had direct contact with taxpayers and taxpayer representatives. We administered the survey between July and September 2002 to a stratified sample of IRS employees identified through IRS's personnel database.

Study Population

The study population from which the sample was drawn consisted of 10,186 SB/SE frontline enforcement employees nationwide as of June 2002. To ensure that the study population only included frontline enforcement employees who had regular contact with taxpayers and taxpayer representatives, IRS managers familiar with the positions reviewed a list of titles for all positions in the GS-512 job series (revenue agents), GS-1169 job series (revenue officers), GS-526 job series (tax compliance officers), an GS-501 and GS-598 job series (tax auditors), and identified position titles in these 5 series where the incumbent would have regular contact with taxpayers and taxpayer representatives.

Sample Design

The sample design for this survey is a single-stage stratified sample of IRS frontline enforcement employees in SB/SE. We drew a sample of 500 employees composed of 4 strata—revenue agents, revenue officers, tax compliance officers, and tax auditors.

After we administered the survey, we adjusted the original survey and sample population size because 45 respondents indicated that they did not have contact with taxpayers and taxpayer representatives. These respondents were considered "ineligible" to participate in our survey and were subsequently excluded. We adjusted the final sample size to 455. We received 350 completed responses to our survey—a response rate of 77 percent. The remaining 105 cases were considered to be nonrespondents.

Calculation of Sample Estimates

All estimates produced in this report are for a study population defined as IRS's SB/SE frontline enforcement employees who have contact with taxpayers and taxpayer representatives. We designed our sample to produce precise estimates of this population on a nationwide basis. As a result, we did not perform any analyses by stratum. Further, we created the estimates by weighting the survey responses to account for the sampling rate in each stratum. The weights reflect both the initial sampling rate and the response rate for each stratum.

Sampling Error

We randomly selected the sample used for this study based on a probability procedure. As a result, our sample is only one of a large number of samples that we might have drawn from the total population of SB/SE frontline enforcement employees. If different samples had been taken from the same population, it is possible that the results would have been different. To recognize the possibility that other samples may have yielded other results, we express our confidence in the precision of our particular sample's results as a 95-percent confidence interval. For all the percentages presented in this report, unless otherwise noted, we are 95-percent confident that the results we obtained are within plus or minus 10 or fewer percentage points of what we would have obtained if we had surveyed the entire study population. For example, our survey estimates that 58 percent of the respondents indicated that section 1203 had no effect on their likelihood of requesting documents from a taxpayer. The 95-percent confidence interval for this estimate would be between 48 percent and 68 percent. We calculated the confidence intervals for our study results using methods that are appropriate for a stratified probability sample.

Nonsampling Error

In addition to the reported sampling errors, the practical difficulties of conducting any survey may introduce other types of errors, commonly referred to as nonsampling errors. For example, questions may be misinterpreted, the respondents' answers may differ from those who did not respond, or errors could be made in keying the questionnaire responses into a data file. We took several steps to reduce such errors.

We pretested the survey questions with employees from SB/SE who were part of the survey's target population. After the survey administration, we examined the response rate for each of the 4 strata to determine whether any of the strata were underrepresented. The response rates for the revenue agent, revenue officer, tax compliance officer, and tax auditor strata were 89 percent, 87 percent, 78 percent, and 44 percent,

respectively. We did not assess the impact of the nonrespondents on our results. To the extent that the nonrespondents had different views than the respondents, then our findings would be biased. The response rates for the revenue agent, revenue officer, and tax compliance officer strata are fairly high and give us a high degree of confidence that our findings for these groups are likely to be representative of the fuller populations. The 44 percent response rate for the tax auditor strata raises the possibility that the results for this group may have been different if more employees had chosen to complete the survey.

To ensure the integrity of the survey data, we performed a quality control check on the surveys that were keyed into an automated data file. We found no keying errors.

Survey Development

We identified areas to cover in the survey based on our congressional request and initial interviews with IRS and National Treasury Employees Union officials.

We pretested the survey to IRS revenue agents, revenue officers, and tax compliance officers at three IRS field offices (at the time of the pretests, tax auditors were unavailable). Two of the offices were located in suburban Maryland and another was located in Washington, D.C. In doing the pretest, we evaluated the appropriateness of the survey questions and the various formats we planned to use in administering the survey. Based on the pretests, we made necessary changes to the survey prior to its nationwide implementation.

Survey Administration

We administered the survey in three ways: mail, Internet, and as a portable document format (pdf) attachment sent out via E-mail. The respondents could submit their completed surveys through regular mail, fax, or the Internet. In addition to the survey itself, each survey package included two letters encouraging employees to participate in the survey administration. One letter was signed by the IRS Commissioner of the Small Business/Self Employed Division and the other was signed by GAO's Managing Director of the Tax Administration and Justice team. We conducted at least two follow up calls to each nonrespondent in order to encourage a high response rate. A copy of the survey instrument is in appendix III.

Content Analysis

Some of the survey questions were open-ended, allowing respondents an opportunity to provide thoughts and opinions in their own words. Of the 350 employees that responded to our survey, 208 provided written

responses to the open-ended questions. In order to categorize and summarize these responses, we performed a systematic content analysis of the open-ended responses. Two GAO analysts reviewed the responses and independently proposed categories. They met and reconciled these; each comment was then placed into one or more of the resulting categories, and agreement regarding each placement was reached between at least two analysts. All initial disagreements regarding placement into categories were discussed and reconciled. The numbers of responses in each content category were then summarized and tallied.

Case File Review Methodology

To contribute to our understanding of IRS's processing of section 1203 cases and to determine the amount of time it takes to process the cases, we reviewed 92 of the 100 most recently closed cases that were recorded in IRS's ALERTS database as of August 30, 2002. We developed a data collection instrument to record the type of allegation as well as various dates associated with key stages in the processing of the case. These key stages were identified as part of our review of the section 1203 process and confirmed through discussions with IRS officials familiar with the processing of these cases.

Of the 100 cases that were identified in IRS's database as being the most recently closed, we determined that 92 were available for review. For the 8 cases that were not available, IRS identified 3 as being duplicative, and we were advised by IRS not to include them in our review. In addition, according to IRS, 5 other cases were not available for review because the employee left IRS before TIGTA finished the investigation. (These cases were recorded as "not adjudicated.") We performed a limited quality control check of the data recorded on 12 percent of the 92 cases by randomly selecting the cases.

In addition, for 19 of the 92 cases, missing data prevented us from computing case processing times. As a result, processing times could only be calculated for 73 of the 92 cases included in this review.

Table 3 provides a breakdown of the number of cases opened before, on, or after March 1, 2002—the date that the new section 1203 process was implemented. All cases were closed after March 1, 2002.

Table 3: Number of Cases Opened before, on, or after March 1, 2002

N=92^a	Cases closed after 3/1/2002
Cases opened before 3/1/2002	59
Cases opened on or after 3/1/2002	14
Total	73

Source: GAO analysis of IRS closed cases.

^a19 of the 92 cases were missing an opened or closed date.

The case processing times were calculated based on the dates that the case was opened by either TIGTA or IRS and closed by IRS. For the closing date, we used the date that the employee was issued a letter informing them of the outcome of his or her case. If there was no such letter, we used other documentation contained in the file that indicated the date that the case had been closed. In 5 of the cases, the employee had resigned or retired and the case file did not include a letter or other documentation to indicate the case had been closed. For these cases, we used the employees' resignation or retirement date.

Our work was conducted in accordance with generally accepted government auditing standards.

Appendix II: Data on Section 1203 Allegations

Tables 4, 5, and 6 summarize information on section 1203 allegations for the period July 1998 through 2002. Table 4 provides information on substantiated section 1203 allegations by disposition and table 5 provides information on employee firings by type of misconduct and employee GS level. Table 6 provides a breakdown of results for the 3,512 allegations that were investigated, including allegations that were substantiated as a section 1203 violation, allegations that were substantiated for nonsection 1203 misconduct, and allegations that were not substantiated.

Table 4: Summary of Substantiated Section 1203 Allegations by Disposition, July 1998 through September 2002

Type of section 1203 misconduct	Firings	Resigned/ retired	Probation separation ^a	Fired on other grounds ^b	Penalty mitigated	In personnel process ^c	Total
Taxpayer and employee rights							
False statement under oath	0	1	0	0	0	0	1
Civil rights/constitutional rights	0	0	0	1	0	0	1
Falsifying or destroying documents	3	5	1	0	0	1	10
Assault or battery	1	0	0	0	0	0	1
Retaliation or harassment	1	4	0	1	0	0	6
Threat to audit for personal gain	4	4	2	1	1	0	12
Subtotal	9	14	3	3	1	1	31
Compliance with federal tax laws							
Failure to timely file federal tax return	55	90	12	14	159	15	345
Understatement of federal tax liability	7	13	1	0	6	16	43
Subtotal	62	103	13	14	165	31	388
Total	71	117	16	17	166	32	419

Source: GAO analysis of IRS data.

^aRefers to the firing of an IRS employee during the first year of employment during the employee's probationary period of employment.

^bRefers to disciplinary firings for misconduct not related to section 1203.

^cRefers to instances when an IRS deciding official has determined that a section 1203 allegation was substantiated and forwarded the case to the Executive Review Board for consideration.

Note: Dispositions for 8 of the 10 types of section 1203 misconduct are noted on this table. For the remaining 2 types of misconduct, allegations made against the employee were not substantiated.

Table 5: Summary of Employee Firings by Type of Misconduct and Employee GS-Level, July 1998 through September 2002

Employee GS level	Falsifying or destroying documents	Assault or battery	Retaliation or harassment	Threat to audit for personal gain	Failure to timely file federal tax return	Understatement of federal tax liability	Total
02	0	0	0	0	1	0	1
03	0	0	0	0	7	0	7
04	0	0	0	0	10	2	12
05	0	0	0	1	7	1	9
06	0	1	0	0	4	1	6
07	0	0	0	1	8	0	9
08	1	0	1	0	8	2	12
09	1	0	0	0	2	0	3
10	0	0	0	0	1	0	1
11	0	0	0	1	2	0	3
12	0	0	0	0	3	1	4
13	0	0	0	1	2	0	3
14	1	0	0	0	0	0	1
Total	3	1	1	4	55	7	71

Source: GAO analysis of IRS data.

Note: Firings for 6 of the 10 types of section 1203 misconduct are noted on this table. For the remaining 4 types of misconduct, an employee was not fired.

Table 6: Summary of Investigative Results, July 1998 through September 2002

Type of section 1203 misconduct	Investigative outcomes			Total investigations
	Allegations substantiated for section 1203 misconduct	Allegations substantiated for non section 1203 misconduct	Allegations not substantiated	
Taxpayer and employee rights				
Seizure without approval	0	2	11	13
False statement under oath	1	3	17	21
Civil rights/constitutional rights	1	10	251	262
Falsifying or destroying documents	10	22	34	66
Assault or battery	1	4	3	8
Retaliation or harassment	6	125	1,549	1,680
Misuse of section 6103 to conceal information	0	0	3	3
Threat to audit for personal gain	12	23	42	77
Subtotal	31	189	1,910	2,130
Compliance with federal tax laws				
Failure to timely file federal tax return	345	330	239	914
Understatement of federal tax liability	43	281	144	468
Subtotal	388	611	383	1,382
Total	419	800	2,293	3,512

Source: GAO analysis of IRS data.

Appendix III: GAO Survey of IRS Frontline Enforcement Employees

To determine IRS frontline enforcement employees' perceptions of how section 1203 has affected their interactions with taxpayers, we surveyed a sample of IRS revenue officers, revenue agents, tax compliance officers, and tax auditors in the Small Business/Self Employed Division. We received 350 completed responses to our survey—a response rate of 77 percent. Note: Percentages may not add to 100 percent due to rounding. In addition, for survey questions 5 and 9, respondents who answered “not applicable to my job” were not included in our analysis of the results.



United States General Accounting Office

Survey of IRS Small Business/Self Employed Frontline Enforcement Staff

Introduction

The U.S. General Accounting Office (GAO), an independent agency of Congress, is studying the effects of section 1203 of the IRS Restructuring and Reform Act of 1998 on tax administration. As part of our study, we are surveying IRS Small Business/Self-Employed frontline enforcement employees to obtain their opinions on whether section 1203 has affected their ability to do their jobs.

You have been randomly selected by GAO to participate in this survey from a list of all IRS Small Business/Self-Employed frontline enforcement staff. Your participation is voluntary. However, we urge you to complete this survey. We cannot develop meaningful information about this matter without your frank and honest answers.

GAO will take steps to prevent the disclosure of individually identifiable data from this survey. Your responses will be combined with those of other IRS employees who have been randomly selected to participate in this survey. The identification number on the survey is included only to aid us in our follow-up efforts and will not be used to identify you or associate you with your responses. After the surveys have been processed, all individual identifying information will be destroyed. No one will be able to tell how you or anyone else answered.

It will take you about 15-20 minutes to complete this survey. You can easily answer most of the questions by checking boxes or writing your answers in the blank space that is provided. Space for any additional comments has also been provided at the end of the survey.

You may complete the survey using pen or pencil. If you change your answer, please make sure that your new answer is clearly marked.

Please complete the survey within 5 days of your receipt of the survey and mail it to:

U.S. General Accounting Office
Attn: Michelle Sager
301 Howard Street, Suite 1200
San Francisco, CA 94105-2252

You may also fax the completed survey back to GAO at: (202) 512-2502 or (202) 512-2514.

If you have any questions or concerns about responding to the survey, please contact the following GAO staff:

Brenda Rabinowitz
Phone: (202) 512-8706
E-mail: rabinowitzb@gao.gov

Kristen Plungas
Phone: (202) 512-3091
E-mail: plungask@gao.gov

Thank you for your time and cooperation.

Appendix III: GAO Survey of IRS Frontline Enforcement Employees

I. Background Information

The purpose of this section is to obtain general information about your current position with IRS.

1. What is your current position at IRS? *(Check only one.)*
n=350

- 1. Revenue agent (job series GS-512) 49%
 - 2. Revenue officer (job series GS-1169) 40
 - 3. Tax compliance officer (job series GS-526) 9
 - 4. Tax auditor (job series GS-501 & 598)
 - 5. Other *(Please specify in the space provided below.)* 2
- _____
- _____

2. Do you manage frontline staff, such as revenue officers, revenue agents, tax compliance officers, and tax auditors?
(Check only one.)
n=349

- 1. Yes 2%
- 2. No 98

3. Were you in your current position before January 1, 1999? *(Check only one.)*
n=348

- 1. Yes 86%
- 2. No 14

4. In the everyday conduct of your work, about how often do you interact with taxpayers or their representatives face-to-face? *(Check only one.)*
n=348

- 1. Frequently (every day or almost every day) 57%
- 2. Often (2-3 times per week) 30
- 3. Sometimes (about once a week) 8
- 4. Rarely (less than once a week) 6
- 5. Never 0

Appendix III: GAO Survey of IRS Frontline Enforcement Employees

II. Understanding of Section 1203

The purpose of this section is to obtain your understanding of section 1203.

5. How clear or unclear is your understanding of the following types of misconduct under section 1203?
(Check one box in each row that best represents your answer.)

	Very clear (1)	Generally clear (2)	Generally unclear (3)	Very unclear (4)	Don't know (5)	Not applicable to my job (6)
a. Willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer's home, personal belongings, or business assets n=169	64%	29%	5%	1%	1%	
b. Providing a false statement under oath regarding a material matter involving a taxpayer or taxpayer representative n=334	63	31	4	1	2	
c. Violating the rights of a taxpayer, a taxpayer representative, or another IRS employee granted under the Constitution and various nondiscriminating statutes n=345	45	32	15	6	2	
d. Falsifying or destroying documents to conceal mistakes by an IRS employee regarding a taxpayer or taxpayer representative n=345	68	27	4	0	1	
e. Assault or battery committed on a taxpayer, taxpayer representative or another IRS employee n=342	72	22	5	1	1	
f. Retaliating against or harassing a taxpayer, taxpayer representative or another IRS employee by violating the law, rules, and regulations, or IRS policies n=347	61	27	8	4	1	
g. Willful misuse of section 6103 to conceal information from a congressional inquiry n=326	40	28	18	5	8	
h. Willful failure to file a tax return under IRS code n=346	77	20	2	1	0	
i. Willful understatement of federal tax liability n=347	71	23	3	2	0	
j. Threatening to audit a taxpayer for the purpose of extracting personal gain n=343	82	16	1	0	0	

Appendix III: GAO Survey of IRS Frontline Enforcement Employees

6. To what extent has IRS provided you with clear examples or definitions of what constitutes section 1203 misconduct of harassment or retaliation against a taxpayer, taxpayer representative or another IRS employee? *(Check only one.)*
n=340

- 1. Very great extent 11%
- 2. Great extent 37
- 3. Moderate extent 32
- 4. Some extent 13
- 5. Little or no extent 6
- 6. No basis to judge/Don't know 1

III. Impact of Section 1203

The purpose of this section is to obtain your views on how section 1203 has impacted you in doing your job.

7. In the everyday conduct of your work, how fearful, if at all, are you of the following:
(Check one box in each row that best represents your answer.)

	Very fearful (1)	Somewh at fearful (2)	A little fearful (3)	Not at all fearful (4)	No basis to judge/ Don't know (5)
a. Having a section 1203 complaint filed against you by a taxpayer n=350	27%	39%	19%	15%	1%
b. Being investigated as a result of a section 1203 complaint filed against you by a taxpayer n=350	32	35	18	14	1
c. Being fired as a result of a section 1203 complaint filed against you by a taxpayer n=350	33	25	20	20	2
d. Other <i>(Please specify in the space provided below)</i> n=85	39	15	5	9	33

Please specify your answer to #7d here: **Do Not Provide Any Tax Return Information.**

Appendix III: GAO Survey of IRS Frontline Enforcement Employees

8. Have any of the fears you identified in question #7 affected the way you do your job? (Check only one.)
n=348

- 1. Not applicable, indicated "not at all fearful" to all items in question #7. 8%
- 2. Yes 68
- 3. No 21
-
- 4. No basis to judge/Don't know 3

9. In interacting with taxpayers, to what degree have the following aspect(s) of doing your job been affected as a result of section 1203? (Check one box in each row that best represents your answer.)

	Greatly increased (1)	Somewhat increased (2)	Had no effect (3)	Somewhat decreased (4)	Greatly decreased (5)	Don't know (6)	Not applicable to my job (7)
a. Overall amount of time to work on a case n=342	43%	37%	15%	2%	1%	2%	
b. Likelihood of recommending a seizure n=106	12	4	14	17	50	3	
c. Likelihood of recommending a lien n=118	5	16	38	34	5	2	
d. Likelihood of recommending a levy n=111	8	14	34	33	8	2	
e. Likelihood of requesting documents from a taxpayer n=344	7	18	58	12	3	2	
f. Likelihood of reviewing supporting tax documentation n=344	7	16	66	6	2	3	
g. Likelihood of questioning supporting tax documentation n=341	5	20	54	14	5	2	
h. Likelihood of contacting a third party n=340	19	17	19	26	19	1	
i. Likelihood of recommending, assessing, or collecting a taxpayer's liability n=310	5	14	56	20	3	1	
j. Likelihood of resolving disputed issues with a taxpayer n=343	7	24	46	16	5	2	
k. Likelihood of referring cases to other areas of IRS or TIGTA n=342	7	12	54	14	7	7	

Appendix III: GAO Survey of IRS Frontline Enforcement Employees

10. In what other ways, if any, has section 1203 affected your ability to do your job?
Do Not Provide Any Tax Return Information.

11. How confident are you that, under section 1203, a disciplinary action **will not** be taken against you if you happen to make an honest or unintentional mistake? *(Check only one.)*
 n=348

- 1. Very confident 6%
- 2. Somewhat confident 21
- 3. A little confident 18
- 4. Not at all confident 50
- 5. No basis to judge/Don't know 5

12. To what extent do you believe that section 1203 impacts IRS employees in the following ways:
(Check one box in each row that best represents your answer.)

	Very great extent (1)	Great extent (2)	Moderate extent (3)	Some extent (4)	Little or no extent (5)	No basis to judge/ Don't know (6)
a. Promotes employee accountability in doing their jobs n=343	9%	15%	14%	22%	38%	3%
b. Promotes respect for taxpayer rights n=346	12	16	15	25	30	4
c. Other <i>(Please specify in the space provided below)</i> n=82	26	10	7	2	15	40

Please specify your answer to #12c here: **Do Not Provide Any Tax Return Information.**

Appendix III: GAO Survey of IRS Frontline Enforcement Employees

13. Compared to section 1203, how much do the following changes impact your ability to do your job?
(Check one box in each row that best represents your answer.)

	Much greater impact than section 1203 (1)	Somewhat greater impact than section 1203 (2)	About the same impact as section 1203 (3)	Somewhat less impact than section 1203 (4)	Much less impact than section 1203 (5)	No basis to judge/ Don't know (6)
a. Ongoing tax law changes n=350	22%	20%	20%	14%	21%	3%
b. Complex tax law changes n=348	28	15	23	14	16	5
c. IRS's reorganization changes n=348	31	21	19	12	11	6
d. Other work-related changes <i>(Please specify in the space provided below)</i> n=110	28	8	11	2	6	46

Please specify your answer to #13d here: **Do Not Provide Any Tax Return Information.**

IV. Comments

14. If you have any comments regarding any previous question, or general comments regarding your perceptions of section 1203, please enter them here. **Do Not Provide Any Tax Return Information.**

Thank you for your participation.

Please return your completed questionnaire using the envelope provided.

Appendix IV: Summary of Content Analysis of Open-Ended Comments from GAO Survey of IRS Frontline Enforcement Employees

Some of the survey questions were open-ended, allowing respondents to provide thoughts and opinions in their own words. In order to categorize and summarize these responses, we performed a systematic content analysis of the open-ended responses. Two GAO analysts reviewed the responses and independently proposed categories. They met and reconciled these; each comment was then placed into one or more of the resulting categories, and agreement regarding each placement was reached between at least two analysts. All initial disagreements regarding placement into categories were discussed and reconciled. As shown in figure 7, the number of responses in each content category was then summarized and tallied.

**Appendix IV: Summary of Content Analysis of
Open-Ended Comments from GAO Survey of
IRS Frontline Enforcement Employees**

Figure 7: Summary of Content Analysis of Open-Ended Written Responses

Section 1203 has or has not made me fearful of:	(59 respondents)
<p>Sub-categories:</p> <ul style="list-style-type: none"> • Fear, general/not specific • I fear a false section 1203 allegation by a taxpayer • I fear being investigated for an honest mistake • I fear losing my job/being terminated as a result of section 1203 • I fear IRS management/management will use section 1203 against me • I fear TIGTA (investigative strategies, quotas, etc.) • Other fear • I am not afraid 	
The section 1203 investigative process is troubling/intimidating/confusing:	(19 respondents)
<p>Sub-categories:</p> <ul style="list-style-type: none"> • Problems with the investigative process, general/not specific • I do not know if I committed a violation • Any allegation triggers an automatic investigation • I have to prove my innocence/The investigation begins with a presumption of my guilt • I am denied due process • It is expensive/time consuming to defend myself • Other problems with the investigative process 	
My job behavior has changed in the following ways as a result of section 1203:	(114 respondents)
<p>Sub-categories:</p> <ul style="list-style-type: none"> • No effect on my job behavior • I do nothing/I avoid taking enforcement action • I am less likely to take enforcement action • I second-guess decisions • I find my job more difficult • I am less productive/less efficient/less effective • My work takes longer • I need more paperwork/documentation • I provide taxpayers more time and information • I provide fewer services to taxpayer/I have less freedom to help taxpayers • I request less taxpayer or third party information • I do not attempt to verify information from taxpayer • I avoid large or unusual taxpayer returns/items on returns • I avoid interactions with taxpayers • Other impacts on my job behavior 	

Source: GAO.

**Appendix IV: Summary of Content Analysis of
Open-Ended Comments from GAO Survey of
IRS Frontline Enforcement Employees**

The following challenges impact my job more than section 1203:	(73 respondents)
Sub-categories:	
<ul style="list-style-type: none">• Lack of adequate information/training to do my job• Human capital problems in the workplace• Resource deficiencies in the workplace• The U.S. tax code/law/policies (hard to understand, outdated, etc. not section 1203-related)• Office/agency restructuring• Management being disconnected from/unsupportive of staff• Managers being inconsistent/unethical/not accountable for actions• Other changes	
Overall effects of section 1203:	(105 respondents)
Sub-categories:	
<ul style="list-style-type: none">• No effect/no change, general/not specific• Most employees already follow(ed) the rules before section 1203• Section 1203 has improved taxpayer rights/makes employees accountable• Section 1203 overemphasizes taxpayer rights/gives taxpayers too much power• Staff held to a different/higher standard• Reform was a quick fix by Congress/Congress sacrificed workers• Section 1203 is vague/hard to understand• Other overall effects	
I have experienced changes in taxpayer behavior as a result of section 1203:	(69 respondents)
Sub-categories:	
<ul style="list-style-type: none">• Section 1203 reduces taxpayer cooperation• Taxpayers use section 1203 to delay or avoid payment• Taxpayers use section 1203 to get even/threaten/intimidate/retaliate against staff• Taxpayers use section 1203 to take advantage of the IRS• Other changes in taxpayer behavior	
Section 1203 impacts the feelings and attitudes of IRS employees in the following ways:	(60 respondents)
Sub-categories:	
<ul style="list-style-type: none">• My morale has declined/I dislike my job• Staff morale has declined/Staff dislike their jobs• I feel targeted or defensive• Staff feels targeted or defensive• I feel like section 1203 is looming/hanging over my head• Staff feels like section 1203 is looming/hanging over our heads• I am thinking about leaving IRS (take other jobs, retire, etc.)• Staff thinking about leaving IRS (take other jobs, retire, etc.)• Other impact on feelings and attitudes of employees	

Appendix V: Stages of Section 1203 Case Processing

The following description of section 1203 case processing applies to all allegations, except those related to compliance with federal tax laws and employee and taxpayer civil rights, which are processed separately.¹ Complaints involving allegations of section 1203 misconduct are subject to a 3-stage process, including: (1) reporting and investigative determination, (2) fact-finding, and (3) adjudication. Figure 8 provides an illustration of the various stages of the processing of a section 1203 case.

Reporting and Investigative Determination

Any taxpayer, taxpayer representative, or IRS employee can file a complaint with IRS or TIGTA alleging employee misconduct under section 1203. IRS managers have been instructed to forward all allegations to TIGTA, which has primary responsibility for receiving and investigating complaints involving allegations of section 1203 misconduct. Once it receives the complaint, TIGTA is to enter information on the allegation into its information tracking system for managing and reporting purposes.

After entering the information into its information system, TIGTA is to make an initial determination about whether the allegation should be investigated as a potential act of employee misconduct. If TIGTA finds sufficient information indicating a section 1203 violation may have occurred, TIGTA is to investigate the allegation. Similarly, TIGTA may find sufficient grounds to conduct an investigation for misconduct unrelated to section 1203. In either case, the results of the TIGTA investigation are provided to IRS as a formal Report of Investigation.

TIGTA may also determine that the complaint does not contain specific enough information, or that it does not have the necessary expertise, to be able to make a determination on the complaint's investigative merit. In these instances, TIGTA is to refer the complaint to the Commissioner's Complaint Processing and Analysis Group (CCPAG) to determine whether there is a basis for an investigation. A case development team within CCPAG is to receive the allegation and enter information on the allegation into its information tracking system. The role of the case development

¹As discussed earlier in this report, IRS's Employee Tax Compliance unit is responsible for identifying and investigating employees who appear to have tax compliance problems. IRS's Office of Equal Employment Opportunity is responsible for reviewing and analyzing EEO settlement agreements, findings of discrimination, and taxpayer complaints of discrimination to determine whether a potential section 1203 violation exists. However, under certain circumstances, TIGTA may also investigate allegations related to compliance with federal tax laws and employee and taxpayer civil rights.

team is to gather the relevant facts related to the allegation to determine whether the essential elements of a section 1203 violation may be present.

Upon its evaluation of the allegation, CCPAG may conclude that the complaint is frivolous (e.g., a taxpayer alleges misconduct because the employee did not agree with the taxpayer that the tax laws are unconstitutional). In these instances, CCPAG is to forward the allegation to IRS's Frivolous Return Program at the Ogden Service Center.²

After gathering the relevant information—for allegations not considered frivolous—CCPAG is to forward the allegation to the Board of Employee Professional Responsibility (BEPR) for its review. BEPR includes the Director, CCPAG, and representatives from the Small Business and Self Employed Division. IRS's Strategic Human Resources and Agency-Wide Shared Services employee relations specialists and Office of Chief Counsel General Legal Services may serve as advisors to BEPR. TIGTA also serves in an advisory role on BEPR. IRS's Senior Counselor to the IRS Commissioner participates in BEPR's review of allegations involving IRS executives, GS-15's and senior manager pay band employees.

BEPR's review may result in several outcomes. Specifically, BEPR may concur with the case development team's finding that the allegation has no merit. In this situation, no investigation is conducted and the Director CCPAG is to issue a letter to the employee and his/her manager advising that there will be no investigation. If BEPR concurs with the case development team's findings that no misconduct occurred, the Director of CCPAG is to issue a clearance letter to the employee and his/her manager. The case is then closed. If BEPR concurs with the case development team's findings that other misconduct may have occurred, BEPR is to recommend a referral to TIGTA or IRS management for investigation, and regular disciplinary procedures are to apply.³ If BEPR agrees with the case development team's findings that section 1203 misconduct may have occurred, BEPR is to recommend a referral to TIGTA for investigation.

²The Frivolous Return Program is responsible for identifying the tax returns of individuals who assert unfounded legal or constitutional arguments and refuse to pay their taxes or to file a proper tax return. The program also identifies returns claiming frivolous refunds, such as those involving slavery reparations.

³The regular disciplinary process is codified at 5 U.S.C. Chapter 43 on unacceptable performance and 5 U.S.C. Chapter 75 on adverse actions.

Fact-Finding

Once TIGTA or BEPR determines an allegation to have investigative merit as a possible section 1203 violation, TIGTA is to perform the investigation. Specifically, TIGTA may review records, interview witnesses, and consult technical experts as necessary to develop information relevant to the alleged violation. In some cases, the possible section 1203 misconduct may also be a potential violation of criminal law. In these cases, TIGTA is to refer its findings to a local U.S. Attorney Office for consideration of criminal prosecution. After the investigation is completed, and a referral is made to a U.S. Attorney, if appropriate, TIGTA is to provide a Report of Investigation to CCPAG.

Adjudication

All TIGTA Reports of Investigation on allegations of section 1203 violations are first to be reviewed by CCPAG to determine whether the evidence can support the allegation for a section 1203 violation. If CCPAG determines that the evidence does not support a section 1203 violation or other misconduct unrelated to section 1203, the Director of CCPAG is to issue a clearance letter to the employee and his/her manager. If CCPAG determines that the evidence presented supports a section 1203 violation, it is to forward the Report of Investigation to the “proposing official”—a management official generally two levels of supervision above the subject of the allegation—for further action.

Acting with the advice of an employee relations specialist, the proposing official is to determine whether misconduct has been substantiated by a preponderance of the evidence. If the proposing official determines that no misconduct occurred, the official is to issue a clearance letter to the employee. If this official determines that the evidence supports misconduct unrelated to section 1203, IRS’s regular disciplinary procedures are to apply.⁴ If this official determines that the specific elements of a section 1203 violation appear to be established by a preponderance of the evidence, he or she is to issue a letter to the employee proposing removal from the federal service. The employee has the right to respond to this proposal letter and to review any information relied upon by the proposing official. The case is to be submitted to the deciding official, generally an executive at least three levels of supervision above the employee.

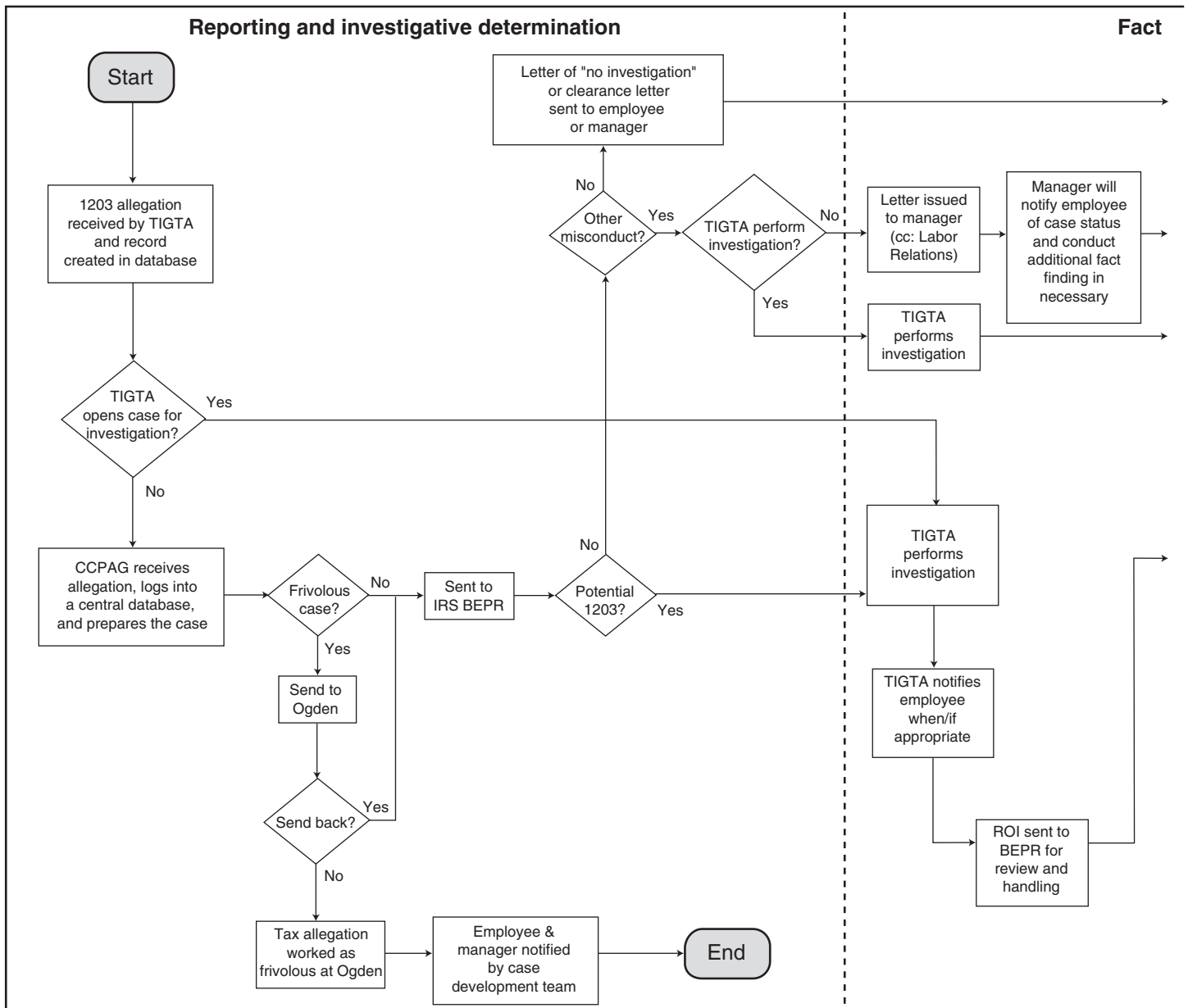
⁴The discipline imposed may range from oral counseling to termination of employment, depending on the nature and severity of the misconduct, the employee’s work record, and other factors.

The deciding official is to review the entire case file, including the employee's response, to determine whether the charge has been proved. If the deciding official determines that no misconduct occurred, the official is to issue a clearance letter to the employee. If this official determines that the evidence supports misconduct unrelated to section 1203, IRS's regular disciplinary procedures are to apply. If the deciding official determines that a section 1203 violation is established by a preponderance of the evidence, the employee is to be removed from the federal service, unless the Commissioner of Internal Revenue decides that another penalty is to be imposed.

The Commissioner of Internal Revenue has established a Section 1203 Review Board (Board) to consider all cases in which a deciding official finds that a section 1203 violation has occurred. Comprised of various IRS executives from different IRS units, the board must review the allegation to determine whether a penalty less than firing the employee is appropriate.⁵ If the Board does not find mitigation to be appropriate, the case is not submitted to the IRS Commissioner. The case is then returned to the deciding official who is to impose the statutory penalty of termination of employment. If the Board recommends mitigation, the Commissioner reviews the recommendation. If the Commissioner mitigates the penalty, other disciplinary actions, such as written counseling, admonishment, reprimand, or suspension, may be applied. The Commissioner's decision on the level of discipline to be imposed is not subject to review outside IRS. After the Commissioner's decision, the employee may appeal the finding that a violation occurred.

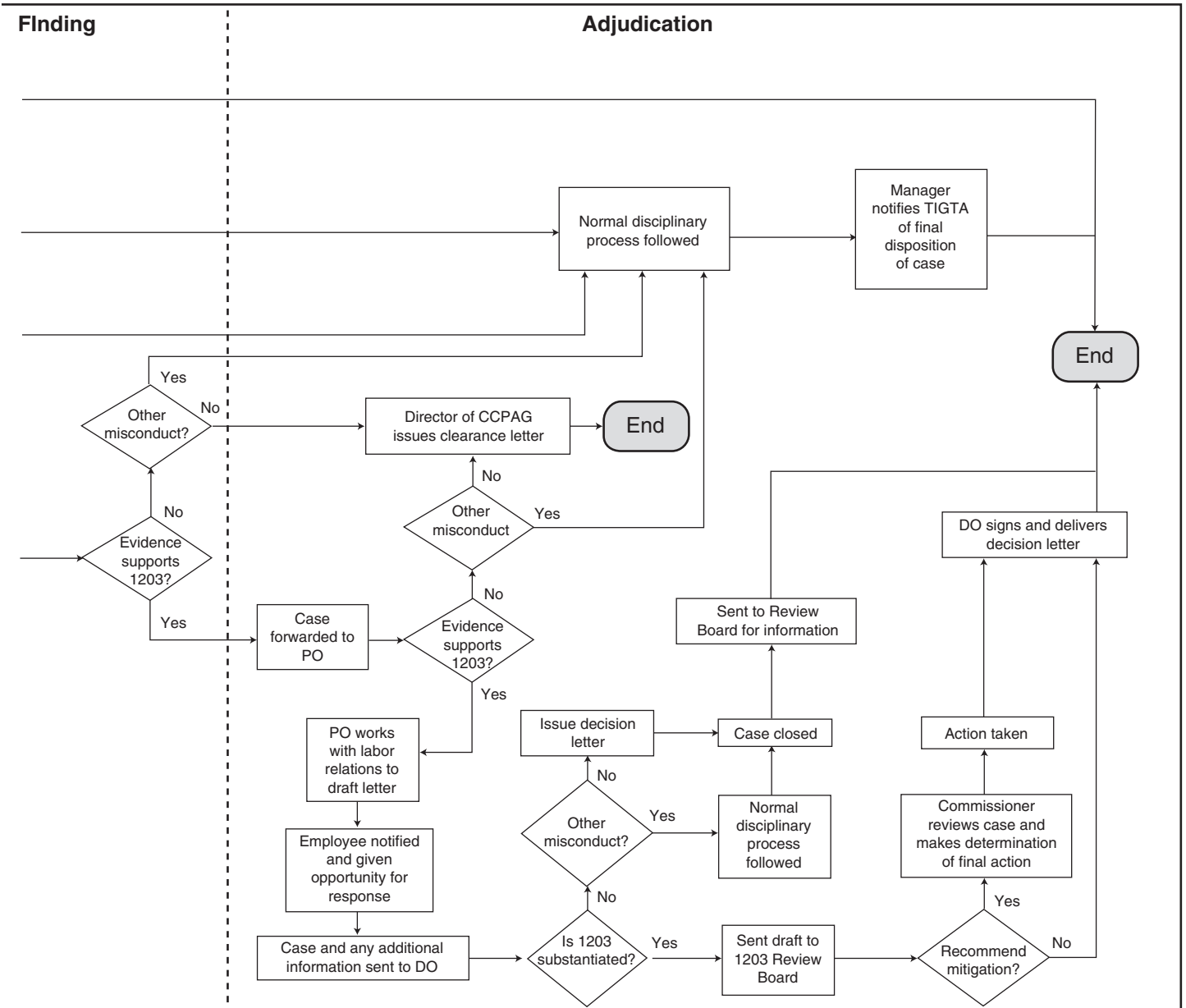
⁵The Deputy Commissioner is designated as the Board Chairman, but he is serving as the Acting Commissioner of Internal Revenue at this time, and in this role must consider the recommendations of the Board. Current members of the Board are the Assistant Deputy Commissioner, who serves as Acting Chairman, the Deputy National Taxpayer Advocate, the National Director for Equal Opportunity and Diversity, and the Deputy Commissioner of the Large and Midsized Business Division. In addition, the Director of CCPAG serves as Executive Director for the Board, presenting case files for consideration and maintaining records of the Board's activities. Agency-Wide Shared Services employee relations specialists assemble case files for the Board, and a representative of the Office of Chief Counsel attends and participates in all Board meetings.

Figure 8: Case Flow Process for Section 1203 Cases



Source: IRS.

Appendix V: Stages of Section 1203 Case Processing



Note: BEPR-Board of Employee Professional Responsibility; CCPAG-Commissioner's Complaint Processing and Analysis Group; DO-deciding official; IRS-Internal Revenue Service; PO-proposing official; ROI-Receipt of Investigation; TIGTA-Treasury Inspector General for Tax Administration

Appendix VI: Comments from the Internal Revenue Service



COMMISSIONER

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

February 6, 2003

Mr. James R. White
Director, Tax Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. White:

I reviewed your report titled "IRS and TIGTA Should Evaluate Their Processing of Employee Misconduct under Section 1203," GAO-03-394. In recognition of the profound affect that Section 1203 has had on some of our employees, we are continually evaluating every aspect of the program and, in particular, striving to improve the way in which we process 1203 cases. Indeed, this evaluation has led to a number of administrative improvements and has also yielded insights that led to the 1203 legislative proposal in the President's budget.

I believe the most effective response to the issues you highlighted in your report would be enactment of the legislative proposal. The changes proposed clarify several aspects of Section 1203, and authorize the Commissioner of Internal Revenue to establish guidelines for imposing penalties other than termination of employment. These guidelines would also address some of the recurring fact patterns in cases that the Commissioner must now personally review, but that clearly do not warrant firing the employee. Other proposed changes to Section 1203 narrow its application by eliminating offenses related to employee rights and late filed tax returns when a refund is owed. Enacting this legislation would help restore our employees' confidence that they will be treated fairly, while ensuring that we appropriately deal with the very small number of egregious acts of misconduct.

As your report makes clear, employees continue to express significant concern that their jobs are in jeopardy whenever a taxpayer complains. We have addressed this issue through Commissioner speeches, videos and all employee messages, as well as by publicizing statistics and case results. Despite assurances that employee rights will be fully protected and that no employee will be fired for an innocent mistake, your survey results show that fear of Section 1203 allegations remains a significant issue for our front-line employees. I do not believe additional training and publicity will allay that fear. The correct response to the employee concerns is to enact the legislative proposal.

Our response to your recommendation is enclosed. If you have questions, please call Stephen Whitlock at (202) 622-6383.

Sincerely,

A handwritten signature in cursive script that reads "Bob Wenzel".

Bob Wenzel
Acting Commissioner

Enclosure

RECOMMENDATION: The Commissioner of Internal Revenue and Treasury Inspector General for Tax Administration jointly establish and implement a plan for a coordinated evaluation of the Section 1203 process. In establishing this system, IRS and TIGTA also should develop (1) results oriented goals for processing 1203 cases, (2) performance measures that are balanced and can be used to assess progress towards those goals, and (3) methods for collecting and analyzing performance data related to the goals and measures.

RESPONSE: The IRS and the Treasury Inspector General for Tax Administration (TIGTA) share responsibility for implementing Section 1203. We and TIGTA have taken steps to improve the process for investigating and evaluating allegations against employees, including a significant process reengineering that we implemented in March 2002. We agree that coordinated evaluation is desirable, but TIGTA's independence makes it inappropriate for us to oversee its performance. We will establish a baseline for timely action on allegations, now that the process we established in March 2002 has been stabilized, with specific goals based on that baseline data. We will continue to monitor employee attitudes through surveys and focus groups, so that we can identify steps to further address employee concerns about Section 1203. We will use the results of the GAO survey as the baseline for assessing improvements in employee attitudes.

Appendix VII: Comments from the Treasury Inspector General for Tax Administration



INSPECTOR GENERAL
for TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

February 6, 2003

Mr. James R. White
Director, Tax Issues
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. White,

We have reviewed the report concerning the Internal Revenue Service (IRS) and the Treasury Inspector General for Tax Administration's (TIGTA) processing of alleged §1203 violations. This report is entitled *Tax Administration: IRS and TIGTA Should Evaluate Their Processing of Employee Misconduct under Section 1203*, (GAO-03-394). We appreciate the opportunity to comment on the audit and associated report.

The overall objective of this audit was to assess the implementation of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA98) § 1203. The audit objectives included the following:

- (1) to determine the number, type and disposition of section 1203 allegations; (2) determine the frontline enforcement employees' perceptions of how section 1203 has affected their interactions with taxpayers; and (3) identify what problems, if any, IRS and TIGTA have encountered in processing section 1203 cases and the extent to which they have addressed them.

Your audit notes that the IRS and TIGTA made changes to address problems with the process for receiving, investigating, and adjudicating § 1203 allegations. One of the changes instituted in March 2002, streamlined the § 1203 process by requiring that all §1203 allegations except those allegations related to employee tax compliance, *i.e.*, §§ 1203(b)(8) and 1203(b)(9), are reported directly to TIGTA. The IRS and TIGTA also created the Board of Employee Professional Responsibility to ensure that 1203 allegations are promptly investigated and adjudicated.

The audit makes the following recommendation:

Recommendation: The Commissioner of Internal Revenue and the Treasury Inspector General for Tax Administration jointly establish and implement a plan for a coordinated evaluation system of the section 1203 process. In establishing this system, IRS and TIGTA also should develop (1) results-oriented goals for processing section 1203 cases, (2) performance measures that are balanced

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and can be used to assess progress towards those goals, and (3) methods for collecting and analyzing performance data related to the goals and measures.

While TIGTA philosophically understands the desire to have a jointly established and implemented plan for a coordinated evaluation system of the 1203 process, there are legislative challenges in meeting this objective. The RRA98 amendments to the Inspector General Act of 1978 (IG Act) created TIGTA as an independent IG with structural and actual autonomy from the IRS. TIGTA has independently established goals, performance measures, and methods for analyzing performance data for all TIGTA investigations, including section 1203 cases. TIGTA understands that the IRS is in the process of establishing a system to ensure the timely adjudication of section 1203 cases. In addition, as noted earlier, the IRS and TIGTA made changes to the §1203 process to ensure that all § 1203 cases are investigated and adjudicated in a timely manner. TIGTA will continue to effectively manage investigations of § 1203 allegations and TIGTA will work with the IRS to ensure the 1203 process is operating efficiently and effectively.

Thank you for the opportunity to review and comment on your draft report and recommendation regarding the handling and processing of §1203 allegations. Also please allow me to express my appreciation to you and your staff for their work done in this area.

If you need any further information regarding this matter, please do not hesitate to call me or a member of your staff may call Tim Camus, Special Agent in Charge, Operations Division, at (202) 927-7234.

Sincerely,


Pamela J. Gardiner
Acting Inspector General

Appendix VIII: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Staff Acknowledgments

In addition to the persons named above, the following persons made key contributions to this report: Kevin Dooley, Evan Gilman, Patty Hsieh, Shirley Jones, Stuart Kaufman, Anne Laffoon, MacDonald Phillips, Kristen Plungas, Brenda Rabinowitz, Anne Rhodes-Kline, Andrea Rogers, Wendy Turenne, and Chris Wetzel.

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