

April 2000

**TAX  
ADMINISTRATION**

**IRS' Implementation  
of the Restructuring  
Act's Personnel  
Flexibility Provisions**



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**G A O**

Accountability \* Integrity \* Reliability

**United States General Accounting Office  
Washington, D.C. 20548**

**General Government Division**

B-284218

April 28, 2000

The Honorable Bill Archer  
Chairman, Committee on Ways and Means  
House of Representatives

The Honorable Amo Houghton  
Chairman, Subcommittee on Oversight  
Committee on Ways and Means  
House of Representatives

To help the Internal Revenue Service (IRS) improve tax administration and service to taxpayers, Congress included new requirements and more flexibility for handling personnel issues in the IRS Restructuring and Reform Act of 1998 (Restructuring Act).<sup>1</sup> Some of the act's personnel flexibility provisions are mandates requiring IRS to create a new performance management system; terminate employees for specified acts of misconduct, such as lying under oath in a taxpayer matter; eliminate the use of enforcement statistics in employee evaluations; and develop a new training plan that emphasizes customer service. Other personnel flexibility provisions give IRS discretionary authority in hiring, paying, and recruiting staff.

This report responds to your request that we provide a status report on IRS' implementation of these provisions. The report also discusses any tax administration concerns that may have arisen in relation to implementation.

To meet these objectives, we reviewed documentation on the status of each personnel flexibility provision and interviewed officials from IRS organizational units, the Department of the Treasury, and the Office of Personnel Management (OPM). We also reviewed prior GAO and Treasury Inspector General for Tax Administration (TIGTA) reports that related to certain provisions. As agreed with the Subcommittee office, we did not assess the effectiveness of the personnel flexibility provisions.

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<sup>1</sup>P.L. 105-206 was enacted on July 22, 1998. Title I, Subtitle C, Personnel Flexibilities, sections 1201-05, list the provisions, which we summarize in app. I.

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## Results in Brief

IRS has implemented or begun to implement the mandated personnel flexibility provisions in the Restructuring Act. Specifically, the agency has begun implementing a new three-phase performance management system; has been reviewing alleged employee misconduct and, as of March 1, 2000, had terminated 17 employees for misconduct; has been working to eliminate enforcement statistics in employee evaluations; and has implemented a new training program emphasizing customer service.

IRS has also begun using some of the discretionary personnel flexibility provisions permitted by the Restructuring Act. Senior managers have been hired at critical pay;<sup>2</sup> a new pay-banding system for non-Senior Executive Service (SES) managers has been adopted; and several streamlined demonstration projects and new separation incentive payments are under development. Also, certain recruitment, retention, and performance bonuses have been paid.

IRS' implementation of the personnel flexibility provisions raises several tax administration concerns. As our prior report and a TIGTA report have noted, IRS has had difficulty in eliminating the use of enforcement statistics in employee evaluations.<sup>3</sup> Another TIGTA report found that IRS has had difficulty developing an accurate system for counting taxpayer complaints of employee misconduct.<sup>4</sup> In addition, as we have previously reported, IRS employees have taken significantly fewer enforcement actions to collect delinquent taxes since passage of the Restructuring Act. Frontline employees we spoke to believed that the decline was due to a lack of agency guidance on how to interpret the provision concerning employee misconduct.<sup>5</sup>

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## Background

Following a series of hearings concerning the treatment of taxpayers, Congress concluded that IRS needed comprehensive reform. On July 22, 1998, Congress enacted the Internal Revenue Service Restructuring and Reform Act to balance IRS' responsibility to collect taxes with its responsibility to protect the rights of taxpayers and serve the public.

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<sup>2</sup>The act provides that up to 40 individuals may be hired at a pay rate up to the Vice President's, currently \$181,400.

<sup>3</sup>IRS Personnel Administration: Use of Enforcement Statistics in Employee Evaluations (GAO/GGD-99-11, Nov. 30, 1998) and TIGTA, The IRS Should Continue Its Efforts to Achieve Full Compliance With Restrictions on the Use of Enforcement Statistics (Sept. 29, 1999), Ref. No. 199910073.

<sup>4</sup>TIGTA, The IRS Can Further Improve Its Complaint Processing Procedures and Systems (Sept. 29, 1999), Ref. No. 199910070.

<sup>5</sup>IRS Restructuring Act: Implementation Under Way but Agency Modernization Important to Success (GAO/T-GGD-00-53, Feb. 2, 2000).

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The personnel flexibility provisions of the act cover a wide range of personnel-related functions, including

- providing critical pay to attract senior managers,
- rewarding senior executives for meeting IRS goals and objectives,
- terminating employees for misconduct,
- eliminating the use of enforcement statistics in employee evaluations, and
- developing a training program that emphasizes customer service.

As we have reported, the Restructuring Act mandated sweeping reforms at IRS.<sup>6</sup> In addition to the personnel flexibilities, the act included other provisions to reorganize IRS and to provide additional taxpayer protection and rights. In response to the act, IRS changed its mission statement to emphasize taxpayer service and is restructuring its organization into four operating divisions to serve different groups of taxpayers. The status of implementation of the taxpayer protection and rights provisions is the subject of a forthcoming GAO report.<sup>7</sup>

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## Scope and Methodology

To meet our reporting objectives, we reviewed documentation from various IRS organizations on the status of each personnel flexibility provision of the Restructuring Act. We interviewed officials from the organizations responsible for implementing the various personnel provisions, including IRS' Chief, Management and Finance; Chief, Human Resources; and National Director, Complaint Processing Analysis Group. For those provisions requiring Treasury or OPM approval, we obtained the views of cognizant officials. We also asked IRS and Treasury officials for their views on any tax administration concerns or problems they encountered in implementing the provisions of the act. Finally, for some provisions, we reviewed prior GAO and TIGTA reports. As agreed with the Subcommittee office, we did not assess the effectiveness of the personnel flexibility provisions.

We did our work primarily at IRS headquarters in Washington, D.C., between November 1999 and March 2000 in accordance with generally accepted government auditing standards.

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<sup>6</sup>IRS Management: Formidable Challenges Confront IRS as It Attempts to Modernize (GAO/T-GGD/AIMD-99-255, July 22, 1999).

<sup>7</sup>Tax Administration: IRS' Implementation of the Restructuring Act's Taxpayer Protection and Rights Provisions (GAO/GGD-00-85, April 2000).

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We requested comments on a draft of this report from the Commissioner of Internal Revenue. The comments are discussed at the end of this letter and are reprinted in appendix III.

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## IRS Has Implemented or Begun to Implement the Mandated Provisions

IRS has either implemented or begun to implement the personnel flexibility provisions mandated by the Restructuring Act. IRS has begun to overhaul its performance management system and has terminated employees for misconduct. In addition, IRS has been working to eliminate the use of enforcement statistics in employee evaluations and has implemented a new customer service training program.

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## Overhaul of IRS' Performance Management System Has Begun

IRS officials believe that they have established a new performance management system that conforms with the requirements of the Restructuring Act. Section 9508 of the U.S. Code, added by the Restructuring Act,<sup>8</sup> required that IRS establish a performance management system that would maintain individual accountability by establishing retention standards, periodically determine whether each employee met the standards, and take action with any employee whose performance did not meet the standards.

IRS has a three-phased approach for implementing its new performance management system. IRS officials believe that such an approach is needed because of the complexity of developing a new system while undergoing major organizational change, promoting workforce diversity, and maintaining cooperative labor relations. The three phases are

- Phase one: Establishment of a retention standard for all employees (a level of performance necessary to be retained in a job) that requires the fair and equitable treatment of taxpayers was accomplished on July 1, 1999. According to IRS' Chief Human Resources Officer, phase one meets the requirements of section 9508.
- Phase two: Performance plans for managers were implemented by January 31, 2000. Performance plans for other employees are currently being developed, beginning with those for newly created positions.
- Phase three: Integration with other human resource systems is scheduled for some time during fiscal year 2001.

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## IRS Has Terminated Employees for Misconduct

As of March 1, 2000, IRS had terminated 17 employees in accordance with this provision. Section 1203 of the Restructuring Act required IRS to terminate an employee if there was an administrative or judicial determination that the employee committed certain acts or omissions in

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<sup>8</sup>Section 1201 amends title 5 of the U.S. Code, adding a new chapter 95 (sections 9501-10).

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performance of official duties.<sup>9</sup> Such acts include lying under oath in a taxpayer matter and falsifying documents to conceal employee mistakes (see app. I). IRS has procedures in place for receiving and investigating alleged violations. Of over 400 allegations of employee misconduct, IRS found that about 40 were probable violations of the act, while about 70 were considered to be misconduct not covered by the act.

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### IRS Has Been Working to Eliminate the Use of Enforcement Statistics in Employee Evaluations

IRS has taken steps to meet the Restructuring Act's section 1204 prohibition on using enforcement statistics to impose or suggest production quotas or goals for any employee or to evaluate an employee based on such statistics. However, IRS does not have the information necessary to determine whether the implementation steps have been sufficient.

IRS has taken several steps to implement section 1204. IRS has taken action on the recommendations in our earlier report on IRS' use of enforcement statistics, such as making the certification form and associated guidance more specific about the appropriate and inappropriate use of enforcement results.<sup>10</sup> Our current review showed that appraisal forms had been revised in late 1998 to add certification that enforcement statistics were not used in evaluating employees. In addition, IRS has issued a handbook on the appropriate use of performance measures, conducted agencywide training sessions, and planned to issue additional guidance for supervisors on how to avoid the use of enforcement statistics in setting employee performance expectations and monitoring or evaluating performance.

Information collected after passage of the Restructuring Act, but before IRS' implementation was complete, showed that enforcement statistics continued to be used inappropriately. In a spring 1999 survey, IRS found that about 7 percent of its employees in the Collection division and 9 percent in the Examination division reported that their supervisors had either discussed enforcement statistics with them or used statistics to evaluate their performance. A TIGTA report showed that as of September 1999, about 2 percent of the evaluation documents contained suggestions of quotas.<sup>11</sup>

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<sup>9</sup>Section 1203(c)(1)-(2) provides the Commissioner with nondelegable authority to (1) in his sole discretion, take a personnel action other than termination and (2) to set up a procedure that would be used to determine whether an individual should be referred to him for such a determination.

<sup>10</sup>GAO/GGD-99-11, Nov. 30, 1998.

<sup>11</sup>TIGTA, 199910073, Sept. 29, 1999.

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Neither we nor IRS have evaluated the effectiveness of the steps it has taken. At present, IRS has some, but not all, of the performance information it needs to make such an assessment. The results of IRS' next survey of employees should provide comparative data to assess whether the agency has made progress in eliminating the use of enforcement statistics in employee evaluations.

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### IRS' New Customer Service Employee Training Program Is Now in Place

About 50,000 IRS employees had received the new customer service training as of December 31, 1999. Section 1205 of the Restructuring Act required IRS to submit a plan for a new training program emphasizing customer service to the House Ways and Means and Senate Finance Committees. IRS did develop and submit a new training plan to the Committees on March 5, 1999. A pilot version of the new training was not well received by employees, and as a result, IRS revised the course. Feedback on the revised course showed improved employee satisfaction.

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### IRS Has Begun Using the Restructuring Act's Discretionary Authority

IRS has begun using the discretionary personnel flexibilities permitted by the Restructuring Act. Senior executives have been hired using new critical pay authority, a new pay-banding system for non-SES managers has been approved, and several streamlined demonstration projects and new voluntary separation incentive payments for employees are under consideration. Also, IRS has paid retention allowances to certain service center employees. As discussed below, some of the personnel flexibility provisions have been used on a limited basis; others have not been used.

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### New Senior Executives Have Been Recruited

Section 9503 allowed IRS to hire as many as 40 critical pay managers for as long as 4 years at up to the pay rate of the Vice President--\$181,400.<sup>12</sup> As of February 11, 2000, IRS had hired 12 such managers<sup>13</sup> and made preliminary offers to another three using this provision. Additional announcements have been prepared for eight more positions. These positions were identified as critical to IRS' success in improving tax administration and customer service. Positions filled to date include the Chief Information Officer, National Taxpayer Advocate, and Chief, Criminal Investigation Division. (See app. II for a complete listing of positions.)

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### A Broad-Banded Pay System Has Been Approved

IRS has developed a senior manager broad-banding plan in concert with its stakeholders, including Treasury, OPM, and the National Treasury Employees Union. Section 9509 authorized IRS to implement a broad-banded pay system, also called pay banding, to assist in its reorganization.

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<sup>12</sup>The pay rate was \$175,400 when the Restructuring Act was passed. The new pay rate was effective Jan. 1, 2000.

<sup>13</sup>Although 12 critical pay managers had been hired, 1 resigned effective June 26, 1999.



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Pay-banding combines two or more pay grades. Using this provision, IRS plans to combine former GS-14 and GS-15 managers, which according to IRS' Office of Human Resources would allow IRS to reduce staffing imbalances. For example, IRS has 284 more managers than it needs in some cities, while it has 132 unfilled positions in other cities. IRS has received Treasury approval to begin placing managers into the new pay band as early as April 2000.

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**Streamlined Demonstration Projects Are Under Consideration**

Our review of IRS documentation showed that IRS is considering some streamlined demonstration projects that are permitted by section 9507, but it has not used this provision yet.<sup>14</sup> Congress intended that the demonstration projects would allow the Commissioner to identify ways to improve personnel management, provide increased individual accountability, eliminate obstacles to disciplining poor performers, expedite appeals that arise from adverse actions, and promote pay based on performance. Such projects would not be subject to the current lengthy approval processes generally applicable under title 5. Two demonstration projects that IRS was considering as of November 30, 1999, were modifying the rating cycle for senior executives and authorizing team-based awards.

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**A Strategy for New Separation Incentive Payments Is Being Developed**

Our review of IRS documentation showed that IRS is developing a strategy for using the new separation incentive payments, including an analysis of personnel needs by location. Section 1202 of the Restructuring Act allowed IRS to offer voluntary separation incentive payments to employees to the extent necessary to carry out the reorganization plan. This statutory buyout authority was intended to afford IRS additional flexibility in making the personnel decisions needed for its reorganization. Similar to other federal government buyout programs, this provision would allow eligible employees to receive up to \$25,000 after voluntary separation from IRS.

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**Recruitment, Retention, and Relocation Incentives Have Been Used on a Limited Basis**

IRS has made limited use of the recruitment, retention, and relocation provisions in section 9504 because the agency has been able to use existing legal authority to pay such expenses, and new regulations are currently being drafted. As a pilot project, new authority was granted to the Memphis Service Center to pay a lump-sum retention allowance to seasonal data transcribers who returned for a subsequent season. IRS plans to evaluate the results of this pilot for possible use in other service centers.

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<sup>14</sup>Demonstration projects, like pilot programs, are generally used to illustrate, demonstrate, or test a proposed program using a limited population or test group.

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## IRS Has Made Either Limited Use or No Use of the Remaining Provisions

IRS has made limited use or no use of the remaining personnel flexibility provisions. For example, section 9505 allowed senior executives who have program management responsibility over significant functions to receive performance bonuses without regard to certain limits established in current federal personnel law. Since enactment, Treasury approved IRS' request to pay a 25-percent bonus for one senior executive. Other SES bonuses for fiscal years 1998 and 1999 were limited to no more than 20 percent, the rate permitted by existing legislation.

Section 9506 broadens the definition of a "career reserved position" to include certain positions filled by limited term or limited emergency appointees. As of March 1, 2000, IRS had filled three career reserved positions with limited term appointments. These positions were an assistant to the Commissioner (3-year term), the Transition Executive for Shared Services (2-year term), and the Director of Exempt Organizations, Rulings, and Agreements (3-year term).

Section 9510 provides general rules for workforce staffing and has not been used. Section 9510(a) provides rules for converting employees from term appointments to permanent appointments, and section 9510(b) authorizes IRS to establish category rating systems for evaluating job applicants rather than assigning numerical ratings. Under this provision, IRS is authorized to select any candidate in the highest quality category, so long as veterans' preference rights have been accorded.

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## Additional Tax Administration Concerns in Implementing the Personnel Flexibility Provisions

IRS' implementation of the personnel flexibility provisions of the Restructuring Act raises several concerns. As already discussed, IRS has had difficulty eliminating all references to enforcement statistics in employee evaluations. In addition, IRS has had difficulty developing an accurate system for tracking taxpayer complaints of employee misconduct and has experienced a significant decline in enforcement actions, such as liens, levies, and seizures, to collect delinquent taxes.

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## Errors Could Exist With the Complaint Processing System

IRS recognized that it needs a system for tracking taxpayer complaints of employee misconduct as defined in section 1203 of the Restructuring Act. In September 1999, TIGTA reported that IRS did not have an integrated complaint processing system for identifying and reporting taxpayer complaints and allegations of employee misconduct.<sup>15</sup> Instead, IRS used existing systems and procedures that were in place before the

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<sup>15</sup>TIGTA, 199910070, Sept. 29, 1999.

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Restructuring Act. Thus, IRS cannot ensure that the complaints are not double-counted because these systems are not linked with one another.

TIGTA noted that IRS is taking significant actions to improve its complaint processing procedures and systems. IRS actions include the development of an integrated database that will permit recognition of duplicate complaints and identify trends. During our work, IRS approved the first step in this effort by contracting for an analysis of new information system requirements. According to IRS' National Director, Complaint Processing Analysis Group, IRS anticipates having the new system requirements in place by September 30, 2000.

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## Enforcement Actions Have Declined Since Passage of the Restructuring Act

IRS' use of enforcement actions, such as liens, levies, and seizures, to collect delinquent taxes has declined significantly since passage of the Restructuring Act. We noted in our February testimony<sup>16</sup> that comparing data on enforcement actions before the Restructuring Act to fiscal year 1999 data showed that lien filings were down about 69 percent, levies down about 86 percent, and seizures down about 98 percent. Moreover, according to IRS, collections from delinquent taxpayers were down about \$2 billion from fiscal year 1996 levels.

In our testimony, we concluded that while we do not know the appropriate number of enforcement actions IRS should take, the current number of seizures is probably too low. We also heard repeatedly from frontline employees about a lack of guidance on when to make seizures in light of section 1203, which requires termination of employees for specified misconduct. Accordingly, in our recent report on seizures,<sup>17</sup> we made recommendations aimed at (1) clarifying when seizures ought to be made, (2) preventing departures from process requirements established to protect taxpayer interest, and (3) delineating senior managers' responsibilities for ensuring that seizures are made when justified. In commenting on our report, IRS generally agreed with our recommendations.

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## Agency Comments

We requested comments on a draft of this report from the Commissioner of Internal Revenue. In a letter dated April 20, 2000, the Commissioner said that he was pleased with our characterization of IRS' implementation of the Restructuring Act's personnel flexibilities. He also said that IRS was striving to be a model for the rest of the federal government in the area of

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<sup>16</sup>GAO/T-GGD-00-53, Feb. 2, 2000.

<sup>17</sup>IRS Seizures: Needed for Compliance but Processes for Protecting Taxpayer Rights Have Some Weaknesses (GAO/GGD-00-4, Nov. 29, 1999).

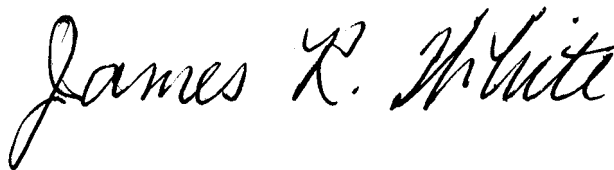
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performance management. A Strategic Assessment was attached to the letter, summarizing IRS' strategies for managing its human resource needs (see app. III).

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As agreed with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days from its date of issue. At that time, we will be sending copies to Senator William V. Roth, Jr., Chairman, and Senator Daniel P. Moynihan, Ranking Minority Member, Senate Committee on Finance; Representative Charles B. Rangel, Ranking Minority Member, House Committee on Ways and Means; Representative William J. Coyne, Ranking Minority Member, Subcommittee on Oversight, House Committee on Ways and Means; the Honorable Lawrence H. Summers, Secretary of the Treasury; the Honorable Charles O. Rossotti, Commissioner of Internal Revenue; and the Honorable Janice R. Lachance, Director, Office of Personnel Management. We will also make copies available to others upon request.

If you have any questions, please call me at (202) 512-9110 or Alton C. Harris at (404) 679-1900. A key contributor to this report was John Gates.



James R. White  
Director, Tax Policy and  
Administration Issues

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## Abbreviations

IRS	Internal Revenue Service
OPM	Office of Personnel Management
SES	Senior Executive Service
TIGTA	Treasury Inspector General for Tax Administration

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# Summary of Restructuring and Reform Act Provisions Authorizing Personnel Flexibilities Within IRS

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## Section 1201: Improvements in Personnel Flexibilities

Title 5 of the U.S. Code provides personnel rules and procedures that regulate hiring, evaluating, promoting, and firing government employees, including employees at the Internal Revenue Service (IRS). Section 1201 of the Internal Revenue Service Restructuring and Reform Act of 1998 (P.L. 105-206) amends title 5, adding a new chapter 95 (sections 9501-10), to provide IRS with certain personnel flexibilities.

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## Section 9501 Allows Internal Revenue Service Personnel Flexibilities

Section 9501 allows IRS certain personnel flexibilities (as provided by sections 9502-10) if they are exercised consistently with certain existing provisions in title 5 (e.g. provisions relating to merit system principles and prohibited personnel practices, preference eligibles, aggregate limitations on pay, labor management relations, and delegation of authority for personnel management). Employees within a unit with a recognized employee union will be affected by the exercise of these personnel flexibilities only if a written agreement between the union and the IRS so specifies.

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## Section 9502 Authorizes Pay Authority for Critical Positions

Section 9502 authorizes the Office of Management and Budget (OMB) to approve requests from IRS for critical position pay up to the rate of pay of the vice president (3 U.S.C. 104), an increase from what section 5377 allows.<sup>1</sup>

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## Section 9503 Allows Streamlined Critical Pay Authority

Section 9503 allows the use of a streamlined process in fixing the compensation and appointing up to 40 individuals for terms of no more than 4 years to designated critical administrative, technical, and professional positions needed to carry out IRS functions. The positions must require an extremely high level of expertise and be critical to IRS' accomplishment of an important mission. Exercise of the authority must be necessary to recruit or retain an individual exceptionally well qualified for the position and may be used for a period of 10 years after the provision's enactment. Appointees to such positions must not have been IRS employees before June 1, 1998. The total rate of pay authorized under this provision (including performance and recruitment bonuses) may not exceed the rate of pay of the vice president. If these conditions are met, the appointments are not subject to the otherwise applicable requirements under title 5 governing appointments to the competitive or Senior

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<sup>1</sup>Under 5 U.S.C. 5377, at the request of an agency head, OMB, in consultation with the Office of Personnel Management (OPM), may grant authority to fix the rate of basic pay for a "critical position" up to the rate payable for level I of the Executive Service. Section 5377(b) limits this grant of authority to those positions that require expertise in an extremely high level in a scientific technical, professional, or administrative field and that are critical to the agency's successful accomplishment of an important mission.



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**Appendix I**  
**Summary of Restructuring and Reform Act Provisions Authorizing Personnel Flexibilities**  
**Within IRS**

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Executive Service or chapter 51, relating to classification of positions, or chapter 53, relating to pay rates and systems.

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**Section 9504 Allows Recruitment, Retention, Relocation Incentives, and Relocation Expenses**

Section 9504 allows IRS to vary from existing provisions governing recruitment, relocation, and retention incentives for a period of 10 years, subject to OPM approval.<sup>2</sup> This provision also allows IRS to pay from appropriations allowable relocation expenses (as set out in 5 U.S.C. 5724a) for employees transferred or reemployed and allowable travel and transportation expenses (as set out in 5 U.S.C. 5723) for new appointees.

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**Section 9505 Provides Performance Awards for Senior Executives**

Section 9505 provides that for a period of 10 years, IRS senior executives who have program management responsibility over significant functions may be paid a performance bonus without regard to the limitation in 5 U.S.C. 5384(b)(2). Any award in excess of the 20 percent limitation, however, must be approved by the Secretary of the Treasury.<sup>3</sup> Section 9505 further provides that notwithstanding 5 U.S.C. 5384(b)(3), the Secretary of the Treasury shall determine the aggregate amount of performance awards available under this provision to be paid during the fiscal year.<sup>4</sup> This amount may not exceed 5 percent of the aggregate amount of basic pay paid to IRS career senior executives during the preceding fiscal year. (A performance award may not be paid to an executive in a calendar year if that executive's total annual compensation will exceed the rate of pay of the vice president.)

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<sup>2</sup>Under 5 U.S.C. 5753, OPM may authorize the head of any agency to pay a bonus to an employee if OPM determines that an agency would be likely, in the absence of such a bonus, to encounter difficulty in filling the position. The amount of the bonus under this section may not exceed 25 percent of the annual rate of basic pay of the position to which the employee is being appointed (or relocated to). Under 5 U.S.C. 5754, OPM may authorize the head of an agency to pay an allowance to an employee if the unusually high or unique qualifications of the employee or special need of the agency for the employee's services make it essential to retain the employee and the agency has determined that the employee would be likely to leave in the absence of a retention allowance. A retention allowance may not exceed 25 percent of the employee's rate of basic pay.

<sup>3</sup>5 U.S.C. 5384 provides rules for performance awards in the Senior Executive Service. Section 5384(b)(2) provides that a performance award may not be less than 5 percent nor more than 20 percent of the career appointee's rate of basic pay.

<sup>4</sup>Section 5384(b)(3) provides that the aggregate amount of performance awards paid by an agency during any fiscal year may not exceed the greater of 10 percent of the aggregate basic pay paid to all career appointees in the agency during the preceding fiscal year or 20 percent of the average of the annual rates of basic pay paid to all career appointees during the preceding fiscal year.

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**Section 9506 Provides Limited Appointments to Career Reserved Senior Executive Service Positions**

Section 9506 broadens the definition of a “career reserved position” with regard to IRS to include certain positions filled by “limited emergency appointees” and “limited term appointees” (see 5 U.S.C. 3132(a) (5)-(6)). Section 9506 limits the number of appointees under this provision to up to 10 percent of the number of SES positions available to IRS. Notwithstanding provisions in section 3132 regarding limited term and limited emergency appointees, the term of such an appointment is limited to 3 years, and an appointee is allowed to serve two such terms.<sup>5</sup>

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**Section 9507 Authorizes Streamlined Demonstration Project Authority**

Section 9507 authorizes IRS to conduct streamlined demonstration projects under 5 U.S.C. 4703 when certain requirements contained therein are inapplicable.<sup>6</sup>

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**Section 9508 Provides General Workforce Performance Management System**

Section 9508 provides that in lieu of a performance appraisal system, IRS must, within 1 year, establish a “performance management system” that would maintain individual accountability by (1) establishing one or more retention standards for each employee related to the work of that employee, (2) making periodic determinations of whether each employee meets the established retention standards, and (3) taking actions with respect to any employee whose performance does not meet the established retention standards.<sup>7</sup>

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**Section 9509 Authorizes General Workforce Classification and Pay**

Section 9509 authorizes IRS, subject to criteria prescribed by OPM, to establish one or more broad-banded pay systems covering all or any portion of its workforce. For the purposes of this provision, the term “broad-banded pay system” means any system for grouping positions for pay, job evaluation, and other purposes that is different from the system established under chapters 51 and 53 of title 5 as a result of combining grades and related ranges of pay into one or more occupational series.

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<sup>5</sup> 5 U.S.C. 3132 provides definitions and other related provisions for the Senior Executive Service. Section 3132(a)(8) defines a “career reserved position” as a position that is required to be filled by a career appointee. Section 3132(b)(1) provides that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality or the public’s confidence in the impartiality of the government.

<sup>6</sup> Under 5 U.S.C. 4703, OPM is authorized, either directly or through agreement or contract with one or more agencies, to conduct and evaluate personnel demonstration projects. (Demonstration projects, like pilot programs, are generally used to illustrate, demonstrate, or test a proposed program using a limited population or test group.)

<sup>7</sup> Under 5 U.S.C. 4302, each agency is to develop one or more performance appraisal systems that provide for periodic appraisals of job performance of employees.

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**Section 9510 Provides**  
**General Workforce Staffing**

Section 9510 is the final provision added by section 1201 of the Restructuring and Reform Act, and it provides general workforce staffing rules. Section 9510(a) provides rules for converting employees from term appointments to permanent appointments. Section 9510(b) authorizes IRS to establish category rating systems for evaluating job applicants under which qualified candidates are divided into two or more quality categories on the basis of relative degrees of merit rather than assigned individual numerical ratings. Under this provision, IRS is authorized to select any candidate in the highest quality category, as long as veterans' preference rights are accorded.

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**Section 1202:**  
**Voluntary Separation**  
**Incentive Payments**

Section 1202 of the act authorizes IRS to use Voluntary Separation Incentive Pay (buyouts) to the extent necessary to carry out the plan to reorganize IRS under section 1001 of the act. Under the provision, eligible employees could receive a lump sum up to \$25,000 after voluntary separation from IRS.<sup>8</sup>

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**Section 1203:**  
**Termination of**  
**Employment for**  
**Misconduct**

Section 1203 of the act mandates that IRS terminate the employment of an IRS employee if there is a final administrative or judicial determination that the employee committed certain acts or omissions in the performance of official duties. There are 10 acts or omissions listed in this provision that require termination, as follows:

- “willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer’s home, personal belongings, or business assets;
- “providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative;
- “with respect to a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, the violation of . . . any right under the Constitution of the United States or any civil right established under [certain existing legislation];
- “falsifying or destroying documents to conceal mistakes made by any employee with respect to a matter involving a taxpayer or taxpayer representative;
- “assault or battery on a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service, 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;

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<sup>8</sup>This provision is very similar to other buyout provisions in previous legislation. See, e.g., the Omnibus Appropriations Act of 1997, P.L.104-208, section 663, authorizing voluntary separation incentives for employees at certain federal agencies.

- “violations of the Internal Revenue Code of 1986, Department of Treasury regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of retaliating against, or harassing, a taxpayer, taxpayer representative, or other employee of the Internal Revenue Service;
- “willful misuse of the provisions of section 6103 of the Internal Revenue Code of 1986 for the purpose of concealing information from a congressional inquiry;
- “willful failure to file any return of tax required under the Internal Revenue Code of 1986 on or before the date prescribed therefor (including any extensions), unless such failure is due to reasonable cause and not to willful neglect;
- “willful understatement of Federal tax liability, unless such understatement is due to reasonable cause and not to willful neglect; and
- “threatening to audit a taxpayer for the purpose of extracting personal gain or benefit.”

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### **Section 1204: Basis for Evaluation of Internal Revenue Service Employees**

Section 1204 of the act prohibits IRS from using records of tax enforcement results to evaluate employees or to impose or suggest production quotas or goals for employees. This provision repealed section 6231 of the Technical and Miscellaneous Revenue Act of 1998, P.L. 100-647, which prohibited the use of records of tax enforcement results to evaluate employees directly involved in collection activities and their immediate supervisors or to impose or suggest production quotas or goals for these employees.

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### **Section 1205: Employee Training Program**

Section 1205 of the act requires IRS to implement an employee training program within 180 days of the act’s enactment. The plan, with details as specified by this provision, must be submitted to the Senate Finance Committee and the House Ways and Means Committee.

# IRS Executive Positions Filled, Hiring in Process, or Recruiting in Process Using Streamlined Critical Pay Authority

<b>Position</b>	<b>Status as of February 11, 2000</b>	<b>Appointment date</b>
Chief Financial Officer	Hired <sup>a</sup>	August 16, 1998
Chief Information Officer	Hired	August 11, 1998
National Taxpayer Advocate	Hired	September 1, 1998
Deputy Commissioner, Modernization	Hired	September 6, 1998
Director, Government Program Management Office	Hired	November 2, 1998
Assistant Commissioner, Management and Financial Systems	Hired	May 9, 1999
National Director, Account Management Division	Hired	July 19, 1999
Chief, Agencywide Shared Services	Hired	October 3, 1999
Commissioner, Large and Mid-Sized Business Division	Hired	November 28, 1999
Chief Criminal Investigation Division	Hired	December 6, 1999
Director, Program Control (Enterprise Program Management Office)	Hired	December 19, 1999
Commissioner, Small Business and Self-Employed Division	Hired	January 10, 2000
Director, Real Estate and Facilities Management	In process	
Deputy Commissioner, Wage and Investment Division	In process	
Exempt Organizations Rulings and Agreements	In process	
Senior Technical Advisor, Large and Mid-Sized Business Division (Financial Services and Healthcare)	Recruiting	
Senior Technical Advisor, Large and Mid-Sized Business Division (Food, Retail, and Pharmaceutical)	Recruiting	
Senior Technical Advisor, Large and Mid-Sized Business Division (Energy and Chemical)	Recruiting	
Senior Technical Advisor, Large and Mid-Sized Business Division (Communications, Technology, and Media)	Recruiting	
Senior Technical Advisor, Large and Mid-Sized Business Division (Manufacturing, Construction, and Transportation)	Recruiting	
Director, International, Large and Mid-Sized Business Division	Recruiting	
Director, Strategy, Research, and Program Planning Large and Mid-Sized Business Division	Recruiting	
Director, Strategic Planning and Client Services, Information Services	Recruiting <sup>b</sup>	

<sup>a</sup>The Chief Financial Officer resigned effective June 26, 1999.

<sup>b</sup>This position is also being paneled for standard SES consideration.

# Comments From the Internal Revenue Service



COMMISSIONER

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

April 20, 2000

Mr. James R. White  
Director, Tax Policy and Administration Issues  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. White:

Thank you for the opportunity to review and comment on your draft report entitled "Tax Administration: IRS' Implementation of the Restructuring Act's Personnel Flexibility Provisions." Upon review, we were pleased that the report recognizes the IRS as having complied with the requirements set forth with respect to the establishment of the new performance management system and increased use of staffing tools, including variations of the authority for payment of retention allowances. Our modernization and restructuring effort is moving forward, and the new business units are standing up. Our progress in implementing other personnel flexibilities will continue as outlined in the enclosed Strategic Assessment, which summarizes our strategies for managing the human resource needs of the modern IRS.

Our goal is to be the model for the rest of the Federal service in the area of performance management. We have implemented many of the recommendations of the President's Management Council on Managing Performance in the Federal Government prior to the February 2000 issuance of its Interagency Work Group's report. We continue to explore private sector models and consult with the Office of Personnel Management to maximize the impact of implementation of the flexibility provisions on organizational effectiveness. Although we have made great strides, we anticipate further improvements as we implement additional flexibilities through the use of our streamlined demonstration project authority.

If you have any questions, your staff may contact Ronald P. Sanders, Chief Human Resource Officer, at (202) 283-9200.

Sincerely,

A handwritten signature in cursive script that reads "Charles O. Rossotti".

Charles O. Rossotti

Enclosure

**Strategic Assessment: Our People**

*IRS Office of Strategic Human Resources*

**The Issue:** With almost 80% of its budget devoted to its employees, the Internal Revenue Service depends on its human capital to accomplish its vital mission. However, as we begin to fully implement our Modernization Blueprint, our workforce is in a state of flux. Even as employees are being realigned to new positions and organizations, the Service’s workforce has become severely imbalanced in a number of critical characteristics, such as age and skill mix. These imbalances, particularly as they relate to Modernization, potentially degrade our ability to meet business requirements over the long term.

- **Internal Trends.** In the short term, our new organization structure will create geographic misalignments and “structural” (or demand-supply) gaps in a number of key business areas, such as pre-filing. Those structural gaps will be further exacerbated by labor force/labor market demographics, both internal and external, that will impede our ability to close them. For example, while we have an oversupply in administrative and overhead occupations, we face increased, long-term demand for such mission-critical categories as front-line compliance and information technology professionals and managers. However, over 50% of the employees in these critical categories are eligible for some type of retirement, and their multi-year replenishment “pipeline” has been reduced to a trickle because of past fiscal constraints.

	<b>Existing</b>	<b>Emerging</b>
<b>External</b>	Tight Labor Market Pay Constraints, Image	Nomadic Career Patterns
<b>Internal</b>	Transition Trauma High Retirement Eligibility	Supply/Demand, Skills Gaps Geographic Misalignments Inadequate Replacement Pool

- **External Trends.** Moreover, these mission-critical categories are among the most in demand in the external job market. In this regard, retention and eventual replacement of employees in these categories will be adversely affected by: (1) a hyper-competitive external labor market, particularly for degreed candidates of the sort IRS must employ; (2) the negative image of the Federal government, as well as the IRS, as an employer of choice; (3) continued statutory constraints on our ability to compete on a dollar-for-dollar basis for prime employment candidates; (4) a more portable retirement system for new-hires that will allow them more employment mobility; and (5) emerging career patterns that indicate frequent job changes over the course of a 25-year work-life span – in other words, candidates are no longer looking for a career with a single organization.

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**Appendix III**  
**Comments From the Internal Revenue Service**

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**Strategies.** These challenges require a comprehensive, strategic approach to managing the Service's human resources. That approach has four main components: transition, renewal, development, and performance, each of which is briefly summarized below. Specific initiatives are indicated by *italics*.

- **Transition.** Under the terms of a landmark *Restructuring Agreement* with the National Treasury Employees Union, we have developed a *comprehensive People Transition Strategy* that non-competitively realigns over 90% of our current employees to jobs in our new organization. In addition, we have begun to implement an *executive and senior management realignment strategy* that employs a merit-based, competitive process to fill our 1600+ top leadership positions. Those employees and managers that do not realign will be (a) offered early/regular *retirement, with separation incentive pay* (VSIP), to leave the IRS; or (b) assigned to interim positions in our new Divisions until retrained and/or permanently placed. As those buyouts and placements are effected, additional full-time equivalents (FTEs) will be freed up to support critical workforce renewal efforts.
- **Renewal.** The imbalances noted at the outset also require a sustained workforce renewal effort, and the Service's FY 2001 budget proposes over 2800 FTEs to support that effort. These resources, along with those freed up by our transition strategy, will be allocated to Divisions in accordance with a *strategic hiring plan* that identifies critical needs as part of an overall *personnel requirements system*. That plan and system are currently under development, and to execute it, the Service should establish a *Strategic Recruiting Council*, championed by a Division Commissioner and chaired by a senior executive, to oversee an aggressive college recruiting campaign and reinvigorated *intern and cooperative education programs*. That Council should also develop and oversee the execution of a sophisticated *recruiting campaign* employing state-of-the-art labor market research, print and electronic (that is, Web-based) media outreach, a *cadre of trained IRS recruiters*, and a *sustained campus presence* to attract high quality degreed candidates.
- **Development.** In the future, the Service will depend even more heavily on employees that are technically proficient and well led. Both require substantial investments in training and development -- at least at the level of current funding. However, we must also make qualitative improvements in the way training is developed and delivered. In this regard, the IRS needs to completely *redesign its learning and education system* to reflect its new organization structure, devolving responsibility for technical training to its Divisions while *strengthening its corporate leadership development* activities to insure an adequate "pipeline" of high quality candidates for our top jobs. And in order to meet the demand for more and better training, the Service must also continue its efforts to identify and *validate mission-critical technical and leadership competencies* and occupational career paths, *exploit new technologies* (such as Web-based distance learning), and *establish strategic partnerships* with universities and other education providers to expand capacity.



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**Appendix III**  
**Comments From the Internal Revenue Service**

- **Performance.** The Service's strategic goals implicitly require our employees and managers to demonstrate a new set of values and behaviors that build upon, and complement, those that have served the IRS so well. If those values and behaviors are to become part of the Service's organizational culture, they must be reinforced and rewarded in a systematic way. To this end, we have implemented a *new performance appraisal system* that aligns executive and managerial performance standards with our organizational Balanced Measures System (BMS) and establishes individualized annual performance contracts that are linked directly to business objectives. In addition, we are set to implement a *new paybanding system* for senior managers, and a *new pilot bonus system* for key senior leadership positions, that will link executive and managerial compensation more directly to performance. These initiatives must be tested and expanded. In addition, the Service must complete the current effort to align *bargaining unit employee performance standards* with BMS, and undertake more comprehensive pay and performance management reforms in partnership with NTEU.

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