
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION

Office of Inspections and Evaluations



*Internal Revenue Service's Compliance
With the Lautenberg Amendment*

June 23, 2014

Reference Number: 2014-IE-R008

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Phone Number | 202-622-6500

E-mail Address | TIGTACommunications@tigta.treas.gov

Website | <http://www.treasury.gov/tigta>



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

June 23, 2014

MEMORANDUM FOR CHIEF, CRIMINAL INVESTIGATION

FROM: R. David Holmgren *R. David Holmgren*
Deputy Inspector General for Inspections and Evaluations

SUBJECT: Final Inspection Report – Internal Revenue Service’s Compliance
With the Lautenberg Amendment (# IE-14-003)

This report presents the results of our inspection to determine whether the Internal Revenue Service (IRS) has policies and procedures in place to identify law enforcement officers (hereafter referred to as special agents) convicted of or who pled no contest to a misdemeanor crime of domestic violence which, under U.S. law, prohibits any person from possessing a weapon or ammunition.

Synopsis

The IRS has adequate controls in place to help ensure compliance with the Lautenberg Amendment,¹ which prohibits any person convicted of a misdemeanor crime of domestic violence from possessing firearms or ammunition, and therefore bars a person with such a conviction from employment with the IRS as a special agent. The controls include a prescreening process and background investigation for new law enforcement applicants, and periodic background investigations for existing special agents. Any discrepancies and potentially unfavorable information found as a result of the background investigation are reported to the appropriate IRS offices for review and administrative or disciplinary action, as deemed necessary.

We found that 98 percent of all special agents in the Office of Criminal Investigation had current background investigations (an investigation initiated or completed within five years). Employees in the Personnel Security Office² researched the approximately 2 percent (51 of 2,490) who did

¹ 18 U.S.C. § 922(g)(9).

² The Personnel Security Office within the IRS Human Capital Office is responsible for administering the IRS’s prescreening and background investigation programs.



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Abbreviations

ALERTS	Automated Labor and Employee Relations Tracking System
CI	Criminal Investigation
HCO	Human Capital Office
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
OPM	Office of Personnel Management
PARIS	Performance and Results Information System
TIGTA	Treasury Inspector General for Tax Administration



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Background

The Lautenberg Amendment, codified as 18 U.S.C. Section 922(g)(9), prohibits any person convicted of a misdemeanor crime of domestic violence from possessing firearms or ammunition, even in the line of duty. This prohibition applies to law enforcement personnel without exception.¹ A crime identified under this statute is an immediate disqualifier to Federal law enforcement applicants and a terminating action to those presently employed as special agents. The prohibition applies to persons convicted of such misdemeanors at any time, even if the conviction occurred prior to the law's effective date, September 30, 1996. The misdemeanor crime of domestic violence must first be an offense that is a misdemeanor under Federal, State, or Tribal law. Additionally, the crime must involve the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by:

- a current or former spouse, parent, or guardian of the victim,
- a person with whom the victim shares a child in common,
- a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or
- a person similarly situated to a spouse, parent, or guardian of the victim.²

This review was performed at the Internal Revenue Service (IRS) Office of Criminal Investigation (CI) and the Human Capital Office (HCO) in Washington, D.C., during the period December 2013 through April 2014. We conducted this inspection in accordance with the Council of the Inspectors General for Integrity and Efficiency Quality Standards for Inspections. Detailed information on our objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹ United States Attorneys' Manual, Title 9, Criminal Resource Manual, Section 1117 (July 2013).

² 18 U.S.C. § 921(a)(33).



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Results of Review

Procedures to Identify Law Enforcement Officers Convicted of a Misdemeanor Crime of Domestic Violence Are in Place

The IRS has adequate controls in place to identify special agents who have been convicted of a misdemeanor offense of domestic violence, an offense which prohibits such a person from possessing a weapon or ammunition. The controls include a prescreening process and background investigation for new applicants and periodic background investigations for existing special agents. Additionally, CI has a self-reporting process that requires its special agents to report any and all arrests, except for traffic violations that result in fines of less than \$150 and that do not result in the loss of driving privileges. As it relates specifically to the Lautenberg Amendment, CI requires its special agents to notify their first-line manager if they were convicted of or pled no contest to a domestic violence charge.³ These controls are documented in the IRS Internal Revenue Manual (IRM).⁴

Prescreening and background investigations

The HCO prescreens all IRS applicants to determine initial suitability and eligibility. As part of the prescreening process, the HCO submits each applicant's fingerprints to the Office of Personnel Management (OPM), which searches the Federal Bureau of Investigation Identification Division's criminal history records. The OPM reports the results of the fingerprint check to the IRS HCO, and the HCO must review the results to determine whether the applicant is suitable for employment with the IRS. The IRS specifically screens applicants for special agent positions for offenses related to domestic violence. Applicants may not report for duty and be allowed unescorted access to IRS facilities until this process has been favorably completed.

The IRS classifies all law enforcement positions as high-risk public trust positions; therefore, all new special agents must have a background investigation, and current special agents must have a periodic background reinvestigation every five years.⁵ An IRS special agent may also have a security clearance that requires a background investigation every five years (top secret clearance) or 10 years (secret clearance).

³ Internal Revenue Manual 9.11.4.4 (Aug. 5, 2005).

⁴ The IRM is the IRS's primary official source of instructions to staff related to the administration and operations of the IRS. It contains the directions employees need to carry out their operational responsibilities.

⁵ The IRS can choose to waive the requirement for a background investigation if the applicant has a current suitability or security investigation that was favorably adjudicated within the past five years, the investigation meets or exceeds the requirements for the position, and there has been no break in service greater than 24 months.



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Within the HCO, the Personnel Security Office initiates and tracks the status of the background investigations, and investigators from the OPM conduct the investigations.⁶ Any discrepancies and potentially unfavorable information found as a result of the background investigation is reported to the Office of Labor Relations within the HCO for adjudication⁷ and subsequently to CI for review and administrative or disciplinary action, if deemed necessary.

Information provided by the Personnel Security Office revealed that about 98 percent of all special agents had current background investigations. However, approximately 2 percent (51 of 2,490) of special agents did not have current background investigations because reports used to identify special agents that require background investigations did not include special agents who previously held secret or top secret clearances or currently have secret clearances.⁸ In most cases, CI managers cancelled the special agents' security clearances but did not update the special agents' position description in the personnel system (HR Connect) to high-risk public trust.

Employees in the Personnel Security Office indicated that they are exploring options to mitigate the problem, which may include using a different source to track the status of pending background investigations and/or enhancing the reporting capabilities of the current tracking systems. These errors affected a relatively small number of IRS special agents and appeared to have little impact on the overall effectiveness of the controls designed to identify special agents convicted of a misdemeanor crime of domestic violence.

Self-reporting process

CI has a self-reporting process that requires all special agents to promptly notify their first-line manager, whether verbally or in writing, of any arrest no later than the next scheduled workday.⁹ Special agents who fail to report an arrest to CI management could be subject to disciplinary action. Additionally, a special agent who is convicted of or pleads no contest to a charge of domestic violence must notify his or her first-line manager. Following the initial notification by the special agent, the first-line supervisor should notify his or her Special Agent in Charge (or equivalent). The first-line manager should also ensure that information related to the arrest is reported to the Treasury Inspector General for Tax Administration (TIGTA) Office of Investigations, which is responsible for investigating all allegations of misconduct related to CI special agents.

⁶ IRM 10.23.3.4 (Nov. 15, 2011).

⁷ Adjudication is an examination of a person's character or conduct over time resulting in a favorable or unfavorable determination of their employment suitability; eligibility for access to classified information, materials, or areas; or retention in Federal employment.

⁸ Reports from the Security Entry and Tracking System are used to identify special agents who require background investigations related to a high-risk public trust position. This report excludes special agents who have a security clearance.

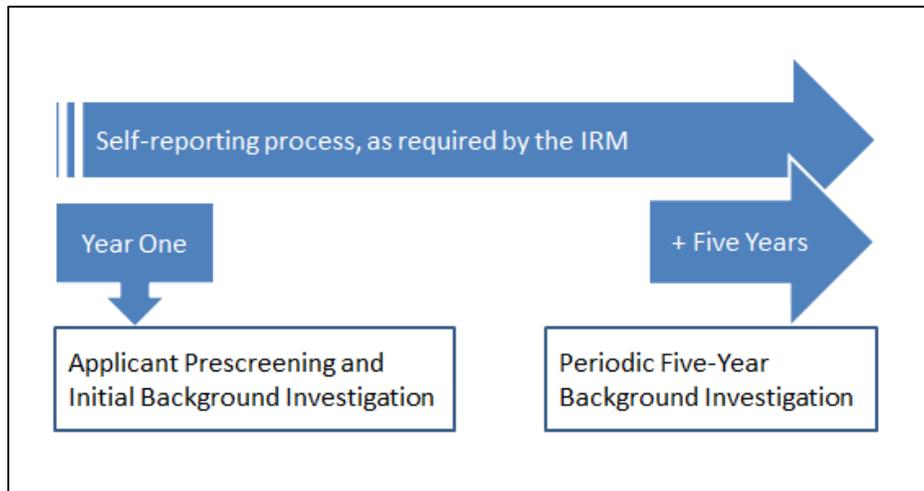
⁹ IRM 9.11.4.4 (Aug. 5, 2005).



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In summary, each IRS special agent should have a background investigation approximately every five years, which should disclose an arrest or conviction related to misdemeanor domestic violence. At any point during this five-year period, a special agent is expected to report an arrest or conviction to his or her first-line manager. Figure 1 illustrates the control processes.

Figure 1: Illustration of CI's Control



Source: TIGTA analysis of IRS procedures and interviews with IRS HCO personnel.

Allegations Related to Domestic Violence

The TIGTA Office of Investigations records information related to its investigations in the Performance and Results Information System (PARIS)¹⁰ and submits a report of investigation to the IRS for each investigation related to an IRS employee. Upon receipt of the TIGTA report of investigation, the IRS Labor Relations Office should record all allegations of misconduct and any supporting details in the IRS's Automated Labor and Employee Relations Tracking System (ALERTS).¹¹

We reviewed PARIS and ALERTS records from October 2008 through January 2014 for employee misconduct allegations related to IRS special agents and identified 13 cases where allegations in the case appeared to be related to domestic violence, as defined by Title 18 of the United States Code.¹² In each case, the Office of Investigations gathered the facts and circumstances related to the allegation and subsequently submitted a report of investigation to the IRS for administrative adjudication. The TIGTA reports of investigation do not include any

¹⁰ The PARIS is the primary management information system for the TIGTA Office of Investigations.

¹¹ The ALERTS is an IRS database which allows users to establish, track, and maintain employee relations cases and to establish and track Labor Relations activities; Unfair Labor Practice charges; and events for negotiation processes, grievances, and arbitration proceedings.

¹² 18 U.S.C. § 921(a)(33).



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recommended action that the IRS should consider taking in regard to the facts contained in the investigative report.

Of the 13 cases investigated by the Office of Investigations during the period of our review, ***
 ***** 3d *****
 ***** *. This was the only case where the Lautenberg Amendment was applicable.

The Lautenberg Amendment was not applicable in the remaining 12 cases, because the special agents involved were not convicted of the misdemeanor crime of domestic violence. ** **

 ***** 3d *****

 *****¹³ *****
 ***** 3d *****
 ***** *. In the other allegations, the special agents pled guilty to an offense other than domestic violence, the case was dismissed or the charges were dropped, or charges were not filed. Figure 2 documents the resolution of all 13 allegations that appeared to be related to domestic violence.

Figure 2: Summary of Result of Allegations

Result	Count
***** 3d *****	3d
***** 3d* ***** ** * *****	3d
Plea Related to Other Charges	3
Charges Dismissed or Dropped	4
No Charges Filed	4
Total Cases	13

Source: TIGTA analysis of information from the PARIS and the ALERTS, and interviews with IRS HCO and TIGTA Office of Investigations personnel.

¹³ ***** 3d *****



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Appendix I

Detailed Objective, Scope, and Methodology

The objective of our review was to determine whether the IRS has policies and procedures in place to identify special agents convicted of or who pled no contest to a misdemeanor crime of domestic violence which, under U.S. law,¹ prohibits any person from possessing a weapon or ammunition. To accomplish this objective, we:

- I. Documented and assessed the policies and procedures related to identifying special agents convicted of or who pled no contest to a misdemeanor crime of domestic violence.
 - A. Determined whether Special Agents in Charge, or other CI managers, are required to report all allegations of domestic violence by special agents to CI leadership and other IRS offices.
 - B. Determined whether the IRS maintains a database of all allegations of domestic violence by special agents at the local and or headquarters level.
- II. Determined whether the IRS actively and regularly screens special agents to determine whether any special agent has been convicted of or pled no contest to the qualifying misdemeanor crime of domestic violence and did not self-report as required by the IRM.²
- III. Determined whether the IRS screens law enforcement applicants to determine whether applicants have been recently convicted of or pled no contest to the qualifying misdemeanor crime of domestic violence.

¹ 18 U.S.C. § 922(g)(9).

² IRM 9.11.4.4 (Aug. 5, 2005). The IRM is the IRS's primary official source of instructions to staff related to the administration and operations of the IRS. It contains the directions employees need to carry out their operational responsibilities.



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Appendix II

Major Contributors to This Report

Kevin P. Riley, Director, Inspections & Evaluations
James A. Douglas, Supervisory Evaluator
John L. da Cruz, Lead Program Analyst



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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Operations Support OS
Deputy Commissioner for Services and Enforcement SE
IRS Human Capital Officer OS:HC
Deputy Human Capital Officer OS:HC
Deputy Chief, Criminal Investigation SE:CI
Acting Director, Workforce Relations Division OS:HC:R
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC



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Appendix IV

Management's Response to the Draft Report



Criminal Investigation

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

May 23, 2014

MEMORANDUM FOR R. DAVID HOLMGREN
DEPUTY INSPECTOR GENERAL FOR INSPECTIONS AND
EVALUATIONS

FROM:

Richard Weber

Handwritten signature of Richard Weber, consisting of stylized initials "RW" and a flourish.

Chief, Criminal Investigation, SE: CI

SUBJECT:

Draft Inspection Report – Internal Revenue Service's
Compliance with the Lautenberg Amendment (# IE-14-003)

Criminal Investigation (CI) reviewed Treasury Inspector General for Tax Administration's (TIGTA's) Draft Inspection Report related to its audit on Internal Revenue Service's Compliance with the Lautenberg Amendment. The TIGTA report did not propose any corrective actions and CI concurs with the findings that the Internal Revenue Service has adequate controls in place to help ensure compliance with the Lautenberg Amendment.