



October 2015

# IRS WHISTLEBLOWER PROGRAM

Billions Collected, but  
Timeliness and  
Communication  
Concerns May  
Discourage  
Whistleblowers

# GAO Highlights

Highlights of [GAO-16-20](#), a report to congressional requesters.

## Why GAO Did This Study

Tax whistleblowers who report on the underpayment of taxes by others have helped IRS collect almost \$2 billion in additional revenue since 2011, when the first high-dollar claim was paid under the expanded program that pays qualifying whistleblowers a minimum of 15 percent of the collected proceeds. These revenues help reduce the estimated \$450 billion tax gap—the difference between taxes owed and those paid on time.

GAO was asked to review several aspects of the whistleblower program. Among other things, this report (1) assesses the WO claim review process, (2) assesses how the WO determines awards, (3) evaluates how the WO communicates with external stakeholders, and (4) evaluates IRS's policies and procedures for protecting whistleblowers. GAO reviewed the files of all 17 awards paid under 26 U.S.C. § 7623(b) through June 30, 2015; reviewed IRS data; reviewed relevant laws and regulations, and the WO's policies, procedures and publications; and interviewed IRS officials, five whistleblowers that independently approached GAO, and nine whistleblower attorneys who were recommended by IRS or other attorneys.

## What GAO Recommends

Congress should consider providing whistleblowers with legal protections against retaliation from employers. GAO makes ten recommendations to IRS including, tracking dates, strengthening and documenting procedures for award payments and whistleblower protections, and improving external communications. IRS agreed with our recommendations.

View [GAO-16-20](#). For more information, contact James R. McTigue, Jr. at (202) 512-9110 or [mctiguej@gao.gov](mailto:mctiguej@gao.gov).

October 2015

## IRS WHISTLEBLOWER PROGRAM

### Billions Collected, but Timeliness and Communication Concerns May Discourage Whistleblowers

## What GAO Found

The Internal Revenue Service (IRS) Whistleblower Office (WO) is responsible for processing thousands of tax whistleblower claims annually for two related whistleblower programs: for claims of \$2 million or less, the 7623(a) program, and for claims over \$2 million, the 7623(b) program. The whistleblower claim review process takes several years to complete, and GAO found that the WO is not using available capabilities to track and monitor key dates in its claim management system. Without available information on key dates related to award review and payments, the WO is unable to assess its performance against timeliness targets and risks unnecessarily delaying award payments.

Between fiscal year 2011 and June 30, 2015, the WO awarded over \$315 million to whistleblowers—the bulk of which was for the 7623(b) claims, which were first paid in fiscal year 2011, 4 years after the program started. In a review of the 17 paid 7623(b) award claim files, GAO found that the WO made errors in determining some awards, resulting in over- and underpayments totaling approximately \$100,000. In response to errors, IRS began corrective actions, including ensuring total collected proceeds are verified before making award payments. However, the WO has not documented this new procedure, putting it at risk of making additional errors in award payments.

**Number of Whistleblower Awards, Proceeds Collected, and Award Amounts  
Fiscal Year 2011 to June 30, 2015**

	7623(a) claims	7623(b) claims	Total
Total Awards	483	17	500
Total Collected Proceeds	\$843 million	\$1,039 million	\$1,882 million
Total Award Amount	\$54 million	\$261 million	\$315 million

Source: GAO analysis of IRS data. | GAO-16-20

The WO's communication with stakeholders, including whistleblowers, is limited due to delayed annual reports to Congress, incomplete data, and limited program information for whistleblowers. Delays in issuing the annual reports have resulted in last minute revisions that introduced discrepancies and inconsistent reporting periods that preclude year-over-year comparisons. The WO is addressing some data gaps and has published two fact sheets to provide more information to the whistleblower community; however, the fact sheets do not include information on key aspects of the program, such as time ranges for steps in the review process. Until changes are made to the annual report and fact sheets, the utility of these publications is limited.

IRS and the WO take steps to protect whistleblowers and the information they submit, but GAO found gaps in IRS and WO procedures. For example, the WO did not have documented controls in place for sending mail, and at least once sent sensitive mail to an incorrect address that also had a return address indicating the letter was from the WO. This potentially compromised the identities of whistleblowers. The WO has said it has since changed how they label return addresses, but has not documented this policy. Further, tax whistleblowers do not have statutory protections against retaliation from employers. IRS and the whistleblower community support such protections, noting that inadequate protections may discourage whistleblowers from coming forward.

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## Abbreviations

ARC	Award Recommendation and Coordination
CDO	Case Development and Oversight
CI	Criminal Investigation
FTE	full-time equivalent
ICE	Initial Claim Evaluation unit
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LB&I	Large Business and International
OD	operating division
OMB	Office of Management and Budget
PARL	preliminary award recommendation letter
RSED	refund statute expiration date
SB/SE	Small Business / Self-Employed
SME	subject matter expert
TE/GE	Tax Exempt and Government Entities
TEFRA	Tax Equity and Fiscal Responsibility Act of 1982
TIGTA	Treasury Inspector General for Tax Administration
Treasury	Department of the Treasury
W&I	Wage and Investment
WO	Whistleblower Office

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October 29, 2015

The Honorable Orrin Hatch  
Chairman  
The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Charles Grassley  
Chairman  
Committee on the Judiciary  
United States Senate

The Honorable Peter Roskam  
Chairman  
Subcommittee on Oversight  
Committee on Ways and Means  
United States House of Representatives

Tax whistleblowers—individuals who report on the underpayment of taxes or on the violation of tax laws by others—potentially help the Internal Revenue Service (IRS) collect billions in tax revenue that may otherwise go uncollected. While IRS has had the authority to pay awards to whistleblowers for more than a century, the Tax Relief and Health Care Act of 2006 expanded the program to pay qualifying whistleblowers a minimum of 15 percent of the collected proceeds for high-dollar claims.<sup>1</sup> This act also established the Whistleblower Office (WO) within IRS to manage the whistleblower program. Proceeds collected as a result of whistleblower information, which have totaled almost \$2 billion dollars since 2011, can help reduce the tax gap—the difference between the

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<sup>1</sup>Pub. L. No. 109-432, div. A, title IV, § 406, 120 Stat. 2922, 2958 (Dec. 20, 2006). This expanded program requires IRS to pay an award between 15 and 30 percent of collected proceeds when the IRS proceeds with an action based on the whistleblower's information for claims alleging over \$2 million in tax underpayments.

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amount of taxes owed by taxpayers and the amount voluntarily paid on time. IRS estimated the net tax gap to be \$385 billion for tax year 2006.<sup>2</sup>

We previously reported that the lack of data about the WO's operations and limitations on communication between the IRS and whistleblowers have hindered the program's success.<sup>3</sup> In response, IRS took steps to improve the data it collects and reports and the timeliness for processing information submitted by whistleblowers. However, the whistleblower community, including whistleblowers and their attorneys, continue to voice concerns that limited communication by IRS and lengthy award processes are frustrating current whistleblowers and discouraging potential whistleblowers. This jeopardizes the success of the program and hinders IRS's ability to reduce the tax gap.

You asked us to review several aspects of the whistleblower program, including its timeliness for processing whistleblower claims, communications with whistleblowers, and award payments. This report (1) describes the steps, timeframes, and staffing levels in the whistleblower claims process, including the WO staffing strategy for improving efficiency and assesses how, if at all, whistleblower claims are prioritized within IRS's investigation, examination, and collections workloads; (2) describes the high-dollar whistleblower claim awards and assesses how the WO determines these awards; (3) evaluates the WO's role in managing the whistleblower claims process and in communicating with the whistleblower community; and (4) evaluates the WO and IRS policies and procedures that safeguard whistleblower identities and protect whistleblowers from retaliation.

To describe the steps and timeframes in the whistleblower claims process, we reviewed IRS guidance, including IRS's Internal Revenue Manual (IRM) on whistleblower claim processing and IRS management's expectations for timeliness. To assess how often IRS met its timeliness

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<sup>2</sup>IRS estimated the gross tax gap for tax year 2006 (the most recent estimate available) to be \$450 billion. IRS expects it will ultimately collect \$65 billion, making the net tax gap \$385 billion. Of the more than \$2 billion collected from whistleblower claims, over \$1 billion was the result of the 17 awards paid under the 7623(b) program as of June 30, 2015. More than 30,000 whistleblower cases are currently in IRS's active inventory.

<sup>3</sup>See GAO, *Tax Whistleblowers: Incomplete Data Hinders IRS's Ability to Manage Claim Processing Time and Enhance External Communication*, [GAO-11-683](#) (Washington, D.C.: Aug. 10, 2011).

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goals, we reviewed IRS data on how long IRS took to process these steps and interviewed IRS officials responsible for completing these review steps. We identified several weaknesses with E-TRAK, the whistleblower data system, but determined that these data were reliable for the purposes of our review.<sup>4</sup> We also interviewed WO officials concerning the implementation of the WO's staffing strategy in light of the reduced fiscal year 2015 budget. To assess how whistleblower claims are prioritized within IRS's workload, we reviewed IRS guidance, including the IRM and WO guidance to the operating divisions (OD), and interviewed officials within the four ODs that process whistleblower claims—Large Business and International (LB&I), Small Business / Self-Employed (SB/SE), Tax Exempt and Government Entities (TE/GE), and Criminal Investigation (CI).<sup>5</sup> We compared the procedures used in an investigation, examination, or collections case with a whistleblower claim to procedures used for a case without a whistleblower claim and identified the differences.

To assess how the WO determines awards, we reviewed section 7623 of the Internal Revenue Code and the implementing regulations, and the IRM section that specifies the process and criteria for determining whistleblower awards. We reviewed the claim files for all 17 awards paid under the expanded whistleblower provision (known as 7623(b) or high-dollar claims) through June 30, 2015 to determine how the WO established awards, what criteria were used, and whether awards were calculated correctly. To evaluate the role of the WO in monitoring whistleblower claims, we reviewed the IRM and WO guidance, and interviewed WO and OD officials responsible for whistleblower claims.

To evaluate how the WO communicates with the whistleblower community, we reviewed relevant regulations covering confidentiality and disclosure of information issues. We reviewed IRS's internal and external communications plan and interviewed WO staff involved with implementing the plan. We also interviewed a non-generalizable sample

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<sup>4</sup>Some information in E-TRAK appears to be incorrect: for example, taxpayer identification numbers associated with whistleblowers and other information appear to be missing or incomplete. Those data were not material for our findings.

<sup>5</sup>CI has investigative jurisdiction over tax, money laundering, and Bank Secrecy Act violations. It is a principal office and not an operating division under IRS's organizational structure. However, for the purposes of our report, we use the term operating division to refer to LB&I, SB/SE, TE/GE, and CI, the divisions that process whistleblower claims.

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of five whistleblowers and nine whistleblower attorneys for their perspectives on IRS's communications with whistleblowers. We selected these whistleblower attorneys based on their participation in our prior report, their varied experiences with the WO, and on recommendations of others within the whistleblower community. We also spoke with five whistleblowers who contacted us as willing to speak, either on their own or through their attorney; due to confidentiality concerns, we did not reach out directly to any whistleblowers.

To evaluate how the WO safeguards whistleblowers' identities and protects whistleblowers from retaliation, we reviewed IRS guidance, including the IRM, on what steps the WO and ODs take to keep whistleblower identities confidential. We interviewed WO and OD officials about key controls for safeguarding information and about the potential weakness of such controls. We reviewed IRS and the Department of the Treasury's legislative proposals on retaliation protections for tax whistleblowers. We also interviewed whistleblowers and whistleblower attorneys to discuss the usefulness and potential benefits of employer retaliation protections. For additional information on our scope and methodology, see appendix I.

We conducted this performance audit from October 2014 to October 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

In 1867, Congress enacted legislation that allowed the government to pay awards to individuals who provided information that aided in detecting and punishing those guilty of violating tax laws. Initially, Congress appropriated funds to pay these awards at the government's discretion. In 1996, Congress increased the scope of the program to also provide awards for detecting underpayments of tax and changed the source of awards to money IRS collects as a result of information whistleblowers provide.

The Tax Relief and Health Care Act of 2006 created an expanded whistleblower award program to complement the existing whistleblower program. We refer to the original program as the 7623(a) program and the expanded program as the 7623(b) program after the Internal Revenue

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Code subsection that authorizes the different award payments. Claims submitted under the 7623(b) program are those that allege a tax noncompliance of over \$2 million and are subject to a mandatory award of between 15 and 30 percent of collected proceeds, to be determined by the WO based on the extent of the whistleblower's contributions. Whistleblowers may appeal an award determination under 7623(b), including the denial of an award, in the Tax Court. Claims submitted under the 7623(a) program are more discretionary: they are not subject to statutory minimum award payments, are not eligible for judicial review of award determinations in the Tax Court, and, prior to 2010, were not subject to the same procedures for award determination as those claims submitted under the 7623(b) program. However, IRS officials announced in an update to the IRM that it would award and evaluate 7623(a) claims received after July 1, 2010 by the same process it uses for the 7623(b) program for claims submitted after the announcement.<sup>6</sup> That is, 7623(a) whistleblower claims received after July 1, 2010 will be paid between 15 and 30 percent of collected proceeds and will be based on the same factors used to determine 7623(b) awards.

The Tax Relief and Health Care Act of 2006 also established the WO within IRS, which is responsible for managing and tracking whistleblower claims from the time IRS receives them to the time it closes them, either through a rejection or denial letter or an award payment. The Secretary of the Treasury is required to submit an annual report to Congress on the activities and outcomes of both the original and expanded whistleblower programs.

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## Growth in Staffing and Workload

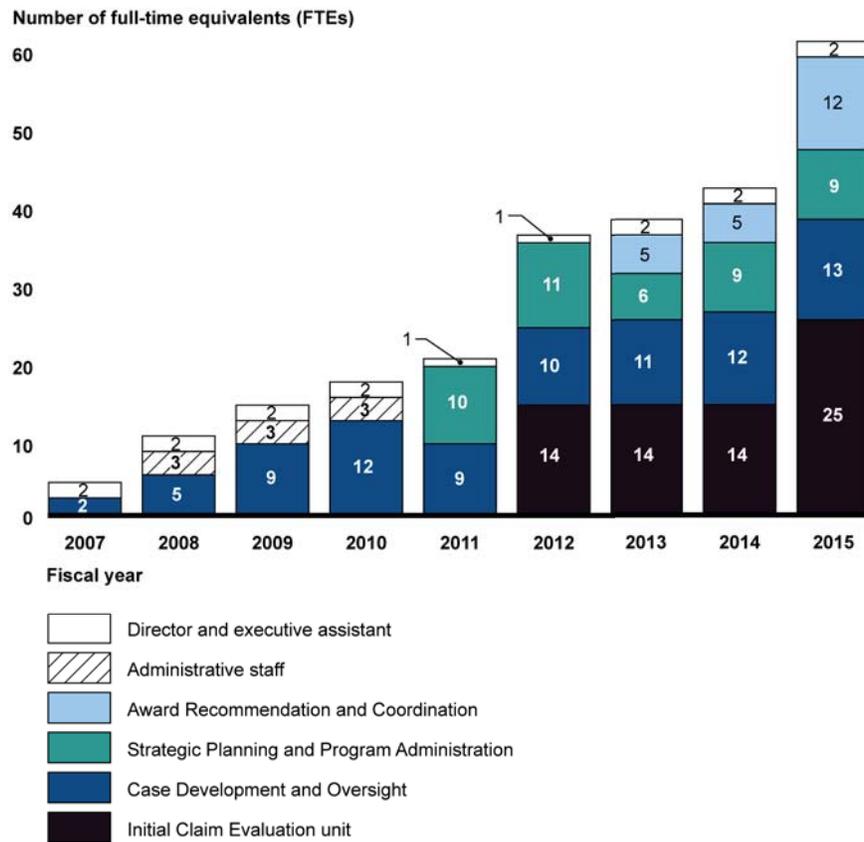
Various functional branches comprise the WO. The Initial Claim Evaluation (ICE) unit receives and records incoming 7623(a) and 7623(b) claims. ICE also alerts whistleblowers to the status of received, incomplete, and denied claims. Strategic Planning and Program Administration has responsibility for overall program management including program analysis, developing operating procedures, and updating the IRM. Award Recommendation and Coordination (ARC) reviews and issues award decisions for 7623(a) claims. Awards for 7623(b) claims fall under the responsibility of Case Development and Oversight (CDO). CDO also evaluates potential 7623(b) claims and

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<sup>6</sup>IRM Part 25, Chapter 2, Section 2.6 (06-18-2010).

coordinates the most complex cases across IRS operating divisions (OD). Figure 1 shows WO staffing levels from fiscal year 2007 to September 15, 2015.

**Figure 1: IRS Whistleblower Office Staffing, Fiscal Years 2007 to September 15, 2015**



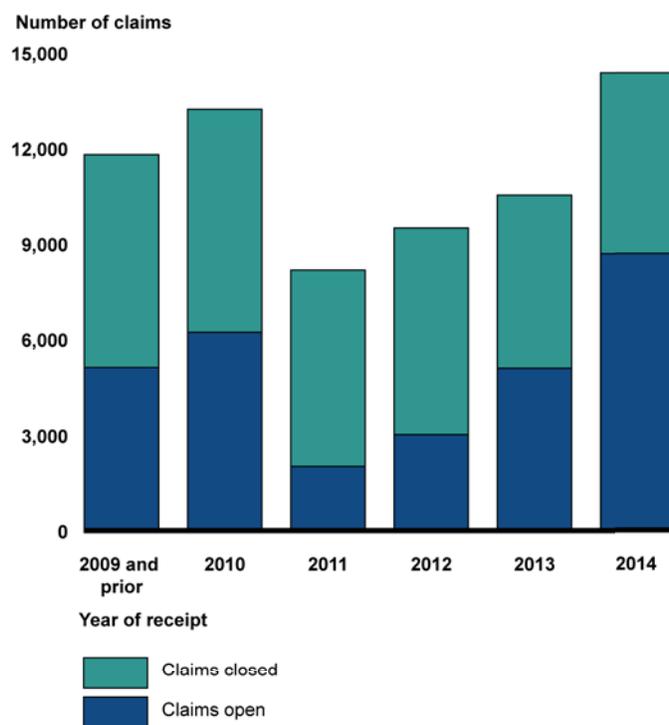
Source: GAO analysis of IRS data. | GAO-16-20

Note: Prior to being merged with the Whistleblower Office in 2012, the Initial Claim Evaluation unit operated separately and processed 7623(a) claims.

The WO has grown since its establishment in February of 2007 and had 61 staff on board as of September 15, 2015. The WO's workload has also increased over the years (see figure 2). Since fiscal year 2010, the WO has received, on average, over 10,000 claims each year between the 7623(a) and 7623(b) programs. Further, as of May 14, 2015, the office had 30,152 open claims in their workload with more than half of these coming in since the start of fiscal year 2012. Over 95 percent of claims

closed between the start of fiscal year 2013 and August 5, 2015 did not receive award payment. Each year most claims are closed early in processing for a number of reasons, including the following: the submission is nonspecific to taxpayer or tax issue, the submission is unclear, or the claimant lacks credibility. The WO's workload includes the initial vetting of claims and the processing of the small number of claims that result in an award. Claims that pass the initial rounds of review have the potential to be under review for several more years and may not result in any award. For example, a claim may not merit award if the WO determines that the information did not substantially contribute to an IRS action or the information resulted in no collected proceeds.

**Figure 2: Number of Open and Closed Claims by Fiscal Year of Receipt, as of May 14, 2015**



Source: GAO analysis of IRS data. | GAO-16-20

Note: The number of submissions in fiscal year 2010 was anomalous. That year, the Whistleblower Office received one whistleblower submission that identified over 3,000 taxpayers. Most of these claims were placed in suspended status while the operating divisions evaluated if they would pursue a claim for each identified taxpayer.

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## Whistleblower Claims Management System: E-TRAK

Launched in 2009, E-TRAK is IRS's whistleblower claims management information system. The WO and the ODs use E-TRAK to track the progress of claims as they move through the review process and to store information on the file. Our prior report found several weaknesses in E-TRAK and its ability to accurately monitor whistleblower claims and produce reportable statistics for management use.<sup>7</sup> According to IRS officials, E-TRAK was designed to be a claim management tool to track claim progress, not a system designed to report and monitor overall program performance. Since 2011, IRS has made several updates to E-TRAK to better capture and report key whistleblower claims data, but according to IRS officials, E-TRAK remains difficult to use as a system for managing WO operations.

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## Whistleblower Claims Can Take Years to Process

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### Whistleblower Claims Go through a Multi-Step Process and Are Selected for IRS Action Based on Merits of the Case

**Initial review and routing:** The whistleblower claims process involves multiple steps, starting with a whistleblower's initial application and ending with a rejection, a denial, or an award payment. The process begins when a whistleblower submits a signed Form 211, *Application for Award for Original Information*, to the WO. The first stage of the process consists of two steps. First, the WO's Initial Claim Evaluation (ICE) unit performs an administrative review of the incoming applications. ICE examines the submission for completeness and logs it into E-TRAK, the claims management information system. Second, claims are generally sent to staff from the Small Business / Self-Employed (SB/SE) operating division (OD) where they are reviewed to determine whether the claims merit further consideration by an OD or should be rejected or denied. Claims that are identified as potential 7623(b) claims are sent to the WO's Case Development and Oversight (CDO) team for further review. At this stage, the WO may reject claims because the tax noncompliance allegation is unclear, no taxpayer is identified, or the whistleblower is ineligible for an award. Claims can also be denied if there is no potential noncompliance found, among other reasons. Claims are then routed to the proper OD for

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<sup>7</sup>See [GAO-11-683](#).

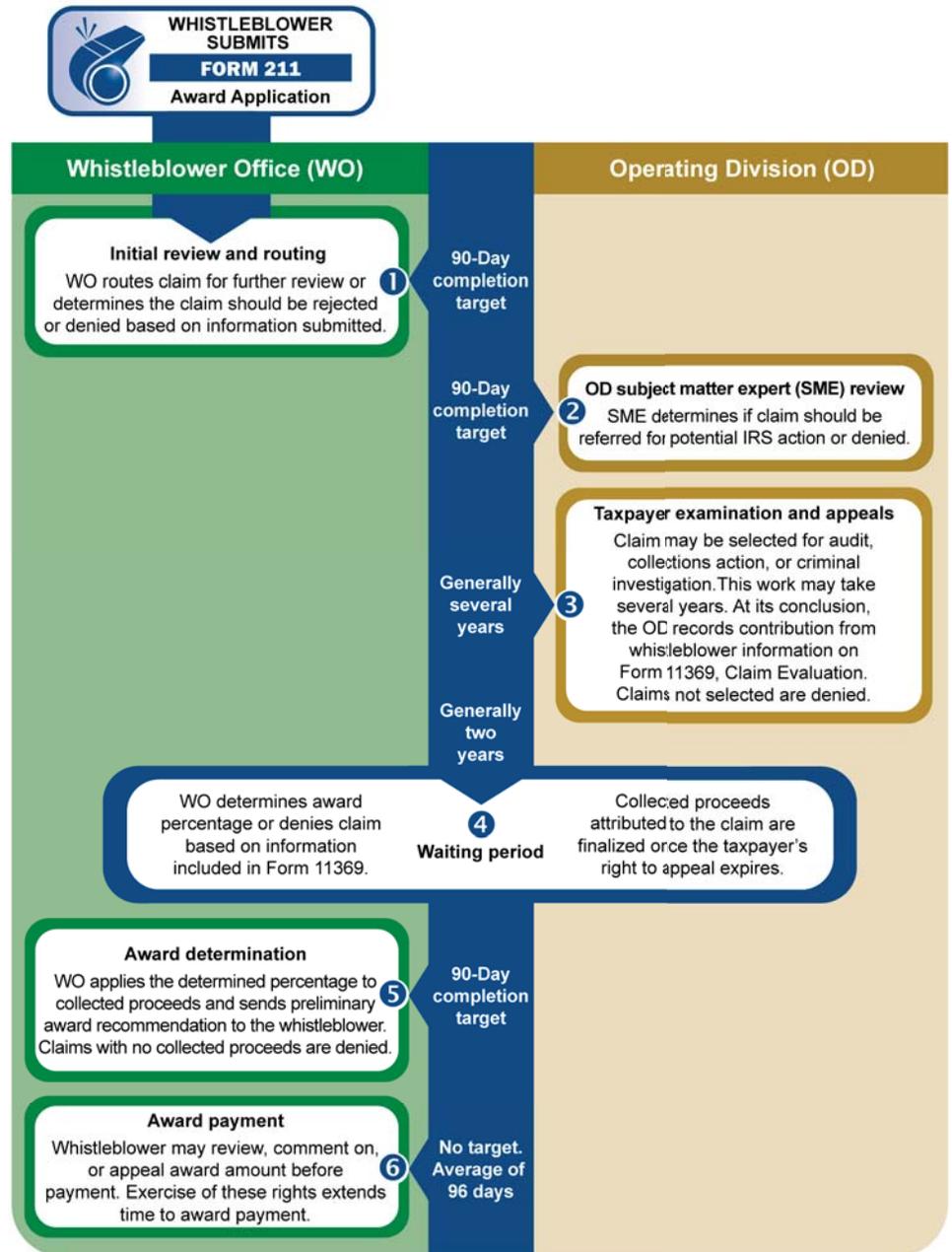
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further review, including Criminal Investigation (CI) if there is the potential for a criminal investigation, or are routed to ICE which sends the whistleblower a rejection or denial letter. The Deputy Commissioner for Services and Enforcement has set a 90-day target for completion of these ICE, CDO, and SB/SE review steps. WO data shows 67 percent of 7623(b) claims are processed within this time frame. WO officials said that cases of greater complexity are more difficult to handle and so are more likely to experience delays. In particular, they said that claims that need coordination across ODs because of their complexity are especially prone to delay. Figure 3 summarizes the full claim review process for 7623(b) claims.<sup>8</sup>

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<sup>8</sup>The claim review process for 7623(a) claims is largely similar, with differences in steps two and six.

Figure 3: Whistleblower 7623(b) Claims Process at the Internal Revenue Service



Source: GAO analysis of IRS data. | GAO-16-20

**OD SME review:** The 7623(b) claims—those that allege over \$2 million in tax noncompliance—that are not rejected or denied in the initial review

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are generally forwarded to OD subject matter experts (SME) for a more rigorous review.<sup>9</sup> For example, the SME may follow-up with the whistleblower to obtain more information and will evaluate whether the source of the information has the potential to compromise any case developed from it. SMEs may deny claims if insufficient time remains on the statute of limitations, among other reasons. Once claims are routed to an OD, they leave WO control; however, throughout the claim review process a WO analyst may monitor certain 7623(b) claims if the tax issue involves multiple ODs or is particularly sensitive.

The Deputy Commissioner for Services and Enforcement has set a 90-day target for completion of SME reviews. However, these reviews may take more than 90 days if the whistleblower's information relates to a complex tax case or has an international component and requires documents to be translated, among other reasons. SMEs we spoke with generally agreed that they could meet the 90-day target for most claims. The 90-day target is just that—a target. WO and OD officials understand there are several reasons why a SME review may take longer than 90 days. An official from one OD said that if a SME review does surpass 90 days, the WO and OD management may follow up to ensure a claim is not sitting idle and to provide additional resources to the SME if necessary and available. As of August 5, 2015, the WO reports that 67 percent of 7623(b) claims have met this time target since October 1, 2012.

As part of their review, SMEs may contact (or debrief) whistleblowers to clarify information submitted with the Form 211. Debriefings also provide an opportunity to set expectations about communication between IRS and the whistleblower and the length of the process. In 2012 and again in 2014, the Deputy Commissioner for Services and Enforcement called for SMEs to debrief whistleblowers unless there is a clear reason not to do so. Debriefings can occur during the SME review or later, after the taxpayer's examination has started. In both instances, the SME conducts the debriefing. The whistleblower attorneys we spoke with varied in their estimates of how often whistleblowers were debriefed but agreed that IRS debriefs their clients less than 50 percent of the time.

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<sup>9</sup>7623(a) claims that are not closed are sent to the relevant OD for potential audit selection and are not reviewed by a SME.

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SMEs also determine the extent to which the whistleblower provided unusable information: for example, information subject to attorney-client privilege or illegally obtained information that may compromise IRS's tax case.<sup>10</sup> As warranted, IRS counsel may be involved in assessing the limitations and the risk in using the whistleblower's information.<sup>11</sup> The SME review, including debriefings and the review for unusable information, is a step unique to a whistleblower claim and can add time to the whistleblower claim process.

Claims that are not denied by the SME are added to the OD's inventory of returns for potential selection. If the OD does not select the taxpayer(s) identified in a whistleblower's claim for examination, the claim is returned to the WO for denial processing. Selecting the returns largely depends on the merits of the case.<sup>12</sup> To the extent that whistleblower information pertains to a high priority tax issue as specified in the IRS's annual plan, ODs prioritize returns for examination based on the merit of the tax issue, not on the source of the referral.

ODs use whistleblower information to identify issues and to establish leads for obtaining documents supporting tax assessments or collections.<sup>13</sup> They develop evidence independent of whistleblower

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<sup>10</sup>To minimize the risk, IRS Office of Chief Counsel has issued guidance to IRS employees on the limitation of contacts with whistleblowers who are current employees of a taxpayer or who are representatives of a taxpayer. Although IRS can use illicitly or illegally obtained whistleblower information under certain circumstances, it cannot do so if the whistleblower acted as an agent of the IRS. See Chief Counsel Notice 2010-004.

<sup>11</sup>IRS counsel provides a risk analysis for using whistleblower information with potential legal limitations.

<sup>12</sup>We have recent, on-going, and planned work examining IRS's controls for selecting cases in LB&I, SB/SE, TE/GE, and Wage and Investment (W&I). See GAO, *IRS Case Selection: Automated Collection System Lacks Key Internal Controls Needed to Ensure the Program Fulfills Its Mission*, [GAO-15-744](#) (Washington, D.C.: Sept. 10, 2015); GAO, *IRS Case Selection: Collection Process Is Largely Automated, but Lacks Adequate Internal Controls*, [GAO-15-647](#) (Washington, D.C.: July 29, 2015); and GAO, *IRS Examination Selection: Internal Controls for Exempt Organization Selection Should Be Strengthened*, [GAO-15-514](#) (Washington, D.C.: July 13, 2015).

<sup>13</sup>Credible whistleblower information identifying additional assets or income sources of a taxpayer already subject to collection action are forwarded to the collections function for processing. ODs may also refer a case with whistleblower claims that has been resolved to collection for further action if the taxpayer does not voluntarily pay the full amount assessed. However, according to WO officials and E-TRAK data, few whistleblower claims are sent directly to collections and most taxpayers identified by 7623(b) claims pay tax assessments in full.

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information to support any tax adjustments or collections action. To mitigate the risk of compromising the tax case, OD guidance specifies the contact with whistleblowers should be conducted through the SME and counsel, as appropriate.

**Taxpayer examination and appeals:** The examination, appeals, and collection process may take several months to several years, depending on the tax issues raised, agreement by the taxpayer, and payment. We were able to collect data on the length of audits for twelve of the seventeen 7623(b) claims that were paid as of June 30, 2015. The length of this process ranged from 6 months to more than 4 years, with an average of 2 years. Audit length can be affected by case complexity, availability of documentation, taxpayer cooperation, and availability of IRS resources. Taxpayer appeals also have the potential to extend the time a claim is open. Taxpayers may pursue an appeal with the IRS Office of Appeals, which generally takes between 90 days and 1 year to complete, or by filing suit in Tax Court, which may take several months to over a year to litigate. After an audit and any appeals, and if a taxpayer does not pay the taxes owed, the case may be sent to collections, where IRS will attempt to collect the outstanding liability from the taxpayer. Similar to audit selection, IRS cannot pursue all outstanding collections cases, and cases are selected based on the merits of each case and not because a taxpayer was the subject of a whistleblower referral.<sup>14</sup>

At the conclusion of the examination process, OD staff record the contribution made by the whistleblower on a Form 11369, *Confidential Evaluation Report on Claim for Award*. The OD sends the Form 11369 to the WO along with any supporting documentation from the OD and with the original documentation provided by the whistleblower. According to IRM provisions and direction from the Deputy Commissioner for Services and Enforcement, the ODs should purge any documentation that identifies the existence of a whistleblower from the taxpayer's file.<sup>15</sup>

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<sup>14</sup>For more information on IRS collections programs, see GAO, *IRS Case Selection: Collection Process Is Largely Automated, but Lacks Adequate Internal Controls*, [GAO-15-647](#) (Washington, D.C.: July 29, 2015).

<sup>15</sup>Memorandum for the Commissioners of Large Business and International, Small Business/Self-Employed, and Tax Exempt and Government Entities; Chief, Criminal Investigation, and Director, Whistleblower Office from the Deputy Commissioner for Services and Enforcement, Internal Revenue Service, *IRS Whistleblower Program* (August 20, 2014).

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**Waiting period and award determination:** Using information supplied by the OD in the Form 11369, the WO analyst assesses how the whistleblower's actions contributed to the IRS action and determines whether to recommend an award.<sup>16</sup> If an award is recommended, the WO analyst determines an award percentage, which is applied to the total collected proceeds to calculate the final award payment. However, the WO only calculates the award once collected proceeds are final, which occurs after the expiration of any remaining appeals rights of the taxpayer and the right to request a refund. The refund statute expiration date (RSED)—which extends at least 2 years from the date of the last payment made by the taxpayer to settle the tax liability related to the whistleblower's claim—is the date at which IRS has what it considers to be finalized collected proceeds. The WO does not pay awards before the RSED to avoid paying an award on proceeds that could later be returned to the taxpayer. In rare cases, the WO may pay an award earlier than this, such as when IRS and the taxpayer sign a comprehensive closing agreement waiving refund rights and immediately finalizing the collection amount.

Once the collected proceeds are finalized, the WO calculates the award and sends a preliminary award package to the whistleblower. The Deputy Commissioner for Services and Enforcement sets a 90-day target beginning at RSED for sending the preliminary award package. This package summarizes the award calculations and the factors used to determine the award percentage.

**Award payment:** After receipt of the awards package, whistleblowers have the option to

- accept the award as calculated;
- submit comments to the award file; or
- request a review of the full file to see how the award was determined.<sup>17</sup>

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<sup>16</sup>Awards might be denied if the information provided by the whistleblower had been discovered during the course of a prior examination or if the examination did not reveal tax noncompliance.

<sup>17</sup>Only claims determined to be 7623(b) claims have the option to review the administrative file. 26 C.F.R. § 301.7623-3(c)(5).

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The WO will review any comments submitted by whistleblowers before making a final award determination and sending the award payment. Whistleblowers who disagree with how an award is determined can dispute the award in Tax Court if raising concerns with the WO does not provide relief.<sup>18</sup> Exercise of the review or comment options will lengthen the time to award payment.

In our review of the 17 paid 7623(b) claims as of June 30, 2015, we found that claims took 4 years to 7½ years from the submission of the Form 211 to the award payment. Much of this time was spent with the WO. For example, from the time the OD completed and sent the Form 11369 to the WO for award evaluation, it took between 1½ to 4½ years for claims to be paid.

Only a very small percentage of claims submitted have closed with an award payment. For example, between fiscal year 2013 and August 5, 2015, only 507 whistleblower claims (or less than 5 percent of 7623(a) and 7623(b) claims) closed with an award payment. During the same period 19,757 claims were closed with no payment. As described above, the WO can deny or reject claims at each point in the process before award payment. Table 1 summarizes the frequency of various reasons for claim closures. See appendix II for information on which office or OD made the closure decision.

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<sup>18</sup>Any determination regarding an award under section 7623(b)(1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court. 26 U.S.C. § 7623(b)(4).

**Table 1: Whistleblower Claim Closures by Closure Reason, Fiscal Years 2013 through August 5, 2015**

Closure reason	2013	2014	Through August 5, 2015	Total
<b>Award paid</b>	<b>130</b>	<b>238</b>	<b>139</b>	<b>507</b>
<b>Claim rejected</b>	<b>2,712</b>	<b>3,098</b>	<b>3,599</b>	<b>9,409</b>
allegations are not specific, credible	1,796	514	3,322	5,632
no tax issue	916	2,584	139	3,639
failure to file a Form 211			72	72
incomplete Form 211 or failure to sign			59	59
ineligible whistleblower			7	7
<b>Claim denied</b>	<b>2,657</b>	<b>1,564</b>	<b>2,427</b>	<b>6,648</b>
below threshold <sup>a</sup>	962	662	795	2,419
information already known	847	271	57	1,175
statute expired	236	163	262	661
short statute	194	131	167	492
no-change examination	166	124	180	470
no collected proceeds (uncollectable)	134	78	42	254
lack of resources	66	78	77	221
no-change as a result of whistleblower information	52	57	26	135
survey other <sup>b</sup>			821	821
<b>Closed - other</b>	<b>1,082</b>	<b>1,620</b>	<b>969</b>	<b>3,671</b>
<b>Administrative error</b>			<b>29</b>	<b>29</b>
<b>Total</b>	<b>6,581</b>	<b>6,520</b>	<b>7,163</b>	<b>20,264</b>

Source: GAO analysis of IRS data. | GAO-16-20

Note: This table includes both 7623(a) and 7623(b) claims. The Whistleblower Office renamed certain closure reasons in fiscal year 2015. This table consolidates similar closure reasons from fiscal years 2013 and 2014 into the new closure reason categories established in 2015.

<sup>a</sup>“Below threshold” means that the issue is below the threshold for IRS action.

<sup>b</sup>“Survey other” means the operating divisions chose not to pursue because there will be no tax effects.

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## Resource Allocation Decisions Based on Limited Staff Resources Have Contributed to Workflow Backlogs and Delays

Recent reductions to IRS's budget have necessitated most divisions and offices make do with fewer resources.<sup>19</sup> The WO is not an exception. While the office has been able to grow its staff since 2007, this growth has not kept pace with the workload. The WO has studied its workflow to identify opportunities to more efficiently use staff through a consolidation of processes. While a number of these proposals show promise, IRS has put implementation on hold while it reconsiders staffing allocations in light of its budget. Because the current process is dispersed across three different units (each with their own staff allocations), any consolidation might save staff days across the agency, but would likely require staff increases wherever the functions were consolidated. As such, decisions on this consolidation need to be made while considering IRS's overall budget and agency-wide resource allocation. Not implementing these changes has at least partially contributed to workload backlogs—more than 11,000 cases—in three areas: SB/SE's initial review, the award determination process, and processing rejection and denial letters.

First, the WO cancelled plans late in 2014 to bring on additional staff and take over the initial review and routing duties that were being done by SB/SE staff; this contributed to a backlog of approximately 5,000 claims. According to SB/SE officials, the inventory of claims being sent to them for initial review slowed as the WO prepared to take over the work. However, those plans were contingent on IRS's proposed fiscal year 2015 budget, which IRS did not receive. As the initial review process returned to its original functioning, SB/SE received an influx of more than two times the normal workload of initial review work in both the first and second quarters of fiscal year 2015. According to SB/SE officials, they received over 8,700 claims for initial review, which was more than the typical amount of approximately 2,100 claims per quarter, and this resulted in a backlog. The backlog was further exacerbated by staffing shortfalls. According to WO officials, four to five full-time equivalent (FTE) employees have been historically needed to complete this work.<sup>20</sup> However, according to WO officials, only 1.2 FTEs were available to do the work at times. IRS officials told us that in the past, when staff met the

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<sup>19</sup>GAO, *IRS 2016 Budget: IRS Is Scaling Back Activities and Using Budget Flexibilities to Absorb Funding Cuts*, GAO-15-624 (Washington, D.C.: June 24, 2015).

<sup>20</sup>FTEs represent the total number of hours worked divided by the number of compensable hours applicable to each fiscal year. For example, in fiscal year 2013, there were 2,080 compensable hours.

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weekly time budgeted for their initial review, they set aside remaining work until the following week.

In early 2015, SB/SE brought on 12 revenue agents as 30-day detailees to clear the backlog, but this effort was not entirely effective.<sup>21</sup> First, the detailees were brought on before SB/SE received the influx of claims. These detailees helped in clearing an existing backlog, but were not sufficient in number to clear the new claims. Second, the SB/SE initial review and WO processes have a learning curve and because revenue agents are assigned to the WO for only 30-day periods, they may rotate to new assignments soon after they become proficient. According to SB/SE officials, in June 2015, SB/SE was approved to bring on 23 120-day detailees and expects to reduce the backlog by the end of fiscal year 2015. SB/SE and the WO have not yet settled on a permanent staffing plan for these duties, but WO officials said that they have no immediate plans to take over these duties due to budget constraints.

Second, a backlog exists in the award determination step for 7623(a) claims. WO officials cited inadequate staffing resources and the volume of small awards as the cause of this backlog. WO officials report that approximately 25 percent of open 7623(a) claims (about 4,200 claims) were with Award Recommendation and Coordination (ARC) and awaiting review of Form 11369 as of July 28, 2015. This is the same level of backlog reported by WO officials in March 2015. WO officials said they brought in 120-day detailees to assist, but the detailees could not be adequately trained within the 120-day window to clear the backlog. Further, two permanent ARC staff left their positions. WO officials told us they anticipate doing additional hiring to clear the backlog. On September 15, 2015, a WO official told us the office had hired six additional ARC staff and most had already reported for duty, for a net increase in ARC staff to four.

Third, the WO has a backlog of approximately 2,500 denial or rejection letters. WO officials said the backlog resulted from the low priority given to denial letters—the WO views getting whistleblower information to the ODs and working on award payments as higher priority. Officials said procedural changes also contributed to this backlog. In August 2014, the

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<sup>21</sup> A detailee is a federal employee who is temporarily assigned or loaned to another unit, agency, or department without a permanent change of position. The detailees assigned to the WO were from other areas of IRS and not from other agencies.

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final regulations on whistleblower awards became effective, detailing procedures for the denial process.<sup>22</sup> To implement the new regulations, the WO drafted new language for denial letters. While the new language was being developed and approved, the WO ordered a hiatus on new denial notifications for 5 months, which contributed to the buildup of denial letters. Because processing denials is a low priority and staff resources are limited, WO officials told us they do not expect to clear the backlog caused by the hiatus in the near future and did not provide a time period for when they plan for this to be done.<sup>23</sup>

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### The WO's Claim Process Could Benefit from Consolidation, but IRS Has Not Implemented Its Streamlining Proposals

WO officials have studied improving the efficiency of the initial review process. The current procedures can create unnecessary processing, which results in an inefficient use of staff time and added cost. As previously discussed, ICE performs the administrative processing work and then passes the claim along to SB/SE for the initial review—that is, SB/SE reads through whistleblower claims to identify the tax matter at issue and determines whether and which OD should work the claim. Each stage of review of a claim requires resources, so rejecting or denying claims at the earliest opportunity would be efficient. WO staff told us that in some cases it was obvious in the mail processing administrative review that some submitted claims were not worthy of pursuit, but such claims are moved along to ensure all claims receive a fair and honest consideration. They told us that these claims came in with only vague insinuations of wrongdoing and that a small number of whistleblowers submit multiple claims of this type per month. Forty-six percent of all claims (9,271 claims out of 20,264 claims) were closed between fiscal year 2013 and August 5, 2015 because the allegations were not specific, not credible, not clear, or did not identify a tax issue (see table 1). However, the process is not set up to allow the WO ICE unit to deny such claims. As a result, the ICE unit ends up performing administrative functions on claims that are likely to be denied when SB/SE staff do their initial review. The result is added costs and time to the overall review process because claims known to be of poor quality are allowed to advance in the process.

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<sup>22</sup>26 C.F.R. 301.7623-3.

<sup>23</sup>For more information on the current status of 7623(b) claims, see appendix III. The WO did not start tracking 7623(a) claims by status until June 1, 2015; therefore, the WO was unable to provide data on current status for these claims.

The WO has also studied making use of the expertise of the OD in trying to realize efficiencies in the claim review process. Currently, SMEs closely scrutinize claims for the significance of the noncompliance as well as the usefulness and completeness of the information provided. As of August 5, 2015, they referred on average about 88 percent of claims received for examination. Because the OD's expertise is an important component to the scrutiny a claim receives, the WO's plans for consolidation have considered more extensive use of the OD. Table 2 summarizes the claims received by the SME as well as those then referred to examination.

**Table 2: Number of 7623(b) Whistleblower Claims Received by Subject Matter Experts and Referred to Examination, Fiscal Years 2013 through August 5, 2015**

Operating division (OD)		Total cases sent to OD subject matter expert (SME)	Total referred to examination by SME <sup>a</sup>	Percent of cases referred to examination by SME
Large Business and International	Claims	940	922	98%
	Whistleblowers	263	233	89%
Small Business/ Self-Employed	Claims	753	688	91%
	Whistleblowers	183	147	80%
Tax Exempt and Government Entities	Claims	134	79	59%
	Whistleblowers	36	20	56%
Not specified	Claims	95	5	5%
	Whistleblowers	5	3	60%
<b>Total claims</b>		<b>1,922</b>	<b>1,694</b>	<b>88%</b>
<b>Total whistleblowers</b>		<b>487</b>	<b>403</b>	<b>83%</b>

Source: GAO analysis of IRS data. | GAO-16-20

<sup>a</sup>This column represents the number of claims that were referred to examination to be added to the workload inventory. Not all claims that are referred to examination are ultimately examined.

WO officials recognize that the staffing arrangement in place does not match the organization's functions and have studied their workflow and proposed options for revising the process.<sup>24</sup> One option involves making the administrative review more substantive by consolidating SB/SE's

<sup>24</sup>IRS has begun a Lean Six Sigma review of the WO operations, as well as the processes and procedures of the ODs specific to whistleblower claims. Lean Six Sigma is a data-driven approach to eliminating defects and errors which result in losses of time, money, or opportunities. WO officials were not able to provide a timeframe for when this study would be completed.

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review into it. The proposed initial review within the WO would evaluate claims to determine if they merit examination and route those directly to the ODs. This proposal would eliminate the need for the SB/SE detailees. Additionally, WO officials expect that implementing the proposed process could be more efficient, could reduce the opportunities for unnecessary or inappropriate disclosure of whistleblower information, and could help the WO retain greater control over the process, among other benefits.

Another proposal entails routing incoming submissions directly to the OD SMEs. This proposal would give the WO an administrative role in the claim receipt process. Each OD would then evaluate claims to see whether they merit examination and route such claims to the examination teams' selection inventory. This proposal aims to give ODs greater autonomy to evaluate and direct the claims they will work and would reduce the number of review steps as a result. However, it will require additional FTEs for the ODs.

Increasing efficiency can help government make better use of scarce resources.<sup>25</sup> IRS has not decided which plan, if any, to implement and WO officials said that there were no current plans to advance any of them at this time. WO officials said that due to recent changes in WO management and ongoing reviews, near-term changes are unlikely. However, on August 26, 2015, the new director said additional studies are being conducted in several areas including those described above. Until a plan is in place, the WO risks delaying opportunities for improving the efficiency and quality of its reviews.

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## The WO Does Not Monitor a Key Date for Award Calculations, Causing Additional Delays in Award Payment and Ineffective Program Management

As noted earlier, the IRS only pays awards once a taxpayer waives all rights to appeal or once these rights expire. Taxpayers have 2 years to file a request for refund from the date the tax was paid or 3 years from the date the return was filed, whichever is later. Except in the rare cases where a waiver is made, the RSED marks the date on which the WO is first able to calculate finalized collected proceeds.

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<sup>25</sup>See GAO, *Fragmentation, Overlap, and Duplication: An Evaluation and Management Guide*, GAO-15-49SP (Washington, D.C.: Apr. 14, 2015). This guide defines economy and efficiency as maintaining services or outcomes using fewer resources (such as time, money, and staff) or improving or increasing the quality or quantity of services or outcomes while maintaining (or reducing) resources expended.

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Despite the importance of this date in the claims process, the WO does not automatically track it in its claims management information system, E-TRAK—even though E-TRAK has a data field capable of tracking such information. WO officials told us that they do not use this E-TRAK field consistently and therefore cannot run reports showing upcoming RSEDs. They said that E-TRAK was designed with more capabilities than the WO uses in practice. Instead, WO analysts manually compare the cases in their workload against a paper list of approaching RSEDs that the WO generates on an annual or semiannual basis. One WO analyst described his own method of tracking RSEDs since it is not done consistently in E-TRAK. WO officials said the cost of tracking RSEDs in E-TRAK going forward would be minimal.

The lack of consistently tracked RSED information in E-TRAK complicates the monitoring of award payments. If analysts use their own methods to track RSEDs without documenting them, it is not possible for supervisors to oversee their work or for another analyst to complete their work in their absence. Our review of paid 7623(b) claim case files found that the tracking procedures used can delay award payments. In some cases, WO analysts documented difficulty in meeting timeliness targets.

Not recording the RSED in E-TRAK also means the WO cannot know if it is meeting its performance goals or whether it is unnecessarily delaying payments. As discussed earlier, the WO has a 90-day target for sending award recommendation packages from the date that IRS can determine finalized collected proceeds (generally the RSED). Because the WO does not track the date collected proceeds are finalized against the date of mailing the award recommendation package, it cannot assess its performance against the timeliness target.

## IRS Has Collected More Than \$2 Billion from Whistleblower Claims since 2007, but Some Award Payments Were Miscalculated

### IRS Has Paid 17 High-Dollar Claims, Half of Which Resulted in Collected Proceeds Over \$10 Million Each

Since fiscal year 2007 (when the 7623(b) program was established), IRS has collected more than \$2 billion from both the 7623(a) and 7623(b) programs. As of June 30, 2015, IRS had paid awards to whistleblowers on 17 high-dollar claims of the 7623(b) program. IRS paid the first of these claims in 2011 and expects to pay several more claims by the end of fiscal year 2015.<sup>26</sup> These 17 high-dollar claims accounted for over \$1 billion in collected proceeds. About half of these claims each had collected proceeds over \$10 million. Since 2011, 7623(b) claims constituted about 55 percent of all proceeds collected but accounted for less than 4 percent of the number of whistleblower awards paid (see table 3).

**Table 3: Number of Whistleblower Awards, Proceeds Collected, and Award Amounts, Fiscal Year 2011 through June 30, 2015**

	7623 (a) claims	7623 (b) claims	Total
Total awards	483	17	500
Total collected proceeds <sup>a</sup>	\$843 million	\$1,039 million	\$1,882 million
Total award amount <sup>b</sup>	\$54 million	\$261 million	\$315 million

Source: GAO analysis of IRS data. | GAO-16-20

<sup>a</sup>Collected proceeds data are not consistent with those in the WO annual reports. The WO provided revised collected proceeds data for fiscal years 2012 through June 2015.

<sup>b</sup>The award totals exclude sequestration reductions pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, which was applied to awards paid on or after March 1, 2013.

<sup>26</sup>Although the 7623(b) program was established in December 2006, the first high-dollar award was paid in April 2011, due to the lengthy process previously described. The number of awards does not represent the unique number of whistleblowers, as some whistleblowers made multiple claims and were paid on more than one occasion.

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Whistleblowers are awarded a percentage of collected proceeds ranging from a minimum of 15 percent to a maximum of 30 percent.<sup>27</sup> Of the 17 high-dollar awards paid through June 30, 2015, the majority were at the 22 percent of collected proceeds level with several at the 30 percent maximum level. Almost 17 percent of the total collected proceeds for both programs were paid out as awards.

The characteristics of the 17 paid 7623(b) claims varied. Over half of the claims had attorneys representing the whistleblower. Most but not all whistleblowers had a professional relationship with the taxpayer involved in the underpayment. Claims involved tax issues such as not properly reporting income, unreported offshore accounts, and employment tax.

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### The Award Determination Process Is Subjective, but Includes Measures to Mitigate Potential Inconsistencies

To determine whistleblower awards, the WO assesses the extent of the whistleblower's substantial contributions to a case.<sup>28</sup> This process is inherently subjective as there are no quantifiable measures for whether a contribution is substantial. IRS regulations describe the process for calculating awards and identify the positive and negative factors used as criteria for award calculation.<sup>29</sup> These factors, as shown in table 4, focus on the merits of the whistleblower information and whistleblower behavior. The factors are not weighted or exclusive; for example, other factors can be considered in certain circumstances.

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<sup>27</sup>The WO determines award percentages of 15, 18, 22, 26, or 30 percent based on an analysis of positive and negative factors listed in table 4.

<sup>28</sup>26 U.S.C. § 7623(b)(1).

<sup>29</sup>The WO awarded more than half of the 17 claims under the 2010 interim guidance found in IRM 25.2.2.9.2 (06-18-2010). Award determinations under the IRM guidance included an evaluation of seven positive and four negative factors. After the issuance of the final regulations on August 12, 2014, the WO applies eight positive and eight negative factors in making award determinations. 26 C.F.R. § 301.7623-4(b). The regulations added additional negative factors related to whistleblower (and whistleblowers' legal representatives') violations of confidentiality agreements or section 6103(n) contracts with the IRS. For 7623(a) claims filed on or after July 1, 2010, IRS uses the same process as for 7623(b) claims.

**Table 4: Factors the Whistleblower Office Uses to Determine Awards**

<b>Positive factors</b>	<b>Negative factors</b>
Whistleblower acted promptly.	Whistleblower delayed informing IRS, adversely affecting IRS's ability to pursue the case.
Whistleblower information identified a previously unknown issue or transaction.	Whistleblower contributed to the tax noncompliance.
Whistleblower information identified taxpayer behavior IRS was unlikely to identify or was particularly difficult to detect.	Whistleblower profited from the noncompliance, but did not plan or initiate the action.
Whistleblower information provided factual details in a clear and organized manner, saving IRS work and resources.	Whistleblower (or legal representative) adversely affected IRS's ability to pursue the case.
Whistleblower (or legal representative) provided exceptional cooperation and assistance during the audit, investigation, or trial.	Whistleblower (or legal representative) violated IRS instructions, causing IRS to expend additional resources.
Whistleblower information identified taxpayer assets not otherwise known to IRS.	Whistleblower (or legal representative) violated terms of confidentiality agreement with IRS.
Whistleblower information identified connections between transactions or parties to transactions not otherwise known to IRS.	Whistleblower (or legal representative) violated terms of a section 6103(n) contract.
Whistleblower information impacted the taxpayer's behavior, causing prompt corrective action.	Whistleblower (or legal representative) provided false or misleading information.

Source: GAO analysis of 26 C.F.R. § 301.7623-4(b). | GAO-16-20

Generally, IRS first assesses the presence and significance of positive factors to determine whether the award should be increased from the 15 percent minimum to 22 or 30 percent. Then, IRS considers the presence and significance of negative factors to determine whether the award percentage should be decreased.<sup>30</sup> As described earlier, when ODs close out an action related to an investigation, examination, or collections, they document whistleblower contributions to the tax case on the Form 11369. Complex tax cases comprising different tax issues may involve several audit teams (for example, a case could have both international and domestic components); each team provides separate documentation of the whistleblower contributions to that particular issue. The WO uses all the information to derive a final list of positive and negative factors.

<sup>30</sup>Section 7623 provides for a lesser award if the specific allegation presented by the whistleblower came from a judicial or administrative hearing, government report, audit or investigation or from the news media and the whistleblower was not the original source of the information or a reduction to the award is allowed if the whistleblower planned and initiated the actions that led to the underpayment of tax. The WO must deny an award if the whistleblower is criminally convicted for planning or initiating the actions that led to the underpayment of tax or other violation of the internal revenue laws.

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In our review of 7623(b) awards, we found documentation showing two levels of supervisory review in 11 of the 17 awards. A WO supervisor and the WO director reviewed and approved the WO analyst's initial award recommendations. WO guidance does not explicitly require supervisory review prior to the director's concurrence; however, according to a WO official, WO processes entail such review of the WO award recommendations. It is not clear whether the remaining 6 cases had not been reviewed or such reviews were not clearly documented.

The lack of quantifiable criteria for determining whistleblower awards subjects the WO award process to potential inconsistency in making awards. Different WO analysts may arrive at different award determinations based on the same set of whistleblower contributions identified by the OD. The WO mitigates some potential inconsistency by using broad award categories. According to a WO official, few 7623(b) awards were made each year, so WO analysts generally discussed each one to try to ensure consistency in the award percentage recommendation. Current WO procedures require the WO director to approve all 7623(b) awards and 7623(a) awards over \$1 million, which reduced inconsistency. However, should the volume of high-dollar claims reaching the award determination stage increase, as the WO expects, the consistency of the award determinations may be affected.<sup>31</sup>

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### WO Made Errors in Determining Collected Proceeds and Calculating Awards and Has Not Documented Corrective Actions

During the course of our case file review of the seventeen 7623(b) awards, we found that the WO made errors in calculating whistleblower awards and communicated incorrect award information to whistleblowers in five cases. The WO identified and corrected three errors by reissuing revised letters to the whistleblower prior to award payments. In a fourth case, a refund check related to tax withholding was issued and then cancelled. In the fifth case, we found the WO had miscalculated the award and had not taken all relevant assessments, penalties, and interests into account when determining the collected proceeds, resulting in an incorrect payment by IRS. According to the WO, they did not use tax

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<sup>31</sup> Delegation Order 25-7 (Rev. 2) delegated the authority to approve section 7623(a) awards to WO managers when the amount in dispute for purposes of initiating the whistleblower award administrative proceeding provided for in Treas. Reg. § 301.7623-3 is less than \$50,000 and WO senior managers when the amount of dispute for purposes of initiating the whistleblower award administrative proceeding provided for in Treas. Ref. § 301.7623-3 is less than \$1 million.

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assessment software in this case which resulted in a simple math error. A WO official said the WO has been using tax assessment software to determine award amounts since early 2014, so math errors should no longer occur. Subsequent to our query about this case, the WO verified all 7623(b) awards and identified two other potential errors. For two of these three cases, the WO issued supplemental awards. In the third case, IRS concluded that additional resources were not warranted to pursue the overpayment. In total, these award errors amounted to approximately \$100,000.

To mitigate errors in determining collected proceeds, the WO said it has changed its procedures to include a review of the taxpayer account at the time of award payment to verify that any and all relevant changes in tax assessment, penalties, interest, and other additional amounts have been taken into account. While the award percentage can be determined soon after the OD closes its investigation, examination, or collection action, the award amount depends on the collected proceeds. Collected proceeds are subject to change until there is a final determination of tax: specifically, until the statute of limitations for the taxpayer to claim a refund expires or until there is an agreement between the taxpayer and IRS that waives the taxpayer's right to file a claim for refund. On July 27, 2015, the WO e-mailed information about the new procedure to WO staff who process award payments for 7623(b) claims, but did not disseminate the e-mail to everyone in the WO, including those who process 7623(a) awards until we brought the oversight to their attention on September 1, 2015. According to WO officials, the WO will be issuing an official procedural change, but as of September 1, 2015, it has not done so.

An integral component for the reasonable assurance of the effectiveness and efficiency of operations is through an organization's policies and procedures, including those for review and ensuring accountability.<sup>32</sup> As previously noted, the WO has not only communicated erroneous award information to whistleblowers, it has also made errors in calculating award payments. Without additional documented procedures, such as having an

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<sup>32</sup>Control activities, such as the policies and procedures designed to achieve an agency's objectives, are one of five standards for internal control. See internal control activities in GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: Nov. 1999). This is also consistent with our updated publication, effective October 1, 2015: *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

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additional management or supervisory review of the preliminary award recommendation and award letters prior to their issuance, as well as verifying the collected proceeds at the time of award payment, IRS will remain vulnerable to communicating incorrect award information and making erroneous award payments to whistleblowers. This is especially important given that that IRS expects to make more high-dollar award payments in the near future.

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## Whistleblower Office Communications Are Limited by Insufficient Data and Prohibitions on Disclosing Taxpayer Information

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### Untimely and Inconsistent Data in the Whistleblower Office Annual Reports to Congress Hinder Program Oversight

A key communication tool that the Secretary of the Treasury and IRS use to inform Congress and the public about the WO and 7623(a) and 7623(b) programs is the WO's annual report to Congress. This report is required by the Tax Relief and Health Care Act of 2006, the same legislation that established the WO and the 7623(b) program, and requires the Secretary of the Treasury to conduct an annual study of section 7623 programs, and to include in the annual report legislative or administrative recommendations for the program.<sup>33</sup> This report provides IRS with an opportunity to discuss these programs' operations, challenges, outcomes, and statistics. There are no requirements for when the report should be issued or what data the report should include.

The timing of the release of the annual reports has raised some concern. The fiscal year 2013 annual report was issued over 6 months after fiscal year 2013 ended and the fiscal year 2014 report was released over 8 months after the end of fiscal year 2014; the fiscal year 2014 report was not released to the public via [www.irs.gov](http://www.irs.gov) until July 6, 2015. According to WO officials, the WO had compiled the FY 2014 report and data by mid-

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<sup>33</sup>Pub. L. No. 109-432, § 406(c), 120 Stat. 2922, 2960 (Dec. 20, 2006).

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December 2014, but the report could not be released until it was reviewed within IRS, the Department of the Treasury (Treasury), and the Office of Management and Budget (OMB). According to WO officials, IRS sent the report to Treasury in March 2015, and the report cleared both Treasury and OMB review on June 4, 2015. According to WO officials, these reviews resulted in editorial but not substantive changes to the report.

The WO updated statistics in both of these reports before issuing them. For example, the fiscal year 2014 report includes data as of May 14, 2015. According to WO officials, the WO provides the updates so the reports reflect the status of claims closer to the report's issuance, but a drawback to this approach is that the annual reports do not provide a consistent snapshot of what occurred with the whistleblower program in a given fiscal year. As a result, monitoring the program's operations and results from year to year may become increasingly difficult for congressional oversight committees and the whistleblower community. Furthermore, last minute changes to the report have introduced discrepancies. For example, in the fiscal year 2014 annual report, the data in the executive summary reflects the data through December 2014, while the data tables in the report body reflect the updated May 2015 data. Such discrepancies (which can cause confusion with readers) could be avoided if the reported data were as of the end of the fiscal year or the reports were issued closer to the end of the fiscal year.

In addition to questions about the annual report's release date, concerns remain regarding the content and presentation of data in the annual report. We reported in August 2011 that the annual reports' data were limited and, for example, did not contain information on processing times or reasons why claims were rejected. We recommended that IRS include more information and statistics in these reports, which IRS has done with subsequent annual reports.<sup>34</sup> However, based on discussions with program stakeholders (including some in the whistleblower community), additional information in the annual report could make it more useful. A key standard of internal control is communication; management should ensure there are adequate means for communicating with external

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<sup>34</sup>See [GAO-11-683](#).

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stakeholders who may have a significant impact on the agency achieving its goals.<sup>35</sup>

Stakeholders, including congressional staff and some in the whistleblower community, noted that the annual report can be difficult to understand because tables are poorly labeled and terminology is not fully explained. For example, annual reports since 2013 have included several data tables on the reasons for claims closures, number of claims received, status of open claims, and award payments. However, these tables do not use a common denominator to enable the reading of information across tables. One table shows claims received for both 7623(a) and 7623(b) programs, while another table shows the status of claims for 7623(b) claims only.<sup>36</sup> Award payment information is provided by number of award payments and readers must look to another table and past reports to see how many claims are closed as paid. Further, the tables include whistleblower claim process steps that are not fully explained and can be confusing.

In addition, the annual reports do not provide data on the amount of time it takes to process either 7623(a) or 7623(b) claims from claim submission to award payout. The report's one table on timing only provides a snapshot of how long 7623(b) claims have been in a current status as of a date on which the snapshot was taken. This table does not provide information for how long an average claim spends in each status; however, readers may incorrectly interpret this table as showing the overall average time for claims to move through the process. The table also shows the longest and shortest days for claims in each status. This information can be misleading; readers may interpret the shortest days column to mean that it is possible for a claim to spend one day in a given status when in fact the data only shows that at least one claim had been in the status only one day when the snapshot was taken.

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<sup>35</sup>See [GAO/AIMD-00-21.3.1](#). This standard is also consistent with our updated publication, effective October 1, 2015, [GAO-14-704G](#), which states that externally communicating necessary quality information to achieve a program's objectives, including for effective oversight, is a key internal control.

<sup>36</sup>The WO did not track 7623(a) claims in E-TRAK by a claim's current status until June 1, 2015, and therefore was unable to report such information in the annual reports for fiscal years 2007 through 2014.

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IRS attributes some problems with data in the annual reports to E-TRAK, as well as to other spreadsheets used to track whistleblower claims information. As previously described, E-TRAK was not originally designed as a management reporting system and therefore was not developed to easily run certain data reports. The WO has made changes to E-TRAK over time to allow for more robust data reporting, but the WO still has problems reporting certain data in the annual reports. For example, the WO has added some status fields to better describe and differentiate where claims are in the review process; however, when these fields were added, the WO did not always have the time or resources to update claims that were already in process to the new status categories. As a result, the annual reports have included a mix of data using the old and new statuses that can be difficult to aggregate and interpret.

In addition, the WO is not using the full capabilities of E-TRAK; according to WO officials, some information that is reported in the annual reports (such as total collected proceeds) is maintained in separate spreadsheets that do not feed into or from E-TRAK data. In the course of providing us with data on award payments, for example, WO officials said they discovered that this spreadsheet was not updated to properly reflect the total collected proceeds associated with award payments. As a result, WO officials stated that the total collected proceeds reported was overstated and that awards paid as a percentage of collected proceeds was understated in all annual reports dating back to at least the fiscal year 2011 annual report. According to WO officials, this error will be corrected for the fiscal year 2015 report for historical data and procedures are in place to ensure subsequent data will be correct. The WO annual report could be more useful to stakeholders and the whistleblower community if the WO can provide reliable data showing progress and changes across years in comparable timeframes.

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Prohibitions on Taxpayer  
Information Disclosure  
Limit Information  
Whistleblower Office Can  
Share about Claims

IRS is limited in what information it can share with whistleblowers and other stakeholders throughout the whistleblower claim process. Section 6103 of the Internal Revenue Code prohibits the unauthorized disclosure of tax information.<sup>37</sup> A violation of section 6103 can lead to civil and/or criminal penalties, including imprisonment of up to 5 years. IRS takes section 6103 very seriously; IRS does not share information with a whistleblower about what may be happening with their claim if such information could reveal taxpayer information, such as confirming that the taxpayer in question is being audited.

As a result, the WO policy on providing whistleblowers updates on a claim's status is to state only whether the claim is open or not. Until a rejection or denial letter has been issued or an award payment made, all claims are considered open. Given this policy, it is possible for a whistleblower to not hear anything from the WO for several years. Because information provided by the WO is so limited, whistleblowers can and do draw conclusions about progress on their claims from the contact they do have with IRS or the taxpayer. Some whistleblowers and whistleblower attorneys we spoke with told us they had been confident in knowing what was occurring in their case because of insider information from taxpayer sources, public information, or inference from limited communications with the WO, but some were later surprised to have their claims denied.

The Office of Chief Counsel officials we spoke with stated that whistleblowers may infer from IRS's silence that action may be happening on their claim. However, if the WO were to communicate information sufficient for the whistleblower to infer confidential taxpayer information, then the communication could violate section 6103.

Whistleblower program stakeholders have voiced concern about this limited communication. They reported frustrations with the limited

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<sup>37</sup>Section 6103 of the Internal Revenue Code governs the confidentiality of taxpayer returns and return information. Under section 6103(b)(1), a return means any tax or information return, declaration of estimated tax, or claim for refund filed with IRS. Return information means a taxpayer's identity, the nature, source, or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to investigation, or any other data received by, recorded by, prepared by, furnished to, or collected by the IRS. 26 U.S.C. § 6103(b)(2).

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information IRS is willing to share with whistleblowers, especially those that have risked their careers or safety to be whistleblowers. Some whistleblower attorneys we spoke with stated that they are accepting fewer IRS whistleblowers as clients or have stopped taking on such clients altogether due to their frustration with the program. These concerns include limited communication by IRS while claims are open, limited communication about the process, and limited information about what makes a good claim. As such, IRS may risk missing out on recovering significant tax revenue when whistleblowers decide not to come forward with information.

Officials in the WO also cited frustration with section 6103 limitations. Officials said that they are well aware of the criticisms of the whistleblower program, including allegations that IRS has an anti-whistleblower attitude attributed to the Office of Chief Counsel, but section 6103 restrictions prevent WO and IRS management from directly answering or rebutting some of these criticisms. IRS officials said they cannot comment on pending litigation and cannot reveal facts of specific whistleblower claims to explain certain outcomes. Furthermore, Office of Chief Counsel officials told us that the office's role is to represent the IRS and provide fair and impartial legal advice, which does not entail responding to outside criticism on behalf of the agency.

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### IRS Has Not Used Section 6103(n) Contracts with Whistleblowers and Does Not Have a Documented Process for Using Them

IRS has the authority to disclose some information with whistleblowers under several subsections of section 6103 of the Internal Revenue Code. Specifically, the WO has the authority under section 6103(h)(4) to share information with whistleblowers during the award determination phase and under section 6103(k)(6) to share information with a confidential informant, which is typically used by CI.<sup>38</sup> IRS also has the authority to enter into a contract with an individual to share information for the purposes of advancing tax administration, under section 6103(n).

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<sup>38</sup>The WO may disclose tax information to a whistleblower or their legal representative to the extent necessary to conduct a whistleblower administrative proceeding, which includes communicating with the whistleblower about the preliminary award recommendation or denial of award, providing the whistleblower the award report package, allowing the whistleblower to review documents supporting the award determination, and sending the final award or denial letter. 26 C.F.R. § 301.6103(h)(4)-1. IRS employees are generally allowed to disclose return information to the extent necessary to conduct examinations, collections, investigations, or other tax enforcement activities. 26 C.F.R. § 301.6103(k)(6)-1.

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However, according to IRS officials, IRS has not yet used these section 6103(n) contracts for whistleblowers.<sup>39</sup>

Under a section 6103(n) contract, a whistleblower can, for example, work with IRS to help an IRS examiner understand an alleged tax issue. IRS officials have publicly acknowledged the possibility of using section 6103(n) contracts with whistleblowers, as well as the benefits of doing so. For example, in an August 2014 memo to the commissioners of the ODs, IRS Deputy Commissioner for Services and Enforcement stated that, with appropriate controls, a section 6103(n) contract may be used when disclosure of taxpayer information is necessary to obtain a whistleblower's insights and expertise on complex technical or factual issues. This memo mirrored language from a June 2012 memo. IRS has not yet used this provision for the whistleblower program because, according to the WO and OD officials we spoke with, there has not yet been a case where an exam team needed this provision to investigate and build a case.

We spoke with several IRS officials from various divisions and offices, (including the SB/SE, LB&I, and TE/GE ODs and the Office of Chief Counsel) about the processes for evaluating the need for a section 6103(n) contract and the process for requesting authorization to enter into such a contract. According to some of these officials, there are no criteria or guidance for determining the need for a contract other than the language of section 6103(n), related regulations authorizing their use, and the Deputy Commissioners' memos. The IRM sections related to the whistleblower programs include one short section on 6103(n) approvals, stating they may be used when in the best interest of the government and that the purpose must be obtaining services for tax administration. A prior version of the IRM stated that these would be used in rare circumstances. The request for a section 6103(n) contract starts at the examiner level and, if approved by the responsible executive, must be authorized by the

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<sup>39</sup>Section 6103(n) allows disclosure of tax information to persons contracted to provide services to the government for purposes to tax administration. Treasury regulations describe the circumstances under which government employees with access to tax information can properly disclose that information. Treasury Department employees may disclose return information to a whistleblower and their legal representative to the extent necessary in connection with a written contract for services relating to the detection of violations of the internal revenue laws or related statutes. Whistleblowers and their legal representatives are subject to the same civil and criminal penalties for unauthorized disclosure as government employees. 26 C.F.R. § 301.6103(n)-2.

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OD at a level no lower than the Deputy Commissioner. We did not identify any additional guidance specific to the process for requesting and approving a section 6103(n) contract within two of the three ODs that handle the majority of whistleblower claims. Without clear guidance for all examiners, IRS staff may not be using a resource available to them that could potentially save IRS time and other limited resources.

Whistleblowers and the attorneys we spoke with argue that such contracts could provide IRS with free help to analyze complex tax issues and provided several examples of how such contracts could benefit IRS. For example, one attorney said a whistleblower who has inside information about the taxpayer could alert IRS if the taxpayer were fabricating documentation during an examination. However, because IRS has never entered into a section 6103(n) contract with a whistleblower, IRS does not know whether it may be missing opportunities to collect additional tax revenue.

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**Whistleblower Office Increased Information Available for Whistleblowers but Did Not Fully Describe Claim Review Process and Timeframes**

The WO developed a fiscal year 2015 communications plan aimed at improving how the office communicates within IRS and with the whistleblower community. According to WO officials, this is the first finalized and documented communications plan for the WO. One key message to the whistleblower attorney community that this plan targets is how to prepare a complete submission with documentation that will assist in the processing of the claim. The WO published two fact sheets to communicate key information about the program to whistleblowers focused on the whistleblower claim process and how to submit a claim for an award. WO officials told us they developed the content of the fact sheets based on common questions they receive from whistleblowers and their attorneys. The WO limited the fact sheets to one page each.

Our review of the published fact sheets found they did not include some key information relevant to whistleblowers and did not provide much new information beyond what is already available on [www.irs.gov](http://www.irs.gov). For example, the fact sheets do not provide any examples or specific explanations of what is meant by key terms used in the award determination process, particularly denials. The fact sheets (as well as information posted on [www.irs.gov](http://www.irs.gov) and included in the annual report) do not include a full description of the claim review process, such as a detailed step-by-step guide that includes timeframes for steps in the process. Additionally, the fact sheets do not include information about key taxpayer rights and how much time that taxpayer appeals may add to the review process, which could be helpful to the whistleblower community's

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understanding of the WO's processes. The fact sheets state that claims can take 5 to 7 years to complete the review process without providing any additional information about why it may take longer.<sup>40</sup> Other information not included and that could be helpful according to whistleblower attorneys we spoke to, is suggestions for the types of documentation to include with a claim submission.

We spoke with whistleblowers and attorneys specializing in IRS whistleblower claims who were unaware of some key processes in the whistleblower claim cycle or how long the review process can take. Some stated that the information available from IRS about the program is limited so they rely on other resources—such as discussions with other whistleblower attorneys—for information. For example, according to one whistleblower attorney, several whistleblower attorneys have periodic teleconferences to compare experiences and share information learned about the program. One attorney who participates in these calls said they have reached out to the Director of the WO to request he participate in a call to discuss what attorneys can do to improve the quality of their clients' Form 211 submissions; the Director of the WO has neither accepted nor declined the invitation. Attorneys also told us they have looked to whistleblower litigation to learn more about the whistleblower process. One attorney we spoke with stated that he appeals most claims because the discovery phase of litigation is where he learns the most about the program and how to improve future Form 211 submissions.

Program managers should ensure there are adequate means of communicating with external stakeholders who may have a significant impact on the agency achieving its goals.<sup>41</sup> As the administrator of the whistleblower program, the IRS should be the primary source of information about the program. While the WO is taking steps to improve communication with whistleblowers, it is missing an opportunity to provide information to the whistleblower community that could potentially reduce burden on the WO and alleviate workload. The fact sheets do not address

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<sup>40</sup>As previously discussed, the 5 to 7 year average timeframe is not based on verified E-TRAK data from claims moving through the process, as the WO does not calculate the average time from submission to claim closure.

<sup>41</sup>See [GAO/AIMD-00-21.3.1](#). This standard is also consistent with our updated publication on internal controls, effective October 1, 2015, [GAO-14-704G](#), which states that externally communicating necessary quality information to achieve a program's objectives, including for effective oversight, is a key internal control.

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some of the key areas of concern for existing and potential whistleblowers, including estimated timelines for steps in the review process, guidance on best practices for submitting a successful Form 211, and specific examples of the various reasons why claims are denied. Publicizing such information may also alleviate burdens on the WO because whistleblowers may better understand the process.

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### Annual Status Letter Pilot Project Used Already Constrained Resources and Has Unknown Benefits

In March 2015, the WO initiated a pilot program of sending annual letters to a sample of whistleblowers with open claims to let them know that their claim remains open. The goals of this program are to proactively communicate with whistleblowers and to reduce the frequency of letters, e-mails, and phone calls from whistleblowers inquiring on the status of their claim. The pilot sample included whistleblowers whose claims had been open for at least 3 years and where the WO was not expecting to take action in the short-term (i.e., 3 months or less). The letters did not include any new information for the whistleblower, and state that the WO cannot share further information about the claim. The letters simply stated that the whistleblower's claim remained open.

WO officials told us they will collect benefit and cost information about the pilot for several months before deciding whether to continue it. However, WO officials also told us they did not have a formal plan for assessing these costs and benefits. A benefit-cost analysis is the OMB's recommended technique for a formal analysis of government projects, and is used to aid agencies in determining whether a project is appropriate when compared to alternative options, including the option of not having the project.<sup>42</sup> For such an analysis to be useful to decision makers, it should include, among other elements, a comprehensive enumeration of the different types of benefits and costs needed to identify the full range of the project's outcomes.

According to WO officials, the WO's initial assessment of the program shows that it has taken 100 staff hours to send pilot letters to approximately 180 whistleblowers updating them on approximately 360 open claims. WO officials stated that a significant portion of the time spent on the pilot program was spent confirming data in E-TRAK. WO

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<sup>42</sup>Office of Management and Budget, *Circular A-94: Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs* (Washington, D.C.: October 1992).

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staff researched each whistleblower claim in the pilot to confirm the status and the mailing address of the whistleblower. WO management stated that this process improved the WO's data by identifying claims that were not properly updated in E-TRAK and by identifying incorrect addresses through returned (undeliverable) mail. WO officials estimate that it would take three staff years to send letters to all eligible whistleblowers, but WO officials expect that the time needed for annual letters would decrease as the office realizes labor efficiencies and improved E-TRAK data from previous years' letters.

The WO does not have plans to reach out to pilot letter recipients to determine if they found value in receiving the letter or if they had other feedback about the pilot program. The officials stated that sending a survey (or otherwise reaching out to these whistleblowers) would be counter to the intent of the program, which is to reduce the incoming calls and correspondence. The WO plans instead to monitor the number of phone calls and correspondence from pilot participants requesting information about their claim to determine if the letters deterred whistleblowers from contacting the WO. Further, WO officials said they are monitoring press coverage and internet message board discussions about the pilot letters. Internet postings indicate that whistleblowers are frustrated by the lack of information in the letters. Most of the whistleblower attorneys we spoke with—at least one of whose clients were part of the pilot sample—generally did not think the pilot letters were useful because they did not include a meaningful update on the status of their claim. While some of the whistleblowers and attorneys we spoke with said they appreciated IRS's attempt to improve communication with whistleblowers, the letters did not communicate anything new, and they already knew their claims were open because they had not received award or denial letters.

However, the sample of whistleblowers we spoke with (and those that comment on the internet and in the press) may not be fully representative of the whistleblower community's views. Whistleblowers that wish to remain anonymous may not express their opinions of the pilot program for fear of being identified as a whistleblower. Without attempting to hear directly from those receiving the letters, the WO is unable to fully identify and measure the benefits of the program. Benefit information may be skewed toward the opinions of vocal whistleblowers.

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## Multiple Opportunities Exist to Strengthen Whistleblower Protections

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### Potential and Observed Errors Include Sending Sensitive Information to Incorrect Addresses and Retaining Whistleblower Information in Exam Files

The protection of a whistleblower's identity is of utmost importance to the success of the program. Without such protections, some whistleblowers may not come forward to IRS out of concern or fear for their employment or safety, according to whistleblowers and their representatives that we interviewed. As outlined in the IRM and in Treasury regulations, IRS will protect the identity of the whistleblower to the fullest extent permitted by the law.<sup>43</sup> In instances where revealing a whistleblower's identity is essential to the pursuit of an examination or investigation, IRS guidance states that it will make every effort to consult with the whistleblower before deciding whether to proceed with the case. Also, IRS neither confirms nor denies the existence of a whistleblower in a case if asked directly by the taxpayer. While the WO has procedures and policies in place to protect whistleblower identities, we found instances of whistleblower identities being at risk for disclosure. In at least one case, a whistleblower's identity was improperly disclosed by a former IRS employee who later pled guilty to several charges, including some related to the handling of the audit pertaining to the whistleblower's claim.

First, in our review of closed claim files we found that the WO has sent sensitive whistleblower mail to incorrect addresses. The WO maintains whistleblower addresses separately from taxpayer addresses in the event that the whistleblower wishes to have WO mail sent to an address other than the one used to file their tax returns. One whistleblower attorney said he recommends having the WO send all of his clients' mail to the attorney's office to minimize the risk of misdirected mail. Even so, we saw instances in our file review of the WO sending mail directly to whistleblowers even after receiving requests to send all mail to the attorney. Further, on at least one of these mailings, the IRS Whistleblower Office was named on the return address. Such errors could have consequences for whistleblowers, including having their identity as a whistleblower disclosed. In addition, whistleblowers' rights could be

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<sup>43</sup>IRM Part 25, Chapter 2, Section 2. 26 C.F.R. § 301.7623-1(e)

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impacted because communication from the WO contains time-sensitive material. For example, the whistleblower's right to respond to the WO on preliminary award recommendations or the right to appeal final award determinations with the Tax Court must occur within 30 days from the date the notice is sent by the WO.

WO officials told us that as of mid-2012, the office no longer identifies the IRS Whistleblower Office on return mail labels, although there is no written policy. WO officials recognized that whistleblowers were uncomfortable with receiving mail that is clearly labeled as coming from the IRS Whistleblower Office. According to these officials, mail sent from the ICE unit in Ogden, UT (such as acknowledgement letters) lists only a building identifier, and mail sent from other locations (such as a field office where only one WO analyst works) is sent using the analyst's address and last name only. Given the volume of correspondence the WO sends as well as the recent hiring of staff and plans for additional hires, having a written policy would strengthen the WO's protections of whistleblowers' identities.

The WO requests whistleblowers update their address with the WO whenever they move, which can be a common occurrence given the several years it can take for a claim to complete the review process. Given that communications from the WO to whistleblowers are limited, there are few opportunities to remind whistleblowers about this requirement. Additionally, as of July 30, 2015, the WO's website did not include clear instructions for whistleblowers needing to change their address. According to WO officials, it is possible that some whistleblowers updated their address with IRS for their personal account and erroneously thought the WO would also update E-TRAK with their new address information. As a matter of protecting whistleblowers, the WO does not default to using the whistleblower's personal address. WO officials told us they had not considered creating a change of address form specific to whistleblowers. A change of address form specific to whistleblowers could help alleviate some of the confusion whistleblowers face when they change their addresses with IRS. However, according to WO officials, such a form could create more administrative work for the WO if it is mistakenly used by non-whistleblowers, such as if a taxpayer wanting to update their personal account uses a whistleblower address change form instead of the one intended for taxpayer files.

Even in instances when a whistleblower did submit the proper address change request to the WO, E-TRAK was not always updated accordingly. WO officials told us that updating address change information in E-TRAK

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can be challenging and time consuming. For example, if a whistleblower submits multiple, unrelated Forms 211 alleging noncompliance by multiple taxpayers, the WO opens a claim for each in E-TRAK. If the whistleblower moves or requests that all correspondence be sent to an attorney, each of the whistleblower's files in E-TRAK must be updated to include the new address. WO officials said they were in the process of developing an update for E-TRAK to allow for global updates to all files for a particular whistleblower. As of July 28, 2015, an E-TRAK update has been rolled out on a limited basis that allows for bulk updates of addresses, among other things. According to WO officials, the new function in E-TRAK is working well based upon initial testing with a sample of bulk claims.

Second, we found instances where whistleblower information was not returned to the WO after an exam was closed. According to the IRM and other WO guidance, information identifying the name or existence of a whistleblower should be protected, especially from the taxpayers the whistleblowers include on their Form 211 submissions.<sup>44</sup> When the WO sends claims to the ODs for review and examination, the file contains a cover sheet that instructs the OD how to handle whistleblower information. For example, whistleblower information should receive special security protections and the exam team should never disclose to anyone the name of the whistleblower or the fact that IRS is in possession of whistleblower information. All information provided by the whistleblower is to be returned to the WO at the conclusion of any audit activity with the Form 11369. Additional instructions are included on the Form 11369 reminding the exam team of the proper procedures for safeguarding whistleblower information and returning it to the WO.

Despite these procedures, we found instances where whistleblower information (including the name and Social Security number of some whistleblowers) was retained in exam files in breach of IRS policy. As we reported in July 2015, three of the eleven TE/GE closed case files we reviewed that originated from a whistleblower referral included information identifying the whistleblower, such as by name or Social Security number.<sup>45</sup> Additionally, two others included information pointing to the existence of a whistleblower, albeit not the identity. TE/GE officials said

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<sup>44</sup>IRM Part 25, Chapter 2, Section 2.12

<sup>45</sup>[GAO-15-514](#)

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that as of September 25, 2015, the five identified cases had been redacted in accordance with the policy outlined in the IRM. WO officials also cited other instances where they became aware of improper storage or retention of whistleblower information and documentation in the ODs. SB/SE officials said that as of September 1, 2015, they were in the process of doing more training with staff on the issue. LB&I officials said they send a memo to examiners that directs them to the LB&I website where there is guidance and training on closing claims and protection of whistleblower information. Because whistleblower cases have the potential to be challenged through legal proceedings, these protections are important. Without such file segregation, a taxpayer could potentially identify a whistleblower in documents received during discovery for a refund action or other tax-related suit in federal court.<sup>46</sup>

These breaches in protecting whistleblowers' identities highlight weaknesses in IRS's internal controls over whistleblower information and records. As a part of internal control, management should limit records access to authorized individuals and should assign and maintain accountability for their custody and use.<sup>47</sup> Current procedures call for the examiners to retain separate taxpayer examination and whistleblower claim files and to return the whistleblower claim file to the WO at the conclusion of the examination to ensure proper handling of whistleblower information. If reviews of these files are either not occurring or are not effective, whistleblower information and the public's trust in the program are at risk. Additional controls—such as a specific management sign off on files before they are closed in the OD—could reduce the risk of whistleblower identities being inadvertently disclosed.

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### Tax Whistleblowers Do Not Have Legal Protections from Retaliation by Employers

Unlike other whistleblower programs, there is no law protecting tax whistleblowers against retaliation from their employers. A tax whistleblower that is discharged, demoted, suspended, threatened, harassed, or otherwise retaliated against by their employer because they provided information to the IRS has no cause of action to bring a lawsuit in federal court. Other whistleblower award programs (such as those

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<sup>46</sup>A return or return information may be disclosed in a judicial or administrative proceeding pertaining to tax administration if the treatment of an item in the return is directly related to the resolution of an issue in the proceeding. 26 U.S.C. § 6103(h)(4)(B).

<sup>47</sup>[GAO/AIMD-00-21.3.1](#)

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created under the False Claims Act or Dodd-Frank Act) provide legal recourse to such retaliatory practices.<sup>48</sup> Under those statutes, whistleblowers have a right to file a claim in U.S. district court for relief from retaliatory actions, including reinstatement of their job, back pay, and other damages.

Many of the tax whistleblower attorneys we spoke with also provide legal services to individuals bringing suit under the False Claims Act. Those attorneys commented that not having statutory relief from retaliation for tax whistleblowers puts these clients at risk of adverse actions by their employers if it becomes known that they are a whistleblower. Some tax whistleblowers we spoke with also noted that they had suffered from negative consequences at work—such as being denied a promotion or being demoted—as a result of their whistleblower status. Some level of legal protections may provide additional assurances to potential whistleblowers and could encourage those with high-value inside information about tax noncompliance to come forward.

It is the IRS and WO's goal to protect the identity of the whistleblower. IRS officials support statutory retaliation protections for tax whistleblowers. IRS officials told us, however, that such protections should be remediated outside of IRS. The Secretary of the Treasury has put forth legislative proposals for retaliation protections for whistleblowers in IRS's fiscal years 2014, 2015, and 2016 Congressional Budget Justifications, and has discussed them in recent WO annual reports to Congress. In these proposals, Treasury estimates these protections would not impose additional costs on IRS. As of August 31, 2015, no bills providing protection to IRS whistleblowers from retaliation by their employers had been introduced by the 114th Congress.

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<sup>48</sup>Under the False Claims Act, an individual may receive an award for bringing an action in federal court on behalf of the government against a person or company who defrauded the government. The False Claims Act provides employees relief from retaliation by employers because of the lawsuit. Relief to employees includes reinstatement of position, two times the amount of back pay plus interest, and compensation for any special damages. 31 U.S.C. § 3730(h). Section 922 of the Dodd-Frank Act included a protection from retaliation for whistleblowers providing information to the Securities and Exchange Commission for an award. Under the Dodd-Frank Act, the whistleblower may bring an action in federal court if their employers retaliated against them because of the information they provided to the Securities and Exchange Commission under the program. Relief for employees who prevail against their employer for retaliation includes reinstatement of their job, two times the amount of back pay plus interest, and any litigation costs. 15 U.S.C. § 78u-6(h).

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## Conclusions

For the whistleblower program to be successful in helping IRS enforce the tax code, encourage voluntary tax compliance, and reduce the tax gap by collecting revenue that could have otherwise gone uncollected, whistleblowers need to have confidence in the program's processes and outcomes. Since we last reported on the 7623(b) program in 2011, IRS has made hundreds of millions of dollars in award payments to whistleblowers and is in the process of evaluating thousands more claims for potential award payments. The WO has also made several improvements in the way it collects and reports information, making the program more transparent. However, IRS and the WO could make additional changes to improve timeliness, ensure the accuracy of award payments, expand communications, and increase protections for whistleblowers.

Identifying and addressing inefficient processes should be a priority for the WO, especially in the wake of recent budget cuts and curbs to the WO's hiring plans. In order to maximize the benefits of information provided by whistleblowers, the claim review process needs to efficiently process useful information. Given the volume of claims received, even small increases in efficiency can improve timeliness of claim reviews and can free up WO resources to clear backlogs of other work, such as issuing denial letters.

Whistleblowers need to have confidence that their awards have been calculated fairly and correctly. While WO officials said they have instituted a new policy to prevent the sort of errors we found in our review, documenting the new policy and disseminating it to all staff in the WO is essential to ensure everyone is aware of and has access to the policy.

Effective communication with Congress and the public is also critical to the program's success. The annual report to Congress serves as the WO's opportunity to provide a comprehensive overview of what the WO accomplished and what challenges it faced in the prior fiscal year. Presenting Congress with comprehensive, reliable, and clear data in a timely manner will help Congress provide effective oversight. Further, providing the public with a complete and accurate picture of how the WO and the 7623 programs operate can bolster the public's trust in the program.

Finally, whistleblowers need assurances that their information and identities are protected. Strengthening controls in areas such as mailings and file retention can further prevent accidental disclosures of whistleblower information that could bring them harm. Additional

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protections against retaliation from employers could further boost whistleblowers' confidence in the program and encourage more insiders with information on significant tax underpayments to come forward.

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## Matter for Congressional Consideration

To further encourage whistleblowers to provide information to IRS about serious tax noncompliance and to protect whistleblowers, Congress should consider legislation that would provide protections for tax whistleblowers against retaliation from their employers.

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## Recommendations for Executive Action

We recommend the Commissioner of Internal Revenue direct the Whistleblower Office Director to take the following eight actions:

1. Implement a staffing plan for streamlining the intake and initial review process to make more efficient use of staff resources.
2. Record refund statute expiration dates (RSED) in E-TRAK and monitor expiration dates routinely so that the award payment process can start as soon as the claims are eligible for payment.
3. Strengthen the procedures for calculating award amounts and for the issuance of the preliminary award recommendations and award letters to whistleblowers. Such procedures should include, at minimum, a documented process for:
  - supervisory review prior to the director's concurrence,
  - verifying collected proceeds prior to an award payment for both the 7623(a) and 7623(b) programs, and
  - reviewing preliminary award recommendation and award letters to the whistleblower prior to their issuance.
4. Provide additional information in the annual report to Congress to better explain the statistics provided and the categories of claim review steps reported. Specifically, the report should
  - include correct, reliable data that reflect only the activities of the fiscal year of the report;
  - describe all status categories and clearly identify claim type in the tables; and
  - include an overall timeliness measure (by providing an average and range) to show how long claims take to go from submission of Form 211 to closure decision.

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5. Develop an additional or revised fact sheet about the whistleblower claim process and/or publish additional information on the IRS website. Such information should include
    - an outline of the entire claim review process, with an average time or time range for the various review steps;
    - a description of the key taxpayer rights that a taxpayer may exercise and how much time this may add to a claim's review;
    - examples to illustrate common circumstances that result in denials; and
    - items to include in a Form 211 submission, and suggestions for the types of documentation that are particularly helpful to the WO.
  6. Develop a comprehensive plan for evaluating the costs and benefits of the pilot annual status letter program, including obtaining feedback from whistleblowers in the pilot regarding the usefulness of the letter.
  7. Establish a process to ensure whistleblower addresses are being properly updated in E-TRAK to ensure the WO does not send whistleblower mail to outdated or incorrect addresses. This process could include developing a change of address form specific to whistleblowers and including a blank copy of it in every correspondence with whistleblowers or referencing the importance of updating the WO with any address change in every correspondence with whistleblowers.
  8. Formally document a procedure for return address labels for mail originating from the WO that states that external envelopes should not identify the WO as the sender of the correspondence.

We recommend the Commissioner of Internal Revenue direct the Deputy Commissioner for Services and Enforcement to take the following two actions:

1. Develop guidance for examiners in operating divisions to use in determining whether an Internal Revenue Code section 6103(n) contract with a whistleblower would be beneficial and outline the steps for requesting such a contract.
2. Strengthen guidance and procedures to ensure whistleblower information is retained only in the proper file locations. Such procedures could include requiring management sign off of taxpayer file reviews to ensure all whistleblower information has been appropriately segregated and sent back to the WO.

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To ensure timely and consistent information to Congress and the public, we recommend the Secretary of the Treasury issue its Whistleblower Office annual report to Congress no later than January 31st each year covering the prior fiscal year.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Commissioner of Internal Revenue and Secretary of the Treasury for comment. IRS provided technical comments that were incorporated, as appropriate. We received written comments from IRS's Deputy Commissioner for Services and Enforcement, which are reprinted in appendix IV. Treasury did not provide comments.

The Deputy Commissioner agreed with our recommendations and underscored the importance of the whistleblower program as part of IRS's overall enforcement efforts and stated that IRS is committed to improving the whistleblower claim review process and implementing the recommendations in our report, as well as recommendations that are expected as part of an internal Lean Six Sigma review. IRS has already taken some actions to address the findings and recommendations in our report. For example, the Deputy Commissioner said that the initial review backlog of over 5,000 claims has been reduced to less than 500 as of September 2015, and that ARC has brought on six new employees to work on the award determination backlog. IRS is also addressing the denials backlog and looking at ways to streamline the claim review process to provide opportunities for efficiencies, including technology improvements.

The Deputy Commissioner also acknowledged the constraints section 6103 disclosure rules place on the whistleblower program, but said IRS will be looking for ways to address communication concerns, including our recommendations related to the pilot annual status letter program and 6103(n) contracts. The Deputy Commissioner also stated that IRS will address the recommendations for the annual report by implementing meaningful changes to the content, format, and timing of the next annual report. Finally, the Deputy Commissioner stated IRS recognizes the importance of strong internal controls and of updating policies and procedures in a timely manner to ensure proper oversight of the program.

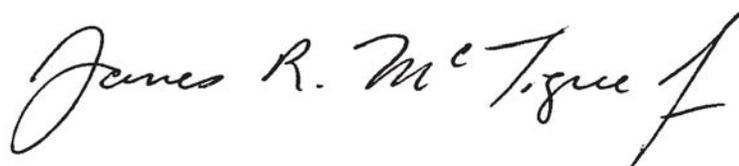
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As agreed with your offices, unless you publicly release its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to the Secretary of the

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Treasury, the Commissioner of Internal Revenue, and other interested parties. The report will also be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-9110 or at [mctiguej@gao.gov](mailto:mctiguej@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.

A handwritten signature in black ink that reads "James R. McTigue, Jr." with a stylized flourish at the end.

James R. McTigue, Jr.  
Director, Tax Issues  
Strategic Issues

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# Appendix I: Objectives, Scope, and Methodology

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This report (1) describes the steps, timeframes, and staffing levels in the whistleblower claims process, including the Whistleblower Office's (WO) staffing strategy for improving efficiency, and assesses how whistleblower claims are prioritized within Internal Revenue Service's (IRS) investigation, examination, and collections workloads; (2) describes the high-dollar 7623(b) whistleblower awards and assesses how the WO determines these awards; (3) evaluates the WO's role in managing the whistleblower claims process and communicating with the whistleblower community; and (4) evaluates how the WO safeguards whistleblower identities and protects whistleblowers from retaliation.

To describe the steps and timeframes in the whistleblower claims process, we reviewed IRS guidance, including IRS's Internal Revenue Manual (IRM), on whistleblower claims processing and IRS management's expectations for timeliness.<sup>1</sup> To assess how often IRS met its timeliness goals, we reviewed IRS data on how long IRS took to process these steps.<sup>2</sup> We also spoke with IRS officials in the WO and operating divisions (ODs) responsible for completing these steps.<sup>3</sup> We, along with the Treasury Inspector General for Tax Administration (TIGTA), identified several weaknesses with the whistleblower data system, E-TRAK, but determined that the data we used were sufficiently reliable for the purposes of our review.<sup>4</sup> Sensitive to weaknesses in E-TRAK, the WO included procedures to validate the data they compiled for us. The WO official said he checked whether data generated is consistent with his knowledge of the program and examined outliers for potential data entry errors. He also selected a sample of cases for individual file reviews. We also looked at the claims processing documentation in the

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<sup>1</sup>The IRM is IRS's primary and official source of instructions to IRS staff. See IRM Part 25 Chapter 2 Section 2 *Whistleblower Awards*.

<sup>2</sup>To avoid duplication, GAO did not assess IRS's whistleblower claims management information system, E-TRAK, as the Treasury Inspector General for Tax Administration (TIGTA) was doing so as part of its forthcoming 2016 audit.

<sup>3</sup>Although the IRS Criminal Investigation unit is not an OD, for the purpose of this report we will use the term OD to include Criminal Investigation.

<sup>4</sup>Some information in E-TRAK appears to be incorrect and other information appears to be missing, but those data were not material for our findings. For example, some taxpayer identification numbers associated with whistleblowers in E-TRAK appear to be invalid numbers. Missing data resulted when new data fields were incorporated into the data system to collect additional information and whistleblower claims which were closed at the time might or might not include information for these new fields.

whistleblower case files for 7623(b) awards to assess timeliness for those claims. For WO staffing, we reviewed the WO's staffing strategy and proposals for additional staff. We also interviewed WO officials concerning implementation of the WO's staffing strategy in light of the reduced fiscal year 2015 budget.

To assess how whistleblower claims are prioritized within IRS's workload, we reviewed IRS guidance, including the IRM, WO guidance to the ODs, as well as OD guidance to their respective staff.<sup>5</sup> We interviewed officials from the four ODs that process whistleblower claims—Large Business and International (LB&I), Small Business / Self-Employed (SB/SE), Tax Exempt and Government Entities (TE/GE), and Criminal Investigation (CI). We compared the procedures used in an investigation, examination, or collections of cases with whistleblower claims to procedures used for cases without whistleblower claims. We found that, generally, the same procedures were used though whistleblower cases entail additional processes to determine the merit of the whistleblower information, to document contributions, and to ensure confidentiality.<sup>6</sup>

To describe the 7623(b) awards, we reviewed the whistleblower case files for all such high-dollar awards since the 7623(b) provision was implemented in December 2006 through the end of June 2015. Of the 17 awards, we reviewed the 11 case files located in Ogden, Utah. For the remaining 6 cases, we obtained copies of specific documents from the WO, including Form 211 *Application for Award for Original Information*, Form 11369 *Confidential Evaluation Report on Claim for Award* and other documents submitted by the ODs, internal award recommendation report, detailed award report, and any counsel memos. We also received awards and collected proceeds data for 7623(a) claims from the WO. WO officials reported they do not use E-TRAK to track collected proceeds and awards, but rather use a separate spreadsheet which is also used for information reporting of individual whistleblower income. The WO verified the collected proceeds from taxpayer accounts.

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<sup>5</sup>In addition to general examination guidance, IRM Part 4 also contains specific guidance for different ODs as well as the examination of specific types of taxes (e.g. employment tax) and entities (e.g. partnerships). Guidance for criminal investigation is found in Part 9 and collections in part 5.

<sup>6</sup>IRS policy for notifying taxpayers of third party contact does not apply to whistleblowers.

To assess how the WO determines 7623(b) awards, we reviewed section 7623 of the Internal Revenue Code and implementing regulations, and the IRM section which specifies the process and criteria for determining whistleblower awards and interviewed WO officials.<sup>7</sup> We also reviewed the claim files of all awards paid under section 7623(b) to assess how the WO determined awards, what criteria were used, whether the criteria were applied consistently, and whether awards were correctly calculated.

To evaluate the role of the WO in monitoring whistleblower claims, we reviewed the IRM and WO guidance, and interviewed WO and OD officials responsible for whistleblower claims.<sup>8</sup> We also looked at the communication between the WO and ODs as documented in the 7623(b) awards case files.

To evaluate how the WO communicates with the whistleblower community, we reviewed relevant regulations covering confidentiality and disclosure of information issues.<sup>9</sup> We also reviewed IRS's internal and external communications plan, including WO's two fact sheets for external communication, and interviewed WO staff involved with implementing the strategy. We also interviewed a non-generalizable sample of five whistleblowers and nine whistleblower attorneys for their perspectives on IRS communication with whistleblowers. We selected these whistleblower attorneys based on their participation in our prior report, their varied experiences with the WO, and on recommendations of others within the whistleblower community.<sup>10</sup> We also spoke with whistleblowers who contacted us either on their own or through their attorney. Due to confidentiality concerns, we did not reach out directly to any whistleblowers. We used qualitative data analysis software to identify

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<sup>7</sup>IRM Part 25 Chapter 2 Section 2.7, Section 2.8, and Section 2.9. Sections 301.7623-1 to 301.7623-4 of the Code of Federal Regulations specify requirements for the whistleblower program, from submission of claims to award payment or denial.

<sup>8</sup>IRM Part 25 Chapter 2 Section 2.

<sup>9</sup>Section 6103 of the Internal Revenue Code and related regulations control confidentiality and disclosure of tax information; specifically, sections 301.6103(n)-2 and 301.6103(h)(4)-1 of the Code of Federal Regulations address allowable communications with whistleblowers.

<sup>10</sup>GAO, *Tax Whistleblowers: Incomplete Data Hinders IRS's Ability to Manage Claim Processing Time and Enhance External Communication*, [GAO-11-683](#) (Washington, D.C.: Aug. 10, 2011).

common themes and patterns in our interviews with whistleblowers and their attorneys.

To evaluate how the WO safeguards whistleblower's identities and protects whistleblowers from retaliation, we reviewed IRS guidance, including the IRM, on what steps the WO and ODs take to keep whistleblower identities confidential.<sup>11</sup> We interviewed WO and OD officials about key controls for safeguarding information and the potential weaknesses of such controls. We reviewed Department of the Treasury's legislative proposals on retaliation protections for tax whistleblowers.<sup>12</sup> We also interviewed whistleblowers and whistleblower attorneys to discuss the usefulness and potential benefits of employer retaliation protections.

We conducted this performance audit from October 2014 to October 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>11</sup>IRM Part 25 Chapter 2 Section 2.12 *Confidentiality of the Whistleblower* and Memorandum for the Commissioners of Large Business and International, Small Business/Self-Employed, and Tax Exempt and Government Entities; Chief, Criminal Investigation, and Director, Whistleblower Office from the Deputy Commissioner for Services and Enforcement, Internal Revenue Service, *IRS Whistleblower Program* (August 20, 2014).

<sup>12</sup>Department of the Treasury, *General Explanations of the Administration's Fiscal Year 2016 Revenue Proposals* (Washington, D.C.: February 2015); *General Explanations of the Administration's Fiscal Year 2015 Revenue Proposal* (Washington, D.C.: March 2014); and *General Explanations of the Administration's Fiscal Year 2014 Revenue Proposals*, (Washington, D.C.: April 2013).

# Appendix II: Whistleblower Claim Closures by Decision Maker

Whistleblower claims can be denied and closed throughout the claim review process. Table 5 summarizes where claims closure decisions occurred from fiscal year 2013 through August 5, 2015. Most claims that are closed are done so at the WO initial review stage.

**Table 5: Whistleblower Claim Closures by Closure Decision Maker, Fiscal Years 2013 through August 5, 2015**

Closure decision made by	2013	2014	2015	Total
<b>Initial review</b>	<b>3,720</b>	<b>4,511</b>	<b>4,124</b>	<b>12,355</b>
Criminal Investigation (CI)	1	2	-	3
Large Business and International (LB&I)	195	702	420	1,317
Small Business / Self-Employed (SB/SE)	3,489	3,799	3,699	10,987
Tax Exempt and Government Entities (TE/GE)	30	5	2	37
Wage and Investment (W&I)	2	-	-	2
Other <sup>a</sup>	3	3	3	9
<b>Subject matter expert</b>	<b>269</b>	<b>188</b>	<b>637</b>	<b>1,094</b>
CI	-	3	-	3
LB&I	24	112	15	151
SB/SE	216	49	563	828
TE/GE	28	23	59	110
Other <sup>a</sup>	1	1	-	2
<b>Field</b>	<b>1,808</b>	<b>903</b>	<b>1,360</b>	<b>4,071</b>
CI	46	80	648	774
LB&I	187	172	103	462
SB/SE	876	607	537	2,020
TE/GE	682	37	69	788
W&I	1	-	1	2
Other <sup>a</sup>	16	7	2	25
<b>Whistleblower Office (other than initial review)</b>	<b>784</b>	<b>918</b>	<b>1,042</b>	<b>2,744</b>
<b>Total</b>	<b>6,581</b>	<b>6,520</b>	<b>7,163</b>	<b>20,264</b>

Source: IRS data, as of August 5, 2015. | GAO-16-20

<sup>a</sup>“Other” includes claims that were closed but where E-TRAK does not contain information to identify which operating division or other subunit within IRS was responsible for the claim closure action.

# Appendix III: Status of the 12,439 Open 7623(b) Claims as of August 5, 2015

Current status	Number of claims	Number of whistleblowers who submitted these claims	Longest days currently in status
<b>Whistleblower Office (WO) - initial review</b>	<b>91</b>	<b>30</b>	<b>601</b>
<b>Operating division (OD) subject matter expert</b>	<b>123</b>	<b>29</b>	<b>188</b>
Large Business and International (LB&I)	99	19	140
Small Business / Self-Employed (SB/SE)	14	6	188
Tax Exempt and Government Entities (TE/GE)	10	4	94
<b>Criminal Investigation (CI) review</b>	<b>54</b>	<b>5</b>	<b>575</b>
<b>OD field</b>	<b>2,232</b>	<b>487</b>	<b>2,808</b>
CI	684	121	2,808
LB&I	849	234	2,301
SB/SE	641	132	2,213
TE/GE	56	29	2,033
OD undefined in E-TRAK	2	2	785
<b>Appeals</b>	<b>262</b>	<b>77</b>	<b>1,995</b>
<b>WO - case suspended</b>	<b>8,534</b>		<b>1,973</b>
Bulk sent for OD evaluation	4,380	10	1,465
Related claims still in process	2,544	204	1,973
Refund statute	522	59	1,346
Collection action	494	83	1,267
TEFRA related <sup>a</sup>	90	13	1,045
Litigation	60	27	1,038
Other	444	18	1,129
<b>WO - Review phase</b>	<b>1,094</b>		<b>1,877</b>
Form 11369 review	577	212	1,877
Manager approval	131	52	188
Manager approved	70	28	92
Admin proceeding rejection/denial	213	84	148
Rejection/denial letter pending	23	10	70
Award evaluation	80	12	419
<b>WO – Award phase</b>	<b>25</b>		<b>103</b>
Admin proceeding PARL <sup>b</sup>	16	6	47
PARL approval	1	1	103
Final award processing	5	5	61
Final award approval	3	1	0
<b>Status undefined in E-TRAK</b>	<b>24</b>	<b>5</b>	

Source: IRS data as of August 5, 2015. | GAO-16-20

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**Appendix III: Status of the 12,439 Open 7623(b)  
Claims as of August 5, 2015**

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<sup>a</sup>TEFRA related claims are those that involve partnerships as defined in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

<sup>b</sup>PARL stands for the preliminary award recommendation letter.

# Appendix IV: Comments from the Internal Revenue Service



DEPUTY COMMISSIONER

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

October 5, 2015

James R. McTigue, Jr.  
Director, Tax Issues  
Strategic Issues Team  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Mr. McTigue:

Thank you for the opportunity to comment on the draft report titled, *Billions Collected, but Timeliness and Communication Concerns May Discourage Whistleblowers* (GAO 451125). Information received from tax whistleblowers – individuals who report to the IRS on violations of tax laws by others– is an important tool for improving tax administration, and has assisted the IRS in detecting tax compliance issues and in collecting over \$2 billion dollars in tax revenue. As of June 30, 2015, the IRS has awarded over \$315 million to whistleblowers.

It is without question that the Whistleblower Program makes an important contribution to the tax system, both by helping encourage compliance (through a deterrent effect on those who may otherwise engage in tax evasion or avoidance) and by contributing to reducing the Tax Gap (through submissions of valuable information that has resulted in a wide range of audits and investigations, and yielded significant collection of unpaid taxes). We are committed to maximizing the success of this program. Although staffing across the agency has been declining, with fiscal year 2014 ending with more than 13,000 fewer permanent full-time employees compared with 2010, the staffing for our Whistleblower Office has not incurred staffing reductions, but has grown significantly since the inception of the office in 2007.

We appreciate your robust review of this IRS program. The inefficiencies that you identified with the Whistleblower Claim Process are ones that we had previously identified, and they are part of what led us to take action to strengthen this program. Your report findings further confirm for us the existence of efficiency improvement opportunities, and your recommendations are timely and insightful and will assist us in making progress in our re-engineering of the whistleblower claim process.

To date, we have initiated the following actions, both to address the backlog of claims that have resulted from the existing claim process and to design the future process so that it is efficient, effective and improves the timeliness of the whistleblower claim process:

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- To deal with the backlog, we brought in employees from other divisions to work the inventory. The classification inventory, which peaked at 5,703 claims in March 2015, is, as of September 2015, down to a total of 462 claims requiring classification. We also added six new employees to the Whistleblower Office to work the award determination backlog, and we are addressing the denial letter backlog;
- We initiated a Lean Six Sigma (LSS) project in the Fall of 2014 that has been looking at ways to streamline operating processes by eliminating the multiple hand-offs between the Whistleblower Office and the operating divisions, and to provide opportunities for efficiencies in managing whistleblower claims, including technology improvements;
- Since January 2015, a senior executive from the Deputy Commissioner for Services and Enforcement Office has been assigned to guide the Whistleblower Program re-engineering effort; and
- In August 2015, Lee Martin assumed responsibility for directing the Whistleblower Program, bringing with him a strong background in LSS and organizational effectiveness. Once the LSS completes its review and recommendations and the new Whistleblower Office Director has an opportunity to complete his assessment of all recommendations, we will pursue full process improvement implementation.

Your report also covered the issue of Whistleblower Office communications, both with whistleblowers directly and more broadly through the Whistleblower Annual Report to Congress. With respect to communications with whistleblowers, we appreciate that whistleblowers would like to hear from IRS on the status of their claim. However, as you noted, section 6103 of the Code prohibits us from disclosing tax information. For example, whistleblowers often want to know whether we are auditing the taxpayer that they identified, however, we cannot disclose that information because it would reveal taxpayer information (i.e., that we are auditing that taxpayer).

In an effort to address whistleblowers communication concerns, we conducted a pilot whereby we sent letters to whistleblowers informing them that their claim is open and still under consideration. We are evaluating the merits of that pilot, and will take your insights into account as we formulate our going forward path. We are also looking into situations where entering into a contract under section 6103(n) would be useful to the examination process while ensuring that there is no risk of taint. Likewise, we appreciate your recommendations for our annual report to Congress. We will begin implementing meaningful changes with respect to content, format and timing for our next annual report.

Finally, we recognize the importance of updating the policies and procedures of the Whistleblower Program, and all programs, for that matter. As we implement your recommendations, as well as the changes from the LSS project, we will ensure that our

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policies and procedures are updated in a timely fashion and we will strengthen our internal controls. These are important oversight functions and they will be the focus of the Whistleblower Office.

In closing, the IRS remains committed to improving this process and implementing your recommendations. We are identifying the specific IRS actions to be taken to effectively address your recommendations, and will provide a more detailed description of our actions, responsible officials, and implementation timelines in our response to the final report. We appreciate GAO's continued support and thoughtful insight as we strive to further strengthen our processes and programs throughout the Service. If you have any questions, please contact me, or a member of your staff may contact Lee Martin, Director, Whistleblower Office, at (202) 317-6375.

Sincerely,



John M. Dalrymple  
Deputy Commissioner for Services and Enforcement

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# Appendix V: GAO Contact and Staff Acknowledgments

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## GAO Contact

James R. McTigue, Jr. (202) 512-9110, [mctiguej@gao.gov](mailto:mctiguej@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Libby Mixon (Assistant Director), Lisette Baylor, Amy Bowser, Brett Caloia, Bertha Dong, Mackenzie Doss, Robert Gebhart, Danielle N. Novak, Cynthia Saunders, Albert Sim, and James R. White made key contributions to this report.

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