



*The Whistleblower Program Helps Identify  
Tax Noncompliance; However, Improvements  
Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

**August 30, 2016**

**Reference Number: 2016-30-059**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

**Redaction Legend:**

1 = Tax Return/Return Information

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## HIGHLIGHTS

### **THE WHISTLEBLOWER PROGRAM HELPS IDENTIFY TAX NONCOMPLIANCE; HOWEVER, IMPROVEMENTS ARE NEEDED TO ENSURE THAT CLAIMS ARE PROCESSED APPROPRIATELY AND EXPEDITIOUSLY**

## Highlights

### **Final Report issued on August 30, 2016**

Highlights of Reference Number: 2016-30-059 to the Internal Revenue Service Director for the Whistleblower Office.

### **IMPACT ON TAXPAYERS**

Internal Revenue Code Section 7623 authorizes the IRS to pay monetary awards to whistleblowers for information leading to detecting underpayments of tax or bringing to trial and punishment persons guilty of violating tax laws. The IRS Whistleblower Program plays an important role in reducing the Tax Gap by providing an avenue for reporting tax evasion. However, whistleblowers and members of Congress continue to express concerns with the operation of this program.

### **WHY TIGTA DID THE AUDIT**

This audit was initiated to determine whether whistleblower claims are appropriately and timely processed before referral for investigation or examination. The Government Accountability Office recently reviewed other portions of the IRS Whistleblower Program in response to a request from the Chairman and Ranking Member of the Senate Committee on Finance.

### **WHAT TIGTA FOUND**

The Whistleblower Program has helped the IRS collect significant amounts of revenue by facilitating whistleblower claims reporting violations of the tax laws that may otherwise go unidentified. From Fiscal Year 2011 through February 2016, the IRS collected more than \$2 billion because of information provided by whistleblowers. In addition, the Whistleblower Office has recently reduced inventory backlogs.

However, whistleblowers are not always contacted to clarify allegations. Improvements are needed to monitor the timeliness of claim processing and ensure that rejection/denial decisions are properly supported. Furthermore, the Whistleblower Office does not have appropriate controls in place to allow for sufficient oversight of claim processing. Specifically:

- A lack of performance measurement and quality review impedes program evaluation.
- Computerized tracking data are not always accurate.
- Coding of claims on the Audit Information Management System is inconsistent.
- Guidance for claim processing can be improved.

In addition, claims made by ineligible persons are not always identified.

### **WHAT TIGTA RECOMMENDED**

TIGTA recommended that the Director, Whistleblower Office, implement the Balanced Performance Measurement System for the Whistleblower Program and implement controls to ensure the consistent, appropriate, and expeditious processing of whistleblower claims.

In response to the report, IRS management agreed with and plans to implement corrective actions for nine of our 10 recommendations. IRS management believes that existing guidance is sufficient for the storage of supporting documentation for claim determinations. TIGTA maintains that existing guidance only requires documentation of the decision and not the support for the decision.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

August 30, 2016

**MEMORANDUM FOR** DIRECTOR, WHISTLEBLOWER OFFICE

**FROM:** Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – The Whistleblower Program Helps Identify Tax Noncompliance; However, Improvements Are Needed to Ensure That Claims Are Processed Appropriately and Expeditiously (Audit # 201430019)

This report presents the results of our review to determine whether the Internal Revenue Service ensures that the Whistleblower Office appropriately and timely evaluates whistleblower claims before referring them for investigation or examination. This review is included in our Fiscal Year 2016 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives.

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

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report recommendations. If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

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## *Table of Contents*

<a href="#">Background</a> .....	Page 1
<a href="#">Results of Review</a> .....	Page 11
<a href="#">The Whistleblower Program Has Helped the Internal Revenue Service Collect Significant Amounts of Revenue</a> .....	Page 11
<a href="#">Staffing Increases and Procedural Changes Helped the Whistleblower Office Reduce Inventory Backlogs</a> .....	Page 12
<a href="#">Whistleblowers Are Not Always Contacted for Clarification When Necessary</a> .....	Page 16
<a href="#">Recommendation 1:</a> .....	Page 18
<a href="#">Recommendation 2:</a> .....	Page 19
<a href="#">Monitoring Timeliness of Claim Processing Can Be Improved</a> .....	Page 19
<a href="#">Recommendation 3:</a> .....	Page 21
<a href="#">Rejection/Denial Decisions Were Not Always Properly Supported</a> .....	Page 21
<a href="#">Recommendation 4:</a> .....	Page 22
<a href="#">The Whistleblower Office Does Not Have Appropriate Controls in Place to Allow for Sufficient Oversight of Claim Processing</a> .....	Page 23
<a href="#">Recommendations 5 through 8:</a> .....	Page 31
<a href="#">Recommendation 9:</a> .....	Page 32
<a href="#">Ineligible Whistleblowers Are Not Always Identified</a> .....	Page 32
<a href="#">Recommendation 10:</a> .....	Page 34



*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

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## **Appendices**

<a href="#">Appendix I – Detailed Objective, Scope, and Methodology</a> .....	Page 35
<a href="#">Appendix II – Major Contributors to This Report</a> .....	Page 39
<a href="#">Appendix III – Report Distribution List</a> .....	Page 40
<a href="#">Appendix IV – Outline and Flowcharts of Whistleblower Process</a> .....	Page 41
<a href="#">Appendix V – Details for Cycle Time Sample</a> .....	Page 52
<a href="#">Appendix VI – Details for Rejection/Denial Sample</a> .....	Page 55
<a href="#">Appendix VII – Glossary of Terms</a> .....	Page 58
<a href="#">Appendix VIII – Management’s Response to the Draft Report</a> .....	Page 61



*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
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## *Abbreviations*

AIMS	Audit Information Management System
AO	Area Office
ARC	Award Recommendation and Coordination
CDO	Case Development and Oversight
CI	Criminal Investigation
FY	Fiscal Year
GAO	Government Accountability Office
ICE	Initial Claim Evaluation
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
LB&I	Large Business and International
SB/SE	Small Business/Self-Employed
SME	Subject Matter Expert
SPPA	Strategic Planning and Program Administration
TE/GE	Tax Exempt and Government Entities
TIGTA	Treasury Inspector General for Tax Administration
WO	Whistleblower Office



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## Background

Internal Revenue Code (I.R.C.) Section (§) 7623 authorizes the Internal Revenue Service (IRS) to pay monetary awards to whistleblowers for information leading to detecting underpayments of tax or bringing to trial and punishment persons guilty of violating tax laws.<sup>1</sup> This authority began in March 1867 when the Secretary of the Treasury was allowed to pay awards as deemed necessary, *i.e.*, discretionary, and remained relatively unchanged until July 1996 when the Taxpayer Bill of Rights 2 authorized awards for detecting underpayments of tax and changed the award source from appropriated Government funds to collected proceeds.<sup>2</sup> In December 2006, the Tax Relief and Health Care Act of 2006 required the creation of the Whistleblower Office (WO) within the IRS and made substantive changes by creating I.R.C. § 7623(a) for the discretionary awards previously paid under I.R.C. § 7623 and adding I.R.C. § 7623(b) for mandatory awards with rights to appeal award decisions in U.S. Tax Court.<sup>3</sup>

The mandatory § 7623(b) award provisions apply when amounts in dispute exceed \$2 million and, if against an individual taxpayer, when the taxpayer's gross income also exceeds \$200,000 for any taxable year subject to the action. The award amount is at least 15 percent but not more than 30 percent of the collected proceeds, as determined by the WO based on the whistleblower's contributions to the IRS enforcement action. However, the award can be 10 percent or less of the collected proceeds if the whistleblower was not the originating source of the information, such as when the information came from the news media or a judicial or administrative hearing. In addition, the award can be reduced if the whistleblower planned and initiated the tax noncompliance, and the award can be denied if the whistleblower is convicted of criminal conduct that led to the tax noncompliance.

The discretionary § 7623(a) award provisions apply when amounts in dispute are below the § 7623(b) thresholds as well as for all information provided before December 20, 2006. The award amount is determined by the WO based on the extent of the whistleblower's contributions and is not subject to a statutory minimum payment. Prior to the Tax Relief and Health Care Act of 2006, the IRS policy for discretionary awards was a maximum 15 percent of collected taxes and penalties, limited to a maximum award of \$10 million. This discretionary award policy continued with some minor modifications until July 1, 2010, when the policy was changed to match § 7623(b) criteria for award payments. However, there are no statutory appeal rights for § 7623(a) award determinations.

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<sup>1</sup> For this review, the term "whistleblower" is a person claiming an award under I.R.C. § 7623 for providing potential tax noncompliance information to the IRS. See Appendix VII for a glossary of terms.

<sup>2</sup> Pub. L. No. 104-168, 110 Stat. 1452 (1996) (codified as amended in scattered sections of 26 U.S.C.).

<sup>3</sup> Pub. L. No. 109-432, 120 Stat. 2958 (2006).





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*The Whistleblower Program Helps Identify Tax Noncompliance;  
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---

Individuals who want to report possible tax noncompliance but are not seeking an award and may also want to remain anonymous can submit information to the IRS using Form 3949-A, *Information Referral*. However, if an individual wants to become a whistleblower and be considered for an award for his or her information, a Form 211, *Application for Award for Original Information*, must be signed under penalty of perjury and submitted to the WO.

The Director, WO, has primary supervisory responsibility for the Whistleblower Program, including oversight and control of all policy decisions and implementation. Among other duties, the Director:<sup>4</sup>

- Defines and communicates key performance goals.
- Analyzes program trends to drive policy and outreach strategies.
- Monitors performance goals.
- Develops clear process standards within the program.
- Provides technical guidance.
- Conducts a study each year and reports to Congress on the use of I.R.C. § 7623 with any legislative or administrative recommendations.

### **WO staffing**

In addition to the Director and Executive Assistant, there are currently four units within the WO:

- ***Strategic Planning and Program Administration (SPPA)***: provides administration of budget, policy and procedure guidance, personnel, staffing activities, strategic planning, and acts as a congressional liaison.
- ***Initial Claim Evaluation (ICE)***: reports to the SPPA Program Manager and is the primary receipt and control function responsible for intake, monitoring, award processing, and responding to inquiries from internal and external customers.
- ***Case Development and Oversight (CDO)***: primarily responsible for reviewing and developing information submitted by whistleblowers, coordinating with operating divisions, and recommending awards based on feedback from the operating divisions.
- ***Award Recommendation and Coordination (ARC)***: reports to the CDO Program Manager and provides litigation support and award determination processing.

Staffing for the WO has increased from 20 employees in Fiscal Year (FY) 2011 to 61 employees in FY 2015. Figure 1 shows WO staffing from FYs 2011 through 2015. Significant organization

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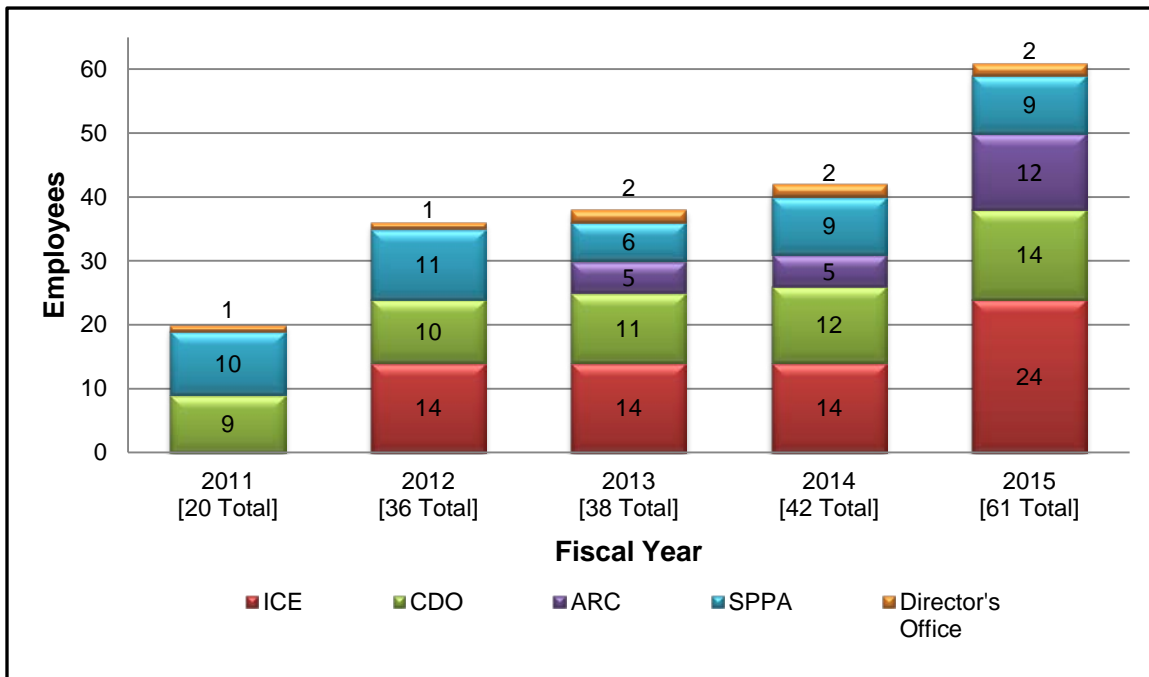
<sup>4</sup> Internal Revenue Manual 1.1.26.2(3) (Aug. 11, 2015).



*The Whistleblower Program Helps Identify Tax Noncompliance; However, Improvements Are Needed to Ensure That Claims Are Processed Appropriately and Expeditiously*

and staffing changes included development of the SPPA unit in December 2010, obtaining direct control of the ICE unit from the Small Business/Self-Employed (SB/SE) Division in January 2012, development of the ARC unit in June 2013, and approximately doubling the staffing for the ICE and ARC units in FY 2015.

**Figure 1: WO Staffing – FYs 2011 Through 2015**



Source: Treasury Inspector General for Tax Administration (TIGTA) analysis of data provided by the WO.

**Whistleblower claim processing**

Each submission received by the WO is assigned one or more claim numbers on its computer tracking system, known as E-TRAK. A claim number is assigned to each taxpayer included in the whistleblower’s allegation. As a result, some submissions may produce multiple claims if more than one taxpayer is included in the allegation. To help coordinate activity for a submission with multiple taxpayers, the WO designates one claim as the master claim, generally the first taxpayer listed in the submission. The other taxpayer claims are designated as related claims and cross-referenced to the master claim. If additional taxpayers are identified later, additional related claims are created. A single taxpayer allegation is commonly referred to as a stand-alone claim.

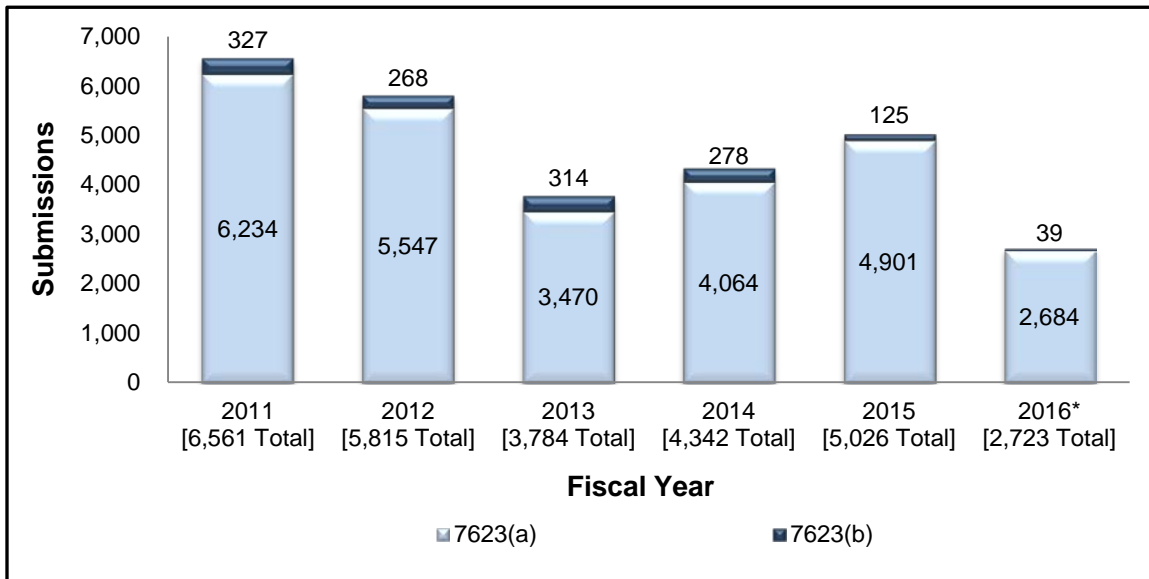
A submission and its applicable claims are initially designated as § 7623(a) on E-TRAK until the WO determines that the § 7623(b) threshold has been potentially met. However, this designation is not final and the submission/claim(s) can be converted between the two types, if necessary, until closed. Figures 2 and 3 show that fewer submissions have been received but more claims



*The Whistleblower Program Helps Identify Tax Noncompliance; However, Improvements Are Needed to Ensure That Claims Are Processed Appropriately and Expeditiously*

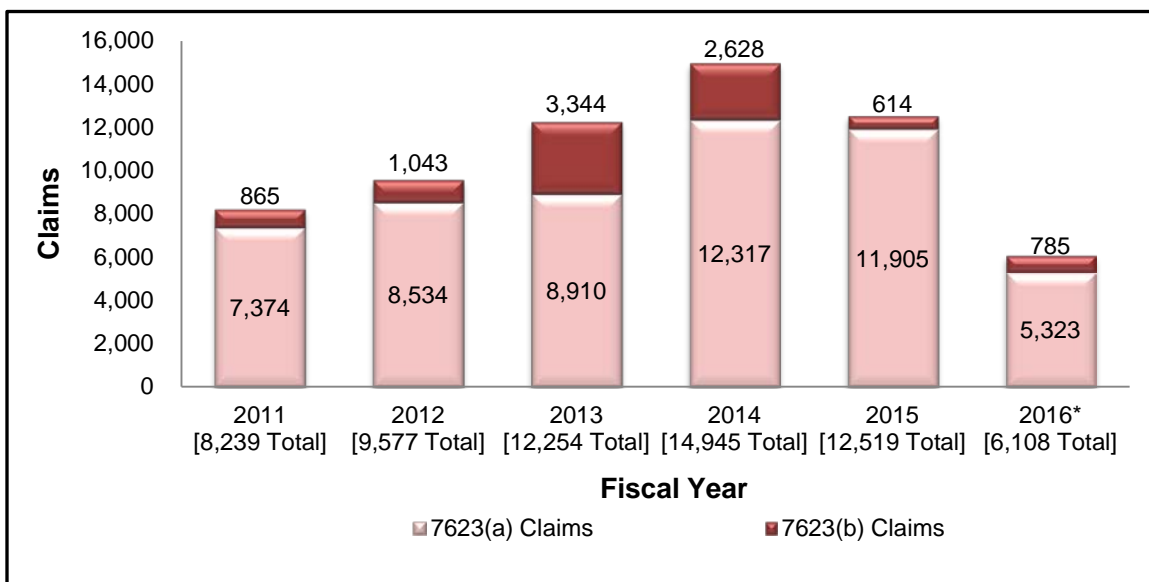
have been created each year since FY 2011, with the vast majority of submissions and claims being § 7623(a) allegations.

**Figure 2: Designation for Submissions Received During FYs 2011 Through 2016 (\*as of March 2016)**



Source: TIGTA analysis of data provided by the WO as of March 31, 2016.

**Figure 3: Designation for Claims Created From Submissions Received During FYs 2011 Through 2016 (\*as of March 2016)**



Source: TIGTA analysis of data provided by the WO as of March 31, 2016.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
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Based on our research and understanding of the program, whistleblower claim processing involves the following seven general stages, although § 7623(a) and § 7623(b) claims may require different processing within each stage.<sup>5</sup>

1. **Intake** – The ICE unit will ensure that the submission has not been previously received before recording and assigning a master claim in the computer tracking system. The submission is checked for completeness, *e.g.*, Form 211 signed, whistleblower and taxpayer identified, and allegation provided, with attempts to fix if necessary. A rejection letter is sent to the whistleblower if an incomplete submission cannot be fixed. For complete submissions, the ICE unit will establish related claims for any additional taxpayers listed in the allegation and send an acknowledgement letter to the whistleblower listing all claims.
2. **Initial Evaluation** – The ICE unit sends claims to the applicable operating division Classification function to screen for potential tax noncompliance. The classification results are returned to the ICE unit, which determines if the claim should be:
  - Closed using a rejection or denial letter.
  - Sent to an operating division for further consideration.
  - Considered for “high touch” processing.<sup>6</sup>

Potential high touch claims, which are typically § 7623(b) claims, are evaluated by the CDO unit and either returned to the ICE unit for continued general claim processing or assigned to a CDO unit analyst to determine if the claim should be closed using a rejection or denial letter or sent to an operating division for further consideration.

3. **Operating Division Consideration** – Claims with indications of fraud are sent to Criminal Investigation (CI) for evaluation of investigation potential.<sup>7</sup> Depending on taxpayer characteristics, claims with examination potential are sent to the Large Business and International (LB&I) Division, SB/SE Division, or Tax Exempt and Government Entities (TE/GE) Division for evaluation. For high touch claims, a Subject Matter Expert (SME) is assigned by the operating division to coordinate with the CDO unit analyst and

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<sup>5</sup> See Appendix IV for an outline with flowcharts of the process.

<sup>6</sup> The WO uses the term “high touch” to describe a § 7623(a) or § 7623(b) claim assigned to a CDO unit analyst because it requires special handling or coordination between operating divisions. We will use this term in our report, although high touch is not used in the Internal Revenue Manual for the Whistleblower Program. Examples of high touch claims include those with allegations of activity for offshore transactions, preparer misconduct, identity theft, refund schemes, and tax shelters.

<sup>7</sup> CI is a principal office and not an operating division under the IRS’s organizational structure. However, for the purposes of this review, we use the term operating division to refer to all IRS functions outside the WO that are involved with whistleblower claims.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

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to conduct a selection review that may include contact with the whistleblower, known as a debriefing.

- 4. Compliance Activity** – If a claim is selected or included in an ongoing investigation/examination, the operating division or the SME will provide the assigned field group with the whistleblower’s allegation. The field group considers the claim information for potential leads while conducting the investigation/examination but must develop independent evidence to support any tax noncompliance. Results are provided to the ICE or CDO unit analyst using Form 11369, *Confidential Evaluation Report on Claim for Award*, including indication of whether the taxpayer is pursuing an appeal with the IRS Office of Appeals.
- 5. Monitor/Suspension** – Claims can be placed in suspense while other actions are completed, such as:
  - Resolution of appeals by a taxpayer.
  - Completion of collection action.
  - Expiration of the statute of limitation for claiming a refund of collected proceeds.
  - Processing of related claims for the submission.
  - Resolution of the key partnership case.
- 6. Award Determination** – When all claim actions are complete, an ARC or CDO unit analyst will prepare the award determination for rejection, denial, or award. The analyst considers factors such as:
  - Applicable award policy when the submission was received.
  - Results of the operating division investigation/examination.
  - The whistleblower’s contributions to the results.
  - The amount of collected proceeds.

If an award will be paid, a recommended award percentage is determined and applied to collected proceeds to determine the recommended award amount. This award determination is reviewed and approved by WO management.

- 7. Notification and Closing** – Results are generally provided to whistleblowers when all actions and all claims are completed for the submission. The whistleblower will receive a rejection, denial, or award notification based on the following criteria:
  - Rejection: The whistleblower does not receive an award because the whistleblower is ineligible, the submission was not signed under penalty of perjury, or the allegation was not specific or credible. For § 7623(b) rejections,



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
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the WO will send the whistleblower a preliminary rejection letter with the basis for rejection.<sup>8</sup> After a 30-day review and comment period, if the WO determines that a rejection is still appropriate, it will send the whistleblower a final rejection letter with the basis for rejection.<sup>9</sup>

- **Denial:** The whistleblower does not receive an award because no tax noncompliance was identified, no proceeds were collected from the examination/investigation, or the IRS decided not to proceed with the examination/investigation. For § 7623(b) denials, the WO sends the whistleblower a preliminary denial letter with basis for denial.<sup>10</sup> After a 30-day review and comment period, if the WO determines that the denial is still appropriate, it will send the whistleblower a final denial letter with the basis for denial.
- **Award:** The WO will send the whistleblower a preliminary award package that provides computation of collected proceeds, a recommended award percentage, factors for the award percentage, and the recommended award amount. The whistleblower has a 30-day review and comment period, after which the WO will make any appropriate adjustments before sending the whistleblower a final award determination package and payment of award.<sup>11</sup> For § 7623(b) awards, the whistleblower can return a confidentiality agreement within the 30-day review and comment period and receive another 30-day period to receive additional explanation or discuss the award with the WO. In addition, the § 7623(b) award payment is not made until after the whistleblower's appeal rights have expired or any litigation regarding the award determination has been resolved by the Tax Court.

### **Few whistleblower submissions result in awards**

Historically, few whistleblower submissions result in awards. During FY 2015, the WO closed 10,615 claims and had already closed 12,984 claims in FY 2016 as of February 2016. Figure 4 shows that majority of claim closures in FYs 2015 and 2016 (83 and 85 percent, respectively) are rejected or denied before going to an operating division field group for an investigation or examination, with only a small portion (2 percent each year) resulting in an award. Most claims

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<sup>8</sup> For § 7623(a) and (b) rejections prior to October 2014, the WO letter to whistleblowers did not provide the basis for rejection.

<sup>9</sup> All days are calendar days unless otherwise noted.

<sup>10</sup> For § 7623(b) denials prior to October 2014, the WO letter to whistleblowers did not provide the basis for denial. In addition, the WO did not send preliminary denial notification or have a 30-day review and comment period.

<sup>11</sup> For § 7623(a) awards prior to December 2014, the WO did not send preliminary award notification or provide a review and comment period.



*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

were rejected because the allegations were not specific enough for the IRS to take action or denied because the allegation was below the threshold to justify resources for compliance action.

**Figure 4: Closure Reasons for Claims Closed in  
FYs 2015 and 2016 (\*as of February 2016)**

Closure Reason	Number of Claims	
	FY 2015	FY 2016* <sup>12</sup>
<b>Before Field Group</b>	<b>8,801 (83%)</b>	<b>11,045 (85%)</b>
Rejected: Ineligible Whistleblower	7	6
Rejected: Incomplete Submission	170	288
Rejected: Allegations Unclear/Nonspecific	5,633	8,145
Denied: Below Threshold	1,116	1,348
Denied: Short Statute	240	213
Denied: Statute Expired	470	419
Denied: Lack of Resources	89	37
Denied: Information Already Known	74	63
Denied: Not Selected for Field	1,002	526
<b>After Field Group</b>	<b>345 (3%)</b>	<b>675 (5%)</b>
Denied: Tax Noncompliance Not Found	287	534
Denied: No Collected Proceeds	58	141
<b>Award Paid</b>	<b>204 (2%)</b>	<b>322 (2%)</b>
<b>Other</b>	<b>1,265 (12%)</b>	<b>942 (7%)</b>
Error Creating Claim	36	***1***
Specific Reason Not Listed Above <sup>13</sup>	1,229	***1***
<b>Total</b>	<b>10,615</b>	<b>12,984</b>

Source: TIGTA analysis of WO inventory report data.

**A small number of whistleblowers submit a substantial percentage of claims**

The IRS does not discourage or limit the scope of potential tax noncompliance that can be submitted by whistleblowers. All submissions must be reviewed upon receipt and, if complete, evaluated for tax noncompliance. By doing so, inventory backlogs may develop depending on the volume and complexity of submissions as well as the limited resources of the WO and operating divisions.

<sup>12</sup> Percentages do not add to 100 due to rounding.

<sup>13</sup> The WO is reviewing this closure reason for training opportunities and for potential definitional adjustments or additional closure reasons to improve description of actions taken to close claims.



*The Whistleblower Program Helps Identify Tax Noncompliance; However, Improvements Are Needed to Ensure That Claims Are Processed Appropriately and Expeditiously*

Although fewer submissions have been received each year since FY 2011, more claims have been created for potential taxpayer noncompliance. As the number of claims per whistleblower submission increases, the processing and monitoring of claims becomes more complex and the resource needs of the Whistleblower Program increase. In addition, program statistics, such as the number of rejections/denials compared to awards, can also be influenced by a few submissions with numerous claims that may or may not be credible. Figure 5 shows that 25 whistleblowers were responsible for almost 38 percent (15,209 of 40,173) of claims created from submissions received during FYs 2013 through 2015. More than 90 percent of whistleblowers (9,199) had four or fewer claims created for submissions received during FYs 2013 through 2015 (total of 14,933 claims or 37.2 percent), while less than 0.25 percent of whistleblowers (25) had 100 or more claims created.

**Figure 5: Claims Per Whistleblower for Submissions Received During FYs 2013 Through 2015**

Range of Claims Created Per Whistleblower	Number of Whistleblowers	Number of Claims Created <sup>14</sup>
1	5,364	5,364
2 – 4	3,835	9,569
5 – 9	675	4,151
10 – 19	184	2,394
20 – 49	76	2,194
50 – 99	19	1,292
100 – 999	20	6,271
1,000 plus	5	8,938
<b>TOTAL</b>	<b>10,178</b>	<b>40,173</b>

Source: TIGTA analysis of data provided by the WO as of December 11, 2015.

Although the 25 whistleblowers who submitted 100 or more claims may not be representative of past or future results, they do not appear to be any more productive for the IRS given that approximately 28 percent were still open as of February 2016, while approximately 72 percent had been rejected or denied, and none had resulted in awards. Figure 6 shows that this is approximately the same as all claims submitted during FYs 2013 through 2015.

<sup>14</sup> Some claims are counted more than once in this figure because some submissions had multiple whistleblowers. The total for this figure will not equal the total of open and rejected/denied claims in the subsequent figure because that figure does not count claims more than once.





*The Whistleblower Program Helps Identify Tax Noncompliance;  
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**Figure 6: Status of Whistleblower Claims for Submissions Received During FYs 2013 Through 2015**

Claims Created Per Whistleblower	Open	Rejected/Denied	Awards Paid
100 or more <sup>15</sup>	4,508 (28.1%)	11,519 (71.9%)	0
All claims, FYs 2013–2015	13,036 (32.9%)	26,573 (67.1%)	***1***

Source: TIGTA analysis of data provided by the WO as of February 2016.

This review was performed with information obtained from WO locations in Washington, D.C., and Ogden, Utah, and from CI, the LB&I Division, the SB/SE Division, and the TE/GE Division locations in Englewood, Colorado; Jacksonville, Florida; Lee’s Summit, Missouri; Philadelphia, Pennsylvania; and Pittsburgh, Pennsylvania, during the period July 2014 through April 2016. We conducted this performance audit 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. The Government Accountability Office (GAO), based on a request from the Senate Committee on Finance, also reviewed the Whistleblower Program during our scope period.<sup>16</sup> Our review was primarily focused on the process leading up to the assignment of the claim to an operating division, and we coordinated with the GAO to minimize scope overlap. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

<sup>15</sup> Whistleblower submissions received in FYs 2013 to 2015 with 100 or more claims (through February 2016).

<sup>16</sup> GAO, GAO-16-20, *IRS WHISTLEBLOWER PROGRAM: Billions Collected, but Timeliness and Communication Concerns May Discourage Whistleblowers* (Oct. 2015).



*The Whistleblower Program Helps Identify Tax Noncompliance; However, Improvements Are Needed to Ensure That Claims Are Processed Appropriately and Expeditiously*

*Results of Review*

The Whistleblower Program has helped the IRS collect significant amounts of revenue by facilitating whistleblower claims reporting violations of the tax laws that may otherwise go unidentified. Although the WO has recently reduced inventory backlogs, improvements are still needed to ensure that whistleblower claims are appropriately and timely evaluated before being rejected, denied, or referred to operating divisions for investigation or examination.

*The Whistleblower Program Has Helped the Internal Revenue Service Collect Significant Amounts of Revenue*

From FY 2011 through February 2016, the IRS collected more than \$2 billion due to information provided by whistleblowers that may not otherwise have been collected from taxpayers. The 732 awards paid to whistleblowers totaled more than \$363 million. Figure 7 summarizes the proceeds collected and awards paid for this period. These revenues help reduce the estimated \$406 billion Tax Gap—the difference between taxes owed and those paid on time.<sup>17</sup>

**Figure 7: Collected Proceeds and Awards Paid – FYs 2011 Through 2016 (\*as of February 2016)**

		FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016*	TOTAL
<b>Collected Proceeds (millions)</b>		\$48.0	\$592.5	\$343.7	\$310.0	\$501.3	\$221.8	<b>\$2,017.3</b>
<b>Awards Paid for § 7623(a) and § 7623(b)</b>	<b>Number<sup>18</sup></b>	97	128	133	101	99	174	<b>732</b>
	<b>Amount (millions)</b>	\$8.0	\$125.4	\$54.1	\$52.3	\$103.5	\$20.4	<b>\$363.7</b>
	<b>Percent of Collected Proceeds</b>	16.7%	21.2%	15.7%	16.9%	20.6%	9.2%	<b>18.0%</b>

Source: WO Annual Reports to Congress for FYs 2011 through 2015 and WO data for FY 2016 (as of February 2016).

The 174 awards paid during the first few months of FY 2016 have already surpassed the 99 awards paid during FY 2015. Although this is a positive early result, the amounts for

<sup>17</sup> The IRS estimated the average annual gross Tax Gap for the Tax Year 2008 through 2010 time frame (most recent estimate) to be \$458 billion and estimates it will ultimately collect \$52 billion, making the net Tax Gap \$406 billion.

<sup>18</sup> The number of awards paid will not equal the number of claims closed for an award because an award may involve multiple claims from a whistleblower.



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---

collected proceeds and awards have decreased, due in part to 165 of 174 FY 2016 awards being paid for § 7623(a) claims, compared to 80 of 99 claims in FY 2015. The recent increase in the number of awards paid is also likely due to increased claim closures to address inventory backlogs.

**Staffing Increases and Procedural Changes Helped the Whistleblower Office Reduce Inventory Backlogs**

Appendix IV shows that whistleblower claims are processed using a variety of procedures, depending on the type of claim [§ 7623(a), § 7623(b), or high touch] and the nature of the alleged tax noncompliance. During our review, the WO increased staffing and implemented procedural changes to reduce inventory backlogs and address processing delays in four areas: 1) establishing submissions, 2) classifying claims, 3) reviewing operating division results, and 4) sending rejection/denial letters. Reducing these backlogs should improve the timeliness of processing future claims. Our detailed results for the four areas are as follows:

**Establishing submissions**

The number of submissions received by the WO and the average number of days to establish the submissions on E-TRAK have varied significantly in recent years. The WO has a target to establish submissions on E-TRAK within 30 days of receipt. However, in October 2014, the WO stated that it was working submissions that were about 90 days old. To address this backlog, in August 2014, the ICE unit began a new process for batching and assigning work to employees. In addition, the ICE unit received additional staffing for FY 2015. Using E-TRAK data, we determined that the average number of days from when a submission was received to when it was initially established on E-TRAK decreased from a high of 75.6 days in FY 2014 to 23.2 days in FY 2015 and was averaging 5.5 days for the first half of FY 2016. Figure 8 summarizes the number of submissions and the average number of days to establish submissions during FYs 2011 through 2016 (as of March 31, 2016).



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**Figure 8: Average Calendar Days to Establish Submissions**

Submission Received	Number of Submissions <sup>19</sup>	Average Calendar Days to Establish
FY 2011	6,557	36.6
FY 2012	5,805	49.4
FY 2013	3,690	36.6
FY 2014	4,309	75.6
FY 2015	4,997	23.2
FY 2016 (as of March 2016)	2,711	5.5

Source: TIGTA analysis of E-TRAK data as of March 31, 2016.

**Classifying claims**

After the ICE unit has established and completed its review of submissions for completeness, the claims created from the submissions are sent to an operating division Classification function for initial evaluation of the allegation. The Classification function will return its recommendation to the ICE unit to: 1) close the claim without further review, 2) refer the claim to an operating division for potential investigation or examination, or 3) refer the claim to the CDO unit to consider for potential high touch claim.

Most claims go to the SB/SE Division Classification function because of the type of taxpayers in the allegations. This function classified 8,053 claims in FY 2013, 10,225 claims in FY 2014, and 14,493 claims in FY 2015. The SB/SE Division Classification function has a verbal agreement with the WO to complete its reviews within 25 days. However, due to the increase in claims and limited staffing, the SB/SE Division Classification function developed a backlog of claims at points during FYs 2014 and 2015. It used multiple temporary assignments to address this backlog as well as increasing permanent staffing from two to six employees. In addition, a first-read process was implemented in February 2015 to make recommendations on claims with easily identified issues, *e.g.*, no tax issue stated in the allegation or claims that must be referred to a specialty tax group for review, that allowed other classifiers to focus on claims with more complex issues.

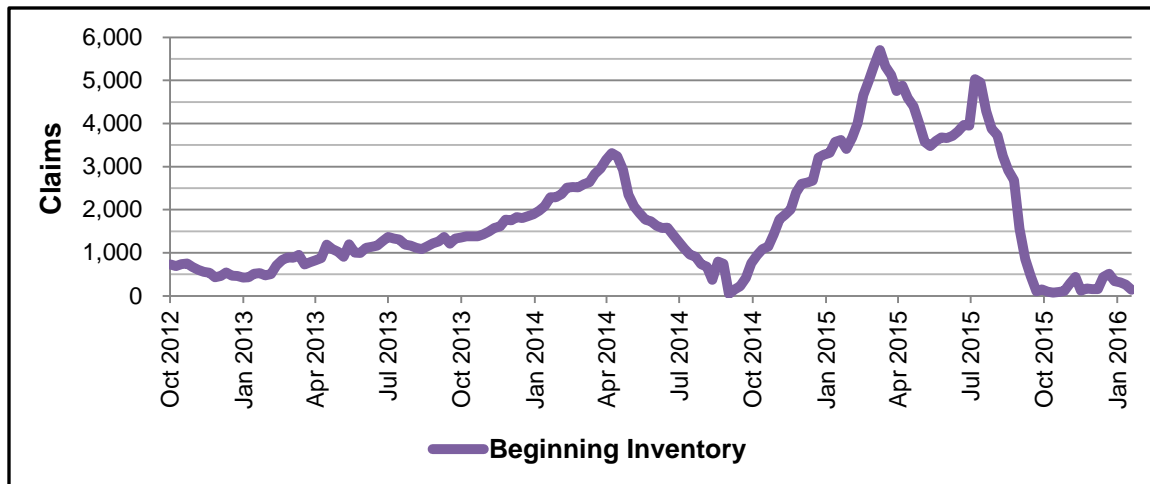
Using SB/SE Division Classification function inventory reports, we determined that claims waiting to be classified decreased from a high of 5,703 in March 2015 to 142 in January 2016. Figure 9 shows the volatility of the SB/SE Division Classification function's inventory during FYs 2013 through the start of FY 2016.

<sup>19</sup> 182 submissions were not used for calculation of average establish days due to unreliable E-TRAK dates.



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**Figure 9: SB/SE Division Classification Function Inventory for Whistleblower Claims**



Source: SB/SE Division Classification function inventory reports.

### **WO review of operating division compliance results**

Claims sent to an operating division will be returned to the WO with a Form 11369 that may include supporting documentation to explain the results of the compliance actions taken by the operating division. For most § 7623(a) claims, the ICE unit will first review the Form 11369 package for completeness and correspond with the operating division if necessary before sending to an analyst in the ARC unit for review. The ARC unit analyst makes a preliminary award determination that includes a preliminary award percentage based on positive and negative factors related to the whistleblower's contribution. For high touch claims, typically § 7623(b) claims, the assigned CDO unit analyst reviews the Form 11369 package for completeness, including possible clarification with the operating division if necessary, and makes a preliminary award determination.

Upon completion of the Form 11369 review by the ARC or CDO unit analyst, the claim is moved to the next applicable processing step that may include other compliance activity, suspending for monitoring, preparing award determination, or notification and closing. Although the WO has an overall target for the ICE unit to check Form 11369 packages for completeness within 14 days after receipt from an operating division, there is no target for the portion of the Form 11369 review conducted by ARC or CDO unit analysts.

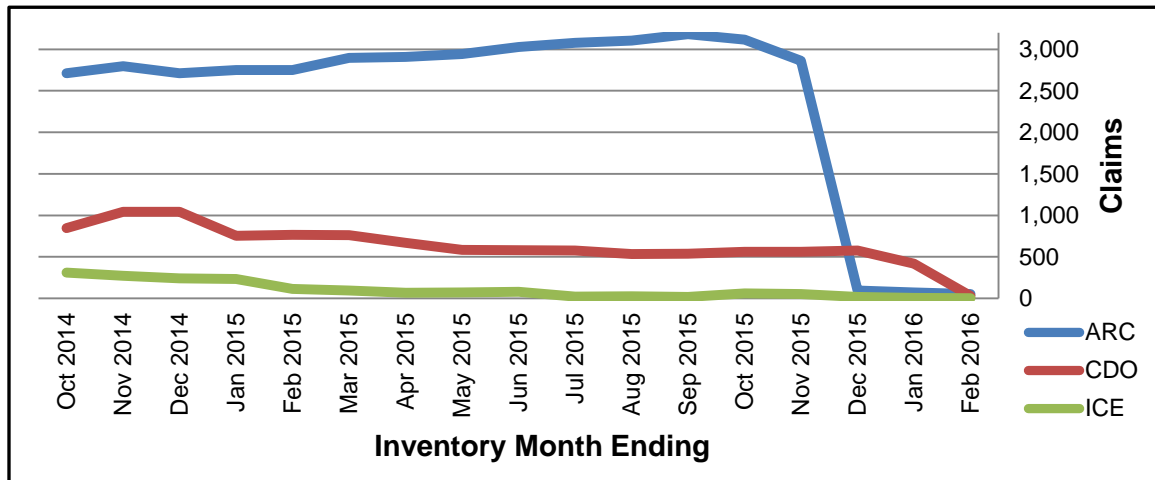
During FY 2015 and the first few months of FY 2016, the ARC unit had a significant backlog for Form 11369 reviews. The WO stated that the ARC unit backlog was due to an increased number of operating division responses and limited staffing resources to evaluate the claims, train new employees, and implement procedures for the final whistleblower regulations. Backlogs for Form 11369 reviews by the WO could delay subsequent processing actions, including providing



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However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

results to whistleblowers. Figure 10 shows that the majority of claims waiting for a Form 11369 review during FY 2015 were with the ARC unit, peaking at 3,182 claims waiting an average of 345 days by the end of September 2015.

**Figure 10: Inventory for Form 11369 Reviews by WO Units**



Source: WO monthly inventory reports.

In December 2015, while in discussion with TIGTA about the processing backlog, the WO removed the procedure to make a preliminary award percentage determination from the ARC unit's Form 11369 review. In addition, the WO received help from the SB/SE Division to review and update 2,982 claims in the Form 11369 review status for the following processing steps:

- 20 claims sent to operating divisions for compliance activity.
- 108 claims moved to suspense for monitoring taxpayer appeal of field group actions.
- 1,050 claims moved to suspense for monitoring collection of proceeds.
- 521 claims moved to suspense for monitoring refund statute of collected proceeds.
- 136 claims moved to prepare award determination before notification.
- 1,147 claims moved to prepare rejection/denial notification.

By the end of December 2015, the ARC unit had an inventory of 92 claims that had been waiting an average of 116 days for the Form 11369 review. This backlog cleanup will temporarily increase inventory for subsequent processing actions, such as sending rejection/denial letters (see subsequent discussion), but should eventually improve overall timeliness for claim processing in the future.



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However, Improvements Are Needed to Ensure That Claims Are  
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### **Sending rejection/denial letters**

Claims without the possibility of or not resulting in collected proceeds are placed in an E-TRAK status for sending rejection/denial letters. This includes claims:

- Determined to be incomplete.
- With no allegation of a tax issue.
- Below the IRS's dollar threshold for compliance action.
- With an expired or soon-to-expire assessment statute.
- With no investigation or examination conducted.
- With no tax noncompliance determined by an investigation or examination.
- With an adjustment, but the taxpayer did not pay within the collection statute.

In October 2014, the WO stated that it had been holding rejection/denial letters since August 2014 while waiting for revisions to procedures and form letters due to final whistleblower regulations being issued. Although the revised procedures and letters were implemented in early FY 2015, the WO initially directed resources, including new staffing, to address other inventory backlogs.

By the end of September 2015, there were 5,116 claims waiting for rejection/denial letters. Not timely sending closure letters can cause whistleblowers and other stakeholders to question what the IRS has been doing with the claims. During the first few months of FY 2016, the WO began to address and substantially decrease this backlog. By the end of February 2016, there were 973 claims waiting for rejection/denial letters. We believe a major contributor to this inventory is the recent effort to reduce the backlog of the Forms 11369 awaiting review because most (565 of 973 claims waiting for rejection/denial letters) are assigned to the ARC unit.

### **Whistleblowers Are Not Always Contacted for Clarification When Necessary**

In an August 2014 memorandum to the WO and operating divisions, the IRS Deputy Commissioner for Services and Enforcement stressed the importance of debriefing whistleblowers when necessary to clarify information.

*Some whistleblowers have insights and information which can help the [IRS] understand complex issues or hidden relationships. Debriefing of the whistleblower, whether in person or by telephone, is an invaluable and crucial component of the evaluation of the information prior to a decision on whether the information should be referred to the field for [examination] or investigation. A debriefing interview can identify connections between the taxpayer and others*



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*who may have had a significant role in the alleged noncompliance. The whistleblower may also be able to explain and clarify documents and information submitted with the Form 211.*

Although debriefing a whistleblower can be beneficial, the IRS is limited in what information can be disclosed to whistleblowers because I.R.C. § 6103 prohibits unauthorized disclosure of return or return information. Violation of § 6103 can lead to civil and criminal penalties for IRS employees. However, there are exceptions for disclosure of some information to whistleblowers. Specifically, § 6103(h)(4) authorizes the WO to disclose information with whistleblowers while communicating award determinations during administrative proceedings, and § 6103(k)(6) allows the IRS to disclose return information in order to obtain information for the determination of a tax liability. In addition, § 6103(n) provides the IRS authority to enter into a contract with an individual to share information for the purposes of advancing tax administration. However, the GAO recently reported that the IRS has not yet used a § 6103(n) contract for whistleblowers.<sup>20</sup>

To determine if whistleblowers were consistently contacted for debriefings, we reviewed a stratified sample of 89 submissions [both § 7623(a) and § 7623(b)] randomly selected from an estimated population of 1,388 FY 2014 submissions sent to an operating division for evaluation.<sup>21</sup> We found that 16 of 89 submissions sent to operating divisions had debriefings and six had a justification recorded for not having a debriefing. We reviewed the allegations and processing activities for the 67 remaining submissions and found that debriefing the whistleblowers may have benefited the operating division's evaluation for 16 submissions. Our conclusions for the 67 submissions are below:

- ***The whistleblower was not contacted for clarification, but should have been:*** 16 submissions.
- ***A debriefing or justification could have been completed because the submission was still with the SME during our review:*** 7 submissions.

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<sup>20</sup> GAO-16-20, *IRS WHISTLEBLOWER PROGRAM: Billions Collected, but Timeliness and Communication Concerns May Discourage Whistleblowers* p. 34 (Oct. 2015).

<sup>21</sup> Submissions were identified using master or stand-alone claim relationship. Sample stratification was based on submission type [§ 7623(a) or § 7623(b)] and open or closed status. Originally, 130 sample submissions were selected from a population of 1,954 submissions but, due to a misunderstanding of E-TRAK coding to identify submissions sent to operating divisions, we later determined that only 89 had actually been sent to the operating divisions and estimated the population to be 1,388 submissions. The point estimate projection is based on a two-sided 95 percent confidence interval. We are 95 percent confident that the point estimate is between 1,142 and 1,635 submissions.





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However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

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- ***No debriefing was needed because the closure implied that a debriefing was not necessary, e.g., allegations with an expired statute of limitation or that were below the IRS threshold:*** 19 submissions.
- ***No debriefing was needed because the allegations were not complex or did not need clarification:*** 25 submissions.

For this sample, we also reviewed compliance with the August 20, 2014, memorandum from the IRS Deputy Commissioner for Services and Enforcement which requires that, “All whistleblower submissions referred for SME review in the LB&I, TE/GE, and SB/SE Divisions will include debriefing of the whistleblower or a specific justification for a decision not to conduct a debriefing.”

The WO stated that it interpreted this memorandum as only applying to § 7623(b) submissions. We believe the debriefing requirement could also apply to some § 7623(a) submissions, e.g., high touch § 7623(a) claims sent to the SMEs, because the memorandum specifically states that all submissions referred for SME review should be considered for debriefing. However, our sample contained only 22 § 7623(b) submissions assigned to the SMEs within the LB&I, SB/SE, or TE/GE Divisions after the Deputy Commissioner for Services and Enforcement’s memorandum was issued. We found that 14 of 22 submissions had debriefings, justifications, or were still being evaluated by an SME. However, the SMEs did not follow the Deputy Commissioner for Services and Enforcement’s memorandum for the remaining eight submissions by conducting a debriefing or justifying why a debriefing was not necessary.

The WO stated that there is no predefined WO management report in E-TRAK to check if the debriefing requirement is being accomplished by the SMEs, but it does have the ability to create E-TRAK ad hoc reports when needed. In addition, the WO stated that CDO unit analysts are not required to follow up with the SMEs for the debriefing requirement. As part of its program oversight responsibility, we believe that the WO should be verifying if requirements are being met, such as the SMEs following debriefing requirements, and communicating verification results to the operating divisions.

## ***Recommendations***

The Director, WO, should:

**Recommendation 1:** Ensure that any I.R.C. § 7623(a) claims that are sent to the SMEs are subject to the debriefing requirement in the August 20, 2014, memorandum from the IRS Deputy Commissioner for Services and Enforcement.

**Management’s Response:** The IRS agreed with this recommendation. The IRS Deputy Commissioner for Services and Enforcement will provide an updated memorandum to the operating divisions that outlines and reinforces the expectations



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

for the Whistleblower Program. The updated memorandum will specify debriefing expectations for both I.R.C. § 7623(a) and I.R.C. § 7623(b) claims.

**Recommendation 2:** Verify that operating division SMEs are following the requirement for debriefing whistleblowers and provide results to operating divisions for possible improvements.

**Management's Response:** The IRS agreed with this recommendation. The WO will add an E-TRAK claim action code to denote that a debriefing did not occur and why. With this new code and the current E-TRAK claim action code for when a debriefing has occurred, the WO will track and provide results to operating divisions on a quarterly basis for whether the debriefing requirement is being followed.

### **Monitoring Timeliness of Claim Processing Can Be Improved**

We reviewed a sample of 135 claims to determine the average cycle times of selected processing steps and found that the WO could benefit from more closely monitoring the cycle time of its processing steps.

The WO has cycle time targets for some processing steps, such as 30 days to establish claims and seven days to process rejects/denials after classification. It also has a verbal agreement with the SB/SE Division to classify claims within 25 days. The IRS Deputy Commissioner for Services and Enforcement also set cycle time targets of 90 days for each of the following processing steps: initial evaluation of a claim, review of the claim by an operating division SME, and reaching an award decision once collected proceeds can be determined. However, there are no cycle time targets for other processing steps, such as consideration of referral for a potential high touch claim to be assigned to the CDO unit or review of a Form 11369 provided by an operating division.

Although the WO has had the capability for many years to create ad hoc E-TRAK monitoring reports, a summarized monthly inventory report was not created until October 2014 for unit and overall activity. The WO stated that this inventory report is still being revised for different monitoring needs as well as for checking accuracy of summarized data. However, the FY 2015 inventory reports initially provided to us were later found to be incorrect when the statistics for the WO Annual Report to Congress were compiled. The WO corrected the inventory report to match statistics in the annual report and is continuing to revise it for monitoring needs.

We found the inventory report to be a starting point for understanding claims currently in process, but it lacked historical and cycle time data for claims that have completed specific steps, which prevents the WO from determining if targets are being met or making management decisions based on the results. The GAO reported a similar issue with the FY 2014 WO Annual



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Report to Congress, stating that the report does not clearly display the amount of time for claims to move through processing.<sup>22</sup>

To gain a better understanding of claim cycle time, we reviewed a stratified sample of 135 claims randomly selected from a population of 14,272 claims submitted in FY 2014.<sup>23</sup> Our results show the need for the WO to monitor for cycle time in order to measure if targets are being met. Figure 11 shows our estimated average cycle times to complete each reviewed processing step.<sup>24</sup> Not all 135 sample claims were involved in each processing step reviewed.

**Figure 11: Average Cycle Time of Selected Claim Processing Steps**

Claim Processing Step	Cycle Time Target (calendar days)	Estimated Average Cycle Time (calendar days)	Number of Claims Reviewed
Establishing original claims <sup>25</sup>	30	73	130
Classifying claims by operating divisions	25 for SB/SE Division; None for other divisions	60	102
Referrals to CDO unit for high touch	None	42	38
CDO unit analyst evaluation of high touch claims	None	110	43
Area Office (AO) and SME evaluation	None for the AO; 90 for the SME	153	35
Notification of results	7 for classification reject/denial; 90 for collected proceeds determined	91	77

Source: TIGTA analysis of a sample of 135 whistleblower claims submitted in FY 2014.

Within E-TRAK is a follow-up date for each claim to indicate when a claim should be checked to determine if an action has occurred. While reviewing the sample claims, we observed that E-TRAK follow-up dates had expired for 19 of 51 open claims and appear to be an underused tool that could help the WO monitor timeliness. Using an October 2015 E-TRAK computer

<sup>22</sup> GAO, GAO-16-20, *IRS WHISTLEBLOWER PROGRAM: Billions Collected, but Timeliness and Communication Concerns May Discourage Whistleblowers* p. 30 (Oct. 2015).

<sup>23</sup> Sample stratification was based on claim type [§ 7623(a) or § 7623(b)], open or closed status as of February 2015, and claim relationship [stand-alone, master, or related].

<sup>24</sup> Appendix V provides additional details for our cycle time sample review that includes point estimates for our projections.

<sup>25</sup> This processing step is from when the submission is received by the WO until ready for initial evaluation. It does not include five sample claims because related claims were created after additional taxpayers not listed in submissions were identified during subsequent evaluation steps.



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However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

extract, we found that 17,059 (50.9 percent) of the 33,488 open claims had follow-up dates that expired before October 2015. Although the use of follow-up dates is an optional E-TRAK tool that not all WO employees use, the Director, WO, stated that this was a valuable tool and planned to emphasize its use within the WO. The WO should explore using the E-TRAK follow-up tool as a method to help monitor claims, which may prevent future delays for processing claims.

### **Recommendation**

**Recommendation 3:** The Director, WO, should ensure that management monitoring reports for the Whistleblower Program include data to determine if processing targets are being achieved, *e.g.*, cycle time for claims at key processing steps.

**Management's Response:** The IRS agreed with this recommendation. In its response, the WO stated that it is conducting an evaluation of the program measures, metrics, and reporting to determine what measures and metrics exist, whether the measures and metrics are effective, whether additional measures and metrics are needed, and how best to report on performance. As part of its evaluation, the WO will take this recommendation into account.

### **Rejection/Denial Decisions Were Not Always Properly Supported**

Internal controls help ensure that management's directives are carried out. One such control is that significant events should be clearly documented and the documentation should be readily available for review.<sup>26</sup> Documentation is important because it provides the principal evidence to support actions and decisions throughout the whistleblower claim evaluation, such as when whistleblower claims are rejected or denied. Not only is documentation needed for the WO to evaluate if procedures are being followed to support decisions, but it will be necessary for supporting the IRS's position if decisions are litigated.

To determine whether rejection/denial decisions were supported, we reviewed a stratified sample of 140 claims randomly selected from a population of 3,181 claims submitted in FY 2014 that were rejected or denied as of February 2015 and were not assigned to an operating division field group.<sup>27</sup> This sample includes both § 7623(a) and § 7623(b) claims with rejection/denial recommendations made by Classification functions, CDO unit analysts, or the SMEs. Figure 12 shows that we found 60 closures with processing inconsistencies that increase the risk of unsupported rejection/denial decisions, some of which are included under more than one

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<sup>26</sup> GAO, GAO-14-704G, *Standards for Internal Control in the Federal Government* p. 48 (Sept. 2014).

<sup>27</sup> Sample stratification was based on claim type [§ 7623(a) or § 7623(b)], areas making recommendation (the WO, the Classification function, or the SME), and closure reasons.



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category.<sup>28</sup> We did not determine whether the claims were improperly closed as rejections/denials. However, the supporting documentation was not always provided, did not always match the closure reason recorded in E-TRAK, or did not clearly substantiate the reason for the decision.

**Figure 12: Inconsistent Processing for Rejection/Denial Decisions for Claims Not Provided to Operating Division Field Groups**

	Number of Sample Claims	Stratified Estimate for 3,181, Claims in Population
<b>Unique Claims With One or More Inconsistencies</b>	<b>60</b>	<b>1,072</b>
<b>Processing Inconsistency</b>		
No classification support documentation for closure	21	754
Closure reason recorded in E-TRAK did not match supporting documentation	49	751
Claim potentially closed prematurely because of lack of supporting documentation, not fully evaluated, or inconsistent criteria	8	73

Source: TIGTA analysis of a sample of 140 whistleblower claims that were rejected or denied.

Although the WO agrees that classification support should be in E-TRAK, there is no procedure requiring the support to be added, and the WO believes that the E-TRAK backup process is sufficient to eliminate the need to keep documentation in physical files. In addition, closure documentation may list multiple closure reasons, potentially causing different interpretations for the correct closure reason to use. In April 2015, the WO implemented a change to the closure document for classifiers to choose only one closure reason, which should minimize future closure mismatches. Furthermore, the WO stated that ICE unit personnel are not required to dispute determinations for § 7623(a) claims made by operating divisions and do not have sufficient technical knowledge to do so. Finally, the WO stated that its CDO unit analysts have extensive tax knowledge to make closure decisions for § 7623(b) claims, and WO procedures do not require that closure decisions be made by the operating division.

**Recommendation**

**Recommendation 4:** The Director, WO, should establish guidance requiring that supporting documentation for rejection/denial decisions is input to E-TRAK.

<sup>28</sup> See Appendix VI for additional details for our rejection/denial review that includes point estimates for our projections.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

**Management's Response:** The IRS disagreed with this recommendation and indicated that an appropriate corrective action had already been taken. The WO issued a November 2014 procedure alert to WO employees requiring the result and basis for a claim determination to be included in the Award Recommendation Memorandum, which is required to be uploaded into E-TRAK.

**Office of Audit Comment:** We believe that the WO's action is not adequate because supporting documentation for rejection/denial decisions should be available to corroborate the determination in the Award Recommendation Memorandum. As stated in the report, the WO agrees that classification support should be in E-TRAK, but there is no procedure requiring the support to be added.

### **The Whistleblower Office Does Not Have Appropriate Controls in Place to Allow for Sufficient Oversight of Claim Processing**

During our review, we observed that a number of controls were deficient or missing for the systems and processes used to process whistleblower claims. Specifically, issues with controls included: 1) lack of program performance measures or structured quality review program, 2) unreliable E-TRAK data, 3) inconsistent computer coding of examinations, and 4) limited guidance in the Internal Revenue Manual (IRM) sections pertaining to WO operations.

#### **Lack of performance measurement and quality review impedes program evaluation**

The Balanced Performance Measurement System (hereafter referred to as balanced measures) was developed by the IRS to reflect priorities consistent with mission and strategic goals. Each of the three components of balanced measures—customer satisfaction, employee satisfaction, and business results—is considered when setting organizational objectives, establishing targets, and assessing results for evaluating performance. The IRS uses balanced measures at both the strategic level and the operational level to measure organizational performance. To integrate and use the balanced measures throughout the IRS, each organization must establish:<sup>29</sup>

- A comprehensive approach to measure and use customer satisfaction, employee satisfaction, and business results (quantity and quality) data.
- A clear strategy to use all elements of balanced measures in strategic, operational, and business planning.

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<sup>29</sup> IRM 1.5.1.14 (Aug. 21, 2009).



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

- A commitment to ensure, explain, and demonstrate how customer satisfaction, employee satisfaction, and business results are being used and addressed in the business decisions of the organization.

Numeric targets for any measure should be set based on a review of prior year results, historical patterns, anticipated resources, organizational priorities and initiatives, and an assessment of existing and emerging trends, issues, and problems. A baseline is established for first-year measures, and future targets are based on first-year actuals. IRS-wide and organizational unit numeric targets should be in organizational documents such as Business Performance Review documents.<sup>30</sup> Examples of possible WO numeric targets could include the number of days to complete a particular processing step or a percentage of claims completing a particular processing step within the expected time period.

We reviewed the WO's Business Performance Review for the fourth quarter of FY 2015 and found balanced measures mentioned but with no explanation for how the measures are monitored or used to evaluate performance. The WO stated that it had no structured process for evaluating its performance, but the balanced measures were being considered in conjunction with an IRS Lean Six Sigma review of the Whistleblower Program.<sup>31</sup> In addition, quality measures (accuracy, communications, following technical processes, and timeliness) will be developed as the WO considers a future quality review process. The WO measures the satisfaction of its employees using the Federal Employee Viewpoint Survey, but there is no measurement for satisfaction of operating division employees who work with the WO to process claims. There is also no measurement for customer satisfaction of whistleblowers and their representatives.

In addition to establishing quality measures to understand program achievements, we believe that measuring the satisfaction of operating division employees and whistleblowers/representatives will increase transparency and help to identify processing problems including potential delays. For example, we discussed the quality, timeliness, and processing of whistleblower claims provided to the operating divisions with a judgmental sample of 25 managers and employees within CI and the LB&I, SB/SE, and TE/GE Divisions who were assigned § 7623(a) or § 7623(b) claims submitted in FY 2014.<sup>32</sup> In general, we found that operating division managers and employees believe the program has value, claims are given priority or the same status as

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<sup>30</sup> The Business Performance Review process is conducted quarterly for each operating division, during which executives discuss their progress on meeting their performance targets or goals and new or emerging issues that may affect major programs and performance.

<sup>31</sup> In August 2014, the Deputy Commissioner for Services and Enforcement requested a program review to ensure that resources committed to the Whistleblower Program are applied efficiently and effectively. The IRS initiated a Lean Six Sigma review to find ways to streamline operating processes by eliminating multiple hand-offs between the WO and the operating divisions and to provide opportunities for efficiencies in managing whistleblower claims.

<sup>32</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. This sampling method was used due to our limited time and staffing resources. The managers and employees selected were either the SMEs, coordinators in the AOs, or staff within examination groups.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

other work, and allegations are good enough to evaluate but not always better than work from other sources. However, potential problems mentioned by the operating division managers and employees include the following:

- Claims being sent straight to the field without SME contact.
- Delays getting paper files to start a review.
- Sporadic misroutes.
- Claims not timely provided after being submitted.
- The SMEs not devoting time due to other duties.
- Coordinating with other functions.
- Claim indicators not being timely removed from the Audit Information Management System (AIMS) for completed cases.
- Reconciling cases between the AIMS and E-TRAK.
- The WO questioning decisions.
- Confusion in completing Form 11369.
- E-TRAK frequently being down.

Although we did not contact external stakeholders, the GAO recently reported the IRS should ensure that there are adequate means for communicating with external stakeholders who may have a significant impact on the agency achieving its goals. Examples cited by the GAO for the Whistleblower Program included improving understanding of the WO's Annual Report to Congress, improving communication for the status of claims, and improving transparency for the process.<sup>33</sup>

The WO stated that establishing customer satisfaction balanced measures is not possible at this time, but future legislative changes to disclosure laws may make it possible. However, we believe that exploring methods to measure customer satisfaction can begin now. As a potential example, a voluntary survey could be included with the final notification package that asks about the whistleblower's experience with the different aspects of the program. A survey could address the timeliness and clarity of processing steps such as acknowledging submissions, correcting incomplete submissions, conducting debriefings, and notifying whistleblowers of results.

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<sup>33</sup> GAO, GAO-16-20, *IRS WHISTLEBLOWER PROGRAM: Billions Collected, but Timeliness and Communication Concerns May Discourage Whistleblowers* pp. 29–30, 32–33, and 36 (Oct. 2015).





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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

**The Whistleblower Program has no structured quality review program**

Quality review is a management tool to ensure that procedures are being followed and to identify areas with processing problems. The Whistleblower Program is in need of a structured quality review process to better ensure that claim processing is following guidance and to identify potential areas for improvement.

To determine if information was accurately recorded in E-TRAK and guidance was followed or needed, we reviewed a stratified sample of 135 claims randomly selected from a population of 14,272 claims submitted in FY 2014.<sup>34</sup> We found a total of 91 exceptions, with 72 of the 135 sample claims having at least one exception. Using this stratified sample, we estimate that 6,405 (44.9 percent) of 14,272 claims had at least one exception.<sup>35</sup> The exceptions accounting for the majority of the exceptions (76 of 91 claims) are:

- ***No acknowledgment letters sent for submissions by whistleblowers:*** 10 of 135 claims (7 percent).
- ***No acknowledgment letters sent when additional information was provided by the whistleblowers:*** 9 of 25 claims (36 percent).
- ***Sending or receiving of claims to/from classification not recorded in E-TRAK:*** 8 of 111 claims (7 percent).
- ***No classification support documentation for decisions in the physical administrative files:*** 13 of 111 claims (12 percent).
- ***Justification for CDO unit not accepting “high touch” referrals was not recorded in E-TRAK or in the physical administrative files:*** 11 of 11 claims (100 percent). The CDO unit accepted a total of 20 “high touch” referrals within our sample.
- ***Closure reasons and/or the area making recommendations, e.g., Classification function or the SME, not recorded in E-TRAK or did not match supporting documentation:*** 25 of 84 claims (30 percent).

WO management stated that they are in the process of updating procedural guides for the ICE and CDO units, which is intended to minimize future inconsistent processing. In addition, managers currently spot-check employee actions and recordings for errors. However, the WO acknowledges the benefits of improving quality and is considering establishing a structured

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<sup>34</sup> Sample stratification was based on claim type [§ 7623(a) or § 7623(b)], open or closed status as of February 2015, and claim relationship (stand-alone, master, or related).

<sup>35</sup> The point estimate projection is based on a two-sided 95 percent confidence interval. We are 95 percent confident that the point estimate is between 5,073 and 7,736 claims.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

quality review program in FY 2016 that will cover processing from start to finish, which is intended to identify future improvement areas.

**Computerized tracking data are not always accurate**

The WO began using the E-TRAK in January 2009 to track the progress of claims and to store information. It contains multiple tables to record potential claim activity. Previous TIGTA and GAO reviews reported problems with recording, tracking, and reporting results after the WO established E-TRAK.<sup>36</sup>

In February 2015, we obtained extracts for all records for selected fields from 15 tables within E-TRAK. Although our data validation produced reasonable assurance that the extracts matched system data and could be used for our testing, we informed the WO of missing data, input errors, fields not used or used for other purposes than intended, discrepancies between fields, claims still assigned to former WO employees, and system functionality not being fully used. A recent GAO review also reported E-TRAK problems that included incorrect, missing, or outdated information and system functionality not being fully used.<sup>37</sup>

To follow up on previous testing, we also obtained computer extracts in October 2015 and March 2016 for all records for selected fields from two tables within E-TRAK. Our data validation produced reasonable assurance that the extracts matched system data and could be used for our testing, but we again informed the WO of missing data, input errors, and discrepancies between fields.

The WO stated that it had implemented a new process to reassign claims between WO employees and was in the process of implementing procedures for previously unused features. To increase system functionality, it was also addressing the issues of fields not being used or being used for other purposes than intended. The WO is also considering establishing a structured quality review program in FY 2016 that will review processing from start to finish, which could improve data accuracy.

Near the end of our review, we observed that users were frequently notified that E-TRAK was unavailable. We reviewed E-TRAK system logs and determined that E-TRAK was unavailable 31 times during Calendar Year 2014 for almost 62 hours. Unavailability increased to 106 times during Calendar Year 2015 (as of October 2015) for almost 307 hours. The WO stated that the system had several problems due to inadequate hardware and equipment failure that were not

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<sup>36</sup> TIGTA, Ref. No. 2012-30-045, *Improved Oversight Is Needed to Effectively Process Whistleblower Claims* (Apr. 2012), and GAO, GAO-11-683, *TAX WHISTLEBLOWERS: Incomplete Data Hinders IRS's Ability to Manage Claim Processing Time and Enhance External Communication* (Aug. 2011).

<sup>37</sup> GAO, GAO-16-20, *IRS WHISTLEBLOWER PROGRAM: Billions Collected, but Timeliness and Communication Concerns May Discourage Whistleblowers* (Oct. 2015).



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

within the control of the WO. In late October 2015, E-TRAK was moved to its own server and the WO stated that this should help stability issues.

**Coding of claims on the AIMS is inconsistent**

Examination functions within the LB&I, SB/SE, and TE/GE Divisions use the AIMS to control their case inventories. AIMS coding includes an indicator that is used by the WO to identify examination cases for which there is a whistleblower claim. The examination cannot be closed on the AIMS unless the claim indicator is removed by the WO. This prevents an examination case from closing without the results being provided to the WO. However, missing claim indicators on the AIMS could cause examination results to be overlooked or delayed for whistleblower claims, and delays removing the claim indicator will delay closing activity by examination groups, which could include making additional tax assessments.

AIMS coding also includes tracking codes to identify specific return categories. One such tracking code is used when a whistleblower claim is sent to examination. If correctly coded, AIMS records with claim tracking codes should also have claim indicators. We extracted 5,774 tax modules from the AIMS with claim tracking codes for ongoing examination cases as of the end of September 2015 and identified 621 (10.8 percent) tax modules without claim indicators. Additional research for a random sample of 30 tax modules found 22 ongoing examinations still without claim indicators in November 2015. The majority, 13 sample tax modules, were for claims sent to the Employment Tax function for evaluation.<sup>38</sup>

After our research, we discovered that the SB/SE Division had started conducting monthly research in July 2014 for cases under its control on the AIMS with missing claim indicators.<sup>39</sup> A monthly report is provided to SB/SE Division Examination functions to take action as needed to ensure that tax modules are appropriately marked with claim indicators. In October 2015, the SB/SE Division found 306 potential tax modules with missing claim indicators.

We also discovered that the SB/SE Division began conducting a monthly reconciliation in November 2014 between the AIMS and E-TRAK for its examination functions. Initially, the SB/SE Division found 3,378 (42 percent) of 8,009 tax modules coded as whistleblower claims in the AIMS but with no associated claims in E-TRAK.<sup>40</sup> These monthly reconciliation inconsistencies are provided to the WO for review. By the March 2016 monthly reconciliation, these inconsistencies decreased to 1,500 (20 percent) of 7,548 tax modules on the AIMS without

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<sup>38</sup> Although the 30 tax modules were selected randomly, the sample size is not sufficient to project results for the additional research to the population of 621 tax modules without claim indicators.

<sup>39</sup> The SB/SE Division's research method is different than what we used for our audit testing. The SB/SE Division identifies taxpayers with ongoing examinations with a claim indicator and then searches for other related tax modules associated with the examinations.

<sup>40</sup> The number of tax modules may not directly correlate to the number of claims because E-TRAK assigns a single number to a taxpayer claim that may have multiple tax modules within the AIMS.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

associated claims in E-TRAK. In addition, the SB/SE Division initially found 504 (10 percent) of 5,136 claims coded in E-TRAK as being sent to the SB/SE Division Examination function but with no associated tax modules coded as whistleblower claims in the AIMS. These monthly reconciliation inconsistencies are provided to SB/SE Division Examination functions for research. By the March 2016 monthly reconciliation, these inconsistencies decreased to 104 (2 percent) of 5,883 claims coded as being sent to SB/SE Division Examination functions in E-TRAK without associated modules in the AIMS.

The WO is aware that there are claims which have been referred to operating division Examination functions without claim indicators on the AIMS. The WO will activate claim indicators on tax modules when claims are sent to the field. If the field expands the examination to another tax year or taxpayer, the WO relies on the field to provide the information so that the WO can activate the claim indicators for the additional tax modules. The WO is concerned that if it activates claim indicators on the AIMS without information from the field, this could cause confusion when closing the examination.

Because the AIMS and E-TRAK are not systemically connected, there will always be some level of inconsistency between the two systems. However, we believe the WO should be more proactive to ensure that claim activity is being properly controlled by operating division Examination functions. The research for potential missing claim indicators and reconciliation between the AIMS and E-TRAK conducted by the SB/SE Division should be embraced and expanded to the other operating divisions. By working to ensure that claims are properly coded on the AIMS, the risk decreases for examination results to be overlooked or delayed for whistleblower claims.

**Guidance for claim processing can be improved**

Management uses guidance to help ensure that employee actions are consistent and follow management's expectations. It is also an important means to help train new employees in the process as well as provide transparency for an activity. The IRM is the primary, official source of IRS instructions related to the policies, authorities, procedures, and guidelines for daily operations. Interim guidance is used for immediate, time-sensitive, or temporary changes until the IRM can be updated. The IRM is available to all IRS employees and made available to the public with redaction if necessary.

We reviewed the three IRM sections pertaining to the Whistleblower Program and found that IRMs 1.1.26 and 25.2.2 were last updated in August 2015, but IRM 25.2.1 had not been updated since December 2008. We also found that the sections had limited detailed steps for processing claims. For example:

- **IRM 1.1.26, *Organization and Staffing, Whistleblower Office***, describes the WO and its structure and responsibilities as well as providing some general definition of terms for the program. Although we found no noticeable omissions, it had a limited description of the various activities of the ICE unit.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

- **IRM 25.2.1, *Information and Whistleblower Awards, Receiving Information***, contains instructions for receiving information from whistleblowers but also for informants who do not want an award, which could cause confusion for processing whistleblower claims. Because this section has not been updated since December 2008, we found that it does not reflect changes, such as those resulting from the final regulations issued in August 2014.
- **IRM 25.2.2, *Information and Whistleblower Awards, Whistleblower Awards***, contains procedures for all IRS personnel to follow when working whistleblower claims. We found that this section had basic instructions for processing claims, but it does not always have the details to fully explain how a task will be completed. For example, the IRM does not explain how the Classification function will document its claim evaluation or the method to provide its recommendation to the WO, including the use of E-TRAK. In addition, this IRM does not have guidance for how management will use E-TRAK to monitor processing.

The WO uses procedural guides, not included in the IRM, to provide additional instructions to the ICE unit, the CDO unit, and the SB/SE Division Classification function. There is no guide for the ARC unit or for other operating divisions to process claims. These guides are not available to all IRS employees and not made available to the public. Procedural alerts are used for changes to the guides until they can be updated. However, numerous alerts have been issued in recent years, making it difficult to keep the guides updated: eight alerts were issued in FY 2014 and another 11 alerts were issued in FY 2015. The WO stated that it was in the process of updating procedural guides for the ICE and CDO units. The last updates for procedural guides during our review were April 2016 for the ICE unit, December 2014 for the CDO unit, and March 2015 for the SB/SE Division Classification function.

The WO stated that the IRM is for policy guidance and is not the appropriate means to communicate detailed processing steps, which is why procedural guides are used. We disagree with the WO because the IRM should have adequate detail to explain the steps necessary to complete daily operations. According to IRM 1.11.6.3(4), one purpose of the IRM is to provide “step by step instructions to carry out laws enacted by Congress per the Internal Revenue Code (IRC), Treasury Regulations, and Revenue Rulings.” An example of employee guidance contained in the IRM is the detailed procedures for IRS examiners contained in many sections of IRM Part 4, *Examining Process*. Therefore, only unique, limited situations should be considered for a procedural guide outside the IRM because these unpublished procedural guides limit the ability of other IRS functions, the public, and other stakeholders to understand the program. Furthermore, limiting the use of unpublished procedural guides increases IRS transparency and also minimizes the need to update multiple documents, decreases duplication, and decreases conflicts between guidance.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

## **Recommendations**

The Director, WO, should:

**Recommendation 5:** Implement the Balanced Performance Measurement System for the Whistleblower Program.

**Management's Response:** The IRS agreed with this recommendation. The WO stated that it has or will incorporate some components of the Balanced Performance Measurement System for the Whistleblower Program. The WO currently uses the Federal Employee Viewpoint Survey to measure employee satisfaction; will evaluate the program to develop measures, metrics, and reporting for business results; and will develop a survey to track internal customer satisfaction.

**Office of Audit Comment:** We believe management's response is incomplete for implementing the Balanced Performance Measurement System for the Whistleblower Program. Although the WO is planning to use and develop measures for employee satisfaction, business results, and internal customer satisfaction, there are no plans to use and develop measures for external customer satisfaction, *e.g.*, whistleblowers and their representatives. In addition, management's response did not mention the development of a strategy to use all elements of balanced measures in strategic, operational, and business planning. Furthermore, management's response did not explain or demonstrate how customer satisfaction, employee satisfaction, and business results will be used and addressed in the business decisions of the organization.

**Recommendation 6:** Develop a structured quality review process for the Whistleblower Program.

**Management's Response:** The IRS agreed with this recommendation. The WO is working to establish a comprehensive quality review program that will include adherence to established procedures, time frames, and accuracy of data input.

**Recommendation 7:** Establish systemic computer validation checks on E-TRAK to minimize the initial entry of inaccurate data, and establish methods to identify and correct inaccurate entries.

**Management's Response:** The IRS agreed with this recommendation. The WO is in the process of developing change requests for E-TRAK programming to establish validity checks for input fields, such as received date and status fields.

**Recommendation 8:** Implement a process to coordinate with operating division Examination functions to ensure that coding for whistleblower claims on the AIMS is accurate.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

**Management's Response:** The IRS agreed with this recommendation. The WO will develop a standardized, formal process with the operating divisions to ensure that coding for whistleblower claims on the AIMS is accurate.

**Recommendation 9:** Incorporate key guidance into the IRM to explain Whistleblower Program operations and update when necessary.

**Management's Response:** The IRS agreed with this recommendation. The WO is in the process of determining key operational guidance that will be updated and incorporated into the IRM.

### **Ineligible Whistleblowers Are Not Always Identified**

The whistleblower regulations allow the WO to reject a claim for award filed by an ineligible whistleblower. The following individuals are listed by the regulations as ineligible:<sup>41</sup>

- An individual who is an employee of the Department of the Treasury or was an employee of the Department of the Treasury when the individual obtained the information on which the claim is based.
- An individual who obtained the information through the individual's official duties as an employee of the Federal Government or who is acting within the scope of those official duties as an employee of the Federal Government.
- An individual who is or was required by Federal law or regulation to disclose the information or who is or was precluded by Federal law or regulation from disclosing the information.
- An individual who obtained or had access to the information based on a contract with the Federal Government.
- An individual who filed a claim for award based on information obtained from an ineligible whistleblower for the purpose of avoiding the rejection of the claim that would have resulted if the claim was filed by the ineligible whistleblower.

Depending on the source and timing of claim information, ineligible whistleblowers may include current/former IRS employees and IRS contractors. In addition, other individuals could submit claims as surrogates for ineligible IRS employees/contractors, *e.g.*, a spouse or dependent of an IRS employee. We matched whistleblowers with IRS employment records and reviewed claims submitted by these individuals. Our review found that the WO is not always aware when current or former IRS employees, IRS contractors, or their potential surrogates submit claims.

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<sup>41</sup> Treas. Reg. § 301.7623-1(b)(2).



*The Whistleblower Program Helps Identify Tax Noncompliance; However, Improvements Are Needed to Ensure That Claims Are Processed Appropriately and Expeditiously*

The WO identified 58 claims involving eight current IRS employees and four spouses of current or former employees. However, Figure 13 shows that the WO did not identify 89 claims involving 49 whistleblowers connected to the IRS. Of the 89 claims for whistleblowers connected to the IRS, 19 were submitted before IRS employment began and the claims are permitted to continue processing. However, we believe the WO should have known about the employment to consider eligibility and take necessary precautions to ensure that claim processing is secure based on employment location and position.

**Figure 13: Whistleblowers With a Connection to the IRS Not Identified by the Whistleblower Office**

IRS Connection	Number of Whistleblowers	Number of Claims
Current Employee	19	30
Current Employee Spouse	13	21
Former Employee	5	9
Former Employee Spouse/Dependent	9	26
Current Contractor/Spouse	0	0
Former Contractor/Spouse	3	3
<b>TOTAL</b>	<b>49</b>	<b>89</b>

*Source: TIGTA analysis of E-TRAK and employment data.*

Although an E-TRAK closure definition was created in February 2015 to indicate that a claim was rejected because of an ineligible whistleblower, WO management stated that they have no current process to use this closure reason to supersede normal claim processing. Currently, WO management stated that they identify ineligible whistleblowers if disclosed within the submission or if discovered during claim evaluation, but there is no specific process to check for ineligible whistleblowers.

If a process to check for ineligible whistleblowers is developed, the WO stated that it would need a source to identify ineligible submissions due to IRS employment because the testing method used by TIGTA is not available to the WO staff. The ICE unit verifies that Social Security Numbers match names on submissions when first received, but the research source uses tax entity information that does not indicate if the whistleblower is an IRS employee or spouse. Another available research source for tax account information includes information to determine if the whistleblower is an IRS employee or spouse, but it would not identify current or former IRS contractors or their surrogates.

The WO is concerned that using the alternative source to check for IRS employment would also provide additional tax information not needed for the ICE unit employee duties. We agree there is the risk for employee misuse when allowing access to any IRS records or systems, and the WO should be vigilant for misuse of any source provided. However, we believe using the alternative





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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

source to check for ineligible whistleblowers is within the duties of WO employees. Another option would be to include IRS employee/spouse information in the source already being used by the WO.

WO management stated that the determination about an individual's eligibility for an award is not made until it appears that the information will lead to an award. Even if the whistleblower is ineligible to receive an award, the IRS can still use the information provided, which can be processed as an employee referral. We agree that information from ineligible whistleblowers could be used by the IRS to pursue tax noncompliance. However, we disagree that the whistleblower process is the best means to do so. Ineligible claims should be quickly closed, with possible consideration given to providing the allegation through a nonaward referral process, *e.g.*, employee referral. The WO should not use resources to control allegations with no potential for award from ineligible whistleblowers, regardless if identified early or late in the process.

By not identifying and rejecting ineligible whistleblowers early in processing, the WO and operating divisions use resources unnecessarily to process claims that will not receive an award. In addition, the risk increases that awards could be paid to ineligible whistleblowers. Furthermore, there is an increased risk of employee misconduct for unauthorized access to IRS records or systems by current employees and contractors curious about claims submitted by them or surrogates. When asked how the WO identifies other types of ineligible whistleblowers, *e.g.*, other Federal employees, WO management stated that they currently have no method and will need to consider how to address it.

## ***Recommendation***

**Recommendation 10:** The Director, WO, should implement a process to quickly identify and reject claims submitted by all types of ineligible whistleblowers.

**Management's Response:** The IRS agreed with this recommendation. The WO will research claims during the intake process for ineligible whistleblowers. In addition, the WO will change questions and attestations required on the claim submission form to improve identification of ineligible whistleblowers.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

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## Appendix I

### Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS ensures that the WO appropriately and timely evaluates whistleblower claims before referring them for investigation or examination.<sup>1</sup> To accomplish this objective, we:

- I. Obtained and reviewed the guidance for processing whistleblower claims, including time standards, by researching applicable tax laws, regulations, policies, and procedures. Also, we determined whether guidance incorporates recent program developments.
- II. Evaluated the reliability of E-TRAK to record the progress of whistleblower claims and ensure that processing actions followed guidance before providing whistleblower claims to operating divisions for investigation or examination.
  - A. Obtained a computer extract from the E-TRAK system between February 4 and February 9, 2015, for whistleblower claim data within 15 tables. We conducted validation testing to ensure that the computer extracts were reliable for our testing needs, which included comparing counts with WO data, scanning extracted data fields for incomplete or inaccurate information, *e.g.*, missing required entries, dates out of order, and future dates, and spot-checking potential inconsistencies as well as randomly selecting records to manually confirm that extracted data matched E-TRAK. We discussed potential incomplete or inaccurate information recorded on E-TRAK with WO officials.
  - B. Used the E-TRAK extract to select a stratified random sample of Section (§) 7623(a) and § 7623(b) whistleblower claims submitted in FY 2014. We reviewed the sample to determine whether information was accurately recorded on E-TRAK and whether processing guidance was followed prior to providing the claim to the operating divisions for investigation or examination, if applicable. We also reviewed this sample to gain a better understanding of claim cycle time.<sup>2</sup> The total sample of 135 was selected from a population of 14,272 claims, which was increased from the initial sample size of 97 claims to ensure that each stratum was represented in the sample. The initial sample size was based on preliminary statistical calculations for an unknown population using a confidence level of 95 percent, an occurrence rate of 50 percent, and a precision rate of  $\pm 10$  percent. We discussed our sample results

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<sup>1</sup> See Appendix VII for a glossary of terms.

<sup>2</sup> See Appendix V for additional details for our cycle time review that includes our projections.



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*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

- with WO officials, and a contracted statistician assisted us with reviewing sample projections.
- C. Identified claims submitted by IRS employees, IRS contractors, or their surrogates by computer matching whistleblowers within the E-TRAK extract to IRS employment databases. We conducted validation by checking for missing or unreliable data values and checking whether names and addresses recorded in E-TRAK matched those recorded in the employment databases. We checked matches for actions taken by the WO and discussed with WO officials.
  - D. Obtained and reviewed computer extracts from E-TRAK as of October 19, 2015, and March 31, 2016, to determine the volume of submissions by claim type and whether timeliness for establishing submissions improved. We conducted validation testing to ensure that the extracts were reliable for our testing needs, which included comparing counts with WO data, scanning extracted data fields for incomplete or inaccurate information, *e.g.*, missing required entries, dates out of order, and future dates, and spot-checking potential inconsistencies as well as randomly selecting records to manually confirm that extracted data matched the E-TRAK. We discussed the results with WO officials.
  - E. Obtained and reviewed E-TRAK system logs for downtime to determine whether the system is reliable for users to access. We discussed the results with WO officials.
  - F. Obtained and reviewed E-TRAK data summarized by the WO for the number and status of claims submitted by each whistleblower during FYs 2013 through 2015 to determine whether whistleblowers with a substantial number of claims were more or less productive than other whistleblowers for identifying tax noncompliance. We discussed the results with WO officials.
- III. Used the E-TRAK extract to select a stratified random sample of § 7623(a) and § 7623(b) whistleblower claims submitted in FY 2014 that were rejected or denied prior to being provided to operating divisions for investigation or examination. We reviewed the sample to determine whether the decisions were documented with support. The total sample of 140 was selected from a population of 3,181 claims, which was increased from the initial sample size of 97 claims to ensure that each stratum was represented in the sample. The initial sample size was based on preliminary statistical calculations for an unknown population using a confidence level of 95 percent, an occurrence rate of 50 percent, and a precision rate of  $\pm 10$  percent. We discussed the sample results with WO officials, and a contracted statistician assisted us with reviewing sample projections.<sup>3</sup>

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<sup>3</sup> See Appendix VI for additional details for our rejection/denial review that includes our projections.



*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

- IV. Used the E-TRAK extract to select a stratified random sample of § 7623(a) and § 7623(b) whistleblower submissions submitted in FY 2014. We reviewed the sample to determine whether whistleblowers were contacted for additional information, *i.e.*, debriefings, before providing to operating division field groups and whether the requirements in the IRS Deputy Commissioner for Services and Enforcement's memorandum dated August 20, 2014, were followed. The total sample of 130 was selected from a population of 1,954 submissions, which was increased from the initial sample size of 97 submissions to ensure that each stratum was represented in the sample. The initial sample size was based on preliminary statistical calculations for an unknown population using a confidence level of 95 percent, an occurrence rate of 50 percent, and a precision rate of  $\pm 10$  percent. Due to a misunderstanding of the E-TRAK coding used to identify submissions sent to operating divisions, we later determined that only 89 had actually been sent to the operating divisions and estimated the population to be 1,388 submissions. The point estimate projection is based on a two-sided 95 percent confidence interval. We are 95 percent confident that the point estimate is between 1,142 and 1,635 submissions. We discussed the sample results with WO officials, and a contracted statistician assisted us with reviewing sample projections.
- V. Contacted operating division field personnel with assigned claims to discuss the quality, timeliness, and processing of claims. We used the E-TRAK extract to select a judgmental sample of 25 managers and employees within CI and the LB&I, SB/SE, and TE/GE Divisions who were assigned § 7623(a) or § 7623(b) claims submitted in FY 2014.<sup>4</sup>
- VI. Evaluated the reliability of the ICE indicator on the AIMS to identify examination cases for which there is a whistleblower claim.
- A. Obtained computer extract from the AIMS as of the end of September 2015 for cases with a tracking code that indicates the case was created for a whistleblower claim and analyzed for potential examination cases on E-TRAK that do not have the ICE indicator on the AIMS showing a whistleblower claim. We conducted validation testing to ensure that the computer extract was reliable for our testing needs, which included comparing source counts with extracted counts, scanning extracted data fields for incomplete or inaccurate information, *e.g.*, missing required entries, dates out of order, and future dates, and randomly selecting 30 records to manually confirm that extracted data matched the AIMS. The 30 random records were also used for additional research to determine whether claim indicators were still missing on the AIMS by November 2015. Although the records were selected randomly, the sample

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<sup>4</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population. This sampling method was used due to our limited time and staffing resources. The managers and employees selected were either the SMEs, coordinators in the AOs, or staff within examination field groups.



*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

---

- size is not sufficient to project results for the additional research. We discussed the results with IRS officials.
- B. Obtained and reviewed the AIMS reconciliation with E-TRAK conducted by the SB/SE Division.
- VII. Determined how the WO monitors and reports its program achievements.
- A. Obtained and reviewed business metrics used by the WO to evaluate the program.
  - B. Obtained, reviewed, and compared WO inventory reports to the FY 2015 Annual Report to Congress to determine whether key results were appropriately displayed.

**Internal controls methodology**

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: IRS policies, procedures, and practices for the processing of whistleblower claims. We evaluated these controls by reviewing source materials, interviewing management, and reviewing samples of whistleblower claims.



*The Whistleblower Program Helps Identify Tax Noncompliance;  
However, Improvements Are Needed to Ensure That Claims Are  
Processed Appropriately and Expeditiously*

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## **Appendix II**

### *Major Contributors to This Report*

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Bryce Kisler, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations)  
Glen Rhoades, Director  
Robert Jenness, Audit Manager  
Aaron Foote, Lead Auditor  
John Park, Senior Auditor  
Ali Vaezazizi, Auditor



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## **Appendix III**

### *Report Distribution List*

Commissioner  
Office of the Commissioner – Attn: Chief of Staff  
Deputy Commissioner for Services and Enforcement  
Chief, Criminal Investigation  
Commissioner, Large Business and International Division  
Commissioner, Small Business/Self-Employed Division  
Commissioner, Tax Exempt and Government Entities Division  
Commissioner, Wage and Investment Division  
Director, Office of Audit Coordination



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## **Appendix IV**

### *Outline and Flowcharts of Whistleblower Process*

The general outline and flowcharts for whistleblower submission/claim processing shown below were constructed using guidance from the IRM and WO procedural guides/alerts along with discussions with WO staff.<sup>1</sup> This outline has seven stages with common actions; not all possibilities are shown. For submissions with multiple claims, each claim may go through the process differently and/or at different times based on the IRS activity involved with each claim.

#### **1. Intake**

- 1.1. Whistleblower submits Form 211, *Application for Award for Original Information*.
- 1.2. ICE unit reviews to determine if new submission.
  - 1.2.1. If new, record and assign claim on E-TRAK, including whistleblower representation (if applicable).
  - 1.2.2. If duplicate or supplement, send acknowledgement letter to whistleblower and associate with previous submission.
- 1.3. ICE unit checks for submission completeness.
  - 1.3.1. If incomplete, attempt to fix including possible correspondence with whistleblower.
  - 1.3.2. If still incomplete after attempt to fix, close by sending rejection letter to whistleblower with review and approval by WO management.
- 1.4. ICE unit assigns related claims on E-TRAK if submission lists multiple taxpayers.
- 1.5. ICE unit sends acknowledgement letter to whistleblower and sends submission/claim(s) to operating division Classification function.

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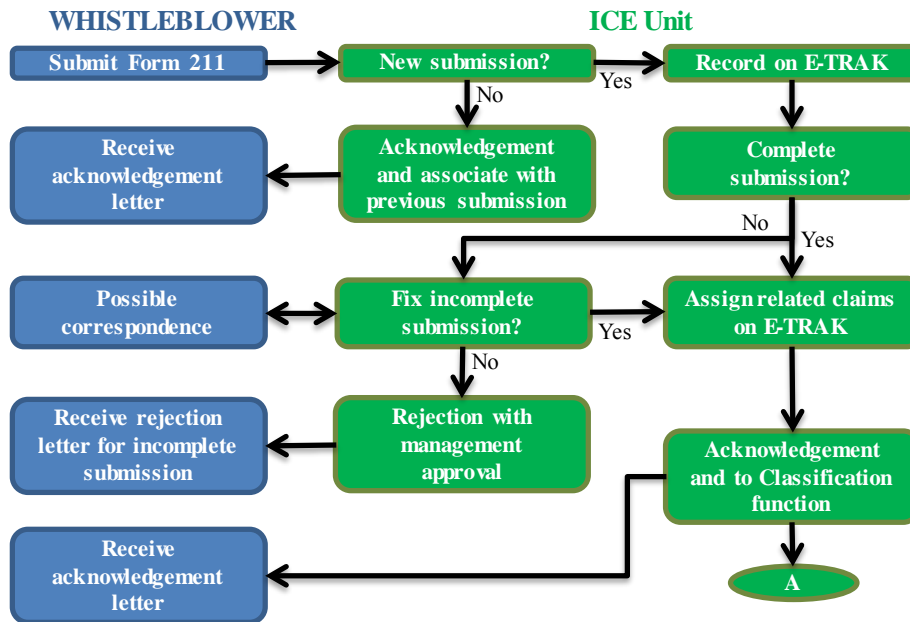
<sup>1</sup> See Appendix VII for a glossary of terms.





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**Figure 1: Flowchart of the Intake Process**



**2. Initial Evaluation**

- 2.1. Classification function receives submission/claim(s) from the ICE unit and checks for potential high touch processing and, if applicable, sends referral to ICE unit for forwarding to CDO unit.
- 2.2. If not potential high touch, Classification function evaluates for tax potential and returns to ICE unit.
- 2.3. ICE unit acts on Classification function response to either close using rejection/denial letter or send to operating division for compliance consideration.
  - 2.3.1. If closure, may place in suspense if other claim(s) from submission are being considered.
  - 2.3.2. If sending to examination function, establish claim indicator on the AIMS.
- 2.4. CDO unit reviews referrals for potential high touch processing.
  - 2.4.1. If high touch criteria not met, referral is returned to ICE unit for continued general processing.
  - 2.4.2. If high touch criteria met, CDO unit analyst assigned and acknowledgement letter sent to whistleblower, if necessary.
- 2.5. CDO unit analyst evaluates high touch claims for tax potential.

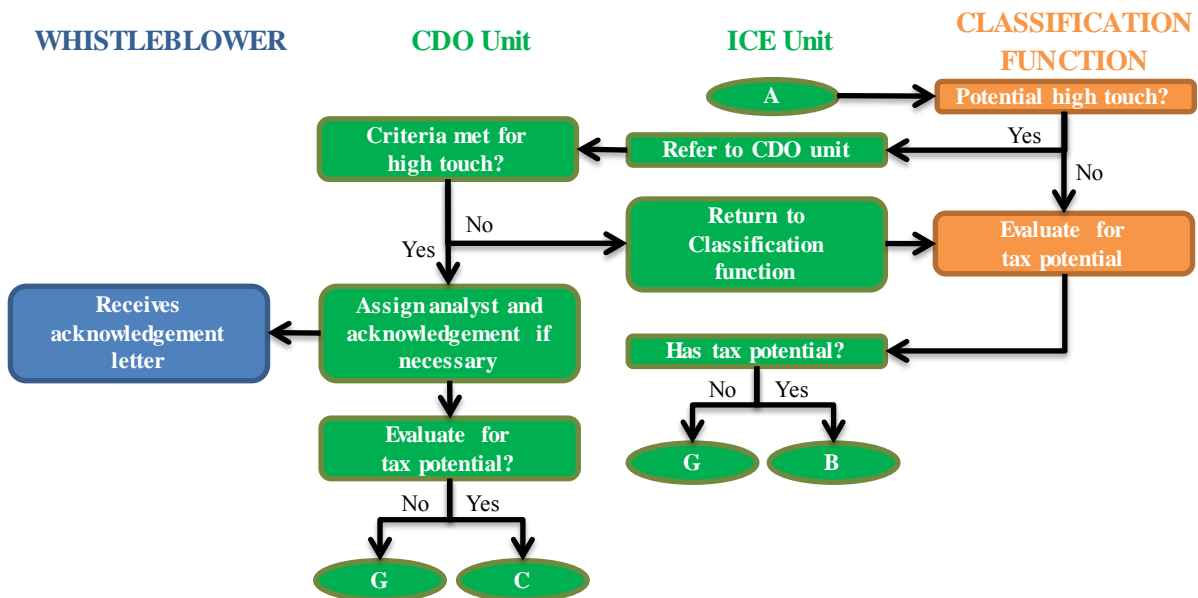


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2.5.1. If no potential, may place in suspense if other claim(s) from submission are being considered.

2.5.2. If tax potential found, sends to operating division SME for consideration.

**Figure 2: Flowchart of the Initial Evaluation Process**



**3. Operating Division Consideration**

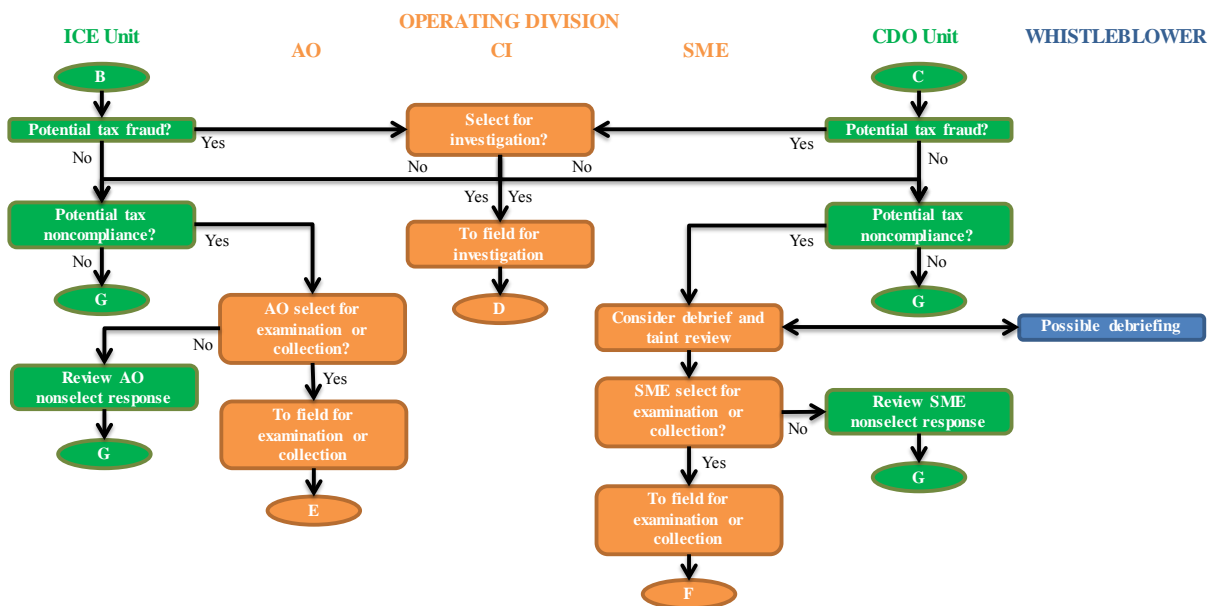
- 3.1. ICE or CDO unit analyst sends claim with potential tax fraud to CI for initial review to determine if investigation will be started or to be forwarded for activity currently underway.
- 3.2. ICE or CDO unit analyst sends claim with potential unreported or unpaid tax to the LB&I, SB/SE, or TE/GE Division to consider for examination/collection activity.
- 3.3. For § 7623(a) claim, the AO determines if any examination/collection activity will be started based on standard selection priority criteria or forwards to assigned field group if activity currently underway.
- 3.4. For high touch (typically § 7623(b)) claim, assigned SME may debrief whistleblower and coordinate with IRS Office of Chief Counsel for taint review of any whistleblower information that may have potential legal limitations.
- 3.5. Applicable CI, the AO, or the SME will notify ICE or CDO unit analyst if a claim is selected for examination/collection activity or provides explanation using Form 11369, *Confidential Evaluation Report on Claim for Award*, if not selected.



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- 3.6. For high touch claim selected for field examination, CDO unit analyst will request ICE unit to establish claim indicator on the AIMS.
- 3.7. ICE or CDO unit analyst reviews and clarifies, if necessary, the Form 11369 explanation from CI, the AO, or the SME for not selecting for examination/collection activity before closing or may place in suspense if other claim(s) for submission are still being considered.

**Figure 3: Flowchart of the Operating Division Consideration Process**



#### 4. Compliance Activity

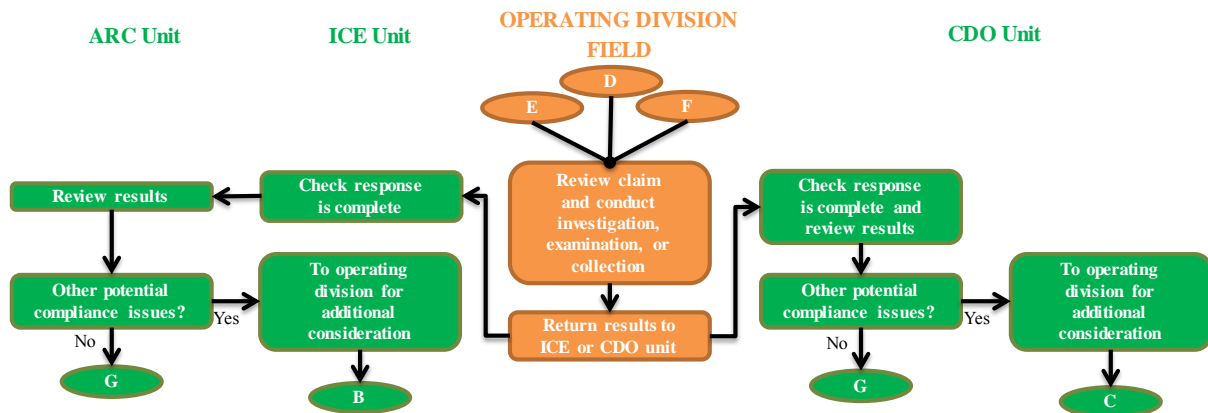
- 4.1. If a § 7623(a) or § 7623(b) claim is selected or included in an ongoing field case, CI, the AO, or the SME will provide the assigned field group with the claim allegation and evaluation conducted to date excluding tainted information determined by IRS Office of Chief Counsel.
- 4.2. Field group considers the claim for potential leads while conducting the investigation/examination and develops independent evidence to support any tax noncompliance.
- 4.3. Field group results are provided to ICE or CDO unit analyst using Form 11369, including whether the taxpayer is pursuing an appeal with IRS Office of Appeals.
  - 4.3.1. For § 7623(a) claim, ICE unit checks that the Form 11369 response is complete before providing to ARC unit analyst to check results, and either may contact field group to provide missing information or clarify results if necessary.



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- 4.3.2. For high touch (typically § 7623(b)) claim, CDO unit analyst reviews the Form 11369 response and may contact field group to provide missing information or clarify results if necessary.
- 4.3.3. For completed examination, ICE or CDO unit analyst removes claim indicator on the AIMS.
- 4.4. Depending on circumstances, ARC or CDO unit analyst may redirect claim back to the operating division for consideration of other potential compliance issues with allegation, *e.g.*, CI did not accept claim for investigation and claim sent for possible examination.

**Figure 4: Flowchart of the Compliance Activity Process**



## 5. Suspend

- 5.1. Check for suspense reasons; otherwise send to award determination.
  - 5.1.1. If taxpayer appeals field group actions, ICE or CDO unit analyst will place claim in suspense while monitoring for results; claim is not shared with Appeals Office.
  - 5.1.2. If whistleblower’s submission involves key partnership case, ICE or CDO unit analyst will place claim in suspense while monitoring for results.
  - 5.1.3. If whistleblower’s submission involves bulk claim, ICE or CDO unit analyst will place claim in suspense while monitoring for results.
  - 5.1.4. If whistleblower’s submission contains other claims still in process, ICE or CDO unit analyst will place claim in suspense while monitoring other claim results.
  - 5.1.5. If field makes collection-related adjustment, *e.g.*, additional tax assessment, applicable to claim, ICE or CDO unit analyst will monitor taxpayer account for collected proceeds until paid in full or after collection statute expires.

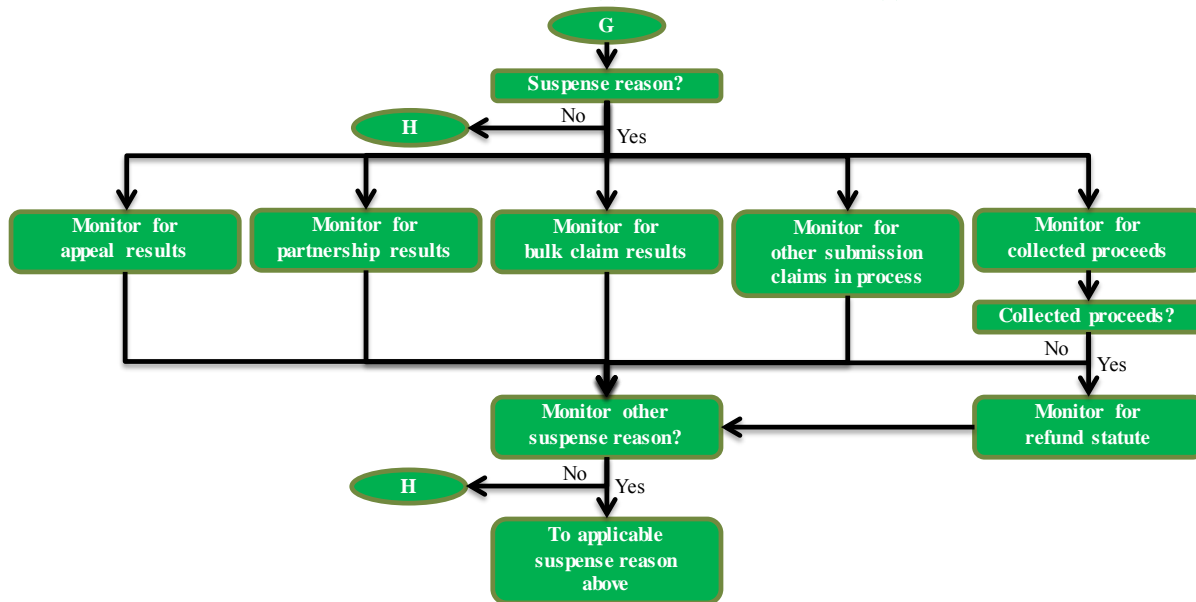


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- 5.1.6. If collected proceeds are received for claim, ICE or CDO unit analyst will monitor taxpayer account until after refund statute expires.
- 5.2. After suspense reason resolved, check for other suspense reason(s) before sending to award determination.

**Figure 5: Flowchart of the Suspend Process**

ICE/ARC Unit for § 7623(a) or CDO Unit for § 7623(b)



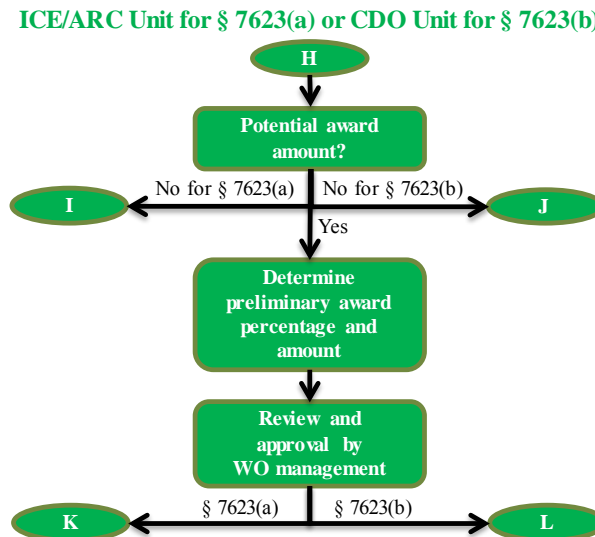
**6. Award Determination**

- 6.1. When compliance evaluation and applicable suspension activity is complete, ARC or CDO unit analyst reviews results to determine potential award amount; otherwise send to notification and closing.
- 6.2. ARC unit analyst prepares § 7623(a) award and CDO unit analyst prepares § 7623(b) award using operating division field results to determine award percentage, based on whistleblower contributions that are applied to collected proceeds for recommended award amount.
- 6.3. Recommended award determination and preliminary award letter reviewed and approved by WO management before sending to notification and closing.



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**Figure 6: Flowchart of the Award Determination Process**



## 7. Notification and Closing

- 7.1. For § 7623(a) rejection, ICE or ARC unit analyst prepares letter (specifying basis for rejection) that is reviewed and approved by WO management before sending to whistleblower and closing submission on E-TRAK.
- 7.2. For § 7623(a) denial, ICE or ARC unit analyst prepares letter (not specifying basis for denial) that is reviewed and approved by WO management before sending to whistleblower and closing submission on E-TRAK.
- 7.3. For § 7623(b) rejection/denial, whistleblower receives preliminary letter (specifying basis for rejection/denial) followed by final letter of rejection/denial, if applicable.
  - 7.3.1. CDO unit analyst prepares preliminary letter that is reviewed and approved by WO management before sending to whistleblower.
  - 7.3.2. Whistleblower has 30 days to review and provide comments to the WO.<sup>2</sup>
  - 7.3.3. After 30-day review period, CDO unit analyst reviews any whistleblower comments for reconsideration and takes follow-up action, if necessary.
  - 7.3.4. CDO unit analyst prepares final letter that is reviewed and approved by WO management before sending to whistleblower.

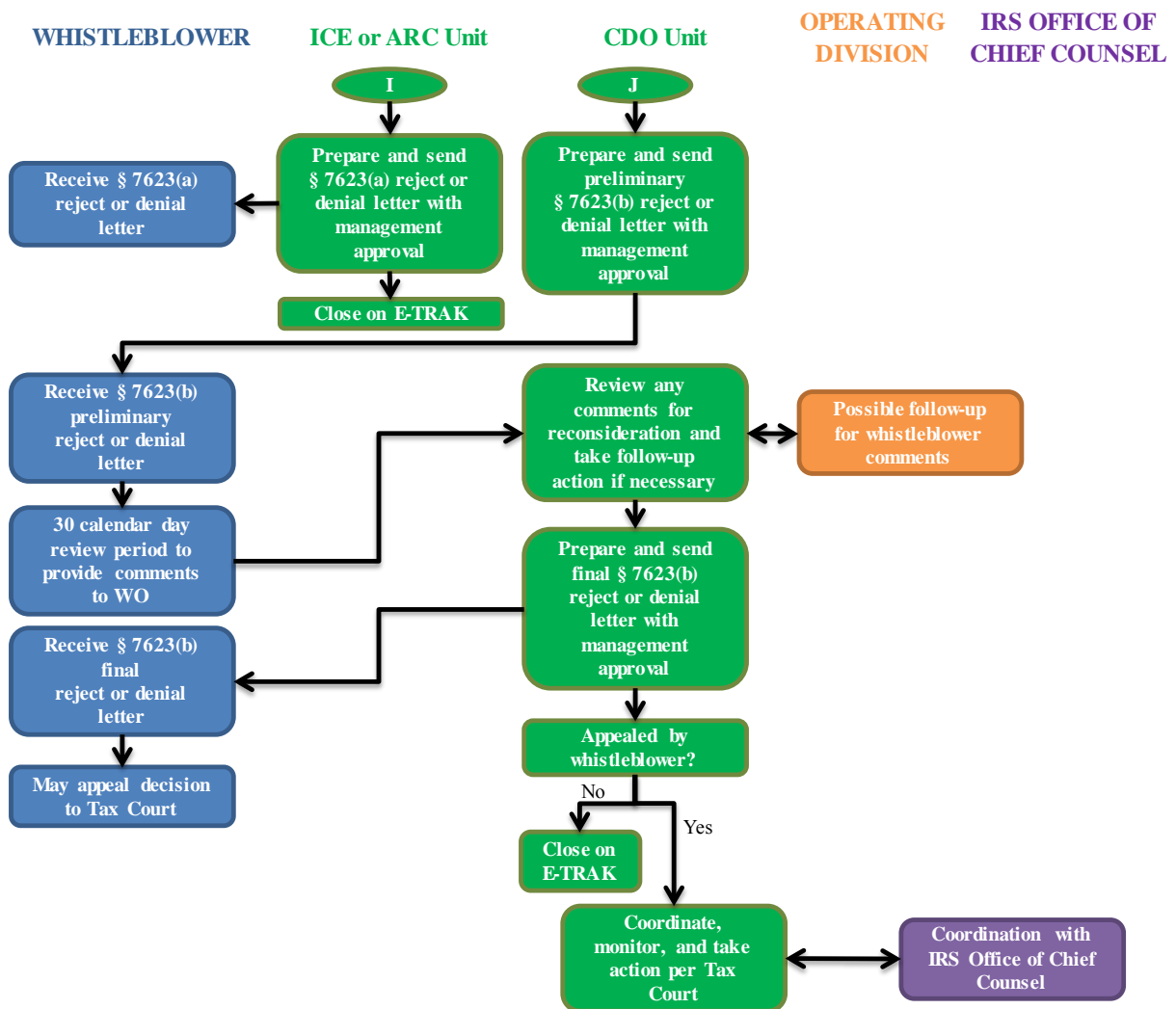
<sup>2</sup> All days are calendar days unless otherwise noted.



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- 7.3.5. If whistleblower appeals decision to the Tax Court, CDO unit analyst coordinates with IRS Office of Chief Counsel, monitors for results, and takes action per Tax Court decision.
- 7.3.6. After whistleblower’s appeal rights have expired or litigation resolved by Tax Court, CDO unit closes on E-TRAK.

**Figure 7: Flowchart of the Notification and Closing Process (Part 1 of 3)**



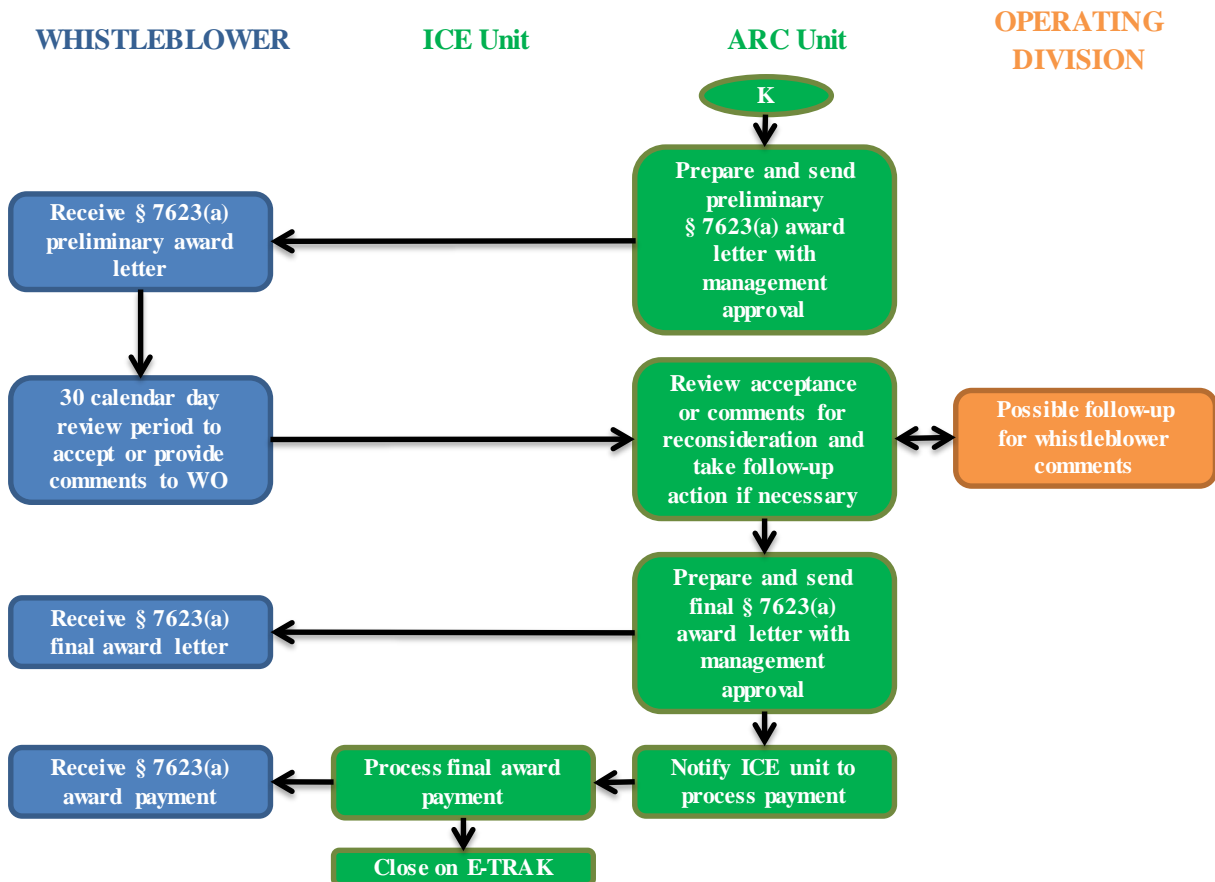
- 7.4. For § 7623(a) award, whistleblower receives preliminary letter with support for determination, followed by final letter with support for determination and award payment.



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- 7.4.1. ARC unit analyst prepares preliminary award letter that is reviewed and approved by WO management before sending to whistleblower.
- 7.4.2. Whistleblower has 30 days to review and accept award or provide comments to the WO.
- 7.4.3. After 30-day review period, ARC unit analyst reviews whistleblower’s acceptance or any comments for reconsideration and takes follow-up action if necessary.
- 7.4.4. ARC unit analyst prepares final letter that is reviewed and approved by WO management before sending to whistleblower and notifying ICE unit to process payment.
- 7.4.5. ICE unit processes award payment and sends to whistleblower before closing on E-TRAK.

**Figure 8: Flowchart of the Notification and Closing Process (Part 2 of 3)**







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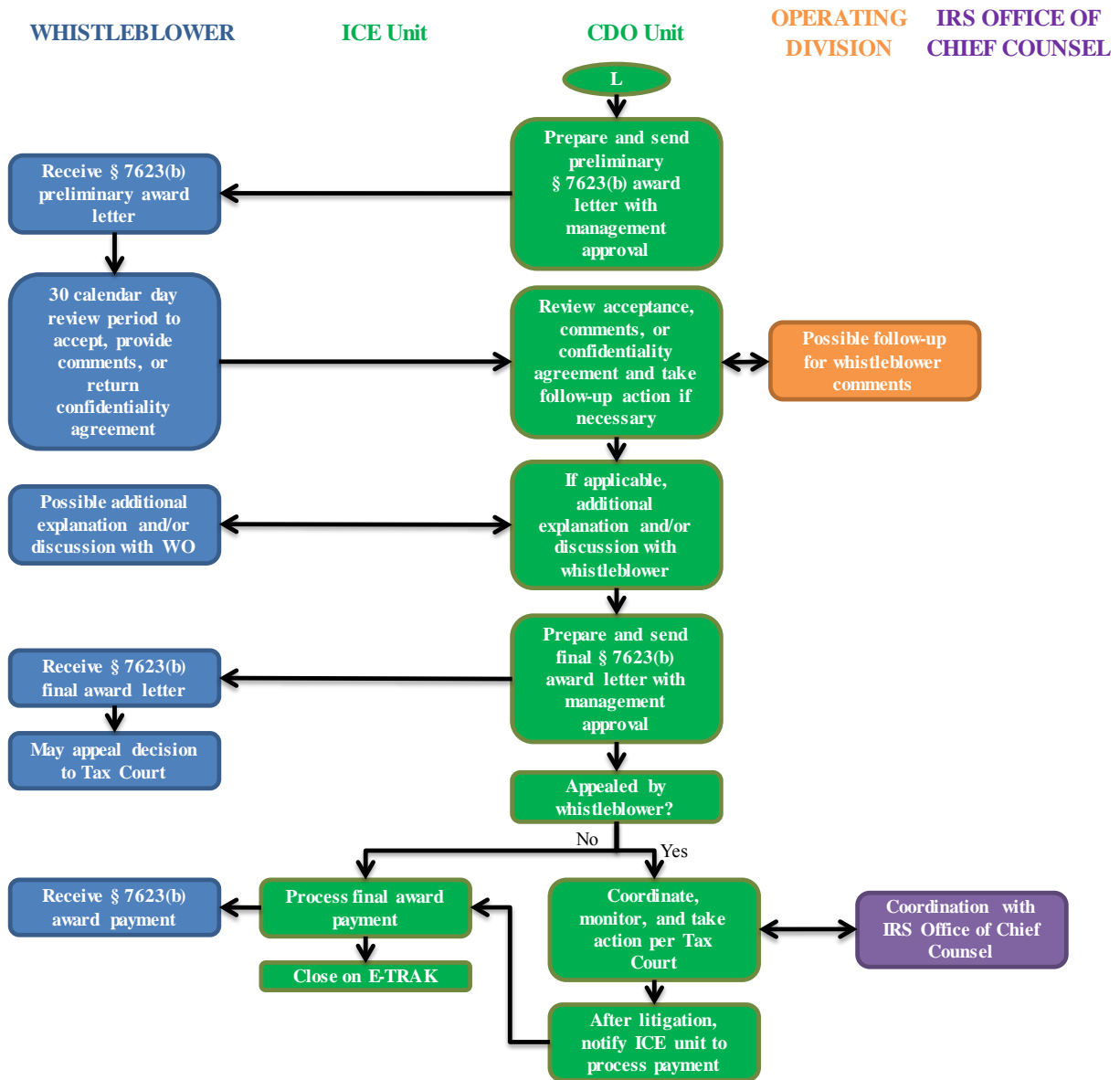
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- 7.5. For § 7623(b) award, whistleblower receives preliminary letter with support for determination, followed by final letter and then award payment after appeal rights have expired or litigation resolved by Tax Court.
  - 7.5.1. CDO unit analyst prepares preliminary award letter that is reviewed and approved by WO management before sending to whistleblower.
  - 7.5.2. Whistleblower has 30 days to review and to: a) accept award, b) provide comments to the WO, or c) return confidentiality agreement for another 30-day period to receive additional explanation and/or discuss award with the WO.
  - 7.5.3. After 30-day review period, CDO unit analyst reviews whistleblower's acceptance, any comments for reconsideration, or returned confidentiality agreement and takes follow-up action, if necessary.
  - 7.5.4. If confidentiality agreement returned, CDO unit analyst sends additional explanation and/or coordinates discussion with whistleblower.
  - 7.5.5. CDO unit analyst prepares final letter that is reviewed and approved by WO management before sending to whistleblower.
  - 7.5.6. If whistleblower appeals decision to the Tax Court, CDO unit analyst coordinates with IRS Office of Chief Counsel, monitors for results, and takes action per Tax Court decision.
  - 7.5.7. After whistleblower's appeal rights have expired or litigation resolved by Tax Court, CDO unit analyst notifies ICE unit to process payment.
  - 7.5.8. ICE unit processes award payment and sends to whistleblower before closing on E-TRAK.



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**Figure 9: Flowchart of the Notification and Closing Process (Part 3 of 3)**





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## Appendix V

### Details for Cycle Time Sample

To gain a better understanding of claim cycle time, we reviewed a stratified sample of 135 claims randomly selected from a population of 14,272 claims submitted in FY 2014.<sup>1</sup> Our results for six reviewed processing steps show the need for the WO to monitor for cycle time in order to measure if targets are being met. Not all sample claims were involved in each processing step reviewed.

1. **Establishing original claims:** Estimated average cycle time of 73 days based on 130 sample claims.<sup>2</sup> This processing step is from when the submission is received by the WO until ready for initial evaluation. It does not include five sample claims because related claims were created after additional taxpayers not specifically listed in submissions were identified during subsequent evaluation steps. The cycle time target for this step is 30 days, but 108 sample claims exceeded the target. As discussed previously, the WO informed us of a backlog before our sample review. In October 2015, the WO stated that the backlog had been addressed and the establishing claims step was currently taking a few days to complete. Using March 2016 extracts from E-TRAK, we confirmed the backlog was addressed and average processing is currently under the 30-day target. The WO monthly inventory report displays volume but does not display average cycle time or current status time for this step.
2. **Classifying claims:** Estimated average cycle time of 60 days based on 102 sample claims.<sup>3</sup> This processing step is from when the claim is sent to classification until a recommendation to reject/deny is made or the claim is sent to an operating division for further evaluation. The cycle time target for this step is 25 days for the SB/SE Division Classification function and no target for other Classification functions, but 68 sample claims exceeded 30 days. The SB/SE Division Classification function informed us of a backlog before our sample review, and then in October 2015, the WO stated that the backlog was addressed with current processing for classifying claims taking just a few days to complete. Using the SB/SE Division's claim classification inventory report, we

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<sup>1</sup> See Appendix VII for a glossary of terms. Sample stratification was based on claim type [§ 7623(a) or § 7623(b)], open or closed status as of February 2015, and claim relationship [master or related].

<sup>2</sup> All days are calendar days unless otherwise noted. The point estimate projection is based on a two-sided 95 percent confidence interval calculated using the Jackknife estimator. We are 95 percent confident that the point estimate is between 62.2 and 84.2 days.

<sup>3</sup> The point estimate projection is based on a two-sided 95 percent confidence interval calculated using the Jackknife estimator. We are 95 percent confident that the point estimate is between 49.3 and 71.5 days.



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confirmed that the backlog was addressed, but the report does not have data to confirm that average processing is under the 25-day target. However, an ad hoc WO report from E-TRAK indicates the 25-day target was being met in September and October 2015. The WO monthly inventory report displays volume that is not separated by Classification functions and does not display average cycle time or current status time for this step.

3. **Referrals to the CDO unit:** Estimated average cycle time of 42 days based on 38 sample claims.<sup>4</sup> This processing step is from when the claim is sent to the CDO unit until the decision to assign a CDO unit analyst or send the claim back to the originator, e.g., ICE unit or Classification function, for processing. This includes potential high touch referrals (typically § 7623(b) claims). There is no cycle time target for this processing step, but it is included in the overall 90-day target to complete initial WO evaluation, which includes all steps from establishing claims through either sending to the operating division, suspending, or closing. The WO monthly inventory report does not include volume, cycle time, or current status time for this step.
4. **CDO analyst evaluation of § 7623(b) claims:** Estimated average cycle time of 110 days based on 43 sample claims.<sup>5</sup> This processing step is from when the claim is assigned to a CDO unit analyst until a decision is reached to reject/deny the claim or send it to the operating division. There is no cycle time target for this processing step, but it is included in the overall 90-day target to complete the initial WO evaluation, which includes all steps from establishing the claim through sending it to the operating division, suspending, or closing. The WO monthly inventory report displays volume but does not display average cycle time or current status time for this step.
5. **AO and SME evaluation:** Estimated average cycle time of 153 days based on 35 sample claims.<sup>6</sup> This processing step is from when the claim is sent to the AO/SME until decision to reject/deny the claim or send it to an operating division field group. The cycle time target for SME evaluation is 90 days, but there is no cycle time target for AO evaluation because assignment to field groups is based on resource availability and amount of time remaining for the assessment statute of limitation. For the claims assigned to the SMEs in our sample (28), the estimated average cycle time was 204 days, with nine sample claims exceeding 90 days.<sup>7</sup> For AO and SME evaluation, the WO

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<sup>4</sup> The point estimate projection is based on a two-sided 95 percent confidence interval calculated using the Jackknife estimator. We are 95 percent confident that the point estimate is between 30.1 and 54.1 days.

<sup>5</sup> The point estimate projection is based on a two-sided 95 percent confidence interval calculated using the Jackknife estimator. We are 95 percent confident that the point estimate is between 76.4 and 143.6 days.

<sup>6</sup> The point estimate projection is based on a two-sided 95 percent confidence interval calculated using the Jackknife estimator. We are 95 percent confident that the point estimate is between 103.4 and 202.3 days.

<sup>7</sup> The point estimate projection is based on a two-sided 95 percent confidence interval calculated using the Jackknife estimator. We are 95 percent confident that the point estimate is between 126.3 and 281.7 days.



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monthly inventory report displays volumes but does not display average cycle time or current status time for this step.

6. **Closing claims:** Estimated average cycle time of 91 days based on 77 sample claims.<sup>8</sup> This processing step is from when the closure decision is made until it is recorded in E-TRAK and a letter is issued to the whistleblower (preliminary letter, if applicable). It does not include any suspense periods. There is a 90-day target for making an award decision when collected proceeds can be determined, and a seven-day target for reject/denials from the Classification function. The WO informed us of a backlog before our sample review, but by November 2015, the backlog had been addressed. Using WO management reports, we confirmed that the backlog was addressed, but the WO monthly inventory report only displays volumes and does not display average cycle time or current status time for this step.

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<sup>8</sup> The point estimate projection is based on a two-sided 95 percent confidence interval calculated using the Jackknife estimator. We are 95 percent confident that the point estimate is between 72.8 and 109.3 days.



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## Appendix VI

### *Details for Rejection/Denial Sample*

Internal controls help ensure that management's directives are carried out. One such control is that significant events should be clearly documented and the documentation should be readily available for review.<sup>1</sup> Documentation is important because it provides the principal evidence to support actions and decisions, such as when whistleblower claims are rejected or denied.<sup>2</sup> Not only is documentation needed for the WO to evaluate if procedures are being followed to support decisions, but it will be necessary to support IRS positions if decisions are litigated.

To determine whether rejection/denial decisions were supported, we reviewed a stratified sample of 140 claims randomly selected from a population of 3,181 claims submitted in FY 2014 that were rejected or denied as of February 2015 and were not assigned to an operating division field group.<sup>3</sup> We found 60 closures with the following exceptions discussed below, some of which are included under more than one category. We did not determine whether claims were improperly closed as rejections/denials. However, the supporting documentation was not always provided, did not always match closure reasons in E-TRAK, or did not clearly demonstrate the reason for the decision.

- **No supporting documentation for closure decisions:** 21 claims, all § 7623(a) claims. These had only E-TRAK action comments without supporting documentation in physical administrative files or electronic copies in E-TRAK. The WO concurred with the results. Based on our stratified sample, we estimate that 754 (23.7 percent) of 3,181 claims place the IRS at risk of being unable to support claim rejection/denial decisions because supporting documentation is not consistently retained.<sup>4</sup> The WO agrees that closure support should be in E-TRAK but has no requirement to do so. Also, it is confident in its system backup process and does not see a need to keep documentation in physical files.
- **Closure reasons and/or the area making recommendations, e.g., the WO, the Classification function, or the SME, not recorded in E-TRAK or did not match supporting documentation:** 49 claims (34 for closure reasons, four for area, and 11 for both). Of the 49 claims, 34 involved the ICE unit, which concurred with the results

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<sup>1</sup> GAO, GAO-14-704G, *Standards for Internal Control in the Federal Government* p. 48 (Sept. 2014).

<sup>2</sup> See Appendix VII for a glossary of terms.

<sup>3</sup> Sample stratification was based on claim type [§ 7623(a) or § 7623(b)], areas making recommendation (the WO, the Classification function, or the SME), and closure reasons.

<sup>4</sup> The point estimate projection is based on a two-sided 95 percent confidence interval. We are 95 percent confident that the point estimate is between 489 and 1,020 claims.



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except for\*\*\*\*\*1\*\*\*\*\*. The remaining 15 claims involved the CDO unit, which concurred that four claims had wrong closing reasons and 11 claims had wrong areas, but did not concur that nine of the 11 claims also had the wrong closing reason because of different interpretations of closure documentation. Based on our stratified sample, we estimate that 751 (23.6 percent) of 3,181 claims did not have the closure reasons and/or the area making closure recommendations recorded accurately or consistently on E-TRAK.<sup>5</sup> The WO stated that the classification closing menu was revised in April 2015 to provide a drop down screen to mark a single closure reason that matches E-TRAK closure reasons, which should minimize future mismatches. In addition, the WO stated that it would consider a similar revision for other closures using Form 11369, *Confidential Evaluation Report on Claim for Award*, for supporting documentation.

- **Claims closed prematurely because of a lack of supporting documentation, not fully evaluating allegations, or using inconsistent criteria:** eight claims. Based on our stratified sample, we estimate that 73 (2.3 percent) of 3,181 claims may have closed prematurely.<sup>6</sup>

- We found three claims for which we believe the allegation was not fully evaluated before being closed. \*\*\*\*\*1\*\*\*\*\*  
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<sup>5</sup> The point estimate projection is based on a two-sided 95 percent confidence interval. We are 95 percent confident that the point estimate is between 620 and 882 claims.

<sup>6</sup> The point estimate projection is based on a two-sided 95 percent confidence interval. We are 95 percent confident that the point estimate is between 0 and 176 claims.







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## Appendix VII

### Glossary of Terms

<b>Term</b>	<b>Definition</b>
<b>Area Office</b>	Office within operating division to determine if examination/collection activity will be started for Section (§) 7623(a) claim based on standard selection priority criteria or forwards to assigned field group if activity currently underway.
<b>Bulk Claim</b>	Submission listing a significant number of taxpayers for the same alleged tax issue that a few are used as tests to be evaluated for noncompliance before determining if remaining should be evaluated or closed.
<b>Claim</b>	Number(s) assigned to a submission for each taxpayer listed in allegation and/or when multiple whistleblowers are listed in submission used by the WO to control processing activity.
<b>Collected Proceeds</b>	Amounts collected by the IRS for tax noncompliance used to determine an I.R.C. § 7623 award. The Taxpayer Bill of Rights 2 originally defined collected proceeds as “amounts (other than interest) collected by reason of the information provided.” <sup>1</sup> The Tax Relief and Health Care Act of 2006 changed the definition of collected proceeds to include “penalties, interest, additions to tax, and additional amounts.” <sup>2</sup> The current whistleblower regulations provide additional details for the definition, to include “Collected proceeds are limited to amounts collected under the provisions of title 26, United States Code.” <sup>3</sup>
<b>Cycle Time</b>	Elapsed calendar days to complete an activity.
<b>Debriefing</b>	IRS contact with a whistleblower to clarify or obtain more information.

<sup>1</sup> Pub. L. No. 104-168, 110 Stat. 1452 (1996) (codified as amended in scattered sections of 26 U.S.C.).

<sup>2</sup> Pub. L. No. 109-432, 120 Stat. 2958 (2006).

<sup>3</sup> Treas. Reg. § 301.7623-2(d).



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<b>Term</b>	<b>Definition</b>
<b>Denial</b>	No whistleblower award based on IRS actions. This includes no tax noncompliance identified, no collected proceeds, or determination not to proceed because below threshold for compliance potential, statute of limitations expired or insufficient time remaining, lack of resources, or information already known.
<b>Evaluation</b>	Activity by the WO or operating divisions to determine potential for an examination or investigation.
<b>Examination</b>	Review to detect underpayment of tax that is conducted by the LB&I, SB/SE, and TE/GE Divisions.
<b>Fiscal Year</b>	The yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.
<b>High Touch</b>	Claim requiring special handling or coordination between operating divisions. This may include activity for offshore transactions, preparer misconduct, identity theft, refund schemes, and tax shelters.
<b>Investigation</b>	Review to detect person violating tax laws that is conducted by CI.
<b>Lean Six Sigma</b>	Data-driven approach to eliminating defects and errors which result in losses of time, money, or opportunities.
<b>Master Claim</b>	First claim number assigned to a submission if multiple taxpayers in allegation; generally the first taxpayer listed in the submission. Used by the WO to control claim numbers for a submission.
<b>Operating Division</b>	IRS offices or functions outside the WO that are involved with processing whistleblower claims.
<b>Rejection</b>	No whistleblower award because of whistleblower actions. This includes ineligible whistleblower, submission not signed under penalty of perjury, allegation not specific/credible, or no tax issue described in allegation.
<b>Related Claim</b>	Subsequent claim number(s) assigned to a submission if multiple taxpayers in allegation with cross-reference to the master claim. Used by the WO to control claim numbers for a submission.
<b>Stand-Alone Claim</b>	Submission involving a single taxpayer allegation.



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<b>Term</b>	<b>Definition</b>
<b>Status Time</b>	Elapsed calendar days for activity still in process.
<b>Submission</b>	Information provided using Form 211, <i>Application for Award for Original Information</i> , for allegation of tax noncompliance. This may include supporting documentation provided with or after the Form 211.
<b>Taint Review</b>	Evaluation and analysis conducted by the SME in coordination with operating division counsel for tainted information.
<b>Tainted Information</b>	Improperly obtained information provided by whistleblower that could compromise the examination or investigation tax case.
<b>Tax Gap</b>	Estimated difference between the amount of tax that taxpayers should pay and the amount that is paid voluntarily and on time.
<b>Tax Module</b>	IRS method of recording tax type and period information for a specific taxpayer.
<b>Tax Noncompliance</b>	The underpayment of tax or violation of tax laws.
<b>Tax Year</b>	The 12-month accounting period used as the basis for calculating annual taxes. For most individual taxpayers, the tax year is synonymous with the calendar year.
<b>Taxpayer Characteristics</b>	Type and size of taxpayer used to determine which operating division would be involved to evaluate tax noncompliance.
<b>Whistleblower</b>	Person claiming an award under I.R.C. § 7623 for providing potential tax noncompliance information to the IRS.



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**Appendix VIII**

*Management's Response to the Draft Report*



WHISTLEBLOWER OFFICE

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

July 28, 2016

MEMORANDUM FOR MICHAEL E. MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Lee D. Martin  
Director, Whistleblower Office

SUBJECT: Draft Audit Report – The Whistleblower Program Helps Identify Tax  
Noncompliance; However, Improvements Are Needed to Ensure  
That Claims Are Processed Appropriately and Expeditiously  
(Audit# 201430019)

Thank you for the opportunity to respond to the draft report. The Internal Revenue Service (IRS) Whistleblower Program, which was modified and expanded by Congress in 2006, is an important and effective tax administration tool. Information submitted by tax whistleblowers to the IRS Whistleblower Program has led to the detection of tax compliance issues that may have otherwise gone uncovered, and has assisted the government in collecting billions of dollars in additional tax revenue. The Whistleblower Program makes an important and measurable contribution in reducing the tax gap, and an equally important, albeit immeasurable, contribution to voluntary compliance by virtue of its deterrent effect on taxpayers who may otherwise be tempted to engage in tax evasion or avoidance.

The IRS is committed to maximizing the success and robustness of the Whistleblower Program. One of the challenges we face, as noted in your report, is that a significant portion of the thousands of claims we receive each year are not actionable (i.e., not specific, not credible, etc.); and a significant amount of resources is expended in reviewing and rejecting this segment of unproductive submissions as we work to focus on those claims that merit pursuit. In addition, the whistleblower claim processes that had developed over time were not fully efficient, and as such, resulted in inventory backlogs across the Program.

To address this issue, we took a two-pronged approach. First, we initiated a Lean Six Sigma (LSS) review of the Whistleblower Program in the Fall of 2014, looking for opportunities to improve the efficiency and effectiveness of the claim process. The LSS review has been completed, and we are in the process of implementing several improvements that will allow us to maximize the effectiveness of the Program. Second, we brought in resources from across IRS to assist the Whistleblower Office with the inventory and we eliminated the various backlogs. During this time, the Whistleblower Office increased its staffing and developed new process improvements to implement the new regulations. We appreciate TIGTA's acknowledgement of all the progress we've made in addressing the inventory backlogs.



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Improving the internal operating processes of our Whistleblower Program is an important component of our overall strategy, but it is only one component of the strategy. The second, and equally important, piece is improving our communications with external stakeholders – our tax whistleblowers, their representatives and whistleblower advocates. To that end, we are taking the following steps: (1) having eliminated the backlog of classification inventory, we are now sending acknowledgements of a claim submissions within a few days of our receipt of the submission; (2) we changed the content, format and timing of our Annual Report to Congress, so as to provide more accessible data about our Whistleblower Program, in a manner that will allow for year-to-year comparisons going forward; (3) we are developing external educational materials that will provide insights into best practices for submitting a successful claim, aimed at both improving the claim submissions we receive and reducing claims that are not productive or those that are submitted out of a personal grievance against a neighbor, ex-spouse, or employer; and (4) beginning August 1<sup>st</sup>, we are moving up the date of our communications with whistleblowers on the preliminary award recommendation package to right after full proceeds from an action have been collected – this change will, in many instances, allow us to start exchanging meaningful information with whistleblowers almost 24 months earlier than the existing process.

We appreciate your thorough review of the Program. Your insights and recommendations are both helpful and timely, as we are in the midst of making several changes and improvements to the Whistleblower Program in response to the findings and recommendations of the Government Accountability Office, the process improvement opportunities coming out of our own LSS initiative, and also important feedback that the whistleblower community and their advocates have shared with us.

Attached is a detailed response outlining our corrective actions to address your recommendations. If you have any questions, please contact me.

Attachment



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Attachment

**RECOMMENDATION 1:** Ensure that any I.R.C. § 7623(a) claims that are sent to SMEs are subject to the debriefing requirement in the August 20, 2014, memorandum from the IRS Deputy Commissioner for Services and Enforcement.

**CORRECTIVE ACTION:** In light of the extensive changes to the Whistleblower Program, both those that have been completed and those that are planned, there will be a new and updated memorandum issued from IRS Deputy Commissioner for Services and Enforcement (DCSE) to all of the Operating Divisions outlining and reinforcing the DCSE's expectations IRS-wide with respect to the Whistleblower Program and whistleblower submissions. Some steps in the claim process, such as debriefings of the whistleblower, are a logical and important tool for § 7623(b) claims, but may not be necessary or warranted for § 7623(a) claims sent to operating division subject matter experts. The updated memorandum will specify the expectations on debriefings for both § 7623(a) and § 7623(b) claims.

**IMPLEMENTATION DATE:** March 31, 2017

**RESPONSIBLE OFFICIAL:** Director, Whistleblower Office

**CORRECTIVE ACTION MONITORING PLAN:** IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 2:** Verify that operating division SMEs are following the requirement for debriefing whistleblowers and provide results to operating divisions for possible improvements.

**CORRECTIVE ACTION:** We currently have a claim action code for when a debriefing has occurred. We are adding a new debriefing claim action code for input by those working whistleblower claims. This code will be used to denote that a debriefing did not occur and why. This will provide a means for tracking whether the operating division is following the debriefing requirement. The Whistleblower Office will be able to provide the results to the operating divisions on a quarterly basis.

**IMPLEMENTATION DATE:** June 30, 2017

**RESPONSIBLE OFFICIAL:** Director, Whistleblower Office

**CORRECTIVE ACTION MONITORING PLAN:** IRS will monitor this corrective action as part of our internal management system of controls.



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**RECOMMENDATION 3:** The Director, WO, should ensure that management monitoring reports for the Whistleblower Program include data to determine if processing targets are being achieved, e.g., cycle time for claims at key processing steps.

**CORRECTIVE ACTION:** The Whistleblower Office is in the process of conducting a full scale evaluation of the program measures, metrics and reporting. Specifically, we are reviewing claim processes to determine what measures and metrics exist, whether those measures and metrics are effective, whether additional measures and metrics are needed, and how best to report on the key performance and organizational measures and metrics. As part of the process, which is on-going, we will take this recommendation into account.

**IMPLEMENTATION DATE:** June 30, 2017

**RESPONSIBLE OFFICIAL:** Director, Whistleblower Office

**CORRECTIVE ACTION MONITORING PLAN:** IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 4:** The Director, WO, should establish guidance requiring that supporting documentation for rejection/denial decisions is input to E-TRAK.

**CORRECTIVE ACTION:** The Whistleblower Office has issued a procedure alert that provides this guidance. The requirement went out to the WO in Procedural Alert 2015-003 "Award Recommendation Memo" Issued November 24, 2014. This alert requires input of the recommendation (award/rejection/denial) and the basis of the recommendation for all submissions into the Award Recommendation Memorandum (ARM). The ARM is required to be uploaded into e-Trak in all procedural guides/procedural alerts covering award recommendation/determinations.

**IMPLEMENTATION DATE:** Implemented

**RESPONSIBLE OFFICIAL:** Director, Whistleblower Office

**CORRECTIVE ACTION MONITORING PLAN:** IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 5:** Implement the Balanced Performance Measurement System for the Whistleblower Program.

**CORRECTIVE ACTION:** A Balanced Performance Measurement System consists of three elements: Employee Satisfaction, Customer Satisfaction and Business Results (Internal and External). We are working on incorporating some components of the Balanced Performance Measurement System for the Whistleblower Office. The Federal Employee Viewpoint Survey is currently used to measure Employee Satisfaction. As stated in Corrective Action #3 above, the Whistleblower Office is in the process of conducting a full scale evaluation of the program measures, metrics and reporting. Specifically, we are reviewing claim processes to determine what measures and metrics



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exist, whether those measures and metrics are effective, whether additional measures and metrics are needed, and how best to report on the key performance and organizational measures and metrics. This will provide the Business Results. Lastly, to measure Customer Satisfaction we will develop a survey to track internal customer satisfaction with the Whistleblower Office and the Whistleblower Program. This will help the Whistleblower Office identify actions it can take to improve customer satisfaction and assess the effectiveness of Program improvements.

**IMPLEMENTATION DATE:** September 30, 2017

**RESPONSIBLE OFFICIAL:** Director, Whistleblower Office

**CORRECTIVE ACTION MONITORING PLAN:** IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 6:** Develop a structured quality review process for the Whistleblower Program.

**CORRECTIVE ACTION:** As part of the Whistleblower Program re-engineering effort, the Whistleblower Office has been working on establishing a comprehensive quality review program that includes adherence to established procedures, timeframes, and accuracy of data input. We expect to be able to implement a complete quality review program by the end of second quarter FY17.

**IMPLEMENTATION DATE:** March 31, 2017

**RESPONSIBLE OFFICIAL:** Director, Whistleblower Office

**CORRECTIVE ACTION MONITORING PLAN:** IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 7:** Establish systemic computer validation checks on E-TRAK to minimize the initial entry of inaccurate data, and establish methods to identify and correct inaccurate entries.

**CORRECTIVE ACTION:** We are reviewing the mandatory input fields in e-trak. This includes verifying fields that can have a validity check, such as received date and status fields, to ensure that future dates can't be input or status fields cannot be left blank. These are based on the primary concerns raised by TIGTA. We are in the process of developing change requests for programming.

**IMPLEMENTATION DATE:** March 31, 2017

**RESPONSIBLE OFFICIAL:** Director, Whistleblower Office

**CORRECTIVE ACTION MONITORING PLAN:** IRS will monitor this corrective action as part of our internal management system of controls.





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**RECOMMENDATION 8:** Implement a process to coordinate with operating division Examination functions to ensure that coding for whistleblower claims on the AIMS is accurate.

**CORRECTIVE ACTION:** We are currently operating under an informal coordination process with SB/SE and LB&I. We will develop a standardized, formal process with SB/SE, LB&I, and TEGE.

**IMPLEMENTATION DATE:** March 31, 2017

**RESPONSIBLE OFFICIAL:** Director, Whistleblower Office

**CORRECTIVE ACTION MONITORING PLAN:** IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 9:** Incorporate key guidance into the IRM to explain Whistleblower Program operations and update when necessary.

**CORRECTIVE ACTION:** We are in the process of determining the key operational guidance items that need to be updated and incorporated into the IRM.

**IMPLEMENTATION DATE:** September 30, 2017

**RESPONSIBLE OFFICIAL:** Director, Whistleblower Office

**CORRECTIVE ACTION MONITORING PLAN:** IRS will monitor this corrective action as part of our internal management system of controls.

**RECOMMENDATION 10:** The Director, WO, should implement a process to quickly identify and reject claims submitted by all types of ineligible whistleblowers.

**CORRECTIVE ACTION:** IDRS research conducted by the intake team did not include information on whether a whistleblower is ineligible. We have identified command codes the intake team can use that will identify certain categories of ineligible whistleblowers. We will have the intake team identify and elevate these claims during the intake process. In addition, we are taking steps to improve our identification of ineligible whistleblowers, including by changing the questions and attestations required on the claim submission form (Form 211).

**IMPLEMENTATION DATE:** June 30, 2017

**RESPONSIBLE OFFICIAL:** Director, Whistleblower Office

**CORRECTIVE ACTION MONITORING PLAN:** IRS will monitor this corrective action as part of our internal management system of controls.