

August 2011

TAX WHISTLEBLOWERS

Incomplete Data Hinders IRS's Ability to Manage Claim Processing Time and Enhance External Communication

U.S. Government Accountability Office

GAO 90

YEARS

1921-2011

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Why GAO Did This Study

The Tax Relief and Health Care Act of 2006 expanded the Internal Revenue Service's (IRS) whistleblower program, increasing rewards for submitting information on others' tax underpayments to up to 30 percent of collected proceeds. The expanded program targets tax underpayments over \$2 million and could reduce the gap between taxes owed and taxes paid. IRS's Whistleblower Office has received over 1,300 submissions qualifying for this new program since 2007.

GAO was asked to assess (1) how IRS manages the expanded program, (2) how IRS communicates with whistleblowers and the public, and (3) any lessons from IRS's or other government whistleblower programs that could improve IRS's expanded whistleblower program. GAO analyzed IRS documents and data and interviewed IRS officials, whistleblower attorneys, and federal and state whistleblower program officials.

What GAO Recommends

GAO recommends that IRS collect more information—including data on the time each step takes for all claims and reasons for claim rejection—in its claim tracking system, establish a process to follow up on claims that exceed review time targets, and include more information on these issues in its annual reports to Congress.

In written comments on a draft of this report, IRS generally agreed with our recommendations.

View [GAO-11-683](#) or key components. For more information, contact James R. White at (202) 512-9110 or whitej@gao.gov.

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What GAO Found

Whistleblower claims can take years to go through the IRS review and award determination process. As of April 2011, about 66 percent of claims submitted in the first 2 years of the program, fiscal years 2007 and 2008, were still in process. According to IRS officials, claims can take years to process because IRS must take various steps to ensure the integrity of claim reviews and resulting taxpayer examinations. Further, taxpayers subject to examination can exercise rights that can add years to the process. IRS does not collect complete data on the time each step takes or the reasons claims are rejected. Without such data, IRS may be unable to identify potential improvements to claim processing efficiency. Furthermore, not all the IRS divisions that review whistleblower claims have time targets for their subject matter expert reviews. Nor does the Whistleblower Office have a systematic process to check in with the divisions about the time taken for their initial reviews.

IRS Expanded Whistleblower Program Claim Review Process Steps

1. Whistleblower files claim
2. Whistleblower Office initial claim review
3. Subject matter expert review
4. Classification and examination
5. Appeals and collections
6. Period for taxpayer to exercise right to request refund
7. Whistleblower Office final review
8. Award payment

Source: GAO analysis of IRS documents and the Internal Revenue Manual.

IRS is limited in what information it can share with whistleblowers about the status of claims because of statutes protecting the privacy of tax information. For example, because IRS cannot disclose if it is examining a taxpayer, it cannot inform whistleblowers on the progress of their claims or the reasons their claims are rejected. One mechanism through which the Whistleblower Office can communicate program results is its mandated annual report to Congress. However, the most recently released report, for fiscal year 2010, did not contain information on case processing times or specific data on why IRS rejected claims. Collecting additional data and including it in the report could improve the transparency of the program and Congress's ability to oversee it.

Federal and state whistleblower programs have features with potential benefits that could improve IRS's expanded whistleblower program, including options that increase interaction or information shared with whistleblowers and options that attempt to improve the accountability for claim processing. While there are potential advantages to all identified options, it is difficult to determine if the advantages outweigh the disadvantages for many options. Furthermore, IRS would be limited by taxpayer data protections in implementing some of the options.

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Abbreviations

CI	Criminal Investigation
IRS	Internal Revenue Service
JCT	Joint Committee on Taxation
LB&I	Large Business and International Division
NOL	Net Operating Loss
SB/SE	Small Business / Self Employed Division
SME	subject matter expert
TE/GE	Tax Exempt and Government Entities Division
TIGTA	Treasury Inspector General for Tax Administration
W&I	Wage and Investment Division

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G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

August 10, 2011

The Honorable Max Baucus
Chairman
The Honorable Orrin Hatch
Ranking Member
Committee on Finance
United States Senate

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

For decades the Internal Revenue Service (IRS) has had the authority to pay awards to whistleblowers who submit information about others' tax underpayments. The Tax Relief and Health Care Act of 2006¹ expanded this authority to make it more attractive for whistleblowers to provide information to IRS, which could help IRS reduce the tax gap—the difference between what is owed in taxes and what is paid voluntarily and on time. IRS's most recent estimate of this gross tax gap was \$345 billion for 2001.² The act, which targets tax amounts in dispute of more than \$2 million, requires IRS to pay whistleblowers up to 30 percent of the collected proceeds, including additional tax, interest, penalties, and other amounts it collects as a result of information whistleblowers provide. The act also directed IRS to establish a Whistleblower Office to administer the expanded whistleblower program. Since the Whistleblower Office was established in early 2007, IRS has received over 1,300 whistleblower submissions qualifying for the expanded program, alleging tax noncompliance by more than 9,500 taxpayers. As of May 12, 2011, IRS has paid a small number of awards under the expanded program. IRS has determined that information on awards paid is protected from disclosure in the same manner as taxpayer return information and

¹Pub. L. No. 109-432, div. A, title IV, § 406, 120 Stat. 2922 (Dec. 20, 2006).

²IRS estimated that it would eventually collect about \$55 billion of the gross tax gap through late payments and IRS enforcement actions, leaving a net tax gap of around \$290 billion.

disclosure of the number of awards paid would violate IRS's privacy protections.³

You asked us to review IRS's expanded whistleblower program to determine whether it is operating effectively and to what extent improvements could be made. In response, this report's objectives are to (1) assess how IRS manages the expanded whistleblower program; (2) evaluate how IRS communicates with whistleblowers and the public; and (3) determine what lessons, if any, can be learned from IRS's and whistleblowers' past experiences with the Whistleblower Office and other governmental efforts that could improve IRS's expanded whistleblower program.

To assess how IRS manages the expanded whistleblower program, we analyzed the Internal Revenue Manual and other IRS documents and data, interviewed officials from IRS's Whistleblower Office and operating divisions which investigate whistleblower claims, and reviewed GAO's existing body of work on internal control standards. To evaluate how the Whistleblower Office communicates with whistleblowers and the public, we interviewed IRS officials and private attorneys who represent multiple tax whistleblowers. To determine what lessons can be learned from IRS's and others' experiences with whistleblower cases, we reviewed documents and interviewed officials from federal agencies and state tax agencies with whistleblower reward programs. We also interviewed attorneys who represent tax whistleblowers to discuss their experiences with submitting whistleblower claims to IRS. Whistleblower attorneys have a clear financial interest in the outcome of whistleblower claims. However, interviewing them allowed us to obtain broad viewpoints of the IRS whistleblower program while keeping whistleblowers' identities confidential. For more information on our scope and methodology, see appendix I.

We conducted this performance audit from September 2010 to August 2011 in accordance with generally accepted government auditing

³Section 6103 of the Internal Revenue Code governs the protection of taxpayer returns and return information. IRS's view is that reporting the exact number of awards before a sufficient number of payments have been made would violate section 6103, which prohibits disclosing tax information either directly or indirectly. IRS has not yet paid a sufficient number of awards to meet the threshold for aggregate public disclosure. We deferred to IRS's interpretation of the disclosure rules and have not reported the exact number of awards paid.

standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

In 1867, Congress enacted legislation that allowed the government to pay awards to individuals who provided information that aided in detecting and punishing those guilty of violating tax laws.⁴ Initially, Congress appropriated funds to pay these awards at the government's discretion. In 1996, Congress expanded the scope of the program to also provide awards for detecting underpayments of tax and changed the source of awards to money IRS collects as a result of information whistleblowers provide.⁵

The Tax Relief and Health Care Act of 2006 created an expanded whistleblower award program to complement the existing whistleblower program.⁶ Table 1 shows the distinctions between the two programs, which we refer to as the original and expanded programs. This report focuses on the expanded program.

⁴See An Act to Amend Existing Laws Relating to Internal Revenue, and for other Purposes, ch. 169, § 7, 14 Stat. 471, 473 (1867).

⁵Taxpayer Bill of Rights 2, Pub. L. No. 104-168, title XII, § 1209, 110 Stat. 1452 (July 30, 1996).

⁶See 26 U.S.C. § 7623. For the purposes of our report, we refer to the rules laid out in Internal Revenue Code section 7623(a) as the original program and 7623(b) as the expanded program.

Table 1: Current Features of IRS's Original and Expanded Whistleblower Programs

Feature	Original program	Expanded program
Date of whistleblower claim submission	All submissions made before December 20, 2006, and submissions that do not otherwise meet criteria for the expanded program	Submissions made December 20, 2006, or later that also meet the amounts in dispute criteria below
Threshold criteria for tax amount in dispute	Submissions made on or after December 20, 2006, where amount in dispute is \$2 million or less in tax underpayments; no threshold for submissions made prior to December 20, 2006	Submissions where amount in dispute is over \$2 million; if claim is against an individual, the individual must also have more than \$200,000 in gross income for at least one tax year covered by the claim
Award payment	Discretionary award up to 15 percent of collected proceeds, capped at \$10 million by IRS for claims submitted prior to December 20, 2006; for claims submitted after July 1, 2010, award determination will be based on the criteria that apply to the expanded program	Mandatory award, generally between 15 percent and 30 percent of collected proceeds with no award cap ^a
Basis of award calculation	Additions to tax, penalties, and other amounts collected as a result of administrative or judicial action resulting from the information provided	Additions to tax, penalties, interest, and other amounts collected as a result of any administrative or judicial action resulting from the information provided
Venue for appealing award determinations	None ^b	U.S. Tax Court ^c

Source: GAO analysis of Internal Revenue Code section 7623 and IRS documents.

^aAward calculations begin at a base of 15 percent and are adjusted up or down due to certain positive or negative factors. For example, award calculations can be increased to up to 30 percent for whistleblowers who show extraordinary cooperation or assistance in providing information to IRS. Awards are reduced to a maximum of 10 percent if the information was gathered primarily from judicial or administrative hearings.

^bWhistleblowers may appeal determinations under the original program to the Court of Federal Claims if IRS had entered into a contract, written or implied, with the whistleblower, and the contract comes into dispute.

^cSection 7623(b)(4) of the Internal Revenue Code provides the Tax Court jurisdiction to hear appeals of award determinations, including the amount or denial of an award, under the expanded program. See *Cooper v. Commissioner*, 135 T.C. 70 (July 8, 2010).

The act also directed IRS to create the Whistleblower Office, which is responsible for managing and tracking whistleblower claims from the time IRS receives them to the time it closes them, either through a rejection letter or an award payment. The Secretary of the Treasury is required to submit an annual report to Congress on the activities and outcomes of both the original and expanded whistleblower programs. As of May 2011, the Whistleblower Office had 20 staff members.

IRS's review of whistleblower claims involves a series of steps and IRS can reject claims throughout the process. Although IRS's Whistleblower Office manages the whistleblower program, conducts initial reviews of

claims, and makes award determinations, IRS's operating divisions are responsible for investigating claims and conducting examinations under the expanded program.⁷ The Office of Chief Counsel is not involved in every whistleblower claim but reviews whistleblower claims for legal issues when the Whistleblower Office or operating divisions request such assistance. IRS's Criminal Investigation (CI) unit also investigates fraud identified by whistleblower claims.⁸ A claim may transfer from CI to an operating division if CI is initially involved but declines to pursue the claim. Conversely, an operating division can involve CI if it determines during an examination that there is a criminal component to a claim. While the act establishing the expanded whistleblower program does not offer specific protections for whistleblowers, the Whistleblower Office has several policies and procedures to protect the identity of a whistleblower.

Whistleblowers may not submit claims anonymously, as submissions must be made under penalty of perjury and IRS needs to assess the credibility of whistleblowers and the information they provide. Likewise, certain individuals, such as some federal employees, are prohibited from receiving whistleblower awards and the Whistleblower Office must know the identity of the whistleblower to enforce this restriction. Table 2 is a simplified outline of the whistleblower claim process for the expanded program.

⁷The Small Business/Self-Employed (SB/SE) division investigates claims against small businesses with assets of less than \$10 million and self-employed taxpayers. The Large Business and International (LB&I) division investigates claims against corporations and partnerships with assets of \$10 million or more. The Tax Exempt and Government Entities (TE/GE) division investigates claims against pension plans, exempt organizations, and government entities. Another operating division, Wage and Investment (W&I), is responsible for individual taxpayers without business income. Due to the high income and tax criteria for the expanded whistleblower program, W&I is not involved in investigating whistleblower claims under the expanded program.

⁸CI has investigative jurisdiction over tax, money laundering, and Bank Secrecy Act violations. It is a principal office and not an operating division under IRS's organizational structure. However, for the purposes of our report, we use the term operating division to refer to LB&I, SB/SE, TE/GE, and CI, the divisions that process whistleblower claims.

Table 2: Expanded Whistleblower Program Claim Process Steps and Potential Outcomes

Claim process step	Step description	Potential outcomes
Step 1 Whistleblower files claim	A whistleblower files Form 211, <i>Application for Award for Original Information</i> , with Whistleblower Office	
Step 2 Whistleblower Office initial claim review	The Whistleblower Office reviews Form 211 and assesses if the claim qualifies for the expanded whistleblower program	(1) The claim does not meet expanded criteria and is processed using the original program rules; (2) The claim does not qualify for the original or expanded program; whistleblower receives a Whistleblower Office rejection letter—case closed; or (3) The Whistleblower Office refers the claim to the appropriate operating division
Step 3 Operating division subject matter expert (SME) review	SMEs perform an initial assessment to determine whether the allegation is worthwhile to pursue and ensure that documents received are not privileged	(1) The SME rejects the claim as something IRS will not pursue; whistleblower receives a Whistleblower Office rejection letter—case closed; or (2) The SME forwards the claim to the operating division examination function
Step 4 Operating division classification and examination	The operating division determines how a claim fits into its overall examination workload, may perform an examination, and determines the change in tax assessment, if any; when completed, operating division sends award claim file to the Whistleblower Office	(1) An examination is not included in the workload for various reasons, such as other priority examinations or the issue was reviewed in a prior examination; the case is sent back to the Whistleblower Office; whistleblower receives a Whistleblower Office rejection letter—case closed; or (2) An examination concludes with no change in tax assessment; award claim file is sent back to the Whistleblower Office; whistleblower receives a Whistleblower Office rejection letter—case closed; or (3) An examination concludes with a revised assessment for the taxpayer
Step 5 Appeals and collections	(1) The taxpayer may appeal the assessment within IRS or the courts; or (2) The taxpayer pays the tax and, if any, penalties and interest	(1) The taxpayer wins the appeal and has no change in tax liability; whistleblower receives a Whistleblower Office rejection letter—case closed; or (2) The taxpayer loses the appeal or does not appeal; IRS collects monies
Step 6 Taxpayer right to request refund	Taxpayers have the right to request a refund within 2 years from the date the tax was paid	The Whistleblower Office waits to make an award determination until the allowable time for the taxpayer to request a refund has expired, which is typically 2 years
Step 7 Whistleblower Office final review	The Whistleblower Office determines an award percentage and notifies the whistleblower of the intended award amount	(1) The determination shows the whistleblower’s information did not contribute to any tax recovery; whistleblower receives a Whistleblower Office rejection letter—case closed; or (2) The whistleblower receives a notification letter indicating the intended award
Step 8 Award payment	The Whistleblower Office pays the whistleblower	Whistleblower is paid a taxable sum— case closed

Source: GAO analysis of IRS documents and Internal Revenue Manual.

Whistleblower awards are mandatory if IRS takes administrative or judicial action that results in collected proceeds based on the whistleblower's information. IRS is clarifying the definition of collected proceeds. Currently, the Internal Revenue Manual section on whistleblower awards defines collected proceeds as only new monies collected.⁹ Recently, IRS issued proposed regulations that would clarify the definition of collected proceeds to include denials of refunds and reductions in overpayment credit balances when calculating a whistleblower's award.¹⁰ If IRS pays an award to a whistleblower, its policy is to withhold 28 percent in tax from all whistleblower payments, as award payments are taxable income.¹¹ IRS withholds tax to reduce the risk of tax underpayment on what can potentially be large amounts of income.

At the federal level, there are several other agencies that offer awards for those who bring forth information that could lead to the government recouping money. The Department of Justice receives allegations of fraud against the government under the False Claims Act, although tax cases are specifically excluded. The False Claims Act includes a qui tam provision that allows whistleblowers to pursue claims on behalf of the government if the government elects not to proceed on the claims brought by the whistleblower. The Centers for Medicare and Medicaid Services offers awards to those who provide information on health care fraud. The Securities and Exchange Commission and the Commodity Futures Trading Commission are each implementing whistleblower programs and consulted IRS for advice.¹² Three states—New York, Florida, and Texas—also have tax whistleblower reward programs. New York's program has a tax qui tam provision that was enacted in August 2010. Oregon also has a tax whistleblower reward statute, but the program is inactive.

⁹Internal Revenue Manual 25.2.2.1 (06/18/2010).

¹⁰*Rewards and Awards for Information Relating to Violations of Internal Revenue Laws*, 76 Fed. Reg. 2852 (Jan. 18, 2011).

¹¹Nonresident aliens who receive whistleblower awards may be subject to different withholding rates.

¹²Both of these whistleblower programs were mandated in the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (Jul. 21, 2010).

Whistleblower Claims Can Take Years to Process but the Whistleblower Office Does Not Have Complete Data on Claim Processing Time

Whistleblower claims can take years to go through the IRS review and award determination process. For example, as of April 25, 2011:

- about 66 percent of claims submitted in the first 2 years of the program, fiscal years 2007 and 2008, were still in process;
- less than 7 percent of claims submitted in fiscal years 2007 and 2008 that were still in process were in the Whistleblower Office final review or Whistleblower Office award evaluation steps; and
- 447 claims submitted in fiscal year 2010 had been in the Whistleblower Office initial claim review step at least 200 days.

For each year since 2007, table 3 shows the number of claims at each step of the review process as tracked within E-TRAK, a claim management information system IRS developed and launched in January 2009. The table does not include claims receiving awards because of IRS's concerns about disclosing tax information.

Table 3: Status of Whistleblower Claims by Identified Taxpayers by Year of Claim Receipt, Fiscal Years 2007 to 2011

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011 ^a	Total
Total number of whistleblowers	50	362	430	389	156	1,387
Total claims (taxpayers identified by whistleblowers)	561	1,183	2,016	5,358	422	9,540
Number of claims rejected	24	574	537	140	11	1,286
Number of claims in process	537	609	1,479	5,218	411	8,254
• Whistleblower Office initial claim review	0	0	0	447	121	568
• Operating division SME review	2	73	117	933	157	1,282
• Criminal Investigation review	2	4	17	18	3	44
• Operating division examination	498	274	541	425	121	1,859
• Taxpayer appeals	7	3	6	2	0	18
• Whistleblower Office final review	12	52	98	45	2	209
• Whistleblower Office award evaluation	1	12	19	4	0	36
• Claim suspended ^b	15	191	681	3,344 ^c	7	4,238

Source: GAO analysis of IRS data.

Notes: E-TRAK currently tracks claims by taxpayers identified. Some whistleblowers submit information on multiple taxpayers in one submission. For approximately 200 submissions made prior to July 2008, E-TRAK assigned multiple taxpayers to one claim. The data in the table, therefore, generally refer to the number of alleged noncompliant taxpayers and not the number of whistleblowers, except in the row labeled "total number of whistleblowers." All data are as of April 25, 2011, and do not include data on claims receiving awards.

^aFiscal year 2011 covers the period from October 1, 2010, through April 25, 2011.

^bSuspended claims are those that are awaiting action outside of IRS's or the Whistleblower Office's control. Claims may be classified as suspended during the collections process or while the Whistleblower Office waits for the statute of limitations for taxpayers to request refunds to expire. Claims may also be suspended if a submission involved more than one taxpayer and IRS has yet to complete all related taxpayer examinations. E-TRAK does not actively track the reasons why claims are suspended.

^cIn fiscal year 2010, the Whistleblower Office received one whistleblower submission that identified more than 3,000 taxpayers. Most of these taxpayer claims were placed in suspended status while the operating divisions evaluate if they will pursue a claim for each identified taxpayer.

According to Whistleblower Office and operating division officials, it can take IRS significant time to review and examine whistleblower claims for various reasons.

- Some whistleblower claims are highly complex and are submitted with large amounts of supporting documentation. Evaluating large amounts of data is time-consuming.
- Both the Whistleblower Office and the SMEs need to understand the relationship between a whistleblower and a target taxpayer in order to make determinations about the qualifications of the claim. For example, certain individuals are not eligible for awards under the expanded whistleblower program, including federal employees who learn of tax noncompliance in the course of their work activities or individuals who are current representatives, such as attorneys or accountants, of a targeted taxpayer.
- SMEs review information that whistleblowers provide to determine if it may be tainted, meaning it may be subject to attorney-client privilege or any other legal protections that would preclude IRS from using it in an examination. If SMEs determine that information may be tainted, the Office of Chief Counsel reviews the claim and determines which documents should and should not be forwarded to an examination team.
- SMEs can request debrief meetings with whistleblowers to clarify the tax noncompliance issues alleged or to determine the source of submitted information to ensure it is not privileged. According to operating division officials, arranging and holding these meetings can add time to the SME review process; for example, if IRS counsel is not immediately available or whistleblowers need to arrange to travel to an IRS office.
- SMEs have other work priorities that may delay their review of whistleblower claims. SMEs may have expertise in specific areas of tax compliance, such as employment tax or estate and gift tax. LB&I, SB/SE, and TE/GE have between 7 and 10 SMEs each; they do not

work exclusively on whistleblower claims and support other examinations and IRS programs.¹³

- Within the examination step, operating divisions do not prioritize whistleblower claims; they are treated the same as all other examinations.¹⁴ According to IRS officials, each claim should rise on its own merits alongside other cases that have been selected for examination by other programs.

After the examination step, whistleblowers will likely still have to wait several years before IRS can determine if they are due an award due to factors outside the Whistleblower Office's control. Taxpayers can appeal IRS's assessment of tax, and if a taxpayer and IRS cannot reach agreement on the outcome of the case through the appeals process, the taxpayer may have the case reviewed by the U.S. Tax Court, U.S. Court of Federal Claims, or a U.S. district court. Furthermore, the Whistleblower Office generally does not pay claims until after IRS collects all proceeds from taxpayers, the 2 years taxpayers are granted to request refunds of their payments has elapsed, and in some cases, IRS has completed all taxpayer examinations resulting from a single award claim form (Form 211). Whistleblower Office officials said that the 2-year wait was important because taxpayers, regardless of whether they were the subject of a whistleblower investigation, have the right to request a refund, even on issues that whistleblowers identified.¹⁵ Likewise, the officials said that waiting until all claims under one submission are complete can be to the benefit of whistleblowers if, for example, claims only meet the disputed tax amount criteria for the expanded program when considered in aggregate.¹⁶ Other than for claims being appealed, IRS classifies these

¹³As of April 25, 2011, of the claims currently assigned to the operating divisions, 16.7 percent were assigned to CI, 32.6 percent to LB&I, 48 percent to SB/SE and 2.7 percent to TE/GE.

¹⁴Among all examinations, including examinations of whistleblower claims, the average cycle time—the time from the start of an examination to its completion—is 211 days in SB/SE and 322 days in LB&I.

¹⁵26 U.S.C. § 6511(a). For example, a taxpayer's deduction may be denied because the taxpayer could not produce supporting documentation during an examination. If, within 2 years of paying the tax, the taxpayer obtains supporting documentation, the taxpayer may apply for a refund for the associated documented deduction.

¹⁶If a submission in total would be greater than the \$2 million threshold for the expanded program but each taxpayer claim within the submission does not meet the threshold, paying on the taxpayer claims individually would negatively impact the whistleblower's appeal rights, which differ under the original and expanded programs.

types of claims in E-TRAK as suspended. Table 3 provides data on the number of claims that were in suspended status as of April 25, 2011.

We also identified other factors that could affect claim processing times. As discussed, Whistleblower Office analysts and SMEs review the relationship of a whistleblower to a targeted taxpayer when assessing the credibility of information whistleblowers provide. Although Form 211 asks whistleblowers to explain their relationship to target taxpayers, the question is part of a broader question asking whistleblowers to describe the documents they provided. Operating division SMEs told us that sometimes the relationship information is not provided or is included within the attached documents, where it can take significant time to find and understand the relationship. Furthermore, Form 211 does not ask other questions that help IRS evaluate whistleblowers' submissions, such as if the whistleblowers have supplied the same information to other government agencies, submitted all information they have supporting a claim, or are federal employees. Operating division officials told us that having this relationship and other information more clearly identified at the beginning of the whistleblower claim review process could help them process claims more efficiently.

The Whistleblower Office Does Not Have Complete and Accurate Data on Claims Processing, Including Time in Each Step

Although table 3 highlights the length of time taken to review claims, the Whistleblower Office does not collect complete and accurate data in E-TRAK about several aspects of claims processing that could be used to manage the whistleblower program. For example, the Whistleblower Office and operating divisions do not have complete data on the length of time claims spend at each step of the review process to inform the decision making for establishing appropriate review time targets. We requested aggregate data on the median time claims spend in each step by fiscal year of claim receipt and data on how often the Whistleblower Office and subject matter experts complete the initial reviews within a given number of days, but Whistleblower Office officials told us time data from E-TRAK would be incomplete for various reasons.

First, the Whistleblower Office does not update E-TRAK with data on time taken for each step for all claims. If one submission includes claims for multiple taxpayers, the Whistleblower Office updates time information for only one master claim within the submission and references all related claims to the master claim. E-TRAK records time data for related claims only if the time in a step for a related claim diverges from that of the master claim. Without significant data analysis, Whistleblower Office officials are not able to determine how often this divergence occurs.

Therefore time data cannot be reported on a per-claim or per-whistleblower-submission basis, but can be reported as a combination of the two.

Second, IRS did not consistently record time data for submissions before the introduction of E-TRAK in January 2009.¹⁷ Time data on claims that completed each step before this date are incomplete; while time data may have been recorded for some submissions, it was not required for all submissions. Whistleblower Office officials stated that E-TRAK was designed to be a claim management tool to track claim progress rather than one designed to report and monitor overall program performance. According to one Whistleblower Office official, IRS does not use aggregate time information in the day-to-day operations of the program and, therefore, did not build these capabilities into E-TRAK when designing it. Because E-TRAK already has the data field available for tracking time information, the cost of tracking such information for all claims would be limited to the time needed for analysts to input the additional data field in the claim file.

Other aspects of E-TRAK limit the accuracy of Whistleblower Office data. For example, E-TRAK may show more time than is accurate for some claim review process steps because of E-TRAK's method for accounting for certain events. The Whistleblower Office can perform an initial review and assign a claim to a SME for review. If a SME later returns the claim to the Whistleblower Office to be reassigned to a different operating division, E-TRAK does not reset the day count on how long the claim has been with the Whistleblower Office. E-TRAK will show the day count for Whistleblower Office initial review as the time the claim was received until the time the claim was reassigned to the second operating division for review. Similarly, if a SME requests legal advice from Chief Counsel's Office, E-TRAK continues to count the time the claim is with Chief Counsel's Office as being with the SME. As such, E-TRAK data can make it appear that claims spend more time in certain steps than they actually spend, making it difficult for management to have an accurate picture of

¹⁷In August, 2009, the Treasury Inspector General for Tax Administration (TIGTA) reported that as of March 2009, E-TRAK could not provide management information reports and that not all key data was successfully transferred from the previous tracking systems into E-TRAK. TIGTA made recommendations on how the Whistleblower Office could improve claims data management and IRS agreed with these recommendations. See TIGTA 2009-30-114, *Deficiencies Exist in the Control and Timely Resolution of Whistleblower Claims*, Aug 20, 2009.

the program's operations and make informed resource allocation decisions.

The Whistleblower Office only began tracking the point in the process at which whistleblower claims were rejected in January 2009, when E-TRAK was introduced. As table 2 showed, IRS can reject whistleblower claims at almost any point in the process. For example, claims may not fit the criteria for the award program, IRS may already have the information the whistleblower submitted, or an examination may result in no change in tax assessed, among other reasons. Table 4 shows the breakdown of when in the process IRS rejected claims. Of the claims where the rejection step was tracked, over half were rejected after examination in the Whistleblower Office final review. All claims that were rejected before January 2009 are labeled as not tracked in table 4.

Table 4: Rejected Claims by Taxpayers Identified by Step in Process Where Rejection Occurred, Fiscal Year 2007 to 2011

Step in process	Total number of claims rejected
Whistleblower Office initial review	153
SME review	156
Examination	1
Suspended	115
Whistleblower Office final review ^a	503
Not tracked ^b	358
Total	1,286

Source: GAO analysis of IRS data.

Notes: Fiscal year 2007 data begins with the program's inception date of December 20, 2006. Fiscal year 2011 data includes data through April 25, 2011.

^aGenerally, IRS does not reject claims in the examination step. When IRS completes an examination, examiners send an award claim file to the Whistleblower Office and the Whistleblower Office analysts determine how useful the whistleblower's information was to the examination outcome based on information the examiner provided. The Whistleblower Office rejects claims where an examination concluded with no change in assessment or where a whistleblower's information did not contribute to an examination.

^bClaims rejected before January 2009 were not tracked by the step in the review process where rejection occurred and are listed in the table as "not tracked."

Although the Whistleblower Office has begun to track the step in the claim review process at which claims are rejected, E-TRAK does not include data fields for tracking the reasons why claims are rejected, although the information is contained in the text fields of the claim files. Without reviewing all closed claims, Whistleblower Office management cannot know how frequently claims are rejected for each reason. Tracking this

information could help the Whistleblower Office make some program management or resource allocation decisions and in reporting information. For example, whistleblower attorneys we interviewed were concerned that claims that take years to process risk being rejected because the statute of limitations for assessment may expire before IRS completes an examination.¹⁸ Whistleblower Office officials could not provide E-TRAK data on the exact number of times claims are rejected because the statute has expired because E-TRAK does not track why claims are rejected, but they stated that it is not a frequent outcome.¹⁹ Without data in E-TRAK on rejection reasons, the Whistleblower Office cannot know how frequently claims are rejected because the statute has expired. Whistleblower Office officials said that while this information would be helpful, collecting it is not yet a priority.

Furthermore, IRS could not provide data on specific reasons why claims were suspended because E-TRAK only tracks this information in the comments section of claim files, which do not require standardized language to allow for accurate searching, according to a Whistleblower Office official. Without this data in E-TRAK, Whistleblower Office officials did not know how many claims were in the 2-year period during which the taxpayer can request a refund. Having such information may aid the Whistleblower Office in planning for future work related to likely award payments. Adding a field to E-TRAK to capture both reasons why claims are in suspended status and why they were rejected would likely require

¹⁸In general, IRS has 3 years from the date a taxpayer files a tax return—not the date a whistleblower submits a claim—to complete an examination and assess the taxes owed unless the taxpayer agrees to an extension or under specific exceptions that allow IRS to extend the statute unilaterally, such as for cases of fraud.

¹⁹The Whistleblower Office does not actively manage or track claims that are approaching their statute of limitations, although once identified in the Whistleblower Office initial review process, analysts, SMEs, and other IRS officials consider the statute of limitations when prioritizing their work load. Additionally, according to Whistleblower Office officials, examiners face performance consequences if they do not complete an assigned examination before the statute of limitations expires. Nevertheless, IRS officials acknowledge that some claims are ultimately rejected because the statute of limitations has expired; however, they told us that this most frequently happens because the statute has already expired or is close to expiring by the time a whistleblower submits a claim.

limited resources to reprogram E-TRAK.²⁰ Additional limited resource needs would include the time needed for analysts to input the reason when updating the claim file.

Having more complete data available to Whistleblower Office management would be consistent with key internal control standards for maintaining relevant and reliable information to help agencies achieve their objectives.²¹ Without complete and accurate data on claim processing time, the Whistleblower Office may not be able to identify certain aspects of the program, if any, that could be improved to increase claim processing efficiency. Moreover, according to IRS's overall strategic goals for 2009-2013, the agency should act quickly to initiate compliance contacts, complete audits, and collect taxes in order to reduce the administrative burden on IRS and reduce overall costs, such as penalties and interest, for the taxpayer. This lack of complete data limits the Whistleblower Office's ability to provide program information to Congress and the whistleblower community, which may erode confidence in the program.

The Whistleblower Office Does Not Have a Systematic Process to Manage the Timeliness of All the Processing Steps It Oversees

Whistleblower claims can take years to process due in part to steps (some required) outside the Whistleblower Office's control, such as examinations of taxpayers' returns, taxpayer appeals, and taxpayer rights to request a refund up to 2 years after making a payment. However, the Whistleblower Office can do more to manage the time taken for the parts of the process it does influence. The Whistleblower Office and some operating divisions have time targets for their initial claim reviews; however, other operating divisions do not have targets and the Whistleblower Office does not have a systematic process to check in on claims once they are with the operating divisions for review. To monitor the time taken for the Whistleblower Office initial claim review step, the Whistleblower Office established a target of 60 days to review a claim.

²⁰E-TRAK has added new step fields before. In 2010, IRS added the "suspended case" step, which, according to the analyst who completed this addition, required less than an hour to complete because it involved adding one additional choice to an existing list of step choices. To reconfigure E-TRAK to accommodate a new field, the analyst estimated it may take days or weeks of direct programming time followed by additional time to schedule the changes to become functional.

²¹See GAO, *Internal Control Standards: Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: Aug. 2001).

Claims in the Whistleblower Office initial review step more than 60 days are flagged in E-TRAK, which triggers an inquiry by Whistleblower Office analysts and management to determine and validate the reason for the delay. SB/SE and CI have targets for SME reviews, at which point claims that eclipse the target are flagged for follow-up. SB/SE's target, which was formally established in March 2011, is a series of 30-day targets for various activities of the SME review process, such as the process for reviewing information for taint concerns and optional debrief meetings with whistleblowers. SB/SE's overall target is 240 days and CI's target is 90 days to perform the initial SME review. Whistleblower Office officials could not provide complete data on how often claims meet these targets. LB&I and TE/GE do not have targets for how long initial reviews should take, although TE/GE policy directs SMEs to follow up on all claims at least once quarterly and LB&I SMEs report to their managers on claims over 200 days old.

The Whistleblower Office does not have a systematic process to check in with the operating divisions to review claims based on the length of time they have been in the SME review step, and the operating divisions do not have full access to E-TRAK to be able to generate reports on claims assigned to them. Without a systematic process to check in on all claims, the Whistleblower Office risks having claims not receiving the attention or resources they need to be completed, and operating division management may not have the information needed to make effective SME resource allocation decisions. Whistleblower Office officials told us they send a list of claims inventory to each operating division monthly, ordered by oldest claim first. They further stated that this report is only for informational purposes because the Whistleblower Office does not have the resources to check in with the operating divisions regularly on specific claims. Operating division officials told us they do not receive this report monthly but may receive it quarterly, or sometimes less frequently. Some SMEs have had access to E-TRAK to update information since September 2010, but they are limited in what information they can input or search, making it incumbent on the Whistleblower Office to provide to them certain data about assigned claims. The Whistleblower Office plans to allow SMEs greater access to E-TRAK in the future. For example, LB&I officials told us they are working with the Whistleblower Office to expand their E-TRAK access to allow them to directly run their own reports from E-TRAK, including reports that could show claims that have been in the SME review step the longest.

Restrictions on Disclosing Tax Information Limit IRS Communication on Specific Claims, but Increased Communication on Overall Results Could Improve Program Transparency

IRS is limited in what information it can share with whistleblowers and other stakeholders throughout the whistleblower claim process. Section 6103 of the Internal Revenue Code prohibits the unauthorized disclosure of tax information.²² According to IRS, disclosing to a whistleblower that IRS is examining a taxpayer reveals tax information; therefore, IRS does not inform whistleblowers on the progress of their claim other than to confirm that the claim is either open or closed. Furthermore, IRS does not publicly report or comment on specific whistleblower awards, which it also considers to be tax information. IRS will report only on aggregate whistleblower award information once the Whistleblower Office has paid a number of awards sufficient to avoid improper disclosure.

Because section 6103 restricts IRS in the amount of information it can share with whistleblowers and whistleblower claims can take years to resolve, whistleblowers may not hear from the Whistleblower Office for years once claims are accepted. According to Whistleblower Office officials, even though IRS tells whistleblowers about the restrictions on providing status updates and the potential for claims to take years to complete, the Whistleblower Office fields numerous calls daily from whistleblowers asking for updates on the status of their claims. Several times per month, the Whistleblower Office also responds to members of Congress asking for status updates on behalf of whistleblowers who are their constituents. The Whistleblower Office responds to these requests only by stating if a claim is open or closed. Responding to these types of requests diverts Whistleblower Office resources from processing claims.

During the Whistleblower Office and SME initial reviews and examination, IRS has little contact with whistleblowers. Operating divisions may offer debrief meetings to whistleblowers to clarify information about their submissions, but these meetings may be the only interaction between IRS and whistleblowers until IRS rejects a claim or decides to issue an award. Examiners do not actively involve whistleblowers in their work because they need to build their case independent of the whistleblower's

²²Section 6103 of the Internal Revenue Code governs the protection of taxpayer returns and return information. Under section 6103(b)(1), a return means any tax or information return, declaration of estimated tax, or claim for refund filed with IRS. Return information means a taxpayer's identity, the nature, source, or amount of income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to investigation, or any other data received by, recorded by, prepared by, furnished to, or collected by the IRS. 26 U.S.C. § 6103(b)(2).

involvement to be able to corroborate the information provided and to ensure they do not receive tainted information.

There are some statutory exceptions to section 6103 that allow IRS to disclose tax information when it is necessary in conducting investigations and gathering information to administer the tax code. Under section 6103(k)(6), IRS may disclose taxpayer return information to a whistleblower to the extent necessary for investigative purposes.²³ Another exception, section 6103(n), allows IRS to enter into contracts with outside parties for services for purposes of tax administration. IRS could enter into a section 6103(n) contract with whistleblowers for analytic services and could disclose tax information necessary to obtain those services.²⁴ Whistleblowers who enter into section 6103(n) contracts must comply with IRS's safeguards of tax information and are subject to statutory civil and criminal penalties for unauthorized disclosure, which include fines and jail time. If IRS discloses tax information to whistleblowers under section 6103(k)(6), whistleblowers would not be subject to penalties for unauthorized disclosure.

The decision to enter into section 6103(n) contracts rests with the operating divisions; it is not directed by Chief Counsel or the Whistleblower Office, although they may provide advice to the operating divisions. Section 6103(n) contracts are intended to be used rarely by IRS in processing whistleblower claims,²⁵ and as of April 28, 2011, IRS had not entered into any contracts with whistleblowers. Operating division officials stated they have not yet had a claim that necessitated this increased level of interaction with a whistleblower to gather information about the taxpayer.

²³26 C.F.R. § 301.6103(k)(6)-1.

²⁴26 C.F.R. § 301.6103(n)-2. The Internal Revenue Manual advises IRS employees to use section 6103(n) contracts to obtain the services of experts for investigative purposes rather than section 6103(k)(6) whenever possible. IRM 11.3.21.4 (03-28-2008).

²⁵In the Joint Committee on Taxation's (JCT) Technical Explanation of the expanded whistleblower program, JCT noted that IRS could enter into section 6103(n) tax administration contracts when whistleblower assistance is necessary to analyze information provided or investigate the matter claimed. JCT also noted that IRS's use of section 6103(n) contracts should be infrequent and only when the review of the claim could not be properly or timely completed without disclosing taxpayer's return information. JCX-50-06.

According to operating division, Chief Counsel, and Whistleblower Office officials, IRS does not have specific criteria for when a section 6103(n) contract should be offered to a whistleblower, other than it should be used rarely. According to IRS officials, each claim needs to be examined based on its facts and circumstances and generally IRS has the authority and tools to collect any information that a whistleblower could bring forward. Although no section 6103(n) contracts have been offered, IRS officials told us that one situation where a section 6103(n) contract would be useful is if, in the course of an examination, a taxpayer provided documents or testimony to IRS that contradicted information a whistleblower provided. IRS agents could use a section 6103(n) contract to share some tax information with the whistleblower in investigating the inconsistency.

Also, rejection letters IRS sends to whistleblowers do not state why IRS denied a request for an award. IRS officials told us that to provide the reason would violate section 6103. For example, the Whistleblower Office may reject a claim because an examination did not result in an additional tax assessment, but sharing this fact with the whistleblower discloses that IRS conducted an examination. Whistleblowers whose claims for awards are denied can challenge IRS's decision in U.S. Tax Court, although it is uncertain if they will learn the reason for the claim rejection during the appeal process.²⁶ According to Whistleblower Office officials, whistleblowers have appealed more than 20 award denials under the expanded whistleblower program and they expect the frequency of these appeals to increase.

According to whistleblower attorneys we interviewed, whistleblowers can be frustrated by the lack of communication from IRS regarding their claims. Because some whistleblowers risk their careers by filing a claim, they want to know that IRS is maximizing the information they provide. The attorneys said that IRS not interacting with the whistleblower for long

²⁶The Tax Court has jurisdiction to review IRS's whistleblower award determinations under the expanded program, including the denial of an award claim. See *Cooper v. Commissioner*, 135 T.C. 70 (July 8, 2010). However, the Tax Court's jurisdiction does not extend to reviewing IRS's decision of whether to pursue administrative or judicial action against the taxpayer. If IRS denies an award because no tax, interest, or penalty was collected from the taxpayer based on the whistleblower's information, that decision will not be reviewed by the Tax Court. *Cooper v. Commissioner*, 136 T.C. 30 (June, 20, 2011). As of June 21, 2011, the Tax Court had not published a case discussing the merits of IRS's whistleblower award determination where amounts were collected from the taxpayer.

periods of time and not using whistleblowers as resources during investigations discourages whistleblowers and may deter some from coming forward with claims, although we could not verify the latter point.

The Director of the Whistleblower Office told us that many of the steps IRS takes in the whistleblower process, including limiting interaction with the whistleblower, are aimed at protecting all interested parties—the privacy of the taxpayer’s information, the identity of the whistleblower, and the integrity of the IRS examination. For example, IRS examiners need to build cases independent of whistleblowers and corroborate all of the information whistleblowers provide. This independent process ensures that examinations are not overly influenced by whistleblowers who have a financial stake in the outcome of examinations; that the identity of a whistleblower is not disclosed; and that taxpayers receive fair and defensible examinations.

One mechanism through which the Whistleblower Office communicates program progress and outcomes to the whistleblower community is the Whistleblower Office’s annual report to Congress, which outlines the program’s operations for a given fiscal year. This report, which is required by the act that established the Whistleblower Office, is to include an analysis of the program’s operations and outcomes and any legislative or administrative recommendations on how to improve the program. The act does not specify what data IRS should include in the report. The reports issued to date contain limited data on claims submitted to the expanded whistleblower program. For example, the 2010 annual report, the most recent report available, included the number of whistleblowers and the number of taxpayers identified, but did not provide data on the time taken for claims to move through the process or specific information on rejected claims. The lack of such data limits Congress’s ability to effectively oversee the program. Reporting such additional data could also improve the transparency of the program, which may result in additional whistleblowers coming forward.

Some Whistleblower Attorneys Said Award Payment Issues May Discourage Whistleblowers

As IRS begins paying awards under the expanded whistleblower program, some in the whistleblower community are frustrated by some issues that they see as unfair to whistleblowers. For example, according to whistleblower attorneys we spoke with, net operating loss (NOL) carryforwards remain an issue with the whistleblower program because they are excluded from the definition of collected proceeds.²⁷ If a whistleblower's information results in a reduction in NOL, IRS may not realize a financial benefit for years until the company has a positive tax liability. If the NOL is not exhausted within 10 years or the taxpayer goes bankrupt, IRS may never realize a financial benefit. When whistleblowers bring information to the IRS, they may not know the NOL position of the taxpayer on whom they are blowing the whistle. According to whistleblower attorneys, denying an award because a targeted taxpayer has a NOL carryover is inherently unfair if IRS eventually receives a financial benefit when the NOLs are exhausted. Some of the attorneys noted that this issue may discourage whistleblowers from coming forward because it adds additional uncertainty to the process and may make submitting a claim not worth the risks to their careers. IRS officials told us that they plan to develop further guidance on collected proceeds and NOLs.

Furthermore, according to the attorneys, IRS's 28 percent tax withholding policy on expanded whistleblower program award payments could result in IRS overwithholding taxes for some whistleblowers, especially those who are represented by attorneys. Attorney fees, which may be 30 percent or more of the total award, are deductible from gross income and reduce the taxable amount of an award. IRS previously did not withhold taxes on payments made under the original whistleblower program, where awards have been capped at \$10 million, but it has recently begun withholding on any awards totaling over \$10,000. Overwithheld funds can be refunded when the whistleblower files a tax return for the tax year of the award, but there could be a year or more between award payment and the refund of the overwithheld portion of the award. IRS does not have a process in place to negotiate an adjusted withholding rate with whistleblowers based on their individual

²⁷A net operating loss occurs when, in a tax year, a company's deductible losses are greater than its tax liability, resulting in no taxable income. NOLs that exceed taxable income can be carried back generally for 2 tax years or carried forward for 10 or more years. A company may not realize the NOL credit if it does not have taxable income before the NOL expires.

circumstances because the ability to deduct attorney fees is dependent on whistleblowers paying their attorney after receiving awards, which may not always happen. Whistleblower Office officials told us they would rather have a single rate that applies to all whistleblowers paid more than \$10,000 than become involved in the independent relationship between whistleblowers and their attorneys.

Other Agencies and Whistleblower Attorneys Identified Options That Could Potentially Improve IRS's Whistleblower Program but Involve Trade-Offs

Federal and state whistleblower programs we reviewed have features with potential benefits that could improve IRS's expanded whistleblower program. Whistleblower attorneys we interviewed also suggested changes they thought could improve the program. Based on these program reviews and interviews, we compiled options that could apply to IRS's whistleblower program, analyzed their potential advantages and disadvantages, and identified strategies that could mitigate the disadvantages.²⁸ These options, along with the advantages, disadvantages, and mitigation strategies, are presented in table 5, approximately in order of their place in the whistleblower claim review process.

²⁸For a more detailed discussion of our methodology, see app. I.

Table 5: Options to Enhance IRS’s Whistleblower Program, Their Potential Advantages and Disadvantages, and Potential Strategies for Mitigating Disadvantages

Option and programs utilizing the option	Potential advantages	Potential disadvantages	Potential strategies for mitigating disadvantages
<p>Increase initial vetting</p> <ul style="list-style-type: none"> Texas Informant’s Recovery Program conducts significant initial research, leading to investigation of a small percentage of claims 	<ul style="list-style-type: none"> Could weed out claims that are likely to be rejected later in the process, increasing the likelihood that examinations yield revenue 	<ul style="list-style-type: none"> Resource constraints limit the Whistleblower Office’s ability to increase vetting Benefit of reviewing claims earlier in the process is uncertain 	<ul style="list-style-type: none"> Developing criteria for claims more likely to generate awards could expedite claim processing
<p>Implement time targets for SME review process</p> <ul style="list-style-type: none"> Texas Informant’s Recovery Program asks for the audit to be complete—or provide a reason why it is not complete—within 6 months The Department of Justice has 60 days to accept or decline False Claims Act claims, with options for extension with court approval 	<ul style="list-style-type: none"> Could help ensure that claims are completed in a timely fashion Could aid in ensuring that the statute of limitation does not expire 	<ul style="list-style-type: none"> Time targets often are recommendations with no consequences for not meeting them Needed review time may vary widely based on the facts and circumstances of each claim Time targets could create negative incentives to rush the processing of a claim and not be as thorough with it 	<ul style="list-style-type: none"> An action—such as approval or a check-in by the Whistleblower Office—could be required if the time target is eclipsed
<p>Implement “checkpoints” for the Whistleblower Office to monitor claims that have eclipsed a recommended time target</p> <ul style="list-style-type: none"> No other programs 	<ul style="list-style-type: none"> Could help ensure that claims are completed in a timely fashion Could aid in ensuring that the statute of limitation does not expire Allows for flexibility in length of time a claim takes to process 	<ul style="list-style-type: none"> Because the Whistleblower Office would only be inquiring on the status of a claim, would not necessarily lead to quicker processing 	<ul style="list-style-type: none"> After the check-in, agreed upon actions between operating divisions and the Whistleblower Office could prompt action on a claim
<p>Regularly communicate claim progress to whistleblower</p> <ul style="list-style-type: none"> Commodity Futures Trading Commission plans to regularly update whistleblowers on their claim status 	<ul style="list-style-type: none"> Could reduce information solicitations from whistleblowers, freeing up Whistleblower Office resources Might provide a method of holding IRS accountable 	<ul style="list-style-type: none"> Tax information may be improperly disclosed Benefit may be limited if whistleblowers do not change behavior with additional information Section 6103(n) contracts would not allow for sharing of claim status because it does not show a benefit to tax administration 	<ul style="list-style-type: none"> Amend section 6103 to allow for sharing of claim progress information with whistleblowers with sanctions for redisclosure

Option and programs utilizing the option	Potential advantages	Potential disadvantages	Potential strategies for mitigating disadvantages
<p>Increase interaction with whistleblowers during investigation process</p> <ul style="list-style-type: none"> Securities and Exchange Commission intends to interact with whistleblowers during the investigation process where appropriate The Florida Department of Revenue allows for interaction with whistleblower during an investigation, but rarely uses it 	<ul style="list-style-type: none"> Whistleblowers' intimate knowledge of the information they provide and the targeted taxpayers could help IRS conduct examinations 	<ul style="list-style-type: none"> Tax information may be improperly disclosed Over reliance on whistleblower information may impact the independence of the investigation 	<ul style="list-style-type: none"> IRS could utilize a section 6103(n) contract to help prevent redisclosure of tax information and impose strict penalties for doing so
<p>Communicate reason for claim rejection to whistleblowers</p> <ul style="list-style-type: none"> Centers for Medicare and Medicaid Services' Incentive Rewards Program provides information to informants on the reason their claim was rejected 	<ul style="list-style-type: none"> Could cut down on whistleblowers appealing rejections in court 	<ul style="list-style-type: none"> Tax information may be improperly disclosed if additional information is shared Section 6103(n) contracts would not allow for sharing of claim rejection reasons because it does not show a benefit to tax administration 	<ul style="list-style-type: none"> Providing aggregate information to Congress and the public in the annual report could provide common reasons claims are rejected Section 6103 could be amended to allow IRS to communicate rejection reasons to whistleblowers with sanctions for redisclosure
<p>Add a qui tam provision to allow whistleblowers to pursue claims independently</p> <ul style="list-style-type: none"> Department of Justice / False Claims Act New York Attorney General's Bureau of Taxpayer Protection – False Claims Act 	<ul style="list-style-type: none"> Could provide accountability for IRS to make timely decisions on whether to pursue claims Could leverage resources of outside counsel in processing whistleblower claims 	<ul style="list-style-type: none"> Could increase the risk of abuse of the whistleblower program, as individuals could pursue meritless claims Claims filed in court are part of the public record, which could result in the disclosure of tax information Qui tam tax claims would likely target specific acts whereas IRS examines a taxpayer's entire tax return 	<ul style="list-style-type: none"> As with some False Claims Act claims, tax claims could be filed "under seal" of the court to avoid disclosure Requiring a high dollar threshold for underpayment could reduce the number of meritless claims
<p>Public communication of awards decisions</p> <ul style="list-style-type: none"> Department of Justice / False Claims Act 	<ul style="list-style-type: none"> Could generate increased public awareness of the program, potentially leading to increased claims 	<ul style="list-style-type: none"> Could result in public disclosure of tax information and notify the taxpayer of the existence of a whistleblower 	<ul style="list-style-type: none"> Decisions could be announced in aggregate without using tax information, such as in the annual report to Congress

Source: GAO analysis.

While there are potential advantages to all identified options, it is difficult to determine if the advantages outweigh the disadvantages for many options. For options that could involve the disclosure of tax information, Treasury guidance states that any proposed exception to section 6103 must demonstrate substantial benefits.²⁹ Whether informing whistleblowers about why their claims were rejected would produce benefits, such as fewer appeals, is unclear. The Director of the Whistleblower Office did not see net benefits from developing criteria on when section 6103(n) contracts would be appropriate or desirable, due to the varying facts and circumstances of whistleblower claims.

Likewise, it is unclear whether greater Whistleblower Office claim vetting would improve the efficiency of investigations and what additional resources might be needed. Adding a qui tam provision—which allows autonomy for whistleblowers and their counsel to pursue claims independently in court after the agency chooses not to pursue—could encourage IRS to make more timely decisions on whether to pursue a claim. However, a qui tam provision would alter the tax examination process in uncertain ways. Because the suit would likely be focused on the issue identified by the whistleblower, IRS officials said a qui tam provision might favor maximizing the whistleblowers award rather than identifying the correct tax liability.

Conclusions

The goal of the expanded whistleblower program is to encourage whistleblowers to come forward with information on substantial tax underreporting that, collectively, could help IRS reduce the tax gap and encourage greater voluntary compliance. For the program to be successful, whistleblowers need to have confidence in the program's processes and outcomes. IRS's claim review process is designed to ensure the integrity of the program, and the many steps involved can take years to complete. Some of the steps in the process are necessarily outside the Whistleblower Office's control in order to, for example, protect the independence of examinations and avoid superseding other enforcement priorities.

²⁹Department of the Treasury, Office of Tax Policy, *Report to The Congress on the Scope and Use of Taxpayer Confidentiality and Disclosure Provisions, Volume I* (Washington, D.C., 2000).

However, without more complete data about claim processing time and outcomes, IRS has limited information about the efficiency of the program. Such data could help IRS management assess the efficiency of current processes and evaluate potential improvements. In addition to collecting more complete data, establishing time targets for all operating division initial reviews and following up on claims that exceed these targets could serve to indicate the priority whistleblower claims should receive, set expectations for the length of time they should generally take to review, and focus attention on claims exceeding time targets.

Other steps could improve whistleblower submissions and reporting to Congress. Collecting additional information on Form 211 could aid IRS in evaluating whistleblowers' credibility and perhaps speed up the claim review process. Including more information in the annual Whistleblower Office report to Congress could enhance Congress's ability to oversee the program and increase public confidence in the program, which could encourage more whistleblowers to submit claims.

Recommendations for Executive Action

To improve the effectiveness of IRS's expanded whistleblower program, we recommend the Commissioner of Internal Revenue direct the Whistleblower Office Director to take the following seven actions:

- record time-in-step information for all claims by identified taxpayer in E-TRAK;
- adjust E-TRAK's tracking feature to more accurately count the number of days claims remain in each step;
- track the reasons for claim rejections by broad categories;
- track the reasons claims are listed as suspended by broad categories;
- establish a process by which the Whistleblower Office routinely follows up on claims that have been in the operating division SME initial review step more than a targeted number of days;
- redesign Form 211 to include stand-alone questions on the following information:
 - the relationship of the whistleblower to the target taxpayer,
 - the employer of the whistleblower,
 - whether the whistleblower has submitted the information to any other federal or state agencies, and
 - whether the whistleblower has included all information relevant to the claim; and
- provide additional summary statistics in future annual reports to Congress, including data on the length of time claims remain at each step of the review process, data on the length of time from claim

receipt to payments, reasons for claim rejections, aggregate information on awards paid, and total amount of whistleblower payments.

Further, we recommend that the Commissioner of Internal Revenue direct the Commissioners of LB&I and TE/GE to develop targets for how long SME reviews should take before being flagged for follow-up.

Agency Comments and Our Evaluation

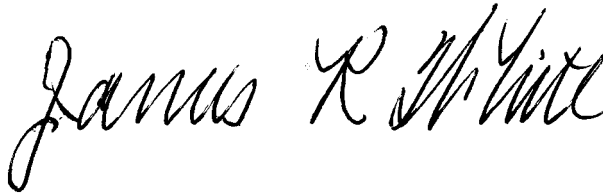
We provided a draft of this report to the Commissioner of Internal Revenue and offered other agencies we spoke with the opportunity to comment on the draft. IRS and SEC provided technical comments, which we incorporated into the report as appropriate. We received written comments from IRS's Deputy Commissioner for Services and Enforcement, which are reprinted in appendix II.

The Deputy Commissioner stated that IRS generally agreed with our recommendations, and said it would incorporate the recommendations as IRS continues to make improvements to the operating processes and procedures of the whistleblower program. The Deputy Commissioner noted, however, that resource availability could affect the implementation of recommended improvements. He stated that recommended modifications to E-TRAK to more accurately reflect program information will be considered as part of an overall evaluation of E-TRAK adjustments and enhancements, which will begin in the near future, and that IRS would make the appropriate improvements as feasible given resource constraints and competing priorities. Also, the Deputy Commissioner agreed to consider whether time targets for operating divisions are appropriate as part of IRS's efforts to ensure that subject matter experts' initial review of whistleblower cases is completed in a timely manner. IRS will consider including additional summary statistical information in its annual report to Congress, but did not specify what information.

We acknowledge that resources must be considered when considering improvements to the whistleblower program, but IRS risks not being able to maximize the program's effectiveness without implementing the recommendations in this report. Collecting more data on review timeliness and outcomes and establishing time targets could help IRS to make more effective decisions on allocating its resources and aid its ongoing program assessment. Congress has expressed concern about the limited data available about the whistleblower program and including more information and data in the Whistleblower Office annual report could improve oversight of, and increase confidence in, the program.

As agreed with your offices, unless you publicly release the contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to the Secretary of the Treasury, the Commissioner of Internal Revenue, and other interested parties. The report will also be available at no charge on the GAO Web site at <http://www.gao.gov>.

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

A handwritten signature in black ink that reads "James R. White". The signature is written in a cursive, flowing style.

James R. White
Director, Tax Issues
Strategic Issues Team

Appendix I: Scope and Methodology

To assess how the Internal Revenue Service (IRS) manages the expanded whistleblower program, including communicating within IRS, we reviewed the Tax Relief and Health Care Act of 2006, which required that IRS establish the Whistleblower Office and administer the expanded award program; reviewed IRS documents on the whistleblower program, including Internal Revenue Manual section 25.2.2, which outlines roles and responsibilities in the expanded whistleblower program; and reviewed GAO's body of work on internal control standards. We also interviewed staff from the IRS Whistleblower Office, representatives from the three business operating divisions—Small Business/Self Employed, Large Business and International, and Tax Exempt and Government Entities—that handle whistleblower claims, and representatives from other IRS divisions—Chief Counsel and Criminal Investigations—that are part of the whistleblower process. We also spoke with nine attorneys who represent tax whistleblowers to determine the concerns of whistleblowers regarding the length of time the whistleblower claim review process takes. Seven of these attorneys were a nongeneralizable sample of attorneys recommended by IRS as frequent representatives of whistleblowers submitting claims to the whistleblower program. Whistleblower attorneys have a clear financial interest in the outcome of whistleblower claims. However, interviewing them allowed us to obtain broad viewpoints of the IRS whistleblower program while keeping whistleblowers' identities confidential. To report statistics on whistleblower claims, we analyzed data from the Whistleblower Office's E-TRAK system. We found that the data generated from E-TRAK on claim status was sufficiently reliable for the purposes of our report.

To evaluate how IRS communicates with whistleblowers and the public, we reviewed Internal Revenue Code section 6103, which governs the protection of tax information. We interviewed staff from the IRS Whistleblower Office and the operating divisions and other offices that are part of the whistleblower process. We interviewed the attorneys for their opinions on how IRS communication procedures affect whistleblowers and the processing of whistleblower claims. We also spoke with the National Taxpayer Advocate to identify potential privacy concerns for targeted taxpayers.¹

¹The National Taxpayer Advocate heads the Taxpayer Advocate Service, an independent organization within IRS which provides services to taxpayers seeking help in resolving problems with IRS.

To determine what lessons, if any, can be learned from IRS's and whistleblowers' past experiences with the Whistleblower Office as well as other governmental efforts that could improve the IRS whistleblower program, we identified federal and state programs that were similar to IRS's whistleblower program. At the federal level, we interviewed officials from programs that provide financial awards for bringing information to the government on specific issues that result in awards paid to whistleblowers. Specifically, we interviewed officials from the Department of Justice, which administers claims made under the False Claims Act; the Incentive Rewards Program at the Centers for Medicare and Medicaid Services; and the new whistleblower programs established under the Dodd-Frank Wall Street Reform and Consumer Protection Act at the Securities and Exchange Commission and the Commodity Futures Trading Commission. We identified states with tax whistleblower reward programs—New York, Florida, and Texas²—and interviewed representatives from these programs and reviewed relevant program documents. To identify potential lessons learned from IRS's past experiences, we spoke with IRS officials and attorneys who represent tax whistleblowers and reviewed academic literature on tax whistleblowers. From these interviews and document and literature reviews, we created a list of options and asked IRS and whistleblower attorneys on their thoughts of the advantages and disadvantages of these options in the context of the IRS whistleblower program.

We conducted this performance audit from September 2010 to August 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

²Oregon also has a whistleblower rewards statute, but the program is inactive.

Appendix II: Comments from the Internal Revenue Service



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D. C. 20224
August 3, 2011

DEPUTY COMMISSIONER

Mr. James White
Director, Tax Issues
Strategic Issues Team
U.S. Government Accountability Office
Washington, DC 20548

Dear Mr. White:

Thank you for the opportunity to respond to the draft report on "Tax Whistleblowers: Incomplete Data Hinders IRS's Ability to Manage Claim Processing Time and Enhance External Communication" (GAO 11-683). The report identifies a number of opportunities for improving program management, principally through enhancements in the case management information system. The IRS generally agrees with the recommendations in the report and will incorporate these as we continue to make improvements to operating processes and procedures. The IRS response is enclosed.

The report also catalogs options for program changes, based on stakeholder input and examination of other federal and state whistleblower programs. We will take these options into account as we continue to make program improvements.

The report highlights that it can take significant time to fully process whistleblower claims. We appreciate your recognition that this is due to a number of issues, most notably the requirement to allow taxpayers the appeals and litigation rights that the law affords. The report also notes communication limits given restrictions on disclosing tax return information that is subject to protections under section 6103 of the Internal Revenue Code. The Fiscal Year 2010 Annual Report to Congress on the Whistleblower Program highlights section 6103 issues as a challenge in program design and implementation. While we acknowledge the concerns expressed by stakeholders on these issues, the IRS is legally required to comply with the statutory protections for this information.

If you have any questions, please contact me, or a member of your staff may contact Stephen Whitlock, Director, Whistleblower Office, at (202) 622-0351.

Sincerely,


Steven T. Miller
Deputy Commissioner for Services and
Enforcement

Enclosure

ENCLOSURE

GAO Recommendations and IRS Responses to GAO Draft Report
"Tax Whistleblowers: Incomplete Data Hinders IRS's Ability to Manage Claim Processing Time and Enhance External Communication" (GAO 11-683)

Recommendations:

The Commissioner of Internal Revenue should direct the Whistleblower Office Director to take the following seven actions:

1. Record time in status information for all claims identified by taxpayer in E-TRAK;
2. Adjust E-TRAK's tracking feature to more accurately count the number of days claims remain in a status;
3. Track the reasons for claims rejections by broad categories;
4. Track the reasons claims are in suspended status by broad categories;
5. Establish a process by which the Whistleblower Office routinely follows-up on claims that have been in the operating division subject matter expert initial review status for more than a targeted number of days;
6. Redesign Form 211 to include stand-alone questions on the following information:
 - a. The relationship of the whistleblower to the target taxpayer
 - b. The employer of the whistleblower
 - c. Whether the whistleblower has submitted the information to any other federal or state agencies
 - d. Whether the whistleblower has included all information relevant to the claim;
7. Provide additional summary statistics in future annual reports to Congress, including data on the length of time claims remain at each step of the review process, data on the length of time from claim receipt to payments, reasons for claim rejections, aggregate information on awards paid, and total amount of whistleblower payments.

The Commissioner of Internal Revenue should direct the Commissioners of LB&I and TEGE to develop targets for how long subject matter expert reviews should take before being flagged for follow-up.

Response:

The IRS generally agrees with the recommendations in the report and will take corrective actions as appropriate.

Recommendations 1 through 4, address improvements to information tracking systems. The IRS has taken a number of steps in recent years to improve information tracking and will take additional steps as recommended. The E-TRAK case management system replaced three systems used to manage claims filed by whistleblowers under section 7623. These included the ICE-Web system, used to manage claims submitted under the section 7623 program as it existed prior to the 2006 amendments, and two

2

supplemental systems designed as interim supplements to meet the additional needs of the program after the amendments. In January 2009, E-TRAK became the system for recording new section 7623 submissions. In the summer of 2010, the Whistleblower Office completed the migration of legacy section 7623 claim information from the ICE-Web information system to E-TRAK, and activated features to allow operating divisions to access the E-TRAK data directly. Work on E-TRAK adjustments and enhancements based on operating division experiences and needs will be resumed in the near future (in consultation with the operating divisions). The data collection and reporting issues identified in the GAO recommendations will be part of the project, as will an exploration of the feasibility of a bulk claim update capability and other process changes that could make full implementation of those recommendations cost effective. We will make appropriate improvements as feasible given resources constraints and competing priorities.

Regarding recommendation 5, the IRS is working to improve the process to ensure that all operating divisions timely review the period that claims have under subject matter expert initial review. As this process is improved, we will determine whether targets for subject matter expert review are appropriate (as further recommended by GAO).

The IRS also agrees with recommendation 6 and will make changes to the Form 211 to capture information that might facilitate review and evaluation of submissions by the operating division subject matter experts.

Regarding recommendation 7, the IRS agrees to consider, when feasible and available, the addition of certain summary statistical information in the annual report to Congress. Note that the 2010 annual report to Congress has already been submitted.

Note that the IRS also expects recommendations from the Treasury Inspector General Tax Administration (TIGTA) in the coming weeks. We anticipate developing a corrective action plan to implement all agreed GAO and TIGTA recommendations on a consistent basis.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

James R. White, 202-512-9110 or whitej@gao.gov

Acknowledgments

In addition to the contact named above, Jeff Arkin, Assistant Director; Amy Bowser; Jeffrey Niblack; Danielle N. Novak; and Cynthia Saunders made key contributions to this report.

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