



United States Government Accountability Office

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Report to the Ranking Member,  
Committee on the Judiciary,  
U.S. Senate

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December 2022

# ABUSIVE TAX SCHEMES

## Additional Steps Could Further IRS Efforts to Detect and Deter Promoters

# GAO Highlights

Highlights of [GAO-23-105843](#), a report to the Ranking Member, Committee on the Judiciary, U.S. Senate

## Why GAO Did This Study

Abusive tax schemes threaten our tax system's integrity and contribute to the tax gap—the difference between taxes owed and paid. Often, abusive tax schemes are marketed by promoters and include complex, multi-layer transactions to attempt to conceal the true nature and ownership of the taxable income or assets. To address abusive tax schemes and their promoters, IRS created the Office of Promoter Investigations in 2021.

GAO was asked to review IRS actions to address abusive tax schemes and those who promote and enable them. This report (1) describes how IRS conducts promoter investigations and presents summary data on these investigations; (2) evaluates how IRS educates taxpayers about referring information on promoters to IRS; and (3) evaluates to what extent IRS's reorganization plan for promoter investigations was consistent with key practices and the extent to which IRS is prepared to evaluate the performance of its new office.

## What GAO Recommends

GAO recommends that IRS (1) amend the Dirty Dozen list publication to tell taxpayers how to refer information on promoters to IRS; and (2) finalize outcome-oriented goals and performance measures for the Office of Promoter Investigations. IRS agreed with the recommendations.

View [GAO-23-105843](#). For more information, contact James R. McTigue, Jr, (202) 512-6806 or [McTigueJ@gao.gov](mailto:McTigueJ@gao.gov)

December 2022

## ABUSIVE TAX SCHEMES

### Additional Steps Could Further IRS Efforts to Detect and Deter Promoters

## What GAO Found

The Internal Revenue Service (IRS) has taken steps to identify and stop promoters who arrange and market abusive tax schemes. Such schemes involve various kinds of arrangements designed to circumvent tax laws or evade taxes. IRS's investigations into promoters vary in complexity and may span across different organizational units within IRS, as shown in the figure below. In fiscal years 2021 and 2022, IRS conducted hundreds of investigations that resulted in tens of millions of dollars in penalties assessed.

#### Principal IRS Organizational Units Involved in Abusive Tax Scheme Promoter Investigations



##### Small Business/ Self-Employed

Audits small businesses and certain self-employed individuals.

Operates the new agency-wide Office of Promoter Investigations, which includes the Lead Development Center to receive and develop leads from various internal and external sources.



##### Large Business and International

Audits large businesses, international taxpayers, and high-wealth individuals.

Reviews taxpayer and material advisor disclosures of reportable transactions.



##### Tax Exempt and Government Entities

Audits tax-exempt organizations such as charities; employee benefit plans such as retirement accounts; and state, local, and tribal governments.

Reviews tax-exempt entities' disclosures of certain tax shelter transactions.



##### Criminal Investigation

Investigates tax crimes involving violations of the Internal Revenue Code, the Bank Secrecy Act, and various other statutes.

Recommends cases for criminal prosecution to the Department of Justice and U.S. attorneys.

Source: GAO analysis of Internal Revenue Service (IRS) documents. | GAO-23-105843

Currently, IRS is aware of over 40 types of abusive tax schemes involving promoters. One method IRS uses to identify these promoters is information referrals from the public. GAO found that the public can refer information to IRS on a number of forms, few of which can be submitted online. GAO previously recommended that IRS take steps to improve its referral programs by developing a consolidated, online referral submission tool.

Additionally, one of IRS's key public communication tools for abusive tax schemes, its annual Dirty Dozen list, does not include information on how to report promoters of suspected abusive tax schemes. Adding instructions to the Dirty Dozen list about how to submit information on promoters may allow IRS to better leverage information from the public and increase its ability to identify and stop promoters of abusive tax schemes.

IRS created the Office of Promoter Investigations in 2021 to coordinate IRS's response to promoters of abusive tax schemes. The office works to design, develop, and deliver the major activities that help detect and deter abusive tax schemes and their promoters. Although the office has developed strategic goals to fulfil its mission, it has not yet finalized and communicated outcome-oriented performance goals and measures within IRS. Finalizing outcome-oriented performance goals and measures will allow the Office of Promoter Investigations to better evaluate its efficacy and ensure it is meeting its mission.

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## Abbreviations

CI	Criminal Investigation
CRAT	Charitable Remainder Annuity Trust
IRS	Internal Revenue Service
LB&I	Large Business and International division
OPI	Office of Promoter Investigations
SB/SE	Small Business/Self-Employed division
TE/GE	Tax Exempt and Government Entities division
TIGTA	Treasury Inspector General for Tax Administration

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December 15, 2022

The Honorable Chuck Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate

Dear Senator Grassley:

Abusive tax schemes involve various kinds of arrangements designed to circumvent tax laws or evade taxes.<sup>1</sup> These abusive tax schemes contribute to the tax gap—the difference between the taxes people and businesses legally owe, and what they annually pay voluntarily and on time. In recent years, the Internal Revenue Service (IRS) has estimated the average gross tax gap to be \$496 billion per year.<sup>2</sup> Furthermore, if taxpayers believe some individuals and businesses are not paying their fair share of taxes, it undermines confidence in our tax system and erodes voluntary compliance.

Abusive tax schemes marketed by promoters range from highly complex, multi-layer transactions to basic schemes. These schemes often attempt to conceal the true value and ownership of the taxable income and assets. Some promoters may be paid tax preparers.<sup>3</sup> We recently reported on two potentially abusive tax schemes that have been an

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<sup>1</sup>For readability, we use the term “abusive tax scheme” in this report instead of the longer term “abusive tax avoidance transaction,” which also appears in IRS documents and guidance to its examiners.

<sup>2</sup>Internal Revenue Service, *Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2014-2016*, Publication 1415 (Oct. 2022).

<sup>3</sup>A paid preparer is anyone who is paid to prepare, assist in preparing, or review a taxpayer’s tax return. In November 2022, we recommended that Congress grant IRS the explicit authority to establish professional requirements for paid tax preparers. GAO, *Paid Tax Return Preparers: IRS Efforts to Oversee Refundable Credits Help Protect Taxpayers but Additional Actions and Authority Are Needed*, [GAO-23-105217](#) (Washington, D.C.: Nov. 30, 2022).

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enforcement priority for IRS—micro-captive insurance and syndicated conservation easements.<sup>4</sup>

IRS has stated it needs to improve its ability to identify and deter promoters and stop abusive tax schemes before the promoter can widely market them. In April 2021, IRS announced the creation of the new Office of Promoter Investigations (OPI). OPI's work includes the design, development, and management of major activities to help detect and deter abusive tax schemes and their promoters.

You asked us to review IRS actions to address abusive tax schemes and those who promote and enable them. This report: (1) describes how IRS conducts promoter investigations and presents summary data on those investigations; (2) evaluates how IRS educates taxpayers about referring information on promoters to IRS; and (3) evaluates to what extent IRS's reorganization plan for OPI was consistent with key practices and the extent to which IRS is prepared to evaluate the performance of OPI.

To describe IRS's current promoter investigations, the process for conducting those investigations, and summary data on the number of investigations and penalties assessed, we reviewed IRS documentation on processes and procedures for promoter investigations. We also reviewed written responses to questions submitted to IRS regarding promoter investigations. We interviewed IRS officials regarding sources of information on abusive tax schemes and their promoters. We also interviewed the officials on how IRS uses this information to identify abusive tax schemes and promoters. We reviewed IRS data on the number of promoter investigations in fiscal years 2021 and 2022 and any financial results of those investigations. We found the data to be sufficiently reliable to report the number of open and closed promoter investigations, and the dollar amount of any penalties assessed.

To evaluate how IRS educates taxpayers about referring information on promoters to IRS, we first reviewed our prior work that evaluated IRS referral programs.<sup>5</sup> We then conducted keyword searches of IRS.gov to

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<sup>4</sup>GAO, *Abusive Tax Schemes: IRS Could Improve Its Reviews of Offshore Insurance Audits and Investigations*, [GAO-22-104180](#), (Washington, D.C.: Mar. 23, 2022) and *Tax-Law Enforcement: IRS Could Better Leverage Existing Data to Identify Abusive Schemes Involving Tax-Exempt Entities*, [GAO-19-491](#) (Washington, D.C.: Sept. 5, 2019).

<sup>5</sup>GAO, *IRS Referral Programs: Opportunities Exist to Strengthen Controls and Increase Coordination across Overlapping Programs*, [GAO-16-155](#) (Washington, D.C.: Feb. 23, 2016).

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identify guidance to taxpayers about how they can refer information on abusive tax schemes and suspected promoters of those schemes to IRS. We found several webpages and one IRS brochure that contained information relevant to reporting abusive tax schemes and promoters of those schemes. We reviewed the content of these webpages and the brochure, as well as the content of any linked referral forms. We additionally reviewed annual IRS communications (from 2014 to 2022) that warn taxpayers about abusive tax schemes to see if those communications included instructions to taxpayers about how to refer information to IRS about abusive tax schemes and their promoters. We then assessed this IRS guidance and communication against information and communications principles from *Standards for Internal Control in the Federal Government*.<sup>6</sup> We also consulted leading practices on designing and implementing control activities to prevent and detect fraud from our *A Framework for Managing Fraud Risks in Federal Programs* (Fraud Risk Framework).<sup>7</sup>

To assess the extent to which IRS's reorganization plan for OPI was consistent with key practices and the extent to which IRS is prepared to evaluate the performance of OPI, we first identified key practices we previously reported for agency reorganization and reform efforts as well as specific actions outlined in the Internal Revenue Manual. We determined which key practices were most relevant to OPI efforts and reviewed IRS documents related to OPI implementation. We then assessed the extent to which IRS actions and documents were consistent with these selected practices.<sup>8</sup> To assess the extent to which IRS is prepared to evaluate the performance of OPI, we identified efforts OPI took to collaborate across IRS by reviewing agency documentation and by interviewing agency officials. We compared IRS's identification and use of performance goals and measures to selected leading management practices. We identified the selected leading practices by reviewing our work on performance management and accountability that sets forth a

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<sup>6</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014), Principle 15 – Communicate Externally.

<sup>7</sup>GAO, *A Framework for Managing Fraud Risks in Federal Programs*, [GAO-15-593SP](#) (Washington, D.C.: July 2015), Component 3.2 - Design and Implement Specific Control Activities to Prevent and Detect Fraud.

<sup>8</sup>GAO, *Government Reorganization: Key Questions to Assess Agency Reform Efforts*, [GAO-18-427](#) (Washington, D.C.: June 13, 2018).

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general framework for federal agencies to define mission and desired outcomes, measure performance, and use performance information.<sup>9</sup>

We conducted this performance audit from February 2022 to December 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

### Abusive Tax Schemes

Abusive tax schemes—arrangements to reduce tax liability that are not supported by law or that manipulate the law in a way that is not consistent with its intent—threaten our tax system’s integrity. Abusive tax schemes vary from very simple to very complex and from ones clearly illegal to those carefully constructed to disguise the illegality of the scheme. Such abusive tax schemes might be based on invalid interpretations of tax law, misrepresented facts, or both. Some abusive tax schemes may attempt to use trusts or other entities or offshore accounts to hide income.

Users of abusive tax schemes can range from those believing their tax position is correct to those who knowingly and willingly file incorrect tax returns. IRS regularly warns taxpayers to avoid paid tax return preparers and other advisors who promote these abusive tax schemes. IRS investigates promoters of abusive tax schemes as part of its efforts to protect the integrity of the tax system and reduce the tax gap.<sup>10</sup> Structuring these abusive tax schemes might come at a considerable expense to the taxpayer in fees paid to the promoter, but it is the taxpayer who is liable if IRS uncovers the scheme.

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<sup>9</sup>GAO, “Leading Practices in Managing for Results in Government,” <https://www.gao.gov/leading-practices-managing-results-government>.

<sup>10</sup>The term “promoter” generally means a person who (1) organizes an entity, investment plan or arrangement, or any other plan or arrangement, or participates, directly or indirectly, in the sale of any interest in an entity, plan, or arrangement and (2) makes, furnishes, or causes another person to make or furnish a statement about its tax benefits. See 26 U.S.C. § 6700(a). When the promoter knows or has reason to know the statement is false or fraudulent to any material matter or a gross valuation overstatement to any material matter, a penalty can be imposed.

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## Promoter Investigations

IRS generally conducts two types of investigations regarding promoters of abusive tax schemes: (1) civil investigations and (2) criminal investigations. During a civil promoter investigation, IRS evaluates whether a promoter is subject to penalties or injunctive action because of the promoter's involvement in or marketing of abusive arrangements. In a criminal promoter investigation, IRS special agents investigate whether a promoter committed criminal tax fraud or other financial crimes.

Recently, we reported on IRS's efforts to take action against a number of promoted abusive tax schemes. In March 2022, we reported on how IRS investigates promoters of abusive tax schemes involving a type of insurance product known as micro-captive insurance.<sup>11</sup> We made several recommendations to improve how IRS oversees its taxpayer audits and promoter investigations involving these insurance arrangements. IRS disagreed with the recommendations, stating that its current procedures are sufficient and citing resource constraints.<sup>12</sup> We maintain that IRS should take the actions we recommended.

In September 2019, we reported on how IRS addresses abusive tax schemes involving tax-exempt entities and overvalued conservation easements.<sup>13</sup> In that report, we recommended that IRS strengthen its internal controls over a variety of programs and data used to identify abusive tax schemes involving tax-exempt entities, including that it link data across its operating divisions. IRS agreed with all of our recommendations and is taking actions to address them.

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## Office of Promoter Investigations

In 2021, IRS announced the creation of the Office of Promoter Investigations (OPI) to coordinate its oversight of promoters. IRS leadership positioned the new office within the Small Business/Self-Employed (SB/SE) division—one of four principal IRS organizational units either leading or supporting promoter investigations. See figure 1.

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<sup>11</sup>[GAO-22-104180](#).

<sup>12</sup>IRS disagreed with our recommendations before the Inflation Reduction Act of 2022 was enacted. The act provides IRS about \$80 billion in additional funding over the next decade. Pub. L. No. 117-169, § 10301, 136 Stat. 1818, 1831–1833 (2022).

<sup>13</sup>[GAO-19-491](#).

**Figure 1: Principal IRS Organizational Units Involved in Abusive Tax Scheme Promoter Investigations**



Source: GAO analysis of Internal Revenue Service (IRS) documents. | GAO-23-105843

Note: Other IRS organizational units that provide key support to investigations of abusive tax scheme promoters are the Office of Chief Counsel and Research, Applied Analytics, and Statistics.

Prior to the reorganization, SB/SE housed the Lead Development Center, which centralizes receipt and development of abusive tax preparer and promoter leads, conducts research, and authorizes the initiation of abusive tax preparer and promoter investigations in coordination with other IRS organizational units. The center was moved to OPI as part of the reorganization.

The Large Business and International (LB&I) division oversees the processing of reportable transaction disclosure filings by taxpayers participating in reportable transactions and their material advisors.<sup>14</sup> The

<sup>14</sup>The Internal Revenue Code and associated Treasury regulations require taxpayers participating in certain “reportable transactions” and “material advisors” who recommended those transactions to disclose information to IRS. 26 U.S.C. § 6111; 26 C.F.R. § 1.6011-4. Recently, certain reportable transaction reporting requirements have been successfully challenged in federal court on procedural grounds. See *Mann Constr. v. U.S.*, 27 F.4th 1138 (6th Cir. 2022) (setting aside Notice 2007-83, which had designated certain trust arrangements involving cash-value life insurance arrangements); *CIC Servs. v. IRS*, No. 3:17-cv-110 (E.D. Tenn. Mar. 21, 2022) (vacating IRS Notice 2016-66, which had designated certain micro-captive insurance arrangements as reportable transactions); *Green Valley Invs., LLC v. Comm’r of Internal Revenue*, No. 17379-19 (T.C. Nov. 9, 2022) (setting aside Notice 2017-10, which designated syndicated conservation easement transactions as reportable transactions).

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Office of Tax Shelter Analysis coordinates LB&I's tax shelter planning and operations.<sup>15</sup>

Certain tax-exempt entities are required to file a disclosure form when the entity is a party to a prohibited tax shelter transaction, including the identity of any known party to the transaction.<sup>16</sup> The Tax Exempt and Government Entities (TE/GE) division reviews these disclosures. Criminal Investigation (CI) works closely with SB/SE, LB&I, and TE/GE to investigate and pursue promoters of abusive tax schemes.<sup>17</sup>

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## IRS Is Conducting Hundreds of Investigations of Promoters Involving Dozens of Types of Abusive Tax Schemes

IRS officials told us that, as of September 2022, IRS was investigating over 40 types of abusive tax schemes involving promoters. The list provided to us by IRS includes, but is not limited to, the following abusive tax schemes:

- **Improper claims of business research credits.** In this abusive tax scheme, taxpayers improperly claim what is commonly known as the Research Tax Credit, which provides a credit for increasing business research activities.<sup>18</sup> According to IRS, instances where promoters advise taxpayers to improperly claim the credit generally involve a failure to participate in or substantiate qualified research activities or a failure to satisfy the requirements related to qualified research expenses. IRS often sees expenses for nonqualified activities included in claims for the Research Tax Credit.<sup>19</sup>
- **Abusive syndicated conservation easements.** In syndicated conservation easements arrangements, taxpayers claim deductions for conservation easements, generally granted to tax-exempt entities by way of a partnership or other pass-through entity. These

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<sup>15</sup>The Internal Revenue Manual explains that the term abusive tax shelter is commonly used to mean an abusive tax transaction or promotion that is highly technical. Internal Revenue Manual §4.32.1-1.

<sup>16</sup>26 U.S.C. § 6033(a)(2).

<sup>17</sup>CI is a principal office and not an operating division under IRS's organizational structure.

<sup>18</sup>26 U.S.C. § 41.

<sup>19</sup>Internal Revenue Service, "Avoid improper claims for business credits," IR-2019-42 (March 14, 2019).

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transactions are abusive when the value of the easements, and therefore the deductions, are improperly inflated.<sup>20</sup>

- **Abusive micro-captive insurance arrangements.** In abusive micro-captive structures, taxpayers claim tax benefits associated with insurance for payments to subsidiaries or other related companies that are not providing genuine insurance. For example, according to IRS, coverages may claim to “insure” implausible risks, fail to match genuine business needs, or duplicate the taxpayer’s commercial coverages. Amounts paid under these arrangements are often excessive and used to avoid tax law.<sup>21</sup>
- **Abusive use of Charitable Remainder Annuity Trust (CRAT).** In general, a CRAT is a trust that pays a specified annual (or more frequent) amount or percentage to a beneficiary until death or at the end of a specified term of years, with the remainder paid to a qualified charity.<sup>22</sup> In establishing the CRAT, appreciated property is transferred to it, which can qualify for a partial charitable deduction.<sup>23</sup> The CRAT then uses the proceeds to purchase a single premium immediate annuity. This type of annuity provides for a guaranteed income based on a lump sum of assets invested. The beneficiary in this scheme reports, as income, only a small portion of the annuity received from the single premium immediate annuity. Through a misapplication of the law relating to CRATs, the beneficiary treats the remaining payment as an excluded portion representing a return of investment for which no tax is due. According to IRS, taxpayers seek to achieve this inaccurate result by misapplying the rules under sections 72 and 664 of the Internal Revenue Code. Taxpayers engaged in this abusive tax scheme improperly claim a step-up in basis on the transfer of the appreciated assets to the CRAT as if they

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<sup>20</sup>Internal Revenue Service, “IRS wraps up 2022 ‘Dirty Dozen’ scams list; agency urges taxpayers to watch out for tax avoidance strategies,” IRS IR-2022-125 (June 10, 2022). We reported on syndicated conservation easements in [GAO-19-491](#).

<sup>21</sup>Internal Revenue Service, “IRS wraps up 2022 ‘Dirty Dozen’ scams list; agency urges taxpayers to watch out for tax avoidance strategies,” IRS IR-2022-125 (June 10, 2022). GAO reported on micro-captive insurance abusive tax schemes in [GAO-22-104180](#).

<sup>22</sup>26 U.S.C. § 664(d)(1); 26 C.F.R. § 1.664-2. The annual payments to the beneficiary cannot be less than 5 percent or more than 50 percent of the initial net fair market value of all the property placed in the trust.

<sup>23</sup>Any deduction is limited to the present value of the charitable organization’s remainder interest, which is calculated as the value of the donated property minus the present value of the annuity. 26 C.F.R. § 1.664-2(c).

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had been sold to the trust. When the CRAT sells the property, it does not recognize the gain due to the improperly claimed step-up in basis.

- **Abusive use of a tax treaty between the United States and Malta.** In July 2021, IRS announced that some U.S. citizens and residents were relying on an interpretation of the U.S.-Malta Income Tax Treaty to take the position that (1) they may contribute appreciated property tax free to certain Maltese pension plans, and (2) there are no tax consequences when the plan sells the assets and distributes proceeds. Ordinarily gains would be recognized upon disposition of the plan's assets and distributions of the proceeds. IRS stated it was evaluating the issue to determine the validity of these arrangements. In December 2021, the U.S. and Malta entered into a Competent Authority Arrangement confirming their understanding of the definition of a pension fund for purposes of the U.S.-Malta income tax treaty, which excludes plans that allow participants to contribute property other than cash or do not limit contributions by reference to income earned from employment and self-employment activities.
- **Inappropriate use of monetized installment sales.** Taxpayers are permitted to use a special method of accounting—the installment method—for the gain from certain transactions involving real or personal property in cases where the purchase price is to be paid over a period of years.<sup>24</sup> In a monetized installment sale, taxpayers attempt to use the installment method of accounting for an installment sale combined with a purported loan. In a typical transaction, the seller enters into a contract to sell appreciated property to a buyer for cash and then purports to sell the same property to an intermediary in return for an installment note. The intermediary then purports to sell the property to the buyer and receives the cash purchase price. Through a series of related steps, the seller receives an amount equivalent to the sales price, less various transactional fees, in the form of a purported nonrecourse, unsecured loan. In these arrangements, the seller receives most of the proceeds but improperly delays the gain recognition on the appreciated property. IRS has identified a number of features which make these transaction problematic, including the lack of genuine indebtedness.

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<sup>24</sup>26 U.S.C. § 453. See also 26 U.S.C. §§ 453A, 453B.

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According to IRS officials, new abusive tax schemes are typically identified through

- internal referrals from IRS employees who become aware of an abusive tax scheme during the course of their normal work duties, such as during audits;
- external referrals from the public, including attorneys, certified public accountants, investors in abusive tax schemes, and enrolled agents; and
- referrals from other government agencies such as the Department of Justice.

IRS regularly shares information on abusive tax schemes with the public through its Dirty Dozen list which comprises the “worst of the worst tax scams,” according to IRS.gov.<sup>25</sup> IRS publishes this list annually in a series of news releases via its website, to help alert taxpayers about schemes and scams they might encounter during the spring tax filing season. Until 2020, IRS generally issued 12 news releases—one for each scam or scheme—plus one final release recapping the entire list. In recent years, IRS has issued fewer than 12 news releases by grouping the dozen scams and schemes into one or a few news releases.<sup>26</sup>

IRS officials told us IRS is pursuing active promoter investigations for several of the Dirty Dozen schemes that appeared on current and prior years’ lists. In June 2022, IRS issued its first news release for the 2022 Dirty Dozen list by focusing on four transactions that are wrongfully promoted and that IRS would likely review:

- abusive use of charitable remainder annuity trusts,
- abusive use of Maltese individual retirement arrangements,
- abusive use of Puerto Rican and foreign captive insurance, and

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<sup>25</sup>Internal Revenue Service, “Dirty Dozen,” accessed July 28, 2022, <https://www.irs.gov/newsroom/dirty-dozen>.

<sup>26</sup>In 2020, IRS issued only one news release describing all 12 items on the Dirty Dozen list. In 2021, IRS issued four news releases, and in 2022 IRS issued six, by grouping a few items on the Dirty Dozen list together.

- inappropriate use of monetized installment sales.<sup>27</sup>

IRS issued its sixth and last news release for the 2022 list by focusing on other schemes that typically target high net-worth individuals, such as

- abusive use of offshore accounts,
- abusive use of digital assets like cryptocurrency,
- abusive syndicated conservation easements, and
- abusive micro-captive insurance arrangements.<sup>28</sup>

The civil investigation process for a promoter investigation varies slightly based on which of IRS’s operating divisions conduct the investigation, but generally the process follows the steps illustrated in figure 2.

**Figure 2: General Process for Conducting a Civil Promoter Investigation**



Source: GAO analysis of Internal Revenue Service documents. | GAO-23-105843

Note: During the process, IRS can ask the Department of Justice to obtain an injunction to stop abusive promoter activity.

First, an IRS operating division identifies a promoter lead through one or more of the avenues described above—internal referrals, or external referrals including ones from other government agencies—and creates a “referral package.” Next, IRS designates one, or sometimes multiple, operating divisions to conduct the civil investigation. Some abusive tax schemes primarily involve taxpayers under the jurisdiction only one operating division. However, other schemes involve taxpayers under multiple divisions, thus necessitating ongoing coordination among the

<sup>27</sup>Internal Revenue Service, “IRS warns taxpayers of “Dirty Dozen” tax scams for 2022,” IR-2022-113 (June 1, 2022).

<sup>28</sup>Internal Revenue Service, “IRS wraps up 2022 “Dirty Dozen” scams list; agency urges taxpayers to watch out for tax avoidance strategies,” IR-2022-125 (June 10, 2022).

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divisions.<sup>29</sup> During this case management and planning phase, CI is contacted to address any conflicts with ongoing or potential CI activities. The new Office of Promoter Investigations coordinates this CI “de-confliction” step before operating divisions receive promoter investigations cases.

As the designated operating division begins its investigation startup, it may make initial contact with a promoter, interview a promoter, receive documentation on the promotion, and contact relevant third parties. If possible, IRS attempts to identify participants in a promotion by soliciting a list of clients from the suspected promoter. IRS officials told us that addressing client noncompliance is a key aspect of abusive transaction compliance activities.

After fact gathering, the designated operating division determines if a promoter has engaged in conduct that violates applicable civil statutes. After completing the investigation, the designated operating division begins case assembly and closure and prepares an investigation summary on the promoter. Investigations can result in one or more of the following outcomes: (1) injunction, (2) penalty assessment, (3) criminal referral, or (4) discontinuance, which is an investigation that is closed without an injunction or penalty assessment.<sup>30</sup>

Civil investigations are generally led by IRS operating divisions such as SB/SE, LB&I, and TE/GE. Criminal investigations are led by CI. During a criminal investigation, if IRS determines that a promoter should be criminally prosecuted, then a prosecution recommendation is forwarded to the Department of Justice’s Tax Division or the United States Attorney (for non-tax related investigations).<sup>31</sup>

IRS officials told us that the agency pursues enablers of abusive tax schemes, in addition to promoters. Enablers are other parties involved in an abusive tax scheme that help facilitate or enable the scheme. For

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<sup>29</sup>We previously reported that the LB&I and SB/SE divisions have jointly investigated abusive tax schemes involving micro-captive insurance. See [GAO-22-104180](#).

<sup>30</sup>An injunction referral can be made to the Department of Justice if the investigation team determines that the preparer or promoter continues to organize and sell an illegal tax shelter or prepares tax returns with positions they know to be unreasonable.

<sup>31</sup>Internal Revenue Service, “How Criminal Investigations Are Initiated,” accessed Oct. 4, 2022, <https://www.irs.gov/compliance/criminal-investigation/how-criminal-investigations-are-initiated>.

example, in abusive tax schemes involving syndicated conservation easements, property appraisers who offer inflated appraisals might be considered an enabler of the scheme. Agency officials told us IRS may work with state and local authorities that grant professional licenses to impose consequences.

According to IRS data, the agency conducted hundreds of investigations of abusive tax scheme promoters in fiscal years 2021 and 2022 (the most recent data available). These investigations resulted in millions of dollars in penalties assessed against promoters. See table 1.

**Table 1: IRS Promoter Investigations, Fiscal Years 2021 and 2022**

	Fiscal year 2021			Fiscal year 2022		
	Opened (number)	Closed (number)	Penalties assessed (dollars in millions)	Opened (number)	Closed (number)	Penalties assessed (dollars in millions)
Criminal investigations	99	145	\$25	111	113	\$41
Civil investigations	56	81	\$22	103	77	\$29
<b>Total</b>	<b>155</b>	<b>226</b>	<b>\$47</b>	<b>214</b>	<b>190</b>	<b>\$71</b>

Source: GAO review of Internal Revenue Service (IRS) data. | GAO-23-105843

Note: Totals may not sum due to rounding.

Given that abusive tax schemes are often hidden, IRS does not have complete data on the universe of abusive tax schemes. As we reported in 2011, estimating the total number of promoters and taxpayers involved is at best an inexact process.<sup>32</sup> In a 2006 study, IRS used various qualitative and quantitative methods in an attempt to develop some estimates.<sup>33</sup> IRS estimated about 1 million tax returns and about 11,000 to 15,000 promoters were involved in abusive transactions in 2004. IRS officials told us that they searched records back to 2014 and did not find any recent updates to the 2006 study. IRS officials did tell us, however, they have developed a significant knowledge base on some of the more common schemes.

<sup>32</sup>GAO, *Abusive Tax Avoidance Transactions: IRS Needs Better Data to Inform Decisions about Transactions*, GAO-11-493 (Washington, D.C.: May 12, 2011).

<sup>33</sup>Internal Revenue Service, *Forecasting Potential Abusive Tax Avoidance Transaction Promoters and Participants*, (June 2006).

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## IRS Could Improve External Referrals on Suspected Abusive Tax Schemes

### Multiple IRS Forms and Instructions Add Confusion to the Process for Reporting Promoters

IRS relies on help from taxpayers and tax practitioners to identify promoters and preparers who peddle abusive schemes and enablers who facilitate them. According to IRS officials, during the past 10 years about 10 percent of all promoter and preparer scheme leads came from external referrals.

The IRS website describes how the public can report promoters of abusive tax schemes and how these referrals help IRS investigations.<sup>34</sup> As an example of how a referral can yield significant benefits, we reported in 2013 how one whistleblower provided information about how his employer, a foreign bank, was actively facilitating U.S. taxpayers' concealment of taxable income.<sup>35</sup> The referral eventually led to the collection of billions of dollars in tax revenues. At an August 2022 nationwide forum for tax professionals, IRS officials from OPI told participants that it is mutually beneficial for IRS and tax practitioners to work together because compliant tax practitioners should not have to compete for business with abusive promoters and return preparers.

OPI officials told us that both IRS employees and the public can report information on promoters by submitting Form 14242, *Report Suspected Abusive Tax Promotions or Preparers*. Over the 5-year period from fiscal years 2017 to 2021, taxpayers submitted 563 of these referral forms. According to IRS officials, about 60 percent of the forms included information that identified preparers and promoters for potential investigations.

Preparer and promoter referral submissions via Form 14242 are a small portion of the total information referral submissions that IRS receives via

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<sup>34</sup>Internal Revenue Service, "Abusive Tax Schemes and Abusive Tax Return Preparers—IRS Lead Development Center," accessed Oct. 11, 2022, <https://www.irs.gov/businesses/small-businesses-self-employed/abusive-tax-schemes-and-abusive-tax-return-preparers-irs-lead-development-center>.

<sup>35</sup>GAO, *Offshore Tax Evasion: IRS Has Collected Billions of Dollars, but May be Missing Continued Evasion*, GAO-13-318 (Washington, D.C.: Mar. 27, 2013).

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a variety of other forms and hotlines used by the public. We previously reported that IRS received about 87,000 information referrals via a more general form in fiscal year 2015.<sup>36</sup> In February 2022, the Treasury’s Inspector General for Tax Administration (TIGTA) reported that tens of thousands of these information referral forms were awaiting processing.<sup>37</sup>

In 2016, we reported that multiple IRS forms and instructions can confuse the public trying to report tax noncompliance to IRS.<sup>38</sup> We identified one general information referral process plus eight specialized referral programs and found that several programs had their own forms and mechanisms for intake and screening. We found that the mix of referral programs may be confusing to taxpayers submitting referrals. We found instances where individual taxpayers submitted referral information on the wrong form or sent it to the wrong office. We also found that some individuals submitted multiple different forms for the same allegation. TIGTA, in its reports on IRS’s informational referral programs, found that taxpayers could not easily obtain information from IRS’s website on how to report suspected tax fraud activity. TIGTA also found that guidance to taxpayers was confusing and inconsistent.<sup>39</sup>

For our current work on promoters of abusive tax schemes, we searched IRS.gov for information about how to submit referrals to IRS about promoters of abusive tax schemes using keywords such as “abusive,” “promoter,” and “scheme.” We identified eight webpages and one IRS brochure (Publication 5610) that contained instructions on how to report information about potentially abusive tax schemes and transactions and promoters and preparers of those schemes and transactions (see appendix I). We reviewed the content of these webpages and brochure, as well as the content of any linked referral forms. The webpages

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<sup>36</sup>[GAO-16-155](#). In our 2016 report, we described IRS’s process for screening and routing information referrals submitted via Form 3949-A, *Information Referral*, assessed controls for the information referral screening and routing process, and evaluated the coordination between the information referral process and other specialized referral programs.

<sup>37</sup>Treasury Inspector General for Tax Administration, *Plans to Close the Austin Tax Processing Center Should Be Halted Until Hiring Challenges and Substantial Backlogs at Remaining Centers Are Addressed*, Rept. No. 2022-40-015 (Feb. 7, 2022).

<sup>38</sup>[GAO-16-155](#).

<sup>39</sup>Treasury Inspector General for Tax Administration, *Improvements Are Needed to Correct Continued Deficiencies in the Processing of Taxpayer Referrals of Suspected Tax Fraud*, Ref. No. 2019-40-040 (May 23, 2019) and *The Process for Individuals to Report Suspected Tax Law Violations Is Not Efficient or Effective*, Ref. No. 2012-40-106 (Sept. 10, 2012).

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contained information on, or links to, eight different forms that taxpayers could use to refer or disclose information on abusive schemes and transactions and promoters and preparers. The webpages also contained information on two hotlines for referring information on abusive tax schemes and promoters and preparers.

Some of the IRS forms we identified are intended for more general allegations of tax noncompliance. For example, individuals seeking to report more general tax noncompliance are instructed to use Form 3949-A, *Information Referral*. If filers seek a financial award for the information provided, they are instructed to file Form 211, *Application for Award for Original Information*, with the IRS Whistleblower Office.

Other forms and reporting mechanisms we identified are for more specialized referral programs. For example, individuals wishing to report tax law violations by a tax-exempt organization are instructed to file Form 13909, *Tax-Exempt Organization Complaint (Referral)*. The two IRS “hotlines” we identified are mail, email, or fax addresses to other specialized referral programs. Other forms we identified are intended only for taxpayers and certain promoters—called material advisors—to disclose information on certain reportable transactions to IRS.

Having multiple avenues for referrals such as a variety of forms and hotlines can have some benefits, like expanded reach. However, as we found in our 2016 work on IRS’s referral programs, the multitude of forms and other mechanisms can confuse taxpayers reporting abusive tax schemes and promoters or cause them to file their report incorrectly.

In addition to the multiple avenues to report different types of promoters, taxpayers could also be confused by the instructions for reporting abusive tax schemes on the forms. The referral forms we identified have few instructions to help filers determine which form may be more appropriate than others. For example, it is not always clear whether a taxpayer should report promoters of abusive tax schemes involving tax-exempt entities by filing Form 14242 or Form 13909, which is specific to tax-exempt organizations.

IRS’s Taxpayer Bill of Rights notes the importance of having clear instructions to guide taxpayers. This document states that taxpayers are entitled to clear explanations of the laws and IRS procedures in all tax

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forms, instructions, publications, notices, and correspondence.<sup>40</sup> As part of its strategic plan for fiscal years 2022 to 2026, IRS has said that it will aim to develop easy-to-understand tax products and correspondence.<sup>41</sup> Federal internal control standards also require agencies to communicate effectively with external stakeholders to help achieve agency goals.<sup>42</sup>

Although all the referral forms are available on IRS's website, most of the forms cannot be submitted electronically. To file Form 14242, *Report Suspected Abusive Tax Promotions or Preparers*, the form must be mailed or faxed to IRS.<sup>43</sup> The extra effort to mail or fax a form might deter referrals. IRS's strategic plan states that taxpayers and practitioners increasingly expect more online government services that incorporate new interactive features, like personalized online applications.<sup>44</sup> Taking into account these taxpayer preferences could help to encourage referrals of information on abusive tax schemes and promoters.

Hotlines and other mechanisms for agency employees or the public to report fraud, waste, and abuse are a key internal control activity. Revenue agencies in some foreign countries and U.S. states provide taxpayers one centralized online tool for referring tips and other information about tax noncompliance, such as abusive tax schemes. For example, taxpayers in the United Kingdom, Canada, Australia, and the states of California and New York can submit referrals via an online tool or by calling one main telephone number. Federal agencies such as the Social Security Administration also have online forms for reporting fraud via their websites.

According to *Standards for Internal Control in the Federal Government*, receiving information from external parties such as through whistleblower or ethics hotlines can help an agency detect and prevent risks and achieve agency objectives.<sup>45</sup> Additionally, according to our Fraud Risk

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<sup>40</sup>Internal Revenue Service, *Your Rights as a Taxpayer: The Taxpayer Bill of Rights*, Publication 1 (Sept. 2017).

<sup>41</sup>Internal Revenue Service, *Strategic Plan FY2022-2026*, Publication 3744 (July 2022).

<sup>42</sup>[GAO-14-704G](#), Principle 15 – Communicate Externally.

<sup>43</sup>OPI officials told us that IRS employees can internally submit Form 14242 electronically via email.

<sup>44</sup>Internal Revenue Service, *Strategic Plan FY2022-2026*, Publication 3744 (July 2022).

<sup>45</sup>[GAO-14-704G](#), Principle 15 – Communicate Externally.

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Framework, increasing awareness among individuals outside of an agency about the likely detection of fraud and the penalties for committing fraud can help with deterrence.<sup>46</sup> Reporting mechanisms can deter individuals from engaging in fraudulent and abusive behavior if they believe they will be reported. Agencies should ensure individuals outside an agency can report potential fraud and abuse like tax noncompliance.

In 2016, we recommended that IRS take steps to improve its referral programs by developing a consolidated, online referral submission tool and exploring options to further consolidate screening operations.<sup>47</sup> In June 2022, we wrote to the IRS Commissioner that this recommendation should be given high priority.<sup>48</sup> IRS has since taken some steps to address our recommendation but still does not have a timeline for consolidating and automating its multiple referral programs.

Without progress on consolidating referral programs, IRS risks continued public confusion caused by trying to choose among multiple forms, including ones that can be used to report abusive tax scheme promoters. Consolidating and streamlining IRS's multiple referral programs, as we previously recommended, would also help address the deficiencies we identified with respect to the multiple forms' instructions. That is, with fewer (or perhaps only one) referral forms to choose among, instructions as to which form to use would be simplified. An online referral system may enable those submitting information on abusive tax scheme promoters to more quickly and easily submit a referral. Online referrals may also enable IRS to more easily route promoter referrals to the correct office, given that the current process requires manual clerical screening and routing of paper referrals to IRS enforcement units for further screening.

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<sup>46</sup>[GAO-15-593SP](#). We are not implying that potentially abusive tax schemes are fraud or equivalent to fraud. We merely note that this principle from GAO's Fraud Risk Framework would be applicable to and beneficial for IRS's compliance enforcement efforts targeting abusive tax schemes.

<sup>47</sup>[GAO-16-155](#). TIGTA also recommended in 2012 that IRS study how to develop an online form that taxpayers could use to refer suspected tax law violations to IRS. Treasury Inspector General for Tax Administration, *The Process for Individuals to Report Suspected Tax Law Violations Is Not Efficient or Effective*, Ref. No. 2012-40-106 (Sept. 10, 2012).

<sup>48</sup>GAO, *Priority Open Recommendations: Internal Revenue Service*, [GAO-22-105632](#) (Washington, D.C.: June 6, 2022).

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## IRS's Recent Dirty Dozen Lists Have Not Included Information on How to Report Promoters of Abusive Tax Schemes

While IRS's Dirty Dozen list helps educate the public about abusive tax schemes, in recent years the Dirty Dozen news releases have not included information on how taxpayers can report these abusive tax schemes and their promoters to IRS. When we previously reviewed IRS's referral programs in 2016, the 2014, 2015, and 2016 Dirty Dozen lists contained information, or links to additional information, on how to report abusive tax schemes to IRS.<sup>49</sup> The last Dirty Dozen news release to include information on how to report promoters of abusive tax schemes was published in 2019.<sup>50</sup> In that year, the Dirty Dozen included a hyperlink to IRS Form 14242, *Report Suspected Abusive Tax Promotions or Preparers*. Since then, the annual series of news releases announcing the Dirty Dozen list has not included any information on how to report promoters of abusive tax schemes to IRS.

IRS officials told us the communications team that compiles the annual Dirty Dozen list has to make a number of situational and judgment calls as to what items are included. To compile the list, IRS's Media Relations office first coordinates with other IRS organizational units, Chief Counsel, and agency leadership. To then pare down the list, the communications team has to assess what will be of most interest to the media and general public. IRS officials told us that just because a specific item is not carried over from year-to-year does not mean it is no longer a concern from a tax administration standpoint.

As we noted above, referrals by the public help IRS detect and deter abusive tax schemes. However, the Dirty Dozen list—one of IRS's key tools for communicating information to the public on abusive tax schemes—no longer includes instructions about how the public can refer these tips. The absence of instructions may contribute to referrals being misrouted, or worse, result in a missed opportunity to hear from individuals wishing to submit referrals.

Modifying the Dirty Dozen list to include instructions on how to submit referrals could yield several benefits for IRS. It could increase the number of referrals, help direct the public to the appropriate form, and reach a broader and more diverse audience given the wide publication of the Dirty Dozen list and its translation into multiple languages. Additionally, modifying the Dirty Dozen list to include information regarding referrals

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<sup>49</sup>[GAO-16-155](#).

<sup>50</sup>Internal Revenue Service, "Abusive tax shelters, trusts, conservation easements make IRS' 2019 'Dirty Dozen' list of tax scams to avoid," IR-209-47 (Mar. 19, 2019).

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may help to streamline the referral submission process by reducing the likelihood of forms being sent to the wrong office within IRS. By not modifying the Dirty Dozen list to include this information, IRS may be missing opportunities to leverage information from the broader public to identify more abusive tax schemes and their promoters.

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## Finalizing Goals and Performance Measures Could Help IRS Realize Plans for Improving Promoter Investigations

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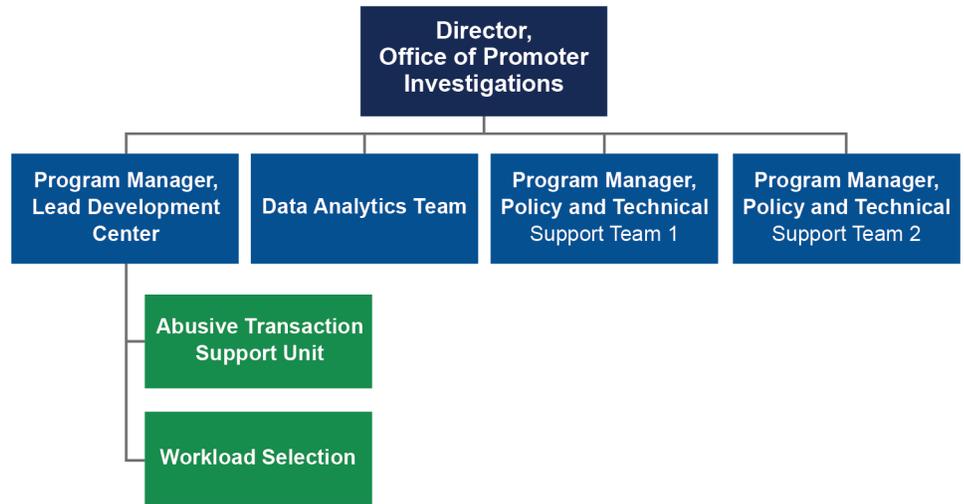
### IRS Has Mostly Completed Implementation of the New Promoter Investigations Office

In April 2021, IRS publicly announced the creation of the Office of Promoter Investigations (OPI) to be located within SB/SE. OPI has sole responsibility for approval of all promoter and preparer investigations but coordinates with other operating divisions that conduct promoter investigations, such as TE/GE and LB&I. A memorandum requesting approval for the reorganization sent to the IRS Deputy Commissioner for Services and Enforcement stated that the phased implementation of OPI would take several months to complete and that any plans for future change would be assessed based on IRS's budget and available resources. IRS officials confirmed in April 2022 that most parts of OPI were fully operational.

IRS officials told us that IRS decided to locate OPI within SB/SE because SB/SE had, at that time, the largest number of investigations involving promoters and preparers among the operating divisions. The director of OPI reports to the Deputy Commissioner for SB/SE Examination.

IRS created OPI by transferring in some existing teams and groups, such as SB/SE's Lead Development Center, and establishing new teams. The proposal to create OPI projected the office would have 59 employees, with about half being transferred from other SB/SE groups. The following groups report to the Director of OPI: the newly combined Promoter Policy and Technical Support Team 1, the newly established Policy and Technical Support Team 2, the newly established Promoter Data Analytics Team, and the Lead Development Center. Under the Lead Development Center are two groups: the Abusive Transaction Support Unit and Workload Selection. See figure 3.

**Figure 3: Organization of New IRS Office of Promoter Investigations**



Source: GAO analysis of Internal Revenue Service documents. | GAO-23-105843

Employees of the new units include economists, statisticians, and social scientists for OPI’s Data Analytics Team. The Data Analytics Team builds data models to identify promoter activity in the taxpayer population. OPI officials told us they want to use data analytics to identify abusive tax schemes. This aligns with IRS’s new strategic plan, which discusses the agency’s objective to proactively identify current and emerging fraud schemes and other threats using real-time intelligence and analytics. IRS officials told us as of August 2022, they were on-boarding and training new staff on the Data Analytics Team and had filled all approved new positions. In 2019, we reported on the challenges IRS faces in hiring employees.<sup>51</sup>

OPI has implemented some changes intended to address data limitations and challenges affecting promoter investigations. OPI officials told us that since January 2022 data on open LB&I promoter investigations have been added to the Lead Development Center’s database. Previously that database only contained information on SB/SE and TE/GE promoter investigations. In 2019, we recommended that IRS improve its use of data and analytics to better combat abusive tax schemes involving tax-exempt

<sup>51</sup>GAO, *Internal Revenue Service: Strategic Human Capital Management is Needed to Address Serious Risks to IRS’s Mission*, GAO-19-176, (Washington, D.C.: Mar. 26, 2019).

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entities.<sup>52</sup> For example, we recommended that IRS link audit data on abusive tax schemes involving tax-exempt entities across operating divisions. IRS's actions to improve the Lead Development Center's database are consistent with this recommendation.

IRS has begun revising some policies and procedures in the Internal Revenue Manual related to promoter investigations and OPI's role.<sup>53</sup> IRS revised a section of the manual that provides agency-wide guidance to employees examining abusive transactions and promoters. The revised section sets forth general principles regarding coordination among IRS's operating divisions and other stakeholders.<sup>54</sup> IRS has already begun this coordination. IRS officials told us OPI representatives have been contacting various operating divisions, offices, and other parts of IRS to educate them about OPI and its role.

OPI officials told us they are listening to the operating divisions about how they conduct their promoter investigations work and they are trying to develop some best practices that could be followed agency-wide. IRS officials said that, at this time for the most part, they are not insisting that certain promoter investigation activities be done a certain way. Rather, OPI officials said they are first researching how OPI can add value to the needs and practices of the operating divisions. IRS officials said OPI is trying to take a more "holistic approach" to promoter investigations and bring some synergy to the different ongoing efforts scattered across the agency.

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## IRS Has Not Finalized Performance Goals and Measures to Evaluate the New Promoter Investigations Office

IRS documentation and statements by IRS officials set forth expectations that OPI will improve IRS's enforcement efforts against promoters of abusive tax schemes. IRS has begun to implement some key practices to evaluate OPI's performance. However, to better assess whether the reorganization and implementation of the new office has led to improvements in promoter investigations, IRS will need to finalize and communicate its goals and performance measures.

IRS's plans to create OPI lacked specific outcome-oriented goals for the reorganization. A lack of goals is inconsistent with the Internal Revenue

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<sup>52</sup>[GAO-19-491](#).

<sup>53</sup>Internal Revenue Manual § 1.1.16.4.

<sup>54</sup>Internal Revenue Manual § 4.32.1.

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Manual and our leading practices on agency reforms. The manual describes the documentation IRS business unit leaders must submit when requesting a reorganization.<sup>55</sup> For example, among other things, the request must (1) clearly articulate the business need for the reorganization and the expected outcomes and (2) describe how and when the reorganization will be evaluated, tracked, or both if applicable.

According to the memorandum requesting the reorganization, OPI would have “a significant impact” on IRS’s efforts to identify and investigate promoters and the abusive tax schemes they are promoting. However, the request memo did not propose specific quantitative measures to evaluate the reorganization. IRS officials told us the memo did suggest ways—such as ensuring a balance between investigations sent to field offices and resulting examinations—the new office could be evaluated.

IRS officials also told us the request to create OPI was made at the same time IRS was planning a broader agency-wide reorganization. In a 2021 report to Congress on implementation of the Taxpayer First Act, IRS proposed consolidating its current compliance functions, which were spread across different taxpayer segments (such as SB/SE and LB&I examinations), into one Compliance Division.<sup>56</sup> Prior to the issuance of IRS’s report to Congress, we recommended that IRS finalize specific, identifiable, and outcome-oriented goals and performance measures for its reorganization plans. IRS concurred with this recommendation.<sup>57</sup> In 2021, IRS began a new initiative called IRS NEXT to implement some of the proposals.

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<sup>55</sup>Internal Revenue Manual §1.1.4.5(3). The manual defines reorganization/restructuring as an organizational change which eliminates, adds, or redistributes the functions or duties of an organization. Internal Revenue Manual § 1.1.4.3(15).

<sup>56</sup>Internal Revenue Service, *Taxpayer First Act Report to Congress*, Publication 5426 (Jan. 2021).

<sup>57</sup>GAO, *IRS Reorganization: Planning Addressed Key Reform Practices, but Goals and Measures for the Plan Have Not Been Finalized*, [GAO-21-18](#) (Washington, D.C.: Oct. 19, 2020). In its January 2021 report to Congress, IRS listed some performance measures to evaluate progress toward its reorganization goals. However, some of the measures in the plan were described as notional and still under development. IRS’s reorganization plan stated that IRS would identify more specific measures in an upcoming Organizational Blueprint Report. In April 2022, IRS reported that it did not have an expected date for completing that report because IRS said it had not received the funding needed to fully implement it.

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In prior work on agency reforms and reorganizations, one of the key practices we identified was that agencies should specify outcome-oriented goals and performance measures for a reorganization effort.<sup>58</sup> A critical first step in an agency reorganization process is to define the benefits of the reorganization and describe how the future will be both different from and better than the past. Finalizing specific outcome-oriented goals for a reform or reorganization helps agencies to track progress during implementation. Proceeding without specific goals in advance makes it more difficult to determine whether the agency is achieving the reorganization's intended results.

IRS has begun developing goals and performance measures for OPI. IRS published a mission statement and strategic goals for OPI on its website and in the Internal Revenue Manual.<sup>59</sup> Specifically, OPI's mission is to strengthen IRS's response to promoters and enablers of abusive tax avoidance transactions by detecting and ending the promotion, organization, and sale of abusive tax transactions. OPI has three strategic goals:

1. Protect taxpayer rights and equitably enforce the tax laws.
2. Leverage new technology and data analytics to detect and combat sophisticated evasion techniques and facilitate timely audits and collection investigations.
3. Proactively provide taxpayers and other stakeholders with information on how to protect themselves against fraud schemes and abusive tax avoidance efforts.

IRS officials shared with us a Performance Dashboard for OPI that, as of September 2022, was still under development. The dashboard listed "mission focus points" and six performance goals with proposed metrics to measure progress against those goals.<sup>60</sup> At the time of our report, the performance goals and measures were still under development. OPI officials told us they have been working with IRS's Research, Applied

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<sup>58</sup>GAO-18-427.

<sup>59</sup>Internal Revenue Manual § 1.1.16.4. IRS, "Office of Promoter Investigations At-a-Glance," accessed on August 3, 2022, <https://www.irs.gov/about-irs/office-of-promoter-investigations-at-a-glance>.

<sup>60</sup>For purposes of this report, we consider IRS's terminology of "mission focus points" to be analogous to the term "objectives" as used in *Standards for Internal Control in the Federal Government*, GAO-14-704G.

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Analytics and Statistics organization to further develop performance measures and related reports.

As we have previously reported in a body of work on performance management and accountability since passage of the Government Performance and Results Act of 1993, federal agencies can adopt several leading practices in results-oriented performance management to help them achieve strategic goals and objectives.<sup>61</sup> One such leading practice is to develop performance goals that specifically define what an organization is trying to achieve.<sup>62</sup> Performance goals are near-term, quantifiable, and objective, against which progress can be assessed—generally by one or more performance measures.<sup>63</sup>

Showing how performance goals and measures link to and support specific strategic goals can help IRS assess near-term progress toward long-term outcomes. IRS would also be able to assess how the creation of OPI and directing resources towards combatting abusive tax schemes contributes to that goal. Because OPI is collaborating with multiple IRS divisions and other organizational units, it is also important to develop and reach agreement on common goals consistent with other divisions' goals as well as IRS's overall strategic plan and goals.<sup>64</sup>

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## Conclusions

Abusive tax schemes threaten the integrity and fairness of our nation's tax system. IRS's OPI has undertaken many activities to improve IRS's response to promoter-driven abusive tax schemes, including revising IRS

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<sup>61</sup>Pub. L. No. 103-62, 107 Stat. 285 (1993) (GPRA). GPRA was updated by the GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011) (GPRAMA). Although GPRAMA generally applies to agency wide strategic plans, its framework is useful to guide any type of planning. GPRAMA requires long-term strategic and annual performance goals and associated measures, preferring measures relating to outcomes (results) versus outputs (activities). GAO, "Leading Practices in Managing for Results in Government," <https://www.gao.gov/leading-practices-managing-results-government>. For a recent report on performance management at IRS, see, GAO, *Taxpayer Service: IRS Could Improve the Taxpayer Experience by Using Better Service Performance Measures*, [GAO-20-656](https://www.gao.gov/products/GAO-20-656) (Washington, D.C.: Sept. 23, 2020).

<sup>62</sup>GAO, *Internal Revenue Service: Challenges Remain in Combating Abusive Tax Shelters*, [GAO-04-104T](https://www.gao.gov/products/GAO-04-104T) (Washington, D.C.: Oct. 21, 2003).

<sup>63</sup>[GAO-20-656](https://www.gao.gov/products/GAO-20-656).

<sup>64</sup>In our prior work on leading practices for collaboration, we have found that federal agencies can use their strategic and annual performance plans as tools to drive collaboration with other agencies and other partners and establish complementary goals and strategies for achieving results. GAO, "Leading Practices in Managing for Results in Government," <https://www.gao.gov/leading-practices-managing-results-government>.

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internal policies and procedures and engaging internal and external stakeholders. OPI is also beginning to leverage data analytics to detect more promoters. IRS and OPI, however, could improve their efforts to investigate promoters of abusive tax schemes in two key areas: external referrals and performance measurement.

Currently, taxpayers wanting to refer information to IRS about promoters of abusive tax schemes encounter a referral process that can be confusing. Taxpayers also have limited options to submit this information online. We previously reported on this situation in 2016. At that time, we recommended that IRS take steps to improve its referral programs by developing a consolidated, online referral submission tool. In June 2022, we designated this a priority open recommendation. By taking action to implement this recommendation, IRS may be able to decrease taxpayer confusion and increase the number of referrals it receives.

During our current review, we also found that in recent years IRS's annual Dirty Dozen list—its widely publicized vehicle for alerting the public to abusive tax schemes—has not included information on how the public might refer information about promoters of abusive tax schemes. By including such information on its Dirty Dozen list, IRS may better enlist the broader public to help identify abusive tax schemes and their promoters.

We also found that while OPI has begun to develop outcome-oriented performance goals and measures, the office has yet to finalize them and share them within IRS. OPI has been operating for over 1 year, without performance goals and measures in place. OPI may not ever be fully able to evaluate its own efficacy, since the total population of abusive tax schemes and their promoters is unknown, but by establishing outcome-oriented performance goals and measures, OPI could provide evaluation metrics to help IRS ensure that its new office is improving IRS' response to known abusive schemes and their promoters.

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## Recommendations for Executive Action

We are making the following two recommendations to IRS:

The Commissioner of Internal Revenue should ensure that the Director of the Office of Communications, in collaboration with other IRS organizational units as appropriate, amends the Dirty Dozen list publication to include telling taxpayers how to refer information to IRS on preparers and promoters involved in abusive tax schemes.

(Recommendation 1)

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The Commissioner of Internal Revenue should ensure that the Director of the Office of Promoter Investigations finalizes outcome-oriented goals and performance measures to evaluate the effectiveness of OPI. (Recommendation 2)

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## Agency Comments

We provided a draft of this report to IRS for review and comment. In its comments, reproduced in appendix II and summarized below, IRS agreed with our recommendations.

IRS agreed with our recommendation to amend the Dirty Dozen list publication to include instructions for taxpayers on how to refer information to IRS on preparers and promoters involved in abusive tax schemes. Specifically, IRS stated it will include referral information in news releases regarding abusive tax schemes.

IRS also agreed with our recommendation to finalize outcome-oriented goals and performance measures to evaluate the effectiveness of OPI.

IRS also provided technical comments, which we incorporated as appropriate.

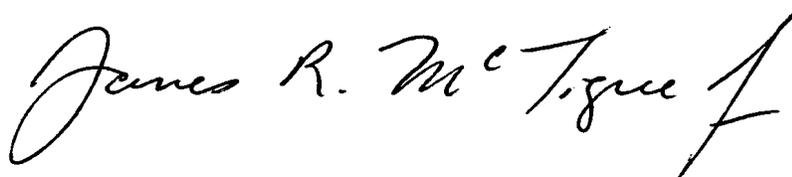
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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Commissioner of Internal Revenue, and other interested parties. In addition, the report will be available at no charge on the GAO website at <https://www.gao.gov>.

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If you or your staff have any questions about this report, please contact me at (202) 512-6806 or [mctiguej@gao.gov](mailto:mctiguej@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "James R. McTigue, Jr." The signature is written in a cursive style with a large, stylized initial 'J'.

James R. McTigue, Jr.  
Director, Tax Policy and Administration  
Strategic Issues

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# Appendix I: GAO Identified IRS Webpages and Forms about Referring Information on Tax Noncompliance

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We identified the following eight IRS webpages that contained instructions about how to refer information on tax noncompliance (including information on promoters of potentially abusive tax schemes) to IRS.<sup>1</sup>

We searched IRS.gov for information on how to submit referrals to IRS about promoters of abusive tax schemes. We used keywords such as “abusive,” “promoter,” and “scheme.” We conducted our searches in June 2022 and November 2022. We reviewed the content of the webpages to identify information on IRS forms and hotlines that taxpayers could use to refer or disclose information on abusive schemes and transactions and promoters and preparers.<sup>2</sup>

Abusive Tax Schemes and Abusive Tax Return Preparers - IRS Lead Development Center,  
<https://www.irs.gov/businesses/small-businesses-self-employed/abusive-tax-schemes-and-abusive-tax-return-preparers-irs-lead-development-center>.

Abusive Tax Shelters and Transactions,  
<https://www.irs.gov/businesses/corporations/abusive-tax-shelters-and-transactions>.

Abusive Trust Tax Evasion Schemes,  
<https://www.irs.gov/businesses/small-businesses-self-employed/abusive-trust-tax-evasion-schemes>. See items 8 and 11.

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<sup>1</sup>We also identified one IRS brochure that contained instructions to taxpayers about how to refer information on preparers and promoters of abusive tax schemes. Internal Revenue Service, *Bigger refund sound too good to be true? (How to Report Suspected Abusive Tax Promotions or Preparers)*, Publication 5610 (Mar. 2022).

<sup>2</sup>We identified two webpages for the IRS Office of Indian Tribal Governments with instructions to email the office directly with information on potentially abusive schemes that involve tribal entities. IRS, “Fraud and Abusive Schemes Information for Indian Tribal Governments,” <https://www.irs.gov/government-entities/indian-tribal-governments/fraud-and-abusive-schemes-information-for-indian-tribal-governments>, and “Reporting Abusive Schemes and Their Promoters,” <https://www.irs.gov/government-entities/indian-tribal-governments/reporting-abusive-schemes-and-their-promoters>.

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**Appendix I: GAO Identified IRS Webpages and  
Forms about Referring Information on Tax  
Noncompliance**

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EO Abusive Tax Avoidance Transactions,  
<https://www.irs.gov/charities-non-profits/eo-abusive-tax-avoidance-transactions>.

EP Abusive Tax Transactions,  
<https://www.irs.gov/retirement-plans/ep-abusive-tax-transactions>.

How Do You Report Suspected Tax Fraud Activity?,  
<https://www.irs.gov/individuals/how-do-you-report-suspected-tax-fraud-activity>.<sup>3</sup>

Office of Promoter Investigations At-a-Glance,  
<https://www.irs.gov/about-irs/office-of-promoter-investigations-at-a-glance>

Tax Scams - How to Report Them,  
<https://www.irs.gov/businesses/small-businesses-self-employed/tax-scams-how-to-report-them>.

These webpages contained information on, or links to, eight different forms that taxpayers could use to refer or disclose information on potentially abusive tax schemes and transactions and promoters and preparers of those schemes and transactions. Three of the webpages also contained information on two hotlines for referring information. See table 2.

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<sup>3</sup>A notice on the webpage states that it is an archival or historical document and may not reflect current law, policies, or procedures. As of October 2022, the webpage was still active.

**Appendix I: GAO Identified IRS Webpages and  
Forms about Referring Information on Tax  
Noncompliance**

**Table 2: IRS Forms and Hotlines for Referring or Disclosing Information about Tax Noncompliance Including Potentially Abusive Tax Schemes and Promoters**

<b>Form or hotline name</b>	<b>Type</b>	<b>Purpose of form or hotline</b>	<b>How to submit</b>
Form 211 Application for Award for Original Information	referral	Taxpayers file this form to apply for a whistleblower reward.	mail
Form 3949-A Information Referral	referral	Taxpayers file this form to report suspected tax law violations by a person or a business.	mail
Form 13909 Tax-Exempt Organization Complaint (Referral)	referral	Taxpayers file this form to send information about suspected tax-exempt organizations not complying with tax laws.	email, mail, fax
Form 14157 Return Preparer Complaint	referral	Taxpayers use this form to file a complaint against a tax return preparer or tax preparation business.	mail, fax
Form 14242 Report Suspected Abusive Tax Promotions or Preparers	referral	Taxpayers file this form to report a suspected abusive tax avoidance scheme or tax return preparers who promote such schemes.	mail, fax
Abusive Tax Shelter Hotline	hotline	IRS webpage on Abusive Tax Shelters and Transactions instructs taxpayers to contact the hotline to share information about abusive tax shelters.	email, mail, fax
Abusive Transaction Hotline (for retirement plans)	hotline	IRS webpage on Employee Plans Abusive Tax Transactions instructs taxpayers to contact the hotline to share information about tax shelters and emerging issues that may be abusive in retirement plans.	email, mail
Form 8886 Reportable Transaction Disclosure Statement	disclosure	Taxpayers file this form to disclose information for each reportable transaction in which they participated.	mail, fax
Form 8886-T Disclosure by Tax Exempt Entity Regarding Prohibited Tax Shelter Transaction	disclosure	Certain tax-exempt entities file this form to disclose information with respect to each prohibited tax shelter transaction to which the entity is a party.	mail
Form 8918 Material Advisor Disclosure Statement	disclosure	Material advisors to a reportable transaction file this form to disclose certain information about the transaction.	mail, fax

Source: GAO review of Internal Revenue Service (IRS) documentation. | GAO-23-105843

# Appendix II: Comments from the Internal Revenue Service



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

December 8, 2022

James R. McTigue, Jr.  
Director, Tax Policy and Administration, Strategic Issues Team  
United States Government Accountability Office  
Washington, DC 20548

Dear Mr. McTigue, Jr:

Thank you for the opportunity to review your draft report entitled, *Abusive Tax Schemes: Additional Steps Could Further IRS Efforts to Detect and Deter Promoters of Schemes* (GAO-23-105843). Your report examined (1) how the IRS conducts promoter investigations and presented summary data on those investigations; (2) how IRS educates taxpayers about referring information on promoters to IRS; and (3) to what extent IRS's reorganization plan for the Office of Promoter Investigations (OPI) was consistent with key practices and the extent to which IRS is prepared to evaluate the performance of OPI.

The goal of the OPI is to protect taxpayer rights and equitably enforce the tax laws. We want to proactively provide taxpayers and other stakeholders with information on how to protect themselves against fraud schemes and abusive tax avoidance efforts. The IRS is committed to identifying and stopping abusive tax schemes and abusive promoters and preparers as soon as possible. The IRS relies on help from the tax practitioner community and the public to identify "too good to be true" abusive tax transactions. For example, OPI serves as a member of the IRS's Joint Strategic Emerging Issues Team (JSEIT), which acts as a conduit between taxpayers with compliance issues and the relevant IRS division. JSEIT aims to provide early communication to prevent abusive fraud and to identify emerging issues for purposes to best address issues of noncompliance. As a participant in this process, OPI continues to ensure that the IRS and tax practitioners work together to stop promoters of abusive transactions and prevent tax loss.

We appreciate the valuable feedback you have provided. Thank you for recognizing that we have an annual communication to warn taxpayers about abusive tax schemes and are conducting hundreds of investigations of promoters involving dozens of types of

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**Appendix II: Comments from the Internal Revenue Service**

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abusive tax schemes. Our comments in response to your specific recommendations are enclosed. If you have any questions, please contact me or Deborah Ngo, Director, Office of Promoter Investigations, Small Business/Self-Employed Division.

Sincerely,

**Melanie R. Krause** Digitally signed by Melanie R. Krause  
Date: 2022.12.08 14:36:04 -05'00'

Melanie R. Krause  
Acting Deputy Commissioner for  
Services and Enforcement

Enclosure

Enclosure

**GAO Recommendations and IRS Responses to GAO Draft Report  
Abusive Tax Schemes (23-105843)**

**RECOMMENDATION 1:**

The Commissioner of IRS should ensure that the Director of the Office of Communications, in collaboration with other IRS organizational units as appropriate, amends the Dirty Dozen list publication to include telling taxpayers how to refer information to IRS on preparers and promoters involved in abusive tax schemes.

**Comment:**

We agree with the recommendation. In coordination with IRS organizational units, we will include referral information on promoters in news releases regarding abusive tax schemes that will provide information to the public on how to refer promoters. We will also continue to work with the IRS business units, Chief Counsel, and agency leadership to solicit feedback on abusive tax schemes and continue to relay items of most interest to the media and general public.

**RECOMMENDATION 2:**

The Commissioner of IRS should ensure that the Director of the Office of Promoter Investigations finalizes outcome-oriented goals and performance measures to evaluate the effectiveness of OPI.

**Comment:**

We agree with the recommendation. We will finalize OPI's performance goals and measures to evaluate the effectiveness of the new office.

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

James R. McTigue, Jr. at (202) 512-6806 or [McTigueJ@gao.gov](mailto:McTigueJ@gao.gov).

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## Staff Acknowledgments

In addition to the contact named above, Tara Carter (Assistant Director), Mark Kehoe (Analyst-in-Charge), and Sam Facas made key contributions to this report. Other contributors include Peter Beck, John Bornmann, Jacqueline Chapin, Caitlin Cusati, Tonita Gillich, Eric Gorman, Neil Pinney, Marylynn Sergent, Andrew J. Stephens, Sarah Veale, and Alicia White.

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