

GAO Faults Whistleblower Program Over Timeliness, Communication

By

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Timeliness and communication concerns may discourage whistleblowers from coming forward to the IRS with information, according to a Government Accountability Office report released publicly on November 30.

The IRS Whistleblower Office's "communication with stakeholders, including whistleblowers, is limited due to delayed annual reports to Congress, incomplete data, and limited program information for whistleblowers," the report  found.

Senate Finance Committee members in June 2014 had asked the GAO to look into the IRS processes and resources devoted to administering the whistleblower program, citing concerns that awards were not being processed in a timely fashion. A GAO performance audit was performed from October 2014 to October 2015. (Prior coverage )

The report found that from 2011 to 2015, in 500 total award payments totaling \$315 million, the Whistleblower Office made errors that amounted to approximately \$100,000. Although only 17 awards were paid under [section 7623\(b\)](#), those amounted to the bulk of the award amount, totaling \$261 million. Those 17 claims took between four and 7-1/2 years from submission to award payment, and from the time the operating division completed and sent the request forms to the Whistleblower Office for evaluation, it took between 1-1/2 and 4-1/2 years for claims to be paid. Nearly \$2 billion was collected as proceeds under the program during that time, the report says.

Dean Zerbe of Zerbe, Fingeret, Frank & Jadav PC said the report underscores how the IRS is failing to take full advantage of the program and is losing out on billions in uncollected tax revenue. "Bang for buck for honest taxpayers -- it's hard to beat a program that is bringing in \$6 from big-time tax cheats for every \$1 it pays in awards," Zerbe said, adding that he hoped the report would serve as "hot, strong coffee" for IRS senior management and the administration to prioritize the whistleblower program.

In a written statement , Stephen M. Kohn of the National Whistleblowers Center said the IRS was making important progress in its program, demonstrated by the payment of 500 claims, but that more needs to be done, including the dedication of far more resources.

"As we have seen in the Bradley Birkenfeld Swiss Bank case, whistleblower disclosures were critical in breaking the back of secret Swiss banking and can have an incredibly positive impact on ensuring compliance with the law," said Kohn, who represented Birkenfeld in collecting \$5 billion in unpaid taxes in what was the largest whistleblower award to date. (Prior coverage )

"The reported statistics of claims denied does not show just how much additional revenue the IRS is leaving on the table by not bringing enforcement actions on more whistleblower claims," Scott A. Knott of the Ferraro Law Firm said. "Because the IRS does not track the expiration of the period of limitations on refunds in every whistleblower case that resulted in the payment of additional tax, the IRS is setting itself up to fail to properly pay out awards in a timely fashion."

Status Letters Not Enough

The Whistleblower Office policy on providing updates on whistleblower claim status is to simply state whether a claim is open or not. Practitioners previously said that an IRS pilot program announced earlier this year that would send status letters to whistleblowers was a step in the right direction, but may not go far enough in relieving whistleblower anxiety. (Prior coverage ) "Whistleblower program stakeholders have voiced concern about this limited communication," the GAO report says. "They reported frustrations with the limited information IRS is willing to share with whistleblowers, especially those that have risked their careers or safety to be whistleblowers."

"Some whistleblower attorneys we spoke with stated that they are accepting fewer IRS whistleblowers as clients or have stopped taking on such clients altogether due to their frustration with the program," it says. "As such, IRS may risk missing out on recovering significant tax revenue when whistleblowers decide not to come forward with information."

The report also says the pilot project used already constrained resources and had unknown benefits. The Whistleblower Office does not have plans to contact letter recipients to determine the value in receiving their letters, the GAO said.

Potential for Award Inconsistency

The report criticizes the "lack of quantifiable criteria for determining whistleblower awards," which it says subjects the awards process to potential inconsistency. Broad award categories exist to mitigate inconsistency, and the office director is required to approve high-dollar award claims, but if the volume of high-dollar claims reaching the award stage were to increase as predicted, consistency may be further affected, the report concludes.

"The IRS should reconsider its award determination process of starting from the bottom of the 15 to 30 percent range and working their way up, and instead use the middle of the range as the starting point and vary from that number based on the positive or negative factors of a whistleblower's contribution in each case," Knott argued.

Senate Finance Committee member Chuck Grassley, R-Iowa, who drafted the 2006 revisions to the law to include a "shall pay" provision dictating payouts between 15 and 30 percent of the collected proceeds, noted in a written statement  how the report gives the IRS "a list of concrete steps" to improve the Whistleblower Office.

"We all need to make sure the IRS puts out a welcome mat for whistleblowers. The collection of \$2 billion for the federal treasury that otherwise would have been lost to fraud is good news for the taxpayers. The news would be even better if the IRS stepped up its work," Grassley said.

Recommendations

The GAO report makes 12 recommendations, 11 of them at the executive level. Included among them: Treasury should issue its Whistleblower Office annual report to Congress no later than January 31 of each year; the IRS should implement a staffing plan for streamlining intake and the initial review process; and the IRS should develop guidance for examiners in operating divisions to use in determining whether a [section 6103\(n\)](#) contract with a whistleblower would be beneficial and outline the steps for requesting such a contract. It also recommends that Congress consider legislation that would provide protections for tax whistleblowers against employer retaliation.

Practitioners have criticized the IRS for not using section 6103(n) agreements to promote communications with whistleblowers. [Section 6103](#) generally prohibits the IRS from sharing tax return information with anyone outside the Service, but subsection (n) provides an exception allowing disclosure when necessary for "the providing of other services, for purposes of tax administration."

"It is head-scratching to say the least that the IRS -- as it faces the issues of a tough budget -- fails to engage in contracts with whistleblowers to assist them in the work of the IRS. It is clear from the GAO report that there is no one at the IRS minding the store when it comes to encouraging contracts with whistleblowers," Zerbe said.